

AS BLACK AS COAL

Business and human rights
with focus on coal mining in Colombia



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Cerrejón coal mine

INTRODUCTION

Business enterprises are critical actors in global development today. Swedish companies have the potential to contribute to a fair and sustainable development but for this to be realized, the companies need to respect human rights in all their operations and also monitor their suppliers' activities. States have a responsibility to have effective legislation in place to prevent and address human rights violations by businesses. Demands are also increasingly being raised on financial actors and institutional investors that they invest their capital in a responsible and sustainable way. Some sectors pose higher risks and more challenges for companies and investors, and certain markets are more difficult than others. Mining is an example of a high risk sector and Colombia is a country where there are increased risks for human rights abuses.

Colombia is the world's fourth largest coal exporter. Cerrejón is Colombia's biggest coal mine and one of the world's largest open pit coal mines. Sweden's largest state-owned company Vattenfall is buying coal from Colombia. The national pension funds (the AP funds) hold investments in the three international mining companies Anglo American, BHP Billiton and Glencore, who in equal shares own the mining company Cerrejón.

Focus of the report

This report discusses business and human rights with examples from coal mining at Cerrejón in Colombia. It looks at Sweden's policies in relation to sustainable business and the roles and responsibilities of states, companies and institutional investors laid down in the UN Guiding Principles on Business and Human Rights. The report links this to the example of the coal mine Cerrejón in Colombia, since mining is a high risk sector as regards respect for human rights and Colombia is a difficult market which means particular risks and challenges for companies and investors. The report investigates Vattenfall and how they deal with the coal supply chain and Corporate Social Responsibility (CSR) as well as the Swedish national pension funds (the AP funds) and their responsibilities as institutional investors. The report includes concrete recommendations to the different actors.

The report investigates implications for local communities of the Cerrejón coal mine in Colombia and raises voices of affected communities, particularly in relation to involuntary resettlement, inadequate consultation processes, water scarcity and current plans by the company to divert a river. The example of Cerrejón highlights the challenges for businesses and investors involved in mining in a country like Colombia.

BUSINESS AND HUMAN RIGHTS

Enterprises are important actors in global development, but the state needs to ensure that frameworks and legislations are in place to regulate the businesses. States have a duty to protect against human rights violations according to the UN Guiding principles on business and human rights. The Swedish government has taken some steps, for example the launch of a national action plan. But the Swedish government needs to take a more active role as legislator and introduce for example mandatory requirements on human rights due diligence for state-owned companies.

Business enterprises – central actors

The operations of business enterprises affect development and people's lives in the countries of operations. In order to ensure that business activities contribute to a social, economic and environmental sustainable development, the state is responsible for developing frameworks and regulations. The main international guidelines in relation to human rights are the UN Guiding Principles on Business and Human Rights, which are a set of guidelines for states and companies to prevent, address and remedy human rights abuses committed in business operations¹. The principles were proposed by the UN Special Representative on business and human rights John Ruggie and they were endorsed by the UN Human Rights Council in June 2011. Business enterprises are central actors in the implementation of Agenda 2030 and fulfillment of the global development goals.

Swedish policies on business and human rights

According to the UN Guiding principles on business and human rights, states have a duty to protect against human rights abuses by third parties, including business enterprises.

“ Business and respect for human rights go hand in hand and should be part of an active corporate social responsibility policy. ... The Government would like to urge and encourage all Swedish companies to use the international guidelines as a basis for their operations and to set a good example both at home and abroad. The Government will act to support them in this effort.

Mikael Damberg, Minister for Enterprise and Innovation, Swedish National Action Plan for Business and Human Rights, August 2015

1 UN (2011), Guiding principles on business and human rights, http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

The Swedish government has announced that Sweden shall have ambitious policies for sustainable and responsible businesses. The government has taken some steps in this direction. In August 2015, the government launched the Swedish action plan on business and human rights in order to implement the UN Guiding principles². This was followed by a communication to the Swedish Parliament in December 2015 on policies for sustainable business³.

Sweden was the sixth country in the world to adopt a national action plan on business and human rights. The government sets out clearly that it expects Swedish business enterprises to live up to the UN Guiding principles and respect human rights. It is a positive step that the government plans to conduct a baseline study in order to evaluate how Swedish legislation compares with the UN principles and to determine whether there are any gaps that need to be addressed. But otherwise, the national action plan lacks concrete measures and proposals for legislations, for example regarding Swedish companies' operations abroad, so called extraterritorial legislation, and mandatory human rights due diligence for companies operating in high risk sectors and areas as well as for state-owned companies. The UN Guiding principles stress that states should “consider a smart mix of measures – national and international, mandatory and voluntary – to foster business respect for human rights”⁴.

The UN Guiding principles state that abuses of human rights by state-owned businesses may entail a violation of the state's own international law obligations. Where states own or control business enterprises, they have the greatest means to ensure that relevant policies and legislations regarding respect for human rights are implemented.⁵

- 2 Regeringskansliet (2015), Action plan for business and human rights, August 2015, <http://www.government.se/contentassets/822dc47952124734b60daf1865e39343/action-plan-for-business-and-human-rights.pdf>
- 3 Regeringskansliet (2015), Regeringens skrivelse 2015/16:69, Politik för hållbart företagande, 10th December 2015, <http://www.regeringen.se/contentassets/fddf455a4b1843b6a58c70b2e9f0c6fe/politik-for-hallbart-foretagande.pdf>
- 4 UN (2011), Guiding principles on business and human rights, http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf
- 5 UN (2011), Guiding principles on business and human rights, http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf



Coal train

In March 2016, the Council of Europe adopted recommendations to EU member states on human rights and business⁶. According to the recommendations, “member states should apply such measures as may be necessary to encourage or, where appropriate, require that business enterprises domiciled within their jurisdiction apply human rights due diligence throughout their operations”. This also concerns business enterprises that are controlled or owned by states. The Council also recommends member states to encourage and require business enterprises to display greater transparency. Businesses should regularly provide information on their efforts regarding corporate responsibility to respect human rights.

Policy coherence for development

The Swedish government has announced high ambitions and a new start for its Policy Coherence for Development (PCD), which was adopted in 2003 and forms the basis for coherent policies that contribute to a global sustainable development. The Swedish government stresses the important role of business as an actor and partner in this work. Hence, sustainable

business is a critical policy area for the Swedish coherence policy. The government presented a communication on PCD to the Parliament in May 2016, where sustainable business was one of the thematic areas that was specifically analysed⁷. In the communication, the government lists business in difficult markets as potentially in conflict with the objectives of coherent policies contributing to a fair and sustainable global development. Difficult markets are characterized by, for example, occurrence of violations of human rights and weak institutions. The government states that Swedish companies shall lead by example on how to integrate social and environmental responsibilities in their business operations. They shall respect human rights and environment in all their activities, which requires special attention when the operations take place in countries where the respect for human rights and environment is weak. The government encourages the companies to hold a dialogue on issues related to human rights with different stakeholders, including trade unions and civil society.

6 Council of Europe (2016), Recommendation CM/Rec (2016) 3 of the Committee of Ministers to Member States on human rights and business, adopted 2nd March 2016.

7 Regeringskansliet (2016), Regeringens skrivelse 2015/16:182, Politiken för global utveckling i genomförandet av Agenda 2030, 26th May 2016, <http://www.regeringen.se/contentassets/c233ad-3e58d4434cb8188903ae4b9ed1/politiken-for-global-utveckling-i-genomforandet-av-agenda-2030-skr-201516182>

Human rights due diligence

According to the UN Guiding Principles, human rights due diligence is defined as an ongoing risk management process in order to identify, prevent, mitigate and account for how a company addresses its adverse human rights impacts. It includes four key steps: assessing actual and potential human rights impacts; integrating and acting on the findings; tracking responses; and communicating about how impacts are addressed. The UN principles identify human rights due diligence as the principal tool that a business should use to address human rights risks.

Source: Business & Human Rights Resource Centre



Misael Socarrás, Ipuana



Photographer: Catalina Carro

Cerrejón coal mine

THE EXAMPLE OF CERREJÓN IN COLOMBIA

This report discusses business and human rights with examples from the largest coal mine in Colombia. As regards respect for human rights, mining is often considered a high risk sector and Colombia is considered a difficult market with many challenges. It is a country endowed with vast natural resources. Mining is seen as a driving force for a long term economic growth by political and economic leaders. But the question is who is benefitting from the exploration of Colombia's resources – and in this particular case, the mining of coal.

Mining – engine of Colombia's economy

Colombia is a country rich in natural resources. It has vast reserves of gold, oil, coal, gas, nickel, and other minerals. During the administration of President Álvaro Uribe Vélez (2002-2010) mining was considered to be a driving force for long term economic growth, and the country adopted a series of policies aimed at increasing Foreign Direct Investments (FDI). Favourable investment conditions were created for multinational companies and mining concessions were granted on a large scale. In the year 2000, a number of 105 mining concessions were granted, but in 2010 this had increased to 1 114.¹ Between the years 2000 and 2012 the production of the mining sector grew significantly. Regarding coal, the production went from 38 million tons to close to 89 million tons per year.²

President Uribe launched the Mining and Energy Vision 2019, with the goal that Colombia should become one of the most important mining countries in Latin America by 2019. The current President Juan Manuel Santos continued on the same path and the country's National Development Plan 2010-2014 declared mining as one of the engines for economic growth and job creation. The mining sector has continued to grow. Out of the Foreign Direct Investment that Colombia attracted in 2013, more than 46 per cent went into the mining sector.³

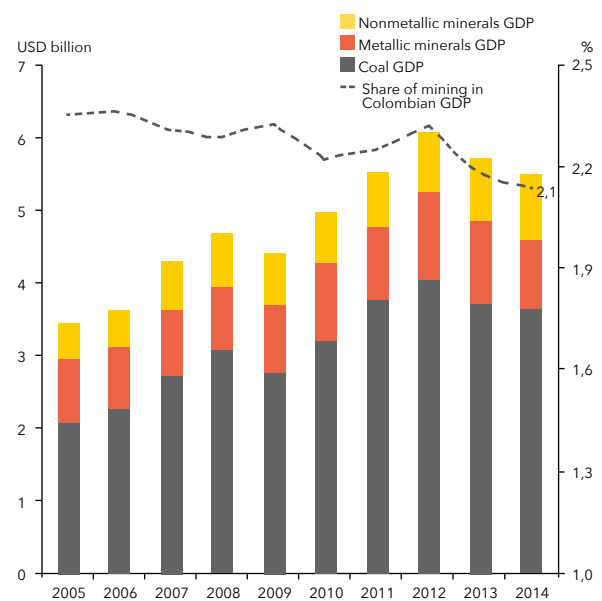
Major coal exporter

Colombia is the world's fourth largest coal exporter, and the country is considered to have the largest coal reserves in Latin America. Coal exports represent 15 per cent of the country's total exports⁴. The majority of Colombia's coal is of very good quality and is classified as hard, with high heat-generating capacity.

The Netherlands is by far the largest European importer of coal from Colombia, but more than 70 per cent of this is transhipped in Amsterdam and Rotterdam and transported

⁴ Agencia Nacional de Minería, 2015 https://www.anm.gov.co/sites/default/files/DocumentosAnm/anm_ladu_final.pdf

COAL, METALLIC MINERALS AND NON-METALLIC MINERALS' GDP



https://www.anm.gov.co/sites/default/files/DocumentosAnm/anm_ladu_final.pdf

¹ El Espectador 2015 "Títulos mineros aumentaron 1.089%" <http://www.elespectador.com/noticias/actualidad/vivir/titulos-mineros-aumentaron-1089-articulo-314536> (Accessed September 2015)
² República de Colombia – Departamento Nacional de Planeación, 2015 "Bases del Plan Nacional de Desarrollo 2014 – 2018, Todos por un Nuevo País: Paz, Equidad y Educación – Version for the Congress (p. 118) <https://colaboracion.dnp.gov.co/CDT/Prensa/Bases%20PND%202014-2018F.pdf> (Accessed September 2015)
³ Coal Action Network (2016), Ditch coal – The global mining impacts of the UK's addiction to coal, <http://coalaction.org.uk/ditchcoal.pdf>



on to other European countries, for example Germany⁵. Transshipments and trade in hard coal is sometimes done via low tax countries, which makes it difficult to get reliable statistics on where the coal is actually burned in the end, and who is paying for it.

