

SCHOLARLY ARTICLE

Informal Mining in Colombia: Gender-Based Challenges for the Implementation of the Business and Human Rights Agenda

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Abstract

This paper analyses whether the implementation of business and human rights (BHR) frameworks in Colombia properly responds to the challenges posed by informal mining and gender-based violence and discrimination in the context of conflict and peacebuilding. The mining sector has been considered key in Colombia to promote economic growth, but it is also characterized by significant informality. Informal mining in Colombia has been linked to gender-based violence and discrimination. We contend that while informality has been identified as a substantial hurdle to the realization of human rights, BHR frameworks still fall short in addressing this aspect of business. By examining the specific measures Colombia has devised to implement BHR, including two National Action Plans on BHR, we demonstrate the urgency of addressing informal economies in BHR and to continue developing particular insights to properly protect, respect and remedy the human rights wrongs women experience in the context of informal mining.

Keywords: Colombia; gender; informality; mining; national action plans on business and human rights

1. Introduction

Mining has been an important activity for the Colombian economy since colonial times.¹ From the late twentieth century onwards, it has been viewed as a key element of the

¹ Luis Bértola and Jeffrey Williamson, 'Globalization in Latin America before 1940' in Victor Bulmer-Thomas, John Coatsworth and Roberto Cortes-Conde (eds.), *The Cambridge Economic History of Latin America* (Cambridge: Cambridge University Press, 2006).

country's economic growth.² However, informal mining – and the link to gender-based violence and discrimination in this setting – have been a concern for the Colombian state, scholars and civil society.³ Analysing this interface between informal mining and the exposure of women to violence and discrimination is particularly relevant in a country that has been enmeshed in a protracted internal armed conflict and that is in the process of peacebuilding.⁴ Women in Colombia, particularly those living in the countryside and remote regions, have been exposed to armed conflict-related harms that have placed them in a precarious position exposing them to further violence.⁵

In this paper, we argue that the interrelation between gender-based violence and discrimination, mining, armed conflict and peacebuilding in Colombia, demonstrates the need for explicit attention to the gendered nature of informal economies in the business and human rights (BHR) field. We posit that Colombia needs to take a comprehensive gender-responsive approach to the implementation of BHR instruments and practices to consider the challenges that informal mining raises for women. Our analysis points to an important gap in BHR more widely, namely, that informal economies are often insufficiently addressed. As our exploration of the Colombian mining context illustrates, addressing this gap is critical if the gendered dimensions of BHR are to be properly addressed, not least because women are often over-represented in informal economies. In the Colombian mining industry, for instance, women represent a small percentage of the total workforce but their number increases in the informal economy.⁶

Scholars, civil society and government authorities have debated the concept of informal mining in Colombia without reaching a stable consensus.⁷ The Colombian Ministry of Mines and Energy's Gender Guidelines for the Mining and Energy Sector defined informal mining

² Departamento Nacional de Planeación, 'Plan Nacional de Desarrollo 1998–2002: Cambio para Construir la Paz' (1999), https://colaboracion.dnp.gov.co/cdt/pnd/pastrana2_contexto_cambio.pdf (accessed 10 November 2021) 480–83.

³ Ibid, 422–423; Julie Alejandra Cifuentes Guerrero and Leonardo Güiza Suárez, 'El rostro de la mujer minera en Colombia: un análisis a partir del enfoque de género' (2021) 18 *Cuadernos de Desarrollo Rural* 1; Susana Martínez-Restrepo et al, 'Empleo, informalidad y bienestar de las mujeres en el sector minero-energético en tiempos de pandemia' (2021), <https://publications.iadb.org/publications/spanish/document/Empleo-informalidad-y-bienestar-de-las-mujeres-en-el-sector-minero-energetico-en-tiempos-de-pandemia.pdf> (accessed 10 November 2021); MIT D-Lab and Alliance for Responsible Mining, 'Creative Capacity Building to Address Gender-Based Violence in the Artisanal and Small-Scale Gold Mining Sector in Colombia' (2021), <https://d-lab.mit.edu/resources/publications/creative-capacity-building-address-gender-based-violence-artisanal-and-small> (accessed 10 November 2021).

⁴ Grupo de Memoria Histórica, *¡Basta Ya! Colombia: Memorias de Guerra y Dignidad* (Bogotá: CNRR, 2013) 31–109; El Gobierno Nacional y las FARC-EP, 'Acuerdo final para la terminación del conflicto y la construcción de una paz estable y duradera' (2016), https://www.jep.gov.co/Marco%20Normativo/Normativa_v2/01%20ACUERDOS/Texto-Nuevo-Acuerdo-Final.pdf?csf=1&e=0fpYA0 (accessed 10 November 2021); Instituto Kroc, 'El Acuerdo Final de Colombia en tiempos del COVID-19: apropiación institucional y ciudadana como clave de la implementación' (2021), <https://curate.nd.edu/downloads/und:9c67wm14c71> (accessed 10 November 2021).

⁵ Auto 092 de 2008 Corte constitucional de Colombia (2008); United Nations Security Council, 'Conflict-Related Sexual Violence. Report of the Secretary-General', S/2021/312 (30 March 2021) 24–26.

⁶ Martínez-Restrepo et al, *note 3*, 15–16.

⁷ Marcello M Veiga and Bruce G Marshall, 'The Colombian Artisanal Mining Sector: Formalization is a Heavy Burden' (2019) 6 *The Extractive Industries and Society* 223, 223–227; Grupo de Diálogo sobre Minería en Colombia (GDIAM), 'Propuestas para una minería incluyente en Colombia' (2021), <https://gdiam.org/wp-content/uploads/2021/09/Cuarta-publicacion%CC%81n-GDIAM-Nacional-2021-1.pdf> (accessed 1 November 2021); Margarita Ricaurte de Bejarano, *Manual de Derecho Minero* (Bogotá: Temis, 2021) 423, 433–452; Carlos A Rodríguez and Sebastián Rubiano Galvis, 'Las mujeres y la minería ilegal de oro en la Amazonía colombiana' (2016), https://www.academia.edu/24382375/Las_mujeres_y_la_mineria_ilegal_de_oro_en_la_Amazonia_colombiana (accessed 1 November 2021).

as ‘mining developed in precarious technical, environmental, health and safety, commercialization, and employment conditions’.⁸ According to Marcello M Veiga and Bruce G Marshall, ‘[i]nformal mining encompasses a set of deficiencies in environmental management, technical assistance and development, access to information and acceptable working conditions’.⁹ A Colombian non-governmental organization dedicated to study of this activity indicates that informal mining only pertains to small-scale and artisanal operations, and that medium-scale mining could be considered informal if they have not been able to acquire their mining title despite all their efforts.¹⁰

For the purposes of this paper, we understand that informal mining happens when mining activities do not take place in corporate environments, do not have mining titles when legally required, and are developed in precarious conditions that fall outside structures of environmental, commercialization, employment, health and safety, technical or employment regulation.

Informal mining can take various forms. For instance, small-scale and artisanal mining are often understood as informal, as they exhibit some of those precarious conditions. However, there is evidence that this kind of mining can operate formally.¹¹ Small-scale and artisanal miners, civil society, scholars and the Colombian government have tried to distinguish informal mining from illegal mining.¹² To do so, some have emphasized that in Colombia small-scale and artisanal miners do not need mining title to develop their activities.¹³ Others have underlined that illegal mining occurs ‘when the activity is conducted deliberately without proper authorization issued by the relevant authorities or by criminals practicing the activity for the purposes of laundering money’.¹⁴ However, in this paper we are not tackling the specificities of this ongoing discussion.

