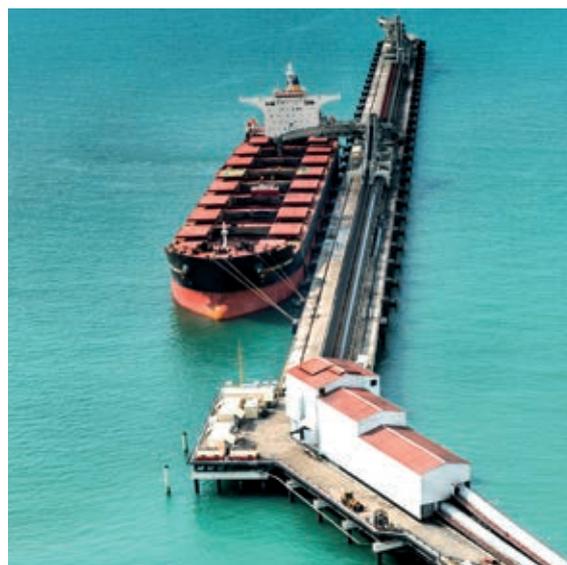


# Buying Coal from Colombia >

Taking stock of 6 years of engagement 2012–2018



twentyfifty®

# Acknowledgement

The preparation of this report was coordinated on the part of twentyfifty by Luke Wilde, Emily Richards and Sulema Pioli and on the part of EnBW by Lothar Rieth, Dirk Keller and Karin Kolbe.

Furthermore, we would especially like to thank Simone Droll, Katharina Klein, Bruno Luycx, Reinhold Repple and Stefan Webers (from EnBW), Guy Wilson (from twentyfifty) for the entire preparation and compilation process and without whom the completion of this study would not have been possible. The same applies to the help of CREER, where Viviana Arango, Camila Miranda and Luis Fernando de Angulo provided us with their extensive expertise and active support in particular during the on-site research.

In addition, we would like to thank the people working for the companies Drummond and Prodeco and for their detailed feedback on earlier draft versions. They supported the research on-site and gave recommendations for dialogue partners in Colombia.

The authors of this study would also like to express their appreciation to all interviewees (governmental, non-governmental), especially in Colombia – in Cesar as well as in Bogotá – for their willingness to take part in discussions and thus support the realisation of this study.

For this study, information up to spring 2019 was researched, reviewed and discussed. The study was published at the end of July 2019.

# Contents

Preface I (by EnBW) .....	4
Preface II (by twentyfifty ltd.) .....	6
Executive Summary .....	8
<b>1 This Analysis .....</b>	<b>12</b>
1.1 Introduction .....	12
1.2 Background .....	12
1.3 Objectives of the analysis .....	13
1.4 Analytical frameworks used .....	14
<b>2 The operating context .....</b>	<b>18</b>
2.1 Colombian history .....	18
2.2 The department of Cesar .....	20
2.3 Coal mining in Cesar .....	22
2.4 Economic development in Cesar .....	24
2.5 Governance and oversight challenges of the mining sector in Cesar .....	27
2.6 Impact of conflict and the role of paramilitary groups .....	29
2.7 Peace agreement .....	30
2.8 Land restitution and victims in Colombia .....	31
<b>3 EnBW's engagement to date .....</b>	<b>32</b>
3.1 EnBW, its strategy and use of coal .....	32
3.2 The world coal market and Colombia .....	34
3.3 Developing EnBW's strategy for responsible coal sourcing .....	35
3.4 Stop buying coal from Colombia or continuous engagement .....	37
<b>4 Development of Mining Companies' Due Diligence practices .....</b>	<b>44</b>
4.1 Corporate due diligence requirements .....	44
4.2 Progress in implementing due diligence practices .....	46
4.3 Summary .....	55
<b>5 Progress in addressing impacts 2012-2018 in Cesar .....</b>	<b>58</b>
5.1 Health and safety .....	58
5.2 Collective Bargaining and engaging with trade unions .....	62
5.3 Tackling violence .....	64
5.4 Environmental and health impact .....	69
5.5 Resettlement .....	73
5.6 Living conditions & social investment .....	77
5.7 Summary .....	82
<b>6 Overall Conclusion .....</b>	<b>84</b>

# Preface I

by EnBW

Dear EnBW stakeholders, dear readers,

Since 2011, we have been committed to the responsible procurement of hard coal. We have also continuously expanded our activities. The EnBW Executive Board has adopted a Code of Principles that place clear demands on our coal suppliers, and our sustainability department has established a Sustainability Registry for our coal suppliers together with the trading department. We have always sought direct dialogue with our suppliers and established an open, critical and constructive basis for discussion. At regular intervals we have also visited Colombia to get our own picture of the working and living conditions in the mining regions. In addition, we have met regularly with NGOs in Europe and Colombia to exchange information on current developments.

After more than seven years of engagement, we have decided to review our overall approach and clarify whether, and to what extent, we have made progress on the ground in the mining regions. In doing so, we want to make as concrete a contribution as possible to the debate on working and living conditions in the mining regions in Colombia. In this respect, media and NGO reports from Western Europe describing individual cases have painted a very negative picture in recent years and created the impression that no improvements have been made on the ground.

With the support of the external consulting firm twentyfifty, which specialises in the human rights due diligence of companies, we have therefore prepared a development and progress report which compiles reliable information on the overall situation in the mining regions in Colombia, in particular with the aim that we can derive findings on the further development of our own approach to responsible coal procurement. We have deliberately concentrated on the Cesar mining region, as in recent years we have procured the majority of our Colombian coal from the Drummond and Prodeco mining companies.

On the basis of various trips to Colombia, a multitude of stakeholder consultations, the analysis of extensive information from our suppliers and the compilation of external data, we have attempted to present as accurate a picture as possible of developments in the central human rights issues in Cesar. In the process of developing the study, it became clear that this broad methodical approach has its limits, as figures, data, facts and objectifiable information are not available in all of the subject areas examined (occupational safety, freedom of association, safety, environmental and health protection, resettlement and living conditions). This has been made more difficult by the fact that increasingly – due to the growing number of visits by foreign guests and the large number of interviews carried out – the interviewees often answered in somewhat stereotyped patterns, so that the added value of these statements regrettably decreased.

Generally speaking, the overall results are encouraging, although not all are fully satisfactory. This relates to the internal structure and organisation of the mining companies, how and where issues of human rights responsibility and sustainability are handled and the intensity with which individual issues were dealt with by mining companies, but also the extent to which external factors did not permit further progress.

The analysis of the management structures of Drummond and Prodeco has shown that in recent years both companies have established professional management structures in accordance with international human rights and sustainability standards. With regard to the central issues, positive developments in occupational health and safety can be noted in the mines during the survey period. The results in the fields of resettlement and environmental and health protection can be classified as moderate to positive. After initial difficulties, significant progress was made in the resettlement process in the communities most severely affected by coal mining. Environmental and health protection in the vicinity of the mines was continuously developed, so that initial figures show a declining number of respiratory diseases in the affected areas.

The results in the areas of security and living conditions remain unsatisfactory overall, without this being attributable exclusively to coal mining and the behaviour of mining companies. Developments in both areas have to be considered in a broader historical context, taking into account the limited leverage and influence of mining companies and coal importers on local developments, and their respective contributions, have to be carefully examined. The increase in the number of killings of activists from NGOs and trade unions throughout the country following the signing of the peace treaty is to be condemned and classified as highly alarming. However, the clear public condemnation of these acts by the mining companies and the development and implementation of their own confidence-building measures as well as their participation in multi-stakeholder initiatives to build peace and trust are very welcome, as is the full cooperation with the local authorities, which is actually to be expected as a matter of course. Our study shows how important coal mining was, and remains, for the economic development of the Cesar region as a whole. Nevertheless, it is noticeable that the residents in the vicinity of the mining areas are still very dissatisfied with their personal economic situation. Mining companies are therefore trying to develop economic structures and create new income opportunities for residents in the mining regions with their own and joint projects and initiatives, and the study provides very good indications of this. There is therefore reason to hope that the taxes and royalties paid by the mining companies over many years will have a positive impact on the overall development in the Cesar region, and in particular on the living conditions of the residents most affected by coal mining.

After carefully weighing up the arguments presented, we therefore see the results presented as confirmation of our overall approach to responsible coal procurement, which is based on dialogue with all stakeholder groups and the constant identification of deficits and areas in need of further development as the basis for a permanent improvement process. From today's perspective, there is no reason to end supply relationships, but on the contrary to support the

mining companies on the path they have chosen and, if possible, to continue to exert our influence through direct supply relationships. The situation today shows that progress has been made in all areas, even if this has not been as comprehensive and far-reaching in all areas as we had initially expected and as we would ultimately have wished it to be. When assessing the overall situation, however, it must always be borne in mind that various structural developments over the past decades, such as the years of civil war and the stony road to a stable democracy less burdened by corruption, continue to have an impact on the development in Colombia and in the regions. In our view, it would therefore be inappropriate to transfer the entire burden of change and responsibility to the mining companies and coal importers. In other words, changing the situation on the ground in the mining areas remains a joint task.

On the basis of the findings of the study, we therefore want to further develop our approach to responsible coal procurement and, together with the mining companies and all stakeholders on the ground, address those focus points with an action plan where the need for action and the scope for influencing improvements are greatest. To this end, we have already held initial preliminary talks with the mining companies on all relevant areas, but also on the management and reporting systems required, which will be intensified in the coming months.

At the same time, we also want to make use of the findings of this study for our activities in other coal-producing countries, such as Russia, in particular for stakeholder talks and when planning on-site visits in the near future.

Sincerely,



Dr.-Ing. Hans-Josef Zimmer  
EnBW Chief Technical Officer

Karlsruhe, July 2019

# Preface II

by twentyfifty ltd.

Whether purchasing coal for use in power stations or other raw materials, many of our clients face challenges in evaluating whether they are fulfilling their corporate responsibility in the buying relationship. In particular, in whether the leverage they have is used to good effect to bring about improved sustainability performance by suppliers. We therefore welcomed this opportunity to work with EnBW and support it in reviewing its engagement with the Colombian coal mining companies who supply them.

We were fully aware of the complexities of the situation where the companies Drummond and Prodeco are operating in Cesar and sought assistance from CREER in understanding the dynamics of the local situation today. We thank them for their invaluable and nuanced insights, as well as comprehensive review of the current situation and activities. We started this project by looking for hard evidence of progress; for graphs, figures and quantitative indicators – this did not prove easy. In a few topics, such as the operational safety performance of the two mining companies it does exist, in other topics it is now being collected but it is too early to draw very solid conclusions, and in other areas such as impacts within the local communities the information available is sketchy and difficult to link with certainty. To have relied only on such indications would do a disservice to the companies and others working to bring about change, so the study also incorporates more qualitative evidence such as the way in which stakeholders are now working together, and personal testimonies, particularly those gathered in EnBW's regular trips to Colombia.

The peace remains fragile in Colombia. Today, there are new victims arising from the actions of criminal gangs who some allege are former paramilitaries. Meanwhile the reconciliation process after 50 years of internal war and the processes for the remediation of victims and restitution of land move steadily, but slowly. These form an ever-present backdrop to the mining companies' operations and their engagement with the local communities.

It is clear, that the mining companies have made progress in tackling employment related issues including safety and trade union relationships and they have recognised the UN Guiding Principles on Business and Human Rights and started the task of putting human rights due diligence practices into place. EnBW was an early supporter of this approach and has encouraged the development of these management systems.

Further, over several visits EnBW has developed a sophisticated understanding of the local situation and formed positive relations with multiple stakeholders including communities in Cesar. Looking forward, it can make use of this access to monitor the maturing of the mining companies' risk management systems in particular by exploring how they incorporate the voices of the affected communities, and if vulnerable groups such as women, minorities or migrants are fairly represented. This would support the patient work being undertaken by CREER and others to re-build relationships between businesses, state and local institutions, and the local communities.

The increasing capacity for multi-stakeholder action is also a cause for optimism. Establishing it is time-consuming but it is necessary to addressing the lack of progress in living standards of the local communities. However, all stakeholders may shortly be facing a significant additional challenge. Like many

in its industry EnBW is switching its energy portfolio to reduce its climate impacts. This is welcome news for the climate, but perhaps not such good news for those who are employed in the coal industry and its suppliers in Cesar. The picture is not year clear. Figures from the International Energy Authority indicate increasing global use of fossil fuels in energy production, while in March Prodeco's owner Glencore announced it was capping its global coal production. However, there is growing momentum for the world to decarbonise more rapidly and so it is reasonable to expect that before long demand for coal will be decreasing.

In this context, if the mining companies are to leave Cesar better than when they arrived the efforts to establish alternative livelihoods in the local communities become all the more necessary, as does the continuing support for reconciliation and the respectful treatment of victims. Further, human rights due diligence processes will have a critical contribution to make in mine closure planning, ensuring that all voices are heard in the planning and adverse impacts on the communities, both past and present are identified and addressed. The updating and implementation of mine closure plans is a second important area EnBW and its peers can focus on in on-going engagement, and in its efforts to fulfil its responsibilities to seek to prevent or mitigate adverse impacts that are directly linked to its operations.



Luke Wilde  
Chief Executive, twentyfifty ltd

London, July 2019

# Executive Summary

EnBW is a German utility company headquartered in Karlsruhe, Germany. Its energy portfolio has been changing from fossil fuels to renewable energies, and renewables are at the centre of its future strategy. In accordance with this goal, EnBW has declared that it will make no further investments into coal as a basis for energy production. However, for the very near future coal will remain an important part of its existing portfolio and a portion of that hard coal, as of today, will come from Colombia. Colombian coal producers have been criticised by western NGOs and the media for failing to meet social and environmental standards. Moreover, critics accuse mine owners of having financed paramilitary groups in the late 1990s and 2000s and being directly or indirectly responsible for acts of violence and human rights violations in mining areas to this day.

## The design of the study

EnBW initiated this development and progress report in order to find out if the mining companies have laid the foundations internally in order to increase their sustainability and corporate responsibility activities and to what degree they have done so. Ultimately, the questions raised aim to explore what kind of progress has been made in addressing the impacts of coal mining in Colombia, with particular regard to working and living conditions in the mining corridor.

The answers to these questions will help to illustrate whether EnBW's responsible sourcing approach – with a focus of ongoing engagement with coal producers – has been effective, and whether there has been any notable impact on their sustainability performance with a focus on key topics.

The inquiry scope was limited to the coal mining region in the Cesar department, and the respective mining companies EnBW sources coal from, Drummond and Prodeco. The inquiry has made use of previous studies and reports conducted by NGOs, academics and other coal importers, information provided by the mining

companies, regular site visits to Cesar, including findings collected during a trip in February 2018 to Colombia and the many visits before, as well as evidence of changes in the social and environmental conditions within the sphere of impact of the Drummond and Prodeco mines, researched by CREER.

When the coal mining companies began their activities in the early 1990s, Colombia was in the midst of a civil war that continued for over 50 years. In the past 5–6 years the political climate has been changing, leading to a landmark peace agreement in 2016 between the government and the FARC rebels. However, in parliamentary and presidential elections in 2018, politicians who oppose central aspects of the peace treaty and who want to renegotiate parts of it have returned to power.

## The context

The operating context for the mining companies in Colombia and in the Cesar region remains complicated. On the one hand, there is increasing socio-economic and political stability and signs of re-establishing governance; on the other hand, despite the economic upturn, a large number of local residents still live in poor conditions in the mining regions. There are still occasional acts of violence against activists and some victims continue to wait for redress. Decades of conflicts and turmoil have led to misunderstandings between politics, business and society. For these reasons, it takes time to rebuild trustful relationships between communities, coal mining companies and public institutions. In the coal regions, not all wounds related to the past have healed, as acts of violence have not been solved and the national reconciliation process takes longer and is more difficult than expected. While coal mining companies provide many jobs, and pay taxes and royalties that support state revenue, corruption among public authorities is still widespread. Although the overall economic situation has improved this is not always evidenced by an improvement in the living conditions of the local population in the coal mining areas such as Cesar.

EnBW itself is committed to conducting its business activities responsibly. It has continuously expanded its respective activities and strives to live up to its corporate responsibility along its value chain. This applies to the procurement of raw materials, and in particular to the purchase of hard coal. In recent years EnBW has introduced a number of sustainability measures in coal procurement, starting with the establishment of a sustainability registry in which all mining companies EnBW sources coal from are listed, through to the establishment of a Committee for Sustainable Procurement, regular reports to the Executive Board on the progress of its responsible procurement approach, and extensive stakeholder dialogues with governmental and non-governmental representatives in Europe and in Colombia.

Following the adoption of the UN Guiding Principles on Business and Human Rights, it has engaged directly with its three main Colombian coal suppliers Drummond and Prodeco (in the department of Cesar) and Cerrejón (in the department of La Guajira) on sustainability issues, and has started sorting out and looking for ways to live up to and abide by the Guiding Principles. EnBW has sent delegations to visit Colombia and it has tracked the mining companies' progress against its EnBW Principles of Conduct for the Responsible Procurement of Coal and other Raw Materials at least twice a year. In those principles it emphasises the importance of international business and human rights standards and its preference for ongoing engagement with suppliers and stakeholders over a disengagement approach. Taking the approach of stopping the purchase of coal from Colombia would deprive EnBW of the opportunity and leverage to participate in improving working and living conditions on the ground.

### Key findings

The study has identified a number of factors that have contributed to positive developments over the last five years. These include, on the part of the mining companies, the comprehensive establishment of internal structures to ensure respect for international human rights standards including a clear commitment to respect human rights, and the establishment of internal management systems to undertake human rights due diligence as set out in the UN Guiding Principles for Business and Human Rights.

Key sustainability impacts have been analysed in various issues in the coal supply chain. In some issues noticeable progress has been made, in other areas signs of progress can be seen, in others the effects are more limited:

Positive developments can be recorded in the field of occupational health and safety in the mines. In this area, high international standards are applied. Comprehensive safety management systems have been introduced by both mining companies and the number of occupational accidents is declining and current performance is in line with professional industry standard practices.

Relations with trade unions (in the sense of collective bargaining and engaging with trade unions) have also developed positively in principle. The legitimate role of labour representatives is recognised, more effective engagement with trade unions has been established and the number of strikes has fallen sharply, also the number of employees with collective agreements is relatively high in relation to the region.

The results in the fields of resettlement can be classified as moderate to positive. Mining companies have put in place effective collaboration and operating practices for resettlement in the three communities affected in Cesar. Successes were achieved in the resettlement of communities most affected by

coal mining. In the community of Plan Bonito, the vast majority have reached agreements with the mining companies. In the municipality of El Hatillo a framework agreement was signed last year, and only in Boquerón does it remain to be seen if and to what extent resettlement will take place.

In the realm of environmental and health impacts, there have been initial advances. Environmental data is now collected on a regular basis by mining companies and the environmental authorities. Although more transparency with regard to available environmental data and impact is needed, dust concentration decreased constantly, and also first evidence of declining rates of respiratory diseases are available. Concerning environmental issues, areas neglected so far – such as questions of forest recultivation and forest compensation programmes – have made initial progress, and questions of mine closures are now also being actively addressed by mining companies for the first time.

The results in the areas of security and tackling violence remain unsatisfactory without this being solely attributable to coal mining and mining companies. The crime rate in Colombia, including the mining region, is still above average in international comparison. The increase in killings of NGO and trade union activists throughout the country following the signing of the peace agreement is worrying, but the clear public condemnation of these acts by mining companies and their advocacy for non-violence and a peaceful coexistence of all players are strong signals. Yet, there is limited willingness to discuss the potential involvement of the mining companies in past violence and the presence of paramilitary groups in the mining area. These developments do not contribute to an improvement of the overall situation.

The study shows how important coal mining is for living conditions and social investment in the Cesar region as a whole. Despite widespread corruption, the socio-economic situation of the inhabitants of Cesar has improved significantly, even though the poverty level is still above average. However, the great dissatisfaction of the direct residents with the prevailing living conditions in the vicinity of the mining areas is a noteworthy negative factor. This has been recognised by the mining companies and attempts are being made today to support building the capacity of the local institutions and to target projects that help build the self-sufficiency of local communities in an unprecedented way.

Over the years of the conflict, relationships between the national government and local institutions, and between the local institutions and the communities and businesses, broke down. This fractured governance is a key cause of mistrust and conflict to this day. The causes of this malaise have been reinforced by corruption, inward migration and the lack of alternative sources of incomes. It is therefore encouraging to see, as is shown in this study, that it has become apparent to actors from different sectors (politics, business and society), that they must pull together in order to make a lasting positive difference on the ground. This applies not only to the economic situation, but also to security and environmental aspects. For these reasons, many multi-stakeholder initiatives have emerged – in addition to the social engagement of the mining companies, which has been going on for years – with the aim of supporting the peace process and strengthening trust between the various sectors. These inclusive types of initiatives allow for all actors' voices and needs to be incorporated into the decision-making process. A number of important multi-stakeholder initiatives to support the overall reconciliation process are underway in which the mining companies are participating, for example the Working Group on Human Rights, the Forest Compensation Programme, the consolidation of the Regional Air Quality

Monitoring Network, including early warning systems, and the Declaration on the Security of Social Leaders. There are also new partnerships in place with the Department for Social Prosperity and Regional Employment, and the Entrepreneurship Centre. Mining companies have also started participating in the forward-looking/future-oriented project on trust and consensus building that is supporting collaboration between state, business and civil society actors.

#### **Conclusion and outlook**

This inquiry has identified evidence that the mining companies have made progress in line with the calls for change made by EnBW, its European peers and others. The overall rating is mixed, with positive signs dominating across all subject areas. Where mining companies have the greatest influence, the most significant differences compared to the past can be found. However, in all areas, the framework conditions that strongly influence the activities of the mining companies are to be taken into account. Therefore, continued engagement is necessary to tackle the most pressing issues, such as resettlement, security and living conditions and encouraging and supporting suppliers to engage in the restitution of land, and the remediation of past violence and environmental impact.

Against this background, it is always necessary to review and question what is a realistic approach for coal importers such as EnBW to exercise their human rights due diligence along the supply chain, and what ambition can be pursued credibly in principle, especially at a local level and *vis-à-vis* mining companies. The study shows that developments or stagnation in most, if not all, topics – and this is most evident in the living conditions of local residents in the Cesar mining regions – are influenced by a variety of factors, not all of which are within the control of mining companies. It is important that shortcomings and deficiencies are addressed – and addressed at all levels by all actors, both governmental and non-governmental, and last but not least, local civil society has a central role to play.

EnBW's approach of responsible coal procurement, based on dialogue with all stakeholder groups and the continuous identification of deficits and development areas, has led to remarkable impulses for improvement in a large number of thematic areas, even if individual changes cannot always be causally attributed to EnBW. The results confirm that the continuous exchange with local mining companies forms the basis for changes in awareness among companies. The results presented underline the fact that it is not so much the threat of the termination of supply relationships that is most effective, rather it is the continuous contact with the mining companies and the constant addressing of shortcomings and development issues on-site. The study thus offers many reference points for working towards the further development of the commitment of mining companies of improving their human rights due diligence approaches.

Looking forward, this inquiry report should therefore form the basis for EnBW's future engagement with its Colombian suppliers. It can be used as a reference point for future buyer-supplier relations which might include agreeing action plans with the suppliers. These action plans should be reviewed at regular intervals to monitor progress in the development of management systems as well as their impact on the ground.

# This analysis

This section provides an overview of the analysis, its background, its objectives, scope, partners and processes, and of how the study was conducted. Furthermore, it introduces the key analytical frameworks which have been applied in order to organise and understand the information collected and received.

## Background

EnBW has bought coal from Colombia since 2001. From 2006 onwards, it has had commercial relations with three Colombian mining companies (Cerrejón, Drummond and Prodeco) and has been engaging with them on sustainability topics since mid-2011. On a regular basis – almost every year – it has sent delegations to visit the country, the mining companies and their stakeholders, and has regularly tracked their performance against the EnBW Principles of Conduct for the Responsible Procurement of Coal and Other Raw Materials. In developing its understanding of the issues on the ground and how to address them, EnBW seeks to maintain continuous dialogue with various stakeholder groups, including Colombian and European non-governmental organisations (NGOs).

EnBW is not alone in aiming to procure coal and other raw materials responsibly, but it engaged directly with the mining companies and other players in Colombia at an early stage in order to address human rights-related issues. A number of other European buyers of Colombian coal have engaged with these mining companies in both similar and in different ways, for example in the context of the multi-stakeholder “Dutch Coal Dialogue” and the business-led “Bettercoal” initiative. At the same time, other international players – including NGOs, human rights institutes and development organisations, as well as governments – have made approaches to the mining companies. These engagements have taken place against the backdrop of a complex and changing context, which is affected by the peace process and its challenges of reconciliation and accountability; the impacts of other industries such as agriculture; and regional crises such as the instability in neighbouring Venezuela.

There have been many notable studies and assessments of coal mining in Colombia, and the practices of the mining companies, including:

- > The Sector-wide Impact Assessment conducted by CREER (June 2016)<sup>1</sup>
- > Vattenfall’s Human Rights Risk Assessment (June 2017)<sup>2</sup>
- > Bettercoal’s assessment of Drummond Coal (2014) and follow-up (2015) as well as Bettercoal’s assessment of Prodeco (2018)<sup>3</sup>
- > NGO studies, such as the Pax Report “The Dark Side of Coal” (2014)<sup>4</sup>, the Urgewald/FIAN report “Bitter Coal” (2013)<sup>5</sup> and the FIAN Report “Schwarze Löcher in der Unternehmensverantwortung” (2012)<sup>6</sup>
- > The German National Human Rights Institution’s report “Closing gaps in protection: Transnational cooperation on human rights” (2017)<sup>7</sup>

1 CREER (2016) Sector-wide impact Assessment of the Mining Corridor in Colombia – <https://www.ihrb.org/focus-areas/commodities/report-sector-wide-impact-assessment-of-the-mining-swia-in-colombia> [accessed 22.02.2019]

2 Vattenfall (2019) A Human Rights Risk Assessment in Colombia – <https://corporate.vattenfall.com/globalassets/corporate/sustainability/doc/A-human-rights-risk-assessment-in-Colombia.pdf> [accessed 03.02.2019]

3 Bettercoal (2018) Bettercoal supports its coal suppliers on a continuous improvement path – <https://bettercoal.org/bettercoal-supports-its-coal-suppliers-on-a-continuous-improvement-path/> [accessed 01.02.2019]; [https://bettercoal.org/wp-content/uploads/2019/01/Bettercoal-Public-Report-Prodeco-Group\\_final.pdf](https://bettercoal.org/wp-content/uploads/2019/01/Bettercoal-Public-Report-Prodeco-Group_final.pdf) [accessed 14.06.2019]

4 Pax (2014) The Dark Side of Coal – <https://www.paxforpeace.nl/publications/all-publications/the-dark-side-of-coal> [accessed 22.02.2019]

5 Urgewald/ FIAN (2013) Bitter Coal – Ein Dossier über Deutschland Steinkohleimporte – [https://www.fian.de/fileadmin/user\\_upload/dokumente/bittercoal.pdf](https://www.fian.de/fileadmin/user_upload/dokumente/bittercoal.pdf) [accessed 01.02.2019]

6 FIAN (2012) Schwarze Löcher in der Unternehmensverantwortung – [http://www.fian.de/fileadmin/user\\_upload/dokumente/shop/Bergbau/2012\\_FIAN\\_Bergbaustudie\\_screen.pdf](http://www.fian.de/fileadmin/user_upload/dokumente/shop/Bergbau/2012_FIAN_Bergbaustudie_screen.pdf) [accessed 22.02.2019]

7 German Institute for Human Rights (2017) Closing Gaps in Protection: Transnational Cooperation on Human Rights – [https://www.institut-fuer-menschenrechte.de/fileadmin/user\\_upload/Publikationen/Information/Information\\_14\\_Promising\\_Practice\\_Closing\\_protection\\_gaps\\_in\\_the\\_human\\_rights\\_Business\\_context.pdf](https://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/Information/Information_14_Promising_Practice_Closing_protection_gaps_in_the_human_rights_Business_context.pdf) [accessed 18.03.2019]

These and other studies have added a great deal to the understanding of the situation in Colombia, the human and environmental impacts of mining activities, and the continuing challenges that mining companies and their communities face. What is still missing is an analysis of whether substantial progress has been made over time in the coal mining regions concerning social and environmental as well as other human rights issues. This analysis should include the extent to which coal mining companies have contributed to any progress made by changing their approach and actions in terms of taking responsibility for human rights. EnBW commissioned the consultancy twentyfifty ltd.<sup>8</sup> in 2018 to provide such an analysis, with the support of the Centro Regional de Empresas Y Empreimientos (CREER)<sup>9</sup> in Bogotá, Colombia.

## Objectives of the analysis

Since 2010 EnBW has made strong efforts to use its leverage as a major European buyer of Colombian coal and to match its stated commitment concerning the subject of sustainability and taking responsibility for human rights. European NGOs have challenged EnBW's approach in the past couple of years via direct written inquiries, posing questions at AGMs and on other occasions. The main questions include whether EnBW should disengage from doing business with Colombian mining companies and stop sourcing coal from Colombia; if its responsible coal-sourcing efforts go far enough; if its actions are proving effective; and if EnBW is fulfilling the expectations placed upon it.

While EnBW believes that over time good – and sometimes significant – progress has been made by the mining companies, its critics do not share this perception. Very often individual cases that affect the fates of individuals and families are brought up, discussed together and, if possible, remedied. In the past, however, discussions on the general situation in the mining regions were rarely conducted on the basis of reliable aggregated information. By commissioning this analysis, EnBW wants to contribute to the understanding of the status quo and whether existing actions to advance responsible coal production in Colombia are making a difference in the mining region of Cesar. This will form the basis for a review and the further development of EnBW's responsible coal-sourcing approach.

EnBW has asked itself on numerous occasions whether coal purchases from Colombia should be stopped temporarily or completely. It decided to continue purchasing coal on the condition that by its continued interaction with mining companies and stakeholders on the ground it could use its influence to help establish sustainability and human rights standards, and thereby contribute to improving the living conditions of the local population in Cesar. After intense discussions internally, EnBW's board has come to the conclusion that if it had stopped purchasing coal from Colombia, it is quite possible that it would not have had any further influence on the CSR practices of its Colombian suppliers. In other words, by maintaining (if possible) a direct commercial relationship with these suppliers, it has a more extensive area of influence to encourage the suppliers to implement effective human rights due diligence procedures.

Against the background of these assumptions, this study seeks to provide an analysis addressing the following two questions:

1. Have mining companies in the coal mining region of Cesar changed their stance regarding sustainability and corporate responsibility?
2. Has there been progress in addressing the impacts of coal mining in Colombia, with particular regard to working and living conditions in the mining region and mining corridor.

<sup>8</sup> twentyfifty is a consultancy working with multinational companies taking practical steps to implement the UN Guiding Principles on Business and Human Rights. twentyfifty has worked with leading European energy companies to assess the environmental, social and governance risks of coal procurement in 2011 and develop the first industry guidelines. In 2013 and 2014, twentyfifty worked with EnBW to develop its Principles of Conduct for the Responsible Procurement of Coal and Other Raw Materials. For more information: <https://www.twentyfifty.co.uk/en>

<sup>9</sup> CREER is a regional hub and centre for south-south learning and knowledge development, supported by the London-based Institute for Human Rights and Business. It has become an important actor for conversations with different stakeholders (local communities, state authorities and NGOs) in the Colombian mining territories. For more information: <https://www.creer-ihrb.org/>

EnBW commissioned twentyfifty to analyse and set out the evidence of developments over time (with a focus on the years 2012–2018) in the mining corridor within the department of Cesar, including a focus on the following issues:

1. Health and safety
2. Collective bargaining and engaging with trade unions
3. Tackling violence
4. Environmental and health impacts
5. Resettlement
6. Living conditions & social investment

Cesar is where the mining companies Drummond Ltd. Colombia<sup>10</sup> (thereafter Drummond) and Grupo Prodeco<sup>11</sup> (thereafter Prodeco) operate mines and provide the biggest share of imported hard coal to EnBW.<sup>12</sup>

This study takes into account a variety of sources, such as previously conducted and publicly available studies (see Section 1.2), a baseline report from CREER prepared with the objective of understanding the changes in human rights and environmental conditions that have occurred within the sphere of impact of Drummond's and Prodeco's operations in the period 2012–2018, internal records from EnBW's previous engagements with the suppliers (including EnBW's sustainability index of its coal suppliers), a number of site visits to Cesar<sup>13</sup>, additional information provided by stakeholders in follow-up calls, emails and reports. In addition, materials were used from the mining companies Drummond and Prodeco, including sustainability reports and other public materials provided on their websites as well as internal documents such as grievance records, monitoring data on health, safety and environmental impacts, training and other materials provided by the mining companies in response to specific information requests.

## Analytical frameworks used

As a reference framework for the evaluation of the changes on the part of the mining companies, current international standards and documents were used, in particular the UN Guiding Principles on Business and Human Rights and the OECD Due Diligence Guidance for Responsible Business Conduct. These form the basis for EnBW's Principles of Conduct for the Responsible Procurement of Coal and Other Raw Materials.

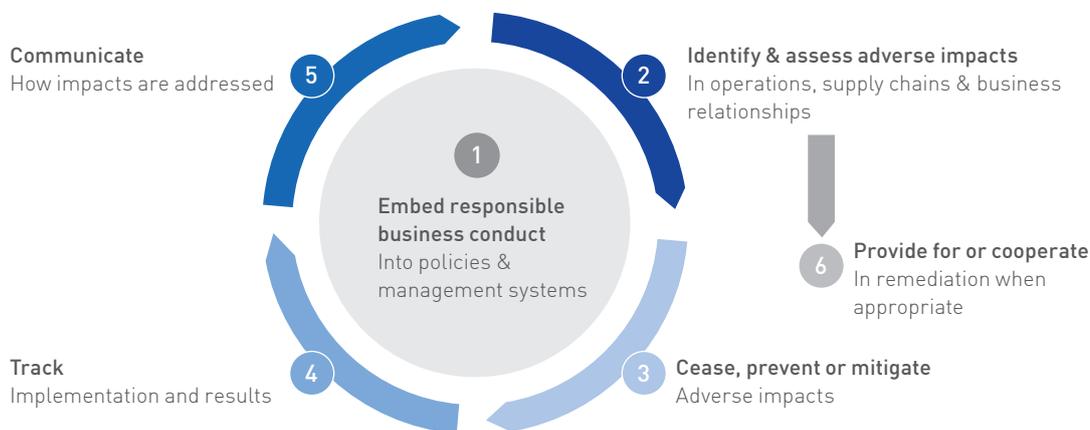
<sup>10</sup> Drummond was founded in 1935 and is based in Birmingham, Alabama (USA). It is principally engaged in the mining, processing and sale of coal and coal derivatives. The company began production in Colombia in 1995 and exports all of its output as thermal coal. The firm has proven and probable reserves of approximately 1.9 bn t, and current production is approximately 32 mill. t/y. The company's Colombian operation includes the Mina Pribbenow and El Descanso open-pit coal mines located in the Cesar Coal Basin near La Loma; Puerto Drummond, a deep-water ocean port on the Caribbean Sea near Santa Marta; and coal transportation and handling facilities. In June 2011, the company entered into a partnership with the Japanese conglomerate Itochu to create a new company, Drummond International, that will own and operate the assets. Drummond owns 40.96% of Ferrocarriles del Norte de Colombia S.A (Fenoco). Source: <https://www.bnamericas.com/en/company-profile/infrastructure/drummond-company-inc-drummond> [accessed 05.01.2019]

<sup>11</sup> Grupo Prodeco is headquartered in Barranquilla, Colombia. It is a wholly owned Colombian subsidiary of Glencore plc engaged in the exploration, production, transportation and shipping of thermal and coking coal, and related infrastructure, which is exported to Europe, America and Asia. The group is made up of C.I. Prodeco S.A., owner of the Calenturitas mine and a railroad operation; Carbones de la Jagua S.A., Consorcio Minero Unido S.A. and Carbones El Tesoro S.A., owners of La Jagua mine; and Sociedad Portuaria Puerto Nuevo S.A., which owns the coal export terminal Puerto Nuevo. Glencore acquired Prodeco in 1995. In 2004, the company began operations in the Calenturitas open pit mine, in Colombia's Cesar department, which produces low sulphur thermal coal with high heat content. In 2007, the company bought the Consorcio Minero Unido mine, and one year later, it acquired El Tesoro, thus completing a full acquisition of La Jagua. Grupo Prodeco also owns 39.76% of Ferrocarriles del Norte de Colombia S.A (Fenoco), which holds the concession for Colombia's northern railroad network and which Prodeco uses to transport coal to the Ciénaga municipality. Source: <https://www.bnamericas.com/company-profile/en/grupo-prodeco-grupo-prodeco> [accessed 05.01.2019]

<sup>12</sup> The CSR performance of Colombia Natural Resources (CNR), formerly owned by Goldman Sachs and currently owned by Murray Energy Corporation has not been included in this study, because in the period under review no significant amounts of coal have been sourced from CNR.

<sup>13</sup> The most recent visit in February 2018 included meetings with Drummond and Prodeco management as well as meetings with local and national level stakeholders, e.g. governmental bodies, NGOs and representatives of locally affected communities.

