

## **Colombia: case study about coal for exportation**

### **A. Brief data about coal**

#### 1. Historic background

In Colombia, the use of coal for fuel began in 1837 when domestic demand for coal was met by the miners from the Departments of Cundinamarca, Boyacá, Valle and Antioquia. In the year 1886 the Code of Mines of the Sovereign State of Antioquia was adopted. This is considered the first national mining statute.

In the month of May, 1864, John May, an American engineer, discovered the two biggest coal mines that have existed in this country. One was called “Coal Mine of Cammel”, and it was located in the zone that is currently known as EL CERREJÓN. Later on, in 1875, Mr. May found the mines in El Cesar department which are currently being exploited by the Drummond company.

*“May discovered the coal deposits which left him astonished not only by their quantity and quality but also by the fact that the coal was, practically, on the surface.”<sup>1</sup>*

In 1940, the Colombian mining sector was promoted - thanks to the creation of the Instituto de Fomento Industrial – IFI (Institute of Industrial Promotion). Its purpose was to organize and promote companies devoted to the exploration, exploitation, processing and transformation of the mines that belonged to the Nation. A few years later, The Paz de Río Iron and Steel Company, which belonged to the State, started operating. In 1956, they reached a production of 2 million tons<sup>2</sup>. After the world energy oil crisis of 1973, coal was seen as a strategic mineral for national and international economies. This generated an increment in the production of coal. In 1970, the government produced the Mining Statute and founded the Fondo Nacional del Carbón (National Fund for Coal).

The current mining policy is based on three elements: (i) the need for promoting Colombia so that it becomes a priority destination for mining investment companies through the “Promotion Policy of Colombia as a Mining Country”; (ii) the strengthening of the mining institution through the “Policy of the Mining Resources Administration”; and (iii) to make this sector legal and sustainable, which is what this sector requires, through the “Policy of Improvement of Productivity and Competitiveness of the minor sector”.

The legal base of mining is the mining code, law 685 of August 15<sup>th</sup>, 2001, that is based on the following principles: (i) strengthening of the rights to the mining title or long term concession contract - with freedom of negotiation; (ii) speeding up of the formal procedures - including the environmental ones – and increasing tax stability. This code sparked off several reactions: on the one hand, it was argued that the code included environmental factors and that it recognized the preferential right that indigenous people and Afro-Colombian communities have in order to exploit the minerals found within their territories. On the other hand, some people say that it was impossible to carry out the provisions in favor of the indigenous communities because some

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<sup>1</sup> Joaquín Viloria De La Hoz, “La economía del carbón en el Caribe Colombiano” (The coal economy in the Colombian Caribbean), in a work document about regional economy, No. 4 of the Research Center of the Colombian Caribbean and the Bank of the Republic, Cartagena de Indias, May 1998, page 4.

<sup>2</sup> *Ibíd*em page 2.

requirements were impossible to be fulfilled by these communities. Since indigenous communities don't use the preferences established by the law, the state can, as indeed it does, grant the mining zones to entrepreneurs. Therefore, the new norm favored large mining exploitation but it revoked the possibility for the State to exploit, directly, the mineral fields. This favored the multinational companies because they had now fewer requirements in order to initiate activities and to acquire rights over the mining district; they were authorized to spend less time in the exploration and exploitation stages; and large companies were authorized to exploit strategic minerals. From the environmental point of view, the environmental license was eliminated for the exploration stage. This is something that should be reviewed since this type of activity may cause great damage to nature – even if they only carry out the exploration phase and not the mine exploitation.

As a result of the application of the mining code, mining titles - by which companies may start operations whenever they determined - have increased. Until 2008, 5,067 mining titles had been granted that cover an area of 2,927,189 hectares.<sup>3</sup> Currently, a new code that would comply with some environmental laws is waiting for presidential signature. However, this does not change the situation of small mining companies at all – including those near the ethnic communities.

## **2. Mining Zones**

### **2.1 North Region**

At the Department of la Guajira, situated in the north part of Colombia and the territory of the Wayúu ethnia, EL CERREJÓN - North Zone Project was developed. It has had different phases and expansions. This region goes from the Southeast of the Department – where the mining deposits are – to Bahía Portete, near Cabo de la Vela, on the Northwestern part of the Department.

It includes, also, the Departments of Cesar and Magdalena, and more specifically the Serranía del Perijá, and the towns of La Jagua de Ibirico, Becerril, La Loma and El Paso, and Codazzi, where other exploitation zones are found. The zone includes the coal ports located in the Department of Magdalena.

### **2.2 Northeastern Andean Region**

It includes the Department of Santander, with exploitations at the town of El Carmen de Chucurí, (Santander's Mid-Magdalena region) and the coal ports in Barranquilla (Department of Atlántico), and Santa Marta and Ciénaga (Department of El Magdalena), as well as Cartagena (Department of Bolívar); the Department of Norte De Santander with the Zulia Region, adjacent to Venezuela, which exports most of its coal through the Maracaibo Lake, and the rest through the Colombian Ports of Santa Marta, Ciénaga and Barranquilla.

### **2.3 Central Andean Region**

It includes Boyacá and Cundinamarca, with the exploitations at the center and north of the high plains of Cundinamarca and Boyacá, and the transportation corridor between this region and the Port of Buenaventura on the Pacific Coast. As for coal, planning is carried out dividing the territory into mining zones: for example, there is the Cesar-Guajira Mining Zone, or the Boyacá-Cundinamarca mining zone, among others.

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<sup>3</sup> Attachment No. 1

### 3. Mining Districts

Mining districts were adopted as a unit in order to group together mining activities that were defined<sup>4</sup> according to the criteria stipulated by the Unidad Minero Energética-UPME (Energy/Mining Unit) which depends on the Ministry of Mines and Energy. Establishing a zone as a mining district depends on: a) The type of mineral material and the production volume, b) the grade of mining concentration in relation to relatively homogeneous and uniform zones, and c) the mining tradition of local and regional communities.

The units of analysis for the identification and analysis of socio-environmental impacts used in this study are the following: (i) the Barrancas Mining Districts in the Department of La Guajira that are administered by EL CERREJÓN, and (ii) La Jagua, administered by DRUMMOND, in the Department of El Cesar. These two districts produce more than 90% of the coal that is exported to the Europe and United States markets.

