

Vattenfall's Efforts on Coal Supply Chain Responsibility

Human Rights Risk Assessment in Colombia
– update June 2021

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VATTENFALL

1. Introduction

With this report, we present the last and final update on our Colombian coal sourcing activities according to the requirements of the UN Guiding Principles for Business and Human Rights¹.

Our coal sourcing from Colombia has decreased step by step during the last five years². The closure of Hemweg in the Netherlands, the sale of our Heat business in Hamburg and the decision to close the Moorburg plant means that our overall coal sourcing volume for our own consumption decreased to 1.2 million tons in 2020 (compared to 4.4 million tons in 2019) and that we did not purchase coal from Colombia during 2020. Currently, we do not source any coal from Colombia for our remaining hard coal-fired plants in Berlin. This leaves us with no commercial relationship and hence no direct leverage on Colombian coal suppliers.

We are committed to the UN Guiding Principles and as such see there is a role for ourselves in helping to improve conditions in Cesar and La Guajira, the main coal mining regions in Colombia. This is an ambition that we cannot realise on our own. We have been an active member of the industry initiative Bettercoal for many years³ and were part of initiating the Bettercoal Colombia Working Group (CWG). The CWG, where we are a member of and provide input with our knowledge, will give continuous updates going forward.

In this update, we will give a summary of our main actions since we started planning our Human Rights Impact Assessment in 2016. We give an overview of the status of main issues in the coal supply chain in Colombia, of what we expect from stakeholders on the way forward and how we aim to work with Bettercoal, the CWG, and its members in order to improve conditions on site. The expectations that we address in this report are partly recommendations that are already taken up by the CWG Bettercoal. The other part of our recommendations reflect our current knowledge of the situation and we included these in this report as we think other stakeholders such as companies, NGOs etc. might find our view useful. We conclude with sharing some learnings that we made on the way of running a Human Rights Impact Assessment (HRIA). This may be beneficial to other organisations that would like to run similar processes.

2. What have we done so far

At Vattenfall, we believe in the individual responsibility of companies to perform due diligence in combination with the power of collective action when trying to address identified risks.

In 2017, responding to the concerns of several civil society organizations over the situation of local communities and the environment of the coal mining regions of Cesar and La Guajira in Colombia, Vattenfall performed a HRIA over our hard coal procurement process in these regions. Our main objective was to get a first-hand account of the environmental and social situation surrounding Colombian coal mines that export to Europe. We visited mines of the companies Cerrejón, Prodeco, Drummond and Colombian National Resources (CNR). We compiled all information we could gather by talking to stakeholders on site and through desktop research into a comprehensive report. This report aimed at identifying the most severe human rights impacts in the coal supply chain in Colombia. Our starting point for the assessment were critical voices.

¹ Hereinafter referred as the UN Guiding Principles.

² Consumption Colombian hard coal in Vattenfall plants in thousand tons:
977 (2016), 472 (2017), 301 (2018), 196 (2019), 0 (2020)

³ Bettercoal was established by a group of major coal buyers to promote the continuous improvement of sustainability performance in their coal supply chain by independently assessing the performance of coal mining operations against the ten principles of the Bettercoal Code through the Supplier Assessment Process. The independent assessments results in a Continuous Improvement Plan (CIP) on any possible findings. Bettercoal and Bettercoal Members expect the suppliers to improve their performance through addressing the findings going forward.
www.bettercoal.org

The table below is a summary of the issues we regarded as relevant for the four mining companies. The detailed findings of our report can be found in the HRIA.⁴

Table 1 – Summary of issues identified (Vattenfall Colombia Report 2017)

Workers' rights	<ul style="list-style-type: none"> Accident reporting Occupational illnesses / access to remedy Services provided by on-site health care units H&S companies' performance Union leader's security Subcontracting practices
Displacement and land restitution (Internal Armed Conflict)	<ul style="list-style-type: none"> Effectiveness and trust in the process Role of companies during the conflict and demand for an extrajudicial process Expectations towards mining companies with regards to remedy with the victims Communities security during restitution process and level of protection offered by public forces
Involuntary resettlement	<ul style="list-style-type: none"> Legitimacy and equality in negotiation process Eligibility criteria Ethics Timeframes and delays Living conditions / community investments Security concerns for community leaders (village of El Hatillo) Lack of trust in effectiveness of grievance mechanisms
Environment and communities	<ul style="list-style-type: none"> Air quality Noise and vibrations Impacts on fishing community Access to water Living conditions and community investments

In the next step, we used the report findings to establish a dialogue with the mining companies and to agree on a concrete action plan with each of the companies to provide remediation. As one result of this process, in 2018, we excluded Drummond from our list of approved coal suppliers, since Drummond decided to discontinue the direct dialogue with Vattenfall on our assessment and the action plan.

From the second half of 2018, we aligned our efforts with the work of Bettercoal more closely and supported the establishment of the CWG within Bettercoal. Vattenfall worked towards aligning the recommendations of our HRIA with the efforts of the working group and the issues identified in the companies' Continuous Improvement Plans (CIPs) to address specific risks relevant to the country, grow suppliers' participation and foster better relationships with all stakeholders involved in this complex environment. Since the forming of the CWG, Vattenfall's efforts in Colombia have been managed via the CWG and through bilateral engagement with the mining companies. With declining sourcing volumes from Colombia and less commercial leverage that we have on suppliers, this joint industry push makes sense for us.

As of today, all mining companies in Colombia, except CNR, have been assessed by Bettercoal. Drummond was assessed twice. Cerrejón is due for reassessment in 2022. The situation with Prodeco is somewhat different as Glencore, the parent company, has applied to return the mining licenses to the Colombian Government.

A full chronology of events and actions can be found in the Appendix.

⁴ A Human Rights Risk Assessment in Colombia: https://group.vattenfall.com/siteassets/corporate/who-we-are/sustainability/doc/vattenfall_colombia_coal_report_english.pdf

3. Why we shifted our engagement strategy over time

Our HRIA in 2017 was a Vattenfall initiative (as part of our responsibility to conduct appropriate due diligence⁵) and outside of Bettercoal's assessment program as we wanted to have a deeper investigation into human rights impacts allegations.

However, as a result of our report, a Bettercoal delegation went to Colombia in April 2018 for a follow-up visit, which led to a consensus that the complexities surrounding environmental, socio-economic and human rights impacts associated with coal mining are difficult to solve by just engaging the mining companies and that a different approach was needed. Colombia is a complex country, rich of natural resources, and many of the challenges and issues identified are systemic and have been rooted in the society for decades. Issues such as reparation of the victims of conflict in the coal belt area are beyond the scope of the Bettercoal assessments. In the group, we also agreed that addressing potential solutions or avenues of change needed other different engagement mechanisms that were not covered by Bettercoal's Continuous Improvement Plans. This was not just unique to Colombia, but symptomatic for the main coal producing regions.

Thus, Bettercoal members formed the CWG with the objective to facilitate a more coordinated approach to the monitoring of the Continuous Improvement Plans (CIPs) for suppliers as well as to build knowledge and address the systemic issues that are beyond the scope of Bettercoal assessments⁶.

Vattenfall does not claim that this somehow broader approach was initiated by us. Still, we feel that the insights that we gained with our HRIA and the discussion that were triggered by that, have been a valuable input for this process in Bettercoal.

4. How the Colombia Working Group has progressed in their work

Since the start of the CWG, Vattenfall has been engaged there as an active member. In this chapter, we would like to give a brief summary on the main actions of the CWG.

Since its inception members have met, physically or virtually, at least on a monthly basis. To date, the focus of our conversations have been to refine the action plan, to seek feedback from stakeholders and to discuss ongoing issues in Colombia. The complexity of Colombian issues is vast, with constant developments and the CWG had to invest time and resources in obtaining a greater understanding of the developments and decide appropriate action. In some cases it meant having to seek other points of views.

