

# COAL MINE CLOSURE FROM A LENS OF RESTORATIVE JUSTICE, HUMAN RIGHTS, AND CORPORATE DUE DILIGENCE FOR A JUST TRANSITION IN COLOMBIA

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## ABSTRACT

A just energy transition is a central topic in discussions about the future of energy, mainly since the commitment of 196 countries in the 2015 Paris Agreement to prevent global temperatures from rising 2 degrees Celsius above pre-industrial levels. Efforts are concentrated on limiting the increase to approximately 1.5 degrees to achieve carbon neutrality by 2050.<sup>1</sup>

Colombia has set ambitious short-term greenhouse gas (GHG) emissions reduction targets (51% by 2030) and a long-term goal of carbon neutrality by 2050. Achieving these objectives necessitates a profound transformation driven by the Energy Transition Policy.<sup>2</sup> The policy mandates a shift from less than 1% to over 12% in the energy matrix by 2022 for non-conventional renewable energies, a GHG emissions reduction target from 20% to 51% by 2030, and the prioritisation of 'sustainable recovery' as the cornerstone of the economic recovery strategy post-COVID 19.<sup>3</sup>

However, as the sixth-largest global coal exporter,<sup>4</sup> Colombia faces an uncertain future. The geopolitical aftermath of the Ukrainian war has underscored the imperative to ensure energy security and expedite the transition to renewable energy sources.<sup>5</sup> While an immediate economic opportunity exists for Colombia, the long-term outlook involves an escalating decline in coal demand.<sup>6</sup> Climate policies and the rapid growth of renewables, with an expected global drop in coal demand through 2030, increasingly pressure coal's role in the power sector.<sup>7</sup>

The current Colombian energy transition policy, acknowledging the need for decarbonisation, does not envision provisions for repairing human rights impacts during the dismantling of coal operations. The existing legal frameworks on mine closure do not also consider human rights issues to remedy the adverse impacts caused to the affected communities during closure and post-closure. Questions arise regarding the Colombian government's ability to adapt and respond to the real-time decline in coal demand and potential closure operations. The consequences of the lack of preparation for these scenarios extend beyond the environment and the economy and land on the human rights of the individuals and dependent communities in the sector, such as La Guajira and Cesar departments.

This scenario calls for a fair and equitable framework for the energy transition in the coal sector, prioritising the human rights of nature, individuals and populations dependent on the industry. Specific regulation focusing on human rights is required to establish clear obligations for authorities and companies during mine closure and post-closure of coal operations. The principles of restorative justice and the United Nations Guiding Principles on Business and Human Rights provide a robust framework for states and companies to identify harm, assign responsibility, repair damage, and prevent future occurrences that can be used in Colombia's coal mine closure framework.

**PART I. GENERAL INTRODUCTION**

This section provides the necessary background and justification for the proposed conceptual framework developed and discussed in the subsequent chapters. First, it contextualises the significance of coal mining in Colombia and the social concerns associated with coal extraction. Then, it focuses on the specific human rights issues in mining territories and the case of La Guajira. Later, it introduces the research problem related to the Colombian lack of preparedness for remedying human rights impacts during mine closure. Finally, it presents the research objective or aim, the research questions and the methodology chosen for the resolution.

**1.1. THE CONTEXT OF COAL IN COLOMBIA AND ITS RELATIONSHIP TO HUMAN RIGHTS.**

**1.1.1. IMPORTANCE OF COAL FOR COLOMBIA.**

Colombia's coal industry is a cornerstone of its economy and a significant player in its macroeconomics and regional development. It is a vital part of the national energy matrix, an industrial input, and a major job creator.<sup>8</sup> The country's relationship with coal has been shaped by two historical approaches: one focused on domestic energy and steel production and another purely export-oriented to generate royalties.<sup>9</sup> The former dates back to the late 19th century, while the latter gained prominence in the 1980s, driven by the neoliberal policies of the time. These policies encouraged liberalisation, privatisation, and the influx of foreign direct investment, creating favourable conditions for transnational companies to establish or expand their mining projects in the country.<sup>10</sup> As a result, Colombia's coal extraction volume has surged, making it the sixth-largest exporter in the world and the largest in Latin America.<sup>11</sup> With annual production exceeding 60 million tonnes, coal is the mining product that contributes the most to Colombia's GDP, accounting for 89.45% of the mining GDP and 0.66% of the national GDP.<sup>12</sup>



**Figure 01.** Carbon Zones in Colombia.

Source: Colombian Geological Service 2021.

Currently, 1,621 mining concession titles are distributed across the twelve coal-producing zones of the country.<sup>13</sup> Approximately 88% of coal production is extracted in the departments of La Guajira (Zone 1), Cesar (Zone 2), and Córdoba (Zone 3), primarily for export as thermal coal; the remaining 12% is extracted underground in the departments of Zones 4 to 12 (Figure 01).<sup>14</sup>

Of the coal-related titles, 97.5% are associated with small and medium-sized mining, which generates 10% of national production.<sup>15</sup> In comparison, only 2.5% pertain to large-scale mining by multinational companies and their subsidiaries. These companies conduct open-pit mining activities in Cesar and La Guajira, responsible for 92% of the country's

production.<sup>16</sup> The largest coal companies, Drummond and Glencore subsidiaries -Prodeco and Cerrejón- have generated, on

average, 24,000 jobs (direct and contractors) per year, which represents 11,9% of the total employment generated by mining and quarrying activity at the national level. They have also contributed around 96% of the coal royalties, which shows their importance in the national and regional context.<sup>17</sup>

In addition to its national contributions, coal mining significantly impacts local economies through variables such as employment, GDP, and regional exports. For instance, in Zone 1 -La Guajira-, the mining and quarrying sector represents 38.9% of the departmental GDP, with 99.3% of total exports in 2020, while in Zone 2-Cesar-, the contribution to GDP is 40.7%, and exports account for 99.6%.<sup>18</sup> This phenomenon is even more pronounced in the coal-dependent municipalities where coal production is concentrated.<sup>19</sup> In this sense, Zones 1 and 2 contain the country's most significant coal- dependent municipalities. For Cesar, 92% of production is concentrated in three municipalities: Becerril, La Jagua de Ibirico, and Agustín Codazzi. Similarly, in La Guajira, 97% of production is concentrated in three municipalities: Albania, Hatonuevo, and Barrancas.<sup>20</sup>

### 1.1.2. SOCIAL DYNAMICS IN VULNERABLE MINING COAL-DEPENDENT COMMUNITIES

Despite what one might expect, these coal-rich municipalities are not wealthy. On the contrary, it can be argued that they suffer from the 'commodities curse,' a phenomenon in which oil, gas, and mineral- rich countries fail to reach their full potential due to their natural resource wealth and the government's failure to address public welfare needs effectively.<sup>21</sup>



**Figure 02.** Map of La Guajira and the open-pit mine "El Cerrejón" location

Source: The Cerrejón 2022.

The Department of La Guajira exemplifies this situation. It is home to the largest open-pit coal mine in Latin America, 'El Cerrejón' (Figure 02), with over 12,000 workers, including direct employees and contractors, more than 60% of whom are local.<sup>22</sup>

Yet, the 'coal boom' did not mean development but corruption and neglect. La Guajira remains one of Colombia's most impoverished and vulnerable regions. According to 2020 figures from the National Administrative Department

of Statistics (DANE), the department's monetary poverty rates exceed 66%, and extreme economic poverty is at 39%, the highest in the country in both cases.<sup>23</sup> The multidimensional poverty index, which includes illiteracy, low educational attainment, barriers to healthcare services, long-term unemployment, critical overcrowding, water access, child labour, and informal work, among others, stands at over 50%, ranking it fourth nationally.<sup>24</sup> One reason for the population's hardships is the high levels of political and administrative corruption,<sup>25</sup> exacerbating a prolonged institutional crisis and state absence that has led to human rights violations, especially among the Wayúu indigenous people, who make up 41.7% of the population.<sup>26</sup>

In addition, the region's social fabric has also been deeply fragmented by community issues, mainly due to conflicts of interest related to local employment and contracting opportunities in the mining industry.<sup>27</sup> These challenges have been further compounded by how corporate social investment funding is managed and distributed.<sup>28</sup> Mining corporations like El Cerrejón have often stepped in to fill the gap left by the state, providing essential social services such as education, healthcare, and infrastructure.<sup>29</sup> While these initiatives are intended to benefit local communities, they have also created a deep dependency on mining activities, leading to complex power dynamics and tensions within the affected populations.<sup>30</sup> The result is a cycle of dependency, where their economic and social well-being is tied to the continued existence of an industry that also threatens their long-term sustainability.<sup>31</sup> This situation underscores the need for a more equitable and sustainable approach to business practices that empowers communities rather than deepens their vulnerabilities.

### **1.1.3. HUMAN RIGHTS CONCERNS DERIVED FROM COAL MINING ACTIVITIES IN LA GUAJIRA.**

The risks associated with mining activity have become a harsh reality in Colombia's coal mining regions, particularly in La Guajira, where the social and environmental impacts have deeply affected the territory, leading to significant negative consequences on the enjoyment of human rights by individuals, communities, and nature.<sup>32</sup>

For instance, communities surrounding El Cerrejón have endured profound changes in their landscape, flora, and fauna due to the relentless expansion of mining operations.<sup>33</sup> The resulting air, water, and soil pollution from dust, gases, vibrations, and noise have severely hindered their right to a healthy environment and have negatively impacted public health.<sup>34</sup> Beyond land and environmental concerns, workers in La Guajira have faced precarious labour conditions, with insufficient guarantees of union rights and equitable opportunities.<sup>35</sup>

Additionally, the voluntary or forced resettlement of local populations, displaced to make way for mining activities, has infringed upon their property and housing rights, contributing to human insecurity and displacement.<sup>36</sup> These relocations often involved a loss of land and territory, which were particularly detrimental to indigenous and Afro-Colombian peoples, whose cultural identities and livelihoods are closely tied to their ancestral lands.<sup>37</sup> The lack of adequate participation and consultation in these processes further exacerbated the disconnection of these ethnic communities from their essential territories. The lack of access to resources such as land and water has further eroded their individual and collective human rights, threatening their very existence.<sup>38</sup>

Other alarming allegations are tied to threats and attacks on the lives and personal integrity of community leaders, environmental defenders, and other vulnerable individuals. Armed actors, including guerrilla and paramilitary forces with a historical presence in the region, have reportedly targeted those who oppose or critique mining activities, further intensifying the atmosphere of fear and repression.<sup>39</sup>

These examples show the profound human rights violations arising from the extractive industry despite being heavily regulated in Colombia. The adverse impacts on this region's environment, public health, labour rights, and cultural heritage are a stark reminder of the need for more decisive state intervention and corporate accountability. The displacement of communities, degradation of vital ecosystems, and threats to the lives and safety of those who stand in opposition to these activities highlight systemic failures to protect the fundamental rights guaranteed by Colombia's Constitution and international treaties. The state's failure to address these issues deepens these communities' social and environmental injustices and risks exposing Colombia to international scrutiny and liability. To prevent further harm, state and corporate actors must take urgent and comprehensive action to remedy these violations and ensure that human rights are respected, protected, and fulfilled in all future mining operations.

