



Scoping Mission

Understanding the Context of the Colombian Coal Sector

*Key issues and potential opportunities for collaboration in the producing
regions of La Guajira and Cesar*

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Executive Summary

Over the past years responsible coal mining has become a major topic on the Dutch political agenda. Given that the Netherlands will continue to import coal for at least the next 15 years, the Dutch government is keen to support and strengthen responsible practices in the coal supply chain, in particular in the main sourcing country, Colombia. In November 2014, the Minister of Foreign Trade and Development Cooperation, Lilianne Ploumen, will travel to Colombia together with a multi-stakeholder delegation and visit the coal producing regions to better understand the situation on the ground.

In order to obtain the necessary knowledge and define the outline of a possible Dutch contribution, the Embassy of the Kingdom of the Netherlands in Colombia has commissioned a Scoping Mission – Colombian Coal sector.

The political context in which the Colombian coal sector operates is influenced by 50 years of internal conflict between many different armed actors. At the heart of this conflict is the struggle for land and control over natural resources in a context of great inequality. The armed conflict has polarized Colombia and caused many victims. The ongoing peace process and a possible agreement for the post-conflict period will be essential for the future of coal mining regions.

The Scoping Mission identified several key social, environmental and labour challenges in the coal producing regions of Cesar and La Guajira. In these regions, the relationship between key stakeholders, such as local communities, trade unions and mining companies, is difficult. There is a polarized atmosphere and an absence of trust between actors. These two rural areas suffer high levels of poverty and unmet basic needs. Governmental presence has traditionally been relatively weak, and the local and regional governments lack institutional capacity and resources. This explains why communities and local governments often expect mining companies to undertake additional efforts to support regional development and to address social and environmental impacts beyond legal requirements.

This study has concluded that interventions by the Dutch government to take on the social, environmental and labour challenges in the coal mining areas are feasible and desirable. Interventions should be defined and implemented in close cooperation with local, national and international stakeholders. Based on the interviews and research undertaken, the Scoping Mission recommends that the interventions by the Dutch government are organized in four work streams:

- a) Mediation of a dialogue to solve conflicts between stakeholders;
- b) Through continuous dialogue, encourage the Colombian government to be more proactive in addressing social and environmental challenges in the coal areas;
- c) Support reliable and independent data collection;
- d) Support thematic projects that address pressing challenges in the mining region (e.g. to improve water management).

Resumen Ejecutivo

En los últimos años la minería responsable de carbón se ha convertido en un tema muy importante en el debate político holandés. Teniendo en cuenta que los Países Bajos continuarán importando carbón al menos por los próximos 15 años, el gobierno está interesado en apoyar y fortalecer las prácticas responsables en la cadena de abastecimiento del carbón, particularmente en Colombia de donde proviene el mayor volumen de abastecimiento. En noviembre de 2014, la Ministra de Comercio Exterior y Cooperación al Desarrollo, Lilianne Ploumen, viajará a Colombia, junto con una delegación de varios grupos de interés, y visitará la región carbonífera para entender mejor la situación en el terreno. Con el objetivo de tener el conocimiento necesario y establecer las líneas generales de una posible colaboración holandesa, la Embajada de Reino de los Países Bajos en Colombia encargó una misión de determinación de alcance en el sector carbonífero colombiano.

El contexto político en el cual el sector de minería de carbón opera está determinado por 50 años de conflicto interno entre diferentes actores armados. En el centro de este conflicto se encuentra la lucha por la tierra y el control de los recursos naturales en un contexto de enorme desigualdad socio-económica. El conflicto armado ha polarizado el país y ha causado millones de víctimas. El proceso de paz en curso y el posible acuerdo de paz serán esenciales para el futuro de las zonas carboníferas.

La misión identificó varios retos sociales, ambientales y laborales en las regiones productoras de carbón del César y La Guajira. En estas regiones, la relación entre los grupos de interés, como las comunidades, los sindicatos y las empresas mineras, es difícil. Hay un atmósfera polarizada y una ausencia de confianza entre los actores. Estas dos zonas rurales presentan altos niveles de pobreza y necesidades básicas insatisfechas. La presencia gubernamental ha sido débil tradicionalmente y las autoridades locales no cuentan con capacidad institucional ni financiera. Esto explica por que las comunidades y los gobiernos locales esperen que las compañías mineras hagan esfuerzos adicionales para apoyar el desarrollo regional y gestionar sus impactos sociales y ambientales más allá de lo que la norma les exige.

Este estudio ha concluido que la colaboración del gobierno holandés en aspectos sociales, ambientales y laborales en las zonas carboníferas es factible y deseable. La colaboración debe ser definida e implementada a partir de una cercana colaboración con los actores locales, nacionales e internacionales. Basados en las entrevistas y la investigación desarrollada, la misión recomienda que la colaboración sea organizada en cuatro frentes de trabajo:

- a) Mediación en un diálogo para resolver conflictos entre los diferentes actores,
- b) A través de un dialogo continuo, impulsar al gobierno colombiano a ser más proactivo en la gestión de los retos sociales y ambientales de las zonas carboníferas,
- c) Apoyar la recolección de información y datos confiables e independientes,
- d) Apoyar proyectos temáticos que permitan darle solución a los retos urgentes en las regiones carboníferas (ej. mejorar la gestión de agua).

Samenvatting

In de afgelopen jaren is verantwoorde steenkoolwinning hoog op de politieke agenda in Nederland komen staan. Aangezien Nederland zeker de komende vijftien jaar veel steenkool zal blijven importeren, wil de Nederlandse regering verantwoord handelen binnen de steenkoolketen ondersteunen en versterken, met name in het belangrijkste herkomstland, Colombia. In november 2014 zal Minister van Buitenlandse Handel en Ontwikkelingssamenwerking Lilianne Ploumen met een delegatie van belanghebbenden naar Colombia afreizen, en zal daar de steenkool-producerende regio's bezoeken om de situatie ter plekke beter te begrijpen. De Nederlandse ambassade in Colombia heeft opdracht gegeven tot een 'scoping mission' van de Colombiaanse steenkoolsector, met als doel de situatie in kaart te brengen en de mogelijkheden met betrekking tot een potentiële Nederlandse bijdrage uiteen te zetten.

De Colombiaanse steenkoolketen wordt beïnvloed door een politieke context gevormd door vijftig jaar van intern conflict tussen verschillende gewapende actoren. De kern van dit conflict is de strijd om land en de controle over de natuurlijke rijkdommen in een omgeving gekenmerkt door grote ongelijkheid. Het gewapende conflict heeft Colombia gepolariseerd en veel slachtoffers geëist. Het lopende vredesproces en op termijn een mogelijk akkoord over de post-conflict periode zal essentieel zijn voor de toekomst van de steenkoolregio's. De 'scoping mission' identificeerde verschillende uitdagingen op het gebied van milieu, arbeid en sociale vraagstukken in de steenkool producerende regio's Cesar en La Guajira. In deze regio's, gekenmerkt door een historie van conflict, is sprake van een moeilijke relatie tussen de belangrijkste belanghebbenden, zoals lokale gemeenschappen, vakbonden en mijnbouwbedrijven. De sfeer is gepolariseerd en vertrouwen tussen de actoren ontbreekt. De twee genoemde regio's gaan gebukt onder grote armoede en een gebrek aan basisvoorzieningen. De aanwezigheid van de overheid in deze gebieden is van oudsher zwak en de lokale en regionale overheden hebben een tekort aan institutionele capaciteit en middelen. Als gevolg verwachten gemeenschappen en lokale overheden vaak van de mijnbouwbedrijven dat zij extra inspanningen leveren voor de regionale ontwikkeling van het gebied en de aanpak van sociale- en milieueffecten; inspanningen die verder gaan dan de wettelijke vereisten.

Dit onderzoek concludeert dat een bijdrage van de Nederlandse overheid aan de sociale-, milieu- en arbeidsuitdagingen in de steenkoolregio's haalbaar en wenselijk is. Elke bijdrage moet opgezet en uitgevoerd worden in nauwe samenwerking met relevante lokale, nationale en internationale belanghebbenden. Gebaseerd op de interviews en het onderzoek van de 'scoping mission' wordt aanbevolen om de bijdrage van de Nederlandse overheid te organiseren in vier werkstromen:

- a) Bemiddeling van een dialoog om de conflicten tussen de betrokken belanghebbenden op te lossen;

- b) Middels continue dialoog, de Colombiaanse overheid stimuleren tot een meer proactieve houding in de aanpak van de sociale en milieu uitdagingen in de steenkoolgebieden;
- c) Ondersteunen van het vergaren van betrouwbare en onafhankelijke data;
- d) Ondersteunen van thematische projecten om de dringende problemen in de mijnregio's te adresseren (bijvoorbeeld het verbeteren van water management).

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I. Introduction: The Scoping Mission – Colombian Coal Sector

I.1. Context of the Scoping Mission - Colombian Coal Sector

➤ Why was this Scoping Mission commissioned?

Experts estimate that the Netherlands will continue to import coal for at least the next 15 years as a consequence of the projected energy mix.

Responsible coal mining has become a major topic on the Dutch political agenda in the summer of 2010, following a critical documentary by a national television channel, which exposed the social and environmental conditions of coal mining regions in Colombia and South Africa. As a response, in July 2010 the Dutch Coal Dialogue (DCD) was launched at the initiative of the sector organization of Dutch utility companies, EnergieNed. This started a process that aimed at increasing transparency in the coal supply chain and strengthening assurance processes with a view to on the ground improvements in the coal sector. The DCD ended in August 2013.

Given the status of the Netherlands as a major importer of Colombian coal, the public criticism of coal mining companies active in Colombia and the great importance attached by the Dutch government to sustainability and transparency in value chains, the Dutch government is keen to stimulate responsible business practices in the coal supply chain. After the end of the DCD, the Dutch government is looking for further ways to support and strengthen responsible practices within the coal supply chain, in particular in the main sourcing country, Colombia.

In November 2014, the Minister of Foreign Trade and Development Cooperation will travel to Colombia, together with the CEO's of Dutch utility companies, Bettercoal, members of parliament and civil society organisations. In order to better understand the situation in the coal mining area, Minister Lilianne Ploumen will visit a coal mine and meet with different stakeholders in Colombia.

Due to the complexity of the Colombian context, the previous experiences with the DCD and the variety of issues and stakeholders, a Scoping Mission in Colombia and in the Netherlands was required – prior to the visit of the Minister – to obtain the necessary knowledge and define the outline of a Dutch contribution.

The **Scoping Mission – Colombian Coal Sector** study was requested by the Embassy of the Kingdom of the Netherlands in Colombia, and commissioned to a lead consultant in the

Netherlands, The Terrace, in collaboration with a Colombian counter-party, BSD Consulting.

➤ Objectives of the Scoping Mission

There were two key objectives of the Scoping Mission:

1. *To understand the current on the ground situation in the coal mining regions in Colombia;*
2. *To define the contribution of the Netherlands to improve the situation on the ground in the coal mining regions.*

The official Terms of Reference (ToR) for this assignment (see Annex V) were drafted in July 2014. While maintaining the key objectives, the Embassy decided to adapt the initial ToR in September based on new developments in Colombia and in the Netherlands, and especially due to the intense political and social debate on Colombian coal. New insights of the research team following initial interviews with stakeholders confirmed the necessity of this adjustment.

Considering the two key objectives and the developments that took place, several research questions were defined for the Colombian context:

- What are the main social and/or environmental challenges in the coal-mining sector?
- How should these problems be ranked? Which needs are most pressing?
- What interventions are possible to improve on the ground conditions?
- Where can the Netherlands add value vis-à-vis existing interventions?
- Define the general outline of the support that the Netherlands could provide.

➤ Deliverables

This document is the outcome of the research carried out to answer the above-mentioned research questions. It presents relevant background information about the mining sector in Colombia, with a particular focus on the two key regions where coal exported to the Netherlands is extracted: Cesar and La Guajira.

I.2. The Role of the Dutch Embassy in the Scoping Mission

During the Scoping Mission assignment, there has been a valuable collaboration with the Embassy of the Kingdom of the Netherlands in Colombia. In particular, the commitment of the Dutch Embassy to this project was strengthened by its:

- Convening power – fundamental to reach all stakeholder groups in short time;
- Competence of the team on the subject of this assignment;

- Proven capacity to execute the necessary tasks for this project and provide future support.

We are very grateful for their support.

I.3. Research tasks performed for the Scoping Mission

In order to achieve the two objectives of the Scoping Mission and to answer the defined research questions, the consulting team, in close cooperation with the Dutch Embassy in Bogota, performed the following tasks:

- Literature review of both Colombian and Dutch sources (a list of the analysed sources is provided in Annex IV):
 - Reports published by different stakeholder groups (governmental organizations, non-governmental organizations, mining organizations, trade unions, research institutes, etc.);
 - Media analysis;
 - Online information (websites of relevant organizations).
- Interviews with all relevant stakeholder groups (for further details, see Annex II);
- Visit to Drummond's mine-site in Cesar and surrounding local communities in September 2014;
- Two-day FESCOL conference in Bogota: a dialogue between all stakeholders in the coal mining sector (for further details see Annex II and III).

2. Understanding the Context of the Colombian Coal Sector

2.1. Political context

The political context in Colombia is shaped by a history of more than 50 years of internal conflict between many different actors struggling for economic and political power. The country's socio-economic inequality and political exclusion are at the root of this conflict. Colombia has experienced high levels of violence related to the fight over land ownership, drugs trade and control of the country's natural resources (including oil, gold and emeralds).

Since the 1960's, Colombia has been experiencing armed confrontations between the State and guerrilla groups (Revolutionary Armed Forces of Colombia – FARC, and the National Liberation Army - ELN) with a farmer basis and a communist ideology. Over the past ten years, both guerrilla groups have lost political support due to a strong offensive by the Colombian army. However, guerrilla groups are still active in the country.

The growth of the FARC since the 1960's exposed the weakness of the security forces and of the state. The conflict was aggravated by the creation of paramilitary groups in the 80's. These aimed at protecting the interests of large landowners who were suffering kidnappings and extortions by guerrilla groups. The paramilitary groups increasingly financed their activities with profits from the drug trade and worked in cooperation with large drug cartels that consolidated in the 1990's. Various paramilitary groups united in 1997 to form the United Self-Defence Forces of Colombia – AUC.

Paramilitary groups started what they called a “social cleaning” and targeted all persons that they perceived as part of or sympathetic to the guerrilla movements. These paramilitary groups worked in coordination with national army units and were often in a position to decide which individuals could be candidates in municipal and gubernatorial elections, and in this way exerting a strong influence on the composition of local governments. Paramilitary groups became very powerful due to the money made from drug trafficking and acquired influential political power at national level through corruption and electoral manipulation.

At the local level, paramilitary groups became the actual governing actor in several regions. In order to survive, local communities, authorities and private sector had to adapt to this context. This is also the case in the coal-producing region of Cesar. During the 1990's, paramilitary groups became powerful and assumed control over the area. Although they largely succeeded in driving the FARC guerrillas out of the coal mining areas, paramilitary groups left a trail of thousands of dead people and displaced and ruined families. In these years they were the most violent actors in the Colombian conflict.

In 2003, during the first mandate of President Uribe (2002-2006), the AUC paramilitary groups negotiated their demobilization, disarmament and reintegration in society. In 2005, the parliament passed a law, called *Ley de Justicia y Paz* ('Justice and Peace Law'), to manage this process. In 2011, a complementary law addressing land restitution for the victims was approved, the *Ley de Víctimas y Restitución de Tierras* (Law on Victims and Land Restitution). Chapter 2.2.2 further explains the current context of Colombia's post-conflict period.

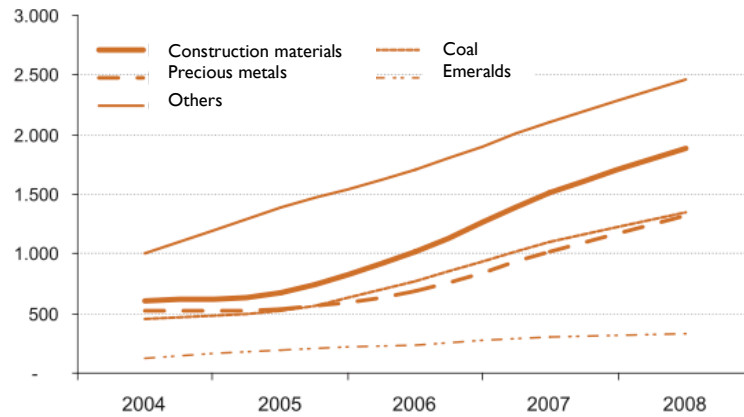
Although the AUC agreed to demobilize in 2003, in reality many paramilitary groups have never demobilized or have regrouped into several emerging criminal groups. These groups are responsible for threats and violence in many parts of the country, including in the coal mining region of Cesar. The government refers to them as BACRIM (bandas criminales - criminal gangs) while other parties continue to label them as "paramilitary groups".

