

# A HUMAN RIGHTS RISK ASSESSMENT IN COLOMBIA

“Vattenfall’s efforts on coal supply chain responsibility”

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## Executive summary – Vattenfall Human Rights Risk Assessment in our Colombian Coal Supply Chain

Vattenfall procures hard coal on the global market, including Colombia, to supply our power plants in Germany and the Netherlands and for trading purposes. In 2016, an independent third-party study showed that Vattenfall's most significant human rights risks lie in the sourcing of fuels and goods and services from high risk countries such as Colombia. To identify those risks, we decided to perform an enhanced due diligence of our coal procurement activities in Colombia.

In this report, we present the result of this enhanced due diligence work according to the requirements of the UN Guiding Principles for Business and Human Rights. It is the result of a 14-month process of preparation, desktop research, country visit, fact checking, analysing information, writing and two rounds of stakeholder consultation.

The report focuses on four areas of human right risks in the Colombian departments of Cesar, La Guajira, and Magdalena:

- Workers' Rights (Occupational Health and Safety and Freedom of Association)
- Displacement and Land Restitution in the Internal Armed Conflict
- Involuntary Resettlement
- Environment and Communities

The report summarises the different opinions and views of stakeholders on these four general themes, provides recommendations towards the mining companies to address the risks and describes the next steps for how Vattenfall aims to cooperate and build bridges between the stakeholders going forward. We are committed to use this report as a starting point to engage in further dialogue with the mining companies to jointly set action plans for continuous improvements in the Colombian coal sector.

With this report, we do not intend to:

- Establish the "truth" or take a position as to who is right and who is wrong on the issues contested.
- Provide a conclusion regarding how mining operations impact the human rights of workers, the local communities, or any other potentially affected rights holder.
- Provide an assessment as to whether or not the mining companies live up to the [Vattenfall Code of Conduct for Suppliers](#).
- Provide an evaluation of the robustness of the mining companies' management systems and the implementation thereof, which falls with the scope of Bettercoal assessment process.
- Provide an overview of projects and activities the mining companies are involved in.

### Report Structure

The report is structured in five chapters:

1. An overview of the methodology we have adopted
2. An analysis of the coal mining industry and its role in Colombia
3. The main human rights risks of coal mining in Colombia that we have identified per region including stakeholder perspectives
4. Our recommendations for coal mining companies how they should or could address the challenges identified
5. Our own reflections about the entire process and our next steps

## Main Observations

In the table below, we have summarised the main human rights risks as perceived by local stakeholders in Colombia:

Area	Issue
<b>Workers' rights</b>	Accident reporting Occupational illnesses / access to remedy Services provided by on-site health care units H&S companies' performance Union leader's security Subcontracting practices
<b>Displacement and land restitution (Internal Armed Conflict)</b>	Effectiveness and trust in the process Role of companies during the conflict and demand for an extrajudicial process Expectations towards mining companies with regards to remedy with the victims Communities security during restitution process and level of protection offered by public forces
<b>Involuntary resettlement</b>	Legitimacy and equality in negotiation process Eligibility criteria Ethics Timeframes and delays Living conditions / community investments Security concerns for community leaders (village of El Hatillo) Lack of trust in effectiveness of grievance mechanisms
<b>Environment and communities</b>	Air quality Noise and vibrations Impacts on fishing community Access to water Living conditions and community investments

## Recommendations

Vattenfall's main responsibility in the coal supply chain lies with our current and potential suppliers. Our recommendations are therefore aimed towards the coal mining companies. These companies are our supply chain business partners, with whom we believe we can cooperate through engagement and dialogue and enable action to address the issues identified. We are aware that for most of the recommendations, some of the companies are already taking actions and have projects and processes in place which address these, so we feel there is a good basis to cooperate.

The report clusters recommendations according to the 'Act, Enable and Influence' framework. Within 'Act', we make recommendations to our coal mining companies that they should implement. These are changes that are within the company's direct control. Within 'Enable', we make suggestions to coal mining companies to support, incentivise or invest in other actors such as NGOs, business partners and key stakeholders to accelerate change. Within 'Influence', we make suggestions to coal mining companies to advocate and share knowledge and expertise with government and other stakeholders to drive policy change and transform the industry.

With our recommendations, we aim towards an increased alignment between companies practices and international guidelines and best practices. For example, by improving transparency on human rights risks, seeking cooperation with the relevant governmental bodies to close gaps in basic infrastructure or working towards more effective grievance mechanisms. Every recommendation should be read and interpreted in its specific context.

## Next steps

Our next steps will be to:

- Follow up with individual mining companies with dedicated recommendations, discuss their current activities, projects and processes which already address our recommendations and seek to agree on an action plan with SMART goals on possible improvements.
- Discuss our report, findings and recommendations with Bettercoal, where Vattenfall is a founding and active member of, as well as Bettercoal members to work towards a joint engagement approach on Colombia.
- Update stakeholders on progress.

We believe in a process of continuous improvement and do not support a strategy of disengagement as a starting point. However, should we reach the conclusion that a mining company is not willing to agree on an action plan or has not met an agreed action plan within reasonable time frames, we will seek to temporarily disengagement until improvements are made.

## ABOUT THIS REPORT

### About Vattenfall

Vattenfall is a European producer of electricity and heat, with sales operations in both segments. Our main markets are Denmark, Finland, the Netherlands, Germany, the U.K., and Sweden. The Group has approximately 20,000 employees. Our parent company, Vattenfall AB, is 100% owned by the Swedish state, and its headquarters is located in Solna, Sweden.

We are on a sustainability journey, transforming our portfolio towards more sustainable production and supporting the progress of our customers and society to a fossil-free world by providing climate-smart solutions. We are phasing out fossil-based production and investing in renewables—primarily wind, but increasingly solar, too. Our aim is to become fossil-free within one generation. For more information on the company, please consult our website<sup>1</sup>.

Following the divestment of Polish and Danish hard-coal assets in prior years, Vattenfall currently operates seven hard-coal-fired power plants in Germany and the Netherlands. In 2016, the share of hard coal in electricity generation accounted for 14%, and in heat production 27%<sup>2</sup>. For use in our power plants and for trading purposes, Vattenfall procures hard coal on the global market, including from Colombia. In 2016, hard coal imported from Colombia accounted for 20.4% of the total of hard coal that was used in Vattenfall's power plants. These percentages fluctuate from year to year because of market conditions.

### Vattenfall's Commitment to Responsible Sourcing

Vattenfall's sustainability framework is based on the 10 principles of the UN Global Compact, the OECD Guidelines for Multinational Enterprises, and the [UN Guiding Principles on Business and Human Rights](#), as well as other international guidelines and norms. In line with the expectations set forth in the UN Guiding Principles on Business and Human Rights, we are aware that our responsibility to respect human rights goes beyond our own operations and activities. We know that, as a European energy company, we need to perform due diligence to identify potential adverse human rights impacts associated with hard-coal mining in our supply chain, and then act upon the findings. This commitment has been repeatedly raised in dialogues with human rights organisations and politicians.

Vattenfall's sourcing philosophy, which is aligned with international guidelines, is to be a positive force for change by engaging in dialogue with relevant stakeholders and by working actively with suppliers.

At Vattenfall, we are committed to undertaking appropriate steps to ensure we take responsibility for our purchasing practices in the coal supply chain. This builds on our Code of Conduct for Suppliers, and it includes implementing a risk assessment for our hard-coal suppliers as an input to our decision-making process regarding whether to buy hard coal from a specific supplier<sup>3</sup>. Through our supplier-engagement strategy and newly implemented sustainability-assessments processes, we aim to deepen our influence in the supply chain and to strengthen relationships with our suppliers. We believe in an approach that embraces continuous improvement and do not support a strategy of disengagement as a starting point. Ultimately, if there are no signs of improvement within a realistic time frame, we could choose not to buy coal from a certain supplier until the situation has improved satisfactorily. (See also: Highlight — Vattenfall's Responsibility.)

<sup>1</sup> <https://corporate.vattenfall.com/>

<sup>2</sup> [https://corporate.vattenfall.com/globalassets/corporate/investors/annual\\_reports/2017/vattenfall\\_annual\\_and\\_sustainability\\_report\\_2016\\_eng.pdf](https://corporate.vattenfall.com/globalassets/corporate/investors/annual_reports/2017/vattenfall_annual_and_sustainability_report_2016_eng.pdf) (page 178)

<sup>3</sup> For more information about our due diligence procedure, please see:

[https://corporate.vattenfall.com/globalassets/corporate/sustainability/doc/updated\\_due\\_diligence\\_process\\_risk\\_screening\\_130516\\_v2.pdf](https://corporate.vattenfall.com/globalassets/corporate/sustainability/doc/updated_due_diligence_process_risk_screening_130516_v2.pdf)

## Vattenfall's Responsibility as a Coal Buyer

According to the UN Guiding Principles, principle<sup>4</sup> 13, the responsibility to respect human rights, requires that business enterprises:

1. Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
2. Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products, or services by business relationships, even if the business enterprise has not contributed to those impacts.

Key words for understanding the role of the company in relation to adverse human rights impacts are causing/contributing/being linked. In particular<sup>5</sup> (emphasis added):

- "Companies may cause negative impacts, for example if employees are injured due to unsafe working conditions, or if companies displace communities from their lands and livelihoods without due process and compensation";
- "Companies may contribute to negative impacts, for example if their purchasing practices incentivize suppliers to force workers into unpaid overtime to meet contract requirements, or if multiple companies drain or pollute the water resources essential to local communities' drinking supply";
- "Companies' operations, products, or services may be linked to negative impacts, for example, if forced labor or child labor is used to harvest ingredients or make components that go into their products or if a technology company's equipment is used by government security forces to track, imprison, and harm end-users, despite the company's reasonable efforts to avoid these outcomes".

Within this framework, it is clear that Vattenfall does not find itself in the "cause" case.

However, Vattenfall might still find itself in the "contribute" or "linked" cases, via the coal we source from Colombia that is used in our coal power plants for the production of our services (i.e., heat and electricity). To determine our attribution, we have performed the following test to evaluate whether we can reasonably exclude the possibility that we are in the "contributing" case.

### To test this, we have used the following indicators:

Can Vattenfall's actions or omissions reasonably be expected to materially increase or exacerbate the human rights risks by encouraging, enabling, or facilitating any potentially adverse human rights impact?

NO. Vattenfall has in no way encouraged, enabled, or facilitated any potentially adverse human rights impacts. However, we recognise that we did not in the past appropriately engage on these issues directly with our suppliers to assess and handle such risks.

Can Vattenfall's own policies (such as purchasing policies related to prices and delivery times) reasonably be expected to materially increase the human rights risks posed by the business relationship?

NO. We do not believe that Vattenfall's purchasing policies have increased or exacerbated human rights risks in our coal supply chain in Colombia.

Does the company benefit from any potentially adverse human rights impact? Does Vattenfall gain from acquiring cheaper coal because of poor HSSE performance?

NO. Considering our coal-sourcing portfolio, we don't think this is the case.

Therefore, we believe that Vattenfall is not causing, or contributing to, potentially adverse human rights impacts. Vattenfall's primary role in any human rights concerns identified in Colombia results from business relationships "linked" to our operations and services.

<sup>4</sup> [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf) (Accessed in May 2017)

<sup>5</sup> <https://www.shiftproject.org/un-guiding-principles/> (Accessed in May 2017)

## Why This Report

In 2016, Vattenfall commissioned an independent third party to identify the most severe human rights risks in our value chain. The results of this assessment showed that Vattenfall's most significant risks lie in our coal supply chain and sourcing of fuels and goods from high-risk countries.

In the same year, we were invited by representatives of the Colombian non-governmental organisation (NGO) Censat (Friends of the Earth) and a representative from the Tabaco community in Colombia to visit communities in La Guajira Department and witness the impact of the mining industry on that part of Colombia.

As a result, and in response to pressure from several NGOs that had advocated we temporarily cease procurement activities in Colombia, Vattenfall's Responsible Sourcing Board<sup>6</sup> decided to undertake enhanced supply chain due diligence. We began by identifying the possible risks of adverse human rights impacts in our coal supply chain in Colombia.

Vattenfall is a founding member of Bettercoal, to whose activities we are committed. The intention of this report is not to determine whether our Colombian coal suppliers are in compliance with our code of conduct or with the Bettercoal code. This would fall under the scope of the Bettercoal assessment process, which focuses on evaluating companies' policies and management systems.

We see this report as complementary to the efforts of Bettercoal. The intention of this work is to adopt a human rights approach, help us get a deeper understanding of which human rights are being or could be affected, identify our responsibility as a company committed to responsible sourcing, use the findings from this work to have a constructive dialogue with suppliers, and work together with them and with Bettercoal on improvements.

## What's Inside This Report

This report provides an overview of the results of the due diligence conducted over our coal supply chain in Colombia. In particular, we looked at four main human rights issues identified during our preliminary research: Workers' Rights (Occupational Health and Safety and Freedom of Association); Displacement and Land Restitution in the Internal Armed Conflict; Involuntary Resettlement; and Environment and Communities, with a focus on the Colombian departments of Cesar, La Guajira, and Magdalena.

### The report includes the following content:

- An overview of the methodology we have adopted (Chapter 1: Methodology)
  - Shares relevant information about the approach and the overall process, as well as the purpose of the report and any limitations as to its scope;
- The coal mining industry and its role in Colombia (Chapter 2: Introduction)
  - Shares key contextual information related to coal mining and the human rights issues analysed, which we hope will increase understanding of the complexities of the issue and the distinct views of stakeholders;
- The main human rights risks of coal mining in Colombia, identified (Chapter 3: Observations and Feedback)
  - Shares the different perspectives of the stakeholders consulted on possible adverse impacts of coal mining activities in Colombia in the regions of Cesar, La Guajira, and Magdalena, including possible effects on workers and their representatives (Workers' Rights), on members of the local communities, from a social perspective (Displacement and Land Restitution in the Internal Armed Conflict, as well as Involuntary Resettlement) and an environmental perspective (Environment and Communities);
- Recommendations for Business (Chapter 4: Recommendations)
  - Provides recommendations for coal mining companies as to potential ways to address some of the challenges identified, based on the Act, Enable, Influence framework illustrated in this chapter;
- Vattenfall's own reflections about the entire process (Chapter 5: Conclusions and Next Steps)
  - Provides an overview of what we have learned and includes Vattenfall's commitments and follow-up activities.

<sup>6</sup> The Responsible Sourcing Board (RSB) is the decision-making body in Vattenfall's coal supplier due diligence procedure and consists of senior management of different departments.



### **Who Should Read This Report**

This report would be useful to companies operating or sourcing hard coal in Colombia, as well as to NGOs and institutions engaged in dialogue with these companies and to stakeholders involved in assessing and addressing human rights issues.

Additionally, the report is meant for Vattenfall's shareholders and any other interested stakeholders.

### **Disclaimer**

The content presented in this report is based upon the information available and conditions existing as of the date of the review. In performing this work, Vattenfall relied upon publicly available information and information provided by all stakeholders consulted. Vattenfall has made every attempt to ensure the accuracy and reliability of the information provided. However, the information is provided "as is," and Vattenfall makes no representations or warranties, express or implied, about accuracy and reliability. Also, any statements presented in the tables included in the Observations and Feedback chapter represent the opinions of stakeholders and do not represent Vattenfall's own opinion.

This report is designed to provide helpful information on the subjects discussed and related matters of interest for the personal use of the reader. Vattenfall will not accept any responsibility or liability for any use, citation, or communication related to this report, or the information herewith included, by a third party.

## METHODOLOGY

### Our Goal

The main objective of Vattenfall's Responsible Sourcing Board in commissioning this enhanced due diligence exercise was to identify possible adverse human rights impacts in our Colombian coal supply chain and, in particular:

- Understand the human rights situation in Colombia in the context of coal mining and identify the risks of actual or potential adverse human rights impacts;
- Evaluate our position in relation to the possibly adverse human rights impacts identified, i.e., whether we may be contributing or be directly linked to them via our purchasing activities from Colombia. (See About this Report: Highlight — Vattenfall Responsibility);
- Provide input to our internal decision-making processes and engagement with suppliers and exercise Vattenfall's leverage as part of our purchasing activities;
- Establish a dialogue with affected parties, supplier companies, and other stakeholders to identify possible ways to prevent or mitigate the potential adverse impacts identified, or to remediate actual impacts. Ultimately, our visit to Colombia and completion of this report constitutes only one of the necessary steps for handling possible adverse impacts on human rights in our coal supply chain;
- Based on the areas above, develop strategies and actions for how Vattenfall and other stakeholders can strive towards continuous improvements related to (potential) human rights impacts.

### How to Read This Report

- This report is not a Human Rights Impact Assessment for Vattenfall in Colombia, or an in-depth assessment of human rights risks in our entire coal supply chain. It aims to provide a picture of the possible adverse human rights risks linked to mining operations that we identified in Colombia's departments of Cesar, La Guajira, and Magdalena, as highlighted in Chapter 2: Observations and Feedback.
- Further, this report is not meant to serve as an audit, nor does it provide a view of the overall performance of the coal mining companies we source from in Colombia. In an audit, information received should be verified, and this was not the purpose of our work. Rather, the report focuses on the perceived human rights impacts on people (workers, communities, and particularly any vulnerable groups). We also engaged with the companies on the identified issues and received supporting documentation. However, in most cases it was difficult to make an evaluation because the information received from the two sides was diametrically opposed. As a result, we summarised issues and views in Chapter 3: Observations and Feedback.
- This report brings together information and views gathered through desktop research and the field visit. It is important to note that the views of stakeholders are polarised, which means that the information received might be contradictory and/or unreliable. Regardless of our best efforts to present the findings in the most balanced manner possible, we are aware that some of the statements included in our report might be perceived as critical of mining companies, state actors, or other stakeholders.
- We intend this work to serve as one step towards continuous improvement through cooperation with all actors. The meetings we had with the companies and other stakeholders were in the spirit of an open dialogue in which we gathered relevant information as a basis for our recommendations and to advance dialogue and engagement.

Additional information on our fact-finding and the challenges we faced can be found in Chapter 5: Conclusions and Next Steps.

## Our Approach

To guide our approach in conducting the assessment, we have aimed to align with the following international standards:

- The UN Guiding Principles on Business and Human Rights, which require companies to perform human rights due diligence and which stress the importance of identifying human rights risks from the rights holders' perspective (i.e., the perspective of those who could be potentially affected by business activities in the enjoyment of their human rights).
- The OECD Due Diligence Guidance for Responsible Supply Chain<sup>1</sup>, which includes risk assessment as one step in a five-step framework for risk-based due diligence in the mineral supply chain. Risk assessment entails "identifying and assessing any actual or potential risks by evaluating the factual circumstances of its activities and relationships with suppliers and evaluating those facts against relevant standards and legal instruments [...] and [Vattenfall's] internal policies". This means we have to take a holistic approach, beyond our own policies and systems, and consider the operating environment.

One of the challenges we faced during this project was finding the right methodology to follow.

The application of human rights due diligence has challenged many large corporations since the introduction of the UN Guiding Principles. There is a wealth of tools and approaches available from non-profit and for-profit consultancies. For example, the approach developed by the Danish Institute for Business and Human Rights is mostly suited to identify impacts at project and site level<sup>2</sup>.

The approach we used is based on existing methodologies and guidance on human rights risk and impact assessments. We have primarily referred to the Implementation Guidance of the UN Guiding Principles<sup>3</sup>, the Danish Institute for Human Rights<sup>4</sup>, and the "Getting it Right" Human Rights Impact Assessment Guide developed by the International Centre for Human Rights and Democratic Development<sup>5</sup>.

Given Vattenfall's role in the coal supply chain, we have paid particular attention to expert advice on human rights in the supply chain. Experts suggested a focus on the following areas, which we have reflected in this report<sup>6,7</sup>:

- Investigating the human rights situation in a country (e.g., in the country of sourcing), as reflected in Chapter 2: Introduction;
- Checking on possible negative human rights impacts in this context, and identifying potential problem areas and ways of achieving continuing improvement on the basis of sharing ideas with rights holders, as reflected in Chapter 2: Introduction and Chapter 3: Observations and Feedback;
- Checking on our role (cause/contribute/linked) through business relations with companies (e.g., suppliers) and state actors<sup>8</sup>, as reflected in Chapter 0: About this report;
- Developing management strategies for the appropriate mitigation and remedy, as reflected in Chapter 4: Recommendations;
- Developing a human rights perspective in management and in the whole company, as reflected in Chapter 5: Conclusions and Next Steps.

<sup>1</sup> The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas is the first example of a collaborative government-backed multi-stakeholder initiative on responsible supply chain management of minerals from conflict-affected areas. One of its main objectives is to help companies respect human rights and avoid contributing to conflict through their mineral sourcing practices by providing clear guidance on supply chain management of such minerals in the various stages of the supply chain.

<sup>2</sup> [www.humanrights.dk](http://www.humanrights.dk) (Accessed in May 2017)

<sup>3</sup> [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf) (Accessed in May 2017)

<sup>4</sup> [www.humanrights.dk](http://www.humanrights.dk) (Accessed in May 2017)

<sup>5</sup> <http://hria.equality.ie/en/index.html> (Accessed in May 2017)

<sup>6</sup> United Nations (2008a): Protect, Respect, and Remedy — A Framework for Business and Human Rights. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. 7 April 2008, A/HRC/8/5, Geneva: United Nations Human Rights Council.

<sup>7</sup> Human Rights Impact Assessments for Implementing Corporate Responsibility, Inef Research Paper series, Brigitte Hamm und Christian Scheper, 2012, p.6

<sup>8</sup> The examination must cover the activities of subsidiaries and other joint venture partners, contractors, subcontractors, and intermediaries, as well as different levels of state authorities. Frequently, big companies are suppliers themselves (e.g., in the context of large projects).

### **The UN Guiding Principles on Business and Human Rights**

The Guiding Principles were unanimously endorsed by the UN Human Rights Council in 2011 and are now the authoritative global reference point on business and human rights. They are based on the three pillars of the UN “Protect, Respect and Remedy” Framework, which recognises the complementary yet distinct roles of states and business in protecting and respecting human rights:

- State Duty to Protect: States have the duty to safeguard human rights through appropriate policies, regulation, and adjudication;
- Corporate Responsibility to Respect: Companies must “Know and Show”, meaning they must assess human rights impacts and take steps to manage them (i.e., to mitigate and eliminate);
- Provide Access to Remedy: States and companies must remedy abuses through judicial and non-judicial means.

With regard to a company’s responsibility to respect, the principles require companies to perform human rights due diligence; they are expected not just to respect national laws but also to handle human rights risks as their own responsibility. Professor John Ruggie, in his 2008 report, justifies this requirement with the observation that human rights issues arise when companies do not consider possible negative implications for the people concerned before starting a business activity. Ruggie therefore calls on companies to take proactive steps to clarify and comprehend how their business activities may cut across human rights issues.

### **The Process We Have Followed**

Given the above approach, we designed and fulfilled the following phases to perform due diligence over our coal supply chain. Below is a summary of the activities we conducted during each phase, which includes reference to the stakeholders we have consulted. (The full list of stakeholders can be found in the Appendix.)

#### **Phase 1: Desktop research (September–November 2016)**

- Identify main human rights issues affecting coal mining in Colombia and understand the legal framework.
- Identify potential stakeholders for consultation. (See additional information in: Highlight — How We Selected Stakeholders).
- Conduct interviews with selected European and Colombian stakeholders to inform our research and the phases to follow.

#### **Phase 2: Preparation of site visit (December 2016–February 2017)**

- Validate stakeholders: The initial list of stakeholders identified was shared with selected organisations for validation and prioritisation.
- Organise logistics: Visits to communities were arranged, independent of the coal mining companies.

#### **Phase 3: Visit to Colombia (March 2017)**

- Conduct a three-week visit to Colombia with the objective of meeting and interviewing stakeholders at the national and local level. Meetings with communities, unions, and workers’ representatives, local authorities, and mining companies were organised separately.
- Week 1: Interviews in Bogota and Magdalena Department. We met with government and public institutions, civil society organisations, and affected communities.
- Week 2: Interviews in Cesar Department. We met with government and public institutions, affected communities, unions and union representatives, civil society organisations, and mining companies.
- Week 3: Interviews in La Guajira Department. We met with government and public institutions, affected communities, civil society organisations, and mining companies.

#### **Phase 4: Writing the Report (April–October 2017)**

- Draft the report.
- Conduct additional desktop research into stakeholders’ and companies’ comments and claims; this included identifying additional documents and cross-checking information with verifiable data sources.

<sup>9</sup> Human Rights Impact Assessments for Implementing Corporate Responsibility, Inef Research Paper series, Brigitte Hamm und Christian Scheper, 2012, p.6

<sup>10</sup> United Nations (2008a): Protect, Respect, and Remedy — A Framework for Business and Human Rights. Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. 7 April 2008, A/HRC/8/5, Geneva: United Nations Human Rights Council.

### **Phase 5: Report Consultation and Review (June-September 2017)**

- Conduct two rounds of consultation on two versions of the draft report with all involved stakeholders.
- Validate additional information received, obtaining as many sources as possible and comparing feedback from stakeholders to ensure as correct representation as possible.

### **Phase 6: Report Launch (November 2017)**

- Finalise the report.

### **Phase 7: Follow up: Communication and Engagement Strategy (to come, from November 2017)**

- Engage in a dialogue with the mining companies and other stakeholders to cooperate towards continuous improvement. This includes persistently following up on progress made on flagged issues with mining companies through constructive engagement and dialogue, and jointly setting action plans for continuous improvement where needed.
- Engage in a dialogue with Bettercoal to evaluate if and how the results of our risk assessment can be used and integrated into the Bettercoal Supplier Assessment programme and, in particular, into the ongoing improvement plans resulting from the site assessments and consideration of upcoming site assessments by the mining companies.

For an overview of planned next steps as part of this work, please refer to Chapter 5: Conclusions and Next Steps.

#### **How We Selected Stakeholders for Consultation**

During Phase 1 (desktop research), we conducted a broad mapping of the relevant stakeholders in Colombia. This mapping was based on desktop research on the mining sector in Colombia, reports on human rights impacts in the mining regions of the departments of Cesar and La Guajira, and past meetings with mining companies, civil society organisations, and community representatives. More than 100 stakeholders were identified.

During Phase 2 (preparation of site visit), we shared the broad stakeholder mapping with civil society organisations to verify that the mapping represented stakeholders who could provide information to us on the main human rights risks of coal mining in the mining regions of Cesar and La Guajira. Based on the feedback, we finalised the selection of stakeholders and tried to engage with them directly as much as possible. For some stakeholders who were hard to contact (such as local communities), we cooperated with civil society organisations when needed. Based on our direct and indirect engagement with those stakeholders, we drafted the preliminary agenda for our visit to Colombia. The final list of stakeholders to interview included more than 50 parties.

During Phase 3 (visit to Colombia) we held face-to-face meetings with stakeholders. The vast majority of the meetings were scheduled during the preparatory phase. When additional stakeholders were suggested while we were on site, we tried to set up meetings whenever possible. Due to time constraints, this was not always possible.

During stakeholder mapping and selection, we tried to keep a balance among governments, regional authorities, public institutions, civil society, and the companies. We are aware that in the final selection of stakeholder we favoured those with a critical approach towards mining companies and in some cases coal mining in general. This is due to a number of reasons: First, we were unable to meet all of the stakeholders during the on-site tour, including those suggested by the companies, such as governors and mining authorities; second, our aim has been to identify the main human rights risks and not develop an overview of the performance of the mining companies. As a result, we frequently include in this report the issues as described to us by the rights holders, as well as the summarised views of the companies and government bodies.

During Phase 5 (report consultation and review), the stakeholders we had interviewed in Colombia were asked to provide comments on a first draft of the report. This round of consultation was conducted in English and Spanish. In a second round of consultation, stakeholders who had provided comments on the first draft were asked to comment on the second draft. Reflecting the makeup of this group of stakeholders, this round of consultation was conducted only in English.

A specific description of limitations is included in Chapter 3: Observations and Feedback under each issue analysed. The full list of stakeholders interviewed can be found in the Appendix.

## Report Content and Purpose

This report reflects the results of our assessment, including data collection, desktop research, and observations from our visit to Colombia. It focuses on potential adverse impacts on human rights, including systemic challenges presented by Colombia's mining industry.

The purpose of this report is to:

- Identify the main human rights risks in our coal supply chain in Colombia for Vattenfall's due diligence processes;
- Provide a view from certain stakeholders' perspectives of the adverse impacts on human rights, while striving to present other stakeholders' opinions and feedback (especially government and mining companies) on the issues raised by those stakeholders to the degree possible within the scope of this project;
- Summarise the outcome of the research and interviews we conducted (including the views of disparate stakeholders);
- Provide recommendations for the mining companies—our supply chain business partners—to address the main human rights risks. We believe we can exercise leverage, thereby enabling action to address the issues we have identified;
- Contribute in a positive way to the dialogue we have with the stakeholders, both in Europe and in Colombia, to work towards continuous improvements in the Colombian coal sector by building bridges among all the actors;
- Be a starting point to engage in further dialogue with the mining companies to jointly set action plans for continuous improvements.

## Scope Limitations

Some scope limitations must be noted.

### 1) Which human rights issues are considered:

This report does not provide a full description of all the impacts on all stakeholders of coal mining activities in Colombia. The focus of this report is on the four main human rights issues we identified through research and engagement with stakeholders during our on-site visit. We believe that Vattenfall has the potential to wield the largest impact on these specific issues, through our coal supply chain. Civil society stakeholders brought these issues to our attention.

These human rights issues include:

1. Workers' rights, in particular
  - Occupational Health and Safety
  - Freedom of Association
2. Displacement and Land Restitution in the Internal Armed Conflict
3. Involuntary Resettlement
4. Environment and Communities

### 2) Geographical limits

The focus is on the operations in Cesar, La Guajira, and Magdalena of large-scale mining activities that have legal mining titles.

### **3) Specific objectives**

This report does not intend to:

- Establish the “truth”;
- Take a position as to who is right and who is wrong in the debates on the topics mentioned above;
- Provide a conclusion regarding how mining operations impact the human rights of workers, the local communities, or any other potentially affected rights holder;
- Provide an assessment as to whether or not the mining companies live up to the Vattenfall Code of Conduct for Suppliers;
- Provide an overview or examples of “good performances” of the mining companies;
- Provide an overview of all projects and activities the mining companies are involved in;
- Provide an evaluation of the robustness of the mining companies’ management systems and the implementation thereof.

## INTRODUCTION

### Overview

This chapter provides useful information on relevant historical, contextual, and legal issues that we hope will help the reader understand the complexities of the matter at hand and the distinct positions expressed by stakeholders that are summarised in Chapter 3. Where relevant, we provide information on the specific context in Colombia's departments of Cesar, La Guajira, and Magdalena, where we focused our research and engaged with stakeholders.

