

# Land and Conflict

Resource Extraction, Human Rights, and Corporate Social  
Responsibility: Canadian Companies in Colombia



Report prepared by MiningWatch Canada  
and CENSAT-Agua Viva  
for Inter Pares

September 2009

Inter Pares works with social change organizations around the world who share our analysis that poverty and injustice are caused by structural inequalities within and between nations, and who are working to promote social and economic justice in their communities.

On-the-ground research in Colombia was carried out by CENSAT/Agua Viva and by lead researcher Étienne Roy-Grégoire, and the final report elaborated by MiningWatch Canada and Mr. Roy-Grégoire with the collaboration of Inter Pares.

The authors and collaborating organizations would like to thank the following for comments and assistance received on this report: Mary Durran, Love St-Fleur, and Rachel Warden.

Inter Pares gratefully acknowledges the financial and in-kind support provided by collaborating institutions for this publication:

Canadian Labour Congress  
CAW Social Justice Fund  
Co-Development Canada  
Canadian Union of Public Employees  
Canadian Union of Postal Workers  
Canadian Catholic Organization for Development and Peace  
Kairos: Canadian Ecumenical Justice Initiatives  
Ontario Public Service Employees Union - OPSEU  
Ontario Secondary School Teachers' Federation - OSSTF  
Public Service Alliance of Canada - PSAC  
Public Service Alliance of Canada Social Justice Fund  
Steelworkers Humanity Fund  
United Church of Canada

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ISBN: 978-0-9781200-5-4

Cover photo:

View from the town of Marmato, Colombia. Photo: Jean Symes.

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## Executive Summary

Canadian foreign direct investment in Colombia has grown consistently since the 1990s, particularly in telecommunications, mining, and fossil fuel extraction. Canadian mining and oil companies are major players in Colombia.

Despite a concerted public relations campaign by the Colombian government, Colombia continues to suffer widespread human rights abuses, including extrajudicial executions, disappearances, extortion, and threats. Control over land, labour, and natural resources are integral to the war and violence in Colombia, and the past few decades have seen massive displacement and murder for political and economic ends. Striking correlations have been observed between where investment – both domestic and foreign – takes place and rights abuses, ranging from murder and massacres and related massive land and property theft to violations of the rights to freedom of movement and to a healthy environment.

Human rights violations are linked to efforts by those behind Colombia's murderous paramilitaries to create conditions for investment from which they are positioned to benefit. There are also ongoing relations between the paramilitary forces and all levels of government and the armed forces, up to the highest officials, and there are clear indications that political cover for such human rights abuses and crimes will continue.

John Ruggie, UN Special Representative on human rights and transnational corporations, emphasizes that it is the responsibility of States to *protect* human rights, while both State and non-State actors are obligated to *respect* human rights, and where appropriate, to *remedy* human rights violations.

The Colombian context presents especially difficult challenges for companies making investments to be able to protect or respect human rights standards and contribute positively to the overall human rights situation. Indeed, the high level of violence and the continued presence of paramilitaries in areas of high investment raises serious concerns that Canadian investment risks contributing to or exacerbating the violence, and risks benefiting from or being complicit with the human rights abuses and massive displacement that continue to occur. In such circumstances, where the State is not willing or able to protect human rights, the obligation on corporations to respect human rights becomes more critical, while at the same time more difficult to define and fulfil.

Debates continue concerning the need for more stringent corporate accountability legislation in Canada. Expanding Canadian corporate interests in Colombia have led executives and business lobby groups to push for the negotiation and implementation of the Canada-Colombia Free Trade Agreement (CCFTA) with strong

provisions for investor protection, which was signed in November 2008. At time of writing, the Agreement has yet to be ratified by Parliament and implemented by the Canadian government.

This report looks at four case studies of Canadian extractive industry investment projects in Colombia and analyses the potential human rights risks associated with them, using as an analytical framework Rights and Democracy's work on Human Rights Impact Assessment (HRIA) for foreign investment projects, and referring as well to framework principles developed by the UN Special Representative on human rights and transnational corporations.

The four cases are:

- B2Gold in the department of Sur de Bolívar;
- Greystar Resources (gold mining) in the department of Santander;
- Colombia Goldfields and B2Gold in the region of Caldas and Antioquia;
- and for petroleum, Nexen Ltd. in the department of Tolima.

This report is not itself a Human Rights Impact Assessment (HRIA). Rather it identifies issues and circumstances that clearly indicate that transparent and independent HRIAs are necessary to avoid significant potential risk to human rights on existing and proposed projects, and on initiatives such as the Canada-Colombia Free Trade Agreement (CCFTA).

The research finds that the safeguards that are currently in place are inadequate to address the significant risks to the protection of and respect for human rights of people affected by investment projects in Colombia. The findings are analysed with respect to:

- Corporate Social Responsibility (CSR) policies;
- Social and economic impacts (food security, environment, labour, and the marginalization of small-scale mining and traditional livelihoods);
- Collective rights of Indigenous Peoples and Afro-Colombians;
- Democratic expression, consultation, and community decision-making; and
- Corporations' potential relationships, directly or indirectly, with armed actors, both State (Armed Forces) and illegal/non-State (guerrilla and paramilitary)

Testimony gathered in the course of this study suggests consistent and clear patterns in key areas where companies risk benefiting from human rights violations and/or benefiting those responsible for human rights violations. Under these circumstances, increased investment in the extractive sector is at risk of entrenching and even expanding the already astonishing toll on the human rights of Colombians.

## Need for this study

Canadian foreign direct investment in Colombia has risen consistently since the 1990s, particularly in the fields of telecommunications, mining, and fossil fuel extraction. Canadian mining and oil companies are major players in Colombia. The regions in which they



Small-scale miner at work, Vetás, Santander department. Photo: Jean Symes.

are active, rich in minerals and oil, have been and continue to be plagued by violence, displacement, and paramilitary activities. In fact, resource-rich regions are the source of 87 per cent of forced displacements, 82 per cent of the violations of human rights and international humanitarian law, and 83 per cent of murders of union leaders.<sup>1</sup> Both the high levels of violence and the presence of illegal armed groups raise serious concerns about the potential for Canadian investment to benefit from or be complicit in the conflict.<sup>2</sup>

Maria McFarland Sánchez-Moreno, the Senior Americas Researcher for Human Rights Watch, in her testimony to the US Congress on February 12th, 2009, said “Despite the rosy picture of the human rights situation that is often painted by Colombian Government officials, Colombia to this day presents widespread human rights abuses, including extrajudicial executions of civilians, enforced disappearances, kidnappings, use of child soldiers and antipersonnel landmines, extortion and threats.”<sup>3</sup>

Control over land, labour, and natural resources are integral to the war and violence in Colombia, and the past few decades have seen massive displacement and murder for political and economic ends. Striking correlations have been observed between investment, both domestic and foreign, and rights abuses, ranging from murder and massacres and related massive land and property theft, to violations of the rights to freedom of movement and to a healthy environment.

Rights and Democracy’s work on Human Rights Impact Assessment (HRIA) for foreign investment projects<sup>4</sup> provides a framework for evaluating whether a given investment project has led to – or places the investor at risk of – failing to respect human rights, benefiting from violations of human rights, or being complicit in the violations of human rights protected by the Universal Declaration on Human Rights<sup>5</sup> as well as those protected by the International Covenant on Economic, Social and Cultural Rights.<sup>6</sup>

1. Interview with Francisco Ramírez, President of SINTRAMINERCOL (Colombian Union of Mine Workers), Bogotá, July 28, 2008.

2. Canadian Council for International Co-operation, *Towards a Human Rights Framework for Canadian Policy on Colombia. A policy brief from the Americas Policy Group*, November 2006. Retrieved May 25, 2009 from: [http://ccic.ca/e/docs/003\\_apg\\_2006-11\\_canadian\\_policy\\_towards\\_colombia.pdf](http://ccic.ca/e/docs/003_apg_2006-11_canadian_policy_towards_colombia.pdf).

3. United States House of Representatives Committee on Education and Labor, *Hearing Examining Workers’ Rights and Violence against Labor Union Leaders in Colombia. Testimony of Maria McFarland Sánchez-Moreno, Esq., Senior Americas Researcher, Human Rights Watch*, February 12, 2009. Retrieved May 19, 2009 from: <http://www.hrw.org/en/news/2009/02/12/testimony-maria-mcfarland-s-nchez-moreno-us-house-representatives>.

4. International Centre for Human Rights and Democratic Development (also known as Rights & Democracy), *Human Rights Impact Assessments for Foreign Investment Projects Learning from Community Experiences in the Philippines, Tibet, the Democratic Republic of Congo, Argentina, and Peru*, International Centre for Human Rights and Democratic Development, 2007. Retrieved May 25, 2009 from: [http://www.dd-rd.ca/site/PDF/publications/globalization/hria/full%20report\\_may\\_2007.pdf](http://www.dd-rd.ca/site/PDF/publications/globalization/hria/full%20report_may_2007.pdf).

5. UN, *Universal Declaration of Human Rights*. Retrieved May 25, 2009 from: <http://www.ohchr.org/EN/UDHR/Pages/Language.aspx?LangID=eng>.

6. UN, *International Covenant on Economic, Social & Cultural Rights*. Retrieved May 25, 2009 from: [http://www.unhcr.ch/html/menu3/b/a\\_cescr.htm](http://www.unhcr.ch/html/menu3/b/a_cescr.htm)

Numerous academic and human rights studies indicate that such violations have been linked to efforts by those behind Colombia's murderous paramilitaries – often with the collusion of members of the armed forces – to create conditions for investment from which they are positioned to benefit.<sup>7</sup> There are demonstrated substantive relations among the paramilitary forces and all levels of government, up to the highest officials – including Colombia's former ambassador to Canada, Jorge Visbal Martelo,<sup>8</sup> and President Uribe's cousin and close advisor, Mario Uribe Escobar. Ongoing government efforts to grant amnesty to the paramilitaries and to provide technical loopholes for already-convicted politicians<sup>9</sup> indicate that continued political cover for such human rights abuses and crimes will continue.

John Ruggie, UN Special Representative on human rights and transnational corporations, has developed a framework for business and human rights, which comprises three core principles:

- *the State duty to protect against human rights abuses by third parties, including business;*
- *the corporate responsibility to respect human rights; and*
- *the need for more effective access to remedies.*<sup>10</sup>

We have used both Rights and Democracy's HRIA and the UN Special Representative's principles to frame this report.

The lack of specific information about Canadian corporations operating in Colombia – notably in media coverage, but even in some of the companies' own reports to shareholders – has contributed to a profound silence from Canadians with regards to their actions.

Growing Canadian corporate interests in Colombia over the past decade have led executives and lobby groups to push for the negotiation and implementation of a Canada-Colombia Free Trade Agreement

(CCFTA) with strong investor protection clauses. The House of Commons Standing Committee on International Trade (CIIT) issued a report in June 2008 on the CCFTA that called for an "impartial human rights impact assessment (to) be carried out by a competent body, which is subject to independent levels of scrutiny and validation." The Committee also maintained that "the recommendations of this assessment should be addressed before Canada considers ratifying and implementing an agreement with Colombia." Instead, the Agreement was signed by both countries one week before the Committee was to issue its report. At time of writing, the CCFTA has yet to be ratified and implemented by the Canadian government. Implementing legislation, the last step in bringing the agreement into force, will likely be approved in the fall of 2009.<sup>11</sup> There are concerns that this agreement does not address the alarming context in Colombia, and in fact could work to exacerbate the human rights situation.<sup>12</sup>

In February 2009, Liberal MP John McKay introduced a private member's bill to parliament, Bill C-300, to promote responsible environmental practices and international human rights standards on the part of Canadian mining, oil and gas corporations in developing countries. It will be studied and voted on in the fall of 2009. While the bill incorporates some recommendations of an earlier consensus report<sup>13</sup> by Canadian NGOs and extractive industry representatives, its nature as a private member's bill limits its reach, excluding important recommendations of the consensus report – itself a compromise on the part of human rights activists and NGOs. With the Canadian government's sudden roll-out in March 2009 of a Corporate Social Responsibility policy, which critics say is considerably weaker than Bill C-300 and far weaker than what was called for in the compromise consensus

7. See for example Stéphanie Lavaux, "Natural resources and conflict in Colombia," in *International Journal*, Volume 62, No. 1, Winter 2006-2007; Amnesty International, *Colombia: The Paramilitaries in Medellín: Demobilization or Legalization?*, 2005. Retrieved May 25, 2009, from:

<http://www.amnesty.org/en/library/asset/AMR23/019/2005/en/1f14c436-d4d5-11dd-8a23-d58a49c0d652/amr230192005en.html>; and Amnesty International, AMR 23/001/2007, July 2007.

8. Michelle Collins, "Former Colombian Envoy Embroiled in Paramilitary Scandal," *Embassy Magazine*, June 10, 2009. Retrieved July 20, 2009 from: <http://www.embassymag.ca/page/view/martelo-6-10-2009>.

9. Jasmin Hristov, "Legalizing the Illegal: Paramilitarism in Colombia's 'Post-Paramilitary' Era," *NACLA Report on the Americas*, Volume 42, Issue 4, July/August 2009. Retrieved July 20, 2009 from: <https://nacla.org/node/5939>.

10. John Ruggie, *Protect, Respect and Remedy: a Framework for Business and Human Rights*. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. UN Human Rights Council, April 7, 2008. Retrieved July 28, 2009 from: <http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf>

11. Linda Diebel, "Is Canada-Colombia free trade deal off the table until fall?," *The Toronto Star*, May 28, 2009.

Retrieved June 6, 2009 from: <http://thestar.blogs.com/decoder/2009/05/looks-like-canadacolombia-free-trade-deal-off-the-table-until-fall.html>.

12. Canadian Council for International Co-operation, *op. cit.*, p. 11, 30, 34.

13. Advisory Group Report. *National Roundtables on Corporate Social Responsibility (CSR) and the Canadian Extractive Industry in Developing Countries*, March 29, 2007. Retrieved on April 21, 2009 from:

<http://www.halifaxinitiative.org/updir/AdvisoryGroupReport-March2007.pdf>

report, Canada's national debate on corporate social responsibility in Colombia and in the rest of the world is far from over.

Because of the limited time before the final votes on the CCFTA and Bill C-300 in Parliament, it is urgent that clear risks of violations of individual and collective human rights linked to Canadian corporate activity in Colombia be identified and shared with Canadians.

These factors together contribute to the urgent need for the production of this report.

### Objectives of the study

The goal of this research project was to establish detailed information on the activities and impacts of Canadian extractive companies in Colombia. This would allow for increased international support for civil society organizations and trade unions to defend human rights, labour, and environmental standards, as well as improving monitoring of Canadian corporations active in Colombia.

*When mining or oil companies enter new territories, they often do so first by announcing that they will bring progress, development, and jobs.*

Specifically, the project aimed to:

- Develop an overview of trends in the Canadian investment in three sectors (oil, mining and palm oil), focusing on growth rate, investment rate, identification of the most important types of impact on human rights. (The focus on palm oil was dropped as the available indicators did not show significant Canadian foreign direct investment on the sector.)
- Consolidate information on the activities of Canadian corporations in terms of human rights and environmental impacts, through case studies in key regions of the country.
- Document the history of use and ownership of land in the case studies, activities of armed groups in the area, and the role of state and private institutions. Similarly, analyze impacts on human rights arising from these activities as well as effects related to the appropriation of

land and ecosystems.

- Describe the support offered by the Embassy and the Canadian government to Canadian corporations in Colombia as well as the influence of the activities of the Canadian government and Canadian companies in public policy, including regulatory policy, in Colombia.

### The extractive sector and the Colombian context

Since the initial demobilization of the paramilitaries began in 2004, the Colombian government has, with some success, attempted to portray Colombia as a “post-conflict” country.<sup>14</sup> The characterization is clearly false. A recent International Crisis Group report notes that the conflict is “evolving not ending,” and that the recent improvement in security in urban centres and the loss of influence of insurgent groups has been accompanied by “serious human rights violations.”<sup>15</sup> The targets of this violence tend to be the political opposition and members of popular sectors including Indigenous peoples, peasant farmers, environmentalists, student organizers, trade unionists, and Afro-Colombian communities – as well as former paramilitaries resisting pressure to rejoin their former comrades in new groupings (as discussed in the Sur de Bolívar case study, below).

Paramilitaries and their successors control between 2 and 7 million hectares of stolen land. In one of few returns of stolen land, some 18,000 hectares were given back to Afro-Colombian communities in Chocó in 2007. Residents have continued to face ongoing threats, intimidation and murder.<sup>16</sup> Victims can apply to be compensated via the government's mechanism for war reparations, the Justice and Peace Law. But some displaced people who have claimed compensation for loss of land have been killed, others intimidated, and the number of perpetrators sentenced for such crimes remains close to zero. In a country in which the distance between the expressed intent of the government and reality is so great, everyone from the Constitutional Court to the Colombian press and NGOs have specifically emphasized the government's lack of attention and action on

14. See “New Ambassador Invites Canadians to See the New Colombia,” *Embassy Magazine*, March 22, 2009. Retrieved June 12, 2009 from: [http://www.embassymag.ca/page/view/.2006.march.22.dip\\_circ](http://www.embassymag.ca/page/view/.2006.march.22.dip_circ). See also Barin Masoud, “Rights: Abuses in Colombia on Trial in U.S.,” *IPS News*, July 9, 2007. Retrieved June 12, 2009 from: <http://ipsnews.net/news.asp?idnews=38473>.

15. International Crisis Group, *The Virtuous Twins: Protecting Human Rights and Improving Security in Colombia*, May 25, 2009, p. 2-3, 18. Retrieved June 12, 2009, from: <http://www.crisisgroup.org/home/index.cfm?l=1&id=6112&m=1>.

16. Revista Semana, “Los señores de las tierras,” 5 de junio de 2004; Contraloría Delegada para el Sector Defensa, Justicia y Seguridad, Dirección de Estudios Sectoriales. Luís Bernardo Florez, Vice-Controlor General de la Nación, “Desplazamiento Forzado: Un impacto territorial,” 2005. Quoted in *Norwegian Refugee Council (NRC) to the Universal Periodic Review mechanism established by the Human Rights Council in Resolution 5/1 of 18 June 2007. (July 2008). Internally displaced people (IDPs) in Colombia*. p. 2. Retrieved July 27, 2009 from: [http://lib.ohchr.org/HRBodies/UPR/Documents/Session3/CO/IDMC\\_COL\\_UPR\\_S3\\_2008\\_NorwegianRefugeeCouncilsInternalDisplacementMonitoringCentre\\_uprsubmission.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session3/CO/IDMC_COL_UPR_S3_2008_NorwegianRefugeeCouncilsInternalDisplacementMonitoringCentre_uprsubmission.pdf)

the issue of land and displaced people.<sup>17</sup> Vulnerable groups, including women, children, Indigenous and Afro-Colombians remain disproportionately affected by displacement: 74% of displaced people are women and children, and while Indigenous people represent 3% of Colombia's population, they make up 8% of the displaced.<sup>18</sup>

Mining and oil corporations operating in Colombia are often working in areas that have been subject to armed conflict and forced displacement, on lands that have been “abandoned” due to violent pressure on the communities, or whose title has changed hands over the last decade due to paramilitary pressure (see Sur de Bolívar case study). Studies have documented how some corporations use irregular practices to gain titles and concessions, and how corporations seek political allies that are able to regulate new land uses.<sup>19</sup>

Other research and legal cases have shown that in order to provide secure conditions for investment, some multinationals have directly and indirectly supported paramilitary groups.<sup>20</sup> In such cases, paramilitaries function as irregular forces for territorial consolidation in extractive projects, whether operating on their own or under a more explicit understanding with transnational corporations.

When mining or oil companies enter new territories, they often do so first by announcing that they will bring progress, development, and jobs. This initial stage is often carried out in a way that bypasses the traditional and sometimes legally enshrined decision-making powers vested in the affected communities. Foreign companies generally hire local community members (who often do not have education or training beyond the most basic state schools) as cheap labour in the lowest positions in the company. While modern extractive industries may employ a large number of local workers in the early phases of a project, the amount of unskilled labour needed to actually operate large-scale

mining or oil and gas projects tends to be minimal.<sup>21</sup>

In Colombia, reforms to labour law since the onset of the economic liberalization program in 1990 have led to lower legal standards in determining the basic rights of workers. This has included the introduction of

*In Colombia, more than in almost any other country in the Western hemisphere, violence has corroded and subverted democracy. Too often, killings and threats—not free elections or democratic dialogue—are what has determined who holds power, wealth, and influence in the country. Nowhere is this more evident than in the relationship between paramilitary groups and important sectors of the political system, the military, and the economic elite...To their enormous profit, they [paramilitaries] have forced hundreds of thousands of small landowners, peasants, Afro-Colombians, and indigenous persons to flee their families' productive lands. The paramilitaries and their supporters have often taken the abandoned lands, leaving the surviving victims to live in squalor on city fringes, and leaving Colombia second only to Sudan as the country with the most internally displaced people in the world.*<sup>23</sup>

various means for employers to downplay responsibility for wages, benefits and working conditions to the workers themselves, through “associated work cooperatives,” “contracts for services,” and “outsourced recruitment,” while making unionization more difficult. The plight of Colombia's sugar cane workers provides an example of the effect of these changes: cane cutters work extremely long days for up to seven days a week, without benefits or job security, through just such “work cooperatives”. Yet when cane cutters in the Valle del Cauca went on strike to demand better wages in September of 2008, they were accused of being infiltrated by the FARC and were repressed by the government.<sup>22</sup>

### **Economic interests, land conflicts and the extractive industry**

According to the well-respected Colombian organization Consultancy for Human Rights and Displacement (CODHES), there are more than four

17. César Rodríguez Garavito and Diana Rodríguez Franco, “Atención a desplazados: Corte Constitucional evaluó al Gobierno y el balance aún es negativo,” *El Tiempo*, July 12, 2009. Retrieved July 27, 2009 from: [http://dejusticia.org/interna.php?id\\_tipo\\_publicacion=1&id\\_publicacion=619](http://dejusticia.org/interna.php?id_tipo_publicacion=1&id_publicacion=619). See also Norwegian Refugee Council, op. cit., p.5.

18. UNHCR, *The State of the World's Refugees 2006*, April 2006. Box 7.4, “Internal Displacement in Colombia.”

19. Samir Elhawary, “¿Caminos violentos hacia la Paz? Reconsiderando el nexo entre conflicto y desarrollo en Colombia,” in *Colombia Internacional No. 67*, Bogotá, January-June 2008, p. 84-100; Mark Curtis, *Fanning the Flames: The role of British mining companies in conflict and the violation of human rights*, War on Want, London, November 2007.

20. Francisco Ramírez, *The Profits of Extermination in Colombia*, Common Courage Press. 2005.

21. “Open Pit Gold Mines: A life cycle,” *The Dominion*, Fall, 2008. Retrieved June 5, 2009 from: <http://www.dominion-paper.ca/mining>.

22. Dawn Paley, “Working Today with the Hope of a Brighter Future,” *Vancouver Sun*, December 26, 2008. Retrieved June 5, 2009 from:

<http://www.vancouver.sun.com/Business/Working+today+with+hope+brighter+future/1115059/story.html>.

23. Human Rights Watch, *Breaking the Grip? Obstacles to Justice for Paramilitary Mafias in Colombia*, October 2008.

million internally displaced persons in Colombia.<sup>24</sup> The group estimates that about seven million hectares of land have been appropriated by means of force, through the activities of the Colombian Army, the

*There is no willingness to return land and other property to [displaced persons] and... they suspect that while displacement may originally have been caused by armed conflict, the taking over of their lands by large corporations is at least a side effect, if not part of a policy of forced displacement.*

paramilitaries, and the guerrilla. According to CODHES, responding to government attempts to deny the ongoing humanitarian crisis in many parts of the country: “Forced displacement is the greatest manifestation of the humanitarian and human rights crisis associated with the intensification of irregular warfare in several regions of the country... To deny that increasing displacement is an expression of the humanitarian and human rights crisis is an absurd attempt to cover the sun with one’s hands.”<sup>25</sup>

The economic interests of armed actors in the Colombian conflict have been flagged by various sources.

As noted in a 2006 UN report:

*The conflict [has been] complicated by interests in the cocoa industry and the development of new plantation farms for bananas and palm oil-producing trees, the illegal drug trade and exploitation of huge deposits of oil and other mineral resources found across the country’s major regions. Struggle for and control of flow of income or rents from these economies provided additional sources for financing of the armed conflict, as well as the motivations and strategies for continuing it. The interests involved range from the local, through the national, to the transnational ... It seems that the possession of land has become one of the objectives of the paramilitary forces. Various sources report that disappearances perpetrated against the civilian population in rural areas may be aimed at causing terror and displace-*

*ment, and the unlawful appropriation of land and other property.*<sup>26</sup>

The UN’s Special Rapporteur for internally displaced persons reported in 2007 that “there is a widespread perception among displaced persons that there is no willingness to return land and other property to them and... they suspect that while displacement may originally have been caused by armed conflict, the taking over of their lands by large corporations is at least a side effect, if not part of a policy of forced displacement. The Representative heard allegations of lands occupied illegally, either through transfer of titles under duress and for minimal financial compensation or through forgery of land titles.”<sup>27</sup> The Public Defender’s Office for Sur de Bolívar corroborated this phenomena: “As a region of spontaneous colonization, many of the land holdings and de facto mining by farmers and miners are not supported by documented property rights, and therefore have made it easier for armed groups to exploit this situation and further their financial interests through concessions that have the potential to attract, in the future, multinational mining companies.”<sup>28</sup>

In many cases greater corporate access to Colombia’s resources has resulted in the increased financing of actors in the conflict,<sup>29</sup> massive displacement,<sup>30</sup> and disruption for the poor.<sup>31</sup> A recent study by CODHES shows that forced displacement increased by 24.47% in 2008, with 412,553 people displaced in one year.<sup>32</sup> The depopulated land is then available for use by local and foreign investors, whose extractive projects in many cases render it unsuitable for previous land uses even if the former inhabitants were able to return.

### **Extractive industries on Indigenous lands**

Indigenous peoples and Afro-descendent and peasant communities in Colombia have unique identities and relationships to the land, which are formally rec-

24. CODHES, *CODHES Informa: Tapando el sol con las Manos*, no. 74, Bogotá, September 25, 2008. Retrieved June 7, 2009 from: [http://www.semana.com/documents/Doc-1766\\_2008930.pdf](http://www.semana.com/documents/Doc-1766_2008930.pdf). (Note that this figure does not include Colombians who have fled the country, estimated to be above one million people.)

25. *Ibid.*

26. UN, E/CN.4/2006/56/Add.1, Geneva, January 17, 2006, para. 13 and 56.

27. UN, A/HRC/4/38/Add.3, Geneva, January 24, 2007, para. 53.

28. Defensoría del Pueblo, Sistema de Alertas Tempranas, *Informe de riesgo No. 042-06 A.I.*, Bogotá, October 20, 2006, p. 6.

29. Amy S Clarke, “Chiquita Fined \$25M For Terror Ties,” *CBS News*, March 15, 2007. Retrieved June 6, 2009 from: <http://www.cbsnews.com/stories/2007/03/15/terror/main2571969.shtml>.

30. Chris Arsenault, “Controversy Dogs Coal Operations in Colombia,” *Mines and Communities*, February 7, 2008. Retrieved June 6, 2009 from: <http://www.minesandcommunities.org/article.php?a=8414>.

31. Micheál Ó Tuathail, “Marmato’s Gold Bonanza,” *The Dominion*, March 18, 2008. Retrieved June 6, 2009 from: <http://www.dominionpaper.ca/articles/1777>.

32. CODHES, *CODHES Informa: Víctimas Emergentes: Desplazamiento, derechos humanos y conflicto armado en 2008*, no. 75, Bogotá, April 22, 2009. Retrieved June 7, 2009 from: [http://www.abcolombia.org.uk/downloads/codhes\\_informa\\_no.75\\_-\\_Victimas\\_emergentes.\\_22\\_abril\\_2009.pdf](http://www.abcolombia.org.uk/downloads/codhes_informa_no.75_-_Victimas_emergentes._22_abril_2009.pdf).

ognized in the Colombian Constitution,<sup>33</sup> and internationally by the United Nations through the Universal Declaration of Human Rights<sup>34</sup> and the International Covenant on Economic, Social and Cultural Rights.<sup>35</sup>

However, legislation meant to protect Indigenous and Afro-Colombians has been contradicted by national legislation designed to facilitate increased foreign investment. In addition, the requirements of international trade and investment agreements take precedence over national legislation, often at the expense of vulnerable populations. As described by Canada's Department of Foreign Affairs and International Trade,



Caramanta, Antioquia department. Photo: Jean Symes.

*Colombia has undertaken, over the last four years, a series of major reforms to develop a very competitive legal framework and investment regime as well as a good business climate. Colombia has made definite progress in the modernization and liberalization of its trade and investment regime through the adoption of ambitious reforms in many economic sectors as well as the adoption of a Law on Legal Stability.*<sup>36</sup>

According to the analysis of Canada's FTA done by the Canadian Council for International Cooperation (CCIC),<sup>37</sup> the investment chapter "goes further than previous [agreements] in restricting government ability to set policies that would benefit their citizens," and

strengthens the hand of investors with respect to already disadvantaged groups. In the Colombian context, this could result in legalized violations of the

Constitutional rights of Indigenous and Afro-Colombian populations, similar to the legislation brought in by the government of Peru to implement the US-Peru Free Trade Agreement that in June 2009 resulted in military repression of protests and massacres of Indigenous peoples.<sup>38</sup>

"There are around a million indigenous people in Colombia, belonging to more than 80 different [Indigenous] groups with over 60 separate languages. Nearly all of these groups have been victims of forced displacement or are threatened by it as a result of the internal armed conflict," according to Ron Redmond, the spokesperson for the United Nations High Commissioner for Refugees.<sup>39</sup>

According to data from the Centre for Indigenous

33. República de Colombia, *Constitución Política de la República de Colombia de 1991*, 1991. Retrieved June 5, 2009 from: <http://pdba.georgetown.edu/Constitutions/Colombia/col91.html> (see Articles 246, 286, 321, 329, 330 and 357).

34. UN, *Universal Declaration of Human Rights*, *op. cit.*

35. UN, *International Covenant on Economic, Social & Cultural Rights*, *op. cit.*

36. Government of Canada, Department of Foreign Affairs and International Trade, *Economic analysis of prospective free trade agreement(s) between Canada and the countries of the Andean community*, June 2007, p. 5. Retrieved December 5, 2008 from: [http://www.international.gc.ca/assets/trade-agreements-accords-commerciaux/pdfs/FINAL\\_And\\_Econ\\_Anal\\_Ju\\_22\\_2007-App-en.pdf](http://www.international.gc.ca/assets/trade-agreements-accords-commerciaux/pdfs/FINAL_And_Econ_Anal_Ju_22_2007-App-en.pdf).

37. Sheila Katz, Mark Rowlinson, Steven Shrybman, Scott Sinclair, Gauri Sreenivasan, Dana Stefov. *Making a Bad Situation Worse: An Analysis of the Text of the Canada-Colombia Free Trade Agreement*. Canadian Council for International Co-operation, Canadian Association of Labour Lawyers, Canadian Labour Congress, Canadian Centre for Policy Alternatives, Ottawa, 2009. Retrieved July 28, 2009 from: [http://www.cccic.ca/e/docs/making\\_a\\_bad\\_situation\\_worse\\_long\\_version.pdf](http://www.cccic.ca/e/docs/making_a_bad_situation_worse_long_version.pdf)

38. Ángel Páez, "Congress Probes Massacre; Prime Minister to Quit," *Inter-Press Service*, June 16, 2009. Retrieved August 26, 2009 from: <http://ipsnews.net/news.asp?idnews=47248>.

39. Dawn Paley, "Cauca: A Microcosm of Colombia, A Reflection of Our World," *Upside Down World*, September, 2008. Retrieved June 6, 2009 from: <http://upside-downworld.org/main/content/view/full/1452/61/>.

Cooperation (CECOIN), approximately 30 million hectares of Colombia's national territory are designated as Indigenous lands, and seven million hectares of land are designated as Afro-Colombian lands.<sup>40</sup>



Marmato, Caldas department. Photo: Jean Symes.

*The 1991 Constitution states that “the exploitation of natural resources in indigenous territories shall be without prejudice to the cultural, social and economic status of indigenous communities. In decisions taken in respect of such exploitation, the government shall encourage the participation of representatives of the respective communities.”<sup>41</sup> In the view of Orsinia Polanco Jasayú, a Wayú Congresswoman, meaningful prior consultation would consist of “a special compulsory public process to be undertaken before adopting, deciding on, or implementing any legislative or administrative action or public or pri-*

*vate projects likely to directly affect the livelihood of the Indigenous peoples, including territorial, environmental, cultural, spiritual, social, economic, and health aspects, as well as aspects that affect their ethnic integrity.”<sup>42</sup>*

ILO Convention 169,<sup>43</sup> which is recognized by Colombian law (through Law 21 of 1991) establishes the obligation of governments to consult Indigenous peoples and tribal bodies before industrial projects are carried out in their territories. Additionally, Decree 1320 of 1998 regulates the procedure of consultation with Indigenous and Afro-Colombian communities prior to the exploitation of natural resources within their territories.