#### 3.1. Mining District of Barrancas, Guajira. Cerrejón- North Zone Project

This district comprises an area of 380 km<sup>2</sup>. It is located between the town of Cuestecitas, to the north, the Ranchería river and the Cerrejoncito stream to the south, and it includes the towns of Barrancas, Maicao, Hatonuevo and Albania. The mining activity of this district is devoted exclusively to the production of thermal coals that are in the tertiary age formation of EL CERREJÓN. This is open pit exploitation with high yields and competitive costs due to the use of equipment of great capacity that removes enormous volumes of material.

This mine was exploited by the International Colombia Resources Corporation INTERCOR, an affiliate of Exxon which in 1974 was the biggest oil company in the world. The Colombian state - using funds from ECOPETROL, the Colombian Oil Company, and from IFI - formed CARBOCOL, Carbones de Colombia (Colombian Coal). This company, in turn, became partners of Exxon in 1976 in order to make the investments for the exploration and exploitation of the resource.<sup>5</sup> The Cerrejón – Central Zone and the Padilla area projects merged with Cerrejón – North Zone. The Colombian state sold its participation in Carbocol SA. to Carbones del Cerrejón SA, a consortium conformed by BHP Billiton plc, Anglo American plc, and Glencore International AG. This consortium bought the ExxonMobil shares in 2002. It is now administered by Carbones del Cerrejon Ltd.

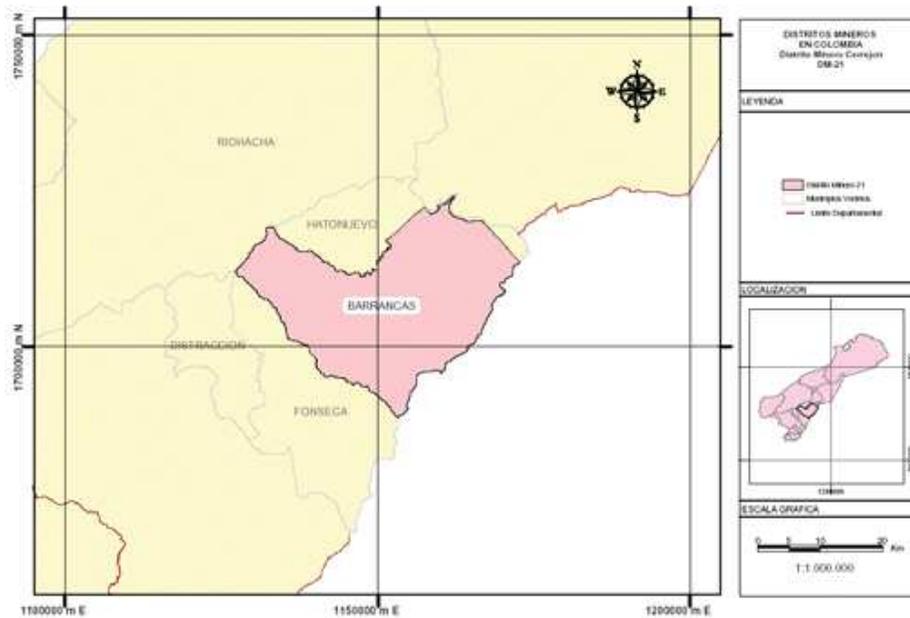
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<sup>4</sup> “The main economic activity of this region is the exploitation of one or more minerals. It is organized in company units that use the local workmanship that complies with the rational development of its exploitations. Its parameters of technical, economic, social and environmental feasibility achieve an integral development that is in harmony with the economic activities, the soil and the sub-soil uses, with the community plans, the culture and the regional and national progress.”<sup>4</sup>

This definition which integrated diverse components of the territory was never adopted, formally, because it left out a good number of the country’s zones where mining is just another economic activity but where there is an important mining potential and an important mineral production. .

<sup>5</sup> Salas Bahamón, Jaime Ernesto. 2004. Cerrejón and its effects: a socio-economic and environmental perspective.

**Figure 1. Barrancas Mining District (Source: UPME, 2005)**



### 3.2 Department of El Cesar

The department of El Cesar is located in the northeastern part of the country. It limits to the north with La Guajira, to the east with Norte de Santander and Venezuela, to the south with Santander and to the west with Bolívar and Magdalena. The coal deposits are in the middle of the northern zone of the department and to the south of the Sierra Nevada de Santa Marta, an environmental conservation zone, a biosphere reserve, and the territory of four of the largest indigenous communities. It has wide transportation roads: the Magdalena Highway links this zone with Barranquilla, Bucaramanga and Bogotá and, from these cities, with the rest of the country and with the Atlantic Coast ports. Part of the railroad that links the deposits with Santa Marta was restored so it can transport coal. The Magdalena River from the fluvial port of Tamalameque to Barranquilla is another transport medium that uses barges

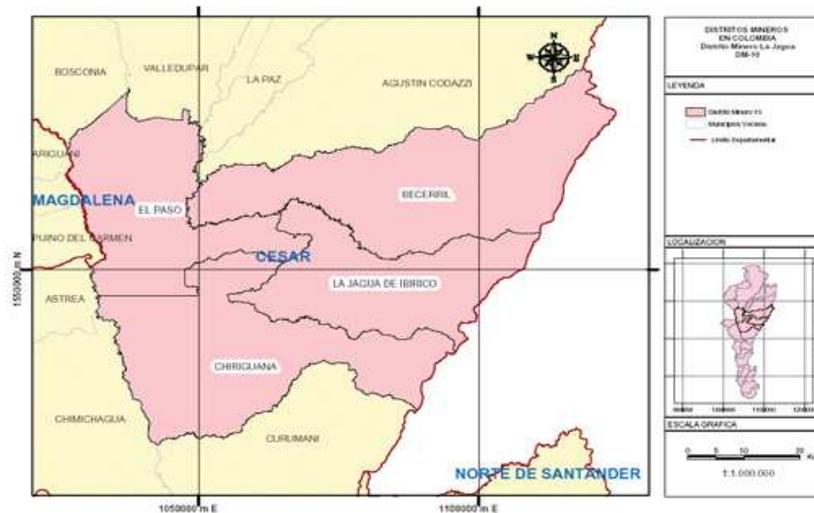
#### 3.2.1 Mining District of La Jagua

It is located at the central part of the Department of El Cesar, adjacent to the towns of Becerril, El Paso, Codazzi, La Jagua and La Loma. Its mining activity is the coal exploitation of the coal seams that have been found in Los Cuervos. From the structural geological point of view, this district has three different zones: La Jagua de Ibirico, formed by the synclinal fold with the same name, and the Alto de Becerril and La Loma, where there are three great structures known as El Descanso, La Loma and El Boquerón synclinals.

