WORKSHOP MEMORIES

"Improving Environmental Governance in the Colombian Extractive Sector. Lessons learned and Recommendations"

With the support of:

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Improving Environmental Governance in the Colombian Extractive Sector. Lessons learned and Recommendations.

METHODOLOGICAL ELEMENTS OF THE WORKSHOP
This session of the document presents the objectives, scope and approaches that were taken into account for the thematic development of the workshop.

Introduction
Colombia in recent years has focused part of its economic development on extractive industry, such as mining. However, this path has not been easy because of the challenges posed by regulations and State entities to effectively ensure the balance between extractive activities, protection of fundamental rights and conservation of the environment. Those challenges have led to the oppositions of communities and civil society due to the negative impacts that this economic activity can have on the environments where mining projects are developed.

This is part of international and national debates that try to maintain a vision of mining as an activity that under the right circumstances can generate sufficient benefits for the State, as well as for the territories and their communities. Similarly, the debate has also been based on good business practices that can currently be identified around the world, and that allow mitigation and prevention of the (negative) impacts that mining has on the environment and its relationship with the effective enjoyment of fundamental rights.

According to the Special Rapporteur of the United Nations Organization for Human Rights and the Environment, John Knox, in recent years the relationship between human rights and the protection of the environment has become clearer. A healthy environment is necessary for the enjoyment of a wide range of human rights. In turn, the exercise of human rights, including the rights of access to information and participation in decision-making, is fundamental to guarantee the right to a healthy and sustainable environment.

To contribute to the construction of a debate about mining in the country, which leads on the way to overcoming the needs of strengthening the State, the United Nations Development Program - UNDP and the Swedish Agency for the Protection of the Environment - SEPA, have joined efforts to contribute to improving environmental governance in the mining sector through the Global Program of Environmental Governance for the Sustainable Management of Natural Resources - EGP.

It is within the framework of the SEPA - UNDP alliance that this workshop is planned, which seeks, in general terms, to strengthen the understanding of the biodiversity, ecosystem services and human rights approach in the environmental governance of the mining sector. Understanding this link allows entities of the State of the mining and environmental sector to identify necessary
elements to be incorporated in the management of the sector to ensure that the necessary measures are taken to exercise a mining activity in the country that is focused on respect, both communities as well as the environment. This last means a change of anthropocentric vision of the rights to move to a vision from the bio-cultural, an approach that has been strengthened from scenarios such as the Constitutional Court with its ruling, in which the high court considered the river Atrato "subject of rights "and special constitutional protection. This ruling seeks to stop the deterioration of this affluent has been victimized by mining and the indiscriminate use of mercury for the exploitation of gold\(^1\).

The workshop was held on November 30\(^{TH}\) and December 1\(^{ST}\), 2017, where the methodological accompaniment was provided by the Regional Center for Responsible Enterprises and Entrepreneurships – CRER\(^2\) (by its initials in Spanish). It also had the participation of both international and national experts and officials from national and regional entities of the mining and environmental sectors. On behalf of the international experts, the Director of Themis Research participated, who was in charge of introducing the relationship between the environment and human rights in the mining cycle. Additionally, 4 experts from SEPA participated in the themes of Ecosystem Services, Participation and Strategic Communication, Environmental Monitoring and Mine Closure. Finally, to introduce the principles of the Rule of Law in environmental management, the Folke Bernadotte Academy and officials from the UNDP Headquarters took part.

National experts included the participation of academics, the Presidential Council for Human Rights, the Alexander von Humboldt Biological Resources Research Institute and representatives of some Regional Autonomous Corporations and / or Sustainable Development. The participants in the two days of the workshop were, mainly, entities of control and environmental monitoring of the regional and national order, as well as officials of entities of the mining sector.

The two days of the workshop focused on the developments and advances in Colombia in the face of the understanding of the link between biodiversity, ecosystem services and human rights. This allowed identifying with the participants challenges, advances and needs that exist in the country for their inclusion in the environmental public administration.

To take full advantage of the presence of all the participants and speakers (national and international), the two days of the workshop were divided into sessions that addressed specific topics.

\(^1\) For more information, review the complete sentence in the following link: [http://www.corteconstitucional.gov.co/relatoria/2016/t-622-16.htm](http://www.corteconstitucional.gov.co/relatoria/2016/t-622-16.htm), retrieved on January 10, 2017.

\(^2\) CRER ([http://creer-ihrb.org](http://creer-ihrb.org)) is committed to: i) Facilitating and strengthening informed dialogue, ii) Ensuring effective communication among different stakeholders, and iii) Strengthening the capacities of rights holders, companies, and governments.
Objectives of the workshop

- Increase, in the participants, the understanding of the relationship between biodiversity, ecosystem services and human rights, and their contribution to the environmental governance of the mining sector.
- Identify the challenges and opportunities that this approach implies for the planning of the mining sector in Colombia, as well as for the entities and government agencies related to the sector.
- Establish gaps and priority areas of learning and future technical support on the inclusion of the perspective of biodiversity, ecosystem services and human rights for mining development.
- Strengthen the relationship between SEPA - UNDP, environmental entities and entities of the mining sector to explore future possibilities for cooperation, which will help overcome the challenges for environmental management in the mining sector, identified during the workshop.