Mining Policy: an economic locomotive towards prosperity

In the first decade of 2000, the Colombian government determined that the mining and energy sectors would become the major drivers of the Colombian economy, and the country would position itself as one of the leading mining countries in Latin America. The plan was initially pushed forward during the administration of President Alvaro Uribe Velez (2002-2010) with the introduction of the Mining and Energy Vision 2019. This vision has continued under President Santos and was incorporated in the National Development Plan (NDP) 2010-2014. The NDP specified that the mining and energy sectors would become one of the "economic engines" (literally "locomotives") of Colombia's development, bringing "prosperity to all, more jobs, less poverty and more security."

Based on its 'mining vision', the government asserted the need to increase large-scale and open-pit mining projects, spurred by a policy of attracting foreign investment and providing tax benefits to multinational corporations combined with an improvement of the security conditions in most mining regions. Those political decisions, the discovery of the abundance of Colombia's mineral resources and the sharp increase in mineral prices after 2003, led to the highest number of mining permits being granted in the history of Colombia.

Image I: Mining permits granted Colombia per mineral



Source: Ingeominas; Fundacion Foro Nacional por Colombia, 2011

The second mandate of President Santos, which started after his re-election in 2014, did no longer promote mining as a locomotive. The new priorities are education, equity and peace. However, it still positions the mining sector as a key source of income for financing the public budget in the coming years. The taxes and royalties generated by the extractive industries are considered indispensable for bringing development to the country and funding the post-conflict process.

BOX I - Legal Framework for the mining sector

Colombia's legislative framework for extractive industries focuses on attracting foreign investments. Colombian regulation takes into account the environmental consequences of mining, but hardly addresses the social effects. At the same time, most stakeholders consider that on the ground enforcement of the legislative framework is weak. Institutions, especially at local level, lack the capacity to enforce and to monitor compliance with social (including labour) and environmental legislation.

Four documents define Colombia's mining policies:

- Mining and Energy Vision 2019 (Minero Energético Vision 2019),
- National Development Plan 2011-2014 (Plan Nacional de Desarrollo),
- Code of Mines (Código de Minas), and
- National Mining Management Plan (Plan de Ordenamiento Minero - PNOM).

As natural resources are property of the nation, national authorities have the jurisdiction to award permits and licenses for mining operations. However, following a recent decision by the Constitutional Court (Sentence C-123, 2014), it is understood that national authorities should negotiate with local authorities the necessary arrangements for the protection of the environment and health of local communities and, in particular, for ensuring the economic,

social and cultural development of the communities in the area impacted by the projects. However, until now, no consultation with local authorities has been implemented and it is not clear how this process should take place.

From a social and labour perspective, Colombia has ratified over 60 ILO Conventions, among them the conventions on indigenous people's rights, including the right to free, informed and prior consent (FPIC), freedom of association and collective bargaining, and elimination of child labour. Additionally, Colombia is signatory of the Voluntary Principles on Security and Human Rights.

From an environmental perspective, the Code of Mines (Law 685 of 2001) states the obligation for mining concessionaires to present an environmental assessment study and to comply with the legal framework on hygiene, safety and labour. The Environmental Impact Assessment (EIA) and the corresponding Environment Management Plan (EMP)(Law 99 of 1993) are requirements to obtain the environmental license that is a pre-requisite for operating. The EIA includes an analysis of the impacts on abiotic, biotic and socio-economic factors in the area of influence. The EIA also requires that if an indigenous or Afro-Colombian community is present in the area impacted, the company has to implement a FPIC process, discuss the impacts of the project with the community and manage the procedures to attribute possible compensation measures.

An environmental license is granted for the life of the project, including the stages of construction, operation and closure. No license is required for the exploration phase.

Colombian legislation does not provide a comprehensive structure for addressing the negative social impacts of mining. There is no regulation to guide resettlement processes, to define how mining projects must compensate communities, or how to deal with the disappearance of traditional social, cultural and economic ties and activities. This contributes to social conflicts between mining companies and local communities.

Despite the legislation in place, national authorities have limited capacity to evaluate and monitor the environmental and social performance of companies. Local authorities, which have to deal with impacts of mining projects, do not have jurisdiction in this matter and have limited capacity to monitor impacts and ensure legislation's enforcement.

It is important to take into account that most rural regions, where mining activities take place, all have the same local context: high levels of poverty and unmet basic needs, and local authorities with reduced financial and institutional capacities to solve these issues. In this context, communities and local governments often expect mining companies to undertake additional efforts to address social and environmental impacts beyond legal requirements. In particular, it is expected that mining companies concretely support local development by hiring local people, implementing local procurement and ensuring social investments.

2.2. Social context

2.2.1. Armed conflict, forced displacement and past violation of human rights

As highlighted earlier in the description of the political context, Colombia has a long history of armed conflict between guerrilla movements, paramilitary forces, the Colombian army and criminal organizations. Threats and attacks on companies, communities and trade union leaders have occurred in the whole country, also in the two departments where coal mining takes place. Violence has decreased in the past years but is still very present in Colombian society, despite the peace talks taking place in Cuba between the government and one guerrilla movement (FARC).

The armed conflict has polarized Colombia and has caused many victims. The consequences of the violent conflict are felt daily by millions of people, especially in the rural areas of the country. Between 1958 and 2013, approximately 220.000 people were killed in Colombia, 80% of them civilians. There are 5.7 million internal refugees who fled their homes because of the violence, generating the world's second largest population of internally displaced people (UNHCR, 2014).

At the heart of this conflict is the struggle for land and control over natural resources in a context of great inequality. The dispossession of land was a strategic objective not only for military gains but also for economic and political purposes. The accumulation of land was closely related to the phenomenon of forced displacement perpetrated by several armed groups (guerrilla and paramilitary groups).

BOX 2 – Violence over land ownership

Almost 15% of all agricultural land in Colombia has been abandoned, stolen or forcibly appropriated from the owners, mostly small farmers (UNHCR, 2012). People who want to reclaim their land (supported by the 2011 Law on Victims and Land Restitution) are often threatened and their life is in danger once they try to return to their former properties.

One cause of this violence is the large inequality in the country, especially in the rural areas. Colombia has one of the highest inequality rates in the world. The Human Development Report 2011 of UNDP states: “the core of Colombian problems lies in its rural economy”. Around 1% of the landowners control 56% of the land, while 67% of the farmers control only 4%. The great majority of the rural families (80%) live on small parcels with a low productivity, which makes it impossible for most people in the rural areas to live under decent conditions.

2.2.2 Entering a period of reconciliation and post-conflict

As previously mentioned, in 2003 the AUC paramilitary groups were demobilized through an agreement with the government of President Uribe. In 2005, parliament approved the 'Justice and Peace Law' to facilitate the process of demobilization, disarmament and reintegration of those groups. The 2005 Law included provisions that established how the prosecution and punishment of members of paramilitary groups and the reparation of the victims would be implemented. This was different from the previous peace processes in Colombia where unconditional amnesties and impunity were used in order to reach peace agreements.

The peace agreement with the AUC included the commitment of ex-paramilitary groups to the process of seeking '*Truth, Justice and Reparation*' for victims. Since 2005, the National Attorney has led judiciary processes that aim to reveal the truth about the paramilitary violence in Colombia. However, despite the benefits of collaboration with paramilitaries who have confessed their crimes, in July 2013 (eight years after the 'Justice and Peace Law' was approved), prosecutors of the Justice and Peace Unit had only achieved 18 convictions. In the meantime, several ex-paramilitary leaders and ex-combatants have regrouped in emerging criminal gangs currently active in Colombia (Human Rights Watch, 2014).

An important part of the 'Justice and Peace' process is memory reconstruction and victims' recognition and reparation. The National Centre for the Historic Memory (*Centro de Memoria Histórica*) has been created to lead the efforts to document the history of violence, to recognize the victims and their losses, and to find a path of reconciliation and forgiveness towards the future.

Since 2011, the 'Law on Victims and Land Restitution' regulates reparations for victims of the conflict (whether they are victims of paramilitary groups, guerrilla movements or the Colombian state). The 2011 Law determines that all recognized victims have the right to receive individual reparations. Simultaneously, the *Unidad Nacional de Víctimas* was created to coordinate and develop the public policy to support the victims. The *Unidad de Víctimas* also manages the collective and individual reparation processes. Its goal is to restore the victims' dignity through the implementation of the right to truth, justice and reparation, and to provide a guarantee of non-repetition. Reparation can be settled through an administrative process, after recognition and valuation of the damage, or through a judiciary decision of the Justice, Peace and Reparation Tribunals or of the Inter-American Human Rights Court. Currently, 6.9 million victims have registered with the *Unidad de Víctimas*. 131.000 of them have been administratively compensated (*Unidad de Víctimas*, 2014).

In addition to the previous demobilization agreements, since 2012 the country is engaged in a Peace Process with the FARC. The peace agreement chapters include issues such as land distribution and use, victim's recognition and reparation, political participation of minorities, and elimination of drug trafficking and illegal crops. The Colombian government is in the

process of formulating a policy on the involvement of the private sector in the post-conflict period, which will likely include the expectation that private sector actors contemplate their own role in the armed conflict and contribute to the reparation of victims.

Simultaneously, several reconciliation and forgiveness initiatives have been set up to support the peace process led by the government. *SoyCapaz* (I'm Capable) and *Reconciliation Colombia* are two examples of initiatives headed by civil society organizations and the private sector looking to promote the national peace environment and commitment to facilitate a post-conflict scenario. *SoyCapaz* is promoted by the foundation of the National Industrial Association, the main industrial society, and counts 120 private companies among its supporters. *Reconciliación Colombia* currently has 47 partners from national and regional media, private sector, international cooperation and Programs of Development and Peace grouped in the network Prodepaz.

The post-conflict period following a peace agreement with the FARC, and eventually with ELN, is Colombia's biggest challenge, especially because the process of Justice and Peace is still going on. The result of this peace process and the agreement for the post-conflict period will be essential for the future of coal mining regions.

2.3. Economic context

2.3.1 Contribution of coal mining to Colombia's economy

Colombia's three main extractive products are oil, coal and gold. However, there is also exploitation of emeralds, silver, platinum, nickel and copper. Colombia is currently the largest producer of coal in Latin America, and one of the ten largest worldwide. The country is also home to the largest coal reserves in Latin America. At the current rate of extraction, coal mining in Colombia would be able to continue for another 100-120 years.

Coal production accounts for approximately 20% of Colombia's exports and 2% of the GDP. Driven by an increase in demand in the international markets, between 2005 and 2012 production has increased from 59.7 to 73.6 million tonnes, almost entirely for export.

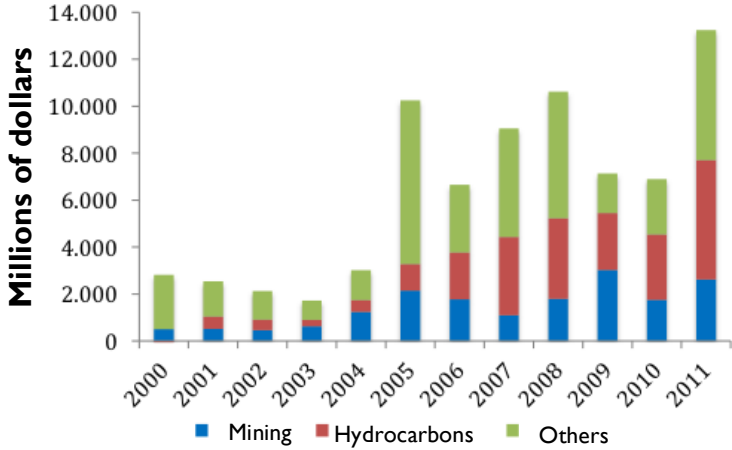
The Netherlands is the biggest importer of Colombian coal, followed by the United States: 21% of Colombia's coal production in 2012 (1.478 million US dollars) was exported to the Netherlands. However, the majority of the coal exported to the Netherlands (more than 63% in 2012) is intended for transit, mainly to Germany.

In 2012, 47 % of the coal used in the Dutch energy sector was of Colombian origin.

The fast expansion and growth of the extractives industries in Colombia caused a significant increase of the contribution of these industries to the national GDP, to the Colombian

exports and to the foreign direct investment (FDI) received to develop the mining and oil sectors. In particular, according to the Ministry of Commerce, Industry and Trade, FDI grew rapidly, from 3 billion US dollars in 2004, to a record 16.8 billion US dollars in 2013.

Image 2: Evolution of Foreign Direct Investment in Colombia



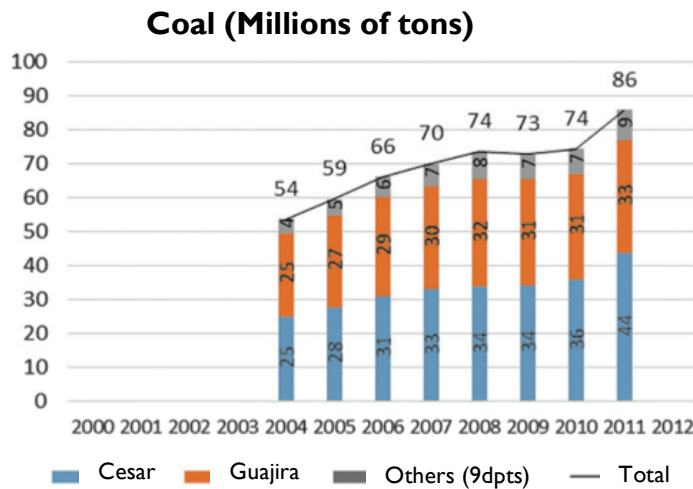
Source: Banco de la República

2.3.2 Economy in the coal producing regions: Cesar and La Guajira

This report focuses on the specific context in La Guajira and Cesar (see maps Annex I), where the operation of large-scale coal mining destined for export is concentrated. These are the regions where the coal imported in the Netherlands and the European Union originates.

Between 2000 and 2012, 48% of the total Colombian coal production took place in Cesar and 42% in La Guajira. The remaining 10% came from other mining departments and was mainly used for domestic consumption.

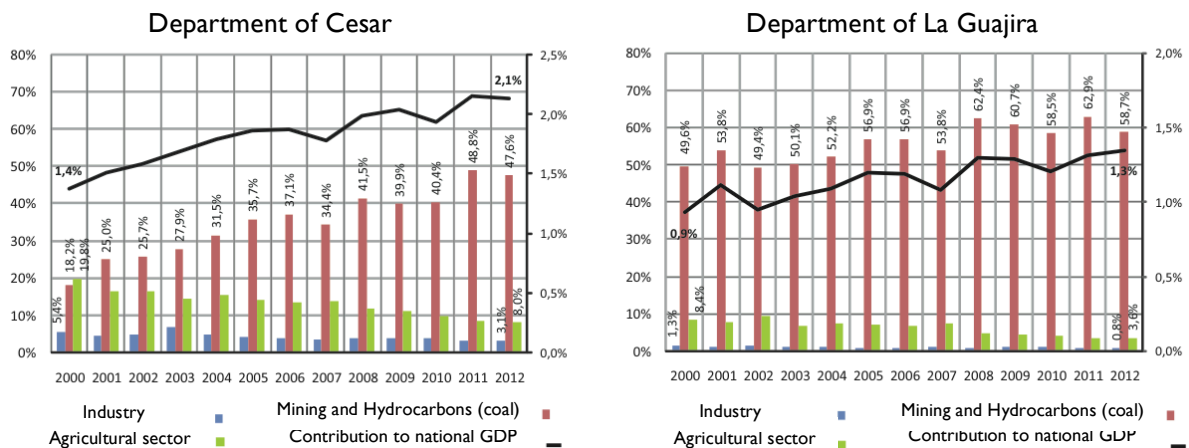
Image 3: Distribution of coal production per department



Source: Contraloría General de la República, 2013

The growth of coal mining and exporting activities has a strong impact on the performance of the regional economies. The economies of Cesar and La Guajira have grown faster than the overall economy in recent years. Image 4 shows that the economy of Cesar grew from representing 1.4% of Colombia's GDP in 2000, to 2.1% in 2012. The total economic contribution of La Guajira to GDP increased from 0.9% at the beginning of the period, to 1.3% at the end. According to the Ministry of Commerce, Industry and Trade, in 2012 mining represented 41,9% of the GDP of Cesar's department GDP; in La Guajira it represented over 60%.

