

ANALYSIS OF THE APPLICABILITY  
AND EFFICACY OF THE  
**GUIDING PRINCIPLES**  
**ON BUSINESS AND**  
**HUMAN RIGHTS:**  
ARGENTINA, BRAZIL,  
COLOMBIA AND PERU



**Analysis of the applicability and efficacy of the Guiding Principles on business and human rights: Argentina, Brazil, Colombia and Perú (executive summary)**

Project co-funded by the European Union.  
Transnational Corporations and Guiding Principles: Towards Effective Mechanisms for the Protection of Human Rights in Latin America.

Prepared by:  
Bienaventurados los Pobres, Justiça nos Trilhos, Pensamiento y Acción Social, CooperAcción

**Project partner organizations**

Bienaventurados Los Pobres (BePe)  
Av. Güemes 1121 – K4700CLL S.F.V. Catamarca, Argentina.  
Tel.: (+54) (0385) 422 8070 / (+54) (0383) 443 0915  
Web: <http://www.bepe.org.ar/>  
E-mail: [central@bepe.org.ar](mailto:central@bepe.org.ar)

Justiça nos Trilhos (JnT)  
Rua Dom Pedro II, n.138, Bairro Jacú. Açailândia, Maranhão, Brasil.  
Tel.: (+55) (99) 3538 0901  
Web: <http://justicanostrilhos.org/>  
Email: [imprensajnt@gmail.com](mailto:imprensajnt@gmail.com)

Pensamiento y Acción Social (PAS)  
Diagonal 42a # 19 - 17. Oficina 201. Bogotá, Colombia  
Tel.: (+57) (1) 751 87 76 / (+57) (1) 751 88 14  
Web: <http://www.pas.org.co/>  
Email: [comunicaciones@pas.org.co](mailto:comunicaciones@pas.org.co)

Acción Solidaria para el Desarrollo (CooperAcción)  
Jirón Río de Janeiro 373, Jesús María. Lima, Perú.  
Tel.: (+51) (1) 461 2223 / (+51) (1) 461 3864  
Web: <http://cooperaccion.org.pe/>  
Email: [cooperaccion@cooperaccion.org.pe](mailto:cooperaccion@cooperaccion.org.pe)

**Project management committee**

Argentina: Sebastian Eduardo Pinetta (BePe)  
Brazil: Xoán Carlos Sánchez Couto, Renato Paulino Lanfranchi (JnT)  
Brazil: Martina Molinu (COSPE)  
Colombia: Diego Pérez Guzmán (PAS)  
Perú: Julia Cuadros Falla, Leonidas Wiener Ramos (CooperAcción)

**Investigation committee**

Argentina: Aimée Martínez Vega y Natalia Sentinelli  
Brazil: Mariana Lucena; Joana Emmerick Seabra; Larissa Pereira Santos; Xoán Carlos Sánchez  
Colombia: Paula Álvarez Roa; Federico Piñeros Torres.  
Perú: CooperAcción

**Case studies**

Argentina: Minería transnacional de litio en lagunas altoandinas de Catamarca.  
Brazil: Minería y ferrocarril Carajás. Estados do Pará e Maranhão.  
Colombia: Territorio afectado por operación minera en los departamentos de La Guajira y Cesar  
Perú: La extracción minera en el sur Andino

**Special thanks to**

Argentina: A la comunidad del Bolsón de Fiambalá, a ACAMPA (Asociación de Campesinos del Abaucán), a la Asamblea Fiambalá Despierta, a la Radio FM Horizonte.  
Brazil: Corredor Carajás (Estados do Pará e Maranhão, Brasil). Comunidade rural Mutum II; Quilombo Santa Rosa dos Pretos; Comunidade rural Capotal; Terra Indígena Pindaré; Comunidade Auzilândia; Comunidade Rural Vila União; Comunidade Rural Vila Concórdia; Assentamento Rural Planalto I; Assentamento Rural Francisco Romão; Acampamento Agroplanalto; Comunidade urbana Piquiá de Baixo.  
Colombia: Comunidades reasentadas de Roche, Tamaquito II, Comunidad de Tabaco y la Organización Fuerza de Mujeres Wayuu en el departamento de La Guajira. A la comunidad de El Hatillo en el departamento del Cesar.  
Perú: Representantes, líderes y lideresas de comunidades y organizaciones del corredor minero en Apurímac (provincia de Cotabambas) y Cusco (provincias de Chumbivilcas y Espinar).

**Editorial production**

Editorial coordination: Christian Mantilla Monsalve (PAS)  
Edition and translation: Erna von der Walde  
Layout and design: Felipe Flórez Murillo  
Printing: Más Medios Diseño & Comunicaciones

**ISBN print:** 978-958-58829-7-3  
**ISBN digital:** 978-958-58829-8-0



Attribution-NonCommercial-ShareAlike 4.0 International (CC BY-NC-SA 4.0)

This publication was produced with the financial support of the European Union. Its contents are the sole responsibility of the partner organizations and do not necessarily reflect the views of the European Union.

April 2019  
Bogotá, D.C., Colombia  
Printed in Colombia

# ANALYSIS OF THE APPLICABILITY AND EFFICACY OF THE **GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS:** ARGENTINA, BRAZIL, COLOMBIA AND PERU

## Project

**Transnational Corporations and Guiding Principles: Towards Effective Mechanisms  
for the Protection of Human Rights in Latin America**

Project co-funded by the European Union



## Project



## Partners of the project



## Consultant





# Table of contents

Pag.

7	<b>Presentation</b>
9	<b>1. Corporate States, captured by trans-national power</b>
13	<b>2. Guiding Principles vs. The rights of communities</b>
15	2.1 Argentina: Transnational lithium mining in the high-altitude Andean lagoons of Catamarca
22	2.2 Brazil: Iron mining and railroad in Carajás
28	2.3 Colombia: Coal mining in La Guajira and Cesar
33	2.4 Perú: Copper mining in the Andean South
39	<b>3. Main findings and conclusions</b>
45	<b>4. Recommendations</b>



La Guajira, Colombia. Wastefulness. While La Guajira is suffering from water shortages, the mining companies are watering it on the roads. 2020. Photo: Santiago Londoño (PAS).



# Presentation

In 2011, the United Nations Human Rights Council adopted the Guiding Principles on Business and Human Rights, a voluntary mechanism created as a response to the persistent human rights abuses committed in the context of extractive operations by transnational corporations.

With the goal of reviewing the implementation and efficacy of these Guiding Principles in the protection of the human rights of the communities where transnational corporations performed their extractive operations, in 2018 four organizations from Argentina,<sup>1</sup> Brazil,<sup>2</sup> Colombia,<sup>3</sup> and Perú<sup>4</sup> came together to develop the project: *Transnational Corporations and Guiding Principles: Towards Effective Mechanisms for the Protection of Human Rights in Latin America*, co-funded by the European Union.

The project included research oriented towards producing a detailed report for each country in which the impacts to the rights of communities and their territories<sup>5</sup> were analyzed: transnational lithium mining in the high-altitude Andean lagoons of Catamarca, Argentina; iron ore extraction and related logistics in Carajás, Brazil; coal extraction in La Guajira and Cesar, Colombia; and copper extraction in the Andean south, Perú. The Report for each country gives an account of the state of the effective implementation of the Guiding Principles in the context of the most recent mining and energy policies of each government. It also identifies the different human rights violations, as well as the impacts on the territories and nature, and collects some of the concerns and urgent demands of the affected communities.

Based on each country's Report and a collective analysis on the applicability and efficacy of each of the three pillars of the Guiding Principles and their correlate in public policy (National Action Plans or other mechanisms), a Latin-American Report was created, which identifies some common patterns and particular aspects to each country regarding the implementation processes.<sup>6</sup> The document we present here corresponds to the executive summary of such Report.

The research was performed under the principles and methods of Participatory Action Research (PAR). The hypotheses, questions, and methodological tools were agreed upon collectively and each organization defined a case study, territorially located, and formed a research team, which included leaders and representatives from the affected communities in each country. The progress reports of each country's Report as well as the Latin-American Report underwent permanent discussion by the research teams and the Project Management Committee, who then provided feedback. Pensamiento y Acción Social (PAS) was in charge of the overall coordination of the research and the design of the methodology followed in the four countries.

The guidelines for the analysis and the production of these reports were the documented reality of each case, the concern for the guarantee and protection of the rights of the affected communities in these extractive environments, and the demands of the communities.

1 Civil Association Bienaventurados Los Pobres –BePe. <http://bepe.org.ar/>

2 Justiça Nos Trilhos. <http://justicanostrilhos.org/>

3 Pensamiento y Acción Social. <https://www.pas.org.co/>

4 CooperAcción. <http://cooperaccion.org.pe/>

5 We prefer to talk about territories affected by the operations of transnational corporations instead of "mining corridors," a concept which is promoted by a mercantile extractivist logic and used by businesses. Nevertheless, in many sectors of academia, social organizations, and even the same communities, the term "mining corridor" is used indistinctly.

6 Each Country Report, as well as the Latin American Report (full version), can be accessed online on the corresponding organization's website.



Chuquisaca, Fiambala. Argentina. 2019. Photo: BePe.



# 1. Corporate States, captured by trans-national power

In the four countries where the investigation took place, there are several coincidences with regards to the economic model that is implemented, as well as with the type of state governance and administration.

In all of the analyzed cases, an extractivist model predominates, which not only re-orders the economy but also the State, the territories, and society at large, defining for them patterns of use and behavior according to the interests of large corporations. In general, government policies in these countries adopt the characteristic elements of corporate globalization, such as the promotion of hyper-growth, the commodification of natural resources and public goods and services, the disruption of communal coexistence and the homogenization of culture, the replacement of the power structures of the nation-state by corporate bureaucracies, the de-regulation of cross-border movements of capital, goods and services, and the re-orientation of national economies towards the extraction and export of raw materials and primary goods.

As has been observed, large corporate groups design strategies to limit the State's regulatory actions when they consider such measures would impair the fulfillment of their expectations, which are aimed at obtaining the highest return on investment. The role of the State in regulating the economy has been significantly reduced as a result of the processes of State asset privatizations, the deregulation of economic activities, and the drastic cuts in government spending and public sector employment. In this sense, common measures are applied in the four countries covered in this report, such as the reduction of taxes on exports, the implementation of labor flexibility legislation, and the weakening or flexibilization of regulations to enable the intervention of environmentally protected areas.

The cases studied showed that the implemented extractivist model does not only appropriate resources by means of extractive operations. These activities are carried out in tandem with land grabbing by means of dispossession mechanisms used against the communal territories of peasant, Indigenous and Afro-descendent communities, the appropriation not only of minerals but of nature as a whole, of landscapes, territorial and socio-cultural environments, and the vital spaces of the communities.