Globally, the higher participation of women in informal mining results in their greater risk of exposure to the industry’s human rights harms.¹⁵ In Colombia there has been an additional cause of concern, as there is evidence that certain illegal armed groups have, in some instances, used informal mining to finance their activities. International governmental organizations, civil society and the Colombian government have acknowledged that armed

⁸ Original Spanish passage: ‘minería realizada en condiciones precarias en materia técnica, ambiental, de salud y seguridad, comercialización del mineral y de empleo’. Ministerio de Minas y Energía, ‘Lineamientos de género para el sector minero energético’ (2020), <https://www.minenergia.gov.co/documents/10192/24180065/Lineamientos-de-pol%C3%ADtica-p%C3%BAblica-con-enfoque-de-g%C3%A9nero-del-sector-minero-energ%C3%A9tico.pdf> (accessed 1 November 2021) 13.

⁹ Veiga and Marshall, note 7, 223.

¹⁰ Grupo de Diálogo sobre Minería en Colombia (GDIAM), note 7, 23–24.

¹¹ USAID Global Environmental Management Support (GEMS), ‘Sector Environmental Guideline: Artisanal and Small-Scale Mining’ (2017), <https://www.usaid.gov/environmental-procedures/sectoral-environmental-social-best-practices/seg-mining/pdf> (accessed 10 November 2021) 13; Cifuentes Guerrero and Güiza Suárez, note 3, 6.

¹² MIT D-Lab and Alliance for Responsible Mining, note 3, 39; Veiga and Marshall, note 7, 223–224; Defensoría del Pueblo, ‘La minería sin control: Un enfoque desde la vulneración de los derechos humanos’ (2015), <https://www.defensoria.gov.co/public/pdf/InformedeMineria2016.pdf> (accessed 10 November 2021) 230.

¹³ Cifuentes Guerrero and Güiza Suárez, note 3, 5.

¹⁴ Veiga and Marshall, note 7, 223. The government and certain scholars use the term ‘criminal mining’ to refer to cases in which illegal armed groups control, finance or develop mining activities. Beatriz Eugenia Suárez-López, ‘Retos de la regulación jurídico-penal de la minería en Colombia. Estudio del artículo 333 del Código Penal colombiano’ (2017) 135 *Vniversitas* 421, 430; Defensoría del Pueblo, ‘Informe especial: Economías ilegales, actores armados y nuevos escenarios de riesgo en el posacuerdo’ (2018), <https://www.defensoria.gov.co/public/pdf/economiasilegales.pdf> (accessed 10 November 2021) 128; Juan Felipe Ortiz-Riomalo and Angelika Rettberg, ‘Minería de oro, conflicto y criminalidad en los albores del siglo XXI en Colombia: Perspectivas para el posconflicto colombiano’ (2018) 23 *Colombia Internacional* 17, 19, 42, 44.

¹⁵ Katy Jenkins, ‘Women, Mining and Development: An Emerging Research Agenda’ (2014) 1 *The Extractive Industries and Society* 329.

conflict contributes to fuelling gender-based violence and discrimination.¹⁶ The same heightened risk of violence could occur in the context of informal mining.¹⁷

In this paper we explore the intersections between BHR instruments adopted by the Colombian government and gender-based violence and discrimination in informal mining. Colombia is not a newcomer to global BHR discussions. The government has adopted two National Action Plans on BHR (NAPs) in 2015 and in 2020, along with follow-up reports and BHR public policy documents specific to certain rights or industries, several of which address the mining sector.¹⁸ Both NAPs illustrate the government's commitment to implementing the United Nations Guiding Principles on Business and Human Rights (UNGPs),¹⁹ in addition to other instruments such as the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises²⁰ and the International Labour Organization (ILO) Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.²¹ However, the focus of BHR national instruments to date has remained primarily fixed on the formal economy. As our analysis will illustrate, this oversight is concerning from a gender perspective, as women's participation in the mining sector happens mostly in informal mining, and the absence of explicit attention to informal economies in BHR instruments could be one of the factors that contribute to the perpetuation of the human rights violations that affect women in this sector.

The paper proceeds as follows. In Part II, we study the role of mining in the Colombian economy and the complex situation of women in informal mining. In Part III, we analyse how gender and informality have been considered in the drafting and implementation of

¹⁶ UN Economic and Social Council, 'Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women. Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, Ms. Radhika Coomaraswamy, Submitted in Accordance with Commission on Human Rights Resolution 2002/52', E/CN.4/2003/75/Add.2 (14 January 2003); CIDH, 'Las mujeres frente a la violencia y a la discriminación derivadas del conflicto armado en Colombia', OEA/Ser.L/V/II. Doc 67 (18 October 2006); Auto 092 de 2008 Corte constitucional de Colombia (2008), [note 5](#); Working Group to Monitor Compliance with Auto 092 of the Constitutional Court, 'Access to Justice for Women Victims of Sexual Violence: Fourth Follow up Report to Auto 092 of 2008 of the Colombian Constitutional Court' (2011), https://www.coljuristas.org/documentos/libros_e_informes/acceso_a_la_justicia_para_mujeres.pdf (accessed 10 November 2021).

¹⁷ Auto 009 de 2015 Sentencia T-025 de 2004 Corte constitucional de Colombia and Sala especial de seguimiento (2015) 29–30; Cifuentes Guerrero and Güiza Suárez, [note 3](#), 11–12; MIT D-Lab and Alliance for Responsible Mining, [note 3](#).

¹⁸ Consejería Presidencial para los Derechos Humanos, 'Plan nacional de acción sobre derechos humanos y empresas' (2015), https://www.ohchr.org/documents/issues/business/nationalplans/pna_colombia_9dic.pdf (accessed 10 November 2021); Consejería Presidencial para los Derechos Humanos, 'Informe de avances en la implementación: Actualización mayo 2017' (2017), <http://www.derechoshumanos.gov.co/observatorio/publicaciones/Documents/2017/170523-Informe-empresas-ac2.pdf> (accessed 10 November 2021); Consejería Presidencial para los Derechos Humanos, 'Segundo informe de seguimiento del plan nacional de acción de derechos humanos y empresas 2017–2018' (2018), <http://www.derechoshumanos.gov.co/observatorio/publicaciones/Documents/2018/Informe%20seguimiento%20PNA%20E%20y%20DDHH%202018.pdf> (accessed 10 November 2021); Resolución 40796 de 2018 (Colombia); Consejería Presidencial para los Derechos Humanos, 'Plan nacional de acción de empresas y derechos humanos 2020–2022: "Juntos lo hacemos posible resiliencia y solidaridad"' (2020), <http://www.derechoshumanos.gov.co/Prensa/2020/Documents/Plan-Nacional-de-Accion-de-Empresa-y-Derechos-Humanos.pdf> (accessed 1 November 2021); Ministerio de Minas y Energía, [note 8](#).

¹⁹ Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework', A/HRC/17/31 (21 March 2011) (UNGPs); Consejería Presidencial para los Derechos Humanos (2015), [note 18](#), 6; Consejería Presidencial para los Derechos Humanos (2020), [note 18](#), 6.

²⁰ Consejería Presidencial para los Derechos Humanos (2015), [note 18](#), 6; Consejería Presidencial para los Derechos Humanos (2020), [note 18](#), 23, 35–37.

²¹ Consejería Presidencial para los Derechos Humanos (2020), [note 18](#), 23, 37–38.

relevant international BHR instruments. In Part IV, we examine Colombia's actions to adopt and implement those international instruments. We focus on the adoption of the 2015 and 2020 NAPs. We pay particular attention to their guidelines in relation to mining. In Part V, we conclude by offering some suggestions as to how women's experience of human rights violations in informal mining might be more systematically addressed in BHR instruments.