### The Extractive Industry in Colombia

Extraction of Colombia's exhaustible natural resources (including oil, coal, and gold) is a significant driver of economic growth in the country. According to the Organisation for Economic Co-Operation and Development (OECD), the oil and mining sector represented 7.7% of Colombia's annual gross domestic product in 2013 and contributed 0.4% to annual GDP growth<sup>1</sup>.

However, the country's economic reliance on the extractives industry has led to social conflicts, posed risks to human health, and put significant pressure on Colombia's biodiversity and ecosystems<sup>2</sup>.

According to data from the industry, mining is forecast to become Colombia's economic growth engine, with investments of at least USD1.5 billion a year over the next five years, if the government guarantees legal certainty. Companies in the mining sector have been demanding more clarity with regards to the consideration of community concerns, as well as a faster environmental licensing process. Protests have frequently blocked exploration operations and production<sup>3</sup>.

In Colombia, much land is part of existing or proposed mining concessions. At present, approximately 5.6 million hectares are under concession to mining (land used for agriculture accounts for 6.3 million hectares<sup>4</sup>), and around 25 million hectares are under concession request<sup>5</sup>. According to figures published by the National Mining Agency of Colombia (ANM) in 2016, of 114 million hectares in the territory of Colombia, 5% were under mining license, 2.3% were in exploration phase, and 1.1% were in production stage<sup>6</sup>.

<sup>1</sup> Total annual GDP growth was 4.7%. [https://www.oecd.org/eco/surveys/Overview\\_Colombia\\_ENG.pdf](https://www.oecd.org/eco/surveys/Overview_Colombia_ENG.pdf) (Accessed in May 2017)

<sup>2</sup> <https://www.oecd.org/countries/colombia/Colombia%20Highlights%20English%20web.pdf> (Accessed in May 2017)

<sup>3</sup> <http://www.reuters.com/article/us-colombia-mining-idUSKCN18C2KR> (Accessed in May 2017)

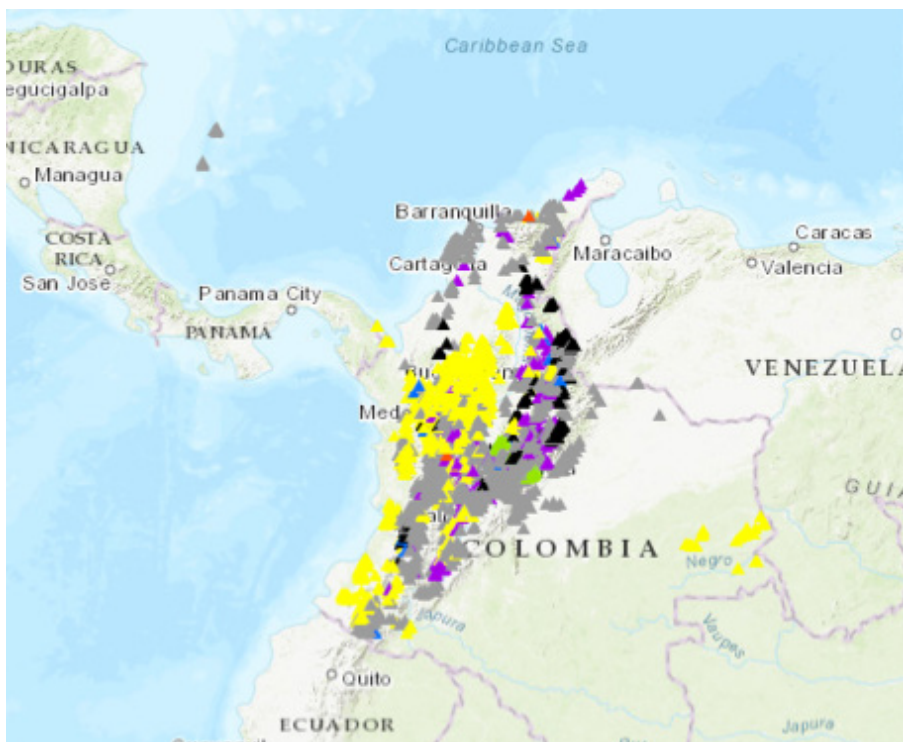
<sup>4</sup> [http://www.upra.gov.co/sala-de-prensa/noticias/-/asset\\_publisher/GEKyUuxHYSXZ/content/el-65-8-del-suelo-pto-del-pais-no-se-aprovecha](http://www.upra.gov.co/sala-de-prensa/noticias/-/asset_publisher/GEKyUuxHYSXZ/content/el-65-8-del-suelo-pto-del-pais-no-se-aprovecha) (Accessed in May 2017)

<sup>5</sup> <http://www.contagioradio.com/mineria-en-colombia-ocupa-5-millones-de-hectareas-y-la-agricultura-solo-4-millones-articulo-11484/>

<sup>6</sup> [https://www.anm.gov.co/sites/default/files/DocumentosAnm/anm\\_ladu\\_final.pdf](https://www.anm.gov.co/sites/default/files/DocumentosAnm/anm_ladu_final.pdf) (Accessed in May 2017)



## Overview of Mining Titles in the Country (coal mining titles are marked in black)<sup>7</sup>



### Regulatory Framework and Mining Titles

The regulatory framework governing mining includes the Mining Code<sup>8</sup> (Law 685 of 2001), which regulates the legal relationship between the state and individuals at all stages of mining, and policies issued by the Ministry of Mining and Energy<sup>9</sup>.

Institutional actors include:

- 1) The National Mining Agency (ANM) is in charge of holding, managing, and tracking titles and the registration process, as well as calculating, collecting, managing, and transferring royalties and compensation<sup>10</sup>;
- 2) The Mining Energetic Planning Unit is in charge of planning in the sector;
- 3) The Colombian Geological Service is in charge of scientific research<sup>11</sup>.

Since the Colombian Constitution was promulgated in 1991, all subsoil and non-renewable resources are deemed state property. Individuals may acquire rights in the form of mining titles.

<sup>7</sup> [http://www.simec.gov.co/Inicio/ServiciosSIG/Mineria\\_SIG/tabid/90/Default.aspx](http://www.simec.gov.co/Inicio/ServiciosSIG/Mineria_SIG/tabid/90/Default.aspx) (Accessed in May 2017)

<sup>8</sup> [http://www.minambiente.gov.co/images/normativa/leyes/2001/ley\\_0685\\_2001.pdf](http://www.minambiente.gov.co/images/normativa/leyes/2001/ley_0685_2001.pdf) (Accessed in May 2017)

<sup>9</sup> <http://thelawreviews.co.uk/edition/the-mining-law-review-edition-5/1140351/mining-colombia> (Accessed in May 2017)

<sup>10</sup> [https://www.anm.gov.co/sites/default/files/DocumentosAnm/anm\\_ladu\\_final.pdf](https://www.anm.gov.co/sites/default/files/DocumentosAnm/anm_ladu_final.pdf) (Accessed in May 2017)

<sup>11</sup> <http://thelawreviews.co.uk/edition/the-mining-law-review-edition-5/1140351/mining-colombia> (Accessed in May 2017)

According to the Mining Code, surface rights are guaranteed for mining activities in the concession area but must be negotiated directly or through administrative/judicial proceedings<sup>12</sup>. When granted a mining title, a licensee acquires the right to explore and exploit minerals in the subsoil, within a set area, for 30 years, as well as to acquire ownership rights of the extracted minerals in exchange for royalties. Any rights or title regarding the surface on which mining operations take place must be negotiated separately<sup>13</sup>. However, given that the Mining Code makes mining a public interest activity, expropriation and easement applications can be filed for properties indispensable to a mining project. In all cases, prior consultation must be carried out if permanent settlements of ethnic minorities are located in the concession area. (For greater detail, see Highlight — Indigenous Peoples, Involuntary Resettlement, and FPIC.)

Environmental licensing in the mining industry is regulated by the Environmental License Agency (ANLA) or by a regional environmental authority. The introduction of Decree 2041 in 2014 to expedite the environmental impact assessment (EIA) process proved controversial among legal and civil society stakeholders because it restricts the scope of EIAs and the extent of community participation in the process<sup>14</sup>. Prior to the introduction of the Mining Code, an environmental impact study was required before a project's exploratory phase could begin; now it is required only after the exploratory stage and before the exploitation phase. By the end of 2010, less than a quarter of mining titles issued were subject to some form of environmental authorisation<sup>15</sup>. Reports show that from 16% to 32% of the land titled for mining is located in areas of environmental importance<sup>16</sup>.

Thirty-Three autonomous regional regulators are responsible for implementing environmental policies at the subnational level. However, according to the OECD<sup>17</sup>: "They are subject to few accountability constraints, vulnerable to capture by local interests and under-financed. Since these bodies have important responsibilities, including gathering environmental information, performing environmental impact assessments and licensing procedures, their weak performance overall is an important impediment to effective environmental management".

In terms of consultation mechanisms available to communities, for instance, Law 134 of 1994 established participation mechanisms regulating how consulta popular (popular consultation) works. Constitutional ruling 133/2017 confirmed that communities have the right to decide whether they want mining activities in their territory, removing the national government's sole authority over mining projects and allowing mayors and provincial governors to challenge exploration permits. This mechanism was recently used in 44 municipalities to allow communities to regulate mining and extraction activities through popular voting processes<sup>18</sup>. In a recent example, AngloGoldAshanti Ltd. was forced to suspend gold-mining activities when 99% of the residents voted in a referendum against allowing mining in Cajamarca, Toliman Department. AngloGold has invested some USD900 million in Colombia since 2006, and La Colosa, the mine in question, was the largest of its three projects in the country<sup>19</sup>.

Citizens have the right to petition for access to public information (derechos de petición).

<sup>12</sup> Pursuant to Presidential Directive 10 of 2013 (<http://wsp.presidencia.gov.co/Normativa/Directivas/Documents/DIRECTIVA%20PRESIDENCIAL%20N%C2%B0%2010%20DEL%2007%20DE%20NOVIEMBRE%202013.pdf>) and Decree 2613 of 2013 ([http://www.minambiente.gov.co/images/normativa/decretos/2013/dec\\_2613\\_2013.pdf](http://www.minambiente.gov.co/images/normativa/decretos/2013/dec_2613_2013.pdf)) (Accessed in May 2017)

<sup>13</sup> <http://thelawreviews.co.uk/edition/the-mining-law-review-edition-5/1140351/mining-colombia> (Accessed in May 2017)

<sup>14</sup> Ministerio de Ambiente y Desarrollo Sostenible, 15 October 2014, Decreto No. 2041. <https://www.minambiente.gov.co/index.php/normativa/decretos> (Accessed in May 2017)

<sup>15</sup> OECD report on Colombia, 2014, <https://www.oecd.org/countries/colombia/Colombia%20Highlights%20english%20web.pdf> (Accessed in May 2017)

<sup>16</sup> OECD report on Colombia, 2014 <https://www.oecd.org/countries/colombia/Colombia%20Highlights%20english%20web.pdf> (Accessed in May 2017)

<sup>17</sup> <https://www.oecd.org/about/publishing/colombia-policy-priorities-for-inclusive-development.pdf> (Accessed in May 2017)

<sup>18</sup> <http://www.eltiempo.com/colombia/otras-ciudades/exploracion-minera-y-consulta-popular-en-44-municipios-de-colombia-96876> (Accessed in May 2017)

<sup>19</sup> <https://www.reuters.com/article/us-colombia-mining/anglogold-suspends-colombia-project-after-anti-mining-vote-idUSKBN17T3BH> (Accessed in May 2017)

## Coal Mining in Colombia

Colombia is the fourth-largest coal exporter in the world (after Indonesia, Australia, and Russia)<sup>20</sup>. According to International Energy Agency statistics, Colombia in 2016 exported a record 83.3 million tons of coal, 92.1% of its total coal production<sup>21</sup>. Traditionally, Colombia's primary export markets are in Europe and North America, including the countries in which Vattenfall's coal plants provide power. However, Colombian coal exports to Asia grew in 2016, particularly to Japan and Korea<sup>22</sup>.

Colombia's production of coal, more than 90 million tons in 2016<sup>23</sup>, occurs mostly in the departments of La Guajira, Cesar, Cundinamarca, Boyaca, and Norte de Santander<sup>24</sup>. As discussed, this report focuses on the regions of Cesar, La Guajira, and Magdalena, where we conducted our site visit and stakeholder engagement, including contact with some of the major coal exporters listed below. (The Department of Magdalena is relevant, not for coal-extraction activities, but because coal mined in Cesar Department is transported to ports in Magdalena for export.)

Colombia's coal-mining sector is dominated by large-scale open pit activities that operate under concession. (See Highlight — Regulatory Framework and Mining Titles, above.) In the departments of Cesar and La Guajira, large coal-mining operations are conducted by international mining companies and coal exporters:

- Carbones del Cerrejón LLC (a joint venture of Anglo American Plc, Glencore Plc, and BHP) in the Department of La Guajira;
- Drummond Co. Inc. in the Department of Cesar;
- Prodeco SA (fully owned by Glencore Plc) in Cesar;
- Colombia Natural Resources (CNR), acquired in 2015 by Murray Energy Corp., in Cesar.

The highest concentration of coal mining activities take place in the Department of Cesar, where three companies currently operate: Prodeco, Drummond, and CNR.

### Bottom Line of Social Conflict Between Communities and Mining Ventures

The core source of social conflict between communities and those conducting mining activities is the perception that the communities do not benefit from the wealth generated by mining, due to high levels of corruption.

Colombia has ratified the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. However, according to the OECD, "Corruption and perceptions of corruption remains an issue. Corruption affects in particular sub-national governments. In 2011, more than 100 mayors (out of 1123 municipalities) were punished by the Inspector General"<sup>25</sup>.

The disappearance of royalties accruing from mining licences into private hands is well-documented<sup>26</sup>. High levels of corruption at the regional level prompted the central government to take back powers from regional authorities. From an environmental-monitoring perspective, this meant that the Agencia Nacional de Licencias Ambientales (Environmental Licensing Authority, or ANLA) took over responsibilities such as monitoring or licensing that were previously held by regional authorities<sup>27</sup>.

<sup>20</sup> <http://www.iea.org/publications/freepublications/publication/CoalInformation2017Overview.pdf> (Accessed in May 2017)

<sup>21</sup> <http://www.iea.org/publications/freepublications/publication/CoalInformation2017Overview.pdf> (Accessed in May 2017)

<sup>22</sup> <http://www.iea.org/publications/freepublications/publication/CoalInformation2017Overview.pdf> (Accessed in May 2017)

<sup>23</sup> <http://www.iea.org/publications/freepublications/publication/CoalInformation2017Overview.pdf> (Accessed in May 2017)

<sup>24</sup> <http://thelawreviews.co.uk/edition/the-mining-law-review-edition-5/1140351/mining-colombia> (Accessed in May 2017)

<sup>25</sup> <https://www.oecd.org/about/publishing/colombia-policy-priorities-for-inclusive-development.pdf> (Accessed in May 2017)

<sup>26</sup> <http://www.anticorruptcion.gov.co/Paginas/la-jagua-un-modelo-de-corrupcion-en-el-manejo-de-regalias.aspx> (Accessed in May 2017)

<sup>27</sup> <http://repository.unilibre.edu.co/bitstream/handle/10901/7706/GneccoGomezAlvaroJose2014.pdf?sequence=1> (Accessed in May 2017)

<sup>27</sup> Interview with ANLA, March 2017

In La Guajira, where three previous governors were convicted following corruption charges, the percentage of people living in extreme poverty increased, even as the department took in significant royalties. In Cesar, La Jagua de Ibirico is renowned as one of the most corrupt municipalities in Colombia. Investigations by the Contraloría General de la República (Colombian Comptroller's Office) revealed irregularities in the use of funds and awarding of contracts. Several mayors have been jailed on charges of corruption. Despite being the municipality that receives the most royalties in a department whose relative wealth accrues from coal mining and its royalties, living conditions for La Jagua's inhabitants have not improved, and development has not occurred as anticipated<sup>28</sup>. For example, from 1997 to 2003, the town received about 100 billion pesos (around USD35 million) from royalties but never received clean drinking water. This prompted the Ombudsman's Office to ask the Anti-Corruption Office of the Presidency to investigate corruption in the management of coal royalties in Cesar<sup>29</sup>.

The system for collecting royalties in Colombia, as a result, was changed in 2012. Royalties are now collected by the central government, which then routes the funds to the regions via the General System of Royalties<sup>30</sup>. However, a 2015 report by the OECD found that the current system of resource administration fails to incentivise regional authorities to improve their capacity to make public investment<sup>31</sup>. Recent investigations by the Comptroller General revealed cases of corruption relating to the misuse and diversion of public funds in the mining corridor from 2012 to 2015 in Cesar's municipalities of La Jagua del Ibirico, Becerril, and Agustín Codazzi. In La Jagua, the Comptroller General found irregularities of more than 127 billion pesos in the construction of social housing and 2.4 billion pesos of overcharges in the School Food Programme<sup>32</sup>.

The OECD<sup>33</sup> has also highlighted the poor coordination, conflicting agendas, and lack of trust in the judicial system and among institutions that fight corruption, citing a lack of independence, susceptibility to political agendas, and overall ineffectiveness<sup>34</sup>.

While Colombia's justice system faces significant challenges with respect to punishing crimes of corruption (including within the judiciary) and violence against trade unionists, among other victims, recent data suggests that better access to justice and speedier case resolution have begun to improve matters. Some judicial institutions now enjoy high approval ratings, including the Constitutional Court, whose role is to uphold the social and economic rights of individuals<sup>35</sup>.

An increase in transparency is seen as a fundamental step to win citizens' trust, and the government has already taken action. Colombia's accession to the Open Government Partnership (OGP) in 2012 entailed commitments on access to information and e-government. Regarding accountability and citizen engagement, a new Law on Transparency and Access to Public Information was promulgated<sup>36</sup>.

<sup>28</sup> [http://www.undp.org/content/dam/undp/documents/projects/COL/00058220\\_Analisis%20Cesar%20Definitivo%20PDF.pdf](http://www.undp.org/content/dam/undp/documents/projects/COL/00058220_Analisis%20Cesar%20Definitivo%20PDF.pdf) (Accessed in May 2017)

<sup>29</sup> <http://www.defensoria.gov.co/es/nube/regiones/954/Informe-sobre-explotaci%C3%B3n-transporte-y-embarque-de-carb%C3%B3n-en-Cesar-y-Magdalena-carb%C3%B3n-embarque-Cesar-Magdalena-MAVDT-Medio-ambiente-Derechos-Humanos-Magdalena.htm> (Accessed in May 2017)

<sup>30</sup> <https://www.oecd.org/regional/regional-policy/profile-Colombia.pdf> (Accessed in May 2017)

<sup>31</sup> According to the OECD: "Current expenditures are earmarked for departments and municipalities according to poverty rates and demographic size (SGP Sistema General de Participación). Yet, the lack of up-to-date territorial data makes it difficult to assess the effective distribution of these resources and the amount of funds allocated through transfers has remained virtually unchanged since 2005. These shortcomings in the national system may cause fiscal inertia as sub-national authorities lack incentives for improving their capacity to implement public investment". <https://www.oecd.org/about/publishing/colombia-policy-priorities-for-inclusive-development.pdf>

<sup>32</sup> <http://elpilon.com.co/estas-las-irregularidades-investiga-la-contraloria-general-cesar/> and <https://www.elheraldo.co/cesar/trasladan-fiscalia-posibles-hallazgos-de-sobrecostos-en-la-jagua-de-ibirico-213780> (Accessed in May 2017)

<sup>33</sup> <https://www.oecd.org/about/publishing/colombia-policy-priorities-for-inclusive-development.pdf> (Accessed in May 2017)

<sup>34</sup> "The proliferation of institutions tasked with fighting corruption is characterised by limited co-ordination and trust between them as each pursues its own agenda, creating inefficiencies in the system. The Auditor General (Auditoría) appears to be overseen by the authority it is mandated to control—the Comptroller General (Contraloría). This governance and accountability model calls into question the independence of these institutions, as well as their overall effectiveness. In addition, territorial sections of the Contraloría are funded locally and can therefore be exposed to local political influence. Furthermore, the Inspector General of Colombia (Procuraduría) currently has the power to remove elected officials and autonomous regulators from office. As currently distributed, these powers enable the Inspector General to act as prosecutor, judge and jury in its disciplinary investigations, which calls into question the constitutional autonomy of the Executive and Legislative branches of government". <https://www.oecd.org/about/publishing/colombia-policy-priorities-for-inclusive-development.pdf> (Accessed in May 2017)

<sup>35</sup> <https://www.oecd.org/about/publishing/colombia-policy-priorities-for-inclusive-development.pdf> (Accessed in May 2017)

<sup>36</sup> <https://www.oecd.org/about/publishing/colombia-policy-priorities-for-inclusive-development.pdf> (Accessed in May 2017)

## Human Rights Context of Coal Mining in Colombia

We have identified four primary human rights issues in Colombia's coal-mining sector to explore in this report. (See Chapter 1: Methodology for why we selected them.)

Our focus on these priority human rights issues includes:

1. Workers' rights, in particular
  - Occupational Health and Safety
  - Freedom of Association
2. Displacement and Land Restitution in the Internal Armed Conflict
3. Involuntary Resettlement
4. Environment and Communities

In this chapter, we provide brief summaries of these four issues (and related sub-issues) to help provide context for our on-site visits. We present our findings in the following chapter.

### Workers' Rights

In this report, we focus on occupational health and safety and freedom of association.

Given that work is part of everyone's daily life and is crucial to a person's dignity, well-being, and development as a human being, the recognition of workers' rights is critical to protecting human rights in the workplace. Workers' rights include fair pay and benefits, safe working conditions, and the right to freedom of association, as included in the relevant International Labour Organisation (ILO) conventions and in articles 23 and 24 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as the Colombian Constitution and the Colombian Labour Code.

Colombia's Constitution, in particular, guarantees freedom of association and provides for collective bargaining and the right to strike. It also addresses forced labour, trafficking, discrimination, protections for women and children in the workplace, minimum wages, working hours, skills training, and social security<sup>37</sup>.

However, in its submission to the OECD's Employment, Labour and Social affairs Committee (ELSAC) on Colombia's ascension to the OECD, the OECD's Trade Union Advisory Committee (TUAC) stated that Colombia has failed to make adequate progress on previous recommendations with regards to respect for labour rights and the rights and safety of trade union representatives<sup>38</sup>.

In January 2017, the governments of Canada and the U.S. published their respective responses to official complaints filed by trade unions concerning Colombia's failure to comply with the labour rights commitments of their respective trade agreements. These reports document the lack of progress on the issues covered by the ELSAC mandate and make a number of recommendations<sup>39</sup>. The 2017 report of the ILO Committee of Experts on the Application of Conventions and Recommendations underlines a similar lack of progress.

### Occupational Health and Safety

With regards to the health system in general, in 1993, Law 100 reformed the Sistema General de Seguridad Social en Salud (General System of Social Security in Health, or SGSSS). It transferred responsibility for planning and purchasing health services to new health insurance agencies called Entidades Promotoras de Salud (Health Promoting Entities, or EPS). This law created a national health system by making health insurance mandatory for all who could afford it, creating a single national pool for insurance contributions, splitting the purchaser and provider functions, and encouraging competition by allowing individuals to choose their insurer. Responsibility for managing the financing and operation of health services was developed locally.

<sup>37</sup> <https://www.dol.gov/ilab/reports/pdf/ColombiaLaborRights.pdf> (Accessed in May 2017)

<sup>38</sup> The report goes on to say that "Colombia has been criticized over a number of years for failing to implement commitments made on labour rights in various international processes including, in 2017, by two ELSAC members, Canada and the US." [http://www.tuac.org/en/public/e-docs/00/00/13/3E/document\\_doc.phtml](http://www.tuac.org/en/public/e-docs/00/00/13/3E/document_doc.phtml) TUAC (Accessed in May 2017)

<sup>39</sup> <https://www.canada.ca/en/employment-social-development/services/labour-relations/international/agreements/2016-1-review.html> (Accessed in May 2017) and [https://www.dol.gov/sites/default/files/documents/ilab/PublicReportofReviewofUSSubmission2016-02\\_Final.pdf](https://www.dol.gov/sites/default/files/documents/ilab/PublicReportofReviewofUSSubmission2016-02_Final.pdf) (Accessed in May 2017)

## Need for Health System Reform

A 2016 review of Colombia's Health system by the OECD<sup>40</sup> revealed that the country faces challenges to maintain and improve the performance of its health system. It found that:

- Health insurers act as mere financial clearing houses, lacking effective engagement with either consumers or providers;
- Colombia has an explicit inclusion list of services to be funded, contrary to the models of OECD countries such as the U.K. or emerging economies such as Mexico, which ensure access to necessary care for most citizens while restricting funding to less cost-effective therapies through explicit inclusion. This has led to the increase of the number of *accion de tutela* (writs of action for constitutional rights<sup>41</sup>) as individuals took cases to the Constitutional Court. This has had costly consequences in the health system.

The OECD<sup>42</sup> has made a number of recommendations to strengthen the role and accountability of the EPS, including awarding contracts to providers based on: robust measures of quality and outcome; developing more demanding and transparent performance frameworks around the insurers (EPS), providers (IPS), and territorial authorities responsible for public health; and improving the assurance and monitoring of the quality of care across the system.

With regards to Occupational Health and Safety in particular, national law provides protection for workers' occupational health and safety and provides workers with the right to leave dangerous work situations without jeopardising employment. The health and safety of workers in the mining sector is protected under various laws<sup>43</sup>. The coal mining occupational health and safety (H&S) standards are administered by the National Mining Agency and the Colombian Geological Service.

Legal obligations related to mining safety include, among others, forming a committee of medicine, ensuring industrial hygiene and safety, and enrolling workers in the social security systems. Decree 0472 of 2015<sup>44</sup> also states that employers must report any labour-related accidents or illnesses, both to the Ministry of Labour and to the Health and Professional Risk entities.

<sup>40</sup> <http://dx.doi.org/10.1787/9789264248908-en> (Accessed in May 2017)

<sup>41</sup> Central among the legal mechanisms for the protection of equality in Colombia is the *tutela*, an easily accessible and quickly resolved writ for the satisfaction of fundamental rights. As such, it has become a popular mechanism for ordinary citizens to claim their constitutionally protected rights.

<sup>42</sup> The main recommendations are:

- EPS to manage both clinical risks (through effective prevention, early diagnosis, and quality management of health care providers) and financial risk (by managing demand and contracting intelligently with providers and suppliers).
- Greater accountability for the role of EPS is needed. They should evolve into efficient and effective purchasers of care, engaging in prevention and early detection and awarding contracts to providers based on robust measures of quality and outcomes.
- The Colombian authorities should also identify how international best practice in risk-adjustment mechanisms can be applied to EPS.
- Develop more demanding and transparent performance frameworks around insurers (EPS), providers (IPS), and territorial authorities responsible for public health, focused on population health outcomes, quality of care, financial sustainability, and good governance.
- Draw upon international experience to modify payment systems to insurers, providers, and workforce, to reward quality of outcomes rather than activity. Vertical integration between insurer and provider should be discouraged. EPS should evolve into fully fledged purchasers of care, awarding contracts to providers competing for patients based on service quality.
- Address the exponential growth in *tutelas* by redefining the basic benefits package as an exclusion list. Improving the quality and timeliness of service will also reduce the need for *tutelas*.
- Encourage innovation and higher performance within the IPS market, for example, by encouraging EPS to use quality and outcomes metrics in their contracts with IPS, or allowing higher-performing IPS increased financial and operational autonomy.
- Improving the assurance and monitoring of the quality of care across the system. In particular, the scarcity of reliable-quality data is an issue that must be addressed with urgency. Source: <http://dx.doi.org/10.1787/9789264248908-en> (Accessed in May 2017)

<sup>43</sup> Law 685 of 2001 on the safety of persons and property, Decree 1335 of 1987 on safety regulations in underground mining works, Decree 2222 of 1993 on health and safety regulations in open-pit mining operations, Decree 0472 of 2015 established the criteria to determine fines and sanctions to corporations infringing HSE regulation, Decree 1443 of 2014 regulates health and safety at the workplace system, Decree 1477 of 2014 introduces a new chart with the list of labour-related diseases, Decree 1072 of 2015 is a compilation of all existing decrees in the labour sector, Decree 1886 of 2015 establishes safety rules for underground mining.

<sup>44</sup> <http://www.ins.gov.co/normatividad/Decretos/DECRETO%200472%20DE%202015.pdf> (Accessed in May 2017)



The Occupational Risks System covers occupational accidents and diseases, including pensions for total permanent or partial permanent disability and for death.

**Key actors include:**

- The Administradoras de Riesgos Laborales (Occupational Risk Insurers, or ARLs) cover the promotion, prevention, and response to risks related to injury and occupational diseases (ATEP), as well as pension coverage for disability or death caused by or during work. All employers, regardless of their economic activity, must contribute financially to the ARLs and enroll employees, from the start of an employment relationship, in an ARL, either public or private. The services provided by an ARL are not exclusive to a single company but are for all the companies enrolled in that ARL;
- Juntas de Calificación de Invalidez (Qualification Committees for Disability) are regional or national agencies linked to the Ministry of Labour that, together with other functions, resolve disputes that arise in relation to determining the work or common origin of the accident or illness and/or qualify the loss of work capacity or the state of invalidity;
- The Entidades Promotoras de Salud (Health-Promotion Entities, or EPS) are responsible for recruiting and ensuring health care for the population, subject to rules defined by the National Regulatory Commission and the Ministry of Social Protection. These are the agencies that individuals choose as insurers, as mentioned above;
- The Instituciones Prestadoras de Servicios de Salud (Health Care Service Providers, or IPS) are private or mixed-public institutions attached to the Ministry of Social Protection, such as the National Institutes of Health and the National Cancer Institute.

According to interviews we have conducted with the unions, a key challenge for complainants lies in proving that an illness or disease is work-related. Labour unions have also criticised what they consider a vicious circle formed by the ARLs and the EPS/Health Service Providers in which: “If the ARL, after a long process of qualification that can take years, decides the illness is not work-related, the case gets transferred to the EPS. However, in many cases the EPS disagrees with the ARL and sends back the case to the ARL, leading to a new reevaluation of the case by the Qualification Committee for Disability Committee”<sup>45</sup>. This means that the evaluation of work related incidents is often delayed, sometimes for years.

Workers can file health and safety complaints through a hotline, the Ministry of Labour’s website, or the court system<sup>46</sup>. Alternative dispute resolution systems are used by the Ministry of Justice for labour disputes that include arbitration, mediation, and conciliation<sup>47</sup>.

Recently, the Ministry of Labour issued a communication recognising a need to “regulate the subject of the rehabilitation, relocation and the procedures to qualify disability that are managed by the Qualification Committee for Disability, in order to establish actions to solve the difficulties that exist in the recognition of the guarantees and labour rights, especially with the people related to the mining activity”<sup>48</sup>.

<sup>45</sup> Interview with union representatives, March 2017.