It is administered by the Drummond Company Ltd, a branch of the American company Drummond Company Inc., which widened its activities by acquiring the coal reserves of El Descanso in 1997, and Sororia, Rincón Hondo, and Similoa's in 2003. Recently, other activities as natural gas, oil, and methane gas exploration were added in El Cesar.<sup>6</sup>

<sup>6</sup> Drummond Ltd (2004). "Drummond: Ten Years of Good Energy in Colombia. Social Balance. Page 10 cited in: Sarmiento Eljadue Natalia, " (Kindness of Strategy?: Knitting Social Responsibility in the Coal World, Uniandes – CESO, Department of Political Science, 2008, page.51

**Figure 2: District of El Cesar (Source: UPME, 2005)**



## **B. Coal export data**

Colombia is the fifth exporter of thermal coal in the world and has the biggest coal reserves in Latin America. Colombian coal is well-known for being one with the lowest sulfur and ash content but with high heating value. For the Colombian economy, after oil, coal is currently in the second export line.

The main coal export destinations are Europe and the United States. The national production has grown enormously in the last twenty years – especially during the period between 1987 and 2003– thanks to the setting in operation of the big projects carried out by multinational companies such as Drummond, Exxon, BHP Billiton, Glencore International, Amcoal and Rio Tinto. In 2003, the production was higher than 50 million tons, 91.24% of which was exported to international markets. In the domestic economy, mining has been of relative low importance because its contribution to the Gross Domestic Product was not higher than 2.8%. However, after 2003, it has had an important increase caused, mainly, by the coal mining growth. Colombian coals are basically hard coals (thermal, metallurgic-coke and anthracite) and the thermal coal represents 97% of the production and exports.

### **1. Main Companies**

As per 2008 data, the biggest producing companies are those that have mining concessions in la Guajira and El Cesar - CARBONES DEL CERREJÓN and CERREJÓN NORTH ZONE - followed by DRUMMOND and PRODECO. The sales of Carbones del Cerrejón in 2008 were COP\$3,282,416 billion (approximately US \$ 1,670 million) and grew 85.2% compared with the year 2007. Sales of Cerrejón North Zone were COP\$1,664,406 billion (approximately US\$ 847 million) and grew 28.8%. These companies belong to the consortium formed by BHP Billiton, Anglo American and Xstrata. Then there is also Drummond, with sales of COP\$3,131,399 billion (approximately US \$ 1,593 million) and a growth of 34.3%, as well as C.I. Prodeco with COP\$1,442,413 billion (approximately US \$ 734 million) and an increase of 40.1%.

**Chart No 1. Coal Production in the Two Main Districts**

Departamento	2004	2005	2006	2007	2008	Total general
Cesar	25.028.378,1	27.709.503,3	31.118.284,0	33.186.565,8	33.676.251,0	150.718.982,2
Guajira	24.546.793,0	27.180.029,0	29.073.485,0	30.069.452,0	31.939.855,0	142.809.614,0
<b>Total general</b>	<b>49.575.171,1</b>	<b>54.889.532,3</b>	<b>60.191.769,0</b>	<b>63.256.017,8</b>	<b>65.616.106,0</b>	<b>293.528.596,2</b>

## 2. What does Colombia export <sup>7</sup>?

Soft coal, briquettes, ovoid and similar solid fuels obtained from coal, lignites, even agglomerates, except for jet (a black shining mineral), turba (including the one used for animal beds), coke and semi-coke, gas carbon. 96.6% of coal exports correspond to cokes and the rest to soft coal, which indicates that the country is exporting coal for the production of energy, mainly.

## 3. Who is Exporting?

Multinational companies such as Drummond, that has the highest volumes and the highest income (30.8%), Carbones del Cerrejón (25.9%), Cerrejón North Zone (17.9%), Prodeco (12.3%), Carbones del Caribe, according to the following chart.

**Chart No. 2. Export volume per company Period 2005-2009 in TM**

OTROS EXPORTADORES	13.547.093
COLCARBON S A CDORA COL DE CARBON S A	2.067.879
CARBONES COL DEL CERREJON S A	3.804.526
C I CARBONES DEL CARIBE S A	5.095.433
C I PRODECO PRODS DE COL S A PRODECO S A	33.248.081
CERREJON ZONA NORTE S A	52.057.903
CARBONES DEL CERREJON LLC	74.679.529
DRUMMOND LTD	92.821.607
Total general	277.322.053

*Source: SICEX own preparation*

## 4. Where is it exported?

Exports go, mainly, to European countries (46.4%), and in a smaller proportion to North America (37.1%); to Latin America (7.8%); to Caribbean countries (3.19%), and to Asia (5%). During the last five years, the United States is the country that has bought the highest volumes, although its demand has decreased. The second most important buyer is The Netherlands, which in 2005 went

<sup>7</sup> Information about exports was taken from the SICEX database ([www.sicex.com.co](http://www.sicex.com.co)). For the analysis, chapter 27 about tariff, which refers to mineral fuels, mineral oils and products for its brewing; bituminous (oily) materials; mineral wax, soft coals; briquettes, ovoid and similar solid fuels obtained from soft coal. These specific sub-items ([www.dian.gov.co](http://www.dian.gov.co)) were included. Data include up to the month of June 2009.

from importing 14% of the Colombian coal to 22% in 2008. Volumes were close to 43 million tons.