II. The Mining Sector in Colombia: Informal Mining and Gender

The Role of the Mining Sector in the Economy

During the last two decades, mining has been considered key to the promotion of economic growth and development in Colombia. Between 2010 and 2020, the exportation of minerals has represented an average of 20.77 per cent of the total exports of Colombia.²² At the date of writing, Colombia ranks among the top ten exporters of coal worldwide.²³ According to the Mining and Energy Planning Unit (UPME after its name in Spanish), the government agency in charge of devising the development of those two sectors in the country, the average participation of the mining sector in the country's GDP between 2000 and 2016 was 2.2 per cent.²⁴ This participation fell to 1.6 per cent between 2017 and 2020.²⁵ The contraction of the sector and the COVID-19 pandemic are among the factors that explain this reduction.²⁶ Nonetheless, for the years 1999 to 2020, foreign direct investment (FDI) average in the mining sector constitutes 13.5 per cent of the total FDI for the country.²⁷ Since 2002, the five administrations the country has had have included the mining sector as a crucial component of their national development plans.²⁸

Despite the central role mining has had in the government's narrative of economic growth and development, this economic activity has historically stirred a lot of controversy in Colombia. Its impact on human rights, particularly on the environment and on peoples' livelihoods and daily lives, has been underscored as a negative consequence that compromises the state's duties to respect, protect and fulfil human rights and raises

²² UPME, 'Indicadores Económicos de la Minería', <https://www1.upme.gov.co/simco/Cifras-Sectoriales/Paginas/IndicadoresEconomicos.aspx> (accessed 10 November 2021).

²³ 'Colombian Coal Output Fell 2% in 2019', *Reuters* (4 March 2020), <https://www.reuters.com/article/colombia-mining-idUSL1N2AX1JC> (accessed 10 November 2021); Katharina Buchholz, 'The World's Biggest Coal Exporters', *Statista* (21 May 2021), <https://www.statista.com/chart/20587/biggest-coal-exporters/> (accessed 10 November 2021); IEA, 'Report Extract: Trade', <https://www.iea.org/reports/coal-2020/trade> (accessed 1 November 2021); Ministerio de Minas y Energía and UPME, 'Plan nacional de desarrollo minero con horizonte a 2025' (2017), http://www1.upme.gov.co/simco/planeacionsector/documents/pndm_dic2017.pdf (accessed 10 November 2021).

²⁴ Ministerio de Minas y Energía and UPME, note 23, 30.

²⁵ UPME, note 22.

²⁶ Sergio Clavijo, 'Desempeño 2017 y perspectivas 2018 del sector minero-energético', *La República* (18 April 2018), <https://www.larepublica.co/analisis/sergio-clavijo-500041/desempeno-2017-y-perspectivas-2018-del-sector-minero-energetico-2715195> (accessed 10 November 2021); Daniel García Escobar, 'Recuperación minera para la reactivación del país', *Asuntos Legales* (9 October 2020), <https://www.asuntoslegales.com.co/consultorio/recuperacion-minera-para-la-reactivacion-del-pais-3071574> (accessed 10 November 2021); Roberto Casas, 'Sector minero enfrentaría "su peor caída" en 2020', *El Heraldo* (12 December 2020), <https://www.elheraldo.co/economia/sector-minero-enfrentaria-su-peor-caida-en-2020-779564> (accessed 10 November 2021).

²⁷ UPME, note 22.

²⁸ Departamento Nacional de Planeación, 'Plan Nacional de Desarrollo 2002–2006 Hacia un Estado Comunitario' (2003), <https://colaboracion.dnp.gov.co/cdt/pnd/pnd.pdf> (accessed 10 November 2021) 109–115; Ley 1450 de 2011 (Colombia) 275–96; Departamento Nacional de Planeación, 'Plan Nacional de Desarrollo 2014–2018: Todos por un nuevo país' (2015), https://observatorioplanificacion.cepal.org/sites/default/files/plan/files/Colombia_Plan_Nacional_de_Desarrollo_2014_2018.pdf (accessed 10 November 2021) 225–51; Departamento Nacional de Planeación, 'Plan Nacional de Desarrollo 2018–2022: Pacto por Colombia, pacto por la equidad' (2019), <https://www.dnp.gov.co/DNPN/Paginas/Plan-Nacional-de-Desarrollo.aspx> (accessed 1 November 2021) 695–710.

important questions related to the existing normative framework for this business activity in the country.²⁹

The measures the Colombian state has taken to formalize mining activities have been contentious, particularly in relation to artisanal and small-scale mining. The 1998–2002 National Development Plan indicated that the informal part of the sector was close to 95 per cent.³⁰ According to the 2011 Colombian mining census, 63 per cent of the 14,357 surveyed mining units did not have a mining title and almost 76 per cent did not have environmental licenses.³¹ With regard to gold, 86.7 per cent or 3,584 units did not have mining title.³² Estimations of the number of artisanal miners differ. While the 2011 Mining Census indicated an average of 50,000 artisanal gold miners, other sources point to 68,000 or 200,000.³³ The high levels of informality could be linked to the fact that the process of formalization has been deemed complicated and costly.³⁴ For instance, some point out that for artisanal miners there are no clear incentives to formalize their activity, as this type of mining is mostly driven by poverty and provides a meagre subsistence.³⁵ The absence of strong state institutions in the locations where these mining activities take place further complicates this matter.³⁶ In short, implementing human rights compliance measures and tracking them within informal value chains and operations is a complicated task.³⁷

Armed Conflict, Peacebuilding and the Mining Sector

At least since the 1980s, Colombia has struggled to put an end to its protracted armed conflict and to transition successfully to peacebuilding. In the 1990s, the opening of the domestic market prompted the arrival of multinational corporations from different economic sectors, including oil and mining.³⁸ This happened in a context characterized

²⁹ CREER, 'La minería que no se ve: Evaluación integral sectorial de impactos en derechos humanos' (2016), <https://www.ideaspaz.org/tools/download/74232> (accessed 10 November 2021); CREER, 'Tipología de impactos de la actividad minera y de la población sobre la que recaen, como parte de la evaluación integral sectorial de impactos en las regiones priorizadas con enfoque en derechos humanos' (2015), <http://bdigital.upme.gov.co/handle/001/1322> (accessed 10 November 2021); ABColombia, 'Giving It Away: The Consequences of an Unsustainable Mining Policy in Colombia' (2012), http://www.abcolombia.org.uk/wp-content/uploads/2017/06/Giving_it_Away_mining_report_ABColombia-2012-ENG.pdf (accessed 1 November 2021); Ana Jimena Bautista Revelo and Leonel Plazas Mendieta, *Tensiones entre la política extractivista y la restitución de tierras y los derechos territoriales* (Bogotá: MOVICE, 2018); Defensoría del Pueblo, note 12; Helcías José Ayala Mosquera et al, 'Sentencia T 445 de agosto de 2016: Documento de investigación científica y sociológica respecto a los impactos de la actividad minera y la explotación ilícita de minerales, en los ecosistemas del territorio colombiano' (2019), <http://www.humboldt.org.co/images/documentos/3-identificacin-de-impactos-expertos.pdf> (accessed 10 November 2021).

³⁰ Departamento Nacional de Planeación, note 2, 423.

³¹ Veiga and Marshall, note 7, 226.

³² Ministerio de Minas y Energía, 'Censo minero departamental 2010–2011' (2012), <https://www.minenergia.gov.co/documents/10180/698204/CensoMinero.pdf/> (accessed 1 November 2021) 12, 14.

³³ Veiga and Marshall, note 7, 225.

³⁴ Banyan Global, 'USAID/Colombia Gender Analysis and Assessment Final Report' (2019), <https://banyanglobal.com/wp-content/uploads/2019/05/USAID-Colombia-Gender-Analysis-and-Assessment.pdf> (accessed 1 November 2021) 29; María Alejandra Vélez and Luz Angéla Rodríguez, 'Cómo promover la formalización de la pequeña minería de oro', *El Tiempo* (30 October 2021), <https://www.eltiempo.com/vida/medio-ambiente/como-promover-la-formalizacion-de-la-pequena-mineria-de-oro-628912> (accessed 10 November 2021).