<sup>46</sup> [http://www.mintrabajo.gov.co/component/docman/doc\\_download/1026-resultados-del-plan-de-accion-eeuu--colombia-abril-2013.html](http://www.mintrabajo.gov.co/component/docman/doc_download/1026-resultados-del-plan-de-accion-eeuu--colombia-abril-2013.html) (Accessed in May 2017)

<sup>47</sup> <http://www.minjusticia.gov.co/Ministerio/Estructuraorganizacionaldelaentidad/ViceministeriodePromociondelajusticia/DirecciondeMetodosAlternativosySolucion-deConflictos.aspx> (Accessed in May 2017)

<sup>48</sup> <http://www.mintrabajo.gov.co/julio-2016/6206-ministra-lopez-obregon-se-reune-con-trabajadores-enfermos-de-la-drummond.html> (Accessed in May 2017)

## OHS in Coal Mining in Colombia

The Sistema de Riesgos Profesionales (Workers Risks System) categorises the mining sector as one entailing extreme risk activity (level 5)<sup>49</sup>.

National statistics show that, of the total number of fatalities in mining recorded in the period 2005-2017, 74% occurred in coal mining activities (857 fatalities). From 2010 to 2017, fatalities in underground coal mining represented 87% of the total for mining activities<sup>50</sup>. In 2017, 74% occurred in coal-mining activities (857 fatalities). From 2010 to 2017, fatalities in underground coal mining represented 87% of the total for mining activities<sup>51</sup>.

Although coal mining operations in Cesar and La Guajira departments are open-pit, for which safety records are better than for underground mines, there have been instances of strikes promoted by unions (among others, Sitramienergética and Sintracarbón) because of alleged low health and safety standards and an increase in occupational illnesses and accidents<sup>52</sup>.

With regards to the recognition of specific occupational health and safety occurrences in the coal mining sector, in 2014 the Ministry of Labour added pneumoconiosis, mesothelioma, silicosis, and asbestosis to the list of diseases recognised to have occupational causes<sup>53</sup>. However, the burden remains on the worker to demonstrate that a disease is work-related, and it is argued by unions that many insurance companies tend to refuse to grant such recognition<sup>54</sup>.

## Freedom of Association

The right to freedom of association is enshrined in Colombian law, in the national constitution's articles 39, 55, and 56, and in the Labour Code<sup>55</sup>. The law provides for the right of workers to form and join unions, bargain collectively, and conduct legal strikes, and it prohibits anti-union discrimination.

The International Trade Union Confederation (ITUC) classifies Colombia as "5-No Guarantee of Rights" (on a scale from 1-5) in its Global Rights Index<sup>56</sup>, a rating that depicts the world's worst countries for workers, especially in relation to the treatment of unionists and labour unions.

The OECD<sup>57</sup> has reported that, unlike most member countries of the OECD, employers in Colombia have the ability (under article 481 of the Labour Code) to negotiate pactos colectivos (collective pacts) with non-unionised workers when a union represents fewer than one-third of the workforce. The OECD states that such "collective accords are sometimes used by employers to prevent the emergence of trade unions or weaken their influence"<sup>58</sup> and recommends that Colombia eliminate the option of negotiating collective pacts with non-unionised workers<sup>59</sup>.

<sup>49</sup> Stipulated by Decree-Law 1295 of 1994 and Decree 1772 of 1994

<sup>50</sup> ANM [https://www.anm.gov.co/?q=emergencias\\_mineras](https://www.anm.gov.co/?q=emergencias_mineras) (Accessed in May 2017)

<sup>51</sup> ANM [https://www.anm.gov.co/?q=emergencias\\_mineras](https://www.anm.gov.co/?q=emergencias_mineras) (Accessed in May 2017)

<sup>52</sup> See, for instance: <http://otramerica.com/especiales/cronicas-wayuu/carbon-limites-la-huelga-minera/2915>, [http://www.radioguatapurí.com/index.php?option=com\\_k2&view=item&id=5125vicepresidente-del-sindicato-de-sintramienergética-stevenson-%C3%A1vila-hab%C3%B3-sobre-la-votaci%C3%B3n-a-huelga-de-los-empleados-de-prodeco&Itemid=123](http://www.radioguatapurí.com/index.php?option=com_k2&view=item&id=5125vicepresidente-del-sindicato-de-sintramienergética-stevenson-%C3%A1vila-hab%C3%B3-sobre-la-votaci%C3%B3n-a-huelga-de-los-empleados-de-prodeco&Itemid=123), <https://www.elespectador.com/noticias/negocios/articulo-trabajadores-de-mina-de-carbon-de-glencore-colombia-votan-huelga> (Accessed in May 2017)

<sup>53</sup> <http://www.mintrabajo.gov.co/medios-agosto-2014/3713-4-nuevas-enfermedades-entra-a-la-tabla-de-riesgos-laborales.html> (Accessed in May 2017)

<sup>54</sup> Interview with Union representatives, March 2017

<sup>55</sup> [http://aplicaciones.cejpa.edu.co/biblioteca/biblio\\_digital/virtualteca/cartillas/Cartilla\\_Derecho\\_colectivo\\_del\\_trabajo\\_RG\\_ene\\_11\\_-20p.pdf](http://aplicaciones.cejpa.edu.co/biblioteca/biblio_digital/virtualteca/cartillas/Cartilla_Derecho_colectivo_del_trabajo_RG_ene_11_-20p.pdf) (Accessed in May 2017)

<sup>56</sup> <http://survey.ituc-csi.org/ITUC-Global-Rights-Index.html?lang=en> (Accessed in May 2017)

<sup>57</sup> OECD Review of Labour Market and Social Policies, Colombia 2016, Chapter 3, Enforcing Labour Rights in Colombia, p.116.

<sup>58</sup> OECD Review of Labour Market and Social Policies, Colombia 2016, Chapter 3, Enforcing Labour Rights in Colombia, p.116.

<sup>59</sup> The OECD went on to accuse the Ministry of Labour of not conducting ongoing monitoring of formalisation agreements or guaranteeing the participation of unions in their development and implementation, leading to problems such as employers using formalisation agreements to avoid sanctions without establishing permanent or direct employment relationships, and/or without covering all the workers affected by illegal subcontracting and firing workers without "just cause" within the protected five-year period after formalisation. According to TUAC, "Collective pacts usually are contracts that workers are unable to negotiate and are forced to accept under threat of dismissal. In some cases, the employer will use the promise of an agreement to entice workers to resign from the union, leaving membership below the one-third threshold, making such agreements legal. In effect, the practice of collective pacts has greatly weakened trade union membership in Colombia. OECD Review of Labour Market and Social Policies, Colombia 2016, Chapter 3, Enforcing Labour Rights in Colombia, p.99. and [http://www.tuac.org/en/public/e-docs/00/00/0C/BB/document\\_doc.phtml](http://www.tuac.org/en/public/e-docs/00/00/0C/BB/document_doc.phtml) (Accessed in May 2017)



On 21 March 2017, it was reported that Labour Minister Clara López Obregón, at a meeting of the Tripartite Commission, had announced new proposals to restrict the possibility of negotiating collective pacts<sup>60</sup>. The state of this initiative is unclear as the minister resigned in May 2017.

According to the OECD's Employment, Labour and Social Affairs Committee (ELSAC)<sup>61</sup>, recommendations issued in 2015 that still stand as of 2017 are:

- Eliminate the option to negotiate collective accords with non-unionised workers;
- Extend collective agreements automatically to all employees of a company;
- Require multiple trade unions in a single company to form a bargaining team in order to ensure a single collective agreement;
- Require companies to formalise the state of employees working under such contracts; through regular employment contracts that ensure access to all basic labour rights;
- Monitor closely the content and implementation of formalisation agreements negotiated between companies and the Ministry of Labour.

## Subcontracting

Subcontracting in Colombia is regulated by Law 1429/2010 (article 63), the National Development Plan 2015-2018, and Decree 583 of April 2016.

According to TUAC's Submission to the Employment, Labour and Social Affairs Committee (ELSAC)<sup>62</sup> on Colombia's Accession to the OECD, Decree 583 was "drawn up without consultation with the Colombian trade union confederations". The report goes on to say that "far from prohibiting the 'misuse' of labour intermediation practices, this Decree legalises outsourcing in core activities. It permits private and public companies to outsource their core business activities to third parties if these companies comply with trade union rights. It also allows firms to transfer its workers to sub-contracting firms. A contracted worker would receive a salary well below that of the permanent staff although both perform would the same functions". Trade unions consider Decree 583 a backward step and contend it should be repealed. The Canadian and U.S. governments criticised Decree 583 in their recent responses to the complaints filed under their respective bilateral trade agreements with Colombia. The Canadian Government called for Decree 583 to be repealed, while the U.S. Government recommended that Colombia take "additional effective measures to combat abusive subcontracting".

On 15 March 2017, Colombia's Consejo del Estado (Council of State) announced the provisional suspension of Decree 583 following a complaint filed by ACOSSET, the employers' organisation that represents temporary agencies. The Council of State is expected to give its final decision later in 2017.

According to the U.S. State Department's 2016 Human Rights report on Colombia, "metal and mineworkers' union SINTRAIME reported that inspections for abusive subcontracting carried out by the Ministry of Labor at Drummond coal mine have been ineffective in safeguarding the freedom of workers to organise"<sup>63</sup>. In 2016, the Ministry of Labour sanctioned Cerrejón and Drummond 2 billion pesos each for excessive use of third-party contractors<sup>64</sup>.

<sup>60</sup> In its latest update, the OECD stated that "By February 2017 collective bargaining coverage in the private sector remains consistently low (c2%), with no progress in the reduction of the number of collective pacts and that in fact they are increasing". The OECD also condemned high levels of impunity as companies remain unsanctioned. TUAC submission to the OECD ELSAC on Colombia's ascension to the OECD, 2017 [http://www.tuac.org/en/public/e-docs/00/00/13/3E/document\\_doc.phtml](http://www.tuac.org/en/public/e-docs/00/00/13/3E/document_doc.phtml) and <http://www.portafolio.co/economia/empleo/mintrabajo-limitaria-pactos-colectivos-en-las-empresas-504320>

<sup>61</sup> [http://www.tuac.org/en/public/e-docs/00/00/13/3E/document\\_doc.phtml](http://www.tuac.org/en/public/e-docs/00/00/13/3E/document_doc.phtml) (Accessed in May 2017)

<sup>62</sup> TUAC submission to the OECD ELSAC on Colombia's ascension to the OECD, 2017. [http://www.tuac.org/en/public/e-docs/00/00/13/3E/document\\_doc.phtml](http://www.tuac.org/en/public/e-docs/00/00/13/3E/document_doc.phtml) (Accessed in May 2017)

<sup>63</sup> <https://www.state.gov/documents/organisation/265786.pdf> (Accessed in May 2017)

<sup>64</sup> The complaints that prompted the investigation were filed 2013-2014 by Sintraime and Sintracarbón unions. Sintraime complained to Drummond about illegal outsourcing to Gecolsa, a company in charge of the maintenance/servicing of equipment in the mining area of La Jagua de Ibirico, Cesar. Sintracarbón complained to Cerrejón for the same reason. For six years, both multinationals contracted maintenance with Gecolsa, which in turn subcontracted with a second company, Dimantec; double subcontracting is illegal, according to Colombian Law. <https://prensabolivariana.com/2015/12/16/sindicato-metalurgico-sintraime-denuncia-despidos-arbitrarios-en-empresa-dimantec-ltda/> and <http://colombiasupport.net/2016/11/labour-ministry-fines-8-companies-more-than-15-billion-pesos/> (Accessed in May 2017)

A number of unions are active in operations of the major mining companies, with some overlap. Major coal mining unions include<sup>65</sup>:

- **Sintraminergética:** Prodeco, Drummond
- **Sintracarbón:** Prodeco, Cerrejón
- **Sintracerrejón:** Cerrejón
- **Sintradem:** Drummond
- **Sintradrummond:** Drummond
- **Agretritrenes:** Drummond
- **Sintramineros:** Drummond
- **Sintraime:** Drummond

### **The Sintradem Union Case**

Sintradem (Sindicato Nacional de Trabajadores Enfermos y Discapacitados del Sector Minero) was formed in 2014 to represent disabled and sick workers employed by Drummond. The union currently represents 186 people with musculoskeletal and respiratory issues and aims to protect the rights of workers who have experienced health impacts due to occupational hazards. The company, which did not initially recognise the union because this was neither based on an industry sector nor skills, brought a legal action against Sintradem asking for its dissolution. This court case was resolved in Sintradem's favour, and the company recognised the union, whose existence is no longer legally disputed.

The parties then engaged in negotiation with regards to a collective agreement. Following a lack of progress in the negotiations, Sintradem registered a complaint in 2016 to the OECD National Contact Point (NCP) in Colombia. In September 2017, an agreement was finally reached<sup>66</sup>, although the case log at the OECD remains open. (For more information, see Chapter 3: Observations and Feedback.)

One of the biggest controversies relates to accusations of discrimination and violence against unions and union leaders.

Across most industry sectors in Colombia, there is a tense, often politicised, relationship between union leaders and company management and among and within unions. Labour relations are characterised by tensions, strikes, and violence.

Unions complain about multiple instances in which companies across sectors have fired employees who formed, or sought to form, new unions, as well as management use of temporary contracts, service agencies, and other forms of subcontracting to limit worker rights and protections<sup>67</sup>.

Despite legislative prohibition of discrimination against unionists, many incidents have been reported of union leaders being fired for their activities<sup>68</sup>.

Colombia is still widely considered the most dangerous place in the world for trade unionists, a situation aggravated by impunity for those who perpetrate such crimes<sup>69</sup>. Unionists face violence,

<sup>65</sup> Note that CNR has no own mining personnel and is not linked to any labour unions.

<sup>66</sup> <http://www.drummondLtd.com/drummond-ltd-firma-convencion-colectiva-con-sintradem/> (Accessed in May 2017)

<sup>67</sup> <https://www.state.gov/documents/organisation/265786.pdf> (Accessed in May 2017)

<sup>68</sup> Maplecroft assessment of coal mining in Colombia, 2015

<sup>69</sup> <https://business-humanrights.org/en/new-report-by-afi-cio-says-that-more-trade-unionists-are-killed-in-colombia-than-in-rest-of-the-world-combined> (Accessed in May 2017)

threats, harassment, and other practices limiting their right to freedom of association and collective bargaining. According to the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), more labour rights advocates are killed each year in Colombia than in the rest of the world combined. Violence against union representatives has been linked to the longstanding civil conflict. To date, over 3,000 union leaders have been killed since the start<sup>70,71</sup>. Numbers put forth in 2011 from Funtraenergética, a labour union in the extractives industry, indicate that 78% of crimes against trade unionists took place in municipalities with mining or petroleum activities<sup>72</sup>.

Violence continues, despite the government's commitments under the 2011 Colombian Action Plan Related to Labour Rights (Labour Action Plan) and inspections by the Ministry of Labour<sup>73</sup>.

The National Labour School, Colombia's leading labour-rights NGO, reported 18 killings of trade unionists from January 2015 through February 2016. The government has reported more than 120 since 2011.

According to Peace Brigades International (PBI)<sup>74</sup>, in 2017, when military actions pertaining to the conflict fell to historically low levels, violence against human rights defenders increased to record levels, culminating in the assassination of 17 human rights defenders, community leaders, and members of Juntas de Acción Comunal (Communal Action Councils, or JACs) during the period from the signing of the Peace Agreement on 24 November 2016 to 31 January 2017. February 2017 brought an increase in the number of death threats, aggression, assassination attempts, and attacks perpetrated against civil rights defenders<sup>75</sup>.

The We Are Defenders Program identifies neo-paramilitary groups as having been responsible in 45 cases of homicide against human rights defenders in 2016. The OECD<sup>76</sup> has stated that the "vast majority of homicides remain unresolved and the intellectual authors of murders and attacks are seldom prosecuted" and has called for Colombia to take action to address the low rate of conviction for threats and violence against trade unionists. As of February 2015, the Attorney General's Office had obtained convictions in only six such killings committed since 2011<sup>77</sup>. Labour groups have stated that more must be done to address impunity for perpetrators of violence and threats against trade unionists.

The TUAC<sup>78</sup>, in its report on Colombia's ascension to the OECD, made a number of recommendations to increase the security of union representatives.

<sup>70</sup> <https://business-humanrights.org/en/new-report-by-afl-cio-says-that-more-trade-unionists-are-killed-in-colombia-than-in-rest-of-the-world-combined> (Accessed in May 2017)

<sup>71</sup> The We Are Defenders Program identified neo-paramilitary groups as responsible in 45 cases of homicide against human rights defenders in 2016.

<sup>72</sup> [http://lasillavacia.com/sites/default/files/mineropedia/mineria\\_en\\_colombia.pdf](http://lasillavacia.com/sites/default/files/mineropedia/mineria_en_colombia.pdf) (page 63) (Accessed in May 2017)

<sup>73</sup> <https://www.state.gov/documents/organisation/265786.pdf> (Accessed in May 2017)

<sup>74</sup> PIB is a not-for-profit organisation recognised by the Office of the UN High Commissioner for Human Rights.

<https://pbicolombia.org/2017/05/09/6519/> (Accessed in May 2017)

<sup>75</sup> PIB is a not for profit organisation recognised by the Office of the UN High Commissioner for Human Rights.

<https://pbicolombia.org/2017/05/09/6519/> (Accessed in May 2017)

<sup>76</sup> OECD Review of Labour Market and Social Policies, Chapter 3, Enforcing Labour Rights in Colombia, p.104.

<sup>77</sup> According to the Attorney General's Office (Fiscalía), for the period 2011-2016, a total of 152 cases of assassinations of trade unionists were handled by the office, of which 127 are open (84%) and 25 are closed (16%). Of the 127 open cases, 9 are at the investigation stage (7%), while 13 have gone to trial (10%). Of the 25 closed cases, 10 have resulted in a conviction—fewer than 7% of the 152 cases. For the same period, 2011-2016, the attorney general reports a total of 673 cases concerning other forms of violence against trade unionists, 84% of which were death threats. Of 241 open cases, 96.6% are still at the preliminary inquiry stage. There is only one formal investigation. In June 2016, the Higher Council of the Judiciary reduced from three to two the ILO judges that had been assigned exclusively to cases of murders of members of the trade union movement. In March 2017, there was still just one judge handling this case load. Sources: <https://www.hrw.org/world-report/2017/country-chapters/colombia> (Accessed in May 2017); Información Sindicalistas Enero 2011, December 2016, Fiscalía, p8-9; TUAC submission to the OECD ELSAC on Colombia's ascension to the OECD, 2017.

<sup>78</sup> Recommendations included:

- Involve trade unionists at risk in the risk-assessment process to improve the quality/avoid misinformation;
- Ensure effective controls to prevent corruption, including asking the UNP to publish its budget;
- Ensure that bodyguards are hired on the basis of direct employment contracts with per diems for missions and contributions to social protection and other security for public sector employees;
- Allow unions to select their own bodyguards;
- Reduce the amount of time for completion of the risk-assessment process for people under immediate threat;

The U.S. and Canadian governments also issued the following recommendations:

- Provide the National Protection Unit sufficient and permanent financial resources to operate effectively;
- Ensure that inter-institutional coordination mechanisms (between the Ministry of Labour and the Office of the Attorney General) are in place for the exchange of information and sharing of relevant evidence;
- Critically and independently examine the role of the Escuadrón Móvil Antidisturbios (ESMAD) for excessive use of force;
- Monitor the sufficiency of the provided protection measures and increase them, if deemed inadequate, by taking a systematic approach to improve investigations into cases of trade union violence. [http://www.tuac.org/en/public/e-docs/00/00/13/3E/document\\_doc.phtml](http://www.tuac.org/en/public/e-docs/00/00/13/3E/document_doc.phtml) (Accessed in May 2017)

## Displacement and Land Restitution in the Internal Armed Conflict

The internal armed conflict in Colombia is mostly driven by two armed, non-state groups<sup>79</sup>:

- Guerrilla groups (left-wing rebels) have been active in the mining regions since the 1970s and include the recently demobilised FARC-EP (Revolutionary Armed Forces of Colombia-People's Army) and the ELN (National Liberation Army);
- Paramilitary groups (right-wing fighters opposing the guerrillas) have been present in the mining regions since the 1980s and include the United Self-Defense Forces of Colombia (Autodefensas Unidas de Colombia-AUC, which was demobilised 2003-2006), and successor groups such as the BACRIM (Bandas Criminales, or criminal bands).

Colombia's internal armed conflict is widely recognised as a major cause of massive, forced displacements. Around 6.5 million hectares of land, including some of the most fertile, was stolen, abandoned, or forcibly changed hands in other ways from 1985 to 2008 as a result of the conflict<sup>80</sup>. As a consequence, Colombia has one of the highest rates of internal displacement in the world<sup>81</sup>.

The alleged contribution of mining activities to the violence is a highly contested issue in Colombia. In a 2012 report, "La Maldita Tierra", by the National Centre for Historical Memory (CNMH), paramilitary leaders Mancuso and Castano confessed that the presence of mining in Cesar made it attractive to take military action in that area. Mining companies argue that they have been the target of violence of paramilitary forces, which have been known to extort illegal contributions from corporations.

In Cesar Department, "The Dark side of Coal", a report by PAX, documented witnesses' accounts claiming ties between paramilitary group AUC and the mining companies in response to an escalating campaign of kidnappings and attacks against the companies by the leftist guerrillas of FARC and the ELN.

Official statistics from the Unidad para las Víctimas (Victims' Unit) show that almost 9 million victims of the conflict since 1985 have been registered, including some 7 million victims of forced displacement. About 990,000 are said to have been killed, with others victimised by enforced disappearances, hostage-taking, torture, and anti-personnel mines and unexploded ordnance. The most up-to-date numbers from the Victim's Unit indicate around 430,000 victims of forced displacement due to the conflict in Cesar and around 160,000 in La Guajira<sup>82</sup>.

According to the CNMH<sup>83</sup>, the mining boom since 2008 has also sharpened the problems of inequality, violence, and displacement in several parts of the country, including the coal-mining regions of Cesar and La Guajira.

The communities affected by the conflict are protected by a transitional justice system through the Justice and Peace Law (Law 975 of 2005)<sup>84</sup> that was created for the demobilization of armed, mainly paramilitary, groups. The introduction of the Victims and Land Restitution Law (Law 1448 of 2011)<sup>85</sup> particularly shows that Colombia's government is making progress in protecting the right to truth, justice, reparation, and guarantees of non-recurrence for victims of the internal armed conflict<sup>86</sup>.

<sup>79</sup> According to several reports, in Cesar only, both the guerrillas and paramilitaries had an active presence in the territory beginning in the early 1980s. As of 2011, 20 guerrilla Bandas Criminales (BACRIM) have been operating in the department; in 2012, narco-paramilitary groups were present in 85% of the municipalities in Cesar – see <https://rni.unidadvictimas.gov.co/mwg-internal/de5fs23hu73ds/progress?id=nsUE8D7PDGw2bma9g5L5QkT8AJHWR6MmRvddna1FNLQ>, <https://www.brookings.edu/wp-content/uploads/2016/06/Changing-Timesthe-Intl-Response-to-Internal-Displacement-in-Colombia-December-2014.pdf>, El Espectador, 2012 and CODHES, La Crisis Humanitaria en Colombia Persiste, 2013, [http://www.abcolombia.org.uk/downloads/Informe\\_Desplazamiento\\_2012\\_La\\_Crisis\\_Humanitaria.pdf](http://www.abcolombia.org.uk/downloads/Informe_Desplazamiento_2012_La_Crisis_Humanitaria.pdf) (Accessed in May 2017)

<sup>80</sup> <https://www.economist.com/news/americas/21567087-hard-bargaining-starts-peace-land-and-bread> (Accessed in May 2017)

<sup>81</sup> <https://www.land-links.org/country-profile/colombia-2/> (Accessed in May 2017)

<sup>82</sup> <https://rni.unidadvictimas.gov.co/RUV> (Accessed in September 2017)

<sup>83</sup> CNMH is a public institution attached to the Department for Social Prosperity (DSP), which aims to collect and recover information related to the violations referred to in article 147 of the Law of Victims and Land restitution through all documentary material, oral testimony, and by any other means.

<sup>84</sup> <http://www.justiciatransicional.gov.co/ABC/Ley-de-Justicia-y-Paz> (Accessed in May 2017)

<sup>85</sup> <http://www.justiciatransicional.gov.co/ABC/Ley-de-V%C3%ADctimas-y-Restituci%C3%B3n-de-Tierras> (Accessed in May 2017)

<sup>86</sup> Defined as: "those people that, individually or collectively, have suffered from damages for facts that occurred since 1st of January 1985, as a result of violations of international humanitarian law or serious violations of international human rights standards that occurred during the internal armed conflict", by Article 3 of the Victim and Land Restitution Law.

The Colombian government's effort is partly focused on an ambitious land-restitution scheme designed to tackle the issues of forced displacement and other crimes against victims of the conflict. It aims to provide, among other services, collective and individual reparations and land restitution to those who were forcibly displaced. This includes assistance for victims of displacement in reclaiming land, even if the land is currently under concession for a mining license.

Under the Victims and Land Restitution Law, victims are entitled to individual and collective reparations. Those entitled to collective reparation ("Sujetos de reparación colectiva") are not individuals but groups, communities, and other organizations that suffered collective damages in the context of the armed conflict. The collective reparation process covers restitution measures, economic compensation, and rehabilitation, satisfaction, and non-repetition safeguards in political, material, and symbolic aspects<sup>87</sup>.

### **Key Actors of the Land Restitution Process**

The Land Restitution Legal Process is administratively managed by the Unidad de Restitución de Tierras (Land Restitution Unit, or LRU), which is charged primarily with managing a Registry of Dispossessed and Forcibly Abandoned Lands. The registry "serves as a gateway to the restitution process—in order to initiate legal action for restitution, victims' land must first be 'registered,' meaning that they must receive certification from the Administrative Unit that their land has been wrongfully possessed. Once the land is registered, the Administrative Unit is also responsible for overseeing the case's adjudication and the gathering of evidence for the trials"<sup>88</sup>.

A specific team called Equipo de Asuntos Ambientales, Mineroenergéticos e Infraestructura (Environmental Affairs, Mining-Energy and Infrastructure Team, or AMEI), was formed to accompany and advise the LRU, particularly when environmental, mining, energy, and infrastructure issues are present with respect to properties requested for restitution, and to evaluate whether conditions are adequate for a claimant to properly make use of a property if and/or when it is to be restored.

Finally, the Victim and Land Restitution Law created the Unidad para la Atención y Reparación Integral a las Víctimas (Comprehensive Victim Support and Reparation, or Victim's Unit) which aims to provide comprehensive attention for the victims and seeks to build the state's capacity to respond to humanitarian emergencies and avoid new violations of human rights<sup>89</sup>. This entails coordinating victim services at the local, regional, and national levels and among the various governmental agencies involved.

The Victims' Unit is responsible for managing the resources for reparation, including the Fund for Victim Reparations<sup>90</sup>. The Law of Peace and Justice established the fund in 2005 as a financing mechanism for victims' reparations, including restitution and civil damages<sup>91</sup>.

A total of USD30.1 million has been earmarked for the 10 years that the law will be in effect, and a national plan for the assistance and integral reparation of victims has been approved, including a mechanism for continuous monitoring and review<sup>92</sup>.

<sup>87</sup> <https://www.unidadvictimas.gov.co/sites/default/files/documentosbiblioteca/carrepcolv2.pdf> (Accessed in May 2017)

<sup>88</sup> <http://harvardhri.com/wp-content/uploads/2009/09/Summers.pdf> (Accessed in May 2017)

<sup>89</sup> <http://www.un.org/victimsofterrorism/en/node/598> (Accessed in May 2017)

<sup>90</sup> <http://harvardhri.com/wp-content/uploads/2009/09/Summers.pdf> (Accessed in May 2017)

<sup>91</sup> <http://harvardhri.com/wp-content/uploads/2009/09/Summers.pdf> (Accessed in May 2017)

<sup>92</sup> <http://buildingpeaceforum.com/2013/04/colombia-the-victims-hour/> (Accessed in May 2017)

According to the law, contested land would remain under the control of the current owner until legal proceedings have concluded and the owner has been found liable for wrongdoing.

If the current owner cannot prove it acted in "good faith free from guilt", the land would pass to the Victims' Unit 's Fund. In the event that the current owner is a mine operator, the company would lose its license to operate on that land<sup>93</sup> and would have to assume the costs of compensating the victim.

If, on the other hand, the current owner/company can demonstrate that it has acted in good faith, it would retain ownership of the land and would not be obliged to pay "compensation". In this case, the Land Restitution Unit would be responsible for providing the victim with resources to acquire new land, or provide compensation in another manner.

### **The case of Platanal, in Cesar Department**

In Platanal, 17 families claim "dispossession" of their land rights, arguing that they sold their plots at low prices in the midst of the armed conflict between guerrillas and paramilitaries. After the land was bought and sold by several owners, it was purchased in 2008-2009 by Drummond, which began to develop an open coal pit.

The families asked the judge to recognise that they were dispossessed because of the armed conflict; the company claims it acquired the land legitimately and acted "in good faith free from guilt", asserting that it even refrained from acquiring one plot of land because of legal issues it detected in researching the land titles.

There are currently two claims (submitted prior to the Constitutional Court ruling against article 50) in the area of El Platanal<sup>94</sup>.

- One claim is managed by the LRU itself, representing 16 families with demands for economic "compensation" for 715 hectares of land.
- The other claim, managed by Comisión Colombiana de Juristas (Jurists Commission), represents one family asking for "restitution" of 400 hectares.

In these cases, the type of claim is of utmost importance. When a claim demands only "compensation" and not "restitution", a company cannot be declared not to have acted "in good faith free from guilt", and hence cannot lose its license to operate the mine in question.

Despite the clear process in place, a number of challenges remain, particularly the limited capacity of the institution managing the claims process. For instance, official reports from the LRU indicate that of a total 64,882 authorised requests of restitution since 2011, only 5,407 have reached final sentence (around 8%)<sup>95</sup>. Moreover, several cases have been recorded in which victims who applied for legal restitution and leaders of land restitution movements received death threats and were intimidated and attacked physically<sup>96</sup>.

As of March 2017, there were around 5,500 claims in Cesar. The LRU has covered 80% of those cases, 60% of which were declared not valid and the remaining 40% were sent to the Land Restitution

<sup>93</sup> The law provides that the judgment is pronounced on the possible nullity of the concessions and authorisations for the use of the natural resources that would have been granted on the respective land. (Article 91)

<sup>94</sup> Interview with LRU and Victims, March 2017

<sup>95</sup> <https://www.restituciondetierras.gov.co/estadisticas-de-restitucion-de-tierras> (Accessed in May 2017)

<sup>96</sup> [http://www.acnur.org/t3/uploads/media/2869\\_HRW\\_el\\_riesgo\\_de\\_volver\\_a\\_casa.pdf](http://www.acnur.org/t3/uploads/media/2869_HRW_el_riesgo_de_volver_a_casa.pdf) (Accessed in May 2017)

Court. To date, there are 800 cases in the judicial process, but the court has ruled on only 120. None of them relates to a claim over a mining title. The most advanced case is that of Platana<sup>97</sup>. (See Highlight — The Case of Platana.)

