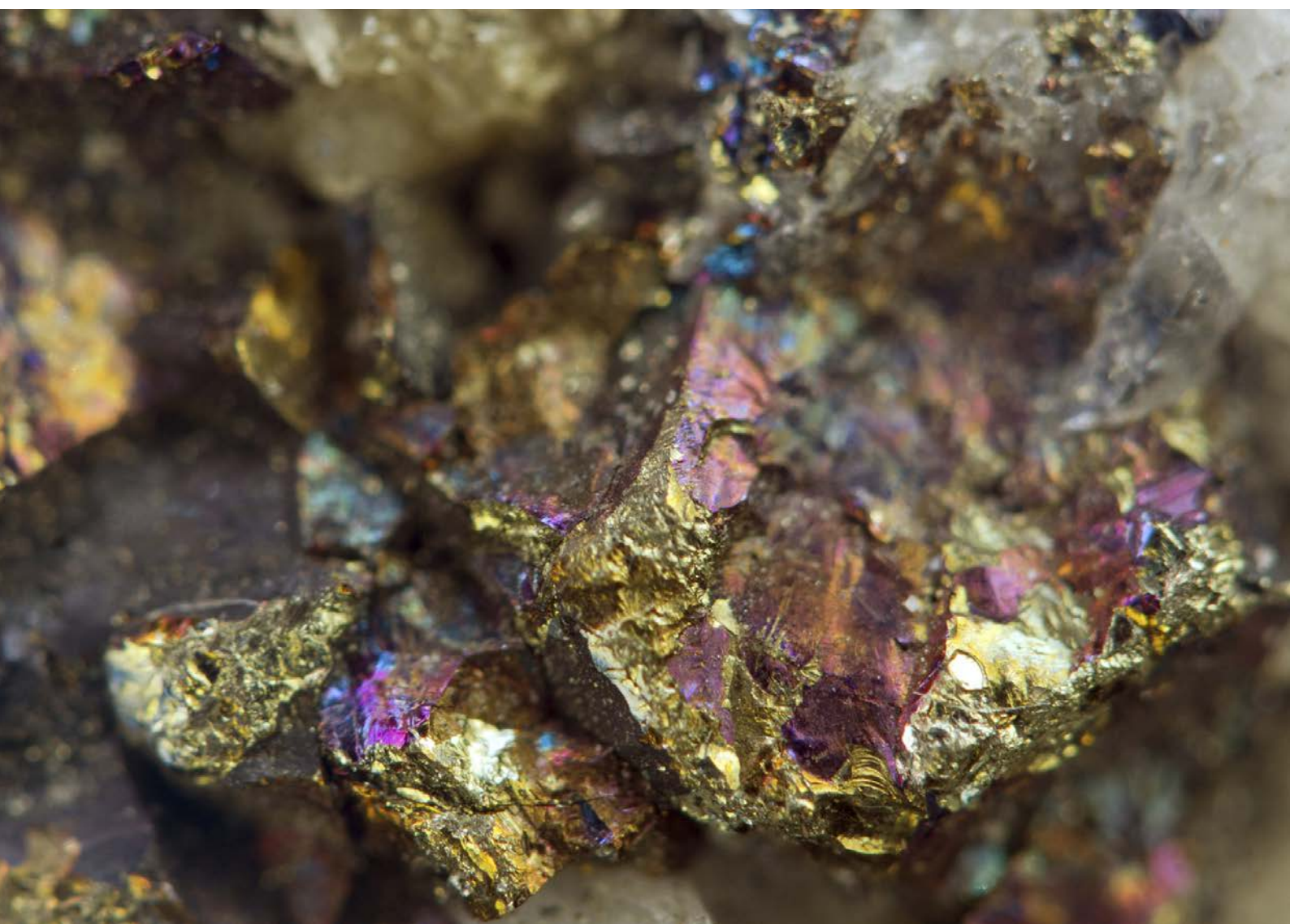


DUE DILIGENCE IN COLOMBIA'S GOLD SUPPLY CHAIN OVERVIEW



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About the OECD Due Diligence Guidance

The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (OECD Due Diligence Guidance) provides detailed recommendations to help companies respect human rights and avoid contributing to conflict through their mineral purchasing decisions and practices. The OECD Due Diligence Guidance is for use by any company potentially sourcing minerals or metals from conflict-affected and high-risk areas.

About this study

This report is the first of a series of assessments on Colombian gold supply chains and aims to develop an initial approach and analysis for how risks outlined in Annex II of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas are relevant in the Colombian context.

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Find out more about OECD work on the minerals sector: mneguidelines.oecd.org/mining.htm

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Foreword

The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas¹ (hereafter OECD Due Diligence Guidance for Minerals) provides detailed recommendations to help companies respect human rights and avoid contributing to conflict through their mineral purchasing decisions and practices. The Due Diligence Guidance is for use by any company potentially sourcing minerals or metals from conflict-affected and high-risk areas and is global in scope. Colombia adhered to the OECD Due Diligence Guidance for Minerals² in May 2012.

To support implementation efforts by producer countries, the OECD commissioned a baseline assessment of the gold supply chain in Colombia. The aim of the baseline assessment is to analyse the gold mining sector in Colombia and the potential to build responsible mineral supply chains as defined in the Due Diligence Guidance for Minerals. The assessment should furthermore assess stakeholders' awareness of supply chain risks, the Due Diligence Guidance and the level of implementation – if any - of due diligence initiatives and related government initiatives that could be leveraged. The assessment should lead to strategic recommendations on how to advance responsible sourcing in the gold sector in a manner that makes a positive contribution to socio-economic development of producer countries and communities.

The following overview report is the first of a series of baseline assessment and aims to develop an initial approach and analysis for how risks outlined in Annex II of the OECD Due Diligence Guidance for Minerals are relevant in the Colombian context. The research for this report was undertaken by independent experts in 2015 and is based on previous research, new analysis of secondary sources, and exploratory interviews with key stakeholders in the mining and security sectors in Colombia.³ This initial report will be complemented by five regional case studies (phase II) and a concluding report (phase III) assessing ongoing due diligence and traceability projects and outlining recommendations on how these can be leveraged, improved and scaled up.

Executive summary

- In 2014, the mining sector represented around 2% of Colombia's GDP and by the third quarter of 2015, foreign investment in the mining industry represented 7% of all foreign direct investment. In 2014, the World Gold Council ranked Colombia as the 6th gold producer in Latin America and the 19th in the world. In the last ten years, gold production tripled, reaching approximately 57 tonnes in 2014.
- Small and mid-scale miners, most of them without a mining title, produce most of the gold in Colombia. According to official figures, in 2014 large-scale operations accounted for only 12% of gold production and the total number of mining title holders were responsible for only 17% of production.
- In the last decade conditions have become increasingly ripe for illegal armed groups¹ and criminal organisations to seek rents from mining and other extractive activities. The success by the Colombian government in weakening the military and financial structures of illegal armed groups, the hike in the international price of gold and other minerals and the difficulties in maintaining a steady flow of funds from drug production and trafficking have provided incentives for illegal armed groups to seek resources elsewhere.
- Linkages between drug trafficking and the gold trade are not specific to Colombia. Neither is the fact that natural resources - especially illegal gold production - provide income to illegal armed groups. However, the fact that in Colombia drug trafficking, illegal armed groups and gold production and trade converge is distinctive.
- Although the presence and influence of illegal armed groups and criminal organisations have been reduced as a result of government action, those groups have consolidated their influence over illegal miners in a number of regions and are deriving significant revenues from illegal mining. In 2015 the Colombian Ministry of Finance estimated that illegal mining could generate as much as USD 5 billion in revenues per year.
- In recent years, the way illegal armed groups extract rents from the supply chain of gold has become more complex, diverse and sophisticated. Today armed groups have more control over production stages, use sophisticated methods of extortion, tax fraud, and money laundering, and are involved in smuggling of contraband of gold.
- As illegal armed groups and criminal organisations seek to establish a foothold in mining regions, violence rates against civilians, including forced displacements, murders and other human rights abuses, have also increased.
- While it is apparent that the supply chain in Colombia faces a number of risks and challenges, authorities are increasingly acknowledging them and implementing a wide array of measures to address them. In the past years, Colombian authorities have been rolling out a series of initiatives that aim to improve traceability of the country's gold supply chain.

¹ In Colombia the term 'illegal armed groups' is used interchangeably with what the OECD Due Diligence Guidance refers to as 'non-state armed groups'; these are groups challenging the state's monopoly of the use of force. Colombian authorities prefer the term 'illegal armed groups' to underline their illegal nature; throughout this report, we hence use the term 'illegal armed groups'. The second terminology distinction made by Colombian authorities relates to the objectives of the non-state actor. Left-wing guerrillas have been called both 'narco-terrorist' and 'rebel organisations'. Meanwhile, other illegal armed groups, such as the BACRIM and drug trafficking networks, are associated with the term 'criminal organisations' or 'gangs'. To avoid confusion, we also use similar distinctions in the text.

- Among those initiatives, the government has prioritised the implementation of strategies to promote the formalisation and legalisation of what is still a highly informal gold sector. Some of the most notable measures include the implementation of the Single Registry for Mineral Traders, expected to provide traceability and chain of custody information, effort to provide oversight of all legal mining sites, and a revamped programs to formalise small-scale informal miners.
- The government has also increased its efforts to curb the influence of illegal armed groups and criminal organisations over gold mining operations. Targeted operations by security forces and prosecutors, better inter-institutional coordination and improved assessments by intelligence agencies, have yielded important results.
- Against this backdrop, efforts – particularly by companies - to work towards responsible mineral supply chains and improve due diligence along the supply chain of gold by implementing the OECD Due Diligence Guidance is particularly pertinent.

Colombia's gold mining sector

Gold mining in Colombia dates back to the fifth century B.C. and flourished until the sixteenth century A.D. Before the arrival of the Spanish conquistadors in the fifteenth century, indigenous communities who lived in what is now Colombia were masters in producing gold works and artefacts. During the time of Spanish rule over Colombia (sixteenth to nineteenth centuries) a number of gold mines throughout the country produced significant amounts of gold. In the seventeenth century, rebel slaves established themselves in remote regions and engaged in artisanal gold mining. Until the 20th century, about a third of world gold production was extracted from Colombia. During most of the 20th century, Colombia produced between five to twenty tonnes of gold annually (Colombian Mining Information System, 2015). Since the mid-2000s, however, Colombian authorities have promoted investment in the mining sector, which has become an important source of income for the Colombian economy.

The role of gold: Regions of production, type of mining and production levels

In 2014, the mining sector represented around 2% of Colombia's GDP and by the third quarter of 2015, foreign investment in the mining industry represented 7% of all foreign direct investment (Colombian Central Bank, 2015; Ministry of Mines and Energy, 2015; National Statistical Department, 2015). Investment in mining activities and growth in production have had a positive impact in terms of economic growth. Within the mining sector, coal production represents approximately 75% of the sector's activity, nickel 5%, gold 5%, and other minerals (silver, platinum, tin, non-metallic minerals) 15%.⁴

While not yet a major international producer, Colombia's gold mining sector has grown in the last decade. In 2014, the World Gold Council ranked Colombia as the 6th gold producer in Latin America and the 19th in the world (World Gold Council, 2014). In the last ten years, gold production tripled. According to official figures, Colombian gold production achieved approximately 65 tonnes in 2012 but decreased to 57 tonnes in 2014 (Colombian Mining Information System, 2015), likely the result of the drop of global gold prices and more control on contraband gold coming into the country. Exports reached USD 474 million dollars in 2014.⁵ By 2012, gold exports had topped coffee exports, becoming the third largest traded commodity from Colombia after oil and coal.

Though there are small production sites throughout the country, gold production is concentrated in a few regions. Close to one third of Colombia's departments (equivalent of provinces) are considered gold producers. Antioquia, Chocó and Bolívar are the top three, followed by Cauca, Caldas, Córdoba, Nariño, Tolima, Valle del Cauca, and Santander. While there are small-scale and artisanal mining operations in more than 430 municipalities, gold production in terms of volumes is concentrated in approximately 30 of them.⁶ About 60% of gold production is alluvial and 40 % underground. Colombia's main gold producer departments are also regions where indigenous (e.g. Emberas, Zenúes, Nasa) and Afro-Colombian people live. Some of those communities are opposed to any extractive activities in their territories, while others sustain their livelihoods thanks to the artisanal activities undertaken on their collective lands.

Looking to the future, the government has established Strategic Areas for Mining (*Áreas Estratégicas Mineras*) covering 17.6 million hectares, where under a concept of technical, environmental and social responsibility, it hopes to develop the exploitation of strategic minerals such as uranium, iron ore, platinum and coltan (Ministry of Mines and Energy, 2012).⁷

Most gold production in Colombia is largely informal, small scale and without a mining title. According to figures from the National Mining Agency, in 2013 mining title holders were responsible

for only 17% of the total production (ANM, 2015).⁸ Authorities attributed the remaining 83% to artisanal miners, miners that have applied to legalisation or formalisation programs, or traditional small-scale miners that requested the creation of special mining reserve areas⁹ (Ministry of Mines and Energy, 2015).

Legislation and reality: an attempt to differentiate between types of mining

There are different interpretations of what is meant by **illegal mining**. From a strictly normative point of view, only miners that have a title and an environmental license are producing gold legally. The 2001 Mining Code notes that “the right to explore and exploit mines that are state property can only be granted through a concession title registered in the National Mining Registry” (Law 685, art. 14, 2001).