But Indigenous organizations have questioned Decree 1320 based on its legitimacy and legality, the breadth of its application, and the actual procedures it establishes. Indigenous and Afro-Colombian communities have begun to refuse consultations, citing their experience that the consultation process has been used to manipulate and strategically misinform them in order to facilitate the entry of megaprojects. Further, once made, both government and transnational companies have often broken these agreements.<sup>44</sup>

At the same time, non-Indigenous and non-Afro-Colombian rural communities are also disadvantaged, with even fewer legal tools to control their land. Under the Mining Code (Law no. 685 of 2001) the subsoil is considered state property, leaving the owners of surface rights vulnerable to the influx of mega-mining and oil industries.<sup>45</sup>

Despite the fact that Afro-Colombian communities have priority in the collective licensing of exploration and mining, and the Ministry of Mines and Energy has the power to designate community mining zones, applications for mining concessions by multinationals are being accepted for the collectively-owned territories of Afro-Colombian communities.<sup>46</sup> According to the

40. Interview with CECOIN representative, Bogotá, April 15, 2008.

41. República de Colombia, *Constitución Política de la República de Colombia*, *op. cit.*, article 330.

42. Orsinia Polanco Jasayú, *Consulta previa, más allá de un simple aval*, Bogotá, 2008. Retrieved June 11, 2009 from: [http://www.indepaz.org.co/attachments/138\\_Consulta%20previa.doc](http://www.indepaz.org.co/attachments/138_Consulta%20previa.doc).

43. International Labour Organization, “Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries.” Retrieved July 28, 2009 from: <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=170&chapter=1&query=%23subject%3D20&highlight=&querytype=bool&context=0>.

44. Gloria Amparo Rodríguez, “La consulta previa, un derecho fundamental de los pueblos indígenas y grupos étnicos de Colombia,” in *Revista Semillas*, no. 36/37, September 2008. Retrieved June 6, 2009 from: <http://www.semillas.org.co/sitio.shtml?apc=I1—&x=20156105>.

45. Interview with human rights activist, Bogotá, July 16, 2008.

46. República de Colombia, *Ley 70 del 1993*, 1993.

Proceso de Comunidades Negras (PCN),<sup>47</sup> as the affected communities are mostly in environmentally sensitive areas of great biodiversity, large extractive projects by private companies cause cultural and environmental degradation. Furthermore, the communities have significantly fewer resources, and are therefore at a disadvantage during the legally required consultations with companies, and the resulting agreements often limit or undermine traditional forms of production and cultural values.<sup>48</sup>

### **Mining law and regulations in Colombia**

Colombia began to reform its mining laws in 1996, in a process notable for the role played by the Canadian International Development Agency (CIDA). CIDA supported a technical assistance project to help the Colombian government reform its mining law, through which intermediaries or agents for Canadian companies were contracted as experts in mining law.<sup>49</sup> The reforms privilege large foreign investors. Under the new law:

- areas previously excluded from the mining areas were redesignated as merely “restricted,” thus opening the way to mining projects;
- provisions for legal small- and medium-scale mining were made more restrictive;
- taxes were cut for transnational mining companies; and
- the state mining company Minercol was liquidated.<sup>50</sup>

The exploration and exploitation of mineral wealth is regulated through Law No. 685 of 2001 and its regulatory decrees, which were likewise drafted under the advice of counsel for several mining companies,<sup>51</sup> and also with support from CIDA. Among other things, the legislation stipulates that: <sup>52</sup>

- Ownership of mining assets is vested in the State.<sup>53</sup> Mining reserves may be created for communities with a mining tradition, but only under the strictest technical, financial, and organizational requirements.
- Mining areas are delineated for Indigenous and Afro-Colombian communities only where they have legal title (i.e. where land claims have been settled – as arduous a process in Colombia as it is in Canada); at the same time, there are no provisions to allow mining to be restricted for cultural reasons.
- Only areas declared as National Parks are excluded from mining.

Bill 10 of 2007, which amends Law No. 685, is currently being discussed in Congress. The draft Bill contains a number of controversial proposals that favour large-scale over small-scale and artisanal mining. Article 3 requires multiple mining concessions for a single ore body to be integrated within a single program of exploration and exploitation, whether registered to one or more individuals or companies. This would allow the consolidation of informal (small-scale) mining areas, and the disappearance of the mining reserves originally established to support the development of artisanal mining. Under this provision existing concessions can be frozen by the State, and later transferred to those it deems to have the appropriate economic and technological capacity, such as transnational corporations. Article 4 grants temporary permission to take over lands adjacent to mining operations with no requirement for an environmental permit or consideration of overlap with Afro-Colombian or Indigenous territories. Article 5 makes expropriation automatic if property owners do not file a formal objection within 30 days (assuming they are able to do so, and have actually been notified). Other measures establish capi-

47. The PCN (Black Communities Network) is a network of Afro-Colombian organizations organizing around the defence of their cultural, ethnic, and territorial rights.

48. Interview with a representative of Proceso de Comunidades Negras, Bogotá, June 10, 2008.

49. Letter from The North-South Institute to the Sub-Committee on Human Rights and International Development of the Standing Committee on Foreign Affairs and International Trade, March 18, 2002. Appendix 4 of *Through Indigenous Eyes: Toward Appropriate Decision-Making Processes Regarding Mining On or Near Ancestral Lands*. The North-South Institute, September 2002. Retrieved July 28, 2009 from: <http://www.nsi-ins.ca/english/pdf/synerfinal.pdf>

50. SINTRAMINERCOL, Equipo de Investigación en Derechos Humanos, *La gran minería en Colombia: una guerra de exterminio de las multinacionales*, SINTRAMINERCOL, 2003.

51. Including HOLCIM, CEMEX, and Santafé Brick.

52. Francisco Ramírez, “Tierra y minería, el conflicto en Colombia,” in *Revista Semillas*, no. 32-33, March 2003.

Retrieved June 11, 2009 from: <http://www.semillas.org.co/sitio.shtml?apc=11%97%97&x=20155119>. According to the Colombian State: “El Estado, según lo establece esta Ley [Código de Minas, ley 685 de 2001], renuncia a ser empresario minero, pero continúa participando en el negocio de la minería como vendedor de acceso a áreas con expectativas mineras. Este nuevo enfoque lleva a que los empresarios mineros y relacionados, que anteriormente eran considerados como usuarios de trámites administrativos, sean tratados ahora como clientes, a quienes el Estado debe buscar y atraer, ya que ellos, con sus inversiones y actividad, pueden generar mayores recursos para el Estado y más riqueza para el país.” República de Colombia, Unidad de Planeación Minero Energética, *Plan Nacional de Desarrollo Minero 2007-2010, Gestión Pública para propiciar la actividad minera*, Bogotá, August 2007.

53. Unidad de Planeación Minero Energética, *op. cit.*, p. 9.

tal requirements that are clearly beyond the means of artisanal and small-scale miners.<sup>54</sup>

Although the Government has justified this bill as an effort to increase declining employment levels in the mining sector, existing statistics indicate it would have

According to community leaders, the reforms will result in the elimination of small-scale mining – in law and in fact – leaving thousands of people in a clearly vulnerable situation.<sup>56</sup> In response, environmentalists, trade unions, Indigenous peoples, small-scale miners, and some Congressional advisors have set up round table discussions to explore the views of different sectors and to feed into Congressional debates on the Bill.<sup>57</sup>

The proposed Bill is also being challenged as being unconstitutional for allowing the exploration and mining on ecosystems of special ecological interest, such as the Andean páramos (moors).<sup>58</sup> The suit, filed by the Interamerican Association for Environmental Defence (AIDA) and the Management Corporation for the Environmental and Public Interest (GESAP Initiative) in the



Small-scale miners, Vetás, Santander department. Photo: Jean Symes.

the opposite effect. Documentation from the National Department of Statistics (DANE) shows that the mining sector represented 1.14% of all jobs in January-June 2002. Despite the increase in foreign investment, by the first half of 2007 that percentage had fallen to just 0.92%, including both mining and quarrying.<sup>55</sup> Large-scale mining, facilitated by the provisions of this Bill, is much less labour-intensive than the small-scale mining it displaces, and requires higher skill levels for its workers.

Colombian Constitutional Court, was accepted on September 8, 2008. The groups allege that the destruction by mining of important ecological features such as páramos violates the constitutional right to a healthy environment; from a functional standpoint, high-impact activities like mining activity may cause the loss of valuable water sources, as signalled by a report by the Attorney General's Office.<sup>59, 60</sup>

Both the earlier reforms to Colombian mining law and the proposed new measures appear to have been

54. Interview with Senator Jorge Enrique Robledo, Colombian Senate, Bogotá, September 26 and 27, 2008.

55. República de Colombia, Departamento Nacional de Estadística, "Población Ocupada según ramas de actividad, Serie Trimestral 2001-2007. Total Nacional, Cabeceras, Zona Rural." Retrieved June 13, 2008 from: [http://www.dane.gov.co/index.php?option=com\\_content&task=category&sectionid=19&id=74&Itemid=256](http://www.dane.gov.co/index.php?option=com_content&task=category&sectionid=19&id=74&Itemid=256).

56. FEDEAGROMISBOL and Corporación Sembrar, *Reforma al Código de Minas: La desaparición de la pequeña minería y minería artesanal en beneficio de las transnacionales*, n.d.

57. Interview with Senator Jorge Enrique Robledo, *op. cit.*

58. Asociación Interamericana para la Defensa del Ambiente – AIDA, "Organizaciones nacionales e internacionales demandan el Código de Minas de Colombia para proteger ecosistemas frágiles como los páramos," press release, Bogotá, September 11, 2008. Retrieved June 11, 2009 from: <http://www.censat.org/noticias/2008/9/20/Organizaciones-demandan-codigo-de-minas-para-protoger-ecosistemas-fragiles/>.

59. Edgardo José Maya, *Panorama y perspectivas sobre la gestión ambiental de los ecosistemas de páramo*, Procuraduría General de la Nación, 2008.

60. See: Hildebrando Vélez, *Amicus curiae del Centro Nacional de la Salud, Ambiente y Trabajo – CENSAT Agua Viva. Demanda de Inconstitucionalidad contra el artículo 34 (Parcial) de la Ley 685 de 2001 (Código de Minas)*. Ref: Proceso D0007419, CENSAT Agua Viva, 2008.

designed in large measure to facilitate the entry and operation of transnational companies in the mining sector, removing many of the pre-existing legal protections for the rights of affected peoples, including their economic well-being, social fabric, ecological integrity, and territorial identity.

### **Growing Canadian investment in Colombia**

Foreign direct investment in Colombia has grown significantly in recent years, particularly in the extractive sector. In the last five years foreign investment in the mining sector in Colombia averaged about 30% of total foreign investment, reaching its highest level during 2005 when it exceeded U.S. \$2 billion, levelling off since then at around U.S. \$1 billion annually.<sup>61</sup>

Canadian direct investment stock in Colombia amounted to \$453 million in 2006 according to Canadian government statistics,<sup>62</sup> and has been concentrated in the oil exploration, mining, printing, footwear, food processing, education, and household paper sectors. In 2007 the Canadian Embassy in Colombia estimated the stock of Canadian investment to be significantly higher (\$3 billion).<sup>63</sup> This estimate takes into account that a majority of Canadian investments are made through offshore financial centres and/or countries with which Canada has tax treaties (this is especially the case for the oil & gas and mining sectors). A preliminary survey undertaken by the Embassy revealed that Canadian investors are seizing investment opportunities in Colombia, with more than US\$2 billion in planned additional investment over the next two years. This survey also confirms an increasing flow of Canadian direct investment, particularly in the acquisition of property and exploration rights in the oil & gas and mining sectors. Canada's key services interests in Colombia include oil and gas services, min-

ing services, engineering services, architectural and environmental services, distribution services, and information technology.<sup>64</sup>

Colombian government estimates concur with those of the Embassy: according to the Colombian government, from 1994 to date, the investment of large Canadian companies such as Northern Telecom, Newbridge Networks, Seagram, McCain Foods, TransCanada Pipelines, Bell Canada International, Agra International, and others such as Vanguard Oil, Northex International, Latin Gold, Teleglobe, Nexen, and Quebecor has reached \$3 billion, mainly in telecommunications, oil and gas, energy and transport.<sup>65</sup>

As President Uribe told a press conference after the signing of the Canada-Colombia FTA, "Canadian investment is very significant to Colombia. Colombia is a country that just five years ago had just 13 percent of its territory open to oil and mineral exploration. By the end of our term in Government we aspire to increase this to between 40 percent and 50 percent. The Canadian investment is essential."<sup>66</sup>

### **Canadian investment in mining**

Mario Ballesteros Mejía, Director-General of INGEOMINAS (Colombian Institute of Geology and Mining), points to the change in the Mining Code in 2001 as the primary factor explaining the recent increase in mineral exploration in Colombia.<sup>67</sup> In his view, other factors include Colombia's relative legal and tax stability, as well as President Uribe's "democratic security" policy, a policy that has been heavily criticized by human rights organizations.<sup>68</sup>

According to the Ministry of Mines and Energy, 52% of the foreign companies investing in mining in Colombia are Canadian:

61. República de Colombia, Sistema de Información Minero Colombiano, *Contexto Económico Colombiano a 2007*, Bogotá, 2008. Retrieved June 11, 2009 from:

[http://www.simco.gov.co/simco/Documentos/Contexto\\_Economico\\_Colombiano.pdf](http://www.simco.gov.co/simco/Documentos/Contexto_Economico_Colombiano.pdf).

62. Agriculture and Agri-Food Canada, Government of Canada, *Agri-Food Past, Present & Future Report – Colombia*, November 2007. Retrieved August 26, 2009 from: [http://www.ats-sea.agr.gc.ca/lat/3854\\_e.htm](http://www.ats-sea.agr.gc.ca/lat/3854_e.htm).

63. Department of Foreign Affairs and International Trade, Government of Canada, *An FTA with the Andean Community countries of Colombia and Peru: Qualitative Economic Analysis*, June 2007. Retrieved August 26, 2009 from:

<http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/andean-andin/FTA-ALE-and.aspx>

64. Department of Foreign Affairs and International Trade, Government of Canada, *Economic analysis of prospective free trade agreement(s) between Canada and the countries of the Andean community*, *op. cit.*, p. 11.

65. Presidencia de la República de Colombia, Secretaría de Prensa, "El Lunes Arrancará Negociación de TLC con Canadá," press release, July 12, 2007. Retrieved June 11, 2009 from:

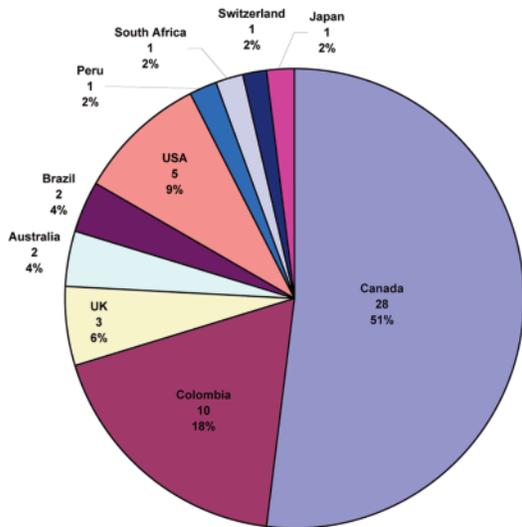
<http://oacp.presidencia.gov.co/snerss/detalleNota.aspx?id=11079>.

66. Álvaro Uribe Vélez, "Declaración y rueda de prensa del Presidente Álvaro Uribe durante la firma del Tratado de Libre Comercio Colombia-Canadá," Lima, Perú, November 21, 2008. Retrieved July 29, 2009 from: <http://web.presidencia.gov.co/sp/2008/noviembre/21/19212008.html>.

67. Mario Ballesteros Mejía, "Minería – Fiebre de Oro," in *Revista Dinero*, October 26, 2007.

68. Amnesty International, *The "democratic security" policy is not a human rights policy*, press release, December 10, 2002. Retrieved June 12, 2009 from: <http://www.amnesty.org/en/library/info/AMR23/142/2002/en>; International Crisis Group, *op. cit.*, p. 2.

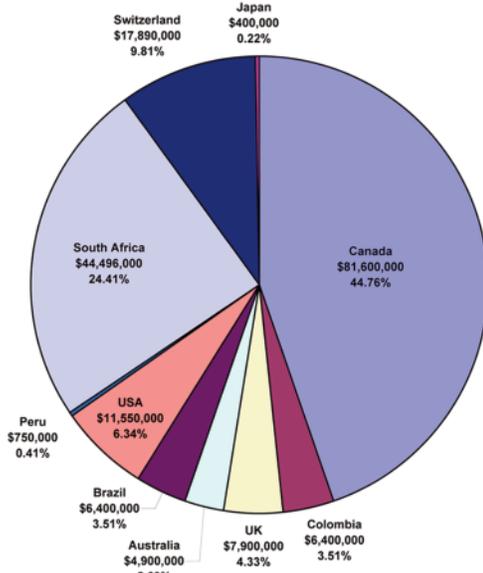
Colombian Mineral Exploration Companies' Domicile  
(i.e. 52% or 28 Companies investing in metals exploration in Colombia are from Canada.)



Source: Ministry of Mines and Energy (2008)<sup>75</sup> (see large chart on p. 72)

Correspondingly, the level of Canadian investment expenditure in this sector is quite high compared with that of other countries:

Amount of Metals Exploration Expenditure/Companies' Domicile Country in Colombia  
(i.e. Companies based in Switzerland are investing US\$ 17.9 M or 9.81% of the total metals exploration expenditure in Colombia in 2008.)



Source: Ministry of Mines and Energy (2008)<sup>75</sup> (see large chart on p. 73)

At the time of writing, Canadian mining corporations with active interests in mineral exploration included: B2Gold Corp., Greystar Resources Ltd., Colombia Goldfields Ltd., Barrick Gold Ltd., Ventana Gold Corp., Mega Uranium Ltd., Caribbean Copper and Gold Inc., Frontier Pacific Mining Corporation, and Galway Resources Ltd.<sup>69</sup>

### Canadian investment in oil and gas

According to the (Colombian) Bank of the Republic, oil investment in the first five months of 2007 alone came to approximately \$1.75 billion, almost half of all foreign investment in Colombia for that period.<sup>70</sup> Canadian investment in the oil and gas sector is also significant, though not as large or growing as quickly as mining investment.

The president of the National Hydrocarbons Agency, Armando Zamora, claims that production can reach 30,000 barrels per day in coming years. Over the past five years between 40 and 50 new companies, mostly from Canada, the United Kingdom, and the U.S., have come to Colombia and have become the new 'oil barons'.<sup>71</sup> Transnationals' investment is expected to increase:

*[Analyst] Frederick Kozak calls [Colombia] "an environment of opportunity" in an 88-page report on the country. "As many people know, Colombia has recently become 'the' country in South America for oil and gas opportunity and investment," Mr. Kozak said in his report.<sup>72</sup>*

Nexen (then Canadian Occidental Petroleum) made the "discovery of the century" in Tolima in 2000. In March 2004, after signing a \$2.1-billion agreement with the International Monetary Fund, Colombia's Minister of Energy announced that multinationals could negotiate contracts with the National Hydrocarbons Agency (ANH) and no longer needed to work through Ecopetrol, the country's energy company. Favourable to foreign investors, these new rules eliminated time limits on production rights (allowing foreign firms indefinite rights to hydrocarbons), allowed foreign firms to hold 100% of oil rights, and decreased royalties from 20% to about 8%.<sup>73 74</sup>

69. República de Colombia, Ministerio de Minas y Energía, *Colombia Minera: Desarrollo Responsable*, n. d. Retrieved June 11, 2009 from:

<http://www.cafedecolombia.com/eventos/grupodenotables/docs/Octubre6de2008SeminarioDeInversion/MiningSector.pdf>.

70. María Gladys Escobar, "Llegan más petroleras a Colombia," *El País*, August 10, 2007. Retrieved June 11, 2009 from: <http://foros.elpais.com/index.php?showtopic=6462>.

71. *Ibid.*

72. "A tamer Colombia merits a closer look," *Globe & Mail*, Toronto, June 5, 2008.

73. CENSAT Agua Viva – Friends of the Earth Colombia, *La presencia de las empresas petroleras canadienses en Colombia*, Bogotá, 2001.

74. Garry Leech, "Plan Colombia Benefits U.S. Oil Companies," in *Colombia Journal*, November 12, 2004. Retrieved June 9, 2009 from: <http://www.colombiajournal.org/colombia198.htm>.

75. República de Colombia, Ministerio de Minas y Energía, *Colombia Minera: Desarrollo Responsable*, *op. cit.*

## Methodology

Rights and Democracy's *Guide to assess the impact of foreign investments on human rights*<sup>76</sup> was used as a tool for analyzing the status of collective and individual human rights in each case study. We took into account the most relevant rights in accordance with Sections B, C, D, and G (Right to Non-Discrimination, Right to Security of the Person, Rights of Workers, Environmental Protection), as well as section E (Indigenous Peoples' Rights, Economic, Social and Cultural Rights, Right to Development, Food, Water, Health, Housing, Education, Freedom of Thought and Opinion, etc.). Preliminary interviews and conversations were conducted with various actors to define the focus of each case study and the priority of rights according to the guide. The research also took into account the rights recognized by the Colombian Constitution.

An extensive collection of documents was reviewed relating to investment in mining, oil and gas, and palm oil, and is listed in Appendix 1.

Interviews and focus group discussions were undertaken with community leaders, politicians, and representatives of companies and government institutions to gather feedback, explore existing research, and document information provided by key individuals and organizations at the national

and regional level. Interview guides were developed, focusing on four themes:

- Canadian extractive sector involvement in Colombia;
- human rights impacts of investment projects;
- forced dislocation, appropriation of land, cultural changes, and land use; and
- social and institutional relations.

An anonymized list of the interviews cited in the investigation is attached to this report as Appendix 2,

as is a sample interview guide as Appendix 4 (in Spanish).

The research began by mapping Canadian investment in mining and oil and gas projects in Colombia, based on information gathered directly by the researchers and preliminary interviews with national and regional organizations. Cases were chosen for in-depth research based on whether there was significant Canadian investment; whether the investigation team had a working relationship with local organizations that could facilitate research in the field; and whether a reasonable level of security could be assured for both investigators and interviewees. Cases where Canadian investment was minor or the investment project was highly transitory or speculative were excluded. The cases chosen were: B2Gold in the department of Sur de



Mural in the centre of Marmato, Caldas department. Photo: Jean Symes.

Bolívar; gold mining company Greystar Resources in the department of Santander; Colombia Goldfields and B2Gold in the region of Caldas and Antioquia; and for petroleum, Nexen Ltd. in the department of Tolima.

Research in the field was based on generating opportunities for dialogue in an environment of trust, through talks, workshops, and small group discussions with local communities and key witnesses. This allowed a broad view of the situation, covering collective and individual rights from the perspectives of a

76. International Centre for Human Rights and Democratic Development, *Getting it Right: A step by step guide to assess the impact of foreign investments on human rights*, November 2008. Retrieved May 25, 2009 from: [http://www.dd-ca/site/\\_PDF/publications/Getting-it-right\\_HRIA.pdf](http://www.dd-ca/site/_PDF/publications/Getting-it-right_HRIA.pdf).

variety of local actors (the elderly, youth, teachers, miners, peasants, women, civil servants). Company officials in the country were also interviewed.

In conjunction with Rights & Democracy's HRIA guide, analysis of the findings was carried out with reference to John Ruggie's framework principles on human rights and business, "Protect, Respect and Remedy." We noted in particular the obligation of States to *protect* human rights and of corporations to *respect* human rights. While our research did not inquire into the implications of corporate liability or government obligation to *remedy* human rights violations, we noted the importance of ensuring actions do not increase obstacles to eventual reparations.

### *Limitations of the study*

As in most regions where extractive projects take place, no formal mechanisms have been implemented in Colombia for monitoring and evaluating the range of conflicts and social and environmental impact. Official statistics for most regions are scarce, and in some cases

measure the precise depth and extent of the trends and processes described by interviewees in the case studies. Independent and transparent HRIAs will be required to measure the full extent of the risks to human rights noted in this study, and to identify what measures can be taken, if any, to mitigate them.

### **Promotion of corporate social responsibility by the Canadian Embassy**

The commercial section of the Canadian Embassy in Colombia has a formal mandate to promote corporate social responsibility (CSR).<sup>77</sup> It is supported in this by the Embassy's political section. Interviews with members of Embassy staff in August 2008 provided further details regarding the manner in which the Embassy carries out its mandate. Unfortunately, we do not have permission to quote Embassy personnel either by name or office.

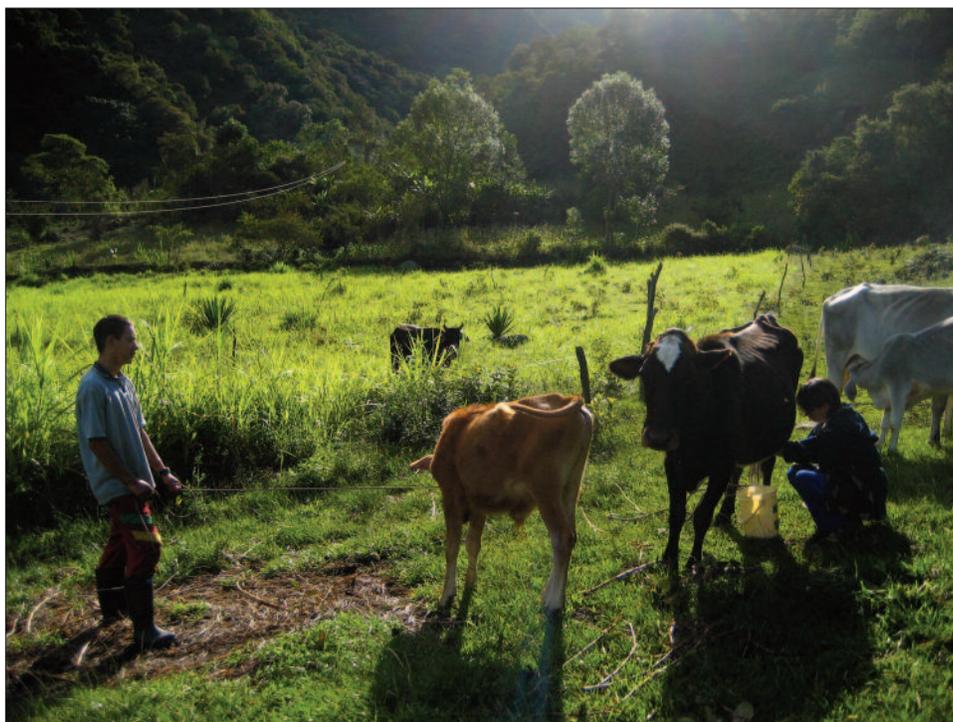
The mandate of the political section is to promote Canada's economic interests in Colombia, specifically

to promote Canadian exports to Colombia, to promote Canadian investment in Colombia, and to promote CSR. The commercial section provides Canadian companies with information and facilitates contacts with the Colombian government and industry representatives. The specific CSR standards promoted by the commercial section at the time of the interviews were the *OECD Guidelines for Multinational Enterprises*.<sup>78</sup>

Although Embassy staff could not give figures, either exact or grouped by sectors, they believed that most businesses that require the services of the commercial section operate in the extractive sector. Although the Embassy had no comprehensive data on Canadian companies operating in the country, they believed that the majority of

Canadian companies operating in Colombia have sought the support of the commercial section at some point.

According to Embassy staff, security is the princi-



*Campesino* life. Surata, Santander department. Photo: Jean Symes.

investment activity has been ongoing for over a decade. Combined with our limited resources and the restrictions on the investigative team due to security concerns, these factors made it more difficult for us to

77. "The department will [...] engage like-minded regional partners on issues of governance and accountability, and work to further corporate social responsibility in the [Americas]," Government of Canada, Department of Foreign Affairs and International Trade, *Report on Plans and Priorities 2008-2009*, Ottawa, n.d.

78. OECD, *OECD Guidelines for Multinational Enterprises*, 2008. Retrieved June 11, 2009 from: <http://www.oecd.org/dataoecd/56/36/1922428.pdf>.

pal concern of Canadian companies interested in investing in Colombia; the increase in investment is due to the perceptions of an improvement in this regard. They assert that Canadian companies have a very good reputation in Colombia. The Embassy staff also believed that firms have generally adopted the principles of CSR and that Canadian companies are pioneers in the field, in some cases even more advanced than the Colombian and Canadian governments. In general, the promotion of Canadian business interests is seen as complementary to the promotion of human rights.

A favoured partner of the Embassy in the promotion of CSR is the Ideas for Peace Foundation (Fundación Ideas para la Paz – FIP), a private foundation.<sup>79</sup> FIP's role is central: at time of interviews the Embassy did not have available any material tailored to the context of conflict in Colombia, and instead referred companies seeking guidance on the specific dynamics of the conflict to FIP.

FIP has also received funding from the Embassy to conduct public activities to promote CSR. For example, in 2008, the Embassy organized a one-day seminar on CSR in collaboration with FIP<sup>80</sup> and *Dinero* and *Semana* magazines. The objectives of this seminar were to “clarify myths about CSR, discuss the challenges of CSR in Colombia, to educate businesses on their legal responsibilities and show how firms can better project their image in relation to CSR. It also provided a private space in which business representatives could discuss the challenges of CSR in Colombia.”

Another objective of the event was to “showcase Canada as a CSR leader.” Embassy staff believe that the majority of Canadian companies in Colombia participate in such events, generally at a high executive level. During the visit of Prime Minister Harper to Colombia in July 2007 there was a roundtable with Canadian companies on the topic of CSR.

The political section of the Embassy uses funds to



Small-scale mining operation, Vetás, Santander department. Photo: Jean Symes.

support spaces for “multi-stakeholder” dialogue. For example, the Embassy gave financial support, channelled through FIP, to support the inclusion of representatives of civil society in the process of drafting the “Colombia Guides,” a guide to CSR in Colombia.<sup>81</sup> In the “Colombia Guides” process eight national and transnational companies (none of them Canadian) are involved. However, according to INDEPAZ, one of the NGOs that participated in the process, one of the problems encountered was related to the establishment of a monitoring body. NGOs are in a highly unequal position compared to companies in terms of resources

79. “The Ideas for Peace Foundation (FIP) is a center for independent thinking, non-profit created in 1999 by a group of Colombian businessmen. Its mission is to contribute with ideas and proposals to overcome the armed conflict in Colombia and the construction of a sustainable peace, with the support of the business sector” [online]:

[http://www.ideaspaz.org/new\\_site/secciones/queeslafundacion/quees.htm](http://www.ideaspaz.org/new_site/secciones/queeslafundacion/quees.htm) (page accessed August 4, 2008).

80. See [http://www.ideaspaz.org/new\\_site/secciones/sector\\_empresarial/empresas\\_talleres\\_conferencias.htm](http://www.ideaspaz.org/new_site/secciones/sector_empresarial/empresas_talleres_conferencias.htm) (page accessed May 28, 2009).

81. Interview with Angela Rivas, Coordinator, Business and Conflict Sector, Catalina Niño, Research, Business and Conflict Sector, and Pilar Lozano, Research, Business and Conflict Sector, Fundación Ideas para la Paz, Bogotá, August 4, 2008.

and have no capacity to monitor compliance with the “Guide”.<sup>82</sup>



Near Marmato, Caldas department. Photo: Jean Symes.

The Embassy does not monitor the CSR practices of companies operating in Colombia. Monitoring was not in its mandate, nor did it have the skills and resources to do so. Moreover, according to representatives of the commercial section, the responsibility for monitoring companies’ CSR belongs to the country receiving the investment. Embassy staff had never received complaints of rights violations in which they had been able to confirm that a Canadian company has had any involvement. Neither were they aware of complaints by individuals or communities related to the actions of Canadian companies.<sup>83</sup> On the other hand, on one occasion, representatives of the Embassy did advise companies not to operate in a specific region of Colombia due to potential conflicts with local artisanal miners and other law and order problems. There is, however, no human rights impact analysis that would allow the Embassy to establish areas where investments present a risk. In any case, according to Embassy staff, the decision to invest or not belongs exclusively to the business, and the Embassy staff do not know in any particular case whether their advice is followed or whether any Canadian companies are operating in a given area.

Representatives of the Embassy believe that public

scrutiny has a positive impact on CSR, welcomed the present study, and were very helpful in outlining the role of the Embassy in implementing Canadian policy. However, we noted with concern that other employees of the Embassy have been heard to use terms like “anti-mining” or “anti-everything” NGOs, to refer to the activities of civil society organizations that criticize aspects of mining investment in various countries of Latin America. The attitudes such terms reveal are counterproductive to the promotion of CSR, and inconsistent with the recognition by Canada – along with other governments, including Colombia – of the importance of autonomous civil society analysis and democratic action in the Accra High Level Forum.<sup>84</sup>

## Observations

An analysis of the testimony and documentation presented in the case studies supports several significant observations, which are presented below with respect to:

- land and conflict
- corporate social responsibility (CSR) policies;
- social and economic impacts (food security, environment, labour, and the marginalization of small-scale mining and traditional livelihoods);
- collective rights of Indigenous peoples and Afro-Colombians;
- democratic expression, consultation, and community decision-making; and
- corporations’ potential relationships, direct and indirect with armed actors, both State (Armed Forces) and illegal/non-State (guerrilla and paramilitary).

We emphasize that the observations that follow concern medium- to high-probability potential risks, based on the evidence we were able to collect. We are not suggesting that any company is intentionally benefiting from past, present or future human rights violations, or rewarding those who carry out the violations.

82. Interview with Yamile Salinas, Advisor, and Camilo González Posso, President, Indepaz, Bogotá, August 15, 2008.

83. The Embassy had received information from Canadian NGOs that Canadian companies were operating in the Sur de Bolívar region, but had not been able to verify this, nor was it aware of human rights violations that could be directly related to Canadian interests.

84. See: Third High Level Forum on Aid Effectiveness, *Accra Agenda for Action*, Accra, September 2 to 4, 2008; and Advisory Group on Civil Society and Aid Effectiveness, *Synthesis of Findings and Recommendations*, August 2008, endorsed by the Canadian government and other OECD countries.

Nevertheless, as per John Ruggie's CSR framework principles,<sup>85</sup> existing human rights violations by others do not reduce a company's responsibility to respect the human rights of those affected by its investments, nor does it reduce governments' responsibility to promote and protect human rights. Rather, such circumstances require increased vigilance and proactive measures, including in-depth, transparent, and independent human rights impact assessments, to ensure human rights obligations are met.