The largest coal mines and the ones that generate the most exports are located in the north of the country, in the regions of La Guajira and Cesar. Over 90 per cent of Colombia's coal production occurs here, through large-scale open cast mining operations. The largest among them, Cerrejón, is considered to be one of the largest open pit coal mines in the world.

Giving away its minerals

In 2013, Colombia's coal export was valued at over 640 billion USD.⁶ In the midst of the mining boom, the Colombian government has not taken the time to put in place proper governance mechanisms and institutional structures in relation to mining, for example for protection of the environment and ecologically sensitive areas, for protection of human rights as well as for revenue collection. This is needed if Colombia will truly benefit from the extraction of its resources.

Colombia's local economy and the population will only gain from resource extractions if revenues are effectively collected and redistributed. The extractive sector has a complicated system of tax exemptions for companies. For example, in 2007, the Colombian government lost 53 per cent of its possible income

from the extractive sector through tax exemptions to multinational companies. In 2009, this figure had increased dramatically to 90 per cent.⁷ This is money that Colombia could have used for spending in social sectors, such as on health, education and housing. The country has one of the highest inequality rates in Latin America. Colombia has so far not managed to take advantage of its rich natural resources and create revenue for social spending.

Cerrejón - the largest coal mine

The company Carbones de Cerrejón was established in 1983 as a partnership between the Colombian state-owned mining company Carbocol and Intercor, a subsidiary of the US energy company Exxon. The company obtained a 69 000 hectare concession in order to extract coal in La Guajira. This is one of the driest regions in Colombia and is situated in a remote corner in the north-east of the country, bordering Venezuela. The mine was named Cerrejón, after a mountain close by that was sacred for the indigenous group Wayúu. This became Colombia's first open pit coal mine.

In 2000, Carbocol sold its share of the company to a consortium comprising of BHP Billiton Ltd (based in Australia and UK), Anglo American plc (based in South Africa and UK), and Swiss Glencore International AG. Three years later Exxon sold its share to the consortium as well. In 2006, Glencore merged with Xstrata, and the Anglo-Swiss company is now Glencore plc. Today Cerrejón is owned in equal shares by the three mining giants. The consortium has a contract to operate the mine that runs until 2033. Anglo American, however, announced

5 PAX (2014), The dark side of coal: Paramilitary Violence in the Mining Region of Cesar, Colombia, <http://www.paxchristi.net/news/pax-netherlands-issues-report-dark-side-coal/3374#sthash.DsTOU611.dpbs>

6 Coal Action Network (2016), Ditch coal – The global mining impacts of the UK's addiction to coal, <http://coalaction.org.uk/ditchcoal.pdf>

7 ABColombia (2012), Giving it away: The consequences of an unsustainable mining policy in Colombia, http://www.abcolombia.org.uk/downloads/Giving_it_Away_mining_report_ABColombia.pdf

in February 2016 that it plans to accelerate the sale of its iron ore, coal and nickel mines, after its annual profits more than halved. The company said that it would exit its entire coal operations in Australia, Colombia and South Africa.⁸

According to the System of Colombian Mining Information Simco, most of the hard coal from the Cerrejón mine is exported to the European market (about 60 per cent)⁹. In 2015, 40 per cent of the hard coal imported to the Netherlands from

Colombia came from La Guajira. In Germany, over 50 per cent of the imported hard coal from Colombia is from this area and in Denmark the number is just under 30 per cent. The value of the coal exported from Cerrejón in 2010 amounted to 2 500 million USD. In 2014, Cerrejón had a production of 34 million tons.¹⁰ The mine has its own railway line that transports the coal to its port, Puerto Bolivar, where the coal is loaded onto boats and shipped away

8 The Guardian, Anglo American plans to hasten coal and iron ore sell-offs as profits halve, 16th February 2016, <https://www.theguardian.com/business/2016/feb/16/anglo-american-plans-to-hasten-coal-and-iron-ore-sell-offs-as-profits-halve>

9 Sistema de información minero colombiano, Simco, <http://www.simco.gov.co/Default.aspx?alias=www.simco.gov.co/english>

10 Coal Action Network (2016), Ditch coal – The global mining impacts of the UK's addiction to coal



Cerrejón coal mine

Photographer: Oliver Balch

IMPACT ON LOCAL COMMUNITIES

The Cerrejón mine has throughout the years had a severe impact on communities living in the area. A main problem is access to water, since nearby rivers and streams have been affected by pollution from the mining operations as well as diversions of the water course. Resettlements of local communities have led to loss of land for agriculture and difficulties to sustain livelihoods. Consultations with the local people have in most cases been inadequate. Among the affected local people are several indigenous groups as well as Afro-Colombians.

Photographer: Javier De la Cuadra



“There has been a change in the way we live our lives. Today the air is polluted and our lungs are filled with carbon”

Yasmin Romero Epiayu, interviewed by Forum Syd in La Guajira, October 2015

Coal dust affects the health

Pollution from the mining has had serious impacts on the health of nearby communities. Villagers have for years been exposed to coal dust from the mines as well as from the trains that are transporting the coal through their territories. The community members are affected in various ways, ranging from skin diseases, stomach problems, eye disorders and respiratory problems.¹ The coal mining in Colombia uses explosives, which is disturbing nearby communities and makes their houses shake. The pollution of rivers has implications particularly on women's health in communities living by the rivers, since they spend a long time immersed in the water, for example, washing clothes. As a result, the women are suffering from skin problems.²

1 DanWatch (2010), The curse of coal, http://www.multiwatch.ch/cm_data/100505_danwatch_cerrejon.pdf

2 ABColombia (2012), Giving it away: The consequences of an unsustainable mining policy in Colombia, http://www.abcolombia.org.uk/downloads/Giving_it_Away_mining_report_ABColombia.pdf

Lack of water

La Guajira is among the most arid regions in Colombia. The dry landscape and the small rivers scarcely located in a dry wasteland throughout 15 300 km of desert make access to water a constant struggle. The last few years has seen less rain than normal. The Colombian government mainly blames the drought on the weather phenomenon El Niño.

The most important water source in the region, the Rancheria River, has been dammed up through the Cercado dam, built by the Colombian government in 2011. According to communities, the river now serves the agricultural industry and the Cerrejón coal mine, instead of the local and indigenous communities. In February 2015, five indigenous groups requested the Inter-American Commission on Human Rights (IACHR) to introduce urgent precautionary measures to enable them to regain use of the river and to halt deaths due to starvation and malnutrition. According to the International Work Group for Indigenous Affairs (IWGIA), 37 000 indigenous children are malnourished in La Guajira. The hope is that the Commission will order the immediate opening of the gates that restrict the flow of water from the Rancheria River, which is accumulated in the Cercado dam.³

According to data from Cerrejón's Environmental Management Plan, the coal mine uses around 17 million liters of water per day.⁴ The company, for example, uses water to spray the coal dust and the roads where the coal is transported. While the company consumes huge amounts of water, most families in La Guajira are left with very little water for their daily consumption. Over the years, water in the nearby rivers and streams has been polluted by the mining operations. Many

3 International Work Group for Indigenous Affairs, IWGIA (2015), Colombia: Thousands of indigenous Wayúu children dead from malnutrition, 4th April 2015, http://www.iwgia.org/news/search-news?news_id=1190

4 Dejusticia, Business and Human Rights Resource Center (2015), Digging Deeper: The Human rights impacts of coal in the global south, http://media.wix.com/ugd/c04a21_3e6e58c1b5804082b-f31ac72699d0c53.pdf



Homestead in Roche shortly before eviction

“The water tanks from Cerrejón are filled every 15 days and that water is not enough to satisfy the needs of the people. They do not have water to drink because the water in the tanks is non-potable water. The communities only use the water provided by the company for washing clothes and for taking baths.”

Rogelio Ustate Arregoces from Tabaco community, interviewed by Forum Syd, 15th April 2016

communities have been suffering from a lack of water, both drinking water and water for daily use.⁵

Cerrejón, as part of its CSR obligations, provides some villages close to the mine with tanks of water. But many people from different communities have complained about the quality of the water. They say that it is not suitable for drinking and can only be used for washing.⁶ This is not a sustainable solution, since the water provided is barely enough for household use and not sufficient for agricultural purposes.

Cerrejón has diverted some streams during earlier expansion of the mining areas, in order to access coal reserves in the river basins. According to villagers from the affected communities, some of these streams do not have water flow anymore. Examples are Cerrejoncito, which has not had any water for the last 5 years, Tabaco and Aguas Blancas.⁷ This has further aggravated the effects of the drought on livelihoods and survival for many communities.

Indigenous people

There are about 70 different groups of indigenous people in Colombia, amounting to around 3,5 per cent of the national population.⁸ Approximately one-third of the national territory is collectively owned by the indigenous peoples. The armed internal conflict, which lasted during almost five decades, has been a driving force behind the expropriation of indigenous peoples' land and their marginalization. The conflict has forced many local and indigenous people away from their homes and original territories. Out of a population of almost 49 million people, Colombia has around 6 million internally displaced people due to the conflict⁹.

The largest indigenous community is Wayúu, who com-

prises 44 per cent of La Guajira's population¹⁰. Indigenous communities are already among the most vulnerable groups in Colombia. Large parts of the indigenous territories are now being affected by oil and mining operations, which severely affect the lives of the indigenous communities. In La Guajira, the survival of the Wayúu and their social fabric and ancestral traditions are threatened through the mining operations of Cerrejón. The Cerrejón mine is situated in the middle of the ancestral land of the Wayúu and their territory is being divided by the company's rail line.

Colombia has ratified the International Labour Organisation's (ILO) Convention 169 on indigenous peoples' rights, where free, prior and informed consent (FPIC) is stipulated. The Colombian constitution of 1991 also grants the right of prior consultation to indigenous peoples. The principle of FPIC states that a community has the right to give or withhold its consent to projects that affect indigenous peoples' rights to land, territory and resources, including mining and other utilization or exploitation of resources. FPIC is now a key principle in international law related to indigenous peoples. In 2009, the Constitutional Court ordered the Colombian state to take measures to protect the lives of 34 indigenous peoples at risk of physical and cultural extinction because of the internal armed conflict.

Lack of consultations

According to representatives of indigenous communities in La Guajira, there has often been a lack of consultations in relation to mining activities in the region. In cases where consultations have been held, they have often been insufficient. In many cases, the communities were not properly informed before mining activities started or about the company's expansion plans. The fact that many cases related to effects on indigenous peoples of large scale projects have been presented to the Constitutional

“We are suffering a huge crisis because of lack of water, since the company Cerrejón has caused an irreversible damage with the diversion of streams. An example of that is the diversion of the Aguas Blancas, which was rerouted and is now dead. The stream Cerrejoncito used to have a permanent water flow, but now it is five years since the last time Cerrejoncito had a water flow.”

Rogelio Ustate Arregoces from Tabaco community, interviewed by Forum Syd, 15th April 2016

5 Dejusticia, Business and Human Rights Resource Center (2015), Digging Deeper: The Human rights impacts of coal in the global south, http://media.wix.com/ugd/c04a21_3e6e58c1b5804082b-f31ac72699d0c53.pdf

6 Can we afford 30 more years of coal exploitation?, Munic, Jagoda, published 26th February, 2015, <http://www.foei.org/news/can-afford-30-years-coal>

7 Rogelio Ustate Arregoces from Tabaco community, interviewed by Forum Syd, 15th April 2016

8 IWGIA, Indigenous peoples in Colombia, <http://www.iwgia.org/regions/latin-america/colombia>

9 Internal Displacement Monitoring Centre, <http://www.internal-displacement.org/americas/colombia/>

10 DanWatch (2010), The curse of coal, http://www.multiwatch.ch/cm_data/100505_danwatch_cerrejon.pdf

“ Since a long time, we have a policy of having a very good relation with the communities, of always seeking a relation that respects, in the first place, their autonomy, their traditional authorities, their uses and customs and their ways of solving their problems.”

