



## VARIANTS APPLIED TO THE CONTROL SCHEME IN MINING COMPANIES IN ÍQUIRA – HUILA

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### KEY WORDS

*Mining Law  
Environmental Monitoring  
and Control  
Mining Management  
Control*

### ABSTRACT

*This research paper addresses the mining control regulatory scheme in Colombia, to set its implementation variants in order to conduct an analysis of its implementation in the companies that carry out mining activities in the municipality of Íquira (Huila), between 2008 and 2013. For its development, a mixed approach methodology was used, that is, qualitative tools as well as quantitative, using an applied research design, socio-legal and descriptive. It came to the conclusion that with further research a comparative between the before and after of the mining activity in the place of study and a possible Mining Observatory in Huila.*

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## 1. Introduction

The department of Huila is located in the southwestern area of the country; in the Andes region, extended between the Central and the Eastern mountain range, in southeast and northeast direction. Its economy is based mainly in the agriculture, predominating coffee plantations —of which is the largest producer and its quality is considered the highest in the country—; moreover, it stands out “the cacao, rice, sugar cane and frugal crops. With regard to the fish farming, Tilapia or Mojarra productions stand out, making this Department the higher producer and exporter in the country”. (Gobernación del Huila, 2005) [Governance of Huila, 2005].

Mining activity establishes another important factor in the Department’s economy, due to its geological and geomorphic conditions; it is a suitable location for the formation and/or build-up of minerals. In the Department this activity shows an incipient development both in the extraction processes and the benefit and transformation processes. In the mining that focuses its processes in the benefit and primary treatments, the activity is limited to improve the raw material and mining consumables’ quality, without the implementation and mining-industrial processes promotion that allows the obtainment of final products that generates higher value-added and better possibilities of a decent employment.

Not only are the benefit and transformation processes relevant for the mining sector in Huila, also the productive industrialization processes of stony-origin raw material “mineral, inasmuch the latest processes generated higher profitability in the mining business, from the value-added in benefit, transformation and commercialization of its products and derivatives, that marginally impacts the regional economy’s GDP” (Fundación para la educación superior y el desarrollo, 2008) [Foundation for the superior education and development, 2008] in relation to minerals and stony-materials which are subject of extraction or utilization and transformation, benefit and industrialization processes, clays, dolomite, limestone, marble, gold and phosphate rock, among others, were found in the Department.

Mining constitutes an important activity for the Department’s economy, the country and the whole world, and it is clear that the mankind survival and the existing technological developments are not possible without the execution of the referred economical activity. Nevertheless, mining is considered an activity of great consideration due to the harmful environmental damages that it causes. The mining activity throughout the production chain is regulated by technical, environmental, labor and social welfare provisions, and the competence of the different organizations in charge is well-defined not only in regard to the mining titles and environmental licenses granting, but also in this activities development’s inspection, monitoring and control.

It is important to create scenarios that allow and ensure that the mining activity continue developing and enhancing itself in the country, but under environmental sustainability criteria to preserve the environment which is a fundamental right not only for the current, but also future generations. The ideal scenario proposed requires responsible behavior by the actors involved in the mining chain, the government through its institutionalization and the individuals that carry out mining activities, in which each one of them strictly complies with their respective obligations and in compensation their rights equally enshrined in the Colombian legal system will be assured and respected.

The control and monitoring of the mining activity in the Department of Huila, in technical and environmental aspects, correspond to different authorities, which should execute their labor in an articulated and coordinated way. Among these authorities we find: the environmental and agricultural prosecutor, who has the faculty to formulate general policies and to issue administrative acts with regard to disciplinary control and, in the appropriate time, to contribute in the project implementation.

The Agencia Nacional Minera [National Mining Agency], as mining authority or national territory grantor, is responsible for promoting, celebrating, administering and monitoring concession contracts and all other mining titles for exploitation and exportation of state-ownership’s minerals, when that role is

delegated by the Ministerio de Minas y Energía [Ministry of Mines and Energy], in accordance with the law, ensuring the national benefit of the mineral resources under environmental sustainability and security criteria, and mining health for the operative personal.

From the environmental orbit, the main Department's mining authority is the Corporación Autónoma Regional del Alto Magdalena - CAM [Autonomous Regional Corporation of the Alto Magdalena's], responsible for the granting and monitoring environmental licenses of mining exploitation and exportation, in addition, it has dominion to impose sanctions such as closing and machinery confiscation as well as the impound of instruments used to impact renewable resources. These control measures are taken over by the CAM in association with the Policía Nacional [National Police], in order to prevent the use of polluting and highly hazardous substances, that are commonly used in illegal mining.

"The Dirección de Impuestos y Aduanas Nacionales - DIAN [National Direction of Taxes and Customs] is the authority responsible for the tax collection" (DIAN, 2008) that the execution of this activity generates, and accordingly must carry out the necessary control and monitoring, in order to assure the compliance with the law by the contributors.

As first municipal authority and responsible for the socioeconomic development within his jurisdiction, the Mayor has the obligation to support the mining and environmental authorities, in all the activities that were expressly mandated by legal order.

During the research, we have relied on the accompaniment of some institutions such as the Procuraduría de lo Ambiental y lo Agrario [Environmental and Agricultural Procurator's Office], and the Secretaría de Agricultura y Minería del Departamento [Secretariat of Agricultural and Mining of the Department]. This last governmental entity does not have assigned power to penalize, however, it has been overtaking y supporting, prospective mineral labors in the Departmental territory, industrialization processes researches, technical and economical assessments of projects to evaluate their viability and financing. Likewise, its institutional management brings support to the coordination, co-financing and execution, of strategic projects, to the new technology

implementation and development of productive infrastructural processes in the mining chain.