## **1.2. THE DECLINE OF COAL IN COLOMBIA AND ITS EFFECT ON HUMAN RIGHTS.**

The decline in coal production levels at Cerrejón in 2023,<sup>40</sup> alongside the approaching termination of mining concessions across Colombia,<sup>41</sup> presents significant risks for vulnerable communities, particularly in coal-dependent regions like La Guajira and Cesar. As coal demand decreases globally, the potential withdrawal of mining companies threatens to exacerbate existing socioeconomic and environmental challenges, raising urgent questions about the future of these communities and their human rights.<sup>42</sup> Since Colombia has abundant coal reserves primarily destined for export, the decrease in international demand for this mineral and the eventual withdrawal of mining companies can directly affect the production and economy of coal-producing regions.<sup>43</sup> Moreover, it can result in medium—and long-term negative impacts on nature and people's human rights.

### **1.2.1. HUMAN RIGHTS POTENTIAL IMPACTS OF MINE CLOSURE AND POST-CLOSURE ACTIVITIES.**

When a mining region is affected, possibly due to falling commodity prices or the exhaustion of the coal reserves, the mine closure can lead to severe political, economic and social repercussions. Some examples of coal mining closures in India,<sup>44</sup> South Africa<sup>45</sup> and the United States,<sup>46</sup> where these adverse effects have been apparent, show the vast array of potential negative consequences on recognised human rights as defined by international treaties, such as the right to health, culture, the right to continuous improvement of living conditions, and food security.<sup>47</sup> These affectations represent the loss of livelihoods, environmental degradation, and health risks (Table 01).<sup>48</sup> They can be caused by insufficient planning for post-mining land use during the mine closure or post-closure.<sup>49</sup>

**Table 01.** Potential Human Rights Impacts During Mine Closure and Post-Closure.

<b>Human Rights Impact</b>	<b>Consequences</b>
<b>Loss of Livelihoods</b>	Workers and communities dependent on the mine for employment and income can face severe economic hardship when a mine closes, as mines usually constitute a significant portion of the local economy. The sudden loss of jobs can lead to increased poverty, unemployment, and economic instability. <sup>50</sup>
<b>Forced Migration and Displacement</b>	Communities that rely on mining may be forced to migrate in search of new opportunities, disrupting social and cultural ties. In remote mining towns, closing a mine can mean the closure of the town itself due to limited alternative employment opportunities, known as ‘ghost towns’. This is particularly traumatic in less wealthy societies with fewer job options. In some cases, poor land rehabilitation after mine closure can render the land unusable, forcing people to relocate. <sup>51</sup>
<b>Cultural Disintegration</b>	The closure of mines can lead to the disintegration of community structures, as economic difficulties strain relationships and social cohesion. <sup>52</sup>
<b>Loss of Access to Services and Infrastructure</b>	Many mining companies provide essential services, such as healthcare, education, and utilities, to the communities they operate in. When the mine closes, these services may be withdrawn, leaving the community without basic amenities. <sup>53</sup>
<b>Unhealthy environment, water contamination and food insecurity.</b>	Water contamination from acid mine drainage and heavy metals can affect drinking water and agricultural land, threatening the right to water and health. <sup>54</sup> Soil degradation due to inadequate land rehabilitation can lead to erosion and loss of arable land, impacting food security and the right to a healthy environment. <sup>55</sup> At the same time, the loss of biodiversity and degraded ecosystems can disrupt the livelihoods of communities dependent on natural resources for food, medicine, and cultural practices. <sup>56</sup>
<b>Health Risks</b>	Residual pollution from abandoned mine waste poses long-term health risks to communities, such as respiratory diseases, cancer, and other illnesses due to exposure to toxins. <sup>57</sup> In addition, the economic and social impacts of mine closures can lead to mental health problems, including depression, anxiety, and stress, particularly in communities with limited access to mental health services. <sup>58</sup>

Source: Elaboration from author.

The latter is not meant to be an exhaustive list; it is only illustrative of the potential impacts that could arise in La Guajira due to dismantling coal operations in the region. The current socioeconomic context of coal mining in La Guajira presents a significant challenge for Colombia's government in ensuring that the rights of these populations are protected during the energy transition and coal phase-out to avoid any of these and other adverse effects on their human rights. In particular, the government needs to take into account the background of forced displacement of indigenous communities, severe water scarcity, and social disruption caused by coal mining that has already undermined the rights to land, water, and livelihoods of the communities. As the country moves toward mine closure and post-closure, the government must address the risks associated with these processes and remedy the long-standing impacts on both people and the environment to fully repair the economic, social, and environmental damage inflicted.

### **1.2.2. IS COLOMBIA PREPARED TO HANDLE A COAL PHASE-OUT AND PROTECT HUMAN RIGHTS DURING COAL MINE CLOSURE?**

The lack of provisions, as evidenced when multinational Prodeco left Cesar in 2021, to ensure effective remedies for human rights impacts during mine closure and the post-closure phase, calls into question the reality of a just transition, which is to leave no one behind. In 2020, Glencore announced the resignation, transfer of its titles, and closure of its Prodeco mines in the department of Cesar, marking the beginning of the decline or 'twilight' of the coal industry in Colombia.<sup>59</sup> Yet the government could not help the widespread layoffs under the modality of ‘voluntary retreat’ and a slowdown in economic

activities that came later due to the halt in mining.<sup>60</sup> The long-term consequences for the community are yet to be seen. Still, one thing is sure: the suspension of Prodeco's mining operations in Cesar significantly altered the context of discussions on just energy transitions.<sup>61</sup> The case highlighted the void in regulations addressing social liabilities during mine closure. However, despite the awareness raised, Glencore has left the country impune of the human rights impacts caused before and during the resignation of its mine titles, and no effective remedy has been offered for the affected communities.<sup>62</sup> This lack of action has left the communities in ongoing legal struggles.<sup>63</sup> Despite a court ruling that mandated holding dialogue tables with the community and Prodeco to create a Transition Plan,<sup>64</sup> the community reported that only one meeting was held to present the closure plan proposal, not to construct or debate it jointly. They demand the creation of a working group that includes entities such as the Ministry of Mines and Energy, the National Environmental Licensing Agency, the National Mining Agency, and Prodeco, as well as the participation of the communities and supervision by the Ombudsman's Office and the Attorney General's Office to ensure citizen participation.<sup>65</sup> This case is under review by the Constitutional Court, which oversees the Tutela rulings decided in the second instance.<sup>66</sup>

After the Prodeco case, civil society and academia have advanced exhaustive analyses of closure processes and planned coal decline, considering the principles of energy justice: recognition, participation, distribution, and restoration.<sup>67</sup> The current administration has recognised this situation and agrees there is an opportunity to prepare more for mine closure, particularly in large-scale projects where the effects in coal regions are deeper, with companies leaving sooner than expected or executing poorly designed closure plans.<sup>68</sup>

### **1.2.3. THE NEED FOR A FAIR COAL PHASE-OUT IN COLOMBIA WITH A HUMAN RIGHTS APPROACH.**

A human rights-based approach must be mainstreamed into all state actions, ensuring that the rights of those affected by the coal phase-out are upheld.<sup>69</sup> This approach in Colombia's coal phase-out is not just a moral duty or an ideological goal; it is a binding obligation rooted in the international human rights treaties the country has ratified,<sup>70</sup> the constitutional functions of the state,<sup>71</sup> and the urgent realities facing affected communities. This approach is non-negotiable. Therefore, Colombia must balance its short-term economic opportunities with long-term sustainability and human rights obligations, especially as global demand for coal declines. The transition must be viewed through the lens of energy justice, ensuring it is fair to those most affected: individuals, communities, and the environment.<sup>72</sup> A just transition is not a substitute for sustainable development but should, at the very least, avoid exacerbating inequality, address environmental issues, and respect human rights beyond labour considerations.<sup>73</sup> Ideally, decarbonisation measures can achieve these goals while also contributing to global climate change efforts. Guaranteeing the right to remedy and reparation is crucial for communities suffering from the negative impacts of mine closure. Insufficient measures to provide adequate access to justice and reparations for the adverse impacts of mine closures would violate fundamental rights.<sup>74</sup>

### **1.3. OBJECTIVE AND RESEARCH QUESTION.**

This study focuses on developing a conceptual framework for the closure and post-closure stages of coal mines in Colombia, addressing human rights concerns of coal-dependent communities and the role of transnational companies operating large-scale coal projects. By combining the principles of restorative justice, the United Nations Guiding Principles on Business and Human Rights (UNGPs) and mandatory corporate due diligence, this research proposes that a just transition can only be achieved when these elements are integrated.

This dissertation's central research question is: How can a human rights-centred approach combine restorative justice principles and corporate due diligence obligations to provide a just energy transition framework for closing large-scale coal projects in Colombia?

#### **1.3.1. METHODOLOGY.**

The research employs a doctrinal legal research approach, traditionally used in legal research, to systematically examine and interpret laws, legal principles, and their application.<sup>75</sup> This approach is particularly relevant for parts II and III of the study, which delve into redistributive justice -exploring the concept and its application to mining closure- and the human rights and business framework - examining the United Nations Guiding Principles on Business and Human Rights (UNGPs), corporate due diligence obligations, and remedy mechanisms-. These sections thoroughly examine international legal developments, doctrines, and practices related to just energy transitions, human rights protections, and corporate responsibilities, focusing on the closing stage of mining operations.

Part IV applies this combined conceptual framework through a case analysis.<sup>76</sup> This section examines Colombia's current policy and legal system for the energy transition, identifying gaps and challenges in providing effective remedies for human rights impacts during mine closure. By analysing specific policy instruments and regulations, the study assesses how well Colombia's existing norms align with the proposed framework and where improvements are needed. The decision to focus on Colombia is driven by the researcher's prior knowledge of its legal system, the country's strategic importance as a coal supplier in Latin America and worldwide for over thirty years,<sup>77</sup> and the continuing mining controversies in Colombia from the coal multinational companies.<sup>78</sup> This makes Colombia a critical case study for examining the intersection of human

rights, corporate responsibility, and energy transitions.

Part V of the study builds on the doctrinal analysis and case study findings to provide recommendations for Colombia’s energy policy on mine closure. These recommendations are designed to integrate the conceptual framework into the country’s regulatory system, ensuring that coal mine closures are conducted in a manner that respects human rights and promotes social justice. By combining doctrinal analysis with case study and policy-focused research, this methodology provides a comprehensive approach to addressing the complex challenges of coal mine closure in Colombia, ensuring that human rights and restorative justice principles are at the forefront of the transition process.