Carlos Franco Echavarría, Manager of the Department of Social Standards and International Engagement, Carbones de Cerrejón, interviewed by Forum Syd, March 2016.



Photographer: Emma Banks

View in Las Casitas

Court indicates that there is a failure of the Colombian state to carry out adequate consultation processes.¹¹

Following the lack of adequate consultations in relation to expansion of the mining activities at Cerrejón, the Wayúu communities at Provincial and Tamaquito II decided to organize their own autonomous consultation in August 2014.¹² They also invited Afro-Colombians and peasant farmer communities in order to gather communities that have all been affected by the coal mining. They chose to do this in the form of a Peoples’

Tribunal. People came together to share experiences, visit former sacred sites, discuss the effects of the coal mining and give their testimonies of damages by the mining company. Participants highlighted how the mining activities on their territories have restricted the right to free movement of the indigenous people. Practices such as fishing, hunting, grazing by the cattle and collection of medicinal plants have been restricted. Indigenous community members have lost their sacred locations and ancestral sites and social life has been destroyed.¹³

11 ABColombia (2012), Giving it away: The consequences of an unsustainable mining policy in Colombia, http://www.abcolombia.org.uk/downloads/Giving_it_Away_mining_report_ABColombia.pdf

12 Coal Action Network (2016), Ditch coal – The global mining impacts of the UK’s addiction to coal, <http://coalaction.org.uk/ditchcoal.pdf>

Poor conditions in resettlements

There is no specific law on resettlement in Colombia, although the environmental licensing law dictates that impacted communities should benefit from extractive projects and be able to improve their socio-economic situation. Cerrejón claims that the company follows the standards for resettlement of the International Finance Corporation (IFC) of the World Bank¹⁴.

In its principles, the IFC states that involuntary resettlement should be avoided, wherever feasible, or minimized by exploring alternative project designs and sites. Where involuntary resettlement is unavoidable, affected people must be engaged in the planning, implementation and monitoring of the resettlement process. It must be ensured that the livelihoods and living standards of affected people prevailing before their displacement are improved. All people affected by an involuntary resettlement must be compensated for lost assets. According to the IFC, a Resettlement Action Plan (RAP) must be established. Without proper planning and management, involuntary resettlement may result in long-term hardship for affected people and environmental damage to the locations in which they are resettled.¹⁵

International Finance Corporation (IFC) principles for involuntary resettlement

- Involuntary resettlement should be avoided.
- Where involuntary resettlement is unavoidable, all people affected by it should be compensated fully and fairly for lost assets.
- Involuntary resettlement should be conceived as an opportunity for improving the livelihoods of the affected people and undertaken accordingly.
- All people affected by involuntary resettlement should be consulted and involved in resettlement planning to ensure that the mitigation of adverse effects as well as the benefits of resettlement are appropriate and sustainable.

Source: IFC, Handbook on preparing a Resettlement Action Plan

13 Sentencia del Tribunal Ético y Político: Agresión Minera en La Guajira, Barrancas, La Guajira, 7-9 de agosto 2014, http://www.colectivodeabogados.org/IMG/pdf/141118_sentencia_del_tribunal_etico_y_politico_agresion_minera_en_la_guajira_version_final.pdf

14 Emma Banks, PhD Candidate, Department of Anthropology, Vanderbilt University, Email on 16th May 2016

15 IFC, Environment and Social Development Department, Handbook on preparing a Resettlement Action Plan, <http://www.ifc.org/wps/wcm/connect/22ad720048855b25880cda6a6515bb18/ResettlementHandbook.PDF?MOD=AJPERES>



Community member of Horqueta

Involuntary resettlement can include both the physical displacement of people and the disruption of their livelihoods. The main problem with the resettlements that have taken place due to Cerrejón's mining activities is loss of land for agriculture, hunting and gathering and as a result, difficulties to sustain livelihoods and massive unemployment. Rural people have been forced to urban areas, without being prepared for this. For example, they lacked education and job training. People have lost not only their means of livelihood, but also their connections to their families, neighbours and communities. As a result, resettlement has increased crime, feelings of insecurity and divisions within and among communities. Hence, people have lost their autonomy and ability to provide for themselves. The new settlements that communities have been given and relocation sites are often inferior to their former homesteads. The houses are often of poor quality and there is not adequate water neither for consumption nor agriculture in most resettled

communities. People have also lost access to ancestral remains and ancestral sites.¹⁶

According to community members, Cerrejón has not lived up to the principles for resettlement developed by the IFC/World Bank. The process of compensation to affected people has been uneven. There were Resettlement Action Plans for the most recent resettlements. However, earlier resettled communities like Oreganal did not have the same process. Consultations were conducted in the most recent resettlements, such as in Tamaquito II, Roche, Patilla, Chacleta and Las Casitas. But the level and type of consultations was unsatisfactory, except in the case of Tamaquito II. Part of the problem is that the Colombian state does not do enough to regulate resettlement.

In early 2016, many families from the communities of Chancleta and Patilla, who were resettled by Cerrejón between 2012 and 2014, had returned to their old village sites near the Cerrejón mine because of insufficient conditions in the new settlements¹⁷. The villagers claim that the company has failed to keep its promises about employment, water and health facilities in the resettlements. In a letter to the Cerrejón company, the villagers told that "as families of the resettled communities of New Chancleta, New Roche and New Patilla, due to the adverse conditions of life that we have encountered for several months now, we have been obliged to return to our original site, in search of a solution, due to the fact that the company has not complied with the agreements made with the communities"¹⁸.

No solution despite resettlement agreement

The company Cerrejón has still not found a permanent solution for the people who were evicted from the village Tabaco in 2001, although there was an agreement on resettlement in 2008. The company has stated that it is committed to "reunit-

16 Emma Banks, PhD Candidate, Department of Anthropology, Vanderbilt University, Email on 16th May 2016

17 Emma Banks, PhD Candidate, Department of Anthropology, Vanderbilt University, Email on 16th May 2016

18 London Mining Network, It's all kicking off at Cerrejón coal, 17th February 2016, <http://londonminingnetwork.org/2016/02/its-all-kicking-off-at-cerrejon-coal/>.

Recent eviction

In February 2016, one family from Roche was brutally evicted by Colombian police. The family is Afro-Colombian and had remained in their old village site. The eviction was carried out by the Mobile Anti-Disturbance Squadron (ESMAD) and witnesses reported of an excessive violence being used. The use of excessive and disproportionate force, such as throwing of gas canisters, rubber and steel projectiles at the crowd, prevailed throughout the expropriation process. Several people were injured and ESMAD arbitrarily detained a journalist and a photographer at the police station and destroyed their photos.

Following the incident, civil society organisations

signed a joint statement demanding that the authorities investigate the conduct of ESMAD during the expropriation and that they ensure that the agreement signed between the Roche community and the company is fulfilled. The statement also calls on Cerrejón's shareholding corporations (Anglo-American, BHP Billiton and Glencore) to investigate this event in accordance with their obligation to uphold international human rights standards.

Source: London Mining Network (2016), <http://londonmining-network.org/2016/02/cerrejon-coal-brutal-evictions-of-villagers-resisting-relocation/>.



“ They destroyed the entire village. They took all our land away. We lost all our livestock, everything. They relocated us to other districts, where we now live in poverty since we cannot grow anything. Where we used to live, where the Tabaco river flows, we grew cassava, maize and bananas. For many years, our cattle grazed the land and we also had fruit trees, but today we have to buy everything. We have become destitute, since we no longer have a village.”

Samuel Arregoces, former inhabitant of Tabaco, interviewed by Forum Syd, October 2015

ing the divided community of Tabaco”¹⁹, but despite several years of negotiations, there is still no progress.

It was in August 2001 that the inhabitants of the village Tabaco were forcibly removed from their homes to make way for an expansion of the mining operations. It was a brutal eviction, where bulldozers tore down the houses and demolished them. According to witnesses, the eviction was assisted by police, armed guards and military. Most of the people in Tabaco were Afro-Colombians and made a living as farmers. 700 villagers were forced from their homes.

Cerrejón was then co-owned by Carbocol and Intercor. In 2002, the Tabaco community filed a legal petition, where they demanded resettlement. This was approved by the court, which ordered a reconstruction of the village and its infrastructure. Neither Cerrejón nor the municipality Hatonuevo lived up to

this.²⁰ In December 2008, Cerrejón and representatives of the Tabaco community reached an agreement, which included compensation to be paid and finding a sustainable situation for the villagers²¹. Today, the former inhabitants of Tabaco are spread out, some living as internally displaced people and others having moved to neighbouring cities and municipalities.

19 Dejusticia, Business and Human Rights Resource Center (2015), Digging Deeper: The Human rights impacts of coal in the global south, http://media.wix.com/ugd/c04a21_3e6e58c1b5804082b-f31ac72699d0c53.pdf

20 London Mining Network (2016), <http://londonminingnetwork.org/2016/02/cerrejon-coal-brutal-evictions-of-villagers-resisting-relocation/>

21 OECD (2009), Statement by the Australian national contact point, BHP Billiton-Cerrejón coal specific instance, <http://www.oecd.org/industry/inv/corporateresponsibility/43175359.pdf>



Community members of Horqueta

Photographer: Javier De la Ciadra

DIVERSION OF RIVERS OPPOSED BY LOCAL PEOPLE

Cerrejón's current plan to divert the water course of the Bruno stream is strongly opposed by the local communities. They claim that a diversion will threaten access to water and thereby agriculture and livestock rearing in the area. Earlier, Cerrejón has had an other controversial plan to divert a main river in order to reach coal reserves in the river basins. Local communities have jointly managed to stop this plan.

Current plan for diversion of the Bruno stream

Currently, in 2016, some communities are involved in a struggle against Cerrejón's plans to divert the water course of stream Bruno. The Bruno is a tributary of the Rancheria river, which is one of the major surface water sources in La Guajira. It is located in the northern part of the Cerrejón mine and originates in the nature reserve of Montes de Oca in the Perijá and runs 26 kilometers to meet the Rancheria River. Bruno hides 40 million tons of coal reserves under its river bed. Therefore, in 2013, it became an essential part of the expansion plan of the Cerrejón mine. The current plan by the company is to redirect part of Bruno stream in order to reach the coal reserves. Cerrejón has mining pits on both sides of the river. Since March 2016, the company has the permits to go ahead with the diversion. It is a part of the river amounting to 3,6 kilometers that will be redirected beside its original water course and moved 700 meters to the north, closer to the main road.¹

The company has obtained permits from the National Authority of Environmental Licenses (ANLA) and Corpoguajira, the regional authority on environment and natural resources. No external review by a third party has been carried out and Corpoguajira hired individual experts who conducted the environmental studies.²

The company claims that they have been studying the pending as well as the width of the water course and they are guaranteeing that the speed of the water will be the same as before.³ The company will try to make the artificial conditions very similar to the natural ones and the replication of the natural ecosystem will be done gradually. The Director of Corpoguajira says that they will seek to minimize environmental impacts and preservation of environmental resources such as wildlife,



Photographer: Javier De la Cuadra

Jazmin Romero by the stream Bruno

soil and water.⁴ But the Colombian NGO CENSAT Agua Viva (Friends of the Earth Colombia) and the trade union Sintracarbon have made an in-depth study and they maintain that a diversion of the Bruno stream would generate irreparable damage to the regional ecosystem which provides access to water for numerous communities. A diversion would lead to deforestation and a loss of biodiversity, which would severely affect the agricultural production and rearing of livestock in the area. It would also result in serious negative impacts on groundwater recharge and thus aggravate the already difficult situation in terms of access to water for communities in La Guajira.⁵

Since the river Rancheria and its tributaries is one of the most important water sources for the local people and their livestock in the area, the communities are strongly protesting against the redirection of Bruno. On the banks of the stream there is a vegetation of tropical dry forest with different trees and reeds. The stream is also important for fishing. The local communities get water for their livestock from the stream and they grow medicinal plants in the river basin. With the redirection, the water course will be trapped between an open pit

1 Carlos Franco Echavarría, Manager of the Department of Social Standards and International Engagement, Carbones de Cerrejón, interviewed by Forum Syd, March 2016

2 El Espectador, Los detalles detrás de la desviación del arroyo Bruno en La Guajira, 6th April 2016, <http://www.elespectador.com/noticias/medio-ambiente/los-detalles-detras-de-desviacion-del-arroyo-bruno-guaj-articulo-625776>

3 Carlos Franco Echavarría, Manager of the Department of Social Standards and International Engagement, Carbones de Cerrejón, interviewed by Forum Syd, March 2016

4 El Espectador, Los detalles detrás de la desviación del arroyo Bruno en La Guajira, 6th April 2016, <http://www.elespectador.com/noticias/medio-ambiente/los-detalles-detras-de-desviacion-del-arroyo-bruno-guaj-articulo-625776>

5 CENSAT, Sintracarbon (2015), Las desviación del Arroyo Bruno: entre el desarrollo minero y la sequía, <http://censat.org/es/publicaciones/la-desviacion-del-arroyo-bruno-entre-el-desarrollo-minero-y-la-sequia>

“ In the past, there were some streams that were diverted, and the company used to say that the water flows were going to remain the same. Currently, those streams are dry, and that is why we think that the communities will be affected by the diversion of the Bruno stream. The communities demand a prior consultation that fulfills the established requirements for such a consultation.”

