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Gold Mining and local communities in Southern Córdoba in Colombia, the case of El Alacrán mine



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Title: **Gold Mining and local communities in Southern Córdoba in Colombia, the case of El Alacrán mine.**

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Date: 2019ko azaroa

Design and layout: Marra, S.L.

Printing: Lankopi S.A.L.

Legal deposit: BI-02478-2019

Cover photo: Guillermo Otano

Inside photographs: Javier Lautaro, Guillermo Otano

Executive summary

In recent years, gold mining in Colombia has attracted public attention both domestically and internationally. Over the last decade, national development plans have identified gold as one of the three minerals with the greatest export potential in Colombia, together with coal and oil. The stability of its price in international markets has made it desirable for foreign investors, as well as national and regional elites, who see the precious metal as not only a lucrative business, but also a fundamental driver for economic growth.

For the communities living in the mining areas, however, gold represents a very different reality. Behind the official statistics, there are scenarios permeated by complex conflict dynamics, which are vulnerable to becoming even worse. Where small-scale gold mining is abundant, high levels of inequality and poverty are often associated with a lack of security and the presence of various armed groups. The combination of unsatisfied basic needs, on the one hand, and the presence of organised criminal networks, on the other, encourages the generation of illegal economies. Some sources estimate that 80% of national gold production comes from mines that have no legal operating permits. And yet most of this gold with a dubious origin ends up in legal export channels due to the difficulty of establishing reliable traceability systems.

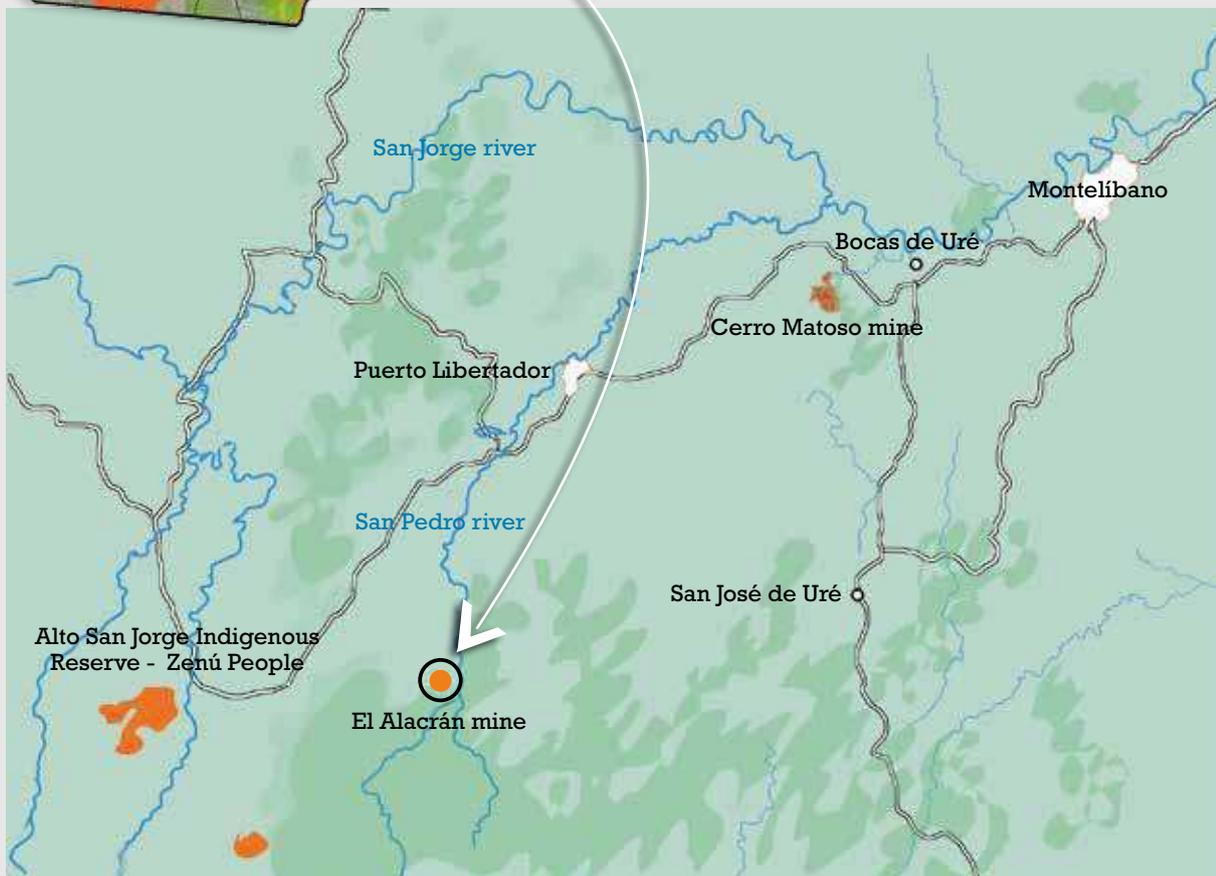
This research addresses some of the most pressing problems and challenges posed by gold mining in Colombia following the signing of the Peace Accords between the government and the FARC-EP, in November 2016. Through a case study of the El Alacrán gold mine, the study offers a detailed analysis of the complex political geography of Southern Córdoba, where the mine is located. The area is rural and traditionally agricultural, but in recent decades it has experienced an expansion of mining activity. This includes small-scale artisanal operations where the gold extraction has become somewhat more mechanised, as well as large open-pit mining, such as that at Cerro Matoso, dedicated to the extraction of ferronickel, and the plans of Minerales Córdoba S.A. to open another mine in the near future with a view to exploiting the copper reserves in the area where the El Alacrán mine is currently located.

The investigation is divided into two parts. The first addresses the mining policies and regulatory developments that control this activity, placing special emphasis on the contradictions of the legal frameworks and the challenges posed by the formalisation of informal gold mining. The second analyses the different types of mining that take place in Southern Córdoba, focusing on the impacts these have on local communities, especially the indigenous Zenú people of the Alto San Jorge Reserve. Finally, as a conclusion, we set out the main sources of conflict in the region and identify possible ways to resolve these.

The research has been undertaken by the CINEP/Programa por la Paz (CINEP/PPP) at the request of the **ALBOAN** Foundation, with funds from the Basque Agency for Development Cooperation and the Provincial Council of Bizkaia. Both organisations collaborate in the Conflict-Free Technology campaign and are part of the global advocacy network Justice in Mining, promoted by the Society of Jesus. We hope that the efforts of this joint work will contribute to lasting peace in the region.



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Context of the mining policy and regulations in Colombia

Colombia: strengthening extractive industries shapes and intensifies conflicts

Since the 1990s, Latin America has seen a reinvigoration of its extractive industries. The various governments in the region, in general terms and with different justifications, have maintained a commitment to a primary export model rooted in historical developments (García Velandia, 2015a, pp.17-19). This opening up of the extractive industries has consolidated the three-decade-old neoliberal model found in the Latin American region. Under this model, the State renounces its role as an investor while new private, national, and international capital, is beginning to have a greater impact, by exerting different pressures and through political negotiations, on the regulations and decision-making affecting national development.¹

It has been confirmed that this model, today as in the past, implies environmental and social effects in the regions and leads to even more precarious living conditions for the affected populations, massively and systematically violating a multiplicity of fundamental rights, both individual and collective, relating to a dignified life and the organisation, mobilisation and participation of communities; consequences that particularly affect women's rights as they intensify patriarchal violence against women, adolescents, and girls and exacerbate gender inequalities (various organisations, 2016; Carvajal, 2016, pp.31-32).

¹ For authors such as Pardo (2018), this is a case of state appropriation by transnational trade union powers. However, beyond this it is also important to understand how these powers are interlaced with the local and regional centres of power in each context (McKay & Golque, 2016) and the historical conflicts in each of the zones.

At the beginning of this century, coinciding with the 2006² economic crisis, the government of the time opened the door to a growing influx of international capital intent on the large-scale extraction of minerals and their commercialisation in the global financial markets. This involved promoting the nation as a mining country, together with creating flexible channels for investment and consolidation, and the expansion and intensification of mining in most regions. This latter aspect occurred and is still occurring in regions where there are human populations —farming communities, ethnic groups, and urban citizens— and natural ecosystems, armed conflict and, in many cases, local mining ventures, where different types of conflicts are shaped and/or intensified. Such conflicts are largely an expression of the clash between the general interests of citizens [and their rights] and a mining policy aimed at satisfying the appetite to allocate State revenue and the economic interests of large companies, both domestic and foreign (Pardo, 2013, p.194).

The current government has opted to maintain the revenue model on the grounds that the benefits of mining-energy projects will leverage solutions for “great needs” and, for this purpose, it has proposed creating conditions that boost production and increase exploration based on “environmentally responsible, inclusive, competitive, and resource-generating activity” (National Planning Department; Departamento

² Since the beginning of the 21st century, several crises have arisen or been replayed at the global level, involving food, energy and fuel, climate and finance. Without questioning the model, the response to these crises involves imagined scarcity, where land and natural resources become a necessity for advanced capitalism, and countries in the global south are central to new investments, re-editing processes of primitive accumulation in global capitalism (Sauer & Borrás, 2016). Essentially, this is the expansion of capitalist market relations and the ongoing process of accumulation by dispossession (Harvey, 2003). In practice, this is reflected by the search for new and safer investment opportunities and capital mobilisation, with diverse investors (pension funds and companies in the financial sector).

Nacional de Planeación, DNP, 2018, p.698)³. This is despite it recognising that the benefits of these activities do not correspond to the social and environmental costs absorbed by the regions, costs that exceed the management and mitigation capacities of the regional bodies, and the fact that the socioenvironmental impacts of this industry generate tension (DNP, 2018, p.701). These statements should be understood as part of the official rhetoric and private company narrative wherein the environmental impacts of mining are generated by illegal development rather than the activity *per se*. Similarly, in recent months the way has been paved for fracking, to exploit non-conventional deposits.