2019

During 2019, the CWG worked towards identifying the top priority issues to focus on. The group evaluated the findings from the Bettercoal assessments on Drummond, Prodeco and Cerrejón, the findings from the Vattenfall HRIA and the follow up from the Bettercoal delegation visit in 2018 as well as other sources of information including civil society organisations (CSOs).

The group selected the issues on the basis of pre-defined criteria:

- Urgency and relevance of the topic to key stakeholders
- Achievable impact the CWG can have
- Level of influence the CWG can have as part of Bettercoal and also through its members
- Available resources of group members and secretariat

⁵ While cooperation across industry groups, local partners, and civil society organisations is encouraged, the ultimate responsibility to carry out appropriate due diligence on supply chains lies with the company itself (OECD Guidance on Responsible Business Conduct).

⁶ <https://bettercoal.org/resource/cwg-terms-of-reference/>

As a result, the CWG narrowed down the issues to:

- Fostering increased dialogue in the peace building process
- Access to clean water
- Mine closure

The CWG shared the list for consultation with external relevant stakeholders, including mining companies, NGOs, international organisations and dialogue institutions, to receive their feedback on the approach and relevance in the Colombian coal mining context. Considering the comments and recommendations gathered, the CWG decided to restructure the focus issues into the following ones⁷:

a) Fostering increased dialogue in the peace building process

To support the peace building process in the mining regions, the CWG has defined the following objectives:

- Contribute to build trust amongst relevant stakeholders (as a precondition for dialogue) in mining regions, e.g. by supporting the CREER multi-stakeholder dialogue project “Building Trust in Cesar”. Bettercoal welcomes and encourages the extension of the initiative into the mining area of La Guajira, with the support of the Swiss Embassy and Cerrejón.
- Contribute to truth finding by encouraging mining companies to engage with the Truth Commission.
- Promote the strengthening of the protection of human rights defenders e.g. by organising a virtual roundtable with key stakeholders (e.g. mining companies, PDP, CREER, Fiscalía, local community representatives) to address and discuss the issue.
- Support mining companies and victims to create a shared vision of how to reconstruct the social fabric and contribute to peace building in the Cesar mining region.

b) Access to clean water

Concerns over the environmental impact of coal mining activities over surface waters and aquifers and the lack of drinking water in affected and resettled communities have been one of the constant issues we have seen since 2017.

This is especially more prominent in the region of La Guajira, known for its arid conditions, where the conflict between Cerrejón and the communities has not been resolved and has even escalated to formal investigations by the UN Rapporteur and the OECD.

Given the relevance that water has not only as a basic human need but also for economic activities and its cultural and religious relevance, the CWG believes that in such a context a holistic approach to water management would be beneficial. This Water Stewardship approach would bring together the main stakeholders affected, as communities, pertinent authorities, various main water users and other stakeholders, to address the issue of future water security in this region. To enhance the sustainability of water as a shared resource, the CWG has started to explore how such a project could be developed in the region of La Guajira in Colombia.

c) Mine closure

The decline in the price of coal together with the implications the Covid-19 pandemic had for the Colombian mining operations highlighted the relevance of the issue of mine closure. In addition, the CWG has identified the “Just Transition” project as an opportunity to further address and contribute to the long-term regional development of Cesar and La Guajira beyond coal.

⁷ This list was updated in 2020 to reflect the Covid-19 situation. For more details see the Colombia Work Plan: <https://bettercoal.org/resource/bettercoal-cwg-working-plan-2020/>

2020

During 2020, the work of the CWG continued but the Covid-19 crisis forced us to adjust the planning and implementation of the original 2020 work plan, particularly with regards to face-to-face engagements with stakeholders. Despite being unable to travel to Colombia, throughout the year, the CWG has engaged virtually with as many stakeholders as possible, to keep up the engagement and remain well informed of local developments. The CWG engaged with organisations such as the Human Rights Resource Centre in Colombia, IndustriALL, Urganwald, PAX and CREER⁸. The input received throughout all these meetings has helped the CWG refining its original 2020 work plan and identify specific actions where Bettercoal can add value. As a result, the CWG defined the following priority tasks for 2020 and followed up on these:

Table 2 – Overview of CWG priority tasks for 2020

CWG main 2020 objectives	Status
Monitoring of the Continuous Improvement Plans (CIP) of Bettercoal Colombian Suppliers (Drummond Ltd, Prodeco and Cerrejón)	The pandemic posed additional challenges for the operations all Bettercoal’s Colombian suppliers – Cerrejón, Drummond Ltd and Prodeco. Bettercoal engaged with all three of them to follow up on their Continuous Improvement Plans as well as discuss other relevant contextual topics e.g. increasing threats against social leaders, challenging negotiations with trade unions and of course the implications of the Covid-19 pandemic on the suppliers’ operations.
Engage with Colombian mining companies that are not part of Bettercoal	Ceased (CNR filed for bankruptcy)
Develop a list of prioritised contextual issues	The final list has been developed (see previous chapter). It is worth emphasising that this was the product of numerous conversations with stakeholders to gather insights and have a better understanding of broader topics relevant for the mining industries. They included: PAX, the National Federation of Christian Trade Unions in the Netherlands (CNV), the Human Rights and Business Resource Centre, the Development and Peace Programmes (PDP in Spanish), Regional Centre of Responsible Business and Entrepreneurship (CREER in Spanish), National Union of Ill, Disabled, Mining Workers (SINTRADEM in Spanish), Sintracerejón and IndustriAll.

⁸ In addition, Vattenfall has maintained dialogues with ASK! and Forum Syd Colombia.

<p>Delegation visit to Colombia</p>	<p>The CWG was planning an engagement visit to Colombia for the week of the 9-13 March 2020. During this week, the delegation had planned to engage in individual meetings with governmental organisations, mining companies, dialogue institutions, international organisations, communities and unions. During these meetings, Bettercoal had hoped to discuss in depth the prioritised issues defined, identifying opportunities for developing specific actions where Bettercoal could add value and have an impact on the ground. Bettercoal also expected to be addressing other contextual topics relevant to the Colombian mining context. This visit had to be converted into a digital visit (April – May 2021) and the CWG's commitment with Colombian stakeholders continued by running virtual meetings. The group was able to advance on all the objectives planned for the year.</p>
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In addition, Bettercoal issued a range of public statements during 2020. Several stakeholders flagged issues to us directly, to Bettercoal and its other members. For example, IndustriALL engaged with member companies over concerns of the long term strike at Cerrejón. With the coordination of its members, Bettercoal publicly addressed some of these issues:

- Sintracarbon strike⁹ at Cerrejón and on its resolution¹⁰
- Bettercoal response to Christian Aid Report 'Undermining Human Rights: Ireland, the ESB and Cerrejón coal'¹¹
- Bettercoal Support to CREER multi-stakeholder dialogue Project "Building Trust in Cesar"¹²

5. What is the current status in Cesar and La Guajira?

In the following section, we provide a short summary of the current status of some of the issues that Vattenfall identified in its HRIA, e.g. resettlement of Tabaco, El Hatillo, or Boquerón and some new issues that have arisen over the last past two years, e.g. the strike at Cerrejón. Here we provide a brief overview of the situation (in the view of Vattenfall), how the CWG is addressing the issue and what are Vattenfall's expectations going forward. At the time of writing this report the CWG digital visit was still ongoing so we cannot disclose any outcome from these meetings. An overview and outcomes of this activity will be published by Bettercoal in due course.

5.1 Region: Cesar / Companies: Prodeco – Drummond

Resettlements of El Hatillo and Boquerón

One of most pressing issue that has persisted since our last visit is the situation of the communities pending resettlement: Boquerón and El Hatillo.