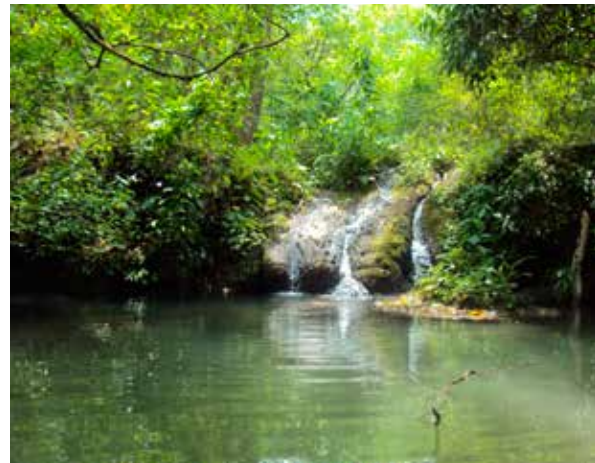
Yoe Arregoces Ustate, from Roche community, interviewed by Forum Syd, 15th April 2016

mining and a busy paved road. The diversion will also affect the Rancheria River.⁶

First victory for communities

With a broad representation of more than 30 social movements and civil society organizations a forum was held in May 2016 to discuss and assess the environmental, economic, social, political and cultural impacts of a diversion of the Bruno stream. The trade union Sintracarbon and several representatives of indigenous communities, such as the Wayúu, Arhuaco, Wiwa and Kankuamos, were also present. The forum was organised by the Civic Committee for the Dignity of La Guajira, which works for the protection and preservation of indigenous peoples' territories and biodiversity. Experts at the forum questioned the assurances by the company Cerrejón that the implications of the redirection of Bruno will be minimal. Participants assume that Cerrejón will not stop at the diversion of the Bruno stream and they believe that the company has an intention to divert other smaller streams. The forum adopted a declaration, which calls for a civic strike in defense of water, life and territory. The declaration states “that if we allow this to happen, we allow an ecological, environmental and social crime against humanity in La Guajira”⁷. The forum will also appoint a commission that will analyze the impact and legal aspects regarding a diversion of the Bruno stream.

Cerrejón claims that the company has held prior consultations on the diversion of Bruno stream with the local communities during a process that took almost a year. A representative of the company claims that consultations were held with more than 5 000 people in the affected area.⁸ But according to community members, consultations were only held with



Photographer: Juan Peña

Bruno stream

“ We are four communities that are placed on the riverside of the Bruno stream; Rocio, La Horqueta, Charito and Piedras Amarillas. These communities would be seriously damaged by the diversion of the stream. We consume the water of Bruno, we use it for our kids and for daily use, so if they redirect the stream the only source of water we have at the moment will disappear. We as the community of La Horqueta have not been consulted, but we are one kilometer away from the place where they will divert the stream.”

Juan Manuel Vergara, from La Horqueta community, interviewed by Forum Syd, 15th April 2016

the Campo Herrera community, which lives 2.5 kilometers downstream. Communities that, according to them, live closer to the stream, such as Rocio, Horqueta, Piedras Amarillas, Charito and La Puente, say that they have not been consulted about the diversion.

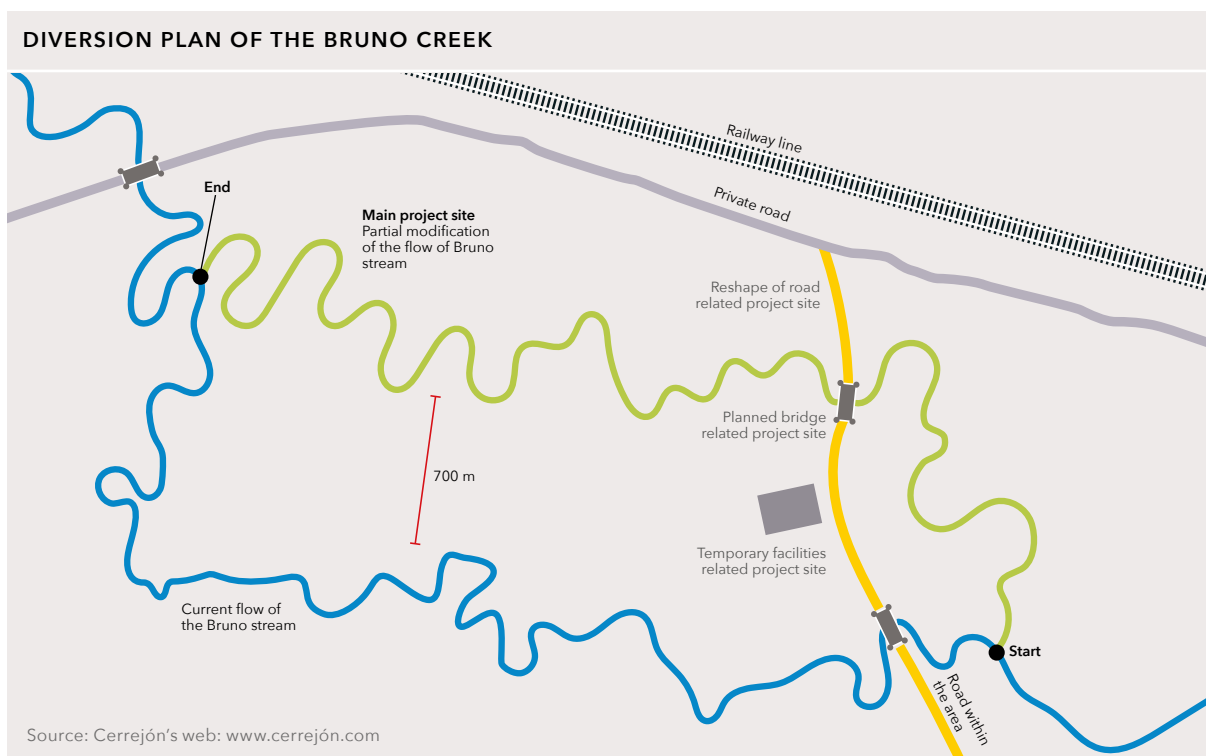
Community members of Horqueta have been leading the resistance against the diversion. In May 2016, they won a first victory when the Administrative Tribunal of La Guajira ordered a suspension of the diversion plans for one month. After being notified of the suspension of the process to divert the water course of the Bruno stream, Cerrejón reported that it will abide by the orders, but it will challenge this decision at the State Council. The mining company argued that the project was approved by all instances required by Colombian law, has all the authorizations and permits, and was designed under “the highest technical, social and environmental standards”.⁹

6 El Espectador, Indígenas Wayúu se oponen a la desviación del Arroyo Bruno, 2nd April 2016, <http://www.elespectador.com/noticias/nacional/indigenas-wayuu-se-oponen-desviacion-del-arroyo-bruno-articulo-625150>

7 Comité Cívico por la Dignidad de la Guajira, Declaración final del II foro: Análisis de los impactos ambientales, económicos, sociales, políticos y culturales del desvío del Arroyo Bruno, 15th May 2016, <http://rio-rancheria.blogspot.se/>

8 Carlos Franco Echavarría, Manager of the Department of Social Standards and International Engagement, Carbones de Cerrejón, interviewed by Forum Syd, March 2016

9 Cerrejón, Sentencia del tribunal contencioso administrativo de La Guajira ordena, web posting 13th May 2016, <http://www.cerrejon.com/site/sala-de-prensa/archivo-de-noticias/sentencia-del-tribunal-contencioso-administrativo.aspx>



The Administrative Tribunal ordered that a technical committee be installed, which should involve about 20 national and regional agencies. They must design a plan to ensure the community that the water from Bruno will not be exhausted as well as determine whether there will be a direct impact on communities of the diversion of the stream. The judgment also orders prior consultation with the Horqueta community, who filed the case.¹⁰

The president of the Committee for Civic Dignity of La Guajira said that Cerrejón must respect the rights of the Wayúu people, especially because the river ramifications of this stream cover 90 per cent of the population of the Wayúu municipality Albania. This is particularly important because of the huge water deficit in La Guajira. Prior consultations are backed by international conventions, which Colombia has signed (ILO Convention 169) and, therefore, consultations should be held before carrying out this plan.¹¹

Earlier plans for diversion of Rancheria river

Cerrejón has had earlier plans to divert rivers in order to reach coal reserves beneath the rivers. One such plan concerned the Rancheria river itself. In 2011, the company Cerrejón presented a plan to divert 26 kilometers of the Rancheria river away from

“The communities living around the Cerrejón mine have lost their culture and the ability to live a dignified life in the area. An expansion of the mine will mean new conflicts, new displacements and, above all, less dignity for the different peoples of Colombia.”

Danilo Urrea, CENSAT, Agua Viva, interviewed by Forum Syd in Stockholm, October 2015

its natural water course, in order to extract 500 million tons of coal from the river basin. The company estimated that the diversion of the river would lead to a loss of natural aquifer water in the area of around 40 per cent, which would have “a potential impact on downstream water users, and in ecosystems and coastal water”. The company said that it would try to mitigate the impact of the diversion.¹²

Local communities, including indigenous and Afro-Colombian groups, protested strongly against the diversion of the river, since it would have had severe ecological, social and cultural implications. In November 2012, after communities had mobilized in defense of their territories and against the plan to divert the river, the company decided to cancel the project.

10 Extractivismo en Colombia, Los wayuu aplauden freno a desvío del Bruno; Cerrejón impugnará, May 2016, <http://extractivismo-encolombia.org/los-wayuu-aplauden-freno-desvio-del-bruno-cerrejon-impugnara/>.

11 Extractivismo en Colombia, Los wayuu aplauden freno a desvío del Bruno; Cerrejón impugnará, May 2016, <http://extractivismo-encolombia.org/los-wayuu-aplauden-freno-desvio-del-bruno-cerrejon-impugnara/>.

12 ABColombia (2012), Giving it away: The consequences of an unsustainable mining policy in Colombia, <http://www.christianaid.org.uk/images/giving-it-away-colombia-mining-report.pdf>

VATTENFALL

Vattenfall buys hard coal from Colombia, but they are not disclosing from which mines they are buying. This lack of transparency is not in line with the Swedish action plan for business and human rights nor the government's ownership policy for state-owned companies. The Swedish government has a responsibility to ensure that its state-owned companies comply with the UN Guiding principles on business and human rights.



Photographer: Vattenfall

Vattenfall's coal plant Hemweg 8 in Holland

Vattenfall and coal

Vattenfall is a Swedish power utility and the country's largest state-owned company. It is one of Europe's largest producers of electricity and heat. Beyond Sweden, the company operates in Denmark, Finland, Germany, the Netherlands and the UK. 40 per cent of the electricity generated by Vattenfall derived from burning coal in 2014.¹ Vattenfall uses two different kinds of coal: hard coal and lignite. Hard coal is more efficient than lignite and it is imported to Germany and Netherlands where it is burned.