The recent peace agreement with the FARC-EP and the ongoing negotiations with the ELN could be seen as a positive step towards ending more than five decades of internal armed conflict and are expected to strengthen and expand the current efforts of the government to tackle the issues of forced displacement and land restitution.

### **The Need to Establish Trust via Dialogue**

According to the Colombian Institute for Human Rights (CREER), one of the key elements to enable the different parties to have an open dialogue is the need to restore trust. According to CREER, the social fabric “has been damaged by factors such as:

- armed conflict and violence against leaders and organisations, resulting in displacement;
- the lack of credibility of the monitoring mechanisms for companies' environmental obligations;
- the ineffectiveness of complaint mechanisms and access to remedy in both the public and private spheres;
- high levels of corruption that have prevented the benefits of large mining projects from materialising in social benefits and a higher quality of life in surrounding communities
- low levels of legal security that result in unpredictable institutional actions”.

(Source: CREER, 2017 — <http://creer-ihrb.org>)

### **Involuntary Resettlement**

According to the IFC, “involuntary resettlement refers both to physical displacement (relocation or loss of shelter) and to economic displacement (loss of assets or access to assets that leads to loss of income sources or means of livelihood) as a result of project-related land acquisition and/or restrictions on land use”<sup>98</sup>. “Resettlement is considered involuntary when affected individuals or communities do not have the right to refuse land acquisition that results in displacement. This occurs in cases of: (i) lawful expropriation or restrictions on land use based on eminent domain; and ii) negotiated settlements in which the buyer can resort to expropriation or impose legal restrictions on land use if negotiations with the seller fail”<sup>99</sup>.

Within the context of mining activities, involuntary resettlement often occurs in the context of legal land expropriation or negotiated settlements with restricted access. As discussed below, there are also instances of resettlement occurring as a consequence of environmental pollution from mining activities.’

The physical resettlement of communities can result in loss of livelihoods and the communities’ social structures. In the case of indigenous peoples, land can have a sacred/spiritual/religious meaning and, as custodians rather than owners of the land they live on, they may consider financial compensation inadequate.

<sup>97</sup> Interview with LRU, Valledupar, March 2017

<sup>98</sup> [https://www.ifc.org/wps/wcm/connect/79fe9e804885565cb9c4fb6a6515bb18/PS\\_5\\_LandAcqInvolResettlement.pdf?MOD=AJPERES](https://www.ifc.org/wps/wcm/connect/79fe9e804885565cb9c4fb6a6515bb18/PS_5_LandAcqInvolResettlement.pdf?MOD=AJPERES) (Accessed in May 2017)

<sup>99</sup> [https://www.ifc.org/wps/wcm/connect/79fe9e804885565cb9c4fb6a6515bb18/PS\\_5\\_LandAcqInvolResettlement.pdf?MOD=AJPERES](https://www.ifc.org/wps/wcm/connect/79fe9e804885565cb9c4fb6a6515bb18/PS_5_LandAcqInvolResettlement.pdf?MOD=AJPERES) (Accessed in May 2017)



## Indigenous Peoples and FPIC

According to the Ministry of the Interior of Colombia, 36 indigenous communities are at risk of physical and cultural extinction at the national level due to the following factors: 1) conflict violence; 2) factors related to the conflict (e.g., displacement); and 3) economic interests<sup>100</sup>. One of the most affected indigenous communities in Colombia is that of the Wayuu. According to the ministry, the biggest factor threatening the Wayuu in La Guajira is coal mining<sup>101</sup>.

Colombia ratified ILO Convention 169 in 1992<sup>102</sup>, recognising that indigenous people have additional rights, including the right to Free Prior and Informed Consent (FPIC) before projects begin in their territory<sup>103</sup>. The Constitutional Court, through Order No. 004 of 26 January 2009, ordered the government to design a programme to protect the rights of indigenous people in the context of resettlement and armed conflict.

In 2014, the Constitutional Court (T-576/14) declared that Afro-Colombian communities also have the right to FPIC<sup>104</sup>.

As a result, communities started a series of legal actions (acción de tutela) to ensure that FPICs are enforced. In La Guajira, many communities in the process of resettlement declared themselves Afro-Colombians in order to exercise this right<sup>105</sup>.

The Ministry of the Interior is the sole body with authority to recognise indigenous groups or Afro-Colombians and grant them rights. A backlog of evaluations is pending, so a significant number of communities that have declared themselves Afro-Colombian is not recognised by the government<sup>106</sup>.

There are a number of challenges related to definitions, legal consistency, and perceived contradictions between FPIC and the Mining Code

- In general, laws and regulations frequently overlap and contradict one another. According to civil society, "Law 685 of 2001 (commonly known as the Mining Code) conflicts with a number of other national policies, including Constitutional protections to Indigenous Peoples and safeguards for the environment". They argue that Colombia appears to have moved in the direction of facilitating foreign direct investments (FDI) in mining to the extent of creating "Strategic Mining Areas" to be auctioned to multinational corporations, threatening the survival of indigenous people<sup>107</sup>.
- There are no clear guidelines or rules for the companies to apply because the right to FPIC, even if guaranteed by law, is not regulated. This has generated inconsistent approaches and led to numerous court cases and a plethora of jurisprudence that is open to interpretation<sup>108</sup>.
- Not all indigenous communities are registered as "indigenous", and some are hence not recognised by the government as such. Consequently, it is unclear which communities are entitled to FPIC<sup>109</sup>.
- The decision resulting from the FPIC is also not recognised as binding for the state. However, the Inter-American Court on Human Rights has declared that there are three cases in which a decision from the community should be binding (Sentencia T-129/2011):
  - When the process requires resettlement;
  - When the process requires storage and disposal of toxic material;
  - When there are high environmental, social, and cultural impacts that put at risk the existence of the community.

<sup>100</sup> Interview with Ministry of Interior, March 2017

<sup>101</sup> Interview with Ministry of Interior, March 2017

<sup>102</sup> ILO's Convention No.169 is based on respect for the cultures and ways of life of indigenous and tribal peoples. It aims at overcoming discriminatory practices affecting these peoples and enabling them to participate in decision-making that affects their lives.

<sup>103</sup> In 2007, the UN General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples, recognizing their rights and making specific mention to FPIC as a prerequisite for any activity that affects their ancestral lands, territories, and natural resources.

<sup>104</sup> <http://www.corteconstitucional.gov.co/relatoria/2014/t-576-14.htm> (Accessed in May 2017)

<sup>105</sup> Interview with Ministry of Mines, March 2017

<sup>106</sup> Interview with Ministry of Mines, March 2017

<sup>107</sup> <http://www.christianaid.org.uk/images/giving-it-away-colombia-mining-report.pdf> (Accessed in May 2017)

<sup>108</sup> [http://www1.upme.gov.co/sites/default/files/forum\\_topic/3655/files/industria\\_minera\\_comunidades\\_colombia\\_problemas\\_recomendaciones.pdf](http://www1.upme.gov.co/sites/default/files/forum_topic/3655/files/industria_minera_comunidades_colombia_problemas_recomendaciones.pdf) (Accessed in May 2017)

<sup>109</sup> In some cases, certain indigenous communities have pushed to exercise their right to FPIC, despite not having been recognised formally. Nevertheless, there is jurisprudence recognising the right to self-declaration without government approval.



In Colombia, there is no specific normative or jurisprudential framework that regulates involuntary resettlement<sup>110</sup>. In addition to the general principles established in the Constitution and Law 56 of 1981, the most important reference for resettlement processes are the guidelines published by the World Bank/IFC and the Inter-American Development Bank<sup>111</sup>.

Resettlement can occur collectively as a community, individually as a family, or via economic compensation.

According to the guidelines set out by the World Bank/IFC, it is the responsibility of the project sponsor or other responsible entity to create a Plan de Reasentamiento (Resettlement Action Plan, or RAP), a document in which the responsible entity specifies the procedures it will follow and the actions it will take to mitigate adverse effects, compensate losses, and provide development benefits to persons and communities affected by an investment project<sup>112</sup>.

The RAP includes details of the population census, socio-economic situation of the community prior to and following mining activities, impacts to be compensated, identification of new territory, and restoration of the socio-economic situation, including housing and social projects. This information is to be used to establish loss compensation and provide development benefits to persons and communities affected by a project. In Cesar, three communities are affected by resettlement (El Hatillo, Boquerón, and Plan Bonito). In La Guajira, six communities are affected (Tabaco, Roche, Chancleta, Patilla, Las Casitas, and Tamaquito).

### Involuntary Resettlements in Cesar

In 2010, due to the high levels of air pollution in the mining corridor of Cesar<sup>113</sup> and the cumulative impact of mining activities on neighbouring communities (the municipalities of El Paso and La Jagua de Ibirico), the Ministry of Environment, Housing and Territorial Development ordered mining companies Drummond, Prodeco, and CNR to resettle the populations of Plan Bonito and El Hatillo (in the jurisdiction of the municipality of El Paso) and Boquerón (in La Jagua de Ibirico), within one year for Plan Bonito and two years for the other two<sup>114</sup>. The companies lost an appeal in 2010. An administrative process is currently awaiting decision. To date, the companies have argued that the conditions that led to the decision to resettle were never met, challenging the scientific study that led the ministry to opt for resettlement.

Of the three communities, only Boquerón, with 180 families as of 2013, had declared its residents Afro-Colombian. This has not yet been formally recognised by the government, only by local authorities. National recognition would grant the community additional benefits, including the rights to Free Prior and Informed Consent (FPIC)<sup>115</sup>.

In 2013, responding to a food crisis in the aforementioned communities, a tripartite mission led by the World Food Programme (WFP), the Office for the United Nations High Commissioner of Human Rights (OHCHR), and the UN Office for the Coordination of Humanitarian Affairs (OCHA)<sup>116</sup> assessed the situation and concluded that:

- Communities' living conditions have changed radically as a result of the mining activity. Access to agricultural, hunting, grazing, and fishing areas has disappeared or been significantly restricted;
- Chronic poverty has weakened communities in such a way that there are no support networks within the community;

<sup>110</sup> Free prior and informed consent, social complexity and the mining industry: Establishing a knowledge base, John R. Owen, Deanna Kemp, University of Queensland, 2014.

<sup>111</sup> See for example: [http://ewebapps.worldbank.org/apps/IP/IPPublications/Final\\_Version\\_Involuntary%20Resettlement\\_05\\_17\\_2016.pdf](http://ewebapps.worldbank.org/apps/IP/IPPublications/Final_Version_Involuntary%20Resettlement_05_17_2016.pdf) (Accessed in May 2017)

<sup>112</sup> <https://commdev.org/userfiles/ResettlementHandbook.pdf> (Accessed in May 2017)

<sup>113</sup> Resolution 1525/2010 by the Ministry of Environment, ruling against the companies' argument that the air pollution conditions are not met, stated that between 2008 and 2010 there was indeed an increase in PM.

<sup>114</sup> Resolutions 970 and 1525 of 2010

<sup>115</sup> In Colombia, the right to FPIC is extended to Afro-Colombian Communities.

<sup>116</sup> Informe Conjunto de Mision a las Veredas El Hatillo, Y Plan Bonito (El Paso) y Boqueron (La Jagua de Ibirico) en el Departamento del Cesar 5 – 8 March 2013 [http://www.askonline.ch/fileadmin/user\\_upload/documents/Thema\\_Wirtschaft\\_und\\_Menschenrechte/Bergbau\\_Rohstoff/Glencore\\_Kolumbien/INFORME\\_MISSION\\_CONJUNTA\\_OCHA\\_OACNUDH\\_Y\\_PMA.pdf](http://www.askonline.ch/fileadmin/user_upload/documents/Thema_Wirtschaft_und_Menschenrechte/Bergbau_Rohstoff/Glencore_Kolumbien/INFORME_MISSION_CONJUNTA_OCHA_OACNUDH_Y_PMA.pdf) (Accessed in May 2017)

- Communities lack basic infrastructure, including poor water access and a lack of sewage or rubbish-collection systems;
- Community members have limited employment opportunities at the mines and lack access to capacity-building initiatives. On the other hand, the community displayed scarce interest in developing community activities or organizing. Many residents expressed only an interest in quickly receiving money from the resettlement process;
- Access to health services is very limited due to little economic capacity, distances, and deficiencies in transport. Additionally, public health service lacks the capacity to handle the migrants' influx into La Loma, next to the Calenturitas mine;
- Lack of support, advice, and monitoring from state institutions, despite their involvement in the Comité de Concertación (Concertation Committee). The communities accused the state institutions of playing a passive role and not demanding that mining companies comply with the government decree in a timely manner. At the same time, the communities expressed discomfort because the negotiation of compensation was undertaken through an operator, instead of via direct negotiation with the mining companies;
- The existence of a resettlement process and the presence of the mining companies are used as an excuse by local, regional, and national authorities to delay, negate, or restrict performance of their duty to protect the human rights of the communities;
- Lack of access to information from the companies and operators is weakening the social structure of the communities and generating mistrust between community leaders and the population.

To date, only one community, Plan Bonito, has been resettled (three years after the deadline set in 2011). A second, El Hatillo, is currently negotiating the terms of the RAP. The five-year delay, combined with security concerns and reports of death threats to community leaders, has contributed to a tense and difficult relationship between some community leaders and the mining companies<sup>117</sup>. Boquerón is still in the process of agreeing to census terms.

The Comptroller General's 2013 monitoring report on compliance with the resettlement decision declared that: "The Ministry of Environment made a mistake by granting a mining license without ordering the resettlement of the communities prior to the commencement of mining activities"<sup>118</sup>.

<sup>117</sup> See, for example: <http://incomindios.ch/en/wp-content/uploads/2014/04/due-diligence-transparency-and-guarantees-El-hatillo-03-2014-2.pdf> (Accessed in May 2017)

<sup>118</sup> [http://www.contraloria.gov.co/documents/20181/479002/INFORME\\_FINAL\\_ACES\\_CORTE+CONSTITUCIONAL+SENTENCIA+T154+VIGENCIA+2013.PDF/pdf/75704e7e-b669-4b1e-b575-03893b5cb2aa?version=1.0](http://www.contraloria.gov.co/documents/20181/479002/INFORME_FINAL_ACES_CORTE+CONSTITUCIONAL+SENTENCIA+T154+VIGENCIA+2013.PDF/pdf/75704e7e-b669-4b1e-b575-03893b5cb2aa?version=1.0) (Accessed in May 2017)

## Involuntary Resettlements in La Guajira

In 2001, the municipal authorities of Hatonuevo forcefully evicted the inhabitants of the village of Tabaco, ending a process of expropriation initiated years earlier. The Supreme Court of Justice ordered the mayor of Hatonuevo to offer housing solutions to evicted residents in 2002. The order has not yet been fulfilled on grounds that the municipality lacks resources<sup>119</sup>.

Other towns that have had to resettle involuntarily, due to the expansion of operations by Carbones del Cerrejón (the joint venture of Anglo American, Glencore, and BHP), include Las Casitas, Roche, Chancleta, and Patilla. Tamaquito II is the only community that volunteered to be resettled.

Most of these communities have been in resettlement processes for at least 10 years, and each is in a different stage of the process, as illustrated on Cerrejón's website<sup>120</sup>. For every community, Cerrejón provides information (as of 2012) with regards to the number of families entitled versus families pending resettlement. Certain information is missing from the website, including the number of families that are not entitled to be resettled and the economic compensation that is to be received. This is one of the most contentious areas; in Las Casitas, for instance, half the population is entitled to resettlement.

Some of these communities, as Afro-Colombian and indigenous communities (Wayuu), are protected by the rights of free prior and informed consent (FPIC) on the resettlement measures per judiciary resolutions (Chancleta: Tutela Action 256/15; Roche: State Council Action AC-2016-00058). However, the communities claim that the obligations imposed on Cerrejón have not yet been met.

More specifically:

- Tutela Action 256/15 ordered Cerrejón to provide water and sewage systems to the communities of Patilla, Chancleta, and Roche by working with a company to connect them to the aqueduct serving Barrancas.
- The State Council Action AC-2016-00058 in December 2016 granted the right to FPIC and ordered Cerrejón to initiate FPIC with the Afro-Colombian communities and to include inhabitants who sold their property to the company since 1997. However, according to the Roche community, the deadlines established have expired, and Cerrejón still has not initiated the process.

## Environment and Communities

In Colombia, environmental protection is constitutionally recognised as a fundamental principle and a collective right<sup>121</sup>. The nation has ratified a number of international environmental treaties<sup>122</sup>. It has national laws that protect ecologically fragile ecosystems through a system of forest reserves, national parks, and special protection of high-altitude watershed areas (páramos)<sup>123</sup>.

Under the Mining Code, mining has been declared a “public interest” and takes precedence over any other activity. This has the potential to undermine Colombia's environmental protection laws. For example, Article 34 allows for authorities to remove the environmental protection awarded to national forest reserves for the purpose of mining. Additionally, Article 37 of the Mining Code prevents municipal authorities from prohibiting mining, even if it competes with other interests in their jurisdiction. However, municipal authorities have the right to organise Consultas Populares, local referendums that have the power to prohibit the commencement of mining activities. (See Highlight — Regulatory Framework and Mining Titles.)

<sup>119</sup> In 2012 Cerrejón handed over to the mayor's office the territory of La Cruz, where the new settlement will be built.

<sup>120</sup> <http://www.Cerrejón.com/site/desarrollo-sostenible-%E2%80%A2-responsabilidad-social-rse/reasentamientos-que-reciben-las-comunidades-reasentadas.aspx> (Accessed 30 March 2017)

<sup>121</sup> <http://thelawreviews.co.uk/edition/the-mining-law-review-edition-5/1140351/mining-colombia#footnote-003> (Accessed in May 2017)

<sup>122</sup> including treaties on Biodiversity, Climate Change, Climate Change-Kyoto Protocol, Desertification, Endangered Species, Hazardous Wastes, Marine Life Conservation, Ozone Layer Protection, Ship Pollution, Tropical Timber, and Wetlands. <https://www.eia.gov/cabs/Colombia/Full.html> (Accessed in May 2017)

<sup>123</sup> The laws include: Law 99 (1993) which created the National Environmental System (Sistema Nacional Ambiental, SINA); the National Natural Renewable Resources and Environmental Protection Code (Decreto Ley 2811 de 1977), a comprehensive statute that remains one of the pillars of Colombian natural resource and environmental law; Law 344 (1996); Decree 1687 (1997); Law 489 (1998); Decree 1124 (1999); Decree 48 (2001); Law 790 (2002) and Decree 190 (2003) which caused the merger of the Ministry of Environment and the Ministry of Development into the Ministry of the Environment, Housing and Territorial Development; the Forestry Law (1963); and the National Parks System Statute (1977).

According to the OECD<sup>124</sup>, “The 1993 umbrella Law on Environmental Management established a solid policy and institutional framework for modern environmental management. However, in the first decade of the 21st century, Colombia’s environmental institutions were largely overwhelmed by environmental pressures stemming from the fast pace of economic growth. Despite the re-establishment of a strengthened Ministry of Environment and Sustainable Development, and the establishment of the National Environmental Licensing Authority in 2011, the mid 2000s were characterised by a lack of compliance with environmental legislation by coal mining companies including issues related to hazardous discharges in water, pollution due to poor disposal and treatment of particulates, the lack of solid waste management plans and permits for water abstraction for rivers, etc.”<sup>125</sup>.

In 2013, the Comptroller General’s Office reported that “Colombia is the country with the greatest biodiversity per square kilometer on the planet, and current instruments regulating [mining] activities are not sufficiently effective to protect, safeguard and maintain the natural resources properly”<sup>126</sup>. That year, the Constitutional Court (ST 154 / 2013<sup>127</sup>) mandated that the Ministry of Environment “coordinate with relevant institutions and build a comprehensive national policy aligned with the [World Health Organization]<sup>128</sup> and other international institutions with the objective of optimising pollution prevention and control caused by the exploitation and transportation of coal”. This has not been satisfied by the authorities, despite reminders issued by the Comptroller General’s office. This ruling is also being used by civil society to declare that any monitoring that does not follow the guidance of the WHO or, in fact, any license being considered by the Agencia Nacional de Licencias Ambientales (Environmental Licensing Authority, or ANLA) is illegal because neither the Ministry of the Environment nor the ANLA has followed the order.

In 2014, the OECD stated that Colombia’s environmental spending is still relatively low and has not kept pace with overall trends in public spending and that environmental law enforcement remained insufficient<sup>129</sup>. This was corroborated in 2015 by the Constitutional Court in sentence T-256/15, which stated, “It is evident that levels of environmental monitoring over coal mining activities by the authorities is insufficient and ineffective”

Recently, the Ombudsman’s Office<sup>130</sup> urged the Ministry of Environment, CorpoCesar (the regional monitoring authority for Cesar), and the coal-mining companies to implement and execute programmes for the environmental recovery of the area. It also called on the Colombian Family Welfare Institute and the governors of Cesar and Magdalena departments to carry out the necessary studies and take appropriate measures to mitigate the impacts of coal-transport activities on youthful populations in affected municipalities.

According to the OECD<sup>131</sup>, “The environmental effectiveness and enforcement of waste and industrial chemicals policies in Colombia would benefit from better coordination between the numerous institutions involved in waste and chemicals management, and from comprehensive and consistent guidance, in particular through an overarching legal framework. Increased financial resources would also help to develop an appropriate waste management infrastructure, move towards waste prevention and minimisation as well as ensuring sound management of industrial chemicals”.

<sup>124</sup> <https://www.oecd.org/about/publishing/colombia-policy-priorities-for-inclusive-development.pdf> (Accessed in May 2017)

<sup>125</sup> <http://www.defensoria.gov.co/public/pdf/InformedeMinerla2016.pdf> and OECD report on Colombia, 2014, <https://www.oecd.org/countries/colombia/Colombia%20Highlights%20english%20web.pdf> (Accessed in May 2017)

<sup>126</sup> Contraloría General de la República, Minería en Colombia: Fundamentos para superar el modelo extractivista (Bogotá: Imprenta Nacional de Colombia, 2013)

<sup>127</sup> <http://www.corteconstitucional.gov.co/RELATORIA/2013/T-154-13.htm> (Accessed in May 2017)

<sup>128</sup> [http://apps.who.int/iris/bitstream/10665/69478/1/WHO\\_SDE\\_PHE\\_OEH\\_06.02\\_spa.pdf](http://apps.who.int/iris/bitstream/10665/69478/1/WHO_SDE_PHE_OEH_06.02_spa.pdf) (Accessed in May 2017)

<sup>129</sup> OECD report on Colombia, 2014 <https://www.oecd.org/countries/colombia/Colombia%20Highlights%20english%20web.pdf> (Accessed in May 2017)

<sup>130</sup> <http://www.defensoria.gov.co/es/nube/regiones/954/Informe-sobre-explotaci%C3%B3n-transporte-y-embarque-de-carb%C3%B3n-en-Cesar-y-Magdalena-carb%C3%B3n-embarque-Cesar-Magdalena-MAVDT-Medio-ambiente-Derechos-Humanos-Magdalena.htm> (Accessed in May 2017)

<sup>131</sup> <https://www.oecd.org/about/publishing/colombia-policy-priorities-for-inclusive-development.pdf> (Accessed in May 2017)

According to civil society organisations such as Forumsyd<sup>132</sup> and Tierra Digna<sup>133</sup>, communities are being negatively affected by the environmental impacts of mining activities, indicating that coal production in Cesar and La Guajira departments contributes significantly to such impacts<sup>134</sup>.

The two most debated environmental effects in these regions are:

- The impact of dust and particulate air emissions contributed by coal-mining operations, compared to other sectors, as monitored through air-monitoring installations. Air pollution is the prime reason authorities decided to involuntarily resettle communities in Cesar Department<sup>135</sup>;
- Impacts on water, water use, and access to drinkable water for local communities, especially for people that live in semi-arid and arid areas such as La Guajira.

Further debate and disparate stakeholder positions will appear in greater detail in the next chapter.

Environmental impacts also occur outside the areas in which mining activities are performed via transportation routes and port facilities in the Magdalena and La Guajira departments. For example, in January 2014, the government halted coal shipments from a port in Magdalena until the facility could be improved so as to prevent the contamination of nearby beaches<sup>136</sup>.

Currently, neither government nor scientific studies comprehensively measure the impact of coal-mining activities on the environment and surrounding communities in La Guajira or Cesar. According to the Constitutional Court<sup>137</sup>, “it is evident that levels of environmental monitoring over coal mining activities by the authorities is insufficient and ineffective”.

### La Guajira and the Case of Water

Correjón’s operations are located in the Lower Guajira (mining operations) and the Upper Guajira (port operations in Puerto Bolivar for the export of coal). La Guajira is one of the driest regions in Colombia, and water resources are scarce. According to Corpoguajira, the regional monitoring authority for La Guajira, the main water restrictions occur in Upper and Middle Guajira, where two-thirds of the population resides. Industrial activities that include coal activities have worsened water scarcity, altered vegetation, and circulated contaminated water<sup>138</sup>.

The widespread poverty of most of the population living in semi-arid and arid areas has resulted in overgrazing and overexploitation of the land, consumption and contamination of the scarce water, and destruction of the meager forest for firewood and coal for cooking food, as well as negative effects on fauna, soil, and water<sup>139</sup>.

La Guajira lacks basic sanitation services, even in its biggest municipalities. Water contamination by chemicals is an issue. The basins of the rivers Ranchería, Cesar, and Tapias have been affected by the use of chemicals from agricultural activities and open-cast coal mining. In addition, surface water resources have rapidly deteriorated because of deforestation in the great basins<sup>140</sup>.

<sup>132</sup> [http://www.forumsyd.org/PageFiles/7127/Kol\\_rapport\\_FS\\_web.pdf](http://www.forumsyd.org/PageFiles/7127/Kol_rapport_FS_web.pdf) (Accessed in May 2017)

<sup>133</sup> <https://peacepresence.org/2015/10/28/tierra-digna-new-report-colombias-coal-who-wins-and-who-loses/> (Accessed in May 2017)

<sup>134</sup> <https://justiciaambientalcolombia.org/2014/08/11/coleccion-estudios-contraloria-mineria-colombia/> (Accessed in May 2017)

<sup>135</sup> Communities referred to studies issues by IDEAM stating that the limits for TSP and PM10 were exceeded several times in the communities of La Loma, Boqueron, and Plan Bonito.  
[http://documentacion.ideam.gov.co/openbiblio/bvirtual/023637/Informe\\_del\\_Estado\\_de\\_la\\_Calidad\\_del\\_Aire\\_en\\_Colombia\\_2011-2015\\_vfinal.pdf](http://documentacion.ideam.gov.co/openbiblio/bvirtual/023637/Informe_del_Estado_de_la_Calidad_del_Aire_en_Colombia_2011-2015_vfinal.pdf)  
(Accessed in May 2017)

<sup>136</sup> <https://www.economist.com/news/business/21599011-government-struggles-contain-public-backlash-against-miners-digging-itself-out> (Accessed in May 2017)

<sup>137</sup> Sentence T-256/15

<sup>138</sup> [http://www.corpoguajira.gov.co/web/attachments\\_Joom/article/57/PGAR.pdf](http://www.corpoguajira.gov.co/web/attachments_Joom/article/57/PGAR.pdf) (Accessed in May 2017)

<sup>139</sup> [http://www.corpoguajira.gov.co/web/attachments\\_Joom/article/57/PGAR.pdf](http://www.corpoguajira.gov.co/web/attachments_Joom/article/57/PGAR.pdf) (Accessed in May 2017)

<sup>140</sup> [http://www.corpoguajira.gov.co/web/attachments\\_Joom/article/57/PGAR.pdf](http://www.corpoguajira.gov.co/web/attachments_Joom/article/57/PGAR.pdf) (Accessed in May 2017)

**Deviation of Arroyo Bruno. The Arroyo Bruno** (Bruno Stream) is a tributary of the Rancheria River, one of the major surface water sources in La Guajira. It is located in the northern part of the Cerrejón mine, originating in the nature reserve of Montes de Oca in the Perijá and running 26 kilometers to the Rancheria River. Cerrejón is planning to divert part of the Arroyo Bruno<sup>141</sup>. This has been a contentious project prompting significant social unrest. Cerrejón maintains that the stream is not a major contributor to the Rancheria River and carries water only a few months annually. The Resolution of the State Council on 13 October 2016 for the Proyecto La Puente mandated implementation of a free, prior and informed consent (FPIC) in La Horqueta and supported the status as Wayuu of the remaining 26 communities. If this status is confirmed, these communities would also acquire FPIC. On 14 August 2017, the Colombian Constitutional Court ordered the company to cease efforts to divert the Arroyo Bruno for three months. Communities reported that 3.6 kilometers of the river have already been diverted. The company is currently engaged in dialogue with the affected communities.

**Legal actions against Cerrejón.** Several legal actions have been undertaken against Cerrejón by the communities in the form of *accion de tutela*. The Constitutional Court Ruling T-256/15 (in an action started by the Afro-Colombian communities of Patilla and Chancleta) has held Cerrejón directly responsible for impacting their right to water and right to food<sup>142</sup>. The court declared that Cerrejón did not meet its obligation to provide dwellings with public services, and it ordered Cerrejón to:

- Take the WHO guidelines on water quality into account;
- Mitigate, and compensate for, the abusive use of water and reduce the community's exposure to damaging environmental factors;
- Respect environmental and social needs in exercising its right to development;
- Protect the right of access to traditional water sources.

In another case (T-704/16, December 2016), the Constitutional Court ruled in favor of the community of Media Luna in Puerto Bolivar, located two kilometers from the port, granting it "constitutional protection and tutelage of its fundamental right to prior consultation and ruling against a previous decisions taken by the Ministry of Environment, ANLA, the Ministry of the Interior and Cerrejón". The court also ordered:

- ANLA to determine if the other 12 neighboring communities are also entitled to this right;
- Cerrejón to mitigate the damages caused to the region;
- The government to perform the consultation previously denied in the project to expand Puerto Bolivar and to evaluate whether the Environmental Management Plan is sufficient—and, if not, whether this shall trigger the modification, suspension, or even the revocation of the mining license<sup>143</sup>.

<sup>141</sup> [http://www.forumsyd.org/PageFiles/7127/Kol\\_rapport\\_FS\\_web.pdf](http://www.forumsyd.org/PageFiles/7127/Kol_rapport_FS_web.pdf) (Accessed in May 2017)

<sup>142</sup> <http://extractivismoencolombia.org/wp-content/uploads/2016/03/T-256-de-2015.pdf> (Accessed in May 2017)

<sup>143</sup> <https://colombiaplural.com/Cerrejón-problema-la-guajira/> (Accessed in May 2017)

## OBSERVATIONS AND FEEDBACK

### Overview

During our visit to Colombia in March 2017, we conducted site visits in Bogota, La Guajira, Cesar, and Magdalena departments. The map below shows the regions in which we focused research and the places and communities we visited. The full list of stakeholders interviewed can be found in the Appendix.