Structure of the workshop

The event had two main components: the first corresponds to the opening of the first day, which, through a keynote presentation and a panel discussion with representatives of Colombian institutions in the general theme, the advances that exist in the link biodiversity, ecosystem services and human rights and how this approach helps decision making in the mining sector, especially in relation to the environment.

The second corresponds to the work carried out since noon of the first day of the workshop (November 30) and during the whole of the second day (December 1) from guided discussions by thematic sections, which were conducted by experts from the SEPA and the UNDP. Based on presentations, workshops and knowledge exchange with participants, the 6 principles of the Rule of Law for environmental management were discussed, as well as the topics of i) Biodiversity and Ecosystem Services; ii) Participation and Strategic Communication; iii) Environmental Monitoring and iv) Closure of Mines.

WORK SESSIONS

Each one of the work sessions is presented, where the objectives, key messages, discussions and reflections are included. In the section of annexes of this document you will find the material developed by the participants in the sessions of the two working days.

1. Integrating human rights and protecting the environment in mining decision-making: possible approaches for Colombia to integrate national experience and international tools

This session corresponds to the presentation of the "Global Guidance Note (GGN) on Environmental Governance and Human Rights for the Mining Sector" by Margaret Wachenfeld.
This Global Guidance Note has as its target audience, in the first place, the governmental authorities responsible for the regulation of the mining industry, and the mining, environmental, social and human rights authorities. Second, to the National Institutions of Human Rights (NIHR), representatives of civil society; indigenous peoples and their representatives and other development partners and professionals. It is not a Guidance Note for private sector mining companies.

The GGN is based on Principle 10 of the Rio Declaration of 1992, by Environmental Justice. This Principle\(^3\) incorporates:

- The right to **timely and effective access to information** on environmental matters;
- The right to **participate individually or collectively** in **making decisions** that **affect the environment**;
- The right to **have access to justice** to protect their environmental rights.

Taking as a central axis the importance of participation for the adequate environmental management, the integration of this position was given to the mining sector in Colombia. The above with the objective of addressing not only the way in which the country understands and regulates participation, but also to identify challenges and opportunities, from the entities of the environmental and mining sector, to achieve an economic activity that is sustainable, social and environmentally.

One of the most relevant points of this presentation was the analysis of the mining cycle that is included within the GGN and reflections were incorporated for Colombia for each step of the cycle. In this way, each stage was approached from a perspective of the opportunities that in the national context exist to achieve the development of the mining sector taking into account the contexts where it is carried out, the types of mining that the country has, the normative advances that exist to the respect and the challenges so that the mining regulations find spaces for dialogue and active participation of different sectors for the planning and sustainability of the sector. Next, the 8 moments of the mining cycle are shown.

The main reflections were:

- Does the mining policy, and therefore the Colombian legal framework, have an approach for the protection of human rights or is it only about regulating and regulating the operation of mining companies?

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\(^3\) This Principle was not only the basis for discussion in this session, but also in the other sessions that accompanied the work during the two days of the workshop.
How much does the mining policy take into account the wide range of mining activities in the country? When including this variety of mining, does it do so under a rights protection approach?

To what extent the participation of different interest groups has been relevant for the planning of the sector and how much corresponds to participation for purely informative purposes, but not of incidence in decision-making?

The tools that environmental authorities have to monitor that mining companies comply with legal requirements, i.e. the Environmental Impact Assessments - EIA and the Environmental Management Plans - EMP, are they prepared at the right time or should they be required in other earlier stages of the mining cycle?

As part of the planning of the sector, who deals with social impacts and human rights?

Is the environmental monitoring carried out by national and regional environmental authorities sufficient to monitor all impacts, including cumulative ones?

How much participation of the communities or other groups of interest exists to do the planning of the closing and post-closing of a mine?

What happens with the impacts of the abandoned mines and that did not reach situations of adequate closure?

Although these questions were not addressed with the intention of answering them in this session, they were input for many of the discussions that took place in the thematic sessions addressed during the two days of the workshop. The challenges that exist in the country to ensure that mining is developed in a way that is harmonious with the 8 steps of the mining cycle are also diverse, but also with the principles of the Rule of Law for environmental management, which will be addressed later on.

These principles have to do with:

- Ensure the participation of stakeholders in the different stages of the mining cycle with adequate, sufficient and widely disseminated information so that the discussions that take place are not to inform about projects but to make informed decisions about the future of mining in the territory.
- Transparency in information is at the center of the discussion, not only as a principle for environmental management but also to advance the dialogue between actors.