In the face of this advance of extractive industries⁴, broad waves of social mobilisation have arisen in the country, mobilisation that has also used legal actions as a strategy to defend the regions against mining and hydrocarbon extraction. The Political Constitution, and in particular citizen participation mechanisms and functions established for municipal councils, have also been used directly to try to curb the national policy that prioritises the extractive model; these have been implemented at the local level, through public consultations (Negrete,

3 By the end of 2017, Colombia had granted 8,375 mining titles, representing 2.63 % of the national territory under exploitation, 0.66 % in construction and assembly, and 0.23 % in exploration. Within the framework of the mining policy, minerals such as gold, silver, copper, iron, and emeralds are recognised as being strategic (National Mining Agency; Agencia Nacional de Minería, ANM, 2018a, p.10).

4 According to data from the National Forum for Colombia (Foro Nacional por Colombia, 2017) the increase in mining titles is evidenced by the rise from 2,711 titles in 2004 to 9,602 in 2015. Similarly, the National Plan for Mining Development, Vision 2019, issued in 2006, proposed progressively boosting the mining industry, setting the goal of doubling coal extraction and quadrupling precious metal production (Mining Energy Planning Unit; Unidad de Planeación Minera Energética, UPME, 2006, pp.77-78). This document outlines the need to harmonise the interests of local communities with national and international interests, prioritising the potential benefits of mining in terms of employment and resources. (UPME, 2006, p.69).

2017, p.5). This social mobilisation relating to socioenvironmental conflicts constitutes an arena with a great deal of potential to dispute the definitions of local and national development, regional environmental planning, production of knowledge and citizen participation⁵, in the face of the State's inability and non-compliance with regard to devising an alternative to the extractive model that guarantees the rights of the communities. However, the mobilisation and regional planning proposals generated by the communities also tackle violence against social leaders and grassroots organisations.

While this is happening, there is slow implementation, and in many cases paralysis, of the measures of the Peace Agreement with the Revolutionary Armed Forces of Colombia – FARC-EP– signed in November 2016, that led to the construction of peace in the region and the guaranteeing of the rights of poor rural populations. This, among other things, implies reflecting collectively on the origin and cause of social conflicts in the country, which are caused by inequality in access to land and the precarious social and environmental planning in the region. Although the Peace Agreement does not refer to mining directly, except in the fight against forms of illicit economy, including criminal mining (while warning that traditional artisanal mining cannot be considered as such), there are clear references to the need to push land use planning forward, with much greater participation by the local communities, and to implement environmental protection measures.

5 This dispute has been paralleled in the judicial system: between 2010 and 2017 the 25 judgements were passed by the Constitutional Court and 11 by the State Council, (National Forum for Colombia, 2017). This accounts for tensions in the way mining legal provisions have challenged the right to citizen participation, the competencies between different territorial levels of the State, and the social, environmental, economic and cultural impacts of mining and hydrocarbon extraction on people, communities, and ecosystems. According to Constitutional Court judgement SU-133, 2017: "It was in the context of this new constitutional framework that discussions on the impacts of extractive industries moved to the judicial setting."

General regulatory framework for mining in Colombia

The historical evolution of Colombian mining regulations demonstrates that, particularly since the 1970s, mining has been recognised as a promising avenue for the country's economic development. On that basis, it began to open up the sector over the following two decades. At the same time, differential rights began to be recognised as part of the culmination of intense social mobilisation in the late 1980s: the Political Constitution of 1991 recognised the multi-ethnic and multicultural character of the nation, and set out a series of laws guaranteeing the right to ethnic difference, local political participation, and environmental regulation and protection in the country⁶ (García Velandia, 2015b).

In 2001, the Mining Code was issued (Law 685 of 2001), ratifying the subsoil as the property of the State (which according to the Constitutional Court includes all regional bodies, not only those of a national nature), while establishing the Mining Title as the central instrument through which the right to explore and exploit state-owned deposits is granted, under the principle of "first in time, first in law", implying the priority of the first applicant over others when they meet the necessary requirements⁷. It has been pointed out that this law, in addition to substantially changing the guidelines with which the mining sector was governed, presents serious incompatibilities with the 1991 Constitution: it disregards the Social Rule of Law by limiting the role of the State and nullifying its entrepreneurial function; it breaks the decentralised structure of the State by prohibiting regional organisations from determining their mining regulations; and

⁶ Law 70 of 1993: recognising the rights of Afro-Colombian populations; Law 99 of 1993: on environmental protection; Law 388 of 1997: on land planning, among others. Regulatory development that had a progressive parallel in the jurisprudence of the Constitutional Court.

⁷ The mining title corresponding to the mining concession contract covers all phases from exploration to the closure or abandonment of a mine (Articles 14 and 45 of Law 685 of 2001).



Access sign for the sheds at the mine, El Alacrán mine.

defines its own rules for environmental management over those of the sector responsible for doing this in Colombia (Martínez; Peña; Calle & Velásquez, 2013, p.11-15).

Even the Constitutional Court (2017a) stated that in the context of the institutional framework established by the 2001 Mining Code, mining became "a source of social, cultural and environmental conflict." This is directly related to the fact that after it was issued, there was an avalanche of applications for mining titles, as well as serious corruption problems and a mining contract fair, a situation that reflects the State's failure as the administrator of natural resources, particularly with regard to licensing, control, and inspection (Pardo, 2013, p.192).

In environmental matters, the Code establishes that the integrity and enjoyment of the environment, as well as the duty to properly handle non-renewable natural resources are "compati-

ble and concurrent” with the need to “rationally” promote and develop the extraction of mineral resources, as an essential part of the national economy and social welfare (Article 194). It also determines that in order for an environmental licence to be granted, the stakeholder must deliver, together with the Mining and Works Programme, an Environmental Impact Study⁸ (Article 204). This, in principle, implies that no mining concessions will be granted unless this requirement is met, but this is not the case for exploration which, *per se*, involves physical intervention in the landscape. It is clear that these actions are more focused on individuals than public organisations and that, in any case, there is no express involvement of communities in this step, not even of ethnic groups (Negrete, 2013, p.39), despite the constitutional guarantees that these collectives have.

In 2010, Law 1382 was passed, aimed at reforming the Mining Code and defining mining exclusion zones, including upland *páramos* and Ramsar wetlands⁹, as well as mining formalisation procedures, among other issues. This law was subsequently declared unconstitutional as there was no prior consultation with ethnic groups. In Ruling C-366 of 2011, the Constitutional Court considered that this regulation, by reformulating the concept of mining activity, was liable to being applied in indigenous and afro-descendant territories and, since the exploitation of mining resources is a crucial aspect for the protection of ethnic and cultural diversity,

⁸ This should contain the elements, information, data and recommendations required to describe and characterise the physical, social, and economic environment of the site or region of the project and exploitation work; the impacts of these projects and work with a corresponding evaluation; plans for prevention, mitigation, correction and compensation of any impacts; the specific measures to be applied for the abandonment and closure of the working fronts and a management plan for these; and the necessary investments and monitoring systems for the measures mentioned.

⁹ Ramsar wetlands are those included by each country in the List of Wetlands of International Importance under the Convention on Wetlands of International Importance. Especially Waterfowl Habitats. In Colombia, there are 7 locations covering 754,148 hectares.

this right should have been exercised (García Velandia, 2015b, p.14).

Despite being declared unconstitutional, the Court ordered that it remains in force temporarily for two years so as not to cause harmful effects on the environment since it protected strategic ecosystems. Within this period, the Government had to develop a new law for the sector under consultation with the ethnic groups (Rubiano, 2012, pp.1-2). However, this has still not happened because the main law currently in force is Law 685 of 2001, with the modifications established in 2015 with the National Development Plan Law (Law 1753), which, for example, prohibits mining in Ramsar wetlands and includes the possibility of restricting productive activities in other ecosystems considered of strategic importance (Article 172).

Informal mining and formalisation

At the beginning of the 2000s, a twofold scenario was evident: on the one hand, the Mining Code recognised the State's obligation to support the formalisation of informal mining; but on the other hand, in different documents stating the national mining policy, the latter was considered an obstacle to sustainable development, meaning there was scope for it to be persecuted and criminalised (UPME, 2006). A key point in the analysis is that, at that time, there was no clear definition differentiating informal and illegal mining from criminal mining.

The Mining Code defined illegal mining as any practice carried out without a valid mining title, establishing only two exceptions: occasional manual mining and panning¹⁰. From this point onwards, there was an important reshuffling, where the definitions of these phenomena were

¹⁰ Panning was recognised as a popular activity among the inhabitants of present-day alluvial land. It involves the manual washing of sand, without machinery or mechanical means, in order to separate and collect precious metals; to undertake this activity, it is necessary to register with the municipal offices (Articles 155 and 156 of Law 685 of 2001).

broadened and strengthened, and various lines of treatment were established. In 2003, the National Government developed Decree 2191, which established a Technical Mining Glossary. Within this, small-scale mining is defined as: that which is carried out manually, not exceeding 250 tonnes per year of extracted material; traditional exploitations, such as those deposits traditionally exploited by neighbouring communities as the only source of supply; and Special Reserve Areas such as those where traditional exploitation is carried out, where external extraction proposals are temporarily not accepted.

This opened a new avenue for recognising those populations dedicated to small- and medium-scale mining as a means of subsistence, and who have developed specific territoriality around this practice. Thus, Decree 1666 of 2016 defines subsistence mining as:

mining activity undertaken by natural persons or groups of people who are dedicated to the open pit extraction and collection of river sands and gravels intended for the construction industry, clays, precious metals, precious and semi-precious stones, involving only manual methods and tools, without using any kind of mechanised equipment or machinery in the extraction process.

These exercises that define other mining modalities are linked to definitions of who can initiate formalisation processes and obtain mining titles. Since 2010, both in Decree 2715 of that year and the reformed Mining Code (Law 1382), it has been established that only those who meet two requirements may initiate legalisation processes: (i) persons who are able to demonstrate through technical and commercial documentation that they have been carrying out the activity for at least five years; and (ii) who, furthermore, can demonstrate a minimum prior existence of ten years, counting from 2010. Similarly, Law 1382 of 2010 es-

tablished formalisation time limits, after which small mining works with no mining title were to be treated as illegal mining¹¹. However, on April 20th, 2016, the State Council provisionally suspended the effects of this decree, considering that these formed part of a regulation that had already been expelled from the legal system for being unconstitutional, i.e., Law 1382 of 2010.