⁹ <https://bettercoal.org/sintracarbon-strike-at-cerrejon/>

¹⁰ <https://bettercoal.org/end-of-sintracarbon-strike-at-cerrejon/>

¹¹ <https://bettercoal.org/bettercoal-response-to-christian-aid-report-undermining-human-rights-ireland-the-esb-and-cerrejon-coal/>

¹² <https://bettercoal.org/bettercoal-support-to-the-creer-multi-stakeholder-dialogue-project-building-trust-in-cesar/>

Boquerón

After more than a decade of uncertainty whether Boquerón should be resettled¹³, that led to a lack of social investment from the regional Government, a divided community, increasing poverty levels and lack of compensation for the cumulative environmental impacts from the mining activities, the Ministry of Environment revoked its decision to resettle the community in February 2021.

Vattenfall welcomes that a decision was taken, however, we are concerned that scientific parameters used by the Ministry are challenged by Civil Society Organisations (CSOs) and parts of the Boquerón community. Concerns over the reliability and location of air monitoring stations were expressed by multiple stakeholders.

The Ministry of Mines have issued the Boquerón Pact¹⁴, which is divided into six strategic lines: Dwellings; Sanitary; Health; Education; Food Security and Enterprise management. How this plan will be implemented has not been decided yet and it is part of the conversation between the Central Government, the Cesar government, the Municipality of La Jagua de Ibérico, community representatives and senators. It is the Ministry's intention to include the mining companies, although, there is no clarity over that matter yet.

The CSO Tierra Digna has criticised the Pact alleging that community members had to sign that there had not been an environmental damage. Tierra Digna now works with territorial promoters, leaders, to strengthen internal cohesion, create opportunities for dialogue and build trust.

How is the CWG addressing the issue?

The CWG has closely monitored development over Boquerón. This matter has also been included in the Continuous Improvement Plans follow up calls with the mining companies and interviews during our digital visit with government institutions such as ANLA.

Vattenfall's view

In this section (and the corresponding sections below) we outline the key topics that Vattenfall deems to be of high importance going forward. If relevant Vattenfall would provide recommendations on these issues to the CWG :

- The Regional Government and the Municipality of La Jagua de Ibérico should coordinate a social and environmental investment plan with the mining companies in a way that the community can benefit from the coal mine tax revenues that are injected into the region.
- The relevant authorities should implement safeguards and guarantees to ensure there is no fund misappropriation.
- The relevant authorities should create citizen review groups in order to promote transparency and accountability. The inhabitants of Boquerón or their expert representatives should be able to evaluate whether the funds are properly invested and that expected results are generated.
- The Central Government should produce a Just Transition Plan that guarantees the social, economic and environmental development of the region as the closure of coal mines in the region seems to be approaching.
- Should Prodeco's mining licenses be granted to another coal mine company, the Government should make a requirement that the buyer company becomes Bettercoal assessed and commits to take over the social responsibility of the company.
- That until it exits the region, Prodeco should commit to fulfil its social and environmental commitments in the shortest amount of time possible.

¹³ Prodeco, Drummond and CNR challenged the Government's decision in 2010 to resettle the community arguing that the levels of air pollution were lower than when the Government took the decision. By the time of our visit in 2017, Prodeco had submitted a modelling report. In 2021, the ANLA accepted this argument and revoked the decision to resettle.

¹⁴ <https://elpilon.com.co/Boquerón-busca-una-nueva-oportunidad-en-su-propia-tierra/>

5.1.1 El Hatillo

After eight years of delay and disagreements between mining companies and the community, a Resettlement Action Plan (RAP) was signed in November 2018. Unfortunately, what seemed to be a positive development in the area, did not turn out as expected. As of today, the community has not been resettled. Since the signing of the agreement there have been delays in finding suitable land and once the land was found, delays prolonged as the municipality in charge did not requalify it as urban land. Now with the bankruptcy filing by CNR and Glencore/Prodeco's return of the mining licenses to the Government, only Drummond is left to fulfil its commitments. The RAP established that the three mines pay a regular quota to be distributed among the community. With two absent companies, Colombian law does not allow those payments to be made and distributed to the community.¹⁵

In March 2021, Vattenfall was alerted of this situation directly from community representatives and European CSOs. We received copies of letters by the community (shared with Bettercoal) protesting against the actions of Prodeco and CNR and denouncing the Ministry of Environment and the National Authority for Environmental Licences (ANLA) for ignoring the issue alleging lack of jurisdiction. We sought more information by engaging with one of the community leaders¹⁶ and CSOs including ASK!. Vattenfall learned that the current situation is extremely fragile. Families that opted for individual resettlement are not receiving the moneys. This means that they are at risk of losing the houses they just bought. In addition, they do not have productive projects that give them a sustainable economic situation. The future of the collective resettlement is also very uncertain for the community, many are at risk of facing a food crisis as it happened in early 2013. Initially, the ANLA and the Ministry denied competence over this matter. Vattenfall's last communication with El Hatillo revealed that this matter is being investigated by the ANLA now, although, there is no clarity as to the timeframe.

The CSOs also expressed concern over Prodeco's and Glencore's lack of communication after the exit strategy was revealed leading to ever higher concerns over the future of the region.

Vattenfall shared all this information with the CWG.

How is the CWG addressing the issue?

It was decided that this will be on the agenda of our digital visit to Colombia. This topic is being covered during the digital visit with Prodeco, Drummond and the relevant authorities.

Vattenfall's view

Vattenfall is very concerned over the fate of the community, especially given that CNR has filed for bankruptcy and that Prodeco has started the process of leaving the region. There is uncertainty as to the future new owner of the mine.

¹⁵ <https://www.elespectador.com/colombia/mas-regiones/las-promesas-incumplidas-de-la-mineria-de-carbon-al-cesar-articulo/>

¹⁶ In March 2021, one of the Community leaders reported the following:

- Conversation with one of El Hatillo Community Leaders: The Transition Plan until people are allocated in new law included food provision plus monetary subsidy and formation program but the process stopped when CNR declared itself in bankruptcy and it seems that the fiduciary contract means that if one of the entities do not pay, the money accumulated is frozen and cannot be used. Drummond made the correspondent payment last quarter.
- The community is waiting for the "Superintendencia de sociedades" (the entity dealing with CNR) to see how they resolve the situation and whether it is ANLA or the Ministry of Environment the correspondent authority to make use of the resources accumulated.
- They have had direct communication with ANLA that has stated they are working to maximum capacity to solve the issue.

Vattenfall's view on the way forward would be:

- that the Colombian authorities should solve this issue in the shortest possible time and provide emergency livelihood measures to the community until this is solved.
- that all mining companies, regardless of whether they are exiting the region or not:
 - comply with the Ministry of Environment's decision to resettle and Court Orders. In 2018, the ANLA fined all mining companies to pay 5.800 million pesos for not complying with El Hatillo and Boquerón resettlements. To this date it is not known whether this fine has been paid.
 - develop remediation actions as expected by the UN Guiding Principles.

5.1.2 Dialogue with victims and the Truth Commission

Unfortunately, to this date, there seems to have been no dialogue between the mining companies and the Truth Commission despite calls made by Padre de Roux for collaboration.

The only advancement in the region linked to coal mines that Vattenfall knows of is the presentation of the Development Plan by the town of Estados Unidos covering 2018 – 2040 to the authorities and the Truth Commission. The plan includes the collection of testimonies that contribute to establishing the truth about what happened in Estados Unidos. This plan was developed with the Support of Plan Desarrollo y Paz (PDP) and Prodeco.

Parallel to the Truth Commission¹⁷, CSOs such as PAX have made numerous petitions to Prodeco and Drummond to establish a parallel dialogue with the victims represented by Asamblea Campesina. Prodeco started to show signs of wanting to opening a dialogue with the ACC. However, since the company's announcement of its exit strategy there have been rising concerns over the future dialogue with victims as the company has ceased to communicate with its stakeholders "until there is further clarity". PAX wrote an open letter to the CEO of Glencore in which they ask that Prodeco should accept their moral obligation, continue dialogue with Asamblea Campesina on truth and reconciliation and publish the findings of its Human Rights Impact Assessment, commissioned in 2018¹⁸.