However, to pin down the monitoring and control in the appliance of the regulatory scheme in legally established companies in the municipality of Íquira (Huila) implies the search for legal and methodological scenarios, which can propound new epistemic borders for the enhancement of the administrative and inter-administrative capacities in the individuals-government relationships.

"The State will look after focusing in the completed formalization of the mining activity in Colombia. In that regard, it is necessary for all the government entities, nationally, regionally and locally, as well as all the legal entities, to have clearness about the negative impact that the illegal extraction in the mining sector, might cause in an environmental, economical, social and working level in the country. It is necessary to define integral strategies that enable the illegal extraction activity's control, by the municipality Mayors, to which it requires that they count on technical support by the Mining authority and the operative support by the public force, which allows them to take the measures that mining code qualifies them to perform. For this purpose, the Ministerio de Minas y Energía [Ministry of Mines and Energy] must ensure a joint action that involves the Ministerio de defensa [Ministry of defense], Fuerza Pública [Public Force], Ministerio del interior [Ministry of Internal Affairs], Governors, Mayors, Ministerio del medio ambiente [Ministry of Environment] and Corporaciones Autónomas Regionales [Autonomous Regional Corporations]; for this accompaniment to be effective and a real eradication of the illegal extractive activities in the country". Colombian Mining Sector's Development Policies. MME. Page 48.

[http://www.minminas.gov.co/minminas/downloads/UserFiles/File/Minas\\_%20Anllela/Otros/politicas.pdf](http://www.minminas.gov.co/minminas/downloads/UserFiles/File/Minas_%20Anllela/Otros/politicas.pdf)

## 2. Problem Question

Which are the variants in the application of the regulatory scheme in the legally established companies that carry out mining activities in the municipality of Íquira (Huila) in the period from 2008 to 2013?

In order to determine the variants is primarily necessary to have clearness in the solution of the following queries: Which is the regulatory scheme in the legally established mining companies in the Department of Huila? Which are the national and local institutions that undertake the legal control process to the mining companies that perform mining activities in the Department of Huila? Is the regulatory scheme in legally established mining companies in the Department of Huila really effective?

In furtherance of solving these research questions, a data recollection has taken place through documental analysis and interpretation, legal hermeneutics (Piconto, 1992)<sup>1</sup> of the normative that constitutes the mining regulatory control scheme, in addition the data collection by surveys and interviews. Based on the findings, and analysis of them in relation to the governments' political goals were conducted, in order to establish the ways to strengthen the institutional environmental control capability. In the research area, which took place exclusively about the mining activity, requirements and competent entities involve and intervene in mining according to what is established in the national regulations and based on a territorial research conducted in the Department of Huila, targeted on the Municipality of Íquira (Huila) in the period from 2008 to 2013.

## Environmental control and monitoring

In order to cover the research of the present thematic it is important to be clear on the current national regulations that govern the mining activity in the Colombian national territory. The Constitución Política de Colombia [Colombia Political Constitution] in Article 8 enunciates that "it is the government and individuals' obligation to protect the natural and cultural national resources" (Law 685,2001), thus, the Colombian government considers the environment as the nation's public patrimony, and the legal integration of

this premise was from the Stockholm Declaration in 1972 (Naciones Unidas, 1972) [United Nations, 1972], issued in the United Nations Conference about Human Environment, where 113 countries attended and for the first time the environmental problem was debated. As a result, a set of recommendations and principles that advocate for the sustainable development right, the environment protection and conservation, were made; in addition, a year later into our legal order the law 23 of 1973 was issued, by which the president of the republic of Colombia was vested in with extraordinary faculties to issue the Código de Recursos Naturales y Protección al Medio Ambiente [Natural Resources and Environmental Protection Code], which has as a main objective "to prevent and control environmental polluting, and seeks the improving, conservation and restoration of the renewal natural resources, in order to defend the health and welfare of all the inhabitants of the national territory" (Law 23, 1973). Subsequently, the Decree 2811 of 1974 (Decree 2811, 1974) by which the Código de Recursos Naturales y de Protección al Medio Ambiente [Natural Renewable Resources and Environmental Protection National Code] was issued; all the above establish, in their intricate objective and environmental public utility identification and social interest, that both Government and individuals, must be part of its preservation and management, and the Government as the principal administrator must engage this public function through the entities created to that end.

According to the Law 685, 2001 for the mining activity to be executed, a set of lineaments must be followed such as acquiring a concession contract, mining title, environmental license and an environmental management plan granted by the Agencia Nacional de Minería [National Mining Agency], in addition, the competent authorities must carry out constant control, and so the Law 685 is explicit in its 164 and 165 articles, that say that Mayors, Prosecutions offices and the Corporación Autónoma Regional del Alto Magdalena (CAM) [Regional Autonomous Corporation of the Alto Magdalena] have the faculty of control and monitoring, however, in reality little has been done to control the mentioned situation by the environmental authorities (Law 685, 2001).

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<sup>1</sup> Picontó. T. (1992). Teoría General de la interpretación y hermenéutica: Betti y Gadamer [General theory of interpretation and hermeneutic: Betti and Gadamer]. Anuario de Filosofía del Derecho IX [Philosophy yearbook IX.]. Legal hermeneutic is "the interpretation that aims to a normative and practical finality; it tends to gather decision criterion or a maxim for the action.