### **Land and conflict**

In each case there has been a local history of forced displacement, concentration of the ownership of land, and presence of armed actors. There are clear indications that the armed actors are moving to take advantage of the mineral and petroleum resources in the area either directly or through speculators or landowners/investors. In Santander, the armed conflict has led to frequent, forced relocations of the population in and near Greystar's project area, and the Public Defender's Office has noted a renewed presence of paramilitaries. In Sur de Bolívar, where B2Gold is active, the Public Defender's Office concluded that "the interest of illegal armed groups in the San Lucas mountain range has to do with gaining control of the territory and exploitation of its natural wealth." In Antioquia, where Colombia Goldfields and B2Gold are active, our research shows that massive population displacement has taken place in the project areas, both directly by paramilitaries, and through coerced sales of land. Marginalized people have been particularly vulnerable to displacement. Women and their children make up the majority of displaced people, and Indigenous and Afro-Colombians are displaced disproportionately more than their representation within the population.

No credible reparations program exists for people displaced from their land and impunity for land theft or appropriation is almost absolute, so companies cannot rely on government registries. Given the documentation at the national level of various means of land theft related to conflict, and the history specific to each of these regions as outlined in the case studies, there is considerable risk that some land currently being used for extractive projects in the case study areas has been illegally appropriated. As well as inadvertently benefiting from a human rights violation, companies run the further risk of inadvertently rewarding those who carried out the violation. Within a Human Rights Impact

Assessment, a specific cross-referenced study of historic land titling, acquisition, and human rights violations would be required to assess and avoid this risk.

California community leaders, backed by 300 signatures, responded to a March 2005 editorial in *El Tiempo* which had lauded Greystar's economic investment in the municipality:<sup>86</sup> *We raise our voice in protest against what we consider to be an assault on our people, our principles and our dignity. We believe that this article, manipulative and false, has erased with one stroke our municipality's more than 400 year history of mining ... It describes us as a backwater that has improved its standard of living thanks to the arrival of the Canadian company Greystar ... [I]t also says that the multinational has caused a turnaround in the lives of Californians. That is perhaps the only thing that is true ... but in another sense: we were a peaceful community, undisturbed until the great company arrived. Then on the tail of its abundant resources came the armed groups. Furthermore, [the article] assures us that unemployment has ended ... In California, 90 percent of women of working age are unemployed.*<sup>87</sup>

### **Corporate social responsibility (CSR) policies**

All of the companies represented in the case studies recognize the importance of CSR, and have CSR policies and programmes in place, though the interpretation and implementation of CSR obligations varied. In all cases, ensuring that the host communities receive economic benefits and community development projects was seen as central to CSR. The case studies show more variation in the extent to which CSR also was understood to include the consideration of risks to Indigenous and minority rights, protecting existing social and economic structures, and protecting human rights, labour rights, and the environment.

All of the case study areas showed an absence of the State from civil affairs, and varying degrees of military presence. In this context, local people often look to the investment project to fill the vacuum in basic services that are more properly the responsibility of the State. While companies generally wish to contribute to the well-being of their host communities, some company spokespeople acknowledged the risks of fulfilling, or being seen to fulfil, roles that belong to the State. Even so, company-sponsored development projects are mostly perceived by community members as self-interested, aimed at either building support for the investment project or helping fulfil the company's own needs, or both. In addition, as noted by one consultant's report, where there are strong political divisions, as there are in the municipality of California in Santander where Greystar is working, struggles to control future royalties could exacerbate corruption and

85. John Ruggie, *op. cit.*

86. "Un Pueblo Redimido Por El Oro," *El Tiempo*, March 8, 2005.

87. "California, Pueblo Indignado," *El Tiempo*, April 18, 2005. Retrieved June 7, 2009 from: <http://www.eltiempo.com/archivo/documento/MAM-1639581>.

influence-peddling.<sup>88</sup> This is especially true when combined with the general situation in Colombia, with weakly enforced laws, no strong central government oversight, and a history of corruption and criminality reaching into the highest levels of government.

### **Social and economic impacts**

All of the projects covered by the case studies are in the exploration phase; nonetheless some are well-established, and they all showed significant social and economic impacts. These impacts are multi-faceted, involving forced displacement and varying degrees of voluntary displacement, with the corresponding damage to the communities' social fabric and political expression, agricultural production, and security of housing and food. While the availability of employment and the flow of money from these projects has provided opportunities for those politically and geographically positioned to take advantage of them, at the same time, it has exacerbated inequalities, political clientelism, and corruption. While income and employment is promised, the instability associated with large-scale mining was unfortunately demonstrated during the study period: in one case, after destroying former livelihoods, the company suddenly withdrew, leaving increased poverty and massive unemployment in its wake.

### **Food security**

One of the insidious effects of the armed conflict and forced displacement by armed actors in the areas of these investment projects is the impact on the population's ability to feed itself. As illustrated by the various aspects of the case studies, a number of factors can result in food insecurity. Actual fighting can prevent crops from getting to market, affecting both producers and consumers, as has happened around Greystar's operations, as well as preventing access to crop inputs. Displacement means that productive peasant farmers are no longer able to grow their own food or bring produce to the market, as in the Greystar and B2Gold examples; they often end up unemployed or underemployed. And at a regional level, productive land occupied for mineral or petroleum exploration and development is no longer available to grow food. In addition, the impact of such development on the environment may undermine agricultural productivity and adversely affecting water quality or diverting water supplies and

affecting aquifer recharge zones.

While large landowners in the area of B2Gold and Colombia Goldfields operations in Caramanta expressed interest in investing in a large-scale project,<sup>89</sup> peasants were concerned about the risks mining poses for their productive activities. "We the peasants of Caramanta ... have defended our rights to our land, we have protected crop diversity, sustainable management of natural resources, and the development of organized and just communities. ... All of this is under threat; moreover, we fear for the safety of our selves and our families and communities as we are persecuted for not agreeing to an extraction project proposed by those who would further their personal interests by coming to our land to get rich from mining."<sup>90</sup> In the presence of paramilitary actors who see their prospects linked to those of foreign investors, community members' fear for their lives is real.

### **Environment**

Environmental impacts increase in severity as extractive projects advance. Typically, exploration produces more superficial, though more extensive, impacts on biodiversity, surface water, and forests. Actual large-scale mining projects have more serious and long lasting effects that are only ever partially mitigated. With such grave consequences, the affected community must have the right and the ability to participate in deciding whether a mining project goes ahead, and how. Reduced opportunities for accountable democratic process in zones of conflict make this less possible. Beyond the right to a clean environment, the implications for the integrity of fragile ecosystems such as the highland páramos are serious. Even on a strictly utilitarian level, the diversion and contamination of water systems has huge impacts on downstream water uses, whether agricultural or urban. This has been identified as a problem in the Greystar project and for Colombia Goldfields' Caramanta project, and a potential problem in the other study areas. The designation of protected areas as forest reserves is apparently perceived by some companies as yet another barrier that unjustifiably restricts their ability to do business, and they have indicated that mining regulations should be changed. As a representative of B2Gold put it, "There are some environmental requirements that jeopardize investment."<sup>91</sup>

88. Luc Zandvliet, Yezid Campos Zornosa and Shawna Christianson, *Striking gold? The challenges and opportunities during mine exploration for "getting it right" in mine exploitation – Angostura Gold-Silver Project, Santander Department, Colombia*, CDA – Corporate Engagement Project, October 2004.

89. Interview with representatives of a local peasant organization, Caramanta, September 16, 2008.

90. "El Campesinado de Caramanta y la región acorralados por la minería a gran escala, convoca apoyo urgente," Caramanta, July 2008.

91. *Ibid.*

## Labour

The elimination of the state mining company MIN-ERCOL and therefore its union SINTRAMINERCOL was a key element of the 2001 mining code reform. SINTRAMINERCOL and its allied sectoral unions SINALTRAINAL (the food workers' union, to which the Agro-Mining Federation of Sur de Bolívar FEDEAGROMISBOL is affiliated) and SINTRAMINERGETICA (representing coal miners) must not only defend the interests of their members in a very violent and volatile situation, they must also defend their very lives. Their leadership has suffered a long history of threats, intimidation and murder from the local to the national level at the hands of the various anti-union interests in Colombia. In southern Bolívar, the repression of FEDEAGROMISBOL due to its activism around community security, land-use, and development concerns, has been severe. It includes various death threats, and the 2006 murder of affiliate Bolívar Miners' Association leader Alejandro Uribe, as well as the false arrest of its president Teofilo Acuña in 2007, who was subsequently released for lack of evidence.

### *Marginalization of small-scale mining and traditional livelihoods*

Existing small-scale mining operations in all of the study locales have been affected by differing combinations and intensities of intimidation, violence, forced displacement, consolidation of land and mining concessions, and specific policies that favour large-scale mining and discourage small-scale and artisanal mining. Both State policies and the mining companies studied seem to consider small-scale mining to be an obstacle to developing large-scale mining projects.<sup>92</sup> Neither the government nor the companies seek to meaningfully accommodate small-scale miners in their planning, nor formally recognize their prior use and occupation of the area, or in many cases, their legal and Constitutional protection.

Large mining projects seek a return on their investment in the short term, exploiting the area's resources and leaving a large environmental and socio-economic footprint. In contrast, small-scale miners' representatives advocate a sustainable model to ensure well-being for centuries to come, with the local mining population deriving its livelihood from small-scale

operations alongside mixed agricultural activities. In contrast with the significant support provided to larger mining companies, small-scale miners are typically unable to access capital or credit, and are without basic services. Small-scale mining is often demonized as being dangerous to both workers and the environment, as well as being inefficient. Artisanal miners note that while large mining corporations receive tax benefits for research and development, authorities have ignored their requests for support to enhance productivity and social and environmental safety through improved mining and processing technology and management.

In fact, the miners have called both for State support and foreign investment to help them improve small-scale mining's productivity and social and environmental safeguards. They feel the number of people employed in the sector should constitute a compelling argument in their favour. However, this support has not materialized, nor has the State offered a well-considered and funded transition plan to provide small-scale and artisanal miners with viable alternatives to mining. Instead, the combined effects of armed actors, the Colombian government, and national and foreign investors – including Canadian – have in some cases led to violent repression. More generally, small-scale miners face increasing legal vulnerability, and progressively worse living conditions, with no viable alternatives.

For example, small-scale miners have complained about new restrictions on the use of explosives that would put small-scale mining in jeopardy, and they have faced numerous difficulties with authorities in legalising existing informal mining in the area.<sup>93</sup> According to Greystar, “there is no takeover of small-scale mining as the corporation is exploring new areas where [this] does not take place.”<sup>94</sup> Yet already in 2000, Greystar had submitted a request to the municipal government of California for the cessation of informal mining activities within the company's licence area.

In Sur de Bolívar where B2Gold has joint venture arrangements with AngloGold Ashanti, the population's livelihood consists of small-scale mining mixed with agricultural activities. Small-scale mining has been perceived as an obstacle to large-scale mining projects, and small-scale miners have been targeted for paramilitary violence. Artisanal miners have organized

92. This is contrary to the perspective of mainstream international mining associations, such as the International Council on Mines and Metals, which believes that “a harmonious relationship between mining companies and local ASM operators is crucial if both parties are to maximize their contributions to the economy and livelihoods of their operational areas.” See ICMC, “ICMM co-hosts Artisanal and Small-Scale Mining workshop in Ghana,” press release, May 29, 2009. Retrieved July 20, 2009 from: <http://www.icmm.com/page/13994/icmm-co-hosts-artisanal-and-small-scale-mining-workshop-in-ghana>.

93. Luis Alfredo Muñoz, Federación de Mineros de Santander (FESAMIN), speech at the *Foro Regional Minero*, Bucaramanga, April 24, 2008.

94. “Greystar respeta derechos de los mineros en California,” *El Frente*, n.d.

to defend themselves, in 1994 forming the Mining Association of Sur de Bolívar, which later became the Agro-Mining Federation of Sur de Bolívar (FEDEAGROMISBOL) with some 15,000 members.<sup>95</sup> Since its inception, FEDEAGROMISBOL has opposed industri-

had made the ground unstable, and that relocation was necessary to avoid potential losses due to subsidence (ground sinking or collapsing over mine workings). Increasingly restrictive regulations enforced by the state agency CORPOCALDAS (Caldas Autonomous

Regional Corporation) made the small-scale miners more willing to sell.<sup>99</sup> The company bought a large number of small-scale mines and mills, and destroyed the equipment. Demonstrating the instability inherent in large-scale mining, when it found itself short of funds, Colombia Goldfields abandoned the project early in 2009. In its wake, it left social havoc, worsened poverty, and massive unemployment, with the former owner-operators and employees of the small-scale mines left with no equipment or means to ply their former trade.

### **Collective rights of Indigenous peoples and Afro-Colombians**

Colombian law and international standards endorse the ability of Indigenous and minority groups to self-identify, and recognize

specific rights to be consulted on development projects in their territories, and in the case of Afro-Colombians, to establish their own small-scale mining areas. Indigenous peoples' right to free, prior, informed consent (FPIC) on development projects in their territories is recognized by the Colombian government's ratification of the UN Declaration on the Rights of Indigenous Peoples.<sup>100</sup> In several of the case studies – often with the collusion of State agencies and officials – companies avoided these consultation requirements by defining project areas in such a way as to exclude officially-recognized Indigenous territories, by refusing to recognize self-identified Indigenous groups, or by requiring them to meet impossibly strin-

al exploitation of gold and instead calls for the State to establish a special mining reserve for small-scale miners.<sup>96</sup> The Federation has suffered numerous human rights abuses, including torture and murder, against its members and leaders.<sup>97</sup>

The case of Marmato is another dramatic case: a mining town with a history of 500 years of small-scale gold mining, it was recognized as a historical and cultural site in 1982.<sup>98</sup> Colombia Goldfields' proposed open-pit gold mine in the area above the town would have required relocating the town itself as well as eliminating a large number of small-scale mining operations. The company and some authorities maintained that extensive mine workings under and near the town

95. Sandra Satterlee, "Colombian gold miners under threat," *The Guardian*, April 25, 2008.

96. Defensoría del Pueblo, Sistema de alertas tempranas, *Informe de riesgo No. 015-07 A.I.*, Bogotá, June 15, 2007, p. 14.

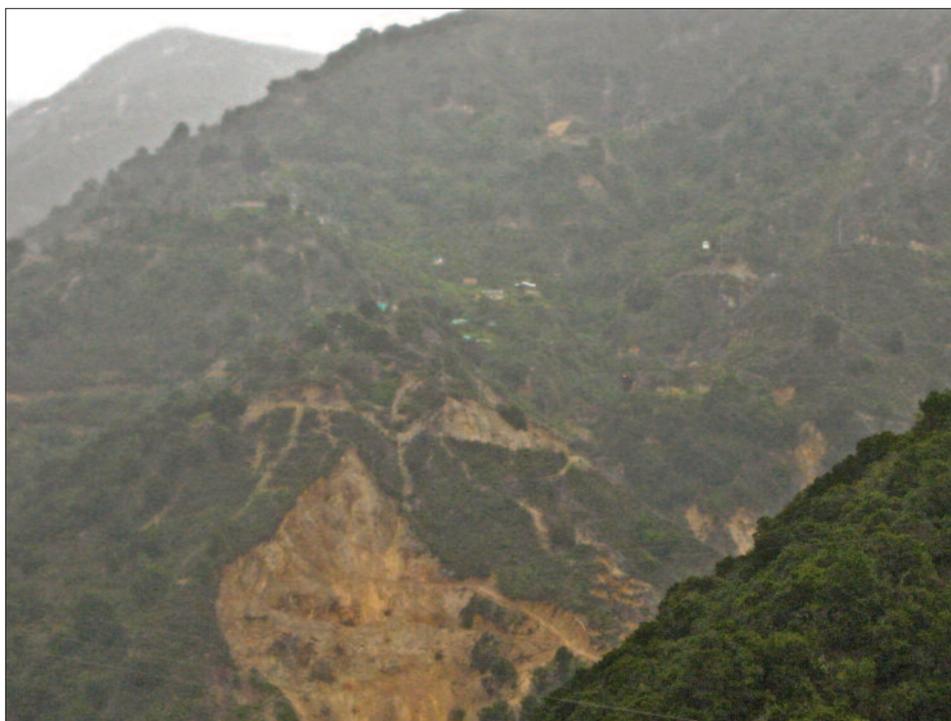
97. OPI, PDPMM, *La Coyuntura en el Magdalena Medio*, Bogotá, June 3, 2008.

98. The history of Marmato is well known: it was an area of alluvial gold mining by indigenous Cartama and Moragas groups; mining was the primary source of revenue for the Spanish Crown during the sixteenth century; at the time of Independence (1825), the area's mining rights were officially passed to the British to finance the war of emancipation; [Marmato] was declared a National Monument via resolution No. 002 of March 1982 by the Colombian Institute of Culture.

99. Interview with a local representative of SINTRAMINERGETICA, Marmato, September 19, 2008.

100. UN, *Declaration on the Rights of Indigenous Peoples*. Retrieved June 7, 2009 from:

<http://www.un.org/esa/socdev/unpfi/en/drip.html>.



Greystar Resources' Angostura project exploration area, California, Santander department. Photo: Jean Symes.

gent criteria to be recognized. In other areas consultation was alleged to have taken place, but accounts of the processes indicate varying degrees of inadequacy.

### **Democratic expression, consultation, and community decision-making**

Non-Indigenous and non-Afro-Colombian communities, whether they are peasant farmers or small-scale miners (and many people are both) do not have the legal protection – however weak, and however weakly enforced – that Indigenous and Afro-Colombian communities do. The question is whether the interests and actions of the Canadian investment project support or undermine the ability of communities to understand any proposed project and participate meaningfully in undistorted, democratically based decision-making processes. This question is closely linked to the involvement and influence of armed actors discussed under *Security*, below.

In some instances, local governance has been weakened by increasing delegation of government responsibility to corporations, as civil society organizations in Marmato have noted: “Public functions are being delegated to the large strategic operator, including decision-making functions. This is part of so-called ‘corporate contracts’. Mining reform has weakened public authority as the State delegates functions to corporations...such as the administration of the mining industry in the region.”<sup>101</sup>

We found that in several cases, even after an extended period, local people were unaware of the real scope of mining projects. One company’s representative even denigrated civil society groups that monitor its mining activities and are critical of the conditions of mineral development, accusing them of being “contaminated by paramilitaries or guerrillas,” a characterization that can have serious human rights consequences in areas with the presence of either group. He insisted that corporations have a right to mine, and that “no municipality can close its doors to a mining project.”<sup>102</sup>

### **Relationship with armed actors**

The physical security of investment projects is in many ways the core of this study; the actions of State, insurgent, and paramilitary armed forces are the immediate cause of human rights violations. The case studies provide insights into the relationships between the

State, the corporations, and the various armed actors, and expose a range of related human rights problems. They also highlight the intrinsic human rights risks for companies working in conflict zones:

- the risk of benefiting armed actors who violate human rights;
- the risk of contributing to the persistence, consolidation, or reorganization of such armed groups; and
- the risk of benefiting from human rights violations.

In the four cases studies presented here, there were no allegations that the companies in question were directly involved in perpetrating human rights abuses. However, in all cases the history and/or current context of the area suggests a serious potential for the above indirect risks, and in most of the cases clear allegations from credible sources and documentation provide sufficient reason for further investigation. In all cases, armed conflict over control of land and resources – and human rights abuses directed against the local population – predate or coincide with the involvement of the company and have not since stopped. As the Public Defender’s office stated,

*... the armed conflict in Sur de Bolívar relates to the strategic military, economic and political value of its territories;... control of production (natural resources, minerals and mega projects), and the purchase and expropriation of land for development of productive projects and agro-business – all involving the use of violence.*<sup>103</sup>

Given the documented relationship between the Army and Carlos Castaño’s AUC (Autodefensas Unidas de Colombia, or United Self-Defence Forces of Colombia) paramilitaries, the close relationship between the companies’ private security (typically made up of ex-military) and the Colombian Army is a significant risk factor. While the AUC has supposedly been demobilized, in many places it is regrouping as new paramilitary groups, including the infamous “Aguilas Negras” (“Black Eagles”).

The Army itself is known to be responsible for massive and serious human rights abuses:

*[Reports indicate that] on September 19, 2006, members of the army’s Nueva Granada Antiaircraft Battalion killed Alejandro Uribe Chacón... leader of the Association of Miners of Bolívar. A number of witnesses reported that they had seen soldiers carrying his body*

101. Interview with Francisco Ramírez, President of SINTRAMINERCOL (Colombian Union of Mine Workers), July 28, 2008, Bogotá.

102. Interview with Julián Villarruel Toro, Vice president for Corporate and Legal Affairs, B2Gold Colombia, Bogotá, August 26, 2008.

103. Defensoría del Pueblo, Sistema de alertas tempranas, *Informe de riesgo No. 015-07 A.I.*, Bogotá, June 15, 2007, p. 3.

*in the direction of a military base in San Luquitas in the municipality of Santa Rosa. According to reports, on September 20, the army presented the body of Alejandro Uribe to judicial authorities indicating that he was a guerrilla killed in combat. ...several witnesses have said that in the past year, members of the Nueva Granada Antiaircraft Battalion have threatened to kill FEDEAGROMISBOL leaders. Moreover, reports indicate that soldiers have told local residents that its operations are designed to protect the interests of international mining companies in the area.*<sup>104</sup>

Furthermore, there are also allegations that in at least some areas, soldiers and the re-established paramilitaries are one and the same.<sup>105</sup>

Given this, it would be reasonable to expect companies operating in Colombia would at minimum refer to the US-UK Voluntary Principles on Security and Human Rights.<sup>106</sup> In Colombia, the Voluntary Principles were launched in 2001 by the US Embassy,<sup>107</sup> and are meant to “guide companies in maintaining the safety and security of their operations within an operating framework that ensures respect for human rights and fundamental freedoms,” in relation to public and private security and the use of force.<sup>108</sup> No company in this study identified the Voluntary Principles on Security and Human Rights as a guiding document for CSR.

## Conclusions

The Colombian context presents especially difficult challenges for investment projects to be able to uphold human rights standards and contribute positively to the overall human rights situation. The Colombian government is eager to promote foreign investment, through, for example, bilateral agreements with other countries and changes to domestic legislation to improve conditions for investors. At the same time, institutional controls and government oversight and accountability are notably weak in the areas of human security, environmental protection, the recognition of Indigenous and minority rights, and the legal registration of property – the very areas that are crucial to ensuring that the human rights impact of such investment is positive.

John Ruggie, UN Special Representative on

Human Rights and Transnational Corporations, emphasizes that it is the responsibility of the State to *protect* human rights, while both State and non-State actors are obligated to *respect* human rights, and even, where appropriate, to *remedy* human rights violations.<sup>109</sup> The Colombian government’s record in protecting human rights is poor and inconsistent. In such circumstances, where the State is not willing or able to protect human rights, the obligation on corporations to respect human rights becomes more crucial, while at the same time more difficult to define and to fulfil.

Testimony gathered in the course of this study suggests consistent and clear patterns in several key areas where companies risk benefiting from human rights violations and/or benefiting those responsible for human rights violations. Under these circumstances, increased investment in the extractive sector is at risk of entrenching and even expanding the already astonishing toll on the human rights of Colombians.

The acquisition of petroleum and mineral concessions (subsurface rights) poses a problem in that there is no mechanism for prior consultation with local people, much less the free, prior, and informed consent of Indigenous communities. The acquisition of mineral concessions is also reported to be problematic with respect to small-scale miners, who may have never held legal mining rights, or may have surrendered those rights through legal means via the purchase or consolidation of concessions under pressure from State agencies or illegal armed actors – or simply have abandoned their properties in fleeing armed conflict.

There is a significant risk that companies are benefiting from earlier appropriations of lands and titles, regardless of their policies and best intentions, due to the history of the massive theft of land by paramilitaries explicitly for expected resource revenues, their insertion into local and regional political and economic structures, and in some areas (e.g., Sur de Bolívar), the continued presence of re-armed paramilitary groups. There is no adequate mechanism for documenting land title and history, nor is there adequate investigation of land theft or a credible reparations mechanism for those who have been violently displaced from their land. In these situations, there is also a very significant risk that an investment will reward human rights violators, create an incentive for further violations, and potentially contribute to the consolidation of former paramilitaries in their new groupings.

All of the case studies reported the use of former

104. Amnesty International, AMR 23/001/2007, July 2007.

105. CPT, *Informe de Derechos Humanos 2007*, Barrancabermeja, 2007, p. 6.

106. *Voluntary Principles on Security and Human Rights*, 2000. Retrieved June 12, 2009 from: [http://www.voluntaryprinciples.org/files/voluntary\\_principles.pdf](http://www.voluntaryprinciples.org/files/voluntary_principles.pdf).

107. *Significant events in the history of the Voluntary Principles on Security and Human Rights, 2000-2006*, n.d. Retrieved June 8, 2009 from: <http://www.voluntaryprinciples.org/timeline/index.htm>.

108. *Voluntary Principles on Security and Human Rights*, *op. cit.* [preamble].

109. John Ruggie, *op. cit.*

Colombian military personnel for private security as well as relationship between the companies and the Army itself. This creates a range of risks with respect to the prior human rights history of specific units and members of the Army, their relationships with paramilitary groups, as well as the relationship among military and paramilitary structures. While some companies interviewed described various safeguards, in no case did these include the US-UK Voluntary Principles on Security and Human Rights, even in situations that clearly require them. This calls into question the value of voluntary measures that are at the discretion of individual corporations, in the absence of legal requirements to provide a minimum standard on which to build.

Extractive projects undertaken in partnership with other companies require a strict regime of “due diligence” with respect to security provisions on each partner company’s operations. Given the evidence of significant control of the security industry by paramilitaries and their successors, provision of security requires specific due diligence to ensure it is not contributing to organized crime.

The weakness of Colombian State institutions creates specific risks in terms of a lack of protection for the rights of Indigenous peoples and Afro-Colombians. There is no accepted systematic mechanism for consulting with peasant, Afro-Colombian, or Indigenous communities regarding development projects or changes in land use. In fact, the Colombian State appears to rely on private investors to undertake consultation on its behalf. Even within the existing legal and Constitutional framework, the State is not experienced by many groups as an effective guarantor of people’s human rights, nor of the land rights of Indigenous peoples and the territorial and development rights of Afro-Colombians. This situation is worsened by continued open hostility by high government officials, including the President, toward civil society organizations, human rights defenders, and those who have critiqued extractive industry projects.

Environmental measures are reported to be weak

in the identification and protection of sensitive ecosystems and critical ecosystem components such as water systems, as well as in the prediction, monitoring, and mitigation of environmental impacts from mineral and petroleum exploration and development.

The absence of basic government services in most of the communities studied creates a risk that any corporate contribution to local social services (e.g., schools) may be seen as an effort to influence public opinion or “buy” local officials. They cannot and should not be expected to fulfil the role of the State, yet in the absence of government services, and knowing that companies are reaping significant profit from local mineral deposits, communities understandably expect some benefits to flow to them. Where State agencies are more involved, as in the case of Marmato in the



Central Plaza, Vetás, Santander department. Photo: Jean Symes.

third case study, testimony indicated contradictions regarding the obligation of State agencies to protect the well-being of the town and its inhabitants, while insisting on a controversial and poorly managed relocation of the town. The community is now faced with an incomplete relocation, and no industry. Where the State is weak and does not fully protect the rights of the populace, there are risks to both the company and the community in relying on the State to act as an impartial guarantor of local people’s rights.

Both Colombian authorities and transnational mining corporations have demonized small-scale and artisanal mining as inefficient, as well as dangerous to both workers and the environment, and have worked to

marginalize or eliminate such activities. Artisanal and small-scale miners have consistently sought State support and foreign investment to enhance their productivity and social and environmental safety through improved mining and processing technology and management. They feel the number of people employed in the sector should constitute a compelling argument in their favour. However, this support has not materialized, nor has the State offered a well-considered and funded transition plan to provide small-scale and artisanal miners with viable alternatives to mining. Instead, the combined effects of armed actors, the Colombian government, and national and foreign investors have in some cases led to violent repression. More generally, small-scale miners face increasing legal marginalization, and progressively worse living conditions, with no viable alternatives.

The Canadian Embassy's efforts in promoting CSR have helped some companies, notably Greystar, to identify and implement CSR measures, but have not eliminated a range of human rights risks. Nor has the Canadian government, nor its Embassy, undertaken a systematic evaluation of the potential human rights impacts of investment in Colombia, or in the various regions and economic sectors, as the basis for deciding whether and under what circumstances it should

*The consensus recommendations of the Advisory Group to the National Roundtables on Corporate Social Responsibility in the Extractive Sector, themselves considered minimal by participating Canadian human rights advocates and NGOs, have not been implemented by the Canadian government. In light of the urgent need for accountability by both government and corporations in Colombia, passage of Bill C-300, "An Act Respecting Corporate Accountability for the Activities of Mining, Oil or Gas Corporations in Developing Countries," which incorporates some of the Roundtable recommendations, would be a first step toward adequate CSR legislation.*

encourage or support investment projects.

In view of the ongoing relationships between Colombian government officials, the re-organized paramilitaries, and the military, the Colombian government has not been willing or able to consistently and effectively protect most human rights, including the rights of those who are opposed to extractive projects or require protection from their negative effects. Following John Ruggie's framework principles of "Protect, Respect, Remedy,"<sup>110</sup> the incapacity or unwillingness of a State to *protect* human rights puts an additional burden of responsibility on the companies in their efforts to *respect* human rights. At minimum, such a situation requires tools such as Human Rights Impact Assessments and the Voluntary Principles on Security and Human Rights.

Colombian government linkages with paramilitaries, and military collusion with them, create an untenable situation for Canadian government promo-

tion of investment, and for companies looking to invest. To protect human rights while promoting investment, the Canadian government must ensure that Canadian companies investing overseas respect the full range of internationally recognized human rights standards. This includes ensuring that investment projects do not make it impossible for remedy to occur – for instance with respect to people displaced from their land, or irreversible environmental impact or land use change – and that the Canada-Colombia Free Trade Agreement does not increase obstacles to communities' right to remedy or reparation.

Independent and transparent Human Rights Impact Assessments are necessary to avoid the significant risks identified in this report, specifically that the Canadian government may not be fulfilling its obligation, as per the Ruggie principles, to *protect* human rights in Colombia, and that companies that invest may not be fulfilling their obligations to *respect* human rights.

Independent and transparent HRIAs should be done on existing investment projects, with particular attention to the areas outlined in this report, as well as on new projects and policies prior to implementation.

As recommended by the House of Commons Standing Committee on Foreign Affairs and International Trade, the CCFTA should be subject to an independent HRIA before it is implemented.

## Case studies

As described in the "Methodology" section above, four case studies were undertaken:

- the San Lucas mountain range in Sur de Bolívar department where B2Gold is active;
- northern Santander department where Greystar Resources is active;
- the areas of Caldas and Antioquia departments where Colombia Goldfields and B2Gold are active; and
- the areas of Tolima department where Nexen is active.

They are presented here in an abridged form, focusing on the key testimonials and findings. In analyzing the case studies, common elements emerged, as well as issues specific to each particular case.

In case studies #2, 3 and 4, these have been grouped by theme, as pertinent to the case:

- land acquisition and the arrival of foreign mining companies,
- conflict in the region,
- corporate social responsibility policies,

110. John Ruggie, *op. cit.*

- governance and community involvement,
- impact on Indigenous peoples and Afro-Colombians,
- environmental concerns and competing interests, and
- the project's effect on small-scale mining.

Case study #1 focuses more directly on human rights risks and is therefore organized to document

- risk of inadvertently rewarding human rights violators for their crimes;
- risk of contributing to paramilitary persistence and reorganization; and
- risk of benefiting from human rights violations against those who oppose the project.

### Case study #1: Sur de Bolívar – B2Gold

#### Context

This case study focuses on the southern part of the department of Bolívar where a number of communities and organizations oppose the industrial mining of a gold deposit located in the San Lucas mountain range. The area is part of a region known as Magdalena Medio, which also comprises lands belonging to the departments of Santander, César and Antioquia bordering the Magdalena River. The economic centre of the region is the city of Barrancabermeja in Santander.

The region of Magdalena Medio is particularly hard hit by the armed conflict. The strategic importance of the region<sup>111</sup> and actions of the various armed groups have led to massive violations of human rights. Magdalena Medio's Development and Peace project<sup>112</sup> reports that between 1994 and 2007, 116,453 people in the region were forcibly displaced; 53,202 of them came from municipalities in Sur de Bolívar.<sup>113</sup> Between 1997 and 2007, 2,355 civilians in Magdalena Medio died from violence related to political causes, including 380 from Sur de Bolívar. During this period, 75% of

violations of human rights and of international humanitarian law (IHL) were attributed to paramilitaries, 14% to persons unknown, 5% to FARC-EP guerrillas, 4% to the Colombian Army and 2% to ELN guerrillas.<sup>114</sup>

Since the mid-1990s, several companies have conducted exploration work in this area and maintain an interest in the Serranía de San Lucas deposit. One of these is a Canadian company, B2Gold, with offices in Vancouver. As part of the research for this case study, two interviews were carried out with a representative of B2Gold, several interviews were conducted with human rights defenders in Magdalena Medio, and an extensive review of the literature was undertaken. Significantly, for security reasons, research activities did not include a visit to communities in the mining region.

