



Case Study on Children's Right to a Healthy Environment Affected by Coal Mining in the El Hatillo Community

Executive summary

I. Purpose of the study

The executive summary at hand is part of a case study to be published this year that describes how the rights of children and adolescents from the Hatillo community located in the region of Cesar in the Northeast of Colombia have been affected as a result of coal mining. The Colombian State has so far failed to adequately regulate and monitor company activities in the region. It has also failed to comply with its duty to provide basic social services.

The executive summary begins with a short note on methodology applied for investigating the case. It then analyzes the damages suffered by the community, including children, and identifies major violations of and threats to their rights, including their environment-related rights, due to actions or omissions of the State. It shortly outlines breaches of obligations with regard to the attributes of availability, access, adequacy and sustainability. It also includes an overview of third parties involved in the evolving situation of the affected community.

II. Notes on applied methodology and limitations of the study

Pensamiento y Acción Social (PAS), with the support of Terre Des Hommes Germany, has been documenting the case of El Hatillo between October 2014 and January 2015 from a child rights perspective, with a particular focus on environmental rights. The investigation builds on previous work done with the affected community.

To realize the study, PAS conducted an extensive review of existing literature and other relevant documents pertaining to the situation. Based on this review and an intimate knowledge of the community - which PAS has been able to develop during the last 4 years while supporting community members in demanding the fulfillment of their rights-, the

research team identified the main variables dealing with child rights and the environment for the study. The team also reviewed the level of implementation of international standards and national laws and policies existing in Colombia, which are applicable to this specific situation. This background information was then confronted with and validated by fieldwork. Here, the research team applied a qualitative approach. It conducted:

- 11 focus groups with children from the Hatillo community aged between 6 and 12 years;
- interviews with parents and caregivers, teachers and community leaders;
- bi-lateral meetings with local State institutions and UN Agencies.

The main purpose of the interviews and focus groups was to analyze the situation of children within the community and to collect information about existing protection mechanisms along with community responses and recommendations.

In order to ensure the effective participation of children and adolescents in the research process, PAS facilitated and supported the focus groups of children and youth. This concerned primarily the analysis of the child rights situation in El Hatillo along with measures undertaken within the community to collect information for the study. PAS structured the interviews as well as other instruments to gather and analyze information. Amongst other things, interviews evolved around questions relating to changes in the social context, particular violations of rights and main causes, State responses and recommendations to improve the situation.

It is important to note that one major limitation of the study was the scarce information available on the situation of the community in general and, to an even larger extent, on children.

Within the framework of this research it was not possible to include psychosocial impacts on children. However, interviewees as well as observations from the research team underlined the need for a deeper analysis of the situation and possible affects to the psychosocial health and wellbeing of children living in the community.

III. Context and situation of the community

El Hatillo is a rural community located in the center of the Cesar region and part of the village of La Loma in the El Paso municipality. It comprises of peasant families who possess the legal status of occupants of *terrenos baldíos de la nación*¹, which was recognized by the Colombian State, based on the Law 160 of 1994 (Agrarian Reform Law). At present, the community consists of more than 600 residents, with more than 50% of them below the age of 18².

Following the discovery of thermal coal in the center of Cesar in the early 1990s, wastelands of the municipalities of El Paso, La Jagua and Becerril were granted in concession for exploitation

¹ The *terrenos baldíos de la nación* are lands belonging to the nation that only the State can allocate. These lands, according to agrarian reform criteria, should be allocated to farmers who occupy, inhabit and cultivate the land for at least five years.

² Cf. RePlan, “El Hatillo Taller PAR – VI. Condiciones socioeconómicas actuales”, 29th October 2013. Due to difficulties in the execution of a public census and consistent lack of accuracy of information collected in 2013 on the community, an update of the census was carried out in November – December 2014. The results of the census were not available at the time of writing this executive summary. They will be included in the final report.

by the Colombian Institute of Geology and Mining (Ingeominas). According to a study carried out by Los Andes University and the Center for Economic Development Studies, "coal mining in this area was made possible because of the proximity to export ports and the high reserve levels and standards of quality of the mineral"³. In 2003 production of coal in the department of Cesar reached 19 million tons, which represented 40% of the national production back then. The Cesar region steadily increased its contribution to the national percentage, which currently stands at 48%, reaching a production of nearly 35 million tons⁴. Today, coal is the second most important national export product. The Colombian government plans to export 250 million tons of coal by 2018.⁵

Resettlement process affecting El Hatillo

In 2008, for private economic interests, a resettlement process concerning the community of Hatillo was initiated. Carbones del Cesar SA, the company who held a mining concession covering part of the area where the community was settled, saw the need to resettle the population to exploit the mine and began community outreach in order to achieve the necessary agreements. However, the process stopped when the concession holder changed. The current holder is the company Colombian Natural Resources (CNR).

