

### Closing gaps in protection: transnational cooperation on human rights; the case of the extractive sector in Colombia

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Analysis

# Closing gaps in protection

Transnational cooperation on human rights: The case of the extractive sector in Colombia

Jan-Christian Niebank | Deniz Utlu



## The Institute

The **German Institute for Human Rights** is the independent National Human Rights Institution in Germany. It is accredited according to the Paris Principles of the United Nations (A-status). The Institute's activities include the provision of advice on policy issues, human rights education, information and documentation, applied research on human rights issues and cooperation with international organisations. It is supported by the German Bundestag. The Institute was mandated to monitor the implementation of the UN Convention on the Rights of Persons with Disabilities and the UN Convention on the Rights of the Child and established Monitoring Bodies for these purposes.

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Thanks to: Viola Bölscher, Heidi Feldt, Andrea Kämpf, Gizem Kaya, Anna Würth



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## Summary

The German energy sector has close ties with the Colombian mining sector: large amounts of coal from Columbia are imported into Germany, particularly from the country's export-relevant coal mining regions in Cesar and La Guajira. A small number of coal mines in these two regions extract virtually all of Columbia's coal exports, including those destined for the German energy sector.

What responsibility do German actors bear for the human rights impacts and risks associated with Colombian coal mining: The attendant environmental problems, for instance, or the influences on regional development, the resettlements or the impacts and risks associated with working conditions?

This analysis, which is based on literature research and numerous interviews in the regions, attempts to answer this question. It reveals that responsibilities and opportunities to take action arise for both the businesses and the States at the start and the end of the supply chain. As the constellation of actors involved is complex, it is not always obvious who bears precisely what sort of responsibility for what. Moreover, this complex constellation is itself embedded in a transnational economic structure. This allows gaps in human rights protection to open. In addition, the responsibility for the human rights situation is the subject of great disagreement at the national level among the Colombian actors. The politicisation and lack of objectivity characterising the prevailing discourse of the various actors contributes to the perpetuation of the gaps in protection; new strategies are called for in order to close these gaps. Overall, this analysis advocates a collective – transnational – effort by businesses and the States at both ends of the supply chain. Both, businesses and States, should use the influence they have and fulfil their responsibilities. To reduce human rights risks, affected local communities and civil society organisations should

also be involved. The potential of National Human Rights Institutions to facilitate empowerment and participation should be harnessed to this end.

After first analysing the human rights situation in the context of the coal mining industry in Cesar and La Guajira, this publication looks at what new strategies to close protection gaps might involve.

Enterprises operating in the coal regions could ensure that they meet their responsibility to respect human rights by integrating independent human rights expertise into their corporate processes, for instance, and by carrying out human rights risks analyses, that assess risks for rights holders even if there are none for the business. They could then take measures to address these rights and impacts, adhering as they do so to the avoid – reduce – mitigate – remediate hierarchy.

Enterprises at the other end of the supply chain could engage in dialogue with their suppliers, as some have already begun to do, and to promote an integration of corporate cultures that is based on a common understanding of human rights through joint projects in the affected regions. They could use this as a basis on which to develop common, integrated processes for the implementation of human rights due diligence – for human rights risks and impact assessments, for example, and for effective responses and transparency, communication and grievance mechanisms. It is important that companies address the human rights risks and impacts that arise from their own business practises. They should not conflate this with abstract CSR activities not directly related to their responsibility to respect human rights, such as general social engagement to improve the living conditions of local residents – though it may not always be possible to draw a clear distinction between these.

Host states of enterprises could choose long-term approaches in their regional development planning and begin preparing for the time following the closure of the mines well in advance and in a transparent manner. The home States of importing companies could influence the framework conditions for business activities through inter-ministerial processes and through their own national strategies to secure the supply of raw materials and promote foreign trade.

To ensure horizontal policy coherence, energy, environmental and trade policies should always take human rights impacts in the mining regions into account.

Transnational cooperation at the regional level would enable National Human Rights Institutions to translate corporate due diligence into more concrete terms and set up a human rights monitoring system, with appropriate indicators, to monitor business activities and to communicate information along the supply chain. In addition, NHRIs could help to set up structures supporting effective dialogue between enterprises and local communities. Civil society organisations, for their part, have access to valuable specialist knowledge both because they are locally active and due to their international affiliations. They can act as independent experts to help enterprises accurately assess the impacts of their activities, and they can also inform and mobilise the public.



# 1 Introduction

The German energy industry uses imported Colombian coal to meet about a quarter of Germany's coal demand, making Colombia the country's second largest source of coal supplies, after Russia. Thus the supply chains of German (and European) energy companies are closely linked to the Colombian mining industry. Enterprises and State bodies at both ends of the supply chain therefore bear some responsibility for the adverse impacts of coal production on human rights in the mining regions, particularly in the Colombian regions of Cesar and La Guajira. These impacts are associated primarily with the environment, resettlement activities and migration, the armed conflict between the Colombian State and illegal armed groups, working conditions at the mining operations and at their suppliers and with regional economic development.

After providing a brief introduction to the Colombian mining sector (Section 2) and an overview of both its actual and potential adverse effects on human rights, this analysis highlights opportunities for transnational cooperation among human rights actors in the coal sector aimed at reducing human rights risks and strengthening remedy mechanisms (Chapter 4). Since the causes of adverse impacts on human rights in the coal mining areas in Colombia are transnational, it makes sense to develop transnational strategies to address and, if possible, prevent these impacts. The aim of this study is to identify the

responsibilities and duties of individual actors with respect to addressing the human rights risks and impacts in the coal mining sector and to generate suggestions as to how National Human Rights Institutions, States and businesses can better fulfil their responsibilities and obligations (Section 5).

The analysis is based on an assessment of the relevant literature,<sup>1</sup> collaboration with Colombian researchers undertaken in order to gain an understanding of local research perspectives,<sup>2</sup> and on conversations with experts,<sup>3</sup> and workshops and focus group discussions held in Colombia with stakeholders, including groups of affected persons.<sup>4</sup> The aim of the focus group discussions was to bring together actors of relevance for transnational cooperation, including Defensoría del Pueblo (Defensoría), Colombia's National Human Rights Institution, as well as to facilitate the collection of qualitative data.

The analysis is confined to the segment of the coal sector in Colombia that is relevant for exports. This segment seemed well suited as a context in which to consider cooperation among actors in home and host countries of enterprises, because the German energy sector obtains large amounts of coal from Colombia. This publication uses the terms "home country"/"home state" not only in relation to enterprises with subsidiaries (or shares in foreign owned enterprises) in a host country

1 Cf. German Institute for Human Rights (forthcoming): Fallbeispiele zu Menschenrechtsproblemen im kolumbianischen Bergbau.

2 The German Institute for Human Rights commissioned a local research institute, Centro Regional de Empresas y Emprendimientos Responsables (CREER), and Carlos Acosta, a lawyer specialising in environmental and human rights law, to carry out research in Colombia based on a set of guiding questions. The guiding questions related to the economic (I) and normative (II) framework for the mining sector in Colombia and to case studies (III) on business operations that had had adverse impacts on human rights.

3 To triangulate the first results from the literature review, the authors of this analysis met in November of 2015 with several experts from the business arena, civil society and State authorities.

4 In May of 2015 a total of six workshops were held in Cesar and La Guajira by the German Institute for Human Rights, Defensoría (Colombia's National Human Rights Institution), civil society/NGOs and CREER. In separate discussions, they met with the communities affected, State authorities, a trade union and the enterprises Drummond and El Cerrejón. CREER, the German Institute for Human Rights and Defensoría kept records of the results. To ensure a frank and open discussion, no audio recording was made.

(e.g. Colombia) but also in relation to enterprises which import from such a host country, even though these have few or no operations there. Economic aspects were considered to the extent that they appear to be relevant for human rights and development economics. The analysis of human rights and of the responsibilities deriving from them for the various actors is based solely on the international human rights treaties and other UN documents, in particular the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Declaration on the Rights of Indigenous Peoples, the Guiding Principles for Business and Human Rights and the core labour standards of the International Labour Organization (ILO) and ILO Convention 169. The UN Guiding Principles were a particularly helpful source when it came to identifying the responsibilities of the individual actors, as they provide a summary of the status quo in international law and enjoy high degree of

legitimacy due to their unanimous acceptance in the Human Rights Council.

The analysis revealed that mining enterprises in the host country, importing enterprises in the home countries and the States at both ends of the supply chain bear responsibility for the sector's impacts on human rights, while all stakeholders have the ability to contribute towards reducing the risks: civil society organisations and the communities affected can help to depoliticise conflicts among actors and steer discussion back onto a more objective track. Being at once firmly anchored in the national protection of human rights and well integrated within global structures, National Human Rights Institutions have the potential to bring actors together on an equal footing and to translate human rights obligations, particularly those of their States, into more specific terms by providing information and applying their human rights expertise.