Figure 1 > OECD Due Diligence Process for Responsible Business Conduct



Source: OECD Due Diligence Guidance for Responsible Business Conduct, <https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf> [accessed 18.03.19]

The reader should note that while the terminology of human rights is often used in this report (in recognition of the importance of the UN Guiding Principles), well-practiced human rights due diligence is also effective in identifying environmental impacts which give rise to economic, health or cultural impacts on people.<sup>14</sup> Particularly in the western world, human rights is often understood narrowly in relation to personal freedoms and democratic participation. In this study it is used in the more broader context, also encompassing economic, social and cultural rights such as the right to health.

### UN Guiding Principles on Business and Human Rights

Next to substantial progress in the field of corporate responsibility and sustainability reporting the most significant development in the field of corporate responsibility in the past decade has been the wide adoption of the United Nations Guiding Principles on Business and Human Rights (UNGPs). Endorsed by the UN Human Rights Council in June 2011, the UNGPs provide the first global recognition of a corporate responsibility to respect human rights. They provide guidance to governments, businesses and civil society to implement the UN “protect, respect, remedy” framework and include the following requirements:

- > States to implement the “State Duty to Protect” their citizens from the adverse human rights impacts of economic actors
- > Businesses to practice human rights due diligence and demonstrate fulfilment of the “Corporate Responsibility to Respect Human Rights”
- > States and businesses to ensure individuals who may have been harmed have “Access to Remedy”

<sup>14</sup> Human rights are basic rights and freedoms. They include, but are not limited to, the rights of workers. They are to be enjoyed without discrimination, i.e. everyone has the same rights. Human rights reflect basic human needs, and relate to a broad range of issues, such as security, housing, water, privacy, discrimination, freedom of expression, land tenure etc. Human rights are founded on basic values such as freedom, respect, equality, dignity, empowerment and accountability. They exist in language and can be expressed in, and guaranteed by, law. The International Bill of Human Rights (Universal Declaration of Human Rights and two covenants implementing it) and the International Labour Organization (ILO) core conventions comprise the minimum core of internationally recognised human rights. The human rights of specific groups are spelled out in separate treaties such as the Convention on the Rights of the Child (CRC) or the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). The primary focus of the many international covenants and conventions has been on defining the accountabilities of states for protecting, respecting and fulfilling human rights. Until the end of nineties, little attention was paid to the responsibilities of business for respecting the human rights of people other than those its employs.

The UNGPs have been taken up by governments via National Action Plans to coordinate awareness-raising and tangible measures to implement the UNGPs.<sup>15</sup> In addition, many market players, such as investors and businesses are putting due diligence programmes into place.

The UNGPs place an emphasis on identifying and addressing the impacts of business operations and business relationships on human rights. Identifying impacts is to be done through meaningful engagement with the people potentially affected, not just experts, and this should include people with particular vulnerabilities such as minorities, children or those with learning or physical disabilities. A human rights approach will support the building of trusting relationships with local communities and help companies to build the link between identified impacts and the actions they are taking to make improvements. The UNGPs speak both to the relationship between the mining companies and the Colombian state bodies, whether at national or departmental level, and also to the relationship between EnBW and the mining companies that supply it.

In this context, EnBW's engagement with the mining companies becomes a discussion about leverage, and whether EnBW has used its own points of leverage effectively to seek to prevent or mitigate adverse impacts in its Colombian supply chain. Its European stakeholders (state and non-state) place significant emphasis on the UNGPs and the importance of due diligence approaches, both for the mining companies and for EnBW itself. Meeting these requirements poses major challenges for many companies and a large number of guidance documents are available to them which describe how to put the UNGPs into practice. Furthermore, EnBW needs to be able to communicate its action to its critics within this human rights framework.

The OECD Due Diligence Guidance for Responsible Business Conduct has emerged as one of the central guidance documents for companies. The OECD guidance seeks to promote a common understanding among governments and stakeholders on the necessary due diligence for responsible business conduct. The UN Guiding Principles on Business and Human Rights, as well as the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, also contain due diligence recommendations, and the OECD guidance can assist enterprises in implementing them.

### **The OECD Due Diligence Guidance for Responsible Business Conduct (RBC)**

The OECD has become the de facto standard setter for human rights due diligence, developing a range of generic and industry-specific guidance to support companies looking to put human rights due diligence into practice.

Working with industry groups and other stakeholder groups, it has published practical guidance for the minerals, agriculture, garments and banking sectors. In 2018, it published generic guidance for all sectors.<sup>16</sup> The OECD guidance gives greater clarity to the use of leverage in a supplier relationship. It expects companies to incorporate RBC expectations and policies into their engagement with suppliers and in other business relationships, including communicating key aspects of the RBC policies as well as incorporating conditions and expectations regarding RBC issues in supplier or business relationship contracts or in other forms of written agreements. It also expects companies to develop and implement pre-qualification processes and due diligence for suppliers and other business relationships, where feasible. Moreover, companies should provide adequate resources and training to suppliers and other business relationships for them to understand and apply the relevant RBC policies.

### **EnBW's code of practice for responsible sourcing**

Based on national and international standards, EnBW developed its Principles of Conduct for the Responsible Procurement of Coal and Other Raw Materials (EnBW's code of practice for responsible sourcing – see chapter 3). They were prepared in late 2013, with both external assistance and additional multi-stakeholder

<sup>15</sup> The German National Action Plan (NAP) was published in December 2016. Source: <https://www.auswaertiges-amt.de/en/aussenpolitik/themen/aussenwirtschaft/161221-nap-kabinett-node>; [accessed 05.01.2019]. The Colombian NAP was launched in December 2015. Source: <https://globalnaps.org/country/colombia/>; [accessed 05.01.2019]. Governments have also started monitoring the implementation of NAPs. Germany's government expects 50% of the companies to have installed appropriate mechanisms with regard to the UNGPs by 2020, otherwise additional legislative measures might be taken into consideration. Source: <https://www.auswaertiges-amt.de/de/aussenpolitik/themen/aussenwirtschaft/wirtschaft-und-menschenrechte/monitoring-nap/2124010> [accessed 05.01.2019]. For further information on the implementation on the NAP in Colombia, see Annual NAP reports. Source: [http://www.derechoshumanos.gov.co/observatorio/publicaciones/Documents/2017/170602\\_InformeAnualEmpresa\\_English.pdf](http://www.derechoshumanos.gov.co/observatorio/publicaciones/Documents/2017/170602_InformeAnualEmpresa_English.pdf) [accessed 05.01.2019]

<sup>16</sup> OECD (2018) Due Diligence Guidance for Responsible Business Conduct – <http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf> [accessed 18.03.2019]

consultations. Following further consultation with the Executive Board and a broad range of stakeholders they were published in 2014. The principles require EnBW's suppliers and business partners to accept these and similar standards themselves, and to take measures to implement them. They also include an early commitment to due diligence as envisaged by the UN Guiding Principles on Business and Human Rights.

The principles state EnBW's intended approach very clearly: "Past experience has shown us that a 'comply or sanction' approach only works to a certain extent. Cooperating and communicating with suppliers is therefore all the more important to identify structural problems at an early stage and develop solutions together." They go on to set out commitments regarding transparency in raw materials procurement, to maintaining ongoing dialogue with stakeholders, and to continuous long-term improvement on the part of those involved in the producing countries. The principles also require that suppliers "implement suitable and verifiable processes to meet due diligence requirements as stipulated in the United Nations Guiding Principles on Business and Human Rights". These three frameworks form the basis for EnBW's assessment of the development of mining companies in the exercise of their human rights responsibilities.

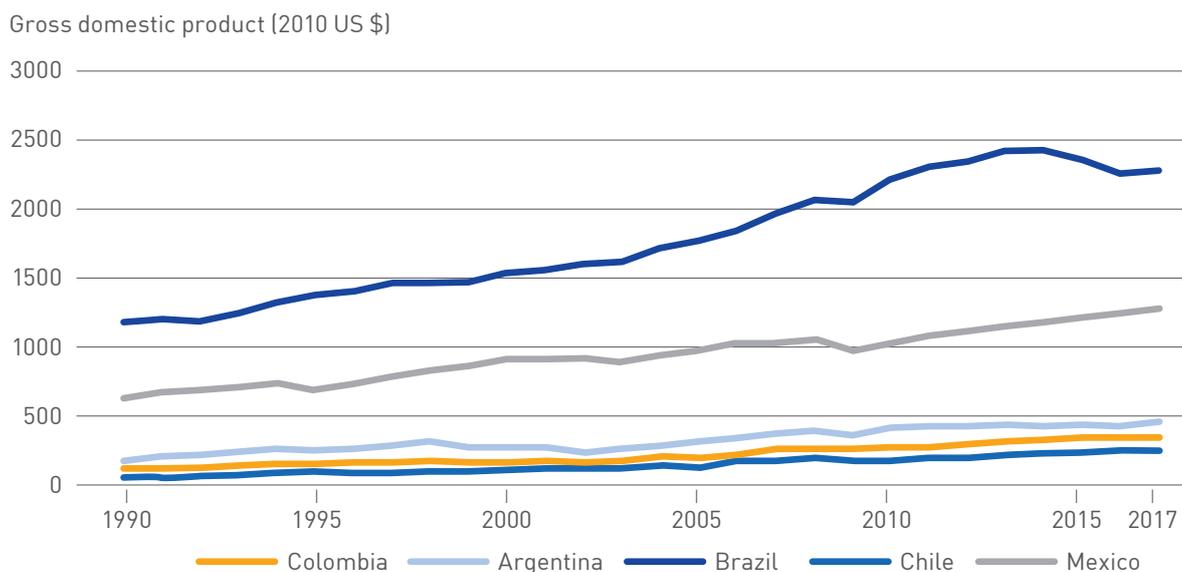
# The operating context

In this chapter, the contextual factors present in Colombia today and in the past are outlined, starting with an overview of Colombia and the mining region of Cesar. The role of coal mining is described, as is the political landscape with regard to fragile government structures. These are important factors that enable us to better comprehend the changing role of the different state and non-state players and that might also contribute to a more comprehensive assessment of the engagement of business and, in particular, mining companies in the region over the course of the past years.

## Colombian history

Colombia is the fifth-largest country by size in Latin America and the Caribbean, and the third by population. It is one of the most ethnically and linguistically diverse countries in the world, with its rich cultural heritage reflecting the influences of indigenous peoples, European settlement, forced African migration, and immigration from Europe and the Middle East. The multicultural population is the result of a melting pot between indigenous inhabitants dating back to the days before the formation of Colombia as a country, Hispanic immigrants and former African slaves. It is also among the world's most biodiverse countries, with its territory encompassing Amazon rainforest, tropical grassland and coastlines along both the Caribbean and Pacific.

**Figure 2 > World Development Index in selected Latin American Countries**

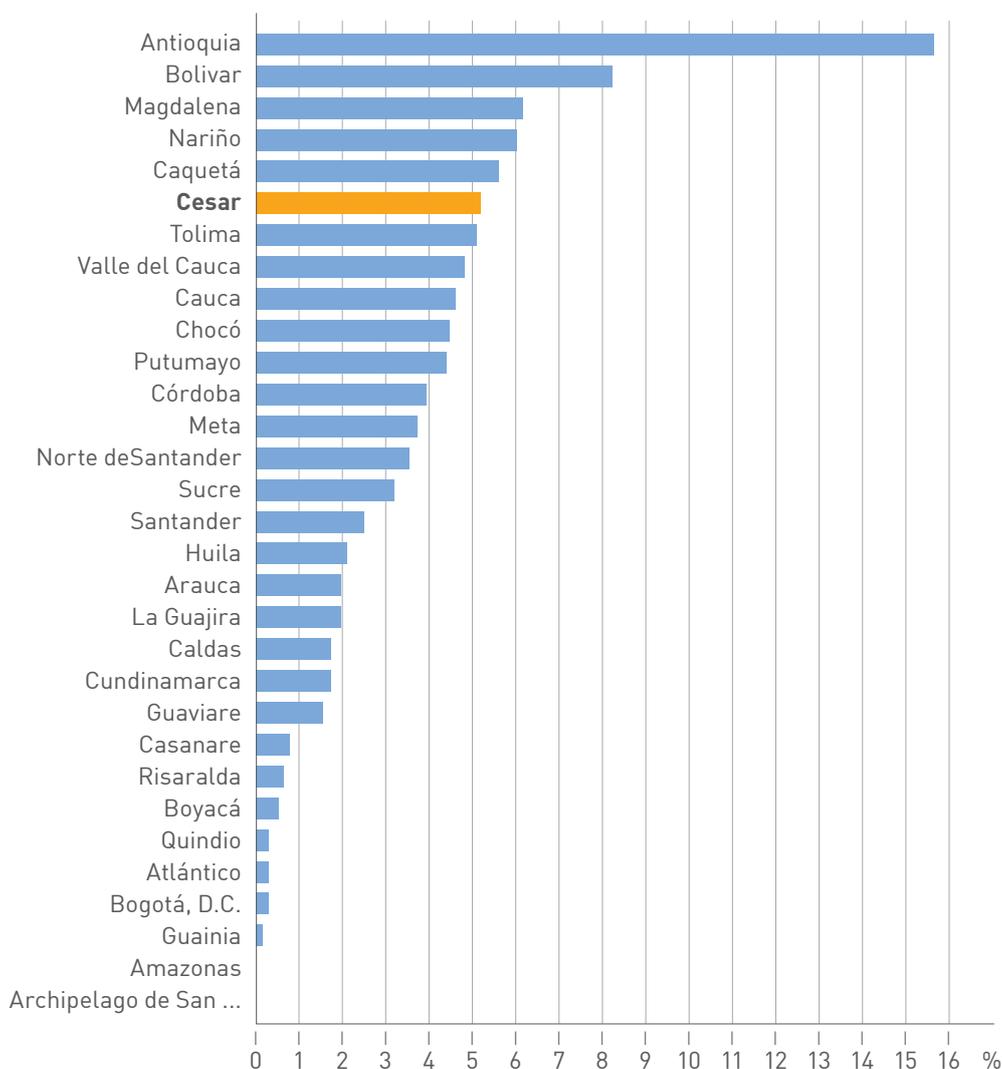


Source: World Development Indicators, World Bank 2016 <https://data.worldbank.org/country/colombia>

Since its independence from Spain in 1810, Colombia has had a long history of democratic and republican institutions. The adoption of a new constitution in 1991 included a fortified framework for human rights, an improved foundation for economic development and investment, and for the protection of the environment. Today, it has the fourth-largest economy in Latin America after Brazil, Mexico and Argentina and is on its way to OECD membership in May 2018 when the OECD invited Colombia as the 37th member.<sup>1</sup>

However, Colombia has been marked by a bloody internal conflict over the last 50 years. The conflict peaked in the late 1990s and declined until the 2016 peace agreement between the government and the FARC rebels was sealed. The period of unrest saw various Colombian governments, paramilitary groups, crime syndicates and far-left guerrillas such as the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia, FARC) and the National Liberation Army (Ejército de Liberación Nacional, ELN) engaging in a low-intensity war as they sought to increase their influence over Colombian territory and economic activities such as drug trafficking<sup>2</sup>. All of the parties that were engaged in the conflicts have been criticised for numerous human

Figure 3 > Displacements by department 1999 to 2011



Source: Victim's Unit Colombia, Bogota, 2012

1 OECD (2018) OECD countries agree to invite Colombia as 37th member – <http://www.oecd.org/countries/colombia/oecd-countries-agree-to-invite-colombia-as-37th-member.htm> [accessed 18.03.2019]

2 Restrepo, EM. "Colombia and its 'Wars' against Drug Trafficking, 1970–2008". Drug Trafficking, Organized Crime, and Violence in the Americas Today. BM. Bagley and JD. Rosen (eds). University of Florida Press. 2015 And Otis, J. (2014) "The FARC and Colombia's illegal Drug Trade". Wilson Centre – [https://www.wilsoncenter.org/sites/default/files/Otis\\_FARCDrugTrade2014.pdf](https://www.wilsoncenter.org/sites/default/files/Otis_FARCDrugTrade2014.pdf) [accessed: 08.01.2019]

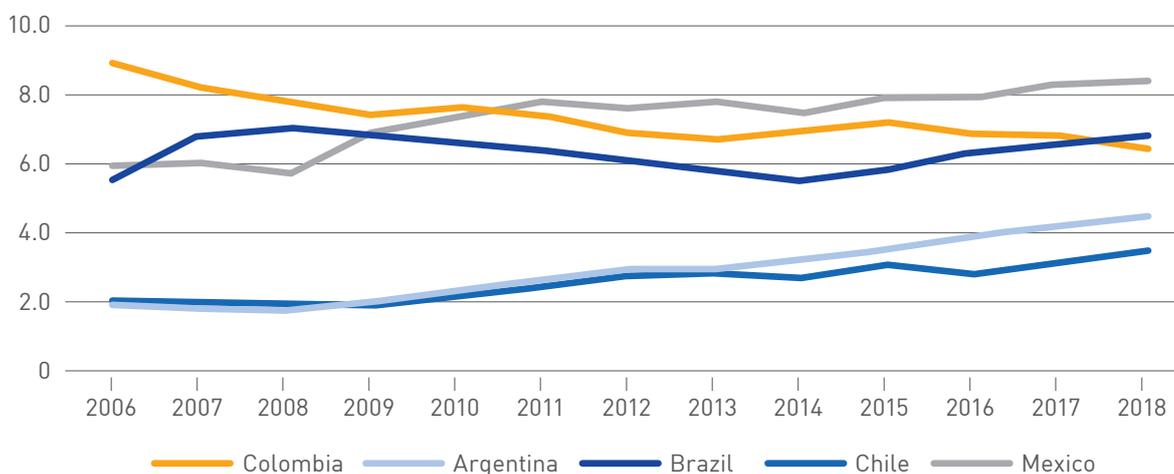
rights violations. According to a study by Colombia's National Centre for Historical Memory, 220,000 people died in the conflict between 1958 and 2013 across the country, most of them civilians (177,307 civilians and 40,787 fighters) and more than five million civilians were forced from their homes between 1985–2012. Overall the world's second-largest population of internally displaced persons (IDPs) was created.

The situation throughout the country over the last two decades has been very violent, as evidenced by the large numbers of displaced people throughout the country. A study by the Unit of Victims (see figure 3) shows that the rate of displaced persons in Cesar alone is as high as in a dozen other areas in Colombia, irrespective of whether raw materials are mined in the respective region.

There are other statistics that illustrate that the violence was spread across the country. These measure criminality figures everywhere and show that there were, in fact, areas with worse levels of violence than Cesar. Here, too, Cesar ranks the same as other regions with similar levels for offences in different categories – overall, Cesar is in the average range.<sup>3</sup>

After the armed conflicts ended, stability increased steadily in Colombia. The figure 4 illustrates the Security Apparatus Indicators in the years 2006–2018 as part of the Fragile State Index.<sup>4</sup> The “Security Apparatus indicator” described here considers the security threats to a state, such as bombings, attacks and battle-related deaths, rebel movements, mutinies, coups or terrorism. This indicator also takes into account serious criminal factors, such as organised crime and homicides, and the perceived trust of the citizens in domestic security. The overall trend shows a strong improvement over the past ten years, and yet the situation deteriorated again by the time the peace treaty was signed, which shows, among other things, how high the potential for violence remains.

Figure 4 > Development of Security Apparatus Indicators 2006 – 2018



Source: Country Dashboard Fundforpeace: <http://fundforpeace.org/fsi/country-data/>

## The department of Cesar

The largest coal mines in Colombia – and the ones that generate the most exports – are located in the north of the country in the departments of La Guajira and Cesar. As outlined in the first chapter this study focuses on coal mining in Cesar. Created in 1967, the department of Cesar descends from the Sierra Nevada de Santa Marta in the north and the Sierra de Perijá in the north-east to the lowlands of the Magdalena River valley, and is traversed by the Cesar River, a tributary of the Magdalena. The region was first inhabited by indigenous peoples known as Euparíes in the Valley of Upar and Guatapuríes in the Valley of the Cesar River. Spaniards were the first Europeans to explore the area, which the German Ambrosio Alfínger savagely conquered in 1532.

3 Official Police Publication (2017) “Measuring crime: criminality figures and police operations in Colombia, 2017”, pp. 107-108 – <https://www.policia.gov.co/revista/revista-criminalidad-volumen-60-no-3> [accessed 25.06.2019]

4 Fund for Peace (2018) – <http://fundforpeace.org/fsi/> [accessed 01.03.2019]

Figure 5 > Map of the Republic of Colombia with the regions



Source: Image database 1234RF

The department of Cesar covers 22,905 km<sup>2</sup>. The Cesar region today has over 1 million inhabitants and has thus experienced the same percentage growth as all of Colombia. The population of Colombia, like that of Cesar, has grown by more than 30% since 1990.<sup>5</sup> To the north is the mining department of La Guajira; and to the east is the border with Venezuela. It is approximately 750 km north of the capital Bogotá. Agriculture is the dominant economic activity, with cotton, rice and corn (maize) being the principal crops. Raising cattle is widespread, and Cesar is one of the main cattle departments of the Caribbean coast. Most of its herd is dedicated to the production of milk and meat.<sup>6</sup> Industry is centred around Valledupar, the departmental capital, where commercial services and industry (oil, fat and milk-based products) also provide significant employment.<sup>7</sup> In 2016, the departmental gross domestic product (GDP) accounted for 1.8% of the national total. The most important sector was mining, quarrying and exporting coal, contributing 40% of the GDP in the department.<sup>8</sup> In the municipalities of the central mining corridor, agriculture, livestock and fisheries present the main alternatives to mining. The most important crops are coffee, cocoa, avocado and African oil palm. Since the 1960s, the cultivated hectares in the department of Cesar have fallen considerably.

Overall Colombia still has one of the highest levels of inequality in the region and worldwide (Gini Index 0.535 in 2014, in Latin America second only to Haiti) and due to the lack of socio-economic improvement, in many regions poverty remains widespread. Moreover, the Multidimensional Poverty Index shows that the incidence of poverty is consistently higher in rural areas compared to urban areas. Even though in recent years the data has shown substantial improvements in some regions, especially related to the provision of public goods, people living in rural areas endure more difficult conditions.<sup>9</sup> Overall, the living conditions in Cesar have improved, but remain below the national average (more details on this issue are presented in this and other chapters).

## Coal mining in Cesar

The Drummond and Prodeco mines that are the focus of this report are in the central mining corridor of Cesar. Some 26.2% of Colombia's coal reserves are found in the department of Cesar and between 2012 and 2017, the contribution of the department to the total national production of coal was 53.2%.<sup>10</sup>

There are seven mines in production, 41 in construction and 260 in exploration. The 308 mining titles awarded cover an area of 275,000 hectares, approximately 12.19% of the department<sup>11</sup>, yet today only about 1% of the mining titles represent coal mining that are effectively in operation. Plus not all of the awarded areas are actually used for mining. The companies with the greatest presence and representation are Drummond, Prodeco and CNR.<sup>12</sup> The coal mines are located in the centre of the department. This area is known as the Cesar mining corridor, and includes the municipalities of Jagua de Ibirico, El Paso, Becerril, Chiriguana and Agustín Codazzi. Since the 1990s mining has been the main economic activity in the department, with a high percentage of the population involved in mining or its supply chain, and royalty payments made to the municipalities.<sup>13</sup> Colombia is the fourth-largest coal exporter in the world (after Indonesia, Australia and Russia).<sup>14</sup> In 2014, the mining and energy industries accounted for 10% of Colombia's GDP (6–8% as a longer-term trend), received most of the foreign direct investments (FDI) (43%), and represented 70% of total exports.

In 2016, Colombia shipped more to Asia than to the USA, but in 2017 the situation reversed: while 2 million tonnes went to Asia, 6 million tonnes went to North America and 5 million tonnes to South America. Europe (including

5 See Population calculations by DANE in the individual regions – <http://www.statoids.com/uco.html> [accessed 5.06.2019]

6 FEDEGAN (2017) Conozca el censo pecuario nacional del ICA 2017 – <https://www.fedegan.org.co/noticias/conozca-el-censo-pecuario-nacional-del-ica-2017> [accessed 18.03.2019]

7 Encyclopedia Britannica – <https://www.britannica.com/place/Valledupar> [accessed 18.03.2019]

8 EL Tiempo (2018) Economía de Cesar, al son del vallenato y algo más – <https://www.eltiempo.com/colombia/otras-ciudades/economia-de-cesar-al-son-del-vallenato-y-algo-mas-261296> [accessed 18.03.2019]

9 Bertelsmann Transformation Index, Level of Socioeconomic Development – <https://www.bti-project.org/en/reports/country-reports/detail/itc/COL/> [accessed 18.03.2019]

10 Association National de Mineral (2017) DEPARTAMENTO DE CESAR – [https://www.anm.gov.co/sites/default/files/DocumentosAnm/bullets\\_cesar\\_01-06-2017.pdf](https://www.anm.gov.co/sites/default/files/DocumentosAnm/bullets_cesar_01-06-2017.pdf) [accessed 18.03.2019]

11 Association National de Mineral (2017) DEPARTAMENTO DE CESAR – [https://www.anm.gov.co/sites/default/files/DocumentosAnm/bullets\\_cesar\\_01-06-2017.pdf](https://www.anm.gov.co/sites/default/files/DocumentosAnm/bullets_cesar_01-06-2017.pdf) [accessed 18.03.2019]

12 Updated with the Colombian Mining Cadastre – 23 May 2017

13 Royalties are the economic compensation that is paid by coal mining companies to the Colombian government for the exploitation of non-renewable natural resources.

14 <https://www.bti-project.org/en/reports/country-reports/detail/itc/COL/> [accessed 18.03.2019]

Figure 6 &gt; Mining projects in Cesar



Source: Adapted Original Portafolio 2018\*

\*Portafolio (2019)

<https://www.portafolio.co/negocios/activos-de-la-drummond-en-la-mira-de-importantes-mineras-516377> [accessed 18.03.2019]

countries bordering the Mediterranean) continues to be Colombia's primary sales market. Within the EU, Germany, the largest member state and largest industrialised country, imports the most coal. While the demand for steam coal in the EU is decreasing, amidst the countries surrounding the Mediterranean, including the north and west coasts of Africa, it is increasing.

Table 1 &gt; Ownership of coal mines in Cesar

Name of the mine	Ownership
Calenturitas	Prodeco
La Jagua	Prodeco
Cerro Largo	Pacific Coal
El Hatillo	Murray Energy
El Descanso zona norte	Drummond
La Francia	Murray Energy
La Loma – Pribbenow	Drummond

Source: Internet research

Table 2 &gt; Mineral titles held in Cesar

Mining titles in Cesar by Mineral	
Coal	53
Coal-coltan	1
Coal-building materials	1
Construction materials	171
Construction materials - other minerals	11
Gold and precious metals	5
Other minerals	60

Source: Association Nacional de Mineral

Steam coal exports from Colombia in 2017 fell by 6.1% to 83.2 million tonnes. Cerrejón exported 31.8 million tonnes, a little less than in the previous year. Drummond slightly increased its exports by 0.6% to 32.8 million tonnes and remains the primary coal exporter in Colombia. Exports from Prodeco, on the other hand, declined significantly by 27.6%. The largest import country for Colombian coal is Turkey who bought 17 million tonnes in 2017. Mexico and Chile followed at 7 million tonnes each. Exports to the Asia-Pacific region declined in 2017.

**Table 3 > Steam coal exports by company in Mio. t**

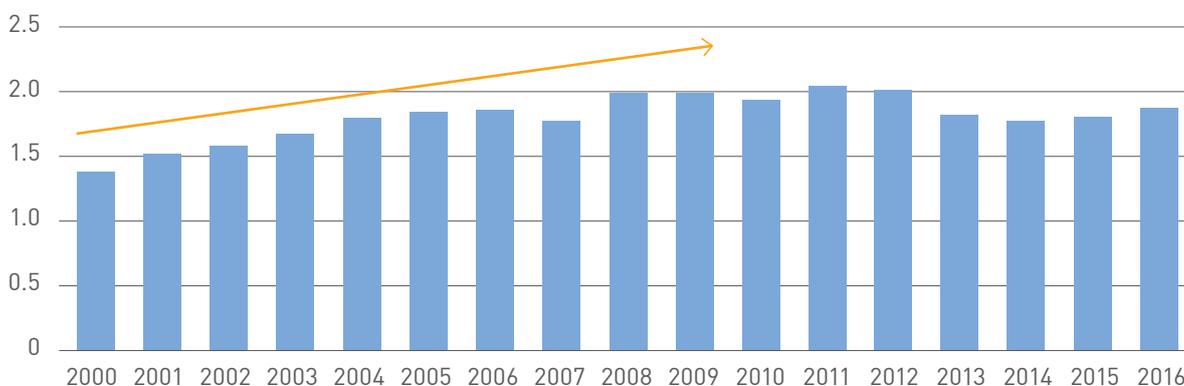
Exporter	2012	2013	2014	2015	2016	2017
Prodeco	14.3	16.4	18.3	16.9	19.2	13.9
Drummond	25.6	20.0	23.2	27.9	32.6	32.8
Cerrejón	32.8	33.7	34.2	33.4	32.4	31.8
<b>Colombia Total</b>	<b>79.8</b>	<b>73.6</b>	<b>77.1</b>	<b>81.6</b>	<b>88.6</b>	<b>83.2</b>

Source: Association Nacional de Mineral VdKI 2018 Report, p.75; <https://english.kohlenimporteure.de/publications/annual-report-2018.html>

## Economic development in Cesar (incl. income from coal mining)

The answer to the question of whether and how the economic situation in the district of Cesar has developed varies. It is necessary to differentiate between different dimensions to grasp the overall situation. There is first, the economic development of the region as a whole, second the proper provision of public services through public authorities based, among other factors, on income sources, such as royalties and taxes by corporate players, and, third, there is the overall question of living conditions – the question of which portion of the population lives in poverty and whether the overall situation of these people has improved at all (in comparison to the rest of the society). Basically, the Cesar region has developed positively in economic terms. During the period of 2000–2016, Cesar’s economy recorded yearly average growth of 5.9%.<sup>15</sup> This is the best performance in the Caribbean region (4.2%) and ranking above the national average (4.1%). This economic acceleration led to the increase of Cesar’s participation in the national GDP, which went from 1.38% in 2000 to 1.86% in 2016 (figure 7 below).

**Figure 7 > Cesar’s proportion of the national GDP, 2000-2016**



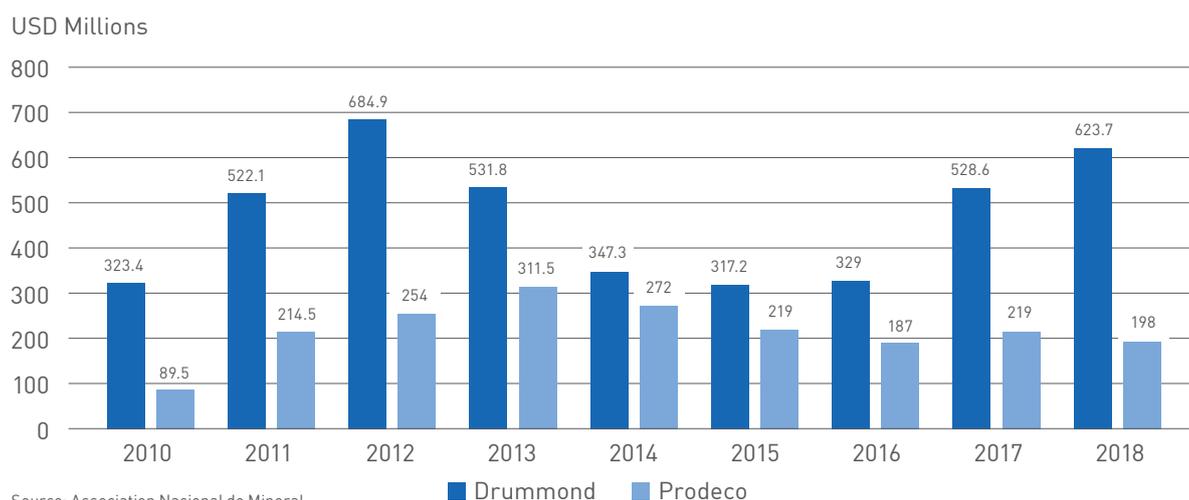
Source: DANE, prepared by CESORE

Cesar’s economy has maintained high levels of growth during the last few years, a large part of the development of GDP is determined by the dynamics of the mining sector – mainly coal extraction. Other statistics show that in the last decade the rate of growth of the mining sector and of Cesar’s economy presents similar trends. This has been

<sup>15</sup> According to the Centro de Estudios Socioeconómicos y Rurales – CESORE

influenced by the increasing importance of coal mining as a major economic driver in the department. In 2016, mining exploitation represented 38.3% of the department's GDP. The percentage in 2000 was almost half (18.2%) while previous to 1993 it was close to zero.

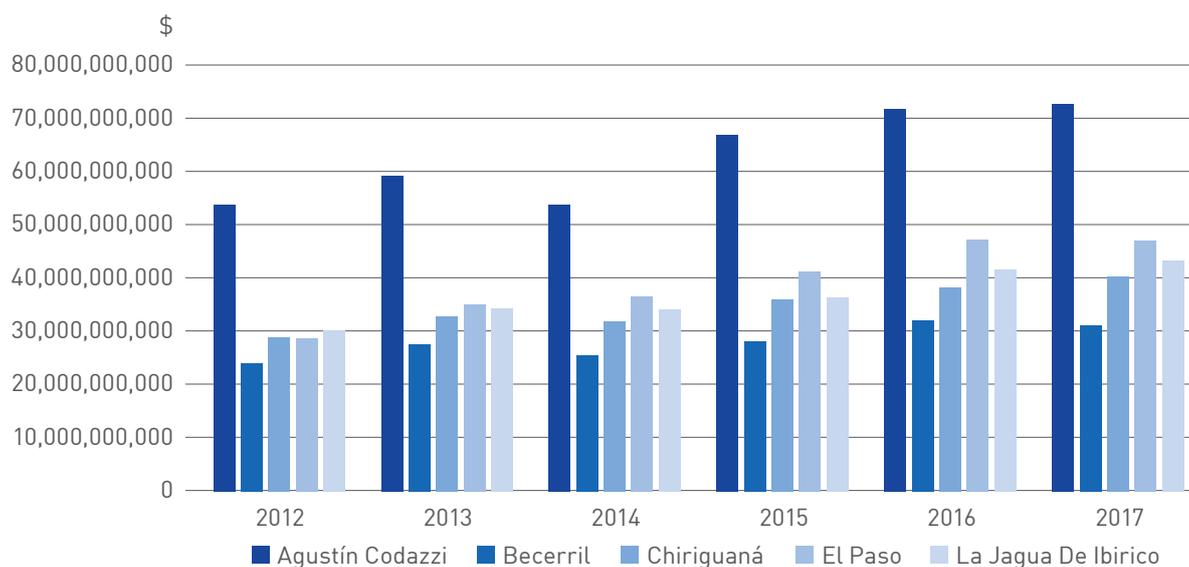
**Figure 8 > Royalties and taxes distribution**



Thus conditions for a positive development were good, especially against the background that the revenue side of the public sector in Cesar has also developed very positively since 1995. Since the 1990s, several billion USD in royalties and taxes have been transferred to the local authorities.

In the past, a large percentage of royalties went directly to the coal producing districts. For instance, between 1995 and 2010, 80% of royalties were allocated to eight Colombian districts. Cesar and the neighbouring coal producing district La Guajira were two of them. Considering that only 17% of the Colombian population lived in these districts, this proportion was large. Nevertheless, these considerable resources hardly reached the local population.

**Figure 9 > Total investment by municipality from national royalties 2012–2017**



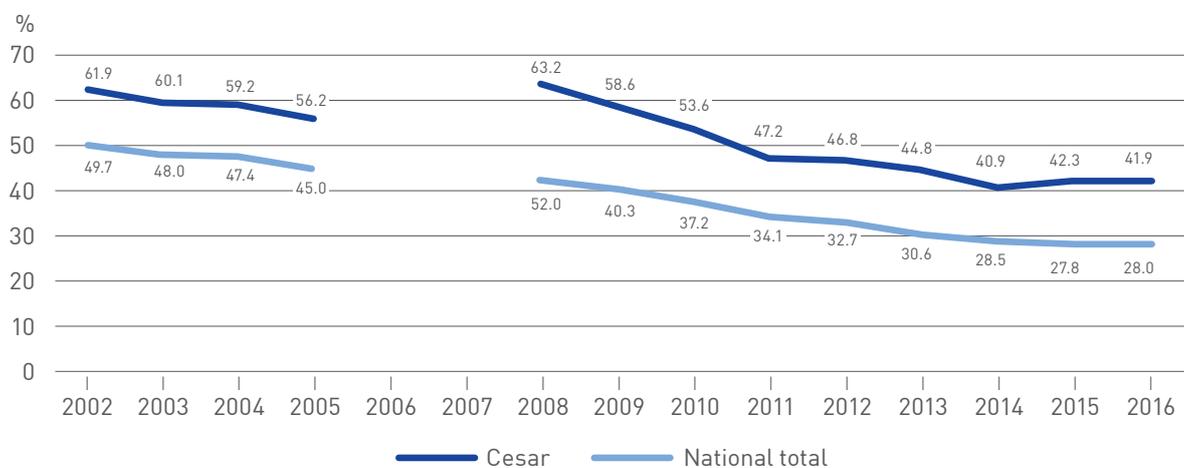
Money was lost due to fraud and the use of royalties for projects that had only a low impact on the livelihoods of the population. In order to increase the effect that royalties have on the population, the royalty system was centralised by the national government in Bogotá and royalties were assigned according to project applications starting in 2011. Through such a centralisation process, it was hoped that the money would be invested more effectively and could lead to positive long-term developments. This also meant, however, that relatively speaking, coal producing districts now receive less money in terms of royalties. Moreover, they were suddenly competing with other districts and only received money if they developed suitable projects.<sup>16</sup> As can be seen in figure 9, some districts, such as Agustín Codazzi and El Paso, have been more successful in acquiring money than other districts.