In this chapter, we present a summary of the information we have collected through interviews we conducted during on-site visits and stakeholder engagement in drafting this report. The information gathered constitutes the viewpoints of the stakeholders engaged regarding human rights issues:

1. Workers' rights, in particular:
  - Occupational Health and Safety
  - Freedom of Association
2. Displacement and Land Restitution in the Internal Armed Conflict
3. Involuntary Resettlement
4. Environment and communities

Under each issue (and sub-issue), we provide the following information:

- General information, including the region in which we assessed the issue, the stakeholders affected, the potential human rights impacted, the stakeholders interviewed on the topic, and—where relevant—any limitations specific to the issue.
- Tables summarise the various claims/opinions/facts we have collected from distinct stakeholders through the interview-and-consultation process. (The full list of stakeholders can be found in the Appendix.)

We have structured the tables as follows:

- The main areas of attention (identified by issues and corresponding subtopics) are categorised and tagged across the tables to reflect core concerns and issues expressed by the stakeholders.
- For each area and specific issue/line of the tables, we have included and summarised the various claims/opinions/facts in the columns, dividing them per stakeholder category while striving to present the information in the most balanced and impartial manner possible. Sometimes, due to confidentiality reasons, we have not shared full details of mining company activities or of specific feedback.
- When it might facilitate the flow of reading across the columns, we have titled and clustered the discussion points.
- Where relevant, we have developed specific tables for the different regions.

Notwithstanding our best efforts to engage with as many interested actors as possible during the consultation process (Phase 5), there was, unfortunately, a general lack of feedback from government and public institutions. The views on some particular issues may thus seem unbalanced. We shall continue to seek such views following publication of this report, engaging with them via our corporate offices in Sweden, the Netherlands, and Germany.



## Workers' Rights

### Occupational Health and Safety

**Department:** Cesar

**Stakeholders affected:** Workers, workers with disabilities (vulnerable group)

#### Potential Human Rights at Risk:

- Right to life, liberty, and security of person (UDHR 3, ICCPR 6)
- Right to health (UDHR 25, ICESCR 12)
- Right to safe and healthy working conditions (UDHR 23, ICESCR 7)

**Stakeholders interviewed:** Representatives of unions (Sintraminérgica and Sintradem); management representation at mining companies (Drummond and Prodeco).

**Limitations:** Our analysis is limited to the Cesar area and results from meetings with two unions, Sintradem and Sintraminérgica (one of the major unions for the coal industry in Colombia, with representation in the operations of Prodeco and Drummond). Attempts to meet with Sintracarbón, the main union representing the interests of workers of Cerrejón in La Guajira, were unsuccessful, so we could not appropriately assess the situation in La Guajira. We did not engage with the department's labour ministry and will seek to engage with it following publication of the report.

### Observations and feedback

Issue	Subtopic	Unions	Other stakeholders (as specified)	Mining Companies
Accident reporting	Calculations	Unions criticised the system for reporting Lost Time Accidents (LTAs) because accidents that have prompted reassignment of incapacitated workers to other tasks are not computed as LTAs. This is not aligned with best practices in reporting occupational health and safety figures.	N/A	Mining companies explained how safety indexes are calculated, including detailed methodologies and formulas. They calculate Lost Time Incidents, the Disabling Injury Severity Rate, and Total Recordable Incidents, among others, and do not see a need to change a calculation method that they assert follows best practices. They say they will continue to focus on multiple performance indicators, primarily those seeking to improve safety beyond mere LTA.



Issue	Subtopic	Unions	Other stakeholders (as specified)	Mining Companies
Access to remedy for occupational illnesses	Effectiveness of the process	<p><b>Length of qualification process to establish the work-related origins of a health issue/illness:</b></p> <p>The unions criticised the vicious circle formed by the Professional Risk Insurers (Aseguradoras de Riesgos Laborales, or ARL) and the Health Service Provider (Entidades Promotoras de Salud, or EPS), by which if the ARL, after a qualifying process that can take years, rules that an illness is not work-related, the case is then transferred to the EPS.</p> <p>In many cases, the EPS disagrees with the ARL and routes the case back, leading to a reevaluation by the Qualification Committee for Disability Committee. The unions complain that qualification can turn into a game between the regional and national qualification of disability boards. Resolution can take years, even though it is stipulated that the response time should be 30 calendar days at each level.</p>	<p><b>Length of qualification process to establish the work-related origins of a health issue/illness:</b></p> <p>In 2016, Colombia’s Ministry of Labour stated the need to “regulate the subject of the rehabilitation, relocation and the procedures to qualify disability via the ‘Juntas de Calificación de Invalidez’ (Qualification Committee for Disability), in order to establish actions to solve the difficulties that exist in the recognition of the guarantees and labour rights, especially with the people related to the mining activity”<sup>1</sup>.</p> <p>The ministry also asked the Territorial Directorate of the Ministry of Labour in Magdalena Department to investigate allegations made with regards to the implication of job relocation and procedures before the regional and national disability qualification boards<sup>2</sup>.</p>	<p><b>Length of qualification process to establish the work-related origins of a health issue/illness:</b></p> <p>Mining companies argued that there is only one Social Security System in the country and that it is designed to guarantee coverage of financial and assistance benefits. They asserted that the procedures established in the legislation apply to all affiliates of the Social Security System regardless of the company for which an employee works. If an employee or any interested party does not agree with the determination by the EPS or ARL, the system establishes that a diagnosis can be contested. The case will be taken up at a higher level in the regional or national boards, and the justice system serves as an ultimate alternative for dissatisfied parties.</p>
		<p><b>Protection of worker’s rights to get financial benefits:</b></p> <p>According to unions, lengthy processes and delays leave worker rights unprotected and workers unable to collect a basic salary during the process.</p>	<p><b>Protection of worker’s rights to get financial benefits:</b></p> <p>Mining companies stated that workers are protected during procedures to assess an illness when controversy exists regarding its origin. They refer to Decree 1562 of 2012: If the origin of a health-related event is qualified in the first instance as an occupational illness or a work-related accident, and that judgment is under dispute, the Labour Risk Administrator (ARL) must assume payment of the temporary disability subsidy, and the EPS must provide the services related to assistance. If the origin is not deemed work-related, and the case is under dispute, it is the responsibility of the EPS to assume the financial and assistance costs until the origin is defined.</p>	

<sup>1</sup> <http://www.mintrabajo.gov.co/julio-2016/6206-ministra-lopez-obregon-se-reune-con-trabajadores-enfermos-de-la-drummond.html> (Accessed in May 2017)

<sup>2</sup> Since 2014, Sintradem has been negotiating with Drummond to be recognised as a union. In 2016, the Court ordered Drummond to recognise Sintradem, but a collective bargaining agreement has yet to be reached.

Issue	Subtopic	Unions	Other stakeholders (as specified)	Mining Companies
<p><b>Access to remedy for occupational illnesses</b></p>	<p><b>Independence and trust in the system</b></p>	<p><b>Independence and trust in the ARLs (Administrators of Labour Risks):</b>            ARLs' independence was questioned by unions, given that the mining companies are their clients; by law, employers pay contributions to the ARLs. Unions and ex-workers have complained of disagreements with determinations made by the ARLs and difficulties in proving that an illness or injury is work-related, contributing to a perception of lack of independence.</p> <p>The unions and former employees also argued that they have lost most court cases brought against companies to contest an ARL decision, feeding perceptions that the justice system favours the mining companies.</p> <p>Unions also argued that the system enables companies to evade taking responsibility for the health of workers and that, due to the interests at stake and the nature of the actors, this problem remains hidden from the public eye.</p>	<p><b>Independence and trust in the ARLs (Administrators of Labour Risks):</b>            According to the vice president of the Doctors Association<sup>3</sup> in Colombia, money collected by health insurance entities is not distributed to protect the health of the workers. ARLs in particular are accused of "collecting a large amount of the resources from the fiscal contributions made by the employers and independent workers of Colombia and diverting a huge proportion of resources that should serve to care for those affected by accidents at work and occupational diseases as established by the Constitution and the Law".</p> <p>The International Commission of Jurists (ICJ)<sup>4</sup> noted that other challenges in accessing remedy included the possibility of retaliation against workers for filing complaints against employers, as well as cases of companies manipulating judicial procedures to increase litigation costs and using frivolous counter-claims to harass litigants.</p>	<p><b>Independence and trust in the ARLs (Administrators of Labour Risks):</b>            Mining companies stated that anyone who makes severe accusations regarding a lack of independence in the way the ARLs operate and pressure exercised is obligated to inform the competent authorities. They also added that it is also public knowledge that the Office of the National Public Prosecutor has engaged in investigations and made criminal accusations of systemic fraud in the qualification process in favour of affiliates.</p> <p>With regards to the accusation related to the diversion of money, companies state that they have no knowledge of it and know of no instance in which financial or assistance benefits to which an employee has a right under the General Labour Risk System have been denied by an ARL due to a lack of resources. The companies invited complaints to be filed, saying public resources should be managed in accordance with Colombian law.</p> <p>Companies vehemently rejected accusations that they manipulate the justice system.</p>
		<p><b>Recognition by ARLs of work-related issues:</b>            ARLs have been accused by unions of being reluctant to recognise respiratory cases as work-related, even in the case of exposure to substances and particles such as crystalline silica that, according to the U.S. Occupational Safety and Health Administration, is classified as a human-lung carcinogen that can cause silicosis and can result in disability or death.</p>	<p>N/A</p>	<p><b>Recognition by ARLs of work-related issues:</b>            Mining companies rejected claims that the ARL does not recognise some respiratory illness as occupational. For example, said one mining company, 11 cases of pneumoconiosis were diagnosed and recognised by the ARL during several years of its operation. These workers, it said, had more than 10 years exposure to silica working for other companies before they joined this mining company, which then handled the cases appropriately.</p>

<sup>3</sup> <https://notiagen.wordpress.com/2012/03/05/el-via-crucis-de-la-reclamacion-por-enfermedad-laboral/> (Accessed in May 2017)

<sup>4</sup> <https://www.icj.org/wp-content/uploads/2012/09/Colombia-access-to-justice-corporations-thematic-report-2010-spa.pdf> Accessed in May 2017)

Issue	Subtopic	Unions	Other stakeholders (as specified)	Mining Companies
<b>On-site health care units</b>	<b>Services provided by on-site health care units</b>	According to unions, there is lack of trust in the services provided by on-site health clinics provided by the mining companies. Union leaders have accused the companies of manipulating reports or hiding the real health issues from workers.	N/A	Mining companies claimed that many doctors have been fired because they were involved in taking bribes from workers seeking sick leave while, on the contrary, neither the company nor the professionals who work in its health care units have ever been sued for liability or medical negligence. The companies also said the great majority of workers report being satisfied with the services provided in the health care units.
<b>Health and safety (H&amp;S) standards</b>	<b>Companies' practices</b>	The unions shared footage of what they stated were unsafe practices at one mining company's sites, including excessive loading of trucks, which leads to musculoskeletal disorders, and ineffective filters in vehicles, which exposes workers to dust inside the cabins. In addition, they shared reports by the unions denouncing high levels of work-related injuries because of long working hours and the shift system.	N/A	Mining companies stated that H&S measures are in place and report low levels of confirmed worker incidents, though Vattenfall notes that this does not count cases currently under review by the ARL or Qualification Committees. Mining companies also stressed that arenas for dialogue include discussion tables, channels of communication, and grievance mechanisms whereby workers and representatives can express their opinions and recommendations regarding these matters. Examples of practices companies cite include: 1) a personal respiratory-protection programme, based on U.S. National Institute for Occupational Health and Safety (NIOSH) and Occupational Safety and Health Administration (OSHA) recommendations; 2) actions to prevent injuries during loading operations; 3) load monitoring and studies undertaken; 4) maintenance procedures for trucks and equipment; 5) medical assessments and periodic ergonomic and musculoskeletal assessments to detect disorders, in accordance with procedural requirements.

## Freedom of Association

**Department:** Cesar

**Stakeholders affected:** Workers, workers with disabilities (vulnerable group), and union leaders (vulnerable group)

### Potential Human Rights at Risk:

- Right to life, liberty, and security of person (UDHR 3 and 9, ICCPR 6)
- Right to freedom of association and collective bargaining (UDHR 20, ICCPR 22 and 23, ICESCR 8)
- Right to freedom of assembly (UDHR 20 ICCPR 21)
- Right to an adequate standard of living (UDHR 25, ICESCR 11)
- Right to equal pay for equal work (UDHR 23, ICESCR 7)
- Right to work and to just and favourable conditions of work (UDHR 23 and 24, ICESCR 7)

**Stakeholders interviewed:** Representatives of Sinraminergética; Sintradem; management representatives at mining companies (Drummond and Prodeco); the Unidad Nacional de Protección; the governor of Cesar.

**Limitations:** Our analysis is limited to the Cesar Department and constitutes the results of meetings with two unions, Sinraminergética and Sintradem. Attempts to meet with Sintracarbon, the main union representing the interests of workers of Cerrejón in La Guajira were unsuccessful, so we could not appropriately assess the situation in La Guajira.

## Observations and feedback

Issue	Subtopic	Unions	Other stakeholders (as specified)	Mining Companies	Government and Public Institutions
Security	Unions leaders' security	<p>Some union leaders presented evidence of death threats received as recently as November 2016.</p> <p>Unions complained that companies are still permissive and do not take enough action to publicly condemn such threats, and that, despite claims that internal human rights training has been implemented, it does not seem to have led to a positive result.</p> <p>Union leaders claim that not enough action is taken by the police departments and that security measures implemented by Colombia's Unidad Nacional de Protección (National Protection Unit, or UNP), are slow and insufficient, while protection offered to union leaders by the mining companies is limited to within a mine's boundaries.</p>	<p>ITUC<sup>5</sup> has documented the following cases:</p> <ul style="list-style-type: none"> <li>• hots fired at the headquarters of Sintradrummond in Santa Marta in September 2014.</li> <li>• On 20 April 2016, threats were received against some union leaders during a collective-bargaining process.</li> </ul>	<p>Mining companies stated that they wholeheartedly condemn all threats, violence, and human rights abuses in Colombia, including those alleged to have been made by criminal organisations against union leaders. Some companies have also issued public statements of condemnation. Companies added that they support and implement international standards at all operations and implement due diligence and risk assessments, as well as training on the UN Guiding Principles on Business and Human Rights and the Voluntary Principles on Security and Human Rights. One company also mentioned that it has offered legal support in the past, has supported investigations, has encouraged affected individuals to report threats to the authorities, and has facilitated meetings by union leaders with the National Director of Human Rights of the Ministry of Defense to discuss the issue of threats.</p>	<p>According to the UNP, death threats against union leaders have decreased over the past year; in some cases, protection measures are being removed as they are no longer considered necessary. An additional challenge is that leaders of unions are often also community leaders, and causes of violence against them could reflect local and regional political and economic activities.</p>

Issue	Subtopic	Unions	Other stakeholders (as specified)	Mining Companies	Government and Public Institutions
Contractors	Recurrent use of subcontractors	<p>The trade unions emphasised that in most coal mining companies, the number of contractors is almost equal to the number of direct employees.</p> <p>They perceive the use of subcontracting by companies as a strategy to save employment-related costs and undermine the power of the unions.</p>	<p>According to a specialist attorney, Decree 583 encourages abusive subcontracting because a contracted worker can receive a salary well below that of permanent staff, although both perform the same functions: "These practices lead to discriminatory practices due to substantial differences in wages for work of equal value, as per ILO convention 100 on Equal Remuneration (e.g., a company-hired plant maintenance employee would earn 1,600 pesos per month, while in the subcontracted company, he would earn 860 pesos for the same work)".</p> <p>This view is in line with the recommendations issued by the U.S. and Canadian governments on the issue of subcontracting in Colombia<sup>6</sup>.</p>	<p>Mining companies commented that the use of contractors is common in virtually all businesses around the world and added that the work done by contractors is limited to specific specialist skills generally outside of the core business competency: activities of assistance, support, and maintenance. They added that use of contractors does not prevent the employees of those contracted companies from exercising their freedom of association.</p>	N/A

<sup>6</sup> Both the US and Canada have issued recommendations on the issue of subcontracting in Colombia, which include:

- repealing Decree 583 and replacing it with a legal instrument that unambiguously empowers labour inspectors to combat the misuse of intermediation and subcontracting;
- improving labour inspections to identify when subcontracting is being used to disguise a direct employment relationship;
- developing guidelines for labour inspectors that identify permanent core business functions in specific economic sectors;
- directing enforcement resources at ensuring that civil law contracts (e.g., associated work cooperatives) are not used to deny workers social and labour protections provided in the law;
- improve application and collection of fines to ensure that employers who violate labour laws are sanctioned and that fines are collected in a timely manner;
- improve the labour law inspection system to ensure that inspections comply with legal procedures and timelines and are carried out in accordance with a national inspection strategy targeting at-risk sectors.

[http://www.tuac.org/en/public/e-docs/00/00/13/3E/document\\_doc.phtml](http://www.tuac.org/en/public/e-docs/00/00/13/3E/document_doc.phtml) (Accessed in May 2017)

Issue	Subtopic	Unions	Other stakeholders (as specified)	Mining Companies	Government and Public Institutions
Collective bargaining	Sintradem case	<p><b>History of the Sintradem case at OECD's National Contact Point (NCP):</b>            In a complaint to the NCP about negotiations with Drummond, the union made the following requests:</p> <ul style="list-style-type: none"> <li>– Union freedom: Halt judicial proceedings against Sintradem, publicly acknowledge Sintradem, and cease hostile actions against Sintradem, including court action to dismiss a union vice-president.</li> <li>– Collective bargaining: Accept the arbitration result and agree on a specific collective agreement for Sintradem.</li> <li>– Health and safety and working conditions: Provide a solution that will guarantee workers the average salary, instill fair economic compensation for sick workers, set up a bilateral commission between Sintradem and Drummond, audit policies and implement health and safety measures in the workplace.</li> <li>– Human rights policies: Comply with the HR policy; give regular training to supervisors and workers on HR, and develop and implement HR due diligence.</li> <li>– Corporate responsibility: Provide economic compensation to Sintradem, implement SCORE methodology from the International Labour Association (ILO), and promote better dialogue and improve the work environment.</li> </ul>	N/A	<p><b>History of the Sintradem case at OECD's National Contact Point (NCP):</b>            Drummond stated that that it has always respected the independence of unions and the right of association and added that it has different agreements with different unions; support provided to each union is included in the different collective employment agreements based on factors such as the size of the trade union and how long it has been at the company, with Sintramienergética receiving the greatest economic resources, leaves, per diems, and airline tickets.</p> <p>The company also asserted that the collective employment agreements contain benefits beyond the legal minimums and constitute some of the most robust and complete in Colombia, relative to benefits for attending appointments, medical treatment, and qualification processes with the National Board in Colombia.</p> <p>In addition, the company explained that the arbitration court decision awarded fewer benefits than were contained in a previous offer made by Drummond; the company said it will be offering Sintradem an agreement with the same terms as it has made with other union organisations of similar size and seniority.</p>	N/A

Issue	Subtopic	Unions	Other stakeholders (as specified)	Mining Companies	Government and Public Institutions
		<p><b>Major dispute points:</b> The major dispute points between Sintradem and Drummond concern compensation and benefits for workers that have been reassigned; employees who endure work-related accidents and suffer disabilities do not benefit from the same terms as were offered in their previous job positions.</p>		<p><b>Major dispute points:</b> With regards to the dispute concerning compensation and benefits for workers that have been reassigned, the company explained that the workday is in line with what is established in article 165 of the Substantive Labour Code, which in turn meets ILO guidelines. Employees who work 8 hours per day cannot expect to be remunerated as if they worked 12 hours, or to be paid for factors to which they have no right—for example, premiums for work at night, on Sundays, or holidays—if they have not worked those days/times.</p>	

## Displacement and Land Restitution in the Internal Armed Conflict

**Department:** Cesar

**Stakeholders affected:** Farmer communities along the Mining Corridor in Cesar, including Hato La Guajira, Santa Fe, Estados Unidos, El Prado, Topasio, and Platanal.

### Potential Human Rights at Risk:

- Right to life, liberty, and security of person (UDHR 3, ICCPR 6)
- Right to property (UDHR 17)
- Right to adequate housing (UDHR 25, ICESCR 11)
- Rights to freedom of movement (UDHR 13, ICCPR 12)
- Right to education (UDHR 26, ICESCR 10)
- Right to an adequate standard of living (UDHR 25, ICESCR 11)
- Right to food (UDHR 25, ICESCR 11)
- Right to water (UDHR 25, ICESCR 11)
- Right to health (UDHR 25, ICESCR 12)
- Right to participate in the cultural life of the community (UDHR 15, ICCPR 27, ICESCR 15)
- Right to remedy (UDHR 8, ICCPR 2)
- Right to access to information (UDHR 19, ICCPR 19)

**Stakeholders interviewed:** Management representation at mining companies (CNR, Drummond, and Prodeco); Pensamiento y Accion Social (PAS); PAX; Land Restitution Unit; Victims Unit. We visited the communities of Hato La Guajira and Santa Fe, which have pending land-restitution claims involving coal mining companies. We also met with victims from the communities of Estados Unidos, El Prado, Topasio, and Platanal.

**Limitations:** La Guajira was outside our scope, as land restitution was not identified as a major issue in that department.



## Observations and feedback

Issue	Subtopic	Communities and their representatives (including civil society organisations)	Mining Companies	Other stakeholders (as stated)
<b>Land-restitution process</b>	<b>Effectiveness and trust in the process</b>	<p>Concerns have been expressed by civil society organisations regarding bias at the Land Restitution Unit in favour of mining companies, as all claims under a mining concession must go through a review by the Equipo de Asuntos Ambientales, Mineroenergéticos e Infraestructura (Environmental Affairs, Mining-Energy and Infrastructure Team, or AMEI). Civil society has complained that this committee acts as a filter to protect the interests of the extractives industry.</p> <p>According to NGOs, the lack of institutional support becomes one of the main obstacles for victims to achieve reparation with integrity. Colombians call it an “institutional pilgrimage” when people are sent from one entity to another, assigned waiting periods, and suffering procedural delays due to lack of operational and budgetary capacity.</p>	<p>Mining companies stated that, as corporate responsible entities, they respect Colombia’s law and legal processes and said that whenever they are part of a process, they act in accordance with legal procedures; multinationals have no power to influence land-restitution processes.</p> <p>They added that the presumption that the AMEI favours mining companies is false: In a specific case, the AMEI determined that it was not possible to restore a property next to a mining operation because the claimant could not properly use it for agricultural activity, and material restitution was not possible as contemplated in the Land Law. The victim’s right to restitution of property was not violated by an offer of equivalent compensation, they said; on the contrary, this was an effort to protect the victim and achieve an effective reparation. The cited case, said the companies, exemplifies that mining activity is not taking precedence over the victim’s rights because it made sense neither to put a family next to the mining operation nor to close the concession.</p>	<p>Interviews with the LRU revealed that many claims were rejected for missing the legal deadline, losing land for reasons unconnected to the paramilitaries, or failing to establish the land title.</p> <p>According to the LRU, claimants whose cases have been dismissed have a right to appeal; the case, however, is reviewed by the same person/unit that first ruled on the application. The absence of a mechanism for appealing to a higher level may indicate that the system is insufficiently independent.</p> <p>With regards to the AMEI, the LRU maintains that this group of professionals “empowers officials in environmental, mining-energy and infrastructure issues so that no mistakes are made”.</p>

Issue	Subtopic	Communities and their representatives (including civil society organisations)	Mining Companies	Other stakeholders (as stated)
Land-grabbing during the conflict	Role of companies	<p><b>Land claims:</b> Civil society organisations have accused coal mining companies of having had a role in the land-grabbing perpetuated by paramilitaries. Claims included:</p> <ul style="list-style-type: none"> <li>• company links to the paramilitaries in the displacement of communities to access land cheaply, along with associated violence;</li> <li>• acquisition of land from displaced communities by companies via intermediaries linked to paramilitaries.</li> </ul> <p>Also, according to NGOs, there are land restitution processes in some municipalities by which a company appears as an opponent to claim interest in lands; links with armed actors and agents of forced displacement have been reported.</p>	<p><b>Land claims:</b> Companies stated that they are fully committed to the UN Guiding Principles and have a risk-assessment process in place to ensure that human rights are respected in their operations. This includes processes to review land ownership and to abstain from negotiating the acquisition of lots whose landowners are alleged to have been involved in legal investigations or to have gained ownership or possession of the lots by force or as a result of forced displacement.</p> <p>For one mining company, 53 properties acquired by governmental mandate are under a land-restitution claim. The company said it did not buy the properties from the victims but from others who had acquired the status of owners.</p>	<p><b>Land claims:</b> The Attorney General’s Office (Fiscalía General de la Nación) could not comment as to whether any of the relevant mining companies is currently under investigation, because of confidentiality reasons.</p> <p>The LRU did not comment on this issue.</p>
		<p><b>Expectations towards mining companies:</b> According to NGOs, mining companies should acknowledge their role in the armed conflict and in human rights violations and help provide remedies for victims of violence, including recognition, truth-finding, compensation, and guarantees of non-repetition.</p>	<p><b>Expectations towards mining companies:</b> Mining companies stated that Colombia has instituted a process to investigate links to paramilitaries and, more recently, FARC. Community members with evidence of this can initiate an institutional process.</p> <p>They also mentioned that Colombia’s government has established a peace process that seeks to determine facts regarding the role of companies during the conflict, and it has requested them to abide by it. As such, they asserted that they will continue supporting the government in its peace-building efforts. They also added that they have actively promoted peace in the region—for example, working on different initiatives with the Ministry of Post-Conflict and collaborating with civil society organisations in projects promoting peaceful coexistence.</p>	<p><b>Expectations towards mining companies:</b> According to the Colombian Institute for Business and Human Rights (CREER)<sup>7</sup>, “The Commission for the Clarification of Truth, Coexistence and Non-Repetition, as described in Point 5 of the Final Agreement, invites different actors who, in one way or another, were related to the situation of armed conflict, to tell what happened. Therefore, companies can be promoters of peace and contribute to the reconstruction of the social fabric.”</p> <p>In addition, said CREER, “The prevalence of judicial mechanisms over non-judicial ones is no longer the only route. If firms become even more involved in non-judicial mechanisms, the possibility that the reconstruction of the social fabric overlaps with criminal responsibility would result in positive and effective participation, which would ultimately transform the social understanding of enterprises in the territory and communities, and result in models of reconciliation other than those traditionally associated only with the principles of transitional justice”.</p>

Issue	Subtopic	Communities and their representatives (including civil society organisations)	Mining Companies	Other stakeholders (as stated)
Security	Communities security in the restitution process	<p><b>Threats to community members:</b> NGOs stated that some communities and individuals that are trying to go back to their original land are receiving death threats.</p> <p>The communities expect the companies to advocate against violence.</p>	<p><b>Threats to community members:</b> The companies stated that if they gain knowledge of death threats against community members, they immediately inform the pertinent authorities. However, they cannot control the measures taken by the Colombian Government and cannot ensure that death threats are not issued against community members.</p>	N/A
		<p><b>Level of protection offered by the public forces:</b> The documentation and reporting of these threats and the level of protection offered by the national and local government has not resulted in a halt to such threats, and there are accusations that police forces do not dedicate sufficient resources or time to investigations.</p>	<p><b>Level of protection offered by the public forces:</b> Companies stated that they will refrain from commenting on accusations regarding the ability of the police forces to protect against/investigate potential threats.</p> <p>They added that they have attempted to assist the community in developing security measures and have made the national government aware of the situation. The companies believe that the Department of Defense and other government departments and agencies have undertaken to work with communities to improve security.</p>	
Grievance mechanism	Demand for extrajudicial remedy process	<p>Given a general mistrust of government institutions, victims in the Cesar mining corridor have demanded extrajudicial mechanisms for restitution, such as direct dialogue with companies. The latter claimed they cannot rely only on the established model for remediation and said they must instead seek a voluntary, complementary process in which companies acknowledge the victims and their own role in the armed conflict and in restitution, and then provide compensation while committing to protect human rights in the future. According to NGOs, this remedial process should include the following elements: acknowledgement, truth-finding inquiry, collective reparation, and guarantees of non-repetition.</p>	<p>Some mining companies stated that maintaining an open dialogue with communities is a core value and that they are open to speaking with alleged victims that have accused mining companies of wrongdoing. In addition, companies claim that they have to date not received such a request from any community member through the grievance mechanism that is already in place.</p>	<p>CREER<sup>8</sup> is currently conducting a study on “Confidence Building and Challenges and Opportunities for the Formation of New Agreements”. The study is aimed at identifying barriers to, and opportunities for, building trust and consensus and resolving conflicts between communities, civil society organisations, coal-producing companies, and Colombian government entities at the local, regional, and national levels. CREER will start exploring these dynamics in certain municipalities with mining environments in Cesar. This initiative is a follow up to CREER’s “Study on the Impacts of Mining in Colombia”, which was conducted 2015-2016.</p>

<sup>7</sup> <http://creer-ihrb.org/4-mas-alla-de-la-responsabilidad-la-participacion-de-las-empresas-en-procesos-de-construccion-de-verdad-y-reconciliacion/> (Accessed in May 2017)

<sup>8</sup> Interviews with CREER (March-October 2017)

## Involuntary Resettlement

**Department:** Cesar

**Stakeholders affected:** The community of Plan Bonito has been resettled, and El Hatillo and Boquerón are in the process of being resettled. The mines surrounding Boquerón and El Hatillo are Calenturitas (owned by Prodeco), Pribbenow (owned by Drummond), and El Hatillo and La Francia (previously owned by CNR and now owned by Murray Energy Corp.).

### Potential Human Rights at Risk:

- Right to life, liberty, and security of person (UDHR 3 and 9, ICCPR 6)
- Right to adequate standard of living (UDHR 25, ICESCR 11)
- Right to property (UDHR 17)
- Right to adequate housing (UDHR 25, ICESCR 11)
- Right to food (UDHR 25, ICESCR 11)
- Right to water (UDHR 25, ICESCR 11)
- Right to health (UDHR 25, ICESCR 12)
- Right to participate in the cultural life of the community (UDHR 15, ICCPR 27, ICESCR 15)
- Right to remedy (UDHR 8, ICCPR 2)
- Right to access to information (UDHR 19, ICCPR 19)

**Stakeholders interviewed:** The communities of El Hatillo and Boquerón (Plan Bonito was not visited as it was resettled via economic compensation, and the community as such no longer exists); management representation at mining companies (CNR, Drummond, and Prodeco); PAS; PAX; Socya (third party, “the operator”, managing resettlement on behalf of the companies); CorpoCesar.