The research relies on qualitative, desk-based methods, analysing existing documents, legal and academic texts, and reports from public authorities and international organisations.<sup>79</sup> Sources are drawn from English and Spanish public access materials, ensuring a comprehensive understanding of the issues.

### **1.3.2. SCOPE AND LIMITATIONS.**

The scope of this research is limited to the theoretical design of a conceptual framework for the closure and post-closure stages of coal mines in Colombia. It does not extend to the practical implementation or execution of these policies nor the analysis of their efficacy. The framework’s reception and its economic, social, and environmental impacts remain beyond the study’s scope, leaving those aspects to be addressed by other disciplines. Still, it offers a combination of theories, recommendations and criteria drawn from human rights organisations, business guidelines, and academic perspectives that can be implemented in Colombia’s energy policy. Moreover, since there is little research on the human rights impacts caused by mine closure globally and in Colombia, this dissertation only explores the potential impacts on coal-dependent communities, drawing from the precedent of human rights violations in one coal region (La Guajira) and analogous studies worldwide. More research on this topic is needed to create customised regulations that address the specific contexts of the coal regions during mine closure.

### **1.3.3. SIGNIFICANCE OF THE STUDY.**

The study is valuable because it combines elements of Colombia’s policy and legal frameworks related to energy justice and corporate due diligence—areas that have yet to be integrated and applied specifically to mine closure. This makes the research unique in its approach to crafting a policy framework for Colombia that addresses corporate accountability and remedies for protecting human rights in the context of mine closure. By proposing specific regulations based on this combined framework, this research contributes to preventing adverse impacts on nature, individuals and vulnerable coal-dependent communities, ensuring that their rights are safeguarded during the transition away from coal. The findings of this study could also serve as a foundation for future research that compares Colombia to policy frameworks from other countries facing similar coal phase-outs during the energy transition, such as South Africa, Canada, the United Kingdom, Germany, and Australia. Such comparative analyses could further refine the understanding of implementing just transitions that are both equitable and sustainable.

## **PART II. THEORETICAL FRAMEWORK**

### **2. RESTORATIVE JUSTICE IN ENERGY TRANSITIONS: THEORETICAL FOUNDATIONS FOR MINE CLOSURE IN COLOMBIA.**

#### **2.1. INTRODUCTION.**

The negative impacts of poorly managed closure processes on communities, as presented in Part I, can be severe and far-reaching. Establishing policy frameworks that integrate a just transition approach is crucial to anticipate and prevent those effects and ensure that no one is left behind during the energy transition. This chapter explores the fundamental principles and practices necessary for a just energy transition, focusing on how public policies related to decarbonisation can simultaneously address social issues and protect the human rights of individuals, local communities, and the environment. The discussion begins with examining the theoretical and conceptual frameworks underpinning a just transition. By understanding these principles, governments—such as Colombia, which has already incorporated them into its energy transition plans<sup>80</sup>—can effectively define duties and guarantees for those most impacted by the decline of coal projects in vulnerable regions.

This chapter acknowledges the challenges posed by the lack of a universally accepted definition of a just transition and introduces the energy justice theory developed by scholars, notably Raphael Heffron. This theory provides a structured approach to understanding and shaping justice within the energy sector, composed of five key tenets: distributive, procedural, restorative, recognition, and cosmopolitan justice.<sup>81</sup> Among these, the focus is set on the restorative dimension, which has received less attention from scholars, governments, and international organisations and is highlighted as particularly relevant to coal mine closure processes.<sup>82</sup> The chapter evaluates whether this component effectively incorporates human rights protections and ensures corporate accountability while exploring the limitations of existing legal instruments in enforcing restorative justice during mine closure. The analysis reveals a gap in international legal frameworks for addressing remediation in coal-affected communities, leaving restorative justice mainly within the public policy domain. Furthermore,

companies are not legally required to adopt a human rights-based approach but are guided by voluntary sectoral standards that predominantly focus on environmental and socioeconomic concerns. The chapter concludes with the need to integrate businesses to complement restorative justice with corporate principles to ensure mine closure is genuinely just.

## 2.2. JUST TRANSITION.

The term 'just transition' originates in the 1970s, emerging from the union workforce during international debates on climate change.<sup>83</sup> Initially, it was used to advocate for the rights and interests of workers in industries affected by environmental policies and the shift towards sustainable practices.<sup>84</sup>

At its core, a just transition contains a moral component centred on fairness. In the context of climate change and energy transition, the term aims to ensure that the transition to a sustainable economy is equitable, particularly for those most likely to be affected but who have contributed the least to the causes of environmental harm.<sup>85</sup> This includes workers in the extractive industry, vulnerable communities, and marginalised groups. The essence of fairness in just transition emphasises that these groups should not bear an undue burden from the shift towards cleaner energy sources.<sup>86</sup>

The fundamental idea of a just energy transition is to 'leave no one behind' as the world moves away from fossil fuels towards a more sustainable future.<sup>87</sup> To achieve this goal, the principle has evolved to include considerations beyond workers for local communities and the environment, recognizing that the negative impacts of energy transitions are widespread and multifaceted.<sup>88</sup> Today, ensuring a just transition means addressing economic, social, environmental and poverty dimensions to create inclusive and sustainable development pathways.<sup>89</sup>

Just transition is now widely accepted by academia, governments, and international institutions. Its principles have been integrated into major international frameworks and political agreements.<sup>90</sup> For instance, the concept has been a part of the UNFCCC discussions for years and is included in the preamble of the Paris Agreement.<sup>91</sup> Although its inclusion in the preamble is not legally binding, it remains a significant instrument guiding political action.<sup>92</sup> This explains why Nationally Determined Contributions (NDCs) under the Paris Agreement and the energy policies of many countries also reflect the commitment to ensuring a just transition.<sup>93</sup>

Despite its broad acceptance, there is still no single, uncontested definition of just transition.<sup>94</sup> This ambiguity can be seen as both an advantage and a disadvantage. On the one hand, the lack of a rigid definition allows the concept to be flexible and adaptable to the specific contexts and needs of different countries undergoing decarbonisation processes.<sup>95</sup> On the other hand, the malleability of the concept can make it challenging to operationalise and implement effectively.<sup>96</sup> The latter is a cause for concern because, beyond the good intention of some states, the absence of specific content for the just transition makes it challenging to guarantee fair conditions for the subjects involved.<sup>97</sup>

To give substantive content to just transition and avoid it becoming a meaningless term, scholars in the field of energy and public policy law, where this dissertation is framed, have developed a theoretical framework of energy justice. This theoretical construct focuses on understanding and operationalising the concept of energy justice, as explained next.

## 2.3. ENERGY JUSTICE.

Before the energy justice theory arose, policymakers traditionally focused on energy supply and demand issues, encapsulated in the energy trilemma of energy security, affordability, and sustainability. However, this focus often overlooked the social aspects of the energy transition.<sup>98</sup> This recognition led scholars and then governments to understand that while technical and economic challenges are essential, they must be addressed with social justice concerns to ensure a truly equitable energy transition.<sup>99</sup>

Energy justice theory ensures the fair distribution of the benefits and burdens of energy production and consumption, equitable access to energy resources, and inclusive participation in energy decision-making processes.<sup>100</sup> Developed by scholars, notably Raphael Heffron, energy justice offers a robust ethical framework for the energy industry. It helps unpack critical socio-economic complexities and serves as a vehicle for decision-makers to engage with justice concerns preemptively by tackling areas of potential inequality from the early stages of project planning throughout the lifecycle of a project.<sup>101</sup> The theoretical construct of energy justice encompasses analysing five forms of justice - distributive, procedural, recognition, restorative and cosmopolitan- (Table 02), each of which can be applied at different stages of the energy supply chain to identify and address where (in)justices occur.<sup>102</sup>

Table 02. Energy Justice Tenets.

Energy Justice Tenet	Content
<b>Distributive Justice</b>	Concerns the allocation of benefits and costs of the energy sector through space and over time. It is inherently spatial, including the siting of infrastructure. Key questions include whether revenues from energy developments are shared sufficiently and who suffers from the environmental damages.
<b>Procedural Justice</b>	Focuses on due process and total compliance with legal steps. It emphasises the importance of affected stakeholders participating in decision-making and observing all steps in environmental impact assessments.
<b>Recognition Justice</b>	Ensures the protection and respect of rights and identities of different groups in society. This includes the recognition of historical territorial rights and addressing past injustices.
<b>Restorative Justice</b>	Focuses on repairing any injustice caused by the energy sector. The harm caused to any individual should be rectified, and specific laws should be enforced to ensure proper waste management and decommissioning -dismantling of infrastructure-returning energy sites to their former use.
<b>Cosmopolitan Justice</b>	Considers that we are all global citizens and that the effects of local activities should be viewed from a broader perspective. This includes thinking about the cross-border impacts of energy systems and ensuring global fairness in energy practices.

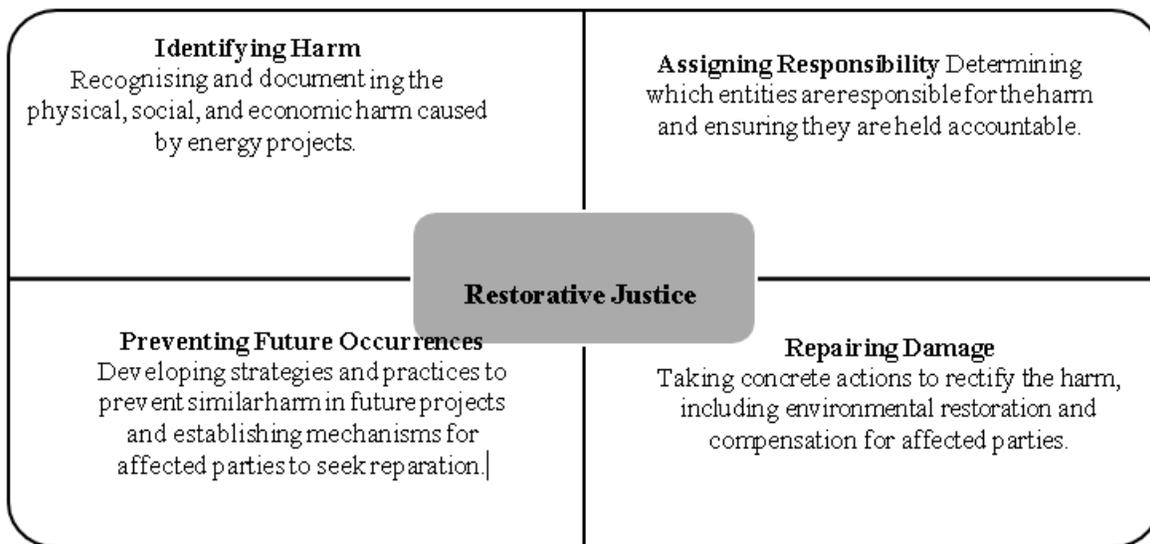
**Source:** Elaboration from the author based on Vega-Araújo and Heffron 2023<sup>103</sup>.