In total, several billion US dollars in royalties and taxes have flowed also after 2010 into the Cesar region (see figure 8) in recent years and have only been used to a limited extent to rebuild the department.

It can therefore be said that the Cesar region has experienced an economic upswing and that the public authorities in the districts it can be assumed that they have had sufficient funds at their disposal, so that the legitimate question is to what extent the local population benefited from the general economic upswing.

This overall positive economic development is however not the only explanatory factor to make a judgement call on whether the overall living conditions of the population have improved. It constitutes however a necessary precondition to improve people's lives.

**Figure 10 > Reduction of poverty in Colombia and the district of Cesar**



Source: DANE, prepared by CESORE

Beyond the individual cases often cited in the media and in NGO reports, which give the impression that the majority of the population, especially near mines, benefited little or not at all from the economic activities, it is very difficult to find sufficient and robust data that help to gain a reliable impression of the overall situation of the inhabitants in the mine areas.

As the findings presented in the interim result were considered by some stakeholders to be insufficient, efforts were intensified to provide data that could be relied upon. Since 2000, the Center for Socioeconomic and Regional Studies – Cesore has published robust figures on poverty in the region. These figures suggest that there has been a significant improvement in the situation of the residents in Cesar since 2000.

The available data show that there has been a strong improvement in the economic situation of all residents in the Cesar region since 2000. The Poverty Index did improve (see figure 10). Poverty in Cesar went down from

<sup>16</sup> The Terrace (2014) Scoping Mission – <https://zoek.officielebekendmakingen.nl/blg-410797.pdf> [accessed 18.03.2019]

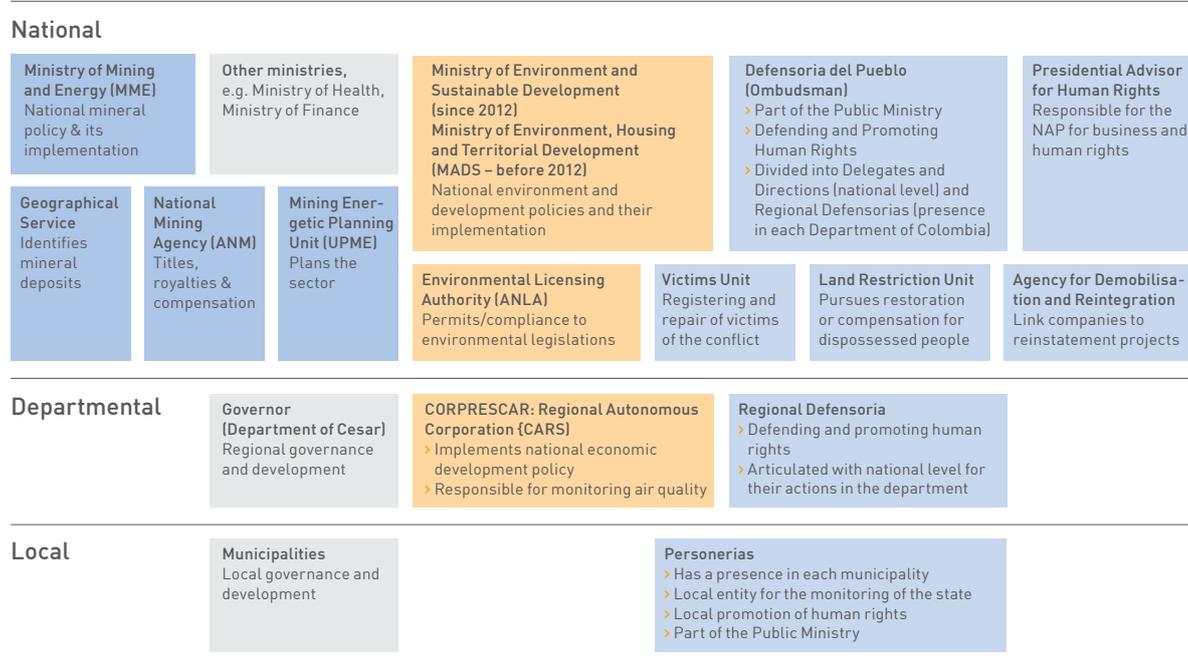
49.7% in 2002 to 28% in 2016. In recent years the situation on the ground stagnated with a poverty rate of just under 28%. These figures also give only one indication of the living conditions in Cesar. It is not possible to draw any conclusions about the living conditions of local residents in the vicinity of the coal mines. Chapter 5 deals in more detail with how the residents in the communities in the immediate vicinity of the mines, such as EL Hatillo, perceive the situation.

In summary, it can therefore be said that taxes, royalties and dividends from the energy sector contributed approximately 31% of regular revenues to the state budget in the past couple years. For this reason, state revenues from raw material exports represent substantial revenues for the state budget. It should also be mentioned that the implementation of the peace agreement will require a significant fiscal effort from the government, and therefore additional reliable income sources are very much needed.

## Governance and oversight challenges of the mining sector in Cesar

Figure 11 illustrates the key organisations at the national, departmental and local level that play a part in the governance or oversight of commercial, operational, environmental or human rights impacts of mining activities. It is not easy, especially for local residents or coal importing companies, to understand who is responsible for what at a national, regional or local level. It is no surprise that a number of representatives from various organisations underlined in bilateral conversations that the organisations do not work together smoothly. Until recent initiatives started to re-establish links, there had been no continuous exchange of information or intensive cooperation between these organisations.<sup>17</sup>

**Figure 11** > Key entities in the governance and oversight of the mining sector in Colombia



Source: twentyfifty and Centro Regional de Empresas y Emprendimientos Responsables – CREER

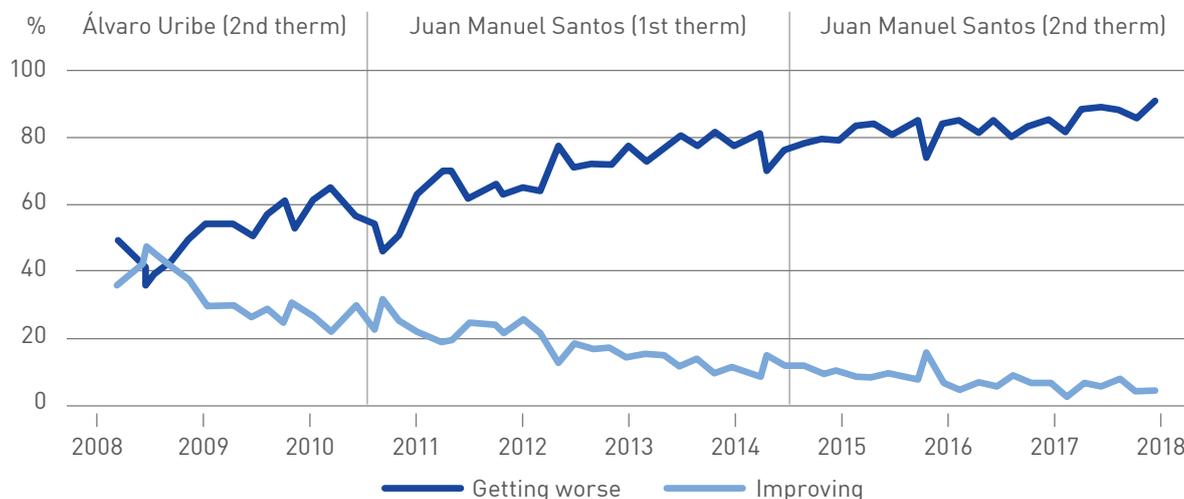
The mining industry is regulated by the National Government in Bogotá. For many years, coordination between the national authorities and the local authorities in Cesar has been poor. In most cases, the views and needs of the authorities in Cesar, in the communities and of civil society organisations on mining developments have not

<sup>17</sup> Talks with municipalities during on-site visits in March 2017 and during various talks with representatives of authorities in February 2016, March 2017 and February 2018.

been taken into consideration adequately. For example, there has been no substantial and decision-relevant involvement of the region's environmental authority, CORPOCESAR, in the granting of environmental licences by ANLA<sup>18</sup> – the National Environmental Licensing Authority. Furthermore, as they have no jurisdiction over mining, local municipalities are not able to incorporate mining within their local development plans. This disconnect between national and local governance has been a root cause of conflict in the region, undermining the legitimacy of the state, and it limits the possibility for building agreements and resolving conflicts between the state, businesses and communities.

According to the analysis by CREER, communities regard national and local authorities as lacking neutrality in their monitoring and control of the mining companies. ANLA's work is perceived very differently by the parties on the ground. According to community leaders, national organisations such as ANLA only visit the mining area when the mining companies need support to gain approval for a project. As a consequence, the lack of regular interaction between national and regional environmental authorities, the lack of local presence of the national authorities, and the failure to coordinate actions has bred a pervasive distrust of the state institutions on all levels. The mining companies, on the other hand, see ANLA's work as being relatively reliable and positive. Drummond confirmed that there were regular visits by ANLA to the mine areas. As an example, it was cited that in the year 2016 Drummond had 127 visits from regulatory agencies, including 22 from ANLA and 26 from the National Mining Agency (ANM). Prodeco also confirms that there is an ANLA person stationed in Valledupar and that he performs his supervisory role properly. ANLA visits at least annually in order to verify compliance with environmental plans. However, while officially ANLA visits only once a year to verify compliance, the reality is that they undertake this activity more regularly through their official in Valledupar.

Figure 12 > Public views on corruption in Colombia (%)



Source: Gallup, Financial Times 15.08.2018

At the local level there is also an attempt to provide contact points for citizens and residents. There are two important state entities with a local presence and mandates to promote and protect human rights, and who also have critical roles in the truth and reconciliation process. These are the Personerías which monitor the mayors and decentralised entities in each municipality and the Defensorías Regionales human rights ombudsmen. These local institutions provide official channels for concerns and grievances and the communities have great expectations of them. They are helping to develop trust between the communities and the state, and non-state players.<sup>19</sup>

Overall, it can therefore be said that the relationship and cooperation between the various institutions involved could be improved, and that this room for improvement exists. As evidence of this, it can be stated that in 2016

<sup>18</sup> Autoridad Nacional de Licencias Ambientales (ANLA) is the National Environmental Licensing Authority. It works to unify the indicators for monitoring air quality and surface and ground water, so that they are comparable between projects in the mining corridor.

<sup>19</sup> Talks with representatives of various communities during on-site visits in March 2017 in La Loma.

the National Mines Agency created the Regional Relationship Strategy to try to address the misalignments between national and local authorities. However, there is still a lack of detailed information regarding the concrete work and outcomes of this initiative.

Finally, it is necessary to discuss the problem of corruption in Colombia and especially in the regions. Corruption is a massive problem in Colombia throughout the country.<sup>20</sup> The perceived level of corruption has also increased significantly in recent years, as a recent survey by the Financial Times has shown (see figure 12).<sup>21</sup> More than 90% of the public was of the opinion that the situation had become worse in the second term of the Santos administration, in comparison to about 50% at the beginning of the second term of the Uribe administration. As evidence, both local residents and mining companies claim that the last four past mayors of La Jagua have all been charged and convicted of corruption allegations.<sup>22</sup>

## Impact of conflict and the role of paramilitary groups

In the Cesar mining region, the Autodefensas Unidas de Colombia (AUC) paramilitaries who operated between 1996 and 2006 caused many deaths and displaced persons.

In December 1999, the AUC command set up the special JAA Front that was to operate in the immediate vicinity of the Drummond and Prodeco mines.<sup>23</sup> The JAA Front's mission was to defeat the guerrilla groups present in the coal mining area, or to drive them into the mountain regions. Civilians were not spared in the process and many ended up being killed, threatened or displaced.

Paramilitary groups started a period of what they called "social cleaning" and targeted all persons that they perceived as part of, or sympathetic to, the guerrilla movements. These paramilitary groups worked in coordination with national army units and were often in a position to decide which individuals could be candidates in municipal and gubernatorial elections, and in this way exert a strong influence on the composition of local governments. Although the AUC agreed to demobilise in 2003, in reality many paramilitary groups have never demobilised or have regrouped into criminal gangs. These gangs are responsible for threats and violence in many parts of the country, including in the coal mining region of Cesar. The government refers to them as BACRIM (bandas criminales – criminal gangs) while other parties continue to label them as "paramilitary groups".<sup>24</sup>

The peace agreement with the AUC included the commitment of ex-paramilitary groups to the process of seeking "truth, justice and reparation" for victims. Since 2005, the National Attorney has led judiciary processes that aim to reveal the truth about the paramilitary violence in Colombia. However, despite the benefits of collaboration with paramilitaries who have confessed their crimes, as an example in July 2013 (eight years after the "Justice and Peace Law" was approved), prosecutors of the Justice and Peace Unit had only achieved 18 convictions. In the meantime, several ex-paramilitary leaders and ex-combatants have regrouped in criminal gangs currently active in Colombia.<sup>25</sup>

Critics and NGOs continue to accuse mine owners of having financed paramilitary groups in the late 1990s and 2000s. Following this line of argument, threats, displacements and murder were supposedly carried out by paramilitary groups, primarily in order to clear land for coal mining businesses. Other debates around the role of paramilitary groups have a stronger focus on the protection of mining facilities. PAX has collected and analysed a large number of testimonies from former commanders of paramilitaries, victims of human rights violations, employees of mining companies and their suppliers as part of a report named "The Dark Side of Coal". In this report, sources state that the mining companies have been cooperating with paramilitaries for years.<sup>26</sup> This was heavily disputed by Drummond and Prodeco.

20 BBC News (2018) Colombia hopes a referendum will help root out corruption – <https://www.bbc.com/news/world-latin-america-45283733> [accessed 18.03.2019]

21 Gallup, Financial Times (2018) – <https://www.ft.com/content/0b833ef8-9c81-11e8-9702-5946bae86e6d> [accessed 18.03.2019]

22 Vattenfall (2017), p. 20 – [https://corporate.vattenfall.com/globalassets/corporate/sustainability/doc/vattenfall\\_colombia\\_coal\\_report\\_english.pdf](https://corporate.vattenfall.com/globalassets/corporate/sustainability/doc/vattenfall_colombia_coal_report_english.pdf) [accessed 18.03.2019]

23 PAX (2014) The Dark Side of Coal – <https://www.paxforpeace.nl/publications/all-publications/the-dark-side-of-coal>, p. 23 [accessed 14.06.2019]

24 The Terrace (2014) Scoping Mission, p. 10 – <https://zoek.officielebekendmakingen.nl/blg-410797.pdf> [accessed 22.02.2019]

25 Human Rights Watch, 2014 – <https://www.hrw.org/world-report/2014/country-chapters/colombia> [accessed 22.02.2019]

26 PAX (2014) The Dark Side of Coal – <https://www.paxforpeace.nl/publications/all-publications/the-dark-side-of-coal> [accessed 22.02.2019]

Instead Drummond was involved a variety of court cases in which the credibility of witnesses was strongly questioned because of the proven payment of bribes.<sup>27</sup> On a number of occasions, the accusations against the coal producers have been examined by the courts. None of the cases against the mining companies have been successful. Drummond has faced a number of cases and appeals. For example, in 2016 the United States Supreme Court declined the request by the plaintiffs to review a case against Drummond, on the basis that the plaintiffs relied on inadmissible hearsay to support their claims, and that the claims were not viable. In its press releases, Drummond welcomed the Supreme Court's decision, "as it is a reaffirmation that we conduct business following the law at all times. At no time have we ever been involved in illegal activities or in relationships with illegal groups".<sup>28</sup>

Prodeco has rejected the allegation of any type of support or collaboration with paramilitary groups. Prodeco does not deny that there was collaboration between Prodeco's security department and the army (which was common practice within the mining sector) or that Prodeco's security department were approached by the members of paramilitary forces with offers of support and collaboration. However, Prodeco stresses that "no such offers were ever accepted" and it "has publicly denied making any payments to AUC or any other paramilitaries on numerous occasions".<sup>29</sup>

In recent years, irregular media coverage on the alleged connections between the coal producers and the paramilitaries has continued. Between 2012 and 2015 there was sort of regular coverage on the presumed human rights violations of mining companies. At that time, the NGOs campaign was successful in coining the term "blood coal", which has also been picked up by German newspapers and politicians. These reports regularly emphasise that German energy suppliers should stop buying Colombian coal and constructively disengage from mining companies because they are not living up to their responsibilities.<sup>30</sup>

## Peace agreement

Following a peace agreement with the Colombian government in 2005, the AUC, including the JAA Front, were disarmed and disbanded. The violence in Cesar did not end with the disarming of the AUC. Successor paramilitary groups continued in the years following and particularly after the 2011 Land Restitution Law to threaten and intimidate victims, land restitution claimants, trade union leaders and other civil society leaders (including human rights defenders and journalists). This violence, driven by interests in maintaining the conflict status quo, has had the effect of paralysing civil society action to reclaim rights.

Colombia's long road to peace seemed to have its destination in sight when on 23 June 2016 the Colombian government and the FARC rebels signed a historic ceasefire deal. That peace deal was rejected by the public, and the government signed a revised agreement with FARC on 24 November 2016. The president Juan Manuel Santos was awarded the Nobel Peace Prize for his efforts to bring the country's 50-year-long civil war to an end. However, the congressional and presidential elections in 2018 have given rise to considerable concerns about the continuation of the peace process based on the former premises. The success of the presidential election by Iván Duque, who openly stated that he opposes the peace deal, underlined that that some of the peace deal's elements – such as guaranteed seats in congress for FARC leaders and promises of softer sentencing – has proven too much for a significant number of voters, which have already narrowly rejected the agreement in a referendum in late 2016.<sup>31</sup> For this reason, the peace deal had to be amended by Santos and was later ratified in

27 Drummond provided additional information, explaining that a great amount of information collected by PAX and published in their report came from Terrence P. Collingsworth, an American attorney who has been repeatedly and unsuccessfully suing Drummond since 2002. And that a memorandum opinion and order from a judge of the US District Court was issued "accusing him of repeatedly lying about making payments to witnesses and possibly assisting them in committing perjury". See order: <https://www.scribd.com/doc/293357993/Drummond-v-Collingsworth-Order> and Forbes article <https://www.forbes.com/sites/daniefisher/2015/12/15/labor-rights-lawyer-paid-witnesses-and-lied-about-it> [accessed 22.06.2019]

28 Drummond (2013) – <http://www.drummondco.com/supreme-court-rejects-case-against-drummond-company/> [accessed 18.03.19]

29 Glencore (2014) – <http://www.glencore.ch/de/Publikationen/Kolumbien/201403240800-Pax-Christi-March-Rebuttal-and-June-panel-presentation.pdf> [accessed 18.03.2019]

30 Die Zeit "Blutige Kohle für deutschen Strom" ["Bloody coal for German electricity"] 27.07.2012 – <https://www.zeit.de/wirtschaft/2012-09/kolumbien-stein-kohle-el-Cerrejón> [accessed: 02.01.2019]

Der Spiegel "Die Dunkle Seite der Energiewende" ["The dark side of the energy revolution"] <http://www.spiegel.de/wirtschaft/soziales/deutschland-und-die-energie-wende-wie-laender-wie-kolumbien-dafuer-zahlen-a-1127332.html> [accessed 02.01.2019]

31 The Guardian (2018) – <https://www.theguardian.com/world/2018/jun/16/colombias-election-peace-ivan-duque-gustavo-petro> [accessed 10.06.2019]

congress, but a large portion of Colombian people still want it revised. Duque – who has promised to amend key parts of the deal – has promised the people that they will have this opportunity and has since been struggling to find a balanced approach. At the same time, he wants to avoid putting the country in an unstable situation.<sup>32</sup>

Today, the level of violence against human rights defenders and activists remains high. In 2018, Amnesty International concluded that “the absence of the state and its failure to guarantee human rights has cultivated an environment in which community leaders can be attacked with impunity”.<sup>33</sup> However, human rights groups have not criticised the mining companies. It has been quite conspicuous that Colombia’s murder rate is at an all-time low, but its activists keep getting killed.

Some observers think that the illegal militia and organised crime groups that did not disband are the likely culprits. Almost 80% of all death threats against activists have been traced back to them.<sup>34</sup> Evidence from both Colombian and international observers suggest that the killings are a response to the Colombian government’s attempt to assert control over areas once overrun by organised crime.

## Land restitution and victims in Colombia

In the years of civil war there was a significant level of forced displacement in the mining corridor as well as other instances of victimisation including homicides. Disputes over land and the violence towards so-called “social leaders” are an ongoing legacy of the conflict, and an unhelpful backdrop for the efforts to rebuild trust with the communities.

The process of land restitution has two phases: administrative and judicial. The Land Restitution Unit (LRU) is in charge of the administrative phase of the process, which includes analysing the context in regions, prioritising the regions for the concerns of the victim, collecting all the evidence in the case and presenting the case to the judges of land restitution on behalf of the victims.

The LRU has a presence in departments such as Cesar. The office is in charge of cases of land grab that occurred in Cesar and La Guajira. This office has the highest number of solved cases (approx. 5,000 cases out of 7,000). For the LRU, solving a case means documenting and investigating to meet judicial process standards in the land restitution courts. The LRU acts in these processes as plaintiffs on behalf of the victims.

The restitution processes slow down when cases are under review by the judges, because they do not have the capacity to handle the large numbers. Once judges issue a verdict on a case of land restitution, different entities of the state must provide support to families to return them to their land.<sup>35</sup>

<sup>32</sup> Americas Quarterly (2019) – <https://www.americasquarterly.org/content/risks-and-rewards-duques-peace-deal-dispute> [accessed 10.06.2019]

<sup>33</sup> Amnesty International (2018) – <https://www.amnesty.org/en/latest/news/2018/04/colombia-government-must-protect-human-rights-defenders-and-community-activists-amid-rising-violence/> [accessed 10.06.2019]

<sup>34</sup> The Conversation Website „Colombia’s murder rate is at an all-time low but its activists keep getting killed” [06.04.2018] – <http://theconversation.com/colombias-murder-rate-is-at-an-all-time-low-but-its-activists-keep-getting-killed-91602> [accessed 10.06.2019]

<sup>35</sup> Between January 2012 and December 31, 2013, the Land Restitution Unit started to document usurpation cases in ten areas of Cesar, including the municipalities of Agustín Codazzi and Becerril, which form part of the Cesar mining corridor. As of June 2017, the Land Restitution Unit had received, in the centre and north of Cesar, 5,247 requests, of which 1,402 were rejected, 790 were formulated as claims, and 399 entered the Unique Registry of Usurped and Abandoned Land while they are made into claims. In five years, the judges have proffered just 86 restitution sentences. These sentences have benefited 313 family units for a total of 1,923.64 hectares with restitution orders (Land Restitution Unit 2017). In the Land Restitution Unit, Cesar Region office, there have been 312 cases of families who decided not to continue with the claim. Some families decided that they would not claim due to fear or fatigue, while others have arrived at an “economic agreement” with the opposition so that the plots do not go to court.

# EnBW's engagement to date

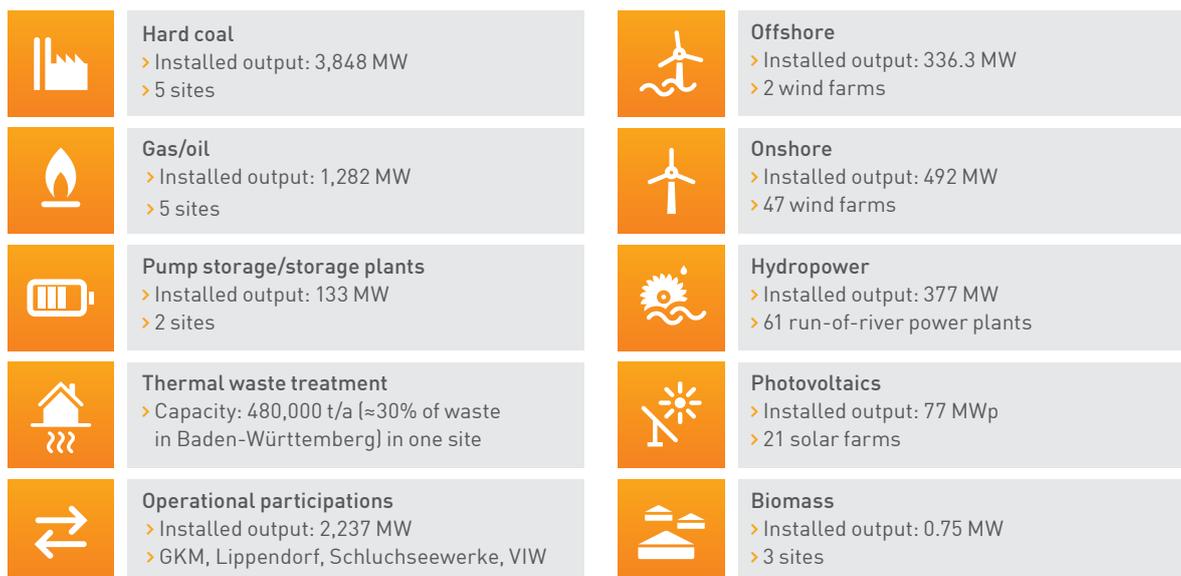
This chapter provides an overview of EnBW's response to external criticism and increased public interest in its procurement of coal from Colombia, and provides an overview of the commitments, processes and monitoring mechanisms which it has put in place since 2011: Starting with EnBW as a company, its strategy and the role of coal in the energy mix, and the trading of coal followed by the world coal market and the importance of Colombia as a reference country for coal sourcing and complemented by EnBW's strategy for responsible coal sourcing and how it has developed its approach over time.

## EnBW, its strategy and use of coal

EnBW is a large, vertically integrated energy group, whose activities comprise of electricity generation and trading, transmission and distribution networks, renewables and the supply of electricity, gas and related services in Germany and selected other European countries. Over 93% of EnBW is owned by the state of Baden-Württemberg and the Oberschwäbische Elektrizitätswerke (OEW), a consortium of municipal governments. In 2018, its revenue was €20.6 bn and it employed 21,775 people.<sup>1</sup>

Figure 13 > EnBW Power Generation in 2018

Power generation [gross values]:



Source: own diagram EnBW

<sup>1</sup> EnBW Integrated Annual Report – [https://www.enbw.com/enbw\\_com/downloadcenter/annual-reports/enbw-integrated-annual-report-2017.pdf](https://www.enbw.com/enbw_com/downloadcenter/annual-reports/enbw-integrated-annual-report-2017.pdf) [accessed 02.01.2019]

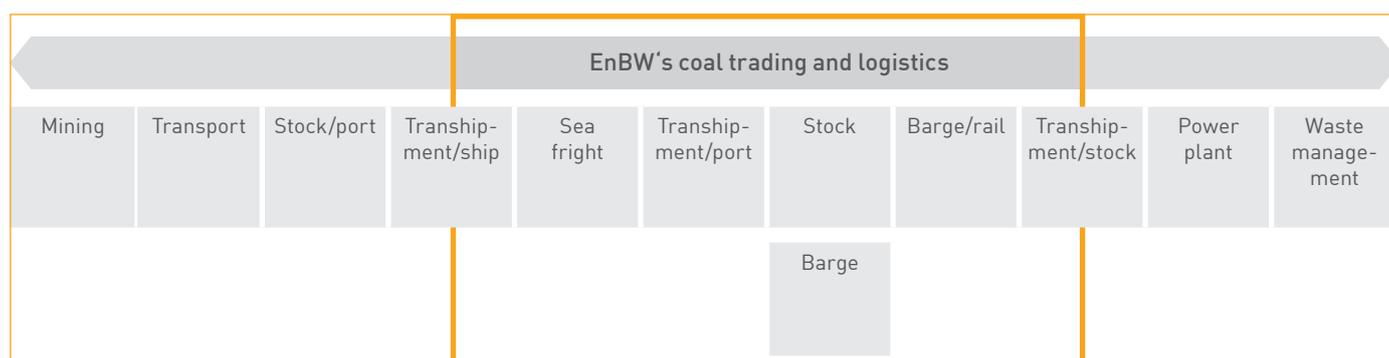
EnBW is committed to ensuring that it conducts its business activities responsibly, and that it creates economic, environmental and social added value for its customers and for the communities where it operates. It is dedicated to the success of the German Energiewende and is currently on target to meet its commitment to doubling the share of renewable energies from 19% (base year 2012) to over 40% in 2020. This rapid structural upheaval in the energy industry is leading to a drastic drop in earnings, especially in the conventional power plant business.

In figure 13 an overview of the sources of EnBW's energy power generation in 2018 is shown, the majority of these are owned by the company itself. While EnBW is significantly expanding renewable energies, a balanced portfolio of energy sources remains important to ensure a reliable, economic and secure supply in Germany. Unfortunately, around 80% of global energy consumption is still produced with fossil fuels including coal, crude oil and natural gas. At EnBW, although the renewable portfolio is constantly increasing at a level of about 28% in 2018, 40% of its electricity is still generated by fossil fuel power plants.

EnBW operates conventional coal or gas-fired power plants (directly or via shareholdings) with an installed capacity of around 7,200 MW. Its plants are characterised by good availability, cost-effectiveness and very high efficiencies. The EnBW plants are state of the art: in combination with combined heat and power generation and using modern flue gas cleaning systems, they generate energy as efficiently and environmentally friendly as possible. They are constantly being modernised – with investments every year in the technical optimisation and modernisation of the plants.

The trading department is responsible for the coal supply to EnBW's power plants. The coal is sourced on the world coal market under the aspects of quality, quantity, availability and price with EnBW's Code of Principles in mind. As can be seen in figure 14 EnBW's engagement in the global coal value chain focuses on selected steps. EnBW's trading engagement starts with the shipment of coal and ends at the power plant. A separate EnBW generation unit runs the power plant and is responsible for waste management and the eventual decommissioning of the plant.

Figure 14 > EnBW's role and tasks in the global coal value chain



Source: own diagram EnBW

Typically, coal supply contracts are single or multi-source. Multi-source contracts define quality but not the origin of the coal – allowing the trader to meet the contract from whichever sources provide the quality required by the delivery date. The contract specifications comply with the Standard Coal Trading Agreement (SCoTA) – the contract of choice for seaborne coal trading in Western Europe.<sup>2</sup>

Multi-source contracts help the customer to benefit from competition in the coal market whereas single-source contracts help to build stronger and more collaborative relationships with suppliers. A single-source approach can deliver a range of benefits, including greater leverage and improved tracking of supplier performance.

<sup>2</sup> SCoTA combines a single, accepted set of standard terms and conditions together with a range of coal quality specifications and delivery points for international coal sales and purchases. As a result, market participants can focus negotiations on what matters most: Price discovery.  
Source: <https://www.globalcoal.com/scota/aboutscota.cfm> [accessed 02.01.2019]

## The world coal market and Colombia

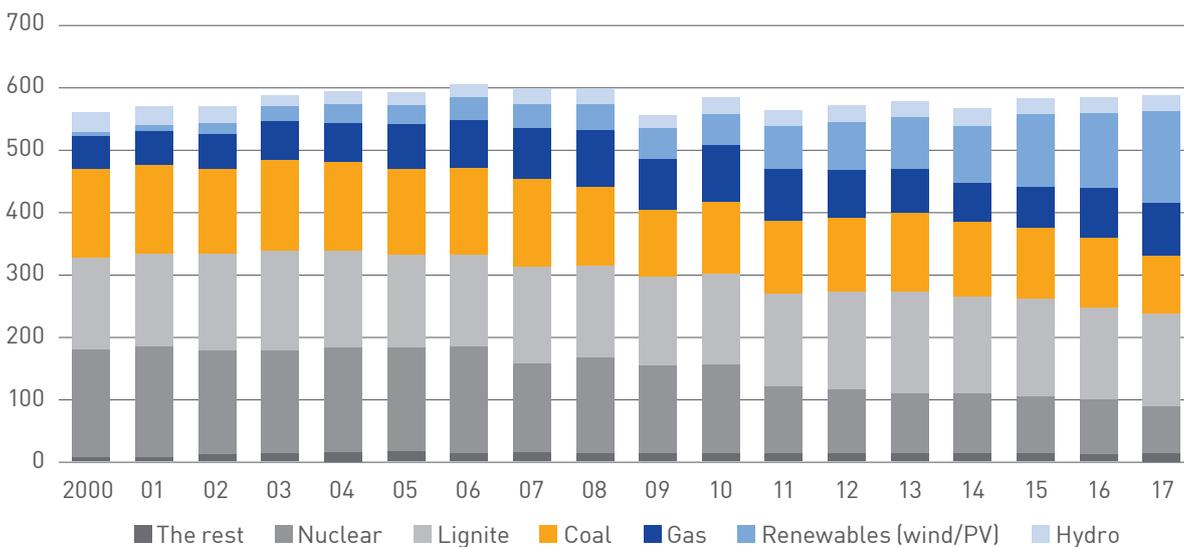
Like mineral oil, coal is a commodity where quality is primary and geographical origin plays a subordinate role.<sup>3</sup> There is a market price index that enables financial hedging of physical transactions and generally accepted contract standards (e.g. SCoTA) that facilitate trade. International commodity traders and the marketing companies of the mining groups have a dominant market position but also ensure that coal is available at all times in sufficient quantities.

In the Atlantic steam coal market, EnBW buys primarily to supply its own power plants, but it is also active as a trader in order to adapt the coal supply to the fluctuating use of its power plants as generation from renewables increases. As German coal mines have closed, and South African coal has been sold to Asia rather than Europe, the coal purchased from Colombia and Russia has increased, with Russia as the most important supplier. Since 2016, US coal has also taken an increasing share of the market.<sup>4</sup>

Figure 15 shows the declining role of coal and nuclear in Germany's energy mix, and the increase in renewables.

**Figure 15 > Germany energy demand 2007–2017**

TWh (gross power production)



Source: own diagram EnBW, data from AGEB (AG Energiebilanzen e.V.)

Over the past 5 years, total coal consumption has declined by a third at EnBW's coal-fired power stations. In 2017, EnBW sourced 4.55 (2016: 4.26) million tonnes of hard coal for its power plant, mainly from five producing countries (see figure 16):

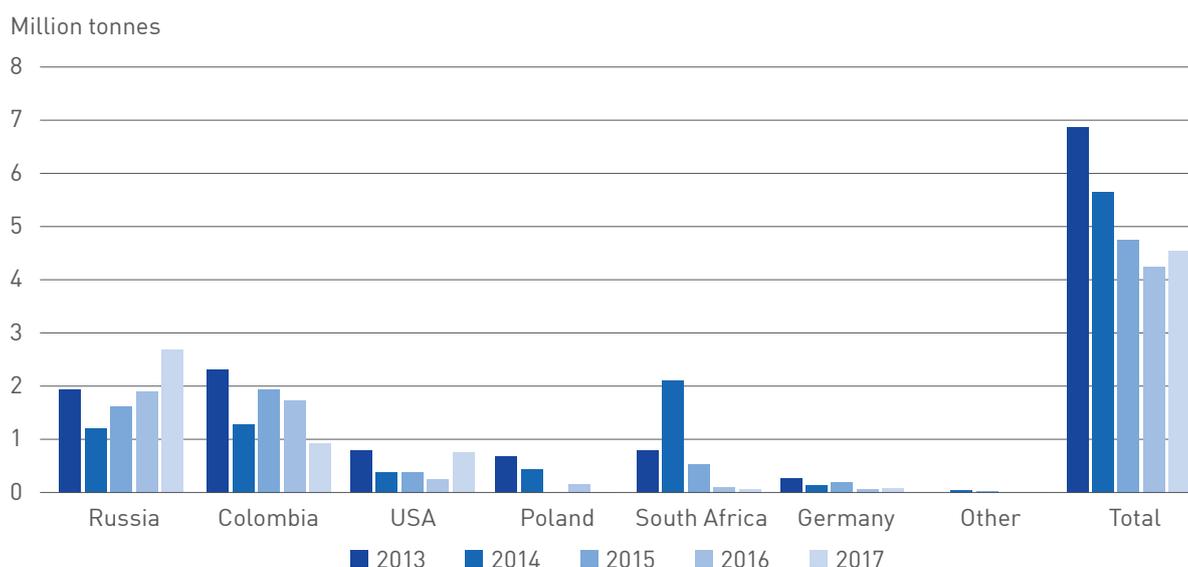
The trends in EnBW's coal procurement have mirrored those of the German energy industry as a whole. In today's European coal market EnBW has limited options and reducing or stopping purchases from Colombia would increase the dependency on Russia. EnBW attaches great importance to a balanced coal procurement portfolio in order to avoid dependence on individual producer countries, producers or traders.