**Chart No. 3. Coal exports to the main countries (in Tons)**

PAÍS DESTINO	2005	2006	2007	2008	2009	Total general
OTROS PAÍSES	7.986.467	8.863.817	10.251.342	18.649.325	4.822.482	50.573.434
ESPAÑA	1.859.560	1.700.632	2.292.337	1.525.451	1.227.516	8.605.496
CHILE	675.055	463.802	2.108.875	3.689.668	1.910.961	8.848.361
ITALIA	2.580.592	1.865.380	2.189.820	1.610.026	824.008	9.069.827
CANADA	2.296.755	1.919.497	1.883.976	1.973.088	1.101.088	9.174.404
FRANCIA	2.163.962	2.538.586	2.970.978	2.044.449	476.900	10.194.875
PORTUGAL	2.497.979	2.755.076	2.868.980	1.760.083	1.115.266	10.997.383
TURQUÍA	2.416.278	2.781.411	2.760.949	2.745.223	1.221.104	11.924.965
ISRAEL	4.348.028	3.759.036	3.111.756	1.802.493	503.121	13.524.434
REINO UNIDO	2.508.130	3.356.157	3.499.395	3.295.550	2.111.801	14.771.032
PAÍSES BAJOS - HOLANDA	7.930.450	9.067.983	12.461.983	7.460.964	6.455.388	43.376.768
ESTADOS UNIDOS	17.444.369	21.801.627	22.646.457	16.882.697	7.485.923	86.261.073
Total general	54.707.625	60.873.004	69.046.849	63.439.016	29.255.558	277.322.053

Other important buyers are Canada (3.29%), Italy (3.29%), and France (3.75%) with almost 2 million tons per year, each, Portugal (4.05%) and Turkey (4.39%) with 2.5 million tons per year, on average, and Israel (4.98%) and the United Kingdom (5.33%) with purchases close to 3 million tons per year, on average.

### 5. Holland as coal export destination

Between January 2005 and June 2009, the Netherlands imported from Colombia a total of 43.200.000 tons of coal, 30.6 million of which came from Cerrejón at the Guajira. They were produced by two companies: CARBONES DEL CERREJON LLC and CERREJON ZONA NORTE S A; 5,1 million tons are produced at Cesar and 7.3 million at Magdalena by the following companies: C I CARBONES DEL CARIBE S A, C I PRODECO S A and DRUMMOND LTD.

**Chart No. 4 Exports to the Netherlands**

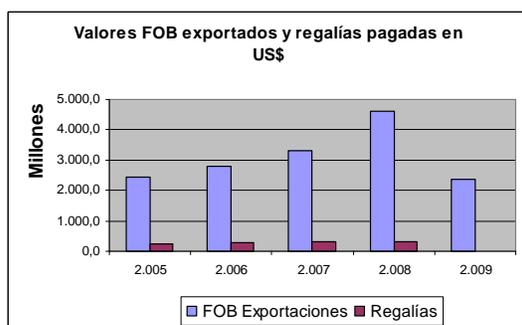
AÑO	Expo Ton	FOB US\$
2005	7.930.450	363.205.441
2006	9.067.983	399.901.554
2007	12.461.983	602.338.073
2008	7.460.964	534.037.018
2009	6.455.388	542.624.177
Total	43.376.768	2.442.106.262

Of the total exports, only 19,72% was reported as having used the agreement of the Preference General System (SGP in Spanish), with the European Union. DRUMMOND and PRODECO use the SGP; El Cerrejón does not use this type of agreements. Every export generates the obligation of reimbursing the foreign currency through exchange market brokers (commercial banks and other financial entities). Therefore, exporters must sell the foreign currency to these brokers. According to the SICEX database information, not all exports are reported with their respective reimbursement.

## 6. Coal Royalties and Taxes

The coal industry transfers part of its profits as royalties to the cities, departments, and other national and regional entities. In the period 2004-2008, the royalties that the coal industry paid to the territorial entities and other entities reached 2.45 billion Colombian pesos. Due to its high production volumes, the departments that receive the highest royalties are Cesar (35.96%) and Guajira (33.95%); the department of Magdalena receives close to 4%. The other departments do not get more than 0.5% of resources from royalties. Other entities that are benefitted by coal royalties are CarboCol, the Fondo de Fomento al Carbón (Coal Promotion Fund), the Fondo Nacional de Regalías (National Royalties Fund), Ingeominas, and DNP (National Planning Department) which have certain specific responsibilities. The 4 x 1000 tax they must pay is covered by royalties.

**Graph No 5. Comparison between royalties and exports**



The amounts paid in coal exploitation royalties correspond to 9.6% of the year 2005 exports, and 10.1%, 9.7% and 6.7% for the years 2006, 2007 and 2008 respectively<sup>8</sup>. It should be pointed out that, while the FOB values of exports almost doubled between 2005 and 2008, royalties did not grow at the same rate. In 2008 they even dropped - as can be seen in the decrease of export volumes of the same year.

### 6.1 Royalties follow-up by El Cerrejón. Company position<sup>9</sup>

Until 2002, El Cerrejón complied with the legal obligation of paying the corresponding taxes and royalties, and the destination given to them was decided solely by the Colombian State. After 2002, when a new company phase began, the company took a more active role in the administration of royalties, and created a follow-up committee to supervise the use given to royalties' moneys. The Universidad de la Guajira, and the Governor of the Department were invited to participate, as well as the Mayors of the towns that were being benefitted by this income.

EL CERREJÓN has strengthened the public administration in order to improve the management of the investments made with public resources. For this, it developed the program "Let's **sow** the royalties" in order to avoid corruption in the destination given to resources coming from EL

<sup>8</sup> Royalties are paid by production volume and not by the amounts registered in invoices at the moment of exportation.

<sup>9</sup> The Consulting Service carried out interviews with EDUARDO LOZANO, Chief of Social Administration Division; EDGAR SARMIENTO, Chief of Resettlement and Land Division and ALEXANDRA GUAQUETA, Chief of the Social Responsibility Office of CERREJON. Their comments and opinions were cited verbatim.

CERREJÓN's coal royalties. It also created citizen comptrollerships through the Cerrejón–Colombian General Comptrollership and the Departmental Comptrollership agreement.

That is why the new Company President has proposed the creation of four foundations:

- Fundación Cerrejón para el Progreso de La Guajira (Cerrejón Foundation for the Progress of La Guajira).
- La Fundación AQUA-Guajira (AQUA-Guajira Foundation).
- La Fundación Cerrejón Guajira Indígena (Indigenous Guajira Cerrejón Foundation).
- Fundación Cerrejón para el fortalecimiento institucional de La Guajira (Cerrejón Foundation for the Institutional Strengthening of La Guajira).

The fundamental mission of each of these foundations is the follow-up to royalty resources. This becomes, then, the first thing on the Cerrejón's Foundations' agendas. The Foundations seek to educate people of this region on how to demand the respect for their rights from the local or national authorities. Foundations also seek to teach local people not to see EL CERREJÓN Cerrejón as the only job source and as an entity obliged to solve all the problems of the community. Another objective is for the regional development to become sustainable. This is achieved by creating businesses and by training and educating people.