In 2010 the Ministry of Environment, Housing and Territorial Development, in an unprecedented move, was forced to issue Resolution 0970 (later modified by Resolution 1525⁶) which ordered for the involuntary resettlement of communities from El Hatillo, Plan Bonito and Boquerón in response to the health conditions of the Hatillo community and the severe air and water contamination in the area. The resolution obliged the companies Vale Coal Colombia, CNR (owned by Goldman Sachs), Drummond and PRODECO (owned by Glencore Exstrata) to carry out the resettlement of the three communities within two years from the issuance of the resolution.

This, according to Resolution 1525, was to include an action plan, a plan of costs, supervision and a set of conclusions. Additionally, the rights of the concerned communities within the resettlement process were established, i.e.: (1) the right to a settlement free from threats, and geological, geotechnical, environmental or social risks, (2) the right to self-determination, (3) the right to information, (4) the right to participation, (5) right to assistance throughout the process, (6) the right to ownership of the allocated land, (7) the right to benefit and, finally, (8) the right to the effective implementation of the process, secured by a independent oversight and supervision mechanism. The process of negotiation comprises of different actors, including community representatives (organized in the Conciliation Committee), State institutions, the companies and their representatives and other civil society organizations (among them PAS). Three years behind schedule, the resettlement process of the El Hatillo community is still ongoing due difficulties regarding the implementation of the resettlement process caused by inaction and negligence on the part of the companies and the state.

³ Perdomo Calvo, Jorge Andrés. Jaramillo Perez, Ana María. Mendieta López, Juan Carlos. *Estimación de la senda óptima de extracción para un recurso natural no renovable: caso de estudio para la actividad carbonífera a cielo abierto en el centro del departamento del Cesar, Colombia*. Universidad de los Andes, Facultad de Economía. Centro de Estudios sobre Desarrollo Económico. Marzo 2010.

⁴ Información Minera de Colombia. Tabla "Producción Departamental de Carbón 2006 – 2010". www.imcportal.com.

⁵ www.minminas.gov.co

⁶ See Resolución 1525 de 2010, Ministerio de Ambiente Vivienda y Desarrollo Territorial.

IV. Main findings

The information presented hereinafter is the result of both a desk review and interviews or focus groups conducted with actors involved, including adults, children and adolescents from the affected community along with representatives from local state institutions.

Given that the analysis of the collected data is still in process, only preliminary findings can be presented here. The final report will contain additional and more in-depth information, including a proper legal analysis, general information on public social assistance programs, advocacy undertaken, and specific recommendations.

Damages suffered

Poor environmental conditions pose an imminent danger to the life, health and development of children. According to the report on drinking water from the Ministry of Health of the Government of Cesar (2011) water in the area of El Hatillo is "not fit for human consumption from a microbiological point of view", while adequate water treatment is missing. Water supply at school is not regular, thus worsening hygiene conditions in bathrooms and obliging children to carry their own water from home⁷. In general, there is a general lack of basic sanitation facilities in the community.

Additionally, according to a community-based study carried out by the Departmental Secretary of Health, 51.48% of the population "shows some kind of disease related to environmental pollution, such as respiratory diseases, skin diseases and eye diseases"⁸.

Medical assistance to the community is limited to the part-time presence of a doctor and a nurse, who provide only primary care, thus requiring the population to move to La Loma or El Paso for medical treatments.

Access to natural and productive resources and services is limited and affected by long-term destruction. At present, access to natural or productive resources and services is strongly affected not only as a consequence of the environmental pollution mentioned above, but also as a consequence of other actions undertaken by the coal mining companies, including land acquisition.

Agricultural and livestock activities in the region have totally ceased: the peasant economy that in the previous decades characterized the region is now almost completely extinct. The situation is worsened by the absence of food crops and the conversion of rural communities with access to land in settlements of rural workers, landless, who rely on access to the few indirect vacancies and temporary jobs offered by the companies.

Fishery has been virtually destroyed since there is no longer access to fishing areas as a consequence of river diversions made by the companies⁹ and the increasing settling tank that affected the river flow.

⁷ To understand the impact of this situation it is important to recall that the region average temperature is between 30 and 40 degrees Celsius, with more than 30% of humidity and limited rain.

⁸ Gobernación del Cesar, Secretaria de salud, "informe de estudio poblacional sobre prevalencia de enfermedades relacionadas con la contaminación ambiental en la vereda el Hatillo – Corregimiento La Loma- Municipio del Paso" abril 5-7 de 2011. Updated information about the health conditions of the population will be included in the final census carried out in 2014. A medical survey is also pending to be published in January 2015.