Other common features to these countries are the appropriation of public resources, the control of financial assets, and the production and control of information as part of the exercise of corporate power that transnational corporations implement in the territories described in this research. In the cases studied, our organizations had difficulty in obtaining information and in other cases it was found that the information lacked transparency. For example, in Argentina there were no specific studies with regards to the water basins, nor was there clarity in the contracts between businesses and the State for the creation of social investment. In Colombia, the information provided by the companies does not coincide with the information obtained from the national environmental agency with respect to the environmental impacts and damages of their extractive activities. It was observed, in general, that businesses deny that their operations have negative effects related to human rights, hide diagnostics and information (even from State institutions), and discredit the claims raised by the affected communities, as well as studies and reports produced by academia and civil society organizations.



Vereda de El Hatillo, El Paso, Cesar, Colombia. Photo: Santiago Londoño (PAS).

“  
**That businesses deny that their operations have negative effects related to human rights, hide diagnostics and information (even from State institutions), and discredit the claims raised by the affected communities”**

Sustaining this dynamic of resource appropriation and land dispossession also implies designing security and control strategies, even exerting violence against the communities who claim their rights, and human rights activist groups, particularly activists of nature rights and environmental rights. Thus, it does not come as a surprise that, since 2018, Latin America is the region in the world where more than half of the crimes against environmental activists are committed. Global Witness has identified five stages or forms of criminalization of those who defend rights affected by transnational corporations: smear campaigns; criminal charges; arrest warrants; irregular processes without the right to defense and due process; and massive criminalization, which may include accompanying organizations and groups of defense attorneys. Global Witness’s report states that “in 2018 an average of more than three activists per week were murdered, when defending their lands from the invasion of industries such as mining, forestry and agribusiness.” Colombia was the country with the highest number, with 24 murders, followed by Brazil with 20, Guatemala with 16 and Mexico with 14.<sup>7</sup> Using the analyzed cases, we

7 “Enemies of the State? How governments and business silence land and environmental defenders,” Global Witness, 2019, p. [https://www.globalwitness.org/documents/19766/Enemies\\_of\\_the\\_State.pdf](https://www.globalwitness.org/documents/19766/Enemies_of_the_State.pdf). Half of worldwide killings of environmental activists in 2018 occurred in Latin America. During 2018, 164



Mutum II Community. Arari Maranhão. Brasil. Photo: Arquivo Justiça nos Trilhos.

were able to identify that, effectively, the five forms of criminalization are applied and that, furthermore, in the cases of Brazil, Perú and Colombia, it can be seen how law enforcement agencies (police and army) are deployed to protect businesses<sup>8</sup> and repress local communities when they protest. The strong militarization of extractive zones has not meant greater security for the affected populations.

people lost their lives defending their territory and the environment, 83 of them died in the Latin-American region and six of these countries were where most killings occurred.

8 In Colombia, they are called 'mining and energy units': "These units are formed by 80,000 troops, 36% of the Army, which they are part of, and almost 30% of the armed forces. The purpose of these units, contrary to what may seem reasonable, is not to provide public security but to ensure foreign investment and mining and energy extraction. Several of these units are based inside Company facilities or mines." See "Colombia: Militarización al servicio del extractivismo," Tomás Gisbert and María Jesús Pinto, Corporación Nuevo Arco Iris, 2019, <https://www.arcoiris.com.co/2014/05/colombia-militarizacion-al-servicio-del-extractivismo/>.





South Andean. Perú. Photo: CooperAcción.



## 2. Guiding Principles vs. The rights of communities

The Guiding Principles on Business and Human Rights are the product of a substantial amount of evidence: Since the 1960s, the UN has confirmed and recognized that the transnational economy is creating severe impacts on human rights. Its concern was first translated in the creation of a Commission on Transnational Corporations and the United Nations Center on Transnational Corporations, two bodies whose goal was to investigate the effects of international business activity, strengthen the capacity of receiving countries to negotiate terms with said corporations, and develop a regulatory framework for transnational business activities.

In the 1990s, reports by social organizations and claims by victims allowed for the greater visibility of the increasingly common and severe human rights abuses committed by businesses related to their economic operations. Only until 2005, the UN High Commissioner for Human Rights named a Special Representative of the Secretary-General (SRSG) on the issue of human rights and transnational corporations and other business enterprises, with the purpose of identifying and evaluating the existing human rights standards associated with business activities. Said task was undertaken by John Ruggie and the end result was the document called “Protect, Respect and Remedy,” which highlighted the state’s duty as a guarantor of rights and focused on the need for victims to have better access to effective remedies for human rights abuses.

This process concluded in 2011 with the adoption of the Guiding Principles on Business and Human Rights by the UN Human Rights Council (Resolution 17/4). It is a standard of conduct that businesses across the world should adopt with the purpose of respecting Human Rights in every place and every time. While these principles are voluntary, they are based upon existing international regulations<sup>9</sup> and are presented as materializing in a more concrete manner the current international and multilateral agreements, aiming towards universal application. It is important to note that during this process there were attempts by civil society organizations to create more efficient political and legal frameworks (UN Norms Project 20049),<sup>10</sup> as well as more

“  
**Reports by social organizations and claims by victims allowed for the greater visibility of the increasingly common and severe human rights abuses committed by businesses related to their economic operations”**

9 Fundamentally, the GPs are grounded on the International Bill of Human Rights (which itself contains the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights ICCPR, and the International Covenant on Economic, Social and Cultural Rights ICESCR) and the Fundamental Principles and Rights at Work (ILO).

10 “The UN Human Rights Norms for Business: Towards Legal Accountability” (Amnesty International, 2004, <https://www.amnesty.org/download/Documents/IOH4200022004ENGLISH.PDF>) are not a treaty that States can ratify and therefore assume binding legal obligations. Nonetheless, it is clear that UN Norms have more authority than many codes of conduct adopted by businesses.

recent initiatives with regards to the need for a binding treaty on business and human rights but which have been obstructed by corporate pressure.

The Guiding Principles are grounded on the three pillars –Protect, Respect and Remedy– and are made up of 31 principles. Each State must define the policies and mechanisms by which it will make effective their implementation, though the UN suggests, expressly, that to this end States produce National Policies on Human Rights and National Action Plans for Business and Human Rights.

Through the study of the selected cases in each country we present below a contrasting analysis between the Guiding Principles and the human rights situation in the communities.

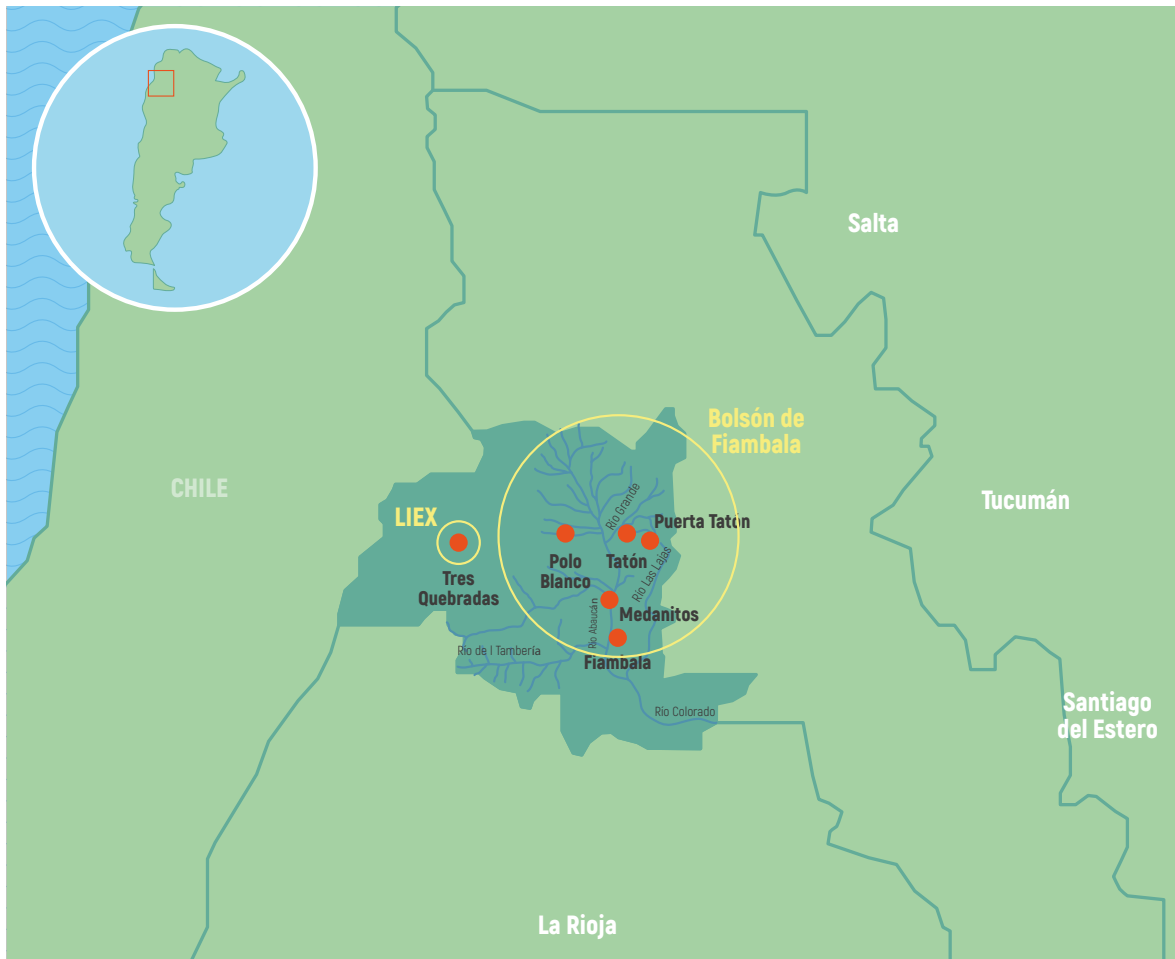
Principles		Foundational	Operational
<b>Protect</b>	It is a duty of the State to protect Human Rights from the negative impacts that could be caused by businesses that operate within their jurisdiction.	GP 1 and 2	GP 3 to 10
<b>Respect</b>	It is the responsibility of all businesses to respect human rights and to not produce negative impacts on populations, which means they must act with due diligence. <sup>11</sup>	GP 11 to 15	GP 16 to 24
<b>Remedy</b>	Effective access to reparations mechanisms for victims of possible human rights violations.	GP 25	GP 26 to 31

11 If due diligence is to act as a tool to help businesses identify and prevent negative impacts on human rights, the States must define in greater detail what it means and how it should be applied. See, "Due Diligence on Human Rights," Brussels: CIDSE, 2013 (p. 11), [https://www.cidse.org/wp-content/uploads/2013/09/HRDD\\_EN\\_Final.pdf](https://www.cidse.org/wp-content/uploads/2013/09/HRDD_EN_Final.pdf).