## 2 Mining in Colombia

### 2.1 The sector

The export-relevant extractive sector in Colombia concentrates on four types of raw materials: petroleum, coal, gold and ferronickel.<sup>5</sup> The sector's share in Colombia's gross domestic product (GDP) nearly doubled between 2000 and 2012, leading many observers to speak of a mining boom there.<sup>6</sup>

Between 2004 and 2015, the country's petroleum exports nearly tripled (from 17 to 50 million tonnes per year).<sup>7</sup> There is only one nickel extraction operation in Colombia, Cerro Matoso but produced a fairly constant annual output of 100,000 to 125,000 metric tonnes of ferronickel over these years (2004–2015).<sup>8</sup> The gold sector is more difficult to characterise in terms of a trend. A major share of the gold mining in Colombia takes place in small scale mining operations.<sup>9</sup> Such operations react flexibly to exogenous variables, such as the price of gold and prices of other products that they can trade in. For example, there is reason to believe that the trade in gold and the drug trade are directly linked: when gold prices fall, drug cultivation increases.<sup>10</sup> In 2006, gold exports began to increase dramatically, rising from approx. 17,000 kilograms that year to 76,000 kilogram in 2012. While exports did slide back down to 48,000 kilograms (2014) after gold prices fell on the global market, they have remained at a

relatively high level nonetheless. Thus, although the gold sector is of lesser significance for Colombia's total export volume than the coal sector is, it still accounts for between 3.5 and 4.5 percent of the country's current account revenue.<sup>11</sup>

Coal's share in total exports also increased significantly in the same period. In 2009, coal exports made up approximately 17 percent of all Colombian exports, twice the share relative to the 1990s.<sup>12</sup> By 2013, the figure had fallen to below 12 percent, but the trend has been upward since then.<sup>13</sup> Although neither coal nor metals make as great a contribution to Colombian GDP as petroleum, coal and gold mining do account for the bulk of production in certain individual regions.<sup>14</sup> On the whole, coal, accounting for a 13 percent of exports, can be described as extremely important for the Colombia's trade balance.<sup>15</sup> Projections up to 2035 assume that coal's economic role will decrease as coal deposits are exhausted and that the coal-mining regions will have to find other branches of economic activity. From a human rights perspective, this scenario requires present-day consequences for the actions of States and enterprises (see Section 4.2).

Most Colombian coal mining takes place in the departments (Colombian provinces) of Cesar and La Guajira. In 2014, income from coal exports

5 Defensoría has published a comprehensive study on nickel abstraction at the Cerro Matoso mine. See Defensoría del Pueblo (2014).

6 Cf. El Espectador (2014).

7 See Acosta (2016), p. 2.

8 Cf. El Espectador (2015).

9 Cf. Massé / Munevar (2016).

10 Cf. Massé / Munevar (2016), discussing substitution effects between the gold and drug sectors, which says that the routes used to smuggle drugs and gold from the country are identical in some cases – which makes the substitution effect between the gold and drug sector possible.

11 See Acosta (2016), p. 3.

12 Ibid. Acosta (2016).

13 Ibid.

14 Ibid.

15 Net exports refer to a national economy's exports less its imports.

accounted for nearly 50 and 40 percent of GDP in Cesar and La Guajira, respectively.<sup>16</sup> La Guajira is home to Latin America's largest open-pit coal mine, Cerrejón.<sup>17</sup> Indigenous Colombians make up approximately half of La Guajira's population.<sup>18</sup> La Guajira is also one of the country's poorest departments, according to the national statistics agency, DANE (Departamento Administrativo Nacional de Estadística).<sup>19</sup> The Multidimensional Poverty Index confirms this as well,<sup>20</sup> showing deprivation of nearly 97% in the areas of education, health and standard of living for rural areas (anything over 50% is considered genuine poverty). Approximately 200,000 people in Cesar and 70,000 in La Guajira have been displaced since 1997. The majority of the displacements were associated with armed conflict.<sup>21</sup>

Indigenous and Afro-Colombian persons comprise a very large share – as large as 50 percent – of the population of the regions that have formal, i. e. licensed, coal mining operations. Three percent<sup>22</sup> of the workers in large scale mining operations are of indigenous or Afro-Colombian descent,<sup>23</sup> women make up three percent of the workforce. At small- and medium-scale mining operations, around 5% of the workers are of indigenous or Afro-Colombian descent and around 10% are women.<sup>24</sup> Human rights concerns dictate that particular attention should be paid to the rights and needs of, as well as the challenges faced by, individuals from groups or sections of the population who are particularly at risk of becoming vulnerable or marginalised. In particular, it is necessary to pay due consideration to the differing risks that may be faced by women and men, and also children and adolescents.<sup>25</sup> In the case of the large-scale

open-pit coal mine, the need to take into account the differences among the risks faced by different groups applies in particular for the surrounding communities.

## 2.2 The enterprises

Most of the mining in Cesar and La Guajira that produces coal for export takes place in licensed, large-scale open-pit mining operations extracting bituminous coal. Drummond, Glencore/Prodeco, Murray Energy and Caribbean Resources run such operations in Cesar. La Guajira is the site of the Cerrejón coal mining complex. All of the mines that extract coal for export are operated by foreign enterprises, or rather, the Colombian subsidiaries thereof.

The German energy industry has close ties with the Colombian coal sector. Apart from Germany's "Big Four" energy suppliers, i. e. RWE, Vattenfall Deutschland, E.ON and EnBW (Energie Baden-Württemberg), there are other German enterprises involved, such as Essen-based STEAG, which is Germany's fifth largest electricity producer. According to SIMCO (Sistema de Información Minero Colombiana), the mining information system maintained by the Colombian State, more than half of all coal exported from Columbia in 2013 went to Germany.<sup>26</sup>

Germany's Federal Statistical Office data show that lignite and bituminous coal supplied 42% of Germany's energy needs in 2014. In 2013, 7,884,000 tonnes of Colombian coal were imported to Germany for use in coal-fired power plants. Thus, Colombia is Germany's second most important coal

16 See Acosta (2016), p. 2.

17 See CREER (2016), p. 36.

18 See DANE (2010), p. 2.

19 See CREER (2016), p. 7.

20 The Multidimensional Poverty Index is an indicator developed by the UNDP that measures poverty using five individual indicators including health, employment and standard of living. For detailed information see United Nations Development Programme, (undated): Multidimensional Dimensional Poverty Index (MPI). <http://hdr.undp.org/en/content/multidimensional-poverty-index-mpi> (retrieved on 02.06.2017).

21 See Hamm / Schax (2014), p. 22.

22 See CREER (2016), p. 19.

23 Cf. Balch (2013).

24 See CREER (2016), p. 11.

25 The specific set of problems is not examined separately hereinafter however.

26 See PAX (2014), p. 75.

supplier (after Russia), supplying approximately one fourth of the total demand in this country.<sup>27</sup>

Summarizing, one can say that export-relevant coal mining in Columbia is carried out chiefly, though

not exclusively, in the departments of Cesar and La Guajira in mining operations run by enterprises from the USA, Canada, Switzerland, the United Kingdom and South Africa. German enterprises figure in this context primarily as coal importers.

### Enterprises active in the Colombian mining sector

Enterprise	Description
Drummond (Cesar)	Drummond is a US mine operator with one mine in Alabama, USA, and two in Colombia (Mina Pribbenow and El Descanso). Drummond also operates its own port in Colombia, Puerto Drummond. <sup>28</sup> The enterprise also has operations at two other ports in the US (in Alabama and Virginia).
Prodeco (Cesar / La Guajira)	The Colombian enterprise Prodeco is a wholly owned subsidiary of one of the world's largest commodity corporations, Glencore plc, which has its headquarters in Switzerland. Glencore's Colombian holdings include two coal mines in Cesar and about one-third of the Cerrejón mine, which it holds through Prodeco. <sup>29</sup>
Murray Energy Corporation (Cesar)	By its own report, Murray Energy Corporation is the largest coal mining company in the USA, where it has most of its operations. Murray Energy bought Goldman Sachs' coal mines in Colombia in 2015. <sup>30</sup>
Caribbean Resources Corporation (Cesar)	Caribbean Resources Corporation, formerly Pacific Coal, is a Canadian mining company engaged in the acquisition, exploration and production of coal in Colombia. <sup>31</sup> The company owns two mines in Cesar and one in Boyacá. <sup>32</sup>
Cerrejón (La Guajira)	Cerrejón is the largest open-pit coal mine in Latin America and the tenth largest in the world. <sup>33</sup> BHP Billiton, Anglo American and Glencore each own a one-third share of Cerrejón. <sup>34</sup> BHP Billiton mines metallic and energy minerals and has its headquarters in Australia and the UK. Anglo American mines and processes metals, coal and diamonds. Headquartered in London, Anglo American is listed on the stock exchange both there and in South Africa. <sup>35</sup> In 2016 it announced its intention to sell its shares in Cerrejón amid reports that BHP Billiton and Glencore might take over its stake. <sup>36</sup>

<sup>27</sup> See Bundesanstalt für Geowissenschaften und Rohstoffe (2014), p. 27.

<sup>28</sup> Cf. Drummond LTD. Colombia (n.d.).

<sup>29</sup> Cf. Prodeco (2016).

<sup>30</sup> Cf. The Wall Street Journal (2015).

<sup>31</sup> Cf. Finance Colombia (2016).

<sup>32</sup> Cf. Caribbean Resources (n.d.).

<sup>33</sup> Cf. Mining-technology.com (2013).

<sup>34</sup> See CREER (2016), p. 36.

<sup>35</sup> Cf. Cerrejón (n.d.): Our Company.

<sup>36</sup> Cf. Bloomberg (2016).

### 3 Human rights and development in the Colombian coal mining sector

In publicly available English-language publications that appeared between 2010 and 2017, 28 case reports describing adverse impacts on human rights from coal mining in Colombia were found. According to these publications, business activities are adversely affecting the enjoyment of numerous rights: the rights to life, liberty and security, rights to freedom of assembly and freedom of association, the right to an adequate standard of living, consultation rights of indigenous peoples, the right to own property, the right to freedom of movement, the right to compensation, right to health and rights at work.<sup>37</sup>

The purpose of this analysis is to identify opportunities for international actors to cooperate to reduce human rights risks in the Colombian mining sector and to address their impacts.