Lastly, found in the Colombian legal system the Law 99 de 1993, by which the Ministerio del Medio Ambiente [Ministry of Environment] is created, the public sector is rearranged, in charge of the environment and natural renewable resources management and conservation, and the Sistema Nacional Ambiental (SINA) [National Environmental System] is formed, the latter being “the set of orientations, regulations, activities, resources, programs and institutions, that allows the implementation of the general environmental principals” (Law 99, 1993)

The Government has established institutions and designee organizations, which aim to create a plan of politics and regulations for the renewable resources protection, recovery, conservation, regulation, use and utilization, for the purpose to ensure the environmental sustainable development, ergo, to take care of engaging prevention and control acts of all the environmental detriment factors and also to impose sanctions and to demand remediation of the damage caused.

The governmental institutions and authorities have the obligation to act in regard to the coordination principle, by which “the authorities will arrange its activities with the ones of other government agencies, in the fulfillment of its obligations and in the reconnaissance of its individuals’ rights” (Law 1437, 2001). The ideal, to which the application of this principle aims to, is that the developing activities are carrying out in an efficient way so that the Colombian government’s primary objectives are accomplished. Regarding mining activity control there are diverse entities in charge that intervenes coordinately seeking the caring and protection of the Government’s resources and the welfare of the individuals.

“The inter-administrative relation is the one that links two or more state public juridical persons, whether it is the State in the broadest sense (Nation and Providences) or any of the public juridical persons of state level” (Cassagne, 1975, pages 97-110). The state has the purposes through its institutions, which must generate between them and the individuals, relationships of inter-administrative nature to originate labors that pertain with the abidance of its duty. According to Entrena Cuesta (Entrena, 1995) the administration has an active role while the

administrated a passive one, nevertheless, citizens in Colombia have diverse control mechanisms to actively participate in the processes derived of the relationships between state entities and other institutions.

The mentioned environmental entities comply its functions to consult the State aims in terms of protection and conservation of the environment, established in the Constitución Política [Political Constitution], that is the reason why in Title II there can be found a complete chapter dedicated to the protection of the collective rights and the environment rights. For instance, in Article 80 it determines that “The State will plan the management and usage of the natural resources to guarantee its sustainable development, conservation, reinstatement or substitution (Proyecto de Acuerdo 186, 2008) [Draft Arrangement 186, 2008]” This function will be conducted by each entity in line with the affairs that were commissioned to undertake and by the inter-administrative relationships, optimally organized and coordinated, in addition to the ones that would be developed in accordance with the general environmental principles enacted in the Article 1 of the Law 99 of 1993, by which are settled the parameters of action for the environmental control institutions and the internationally enacted are adopted, in the Río de Janeiro Declaration of June of 1992 in regard to Environmental and Development, among which are found the biodiversity as national patrimony, the special protection of the moors, disaster preparedness, the use of hydrological resources for human consumption, inter alia.

In this research article, we have mainly focused on the inter-administrative relationship existing between monitoring institutions and environmental control in terms of mining activity. Initially, it was expected to conduct the research in accordance to the collected data brought by different institutions such as: Corporación Autónoma del Alto Magdalena (CAM) [Autonomous Corporation of the Alto Magdalena], the Secretaría de Agricultura y Minería del Huila [Secretariat of Agricultural and Mining of the Department of Huila], the Procurador en lo agrario y ambiental para el Huila [Environmental and agricultural prosecutor], Alcaldía de Íquira (Huila) [Office of the Mayor of Íquira (Huila)], The Dirección de Impuestos

y Aduanas Nacionales de Colombia (DIAN) [National Direction of Taxes and Customs (Dirección de Impuestos y Aduanas Nacionales - DIAN)] and the Servicio Geológico Colombiano [Colombian Geological Service] (formerly INGEOMINAS), however, the last two institutions, due to internal affairs, did not allow the research to work.

## **Institutions of Monitoring and environmental control**

The Corporación Autónoma del Alto Magdalena (CAM) [Autonomous Corporation of the Alto Magdalena] is a public corporative entity, regulated by the Article 23 of the Law 99 of 1993, and it has as a main function the environment and natural renewable resources' regulation in the Department of Huila, in order to propend the region's sustainable development in accordance with the regulations enacted by the Ministerio de Medio Ambiente [Ministry of environment] (CAM, 2015).

This institution is in charge of the affairs derived from environmental impacts and has a purpose to attack illegal mining, but only in regards to the renewable resources, that is: water, soil, air, flora and fauna; while the non-renewable resources are the mine sites, which its formation takes millions of years, are not controlled by the CAM but by the Agencia Nacional de Minería [National Mining Agency].

The CAM sanctions, closes and confiscates all the machinery and instruments used for the impaction of renewable resources (due to the illegal mining activity, that is to say, without a mining title), in joint action with the Policía Nacional [National Police], the CAM carries out this sort of control in order to impound polluting and hazardous substances used in the illegal mining.

The Secretaría de Agricultura y Minería del Huila [Secretary of Agricultural and Mining of the Department of Huila] is an entity in the Governance of the department of Huila, whose objective is to promote and orientate the agricultural, agricultural industry, mining and forestry sectors of the department, with the goal to bring support to the economical and social transformation of the rural zone in benefit of its community. In the mining sector, its role is focused on the legal framework that regulates the technique, environmentally,

legally and socially, of the extractive activity (Governance of Huila, 2015).