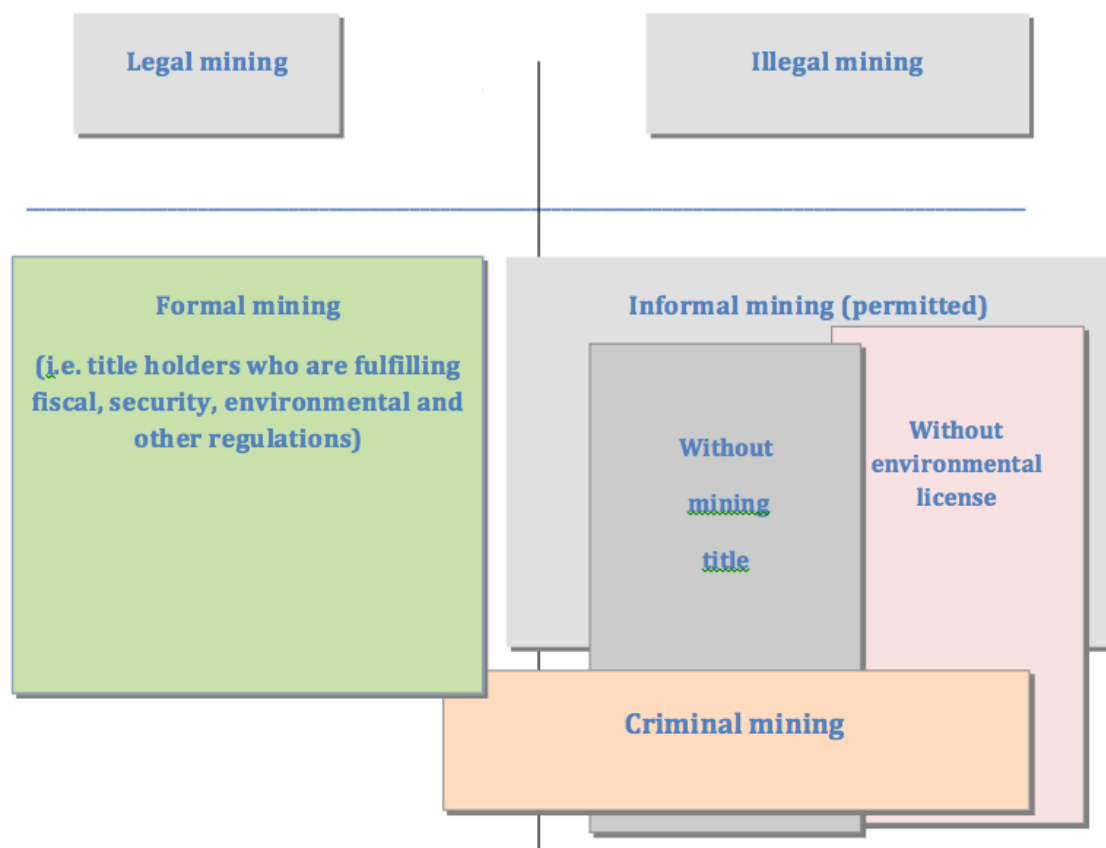
However, Colombian legislation has gradually introduced a number of exceptions to this rule:

- Applicants to legalisation or formalisation processes – the first between 2002 and 2004 and the second after 2010 - and applicants to special traditional small-scale mining reserve areas can continue to produce gold legally while their application is reviewed.
- *Barequeros* registered in their municipality’s mayor’s office can also produce gold without a title (Decrees 276 of 17 February 2015, 0933 of 9 May 2013 and 2390 of 24 October 2002).

Administrative delays in processing legalisation requests and special reserve area applications have made it harder to differentiate between legal and illegal miners. Given that until 2010, only a small number of legalisation and formalisation applications had been fully reviewed, miners that applied to those programs were allowed to continue operating due to a lack of an administrative resolution, and not because they fulfilled legal requirements (Ministry of Mines and Energy, 2014). In fact, some of those miners continue to employ practices that go against environmental legislation, such as the one seeking to ban the use of mercury by 2018 (Law 1658 of 15 July 2013). To further complicate matters, mayors had until recently not been diligent in requiring *barequeros* to register with their offices. Mining communities that were consulted noted that this has often created confusion amongst law enforcement officers as to whether or not these miners are allowed to legally operate.

Another important source of confusion stems from the difference between **informal mining** and criminal mining. Authorities have launched an offensive against ‘criminal mining’ but have not yet clarified what the term means. Although mining without a title – barring exceptions - is illegal and constitutes a criminal offense, the term **criminal mining** is more closely related to operations controlled or targeted by illegal armed groups and criminal organisations to extract rents. While criminal mining usually refers to smaller-scale operations, if a large-scale company colludes with an illegal armed group to facilitate its operations, this could be considered to fit this definition.

Figure 1: Different types of mining in Colombia



Actors involved in the gold sector: ASM, medium and large-scale companies

Colombia's mining supply chain has traditionally been highly informal and few actors hold formal mining titles. A mining census undertaken by Colombia's National Statistics Department in 1988 noted that close to 80% of the mining units surveyed could be categorised as informal or subsistence mining (DANE, 1988). Almost three decades later, the levels of illegal mining remained high. A mining census carried out by the Ministry of Mines and Energy between 2010 and 2011 concluded that 63% of the 14,355 mining units surveyed operated without a title (Ministry of Mines and Energy, 2012).¹⁰ The absence of legal mining titles is especially prevalent in gold mining, where out of 4,133 mining units surveyed, 87% operated without title.¹¹

Until recently, Colombia did not have a clear classification of mining based on scale of operations. An initial attempt by the government to classify large-scale, medium-scale and small-scale mining based on amounts of raw material extracted (Decree 2655, of 18 December 1988) was abandoned in 2001. To facilitate the design and implementation of differentiated policies, the government has returned to a classification based on the amounts of mineral (in this case gold) extracted. The new classification differentiates between subsistence gold miners (up to 20g of gold produced monthly), small-scale gold mining (15,000 tonnes per year for underground operations and 250,000 meters cubed for open pit operations), medium-scale gold (up to 300,000 tonnes per year for underground operations or 1.3 million meter cubes for open pit operations) and large-scale miners beyond 300,000 tonnes (Ministry of Mines and Energy, 2015).

Artisanal and small-scale mining (ASM)

In addition to being informal, most of the gold is produced by small and mid-scale miners. Based on the number of workers they employed, the 2010-2011 mining census estimated that 69% of gold miners surveyed could be classified as small-scale, 30% as mid-scale and 1% as large-scale miners (Ministry of Mines and Energy 2012).¹² In addition, close to 90% of small and mid-scale mining units surveyed operated without a mining title. Most of those miners who employ only manual means like panning are called *barequeros*. Interestingly, Colombian legislation allows those *barequeros* to operate without a mining title as long as they register with the local mayor's office. Due to their informal nature, *barequeros* have traditionally been difficult to register. Since 2015, efforts by the Ministry of Mines to ensure that *barequeros* are registered have resulted in over 85,000 registrations (ANM, 2015).

The distinction between *barequeros*, small-scale and mid-scale miners is often blurry and hard to measure in Colombia. A recent survey of informal, small-scale miners by Fedesarrollo, a local economic think-tank financed by the Inter-American Development Bank, based on the same sample and categories established in the 2010-2011 mining census, shows that close to a quarter of *barequeros* employed heavy machinery (bulldozers or dredges) and close to half admitted to employing some type of mechanic tool (e.g. generators, pumps, etc.) (Goñi et al., 2014: 10). Estimates range between 15,000 families and 1 million people living off small-scale gold mining (Guiza, 2010: 223). The Ministry of Mines and Energy estimates that small-scale mining without a mining title could generate over 50,000 jobs (Grand, 2015). Estimates of artisanal and small scale gold production vary from 5 to 30 tonnes per year. In an effort to reduce this ambiguity, the new classification issued by the government defines "subsistence mining" (an equivalent term to *barequero*) as being alluvial, undertaken with manual tools (e.g. spades, sifts), and without machinery (e.g. water pumps) (Ministry of Mines and Energy, 2015, b).

There are a number of informal service providers that facilitate the production of gold for small-scale miners. Basic processing services are provided by the *entable* or *planta de beneficio*, a small-scale processing facility with grinders, basic sorting machinery and basic chemical procedures to produce 750 fine gold.

Large-scale mining

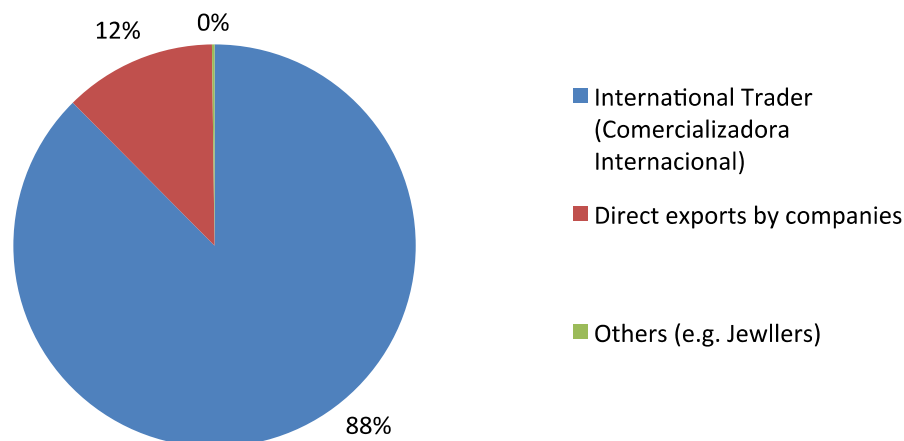
Only a handful of large-scale mining projects are producing gold in Colombia. Authorities report that only three companies – one local and two multinationals – are currently producing. These large-scale operations accounted for close to 12% of gold production in 2014.¹³ Most gold produced by these large-scale companies goes directly from their operations to international refiners located abroad. In addition, there are at least four or five mid to large-scale gold mining projects – most spearheaded by international mining companies - that are still in exploration stages, undertaking financial viability studies or awaiting the required licensing. Between 60 and 70 junior mining companies – most of them multinationals – are undertaking exploration throughout the country.

Smelters, refiners and traders

Most of the gold produced in Colombia is sold to a myriad of small, mid-scale and large gold traders until it is exported. Small and mid-scale miners usually sell to *compra-ventas* or *comercializadoras*, small-scale gold traders operating in the same or neighbouring municipalities where the gold is produced. Pricing is set by these shops; they take the international price of gold as reference and deduct a small percentage for payment of royalties. Only a small portion of the gold produced by small-scale miners is sold directly to international traders or smelters/refiners located in urban centres (namely Cali and Medellín).

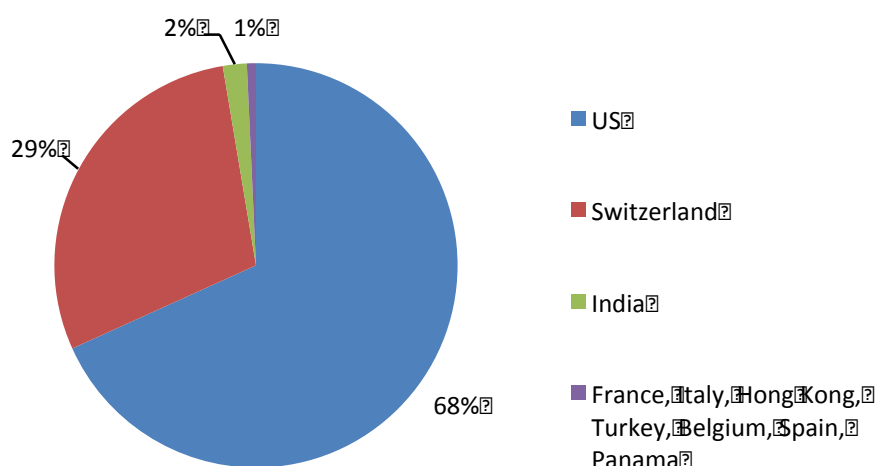
Compra-ventas and *comercializadoras* usually sell to international traders (*comercializadoras internacionales*) – entities established in the 1990s to promote exports of Colombian goods in return for tax benefits – which are often refiners/smelters themselves and account for most of the gold exports to international refiners located in the US, Switzerland and, to a lesser extent, India and other destinations.¹⁴ Increasingly strict customs, financial, tax and traceability regulations have resulted in the closing of various international traders: from more than 15 registered in 2013, only 5 or 6 are still operating. There is also anecdotal evidence of contraband gold coming from and leaving to Panama, Ecuador and Venezuela.¹⁵

Figure 2: Type of gold exports in 2014



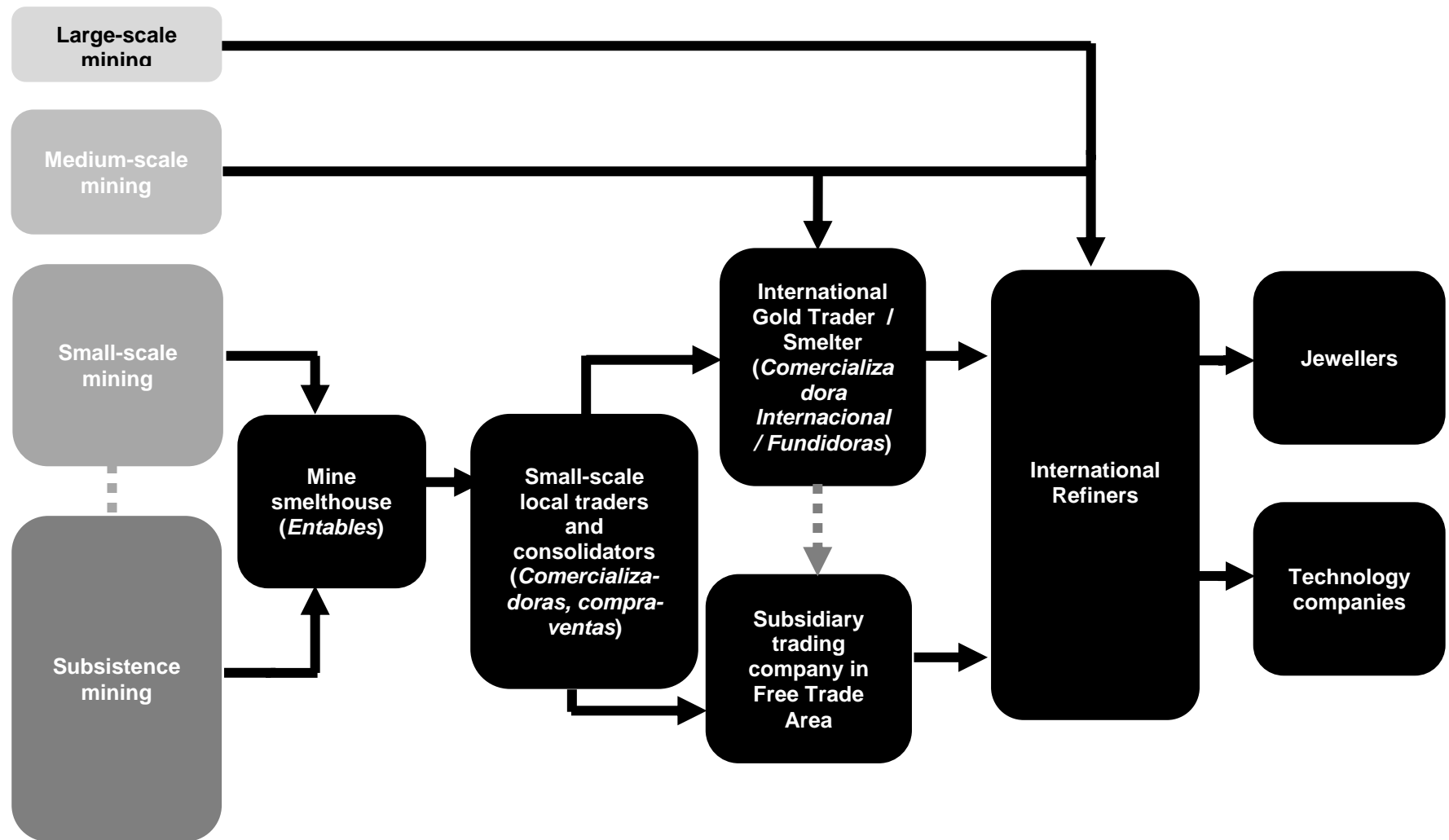
Source: Legiscomex, Export data for tariff item 7108120000 and 7108130000, 2014

Figure 3: Countries importing Colombian gold



Source: Legiscomex, Export data for tariff item 7108120000 and 7108130000, 2014

Figure 4: The Gold Supply Chain in Colombia



Organised crime and illegal armed group involvement in Colombia's economy

Principal illegal armed groups and criminal organisations¹⁶

In Colombia the term 'illegal armed groups' is used interchangeably with what the OECD Due Diligence Guidance refers to as non-state armed groups; these are groups challenging the state's monopoly of the use of force. Colombian authorities prefer the term 'illegal armed groups' to underline their illegal nature; throughout this report, we hence use the term 'illegal armed groups'. The second terminology distinction made by Colombian authorities relates to the objectives of the non-state actor. Left-wing guerrillas have been called both 'narco-terrorist' and 'rebel organisations'. Meanwhile, other illegal armed groups, such as the BACRIM and drug trafficking networks, are associated with the term 'criminal organisations' or 'gangs'. To avoid confusion, we also use similar distinctions in the text.