## 2.1. Argentina: Transnational lithium mining in the high-altitude Andean lagoons of Catamarca

Type	Lithium recovery from brine
Location	Catamarca Province. Tinogasta Department
Business	LIEX S.A Subsidiary of Neo Lithium Corp.

**Figure 1. Lithium mining projects**



Source: BePe

Starting in 1990, lithium production grew exponentially, especially mining from brine. This was due to the increasing demand for this mineral in the production of batteries for mobile phones and computers.<sup>12</sup> This demand has grown in such a way that we even talk about “lithium fever” or “white gold

12 Melisa Argento, Florencia Puente y Ariel Slipak, “¿Qué debates esconde la explotación del litio en el noroeste argentino? Perspectivas y proyecciones sobre la dinámica empresas-estado-comunidad,” in *Ecología Política: pensamiento crítico, diferencia latinoamericana y rearticulación epistémica*, edited by Hector Alimonda, Catalina Toro Perez and Facundo Martin, 403-429 (Buenos Aires and México: CLACSO, 2017): 404. The market share of lithium batteries increased from 5% to 58% between 1995 and 2008 and from 1.8 to 170 tons of lithium for cell phones and from 3.3 tons to 99 tons for computers, between 1996 and 2005.



Fiambala 2019. Argentina. Photo: BePe.

“  
**The country has  
seen an acceleration  
in the search for  
lithium deposits and  
in licensing areas  
for production of  
this mineral, with  
the goal of becoming  
one of the world’s  
main lithium  
suppliers”**

fever.” The discourse surrounding lithium production presents it as a key raw material in the transition towards a “green” energy grid, based on low-carbon dioxide emission systems of transportation and electricity production/capture, such as solar and wind energy. In promoting these energies, the impacts of extracting the large number and amounts of minerals necessary for their production are not taken into account.

“Green” economies, energy transition projects, and “sustainable development” projects are accompanied by a discourse that, on the one hand, establishes a positive relationship between cutting-edge technology and the progress and wellbeing of the country and the community at large;<sup>13</sup> on the other hand, it presents the production of the mineral as an opportunity for the involved communities to participate in a globalized world, based on industrialization, as they will become a crucial factor in the lithium carbonate value chain.<sup>14</sup> For this reason, lithium is promoted as a “strategic resource.”<sup>15</sup> In this context, the country has seen an acceleration in the search for lithium deposits and in licensing areas for production of this mineral, with the goal of

13 N. Giarracca y M. Teubal, “Disputas por los territorios y recursos naturales: el modelo extractivo,” *Revista Alasru*, 5 (2010): 113-133.

14 Florencia Puente and Melisa Argento, “Conflictos territoriales y construcción identitaria en los salares del noroeste argentino,” in *Geopolítica del litio: Industria, ciencia y energía en Argentina*, edited by B. Fornillo, 123-166 (Buenos Aires: El Colectivo, 2015): 155-156.

15 Bruno Fornillo, *Sudamérica Futuro. China global, transición energética y posdesarrollo* (Buenos Aires: CLACSO, El Colectivo, 2016): 70. For a natural resource to be considered strategic “it must fulfill the following conditions relative to its use value, any of them being sufficient: a) be key in the operation of the capitalist mode of production; b) and/or be key for maintaining regional and global hegemony; c) and/or be key for the deployment of a green or post-development economy; and the following conditions regarding to its availability, at least one of them being necessary: a) scarce, or relatively scarce; b) un-substitutable, or difficult to substitute; and c) unequally distributed. Therefore, a strategic resource imposes in an exclusionary fashion a research-action protocol regarding its current situation and its projection.”



becoming one of the world's main lithium suppliers, within an imaginary of positioning the country "on the spearhead of technology."<sup>16</sup>

In Argentina, there are several salt flats with great potential for the production of this mineral. They are located in the provinces of Catamarca, Jujuy,<sup>17</sup> and Salta, where mining has been imposed as state policy for decades. According to a report by the Ministry of Finance on the lithium value chain, in March of 2017 there were 23 lithium mining projects, two of which were currently operating, accounting for 7% of the country's metal exports.<sup>18</sup> With respect to export sales of lithium, they increased 17% from 2016, due to an increase in volume sold, an increase in international prices, and progress towards increased purity of the material. By the end of 2017, according to a joint report by the United States Geological Service and SEGEMAR (Argentina's Mining and Geological Service), 46 projects were under exploration, prospection, operation or production, or in feasibility studies.

Bienaventurados los Pobres (BePe), a civil society organization that supports several communities affected by transnational mining, focused its study on human rights violations in lithium mining within a Ramsar site.<sup>19</sup> The case studied is that of the LIEX S.A. company, which is dedicated to the exploration and potential production of lithium and is a subsidiary of Neo Lithium Corp. (a Canadian corporation.) The project is known as "Tres Quebradas" (3Q) and it is in the pilot phase of producing lithium, potassium, boron, and sodium carbonate and sulfate salts, through the evaporation of brine. The business has been in the Fiambalá zone since 2016, when it acquired the project's licenses. The company's last preliminary economic evaluation report estimates a mean yearly production of 35,000 metric tons of lithium carbonate, with a production cost of 2,791 dollars per ton, during the mine's operational lifetime of 20 years. This is just one of the many extractive projects on the agenda and in execution in the territory of the province of Catamarca, which has become an emblematic jurisdiction for the imposition of Argentina's mining and export project, promoted by governments with the motto "Catamarca Minera" (Mining Catamarca).

16 Melisa Argento, Florencia Puente y Ariel Slipak, "¿Qué debates esconde la explotación del litio en el noroeste argentino? Perspectivas y proyecciones sobre la dinámica empresas-estado-comunidad," en *Ecología Política: pensamiento crítico, diferencia latinoamericana y rearticulación epistémica*, coordinado por Héctor Alimonda, Catalina Toro Pérez and Facundo Martín, 403-429 (Buenos Aires and México: CLACSO, 2017).

17 In March 2011, the province of Jujuy, by government decree No. 7.592, declared mineral reserves that contain lithium "strategic natural resources." The decree requires exploration and production projects to be submitted to prior studies by an expert committee on the Integral Analysis for Lithium Projects, a committee coordinate by the province's Ministry of Production, which will make the decision to accept or reject them.

18 Subsecretaría de Programación Microeconómica, *Informes de cadenas de valor de litio*, (Buenos Aires: Ministerio de Hacienda, 2018).

19 The wetland convention, called Ramsar, is an intergovernmental treaty that serves as a framework for state action and international cooperation for the conservation and rational use of wetlands and their resources.

## Applicability of the Guiding Principles and human rights abuse against communities:

### STATES' DUTY TO PROTECT HUMAN RIGHTS

**States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises.** The Province of Catamarca does not have a clear presence of institutions from the Defensoría del Pueblo (Ombudsman) in the territory. Likewise, there is no clarity in the enforceability and reparation mechanisms for human rights violations. If they exist, they are not promoted by the State in the territory. Also, to date, the Federal State has not carried out an investigation or made a statement regarding the irregularities committed by the government of the Province of Catamarca, by not having regulated the high-altitude Andean lagoons Ramsar site and allowing mining within it.

**States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.** To date, the province of Catamarca has not joined the National Action Plan on Human Rights. The process of consultation and implementation of said National Plan has not included, to date, the Argentine Northwest region, where mining is a key economic activity. There are not any known measures or explicit statements regarding national or provincial guidelines for transnational corporations concerning human rights.

**Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights.** The regulation that has been established in Argentina, and particularly in Catamarca, not only does not follow this principle, but, on the contrary, it deepens the existing inequality in territorial decision making. With the changes to tax and tariff legislation (Decree 160/15), it is not just the territories and the rights of the inhabitants which have been affected. The legislation also enables a type of extractivism and forms of extracting (large-scale extractivism, brine evaporation in an arid puna zone with water deficit and very frail vegetation, the use of millions of liters of water in an arid zone with sandbank growth and deforestation) which do not consider local knowledge and forms of care for the territory. Under current regulations the long-term sale, holding, and licensing of territories and common goods are permitted. The negotiations for such transactions are carried out by an elite of the corporate State and transnational corporations, in dealings that do not recognize the times and spaces of the communities that inhabit these territories.

**Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.** The complicity between State institutions and businesses threatens the objectivity with which public institutions and civil servants protect human rights and their enforceability mechanisms. Catamarca's Department of Mining, an agency that regulates mining companies through the Provincial Administration of Environment and Mining Management and the municipal government of Fiambalá, participates in informational meetings with a clear position in favor of the extractive projects, without considering the rights and decisions of the communities. Many instances of corporate capture of the state can be seen, such as revolving doors, joint State-business public events, etc. Likewise, members of the community have decried the lack of guarantees and transparency in the holding of informational meetings, whose goal is to avoid the constitutional right of prior, free and informed consultation under the paradigm of "social license."

To date, no further measures by the federal or provincial State for the protection against human rights abuses by businesses are known. These businesses receive important support and services from state agencies, as is the case studied here. The human rights due diligence has not been carried out, just as the possible or real consequences to these rights due to the mining activities have not explicitly addressed, which contributes to the infringement of rights in the receiving territory.

***States must ensure their capacity to effectively oversee the activities of businesses, particularly through adequate and independent mechanisms for oversight and accountability.*** The mining company is in charge of determining the baseline on which the impacts of its activities will be assessed and, therefore, of the potential infringements on human rights. That is, the company evaluates itself. Furthermore, we observe that the provincial State lacks vital knowledge and information regarding the territory (for example, it does not have scientific knowledge on the water capacity of the basin where the extractive project is located, and therefore, does not have the capacity to determine the magnitude of the environmental impacts.) The exploration license (which implies drilling and water extraction) was granted without yet having this information. Supervision is based on information supplied by the extractive company and the analyses it performs on the exploration; consequently, the information is not objective and independent. Also, the company in its 2019 report reiterates that it has not been able to obtain scientific information about underground water in the area, despite the fact that the company itself had already started carrying out the necessary studies (through outsourcing). To date, the provincial government has not provided an answer to this claim in the company report, which creates uncertainty with regard to the possible and real impacts on the water resources in the area. In turn, in an interview with the provincial administration for hydrology and water resources, the spokesperson recognized that they do not have studies about the water basin which would allow them to establish oversight criteria.