2. Biodiversity, Ecosystem Services and Human Rights in the Colombian sphere

This session corresponded to a Panel Discussion by national experts. During this session, the following topics were addressed:

- Regulatory and jurisprudential advances to include the ecosystem services, biodiversity and human rights approach. This topic was led by Gloria Amparo Rodríguez, director of the Specialization and the Research Line in Environmental Law of the Faculty of Jurisprudence of the Universidad del Rosario.
With regard to this intervention, the central points focused on calling attention to the need to include more and more the legal aspect within the analyzes that are made on human rights issues and environmental management. In this order of ideas, reference is made to the change of approach that the judicial branch has given to the environment. In the past, there was an anthropocentric view of resources and how they were a function of human beings. With judgments of the Constitutional Court such as the Atrato River (2017) in which rights are granted to the river for protection, they show how the judicial branch is making a change to understanding the relationship between human beings and the environment from a biocultural perspective.

Once again, the importance of participation as an essential principle for sector planning and environmental management was resumed. Having practices and scenarios of true participation in the territories, increases investment security in the sense that the communities have had spaces for dialogue to discuss and make informed decisions about the projects that are to be developed in the territory.

But for this to happen, not only the scenarios must be transformed, but also the information circulated for decision-making, that is, it must not be scientists for scientists, it is also necessary to value the knowledge that exists in the communities and also feeds the debate around the protection of biodiversity.

Another point that the panelist addressed is the importance of participation and the need for it to be binding. On this, in recent years in Chile, work is being done on Principle 10 of the Rio Declaration, with the aim of creating an instrument for the regulation of this principle, which refers to participation. However, for Colombia this discussion has all the validity and echo in the country insofar as it contemplates elements of progressivity and not regressivity. At the time of the panel, it was mentioned that the country could withdraw from the discussion because in some points it has been considered to include elements of regression that would limit and go against Colombia's expectations.

The central message that is left with this intervention on environmental governance is that it must work in coordination, systematically and harmonically between the different actors for the protection of the environment and the development of the mining activity. Bearing in mind the importance that the issue of participation has to achieve this balance between economic development and the environment, the panelist left the phrase "We cannot continue with the paradigm of 'I participate, you participate, another decides'; it must be changed by 'I participate, you participate and we all decide'."

- **Generation of knowledge about ecosystem services for decision making.** This topic was addressed by Hernando Garcia, Scientific Director of the Research Institute of Biological Resources Alexander von Humboldt.
The country's research institutes have not generated knowledge that connects the different sectors. Additionally, there is a prevention to use unofficial information for fear of "bothering" and this may have affected the use of timely information for decision making. The challenge then exists is how we manage to inform and make available the information to make environmental decisions (in sectoral development) in a timely manner. For this, the Institute proposes that innovative strategies be implemented to make information available in the country, in all sectors and actors that require it.

The Institute mentioned the need to understand the difference between the Rule of Law vs. State of Opinion and establish clearly that the first is superior to the second, especially in a context of political polarization in which the latter is strongly manifested in the national context. Care should be taken with this phenomenon because it may be that some of the recent decisions resulting from popular consultations are being taken without sufficient technical information.

The central message that we want to leave on environmental governance is the need to have good, transparent and accessible information for decision-making in such a way that they do not respond to polarization or political pressure but to technical criteria.

For the Institute, the discussion is not "conservation vrs. development "because this is a false dilemma; but the discussion about "conservation with development" must be given.

- **Experiences from the regional environmental authorities on how to advance in the environmental management of the territory that is in accordance with the expectations of the communities, mining and non-mining.** To expose this situation was attended by Yoileth Ibarguen Mosquera, Deputy Director of Quality and Environmental Control of the Regional Autonomous Corporation for the Sustainable Development of Chocó - Codechocó.

For the communities, extractive activity is a big challenge since it has affected the biodiversity and the environment, and this in the post-conflict will be more difficult and a greater challenge for the environmental authorities. This space is a great opportunity to relate with the other institutions, to help. In Chocó, the participation of communities in mining development has not been as assertive. In the department, there is a traditional knowledge that must be taken into account.

The Regional Autonomous Corporation for the Sustainable Development of Chocó - Codechocó has a great responsibility to ensure that the necessary control and surveillance is achieved to minimize and prevent negative impacts on the environment as a result of mining extraction. However, such responsibility generates great challenges such as avoiding situations where the authorities of the collective territories act as an environmental authority and allow extractions.

The question of how to ensure that participation is not just sit and sign the minutes is left open. This is one of the biggest challenges currently facing the actors in the territory, starting with the same configuration and normative scope of the dialogue spaces for projects, which establish that
they are not for the discussion of impacts but to inform and socialize about the occurrence of a project in the territory.


Human Rights are not the responsibility of a single institution and therefore there are confluences between sectors that must be found to work in an articulated manner. An exercise in this way corresponds to the work that for several years has been leading the Ministry through the National System of Human Rights and International Humanitarian Law, to articulate and coordinate the norms, policies, entities and instances, of the national and territorial order, for promote respect for and guarantee of human rights and the application of IHL.