³⁵ Veiga and Marshall, note 7, 225–226.

³⁶ Enrique Prieto-Rios, 'Neoliberal Market Rationality: The Driver of International Investment Law' (2015) 3 *Birkbeck Law Review* 55.

³⁷ Leonardo Güiza, 'La pequeña minería en Colombia: Una actividad no tan pequeña' (2013) 80:181 *DYNA (Colombia)* 109, 113.

³⁸ The World Bank, 'Foreign Direct Investment, Net Inflows (% of GDP) – Colombia', <https://data.worldbank.org/indicator/BX.KLT.DINV.WD.GD.ZS?locations=CO> (accessed 1 November 2021).

by massive armed conflict-related human rights violations. Between the years 2000 and 2008, the internal armed conflict reached its highest intensity.³⁹ In 2005, the process to demobilize the paramilitary groups started⁴⁰ and, in 2012, a peace process began with the guerrilla Revolutionary Armed Forces of Colombia (FARC, after its name in Spanish) that was concluded in late 2016.⁴¹ However, the demobilization of paramilitary groups and the FARC has not resulted in the absolute end of the internal armed conflict.⁴²

The difficulties the country has had in transitioning to peace and the presence of illegal armed groups in certain parts of its territory have been a cause of concern in the mining sector. For instance, the OECD has highlighted that the Colombian department of Antioquia is the largest gold producer in the country and the territory with the highest number of armed conflict-related victims.⁴³ Chocó, the second largest producer of gold in Colombia, shows a similar situation. There, part of the population of Chocó is caught amid the confrontation among different illegal armed groups.⁴⁴ There is also evidence that armed non-state actors participate directly and indirectly in the gold value chain in the country, turning this mineral into a financing source along with drug trafficking.⁴⁵ The involvement of these actors ranges from charging illegal fees to the producers, seizing the production, to managing the mineral exploitation.⁴⁶

The internal armed conflict has also imposed a heavy toll on women, exposing them to forced displacement, sexual violence and land loss, among other human rights violations.⁴⁷ Illegal armed actors, ranging from paramilitary forces to guerrillas, have been implicated in these gender-based human rights violations.⁴⁸ The participation of women in informal mining can expose them to heightened gender-based violence and discrimination risks. In the absence of effective state monitoring and law enforcement, the precarious conditions in which informal work is developed, and the presence of illegal armed actors in the value chain, can contribute to insecure environments for women engaged in informal mining activities.

Gender and the Informal Mining Sector

The participation of women in informal mining is complex to assess given the difficulties in gathering data. This situation could explain the variations in the estimations. For instance,

³⁹ Ibid.

⁴⁰ Ley 975 de 2005 (Colombia).

⁴¹ 'Los puntos de la agenda', *Semana* (31 August 2012), <https://www.semana.com/nacion/articulo/los-puntos-agenda/263987-3/> (accessed 1 November 2021).

⁴² 'Punto final a los diálogos con el Eln', *El Espectador* (18 January 2019), <https://www.elespectador.com/colombia-20/conflicto/punto-final-a-los-dialogos-con-el-eln-articulo/> (accessed 1 November 2021); 'Estos son los grupos que hacen parte del conflicto armado en Colombia', *CICR* (24 September 2018), <https://www.icrc.org/es/document/el-nuevo-grupo-que-entra-hacer-parte-del-conflicto-armado-en-colombia> (accessed 10 November 2021); Indepaz, 'Informe sobre presencia de grupos armados en Colombia. actualización 2018-2 y 2019' (2020), <http://www.indepaz.org.co/wp-content/uploads/2020/11/INFORME-GRUPOS-ARMADOS-2020-OCTUBRE.pdf> (accessed 10 November 2021).

⁴³ Cited in María Soledad Betancur Betancur, 'Minería Del Oro, Territorio y Conflicto En Colombia' (2019), https://co.boell.org/sites/default/files/2019-12/20190612_Mineri%C8%81a%20del%20oro%2C%20territorio%20y%20conflicto%20en%20colombia%20para%20web.pdf (accessed 1 November 2021) 34.

⁴⁴ Ibid; Defensoría del Pueblo, note 14, 177–79.

⁴⁵ Ortiz-Riomalo and Rettberg, note 14, 41–7.

⁴⁶ Ibid, 42–3.

⁴⁷ Auto 092 de 2008 Corte constitucional de Colombia (2008), note 5.

⁴⁸ Grupo de Memoria Histórica, *Mujeres y guerra: Víctimas y resistentes en el Caribe colombiano* (Bogotá: CNRR – Grupo de Memoria Histórica, 2011); Grupo de Memoria Histórica, *El placer: Mujeres, coca y guerra en el Bajo Putumayo* (Bogotá: Centro Nacional de Memoria Histórica, 2012); Centro Nacional de Memoria Histórica, *La guerra inscrita en el cuerpo: Informe nacional de violencia sexual en el conflicto armado* (Bogotá: Centro Nacional de Memoria Histórica, 2017).

the USAID 2019 Gender Analysis and Assessment for Colombia indicated that an average of 60 per cent of artisanal miners are women,⁴⁹ and the Alliance for Responsible Mining website reports that women comprise 30 per cent of the total people working in artisanal and small-scale mining.⁵⁰ The latest report published as part of the implementation of the Ministry of Mines and Energy's Gender Guidelines for the Mining and Energy Sector stated that, in 2020, 71 per cent of women working in the mining sector were informal miners compared with 47 per cent of men.⁵¹

In September 2020, women occupied only 8 per cent of mining direct employment positions in the country.⁵² A 2021 Ministry of Mines gender-based study of 71 formal mining and energy enterprises revealed that among 23 mining enterprises, women represented only 13.2 per cent of the workforce.⁵³ These figures demonstrate that women face significant barriers to entry in formal mining, which can drive their participation in subsistence and small-scale mining, where working conditions are far from optimal.

In terms of informal mining, USAID has pointed out that women in gold mining in Colombia usually occupy positions 'considered non-central to gold-extraction that require little to no qualification and receive limited economic or social recognition.'⁵⁴ This situation exposes them to exploitation and abuse from other participants in the value chain.⁵⁵ The traditional belief that women in the pits is bad luck is prevalent. This curtails women's access to productive mining sites, relegating women to less lucrative work such as 'sifting through the mud, or tailings, that male miners pull out of the mine shafts or panning for gold along riverbeds'.⁵⁶ Informal small-scale and subsistence mining in Colombia usually involve mercury, even though its use was banned from mining in the country in 2018.⁵⁷ There is evidence that in some municipalities women are more exposed than men to mercury's toxicity as they usually do not have access to, or information about, different methods to separate gold and the required protection equipment.⁵⁸

Mining has also been linked to gender-based violence. While formal enterprises have incorporated policies to curb sexual harassment against women, informal mining seems to be a propitious setting for it due to the precarious conditions in which women participate and the lack of state oversight.⁵⁹ Where illegal armed actors are involved, women can experience heightened exposure to gender-based violence emerging from the interplay between the precarious conditions of informal mining and the human rights violations associated with the armed conflict.⁶⁰ Although there is some information available documenting the experiences of sexual and gender-based violence women face in this

⁴⁹ Banyan Global, *note 34*, 29.

⁵⁰ Alliance for Responsible Mining, 'La minería artesanal y de pequeña escala y el género', <https://www.responsiblemines.org/genero-mineria-responsable/> (accessed 1 November 2021).

⁵¹ Martínez-Restrepo et al, *note 3*, 17–8.