<sup>3</sup> The market for coal entails some specificities that need to be taken into account, when discussing issues of a responsible coal sourcing and a supply chain. The following remarks to the world market are based on the data published in the Annual Report 2018 of the German Coal Importer Association – <https://english.kohlenimporteure.de/publications/annual-report-2018.html> [accessed 02.01.2019]

<sup>4</sup> Traditionally, coal production and consumption are in close physical proximity. Of the 7.0 bn tonnes of coal mined worldwide in 2017, 5.75 bn tonnes (82%) were consumed in the countries in which they were mined. Only 18% of global coal production goes into the international trade. From 1.14 billion seaborne trade 273 million was coking coal and 872 million steam coal. The steam coal market is divided into the Atlantic region with 203 million tonnes, and the Pacific region with 669 million tonnes. In particular, the Atlantic coal market has a high degree of standardisation.

It procures coal primarily to supply its own power plants, and on behalf of the grid operator it organises the coal supply for the power plants used as a grid reserve. It acts as a trader in order to be able to adapt the coal supply to the fluctuating needs of the power plants. In 2017, EnBW covered 57% (2016: 80%) of its coal requirements through contracts with intermediaries (traders). In addition, EnBW maintains direct business relationships with selected coal producers.

**Figure 16** > EnBW's Coal Imports 2013–2017



Source: own diagram EnBW

As in previous years, EnBW's power plants received Colombian coal from Cerrejón in La Guajira, and Drummond and Prodeco in Cesar in 2017. The volumes from each supplier vary from year to year. While one year EnBW will receive more coal from Drummond, another year it will receive from Prodeco. In most years, Cerrejón was the third-largest importer of coal. The fact that these three-largest coal producers in Colombia have their own shipping ports means that the origin of Colombian coal can be precisely traced, including coal supplied by multi-source contracts with traders. Declining coal imports from Colombia are expected for the coming years up to 2020.

## Developing EnBW's strategy for responsible coal sourcing

EnBW has always conducted a comprehensive business partner check to verify the integrity of any of its business partners before it enters into a business relationship with them. This is, of course, also the same for a coal supplier.

Following public pressure, and as part of its implementation of the UN Guiding Principles for Business and Human Rights (see chapter 1), EnBW has steadily developed measures for the responsible procurement of coal and other raw materials. The main steps are summarised in EnBW's integrated sustainability approach in the coal value chain (see figure 17). From the outset, there has been close cooperation between the Trading (including risk management), Compliance and Sustainability departments.

**Figure 17** > Steps in the development of social responsibility in coal procurement

Step 1	Step 2	Step 3	Step 4	Step 5
Accepting responsibility	EnBW Sustainability Registry and EnBW Code Principles	Start of regular on-site visits in Colombia	Stakeholder Engagement	Reporting on Coal Sourcing

Source: own diagram EnBW

### Step 1: Accepting responsibility

In 2011, EnBW received the first NGO and media inquiries about its procurement of hard coal from Colombia. EnBW was confronted with the accusation that it was buying “blood coal” from mining companies who were directly or indirectly supporting paramilitary violence. Furthermore, the working conditions in the mines were criticised, and the unions were prevented from fulfilling their tasks,<sup>5</sup> and the neighbouring communities were suffering from unhealthy air, poor living conditions and failed resettlements.<sup>6</sup> European coal buyers, including EnBW, were criticised for continuing their business relationships with mining companies in Colombia and failing to take responsibility for their supply chains. Moreover, a lack of transparency in EnBW's corporate sustainability reporting was criticised.

Until then, EnBW had mainly asked mining companies about coal quality, price issues and occupational safety. In 2011, this changed, and EnBW's sustainability and trading departments started working closely together. They approached the three main coal suppliers (Cerrejón, Drummond and Prodeco) and sent out questionnaires about the social and ecological aspects of their mining processes. At that time only Cerrejón had an established sustainability department, but Drummond and Prodeco were open to dialogue and to discussing responsibility and sustainability issues. EnBW sought answers to many questions covering human rights, occupational safety, environmental protection and resettlement. This alone increased the awareness within the mining companies and led to more intensive contact with their representatives. At that time, there were no discussions within EnBW about stopping purchases (see chapter 3.4). The initial aim was to find out more about the sustainability standards that the mining companies had in place.

The focus was on expanding the information base with regard to sustainability in professional coal mining in Colombia, creating transparency about the situation on-site and starting intensive dialogue with the mining companies. Even at this early stage, EnBW had in-person discussions with all three mining companies, including with Drummond and Prodeco in 2012 at its Karlsruhe headquarters. At that time Cerrejón was already holding regular annual round-table meetings for its European coal buyers in Düsseldorf.

From the beginning (until today), EnBW has responded to all requests for information from third parties, including NGOs, the media and federal and state representatives.<sup>7</sup> At the invitation of the Green Party and the civil society group BUND, an EnBW representative participated in June 2011 in a discussion round about the origin of the coal for the coal-fired power plant at the Karlsruhe site. EnBW also contacted other coal importers in Germany and Europe and exchanged views on human rights and responsible supply chain topics in multi-stakeholder and corporate networks, including the German UN Global Compact Network and the business-driven sustainability network Econsense. EnBW considered joining existing initiatives, such as Bettercoal, but some key concerns for EnBW such as transparency and multi-stakeholder involvement had not been adequately addressed by Bettercoal at that time.

### Step 2: EnBW Sustainability Registry, EnBW Code of Principles and Committee on Responsible Coal Procurement

After gaining additional insights into EnBW's own processes, such as EnBW's long-established business partner check, various possibilities for the further integration of sustainability issues into sourcing processes were discussed. As a consequence, raw material sourcing practices were enhanced by including additional criteria concerning sustainability and corporate responsibility. This happened partly as a result of the events in Colombia and the increased media interest, and because of intense NGO campaigns.

This ongoing discussion laid the basis for the further development of EnBW's human rights due diligence approach. This included developing a database of all relevant suppliers (not only of those based in Colombia, but also those from South Africa, the US and other coal sourcing countries) with an assessment of the respective CSR performance of the mining companies (which later turned into the EnBW Sustainability Registry), the development of a Code of Principles for Responsible Procurement of Coal as well as the revision of all processes of the business partner check.

5 Die Zeit, 27.09.2012 – <https://www.zeit.de/wirtschaft/2012-09/kolumbien-steinkohle-el-Cerrejon> [accessed 02.01.2019]

6 PAX, The investigation report “The Dark Side of Coal” 2014 – <https://www.paxvoorvrede.nl/actueel/dossiers/stop-bloedkolen> [accessed 02.01.2019]

7 EnBW Nachhaltigkeitsbericht 2011 – <https://www.enbw.com/nachhaltigkeitsbericht/> [accessed 02.01.2019]

In 2013, the Executive Board discussed sustainability challenges in coal procurement from Colombia and agreed to develop EnBW's own Code of Principles ("EnBW Principles of Conduct for the Responsible Procurement of Coal and Other Raw Materials") and to build up a robust approach towards the responsible procurement of coal. In the aftermath, the Supervisory Board was also informed about new CSR requirements with regard to the procurement of raw materials and the special situation in Colombia during and after the civil war. The Executive and Supervisory Board have been updated on a continuous and regular basis.

In principle, EnBW already had a Code of Conduct in place which, however, lays down more rules and principles for the conduct of its own employees and addresses fewer issues in the value chain or supply chain. In addition, new Code of Principles have been developed with input from recognised external experts in the field of business and human rights (see figure 18). The new process extends the business partner check with new human rights due diligence requirements. During the drafting procedure it became clear that the code had to be composed of various procedural and material key elements, such as due diligence requirements, compliance, integrity and anti-corruption, human rights, labour standards and environmental protection and communication, as well as the provision of contact persons at EnBW. During the drafting process, other stakeholders, in particular from civil society, trade unions and other business organisations, were consulted during the development of the code to test the direction and robustness of the principles. The Code of Principles were formally adopted by the Executive Board in July 2014.

**Figure 18** > International Human Right Standards as part of EnBW's Code of Principles

**The Principles of Conduct for the Responsible Procurement of Coal and Other Raw Materials are based on recognised international guiding principles and standards as follows:**

- > The ten principles of the United Nations Global Compact
- > The OECD Guidelines for Multinational Enterprises
- > The Universal Declaration of Human Rights, (general declaration of human rights, international pact of civil and political rights, international pact of economic, social and cultural rights)
- > The core labour standards of the International Labour Organization (ILO)
- > The United Nations Declaration on the Rights of Indigenous Peoples and ILO Convention 169 – Agreement concerning indigenous and tribal people living in independent countries
- > The IFC Performance Standards. (The principles of conduct form the basis for the establishment and continuation of all business relationships in coal procurement single-source and multi-source)

Adherence to the principles for responsible sourcing is checked on a regular basis or, if necessary, updated at short notice. The information database that forms the basis of the sustainability registry is compiled by EnBW's sustainability team by researching publicly accessible information. Other state and non-state stakeholders are also consulted, and other information channels are used for information gathering, such as self-assessments disclosures by the mining companies, on-site visits in Colombia and information from third-party auditors.

Until today, EnBW's assessments of the Colombian companies have always shown that they have performed above average in comparison to other coal mining companies around the world. Even though Colombian mining companies are frequently criticised in the media, they have performed better by far in the internal sustainability checks than producers from other sourcing countries. More information on the human rights performance of Drummond and Prodeco is presented in chapters 4 and 5.

The responsibility for assessing compliance with the Code of Principles lies with EnBW's central sustainability division. Representatives of the following departments, trading (including risk management), compliance and environmental protection are also included in the review of assessments and identifying actions. All these units are part of the Committee on Responsible Procurement of coal and other raw materials that meets at least twice a year. This committee was first set up in 2013 when information requests from third parties continually increased. Later the committee gradually took over standard tasks of the business partner check. All major sustainability issues relating to coal procurement are discussed by this committee and recommendations for action are prepared.

In July 2014, the Code of Principles was translated into operational processes by means of comprehensive implementation guidelines. This includes key points and basic principles that are used to integrate the principles into existing measures and activities in the coal procurement process, which includes all types of interaction with producers and traders. Subsequently, the code has been included in direct contracts (single-source) with coal suppliers in Colombia. Gradually, the practice has been extended to all direct supplier relationships across the world.

As a consequence, so-called "CSR clauses" have been included in all contracts, providing EnBW with the possibility to cancel or review the contract if coal mining companies fail to comply or are not willing to engage in consultations on human rights issues. The Code of Principles provides orientation for the step-by-step implementation of EnBW's responsible coal sourcing approach in light of current market constraints, such as standard contracts, market power, etc. Although at the time the coal mining companies were slightly surprised during the introduction of this new requirement, eventually all business partners accepted contracts that include a "CSR clause."

For EnBW, adherence to its Codes of Principles has been an essential part of the implementation of social and ecological responsibility along the coal supply chain.

### Step 3: Start of regular on-site visits in Colombia in 2014

After establishing contacts and conducting regular dialogues with all suppliers and gathering extensive information on the overall social and ecological conditions in mining regions in Colombia, a first trip to the coal regions of Colombia was planned in early 2014.

The first goal was to get a personal impression of the mining conditions on-site. It was the idea to collect first-hand information concerning the working and living conditions in and around the coal mines. From the beginning, EnBW worked together with locally based experts including local representatives of the Friedrich Ebert Foundation, the Konrad Adenauer Foundation, of various embassies, such as the German and Dutch embassies, other local NGOs, trade union representatives, academics as well as local communities.<sup>8</sup> They helped EnBW to better understand the national and regional context and arranged contact with other local players. This has enabled EnBW to continuously expand its knowledge of mining conditions, but also of the culture in politics, business and civil society.

Representatives of both trading and sustainability departments were part of EnBW's visiting delegation. On the first trip in March 2014, Cerrejón in La Guajira and Drummond in Cesar were visited during a one-week trip. At that time, the contact with Prodeco was mainly organised through its main shareholder Glencore and its sustainability department in Switzerland. Both Cerrejón and Drummond were open for dialogue and engaged from the beginning. They described various activities already underway to improve their occupational safety and environmental protection performance. This included open discussions about the difficulties with the resettlement efforts in Cesar (and La Guajira) at the time – a constant source of conflict with the local communities, but also about the overall security situation in the region and the cooperation with local authorities.

In 2014, there was little exchange between Colombian NGOs and the mining companies, and there was limited debate about responsible supply chains in the Colombian Mining Associations (ACM) and other stakeholder meetings. Hence in September 2014, EnBW organised a first Colombian round-table meeting together with its partners; the Friedrich Ebert Foundation (FESCOL), Colombian Mining Association (ACM) and the German Trade Union for Mining, Chemical and Energy Industries (IGBCE). This was the first time a conference of this kind had been held in Colombia. It aimed at bringing together various stakeholders from state and non-state players (business, trade unions, NGOs) and addressing key topics such as environmental protection, occupational safety, trade union rights and the sensitive issue of past and current human rights violations. For the first time, representatives of local and international civil society organisations met with the three major coal suppliers in one room and discussed openly the requirements for responsible business practice in the coal mining business.

<sup>8</sup> The German political foundations are recognised local players in Colombia. KAS Kolumbien – <https://www.kas.de/web/kolumbien>; FES Kolumbien – <https://www.fes-colombia.org/> [accessed 02.01.2019]

EnBW invited other coal importers from Europe to show that there is a broad alliance of players that have an interest in responsible sourcing practices.

Since then EnBW has made visits to Colombia, visiting the coal mining regions of La Guajira and Cesar on a regular basis, and holding regular talks with representatives of the Colombian state, community representatives, civil society and trade unions. In addition, during every visit the EnBW delegation meets with the German Ambassador to Colombia, and/or employees in charge of business-related matters of the German Embassy.

#### **Step 4: Stakeholder engagement**

EnBW has engaged with stakeholders including local and international NGOs in discussions about responsible coal procurement since 2011. Invitations to talks or panels have been accepted and EnBW has been willing to answer general questions about coal trading, human rights and responsibility issues. On a number of occasions EnBW has invited representatives of civil society and politics to discuss the importance of responsibility, sustainability and human rights in the supply chain. As an example, on 6 February 2014, EnBW – with the support of Stiftung Energie und Klimaschutz (Energy and Climate Protection Foundation) – organised a debate evening on the subject of “Coal from Colombia – Limits to Profit and Morality.” The most important critics from German civil society had their say and discussed with EnBW’s Executive Board on the podium about the influence of companies in promoting respect for human rights.

At the 2014 Annual General Meeting, EnBW’s CEO, Frank Mastiaux, invited representatives of civil society to join the EnBW delegation on a trip to Colombia, so that both sides together could get a common picture of the situation on the ground and to propose and meet those stakeholders who, from the point of view of the other side, are important for a better understanding of the situation in Colombia. In March 2015, this joint trip, a fact-finding mission to the mining region of Cesar, took place together with representatives of the EnBW Supervisory Board and relevant EnBW departments as well as civil society representatives of PAX, Urgewald and Misereor. The NGOs were involved in planning, setting the itinerary and selecting whom to speak with, including further joint talks in the capital Bogotá. In five days, a total of 19 meetings took place in the mining region of Cesar and Bogotá.

During these meetings, it became clear that the mining companies had increased their CSR commitments, but although they have committed to following the UN Guiding Principles and complying with the demands of industry-specific initiatives such as Bettercoal, there was still considerable potential for improvement. Progress as well as shortcomings were openly discussed and debated intensively, especially the distinction between state responsibility and the corporate responsibility to respect human rights. The importance of increased communication, the openness for dialogue as well as a grievance mechanism were also part of the agenda.

EnBW representatives stressed that, on the one hand, it expected more engagement from the coal companies and that, on the other hand, they felt encouraged by the willingness of mining companies to openly discuss new requirements and, at the same time, to maintain their commitment to continuously improve. This included a steady stakeholder engagement, especially with NGOs, producers, competitors and state players and the ongoing encouragement of coal producers to proactively address CSR issues (including concrete projects, milestones, etc.) – exerting influence in particular through direct supply contracts.

In addition, site visits to Colombia have always been taken as an opportunity to review one’s own approach with that of competitors. As a result of these activities, for example, EnBW initiated the launch of a declaration for socially responsible, ethical and environmentally sound action in the hard coal supply chain at VdKI, the German Coal Importers Association.<sup>9</sup>

Moreover, EnBW has invited NGO representatives several times to Karlsruhe for talks with members of the EnBW Executive Board. This has underlined how seriously EnBW is taking responsible coal procurement from the top to the operational departments. Good and reliable contacts have also been established with the Colombian Embassy in Berlin, with whom regular talks are held on the progress and challenges of the Colombian coal industry with regard to human rights responsibility.

<sup>9</sup> VdKI Declaration – <https://www.kohlenimporteure.de/aktuelles/grundsatzerklaerung.html> [accessed 02.01.2019]

Based on feedback from these trips, EnBW was encouraged to make direct contributions to projects in Colombia that have an impact on the living conditions of the communities in the mining region. In December 2014, the EnBW board offered technical support to Cerrejón and Drummond in one of the following areas: (i) water supply, (ii) renewable energies or (iii) dust/environmental monitoring with the goals of strengthening local technical capacity and identifying and developing improvement projects. These companies reacted at that time and decided to focus on water supplies to the mining communities. In the first half of 2015, EnBW provided technical support in project planning (via its subsidiary RBS Wave), concrete projects and support services were identified, and the implementation of the projects was financed by the mining companies.

EnBW engineers developed four different standardised photovoltaic systems for pumps at different types of wells. These could maintain the water supply all year round to the decentralised communities – reliably, cost-effectively and sustainably. For two projects, EnBW engineers also evaluated water analyses and pump tests and, building on these, made recommendations for water treatment measures and maximum well yields. The projects were supposed to directly benefit the mining communities by improving the water supply. The projects were implemented by the mining companies in cooperation with the affected communities in the second half of 2015.

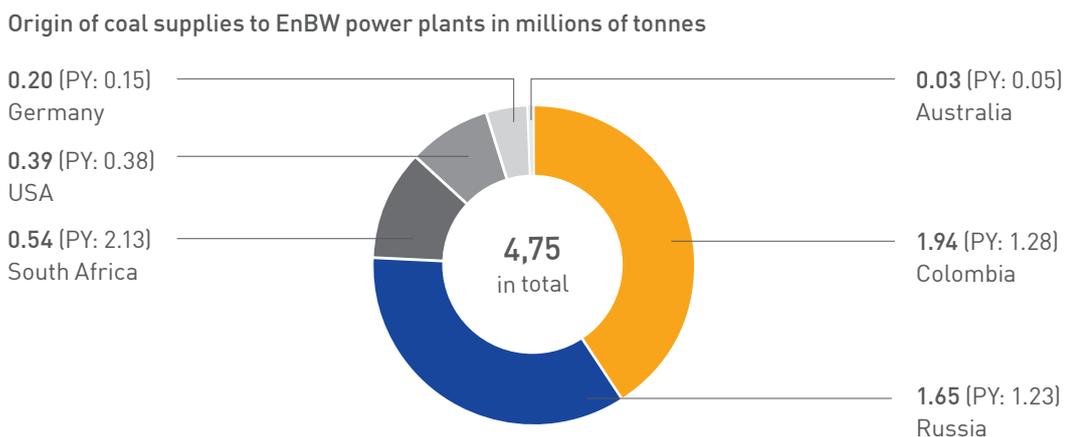
The goal was to reach scalability and to strengthen the “help for self-help” approach. The projects led to mixed results. Due to technical difficulties, such as grid connection problems and the limited availability of technical equipment some projects could not be finalised at that time. Other water supply projects were very successful and allowed the establishment of decentralised water supplies. It also showed that the cooperation with local municipalities to obtain additional investment was key for the successful implementation of a project.

**Step 5: Reporting on coal sourcing**

In line with its integrated reporting approach, which has addressed a large number of non-financial aspects, EnBW has always welcomed initiatives to increase market transparency. EnBW was one of the first energy suppliers in Germany to disclose the origin of its coal deliveries. In individual cases EnBW also named the mining companies from whom we directly purchase coal.

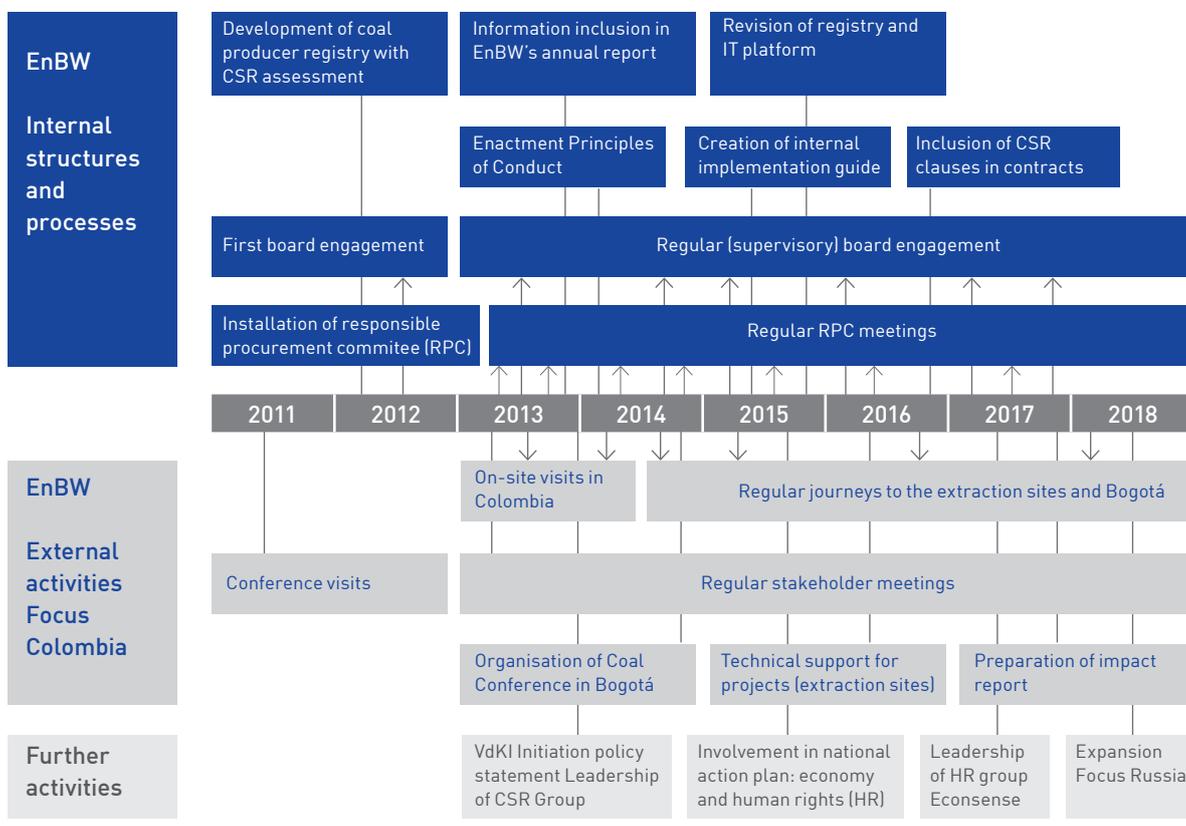
However, most of EnBW’s coal comes from trading companies and is multi-sourced, based on international standard contracts. These standard contracts include a confidentiality clause to which EnBW is bound. Therefore, it was unable to provide a complete list of contractors at first. EnBW has since discussed this aspect with its business partners and is continuously improving its transparency standards in the supply chain. For example, it is taking transparency requirements into account when initiating contracts in order to be able to provide more detailed information on all business partners. EnBW has been publishing annual data on the geographical origin of coal in its Integrated Annual Report since 2012 (see figure 19). In comparison with coal from other regions of the world, the origin of Colombian coal can be traced back precisely, as each of the three major coal producers have their own shipping ports (Cerrejón, Drummond and Glencore (Prodeco)).

**Figure 19 > Excerpt from its Integrated Annual Report 2017 – and EnBW standard presentation on responsible coal sourcing**



Source: EnBW Integrated Annual Report 2017

Figure 20 &gt; EnBW's Responsible coal sourcing approach – activities



Source: Own diagram

Overall (see figure 20) EnBW started a number of internal and external processes in the realm of responsible coal sourcing between 2011 and 2018. As can be seen, next to the introduction of regular activities, such as the coal registry and site visits in Colombia, a range of additional activities and stakeholder meetings were organised to bring state and non-state players from Colombia and Europe together to search for robust solutions to improve the working and living conditions in the mining areas.

## Stop buying coal from Colombia or continuous engagement

From the outset, NGOs asked EnBW to immediately terminate its supply relations with Colombian coal companies due to past human rights violations, but also due to supposedly ongoing and current violations of CSR requirements. In recent years, NGOs from Europe have called on EnBW to draw the necessary conclusions and to interrupt supply relations with Colombian producers.<sup>10</sup> Various campaigns against EnBW were carried out, including signature campaigns and persons at various general meetings of EnBW repeatedly asked questions as to when EnBW “finally” intends to discontinue supply relationships. The NGOs never use the term “boycott,” which such a discontinuation of supply relationships would indeed constitute.<sup>11</sup>

<sup>10</sup> Samples of campaigns against buying coal from Colombia: *urgewald-campaign* – <https://www.kolko.net/agrokraftstoffe-ressourcenkonflikte-und-mega-projekte/unterschriftenaktion-gegen-blutkohle-aus-kolumbien-bei-enbw/>; *Misereor*-press release – <https://www.kolko.net/agrokraftstoffe-ressourcenkonflikte-und-mega-projekte/unterschriftenaktion-gegen-blutkohle-aus-kolumbien-bei-enbw/>; *PAX* campaign – <https://www.paxforpeace.nl/stay-informed/news/power-companies-must-stop-buying-blood-coal> [accessed 25.06.2019]

<sup>11</sup> This comment about not having used the term “boycott” has been made by NGOs during the feedback loop to the draft version of this report. This aspect has been amended and specified accordingly.

EnBW made it clear that at first it would like to gain an accurate picture of the complex situation on the ground and then to decide on further action. It has since pursued an approach of seeking continuous improvement with regard to human rights and sustainability activities by the mining companies. EnBW remains convinced that this is the best alternative to disengagement; it will most likely bring about positive outcomes for the communities on the ground.

EnBW's position has evolved but it has always perceived the possibility of cooperation, and thus the possibility of actively influencing the situation on the ground, as the preferred option and the best way to use its leverage. Only as a last option might a delivery stop or boycott take place. The prerequisite for this was – and always has been – that the mining companies refuse to engage in dialogue and expand their commitment to sustainability. This is still not the case today; indeed the opposite is the case (see chapters 4 and 5).

NGOs also suggest that EnBW, without any supplier relationships with mining companies in Colombia, would have greater leverage or positive influence on the business activities of mining companies. After intensive internal discussions, EnBW has decided to exert its influence through direct business relations – with constant consideration and verification of compliance with minimum human rights standards – and therefore to continue to follow the option of purchasing coal from Colombia.

The basis of EnBW's approach is the consideration of the complex total mixture situation. There are indeed differences in the assessment of the situation in Colombia and in the mining areas between the NGOs and EnBW. Some of these differences that have heavily affected the situation in Colombia include the years of civil war and the overloading of the Colombian constitutional state, which had reached its limits because of the many pending proceedings, the peace negotiations in recent years, and also with regard to the accusations against mining companies, such as the contradictions on the part of the witnesses, some of whom made contradictory statements. Ultimately, it has become clear that even completed legal disputes would not lead to a conciliatory situation and thus to a resilient basis for a peaceful and cooperative coexistence of the local population with the mining companies.

There have been other factors that have become more and more important over time. Above all, the willingness of the mining companies to continuously work on their activities in their sphere of influence in order to adequately fulfil their human rights responsibilities. And last but not least, the most important argument that the overwhelming majority of local players, apart from very few groups in Colombia, stated in personal bilateral talks during many visits that, aside from all things that have gone wrong and could be improved, they are against any type of temporary or complete disengagement or boycotts of coal imports from the mining areas of Cesar (and La Guajira).

During the last visit to Colombia in March 2018, the EnBW delegation did not find any local players who spoke out in favour of a boycott. The EnBW delegation met trade unions, NGOs, local residents, representatives of the Defensoria (in Bogotá and in Cesar) as well as state players and representatives of the German Embassy and German foundations. None of the players wished to see Colombian coal imports stopped, being aware of how important the involvement of local coal companies is for local and countrywide development.

In particular, Western NGOs have insisted that stopping buying coal from Colombia would increase pressure on coal producers to change their behavior and attitudes. In addition, it has always been seen by Western NGOs as an excuse for EnBW or other coal importers to point out that other coal importers beyond Western Europe would not question human rights violations or CSR requirements, irrespective of the fact that the German Energy Transition started almost ten years ago and that German companies have been shutting down coal-fired power plants in the past couple of years, and, in the meantime, as a consequence the Western European demand for coal from Colombia is consistently shrinking.

The NGO disengagement demand is based on the assumptions that only if German and other European companies like EnBW stop buying coal from Colombia will mining companies change their behaviour. Whether this is the case cannot be answered conclusively, but in the following chapters, an attempt will be made to

show that due to the intensive exchange between coal importers from Western Europe and coal companies in Colombia, a lot of improvements have been made and that the two big mining companies in Cesar have not only stepped up their engagement, but that their approach with respect to human rights has changed significantly for the better.

Summing up, the EnBW position of direct engagement has been confirmed several times by the EnBW Executive Board and acknowledged by the Supervisory Board. Accordingly, no general and direct boycott of Colombian producers is planned as long as clear signs of improvement are taking place at the company level and on-site. For EnBW, this involves consideration of the following arguments: the economic significance of Colombian imports, the CSR performance of Colombian producers and the overall local situation regarding security and living conditions as well as the resilience of the NGO accusations.

To date, EnBW has relied on continuous further development of its responsible procurement policy. In addition to the multi-source approach, the supply relationship is deepened in procurement with single-source contracts with Colombian producers. Following this approach, EnBW believes that it can make use of its leverage on the mining companies in a collaborative approach. At the same time, the CSR performance of the coal producers is an essential element of the supply relationship and a gradual improvement of the CSR performance of the producers is necessary and therefore expected.

This approach will be supplemented by a continuation and, if necessary, intensification of the dialogue with NGOs in various constellations and, as far as possible, transparent and resilient communication on coal procurement in external reporting.

# Development of mining companies' due diligence practices

This chapter focuses on the changes within mining companies: first, the management systems that the mining companies have put in place; and second, the measures they have implemented to address the impact of their current activities. The management systems are essentially forward looking, providing the means to prevent, or at least identify and address at an early stage, human rights impacts. They are not designed to address the cases of victims from the conflict of the past, for which there are formal state mechanisms established under the peace agreement (see chapter 2).

## Corporate due diligence requirements

As described in 1.4, the requirements set out in the UNGPs and the OECD Due Diligence Guidance represent a new challenge for most companies. With the adoption of the UNGPs, companies are expected to know what their human rights impacts are and show how they address them. The OECD Guidance adds some implementation assistance.

A list of core elements of human rights due diligence is set out in figure 21. These elements can be found, for example, in the German National Action Plan for Business and Human Rights and form the basic measures that companies are expected to take to live up to their human rights responsibilities.

**Figure 21 > Core elements of due diligence in the field of human rights**

✓	A human rights policy statement
✓	Procedures for the identification of actual or potential adverse impact on human rights
✓	Measures to ward off potentially adverse impacts and review of the effectiveness of these measures
✓	Reporting
✓	A grievance mechanism

Source: German Foreign Office (2016): German National Action Plan Implementation of the UN Guiding Principles on Business and Human Rights<sup>1</sup>

The due diligence approaches essentially comprise the following elements: it starts with expressing their commitment to embedding the respect for human rights within their company. Furthermore, they must have procedures in place for assessing impacts, integrating and acting upon the findings, tracking responses and reporting performance. Last but not least, they are expected to support remediation where it is identified that they have caused or contributed to adverse human rights impacts.<sup>2</sup>

<sup>1</sup> Federal Foreign Office (2016) – <https://www.auswaertiges-amt.de/blob/610714/fb740510e8c2fa83dc507afad0b2d7ad/nap-wirtschaft-menschenrechte-engl-data.pdf>, p. 8 [accessed 02.01.2019]

<sup>2</sup> See Econsense (2014) Respecting Human Rights – Tools & Guidance Materials for Business – [https://econsense.de/app/uploads/2018/06/econsense\\_Respecting-Human-Rights\\_2014.pdf](https://econsense.de/app/uploads/2018/06/econsense_Respecting-Human-Rights_2014.pdf) [accessed 02.01.2019]

While corporate responsibility for human rights is still under development, and strong standards are not yet established, table 5 sets out in greater specificity the standard expectations for human rights due diligence based on experiences by companies and consultancies.<sup>3</sup> These requirements are used as a basis for the analysis and evaluation of the measures and activities of Drummond and Prodeco.

**Table 5** > Specifications for the core elements of due diligence

Core Element	Specifications
<b>Policy Commitment</b>	<ul style="list-style-type: none"> <li>&gt; Approved at the most senior level of the business enterprise</li> <li>&gt; Informed by relevant internal and/or external stakeholders</li> <li>&gt; Stipulates human rights expectations of personnel, business partners and other parties</li> <li>&gt; Publicly available and communicated internally and externally</li> <li>&gt; Reflected in operational policies and procedures</li> </ul>
<b>Procedures</b>	<ul style="list-style-type: none"> <li>&gt; All internationally recognized human rights as a reference point</li> <li>&gt; Actual and potential impacts in own operations and through business relationships</li> <li>&gt; Draw on internal and/or independent external human rights expertise</li> <li>&gt; Reiterative and ongoing process</li> <li>&gt; Meaningful consultation with potentially affected groups and other relevant stakeholders</li> <li>&gt; Prioritise most salient risks</li> <li>&gt; Special attention to individuals from groups or populations that may be at heightened risk of vulnerability or marginalization</li> </ul>
<b>Measures</b>	<ul style="list-style-type: none"> <li>&gt; Human rights statement/policy and findings from assessment processes are integrated across business functions and appropriate action is taken</li> <li>&gt; Responsibility assigned to the appropriate level and functions</li> <li>&gt; Internal decision-making, budget allocations and oversight processes enable effective responses</li> </ul>
<b>Reporting</b>	<ul style="list-style-type: none"> <li>&gt; Track effectiveness of responses based on appropriate and quantitative indicators</li> <li>&gt; Draw on feedback from both internal and external sources, including affected stakeholders</li> <li>&gt; Report externally on salient risks and how they are addressed</li> <li>&gt; Report in a form and frequency that reflect an enterprise's human rights impacts and that are accessible to its intended audiences</li> </ul>
<b>Grievance Mechanism</b>	<ul style="list-style-type: none"> <li>&gt; Provide for or cooperate in remediation through legitimate processes if impacts were caused by or contributed to by the business enterprise</li> <li>&gt; Establish effective operational-level grievance mechanisms according to the UNGP effectiveness criteria</li> </ul>

Source: see Footnote 3

The analysis in this chapter is based on materials provided by the mining companies in sustainability reports, published in press releases and credibly presented in recent years in talks with EnBW representatives in Colombia at the mine site and in the capital Bogotá. The establishment of due diligence procedures is an ongoing process, which is why the assessment given is only an intermediate state. A final evaluation of human rights due diligence processes is, and remains, pending at this point in time.

<sup>3</sup> See Econsense (2017) – [https://econsense.de/app/uploads/2018/06/econsense-Poster\\_No-way-around-due-diligence-%E2%80%93-Overview-of-human-rights-due-diligence-frameworks-and-Legislation\\_Print-in-A3-format\\_2017.pdf](https://econsense.de/app/uploads/2018/06/econsense-Poster_No-way-around-due-diligence-%E2%80%93-Overview-of-human-rights-due-diligence-frameworks-and-Legislation_Print-in-A3-format_2017.pdf) [accessed 15.02.2019]; Shift (2018) – <https://www.shiftproject.org/resources/respect/> [accessed 20.06.2019]

## Progress in implementing due diligence practices

In 2012–2013, both companies had only one responsible person to deal with sustainability issues, and topics such as human rights were rather neglected at the executive level of the mining companies. Sustainability activities and measures were not being carried out in a structured and systematic manner, as can be seen when scanning the companies' first sustainability reports.<sup>4</sup> In recent years, both companies have greatly expanded their internal sustainability approach. They have established and expanded their sustainability departments and sought expert input regarding their methods. In chapter 5, it will be discussed to what degree these changes at the internal operational level have turned into changes at the level of working and living conditions, in other words, to what extent these changes have had an impact on the situation on the ground.

In the following, the development of human rights due diligence by the companies (see figure 21) is analysed according to the core elements introduced above.

### Human rights policy commitment

When Drummond and Prodeco were first approached by coal buyers, NGOs and the media in 2011 and 2012, neither Drummond nor Prodeco had an official human rights policy in place – as was the case with almost all companies in the world, as the UNGPs described in chapter 1.4 were new at that time and companies only then began to address their implementation in concrete terms. At that time, there was no clear policy from the corporate headquarters in the USA or Switzerland available, neither at Drummond nor at Glencore.

This has changed. With the support of external experts, both companies have developed their human rights approaches. Joining the Voluntary Principles on Security and Human Rights (VP) has had a major impact on this process.<sup>5</sup> By 2015 both companies had comprehensive human rights policies in place, including clearly formulated positions on human rights issues.

