

CASE STUDY

Dialogue as a Strategy The Case of Just Energy Transition Processes in Cesar and Magdalena (Colombia)

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The premature and unplanned closure of mines in Cesar and Magdalena is an example of how communities, unwilling to give up, are seeking a form of dialogue in conjunction with local authorities and civil society to address the harm caused to workers and local communities by demanding dialogue mechanisms to create a mine closure policy that aligns with the principles of a Just Energy Transition (JET) Policy for the regions.

Lessons learned:

- The engagement of the communities and civil society in the mining areas demanding positive results in the conflict between the mining companies and the Colombian government is key for the implementation of JET policies at local level.
- The creation of the dialogue table with a binding approach for all parties (community, company, and government) achieved through judicial channels, has an impact on the social and legal entitlement of stakeholders, resulting on a high level of participation in JET issues.
- The contexts of violence in coal producing areas and the weakness and limited capacity of the States where JET policies are implemented make the creation of trust among parties difficult, this has an impact on effective implementation.
- Without an established JET policy, unplanned mine closures can have negative economic and environmental repercussions for communities.

1.1 Context

Colombia is the Latin American country with the highest coal exports, with an average of 59 million tons per year (ANM; 2023). Existing open-pit mines have been operating for more than 30 years, with serious impacts on public health, contamination of water sources, soil desertification, and destruction of ecosystems in the mining regions. However, mining has not been the only factor of soil desertification, since extensive agriculture (monocultures), livestock and deforestation in the territory, together with coal mining, have achieved that today the department of Cesar has 50% of its territory with a high degree of desertification, to such an extent that CORPOCESAR studies established that "between the years 2006, 2007 and 2008, approximately 613,000 hectares were affected by desertification" (Diario El pylon, 2021), a figure that increased in 2019, as its report "made evident the problems that Cesar's soil is going through, due to the fact that between 800,000 and 900,000 hectares suffer from desertification" (Diario El pylon, 2021). The affected areas are inhabited by indigenous peoples, Afro-descendants and peasants with a great spiritual, cultural and ancestral knowledge wealth.

Before the arrival of open-pit coal mining, these areas were dedicated to the agriculture of cotton, corn and even livestock among other activities, which were carried out in harmony with nature, considering customs and traditions.

Subsequently, in Cesar and Magdalena since the 80s experienced "a strong territorial transformation by the arrival of large-scale coal mining activity, economic model that by its size and scope are of high impact both for the territories and for the societies that live there" (CGR; 2018), completely changing their economy towards coal mining. In 2019, "this mining district became the first in thermal coal exports in Colombia with figures that reached 64% of the total coal exported, surpassing the Cerrejón mine in La Guajira" (MME; 2021). Despite this, "it was only until the 1990s that indigenous people and peasants began to know and denounce the damages that coal mining caused in their ancestral territories" (CGR; 2014).

However, what happens when coal mines are closed prematurely, without adequate planning and resulting in an unplanned Just Energy Transition (JET) process? In the Cesar and Magdalena regions, the Swiss company Glencore returned two coal mines in 2020: Calenturitas and La Jagua to the Colombian State. Both mines had 10 years of mining operation left. By returning the mines, the closure plans agreed with the Colombian State in 2016, which foresaw the exploitation of the mine until 2028-2032, became uncertain, which generated social, legal, economic, and political conflicts.

This situation caused four crucial challenges:

- **Mine rehabilitation and liabilities.** Uncertainty about the ecological and social restoration of environmental and social liabilities in the impacted areas of the two mines affecting more than 14 communities representing approximately 20 thousand families.
- **Jobs and livelihood protection.** Layoffs of more than 1,200 direct and 500 indirect workers leading to widespread unemployment, in addition to affecting the entire commercial chain around the mining operation that employs approximately more than 10,000 people. No labor reconversion programs are in place.
- **Environmental degradation.** Crisis of access to drinking water in mining regions, desertification of soils that hinders agriculture in the territories, health problems due to air and water pollution as a result of mining exploitation and now high levels of poverty due to the early closure of the mines, prevent a real JET (CGR; 2018).
- **JET planning and social unrest.** Conflict between the State, the Company and the Local Authorities due to lack of decisions regarding the definitive closure of the two mines and the implementation of an unplanned JET policy, causing high social conflict and increasing violence.

Now, with the challenges mentioned above, in the departments of Cesar and Magdalena, five central actors interacted as follows:

- First the communities and unions in the areas of direct influence organized together with **Tierra Digna**, an environmental NGO. This organization and alliance were vital in the process, given that as a team effort the tutela action (a legal mechanism in Colombia for the defense of human rights) resulted in the court order for the creation of the *Mesa para la Transición Justa y la Defensa Territorial* (Roundtable for Just Transition and Territorial Defense).
- Second, the mining company, Glencore, which to date has not complied with the closure plan for these mines, creating challenges for other actors.
- Third is the Colombian State and its lack of clarity about the mine closure process and the JET policy it wants to implement. Given that until the end of 2023 it had not established whether there would be a total and definitive closure of the mines, even though in 2022, the government of President Gustavo Petro indicated the change of the mining corridor (as this area was called) to the corridor of life, as a pilot in the country of just energy transition.