Each tenet of energy justice represents a distinct aspect of what justice entails and can be addressed through public policy. However, policies are most effective when these tenets are applied in combination.<sup>104</sup> For instance, in low-carbon transitions and renewable energy projects, elements of procedural justice—such as effective participation, early engagement in decision-making, timely information, impartiality, and information disclosure—are vital for achieving community acceptance. Additionally, ensuring a fair distribution of costs and benefits (distributive justice) and safeguarding the protection and respect for rights and identities (recognition justice) are crucial for building trust and agency. Addressing these injustices is considered a precondition for securing and maintaining social acceptance of new projects in a given territory, also known as the Social License to Operate.<sup>105</sup>

However, there has been limited exploration of how to practically implement the energy justice framework, especially in restorative and cosmopolitan justice. Additionally, academic discourse has predominantly focused on defining the energy justice framework rather than applying it within a policy context.<sup>106</sup> Most energy justice studies have originated from scholars in developed countries, with few evaluations considering perspectives from the Global South. Nonetheless, this is changing, as some studies are now beginning to explore the intersections of human rights and energy justice, particularly in the context of decommissioning processes.<sup>107</sup>

#### 2.4. RESTORATIVE JUSTICE FOR DECOMMISSIONING PROCESSES.<sup>108</sup>

Restorative justice is a crucial component of the energy justice framework, particularly relevant to decommissioning processes in the energy sector.<sup>109</sup> It addresses the need to repair the harm caused by the energy industry, ensuring that affected individuals and communities are adequately compensated and that environmental damage is rectified once a project concludes.<sup>110</sup> Restorative justice focuses on remedying injustices by recognising and addressing the harm inflicted on individuals and communities, enforcing measures for proper waste management, and restoring energy sites to their former state.<sup>32</sup> The theoretical foundations of restorative justice in decommissioning processes involve several key elements that can be summarised as identifying harm, assigning responsibility, repairing damage, and preventing future occurrences<sup>111</sup> (Figure 03).



**Figure 03.** Elements of Restorative Justice.

**Source:** Elaboration from the author based on Heffron R. 2021.<sup>112</sup>

However, the analysis of the contents of restorative justice within the energy justice framework faces several critical challenges and limitations:

As a developing theoretical construct, restorative justice lacks the legal frameworks necessary to enforce it on states. No international legal instrument mandates the implementation of energy justice or restorative justice in energy contexts, including the Paris Agreement or the Energy Charter Treaty.<sup>113</sup> Consequently, its application is relegated to public policy, which is subject to political will and voluntary corporate practices rather than binding legal obligations.

As discussed above, while the theoretical construct of energy justice has been developed and discussed in academic literature, its practical application within restorative policy contexts remains underexplored. This lack of practical application raises questions about the feasibility and effectiveness during coal phase-out in diverse geopolitical and socio-economic contexts, particularly in the Global South.

Furthermore, the current conceptualisation of the reparative component of restorative justice does not clearly address how to provide reparative measures from a human rights perspective. It often appears limited to economic compensations typical of civil law. As explained in the introduction, a human rights-based approach is grounded in international human rights standards and is operationally directed towards promoting and protecting human rights. It aims to analyse inequalities, redress discriminatory practices, and address unjust distributions of power that hinder development progress.<sup>114</sup> To ensure that reparations are compliant with civil, cultural, economic, political, social, and environmental rights, they must be comprehensive and address various factors related to the harm, including historical, socioeconomic, and environmental aspects. Reparations can take both symbolic and material forms,<sup>115</sup> yet these dimensions are not sufficiently elaborated within the current theoretical framework.

Moreover, there is considerable uncertainty about the role of companies in implementing restorative justice.<sup>116</sup> In consequence, companies may not effectively implement restorative justice practices without clear legal requirements, which can result in inadequate attention to involving local communities in decision-making and providing insufficient remedies. This problem raises important questions: What should be the ideal role of companies during decommissioning processes to ensure restorative justice is upheld? And how does this ideal compare to current practices? Exploring these questions can help better understand and improve how companies can contribute to meaningful restorative outcomes.

## **2.5. THE ROLE OF COMPANIES IN IMPLEMENTING RESTORATIVE JUSTICE DURING DECOMMISSIONING.**

The practical implementation of restorative justice during decommissioning is fraught with challenges, primarily due to the voluntary nature of many corporate sustainability practices and the gaps in existing regulatory frameworks.

### **2.5.1. THE LIMITATIONS OF VOLUNTARY STANDARDS.**

Companies, often the primary agents responsible for the harm caused by mining projects, are frequently expected to adopt best social justice practices voluntarily.<sup>117</sup> This reliance on voluntary compliance can lead to inconsistent and inadequate outcomes. Without clear legal mandates, companies may implement restorative practices only to the extent that they serve

their corporate interests, such as maintaining a positive public image or satisfying investors. This voluntary approach can result in superficial adherence to principles, often leading to greenwashing rather than substantive change.<sup>118</sup>

The current international standards and sectoral guidelines, such as Better Coal,<sup>119</sup> and those proposed by the International Council on Mining and Metals (ICMM),<sup>120</sup> the World Bank,<sup>121</sup> and the International Finance Corporation (IFC),<sup>122</sup> advocate for comprehensive environmental rehabilitation and the protection of community rights.<sup>123</sup> These guidelines promote sustainability practices to reduce risks and corporate liability. They stress the importance of maintaining a Social License to Operate (SLO) by engaging with local communities and addressing their concerns.<sup>124</sup> However, while these frameworks emphasise environmental rehabilitation measures -such as restoring mining sites to their natural state or repurposing them for community use- and economic considerations -economic diversification, income generation and financial well-being of workers- they often fall short in addressing crucial social aspects that focus on individual and collective human rights of the affected communities.<sup>125</sup>

### **2.5.2. INSUFFICIENT FOCUS ON HUMAN RIGHTS ASPECTS.**

These sectoral sustainability guidelines for the mining industry offer best practices for self-regulating corporate behaviour. Unfortunately, when they concentrate heavily on environmental or socioeconomic mitigation strategies, they fail to provide adequate, specific measures for repairing the adverse human rights impacts throughout the closure and post-closure stages. For instance, while environmental restoration is essential, focusing on ecological aspects can overshadow the equally important need for social and community restoration in the medium and long term. As explained in Part I, the adverse effects of mining on local communities—such as loss of livelihoods, displacement, and cultural erosion—are profound and long-lasting, but these considerations are often neglected in closure plans.<sup>126</sup>

Moreover, existing frameworks often lack detailed provisions for engaging local communities throughout the decommissioning process regarding restorative measures from a human rights perspective. This causes plans to be risk-based and only include a corporate analysis of the effects of mine closure.<sup>127</sup> Regular risk impact assessments lack the human rights approach where the impacts are considered from the business to the stakeholders -from a financial or reputational standpoint-not vice versa.<sup>128</sup> Standard risk assessments can, however, include some human rights impacts such as land use, indigenous rights, occupational health and workers' rights, and environmental protection. Still, there is a need to perform thorough analyses and complement the areas unaddressed by the project otherwise.<sup>129</sup> Furthermore, although some standards conceive detailed measures on stakeholder engagement, they are included for discussing and implementing the mine closure plans but not for designing them from the rights holders' points of view and needs.<sup>130</sup> Community participation is sometimes performed only to meet national legal requirements associated with their license contracts, resulting in closure plans being informed to the community rather than built with them. This absence of collaboration results in decommissioning processes that fail to human rights impacts and support affected communities adequately.<sup>131</sup>

When reporting the results of business activities, mining companies may opt for voluntary practices in environmental, social, and governance (ESG) that provide criteria to perform business activities ethically.<sup>132</sup> However, the current ESG practices also reveal significant gaps in addressing human rights concerns, particularly between the social (S) and governance (G) components. Governance frameworks often fail to ensure that social negative impacts are effectively managed from a rights holder's perspective, leaving communities vulnerable.<sup>133</sup> In countries with insufficient or non-existent business and human rights reporting regulations, the burden of ensuring meaningful restorative practices falls on companies to self-regulate. This self-regulation frequently results in minimal accountability and inadequate protection for affected communities.<sup>134</sup>

### **2.5.3. THE IDEAL ROLE OF COMPANIES DURING MINE CLOSURE.**

Companies should integrate restorative justice principles in the design and execution of decommissioning plans that allow for the correct identification of human rights harm, assign responsibilities for providing adequate repairs and prevent future occurrences. During mine closure and post-closure, they should address environmental and social impacts from a human rights perspective, including environmental restoration, fair compensation and support for affected communities by facilitating alternative economic options. Companies should actively engage with local communities throughout the decommissioning process, ensuring their participation and addressing their concerns. They should also adopt transparent practices and report on their decommissioning activities to demonstrate a genuine commitment to restorative justice.<sup>135</sup>

For companies to be accountable, states must be responsible for developing and enforcing comprehensive regulations that advocate for restorative justice and address environmental, social and human rights aspects of decommissioning.<sup>136</sup> This involves creating binding rules incorporating a human rights-based approach to safeguard the needs and rights of affected communities. Effective monitoring and enforcement mechanisms are essential to ensure compliance with these regulations. Additionally, states should facilitate meaningful community involvement, ensuring that local communities have a voice in the planning and decision-making processes related to decommissioning.<sup>137</sup>

A collaborative approach between states and companies is essential for ensuring that decommissioning processes are effective and just. They can contribute to a fair transition and support sustainable development by fulfilling their respective

roles.<sup>138</sup>

## 2.6. IMPORTANCE OF APPLYING RESTORATIVE JUSTICE IN COLOMBIA.

Applying restorative justice in Colombia's energy transition, particularly during coal mine closures, is crucial for addressing the historical and ongoing harm caused by extractive industries to local communities and the environment.<sup>139</sup> Restorative justice emphasises repairing this harm by ensuring fair treatment, participation, and accountability during mine closure. Integrating this approach into Colombia's energy policy framework can make the transition more just by prioritising human rights and the needs of vulnerable coal-dependent communities, ensuring they do not bear an undue burden during the shift to sustainable energy. By focusing on comprehensive reparations—including economic compensation, cultural recognition, and community involvement—it ensures that justice is not limited to corporate interests or environmental concerns but extends to the people most affected by these transitions. This approach can help Colombia avoid exacerbating existing inequalities and contribute to a fair and sustainable energy future.<sup>140</sup>

Some challenges remain in applying restorative justice principles. While energy justice theory has been developed and discussed in some academic literature, the practical application of restorative justice within policy contexts remains underexplored. Restorative justice offers a promising framework for addressing the harms caused by the energy sector. Still, it presents significant gaps and challenges regarding corporate accountability and responsibility for human rights and negative impacts during mine closure and post-closure. There is an urgent need to develop binding legal frameworks to ensure that restorative justice is not merely a policy tag but a mandated practice. Additionally, more practical applications and case studies from diverse contexts are required to refine and operationalise this concept effectively. Moreover, clear roles and expectations must be established for the state and businesses to ensure restorative justice is implemented effectively and equitably.