The El Procurador en lo Agrario y Ambiental para el Huila [Environmental and Agricultural Prosecutor for Huila]: The Delegate Prosecutor of Huila recognizes the affairs related to agriculture and environment, in accordance with the Decree 262 of 2000. It has functions of preventing and management oversight nature in the environmental and intervention before administrative and legal authorities, that goes from the monitoring of the complying of the constitutional and legal regulations and taking administrative and legal decisions, to monitoring the goods and resources of the nation. (Resolution 0017, 2000). It also counts on some faculties of disciplinary nature to guarantee the protection and preservation of the environment, the resources and the rights or conflicts generated in relation to lands (Sentence C-339/02, 2002).

The Mayor's office of Íquira: It is the most important institution, because as a territorial entity it develops multiple functions in relation to environmental and mining control, that is the reason why diverse functions and attributions of the Mayor are found in the Mining Code. In relation to the mining regulation, the mayor acts as a mining executive and managerial agency as a promoter of sectoral development and of verification. As an example there is the Article 30 that establishes that it is necessary to obtain the certification expedited by the Mayor's office to carry out "barequeo" (Activity of washing superficial sands in riverbeds with a punt, in order to subtract precious minerals), and that document also proves the legal origin of the imported minerals, and on the other hand, the document has the faculty, regulated by the Article 35 of the same Law, to narrow the zones in which the mining activity can be developed in the territory of which is responsible for. This law has the function invested in the article 306: "Mining without a title. The Mayors will proceed to suspend, at any time, by ex officio, by notice or complain of any person, the mining activity to anyone without a legal title inscribed in the Registro Minero Nacional [National Mining Registry]. (Congress of the Republic of Colombia. Law 685, 2001)

The Mayor's office's functions are not limited to the one previously mentioned.

According to the Political Constitution of Colombia in its article 314 numeral 10, it will hold all the enacted by the Constitution and the Law. Within the mining and energetic regulation and monitoring in the department of Huila, it is found that there are three variants that concur and intertwine each other in the activities of this nature, and with its relation to the public entities, and they are: (i) Mining governmental intervention level, (ii) Areas of mining concession and (iii) Mining contract's obligations.

## **Implementation Variants of the Mining Regulatory Scheme**

### ***Mining governmental intervention level***

The State, through the Law and the Constitution, creates delegated institutions and entities, and concedes their functions and faculties to establish a plan of public policies for the purpose to achieve the protection, restoration, conservation, managing, use and usage of the natural renewable resources in order to ensure the sustainable development.

Within the Law 80 of 1993, by which the General Contracting Statute of Public Administration was issued, the different parts that set out a concession contract draw-up, are: granting entity, which grants concession to an activity that due to economical or technical circumstances cannot execute or make by direct mandate to another one to undertake it; and the Concessionaire, which refers to the entrepreneur, that by his own risk, commits to build, maintain, operate and manage, or simply to build and maintain the conceded activities. (Law 80, 1993).

Furthermore, we found that the competent environmental authorities that concede or deny licenses, in accordance with the article 2 of the Decree 2041, are: "Article 2. Competent Environmental Authorities. The competent authorities to concede or deny environmental licenses, in accordance with the law and the present Decree, are: 1. The Autoridad Nacional de Licencias Ambientales (ANLA) [National Environmental Licenses Authority]. 2. The Corporaciones Autónomas Regionales y las de Desarrollo Sostenible [Regional Autonomous Corporations and of Sustainable Development].

The Regional Autonomous Corporations and of Sustainable Development can delegate the execution of this competence to the territorial entities, for which those organizations must take into account especially the technical, economical, administrative and operative capacity, to execute the delegated functions. 3. Municipalities, districts and metropolitan areas, whose urban population is higher than a million (1.000.000) inhabitants within the urban perimeter in terms of the article 66 of the Law 99 of 1993. 4. The environmental authorities created by the Law 768 of 2002 (Decree 2041, 2014) The level of governmental intervention in the mining activity is a fundamental variant that is present in all the scenarios and stages of that activity, as the state entities are responsible for implementing prevention and control acts before the factors that generate environmental detriment, and also enact power of sanction and demand restoration of the harm caused.

### ***Mining Concession Areas***

For the activity performed by the mining exploitation company to be in accordance with the law, it must take into account that "To constitute, declare and probe the right to export and exploit mines of state-owned property, can only be done by the mining concession contract" as established in the Article 14 of the Mining Code, that is to say the previously a Concession Contract must be convened, in accordance with the established in the article 45 of the Mining Code, and an environmental license should have been granted, according to the article 205 of the same law.

The Mining Code in its article 45 defines the concession contract as "the one that is held between the State and an individual to execute, by his own risk, the studies, works and projects of State's ownership minerals that can be found in a determined area". Within the objective of this contract is the exploration, building, assembly of machinery and exploitation, and it is conferred by the Agencia Nacional de Minería (ANM) [National Mining Agency].

Furthermore, to obtain this mining title, the applicant must be able, in concordance to the established in the article 1503 of the Civil Code, that is to say, that the rights and obligations titleholder, regardless of whether it is a natural or a legal person. In case of the second option,

within its social objective mining exploration and exploitation is mentioned. The Consortiums, temporary unions, solidary-base organizations that were constituted whose purpose is to carry out mining activities and communal mining projects, as addressed in the article 248 of the Mining Code.