These constant oscillations in the mining formalisation regulations generated a series of significant technical, organisational, and logistic difficulties for stakeholders hoping to legalise their mining practices. In an attempt to find a solution, in 2015, the National Government developed the Single Regulatory Decree of the Administrative Sector of Mines and Energy, which sought to compile and simplify the national system of mining regulation, and unify the procedures, technical requirements, and omissions for the mining formalisation process. In any case, the success of legalisation and formalisation processes depends to a great extent on whether these policies are adapted to the needs and difficulties of small-scale mining. A key indicator is the estimated time needed to successfully complete the formalisation processes: in this case between 3 and 5 years (Organisation for Economic Cooperation and Development, OECD, 2016). Currently, all natural persons and associations that intend to formalise their mining practices (up to 150 and 500 hectares, respectively), must submit a series of documents and plans that accredit the mining work (Decree 1073 of 2015) and obtain a temporary environmental licence while the definitive mining title is sought from the environmental authorities (Law 1955 of 2019).

¹¹ Within the framework of these new regulatory advances, around 4,000 requests for formalisation were received from all over the country, for which Decree 933 of 2013 was formulated to govern administrative actions, procedures, technical and environmental aspects, conflict resolution processes for zones where titles had already been granted, the definition of restricted zones, and the maximum areas liable to formalisation, in addition to other aspects.

Regulation of gold mining

By 2014, Colombia was the 6th largest gold producer in Latin America, and the 19th largest in the world. Over the last decade, extraction has tripled, mainly due to small- and medium-sized mines, where a high proportion are set up with no mining titles (OECD, 2016). By 2017, it had climbed one place in the global ranking, producing 41 tonnes and exporting 56.6 tonnes (ANM, 2018b). In that year, the gold mining titles accounted for 22.11% of the total number of mining titles in the country, 1,961 out of 8,866, of which 402 (20.5%) were in the exploration stage, 661 (33.7 %) in construction and assembly, and 898 (45.8 %) in operation (ANM, 2017).

With regard to this particular issue, another major effort has been required to regulate specific practices associated with small- and

medium-scale gold mining. Two types of measures have been promoted regarding the use of mercury in the extraction process, as well as concerning the traceability inherent in registration processes. Firstly, through the Mercury Law (1658 of 2013), the National Government mandated the eradication of the use of mercury throughout the country, setting a period of no more than 10 years for industrial activities and a maximum of 5 years for mining use, stipulating that higher education institutions should be encouraged to develop training activities, research, and local outreach focused on achieving these objectives. To this end, the Ministry of Mines and Energy had to devise a strategy promoting the registration of mercury users in its sector. This Law established a maximum of two years for the creation of control and restriction measures relating to the import and commercialisation of mercury, as well as for the creation of a Single National Registry of authorised



View of the El Alacrán mine from the milling sheds.

importers and dealers. The Ministry of Environment and Sustainable Development was also given six months to create the so-called Colombian Environmental Mining Seal (*Sello Minero Ambiental Colombiano*), which is used to identify products from mining activities that do not use mercury¹².

Secondly, as part of this development, in early 2013 the government established the Single Merchant Register (*Registro Único de Comerciantes*, RUCOM), aimed at improving the control and traceability of gold supply chains. In order to do this, traders are identified and registered through financial statements, tax retention certificates and certificates of origin, to ensure that they receive their products from miners considered to be legal¹³. Much of the success of these control measures therefore depends, in turn, on the success of small-scale gold mine formalisation.

Criminal gold mining

Gold mining is an attractive illegal activity as the trade of its product, despite state initiatives, is still not adequately controlled and lends itself easily to the laundering of assets from illicit origins. Therefore, a fundamental characteristic of this phenomenon is the association between drug trafficking, the presence of illegal groups, and the extraction and trading of gold (OECD, 2016).

For example, over the last decade, in the area of this study, the phenomenon of criminal exploitation has been largely determined by the actions of Post-Demobilisation Armed Groups (*Grupos Armados Posdesmovilización*, GAPD)¹⁴. These groups, led by former paramilitary mid-ranking commanders, have reactivated and boosted options like gold mining, timber smuggling and trade extortion in search of funding sources (Usaid, Presidencia & CCAI, 2011, p.72). In 2013, the downward trend in coca cultivation was linked to the growth of gold mining near rivers (United Nations Office on Drugs and Crime, UNODC, 2013, p.73), a situation that coincided with an increased presence of dredgers for mineral extraction. Additionally, several of the drug transport routes were used to import the equipment and machinery used in the mining.

With regard to the commercial chain, the OECD (2016) pointed out that most of the gold in Colombia is sold in small sales or traded within the producing municipalities. These determine the price, taking into account the international cost and discounts for royalty payments, after which the gold is sold to foundries or international traders. The illegal chain begins, therefore, with income from drug trafficking that finances the machinery and supplies for gold extraction, and even, at this point, establishes sales and trading companies that buy gold from both formal and informal miners. Subsequently, via sales to foundries or international traders the gold is “legalised”. Although many of the trading companies work within the law, they are vulnerable, consciously or not, to

12 This seal was created through Resolution 2210 of 2018. The seal is voluntary for gold, silver and platinum producers.

13 RUCOM records legitimate purchases as being from: (i) mining companies in the exploitation phase; (ii) legalisation programme or mining formalisation applicants, during the time such requests are being resolved; (iii) beneficiaries of special reserve areas, during the time such requests are being resolved; (iv) mining formalisation outsourcers; (v) panning miners registered with the respective municipal offices; and (vi) scrap merchants (natural persons who manually collect precious metals from mining waste) (Decree 276 of 2015).

14 According to the National Centre for Historical Memory (Centro Nacional de Memoria Histórica, CNMH, 2016, p.13), these are armed groups that emerged after the demobilisation of the United Self-Defence Forces of Colombia (Autodefensas Unidas de Colombia, AUC). As part of a broader historical perspective, these are linked to the peculiarities of the Colombian State and the institutional design that promoted the private use of force and the provision of security by individuals, along with the permanence of illegal and informal economies, especially in regional spheres, which [in many cases], in addition to being the only means of integrating local communities and populations, demand some form of private regulation.

money laundering. Cash transactions and trading for provisions and supplies, as well as the fact that the marketing and transportation of illegally sourced gold is only a misdemeanour, makes the money laundering process (and/or assets) difficult to trace.

This phenomenon is simply the expression of a more profound reality: the growth and consolidation of informal and illegal economies. In fact, within Colombia, almost half of the financial transactions conducted in the primary and services sectors are not reported. In this case, it is important to bear in mind that, since the 1980s, criminal organisations have established various mechanisms for laundering money from illegal activities¹⁵. Although the Colombian state recently developed various strategies for tracing the gold supply and trade chains, including implementing RUCOM, the truth is that it is still very difficult to control this phenomenon, and it has increased by more than 135% over the last 10 years. In fact, it is claimed that illegal mining can produce between 2,000 and 3,000 million dollars annually (OECD, 2016).

Rights of ethnic groups and mining

The Mining Code recognises the rights of ethnic groups to participate in exploitation and exploration proposals, and prioritises them when granting mining titles in their territories, provided they give precedence to this activity. If not, the State may declare these to be in the public interest and grant them to private individuals. This is an obstacle to the possibility of a decision made by a community that gives precedence to other types of activities (Martínez, Peña, Calle & Velásquez, 2013, p.13).

¹⁵ According to the OECD (2016), in 2014 “the authorities estimated that the income derived from money laundering could have amounted to 10,000 million USD annually, almost 3% of the Colombian GDP. Traditionally, criminal organisations have laundered their assets through the financial system or the real economy.”

In the face of mining project development in their territories, which the Mining Code covers based on Convention 169 of the International Labour Organisation (ILO), in other words, the areas they traditionally occupy (Article 123), prior consultation is a key tool for protecting ethnic groups’ rights to participation. This right bestows the possibility of community consultation when legislative and administrative measures are planned, including projects, works, and other activities that affect their territories either directly or indirectly. This mechanism is intended to protect the cultural, social, and economic integrity of these communities, as well as their right to participation, but is seen by government and private sectors as an obstacle to the development of extractive and infrastructure projects. In the area of mining, the Constitutional Court has determined, through various rulings, how this right should be interpreted:

- 1.** The right of ethnic groups to participation and prior consultation should always be respected in all mining matters. This includes the exploration and exploitation phases of an extractive project, but also any measures that include the possibility of *directly* affecting indigenous and Afro-descendant communities in the future.
- 2.** It is the duty of the mining authority to guarantee real, representative, free, prior, informed, and effective participation in the delimitation of indigenous mining areas and in the concession of any mining titles in these territories or which may affect them directly (Constitutional Court, 2017a).
- 3.** Decisions that directly affect their rights can only be implemented after obtaining the prior, free, and informed consent of the communities, which in no case can be interpreted as a power of veto (Constitutional Court, 2016).

However, despite the Constitutional Court rulings that guarantee this right, prior consultation has been the subject of much criticism, even if it is properly implemented, which is

not actually the case. A significant group of the criticisms focus on the fact that this right is more functional with regard to the development of capital than the guarantee of human rights: on the one hand, the communities are expected to negotiate with governments and companies about their territorial ownership rights, and to participate, whenever possible, in the benefits of the projects and receive equitable compensation for the resulting damages (Murcia, 2014, p.56); and, on the other hand, by developing this process as an information-giving rather than a decision-making mechanism, entirely controlled by the State and companies, the demands of the communities and their right to self-determination are depoliticised (Ulloa, 2014, p.443). Finally, one problem that has emerged when exercising this right involves the direct area of influence of the project and what this is, exactly; there are significant differences between what the communities consider this area to be and that estimated by companies or the State (Rodríguez, 2008, pp. 12-13).