This being the case, it seemed methodologically appropriate to place the analysis itself within the context of this kind of cooperation. To this end, the German Institute for Human Rights, Germany's National Human Rights Institution, joined with Defensoría del Pueblo, Colombia's National Human Rights Institution, on field visits to the export relevant coal regions of Colombia.<sup>38</sup> Accompanying the delegations from the two human rights institutions was a representative from CREER (Centro Regional de Empresas y

Emprendimientos Responsables), a research institute that conducted an extensive human rights impact assessment in Colombia's mining sector and enjoys the trust of the various stakeholders for that reason. This approach allowed the inquiry to encompass a complex network of relationships: the German Institute for Human Rights is engaged in an exchange with the coal importers from Germany and with the Germany's Federal Government, and specifically with the Federal Ministry for Economic Cooperation and Development. Defensoría, for its part, is able to initiate contact with the mining enterprises on the ground through its offices in the regions. In addition, Defensoría receives complaints from local communities and thus has ties with affected groups in the regions.<sup>39</sup>

The delegation, made up of staff from the National Human Rights Institutions of Germany and Colombia and CREER, arranged to hold separate focus group discussions in La Guajira and Cesar with individual stakeholder groups: local communities in Cesar<sup>40</sup> and La Guajira<sup>41</sup>, civil society organisations in Cesar<sup>42</sup>, and the mining enterprises Drummond, in Cesar<sup>43</sup>, and Cerrejón, in La Guajira<sup>44</sup>, as well as with Colombian authorities in both regions, specifically, ANLA (Autoridad Nacional de Licencias Ambientales), the national environmental

37 Cf. German Institute for Human Rights (forthcoming): Fallbeispiele zu Menschenrechtsproblemen im kolumbianischen Bergbau.

38 The German Institute for Human Rights set up this cooperation on the basis of its cooperation model for transnational cooperation in the area of business and human rights [cf. GIHR (2014): Transnational cooperation in business and human rights. A model for analysing and managing NHRI networks [http://www.institut-fuer-menschenrechte.de/fileadmin/\\_migrated/tx\\_commerce/Transnational\\_Cooperation\\_in\\_Business\\_and\\_Human\\_Rights\\_A\\_model\\_for\\_analysing\\_and\\_managing\\_NHRI\\_networks.pdf](http://www.institut-fuer-menschenrechte.de/fileadmin/_migrated/tx_commerce/Transnational_Cooperation_in_Business_and_Human_Rights_A_model_for_analysing_and_managing_NHRI_networks.pdf) (retrieved on 13 Mar. 2017)].

39 Cf. German Institute for Human Rights (2017): Good Practice NMRI Kooperation: Die Zusammenarbeit des Deutschen Instituts für Menschenrechte mit der Defensoría del Pueblo.

40 Cf. minutes of the focus group meeting with communities in Cesar

41 Cf. minutes of the focus group meeting with communities in La Guajira.

42 Cf. minutes of the focus group meeting with civil society in Cesar.

43 Cf. minutes of the focus group meeting with civil society in Cesar.

44 Cf. minutes of the meeting with Cerrejón in La Guajira.



authority, and Corpocesar and Corpoguajira,<sup>45</sup> the regional environmental authorities.<sup>46</sup>

### 3.1 Human rights impacts and risks

Local communities described the environmental impacts of coal mining and the threat of resettlements as their greatest concerns. In this context, clear lines of conflict became apparent between the communities and enterprises and the communities and the State authorities. This involved not only conflicting interests, but also diverging perceptions of impacts and contradictory assessments of the causes of problems. It became clear that the local communities harbour a high level of mistrust vis-à-vis the enterprises and State authorities, and vice versa.

**Environment:** It can be stated at the outset, irrespective of the stakeholders' reports, that coal mining in general does have impacts on the environment and thus can be associated with consequences for human rights.<sup>47</sup> Changes to the environment, such as deterioration of air quality and lowering of the level of the groundwater table, have adverse impacts on human rights, particularly the realisation of the right to an adequate standard of living and the right to the enjoyment of the highest attainable standard of health (Articles 11, 12 of ICESCR).<sup>48</sup> The severity of the human rights abuse is determined not only by the nature of the cause, but also by the local conditions: in drought regions like La Guajira, for instance, lowering of the water table or the diversion of rivers can considerably exacerbate problems with access to drinking water.<sup>49</sup> Negative impacts of this kind are not limited to communities living in the areas directly influenced by the mines:

even areas quite distant from the mines can experience decreases in water availability. Adverse health effects – ranging from respiratory diseases to cancers – reported by communities living in the area directly influenced by the mines are by their nature multifactorial and thus can seldom be traced exclusively to one specific activity of an enterprise.<sup>50</sup>

In the eyes of the members of the local communities in La Guajira and Cesar that took part in the discussions, the mining companies are directly responsible for the higher rates of health problems among local people. One participant also accused the enterprises of being responsible for the lack of health care, claiming that doctors in the mining region would refuse to treat members of these communities due to influence exerted by the enterprises. Other participants supported this statement. The enterprises rejected the accusation. Moreover, the enterprises failed to see any connection between their water use and the water shortage in the regions. The debate on the environmental impacts of coal mining is highly politicised and characterised by a lack of trust at both ends of the supply chain and among all stakeholders.<sup>51</sup>

The companies are the best informed about the environmental impacts of coal mining, since they know what their output volumes are and are familiar with the technology in use. Moreover, by their own report, they also regularly take measurements of the air quality. The coal-importing enterprises (in the home countries) are far from the operations and have no direct access to the relevant data of their suppliers. However, the importing companies are in close contact with their suppliers and have the potential to influence them at least to some degree (see Section 4). The considerable

45 Cf. minutes of the focus group meeting with State authorities in Cesar.

46 Cf. minutes of the focus group meeting with State authorities in La Guajira.

47 Cf. Office of the United Nations High Commissioner for Human Rights (n.d.).

48 Cf. Max Planck (2016).

49 Cf. Contraloría (2014).

50 Cf. Contraloría (2014).

51 Cf. minutes of the focus group meeting with communities in Cesar, minutes of the focus group meeting with State authorities in Cesar, minutes of the focus group meeting with State authorities in La Guajira, minutes of the focus group meeting with civil society in Cesar, minutes of the meeting with Drummond in Cesar and minutes of the meeting with Cerrejón in La Guajira.

geographical distance between the importing companies and the mining operations results in a responsibility gap on the side of the home-country enterprises.

**Resettlements:** In the case of large-scale open-pit mining operations of the kind carried out in Cesar and La Guajira, it is a common occurrence for residents of the areas near a mine to have to resettle. This is associated with the opening of a new pit upon the exhaustion of the coal deposit in another pit. The representatives of the local communities in Cesar and La Guajira spoke of negative experiences with resettlement during the discussions in La Guajira and Cesar. One representative from La Guajira reported experiencing violence during the resettlement, when he refused to leave his house. He also reported the seizure of belongings that had still not been returned.<sup>52</sup> The communities in La Guajira had already undergone resettlement, but were dissatisfied with the housing and living conditions in their new location. They complained about polluted drinking water, about having insufficient cultivable land for their farming and about the poor state of the road that passes through their village. They also reported that many families had to make do without electricity, because the insufficient acreage available for pasture and cultivation meant that they were unable to earn enough money to pay their power bills.<sup>53</sup> One of the local communities in Cesar was facing the prospect of resettlement in the near future. The representatives of this community complained

that the discussions about the resettlement had resulted in social divisions within their community. All of the communities in question are Afro-Colombian communities, which enjoy special consultation rights – like those of indigenous groups.<sup>54</sup> Representatives of two La Guajira communities and one community in Cesar complained that their communities' African origins were not recognised despite their self-identification as Afro-Colombian. This had resulted, they said, in their being denied the right to prior consultation, even though the mining activities had a massive impact on the area they lived in.<sup>55</sup> As the communities see it, negotiations concerning the conditions of resettlement carried out with enterprises are not conducted on the basis of equality, and the State is either absent or biased.<sup>56</sup> When speaking of the resettlements, Cerrejón and Drummond paint a picture of a model, particularly participative process,<sup>57</sup> whereas persons affected and the civil society organisations that see themselves as their advocates decry massive human rights abuses.<sup>58</sup> All in all, it was clear that the positions of the actors in the mining regions were deeply entrenched and left little room for dialogue between them. Those involved saw the National Human Rights Institution as being the most likely source of any mediating potential. The discussions did not address the importers, the German enterprises or the European home countries.

**Working conditions:** The representatives of the local communities participating in the focus

52 Resettlements still do not always take place without violence, which may come from private security firms or the police. In such cases the right to physical integrity is therefore also abused/violated [see Wright (2014) on this; cf. Arbeitsgruppe Schweiz-Kolumbien (2007)].

53 On "adequate housing" and "forced evictions" see: UN, Committee on Economic, Social and Cultural Rights (1997): General Comment 7; see also German Institute for Human Rights (2014): Information anlässlich des Berichts der Sonderberichterstatterin für angemessenes Wohnen, Raquel Rolnik. [http://www.institut-fuer-menschenrechte.de/fileadmin/\\_migrated/tx\\_commerce/Information\\_der\\_Abteilung\\_Int\\_Menschenrechtspolitik\\_anlaesslich\\_des\\_Berichts\\_der\\_Sonderberichterstatterin\\_fuer\\_angemessenes\\_Wohnen\\_Raquel\\_Rolnik.pdf](http://www.institut-fuer-menschenrechte.de/fileadmin/_migrated/tx_commerce/Information_der_Abteilung_Int_Menschenrechtspolitik_anlaesslich_des_Berichts_der_Sonderberichterstatterin_fuer_angemessenes_Wohnen_Raquel_Rolnik.pdf) (retrieved on 06.02.2017).

54 Under ILO Convention 169, indigenous peoples have the right to be consulted whenever their collective rights and community interests might be affected by measures such as exploration projects or mining activities. Having ratified ILO Convention 169 in 1991, Colombia has a duty to comply with it. In Colombia, indigenous people and for Afro-Colombian groups have consultation rights; the State must respect, protect and fulfil those rights. For an overview of the legal framework in Colombia, see Ministerio del Interior (2013), p. 9.

55 Cf. minutes of the focus group meeting with communities in Cesar and minutes of the focus group meeting with communities in La Guajira.

56 Moreover, consultations often do not take place until after relevant advance decisions have been taken [cf. Hernández / Salcedo / Arango (2015), minutes of the focus group meeting with communities in Cesar, cf. minutes of the focus group meeting with communities in La Guajira].