### PART III. CONCEPTUAL FRAMEWORK

## 3. HUMAN RIGHTS AND BUSINESS FRAMEWORK: PRACTICAL IMPLICATIONS FOR MINE CLOSURE IN COLOMBIA.

The United Nations Guiding Principles on Business and Human Rights (UNGPs) offer a robust framework that can complement restorative justice by addressing business accountability and responsibility gaps during the mine closure and post-closure process. This chapter explores how the UNGPs, particularly the III Pillar on Remedy, can support the integration of restorative justice into mine closure policies in Colombia. It aims to equip policymakers with a practical guide for implementing human rights-based approaches to mine closure public policies, ensuring they are prepared for the coal phase-out.

### 3.1. INTRODUCING THE UNGPS.

In 2011, the United Nations Human Rights Council unanimously endorsed the Guiding Principles on Business and Human Rights, a comprehensive set of voluntary guidelines for states and companies to prevent and address human rights abuses committed in business operations.<sup>141</sup> The United Nations Guiding Principles (UNGPs) go beyond the traditional notions of Corporate Social Responsibility built upon sustainability. Instead, the UNGPs establish a comprehensive framework for ensuring respect for human rights in business operations based on the rightsholders' interests.<sup>142</sup> In other words, human rights impacts are considered from the perspective of the consequences or effects for the rights holders and not from the perspective of the consequences that may occur for the company (e.g., financial, operational, legal or reputational).

The Guiding Principles comprise 31 Foundational and Operational principles, organised into three Pillars (Table 03).

**Table 03.** United Nations Guiding Principles for Protect, Respect and Remedy.

Pillar I. Protect	Pillar II. Respect	Pillar III. Remedy
<p><b>States</b> must prevent, investigate, punish and redress human rights abuses through effective policies, legislation, regulation and adjudication and set clear expectations for all businesses to respect human rights, they also must ensure policy coherence.<sup>143</sup></p>	<p><b>Companies</b> must avoid infringing on the human rights of others and should address adverse human rights impacts by preventing or mitigating their effects.<sup>144</sup></p>	<p><b>States</b> must ensure, through appropriate means, that those affected have access to effective remedies when such abuses occur.</p> <p><b>Companies</b> must establish or participate in operational-level grievance mechanisms to provide effective remedies.<sup>145</sup></p>

**Source:** Elaboration from author based on the UN Framework 2011.<sup>146</sup>

The I Pillar deals with the state's responsibility to protect human rights and focuses on the obligations of states to prevent,

investigate, punish and redress human rights abuses committed by companies. This involves adopting robust legal frameworks -public policies, legislation, regulations, or adjudication- that set out the expected behaviour of all businesses domiciled in their territory or jurisdiction to respect human rights throughout their operations.<sup>147</sup> The II Pillar focuses on the duty of all companies, regardless of their size, sector, operational context, ownership and structure, to respect human rights, which includes their obligation not to infringe on human rights, to avoid activities that cause negative consequences on human rights, and to prevent or mitigate these negative consequences.<sup>148</sup> This implies, among other measures, establishing due diligence procedures to identify, evaluate, address and monitor the negative impacts of business activities on human rights.<sup>149</sup> Finally, the III Pillar proposes guaranteeing the access of victims of such violations to state and non- state reparations means, known as grievance mechanisms.<sup>150</sup>

The UNGPs are the starting point, and other international frameworks from the Organization for Economic Cooperation and Development (OECD) and the International Labour Organization (ILO) complement them. Collectively forming robust standards for Responsible Business Conduct with a human rights approach. They guide businesses in aligning their operations with globally recognised human rights norms.<sup>151</sup> Many governments worldwide have adopted the UNGPs through policy documents known as National Action Plans (NAPs),<sup>152</sup> which outline strategies to implement these principles at the national level.<sup>153</sup> Some countries have enacted due diligence laws requiring companies to assess and mitigate human rights risks within their supply chains and report on these measures.<sup>154</sup> Additionally, the UN is discussing a binding treaty to adopt the UNGPs, which could further solidify their status as international norms and enhance their enforceability across borders.<sup>155</sup> This growing international consensus underscores the importance of global integration of human rights into business practices.

### 3.2. COMBINATION OF THE FOUR KEY COMPONENTS OF RESTORATIVE JUSTICE TO THE UNGPS FRAMEWORK.

As presented in the previous chapter, restorative justice is a theoretical framework that focuses on repairing the harm caused by wrongdoing through a process that involves victims, offenders, and the community. This approach has significant implications for business-related human rights abuses, particularly in contexts such as mine closures, where communities, workers, and the environment are often adversely affected. The four critical components of restorative justice—identifying harm, assigning responsibility, repairing damage, and preventing future occurrences—align with the UNGPs. Furthermore, the UNGPs provide a more detailed and applicable framework that can address some of the theoretical limitations of restorative justice, particularly regarding corporate accountability and limited remediation measures.

#### 3.2.1. IDENTIFYING HARM.

In restorative justice, identifying harm is the first step, requiring a thorough understanding of the impacts on victims, which may include individuals, communities, and the environment. This process involves listening to those affected and recognising the full scope of harm, including physical, emotional, economic, and social dimensions.

That aim is coherent with the UNGPs for two reasons. First, states must ensure that businesses operate in ways that identify and prevent human rights abuses by requiring companies to assess their operations' human rights real and potential impacts,<sup>156</sup> including environmental and social negative impacts during mine closure and post-closure stages. Under the UNGP, a human rights negative impact is an adverse consequence that occurs when, as a result of an act or omission, a person's ability to enjoy his or her human rights is eliminated or reduced.<sup>157</sup> Second, regardless of the ability or capacity of the state to fulfil its duties, companies have a responsibility to respect human rights, which leads to identifying negative impacts through due diligence process (Figure 04).



Figure 04. Due Diligence Process and Supporting Measures.

Source: OECD 2018.<sup>158</sup>

In agreement with the UNGPs II Pilar, the OECD Guidelines require companies to conduct Human Rights Impact Assessments (HRIA) to understand how their operations may affect various stakeholders. Through HRIA, companies can systematically identify negative impacts and integrate these assessments into their operational practices, ensuring that harm is recognised early and comprehensively addressed.<sup>159</sup> This aligns with the restorative justice focus on identifying harm but goes further by embedding this identification within a structured internal operative framework. Under due diligence, the company covers not only the negative consequences derived directly from its operation but also those directly related to its operations, products or services provided by its business relationships.<sup>160</sup> As a result of this assessment, companies must define the human rights highlighted to concentrate their primary efforts there.<sup>161</sup> This must be done from the perspective of the rights holders and not from the impacts or risks for the company.<sup>162</sup> The assessment provides input for strategic decision-making in human rights management to prevent and mitigate such impacts according to the context.<sup>163</sup>

While restorative justice offers valuable principles for addressing harm and promoting remedy, it lacks the formal mechanisms necessary for consistently identifying and addressing harms. The UNGPs fill this gap by providing a robust framework grounded in state obligations and corporate due diligence requirements. This framework emphasises a human-rights approach that places affected people at the centre of the process. By establishing clear, mandatory standards of behaviour for companies, governments like Colombia can ensure that human rights impacts are thoroughly identified during a project's operations and critical stages such as mine closure and post-closure. This comprehensive approach is essential for Colombia as it will need to design and implement effective policies for remediation measures during the coal phase-out, ensuring that past and potential future harms are addressed for the affected individuals, communities and the environment.

**3.2.2. ASSIGNING RESPONSIBILITY.**

In restorative justice, this element involves determining who is accountable for the harm caused. This process is about identifying the perpetrators and understanding the roles of different parties in contributing to the harm. This element can be directly connected to the UNGPs and the state's duty to hold businesses accountable for human rights abuses. Under the UNGPs, states must ensure that their legal and regulatory frameworks assign responsibility to companies for any harm caused by their operations. In addition to precise standards, this involves states ensuring businesses know their obligations and act accordingly. Moreover, the UNGPs require businesses to recognise their responsibilities and address their supply chains and other business relationships that may contribute to harm. The OECD standards offer three categories to help businesses address those adverse impacts that are either caused or contributed to by the enterprise or are directly linked to their operations, products or services by a business relationship (Table 04). In the third scenario, where a company is not the direct cause of the harm, it should use its influence or 'leverage' to mitigate any remaining impact to the greatest extent possible.<sup>164</sup>

**Table 04.** Types of Corporate Involvement in Human Rights Negative Impacts to Determine Responsibility.

Type of Involvement	Description of the Involvement	Relation to the Impact	Corporate Response
<b>Causes</b>	The company is the source of the impact through its activities.	Direct	It acts to prevent and mitigate the potential impact or remedy the actual impact.
<b>Contributes</b>	The company allows or enhances the negative consequences through its activities or an external entity, such as the state or another company.	Direct	It contributes to preventing, mitigating, or remedying the harm and uses its leverage.
<b>Relates</b>	The company is directly connected to the entity that is the source of the impact via a commercial relationship and, therefore, is linked to its operations, products or services.	Indirect	It uses its leverage to influence corporate response to prevent, mitigate or remedy the harm.

Source: Elaboration from author based on OECD 2018.<sup>165</sup>

Since the UNGPs are voluntary international standards, they require national implementation, especially for harmonising them with the domestic responsibility frameworks to guarantee business accountability. At this point, the UNGPs share the restorative justice struggles with enforcement, as international law has no legal framework for corporate responsibility; therefore, in the absence of specific national corporate responsibility regimes for human rights violations, they rely on voluntary acceptance of business responsibility.<sup>166</sup> However, UNGPs are considered a set of tools for governments that increasingly obtain more acceptance by countries' legislation and public policies, providing grounds for corporate responsibility through judicial systems.<sup>167</sup> This demonstrates a step towards business accountability on a national level. Yet,

they remain grey areas for impunity in the jurisdictions with weak enforcement, particularly regarding chain supply.<sup>168</sup>

Although the UNGPs are framed as soft law instruments with language often couched in terms like "should" and "may," their practical implementation at the national level requires a shift towards mandatory enforcement. Transforming these principles into binding legal frameworks—using terms such as "must" and "shall"—is crucial for establishing clear obligations and rights for all stakeholders, including authorities, companies, individuals, and communities. By embedding the UNGPs into national legislation, Colombia can ensure that human rights responsibilities are not merely aspirational but legally enforceable. This transition from voluntary to mandatory standards strengthens accountability, creates a level playing field, and ensures that the protections and remedies envisioned by the UNGPs are realised in practice, particularly in sectors like coal mining, where the stakes for affected communities during the coal phase-out are high.