Within its commitment to sustainability, Drummond “declares itself to be a protector of human rights”.<sup>6</sup> It has also condemned human rights violations, for instance in a press release from 2016 where it states that “Drummond has clearly and unequivocally condemned human rights violations”. Drummond publicly condemns any and all human rights violations that have occurred in their area of influence or any other Drummond location. It states that at all times it has worked with the governmental institutions “to make sure that any alleged human rights violations, including threats against our employees, are investigated”.<sup>7</sup>

This clear positioning has also been publicly reiterated by CEO Jose Miguel Linares in sustainability reports and by leading staff at stakeholder meetings with coal buyers in Germany in 2016 and 2018.<sup>8</sup> He stressed that Drummond has increased its efforts tremendously since 2015 and that Drummond is committed to contributing to strengthening the mining industry in Colombia and to protecting human rights in its territory. In addition, Drummond stresses that it carries out its activities in the best way possible by respecting and defending human rights and acting in accordance with its own convictions while in compliance with standards.<sup>9</sup>

When acts of violence were taking place before and after the signing of the peace agreement, Drummond condemned the violence and requested that competent authorities carry out a detailed investigation to capture those responsible for homicides. Drummond stated clearly that it “rejects any violent act, no matter its origin, and reiterates its support to the peaceful resolution of any conflict”.<sup>10</sup>

4 See <http://www.drummond.com/news-publications/sustainability-reports/?lang=en> and <http://www.grupoprodeco.com.co/en/sustainability/sustainability-reports/> [accessed 15.02.2019]

5 The Voluntary Principles on Security and Human Rights (VPs) are a set of non-binding principles created to assist extractive companies to balance security concerns with human rights. The VPs were launched in 2000 and are a tripartite multi-stakeholder initiative. – <https://www.business-humanrights.org/en/conflict-peace/special-initiatives/voluntary-principles-on-security-and-human-rights> [accessed 20.06.2019]. [For more details, see <https://www.voluntaryprinciples.org/what-are-the-voluntary-principles> [accessed 20.06.2019]]

6 Drummond (2015) Sustainability Report – [https://issuu.com/drummondltd/docs/drummond\\_ingles\\_16nov?e=19253911/41384915](https://issuu.com/drummondltd/docs/drummond_ingles_16nov?e=19253911/41384915), p. 12 [accessed 15.02.2019]

7 Drummond (2016) Peace Process and Post-Conflict – <http://www.drummond.com/social-responsibility/peace-process-and-post-conflict/?lang=en> [accessed 18.03.2019]

8 Drummond (2015) Sustainability Report – [https://issuu.com/drummondltd/docs/drummond\\_ingles\\_16nov?e=19253911/41384915](https://issuu.com/drummondltd/docs/drummond_ingles_16nov?e=19253911/41384915), pp. 1-3, [accessed 15.02.2019]. Reference to stakeholder meetings with German coal buyers in Frankfurt/M [16.06.2016] and Amsterdam [03.10.2018]

9 Drummond (2016) Sustainability Report, p. 43

10 Drummond (2017) – <http://www.drummond.com/drummond-condemns-violence-in-el-paso-cesar/?lang=en> [accessed 25.06.2019]

Prodeco's first steps towards a clear positioning regarding its human rights responsibilities were more strongly influenced by its Swiss parent company Glencore. In 2011, at the invitation of the Swiss Embassy in Colombia, Prodeco worked on the creation of a Promise of Value (a document was signed later in February of 2012) which sought to establish the minimum actions for Swiss-origin companies operating in the country to develop their activity under a human rights approach.<sup>11</sup> The first public actions with regard to human rights took place in 2016, when Prodeco signed an alliance with the Program for Development and Peace of Cesar, to boost the development of sustainable projects.<sup>12</sup>

Further to this, it has also spoken out in public about its human rights approach, and also underlined its willingness to contribute to peace in Colombia. For example, in 2017 Prodeco stated: "We seek to use our presence in Colombia to promote positive change and respect for human rights, and we are committed to working with civil society and local and national governments to uphold peace. Through our active dialogue with communities living around our operations, we are developing meaningful partnerships that support the transition to post-conflict in the Cesar and Magdalena regions."<sup>13</sup>

Prodeco states that it rejects any form of violence and emphasises its willingness to cooperate with local authorities. Since 2017/18, Prodeco has stressed that it does not have a long history in the region, and therefore it has put an emphasis on projects that develop sustainable communities. In this context, Prodeco has participated in commemoration ceremonies honouring victims of the past in 2017 and 2018.<sup>14</sup>

Prodeco's CEO, Mark McManus, has stressed on numerous occasions that Prodeco wants to be an active participant in the transformative processes taking place in the country and that respecting human rights is essential for Prodeco's management.<sup>15</sup> Prodeco has underlined in statements that it condemns murder and rejects any violence in the area of influence of its operations. The importance of the role of state players has been stressed by the company, for instance by calling on the relevant authorities to thoroughly investigate the circumstances of murders and deaths of members of local communities and to provide local communities with the appropriate security measures.<sup>16</sup>

On 7 June 2018, large mining companies in Colombia, including Drummond and Prodeco – emphasising their commitment to human rights and security in the region – and together with state and civil society players, published the "Joint Declaration of Rejection to Threats to People's Lives and Physical Integrity" which focuses on collaborative efforts to protect the life and physical integrity of people.<sup>17</sup>

11 Prodeco (2012) – <http://www.grupoprodeco.com.co/en/media/corporate-news/empresas-suizas-y-ddhh/> [accessed 15.02.2019]

12 Prodeco (2016) – <http://www.grupoprodeco.com.co/en/media/corporate-news/pdpc-and-prodeco-group-allied-peace-projects-cesar/> [accessed 15.02.2019]

13 Prodeco (2017) – <http://www.grupoprodeco.com.co/en/media/corporate-news/prodeco-supports-colombian-peace-process/> [accessed 15.02.2019]

14 Prodeco Group (2018) – <http://www.grupoprodeco.com.co/index.php?cID=741> [accessed 15.02.2019]

15 Prodeco Group (2017) – <http://www.grupoprodeco.com.co/en/media/corporate-news/public-statement1/>, p. 11 [accessed 15.02.2019]

16 Prodeco Group (2017) – <http://www.grupoprodeco.com.co/en/media/corporate-news/public-statement/09.01.2017>; <http://www.grupoprodeco.com.co/en/media/corporate-news/public-statement1/>, 07.03.2017 [accessed 15.02.2019]

17 Drummond (2019) – <http://www.drummondltd.com/joint-declaration-of-rejection-to-threats-to-peoples-lives-and-physical-integrity/?lang=en>; <http://www.grupoprodeco.com.co/en/media/corporate-news/prodeco-group-ratifies-its-commitment-protection-and-respect-human-rights-el-cesar/> [accessed 15.02.2019]

In this statement, stakeholders stressed their commitment concerning the promotion and respect of human rights:

1.	Our total rejection of all acts of violence, stigmatization and threats against the life and integrity of any person, with special emphasis on social leaders and human rights defenders.
2.	Our recognition of the work carried out by human rights defenders and social leaders for the defense of rights and the attainment of a more just and egalitarian society; as well as the need to guarantee their participation and to generate actions for their protection as a fundamental pillar in the construction of peace.
3.	That we reiterate the commitment of the State to protect people against the violation of their rights; from the private sector to respect human rights, and from civil society together with the previous ones, for the promotion of the exercise of human rights at all times and places.
4.	And that we will continue joining efforts to work harmoniously, in accordance with the competences of the signatories here, in the collaboration between the State, the companies and civil society for the development of actions and mechanisms around the protection and respect for people's lives and physical integrity, with special emphasis on social leaders and human rights defenders.

The joint declaration is of particular importance, since after the signing of the peace treaty in 2016, the number of acts of violence against social leaders and defenders of human rights in Colombia, including in Cesar, have increased again (see chapter 5.3).

#### a) Procedures for the identification of actual or potential adverse impacts on human rights

#### b) Measures to prevent adverse impacts including an effectiveness review

In their human rights approach both Drummond and Prodeco clearly refer to internationally recognised human rights standards. As mentioned above, in 2015 Drummond and Prodeco adopted the Voluntary Principles on Security and Human Rights (VP) and started work on implementing the United Nations Guiding Principles on Business and Human Rights (UNGPs).

From the first personal encounters between EnBW and Drummond in 2012 with meetings having an explicit human rights agenda, Drummond representatives have always stressed that the well-being of employees, contractors and the communities that surround the Drummond mine are of utmost importance to Drummond.<sup>18</sup> Since then, Drummond has engaged in a number of collective initiatives, such as that of the Colombian Government on the promotion of human rights through the Human Rights Advisor to the Nation's Presidency, the Ministry of Mines and Energy, the National Mining Agency, and other coal mining companies. In addition, Drummond has participated in a pilot programme, through which they are exchanging experiences in the application of the UNGPs and VPs, at the same time contributing to the implementation of the Colombian National Action Plan (NAP) on Business and Human Rights. Drummond has participated in the Pilot Human Rights Program of the Presidential Council of Human Rights, with a focus on complaints and claims systems, the relationship with communities, the analysis of risks and impacts, as well as relationships between the national government, local governments and businesses.

In 2017, Drummond as well as the other members of the Pilot Program migrated over to a permanent initiative called the Human Rights and Coal Working Group. Other initiatives have emerged from this initiative, such as the multi-stakeholder initiative "Generating and promoting trust between stakeholders in the mining region of Cesar" developed by CREER-IHRB, which is also supported by the Harvard University's Consensus Building Institute (CBI).

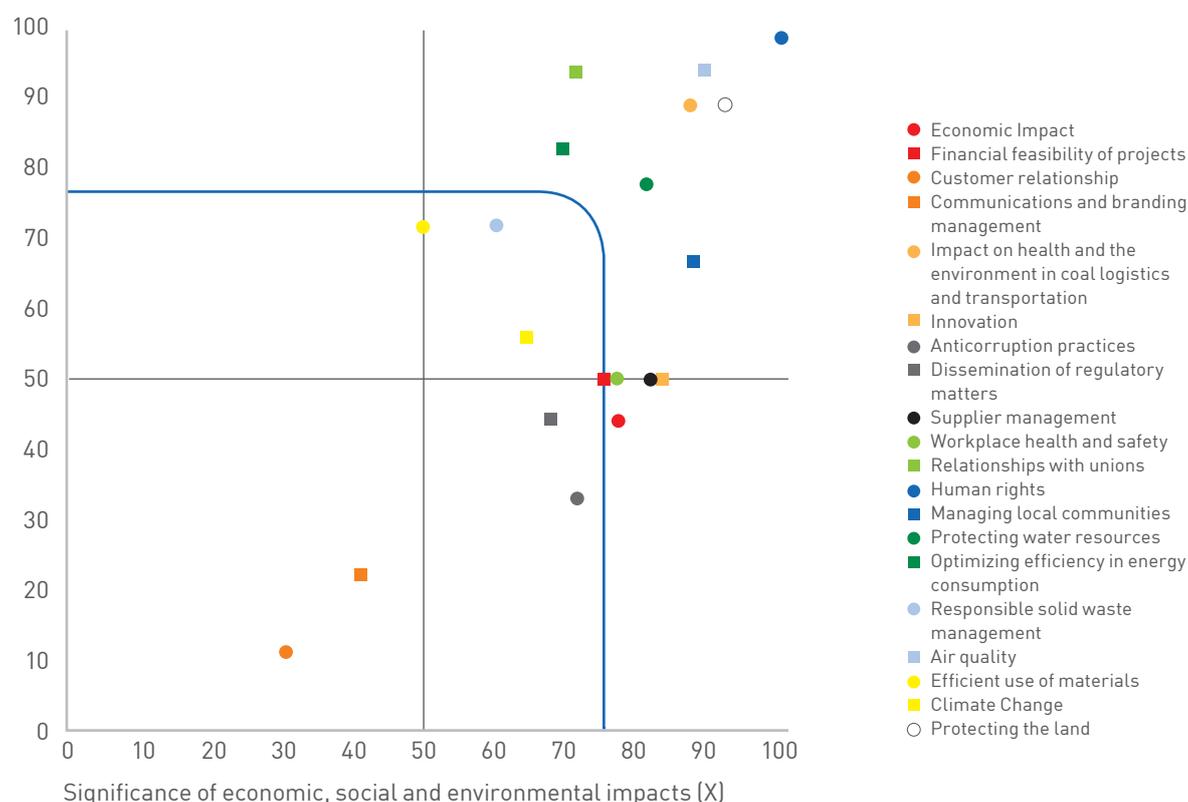
<sup>18</sup> Personal statement by Drummond representatives given to EnBW visitors during mine visits in March 2014 in Cesar (see also: <http://www.drummond.com/drummond-ltd-is-committed-to-respecting-human-rights-at-its-operations/?lang=en> [accessed 15.02.2019]). Similar statements were made by Prodeco representatives in a meeting in Barranquilla in March 2015.

After observing and analysing the overall situation, Drummond accepted that in order to adhere to and implement human right standards, Drummond needed to take essential procedural and organisational steps, such as identifying and prioritising risks, establishing management mechanisms and assigning people responsible for managing, monitoring and controlling human rights issues, all based on the international guidelines that set the standard for the treatment and respect for human rights by businesses.<sup>19</sup> Drummond applied methods in accordance with the VPs to verify and update their Human Rights Risk Analysis and Management Methods.<sup>20</sup>

In its first detailed materiality analysis, which was released in the 2016 sustainability report, a number of stakeholders including employees, customers, unions and state actors have identified the respect for human rights as one of the most important issues (see figure 22).

**Figure 22 > Drummond Materiality Analysis**

Influence on the evaluation and decisions of the stakeholders (Y)



Source: Drummond Sustainability Report 2016, p. 47

Drummond stresses that it rejects any type of child labour or exploitation, illegal discrimination, forced labour, and violation of the freedom of association and collective negotiation, with one of its objectives being to protect the human rights of everyone who has any kind of connection with the company's operations in Colombia.<sup>21</sup>

As part of its human rights programme, it has introduced human rights training courses and stakeholder consultations. By 2018, almost 80% of Drummond's employees had received training which covered topics related to the company's human rights policy, and expectations regarding the VPs and the UNGPs. Three type of training

<sup>19</sup> Drummond [2017] Drummond Ltd. is committed to respecting human rights at its operations – <http://www.drummond.com/drummond-ltd-is-committed-to-respecting-human-rights-at-its-operations/?lang=en> – [accessed 18.03.2019]

<sup>20</sup> Drummond [2018] Drummond's answer to written EnBW questions in March 2018.

<sup>21</sup> Drummond [2017] Drummond Presents Human Rights Management Process and Policy with Contractors and Providers <http://www.drummond.com/drummond-presents-human-rights-management-process-and-policy-with-contractors-and-providers/?lang=en> [accessed 18.03.2019]

courses have been organised, on the first level with the company's administrative staff and management, on the second level a "train the trainers programme" was completed in which identified leaders were trained to give the same workshop to technical and operational staff during the regular training cycles, in order to complete the third level.<sup>22</sup> Drummond intends to increase its efforts to guarantee and monitor strict compliance with the terms of its policies and protect the rights of each of its workers.

Stakeholder consultations have also been expanded in recent years. This concerns very different stakeholder groups such as representatives of public institutions on the state and local level, but also with local communities through community managers that maintain regular contact with local communities; these can also be contacted by telephone at any time if there is an urgent need to talk.

In 2018, Drummond organised meetings in El Cesar and Magdalena with the objective of talking with representatives of communities located in the company's area of influence about the policy it has implemented for the promotion and respect of human rights. The purpose of the meetings was to request feedback and identify opportunities for improvement. Drummond invited experts, such as the director of ARDURA S.A.S., Jose Unda, a human rights advisor. Other meetings took place at the Pribbenow mine (which was attended by council persons and municipal ombudsmen, as well as representatives of community action boards in the municipalities of El Paso (and the district of La Loma), Becerril, Codazzi and La Jagua de Ibirico) as well as at Puerto Drummond with similar representation from several districts (including people from communities with people of African descent, the Youth Committee, Asocomunal and the municipal ombudsmen of Aracataca, Cienaga and Fundacion).<sup>23</sup> According to the participants' feedback recorded by Drummond, the representatives of the different communities underscored Drummond's position regarding the peace process and the post-conflict era, and its interest in identifying, preventing and mitigating potential impacts on human rights for every one of its stakeholders in its different contexts. The sources of risk that have been identified and the management measures assigned to each one of them were also presented.

In 2017, Drummond also started to organise stakeholder events with contractors.<sup>24</sup> Drummond presented its human rights management process and policy and stressed that interaction with contractors is an important area of its human rights approach, and also that employees, contractors and other providers need to have a clear understanding of what should be done and how to report any irregularity considered to be in violation of rights or principles.<sup>25</sup>

Drummond engages its contractors in promoting responsible business practices through contractual requirements, training and monitoring. The company requires that its contractors develop their own policies and procedures on ethics, human rights, and grievance mechanisms.<sup>26</sup>

Drummond has also implemented a Self-Control and Risk Management System for Money Laundering and Financing of Terrorism, applicable to all processes. This includes the necessary steps to monitor business relations, transactions, flows of funds and resources to ensure that the company nor its business partners are providing funding or support to armed actors.<sup>27</sup>

Prodeco has also made reference to the VPs and the UNGPs when developing measures and activities. They are both part of its sustainability strategy. Next to these two, Prodeco also explicitly identifies the IFC Performance Standards, International Council on Mining & Metals (ICMM) standards and other basis human rights standards. Whereas Prodeco's policy was focused in the past on enabling the operation, the recent adaptation focuses on

<sup>22</sup> Drummond [2017] Drummond Ltd. is committed to respecting human rights at its operations –

<http://www.drummond.com/drummond-ltd-is-committed-to-respecting-human-rights-at-its-operations/?lang=en> [accessed 18.03.2019]

<sup>23</sup> Drummond [2018] Drummond talks about human rights with communities in its areas of influence – <http://www.drummond.com/drummond-talks-about-human-rights-with-communities-in-its-areas-of-influence/?lang=en> [accessed 18.03.2019]

<sup>24</sup> Drummond [2017] Drummond presents human rights management process and policy with contractors and providers

– <http://www.drummond.com/drummond-presents-human-rights-management-process-and-policy-with-contractors-and-providers/?lang=en> [accessed 18.03.2019]

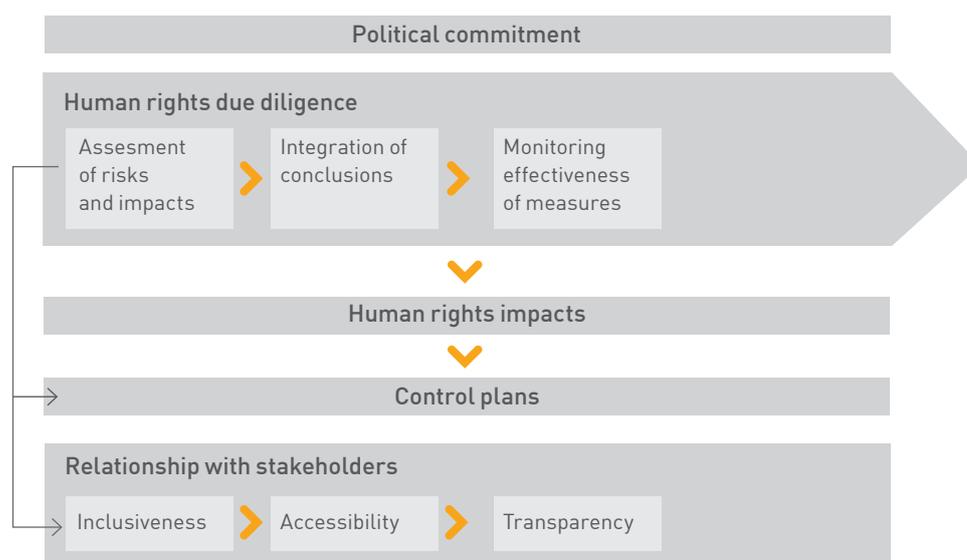
<sup>25</sup> Drummond [2017] Drummond, see previous one

<sup>26</sup> Drummond [2018] Drummond Dialogues with Contractors and Providers to Strengthen its Work in Human Rights <http://www.drummond.com/drummond-dialogues-with-contractors-and-providers-to-strengthen-its-work-in-human-rights/?lang=en> [accessed 25.06.2019]

<sup>27</sup> Drummond [2019] Integrated Management System – Contractors' Manual [http://vss.drummondco.com/Vendor\\_ENG/VendorXMLData\\_ENG/PDF/Contractor-Manual.pdf](http://vss.drummondco.com/Vendor_ENG/VendorXMLData_ENG/PDF/Contractor-Manual.pdf) [accessed 25.06.2019]

the social transition to closure, which also includes a human rights and peace strategy (see figure 23).<sup>28</sup> Human rights, health and safety, protecting the environment and business ethics are part of Glencore's and Prodeco Group Corporate Practice (PGCP).

**Figure 23** > Prodeco's approach to Human Rights



Source: Prodeco Presentation 2018, p. 31/181

Prodeco has been engaged in a number of initiatives, such as the initiative with the Colombian Government on the promotion of human rights through the Human Rights Advisor to the Nation's Presidency. The HR multi-stakeholder working group has been working since 2017 in several activities related to the National Action Plan. Among them, a commentary on the practical aspects of the implementation of the NAP, and the enhancements protocol to manage early warning and the management of threats to individuals (which is an ongoing exercise). Prodeco has also engaged with other companies in the Human Rights Program of Fundación Ideas para la Paz (FIP).

Taking Glencore's Group human rights policy as a starting point, in 2015 Prodeco redeveloped its due diligence process together with FIP, an independent Colombian think tank.<sup>29</sup> FIP helped Prodeco to strengthen its diligence process by undertaking a human rights assessment of its risk management system. This was considered an important step to continue integrating human rights guidelines into its risk analysis process.

In 2016, Prodeco continued to work in line with the risk assessment carried out in 2015 with a focus on due diligence, inclusion and gender equality, and freedom of association.<sup>30</sup> Prodeco's human rights risk assessments looked at potential impacts not only in its operations, but also in its host communities. These risk assessments were made on the basis of external and internal interviews, such as local government and public officers (including police, ombudsmen, secretaries and mayors), community leaders and representatives, and unions. Internal stakeholders included Prodeco officers, including the CEO, CFO, COO, legal team, operations managers, sustainability manager, security team, human resources team and audit team.<sup>31</sup>

<sup>28</sup> From internal Prodeco presentation, presented in February 2018, p. 25

<sup>29</sup> Prodeco [2015] Our commitment to human rights –<http://www.grupoprodeco.com.co/informesostenibilidad2015/eng/nuestro-compromiso/index.html> [accessed 18.03.2019]

<sup>30</sup> Prodeco [2016] Sustainability Report – [http://www.grupoprodeco.com.co/index.php/download\\_file/455/](http://www.grupoprodeco.com.co/index.php/download_file/455/), p. 24, [accessed 18.03.2019]

<sup>31</sup> First results of these risk assessments were presented in personal meetings at Prodeco's offices in Bogotá in December 2016.

As a result, key risk scenarios were identified, and human rights actions plans developed. Themes included training for local communities and local authorities to promote transparency; access to information and accountability concerning the use of royalties; support of technical investigations by independent third parties on the health impacts in the mining regions; the development of constructive communication channels with the region's NGOs; and also addressing the historical legacy of security arrangements and their impact on human rights, as outlined in the peace agreements with FARC.

Prodeco also included a human rights focus lens into its training programme. The training covered awareness of, and compliance with human rights policies and procedures. In 2015, Prodeco started an internal human rights awareness raising campaign to build a culture of peace and respect for human rights. Over the years, Prodeco has tracked a number of KPIs, such as the percentage of administrative employees trained, the hours of training for employees and contractors, and security providers.<sup>32</sup>

As part of its established human rights programme, it has introduced human rights training courses and stakeholder consultations on a regular basis. By 2018, a large percentage of its employees were trained in human rights. These training courses were also provided to security contractors and security employees.<sup>33</sup>

As security in the Cesar region is one of the overarching themes, Prodeco carries out a number of activities in this area.<sup>34</sup> These include ongoing performance monitoring through supervision by its security staff and regular meetings with host communities to identify and discuss any concerns; formal agreements with private and public security providers on the conduct of personnel deployed at its operations; and the development of a locally appropriate approach to the provision of training for all security personnel to ensure understanding of international human rights standards.

Concerning security, since 2015 Prodeco has also included human rights criteria in contracts and investment agreements referring to its Code of Conduct and human rights policy. As an example, there is a specific clause on human rights infringements in its contracted security services provider which requires the provider's compliance during any private security activities and when engaging with its host communities. Due diligence procedures with critical contractors were completed on December 2017.

Regarding security issues, and in line with the VPs initiatives, Prodeco started to guide the behaviour of its private security providers and its engagement with public security forces. Monthly meetings with members of the military take place, in which key security matters are addressed and the opportunity to report any human rights incidents is provided. Prodeco's private security providers have since been contractually obliged to comply with the VP requirements.

In addition, Prodeco has supported measures to strengthen the peace process, such as the stakeholder initiatives "Cesar Development and Peace Program", which has the goal to support civil society in the regions taking part in the peace process. As a result of this development and peace process engagement in Cesar, local organisations, who are signatories of the Trust Pact, were created. The pact represents a commitment to strengthen groups, associations and small entrepreneurs for the improvement of relationships, the reconstruction of values and the consolidation of coexistence and community peace.<sup>35</sup> Prodeco started a number of additional stakeholder initiatives improving the capacities of local NGOs and of official entities of the department of Cesar.<sup>36</sup>

32 Prodeco (2016) Sustainability Report p. 51 – <http://www.grupoprodeco.com.co/informesostenibilidad2015/eng/nuestro-compromiso/index.html#../wp-content/uploads/2016/11/Captura-de-pantalla-2016-11-29-a-las-6.22.08-p.m..png> [accessed 18.03.2019]

33 See previous footnote.

34 Prodeco in presentation to EnBW, p. 34; for an overview of its activities, see <http://www.pdpcesar.org/>

35 Prodeco (2018) Grupo Prodeco invites to the signing of the Trust Pact for the development of La Victoria de San Isidro – [http://www.grupoprodeco.com.co/files/2215/2365/8162/Press\\_Release\\_Trust\\_Pact\\_La\\_Victoria\\_-\\_April\\_2018.pdf](http://www.grupoprodeco.com.co/files/2215/2365/8162/Press_Release_Trust_Pact_La_Victoria_-_April_2018.pdf) [accessed 18.03.2019]

36 Prodeco Sustainability Report 2016 – [http://www.grupoprodeco.com.co/index.php/download\\_file/455/](http://www.grupoprodeco.com.co/index.php/download_file/455/), p. 12 [accessed 18.03.2019]

## Reporting

Drummond published its first sustainability report in 2010, with some delay also for the years 2013/14. For these two reporting periods a single report was published.<sup>37</sup> Since 2016, Drummond has included human rights reporting as part of its sustainability reporting process, publishing its first human rights risk assessment.<sup>38</sup>

In its sustainability reports Drummond covers different activities to evaluate and monitor its human rights approach. According to Drummond it conducts random audits of contractors and suppliers. Bettercoal is also conducting annual audits so that the company complies with international human rights standards, however neither the results nor the corrective action plans have been publicly available until recently.<sup>39</sup> Drummond has also participated in impact studies, such as the “Sector-wide Impact Assessment of the Mining Sector in Colombia” by the Institute of Human Rights and Business/CREER.<sup>40</sup> Drummond has made strong statements that “100% of the company’s significant operational locations have been through a human rights assessment” and that human rights is incorporated into all discussions with stakeholders, but the results of these assessments are not made available to the public.

In addition to increased and regular reporting measures, Drummond has invited its stakeholders to give advice on how to improve its human rights policy. Drummond asked stakeholders what they think about how human rights are handled at Drummond.<sup>41</sup> Stakeholders were invited to share opinions, raise questions or make recommendations about how Drummond can better manage its human rights. This continuous improvement process underlines the willingness to further develop its human rights approach.

Prodeco also started sustainability reporting in 2010 with a gap between 2012 and 2013, resuming for the reporting period of 2014 and from then on a yearly basis.<sup>42</sup> Since then, Prodeco has reported on the identification of key human rights issues, and also on progress in each area. Prodeco links its human rights responsibility to its contributions to the peace process. Prodeco has established a Human Rights Action Plan, which however is not publicly available. Also, Prodeco tried to incorporate the voices of local stakeholders when updating and verifying its materiality analysis and to determine priorities for future sustainability initiatives, thereby applying international standards, such as the AA1000 Accountability Assurance, which has a focus on stakeholder responsiveness. For the 2014 report, it applied peer reviews in its reporting, where third parties confirm that their report is in line with the requirements of the GRI. In the years that followed, third-party assessments and stakeholder feedback was also included in individual chapters. Since 2014, the sustainability report has been audited by a chartered accountant.

In recent years, Prodeco has started multi-sector dialogues by establishing round tables with the participation of the government of Cesar, municipal mayors, civil society, other companies in the sector and the United Nations.<sup>43</sup> These mostly focus on issues such as territorial planning and economic and social development.

Prodeco and Drummond have sought to improve and develop constructive communication channels with the region’s NGOs. Moreover, to further strengthen the coal mining working group that contributes to the National Action Plan on Human Rights and Business (NAP), with representatives from coal companies from Cesar and Guajira, the Presidential Council on Human Rights, the Ministry of Mines and the National Mining Agency.

37 For an overview of all sustainability reports – <http://www.drummondLtd.com/news-publications/sustainability-reports/?lang=en> [accessed 18.03.2019]  
38 Drummond (2016) Sustainability Report 2016 – [https://issuu.com/drummondLtd/docs/drummond\\_2016\\_sustainability\\_report?e=19253911/58661603](https://issuu.com/drummondLtd/docs/drummond_2016_sustainability_report?e=19253911/58661603) [accessed 18.03.2019]

39 It was not until 2019 that Bettercoal changed its communication policy and began to publish the so-called „Bettercoal Assessment Public Report” for mining companies. – <https://bettercoal.org/bettercoal-suppliers/> [accessed 18.03.2019]

40 Institute of Human Rights and Business (2016) Sector-wide Impact Assessment – <https://www.ihrb.org/focus-areas/commodities/report-sector-wide-impact-assessment-of-the-mining-swia-in-colombia> [accessed 18.03.2019]

41 Drummond – <http://www.drummondLtd.com/human-rights-talking-with-communities-about-drummonds-environmental-management/?lang=en> [accessed 18.03.2019]

42 For an overview of all sustainability reports – <http://www.grupoprodeco.com.co/en/sustainability/sustainability-reports/>

43 Prodeco (2016) Sustainability Report – [http://www.grupoprodeco.com.co/index.php/download\\_file/455/](http://www.grupoprodeco.com.co/index.php/download_file/455/), p. 11, [accessed 18.03.2019]

### Grievance mechanisms

Drummond has established a Requests, Complaints and Claims (RCC) System which includes a specific attention and response mechanism for local people. This system is reviewed and compared with international standards on a regular basis and has been improved in specific areas over time.<sup>44</sup> When Drummond receives information coming directly (verbally) from community members about threats, Drummond immediately conveys these complaints in writing to the authorities, asking them to investigate and take any measures they deem necessary.<sup>45</sup>

The following complaints have been received in recent years (see table 6):

**Table 6 > Drummond: Complaints 2014 – 2018**

Employees	
>	The employee grievance mechanism is working since February 19th, 2014
>	90 emails, 48 of them were not considered as a grievance (send of resumes, judicial notifications, advertising, among others)
>	1 of the remaining 42 is actually pending to be closed. It was submitted on March 14, 2018
>	Those 42 grievances were directed to the following departments: <ul style="list-style-type: none"> <li>&gt; Human resources: 32</li> <li>&gt; Internal audit: 6</li> <li>&gt; Contracts: 2</li> <li>&gt; Legal: 2</li> </ul>

Source: Drummond, March 2018

The following issues have been raised in this confidential channel:

1. Contractors' bad labour practices
2. Irregular behaviour by employees in the health service institutions
3. Unsafe conditions in maintenance shops and staff houses
4. Violation of Drummond's Code of Conduct by contractors/employees
5. Claims of irregular delivering of the uniforms and sports equipment that Drummond gives to employees through the Sports committee
6. Employees working in different duties not paid by the company
7. Transportation services
8. Stealing

According to Drummond, at least once a year sessions are held to analyse qualitative and quantitative information from the RCC, in order to identify opportunities for improvement in the RCC system, to identify opportunities for improvement in the behavior of Drummond employees and their contractors, and to identify trends in the opinions of the communities, employees and other stakeholders. As one practical result, Drummond agreed that an office would be opened to serve the community inside the office of the Mayor of Cienaga to make access easier in the case of any requests, complaints or claims. In terms of ethics complaints, the company has a full-time dedicated Compliance Officer who is in charge of the programmes, concerning things such as the prevention of money laundering and the financing of terrorism, ethics, anti-bribery and anti-corruption and the protection of personal data.

<sup>44</sup> Drummond provided details about its grievance procedures in March 2018.

<sup>45</sup> Drummond's answer to EnBW written request in March 2018

Prodeco has established a strategy for the management and resolution of grievances from the community and to build its engagement with the people living near its operations.<sup>46</sup> In 2015, Prodeco designed and implemented a programme called Raising Concerns (Programa de Atención de Inquietudes or PAI) to improve its mechanisms for reporting breaches of its Code of Conduct, corporate policies or national regulations. PAI allows people to report apparent breaches of the corporate practices of the Prodeco Group, laws or regulations, as well as any suspicion of human rights violations or any illegal act. PAI can be used by its employees and contractors and is open for use by the general public or any party affected by its operations. Reports can be made via a national toll-free telephone number, the Prodeco Group website and via email. In 2017, it reviewed its grievance mechanism, in partnership with Fundación Ideas para la Paz with a focus on partners with the greatest potential impact on its host communities.<sup>47</sup>

In 2015, Prodeco received two complaints relating to human rights from its local communities. Prodeco investigated both and concluded that they did not involve human rights breaches and that it had no responsibility; the original complainants were informed of this result. In 2016, Prodeco received six complaints, three connected to water, two connected to access to property and one related to impacts to fishing gear<sup>48</sup>.

**Table 7 > Prodeco: Complaints 2018**

Number of Complaints	received in 2018	resolved in 2018
Social / Communities	14	13
Environmental	5	3
Labor	6	6
Other	22	21

Source: Prodeco, June 2019

For the year 2018, the number of complaints increased slightly, mostly in the social realm regarding community matters. Prodeco also claims to process the vast majority of complaints promptly and to provide solutions to the satisfaction of all parties (see table 7).

## Summary

From the analysis it becomes apparent that both companies have made significant efforts in the last three years to develop systems of human rights due diligence. They are still early in this process of addressing human rights issues on the basis of standardised processes, as are most companies worldwide, and these systems will need time to mature.

The mining companies have published human rights policies which include commitments to respecting international acclaimed human rights and putting into place due diligence processes in accordance with the VPs and UNGPs. They have started to integrate human rights throughout the company, including through training, communication and management systems. They are also raising awareness among external stakeholders, such as communities and contractors.

<sup>46</sup> Prodeco [2016] Sustainability Report – [http://www.grupoprodeco.com.co/index.php/download\\_file/455/](http://www.grupoprodeco.com.co/index.php/download_file/455/), p. 37, [accessed 18.03.2019]

<sup>47</sup> Prodeco [2016], see previous footnote, p. 46

<sup>48</sup> Prodeco [2016], see previous footnote, p. 52

They are starting to monitor and track their human rights performance with indicators that are available internally, but only partially available to the public. Their sustainability reports provide continuous, comprehensible reporting across sustainability topics, including short sections on human rights, but it is not yet possible for interested stakeholders to take a deeper look into the human rights management procedures of the mining companies. The published sustainability reports do not make it sufficiently clear whether there is any criticism of the companies' approaches by local stakeholders.

Thus far, an evaluation of the companies' due diligence measures is only possible to a limited extent, at least with the documents provided to the public by the companies in the form of sustainability reports.

This dilemma is illustrated by the example of the established complaints mechanisms at company level available to all individuals and communities. Companies have formally implemented the requirements of the UNGPs, but despite deep dissatisfaction, which was expressed in many personal talks with community representatives and local NGOs, these complaint mechanisms of companies are unexpectedly hardly used.

In addition, it has to be noted that these channels are not used for the accusations made by Western NGOs or local NGOs – this has also become clear in many discussions with local NGO representatives. Here there is obviously a disconnect between the criticism often voiced that companies do not respond to complaints and the fact that the existing channels are rarely used by the local population. On the one hand, this could be due to a lack of awareness of these complaint mechanisms, or it could be due to a lack of trust in these channels, or indeed in the companies. Many sections of the local population still have a high degree of mistrust in the mining companies and believe that they will only follow those aspects which they are made to do – e.g. by court order. Furthermore, there is the impression – although both companies emphasised that the grievance mechanisms do explicitly not exclude any issues – that these grievance mechanisms are not there to deal with the cases of conflict victims, land restitutions or environmental impacts which are of significant concern to local communities.