The article 6 of the law 80 of 1993 established the parameters to have the competence of contracting:

“The people considered legally competent in the existing regulations are allowed to hold contracts with state entities, consortiums and temporal unions. The national and foreign legal persons must accredit that the contract term will not be inferior to the minimal deadline and another year”. (Law 80, 1993)

Within the law 685 of the mining code (Law 685, 2001) in the articles 22 and 25, the cession of rights emanated of a concession, states that:

A written advance notification to the granting entity is required. If after received this notification, the entity does not make a statement by a resolution within forty-five (45) days, that action implies that there is no objection and a negotiation document will be registered in the Registro Minero Nacional [National Mining Registry]. (Law 685, 2001)

And the area cession:

“There might be cession of rights emanated of a concession contract, by the material division of the designated or covered area. This cession type might comprise the right to use works, facilities, equipment and machinery and to execute the inherent contract easements, except when the involved agreed to the contrary.” (Law 685, 2001)

The mining concession area is regulated by the Chapter VI of the Mining Code, in which are established the diverse rules and regulations that had to be taken into account if exploration and exploitation mining activities in the river course are required to be undertaken, because to execute that sort of activity in that type of area may cause a higher environmental impact, so that the Law has given a specific regulation when it comes to the exploitation of water flows areas. Within the article 45 of the same law established that the concession for the exploitation execution and mining work in a

determined area or zone can not be exceeded by the particular or the concessionaire. Furthermore, within the third chapter of the Mining Code the reserved, excluded and restricted areas, and it is granted to the National Government the faculty to determine the prohibition to carry out exploitation in certain zones for various reasons of superior nature, to the fulfillment of the State’s goals.

### ***Mining Contract Obligations***

The mining concession contract is a document of consensual, bilateral and solemn nature, also hereinafter space, *intuito personae* and onerous, that is regulated by the article 45 of the Law 685 of 2001 hold between de State and an individual, on his on risk, to execute all the State’s ownership mining exploration studies, projects and works. The areas in which can be developed the mining concessions are determined by the territory where it is desirable to be executed and it is the municipal government’s responsibility to delineate the areas where the mining exploiting activities are going to be carried out.

When holding a contract, obligations are generated for both parties, which makes it a bilateral nature contract, so both grantor, who is the one that confer the right to exploit the mining area, and concessionaire, who is the one that acquires and reciprocates obligations for the effective execution of the mining works.

As mentioned above, along with having a concession contract hold, the entity must have an Environmental License, legally expedited, because it is the permission that the competent environmental authority grants for the execution of a project, work or activity. The article 3 Decree 2820 of 2010 (Decree 2820, 2010) establishes that:

The Environmental License, is the permission that the competent environmental authority grants for a project, work or activity execution, in accordance with the law and the regulations, might incur in serious detriment of the natural renewable resources or the environment or introduce substantial or notorious alterations to the landmark. (Decree 2820, 2010)

To its effective execution, it has the three following control phases: (i) To help in the mining legalization management, (ii) To

monitor the legally established mining exploiting companies, through environmental management plans and environmental impact studies, and (iii) Control of the Illegal mining that produces environmental impacts. This legalization management comes from a concession contract granted by the National Mining Agency [Agencia Nacional de Minería], in other words, from the mining authority, where it concedes the resources that it can benefit from or exploit; the corporation, through an environmental license, monitors the environmental management plans that the same company established for its measurements of investigation, controls, prevention and reparation of the environmental impacts that will be generated, so subsequently, the corporation, once granted with this environmental planning instrument of the mining title, supervises if the miner is fulfilling all the environmental actions of which it committed to keep.

As a conclusion, to practice legal mining, a concession contract granted by the National Agency of Mining (ANM) must have been acquired; in addition to that, the interested must constitute a performance warranty that safeguards the fulfillment of the mining and environmental obligations. The environmental License will encompass the allowances, authorizations and concessions of environmental nature to make use of the necessary resources for the mining project, as established in the Mining Code in its article 207.

### 3. Methodology

For the purpose to determine the impact of the mining regulatory control scheme in Colombia, subject matter will be engaged with a methodology of mixed approach, that is to say, quantitative and socio-legal applied research design; on one side, of a descriptive type to establish the implementation variants of the regulatory scheme, and in the other, an explicative type, in order to assess the inter-administrative relationship process between the legally established companies and the institutions that execute environmental monitoring and control, and mining managing control in the variant application; to that end a pertinent triangulation of recollection techniques will be used, like: texts analysis, in order to look through the existing laws related

to mining for the necessary documentary interpretation, so the theoretical framework can be established as the description of the regulatory scheme.

As a second stage, the structured interview, with a thematic core in relation to the previously described, applied to institutions' functionaries of the Huila Department, research topics. Lastly, the applied survey in the municipality of Íquira to a sample of 30 inhabitants, the questionnaire consists of three parts: i) Personal information that included age, gender, scholarship, strata, municipality and experience; ii) General information in relation to the kinds of social, environmental as well as economic impacts, and iii) Specific information related to the citizen knowledge about the law and the sort of work-related relationship to the legal mining exploitation.

The study aim of this research, is based on the case study planned by Stake (as cited in "Educational research methods, Autonomous University of Madrid, 3rd special Education Schoolteaching) that in regard to that it states that "is the study of the plurality and the complexity of a determined case, to get to understand its concrete activities' circumstances" (Stake, 1998). Taking into account the definition, this method works for the small investigations, with a time delimited framework, in terms of existing place and resources, in order to fulfill efficiently what is expected. In view of the foregoing the municipality of Íquira was selected, in that case the Cooperativa Multiactiva Agrominera [Agri-Mining Multi-Active Cooperative], where the research techniques were able to be applied to achieve accurate results by field trips in order to describe what is happening there, and lastly to carry out the collected data interpretation and analysis. (Padua, 1979).