57 Cf. Cerrejón (n.d.) and Drummond LTD. Colombia (n.d.).

58 Cf. Acevedo (2014).

groups in Cesar and La Guajira reported that almost none of the members of their communities were employed in the mines. One community reported having a single member who worked in the local mine; another community said that none of its members had found a job with the mining companies. Trade union representatives that met with the DIMR, Defensoría and CREER in Cesar criticised the adequacy of the measures the companies had in place to protect workers against long-term health damage due to work-related diseases.<sup>59</sup> The trade unions reported that hundreds of mine workers are suffering from illnesses,<sup>60</sup> and criticised the companies for largely ignoring work-related diseases.<sup>61</sup> The companies, they said, often had no concept for health at the workplace in the first place, or at any rate had taken no action to implement one. Enterprises were not complying with their obligation to recognise work-related illnesses as such, they said, so measures to improve working conditions at the operations were lacking.<sup>62</sup> According to the trade union representatives, the region's coal mining companies had also repeatedly thwarted the right to strike, without eliciting any response from the State.<sup>63</sup> Employees perceive the competent labour authorities as being complicit in the companies' efforts to impede the exercise of the right to strike.<sup>64</sup> The local enterprises, however, stressed

that they complied with national and international requirements. According to Cerrejón, the same applies for its contractors and suppliers.<sup>65</sup>

**Armed conflict:** Some of the publicly accessible publications reviewed, and particularly PAX (2014), focus on the connection between mining and armed conflict in Colombia.<sup>66</sup> The publications primarily discuss violence perpetrated by paramilitary groups against the population. Most cases of armed conflict in the export-relevant coal region are associated primarily with the right-wing paramilitary group Autodefensas Unidas de Colombia. Little overt mention of armed conflict was made during the discussions that Defensoría, the DIMR and CREER held in the region.<sup>67</sup> Since PAX (both 2014 and 2016) has directly accused Drummond of being tied to the murder of trade union representatives, the topic is a very sensitive one, making open discussion of it difficult. Representatives of communities and trade unions in Cesar reported receiving threats in the mail, but neither claimed to know who had written them. Although the peace negotiations between the Colombian Government and the FARC (Revolutionary Armed Forces of Colombia) dominated public debate while data was being collected in preparation for the qualitative discussions for this study, they appeared to be less of a focus of attention in the

59 While accidents in the large formal coal sector are significantly less common than in the informal, subterranean sector, the former does involve safety risks that must be addressed with appropriate preventive measures. According to Agencia Nacional de Minería data, between 2005 and 2016 there were at least 875 "emergencias", 1,061 deaths and 585 persons injured in the Colombian mining sector as a whole. Of these, 81 percent were associated with coal mining. The formal sector accounted for 74 percent, and 94 percent of all incidents occurred in underground mining operations [cf. Agencia Nacional de Minería (2016)].

60 The risk of long-term health damage is particularly high because many of those who work in the coal mines are exposed to severe vibration and extreme noise levels as well as physical stress and coal dust [cf. Peñuela (2013) and Robledo (2016)].

61 According to NGO data, chronic exhaustion, back pain, silicosis (miner's phthisis), arthritis and hearing loss are widespread [cf. Butler (2012); also see Section 4.1].

62 International studies have uncovered evidence of a causal link between coal dust of the kind created in open-pit mining and lung diseases, vascular disorders and cancer. Colombia's Office of the Controller General has made explicit reference to this [cf. Rico / Salamanca (2013)]. The trade unions currently report that hundreds of employees are suffering from diseases [cf. Peñuela (2013) and Robledo (2016)].

63 Cf. minutes of the focus group meeting with trade unions in Cesar, see also ITUS (2013). For example, in August of 2013, Drummond attempted to break a strike by workers at its Colombian operations, particularly those represented by the Sintraminergética union, an act condemned by the trade union confederation Central Unitaria de Trabajadores de Colombia (CUT). The competent labour authorities were criticised as being complicit with the enterprise.

64 Cf. also ITUC (19.08.2013).

65 Cf. Cerrejón's labour-related social responsibility policy [Cerrejón (n.d.): Política de Responsabilidad Social Laboral. <http://www.cerrejon.com/site/desarrollo-sostenible-%E2%80%A2-responsabilidad-social-rse/empleados/relaciones-laborales.aspx> (retrieved on 02.06.2017)].

66 Cf. PAX (2016a), Goodland (2011), Amnesty International (2013), Banco de Datos (2013), Colombia Reports (2015), El Spectator (2016) and United States Court of Appeal for the Eleventh Circuit (2016).

67 Cf. minutes of the focus group meeting with civil society in Cesar, minutes of the focus group meeting with communities in Cesar and minutes of the focus group meeting with civil society in Cesar.

focus groups. With reference to the gaps in protection and to ways that actors might work together internationally to close them, three aspects relating to the peace process are discussed below: (1) the peace agreement as an investment incentive; (2) the tension between investment protection and the peace process and (3) policy in Europe that can be associated with Colombian mining.

(1) The peace accord as an investment incentive:

The incentive for enterprises to invest in the regions grows with increasing confidence that the regions will remain at peace. In other words: investment is positively correlated with political stability. Securing such stability, however, is rendered more difficult by the fact that the State authorities in the region are already overwhelmed by the task of regulating the existing enterprises and securing remedies, in cases of adverse impacts on human rights in connection with resettlements, for example, or cases where coal production has resulted in damage to the health of local residents.<sup>68</sup>

(2) Tension between investment protection and the peace process: It is not clear whether investment agreements shield enterprises from the land restitution requirements<sup>69</sup> arising from the Colombian Victims and Land Restitution Act (*Ley de Víctimas y Restitución de Tierras*)<sup>70, 71</sup>

Enacted as part of the peace process, this legislation entered into force in 2011.<sup>72</sup> Under this Act, some enterprises will have to return land to which they acquired rights during the conflict. This may conflict with international investment law, since Colombia is a signatory of 18 trade and investment agreements. According to van Ho (2016), who studies this topic, the enterprises remain protected if the purchase was concluded with the approval of the competent State authorities. Oral approval would suffice.<sup>73</sup>

(3) Policy in Europe: Policy decisions in Germany and Europe were not a topic at the discussions in the coal regions. For instance, none of the groups interviewed assigned any significance to the EU Conflict Minerals Regulation. Yet political decisions made in Europe do influence the human rights situation associated with export-relevant coal mining in Colombia. The EU Conflict Minerals Regulation, adopted on 16 March 2017, after around two years of debate, defines only tin, tungsten, tantalum and gold as conflict minerals.<sup>74</sup> If PAX' (2014) allegations that a business relationship exists between paramilitary groups and Drummond should prove to be true,<sup>75</sup> it is not clear why coal would not also be a "conflict mineral".<sup>76</sup> Even if the accusations are not borne out, one must still ask how an enterprise that is

68 Cf. minutes of the focus group meeting with State authorities in Cesar; minutes of the focus group meeting with State authorities in La Guajira.

69 See Pax (2014), p. 73. Pax argues that enterprises had profited from forced evictions perpetrated by illegal armed groups since these evictions made the land available for them to use without having to negotiate an agreement with the communities. Examples are the eviction of at least 33 families in Machoacán (1999–2004) and a minimum of 48 families in El Prado (2002). Corroborative evidence came from Pax's analysis of assassinations that took place between the years 2012 and 2016, most recently in September of 2016, in which the target was an Afro-Colombian activist who had been actively opposing the expansion of a Drummond mine [cf. PAX (2016a) and PAX (2016b)].

70 Cf. Congress of the Republic of Colombia (2011).

71 Cf. van Ho (2016), p. 60-85.

72 Cf. Congress of the Republic of Colombia (2011).

73 Cf. van Ho (2016).

74 Cf. Euractiv (2017).

75 Seeking truth in a conflict or post-conflict situation is known to be extraordinary complex and has more dimensions than court decisions. Cf. Mariëlle Matthee Brigit Toebes Marcel Brus (2013) "Armed Conflict and International Law: In Search of the Human Face", Springer Verlag, S. 322.

76 In a conflict the state has additional duties as described in UNGP 7 to ensure that businesses operating in a conflict area are not involved in abuses, including "[d]enying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation". An armed conflict means also that there are additional obligations for the state under international humanitarian law in situations of armed conflict, and under international criminal law. This implications of such conflict for the human rights due diligence of home-state businesses, including importers as defined in this study, have to be further discussed, what we cannot do in the realm of this study. However, it is clear that conflict and post-conflict need to meet stricter requirements.

knowingly operating in a conflict area can comply with its due diligence obligations.

At any rate, whether they involve investment agreements or supranational regulations or directives, the political decisions made in the enterprises' home country can have an impact on the human rights situation in the host country. This aspect tends to be overlooked when policy measures, with respect to trade for instance, are considered: a responsibility gap is created between the home States, e. g. Germany (or the EU at the supranational level) and the host States, in this case, Colombia.

**Development:** The topic of (subnational) regional development arose during the talks with the stakeholders in connection with two aspects: 1) lack of impetus from the mining sector towards fulfilling human rights in the mining regions and, specifically in connection with what happens to extraction royalties 2) plans for the post-mining period.