Image 4: Contribution of coal production in Cesar and La Guajira to the National GDP



Source: Contraloría General de la República, 2013

Cesar

Production in Cesar is concentrated in four municipalities: mainly in La Jagua de Ibirico, Chiriguana, El Paso and Becerril. The following companies are operating in the region (see Annex I, Image 9):

- Drummond (Mines Pribbenow and El Descanso; Reserves in Rincón Hondo, Similoa, and Cerro Largo are in the process of environmental licensing)
- Prodeco SA, owned by Glencore Xstrata (Mines Calenturitas and La Jagua)
- Colombian Natural Resources S.A.S., controlled by the US investment bank Goldman Sachs Group (Mines El Hatillo, La Francia and Cerro Largo South coal deposit)

In a span of over two decades, coal extraction in Cesar grew from local artisanal activities to a hub of mega-projects and open-pit mines. In the 1990s, the first multinationals arrived, attracted by large amounts of high-grade reserves and proximity to the ports.

Most of the coal mined in Cesar is transported by railroad to the port region in the district of Santa Marta where each of the companies has its own port. The 226km railway is operated by Ferrocarriles del Norte de Colombia (Fenoco). In 2006, Fenoco was privatized and acquired by Glencore International, Drummond and Goldman Sachs, the mining companies operating in the region. Coal coming from one of the operations in the region (La Jagua) still needs to be transported by road for a few kilometres until it reaches the railway (at Mine Calenturitas). This transport and the railroad operation cause disturbances to the local communities in terms of noise, pollution and safety risks.

On the Caribbean coast, Prodeco owns Puerto Zuñiga, and Drummond owns Puerto Drummond. The two companies are now working together on the construction of a bigger port (Pueblo Nuevo). From there the coal is exported by ship all over the world.

La Guajira

Production in La Guajira is concentrated in three municipalities: Albania, Barrancas and Hatonuevo. In this region a joint venture with independent management operates, belonging equally to BHP Billiton, Anglo American and Glencore Xstrata – the Cerrejón mine (see Annex I, Image 9). Cerrejón is the biggest coal mining operation in Colombia. It also owns a 150km railway that connects the mine with its own port, Puerto Bolívar, from where the coal is exported. Over the past years, the railway has been a target for attacks of guerrilla groups and ex-paramilitary groups.

2.3.3 Impact of mining activities in other economic sectors

Coincident with the growth of the mining activities in the region, both agriculture and manufacturing industries registered decreasing levels of activity. Due to employment

opportunities in the mining sector, with better remuneration prospects, many people chose to abandon agricultural activities, which provided limited possibilities for improvement of their precarious living conditions due to low productivity levels. Other factors, such as political and economic policy decisions, also caused a change in Colombia's industrial activity, both at national and local levels.

In La Guajira the contribution of agriculture to local economy decreased from 8.4% in 2000 to 3.4% in 2012. In Cesar, the agricultural sector, which used to represent 20% of the regional economy in 2000, represented 8% in 2012 (Rudas, 2013). The region of Cesar used to have extensive production of cotton crops. In the 1980's the palm oil industry also established new plantations in the region.

2.3.4 The distribution of royalties received from mining operations

A new Royalty Law that took effect in 2011 dramatically changed the revenue stream of local governments. The system was initially decentralized, and royalties were kept mostly in the producing districts and municipalities. According to the Ministry of Finance, in the period between 1995 and 2010, eight Colombian districts, among which Cesar and La Guajira, received 80% of direct royalties (while only representing 17% of the population). However, massive fraud with the royalties' funds and the financing of low-impact projects that did not promote long-term development in the region, made the government decide to centralize the royalty contributions. Despite having received large amounts of royalties until 2010, mining regions still suffer a severe deficit in housing, potable water and sanitation, education and health.

Since 2011 all districts and municipalities have to send project applications to various royalties' funds managed by the central government in order to get funding. As a consequence they now receive a smaller percentage of the royalties and have to compete for funding with other (non-mining) regions. As of 2015, producing departments will receive directly 20% of the total collected royalties; the remaining 80% will be collected in a fund to finance project applications (National Planning Department, 2012).

As a local government official said: "We have the problems of the mining sector but don't get the money to solve them". The new system also makes the local population more averse towards mining, as they perceive they do not reap enough benefit. Therefore their expectations towards the companies grow. They are seen as a quasi-government and as the major source for funding of social infrastructure.

2.4. The importance of small-scale mining in Colombia and its contribution to the social and environmental impacts

Colombia has a long tradition of small-scale and artisanal mining. Most of small mining operations do not have an environmental management plan nor do they implement labour and safety standards, even if they have a legal title. The Colombian government has a *National Formalization Policy* and several programmes executed to support small-scale and artisanal operations to meet the requirements of the law. The policy also supports small miners to obtain a legal title to operate. Results however have been limited.

According to the National Mining Register, small-scale mining (less than 100 hectares) represents 54% of the total mining titles in the country. Medium-scale mining (100 to 5000 hectares) represents 44% of the total mining titles. This means that 98% of the mining titles in Colombia are small or medium size operations. Artisanal or traditional mining is characterized by small operations that use rudimentary techniques, mostly for subsistence and in several cases run by peasant, indigenous or Afro-Colombian communities.

According to the 2012 Departmental Mining Census, approximately 65% of the 14.000 mineral production units identified in the country are illegal, meaning they do not have a legal title to operate.

Small-scale mining projects are often located in regions where the government (national and local) is absent and where illegal armed groups are active. Many illegal armed groups (guerrilla, paramilitaries, criminal gangs) finance their operations through “taxes” and “payments for security” imposed on small mining operations. In some regions, for example Antioquia, Cauca, Nariño and Chocó, illegal groups are responsible for the direct operation of the illegal mines (“criminal mining”). In other cases, illegal mining is used for money laundering. Illegal mining is progressively taking the place of drug trafficking as a way to finance activities of illegal armed groups.

Although there are some good practices in the sector, small-scale mining often entails high environmental costs due to the processes and substances employed in the extraction activities. Due to widespread small-scale operations of gold mining (both legal and illegal), Colombia is the country with the highest level of mercury pollution in the world. Segovia, a traditional gold mining municipality, has the highest concentration of this element (PBI Colombia, 2011).

Environmental and social impacts of small and artisanal mining (both with and without legal title), and the fact that illegal groups are obtaining resources from this activity, put informal mining at the centre of attention of national and local authorities. In this context, and according to public officials interviewed during the Scoping Mission, the limitation of the

impact of small-scale mining, its formalization, and the fight against illegal mining, are priorities for the government. Large-scale projects are not their concern, as the government claims that the multinational mining companies manage their impacts in compliance with national standards.

3. Key social, environmental and labour challenges in the coal producing regions

In this section of the report, we present the main social, environmental and labour challenges in the coal producing regions.

The situation in the coal areas of Cesar and La Guajira is a complex combination of local, national and international actors. Government, civil society organizations, local communities, indigenous peoples (in La Guajira), labour unions and private sector are the main stakeholders. Two key fundamental issues shape the context in the coal producing regions:

- *The relationship between the stakeholders is difficult and marked by historical conflict and a lack of trust; stakeholders have conflicting views on every discussion topic;*
- *Governmental presence in these areas has traditionally been relatively weak and the capacity of both national and local authorities to monitor and to cope with the impacts of coal mining is limited. Local and regional governments lack institutional capacity and resources.*

Up until today, despite the fact that all stakeholders recognize that change is needed, opposing views and lack of common ground have hampered improvement of the situation on the ground.

3.1. Social challenges

3.1.1 Armed conflict and displacement in Cesar and La Guajira

In coal-producing areas, where the presence of the state was weak, guerrilla and paramilitary groups were responsible for serious violence, expressed in high rates of forced displacement and violent deaths, particularly in the period between 1996 and 2006.

In the department of Cesar, in addition to the national army (Primera Division del Ejercito Nacional), several other armed parties were present (CINEP, 2014):

- The National Liberation Army (ELN) since the 1970's. Two fractions of this movement are still present today.
- FARC-EP (Revolutionary Armed Forces of Colombia, and People's Army) with a strong presence in the region in the 1990's. For some time this group controlled the region and the connecting routes with other regions, namely towards Venezuela, La Guajira and the ports in in the Caribbean coast. In 1999 they lost their power to the AUC and fled to the mountain areas.

- Several factions of the United Self-Defence Forces of Colombia (Autodefensas Unidas de Colombia – AUC) arrived in the region in 1996 and assumed control in 1999. The Juan Andrés Álvarez Front in particular was responsible for great violence.

Despite the fact that there is no official data on the abuses committed by the paramilitary groups in this region, according to estimates by a Dutch NGO, during this period (1996-2006) there were approximately (PAX, 2014):

- 2,600 victims of selective killings (estimate based on information from the national police and on court statements by ex-paramilitaries),
- 500 victims of massacres (estimate based on information from the Justice and Peace Unit of the Attorney-General's Office),
- 240 victims of enforced disappearances (estimate based on information by ex-paramilitaries), and
- more than 59,000 forced displacements (as of the year 2000, estimate based on official statistics of the Colombia police).

Members of the communities in Cesar have become victims of large-scale human rights violations by paramilitary groups and the national army. Some of the victims claim (partial) responsibility of private companies.

In La Guajira, the arrival of paramilitary groups was mostly motivated by drug trafficking in the 1980's, as the Caribbean coast region was a strategic point of interest. In this region, in addition to the units of the national army, the ELN, the AUC and the FARC-EP groups were present. Despite high levels of paramilitary activity, violence against civilians and forced displacement situations took place on a smaller scale than in Cesar (CINEP, 2014). This difference in the level of violence translates in less conflicting relations with the communities, compared to the region of Cesar.

In both Cesar and La Guajira, the national army protected the mining operations, as well as the railway leading to the ports (often attacked by guerrilla and paramilitary groups). At the same time mining companies had to deal with local authorities that were heavily influenced by the paramilitaries. Mining companies allegedly would also have provided financial support to paramilitary groups in exchange for protection of their business interests, and allegedly bought land that was acquired by their owners through violence and forced displacement. In Cesar, an important part of the land bought by mining companies in the 1990's has been supposedly acquired, after several intermediaries, from paramilitary groups that obtained the land through violence and forced displacement (CINEP, 2014). None of the mining companies have been sentenced in (a Colombian or international) court on the basis of those allegations. The companies vehemently deny any type of financing or support to paramilitary groups.

It would be commendable to start a process to clarify the events of the violent past in the region of Cesar. It should be a process involving all relevant local actors and directed at finding solutions and remedy for victims.

Although in the last years the security situation has significantly improved, the legacy of the violence, which left thousands of displaced people living in poverty with no means of subsistence, is still a concern. Most of the victims have not yet been given any compensation and live in precarious conditions. The great level of violence in these regions is not a problem of the past; its consequences are still felt daily by many people: the victims, trade unionists, civil society representatives and also journalists. Ex-paramilitary groups active in the mining regions pose a daily threat to people fighting for their rights.

As mentioned, mining companies have also been the target of criminal groups. Kidnappings and killings of mining company workers, contractors and suppliers were frequent during the 1990's and 2000's. Several trade union leaders were killed. Threats still occur nowadays. Paramilitary and guerrilla groups also targeted important infrastructures to the companies, such as the railway operations. Cerrejón still faces attacks to its railway infrastructure: there were seven incidents in 2012 and three in 2013 (Mining.com, 2013).

3.1.2 Resettlement of communities following expansion of mining operations

In 2010, the Ministry of Environment ordered Drummond, Prodeco and Colombian Natural Resources to resettle three communities in the Cesar region due to the air pollution generated by the mining projects. Air quality measures revealed consistent levels of harmful particles far above the allowed limits, posing health risks for the local communities. Given these conditions, the Colombian government gave one year to mining companies to accomplish the resettlement of Plan Bonito (the community in the most critical location), and two years for the resettlement of the communities of El Hatillo and Boqueron (See Annex I, Image 10). Today, only the community of Plan Bonito has reached an agreement with the companies and has been resettled through individual negotiation with each of the families. The process had mixed results, with some families highly improving their living conditions while others were unable to adequately manage the financial compensation received from the companies and ended up in poverty (several people were not used to managing large amounts of money and spent all the money immediately).

The other two communities, El Boqueron and El Hatillo are still in a negotiation process. The most critical situation at the moment is El Hatillo, a community demanding a collective resettlement plan. The inhabitants of El Hatillo are highly concerned about the social stability and social cohesion following the resettlement process. They want to ensure that the conditions of their future location are very similar to the ones they had before the arrival of the mining companies. The community is being supported by NGOs in the negotiations. However, due to the lack of common ground to reach an agreement and the complexity of

resettlement processes, a solution has not yet been found. As for El Boqueron, recent air pollution readings went down to accepted levels, and therefore the necessity of a resettlement is being evaluated.

La Guajira has a characteristic feature of communities of indigenous peoples, who enjoy special rights under international treaties and national law. Still, in this region, the expansion of the mining industry also caused several (involuntary) resettlements of local communities, namely Tabaco (2001), Patilla Chancleta, Roche, Los Remedios and Tamaquito, following a great mine expansion in 2006 (see Annex I, Image 11).

Colombian national law gives priority to projects of national interest, and therefore offers little protection to local communities in mining areas who find themselves in a situation of (involuntary) resettlement. Colombian law does not cover involuntary resettlement nor remedy provisions. Most companies state they aim to comply with IFC's standards, Principle 5, which refers to compensation packages that include a new house, long-term education support, financial remediation and other benefits. The specific compensation package depends on the agreement achieved in each particular case. The government expects mining companies to lead the resettlement processes and to reach agreements with the communities. In order to do this, companies often hire specialist organizations to guide negotiations (e.g. Drummond, Prodeco and CNR work with rePlan, a Canadian based consultancy with a regional office in Quito, Ecuador).

During the interviews performed for the Scoping Mission, many stakeholders complained about the resettlement processes taking place in the mining regions. Complaints were related to the following aspects:

- Resettlement processes take too long;
- Clear resettlement guidelines from the government are lacking;
- Lack of transparency for local communities of the negotiation process and its outcomes (there is no information publicly available regarding the compensation agreements reached during resettlement negotiations);
- Long-term negative impact on the welfare of families that have already been resettled.
- One or more parties involved are lacking the will to find a solution. Negotiations become increasingly politicized through for instance the involvement of external parties, sometimes with opposing views and interests;

3.1.3 Weak socio-economic development in the coal producing regions and limited employment opportunities

According to results from the 2005 Census, 28% of the population of Colombia was considered to be in a condition of unsatisfied basic needs (NBI). However, in the

departments of Cesar and La Guajira this indicator reached 45% and 61% respectively. These have traditionally been poor regions and, despite increasing economic activity, NBI rates remain amongst the highest in Colombia.

In a span of over two decades, coal extraction in Cesar grew from local artisanal activities into a hub of mega-projects. This changed the life of local communities. For instance, within 15 years, La Loma, a small town inside El Paso municipality and close to the mining operations, saw its population increasing from 2,000 habitants to 22,000, without adequate adaptation of the necessary public infrastructure and services. This migration flow has also caused an escalation in social problems, resulting among others in cultural clashes, violence, alcoholism and prostitution.

Precarious social conditions of the population are common in all municipalities in which coal extraction occurs, both in La Guajira and Cesar. Specifically, a study on quality of life and health of the population in the area of influence of Cerrejón, requested by the company to Cendex Institute of the Universidad Javeriana, presented the following conclusions:

- Access to public services in rural areas is very limited;
- In rural areas the rates of schooling and educational attainment are low and there is a high proportion of illiteracy;
- The rate of affiliation to social security is low;
- The food security situation is precarious: low consumption of animal protein and high fat intake, which causes an unbalanced diet in most families;
- Severe deficiencies in the network of health services.

Given the low investment of the Colombian government in the development of both Cesar and La Guajira, and widespread poverty levels, local communities expect mining companies to build not just a mine but also contribute to the region's infrastructure and regional development. Mining companies also are held accountable for expenses related to the development of necessary infrastructure for operations. Investments include transport, water and energy supply, as well as other necessary core infrastructures, such as railways. Still, companies claim that they cannot supersede the government's responsibilities and that they already pay significant taxes and royalties in accordance with their mining contracts.