The final destinations of royalties should be:

- Basic sanitation.
- Education
- Health

## **7. Tax Benefits for Entrepreneur Exporters**

In Colombia, entrepreneurial activities must pay certain taxes, but some of them do not apply to the mining companies. For example, the remittance tax is caused by the transferring abroad of yields and occasional profits that had been earned in Colombia. And in the case of branches of foreign companies, the tax must be paid just because yields received are presumed to have been transferred abroad. Some exceptions to the tax on remittances are the dividends and participations abroad, which have a fee of 7%; the interest of credits obtained abroad by certain companies; and the reinvestment of yields.

Some company goods and operations in general, and mining companies in particular (if the exemption applies), are excluded from the value added tax (IVA in Spanish)<sup>10</sup>. In cases where the company reinvests the dividends or participations in Colombia, the payment of taxes is deferred as long as investments continue. If the investment lasts for at least 5 years, those participations or

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<sup>10</sup> Domestic or imported equipment and elements used in construction, installation, set-up and operation of monitoring system and environmental control; imports originated in especial import-export – Plan Vallejo programs; the temporary import of heavy machinery for basic industry that is not produced in the country. [Basic industry is mining, hydrocarbons, heavy chemistry, iron & steel industry, extraction metallurgy, generation and transmission of electric energy, and obtaining, purification and conduction of hydrogen oxide]; regular imports of industrial machinery that is not manufactured in the country and is destined to transform raw materials by people who export heavily – ALTEX. Additionally, until the year 2005, the IVA paid for the import of industrial machinery, shall be deducted from the income tax report.

dividends are also exempted from the payment of the tax of 7% by way of interest. It is understood that there is reinvestment just by keeping the earnings as company assets.

Foreign companies in Colombia have the right to deduct from their income tax report the expenses for administration and management or the expenses for royalties and exploitation, as well as for the purchase of intangible assets. These companies may, also, deduct the expenses incurred abroad which are related to the domestic income, and this deduction is limited to 15% of the net income of the taxpayer.

The main exporting companies paid in taxes and other additional fees close to 723 billion Colombian pesos. Drummond is the one that has more deductions (due to the use of the above-mentioned incentives) and is the one that contributes less to the country by means of taxes.

#### **Chart No 6. Income and taxes of the main coal exporters**

Year 2008 (values in thousands of \$)		Operational income	Income tax
Año 2008 (Valores en miles de \$)	Ingresos operacionales	%	Impuesto de renta y complementarios
DRUMMOND LTD	3.131.398.617	2,3	72.706.655
CERREJON ZONA NORTE S A	2.047.432.520	14	294.796.520
CARBONES DEL CERREJON LLC	3.282.416.092	11	355.838.761

### **8. Other benefits or preferential treatment**

In Colombia, coal exports are privileged because they have obtained different benefits granted by the Colombian government, e.g. benefits for exports going to the European Union.

#### **8.1 Special Export Programs – PEX**

These are the programs that allow to register, as exports, the sales that a national manufacturer makes to a foreign company despite the fact that those products have not been exported by the manufacturer, directly, but rather have been given to a national entrepreneur in order to be transformed and then exported as a final product. Through this mechanism, an agreement is made by which a person residing abroad buys raw materials, supplies/consumables, intermediate goods, packaging material or national packages to a Colombian company, and delivers this to another Colombian manufacturer who is responsible for manufacturing and exporting the goods that are made using the goods received. These programs which must be approved by DIAN (Office of National Taxes and Customs), permit the direct or indirect exporter to have access to some tax benefits for exports such as the IVA exemption, the Industry and Commerce Tax exemption, and the Stamp Tax exemption as soon as the export of final goods takes place.

#### **8.2 General System of Benefits for the European Union – SPG Plus**

This is an agreement with the European Union that was approved at the end of 2005 and will be valid for 10 years. Its object is to promote the economic and social development as well as to stimulate the inclusion of developing countries into the global economy. Colombia is one of the beneficiaries of this system. On July 22, 2008, the European Union Council approved a system of generalized preferential duty for the period between January 1st, 2009 and December 31st, 2011. Colombia will be one of the beneficiaries of these benefits that the European Union has been granting as a special stimulus to sustainable development.

### 8.3 Permanent Customs Users – UAP

These benefits were created by decree 2685 of 1999. They benefit the corporations that have been recognized and registered in this category; also, those that, during the previous year, carried out import/export operations for a FOB value that was higher or equal to eight million dollars, or that reached this average during the last three years. Benefits are, also, for those corporations that, besides the value of the operations, have processed at least two thousand (2,000) import/export declaration reports during the previous year, or those that have programs to develop the Special Import-Export Systems contemplated by Decree Law 444 of 1967.

Benefits:

- Temporary import of raw materials and consumables exempted from taxes, to manufacture export goods.
- Being considered as ALTEX matrix company, affiliate or subsidiary<sup>11</sup>.
- Exemption of IVA payments for those Imports of industrial machinery that are not produced in Colombia, law 788/02
- Authorization to export under the figure “Authorization global shipping with partial cargoes”, consolidating operations monthly (10 first days of each month)
- Reimbursement after 10 days of balances in favor of IVA (Value added tax).
- Elimination of physical inspection of exports by Customs inspectors.
- Global and permanent authorization to carry out the customs inspection of the goods to be exported at the user’s premises.
- Guarantee by ALTEX of the customs obligations
- Habilitating factory premises as “private warehouse for industrial processing” for 5 years.
- Possibility of getting a global banking or insurance guarantee in order to obtain the reimbursement of the balance in favor of IVA by virtue of the carried out exports within the next 10 days after the request.
- Possibility of importing consumables and raw materials as temporary import for industrial processing.

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<sup>11</sup> Users who export heavily – ALTEX are defined by Decree 2685/99 as corporations that - after complying with certain requisites - have been recognized and registered as such by the Office of National Taxes and Customs. ALTEX must demonstrate having exports in the previous year for a FOB value equal or higher than 2 million dollars. Exported value must be at least 60% of the value of its total sales in the same period.

## C. Analysis and Summary of Significant Environmental Impacts

Significant environmental impacts on water, ethnic and peasant territories, on the population and on the social and economic variables; on biodiversity and on ecosystems; on the quality of air and the climate, as well as some transversal cumulative impact that affects simultaneously on several environmental components, are here identified and set into context. At the end of the text are the tables that summarize the impacts found.