However, these initiatives fall short of their objective of protecting and improving the indicators of human rights if a territorialization of the policies is not achieved, that is, they do not remain at the national level. "Policies must be adapted to the territory and not the other way around (territories do not have to adapt to policies)."

Once again, this intervention emphasized the importance of participation in the enjoyment of rights and how territories should have the capacity to dialogue. Information and participation is key for adapting policies to territories. You have to build assertive participation, that does not start with maximalisms (white / black, yes / no) but instead have to take a look at each case.

In the Presidential Council for Human Rights there is a specific team for the formulation and implementation of the National Plan of Action in companies and Human Rights, which among the prioritized sectors has mining.

CLOSING REMARKS

After the interventions of each panelist the space for questions of the assistants was opened. The most important reflections of the panel of experts were:

- There is a connection between social welfare, human rights, biodiversity and environmental quality. Natural ecosystems are necessary for the survival and development of communities.
- There is a debt with the communities to integrate the knowledge they have in the investigations that are carried out. Due to a fear of the use of non-official information, ancestral knowledge of the territories of decision-making for the planning of the sector has been excluded, but also for the decision making regarding the protection of the environment and the sustainability of the sector.
The legal framework must incorporate a responsibility for ecosystems and biodiversity. Better coordination is needed in the efforts made to protect biodiversity. The impact on biodiversity is not taken into account when decisions are made about free trade and private interests.

There are different kinds of challenges for environmental authorities, national and regional, that have the competence and tools to monitor the impact of mining. Cooperation between authorities / institutions is needed to overcome the gaps that currently arise.

The information must be available for government entities, and although this is public, in most cases it is not easily accessible and circulated between entities.

Access to information by communities is also necessary to make objective and informed decisions about whether they want mining or not in their territory. Making this information accessible is a need to reduce conflicts between those who are in favor or against of mining. However, to date there is no mechanism or strategy to do this, therefore, it is a challenge to develop these methodologies.

It is not convenient for the Rule of Law that all issues are regulated by the Constitutional Court's decisions.

The control agencies should be in charge of the dissemination of information to ensure that participation changes paradigm and we begin inclusive participation processes, not for the signing of minutes but for decision-making.

3. From principles to action based on information and knowledge: a session on administrative decision-making based on the Rule of Law

This session was conducted by the Folke Bernadotte Academy (FBA) and UNDP who, jointly, developed the implementation guidelines for assessing how government agencies include and respect basic principles of the rule of law in the public administration of the mining sector. The focus of the session was to present the 6 Principles of the Rule of Law: legality, accessibility, transparency and access to information, right to be heard and to participate, right to appeal and accountability. This perspective, with its linkages to Principle 10 of the 1992 Rio Conference, is a tool to strengthen the public administration and apply a human rights-based approach to environmental decisions during the mining cycle.

Relevant results of the joint UNDP-FBA pilots carried out in Sierra Leone, the Philippines, Kosovo and Ukraine were presented. These results showed how the integration of principles of the rule of law in public administration can help identify areas where government agencies can be more effective and rights-based in their interface with citizens. This holds potential to strengthen the protection of the environment, ensure the effective enjoyment of rights and enhance the sustainability of the mining sector. In sum, the ROLPA approach to administrative decision-making in the mining sector holds potential to promote a harmonious relationship between mining, biodiversity and human rights.
In the case of Colombia, the ROLPA methodology has so far been applied within two agencies: 1) the National Authority for Environmental Licensing (ANLA), that is in charge of large-scale projects; and 2) the Regional Autonomous Corporation for the Sustainable Development of Chocó (Codechocó). Compared to approaches in the pilot countries, one of the underlying issues in the Colombian context is adapting the methodology to a broader group of stakeholders than service users to reflect the full scope of the communities that might potentially be affected by mining projects. It is expected that the Rule of Law in Public Administration (ROLPA) assessments will help to identify gaps in environmental governance and subsequently reveal causes for the marginalization of some of the affected stakeholders.

The key messages of the presentation and discussion of the session focused on:

1. For the Colombian case, implementing the ROLPA methodology (Users' Guide for Assessing Respect for the Rule of Law in Public Administration), requires an adaptation, with the aim of including a wider group of interested parties that are affected by the social and environmental impact of mining projects.
2. The assessment of the application of rule of law principles can help identify existing gaps in State entities for environmental governance and highlight the causes of the marginalization of some of the affected stakeholders.
3. There are deficiencies in the coordination between the environmental authorities in charge of awarding licenses (ANLA) and the mining authorities (for example, NMA, Ministry of Mines and Energy, among others).
4. Focus on the quality of decision–making and how it adds to the relations between State and society, rather than the quantity of administrative decisions.
5. The participation of all actors must take place from the early stages of the mining cycle. Communities and local authorities should not only be included at the environmental licensing stage.
6. The principle of legality seeks to avoid the law of opinion. Overcoming the polarization around mining activity in those cases where the opposition is not supported by technical information about the projects.
7. The principle of the right to appeal is the most challenging in the Colombian context: the question of how to seek and obtain redress when services are not received is largely unresolved.
8. A solid legal framework is necessary but implementation and compliance are the cornerstones of the desired de facto application of principles and provisions of the rule of law.
9. Government employees at the local level of government are faced with applying laws that overlap, and oftentimes without sufficient capacity and information for administrative decision-making and actions in defense of the rights of communities and the environment.
With this presentation, the first block of the workshop is closed. The next block of notes refers to the thematic sessions led by SEPA experts. These sessions also included the participation of a national or regional government entity to complement and strengthen the dialogue among attendees.
ANALYSIS OF THE RESULTS OF THE DISCUSSIONS AND REFLECTIONS FOR EACH THEMATIC SESSION WITH THE SEPA INTERNATIONAL EXPERTS

The topics addressed were: i) participation and strategic communication, ii) ecosystem services, iii) closure of mines, and iv) environmental monitoring of the impacts of mining development. In each of these sessions there was the intervention of a national entity from the environmental or mining sector to introduce the advances and challenges that this entity has had to address the specific theme of the session. The national entities that participated were: i) the National Mining Agency - NMA, ii) the Office of Environmental and Social Affairs - OESA of the Ministry of Mines and Energy, iii) the Regional Autonomous Corporation of the Center of Antioquia - CORANTIOQUIA, and iv) the National Authority of Environmental Licenses - NAEL.

1. Participation and strategic communication in the mining cycle

The session focused on understanding the concept of communication and participation as essential elements for social dialogue and how, from a rights-based perspective, it can contribute to the implementation of inclusive solutions to the complex problems present in the territory for the development of the mining activity. In this session, the National Mining Agency - NMA participated as a national expert. Their presentation focused on showing the advances that the NMA is making to implement new processes of dialogue and participation of relevant actors in the territory for the planning of the sector.

The session was divided into three blocks:

1. Presentation and discussion on the links between the basic principles of human rights, participation and communication, added value and some advice on good practices.
2. Introduction to strategic communication planning and how it can be used as a tool to create participation and to implement / support important human resources principles.
3. Based on the map of the mining cycle presented in the first session of the workshop, a group discussion was held on the specific moments where the space for discussion and dialogue should be opened, as well as the identification of actors that should be involved in each stage of the cycle.

The main results of the session are presented in two categories: i) identified problems and ii) minimum elements necessary to overcome the identified problems.

IDENTIFIED PROBLEMS

1. Normative framework that is not based on the proper knowledge of mining resources and related areas such as geology, biodiversity, cartography (ideal scale), which facilitates the transfer of governance of these resources to third parties (companies, individuals) who develop these investigations at the convenient scale.
2. Lack of coordination among the different entities of the State, not only from the mining sector, but also from other sectors, such as the environment.

3. There are gaps and legal contradictions due to judicial decisions that in recent years have been made by higher courts and the Constitutional Court.

4. There is no participation of the communities that is informed and helps to diminish the asymmetries that exist in the access to information.

5. There is no technical knowledge in the communities to interpret the information provided by companies and government entities that help the communities to participate inclusively.

6. The environmental and regional authorities do not have enough time to follow up on all the mining projects they are responsible for and there is no circulation of the information collected by the national environmental authority towards the regional.

7. In Colombia the controversy is not about "closure vs. abandonment", but about how to act against mining projects that have been abandoned by the owners of the mining title, who for different reasons cannot continue with exploitation. This situation has among its problems the absence of an entity that can take charge of the environmental liabilities left by these projects.

8. At the moment, there are no monitoring indicators within the Environmental Impact Studies - EIA for the residual impacts of mining activity in the environment.

ELEMENTS TO OVERCOME IDENTIFIED PROBLEMS

1. Generate information exchange channels between entities in the same sector, but also with entities from other sectors that have competence in the monitoring and control of mining activity.

2. Start processes of confidence generation between the parties (State, companies and communities) to achieve a greater participation in the planning of the sector.

3. Have methodological instruments that develop minimum elements on how the participation of the parties should be throughout all stages of the mining cycle.

4. Achieve that the technical information of the mining projects can be understood by all interested parties, that is to say that those who do not have specialized training in specific topics have information that is understandable from their knowledge and knowledge. This allows the democratization of information, to the extent that it can be used by all people for informed and inclusive participation in the stages of the mining cycle that it is necessary to do so.

The central message that was left is that inclusive and non-selective participation is a basic principle of human rights that offers opportunities for development. However, it is necessary to identify how to move from participation for information to participation for informed decision making. Many of the topics addressed in the session were part of the reflections that the experts from the previous sessions had already addressed, not with a view to providing answers for their solution, but with the objective of identifying collectively what the strategies should be to ensure participation in local scenarios where there is no trust between actors and there is a disgust of the
communities, which consider participation as attendance records and not as mechanisms to influence local and national development.