***States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State's human rights obligations when fulfilling their respective mandates.*** There is evidence that provincial and municipal agencies, as well as civil servants, have used silencing strategies and the criminalization of human rights activists in the territory by delegitimizing their actions and singling them out as ignorant and as obstacles to development, as well as declaring them personae non gratae socially and politically. The main purpose of these accusations against the dignity and free expression of the locals through media stigmatization, political persecution of social organizations, and repression is to destroy, both socially and legally, the possibilities for citizen oversight of business, and if necessary, the possibilities for protest. On this issue it is important to emphasize that, while the Guiding Principles seek to minimize conflicts between the interested parties and reduce the level of violence, the lack of guarantee of Rights by the federal and provincial State closes the doors to dialogue and listening to the affected communities, who then look for alternatives to make their claims heard.

***States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts.*** Certain legal regulations and public policies hinder the full enjoyment of human rights in the analyzed context. For one, provisions on labor and tax matters for mining companies are in practice a violation to the principle of equality, since the numerous tax and customs reductions and the flexibilization conditions implemented to attract investments place these companies in a position of privilege with regard to the tax burden.

In terms of environmental rights, for example, the possibility to deduct from taxes the costs of environmental preservation contributes to reproduce the voluntary logic of human rights compliance, since the "investments" made in this area are little but innocuous in comparison to the severity of the social and environmental impacts that stem from mining activity. On another issue, the right to free expression is endangered by the Argentine Anti-Terrorist Law (No. 26.268), since its provisions allow for classifying strikes and social protests as unlawful acts. Likewise, certain constitutional regulations are breached, for example, the Precautionary Principle (General Environmental law No. 25-675) which establishes the urgent adoption of effective environmental protection measures whenever there is a danger of severe or irreversible damage and an absence of information or scientific certainty.

## BUSINESSES' RESPONSIBILITY TO RESPECT HUMAN RIGHTS

***Businesses must respect human rights and they have the responsibility to respect those that are internationally recognized. This means they must abstain from infringing the human rights of third parties and must address the negative consequences on human rights for which they have any participation.*** The company began its work despite the lack of exhaustive scientific studies about the area and the functioning of its ecosystem; it disregards and violates a Ramsar site and shows a lack of caution in a fragile system of planetary importance. Therefore, not only are the human rights of the people who live in the territory violated, but those of all humanity, by infringing on the equilibrium and proper planetary functioning in the context of an accelerated climate crisis and global concern over water. Besides these impacts on environmental and health rights, the violation of cultural and social rights of the community is manifested in an aggressive Corporate Social Responsibility (CSR) strategy by the company which delegitimizes and destroys traditional ways of living of the community, modifies family and community systems, and imposes foreign social imaginaries, which entirely disrupt the locals' way of life, affecting the real exercise of the right to sovereignty and self-determination.

***Due diligence with regard to human rights.*** To date, the "declaration" where the company has chosen to communicate its responsibilities, commitments and expectations regarding human rights has not been made public. Neither has the company answered information requests about its attention to human rights plans. The capture and buying of consciences to achieve mining acceptance in the territory, generated by public-private alliances for the financing of structures of high importance to the communities, the granting of certain material goods and individual services or the contracting of these services to small community organizations, and the creation of temporary employment (public and private) has become notoriously evident. The CSR, by which the company relates to the community and the institutions, inhibits and reduces the possibility of rejection to the extractive project and deactivates the enforceability of human rights.

***In order to calibrate risks on issues of human rights, businesses must identify and evaluate the real or potential negative consequences on human rights where they may be involved, be it through their own activities or as a result of their business relations. Likewise, to prevent and mitigate negative consequences on human rights, businesses must integrate the conclusions of their impact evaluations as part of their internal functions and processes and take appropriate measures.*** Even though the Company has prepared an environmental impact report where it has described some of the damages and risks, as well as their scale, it does not elaborate on these damages and risks with regard to human rights or international conventions or treaties. Such reports naturalize environmental damages, such as the reduction of bodies of water, irreparable changes to the landscape, and the constant risk of negative impact to globally unique ecosystems. Given this, the mitigation measures proposed are pitiful; they are of an incomparable magnitude compared to the damages caused (for example, with respect to the destruction of the local fauna's habitat, they propose to provide informational courses about the environment.) Likewise, as has been reported by members of the community, a legitimate public hearing has not been held, as is required by the General Environmental Law 26.675. The partial information provided in the information meetings does not allow for a full understanding or an open debate on the scope of the project, its impacts, and the possible infringements on human rights.



## ACCESS TO REPARATIONS MECHANISMS

***As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.*** A legal loophole allows exploration and pilot production to be free of legal consequences with regard to human rights. Likewise, the province does not adopt the necessary measures to investigate, punish and remedy the human rights abuses related to businesses when they occur. The State's duty to protect is weak and even meaningless. Situations like the lack of protection of the Ramsar site and the lack of institutions that promote the protection and guarantee of rights, among others, are strong evidence of the current inefficacy and failure to protect and guarantee human rights. The access to adequate reparations mechanisms and their effective operation are threatened by the current business-community-State relation. The fact that the State does not intervene in guaranteeing rights has effects on the relationship established between businesses and the affected communities, but not in the way proposed by the Guiding Principles, that is, in the sense of accelerating processes and avoiding the bureaucratization of dialogues. On the contrary, it leaves the members of the local communities exposed to an asymmetric relationship and in a context of lack of protection. The State's retreat from its oversight functions enables unmediated contact between the business and the community, so in case of infringements it is possible that claims are treated through informal, non-legal channels, with the risks that the asymmetric relationship between the business and affected communities entail.

To date, effective and appropriate extra-judicial claims mechanisms, parallel to judicial mechanisms, have not been established or made explicit as part of an integral State reparations system to address human rights violations related to businesses. For this reason, we are not aware of the existence of claims mechanisms at an operational level that may offer resources and solutions in the early phase. Extra-judicial claims in cases of damages or infringements would be the norm (for instance, with donations to the community), but a resolution in equal conditions for the parties cannot be assured. On the contrary, the business always has the advantage of making the reparations visible as part of their SCR policy.

## 2.2. Brazil: Iron mining and railroad in Carajás

Type	Iron ore
Location	States of Pará and Maranhão
Company	Vale S.A.

Figure 2. Mining and railroad in Carajás



Source: Arquivo Justiça nos Trilhos.

The mining sector in Brazil accounts for almost 5% of the GDP. From this percentage, in the last year, 44% corresponded to iron ore. According to the Department of Foreign Trade, in 2018 iron ore mining grew 25.4% compared to 2017.<sup>20</sup> The unrestrained extraction of resources, seeking only profit and increased activity for exports, tied to the worsening of the living conditions of the populations affected by business operations, epitomize a development project where inequality and devastation prevail.

20 "Exportações de minério de ferro do Brasil crescem 25,4% em 2018 com avanço da Vale" [Iron ore exports in Brazil grow by 25.4% in 2018 with Vale's growth], Terra (Brasil) (02 January 2019), Retrieved from: <https://www.terra.com.br/economia/exportacoes-de-minerio-de-ferro-do-brasil-crescem-254-em-2018-com-avanco-da-vale,7252a4293a648dac37ad19535174e99cybb8vx0v.html>. January 2019.

At the beginning of the 1980s, under military rule, the “Grande Carajás Program” was born, which had the goal of installing the necessary infrastructure for the extraction and transportation of the vast iron ore reserves in the region of southeastern Pará. With this project, the multiple violations that had already been committed with the construction of the Tucuruí hydroelectric dam, located a short distance North and built to supply electricity to mining enterprises, were spread to a much larger territory. Among these rights violations against local populations we find rural migration, the invasion of Indigenous lands, the felling of timber, and the installation of a steelmaking plant, which irreparably modified the eastern Brazilian Amazon. The Carajás Railroad was built in 1985, connecting the Carajás Mine Complex (State of Pará) with the Port of São Luís (State of Maranhão). In 1997 the Vale Company was privatized and later became VALE S.A.<sup>21</sup> Fueled by the increased Chinese mineral demand, the company expanded significantly its capacity. Currently, the mining complex is undergoing a large expansion under the S11D Project, inaugurated at the end of 2016 and which was presented by the company as the greatest iron ore extraction project in history. The Carajás Railroad connects the largest open-pit iron ore mine, in southeastern Pará, municipality of Carajás, with the Port of Ponta da Madeira. Along its 892 kilometers, in the largest train in the world (with 330 cars and a length of 3.3 km), millions of tons of iron ore, cast iron, manganese, copper, fuels, and coal, as well as 350 thousand passengers per year are transported.

Thus, VALE S.A. is a main cause of irreversible changes and damages in the Amazonian environment and in the lives of the people who live there, particularly in the lives and bodies of women. The company is responsible for serious violations of human rights and social-environmental conflicts, as an expression of the confrontation of opposing logics regarding the occupation and use of territories and goods obtained from nature. In this way, the dictatorial model of development of national infrastructure has been maintained for years, affecting continuously the lives of men and women in the territory in which the mining and railway projects are developed, which cross Indigenous and peasant lands, ancestral Quilombola (Afro-descendent) territories, and environment and river protection areas, profoundly altering nature and the lives of its inhabitants.

The forms of violence against people impacted by mining activities in Carajás, especially against women, go from the destruction of their ways of life and the appropriation and control of their bodies, to several kinds of racism and sexism, imposed silence, subjugation, systematic denial of rights, and dehumanization. In this context of violence, the Guiding Principles have not provided a solution. One of their limitations is that, when dealing with matters of gender in conflict situations, both the GPs (principles 7 and 12) and their commentaries and interpretation guides, limit themselves to the context of armed conflicts, leaving aside other forms, such as social-environmental conflict. This omission in the GPs is unacceptable, as they do not even contain expressions such as “environment,” “nature,” or “natural resources,” considering that, according to the UN, at least 40% of internal conflicts in the last 60 years are related to the exploitation of natural resources.<sup>22</sup>

On the other hand, other conflicts such as domestic and gender-based violence in communities around the extractive project have been observed, which, in addition to the precarization of the modes

21 5.5% of the mining company's stocks belong to BNDES (Brazil National Development Bank), the federal government's main instrument to finance long-term projects, emphasizing the promotion of national private initiatives.

22 “International Day for Preventing the Exploitation of the Environment in War and Armed Conflict, 6 November.” UN Observances, <http://www.un.org/en/events/environmentconflictday/>



Piquiá de Baixo Community. Açailândia. Maranhão. Brasil. Photo: Marcelo Cruz.

of life that the company's activities bring about, increase and exacerbate the levels of violence against vulnerable groups, especially against women.<sup>23</sup>

It is known that mining requires large volumes of water during the extraction process. In the case of VALE S.A., to the operational phases directly related to mineral extraction, we can add the "dry corridor"<sup>24</sup> caused as a result of the construction, expansion, and doubling of the railroad in Maranhão. This dispute over water puts life at risk in the territories. Water scarcity has direct impact on food production, and in these conditions, children, women, and the elderly are the most affected members of the population.