Lignite is extracted from Vattenfall's own mines in Eastern Germany. During the last couple of years, it has been a focus in the public debate in Sweden whether Vattenfall should keep, sell or close the lignite mines and power plants. In September 2015, Vattenfall announced that it will start the process to sell its German lignite operations. On 18th of April 2016, Vattenfall signed an agreement to sell its lignite operations to the Czech energy company EPH with its financial partner PPF Investments. The intended sale has provoked a lot of controversy and a heated debate. Environmental organisations have demanded that Vattenfall shuts down the plants. The Swedish government is supposed to take the final decision at the latest on 18th June 2016.

Hard coal is mainly used in Vattenfall's power plants around Amsterdam, Hamburg and Berlin. Additionally, Vattenfall still supplies three of their previously owned power plants in Denmark with hard coal (Amager, Fyn and Nordjylland, all divested in 2013-2015). Today they do not use or import coal to

Sweden. The power plant Moorburg south of Hamburg went into full operation by end of 2015. This plant alone produces electricity that covers 90 per cent of the electricity demand of the industrial megacity Hamburg.²

Vattenfall buys hard coal from different countries for usage in its own power plants. In 2015, Vattenfall imported 7.2 million tons of hard coal to their plants, mainly from Russia (46%), Poland (20%) and Colombia (15%).³ These shares fluctuate from year to year due to market conditions.

Vattenfall and transparency

Vattenfall trades directly with mining companies, but also with intermediary suppliers and on the spot market. Vattenfall does not disclose information from which mines they purchase the hard coal, because they consider this to be commercially sensitive information. Concerning the coal that the company buys from intermediary suppliers and on the spot market, Vattenfall states that "this means that we cannot always know exactly from which mine (or mines) the coal we purchase originates"⁴. However, Vattenfall acknowledges that it is much easier to track the source of Colombian hard coal compared to coal from other countries, since all mines in Colombia have their own ports.

When asked about the reasons for not disclosing the exact origin of the coal that the company purchases, Vattenfall refers to commercial, legal and practical hurdles towards full transparency in the hard coal supply chain and risks of violating European competition law, raised in analysis made by the research and consultancy group Wood Mackenzie and the Dutch Authority for Consumers and Markets (ACM). The analyses were commissioned by the Dutch Foreign Affairs Ministry in 2014. Wood Mackenzie states that "while tracing coal throughout the physical supply chain back to its mine source is theoretically possible, the practical hurdles and complexities for producers in some countries are challenging". The coal mining industry and infrastructure is in most countries physically built to serve a number of mining companies, which share the available infrastructure for exporting. According to Wood Mackenzie, the monitoring of the original source during the exporting process is complex with opportunities to mix coal

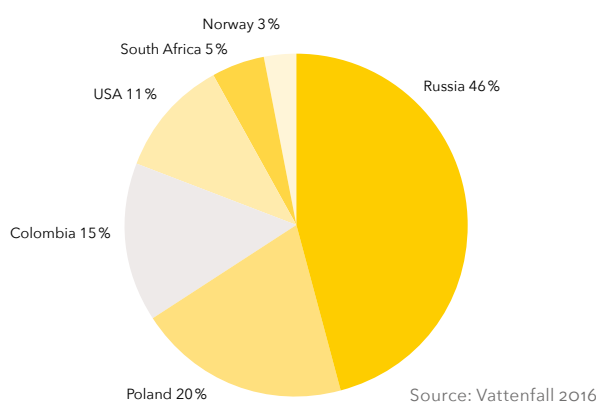
1 Vattenfall, Annual report 2014

2 Vattenfall's web site: Vattenfall's power plants <http://powerplants.vattenfall.com/#/types=Coal/view=map/sort=name> (13th March 2015)

3 Joël Frijhoff, Responsible Sourcing and Trading Manager at Vattenfall, email interview, 18th February 2016

4 Joël Frijhoff, Responsible Sourcing and Trading Manager at Vattenfall, email interview, 18th February 2016

VATTENFALL HARD COAL IMPORT 2015



and lose track of the original source. However, Wood Mackenzie believes that it is theoretically possible to disclose this information by authorising customs authorities for example in the Netherlands to require arriving vessels to produce documentation that provides the relevant source information. The difficulty is in the implementation of the process.⁵

The Dutch Authority for Consumers and Markets (ACM) considered it likely that a requirement on disclosure of origin by name of individual mines, even if the amount purchased is not disclosed, constitutes a violation of the European Competition Law as regards cartel prohibition.⁶ However, ACM stated that an aggregated list by several companies with historical data on mines or mining areas, where they purchase coal, collected, edited and compiled by an independent third party, would not violate the competition law.

Based on input from the Dutch energy companies, the Dutch energy entity KEMA Nederland B.V. presented a list of the origin of hard coal used in Dutch power plants in 2014⁷. Nuon is listed among the five energy companies. The list does not include any quantities and the mines are listed in alphabetic order. Cerrejón is among the Colombian mines in the list. However, Vattenfall considers it of less importance if the particular mining company is a current supplier or not. They state the following: “We are however receptive to any legitimate complaints raised on known suppliers of hard coal to Europe and help other stakeholders to raise this issue. For Vattenfall, it is important to work together to improve the situation on the ground in the countries and with suppliers relevant to our coal supply chain. As suppliers change over time, it is of less

importance to us whether or not we have a commercial relationship at this point in time”.⁸

Vattenfall and Corporate Social Responsibility

The main policy that regulates ethical issues in Vattenfall’s purchasing process is their Code of Conduct for Suppliers, which is based on the state ownership policy that controls Vattenfall. The ownership policy states that state-owned companies should act transparently in matters relating to significant risks and opportunities concerning sustainability.⁹

Vattenfall’s Code of Conduct does not contain specific regulations about forced evictions or the rights of indigenous people to their land and culture. This is remarkable, as Vattenfall is an important buyer of raw materials such as coal and oil, which are high risk sectors in relation to human rights. According to Vattenfall, in their due diligence procedure for coal, they have identified specific areas which are linked to the Code of conduct for suppliers and which are relevant for the coal supply chain. There they include the theme of “Human rights related community impact”.¹⁰

The code contains explicit expectations on Vattenfall’s suppliers and states that Vattenfall will monitor the suppliers’ operations in terms of sustainability and human rights, but the policy does not contain any information about how Vattenfall would act if they were to learn that a supplier does not live up to the expectations in the code.

Vattenfall has recently initiated a risk screening process which is based on their Code of Conduct, and the first screening of coal suppliers was finalized in 2015. For this, Vattenfall

5 Wood Mackenzie, Transparency of Dutch Thermal Coal Supply Chain, for Directorate for Trade Policy and Economic Governance, May 2014

6 Autoriteit Consument & Markt, Letter to the Dutch Foreign Affairs Ministry, 28th October 2014

7 DNV.GL, Kolenherkomst Nederlandse E-centrales 2014, Memo, 6th July 2015

8 Annika Ramsköld, Vice President Corporate Sustainability, and Joël Frijhoff, Responsible Sourcing and Trading Manager at Vattenfall, email interview, 2nd September 2015

9 Regeringskansliet (2015), Statens ägarpolicy och riktlinjer för företag med statligt ägande, <http://www.regeringen.se/contentassets/52b2219b927a415485f2d2a7ae0237e3/statens-agarpolicy-och-riktlinjer-for-foretag-med-statligt-ägande-2015.pdf>

10 Joël Frijhoff, Responsible Sourcing and Trading Manager at Vattenfall, email interview, 24th March 2016



Bolívar Port. Cerrejón's port in Colombia.

commissioned external research companies to collect facts and publicly available information about the coal suppliers' performance on social, environmental and human rights issues. The results were processed by Vattenfall's Responsible Sourcing Board, consisting of managers from different departments. This screening did not lead to discovery of any violation that was serious enough for the Responsible Sourcing Board to decide that Vattenfall should end its business relationship with any of the supplier companies. According to Vattenfall, the outcome of the screening is that problem areas, where the mining companies need to make improvements, have been identified. However, this process is not fully transparent. Vattenfall does not disclose which companies they screen, the results of individual screening of mining companies or information about which mines they have formulated requirements for.¹¹

During the last couple of years, Vattenfall has participated in some CSR activities concerning the Cerrejón mine. In November 2014, they participated in a Dutch trade mission to Colombia, including a site visit to Cerrejón. Vattenfall requested that the mining company should cooperate with Bettercoal and participate in the Bettercoal Assessment Program. In July 2015, Vattenfall participated in a CSR round table hosted by Cerrejón.¹²

Bettercoal

In addition to Vattenfall's own screening process, they are one of the founding members of the Bettercoal initiative. This initiative was created by seven large European energy companies in 2012, and today it has 13 European utilities as members. The aim of Bettercoal is to improve corporate responsibility in coal mining, with a specific focus on the mines themselves.¹³

Bettercoal developed a new coal mining code that was presented in July 2013. The members have committed to implement this code in their respective coal supply chains. The code, developed through consultations with stakeholders in Europe and coal-producing countries (Colombia, Indonesia, Russia and South Africa), is applicable to the mining sites. It includes requirements on management systems, business ethics, dis-

closure, human and labour rights, social performance, health and safety measures as well as environmental performance.

The code forms the basis for assessments (both self-assessments and third-party assessments) of coal mining sites. In Colombia, assessments have been made of only one mine so far, the Drummond mine in Cesar region. The results of these assessments can be used by the members as basis for their purchasing decisions. Bettercoal also has a continuous dialogue with the mining companies in order to influence them to live up to the standards in the code.

A joint initiative to improve the conditions in and around coal mines is positive, but the Bettercoal initiative is lacking in structure as well as in how it operates. Bettercoal is an initiative created and led by energy companies and it does not have a genuine multi-stakeholder governance structure. It is only consumers of hard coal that can become 'regular members'. There is limited transparency and the results of the assessments and site visits are not made public. This means that consumers are deprived of information that would be important in their choices of electricity providers and policy makers in their decisions related to responsible coal sourcing. The Bettercoal members are not required by any binding commitments to act on the outcomes of the assessments and audits.¹⁴

When asked about Bettercoal, Vattenfall gives the following comment: "Through Bettercoal, we are having self- and site assessments conducted through an external audit company. However, progress by Bettercoal has proven to be slow so far. Like all industry initiatives Bettercoal is made up of companies with different ambitions and internal decision making processes. Vattenfall acknowledges the improvement points within Bettercoal (among others transparency of assessment results, commercial incentives) and actively addresses these within Bettercoal. So we are working to push Bettercoal to work on the improvement points and simultaneously Vattenfall is engaging with current and possible future suppliers directly to raise issues of responsible mining practices. Still, we believe that a joint push from companies can ultimately achieve more and therefore remain committed to this initiative."¹⁵

Conclusions - Vattenfall and Colombian coal

It is positive that Vattenfall has initiated a screening process of their coal suppliers, and that they acknowledge their responsibility for the actions of their business partners. These are first steps towards impact, but Vattenfall needs to adopt more measures in order to assume its full responsibility and respect human rights in the hard coal supply chain and to comply with the UN Guiding principles for business and human rights. Vattenfall still has some way to go in order to reach their objective stated in their annual and sustainability report 2015: "Vattenfall aims to be a leader in sustainable production".¹⁶

11 Meeting with Vattenfalls Annika Ramsköld, Vice President Corporate Sustainability, and Joël Frijhoff, Responsible Sourcing and Trading Manager at Vattenfall, 8th March 2016

12 Joël Frijhoff, Responsible Sourcing and Trading Manager at Vattenfall, email interview, 18th February 2016

13 Bettercoal, <http://bettercoal.org/>.

14 PAX (2014), The dark side of coal: Paramilitary Violence in the Mining Region of Cesar, Colombia, <http://www.paxchristi.net/news/pax-netherlands-issues-report-dark-side-coal/3374#sthash.D5TOU6I1.dpbs>

15 Joël Frijhoff, Responsible Sourcing and Trading Manager, Vattenfall, email interview, 18th February 2016

16 Vattenfall (2016), Energy you want, Vattenfall annual and sustainability report 2015

TRANSPARENCY: Vattenfall does not provide full transparency in their hard coal supply chain, contrary to what is stated in the Swedish action plan for business and human rights as well as the government's ownership policy for state-owned companies. For instance, they do not disclose from which mines they purchase their hard coal, which makes it difficult for customers, end consumers and other stakeholders to make informed choices of electricity provider and to hold them accountable for their actions. This is especially serious considering that the coal mining industry is a high risk sector in terms of violations of human rights. It becomes even more important in a country like Colombia, which is a high risk country, when it comes to human rights violations.