Julian Villarruel Toro was Director-General of INGEOMINAS, the Colombian government institute for mining, before joining B2Gold as its Vice-President for Corporate and Legal Affairs. According to Mr. Villarruel Toro, the company adheres to the rules of the International Finance Corporation (IFC).<sup>115</sup>

Nonetheless, this study found that Canadian investment in Sur de Bolívar creates significant risks to human rights. We have concentrated on the following risks to mining investment in Sur de Bolívar:

- Investment may benefit groups responsible for massive violations of human rights;
- Investment may inadvertently encourage the reorganization, persistence, and strengthening of paramilitary structures that seek to economically benefit from actions that involve human rights violations;
- Investment may benefit from human rights violations against communities and human rights advocates who oppose the project.
- These risks have also been cited repeatedly by a number of bodies, including the Public Defender's Office – a State institution – in its

111. “[The Magdalena Medio region] provides a direct route to departments along the border from the centre and north of the country and this has led illegal armed groups to settle in these areas which serve as bridges to other strategic regions”; Defensoría del Pueblo, Sistema de Alertas Tempranas, *El Conflicto Armado en el nororiente del país: Dinámicas y Perspectivas*, Bogotá, August 2008, p. 3.

112. This project was established by the Centre for Research and Popular Education (CINEP) and the diocese of Barrancabermeja. Through the Observatory on Integrated Peace (OPI), it tracks violations of human rights and contraventions of the IHL, and political and social violence in Magdalena Medio. It receives funding from the European Union, the World Bank and the Colombian State. See: [www.pdpmm.org.co](http://www.pdpmm.org.co).

113. OPI, PDPMM: *Database of people expelled from the municipalities of Magdalena Medio 1994-2007*, Barrancabermeja, 2008. The municipalities of Sur de Bolívar are, from north to south: Regidor, Barranco de Loba, Tiquisio, Rio Viejo, Arenal, Morales, Santa Rosa del Sur, Simití, San Pablo and Cantagallo. In December 2007, part of the municipality of Rio Viejo became a new municipality called Norosí. The data given here do not include Barranco de Loba.

114. OPI, PDPMM, *Síntesis DH-DIH-VPS 05-07*, Barrancabermeja, 2008.

115. Interview with Julian Villarruel Toro, Vice-President for Corporate and Legal Affairs at B2Gold Colombia, Bogotá, August 26, 2008. Julian Villarruel Toro is a geologist and attorney. He is also executive director of the Colombian Chamber of Mines.

Early Warning System (EWS)<sup>116</sup> reports.

Most of the sources used in this case study are in the public domain.

### *Land...*

Since the 1970s, Sur de Bolívar has been colonized by people whose livelihoods have depended on agriculture and small-scale gold mining. During the 1980s, coca production became an important source of revenue, controlled by the guerrillas. Various paramilitary groups subsequently vied for control of the Magdalena Medio.<sup>117</sup> In the second half of the 1990s, offensives by the Colombian Army and paramilitary groups caused massive population displacements in Sur de Bolívar and led to other serious human rights violations as well. During this time, the Colombian government and private companies, among these the Canadian company Corona Goldfields, became interested in exploiting gold in the region. After some exploration activities were carried out, the company subsequently withdrew from the region.<sup>118</sup>

Starting in 2003, AngloGold Ashanti (a South African company) undertook exploration activities in the region through its subsidiary, Kedahda SA.<sup>119</sup> During this period, as reported in the Organization of

American States' Mission to Support the Peace Process (MAPP-OAS), "the influence of the self-defence [paramilitary] forces [was] nearly exclusive"<sup>120</sup> in Magdalena Medio. Demobilization of paramilitary groups began in the region in 2005 but as early as 2006, there was an upsurge in activities by paramilitary groups.

During the same period, between 2006 and 2007, Avasca Andean Resources, under a joint venture agreement with AngloGold Ashanti, conducted exploration work in Sur de Bolívar, specifically in Buena Señá, a municipality in Rio Viejo (now Norosí). Avasca was originally owned by Bema Gold, a Canadian company, and was acquired in February 2007 by B2Gold, also Canadian.<sup>121</sup>

Currently Kedahda S.A. operates in Buena Señá and in Cerro del Oso in the municipality of Tiquisio.<sup>122</sup> B2Gold claims it withdrew from the area in 2007.<sup>123</sup> In 2008, however, AngloGold Ashanti and B2Gold formalized agreements for their operations in Colombia.<sup>124</sup> In the words of Julian Villarruel Toro, "the relationship between AngloGold Ashanti and B2Gold pertains to locations where they [AngloGold Ashanti] do not have substantial operations and so the operator is B2Gold. The joint venture is defined as follows: B2Gold has 51% and they have 49%."<sup>125</sup> The

116. As described by the Representative of the Secretary-General for internally displaced persons, "the early warning system (*sistema de alerta temprana* – SAT) is the main instrument to prevent displacement. ... Representatives of the Ombudsman closely monitor the situation of the civilians in five key areas in Colombia and establish reports analyzing the risks that the civilians may face in function of military movements, possible armed hostilities and other factors. These reports are transmitted ... to an Inter-ministerial Committee for Early Warning (*Comité interministerial para la alerta temprana* – CIAT) which is chaired by the Ministry of Interior. Based on the reports and other information available to it, CIAT decides to issue an early warning, thus freeing budgetary and other resources in order to preventively respond to specific threats." (UN, A/HRC/4/38/Add.3, Geneva, January 24, 2007). According to data available from CIAT for 2004, approximately 22% of the risk reports issued by the Public Defender's Office became Early Warnings (Observatorio del Programa Presidencial de Derechos Humanos y DIH, "Comité Interinstitucional de Alertas Tempranas," *Boletín Temático*, No. 2, October 2004, p. 14.). According to the UN, in 2003, in 31% of the early warnings, infractions had been committed. By August 2004, for 46% of the early warnings issued infractions were committed. (UN, E/CN.4/2005/10, Geneva, February 28, 2005, para. 29).

117. República de Colombia, Vicepresidencia de la República, Observatorio del Programa Presidencial de Derechos Humanos y Derecho Internacional Humanitario, *Panorama actual de Bolívar*, s. f. [2005], p. 5.

118. Community opposition has been mentioned as one of the reasons for this withdrawal. Javier Fernando Villamil Velásquez, "Aproximación a los recursos minero energéticos nacionales y el capital extranjero en Colombia," in *Gestión y Ambiente*, vol. 10, no. 3, Bogotá, Decembre 2007, p. 69.

119. Interview with Teófilo Acuña, president of the Federación Agrominera del Sur de Bolívar (FEDEAGROMISBOL), Bogotá, August 2008.

120. MAPP/OEA, *Cuarto Informe Trimestral*, CP/doc. 3989/05, March 11, 2005, p. 4.

121. Interviews with Julian Villarruel Toro, *op. cit.*, (August 26, 2008 and October 29, 2008). B2Gold brought together many of the Bema Gold executives: "The B2Gold management team possesses over 100 years of collective industry experience at Bema alone, and has been very successful, from exploration to financing, to developing and operating mines throughout the world." B2Gold's website at: <http://www.b2gold.com/corporate/directors-and-management.aspx> (page viewed August 11, 2008).

122. Interview with human rights defenders, Barrancabermeja, August 2008.

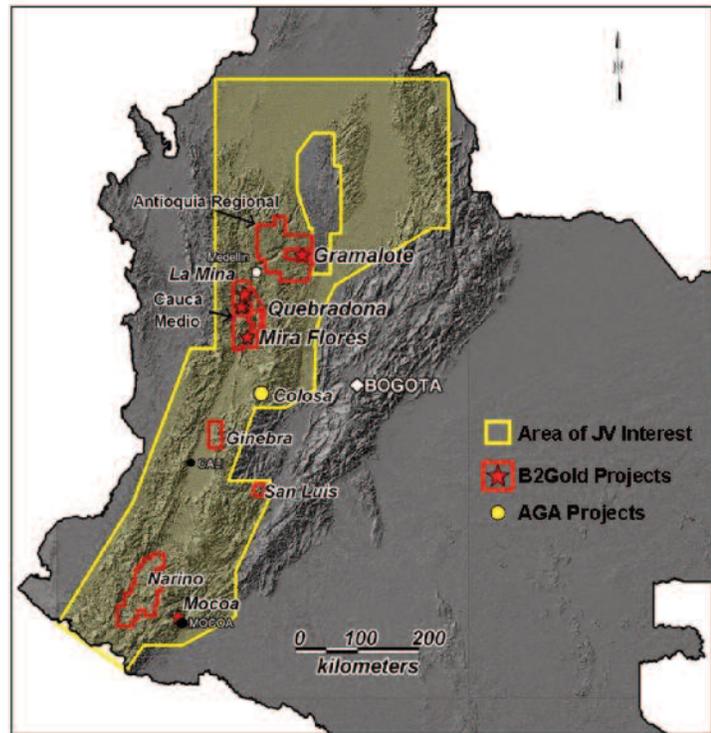
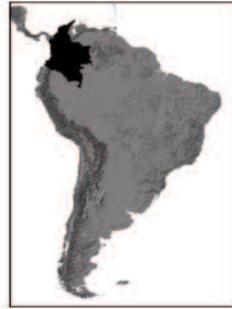
123. Interview with Julián Villarruel Toro, *op. cit.* (October 29, 2008).

124. "Through the transaction, [AngloGold Ashanti] will acquire a direct interest in B2Gold that will provide AngloGold Ashanti with exposure to B2Gold's global exploration program, as well as participation in the underlying joint venture interests in Colombia that AngloGold Ashanti [retains] with B2Gold." Jo Black, "AngloGold Ashanti to acquire 15.9% direct interest in B2Gold," *Metal Markets*, May 20, 2008, Online at: <http://www.metalmarkets.org.uk/2008/05/20/anglo-gold-ashanti-to-acquire-159-direct-interest-in-b2gold/> (viewed July 28, 2008).

125. Interview with Julian Villarruel Toro, *op. cit.* (August 26, 2008).

area covered by this joint venture includes the area of Sur de Bolívar, as shown in Map .

In 1994, artisanal miners organized the Mining Association of Sur de Bolívar, which later became the Agro-Mining Federation of Sur de Bolívar (FEDEAGROMISBOL) with 15,000 members who make their livings from artisanal mining and agricultural activities.<sup>126</sup> Since its inception, FEDEAGROMISBOL has opposed industrial exploitation of gold and calls for the State to establish a special reserve for small-scale miners.<sup>127</sup> FEDEAGROMISBOL has reported numerous human rights abuses against its members and leaders.<sup>128</sup>



**Map 1: Area of B2Gold and AngloGold Ashanti Joint Venture Interest**

Source: B2Gold's website: <http://www.b2gold.com/projects/colombia.aspx> (downloaded July 28, 2008).

### ...and Conflict

#### **Risk of inadvertently rewarding human rights violators for their crimes**

The conflict in Sur de Bolívar is a result of the economic interests of armed actors. According to an analysis of the Public Defender's Office:

*Historically, the armed conflict in Sur de Bolívar relates to the strategic military, economic and political value of its territories; and to the reconfiguration of local and regional power, control and destruction of social movements, control of production (natural resources, minerals and mega projects), and the purchase and expropriation of land for development of productive projects and agro-business – all involving the use of violence.<sup>129</sup>*

#### **The paramilitary offensive and consolidation of territorial control**

According to an analysis of the Public Defender's Office for Magdalena Medio,

*In 1997, the paramilitary project [was] initiated and [managed] to settle in the area ...; its presence led to even greater control of profits from both legal and illegal economies, and particularly, from gold production ... . As paramilitary structures were being consolidated, they were able to permeate local and regional public bodies, to make social and community organizations subservient through threats and fear. During the onerous process of territorial dispute ... which reached its greatest intensity between the years 2000 and 2004, risk to civilians visibly increased and led to systematic, massive violations of human rights and of international humanitarian law in communities there.<sup>130</sup>*

126. Sandra Satterlee, *op. cit.*

127. Defensoría del Pueblo, Sistema de Alertas Tempranas, *Informe de riesgo No. 015-07 A.I.*, Bogotá, June 15, 2007, p. 14.

128. OPI, PDPMM, *La Coyuntura en el Magdalena Medio*, Bogotá, June 3, 2008.

129. Defensoría del Pueblo, Sistema de Alertas Tempranas, *Informe de riesgo No. 015-07 A.I.*, *op. cit.*, p. 3.

130. Defensoría del Pueblo, Sistema de Alertas Tempranas, *Informe de riesgo No. 042-06 A.I.*, Bogotá, October 20, 2006, p. 5.

In 1996, after the United Self-Defence Forces of Colombia (AUC) announced that they had penetrated Sur de Bolívar, farmers in the region made their concerns known to the State and asked for protection. However, during the first phase of the AUC's offensive, at least 150 farmers in the region were killed.<sup>131</sup>

Amnesty International issued numerous urgent actions linked to paramilitary incursions, killings and massive displacements in Sur de Bolívar between 1998 and 2001.<sup>132</sup> The murder of human rights defenders, especially leaders of displaced persons' organizations, was the subject of urgent actions.<sup>133</sup> According to testimonies of people brought before the Inter-American Commission on Human Rights (IACHR), the paramilitaries were backed by Army troops by land, air, and water during the raids.<sup>134</sup>

*The paramilitary group ... United Self-Defence Forces of Santander and South César, which abducted and killed at least 30 Barrancabermeja residents on 16 May, issued public statements to the local media on 5 August, ordering the displaced community to stop all protests and to leave the town within two days. Otherwise another paramilitary attack would take place, similar to the one on 16 May.*<sup>135</sup>

Witnesses told the IACHR,

*In May 1998, paramilitary leader Carlos Castaño Gil declared an offensive against the inhabitants of Sur de Bolívar, which in effect began on July 11, 1998 with a paramilitary invasion in the Cerro de Burgos township, municipality of Simití and ... as a result of these threats hundreds of inhabitants had to move to the municipality of San Pablo. In August 1998, they requested that the Government form a working group and have a high-level commission visit. During the second half of 1998, there was a peasant exodus in Magdalena Medio in which more than ten thousand peasants took part.*<sup>136</sup>

Representatives of displaced communities later declared that they had been displaced by armed actors because of the interest by some companies to mine for gold.<sup>137</sup>

On October 4, 1998, the State made a commitment to guarantee the personal safety, well-being, and liberty of the displaced and their spokespersons, and peasants returned to their villages. Under the agreement, the State stipulated that peasants in Sur de Bolívar were to be included in a protection program,<sup>138</sup> including leaders associated with FEDEAGROMISBOL.<sup>139</sup>

131. IACHR (Inter-American Commission on Human Rights), *Report N° 72/07, Petition 319-01: Admissibility, Edgar Quiroga and Giraldo Fuentes; Colombia*, October 15, 2007, para. 10. Retrieved February 29, 2009 from: <http://www.cidh.org/annualrep/2007eng/Colombia319.01eng.htm>.

132. AI reports the following facts: 300 took part in a raid on Pueblito Mejía, March 1998 (AMR 23/14/98/s, March 5, 1998); in Cerro de Burgos (Simití), June 1998 (AMR 23/40/98/s, June 12, 1998); and again in June 1998 (AMR 23/49/98/s, July 1, 1998, see also: AMR 23/49/98/s, July 1 1998). On the 12 of April 1999, the Colombian Air Force and Army conducted intensive and indiscriminate bombing of the rural area near San Pablo and Simití. A thousand people fled their homes. Beginning on April 13, 1999, paramilitary forces surrounded rural communities, tortured and killed a number of people (AMR 23/38/99/s, April 27, 1999, see also: AMR 23/32/99/s, April 13, 1999). A paramilitary raid that included targeted killings took place in a San Pablo community in June 1999 (AMR 23/50/99/s, July 15, 1999). 17 civilians were disappeared by a 400-strong paramilitary group in Cerro Azul (San Pablo), April 2000 (AMR 23/29/00, April 28, 2000). 250 paramilitaries took the town of Pueblito Mejía and 10 victims were reported in nearby towns, May 2000 (AMR 23/53/00, July 12, 2000). 100 paramilitaries entered the city of Pueblo Mejía where they kidnapped two people. They attacked several cities in Santa Rosa and Morales, June 2000 (AMR 23/50/00, July 21, 2000). About 1,500 people fled after paramilitary forces burst into a Simití community, burned 26 houses and kidnapped one person, May 2001 (AMR 23/052/2001/s, May 23, 2001, see also: AMR 23/031/2001/s, March 16, 2001).

133. See: Amnesty International, AMR 23/86/98/s, November 3, 1998; AI, AMR 23/87/98/s, November 5, 1998; AI, AMR 23/030/2002/s, February 2002; AI, AMR 23/074/2001/s, August 2, 2001; AI, AMR 23/078/2001/s, August 9, 2001. See also: UN E/CN.4/2002/106/Add.2, Geneva, April 24, 2002, para. 132.

134. IACHR, *Report N° 72/07, Petition 319-01* [...], *op. cit.*, para. 11. UN reports also mentioned that "reports had become much more numerous on the use of helicopters by paramilitary groups to spread propaganda and carry out combat action in Sur de Bolívar in November 1998. There is no explanation of how these numerous flights could avoid airspace monitoring which is very thorough in Colombia" (UN, E/CN.4/1999/8, Geneva, March 16, 1999, para. 36).

135. AI, AMR 23/58/98/s, August 7, 1998.

136. IACHR *Report N° 46/08, Petition 699-03, Admissibility: Victor Anaya Delgado, Colombia*, July 24, 2008, note 1. Retrieved February 26, 2009 from: <http://www.cidh.org/annualrep/2008eng/Colombia699.03eng.htm>.

137. Campesinos, Mineros y Trabajadores del Sur de Bolívar, *¿Porqué estamos aquí?*, Barrancabermeja, August 1998, cited in Nizkor, *Panorama actual de la situación de derechos humanos en Barrancabermeja y Sur de Bolívar*, Bogotá, December 2, 1998. Retrieved May 12, 2009 from: [http://www.derechos.org/nizkor/colombia/doc/barra.html#N\\_1\\_](http://www.derechos.org/nizkor/colombia/doc/barra.html#N_1_).

138. IACHR, *Report N° 72/07, Petition 319-01*, [...], *op. cit.*, para. 12.

139. "Leaders of social organizations of Sur de Bolívar, principally from the Permanent Roundtable for Peace and Human Rights in Magdalena Medio and the Federación Agrominera del Sur de Bolívar have been regularly threatened, persecuted, killed and disappeared" (UN, E/CN.4/2002/106/Add.2, Geneva, April 24, 2002, para. 153).

Furthermore, the government expressed its desire to prevent and combat “the criminal association” between some State agents and paramilitary groups.<sup>140</sup> However, according to testimony before the IACHR, on November 28, 1999, two leaders of the displaced “were arbitrarily deprived of their liberty, with no arrest warrant, by members of the National Army, and were ultimately handed over by them to members of paramilitary groups,”<sup>141</sup> who killed them. The IACHR and United Nations institutions received numerous reports of violations of human rights between 1999 and 2004.<sup>142</sup>

In its subsequent declaration to IACHR, the Colombian Government reported that, “the Fifth Brigade of the Army carried out several operations between December 2001 and February 2002 to combat illegal armed groups operating in the area.”<sup>143</sup> However, according to UN reports, “military operations exclusively ... [targeted] the guerrillas and not the paramilitaries, who now operate publicly in more than 40 municipalities in the Magdalena Medio region.”<sup>144</sup>

Projected investments in mineral extraction appear to have been of particular interest to paramilitary groups. Reports from the Public Defender’s Office for Sur de Bolívar indicate that

*As a region of spontaneous colonization, many of the land holdings and de facto mining by farmers and miners are not supported by documented property rights and therefore have made it easier for armed groups to exploit this situation and further*

*their financial interests through concessions that have the potential to attract, in the future, multinational mining companies.*<sup>145</sup>

An example of such a process was identified by the Public Defender’s Office in San Pablo in 2007, where a wealthy family had colluded with illegal armed groups to persuade peasants to abandon their lands and surrender their property rights.<sup>146</sup> In the municipality of Regidor, according to FEDEAGROMISBOL, more than half the properties have been purchased by issuing threats: “They say ‘we buy from you or we pay your widow’.”<sup>147</sup>

### ***Risk of contributing to paramilitary persistence and reorganization***

The demobilization of the Central Bolívar Block (BCB, from the Spanish initials) of the AUC in Sur de Bolívar began in 2005. At that time, the BCB was the largest self-defence organization in Colombia with an estimated 4,400 members.<sup>148</sup> Approximately 2,500 men of the BCB in Santa Rosa in Sur de Bolívar were demobilized in 2006.<sup>149</sup>

That same year and in subsequent years, MAPP/OAS reports documented the reorganization of groups linked to former paramilitary structures in the region.<sup>150</sup> Reports of the Public Defender’s Office included mention of various incidents attributed to groups linked to former paramilitary groups.<sup>151</sup> According to MAPP/OAS, some ex-combatants were threatened with death if they resisted taking up arms in

140. Public declaration by the national government on October 4, 1998 related to agreements between the government and the Mesa Regional del Magdalena Medio de Trabajo Permanente por la Paz (IACHR, *Report N° 72/07, Petition 319-01, op. cit.*, note 25).

141. *Ibid.*, para. 20. See also: UN, E/CN.4/2002/106/Add.2, Geneva, April 24, 2002, para. 134.

142. For example: repeated shelling and machine-gunfire from a helicopter in rural areas in San Pablo; villages occupied by about 300 heavily armed men in military attire, November 1999; a paramilitary raid on the community of Puerto Tiquiso, June 2001; paramilitary incursion into the village San Juan which caused the displacement of 35 families, June 2001 (IACHR, *Report N° 72/07, Petition 319-01, [...] op. cit.*, para. 14 and notes 2 and 9). The UN received the following information: 270 families were displaced after a group of over 300 armed men set up camp in 5 locations, apparently without opposition from the authorities, and killed seven peasants, October 2001 (UN, E/CN.4/2002/74/Add.28, Geneva, 8 May 2002, para. 74); more than 500 uniformed, armed men who identified themselves as AUC, raided 6 villages in the municipality of Arenal, January 2004 (UN, E/CN.4/2005/62/Add.1, Geneva, March 30, 2005, para. 466).

143. IACHR, *Report N° 46/08 Petition 699-03 [...] op. cit.*, para. 17.

144. UN, E/CN.4/2002/106/Add.2, Geneva, April 24, 2002, para. 275.

145. Defensoría del Pueblo, Sistema de Alertas Tempranas, *Informe de riesgo No. 042-06 A.I., op. cit.*, p. 6.

146. In the middle of this conflict, on May 3, 2007, a farmer was found beheaded in his home, and later on May 16, other armed groups distributed threatening leaflets ordering peasants to leave the area. The families relocated to an area near San Pablo (Defensoría del Pueblo, Sistema de alertas tempranas, *Informe de riesgo No. 015-07 A.I., op. cit.*, p. 10).

147. Interview with Teofilo Acuña, *op. cit.*

148. MAPP/OEA, *Quinto Informe Trimestral*, CP/doc. 4062/05, October 5, 2005, p. 7.

149. MAPP/OEA, *Sexto Informe Trimestral*, CP/doc. 4075/06, February 16, 2006, p. 5.

150. MAPP/OEA, *Sexto Informe Trimestral, op. cit.*, p. 7; *Séptimo Informe Trimestral*, CP/doc.4148/06, August 30, 2006, p. 9; *Octavo Informe Trimestral*, CP/doc. 4176/07, February 14, 2007, p. 8; *Décimo Informe Trimestral*, CP/doc. 4249/07, October 31, 2007, p. 4; *Decimosegundo Informe Trimestral*, CP/doc. 4365/09 corr. 1, February 9, 2009, p. 8. For an analysis on the situation of remobilization of paramilitary groups, see MAPP/OEA, *Noveno Informe Trimestral*, CP/doc. 4237/07, July 3, 2007, p. 4-9.

151. Defensoría del Pueblo, Sistema de Alertas Tempranas, *Informe de riesgo No. 042-06 A.I., op. cit.*, p. 9.

a newly formed paramilitary group.<sup>152</sup> In March 2007, the Public Defender's Office in Barranca-bermeja identified as an at-risk population, demobilized persons who refused to take part in further criminal activities, despite pressure from members of their former units.<sup>153</sup>

*[N]ew armed groups... intend to maintain ... control... in order to protect their ability to influence municipal governments' decisions on security and investment issues and public contracts.*

Risk assessment reports from the Public Defender's Office hold that after the demobilization of AUC members in 2005 and 2006,

*[C]riminal activity in the city [of Barrancabermeja] ... seems to represent a new phase of violent control and domination by those whose organizations appear to have their roots in paramilitary structures linked to members who were part of the demobilized AUC .... Death threats, murders, extortion, acts of terror, enforced disappearances, thefts of oil and gas supplies and forced displacements still occur .... [T]he armed [paramilitary] groups undergoing reorganization [seek to] maintain influence over certain clientele with political and economic power [and thus] ... maintain social order in the communities and control of local authorities in order to take charge of policy decisions on investment and security, and have access to returns on public and private contracts.*<sup>154</sup>

According to an analysis presented by the Public Defender's Office, the continued existence of paramilitary organizations reflects their political and economic objectives: "the arrival of large national and foreign capital in north-eastern areas ... will continue to be of great interest to illegal armed actors involved in the conflict. They will see ... potential benefits from resources that will circulate in the region."<sup>155</sup>

And in fact, investment flows to the region are significant. The Magdalena Medio Development and Peace office documented and mapped projected major investments for Magdalena Medio for the period 2008

to 2012 (Map 2: the yellow-coloured zone corresponds to Sur de Bolívar).

An analysis of Sur de Bolívar by the Public Defender's Office emphasizes that:

*The interest of illegal armed groups in the San Lucas mountain range has to do with gaining control of the territory and exploitation of its natural wealth (nickel, uranium, coal, silver, copper, platinum, zinc, molybdenum and gold, among other minerals). The AUC's Central Bolívar Block ... ran operations and held military, social and political control of the municipalities of San Pablo, Santa Rosa and Simití, starting in the mid-nineties ... Members of this organization continued to do intelligence work and provide logistical support in municipal capitals [after having been demobilized]. [We] observe a change of command ... that has brought about the reconfiguration of new armed groups ... that intend to maintain territorial authority and political and social control, previously held by the Central Bolívar Block, in order to protect their ability to influence municipal governments' decisions on security and investment issues and public contracts; and to maintain a monopoly on the production, transportation and marketing of coca. To this end, paramilitary groups have resorted to the use of violence to impose their authority.*<sup>156</sup>

As for the possibility that their investments benefit illegal armed groups, B2Gold emphasizes that public order in Colombia has improved significantly over the past six years. The company argues that in areas where it currently operates, there is no presence of illegal armed groups, although there were in the past. To date, the company has not had to cease operations in any area due to concerns about security, human rights or conflict: "We have not been affected. But that does not mean it could not happen. The only way to avoid it is to act in a responsible manner."<sup>157</sup>

In Villarruel Toro's opinion, Sur de Bolívar "is a complex and difficult area but we have been able to

152. MAPP/OEA, *Decimoprimer Informe Trimestral*, April 2008, p. 9-10. Between the initiation of the demobilization process in 2004 and September 2008, figures show that at the national level 1,658 demobilized paramilitaries died, the majority from homicide (*IACHR Annual Report 2002, Chapter IV: Human Rights Development in the Region*, para. 24. Retrieved May 8, 2009 from: [http://www.cidh.oas.org/annualrep/2008eng/Chap4eng.htm#\\_ftn14](http://www.cidh.oas.org/annualrep/2008eng/Chap4eng.htm#_ftn14)).

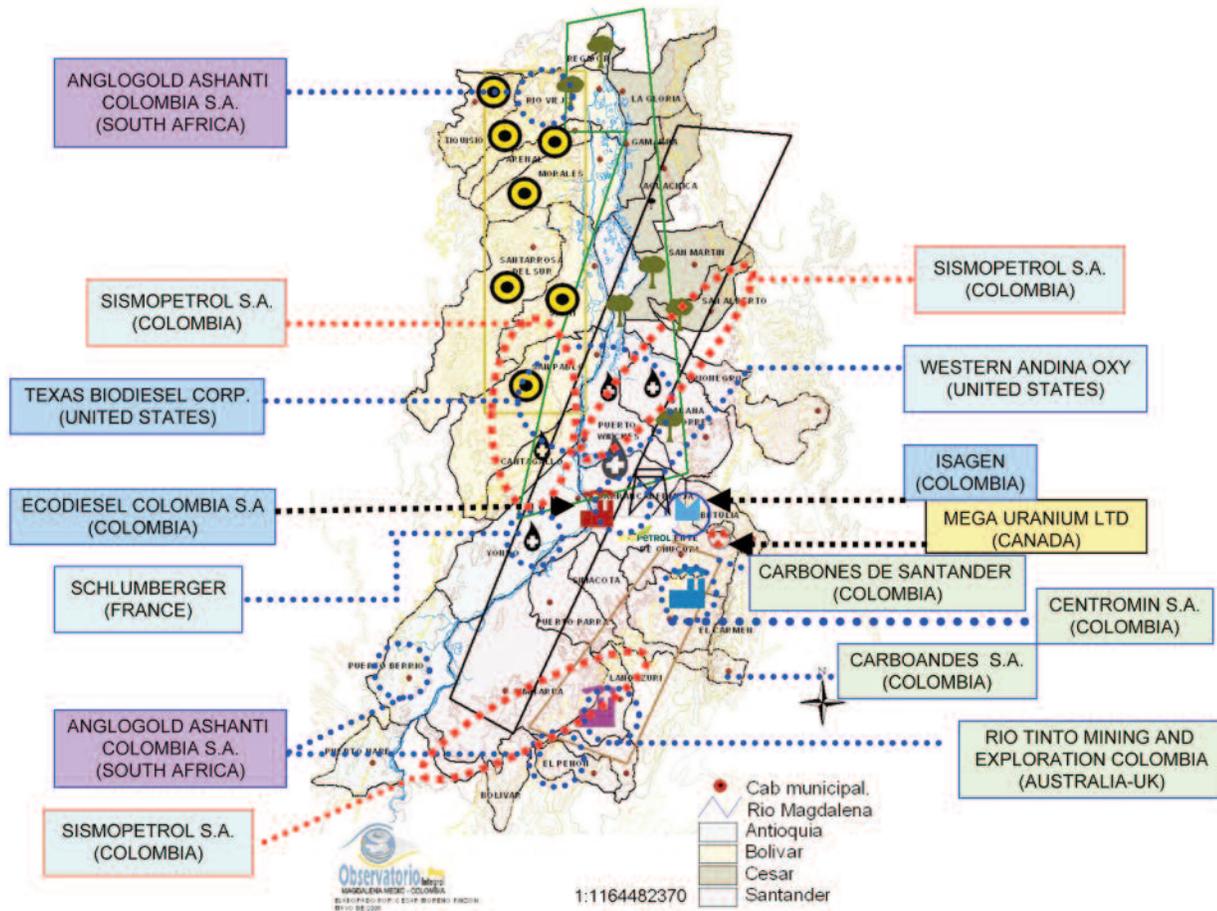
153. "According to the police department in Magdalena Medio, throughout 2006 and to date in 2007, 8 demobilized individuals have been assassinated and 23 others captured; however, some social organizations and media outlets in the area estimate that since the demobilization began, 15 demobilized individuals have been killed and in the last 5 months, 15 others have been killed due to related to internal disputes". (Defensoría del Pueblo, Sistema de alertas tempranas, *Informe de riesgo No. 008-07 A.I.*, Bogotá, March 16, 2007, p. 2-3).

154. *Ibid.*

155. Defensoría del Pueblo, Sistema de Alertas Tempranas, *El Conflicto Armado en el nororiente del país: Dinámicas y Perspectivas*, op. cit., p. 9.

156. Defensoría del Pueblo, Sistema de Alertas Tempranas, *Informe de riesgo No. 015-07 A.I.*, op. cit., p. 4.

157. Interview with Julian Villarruel Toro, op. cit. (August 26, 2008).



**Map 2: Mining and Energy Projects in the Magdalena Medio**

Source: Proyecto de Desarrollo y Paz del Magdalena Medio, La Coyuntura en el Magdalena Medio, Bogotá, June 3, 2008.

work there in the presence of the State,”<sup>158</sup> and he insists that in any event “now we have no interest there.”<sup>159</sup> He emphasizes that the company’s security department works exclusively with the Colombian Army and has no contact with illegal armed groups. Generally speaking, he said, “our security department works directly with the Armed Forces of Colombia. If they did not guarantee security in [a given] area, we would not do the project.<sup>160</sup> The Army analyses the security situation, we need them to give us the green light. This is a formal mechanism that works through the security department.” Regarding risks related to the theft of land, B2Gold argues that “in places where we are working, that is not the case. We know whose land it is, we do not buy from those who violate human rights.” In general, the company believes that it has a very positive impact. “We create jobs and that keeps people from getting involved in groups operating outside the law.”<sup>161</sup>

158. *Ibid.*

159. Interview with Julian Villarruel Toro, *op. cit.*, (October 29, 2008).

160. Interview with Julian Villarruel Toro, *op. cit.*, (August 26, 2008).

161. Interview with Julian Villarruel Toro, *op. cit.*, (October 29, 2008).

***Risk of benefiting from human rights violations against those who oppose the project***

The fact that illegal armed groups have a significant interest in the flow of revenues generated by the extractive sector raises serious concerns about the rights of people in affected regions to participate in democratic process to define local development goals. Past experience also raises questions about the ability and willingness of the State to protect that right.