(1) The first aspect was raised by the civil society actors in Cesar: Coal mining, they said, has not lived up to the hope that it would serve as a "motor for development"<sup>77</sup> helping the state promote human rights. The mining regions had not benefited because adequate resources either had not been generated, or had not been spent appropriately, for instance, to combat unemployment, poverty or hunger, establish functional education or health systems or secure the basic social security of the population. Nor, they pointed out, had there been successful efforts to promote the rights of disadvantaged or discriminated groups, such as the indigenous population, in any systematic way. On the contrary, mining had resulted

in further marginalisation. Research conducted by CREER and the Colombian environmental lawyer Carlos Acosta, which the German Institute for Human Rights commissioned in advance of the research trips, also indicated that indigenous and Afro-Colombian populations make up a vanishingly small proportion of the workforce in this sector (see Section 2). Both civil society and the local communities cited the susceptibility of State bodies to corruption as the greatest obstacle to a use of the revenues generated by the coal mining that would be appropriate from the perspective of human rights.<sup>78</sup> On the other hand, enterprises exploit legal loopholes and manipulate outputs with the aim of minimising the taxes and charges they pay to the public coffers.<sup>79</sup> Back in 2008, Defensoría pointed out in a resolution that mining royalties, if used appropriately, could do much to mitigate the human rights impacts of the shortage of food and water in La Guajira.<sup>80</sup> The same resolution criticised the lack of transparency as to what the government does with the incomes from coal mining.<sup>81</sup> For instance, reportedly, part of the income is ploughed back into the coal mining sector, because Colombia's regional development plans treat coal mining as a development motor.<sup>82</sup>

(2) In response to the Institute's question as to whether preparations were underway for the time after the mining enterprises pulled out, the state authorities referred only to environmental aspects: To obtain a licence, an enterprise would have had to have submitted to the national environmental administration (ANLA) a mine closure plan that included ecological reclamation plans.<sup>83</sup> ANLA does not ask for assessments of the social, economic

77 Cf. Arboleda / Coronado / Cuenca (2014).

78 More than one mayor of the City of La Jagua del Ibirico has received a prison sentence in recent years for embezzlement of public funds (cf. minutes of the focus group meeting with communities in Cesar).

79 For instance, organisations like Ask and Pas have pointed to incorrect tax payments and licensing fees by Glencore [cf. minutes of the focus group meeting with civil society in Cesar and Arbeitsgruppe Schweiz-Kolumbien (2007)].

80 According to the United Nations Development Programme, La Guajira is experiencing a humanitarian crisis due to the shortages of food and water there [cf. Programa de las Naciones Unidas para el Desarrollo en Colombia (2015)].

81 Cf. Defensoría del Pueblo (2008).

82 Cf. Defensoría del Pueblo (2008).

83 Cf. minutes of the focus group meeting with State authorities in Cesar and minutes of the meeting with Cerrejón in La Guajira.



and human rights impact of mine closures however.<sup>84</sup> Cerrejón told the delegation from the Institute, Defensoría and CREER that its operations are scheduled to shut down in 2035.<sup>85</sup> Since the mining sector's share in the department's GDP is generated almost entirely by Cerrejón,<sup>86</sup> La Guajira's GDP can be expected to drop considerably once those operations shut down.<sup>87</sup> This gives cause for concern that the decline in the department's overall economic strength will negatively affect other sectors, and hence on regional development. For instance, not all of Cerrejón's suppliers will be able to find other customers. Accordingly, the strategy pursued by La Guajira's regional development plan is to concentrate economic strength on the tourism sector. To supplement the information obtained from the discussion with the authorities, ANLA and Corpoguarjira, the Institute has included La Guajira's regional development plan in this analysis: The plan envisages the promotion of a sustainable ecological tourism focussed on the indigenous population, with tourism profiting from this population's work while also strengthening it economically. Yet the handicrafts typical for indigenous groups currently account for only a very small portion of La Guajira's GDP: trade ("comercio") as a whole in the department generated a total of around 7 percent of La Guajira's GDP in 2014.<sup>88</sup> Tourism and indigenous economies will hardly be able to compensate for the lost income from the mining sector - so growth rates will decrease. From a human rights perspective, it is necessary for the State to take action that will enable it to fulfil its duty to fulfil human rights despite having fewer resources. The States' duty to fulfil human rights requires that

the core of the economic, social and cultural human rights, i. e. the minimum essential levels of the rights, be realised and that States then use the maximum of their available resources to progressively achieve the full realisation of those rights.<sup>89</sup> The Colombian authorities could not point to action of this kind, or even demonstrate that this human-rights dimension of development had been taken into consideration at all. Accordingly, the mine closure plans that mine operators are required to submit need not include any such consideration of human rights. A "post-extractivism" that builds on local practices - such as indigenous economies - could serve as a point of departure here, but it will certainly not be able to attain the economic value of the coal sector.<sup>90</sup> Moreover, thus far, the topic of post-extractivism has received more attention in academic discourse than in the practical discussions on coal mining in Colombia.

### 3.2 Preliminary conclusions: The responsibility gap

Mining is a highly politicised issue, making an objective exchange among actors virtually impossible: the enterprises either deny that their operations have any negative impacts at all, or they give assurances that they can mitigate the impacts. Local communities, for their part, see all human rights problems, especially negative impacts on the right to health, food and housing, as rooted in the actions of the enterprises. The state authorities invoke the expertise of the enterprises and make little attempt to conduct investigations of their own. There is a general lack of trust among the actors, particularly between the local communities

84 Cf. minutes of the focus group meeting with State authorities in Cesar and minutes of the meeting with Cerrejón in La Guajira.

85 Cf. minutes of the meeting with Cerrejón in La Guajira.

86 Cf. minutes of the meeting with Cerrejón in La Guajira.

87 Costs associated with restoration and renaturalisation also have to be taken into account.

88 See Gobernación de La Guajira (2016), p. 339.

89 Cf. International Covenant on Economic, Social and Cultural Rights (ICESCR), General Comment 3.

90 The initial post-growth (in the enterprises' home-countries) and post-extractivism (in the enterprises' host-countries) debates have not focussed on human rights issues.

The end of extraction activities and thus of economic growth in La Guajira is not dependent on policy decisions or intellectual debates; the exhaustion of resources makes it inevitable. Human rights-related preparations for this foreseeable development are necessary in order to safeguard the progressive realisation of economic, social and culture rights. See Ulloa (2015) on post-extractivism in Latin America.



and civil society on the one side and the mining enterprises and the state authorities on the other.

The importing enterprises and their home States do not initially figure among the set of regional actors, although they are the principal users of the coal produced and their demand for coal has a powerful influence on the economic structure of the departments involved. Trade and investment agreements between home and host States, as well as the former's energy policies and strategies for securing the supply of raw materials,

shape the course of development in the mining regions and thus influence the realisation of economic, social and cultural rights. This indirect influence that business operations have on the human rights situation in the mining regions makes the task of mapping responsibilities more complex. The following section investigates the responsibilities that arise to the individual actors, focusing particularly on the importers and their home States, and attempts to identify strategies for those involved, including the National Human Rights Institutions.

## 4 Networks, states and enterprises as human rights actors in the mining sector

This section examines the responsibility that arises for each stakeholder and looks at what courses of action are available to each of them. Among the stakeholders discussed are the National Human Rights Institutions (NHRIs) in the home and host countries, including the offices of the latter in Colombia's provinces, and the National Human Rights Institutions in the neighbouring countries. The same key actors are discussed: the mining enterprises operating in the host country; the importers in the home countries (for these purposes primarily those in Germany), the communities in the mining regions; the host State; the home State and civil society. Beginning with a look at the challenges for the regional network of NHRIs and for transnational cooperation among them, the analysis then turns to outline the obligations and responsibilities of Germany as the home State and of the German energy sector as home-country enterprises. The role of civil society all along the coal supply chain is also discussed.

### 4.1 Cooperation among National Human Rights Institutions in Latin America

Most Latin American countries play host to foreign business enterprises, especially mining sector enterprises: operations extracting raw materials in these countries are largely run by or for foreign customers. The human rights impacts of these enterprises' activities are felt primarily in the areas of the mines. For this reason, the National Human Rights Institutions in Latin America concentrate on the conditions in these areas, focusing in

particular on collective, indigenous and land rights and on the environmental impacts.<sup>91</sup> This is associated to no small degree with the fact that the NHRIs in the region (with the exception of Chile's) have a mandate to hear and consider complaints and devote a large share of their resources to those activities.<sup>92</sup> Moreover, the Latin American NHRIs see encouraging their national governments to fulfil their human rights commitments as their primary function. Transnational cooperation has therefore not been a major focus of many of these NHRIs in the past. However, a focus group discussion with Latin American NHRI brought to light several areas where cooperation among them might be helpful with respect to human rights monitoring of international supply chains in the mining sector and assessing the human rights risks arising from them.

**Responsibility of enterprises:** Joint formulation and specification of human rights due diligence obligations in the region. In view of the frequent similarities between the problems that arise in the different countries, it would be advisable for the LA NHRIs to develop the requirements for a human rights due diligence system for enterprises collectively and in consultation with one another. Such a system would need to differentiate between the corporate responsibility to protect human rights and the voluntary contributions of enterprises within the framework of social responsibility (corporate social responsibility, CSR).

**Monitoring of business activities:** A great many enterprises have operations in multiple Latin American countries but do not hold themselves

91 Cf. minutes of the focus group meeting in Bogotá during the multi-stakeholder meeting with representatives from the NHRI of Bolivia, Peru, Paraguay, Guatemala, Ecuador, Mexico and Colombia and of the La Guajira and Cesar regional offices of Colombia's Defensoría.

92 See Linos / Pegram (2015), p. 29-30.

to the same standards in all of those countries. For this reason, NHRIs in the region should keep one another informed about the various activities of enterprises in their countries. Cooperation could also involve NHRIs from Canada or Europe when enterprises headquartered in their countries are involved or when the relevant exports are being shipped there. This would be a contribution towards the development of a joint, transnational system for monitoring business activities.

**Asymmetric information:** While the NHRIs in Latin America do monitor the effects of mining in their countries, they often lack detailed information about which foreign and transnational enterprises are involved. The offices in the individual regions have even less information about this. At the same time, enterprises in the home country, e. g. importing companies, often have only a rudimentary picture of the human rights impacts that the mining operations may be having in the host country. A transnational exchange of information would enable all actors, and first and foremost the NHRIs, to improve their level of knowledge in this regard.

**Dialogue between local communities and enterprises:** establishing a dialogue between the local communities and the enterprises that is based on equality constitutes a key challenge facing NHRIs.<sup>93</sup> This is an area where National Human Rights Institutions could learn from one another and develop methods for establishing successful sectoral dialogue.

**Developing indicators for tracking recommendation implementation:** One important function of National Human Rights Institutions is that of formulating recommendations for States on the subject of the necessity of and ways of improving their fulfilment of their human rights obligations. In some cases, these recommendations are based on years of research. However, as yet there is no effective method for tracking the implementation of recommendations. The National Human

Rights Institutions could work together to develop criteria that they could use to measure and assess whether the States have implemented their recommendations.