How is the CWG addressing the issue?

Bettercoal, via its relationship with the Dutch embassy and direct dialogues with the mining companies, has tried to encourage the companies to voluntarily participate in the Truth Commission and hold a dialogue with victims. Concrete actions and outcomes are still to be reviewed.

Vattenfall's view

Vattenfall awaits for a judicial resolution over the current investigation on Drummond's links to the paramilitaries.

Concerns over exit strategy of Prodeco and Glencore

In February 2021, after the Ministry of Mines rejected Prodeco's petition to halt mining operations for four years, the group communicated that it would be returning its mining licenses. The company argued that continuation of mining operations in the regions was no longer economically viable. The closure of activities is estimated to take between two and three years.

Vattenfall received concerns from CSOs over Prodeco's lack of communication after the coal exit strategy was announced¹⁹. The authorities of Cesar expressed their concern over the future of the region.

¹⁷ [How Colombia's Truth Commission navigated a pandemic year - JusticeInfo.net](https://www.justiceinfo.net/colombia/2021/02/04/negocios/salida-del-grupo-prodeco-de-colombia-tardaria-entre-dos-anos-a-cinco-anos/)

¹⁸ <https://paxforpeace.nl/what-we-do/publications/pax-letter-to-glencore>

¹⁹ <https://forbes.co/2021/02/04/negocios/salida-del-grupo-prodeco-de-colombia-tardaria-entre-dos-anos-a-cinco-anos/>

How is the CWG addressing the issue?

the CWG is closely monitoring the situation and is in direct dialogue with Prodeco.

Vattenfall's view

Vattenfall promotes that Bettercoal will address this issue in bilateral conversations with Prodeco and obtain further understanding about the company's plans.

As mentioned above, Vattenfall expects Prodeco to take full responsibility for the impacts caused until date and the future impacts of its exit strategy. More specifically, Vattenfall would like to Prodeco to:

- Fully comply with any pending resolutions, orders and fines issued by the competent authorities, e.g. the pending fine for the delays in the resettlement
- That any severe impacts over the environment and communities is remediated or mitigated before the company's complete exit
- Should Prodeco's mining licenses be granted to another coal mine company, we would like to see that the new buyer becomes Bettercoal assessed and commits to take over the social responsibility of the company
- Open transparent dialogue with affected communities over the future of the region
- Continue dialogue with Asamblea Campesina
- Together with relevant authorities, work towards developing a Just Transition plan for the region

5.1.3 Drummond CEOs being officially charged with financing paramilitaries

In January 2021, Vattenfall and other European utilities received a letter from Urgewald and PAX asking us to comment on Drummond's CEOs José Miguel Linares y Augusto Jiménez being officially charged with financing paramilitaries.

Vattenfall replied reminding the organisations that we excluded Drummond from our list of approved coal suppliers in 2018 since Drummond decided to discontinue the direct dialogue with Vattenfall on our HRIA and the action plan. Vattenfall also highlighted that we have aligned our efforts with the work of Bettercoal more closely via the CWG. We emphasised that Vattenfall believes that synergy has stronger power to deliver impact, so we are active in the CWG, although, we are not sourcing Colombian coal any longer and contribute to continuous improvement through this platform.

How is the CWG addressing the issue?

The CWG is monitoring the developments over this matter closely. The seriousness of these charges is not taken lightly by Bettercoal or its members. Bettercoal issued a public statement in which it also stated that it firmly believes in due process and not commenting on legal proceedings, therefore awaiting the outcome²⁰.

²⁰ <https://bettercoal.org/bettercoal-public-statement-on-the-allegations-against-drummond-colombias-president/>

5.2 Region: La Guajira / Company: Cerrejón

Strike at Cerrejón

In October, 2020 Vattenfall's CEO received a letter from IndustriALL²¹ alerting us of the long strike at Cerrejón following the company's proposal to change shifts leading to a reduced number of staff and longer working hours. The Bettercoal secretariat and other member companies received a similar letter. It seems that despite the mediation by the Ministry of Labour, an agreement could not be reached. Vattenfall immediately responded to IndustriALL stating that the CWG had been monitoring the situation since the summer.

How is the CWG addressing the issue?

The CWG agreed to hold separate calls with IndustriALL and Cerrejón to understand the situation in more detail²². The CWG concluded that given that the Ministry of Labour was acting as a mediator, this was being dealt with by the relevant authorities and there was little that Bettercoal members could do apart from raising awareness for this issue publicly and ask the parties to reach a consensus. Bettercoal issued a corresponding statement²³.

The 91 day strike ended in December 2020 and the parties agreed to a new Collective Bargaining Agreement for a period of 3.5 years.

Bruno Creek Deviation

During 2020, there were voices denouncing that the Interinstitutional Panel (formed by order of the State Council in 2016 to decide over whether the Bruno Creek should be reinstated to its original course or not) did not include representatives from affected communities and that the studies used to reach a conclusion were produced by Cerrejón rather than by an independent third party²⁴.

The case went to the Constitutional Court, that ordered the cessation of all works until a number of identified environmental and social uncertainties by the deviation were addressed by the Panel. However, CSOs and local communities raised concerns again when the Panel concluded not to return the stream to its natural course and to maintain the diversion, allegedly based on partial information, and without generating spaces for participation with the affected communities. They stated that this conclusion was purely based on documentation produced by Cerrejón rather than by an independent third party.

During this time, the communities also constantly denounced Cerrejón for not complying with Auto 419/17 and continuing the deviation works. Cerrejón's position is that the Court order established the cessation of mining activities, not of the diversion²⁵. Vattenfall noticed that the Auto's order for the cessation of works did not include "Maintenance work" of the new deviated stream, which may have caused, in our belief, the confusion as to whether Cerrejón was complying or not with the order.

As understood by Bettercoal, the Panel is made up of 17 members – of which 16 are public, national and regional entities, plus Cerrejón – and was instructed by the court to undertake a technical analysis to address the uncertainties listed in the Court's decision. The ruling also requested that the analysis presented in the ruling should be participatory. This was translated into the opening of forums for discussions with the plaintiffs, communities and other organizations, and into a participation protocol that provided additional opportunities for plaintiffs to present their own information and arguments.

²¹ <http://www.industrial-union.org/Cerrejón-mineworkers-hold-firm-show-your-support>

²² <https://bettercoal.org/sintracarbon-strike-at-Cerrejón/>

²³ <https://bettercoal.org/end-of-sintracarbon-strike-at-Cerrejón/>

²⁴ The Inter Institutional Panel is formed by Central and regional authorities and Cerrejón.

²⁵ Mientras se da cumplimiento a lo ordenado en los numerales anteriores, la suspensión de las obras materiales del proyecto se mantendrá en los mismos términos dispuestos en la medida provisional ordenada mediante el Auto 419 de 9 de agosto de 2017, proferido por la Sala Plena de la Corte Constitucional.

Bettercoal was informed that from 2019 to date, the Inter-institutional roundtable has held several participatory spaces with the plaintiffs' communities, including five meetings, three of them in 2019 (June 5, July 8 and November 29) and two in 2020 (January 31 and February 1) and two visits to the stream (June 6 and July 8). At this year's meetings, the participatory space focused on explaining the grounds of the Inter-institutional roundtable provisional decision of maintaining the stream in its new riverbed, and afterwards, on discussing of the uncertainties of the Constitutional Court.

The Court Order did not include the communities as members of this Inter-Institutional roundtable, and in an explanatory document (Auto 523/19) requested by the Ministry of Environment, the Agency of Rural Development and a CAJAR representative, the Court reaffirmed the composition of the Inter-institutional roundtable.

Subsequent to this conversation, in June 2020 the Comptroller General issued an audit report²⁶ confirming the lack of compliance with Constitutional Court ruling SU-698. According to audit results, there were a total of fourteen administrative irregularities in deciding the deviation of Bruno of which seven have a possible disciplinary implication. Also, it was noted that these deficiencies impact on compliance with the sentence handed down by the Constitutional Court.