Summing up, Prodeco and Drummond are continuously further developing their human rights approach. In their evolving of corporate communications through different channels, starting with company websites through to participation in public dialogues, they show how that they are implementing their human rights responsibilities in a concrete and increasingly consistent manner. There has been a major change and an increase in the level of staffing, quality and capability of their teams focused on human rights which is evident to every visitor.

In the feedback discussions on the draft version of the report, both companies also mentioned that, regarding complaints mechanisms the majority of concerns (including complaints from residents) are handled directly by local community managers, so that the formal process is often not used. This can be confirmed by EnBW visits to the local communities, to the extent that the common togetherness has been strengthened and improved over the years, being well aware of the fact that companies and local residents often have very divergent opinions on, and assessments of, individual issues.

The foundations for human rights due diligence have been put in place. In the future, these must be further developed, including ensuring that all company employees, from the CEO to the contractually bound suppliers, are engaged and committed to human rights, and that the perspectives of communities, including the most vulnerable in those communities, are respected and incorporated.



# Progress in addressing impacts 2012–2018 in Cesar

In the following chapter, the progress and developments with regard to the working and living conditions in the region of Cesar have been reviewed to the extent that detailed (qualitative and quantitative) information has been available. The goal of this chapter is not to be a comprehensive review of all adverse impacts; it tries, however, to describe the developments in the mining region as objectively as possible and to find indications as to whether the working and living conditions in the mining areas have changed as a result of the (changing) behaviour of the mining companies.

This chapter focuses on the contributions of the mining companies in addressing known adverse impacts of its corporate activities. The focus on developments in the period 2012–2018 in the following topics:

1. Health and safety
2. Collective bargaining and engaging with trade unions
3. Tackling violence
4. Environmental and health impacts
5. Resettlement
6. Living conditions & social investment

These were identified as those sustainability and human rights topics that belong to the most important indicators for change in the working and living conditions. Moreover, those are the ones where there have been considerable discussions with NGOs and which were intensively examined by the media in Germany and Europe as to whether there has been progress in the region. It is therefore particularly interesting to analyse how far there have been changes and progress in these topics, and where there is a special need for additional action that might lead to more positive developments in the future.

Each topic is presented in a structured manner: first, the main challenges regarding the topic are introduced, then the situation in the past is described before recent interventions and activities by mining companies, followed by an explanation of the action taken by the companies, and finally the current situation is illustrated. This approach should help to highlight whether, and to what extent, there have been changes in the working and living conditions of the local people and how this can be attributed to the activities of the mining companies.

## Health and safety

### Main challenge

People that work in the coal mining sector face a range of potential health and safety hazards, of which some can lead to delayed diseases such as silicosis, cancer, osteo-muscular diseases and pulmonary illnesses. Minimising the potentially negative effects to people's health as much as possible is one major challenge that coal producers face.

### Past situation

There are hardly any negative reports on the negative consequences of coal mining for health and safety in coal mining in Cesar.<sup>1</sup> This was also reflected in the former approach towards health of the mining companies. In 2010, Prodeco's efforts to improve its workers health records only marginally focused on work-related exposure factors. Instead, they focused on cancer, drug and alcohol problems, de-worming, vaccination, a sun protection programme and home visits with the aim of identifying microbial load in food as well as the management of stress, obesity and fatigue. Moreover, a health-related radio programme was introduced.<sup>2</sup> While all these programmes are useful to increase the overall health of people and encourage a healthy lifestyle, they were only marginally connected to the negative impacts that result from working conditions in the coal mines.

In 2010, Drummond primarily focused on healthy food for their workers and the provision of healthcare.<sup>3</sup> Its voluntary healthcare package was provided in addition to the mandatory one, and included outpatient services, prescription medication, emergency care and mechanisms that benefited relatives, such as spouses, children and parents. Drummond at that time listed quantitative figures concerning the number of services and speciality consultations, medical consultations, prescriptions and emergency care visits, without discussing any detail of how the health and safety records have developed over time.<sup>4</sup>

Safety records were poor in the mines. Between 2005 and 2011, the National Mining Agency recorded eleven mining emergencies in Cesar. In the six years that followed (between 2012 and 2018) it recorded only one mining emergency.<sup>5</sup>

### What has been done?

Both suppliers have introduced comprehensive safety management systems which have been accredited to OHSAS18001:2007 and have introduced first aid points in the mines (Drummond in 2016, Prodeco in 2017).

Drummond began a programme in 2003 to control workers' exposure to crystalline silica. Seven out of ten workers have been subject to an objective evaluation over a 10-year period. The results of this evaluation have made it possible to clearly define the intervention strategy and information programmes, including technical controls, training and health monitoring. This has taken the exposure concentrations that exceeded legal limits to levels which are now well below these limits.

In 2015, Drummond reported 3,763 cases of workers that were exposed to noise and 2,000 workers that were exposed to inorganic particulate matter. The top five illnesses were far-sightedness (1,623 cases), refractive error (1,428 cases), obesity (1,453 cases), old cases of hearing impairment (1,243 cases) and alternation in lipid metabolism (379 cases).<sup>6</sup> In 2016, the cases of workers that have been exposed to noise declined to 3,477 cases and workers exposed to inorganic particulate matter declined to 1,495 cases.<sup>7</sup> As the OHSAS certification process has shown, additional risk control efforts concerning occupational safety and health have been made. These have included familiarisation with, and training on, the OHSAS 18001 standard, the preparation and structuring of the documentation in order to meet the OHSAS guidelines requirements as well as the direct participation of all of the areas and departments of Drummond, including contact persons at various sites in the mining area.<sup>8</sup>

1 Semillas Colombia [2010] Explotación de carbón en el Cesar – <http://www.semillas.org.co/es/explotaci> [accessed 25.06.2019]. There have been many more about the situation in La Guajira. A report from 2010 by the Danish organisation DanWatch focused on the mining region La Guajira and in particular the coal mining company Cerrejón [see Danwatch [2010] The Curse of Coal –[http://old.mutiwatch.ch/cm\\_data/100505\\_danwatch\\_Cerrejón.pdf](http://old.mutiwatch.ch/cm_data/100505_danwatch_Cerrejón.pdf) [accessed 18.03.2019]]. This study found that due to a lack of efficient safety and health measures, coal workers suffered diseases caused by working with large and heavy machinery that caused extensive vibration, poisoning from chemicals that are used at the workplace and severe lung disease. Cases of silicosis were reported in workers that had worked in the mines. The authors of the study also concluded at the time that Cerrejón was not willing to take responsibility for these health-related problems. The company Cerrejón issued a public statement responding to DanWatch back in 2010, rejecting the allegations – [http://old.mutiwatch.ch/cm\\_data/Cerrejon-response-re-DanWatch-report-6-Jul-2010.pdf](http://old.mutiwatch.ch/cm_data/Cerrejon-response-re-DanWatch-report-6-Jul-2010.pdf) [accessed 25.06.2019]. See also: Solidarity Center [2012] – <https://www.solidaritycenter.org/visiting-mine-workers-observe-troubling-conditions-in-colombian-coal-mines-and-surrounding-communities/> [accessed 18.03.2019]

2 Prodeco [2010] – Sustainability Report – [http://www.grupoprodeco.com.co/files/4114/6015/3462/Report\\_2010.pdf](http://www.grupoprodeco.com.co/files/4114/6015/3462/Report_2010.pdf) ; p. 39, [accessed 18.03.2019]

3 Drummond [2010] – [https://issuu.com/drummondLtd/docs/2010\\_sustainability\\_report?e=19253911/67257699](https://issuu.com/drummondLtd/docs/2010_sustainability_report?e=19253911/67257699), p. 89-90 [accessed 18.03.2019]

4 See previous footnote.

5 Taken from [https://www.anm.gov.co/?q=emergencias\\_minerals](https://www.anm.gov.co/?q=emergencias_minerals) – [accessed 07.03.2019]. [There were two reported deaths in the municipality of Jagua in 2015, taken from <https://sistemas.fascolda.com/ridatos/reportes/xgeografico.aspx> [accessed 07.03.2019]

6 Drummond Sustainability Report 2015, see above.

7 Drummond Sustainability Report 2016, see above.

8 Drummond – <http://www.drummondco.com/drummond-ltd-s-mining-operations-received-ohsas-180012007-certification-by-lloyds-register/> [accessed 18.03.2019]

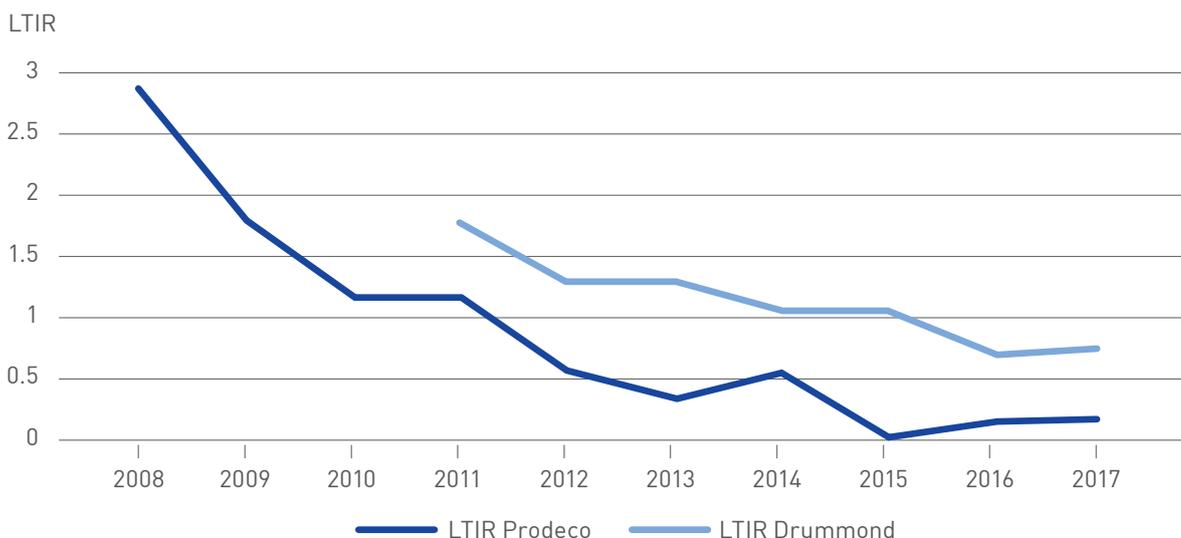
Prodeco has always met all formal legal requirements. In accordance with national law, Prodeco had established a Joint Committee of Health and Safety at Work (COPPAST).<sup>9</sup> In addition in 2015, Prodeco developed a range of occupational health risk assessment tools covering issues that are directly related to the working conditions. These included noise, hand-arm whole body vibration, monitoring for silicate dust and metallic particulates and lighting. Prodeco has also developed an industrial hygiene standard, including a tool to standardise hygiene services throughout the company. The standard has established requirements for industrial hygiene management, recording statistics for monitoring and decision-making and providing programmes to prevent occupational disease.<sup>10</sup> Moreover, epidemiological studies on respiratory, auditory, visual, psychological and osteo-muscular diseases were carried out.<sup>11</sup> In 2017, Prodeco further improved its health and safety management approach. It included 2,068 occupational health exams and 1,347 osteo-muscular evaluations. Activities that added to a safe working environment were also inspected by external partners. Overall, US\$ 444,000 were invested in hygiene programmes in 2017. In 2016 and 2017 Prodeco got a medal of merit, awarded by the Colombian Safety Council (CCS), which recognised Prodeco's efforts to ensure a safe workplace through an effective prevention programme that includes international standards.<sup>12</sup>

### Situation today

Reporting on work-related exposure has increased. For instance, in its 2016 Sustainability Report, Drummond reported the number of workers exposed to hygiene risks that required periodical medical observation. A total of 3,477 workers were exposed to noise and 1,495 workers to dust.

The development of Prodeco's and Drummond's Lost Time Injury Rate (LTIR) can be seen in figure 24. Between 2008 and 2017 (Prodeco) and 2011 and 2016 (Drummond), there was a considerable decrease in the time that was lost due to injuries. It should be noted that the respective calculation methods for LTIR (available LTIR figures refer to frequency rates per 1,000,000 hours worked) may differ. Nevertheless, the figures provide an initial indication of the improved situation with regard to accidents at work. For the mining industry, these figures are both above-average results.

Figure 24 > LTIR as reported by Prodeco between 2008 and 2017 and Drummond between 2011 and 2016



Source: Prodeco Sustainability reports 2010 – 2017; Drummond Sustainability Reports 2012–2017

<sup>9</sup> The COPPAST committee, which is obligatory by law (Joint Committees of Health and Safety at Work) has always been in place with both companies. This committee was formerly known as COPASO (Joint Committees of Occupational Health). The name transition occurred on 4 August 2014 when Decree 1443 / 2014 was issued. The members are elected/renewed every two years.

<sup>10</sup> Prodeco (2015) Safety at our assets – <http://www.grupoprodeco.com.co/informosostenibilidad2015/eng/operaciones-seguras/index.html> [accessed 18.03.2019]

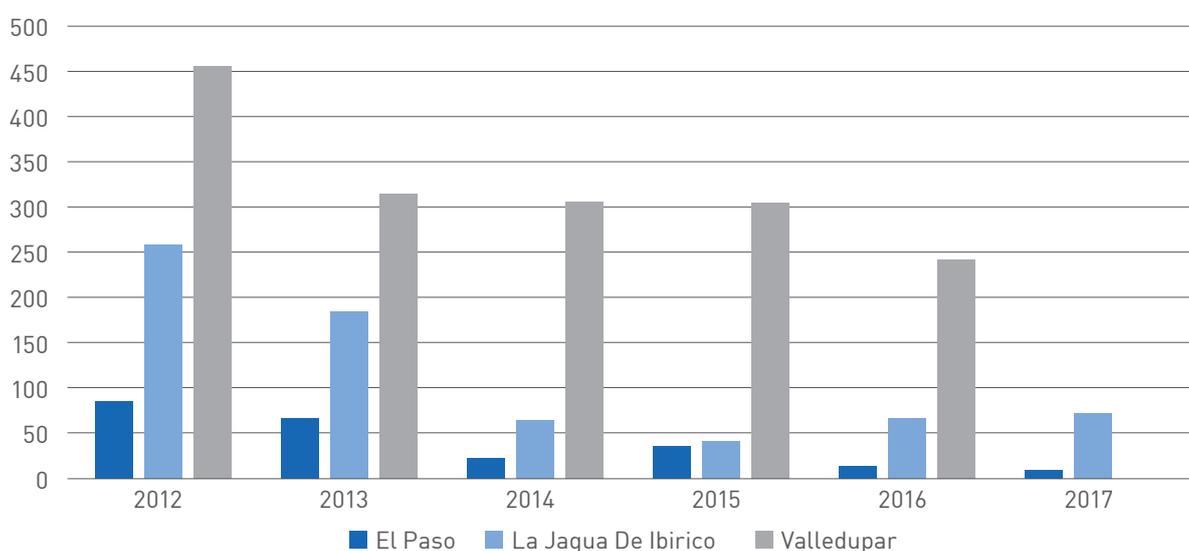
<sup>11</sup> Prodeco Sustainability Report 2016, see above.

<sup>12</sup> In 2017, for the fourth consecutive year, the Colombian Safety Council (CCS) recognised Prodeco's efforts to ensure a safe workplace, through an effective prevention programme that includes international standards, with the Emerald Cross Medal of Merit in the Excellence category, the highest award given by the CCS. Since 2016, all four of Prodeco's assets were recognised in this category (Calenturitas, La Jagua, Puerto Nuevo and the railway).

The year 2017 was Prodeco's sixth consecutive year without a fatality, while there was one death that happened in the Drummond coal mines after five years without fatalities.<sup>13</sup> Whenever there are serious incidents, an intense review of the incident is conducted and results and any remedy measures for the future are applied.

Inside the mines there are health centres to provide basic services or first aid to the employees, and in cases of emergencies mining companies have ambulances available to respond to work-related accidents that require the transfer of persons.

**Figure 25** > The figure illustrates the frequency of labour related accidents between 2012 and 2017



Source: Fasescolda report (2017)

Information from the Colombian Insurers' Federation (Fasescolda) also appears to corroborate improvements in the mining companies' performance, showing a reduction in the frequency of accidents in El Paso and Jaqua de Ibirico, where the Drummond and Prodeco mines are (see figure 25).

In discussions with stakeholders during the site visit in 2018, the trade unions acknowledged the significant improvements in the mine safety records. However, stakeholders remain concerned that the mining companies are not doing enough to monitor the health of the workforce and are not implementing proper measures to address respiratory and muscular-skeletal diseases.

Some of these concerns had led in 2014 to the creation of the National Union of Mining Sector Workers with Illnesses and Disabilities (SINTRADEM) representing 186 workers from the Drummond mine.<sup>14</sup> The union states that there are 1,800 people with illnesses associated with mining work, with osteo-muscular and pulmonary illnesses being most common (for more details, see chapter 5.2).<sup>15</sup>

Figures from the department of health compiled by CREER suggest that the reports of incidences of osteo-muscular illnesses in the mining sector municipalities could have peaked, and there was a substantial drop between the years 2016 and 2017 (see table 8).

It is too early to be confident but it is possible that these show the early results of the mining companies' efforts to address muscular skeletal illnesses.

<sup>13</sup> Drummond (2017) – <http://www.drummondco.com/press-release-on-mine-accident/> [accessed 18.03.2019]

<sup>14</sup> Vattenfall (2017) – A-human-rights-risk-assessment-in-Colombia.pdf, p. 39.

<sup>15</sup> Drummond (2016) Sustainability Report, see above.

**Table 8 > Illnesses of the osteo-muscular system and the conjunctive membrane**

Percentage of persons per 10,000 inhabitants

Mining corridor municipalities	2012	2013	2014	2015	2016	2017	Overall total
Agustín Codazzi	3.37	3.30	3.82	3.91	3.59	2.56	20.54
Becerril	3.19	3.43	6.70	6.14	6.40	2.04	27.90
Chiriguaná	1.87	1.67	4.42	4.07	5.06	2.97	20.05
El Paso	7.17	7.23	6.94	7.82	8.03	4.32	41.51
La Jagua De Ibririco	7.54	7.06	7.53	9.46	7.63	4.64	43.86
<b>Overall total</b>	<b>23.14</b>	<b>22.69</b>	<b>29.40</b>	<b>31.40</b>	<b>30.71</b>	<b>16.53</b>	<b>153.86</b>

Source: Ministry of Health. <http://www.sispro.gov.co/Pages/Contruva%20Su%20Consulta/Prestaciones.aspx>  
 Created by: Centro Regional de Empresas y Emprendimientos Responsables – CREER

## Collective bargaining and engaging with trade unions

### Main challenges

Colombia remains one of the most dangerous countries for trade unionists, with 19 trade unionists killed in 2017. Trade union leaders are very often among the social leaders that fight for the rights of local people. In a situation marked in the past by a “deeply rooted and pervasive culture of violence and intimidation”<sup>16</sup> trade unionists are very often victims of violence. The situation in the Colombian mining industry differs to Western Europe. There are many trade unions present in one company, workers can be members of different unions and a number of workers do not have any form of trade union representation at all. It is therefore one of the main challenges of mining companies to establish good working relationships with trade unions and reach collective agreements for the employers.

### Past situation

Violence against trade unions is manifold in Colombia, including in the region of Cesar. Violence can take the form of permanent persecution, unlawful detention, physical attacks, death threats, forced disappearance or murders. In 2011, the Labour Action Plan (LAP) was signed by the Colombian government. The plan was set up to demonstrate that workers’ rights are respected by the government. However, in the four years after the LAP was implemented, over 100 trade unionists were killed. Between 2000 and 2010, the number of murders of trade unionists in Colombia accounted for 63% of the global murder rate of trade unionist. The government has been accused of failing to protect union members.<sup>17</sup>

In 2013, a contractor of Drummond was charged and sentenced to 38 years in prison for allegedly killing two union members by having them pulled out of a workers-bus by paramilitaries and executed. The contractor claimed that “Drummond’s senior management ordered that the two union organisers be killed”, which was denied by Drummond.<sup>18</sup> Drummond has run a number of court cases in which it could show that it did not order any killings and that the credibility of the witness has been questionable.<sup>19</sup> However, the issue of violence and threats against trade unionists remains high on the public agenda also in the mining sector of Cesar.

As can be expected from the history of trade unions in Colombia, coal companies did not embrace the idea of strong trade unions in the past. The relationships with trade unions have been very strained, which resulted in

<sup>16</sup> ITUC (2018) Global Rights Index – <https://da.se/wp-content/uploads/2018/06/ITUC-Global-Rights-Index-2018-EN.pdf> – P. 28, [accessed 18.03.2019]

<sup>17</sup> International Centre for Trade Union Rights (2016) – [https://www.jstor.org/stable/10.14213/inteuniorigh.23.1.0016?seq=1#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/10.14213/inteuniorigh.23.1.0016?seq=1#page_scan_tab_contents) [accessed 18.03.2019]

<sup>18</sup> Fox News (2013) Colombian judge convicts ex-contractor in Drummond union leader killing –

<https://www.foxnews.com/world/colombian-judge-convicts-ex-contractor-in-drummond-union-leader-killing> [accessed 18.03.2019]

<sup>19</sup> Drummond (2016) – <http://www.drummondco.com/supreme-court-rejects-case-against-drummond-company/> [accessed 18.03.2019]

a number of strikes and intense legal conflicts as the mining companies called into question the lawfulness of strikes. Companies showed particularly limited understanding for the concerns of trade unions when employees damaged the property of mining companies as part of the strike activity.<sup>20</sup>

### What has been done?

Both mining companies have taken significant steps towards the normalisation of relationships with trade unions in recent years. This can be shown in the increased number of signed collective agreements, a reduced number of days on strike and better and more constructive types of engagement.

By 2016, Prodeco had reached six collective agreements with its unions covering 99% of its own employees allowing it to negotiate improvements in labour conditions. Drummond was also able to reach collective bargaining agreements with four of its five unions covering 76.59% of its employees in that year, providing increases in salary and benefits in health, education and housing.

However, the relationships are not unburdened. An aforementioned example of the tensions between mining companies and trade unions was the case of the formation of the trade union Sintradem, which was initially not resolved only later was a constructive path taken. When the trade union of diseased and disabled workers of the mining sector (Sindicato Nacional de Trabajadores Enfermos y Discapacitados del Sector Minero/ Sintradem) was formed in 2014, Drummond tried to dissolve the trade union on the basis of the reasoning that the establishment of this new trade union was not based on working skills or on an industry sector. The case reached the Colombian High Court, where it was ruled that it was a legitimate process to form this type of union.<sup>21</sup> Following that ruling in 2016, Drummond offered Sintradem the possibility of engaging in a collective negotiation simultaneously with the other trade union organisations on the basis of the same principles. At that time Sintradem did not accept the offer, preferring to continue to wait for the decision by the Arbitration Court. In 2017, the offer was made to Sintradem to sign a Collective Employment Agreement under equivalent terms to that signed with another union organisation of a similar size and age. That offer was also not accepted. In the same year, Drummond was notified regarding the Arbitration Award issued by the court, and the company made the decision not to appeal it. Instead – even though the Arbitration Court, in their decision, awarded lower benefits than a previous offer made by Drummond – Drummond offered Sintradem an agreement on same terms as the other union organisation of similar size and seniority.<sup>22</sup>

Overall, the relationship with the unions has improved markedly as has been pointed out in personal talks with representatives of the major trade unions active at Drummond and Prodeco (without mining company representatives being present).<sup>23</sup> This is due to a change in mindset by the mining companies who, in the past, formally recognised the legality of trade union to represent labour rights, but in the first round of negotiations with trade union consensual solutions were not always sought. With reference to the health and safety situation of workers in general, trade unions have recognised the willingness of mining companies to improve and professionalise health and safety management systems. On this basis, in combination with the willingness to pay higher salaries, agreements could be reached. The attitude of trade unions towards companies has also changed and the debates today centre less on a classic antagonistic “us vs. them” attitude. The focus of the negotiations has also changed in terms of content; today the focus is on so-called typical employer-employee issues about working hours and the recognition of occupational diseases, similar in nature to disagreements between employer and employees in Western Europe.

International pressure has been one factor that has led the mining companies to constructively engage with labour representatives. At a conference in September 2014 (see chapter 3.3), for example, the chairman of the German mining union IGBCE called on the representatives of the mining companies to conduct professional relations with the unions, for the benefit of the workers, but also of the companies. IGBCE is in direct contact with the Friedrich-Ebert-Stiftung in Colombia (FESCOL) and various trade unions.

20 Industrial (2018) Case Study – <http://www.industrial-union.org/case-study-glencore-in-colombia> [accessed 18.03.2019]

21 Drummond (2017) – <http://www.drummondlt.com/drummond-ltd-signs-collective-agreement-with-sintradem/?lang=en> [accessed 18.03.2019]

22 See agreement reached with Sintradem (ACTA EXTRACT DLT SINTRADEM [2017]) which includes all the steps taken by Drummond since Sintradem presented a list of petitions in 2014. It gives strong indications that Drummond has taken a conciliatory attitude, and that efforts have been made to solve the collective conflict through direct dialogue, including the signing of the collective agreement, which offered more benefits than the award from the Arbitration Court.

23 Personal meetings with trade union representatives in March 2014, December 2016 and February 2018.

### Situation today

In Colombia, only around 4% of the workforce were members of trade unions in 2016 – one reason for this low figure can most likely be seen in the violence that was perpetrated against trade unions.<sup>24</sup> In the mining sector, the overall situation is completely different. A larger portion of the workers in the mines are members of trade unions, sometimes being members of more than one trade union. This is also due to the very competitive salaries paid in the mining sector, which are above average in Colombia, and an even bigger difference in comparison to local wages in Cesar. Employees in general have the option to be part of a union, or a collective pact or can decide not to be part of either. As can be seen in table 9, at Drummond the majority of the workforce is unionised, whereas at Prodeco most of workers have decided to be part of a non-union agreement, a collective pact, with both guaranteeing decent labour conditions.

**Table 9 > Trade union affiliation at Drummond and Prodeco**

Drummond	Breakdown (2016)*	Prodeco	Breakdown (2016)**
Sintramienergética	42.3	Sintraenergetica	12.3***
Sintradrummond	18.2	Sintracarbon	5.5***
Sintradem	1.6	Sintraprodeco	1.3***
Agretritrenes	1.6		
Non-Union – Agreements	~38		84.2
Sintranmineros	1.0		
<b>Total (unionized workforce)</b>	<b>62%</b>		<b>19.3%</b>

Source: \*Numbers provided by Drummond. \*\*Numbers provided by Prodeco. \*\*\*Contains employees with affiliations to different unions (multi-affiliates).

Negotiations with trade unions are therefore an integral part of coal mining in Colombia and have the potential to further increase standards for workers in the long run. Overall, the situation has improved and in talks with trade union members in local communities, such as in El Hatillo, local community representatives stated that they see no connect between local threats by former paramilitary groups or BACRIM with mining companies. Moreover, in addition to condemning violence against social leaders and trade union members, in June 2018, Prodeco and Drummond pledged their support to the joint declaration of the rejection of threats to the life and integrity of persons – an initiative to bring threats to social leaders and defenders of human rights, including trade unionists, to an end (see also chapter 5.3).<sup>25</sup>

Overall, some kind of normalisation of trade union relationships has taken place which has led to increased trust and the presence and ongoing dialogue between the mining companies and the unions. This provides a good platform to identify and address issues of concern to workers in the future.

## Tackling violence

### Main challenges

Across Colombia, there is a high level of violent acts, including robbery (of goods and people), homicide, extortion and threats.<sup>26</sup> There are regions with a historical presence of illegal organised armed groups. This applies to the region of Cesar similar to a number of other regions in Colombia.<sup>27</sup>

<sup>24</sup> Danish Trade Union Council for International Development Cooperation (2018) –[http://www.ulandssekretariatet.dk/sites/default/files/uploads/public/PDF/LMP/LMP2018/lmp\\_colombia\\_2018\\_final.pdf](http://www.ulandssekretariatet.dk/sites/default/files/uploads/public/PDF/LMP/LMP2018/lmp_colombia_2018_final.pdf) [accessed 18.03.2019]

<sup>25</sup> <http://www.drummondtd.com/joint-declaration-of-rejection-to-threats-to-peoples-lives-and-physical-integrity/?lang=en>, <http://www.grupoprodeco.com.co/en/media/corporate-news/prodeco-group-ratifies-its-commitment-protection-and-respect-human-rights-el-cesar/> [accessed 18.03.2019]

<sup>26</sup> Institute of Human Rights and Business (2016) Sector Wide Impact Assessment – <https://www.ihrb.org/focus-areas/commodities/report-sector-wide-impact-assessment-of-the-mining-swia-in-colombia> [accessed 18.03.2019].

<sup>27</sup> Official Police publication (2017), “Measuring crime: criminality figures and police operations in Colombia, 2017”, pp. 107–118). Cesar ranks as the 14th region out of 33 regions. <https://www.policia.gov.co/revista/revista-criminalidad-volumen-60-no-3> [accessed 25.06.2019].

Threats to social leaders including community leaders, trade unionists and other human rights defenders are a particular concern in many areas in Colombia, including mining regions. They have been documented by state entities and are reported to have increased in 2016.<sup>28</sup>

### Past situation

Colombia has a long history of violence, with different types of violence present. In addition to the confrontations between guerrilla and armed paramilitary groups, there have also been social cleansing operations, political assassinations, vendettas, inter-gang warfare, organised crime and others types of petty crime.<sup>29</sup> During this period, local residents in the mining areas were also affected to a certain extent by violent acts. The non-recognition of victims from this period (by mining companies) also put a strain on relations between mining companies and the local population.

One reason which is often named for perpetuating the violence in Colombia is the failure of state institutions to solve conflicts between opposing groups. The accumulation of political and economic power by different groups with similar forces led to a long-term war-like situation with paramilitary groups as main actors in the 1990s and 2000s.<sup>30</sup>

Coal producers were often alleged to have cooperated with paramilitary groups in the previous decades, either by funding them directly for criminal activities or by purchasing land from them which the paramilitary groups had taken into their possession illegally. However, judicial inquiries have found no evidence to support the allegations of any systemic and structured form of cooperation between mining companies and violent groups. To end the Colombian conflict, peace talks started in 2002 and a peace treaty was finally signed in 2016, with difficulties in initiation and implementation before and after signing the peace treaty (see chapter 2 on the operating context).

### What has been done?

Both Prodeco and Drummond have condemned violence against social leaders, unions and human rights activists.<sup>31</sup> Both mining companies have also recognised the risk of abuses by their security providers in their human rights policies and incorporated security into their risk assessments. Drummond and Prodeco (through its parent company Glencore) adopted the Voluntary Principles on Security and Human Rights in 2015 and are integrating them into their practices.

In line with the requirements of the Voluntary Principles (VP), both mining companies have regular contact with the military, require their private security contractors to comply with their commitments to the Voluntary Principles and provide human rights training to in-house and out-sourced security providers. Both companies are using the Voluntary Principles Implementation Guidelines (IGT) to implement the Voluntary Principles on Security and Human rights.<sup>32</sup>

In 2015, the Working Group on Human Rights and Coal was created. This group includes participation by the Presidential Council for Human Rights, the Ministry of Mines, the National Mining Agency, and the presidents of Drummond, Prodeco and Cerrejón. It aims to share experiences of risk identification and management and has contributed to the development of the National Action Plan on Business and Human Rights. The Working Group on Human Rights and Coal is providing a space for dialogue for the companies and stakeholders to identify

28 German Institute for Human Rights (2017) Closing Gaps in Protection: Transnational Cooperation on Human Rights – [https://www.institut-fuer-menschenrechte.de/fileadmin/user\\_upload/Publikationen/Information/Information\\_14\\_Promising\\_Practice\\_Closing\\_protection\\_gaps\\_in\\_the\\_human\\_rights\\_Business\\_context.pdf](https://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/Information/Information_14_Promising_Practice_Closing_protection_gaps_in_the_human_rights_Business_context.pdf) [accessed 18.03.2019]

29 Societies of Fear: The Legacy of Civil War, Violence and Terror in Latin America (von Krujit Koonings, Kees Koonings) – <https://books.google.de/books?hl=de&lr=&id=mCdsSrteGGoC&oi=fnd&pg=PA141&dq=Trade+Unions+in+Colombia+history&ots=cWU91JTSuq&sig=nCMz02e90GB0Cqx4v5rXL0Um-bk#v=onepage&q=Trade%20Unions%20in%20Colombia%20history&f=false> p. 142 [accessed 18.03.2019]. According to statistics of the World Bank, there were around 68 intentional homicides per 100,000 people in 2002. <https://data.worldbank.org/indicator/VC.IHR.PSRC.P5?end=2016&locations=CO&start=1995&view=chart> [accessed 18.03.2019]

30 Richani, Nazih (2013) Systems of Violence, Second Edition: The Political Economy of War and Peace, p. 3 [accessed 18.03.2019]

31 See chapter 4.2.

32 Voluntary Principles Implementation Guidance Tools – [http://www.voluntaryprinciples.org/files/Implementation\\_Guidance\\_Tools.pdf](http://www.voluntaryprinciples.org/files/Implementation_Guidance_Tools.pdf) [accessed 18.03.2019]

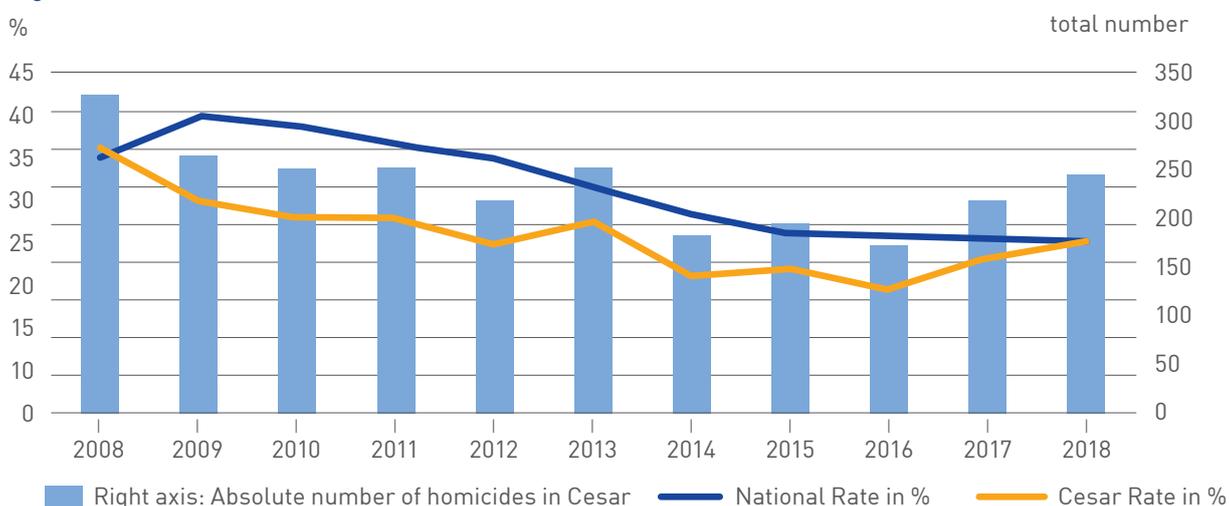
issues and initiate action to address them. The topic of threats to social leaders and the declaration that resulted is one such case in point. Mining companies are also one of the players participating in CREER's recently started project with a focus on trust and consensus building.<sup>33</sup> This project aims to ensure companies' collaboration with state and other stakeholders in the mining corridor for effective enjoyment of rights and is the first to have also taken into account the past, addressing to some degree the victims of the conflict. New scenarios to address issues between companies and communities are emerging progressively.

#### Situation today:

To put this straight at the beginning of this chapter, the crime and homicide rates in Colombia are still among the highest in the world according to UN statistics. Nevertheless, improvements can be deduced step by step over the past few years, but there have always been slight negative developments. Against the background of the constantly changing conditions on the ground, from civil war to conflicts in the drug trade to the peace treaty, it is hardly possible to establish the causality in relation to individual events on the ground. For this reason, several statistics have been consulted in this sub-chapter and they have been interpreted as cautiously as possible.

According to the statistics of regional Colombian think tank Cesore (Centro de Estudios Socioeconómicos y Regionales, (see figure 26) the national homicide rate in Colombia has dropped 33.9% in the last ten years, from 33.31 to 23.08 crimes per 100,000 inhabitants (upper line). In comparison at the departmental level, Cesar also shows a decrease in this type of violent crime. During the last decade, Cesar showed a reduction contraction of 33.75% of the indicator, a little less than the reduction of the national rate. However, as can be seen in figure 26 this downward trend has not continued every year, even though the national rate has decreased (bottom line).