The Revolutionary Armed Forces of Colombia - FARC

The Revolutionary Armed Forces of Colombia (*Fuerzas Armadas Revolucionarias de Colombia – FARC*), a Marxist guerrilla that emerged in the mid-1960s, remains Colombia's main guerrilla and sizable security threat despite losing much of the military might it had accumulated in the 1980s and 90s. As a result of a sustained 12-year military campaign against the group, official sources estimate the FARC went from having close to 20,700 combatants in the early 2000s to between 6,700 and 8,000 men today.¹⁷ Despite suffering major blows in the past five years, the FARC maintains its hierarchical military structure led by a 7 member Secretariat and a 25 member Joint Chiefs, and made up of 7 blocs (equivalent of divisions) and 50 to 70 active fronts (equivalent of battalions) (Ministry of Defence, 2013). Since October 2012, this guerrilla has been engaged in talks with the Colombian government in Cuba to negotiate an end to five decades of conflict.

Under increasing pressure from security forces, FARC units have gradually retreated to their traditional strongholds in peripheral rural areas, particularly along the borders with neighbouring countries, isolated mountainous regions, and tropical jungle plains. In early 2015, the Ministry of Defence reported that this guerrilla only had the capacity to launch attacks in 12% of Colombia's 1,012 municipalities. The FARC has also returned to guerrilla hit-and-run tactics by smaller combat units that refrain from combat and use of improvised explosive devices and sharpshooters to attack oil pipelines and security force garrisons.

The FARC also adjusted its finances to these new conditions. In the late 1980s and early 90s, it gradually diversified its sources of income to include taxation on activities related to illegal drug production and trafficking, extortion of banking, transport, mining, electricity and oil companies, in addition to more traditional sources like kidnapping and cattle theft. Since 2003, estimates of the FARC's annual income range between USD 60 million and USD 500 million according to security force reports and independent analysts (Insight Crime, 2005; La Silla Vacía, 2012). By the early 2000s, analysts estimated that between 50% and 80% of the FARC income was derived from activities related to drug production and trafficking, followed by kidnapping, extortion and cattle theft.

This breakdown appears to have changed in recent years as the FARC moved away from kidnappings, drug production dropped and guerrilla units became smaller and more mobile. Today authorities believe that drugs remain the FARC's main source of income, but are now closely followed in many regions by income from illegal mining and extortion. The Colombian National

Police contends that the proceeds from illegal mining could be close to surpassing those from drug trafficking in the near future.

The National Liberation Army – ELN

The National Liberation Army (*Ejército de Liberación Nacional – ELN*), Colombia's second largest guerrilla group, emerged in the 1960s inspired by the Cuban Revolution and liberation theology. Like the FARC, this group has also seen a gradual decline, but maintains capacity to engage in sporadic military operations in a limited number of regions. Official reports and independent think tanks note that the ELN went from having over 4,500 combatants in the early 2000s, to between 1,500 and 2,500 in 2014 (Nuñez and Vargas, 2015; Ministry of Defence, 2015). Since January 2014, the ELN has been engaged in confidential exploratory talks with government officials with an aim to define the terms of an official negotiation process.

For the past six years, the ELN has been seeking to re-establish its territorial presence. Following the failure of talks with the government between 2006 and 2008, the ELN attempted to revamp its military operations, resulting in a hike in attacks against oil pipelines (particularly in regions along the border with Venezuela), kidnappings, the use of landmines, controls on local transport, and hit-and-run attacks against security forces (Nuñez and Vargas, 2015; Echandía, 2013). Moreover, the ELN resolved its differences with the FARC, reducing tensions between its units on the ground and even resulting in military cooperation in some regions. Despite this renewed activity, reports by security forces and independent think-tanks show that this guerrilla only has presence in 7% to 9% of Colombia's municipalities (Nuñez and Vargas, 2015, Ministry of Defence, 2015).

The ELN has also been forced to diversify its sources of financing as it attempts to regain its military standing. Traditionally, the ELN derived close to 60% of its income from extortion – particularly in mining and oil producing regions - and 25% from kidnapping (Rangel, 2000). Unlike the FARC, this smaller guerrilla historically resisted receiving revenues from drug production and trafficking. However, during the last eight years, the ELN has started taxing drug production activities in some of the areas where its units operate. Today, security forces estimate that between 10% and 15% of the ELN's income could come from drug production activities. Extortion – especially in oil producing regions - remains an important source of income for the ELN, but the 'taxation' of illegal mining is increasingly becoming an important earner for this group (Guiza, 2010; Massé and Camargo, 2012). According to the National Police, it is already the main source of income for fronts operating in Southern Bolívar.

Criminal Gangs – BACRIM

Today, the two left-wing guerrillas are matched by the threat of the Criminal Gangs (*Bandas Criminales – BACRIM*). The BACRIM emerged following the demobilisation between 2003 and 2006 of 32,000 members of paramilitary groups formed during the 1980s to combat guerrillas. Initially led by a core group of former paramilitary mid-level commanders and criminal kingpins, the BACRIM have sought to maintain and expand their control over the illegal revenues of their former outfits (Massé et al., 2010).

The evolution of these groups has been marked by infighting, alliances and pacts of non-aggression between them (Massé, 2011) as well as with the FARC and the ELN in certain regions (McDermott, 2014). They went from 22 small armed structures with local presence in 2007, to 5 criminal networks articulating actions by a number of local armed franchises in 14% of Colombia's municipalities by 2013. The largest and most powerful of these networks today are the Urabeños, followed by the

Paisas, Rastrojos, ERPAC (divided in two smaller factions) and Aguilas Negras. They have shown great resilience to offensives by security forces: despite losing most of their original leadership and 18,000 of their rank and file to captures or deaths between 2010 and 2014, they still maintain over 2,500 men in their ranks, not counting their support networks (Ministry of Defence, 2015).

Dedicated to controlling illegal economies, these groups employ territorial control and coercion while maintaining a low profile. Unlike their predecessors, these groups try to avoid combat with other factions or security forces and only operate in larger uniformed units in rural areas where they want to exercise a more strict territorial control over drug trafficking corridors (UNDSS, 2014). Their territorial presence is dictated by the existence of illegal economies, particularly drug production, transport, trafficking and small-scale retail in urban centres. Rather than subverting authority like paramilitary groups did, the BACRIM coerce local authorities and community leaders through threats, or co-opt them through bribes. These groups are known for offering bribes – sometimes successfully – to security force officials working at the local level to turn a blind eye and even warn them about operations against them (El Colombiano, 2013).¹⁸

The BACRIM derive their income from a combination of transnational criminal activities and local illegal economies. While they maintain control over some areas where illicit crops are farmed, these groups are specially immersed in drug production/refinement, transport and trafficking through their networks of contacts in Central America, the Andean Region, the US, Africa and Europe. They are also involved in money laundering through the financial sector, contraband, purchase of goods (e.g. real estate), and investments in productive sectors (e.g. mining). At a local level, BACRIM franchises regulate illegal economies, such as informal transport services, groceries markets, and contraband through extortion.

Characteristics of illicit economies

Illegal drugs

Colombia has a long history of illicit crop farming, drug production, trafficking and money laundering. During the 1980s, cocaine production and trafficking surged as the country's main illegal economy. Cocaine production in Colombia has nevertheless dropped by half since 2007, though it remains one of the two world's largest cocaine producers with an estimated production of 200 tonnes a year and a major hub for drug trafficking operations (UNODC, 2014). Official estimates of revenue from drug production and trafficking activities range between USD 13.6 and 18 billion (Mejía and Rico, 2010; Arevalo and Ortega, 2013).

Illegal armed groups and criminal organisations have influence over different parts of the drug supply chain. The FARC exercises principally control over farmers and the first stages of cocaine production (coca paste and cocaine base), although it is also reported to be directly involved in cocaine production, transport of drugs, and providing protection for other drug trafficking organisations (McDermott, 2014). The BACRIM exercise some sporadic control over coca farmers, but their main focus is on cocaine production, drug transport, and brokering deals with transnational criminal organisations. From the vertical integration of the cartels in the 1990s, traffickers have evolved into highly atomised networks. Colombian networks are now linked to Mexican cartels, local criminal outfits in Central America and the Andean Region. Even terrorist organisations, such as Hezbollah, and international arms traders are believed to derive financing from drug trafficking organisations in South America (Newman, 2011).

Diversification of trafficking routes and means of transport has allowed them to evade law enforcement operations. According to the UN Office on Drugs and Crime, preliminary studies show

that some of those same routes are being used to bring equipment and supplies in for illegal mining (UNODC, 2014). Until the mid-1990s, the Caribbean and Central America corridor was their preferred trafficking route, but new routes through the Pacific, Venezuela, Ecuador, Peru, and Western Africa have grown in importance. While the US remains their main destination, since the 1990s the European markets, including eastern European countries, have offered viable alternatives when prices shift or demand drops (Mini Dublin Group, 2015).

Illegal mining

In the last decade conditions have become increasingly ripe for illegal armed groups and criminal organisations to seek rents from mining and other extractive activities. The hike in the international price of gold and other minerals and the difficulties in maintaining a steady flow of funds from drug production and trafficking have provided incentives to seek resources elsewhere.

During the late 1980s, both the FARC and ELN expanded their presence to mining areas, where they had contact with small-scale miner associations and trade unions and extorted mining companies. Similarly, in the mid-1990s a small group of paramilitary factions – the precursors of the BACRIM – had consolidated their presence in mining regions where they invested directly in illegal mines, made agreements with informal miners and coerced mayors into giving them part of their royalty payments (El Tiempo, 2010).¹⁹ Today, illegal armed groups and criminal organisations are conveniently located in remote areas where illegal mining operations have traditionally operated, allowing them to quickly turn to it as an alternative source of income (Guiza, 2010; Giraldo and Muñoz, 2012; Indepaz, 2012; Massé and Camargo, 2012).

Illegal armed groups have consolidated their influence over illegal miners in a number of regions. By late 2012, the Attorney General's Office estimated that out of the 489 municipalities with presence of illegal mining, almost 40% had presence of the FARC, the ELN or the BACRIM. The FARC alone was believed to have presence in over 100 municipalities with illegal mining. More recently, the Colombian National Police identified 81 municipalities (out of 1,123) where illegal armed groups and criminal organisations have direct influence over illegal miners, representing less than 10% of the territory. The FARC is reported to have a presence in 52 of them, the ELN in 17 and the BACRIM in 49 (Ministry of Defence, 2015). Authorities contend that members of the FARC and the ELN have infiltrated, and on occasion instigated, protests by illegal miners against the presence of large-scale companies and insufficient government attention to their demands (RCN, 2013; interviews with active and retired law enforcement officials, 2015).

Illegal armed groups are deriving significant revenues from illegal mining. The National Planning Department believes that illegal mining could generate between USD 2 and 3 billion in revenues per year (El Tiempo, 2015). Studies estimate that the FARC's income from extortion to illegal miners in Antioquia could be as high as USD 2 million a month (Giraldo and Muñoz, 2012; McDermott, 2013). Security force sources note that both the FARC and the ELN leadership have given explicit order to their commanders on the ground to establish mechanisms to increase revenues from illegal mining in the areas where they operate (Martinez, 2015).

Illegal mining is also increasingly overlapping with legally titled mining areas. A recent survey undertaken by local economic think-tank Fedesarrollo and financed by the Inter-American Development Bank of local authorities in 18 municipalities where illegal mining is being carried out, notes that in at least half of those regions, legal title holders have clashed – sometimes resulting in forceful evictions or relocations by security forces – with illegal miners who have settled in their property (Goñi et al., 2014). Almost 90% of local authorities surveyed also reported large migrations of informal miners and a third of them mentioned conflicts between incoming informal miners and

settled traditional informal miners over mining sites. Although legally constituted companies are increasingly working with authorities to facilitate the formalisation of illegal miners settled in their properties (see Chapter IV. A.), there is anecdotal evidence that their presence has attracted illegal armed groups and criminal organisations and increased risk levels for legally constituted mining operations (interviews with company security officials).

The lack of capacity and means of local authorities in areas of illegal mining has also provided fertile ground for illegal armed groups and criminal organisations. Giraldo notes that gold producing municipalities have traditionally had below average results in terms of efficiency, service delivery and bureaucratic management (Giraldo, 2013). More importantly, he finds evidence that local authorities and landowners have received bribes from miners in return for tolerating illegal mining (Giraldo, 2013). Contrary to other regions around the world where informal and illegal mining takes place, Colombian security forces are not involved in illegal mining activities, yet local miners and authorities acknowledge the complicity of some members of security forces, particularly low level officials, who receive bribes for allowing machinery, chemicals and other supplies to reach illegal mining sites, ultimately benefiting illegal armed groups (Colombian Air Force, 2015; Attorney General's Office - *Fiscalía General*, 2015; Interviews with local miners).

Contraband and money laundering in Colombia

In addition to a growing formal economy, Colombia has entrenched informal and illegal economies. While it is hard to estimate the size of Colombia's 'grey economy', - informal and illegal underground transactions -, tax authorities in 2007 estimated that around half of all financial transactions in the primary, external and service sectors, all subject to value added taxation, were not being reported to fiscal authorities (Lasso, 2007). Another symptom of an entrenched informal economy is the parallel growth of both formal and informal employment. Today the informal job market represents 49% of the workforce (National Statistical Department, 2015).