⁵² Silvia Botello et al, 'Estudio sectorial de equidad de género para el sector minero-energético' (2020), <https://www.minenergia.gov.co/documents/10192/24274643/ESTUDIO+SECTORIAL+G%C3%89NERO+SME+2020.pdf> (accessed 1 November 2021) 8.

⁵³ *Ibid*, 18, 19, 21.

⁵⁴ MIT D-Lab and Alliance for Responsible Mining, *note 3*, 5.

⁵⁵ *Ibid*, 6.

⁵⁶ *Ibid*, 27–28.

⁵⁷ Ley 1658 de 2013 (Colombia) art 3.

⁵⁸ MIT D-Lab and Alliance for Responsible Mining, *note 3*, 42–45; Comunica and Agriteam Canada, 'Mujeres mineras Sanrocanas: Perfil y brechas de género' (2020), <https://1library.co/document/yj84womq-sanrocanas-mujeres-mineras-per-l-y-brechas-de-genero.html> (accessed 1 November 2021) 17.

⁵⁹ MIT D-Lab and Alliance for Responsible Mining, *note 3*.

⁶⁰ Ministerio del Interior, 'Diagnóstico sobre los principales factores asociados a la violencia estructural de género y la discriminación que inciden en la violencia sexual contra las mujeres en el marco del conflicto armado y el desplazamiento forzado en Colombia, en cumplimiento de la orden 17 del Auto 009 de la Corte Constitucional'

setting, to date, there is no comprehensive study of the situation, pointing to the need for further research that could inform the development of effective BHR measures to address the context.

For instance, there is non-conclusive evidence regarding the correlation between intimate partner violence and informal mining. Academic research carried out in two municipalities in the vicinity of the Santurbán páramo,⁶¹ in the department of Santander, revealed a positive correlation between mining and this type of violence.⁶² While there has not been an exhaustive examination of the correlation,⁶³ worrying factors came to light. Economic dependence, lack of bargaining power in the household and alcohol consumption are factors that could explain the high rates of violence.⁶⁴

Some research on women and informal mining in Colombia has pointed to the presence of sex work in this context as an issue of concern.⁶⁵ The research has suggested that the influx of money and in-migration to areas in which mining is developed are some factors that fuel the commercialization of sex.⁶⁶ Lack of appropriate measures to grasp and tackle gender-based violence and discrimination in the context of informal mining could expose sex workers to human rights violations.⁶⁷ Moreover, it has been documented that women's weak position in informal mining supply chains exposes them to constant negotiation with men, ranging from the mine owner to the gold buyers. This situation exposes them to sexual harassment and unwanted sex.⁶⁸ Subordination of women in their households, lack of alternative sources of income and precarious participation in the informal mining value chain can also work to undermine women's livelihoods. The social and natural environmental changes mining produce, for instance, can endanger their sources of food and water, exposing them to food and economic insecurity.⁶⁹

The 2021 Ministry of Mines' study of gender equality for the mining and economic sector,⁷⁰ which is part of the strategy to implement the Human Rights Policy for the Mining and Energy Sector and the Gender Guidelines for the Mining and Energy Sector,⁷¹

(2016), https://www.mininterior.gov.co/sites/default/files/noticias/diagnostico_violencia_sexual_corte_constitucional_24-05-2016.pdf (accessed 1 November 2021) 259–260.

⁶¹ Enrique Prieto-Ríos, Andrés Gómez-Rey and Mariana Díaz-Chalela, 'Between the Environment and Foreign Investment Protection: The Case of Santurbán in ICSID' in Manuel Alberto Restrepo Medina (ed.), *Crisis del Estado nación y de la concepción clásica de la soberanía* (Bogotá: Editorial Universidad del Rosario, 2019) 171.

⁶² Lucía Andrade Manjarres, René Álvarez Orozco and Yinny Paola Valencia Atuesta, 'Caracterización de la violencia en la relación de pareja en el contexto de la minería aurífera en dos municipios de influencia del páramo de Santurbán' (2020) 22 *Estudios Socio-Jurídicos* 175.

⁶³ *Ibid.*, 199.

⁶⁴ *Ibid.*, 199–200.

⁶⁵ We understand sex work as the 'exchange of sexual services (involving sexual acts) between consenting adults for some form of remuneration, with the terms agreed between the seller and the buyer' (Amnesty International, 'Amnesty International Policy on State Obligations to Protect and Fulfil the Human Rights of Sex Workers' (2016), <https://www.amnesty.org/en/wp-content/uploads/2021/05/POL3040622016ENGLISH.pdf> (accessed 10 November 2021)). For this reason, we consider sex work a legal activity that needs to be regulated to protect particularly the human rights of individuals exchanging their sexual services. The presence of sex workers is not a negative side of mining *per se*. What we consider negative is the lack of choice and proper protection of their rights in this setting. For a relevant analysis of this issue see Petra Mahy, 'Sex Work and Livelihoods: Beyond the "Negative Impacts on Women" in Indonesian Mining' in Kuntala Lahiri-Dutt (ed.), *Gendering the Field: Towards Sustainable Livelihoods for Mining Communities* (Canberra: Australian National University Press, 2011).

⁶⁶ MIT D-Lab and Alliance for Responsible Mining, note 3, 35–36; Rodríguez and Rubiano Galvis, note 7, 21–22; CREER (2015), note 29, 159.

⁶⁷ *Ibid.*

⁶⁸ MIT D-Lab and Alliance for Responsible Mining, note 3, 32–33; Ministerio del Interior, note 60, 259–260.

⁶⁹ Defensoría del Pueblo, note 12, 233; Rodríguez and Rubiano Galvis, note 7, 18–21.

⁷⁰ Botello et al., note 52.

⁷¹ Ministerio de Minas y Energía (2020), note 8, 10.

recommended further research on this subject, as there is some evidence that women face increased levels of gender-based violence in informal mining settings.⁷²

III. Gender, Informal Mining and Business and Human Rights

Despite the positive advancement that the adoption of the UNGPs represents, arguably some important issues were not fully developed within them, such as the protection and realization of human rights in informal economies⁷³ and gender-based impacts of business enterprises.⁷⁴

It is trite that human rights protection in informal economies is difficult to enforce, especially in the Global South, where most informal workers are concentrated.⁷⁵ This notwithstanding, the challenges of informal economies have not been systematically analysed and considered in the BHR agenda.⁷⁶ There is limited engagement with the role that states and business enterprises play in creating, maintaining and profiting from informal markets. As a result, there is a paucity of measures addressing the root causes that sustain informal economies and make them fertile ground for human rights abuses.⁷⁷ Notable exceptions are the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy,⁷⁸ and the ILO's Recommendation 204 on the Transition from the Informal to the Formal Economy.⁷⁹ These instruments recognize: how informality undermines the guarantee of decent work; the central role states play in designing and implementing policies to formalize economies; and the necessity of business enterprises contributing to this endeavour. The International Organization of Employers has stated the following: 'Thus, we have a broad global consensus on what needs to be done to address informality. However, action remains inadequate and slow-paced, and the issue of informality fails to attract the necessary level of attention in the debates at international level.'⁸⁰

While both men and women participate in informal economies, the latter tend to participate in higher proportions in informal work.⁸¹ This entails a lack of social security

⁷² Botello et al, note 52, 58.

⁷³ Rashmi Venkatesan, 'The UN Framework on Business and Human Rights: A Workers' Rights Critique' (2019) 157 *Journal of Business Ethics* 635.

⁷⁴ Joanna Bourke Martignoni and Elizabeth Umlas, 'Gender-Responsive Due Diligence for Business Actors: Human Rights-Based Approaches', *The Geneva Academy of International Humanitarian Law and Human Rights* (2018), <https://www.geneva-academy.ch/joomlatools-files/docman-files/Academy%20Briefing%2012-interactive-V3.pdf> (accessed 1 November 2021).