The Comptroller General evaluated the management of the Ministry of Environment and Sustainable Development, ANLA, Corpoguajira, that among other public institutions form an "inter-institutional" Public Panel of which Cerrejón is part of but not the local community. The Comptroller's report focuses on the deficient report presented by the entities and Cerrejón to justify keeping the Bruno stream diverted, instead of releasing the water into its natural course.

How is the CWG addressing the issue?

The CWG has had periodic communications with Cerrejón and addressed the allegations there. Given the relevance of the topic, it will continue monitoring developments and raise the issue during the digital visit.

Vattenfall's view

In this matter, Vattenfall would like that:

- All competent authorities and bodies, including Cerrejón, work towards full compliance with the Comptroller General recommendations and the Constitutional Court Order.
- The Inter-Institutional Panel should develop an action plan following the Comptroller General recommendations and commission independent studies to base its decision on.
- The Procuradaria should open disciplinary actions against the institutions named in the report.
- As in best practice, decisions should be based on independent and unbiased third party assessments.

Water Monitoring

Over the past few years, Bettercoal and member companies have received complaints and studies complaining about Cerrejón's poor water management and the lack of access to drinking water by a number of the resettled communities. The most recent was a report issued by CSO Indepaz²⁷ together with the Universities of Koblenz-Landau (Germany) and Cartagena (Colombia) in 2019 denouncing Cerrejón's insufficient monitoring and poor water quality results. Cerrejón promptly issued a letter rebuking the findings²⁸.

²⁶ <https://www.contraloria.gov.co/documents/20181/1736422/015+Informe+Auditoria+Cumplimien-to+MADS+Arroyo+Bruno+Is.pdf>

²⁷ <http://www.indepaz.org.co/wp-content/uploads/2019/02/Si-el-rio-suena-piedras-lleva-Indepaz-2019.pdf>

²⁸ https://media.business-humanrights.org/media/documents/files/OBSERVACIONES_DE_CERREJÓN_AL_COMUNICADO_PÚBLICO_DE_INDEPAZ.pdf

In answer to the issues raised by Indepaz, Bettercoal received recent reports on improvements on water monitoring made by Cerrejón. The Resolution 631/2015 from the Ministry of Environment, comparable to the EPA regulation, defines the methodology and parameters to monitor related to heavy metals. Cerrejón identified the monitoring gap occurred in 2018 and updated the monitoring and analysis of the complete water matrix required. The results of the monitoring conducted during 2019 to the complete water matrix, as requested by Resolution 631 of 2015, were submitted to ANLA in the 2019 ICA report, and are continued to be monitored fully since then. This report now includes the monitoring of 60 parameters, including copper, chrome, iron, mercury, nickel and lead, although the national requirement only includes 36 parameters.

The impact of Cerrejón's activities on the aquifers and lack of access to drinking water is still challenged by many communities. Vattenfall believes that the issue may not go away in the short to medium term as part of the root cause is the inherent distrust from communities over the company's reporting.

How is the CWG addressing the issue?

The CWG is currently evaluating the use of Community Based Monitoring mechanisms as a way of building trust between the communities and the company. This will be further explored during Bettercoal's digital visit.

Apart from keeping updated and getting information directly from the main stakeholders, Cerrejón's monitoring mechanisms of water quality for communities is being followed up by Bettercoal members as well as Bettercoal assessors as part of monitoring of progress on Cerrejón's CIP, which is developed based on Bettercoal's assessment of Cerrejón.

Vattenfall's view

Vattenfall would like to see Cerrejón working towards an inclusive and holistic system to manage its water resources. We believe that including the community in their water monitoring system would be a first step to build trust with the community.

Provincial

The case of Provincial is an example of a divided community's long lasting conflict between community and mine. This is one of the cases where the company's actions to seek internal alliances in a community generates internal ruptures in the community. The perception of the community is that the mine is "buying" support from parts of the community to break the community apart. Parts of the community report exhaustion after years fighting the corporation's legal and community engagement teams.

Selected members of the indigenous Wayuu community of Provincial, frustrated with the lack of action from Cerrejón in complying with the Constitutional Court Order T-614/19²⁹ asked the UN to take action. After evaluating the case, in September 2020, the UN Special Rapporteur on Human Rights and Environment issued a call to cease Cerrejón mining activities affecting the people of Provincial³⁰. Shortly after, in November 2020, Cerrejón announced it had reached an agreement. The matter grew more complicated when a section of the community issued a communication refusing such agreement stating that they did not acknowledge the "Cabildo" Oscar Guariyu (the appointed local leader who had signed the

²⁹ A group of Wayuu women in disagreement with earlier compensatory measures by Cerrejón started an Accion de Tutela at the start of 2020. The intention of this action was the closure of some of the mining pits that are close to Provincial (2 km). The Constitutional Court didn't order the closure of the pit but: confirmed the damaging impact over Provincial (exceeding air emission limits, impact on water access and housing and the use of chemicals that may affect the population. The Court also: 1) highlighted the lack of controls by the monitoring authorities 2) ordered Cerrejón to impose urgent measures and the creation of a Technical Committee presided by the Ombudsman and formed by local and national entities to establish the risk factors from mining operations 3) Ordered ANLA, the Ministry of the Environment and Corpogujaira to implement independent monitoring mechanisms with respect to air and water emissions as well as supervising strategies that guarantee the rights of the community; 4) Ordered the Ministry of Health and Social Protection to create a Health brigade to evaluate the health of the Wayuu community of Provincial and inform back to the Technical Commission and health authorities; 5) ordered the Government of La Guajira and the town of Barrancas to ensure the people of Provincial have access to a minimum of potable water to cover basic necessities.

³⁰ <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26306&LangID=E>

agreement with Cerrejón). This was communicated to the Ombudsman Carlos Camargo and representatives of ANLA, the Ministry of the Environment and Corpoguaajira [the provincial environmental agency]³¹.

Since then, the division between leaders in Provincial has been such that it has been reported the leaders on the side of the agreement started a process to collect signatures to expel those leaders against Cerrejón.

In February 2021, Cerrejón issued another communication that an agreement had been reached with the community³².

Vattenfall investigated the root cause of the matter and held conversations with ASK!, Forum Syd and Cerrejón to further understand the issue.

Vattenfall contacted the authorities responsible of monitoring that the Court ruling is complied with. The response from the Comptroller general was that the negotiations were at a halt until new elections for the Cabildo took place.

We shared all gathered information with the CWG and it was part of the monthly conversations monitoring how the issue developed.

How is the CWG addressing the issue?

The CWG took this matter to Cerrejón as part of their regular dialogue. In February 2021, after the first agreement challenged by some sectors of Provincial, Cerrejón issued a joint declaration with Provincial which states that “The Provincial indigenous community has come back to the understanding of the initial agreement, signed in November 2020. We have made adjustments to it and have ratified the entire text, which makes this an historical milestone between the parties.

The improvements in this agreement are the result of consensus among the members of the Reservation, which saw participation from the Traditional Authorities as well as the Council, leaders, and the full assembly of the community”.

Vattenfall’s view

We are satisfied with the fact that an agreement has been reached between Cerrejón and Provincial. In addition, we think it is important that:

- Cerrejón will meet its commitments in a timely and transparent manner, providing guarantees to the community.
- The relevant authorities, named on the T619 Court Order, will exercise their duty to monitor compliance
- For Cerrejón, the Ombudsman and relevant authorities should consider ways of engaging the community to oversee compliance with the court sentence, e.g. Citizen reviews or Community Based Monitoring Mechanisms.

5.2.1 Covid-19

With the outbreak of the pandemic, Prodeco has been the only company to stop operations fully (to this date, they are not operative). Both Drummond and Cerrejón restarted operations (with Covid measures in place) with a special government concession. There were allegations against Cerrejón regarding the restart of activities during the Covid-19 pandemic.