Contraband is a one of the largest sectors of the illegal economy in Colombia. According to recent studies, close to USD 40 billion in contraband goods could have been smuggled into Colombia illegally between 1976 and 2012 (Rocha, 2014). In 2013, Colombian tax authorities estimated that close to USD 6 billion in contraband goods were smuggled into the country. Some of the main goods smuggled include textiles, fuel, liquor, rice, cigarettes and shoes. The permeability of borders with neighbouring countries, meagre results in terms of legal proceedings against contraband networks, local corruption and a social acceptance towards contraband goods, are cited by authorities as some of the factors that have made this phenomenon difficult to contain (Arevalo and Ortega, 2013). Moreover, criminal networks often buy goods abroad and smuggle them into Colombia to launder the proceeds of drug trafficking.

Since the 1980s, criminal organisations have established intricate mechanisms to launder the proceeds of illegal economies. In 2014, authorities estimated that the annual proceeds of money laundering could reach USD 10 billion, close to 3% of Colombian GDP. Criminal organisations have traditionally laundered money through the financial system or via the real economy. Channelling financial operations particularly through institutions located in tax havens such as in Panama and the Caribbean, with strict bank secrecy, was one of the preferred mechanisms to repatriate illegal revenues in the 1990s (Rocha, 2014: 9). As Colombia and other countries have strengthened mechanisms to monitor suspect transactions in the financial sector, criminal groups have diversified their laundering operations to include trade based money laundering mechanisms, as well as investments in the real economy and contraband.

Trade based money laundering

Trade based money laundering prevails as one of the main mechanisms used by criminal organisations. This practice entails misrepresenting the price, quantity and quality of imports or exports in order to repatriate proceeds of drug trafficking. Rocha notes that Colombian criminal organisations have moved from over-invoicing in the 1980s – worth close to 0.5% of GDP - to under-invoicing – for close to 1.3% of GDP in the 2000s – two practices that allow criminal groups to cash in the difference between the real and the invoiced prices to launder proceeds of drug trafficking (Rocha, 2014: 9). With a network of international traders and companies in free trade areas, and similar colluding companies in trading hubs like Panamá and the Caribbean (El Tiempo, 2014), criminal organisations have managed to use trade to their advantage.

Linkages between the drug trafficking and the gold trade

Linkages between drug trafficking and gold trade are not specific to Colombia. Neither is the fact that natural resources, especially illegal gold production, provide income to illegal armed groups. However, the fact that in Colombia, drug trafficking, illegal armed groups and gold production and trade converge is distinctive.

Since the 1980s, drug trafficking organisations have used gold to launder the proceeds of their illegal ventures. Traditionally, these criminal organisations use drug revenues to purchase gold that was then brought back to Colombia - smuggled in, or imported as jewels or scrap metal – then transformed (sometimes with the complicity of local smelters or jewellery dealers) and sold locally or exported through an international gold trading company (sometimes with their complicity as well) (Ferrell and Freed, 1989). In early 2014, the DIAN estimated that between 2012 and 2013 US\$ 3.3 billion of contraband gold entered Colombia from Panamá, Venezuela, Mexico and Chile. Some of it is suspected to have been re-exported to launder money.

As noted before, there is evidence that in some regions illegal armed groups are moving away from cocaine production and into illegal mining. Unlike cocaine, illegal gold production, transport and trading is still only a misdemeanour and it is difficult to prove, which is why judicial authorities only seldom pursue these kinds of cases (see section IV.C.). In some traditional mining areas (like the departments of Córdoba and Antioquia), the coca boom of the 1980s and 1990s substituted traditional artisanal mining as a source of income. However, the mining boom of the late 2000s attracted them back to gold production (Ibañez and Laverde, 2014).

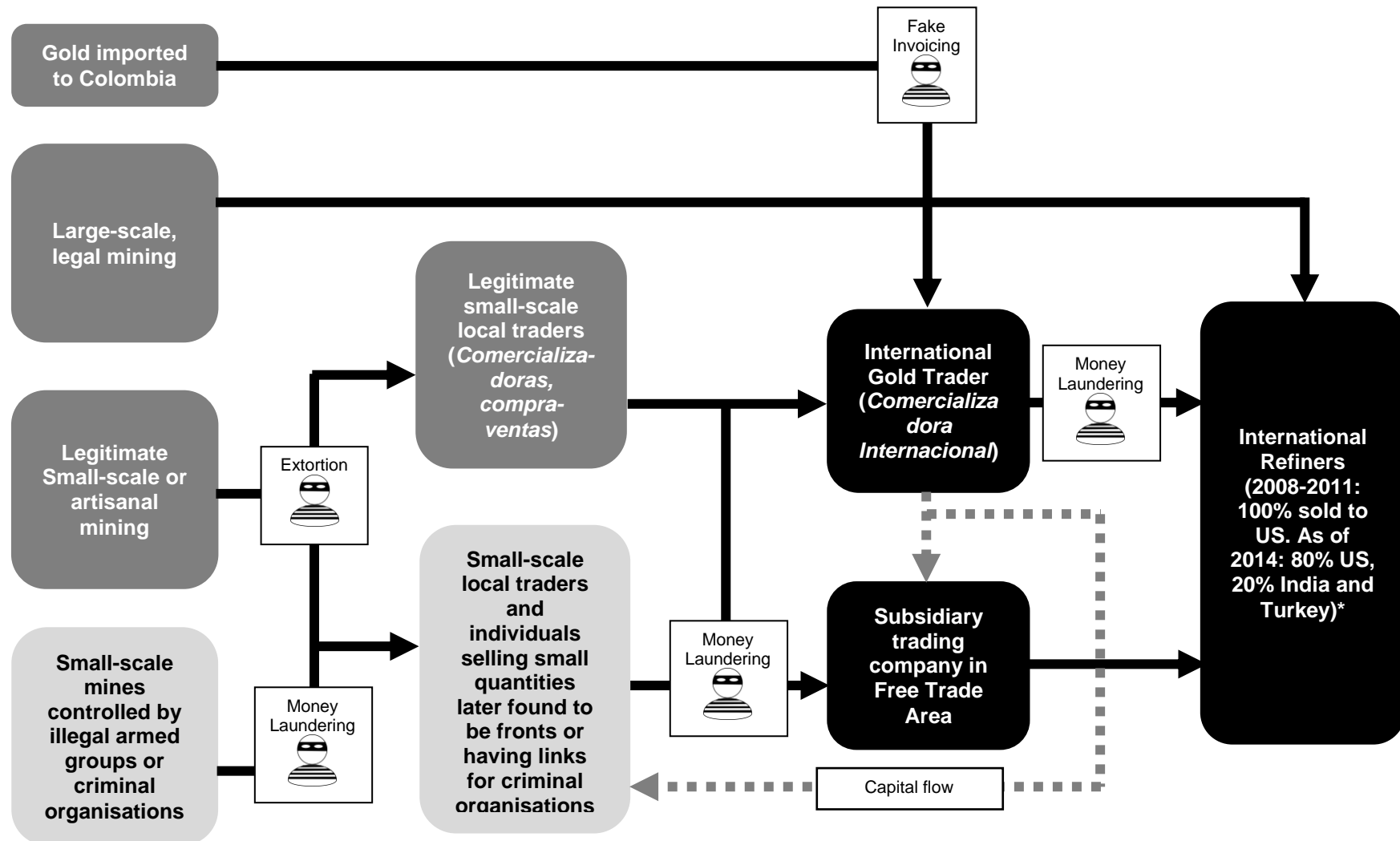
Unsurprisingly, mining sites that produced very little gold, were quickly reactivated and new production sites – most of them illegal- emerged, financed in some cases by the proceeds of drug trafficking operations. Illegal revenues are also used to purchase machinery, chemicals and other necessary supplies for small-scale production (GAFISUD, 2010), establish local gold traders (*compraventas or comercializadoras*) and to purchase gold from illegal miners or small-scale miner associations. These operations are often done in cash or in-kind (e.g. in return for supplies), making them difficult to trace (Goñi et.al., 2014). This system of traders then sells to smelters or international gold traders, legalising the purchase of gold.

Some international gold traders have also been identified as potential vehicles for money laundering (Interview with officer from the National Tax and Customs Agency, 2015). Authorities are already

looking into cases of suspicious purchases through gold traders operating in free trade areas (Interview with prosecutors from the Attorney General's Office and the officer from the National Tax and Customs Agency, 2015). Between 2011 and 2013, authorities identified a legally constituted international gold trader that reported purchases of gold from inexistent suppliers either to justify the fact that the company was sourcing gold from illegal miners or to provide smaller gold traders, possibly owned by criminal organisations, with the necessary support for transactions that allow them to justify proceeds and launder money from drug trafficking operations. While no other similar high profile cases have been publically reported, law enforcement agencies believe that gold traders remain vulnerable, knowingly or not, to money laundering schemes (Interviews with former government official and security expert, 2015).

Authorities suspect that without the inflow of illegal revenues, gold production may not have increased as quickly. For instance, municipalities without proven gold deposits began registering gold production. Moreover, between 2008 and 2010, Colombian gold exports increased 135%, a much higher percentage than the 68% increase in gold prices over the same period.

Figure 5: Typology based on case of an international trader investigated for operations between 2011 and 2013.



Sources: Legiscomex, Export data for tariff item 7108120000 and 7108130000, 2014; interviews with law enforcement officials, 2015.

Annex II risks in Colombia

This section examines the so-called 'Annex II risks' which are the risks companies should consider when carrying out supply chain due diligence; these risks are outlined in more detail in Annex II of the OECD Due Diligence Guidance:

- Serious abuses associated with the extraction, transport or trade of minerals;
- Direct or indirect support to non-state armed groups;
- Direct or indirect support for public or private security forces engaged in illegal activity;
- Bribery and the fraudulent misrepresentation of the origin of minerals;
- Money laundering and the payment of taxes, fees and royalties due to governments.

This section examines how the context of Colombia and its armed and criminal groups fit with Annex II risks of the Due Diligence Guidance.

Proposed typologies for the involvement of organised crime and armed groups in the gold trade

Illegal gold mining is not a new phenomenon in Colombia. Fifty years of armed conflict, twenty years of drug eradication programs and the rise in international gold prices have enticed illegal armed groups to expand or diversify their activities into illegal mining, either by pressuring, co-opting and exploiting traditional artisanal miners, engaging themselves in mining operations, or using the gold supply chain to launder the proceeds of other illegal economies.

In recent years, however, the way illegal armed groups extract rents from the supply chain of gold has become more complex, diverse and sophisticated: today armed groups have more control over production stages, use sophisticated methods of extortion, are involved in smuggling of contraband gold, use new methods for money laundering, tax avoidance and fraud schemes.

As groups seek to establish a foothold in mining regions, violence rates against civilians, including forced displacements, murders and other human rights abuses, in part related to mineral production have increased (Guiza, 2010; CINEP, 2012; Massé and Camargo 2012) .

Direct Participation

Illegally controlled mines

Small-scale mining is most prone to interference by illegal armed groups. Such groups have used illegal revenues to purchase bulldozers, dredgers, and other machinery, allowing them to set-up their own mining operations. Consequently, the sites where illegal armed groups exploit gold illegally have multiplied throughout the country. In recent years, the FARC has tried to go from extorting miners to running mines themselves. According to news sources in June 2012, the commander of the FARC's 53rd front wrote a message to his superiors expressing the need for this guerrilla to establish a "true policy of mine exploitation" (El Espectador, 2014). The Colombian National Police recently reported to have found information about proceeds from illegal mining in 80% of the documents seized during operations against the FARC and 65% of the documents seized from the ELN.

These types of operations are usually found in areas where a particular group has established territorial and population controls. Machinery is usually operated by workers brought from other regions who seldom mix with traditional artisanal miners. This *modus operandi* is usually found in very remote areas, where illegal armed groups have had a long standing presence, and where authorities have scarce access.

In some cases, the actual owners of the mines are former paramilitary leaders, or their straw-men, that used to control those mines before the demobilisation process. In other cases, it is not uncommon to see guerrillas or BACRIM reach agreements to divide control of these territories (Guiza, 2010; Indepaz, 2012; Massé and Camargo, 2012; Giraldo, 2013; Rettberg and Ortiz, 2014).

“Criminal-legal” mining

Illegal armed groups are also suspected of trying to obtain exploration and exploitation permits through front companies and straw-men. Although there are sporadic reports of this type of conduct throughout the country, they are especially prevalent in Antioquia and Cordoba (Giraldo and Muñoz, 2012; Massé and Camargo, 2012).

Law enforcement officials are also concerned about the potential for large and mid-scale companies to collude with armed actors as a result of pressures or convenience (Massé and Camargo, 2012). Since companies can now sign operation contracts that allow small-scale illegal miners to operate within their concessions, there is concern that in some cases companies could:

- be pressured into signing these contracts by illegal armed groups to allow illegal miners they control, to work on their concessions, or
- company officials could use these contracts as a form of payment to illegal armed groups for allowing them to operate in a specific area (Interviews with law enforcement officials, company security officials, and local miners, 2015).

Indirect participation

Extortion of informal, small-scale miners

In most cases, illegal armed groups are not directly involved in the supply chain and prefer to simply extract rents from it. As in other conflict-affected countries, providing protection in exchange for money tends to be one of the most traditional and easiest ways for armed groups to obtain resources. During the last thirty years, both paramilitaries and guerrilla groups have resorted to this type of pressure and extortion to finance their struggles (Indepaz, 2012, Massé and Camargo, 2012; Giraldo, 2013).

The way illegal armed groups extort artisanal miners is similar to the way they extort coca farmers. Illegal armed groups charge a “tax” (known locally as *vacuna*) for each miner or bulldozer operating in a site, or for each gram of gold produced, in exchange for “protection”. In the case of minerals such as coltan and tungsten, they are often paid in kind with the mineral extracted (as artisanal miners usually don’t have much cash) which they later export themselves. These groups also charge ‘tolls’ for each raft along export routes, which are generally the same ones utilised for drug trafficking.

In some cases, illegal armed groups force artisanal miners in remote regions to work for them. In others, they allow them to work on their own, but they are charged between 5% and 10% of the profits of the sale of gold produced. There are mines in which they charge a fixed tariff and others

where the amount is based on percentages (Guiza, 2010; Massé and Camargo, 2012; Indepaz, 2012; Giraldo and Muñoz, 2012).

Illegal armed groups are also taking advantage of the fact that many actors are involved in the first stages of the gold production chain. Thus, they have been quick to extort landowners, miners, owners of *entables* (see I.B. for definition), and machinery operators.

Illegal armed groups are also extorting small-scale legal companies. They can charge between 5% and 10% of daily profits, between USD 3,000 and USD 5,000 per month for each functioning backhoe, or charge a monthly fee for the permit to exploit a given site. Nevertheless, according to testimonies, profit margins, over and above extortion payments are still good (interviews with mining companies).