Brief regional context of Southern Córdoba

Córdoba is a department characterised by a high concentration of land ownership, which is primarily devoted to livestock activities. Throughout its history, the consolidation of these properties has marked the region as one of the most violent in the country. Disputes over land tenure led to the establishment and consolidation of armed paramilitary groups at the service of these large properties, and which had strong links with the social and political elite in the region, as well as drug-trafficking groups, who found the possession and control of these large estates provided a good alternative for safely transporting illicit goods, including cocaine and weapons, towards the sea (Aponte, 2014, p.97).

Geographically, the southern area of the department differs from the north by having mountainous forests that contrast with the wide cattle plains in the north. Despite this, it is closely linked to the social scenario of the rest of the

department. It comprises a highly biodiverse and mountainous region, known as the Nudo del Paramillo, which is divided into three mountain ranges: Abibe to the west; San Jerónimo in the central area; and Ayapel to the east. These mountains are the location of the two most important rivers in the department: the Sinú and the San Jorge.¹⁶

The region has been a focal point for large incoming waves of farming and indigenous populations, displaced from their territories due to the consolidation of farming estates in the north of the department: human rights violations have contributed greatly to populating this agrarian frontier region, which for many has been a promising place for new opportunities beyond the landowning yoke (Leal & Ausdal, 2014). Additionally, due to its geographical characteristics, this region has acted as a transit zone and rearguard for various illegal armed groups, and focuses highly violent disputes between guerrillas and paramilitary militias (González, 2014, p.23). The consequence of these disputes is that, historically, there has been, and still is, severe disruption to civilians and community organisational processes. Indigenous peoples have been particularly affected by armed violence and various social and environmental problems, with an aggravating factor: there is a profound lack of knowledge about their right of access to land and, over the years, this has been added to by unresolved processes of constitution, sanitation, extension of reservations, and land restitution and victim reparation (Agency for Territorial Renewal; Agencia de Renovación del Territorio, ART, 2018b, p.8).

¹⁶ Southern Córdoba has two subregions: Alto Sinú and Alto San Jorge, which include nine of the department's 30 municipalities: in Alto Sinú these are Valencia and Tierralta; and in Alto San Jorge these are Pueblo Nuevo, Planeta Rica, Buena Vista, Ayapel, Montelíbano, Puerto Libertador, La Apartada, and San José de Uré.

Currently, after the surrendering of weapons, the reincorporation of the FARC-EP, and its transformation into the FARC political party, the rural areas in this zone have been taken over by paramilitary groups or GAPD¹⁷ and some former members of the FARC-EP who have regrouped over the past year. As it did previously, the interest of the illegal armed groups vying for the territory revolves around income derived from coca crops, gold mining and extortion (Office of the Ombudsman; Defensoría del Pueblo, 2018a). This “new” dynamic, is no exception to the historical logic that obliged the civilian population to engage in forced cohabitation and develop strategies that allow them to establish dialogue, and, for certain periods of time, territorial agreements with these groups.

In terms of productive activities, the area has passed through distinct phases: (i) colonisation and settlement; (ii) subsistence agriculture and artisanal mining; (iii) extensive livestock rearing and subsistence and commercial agriculture; (iv) illicit crops; and (v) large-scale iron, nickel, coal and gold mining, which is currently predominant, along with extensive livestock rearing and the presence of forestry, agroindustry, agriculture, and illicit crops. In this process, the economic activity that has been most affected is agriculture, both subsistence and commercial, because while livestock ranchers grabbed land, coca crops and mining took away both space and labour (Montoya, Alonso & Negrete, 2016, p.19).

Against this troubled backdrop, two megaprojects have been developed: the Urra dam, built in 1995; and the largest open pit nickel mine on the continent, Cerro Matoso. Some studies, focusing on the links between the armed conflict and mining in the region —particularly iron and nickel— have explained how former paramilitary groups focused their funding strategies on drug trafficking, monopolies, and the acquisition of public revenue (Bernal, 2009). Others demonstrate that after the most critical periods in terms of human rights violations

17 Autodefensas Gaitanistas de Colombia, AGC, Caparrapos or Caparros y Los Paisas.



Land rich in minerals, photography taken in El Alacrán Mine site.

(1995-2010), extractive activities increased, in what has been called a triple coincidence between territories abandoned by violence, high rates of forced displacement, and hectares granted for mining concessions (Anaya & Coronado, 2013, p.19).

Alto San Jorge: a conflict zone crossed by mining

The municipality of Puerto Libertador, where the El Alacrán mine is located, is in the Alto San Jorge subregion, at the source of the San Jorge river between the mountain ranges of San Jerónimo and Ayapel. This subregion includes the municipalities of Ayapel, Planeta Rica, La Apartada, Montelíbano, Puerto Libertador, and San José de Uré, which are organised within the socioeconomic dynamics of the Cauca, Nechí and El Bagre municipalities in Bajo Cauca Antioquia. In 2016, it was estimated to have a population of 333,720, of which 7% were indigenous and 10% Afro-descendant. It also presents difficult social conditions: the weighted index of Unsatisfied Basic Needs (UBN) is 60%,

there is a qualitative housing deficit of 66%, and an illiteracy rate of 27% (Department of Córdoba, 2016, pp.72-73).

At the same time, the population has been subjected to high victimisation rates: between 1997 and 2008, together with the Alto Sinú, 86% of the forced displacement seen in the entire department occurred—81,503 out of 94,409—and, simultaneously, together with the department capital (Montería), it received the largest number of displaced people (Observatory of the Presidential Programme on Human Rights and IHL; Observatorio del Programa Presidencial de Derechos Humanos y DIH, 2009, pp.77-78). This situation has not changed over time

and seems to be worsening. In March 2019, more than 700 farming and indigenous families were displaced to the urban area of Puerto Libertador as a result of fighting between armed groups disputing control of illegal economies (Humanitarian Response, 2019).

These latter events stem from confrontation seen in the post-peace agreement period, following its signing in November 2016. After the FARC-EP guerrillas surrendered their weapons, the Gaitanista Self-Defence Forces of Colombia (Autodefensas Gaitanistas de Colombia, AGC) assumed full control of the territories they left behind. They even told the communities that they would not retaliate against people who had worked with this guerrilla force, and that this would not be a motive for displacing or murdering them. In November 2018, the Office of the Ombudsman issued a new Early Warning for these municipalities, indicating that the so-called Nuevo Frente 18 Román Ruiz-Cacique Coyará, made up of former FARC-EP members, would try to retake control of the territories formerly under their control. This led to forced displacements, confinements, threats, and attacks, also exposing the inhabitants of rural areas to operations by government forces and violent action from all of the groups involved in the conflict (Office of the Ombudsman, 2018b).

It is important to note that past paramilitary action has led to lessons being learned by people who, under high levels of coercion, live with members of armed groups. However, it is also true that their links to these groups are a means of survival, given the high poverty rates in the department and the subregion in particular. This reflects an extreme situation for villagers: it is difficult to escape the territorial control of armed actors. In this respect, it is worth highlighting two aspects, firstly, there is implicit compliance with a social order imposed by the armed actors in the region that determines which behaviour is permitted and which is not. Secondly, knowledge is developed that enables leaders to establish when threats may produce lethal violence and when that is unlikely. According to their accounts, one of their main concerns is the evident territorial control and deployment of the AGC and their



Access to the mining galleries, El Alacrán Mine.

relationship with certain state sectors and government forces.

In this context, the leaders, the legitimate representatives of the communities, are threatened because they are accused of either endangering the security of the members of the armed groups or endangering the control of the illegal economies, specifically revenue from the coca cultivation and processing, and because they are unaware of the norms imposed by this group (Office of the Ombudsman, 2017, p.82). Undoubtedly, the recent increase in the number of hectares planted with coca in the region¹⁸ and the informal use of illegal mines, give the armed groups more capacity for control and greater legitimacy among the population. However, it has been pointed out that these risks are also present for communities facing the development of legal exploration or exploitation projects, backed by the State. For example, it has been reported that in the village of San Juan, where the El Alacrán mine is located, when social leaders –farming and indigenous peoples– tackle community rights violations and try to report these, or take organisational action to demand these are respected, they are threatened and forced to leave the territory (El Espectador, May 31st, 2019).

Mining in the subregion

There are various problems in the subregion related to unresolved historical conflicts over land access. This area is home to indigenous peoples from the Zenú and Emberá Katío ethnic groups as well as Afro-descendant and farming communities. They have developed different strategies for coping with the difficulties relating to access to and control over the land, as well as to the problems involved in establishing collective and individual life projects. These include traditional and small-scale mining.

18 Following a trend of fewer hectares being planted with coca from 2010, beginning in 2016, coinciding with the signing of the Peace Agreement, the cultivated area has grown considerably (UN-ODC, 2019, p.32).

El Alto San Jorge has extensive deposits of nickel, gold, coal, copper, silver, and platinum, as well as limestone and construction materials. For this reason, the region has been categorised by the State as a Special Mining District.¹⁹ Various social conflicts have evolved around extractive practices that exacerbate historical problems relating to illegal economies and socioenvironmental conflicts. These include the complexities of large-scale mining projects, traditional small-scale mining, and criminal mining as a usufruct source for armed groups, with the aggravating factor that the municipalities do not have the capacity or the tools to monitor and control illegal mining production, or deal with the environmental impacts resulting from either legal or illegal extraction.²⁰

In relation to extractive activity, the absence of a regulatory framework taking into account the specifics of the zone has stimulated the presence and consolidation of illicit economies that include the actions of armed groups. These groups control strips along the edges of the rivers and, in these areas, have set up machinery for extraction purposes (Office of the Ombudsman, 2015, p.74). In any case, it is important to highlight that legal mining has also generated impacts that have been widely reported by communities. The main issue is related to Cerro Matoso²¹, an integrated project involving nickel extraction and its transformation into ferronickel, which affects Montelíbano, Puerto Libertador, and San José

19 Montelíbano Mining District - San Jorge Zone in the municipalities of Buenavista, La Apartada, Montelíbano, Planeta Rica, Pueblo Nuevo and Puerto Libertador which produces coal, ferronickel, gold and silver from mining (UPME, 2005, p.16).