### Observations and feedback

Issue	Subtopic	Communities and their representatives (including civil society organisations)	Mining companies	Government and Public Institutions
Involuntary Resettlement process	Legitimacy and equality in negotiation process	<p><b>Mistrust:</b> The communities do not trust the companies and mistrust a resettlement operator funded solely by the companies. In addition, they see themselves at a disadvantage, considering the inequality of resources at hand, including education levels.</p> <p>According to them, it is in the interest of the companies to delay the resettlement process – for example, by bringing a still-active legal action against the government’s decision to resettle victims.</p>	<p><b>Mistrust:</b> From the companies’ point of view, there are difficulties in negotiating with community leaders, rather than with families directly. They are concerned that community leaders may not represent all of the community’s views. Also, NGO involvement in resettlement is not viewed as a positive influence; the companies contend that the NGOs have an “anti-mining stance in general, and what they look for is the cessation of mining activities”.</p>	<p><b>Mistrust:</b> The Comptroller General reported asymmetry in the accessibility of information between the state (ANLA), the former operator of the resettlement plan, and the community. It said this experience (and related disparities) “undermines the trust between the parties”.</p>

Issue	Subtopic	Communities and their representatives (including civil society organisations)	Mining companies	Government and Public Institutions
		<p><b>Assistance for community during negotiation:</b> Communities feel that there has never been equality at the negotiation table. In the case of one community, the companies were represented by the resettlement operator, lawyers, experts in negotiation, engineering, economy, etc., whereas only 30% of the community's representatives had finished secondary school. Only recently has this community been able to appoint three independent consultants, subsidised by the mining companies, to assist during negotiations. Concerns persist that there are no guarantees that these consultants will be able to remain engaged through the end of the negotiations.</p>	<p><b>Assistance for community during negotiation:</b> Companies stated that, since 2015, they have paid legal fees to a lawyer selected by the community and that they have contracted operators and auditors, as demanded by the resettlement process; even if they are under contract with the companies, these professionals work to resolve the entire process, including serving the communities. As an expert on resettlement issues, the resettlement operator can be consulted by the community on complex aspects of the process and can clarify issues. One company mentioned that all these advisers were hired through a selection process carried out by the communities themselves. For example, in the case of El Hatillo, companies hired three external advisers to review and provide advice on the RAP. In the case of El Boquerón, the companies recently hired an adviser to review matters and set forth a method of resolution.</p>	<p><b>Assistance for community during negotiation:</b> The approach to resettlement in El Boquerón's case was condemned by the Comptroller General in a 2013 evaluation report: "The Operators at the time of the resettlement plan, lacked an interdisciplinary team with capacity to execute the resettlements simultaneously"<sup>9</sup>. Vattenfall notes this referred to the first operator appointed by the companies.</p>
		<p><b>Lack of active involvement of institutions:</b> Communities complained about a lack of active involvement from institutions such as the Ombudsman (Defensor del Pueblo) and the Inspector General's Office (Procuraduría).</p> <p>Because of the absence of the authorities in the process, the communities feel that their rights are not sufficiently guaranteed by the state. According to NGOs, some communities are left in a state of "limbo" or "legal vacuum" amid a lack of will for social investment due to their status "in resettlement".</p> <p>As a result, community leaders have been pushing for the creation of a Guarantees Commission before entering the final stages of negotiations. The formation of a Guarantees Commission was agreed with the companies in June 2017 and is meant to include representation from the UN High Commissioner's Office for Human Rights.</p>	<p><b>Lack of active involvement of institutions:</b> Mining companies stated that they strive to facilitate the participation of public institutions in the resettlement plan. Operators have clear instructions to develop an administrative practice of inviting all governmental institutions associated with this process.</p> <p>Their view is that, in the case of El Hatillo's community resettlement plan, institutional representation has always been present with the Inspector General, Ombudsmen, and the Presidential Advisory on Human Rights Committee, which has participated in more than 20 meetings to this date.</p> <p>According to the companies, the resettlement process has been carried out in a participatory way.</p>	N/A

Issue	Subtopic	Communities and their representatives (including civil society organisations)	Mining companies	Government and Public Institutions
Involuntary resettlement process	Unethical practices	<p><b>Companies' tactics:</b> Communities complained that the companies use tactics and methods that weaken the social structure of the communities and generate mistrust between community leaders and the populace. Allegations included: not meeting promises, lack of transparency, providing different messages to different sectors of the community (e.g., residents versus non-residents with land rights) to split them, and a lack of clarity on the criteria for resettlement eligibility.</p> <p>For example, in the negotiations on El Hatillo, residents are represented by the community leaders, who are the only persons authorised to negotiate with the companies. However, companies are able to engage directly with non-residents, as they are not represented by community leaders.</p>	<p><b>Companies' tactics:</b> Mining companies pointed out that there are people in the community that support the industry and with whom they have positive relations. For example, the Plan Bonito community living in La Loma has experienced a positive resettlement experience.</p> <p>One mining company disputed the claim, saying that some communities delay resettlement processes by, for instance, changing demands, or asking for compensation far beyond reason. In addition, there is an additional influx of community members who started to move to the community and buy land so they could qualify for resettlement benefits.</p>	N/A
		<p><b>Lack of transparency:</b> Communities also say they need information from institutions and companies to be clear, transparent, and timely. For example, the community of El Hatillo accused the companies of sharing the Resettlement Action Plan (RAP) with the government before it was approved by the community.</p>	<p><b>Lack of transparency:</b> Companies said communications regarding the resettlement process were made in agreement with community leaders once the RAP was complete. All agreements included in the RAP, including eligibility criteria and the results of all negotiations, are public, and all agreements reached can be read in the RAP because it is a public document.</p>	
Involuntary resettlement process	Timeline and delays	<p><b>Unrealistic deadlines:</b> Communities claim that unrealistic deadlines have been provided to respond to RAP drafts, which is especially unfair in instances after they waited long periods of time for the operator to generate the relevant documentation.</p>	<p><b>Unrealistic deadlines:</b> Mining companies pointed out that the Ministry of Environment, when issuing the resettlement resolutions, created timing expectations that were simply not achievable or in accordance with World Bank guidelines. Second, the resolutions ordering resettlements came as a surprise to both communities and companies.</p>	N/A

Issue	Subtopic	Communities and their representatives (including civil society organisations)	Mining companies	Government and Public Institutions
		<p><b>Delays:</b> Communities and civil society reported unjustifiable delays in starting the resettlement process for Boquerón. The community is in the process of agreeing upon the census methodology after a seven-year delay.</p>	<p><b>Delays:</b> The companies' position with regards to Boquerón is to demonstrate to government institutions that air pollution currently reaching Boquerón does not originate at the mines and that road traffic is the biggest contributor. They are working on an air-modelling system that they say can prove Boquerón need not be resettled.</p>	
<b>Compensation</b>	<b>Legacy</b>	<p>One of the most contentious aspects of the RAP negotiation is the need to agree on compensation. There is disagreement as to the cut-off date used to establish the socio-economic baseline that merits compensation. The community claimed it should be entitled to compensation in relation to conditions back in the early 1990s, when mining operations started.</p> <p>Recently, an NGO filed a acción de tutela (writ of action) on behalf of the El Hatillo community. Part of the tutela demands health compensation for past mining impacts.</p>	<p>Mining companies claimed that the question of compensation lies outside the scope of the resettlement process, which is solely focused on resettlement and mitigating the resulting impacts, as well as on livelihood-improvement programmes.</p> <p>The mining companies recognise only the economic capabilities and land access that the community had back in 2012, when the census was completed, rather than in 2010, when the government issued the decree, but no data was collected.</p>	<p>With regards to the case of El Hatillo, the Ministry of Environment recognised the potential impact of expanded mining production in the region and ordered resettlements to take place prior to expansion.</p> <p>Following the acción de tutela filing, the judge found no evidence to support the claim for health compensation. The assessment of health impacts from mining has already been ordered by the ANLA through an epidemiological study that the companies are currently carrying out.</p>

Issue	Subtopic	Communities and their representatives (including civil society organisations)	Mining companies	Government and Public Institutions
Livelihood	<p><b>Living conditions and access to basic services and infrastructures</b></p>	<p><b>Implementation of international standards:</b>            The communities argued that the companies have met neither the International Finance Corporation (IFC) Resettlement Standard to “improve living conditions of resettled communities” nor the administrative ministerial order to improve livelihood conditions in coordination with authorities while the process is underway. In particular, the communities of El Hatillo and Boquerón complained about loss of lifestyle, access to agricultural land and rivers, and agricultural yield in current land allotments, as well as such environmental and health related impacts as pollution of water streams, health effects caused by dust levels, and noise from nighttime and daily operations, including explosions.</p> <p>Communities in the process of resettlement all said they lack access to certain basic services and infrastructure. For instance, some communities claimed that their situation has not improved in recent years. According to NGOs, community houses do not meet international standards of living; the vast majority do not have access to drinking water or toilet facilities. The municipality refuses to invest in such housing because resettlement appears imminent.</p>	<p><b>Implementation of international standards:</b>            The mining companies claimed they have operated in line with the IFC standards and argued that, at the time of the decision to resettle Boquerón, the community was mostly impacted by dust emissions from a nearby unpaved road. Since the road has been paved, emissions have gone down, the mines claimed, saying that only 11% of emissions is attributable to mining activities, as opposed to such other contributing factors as agricultural activities, cooking over open fires, the burning of waste, and palm oil plantations. They are studying air quality to monitor this question<sup>10</sup>. Companies also contended that a lack of water and the pollution of water was not caused by the mining companies but by such local industries as palm oil plantations.</p> <p>According to the companies, it is the government’s social responsibility to ensure that mining taxes paid by the companies are reinvested in the communities.</p>	<p><b>Implementation of international standards:</b>            In 2010, the government mandated that mining companies apply the World Bank guidelines and improve the quality of life and productive capacity of resettled communities during and after the resettlement process.</p>
		<p><b>Poverty levels:</b>            NGOs also noted that in 2013, UN bodies reported the following findings regarding a humanitarian crisis in El Hatillo and Boquerón: “[R]adical effects on the ancestral way of living; chronic poverty; lack of basic infrastructure; limited employment opportunities; etc.”</p>	<p><b>Poverty levels:</b>            According to the mining companies, certain examples prove that resettlement processes carried out in accordance with regulations have improved living conditions for the resettled communities, as the case of Plan Bonito’s resettlement shows. The Multidimensional Poverty Index in Plan Bonito’s base line, prepared in 2015, shows that of 96 families, 19 lived in poverty, 11 were at risk of falling into poverty, and 66 were in adequate shape. As of December 2016, only 8 continued to live in conditions of poverty, 6 were at risk of falling into poverty, and 84 enjoyed reasonable welfare.</p>	N/A

<sup>10</sup> According to the study, the contribution to air pollution in Boquerón by activities not related to mining for TSP and PM10 is more than 85% and 81%, respectively.



Issue	Subtopic	Communities and their representatives (including civil society organisations)	Mining companies	Government and Public Institutions
Livelihood	Community investments	<p><b>Long-term social investments:</b> Communities reported that mining companies provide resettled communities with insufficient sustainable long-term social investments projects. In the past, social projects have tended to be ad hoc and focused on symptoms (e.g., provision of water tanks or toys for children), rather than investments in a sustainable economy that can survive independently. As examples of ineffective projects, they mentioned the provision of educational support without a school transport system and livestock to a community ill-equipped to maintain it.</p>	<p><b>Long-term social investments:</b> The companies said they have met their social obligations via an agreement that established monthly subsidy payments to families, provided a food subsidy during the food crisis of 2013, and furnished access to education and medical support. They added that within the resettlement process framework, complementary initiatives have been developed to facilitate the communities' transitions; to date, USD1.4 million has been invested by the companies in the community through various programmes, and they have committed to invest an additional USD2 million in livelihood models to help generate income in agreement with the United Nations Development Programme. A further example is Plan Bonito, where part of the monetary compensation agreed with the families was directed to a Capital Seed Fund to benefit each resident family. This fund is for the implementation of productive programmes and projects within the restoration phase of the livelihoods of relocated families. It has been in place for two years and will be maintained for a further year. This seed capital is managed by a firm hired by the mining companies to manage the technical structuring of every project to serve each family according to its needs and abilities.</p>	N/A
		<p><b>Employment opportunities:</b> Communities complained that mining companies do not provide sufficient employment opportunities. For example, in El Hatillo, only 11 people are employed by the mines out of an eligible 270 residents of working age. In Boquerón, 50 residents are employed by the mines.</p>	<p><b>Employment opportunities:</b> One company reported having provided employment opportunities in El Hatillo (15 people from this community directly employed and an additional 30 working with contractors) and said it has committed to providing employment in the neighboring municipalities. It noted that not all residents have the skills and abilities required to perform jobs at its mining operation.</p>	

Issue	Subtopic	Communities and their representatives (including civil society organisations)	Mining companies	Government and Public Institutions
Security	Security concerns for community leaders	<p><b>Threats:</b> Communities reported that threats tend to peak at crucial times in the resettlement process (e.g., when an agreement is about to be reached<sup>11</sup>). The threats take many forms, including written and verbal threats, text messages, the appearance of armed individuals not known to the community, the shadowing of community leaders via motorbike, etc. Community leaders in Boquerón also said the use of antagonistic language during negotiations by the companies puts people at risk. For example, they claimed that communications by the mining companies blaming community leaders for delays in the process have prompted death threats and security problems.</p>	<p><b>Threats:</b> The mining companies stated that they have provided support by continuously asking the relevant authorities to take action to safeguard the security of the communities, and that some communities reported the situation has recently improved. They added that this has been made in accordance with Colombian law and international standards such as Voluntary Principles on Security and Human Rights, as well as the UN Guiding Principles on Human Rights and Business. With regards to threats in El Hatillo, one company said steps were immediately taken to contact the authorities. As a result, the police visited each person that had mentioned this threat, and the company spoke with Cesar’s Progress and Peace Initiative (PDP, a Colombian NGO), which organised workshops for the community on security awareness.</p>	<p><b>Threats:</b> As of March 2017, the Unidad Nacional de Protección (National Protection Unit, or UNP) was still in the process of investigating threats. The investigation was prompted by a request from the Personero Municipal (local Ombudsman) of El Paso municipality. It is the first time in seven years for the UNP to become involved, despite death threats and killings in that period. The UNP responded that it is very difficult to define the source of such threats, which could be linked to common criminals or new armed groups. At the time of our visit, the UNP was still evaluating the security situation. Although the UNP said in the consultation process that a security plan was already in place for the community of El Hatillo, we didn’t receive any documentary evidence.</p>
		<p><b>Level of protection offered by the public forces:</b> Threats were being reported to the relevant authorities and to the Defensoría del Pueblo (Ombudsman) by the community and the mining companies, but the community claimed that police response has been slow and inadequate. The communities stated that the measures provided by the UNP are not tailored to the circumstances (i.e., suitable for isolated rural communities). After the killing of Aldemar Parra, a community member, on 7 January 2017 in El Hatillo, military presence increased for two weeks. The community reported that once the army had left, more armed individuals appeared and remained in the vicinity. NGOs cited a lack of appropriate state support as a general problem in Colombia, especially in rural or ethnic communities that pose very different conditions and characteristics than does providing urban-based security – the UNP’s standard mission.</p>	<p><b>Level of protection offered by the public forces:</b> The mining companies asserted that they have given strong support to the community by continually requesting the authorities to take action to guarantee the community safety.</p> <p>For example, one mining company and the PDP have joined forces to strengthen the peace-building process, which includes capacity-building of community leaders. In November 2016, pursuant to requests from the mining companies, the PDP evaluated the security situation in El Hatillo. A workshop was held on 30-31 January in response to the murder of Aldemar Parra. The workshop included the participation of PAS, the Ombudsman, PDP, and the OHCHR.</p>	<p><b>Level of protection offered by the public forces:</b> According to the UNP, the police force of La Loma started an action plan (Plan Padrino) after the killing of Aldemar Parra. As part of the plan, each community leader has been granted a security escort, and communication measures between community leaders and the police were implemented (e.g., an emergency telephone line). The last known communication as of our visit (March 2017) between the UNP and the policy commander had taken place on 19 January 2017, which indicates a lack of monitoring.</p>

<sup>11</sup> For example, on 11 September 2016, union and community leader Nestor Ivan Martinez, who had actively opposed mining projects, was murdered. In December 2016, Aldemar Parra, a member of the community of El Hatillo, was murdered. Neither killing has been resolved.

Issue	Subtopic	Communities and their representatives (including civil society organisations)	Mining companies	Government and Public Institutions
<b>Grievance mechanism</b>	<b>Effectiveness</b>	Many members of resettled communities claimed that they have no knowledge, access, or trust in the system because it was not run by an independent party.	Mining companies stated that they believe in the importance of maintaining a constructive and timely dialogue with local communities, and that they work with local stakeholders to identify and address their concerns, especially those of people who are more directly affected by operations <sup>12</sup> . This includes formal mechanisms for presenting claims and grievances, including mechanisms audited by external parties and consideration of all grievances and concerns that the community presents in meetings and by other avenues. They added that the resettlement process provides a system for processing petitions, grievances, and claims associated with resettlement. This system maintains an office in each community, which their members can freely visit to express grievances.	N/A

<sup>12</sup> One of the companies provided some data: For the El Hatillo community, the company has thus far registered 368 grievances and complaints, of which 338 are closed and 30 are still under review. In the Boquerón community, 32 grievances and complaints have been registered, of which 29 are closed and 3 are under review. In Plan Bonito, of 22 grievances and complaints registered, 20 are closed and 3 are still under review.

**Department: La Guajira**

**Stakeholders affected:** The six resettled communities of Roche (Afro-Colombian), Patilla (Afro-Colombian), Chancleta (Afro-Colombian), Tabaco, Casitas, and Tamaquito II (Wayuu). Five were subject to involuntary resettlement; Tamaquito II in La Guajira was the exception—residents asked to be resettled when they found that the neighbouring communities were all being resettled, and they did not want to be isolated.

**Potential Human Rights at Risk:**

- Right to life, liberty, and security of person (UDHR 3 and 9, ICCPR 6)
- Right to adequate standard of living (UDHR 25, ICESCR 11)
- Right to property (UDHR 17)
- Right to adequate housing (UDHR 25, ICESCR 11)
- Right to food (UDHR 25, ICESCR 11)
- Right to water (UDHR 25, ICESCR 11)
- Right to health (UDHR 25, ICESCR 12)
- Right to participate in the cultural life of the community (UDHR 15, ICCPR 27, ICESCR 15)
- Right to remedy (UDHR 8, ICCPR 2)
- Right to access to information (UDHR 19, ICCPR 19)

**Stakeholders interviewed:** Ministry of the Interior; representatives from the above-mentioned communities; ForumSyd; CENSAT; CINEP; CAJAR; Asociación Mujeres Wayuu; INDEPAZ; and management representation at mining companies (Cerrejón).

## Observations and feedback

Issue	Subtopic	Communities and their representatives (including civil society organisations)	Mining companies	Government and Public Institutions
<p><b>Involuntary resettlement process</b></p>	<p><b>Indigenous people and Free, Prior, and Informed Consent</b></p>	<p><b>Mistrust:</b> According to NGOs, there is lack of trust and suspicion about the motives and morality of the parties (i.e., to what extent indigenous peoples’ “advisers”, the companies, and even public officials are swayed by economic interests to damage the Free, Prior and Informed Consent (FPIC) and resettlement processes. In general, communities perceive a lack of independent and unbiased advice. Stakeholders recognised that prior consultation is a complex process, but at the same time they doubted the ability of others to participate effectively, either because the affected communities do not have the resources, authority, experience, or even the mastery of language needed to participate, or because Western culture (as represented in both government and companies) is incapable of recognising indigenous values and ways of life.</p>	<p><b>Mistrust:</b> The company stated that it participated in these processes in good faith and with transparency. The company mentioned that multiple impact-identification workshops were implemented with the communities and families, which served as a basis to define the compensation packages included in the Resettlement Action Plans (RAP) as recommended by the UN Guiding Principles and IFC standards.  In addition, the company stated that, as included in the RAPs, it has planned for a third party to assess the resettlement process at the beginning of 2018.</p>	<p><b>Mistrust:</b> As included in an UPME report<sup>13</sup>, the emergence of private “advisers” who specialise in FPIC to assist communities is widening the gap between company and communities. Among the main actors, it is said that these individuals are: 1) biased in favour of indigenous communities or organisations, or are conservationists opposed in principle to extractive projects and bent on radicalising communities and blocking negotiation; 2) moved by their own economic interest to use their negotiation skills to seek an economic agreement that favours them rather than the community. According to officials of the Ombudsman’s Office<sup>14</sup>, one of the most controversial aspects is that the linguistic and cognitive barriers separating the indigenous communities from the technicians of the companies and entities of the state are not recognised, which leads to misunderstandings. The Ombudsman’s Office emphasised that Western society cannot reconcile the fact that indigenous communities have a special attachment to their ancestral lands and that, in many cases, they need to consult with the spirits.</p>

<sup>13</sup> [http://www1.upme.gov.co/sites/default/files/forum\\_topic/3655/files/industria\\_minera\\_comunidades\\_colombia\\_problemas\\_recomendaciones.pdf](http://www1.upme.gov.co/sites/default/files/forum_topic/3655/files/industria_minera_comunidades_colombia_problemas_recomendaciones.pdf) (Accessed in May 2017)

Issue	Subtopic	Communities and their representatives (including civil society organisations)	Mining companies	Government and Public Institutions
		<p><b>Assistance for community during negotiation:</b> According to the NGOs, it is crucial to solve the power imbalance between companies and communities, because it is not possible to negotiate effectively amid the gaps that exist between communities and companies. Communities require a higher level of support to strengthen their organisations and technical knowledge on the issues they are addressing.</p> <p>NGOs cite the case of Tamaquito community as a good example: The community had the financial support of the company to hire an adviser (the community chose INDEPAZ, a social organisation that had been working with them) to accompany the whole process, and the adviser certainly became an important factor in how the resettlement has evolved. According to NGOs, this case shows it is possible to develop a resettlement process based on consensus and negotiation, which depends not only on the company's willingness but also in the ability of communities to form collective action and alliances with other social organisations.</p>	<p><b>Assistance for community during negotiation:</b> The company asserted that, being aware of the best practice and requirements in the IFC standard, it has always accepted the possibility of providing external advisers selected by the community to assist the community during the process. It said technical consultation was always provided to communities when requested and said Indepaz was the organisation chosen by the communities to be that external adviser.</p>	N/A
		<p><b>Lack of active involvement of institutions:</b> The communities complain that the role of government entities is limited to observing the consultations and said they should play a bigger role in being a guarantor of rights, especially when there is inequality between the parties (e.g., scale, technical and legal capacity, and language).</p>	<p><b>Lack of active involvement of institutions:</b> The company mentioned that, as a common practice, group agreements were recorded and signed by all community members and that participation of local authorities was ensured in the working meetings.</p>	N/A

Issue	Subtopic	Communities and their representatives (including civil society organisations)	Mining companies	Government and Public Institutions
Involuntary resettlement process	Unethical practices	<p><b>Use of tactics to divide the communities:</b> According to NGOs, unethical practices are often used during resettlement negotiations to divide the community, including organising community meetings to negotiate terms but failing to invite leaders that the company had deemed “problematic” in the past and discouraging community members from increasing the number of people entitled to resettlement under the threat that “the pot of money will not increase, and it will mean less money per family”.</p> <p>The community also complained that allegations by the companies that terms and conditions were agreed with the community and signed by its members are invalid, because most of the people are illiterate.</p>	<p><b>Use of tactics to divide the communities:</b> The company asserted that it was the families’ decision not to choose collective resettlement, and denied that there was a limited “pot of money” to be distributed among the families.</p> <p>The company further denied all accusations of unethical practices.</p>	N/A
		<p><b>Perverse benefits:</b> According to the NGOs, the company uses “perverse benefits”, threatening to withdraw educational support provided to families during resettlement negotiations. According to civil society, this is one of the major weapons used by companies during negotiations.</p>	<p><b>Perverse benefits:</b> According to the company, when the resettlement with entitled families was negotiated, educational support was one of the benefits all members agreed to receive. The purpose of this premise was to maintain the social fabric of the community at the new site, as defined by the IFC standards and best practices. For example, according to the company, the issue around limitations in the access to education programmes was not to pressure some community members; the company said that it sought to implement eligibility criteria without discrimination, as some community members were benefitting from the programmes without fulfilling requirements that had been agreed.</p>	



Issue	Subtopic	Communities and their representatives (including civil society organisations)	Mining companies	Government and Public Institutions
<b>Involuntary Resettlement process</b>	<b>Criteria applied</b>	<p>The communities have complained that the company applies different eligibility criteria across different communities – not based on best practice – which generates not only confusion but antagonism. For example, in Chancleta, it is claimed that the company granted different rights depending on whether families are indigenous or Afro-Colombian, residents with entitlements or residents with no entitlements. By contrast, the criteria used in Casitas was permanent residency; the rights of indigenous people were not considered. Only those meeting the condition of permanent residency have been relocated, meaning that more than 200 families were left out of the resettlement process and were compensated instead.</p>	<p>The company stated that in terms of resettlement eligibility, the number of families entitled to resettlement was established with the communities in accordance with criteria defined by them. The company was respectful of this decision and compensated each family accordingly.</p> <p>The company added that the recommendation to jointly identify the impacts of a resettlement, as recommended by the UN Guiding Principles and IFC standards, was implemented in all procedures. Multiple impact-identification workshops were implemented with the communities and families and were the basis on which compensation packages were defined and included in the Resettlement Action Plans (RAP). As a common practice, all group agreements were recorded and signed by all community members. However, one challenge is that, once resettlement has advanced and benefits and compensation have been delivered, additional families have requested to be included, despite the baseline previously defined.</p>	N/A
<b>Compensation</b>	<b>Fulfilling promises</b>	<p><b>Water treatment:</b>  <b>The community</b> representatives of Chancleta and Patilla recall that the company promised to build a water treatment plant in exchange for the use of the Rio Cerrejoncito. However, this pledge was never met, as evidenced by the 256/15 ruling declaring the lack of potable water. This has caused growing frustration and a deterioration of the relationship between the company and the community, which contrasts with public communications made by the mining company; this problem is not mentioned in resettlement updates.</p>	<p><b>Water treatment:</b>  The company stated that progress has been made and that it has been complying with the decisions of the ruling, which included conducting the consultation process with the participation of the Ministry of Interior that led to agreements with 60 families (out of 62), providing compensation that has already been delivered to 51 families, and pneumological exams conducted by the Colombian Pneumological Foundation. The company added that progress has been made on the issue of access to water via 12 meetings with the Ministry of Housing and the mayors and the hiring of a technical team that is currently preparing an analysis of the water-access situation and the water projects presented by local governments. The company added that problems have been caused by institutional instability in the La Guajira governor’s office.</p>	N/A

Issue	Subtopic	Communities and their representatives (including civil society organisations)	Mining companies	Government and Public Institutions
		<p><b>Land compensation:</b> Some communities, such as Roche, complained that the land granted was not equivalent to the land they previously had access to and that their ancestral way of life was not considered, including the ability to cultivate land.</p>	<p><b>Land compensation:</b> The company stated that it has complied with the commitments of the negotiated agreements with the resettled families and added that it paid the families the value of their land, according to an independent appraisal, and moreover, paid 150% of this amount.</p> <p>The company stated that the ruling from the State Council requested that it count in compensation inhabitants who had sold their property to the company since 1997 and to consult on the type of property the community wished to have, since it is now recognised as Afro-Colombian. It added that a consultation process was started with the participation of the Ministry of Interior and a methodology for the consultation process has been agreed with the definition of two eligibility criteria: Families that sold their property from 1997 to 2003 and families that have lived in Roche during those years. The community is currently preparing a revised list of families that potentially meet the agreed criteria. The next stage will be to agree on compensation to treat them equally to the 25 resettled families. The third stage will define the compensation method.</p>	
Livelihood	Living conditions and access to basic services and infrastructure	<p><b>Living conditions:</b> <b>One of the most</b> common complaints of the communities is that traditional ways of living were not recognised and that resettlement has not improved living conditions.</p>	<p><b>Living conditions:</b> The company stated that the communities have decided on new sites, town layouts, and designs and have agreed on each aspect of the compensation package that aims to compensate impacts that were jointly identified. The company added that, despite specific challenges, the process has resulted in the enhancement of the living conditions of the communities<sup>15</sup>.</p>	N/A.

<sup>15</sup> For instance, the company has done measurements against the Multi-Dimensional Poverty Index (MPI) and will begin a thorough assessment of livelihood-restoration programmes.

Issue	Subtopic	Communities and their representatives (including civil society organisations)	Mining companies	Government and Public Institutions
		<p><b>Access to basic services and infrastructure:</b> Communities in the resettlement process also said they lack access to certain basic services and infrastructure. One of the most common complaints is that the community's traditional ways of living were not recognised.</p>	<p><b>Access to basic services and infrastructure:</b> The company asserted that at the new site, services are generally better in quality and coverage than what the families originally had. These services include: water, electricity, houses, and community infrastructure. In addition, the company has been working towards easier access to public services provided by the municipality: Municipal administration representatives participated throughout the resettlement process and in 2016 an MoU was signed to carry out maintenance of public infrastructure of resettlements, connect new towns to the municipal aqueduct and sewage systems, and develop livelihood projects for the resettled families, including maintenance of the local school and the electrical network, both in progress. The company admitted that the new community of Roche faced continued challenges regarding water access and structural robustness of the houses.</p>	
Livelihood	Community investments	Communities complained about the lack of long-term, sustainable social investment projects that would enable them to thrive independently.	The company mentioned that land, seed capital, and consultancy have been provided for the productive projects the families chose to develop. Families each received a house with a deed certifying their legal property rights, as well as land to develop farming activities. In addition, families that follow major livestock activities were granted additional land to continue with these activities, also with title deeds. The company recognised that in some cases, results have not been what families expected, and the company said it has been working to provide additional support.	N/A

Issue	Subtopic	Communities and their representatives (including civil society organisations)	Mining companies	Government and Public Institutions
<b>Grievance mechanism</b>	<b>Effectiveness</b>	Community representatives stated either that they were unaware of the grievance mechanism or had little trust in its independence. For example, they explained that the company provides access via email, phone, and physical presence in Puerto Bolivar and at the mine. However, communities have serious limitations with regards to access to internet, phone, and transport.	<p>The company agreed that there is room for improvement and said some communities may have less knowledge of the system. However, it said, the number of complaints presented since 2010 confirms that the Complaints Office is generally well known and widely used by local communities. The company reported that in the past seven years, it has received 2,205 complaints related to possible impacts caused by the operation and has closed 1,601 of the complaints; these complaints were presented by people from 351 communities (indigenous and non-indigenous).</p> <p>The company added that it has planned new activities to start in September 2017 to enhance the awareness of employees working in community engagement, especially with resettled communities, to ensure that they are better informed and prepared to receive and process community complaints. Also, adjustments to the process are being implemented to make the channels more efficient and more accessible via personal engagement and a free telephone line. (Cell phones are widely used in the region.)</p>	N/A

## Environment and Communities

**Department:** Magdalena

**Stakeholders affected:** In the department of Magdalena, there are four ports used for the export of coal from Cesar, three of them are in the municipality of Ciénaga (Puerto Nuevo, Puerto Drummond and Puerto Rio Cordoba) and one in the municipality of Santa Marta. The latter is called Puerto Zúñiga, Puerto Zúñiga was operated by Prodeco, then ceased to operate in 2013. Communities affected are the Don Jaca community, Cristo Rey, and La Paz; because the latter two are not fishing communities, they were not part of our inquiry.