Extortion of mid and large-scale companies

Beyond illegal mining, foreign mining companies undertaking exploration in Colombia are also a preferred target for extortion by illegal armed groups. Between 2000 and 2003, foreign direct investment in the mining sector averaged USD 530 million a year. In 2009, that figure exceeded USD 3.05 billion. With a growing presence of large-scale mining companies operating in the country and an increase in investment of these companies, extortion has increased significantly. While there are no figures by sector, the Ministry of Defence reported a general increase in extortion from 803 cases in 2008 to over 4,800 in 2014 (Ministry of Defence, 2014). However, authorities have acknowledged that companies rarely report extortion due to fears of legal reprimands and increased operational risks.

Illegal armed groups also extract rents from companies by offering them “security” or “protection” against other illegal armed groups. When multinational companies operate in regions where two or more illegal armed groups vie for control, the risk of attacks, sabotage, kidnappings, or extortion against their facilities and their contractors (e.g. suppliers and transport) increases. In other cases, extortive payments do not involve an overt threat of violence. According to on-site testimonies, in some cases mining companies voluntarily cooperate with illegal armed groups, who in exchange provide security against other groups (Massé and Camargo, 2012).

Another form of indirect extortion consists of anticipating the arrival of companies. In some cases, illegal armed groups offer their help to multinationals to facilitate their entry into the region, thus ensuring that they will not have any major inconvenience to operate. The illegal armed groups control the population through threats, preventing any popular and social opposition or unrest once the company starts operating. These groups also recruit workers for companies. Controlling recruitment enables them to prevent or control strikes (Massé and Camargo, 2012).

In recent years, illegal armed groups have also been offering other kinds of “services” to the mining sector. Even though these services are largely legal, illegal armed groups utilise them to pressure, extort, and thus collect additional resources (Massé and Camargo, 2012).

Mining companies often resort to private security companies for their protection. According to sources interviewed for this study, this has driven illegal armed groups to set up their own security companies or infiltrate established ones to access and pressure the multinational companies (interviews with mining companies and private security specialists). Colombia hosts a significant number of private security companies offering their services to multinational companies. While there are a few large reputed security companies, there is a number of mid-size security companies

vulnerable to infiltration – or in some cases established by members of illegal armed groups, particularly former paramilitaries.

Many of the largest companies in the extractive sector have their own security personnel. There is anecdotal evidence that some companies have – knowingly or not – recruited former members of illegal armed groups as part of their security staff. This increases the risk that those individuals could serve as informants for illegal armed groups, especially the BACRIM (Massé and Camargo, 2012).

The interest of illegal armed groups in contractor companies is, however, not limited to private security companies. Other service providers (e.g. transport, food supply) can also serve as intermediaries to extort multinational companies. According to interviewees for this study certain contractors belonging to or with links to illegal armed groups, extort mining companies by overbilling their services (Massé and Camargo, 2012).

Illegal collection of royalties from the extractive sector

Illegal armed groups not only extort large multinational companies, but they have also sought to extract rents from royalty transfers to local authorities. There are different methods to extract rents from royalties, some direct and others more subtle and indirect.

Corrupt mayors or municipal officials have in the past attempted to artificially inflate gold production figures – and thus royalty transfers from the national government - in municipalities by bringing in gold produced in other regions. To do this, they sometimes resort to illegal armed groups, which demand that a percentage of these royalties be returned to them directly or through contracts. According to ex-paramilitary commanders and on-site interviews, corrupt mayors have gone as far as registering contraband gold purchased in other countries with the proceeds of drug trafficking (El Tiempo, 2010).

New interactions: from confrontation to cohabitation and collusion

Currently, illegal armed groups seem to be employing a new *modus operandi* in relation to mining companies. In several mining regions, these groups are avoiding confronting or engaging large-scale companies to avoid potentially attracting the attention of security forces (Massé, 2013). This new strategy of “cohabitation” has changed relations between illegal armed groups and mining communities, large-scale mining companies and local authorities. Illegal armed groups are less inclined to use violence against communities or small-scale miners, since this could result in a backlash from security forces. They are also limiting the number of miners from other regions that can work in their area of operations so as to avoid protests from local miners.

In certain mining regions, illegal armed groups, particularly the BACRIM, seem to increasingly privilege infiltration of local small-scale miner associations, even going as far as promoting their inclusion in government formalisation programs. This way they can then have control over small and medium scale mining that is no longer illegal. In others regions the opposite occurs: guerrilla groups threaten informal miners who join formalisations programs. Similarly, those groups appear to be increasingly opting to coexist with large-scale companies. Companies simply turn a blind eye to illegal mining operations controlled by these groups in their vicinity, and groups avoid engaging the company. As a result, both benefit from the status quo. Unsurprisingly, in many instances, such collusions also require the complicity of local authorities (Massé, 2013).

Financing illegal armed groups and serious human rights abuses

Multinational mining companies are often establishing operations in areas where illegal armed groups have committed human rights violations. Members of these communities often claim that illegal armed groups, particularly the BACRIM, anticipate the arrival of mining companies by clearing their way to operate without resistance by local communities.

Several reports by human rights organisations have brought attention to the potential link between human rights violations and the presence of miners, both legal and illegal (Guiza 2010; CINEP, 2012). Massacres and forced displacement in Bolívar; forced displacement in Antioquia; pressure on populations in several municipalities in Chocó and Antioquia (Carmen del Darien, Jiguamiando, Cerro Careperro); threats to community leaders in Nariño who denounce the presence of illegal excavators or simply refuse to abandon their territories to give way to mining companies in Cauca (Massé and Camargo, 2012); the assassination of an environmentalist that was opposed to surface mining in Risaralda; and the murder of a public official in Quibdó (El Tiempo, 2014). Local and national media have also reported how illegal actors pressure populations, many of them indigenous or afro-descendent, to accept the arrival of mining companies in their territories.

Although there is a correlation between the presence of illegal armed groups, violence and mining operations, it does not necessarily mean that mining is directly causing human rights violations. For instance, it is often challenging to link forced displacements to the presence of mining companies. Indeed, there are cases of threats and even murders that have caused displacement. Illegal armed groups threaten one or two people to cause terror, which provokes a forced displacement of the population, which in turn allows illegal armed groups to directly exploit or offer their collaboration to companies. However, in areas disputed by more than one illegal armed group, displacements are more often the result of efforts to control strategic corridors for drug trafficking than favouring gold extraction by illegal miners or multinationals. In other cases, the relationship is even more ambiguous. The Ombudsman's Office claims that the presence of mining companies could attract illegal armed groups, making it risky for internally displaced persons to return to their lands.

The presence of mining companies and illegal miners has also had an impact on the rights of children and youth. There are reports that illegal armed groups are forcing minors to work in their illegal mining operations (Palacios y al, 2003; Güiza, 2010). In addition, there is anecdotal evidence that criminal networks are using girls, some of them underage, for prostitution near mining sites (El Tiempo, 2013).

Fiscal considerations of illegal mining, including tax evasion, smuggling, and money laundering

The supply chain of gold in Colombia is vulnerable to tax evasion and avoidance, as well as to money laundering and contraband. Authorities have uncovered a number of concerning trends and are increasingly implementing initiatives to reduce these risks.

The risk of inaccurate payment of royalties and other taxes is particularly high in the case of gold originating from illegal mines. The 2010-2011 mining census revealed that 62% of miners with titles paid royalties, while only 18% of those without titles paid this tax. In the gold sector, 46% of legal title holders paid royalties, while only 17% of those without a title observed these obligations (Ministry of Mines and Energy, 2012). Although a significant number of small-scale traders reported

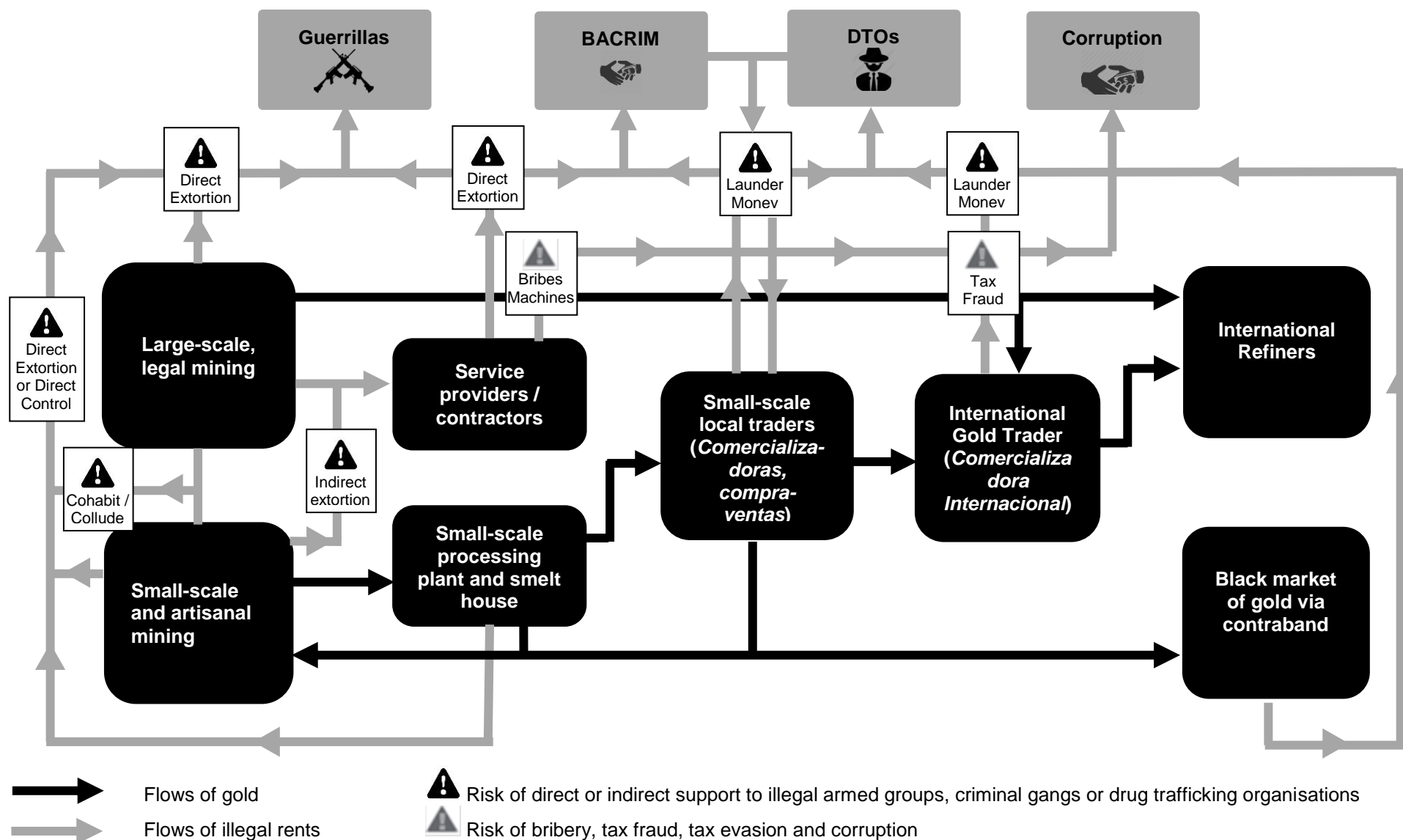
their purchases and pay royalties, it is difficult to trace if reported amounts coincide with gold actually produced (Goñi et al, 2014). In addition - enticed by better prices or by corrupt municipal authorities seeking to inflate their municipal gold production figures (Giraldo and Muñoz, 2012)²⁰ - close to 25% of miners surveyed by *Fedesarrollo* and the Inter-American Development Bank in their 2014 study, sell their gold in municipalities other than where it was produced (Goñi et al, 2014). Miners interviewed noted that some illegal miners sometimes still “legalise” their gold by reporting it as produced by miners with titles or *barequeros* in other municipalities (Interview with miners from Antioquia, 2015). Authorities have implemented measures to improve traceability, including the requirement of a certificate of origin (see section below on government initiatives), but experts note that it is difficult to ascertain whether the gold reported was actually produced in a particular site (Interviews with miners).

While illegal miners represent the highest risk of tax avoidance, legally constituted companies are also reported to pay inaccurate royalties and taxes. A study showed that large gold mining companies (i.e. with over 100 workers) are more likely to fulfil their fiscal obligations (Sabogal, 2012). Moreover, until 2011, mining authorities were only undertaking oversight visits to 40% of registered mining titles (National Mining Agency, 2014). Monitoring missions by the National Mining Agency in 2014 reached 98% of operations with mining titles, revealing that at least 20% had failed to duly pay royalties or legally required fees (National Mining Agency, 2014).

Further down the supply chain, international gold trading companies are also under scrutiny by tax authorities for potential tax evasion or tax fraud. In 2012, the DIAN uncovered a group of international trading companies, including gold exporters that issued fake certificates to illegally profit from VAT rebates (Martínez, 2014). Since, the DIAN has increased requirements and controls over international trading companies, resulting in a reduction from over 3,500 companies in 2012 to around 250 in 2014 (see IV.C). Authorities have nevertheless expressed their concern that suspicious companies could find other mechanisms – such as the use of international free trade zones – to continue their operations.

Tax avoidance, evasion and fraud remain latent risks, but there is also a growing concern regarding the vulnerability of the Colombian gold supply chain to money laundering operations. Since the 1990s, drug trafficking organisations have used gold to launder the proceeds of their illegal ventures (El Tiempo, 1994). In 2013, the Comptroller General noted that between 2003 and 2011, gold exports surpassed reported gold production by 53 tonnes (Rudas and Espitia, 2013), giving credence to the theory of gold smuggling from abroad. In early 2014, the DIAN estimated that close to 50% of the 135 tonnes exported by Colombia between 2012 and 2013 could have been smuggled into the country from Panamá, Venezuela, Mexico and Chile and re-exported (Portafolio, 2014).

Figure 6: Illegal armed groups, criminal organisations and their relations to the gold sector



Entry points for promoting the OECD Due diligence Guidance

Current government initiatives to promote responsible mineral production and trade

Colombian authorities are rolling out a series of initiatives that aim to improve traceability of the country's gold supply chain. The government has prioritised the implementation of strategies to promote the formalisation and legalisation of what is still a highly informal gold sector. While hopeful that these initiatives will mitigate some of the risks outlined above, government officials acknowledge that challenges remain in their implementation.