FEDEAGROMISBOL’s position on a possible industrial exploitation of the Serranía de San Lucas deposit is as follows:

*The exploitation of gold has to be done rationally and for the benefit of society. There are gold supplies there for the next 400 or 500 years, but the multinationals want to mine it in the next fifteen. We can provide livelihoods for 35,000 people with that deposit. At the*

SECTOR	ITEM	INVESTMENT (MILLIONS)		PERIOD
		COLOMBIAN PESOS	U.S. DOLLARS	
Mining	Rio Tinto Mining and Exploration Limited (Australia company with English capital)	600,000	300	*
	AngloGold Ashanti (AGA) with subsidiary company Kedaha S.A.	800,000	400	*
Energy	Biodiesel plant (Ecodiesel Colombia S.A.)	46,000	23	2007-2008
	Extraction and biodiesel plant (Texas Biodiesel-AVM S.A.)	60,000	30	2008-2009
	Sogamoso mega-hydroelectric dam	2,016,000	1,008	2008-2012
Hydrocarbons	Conversion of Barrancabermeja Refinery	4,748,000	2,374	2007-2012
	Water treatment	960,000	480	2007-2009
	Cira Infantas project (Oxy-Ecopetrol)	1,850,200	925.1	2008-2010
Infrastructure & equipment	Large supermarket chains (Barrancabermeja)	30,000	15	2008-2009
	Galan multimodal port (Phase I repairs)	3,500	1.8	2008
	Galan multimodal port (Phase II)	7,000	3.5	2008-2011
	Carare transversal highway	105,700	52.9	2000-2008
	Paving contract for the Cimitarra-Puerto Araujo thoroughway (14.5 Km), part of Plan 2500	7,818	3.9	2006-2008
	Yondó-Cantagallo-San Pablo-Simiti	80,000	40	2008-2009
	Puerto Parra route and Albania-La Llana section	9,809.5	4.9	2006-2008
Calzada-Barrancabermeja-Bucaramanga	700	0.4		
Public finances	Petroleum revenues (Barrancabermeja, Sabana de Torres, Yondó, Cimitarra), CER project (2006)	916,983	458.5	2007-2011
Other	Cormagdalena-Dragados dredging and river bank conservation	28,000	14	2008-2011
TOTALS		12,269,711	6,135.0	

**Table 1: Investment projections for the Magdalena Medio for the period 2008 to 2012**

Source: Proyecto de Desarrollo y Paz del Magdalena Medio, *La Coyuntura en el Magdalena Medio*, Bogotá, June 3, 2008.

*same time, we work in agriculture, and on health, education, roads, housing, human rights – we give priority to life. Our entire perspective relates to our territory, and we therefore take environmental issues into account.*<sup>162</sup>

For B2Gold, Villarruel Toro says that

*[We] cannot operate without social and environmental licence. The first step is to establish communication with communities. Identify their needs. The starting point for B2Gold is the truth, respect for the communities; if the people are peasant farmers, we are not going to remove them, mining is just an alternative.*<sup>163</sup> *If the community does not give its backing, we cannot carry out the project. It is not a matter of the community vetoing the project ... it is a process of building trust.*<sup>164</sup> *To this end we establish a CSR [Corporate Social Responsibility] Committee, formed by the mayor or his head of planning, the heads of community action boards in the area affected by the project, and community leaders.*<sup>165</sup>

However, FEDEAGROMISBOL considers the State to be its only legitimate counterpart: “We did not invite the multinationals. It is the State that must provide solutions. We broke off relations with the multinationals, even though they offered money to [our] leaders.”<sup>166</sup>

With regard to whether human rights violations in any way enhance investment in gold mining in Sur de Bolívar, FEDEAGROMISBOL notes the many threats and attacks against its members and leaders, particularly the murder of Alejandro Uribe, a leader of the Miners’ Association of Bolívar, an affiliate of FEDEAGROMISBOL. Amnesty International reported:

*On September 19, 2006, members of the Army’s Nueva Granada Antiaircraft Battalion killed, according to reports, Alejandro Uribe Chacón ..., leader of the Association of Miners of Bolívar. A number of witnesses reported that they had seen soldiers carrying his body in the direction of a military base in San Luquitas in the municipality of Santa Rosa. According to reports, on September 20, the Army pre-*

162. Interview with Teofilo Acuña, *op. cit.*

163. Interview with Julian Villarruel Toro, *op. cit.*, (August 26, 2008).

164. Interview with Julian Villarruel Toro, *op. cit.*, (October 29, 2008).

165. Interview with Julian Villarruel Toro, *op. cit.*, (August 26, 2008).

166. Interview with Teofilo Acuña, *op. cit.*

sented the body of Alejandro Uribe to judicial authorities indicating that it was a guerrilla killed in combat.<sup>167</sup> According to reports, several witnesses have said that in the past year, members of the Nueva Granada Antiaircraft Battalion have threatened to kill FEDEAGROMISBOL leaders. Moreover, reports indicate that soldiers have told local residents that its operations are designed to protect the interests of international mining companies in the area.<sup>168</sup>

Christian Peacemaker Teams (CPT), an international human rights NGO with a base in Barrancabermeja, reported:

*The day after Uribe's murder, frightened area residents gathered in the village of San Luquitas to discuss a response to the situation. They decided to converge on the regional seat of government, Santa Rosa del Sur, to demand that the government investigate Alejandro's death ... The people who had gathered in San Luquitas reported that members of the Nueva Granada Battalion told them on 21 September, "This will not be the only death that you will have. There will be more deaths of leaders."<sup>169</sup>*

A month later, the Public Defender's Office reported:

*One cannot rule out ... armed confrontations where civilians are caught in the middle, selective and mass homicides, massacres, accidents and incidents involving land mines, destruction of civilian property, forced displacements, forced recruitment ... We consider that there is a high risk level.<sup>170</sup>*

To mitigate these risks, the Public Defender's Office recommended:

*That the Ministry of Mines and Energy ... define sustainable and viable mining programs in Sur de Bolívar and that it provide technical and financial support, giving priority to respect for ownership and occupation of lands*

*on which people make their living from mining. That INCODER [Colombian Institute for Rural Development] use its mandated authority to set up programs that focus largely on the identification and legalization of land in Sur de Bolívar where people make their living from mining.<sup>171</sup>*

Instead, in Santa Rosa del Sur on April 26, 2007, troops from the Nueva Granada Battalion arrested Teofilo Acuña, president of FEDEAGROMISBOL. According to witness statements collected by CPT, the warrant was not signed by an official and was based on a military intelligence report that contained unverified information provided by demobilized guerrillas. Acuña was released 10 days later when the arrest order was revoked by the judge who reviewed the case:<sup>172</sup>

*Witnesses to the arrest reported that Army personnel were overly aggressive and pushed aside a government official from the Human Rights' Ombudsman Office as she protested the way in which they executed the arrest. The*

*There are gold supplies there for the next 400 or 500 years, but the multinationals want to mine it in the next fifteen.*

*soldiers took Acuña to the Santa Rosa military base and initially denied him access to a lawyer. They held him at the base overnight and then transferred him to Barrancabermeja ... The Nueva Granada Battalion arrested Acuña on the very day that he and the miners' federation were to meet with representatives of the Colombian government to discuss their concerns for the mining lands and human rights.<sup>173</sup>*

According to Teofilo Acuña:

*My arrest was a result of Army "intelligence" that claimed I was organizing anti-multinational meetings and demonstrations after the death of Chacón ... All this was perfectly true, but perfectly within the law. Five days after my release I received an email threat calling me a terrorist and a guerrilla, and stating that I would pay for what I had done, along with the others involved.<sup>174</sup>*

Acuña has had to leave the area in fear for his

167. Philip Alston, UN Rapporteur on Extrajudicial Executions, shows "false positives" – murdering civilians and dressing them up as guerrillas – to be a common practice of the Colombia Army. See: United Nations Human Rights Council. *Statement by Professor Philip Alston, UN Special Rapporteur on extrajudicial executions – Mission to Colombia 8-18 Jun 2009*, June 19, 2009. Retrieved July 25, 2009 from <http://www.reliefweb.int/rw/rwb.nsf/db900sid/MUMA-7T679S?OpenDocument>.

168. AI, AMR 23/001/2007, July 2007.

169. CPT, *Colombia: CPTers accompany mining region residents who demand justice after assassination, other military abuses*, press release, Barrancabermeja, September 29, 2006.

170. Defensoría del Pueblo, Sistema de Alertas Tempranas, *Informe de riesgo No. 042-06 A.I.*, op. cit., p. 10.

171. *Ibid.*, p. 12.

172. CPT, *Informe de Derechos Humanos 2007*, Barrancabermeja, 2007, p. 6.

173. CPT, *Colombia: Miner's Federation President Arrested*, Comunicado, Barrancabermeja, April 28, 2007.

174. Sandra Satterlee, op. cit.

life.<sup>175</sup> As reported by CPT near the end of April 2007, some soldiers told members of a community in Sur de Bolívar, “it is better that you go, we tell you as friends”; other soldiers said, “you should not be afraid of us but rather those who will follow later” [the Águilas Negras – “Black Eagles” – a re-formed paramilitary group]. Others said “don’t believe the stories about the Águilas Negras – we are the ‘Águilas Negras’.”<sup>176</sup>

In June 2007, the Public Defender’s Office again issued a report on levels of risk in the municipalities of San Pablo, Santa Rosa del Sur, and Simití. Among the population at risk at the time were

*20,000 people in the urban and rural areas of the municipalities [listed above], and at particularly high risk are 3,000 people who live in the villages located in Rio Santo Domingo canyon... [and] leaders of the mining associations and of the Agro-mining Federation of Sur de Bolívar.*<sup>177</sup>

Risks identified in the report include illegal detentions, hostage taking, selective killings, forced disappearances, attacks, massacres and forced displacements, both massive and of individuals at particularly high risk.<sup>178</sup> To mitigate risk, it was again recommended to the Ministry of Mines and Energy that it give priority to historical lands occupied by people making their living from mining and that it accept the proposal put forward by miners that the mining zone in Sur de Bolívar be declared a special mining reserve.<sup>179</sup> Although the Colombian State has held discussions on the issue with FEDEAGROMISBOL,<sup>180</sup> the pressure on communities has not eased: in April 2008, an e-mail was sent to several people in Magdalena Medio by an unknown person claiming to represent the Águilas Negras. The writer made death threats and classified as “military targets” nine people and organizations, including FEDEAGROMISBOL.<sup>181</sup>

Under these conditions, FEDEAGROMISBOL is doubtful that the State will act impartially to protect its rights in the event of further extractive investments:

*The Army said the company would set up operations one way or another. We also*

*received threats from the Águilas Negras saying that we were military targets because “you are against multinationals, against the presence of the Army.” Members of the Army have told us: “we are there to pave the way for the company’s arrival.” The Army tells the people that FEDEAGROMISBOL is against development, against the presence of the Army, that we have to let transnationals come in. I think the intention is to get rid of us. It is State policy to favour multinational companies. But on the other hand, we have developed a sense of ownership. They will have to kill us all if they want to get rid of us. We pin our hopes on making our complaints public. Information on our situation has to be disseminated as widely as possible.*<sup>182</sup>

## Conclusions

While B2Gold’s policies and stated intentions are positive, the history of armed conflict in the region of Sur de Bolívar, and especially the presence of paramilitary groups and their insertion into the political and economic structures in the region, create clear risks that:

- the company may be benefiting from earlier appropriations of lands and titles,
- the company’s activities may inadvertently encourage the reorganization, persistence and strengthening of paramilitary and successor structures that seek to economically benefit by maintaining social and political control through actions that involve human rights violations (unintended and undesirable incentives to commit human rights violations);
- the company may benefit from ongoing human rights violations against those who oppose or critique the project.

We reiterate that these are medium to high potential risks based on the evidence we were able to collect, and are not imputing intentionality to benefit from human rights violations or reward those who commit

175. Interview with Teofilo Acuña, *op. cit.*

176. CPT, *Informe de Derechos Humanos 2007*, Barrancabermeja, 2007, p. 6.

177. Defensoría del Pueblo, Sistema de alertas tempranas, *Informe de riesgo No. 015-07 A.I.*, p. 3.

178. *Ibid.*, p. 5 and 13.

179. *Ibid.*, p. 14.

180. A roundtable for dialogue with the State has been established, and met on April 2, 2008. The minutes of this meeting state: “Given the gravity of the human rights situation in the Sur de Bolívar, the Ministry of Mines and the Governor of Bolívar are committed to organizing a high-level meeting at the earliest possible moment, with the participation of the country’s vice president, the General Prosecutor’s Office and the Attorney General for the purpose of addressing the problem and taking steps to overcome the current crisis” and “The Secretary of Mines and the Ministry of Mines, will very soon hold meetings with the Armed Forces to address the issue of getting input from the miners of Sur de Bolívar and to take the necessary corrective measures.”

181. Águilas Negras, *Por la Colombia que Queremos*, e-mail, April 19, 2008.

182. Interview with Teofilo Acuña, *op. cit.*

violations. At the same time, it is incumbent upon any company in such circumstances to investigate, minimize, manage, and mitigate such risks.

*Risk of benefiting from earlier appropriations of lands and titles:* Ongoing massive population displacement by paramilitaries has taken place in the Sur de Bolívar over a significant period of time, including one instance in 1998 of 10,000 farmers and their families fleeing at once, and other incidences to the present day. This would indicate that there is reason to doubt the legitimacy of current land ownership. In the absence of adequate mechanisms for documenting land title and history, adequate investigation of land theft, and a credible reparations mechanism for those who have been violently displaced from their land, resource companies operating in the area are at risk of benefiting from earlier theft of lands and titles.

*Risk of contributing to unintended and undesirable incentives to commit human rights violations:* Those who were the source of most human rights violations in Sur de Bolívar, the paramilitaries and their successors, still maintain significant control in area. This creates a significant risk that companies benefit from generalized and specific intimidation, particularly since it is known that paramilitaries, their successors and powerful allies, favour the investment of large resource companies and are positioned to benefit from it.

*Potential to contribute to consolidation of paramilitaries in new groupings:* The issue of security is rife with risk. According to B2Gold, its security department works exclusively with the Colombian Army, and relies on the Army's security analysis. Paramilitary successors are known to control the administration of security contracts in many areas of the country. Further, specifically in Sur de Bolívar, the Colombian Army has been strongly associated with the paramilitary, and there are credible allegations that this association continues.

*Potential benefit from ongoing human rights violations against those who oppose or critique the project:* There is no question that people and communities who critique or oppose specific large mining projects continue to suffer significantly from threats, intimidation and murder. Paramilitaries and their successors have positioned themselves to benefit from such projects, and have targeted critics. There is little indication that the State is protecting the rights of citizens to express dis-

sent, and significant evidence that it has failed to protect the rights of people to democratic process. Added to this, there are credible allegations of ongoing collaboration between soldiers and the newly re-emerged paramilitary, further increasing the risk to the company through its collaboration with the Army for security.

Only an independent, on-the-ground human rights impact assessment could determine the extent and reality of these risks, and what if anything could be done to avoid them under the current circumstances. There is no evidence that such an assessment has been done.

## **Case study #2: Santander – Greystar Resources**

### **Context**

Located in northeastern Colombia, the municipalities of California and Vetas in the department of Santander have been traditional mining areas since colonial times.<sup>183</sup> Gold mining has predominated but by 2006, small-scale mining – by subsistence-level miners and small family enterprises – was contributing roughly 0.89% of the nation's production.<sup>184</sup> There are also reserves of copper, silver and manganese, and there are indications of the presence of molybdenum and uranium.

Data supplied by the Bucaramanga Regional Mining Body for the early 1990s shows that the area was home to 23 mines with legal title at that time. By 1999, according to the National Mining Company (MINERCOL), the number had increased to 70. It is estimated that 500 to 600 people were directly employed in the mining sector in Vetas and California and much of this population was engaged in artisanal mining by independent miners or small, informal associations, operating without permits.

Today the eastern mountain range that runs through the municipalities of California, Vetas and Suratá is the site of numerous large-scale mining projects that belong to national and international investors. These lucrative projects are of strategic interest to armed groups whose ability to operate there is made possible by the weak presence of the State, the high levels of poverty, and the remote geographic location.<sup>185</sup> For many years, the region's high mountain areas made it possible for guerrilla forces to move relatively freely and have a kind of *de facto* authority. Residents of California and Vetas report extortion by

183. "California is home to the most famous gold deposits of the department of Santander. These have been mined since the time of the Spanish conquest. Veins of ore in the páramo were discovered in 1551" and mined early as 1560.

Corporación Autónoma Regional para Defensa de la Meseta de Bucaramanga, [Overview of the Municipality of California], n.d. [2001], p. 12. Retrieved June 11, 2009 from: [www.cdm.gov.co/mapas/california/dctos/diagnostico.doc](http://www.cdm.gov.co/mapas/california/dctos/diagnostico.doc).

184. República de Colombia, Unidad de Planeación Minero Energética, *Boletín Estadístico de Minas y Energía 2002-2007*, Bogotá, n.d.

185. Defensoría del Pueblo, Sistema de Alertas Tempranas, *Informe de Riesgo No. 032-04*, May 7, 2004.

guerrilla groups in the form of monthly payments.<sup>186</sup>

The armed conflict has led to frequent, forced relocations of the population – and the ongoing threat of more to come – and has caused hardship, particularly in rural communities. The uncertainty and fear of the rural population provide a favourable context for the relatively inexpensive acquisition of properties by local landowners and speculators. Indeed, witnesses reported the arrival in their regions of “unknown persons” or “agents” that offer good prices to farm families for their land. Many indicate that the purchase is for the development of mining operations.<sup>187</sup>

### *Land...*

Greystar Resources Ltd., a Canadian mining corporation, first came to the region in 1995 and carried out extensive exploration until the year 2000.<sup>188</sup> The company abandoned its operations in the area from 2000 to 2003, after one of their executives was kidnapped by the guerrillas. Witnesses say, however, that prior to its departure, Greystar had a relationship of “coexistence” with insurgents, a reflection of its keen awareness of the absence of the State and the control exercised by the guerrillas. According to company statements: “At that time, there were in fact communications with the FARC... in these areas, there was no State presence... [and the guerrillas] were in control.”<sup>189</sup>

According to Greystar executives, President Uribe’s commitment to improved security was a key

factor in the company’s decision to resume operations in the region: “Greystar Resources, which left the region in 1999 [sic] under pressure from rebels, has recommenced exploration of gold mines in California and Vetás... Engineer Rafael Silva, manager of the new Greystar office in Bucaramanga, confirmed that the foreign multinational modified its previous plans due to improved security in the area and the currently high price of gold.”<sup>190</sup>

While the Canadian Embassy does not make public which Canadian companies use its commercial services, Greystar’s close relationship with the Embassy is obvious. Embassy officials visit the mine<sup>191</sup> and Collaborative for Development Action (CDA) was hired to carry out a CSR study for the company under the supervision of a DFAIT official.<sup>192</sup> Greystar has also been described by trade officials at the Embassy as a positive example of corporate social responsibility.<sup>193</sup> At the Second International Mining Fair in September 2006 in Medellín, President Uribe presented Greystar Vice-President Frederick Felder with an award for company performance, and at the Prospectors and Developers Association of Canada (PDAC) convention in Toronto the same year, the company earned recognition for its effective corporate “social and environmental responsibility.”<sup>194</sup> Greystar receives investment funds from the International Finance Corporation.<sup>195</sup>

Greystar calculates that its Angostura project, operating in California, Vetás and neighbouring Suratá, could reap between 200 and 300 thousand ounces of gold per year,<sup>196</sup> and still leave a reserve of

186. Interview with local residents, California, July 17, 2008.

187. *Ibid.*

188. Greystar Resources Ltd., *Proyecto Angostura* [official brochure], 2005. Retrieved June 11, 2009 from: [http://www.greystarresources.com/i/pdf/BROCHUREGREYSTARNov\\_05.pdf](http://www.greystarresources.com/i/pdf/BROCHUREGREYSTARNov_05.pdf).

189. Interview with Frederick Felder, vice-president, Greystar Resources Ltd., Bogotá, October 23, 2008.

190. “Retornó La Greystar a Santander,” *El Tiempo*, October 29, 2003.

191. Greystar Resources Ltd., “Guy Salerse [sic], embajada de Canadá, visita proyecto Greystar en compañía de su presidente, David Rovig,” October 31, 2007. Retrieved July 28, 2008 from:

<http://www.greystar.com.co/portal/main/index.php?viewflash=6>.

192. “The Peacebuilding and Human Security division of Foreign Affairs Canada requested that CEP visit Colombia to document current practices of companies operating there and to provide Foreign Affairs Canada with a brief on how companies can most effectively and positively invest in Colombia. As part of this visit Greystar Resources invited the CEP team to visit their operations in Santander department. Shawna Christianson, Policy Advisor, Corporate Social Responsibility from Foreign Affairs Canada accompanied the mission (as an observer).” Luc Zandvliet, Yezid Campos Zornosa and Shawna Christianson, *Striking gold? The challenges and opportunities during mine exploration for “getting it right” in mine exploitation – Angostura Gold-Silver Project, Santander Department, Colombia*, CDA – Corporate Engagement Project, October 2004, p.2.

193. Interview with a member of the commercial section of the Canadian embassy, Bogotá, August 2008.

194. See the company’s web page: <http://www.greystarresources.com/s/Home.asp>.

195. “Greystar is IFC’s first investment in Colombia’s mining sector. Mining is an important component of Colombia’s economy. But, with the exception of coal, it is an industry that has seen limited foreign investment. In 2007, mining represented over 2.5 percent of Colombia’s gross domestic product and over 20 percent of total exports. ‘Greystar shares IFC’s commitment to responsible mining operations and engagement with local communities,’ said William Bulmer, Global Head for mining at IFC. ‘This project has the potential to set new environmental and social standards for mining in Colombia and increase the country’s employment opportunities and government revenues.’” International Finance Corporation, *IFC Invests in Greystar to Support Future Jobs In Colombia’s Mining Industry*, press release, March 16, 2009.

196. “Tras el Oro de California,” *El Tiempo*, November 7, 2003 and “Vuelve La Fiebre Del Oro,” *El Tiempo*, January 24, 2006.

10.15 million ounces plus inferred reserves of 3.43 million ounces. The company hopes to construct an open-pit mine at “low cost” beginning in early 2010 and to commence operations in 2011.<sup>197</sup> Investment in the Angostura project from 1997 to August 2008 is calculated at \$100 million (U.S.).<sup>198</sup>

Greystar plans to expand operations into neighbouring regions populated by small-scale, peasant farmers, that is, in the municipalities Suratá, Charta, Tona, Mutiscua and Cucutilla in the departments of Santander and Norte de Santander, where the company has already obtained mining rights to more than 30 thousand hectares.

### ...and Conflict

The National Centre for Indigenous Cooperation asserts that: “Greystar’s methods as an intermediary are the same as those used by all the multinationals: enter into an agreement with the Army...to clean up the area, define the area to be mined, put up a military base financed by the company, and buy up the corresponding land.”<sup>199</sup>

Indeed, Greystar has provided logistical support to establish a base for security operations in the area, and part of the troops’ mandate is to ensure the viability of mining operations. This was confirmed by company Vice-President Frederick Felder in an interview with *El Tiempo*: “We found a more secure climate in the region and the existence of the High Mountain Battalion, between Suratá and California, gives us peace of mind. Furthermore, we had military accompaniment in the first camp we set up, there are peasant soldiers in the village of Angostura, and the police force has been re-established.”<sup>200</sup>

In fact, the High Mountain Battalion has the capacity to house up to 500 soldiers, and within Angostura’s proposed exploration area, there are two military camps with a total of 55 soldiers.<sup>201</sup>

The company describes its private security system:

“Our security department is composed of a colonel, two majors, one sergeant, two guards ... They are retired military personnel, and it is preferable to have a few high level personnel than numerous poorly qualified employees. They mainly do intelligence work. They stay in contact with the police and the Army and let them know when there are problems.”<sup>202</sup> The Collaborative for Development Action (CDA) reported: “the company has employed up to 80 people in security functions.”<sup>203</sup> Felder explains further: “We have a comprehensive security program which has taken three and a half years to put in place. It is exceptional and we have been fortunate to have been given support by all levels of government. All ministries have helped us, and this includes the president himself.”<sup>204</sup>

Greystar’s return to the area was preceded by a series of military operations, including one particularly extensive campaign. Operation Berlin was undertaken to prevent the passage of the FARC mobile column ‘Arturo Ruiz’ to Catatumbo,<sup>205</sup> where it was assumed it would dispute the AUC’s territorial control of 55,000 hectares of high-quality cocaine production.<sup>206</sup> Despite lack of specific official information beyond media and Army reports, it is clear that the operation took a severe toll on the local population, including cutting off communication, food transport, and travel in the region for 59 consecutive days. In 2004 there were reports of the air force bombing rural and Indigenous communities as part of the government’s military campaign against the guerrillas in Colombia,<sup>207</sup> and this seems to have been the case here as well. Testimony from community members confirms that bombings hit civilian populations.<sup>208</sup>

Subsequent military actions allowed the Army to re-establish control over the area and put in place sufficient controls that Greystar could return. As Felder explained: “It took two years of working with authorities to find a way to secure the region, not only our

197. Greystar Resources Ltd., *Corporate Presentation*, November, 2008. Retrieved May 5, 2009 from: <http://www.greystarresources.com>.

198. Interview with Frederick Felder, vice-president, Greystar Resources Ltd., Bogotá, August 20, 2008.

199. Interview with Indigenous rights activist, Bogotá, July 16, 2008.

200. “Le Apostamos Todo a California”, *El Tiempo*, October 30, 2003.

201. *Memorando de Seguimiento Proyecto Minero Exploración Angostura desarrollado por Greystar*, Angostura project file, Corporación Autónoma Regional para la Defensa de la Meseta de Bucaramanga (CDMB), August 17, 2006.

202. Interview with Luis Guillermo Laserna, Social management director, Greystar Resources Ltd., and director of the Greystar Foundation, Bucaramanga August 22, 2008.

203. Luc Zandvliet, Yezid Campos Zornosa and Shawna Christianson, *op. cit.*

204. John Cumming, “Greystar Resumes Exploration at Angostura,” *The Northern Miner*, January 5, 2004.

205. República de Colombia, Fuerzas Armadas de Colombia, *Operación Berlín – Batalla de Batallas* (comic book). May 21, 2007. Retrieved June 2, 2009 from:

[http://www.fuerzasmilitares.org/multimedia/infantil/op\\_berlin/CSyD\\_berlin\\_02.jpg](http://www.fuerzasmilitares.org/multimedia/infantil/op_berlin/CSyD_berlin_02.jpg).

206. “GAULA Entra en Operación Berlín,” *Eltiempo.com*, December 26, 2000. Bogotá. Retrieved June 2, 2009 from: <http://www.eltiempo.com/archivo/documento/MAM-1223868>.

207. UN, E/CN.4/2005/88/Add.2, Geneva, November 10, 2004, para. 28.

208. Interview with a local women’s association, Bucaramanga, October 2008.

area but ... the authorities had a ... regional security plan ... In 2003, after six to seven months of [military] operations, we came back.”<sup>209</sup>

The violence, however, continued. There have been selective killings, threats and displacement by armed, masked men, presumed to be paramilitaries, within the Greystar-Angostura project area in Mohán, Turbay and Cachiri in the municipality of Suratá, where people were accused of collaborating with the guerrillas.<sup>210</sup>

The existence of minefields exacerbates an already high-risk situation for these populations.

In 2007, the date of the most recent Public Defender’s Early Warning System report to which we had access, 40% of the area’s 5,000 inhabitants were identified as at high risk. The report explained: “The new risk scenario has to do with the interest of illegal armed groups to regain control of the territory and the population in this region; and to use violence and intimidation to do so. This is related to the strategic reorganization of guerrilla forces and a regrouping of paramilitary structures to take over control of formerly held areas and gain access to revenues generated by socio-economic endeavours.”<sup>211</sup> Experience in other areas with extractive industries indicate that paramilitaries are able to generate revenues both through the control of land, as well as control of security contracts and various related municipal services.

### *Corporate social responsibility policies*

In its more than 10 years of exploration, Greystar has not conducted adequate consultation processes, nor has it adequately socialized information on the full scope of its mining project. A 2004 independent study on mining in California found that: “mining will inevitably have a major impact on community life in California. Discussions with more than 80 local actors in the area showed that neither the local community nor the municipal government are aware of, let alone ready to deal with, the challenges of a large mining project of this nature.”<sup>212</sup>

Greystar has opened a public relations office in the

municipality of California and has done outreach activities with the population through educational, cultural, recreational and sports activities. However, little information on the mining project has been provided to residents of the other affected municipalities. Interviews in these communities indicate that people perceive the mining project to be an imminent “monster” but have few resources with which to defend their rural culture, water and land.<sup>213</sup>

### *Community involvement*

Greystar does not believe that rural communities could reject mining activity in their regions, but does feel it should engage with them: “It is true that we must expand our work in other regions. We think that mining and farming can coexist; and moreover, we represent a market for local farmers, we have a program of buying local, we are buying in Suratá. People are worried but it is because there is uncertainty. People fear for their water, but this will not be affected.”<sup>214</sup>

The company has also made alliances with important actors in the region such as the Catholic Church. For example, for several years Greystar has had joint projects with the Church’s Pastoral Office in Bucaramanga with revolving funds, micro-farming and orchards in the province of Soto.<sup>215</sup> The company maintains a high social profile through its Greystar Foundation<sup>216</sup> which has channelled funds in collaboration with USAID and CIDA, and promoted other initiatives such as produce markets they call “community-based business organizations,” with support from the Colombian environmental authority and the Autonomous Regional Corporation for the Defence of the Bucaramanga Plateau (CDMB).<sup>217</sup>

Greystar says it has a policy of not creating false expectations. Paradoxically, the consequence of this policy appears to be that it therefore provides little information to communities about the planned scope of mining projects, while promoting short-term social initiatives that will do little to prepare the community to withstand future social, environmental and economic impacts – both as the mine grows, and later as it winds

209. Interview with Frederick Felder, *op. cit.* (August 20, 2008).

210. Defensoría del Pueblo, Sistema de Alertas Tempranas, *Informe de Riesgo No. 032-04*, May 7, 2004.

211. Defensoría del Pueblo, Sistema de Alertas Tempranas, *Informe de Riesgo No. 026-07*, October 13, 2007.

212. Luc Zandvliet, Yezid Campos Zornosa and Shawna Christianson, *op. cit.*

213. Workshops and roundtable discussions held as part of the study with peasant communities and women’s associations in the Province of Soto. November 2008.

214. Interview with Frederick Felder, *op. cit.* (October 23, 2008).

215. Interviews with local residents, California, July 17, 2008.

216. “The Foundation is a non-profit organization sponsored by Greystar. It acts as the company’s social development arm... Through it, we seek international development funds, we set up agreements and contracts for development projects.” Greystar Resources Ltd., *Balance Social y Ambiental*, Greystar Resources, 2007.

217. “CDMB, with Greystar Foundation’s participation, studied, analyzed and formulated a project for Bio-Commercial cultivation of agraz (*Vaccinium southern*), a native plant, for future commercialization on the international market,” CDMB 2007 Project Report.

down and eventually closes. As reported by the 2004 CDA investigation, the company's priorities are to attain "social acceptance" and create a safe operating environment.<sup>218</sup>

It is clear that Greystar fully appreciates the weaknesses in the social fabric in the region. Its own assessment of the local community found "poor coordination between social groups, lack of leadership, weak participation levels, lack of credibility in the municipal administration, communication barriers."<sup>219</sup> One company representative told us, "This is a community that is politically divided, fragmented by self-interests and gossip. As we say, small town – big hell. So we identified leaders, we saw that some organizations were weak, they lacked unity and were tainted by corruption, and we decided not to support them. We then created a stronger organization, a women's group with around 80 members, called Asocalifornia."<sup>220</sup>

The Land Management Plan of the municipality itself presents a similar picture of the region: "Social organization in California is based on family ties and deeply conservative traditions. This impedes the formation of organizations ... which could unite forces and contribute to obtaining positive results ... Leadership problems and internal conflicts hinder the building of efficient Community Action Boards in California which could promote local development and improve the quality of life in their communities."<sup>221</sup>

In California, the 2004 CDA report warned that the community is politically divided<sup>222</sup> and the control of future royalties could exacerbate corruption and influence-peddling.<sup>223</sup>

Some of the officials who have publicly backed the project have themselves been accused of corruption. In 2004, then-Governor of Santander, Col. Hugo Aguilar

Naranjo, declared that foreign investment makes an important contribution to development, and that it must be endorsed not only by local authorities but also by the national government.<sup>224</sup> On October 11, 2007, the Supreme Court called in Senator Luis Alberto Gil, a close political advisor of former Governor Aguilar Naranjo, for questioning.<sup>225</sup> The senator resigned his seat immediately following questioning, and was subsequently arrested for his alleged ties to paramilitary groups.<sup>226</sup> In late 2008, Col. Aguilar Naranjo himself was called in by the Supreme Court "for questioning with regard to conspiracy to commit violent crime, bribing electors and accepting bribes."<sup>227</sup>

### *Environmental concerns and competing interests*

Diminishing food security and reduced agricultural activity is particularly evident in California. There was once extensive production of wheat, barley, potatoes, corn, beans, fruit and vegetables. Now interviews with community members attest to the effects of displacement, and the dependency on mining: "California residents buy produce from the trucks from Bucaramanga because not enough food is grown here to sustain a community ... Before the displacement of farming families in the community of Turbay, we used to harvest 60 tons of fruit per week (curuba, tree tomato, lulo-fruit, blackberries), which were transported to various market places."<sup>228</sup>

Small-scale mining is already contaminating the Vetás River, which flows through the páramos, and the Suratá River, which is a vital source of water for the city of Bucaramanga (population of just under one million) and neighbouring towns.<sup>229</sup> Moreover, the Angostura project is located in highland ecozones (at altitudes of 2,600 to 3,400 metres<sup>230</sup>) that are essential

218. Luc Zandvliet, Yezid Campos Zornosa and Shawna Christianson, *op. cit.*

219. Frederick Felder, *The Technical and Social Framework of Exploring and Developing Greystar's Angostura Project*, paper presented to Prospectors and Developers Association of Canada (PDAC), Toronto, March 9, 2005.

220. Interview with Luis Guillermo Laserna, Social management director, Greystar Resources Ltd., and director of the Greystar Foundation, Bucaramanga, August 22, 2008.