**State's ability to regulate:** To compensate partially for the curtailment by investment protections of the State's ability to regulate, NHRIs could work together to support the States in this respect. There is a danger that human rights conventions and investment protection agreements may come into competition in the international law arena. International protections safeguard the rights of enterprises, whereas investment and trade agreements do not take the human rights obligations of the host States sufficiently into account. The result is that the protection of investors impedes, to some extent, human rights-related regulation by the State.<sup>94</sup> One example is the conflict between entitlements to land restitution under Colombia's Victims and Land Restitution Act (*Ley de Víctimas y Restitución de Tierras*) and the protection of investor's property (see Section 3.1). In countries where such tensions between investment protection and human rights exist, NHRIs could draw attention to courses of action by States that represent the best available means for States to fulfil their obligations. They could exchange experiences and examples of good practice.

## 4.2 The role of German actors under the UN Guiding Principles

The human rights impacts of mining enterprises occur primarily in the mining regions (see Section 3). Yet the mining operations are linked to enterprises, States, unions and civil society organisations all over the world through complex supply relationships. European coal importers (see Section 2), for instance, are among those indirectly involved in the operations and their impacts in the mining areas.<sup>95</sup> Apart from the State actors

93 See "Resettlements", Section 3.1.

94 Cf. INEF (2014).

95 Cf. Schuller / Utlu (2014): Global supply chains make it possible for profits in one country to be linked to human rights abuses in another: "If a value chain is structured in a way [sic] that the human rights violation and the accumulation of wealth occur in different countries, it can be appropriate to ask for remedy in the country where wealth is accumulated".

in Colombia already described, there are also State bodies in Germany involved, for instance, through instruments of foreign trade promotion or raw materials strategies: the Federal Ministries for Economic Affairs and Energy (BMWi) and for Economic Development and Cooperation are two examples. Moreover, all of the ministries involved in interministerial processes like the development of the National Action Plan for Business and Human Rights have some influence on the framework conditions for business activities, including those in Germany's coal-importing energy sector.

**Enterprises:** The requirements for German enterprises arise particularly from Principle 13(b) (in conjunction with Principle 17(a)) of the UN Guiding Principles: According to this principle, business enterprises' responsibility to respect human rights requires that they "seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts."

Principle 17 describes how enterprises are to carry out their due diligence: they should identify and report on human rights risks and impacts, take appropriate action and track the implementation of actions taken. What appropriate action entails depends on the extent of the "leverage" the enterprise has "in addressing the adverse impact" (Principle 19). This also applies to enterprises whose business activities are linked to the enterprise operating in the host country through the import of commodities. Home-country enterprises frequently complain that they do not have this "leverage" because both they and the enterprises in the host country are dependent on prices on the world market. When commodity prices (the price for bituminous coal in this case) were falling, enterprises' scope for influence over their business partners was shrinking, the enterprises reported, adding that in many cases the only remaining option would be to end the business

relationship, a step which might itself be associated with negative impacts on human rights. If the business relationship remains intact, the argument goes, the home country enterprise remains able to obtain information with the minimum of delay from host country enterprises (in this study, this refers primarily to the mining companies operating in Columbia) and possibly act in a mediatory capacity between stakeholders. When a business relationship is ended, this flow of information ceases with it.<sup>96</sup> However, the enterprise STEAG, Germany's fifth largest energy company, uses contractual clauses to make its suppliers commit to its policy commitment, withdrawing from a business relationship if the partner refuses to accept this.<sup>97</sup>

Coal-importing enterprises like RWE, E.ON and Vattenfall are members of the initiative Bettercoal,<sup>98</sup> whose aim is to improve working and environmental conditions directly in the coal mining regions and through the supply chain. The association focuses on engagement with interested groups and people directly affected and has drawn up a code of ethical principles and provisions that enterprises are expected to fulfil and that is intended to form the basis for regular assessments on the ground. Bettercoal brings external human rights expertise, for instance CREER and SOMO, into its discussions, which is essential for sector initiative and in line with the requirements of the UN Guiding Principles.<sup>99</sup> The initiative is therefore in principle a welcome development from a human rights perspective. However, taken on its own, the instrument is far from sufficient to fulfil the UN Guiding Principles' requirements for human rights due diligence. The "smart mix" called for in the Guiding Principles refers to a combination of mandatory regulations and voluntary measures that foster human rights. A sector initiative like Bettercoal has to be assessed against such a framework of legislative, political and business approaches towards integrating human rights into business processes. For the purposes of implementing the UN Guiding Principles, voluntary measures alone

96 Cf. minutes of the meeting with EnBW in Berlin.

97 Working meeting of Global Compact Network Germany, "Mit menschenrechtlicher Sorgfalt loslegen – erste Schritte zum Management der menschenrechtlichen Auswirkungen Ihres Unternehmens", 13.04.2016.

98 Cf. Bettercoal (2016): Members. <https://bettercoal.org/members> (retrieved on 28.06.2017).

99 Cf. Bettercoal (2016).

will not suffice. They may even have a legitimising effect without actually bringing about human rights improvements. The non-governmental organisation Urgewald, for instance, has accused the Bettercoal initiative of being merely a case of “greenwashing” – purely a PR campaign. The initiative, they suggest, undermines any serious effort to promote transparency, as it fails to take up the most important cases, and Bettercoal’s board is made up entirely of representatives of energy corporations that back the notion of non-binding commitments.<sup>100</sup> In its critical study “Vattenfall’s Dark Side”, Urgewald portrays the way that the energy corporation has created a cheap alibi for itself in Bettercoal, using it to legitimise its coal imports from Cesar. For instance, according to Urgewald’s report, Vattenfall has cited a Bettercoal mining-operation audit that recorded no evidence of serious human rights impacts.<sup>101</sup> The very fact the statements coming from different stakeholders contrast so starkly, combined with how difficult it is to demonstrate causality in many situations (described in the human rights analysis in Section 3), is reason enough to conclude that a sector initiative alone will not suffice.

The Extractive Industries Transparency Initiative (EITI)<sup>102</sup> can provide a positive impetus for greater transparency and accountability in the collection and disclosure of revenues generated in connection with the extraction of natural oil, gas and mineral resources. RWE and other German enterprises are among those supporting EITI’s efforts to get governments to disclose information about tax payments, licences and output and other important data relating to the extraction of energy sources and mineral resources. Germany joined the countries implementing the EITI standard in 2016 and is scheduled to present its first report in 2017.<sup>103</sup> Colombia has begun to implement the EITI standard as an EITI candidate but does not yet disclose sufficient information about revenues from the extractive sector to satisfy the standard.

Transparency is essential to ensuring that local populations benefit from the extraction of coal in their countries. Home-country enterprises should support EITI and use their influence to persuade their business partners in the host countries to do the same.

In Colombia’s case, the information flow between host-country and home-country enterprises has improved in recent years. For instance, the German political foundation Friedrich-Ebert Stiftung, the IG BCE (a union representing workers in the mining, chemical and energy industries) and the power supply company EnBW organised a conference in September 2014 in which the mine operator Drummond took part. According to EnBW, the most important takeaway from this conference was that companies should join together, as a sector, to engage in dialogue with local communities and civil society and work with them. After undertaking a joint exploratory mission in March of 2015, for instance, Drummond and EnBW developed a project aimed at improving local communities’ access to water in Cesar and La Guajira.<sup>104</sup> The communities receive assistance with their well drilling projects in the form of engineering knowledge supplied by the enterprises. The communities involved now have access to water around the clock, according to EnBW. EnBW sees this project as going beyond a corporate social responsibility measure: as they see it, the project could be considered in terms of a “remedy” since the communities involved live in the area affected by the mines. The energy supplier concedes, however, that this project did not mitigate all of the adverse impacts that Drummond’s business activities have had on communities’ access to water.<sup>105</sup> Here lies the crux of the difference between the human rights due diligence and companies’ CSR activities: the companies have to take responsibility for adverse impacts that their activities cause or contribute to (UN Guiding Principle 17(a)). Corporate engagement that is not

100 Cf. Urgewald / FIAN (2013).

101 Cf. Urgewald (2016).

102 Cf. EITI (2015).

103 Cf. D-EITI (n.d.): Umsetzung der D-EITI. <https://www.d-eiti.de/de/> (retrieved on 10.02.2017).

104 Cf. EnBW (2016).

105 Cf. minutes of the meeting with EnBW in Berlin.

linked to an enterprise's own business activities is no substitute for action to uphold an enterprises' responsibility to respect human rights within the meaning of the UN Guiding Principles. This applies to the home-country enterprises as well, including importers. Since their business activities are directly linked to the operations of the host country enterprises, they too bear responsibility for the activities of the latter at their operations and thus have a duty to ensure that human rights are respected. The commentary to Principle 19 discusses what home-country enterprises should do if the activities of their suppliers result in human rights abuses. It identifies four factors that a home country enterprise should consider in this situation: (1) its leverage over the host country enterprise, (2) how crucial the relationship to that enterprise is, (3) the severity of the human rights abuses in question and (4) whether ending the relationship might have an adverse impact on human rights.

From the perspective of the UN Guiding Principles, the more complex the situation is, the more important it is that enterprises seek "independent expert advice". Principles 23 and 24 clarify how enterprises should proceed in a given context. The commentary to Principle 23 identifies actors who are able to provide independent expertise in complex contexts. These include National Human Rights Institutions, in addition to Governments, civil society and relevant multi-stakeholder initiatives.

In all cases, the enterprise in the home country should use its influence to reduce the human rights risks entailed in the business activities of its partner in the host country. If the enterprise's leverage is limited, it should try to obtain more – for example, by providing training offerings or capacity building in the host country enterprise. If the home country enterprise is unable to obtain more leverage, the Guiding Principles, in the commentary to Principle 19, recommend putting

an end to the relationship. It is essential, however, that potential adverse impacts of doing so should be taken into account, for instance, in cases where there is reason to believe that there would be even less respect for human rights were the enterprise not to take part in a project.