A very serious issue with regards to EL CERREJÓN is the impact on the quality of water and soils, because the damage may be irreversible. This impact has destroyed 10,000 hectares of forests and of soils at the Ranchería River basin. After 25 years, only 25% has been recuperated. This, as an economic investment, is equivalent to the value of the coal that is taken out of the Cerrejón mine in one month (30 days).

At the District of La Jagua, the index of respiratory and diarrheic illnesses increased due to the damage caused to the quality of air and water. These are the effects derived, directly or indirectly, from the carboniferous exploitation and connected activities such as transportation. The recovery of the more than 8,000 hectares in forests is uncertain because the recovery programs cover a minimum amount, and the landscape shows an increase in the desertification in lands that used to be dry tropical forests near the Serranía del Perijá. This proves that - as the area inhabitants say, and the data show - the environmental management and the benefits for the quality of life and the environment obtained until now by the Colombian carboniferous exploitation destined to international markets is far from being satisfactory.

### 1. Environmental point of view from the Company's side: El Cerrejón

In the 2004 EL CERREJÓN activities report, some aspects regarding the mining exploitation and the environmental management implemented by this company are highlighted:

*“El Cerrejón is the biggest project of open pit coal mining exploitation in Latin America; in 2003 more than 23 million tons of high-quality thermal coal destined to the Europe and the United States markets were produced and exported. The project began in 1977 after the contract of association between the government of Colombia and Exxon (today Exxon Mobil) was signed. Along the project's life there have been ten Environmental Management Plans (PMA, in Spanish) that have been made according to the requirements of newly opened quarries, and when new mining projects are needed. When the project began in 1982, in the first PMA presented as part of the Environmental Impact Study (EIA in Spanish), the Environmental Education Program (PEA in Spanish) was not mentioned. It was only referred to as part of the socio-/cultural component; it contemplated trainings to economically depressed groups of the neighboring communities. This shows how primitive the environmental legislation that existed in Colombia was back then, as well as the international legislation. The EIA that was developed contemplated the exploitation of up to 15 million tons per year and included only the north zone of the Cerrejón Project. Today, the north, central and south zones belong to the same owner – the BHP Billiton – Anglo American – Glencore consortium, unlike what happened at the beginning of the operations”.*<sup>12</sup>

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<sup>12</sup> Jaime Ernesto Salas Bahamón, 2004. *Cerrejón's Environmental Education Program as Part of the Environmental Management Plan*. CIMELEC INGENIEROS LTDA – IMAG LTDA – CI OMMERTRADE.

## 2. Environmental impacts as seen by the Academia

### 2.1 Table 1. Impacts caused by the mining projects on the different environmental components

Environmental component	Mining activity	Impact
<b>Geomorphology</b>	Construction of huge excavations to reach the coal seams that can be exploited. Widening of the exploitation mining fronts.	Altering of geo-forms: deep hollows and water deposits.
<b>Water resources</b>	Construction of internal roads to facilitate transportation of coal, along the arterial road between La Cabaña and the Bajo Cascajales Pit.	Dragging of materials that clog, partially, the natural drainage of waters in Caño (Channel) Chacón. Increase of total solid material due to the dragging of materials that come from mining fronts or from substances associated to mining water.
<b>Vegetation</b>	Opening of mining fronts Removal of top vegetable coat.	Removal of vegetation in approximately 60 hectares in manipulated zones or in mixed crop zones in the forest matrix. Change in the use of agricultural activities in an area of more than 500 hectares at the basins of Channels Bandas and El Hotel has permitted the recovery of the vegetation in secondary forests.
<b>Local Economy and Society</b>	Mining exploitation works.	Strong impacts on the communities of the little towns El Edén and Bajo Cascajales. Communities are worried for the opening of a new mining front. New economic resources and new job sources.

(Source: Tatiana González, 2009) <sup>13</sup>

## 2.2 Quality of the Air.

### 2.2.1. Environmental conflict at Jagua de Ibirico. César.

In the year 2007, the biggest social and environmental protest that has taken place in the recent history of mining in Colombia occurred in this town. The social outburst was created by the deterioration of the roads and the resulting serious consequences for the people's mobility; by the contamination of waters by oil and other materials and by the pollution of the air by coal and dust

<sup>13</sup>González, Tatiana.2009. *Adjustment and Updating of the Plan for Environmental Management of the San Luis Project for Open Pit and Underground Coal Mining Exploitation in the town of El Carmen de Chucurí, Department of Santander*. Company Practicum Report. Universidad El Bosque. Bogotá D.C. page.35.

particles. This dust formed big clouds that made the sky yellowish for many kilometers around the road and the mine zone, and, therefore, affected the people's health –especially children's and senior citizens'.

During the days of the social protest, the Ministry of the Environment, Housing and Territorial Development (MAVDT in Spanish) opened an office of environmental work at the town of La Jagua de Ibirico with the following objectives: (i) to carry out a Strategic Environmental Evaluation (EAE in Spanish) of the mining zone; (ii) To declare certain areas as contaminated; (iii) To have networks for the monitoring of the quality of the air and the water; (iv) To reach an agreement regarding a cleaner production.

Some compensation commitments were established in which they had to carry out activities of re-foresting the 4,558 hectares on the basins by the following coal exploitation companies: SORORIA, CARBONES DE LA JAGUA, CMU, CARBOANDES, CARBONES DEL CARIBE y NORCARBON SA. This district is administered by DRUMMOND.

Through Resolution 386 of March 7, 2007, the MAVDT classified in two areas the source of contamination of the carboniferous zone of the middle of El Cesar. It ordered the monitoring of carboniferous projects in order to control the quality of the air. Through Resolution 2176 of December 11, 2007, it established a program to reduce contamination for areas that are the source of contamination - as per the classification made of the carboniferous zones of El Cesar.<sup>14</sup>

A year after the strike at La Jagua de Ibirico, in March of 2008, the MAVDT evaluated the contamination of the zone and reclassified the sources of contamination caused by coal exploitation, based on the daily data obtained at each of the evaluated stations. The results were:

- **High contamination.** At the Plan Bonito Norte station the daily measurements showed 81.7% which is a data that exceeds the norm of annual quality.
- **Medium contamination.** At the La Loma Centro ZM1, and La Jagua ZM9 stations, the daily measurements showed 59.7% which is a data that exceeds the norm of annual quality.