⁷⁵ Brett J Miller, 'Living Outside the Law: How the Informal Economy Frustrates Enforcement of the Human Rights Regime for Billions of the World's Most Marginalized Citizens' (2007) 5 *Northwestern Journal of Human Rights* 127.

⁷⁶ Venkatesan, note 73, 635; Surya Deva et al, 'Informality – Forum on Business and Human Rights 2020', *UN Web TV* (17 November 2020), <https://media.un.org/en/asset/k1d/k1d1p1ju9zm> (accessed 1 November 2021).

⁷⁷ Bonita Meyersfeld, 'Business, Human Rights and Gender: A Legal Approach to External and Internal Considerations' in Surya Deva and David Bilchitz (eds.), *Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect?* (Cambridge: Cambridge University Press, 2013) 204; Venkatesan, note 73.

⁷⁸ International Labour Office, *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (Geneva: ILO, 2017) para 21.

⁷⁹ International Labour Organization, *Recommendation 204 Concerning the Transition from the Informal to the Formal Economy* (Geneva: ILO, 2015).

⁸⁰ International Organization of Employers, #UNGPPlus10: *Achievements, Challenges, and the Way Forward in the Uptake and Implementation of the UN Guiding Principles on Business and Human Rights* (Brussels: European Union, 2021) 10.

⁸¹ Nora Götzmann et al, 'Women in Business and Human Rights: A Mapping of the Topics for State Attention in United Nations Guiding Principles on Business and Human Rights Implementation Processes' (2018), <https://www.humanrights.dk/sites/humanrights.dk/files/media/document/women%20in%20business.pdf> (accessed 10 November 2021) 12–13. The International Labour Organization indicates that worldwide more men are engaged in informal work. While 63 per cent of men are informal workers, that percentage is 58.1 per cent for women.

rights, occupational segregation, low remuneration, gender wage gaps (which bring income insecurity), poor working conditions, and less access to credit and goods or assets.⁸² While some of these situations also affect men, these challenges are exacerbated for women whose work is often invisible and combines both productive and unpaid reproductive (domestic) work.⁸³ Unpaid domestic and care work have been shown to limit women's chances for economic independence.⁸⁴

In Colombia, informality reaches almost 50 per cent of the working population. In July 2021, 45.9 per cent of men and 48.1 per cent of women were part of the informal economy in 13 Colombian cities.⁸⁵ According to a 2018 study, informality reached 80 per cent in the Colombian countryside.⁸⁶ In 2019, the gender pay gap was 12.9 per cent.⁸⁷ Women in the country also still bear the burden of unpaid care work.⁸⁸ In sum, Colombian women have longer working days and shorter hours to produce income. The extensive care-related work limits the possibilities of formal employment in traditional positions with fixed, eight-hour work days.

Women are particularly impacted by poverty. In 2020, in the context of the COVID-19 pandemic, 46.7 per cent of Colombian women were poor compared with 40.1 per cent of men, and 17.8 per cent of women were in extreme poverty while 13.5 per cent of men were in that situation.⁸⁹ At the time of writing, the unemployment rate for women is 17.2 per cent and for men is 9.8 per cent.⁹⁰ In February 2021, Colombia was identified by the OECD as the country with the widest gender employment gap.⁹¹ To the extent that there is an

However, the organization clarifies that such a gap against men is explained by the presence of China and the Russian Federation. Once these countries are not included, it is possible to see that in low and lower-income countries the participation of women in the informal economy is higher. Also, women tend to have the most precarious position in comparison with men in this setting – see International Labour Organization, *Women and Men in the Informal Economy: A Statistical Picture* (Geneva: ILO, 2018) 20–21.

⁸² Götzmann et al, *note 81*, 18; Commission on the Status of Women, 'Ministerial Round Table: Informal and Non-Standard Work: What Policies Can Effectively Support Women's Economic Empowerment?', E/CN.6/2017/15 (21 March 2017) 2–3; Johanna Parra, 'Complicaciones de lo ilegal y lo informal: El "business", una propuesta conceptual' (2013) 17 *Antipoda Revista de Antropología y Arqueología* 205.

⁸³ Naoko Otake, 'Gender and the Informal Economy: Key Challenges and Policy Response', International Labour Office, Employment Policy Department Employment Working Paper No. 236 (2017), https://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_614428.pdf (accessed 10 November 2021).

⁸⁴ Commission on the Status of Women, *note 82*, 2–3.

⁸⁵ Departamento Nacional de Estadística, 'Boletín Técnico. Gran Encuesta Integrada de Hogares (GEIH), Medición de empleo informal y seguridad social' (2021), <https://img.lalr.co/cms/2021/09/10174917/Bolet%C3%ADn-de-informalidad-del-Dane.pdf> (accessed 10 November 2021) 4.

⁸⁶ Observatorio Laboral LaboUR, 'Informe 6: Perfil actual de la informalidad laboral en Colombia: estructura y retos' (2018), <https://www.urosario.edu.co/Periodico-NovaEtVetera/Documentos/Reporte-LaboUR-Informalidad-Mayo-2018-PERFIL-ACTUA.pdf> (accessed 1 November 2021) 3.

⁸⁷ Departamento Nacional de Estadística, 'Brecha salarial de género en Colombia' (2020), <https://www.dane.gov.co/files/investigaciones/notas-estadisticas/nov-2020-brecha-salarial-de-genero-colombia.pdf> (accessed 10 November 2021) 11.

⁸⁸ Departamento Nacional de Estadística, Consejería Presidencial para la Equidad de la Mujer and ONU Mujeres, *Mujeres y hombres: Brechas de género en Colombia* (Bogotá: ONU Mujeres, 2020) 49.

⁸⁹ Departamento Nacional de Estadística, 'Pobreza monetaria en Colombia: Resultados 2020' (2021), https://www.dane.gov.co/files/investigaciones/condiciones_vida/pobreza/2020/Presentacion-pobreza-monetaria_2020.pdf (accessed 10 November 2021).

⁹⁰ Cámara de Comercio de Bogotá, 'Principales resultados del mercado laboral a julio de 2021', <https://www.ccb.org.co/observatorio/Analisis-Economico/Analisis-Economico/Crecimiento-economico/Noticias/Principales-resultados-del-mercado-laboral-a-julio-de-2021> (accessed 10 November 2021).

⁹¹ 'Colombia es el país de la Oede con la brecha de género laboral más amplia', *Semana* (12 April 2021), <https://www.semana.com/economia/macroeconomia/articulo/colombia-es-el-pais-de-la-ocde-con-la-brecha-de-genero-laboral-mas-amplia/202154> (accessed 10 November 2021).

improvement in the economy, this mainly benefits men: out of every ten recovered jobs, only one is occupied by a woman.⁹² All these circumstances force women to accept part-time jobs or to resort to informal work.⁹³

The UNGPs did not contain a comprehensive set of references indicating the importance of including gender in the prevention of and response to business-related human rights abuses.⁹⁴ Hence, they fell short in offering clear guidance on how to identify and understand the diverse and differentiated impacts business activities have on women's lives, especially in Global South countries and in informal work settings.⁹⁵ One of the reasons for this was the reduction of gender to 'single issue' analysis, such as focusing 'on discrimination within the workplace rather than on the broader socioeconomic, legal and political context within which companies operate and over which they exercise a certain degree of influence.'⁹⁶ This impeded an in-depth understanding of the role businesses have on women who are not their employees and/or participate informally in value chains. This issue has been remedied to some extent by the UN Working Group on BHR (UNWG) Gender Guidance to the implementation of the UNGPs published in 2019.⁹⁷ The Gender Guidance constitutes an opportunity to develop a thorough analysis of the influence and participation of businesses in women's daily lives beyond formal working hours and working spaces, and to examine the role of states and corporations on exacerbating economic informality.⁹⁸

The Gender Guidance outlines a three-step framework – gender-responsive assessment, gender-transformative measures and gender-transformative remedies – to guarantee the protection and realization of women's and girls' human rights in the context of business operations and activities.⁹⁹ It addresses informal economies in several instances. Principle 14, for instance, calls on businesses 'to respect the human rights of women, including those working in the informal economy' (emphasis added).¹⁰⁰ It is suggested that to translate this into action that '[b]usiness enterprises should map workers in the informal economy who are part of their supply chains' paying particular attention to 'gender-specific issues', among other measures.¹⁰¹ However, no further steps are provided to address the issue of states' and business enterprises' involvement in creating, fostering and profiting from informal work.