In its communication to the Parliament on policies for sustainable businesses in December 2015, the Swedish government states that it has a high level of ambition regarding sustainability for the state-owned companies and that the companies shall lead by example in the area of sustainability. The companies shall live up to international guidelines such as the UN Guiding principles on business and human rights.¹⁷ In its ownership policy for state-owned companies, the Swedish government states that the companies shall act transparently in matters concerning essential risks and possibilities in the area of sustainability.¹⁸

Vattenfall's argument that the disclosure of the origin of the imported coal is commercially sensitive information is doubtful. It is difficult to see in what way disclosing the name of the mines would have a negative impact on their competitive advantages. They would not need to disclose purchased quantities nor prices. Vattenfall refers to the statement of the Dutch Authority for consumers and markets that a requirement on disclosure of origin by name of individual mines might be in violation of the European Competition Law. It is not uncommon that companies refer to commercial secrecy, when asked about transparency. Instead, Vattenfall could take the lead and disclose the mine specific origin of their coal, and be in the forefront among the big energy companies regarding transparency in the coal supply chain.

ENHANCED DUE DILIGENCE: The UN Guiding principles on business and human rights state that businesses have a responsibility for human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.¹⁹ Vattenfall has a responsibility to seek to prevent or mitigate adverse human rights impacts from mines and suppliers in Colombia, with whom they have a business relationship. The UN Guiding principles state that companies shall carry out human rights due diligence in order to identify, prevent, mit-

igate and account for how they address their adverse human rights impacts. Where business enterprises have large numbers of entities in their value chains, the companies should identify general areas where the risk of adverse human rights impacts is most significant, for example due to suppliers' operating context. Mining in Colombia must be seen both as a high risk sector as well as a high risk country and context. It is not possible to fully assess Vattenfall's screening process, since the results of individual screening of mining companies are not disclosed. Hence, it is not possible to evaluate whether Vattenfall fulfills their responsibility in relation to due diligence.

The Swedish government has a responsibility for its state-owned companies such as Vattenfall. It is important that the government takes a more active role as legislator in this regard. The Swedish government should introduce stronger measures in relation to the state owned companies and require a mandatory human rights due diligence by the companies. The government should also investigate and propose legislation with compulsory consequence analysis for companies operating in high risk areas and sectors. This has also been recommended recently by the Council of Europe²⁰.

TAKING APPROPRIATE ACTION: According to the Swedish action plan for business and human rights, state-owned companies like Vattenfall should lead by example and must seek to comply with international guidelines such as the UN guiding principles on business and human rights. The UN principles state that the company first of all should use its leverage to mitigate the negative impact, and, if unsuccessful, cooperate with others for increased leverage. So far, Vattenfall has taken the first steps by means of their screening process and holding dialogues with some mining companies. They are also acting through Bettercoal and pushing for transparency of assessment results as well as the inclusion of traded coal in the scope of Bettercoal. But more measures are necessary. Mining operations, such as at Cerrejón, where controversy have prevailed for many years and accusations of evictions with inadequate resettlements, insufficient consultations, water scarcity and pollution persist, must be closely monitored. Vattenfall should continue to use their leverage to change the structure of Bettercoal towards more transparency and to facilitate real influence from those who are negatively affected by the operations of the coal mines.

EXCLUSION STRATEGY: There is another important step missing from Vattenfall's processes. The UN Guiding principles state that if all else fails, the company should end the business relationship, and the more serious the violations, the faster the company must act. Vattenfall's Code of conduct for suppliers does not include any regulations regarding such a last step, and during the first screening round performed, Vattenfall did not end its business relationship with any company. Without proper, effective measures in place to reward the coal mines that follow the human rights regulations and to punish those who do not, the first steps of screening and dialogue might not have the same effect.

²⁰ Council of Europe (2016), Recommendation CM/Rec (2016) 3 of the Committee of Ministers to Member States on human rights and business, adopted 2nd March 2016.

¹⁷ Regeringskansliet/Utrikesdepartementet (2015), Regeringens skrivelse, Politik för hållbart företagande (skr. 2015/16:69), <http://data.riksdagen.se/fil/2D2F912F-51EB-46B5-A106-6F3AC-C89F48E>

¹⁸ Regeringskansliet/Finansdepartementet (2015), Statens ägarpolicy och riktlinjer för företag med statligt ägande, <http://www.regeringen.se/contentassets/52b2219b927a415485f2d2a7ae0237e3/statens-agarpolicy-och-riktlinjer-for-foretag-med-statligt-agande-2015.pdf>

¹⁹ UN (2011), Guiding principles on business and human rights, http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf



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THE SWEDISH NATIONAL PENSION FUNDS

The Swedish national pension funds (the AP funds) have investments in Anglo American, BHP Billiton and Glencore Xstrata, the three mining companies who in equal shares own Cerrejón. The AP funds are not transparent about the dialogues that they are holding with companies in order to influence them. It is not possible for external stakeholders to scrutinize the dialogues. The AP-funds are of the view that Cerrejón has dealt with the problems and are now moving in the right direction. But accounts from community members differ from those of the company on issues such as resettlements, consultations and water.

The AP funds - important financial actors

The Swedish national pension funds (AP funds), AP 1-7, together hold nearly 1 500 billion SEK in pension assets¹. The biggest funds are AP1-AP6, holding a total of around 1 230 billion SEK², mainly through shareholdings in thousands of companies. These funds administrate the national pension capital of Swedish workers and pensioners, and there is no possibility to opt out of these funds. AP5 does not exist, and AP6 is not investing in listed companies, so this report focuses on AP1-AP4 and AP7. AP7 is different from the others, as this fund holds the premium pension capital for the nearly three million Swedes who have not made an active choice to place their capital elsewhere. Hence, it is possible to opt out of this fund, unlike the other AP funds. AP7 holds 261 SEK billion of premium pension assets³. The AP funds invest 36 billion SEK of the Swedish pension capital in oil, gas, and mining companies⁴.

A major problem with the current system is the mandate of the AP funds, which is formulated by the Swedish parliament. Currently, the AP funds are governed by a principle stating that “the AP funds shall take ethical and environmental consideration without compromising the overall objective of a high return”⁵. This means that human rights and environmental issues are explicitly subordinate to the main objective of high returns.

Need for a new regulation

The Swedish government has no direct control over the AP funds; they are regulated by a law adopted by the parliament. The parliament has a specific pension group consisting of representatives of the Moderate Party, the Liberal Party, the Christian Democrats, the Centre Party, the Social Democrats and, since autumn 2014, the Green Party. In 2015, the directive for

the AP funds was supposed to be revised, following a lengthy review. In June 2015, the Ministry of finance presented a proposal on a new directive for the AP funds, which was endorsed by the parliamentary pension group⁶. The proposal included strengthened requirements in law on the AP funds in their work with responsible investments and responsible ownership and to promote a sustainable development.

The proposal was sent out for consultation during the autumn. Following criticism of some of the aspects and due to political disagreement on the proposal, it was put on hold in December 2015. It is currently unclear whether there will be any revised regulation for the foreseeable future.⁷ Civil society organisations have called on the government to move forward with those parts of the proposal that dealt with sustainability in order to ensure that the capital in the pension funds is invested with respect for human rights, environment and climate and in accordance with international conventions.⁸ In an open letter in June 2016, 10 Swedish civil society organisations called on the ministers in charge as well as the pension group to introduce a new regulation on sustainability, since it is evident that the current framework is insufficient in order to guarantee responsible and sustainable investments by the AP funds⁹.

1 AP1-AP7's websites, The figure is from the end of 2015/beginning of 2016.

2 AP1-AP7's websites, The figure is from the end of 2015/beginning of 2016.

3 AP7, Annual report 2015

4 WWF, Du äger - AP-fondernas ägande av fossila reserver, 19th March 2015

5 Etikrådet, <http://etikradet.se/etikradets-arbete/vardegrund/>, March 2016

6 Regeringskansliet/Finansdepartementet (2015), Nya regler för AP-fonderna, Ds. 2015:34, <http://www.regeringen.se/contentassets/8db380dbf4254e25a55df8d31ee3c74e/nya-regler-for-ap-fonderna-ds-201534.pdf>

7 Svenska Dagbladet, Regeringen skrotar nytt AP-fondssystem, 11th december 2015, <http://www.svd.se/regeringen-skrotar-nytt-ap-fondssystem>

8 Norrbottens Kuriren, Ta ställning för schyssta pensioner, 28th December 2015, <http://www.kuriren.nu/nyheter/ta-stallning-for-schyssta-pensioner-8653781.aspx>

9 Forum Syd, WWF, Latinamerikagrupperna etc, Ge AP-fonderna ett tydligt ramverk för hållbara och ansvarsfulla investeringar, Open letter, 9th June 2016, <http://www.forumsyd.org/Page-Files/5188/%c3%96ppet%20brev%20Schyssta%20Pensioner%20om%20AP-fondernas%20regelverk%20-%209%20juni%202016.pdf?epslanguage=sv>

“We have found it important to move forward regarding the AP funds’ sustainability work. It was an important part in our previous proposal and now we want to move forward on the issue. In the previous proposal, we introduced for the first time into the text of the law that the pension funds shall take sustainability into account and promote a sustainable development. There were also clear formulations that the funds shall work towards achievement of environmental goals.”¹⁰

Per Bolund, Swedish Minister for financial markets, on a new regulation for the AP funds in an article in Svenska Dagbladet, 3rd May 2016

Dialogues

It has been 16 years since the AP funds were instructed to take ethical and environmental concerns without compromising the overall objective of a high return. Since then, the AP1-4 funds have been working according to a principle of dialogue and influence, rather than public ‘blacklisting’. AP1-AP4 has a joint Ethical Council that coordinates all work concerning ethical and environmental issues for the four funds. The Council is composed of representatives from the funds only. There is no independent body that examines whether, or to what extent, the funds take into account environmental and human rights issues. Once a year, the Swedish government presents a review of the AP funds. The report is focused on yield, but also contains information about how the funds handle ethical and environmental issues.

The Ethical Council holds proactive dialogues with the aim to prevent and influence companies to act responsibly as well as reactive dialogues with the aim to influence companies to address violations of human rights, environmental concerns, corruption etc. However, dialogues are only conducted with a small number of the thousands of companies in the AP funds’ portfolios. In 2015, the Ethical Council had an ongoing dialogue with 178 companies¹¹.

Out of a total of 254 incidents around which the Ethical Council held dialogues with companies during 2015, 92 incidents were related to violations of human rights.¹² When a dialogue following an incident is concluded, provided that the objective is achieved, the Ethical Council monitors the company for the next five years. If the Ethical Council’s dialogue has not produced the desired result after a maximum of four years, the Ethical Council recommends the AP funds to divest holdings in the company. A divestment decision is made by each AP fund individually. At the end of 2015, the Ethical



Photographer: Hour Poing

Cerrejón coal mine

Council had recommended the AP funds to exclude 15 companies, most of them in the mining or weapon industries.¹³

There is a lack of transparency around the dialogues. The AP funds do not make information public about which companies they have a dialogue with, their demands or the responses from the companies. The Ethical Council presents a few examples in their annual report, and provides answers to direct questions about the content of the dialogues.