According to data from the Ministry of the Environment, most of the VALE S.A. railway in the State travels through plains regions that are flooded for a good part of the year and feature great water availability.<sup>25</sup> Thus, mining activities began irregular processes of vegetation suppression, resulting in the death of incalculable amounts of babazú coconut palm trees, which used to be an important

23 For more information regarding the exploitation of women in Maranhão, see: "Vale duplica ferrovia e multiplica violações no Maranhão e Pará" [Vale doubles the railway and multiplies violations in Maranhão and Pará] Instituto Socioambiental, Unidades de Conservação (02 December, 2011), <https://uc.socioambiental.org/noticia/vale-duplica-ferrovia-e-multiplica-violacoes-no-maranhao-e-para>.

24 "Dry corridor" is a phrase used by the residents of communities close to the Carajás Railroad to describe that the mining company VALE S.A., with the doubling of the tracks and the obstruction and pollution of rivers and streams, has transformed the region into a large dry corridor.

25 See: Maria Carolina Hazin, coord. "Planejamento para o sucesso da conservação," APA da Baixada Maranhense: Ministério do Meio Ambiente (N. D.): 18.



source of economic autonomy for many families in the region.<sup>26</sup> Besides this, there have been negative interventions on riverbanks, which are permanent conservation areas, including their irregular occupation, sedimentation of waterways, and negative interference and destruction of habitats with severe impacts on local fauna.

The expansion project announced a marked increase in the transportation and dispatch capacity of the Carajás mines (State of Pará), from 130 to 230 million metric tons per year. To do this, VALE S.A. doubled the Carajás railway line, introduced larger and faster locomotives and cars, and began the construction of the fourth pier in the Ponta de Madeira Maritime Terminal. The impact that the doubling of logistic infrastructure has had on bodies of water is a dimension that has not been addressed in the reparations of negative impacts, reparations which in any case seem unlikely, as many current judicial processes show. These interventions produce scarcity and pollution of this valuable resource, which has a differential impact by gender. Women, whose obligations are linked to care and reproduction, experience negative effects on their rights to clean, secure, and adequate provisions of water, for which they must now undertake long walks to other sources.

Furthermore, in the context of extractive activities described above, other evident violations of human rights include the right to adequate food, sanitation, healthcare, housing, work, to not be deprived of the means of subsistence, to participate in cultural life and in the conduct of public affairs, as well as the rights to freedoms and individual security, to free access to information, to mobility, and to a healthy environment.

The most serious event that involves VALE S.A. cannot be omitted: the rupture of the tailings dam Córrego de Feijão, property of the company, which occurred on 25 January 2019 in the municipality of Brumadinho, State of Minas Gerais, which caused the death of 270 people,<sup>27</sup> as well as the devastating pollution of the Paraopeba River, one of the tributaries of the São Francisco River, considered one of the main rivers in the country.

“  
**Mining activities began irregular processes of vegetation suppression, resulting in the death of incalculable amounts of babazú coconut palm trees, which used to be an important source of economic autonomy for many families in the region”**

26 Known in Brazil as “quebradeiras de coco”.

27 The number of confirmed deaths, according to data from 10 September 2019, is of 251, with 19 people missing. See: “Brumadinho: Mais um corpo é encontrado na região da tragédia; 251 já foram achados” [Brumadinho: Another body found in the region of the tragedy; 251 had been found already], O Globo (04 October 2019), <https://oglobo.globo.com/brasil/brumadinho-mais-um-corpo-encontrado-na-regiao-da-tragedia-251-ja-foram-achados-23996042>,

## Applicability of the Guiding Principles and violations to the rights of communities:

**Guiding Principle 14 states that the responsibility of businesses to respect human rights varies according to the magnitude and complexity of the means they dispose of to assume their responsibilities, as well as the severity of the negative impacts of their activities on human rights.** According to the mining company's balance, the second quarter of 2018 closed with a profit of around 206 million Brazilian reais, an increase of 410% with respect to the previous quarter. These amounts impose an obligation to the Company to have appropriate policies and procedures in relation to its size, including a process of human rights due diligence, to identify, prevent, mitigate, and be accountable on how it addresses impacts on human rights, in processes that allow for the reparation of all the negative consequences they cause or contribute to cause, as stated in Guiding Principle 15. Thus, the due diligence approach implies using a lens that identifies and evaluates the main risks on human rights, as is required by the responsibility that stems from the Universal Declaration of Human Rights: That is the spirit of Guiding Principle 12.

**Guiding Principle 13 states that businesses must know and make known that they respect human rights, assuming a political commitment to act according to that responsibility, as is also said in Principle 16.** Formal support from VALE S.A. to the Guiding Principles, along with the determination of their capacity to confront violations, represent a greater duty of due diligence. Instead the company not only shows no interest in providing reparations for the violations it commits, but also it invests more and more in the construction of infrastructure that excludes local populations to meet the demands of international markets, such as China. In its sustainability policy (POL-0019-G, p.2), VALE S.A. presents itself as a catalyst for local development, supporting the socioeconomic and environmental development of the territories where it acts. Nevertheless, considering the severe negative impacts that people subject to their activities must face, their practices completely clash with their propaganda and internal policy documents. A similar situation is seen in their Human Rights Policy (POL-0005-G), which quotes among its guidelines "the monitoring and risk management of Human Rights," pursuant to the recommendation of Principle 16(a), which indicates that its political declarations have the approval at the higher levels of the company, while it ignores line (e), which requires that these declarations must be reflected in the operational procedures of the entire company.

Despite the fact that the company mentions as international reference the UN Global Compact and the Guiding Principles in all of its instruments, such as the Sustainability Policy, the Human Rights Policy and the Human Rights Guide, what is seen is a vast difference between discourse and practice, which contributes to making the victims of business activities invisible.

Brazil, there is no National Action Plan, but recently, with the approval of Ordinance No. 24 from 5 October 2017, the planning for the Secretaria Nacional da Cidadania (the National Department for Citizens) for 2017-2018 was approved, which envisages doing baseline evaluation about Business and Human Rights for the future creation of the Plan. A Business and Human Rights Committee has been created, the purpose of which is, among others, to seek ways of implementing the GPs (article, 2, I). More recently, Decree 9.571 from 21 November 2018 was issued, which established the National Guidelines on Business and Human Rights for medium and large businesses, including transnational corporations present in the country. Nonetheless, no significant progress towards this National Action Plan has been communicated since the Bolsonaro government began in 2019.

28 "Lucro líquido da Vale no trimestre sobe 410% ante 2017" [Vale's net profit increased 410% in 2017], Valor (25 July 2018), <https://www.valor.com.br/empresas/5687791/lucro-liquido-da-vale-no-trimestre-sobe-410-ante-2017>.

The decree was issued without any participation of civil society, social movements or the affected victims in its drafting, and it does not include any provisions to hold businesses responsible for human rights violations. Article 8 mentions the issue of gender in two instances: firstly, where it stipulates that businesses must fight discrimination and preserve the equality of wages and benefits regardless of gender, and secondly, where it states that businesses must respect freedom of sexual orientation and gender identity. Incidentally, the mere recommendations to businesses to adhere voluntarily to the content of the guidelines is not sufficient to fight inequalities, particularly against women.

Thus, the tendency of the Brazilian State with respect to making regulatory frameworks and public policies on human rights and businesses continues to be vague, imprecise, and removed from the real conditions of the victims, while its existing legal and institutional mechanisms do not have the ability to offer just and effective reparation.

2.3. Colombia: Coal mining in La Guajira and Cesar

Type	Coal mining
Location	Departments of La Guajira and Cesar
Companies	Cerrejón, Prodeco, Drummond, CNR

Figure 3. Mining corridor La Guajira - Cesar



Source: Territorios y Derechos Humanos. Pensamiento y Acción Social. 2018.

The largest thermal coal reserves in the country are found in a vast territory that extends across the departments of La Guajira and Cesar. In Cesar, this includes the mines of La Loma, La Jagua, El Boquerón, and El Descanso. In La Guajira they are El Cerrejón, divided into three sections, North Zone, Central Zone and South Zone. For over three decades, 90% of the national coal production has been extracted from this territory.



Young people in Tamaquito II working for the recovery of their medicinal plants. La Guajira. Colombia. Photo: Santiago Londoño (PAS).

The territory is largely inhabited socially and culturally by indigenous, peasant and Afro-Colombian communities with deep-rooted practices of use of and care for the territory, managing their natural environment and maintaining self-sustaining systems of production by means of communitarian activities like fishing, hunting, agriculture, and a subsistence economy. Their vision of the world and the way of life of these communities have been affected in the clash with the vision and interests of the model of globalization and accumulation expressed in the extraction of coal by transnational corporations. Thus, this corridor has become a disputed territory with the imposition of strategies of dispossession, expropriation, appropriation of natural resources, and violence.

In the department of Cesar, coal extraction dates back to the 1990s. There are 354 current mining titles, which represent an area of about 278,000 hectares. Seven large-scale projects are being developed with more than 500 contractor businesses, and more than 46 million tons of coal are extracted every year, from open pits. The businesses that operate here include Drummond, Prodeco-Glencore, and Colombian natural Resources (CNR), which taken together control 60% of production. Coal is transported by railroad over 212 kilometers from the mine in La Loma to the port located in the town of Ciénaga, Magdalena (on the Caribbean Sea).

In La Guajira, the company known as Cerrejón currently extracts 60 million tons of coal per year and has a license until 2033. The mine is located on the basin of the Ranchería River, a river which is a sacred place for the Wayuu Indigenous people and which the company has proposed to deviate 26 km from its course, as under its bed lie over 530 million tons of coal,<sup>29</sup> according to studies by the company. The extraction and export operations of El Cerrejón include mining, transportation, and the shipping of coal from Puerto Bolívar,

“  
**The mine is located on the basin of the Ranchería River, a river which is a sacred place for the Wayuu Indigenous people and which the company has proposed to deviate 26 km from its course”**

29 “Minería, conflictos agrarios y ambientales en el sur de La Guajira.” CINEP/Programa por la Paz, Special Report (May 2016), [https://www.cinep.org.co/publicaciones/PDFS/20160501.informe\\_especial\\_mineria.pdf](https://www.cinep.org.co/publicaciones/PDFS/20160501.informe_especial_mineria.pdf).



on the Atlantic Coast, 150 km away from the mine by railroad. This port is considered the largest coal terminal in Latin America,<sup>30</sup> with the capacity to receive ships of up to 180,000 tons. The companies that operate the mine of El Cerrejón are: Coal Marketing Company Ltd.,<sup>31</sup> Cerrejón Zona Norte S.A., Carbones del Cerrejón LLC, and Cerrejón Coal (Bermuda) Ltd.