**States:** The State is the principal human rights-duty bearer. In order to ensure that human rights are protected against abuse by third parties, including enterprises, States must take appropriate measures to prevent, investigate, punish or redress such abuses. The UN Guiding Principles recommend that States use the full range of permissible measures to prevent or remedy such abuse: effective policies, legislation and adjudication.

States' extraterritorial obligations have a key role to play in closing the responsibility gap associated with human rights infringements by enterprises in the transnational context.<sup>106</sup> One interpretation of existing international law would have it that there is an extraterritorial dimension of the State's duty to protect. This would mean that States would have to regulate activities of their enterprises both inside and outside of the State's territory. The non-binding Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights<sup>107</sup> certainly interpret the State's duty to protect in this way.<sup>108</sup> The UN Guiding Principles on Business and Human Rights do not assume that duties of this kind exist. According to Principle 2, however, States should "set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations." Recognising that international law does not generally prohibit States from regulating enterprises with activities around the world, the UN Guiding Principles present strong reasons for States to endeavour to do so. Increasingly, the UN treaty bodies have been recommending the adoption of domestic measures with extraterritorial

106 Cf. Kaufmann / Good / Ghelmini / Blattner (2016).

107 Cf. ETOs (2013).

108 Under Article 38 d of the Statute of the International Court of Justice, the teachings of the most highly qualified international law experts of various nationalities can be applied as subsidiary means to determine the rules of law. Accordingly, some consider the Maastricht Guidelines to be an authoritative source for the interpretation of international law.



effects; this approach has begun to figure prominently in the General Comments and Concluding Observations of all such bodies.<sup>109</sup>

If business activities in the Colombian coal mining sector are having adverse human rights impacts, one must first ask whether the Colombian State has fulfilled its duty to protect. In addition though, because of the supply chain relationship with the German energy sector, another question arises as well: whether the German State is doing enough to ensure that German buyers exercise their human rights due diligence.

This due diligence builds the core of the responsibility to respect human rights that business enterprises are expected to shoulder and exists independently of the State's duties to protect, which form the first pillar of the UN Guiding Principles. Principle 7 describes the States' obligations in relation to business enterprises in situations of armed conflict, which stand in addition to those placed on States in such situations by international humanitarian and criminal law. In areas affected by conflict, the host State may be incapable of protecting human rights due to a lack of effective control in the territory. Therefore, when transnational enterprises are involved, their home States can play a role by helping both the enterprises and the host State to protect human rights, in order to ensure that enterprises are not involved in human rights abuses (commentary to Principle 7).

Furthermore, the duty to protect of the State in the home country encompasses the responsibility to ensure policy coherence (Principle 8). This means that States should ensure that any and all State bodies that have an influence on business practises observe the State's human rights obligations. Horizontal policy coherence means that State bodies that are responsible for investment, export credits and trade also observe and are aware of these obligations, according to

the commentary to Principle 8. This necessarily applies to national strategies for securing the supply of raw materials as well, since these strategies affect human rights by shaping business practices.<sup>110</sup> Policy coherence should extend to a State's energy and environmental policies as well: such policies should always take the impacts on human rights in the mining regions into account and they should be shaped in a way that does not impede the progressive realisation of economic, social and cultural rights.

**Jurisdiction in the home country:** When human rights abuses that occur in host countries are linked to home country enterprises through supply chains, the question of jurisdiction arises. Might the courts in the home countries be responsible for the victims from host countries? A civil action against the discount clothing company Kik heard by the Dortmund regional court is a test case in this respect: In March 2015, an action was filed in the Dortmund court by one survivor and parents of three victims of a fire that broke out in the Ali Enterprises textile factory in Karachi in September 2012, which killed 260 people and injured an additional 32. In August 2016, the court accepted jurisdiction and granted legal aid to the Pakistani claimants.<sup>111</sup>

**Civil society:** UN Guiding Principles 18 and 23 envisage an important role for civil society organisations: that of channelling their independent expertise, particularly on country-specific and local contexts, into the human rights due diligence processes of enterprises. In addition, civil society can provide a corrective function vis-à-vis the State, drawing attention to any failures by the State to fulfil its duty to protect.

Civil society organisations can be part of a mechanism that systematically tracks the status of human rights implementation and access to justice for members of local communities (human rights baseline). Such baseline tracking should

109 See Kaufmann / Good / Ghielmi / Blattner (2016), p. 54.

110 Cf. Lambert (2012).

111 Cf. European Center for Constitutional Human Rights (2016).

include “biocultural community protocols”<sup>112</sup>, asking what existing resources could be adversely affected by enterprises.<sup>113</sup> Civil society organisations can provide legal assistance and facilitate access to justice for those affected.

Their closer ties to the local communities enable civil society organisations to play a role on the ground in helping to ensure that those affected are better integrated into the relevant decision-making processes of businesses and make their voices heard. International civil society organisations and

organisations in the enterprises’ home countries can act as a counterweight to industry representatives in the media and in political processes, such as the drafting of the national action plan.

It must be noted though that it is possible for the interests of local communities and of civil society organisations to conflict. Enterprise representatives warn that organisations might exploit the concerns of communities in their pursuit of their own aims, which are primarily political.<sup>114</sup>

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112 “Biocultural community protocols are protocols that indigenous and local communities develop on their own behalf that are used in negotiations between the communities and State bodies, enterprises, scientists, nature conservation organisations and other interest groups to regulate access to and the use of the knowledge and resources of the communities.” [Translation of the original German] [http://www.infoe.de/web/images/stories/pdf/infoe\\_waldstudie\\_final\\_net.pdf](http://www.infoe.de/web/images/stories/pdf/infoe_waldstudie_final_net.pdf), p. 68-69 (last retrieved on 21.06.2017)].

113 Remarks by Tierra Digna at the multi-stakeholder meeting on 09.03.2015 in Bogotá (cf. minutes of the focus group meeting in Bogotá during the multi-stakeholder meeting with representatives from the NHRI of Bolivia, Peru, Paraguay, Guatemala, Ecuador, Mexico and Colombia and of the La Guajira and Cesar regional offices of Colombia’s Defensoría).

114 Cf. minutes of the meeting with Drummond in Cesar and minutes of the meeting with Cerrejón in La Guajira.

## 5 How actors can close the responsibility gap

German (and European) enterprises have close ties to the Colombian coal mining sector through their supply chains. This means that the relevant enterprises and State structures on both ends of the supply chain are responsible for the human rights impacts of coal production in the mining areas, primarily in the Colombian departments of Cesar and La Guajira.

In considering the human rights impacts of coal mining, one has to examine the constellation of the actors that are in a position to influence how these impacts are addressed. Obligations arise for the State hosting the operations, in this case, Colombia, including all of the government units in the provinces. Enterprises carrying out the mining, in this case usually foreign mining corporations with operations in Colombia, and enterprises that purchase the extracted coal also have obligations. National Human Rights Institutions also have an increasingly important role to play – those in the home and host countries as well as those in other Latin American countries. Two equally central questions that arise in this context are what options are available to the communities affected, and what function and effect does civil society have in the provinces, in the region and internationally.

Further potential lies in the notion of transnational cooperation between host and home country NHRI. For instance, the NRHIs of the importing States could provide information that is not available in the host countries, e. g. cataloguing the enterprises at various points of the supply chain that are involved in the business activities and their local impacts.

National Human Rights Institutions cannot close the responsibility gaps on their own however. There is also an important role to be played by civil society organisations (non-governmental organisations, NGOs), which, like NHRIs, can serve as external experts brought in as part of business

due diligence mechanisms. They can serve enterprises as an important source of independent expertise, assisting them to assess the impacts of their business activities correctly. Local NGOs in particular are familiar with the conditions specific to a given country and area, with the general political situations and with specific operating environments. Thanks to their close ties with local communities, they also have specialist knowledge and can ensure that the voices of those affected are heard. Thus international NGOs and NGOs in the home countries can provide an important counterweight to business and State perspectives in political processes. In order to avoid legitimacy deficits and ensure that they do not put their own political aims before the interests of rights-holders, NGOs should ensure that they have robust feedback loops with local communities. Transnational civil society cooperation can contribute to political governance in the area of business and human rights: NGOs can cooperate to inform and mobilise the public at both ends of the supply chain. From a human rights perspective, efforts like these are particularly welcome when they succeed in drawing attention to the perspectives of local rights-holders rather than remaining limited to situations in which NGOs from the Global North advocate for the causes of people in the Global South.

The fact that home-country enterprises are linked, via coal imports, to mining operations in the host countries makes these enterprises responsible for the adverse human rights impacts of those operations. An enterprise does not have to be directly involved in the impacts in order for such a responsibility to arise: just the link over the supply chain is enough. In order to close the responsibility gap, home-country enterprises need opportunities to use leverage over the supplier operating in the host country. Some home and host country enterprises have already taken steps in this direction; one sees evidence of this in the joint CSR projects in mining areas, such as the provision of technical

support for well drilling by Drummond and EnBW. Initiatives like Bettercoal also contribute to raising standards.

However, the human rights due diligence processes that some home-country enterprises have instituted are not adequate to the task of exhaustively cataloguing local problems and reacting to them. While the home States are not obligated under the UN Guiding Principles to protect human rights outside of their jurisdiction, the UN Guiding Principles do call on them to draw on the full range of permissible preventative and remedial measures. Victims of human rights abuses in host countries face enormous hurdles if they wish to sue for remedy in an enterprise's home country however.<sup>115</sup> Lastly, and importantly, home States should adjust their strategies for securing the supply of raw materials to ensure that they do not result in the suppression of local practises, and especially local forms of economic production and ways of life. With transnational supply chains becoming more and more complex, it is imperative that transnational impacts are taken into account in national raw materials strategies. In addition to integrating the issue of sustainability into such strategies, which many States already do, States should ensure that their raw materials strategies take into account human rights obligations and the economic conditions before, during and after extractive operations.