AP7 has a dialogue of their own with companies, but sometimes they also collaborate with the other funds. AP7 has four methods to influence the companies that they invest in: public blacklisting, voting at the annual meeting, dialogue and legal processes. For a public blacklisting, the relevant information needs to be verified by the UN, the ILO, the Inter-American Commission on Human Rights or other similar verification source. AP7 has blacklisted 47 companies as of December 2015, mainly because of their involvement in weapon industry, business in occupied areas or violations of human rights and environmental regulations in relation to mining and oil drilling¹⁴.

The AP funds and the Cerrejón mine

The AP funds are investing more than one billion SEK in total in the three owner companies of Cerrejón (Anglo American, BHP Billiton and Glencore). In 2014, the investments were over 3 billion, but since the mining industry made significant losses during the year, the value of the shares has dropped sharply.

AP7: Today, AP7 is satisfied with the way the Cerrejón mine is operated in Colombia, and they no longer have any ongoing dialogue with, or pressure actions towards, the relevant companies regarding the Cerrejón mine. Since 2013, the opinion of AP7 is that the Cerrejón mine has improved their process concerning forced evictions and their dialogue with the local communities. Before 2013, they had concerns about the expan-

¹⁰ Svenska Dagbladet, Bolund vill skaka liv i skrotat pensionsförslag, 3rd May 2016, <http://www.svd.se/bolund-vill-skaka-liv-i-skrotat-pensionsforstag/om/ap-fonderna>

¹¹ Ethical Council, Annual report 2015

¹² Ethical Council, Annual report 2015

¹³ Ethical Council, Annual report 2015

¹⁴ AP7, Uteslutna bolag december 2015, https://www.ap7.se/globalassets/svarta-listan/svarta-listan_dec_2015.pdf

Fund	Date	BHP Billiton Ltd	BHP Billiton plc	Anglo American	Glencore	Total:
AP1	31 Dec 2015	177 713 620	18 359 214	0	0	196 072 834
AP2	31 Dec 2015	79 258 000	45 572 000	7 054 000	14 607 000	146 491 000
AP3	31 Dec 2015	140 085 000				140 085 000
AP4	31 Dec 2015	75 900 000	66 000 000	17 200 000	45 200 000	204 300 000
AP7 Aktiefond	28 Jan 2016	247 759 976	148 686 176	45 811 398	114 717 446	556 974 996
Total:						1 243 923 830

Source: The AP funds 2016

sion of the Cerrejón mine, and they still have the company under surveillance.

AP7 states that the main reason for stopping the attempts to influence the three owner companies is that there have been positive changes, and they give some examples:

The companies are relatively transparent and open to dialogue and are moving in a positive direction. They have, for example, substantially expanded their consultations with local stakeholders compared to a few years back in time. The AP7 assessment is that the company behind the Cerrejón mine adheres to the regulations put in place by for example the World Bank about handling relocations and dialogues with local people and other stakeholders. We have no information about ongoing human rights violations neither from the Inter-American Commission on Human Rights, national courts or other sources of verification.¹⁵

AP7 states that they are monitoring the development of the case, and if they receive information about the three companies not fulfilling their responsibilities, they will make a new assessment.

AP1-4: The Ethical Council has not had any direct contacts with the Cerrejón mine, but they have ongoing dialogues with the three owner companies, which have mining operations around the world. The Cerrejón mine has not been in focus for these dialogues during recent years, and the Ethical Council states that they have not had any reports about problems in the Cerrejón mine for several years:

Around the year 2000, there were several extensive relocations of the local population, which were not conducted in a correct way and that created tensions in the area. In 2006, the Cerrejón company started a comprehensive action program on human rights, that among other things focused on handling possible relocations correctly. Today the company has comprehensive programs and is reporting on their human rights work,

ongoing displacements etc. The Ethical Council has not received any report for several years specifically focused on possible problems related to the Cerrejón mine. However, the Ethical Council states that elaborate reports in which all stakeholder's, including companies, views on various issues are highlighted are valuable. They give the Council a basis to continue engaging with the company regarding any outstanding issues.¹⁶

The Ethical Council also has an ongoing dialogue with the three owner companies on the issue of fresh water in relation to mining and describes the Cerrejón mine as a company that handles the water situation in a satisfying way.

Colombia is currently suffering from an extremely severe drought, which is considered to be caused by the weather phenomenon El Niño. The region La Guajira, where the Cerrejón mine is located, is hit hard, but there is also generally a recurrent problem of drought in the area. In 2011, the Colombian state built the Cercado Dam, which dammed up the Rancheria River that runs through La Guajira and which is located upstream of the Cerrejón mine. The purpose of the dam was to ensure access to water for local communities when drought occurred.

The drought and the damming of the river have created major problems for the local indigenous population Wayúu who are dependent on the water of the river. The Wayúu people have requested at the Inter-American Commission for Human Rights (IACHR) that the dam should be opened to give them access to water. The Cerrejón mine, which is located downstream of the dam, has publicly reported that they mainly use water, around 85 per cent, which is in-between the coal deposits and which is contaminated and not fit for drinking. The remainder of the water used is fresh water and Cerrejón uses less than one-fifth of the water that their permit gives them the right to do. The drought has meant that many wells have dried up and Cerrejón has therefore increased its distribution of fresh water in tanks for

15 Charlotta Dawidowski Sydstrand, Sustainability Strategist at AP7, email interview, 25th February 2016

16 John Howchin, Secretary General, the Ethical Council, email interview, 18th September 2015

the local population. The Ethical Council conducts a dialogue on the use of fresh water with the three owner companies of Cerrejón.¹⁷

Conclusions

Today there is a growing awareness of the huge challenges for the financial sector regarding institutional investments and their implications on human rights, climate and environment. There is also a growing awareness among citizens and consumers about the implications of how financial capital is being managed and invested. Demands are being raised on banks, insurance companies and pension funds that they invest their capital in a responsible and sustainable way.

In the budget proposition in spring 2016, the Swedish government presented a new target for financial markets stating that the financial system shall contribute to a sustainable development. The different actors of the financial markets shall consider environmental, social and governance aspects.¹⁸ As government agencies, the requirements on responsibility and sustainability of the AP funds' investments should be high. But recent reports by both civil society as well as media show that the AP funds have investments in companies that contribute to violations of human rights, environmental damage and climate change.

THE AP FUNDS AND THE CERREJÓN MINE: AP1-4 as well as AP7 are all aware that there have been problems regarding aspects such as resettlements, consultations with communities and access to water, but they are of the view that both Cerrejón and the owner companies have dealt with the problems and are now moving in the right direction. According to them, the Cerrejón mine has sufficient action programs on human rights and handles relocations correctly. But accounts from communities differ from reports by the company and problems remain. Communities bear evidence of inadequate resettlements and difficulties to sustain their livelihoods there, to the extent that families have moved back to their original sites. Consultations have often been insufficient. The Ethical Council is of the view that Cerrejón deals with the issue of water in a satisfying way. But according to community members, the water provided by Cerrejón in tanks is not solving their problem of lack of access to water. The communities and Cerrejón have different views on whether the company is causing a lack of fresh water due to the amounts of water needed in the coal production. There are still problems with resettlements and the Ethical Council needs to closely monitor the case of a resettlement agreement of one of the communities (Tabaco) dating back to 2008, that has not yet been fulfilled. The AP funds also need to be aware of the latest controversy around Cerrejón's plans to divert the water course of the stream Bruno, which is strongly opposed by the local people in the area.

TRANSPARENCY: The AP funds still have work to do in order to be as transparent as should be required by a state agency

and a responsible financial actor. They lack in transparency as regards for example the dialogues that they are holding with companies to improve their behavior. It is not possible to see, neither in the annual report of the Ethical Council nor on the web, which companies they are conducting dialogues with or which mines and incidents the dialogues concern. The outcomes of the dialogues are also not publicly available, unless in some highlighted examples. Hence it is not possible for external stakeholders to evaluate the strategy of dialogues, to see which demands have been raised or to follow if the dialogues have been successful. The Swedish government states in its communication to the Parliament on Policy Coherence for Development in May 2016 that it is important with increased transparency for the financial sector, so that investors and depositors can make well informed decisions. The government states that there is an extensive work going on globally in the financial sector regarding its responsibilities.¹⁹

DIALOGUES: The Ethical Council sees the dialogues as their most important instrument to achieve change and influence companies to act more responsibly. Selling their shares is the last resort. The AP1-4 funds argue that they often find it more effective to keep the investments and try to influence the companies through dialogues, even if it concerns controversial investments. Transparency is a key issue here. It must be possible for external stakeholders to scrutinize the dialogues.

If the dialogues are to be an effective instrument, it is important that the institutional investor has some leverage to prevent or mitigate a negative impact. Since the AP funds often are minority shareholders, it is critical that they are able to influence other shareholders of the concerned company to address the situation as well. The AP funds can also hold dialogues with authorities and relevant industry associations and work for behavior changes in the sector or industry.²⁰

The Ethical Council states that the problems have to be obvious and well documented²¹. But there have been many cases during the last years where civil society and media have reported about serious problems and violations of human rights in connection to operations by companies, where the AP funds have investment. Many of these cases are well documented.

MINORITY SHAREHOLDER: The AP funds are often minority shareholders in the companies where they invest. It has been debated to what extent institutional investors have a responsibility for the activities of a company, where they are minority shareholders. The UN Office of the High Commissioner for Human Rights (OHCHR) has stated that the UN Guiding principles apply to all institutional investors, even if they

¹⁷ John Howchin, Secretary General, the Ethical Council, email interview, February 2015

¹⁸ Regeringskansliet (2015), Regeringen driver på för en hållbar finansmarknad, <http://www.regeringen.se/artiklar/2015/12/regeringen-driver-pa-for-en-hallbar-finansmarknad/>

¹⁹ Regeringskansliet (2016), Regeringens skrivelse 2015/16:182, Politiken för global utveckling i genomförandet av Agenda 2030, 26th May 2016, <http://www.regeringen.se/contentassets/c233ad-3e58d4434cb8188903ae4b9ed1/politiken-for-global-utveckling-i-genomforandet-av-agenda-2030-skr-201516182>

²⁰ UN Office of the High Commissioner for Human Rights, The issue of applicability of the Guiding principles on business and human rights to minority shareholders, 26th April 2013, <http://www.ohchr.org/Documents/Issues/Business/LetterSOMO.pdf>

²¹ Ethical Council, Annual report 2014



Village site at Patilla

are holding minority shareholdings²². The relative size or percentage of the share that an institutional investor holds in a company is not a factor in determining whether there is a business relationship or whether the UN Guiding principles apply. Hence, the AP funds have a responsibility even if they are minority shareholders.

VERIFICATION SOURCES: In its annual report, the Ethical Council lists media, branch organisations, authorities, courts, UN agencies and other investors as verification sources²³. AP7 lists the UN, International Labour organization (ILO) and the Inter-American Commission on Human Rights. The Ethical Council welcomes reports and information from different stakeholders, but it is not clear how they ensure that they are holding independent, relevant and updated information on a continuous basis on the situation in the areas where companies, where they are holding shares, operate. This kind of information is important in order to be able to verify the information provided by the companies.

ENDING RELATIONSHIPS AND BLACKLISTING: According to the UN Guiding principles on business and human rights, in a situation where a shareholder lacks the leverage to prevent

or mitigate adverse impacts and cannot increase its leverage, it should consider ending the relationship. The severity of the human rights abuse is an important factor in determining whether to continue the relationship or to end it. In any case, for as long as the abuse continues and the investor remains in the relationship, it should be able to demonstrate its own ongoing efforts to mitigate the impact²⁴.

It is debated whether public blacklisting or dialogues are the most efficient means to influence companies involved in or connected to human rights violations. The different AP funds have chosen different approaches in this regard. AP7 has public blacklisting as one of their methods to influence the companies that they invest in. AP1-4 funds have investments in a number of companies that AP7 has blacklisted. The Ethical Council of AP1-4 has several times stated that they believe that it is better to influence the mining companies that violate human rights and commit environmental crimes through pressure and dialogues rather than withdrawing from the investment²⁵. It is, however, not possible to evaluate to what extent the AP funds are successful in their dialogues, because of the lack of transparency around the dialogues.