The Gender Guidance closes a gap in providing instructions for the implementation of the UNGPs in relation to gender. However, it still does not provide exhaustive guidance regarding informal economies and the impact that informality has on women and girls' lives, especially in Global South countries. This reinforces the outstanding need to draw more precise insights to address the differentiated and disproportionate impacts on women's human rights in the context of informal economies.¹⁰²

⁹² 'Hay que reforzar el empleo para las mujeres', *La República* (1 June 2021), <https://www.larepublica.co/opinion/editorial/hay-que-reforzar-el-empleo-para-las-mujeres-3178708> (accessed 10 November 2021).

⁹³ Natalia Ramírez-Bustamante, "'A mí me gustaría, pero en mis condiciones no puedo': maternidad, discriminación y exclusión en el mercado laboral colombiano' (2019) 1 *Revista CS* 241.

⁹⁴ See UNGPs, note 19, principle 7.b and relevant commentaries of principles 3, 12 and 20.

⁹⁵ Meyersfeld, note 77, 201–202.

⁹⁶ Bourke Martignoni and Umlas, note 74, 7; see also Meyersfeld, note 77, 202.

⁹⁷ Human Rights Council, 'Gender Dimensions of the Guiding Principles on Business and Human Rights: Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises', A/HRC/41/43 (23 May 2019) (Gender Guidance) 6; Bourke Martignoni and Umlas, note 74, 7.

⁹⁸ Meyersfeld, note 77, 202–204.

⁹⁹ Gender Guidance, note 97, 5.

¹⁰⁰ *Ibid.*, 10, 27, 28.

¹⁰¹ *Ibid.*, para 28.c.

¹⁰² Venkatesan, note 73.

In the context of Colombia, designing and implementing tailored measures to realize women's human rights in informal mining is essential given the central role this activity has in the national economy. It is also crucial considering the role that mining will have in the economic recovery of the country after the COVID-19 pandemic, the ongoing presence of armed conflict in some regions of Colombia, the growing documentation of gender-based discrimination and violence, and the impacts on women's health and environment associated with the sector. So far, the Colombian government's actions to appropriate and implement the UNGPs seem to have been centred mostly on formal business enterprises.

IV. Colombian NAPs: The Hidden History of Gender and Informal Economies

In 2015, the Colombian government adopted its first NAP.¹⁰³ Two relevant events contributed to its drafting: the launching of the 17 Sustainable Development Goals (SDGs) and the peace negotiations between the Colombian government and the FARC guerrilla group.¹⁰⁴ The main goal of the NAP was to foster compatibility between the protection of human rights and the promotion of economic development in the country. Regarding armed conflict, it mandated government agencies to develop a risk guide and warned business enterprises operating in armed conflict zones to be particularly diligent in assessing and managing them. The NAP also prioritized three business sectors which the government considered stirred more social conflict – mining and energy, agroindustry and road infrastructure.¹⁰⁵ Pertaining to mining, the 2015 NAP established that the Ministry of Mines and Energy would adopt a strategy to promote respect of human rights in accordance with the Extractive Industries Transparency Initiative (EITI).¹⁰⁶

The NAP included differential perspectives to guarantee the realization of the human rights of women, LGBTI people, children, adolescents, people with disabilities, trade union members, ethnic groups and other minority groups.¹⁰⁷ This was a significant inclusion that evidenced the government's leadership in addressing issues that were still being developed in the global BHR agenda. However, the NAP stopped short of outlining detailed guidelines in relation to these populations, particularly in contexts of armed conflict and informal work. The NAP included the following:¹⁰⁸ (1) the state would promote knowledge transfer to prevent businesses from violating the right to non-discrimination; (2) the Presidential Advisor for Women's Equality would work for the promotion of women's rights in the context of businesses; and (3) the Ministry of Labour would strengthen the measures to prevent commercial sexual exploitation of children and adolescents and outline a plan to involve the private sector in the protection of their rights.

In the implementation of the 2015 NAP, the Colombian government participated in a study by the Regional Center of Responsible Business and Enterprise (CREER after its name in Spanish) to identify the human rights impacts of mining in Colombia. It also supported research to identify and categorize the types of human rights violations that emerge in this sector.¹⁰⁹ The former identified several gender-based harms related to mining activities and reduced participation of women in corporate mining activities, as well as tackling the issue of informality.¹¹⁰

¹⁰³ *Consejería Presidencial para los Derechos Humanos* (2015), note 18.

¹⁰⁴ *Consejería Presidencial para los Derechos Humanos* (2017), note 18.

¹⁰⁵ *Consejería Presidencial para los Derechos Humanos* (2015), note 18, 7, 16.

¹⁰⁶ *Ibid.*, 15, sec 4.12.

¹⁰⁷ *Ibid.*, 6.

¹⁰⁸ *Ibid.*, 15, sec 4.3 and 4.6.

¹⁰⁹ CREER (2015), note 29; CREER (2016), note 29.

¹¹⁰ CREER (2015), note 29, 40, 41, 43, 44, 124, 139, 159, 366, 369, 373, 374.

Building on the 2015 NAP, in 2018 the Colombian government adopted the Human Rights Policy for the Mining and Energy Sector.¹¹¹ This was structured following the UNGPs, the 2015 NAP, and the 2014–2034 Colombian Human Rights Strategy,¹¹² and incorporated the principles of concurrency, subsidiarity and complementarity. It included a gender perspective focused on bridging gender employment gaps; integrating gender-related considerations in plans and actions of the agencies belonging to the mining sector; promoting knowledge; adopting and implementing women's human rights; and strengthening the production of gender-disaggregated data.¹¹³ However, it did not integrate specific actions to address sexual and gender-based violence in connection with mining, an issue that had been clearly identified in the CREER-led report. As such, the policy presents an interesting example of how international norms can cascade to the national level and how NAPs can prompt or inform further BHR regulatory and policy developments. But it also makes a strong case for the proper integration of gender considerations in international BHR frameworks, as part of prompting gender approaches in BHR efforts at the national level.

In 2020, the Colombian government issued the second NAP on BHR for the period 2020–2022.¹¹⁴ Given that this NAP was adopted during the COVID-19 pandemic, it aims at promoting business growth, economic reactivation, employment creation and social support for the poorest while respecting human rights. In terms of gender, the 2020 NAP explicitly states that it will follow a gender approach along the lines of the Gender Guidance.¹¹⁵ Specific gender initiatives include the adoption of a gender policy in the state's Bank of Foreign Trade (Bancóldex, after its name in Spanish),¹¹⁶ the integration of this perspective in the Ministry of Industry, Commerce and Tourism's strategies to promote urban and rural entrepreneurship among vulnerable populations,¹¹⁷ and the order to the Presidential Advisor for Women's Equality to advise private business enterprises on the adoption of measures to promote gender equality.¹¹⁸ The NAP also specifies that the Ministry of Mines and Energy should outline and implement gender guidelines for the mining and energy sector and map human rights risk in prioritized territories.¹¹⁹ Given the staggering informal labour rates in the country,¹²⁰ the 2020 NAP could have offered more detailed guidance on this issue and link it with gender-based human rights violations. As it is spelled out in this document, the government's strategy to tackle informal economies is mostly focused on supporting start-ups and small enterprises, generating employment, and promoting formalization of employment relations in rural areas and for individuals earning 'minimum base income'. The implementation of the 2020 NAP offers a unique opportunity to go beyond this approach and address these issues comprehensively from a gender-based perspective.