The main new mechanism to track the provenance of gold is the Single Registry for Mineral Traders (*Registro Unico de Comerciaizadores Mineros – RUCOM*). The need for this registry was originally outlined in President Juan Manuel Santos' Development Plan for his first term in 2011 as a way of assuring that mineral traders acquire their products from legal producers as defined by Colombian legislation.²¹ Initially due to start operating in March 2013, the deadline to sign up was extended to January 2014 and finally to January 2015 while authorities refined some of the requirements and built the capacity to manage the registry. The RUCOM introduces a number of new requirements aimed at improving traceability of minerals produced in Colombia, including:

- To register, mineral traders must provide financial statements and tax certificates to the National Mining Agency. In the case of international gold traders, they must be certified by the National Tax and Customs Agency. This information will be updated annually and the ANM will issue a certificate to all registered mineral traders.
- Mineral traders are allowed to purchase from: 1) legal mining title holders, 2) illegal miners who have requested to be included in government legalisation and/or formalisation programs, 3) *barequeros*, 4) miners in special mining districts, 5) collectors of tailings and other waste rocks (known as *chatarreros*), 6) small-scale informal miners sub-contracted by a legal mining title holder to operate in their territory.
- Mineral traders will be required to have official invoices of all their purchases as well as a Certificate of Origin for all minerals in their inventories. Certificates of Origin will be issued by authorised producers (outlined above) or the respective *entable*, and will include information about the geographical provenance, the amount of mineral sold and the mineral trader it was sold to.
- Traders holding mineral stocks without a certificate were allowed to sell them before the end of 2015.

Authorities have noted that the results of the initial registration process have been positive, but acknowledge that challenges remain. Over 4,500 mineral traders had signed up by February 2015, out of which just over 15% failed to meet the requirements. Mayors had also registered over 85,000 *barequeros*.

Initial concerns by small-scale miners and traders – who protested against the measure in February 2015 – have been quelled by the issuing of a decree clarifying roles and responsibilities throughout the supply chain and providing a grace period for some of the measures to become effective (Caracol, 2015). However, questions remain about the willingness and the ability of small-scale traders to procure gold from authorised producers (as outlined above). Many of the gold producers

still do not fit the requirements, and it could take time before they can apply to government legalisation and formalisation programs. Moreover, while the RUCOM establishes some basic traceability standards, it is unclear how much of a filter it will provide against money laundering operations.

Much of the success of the RUCOM will depend on the government's ability to promote the legalisation and formalisation of illegal/informal miners, so they can legally sell to traders. Due to its important economic and social impact in local economies, since the 1980s Colombian legislation has acknowledged the existence of informal miners and introduced programs to facilitate their legalisation and formalisation, with varying degrees of success. Today, the government is committed to improve these programs through a number of initiatives, including:

- 1) **Legalisation:** a number of new mechanisms have been designed to facilitate the legalisation of miners that have been working without a title. Miners can now apply for a formalisation sub-contract when having worked since before July 2013 in an area where a mining title has been granted (likely to a large-scale mining company). At least 9 of these contracts have been signed since 2014 and 20 more are being considered. Title holders can also return titled land for formalisation purposes. Other traditional mechanisms allow miners that have worked in a specific area for subsistence purposes to apply for a mining title as long as they can provide evidence of their traditional presence in the region and of their capacity and plans to continue working there. Until late 2013, legalisation programs had only succeeded in granting concession contracts to 5% of 3,114 applicants (Ministry of Mines and Energy, 2014:17). The Ministry of Mines and the National Mining Agency (ANM) are not only looking to review pending applications, but also to establish less cumbersome mechanisms to apply for a concession contract or a mining title. Currently both institutions are collaborating on a large-scale data collection effort to characterise small-scale miners without titles and define how many can be quickly legalised. Finally, authorities can allocate particular areas as mining reserves for small-scale miners. The approval for the creation of these areas has traditionally been lengthy due to legal bottlenecks, and it will likely not provide a scalable solution to legalise large numbers of miners in the short term.
- 2) **Formalisation:** once legalised, the government provides assistance to small-scale miners, so that they can reach acceptable, legal, economic, environmental and labour standards. A new formalisation policy was launched by the Ministry of Mines and Energy in mid-2014 that will rank mining units in terms of their current level of informality (three levels) and design a working plan catering to their needs. As their first step towards formalisation, miners will receive assistance to fulfil basic legal requirements – including applying for mining titles (Ministry of Mines and Energy, 2014). Formalisation will also be complemented by an ongoing effort by authorities to design policies catering to needs of subsistence, small, mid and large-scale miners. Currently, mining authorities estimate that the formalisation process could take between 3 and 5 years.

According to officials from the Ministry of Mines and Energy, though neither legalisation nor formalisation mechanisms include explicit mitigation mechanisms for most of the risks outlined in Annex II (with the exception of the worse forms of child labour and sexual violence against women), they contend that increasing formalisation will act as a deterrent against influence by illegal armed groups. Moreover, there is increasing coordination with security forces and law enforcement agencies to reduce the influence that illegal armed groups and criminal organisations have in areas where miners are being formalised.

Security concerns

Authorities acknowledge that security remains a concern when implementing formalisation programs. While officers from the Ministry of Mines and Energy participate in a number of coordination bodies with security forces, the operationalisation of these inter-institutional efforts on the ground is often challenging. Security forces will be hard pressed to provide the necessary protection to shield miners in these programs from the influence of illegal armed groups. In fact, there are reports about guerrillas issuing threats against informal miners who apply to formalisation and legalisation programs.

Due diligence

Colombian authorities are also consolidating an array of information sources that will facilitate undertaking robust due diligence processes. As a by-product of the implementation of the RUCOM, the ANM is expected to publish important information that will also improve traceability and chain of custody information. For instance, new listings of all authorised mineral producers (as outlined above) should be made public. The listing of all legal mining title holders will include information about their production capacity, making it easier to trace potential discrepancies when gold is exported.

In addition to these listings, the National Mining Agency (ANM) is working to compile and publish all information collected during monitoring and evaluation visits undertaken to all registered title holders between 2012 and 2014. This information will allow the ANM to cross reference information with reports from the Comptroller General's Office and the DIAN to identify any inconsistencies (National Mining Agency, 2014). In 2014, the ANM reported that these renewed monitoring efforts had resulted in 53% increase in collection rates of royalties, taxes and other fees compared to previous years (National Mining Agency, 2014). In addition to information on the level of fulfilment of fiscal responsibilities, data on the characteristics of registered operations, currently in the National Mining Registry (*Registro Minero Nacional*), is also being updated and formatted for easier public access. The ANM is also working on the implementation of an online registry through which producers and exporters can pay royalties and taxes and authorities can cross reference data with the RUCOM, ultimately improving the traceability of the purchase and sale of gold (interview with officials from the Ministry of Mines and Energy).

Private sector and community-based responsible gold supply chains

Colombia is on the path of becoming a member of the Extractive Sector Transparency Initiative (EITI). Since 2010, a tripartite group of private companies, Colombian authorities and civil society organisations has made progress towards full accession. In 2014, Colombia's application was accepted and an action plan was drafted. Close to 22 large-scale oil and mining companies - out of which just two are gold producers - have agreed to participate in an initial evaluation of transparency in tax payments and access to information. Transparency in transport of extractive sector products and oversight of small-scale mining will not be part of this initial phase. A strong network of civil society organisations is closely monitoring the implementation of EITI at the local level.

Though the implementation of the action plan is still in its early stages, it has forced authorities to take the issue of active disclosure of information on taxation and royalty payments more seriously. The implementation of EITI has revealed a large deficit of available information on payments of taxes

and royalties by companies and institutions. Already efforts like a new royalty payment tracking mechanisms for the public to consult have been designed (*Departamento Nacional de Planeación*, 2015), and further efforts to cross reference these with the data from companies and sub-national authorities are underway (Interview with members of civil society organisations overseeing the implementation of EITI in Colombia, 2015).

‘Fairmined’ initiatives have also emerged in Colombia, with interesting although limited results. Particularly interesting is the participation of gold mining associations and cooperatives in the international initiative “Alliance for Responsible Mining” created in 2002, which develops processes of promoting and supporting artisanal mining communities: “Oro verde” (“Green gold”) in the Chocó department was the first initiative. Cumbitara’s Small Miners Association and Coodmilla La Llanada (La Llanada miners cooperative) both in Nariño, Iquira’s cooperative (*Cooperativa Multiactiva Agrominera*) in Huila or ASOMIPUMES in Barranco de Loba (South Bolivar) are other examples. Since their creation, these responsible mining initiatives, totalling hundreds of miners, have generated a demand for fair trade jewellery and provided an economic incentive for miners to continue using environmentally and socially responsible methods.

In many regions, these initiatives provide economic incentives to artisanal and small scale miners, who otherwise would not have sufficient resources to sustain themselves. They can also help miners remain financially independent – shielding them from financing provided by criminal organisations - and establish an economically and environmentally viable way of producing gold. Since jewellers in Europe and in the US seem ready to pay extra for conflict-free and environmentally sustainable gold, these initiatives could be scaled up to meet demand. Initiatives like Fairmined could also eventually attract people living off coca farming and other illegal economies.

The growing penetration of illegal and criminal actors in the artisanal and small scale mine sector makes it difficult for those programs to remain independent. In fact, some criminal actors and local traders also offer miners a higher price for the gold they purchase from the artisanal miners, in order to make sure they will not sell their gold to competing actors. Fairmined initiatives therefore face high risks of being pressured or become infiltrated by criminal actors.

Some international gold traders are also working to mitigate the risks of purchasing from illegal miners with links to illegal armed groups. A group of international traders has started to implement basic background checks on some of its 90 suppliers by cross referencing information with law enforcement lists of suspects (e.g. Clinton List, cases followed by the Attorney General’s Office, lists of demobilised members of illegal armed groups). Another small-scale trading company decided to make all payments to its suppliers, many of them *barequeros*, via back accounts to improve traceability and reduce the risk of extortion. While these initiatives are still experimental in nature, and there is little evidence yet that they effectively mitigate risk, they signal a certain willingness by gold traders to improve their due diligence.

Law enforcement and military strategies to deter armed actor involvement in the gold trade

Fighting the influence of illegal armed groups over illegal miners

Coercive action against illegal mining, particularly in areas where it is a source of financing for illegal armed groups and criminal organisations, has become a priority for the government of Colombia. Authorities acknowledge that this has only recently been considered a matter of national security. In 2010, then Chief of Police General Oscar Naranjo, recognised that the problem of illegal mining “had

grown exponentially,” and that neither the police nor local mayors had the necessary capacity to address it (El Colombiano, 2013). In an effort to address this, the government introduced a number of measures in its 2010-2014 development plan to dissuade illegal mining and reduce the risk of it providing rents to illegal armed groups or criminals. At that time, authorities neither had a precise knowledge of the downstream market of gold nor how to promote measures by those buyers to prevent money laundering through gold purchases.

Against this backdrop, the government has promoted inter-agency cooperation to combat the influence of illegal armed groups over illegal miners. An initial attempt in 2007 by the Ministry of Mines and Energy to establish an inter-agency body with the Attorney General’s Office (*Fiscalía General*), the Inspector General’s Office (*Procuraduría General*) and the Ministry of Environment was later disbanded and only worked on a small number of ad-hoc cases. Since 2010, the National Police included “criminal mining” as one of its priorities in its action plans. While the Police Directorates of Intelligence (DIPOL) and of Rural Security (DICAR), in cooperation with the Attorney General’s Office, worked to contain this phenomenon, it soon became apparent that further resources and inter-agency cooperation was required. In January 2014, the government established the Unit Against Criminal Mining (UNIMIC), coordinated by the Directorate of Public Safety and Infrastructure at the Ministry of Defence and spearheaded operationally by the Police Directorate of Rural Security. To complement the work done by UNIMIC, in mid-2015 the government created a new Police Directorate and a specialised Army Brigade dedicated to the fight against illegal mining with over 1,000 men combined.

These new efforts to tackle the criminal influence over mines have started yielding results. Ministry of Defence figures show that between January 2010 and 2015 security forces conducted more than 1,000 operations against 3,934 illegal mines, arrested 8,590 suspects, confiscated 1,496 backhoes and destroyed 205, and seized 920 kilos of gold produced illegally (Ministry of Defence, 2015).

Despite an increase in the amounts of illegal gold seizures, authorities acknowledge that they are still facing a number of obstacles in their efforts to dissuade illegal mining. Figures reflect some of the difficulties that underlie efforts to tackle illegal mining. Securing mining areas puts a strain on already stretched security force resources. Moreover, interests behind illegal mining have retaliated against security forces and control officers. In July 2014, an officer from the Controller’s Office was murdered in Quibdó. She was investigating the fake filing of \$13,000 million pesos in royalties from the municipality of Bajo Baudó by 12 fake gold production and trading companies. The DIAN had given them a \$1,100 million pesos in tax returns (El Tiempo, 2014).

The role of the Attorney General’s Office, particularly through the establishment of its Unit Against Natural Resources and Environmental Crimes in 2012, has also been paramount in improving law enforcement efforts. Since its creation, this unit has conducted more than 6000 investigations against illegal mining, among which 484 cases related to criminal investigations against illegal gold mining. However, very few investigations resulted in prosecutions and even less in convictions due mostly to lack of evidence and low capacity of judicial authorities to process cases.

Figure 7: Prosecutions for illegal gold mining

	Number of prosecutions for illegal gold mining	Number of convictions for illegal gold mining
2012	15	0
2013	31	12
2014	20	6

Source: General Attorney's Office (Fiscalia General de la Nación)

Authorities have also introduced normative changes that allow law enforcement agencies to better dissuade illegal armed groups from controlling illegal miners:

- **Destruction of heavy machinery:** The 2010-2014 National Development Plan proscribed the use of heavy machinery in mining operations without a proper mining title. Law enforcement agencies moved quickly to seize machinery in illegal mines (bulldozers and dredges), but were unable to transport them out of the sites to be placed under the custody of the mayor's office or of the judicial police. Once law enforcement officers left, many of the seized assets were disassembled and reassembled in other mine sites. A decree issued in 2012 allows law enforcement agencies to destroy heavy machinery when they are unable to seize it and there is enough evidence to ascertain that it was being used in illegal mining.
- **Control over imports of heavy machinery:** The DIAN - based on decisions by the Andean Community (Colombia, Ecuador, Venezuela, Peru and Bolivia) - has also increased its controls over imports of heavy machinery that could later be used for illegal mining.
- **Changes to the criminal code:** In 2013, the Ministry of Defence tabled legislation that increases the penalties for illegally exploiting mines and allows prosecutors to also target those involved in the transport, and position of minerals produced illegally. This bill is still before Congress and has been met by opposition from associations of small-scale miners.
- **Control over gold produced illegally:** Gold produced in illegal mines has always been subject to seizure by authorities, a measure that was seldom enforced. The introduction of the RUCOM will allow the Police to seize gold from traders that fail to produce a certificate of origin, improving control over a larger portion of the supply chain.