**3.2.3. REPAIRING DAMAGE.**

Repairing damage in restorative justice focuses on returning the victim as much as possible to their pre-harm state. The III Pillar of the UNGPs addresses this matter directly, guiding how to materialise it. In this context, the terms reparation and remedy are similar and refer to the ability of affected individuals and communities to seek redress and obtain relief for harm caused by business-related human rights abuses. Unlike restorative justice, the UNGPs require procedural and substantive measures, meaning it involves both the processes of seeking justice -access to grievance mechanisms- (Table 05) and the outcomes of these processes -types of remedy- (Table 06). Therefore, remedy is not merely about providing compensation; it encompasses a broader concept of accountability and redress, ensuring that wrongs are righted, harms are addressed, and future abuses are prevented.<sup>169</sup> Each remedy should be tailored to the specific harm and may involve a combination of these approaches to ensure effective redress. The application of these remedies varies depending on the context and nature of the harm.<sup>170</sup>

**Table 05.** Access to Grievance: State and Non-State Mechanisms for Remedy.

State-Based Judicial Mechanisms	Include courts and tribunals that can provide legally enforceable remedies. They are crucial for adjudicating severe cases, especially criminal liability or significant human rights breaches.
State-based Non-Judicial Mechanisms	Include administrative bodies like labour inspectors or environmental agencies, which can investigate complaints, impose fines, or order corrective action.
Non-State-Based Grievance Mechanisms	Operational-level grievance mechanisms allow stakeholders to raise concerns directly with the companies.

**Source:** Elaboration from author based on the UN Framework 2011.<sup>171</sup> Table 06. Types of Remedy under UNGPs.

**Table 06.** Types of Remedy under UNGPs.

Restitution	It involves restoring the affected person or community to the original state before the harm occurred. Examples include returning property, reinstating employment, or re-establishing rights.
Compensation	It provides financial or material compensation for harm that can be economically assessed, such as physical or mental harm, loss of earnings, or property damage.
Rehabilitation	It includes measures to support recovery, including medical care, psychological support, and legal and social services.
Satisfaction	It includes acknowledgements of wrongdoing, apologies, or public declarations that restore dignity and reputation to those affected. Judicial or administrative sanctions and commemorative measures.

**Source:** Elaboration from author based on OHCHR 2024.<sup>172</sup>

The UNGPs place a clear responsibility on states and companies to provide remedies when they have caused, contributed to, or are linked to harm, especially when prevention and mitigation measures are insufficient.<sup>173</sup> This obligation surpasses traditional restorative justice by embedding reparative measures within corporate due diligence processes, transforming the responsibility into a proactive duty rather than a reactive response. For example, during mine closure, in cases of

environmental harm caused by a mining operation, restitution might involve land restoration or cleaning up pollution, combined with compensation for health issues suffered by local communities. Regarding labour rights abuses, satisfaction could include a public apology from the company, compensation for lost wages and rehabilitation in support of workers transitioning to other forms of employment. For widespread or systemic abuses, such as discrimination, a guarantee of non-repetition might involve overhauling corporate policies and providing mandatory training to prevent future occurrences of mine closures.

In the context of mine closure, these remedies can encompass environmental and socioeconomic measures, often addressed by other sustainability guidelines. However, the UNGPs differ in two critical ways. First, these measures are tailored to the specific needs and context of rights holders, informed by the outcomes of HRIAs and the dialogue established through stakeholder participation, as required by due diligence obligations. Second, the remedies are designed to address all types of rights holders, whether individually or collectively considered. This approach recognises the rights of both individuals and communities and nature itself, marking a significant departure from traditional anthropocentric views and emphasising a more holistic human rights perspective.

**3.2.4. PREVENTING FUTURE OCCURRENCES.**

Preventing future occurrences is a crucial goal of restorative justice, aiming to address the root causes of harm and implement changes that prevent similar incidents. However, restorative justice lacks the systemic tools to implement and sustain preventative measures. The UNGP shares this goal in the states' duty to create and enforce regulations that address current harms and mitigate future human rights abuses.<sup>174</sup> It also fills the gap by providing a detailed framework for state and corporate actions to prevent future harm.

In the UNGPs, the III Pillar conceives measures to prevent further harm and guarantees of non- repetition. This means measures must be designed in a way that addresses current harm, as well as prevent future occurrences of harm. This could be through changing laws, policies, or corporate practices and issuing injunctions. Grievance mechanisms should be designed and monitored per the effectiveness criteria outlined in the UNGPs, ensuring they are legitimate, accessible, predictable, equitable, transparent, rights-compatible, and a source of continuous learning (Table 07).<sup>175</sup>

**Table 07.** Effectiveness Criteria for Grievance Mechanisms under UNGPs.

Legitimate	Perceived as fair and trustworthy by stakeholders, for which meaningful stakeholder participation in its design and operation is crucial.
Accessible	Available to all affected parties without barriers to entry or by offering multiple channels for filing complaints, such as hotlines or local offices, especially for remote or marginalised communities.
Predictable	Offering a clear and transparent process with a defined timeframe.
Equitable	Providing equal opportunities for all parties to present their case and removing barriers that could discriminate groups.
Transparent	Keeping parties informed about the process and outcomes by publishing regular reports on complaints received and outcomes and providing legal assistance to vulnerable complainants when possible.
Rights-Compatible	Ensuring that remedies align with international human rights standards and do not or impose undue burdens on the complainants.
Source of Continuous Learning	These mechanisms can be managed by the company, alone or in collaboration with other interested parties and provide input to improve future practices and prevent recurrence by regularly reviewing grievance mechanism outcomes and incorporating lessons into policies and practices.

**Source:** Elaboration from author based on OHCHR 2021.<sup>176</sup>

These criteria can allow for integrating lessons from past mine closure incidents into policy and legal frameworks, ensuring continuous improvement. Companies must also consider these criteria through continuous due diligence in their operational grievance mechanisms to remedy human rights impacts previously identified and actively work to prevent them from worsening during the closure and post- closure stages. This view represents an ethical turn for businesses beyond compliance

and sustainability practices because the UNGPs require companies to strive to achieve the highest standards of human rights protection. Combined with a restorative justice lens, the approach can help prevent human rights abuses during mine closure and ensure that any harm caused is adequately and fairly addressed. A combined reading of the contents of restorative justice and UNGPs indicates that states and companies must ensure that affected communities, individuals and the environment are not in a worse situation than before the company arrives in the territory, repair for damages caused by companies during their activity, the closure and post-closure stages, have the tools to progress after the company leaves and within the framework of the energy transition, meaning become resilient, and adaptable to change. Preventing future occurrences in Colombia requires paying historical debts to the coal communities and laying the foundations for developing new projects that, for instance, are aimed at renewable energies. These projects cannot make the same mistakes as the extractive industry and require a start that does not deny past experiences but instead uses them as forms of learning. Public policies and measures adopted by the Colombian government must be consistent with history and respect the expertise of communities that have suffered abuses and, to date, have not been repaired.

### 3.3. THE APPLICATION OF THE UNGPS IN COLOMBIA.

The Colombian State has a duty to integrate the framework of business and human rights into its domestic legal system, as mandated by its international obligations under the Inter-American human rights system. This obligation is underscored by the findings and recommendations of the Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights (REDESCA) and the Inter- American Court of Human Rights (IACHR) rulings.<sup>177</sup>

These international standards place significant responsibilities on Colombia to ensure that businesses operating within and beyond its borders respect human rights. For instance, the REDESCA clarifies that under the UNGPs, states have dual obligations concerning business activities: the duty to respect and guarantee human rights.<sup>178</sup> The duty to respect requires the state to refrain from actions that directly or indirectly lead to human rights violations through business activities. States can incur direct responsibility for corporate actions under specific circumstances, such as when a company acts under state control, exercises public functions, or when the state adopts the company's conduct as its own. Additionally, the state may be held accountable for third-party violations if it fails to prevent, investigate, or punish such actions, demonstrating a form of acquiescence or tolerance. Therefore, the duty to guarantee human rights obligates Colombia to structure its legal and administrative systems to protect human rights in business operations during mine closure fully. This includes four key responsibilities: prevention, regulation, supervision, and the provision of effective remedies for violations.<sup>179</sup>

Although Colombia's legal framework does not explicitly mandate corporate human rights due diligence, several legal precedents and policy initiatives reflect an evolving commitment to integrating human rights considerations into business practices. For instance, the 1991 Constitution of Colombia embeds a fundamental concept of corporate social responsibility through articles 58 and 333 that align with the spirit of the UNGPs.<sup>180</sup> These constitutional provisions implicitly demand that businesses operate within boundaries that respect social and environmental concerns. Such constitutional mandates provide a preliminary legal basis for the broader implementation of the UNGPs in the Colombian context.<sup>181</sup>

Moreover, Colombia's judicial system has progressively interpreted these constitutional principles in ways that resonate with the UNGPs. For example, the Constitutional Court's decision in SU-123 of 2018 underscored the importance of corporate due diligence concerning the rights of Indigenous communities, particularly in prior consultation processes per ILO Convention 169.<sup>182</sup> The Court explicitly referenced the UNGPs, emphasising that companies must act with due diligence to avoid infringing on human rights and to mitigate potential negative impacts. This judicial recognition of due diligence as a standard for corporate conduct, especially in activities affecting vulnerable communities, reinforces the applicability of the UNGPs in Colombia.<sup>183</sup>

The Colombian government has taken steps to integrate the UNGPs into its national policies, particularly by developing National Action Plans on Human Rights and Businesses<sup>184</sup> and a sectoral Human Rights Policy for the Mining and Energy Sector.<sup>185</sup> However, the efforts have primarily been voluntary and non-binding, which limits their effectiveness; the National Action Plans are no longer in force, and the Energy Sector policy does not establish specific actions for decommissioning processes. To ensure that mine closure processes are conducted in a manner that respects human rights, there is a need for binding regulations that hold businesses accountable for their actions during this stage and post-closure. Two draft laws on due diligence are currently under discussion, but these are at a preliminary stage.<sup>186</sup>

This background underscores Colombia's potential to establish a comprehensive human rights due diligence policy in the coal mining sector, especially during mine closure processes. However, it raises critical questions about the extent to which Colombia meets its international obligations through its current energy policies. Are the existing regulations and frameworks for the energy transition sufficient to incorporate restorative justice principles and fulfil the UNGPs obligations for both authorities and companies during mine closure? Moreover, do these policies ensure that affected individuals, communities, and the environment have access to effective remedies throughout and after the closure of coal mines? These questions are thoroughly examined in the next chapter.

## PART IV. CASE STUDY

### 4. ANALYSIS OF COLOMBIA'S ENERGY POLICY THROUGH THE COMBINED RESTORATIVE JUSTICE AND HUMAN RIGHTS AND BUSINESS FRAMEWORK.