⁹ The Calenturitas River, which contributed to food security in the region, was diverted on a stretch of 17 kilometres by Glencore Exstrata. As a consequence, it now currently contributes only to a tiny amount of fish for the surrounding communities.

In February 2013, the combination of limited resources for auto-sustainability and limited work offer resulted in deep worries within the community about its food security. A joint mission, carried out by three UN agencies, namely OCHA, WFP and UNOHCHR¹⁰ in response to the situation underlined the acute food shortage affecting the development of children and pregnant mothers, including higher levels malnutrition compared to national averages and the risk of worsening living conditions and increasing food insecurity.

At the moment, the situation of children below the age of 5 is attended through State programs (the so-called Hogares ICBF) that support families through a food bank, while children older than 5 only received nutritional support during 2013 at school. However, the structural conditions causing this food shortage have not changed, nor have specific measures been undertaken to monitor the situation of children above the age of 5.

Children have limited access to safe, acceptable and healthy environments. Recreation areas and playgrounds are almost inexistent. School infrastructure is poor and precarious, with limited places for children to play under safe and child appropriate conditions. The combination of precarious environmental conditions (very poor vegetation, exclusion of the community from the access to “green zones”, amongst others), the contamination of the existing water resources - traditional places where children and their families played - and almost no investments from State institutions in the area (under the pretext that the community will be relocated anyway) reduce child opportunities to fulfill their right to play and development palpably.

Access to information and participation in decision-making processes is almost inexistent. Child-friendly information on environmental problems and the resettlement process is very limited among adolescents and youth and almost inexistent among children. The voice of children is not included in the transition process for the resettlement, nor are there specific provisions addressing children's needs. Initiatives are limited to sporadic actions undertaken by teachers to explain the implications of the resettlement, but do not go any further than simple information.

V. Legal analysis

Colombia has ratified the great majority of international human rights treaties, including the Convention on the Rights of the Child and its two Optional Protocols. Moreover, the Colombian State has recognized through its domestic legal system that the rights of people under the age of 18 shall be a primary consideration¹¹.

¹⁰ Cf. WFP, UNOHCHR and OCHA, *Informe conjunto de Misión a las Veredas El Hatillo y Plan Bonito (El Paso) y El Boquerón (La Jagua de Iberico) en el Departamento del Cesar*, March 2013.

Cf. WFP, *Informe de valoración de la seguridad alimentaria y nutricional (SAN) en tres comunidades del Cesar*, April 2013.

¹¹ Article 44 of the Colombian Constitution clearly manifests the adaptation of a normative framework in line with the contemporary developments in the field of IHRL. It thus reaffirms the fundamental rights recognized by the CRC and attributes a shared responsibility to the family, the society and the State in protecting children and ensuring their harmonious development, while explicitly establishing the prevalence of child rights over those of other citizens. Furthermore, it expressly refers to international provisions for the protection of those rights not peremptorily expressed in the constitutional text or that do not have clearly defined contents (Articles 93 and 94).

Within the Colombian legal order, the so-called *Código de Infancia y Adolescencia* (Ley 1098 de 2006) is the organic law regulating the various aspects of life related to people below the age of 18. At the time of its adoption, the new Code resulted in a remarkable change in public policy, particularly with regard to the understanding of social and political relationships surrounding this specific population group. In accordance with the doctrine of *integral protection*, it aims to establish a framework structure for the State policy on children.

In the field of international environmental standards, Colombia has signed and ratified all major declarations and conventions. At national law level, environmental issues are enshrined in Articles 49, 79 and 80 of the Political Constitution of Colombia. Additionally, several laws and decrees regulate environmental rights. Law 23 of 1973 aims at preventing and controlling pollution and seeks improvement, conservation and restoration of natural resources in order to defend health and welfare. This law also defines responsibilities for environmental damage.

Law 09 of 1979 establishes health standards for environmental protection and sanitary control, water supply and purification along with solid and liquid waste and excreta disposal, amongst others, while Law 99 of 1993 sets out guidelines on the management and use of natural resources, including water, air and soil.

Decree 2811 of 1974, the so-called Code of Renewable Natural Resources, regulates the use of water resources and the use and regulation of soil and waste, garbage, waste and scrap, amongst other aspects. Additionally, Decree 948 of 1995 attributes to the Ministry of Environment the regulation of the issues related to prevention and control of air pollution and protection of air quality.

In the field of national regulations on community participation, Article 79 of the Colombia Constitution states that "law will ensure community participation in decisions that may affect them"¹² This is in accordance with principle 10 of the Rio Declaration (1992) that guarantees access to information, participation in decision-making and access to justice in environmental matters.