31 <https://www.colectivodeabogados.org/?Carbones-del-Cerrejon-miente-y-actua-de-manera-fraudulenta>

32 <https://www.cerrejon.com/index.php/declaracion-provincial-y-cerrejon/> and <https://www.Cerrejón.com/index.php/Cerrejóns-response-to-the-09-09-un-request-regarding-the-indigenous-community-of-provincial/> and <https://www.cerrejon.com/index.php/cerrejon-alcanza-un-principio-de-acuerdo-con-la-comunidad-de-provincial-y-respon-de-a-los-relatores-especiales-de-naciones-unidas/>

How is the CWG addressing the issue?

The CWG has addressed concerns with the company directly and was given reassurances that measures were being effectively implemented to control infection.

5.2.2 Tabaco

One of the most complex and systemic issue that affect the Colombian society is resettlements. It not only requires the mining companies to take action but also the coordinated action of local and national governments, which presents an additional challenge, and trust between all concerned parties is a prerequisite.

We are concerned that the Tabaco situation has not advanced since our last visit and that tensions remain since the community was evicted by force in 2001. The community is dispersed and deeply divided, including their leaders which accuse each other of lacking legitimacy. Cerrejón only recognises some of the leaders. Currently, there is a disagreement with regards to the size of the land that Cerrejón identified. Some of the leaders state that the hectares allocated did not take into account that the families had grown in numbers. They demand that the community is rebuilt according to the Constitutional Court Order, comprehensive reparations are made, and land is allocated for productive projects.

Cerrejón argues that they have complied with their obligation according to the Court ruling: to find suitable land and build a community centre. They argue that it is the responsibility of the municipality of Hatonuevo to rebuild the community as stated in the Court order and that the municipality argues lack of funds. It is worth mentioning here that La Guajira is one of the regions with highest corruption incidences and that in the past few years several governors were declared guilty of corruption and sent to prison.

As per the latest information received on the issue, dialogue has been happening between relevant parties and there was a willingness to continue despite the Covid-19 pandemic.

How is the CWG addressing the issue?

The CWG has encouraged and followed up on the development of dialogue between the mining company and the affected community and enquired about alternative ways Cerrejón can support the community and get alternative finance for housing development. More broadly, the CWG defined the issue of trust building as one of its focus areas to develop together with local stakeholders including but not limited to coal mining companies, to promote and support opportunities for productive dialogue.

Vattenfall’s view

In Vattenfall’s opinion:

- The municipality of Hatonuevo should fulfil the Constitutional Court order and rebuild the community.
- For the parties involved: Cerrejón, leaders, and the municipality should seek ways of having inclusive and constructive dialogues.

OECD Complaint against Cerrejón owners (Anglo American, BHP Billiton, Glencore)

Shortly after the UN special rapporteur on Human Rights and Environment, David Boyd, issued a public statement stating that Cerrejón had seriously damaged the environment and the health of the Wayuu and asking Cerrejón to cease the mining activities affecting the community of Provincial, complaints to the OECD have been filed in Australia, Ireland, Switzerland and the United Kingdom by the Global Legal Action Network (GLAN)³³ with the support of a coalition of Colombian and international human rights and environmental groups³⁴.

33 GLAN is a non-governmental organisation made up of lawyers, investigative journalists and academics that pursues legal action across borders

34 <https://www.abc.net.au/news/2021-01-19/cerrejon-coal-mine-colombia-in-environment-rights-abuse-probe/13069168>

How is the CWG addressing the issue?

The CWG is monitoring the situation.

5.3 Common issues to the coal mining companies

In this section Vattenfall, presents its view over overlapping issues affecting coal mining companies, namely: threats and violence; mine closure and just transition and historic responsibility.

5.3.1 Threats and Violence

The issue of threats to social leaders is a complex matter where there is not always a relation to mining companies. However, if further measures can be taken by coal mining companies, Vattenfall, via the CWG, encourages Bettercoal Colombian suppliers to focus on the issue and collaborate with external organisations and pertinent governmental institutions in the prevention, management and clarification of threats against social leaders.

In addition to the challenges posed by the current context, periods of extreme violence marked Colombian history and are very much present still. Given the ongoing dispute on the alleged historic involvement of mining companies in the armed conflict and human rights violations, there are demands made on mining companies, as part of the corporate sector, to explore their role in historic conflicts and help provide remedies for those impacted by past human right violations.

How is the CWG addressing the issue?

The CWG takes the issue of threats very seriously, especially to social leaders, having rejected publicly the situation with Colombian social leaders, calling upon the Colombian authorities to take these threats seriously and do everything in their power to find the perpetrators as well as keep those targeted and their families safe. The CWG has also asked mining companies to continue joining efforts following their joint declaration. The mining companies clearly state that if they gain knowledge of threats against community members, they immediately inform the pertinent authorities. However, they are also fully aware that they cannot control the measures taken by the Colombian government.

The CWG does not only engage with coal mining companies and their efforts to prevent and deal with the safety of social leaders but also gathers insights from other local stakeholders that engage directly with the communities. Bettercoal has been made aware that apart from the threat the Covid-19 pandemic poses to people's health, the current situation has also added challenges in the work of protecting social leaders.

The CWG prioritised this as one of the main issues to focus its work on and included it in its work plan. To foster increased dialogue in the peace building process, the CWG is having an open and direct dialogue with coal mining companies in the region of Cesar to understand and follow up on the allegations of their involvement and the steps they are taking to address these. The coal mining companies have taken different ways to address this topic. There has been dialogue and work between the mining companies and affected communities to start building and developing trust that can lead into mutual understanding and agreement in how to work together around this issue moving forward.

Additionally, Bettercoal supports the CREER multi-stakeholder dialogue project "Building Trust in Cesar". This support is part of Bettercoal's commitment and activities to promote continuous improvement in the mining and sourcing of coal for the benefit of all people in the area of influence of the industry, including workers and coal mining communities. In addition, CREER has extended its project to include La Guajira.

5.3.2 Mine Closure

Mine closure is part of Bettercoal Assessment and all coal suppliers are assessed on their preparedness³⁵. Colombian suppliers that did not meet the requirements of the Code on this matter have specific findings that they have to work on to allow progress on their Continuous Improvement Plans, which are regularly monitored. Bettercoal members were also involved in a number of conversations with the Dutch Government and other stakeholders on the transition in Colombia and the role that European utilities could play in a just energy transition.

How is the CWG addressing this issue?

This is a key issue and has been part of the conversations between the CWG and the coal mining companies. The position of the CWG is that this work requires the willingness of the private sector but also an articulated, consensual and multi-stakeholder approach to make it viable and sustainable in the future. In conversations with mining companies, the CWG was made aware that some projects are ongoing towards this end and that the Covid-19 pandemic, although challenging, proved the resilience and worth of those projects that kept ongoing despite the circumstances.

Just Transition and Historic Responsibility

The European Union's strategy to avert climate change and transform the industry to a non-fossil fuel energy model by 2050 will mean significant growth in the renewables sector but will also pose a significant challenge to territories that are strongly reliant on activities such as coal mining. These territories will need to restructure and/or diversify their economy, maintain social cohesion, and train the affected workers and youth to prepare them for future jobs.

The goal of these so called 'just transition policies' is to anticipate closure by developing robust economic alternatives and develop policy measures that will guide a transition towards other jobs for workers and reduce the negative impact of job losses and industry phase-out on workers and communities. The development and implementation of such policies is a multi-stakeholder approach between private sector actors (mining companies and buyers), government and civil society actors.

The European Union has created a Just Transition Mechanism to ensure that the transition towards a climate-neutral economy happens in a fair way, leaving no one behind³⁶. However, this mechanism centers on European activities, not on the global hard coal supply chain. A Just Transition in Europe should also enable for a Just Transition in the coal exporting countries like Colombia. A hard coal exit from Colombia will have significant negative effects on employment, public revenues and the local economy in Colombia's coal mining regions.