The cooperative mentioned above started as a Mining Legalization process performed to a group of agriculturist as a means to diversify their rural economy, that finally was entitled with the Concession Contract No.IDR-10331, in name of the AGRI-MINING MULTI-ACTIVE COOPERATIVE OF THE MUNICIPALITY OF ÍQUIRA "Perdomo, Yised (October 22nd of 2012). Mining in Íquira. Blogspot. Retrieved from <http://mineriaiquira.blogspot.com.co>"; identified with the NIT (Número de Identificación Tributaria) [Tax Identification Number] 813013729 and consisted of 31

members, whom present an inter-institutional coordination between SENA (Servicio Nacional de Aprendizaje) [The National Service of Learning] Office in Neiva, the Autonomous Corporation of the Alto Magdalena (CAM) [Corporación Autónoma del Alto Magdalena] and the Governance of Huila, in order to support the legal, technical, environmental and social management of the agri-mining productive chaining. Within the results we found the fostering of a mining culture of sustainable criteria and environmentally friendly with the agricultural activities in the region, moreover the young entrepreneurs supported by the SENA, have implemented a jewelry productive unit as an added value generator of the minerals extracted there; this has brought a positive impact in terms of environmental regulation terms, a mining productivity improvement that assists the development and the community's quality of life.

Continuing with the investigation of the mentioned event that took place in the municipality of Íquira, the documentation verification of the concession contract was done, where it is established that it was granted from November 19th of 2008 to November 19th of 2038, allowing 30 mining exploitation years in 374 hectares and 2721 square meters in the confluence of the Damita creek, what means that the entrusted environmental entities must carry out monitoring in order to reduce the environmental impact that the mineral resources exploitation produces; apparently these measures have been done as required, as reported by The La Nación newspaper where the miners of Íquira were congratulated for being the first in Colombia to obtain the Fair-minded certification, due to their clean and responsible mining, which opened the doors to international markets. "Polo, Fernando. November 13th of 2014) Miners of Íquira, are first certified in Colombia. The Nation, independent news. Retrieved from <http://www.lanacion.com.co/index.php/noticias-regional/huila/item/244064-mineros-de-iquira-primeros-certificados-en-colombia>." [Mineros de Íquira, primeros certificados en Colombia.]

Complementing the idea of case study, the approach of Montero and León (Montero & León, 2005) is brought, in that its approach is a five stages method explained as follows: I) The

case's selection and definition; this research was conducted in de Department of Huila, specifically in the municipality of Íquira, where the "Cooperativa Multiactiva Agrominera" ["Agri-mining Multi-active Cooperative"], which provided the interaction in the inter-administrative relationship with the institutions that carry out the environmental monitoring and control, mining management and the relationship between the Cooperative and the individual that executes the mining activity. II) The drawing up of a list of questions, in which the problem question is formulated, and that question is linked to the five guiding questions as a roadmap to continue with the outlined research framework. III) Data sources' location, the selected techniques for data collection were texts' analysis, legal hermeneutic, interview of governmental institutions' officers and Íquira inhabitants. IV) Interpretation and analysis, in this case a thorough exam of the recollected data in order to obtain the interpretations and therewith conduct the contrast variants applications and the conclusions of all that process is needed for the thorough fulfillment of the planned objectives; and the last stage V) the preparation of the report, reflected in the project's completion, the results' presentation, the different competitions and this articles' drafting.

## 4. Results

The results indicate, as observed in the table 1, that the mining activity has generated three types of impacts: 66.67% of those surveyed consider that economy was invigorated by the jobs created, while 100% estimated that a negative impact was generated in the environment due to the rivers, soils and air pollution. Furthermore, 56.67% of those surveyed considered that there was an economical negative impact because the resources expected from the exploiting company never entered. It is worth it to mention, according to the table 2, that 73,3% of the people involved in the mining activity are men, with an age rage from 18 to 28 years. With regard to the government's attention to mining activities in the municipality, 70% of those surveyed considered that is not enough, and in respect of the monitoring to the illegal mining activity, 76,7% consider that it is

insufficient. Additionally, 56,7% pointed out that the mining activity did not bring any benefit to the municipality or its inhabitants.

Table 1. General type of impacts information

	YES	NO
Does the mining activity in the municipality of Íquira cause any social impact?	20(66,67%)	10(33,33%)
Is the environment directly affected by the mining activity?	30(100,00%)	0(0%)
Has the mining activity generated an economical contribution to the municipality?	13(43,33%)	17(56,67%)

Source: Authors' analysis

Table 2. Personal information, age and gender

Age		
<18	2	(6,7%)
18-28	13	(43,3%)
29- 38	3	(10%)
39- 48	8	(26,7%)
49-58	0	(0%)
59>	4	(13,3%)
Gender		
Male	22	(73,3%)
Female	8	(26,7%)

Source: Authors analysis

Table 3. Specific information

	Never	Occasionally	Always
Have the mining activity in the municipality of Íquira brought benefits to the country?	17 (56.7%)	10 (33.3%)	3(10%)
		Yes	No
Regarding to the attention paid by the State to the mining activity, do you believe that is enough?		9 (30%)	21(70%)
Do you believe that the illegal mining control in the municipality of Iquira (Huila) is efficient?		7 (23.3%)	23(67%)

Source: Authors' analysis

## 5. Discussion

Having said all the above, and with the purpose of introducing the current investigative project, where the variants in the application of the regulatory scheme in the companies that carry out mining activities in the municipality of Íquira (Huila) in the period from 2008 to 2013, were analyzed, the next paragraphs will address the analysis reached after studying each variant along with the applied techniques for the data recollection, such as texts and journal's analysis.