Over the past two administrations, Colombia has initiated various energy transition measures, each with distinct approaches. These efforts have been crucial in advancing the country's policy towards decarbonisation. However, while progress has been made in recognising the rights of affected populations, significant gaps remain. The current regulatory framework does not guarantee effective remedies for human rights abuses during the coal phase-out. There is a pressing need to establish more robust obligations for the state and companies to ensure that individuals, communities, and the environment are adequately protected and have access to remediation measures before, during, and after mine closures. Without addressing these deficiencies, the energy transition risks perpetuating existing injustices rather than fostering a truly just transition. This chapter analyses the current state and regulatory framework of Colombia's energy transition concerning coal extraction. It brings the elements of restorative justice and the human rights and business framework to highlight whether the government is on track to achieve a just transition, possible impediments, and how they can be surmounted to facilitate a just transition.

#### 4.1. A 'JUST TRANSITION' BASED ON THE EXTRACTIVIST MODEL.

During Iván Duque's presidency (2018-2022), Colombia's public energy transition policies aimed to diversify energy sources while continuing to support the mining and fossil fuel sectors. His administration facilitated significant progress in renewable energy, mainly through energy auctions that attracted substantial solar and wind power investments.<sup>187</sup> Duque's policies faced significant criticism for handling the coal sector despite these advancements.

While the National Development Plan (NDP) included measures to address issues within the mining sector, it lacked a comprehensive strategy to integrate these actions with broader economic and industrial processes that could generate higher value-added, employment, and regional benefits. The plan continued to prioritise energy security through increasing oil and gas reserves and maintaining coal production levels. This focus perpetuated Colombia's longstanding extractive economic model based on non-renewable natural resources, echoing previous administrations' "mining-energy locomotive" vision.<sup>188</sup> Critics argued that Duque's energy transition policy framework was inconsistent with Colombia's climate commitments, as it failed to adequately address the necessary reduction in extractive operations or provide a transition plan for coal-dependent regions. These policies were insufficient for a comprehensive energy system transition or for reducing economic dependency on coal exports. The overreliance on renewable technologies and electric energy failed to fully consider dismantling current extractive activities or anticipate the negative impacts on coal-dependent communities.<sup>189</sup>

When Prodeco decided to close its mine in Cesar during this administration, the national government appeared unprepared, exposing significant regulatory deficiencies regarding mine closures. Instead of discussing the necessary steps towards an energy transition, the government's response was to develop a Coal Agenda to promote coal for export, enhance competitiveness, and access new markets. New coal exploration titles were also granted, and rounds were opened to auction off Prodeco's former mines, although the latter was eventually suspended after several delays.<sup>190</sup> The National Council of Economic and Social Policy (CONPES), in its energy transition document No. 4075, only briefly and vaguely mentioned measures for regulatory strengthening in mine closures or promoting social development within the transition framework. Instead, the document emphasised efficiency and cost-reduction measures in coal extraction and market diversification. With little clarity on the post-coal transition in La Guajira and Cesar, stricter regulations for mine closures, environmental liabilities, labour reconversion, or compensation plans for the region were not prioritised.<sup>191</sup>

Another significant gap in Duque's energy transition policies was the lack of a social agenda. Despite developing important documents and roadmaps for the transition, including a CONPES, a law, a national energy plan, and several work routes, the discussion and feedback from civil society were minimal or absent. This perpetuated a tradition of centralised and non-participatory decision-making in the sector despite long-standing demands for greater openness to dialogue. As a result, many large renewable energy projects have encountered strong resistance from communities with high distrust due to decades of interaction with the coal industry. The lack of inclusive governance for renewable energies risks hindering project implementation.<sup>192</sup>

#### 4.2. A 'JUST TRANSITION' BASED ON A JUSTICE MODEL.

The election of President Gustavo Petro in June 2022 marked a shift in Colombia's political landscape. Petro, the country's first left-wing president, and his vice-president, environmental activist Francia Márquez, have pledged to reduce inequality, fight climate change, and protect the environment. Petro's administration aims to reduce fossil fuel extraction while fostering the transition to renewable energy.<sup>193</sup> Petro's government is committed to consolidating a just energy transition and sustainable economic growth, as outlined in the National Action Plan (2022-2026).<sup>194</sup>

In contrast to the previous government, the current president issued a Methodology to define the Roadmap for a Fair Energy Transition, as well as a Baseline Diagnosis that addresses the risks faced by the coal sector in the framework of the global

energy transition, the characterisation of the territories dependent on exports, and the internal transition needs of these producing regions. Another point to highlight is the participatory aspect of this policy, which was created from international perspectives, the country's progress in the energy transition, the work history of both the public sector and academia and the private sector and civil society,<sup>195</sup> representing an improvement over the last government.

#### **4.2.1. ALIGNMENT WITH THE COMBINED FRAMEWORK OF RESTORATIVE JUSTICE AND HUMAN RIGHTS AND BUSINESS.**

The Baseline Diagnostic for Colombia's energy transition plan focuses on four pillars: equity and democratisation, graduality, sovereignty and reliability, binding social participation, and a knowledge-intensive approach.<sup>196</sup> These pillars provide a robust foundation for transitioning from an extractive economy to a more equitable and sustainable one. However, the analysis through the combined framework of restorative justice and human rights and business reveals both strengths and weaknesses in addressing human rights and justice issues in the context of mine closures and protecting individuals, affected communities and the environment.

The energy transition policy's integration of climate justice, environmental justice, and energy justice principles aligns with the restorative justice approach. This is evident in the policy's focus on recognising the historical harms caused by extractivism and its emphasis on rectifying these through more inclusive and democratic energy practices. The policy integrates expressly four of the five components of the energy justice framework: recognition, procedural justice,<sup>197</sup> distributional justice,<sup>198</sup> and restorative justice.<sup>199</sup>

In the restorative justice element, the policy shows promise, particularly in the first element of identifying harm, by acknowledging the historical harms inflicted by the extractive industries on local communities and ecosystems. Also, the document's emphasis on mine closures and the need for ecological restoration aligns with the restorative justice principle of repairing harm.

However, the policy's focus on workers' rights and ecological rehabilitation, without a corresponding emphasis on the social and economic reparations for affected communities, reveals a significant gap in its restorative justice approach. The lack of clarity on who should provide remedies, under what circumstances, and to what extent leaves affected communities without clear channels for seeking redress. Moreover, the policy does not establish criteria for measuring the effectiveness of the remedies provided, which raises questions about the legitimacy and transparency of the process.

The absence of detailed measures for restitution, compensation, or satisfaction for human rights impacts leaves a critical aspect of restorative justice unaddressed. Moreover, symbolic reparations are not mentioned, which can be essential for acknowledging the dignity and rights of affected individuals and ethnic communities.

One of the most significant gaps in the policy is the absence of corporate accountability measures for human rights violations during mine closures. While the policy recognises the need to develop a new mining law that addresses mine closure regulation, it does not establish clear obligations for companies to conduct impact assessments or report on closure plan implementation with a human rights approach. This lack of corporate responsibility undermines the policy's ability to prevent future human rights abuses and to provide effective remedies for past harms.

The policy also does not address the role of grievance mechanisms in ensuring that affected individuals and communities can seek redress for human rights violations. The absence of operational-level mechanisms with a human rights focus means that companies are not required to provide accessible and effective remedies for those impacted by their operations. This gap is particularly concerning given the historical abuses suffered by mining-dependent communities in Colombia. Moreover, it also fails to specify the duties of authorities at the national, regional, and local levels in investigating human rights complaints and enforcing corrective actions. This lack of enforcement mechanisms further weakens the policy's ability to protect human rights and ensure that remedies are provided promptly and effectively.

Applying the combined restorative justice and human rights and business framework to the Baseline Diagnostic highlights several areas where the policy could be improved to better protect human rights and promote justice, summarised in Part V along with the conclusions.

#### **4.2.2. EXISTING REGULATION FOR DECOMMISSIONING PROCESSES.**

The Baseline Diagnostic identifies gaps in current mining regulations and acknowledges the challenges the Ministry of Mines and Energy and its affiliated entities face in developing a new mining code.<sup>200</sup> Although the policy document recognises the need to address decommissioning and mine closure issues, it does not provide specific measures or guidelines for the new code. Nevertheless, the latest draft of the new Mining Law does include provisions for mine closure and social remedy.<sup>201</sup> However, until this new regulation is enacted, mining companies must navigate the limitations of the existing, inadequate legal framework.<sup>202</sup>

The existing regulations related to mine closures only specify companies' environmental and labour commitments after ceasing their mining operations, when they renounce their titles, or when the license ends according to the established

clauses in the contract.<sup>203</sup> Notably, they do not mandate social remedy measures or the involvement of communities in the process.<sup>204</sup>

When mining contracts are terminated for reasons other than the depletion of reserves -such as renunciation of titles, as in the Prodeco case- the contracting company must hand over the mining infrastructure in operational condition to the National Mining Agency (ANM). Companies are not required to implement a closure plan but rather to update a document related to the projected mine closure.<sup>205</sup> Such a document must include a schedule for fulfilling pending environmental obligations and specify which areas will be subject to rehabilitation according to the mining activity performed.<sup>206</sup> In contrast, a final closure plan is needed when the concession ends by mutual agreement, expiration of the term, and death of the concessionaire.<sup>207</sup> This is more comprehensive and must include management measures for a project's dismantling and abandonment phase. It entails implementing recovery, restoration, and rehabilitation of the area and defining the final use of the intervened areas. Nonetheless, it still does not include human rights and remedy provisions.

In the absence of well-defined closure regulations, companies may choose to use closure guidance from international sources<sup>208</sup> -such as the ones analysed in Part II, with the limitations that they carry- as well as prominent national sectoral practices that align with a human rights focus, for instance, Colombia Guides<sup>209</sup> and the Responsible Business Conduct in Human Rights guidelines from the Chamber of Commerce of Bogota, are particularly relevant and provide practical recommendations for implementing due diligence activities for Small and Medium Enterprises (SMEs).<sup>210</sup> In addition, as an initiative of the Colombian Mining Agency (ACM in Spanish), they are working on the Sustainable Mining Standard for Colombia.<sup>211</sup> However, all these remain voluntary practices and companies are not obliged to disclose or report on the application of these standards.

To ensure a just energy transition in Colombia, it is imperative to implement more robust, binding frameworks for mine closure. The current regulations are insufficient, leaving significant gaps in addressing the social and environmental impacts of decommissioning processes. A comprehensive legal framework must include clear obligations for both the state and mining companies to protect the rights of affected communities and the environment. This includes enforcing social remedy measures, meaningful community involvement, and transparent accountability mechanisms. Strengthening these regulations is crucial to prevent further injustices and to guarantee that the energy transition upholds human rights and fosters sustainable development. Without such reforms, Colombia risks perpetuating the very inequities it seeks to overcome.