The Royal Tropical Institute, in their Colombia report of the evaluation of the Dutch policy on responsible business conduct, emphasised the importance of paying attention to the effects of (future) mine closures. They recommended the parties of the Coal Covenant to include in their due diligence processes the development of long-lasting initiatives in light of probable future mine closures³⁷.

With Glencore's announcement of an early exit strategy from the region, representatives from central and regional government have expressed concerns about what this shift means for Colombia's economy and its affected communities. CSOs such as PAX are making calls to Prodeco-Glencore to fulfill their historic responsibility before exiting³⁸.

³⁵ Provision under Principle 2 of the Bettercoal Code

³⁶ It provides targeted support to help mobilising at least €150 billion over the period 2021-2027 in the most affected regions, to alleviate the socio-economic impact of the transition. https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal/actions-being-taken-eu/just-transition-mechanism_en

³⁷ <https://www.kit.nl/wp-content/uploads/2021/03/Colombia-Country-Report.pdf>

³⁸ <https://www.paxforpeace.nl/stay-informed/news/glencore-should-take-responsibility-towards-victims-of-bloodcoal>

To date, because coal production has provided sufficient income, the potential of agriculture, tourism and other economic sectors in the mining regions were largely neglected and, as a result, suffer from low levels of productivity and profitability. Colombia's lack of a Just Transition Plan calls for creating viable and sustainable 'beyond coal' economic alternatives and decent new jobs in these regions to adapt to this new reality. In order to develop a collaborative and effective approach, the development of a Just Transition Program for Colombia is needed, especially in the light that there already has been a lack of connection and dialogue between government levels and private and civil society actors, such as mining companies and trade unions.

How is the CWG addressing the issue?

Bettercoal and its member companies also want to encourage responsible planning of mine closures, which not only focuses on the positive impact on the climate and environment but also on the challenging future of workers and communities dependent on and impacted by coal mine closures or production reductions.

This is why Bettercoal is supporting the “Colombia Beyond Coal” project, a joint effort of the energy companies RWE, Uniper and Power Plant Rotterdam together with CNV International and CREER, the Colombian Institute for Human Rights and Business. Key objectives include:

- building a project coalition that brings together different stakeholders around a common vision and strategy regarding alternative local economic development
- designing of a joint plan for a local best practice pilot in one of the mining municipalities. Important elements of this pilot are that project activities are economically viable and implemented at local level.
- promoting sustainable development
- generating new decent job opportunities for men, women and youth

Apart from addressing this topic in discussions with the coal mining companies, the CWG is also supporting the Dutch “Just Transition” project which has recently formally applied for subsidy under the Dutch FVO Partnerships program. This project aims to support the transition in Colombian mining regions from coal mining dominance towards a more diversified local economy and to reduce the negative impact of a declined coal demand. It fits with the outcome of the Bettercoal Code review process, which is one of the reasons why some members of the CWG are engaging with the consortium of Dutch energy companies and other members to explore how the group can contribute to the project and to transfer it into specific actions.

6. Challenges and lessons learnt

Notwithstanding the progress reported, it is also necessary to take stock of where Vattenfall is, five years after we started this process, consider what lessons we have learnt, and reflect on whether we have achieved the impact originally desired.

It is important to note here that these are Vattenfall's reflections and not of the CWG.

How to address systemic challenges effectively that have been going on for decades?

The most difficult issues concerning the coal value chain in Colombia are rooted in long standing conflicts, lack of local institutional capacity, mistrust between companies, governments and communities, etc. It would be naïve to expect that decades long problems can be solved in a short period of time, and five years can be considered short. For example, in the CWG, companies are constantly learning about the root cause of many of the problems. What we take with us is that addressing systemic challenges needs a much longer time horizon as well as a coordinated effort of all parties including mining companies, ministries and embassies.

Maintain strong links with government initiatives

The activities of Bettercoal in Colombia and of the parties of the Dutch Coal Covenant (ended in 2020) were very much interlinked. The Dutch government played a significant role and its commitment was also evidenced in its active support of the CREER initiative for Building Trust.

Although the initiative of the Dutch Government has been very much applauded, it is worth considering whether joining efforts with other European coal importing countries would have led to even more effective measures at Government level.

Cooperation among embassies and institutions can be seen as effective tools to address systemic challenges.

More dialogue between European institutions

The capacity of coal importing governments to use their leverage should not be underestimated. If done together with the energy companies, the capacity to make a positive impact and promote change could grow exponentially. Much of the resources were directed at promoting peace in Colombia, nevertheless, there has been untapped opportunity at promoting interinstitutional dialogue across other issues. For example, in Colombia: labour and union conditions; resettlements status, lack of compliance with environmental legislations.

More dialogue with Colombian institutions

Common systemic challenges across the two geographical areas are corruption, mistrust between governments, companies and communities, the lack of institutional presence and enforcement at the local level, and most worryingly, the communities closer to the mines do not seem to be benefiting from the revenues produced.

Government institutions at central, regional and local level have an important role to play with regards to protecting human rights, monitoring the situation in the area and ensuring that the companies comply with Court rulings. Nevertheless, the Comptroller General has repeatedly denounced the failure of such institutions at central and local level.

These institutions play a major role in defining how royalties are used and, more broadly, how local development will be shaped. In the coal sector, this is of the utmost importance if one considers the plausible need to diversify local economies in the face of future mine closures.

Vattenfall believes that a constructive dialogue with government institutions is central to a country focused HRIA approach.

Avoid getting lost in the judicial system

Colombia is a very legalistic country with a complex judicial system. Most of the issues the CWG has been monitoring were tackled in court proceedings. It is easy to get lost in the complexities of the system.

Also, the Comptroller General has stated on numerous occasions that the institutions repeatedly failed to monitor the right execution of the court sentence. We have also been witnessing how some cases have been elevated to extra judicial mechanisms as in the case of the OECD complains.

The importance to have a first-hand view

For Vattenfall, going to Colombia twice as part of our HRIA made a big difference. Seeing things with your own eyes adds perspective and context. Specific attention to a country needs, its challenges and fields for improvements sends a right signal to all stakeholders, and in turn helped us to have more effective dialogues with suppliers.

On top, even though, the challenges are often unique to every country, certain lessons learnt and reflections can help to improve due diligence procedures for suppliers from other countries, e.g. for our Russian coal suppliers.

Getting results from suppliers

For Vattenfall, one of the most frustrating aspects is the amount of issues that are still pending resolution, e.g. El Hatillo, Boquerón, Tabaco, Bruno Creek, Provincial. All of these issues are complex and have been dealt via judicial and non-judicial Colombian mechanisms. Vattenfall's role has been mostly in monitoring the situation closely and engaging with different parties. One could argue that taking a hard stance position or even disengaging for six months as recommended by the UN Guiding Principles would have led to quicker and more improvements. Commercial leverage is a relevant factor in this respect.

Conclusion

Four years have passed since the 2017 HRIA. Have we remediated the issues? Disappointingly, not as many as we would have liked to see. With regards to companies' operational performance against the Bettercoal Code, the CWG is monitoring progress closely and satisfied to see that most of the findings have been closed. However, when it comes to the bigger challenges: long standing issues with resettled communities, relationship with unions etc., the number of issues arising has not decreased and the situation of communities such as El Hatillo, or Tabaco is still precarious. We would also have liked to see more social investments in the neighboring communities. Poverty levels are still very high and it is deflating that the communities closest to the mines have not benefited. In regions where corruption and the lack of effectiveness of monitoring and enforcement agencies is endemic, putting into practice a remediation / mitigation plan is extremely challenging. More so when the Colombian legal system is complex. Many of the issues we have dealt with have been handled by the Courts, e.g. Provincial, Tabaco, Boquerón, etc. The approach taken by the CWG was to monitor developments closely and respect the rule of law.