20 An investigation by the Office of the Ombudsman (2015, p.85) shows that, according to the municipalities in the area, illegal artisanal and high-tech mining are the biggest environmental problems, leading to deforestation, water pollution, the erosion of fertile soils, and an accelerated rate of species extinction.

21 One important fact is that the energy required, mainly for transforming nickel into ferronickel and open pit coal mining, is one of the highest in the country, so the construction of hydroelectric and thermoelectric plants is a priority activity.

de Uré; its title runs until 2044 and, in 2013, was producing monthly profits of 17 billion (La Silla Vacía, 2013).²².

Gold mining

In this subregion, gold mining is undertaken using various techniques. Small-scale gold extraction involves techniques such as panning, hydraulic mills, beak and chisel, and small motors. These are employed respectively, according to the type of vein exploited, its location, and concentration. Mercury is used to separate the mineral more easily from the rock. This generally involves risk for the miner and the environment where the activity is undertaken.

To increase production and improve their income, many miners have changed to larger-scale production, by using machinery such as backhoe loaders, dredges, motor pumps, and earth moving machinery. In response to the type of vein, mines may be open for 2 to 3

months, after which they are moved to a different location. The use of backhoes is generally associated with the deforestation of between two and three hectares of mature trees and plant material, as well as the opening of large trenches in the river which pool the water after the mining (Departmental Comptroller, Córdoba, 2010). These mines usually take the water from the streams to wash the excavated earth and divert watercourses to create alternate channels so the water may enter the mine. The material extracted from the pit is pumped into retention grids, at which point the mercury is added, part of which is burned off and volatilised, the other part being recovered and reused to lower costs. The mud resulting from this process is returned, untreated, to the river, polluting water sources (Departmental Comptroller, Córdoba, 2010).

These types of endeavours group different exploitation modalities together. Thus, after dredge excavation, panning miners appear to work on the mining waste. In many cases, informal miners settle within a permitted area in order to exploit the mineral. In addition, the high cost of machinery means that armed paramilitary groups control the gold extraction business through pressure, extortion, and different types of loans (Pardo, 2012).

Situations like these cause many difficulties for state organisations, at different levels, although progress has been made with regard to definitions and regulatory treatment of the different mining modalities, clearly separating informal mining from panning and criminal mining, although the reality is that, in practice, several of these modalities take place concomitantly. Although the State has determined that panning does not require a mining title but must be registered with the local municipality, the registration process has been slow and confusing thanks to the authorities (OECD, 2016). Likewise, as expressed by the Office of the Ombudsman (2010), the persecution of groups that undertake illegal mining ends up criminalising small informal miners. Pardo summarises this in his research on the different scales of gold mining:

²² This project has played a fundamental role in both the transformation of the landscape and the social dynamics of the region: on the one hand, there are proven impacts on the health of the local populations, the rights of indigenous peoples, and nature due to mining activities being implemented without the valid environmental titles; a lack of consultation with affected ethnic communities (indigenous and afro-descendent); non-compliance with environmental regulations relating to iron and nickel concentration threshold limit values; repeated and uncontrolled emission of particulate matter towards communities and the surrounding ecosystem; and the flow obstruction and chemical alteration of water bodies (Constitutional Court, 2017b). The construction of the plant also led to the dramatic displacement and relocation of communities, as it occupies an area of 1170 hectares, which has ended up spatially fragmenting communities. The company has also been reported several times for appropriating uncultivated lots, a situation that is even more disastrous if one takes into account the fact that there are many demands from neighbouring communities for access to land for cultivation (Serrano, 2016b, p.219). In general, the profit the company makes contrasts with the unsatisfied needs of the surrounding population that has no sewage system, electricity, healthcare centres, or transportation services (Office of the Ombudsman, 2014).

neither the mining nor environmental authorities possess information on which miners are simply maintaining their traditional activity, which have scaled up productive scales with no criminal intent, which grew the scale of the business by pursuing increased income, and which, either voluntarily or by force, ended up working for criminal organisations. (Pardo, 2012, p.169)

This situation is the reality in the Alto San Jorge and Bajo Cauca Antioqueño municipalities, which is why this region has been referred to as “the largest network of illegal gold exploitation in Colombia” (Méndez, 2011). In the Ayapel municipality alone, there were around 1,200 backhoe loaders in 2014, each of which produced up to five pounds of gold per week, providing employment for a total of around 850 people. Although gold production that year in the Córdoba Department doubled, most of the gold produced was declared in Caucasia, a municipality in the neighbouring Antioquia Department, because the price there was higher, meaning the municipality saw a fivefold increase in its reported production (Paz, 2014). This boom was related to the increase in ore prices at the international level.

El Alacrán mine

El Alacrán mine²³ is located in the town of San Juan in the municipality of Puerto Libertador, on the banks of the San Pedro River. It has been in operation at least since 1742, and from that time up to the present day the extraction has been, at times concomitantly, artisanal, illegal and industrial, the latter by national and foreign companies (Negrete, 2016, p.20).

²³ The mine's name translates as “The Scorpion”, and is derived from the fact these arachnids, in many different colours, could be found in the place.



Entrance to the galleries, El Alacrán Mine.

Currently, one of the largest open pit mining projects in Latin America for copper (listed as the main extraction material), silver and gold is situated in the territory where the El Alacrán mine is located. This mine, the San Matías Project, is currently in the exploration phase, under the direction of the Canadian company Minerales Córdoba SAS, but extraction is expected to commence in about six years' time. This project has a 30-year mining title, registered in 2009, of approximately 22,000 hectares, but exploration has focused on 400, corresponding to El Alacrán (Portfolio, June 12, 2018).

According to an economic evaluation carried out in June 2019, the San Matías project has an estimated production of 417,300 tonnes of copper; 724,500 ounces of gold and 5,930,000 ounces of silver. El Alacrán is projected to involve an intense extraction process through traditional open pit mining techniques (drilling, blasting and digger/truck) until the 17th year of exploitation, when it is foreseen that work on this mine will start to be scaled down (Minerales Córdoba, 2019, p.4). Despite the fact that the national government considers this project

to be of “national importance” and highlights the presence of the company (ANM, 2018a, p.32), the truth is that the project is immersed in disputes over rights with at least two different entities: the indigenous Zenú community living in the area, particularly the San Pedro *Cabildo*; and the El Alacrán Miners’ Association (Asociación de Mineros del Alacrán), which claim different rights and are affected by exploration work and future open-pit exploitation in the area. In addition to these, the title area encompasses 25 indigenous councils/settlements and 114 Community Action Boards (Juntas de Acción Comunal, JAC) (Member of JAC de El Alacrán, July 2019).

This is why one of the main conflicts in the mining area involves the uncertainties and expectations about who has the legal and legitimate right to exploit the mines. However, beyond the dispute over the mineral exploitation rights, is the issue of impacts on the environment and livelihoods, which, particularly for the Zenú indigenous communities, generates problems for their physical, social, and cultural survival as a people.

Various types of mining at El Alacrán

Artisanal mining

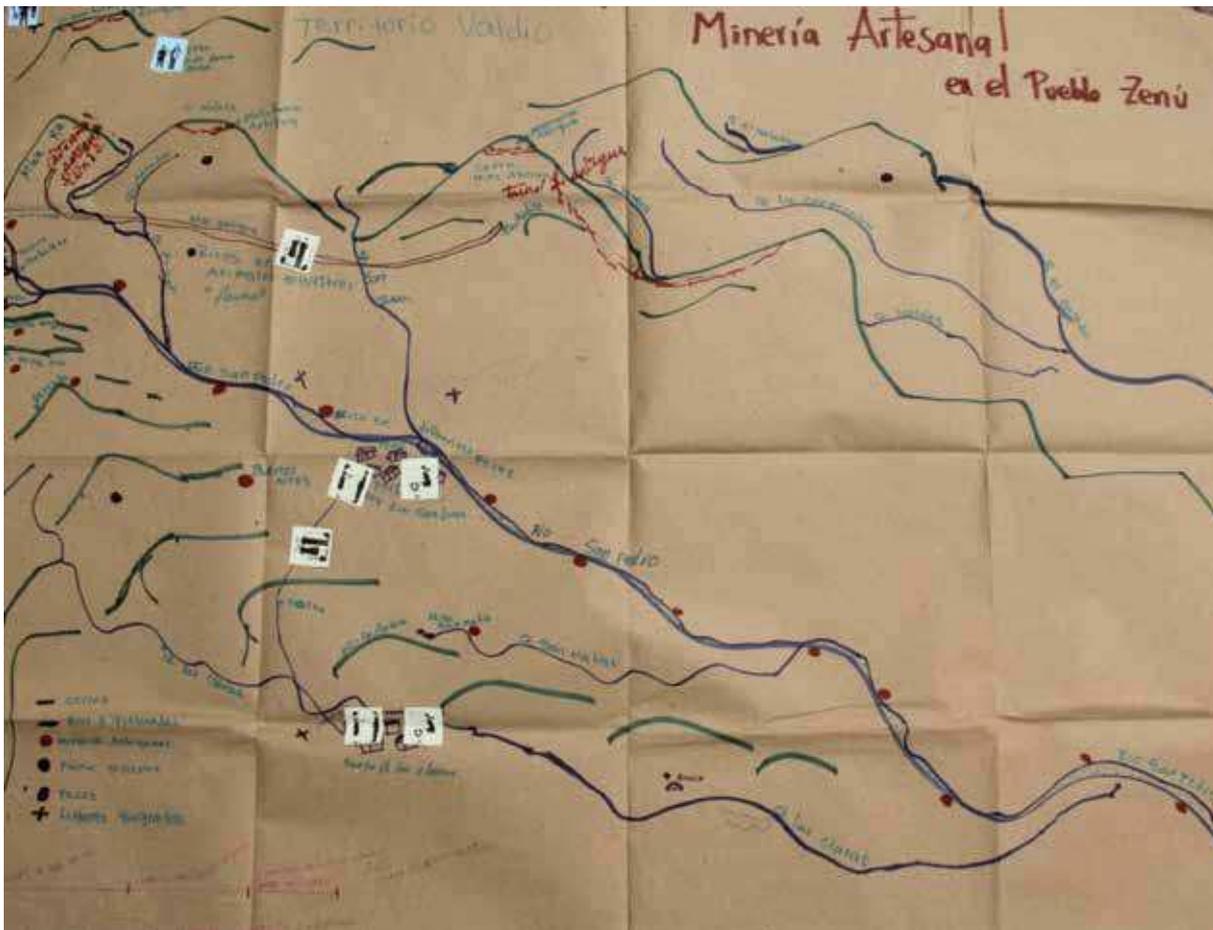
Gold mining in the Puerto Libertador municipality is an ancestral practice of the indigenous communities of this territory. From panning to artisanal mining, the indigenous Zenú community worked the gold and were associated with this activity²⁴. During the colonial period, the Spanish conquistadors introduced black slave labour and intensively mined these deposits. Today it is still possible