221. Municipalidad de California, *Estudio de diagnóstico – EOT (Esquema de Ordenamiento Territorial)*, Municipalidad de California, 2000.

222. Luc Zandvliet, Yezid Campos Zornosa and Shawna Christianson, *op. cit.*

223. Interview with local residents, California, July 17, 2008.

224. Minería de Santander quieren salir del socavón," *Periódico 15*, Bucaramanga, July 15, 2004.

225. Hugo García Segura and Carlos Murcia, "Lo que existe es un cartel de calumniadores," *El Espectador*, August 23, 2008. Retrieved June 11, 2009 from: <http://www.elespectador.com/impreso/politica/articuloimpreso-existe-un-cartel-de-calumniadores>.

226. "Capturado ex senador Gil por parapolítica," *El Espectador*, November 24, 2008. Retrieved June 11, 2009 from: <http://www.elespectador.com/video-ex-senador-gil-capturado>.

227. *Ibid.*

228. Interview with local residents, California, July 17, 2008.

229. Erwin Wolff Carreño, *Incorporación de tecnologías limpias para beneficiar minerales auríferos en la pequeña minería de Vetás y California (Santander) buscando reducir vertimientos de mercurio y cianuro*, Corporación Autónoma Regional para la Defensa de la Meseta de Bucaramanga, 2007. Retrieved June 11, 2009 from: [http://www.cdmb.gov.co/ciaga/documentos/ciaga4/articulo\\_mineria.pdf](http://www.cdmb.gov.co/ciaga/documentos/ciaga4/articulo_mineria.pdf).

230. Horner J. and Castro E.J., *Rock Mass Classification for open pit design at the Au-Ag Project Angostura*, Colombia, n.d.

for the integrity of páramos and lakes found at lower elevations.<sup>231</sup> One could conclude from the above findings that Greystar's appropriation of essential water supplies threatens residents' right to a healthy environment in Vetás, California and Suratá.

Experts from CDMB are concerned about the possible effects from dewatering of exploration tunnels built as part of the mining project, particularly with regard to natural underground streams that feed the region's aquifers. To date, Greystar's underground tunnels in the area of Angostura are 3.2 km long.<sup>232</sup>

There are close to 200,000 hectares of páramos and high Andean forests on the border shared by the departments of Santander and Norte de Santander in an area that has a rich biodiversity and is home to more than 58 lakes, making it an essential source of water.<sup>233</sup> This entire area overlaps with the mine site.

Although the national government has weakened some environmental protections,<sup>234</sup> for well over a decade there has been a struggle over environmental issues between Greystar and various levels of local government. A letter written in 1996 by the Corporación Autónoma Regional en Defensa de la Meseta de Bucaramanga (CDMB), the regional environmental authority, informed the California municipal government that: "[CDMB] has verified during a recent visit to the municipality of California that mineral exploration has begun and a road to the village of Angostura is under construction. This is ... taking place without the required environmental permit, and moreover, without the re-structuring of the [Environmental] Management Plan. Although Rafael Silva, Greystar's engineer in charge of the work, argues that their licence is being processed at the Ministry of Environment – because it relates to large-scale mining – they do not in any case have the right to initiate work without required permissions."<sup>235</sup>

Two years later in 1998, the CDMB again notified Greystar of problems with its exploration activities:

"The [CDMB] has noted with concern that some of the activities you are undertaking in the municipality of California – specifically road construction and activities impacting on forested areas – are causing damage of greater magnitude than foreseen in the approved Environmental Management Plan ... Given that this involves a páramo ecosystem that is considerably fragile, I would ask you to immediately suspend activities ... pending a joint visit and an assessment of the damages caused."<sup>236</sup>

In 2003 in response to a request for a mining permit in Vetás, a CDMB official observed that: "100% of the area is a páramo and in accordance with the regulations, existing mining operations (with an existing or pending licence) remain in effect but new projects are prohibited..."<sup>237</sup>

In 2008, the Board of Directors of the Northeast Border Regional Corporation (CORPONOR), which also has jurisdictional authority on environmental issues, took a bolder position. The underground spring that gives rise to the Cucutilla River is located in Sisavita and feeds an entire water network. A nearby area has nearly 1,000 hectares of rocky outcrops and eight lakes. Luis Lizcano, director of CORPONOR, said: "It is of no use to us to obtain material wealth if, within 20 years, we will have to bring in water supplies from another area at tremendous cost."<sup>238</sup> Both the departmental government office and the municipal authorities that make up CORPONOR's Board of Directors approved this statement. On July 31<sup>st</sup>, 2008, COPONOR declared the Sisavita lagoon to be a Regional Natural Park.

It was hoped that this would eliminate the possibility of mining development by Greystar in this páramo and woodland area. However, following the designation of Sisaviata as a Regional Natural Park, Greystar directors launched a lawsuit against CORPONOR, alleging lack of consultation on the decision to make it a protected area.<sup>239</sup> Greystar maintains:

231. International Finance Corporation, *Environmental and Social Review Summary, Greystar Resource Ltd. (#27961)*, 2009. Retrieved June 11, 2009 from: [http://www.greystarresources.com/i/pdf/1834486\\_ESRS.pdf](http://www.greystarresources.com/i/pdf/1834486_ESRS.pdf).

232. Greystar Resources Ltd., *Exploration underground/Tunnel progress/Angostura Project*, January 2009. Retrieved June 11, 2009 from: <http://www.greystarresources.com/s/Projects.asp?ReportID=95330>.

233. CORPONOR-CDMB-ISA, *Prioridades de Conservación de la Biodiversidad en los Ecosistemas del Complejo Paramuno de Santurbán, 2320-PH1-SPCA-80-004*, May 2002.

234. Legislation that protected páramos and springs from mining projects (resolution 1728 of 2002, Article 32) was repealed by the Colombian government in 2005, and replaced by the weaker Act 1220, Article 10 which only *limits* such projects, requiring that environmental authorities "should take into account decisions that have been made on conservation and sustainable use of ecosystems through various environmental management mechanisms."

235. Corporación Autónoma Regional en Defensa de la Meseta de Bucaramanga, [Letter from the subdirector of Normatización y Calidad Ambiental – CDMB], October 10, 1996.

236. Corporación Autónoma Regional en Defensa de la Meseta de Bucaramanga (CDMB), [Letter from the subdirector of Normatización y Calidad Ambiental – CDMB], February 12, 1998.

237. Corporación Autónoma Regional en Defensa de la Meseta de Bucaramanga, [Announcement by the subdirector of Normatización y Calidad Ambiental], July 29, 2003.

238. "Norte de Santander Prefiere el Agua a las Regalías de Oro," *El Tiempo*, September 8, 2008.

239. Interview with representatives of the Corporación Autónoma Regional para la Defensa de la Meseta de Bucaramanga, October 2008.

“Cucutilla is not within our [mining] project are but we are neighbours. We are in discussions with people responsible for the park to see what to do. There is no contradiction between mining and the environment, the problem is a lack of knowledge. We are even talking to them about a sustainable mining project inside the park.”<sup>240</sup>

The relatively weak environmental protection measures that are in place have been unevenly enforced over the years. Nevertheless, authorities face a daunting task: 50% to 60% of the country’s páramos are at risk of being included in mining concessions held by various companies, Greystar Resources Ltd. among them.<sup>241</sup>

Greystar maintains that: “This is something we are working on with the Ministry of Environment as they have never had exploration here. They do not know how to manage the balance between mining and the environment. Look at Chile and Peru where there is mining in upland areas. The institutions here are not experienced, so there is discussion to find clear and effective rules. We have spoken to the [CDMB] and they support our project because they say ‘you provide employment and poverty is the worst enemy of the environment’ ... The risk to the environment does not come from large projects but from illegal mining. Look, mining is important in Colombia because the biggest problems in Colombia such as the drug trade, are rooted in poverty.”<sup>242</sup>

### *The project’s effect on small-scale mining*

B2Gold’s Julian Villarruel Toro, in his former role as Director-General of INGEOMINAS, stated: “Gold production in the country in recent years had stagnated or even decreased as there had been no large projects like those operating in Peru ... Greater interest in national mineral wealth and attracting new investment from companies that undertake large-scale operations will have a big impact on the small-scale mining that has always dominated the country ... [New ore bodies] have been found through exploration of 120 square kilometres of land in the country’s three mountain ranges ... INGEOMINAS hopes in 2007 that gold production makes up for lost time with the initiation of the

Angostura California project, owned by Greystar Resources.”<sup>243</sup>

As the legal representative of the Association of Miners of California (ASOMICAL), Holmes Valbuena García, observed: “The area designated for future mining by the company is a wetland area with more than 35 lakes at 3,000 metres above sea level.”<sup>244</sup>

In a letter sent to the newspaper *El Frente* in Bucaramanga, Dr. Luis Guillermo Laserna, director of Human and Social Management at Greystar Resources, declared that: “There is no takeover of small-scale mining as the corporation is exploring new areas where ... [this] does not take place, and where another type of operation is needed. ... Only large-scale mining can make the investment necessary to exploit these deposits.”<sup>245</sup>

Small-scale miners have complained about restrictions on the use of explosives in the municipalities of Vetás and California that put small-scale mining in jeopardy. They have faced numerous setbacks with authorities to legalize informal or *de facto* mining in the area.<sup>246</sup> Part of the difficulty lies in a lack of proper orientation for miners who apply for permits without adequate information on the procedures involved.

In 2000, Greystar made a submission to the municipal government of California “to request that an end be brought to illegal mining activities, [and] *de facto* occupations and furthermore, that a definitive suspension be made of such mining activities and all other disruptive actions carried out by persons unknown in the area covered by the aforementioned permit.”<sup>247</sup> Roughly a year later, a group of informal miners wrote to Greystar to say: “We are working temporarily in this area. We will immediately vacate the premises ... but we have nowhere to work ... as the economic situation in this municipality is bad and [it is] very difficult to provide for our families’ basic needs. We wish to make it clear that we are all civilians<sup>248</sup> working on these sites.”<sup>249</sup> With the implementation of the Angostura project, small-scale mining as a viable livelihood seems doomed to disappear. Simply by acquiring mining concessions, Greystar makes such activity in the region impossible.

Company statements indicate that Greystar is cur-

240. Interview with Frederick Felder, *op. cit.* (October 23, 2008).

241. Rafael Colmenares Faccini, Comité Nacional en Defensa del Agua y de la Vida, speech made to the *Foro Internacional del Agua*, held in the Colombian Senate, November 28, 2008.

242. Interview with Frederick Felder, *op. cit.*, October 23, 2008.

243. “El oro recobra su resplandor”, *El País*, Cali, July 16, 2006.

244. ASOMICAL, n. t., [Cartas de Suscriptores] *Ambiente y Sociedad 159*, ECOPORTAL, May 13, 2004. Retrieved September 25, 2008 from: [www.ecoport.net/content/view/full/29292](http://www.ecoport.net/content/view/full/29292).

245. “Greystar respeta derechos de los mineros en California,” *El Frente*, n.d.

246. Luis Alfredo Muñoz, Federación de Mineros de Santander (FESAMIN), speech at the *Foro Regional Minero*, Bucaramanga, April 24, 2008.

247. Greystar Resource Ltd., *Request for judicial review of administrative action*, July 31, 2000.

248. That is, non-insurgents.

249. Letter directed to Rafael Silva, Greystar manager, signed by approximately 50 miners, June 28, 2001.

rently generating 85% of jobs in California with roughly 500 in its employ.<sup>250</sup> On the other hand, the Santander Miners Association (FESAMIN) observed that California's economy has traditionally been maintained by small-scale mining, whereas large open-pit mining is a high technology business which requires few local people. Moreover, employment in large-scale mines is based on temporary contracts whose number rise and fall according to project phases. At the time of the 2008 interview, Greystar was letting people go.<sup>251</sup>

According to statements by Greystar, the Angostura project has an expected life cycle of 25 years. This open-pit operation will use a cyanide-based "heap leaching" technique and has an estimated production rate (or strip-ratio) of 4.4 tonnes of waste rock to one tonne of ore.<sup>252</sup> The company estimates that it will excavate 312 million tons of rock to extract 10.15 million ounces of measured and indicated gold deposits and a further 3.43 million ounces of inferred reserves.<sup>253</sup>

The question remains open regarding which of the two options – large- or small-scale mining – is better for the communities in the long term. Greystar itself is aware of the limitations of its proposition for development: "In all these projects, the question is, what happens next? There are villages in Peru where a mine has closed, five thousand people lost their jobs from one day to the next, they have nowhere to go, there's nothing else to do ... and it is important to start thinking about it from the beginning."<sup>254</sup> However, it is unclear whether the projects proposed by the company to provide economic initiatives in the region have been conceived with this perspective in mind. Rather, projects so far appear to respond to the company's own short-term needs, for example, clothing workshops to produce company uniforms, food services for employees; the company represents the only realistic market for such services.

At the same time, Frederick Felder, Greystar vice-president, says: "We do not want people to become dependent on us and expect gifts and that we replace the State. We are working closely with the community and municipal governments on development plans ... for California and Vetás, suggesting areas for mining and agricultural projects, aqueducts and tourism."<sup>255</sup>

California community leaders, backed by 300 signatures, responded to a March 2005 editorial in *El Tiempo*,<sup>256</sup> which had lauded Greystar's economic

investment in the municipality:

*We raise our voice in protest against what we consider to be an assault on our people, our principles and our dignity. We believe that this article, manipulative and false, erased with one stroke our municipality's more than 400 year history of mining ... It describes us as a backwater that has improved its standard of living thanks to the arrival of the Canadian company Greystar ... [I]t also says that the multinational has caused a turnaround in the lives of Californians. That is perhaps the only thing that is true ... but in another sense: we were a peaceful community, undisturbed until the great company arrived. Then on the tail of its abundant resources came the armed groups. Furthermore, [the article] assures us that unemployment has ended ... In California, 90 percent of women of working age are unemployed.*<sup>257</sup>

## Conclusions

Despite the company's declared best efforts, and the Canadian Embassy's long-term support, this case study suggests that significant human rights risks remain that the company may be:

- benefiting from dislocation and displacement of local populations;
- inadvertently rewarding people or groups who have committed human right violations;
- imposing serious environmental impacts, especially on crucial water supplies; and
- imposing undue costs to local people's economic livelihoods and food security.

We reiterate that these are medium to high potential risks based on the evidence we were able to collect, and are not imputing intentionality to benefit from human rights violations or reward those who commit violations. At the same time, it is incumbent upon any company in such circumstances to investigate, minimize, manage, and mitigate such risks. Notwithstanding Greystar's long involvement in the region, and the supportive role of the Canadian Embassy, it appears that no human rights or risk assessment has been done to evaluate the range of existing and potential human rights impacts of the project.

250. Interview with Luis Guillermo Laserna, *op. cit.*

251. Luis Alfredo Muñoz, *op. cit.*

252. Strathcona Technical Services, *Report*, August 2006.

253. Greystar Resources Ltd., *Corporate Presentation*, *op. cit.*

254. Interview with Frederick Felder, *op. cit.* (October 23, 2008).

255. "Le Apostamos Todo A California," *El Tiempo*, October 30, 2003.

256. "Un Pueblo Redimido Por El Oro," *El Tiempo*, March 8, 2005.

257. "California, Pueblo Indignado," *El Tiempo*, April 18, 2005. Retrieved June 7, 2009 from:

<http://www.eltiempo.com/archivo/documento/MAM-1639581>.

*Risk of benefiting from dislocation and displacement of local populations by the armed conflict:* The Colombian Army's efforts to regain control of the region and end the long-term presence of the FARC in the project area were at least partially intended to allow Greystar to return to its operations; paramilitary groups also became involved. The violence had the effect of temporarily and permanently displacing local people and permanently destroyed their food production capacity. It is not clear to what extent local people were able to maintain title to their properties or under what circumstances they might have lost or sold those properties. There was no indication of efforts by either the Colombian government or the company to reinstate lands and agricultural production, or to compensate for their loss. In the absence of adequate mechanisms for documenting land title and history, adequate investigation of land theft and a credible reparations mechanism for those who have been violently displaced from their land, resource companies operating in the area are at risk of benefiting from earlier theft of lands and titles.

*Risk of inadvertently rewarding people or groups who have committed human right violations through its security arrangements:* Greystar does not refer to specific procedures or guidelines such as the Voluntary Principles on Security and Human Rights in its use of former Colombian military personnel for security, or in the company's relationship with the Army itself. Given that paramilitary groups or their successors are known to control the security sector in other areas of Colombia, and that the Public Defender has noted that paramilitaries are consolidating in the area, a risk assessment with ongoing monitoring is necessary. There is no indication this has been or is being done.

*Risk of imposing serious environmental impacts, especially on crucial water supplies:* Local and environmental authorities have raised serious concerns about significant and unmitigable ecological impacts, especially to local and regional water supplies. The Angostura project is located in an ecologically sensitive area that is already suffering contamination from small-scale mining. Instead of improving small-scale mining practices and technologies, the project will increase water use and pose an additional risk of contamination. In addition, the company – despite its well-developed CSR policies – has initiated a lawsuit contesting measures taken to protect the environment. The investment provisions of the Canada-Colombia Free Trade Agreement further strengthen the power of investors in such situations, since investors can appeal government decisions directly to a powerful trade tribunal, while

citizens must seek domestic legal remedies.

*Risk of imposing significant costs to local people's economic livelihoods and food security:* Small-scale miners are being displaced with no little or no compensation or relocation plan. The local agricultural economy will have a more difficult time recovering from violence and dislocation as the mine occupies increasingly large areas of productive land. Limited availability of government services adds to demands on the company to provide support and services to communities within the project area. The company has made some unilateral commitments in this direction but there is no structure or norms within which to negotiate an agreement with the affected communities and local and national authorities.

### **Case study #3: Antioquia/Caldas – Colombia Goldfields & B2Gold**

#### **Context**

The boom in mining in Colombia in the last ten years is reflected in the departments of Antioquia and Caldas where there has been a sharp increase in exploration activities and applications for mining rights by transnational corporations. A map of Antioquia showing which areas have been staked for mining shows almost total coverage of this region.<sup>258</sup> Of particular interest is the corridor of gold deposits that runs through the municipalities of Marmato (Caldas), and Caramanta, Valparaíso, Támesis, Jardín and Andes (Antioquia). Significant operations are also underway in the municipalities of Riosucio and Supia in Caldas, Jericó in Antioquia, and Quinchía in Risaralda.

According to the Public Defender, over the past 20 years, the armed conflict in Antioquia and Caldas has been shaped by the convergence of three factors: the coffee crisis; struggles between paramilitaries and guerrillas for territorial and political dominance over the region and control of the drug trade; and the increasing influence of transnational corporations involved in resource extraction through megaprojects.<sup>259</sup>

According to the inhabitants of southwest Antioquia, competing economic interests (e.g., other mining companies such as Goldplata/La Muriel Mining and Rio Tinto in Murindó) have led to widespread human rights violations, limiting the region's development: "The military presence in Darien and Urabá in the Atrato region is for the protection of corporate interests and resources. There have been atrocities – for example, the Indigenous population is accused of

258. Directorio de Derecho Minero del Gobierno Municipal de Antioquia, Statement presented at the *Foro Social Minero*, Támesis (Antioquia), June 13, 2008.

259. Sistema de Alertas Tempranas, *Informe de Riesgo No. 011-07 A.I.*, May 28, 2007.

being guerrillas and they are stopped on the road, their clothing removed and there have been cases of rape ... The area is part of the ‘Mandenorte Block’ which has been targeted for mineral exploration and found to be one of the country’s potential mining zones.”<sup>260</sup>

### *Land...*

Colombia Goldfields Ltd. has operated in Colombia since 2005 via Compañía Minera de Caldas SA and Gavilan Minerals SA, its subsidiary companies; to date, it has reported investments in the country of \$35 to \$40 million (U.S.).

Colombia Goldfields’ exploration activities in Caramanta near the Cauca River were in an area that is supposedly unpopulated, inhospitable, and not used for agricultural activity. However, a community workshop<sup>261</sup> on social mapping over past years showed that lands now in the hands of large landowners, belonged in 1995 to numerous peasant families who cultivated sugar cane, ran rustic sugar mills and raised small livestock. Large landowners were able to acquire the properties easily as families suffered financial ruin and were displaced from the region by armed conflict. This area is known for the strong presence of illegal armed groups that have caused displacement.

Moreover, local testimonies suggest that land purchases have not always been made in a transparent fashion: “In the case of Marmato, the company created division in the community, and presented the mining project as a local development initiative, promoting its political significance. The problem is that it is located on the town site and through front men, the company has begun to buy houses. This has disrupted political and social networks ... This disrupts the social fibre of the community.”<sup>262</sup>

Nonetheless, a Colombia Goldfields spokesperson claimed the company has procedures to ensure responsible purchases of lands and titles: “We have a security department that handles that, and we say in all sincerity that we have never purchased titles with prob-

lems. Under our CSR [Corporate Social Responsibility] program, we carried out a study to analyze social data: how many mothers, how many people with links to the GAI [illegal armed groups] ... And the best way to respect human rights is to pay fair wages, right?”<sup>263</sup>

B2Gold Corporation has funded a large portfolio of exploration properties in conjunction with AngloGold Ashanti and has been conducting exploration activities in the village of Río Frío in the municipality of Támesis. This region is also characterized by the accumulation of property by large landowners, where 41% of the families who inhabit the area are now landless. Here again, factors such as the armed conflict, the presence of paramilitary groups, and poor economic conditions have led to a depopulation of the area.<sup>264</sup>

### *...and Conflict*

Historically, the department of Antioquia has had one of the highest rates of violence and forced displacement in Colombia, and in parallel, an ever-increasing concentration of property in the hands of a few. By 2004, 3% of the property owners controlled 55% of the land.<sup>265</sup> In 2007, militarization of the municipalities of Támesis and Caramanta increased significantly. According to locals, this was related to the arrival of multinational mining companies.

On July 25, 2008, a delegation of departmental officials from Caldas and Antioquia announced a project to establish a military battalion in the area to ensure safety.<sup>266</sup> Later that year, the Public Defender’s Office observed that: “During the past 5 years, 10,000 people have been displaced ... Mining concessions coincide with areas affected by displacement and armed actors are located around extraction sites. There have been greater levels of violence, in Quinchia, for example [where B2Gold’s partner AngloGold Ashanti is active], where there is a high rate of abuses... People have been dispossessed and removed from the community to make way for mega-mining projects.”<sup>267</sup>

260. Interview with representatives of an Indigenous organization of southwest Antioquia, Medellín, July 22, 2008.

261. For three periods: before 1990, 1991 to 2004, and 2004 to 2008, held as part of research activities with local communities in Caramanta.

262. Roundtable discussion with inhabitants of Marmato, July 16, 2008.

263. Interview with Ian Park, President, and Francisco Zapata, Vice-President, Colombia Goldfields, and Gabriel Jiménez, Corporación Montaña, Medellín, October 27, 2008.

264. Interview with a representative of a local peasants’ association, Támesis, June 13, 2008

265. “There appears to be a link between forced displacement, concentration of land ownership and areas with high potential in Antioquia. The greatest number of forced displacements have taken place in this department and these continue to grow as the armed conflict worsens; figures compiled by Acción Social (2006) categorize it as the foremost department for displacement ... In parallel, during the period 1996 to 2004, records show increased concentration of land ownership and fragmentation of small landholdings .. For 2004, property owners with less than 10 hectares (86%) held 15% of the total area and property owners with more than 100 hectares (3%) accounted for 55% of the territory,” Carlos Felipe Juan Gaviria Garcés, and Carlos Muñoz Mora, “Desplazamiento forzado y propiedad de la tierra en Antioquia, 1996-2004”, in *Lecturas de Economía*, no. 66, January-June 2007, Universidad de Antioquia, Antioquia, 2007.

266. Interview with a representative of a local peasants’ association, Támesis, June 13, 2008.

267. Interview with a member of the Defensoría del Pueblo (Human Rights Ombudsman), Riosucio, September 19, 2008.

The Caramanta Municipal Assembly released data on the victims of armed conflict in its jurisdiction alone: “between 1997 and 2006, 48 people were killed, 121 were displaced by armed conflict ... [and] in 2001, a massacre left four people dead.”<sup>268</sup>

The municipality of Marmato, despite having the highest per capita budget in the department of Caldas due to gold mining, is considered to be one of the department’s four most-at-risk municipalities because of its high rates of violence and weak public order and enforcement.<sup>269</sup>

With regard to the fragile human rights situation in the region, a Colombia Goldfields representative stated: “There are no illegal armed groups in either Marmato or Caramanta ... Earlier, paramilitaries were indeed present but not anymore.”<sup>270</sup> However, the final declaration of the 2008 Social Mining Forum held in Tâmesis highlighted the concerns of local communities regarding “entire populations being displaced and community members threatened ... by pressure from paramilitary groups and harassment by the armed forces which preceded the arrival of large multinationals that want to exploit minerals in the subsoil.”<sup>271</sup>

As already cited in the Sur de Bolívar case study, B2Gold’s security department works directly with the Armed Forces of Colombia.<sup>272</sup> The company does not make reference to the Voluntary Principles on Security and Human Rights or other guidelines or practices to identify past involvement of specific Armed Forces units or individuals in human rights violations and/or sufficiently safeguard against future violations.

### *Community involvement*

While Colombia Goldfields referred favourably to its negotiations and agreements with the peoples of these regions, this study found that many communities have never had a discussion with the corporation. Others who have had discussions have indicated they do not want the project. According to spokesmen from the Regional Indigenous Council of Caldas: “The people of Marmato must construct their own future. When the governor and the company visit the community, they do so with a group of 7 to 10 professional staff, but the community is always at a disadvantage because

we do not have the technical capacity to understand the project ... Furthermore, the Indigenous people of Marmato have not been taken into account in the debate.”<sup>273</sup>

The Indigenous Organization of Antioquia (OIA) raised the concern that: “We have had to go ‘fishing’ for information on mining projects because it has not been provided by the companies or the State. There have been multi-ethnic discussion groups with Afro-Colombians, Indigenous people and peasants where, with the little information obtained, we try to raise community awareness of the implications that this [mining] has and [we try to develop a] vision for the future. In this region, because of the impact of past resource extraction on the inhabitants, there is a rejection of megaprojects.”<sup>274</sup> In addition, the Indigenous people have strong concerns about the arrival of multinationals in the area: “All the wealth that they will extract here, does not stay in Colombia, but rather they will take it to other countries, just as it happened 516 years ago. They took the wealth, was something left for Colombia? No, Colombia remained the same, and what did that mean for us? Nothing changed ... For us development would mean that the government leaves us in peace on our land, which has all the elements for us to manage within our territory.”<sup>275</sup>

According to some testimonies, B2Gold and Colombia Goldfields have not been sufficiently transparent about the size and scale of mining projects. B2Gold even suggested that some citizen and environmental organizations that monitor its mining activities and are critical of mineral development “unfortunately...are sometimes contaminated; there are many that are contaminated by paramilitaries or guerrillas.”<sup>276</sup>

According to Colombia Goldfields, the region’s municipal councils compete for investment:

*“In one meeting of the municipal council, where the Governor was also present, the mayor of Caramanta asked us to focus more on Caramanta and less on Marmato, because they wanted royalties... There had even been a forum earlier with community action groups where we explained to them that it was a very long term project.”*<sup>277</sup>

268. Information sources: National Police, the Observatory of the Presidential Program for Human Rights (of the vice president’s office) and cited in Asamblea Municipal Constituyente de Caramanta, *Agenda Ciudadana*, Caramanta, June 2007.

269. Sistema de Alertas Tempranas, *Informe de Riesgo No. 010-05*, April 5, 2005.

270. Interview with Francisco Zapata, Vice-President, Colombia Goldfields, Medellín, August 12, 2008.

271. *Declaración Final*, Foro Social Minero (Social Mining Forum), Tâmesis, June 13, 2006.

272. Interview with Julián Villarruel Toro, *op. cit.* (October 29, 2008).

273. Roundtable discussion with inhabitants of Marmato, May 9, 2007.

274. Interview with representatives of Organización Indígena de Antioquia, July 22, 2008.

275. *Ibid.*

276. Interview with Julián Villarruel Toro, *op. cit.* (August 26, 2008).

277. Interview with Ian Park, President, and Francisco Zapata, Vice-President, Colombia Goldfields, and Gabriel Jiménez, Corporación Montaña, *op. cit.*

There is indeed some interest in the mine within some of the municipal councils. For example, the mayor of Caramanta insisted that mining is an opportunity for the municipality, and indicated that as mayor, it was his sole responsibility to report on mining investment. Concerned that the Municipal Constituent Assembly could be used to “misinform the community,” he refused to convoke the assembly, so that he could complete the development plan without distraction.<sup>278</sup> For the “future of the municipality,” the mayor himself intended to identify potential areas for exploitation and incorporate these into the Land Management Plan for Caramanta, and consider expansion of the legal framework that governs mining.<sup>279</sup> While the divisions and special interests involved in this example are not necessarily the responsibility of Colombia Goldfields, the risk of undermining democratic process is one that should be assessed and constantly monitored in areas with weak governance.

B2Gold continues to promote its mining project in Támesis despite the opposition of the municipal government. At a hearing of council officials set up especially for company representatives, the council unanimously expressed its opposition to the mine, citing the need to protect public water resources and peasant livelihoods over and above private interests.<sup>280</sup> However, the company insists on “the right of corporate citizens to exploit mining, and no municipality can close its doors to a mining project.”<sup>281</sup>

B2Gold’s Villarruel Toro indicates that non-Indigenous rural communities have no right to reject mining activity: “Communities are always a bit resistant, for social, historical, cultural reasons, and because of the conflict. It is human nature to resist change. But the idea is that through a Corporate Social Responsibility approach, you will quickly win social licence”<sup>282</sup> ... “The law says that where the existence of a mineral resource is demonstrated, exploration must proceed. But given the company’s CSR policy, what we do is to enter into a process of socialization.”<sup>283</sup>

In early 2008, the Indigenous Organization of Antioquia (OIA) issued a resolution: “[T]he indigenous authorities of the department of Antioquia have decid-

ed not to support the implementation of a consultative process in indigenous territories and communities as means of arriving at any decisions ... [We] also believe that consultation processes undertaken in other indigenous areas have not, in fact, respected their rights, nor included adequate procedures for providing information, consulting, or decision-making, thus flagrantly violating collective rights ... [F]or this reason and to reaffirm and emphasize our political, territorial, administrative and judicial autonomy, the indigenous authorities of Antioquia resolve: ... To not allow the entry of any type of mega-project into indigenous territories ... To not recognize ... agreements taken forward with some leaders [wherein the company] has taken advantage of indigenous authorities’ lack of information and understanding of mega-projects, or where the agreement has been achieved through bad faith involving various types of pressure, deception or threats.”<sup>284</sup>

Just a few months later, a public promotion of the large-scale mining project in Marmato and Caramanta municipalities took place in an open forum on July 25, 2008, organized by the municipal government of Caramanta and the governor’s office of Antioquia. It had the clear support of regional officials, environmental authorities and large landowners.<sup>285</sup>

At the same time, quite aside from political will, the State’s ability to act as guarantor of human rights is increasingly in question as mining companies begin to assume administrative functions. Civil society organizations have noted that: “public functions are being delegated to the large strategic operator, including decision-making functions. This is part of so-called ‘corporate contracts’. Mining reform has weakened public authority as the State delegates functions to this company ... such as the administration of the mining industry in the region.”<sup>286</sup>

### *Impact on Indigenous peoples and Afro-Colombians*

There are roughly 67,000 ethnic Indigenous Embera (Katíos and Chamíes) living on four Reserves in Riosucio and Supía, that is: Cañamomo Lomapieta, San Lorenzo, Nuestra Señora de la Candelaria de la

278. Minutes from the meeting of community representatives from Caramanta with Juan Guillermo Valencia, Caramanta municipal mayor, March 1, 2008.

279. Motion on the process of review and adjustment of EOT [Land Use Planning Framework], signed by Juan Guillermo Valencia, Caramanta municipal mayor, and María del Pilar Gómez Echeverría, intervener for the municipal government of Antioquia, April 12, 2008.

280. Public meeting in the Municipal Council building in Támesis and broadcast by community television, August 18, 2008.

281. *Ibid.*

282. Interview with Julián Villarruel Toro, *op. cit.* (August 26, 2008).

283. *Ibid.*

284. Organización Indígena de Antioquia (OIA), *Resolución 01 de 2008*, Medellín, April 16, 2008.

285. Interview with representatives of a local peasant organization, Caramanta, September 16, 2008.

286. Interview with Francisco Ramírez, *op. cit.* (July 16, 2008).

Montaña and Escopetera Pirza.<sup>287</sup>

In the Marmato area, of the more than 9,500 inhabitants, 56.5% are of African descent and 16.7% are Indigenous. Afro-Colombian communities are organized under Advisory Committees, as established by the 1993 Law 70; and the Indigenous population establishes Councils in accordance with Law 89 of 1890.<sup>288</sup>

According to the Regional Indigenous Council of Cauca's (CRIR) archive of petitions, the Indigenous population of Cauca is estimated at 22,000 people. For many years, CRIR has sought recognition as an Indigenous authority from the Ministry of the Interior. It has requested official status for the Quinchia and Guática Reserve, and called for improved health, education and housing, among other social services, without success. In addition, CRIR has called attention to the serious humanitarian situation in Quinchia and Mistrató where the Indigenous community has been terrorized by the various armed groups. Indigenous leaders have also been repeatedly subjected to harassment and arbitrary arrests by State forces.<sup>289</sup>

Indigenous communities in Cañamomo Lomapieta Reserve in Riosucio and Supia (Caldas) alerted the national and international community through a press release to the fact that between March and April 2008, helicopters had been flying low over the Reserve to survey potential mining sites: “[O]ur territory has been the object of flagrant and systematic violations by the mining company AngloGold Ashanti which, acting in partnership with State agencies and the national government, has been carrying out exploration activities without our consent, disrupting our ...spirituality and threatening our existence.”<sup>290</sup> Indeed, prior to these exploration activities, Kedahda Society, Colombia Goldfields and AngloGold Ashanti had submitted letters and communications to governmental officials in Riosucio, reaffirming their intention to carry out exploration activities as part of a phase one in these territories.<sup>291</sup>

Such occurrences arise from a generalized approach taken by the extractive sector: B2Gold and Colombia Goldfields claim that no ethnic communities are affected by mining projects, and that they can therefore carry on exploration activities without prior

consultation as required by ILO Convention 169 and Colombia's 1993 Act 99.