Communities also look at companies as a source of employment. All parties agree on the economic importance of the work in the mines. Due to the level of wages paid in the mining sector, one family member working in a mine represents an income for the whole (extended) family. However, during the Scoping Mission many stakeholders complained of a lack of employment opportunities. According to their sustainability reports, the mining companies hire around 60% of their staff from the region. However, according to communities, local government and trade unions, the overall contribution to the generation of employment of local people should be increased. Civil society organizations claim that

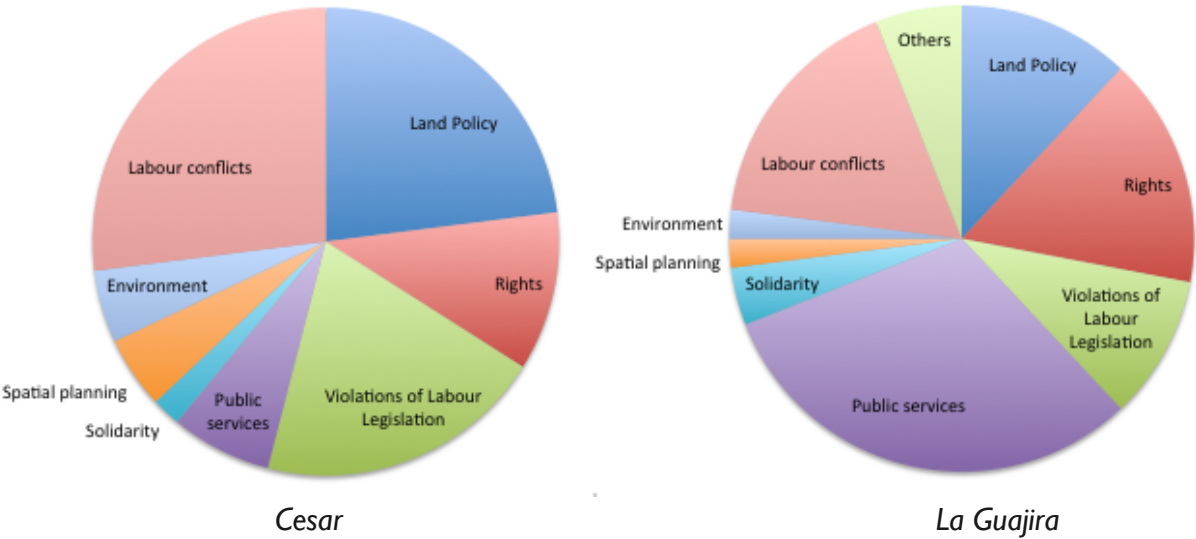
despite the fact that there have been several training sessions provided to community members to qualify them to work in the mines, many of them have never been hired. Companies disagree with this assessment and claim to already invest in training of local people and to hire local workforce.

3.1.4 Increasing conflict between local communities and mining companies

Colombia has seen a substantial increase in the number and intensity of social conflicts between communities and extractive companies. CINEP reports that between January 2001 and December 2011, 274 collective social actions took place associated with the extraction of petroleum, coal and gold in Colombia. Social protests against mineral extraction increased consistently from 2005, and particularly after 2008 (CINEP, 2012).

The social protests in the mining regions are not only related to mining activities, but express a broader dissatisfaction of the actors regarding the economic interests of the Colombian government, corruption of local authorities and lack of regional development. In these regions the trade union leaders are not only active in union activities. Due to their organizational experience they are often also involved in community protests. In La Guajira indigenous peoples who are rather well organized are an important faction in participation. The main types of conflict linked to the exploration of coal are related to:

Image 5: Type of conflicts associated with coal mining in Cesar and La Guajira (1975-2012)



Source: CINEP, 2014

3.1.5 Lack of reliable data on the impacts of industrial activities

As previously mentioned, two aspects that shape the context in Colombia are the lack of trust between the stakeholders and the lack of independent and reliable data regarding the impacts of extractive activities. For example, the information available regarding air quality impacts and water usage is scarce and provided annually to the government by the companies and by CorpoCesar (Cesar's regional environmental authority – see Box 4). Other stakeholders, for instance trade unions and communities, find this information biased and inaccurate. They conduct their own research with data showing opposite results.

In addition, the information, despite being publicly available, can be difficult to access and understand by local communities, given their limited access to information technologies and lack of technical expertise.

The national government states that the limited capacity of the national and local environmental authorities to perform adequate measuring and monitoring tasks is due to lack of institutional capacity and funding.

BOX 3 – Priority topics for impact assessment

Key areas, for which it would be crucial to support independent impact assessments and provide measuring and monitoring capacity, would be:

- *Water quality and quantity*
Companies may adversely impact the access of local populations to safe and affordable water for personal or other uses (see following chapter 3.2.1). Particular attention should be paid to impacts on water availability and water pollution by the mining sector, including impacts on underground water sources.
- *Air Quality and Health impacts*
Coal mining can affect the health of workers and communities living near the mines. Pneumoconiosis is the principally studied disease in coal miners, associated with exposure to particulate matter. Moreover, cardiovascular disease and cancer under inhabitants in nearby towns have also been linked to the extraction of coal. However, data is still very scarce and other causes for these diseases are possible. This justifies the need for more research on the health risks and impacts on individuals working and living in the areas of coal mining.
- *Human Rights impacts*
Local communities have been vulnerable to many impacts of mining activities and have suffered the consequences of armed conflict, including violation of human rights. However, there is no independent human rights impact assessment accepted by all actors that would allow for understanding potential human rights issues in the coal mining regions. Such information would be crucial for discussions on mining policy, the situation of the victims and for the management of conflicts between

communities, victims and mining companies. Due to the complexity of the topic, such a study would have to be performed by a recognized party of indisputable credibility.

BOX 4 – CorpoCesar: looking for funding for a monitoring program

The Corporación Autónoma Regional of Cesar is the regional authority responsible for the implementation of policies, programs and projects related to environment and renewable resources. CorpoCesar is in charge of environmental licencing processes for minor projects and is responsible for the administration, management and exploitation of natural resources in its jurisdiction. As part of its duties, CorpoCesar implements monitoring actions to measure air and water quality, noise levels and impacts on biodiversity. With regard to large-scale coal mining operations, CorpoCesar is not responsible for the licencing processes but it is responsible for monitoring environmental impacts in cooperation with the Ministry of Environment and the National Environment Licences Authority (ANLA).

In order to strengthen its monitoring capacity, CorpoCesar has formulated a project to develop an “Environmental Observatory”. This project has both a technological component, in which CorpoCesar aims to upgrade the technology used, and an educational component, which aims for participatory monitoring with communities and engagement with local schools. The Environmental Observatory would ensure better and reliable data collection of the environmental impacts of different economic activities in Cesar’s region. During the interviews for the Scoping Mission, all stakeholder groups recognized CorpoCesar as a key and trustworthy organization to implement and lead (participatory) monitoring processes.

CorpoCesar is currently looking for funds to develop the Environmental Observatory.

3.2. Environmental challenges

As mentioned above in chapter 3.1, environmental impacts are strongly linked with the social conflict between local communities and mining companies. Stakeholders often relate social problems to environmental impacts (for instance, the importance of access to clean water to their living conditions, health and cultural activities).

3.2.1 Water: increasing scarcity and decreasing quality

Companies may adversely impact the access of local populations to safe and affordable water. Particular attention needs to be paid to the possible water pollution and contamination of drinking water by the mining sector, including of underground water sources. Of the two mining regions, La Guajira in particular struggles with increasing water

scarcity and decreasing water quality. The communities in both regions complain about water impacts related to mining operations (see below).

La Guajira is a semi-arid region with difficult access to water sources. The region has been particularly affected by severe droughts over the past years, which imposes additional stress on the relationship between mining operations and local communities. The local communities claim that the mining activities impact the water quantity and quality in the Rancheria River. The mine presented a plan to divert the course of Rio Rancheria by 26km in order to expand operations. Due to the high level of opposition and impacts in local communities, the proposal is now suspended. Cerrejón says that its activities have a minor impact on the water sources, due to the implementation of better water management systems and pollution control (CINEP, 2014).

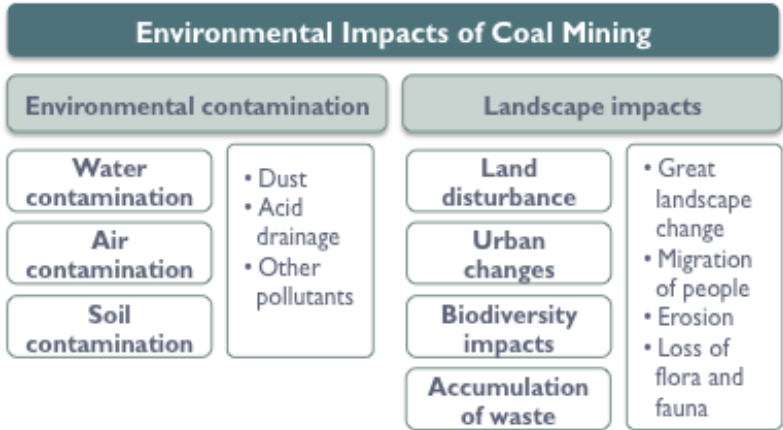
Water-related impact complaints by the communities in both Cesar and La Guajira are related to:

- Increasing droughts and fewer water sources available due to exploitation of groundwater resources;
- Contamination (pollution) of water sources due to high levels of dust;
- Access to fewer sources of water (some sources are located on the property of the mines);
- Decrease in biodiversity (that used to be rich around the water sources) due to drought, increasing dust levels and nuisance from the explosions in the mine.

3.2.2 Environmental contamination and impact on the landscape

The impact of coal mining on the environment varies, but in all cases it will have effects on vegetation, animals and humans. The image below represents an overview of the possible environmental impacts caused by coal mining observed in Cesar and in La Guajira and documented in literature (Contraloría General de la República, 2013).

Image 6: Overview of possible environmental impacts caused by coal mining



3.3. Labour challenges

3.3.1 Conflict between trade unions and mining companies

Strikes, demonstrations and protests were at a record level in Colombia in 2013. Last year, the coal mining industry in Colombia witnessed some of the most prolonged strikes, including a one-month stoppage at Cerrejón, and a 53 days strike at Drummond.

Most of the employees' protests relate to:

- Demand that the national and municipal governments recognize their constitutional rights and intervene in the cases of medical care and rehabilitation of workers suffering from occupational diseases and payment of disability licenses;
- Demand that multinationals respect labour rights infringed by the violation of several labour laws, in particular: lack of benefits; imposing long working hours; unfair dismissal; prohibition of forming unions and lack of industrial safety and adequate occupational health practices;
- Outsourcing of activities ('terciarización') to companies that are not covered under the collective bargaining agreements;
- Representing the interests of local communities – land reform, national policies, local public services (health and education), etc.

Regarding the last point, because of the close relationships companies have with government, communities use them as a way to reach the government. If communities want problems solved, they often target companies' operations (e.g. road blockages) as a way to be heard by the government. Trade union leaders often lead these protests.

Although still difficult, the relationship between companies and trade unions is better in the region of La Guajira than in the region of Cesar, due to historically lower levels of violence experienced in La Guajira (CINEP, 2014).

3.3.2 Alleged non-compliance with basic labour rights

Lack of freedom of association and collective bargaining

Trade union membership is not very common in Colombia. Only 4.4% of the workers in Colombia are unionized. This percentage is higher in the coal mining areas.

There are several unions within the entire coal subsector (see image 7). The strongest and most active unions within the coal subsector, Sintracarbón and Sintraminenergética unite a significant portion of the workers from the main mines in Guajira and Cesar as well as workers from the ports where the coal is exported (Barranquilla and Santa Marta). In recent years Sintracarbón was the leading actor in the creation of two firm-based unions for

subcontracted workers within the Cerrejón complex: Sintrachaneme and Sintramasa. Still, employees claim that there is a lack of freedom of association (especially affecting contractors) and that the negotiations for collective bargaining agreements are long and a source of conflict between trade unions and the companies.

Image 7: Labour Unions in the Colombian Coal Sector in Cesar and Guajira

| Trade Union | Region | Type of Union | Company | Affiliates |
|----------------------------|------------------------------|----------------------|---------------------------------|-------------------|
| <i>Sintracarbón</i> | Guajira, Barranquilla, César | Industry | Cerrejón, Prodeco | 5,000 |
| <i>Sintraminenergética</i> | César, Santa Marta | Industry | Drummond, Prodeco, CNR, Kilbury | 3,000 |
| <i>Sintraime</i> | César | Industry | Contractors | 2,200 |
| <i>Sintradrummond</i> | César | Company | Drummond | 700 |
| <i>SintraCerrejón</i> | Guajira | Company | Cerrejón | 500 |
| <i>Agretritrenes</i> | César | Company | Drummond | 40 |
| <i>Sintrachaneme</i> | Guajira | Company | Cerrejón | 40 |
| <i>Sintramasa</i> | Guajira | Company | Cerrejón | 365 |

Source: Escuela Nacional Sindical, FESCOL presentation, September 2014

Dutch trade unions work mainly with the three biggest union confederations in Colombia. Dutch FNV Mondiaal has long-term partnerships with two Union Confederations: CUT (Single Confederation of Workers), which Sintracarbón and Sintramienergética are part of, and CTC (Confederation of Workers of Colombia). Dutch CNV works with CGT (General Labour Confederation), which Sintradrummond is part of.

Extreme levels of violence against trade union leaders

Colombia is the most dangerous country in the world for trade unionists. Because of the key role that unions have played in defending workers’ and communities’ rights, advocating peace and condemning paramilitary and guerrilla violence in Colombia, trade unions have been a target for the paramilitary groups since the 1980’s. Nearly every year, more trade unionists are killed in Colombia than in the rest of the world combined.

In 2013, 26 trade unionists were killed. The Escuela Nacional Sindical (ENS) also recorded 13 attempted murders, 149 death threats, and 28 cases of intimidation. This represents a 15% increase in comparison with 2012 when 22 trade unionists were murdered and six were the victims of attempted murders. Analysis of the economic sectors most affected by anti-union violence in 2013 reveals that the mining and quarry sector were the most violent, accounting for 25.4% of the cases, followed by manufacturing (19%), education (18%) and

agriculture, hunting and fishing (13%). With regard to the perpetrators of the violence, in the majority of cases there is no information available. But in cases where there is a known or alleged perpetrator, the large majority has been attributed to paramilitary groups (Escuela Nacional Sindical, 2014; Equal Times Newsdesk). These figures demonstrate that, despite government assurances to support the free exercise of trade unionism, violence against trade unionists and the impunity enjoyed by its perpetrators is still a major issue in Colombia.

For the Scoping Mission, we interviewed ten trade union representatives. Four of them had security protection due to life threats. Several of them reported to be victims of continuous threats against them and their families. Trade unionists report that there is a correlation between the level of threats received and the periods of negotiations for the collective bargaining agreements and periods of strike. During strikes and negotiations the threats increase.

Within such a hostile environment, the labour unions demand more commitment from the companies to provide security to their leaders, especially at a time when government support is limited: following corruption scandals inside the National Protection Unit, there is not enough money to ensure the payment and maintenance of adequate protection services to trade union leaders. The Minister of Interior has confirmed a 30% reduction in safety schemes. Recent events confirm that trade union leaders lose their bodyguards when they leave their region, thus limiting their operations or putting their life in danger whenever they travel to other parts of the country.

Leaders of the trade unions in Cesar would like to see a right re-established that they have lost recently: the right to access the mine facilities at any time (as they know that they are safe inside). Mining companies claim that they support the trade union leaders by alerting the competent authorities that should ensure their safety and protection, and by providing the National Protection Unit with all the necessary information.

3.3.3 Weak records on occupational health and safety

According to a survey by Daniel Hawkins (Escuela Nacional Sindical, 2012) the most frequent accidents in open-pit coal mining were caused by overturning vehicles or crashes, falls, injuries to extremities and back injuries, and being hit by or against objects. With regard to the incidence of occupational illness, 35.7% of respondents said they had suffered from work-related illness. The most frequent illnesses were related to muscular problems, followed by respiratory problems.

In the same study, involving open-pit mining workers in La Guajira, Cesar and Barranquilla, and underground mining workers, respondents were asked if the company where they worked offered any work-related training, as a way of improving industrial security practices

in the mine where they worked. A high number of respondents replied “no” (65% of all respondents). Those workers that responded in the affirmative specified that work-related training programs generally take place only sporadically (41%). Trade unions request more training on Health and Safety and the promotion of exchange of knowledge with international trade unions that have working experience in open-pit coal mining.

Mining companies claim they invest heavily in security and that security of employees is a top priority. By following international security standards like OHSAS 18001, among others, they are very keen at minimizing accidents in the mine sites.

3.3.4 High percentage of contractors with limited working rights

In the mining sector, most companies have adopted the business practice of subcontracting workers for tasks and services such as catering, transport etc. Almost half the workforce in the coal mines is outsourced or subcontracted.

El Cerrejón provides about 14,600 on-site jobs. Less than half of these jobs are directly employed workers. Roughly 55% of the workers labouring in Cerrejón’s mines and plants are subcontracted (Cerrejón, Performance Brief, 2013). Drummond employs a workforce of 10,000 workers. Approximately half of the workforce is directly employed by the company (Drummond, Sustainability Report, 2012).

As a consequence, in Cesar and La Guajira labour relations are twofold: “directly employed” workers who work in the central operational activities of the mines and “outsourced or subcontracted” workers, who are employed by contracting firms that provide technical and personnel services to the companies. The “direct” workers have indefinite-term contracts with extra-legal benefits obtained via their collective bargaining agreements (CBAs).