Rights analyzed in the Study

A healthy environment is a precondition for children's physical and mental health. Without it they cannot grow up, become healthy members of society and develop positive future prospects. Considering the impact of the environmental destruction in El Hatillo on the effective fulfillment of the rights enshrined in the Convention on the Rights of the Child and its additional Protocols, this study focused its attention on the following aspects:

- a. Life, survival and development of children;
- b. Equitable access to natural or productive resources and services;
- c. Access to safe, acceptable and healthy environments;
- d. Changes in access to traditional resources;
- e. Children's Health and an adequate standard of living;
- f. Access to information, participation in decision-making processes and access to justice in environmental matters.

¹² This was reaffirmed by judgment C – 126/98 of the Constitutional Court, who reiterates the right of the communities to participate in the decision-making process.

Finally, the principles of the child's best interests as a primary consideration (Art. 3 CRC) and non-discrimination (Art. 2) were included as crosscutting perspectives into the analysis¹³.

Non-fulfillment of Duties to realize Children's Rights

Against the background of the existent set of laws and programs available at the international, national and local level, the damages described in the previous section (IV.) are mainly related to the **failure of the responsible authorities to regulate and monitor the activities of private actors while** adequately taking into account children's vulnerability (including in the resettlement process).

In addition, the **State did not take the measures** it could take, given its available resources, to prevent damage and, in some cases (such as the situation of children aged older than 5 years who benefitted from a nutritional support for less than one year, in 2013) even cut existing social programs without a clear and official analysis of children's needs.

When discussing responsibilities with the departmental and municipal authorities they are acutely aware of the fact that structural limitations undermine the availability and sustainability of existing programs at the local level (resources allocated in their budgets to the area of child development). As the Office of the Inspector General of Colombia concluded, *“due to the way in which the investment plans are prepared (in the Development Plans) it is impossible to determine the amount of resources allocated to childhood and adolescence. Around a third of the investment plans do not specify where the resources that they are going to invest in the social areas related to children and families are coming from”*. Similarly they have identified that *“there is an evident need to strengthen planning processes and make public decisions at the local level with systematic and participative processes for the monitoring and evaluation of results”*¹⁴.

In terms of public policies, **extractive mining and the construction of megaprojects granted and promoted** by the Colombian government contaminate water sources and the air and put the health and lives of the local population, as well as their nutritional security, in danger¹⁵.

The National Control – General (national control organism) underlines that “a development model based on the extraction of minerals and hydrocarbons can cause a strong impact due to the contamination of water and soils, in particular in the mountainous zones of the Andes, putting at risk not only this area's biodiversity, but also nutritional security in the area, given that that toxic chemicals used in the process remain in the environment for a long period of time (tens of thousands of years)”¹⁶.

¹³ For more information on environmental children's rights, see Terre Des Hommes (2012): Protecting Environmental Child Rights (http://www.terredeshommes.org/wp-content/uploads/2013/01/tdh_Environmental-Child-Rights_2012-11-final.pdf).

¹⁴ Cf. Mariana Medina Barragán, *“No más cuentos, por mis derechos hacemos un recuento – Alternative Report to the Committee of the Right of the Child – 2013”*, Comité de Impulso para la construcción del informe alterno de la Convención al Comité de los Derechos del Niño, Bogotá, 2013.

¹⁵ Cf. *supra*.

¹⁶ Cf. *supra*. As underlined by NGOs and State institutions, the generation of large quantities of residues, the disappearance and contamination of water bodies and the atmosphere, as well as the loss of soil and biodiversity that coal mining implies directly affect children.

In general, **monitoring by State institutions** of the situation of children from El Hatillo community is **very limited or almost absent**. Although state institutions have a seat in the Conciliation Committee for the resettlement process, their role is passive and apparently without major requirements concerning the commitments of companies and operators, particularly with regard to children. The existence of a process of resettlement or compensation along with the presence of mining companies is often used as an excuse by the municipal, departmental and national level state institutions to delay, deny or restrict their duty to respect and guarantee child rights, and human rights in general, and to protect and assist the community.

V. Conclusions

Colombia has a comprehensive legal framework in the area of protecting the rights of children and adolescents that adheres to international standards. However, the system shows serious limitations when it comes to implementation.

The case of the children from El Hatillo illustrates the specific implications of large-scale mining for the population in Colombia in general and for the fulfillment of children's rights in particular, both in terms of current effects and future consequences.

The lack of effectively putting into practice the principle of the best interests of the child as a primary consideration for State institutions is evident from the decisions taken within the resettlement process and the very limited actions undertaken by State institutions to protect and fulfill children rights.

In addition to this, the case presented here is particularly illustrative of probable future challenges in the area of child rights, given the development model adopted by the State of Colombia. Despite the magnitude of the issue, environmental rights and the impact of environmental destruction on the fulfillment of fundamental rights are still poorly considered by the State. Quite the contrary, in the environmental field the state often promotes policies that ignore the particular needs of children and of those children who are exposed to the consequences of environmental changes.