2. **Ecosystem services and biodiversity within the development of mining activity**

During this session, the relationship between biodiversity, ecosystem services and human rights was addressed. To guide the conversation among the participants, the SEPA expert raised 4 central themes during his presentation:

i) general introduction on the link between mining, ecosystem services and human rights,

ii) examples of economic valuation of ecosystem services,

iii) introduction to examples of tools to compare the impacts and tradeoffs between the socio-economic impacts of mining projects, and

iv) final considerations on the added value that the ecosystem services approach has for the identification of impacts and the development of the mining sector.

On behalf of the Colombian institutions, the Office of Environmental and Social Affairs of the Ministry of Mines and Energy participated. This entity explained the progress that the country has made in the way of including the ecosystem services approach in the planning of the sector, from the elaboration of the *Action Plan for biodiversity and ecosystem services (APBES)*. With this type of Action Plans has been achieved: perform threat analysis, have a mapping of areas and determine impacts.

Once the exhibitions of the international and national context were finished, round table discussions commenced. The workshop participants discussed the following guiding questions:

- Main challenges in assessing the effect of mining on ecosystem services, biodiversity, human wealth and human rights?
- What can be the unexpected effects of mining on ecosystem services, biodiversity, human wealth and human rights?
- What are the lessons learned (good and bad) when assessing the effects of mining on ecosystem services, biodiversity, human wealth and human rights?

The conclusions of this session can be summarized in:

**IDENTIFIED CHALLENGES**

- To date, as part of the environmental license there is no link between the mining project to be developed and the possible effects on human rights. The information contained in the Environmental Management Plans does not address the subject of human rights.
- There is no tool (neither from the State nor from the companies) to identify the relationship between mining activity and the violation of the effective enjoyment of human rights.
• It is necessary to involve other authorities to ensure that the project does not violate the DD.HH.; Although the relationship between environmental impacts and the enjoyment of rights is being analyzed, this is not an issue that only involves environmental authorities.

• The country does not have a baseline of existing natural resources and the state in which they are located. Therefore, it is not possible to determine with total certainty i) which impacts are exclusive of mining activity, ii) which are a consequence of other activities outside mining, and iii) which are a combination of mining activity consequences and presence of other economic activities. There are regulations and guidelines about the economic valuation of the ecosystem services impact from mining. However, those guidelines are generally not used and economic valuation of the effect that mining has on ecosystem services and biodiversity is generally not done.

• In Colombia there is no updated mining map that includes both legal mining projects (large, medium and small scale) and those that by law are classified as illegal.

• It is necessary that citizen participation mechanisms become effective, that sufficient and clear information be provided for decision-making among the actors on the development of the mining sector in the territory. This leads to the mechanisms of participation losing legitimacy among communities and citizens.

• To date, there is no environmental license in the mining exploration phase; From this phase, communities generate expectations regarding what exploration means and how it differs from the exploitation phase.

• There is no clarity regarding the approach proposed in relation to the link between biodiversity, ecosystem services and human rights: do we want to assess the impact of environmental impacts on human rights? or do you want to include a human rights (participation) approach in environmental decision making?

• There is no consensus on the methodology that should be used to evaluate costs versus the benefits of mining activity and when they should be evaluated.

• Many of the mining projects that are currently in operation are not subject to recent regulations. This generates in the community close to the projects and to the general public, that the operating companies do not comply with the regulations in force in the country.

WHAT IS NECESSARY TO SOLVE THESE CHALLENGES?

• Have up-to-date, complete and appropriate information that is delivered to all the actors that are currently involved (State at all levels, mining companies), as well as to those actors considered relevant but who have not been involved so far (communities).

• The environmental issue should be given a higher priority, not only as protection of the ecosystems but also from a perspective that incorporates the enjoyment of rights by the communities.

• Consolidate a greater relationship between the parties (industry, institutionality, community); initiate trust building processes among interested parties.
• Improve the formulation and / or evaluation capacity of consultants and mining and environmental authorities. Likewise, the standards for the preparation of the Environmental Impact Studies - EIS must be improved, that is, include elements and information that at least the company must include in these studies.

LESSONS LEARNED
• Sometimes the identified environmental impacts are so great that they overflow the attention of the social conditions of the communities of the area of direct influence and this leads to the violation of human rights.

3. Mine closure - importance of early planning to minimize and avoid impacts on biodiversity, ecosystem services and human rights

This session addressed issues related to the importance that should be given to an early planning to the processes of closure and post closure of the mines. This is of vital importance when it is understood that the mining activities and waste associated with this activity often have a long-term impact, even after the extractive activity has ceased. Therefore, closure measures should be planned in the early design of the mine and the design for closure should be based on the characteristics of the mining waste.