The sector-wide campaign of trade unions to affiliate subcontracted workers in the coal sector is intended to offer them the same labour rights. This is one of the key issues of the unions in the Netherlands and of those in La Guajira and Cesar. They criticize the general trend of subcontracting workers, with short-term contracts and almost no extra-legal benefits. According to them, outsourcing and contracting has led to marked differences in wage, job stability and working hours without obtaining the extra-legal benefits associated with the CBAs.

4. Current initiatives on responsible mining in Colombia

Due to the current mining boom in Colombia, several initiatives have emerged over the last years to strengthen responsible practices in the mining sector and to promote a dialogue within the value chain and with other stakeholders in the sector. In this chapter an overview of the most relevant initiatives is presented.

4.1. National initiatives promoting responsible business

Adhesion process to OECD

In 2013 Colombia became an official candidate for OECD membership and initiated reforms to meet the membership requirements. In order to be accepted, the country has to demonstrate concrete results in several areas that include employment, labour and social affairs, environment, territorial development and economic policy. In addition the country has to implement a roadmap to align Colombia's legislation, policy and practices with OECD instruments and to bring Colombia's policies closer to OECD best practices (OECD, 2013). Various committees will review Colombia's legislation and will present an overview of recommended changes. The *Roadmap for the accession of Colombia to the OECD Convention* defines an overview of the process and expectations for the accession of Colombia to the OECD Convention (OECD, 2013). For example, the Environment Policy Committee will verify whether the Polluter Pays Principle (PPP) is applied (i.e. if the costs of pollution prevention and control measures are borne by polluters, and not subsidised by government). A National Contact Point (NCP) has been established to receive complaints, to disseminate knowledge on the OECD Guidelines for Multinational Enterprises and to promote human rights due diligence processes.

Elaboration of the National Corporate Social Responsibility Policy

As part of the action plan to enter into the OECD, the Colombian government is currently working on the elaboration of a Corporate Social Responsibility policy for the private sector. The policy framework includes sectorial guidelines.

Ethical Commitment of Swiss Companies in Colombia

In 2012, 17 Swiss companies with operations in Colombia (amongst which Prodeco, part of the Swiss-based Glencore company) signed a commitment to start up good business practices in Colombia, aligned with 'Swiss Values'. This was an initiative of the Swiss Embassy

in Colombia and was led by 'Ideas para la Paz' Foundation. This initiative was caused by the motivation of the Swiss business sector to comply with the United Nations 'Protect, Respect and Remedy Framework', not only in Switzerland, but also in its operations abroad. The commitment was supported by the development of guidelines on how business enterprises can promote the respect for Human Rights (HRs) in their operations in the Colombian context.

4.2. Extractive Sector Initiatives

Mining and Energy Committee on Human Rights and Security

Created in 2003, the committee's goal is to strengthen the practices of public institutions and companies in human rights and security management, by promoting the implementation of the "Voluntary Principles on Security and Human Rights" (VP's). The committee seeks to share, to promote and to create good practices and to be a forum for discussion amongst its members, civil society and other governmental institutions. 12 private companies participate in this committee. Cerrejón is the only coal company. The Netherlands Embassy in Colombia supports this initiative together with the Embassies of the USA and UK.

Extractive Industries Transparency Initiative (EITI)

In early 2014 Colombia has presented its candidature to adhere to EITI. In 2015, the country has to develop an Action Plan. To do this, the World Bank has given financial support to implement the candidature's activities. The Ministry of Mines and Energy leads this process.

Permanent Dialogue Roundtable on Mining and Environment

Created in 2012, this is an initiative of Foundation Avina, Gestión Ambiental Estratégica and Razón Pública, with the participation of mining companies, national authorities and NGO's. The Roundtable is a space of dialogue to contribute to the construction of a narrative that helps transforming mining into a responsible activity contributing to wealth creation, rather than a source of damage. The Roundtable emphasizes the challenges of:

- Foreseeing and preventing the risks; and
- Protection and reparation in case of the occurrence of negative impacts.

Mining companies such as Prodeco and Cerrejón participate in this initiative. Recently the Roundtable has presented a proposal to the national government for responsible mining, to be discussed during the elaboration process of the National Development Plan (2014-2018). One of the challenges identified by the Roundtable in this document is the participation of the mining sector in processes of building peaceful coexistence and social equality in the mining regions that would allow for an improvement in the respect of human rights and would strengthen a culture of peace (Roundtable on Mining and Environment, 2014).

Addressing Biodiversity-Social Conflict in Latin America (ABC-LA)

This program is funded by USAID and implemented by a global development company (DAI). The goal of this program is to improve the capacity of indigenous and minority communities and local and regional governments to deal with (potential or actual) conflicts associated with extractive activities that could have a negative impact on areas of high biological significance. The regional focus of the initiative is on Antioquia, Chocó, Santander and Putumayo.

4.3. Specific initiatives for the coal sector

Dialogue on responsible mining in coal supply chain in Colombia

This is an initiative led by FESCOL that brings together German energy companies, labour unions, NGO's, academic sector and community representatives to exchange and share their different visions on environmental and social impacts of coal mining in Colombia and try to find common solutions for those impacts. A first dialogue space was facilitated in Bogotá in September 2014. Insights from this meeting are provided in Annex III.

Bettercoal

Bettercoal is an initiative established by a group of European utilities to promote the continuous improvement of corporate responsibility in the coal supply chain, with a specific focus at the mine-site level. In 2013, Bettercoal has completed and validated a *Code for coal mining*, covering topics such as business ethics, human and labour rights, and environmental performance. The *Code* aims to become a globally accepted benchmark for ethically, socially and environmentally responsible practices in the coal supply chain that can be assessed by an independent third party.

Bettercoal has two major tasks: 1) mine-site audits and self-assessments, and 2) establishing improvement programs (corrective action plans).

The Board of directors of Bettercoal is composed of European energy companies. International experts, mining companies and NGO's have a seat in the Stakeholder Panels.

In 2014, Bettercoal executed its first mine-site audit in the Drummond mine and it requested 50 mines worldwide to fill out a self-assessment that will be used to prioritise mines for site audits. Members of Bettercoal will integrate the collected performance data into their coal purchasing decisions.

The Bettercoal initiative is still in its developmental stage but it is facing several criticisms from civil society organizations and mining companies. Criticisms relate for example to the lack of transparency of the assessment process and results, Bettercoal's governance structure and the scope of the *Code* (the code does not address issues related to reparation of victims of human rights violations). Most NGOs are focusing on the shortcomings of Bettercoal and do not encourage mines and companies to participate in Bettercoal's audits. Some mining companies expressed that they do not see the benefits of the audit and the possible corrective plan. As long as energy companies do not show a clear preference for purchasing coal from mines audited by Bettercoal, mines are not likely to be open to an audit. Bettercoal is aware of these issues and is discussing possible solutions with its members.

5. The focus of a Dutch contribution: objectives and possible interventions

5.1. The focus of a Dutch contribution

As highlighted in chapters 2 and 3, there is a long list of social, environmental and labour challenges that have an important impact on the coal mining areas of Colombia. During the interviews of the Scoping Mission, it became clear that the interviewees' expectations towards the Netherlands are high: they would like the Netherlands to provide a positive contribution to all the social, environmental and labour challenges mentioned in chapter 3. The different issues have different priority levels for each of the stakeholder groups. Each stakeholder group would like to see its problems addressed.

The scope of the Dutch interventions needs to be aligned with the Dutch national policy towards Colombia. At present, Colombia has the status of a 'transition country', which means that the bilateral relationship, previously characterized by a high level of development assistance, is gradually transforming into a relationship based on trade. This poses some (financial) limitations on the extent to which the Dutch government could and would want to be involved in projects in the coal mining regions of Colombia.

Based on this, we present below the suggested criteria for the selection of interventions to be supported by the Dutch Government, and we define some important pre-conditions that need to be fulfilled if the interventions are to be successful.

a) Suggested criteria for the selection of interventions

1. Interventions should be aligned with the conditions of the available funding options. Three financial sources are available: The Transition Facility (directed at improving the bilateral commercial relations); The Human Rights Budget (among others focusing on the peace process and reconciliation); and The Thematic Budgets (e.g. Water and Energy);
2. The contribution of the intervention should be directly linked to the coal supply chain;
3. The contribution of the Netherlands should provide an added value coherent with:
 - a. Dutch fields of expertise;
 - b. the existing Dutch policy framework regarding Colombia.
4. The intervention should contribute to building the local and regional capacity of local actors, especially government institutions;
5. The contribution should not interfere nor replace the activities and responsibilities of the Colombian government.

Alignment with the Colombian government and its policies is needed. The Colombian government has a key role to play in the solution of all the issues mentioned in this report.

b) Pre-conditions for successful interventions:

Given the fact that Colombia is a country consisting of many distinct provinces with very different realities, focusing on the specific challenges of regions is important in order to be able to provide a meaningful contribution. Specific pre-conditions that should be fulfilled in order to have successful interventions are:

1. There should be a regional focus in the coal districts of Cesar and La Guajira, where the coal imported to the Netherlands originates from. These two regions also suffer the greatest accumulated impacts of coal mining. All issues and impacts occur at regional level and cannot be solved at the level of individual mines.
2. Interventions should be aligned. Isolated activities should be avoided because all issues are interrelated and involve the same stakeholders;
3. Active participation of all relevant stakeholders in the design and implementation of the interventions is necessary to ensure a support base for the activities and acceptance of its results.

5.2. Objectives of the Dutch interventions in the coal supply-chain

➤ Objectives:

- To generate trust between Colombian stakeholders in order to be able to promote responsible mining and to find solutions for issues identified;
- To ensure that the coal imported for energy production is being sourced from responsible sources (under continuous improvement);
- To create on the ground conditions that allow for a responsible coal supply chain;
- To strengthen institutional capacity and resources in the coal mining regions in Colombia, in order to promote responsible mining;
- To promote independent, reliable and accessible data with regard to mining impacts on local populations, and to mitigate negative effects, achieving on the ground improvements of the social and environmental conditions.

5.3. Opportunities and risks

The initiative of this Scoping Mission and the visit of Minister Ploumen to Colombia are seen as very positive by the stakeholders interviewed. The Colombian government and the coal producing companies see the Netherlands as an important coal buyer and consider Dutch policies and discussions on responsible coal a factor that has to be taken into account.

There is a willingness among all stakeholders to find solutions for issues that in most cases have been under discussion for years. In addition, the attention given by Dutch and European countries, companies and organizations is much appreciated by the interviewees. Many stated that the active involvement of the European coal buyers is fundamental, as coal buyers have an important stake in supply chain responsibility and crucial leverage power. This “power of the market” is recognized by all stakeholders and seen as essential, especially by civil society organizations and trade unions, to implement changes in the conditions in and around the mines, and to motivate the Colombian government to engage in and contribute to possible interventions supported by the Netherlands.

Regarding the risks, the lack of trust between the various stakeholders is an important challenge. It will be difficult to build bridges between the different actors involved, while maintaining good relationships with all parties and remaining impartial. In addition, organisations that are not willing to participate in the proposed interventions or that would prefer other activities to be done, can question the credibility and usefulness of the Dutch contribution.

Another risk would be the tendency of stakeholders to formulate their views in “black and white” positions. Every organization seems to have its own monopoly on the truth. However this kind of polarised thinking, which ignores or simplifies the complexity of Colombian history, is increasingly being rejected in the country. More nuanced positions and dialogues to reach solutions seem to have a future.

5.4. Possible work streams and interventions

Several potential interventions are possible in order to achieve the objectives defined above. These interventions are grouped into four work streams:

- (a) Mediation
- (b) Dialogue with the Colombian Government
- (c) Data: measuring and monitoring impacts
- (d) Thematic projects

Note: it is important to ensure alignment with the activities being implemented to promote responsible mining (see chapter 4). For instance, some proposed interventions could be articulated to align with the Colombian action plan being developed to close the gaps against OECD requirements.

a) MEDIATION – FINDING SOLUTIONS BY MEDIATING A DIALOGUE

All the interviewed stakeholders recognized the pressing need to have a party mediating the dialogue between different stakeholders to:

- Address conflict,
- Improve the relationship and communication between the different actors, and
- Find solutions for issues that often have been under discussion for years.

The mediating party does not necessarily have to be the Dutch government. It can be any third party that is acceptable to the different actors.

Collaboration opportunities:

- Mediation role between companies and trade unions;
- Mediation role between companies and communities (for instance in on-going resettlement processes);
- Mediation role between companies and Victims' Associations (for instance on the role of private companies in the armed conflict in Cesar and possibilities to contribute to the reparation of the victims of the conflict).

Examples of possible stakeholders involved:

- Dutch Envoy for Natural Resources
- Dutch Embassy in Colombia
- Companies (not exclusively mining)
- Labour union representatives
- Representatives of local communities (Veedurías; Mesas de Trabajo)
- Victims Associations in the Cesar region
- Colombian government organizations (Unidad de Víctimas and Centro de Memoria Histórica)
- United Nations (OHCHR)
- MAPP-Organization of American States

Key considerations:

- I. It is important to ensure that funding for this working stream comes from the Dutch and other governments and not from private parties; this ensures perception of independency in the mediation role. For instance, the Colombian government has special funding for the process of reparation of the victims of the conflict.

2. There is a great imbalance in knowledge and power between community and company representatives, and the relationship between companies and trade unions is often tense. However, most parties have shown willingness to enter into a constructive dialogue. All the interviewed stakeholders recognized the need to have independent parties to play two roles: convener and mediator. The Embassy can play the convener role and help to find mediators that are acceptable to all parties.
3. Mediation can take place between two parties, but it is possible that more stakeholders participate. This is a decision that should be tailor-made per activity.

b) DIALOGUE WITH THE COLOMBIAN GOVERNMENT

As previously stated, the Colombian government has a key role to play in solving the identified social, environmental and labour challenges (see chapter 3). However, during the Scoping Mission, interviewees were often critical of the role, the capacity and the willingness of the Colombian government to solve the problems in the coal mining regions. Stakeholders requested the Dutch government to encourage the Colombian government to be more proactive regarding the role of public institutions in the coal areas and to act on issues to:

- Increase its presence and social investment in the mining areas;
- Adapt legislation (on labour, health and access to remedy for example);
- Guarantee enforcement of the current legislative framework (especially environmental laws and the local and regional reparation and reconciliation processes);
- Support regional development that tackles the dependency of the regional economies on coal and mining, and the lack of other economic activities in the regions if mining companies decrease their economic activity. One of the necessities mentioned by all the stakeholders was the need to develop and revitalize local economies.

Examples of possible stakeholders involved:

- Colombian Government
- Local and regional government institutions
- Dutch Embassy
- Local communities

c) DATA: MEASURING AND MONITORING IMPACTS

Collaboration opportunities:

- Generating independent and reliable data on impacts; possibility to support different studies, such as:
 - Water quality and quantity in the mining regions;
 - Air quality in the communities surrounding mining operations;
 - Health impacts of air quality in communities surrounding mining operations;
 - Human Rights impacts in mining areas.
- Support capacity building in local/regional authorities;
- Support local projects that engage with communities to measure impact.

Examples of possible stakeholders involved:

- Colombian Government (CorpoCesar – Observatorio Ambiental)
- Local communities (Veedurías; Mesas de Trabajo)
- National and international companies (technology providers)
- Universities (local and international)
- International organizations like for instance the World Health Organization (WHO), the International Labour Association (ILO) and the United Nations High Commissioner for Refugees (UNHCR).

Further considerations for this work stream

In order to support such independent impact assessments two fundamental needs must be addressed:

I. Improve technical capacity for impact assessments

There is a lack of the necessary technology and competences to perform accurate measuring and monitoring of air and water quality, biodiversity impacts and availability of ecosystem services.

II. Engage with communities for participative and continuous monitoring of impacts

Participative measuring and monitoring processes are fundamental to restore trust in the information provided, and to strengthen the role of communities and affected parties in this work stream.

d) THEMATIC PROJECTS

As follow-up to the work streams a) and c) specific interventions could be supported that address pressing thematic challenges, such as:

SUPPORT WATER SUSTAINABILITY

Collaboration opportunities:

- Based on the results of work stream b), understand how the Dutch expertise in water management can contribute to finding structural solutions for water availability and use in the two departments.

Examples of possible stakeholders involved:

- Colombian Government (CorpoCesar – Observatorio Ambiental)
- Local communities (Veedurías; Mesas de Trabajo)
- National and international companies (with water management expertise)
- Universities (local and international)

5.5. Governance and funding options

Funding of the above-mentioned work streams could be channelled through different facilities of the Dutch government. These are:

- Transition Facility, directed at Colombia, Vietnam and South Africa. For Colombia this is available until mid-2015
- Human Rights Programme: Promotion and Protection of Human Rights (see budget 2014, BUZA, page 12 - 14).
- Thematic funds related to Water and Energy & Supply Security (access to Raw Materials and the responsible and sustainable production of energy and raw materials, BUZA budget 2014, page 17 and 18).