A good part of the ancestral communities from this territory are now living situations of forced re-settlement, some as a consequence of dispossession and expropriation by businesses and others as a consequence of environmental pollution and negative health effects. The communities consider that these resettlements amount to revictimization, to the extent that the companies and the State have not upheld their part of the agreements, they are living in subhuman conditions, and have been re-settled in geographical areas neighboring mining operations, and, in some cases, even in areas where future operations expansions by transnational corporations are projected. In La Guajira, the resettled communities (supported by PAS) are Tamaquito, Roche, Tabaco and the Fuerza de Mujeres Wayuu organization [an indigenous women organization], as well as the community of El Hatillo in Cesar.

### Applicability of the Guiding Principles and violations to the rights of communities:

**Principle 1: States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.** States fail to meet their human rights obligations be it when they are attributed direct violations or when they do not adopt the necessary measures to prevent, investigate, punish, and compensate damages committed by businesses. Nevertheless, despite the actions, plans and policies implemented by the Colombian State, negative impacts on the fundamental rights of the population in the territory (so-called “mining corridor of La Guajira–Cesar”) have been observed, in a context where strategies of expropriation, forced displacement, and political violence are regularly deployed. From the beginning of the extractive operations until the present, innumerable abuses and violations committed by mining businesses in these departments have been reported, as well as their relations to illegal armed groups and violations committed by State agents. The frail and almost non-existent institutional presence, the corporate capture of the State by the extractive companies, and the presence of criminal groups impede any effort to fulfill the State’s responsibility to protect and respect human rights.

**Principle 3: In meeting their duty to protect, States should: A. Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps; B. Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights; C. Provide effective guidance to business enterprises on how to respect human rights throughout their operations; D. Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.**

30 Puerto Bolívar has an area of 60,000 hectares.

31 Incorporated in January 2003, this company is owned, in equal parts, by Anglo American, BHP Billiton, and Glencore. As the exclusive distributor of coal, Cerrejón coordinates the sale and delivery of this high-quality thermal coal around the world. In ten years, CMC’s sales went from 18 million tons (2002) to 33.4 million tons (2013).

Despite the fact that the Colombian State has developed a National Action Plan, with participation by businesses, the State has not had the capacity to force compliance with laws and agreements. A specific case is the order given by the environmental authority to resettle the community of El Hatillo in Cesar, due to pollution, in a timeline of three years. The order is now 9 years old and only in 2018 the companies Prodeco, Drummond and CNR sign the Resettlement Action Plan (RAP) with the community, and over a year of failure to comply has gone by.

The undertaken actions to remedy have proved to be revictimization experiences that end up creating greater damage to the communities. The involuntary resettlements in Cesar and La Guajira are a clear example of the way in which the rights of the communities affected by coal mining have been doubly infringed upon by the same business actor. The delays in the fulfilment and negotiation of resettlement, exposition to a polluted environment during the negotiation process, abandonment by the local government as an effect of the resettlement order, threats, tracking of individuals, and other forms of intimidation are evidence of this phenomenon of double victimization which are a result, partly, of state action. These communities have also seen their rights infringed by the limitations to adequate participation in negotiations on the conditions of resettlement and the lack of recognition of their rural way of life and their relation to the territory.

**Principle 11: Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.** Respect for human rights by the business sector implies recognizing the traditional ways of life that exist in the place where their operations are taking place, as well as the different cultures, peoples, communities, and populations who live there. The development of extractive activity in La Guajira–Cesar has violated this recognition. The profit-driven, expansionist logic of mining companies has caused, for decades, enormous impacts on environmental, social, and labor issues as well as on people's health. The measures taken by businesses to prevent, mitigate, or remedy the negative consequences have been precarious and, according to the communities, have not resolved the structural issues. Under programs of Corporate Social Responsibility (CSR), businesses substitute functions that belong to the state and regulate social processes within the communities. In these territories, where poverty prevails, businesses have become “para-States” and have been able to defer and block decisions and penalties on environmental and judicial issues.

**Principle 13: The responsibility to respect human rights requires that business enterprises: a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.** By definition, extractive activities entail excesses and negative consequences on human rights. For example, communities in Cesar pointed out that the explosions used in the mine every day shake their homes and, in many cases, have deteriorated them. They indicated that, despite this, they must live there fearing that their homes will collapse on them. This can be classified as a clear violation of this Principle and businesses have not taken measures to address this kind of situations. This argument could be equally extended to the pollution of air and water sources, which has led to the proliferation of diseases among the population and in animals, severely affecting the environment, the landscape, the population, the sacred sites, the grazing areas, and the zones of traditional agriculture that existed in the past.

**Principle 16:** *As the basis for embedding their responsibility to respect human rights, business enterprises should express their commitment to meet this responsibility through a statement of policy.* Promoting this type of policy commitments, framed within the image and reputation strategies of mining businesses, exposes a phenomenon that could be called “double-faced,” in which the state and businesses participate in a complementary fashion. It consists of the promotion of a supposed interest for respecting human rights, mainly with regards to public institutions and international dialogues, at the same time as extractive operations are developed that perpetuate the human rights violations and go against the stated commitments.

**Principle 22:** *Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.* The mechanisms created by businesses for claims by those affected, such as complaints and claims offices, turn out to be obsolete. The communities say this becomes a sort of mailbox where people supposedly can go voluntarily and indicate the damage they suffered, but it is the company which will decide if it will respond, or if the damage is liable to reparation. The experiences with reparations related, for example, to resettlements show that there is no real restitution to the victims and that it is considered that a mere economic compensation can repair uncountable damages that will persist for a long time.

## 24. Perú: Copper mining in the Andean South

Type	Copper mining
Location	Departments of Cusco and Apurímac
Companies	Glencore, MMG.

**Figure 4. Copper mining in the Andean South**



Source: CooperAcción

In the regions of Cusco and Apurímac, mining activity has gained great importance due to the exponential growth in the investment and production of copper. This can be seen in the progressive increase of mining licenses on their territories. By July 2018, 48.8% of the territory of Apurímac and 14.8% of Cusco's were licensed for mining.<sup>32</sup> These percentages are higher in provinces like Cota-bambas (Apurímac), where mining licenses have been granted on 74.87% of the territory and in Espinar (Cusco) where they cover 41.3%.<sup>33</sup> Another indicator in the growth of mining in both regions is

32 The projects of Las Bambas and Tintaya Antapaccay are the main copper mining projects. Las Bambas operates in the province of Cota-bambas, region of Apurímac, while Tintaya Antapaccay operates in the province of Espinar, in Cusco. These projects have also been the setting of the main social-environmental conflicts in the last years at the national scale, still active in their zones of influence.

33 "Reporte de evolución de concesiones mineras. Segundo semestre 2017" [Report on the evolution of mining concessions], Dionel Martínez Castillo, Cooperacción, 2017, <http://cooperaccion.org.pe/wp-content/uploads/2018/02/INFORME-DE-CONCESIONES-MINE-RAS-2017-3.pdf>

“  
**The expansion of  
copper mining also  
implies a strong  
pressure on the  
territories of the  
traditional peasant  
and Indigenous  
inhabitants of the  
regions of Cusco and  
Apurímac**”

the number and magnitude of current and projected mining operations. In the case of Apurímac, it is foreseen that in the next few years this region could become the country's “copper capital,” with close to 20 billion US dollars in different mining investments,<sup>34</sup> including the project of Las Bambas, which is now in operation and amounts for 20% of the national copper production.<sup>35</sup> Another determining factor has been that mining has made a significant leap from large, isolated projects (such as in other times of mining booms in the country), to a network of operations (large-scale production, smelting, exploration, etc.) which are connected to each other.

Mining operations in the Andean south are inter-connected through an extensive road infrastructure.<sup>36</sup> There, we find large-scale operations from transnational capital, located along different regions and provinces of the Andean south. The road begins in the provinces of Cotabambas and Grau (region of Apurímac), goes through the provinces of Chumbivilcas and Espinar (region of Cusco), and ends in the coast of Arequipa (Port of Matarani). This road, which ensures the connection to the mining companies that currently operate in Apurímac and Cusco, will also allow the connection to other projects that will be implemented in the following years (at least for the next four decades). Given this, some of the most important mining companies in the world such as Glencore (Switzerland) and MMG (China), have invested in the exploration and production of copper in these regions, taking advantage of these conditions. The expansion of copper mining also implies a strong pressure on the territories of the traditional peasant and Indigenous inhabitants of the regions of Cusco and Apurímac.<sup>37</sup> The intensity and magnitude of the mining projections in the area imply important processes for the transformation of local economic, political, and cultural dynamics.

Institutions in these Andean provinces, whose populations are mostly Indigenous and traditionally rural, are not duly prepared for these transformations. The absence of solid institutions, the weak presence of the State in the area, legal loopholes, and the low efficacy to enforce rules that regulate and place limits on mining, are part of a common diagnostic of natural resource management in the country, on which the OECD, the World Bank and other international institutions agree.

Within the framework of the Guiding Principles, both Glencore and MMG have assumed political commitments to respect human rights. The Swiss

34 “Cartera minera al 2021: US\$8.000 millones en inversiones.” *Gestión* (22 November 2018), <https://gestion.pe/panelg/cartera-minera-al-2021-us8000-millones-inversiones-2209703#>

35 “Las Bambas: ¿Por qué la economía de Apurímac cayó en 2018 pese a la minería?” [Las Bambas: Why did Apurímac's economy contract in 2018 in spite of mining?] *RPP* (28 March 2019), <https://rpp.pe/economia/economia/las-bambas-por-que-la-economia-de-apurimac-cayo-en-2018-pese-a-la-mineria-noticia-1188622>

36 Armando Mendoza, Silvia Passuni and José De Echave, “La minería en el sur andino: El caso de Apurímac, Perú” [Mining in the Andean south: The case of Apurímac, Perú], CooperAcción, Lima, 2014, <http://cooperaccion.org.pe/wp-content/uploads/2017/03/La-Miner%C3%ADa-en-el-Sur-Andino-Apurimac.pdf>

37 Both are rural regions, though with different characteristics: Apurímac has a 61.6% of rural population while Cusco has 46.2%. Both have, in large parts of their territories, rural Indigenous communities.





Defending the environment. Perú. Photo: CooperAcción.

Company Glencore, for example, has a priority in its policies and worldwide statements to reduce its impact on water and is expressly committed to “understand our effect on the environment, minimise our water-related impacts and ensure that our activities do not compromise any shared use of water.”<sup>38</sup> Also, in its sustainability reports (2016–2018), the Chinese Company MMG points out that “we have the commitment to carry out our activities according to the Universal Declaration of Human Rights, the Guiding Principles on Business and Human Rights, and the Principles of the United Nations Global Compact.”<sup>39</sup> Despite the fact the businesses assume political commitments to respect human rights, as stated in their corporate and business marketing documents, neither Glencore nor MMG have been able to fulfill their responsibility to respect them in the places where they operate. In the context of their large-scale mineral extraction, transformation, and transportation activities, the companies Glencore and MMG Las Bambas affect the area where they operate, creating negative impacts on water and the environment, transforming the territories, and the relations between the communities that inhabit them. Due to their magnitude, these transformations can compromise the ways of living, customs, and even the very existence of the rural Indigenous communities of Cusco and Apurímac.