Colombia Goldfields commented on areas where it has mining rights: “There are no black or indigenous communities affected by this project. We have certificates from the Ministry of the Interior. We would never have bought the mining rights without first having come to an agreement with indigenous inhabitants. If there had been indigenous communities, we would have thought twice.”<sup>292</sup> Furthermore: “The law does not require us to consult about the area that will be affected by the project, for if this were the case, no project in Colombia could be undertaken without prior consultation. If there had there been an indigenous community, we would have carried out a consultation because it makes no sense to put our investment in danger ... The Embera-Chamí from Marmato are indigenous, but it is not a traditional settlement. Some people, even groups acting outside the law, employ manipulative strategies and bring indigenous individuals along to negotiate.”<sup>293</sup>

In this instance, the companies are demonstrating a lack of knowledge of the treaties to which Colombia is signatory. ILO Convention 169, which supports the self-recognition of Indigenous communities, says:

*1. This Convention applies to: ...b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region ...and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.*

*2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.*<sup>294</sup>

If a company does not recognize the existence of Indigenous or Afro-descendant communities in the region, it can proceed to apply for title to the concession without either undertaking prior consultation (a right that pertains specifically to Indigenous communities under the Mining Act), or recognising the priority given to community mining granted to Afro-Colombian communities under Act 70 of 1993.

287. Data supplied by traditional authorities from the indigenous group Embera Chamí.

288. Consejo Regional Indígena de Caldas (CRIDEC), *Resumen de la situación en Marmato*, February 3, 2007.

289. See: Centro de Investigación y Educación Popular (CINEP), “Deuda con la Humanidad: 1996” in *Noche y Niebla*, 1996. Retrieved June 11, 2009 from: <http://www.nocheyniebla.org/files/u1/casotipo/deuda/html/pdf/1996.pdf>.

290. Resguardos de Cañamomo y Lomapieta (Cañamomo and Lomapieta Reserves), *Voces del Sinifaná*, ed. 1, Riosucio, May 2008.

291. Letter from the Kedahda S.A., Quinchía, July 10, 2007; letter from Colombia Goldfields, Riosucio, March 6, 2008.

292. Interview with Francisco Zapata, *op. cit.*

293. Interview with Ian Park, President, and Francisco Zapata, Vice-President, Colombia Goldfields, and Gabriel Jiménez, Corporación Montaña, *op. cit.*

294. International Labour Organization, *Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries*.

*Environmental concerns and competing interests*

Forest and water reserves in the region stand to suffer significant damage from mining activities. The Management Plan for the region between Támesis and Valparaiso states: “if [certain mining projects are] carried out, it would cause deterioration where the majority of springs are located [and where] the Land Use Plan has designated this part of the municipal forest a protected area.”<sup>295</sup> Similarly, the La Cuchilla-Támesis-Jardín eco-region, considered to be one of the key water basins of the Antioquian Southwest geological region, would also be affected.<sup>296</sup>

The designation of protected areas is seen by multinationals as yet another barrier that impinges on their ability to do business, and they believe mining regulations should be changed to take care of this issue. B2Gold holds that: “Mining is compatible with the environment. And there are many areas in Colombia that have been designated forest reserves. But ... one learns that people have settled in these places and they no longer qualify as reserves. [Interviewer’s question: *And the law should allow some flexibility to review the classification of “reserve” so that mining would be allowed?*] Yes, exactly ... And there are some environmental requirements that jeopardize investment.”<sup>297</sup>

In a public statement, peasant communities in Caramanta called for urgent support: “We the peasants of Caramanta ... have defended our rights to our land, we have protected crop diversity, sustainable management of natural resources and the development of organized and just communities. ... All of this is under threat, and moreover we fear for the safety of ourselves, our families and communities as we are persecuted for not agreeing to the extraction project proposed by those who would further their personal interests by coming to our land to get rich from mining.”<sup>298</sup> While these farmer organizations were concerned about the risks mining poses for their productive activ-

ities, and the potential violence should they continue to oppose the mine, large landowners expressed interest in investing in a large-scale project.<sup>299</sup>

The Colombia Goldfields mining project compromises the long-term development of the municipality. Although the company argued that sustainable mining can break the poverty-mining cycle,<sup>300</sup> it is clear that large operations are of limited duration compared to traditional small-scale mining, which local residents predict could be a source of livelihood and community development for over 500 years.<sup>301</sup> This estimate is based on the communities’ own lived experience. Marmato, for example, is a mining town with a history of 500 years of small-scale, subsistence gold mining, and was recognized in 1982 as a historical and cultural site.<sup>302</sup>

Projects proposed by Colombia Goldfields as socio-economic alternatives for communities offered little potential as development options for the future. A company report outlined some of these initiatives: a printing shop to develop a community newspaper, a sewing shop that would design company uniforms, a jewellery workshop and ecological garden plots for the company to teach more highly technical methods for using organic waste.<sup>303</sup> According to the company’s Vice-President: “The company’s goal in these programs is for the community to understand that the company is absolutely essential to their quality of life.”<sup>304</sup>

*The project’s effect on small-scale mining: The case of Marmato*

The conflict between small-scale and large-scale mining is clearly displayed in the historic mining town of Marmato, where Colombia Goldfields bought up small mines and mills to make way for a large open-pit mine that would also require the relocation of the town’s inhabitants. Having acquired and closed down a large number of small-scale operations, the company

295. Municipalidad de Valparaíso, *Esquema de Ordenamiento Territorial (EOT)*, 2000 (municipality of Valparaíso, *Land Use Planning Framework*, 2000).

296. Corporación Autónoma Regional del Centro de Antioquia (CORANTIOQUIA), *Plan de manejo del área propuesto para la Reserva Regional del Jardín de la Cuchilla – Támesis*, Medellín, October 2002.

297. Interview with Julián Villarruel Toro, *op. cit.* (August 26, 2008).

298. “El Campesinado de Caramanta y la región acorralados por la minería a gran escala, convoca apoyo urgente,” Caramanta, July 2008.

299. Interview with representatives of a local peasant organization, Caramanta, September 16, 2008.

300. Interview with Ian Park, President, and Francisco Zapata, Vice-President, Colombia Goldfields, and Gabriel Jiménez, Corporación Montaña, *op. cit.*

301. Public meeting of the Comité Cívico Pro-defensa de Marmato, with participation by delegations from CRIDEC, Defensoría del Pueblo and Personero Municipal, September 23, 2008.

302. The history of Marmato is well known: it was an area of alluvial gold mining by indigenous groups Cartama and Moragas; mining was the primary source of revenue for the Spanish Crown during the sixteenth century; at the time of Independence (1825), the area’s mining rights were officially passed to the British to finance the war of emancipation; Marmato was declared a National Monument via resolution No. 002 of March 1982 by the Colombian Institute of Culture.

303. Report sent in electronic form by Francisco Zapata, Vice-President, Colombia Goldfields, on October 20, 2008.

304. Interview with Ian Park, President, and Francisco Zapata, Vice-President, Colombia Goldfields, and Gabriel Jiménez, Corporación Montaña, *op. cit.*

suffered a financial crisis and withdrew in October 2008. If the mining project did proceed using open-pit methods, it would mean the disappearance of the town of Marmato as the pit would physically occupy a significant portion of the town site.

According to CECOIN, the current mining policy facilitates the halt of local, small-scale mining to make way for large transnational corporations: “[Marmato is designated by] INGEOMINAS as a high risk area. This means no one can live there and makes it possible to take over small mining properties. The large mining companies intend to buy the subsoil rights of the entire village to build an open pit operation that runs through the town of Marmato. ... [T]he decision that people have to be evacuated is seen as a strategy to facilitate the company’s purchase of the land. ... [T]he State has played a facilitating role to benefit the company instead of employing mechanisms to ... assist small-scale miners to acquire technologies and other resources.”<sup>305</sup>

The municipality of Marmato is recognized as a Special Mining Zone. In 1954, the government divided the Marmato mountain into two zones: the high section was slated for small-scale or subsistence mining, and the lower section designated for medium and large companies.<sup>306</sup> However, Colombia Goldfields planned to concentrate its efforts on mining the upper part of the mountain where exploration has led them to estimate reserves of 2.6 million ounces of gold.<sup>307</sup>

Marmato has over 250 small mines, of which some 130 are informal operations, while the rest are officially registered. Colombia Goldfields acquired 110 of the latter projects, plus 11 mining mills. All 110 have now been closed and most of the mills destroyed for scrap, leaving roughly 600 people unemployed, the local economy in tatters and the municipality with reduced royalties.<sup>308</sup>

Colombia Goldfields’ plan was to purchase all the small-scale miners’ titles and close their mines to make way for a large-scale mine.<sup>309</sup> Its position was that: “We cannot operate these mines ... because they do not have environmental permits. We were given legal

advice that instead of buying them, we should have denounced them but this did not seem right to us given the investment made the [former] owners of these mines. We then contracted INGEOMINAS to get an estimate of the mines’ value in order to negotiate with the owners.”<sup>310</sup>

The company’s local consultant, Corporación Montaña’s Gabriel Jiménez, dismissed traditional mining’s contribution to Marmato’s economy: “Small-scale mining does not sustain Marmato. It is a town that has no services, there is no access to higher education, that is, the people there survive... Some people talk about preserving the local culture and maintaining the village, but the only contribution to Marmato by small-scale mining has been crates of beer and prostitution.”<sup>311</sup>

In December 2006, the vice-president of Colombia Goldfields subsidiary Compañía Minera de Caldas, Francisco Zapata,<sup>312</sup> petitioned the Ministry of Mines and Energy to deny requests for legalization of informal mines (that is, those without legal title and/or permits) in Marmato, calling for the integration of mining areas in the region.<sup>313</sup> The areas involved are precisely those where the company is seeking mining rights.

Small miners have alleged coercion from public institutions such as Caldas Autonomous Regional Corporation (CORPOCALDAS). New restrictions have been put on the supply of dynamite and the availability of rental machinery, and miners are threatened with property seizure in the event of non-compliance with environmental standards. According to small-scale miners, these new pressures arose coincidentally with Colombia Goldfields campaign to get small-scale miners to sell them their mining rights.<sup>314</sup>

Colombia Goldfields’ has been accused of being the driving force behind the initiative to move Marmato’s institutions and businesses, by pressuring various State agencies. Nevertheless, according to Francisco Zapata: “Mining initiatives are not to be confused with the relocation. The move was planned for 30 years ... [and our activities in the area] are pure

305. Interview with Indigenous Rights Activist, Bogotá, July 16, 2008.

306. República de Colombia, *Decreto 2223 of 1954*.

307. J. Randy Martin, Vice-Chairman and CEO, Colombia Goldfields Ltd., “Colombia Goldfields Provides Update on Proposed Marmato Mountain Lower Zone Acquisition.” November 3, 2008. Retrieved June 27, 2009 from <http://www.infomine.com/index/pr/Pa692401.PDF>.

308. Data and census conducted by the Marmato Comité Cívico Pro-defensa, September 2008.

309. Paul Harris, “Colombia attracting mining’s heavy hitters,” *The Northern Miner*, October 23, 2006. Retrieved July 25, 2009, from: <http://www.northernminer.com/issues/ISarticle.asp?aid=1000206632&PC=>

310. Interview with Francisco Zapata, *op. cit.*

311. Interview with Ian Park, President, and Francisco Zapata, Vice-President, Colombia Goldfields, and Gabriel Jiménez, Corporación Montaña, *op. cit.*

312. Francisco Zapata, Vice-President of the Compañía Minera de Caldas, was also Director General of the Antioquia Autonomous Regional Corporation – CORANTIOQUIA (regional environmental authority) for the period 2001-2003, re-elected for the period 2004-2006. He also served as chairman of the Board of the same body.

313. Archive of the Marmato Comité Cívico Pro-defensa, consulted September 2008.

314. Interview with Ian Park, President, and Francisco Zapata, Vice-President, Colombia Goldfields, and Gabriel Jiménez, Corporación Montaña, *op. cit.*

coincidence. Those who say otherwise want to negotiate compensation with us. There are a lot of sentimental people as well.”<sup>315</sup>

The push to relocate Marmato was only made when Colombia Goldfields sought approval for permits and initiation of mining activities. Relocation had *not* been proposed, and indeed no government action had been taken in 1988 following the determination that Marmato is an area of high risk for which mitigation measures are not feasible.<sup>316</sup> (The area had been designated as unsafe because of the extensive tunnelling and consequent risk of subsidence and/or collapse.) The coincidence has led some organizations to conclude that national and departmental governments are using the argument (that Marmato is located in high-risk area) to protect Colombia Goldfields from having to take on this expense. Under Article 117 of the Mining Code, if a mining project involves the relocation of populations, the costs and respective compensation are to borne by the company concerned.

In a December 2005 interview with Medellín’s *El Colombiano* publication, Ian Park, speaking for Compañía Minera de Caldas, commented on the relocation of Marmato: “Most people want to move.” and added: “We are ready to provide substantial assistance to the community, but in conjunction with the government because I am not going to assume full responsibility.” He then indicated that there would be “a transparently managed trust of approximately \$10 million [U.S.] to relocate the village to El Llano.”<sup>317</sup>

It is unclear whether such commitments will ever be fulfilled. In a preview of the possible impacts that can occur when a mine pulls out of a region that has been made dependent on one employer, in October 2008 the company fell victim to the collapse of the “asset-backed commercial paper” scheme, and was unable to access credit to finance continued operations. The union of mine workers decried the situation in the municipality: “With the arrival of Compañía Minera de Caldas in Marmato ... unemployment began to grow from the moment it bought the first mine, as closures took place as [mine] purchases were made. The final blow came when [the company] had completed purchasing, closing and dismantling [mines and mills] without leaving any possibility of mining in the short or medium term ... All this under the complacent view of the mayor, the governor, the national government. ... Now to deepen the crisis even more, they have begun

with what might be called a mass firing, cancelling the contracts of more than 50 workers in a single day.”<sup>318</sup>

Uriel Ortiz, the mayor, was emphatic in expressing his opinion on the financial crisis facing the Canadian company: “It was not due to problems in Marmato, but the project here went to pieces. They left, saying they will pay, but everyone in debt says that.”<sup>319</sup>

According to Senator Jorge Robledo, in November 2008, several trucks arrived at Colombia Goldfields’ facilities to take computer equipment, furniture, household items, and supplies to Medellín. Soon after, company officials ceased operations in Marmato and dismissed 200 workers, many of whom were left without severance pay.<sup>320</sup>

### Conclusions

Despite company CSR policies to which both B2Gold and Colombia Goldfields referred, in the context of the region’s history of conflict and land concentration, and the many Indigenous communities in the project area – both those who have been recognized by the government and those who have not – the evidence indicates that significant human rights risks remain in both these companies’ projects.

We reiterate that these are medium to high potential risks based on the evidence we were able to collect, and are not imputing intentionality to benefit from human rights violations or reward those who commit violations. A transparent and independent Human Rights Impact Assessment would need to be undertaken to assess the extent and reality of these risks, and as in other cases, in order to avoid such risks assessments must be undertaken before project activities commence.

One could conclude from the above findings that medium to high risks to political and civil rights, as well as risks to economic, cultural and environmental rights that need to be investigated further include:

- one or both companies may be benefiting from earlier illegal or coerced appropriations of lands and titles;
- one or both companies’ actions may inadvertently encourage the reorganization, persistence, and strengthening of paramilitary and successor structures that seek to economically benefit by maintaining social and political control through actions

315. Interview with a local representative of SINTRAMINERGETICA, Marmato, October 2008.

316. Consejo Regional Indígena de Caldas (CRIDEC), *Rechazo al Acuerdo presentado por el Alcalde Municipal de Marmato para trasladar el pueblo*, Riosucio, September 25, 2008. Retrieved June 11, 2009 from: <http://www.moir.org.co/Rechazo-al-Acuerdo-presentado-por.html>.

317. “El “Cerrejón” del oro,” *El Colombiano*, Medellín, December 12, 2005.

318. Interview with a local representative of SINTRAMINERGETICA, Marmato, October 2008

319. “Mina de versiones por futuro del oro en Marmato”, *La Patria*, Manizales, December 7, 2008.

320. Robledo, Jorge Enrique, *Gran Minería del oro golpea a Marmato*, Bogotá, January 16, 2009. Retrieved June 11, 2009 from: <http://www.senadorrobledo.org/?q=node/552>.

that involve human rights violations (unintended and undesirable incentives to commit human rights violations);

- one or both companies appear to be violating Indigenous rights to be consulted on projects affecting them;
- one or both companies may benefit from ongoing human rights violations against those who oppose or critique the project;
- Colombia Goldfields appears to have had a negative impact on the economic rights of communities, with the collaboration of the Colombian state, by pursuing actions that benefited the company while impoverishing the communities;
- Colombia Goldfields appears not to have ensured corporate accountability in managing its own fiscal crisis, causing extreme undue economic hardship to already poor and marginalized people.

*Risk of benefiting from earlier thefts of lands and titles:*

As cited by the Public Defender's Office and others, massive population displacement has taken place in the project areas, both directly by paramilitaries, and through coerced sales of land. An area that a decade ago had thriving and diverse agricultural production has seen communities and markets destroyed, with land accumulated in increasingly fewer hands. By 2004, 3% of large landowners already owned 55% of the land, while increasing numbers of people were now landless. These factors together would indicate that there is certainly reason to be concerned about the freedom of choice of many who sold their land, and of the actual legitimacy of some land ownership in the area. Although the Colombian government has to date prosecuted but a miniscule percentage of the incidents of land theft in Colombia, Colombia Goldfields asserts that it has never purchased titles with problems. Nevertheless, in the absence of adequate mechanisms for documenting land title and history, adequate investigation of land theft and a credible reparations mechanism for those who have been violently displaced from their land, and without an independent and transparent HRIA, resource companies operating in the area are at risk of benefiting from earlier theft of lands and titles.

*Risk of contributing to unintended and undesirable incentives to commit human rights violations:* Communities indicated that militarization increased significantly at the same time as the mining companies began to arrive. The regional Public Defender's Office could not be more clear, noting that mining concessions have coincided with displacement and the location of armed actors, explicitly indicating that people were displaced to make way for large mining projects. Such allegations from people on the ground indicate a significant risk that companies in the area benefit –

even where they are not complicit – from generalized and specific intimidation, particularly since it is known that paramilitaries, their successor groups, and powerful allies, favour the investment of large resource companies and have positioned themselves to benefit from it.

*Risk of contributing to the consolidation of paramilitaries and their successors:* The issue of project security is rife with risk in Colombia. As stated in a previous case study, B2Gold's security department works exclusively with the Colombian Army, and relies on the Army's security analysis. Paramilitary successors are known to control the administration of security contracts in many areas of the country. There was no reference by either company in the region to the use of the Voluntary Principles on Security and Human Rights or other guidelines to identify past involvement of armed forces or other individuals in human right violations, or to sufficiently safeguard against future violations.

*Potential benefit from ongoing human rights violations against critics of the project:* Both Indigenous and non-Indigenous communities in the region have expressed concern that "entire populations [have been] displaced and community members threatened...by pressure from paramilitary groups and harassment by the armed forces"<sup>321</sup> before the arrival of multinational companies, and the municipality of Marmato is considered one of the most at-risk for violence. The companies deny the presence of paramilitaries in their project areas. There is little indication that the State is protecting the rights of citizens to express dissent, and significant evidence that it has failed to protect the rights of people to physical integrity and democratic process.

*Potential violations of Indigenous rights to be consulted:* Despite statements by companies concerning negotiations with Indigenous peoples, Indigenous communities have clearly stated that in contravention of ILO treaty article 169, in many cases they have not been consulted, nor fully informed or listened to when they did have discussions with the companies. There have been cases in which the companies have formally indicated their intention to explore in areas where Indigenous communities have clearly stated they do not want them. Exploration flights over Indigenous territory were ongoing without Indigenous permission.

*Potential violations of economic rights of the communities:* There are allegations by communities of companies having colluded with local and national governments to undermine local economies for their own economic benefit, by pushing for new regulations on small miners, and consolidation of licenses, as well as poten-

321. *Declaración Final*, Foro Social Minero (Social Mining Forum), Tâmesis, *op. cit.*

tially having been involved in the decision to move the community of Marmato. The decision by the government to move Marmato saved the company from having to “assume full responsibility,” with the Colombian government taking on part of the costs. Colombia Goldfields itself purchased over 100 small mining operations in Marmato and destroyed the equipment, and then pulled out of the community, leaving economic devastation and social disruption in its wake. These actions contradicted the company’s own information to the community that it was undertaking a long-term project, and vindicate the communities’ assertions that their former diversified – now devastated – economy represented a more secure economic future for them and their families. The way in which the company managed its own fiscal crisis caused extreme and undue economic hardship to already poor and marginalized people.

*Potential violations of environmental and food security rights:* Some of the project areas included diverse agricultural farmlands mixed with artisanal mining. Communities enjoyed a significant degree of food security, which has been largely destroyed due to forced displacement and land concentration. Some mining companies perceive environmental protections as jeopardizing investment, and expressed an interest in having those protections reviewed. Should the Canada-Colombia trade agreement be ratified, it will provide unintended and undesirable incentives to the Colombian government to avoid the implementation of new environmental protection measures, as well as providing these and other companies with even stronger tools to prevent any such measures.

*Allegations of lack of respect for community consultation and participation, and undermining of democratic process and accountability:* According to testimonies, neither company has been sufficiently transparent about the size and scale of mining projects, and one company’s representative accused critics of mining projects of being infiltrated by armed actors. One of the companies proceeded with the project despite the explicit opposition of the municipal council. In another case, the mayor suspended the town’s assembly, declaring he would decide himself which areas would be opened to mining; no mining company nor the Colombian government objected to this suspension. Both companies maintain that communities cannot refuse a mining project. There are allegations that the Colombian government is delegating public functions –

such as the administration of mining – to mining companies. Such weak governance and oversight by the national government, lack of transparency and information on the part of companies, and lack of democratic process, all deny people their democratic right to participate in decision-making. Experience in neighbouring countries with strong foreign mining interests, such as Peru and Ecuador, indicates a high risk of ongoing and future social conflict under such circumstances.

#### **Case study #4: Tolima – Nexen Inc.**

##### *Context*

This case study looks at exploratory oil drilling in the area known as the El Queso Block near the Upper Magdalena River in the municipalities of Chaparral, Ataco and Coyaima in the department of Tolima. Rights to operate in this area are held by Nexen Inc., in partnership with Repsol, a Spanish-Argentine energy company with which it signed an agreement in 2003.

Nexen Inc., formerly Canadian Occidental, has its headquarters in Calgary and is reported to be the third largest corporation in the Canadian oil and gas sector with assets of \$13.4 billion CDN and 3,500 employees. Nexen has operations in Colombia, Canada, USA, Yemen, the North Sea, Nigeria and Equatorial Guinea.<sup>322</sup>

Nexen began work in Colombia in 1996. In 2000, it had a major find at its Guando oil field in Tolima, in what has come to be known as the “discovery of the century,” a property owned in association with Ecopetrol and Petrobras. The magnitude of the Guando success led to the arrival of numerous corporations in 2000 and 2001, with Colombia signing over 60 contracts with U.S., Canadian, British and Spanish companies including Alberta Energy, British Petroleum/Amoco, Chevron/Texaco, Shell/Occidental, Repsol, Talisman, Exxon/Mobil, Canadian/Oxy, Nexen, and Compañía Española de Petróleos (CEPSA).<sup>323</sup>

In March 2004, after signing a \$2.1 billion agreement with the International Monetary Fund, Colombia’s Minister of Energy announced that multinationals could negotiate contracts with the National Hydrocarbons Agency (ANH) and no longer needed to work through Ecopetrol, the country’s energy company. The new rules eliminate time limits on production rights, allow foreign firms to hold 100% of oil rights, and pay lower royalties than the normal 8%.<sup>324</sup>

322. Nexen, *Operations*, Retrieved July 18, 2009 from: <http://www.nexeninc.com/Operations/landing.asp>.

323. CENSAT Agua Viva – Friends of the Earth Colombia, *La presencia de las empresas petroleras canadienses en Colombia*, Bogotá, 2001.

324. Steve Randall, *Colombia: Current and Future Political, Economic and Security Trends*, CDFAI, 2006. Retrieved June 11, 2009 from:

<http://www.cdfai.org/PDF/Current%20and%20Future%20Political.%20Economic%20and%20Security%20Trends%20.pdf>.

Nexen's current operations are limited to exploration because, the company states, it has not yet found interesting deposits. Nonetheless, it has a 20% to 25% share in drilling operations carried out by Petrobras, Repsol, and Ecopetrol in Tolima.<sup>325</sup> These projects are managed by the majority owners; however, the minority partners (in this case Nexen) are still considered to be responsible for the conduct of the operation, including risks related to human rights and environmental impacts.



**Map 3: Nexen Inc. drilling blocks in Tolima department**

### *Land and conflict*

The department of Tolima has been a historical focal point of the armed conflict. For example, DANE statistics show that between 2003 and 2006, over 2,000 people were displaced from each of the municipalities of Ataco and Coyaima.<sup>326</sup> According to a 2005 report by the Observatory on Human Rights of the Vice-President's office,<sup>327</sup> illegal armed groups are able to operate in the mountainous regions of Tolima because these areas are so difficult to reach. This same report indicates that paramilitaries were active in Nexen drilling areas. FARC forces had been active, but no

longer had a significant presence there.<sup>328</sup>

Given the displacement from the area, and the fighting and murders that prompted people to flee, the company should undertake a study of historical land ownership in order to ensure it is not inadvertently profiting from murder and land theft, and that its operations are not inadvertently rewarding paramilitaries for their crimes.

Most oil companies employ ex-members of the Colombian security forces, adding to the complexity of the human rights situation in the area. Nexen's chief of security explains: "Most companies have a general or colonel in charge of security. For my part I was a police general in Bogotá. I was a commander in Urabá for a year. I am currently vice-president of the Association of Retired Generals."<sup>329</sup> Again, given the significant operational connections between the military and the paramilitaries in most parts of the country, and the crimes committed by the Army itself, the human rights backgrounds of security staff should be a key part of due diligence. While Nexen referred to a number of CSR policies and guidelines (see below), it did not make reference to the Voluntary Principles on Security and Human Rights or other guidelines or practices to identify past involvement of specific Armed Forces units or individuals in human rights violations and/or safeguard against future violations.

Nexen has set up its security system through a contract with the Army, which was facilitated by the National Hydrocarbons Agency. The components of the security program are explained by the company as follows: "We train military personnel in human rights [and] respect for the community in collaboration with the Attorney General, the Public Defender's Office, the bureaucrats... the budget is used exclusively for the betterment of soldiers and not to buy lethal weapons or equipment that would increase confrontation with the FARC [Revolutionary Armed Force of Colombia]. We have control over the budget to ensure this."<sup>330</sup> A rigorous and independent risk assessment should be done to determine whether paramilitaries control security contracts in this area, as they do in many regions of Colombia.

325. Nexen Inc, *Annual Report 2007. What's Next*, 2007. Retrieved November 30, 2008 from:

[http://www.nexeninc.com/Investors/Summary\\_Report\\_07/pdf/2007summary.pdf](http://www.nexeninc.com/Investors/Summary_Report_07/pdf/2007summary.pdf).

326. The precise figures were 2,324 in Ataco and 2,983 in Coyaima. In addition, during this period 14 people were killed in Ataco and 55 in Coyaima. República de Colombia, Vicepresidencia de la República, Observatorio del Programa Presidencial de Derechos Humanos y Derecho Internacional Humanitario, *Diagnóstico Departamental del Tolima*, 2007. Retrieved June 11, 2009 from:

[http://www.derechoshumanos.gov.co/observatorio\\_de\\_DDHH/departamentos/2007/tolima.pdf](http://www.derechoshumanos.gov.co/observatorio_de_DDHH/departamentos/2007/tolima.pdf).

327. República de Colombia, Vicepresidencia de la República, Observatorio del Programa Presidencial de Derechos Humanos y Derecho Internacional Humanitario, *Resumen de la situación en Tolima*, Bogotá, 2005.

328. República de Colombia, Vicepresidencia de la República, Observatorio del Programa Presidencial de Derechos Humanos y Derecho Internacional Humanitario, *Diagnóstico Departamental del Tolima*, *op. cit.*, p. 4.

329. Interview with Argemiro Serna Arias, Head of Security, Yaneth Mantilla P., Safety, Environmental & Social Responsibility (SESR) Coordinator, and Juan Carlos Valencia Lepineux, SESR analyst, *op. cit.* (August 28, 2008).

330. *Ibid.*

### *Corporate social responsibility policies*

The company's website highlights its contributions to community development, reported at about \$163,000 US for the year 2006 for improvements to school buildings, road and bridge repair, employment creation and upgrading of sanitary systems.<sup>331</sup>

Nexen was actively involved with a group of Canadian companies active internationally in creating the "Ethics for Canadian Business" code in 1997 and says it uses "Corporate Social Responsibility, An Implementation Guide for Canadian Business," published by Industry Canada, and a guide produced by OCENSA<sup>332</sup> (Oleoducto Central S.A., Colombia's main oil pipeline) in its public actions and its relations with the Army.

Jeff Flood, a senior adviser for Nexen, is also a board member of Amnesty International Canada. At the March 2008 forum "Business, Corporate Social Responsibility and Conflict," funded by the Canadian Embassy, Jeff Flood spoke as a Nexen social responsibility consultant and observed that "many of the corporate social responsibility issues are being 're-categorized' as human rights issues: Indigenous rights, cultural rights, environmental impacts, consultation, resettlement/compensation."<sup>333</sup>

Nexen is a signatory to the United Nations' *Global Compact* (along with BP America Inc., Electricité de France, Freeport-McMoRan Copper & Gold, Norsk Hydro, Patton Boggs LLP, Placer Dome Inc., Shell International, and Statoil, among others), which proclaims that its signatories will respect human and labour rights and will run environmentally responsible operations. As noted by Canadian Business for Social Responsibility, the *Global Compact* is "frequently criticized for being a weak instrument and too easy to join," and "not very demanding on signatories."<sup>334</sup>

According to Nexen's coordinator for Safety, Environmental & Social Responsibility: "We have been very careful. We meet with all stakeholders, with everyone. All of them are pleased and there is not one complaint ... The identification of stakeholders is done

through the diagnostic process for obtaining an environmental permit. We do a risk analysis with all stakeholders ... For all decisions, we always take into account environmental, social and security issues."<sup>335</sup>

Nexen has been put in the spotlight because of its association with Repsol, which was accused by a people's tribunal in June 2007 of human rights violations in Arauca. In reacting to the allegations against Repsol, Nexen officials stated: "Our responsibility is set out in the contracts we sign and obviously, each year we meet with the technical and legal committees, and the budget must be approved by us ... There have been cases in parts of the world where Nexen withdrew from collaborative initiatives because of accusations of human rights violations ... However, until they prove something in the international courts, it is speculation."<sup>336</sup>

### *Community involvement*

The southern Tolima region suffers high levels of poverty: urban rates range from 62% to 67% in Tolima's three municipalities (Ataco, Ortega and Coyaima) although they are somewhat lower in rural areas, varying from 26% to 41%.

Interviews with community members indicate that they feel pressured to accept extraction projects.<sup>337</sup> Furthermore, the regional government reports that these communities are some of the worst affected by the armed conflict, and with some of the highest rates of displacement. The State has in large measure abandoned its responsibilities here: there is poor access even to basic services such as clean drinking water, medical attention, and education.<sup>338</sup>

With no government attention to alternative economic programs, rural inhabitants, once predominantly farmers, are increasingly now employed as day labourers in the oil sector and related businesses, creating a risk of unhealthy economic dependency on one sector. Companies import the highly technical skilled personnel such as engineers, geologists, and heavy equipment operators, and hire locally only unskilled workers for security, camp operations (cleaning and

331. Nexen Inc., *Community Involvement*, n.d. Retrieved November 30, 2008 from:

[http://www.nexeninc.com/Sustainability/Community/Community\\_Involvement.asp](http://www.nexeninc.com/Sustainability/Community/Community_Involvement.asp).

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333. Jeffery Flood, General Manager for Social Responsibility, Nexen Inc., *Responsabilidad Social Empresarial Hoy: Nuevas Expectativas de Conducta Empresarial*, n.d.

334. Canadian Business for Social Responsibility, *CSR Frameworks Review for the Extractive Industry*, April 2009.

335. Interview with Argemiro Serna Arias, Head of Security, Yaneth Mantilla P., Safety, Environmental & Social Responsibility (SESR) Coordinator, and Juan Carlos Valencia Lepineux, SESR analyst, Nexen Colombia, Bogotá, August 28, 2008.

336. *Ibid.*

337. Interview with members of Centro de Estudios Regionales y Observatorio de Derechos Humanos, Universidad de Tolima, Tolima, August 7, 2008.