Based on the interviews and conversations during the FESCOL conference, it is relevant to explore the possible contribution of other stakeholders to specific interventions. Some organizations have expressed their willingness to contribute, in kind or with money. It is also important to look at the possible use of the Colombian royalties' funds. The Dutch government could facilitate the financing of the interventions through those funds and the National Planning Department (Departamento Nacional de Planeación) could help to structure the projects with various other donors. It is important to articulate such actions with the Agency for International Cooperation (Agencia Presidencial para la Cooperación Internacional).

These issues still have to be explored further after the Dutch government has taken a clear stance on which interventions it wants to support in the coal mining regions of Colombia. At that point, a proposal can be made detailing the possible governance, coordination and financing of the activities of this initiative and its interventions.

6. Conclusions and recommendations

6.1. Conclusions

➤ About the Context

1. Both in Colombia and in the Netherlands there is an intense debate focusing on the large-scale coal mining sector. Many concerns are expressed regarding a large variety of social and environmental issues.
2. The Scoping Mission was able to speak to all relevant stakeholder groups in the Netherlands and in Colombia. The participation in the two-day FESCOL coal dialogue conference allowed the Scoping Mission to listen to their views on all topics.
3. We expect that the social debate on the social and environmental conditions of coal mining operations will continue in the coming years due to:
 - The sensitivity of the subject,
 - The growing attention for responsibility and accountability in supply chains,
 - The continuing sourcing of coal imported from Colombia by European utilities,
 - The strong involvement of many stakeholders.
4. The political context in which the Colombian coal sector operates is influenced by 50 years of internal conflict between many different (armed) actors. The country's socio-economic inequality and political exclusion are at the root of this conflict.
5. As a consequence of this violence 220.000 people were killed and 5.7 million people were displaced.
6. This conflict has polarized Colombian society. There is great distrust between different actors who tend to express their views in "black and white" terms and polarized positions. Finding "common ground" is not easy.
7. Despite the recent demobilization of the paramilitary groups and the ongoing peace process negotiations between the guerrilla movement FARC and the Colombian government, Colombia is still a country with high levels of violence mostly caused by ex-paramilitaries who have reorganized in criminal groups.
8. The result of the peace process and the agreement for the post-conflict period will be essential for the future of coal mining regions.
9. Defenders of human rights and victims of armed conflict are still under threat. Because of the key role that trade unions have played in defending workers' and communities' rights, they have been a target for the paramilitary groups since the 1980's. Colombia is the most dangerous country in the world for trade unionists. In 2013, 26 trade union leaders were killed and there were 13 attempted murders.
10. Colombia has promoted the development of large-scale mining as a locomotive for prosperity. The taxes and royalties created by the extractives industries are

considered indispensable for bringing development to the country and funding the post-conflict process.

11. Next to large-scale mining, in Colombia there is a great share of artisanal and small-scale operations as well as illegal mining. Often, illegal armed groups finance their operations through “taxes” and “payments for security” imposed on small mining operations. In general, this type of mining operations has strong negative social and environmental impacts.
12. Large-scale coal mining takes place in two departments (Cesar and La Guajira), which over the past decades received little attention from the Colombian state. These regions have traditionally high indices of poverty and, despite increasing economic activity, are still amongst the poorest areas in the country.
13. For these two departments the coal mining sector dominates the regional economy. Most of the coal produced is exported through harbours on the Caribbean coast. The Netherlands is one of most important destinations of Colombian coal.
14. Most stakeholders consider that the legal framework for the mining sector is weakly enforced at local level and highlight the inability of local and regional governments to monitor compliance with social (including labour) and environmental legislation.

➤ **About the issues “on the ground”**

1. The political, social and economic contexts of Colombia heavily influence the issues on the ground in the coal mining regions.
2. The Scoping Mission has identified a broad spectrum of social, environmental, labour and human rights issues that need attention.
3. Members of the communities in Cesar have become victims of large-scale human rights violations by paramilitary groups and the army. Some groups of victims claim (partial) responsibility by private companies.
4. Despite registering high levels of paramilitary activity, the violence in La Guajira against civilians and forced displacement situations were of a much smaller size than in Cesar.
5. The expansion of large-scale coal mining has led to several (involuntary) resettlements of communities. Many stakeholders complain about these processes.
6. Given the relative absence of the Colombian state in the two coal mining departments, the mining companies face high expectations from local and regional stakeholders. They are expected to build not just a mine but also contribute to the region’s infrastructure and regional development.
7. Conflicts between communities and mining companies are increasing. The social protests in the region are not only related to mining activities but demonstrate a more general dissatisfaction with the social, environmental and economic situation in the two departments.

8. Due to the polarized atmosphere and the absence of trust between actors, there is a lack of generally accepted, independent and reliable data regarding the impacts of coal mining activities.
9. Coal mining can have a variety of environmental impacts that vary from impacts on landscape, contamination of water and air to the loss of flora and fauna.
10. Specific attention should be given to the increasing water scarcity and decreasing water quality, especially in the department of La Guajira.
11. Relationships between trade unions and mining companies are tense. Issues like security, outsourcing, occupational health and safety, respect for labour rights (e.g. collective bargaining) are under discussion.
12. Trade union leaders have an important role in society. They defend the interests of local communities and often lead community protests.

➤ **About initiatives on responsible mining**

1. Due to the current mining boom in Colombia, several initiatives have emerged over the last years to strengthen responsible practices in the mining sector and to promote a dialogue within the value chain and with other stakeholders in the sector.
2. Colombia is aiming to join the OECD and the EITI and is in a process of adopting the necessary legislation and practices to comply with the requirements of these two organizations.
3. Bettercoal has conducted its first mine-site audit in Colombia, in the mine of Drummond. Its focus is on mine-site audits and self-assessments, and establishing improvement programs (corrective action plans).

➤ **About the Dutch contribution**

1. The Colombian parties welcome a contribution from the Netherlands. There is a willingness among most parties to find solutions for problems that in most cases have been under discussion for years.
2. These parties have high expectations regarding the possible contribution of the Dutch Government and other Dutch/ European parties.
3. The scope of Dutch interventions should be aligned with the Dutch national policy towards Colombia. At present, Colombia has the status of a 'transition country'.
4. Contributions of the Netherlands should be clearly focused: regionally and thematically.
5. Dutch interventions have opportunities and risks. The participation of coal buyers via Bettercoal could give extra leverage to the process. The risks are related to the sensitivity of the coal issue, its polarized climate and the lack of trust between stakeholders.

6.2. Recommendations

1. The Scoping Mission recommends a contribution from the Dutch government to tackling the issues in the coal mining areas of Colombia. Interventions to take on the social, environmental and labour challenges are feasible and desirable.
2. We propose to focus on the departments of Cesar and La Guajira due to the fact that:
 - a. The greater social, environmental and labour impacts occur in these regions where coal mining operations are concentrated,
 - b. The coal imported in the Netherlands originates from these departments.
3. We recommend that Dutch government consult with relevant local, national and international stakeholders in the design and implementation of the interventions to ensure a broad support base for the activities and acceptance of its results.
4. We recommend that the Dutch contributions focus on:
 - a. The generation of trust between Colombian parties in order to find solutions for issues identified,
 - b. The development of independent and reliable data about impacts, and
 - c. Strengthening the institutional capacity and resources.
5. Based on the stakeholder needs expressed in the interviews during the Scoping Mission, we recommend that the interventions are organized in four work streams: a) mediation to help solve conflicts between stakeholders, b) continuous dialogue encourage the Colombian government to be more proactive in addressing social and environmental challenges in the coal areas, c) support reliable and independent data collection and, d) support thematic projects that address pressing challenges in the mining region (e.g. to improve water management).
6. For a successful contribution it is important that interventions are integrated and aligned with other activities of the Dutch government and other actors. It is very important to align the interventions of the Dutch Government with the Colombian authorities' activities in the field of the peace process, the promotion of responsible mining and the reparation for victims of the violence.
7. We recommend that the Dutch government investigates if and in what way other Dutch and/ or European private and public actors can contribute to these interventions.
8. Once the contribution of the Netherlands has been decided, we recommend to involve Bettercoal and to discuss the possible role and contribution it can have in Colombia.

7. Annexes

- I. Maps of the regions
- II. List of interviewees organized per stakeholder. Each interviewee is indicated whether it was an interview (I) or a presentation (P) during FESCOL meeting
- III. FESCOLS's conference insights: a meaningful coal dialogue in Colombia?
- IV. Sources used for literature review
- V. TOR

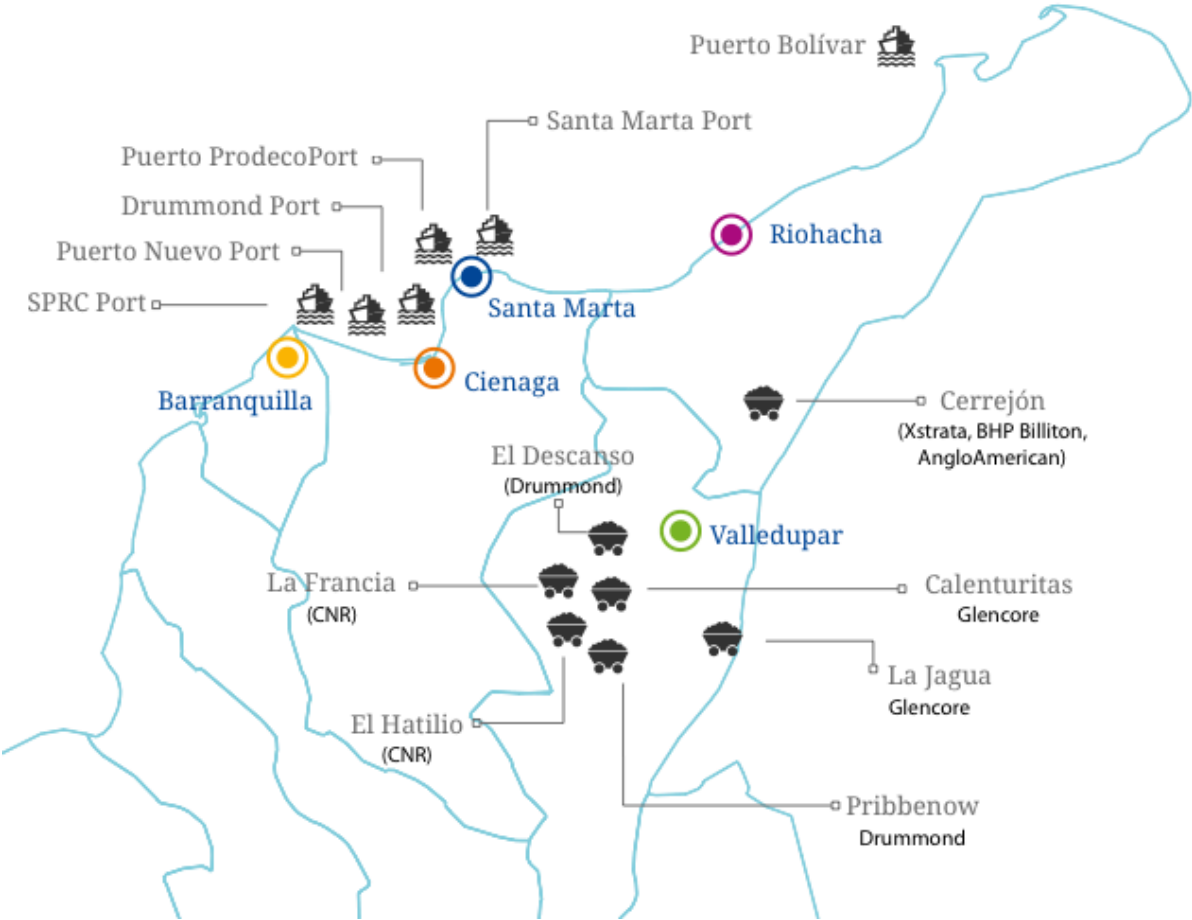
7.1. Annex I – Maps

Image 8: Colombia's Map and localization of Cesar and La Guajira mining regions



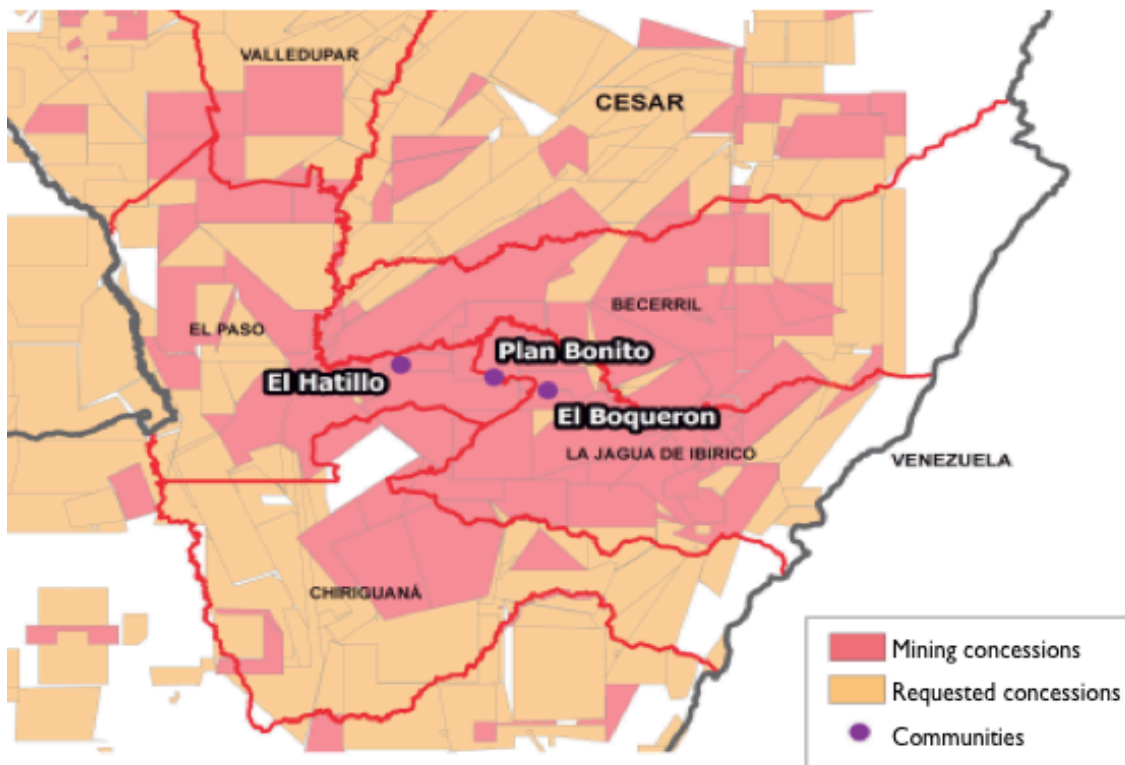
Source: Instituto Geográfico Agustín Codazzi, 2012.

Image 9: Cesar and La Guajira: Mining operations and ports



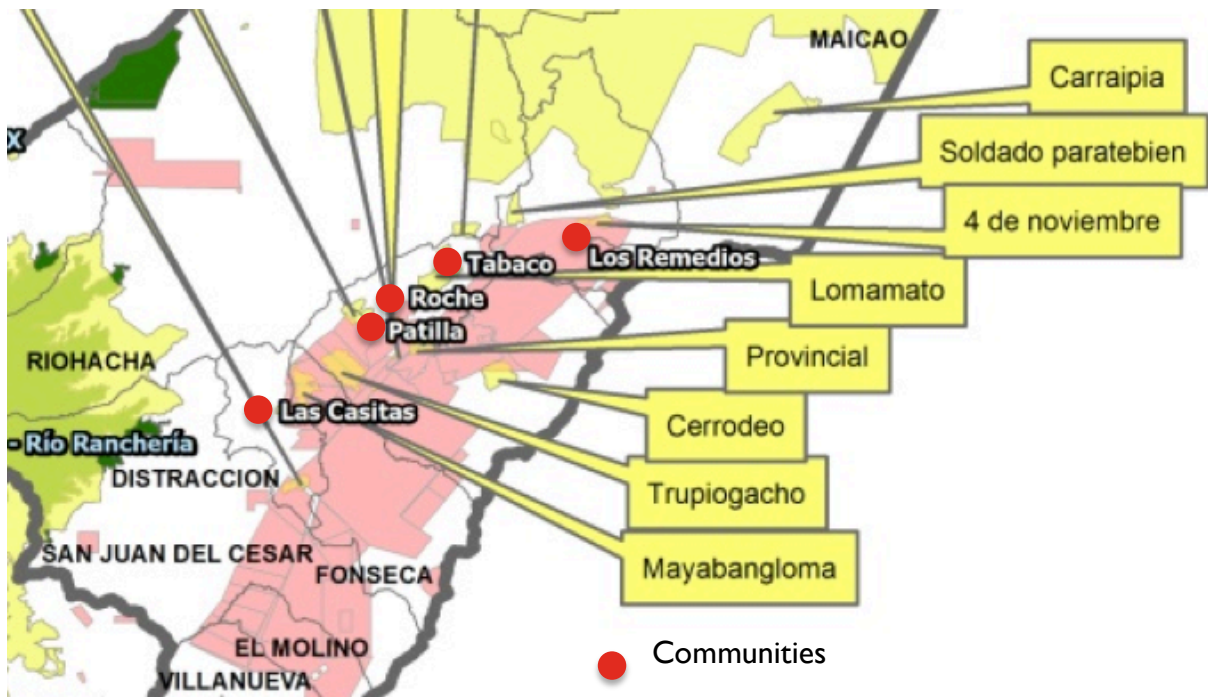
Source: Prodeco, 2011.