## **PART V. RECOMMENDATIONS AND FINAL REMARKS.**

### **5. RECOMMENDATIONS FOR COLOMBIA’S POLICY FRAMEWORK AND FINAL REMARKS.**

This section outlines specific recommendations for developing and implementing public policy in the context of coal mine closure, focusing on the critical questions of remedy, responsibility, and the role of various stakeholders, as well as the dissertation’s conclusions.

#### **5.1. THE ROLE OF PUBLIC POLICY IN INTEGRATING A HUMAN RIGHTS APPROACH.**

A fair and just energy transition in Colombia must prioritise human rights. Public policy is critical in integrating a human rights approach that guarantees the rights of individuals, communities, and the environment during Colombia's energy transition and coal phase-out. As a guiding framework for governmental action, public policy must set the foundation for addressing the complex challenges associated with mine closures, including the legal, social, and environmental impacts.<sup>212</sup> More robust regulations are needed to establish clear expectations for business conduct, particularly regarding human rights and remedies. Given the mining industry's connection to human rights issues, public policies must define the standards and responsibilities of companies in respecting and remedying human rights violations.

#### **5.2. WHY APPLY THE COMBINED FRAMEWORK OF REDISTRIBUTIVE JUSTICE AND HUMAN RIGHTS AND BUSINESS IN COLOMBIA?**

A transition from coal is fair if guided by a restorative justice approach that emphasises identifying harm, assigning responsibility, repairing damage, and preventing future occurrences. To effectively address these elements for mine closure from a human rights perspective, involving business agents in the process is crucial, as well as accurately assessing potential and real impacts through a Human Rights Impact Assessment and implementing grievance mechanisms to guarantee access to remedy with effectiveness criteria.

Colombia must fulfil its international obligations and guarantee human rights protection by integrating the UNGPs into its energy transition framework. Establishing clear and mandatory commitments for the state and businesses for closure and post-closure activities is essential. This framework must encompass the four principles of restorative justice, alongside the procedural and substantive obligations outlined in the UNGPs, to ensure robust regulations that hold businesses accountable for human rights impacts during mine closure and post-closure stages. Such an approach strengthens the effectiveness of remedies and

ensures that companies actively uphold human rights. Only by doing so can the transition be considered fair and truly just.

### 5.3. SPECIFIC RECOMMENDATIONS FOR A COAL MINE CLOSURE AND POST-CLOSURE PUBLIC POLICY.

As evidenced in Part IV, the current energy transition policy includes elements of restorative justice that require further development to materialise the justice component and provide effective remedies for individuals, communities and the environment that may be affected by mine closure activities. This complement is provided through implementing the UNGPs, as summarised next.

1. Content of remedy according to the UNGPs and its application to mine closure: The current energy policy must include substantive remedies for human rights violations during mine closure and post- closure for individuals, groups and the environment. The Policy can provide a combination of restitution (restoring affected communities and environments to their pre-impact states, such as reforestation and restoring water sources polluted by mining activities); compensation (providing financial reparations for economic losses, health impacts, and livelihood disruptions); rehabilitation (offering medical, psychological, and support to affected individuals and communities such as job retraining, social welfare programs, and economic diversification plans); and satisfaction measures (public apologies, recognition of harms, and guarantees of non-repetition through policy changes and improved practices).
2. State and non-state means of providing a remedy in the context of mine closure: Incorporating state and non-state grievance mechanisms into public policy plays a primary role in holding companies accountable and enforcing remedies. Non-state mechanisms, including company-led grievance processes and independent mediation bodies, can complement state efforts by providing more flexible and accessible channels for redress. For judicial mechanisms, public policy can strengthen domestic courts to handle cases related to environmental and human rights abuses effectively by contemplating specialised training for judges on international human rights standards and environmental law. For administrative bodies: the policy can use environmental (e.g., ANLA) and labour agencies (e.g., Labour Inspectors) to monitor compliance with mine closure regulations and address grievances.
3. They should have clear mandates and resources to enforce sanctions and remedial actions. For non- state mechanisms, the policy can mandate companies to establish internal grievance mechanisms that are accessible and transparent or adjust the existing petition mechanisms (PQRs) to have a human rights focus. Public policy should set standards for these mechanisms, ensuring they align with the effectiveness criteria outlined by the UNGPs (legitimacy, accessibility, predictability, etc.).
4. Effectiveness criteria of grievance mechanisms: State-based grievance mechanisms must be evaluated against criteria such as legitimacy, accessibility, predictability, and rights compatibility. The effectiveness of these mechanisms can be measured through speed and timeliness variables, ensuring that grievances are addressed promptly and without unnecessary delays; transparency standards favouring clear communication of processes and outcomes to affected parties; and participation involving affected communities in the design and monitoring of grievance mechanisms. The public policy should include specific indicators, such as the number of resolved cases, the time to resolve grievances, and satisfaction levels among affected communities. Non-judicial grievance mechanisms must also be evaluated using the UNGPs' effectiveness criteria. Public policy should set these criteria as benchmarks for evaluating and improving non-judicial mechanisms throughout the closure stages.
5. Authorities, institutions, and responsibilities for policy implementation: The creation and implementation of mine closure policies require collaboration between multiple state institutions and other stakeholders. Key actors include the Ministry of Mines and Energy, which can formulate the policy, ensuring alignment with national development goals and international human rights commitments and engaging with civil society and sectoral companies through the Intersectoral Roundtable for updating the human rights policy for the mining and energy sector; Ministry of Environment, to oversee environmental rehabilitation and ensure that environmental justice is central to mine closure processes; judiciary, to enforce legal frameworks and adjudicate disputes related to human rights abuses during mine closure; local governments, to engage with affected communities and implement localised aspects of the policy, such as social reintegration programs. The public policy should clearly delineate the responsibilities of each institution, ensuring coordination and avoiding overlap.
6. Role of companies in providing remedy and their obligations: Companies involved in coal mining have a crucial role in ensuring effective remedy during mine closure. Under a restorative justice lens, UNGPs, businesses must have clear obligations to provide remedies. The policy can mandate establishing and operating or participating in adequate and accessible mechanisms for addressing grievances related to the impacts of mine closure. These mechanisms must be aligned with the UNGPs' criteria for effectiveness, including transparency and rights compatibility. Companies can fund environmental restoration, compensation for affected communities, and support for economic diversification in areas dependent on mining, providing sufficient financial guarantees. In addition, companies can work with the government,

civil society, and affected communities to co-create mine closure policies that address all stakeholder needs. Their role should extend beyond compliance to active participation in restorative processes.

7. Corporate due diligence in mine closure: Public policy must enforce corporate due diligence by requiring companies to conduct human rights impact assessments throughout the mine closure process. Due diligence must be ongoing, with companies required to report regularly on their compliance with human rights standards and the effectiveness of their remediation efforts. The policy must also consider enforcement mechanisms, such as regular audits during closure and post-closure, with results made public and penalties for non-compliance.
8. Role of civil society, organisations and Public Ministry: Civil society is critical in ensuring that remedies are accessible and practical. The Ombudsman and People's Office can act as watchdogs, advocates, and dialogue facilitators between communities, companies, and the state, ensuring their voices are heard in policy discussions. This is essential to overcoming resistance and building consensus around the transition strategy. Organisations can provide independent assessments of the implementation of mine closure policies, ensuring transparency and accountability. NGOs and other international bodies, such as the OECD Contact Point, can help build the capacity of local communities to engage with grievance mechanisms and seek remedies.
9. Beneficiaries of the Policy: The primary beneficiaries of mine closure policies are the individuals (workers), affected communities, and the environment of the coal-dependent regions, particularly La Guajira and Cesar. However, within these groups, specific attention must be given to vulnerable groups, such as indigenous peoples, women, and children, who may face disproportionate impacts. The policy must establish a holistic approach to identify and address the needs of all of these actors, include inclusive consultation, and develop programs that address the unique vulnerabilities of each group, such as retraining programs for workers and cultural preservation initiatives for Indigenous communities, as well as prioritise the restoration of ecosystems and the sustainable management of natural resources post-closure considering ancient knowledge and circular economy alternatives.

## 5.4. FINAL REMARKS

These recommendations outline a comprehensive approach to mine closure in Colombia that integrates the principles of restorative justice and the UNGPs, ensuring that human rights are respected, protected, and fulfilled throughout the closure and post-closure phases.

It is worth noticing how many of these measures require materialising the rest of the energy justice principles to create a practical policy framework. More research needs to be done on integrating every tenet of energy justice with due diligence in policy and analysing their practical effectiveness in protecting people's human rights. In terms of the design and implementation of remedy measures, future research can examine the contents of remedies for human rights victims through the jurisprudence of international and national tribunals.

While the public policy on mine closure should cover a wide range of issues, certain aspects may require further development through other means, such as long-term economic diversification to ensure sustainable livelihoods in post-mining areas. The broader implications of coal mine closure for Colombia's climate commitments may require separate policy frameworks that align with global climate goals.

Furthermore, though Colombia has made strides in recognising the environmental and social impacts of mining, enforcing environmental regulations and protecting human rights in the context of mine closures remain inconsistent. Strengthening the regulatory framework and ensuring that it is effectively enforced is crucial for aligning with the principles of restorative justice and due diligence.

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**LIST OF ABBREVIATIONS**

ACM	Colombian Mining Agency
ANM	National Mining Agency
CONPES	National Council of Economic and Social Policy
DANE	National Administrative Department of Statistics
ESG	Environmental, Social and Governance
GDP	Gross Domestic Product
GHG	Green House Gas
HRIAs	Human Rights Impact Assessments
IACHR	Inter-American Court of Human Rights
ICMM	International Council on Mining and Metals
IFC	International Finance Corporation
ILO	International Labour Organisation
NAPs	National Action Plans
NDCs	Nationally Determined Contributions
NDP	National Development Plan
OECD	Economic Cooperation and Development
OHCHR	Office of the United Nations High Commissioner for Human Rights
REDESCA	Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights
SLO	Social License to Operate
SMEs	Small and Medium Enterprises
UN	United Nations
UNFCCC	United Nations Framework Convention on Climate Change
UNGPs	United Nations Guiding Principles on Business and Human Rights

**LIST OF FIGURES**

Figure 01	Carbon Zones in Colombia.
Figure 02	Map of La Guajira and the open-pit mine "El Cerrejón" location.
Figure 03	Elements of Restorative Justice.
Figure 04	Due Diligence Process and Supporting Measures.

**LIST OF TABLES**

Table 1	Potential Human Rights Impacts During Mine Closure and Post-Closure
Table 2	Energy Justice Tenets
Table 3	United Nations Guiding Principles on Business and Human Rights Protect, Respect and Remedy Framework
Table 4	Types of Corporate Involvement in Human Rights Negative Impacts for Determining Responsibility
Table 5	Access to Grievance State and Non-State Mechanisms for Remedy
Table 6	Types of Remedy under the United Nations Guiding Principles
Table 7	Effectiveness Criteria for Grievance Mechanisms under the United Nations Guiding Principles

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