338. See: Gobernación de Tolima, *Necesidades Básicas*, n.d. Retrieved June 11, 2009 from:

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cooking), and physical labour. Usually, these positions are strictly temporary.<sup>339</sup>

Oil projects lead to significant economic imbalances in the regions where they are located. Villages in the vicinity of projects are colloquially referred to as “narco-villages” because of the rapid rise in commercial development and income among a limited number of people while the rest of the municipality remains in poverty.<sup>340</sup> In Tolima, oil development has led to an increased cost of living in the region and residents complain of increasing social problems such as alcoholism and prostitution. These factors diminish the local population’s capacity for organization, decision-making and negotiation. The Regional Indigenous Council of Tolima (CRIT) voices concerns about oil companies’ impact on cultural identity and food self-sufficiency, particularly on Indigenous communities in the areas of Ataco and Coyaima.<sup>341</sup>

The public does not have access to information on royalties paid to municipalities. From their own perspective, company spokespersons confirm the lack of government transparency: “Royalties have been a problem for companies. Businesses cannot exert fiscal control over what happens to royalties.”<sup>342</sup> Further, for royalties not to become a source of social unrest, the State must exercise its responsibility to use taxes in a just and transparent way, and ensure local communities benefit from resource royalties and taxes. In Colombia, where the well-being of rural communities has not been a priority of the central government, the promise of such resources can actually undermine the development of authentic democratic process. The Colombian Oil Association expressed concern about unrealistic expectations of communities. “Some requests are very high, or else they threaten to refuse to let the project go forward. There are unreasonable demands from communities for things that are State responsibilities. The petroleum sector has to be careful not to replace the State.”<sup>343</sup> Furthermore, there are also allegations by community members that oil royalties foster corruption in areas where illegal armed groups operate, turning oil operations into an element of both cause and effect of

the increasing social conflict and political violence in the region.<sup>344</sup>

### *Impact on Indigenous peoples and Afro-Colombians*

The El Queso Block is characterized by significant ethnic and cultural diversity. The records of the National Statistics Department (DANE) indicate that 76.9% of the population residing in the municipality of Coyaima makes claim to Indigenous status, as does 5.2% in Chaparral and 3.7% in Ataco. Information on different ethnicities is documented in the database of the Association of Traditional Authorities of the Regional Indigenous Council of Cauca (CRIT). However, the State does not recognize the existence of many of the Indigenous peoples in the region and as a result, these communities cannot fully exercise their collective rights.

Nexen outlines its consultation process with Indigenous peoples as follows: “First we request information from the Ministry of the Interior. However, even if the State is not aware of the presence of indigenous people, the agreement stipulates that if the company comes upon an indigenous population, it has to report this and carry out a consultative process ... [S]ometimes people represent themselves as indigenous because they have seen the benefits it brings, but a technical study is carried out, with blood tests and studies to determine how long they have populated the area.”<sup>345</sup>

However, Nexen’s Environmental Impact Assessment, presented to the Ministry of Environment, Housing and Territorial Development on areas in El Queso where it is carrying out exploratory drilling, does not include recognition of any Reserves or legally constituted Afro-Colombian or Indigenous communities. A communiqué from the Colombian Institute for Rural Development (INCODER) supported Nexen’s assertion, certifying the absence of such legally constituted communities in the study area.<sup>346</sup> However, a Ministry of the Environment file containing follow-up information on the operation<sup>347</sup> includes a letter from

339. Interview with representatives of Consejo Regional Indígena de Tolima (CRIT), *op. cit.*

340. The term “narco-veredas” is used to make the distinction between the pseudo-development of towns near mining projects and the development of the towns or villages where the project is actually located. In the former, money flows to a small number of people but there is no significant reinvestment in infrastructure. In the latter, the luxury and wasteful practices are evident in infrastructure development and commerce, which is in marked contrast to the situation in the rest of the region.

341. Interview with representatives of Consejo Regional Indígena de Tolima (Regional Indigenous Council of Tolima), Ibagué, August 22, 2008.

342. Interview with Argemiro Serna Arias, Head of Security, Yaneth Mantilla P., Safety, Environmental & Social Responsibility (SESR) Coordinator and Juan Carlos Valencia Lepineux, SESR analyst, *op. cit.* (October 21, 2008).

343. *Ibid.*

344. Interview with representatives of Consejo Regional Indígena de Tolima (CRIT), *op. cit.*

345. Interview with Argemiro Serna Arias, Head of Security, Yaneth Mantilla P., Safety, Environmental & Social Responsibility (SESR) Coordinator, and Juan Carlos Valencia Lepineux, SESR analyst, *op. cit.* (October 21, 2008).

the Ministry of the Interior which mentions three Indigenous governing councils in Ataco and Yaguara Indigenous communities in Chaparral, and calls for compliance in holding consultation processes.<sup>348</sup>

In letters filed at later dates, the absence of traditional communities is reiterated. Indigenous populations are identified, but outside official project boundaries,<sup>349</sup> creating suspicions in the Indigenous communities that the boundaries had been modified to exclude them.

In general in Tolima, when consultation processes do take place, they lack meaningful procedures. CRIT has stated that such processes are usually highly inadequate and in most cases, the supposed consultation is done after the company has begun exploratory drilling. The multinational limits its actions to information sessions and there is no space for the community to consider whether it wants to accept the project or not.<sup>350</sup> Moreover, CRIT complains of a lack of access to information on extractive projects, or of opportunities to take part in the decision-making processes of municipal Boards.

### *Environmental concerns and competing interests*

Little official information was available on environmental impacts of petroleum exploration in Tolima. Environmental authorities limit their mandate to monitoring company activities and a review of environmental management plans.<sup>351</sup> However, it can be noted more generally that risks to the environment in the region arise from both inadequate quality control by many companies and the highly volatile situation in the region. Water bodies have been polluted, on the one hand because of attacks on pipelines, particularly in the Upper Magdalena area, and as well in Tolima because of thefts of gasoline and spills in pipelines with faulty connections.<sup>352</sup>

### *Conclusions*

Nexen has well-developed CSR policies. However, based on this case study, the company is nevertheless exposed to medium to high potential risks of benefiting from human rights violations and/or benefiting those who commit such violations. Again, we do not impute any intentionality in this respect, but this case study suggests that several significant human rights risks remain:

- the company may be benefiting from earlier appropriation of lands and titles, and rewarding those who committed human right violations or took advantage of opportunities generated by such violations;
- the company may be contributing to consolidation of paramilitaries in new groupings; and
- the company may be contributing to marginalization of Indigenous peoples and Afro-Colombians.

*Risk of benefiting from earlier appropriation of lands and titles:* In an area of historic and current violence, landowners may have sold land titles to intermediaries (including paramilitaries) under fear or threat. In the absence of adequate mechanisms for documenting land title and history, adequate investigation of land theft and a credible reparations mechanism for those who have been violently displaced from their land, resource companies operating in the area are at risk of benefiting from earlier theft of lands and titles. There is also a risk of inadvertently rewarding those who committed human rights violations or took advantage of opportunities generated by such violations. Likewise, the consent of Indigenous peoples and the involvement of local communities may also have been subject to intimidation; one Indigenous organization (CRIT) has complained of inadequate consultation processes that do not address these concerns. Nexen works in partnerships

346. República de Colombia, Ministerio de Ambiente, Vivienda y Desarrollo Territorial, *Resolution 1324*, Bogotá, June 7, 2006, in which it granted an environmental permit to Nexen Petroleum Colombia Limited in the Exploratory Drilling area El Queso.

347. República de Colombia, Ministerio de Ambiente, Vivienda y Desarrollo Territorial, Departamento de hidrocarburos, “Área de perforación exploratoria el Queso Este”, in *File No. 3457, Nexen Petroleum Colombia Ltd., Municipalities of Chaparral, Ataco y Coyaima, Departament of Tolima*, Bogotá, n.d.

348. República de Colombia, Ministerio de Ambiente, Vivienda y Desarrollo Territorial, Departamento de hidrocarburos, [Letter directed to Nexen’s legal representative], in *File No. 3457, “Área de perforación exploratoria el Queso Este”, Nexen Petroleum Colombia Ltd*, Bogotá, December 2, 2003.

349. República de Colombia, Ministerio de Ambiente, Vivienda y Desarrollo Territorial, Departamento de hidrocarburos, [Letter dated May 25, 2006, directed to Nexen’s legal representative, by means of which a certificate was issued by the Ministry of the Interior and Justice, declaring the non-existence of ethnic communities (Afro-Colombian or Indigenous) in the area directly affected by the mining project], in Ministerio de Ambiente, Vivienda y Desarrollo Territorial, *Resolution 1324*, Bogotá, June 7, 2006.

350. Interview with representatives of Consejo Regional Indígena de Tolima (CRIT), *op. cit.*

351. *Ibid.*

352. Interview with employees of Corporación Autónoma Regional del Tolima (CORTOLIMA), Ibagué, August 25, 2008.

with a wide range of other companies. Avoiding such risks requires the company to exercise due diligence on the partners' operations as well as its own, including land titles and all contracting arrangements.

*Risk of contributing to consolidation of paramilitaries in new groupings:* Nexen's security arrangements are with the Colombian Army and it uses former Colombian military personnel for security. Nexen representatives referred to a number of CSR policies and guidelines, including the UN *Global Compact*, one of the weakest international standards. While the company's CSR policies go beyond these standards, it did not make reference to the Voluntary Principles on Security

and Human Rights, which are more pertinent in a conflict zone. Nor did it refer to other guidelines or practices to exclude possible links of security personnel with past human rights violations, or with paramilitary organizations or their successors.

*Risk of contributing to marginalization of Indigenous peoples and Afro-Colombians:* CRIT has also expressed concerns about oil companies' impact on cultural identity and food self-sufficiency. The company reports there are no Afro-Colombian or Indigenous communities in the company's concessions, which is inconsistent with data from CRIT and some government agencies.



*Campesino* near Marmato, Colombia. Photo: Jean Symes.

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## **Appendix 2: Interviews, workshops, and meetings**

### ***Interviews***

- Acuña, Teofilo, President of Federación Agrominera del Sur de Bolívar (FEDEAGROMISBOL), Bogotá, August 2008.
- Employees of Corporación Autónoma Regional del Tolima (CORTOLIMA), Ibagué, August 25, 2008.
- Felder, Frederick, Vice president, Greysar Resources Ltd., Bogotá, August 20 and October 23, 2008.
- Human rights activist, Bogotá, July 16, 2008.
- Human rights defenders, Barrancabermeja, August 2008.
- Indigenous rights activist, Centre for Indigenous Cooperation (CECOIN), Bogotá, April 15, 2008.
- Indigenous rights activist, Bogotá, July 16, 2008.
- Laserna, Luis Guillermo, Social management director, Greystar Resources Ltd., and director of the Greystar Foundation, Bucaramanga August 22, 2008.
- Local representative of SINTRAMINERGETICA, Marmato, September and October 2008.
- Local residents, California, July 17, 2008.
- Local women's association, Bucaramanga, October 2008.
- Members of Centro de Estudios Regionales y Observatorio de Derechos Humanos, Universidad de Tolima, Tolima, August 7, 2008.
- Member of the Defensoría del Pueblo (Human Rights Ombudsman), Riosucio, September 19, 2008.
- Members of the commercial and political sections of the Canadian Embassy, Bogotá, August 2008.
- Park, Ian, President, Francisco Zapata, Vice-President, Colombia Goldfields, and Gabriel Jiménez, Corporación Montaña, Medellín, October 27, 2008.
- Ramírez, Francisco, President of SINTRAMINERCOL (Colombian Union of Mine Workers), July 16, 2008, Bogotá.
- Ramírez, Francisco, President of SINTRAMINERCOL (Colombian Union of Mine Workers), July 28, 2008, Bogotá.
- Representatives of a local peasant organization, Caramanta, September 16, 2008.
- Representative of a local peasants' association, Támesis, June 13, 2008.
- Representatives of an Indigenous organization of southwest Antioquia, Medellín, July 2008.
- Representatives of Consejo Regional Indígena de Tolima (CRIT), Ibagué, August 22, 2008.
- Representatives of Corporación Autónoma Regional para la Defensa de la Meseta de Bucaramanga, October 2008.
- Representatives of Organización Indígena de Antioquia, Medellín, July 22, 2008.
- Representative of Proceso de Comunidades Negras, Bogotá, June 10, 2008.
- Rivas, Angela, Coordinator, Business and Conflict Sector, Catalina Niño, Research, Business and Conflict Sector, and Pilar Lozano, Research, Business and Conflict Sector, Fundación Ideas para la Paz, Bogotá, August 4, 2008.
- Senator Jorge Enrique Robledo, Colombian Senate, Bogotá, September 26 and 27, 2008.
- Serna Arias, Argemiro, Head of Security, Yaneth Mantilla P., Safety, Environmental & Social Responsibility (SESR) Coordinator, and Juan Carlos Valencia Lepineux, SESR analyst, Nexen Colombia, Bogotá, August 28 and October 21, 2008.
- Salinas, Yamile, Advisor, and Camilo González Posso, President, Indepaz, Bogotá, August 15, 2008.
- Villarruel Toro, Julián, Vice-President for Corporate and Legal Affairs, B2Gold Colombia, Bogotá, August 26 and October 29, 2008.
- Zapata, Francisco, Vice-President, Colombia Goldfields, Medellín, August 12, 2008.

### ***Workshops and roundtable discussions:***

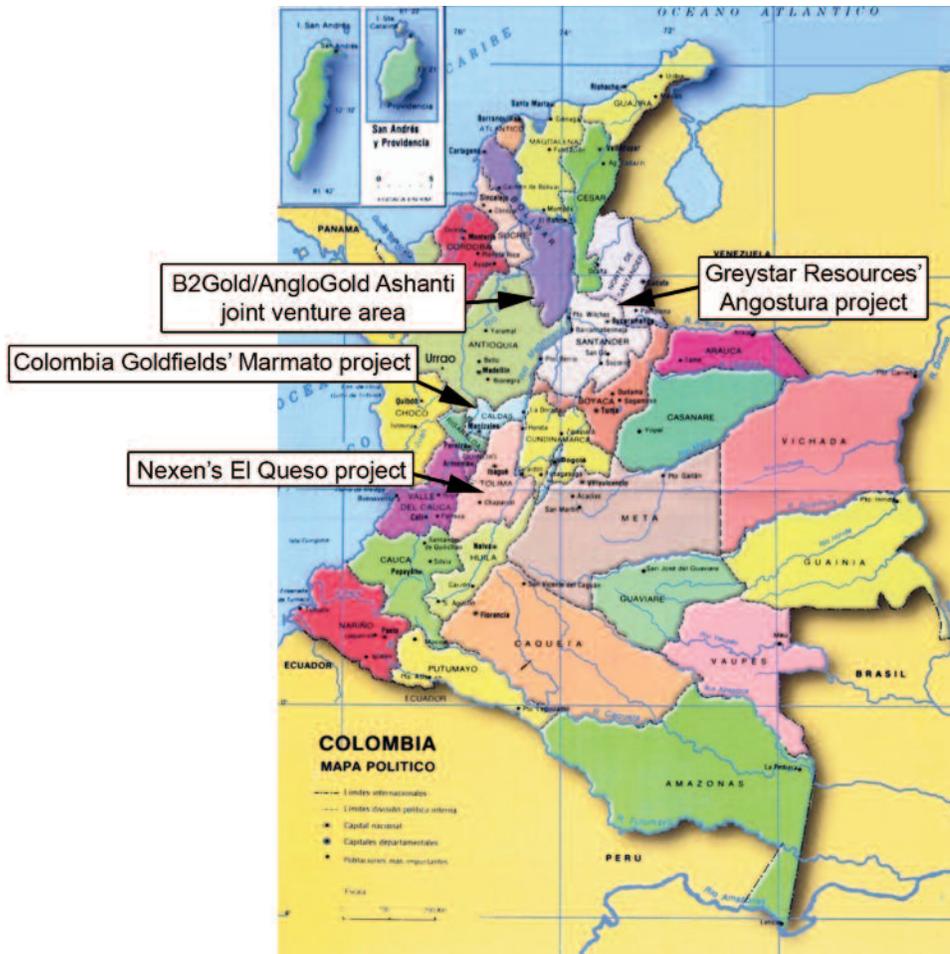
- Central Unitaria de Trabajadores (CUT) Regional Tolima, August 8, 2008.
- Peasant communities and women's associations in the Province of Soto, November 2008.
- Inhabitants of Marmato, May 9 and July 16, 2008.

### ***Public meetings:***

- Comité Cívico Pro-defensa de Marmato, with participation by delegations from CRIDEC, Defensoría del Pueblo and Personero Municipal, September 23, 2008.
- Community representatives from Caramanta with Juan Guillermo Valencia, Caramanta municipal mayor, March 1, 2008.

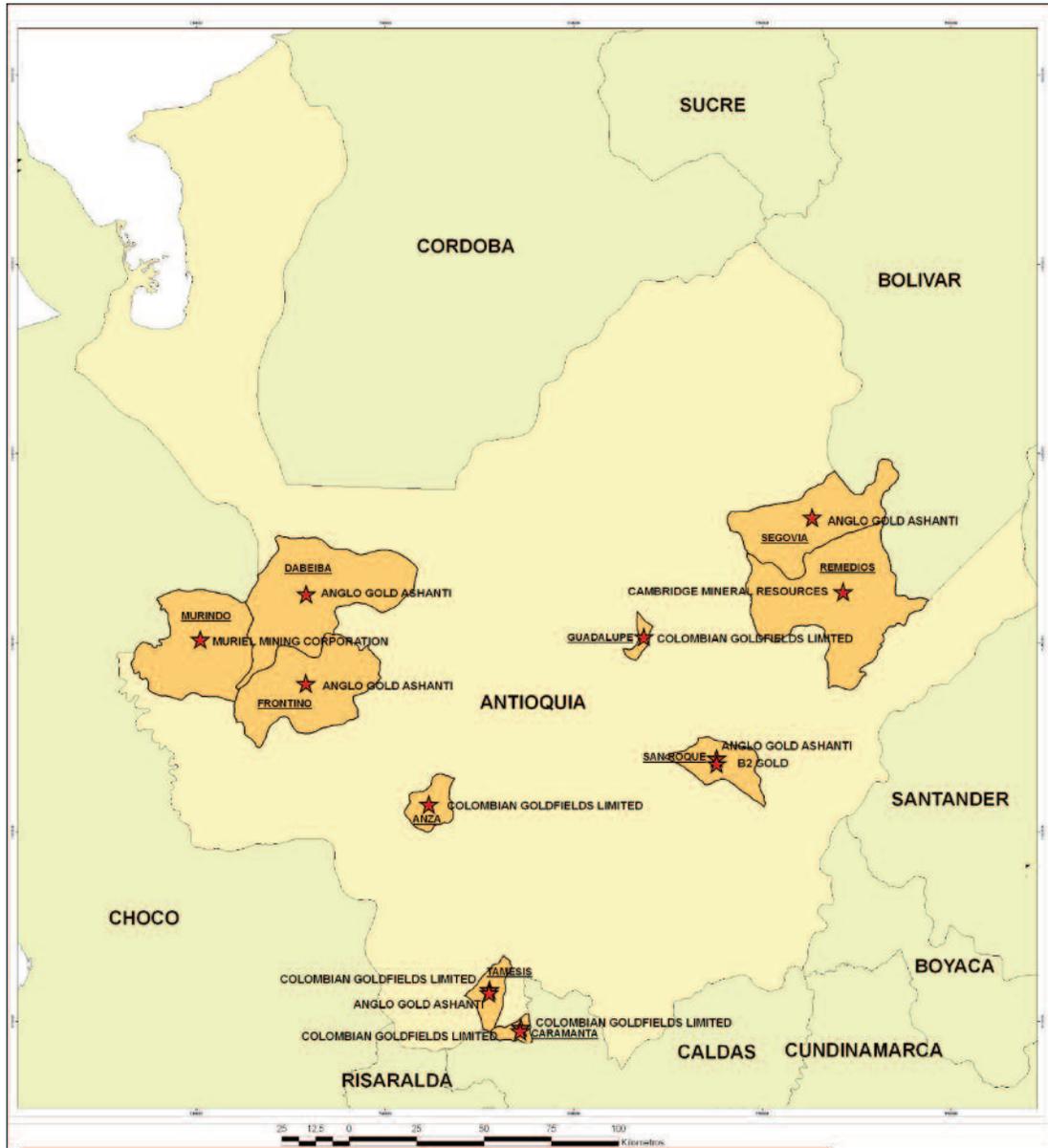
### Appendix 3: Maps of study areas and affected municipalities

Map 4: Location of study areas



### Map 5: Mining conflicts in the department of Antioquia

(The shaded areas represent municipalities; the stars are not to scale and show only which municipality the companies are operating in.)



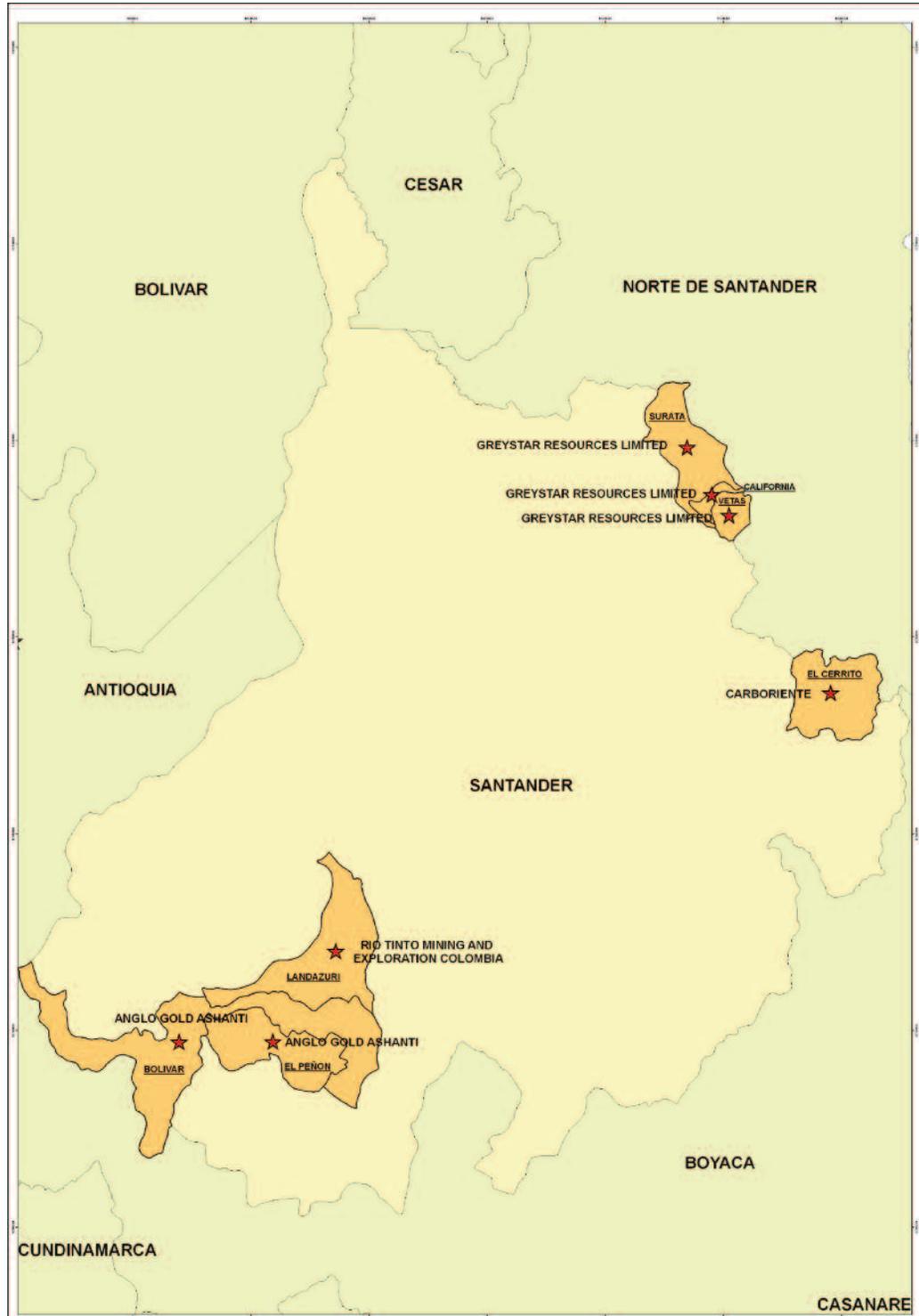
**Map 6: Mining conflicts in the departments of Risaralda and Caldas**

(The shaded areas represent municipalities; the stars are not to scale and show only which municipality the companies are operating in.)



**Map 7: Mining conflicts in the department of Santander**

(The shaded areas represent municipalities; the stars are not to scale and show only which municipality the companies are operating in.)



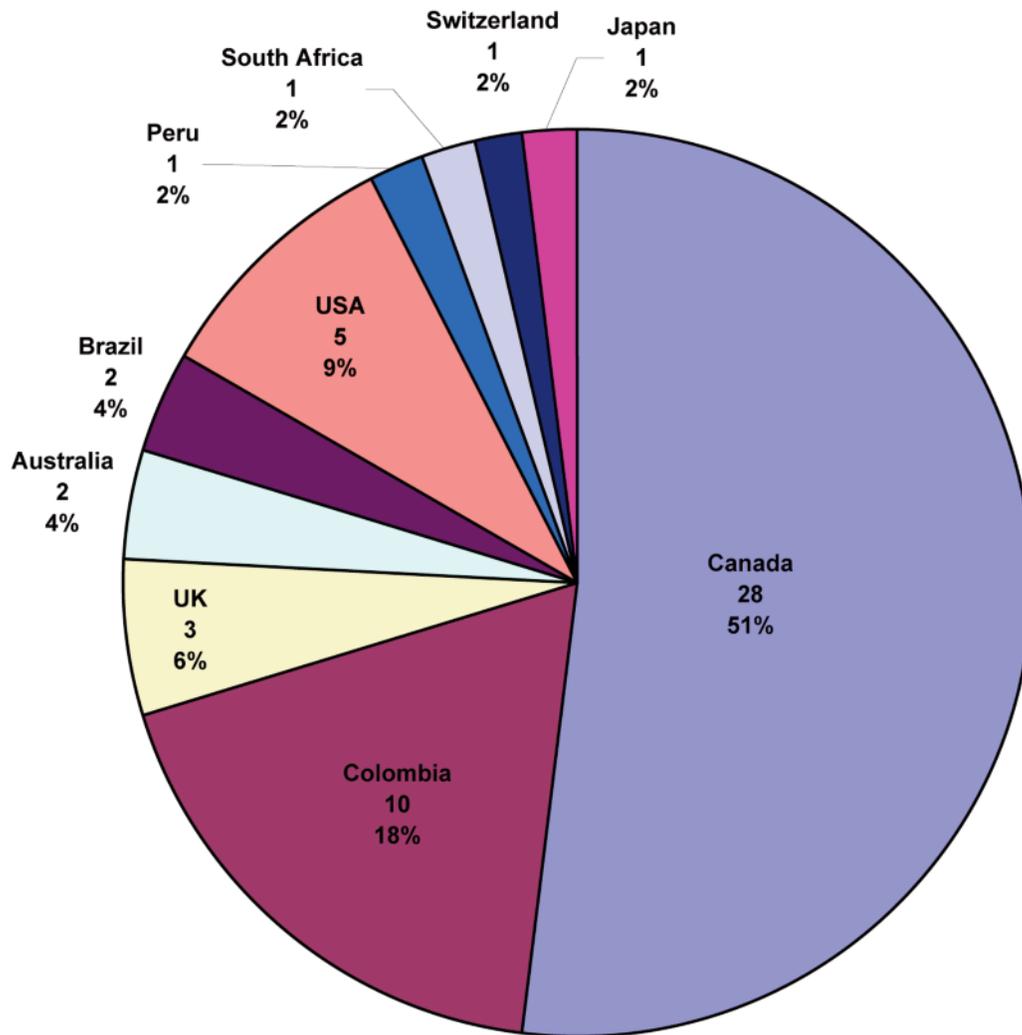
## Appendix 4: Interview guide (Spanish – not translated)

(This interview guide was developed for use with Indigenous organizations; similar guides were developed specifically for other civil society sectors: labour, human rights, peasants, and women.)

1. ¿Cuáles son los procesos regionales o movimientos indígenas que han sido más afectados o amenazados por proyectos extractivos durante los últimos 10-20 años (minería, petróleo, agro-combustibles, otros)?
2. ¿Existen casos de inversión canadiense (minería, petróleo, agro-combustibles, otras) en los territorios indígenas o en las zonas campesinas aledañas? ¿Qué tipo de inversión – directa / indirecta / no se sabe?
3. ¿Cómo ha sido el proceso de entrada o la dinámica de ampliación de estos proyectos extractivos en la región? ¿Qué posición tomen los líderes de las comunidades frente a la entrada de estos proyectos?
4. ¿En lo que se refiere al subsuelo, ¿cómo es la relación de las comunidades indígenas con él?, y ¿las reformas al código minero han afectado esta relación?
5. ¿Cuáles son los derechos individuales y/o colectivos que son típicamente más vulnerados y los impactos más graves a causa de estos proyectos extractivos? (*ver guía de clasificación de Derechos y Democracia*).
6. ¿Existe casos de vulneración de los derechos humanos, desplazamiento forzado o cambio en el uso de las tierras como resultado directo-indirecto de la entrada de los proyectos extractivos.?
7. ¿Cómo aseguran las empresas extractivas su control sobre el territorio?
8. ¿Qué tipo de acompañamiento y apoyo puede brindar su organización en estos casos? ¿Cuáles han sido los instrumentos y mecanismos de consultación y resistencia en el momento de desacuerdo con un proyecto extractivo?
9. ¿Las empresas multinacionales y sus socios empresariales y institucionales en Colombia respetan el mecanismo de la consulta previa como derecho internacional? ¿El Estado o las empresas ofrecen algunas garantías a las comunidades en cuanto a la implementación de estos proyectos extractivos?
10. ¿Existe mano de obra de comunidades indígenas o niños trabajando en los sectores extractivos? ¿Cómo cambian el estilo de vida de las comunidades indígenas y las actividades económicas y socioculturales en estos casos?
11. ¿Qué tipo de amenazas existen al futuro sobre el patrimonio ambiental y cultural de los territorios indígenas en cuanto a mega-proyectos?

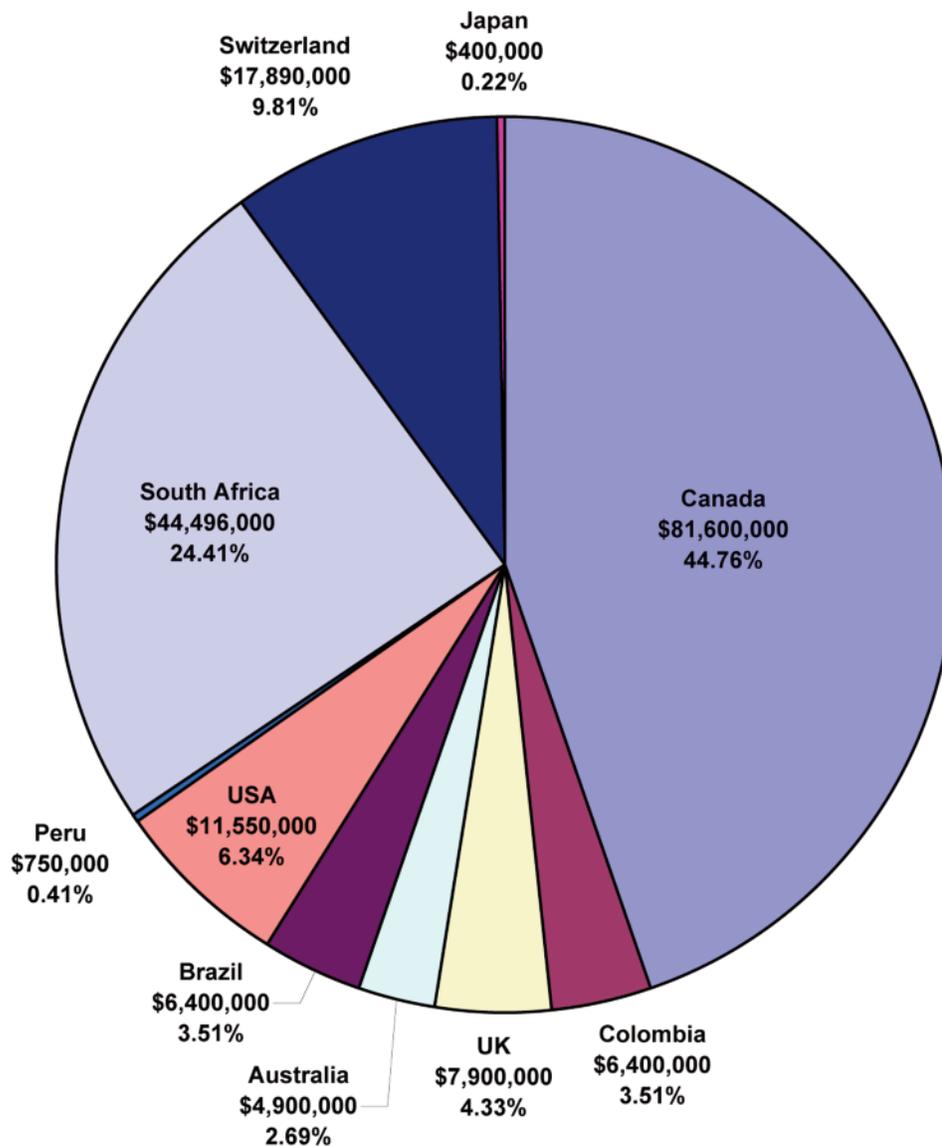
## Appendix 5: 2008 Metals Exploration Investment in Colombia

Colombian Mineral Exploration Companies' Domicile  
(i.e. 52% or 28 Companies investing in metals exploration in Colombia are from Canada.)



Source: Ministry of Mines and Energy (2008)

**Amount of Metals Exploration Expenditure/Companies' Domicile Country Exploring in Colombia (i.e. Companies based in Switzerland are investing US\$ 17.9 M or 9.81% of the total metals exploration expenditure in Colombia in 2008.)**



Source: Ministry of Mines and Energy (2008)



 *Inter Pares*

WORKING FOR CHANGE...AMONG EQUALS  
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