24 For the indigenous Zenú people, gold mining is an ancestral practice, dating back to before the conquistadors. Evidence of this includes the abundant goldsmith-related archaeological material found in the mid valley of the Sinú River, the lower course of the San Jorge and Cauca rivers, and the San Jacinto range (Legast, 1980).

to find the remains of tunnels that were built in this period and that the communities call “*trabajo de antigua*”, literally “ancient work”. In any case, the exploitation of gold has never ceased. After the intense extraction seen in the colonial period, these mines continued to be worked by the local inhabitants using panning and artisanal methods, although more recently, gold has been extracted by colonists from nearby zones.

This activity is still important for local people and their subsistence economy, including people from the Zenú indigenous community that alternate gold extraction with other subsistence activities such as agriculture, fishing, and hunting. However, as an artisanal practice it has been facing dynamics that make it increasingly difficult to maintain. On the one hand, the presence of armed groups and their links with illegal gold extraction put pressure on a region that has been subjected to intense conflict. On the other hand, large companies claim their right to exploit the areas due to the titles granted by the mining authority. This worries the communities because of the impact on nature, particularly the on the San Pedro and San Juan rivers, because of the possible limitations to their mobility and effects on their subsistence economy, and, because of this, they fear they will be displaced, dispossessed, or resettled²⁵ (Field Visit, September 2018).). This situation is becoming increasingly complex because companies change their corporate name and, with this, their operating strategies in the region, exerting yet greater pressure on local communities.

25 This is a real risk, at this time they face losing their territory because of the expansion of large-scale mining, such as that publicly announced by Minerales Córdoba, as it has stated that, if necessary, communities will be relocated to facilitate mineral extraction over the coming years. Communities that would be subject to eventual relocation include those located near the San Matías, Costa Azul, Buenos Aires, Mina Rá and Caño Pepo reserves.



Representation of the region when artisanal mining was practiced, developed in a social cartography workshop with members of the Alto San Jorge Zenú Indigenous Reserve.

Traditional subsistence mining

At the beginning of the 1980s, the mine now known as El Alacrán was founded²⁶. Some years later, miners arrived from municipalities in the neighbouring department of Antioquia, with the intention of working in the mine. These miners introduced the so-called Californian mills, a more technical way of breaking the rock extracted from the mine, in order to obtain gold. The miners are organised and belong to the El

Alacrán Miners' Association, one of the most important mining ventures in the area, which was populated by families to form what is now Mina El Alacrán village²⁷.

With the arrival of the Californian mills, gold mining, which was mainly carried out by hand through panning, was transformed, as most miners began to work underground, and tunnels were built following the course of the gold veins. This technique involves the construction of galleries, and, subsequently, gunpowder is used to fragment the rock. This is transported by carts to the milling sheds, where it is ground,

²⁶ In 2015, 8.5 hectares were being exploited and the community located in the village of the same name comprised 678 inhabitants corresponding to 172 families (Office of the Ombudsman, as cited in the Constitutional Court, 2015). According to community information, in July 2019, there were 800 people corresponding to 200 families.

²⁷ People who recognise themselves as belonging to the indigenous Zenú population live here and are members of the Association (Field Visit, September 2018).



Working area where traditional miners at El Alacrán processed rock.

principally using Californian mills, but also with others, including ball mills and tumbling mills.

The rock is ground wet, and the ground material is passed into an inclined channel at the base of which the gold particles concentrate. The impurities in the gold are finally filtered out using nitric acid, with mercury to confine it (Puche, n.d.). According to members of the Miners' Association, the use of this metal is becoming less frequent (Field Visit, July 2019), due to its serious polluting effects. This coincides with the implementation of a transition strategy led by the local Regional Autonomous Corporation (Corporación Autónoma Regional de los Valles del Sinú y del San Jorge, CVS²⁸) to restrict its use.

Although artisanal and manual techniques are still practised at El Alacrán gold mine, there are a series of environmental impacts that have accumulated in the area because of these, including increased sedimentation of the channels of some nearby streams due to the dumping of mine waste, contamination by mercury and nitric acid, landscape transformations, deforestation, and diversity loss (Puche, n.d.). In June 2019, the CAR issued the Miners' Association with a fine and an order to definitively close the mine due to there being no Environmental Management Plan together with the violation of the collective right to enjoy a healthy environment. For the community, this appears to be part of a strategy that favours large companies and could produce greater conflict between these and the small artisanal miners, in addition to affecting the subsistence of the community (Field Visit, July 2019).

²⁸ In accordance with current environmental regulations, Regional Autonomous Corporation are public entities made up of territorial organisations that, due to their characteristics, geographically form part of the same ecosystem or form a geopolitical, biogeographic, or hydrogeographic unit, with administrative and financial autonomy, responsible for administering, within their jurisdiction, the environment and renewable natural resources, as well as promoting their sustainable development (Article 31 of Law 99 of 1993).

Criminal gold mining

While extraction was booming at El Alacrán mine, the region, immersed in the dynamics of the armed conflict, private individuals linked to the armed groups arrived with the intention of exploiting the gold using backhoe loaders and intimidating any local inhabitants who opposed this. Since 2013, the phenomenon has been increasing considerably in the region, represented by a substantial increase in dredgers and backhoe loaders (CVS, 2018). The consequences on the environment and individual and collective health are serious, and undoubtedly, unlike panning, artisanal and even traditional extractive techniques, illegal gold mining drastically alters the territory. However, the institutional structure generally lumps it in with artisanal and traditional mining, which have not yet formalised their work, and criminal mining. Although in some cases it is not easy to separate these, since not only the extraction but also the marketing is controlled, the fact is that the people and groups involved in each of them can be clearly delimited.

In addition to these consequences, criminal mining involves territorial control, social regulation, extortion, and violent censorship of communities and populations. In the words of an indigenous villager: "Its presence has suddenly impeded our freedom, because we used to be able to walk wherever we wanted, and today we can't, if it involves, for example, this area around here, they put limits on you, that from this time to that you can walk, or not." (Field Visit, September 2018). Other issues include, for example, the fact that several of the ancestral cemeteries and sacred sites for the Zenú people have been lost as a result of mining expansion (Field Visit, July 2018).

Large-scale mining

It is important to emphasise that all across the area there are other small traditional mines, for example, the Pirita, Rá, and La Antena mines. These, which have been exploited by traditional small-scale miners, along with El Alacrán, have had to deal with the arrival of different actors and companies interested in developing mining in this area. Some of these companies are: Dual

Resources, Sociedad Ordinaria de Minas Santa Gertrudis subsequently Sociedad Ordinaria de Minas El Alacrán, Sociedad Ordinaria de Minas OMNI "Omnisom" and, recently, the company Minerales Córdoba, as part of a convoluted framework of circulating projects, business names and mining titles.

In the 1980s, while traditional miners were engaged in small-scale gold mining at El Alacrán, the Canadian company Dual Resources obtained titles for this area and began exploration at both this mine and Mina Rá (1982-1994). The result of the exploration was that Dual Resources found mining viable. However, the company was forced to withdraw because of pressure exerted on the territory by armed groups. Subsequently, in 1995, Dual Resources transferred its titles to the company Santa Gertrudis. On the other hand, in November of the same year, the Government of Córdoba granted legal status to the El Alacrán Miners' Association (Puche, n.d.).

In 1997, the Colombian company Santa Gertrudis, through its legal representative John Bruckner Miller, a foreign citizen, obtained exploration titles from the MME and the Environmental Evaluation and Management Document (Documento de Evaluación y Manejo Ambiental, DEMA) was approved by the Autonomous Corporation. The company then put forward an exploration plan that included training and consultation with traditional and artisanal miners, as well as the restoration of the area. After this, the company Santa Gertrudis changed its name to Sociedad Minera El Alacrán, while retaining the same legal representative. However, the dynamics of the armed conflict meant that the company could not advance exploration in the permitted period, and by 2003 the exploration period that they had been granted expired (Massé, 2013a, p.6).

Between 2003 and 2008, work was suspended due to legal issues, and then, in 2009, John Bruckner Miller appeared again, this time as the legal representative of the Sociedad Ordinaria de Minas OMNI "OMNISON", which wanted to develop the mining of gold and other minerals subject to mining concession III-08021; this contract was granted for a term of 30 years, renewable for a further 30. Sub-

sequently, in 2011, the Sociedad Ordinaria de Minas OMNI "OMNISON" was associated with the Canadian company Ashmond Resources Corp., based in Vancouver (Massé, 2013a, p.6). In this way, the company Ashmomni Omni S.A.S. was formed, and exploratory work began, finding gold and copper as the main minerals in the deposits, and silver and iron as associated minerals on a permitted area of 291,207 hectares (Vargas, 2014).