The variants in which the investigation was focused and oriented were: government intervention's level, concession areas and concession's obligations. In analyzing the first variant, title governmental intervention level, in the study texts, which were the Concession Contract and the Environmental License, was possible to visualize that the first one is governed by the Law 685 of 2001 "By which is enacted the Mining Code and other provisions", and the second by the Decree 2041 "By which is enacted the Title VIII of the Law 99 of 1993 on environmental licenses"; yet we see that in our juridical ordering a set of normativities were created in order to, on one side, promote in a legitimate way the technical exploration and exploitation of the mining resources owned by the State and individuals, and on the other, to implement an environmental managing plan in order to prevent, mitigate, remedy and compensate the environmental impacts and effects resulted of the authorized project, work or activity.

Consisting with the article 5 of the law 685 of 2001, the minerals of any kind and location, lying in the soil or subsoil, belongs exclusively to the State, and to be able to access them a Mining title must have been acquired, as established in the Article 14 of the Law 685 of 2001, which asserts that "Only can be stablish, declare and name the right to explore and exploit mines owned by the State by the mining concession contract, properly granted and registered in the National Mining Registry (Law 685, 2001) that is to say that to be able to access the mentioned minerals and lying, is required to have a Concession Contract and subsequently with an Environmental License, two issues that were evaluated and studied thoroughly during the research and in which will be mentioned hereunder: as the first item

must be highlighted that the Concession Contract is regulated in the article 45 of the law 685 of 2001, where it is related as follows:

“The Mining Concession Contract is the one that is held between the State and an individual, on his own risk, to execute all the State’s ownership mining exploration studies, projects and works, that can be located in a determined area to exploit them under the terms and conditions established by the Code”. (Law 685, 2001)

It is important to highlight that this contract will be agreed within the term requested by the proponent and up to a maximum of thirty (30) years, where that time limit will run from the date of registration of the contract on the National Mining Registry.

Once the mining Concession Contract is acquired, is necessary to request an Environmental License as is enunciated in the Article 5 of the Decree 2041 of 2014, where it asserts that “The obtainment of the environmental license is a previous requirement for the exercise of the rights that might arise from the permits, authorizations, concessions, contracts and licenses, granted by the different environmental authorities” (Decree 2041, 2014) since it is necessary to have this Environmental License to carry out the building, assembly of machinery and exploitation.

The Article 3 of the Decree 2041 of 2014 indicates that the Environmental License:

“It is the authorization that is granted by the competent environmental authority for the execution of a project, work or activity, that in accordance with the law and the regulations, might cause serious detriment of the renewable natural resources or to the environment, or to introduce significant or notorious changes to the landscape; this authorization subjects its holder to the fulfillment of the requirements, terms, conditions and obligations established therein in relation to the prevention, alleviation, amendment and management of the environmental effects of the authorized project, works or activity” (Decree 2041, 2014)

The Environmental Licenses guarantee that the human and economical activities in accordance with the ecological inflections and thus a key element get constituted, to promote

the sustainable development. Moreover, it was found that there are some competent environmental authorities entitled to grant or deny the mentioned Environmental License, which are enlisted in the Article 2 of the Decree 2041 of 2014, and are: The National Authority of Environmental Licenses; the Regional Autonomous Corporations and the ones of Sustainable Development; The municipalities, districts and metropolitan areas whose urban population is higher than (1.000.000) inhabitants within its urban perimeter in the terms referred in the Article 66 of the Law 99 of 1993; and the environmental authorities created by the Law 768 of 2002.

In our research we were able to verify that filed by CAM 73054 of September 27th of 2010, the legal representative the Multi-active Cooperative of the Municipality of Íquira, requested to the Regional Autonomous Corporation of the Alto Magdalena, a Global Environmental License for exploitation of a gold and silver deposit, located in the San Luis, Vergel, Buenos Aires, Cedro Damitas and Alto Damitas, in the jurisdiction of the municipality of Íquira, with a Concession Contract No. IDR-10331 granted by the Colombian Geological and Mining Institute (Ingeominas); which by the Resolution No. 2003 of 2011, the Regulation and Environmental Quality Subdirector granted the license, within the validation of the contract, which is of 30 years from the National Mining Registry – RMN, pointing that in case of contract termination, in an anticipated manner due to expiration, resignation, mutual agreement or execution impossibility, the Global Environmental License will be terminated as well.

Additionally, the Regulation and Environmental Quality Subdirector informed the contract holder that the environmental proposals must be fulfilled and that it has to establish the environmental measures proposed by the Environmental Impact Study – EIA and the additional measures such as preventing, controlling, alleviate and compensate the adverse negative environmental impacts that may arise from the projects activities, in addition to the aimed actions to the reduction of the risk that infringe upon the physical integrity of the staff that works in the area; moreover, the mining concession beneficiary must submit to the Regional Autonomous Corporation of the Alto

Magdalena an Annual Compliance Report (ICA); and in case of non-compliance of the imposed obligations of the Resolution and of the mentioned in the Mining Code, the mentioned sanction imposition referred in the Article 40 of the Law 1333 of 2009 prior punitive process that will be executed by the environmental authority.