22 UN Office of the High Commissioner for Human Rights, The issue of applicability of the Guiding principles on business and human rights to minority shareholders, 26th April 2013, <http://www.ohchr.org/Documents/Issues/Business/LetterSOMO.pdf>

23 Ethical Council, Annual reports 2014 and 2015

24 UN (2011), Guiding principles on business and human rights, http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

25 Dagens Nyheter, AP-fonder försvarar investeringar i kritiserade gruvbolag, 24th February 2016, <http://www.dn.se/ekonomi/ap-fonder-forsvarar-investeringar-i-kritiserade-gruvbolag/>

RECOMMENDATIONS

The following are recommendations to different stakeholders:

The mining company Cerrejón and the owner companies

- Comply with international standards and guidelines, such as the UN Guiding principles on business and human rights, and national legislation related to extraction of natural resources and mining.
- Fully compensate community members, who have been evicted due to expansion of the mining operations, for lost assets.
- Fulfill resettlement agreements and ensure that resettled community members are not worse off compared to before the eviction. Ensure that resettled community members have sufficient means for sustaining their livelihoods.
- There should be no diversion of the Bruno stream in order to expand the mining into the river basin.

Energy utilities - Vattenfall

- Introduce full transparency in the hard coal supply chain and be transparent about the exact origin of the imported coal, i.e. disclose the mine origin of the coal.
- Ensure that the screening process on the mining companies in Colombia complies with requirements for an enhanced human rights due diligence for high risk sectors and high risk areas. Publicly disclose the results of the individual screening of mining companies.
- Carry out in-depth Corporate Social Responsibility assessments of the coal mines, either on own behalf or through Bettercoal. The assessments should be carried out by independent assessors and include participation of all relevant stakeholders, access to information and transparency of conclusions and recommendations.
- Use the leverage to mitigate negative impact on communities of the mining operations and to change the structure of Bettercoal towards more transparency and real influence by those who are negatively affected by the coal mines.
- Introduce an exclusion strategy, which will apply if the dialogues do not succeed.

Institutional investors - the national pension funds (AP funds)

- Introduce full transparency on the dialogues with mining companies, such as which mines and incidents the dialogues concern, the demands on the companies as well as the outcomes of the dialogues.
- Actively seek information from all relevant stakeholders in order to complement information from the mining companies.

- Seek to obtain enough leverage in order to be able to influence the companies, for example through influencing other shareholders and holding dialogues with industry associations.
- Have a clear exclusion strategy, which will apply if the dialogues do not succeed.

The Swedish government

- Introduce legislation on mandatory human rights due diligence for state-owned companies.
- Adopt legislation on mandatory human rights due diligence for companies operating in high risk sectors and high risk areas.
- Introduce requirements on transparency in the supply chain in the ownership directive for state-owned companies.
- Propose and adopt legislation with requirements on sustainable and responsible investments by the national pension funds (AP funds), as part of a new ownership directive.
- Analyse in-depth how Swedish legislations and policies comply with the UN Guiding principles on business and human rights and address possible gaps. Conduct the baseline study that is envisaged in the national action plan on business and human rights.

The Colombian government

- Ensure that prior consultations with communities impacted by the mining operations or expansion of the operations are conducted properly and in a free and informed manner.
- Introduce mechanisms for the provision of effective remedy for community members that have been affected by human rights violations in relation to mining projects.
- Take adequate measures for the prevention of violations of human rights against community members, workers and other stakeholders in La Guajira. Improve the security around the mines.
- Conduct independent surveys and investigations on the impacts of the mining on the local environment, health, livelihoods and human rights.
- Guarantee the right of communities to a healthy environment and apply the precautionary principle enshrined in the Colombian constitution.
- Ensure implementation of the UN Guiding principles on business and human rights.
- Respect the ILO Convention 169 on indigenous peoples' rights, which Colombia has ratified. Respect indigenous peoples' rights to their territories.

“ The consequences of the Colombian coal mining are the joint responsibility of those running the mine and importing the coal. Our message to Vattenfall and the pension funds that invest in Cerrejón is that we have to create an ethical basis for the extraction of natural resources and an awareness of how things really are in the areas that are being exploited. Industrialists, shareholders and importers probably see things differently compared to those living in the areas where the coal is mined. If you invest in other countries and import materials or commodities you have to understand what the situation is like for the people living there. Colombia is trying to build peace, but peace won't be possible if people are being displaced.”

Danilo Urrea, CENSAT/Friends of the Earth Colombia, interviewed by Forum Syd in Stockholm, October 2015

“ I would urge Vattenfall and the pension funds to come here. Then they will see how we live, with rootlessness, loss of culture, and the pollution of water and soil. I would also urge them to cooperate with the villagers to find solutions to our problems.”

Samuel Arregóces, from the Afro-Colombian community of Tabaco, interviewed by Forum Syd in Stockholm, October 2015

Photographer: Friends of the Earth Scotland



Samuel Arregóces and Danilo Urrera in Scotland October 2015.



Hej Sofia och Karin,

Etikrådet hänvisar till det svar ni fick den 18 september där Etikrådet ger sin syn på den historiska problematiken kring Cerrejon och gruvor generellt. Vad gäller Etikrådets process så är det synd att er rapport är försenad. Väl genomarbetade rapporter där samtliga intressenters, inklusive bolagens, syn på olika frågor belyses är värdefulla för Etikrådet. De ger oss också underlag att arbeta vidare med bolaget och eventuellt diskutera ansvar för utestående frågor. Möten med representanter från utsatta områden, likt det möte med Samuel Arregoces från Tabaco ni arrangerade den 20 oktober är utmärkt, men baserat på den information ni gav oss utgick Etikrådet från att det skulle följas av en rapport med konkreta fakta från området. Någon sådan har vi dock ännu inte sett.

Likväl har Etikrådet undersökt närmare den kritik Samuel framfört mot bolaget Cerrejon. Etikrådet uppfattade under mötet att kritiken främst berör två saker, dels bristen på vatten/ att bolaget Cerrejon styr tillgången till vatten genom sin distribution och dels att byggandet av ett utlovat aktivitetshus för Tabaco inte genomförts.

Vatten i området

Som ni vet lider just nu Colombia av extremt svår torka, som anses bero på väderfenomenet El Niño. Området La Guajira, där Cerrejongruvan ligger, är hårt drabbat men det är också generellt ett återkommande problem med torka i området. Den colombianska staten uppförde 2011 Cercado-dammen, vilket dämt upp Rancheria-floden som löper genom La Guajira och som ligger uppströms till Cerrejongruvan. Syftet med dammen var just att säkerställa tillgången till vatten för lokala samhällen när torka uppkom. Torkan och uppdamningen av floden har skapat stora problem för den lokala ursprungsbefolkningen Wayúu vilka lever av flodens vatten. Wayúu folket har inför interamerikanska kommissionen för mänskliga rättigheter (IACHR) begärt att dammen ska öppnas för att ge dem tillgång till vattnet.

Cerrejongruvan som ligger nedströms från dammen har publikt redovisat att de huvudsakligen använder vatten, runt 85%, som finns mellan kollagren och som är förorenat och inte tjänligt som dricksvatten. Det resterande vattnet som används är färskvatten och Cerrejon använder mindre än en femtedel av det vatten deras tillstånd ger dem rätt att göra. Torkan har resulterat i att många brunnar torkat ut och Cerrejon har därför ökat sin distribution av färskvatten i tank till lokalbefolkningarna. Etikrådet för dialog kring färskvattenanvändningen med de tre ägarbolagen till Cerrejon.

Tobaco

Som vi tog upp i det svar ni fick den 18 september så förekom kring millinieskiftet omflyttningar av lokalbefolkning som inte genomfördes på ett korrekt sätt och som skapade motsättningar i området. Tabaco, som Samuel Arregoces representerar, och Cerrejon slöt efter omfattande förhandlingar ett avtal i december 2008 kring bland annat ekonomisk ersättning samt kring återuppbyggnaden av Tabaco i ett nytt område och staden Hatonuevo

ansvarar rent legalt för det projektet. Cerrejon rapporterar löpande kring de åtaganden man gjorde 2008 och den 14e rapporten från november 2015 pekar på att parterna, Hatonuevo, Tabaco och Cerrejon har svårt att enas om var man vill påbörja bygget och det har blivit en rättslig fråga vilket påverkar Etikrådets möjligheter att få fram information.

Etikrådet för som tidigare nämnts löpande dialoger med många gruvbolag. Gruvbranschen är problematisk vilket var skälet till det gruvprojekt Etikrådet genomfördes för ett par år sedan. Mänskliga rättigheter var i fokus i projektet, men som Etikrådet rapporterade i årsrapporten för 2014 var det tydligt att de flesta bolagen då arbetade med att tolka och förstå hur de skulle implementeras och vilka nya policyer och ledningsprogram, som bolagen behövde utveckla för att kunna följa principerna. Etikrådets bild är att det här arbetet pågår i alla branscher just nu, inte bara gruvbranschen.

Etikrådet har i sin dialog med bolaget BHP Billiton angående deras åtgärdsplaner kring dammolyckan i Mariana, Brasilien också tagit upp Cerrejongruvan och meddelat att vi återkommer med ytterligare frågor när vi fått er rapport. Detsamma gäller bolagen Anglo American och Glencore, som alla tre tillsammans delar på ägandet av Cerrejon. Anglo American ingår i gruvprojektet, vilket Etikrådet nämnde i diskussionen med Samuel Arregoces. (Analyserna som bildar underlaget till Etikrådets gruvprojekt är enbart internt arbetsmaterial där analysmodellen ägs av tredje part). Etikrådet använder materialet från gruvprojektet på många sätt i sina fortsatta dialoger med de berörda bolagen men det finns för närvarande inga planer på ett nytt projekt. Etikrådet har många branscher att arbeta med och vi ska fördela de begränsade resurser vi har på bästa sätt.

Etikrådet presenterar sin årsrapport i april.

Etikrådet ser gärna att våra svar i sin helhet publiceras som appendix till er rapport.

Med bästa hälsningar,



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ABBREVIATIONS

ACM	Authority for Consumers and Markets
ANLA	National Authority of Environmental Licenses
CSR	Corporate Social Responsibility
ESMAD	Mobile Anti-Disturbance Squadron
FDI	Foreign Direct Investment
FPIC	Free, Prior and Informed Consent
IACHR	Inter-American Commission on Human Rights
IFC	International Finance Corporation
ILO	International Labour Organisation
NGO	Non-Governmental Organisation
OHCHR	The UN Office of the High Commissioner for Human Rights
PCD	Policy Coherence for Development
RAP	Resettlement Action Plan
UN	United Nations

Links to photographers:

Javier De la Cuadra:
www.extractivismoencolombia.org

Vattenfall (page 22):
<http://powerplants.vattenfall.com/hemweg-8>

Tanenhaus (page 4):
<https://www.flickr.com/photos/tanenhaus/3410197535>

Inf-Lite Teacher (page 24):
<https://www.flickr.com/photos/87328375@N06/8577762026/in/photolist-6cm9Ve-e4ZgNJ/>

Friends of the Earth Scotland (page 33):
<https://www.flickr.com/photos/friendsoftheearthscotland/22449673901>



Photographer: Catalina Caro

Cerrejón coal mine

Business enterprises are important actors in global development today. It is critical that the companies respect human rights in all their operations and also monitor their suppliers' activities. States have a responsibility to have effective legislation in place to prevent and address human rights violations by businesses. Mining is an example of a high risk sector and Colombia is a difficult market with increased risks for human rights abuses.

This report discusses business and human rights with examples from coal mining at Cerrejón in Colombia - one of the world's largest open pit coal mines. Sweden's largest state-owned company Vattenfall is buying coal from Colombia. The national pension funds (the AP funds) hold investments in the international mining companies who own Cerrejón.

Which policies does Sweden have in relation to sustainable business and human rights? Which are the roles and responsibilities of states, companies and institutional investors? How do Vattenfall and the AP funds live up to their responsibilities? The voices and accounts of affected communities, particularly in relation to involuntary resettlement, inadequate consultation processes, water scarcity and current plans by the company to divert a river, show that there are big challenges for businesses and investors involved in mining in a country like Colombia.



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