Enterprises must meet their responsibility to respect human rights. Host-country enterprises, like Cerrejón and Drummond, should therefore actively draw on independent, external human rights expertise and communicate how this expertise flows into their business processes. These enterprises should not stop at the level of policy commitment in this respect: they should

change their business activities in ways that are demonstrably aimed at improving the situations of the affected communities. When analysing the risks of adverse human rights impacts, enterprises should first identify the risks that arise to people and determine which of their rights are at risk, without regard to any disadvantages this might entail for the enterprise, in the form of recourse payments or mitigation costs, for instance. In this context, enterprises should strictly adhere to the avoid – reduce – restore – remediate hierarchy<sup>116</sup> hierarchy: if it is safe to assume that a business activity would have an adverse impact on human rights, then the activity should not be pursued. Home-country enterprises, such as E.ON, RWE, Vattenfall and EnBW, should also participate both in the development of a risk concept of this kind and of the corresponding due diligence processes, and they should use their influence to ensure that the processes are carried out. Home-country enterprises, too, can and should consult independent human rights experts on these issues.

The host States should make effective use of their powers of oversight and control over mining activities. In particular they should ensure that their regional authorities are not biased and that monitoring is not restricted to environmental and social aspects, but encompasses human rights as well. Independent studies (independent of enterprises) on the living conditions and needs of local communities should be commissioned and be triangulated.<sup>117</sup> Enterprises should have to comply with social and human rights standards in order to obtain a licence, just as they are required, for instance, to demonstrate compliance with environmental standards in the mine closure plans they submit. The regional authorities in Colombia currently have great difficulty dealing with the complaints they receive. This is due in part to the

115 The processual, material law and practical hurdles that currently exist are described in Wesche, Philipp / Saage-Maaß, Miriam (2016): Holding Companies Liable for Human Rights Abuses Related to Foreign Subsidiaries and Suppliers before German Civil Courts: Lessons from *Jabir and Others v Kik*. In: *Human Rights Law Review* 16 (2), pp. 370-385; Krajewski, Markus / Oehm, Franziska / Saage-Maaß, Miriam (eds.) (forthcoming): *Zivil- und Strafrechtliche Haftung von Unternehmen für Menschenrechtsverletzungen*.

116 The distinction between reduction and mitigation should be understood in the sense that reduction refers to the risks, while mitigation refers to the impacts: when adverse impacts cannot be avoided, the least invasive option must be chosen. The emphasis here lies in the area of “do no harm”. Mitigating, by contrast, should be understood as active measures taken to ensure that unavoidable interventions have little adverse impact. [Cf. the Danish Institute for Human Rights (2016), p. 21, which speaks of “avoid-reduce-restore-remediate”; see also Bleckmann / Koalick / Utlu (2015), p.13]

117 The term “triangulate” is used here in its sociological meaning, referring to an empirical social research strategy.

lack of transparency with respect to the areas of competence of the many different State bodies that accept complaints, which results in complaints being sent back and forth among them. A mechanism should be put in place here to guarantee that all complaints are handled promptly and transparently, perhaps by requiring the receiving body to track the further processing of complaints and make the process they undergo transparent for the complaining party. In addition, State bodies should not confine themselves to reacting to complaints but should take preventive action as well. Close cooperation with the NHRI and civil society organisations would be beneficial in this respect. The Colombian national action plan should incorporate measures to strengthen the regional structures for prevention measures and establish a more effective system for handling complaints in the coal sector.

In drawing up regional development plans, the host State should actively draw on the academic expertise on post-extractivism and, above all, get members of the public involved, giving special consideration to existing local practices in this context. In addition, the host State should ensure transparency in its treatment of the revenues from coal mining and reinvest them in the fulfilment of economic, social and cultural rights in the mining regions. The unlikelihood that other economic sectors will be able to compensate for the revenues lost when the mines close lends added urgency to the need for such reinvestment.

National Human Rights Institutions also have an increasingly important role to play: They monitor legislation and the implementation of statutes, advise their governments, participate in multi-stakeholder processes and formulate recommendations, some of them addressed to business enterprises. In most countries they also hear and consider complaints from individuals or groups. NHRIs could play a key role in closing the responsibility gaps. Their networks allow them access to the places where the human rights impacts of business activities are experienced, they have the potential to engage directly both with the persons and communities being affected and with those who are causing the effects, and they also enjoy high levels of legitimacy and credibility in the eyes of other stakeholders. NHRIs often have offices in

remote provinces, as those of Colombia's Defensoría, and thus have a presence in direct proximity to the operations that are adversely affecting human rights. However there are scant resources available to the human rights offices in the mining regions for preventive work; these offices mainly act in response to complaints. Their experience with the topic of business and human rights or the UN Guiding Principles also tends to be limited. Capacity building and additional resources are therefore necessary, e.g. additional personnel and training on how to deal with business-related human rights problems. Only then would the NHRI be in a position to assist the communities, advise the enterprises on human rights issues and set up a local system to monitor the human rights impacts of business activities in the area.

It is remarkable however how extensive and dense the network of NHRIs already is. In the future, the network could be reinforced to enable it to tackle the job of monitoring business activities and communicating information along the supply chain. Defensoría's role in Colombia is already changing. In La Guajira, for instance, there are already close contacts among the departmental human rights office, Cerejón, the communities affected and civil society. In the departments, both civil society and the local communities themselves see Defensoría, unlike the State and the enterprises, as having a high level of legitimacy and credibility. The enterprises also expect Defensoría to play a mediating role, one it has already begun to fulfil in some respects.

The NHRIs of the various Latin American countries have formal linkages with one another through various association structures, e.g. the Ibero-American Ombudsman Federation and the Network of National Human Rights Institutions of the Americas. They engage in comparatively little cooperation with one another though, particularly in the area of business and human rights. Up to now, Latin American host States of enterprises have primarily acted individually in addressing the human rights impacts of business activities. This is a strength in the sense that the NHRIs in the host countries have developed their own expertise on local human rights impacts and are therefore able to take appropriate action. Local expertise and local measures alone are not sufficient to reduce

the actual and potential adverse human rights impacts however. Latin American human rights institutions have expressed several needs relating to regional coordination: in cases where an enterprise has operations in multiple countries, there is a need for the exchange of information about options for action among National Human Rights Institutions. Since some of the problems encountered by Latin American countries are similar, joint operationalisation of human rights due diligence requirements for enterprises is advisable. Joint development of methods for structuring stakeholder dialogues and tracking the implementation of recommendations would also be desirable. By cooperating at the region level, NRHIs might also succeed in inducing supranational organisations to engage in more regulation, e. g. in the European

Union or the African Union. One could also envisage the issuance of joint position statements, joint consulting and joint lobbying activities within regional protection systems.

In conclusion: All of the actors in the home country and the host country could do more to ensure more effective and sustainable protection for human rights in the coal mining regions. Achieving this will require the improvement of information flows and possible courses of action in the transnational context and that dialogue partners, particularly the communities affected and the operating enterprises, be brought onto an equal footing – and that no one lose sight of the fact that the extraction of raw materials will inevitably come to an end someday.



## Abbreviations

<b>BCE</b>	Industriegewerkschaft Bergbau, Chemie, Energie (union representing workers in the mining, chemical and energy industries)	<b>FES</b>	Friedrich-Ebert-Stiftung
<b>BHP</b>	Broken Hill Proprietary Company Limited	<b>GDP</b>	Gross domestic product
<b>BMWi</b>	Federal Ministry for Economic Affairs and Energy	<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>BMZ</b>	Federal Ministry of Economic Cooperation and Development	<b>ILO</b>	International Labour Organization
<b>CFS</b>	Committee on World Food Security	<b>KIK</b>	Textilien und Non-Food GmbH
<b>CREER</b>	Centro Regional de Empresas y Emprendimientos Responsables	<b>NGO</b>	Non-governmental organisation
<b>CSR</b>	Corporate social responsibility	<b>NHRI</b>	National Human Rights Institution
<b>DANE</b>	Departamento Administrativo Nacional de Estadística (national statistical authority)	<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>DIMR</b>	Deutsches Institut für Menschenrechte (German Institute for Human Rights)	<b>RWE</b>	Rheinisch-Westfälisches Elektrizitätswerk AG
<b>EITI</b>	Extractive Industries Transparency Initiative	<b>SIMCO</b>	Sistema de Información Minero Colombiana (mining information system)
<b>EnBW</b>	Energie Baden-Württemberg AG	<b>SOMO</b>	Stichting Onderzoek Multinationale Ondernemingen (Centre for Research on Multinational Corporations)
<b>ESC</b>	Economic, social and cultural rights	<b>STEAG</b>	Steinkohlen-Elektrizität AG
<b>FARC</b>	Fuerzas Armadas Revolucionarias de Colombia (Revolutionary Armed Forces of Colombia)	<b>UN</b>	United Nations
		<b>UNDP</b>	United Nations Development Programme
		<b>UNGP</b>	United Nations Guiding Principles for Business and Human Rights

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## Appendix

### List of minutes

Date	Meeting
9 March 2016	Minutes of the focus group meeting in Bogotá during the multi-stakeholder meeting with representatives from the NHRI of Bolivia, Peru, Paraguay, Guatemala, Ecuador, Mexico and Colombia and of the La Guajira and Cesar regional offices of Colombia's Defensoría
17 May 2016	Minutes of the focus group meeting with civil society in Cesar
18 May 2018	Minutes of the focus group meeting with communities in Cesar
19 May 2016	Minutes of the focus group meeting with civil society in Cesar
20 May 2016	Minutes of the focus group meeting with State authorities in Cesar
21 May 2016	Minutes of the focus group meeting with communities in La Guajira
22 May 2016	Minutes of the meeting with Cerrejón in La Guajira
23 May 2016	Minutes of the focus group meeting with State authorities in La Guajira
13 January 2017	Minutes of the meeting with EnBW in Berlin

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