Forthwith, after analyzing in the Concession Contract and the Environmental License the second variant title: mining concession areas, the Law 685 of 2001, in its Second Title – Chapter VI, it established the Concession Areas, in which it aims to announce the delimitation and demarcation that has to comply when carrying out a mining exploration or exploitation, as well as the technical regulations that must be applied in the area subject of the proposal and the contract.

In regards to the third variant title: the mining concession obligations, the liabilities that arise from this contracts are for the two concerned parties, the first one, denominated grantor, whom is the one that confers the right to exploit the mining, and the second, denominated concessionaire, whom acquires the rights and obligations to explore and exploit a deposit, moreover the Law 685 of 2001 establishes in its Article 59 that the concessionaire “is obliged to exercise his right, to comply the obligations of legal, technical, operative and environmental nature, that is expressly referred in this Code”. (Law 685, 2001)

Hereafter, an analysis of the same variants within the interviews carried out during the research was done, delving in the interview executed in the CAM because in that specific interview the more detailed data in regard of its operation in the department of Huila, was obtained.

In analyzing the first variant: governmental intervention level, it was able to visualize through the interviewer that the CAM’s purpose in the Department of Huila, to execute an environmental policy through equity, sustainability and citizen participation criteria, in order to efficiently manage the environment and the natural renewable resources, as established in the Article 23 of the Law 99 de 1993 where it is declared that:

“The Regional Autonomous Corporations are corporative entities of public nature... entrusted by the law to manage within its jurisdiction area, the environment and natural

renewable resources, and to look after its sustainable development, in accordance with the legal provisions and the Environmental Ministry’s politics.” (Law 99, 1993)

Considering the second variant: areas, the concerning areas are the ones that can produce serious detriment to the natural renewable resources or to the environment or in which might introduce substantial or notorious alterations to the landmark.

In regards to the third variant: obligations, the CAM must comply with the functions listed in the Article 31 of the Law 99 of 1993, such as:

“To implement the national policies, plans and programs in terms of the environmental, defined by the approbatory law of the National Development Plan and the National Investment Plan or by the Environmental Ministry, as well as the regional nature that has been entrusted by the law, within their jurisdiction; To exercise the maximum environmental authority function in the area of it jurisdiction, in accordance with the norms of high-level trait, in accordance with the criteria and guidelines issued by the Environmental Ministry; to promote and develop the communitarian involvement activities and programs of environmental protection, sustainable development and natural renewable resources adequate management”. (Law 99, 1993) among others...

## 6. Conclusions

The Political Constitution enunciates that it is the State’s responsibility and commitment and of the individuals to preserve and protect the national territory’s natural and cultural wealth, that is to say, that both the State and the individuals must be involved in its conservation, protection and management, as well it enunciates that it is the State’s responsibility to safeguard the environment and to preserve the areas of special ecological importance, what lead us to affirm that the State is the administrator holder of the environmental protection, and it must exercise its function together with the assistance of the delegated institutions and entities for the National Government to that end.

Through this connection is where an inter-administrative relationships between the State and the local and territorial institutions are achieved, both entities ruled by the cooperation and collaboration’s principle,

where both execute the public politics' plan for the purpose of achieving environmental management control, focused on the protection, restoration, conservation, use and utilization of the environment and the natural renewable resources in order to ensure the sustainable development; the State as the administrator holder is responsible for exercising not only prevention and control acts of all the environmental detriment factors, but also it must impose legal sanctions and demand the caused damages' restoration.

Likewise, within the Colombian legal framework a set of regulations can be found, whose purpose is to promote, by a legitimate way, the technical exploration and the mineral resources exploitation of State or private property contributing to an appropriate utilization of that resources in accordance with the principles and regulations of the national exploitation of natural renewable resources and environment, as well to assure that the mention exploitation is carried out in terms of the environmental management plan in order to prevent, mitigate, remedy and compensate the environmental impacts and effects resulted of the authorized project, work or activity. Thereon and in accordance with the administrative roles and all its interaction, it was noted, in the research, that what it was mentioned above some environmental principle of the constitutional and legal framework are intertwined, whose has been developing with a view of strengthen the regulatory scheme in terms of environmental matter in connection with the human rights, finding the following principles: 1. Integral Legal regulation principle, 2. Environmental precaution and prevention principle, 3 Highest priority principle, 4. Responsibility Principle 5.

Environmental sustainability principle; since the environmental protection and the elements that conforms it, it is the State's responsibility, and of its various agencies and the individuals, to both satisfy fairly the present and future generation's needs.

## **7. Further studies**

Further research of this matter should be conducted in order to develop a comparative framework between before and after the mining exploitation by the Multi-Active Cooperative, located in the Municipality of Íquira of the department of Huila. The forthcoming analysis must be executed by a legal, socioeconomic, cultural and environmental point of view, generated by the extractive mining activity. Even though in various times the public entities had expressed themselves regarding to the economical benefits that the mining activity represents, it is not yet clear the perception of the inhabitants of the area near this activity is carried out, because unfortunately the environmental harm generated by mining is not compensated, and the Unsatisfied Basic Needs index among the miners is still too high.

In upcoming research, it is important to established stronger cornerstones for a Mining Observatory in the department of Huila creation, an organization capable of examination of the mining and environmental licenses granted by the competent authority; on the basis of the "Law and Mining in Huila" Discussion, that took place on September 30th of 2014 in the Universidad Cooperativa's auditorium held by Research Incubator group "Mundu".

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