On behalf of the national institutions, this session counted with the participation of the Regional Autonomous Corporation of the Center of Antioquia - CORANTIOQUIA, who presented the greatest challenges regarding the planning of closure and post closure of mines. It was emphasized that, in Antioquia, as in almost all regions of Colombia, there is presence of all types of mining (large, medium and small scale, as well as subsistence). The regional environmental authorities have instruments for monitoring and control the mine closure and post-closure stage, however, this function is difficult to fulfill when the mining operations do not reach these final stages of the mining cycle, because projects are seen in the need to abandon the mines.

The consequences on communities and the environment due to the presence of abandoned projects that do not reach the closing and post-closure stages are the following:

• Fires and water pollution from underground coal mines that have been abandoned
• Currently, the social dimension in the closing and post-closure stages is not taken into account: what happens with the workers and the communities?
• The Colombian Mining Code includes a financial dimension to ensure that the impacts can be compensated, which is done through compliance policies, but what happens if the insurance policy is in the name of the third party? How can the Regional Autonomous Corporation recover if it is in the name of the company? What happens to those projects that leave and the policy does not cover what is required because it was never renewed by the company?
Once the presentations were finalized, the group discussion took place around the following questions:

1. What is the moment, within the mining cycle, in which the planning of mine closure and post closure measures should begin?
2. At what point in the mining cycle and how should communities be involved?
3. What is being left out? (What is missing)

The conclusions were:

- According to the *Global Guidance Note (GGN) on Environmental Governance and Human Rights for the Mining Sector*, there is a series of activities that must be carried out in each of the stages of the mining cycle. If the analysis is made from this division, the planning of the closure and post-closure measures of the mine should be initiated at the end of the exploration stage, when there is already precise knowledge on how the mining project will be developed, what is the scope of it and how long it is possible to extract resources, among other questions.
- Regarding the second question, communities are involved from the licensing phase, but their active participation should start much earlier; a representative from the National Mining Agency - NMA, mentioned that since 2017 and in some mining regions of the country, a process of dialogue with the communities has started during exploration phase.
- About the things that are currently left out (*What is missing*), it was mentioned that academia is generally absent in this kind of discussions.

4. *Environmental monitoring of mining development projects*

Environmental monitoring is done to comply with legal requirements and ensure compliance with laws, regulations and evaluation criteria. Its objective is to expand the understanding of the impacts of mining activities on the environment. Environmental monitoring provides the necessary information to develop methods to avoid or minimize harm to humans and the environment.

To accompany the discussion, this session was attended by the National Environmental Licensing Authority - ANLA, whose representatives presented the challenges that the entity has had for environmental monitoring, as well as the actions that have been taken in the direction of achieving a greater and better articulation with entities in the territory and mining companies (case of the Cesar mining corridor). In relation to the challenges faced by the entity, it was mentioned that the country did not have maps of regional impacts, but rather concentrated on presenting the information by project, leaving aside the possibility of i) identifying cumulative impacts in regional contexts where the mining operation is broad, ii) determine the presence of other mining projects and other sectors in the same region, and iii) lack of unified monitoring indicators among companies, which made it impossible to compare information between projects of the same region for decision making.
In relation to these challenges, the ANLA initiated a project in the mining corridor of the department of Cesar to advance in the generation of data (in real time) on the air conditions in the region. This project has the participation of the 4 companies that have a presence in this region, as well as the regional environmental authority - CORPOCESAR. However, the challenge still remains to ensure that data is transformed into information that is comprehensible to all publics: the State, other companies, NGOs, academy, communities and the general population.

The conclusions around this session can be grouped into three themes:

1. As part of the process of environmental monitoring carried out by companies and environmental authorities, the possibility of community monitoring should be considered, with the objective that the communities in the area of influence of the projects know the information that is being generated and they can evidence the work that State and companies are doing in regard of protect the environment and reduce the negative impacts on it.

2. In relation to the above, it was mentioned that in addition to having this kind of projects that involve all parties in the monitoring and socialization processes of the results of these actions, it is necessary that the technical information is translated into a language that is comprehensible to all parts.

3. In line with the above, the importance of making information public and accessible to all people was highlighted. Although the environmental authorities mentioned that the information is available to be consulted by everyone on the websites of each entity, this is not enough because in many cases it is difficult to navigate through these internet pages. Additionally, it is not taken into account that, especially in many areas of influence of mining projects, not all people have the knowledge or technological tools necessary to access information (computers, internet, etc.). This point refers to the capacities that communities have to understand and interpret technical information.

**GENERAL CONCLUSIONS**

During the two days of work around environmental governance in the mining sector in Colombia, the challenges faced by the entities to effectively exercise control, monitoring and surveillance were effectively addressed to ensure that mining activities are sustainable both with the environment, as with the communities in their areas of influence.

Four themes can be identified that were discussed transversally in all the discussion sessions and that provide inputs for the adequate environmental management in the country:

1. **Participation:** essential element, not only for the planning of the sector, but also for the management of mining projects in the territory. It does not refer to the creation of spaces
for dialogue and agreement between the State, companies and the community, but rather to ensure that we pass from a passive participation (informing) to an active participation (influencing decision-making). This approach helps to minimize and prevent conflicts between nation - territory (popular consultations) and between communities - companies. In general, participation should be i) more frequent, ii) of better quality and, iii) supported by relevant information.