The government is also currently working on new legislation to reinforce a comprehensive strategy to curb the influence of criminal organisations over the supply chain of gold. This new legislation is expected to include measures that facilitate the suspension of illegal mining operations, allow authorities to confiscate illegally produced minerals at any point in the supply chain, impose stronger penalties for environmental crimes, improve control over supplies for mining (e.g. explosives), facilitate destruction of machinery used in illegal mining, and increase penalties against illegal miners.

Protection and Risk Assessments for the Mining Sector

Considered a priority sector by the Santos administration, the government has sought to provide protection for mining, energy and oil and gas assets. The Directorate for Public Safety and Infrastructure, created by the Ministry of Defence in late 2011, has designed strategies to protect production facilities, supply lines and transport infrastructure – particularly oil pipelines and power grids. More importantly perhaps, this new directorate has undertaken – in collaboration with the Colombian Mining Association, the Colombian Oil Association and the Ministry of Mines and Energy -

detailed risk assessments for operations in the mining and oil sectors. While not available to the general public, these risk assessments offer an important source of information for companies to identify risks along the supply chain of minerals or oil and gas. To counter these risks, this new directorate recommends that companies design a protection plan and even sign agreements for protection protocols with the Ministry of Defence.

Curbing money laundering through the supply chain of gold

Colombia has a robust institutional architecture to fight money laundering and terrorism financing. The Ministry of Finance's Financial Intelligence Unit (*Unidad de Información y Análisis Financiero - UIAF*) established in 1999 - monitors all suspect operations in the financial and other high risk sectors. The Industry and Trade Authority (*Superintendencia de Industria y Comercio*), charged with overseeing all industries and trade companies, is charged with promoting the implementation of company plans to prevent and report suspicious transactions. The Attorney General's Unit for Asset Forfeiture and Money Laundering, charged with prosecuting, has built a capacity to disarticulate complex money laundering operations. The DIAN's Anti-Laundering Unit - charged with monitoring suspicious import/export transaction - as well as Military and Police intelligence directorates - focused on collecting and analysing intelligence on the source of finances by illegal armed groups – complete this institutional architecture.

Although most of the information these units produce is confidential, it has helped shed light on potential areas in the gold supply chain that could be used for money laundering or financing of illegal armed groups. The UIAF, for instance, has uncovered a number of typologies of how criminal organisations use gold to launder money through international gold traders and the use of contraband gold, amongst others. Similarly, the UIAF, Police Intelligence and Military Intelligence are increasingly sharing information to build an inter-institutional profile on how illegal armed groups finance their operations, including through gold production and trading. Finally, collaboration between the UIAF, the Police and the Attorney General's office have recently resulted in the processing of Goldex, a prominent international gold trading company suspected of money laundering and there is hope that other similar operations could soon be indicted.

Authorities have also introduced normative measures to reduce the risk of money laundering in the supply chain of gold. Colombia has been an active member of the Financial Action Task Force on Money Laundering in South America (GAFILAT), and has the highest rates of compliance of recommendations issued by this body, including those related to the supply chain of gold. Since 2008, international gold traders are required to divulge all their transactions to the UIAF, and have their accounts audited and certified. In addition, in 2012 the Ministry of Finance issued a decree that requires international trading companies to acquire an insurance policy for 2% the value of their yearly exports. Insurance companies are expected to undertake detailed financial assessments before issuing the policy, improving oversight over these companies and making it more difficult for criminal organisations to set up front trading companies. In January 2013, the DIAN issued a resolution further increasing requirements to authorise operations by international trading companies, including having a list of suppliers, proven experience in exporting goods, and financial statements, amongst others. Lists of suppliers could make it easier for authorities to trace the origin of gold to the sources.

Preliminary Conclusions

While it is apparent that the supply chain in Colombia faces a number of risks and challenges, authorities are increasingly acknowledging them and implementing a wide array of measures to address them. Against this backdrop, efforts – particularly by companies - to work towards responsible mineral supply chains and improve due diligence along the supply chain of gold by implementing the OECD Due Diligence Guidance are particularly pertinent.

Challenges

- **Define the scope of the problem:** implementing due diligence processes in mineral supply chains goes much beyond just making sure minerals are conflict free. In fact, as already mentioned, the OECD Due Diligence Guidance also deals with serious abuses of human rights, tax evasion, etc. There are legal and political interpretations of what this means, each with different implications. Therefore, in Colombia as in other jurisdictions around the world, the problem is not only to aim for conflict free gold but also gold that is free from serious human rights abuses, gold that benefits the community that is producing it, that is legally exported, that has not been used to launder revenues from other criminal activities, etc. Even though the so called criminal bands or BACRIM are not officially part of the internal armed conflict, they are very much involved in illegal mining and in extorting mining companies. And even if peace agreements are signed with the FARC and other guerrillas, the government of Colombia and international buyers sourcing from this country will still have to exercise due diligence and progressively eliminate criminal actors from their supply chains.
- **The need for a comprehensive assessment of all risks along the supply chain of gold:** As noted above, different institutions have identified the influence of illegal armed groups and criminal organisations at different stages of the supply chain of gold. However, this information is often fragmented. An inter-institutional effort – bringing together law enforcement agencies, environmental and mining authorities - to design a comprehensive risk map for the gold mining sector, could help bridge the current knowledge gap and allow policy makers to redirect or enhance current strategies.
- **Acknowledging risks without stigmatising gold producers:** Although illegal mining is a real concern for the authorities, the problem is not only illegal mining but also illegality in the mining sector. Colombian authorities acknowledge that illegal armed groups have influence over large parts of the supply chain of gold, but there is concern that by pointing this out, gold producers could be stigmatised vis-à-vis international markets. While it is likely that only a fraction of gold produced has been tainted, there is currently no estimation of how big this fraction is.
- **Aligning law enforcement and formalisation/legalisation efforts:** Criteria to select miners for formalisation and legalisation programs only consider general security conditions in the area, but do not include thorough background checks of candidates by law enforcement agencies. Thus, illegal armed groups and criminal organisations that have invested in gold mining, processing or trading operations, could end up being legalised. Moreover, there is a need to shield legitimate small-scale informal miners – particularly those in legalisation/formalisation programs – from the influence of illegal armed groups by establishing specific protection programs for them.

- **Getting local authorities and small-scale miner associations on board:** local authorities can have vested interests in the continuation of illegal mining. Their collaboration has often been hard to come by and they have even acted as spoilers of efforts to formalise illegal miners and/or tackle criminal influences over the supply chain. In addition, a small but boisterous group of small-scale miner associations have systematically opposed government policies and stalled their implementation (e.g. RUCOM).
- **Formalisation will not necessarily eliminate criminal involvement in small scale mining:** Formalisation and legalisation programs will not make gold produced automatically responsible, nor conflict free. As noted before, there is anecdotal evidence that criminal groups encourage the formalisation of small miners, to keep control over them, although they obtain legal mining titles. As a result, in the future, Colombia could evidence the existence of formally legal miners that have continued connections with criminal organisations.
- **Tackle a deeper problem: corruption.** Colombian authorities acknowledge that corruption, including in the mining sector, remains a major challenge. According to different studies, perception of corruption in Colombia is one of the highest in Latin America (Transparency International, Barometro de las Americas). Entrenched political patronage systems remain the norm at the local level and have fostered widespread corruption. The highly informal nature of gold mining in Colombia and the limitations by national authorities to oversee operations locally has facilitated corruption by local members of security forces and municipal and departmental officials. Despite efforts by the government to introduce measures to curb corruption, including an Anti-Corruption Statute and accession the EITI, there is still need for effective mechanisms to contain corruption. Moreover, as in other countries, the situation could even get worse in a post conflict situation (Le Billon, 2008, 2011; Cheng, 2011).

Opportunities

- **Ongoing efforts to trace the origin of gold:** the implementation of RUCOM offers the starting point to trace Colombian gold to its original producer. This new registry should offer key data to improve oversight over parts of the supply chain and identify potential areas that are more vulnerable to the influence of illegal armed groups.
- **Access to information:** the government of Colombia is increasingly committed to providing effective access to information, which should ease due diligence efforts by companies and allow for effective monitoring by civil society groups. Information about gold production, processing and trading is currently being updated and there are plans to make it available for public consumption. Similar efforts to provide markets with more detailed information about risks along the supply chain could also help improve due diligence processes.
- **Positive wider effects of the peace process:** the potential future signature of a peace agreement should make it easier to work closely with local populations in remote areas and thus facilitate promotion of due diligence measures.
- **Scaling up of due diligence initiatives:** Due diligence initiatives already exist and other pilot projects should be enhanced. While it is not always clear that pilot projects are scalable, they are good testing grounds for on the ground due diligence efforts.

- **Cohabitation:** Hybrid formulas combining small scale and large scale mining could be promoted. Experiences already exist in other countries (Côte d'Ivoire).

¹ The Guidance is available in English and Spanish, among several other languages:

<http://www.oecd.org/daf/inv/mne/mining.htm>

² Colombia adhered to the OECD Council Recommendation on Responsible Mineral Supply Chains on 23 May 2012; while not legally-binding, the Recommendation reflects the common position and political commitment of adhering countries which include all 34 OECD countries, and 9 non-OECD countries (Argentina, Brazil, Colombia, Costa Rica, Latvia, Lithuania, Morocco, Peru, and Romania).

³ Some additional interviews were conducted during the revision process between June and December 2015.

⁴ In September 2013, out of 10,158 mining titles registered in government records, 10% (1,050) were for gold production. Available from :

http://www1.upme.gov.co/sites/default/files/forum_topic/3655/files/sector_minero_colombiano_actual_trayectoria_organizacion_industrial_distancia_frontera_tecnologica.pdf

⁵ Export figures are Free on Board.

⁶ Nevertheless, around 100 municipalities officially register gold production.

⁷ The National Mining Agency was expected to identify Strategic Mining Areas within five years following the proclamation of Resolution 180241 of 2012. The State Council is currently reviewing the validity of the Resolution allowing the creation of Strategic Mining Areas after an NGO filed a law suit arguing that this norm was not consulted with indigenous communities.

⁸ According to the Ministry of Mines and Energy, miners waiting for their titles to be issued, barequeros, miners working within special mining reserve areas and illegal miners could account for the additional 83% of production.

⁹ Mining communities can request the creation of a Special Reserve Area, where only traditional miners – informal miners that can prove they have historically ran artisanal operations in a specific area - are allowed to continue to mine.

¹⁰ The Ministry of Mines recognised a number of limitations in the information collected, included the presence of illegal armed groups in some regions, a large variance in the number of municipalities reached and the lack of trust and knowledge by informants when answering the questionnaire.

¹¹ Out of the total illegal mining production, 60 % corresponds to gold production, 25% to coltan, 10% to coal and 5% to tungsten.

¹² The 2010-2011 mining census classified mining units with over 70 employees as large-scale operations, those that reported having 6 to 70 employees as mid-scale and small-scale-mining, those with no more than 5 employees.

¹³ In addition to these large-scale mining operations, the Ministry of Mines has 349 mining title holders or applicants to formalisation/legalisation programs that are allowed to produce and trade precious metals, including gold.

¹⁴ Many of the refiners purchasing from Colombian suppliers are members of the London Bullion Market Association and have strict codes of conduct and due diligence.

¹⁵ Interviews with company officials and local miners associations.

¹⁶ In Colombia the term illegal armed groups is used interchangeably to refer to non-state armed groups challenging the state's monopoly of the use of force. Colombian authorities prefer this terminology to clarify their illegal nature. In the text we adhere to this terminology to avoid confusion. The second distinction made by Colombian authorities relates to the objectives of the non-state actor. Left-wing guerrillas have been called both narco-terrorist and rebel organisations. Meanwhile, other illegal armed groups, such as the BACRIM and drug trafficking networks, are associated with the term "criminal organisations" or gangs. To avoid confusions, we also use similar distinctions in the text.

¹⁷ The Ministry of Defence estimates there were 9,600 members of what it calls "terrorist support networks", or unarmed members of the FARC providing logistical support in villages close to rural areas where they have presence.

¹⁸ By November 2013, the Attorney General's Office's Unit Against Criminal Gangs was investigating links between criminal organisations and 208 public officials, including 114 members of security forces and 7 mayors. 44 members of security forces had already been found guilty of links with these organisations.

¹⁹ In 2010, former paramilitary chief, Salvatore Mancuso, confirmed those allegations.

²⁰ In 2011, the Colombian government introduced a reform to the way royalties are collected and disbursed to local authorities. A new centralised fund collects all royalty payments and redistributes them to both extractive and non-extractive municipalities. Since amounts produced are no longer the only factor on defining the amount transferred to local authorities, the incentive to artificially inflate municipal gold production figures has dropped, but has not disappeared.

²¹ Article 160 of the 2001 Mining Code already envisaged potential criminal charges against those that produced minerals without a mining title (with exceptions for ancestral mining practices using no machinery and those mining for personal use of materials and no commercial purposes) as well as those that processed and traded minerals acquired from operations without a legal mining title.

Bibliography

Arévalo, J., & Ortega, J. (2013). Comercio delictivo, lavado de activos y captura del Estado. *Economía criminal y poder político*, Medellín, Universidad EAFIT, Colciencias.

Caracol (2015), "Mineros denuncian cierre de compraventas de oro en Antioquia," 4 February, <http://webcache.googleusercontent.com/search?q=cache:ZkwJI5h2SpcJ:www.caracol.com.co/noticias/regionales/mineros-denuncian-cierre-de-compraventas-de-oro-en-antioquia/20150204/nota/2618156.aspx+&cd=3&hl=es-419&ct=clnk&gl=co> (Accessed 15 April 2015)

Cardenas M. and Reina M. (2014), "La Minería en Colombia: Impacto Socioeconómico y Fiscal," Fedesarrollo, 8 April 2018.

Central Bank of Colombia (2015), "Flujos de Inversión Extranjera Directa Según Actividad Económica", <http://www.banrep.gov.co/sites/default/files/paginas/C1flujoinv.xls> (Accessed 24 December 2015)

CINEP/Programa por la Paz (2012), *Minería, conflictos sociales y violación de derechos humanos en Colombia*. Bogotá, Informe Especial.

Colombian Geological Service (2015), "Áreas Estratégicas Mineras", <http://www.sgc.gov.co/Noticias/General/Areas-Estrategicas-Mineras.aspx> (Accessed 15 April 2015)

Echandía C. (2013), "Auge y declive del Ejército de Liberación Nacional (ELN)", Fundación Ideas para la Paz, No. 21, November, <http://cdn.ideaspaz.org/media/website/document/529debc8a48fa.pdf> (Accessed 20 March 2015).

Echavaria C. (2014), *What is legal? Formalising artisanal and small-scale mining in Colombia*, IIED, London and ARM, Colombia.