38 “Sustainability Report,” 2018, p. 37, [https://www.glencore.com/dam/jcr/633f190c-76d6-42b3-beca-debb25134556/2018-Glencore-Sustainability-Report\\_.pdf](https://www.glencore.com/dam/jcr/633f190c-76d6-42b3-beca-debb25134556/2018-Glencore-Sustainability-Report_.pdf)

39 For more information, see “Human Rights Policy,” MMG, October 2019, <https://www.mmgroup.com/wp-content/uploads/2019/11/MMG-Human-Rights-Policy.pdf>.

## Applicability of the Guiding Principles and violations to the rights of communities:

GLENCORE	
	<b>Origin:</b> Swiss company <b>Project:</b> Antapaccay <b>Production:</b> Copper, molybdenum, gold and silver <b>Open pit</b>
	<b>Impact:</b> Affected population: 13 rural Indigenous communities in the districts of Espinar, Pallpata, and Héctor Tejada, Province of Espinar, Cusco.
To water	Reduction in the flow of rivers and streams in the K'ana territory:
	<ul style="list-style-type: none"> <li>• Tintaya Zone: Ccamac Mayo stream and the Tintaya River</li> <li>• Antapaccay Zone Coropuquio, Tacu, Minas Mayo, and Ccatun Mayo streams; tributaries to the Cañipía River.</li> <li>• Coroccohuayo Zone: Ccaccamayo stream (in the best-case scenario the flow of this stream would decrease by over 20%).</li> </ul>
	Until the closure of the mine, the flow of the Ccatun Mayo stream (Alturaca River) will have decreased by 84%, while the Cañipía River will have decreased by 34%.
	Effects on water quality associated with mining activity: <ul style="list-style-type: none"> <li>• Water for human consumption in the mine's area of influence contains mercury, aluminum, phosphorus, iron and arsenic. Riesgo sanitario en la zona minera a causa de las altas concentraciones de hierro, nitratos, calcio, sulfatos y molibdeno muy por encima de los estándares nacionales.</li> </ul> Affected population: communities of Huarca, Huisa Collana, Huisa, and Bajo Huancané: <ul style="list-style-type: none"> <li>• Health risk in the mining area due to the high concentrations of iron, nitrates, calcium, sulfates, and molybdenum, at much higher levels than the national standards.</li> </ul>

Sources: Consolidated 2018 EIA for the project . Centro Nacional de Salud Ocupacional y Protección del Ambiente para la Salud (CENSOPAS) del Ministerio de Salud (2010) [National Center for Occupational Health and Protection of the Environment to Health, The Ministry of Health];  
Final Report on the Espinar Dialogue Table (MINAM y MPE, 2013)

MMG	
	<b>Origin:</b> Chinese company <b>Project:</b> Las Bambas <b>Production:</b> copper, molybdenum, gold and silver <b>Open pit</b>
	<b>Impact:</b> Affected population: 16 rural Indigenous communities in the districts of Challhuahuacho, Coyllurqui and Haquira, in the province of Cotabambas, and in the district of Progreso, province of Grau in Apurímac
To the environment	Deficiencies in the environmental impact studies have created dust clouds, vibration, and noise along the road:
	<ul style="list-style-type: none"> <li>• Twice a day more than 125 high tonnage trucks travel on the road, as well as 60 other vehicles with materials, as well as private cars and SUVs.</li> <li>• The road is not paved.</li> <li>• Dust is thrown in the air, homes vibrate, and there is noise pollution</li> <li>• These events affect decent living conditions and the right to a healthy environment.</li> <li>• It crosses the districts of: Progreso, Challhuahuacho, Mara, Capacmarca, Colquemarca, Chamaca, Velille, Coporaque, Espinar, in several provinces of the regions of Cusco and Apurímac, ancestral territory to rural and Indigenous communities.</li> </ul>
	Impacts on water, flora, fauna, and local soils.
	Rivers and springs:
	<ul style="list-style-type: none"> <li>• During mining operations, the flows of the Ferrobamba (Fuerabamba) River and of the water springs in the sub-basin are reduced to the very edge of disappearing.</li> <li>• Depositing mine tailings produces water filtrations from this waste during the entire life cycle of the mine, which will impact water flows.</li> <li>• During the post-closure phase, metal concentrations will increase above the baseline due to effluents from the project.</li> </ul>
	Wetlands:
	<ul style="list-style-type: none"> <li>• 17 wetlands (bofedales) were identified as sensitive habitats.</li> </ul> Fauna: <ul style="list-style-type: none"> <li>• Disappearance of local endemic, uncommon, and endangered species: trout, amphibians, mammals, and birds</li> </ul>



Andean South. Perú. Photo: CooperAcción.

The relationship between businesses and human rights has not been addressed by the current legal and institutional framework in Perú. By the end of 2018, there was no policy, rule or regulation implementing this issue directly in the country, despite the adoption by the United Nations of the GPs in 2011 and the inclusion of these standards to the OECD in the same year.<sup>40</sup> On the contrary, after reviewing and analyzing different policy documents, it is seen that they use a language reluctant to make connections between businesses and human rights, with the exception of labor rights.

The official message in these documents associated businesses to economic growth and highlights their important role as a driver of national development. Despite the fact that social conflicts surrounding the activities of extractive businesses have been an important part of the national agenda in the last ten years, the need to address the relationship between human rights and the actions of businesses does not appear in national policies nor in the country's official vision for the future.

40 In 2000 the OECD adopted explicit references to Human Rights in its Guidelines for Transnational Corporations.





Los Nacimientos Fiambalá. Argentina. Photo: Jose Guevara. 2019.



### 3. Main findings and conclusions

After collecting the concerns and lived experiences of the affected communities, the analysis of the case studies for the four countries, and the review of public policies regarding the implementation of the Guiding Principles on Business and Human Rights, it is possible to sum up certain findings and conclusions to the investigation:

#### 3.1 Findings:

- Regarding the pillars of the Guiding Principles, we find the following:

##### **Pillar 1: Protect**

The case studies presented in the previous section indicate the weakness of the States in complying with this pillar to protect. Commercial arrangements and agreements prevail over policies on human rights. Businesses seek to counter the effects of government decisions by suing the state for exorbitant amounts when they consider that public policies may affect their profits and investments or when governments adopt measures to safeguard human rights or public interest.<sup>41</sup> Likewise, numerous cases of pressure exerted by businesses, revolving doors, and other conflicts of interest have been seen, which demonstrate the corporate capture of States at several levels. Businesses are able to include their interests in the design of public policies on human rights, in prior studies to grant environmental licenses, in environmental damage and impact measurement instruments, and even in remediation measures. This interference is even greater at the level of local institutions and in local governability, where often businesses will take advantage of the corrupt practices of officials in local administration and/or of relations to local political powers. The cases analyzed show how the measures and type of reparation with respect to damages are defined by businesses, thus confirming what the communities have referred to as revictimization.

##### **Pillar 2: Respect**

The few businesses which have recognized the framework of the Guiding Principles point out that they comply with this pillar by carrying out mechanisms of due diligence. Nonetheless, a crucial aspect is the type of information that businesses share with State institutions and the communities. Many times, this information is incomplete, out of date, and/or distorted. Also, information about environmental and health impacts is prepared and provided by the businesses themselves. Finally, risk analyses are carried out by the businesses or consultants,

41 "Las diez demandas internacionales que Duque deberá enfrentar." *El Tiempo* (30 June 2018), <https://www.eltiempo.com/justicia/investigacion/las-demandas-internacionales-que-duque-debera-enfrentar-238000>. The Colombian state has lawsuits against it by Consigo Resources, Prodeco (Glencore), Naturgy (previously Gas Natural Fenosa), Telefónica from Spain, América Móvil from Mexico, Granahorrar, as well as the Canadian companies Gran Colombia Gold, Red Eagle, Eco Oro Minerals, and Galdway Gold, for a sum equivalent to 5 billion USD. With regards to the countries covered in this Report, it is worth noting the case of Argentina, which in 2017 had 7% of all global lawsuits in international tribunals, being the most sued country in the world. See more information in: "El Estado argentino es el más demandado ante tribunales internacionales." *Infobae* (03 July 2018), <https://www.infobae.com/economia/2018/07/03/el-estado-argentino-es-el-mas-demandado-en-tribunales-internacionales/>.



Medanitos 2019. Argentina. Photo: BePe.

without the participation of the communities or their representatives. This reveals the extent to which in the business sector the CSR approach still predominates and that the interpretation of the Guiding Principles is done within this framework and not from the perspective of human rights.

### **Pilar 3. Remedy**

In the cases analyzed it can be seen that remediation or compensation do not correspond to the severity of the damages and impacts. In most cases, the actions implemented take on an assistentialist approach, but not of integral reparation of the causes.<sup>42</sup> Likewise, several of the agreements that have been reached with affected communities have been breached in their timelines and in the type of project to be carried out.

It is worrying that the “remedies” offered treat violations of human rights or environmental damages as a misdemeanor that can be dealt with by non-judicial means. It would seem that, with respect to this pillar, the only requirement businesses have to comply with is carrying out due diligence, understood as a voluntary and autonomous means to limit and control direct or indirect actions that the business may carry out in the course of its operations so as to avoid human rights violations.<sup>43</sup> In this way, the image that businesses have no legal obligations is maintained, which easily creates a setting for corporate power impunity. Respect to human rights should not be allowed to be treated as a matter of “corporate culture.” It has to be considered a matter of regulation and of corporate accountability. It is important to remember

42 Currently, most businesses have offices or an area in charge of processing these types of complaints. Nevertheless, these claims are subject to a prolonged process that leave those who made them in situations with a high level of uncertainty, as it is not known when a response will be issued. The management of complaints also creates the feeling that there are no guarantees and debilitates trust in placing them. Furthermore, there is a great lack of transparency in handling these claims by businesses and their “discretionary” management of information creates serious doubts about the criteria used to address them.

43 Gonzalo Berrón, “Derechos Humanos y empresas transnacionales. Una discusión urgente.” TNI, 2016, <https://www.tni.org/en/node/23160>.

that there are other international instruments on human rights issues that businesses and States have the obligation to respect and guarantee.