Figure 26 > Homicide rate and homicide victims in Colombia in Cesar 2008–2018



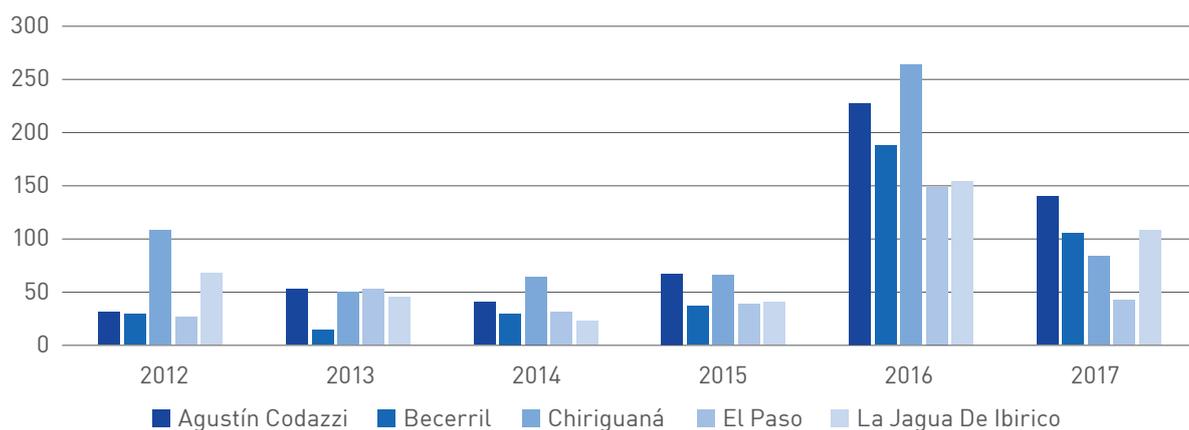
Source: Instituto Nacional de Medicina Legal, Forensis – CESORE

Intentional homicides have decreased in Colombia during the last 20 years. There were around 26 intentional homicides per 100,000 people in 2016 compared to 68 in 2002. Equally, assault and homicides have decreased in the mining corridor. As previously stated, Colombia remains one of the countries with the highest homicide rates in the world. Especially indigenous leaders and human rights activists are disproportionately threatened and killed. Between January 2017 and February 2018, 148 human rights defenders across Colombia were assassinated.

<sup>33</sup> For an overview of current efforts: CREER/Consensus Building Institute (2019) Una visión de paz y desarrollo en el corredor minero del Cesar – <https://www.creer-ihrb.org/documental-cesar> [accessed 18.03.2019].

In figures 27 and 28 the trend in the mining municipalities of Cesar in recent years is illustrated. The data show that crime has decreased and that in the context of the initiation of the peace treaty (before, during and after) the number of violent events has risen sharply. According to conflict researchers, this is related to the fragility of peace processes.

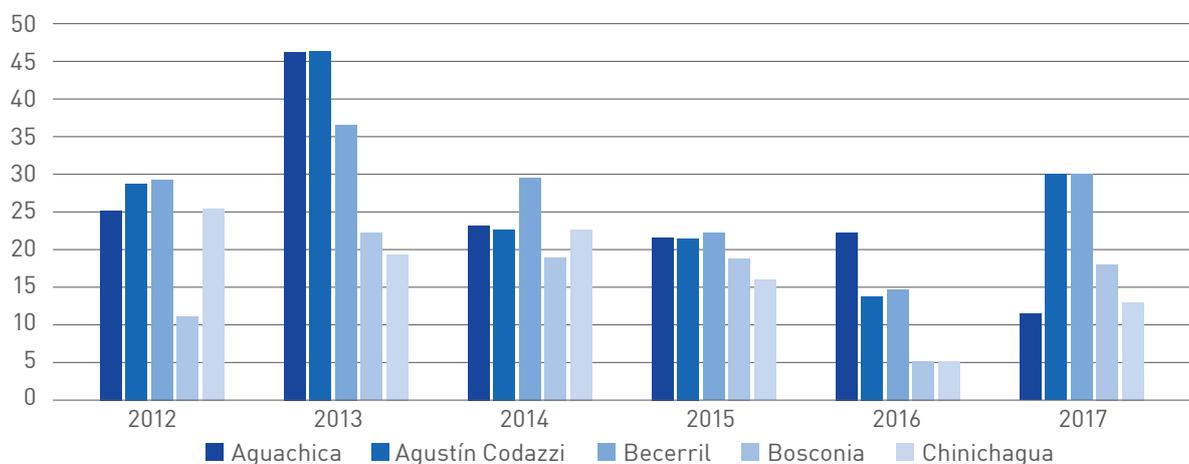
**Figure 27 > Assault rate on people in the mining corridor 2012 – 2017**



Source: <https://www.datos.gov.co/browse?q=homicidios&sortBy=relevance> [last accessed 25.02.2018]  
Created by: Centro Regional de Empresas y Emprendimientos Responsables – CREER

Outbreaks of threats, violence and homicides are still not uncommon in the mining region. For instance, in February 2018, the Gaitanist Self-Defence Forces of Colombia, which the authorities call the “Clan del Golfo”, circulated a pamphlet with threats to social leaders. This pamphlet was circulated mainly in the village of La Mesa, Azúcar Buena and in the neighbourhoods of La Nevada, Los Milagros, Don Alberto and Las Torres, in Valledupar. Eighteen human rights and social leaders from Cesar were named. They had all participated in a meeting in Cesar with the ambassadors of the Netherlands and Germany on 22 January 2018.<sup>34</sup> During personal communications in the communities of El Hatillo and Boquerón, local community members suspected that the power vacuum is being exploited by criminal gangs.

**Figure 28 > Homicide rate in the mining corridor 2012 – 2017**



Source: <https://www.datos.gov.co/browse?q=homicidios&sortBy=relevance>, last accessed February 25, 2018.  
Created by: Centro Regional de Empresas y Emprendimientos Responsables – CREER

<sup>34</sup> PAX (2018) – (<https://www.paxforpeace.nl/stay-informed/news/serious-threats-against-human-rights-defenders-in-cesar-mining-region> [accessed 18.03.2019] 145 Amnesty (2018) – (<https://www.amnesty.org/en/latest/news/2018/04/colombia-government-must-protect-human-rights-defenders-and-community-activists-amid-rising-violence/> [accessed 18.03.2019]

This viewpoint is shared by the international women’s human rights organisation MADRE that sees restructured paramilitary groups threatening “people that stand for human rights” but also afro-descendants, indigenous people, women’s organisations, women’s leaders and others.<sup>35</sup> Equally, Amnesty International concluded in 2018 that “the absence of the state and its failure to guarantee human rights has cultivated an environment in which community leaders can be attacked with impunity”. Human rights groups such as Amnesty International believe that illegal militia and organised crime groups wish to interrupt the peace process by threatening and killing human rights activists and social leaders.<sup>36</sup>

Aggravatingly, many of the criminal acts are not prosecuted due to a lack of strong executive authorities and a complex legal system.

In June 2018, Prodeco and Drummond pledged their support to the joint declaration of the rejection of threats to the life and integrity of persons – an initiative to bring threats to social leaders and defenders of human rights to an end.<sup>37</sup> The document that was signed on 7 June 2018, is the result of the work carried out by the Human Rights and Coal Working Group, comprised of the Presidential Advisory on Human Rights, the Ministry of Mines and Energy, the National Mining Agency and the Mining Corridor Companies of Cesar and La Guajira and the foundation Ideas for Peace, and is led by the Regional Center of Companies and Responsible Entrepreneurship (CREER). The declaration includes the following statements:

1.	Our total rejection of all acts of violence, stigmatization and threats against the life and integrity of any person, with special emphasis on social leaders and human rights defenders.
2.	Our recognition of the work carried out by human rights defenders and social leaders for the defense of rights and the attainment of a more just and egalitarian society; as well as the need to guarantee their participation and to generate actions for their protection as a fundamental pillar in the construction of peace.
3.	That we reiterate the commitment of the State to protect people against the violation of their rights; from the private sector to respect human rights, and from civil society together with the previous ones, for the promotion of the exercise of human rights at all times and places.
4.	And that we will continue joining efforts to work harmoniously, in accordance with the competences of the signatories here, in the collaboration between the State, the companies and civil society for the development of actions and mechanisms around the protection and respect for people’s lives and physical integrity, with special emphasis on social leaders and human rights defenders.

In 2017, Drummond and Prodeco completed the entry process to the multi-stakeholder Comité Minero Energético (CME), which is the Colombian chapter of the international VP initiative. The main objectives of CME are to contribute to the strengthening of the management of state institutions and companies with respect to human rights and security; to share, promote and generate good practices; to be a forum for the discussion of human rights and security issues among its members, civil society and other state institutions; to promote the implementation of the Voluntary Principles on Security and Human Rights and to interact with the plenary of that initiative (<http://cmecolombia.co/>).

35 MADRE (2010) – <https://www.madre.org/press-publications/press-release/take-action-colombian-organizations-receiving-death-threats-again> [accessed 18.03.2019]

36 The Conversation (2018) – <http://theconversation.com/colombias-murder-rate-is-at-an-all-time-low-but-its-activists-keep-getting-killed-91602> [accessed 18.03.2019]

37 Drummond (2018) – <http://www.drummondltd.com/joint-declaration-of-rejection-to-threats-to-peoples-lives-and-physical-integrity/?lang=en>  
<http://www.grupoprodeco.com.co/en/media/corporate-news/prodeco-group-ratifies-its-commitment-protection-and-respect-human-rights-el-cesar/> [accessed 18.03.2019]

## Environmental and health impact

### Main challenges

The environmental impacts of coal mining in the department of Cesar and its links to health are some of the greatest concerns of the communities and local institutions. Air pollution is the most frequent cause of self-reported illnesses in the communities. Next to air pollution, there are alleged effects on the surface, the surroundings, surface water, groundwater, soil, flora, wildlife and the microclimate with the associated effects on the health and livelihoods of people. Over the years, the impression has spread among the local communities that environmental impacts have led to the disappearance of sacred sites and prevented daily activities for local community members such as washing clothes and collecting water.<sup>38</sup>

### Past situation

In 2009, the Forestry Compensation Programme was begun in the Serranía del Perijá in the watershed of the Sororia and Tucuy rivers, in the municipality of Jagua de Ibirico. This programme – operated by Fundación ProSierra Nevada de Santa Marta and undertaken within the framework of mining companies' compensation programmes – aims to protect trees and improve water regulation.<sup>39</sup> Seven mining companies are participating in the project and contributing resources for economic incentives to “environmentally protective families” who – with support from the companies and Corpocesar – provide continuity to environmental protection activities. The programme also included productive activities in the communities and by 2010 a few hundred hectares of forests have been recovered. The project implementation is being continued by coal companies in Cesar.

A number of reports from state actors, such as the German Federal Environmental Agency, and local and Western civil society claim that pollution from coal mining has contaminated drinking water and that the health of inhabitants was seriously impaired by headaches, rashes and lung problems.<sup>40</sup> Inhabitants from the villages close to the mine have reported deaths of local residents due to the heavy pollution, as well as cramps, loss of consciousness, shivering, eye problems, sterility of women and the often-mentioned problem of dust lung (Pneumoconiosis), which leads to considerable coughing attacks.

Dust was insufficiently monitored in 2010 – there were 21 monitoring stations in place, which were managed by the regional environmental authority. There have been debates as to whether the quantity of stations has been sufficient. The regional air-quality monitoring network of Cesar was designed by environmental authorities (Corpocesar and Ministry of Environment) following national and international protocols for this technical matter and is operated independently by Corpocesar.

38 CREER (2016) Sector-wide Impact Assessment of the Mining Corridor in Colombia – <https://www.ihrb.org/focus-areas/commodities/report-sector-wide-impact-assessment-of-the-mining-swia-in-colombia> [accessed 22.02.2019]

39 The Pro-Sierra Nevada de Santa Marta Foundation, created in 1986, is a non-profit, non-governmental organisation with mixed participation, whose main objective is the development of scientific, technological and research activities in order to generate and disseminate knowledge, strengthening the organisational aspect and concerted management of the territory of the Sierra Nevada de Santa Marta for the conservation and protection of its ecological and cultural heritage. [www.prosierra.org/index.php/que-hacemos/proyectos-ejecutados](http://www.prosierra.org/index.php/que-hacemos/proyectos-ejecutados) [accessed 25.06.2019]

40 Bundesanstalt für Geowissenschaften und Rohstoffe (2016), Menschenrechtsrisiken im kolumbianischen Rohstoffsektor – Ein Überblick p. 14 – [https://www.bmz.de/rue/includes/downloads/bgr2016-de-menschenrechtsrisiken\\_im-kolumb-rohstoffsektor-low-res.pdf](https://www.bmz.de/rue/includes/downloads/bgr2016-de-menschenrechtsrisiken_im-kolumb-rohstoffsektor-low-res.pdf) See also further studies, e.g. by the German Federal Environment Agency (UBA), which point to environmental hazards caused by coal mining, German civil society FIAN – [http://www.fian.de/fileadmin/user\\_upload/dokumente/shop/Bergbau/2012\\_FIAN\\_Bergbaustudie\\_screen.pdf](http://www.fian.de/fileadmin/user_upload/dokumente/shop/Bergbau/2012_FIAN_Bergbaustudie_screen.pdf), German Radio DLF [https://www.deutschlandfunk.de/umweltschaedliche-kohle-aus-kolumbien.697.de.html?dram:article\\_id=235765](https://www.deutschlandfunk.de/umweltschaedliche-kohle-aus-kolumbien.697.de.html?dram:article_id=235765) [accessed 25.06.2019]

Watering roads, compacting coal in waggons, covering unloading stations and similar initiatives were performed. In 2011, the first PM 2.5 air measurements were introduced by the environmental authorities.<sup>41</sup> In former Colombian air-quality regulation (updated in 2006 and 2010), PM 2.5 was required when there were issues to comply with PM 10 limits. Despite that, Corpocesar had been monitoring PM 2.5 since 2011 in representative stations such as La Loma Centro and La Jagua Centro. At that time no issues had been reported of a lack of compliance with PM 2.5 regulations, however the monitoring results had not been made public at that time.<sup>42</sup> Yet being aware of the recurrent dust problem in the vicinity of coal mines, a road that was frequently used for coal transportation trucks was paved by Prodeco in 2011 to further reduce dust emissions.<sup>43</sup> Drummond equally highlighted in 2010 that they started to measure suspended particles in the air and that the wetting of roads and storage areas was a regular initiative to reduce airborne pollutants.<sup>44</sup>

As late as 2014, non-state players complained – also at the conference in Bogotá in 2014 (see chapter 3.3) that there was no publicly available information available from environmental and mining authorities on environmental impact studies, management plans or mine closure plans – or monitoring reports carried out by environmental authorities to examine the effects on the environment and health. Air quality and water quality management and regulations and the monitoring thereof are supposed to help in better understanding the actual environmental impact, but at that time, no sufficient data was made available to the public.

#### What has been done?

The mining companies have put in place control measures for dust, water use and discharge, and noise and vibrations, increasing their efforts from 2013/14 onwards. For example, Drummond has established 169 monitoring stations on the tributaries upstream and downstream of the discharges from the wastewater treatment systems of its mining projects to monitor and understand the status of the water quality. The results are analysed in an environmental laboratory which is accredited by the Institute of Hydrology, Meteorology and Environmental Studies (Instituto de Hidrología, Meteorología y Estudios Ambientales – IDEAM). To illustrate the state of the quality in these stations, the Water Quality Index (WQI) is calculated, which identifies the impact the discharges of Drummond's mining projects could have on the receiving streams.<sup>45</sup> Drummond has reported the results of its water quality monitoring programmes in its sustainability reports.

In December 2015, the Colombian Ministry of Environment, Housing and Territorial Development (MOE), tasked the Air Quality Laboratory in Cesar – Corpocesar – to produce official information related to the quality of the environment and renewable natural resources. This is done through regional measurement, rather than project by project, and without replacing the commitments of each project in its ANLA-approved environmental management plan.

The Air Quality Early Warning System was implemented – with the goal to identify pollution events in real time and reduce the number of times the daily norm for air quality was exceeded – by Prodeco in 2015 after being identified as a good practice by other Glencore operations in Australia. From that experience, other mining companies and Corpocesar implemented that technology in the internal and regional air quality networks.

They concentrate on supplying equipment to fulfil the objectives and scope of the Air Quality Laboratory and the Air Quality Early Warning System. As part of the initiative, there are bimonthly working round tables with representatives of the mayor's offices of Cesar, mining companies, health authorities, ANLA and the Ministry of the Environment and Sustainable Development. The working round table was developed as part of the governance of the regional air quality network of Cesar. The meetings evaluate strategies and actions that aim to manage air resources in the region.

41 Particulate matter (PM) is a term used to describe the mixture of solid particles and liquid droplets in the air. It can be either human-made or naturally occurring. PM2.5 refers to atmospheric particulate matter (PM) that have a diameter of less than 2.5 micrometers, which is about 3% the diameter of a human hair. <https://laqm.defra.gov.uk/public-health/pm25.html> [accessed 25.06.2019]

42 See comments from various local community representatives and academics at the 2014 joint conference in Bogotá.

43 Prodeco Sustainability Reports (2010/2011), see above.

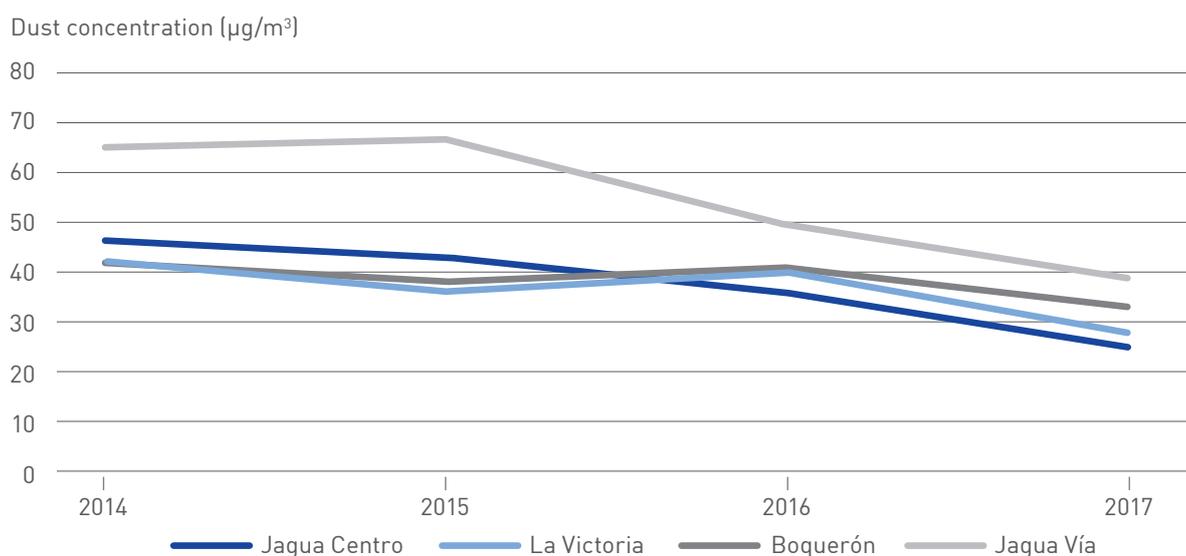
44 Drummond Sustainability Report (2010), see above.

45 Drummond Sustainability Report 2015, p. 125, see above.

### Situation today

Air quality has, depending on the community, significantly improved between 2014 and 2017,<sup>46</sup> as can be seen in figure 29.

**Figure 29** > Dust concentrations in Jagua Centro, La Victoria, Boquerón and Jagua Vía between 2014 and 2017



Source: Data gathered from Prodeco Sustainability Report 2017, p. 130

This is believed to be at least partly the result of the increase in control measures being undertaken in the mines, including the dampening of roads and other working areas in the mine, fog cannons and the paving, cleaning and sweeping of urban roads, among others. Additional to these reasons, the implementation of integral solid waste management systems in La Victoria and Boquerón has also been very important for the reduction of PM 10 concentrations. All stations shown in the figure 29 have been complying with regulations ( $50 \mu\text{g}/\text{m}^3$ ). The main sources of PM 10 are unpaved roads, coal piles, domestic waste burning, wood cooking and forest fires. People living in Colombian coal mining communities are still more likely to develop heart and lung diseases, cancer, hypertension and kidney disease. There is still a debate as to whether the mortality rate in Cesar is higher than in other communities.<sup>47</sup> In the recently updated Colombian air quality regulation (2017), PM 10 Total Suspended Particles (TSP) was removed and PM 2.5 was included as mandatory, so Corpocesar is currently in the process of extending PM 2.5 monitoring to all the regional network.

Table 10 summarises the number of people with chronic respiratory illnesses in the mining corridor. As can be seen, the numbers decreased between 2014/15 and 2017 quite markedly. It is too early to be confident about any type of cause-and-effect relationship, but it is possible that these are the very first results of the mining companies' efforts to decrease airborne pollutants.

<sup>46</sup> Prodeco Sustainability Report 2017

<sup>47</sup> Journal of Environmental and Public Health [2018] Intake Fraction of PM10 from Coal Mine Emissions in the North of Colombia – <https://www.hindawi.com/journals/jep/2018/8532463/> [accessed 18.03.2019] Recent studies developed by Corpocesar have also shown that PM10 concentrations in Cesar are caused by a combination of sources, and not only by mining. Public paved and unpaved roads, domestic waste burning, forest fires and wood cooking have also an impact on PM10 concentrations.

**Table 10 > Chronic respiratory illnesses**

Percentage of persons per 10.000 inhabitants

Mining corridor municipalities	2012	2013	2014	2015	2016	2017	Overall total
Agustín Codazzi	5.20	4.01	7.03	6.54	5.90	4.86	33.54
Becerril	3.67	5.65	3.45	4.27	4.98	2.25	24.28
Chiriguana	1.47	3.14	12.55	4.58	7.57	1.57	30.88
El Paso	2.69	2.82	3.09	8.18	2.82	0.86	20.47
La Jagua De Ibririco	6.91	4.50	6.85	8.30	4.71	0.67	31.94
<b>Overall total</b>	<b>19.94</b>	<b>20.12</b>	<b>32.98</b>	<b>31.87</b>	<b>25.98</b>	<b>10.22</b>	<b>141.10</b>

Source: Ministry of Health. <http://www.sispro.gov.co/Pages/Contruya%20Su%20Consulta/Prestaciones.aspx>  
 Created by: Centro Regional de Empresas y Emprendimientos Responsables – CREER

Closure and rehabilitation plans represent a last chance to address the adverse impacts of mining. In Colombia, the closure and decommissioning plans for mines and ports are approved by the Environmental Licensing Authority ANLA (and can be viewed there, EnBW has done so March 2016) as part of the licensing process for the development of the mine. Closure dates are included in all mining licences and as noted in the illustrations, both mines are already implementing elements of the closure plan.

EnBW has checked the existence of the closure plans with the mining companies but not evaluated their appropriateness. Moreover, it has to be considered that not all development can be foreseen at the time of licensing and that the actual environmental needs and those of local communities might be the same. EnBW has not been able to review whether the mine closure plans address the full range of human rights and environmental impacts as part of this study.

The aforementioned Forestry Compensation Programme has, to date, achieved various results, such as 3,674 ha of preserved forests, 140 ha of restoration and 367.5 ha of agroforestry systems in Cesar.

Drummond has been executing its closure plan practically since the start of operations. In the past three years progress was made in rehabilitating areas on a total of 58 hectares (2015), 71 hectares (2016), 143 hectares (2017) at the La Loma project and at the El Descanso project.<sup>48</sup> Based on information from Drummond, by the end of 2018 they had rehabilitated 1,146 hectares of disturbed land in total. These processes have been complemented with the geomorphological implementation of the dumping areas, which includes the construction of bodies of water at the different dumping levels, landscaping and the construction of canals. Additionally, progress has been made in backfilling, seeking to maximise the areas that will return to ground level for subsequent replanting.<sup>49</sup>

In 2016, Prodeco hired a land rehabilitation expert to improve its methodologies and field activities, to reinforce the positive impacts of these actions and obtain optimum results. The expert began with an assessment to identify improvements to its methodology, with the goal of progressive rehabilitation and a focus on the fundamental role of soil and plant cover. On this basis, Prodeco introduced new rehabilitation practices for revegetation and reforestation.<sup>50</sup> In 2016 they piloted this new methodology at Calenturitas and La Jagua. Based on information from Prodeco, by the end of 2016 they had rehabilitated 1,033 hectares of disturbed land in total, of which 41.5% relates to Calenturitas and 58.5% to La Jagua.<sup>51</sup>

48 Drummond (2017) Sustainability Report, and the Drummond ICA PBN report has been made available which is the Environmental Compliance Report to the environmental authorities.

49 Drummond (2016) Sustainability Report, see above.

50 Prodeco (2016) Sustainability Report, see above.

51 See previous footnote.

The recent progress in addressing the environmental and health impacts of current mining activity is notable, however during the EnBW site visit in 2018 it was clear that the communities do not yet have confidence that the mining companies are truly addressing these impacts appropriately. On many occasions, EnBW has heard about the legacy of past environmental impacts on the natural environment and its use by the communities – for example, possible effects of pollution that occurred in the past, before ANLA tightened the emissions regulations. These long-term issues have had a significant impact on the ability of local communities to meet their own needs and communities feel they are not being adequately addressed. According to an increasingly widespread interpretation of the UN Guiding Principles, the mining companies are expected to address their adverse impacts, whether permitted by law or not, and therefore addressing these legacy impacts needs to be part of closure planning.

## Resettlement

### Main challenges

The resettlement of communities near mines is often required because coal mining deposits lie under or next to communities and cannot be exploited without surface access, or because there is an unavoidable impact of nearby mining on the community, e.g. dust, which necessitates resettlement to preserve the health and well-being of the community. Resettlement can be particularly difficult because there are differing expectations within communities on locations, housing and infrastructure, as well as the amount of financial compensation.

### Past situation

In 2010, it was decided by the Ministry of the Environment, Housing and Territorial Development by resolutions that three towns in the area of La Jagua and El Paso (Plan Bonito, El Hatillo and Boquerón) had to be resettled (see figure 30).<sup>52</sup> The original obligation was initially under the mining concessions and environmental management plans of Prodeco and CNR, the 2010 resolutions then imposed the obligation on Drummond as well.<sup>53</sup> However, two years later in 2012, there were still no resettlement plans in place for the communities. With no regulatory framework providing a clear standard for resettlement in Colombia, roles were unclear and there was no best practice to follow.

### What has been done?

At that time Drummond, Prodeco and CNR had the obligation according to the ANLA resolutions of resettling the towns of Plan Bonito and El Hatillo, in the jurisdiction of the municipality of El Paso, and the town of Boquerón, in the jurisdiction of La Jagua de Ibirico. The resolution clearly states that the resettlement process has to follow the Operations Manual of the World Bank and IFC Standards for Resettlements and meet the best international practices that have been set in terms of resettlement.

Drummond emphasised that this resettlement process in which it is currently, and has been, participating is taking place by virtue of an obligation imposed by the environmental authority but it is not a process for which Drummond as a company should be responsible since none of the towns to be resettled, Plan Bonito and El Hatillo (municipality of El Paso) and Boquerón (municipality of La Jagua de Ibirico), are within the mining concession agreements.<sup>54</sup>

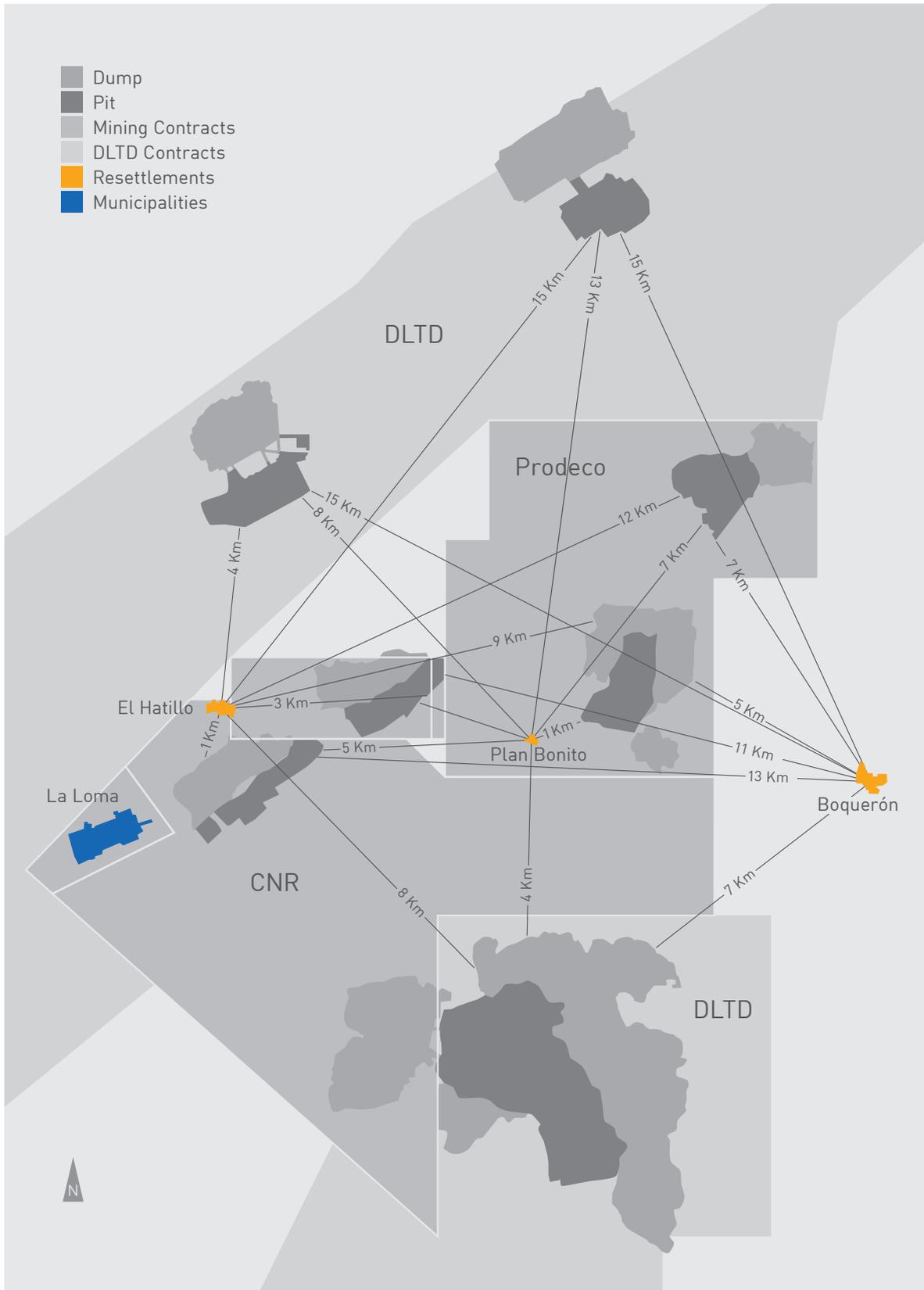
The resettlement process has to – according to ANLA’s resolution – be performed in conformity with norms and best international practices, which tend towards the maintenance or improvement of the conditions of life in the towns that will be purpose of the same. It is supposed to be a process of agreement on concerted action that is built by mutual agreement with the communities, with the approval and active participation of them. The agreements that are attained in this process are structured and registered in a document that is referred to as a Resettlement Action Plan (RAP), which defines the procedure and the way to execute the resettlement. For

<sup>52</sup> Prodeco Sustainability Report 2010/Drummond Sustainability Report 2016

<sup>53</sup> Please see Resolutions 0970 of 20 May 2010 and 1525 of 5 August 2010 – [https://conflictos-ambientales.net/oca\\_bd/media\\_referencias/download/672](https://conflictos-ambientales.net/oca_bd/media_referencias/download/672) and <https://primeralineacom.co/wp-content/uploads/2019/03/Resoluci%C3%B3n-1525-de-2010-Ministerio-de-Ambiente-Vivienda-y-Desarrollo-Territorial.pdf> [accessed 25.06.2019] Resolution 0970 of 20 May 2010 states that initially the obligation to resettle El Hatillo, Plan Bonito and Boquerón was for Prodeco and CNR, then this resolution modifies the obligation and includes Drummond.

<sup>54</sup> Comment provided by Drummond after presenting the first full draft version.

Figure 30 > Mining areas and affected communities El Hatillo, Plan Bonito and Boquerón



Source: Provided by Drummond

the structuring and implementation of the resettlement process and the RAP document, the environmental authority demanded that the mining companies should hire, as the operator of the resettlement, a company with ample international experience in resettlement processes done under the guidelines and parameters of the World Bank and the Inter-American Development Bank (IADB).<sup>55</sup>

Since then, the mining companies have developed an inter-company collaboration framework for resettlement. The first implementation approaches by the organisations FONADE and, after 2012, REPLAN INC, a Canadian company that operated until May 2015, were not successful, so in 2015 Socya, a private company from Antioquia, was appointed as the resettlement operator by the mining companies and took over the tasks. This recent change of operator also followed ANLA's assessment that "the mining companies jointly identified various shortcomings and difficulties of both an administrative and methodological nature, which is why they decided to carry out a process they called 're-engineering'".<sup>56</sup>

In the aftermath, Socya, which has more than 40 years of experience in resettlements processes in Colombia, led the development and implementation of the abovementioned resolutions of the Ministry of the Environment, Housing and Territorial Development.

Socya is a private Colombian non-profit organisation which was established in 1960 by 30 leaders from the Antioquia region. The mining companies saw the need for an integrator who could act as a facilitator of public and private sector engagement for the construction of a more sustainable, inclusive and equitable country. Socya's role has been to develop and implement Resettlement Action Plans for the three communities which meet the requirements of IFC performance standards, operational policies of the World Bank and of the Inter-American Development Bank and the legal framework approved by the parties and incorporated into the Resettlement Action Plan (RAP).

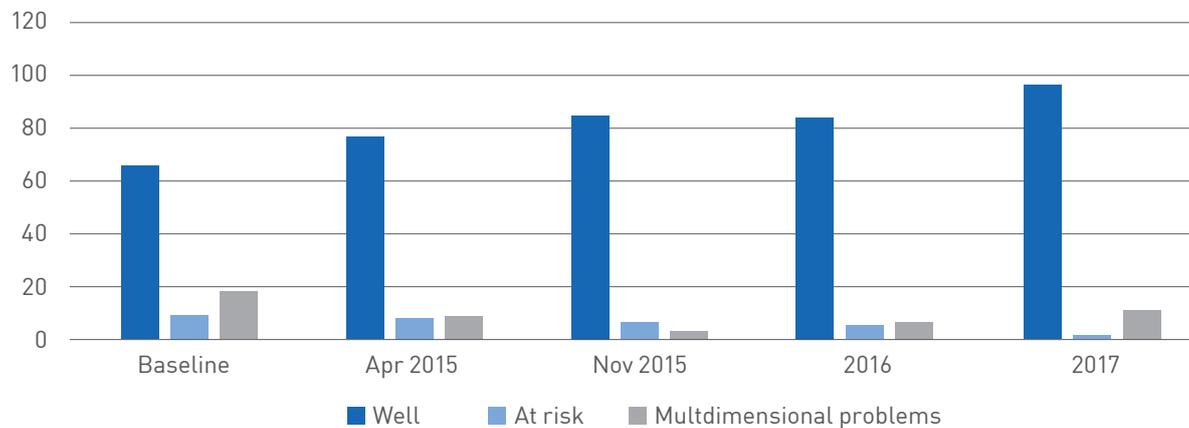
The Plan Bonito community has chosen individual resettlement, which means that each household moved to their new places of living in an independent manner, not as a group. The resettlement plan also includes support for business development, higher education and access to the national health system. Some 98% of the new community's population is now covered by the national health system and there is support for householders to use their compensation effectively and take advantage of the opportunities involved.

At the end of 2016, Plan Bonito's score on the global multidimensional poverty index (MPI: a policy measure developed by the Oxford Poverty and Human Development Initiative and UNDP) has improved compared with 2012. The number of households classified as being in poverty has reduced from 19 to 8, and the number of homes at risk reduced from 11 to 6. The number of households classified as experiencing wellbeing rose from 66 to 84 at the end of 2016, and 96 in 2018 (see figure 31).<sup>57</sup>

In El Hatillo the community council has defined ground rules for collective participation when discussing the Resettlement Action Plan and the actions to be taken before and during resettlement. The collective resettlement plan has taken longer than expected to negotiate, but the framework has been agreed in 2017 and was signed in 2018 after new land was identified and details finalised. Meanwhile the resettlement transition plan has been implemented in El Hatillo since 2014 to ensure that the community's living conditions are maintained or improved in the run up to resettlement. It includes six main areas of intervention. The total investment in the transition plan is around US\$3,135 million.

55 Drummond web page – <http://www.drummondlttd.com/social-responsibility/resettlement-process/resettlement-processes-of-plan-bonito-el-hatillo-and-boqueron/?lang=en> [accessed 25.06.2019]. In order to comply with the ANLA resolution, the mining companies chose, in the beginning, the Canadian company rePlan, which directed and guided the process as an operator. This company was the one responsible for devising the strategy and methodology addressed at the structuring of the agreements between the companies and the communities for the purpose of resettlement, setting up a committee on concerted action in each town, where representatives from the community, members of the companies involved and rePlan participate. These committees met monthly to formalise agreements and generate action plans. They also met weekly under the scheme of "work tables", with an action plan leading to the consolidation of a RAP in each town. Parallel to the structuring of a RAP as core objective of the resettlement process, the government ordered that the mining companies make the implementation of a "transition plan", aimed at improving the conditions of life of the inhabitants of the mentioned hamlets, while the RAP is implemented and executed, and to guarantee the future sustainability of the families as part of the purpose of resettlement. The transition plan was begun in June 2012 in the town of Plan Bonito and El Hatillo.