These three actors are fundamental, since they are at the heart of the problem and are the ones who have a seat at the table for the just transition and territorial defense, in order to seek solutions that are beneficial for all. The issues that should be discussed at the table are environmental liabilities, human rights violations and the economic transition that should take place in these territories. It is worth noting that many of our communities already have in mind proposals for sustainable and sustainable pre-productive development that will allow them to generate this transition and create a regional brand.

- Fourth, the international community of coal consuming countries such as Germany, which invests in JET policies.
- And finally, the fifth actor are the local authorities that are not prepared to face mine closure, the economic crisis of the region and the lack of planning of a local JET policy.

A crosscutting element for all actors is that there is a lack of knowledge and technical tools at the national and local level on mine closures and post-mining economic diversification programs in these areas to carry out a JET process.

1.2 JET Dimensions

The JET solution to be highlighted in this case study is the creation of a mechanism for participation in a stakeholder dialogue process designed to negotiate a mine closure plan that is established via the courts. A stakeholder dialogue would allow access to information and be finally agreed upon a mine closure plan in a tripartite manner. The decision of the court that obliged stakeholders to establish a dialogue table was the result of the collective effort of an alliance between all the indigenous, peasant, Afro-descendant, and union communities, who with the support of the NGO Tierra Digna, were able to demand it in a lawsuit (Companies, State and Communities).

This case is in the first stage. The construction of the tripartite dialogue table was ordered by the court in November 2022 and ratified in December of that year by the court of Cesar, and although the court ruling established that it should be the company who should convene the table, the company avoided establishing it and giving it continuity due to the legal conflicts in force between it and some actors such as the State, which Glencore has filed a lawsuit before the International Center for Settlement of Investment Disputes.

The following is a timeline of the creation of the dialogue table:

Figure 1. Timeline on legal conflict of Mining Closure and just transition.



Prepared by: **Tierra Digna** Team.

For this case to succeed, there are three elements of the JET solution that must be developed:

- The first was the creation of a court-ordered dialogue table to set in motion a JET process in the mining regions. Unfortunately, however, this is a step that has not been achieved to date due to lack of will on the part of the mining company. However, the communities are not giving up and continue to advocate together with **Tierra Digna** for the roundtable to take place and build a closure plan that benefits all parties.

The political attention, international support and public debate resulting from the legal success and the subsequent dispute can strengthen the legal frameworks given that Colombia does not have a mine closure policy and a framework for a JET process, nor mechanisms for participation established in the regulations. For the transformation to be a successful process, it will be necessary to integrate other dimensions of the Just Energy Transition.

- A second element of the JET solution will be the development of community plans for JET processes, since the development of inclusive plans for green economic diversification and new livelihood opportunities designed by the communities and territories themselves is necessary to build effective JET policies. In this sense, the creation and/or proposals for productive projects should be carried out from the grassroots, in a bottom-up scheme. It is worth noting that many of the communities are already developing these types of proposals in order to seek support for their implementation and operation.

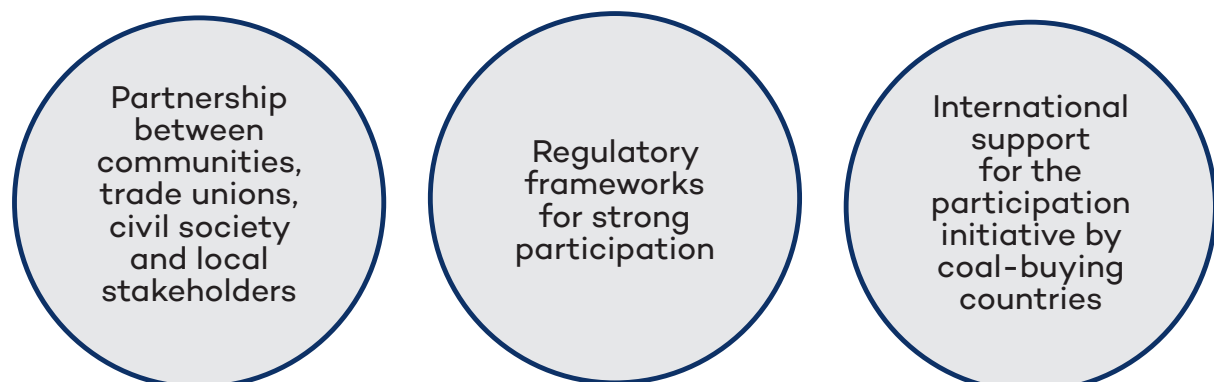
- And finally, ecological restoration is another element that is required of the JET solution, since the closure of the mines is intended to ensure the restoration of strategic ecosystems such as the decontamination of water, land, and air. Likewise, it is important to work on the issue of environmental liabilities in the territory hand in hand with the grassroots communities, especially understanding what these territories mean for the ancestral communities that live there and the relationship they have with their cultural intangibles.