In March 2020, the Ministry of Mines and Energy published the Gender Guidelines for the Mining and Energy Sector.¹²¹ This document stresses that the formal mining and energy sector is highly male dominated, while the presence of women increases significantly in the

¹¹¹ Ministerio de Minas y Energía, 'Política en Derechos Humanos del Sector Minero Energético' (2018), <https://www.minenergia.gov.co/derechos-humanos-y-enfoque-de-genero> (accessed 2 February 2022).

¹¹² Consejería Presidencial para los Derechos Humanos, 'Estrategia nacional para la garantía de los derechos humanos, 2014–2034' (2014), http://www.derechoshumanos.gov.co/Observatorio/Publicaciones/Documents/2014/140815-estrategia_web.pdf (accessed 10 November 2021).

¹¹³ Ministerio de Minas y Energía (2018), note 18, 10–11.

¹¹⁴ Consejería Presidencial para los Derechos Humanos (2020), note 18.

¹¹⁵ *Ibid.*, 26.

¹¹⁶ *Ibid.*, 55, Pilar Fundamental 1, Eje no. 9.

¹¹⁷ *Ibid.*, 53–54, Pilar Fundamental 1, Eje no. 7.

¹¹⁸ *Ibid.*, 55, Pilar Fundamental 2, Eje no. 1.

¹¹⁹ *Ibid.*, 50.

¹²⁰ *Ibid.*, 21.

¹²¹ Ministerio de Minas y Energía (2020), note 8.

informal sector.¹²² It also recognizes the lack of reliable data about women in informal mining, the absence of information on the indirect employment in this industry disaggregated by sex,¹²³ the existent pay gap women endure,¹²⁴ and the urgency of preventing and redressing sexual and gender-based violence in the sector.¹²⁵ Even though these guidelines acknowledge the precarious situation of women, particularly in informal mining, they do not spell out comprehensive actions to respond properly to the challenges that the sector poses for the realization of women's human rights in this setting.

In March 2021, the Ministry of Mines and Energy published a study on gender equality for the mining economic sector focusing on practices and policies within formal business enterprises.¹²⁶ In July 2021, the Ministry of Mines, the Inter-American Development Bank, the initiative CoreWoman and the consulting firm Insuco published a report on women, employment and informality in the mining and energy sector in the context of the COVID-19 pandemic.¹²⁷ According to the study the reduction of formal employment in the mining sector has affected women particularly and has contributed to the increase of informality.¹²⁸ The estimation is that, overall, there was a job loss of 25 per cent for men and 32 per cent for women.¹²⁹ This situation clearly exacerbates gender gaps in employment in an economic sector that historically has been heavily dominated by men. In addition, the analysis established that small-scale and artisanal mining has suffered the impact of the COVID-19 pandemic due to the suspension of operations, decline in demand and difficulties in acquiring supplies, among other factors.¹³⁰

The adoption of the 2015 and 2020 NAPs has been key to develop crucial insights about the interplay between mining and the protection and respect for human rights in Colombia. Their implementation has paved the way to devise gender guidelines for the sector, and to explore the different dimensions and challenges women face in and around mining. Nonetheless, a systematic exploration of the interface between gender-based violence and discrimination and informality in this economic activity is still in its preliminary stages. Yet, developing comprehensive insights about this interface is key to design appropriate measures to realize women's human rights. So far, different actors have been gathering data and information about the specific manifestations of gender-based violence and discrimination in mining. Examining their contribution to the topic is essential to make these human rights violations visible and to inform future government initiatives on the subject.

V. Conclusion

The 2015 NAP prioritized mining as one of the three sectors in which actions had to be taken promptly to guarantee the protection and respect of human rights in business activities. Social conflicts surrounding mining and its environmental impacts supported this decision. Although the subsequent 2020 NAP does not prioritize any sector, it mandated to continue this work on mining. Gender was also included as a key dimension in the 2020 NAP, both as a

¹²² *Ibid.*, 2.

¹²³ *Ibid.*, 4.

¹²⁴ *Ibid.*, 6.

¹²⁵ *Ibid.*, 15.

¹²⁶ Botello et al, *note* 52.

¹²⁷ Martínez-Restrepo et al, *note* 3.

¹²⁸ *Ibid.*, 4.

¹²⁹ *Ibid.*, 15–16.

¹³⁰ *Ibid.*, 17.

general mandate to mainstream during the NAP implementation and as specific orders for certain government agencies.

As demonstrated in this paper, the Colombian BHR approach to informal economies still has significant room for improvement. Working towards outlining and implementing a comprehensive approach on this matter is key to promote in-depth understanding of this phenomenon that would inform tailored actions that contribute to the realization of human rights protection in the context of informal mining. This is particularly crucial for women's human rights, as women tend to be over-represented in the informal economy, including in informal mining.

The measures the Colombian state has devised in the last two decades to foster formalization in mining have not been as successful as expected. The Ministry of Mines and Energy's gender-related interventions have been focused primarily in the formal mining sector, although it has shown willingness to understand and tackle the issue of women in informal mining.¹³¹ Furthermore, regulation of mining in the country does not integrate a comprehensive gender perspective.¹³² The situation of women in mining is an example of the deep interconnection between informal mining and the incidence of gender-based discrimination and violence. Women that participate in informal mining are usually the weaker links of the value chain, highlighting the pressing need for the government to design relevant public policies and measures to address this situation and the human rights harms that it entails.

We have suggested that the Colombian state and other actors should take comprehensive steps to better understand the interface between gender-based violence and discrimination and informal mining in the country. In doing so, the Colombian government should bear in mind that the country is going through a peacebuilding process in which some demobilized illegal armed actors are struggling to reincorporate to civilian life, and old and new illegal armed groups are present in the territories. This situation calls for heightened state and business action, because 'the higher the risk, the more complex the processes' they have to devise and implement to protect and respect human rights.¹³³ Particularly, the Colombian state should act urgently to expand and strengthen its guidance to mining businesses.¹³⁴ Also, formal mining businesses should take into account the specific context in which they are operating in the country and, therefore, implement heightened corporate due diligence processes taking into consideration the post-conflict scenario and the existing interrelation between informal mining, gender-based violence and discrimination, and the presence of illegal armed groups in the Colombian territory.¹³⁵

Moreover, the Colombian state should incorporate a comprehensive approach to informality and gender into its BHR instruments. This would entail investigating and researching how the state, businesses and other relevant stakeholders contribute to creating and sustaining informal markets. Furthermore, revisiting the formalization strategy should imply rethinking the process from a gender-based perspective as there is evidence that mining formalization does not *per se* improve women's lives.¹³⁶ For that reason, the Colombian government should include provisions to ensure formalization is the

¹³¹ Ministerio de Minas y Energía (2020), note 8, 10; Botello et al, note 52; Martínez-Restrepo et al, note 3.

¹³² MIT D-Lab and Alliance for Responsible Mining, note 3, 36.

¹³³ UN General Assembly, 'Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises: Business, Human Rights and Conflict-Affected Regions: Towards Heightened Action', A/75/212 (21 July 2020).

¹³⁴ *Ibid.*, 6–8.

¹³⁵ *Ibid.*, 9–15.

¹³⁶ Doris Buss et al, 'Gender and Artisanal and Small-Scale Mining: Implications for Formalization' (2019) 6:4 *The Extractive Industries and Society* 1101.

adequate response to, not only promote cleaner mining, but also an environment in which gender-based discrimination and violence is prevented and redressed, and the rights of women are protected and realized.

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