In 2016, Ashmomni Omni S.A.S. changed its name to "Compañía Minera El Alacrán S.A.S." (ANM, 2016). From this moment on, the company's public information shows that Compañía Minera El Alacrán S.A.S. was controlled by the large Canadian mining company High Power Exploration Inc. However, yet more changes were made to the company's corporate name in Colombia, and in 2017 Compañía Minera El Alacrán S.A.S. ceded all its rights under Concession III-08021 to Cobre Minerals S.A.S. This company therefore became the sole owner of the title. It should be noted, however, that this change of corporate name is evidence that the mining aspirations directly consider copper to be one of the main minerals that will be extracted, not only because of its association with gold.

To locate the final whereabouts of the exploitation rights for Concession III-08021 it is very important to emphasise that, since 2015, the company Córdoba Minerals Corp and its subsidiary in Colombia, Minerales Córdoba, had also been working on a proposal to acquire the rights over this mining area. As such, they signed an agreement with Cobre Minerals S.A.S. to exclusively and irrevocably cede all of its shares and rights regarding Mining Title III-08021. Therefore, although according to the ANM the title is still in the name of Cobre Minerals S.A.S., and at the end of 2018 the transfer of rights to Minerales Córdoba had not yet been communicated to the mining authority (according to the information from that company itself), it is possible to foresee that the next few years will see the new transfer of rights to this title made in favour of the company Minerales Córdoba, (Minerales Córdoba, 2018).

Minerales Córdoba, in addition to Title III-08021, which covers an area of approximately 391 hec-

tares, is developing an ambitious open pit mining project covering an area of approximately 20,000 hectares, from which they intend to extract gold, copper and other associated minerals. This ambitious plan is called San Matías, and is expected to be one of the largest mining projects in Latin America. This is why Minerales Córdoba began exploration activities in the region and is now negotiating with the communities that will be affected by the project (Portfolio, June 12, 2018).

However, it should be noted that this project was previously planned by the companies Minatura International and Sabre Metals Inc., and in 2011 these companies sold a percentage of the mining interest to the Canadian company Wesgold Minerals Inc. which later changed its name to Córdoba Mineral Corp. Currently, this company is a major Canadian mining exploration company listed on the Toronto Stock Exchange. Its main shareholder is the mining giant High Power Exploration-HPX. This is how this global mining giant operates in Colombia, under the name of Minerales Córdoba, and possesses full mining rights to the San Matías Project, including title III-08021 for the El Alacrán mine.

The Zenú people of Alto San Jorge and gold mining

The indigenous Zenú people of Alto San Jorge are found in the municipalities of Montelíbano, San José de Uré, La Apartada, and Puerto Libertador, the latter being where they have the greatest presence. In 2014, there were 17,047 people organised into 56 minor *cabildos* or *cacicazgos* in the main reserve in Alto San Jorge, located both in the rural and urban areas of these municipalities. Although they are the direct descendants of indigenous peoples located to the north of the department that populated the area, their collective history, territorial context, and government structure differentiate their autonomous identity as the Zenú of Southern Córdoba (Serrano, 2016a, p.19). According to a census carried out by this ethnic group, with the support of the United Nations Development Programme (UNDP), the social situation of those who identify as part of this people is precarious:



Panoramic view of the mine.

72 % of those surveyed (13,768 in 3603 households) are victims of the armed conflict, and 93 % of households do not have sufficient monthly income to cover the basic needs of the household (UNDP, 2018).

After a long struggle, in 2014, 905 hectares in the rural area of Puerto Libertador were formally granted to them. This area can accommodate approximately 300 families, but is insufficient to meet their needs (Serrano, 2016a, p.22), although there are currently applications to extend the reserve; however, the community does not see these being granted in the near future. In 2017, the people were guaranteed the right to Prior Consultation and reparation for the effects of nickel exploration, caused by the company Cerro Matoso, and for the failure to consult them with regard to an extension to the concession granted to the company (Constitutional Court, 2017b).

As gold mining intensified with the arrival of new actors, communities witnessed more drastic transformation of their territory and a series of conflicts arose over the appropriation of territory and the subsurface minerals. Traditionally,

the livelihoods of the indigenous Zenú communities were based on agriculture, hunting, and fishing. During the period when mining was carried out, by both men and women, the river was still very rich in fish of several species, including those known locally as the *guayuco*, *mojarra*, *bocachico* and *sardina*. However, these species gradually decreased in number and disappeared as both traditional and illegal mining activity increased, contaminating water sources. In addition, this growth of mining activity also resulted in the reduction of forests and fewer timber trees of local species, such as the Colombian mahogany and the *hediendo*. It also resulted in the ecosystem losses, limiting the hunting of small animals such as the Lowland paca, *mocha*, *paguí*, and *condona* (Field visit, September 2018).

The main transformations and cumulative impacts of gold mining identified by communities are therefore: pollution of water sources; loss of forests, animal and plant species; air pollution; and loss of medicinal plants, which lead to a decrease in the practice of traditional herbal medicine. They also identify effects on their health associated with respiratory issues and skin problems. These transformations mainly



Workshops with local communities.

affect the health of women because in order to carry out domestic tasks, for example, they have to use polluted water. On the other hand, the communities emphasise how deteriorated livelihoods also affect the development of traditional practices such as hunting, fishing, and the growing of subsistence crops like maize and cassava. This, in turn, leads to the loss of the traditions, uses and customs of the indigenous Zenú communities.

Likewise, the same dispute over the appropriation of subsurface minerals between the different actors has led to the configuration of territorial control dynamics that limit free circulation, impose transit schedules and road restrictions, and exert pressure on local populations through threats, selective assassinations, and the stigmatisation of social leaders. Together, all these issues have led to a significant deterioration in the community's way of life. However, it is worth mentioning that this cumulative impact corresponds not only to the extraction of gold by small-scale and illegal miners, but also to more complex transformation dynamics in a region subject to diverse interests and scenarios: armed conflict; the development of various gold, coal, iron, nickel, and copper extraction projects; the planting of illicit crops; and increased land area dedicated to cattle raising or the planting of extensive paddy fields and teak monocultures. It is therefore not possible to infer that all the impacts and effects mentioned above are exclusively related to gold exploration and exploitation, since several interrelated variables converge in the region, implying a drastic transformation.

In conclusion: El Alacrán: disputes and conflicts related to gold mining

The case of El Alacrán reflects a significant portion of the conflicts related to mining activity in Colombia. On the one hand, there is conflict between the central and regional administrations over land use patterns and land use planning.²⁹ In the municipality of Puerto Libertador, these large concessions have transformed the economic model, which went from being based on agriculture and livestock rearing to mining, for which it was unprepared. This is added to the fact that there are no job alternatives for farmers and artisanal miners who have lost their means of subsistence; there have been changes in land use and loss of food security in the municipality; and various other consequences (Office of the Ombudsman as cited in Constitutional Court, 2015).

From the institutional perspective, this, in part, reveals the inability of local administrations to confront the social problems and conflicts resulting from the push to large-scale mining. To this, we must add the impotence of the Colombian State faced with controlling and reducing the illegal armed groups that control vast areas of the region in Southern Córdoba. Indeed, only a few kilometres from El Alacrán there have been battles between these groups, as well as between them and the government forces. For the indigenous and farming communities, this tension between the national and local administrations also reflects the concrete difficulties they suffer with regard to political under-representation: there is a lack of confidence in the Prior Consultation mechanism, when this right is available, but also, and above all, is the humiliation of always being sever-

²⁹ This conflict has gained a great deal of strength in Colombia and there has been extensive debate around different positions in favour of popular consultations. However, despite there being similar problems caused by extractive industries as in other areas where social organisations achieved consultative processes, this has not yet occurred in this region.

al steps behind in the decisions made about the lands they have historically occupied and of not having adequate information on all the minerals present in the subsurface, in addition to the mining titles granted (Field Visits, July 2018 and July 2019).

One process that could help resolve this conflict is the implementation of the Territorial Development Programme for Southern Córdoba (Programa de Desarrollo con Enfoque Territorial³⁰, PDET), resulting from the Peace Agreement. To this end, through a participatory process, the communities prioritised a series of initiatives at the municipal and regional levels that promote their development according to their basic needs. Both the indigenous Zenú people and the El Alacrán Community Action Board (JAC) actively participated in the development of the Regional Transformation Action Plan (Plan de Acción para la Transformación Regional, PATR), which is reflected in the initiatives for which there is, at least formally, political interest in developing (see Annex 1 on Mining-related initiatives). These initiatives reflect the need to resolve the territorial, social, and environmental conflicts caused by mining as one of the main challenges in territorial peacebuilding. In this regard, it is paradoxical that as part of this process, extractive activity is highlighted as one of the important lines of economic growth, even though almost all diagnoses³¹, except perhaps

30 16 programmes for two subregions that grouped together 170 municipalities. In the case of Southern Córdoba these are: Tierralta, Valencia, Montelíbano, San Jose de Uré, and Puerto Libertador.

31 The municipal diagnosis of this process, made by the Agency for Territorial Renewal (ART), gives an account of drastic changes in land use in the municipality (from agriculture to mining and energy, the latter being its principal economic line); bad mining practices that have contributed to air and water pollution, which has led to incidences of respiratory, dermatological, urinary and congenital diseases; mining concessions that have restricted natural resources such as fishing and productive land; little correlation between formal mining workers and local labour; and shortcomings in food production due to the change in agricultural practices and the migration of workers to other activities, including informal mining and the production of illicit crops (ART, 2018a, pp.2-4).

those by private enterprises, recognise the impact of the extractive model on nature and the farming economy in both the municipality and the region. This fact demonstrates that it is still widely believed that the problem lies only in illegal mining and not in large-scale mining.

A second conflict is centred on the dispute over gold mining rights: the various periods of gold mining in Puerto Libertador have been characterised by tensions over who has the legitimate and/or legal right to exploit the territory, and thus to exercise control over the area inhabited mainly by farming and indigenous Zenú communities. Throughout the history of name changes and contract cessions affecting the title, the traditional El Alacrán miners have had to deal with several different actors who have claimed the right to mine in this area and who have pointed the finger at artisanal miners as exploiting it illegally. This is why the El Alacrán Miners' Association in the Puerto Libertador municipality requested that the ANM legalise mining at El Alacrán as *de facto*. Faced with a negative response from the authorities, the El Alacrán Miners' Association has embarked on a legal battle to have their rights to exploit this mine recognised based on the tradition of mining³².