2. **Access to information:** one of the greatest challenges facing the actors (State, companies, civil society organizations and communities) is to generate trust for the discussion of projects (mining and non-mining). To achieve the above, it is essential that the information is shared in a timely manner with all parties, which includes the use of a common language to be comprehensible to all involved (especially communities), and that is easily accessible to all, that is to say that it is not enough to hang them on the websites, but it must be disseminated by other means to ensure that the communities and the population in general can access it quickly. Carrying out the above will have a positive effect on the reduction of information asymmetries and will promote informed dialogues between the parties, leading to solutions and proposals that are accepted by all those involved in the planning and management of the sector.

Regarding this point, it is important to mention that information is transformed into knowledge, insofar as it is used to understand situations, propose solutions to overcome management challenges, improve or strengthen actions for decision making, etc. That is to say, it must be sought that science is at the center of decision making.

3. **Coordination:** it was evidenced during the conversations and discussions with the assistants that the communication and articulation between the entities of the same sector (mining, environmental, etc.) and between different sectors (intersectoral) is deficient. This makes it difficult for the State to have an impact on the sustainable development of the sector and on its legitimacy with the communities. The coordination between sectors and entities must promote an intersectoral approach for the proper management of the mining sector, in such a way that the impacts that this activity has on the environment and human rights are addressed and assumed by the corresponding entities.

4. **Preventive approach:** it was mentioned at different times that the legislation and regulations regarding the mining sector, including the evaluation and monitoring of environmental management, lack an approach that prioritizes prevention actions. It has opted to have rules that regulate the activity in its procedures, but has not worked to ensure that the actions, both the State and its agencies and operating companies, are based on the notion of "Do No Harm".
This means: i) knowing the contexts of operation, ii) identifying impacts both environmentally and socially, economically, politically, demographically and security, and iii) establishing measures to ensure that actions and activities are not going to deepen problems present in the territory but on the contrary positively impact the areas where the projects will be.

Some actions identified by all the participants, including the experts from SEPA, UNDP and government entities, to improve environmental governance in the 4 transversal themes are:

**Coordination**
1. Review normative and contractual instruments for their updating and improvement, with an approach to the inclusion of biodiversity, ecosystem services (E.S) and human rights.
2. Establish guidelines for a territorial integration scheme to unify purposes and actions in the territory by the sector and the State.
3. Develop a framework for the work of the sector between the central and territorial levels, taking into account what has been said by the Constitutional Court.
4. Build a common vision of mining (that includes different visions).
5. There are inter-institutional instruments that coordinate the work of each entity, but this must have a materialization in facts.

**Participation**
1. Permanent monitoring of the territories to reduce socio-environmental conflicts.
2. Generate community participation mechanisms during the planning stages (mining cycle) under clear roles and guidelines.
3. Use the knowledge of the communities.
4. Inform the community ex-ante (before) the realization of projects.
5. Generate technical capacities in communities for effective contribution in decision making.
6. Generate a responsible entity to ensure that participation is effectively implemented and design a methodological framework.
7. Participation in all stages of the mining cycle, from the planning of the sector.

**Strategic use of information**
1. Strengthen the participation of the National Environmental System - SINA in decision-making instances of the mining-energy sector to incorporate an integral vision in the management of biodiversity and ecosystem services.
2. Analyze the productive chain of information. That is, to ensure that those involved in the generation of data that is later transformed into information include all the actors that must participate. This with the aim of getting everyone to have information that is intelligible for their technical knowledge on the specific issues, but also circulates among all, and in this way the information has the necessary legitimacy to be used in discussions and decision-making of the sector.
3. Create protocols for decision-making that integrate a biodiversity approach into planning stages prior to contracting with companies and that facilitate the provision of information between National Environmental System - NES and the mining sector.
4. Articulation of mining-environmental information, in a dynamic way (web).
5. Develop mechanisms of information and generation of knowledge of inter-sectorial nature and that responds to the needs of relationship with the community.
6. Availability of information for all the actors involved; it is not limited to making it public but easily accessible to all interested parties.
7. Strengthen and socialize the Environmental Information System of Colombia – SIAC, which is a source of consultation.
8. Information and intersectoral knowledge mechanism and with the community.

Preventive approach
1. Sector monitoring system with a focus on biodiversity, ecosystem services and human rights.
2. Strengthen control and surveillance for sector activities in the territory related to biodiversity and ecosystem services.
3. Democratization of information: knowledge of the rules that govern the sector (know what and how) by all actors.
4. Institutional strengthening (capacities, technology, technical assistance, communication).
5. Promote participatory monitoring.
6. Articulate the monitoring of projects with the Plans of Management and Management of Watersheds (PMMW guidelines), to generate articulated decisions with the basin.