Still, we feel we have taken many steps in the right direction. HRIAs are a valuable tool to exercise enhanced due diligence. It enabled us to identify some of the root causes to systemic issues and identify ways to mitigate them. Also, getting a first-hand view was of major importance.

Looking back in time, we are confident that our assessment was carried out in a comprehensive and robust manner. The approach was supported by PAX who accompanied us during the 2017 visit.

Nevertheless, being our first time of conducting a country based HRIA, we of course feel there is room for improvement. One thing that we would do differently is to ensure that we identify clearly per issue and per company how we are associated with the issue, i.e. whether we are "contributing" or "directly linked". Although not expressly mentioned, we felt at the time of the HRIA that we were "directly linked" to the issues rather than contributing. A few years later, BSR issued a guidance to help companies determining whether they are "causing", "contributing" or are "directly linked"³⁹. In the process of writing this last update, we have asked ourselves these seven questions again and concluded that due to all the actions we took during the last years we are "linked" rather than "contributing".

³⁹ [Human Rights Harm Analysis Worksheet.pdf \(bsr.org\)](#)

QUESTION	ANSWER	ATTRIBUTION
Did the company's actions on their own cause the human rights harm?	NO	Directly linked
Did or will the company facilitate, enable, or incentivize other parties in causing the harm?	NO	Directly linked
Could the company have known about or foreseen the potential harm ⁴⁰	Maybe	Directly linked
How specific was the connection between the company's operations and the harm? (scale 1 (lowest) – 5 (highest) ⁴¹	1	Directly linked
Did the company take steps that likely could have prevented the harm from occurring?	Yes	Directly linked
Did the company directly benefit from the negative impact? Guidance: Where the benefit is directly related to the harm and easily identifiable, the more likely it is that the company will be considered to have contributed to that harm	No	Directly linked
Do stakeholders and rightsholders believe that the company caused, contributed to, or was directly linked to the harm, or that the company should otherwise provide or contribute to remedy?	Some	Directly linked Contributed (SOMO)
FINAL ASSESMENT		Directly linked

7. Chronology of events from a Vattenfall perspective

2017

- March 2017: Vattenfall conducts an HRIA over Colombian mines
- November 2017: Vattenfall's publishes report on its HRIA

2018

- January-June: Ongoing dialogue with the three companies on an action plan based on Vattenfall's findings
- April: Follow-up visit to Colombia together with a Bettercoal delegation. Together with the secretariat, other companies present were Uniper, ENGIE and RWE.
- Specific action plans between Vattenfall and Cerrejón and Prodeco that go beyond the scope of the Bettercoal assessment are agreed
- Prodeco and Cerrejón undergo Bettercoal Assessment for the first time
- June : Prodeco, Drummond, and Cerrejón sign joint declaration of rejection to threats to people's lives and physical integrity
- Drummond refuses to agree on an action plan with Vattenfall. Drummond ceases to be an approved direct supplier of Vattenfall
- November: The Bettercoal Colombia Working Group is formed. Chaired by Uniper with representatives from ENEL, ESB, Engie (exited in 2019), RWE and Vattenfall.

⁴⁰ In assessing whether an impact was reasonably foreseeable, some questions that may be relevant are: how the company understood the potential risks before beginning its diligence efforts; the extent to which diligence efforts were pursued by the company and whether those efforts were commensurate with and tailored to the risks; whether the diligence undertaken was consistent with the company's generally established approach to diligence; whether the company identified some or all aspects of the relevant risk during diligence; and the reason the company failed to identify all aspects of the risk during its diligence. (BSR.org)

⁴¹ As the OHCHR acknowledges, "activities that have only a 'trivial or minor' effect" are not specifically connected, while "a specific action or decision by the [business] that provides motivation or incentives [to another actor] to act in a way that results in human rights harm" creates a more specific connection. (BSR.org)

2019

- The CWG works towards forming an action plan that also takes Vattenfall's action plan into consideration with the objective of having one unified action plan. Vattenfall's priority areas are covered in the unified action plan.
- Numerous dialogues are held between the members of the Colombia Working Group, the mining companies, affected stakeholders and civil society. The dialogues helped to increase the level of awareness, understanding and engagement by member companies.
- Bettercoal gives official support to CREER's multi-stakeholder dialogue project "Building Trust in Cesar"⁴².
- Bettercoal releases a number of statements:
 - Bettercoal Public Statement on Blanco Maya Case in Colombia⁴³
 - Bettercoal rejects death threats against social leaders in Colombia⁴⁴
- Towards the end of 2019, once the Action Plan for the CWG has been agreed, the group starts preparing for a follow up visit in March 2020.
- In 2019, the CWG starts working on the mapping and definition of prioritised issues for the Group to focus on. This process included consultation with external stakeholders.

2020

- In February, the visit to Colombia is put on hold due to the pandemic. Discussions are held but via digital channels, engaging in conversations with other relevant stakeholders to gather insights and have a better understanding of broader topics relevant for the mining industry, including PAX, the National Federation of Christian Trade Unions in the Netherlands (CNV), the Human Rights and Business Resource Centre, the Development and Peace Programmes (PDP in Spanish), Regional Centre of Responsible Business and Entrepreneurship (CREER in Spanish), National Union of Ill, Disabled, Mining Workers (SINTRADEM in Spanish), Sintracarrejón and IndustriAll.
- The CWG Action plan on prioritized issues is consulted with the TAC, the mining companies and selected stakeholders e.g. PAX, Urgewald
- The CWG 2020 Work Plan is finalized⁴⁵
- Fortum and EnBW join the CWG
- Conversations are held with Drummond, Prodeco and Cerrejón to follow up progress on their Continuous Improvement Plan.
- CNR declares itself in bankruptcy.
- Vattenfall's CEO and CEOs of other Bettercoal member companies receive a letter from IndustriALL alerting us on the long standing strike at Cerrejón. Vattenfall responds to IndustriALL
- Bettercoal issues statements:
 - Sintracarbon strike⁴⁶ at Cerrejón and on its resolution⁴⁷
 - Bettercoal response to Christian Aid Report 'Undermining Human Rights: Ireland, the ESB and Cerrejón coal'⁴⁸
 - Bettercoal Support to CREER multi-stakeholder dialogue Project "Building Trust in Cesar"⁴⁹
- The CWG Progress Report 2020 is published⁵⁰

2021

- The CWG decides to do a digital visit to Colombia during April – May 2021
- Bettercoal issues the following public statements:
 - Statement on Drummond investigation⁵¹
 - Bettercoal public statement on the complaints submitted to the OECD against Cerrejón and the ESB⁵²

42 <https://bettercoal.org/bettercoal-support-to-the-creer-multi-stakeholder-dialogue-project-building-trust-in-cesar/>

43 <https://bettercoal.org/bettercoal-public-statement-on-blanco-maya-case-in-colombia/>

44 <https://bettercoal.org/bettercoal-rejects-death-threats-against-social-leaders-in-colombia/>

45 <https://bettercoal.org/resource/bettercoal-cwg-working-plan-2020/>

46 <https://bettercoal.org/sintracarbon-strike-at-cerrejon/>

47 <https://bettercoal.org/end-of-sintracarbon-strike-at-cerrejon/>

48 <https://bettercoal.org/bettercoal-response-to-christian-aid-report-undermining-human-rights-ireland-the-esb-and-cerrejon-coal/>

49 <https://bettercoal.org/bettercoal-support-to-the-creer-multi-stakeholder-dialogue-project-building-trust-in-cesar/>

50 https://bettercoal.org/resource/bettercoal-colombia-working-group_progress-report-2020/

51 <https://bettercoal.org/bettercoal-public-statement-on-the-allegations-against-drummond-colombias-president/>

52 [Bettercoal public statement on the complaints submitted to the OECD against Cerrejón and the ESB - Bettercoal](#)