**Potential Human Rights at Risk:**

- Right to health (UDHR 25, ICESCR 12)
- Right to an adequate standard of living (UDHR 25, ICESCR 11)
- Right to adequate housing (UDHR 25, ICESCR 11)
- Right to food (UDHR 25, ICESCR 11)
- Right to water (UDHR 25, ICESCR 11)
- Right to participate in cultural life (UDHR 15, ICCPR 27, ICESCR 15)

**Stakeholders interviewed:** Don Jaca community (representing ex Prodeco workers and fishermen); CorpaMag; Defensoría del Pueblo Magdalena (Ombudsman for Magdalena); Puerto Nuevo (Prodeco); and management representation at mining companies (Drummond).

## Observations and feedback

Issue	Subtopic	Communities and their representatives (including civil society organisations)	Mining Companies
<b>Air quality</b>	<b>Air emissions</b>	Communities reported that dust emissions from coal-loading operations affect community health and agricultural soil and crops, making the land unsuitable for farming.	One of the mining companies stated that data reported by the Air Quality Monitoring System of the Regional Environmental Authority during the years when the port was functioning showed compliance with legal regulations. The company also asserted that its port project was located in an urban area, so no activities associated with agriculture could have been affected by the operation. The company added that some port activities received an ISO 14,001 certificate of compliance with stipulations of the environmental regulations in force and with the Environmental Management Plan approved by ANLA, which periodically monitors compliance.
<b>Other impacts</b>	<b>Noise and vibrations</b>	Communities reported that noise and vibrations from trains transporting coal to Puerto Zúñiga caused structural damages to houses. The trains ceased operating when Puerto Zúñiga closed.	One of the mining companies stated that the design of the rails minimised vibration and therefore the passage of a train caused no impact or damage near the project.
<b>Other impacts</b>	<b>Impacts on fishing community</b>	<p>Communities reported the disappearance of fishing as a major economic activity. Community leaders argued that port security measures prevented them from going far enough into the sea to search for fish stocks.</p> <p>The community claimed that the company's dredging work at the beaches near Don Jaca negatively impacted fishing stocks. The community is represented by a Fishing Committee in a court case against the state regarding health damages and lack of investment.</p> <p>The community distrusts any public report commissioned by the companies, even if conducted by university researchers, saying the companies influence the results.</p>	<p>One of the companies stated that the port activity has not generated any impact on the fishing community. The company added that a third-party study commissioned by the mining company in December 2014 concluded that the decrease in fishing stocks could be associated with dredging and natural changes. In addition, reports by other institutions have pointed to the use of unsustainable and destructive methods of fishing over a long period of time that has resulted in destruction of the natural reefs and a drop in the fish stock.</p> <p>Another company mentioned that in early 2016, in consultation with stakeholders, it identified the following lines of action to enhance the situation in fishing communities:</p> <ol style="list-style-type: none"> <li>1) train fishermen in activities other than fishing, as well as in sustainable fishing practices;</li> <li>2) strengthen fishermen's associations on issues related to the productive activity from which they derive their livelihood;</li> <li>3) fund alternative projects such as recreational fishing and ecotourism activities.</li> </ol> <p>One company worked with fishing associations, including providing each cooperative with a vessel and relevant equipment, the training of business associates in the fishing cooperatives, and training associates in maritime safety, navigation equipment management, and good manufacturing practices.</p>

Issue	Subtopic	Communities and their representatives (including civil society organisations)	Mining Companies
<b>Livelihood</b>	<b>Living conditions and access to basic services and infrastructures</b>	Communities complained about a lack of access to drinking water and electricity and blamed the local administration and the mining company for insufficient social investment.	<p>One of the mining companies stated that the poverty levels and the conditions in which communities live preceded the port operations and said the government is responsible for providing adequate infrastructure and investing the royalties it receives from the mines. Nevertheless, the company asserted that it has invested in building a local school, water tanks, and new boats for the communities.</p> <p>Another company showed us unanswered letters it sent to the mayor of Santa Marta, seeking collaboration in social investment projects.</p>
<b>Livelihood</b>	<b>Community Investments</b>	<p>Communities complained about high unemployment levels and said that, even though all employees received economic compensation for job losses, most community members have musculoskeletal disorders because most of the work in Puerto Zúñiga was manual; the disorders are not recognised by the mining company or the insurance companies.</p> <p>The communities reported that job losses and unemployment were caused by the transfer of the port operations from Puerto Zúñiga to Puerto Nuevo and said that the company never wanted to invest in improving its workers' skills.</p> <p>The communities also said they feel the judicial system is corrupt, as all court cases appear to have been decided in the company's favour.</p>	<p>The company stated that significant action has been taken for those communities impacted by the closure of Puerto Zúñiga, and the community has shown the company its appreciation. It mentioned that of 368 employees at Puerto Zúñiga, 63 were transferred to PNSA, 59 to other operations, and 240 were disengaged (including approximately 40 from Don Jaca). The company opened a voluntary retirement plan that included benefits that were more general than were legally required, including:</p> <ul style="list-style-type: none"> <li>• a severance payment 40% above the legal requirement;</li> <li>• a social security bond, so ex-employees would have health and pension coverage for six months;</li> <li>• life insurance for six additional months;</li> <li>• forgiveness of debts an employee might have owed the company;</li> <li>• a two-stage, voluntary Outplacement Plan led by Universidad del Norte.</li> </ul>
<b>Grievance mechanisms</b>	<b>Effectiveness</b>	The community reported not being aware of the existence of a grievance mechanism to log complaints on environmental impacts.	The company stated that people can log complaints either in person or by post, phone, and email.
<b>Security</b>	<b>Security concerns for community leaders</b>	Communities expressed concern about instances of violence that have contributed to mistrust. In January 2013, shortly after a community leader appeared on TV denouncing a coal spillage by a mining company, he was shot several times in the chest in an attempt to murder him. They alleged that employees of the company in question attacked the man because they feared losing their jobs and income.	N/A



**Department: Cesar**

**Stakeholders affected:** Relevant civil society representatives identified communities as being most adversely impacted by the mine, including El Hatillo, Boquerón, Santa Fe, Hato La Guajira, Estados Unidos, El Prado, and Platanal.

**Potential Human Rights at Risk:**

- Right to health (UDHR 25, ICESCR 12)
- Right to an adequate standard of living (UDHR 25, ICESCR 11)
- Right to adequate housing (UDHR 25, ICESCR 11)
- Right to food (UDHR 25, ICESCR 11)
- Right to water (UDHR 25, ICESCR 11)
- Right to participate in cultural life (UDHR 15, ICCPR 27, ICESCR 15)

**Stakeholders interviewed:** Representatives from El Hatillo, Boquerón, Santa Fe, Hato La Guajira, Estados Unidos, El Prado, and Platanal; civil society representatives PAS, Tierra Digna, PAX; management representatives from Prodeco, Colombia Natural Resources (CNR), and Drummond; the Ministry of Environment, the ANLA, Contraloría General de la República, and regional environmental authority CorpoCesar.

## Observations and feedback

Issue	Subtopic	Communities and their representatives (including civil society organisations)	Mining companies	Government and Public Institutions
Air quality	Air emissions	<p>The communities claimed that dust levels, measured as Particulate Matter (PM10 and PM2.5) and Total Suspended Solids (TSP) have affected their health and ability to cultivate their land.</p> <p>Civil society stressed the need for the government and communities to apply the PM10 and PM2.5 limits established by the WHO, and they referred to Constitutional Court ruling 154/2013 asking the Ministry of Environment to apply the WHO guidelines<sup>16</sup>.</p>	<p>According to mining companies, the major source of emissions was from other sources, such as road transport, cooking with wood or coal, controlled forest fires, and domestic waste incineration. One of the mining companies dismissed the 2011-15 IDEAM report<sup>17</sup> and referred to the network report from CorpoCesar in April 2017 showing a clear reduction in the levels of PM10 over the last year, despite an increase in coal production in the region. Mining companies argued that readings of PM2.5 stations are for the measurement of road traffic only and are not attributed to mining. Readings from the urban stations in 2016 show excessive levels at only four stations in two months, which they attributed to fires and seasonal dryness.</p> <p>Mining companies also indicated that they comply with legal limits and that the PM2.5 standard is not a useful indicator to measure the effects of the physical crushing of rocks, such as occurs in mining. They asserted that PM2.5 emissions coming from mine operations amount to less than 5% of the total TSP emission, based on EPA AP-42 emissions factors. They pointed to a clear reduction in the levels of PM10 during 2016, despite the increase in coal production in the region.</p>	<p>Studies by the relevant authorities have shown an increase in air emissions (PM10) in the coal-mining corridor of Cesar and reported repeated excesses of PM10 in some stations around La Jagua de Ibirico. In particular, according to IDEAM's latest Air Quality Study for the years 2011-2015<sup>18</sup>, the mining corridor of Cesar registered excesses of PM10 (both in annual and daily limits) and high concentrations of PM2.5 and exceeded emissions limits at two monitoring stations close to the mines (i.e., Plan Bonito and La Jagua Via). It also showed a continuous increase in concentrations of PM10 from 2012 to 2014 in La Loma Centro, La Aurora, Chiriguaná, and Becerril.</p> <p>In July 2014, the Cesar Regional Ombudsman found that 60% of the patients in La Loma suffered from 22 types of diseases, mostly respiratory, linked to inhalation of dust particles. Again, no proof or study links these health issues to mining or any other activities.</p>

<sup>16</sup> <http://www.corteconstitucional.gov.co/RELATORIA/2013/T-154-13.htm> (Accessed in May 2017)

<sup>17</sup> [http://documentacion.ideam.gov.co/openbiblio/bvirtual/023637/Informe\\_del\\_Estado\\_de\\_la\\_Calidad\\_del\\_Aire\\_en\\_Colombia\\_2011-2015\\_vfinal.pdf](http://documentacion.ideam.gov.co/openbiblio/bvirtual/023637/Informe_del_Estado_de_la_Calidad_del_Aire_en_Colombia_2011-2015_vfinal.pdf) (Accessed in May 2017)

<sup>18</sup> [http://documentacion.ideam.gov.co/openbiblio/bvirtual/023637/Informe\\_del\\_Estado\\_de\\_la\\_Calidad\\_del\\_Aire\\_en\\_Colombia\\_2011-2015\\_vfinal.pdf](http://documentacion.ideam.gov.co/openbiblio/bvirtual/023637/Informe_del_Estado_de_la_Calidad_del_Aire_en_Colombia_2011-2015_vfinal.pdf) (Accessed in May 2017)

Issue	Subtopic	Communities and their representatives (including civil society organisations)	Mining companies	Government and Public Institutions
<b>Water</b>	<b>Impacts on water and water access</b>	Communities complained about the lack of basic infrastructure, particularly a significant drop in water access due to mining. For instance, El Hatillo and Boquerón reported a lack of clean water supplies. The communities accuse the companies of diverting rivers (e.g., Rio San Antonio), polluting water streams, and affecting subterranean aquifers.	<p>The companies stated that they comply with environmental standards, have limited the use of water from natural sources, and have conducted studies that show little impacts on natural water bodies. Although it is the state’s responsibility to guarantee access to water and electricity, the mining companies asserted that they made efforts to improve power and water infrastructure/supply.</p> <p>One company stated that diversions of the Rio San Antonio during 2009-2010 were carried out in compliance with the Environmental Management Plan approved by the Environmental Authority for Environmental Licenses. The company also stated that after the diversions and in accordance to the Environmental Management Plan (EMP), it carried out environmental management, monitoring, and follow-up activities, and studies demonstrated that the diversions have not caused change in the physical, chemical, and biological quality of the waters that travel through the diverted water bodies.</p>	ANLA and CorpoCesar representatives <sup>19</sup> stated that the main pollution sources in Cesar are coal-mining and agricultural activities, as well as a lack of effective treatment of domestic residual waters. According to ANLA <sup>20</sup> , coal-mining activities have affected important hydrogeological resources that supply different users of groundwater (e.g., communities, industry, etc.) This is because the coal beds lie under some of the area’s aquifers, so mining can trigger drops in aquifer levels. The magnitude of such impacts in the mining corridor is still unknown. In addition, mining activities can modify the direction of groundwater flow by reversing natural hydraulic gradients, causing surface water currents that are hydraulically connected to the aquifers to drain part of their flow towards the mines. ANLA stated that, to date, there have not been significant changes in the hydrogeology that could generate conflicts with other water users. However, ANLA <sup>21</sup> also reported several past incidences of non-compliance. Currently, ANLA is developing a strategy involving the mining companies and CorpoCesar for construction of a conceptual hydrogeological model of the mining corridor that will would lead to a regional groundwater monitoring network for the area.
<b>Livelihood</b>	<b>Community Investments</b>	Communities complained that the companies unilaterally decide on social-investment programmes without consulting the communities as to their needs, and they said the initiatives are not sustainable in the long term. For instance, one mining company built an aqueduct to supply water to El Hatillo, but it did not meet the community’s needs. Other complains verged around the provision of animal farms without enough capacitation of the community to build a long term economic project.	Mining companies stated that their investment in the communities goes beyond legal requirements, including agricultural training, school construction, the provision of scholarships, etc. They added that they initiated, with the Contraloría, the Royalties Oversight Committee in 2004, which was re-launched in 2016 with the companies’ support. The mining companies also indicated that all projects are developed with participation from the communities.	N/A

<sup>19</sup> Interviews with ANLA and CorpoCesar representatives (March 2017)

<sup>20</sup> ANLA, Reporte sobre la zona minera del Cesar

<sup>21</sup> Interviews with ANLA (March 2017)

Issue	Subtopic	Communities and their representatives (including civil society organisations)	Mining companies	Government and Public Institutions
<b>Environ-mental standards</b>	<b>Environmental performance and monitoring</b>	The communities do not trust reports produced by the companies or the authorities.	A mining company stated that more than 400 public officials from various institutions responsible for control and monitoring visited its projects in 2013; around 200 visited its projects in 2014; and a regional inspector comes to the mining projects almost every week.	CorpoCesar reported a lack of sufficient, modern instruments to measure the impacts of mining activities on people’s health and establish causality between water pollution and mining activities, as well as to treat pollution. It also reported that: <ul style="list-style-type: none"> <li>– the frequency of monitoring visits (executed annually, together with ANLA) is insufficient;</li> <li>– companies pay for environmental-compensation projects and then act slowly;</li> <li>– while companies report emissions annually to the ANLA via ICA reports, such data is not independently verified;</li> <li>– in general, due to the diversion of royalties to the national level, the authority is not able to invest sufficiently in resources and measuring systems;</li> <li>– the air monitoring network was recently upgraded to be able to measure more precisely particulate PM2.5, with the help of Sweden’s Government.</li> </ul>

**Department: La Guajira**

**Stakeholders affected:** Of more than 100 communities affected by the mine, the most vulnerable groups identified are Wayuu and Afro-Colombian communities and indigenous women; relevant civil society representatives identified as communities with the most adverse impact Roche (Afro-Colombian), Patilla (Afro-Colombian), Chancleta (Afro-Colombian), Tabaco, Casitas, and Tamaquito II (Wayuu).

**Potential Human Rights at Risk:**

- Right to health (UDHR 25, ICESCR 12)
- Right to an adequate standard of living (UDHR 25, ICESCR 11)
- Right to adequate housing (UDHR 25, ICESCR 11)
- Right to food (UDHR 25, ICESCR 11)
- Right to water (UDHR 25, ICESCR 11)
- Right to participate in cultural life (UDHR 15, ICCPR 27, ICESCR 15)

**Stakeholders interviewed:** Ministry of the Interior; representatives from the aforementioned communities; ForumSyd; CENSAT; CINEP; CAJAR; Asociación Mujeres Wayuu; INDEPAZ; and Cerrejón.

Limitations: The scope of our visit to La Guajira did not include Puerto Bolivar because time was lacking.

## Observations and feedback

Issue	Subtopic	Communities and their representatives (including civil society organisations)	Mining Companies	Government and public institutions
Air quality	Air emissions	All communities visited complained of excessive dust exposure levels. Civil society organisations reported ocular, respiratory, and skin problems within the communities, along with the deaths of five older adults in 2016-2017.	The company contested the claim of excessive dust emissions and particularly mentioned that the results of air quality sampling in the area of influence, performed by the company and CorpoGuajira, show compliance with national legislation for TSP (Total Suspended Particulates) and PM10. The company added that the PM10 particulate matter trend is similar to others in different zones of the country, as evidenced by results in various monitoring networks.	CorpoGuajira, the regional environmental authority, reported that the company is under investigation for excessive air emissions.
Water	Impacts on water and water access	<p><b>Impacts on water supply:</b> Community leaders complained of a general lack of water access and accused the mining company of drying up water holes.</p> <p>In particular, civil society organisations indicated that the environmental authority observed in 2011 that the water flow of the Calenturitas River was completely blocked by the accumulation of sediments generated by mining activity and that debris and sterile material from the mine dried up the Caimancito stream, preventing water from proceeding downstream for several months, which reflected negligence by the mining company.</p> <p>Communities also complained that the water they receive is not drinkable and comes in insufficient quantities to meet their needs and that contaminated water affects soil quality.</p>	<p><b>Impacts on water supply:</b> The company argued that 93% of the water used in their mining operations comes from low quality sources but confirmed that in the past there have been issues with containment walls of sedimentation lagoons and that ANLA mandated that the company compensate for the damage.</p> <p>The mining company added that it is involved in projects to ensure long-term water supply to communities and to provide potable water.</p>	<p><b>Impacts on water supply:</b> The authorities said they lack sufficient data to determine to what extent coal mining activities have affected the hydrogeology of subterranean aquifers and that other activities also affect the water supply, such as the use of fertilizers and the lack of sewage-treatment systems.</p>
		<p><b>Windmills:</b> Community leaders indicated that the company rejected their request to restore windmills.</p>	<p><b>Windmills:</b> The company stated that windmills are the property of the local communities, not the mining company. Therefore, any repairing activity must be done with the consent and authorization of the community's Traditional Authority, along with CorpoGuajira. Once a windmill is repaired, it is delivered to the community, along with capacity-building and skills development to ensure proper use.</p>	N/A

Issue	Subtopic	Communities and their representatives (including civil society organisations)	Mining Companies	Government and public institutions
<b>Other impacts</b>	<b>Noise and vibrations</b>	Communities report that noise and vibrations from trains transporting coal to the ports caused structural damage to their houses.	The mining company mentioned that it commissioned external consultants to conduct assessments of the impact of vibrations along the railway in 2016 and 2017, and results will be presented to ANLA soon. According to the company, the conclusion will be that the vibrations do not exceed the limits recommended by the standard DIN 4150-3 in the short or long term, and there is a lack of evidence of structural damage to the houses caused by the vibrations.	N/A
<b>Livelihood</b>	<b>Community investments</b>	<p>Community leaders considered the many of the investments a public relations effort and said the company is not doing enough. They also found the company very close to local authorities, whose independence is deemed compromised.</p> <p>Communities also complained that the company used the scholarship fund in negotiations by threatening to withdraw it.</p> <p>According to civil society organisations, when social investment serves as a compensation vehicle, it deprives communities from participating in defining the scope and value of what they have lost.</p>	<p>The mining company reported investments in the institutional strengthening of the municipalities of the zone and local initiatives such as scholarships as part of the resettlement programme to enable students' access to higher education.</p> <p>For example, the mining company said it implemented a leading Land Rehabilitation Programme that allowed reclamation of more than 3,600 hectares—almost 100% of the land on which mining activity had been concluded.</p>	N/A
<b>Grievance mechanism</b>	<b>Effectiveness</b>	<p>One of the major challenges for communities and civil society is the lack of resources and technical expertise to challenge environmental impact assessments, evaluation, and monitoring reports.</p> <p>Communities complained of a lack of confidence in grievance mechanisms. NGOs suggested that grievance mechanisms include a third party with no connection to the company.</p>	The mining company stated that it has a robust and efficient grievance mechanism, which is audited by external parties. The company believes that adding a third party to the Grievance Mechanisms will guarantee nothing, particularly if one, the other, or both parties ever lose confidence in the independence of said third party. It said the problems perceived by the community in this regard can be solved by creation of a more systematic dialogue with communities on the efficiency of the existing Grievance Mechanisms.	N/A

## RECOMMENDATIONS

### Overview

This section provides recommendations on how coal mining companies can advance their commitment to respect human rights. Our recommendations focus on the Colombian operations of these companies but might have relevance for their global corporate strategies.

*Why only recommendations to coal mining companies?*

Coal mining companies are our supply chain business partners, with whom we believe we can exercise leverage through engagement and dialogue and enable action to address the issues identified. Therefore, they are the sole focus of our recommendations.

We also believe that many of the recommendations for coal mining companies cannot be resolved unilaterally and that government action is needed, too, together with proactive and positive dialogue with civil society. Nevertheless, as a commercial company, we believe we are not in a position to influence government policy in Colombia, and therefore we have not included recommendations directed to the government or to other stakeholders. Our approach will be to seek a dialogue with government institutions via the embassies of Sweden, Germany, and the Netherlands in Colombia.

However, the ingrained lack of trust among the stakeholders constitutes one of the main barriers to the successful resolution of findings. Back in 2011, the International Labour Organisation (ILO) High-Level Mission in Colombia addressed the need to break the “cycle of mistrust” and gave highest priority to actions aimed at strengthening social dialogue processes. For this reason, we welcome CREER’s<sup>1</sup> (Regional Center for Responsible Businesses and Entrepreneurship) pilot project in the Cesar mining region to explore the dynamics in some municipalities with the goal of identifying barriers and opportunities to build trust and consensus and resolve conflicts among communities, civil society organisations, coal-producing companies, and the Colombian government.

To develop our recommendations to companies, we have used the framework of action “Act, Enable, Influence” (see Highlight – ACT, ENABLE, INFLUENCE FRAMEWORK), which shows how coal mining companies could drive positive outcomes via interaction with other actors in the system (including government and civil society).

<sup>1</sup> CREER’s report, “Sector Wide Impact Assessment of the Mining Sector in Colombia”, stated that, “In order to deal with impacts and to capture opportunities for development, it is necessary that the parties find mechanisms of dialogue based on trust.”

CREER goals are to:

- Facilitate and strengthen informed dialogue among companies, governments, and civil society.
- Ensure effective communication among the various stakeholders. CREER proposes establishing spaces for dialogue based on: trust, quality Interventions, relevance, and applicability.
- Strengthen capabilities that add value to rights holders, companies, and governments based on the efficient management of self-knowledge, in order for this to translate into empowerment, good practices, and effective policies.



## **ACT, ENABLE, INFLUENCE FRAMEWORK (Source: BSR)**

### **ACT**

By making changes that are within the company's direct control; this includes company policies, practices, communications, and investments.

### **ENABLE**

By supporting, incentivising, and investing in other actors such as NGOs, business partners, and key stakeholders to accelerate change.

### **INFLUENCE**

By advocating and sharing knowledge and expertise with government and other stakeholders to drive policy change and transform the industry.

### **Our recommendations are targeted at the priority Human Rights issues identified during our assessment:**

1. Workers' rights, in particular:
  - Occupational Health and Safety
  - Freedom of Association
2. Displacement and Land Restitution in the Internal Armed Conflict
3. Involuntary Resettlement
4. Environment and Communities

The recommendations included in this chapter are those that we think are applicable to all coal mining companies in Colombia. However, we also recognise that some mining companies in our supply chain might be already in the process of fulfilling some of the actions we suggest, or may already have taken measures to address the issues. Some of these actions and measures were also shared during and after our site visit. Therefore, the advice we provide is intended for companies that have not yet taken steps to address the challenges we have identified.

During our assessment, we have also formulated additional company-specific recommendations that, due to confidentiality reasons, we cannot disclose in this report. Moreover, some of these mining companies are participants in the Bettercoal Assessment Program, and Bettercoal is currently engaging with them. We will take all of this into consideration and will collaborate and engage individually with the coal mining companies and with Bettercoal to discuss them and, as relevant, move them forward. More information on the steps Vattenfall will undertake following this report can be found in Chapter 5: Conclusions and Next Steps.

## Recommendations

### Workers' Rights

#### Occupational Health and Safety

Issue/Subtopic	Act	Enable	Influence
<p><b>Accident reporting/calculations</b></p>	<p>Companies should ensure that reporting on Lost Time Accidents follows best practice standards, including the International Council for Mining and Metals' (ICMM) Reporting Guidance on H&amp;S Performance Indicators and Leading Indicators.<sup>2</sup></p> <p>In particular, with regards to reporting on Lost Time Accidents, companies should follow the ICMM definition: "Accidents leading to the restricted work or substituting work should be categorised as an LTA (because the reasons leading to the accident and injury are the same regardless of whether the individual can take on substitute work or not)"<sup>3</sup>.</p> <p>Companies should report how many workers have been reallocated to other jobs because of injury or disease, total number of days in new post, and whether these incidents are considered LTAs.</p>		
<p><b>Access to remedy for occupational illnesses/ effectiveness of the process</b></p>	<p>Companies should monitor and report the number of cases, related to their own operations, that are in the process of being evaluated by the ARL/EPS or by Regional and National Qualification boards for determination (in case the work-related claim is rejected by the ARL/EPS), together with the length of time under evaluation, and they should identify whether the workers are being compensated per the law.</p>	<p>Companies could also proactively communicate to employees the availability of institutionalised channels to log complaints in order to enhance awareness to institutional processes to protect employee rights to get financial benefits.</p>	<p>Companies could advocate for the review of the health insurance system, in particular following the policy recommendations included in the 2014 ILO report, "Strengthen the role of Employment Injury Schemes to Help Prevent Occupational Accidents and Diseases"<sup>4</sup>.</p> <p>Companies could advocate for the Ministry of Labour to meet its July 2016 commitment to "regulate the subject of the rehabilitation, relocation and procedures to qualify disability via the 'Juntas de Calificación de Invalidez' (Qualification Boards for Disability), in order to establish actions to solve the difficulties that exist in the recognition of the guarantees and labour rights, especially with the people related to mining activity"<sup>5</sup>.</p>

<sup>2</sup> <https://www.icmm.com/website/publications/pdfs/6613.pdf> and <https://www.icmm.com/website/publications/pdfs/4800.pdf> (Accessed in May 2017)

<sup>3</sup> An occupational injury or disease that results in the worker's inability to perform routine work functions on the calendar day following the injury is a recordable case. Inability to perform routine work functions includes cases resulting in either assignment of alternate or restricted duty or missed workdays. <https://www.icmm.com/website/publications/pdfs/6613.pdf>

<sup>4</sup> [http://www.ilo.org/safework/info/publications/WCMS\\_214022/lang--en/index.htm](http://www.ilo.org/safework/info/publications/WCMS_214022/lang--en/index.htm) (Accessed in May 2017)

<sup>5</sup> <http://www.mintrabajo.gov.co/julio-2016/6206-ministra-lopez-obregon-se-reune-con-trabajadores-enfermos-de-la-drummond.html> (Accessed in May 2017)

## Freedom of Association

Issue/Subtopic	Act	Enable	Influence
<b>Security/Union leaders' security</b>	<p>Companies should set up, publicly communicate, and implement a zero-tolerance policy regarding threats, intimidation, and physical or legal attacks against human rights defenders, including those exercising their rights to freedom of expression, association, peaceful assembly, and protest against the business or its operations. This should include prohibiting the direct</p> <p>stigmatisation of critical voices among workers and in communities in the companies' zones of influence.</p> <p>Companies should consider reporting publicly the number of death threats received by workers and the number of people affected.</p>	<p>Companies could engage with unions and issue public statements denouncing threats to union leaders, condemning any acts of violence against union leaders, and distancing themselves from any perpetrators. For example, companies can publicly state that "Perpetrators do not represent the interests of the company. They should refrain from abusive actions and respect human rights, including the right to life, freedom of expression, and freedom of association, including being part of or establishing a labour union."</p> <p>Companies could engage more effectively and regularly with national security authorities to follow up on security investigations.</p>	<p>Companies could engage with the relevant authorities to promote the strengthening of protection measures (e.g., speed of response, adequacy of measure, etc.).</p> <p>The following could be used as reference: the recommendations of the OECD's TUAC on the security of union representatives<sup>6</sup> and the recently revised Minnesota Protocol<sup>7</sup>, which makes clear that investigations must be prompt, effective, and thorough, as well as independent, impartial, and transparent.</p>
<b>Contractors/recurrent use of subcontractors</b>	<p>Companies should ensure that methods used for subcontracting do not undermine unions and should apply ILO Convention 100 on Equal Remuneration.</p>		

<sup>6</sup> Recommendations included:

- Involve trade unionists at risk in risk-assessment process to improve quality/avoid misinformation;
- Ensure effective controls to prevent corruption, including asking the UNP (National Protection Unit) to publish its budget;
- Ensure that bodyguards are hired on the basis of direct employment contracts with per diems for missions and contributions to social protection and other security for public sector employees;
- Allow unions to select their own bodyguards;
- Reduce the amount of time for completion of the risk-assessment process for people under immediate threat;

The U.S. and Canadian governments also issued the following recommendations:

- provide the UNP sufficient and permanent financial resources to operate effectively;
- ensure that inter-institutional coordination mechanisms (between the Ministry of Labour and the Office of the Attorney General) are in place for the exchange of information and sharing of relevant evidence;
- critically and independently examine the role of the Escuadrón Móvil Antidisturbios (ESMAD) regarding excessive use of force;
- Monitor the sufficiency of the provided protection measures and increase them, if deemed inadequate, by taking a systematic approach to improve investigations into cases of trade union violence.