- It was found that the level of knowledge and assimilation of the Guiding Principles by businesses, public officials, and affected communities is very low. Through interviews, it was possible to ascertain that only very few of the public officials who have been given the responsibility to develop the national human rights policy or national action plans have a minimum degree of knowledge on the Guiding Principles. The same happens with a few officials from businesses. In the communities, it was found that there is a clear identification of the impacts, damages and types of rights infringed by extractive activities, but there is a similar lack of knowledge on the existence of this voluntary instrument.
- An increase of fundamental rights violations (health, food, healthy environment, etc.), violations to economic, social and cultural rights, as well as collective rights (of Indigenous, Afro-descendent and peasant communities) in the context of transnational extractive enclaves was observed. In the four analyzed cases, the communities shared their concern over the severe impacts and the limitations to their right to water, given the magnitude of water grabbing by extractive industries. Likewise, it was verified that in the past two years communities have been experiencing severe restrictions in their opportunities to participate in claims regarding their rights. In mining areas, common patterns have been observed in terms of the use of violence, including state violence, and stigmatization of community representatives and activists when they claim their rights and report the damages and violations to human rights brought about by businesses.
- Women and children are the most affected members of these communities. The four investigations took care to analyze what occurs regarding the rights of women in these contexts of operations of transnational corporations. It was possible to observe that there are no specific diagnostics of the impacts of mining on the bodies and lives of women, nor is there a recognition of the types of violence against them taking into account the socio-cultural, territorial, and economic changes, as well as the destruction of their ways of life caused by extractivism. Also, within the context of applying the Guiding Principles, neither are there specific programs or mechanisms geared towards protecting, respecting, and remedying the rights of women. Unfortunately, the Guiding Principles have not provided solutions to the violations of the rights of women and children.
- During fieldwork, it was possible to observe that communities who have been living in these contexts for a long time take on an attitude of acceptance of the practices of businesses, and the businesses in turn reinforce this behavior with their assistentialist approach and their attempt to replace the State. This has impacts on the structure of the community's social fabric, creates environments of internal distrust, conflicts among families, and a division of the community's autonomy and its strength to make its claims.

### 3.2 Conclusions:

- Due to their voluntary nature, the Guiding Principles on Business and Human Rights establish a legal relationship between the parties (State and businesses) geared towards increased cooperation to protect the environment. In this sense, this investigation recognizes that the Guiding Principles contribute to increased awareness on the magnitude of the impacts that the operations of transnational corporations have on the environment and on the territories. Also, they raise the need for States and multilateral bodies (like the UN and the EU) to move forward on more effective regulatory mechanisms regarding business activities, which are able to guarantee the rights of affected people and communities, as well as the challenge of maintaining the universality, interdependence, and supremacy of human rights over private economic interests.
- The conditions in which the affected communities live, and which were analyzed in this investigation, allow us to conclude that the Guiding Principles have not achieved significant results in the behavior of businesses in relation to decreasing environmental impacts and damages, negative impacts to the territories, and violations to the rights of communities to health, food, and culture, among others. The Guiding Principles, understood as a cooperation agreement, have enabled the businesses themselves to be the ones to measure the impact of their activities on the environment, establish the baselines, and perform risk analysis, which is why any oversight by State institutions is based on information supplied by the businesses themselves. That is, a vicious cycle of program design and self-evaluation is created, together with the conflict resolution mechanism that, as was seen in the analyzed cases, exist as a direct relation or dialogue between businesses and affected communities without the State intervening as a mediator, when it should be the State who should guarantee that the rights of the affected communities are respected, protected and remedied.
- In the contexts of the Global South where these mining processes take place, local and national States are at very high risk of corporate capture. Intervention by businesses in the creation of certain public policies or human rights protection programs is greater in the territories and on the regional and local authorities where the businesses run their extractive operations. Conditions that contribute to this are the levels of corruption, the weakness of local governability, and the absence of strengthened institutions from the central State. Businesses argue that their intervention is part of the cooperative spirit of the Guiding Principles. Nevertheless, what was observed was the strong control over daily life and public and community life that businesses have, their co-opting of public officials, and their control over the type of information that is shared with authorities and communities. Likewise, there is control over the direction and use of instruments such as national action plans or other types of public policy instruments. All this leads to the conclusion that the Guiding Principles have not contributed to reducing the large corporate power of transnational businesses nor to guarantee the appropriate functioning of checks and balances, which leads to a gradual weakening of democracy in these countries.
- The Guiding Principles have not contributed to ending the impunity that businesses have with regards to human rights violations and the severe environmental and territorial damages they cause. On one hand, this is due to their limitations to contain corporate power, and on the other hand, to the fact that GPs do not have investigation and punishment mechanisms when businesses commit direct violations or when they are responsible due to complicity with other businesses or actors which commit violations. It was seen, in the analyzed contexts, that human rights violations, violence against inhabitants, fear-mongering strategies and controls over daily





South Andean, Perú. Photo: CooperAcción.

life occur in the context of a network of actors and practices in which businesses participate sometimes directly and sometimes indirectly or through complicity.

- Perhaps one of the most important findings in this investigation is about the circumstances in which victims seek access to justice and reparation. It can be concluded that the Guiding Principles, under the “Remedy” pillar do not establish concrete and effective mechanisms, criteria or procedures for the claims of victims or for restitution. Remedy actions are defined in spaces for “agreement” between businesses and the affected communities. It was possible to identify that these spaces are loaded with different forms of pressure, manipulation of information, and dialogues conducted in asymmetric conditions, which result in “compensations” (as businesses call them) that do not correspond to the actual damages and do not satisfy the needs of the communities. The state does not intervene and, therefore, there is no certainty that there will be any compliance with what was agreed upon and it is entirely up to the businesses’ will and financial availability and/or to the pressure that the communities can exert. Resettlement experiences, proposed as a form of remediation, have mostly failed due to breach of agreements, and communities consider that the conditions in which they are resettled are a form of revictimization. The current claims mechanism is ineffective, businesses evade questions or reports, and delay their response.
- Finally, it is possible to conclude that the Guiding Principles are a very weak instrument in the face of free trade agreements and accords and investment deals. Therefore, they mostly fulfill the role of promoting the (positive) image of businesses rather than preventing human rights violations or demanding that they answer legally when these violations are committed. In this way, victim’s rights and the universal primacy of human rights are secondary.



Andean South. Perú. Photo: CooperAcción.

## 4. Recommendations

### To the United Nations:

- Move forward decisively towards adopting a binding treaty that guarantees the human rights of communities and the rights of nature and in which they take precedence over the economic interests of corporations. Said treaty cannot be inferior to the human rights agreements and international instruments signed by States, nor can it contradict other important agreements like the rights of ethnic peoples, the declaration on the rights of peasants, or the Escazú agreement. In this regard, it must also respect the mandate of Resolution 26/9 of 2014<sup>44</sup>. It is worth mentioning that the organizations responsible for this investigation share the proposals made by the global campaign to dismantle corporate power and end impunity and other initiatives that different civil society organizations have proposed in the different rounds of the Human Rights Council Working Group which is in charge of the binding treaty.
- Based on the observations of the reality that the communities live in the analyzed territories, we specially recommend the United Nations that the binding treaty include a concrete investigation and penalty mechanism to transnational corporations for violations to fundamental rights, socio-economic and cultural rights, collective rights and environmental rights, as well as nature's rights. This mechanism can be complementary or subsidiary to the existing ones, such as the International Criminal Court. The severe violations to which the communities have been subjected and the conditions of extreme vulnerability in which they continue to live as a consequence of the strategy of expansion and dispossession by businesses leads us to recommend to the United Nations that there be no more delay in adopting a binding treaty that effectively protects the rights of communities and victims to access justice, integral reparation and, above all, to dignified living in their territories.

### To States:

- States must adopt legal and political mechanisms that stop the undue influence over and capture of public institutions by businesses. With regard to the four countries in this investigation, it is recommended that States give greater priority to social organization and to victims' organizations, to those affected, and to communities when creating public policies on human rights, national action plans for businesses and human rights, etc. and not just to the proposals of businesses.
- Control and oversight agencies of the States must perform a rigorous supervision of the risk analyses and the devices built by businesses to prevent violations, and in cases where human and environmental rights violations exist, they must demand businesses to assume their responsibility and support victims in accessing justice and exercising their right to integral reparation. Special attention must be given to the need to implement (urgently) the precautionary principle on the issue of environmental law.

44 Human Rights Council. "Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights." United Nations General Assembly, 2014, <https://www.ihrb.org/pdf/G1408252.pdf>





Wayú. La Guajira, Colombia. Photo: Santiago Londoño (PAS).

- States must build specific instruments and indicators to measure the differential impact of extractive operations on the lives and bodies of women, as well as on the right to a healthy environment and a dignified future for children and youth. States must guarantee that reparations agreed by businesses and communities include compensation for these differential impacts.
- States must put in practice the precautionary (or prevention) principle before granting mining and extraction licenses. To do this, scientific studies (from academia and NGOs) must be taken into account and should cover the states and diagnostics of different ecological systems, water basins, and special environmental protection areas.
- Regarding territories inhabited by ethnic communities and where mineral exploration, extraction, transportation, etc. are carried out, States must guarantee the right to prior consultation and to free and informed consent by the communities, as well as the respect to the autonomous decisions of their ancestral authorities, as is stipulated in several instruments of international law. States must not delegate the consultation process to businesses.
- Move forward in encouraging national legislation that defines economic crimes committed by business actors on the environment, particularly in places of environmental importance, like Ramsar sites, which are currently being affected by mining activity.

**To businesses:**

- Transnational corporations must fully comply with the commitments and agreements reached with communities and victims with respect to remediation programs, resettlement or others, oriented towards remediation of the violated rights.

- Businesses should not hide behind voluntary agreements to avoid responding (legally) for the human rights violations they commit in carrying out their extractive operations and should adhere to the principle of supremacy, universality, and interdependence of human rights which takes precedence over private interests.
- Businesses must understand that, besides the Voluntary Principles, there are other international instruments that provide evidence that the operations of transnational corporations affect human rights and that indicate obligations with respect to damage prevention and eventual reparation when they are caused. Before starting any project, businesses must comply with prior consultation and the free and informed consent of communities, including risk analyses and treatment plans, among others.

**To the European Union:**

- In the context of multilateral and bilateral cooperation projects and programs between the EU and the States of Argentina, Brazil, Colombia, and Perú, we ask that public policies that protect human rights and environmental rights are evaluated comprehensively and that there is effective monitoring of the compliance of voluntary and/or binding international agreements by transnational corporations with European capital carrying out extractive activities in the countries mentioned above.

**All parties involved** must consider explicitly the differential impacts of their political decisions and commercial and extractive operations have on women, children, and the elderly. In this sense, they must be obligated to design concrete and differentiated protection, reparation, and access to justice actions for these human groups, which end up being the most affected by extractive projects.



Project  
Multinational Corporations and Guiding Principles:  
Towards Effective Mechanisms for the Protection  
of Human Rights in Latin America



Project  
co-funded by the  
European Union

Project



Partners of the project



Consultant