El Colombiano (2013), "Bandas salpican a 208 funcionarios", http://www.elcolombiano.com/bandas_salpican_a_208_funcionarios-PYEC_268025 (Accessed 20 March 2015)

El Colombiano (2010), "El dorado de las bandas criminales", 2 October, http://www.elcolombiano.com/el_dorado_de_las_bandas_criminales-IEEC_106619 (Accessed 15 April 2015)

El Espectador (2014) "'Romaña' en el ajedrez de la paz", 24 October, <http://www.elespectador.com/noticias/judicial/romana-el-ajedrez-de-paz-articulo-524086> (Accessed 20 March 2015)

El Espectador (2014), "No me equivoco: el desfaldo de la DIAN es de \$2 billones", 18 May, <http://www.elespectador.com/noticias/judicial/no-me-equivoco-el-desfalco-dian-de-2-billones-articulo-493142> (Accessed 20 March 2015)

-
- El Tiempo (2015), "Minería ilegal en Colombia mueve \$ 7 billones al año," 4 September, <http://m.eltiempo.com/estilo-de-vida/ciencia/mineria-ilegal-en-colombia-mueve-7-billones-al-ano/16437683/1> (Accessed 20 January 2016)
- El Tiempo (2014), "7.000 millones de dólares, impacto anual del contrabando," 23 September, <http://www.eltiempo.com/economia/indicadores/contrabando-estudio-de-la-dian-sobre-este-flagelo/14582635> (Accessed 20 March 2015)
- El Tiempo (2014), "Contralora asesinada en Chocó indagaba a la 'mafia del oro'," 26 June, <http://www.eltiempo.com/politica/justicia/contralora-consuelo-de-jesus-echeverry-fue-asesinada-en-choco/14175284> (Accessed 15 April 2015)
- El Tiempo (2013), "Campamentos de explotación de niñas en zonas mineras," 26 May, <http://www.eltiempo.com/archivo/documento/CMS-12824463> (Accessed 20 March 2015)
- El Tiempo (2010), "Con oro lavan dinero y se roban regalías, revela ex jefe 'para', Salvatore Mancuso", 31 July, <http://www.eltiempo.com/archivo/documento/CMS-7835388> (Accessed 15 April 2015)
- El Tiempo (1994), "Cartel de Cali convirtió coca en oro," 20 January, <http://www.eltiempo.com/archivo/documento/MAM-18506> (Accessed 20 March 2015)
- Ferrell D. and Freed. (1989), "Solid Gold Shock : Drug Money-Laundering Arrests Stun Downtown Jewelry District," http://articles.latimes.com/1989-02-24/local/me-180_1_drug-money-laundering (Accessed 20 March 2015)
- Financial Action Task Force of South America - GAFISUD (2010), "Tipologías regionales de GAFISUD Actividades y Profesiones No-Financieras Designadas (APNFD)," Financial Action Task Force on Money Laundering in South America, pp. 24-30.
- Fiscalía General de la Nación -Attorney General's Office (2015), "A la cárcel ex policía por minería ilegal en el Cauca", 15 September, <http://www.fiscalia.gov.co/colombia/noticias/a-la-carcel-expolicia-por-mineria-ilegal-en-el-cauca/> (Accessed 24 December 2015)
- Fuerza Aérea Colombiana (2015), "Operación sin precedentes contra la minería criminal en Colombia, primera de esta naturaleza en el Sur occidente y pacífico colombiano," Fuerza Aérea Colombiana, 12 March, <https://www.fac.mil.co/operaci%C3%B3n-sin-precedentes-contra-la-miner%C3%ADa-criminal-en-colombia-primera-de-esta-naturaleza-en-el> (Accessed 20 March 2015)
- Garay L.J. (2013), *Minería en Colombia, Institucionalidad y territorio: paradojas y conflictos*. Bogotá, Contraloría General de la República.
- Giraldo J. & Muñoz J. C. (2012), *Informalidad e ilegalidad en la explotación del oro y la madera en Antioquia*. Medellín: Universidad EAFIT – Proantioquia.
- Giraldo J. (2013), El Gobierno del Oro en el Bajo Cauca, una lectura Weberiana sobre la explotación aurífera aluvial no legal, in *Economía Criminal y Poder Político*, Medellín: Universidad EAFIT.
- Goñi E.A., Sabogal A., & Asmat R. (2014), Minería informal aurífera en Colombia, Fedesarrollo,

Grand M. (2015), Presentation by Director of Formalisation at the Ministry of Mines and Energy at the 2nd International Congress on Illegal Mining, Bogotá, 21 September 2015.

Ibáñez A.M. and Laverde M. (2014), “Los Municipios Mineros en Colombia: características e impactos sobre el desarrollo,” in *Insumos para el desarrollo del Plan Nacional de Ordenamiento Minero*, Juan Benavides, ed. August, p. 213-214.

Insight Crime (2015), “FARC, Peace and Potential Criminalisation”, Insight Crime, private presentation, Bogotá, 19 March.

Le Billon P. (2011), Extractive sectors and illicit financial flows: What role for revenue governance initiatives?. *U4 Issue*, 2011(13).

Martinez, L.E. (2015), Presentation by General Luis Eduardo Martínez, Director of Rural Police at the 2nd International Congress on Illegal Mining, Bogotá, 21 September 2015.

Massé F. (2011), ¿Bandas criminales o neoparamilitares?, *Foreign Affairs latinoamérica*, 11(2), 42-49.

Massé F. (2013), Actores armados ilegales y sector minero en Córdoba, Monografía Observatorio Internacional de DDR – Ley de Justicia y Paz]. Madrid: Centro Internacional de Toledo para la Paz.

Mejia D., & Rico Valencia, D. M. (2010). The Microeconomics of Cocaine Production and Trafficking

In Colombia (La Microeconomía De La Producción Y Tráfico De Cocaína En Colombia). *Documento CEDE*, (2010-19).

Mejía D., Idrobo N. and Tribin A.M., “Minería ilegal y violencia en Colombia”, Seminario Minería en Latinoamérica: retos y oportunidades [Presentation during Conference on Challenges and Opportunities for Mining in Latin America] Los Andes University, Mayo de 2013, https://economia.uniandes.edu.co/content/download/47334/395844/file/Idrobo_Mejia&Tribn_Mayo2013_MineriailegalviolenciaenColombia.pdf

Mining Information System of Colombia (2015), “Histórico de Producción de Oro,” 31 December 2015, http://www.upme.gov.co/generadorconsultas/Consulta_Series.aspx?idModulo=4&tipoSerie=116&grupo=355&Fechainicial=01/01/1931&Fechafinal=31/12/2015 (Accessed 11 January 2016)

Ministry of Defence (2015), “2014 fue un año de acciones y de resultados en materia de seguridad en Colombia: Mindefensa”, 8 January <http://www.mindefensa.gov.co/irj/servlet/prt/portal/prtroot/com.sap.nw.pcc.xmleditor.XMLDocumentDefaultRenderer?snippetid=/guid/009bb6e1-9d79-3210-938e-92d51e2785ca> (Accessed 20 March 2015)

Ministry of Defence (2014), “Identificados cerca de 300 puntos críticos de minería ilegal en 9 departamentos”, Ministerio de Defensa, 4 September, <http://www.mindefensa.gov.co/irj/servlet/prt/portal/prtroot/com.sap.nw.pcc.xmleditor.XMLDocumentDefaultRenderer?snippetid=/guid/f0251ff4-b016-3210-89a0-ff8bbb1458cf> (Accessed 20 March 2015)

Ministry of Defence (2013), “Las FARC acorraladas y a la defensiva,” Ministerio de Defensa, March, p. 5, http://www.mindefensa.gov.co/irj/go/km/docs/Mindefensa/Documentos/descargas/Prensa/Documentos/farc_acorraladas.pdf (Accessed 20 March 2015)

Ministry of Mines and Energy-MME (2015a), Email communication, 18 December 2015.

Ministry of Mines and Energy-MME (2015b), “Clasificación de la Minería en Colombia”, October 2015.

Ministry of Mines and Energy-MME (2015c), “Análisis del Comportamiento del PIB Minero en el Año 2014, segundo semestre y cuarto trimestre del 2014,” <https://www.minminas.gov.co/documents/10180/558364/PibIVTrimestre2014.pdf/2e08741f-fa27-4e0f-81f4-fcb136886eb4> (Accessed 24 December 2015)

Ministry of Mines and Energy-MME (2014), “Política Nacional para la Formalización de la Minería en Colombia,” Ministry of Mines and Energy, May, <http://www.minminas.gov.co/documents/10180/154252/DocumentoPoliticaFMV204Feb2014.pdf/60f2975a-ce7c-4d08-8f9a-816cd2e70be3> (Accessed 15 April 2015)

Ministry of Mines and Energy-MME (2012a), “Censo Minero Departamental,” 2012, <http://www.minminas.gov.co/minminas/downloads/UserFiles/File/Grupo%20de%20Participacion%20Ciudadana/CensoMineroDepartamentalColombiano2010-2011.pdf> (Accessed 20 March 2015).

Ministry of Mines and Energy-MME (2012b), Resolución 180241, 24 February 2012, <http://www.simco.gov.co/LinkClick.aspx?fileticket=Wvh4LoUAqx%E%3D&tabid=106> (Accessed: 24 December 2015)

National Mining Agency-ANM (2014a), “Informe de Rendición de Cuentas 2013-2014,” June, http://www.anm.gov.co/sites/default/files/DocumentosAnm/rendicion_de_cuentas_2014.pdf (Accessed 20 March 2015)

National Mining Agency-ANM (2014b), “En 2013 National Mining Agency fiscalizó 10.161 títulos mineros en todo el país”, 4 February, http://www.anm.gov.co/?q=En_2013_ANM_fiscalizo_10161_titulos_mineros_en_todo_el_pais (Accessed 20 March 2015)

National Mining Agency-ANM (2013), “ANM asume nuevo procedimiento para declarar áreas de reservas especiales”, 23 April, <http://www.anm.gov.co/?q=anm-asume-nuevo-procedimiento-para-declarar-areas-de-reservas-especiales-0> (Accessed 15 April 2015)

National Statistics Department (2015a), “Cuentas Trimestrales – Colombia Producto Interno Bruto (PIB) Tercer Trimestre de 2015,” 16 December 2015, http://www.dane.gov.co/files/investigaciones/boletines/pib/bol_PIB_IIItrim15_oferta_demanda.pdf (Accessed 24 December 2015)

National Statistics Department (2015b), “Medición del empleo informal y Seguridad Social Trimestre octubre - diciembre 2014,” DANE, Press Release, 9 February, https://www.dane.gov.co/files/investigaciones/boletines/ech/ech/re_ech_informalidad_oct_dic2014.pdf (Accessed 15 April 2015)

Newman V. (2011), “The New Nexus of Narcoterrorism: Hezbollah and Venezuela,” Foreign Policy Research Institute, December, <http://www.fpri.org/articles/2011/12/new-nexus-narcoterrorism-hezbollah-and-venezuela> (Accessed 20 March 2015)

Noticias RCN (2014), “Las FARC contaría con 15.700 hombres”, 24 August, <http://www.cerac.org.co/assets/pdf/Media/La%20guerrilla%20de%20las%20Farc%20contar%C3%A9%20con%2015.pdf> (Accessed 20 March 2015)

Núñez P. and Vargas N. (2015), “El ELN camina lento hacia la negociación”, in Fundación Paz y Reconciliación, *Lo que Hemos Ganado*, February, <http://www.pares.com.co/wp-content/uploads/2015/02/Ver-Informe-Completo-Lo-Que-Hemos-Ganado1.pdf> (Accessed 20 March 2015)

OECD (2014), *Managing the minerals sector: implications for trade from Peru and Colombia*, <http://www.oecd-ilibrary.org/docserver/download/5jrp6wrc2r7l.pdf?expires=1453320585&id=id&accname=guest&checksum=A8D2D0C0635F983291BE8591708C2AED> (Accessed 24 December 2015)

Palacios M., Vivescas F., Sicard A. y Niño B. (2003). “Del socavón a la vida: línea base para el acercamiento a la erradicación y prevención del trabajo infantil en la minería artesanal colombiana”. PEPTIMA. Informe de la Universidad Nacional de Colombia para Minercol Ltda. y PNUD.

Portafolio (2014), "Investigan operadores de oro por presunto lavado de activos," 26 May, <http://www.portafolio.co/economia/presunto-lavado-activos-operadores-oro> (Accessed 20 March 2015)

RCN (2013), "Gobierno dice que ELN presiona a mineros para que protesten", 24 July, <http://noticiascrcn.com/tags/paro-minero> (Accessed 20 April 2015)

Rettberg A., & Ortiz J.P. (2014), Conflicto dorado: Canales y mecanismos de la relación entre minería de oro, conflicto armado y criminalidad en Colombia. Bogotá. Universidad de los Andes.

Rocha R. (2014), "La riqueza del narcotráfico y la desigualdad en Colombia: 1976-2012," Departamento Nacional de Planeación, Archivos de Economía, N.147, 3 July, <https://colaboracion.dnp.gov.co/CDT/Estudios%20Economicos/417.pdf> (Accessed 20 April 2015)

Rudas G. and Espitia J-E. (2013), "Participación del Estado y la sociedad en la renta minera," in *Minería en Colombia, derechos, políticas públicas y gobernanza*, Contraloría General de la República, May, Vol. 1, pp. 125-173.

Sabogal A. (2012), "Levantamiento de una línea de base sobre minería ilegal de oro en Colombia," Fedesarrollo, 2 December, http://www.repository.fedesarrollo.org.co/bitstream/11445/371/1/levantamiento-de-una-l%C3%ADnea-de-base-sobre-miner%C3%ADa-ilegal-de-oro-en-Colombia-Informe_metodol%C3%B3gico_miner%C3%ADa_ilegal_oro.pdf (Accessed 20 March 2015)

Semana (2005), "Las Cuentas de las FARC", Semana, 30 January, <http://www.semana.com/nacion/articulo/las-cuentas-farc/70582-3> (Accessed 20 March 2015)

United Nations Office on Drug and Crime (2014), "World Drug Report 2014", June, http://www.unodc.org/documents/data-and-analysis/WDR2014/World_Drug_Report_2014_web.pdf (Accessed 20 March 2015)

Zaum D., & Cheng C. (Eds.). (2011). *Corruption and post-conflict peacebuilding: Selling the peace?* (Vol. 29). Routledge

DUE DILIGENCE IN COLOMBIA'S GOLD SUPPLY CHAIN Overview

This report is the first of a series of assessments on Colombian gold supply chains and aims to develop an initial approach and analysis for how risks outlined in Annex II of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas are relevant in the Colombian context.

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