Image 10: Region of Cesar - local communities affected by coal mining



Source: CINEP, 2014

Image 11: Region of La Guajira - local communities affected by coal mining (some Indigenous and Afro communities are highlighted in yellow)



Source: CINEP, 2014

7.2. Annex II – List of interviewees (I) and presenters at FESCOL (P)

| Stakeholder | Interviewee (I) / Presenter (P) | Function |
|--------------------------------------------|---------------------------------|--------------------------------------------|
| National Authorities | | |
| National Mining Authority | Juan Guillermo Castro - I | Vice-President |
| Ministry of Mining and Energy | César Díaz - I | Vice-Minister |
| | Ligia Esperanza Pérez- I | Dept. of Large Scale Mining |
| | Adriana Ucros- I | Dept. of Environmental Affairs |
| | Margarita Guerra- I | Vice-Minister Adviser |
| National Victims Unit | Maria Eugenia Morales- I | Director |
| Ministry of Commerce, Industry and Tourism | María Elvira Calero- I | Focal Point for OEDC |
| Office of the High Commissioner for Peace | Alexandra Guaqueta- I / P | External Advisor |
| Alexander Von Humboldt Institute | Ana María Hernández Salgar | Policy Coordinator |
| National Planning Department | Catalina Rueda | Mining and Energy department |
| Ministry of Environment | Francisco Gomez - I | Sectorial Director |
| | Fanny Sierra- I | Advisor |
| | Karin Romero- I | Specialized professional |
| | Erika Ginett Amaya- I | Specialized professional |
| National Environment Licences Authority | Paulo Rodriguez- I | Coordination for Economic Impact Valuation |
| | Francisco Aleal - I | Specialized professional |
| | Jorge Prada - I | Specialized professional |
| | Diana Constanza Lozano - I | Contractor |
| Chamber of Representatives | Alirio Uribe- P | Representative |
| UPME | Angela Cadena –P | Director |

| | | |
|-------------------------------------------------------|-----------------------------|---------------------------|
| Local and Regional Authorities | | |
| Departament of César | Pedro Antonio Díaz- I | Governor |
| Municipality of El Paso | Luis Alberto Murgas Pupo- I | Mayor |
| Municipality of El Paso | José Carlos Villegas- I | Ombudsman |
| Municipality of El Paso | Martin Altamar - I | Secretary of the Interior |
| Coorporación Autónoma Regional del César (CORPOCESAR) | Kaleb Villalobos - I | General Manager |

| | | |
|---------------------|------------------------|-----------------------------|
| Trade Unions | | |
| SINTRAMIENERGETICA | Luis Morales – I / P | National President |
| | Horacio Llanos – I / P | Secretary of Labour Affairs |

| | | |
|---------------------------------------------------------------------|-------------------------|-------------------------------------|
| | John Mendoza - I | Local leader for Drummond |
| | Wilder Martinez - I | Local leader of La Jagua de Ibirico |
| | Dewin Ochoa - I | Local leader for Drummond |
| | Alberto Solano - I | Local leader for Drummond |
| | Buelberto Gonzalez - I | Local leader of Santa Marta Port |
| | Ramón Flores - I | Unionized Employee |
| | Jammer Trillos - I | Local leader for Drummond |
| <i>Sindicato Nacional de la Industria del Carbón (SINTRACARBON)</i> | Jairo Quiroz – I / P | President |
| | Armando Valbuena - P | Ex President |
| | Igor Diaz - P | President |
| <i>IG BCE</i> | Michael Wolters - P | |
| | Michael Vassiliadis - P | President |
| <i>Cómite de Empresa RWE AG</i> | Romano Muriga - P | |
| <i>Escuela Nacional Sindical</i> | Daniel Hawkins - P | Director |
| <i>FNV</i> | Mauricio Rubiano – I | Representative of FNV in Colombia |
| | Tjalling Postma - I | Policy officer |

| <i>Mining Companies</i> | | |
|-------------------------------------|---------------------------------|---------------------------------|
| <i>Carbones del Cerrejón</i> | Carlos Franco - I | Social Standards Manager |
| | Juan Carlos Restrepo - I | Corporate Affairs Vicepresident |
| | Roberto Junguito - P | CEO |
| <i>PRODECO</i> | Mark MacManus - I | CEO |
| <i>Colombian Mining Association</i> | Santiago Angel Urdinola – I / P | President |
| <i>Drummond</i> | Jose Miguel Linares - I | President |
| | Amilcar Valencia – I / P | Environment Director |
| | Ricardo Urbina - P | Human Resources Vice-President |

| <i>Coal Buying Companies</i> | | |
|------------------------------|-------------------------|---------------------------------|
| <i>EnBW</i> | Bernd Michael Zinow – P | Senior VP Public Affairs |
| | Lothar Rieth – I / P | Public Affairs (Sustainability) |
| | Bernd Schurmann – I / P | Public Affairs (Sustainability) |
| | Johanes Laubach | Representative Colombia |
| | Hans Josef Zimmer –P | Direction |

| <i>NGO's and Community Representatives</i> | | |
|------------------------------------------------------------------------------------------------|--------------------------------------|-----------------------------------------------------------|
| <i>Avina</i> | Bernardo Toro - I | Advisor of Strategic Committee |
| | Cecilia Barja- I | Country Manager |
| | Eduardo Villegas Flórez - I | Program Coordinator for Mining Dialogue |
| <i>Cordaid</i> | Matthew Bliss - I | Director extractives |
| | Paul van den Berg - I | Political advisor |
| | Nico van Leeuwen - I | Program manager extractives |
| | Claudia Ferrero - I | Program officer extractives |
| | Rogier Marchant - I | Business unit extractives |
| <i>NIMD</i> | Ralph Sprenkels - I | Program manager |
| <i>PAX</i> | Marianne Moor – I/ P | Programme Leader Latin America |
| | Egbert Wesselink- I | Senior advisor |
| | Joris van de Sandt - I | Senior Advisor to the Latin America Programme |
| <i>Amnesty International</i> | Frank Bron - I | Americas Coordinator |
| <i>Tierra Digna Foundation</i> | Andrea Torres- I | Director |
| <i>Nuevo Arco Iris Foundation</i> | José Aristizábal García - I | Sub-Director |
| <i>Centro de Investigación y Educación Popular (CINEP)</i> | Luis Guillermo Guerrero - I | Executive director |
| | Sergio Coronado- I | Sub-Director |
| | Martha Cecilia Garcia- I | Researcher |
| | Liliana Munera -P | Researcher |
| <i>INDEPAZ</i> | Camilo González - P | Director |
| <i>Fundación Ideas para la Paz</i> | Angela Rivas – I | Head of the Business, Conflict and Peacebuilding Division |
| | María Victoria Llorente - I | Directora Ejecutiva |
| <i>Movimiento de Víctimas de Corporaciones Transnacionales</i> | Several Representatives ¹ | |
| <i>Institute for Business and Human Rights</i> | Luis Fernando de Angulo - I | Member of Board of Directors; Country Director |
| <i>Association of Community Action Boards of El Paso</i> | Armando Perdomo - I | President |
| <i>Network of Citizen Monitoring Groups of Public Administration for Mining Municipalities</i> | Jose Bareto - I | President |
| <i>BetterCoal</i> | Martin Christie- P | Director |
| <i>IndustriALL</i> | Brian Kohler- P | Director H&S |
| <i>Pensamiento y Acción Social –PAS-</i> | Rafael Figueroa- P | Researcher |

¹ For security reasons and privacy of the victims, names are not disclosed

| | | |
|---------------------------------------------------|----------------------------|-------------------|
| Friedrich-Ebert-Stiftung | Hans Mathieu- P | |
| <i>Foro Nacional Ambiental</i> | Manuel Rodriguez- P | Director |
| | Guillermo Rudas- P | Economist |
| | Gloria Amparo Rodriguez- P | Researcher |
| <i>Fuerza Mujeres Wayuu</i> | Yasmin Romero Epiayu- P | Indigenous Leader |
| <i>Consejo Comunitario de Chancleta (Guajira)</i> | Wilman Palmezano- P | Indigenous Leader |
| <i>Consejo Comunitario de Tabaco (Guajira)</i> | Rogelio Ustate- P | Indigenous Leader |

7.3. Annex III - FESCOLS's conference insights: a meaningful coal dialogue in Colombia?

The Scoping Mission study was planned in such a way that the appointed research team was able to participate in an important coal dialogue organized in Bogota by three German organisations: Friedrich Ebert Stiftung Colombia (FESCOL), the energy company EnBW AG and the Industry Trade union IG BCE.

The content and general conclusions of this conference are described in this chapter, presenting a good overview of the issues under discussion in the Colombian coal sector. The Chatham House Rule applied for this meeting, hence no specific names or quotes will be used.

The three German organisations gathered all the parties to discuss “Responsible and Sustainable Export Coal Mining in Colombia. Status Quo, Challenges and Solutions”. During two days some 80 people met in Bogota to have a dialogue on the most pressing issues of the coal sector in Colombia. All stakeholder groups were present:

- Local communities
- Indigenous peoples (from La Guajira)
- NGO's (Colombian, German and Dutch organizations)
- Experts and academics
- Trade unions (Colombian, German and Dutch organizations)
- Coal mining companies operating in Colombia (and with business interests in Europe)
- European utilities (German and Dutch organizations)
- The Colombian government only participated in the opening and closure of the conference. The German and Dutch Governments were represented by their respective Embassies.

Such multi-stakeholder meetings are an important step towards a meaningful dialogue in the sector, showing commitment and willingness from all stakeholder groups to participate.

In March 2014, representatives of EnBW visited the departments of Cesar and La Guajira. They concluded that the perception in Europe about the situation in Colombia was biased and did not truthfully represent the situation on the ground. Consequently, they decided to organize this conference to bring all relevant parties to the table, to get more detailed information about the situation in the coal mining area and to understand what contributions can be made to improve the social and environmental conditions in the coal mines departments.

On the first day of the conference there were 25 presentations; on the second day there were 19. These 44 presentations, addressing both legislation issues and the current situation, were spread over six panels covering all issues under discussion in the coal-mining sector:

- *Living conditions of residents and local communities*
- *Labour standards in Colombian coal mines*
- *Security and human rights in mining areas*
- *Health, environmental and landscape protection in and around the coal mines*
- *Responsibility along the supply chain*
- *Future perspectives for a Responsible and Sustainable Coal Mining in Colombia*

There were several key findings from this conference that we consider very relevant for the Scoping Mission. These are presented below and outline the context of the coal mining sector in Colombia.

1. The debate is highly polarized and stakeholders have different interpretations of the situation for every discussion topic. In all the conference sessions opposite views were presented. A meaningful dialogue on these issues did not take place.
2. All issues are very sensitive, quickly leading to polarization and antagonism. Most issues are influenced by a long history of conflict, which makes reconciliation a complex and lengthy process that needs to be mediated by an impartial party.
3. Parties present their views in black and white positions. There was little nuance to be found in most presentations. One example: the government stated that the mining sector is the most controlled sector in the country; other parties conclude that the Colombian state fails to adequately monitor impacts and has no capacity to enforce compliance with the law for companies in this sector.
4. Most parties agree that the Colombian state is not performing its tasks adequately. The regulatory framework is being improved, but the coordination between the different levels of government (national, regional and local) is missing. At a local/regional level there is a lack of capacity and funding, and a weak enforcement of the law. Many corruption cases are documented at this level.
5. When the state and the law do not perform well, many parties expect mining companies to do more than “just” comply with the law. Demands on companies increase, yet companies are reluctant to do more than is legally needed because they consider this a government task. They do not want to take the place of the government.
6. Parties do not trust each other or the data presented. Data from different parties on the same topic can be diametrically opposed. Civil society organizations distrust data from the government and companies. Mining companies are very critical about the extensive research of the Colombian Supreme Audit Institution on mining; yet these documents are considered as the “ultimate truth” by academics and civil society organisations.

7. Great attention is given to large-scale coal mining and its impact. However, in several presentations it was highlighted that the environmental and social impacts of small-scale, artisanal and illegal mining are much more severe and prevailing.
8. There is an enormous gap between, on the one hand, the way indigenous people (in whose traditional areas much of the coal mining in Colombia takes place) look at the world and, on the other hand, the logic of market-driven large-scale mining companies. For indigenous peoples, mother earth should be respected. Coal is seen as an organ of mother earth and should not be exploited. Land has a spiritual meaning and is often linked to ancestors and spirits. The expansion of the mines and the construction of roads and railways take away this ancestral land.
9. All parties agree: large-scale mining has an (enormous) impact on its surroundings. It is impossible to make mining sustainable but it is possible to do it as responsibly as possible.
10. The coal mining industry generates great wealth for Colombia, both at national and regional level: taxes and royalties for the government, employment, investments in social projects and infrastructure. Extractive industries provide an important source of income for the country and are indispensable for funding the post-conflict process.
11. The economies of the departments of Cesar and La Guajira are largely dependent on mining. Historically these have been very poor regions. During the long strike at the Cerrejón mine in 2013, the regional economy of the department La Guajira almost came to a standstill.
12. Increasing criticism of the coal sector in Colombia might cause a negative economic impact by damaging the reputation of country (brand) Colombia and the coal sector. Over the past years campaigns on 'Colombian blood-coal' have been raising awareness of European civil society and coal buyers for the problems in the region.
13. Court cases and legal procedures are very common and often used in Colombia. However, these procedures often take years. This means for example that an appeal against an illegally declared strike can take years and, in the meantime, insecurity reigns. There is a need for non-legal processes and compromises to solve the issues.
14. There is a great level of violence in Colombia, perpetrated by different parties over the last decades. Many people have been affected by this violence. However, this is not solely a matter of the past; its consequences are still felt daily by many people: the victims, trade unionists, civil society representatives and even journalists. These people are often threatened by ex-paramilitaries active in the mining regions, and many of the people fighting for their rights have been killed.

7.4. Annex IV – Sources used for literature review

- ABColombia, *Giving It Away: the Consequences of Unsustainable Mining Policy in Colombia*, November 2012
- Astrid Martínez Ortiz, Asociación del Sector de la Minería a Gran Escala; *Estudio sobre los impactos socio-económicos del sector minero en Colombia: encadenamientos sectoriales*; April 2013
- BUZA, Dutch Ministry of Foreign Affairs, *Budget 2014*
- Cerrejón, *Performance Brief*, 2013
- CINEP/ Programa por la Paz, *Minería, conflictos sociales y violación de derechos humanos en Colombia*, October 2012
- CINEP/ Programa por la Paz, *Minería y conflictos en el Caribe Colombiano: hacia una ecología política de la minería de carbón*, May 2014
- Contraloría General de la República, *Minería en Colombia: Institucionalidad y territorio, paradojas y conflictos*, Vol. 2, November 2013
 - Luis Jorge Garay Salamanca, Economía ecológica, ecología política y justicia ambiental, y neo-institucionalismo. Algunas aproximaciones para el análisis de problemáticas alrededor de la explotación de recursos naturales no renovables.
 - Guillermo Rudas, Jorge Zamora, La paradoja de la minería y el desarrollo. Análisis departamental y municipal para el caso de Colombia
 - Jesús Mena Rodríguez, Economía política, fallas en regulación e institucionalidad ambiental en Colombia: Casos de estudio.
 - Luis Becerra, La conflictividad por el territorio, el control de los RNNR y la renta minera. El choque de las locomotoras mineras en Colombia
 - Julio Fierro Morales, Una aproximación sintética sobre impactos ambientales de la minería no legal
 - Verbel, et all., Implicaciones de la minería del carbón en el ambiente y la salud humana: Una aproximación abreviada al estado del arte
 - Fernando Valencia, Extracción minera y consulta previa a pueblos indígenas y tribales: compilación y análisis de estándares internacionales.
 - Rodrigo Montes, Consulta previa: Consideraciones constitucionales - perspectiva nacional
- Daniel Hawkins, Escuela Nacional Sindical; *Executive report of the study on decent work in the subsector of coal in Colombia*; March 2012
- Danish Institute for Human Rights (DIHR)/Fundacion ideas para la paz (FiB), *Human Rights and Business Country Guide - Colombia*
- Drummond, *Informe de Sostenibilidad*, 2012
- Fundación Foro Nacional por Colombia, *El sector extractivo en Colombia*, November 2011

- Guillermo Rudas, *Notas sobre el estado de la minería de carbón a gran escala en Colombia*, December 2013
- Ministry of Mines, *National Mining Census*, 2012
- OECD, *Roadmap for the accession of Colombia to the OECD Convention*, 2013.
- Peace Brigades International, *Mining in Colombia*, 2011
- Peace Brigades International, *Mining in Colombia: At What Cost?*, November 2011
- Prodeco, *Sustainability Report*, 2011
- Sector de la Minería a Gran Escala, *Minería moderna para el progreso de Colombia*, 2014
- UNHCR, *Operación Colombia*, 2012.