56 See Internet news clipping Las2Orillas [2015] – <https://www.las2orillas.co/multinacionales-del-carbon-tardan-en-cumplir-la-ley/> [accessed 25.06.2019]  
57 Prodeco (2016) Sustainability Report

**Figure 31** > Households in Plan Bonito reporting well-being or otherwise 2015–2017

Source: CREER Report

The EnBW visit to Colombia in March 2018 included a meeting with community leaders in El Hatillo. The community described the process as long and difficult and said that delays impact the community adversely. They do not believe the mining companies take this adequately into account. Furthermore, the community continues to suffer adversely from environmental impacts predating the tighter environmental limits – the local people claim that over 50% of the community depended on the Calenturitas river before its diversion. The compensation provided to those affected by the river diversion has not fully replaced the cumulative negative environmental, economic and social impact. For this reason, the members of the community have been very unsatisfied with the delay in the resettlement process. As stated above, in November 2018, the community of El Hatillo reached an agreement with the three mining companies involved in the process on its resettlement plan.

Socya and the mining companies have found progress in Boquerón difficult to come by. Unlike El Hatillo where the leaders of the coordination committees live in the village, the leaders of the Boquerón committees' own land but do not live there.

Having started topographic mapping of the people to be resettled in 2016, the socio-economic census was delayed in 2017 when residents claimed the Boquerón Concertation Board was not representing them. An influx of new residents after the resettlement was announced has led to a fractured community with unclear representation – in 2014 there were 344 households in Boquerón, and just two years later in 2016 the topographical survey identified 1,626 households (an increase of 472%). This population influx, according to the perception of local communities, has also had an impact on the social relationships with the constant arrival and departure of families from different regions undermining social cohesion, reducing community organisation and fostering conflict within the communities (Ombudsman's Office and the German Institute for Human Rights, 2017). While a new negotiation strategy was established by Socya, the original decision to resettle was based on a high estimate of emissions – and current air measurements suggest that Colombian air quality standards are being met, potentially avoiding the need for resettlement. The mining companies now believe the best option for the community would be to remain and have made presentations to this effect to ANLA.<sup>58</sup>

Mining companies, such as Prodeco emphasise that under the mentioned resolutions issued by the Ministry of Environment, Home and Territorial Development the mining companies are required to resettle the communities of Plan Bonito, El Hatillo and Boquerón, as a purely preventative and pre-emptive measure, in anticipation of potential future increases to mining activities and not because of extremely high levels of air contamination.<sup>59</sup>

<sup>58</sup> The community of Boquerón, marked for resettlement, is now estimated to be at least 2.5 times the resident population, and this has led to difficulties in organising and negotiating a resettlement action plan. Furthermore, this population influx, according to the perception of local communities, has also had an impact on the social relationships with the constant arrival and departure of families from different regions undermining social cohesion, reducing community organisation and fostering conflict within the communities. (Ombudsman's Office and the German Institute for Human Rights, 2017).

<sup>59</sup> Comment provided by Prodeco after presenting the first full draft version.

### Situation today

The diagnosis and formulation of the Resettlement Action Plans involve multi-stakeholder engagement with community representatives, community advisors, ombudsmen, mining companies, NGOs, state bodies and experts/auditors. Each resettlement action plan has to be signed off by the community. The status of the resettlement process in 2018 in each of the three communities is set out below set out below in figure 32:

**Figure 32 > Percentage of population citing unsatisfied basic needs in mining areas**

Community	Scale	Type	Current status or RAP	Current activities
Plan Bonito	173 families, 98 residents and 75 non-residents	Individual	The plan was signed on 26th January 2014, resettlement took place in August 2014	Post resettlement restoration of livelihoods
El Hatillo	322 families, 190 residents and 132 non-residents	Collective	Agreed, the plan was signed on 20th November 2018	Transition plan to maintain or improve living conditions plus initial action to exclude the RAP as per the agreed plan
Boquerón	650 residents, non-residents undetermined	Collective	Delayed, ANLA review of whether resettlement is required	Limited number of components of social development plan

Source: CREER Report

There have been considerable complexities in the development and implementation of resettlement plans for the three communities. While the Plan Bonito community decided to accept individual resettlement, the collective approaches taken in both El Hatillo and Boquerón have first posed questions of community organisation and representation. In the case of Boquerón this has been complicated further by land-holding patterns and a substantial influx of new residents following the announcement of the resettlement. The mining companies, however, seem to have now found a competent partner in Socya and while the negotiations have taken longer, Socya has been able to reach agreements with the communities. In view of the extended duration, the mining companies have supported the transition plan in El Hatillo and the non-resettlement plan in Boquerón in an effort to maintain the resilience of both communities.

## Living conditions & social investment

### Main challenges

People living in the vicinity of the mines have not necessarily profited from it. While some of the workforce comes from the surrounding villages, the skilled workers are often recruited from other parts of the country. According to NGOs that have a presence in Cesar, the familiar “honeypot” effect of mining is occurring, whereby significant numbers of migrants move into the mining areas attracted by the possibility of employment and put additional strain on the local infrastructure, institutions and environment.<sup>60</sup> Many people in the region hoped and expected that the coal industry’s presence would increase living standards for the whole region – either through salaries, direct funding of projects or indirectly through royalties.

### What has been done?

The many years of corruption by the rulers of Cesar, including the municipalities of the mining corridor, means that the populations in the area have not seen mining sector growth translating directly into better public service for the people and eventually improved living conditions. In rural areas there is a higher level of poverty in comparison to urban regions. The municipalities have not yet fully developed the capacity to be

<sup>60</sup> German Institute for Human Rights (2017) Closing Gaps in Protection: Transnational Cooperation on Human Rights –[https://www.institut-fuer-menschenrechte.de/fileadmin/user\\_upload/Publikationen/Information/Information\\_14\\_Promising\\_Practice\\_Closing\\_protection\\_gaps\\_in\\_the\\_human\\_rights\\_Business\\_context.pdf](https://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/Information/Information_14_Promising_Practice_Closing_protection_gaps_in_the_human_rights_Business_context.pdf) [accessed 18.03.2019]

able to make good use of the royalties from mining to support economic and sustainable development. Mining companies have also taken measures to improve the situation on the ground. Both Drummond and Prodeco have been working to strengthen the capabilities of the municipality to formulate royalty projects, e.g. by the strengthening of the civil society. Prodeco has, in the past three years since 2016, supported a programme that trained 120 leaders in the region (by PDP, a local NGO) in how to oversee that the authorities meet their commitments with the population. In another project they supported the strengthening of La Victoria and Estados Unidos communities in their developments of the PDET plan (Los Programas de Desarrollo con Enfoque Territorial (PDET)), which supported regions that have been affected by the conflict in their recovery.<sup>61</sup>

Through the efforts made by President Juan Manuel Santos, the presence of the state has expanded across large parts of the territory historically controlled by illegal armed players. Some threats persist, such as the so-called criminal groups (BACRIM in Spanish) that emerged after the demobilisation of the right-wing paramilitary militias in 2005. These groups are mainly sponsored by the lucrative business of drug trafficking, but their resource portfolio includes income from legal and illegal sources, for example, gold mining activities. For this reason, companies from the raw materials sector remain under suspicion of criminal involvement – regardless of whether there is evidence or not.<sup>62</sup> So far, no clear link between coal mining companies and criminal groups could be established, although this was always postulated in the past by mining critics. A range of different projects is funded by the mining companies, and services are provided that are normally provided by the government. In order to reduce poverty and increase the living situation of the people in the villages close by, education, healthcare and cultural programmes are supported.

Since 1995, Drummond funded programmes in the areas of education, culture, religion, healthcare and the environment. Programmes included, for instance, the equipment of schools, planting of trees, restoration of a basilica, building of a community library and construction of sports parks and similar endeavours. In 2010, Drummond also funded training for 110 community leaders, teachers and public officials on environmental education, management and social responsibility and scholarships for university education.<sup>63</sup> At that time, Drummond also highlighted that royalties paid benefited the local population through a range of different programmes and incentives. These included the provision of water and sewage systems, investments in healthcare and local hospitals, education, college scholarships, books and food for the elementary and secondary school and the provision of infrastructure such as paving of roads.

Drummond has significantly increased its payments for social and environmental investments from US\$917,033 in 2014, to US\$2,662,001 in 2016 and to US\$11,942,382 in 2018.<sup>64</sup> Money was invested into different projects, and taking 2016 as an example year, the largest part went into education and culture (39.85%), followed by maintenance of physical and road infrastructure (17.65%).

As early as 2010, Prodeco funded different projects in the area of education, healthcare and basic infrastructure. For instance, the company implemented programmes at high schools to reduce the number of teenage pregnancies and developed a classroom for disabled children. The years that followed saw a steady increase in money being spent on social services and programmes. Prodeco claims to have pursued a comprehensive approach from 2015 onwards.

Prodeco itself developed a vision around the well-known “creating shared value” approach, funding projects around the following topics: Enhancing quality of public education, increasing local capabilities (including the training of 120 civil society leaders and the social dialogue effort in La Victoria and Estados Unidos) and promoting income-generation projects. Prodeco also developed a series of projects to support the peace efforts by promoting high-impact rural development projects (among them, the collective project on 600 ha of Prodeco land benefitting 150 families, the fish farms and the small farmers development project with 350 farmers), along with the work done strengthening the coffee growers in the Serranía del Perijá. These projects are promoted in the Development Round Table chaired by the governor and attended by local

61 Also, see full list and map of Colombian regions implementing PDET here: [https://www.renovacionterritorio.gov.co/Publicaciones/municipios\\_pdet\\_subregiones](https://www.renovacionterritorio.gov.co/Publicaciones/municipios_pdet_subregiones); [https://www.renovacionterritorio.gov.co/librerias/media/pdf/municipios\\_pdet\\_MAPA\\_textos.pdf](https://www.renovacionterritorio.gov.co/librerias/media/pdf/municipios_pdet_MAPA_textos.pdf) [accessed 25.06.2019]

62 Bertelsmann Stiftung (2018) BTI Country Report – <https://www.bti-project.org/en/reports/country-reports/detail/itc/COL/> [accessed 18.03.2019]

63 Drummond (2010) Sustainability Report, see above.

64 Updated figures provided directly by Drummond.

authorities, civil society and other private companies. The impact of these projects is formally measured by an independent party every two years.<sup>65</sup>

All these programmes have the objective of supporting the improvement of the quality of lives of the communities within the area of influence of our operations, to contribute to the sustainability of the territory and work for their development and regional growth. In 2017, Prodeco's investments have been itemised by various investment lines, see figure 33.

**Figure 33 > Prodeco's social investment in 2017 in US\$**

Concept	2017
Administrative expenses	\$ 82,679
Information and communication	\$ 25,557
Education	\$ 688,380
Social capital development	\$ 661,770
Income generation	\$ 697,786
Special programmes	\$ 51,869
<b>Total investment</b>	<b>\$ 2,208,041</b>

Source: Prodeco

Summing up, relatively early on, from the moment the operations started in Cesar, companies provided investment that would have normally been provided by well-working governments. At the beginning these activities were "only" presented as social commitment, but it turned out more and more that a stable environment with satisfied people could also positively influence the economic development of the mining business.

### Situation today

Chapter 2.4 has already described in detail the economic development of the Cesar region. Many of the macro factors described have developed positively. The share in the GDP in Colombia has risen, this is particularly relevant because the absolute GDP has risen strongly since the end of the 1990s. Also, the royalties and taxes paid by the mining companies remain on a high level, the municipality investments have risen over years and the share of the population affected by poverty has strongly decreased in the last 15 years. So much can be said here about aggregated statistics.

Beyond these robust data sets, there is nevertheless the widespread impression in civil society that the local population does not benefit sufficiently from the positive macroeconomic developments and that coal regions are excluded from poverty reduction. On field trips to the Cesar region, there is often at first sight no clear evidence of change concerning the living conditions of the communities surrounding the mines. It looks like there has been no substantial improvement in living conditions yet. Statements are made to the effect that investments and projects by the two coal producers have increased poverty in Cesar, and this was even supported by one UN study.<sup>66</sup> The many years of corruption by the rulers of Cesar, including the municipalities of the mining corridor, means that the populations in the area have not seen mining sector growth translating into better living conditions.<sup>67</sup> According to the Report of the Comptroller General's Office, in the five mining municipalities of Cesar the "quality of life has not only not improved, but in most cases, is delayed in contrast to other regions of the country".<sup>68</sup>

<sup>65</sup> Drummond (2017) Sustainability Report, see above.

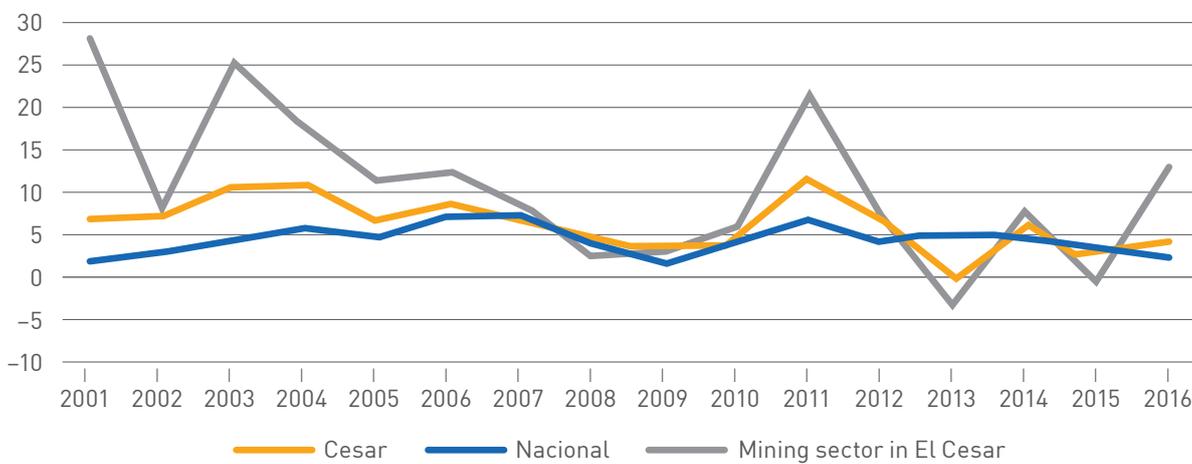
<sup>66</sup> Eye on Latin America (2014) Colombia: UN links coal mining to rise in poverty, putting progress in poverty reduction at risk – <https://eyeonlatinamerica.com/2014/01/23/colombia-un-coal-mining-poverty/>; <https://colombiareports.com/large-scale-mining-increase-poverty-northern-colombia-un/> Unfortunately, there is no longer any link to this UN study. [accessed 18.03.2019]

<sup>67</sup> G. Rudas (2014) La minería de carbón a gran escala en Colombia: impactos económicos, sociales, laborales, ambientales y territoriales – <http://library.fes.de/pdf-files/bueros/kolumbien/11067.pdf> [accessed 18.03.2019]

<sup>68</sup> G. Rudas/ J. Espitia (2013) La paradoja de la minería y el desarrollo. Análisis departamental y municipal para el caso de Colombia – [https://www.researchgate.net/publication/290992326\\_La\\_paradoja\\_de\\_la\\_mineria\\_y\\_el\\_desarrollo\\_Analisis\\_departamental\\_y\\_municipal\\_para\\_el\\_caso\\_de\\_Colombia](https://www.researchgate.net/publication/290992326_La_paradoja_de_la_mineria_y_el_desarrollo_Analisis_departamental_y_municipal_para_el_caso_de_Colombia) [accessed 25.06.2019]

These statements are surprising in that whenever the mining sector has been doing well in recent years, this has a positive impact on local economic development in Cesar. As an example, the growth of the gross domestic product in 2011 (10%) (the orange line in figure 34), correlates to a growth in mining of 20% in 2011, and similar effects could be seen in various years from 2002 to 2016. There are therefore some indications that domestic growth somehow correlates with coal extraction. This is because the share of this sector within the department's aggregate value has notoriously increased, to the point that it has become the main activity in the territory. For 2016, the mining exploitation represented 38.3% of the department's GDP. This value for 2000 was almost half (18.2%) while before 1993 it was almost zero. The highest historical record presented was in 2011 with 46% share.

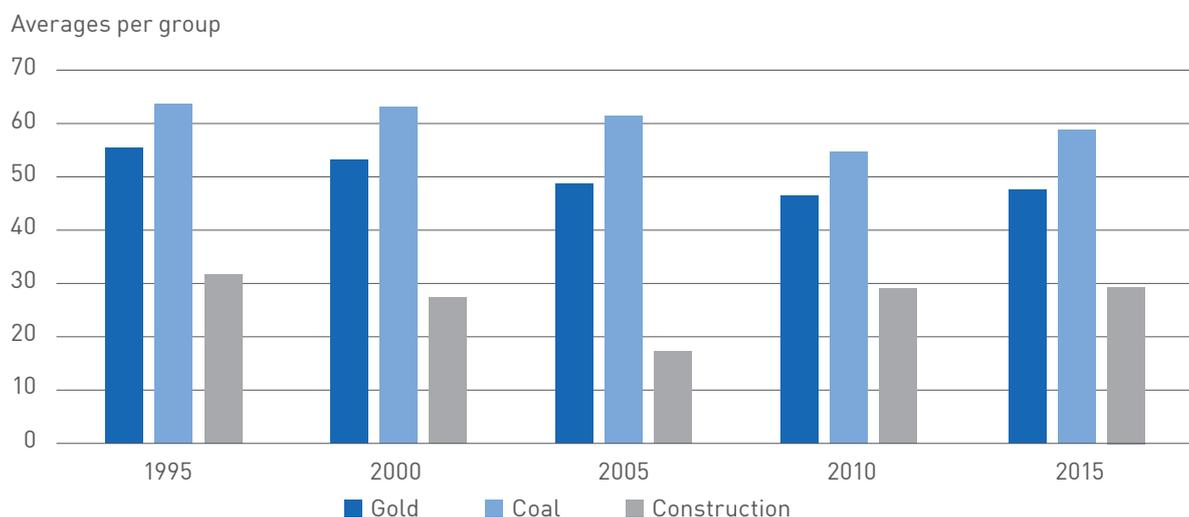
Figure 34 > Development of the national and Cesar's GDP with coal mining growth rates



These number-based representations contrast with the perceptions of many residents in the mine areas.

As can be seen in figure 35, in the mining sector, significant percentages of the population remain in poverty and with basic needs unmet. The perceived reality of the residents contradicts the figures. This is not easy to explain at first glance, but can be explained in different ways. This may be due to the systematic neglect and disadvantage of local residents in the vicinity of the coal mines, who have been subjected to gentle pressure to persuade them to leave the mines, or to the fact that they have not been able to adequately present their concerns to the mining companies and local authorities. Or the other way around, that the municipalities have not yet developed the capacity to be able to make good use of the royalties from mining to support economic and sustainable development. There are many explanations for the discrepancy between the individual perceptions and reports of civil society players. However, it is important that companies have also understood that they should work more directly with communities if they want to get to the bottom of this phenomenon and, at the same time, develop adequate remedies.

**Figure 35** > Percentage of population citing unsatisfied basic needs in mining areas



Source: CREER Report

The majority of local observers believe that the high level of corruption and inward migration are two of the main reasons why an improvement has not been observed.<sup>69</sup> Structural problems therefore limit the impact that investments in the region could have; in addition, an official governmental action plan on what can be done to change this situation has not been introduced for a very long time. Approaches, such as the aforementioned PDET, might provide some help. Created in 2015, the development of the PDETs contribute to the objective of helping the transformation of the Colombian rural sector aimed at reducing the gaps between the city and the countryside.<sup>70</sup> This is achieved amongst other things through the generation of participatory planning processes and investment in small infrastructure projects. Territories that are most affected by armed conflict, poverty, illicit economies and institutional weakness are the focus of these programmes.

Through their investments, coal companies have in many cases provided services and investments that normally the government should have provided. This was acknowledged by local stakeholders during EnBW field trips: “Over time, the government has transferred to the mining companies their responsibility regarding public services’ provision. Currently, all the public services (education, health, sports, culture, etc.) have been provided between the mining companies and civil society organisations” – (El Hatillo Community interview February 2018).

At the same time, it can be assumed that the situation on the ground will not improve when the coal companies leave. In an analysis conducted by the German Institute for Human Rights, the authors highlight that due to a lack of alternative employment opportunities, the region will suffer from economic deprivation once coal producers leave the area.<sup>71</sup> This was largely supported by statements from local and community representatives when EnBW visited the areas: Although the environmental and social problems were highlighted by many people that lived or worked in the mining area, the overwhelming majority of stakeholders (including local communities) agreed that it was not desirable that the mining companies stop producing coal or leave the area.<sup>72</sup>

In recent years, the companies have identified the need to strengthen local authorities in order to improve social and economic conditions for the inhabitants of the mining corridor. Both Drummond and Prodeco stressed in personal conversations with EnBW that they will further increase their local engagement. Prodeco highlights included workshops organised in 2017 with departmental and municipal bodies to assess compliance with the Sustainable Development Goals: It sponsored a diploma in strengthening capabilities

<sup>69</sup> These comments have been made by a number of conversation partners in Cesar during EnBW’s visits in 2016 and 2018.

<sup>70</sup> Agencia de Renovacion del Territorio – <https://www.renovacionterritorio.gov.co/index.php> [accessed 18.03.2019]

<sup>71</sup> German Institute of Human Rights (2017) – [https://www.institut-fuer-menschenrechte.de/fileadmin/user\\_upload/Publikationen/ANALYSE/Analyse\\_Schutz-luecken-schliessen\\_Transnationale-Zusammenarbeit-zu-Menschenrechten.pdf](https://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/ANALYSE/Analyse_Schutz-luecken-schliessen_Transnationale-Zusammenarbeit-zu-Menschenrechten.pdf) [accessed 18.03.2019]

<sup>72</sup> Statements by various stakeholder groups (including local NGOs, local communities) during the visits in December 2016 and February 2018.

for building the “Paz Territorial”, in partnership with the Cesar Development and Peace programme, and that it supported 27 Development and Peace programmes across Colombia to coordinate civil society and clarify and facilitate the peace process in each of the participating regions. Drummond highlights include several initiatives in place to strengthen local authorities, in order to improve social and economic conditions for the inhabitants of the mining corridor in cooperation with the National Agency for Reincorporation and Normalisation (ARN) and the Committee for Monitoring the Investment of Coal and Oil Royalties in the Department of Cesar (CSIR).

## Summary

This chapter has looked at six issues that are of particular interest to stakeholders in the context of coal mining and presents developments and progress in these topics. For each, it sets out the main challenge, the previous situation, the measures the mining companies have taken and the current situation on the ground.

In general, it is noticeable that the development in the selected issues is different. The largest development steps can be found in those issues where the direct influence of the mining companies is strongest. Progress is less noticeable in those areas where progress is also heavily dependent on state actors. Progress in the areas of occupational health and safety is more pronounced than in the areas of living conditions and improving the security situation on the ground. In the latter areas in particular, the assessment of those affected is negative, although there is ample evidence that the situation in terms of security and the economy has improved relatively.

Positive developments can be recorded in the field of occupational health and safety in the mines. In these issues, high international standards are applied. Comprehensive safety management systems have been introduced by both mining companies and the number of occupational accidents is declining and current performance is in line with professional industry-standard practices. Relations with trade unions (in the sense of collective bargaining & engaging with trade unions) have also developed positively in principle. The legitimate role of labour representatives is recognised, more effective engagement with trade unions has been established and the number of strikes has fallen sharply, also the number of employees with collective agreements is relatively high in relation to the region.

The results in the fields of resettlement and of environmental and health can be classified as moderate to positive. Mining companies have put in place effective collaboration and operating practices for resettlement in the three communities affected in Cesar. Successes were achieved in the resettlement of the communities most affected by coal mining. In the community of Plan Bonito, the vast majority have reached agreements with the mining companies. In the municipality of El Hatillo, a framework agreement was signed last year, and in Boquerón, ANLA has still not decided whether resettlement is legally required and, if so, under what conditions a resettlement would take place in the event of a very strong (current) inward migration. The environmental and health protection were continuously developed. Environmental data is now collected on a regular basis by mining companies and the environmental authorities. The measuring procedures and thresholds were refined, although more transparency with regard to available environmental data and impact is needed. However, the dust concentration decreased constantly, and also first evidence of about the declining rates of respiratory diseases are available. In addition, neglected areas such as questions of forest recultivation and forest compensation programmes have made initial progress, and questions of mine closures and the time thereafter are also being actively addressed by mining companies for the first time.

The results in the areas of security and tackling violence as well as living conditions remain unsatisfactory without this being solely attributable to coal mining and mining companies. The crime rate in Colombia was, and still is, above average in international comparison, this applies to all parts of the country and also to the mining areas. The increase in killings of NGO and trade union activists throughout the country following the signing of the peace agreement is worrying. It is widely assumed that criminal groups want to disrupt the peace process by targeting activists in the communities. There is no evidence of the involvement of companies in the current incidents of violence. To the contrary the clear public condemnation of these acts by

mining companies and their advocacy of non-violence and a peaceful coexistence of all players, as well as participation in multi-stakeholder initiatives to build peace and trust, are strong positive signals, as is the full cooperation with local authorities. Yet, there remains the question of how to deal with victims from the past. Dealing with acts of violence in the past takes place very slowly within the framework of the government's reconciliation process. The study shows how important coal mining is for living conditions and social investment in the Cesar region as a whole. Despite widespread corruption and inward migration affecting the capacity of local public authorities to deliver services and projects, the socio-economic situation of the inhabitants of Cesar has improved significantly, even though the poverty level is still above average. However, the great dissatisfaction of the direct residents with the prevailing living conditions in the vicinity of the mining areas is a noteworthy negative factor. This has been recognised by the mining companies. In the past, mining companies have already stepped in where the state was absent and actively contributed to meeting the educational, health, sporting and cultural needs of communities. Today, more attempts are being made to support building the capacity of the local institutions and to target projects that support local employment and help build the self-sufficiency of local communities in an unprecedented way. The strengthening of local employment remains a challenge, as for example, according to one mining company half of the people employed come from Cesar while the other half comes from other regions. There is therefore, overall, reason to hope that the high taxes and levies paid by the mining companies will have a positive impact on the overall development, especially among the residents affected by coal mining. Recently, mining companies have recognised that they have to increase their efforts, particularly those that seek to develop alternative incomes and livelihoods to sustain the communities beyond mining.

Visitors to the Cesar region in recent years still notice the feeling of socio-economic stagnation. While there have been improvements, greater efforts must be made to adapt living conditions to those of other rural and urban areas. This chapter provides some indications to explain why this is so. Nevertheless, more in-depth analyses are still required.

# Overall conclusion

The present study is the result of an intensive and extensive process in which many stakeholders inside and outside EnBW were involved. While other studies focus more on the human rights risks in the coal mining areas in Colombia (see the Vattenfall study), the needs and concerns of individual local residents (see various NGO contributions) or the performance of mining companies in relation to external requirements (see Bettercoal Assessment Reports), this study focused on the questions of whether the attitude of mining companies to human rights and sustainability issues has changed substantially over the past seven years, and whether and to what extent progress has been made in key sustainability issues in the mining regions that have had a positive impact on working and living conditions in the mining regions. The aim was to present as objective a picture as possible of the overall situation in the mining regions using a mix of methods, and in particular on the basis of a large number of figures, data and facts. This approach is unprecedented so far because it goes beyond the presentation of individual cases, and because it places local developments in a larger context.

In summary, it can be said that the stance of mining companies towards sustainability and human rights issues has changed significantly for the better in recent years. Both companies, Drummond and Prodeco, have developed comprehensive internal structures so that step by step they have developed their human rights capabilities and are now in a much better position to fulfil their human rights duty of care. On this basis, a large number of measures have been initiated in various thematic areas, which have led to a gradual improvement in working and living conditions in the coal mining areas. Here, there are differences in the degree of progress made in the individual subject areas examined. Various factors play a role here: general framework conditions, the

interaction between coal exporters and importers, the development of competencies on the part of the mining companies, but also on the part of the local authorities, and the joint willingness of all stakeholder groups to establish new approaches to solutions in a multi-stakeholder setting.

The further (partial) results of individual subchapters are presented below. In order to answer the two questions raised, the analytical frameworks and catalogues of requirements were introduced in chapter 1, which served as a framework and evaluation grid for carrying out the analysis. The focus was on the UN Guiding Principles for Business and Human Rights and the newly presented OECD Guidelines for the Performance of Corporate Due Diligence for Responsible Acting, as well as the EnBW Code of Conduct, which summarises the material sustainability requirements for suppliers. The results of this study show that many “good and best practices” have already emerged in the application of the international standards, but that many questions still cannot be conclusively answered in their actual implementation, as no consensus has yet emerged in practice.

With regard to the context and the framework conditions under which the companies operate, it should first of all be noted – as it is explained in chapter 2 – that Colombia has stabilised as a state in recent years since the end of the open civil war, and is well on the way to becoming an established state modelled on Western standards in the areas of the rule of law and economic development. Colombia’s invitation to join the circle of OECD member states, as the only Latin American state apart from Mexico and Chile, as well as the generally positive trend in the economy is evidence in this regard. Colombia as a whole is heavily dependent on exports of raw materials, in particular the extraction and sale of hard coal. The study presents some evidence of this, starting with the rise in Colombian coal exports, the taxes and levies paid by mining companies, but also the resulting share of the Cesar region in Colombia’s gross domestic product.

It is often claimed that the Cesar region has benefited less from the nationwide upswing than other regions. The available figures do not support these claims. Investment at the municipal level has also risen steadily in recent years following the change in the distribution of taxes and levies on a project basis (with the aim of curbing corruption at the local level). Thus, the poverty rate has also declined continuously both nationwide and in the Cesar region, even though it is still at an unsatisfactory high level. Governance structures at the national, regional and municipal levels have been gradually strengthened, and these have been heavily challenged by the increased demands of the peace process in the last two years. The nationwide increase in violence by paramilitary groups, which can also be observed in the Cesar region, as well as the delayed and only gradual coming to terms with acts of violence from the past, are putting both the authorities and society to the test – particularly the section of the population committed to human rights, collective rights and freedom of association. For the latter points, coal-critical stakeholders often hold mining companies directly responsible or put them in a direct context, without this being undoubtedly proven or conclusively clarified.

In recent years – as described in chapter 3 – EnBW has also continuously expanded its own approach to the responsible procurement of hard coal in accordance with the UN Guiding Principles and the specifications of the National Action Plan of the German Federal Government. EnBW intensified its efforts to specify the requirements to be met by its suppliers, to analyse mining companies by introducing a sustainability registry for all potential coal suppliers, and to communicate the origin of suppliers for its own coal-fired power plants. In addition, the dialogue with the mining companies has been intensified step by step. A good working relationship has been established through various

on-site visits, so that there is now a direct line to the mining companies in the event of incidents and a direct response can be made to allegations, criticism or other forms of reporting and, if necessary, recommendations can be made for remedial action. Even if EnBW has not yet become a member of the company-driven Bettercoal Initiative, EnBW is in regular contact with a large number of coal importers in the search for appropriate solutions for the respective problem situation. Against the background of the prevailing conditions in Colombia and in the mining region described in chapter 2, EnBW needs to set an ambitious but also adequate level of expectations for the mining companies. As described in the UN Guiding Principles, EnBW must also demand the right starting points and appropriate measures in terms of scope and complexity (cf. UN Guiding Principles 14 and 19b) with a sense of proportion and depending on the influence of the mining companies, even if, for example, the mining companies have not directly contributed to the overall negative situation, as in Cesar (cf. UN Guiding Principle 13b).

Chapter 4 therefore first examined the internal structures of Drummond and Prodeco and thus the prerequisites for the development of measures in the classical sustainability fields, before chapter 5 analysed the six main sustainability topics (health and safety, collective bargaining and engaging with trade unions, tackling violence, environmental and health impacts, resettlement, living conditions & social investment) individually according to a uniform pattern. The core results have been presented in sections 4.3 and 5.7, which are summarised briefly here.

With regard to human rights due diligence practices – as laid out in chapter 4 – a number of factors that have contributed to positive developments over the last five years have been identified. These include, on the part of the mining companies the comprehensive establishment of internal structures to ensure respect for international human rights standards including a clear commitment to respect human rights, and the establishment of internal management systems to undertake human rights due diligence as set out in the UN Guiding Principles for Business and Human Rights.

Key sustainability impacts are addressed in chapter 5 focusing on various issues in the coal supply chain. In some issues, noticeable progress has been made, in other areas signs of progress can be seen, in others the effects are more limited:

Positive developments can be recorded in the field of occupational health and safety in the mines. In this area, high international standards are applied. Relations with trade unions (in the sense of collective bargaining and engaging with trade unions) have also developed positively in principle. The legitimate role of labour representatives is recognised, more effective engagement with trade unions has been established. The results in the fields of resettlement can be classified as moderate to positive. Mining companies have put in place effective collaboration and operating practices for resettlement in the three communities affected in Cesar. In the realm of environmental and health impacts, there have been initial advances. Environmental data is now collected on a regular basis by mining companies and the environmental authorities and some material progress has been detected, such as dust concentration decreasing constantly. The results in the areas of security and tackling violence remain unsatisfactory without this being solely attributable

to coal mining and mining companies. The crime rate in Colombia, including the mining region, is still above average in international comparison. The increase in killings of NGO and trade union activists throughout the country following the signing of the peace agreement is worrying, but the clear public condemnation of these acts by mining companies and their advocacy for nonviolence and a peaceful coexistence of all actors are strong signals. The study shows how important coal mining is for living conditions and social investment in the Cesar region as a whole. Despite widespread corruption, the socio-economic situation of the inhabitants of Cesar has improved, even though the poverty level is still above average. However, the great dissatisfaction of the direct residents with the prevailing living conditions in the vicinity of the mining areas is a noteworthy negative factor. This has been recognised by the mining companies and attempts are being made today to support capacity building of the local institutions and to target projects that help build the self-sufficiency of local communities in an unprecedented way.

As a general theme, it is therefore encouraging to see, as is shown throughout this study, that it has become apparent to actors from all sectors (politics, business and society), that they must pull together in order to make a lasting positive difference on the ground. This applies not only to the economic situation, but also to security and environmental aspects. For these reasons, many multi-stakeholder initiatives have emerged – in addition to the social engagement of the mining companies, which has been going on for years – with the aim of supporting the peace process and strengthening trust between the various sectors.

Which overall conclusions can be drawn from these findings? Accountability and human rights due diligence of businesses are easily put forward but difficult to live up to. EnBW has adopted its Code of Principles, developed a far-reaching sustainability registry for mining companies and

conducted regular site visits in Colombia. The mining companies have established due diligence practices, such as management mechanisms and monitoring applications, grievance mechanisms as well as sustainability measures. As a result, impacts at different levels have been achieved in various issues. Overall there is a mixed picture, but an overarching positive trend prevails in the majority of issues. This can be clearly seen as an achievement that results from EnBW's and other stakeholder's interactions and, to some degree, placing pressure on mining companies.

The available study results have already been intensively discussed with the mining companies Drummond and Prodeco and it was agreed to continue the dialogue on this basis, with an action plan to be defined. It is the aim of the next personal meeting between representatives of the mining companies and EnBW to substantiate and to agree on an action plan. The following aspects, among others, will form the basis for further cooperation: Annual updates and exchanges on the six topics examined, the setting of targets in these essential subject areas, taking into account the fact that not only the mining companies are solely responsible for success in selected subject areas, the special focus on the possibilities as to how mining companies can contribute to the improvement of working and living conditions and to the topic of safety as well as the regular reporting on how the mining companies exercise their human rights due diligence.

In addition, EnBW plans to make use of the collected findings of this study for its engagement and forthcoming on-site visits in other coal-supplying countries, such as Russia.

## Imprint

### Publisher

EnBW Energie Baden-Württemberg AG  
Durlacher Allee 93  
76131 Karlsruhe  
Germany

### Coordination

EnBW, Communication Media & Events,  
Sustainability

### Editorial staff

Twentyfifty, EnBW

### Fotos

Adobe Stock  
Drummond, Prodeco

### Editing

AdverTEXT  
Lektorat & Übersetzung für Werbung,  
Wirtschaft und Medien  
Doc Design

### Layout

TANDEM, Agentur für Kommunikation GmbH

### Printing

Elanders GmbH

### Contact

Dr. Lothar Rieth  
EnBW Sustainability  
nachhaltigkeit@enbw.com  
www.enbw.com/sustainability

### Publication date

July 2019



## For additional information

### **twentyfifty ltd**

The Old Church School,  
Butts Hill, Frome,  
Somerset, BA11 1HR  
United Kingdom  
[www.twentyfifty.co.uk/en/](http://www.twentyfifty.co.uk/en/)  
[info@twentyfifty.co.uk](mailto:info@twentyfifty.co.uk)

### **EnBW Energie Baden-Württemberg AG**

Durlacher Allee 93  
76131 Karlsruhe  
Germany  
[www.enbw.com/sustainability](http://www.enbw.com/sustainability)  
[nachhaltigkeit@enbw.com](mailto:nachhaltigkeit@enbw.com)