[http://www.tuac.org/en/public/e-docs/00/00/13/3E/document\\_doc.phtml](http://www.tuac.org/en/public/e-docs/00/00/13/3E/document_doc.phtml) (Accessed in May 2017)

<sup>7</sup> <http://www.ohchr.org/Documents/Issues/Executions/MinnesotaProtocolInvestigationPotentiallyUnlawfulDeath2016.pdf>

## Displacement and Land Restitution in the Internal Armed Conflict

Issue/Subtopic	Act	Enable	Influence
<b>Land-restitution process/role of companies</b>	<p>Companies should commit to ensuring that legal processes regarding land restitution are respected at all levels of the company, including committing publicly not to try to exert influence over the institutions involved in the process (e.g., LRU and the Court).</p> <p>Companies should commit to participate in processes of truth-building and reconciliation.</p> <p>Companies should take concrete efforts to engage in constructive dialogue with victims of past human rights violations. This dialogue could include (i) how the violence affected all stakeholders, (ii) the role of the different stakeholders during the conflict (iii) defining steps towards reconciliation for the victims, and trust-building among all stakeholders within the process established by the Colombian Government and its negotiated peace-process agreements.</p>		<p>Companies could engage with the government and other relevant institutions and advocate for improved transparency on the effectiveness of the land-restitution process, in particular on the number of cases reviewed and sent to Court<sup>8</sup>.</p> <p>Companies could advocate that the government deploy – in the Cesar mining region—the recently created National Commission for Security Guarantees, as well as the Special Investigation Unit dedicated to investigating and dismantling the remaining criminal and illegal armed groups<sup>9</sup>.</p> <p>To enable trust in the private sector and show commitment, companies could consider collaborating with the Colombian Government and the United Nations in the peacebuilding efforts to lead by example – for instance, in the funds indicated by the Peace Agreements. Also, in 2016, the UN and the Government of Colombia announced the launch of a new multi-partner trust fund to respond to stabilisation and peacebuilding needs<sup>10</sup>.</p>
<b>Security/community security in the restitution process</b>	<p>Companies that have yet to condemn violence should set up, implement, and publicly communicate a zero-tolerance policy to threats, intimidation, and physical or legal attacks against human rights defenders, including community leaders.</p>	<p>Companies should engage with communities on the topic and issue public statements condemning any act of violence and distancing themselves from any armed group.</p>	<p>Companies could advocate to the authorities the use of the revised Minnesota Protocol<sup>11</sup>, which makes clear that investigations must be prompt, effective, and thorough, as well as independent, impartial, and transparent.</p>

<sup>8</sup> This could include:

- Number of claims dismissed by the LRU by categorisation of rejection, i.e. lack of proof of title, etc., and stating whether the claim affected a mining title.
- Number of claims sent to the Land Restitution Court indicating whether the claim is for “compensation” or “restitution”; type of body representing the victims, i.e. LRU or other; and whether the claim affects a mining title
- Number of rulings favourable to the victim by compensation or restitution and whether it affected a mining company. Specify cases in which the opposing party (i.e., the mine) could not prove to have acted “in good faith free of guilt”.

<sup>9</sup> see Peace Agreement, Sections 3.4.3. and 3.4.4

<sup>10</sup> <http://www.un.org/apps/news/story.asp?NewsID=53257#WV-P1rcUID8> (Accessed in May 2017)

<sup>11</sup> <http://www.ohchr.org/Documents/Issues/Executions/MinnesotaProtocolInvestigationPotentiallyUnlawfulDeath2016.pdf> (Accessed in May 2017)

Issue/Subtopic	Act	Enable	Influence
<p><b>Grievance mechanism/demand for extrajudicial-remedy process</b></p>			<p>Companies could engage with the government, civil society, and international human rights institutions to advocate for setting up an independent grievance mechanism. This new model of grievance mechanism could take the form of a fund managed by an independent body with significant human rights expertise, which would then take decisions on how to allocate resources from the fund and how to provide resolution and access to remedy. Given the lack of community trust in both government and companies, independent oversight seems essential.</p>

## Involuntary Resettlement

Issue/Subtopic	Act	Enable	Influence
<p><b>Involuntary resettlement process/ legitimacy and equality in negotiation process</b></p>	<p>Facing a lack of country-based guidance, companies should follow the IFC Performance Standard No. 5<sup>12</sup>, and the EBRD<sup>13</sup> and the ICMM<sup>14</sup> Guidelines on land acquisition and resettlement and, where needed, to consult the spirit of the standard with the Guarantees Commission.</p> <p>Companies should address issues of inequality during negotiations by ensuring that communities have a technical representative present during negotiations from the start of the process until its very end. Independent conflict-resolution specialists, as well as technical experts, may be needed.</p> <p>Once the community has been resettled, companies should establish a long-term monitoring mechanism, together with civil society, to ensure that livelihood measures agreed upon in the Resettlement Action Plan (RAP) are implemented. In particular:</p> <ul style="list-style-type: none"> <li>• Ensure that vulnerable groups are identified and their human rights protected;</li> <li>• Maintain dialogue in as open a manner as possible;</li> <li>• Obtain an understanding of the community's expectations with regards to the role of each actor; ensure that inequalities are addressed and that they are represented by a third party.</li> </ul>	<p>Companies could work with the government and third parties to ensure that affected communities have access to basic services.</p> <p>Companies could engage with the relevant authorities and government institutions and ensure that they provide appropriate support during the resettlement process.</p> <p>Companies could consider developing an ethical code of conduct for community consultation, Free, Prior and Informed Consent (FPIC), and resettlement processes.</p>	<p>Companies could promote a dialogue with all actors to overcome the prevalent mistrust and then encourage the exchange of best practices.</p> <p>Companies could start a dialogue with the government to put a clear national legislative framework in place to cover resettlement.</p> <p>Companies could consciously position themselves as actors in this dialogue and leave governance and oversight to an independent third party.</p>

<sup>12</sup> The International Finance Corporation [http://www.ifc.org/wps/wcm/connect/3d82c70049a79073b82cfaa8c6a8312a/PS5\\_English\\_2012.pdf?MOD=AJPERES](http://www.ifc.org/wps/wcm/connect/3d82c70049a79073b82cfaa8c6a8312a/PS5_English_2012.pdf?MOD=AJPERES) (Accessed in May 2017)

<sup>13</sup> The European Bank for Reconstruction and Development <http://www.ebrd.com/documents/environment/pdf-resettlement-guidance-and-good-practice.pdf>

<sup>14</sup> ICMM recommendations on Land Acquisition and Resettlement, in particular, include:

- Ensure that agreements with stakeholders are accurately recorded and then signed by community leaders with oversight and support from their own advisers to account for the illiteracy of some community members. Copies should be presented to members and representative third parties to avoid misunderstandings.
- Sign-off on RAP packages and group agreements should be thoroughly recorded and disclosed in a timely manner.
- Commitments regarding compensation and broader social development benefits to be provided by the company should be recorded in writing in the RAP.
- Ensure that any payments agreed with the resettlement committee meet anti-corruption guidelines and do not undermine community support for the project.

## Involuntary Resettlement

Issue/Subtopic	Act	Enable	Influence
<b>Involuntary resettlement process/ criteria applied</b>	<p>Company should also apply best practice established by the IFC Performance Standard No. 5<sup>15</sup>, and the EBRD<sup>16</sup>, and the ICMM<sup>17</sup> Guidelines on resettlement. In particular, companies should obtain a clear picture of which human rights are being impacted through their mining operations and which of these impacts put the community at risk, in particular:</p> <ul style="list-style-type: none"> <li>• The conditions set in the RAP should ensure that such rights are protected and that any infringements are restored to original condition.</li> <li>• During the negotiation process (particularly when considering compensation for informal modes of livelihood and cut-off dates), consider the objectives of the IFC Standard No. 5<sup>18</sup> on land acquisition and involuntary resettlement<sup>19</sup>.</li> </ul>	<p>Companies could conduct a gap assessment against UN Guiding Principles, the IFC Performance Standard No.5 to evaluate the company’s approach to human rights, particularly as they relate to resettlement processes and the criteria applied.</p> <p>Companies should participate actively in the dialogue, but oversight from an independent adviser is highly recommended.</p>	<p>Companies could advocate that the government and other relevant institutions establish clear criteria for resettlement eligibility and compensation.</p> <p>Companies could engage with the government and other relevant institutions to advocate for the government to regulate and issue tailored guidance on FPIC. This should include:</p> <p>Ensuring that FPIC precedes all mining projects, including expansions.</p> <p>Establishing mechanisms and procedures to verify that free, prior, and informed consent has been sought. In order for these mechanisms to function properly, indigenous peoples must be included in their development<sup>20</sup>.</p>

<sup>15</sup> [http://www.ifc.org/wps/wcm/connect/3d82c70049a79073b82cfaa8c6a8312a/PS5\\_English\\_2012.pdf?MOD=AJPERES](http://www.ifc.org/wps/wcm/connect/3d82c70049a79073b82cfaa8c6a8312a/PS5_English_2012.pdf?MOD=AJPERES) (Accessed in May 2017)

<sup>16</sup> <http://www.ebrd.com/documents/environment/pdf-resettlement-guidance-and-good-practice.pdf> (Accessed in May 2017)

<sup>17</sup> <https://www.icmm.com/en-gb/publications/mining-and-communities/land-acquisition-and-resettlement-lessons-learned> (Accessed in May 2017)

<sup>18</sup> Sections GN 60-65 state that “where a community’s access to commonly held natural resource assets such as rangeland, pasture, fallow land, and non-timber forest resources, the company will provide either land based compensation in the form of suitable replacement land, or access to other areas of natural resources that will offset the loss of such resources to a community. Such assistance could take the form of initiatives that enhance the productivity of the remaining resources to which the community has access, e.g. improved resource management practices or inputs to boost the productivity of the resource base, in-kind or cash compensation for loss of access, or provide access to alternative sources of the lost resource”. In this context, the EBRD also recommends that in cases where it is not possible to legalise informal ways of economy, companies should assist people to change their sources of income through the provision of education and training, access to employment opportunities or assistance to start up a new type of business.

With regards to cut-off dates, the IFC PS 5 mentions this only in the context of completing a census and identifying which individuals or families are entitled to compensation. The IFC does not envisage cases in which the resettlement happens well after mining operations have commenced. It is important to specify that the “cut-off date” was made to protect the rights of the legitimate inhabitants and that this should be taken into account during negotiations.

In addition, it is worth considering that in Guidance Note 5, it says: “A common complication encountered with respect to cut-off dates involves ‘historic’ cut-off dates, which were established at the time a project was ready for development but, due to project delays, have become forgotten or outdated. In such scenarios, natural population growth from eligible households leads to ‘new’ households not listed in the initial surveys: these are to be considered eligible for resettlement benefits and assistance”.

<sup>19</sup> IFC Standard No. 5 on Land Acquisition and Resettlement — Objectives:

- To mitigate adverse social and economic impacts from land acquisition or restrictions on affected persons’ use of land by: (i) providing compensation for loss of assets at replacement cost; and (ii) ensuring that resettlement activities are implemented with appropriate disclosure of information, consultation, and the informed participation of those affected
- To improve, or at least restore, the livelihoods and standards of living of displaced persons
- To improve living conditions among displaced persons through provision of adequate housing with security of tenure at resettlement sites

<sup>20</sup> <http://www.ohchr.org/Documents/Issues/IPeoples/FreePriorandInformedConsent.pdf> (Accessed in May 2017)

## Involuntary Resettlement

Issue/Subtopic	Act	Enable	Influence
	<p>Increase the level of transparency with local stakeholders and the general public. This could include reporting on:</p> <ul style="list-style-type: none"> <li>• Criteria used to determine who is entitled to be resettled;</li> <li>• The percentage of the population that is entitled to be resettled;</li> <li>• Regular updates on progress, based on previously agreed indicators and disclosing the third-party monitoring reports on the resettlement process that were mandated by the Ministry.</li> </ul> <p>Companies with operations near indigenous communities should apply best practice established by the IFC<sup>21</sup> and the ICMM<sup>22</sup> on FPIC.</p>		
<p><b>Involuntary resettlement process/ indigenous people and Free Prior and Informed Consent</b></p>	<p>Companies should apply the principles of Free, Prior and Informed Consent, as defined by ILO convention 169, and regularly evaluate their activities against such requirements.</p> <p>Companies should refer to best practice in engaging with indigenous people and exercising FPIC, as referenced in ICMM's Guidance on Indigenous People, the IFC Performance Standard and Guidance Note on Indigenous People, etc.</p>	<p>Companies should engage government institutions to align on respective roles in the FPIC process and encourage the state to take on the duty to perform FPIC, as this responsibility lies with the government and not the companies, to ensure that this is an unbiased and independent process.<sup>23</sup></p>	
<p><b>Livelihood/living conditions and access to basic services and infrastructure (resettled communities)</b></p>	<p>Companies should apply IFC's Performance Standards and Guidance Note on Community Health, Safety and Security (PS4) and Cultural Heritage (PS8).</p>	<p>Companies could cooperate with municipal administrations and other relevant organisations to improve the living conditions of the communities impacted during and after the resettlement process.</p> <p>Invest in long-term sustainable projects and in developing the skills of inhabitants to enable them to support themselves economically once they are resettled.</p>	<p>Companies could engage with the government at the local and national level, and with other relevant institutions, to ensure that the communities have access to basic services such as water, electricity, and educational and medical facilities, including advocating for the strengthening of the capacity of local governments to provide public services, reduce poverty, and mediate local conflicts.</p>

<sup>21</sup> Performance standard n. 7: [https://www.ifc.org/wps/wcm/connect/1ee7038049a79139b845faa8c6a8312a/PS7\\_English\\_2012.pdf?MOD=AJPERES](https://www.ifc.org/wps/wcm/connect/1ee7038049a79139b845faa8c6a8312a/PS7_English_2012.pdf?MOD=AJPERES) (Accessed in May 2017)

<sup>22</sup> <https://www.icmm.com/website/publications/pdfs/9520.pdf>, <https://www.icmm.com/en-gb/members/member-commitments/position-statements/indigenous-peoples-and-mining-position-statement> and [https://www.icmm.com/website/publications/pdfs/position-statements/2013\\_icmm-ps\\_indigenous-peoples.pdf](https://www.icmm.com/website/publications/pdfs/position-statements/2013_icmm-ps_indigenous-peoples.pdf) (Accessed in May 2017)

<sup>23</sup> Article 15 of ILO Convention 169 states: "The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management, and conservation of these resources. In cases in which the state retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities."



## Involuntary Resettlement

Issue/Subtopic	Act	Enable	Influence
<p><b>Security/security concerns for community leaders</b></p>	<p>Companies should set up, publicly communicate, and implement a zero-tolerance policy to threats, intimidation, and physical or legal attacks against human rights defenders, including community leaders.</p> <p>Ensure that measures identified for the mining companies in the Progreso, Desarrollo y Paz (PDP) Initiative security workshop on 30-31 January 2017 are implemented.</p>	<p>As advised by the PDP Initiative, companies could seek new ways to collaborate and be equally involved in solving the security issue. This could include more active participation in the Comité Interinstitucional de las Empresas (Companies Interinstitutional Committee).</p>	<p>Companies could work with civil society towards trust-building and reconciling demands from residents and non-residents with a view towards alleviating tensions.</p> <p>Companies could advocate for faster and more effective response from the relevant authorities, including the Unidad Nacional de Protección (UNP, or National Protection Unit).</p> <p>Companies could advocate that authorities use the revised Minnesota Protocol<sup>24</sup>, which makes clear that investigations must be prompt, effective and thorough, as well as independent, impartial, and transparent.</p>
<p><b>Grievance mechanism/effectiveness</b></p>		<p>Companies could hire a community liaison officer to enable smooth communication on the issue of involuntary resettlement and dialogue and the collection of grievances to ensure that information is shared with the communities at each step in the process.</p>	<p>Companies could engage with the government, civil society, and international human rights institutions to advocate for an independent grievance mechanism to be set up. This new model of grievance mechanism could take the form of a fund managed by an independent body with significant human rights expertise, which would then take decisions on how to allocate resources from the fund and how to provide resolution and access to remedy. Given the lack of community trust in both government and companies, independent management and oversight seems essential.</p>

<sup>24</sup> <http://www.ohchr.org/Documents/Issues/Executions/MinnesotaProtocolInvestigationPotentiallyUnlawfulDeath2016.pdf> (Accessed in May 2017)

## Environment and Community

Issue/Subtopic	Act	Enable	Influence
<b>Air Quality/air emissions</b>	Companies should continue to seek ways to restrain air emissions to the lowest levels practicable, per relevant IFC Guidelines on air emissions.		Companies could engage with the government and other relevant institutions to advocate for implementation of WHO-recommended air emissions levels or, alternatively, European Union levels.
<b>Environmental standards/ environmental performance and monitoring</b>	<p>Companies should strive to comply with rulings by courts, the Agencia Nacional de Licencias Ambientales (ANLA, or Environmental Licensing Authority), and other authorities in the shortest time possible. Companies should apply international standards in working towards the implementation of best practices to reduce air pollution, water use, and water contamination, particularly as established as best practice by the ICMM and the IFC. For example:</p> <p>Air quality: Implement erosion-control best practices to protect the soil surface and prevent the detachment of soil particles by wind or water. Examples include self-sustaining vegetative cover, erosion-control blankets, etc<sup>25</sup>.</p> <p>Water: Work with peers, local communities, and authorities to apply a catchment-based approach to water management, as recommended by the ICMM<sup>26</sup>.</p> <p>Water quality: Consider applying the CEO Water Mandate's guide<sup>27</sup> to collective action, which identifies four levels in particular as it relates to implementation of monitoring through community-based environmental monitoring<sup>28</sup>.</p>	Companies could work together with other actors to commission, with the approval of civil society, independent studies to verify monitoring evaluations produced by companies or authorities (air emissions, water, noise and vibrations, impacts on fishing communities, legacy issues on cumulative impacts), or verify the data submitted to the authorities. This could also involve providing support to community monitoring activities that could feed the process. For example, there are already examples in Colombia, Peru and Canada of extractives industries establishing community-based environmental monitoring programme. Elements of the programme are that local residents take part in sample collections each year, and that the programme is independent of government and industry environmental monitoring. The programme enables community members to collect their own environmental samples at the locations that are of most concern to them. This encourages data acceptance and promotes environmental protection, ensuring that water quality standards are maintained.	Companies could engage with the government and the other relevant institutions to advocate for the implementation of the OECD recommendations for Colombia (2014) <sup>29</sup> .

<sup>25</sup> "Overview of best practices for surface erosion protection and sediment control", Sloat & Redden

<sup>26</sup> <https://www.icmm.com/water-stewardship-framework> and [https://www.icmm.com/website/publications/pdfs/water/practical-guide-catchment-based-water-management\\_en](https://www.icmm.com/website/publications/pdfs/water/practical-guide-catchment-based-water-management_en)

<sup>27</sup> <http://ceowatermandate.org/wp-content/uploads/2013/09/guide-to-water-related-ca-web-091213.pdf>

<sup>28</sup> Some mining companies have implemented this successfully by, for example, establishing a community-based environmental monitoring programme that assesses many parameters important to local residents, with a focus on local water quality, comparing it to both reference locations and water quality guidelines. Important elements of the programme are that local residents take part in sample collections each year, and that the programme is independent of government and industry environmental monitoring. The programme enables community members to collect their own environmental samples at the locations that are of most concern to them. This encourages data acceptance and promotes environmental protection, ensuring water quality standards are maintained

<sup>29</sup> Recommendations of the OECD included:

- Reinforce the role of the Ministry of the Environment (MADS) as the main body for directing and overseeing the national environmental management system and for directing the work of Autonomous Regional Corporations
- Consolidate and streamline environmental laws and regulations, and align them with good international practices
- Eliminate overlapping and inconsistent environmental requirements in other sectors, particularly extractive industries, energy, and agriculture
- Promote public participation in the environmental-impact assessment process
- Strengthen the environmental information base, ensuring the link with health and economic data
- Draw up and implement a comprehensive remediation strategy for managing the health and environmental risks posed by contaminated sites
- Review the fiscal treatment of mining to assess whether environmental externalities are sufficiently captured

## Environment and Community

Issue/Subtopic	Act	Enable	Influence
	<p>Arrange to have environmental and H&amp;S data submitted in the Informe Calidad Ambiental (ICA or Environmental Quality Report) independently verified by a third party with the objective of improving levels of trust.</p>		
<p><b>Livelihood/living conditions and access to basic services and infrastructure</b></p>	<p>Companies should apply IFC's Performance Standards and Guidance Note on Community Health, Safety and Security (PS4) and Cultural Heritage (PS8).</p>	<p>Companies could cooperate with municipal administrations and other relevant organisations to improve the living conditions of the communities impacted during and after the resettlement process.</p> <p>Companies could also invest in long-term sustainable projects and in developing the skills of inhabitants to enable them to support themselves economically once they are resettled.</p>	<p>Companies could engage with the government at local and national levels and with other relevant institutions to ensure that communities have access to basic services such as water, electricity, and education and medical facilities, including advocating for the strengthening of the capacity of local governments to provide public services, reduce poverty, and mediate local conflicts.</p>
<p><b>Grievance mechanism/effectiveness</b></p>	<p>Companies should work to improve transparency and identify the fears, concerns, and expectations of the population at an early stage. This modelling system should also take into account direct emissions (mining activities), as well as indirect or secondary emissions (such as transport used to serve the mines).</p>		<p>Companies could engage with the government, civil society, and international human rights institutions to advocate for the setting up of an independent grievance mechanism. This new model of grievance mechanism could take the form of a fund managed by an independent body with significant human rights expertise, which would then take decisions on how to allocate resources from the fund and how to provide resolution and access to remedy. Given the lack of community trust in both government and companies, independent oversight seems essential.</p>

## CONCLUSIONS AND NEXT STEPS

### Overview

Vattenfall's human rights risk assessment on its coal supply chain in Colombia is our first enhanced due diligence exercise in a specific country. The practice of conducting such an exercise is relatively new in the field of sustainability, and we understand that this has generated high expectations among European and Colombian civil society stakeholders, particularly regarding our recommendations. We were also reminded by the local communities that, to their knowledge, previous visits from European representatives were not followed up, and their situation remained unchanged.

During this process, we have gained significant knowledge, although many of the issues have remained open because of the different views from stakeholders. For us, this exercise is a first step in working towards gaining as objective a picture as possible of the key disputes and issues in order to integrate these findings into our supply chain due diligence processes and provide balanced recommendations to the mining companies.

Our recommendations are generic and are directed to the mining companies. Our objective is to use such recommendations to develop individual action plans together with the companies. In some cases, we see an opportunity to work together with all companies in joint initiatives.

### Conclusions and Learning

Human rights due diligence and risk assessments are not an exact science, and there is undoubtedly no one-size-fits-all approach. In our approach, we have taken into account standards and general guidelines by expert organisations, as well as case studies from other companies.

### Lessons Learned

#### Importance of gaining contextual knowledge.

Understanding the Colombian context was and continues to be one of the most challenging aspects of this process. We undertook a thorough desktop review before we met with stakeholders. We cross-checked information with multiple sources, engaged with knowledgeable organisations in the preliminary phase, met many engaged stakeholders during our on-site visit, and consulted with them in the process of drafting the report. Still, we are aware that our limited experience in the country, as well as the fact that Vattenfall lacks a physical presence in Colombia, make it hard for us to fully understand all the characteristics and challenges related to the Colombian mining value chain and its human rights risks.

Still, we believe that this assessment is a crucial part of a long process, and that gaining deeper understanding of the Colombian context is a positive step in the right direction.

#### Selection of stakeholders

Colombian society is very polarised and politicised and, as such, we found that all stakeholders have their own agendas, biases, and preconceptions, and that there is no stakeholder that would be regarded as objective by all parties involved in the most contentious issues. Despite the fact that we validated the final list of stakeholders that we wanted to interview with a selected group of organisations that we considered credible (Colombian Ombudsman, CREER, the Terrace, PAX, ForumSyd, and the German Institute for Human Rights, among others), we decided not to share the list of stakeholders with the mining companies so as to ensure an independent process.

Not every stakeholder agreed with us on this approach. However, Vattenfall determined that it was critically important to focus first on the potentially impacted people to best understand the allegations. This was followed by discussions with the companies and other stakeholders to explore each issue.

### **Strengthening relationships with stakeholders**

Conducting this research via an independent third party might have helped in addressing some of the existing and potential criticisms of this report. However, one of the positive outcomes of performing this exercise ourselves, rather than via a third party, has been the ability to form and strengthen relationships with an extensive network of stakeholders. Likewise, an in-person visit to the communities was necessary because not all have access to digital communication channels, and language can be a barrier. Today, we can say that we took the right decision to go to Colombia with our own team. There is no better way to understand and assess the situation than to go there on your own, talk to people, and see and hear all views with your own eyes and ears.

### **Validating information and handling different interpretation**

In a country where lack of trust is ingrained in society and where the credibility of public records or government information is disputed, we did our best to maintain balance. We used a wide variety of available record sources, from Bettercoal assessments results, the information companies provided authorities (Autoridad Nacional de Licencias Ambientales, or ANLA, regional authorities, etc.) civil society reports, and international reports produced by organisations such as the OECD and the ILO.

The interpretation of events and issues has been very challenging, given the diverse and conflicting stakeholder agendas. In most cases, different interpretations or points of view emerged with regards to the same events. In other cases, direct links between mining activities and some of the alleged impacts was difficult to establish. For example, it is hard to attribute water pollution to a single mining operation in the face of historic polluting practices and cumulative impacts from activities other than mining.

The investigation process took account of these differences, trying to separate fact from rumour, reality from allegations and debates from accusations. This was far from an easy, straightforward task. The many debates we had on our project team about what kind of information to include in the report, or what to conclude based on what we heard from antagonistic stakeholders, may serve as proof of this.

Following our trip to Colombia, we undertook a process of further investigating allegations. This involved consulting official government websites for further information, mainly those of ANLA and the regional authorities, and engaging with some of the consulted parties (government and civil society, primarily) for clarification. Unfortunately, not all stakeholders responded to additional questions. Also, in many cases, there were disparate interpretations of the law between companies and civil society.

Ultimately, validation of all facts and additional information provided was not always possible, and the differences of opinion were not resolved. Hence, Vattenfall determined that it did not have the resources or expertise to validate all the information—nor is it our role to do so. We have tried to be very clear when an issue remained disputed or unresolved; we have neither intended nor attempted to provide a final word on outstanding disagreements.

### **Handling scope limitation**

The scope of this report did not include an evaluation of the robustness of the mining companies' management systems. This falls within the scope of the Bettercoal Assessment Program. However, at some point during the assessment process, the companies shared with us policies and management-system documentation to demonstrate that many of the issues identified were being handled. Managing this information and the expectations of mining companies to see it reflected in the report was one of the most difficult tasks. Policies and systems are often an example of a good faith effort and progress, but they do not necessarily lead to good performance in all instances.

We therefore decided that as long as an issue remained unresolved or disputed, it would be included as an observation in the relevant chapter of this report and would be addressed in our recommendations.

### **Processing information and managing expectations**

The amount of information to be processed, cross-checked, and validated shouldn't be underestimated. In our case, this led to delays in the drafting of the report, the consultation process on the draft, and the publication of the report.

At the same time, vision, goals, milestones, and engagement expectations should always be clearly communicated to all stakeholders before an onsite visit and during the consultation process. We recognise that we did not communicate thoroughly. This is something we will address more clearly in any such work in the future.

### **Together or alone?**

We are conscious that our initiative has been questioned for not being part of the Bettercoal process. As mentioned previously, the Bettercoal scope and process is based on an evaluation of companies' policies and systems following the Bettercoal Code and on the joint development of a Continuous Improvement Plan, which is not what we intended to do with our assessment. Our obligation, as a state-owned company, is to perform human rights due diligence in accordance with the UNGPs, which requires a different approach.

We believe that each process serves its own distinct purpose. Our human rights risk assessment has helped us to identify the main risks and give input to our due diligence processes to gain an understanding of how these risks could be handled in the context of the mining sector in Colombia. The Bettercoal process should help us to gain insight into the performance of the mining companies and show if and how the main risks we identified are addressed. Vattenfall continues to support a joint engagement approach on Colombia, which is why we will seek the collaboration of Bettercoal and other Bettercoal member companies. One of the activities we will undertake is to share our experience and findings in order to help strengthen future site assessments by Bettercoal in Colombia.

### **Our Commitment to Shaping a Strategic Approach, Moving Forward**

The production of this report has proven to be a valuable instrument for us to gain a local perspective and insights from the field regarding impacts Vattenfall may be linked to through our coal supply chain in Colombia—information we could not have obtained without visiting the coal mining regions. By continuing our work and engagement with stakeholders and mining companies in our coal supply chain in Colombia through Bettercoal and by other means, we intend to make this a sustained effort.

### **Engaging to address systemic challenges**

We are aware that solving many of the issues identified in this report does not lie in the hands of individual companies and that a concerted approach needs to be sought. We are also aware that our recommendations have been provided solely to companies and not to the government and other actors, including civil society. We intend, however, to engage with Colombian institutions on those challenges via our corporate offices in Sweden, Germany, and the Netherlands, as we believe they are better positioned than we are for a dialogue at the political level.

Our report has been written with an understanding of our role in the supply chain and opportunities for leverage, not with the intention of resolving all outstanding issues in the mining sector in Colombia. We believe this is appropriate, given our company's activities and core expertise.

### **Incorporation of Human Rights assessments through sourcing and purchasing activities**

Even though human rights assessments are context-specific, we will evaluate the best way to incorporate this approach in our due diligence procedure and to extend it, starting with suppliers of hard coal in other regions of the world. In a next step, we will carry out an assessment in Russia in 2018, which will involve not only coal but also biomass and nuclear fuel. For the coal part, we are engaging with Bettercoal to streamline our processes and prevent duplicate efforts. We will also continue to integrate risk assessment in Vattenfall's other sourcing and purchasing activities and to perform human rights risk assessments for other prioritised areas.

### **Internal capacity-building**

We intend to increase awareness within Vattenfall through the sharing of information with internal decision bodies and the wider company. We will organise internal workshops and lessons-learned sessions to provide insights and improve internal processes. We engage regularly and will continue to do so with our Board of Directors to ensure transparency in our operations. This human rights risk assessment has been discussed in the Board, both before and after the assessment.

### **Next Steps**

This report is the result of what we feel has been a strong assessment process backed by good preparation and solid analysis through desktop-based research, interviews, and two rounds of consultation with stakeholders. However, it is a first step in a longer process.

#### **Our next steps include:**

- With regards to our relationship with mining companies, we want to help initiate change through engagement. Among the identified human right risk areas, we found human rights risks related to workers' rights, environmental and health impacts, resettlement, security, and land rights. These issues are region-specific and mine-specific. We will follow up with individual mining companies regarding specific recommendations, and we hope to agree with each of them on an action plan with SMART goals. Through constructive engagement and dialogue, we will continuously follow up with regards to progress made on flagged issues.
- We are aware of disparate stakeholder expectations and know that some stakeholders previously asked us to disengage from buying Colombian coal. However, we believe in a process of continuous improvement and do not support a strategy of disengagement as a starting point. Ultimately, should we reach the conclusion that a company is not willing to agree on an action plan or has not met an agreed action plan within reasonable time frames, we will seek to temporarily cease imports, followed by disengagement if matters remain unsolved. For now, as part of our strategy of continuous improvement and based on our findings, we intend to work together with the mining companies on an action plan, going forward.
- It is important to us to engage continuously with the mining companies on our recommendations. We will therefore provide the stakeholders consulted with biannual updates on our activities. These will be delivered both in Spanish and English and will also be available publicly on our website. We will conduct a follow-up visit to Colombia in due time to support our engagement with the relevant stakeholders.
- Externally, Vattenfall will be actively seeking opportunities to share our experiences and challenges in order to help strengthen future risk assessments conducted by us or by other companies. For instance, we'll share our experiences with Bettercoal and seek to cooperate on a joint engagement approach on Colombia.
- We will communicate our general findings to the governments of the Netherlands, Sweden and Germany and their respective embassies in Colombia. We will likewise explore cooperation and engagement options.

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