As a result of this struggle, the El Alacrán Miners' Association has a Constitutional Court ruling in its favour (2015). However, this has been limited by the mining authority insisting on prioritising the rights of the company holding the title. Thus, in view of the impossibility of continuing their extractive activities, traditional miners are contemplating the possibility of negotiating possible financial compensation from the company owning the title, due to having to abandon their traditional activity, and they

32 This request was based on the jurisprudence of the Constitutional Court (2017a) which in a similar case ruled in favour of the Marmato Traditional Miners' Association, in Caldas, who were notified of an eviction order for the Villonza mine as they were within the Gran Colombia Gold mining title. In that case, the Court suspended the eviction order and the Gran Colombia Gold mining operations.

have sought advice from external institutions, including the Universidad de Córdoba, to ensure that the value of the milling sheds and other work carried out at the El Alacrán mine are financially acknowledged. However, this option does not fundamentally solve the problem of the extractive model for the region, nor does it address the source of subsistence for the mining community.

A third conflict is related to guaranteeing rights within the framework of a negotiation process between the communities and the mining company: the mining title includes mining exploitation in part of the land pertaining to San Juan de Asís, a village where the indigenous Zenú *cabildo* of San Pedro is located, which is part of the Zenú Indigenous Reserve of Alto San Jorge. Taking into consideration the above-mentioned information on the Prior Consultation, the most recent companies to appear as holders of the right to exploit this mining title have inquired about the presence of indigenous communities in its area of influence. In May 2018, Cobre Minerales S.A.S. received certification from the Ministry of the Interior regarding the presence of ethnic communities in the zone of mining title III-08021. This indicates that the San Pedro Indigenous *Cabildo* is within the area of the exploration project, so the community must be involved in a Prior Consultation process .

However, for the Zenú indigenous communities, prior consultation should not be limited to the San Pedro Indigenous *Cabildo*, because if mining on this title goes ahead, more Zenú communities will be affected. This takes into account the fact that, in addition to said title, which covers an approximate area of 391 hectares, the San Matías open pit mining project is planned for development. This covers an approximate area of between 20,000 and 22,000 hectares, seriously affecting the communities in the region, including Zenú people as well as some families of the Emberá Katío people. Minerales Córdoba, will carry out the Prior Consultation process together with the *cabildos* of the Alto San Jorge Zenú Reserve, certified by the Ministry of the Interior, and other communities in the area of influence will also be consulted (Portfolio, June 12, 2018). However, as

a result of decades of harassment and threats of judicial proceedings, these groups do not trust that either private companies or state institutions, particularly at the national level, will guarantee their rights (Field Visits, July 2018 and July 2019), given the latent threat of a resettlement and compensation process. Their fears are supported by the magnitude of the project and informal conversations with the company, as well as the tactics that have been employed to divide the indigenous and farming communities (Field Visit, September 2018).

This reveals another important conflict, which has been seen in other areas of the country, related to compensation, and even to the idea of corporate social responsibility on the part of companies for the social, environmental, and cultural effects suffered by the communities and which may intensify in the short term. In principle, within the framework of assumed know-how and based on the idea that everything can be measured by means of an inventory, the different ways of understanding and exercising relationships with nature and the beliefs that constitute the Zenú people are suppressed and taxed, things that, in the words of the villagers, “are priceless” (Field Visit, September 2018).

All of this occurs within the context of territorial control by illegal armed groups who threaten the leaders negotiating with extractive companies. The presence of illegal armed groups, linked to criminal mining, as well as the new disputes between these related to appropriating their revenue, is another conflict that has a significant impact, on both the indigenous communities and the environment. The lack of control and complacency of some officials and/or state bodies, as well as the continued control the GAPDs have managed to maintain over extraction-related income as a source of funding, demonstrates the complex relationship between the use of violence by illegal groups to underpin economies, which gradually end up being formalised and receiving preferential treatment from State institutions, becoming the preferred focus of public policies, contrary to the rights of peoples and communities.

Finally, the exploitation of the land and the extraction of subsurface elements has meant a series of ruptures in the region, as well as transformations that have led to a massive deterioration of the lifestyles of the indigenous and farming communities that inhabit the zone. In Puerto Libertador, in light of its complex social situation, it has become increasingly urgent to implement rural social development programmes and strengthen the farming economy and agrifood production of the Peace Agreements, which may be restricted precisely because mining activity determines the land planning priorities

(Coronado & Barrera, 2016, pp.91-92) and is increasingly likely to do so in the coming years. At present, the pressure these communities are under is such that there is a fear that they will not be able to live in the territory, either because of hunger, the presence of armed groups, or the threat of displacement.

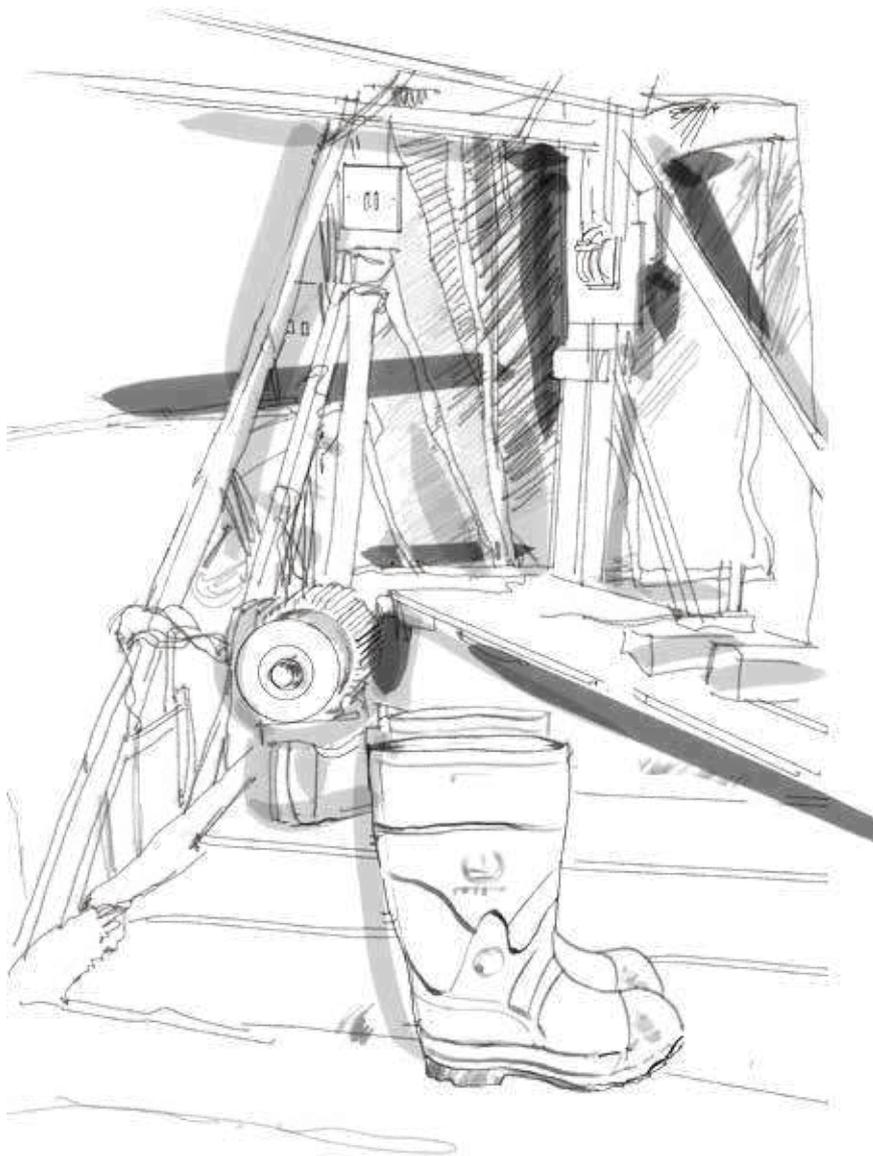


Illustration of the entrance to the mining galleries, El Alacrán mine.

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Annex. Prioritised mining initiatives within the framework of the PATR

Initiative	Regional scope of implementation
Construction of strategies for mining energy and hydrocarbon management involving effective mechanisms for rural and ethnic community participation with territorial entities, the Regional Autonomous Corporation (Corporación Autónoma Regional de los Valles del Sinú y del San Jorge, CVS), the Ministry of the Environment, Colombian National Natural Parks (Parques Nacionales Naturales de Colombia, PNNC), ANM, and ANH, to establish a use regime compatible with the conservation of the region's strategic ecosystems and other productive activities in the territory.	Municipal
Formulation and implementation of a project for subregional studies, including the participation of territorial, ethnic and farming communities, on the effects and positive and negative impacts generated by mining in Southern Córdoba to strengthen decision-making on strategies for mining energy and hydrocarbons.	Subregional
Formalisation of artisanal mineral mining and dredging in the upper and middle basin of the San Jorge River and Alto Sinú, in order to improve working conditions and reduce work-related accidents, and educate small-scale miners about technical, labour, and business issues.	Municipal
Formalisation of small-scale traditional and artisanal mining in the Puerto Libertador municipality together with the ANM.	Municipal
Formulation and implementation of a project for the recovery of strategic ecosystems degraded by irresponsible mining in the Puerto Libertador municipality.	Municipal
Prioritisation of farmers when allocating vacant properties in exploration areas or where mining titles are in force that are not being exploited, in the Puerto Libertador municipality.	Municipal
Appeal to the Congress of the Republic to legislate on the participation of non-ethnic citizens in the mining-energy or environmental licensing processes that affect the land of farming communities in the Alto San Jorge region.	National

Source: In-house elaboration based on ART (2018a, 2018b).



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