Other sources (online content and media analysis):

- Cordaid: www.cordaid.org/en/projects/the-impact-of-coal-mining-in-cesar-colombia/109856/
- For Peace Presence: www.peacepresence.org
- Oliver Balch, The guardian, *Cerrejón mine in Colombia: can it address its human rights risks?*, 25 July 2013
- El Espectador: www.elespectador.com
- Equal Times Newsdesk – study from Escuela Nacional Sindical, 2014: www.equaltimes.org/anti-trade-union-violence-on-the?lang=en#.VDejyM3ZJ3N
- Human Rights Watch, *World Reports 2014: Colombia*: www.hrw.org/es/world-report/2014/country-chapters/122015
- Mesa de Dialogo Permanente sobre Minería y Medio Ambiente, *Propuesta de temas prioritario sobre minería y medio ambiente para su inclusión en Plan Nacional de Desarrollo 2014-2018*, 2014 (Roundtable on Mining and Environment, 2014)
- Mining.com, 13 October 2013
- Ministry of Commerce, Industry and Tourism: www.mincit.gov.co
- National Planning Department, *Sistema General de Regalías – Consejo de Ministros*, 2012 (http://portalterritorial.gov.co/apc-aa-files/7515a587f637c2c66d45f01f9c4f315c/Regalias_DNP.pdf)
- Unidad de Víctimas, 2014: www.unidadVictimas.gov.co
- United Nations High Commissioner for Refugees: www.unhcr.org/pages/49e492ad6.html
- UPME: http://www.upme.gov.co/guia_ambiental/carbon/areas/zonas/indice.htm

7.5. Annex V - TOR



Kingdom of the Netherlands

Scoping Mission
Colombian Coal Sector

Terms of Reference

Date July 23, 2014

Author HMA Bogotá, Colombia

Terms of Reference Scoping Mission Coal Sector Colombia

I. Background

Given the status of the Netherlands as a major importer of Colombia coal, the public criticism of coal mining companies active in Colombia and the high importance paid by the Dutch government to sustainability and transparency in value chains, the Dutch government is keen to stimulate responsible business practices within the coal mining sector. After the Dutch Coal Dialogue (DCD) has come to an end, the Government is looking for further ways to support and strengthen sustainable practices within the coal supply chain.

Further background to the scoping mission is provided in the appendix.

2. Objectives of the scoping mission

This document provides the Terms of Reference for a scoping mission, which aims to provide an answer to the following questions:

With reference to the current situation:

1. What are the main social and/or environmental problems/needs/ challenges in the coal mining sector?
2. How these problems should be ranked, which needs are most pressing?
3. What interventions do already exist to improve the conditions which enable sustainable practices in the coal mining sector?
4. What other partners (international community, NGO's, national government) are already involved and how?

With reference to the role of the Netherlands:

1. What other interventions are possible to improve the conditions which enable sustainable practices in the coal mining sector?
2. Where can the Netherlands add value vis-à-vis existing interventions?
3. How would the Netherlands relate to other partners active in the coal mining sector? How could we work together?
4. What would be the planning and cost implications of the identified interventions?

3. Guidelines for proposed interventions

The scoping mission will consider interventions at three levels:

1. Government (G): national governmental institutions, local government. In addition: multilateral organizations, international diplomatic missions and cooperation agencies,
2. Business (B): mining companies, energy companies/ Bettercoal, sector organizations, company foundations;
3. Civil Society (CS): national and international NGOs, international and national labour unions, community organizations, knowledge institutions.

The proposed interventions should be solution-oriented and lead to an integrated approach for improvements on the ground in the coal mining areas of Colombia.

Where possible and relevant, interventions will be based on the Government to Government (G2G), Business to Business (B2B) and Civil Society to Civil Society (CS2CS) cooperation. Colombian actors will work closely together with Dutch or international counterparts of the same kind, to facilitate exchange of knowledge and experience. Also the possible cooperation *between* the different actors has to be analyzed.

The interventions proposed should help to fulfill the following general and specific objectives:

1. Improvement on the ground of identified issues in the coal mining area (All)
2. Increase the compliance with the Better Coal Code in Colombia. (B)
3. Increase the international trade of coal in compliance with Better Coal criteria. (B)
4. Improve the capacity of the Colombian public sector to monitor, prevent and mitigate the social and environmental impacts of coal mining. (G)
5. Strengthen local governments to be able to foster regional and local development, more specifically to design and manage projects funded by royalties of the coal mining sector. (G)
6. Provide the fair and transparent involvement of communities in (public) decision-making processes and (private) assessments related to coal mining (audits, resettlements etc). (CS)
7. Facilitate a secure and collaborative environment for labour unions to operate in the coal mining sector. (CS)

The proposed role of the Dutch government should be limited to those areas where other (private and public) parties cannot, will not and do not want to play a role. This includes the Colombian (national and local) government. Where other parties can take responsibility, the Dutch government should take a step back. Interventions proposed should first and foremost focus on improving the conditions which enable sustainable practices within the coal supply chain.

4. Deliverables

The deliverables of the scoping mission are the following:

- A report written in English addressing the questions mentioned above, including an executive summary in Dutch and Spanish (max. 25-30 pages).
- For each level of intervention (Government, Business and Civil Society) at least two concrete project proposals, including a schedule of the proposed activities, a governance structure and a cost indication.
- A global process plan that includes the steps that have to be taken in the coming years
- A presentation of the report for the use of the contracting authority (the Netherlands Embassy in Bogotá and the Dutch Ministry of Foreign Affairs).

Copyright: The report will be in the ownership of the contracting authority.

Disclaimer: this is a technical scoping exercise aimed at giving an overview of possible scenarios. It will be up to the contracting authority to decide upon a course of action going forward.

5. Composition team

The team that carries out the assignment consists of two parts:

1. A lead consultant in The Netherlands. For this part of the assignment, The Terrace in Amsterdam (www.theterrace.nl/) has been selected. A team, headed by Pierre Hupperts, partner and strategy director of The Terrace, will:

- Conduct the research in The Netherlands and Europe.
- Travel to Colombia in September to interview key stakeholders together with the Colombia-based partner.
- Be ultimately responsible for the delivery of the report and the recommendations.

2. The Terrace will work closely together with a Colombia-based consultant. The Colombia-based consultant will:

- Gather relevant information in Colombia.
- Conduct interviews with the different stakeholders in Colombia.
- Provide support on the analysis of the information.
- Provide analytical and logistical support during the visit of The Terrace in September.

The lead consultant and Colombia-based consultant will hold weekly (video-conference) meetings facilitated by the Netherlands embassy in Bogotá where progress will be discussed. The embassy will provide support where needed and will attend meetings with third parties if necessary.

Key stakeholders in Colombia will be interviewed by both the lead and Bogota-based consultants in September 2014.

7. Timeline and reporting

| | |
|----------------------------------------------------------------------------------------------------|-----------------------------|
| Start of the project | July 15th, 2014 |
| Contracting local partner | August 1 st 2014 |
| Draft proposal and report to the Ministry of Foreign Affairs and the Netherlands Embassy in Bogotá | 30 September |
| Final report | 15 October |

8. Confidentiality

All information related to this assignment including this ToR may not be shared with third parties without the explicit permission of the contracting authority.

Appendix

Background of the project

Responsible coal mining came to become a major topic on the Dutch political agenda in the summer of 2010, after a critical documentary by a national television channel of the coal mining sector in Colombia and South Africa. As a response, in July 2010 the Dutch Coal Dialogue (DCD) was launched at the initiative of the private sector (EnergieNed). This was the start of a process that meant to lead to increased transparency and to strengthen assurance processes with a view to on the ground improvement in the coal sector. The Dutch Coal Dialogue ended in August 2013. At present, the Dutch government would like to explore how it can continue to contribute to filling in the supply chain responsibility and improvements on the ground..

Context

There is increasing attention in international and Dutch policies for the need to assure sustainability and transparency in value chains. This policy objective is highlighted in the Dutch biodiversity policy, raw materials policy and CSR policy. For these sectors, in Dutch policy reference is made to international frameworks, especially the OECD Guidelines for Multinational Enterprises. Also, the Netherlands is a pro-active player to promote the Voluntary Principles around the globe.

Experts estimate that the Netherlands will continue importing coal for at least the next 15 years as a result of the projected energy mix. Therefore, the importance of responsible coal mining will not fade away in the short-, medium or long-term. The government would like to think of support to possible interventions, in particular in the main sourcing country of coal: Colombia.

Colombia is a country in transition: the internal market is opening up, FDI flows into the country and economic growth is on average 4% in the past five years. The mining & energy sector is one of the most important 'locomotives' of its economic growth. Colombia has built a fairly decent legislative framework for its extractive sector, yet the enforcement of labour and environmental legislation is weak.

For Colombia, coal production is a major source of income (around 20% of exports and 2% of GDP). Production has increased between 2005 and 2012 from 59.7 to 73.6 million tonnes, which is almost entirely for export. The Netherlands is the biggest importer of Colombian coal (20,78% in 2012 – 1.478 mln US dollar in value), but the majority (more than 63 % in 2012) is intended for transit, mainly to Germany. In 2012, 47 % of the coal used in the Dutch energy sector had Colombian origin.

The Colombian government and coal producing companies see the Netherlands as an important coal importer and consider Dutch policies as relevant for the design and

implementation of sustainability standards. Other countries such as Germany, Switzerland and Sweden increasingly give critical signals about the sustainability of coal mining.

Currently, most Dutch/European buyers and importers of Colombian coal execute audits of the mines. These audits include codes like the ILO conventions², ISO 14000³, SA 8000⁴ and ICMM principles⁵. Since 2013 BetterCoal has completed and validated a specific sustainability standard for coal. The Code covers principles and provisions including (1) General performance requirements, including management systems; (2) Business ethics performance, including disclosure (3) Human and labour rights, social performance, including health and safety (4) Environmental performance. The Code aims to become a globally accepted benchmark for ethically, socially and environmentally responsible practices in the coal supply chain that can be assessed by independent third party Assessors. In the Board of Directors, the European energy companies are represented, in the Stakeholder Panels, international experts and NGO's have a seat. Currently, BetterCoal has 10 members. The port of Rotterdam is an associated member.

Currently, BetterCoal is performing its first site assessments. Together with the United States of America, Russia and South-Africa, Colombia is the main supplier of coal to the European market. Bettercoal plans to execute approximately eight site assessments in 2014. Bettercoal has asked fifty mines to fill out a self-assessment that will be used to prioritise mines for site assessments. Members of Better Coal will in 2014 fill the Performance Database with ethical, social and environmental performance data that they can integrate into their coal purchasing decisions.

BetterCoal is an instrument to ensure responsible coal mining. However, the complexity and problems associated with coal mining require an integrated approach by several parties,

The debate about social and environmental issues in and around coal mines is still ongoing. The supply of coal is significant for Dutch energy security and the ports of Amsterdam and

2 International labour standards are legal instruments drawn up by the ILO's constituents (governments, employers and workers) and setting out basic principles and rights at work. They are either conventions, which are legally binding international treaties that may be ratified by member states, or recommendations, which serve as non-binding guidelines.

3 ISO 14000 is a family of standards related to environmental management that exists to help organizations (a) minimize how their operations (processes etc.) negatively affect the environment (i.e. cause adverse changes to air, water, or land); (b) comply with applicable laws, regulations, and other environmentally oriented requirements, and (c) continually improve in the above.

4 SA8000 is an auditable certification standard that encourages organizations to develop, maintain, and apply socially acceptable practices in the workplace. SA8000 is based on the principles of international human rights norms as described in International Labour Organisation conventions, the United Nations Convention on the Rights of the Child and the Universal Declaration of Human Rights. It measures the performance of companies in eight areas important to social accountability in the workplace: child labour, forced labour, health and safety, free association and collective bargaining, discrimination, disciplinary practices, working hours and compensation.

5 The ICMM has developed 10 principles to which member companies must adhere. These considerations resulted from a survey of concerned parties both within and outside the council. They seek to comply and reinforce guidelines established by organizations including the OECD and the World Bank.

Rotterdam. Therefore the Dutch government (Ministry of Foreign Affairs and the Netherlands Embassy in Bogotá) has decided on a proactive approach to help improve practices in this sector, on different intervention levels. This TOR provides an overview of steps that need to be taken in order to give this intervention form and content.

Transition Facility

The Transition Facility aims to facilitate the transition of the bilateral relation between Colombia and the Netherlands. From a relationship based on bilateral development cooperation, both countries are moving towards a mutually beneficial relationship of economic cooperation. The transition facility is a joint approach the Ministry of Foreign Affairs and the Ministry of Economic Affairs. The Facility aims to bring together and stimulate the investment opportunities in the transition countries with the support of the capacities and knowledge of Dutch parties like government, knowledge institutes and business).

In Colombia the general objective of the transition strategy is to expand (sustainable) bilateral trade and investments between the two countries. This can be translated into three main impact results:

1. By the end of 2015 the volume of bilateral (sustainable) trade have been increased by at least 50% (baseline: 2010);
2. By the end of 2015 the accumulated value of (sustainable) bilateral investments have increased by at least 50% (baseline: 2010);
3. By the end of 2015 the total number of Dutch and Colombian companies that established in Colombia or the Netherlands has increased by 50% (baseline: 2010).

Justification

The situation 'on the ground' in the coal areas of Cesar and La Guajira is a complex combination of local, national and international actors, both governmental and from civil society, NGO's, labour unions and industry. Additionally, for many years there has been an ongoing spiral of violence in which paramilitaries, criminal gangs and guerrilla organisations all played a role. These various parties are not only in conflict with each other, but also put a lot of pressure on other actors and on the coal mining situation in general. Attacks and threats on companies, NGO leaders, communities and unions have occurred in the two departments where coal mining is taking place: Cesar and La Guajira.. Governmental presence in these areas is relatively weak and the capacity to cope with the impacts of coal mining is weak so far and the social-economic development of the region is still poor. A new Royalty Law that took effect in 2011 dramatically changed the revenue stream of local governments, causing a sharp reduction in social investments.

Over the past years, both private and public partners have started various initiatives to improve the situation in the coal mining sector. The Mining & Energy Committee, supported by the Netherlands, implements the Voluntary Principles on Security and Human Rights. The Colombian government publicly announced in early 2014 to apply for membership to the

Extractive Industry Transparency Initiative (EITI). The biggest mining companies in Colombia that work under the umbrella of the Sector Minería de Gran Escala (SMGE) signed in 2013 a voluntary declaration to improve conditions. At the national level the Colombian government has set up the National Mining Agency in 2011 to improve the coordination and monitoring of the mining sector in the country. BetterCoal was presented in 2012 at a Stakeholder Meeting and will undertake its first assessments in 2014.

At this moment in the Netherlands the Ministries of Foreign Affairs and of Economic Affairs are discussing a covenant with the Dutch utilities about Corporate Social Responsibility in the Coal Supply Chain. The utilities and the ministries would like to complete the covenant before the 1st of October of 2014. However, the situation in Colombia not only requires an effort by utilities, but also by the Dutch and Colombian government and by civil society organisations to create the enabling conditions for more responsible coal mining and improvement on the ground in the Colombian coal area. Only by working together, real and lasting improvements can be achieved.

In November 2014 the Minister of Foreign Trade and Development Cooperation will travel to Colombia, together with the Dutch CEO's of Dutch utilities/ energy companies, Bettercoal and civil society organisations. She will discuss with the different actors in Colombia the possibility and outline of this partnership to create the enabling conditions for the successful implementation of a program for improvement on the ground in the coal area. Due to the complexity of the Colombian context, the previous experiences with the DCD and the variety of issues and partners, a scoping mission in Colombia and the Netherlands – prior to the visit of the Minister - is required to build the outline for this partnership.