1.3 Main drivers

The first steps of the formation of this participation mechanism was achieved thanks to three driving forces:

- 1. Creation of a round table that accommodated the community's vision** to present proposals for the development of local economies in the JET processes. This alliance seeks to enhance the collective formulation of JET action strategies and has as one of its main lines of action the creation of an economic vision for territories in coal mine closure areas.
- 2. Favorable legal frameworks to promote participation in JET policies.** Within the existing structures in Colombia, the legal frameworks for participation and the judicial branch contributed to achieve a judgement that made the participation in dialogue process on mine closure legally binding for all parties.
- 3. International pressure and support.** It should be noted that a key actor for the success of the process in the creation of this dialogue has been supported by the international community, who has been closely monitoring the closure processes Colombian mines.

Figure 2. Key drivers for the implementation of the closure plan table in Cesar and Magdalena..



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1.4 Main challenges and lessons learned

In this case the communities have faced many challenges, the main obstacles are:

1. The lack of political structures at the national and local level prepared for a JET process.
2. There were also obstacles due to the unconstructive behavior of the relevant actors involved, such as the international legal conflict between the Colombian State and the Glencore mining company, and finally,
3. The lack of participation mechanisms to build a JET process from the territories.

We highlight that the lack of JET public policies, the uncertainty about the definition of the definitive closure and the behavior of the company that does not want to comply with the agreed closure plans, has triggered an international legal conflict between the Colombian State and the Glencore company that has made the dialogue unconstructive and unable to be based on the trust of the parties.

On the other hand, we consider the lack of technical knowledge of the States on mine closure, the great difficulty for economic diversification in areas degraded by mining activity and the post-mining restoration processes in the framework of the JET processes have also been strong obstacles to this process.

This has made constructive dialogue between the Company, communities, and the State even more difficult. The Colombian State has not been able to build concrete solutions from and for the territories on JET issues, but has turned the issue of mine closure, just energy transition and ecological restoration into broad and often political discourses, but empty of solutions to the social and economic problems experienced in mining areas. Thus, losing confidence and increasing conflict.

The increase in social conflict and the increase in armed conflict in areas subject to JET processes and mine closure is another worrying phenomenon. In 2023, 8 community organizations were threatened, all of them belonging to the dialogue table. This makes it urgent that in mining areas where there is armed conflict, special protection and denunciation mechanisms be incorporated into the JET processes to protect environmental and human rights defenders.

Finally, the behavior of Glencore, the Colombian State and the communities leaves five valuable lessons for processes in other countries:

1. **Mandatory just transition processes for mining companies.** In areas with mining operations, the implementation of mine closure plans should be mandatory for companies following the polluter pays principle and cannot be circumvented through legal or illegal mechanisms, given the relevance of these processes for the ecological and social restoration of the territories.

- 2. Promotion of peaceful transitions.** Mining companies in mining closures and JET processes operating in countries with contexts of political violence must commit not to generate further violence from their actions and must comply with due diligence throughout the process. In addition, States must guarantee security protocols and guarantees for the defenders involved.
- 3. Guarantees of environmental protection.** Mine closure processes must be based on contributing to the JET process, which implies guaranteeing the ecological restoration of the territories, especially in the recovery of water resources, soil quality and air quality, as only this guarantees that the closure is truly just and effective.
- 4. Community-led processes.** Fourth, mining closure processes following a JET spirit must be based on the principle of community first, aiming to build strong and sustainable livelihoods in the medium and long term.
- 5. Meaningful participation and transparency of information.** Community organization can be effective for achieving participatory mechanisms that reduce conflict between States and companies. They should be supported with adequate technical knowledge of the mine closures and of the economic diversification opportunities.

Finally, it is important to remember that this is a case in which it was the communities who decided to speak out against an early mine closure and showed the country that there are ways to do it in a better way, through dialogue.

This shows that this type of situation does not only depend on the state or even on the company. The communities are a fundamental axis in this whole process and although as of January 2024 the first roundtable for the just transition and territorial defense has not yet taken place due to an apparent lack of commitment from the Colombian state and the company. The communities show us that there is always another way and that for it to develop it is necessary that all actors work hand in hand so that a true "just" energy transition is developed.

The stakeholder's engagement shows that there is an alternative way to foster a true "just" energy from a bottom-up approach. To listen and work hand in hand with the communities is the basis of all processes, JET among them.

Final recommendation:

An important lesson learned in this case is that in coal mining areas subject to JET processes, the instruments, regulations and public policies on mine closure and economic transition must be built and designed from the territories, guaranteeing effective participation mechanisms for the affected communities.

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