It has to be noted that the Colombian legislation stipulated that the indexes of contamination by Total Particles Suspended (PST in Spanish) may be  $100\mu\text{g}/\text{m}^3$ , annual average, which is a measurement way above the  $40\mu\text{g}/\text{m}^3$  that the European Union stipulated for the year 2005 and  $20\mu\text{g}/\text{m}^3$  for the year 2010; and is also above the one of the United States, which is  $50\mu\text{g}/\text{m}^3$ .<sup>15</sup>, which can be very harmful to the health of the affected population. According to data from the Mayor of La Jagua de Ibirico in the year 2008, despite the governmental commitments that arose as a result of the strike of 2007, morbidity conditions due to coal pollution remain. There are no epidemiological studies about concentration of suspended particles lower than  $0.25\mu$ , which are considered as the ones with higher risk for the health of the population, since they go into the blood stream and produce degenerative illnesses.

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<sup>14</sup> Ministry of the Environment, Housing and Territorial Development. *Environmental Meeting Minutes. February 26 and March 9, 2007.* La Jagua de Ibirico.

<sup>15</sup> European Union Council 2002 in Rojas Brancho, Leonora and Garivay Bravo, Verónica. Suspended Particles: Are They Harmful to Your Health? Can We Do Something About It? [dialnet.unirioja.es/servlet/downloaded](http://dialnet.unirioja.es/servlet/downloaded) on July 23, 2009.

### 2.2.2. The Cerrejón Case

In the case of the mining district administered by EL CERREJÓN, the company admits that there are two environmental problems: the air quality, because of particles released by coal; and the noise made by explosions and by the exploration.

To measure the air quality in the populated zones adjacent to the mine, there is a network of 18 monitoring stations that measure the total amount of suspended particles (TSP) and of breathable dust (PM/10), controlled by the environmental authorities, around the mine.

The obtained results sent to the competent environmental authorities, to the Ministry of the Environment and to CORPOGUAJIRA (Regional Autonomous Corporation of La Guajira) register that the dust concentration, at all the stations, complies widely with what was established by the existing legislation – for both the daily norm and the yearly norm. These results show that the quality of air in these areas is better than the one registered in cities as Bogotá, or in the Puente Aranda Zone (an industrial zone) in Bogotá. It should be noted, however, that these types of comparisons are not appropriate for such an urgent problem, because, even though a big city has high pollution levels, there are other aspects to be taken into account, and it is inappropriate to compare a small village with a city with such high concentration of population. This pollution should never exist, and much less in towns where there was no pollution before.

EL CERREJÓN believes that the subject of illnesses associated to coal production is a myth. They admit that they have received information regarding pulmonary illnesses that could be associated with the coal particles, but explain that the Company's mining plan includes measures to mitigate dust and noise. This permits the results to be, always, below the limits permitted. They add that there is currently a program for controlling emissions of particles (dust) that are generated by the loading, transportation and management of materials such as rocks, coal, and soil. By using a fleet of tankers, approximately 105 kilometers of the mine roads are watered with more than 17,000 cubic meters of water per day. This water comes from the rain that has been stored in retention ponds. These tankers have an approximate value of 40 million dollars. One could say that the mine has been completely designed to be sustainable around the adjacent communities.

### 3. Carboniferous Ports: Coal vs. Tourism

In Colombia, the beach zones and the territorial sea are public assets that may be enjoyed, freely, by the people. However, since the 1990's decade, carboniferous ports have been established on the Caribbean Coast, in highly environmentally-fragile areas, as Bahía Portete where the Cerrejón Port is located. As a result, those beaches have restricted use<sup>16</sup>. The Santa Marta coal port was built on the bay, and since it was built, it has generated contamination in this tourist zone, whether it is due to the coal dust emitted by the storage piles, or to the coal spills in the ocean due to the barges that capsize, which is an event that occurs often. In the case of the DRUMMOND port located in Ciénaga, a tourist little town close to Santa Marta, the Decamerón Hotel had to be closed due to the contamination of its beaches. This also generated unemployment of the hotel workers or other people who, directly or indirectly, lived off this activity.

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<sup>16</sup> Bahía Portete used to have the best preserved mangrove swamps of the Atlantic Coast; however, this ecosystem has deteriorated due to the coal dust. Something similar happened at the port zone of Barranquilla, especially at the newly opened carboniferous ports of the Sociedad Portuaria that have been built on the estuary that the Magdalena River forms, and have filled up large zones that alter the hydrodynamic of this body of water.

In the last years, there have been multiple projects to open new carboniferous ports on high diversity and landscape beauty as the Baru Island, or the Canal del Dique in Cartagena. In fact, through the zone of El Bosque, in Cartagena, coke coal is being taken out, which was not approved by the tourist sector. “The sad experience suffered by the tourist sector of Santa Marta because of the coal companies supports the statement by the MAVDT (Ministry of the Environment, Housing and Territorial Development) regarding the fact that the pollution of beaches and air caused by the coal dust has been highly detrimental for the environment and has produced the closing of hotels such as the Decameron. In Cartagena, plans to build a port as this have fired the alarms of environmentalists and hotel owners, who warned that this would be devastating for the city and for tourism”<sup>17</sup>.

The Santa Marta and Ciénaga ports are the ones that have generated more controversy due to the environmental impact. In 2007, the General Inspector’s Office of Colombia, after reviewing the environmental problems of the carboniferous port of Santa Marta, presented a detailed report. Some of the aspects addressed by the report are:

“From the environmental point of view, there is no doubt that coal transportation in the area of Santa Marta, carried out in the way that it is being carried out now, produces serious impacts on human health and on the fragile ecosystems such as the marine one. It is not necessary to go into more details about this, because there is already enough information and consensus about this matter. However, it is useful to remember some of these impacts:

- Spills of coal waste and spreading of dust during the transit of 18-wheelers (or tractor trailers) during their trip from the mine to the port of Santa Marta. The dust is scattered by the winds, and there is deterioration of vision and of the landscape, of the tourist infrastructure, and of the air quality of the city.
- Damage to the urban infrastructure: noise and traffic problems. This is incremented by similar trucks that transport other exporting products.
- Mineral waste of different size that ends up being deposited in the water, on top of the aquatic vegetation and in the benthic ecosystems, due to the transportation of coal from the barge to the storage rooms of anchored ships.
- Fractures, crushing and other effects on ecosystems, on coral reefs and organisms on the bottom of the sea, produced by the barges’ accidents. In the last years, about 1,600 tons of coal have been spilled when some barges capsized, with the obvious detrimental effects on the environment. For example, 90% of the coral reefs lost their color or were broken after the “Liliana” barge sank.
- Turbulence at the bottom of the sea caused by the barges’ tug boats, which generated removal of sediment.
- All these effects produce, from the anthropic point of view, an undermining of the quality of life of inhabitants; health damages; alteration of the tourist corridor; and traffic jams, air pollution, and risks of accidents. As for the environment and natural resources, there is extinction of local animal life and vegetation, as well as soil contamination. This results in deterioration of environmental quality of the affected area and devaluation of land and of the infrastructure of tourist services. A community leader, at a recent forum, said that 511 properties and 3,150 people have been affected by the coal dust”<sup>18</sup>.

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<sup>17</sup> Editorial@eltiempo.com.co *Coal and beach do not mix well together*. September 16, 2007.

<sup>18</sup> WE ARE RUNNING OUT OF PATIENCE. The Inspector General of Colombia, Julio Cesar Turbay Quintero, at a Public Audience to Deliberate about the environmental situation of Santa Marta, November 19, 2007.

Taking into account this serious environmental problem of the zones affected by the coal ports, the Colombian government issued Decree 3083 of August, 2007 by virtue of which it is ordered that, as of the 1st of July, 2010, all Colombian ports must load coal into the ships through a direct loading system, using conveyor belts or other technologically equivalent system.

In recent months, the Brisa Group, to which the company Centromin S.A. belongs, the one that exploits coal in El Carmen de Chucurí, requested permission to export coal from the Dibulla port in La Guajira. Regarding this zone, the MAVDT had already expressed its opinion in 2006, and denied the environmental license that would permit the handling of coal at that Port. According to the company, “The coal meets the needs of the mining sector and helps to satisfy the lack of public service ports in the Caribbean Coast for the export of coal and other solid materials”<sup>19</sup>, explained the President of Puerto Brisa. The environmental license for this port has been the object of a controversy and of legal processes, because the indigenous communities of the Sierra Nevada of Santa Marta consider that, for them, Dibulla is a sacred place<sup>20</sup>.

#### **4. El Cerrejón: Environmental recovery**

According to the environmental legislation and the Environmental Management Plan stipulated by the corresponding environmental authority, every mining project has the obligation of developing an environmental recovery program in the areas that are left behind after new mining fronts advance. During the first 25 years of the Cerrejón Project operation, 2,600 hectares out of the 10,000 that have been treated, have recovered the vegetable cover. There, 1,200,000 trees have been planted, which means that close to 1,000 hectares have been reforested. This is 10% of what the dry tropical forests used to be before the mining operation began. Even though this is an environmental solution, it is not enough if treated areas are correlated with time elapsed. At that rhythm, taking into account that the mining Concession ends in 2033, only 50% of the area would be recovered.

According to the company, “150 million dollars have been invested in different environmental programs that “have permitted the development of programs that address the efficient use of resources and the protection of the regional biodiversity. Monitoring the air quality, recovering solid waste, rational management of fuels, and the efficient use of water and environmental education are part of this agenda. (...). By rehabilitating the land, the local animal life returns to its habitat. This process has been worked on by the company, through its Center for the Rehabilitation of Local Animal Life”<sup>21</sup>.

Even though this amount is an important one in terms of environmental investment made by projects in Colombia, it is very small when compared to international standards for a project with the CERREJÓN dimension, because the investment only represents what is obtained for coal sales in one month, at the mineral prices of the year 2008. One of the greatest deficiencies of the mining environmental management is the fact that they don't have an estimate of the environmental liabilities generated, which makes it difficult to evaluate how significant environmental investments are in relation to the liabilities.

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<sup>19</sup> [www.cco.gov.co/El\\_Tiempo/Caribe](http://www.cco.gov.co/El_Tiempo/Caribe). Dibulla Port, Interested in Shipping the Coal Produced in La Guajira and El Cesar. February 16, 2009; downloaded on July 29, 2009.

<sup>20</sup> Additional information about Puerto Brisas in [www.ilsa.org.co](http://www.ilsa.org.co)

<sup>21</sup> [eltiempo.com](http://eltiempo.com) The Nation section. Published on August 25, 2008. Author: Publicidad

The Environmental Comptroller of the company informs that, out of the 9,674 hectares where coal was extracted from 1983 to 2006, 25% has already been rehabilitated. In sum, it took one generation for this land to be as it used to be before. This shows the enormous dimension of the task that lies ahead, if we take into account that the exploitation contract of the mine ends in 2033, and that the production rhythm will surely increase year after year. The land rehabilitation is, probably, the flagship program of the mine of La Guajira. According to some company officials, in the 24 years of operations, 30 million of cubic feet of soil have been “safeguarded” – in some kind of bank – which at today prices would cost 30 million dollars. This soil – which is composed of different soil strata that is being piled up in outdoor deposits, as extraction of coal is made in the new quarries”<sup>22</sup>. Thanks to these environmental activities, EL CERREJÓN won, recently, an Ecological Award.

## **5. Roads at coal service**

### **5.1 Use of the main arterial road that links the center of Colombia with the Caribbean.**

In the last two decades, people travelling through this route that goes from the center of the country to the Caribbean Coast, which goes through the department of El Cesar’s carboniferous zone (administered by DRUMMOND), have experience great difficulties. The thousands of tourists from the interior of the country to the Coast, and from the coast cities. The thousands of tourists going from the interior of the country to the beaches, and from the coastal cities to Bogotá, cross with the huge truck that carry coal.

This chronicle describes the situation: *“Driving through the road going from La Jagua de Ibirico, in el Cesar to Santa Marta, is a complete odyssey. Through this route, more than 1,300 18 wheelers circulate daily carrying the coal exploited in this department in an open-pit mine towards the ports located in the capital of Magdalena. Some of the road stretches that could be travelled in 30 minutes are travelled in 2 hours today – depending on the driver’s luck. There are times when it is impossible to go faster than 30 Km/hr because the trucks practically own the road. Passing one of these huge trucks requires a complicated maneuver, but doing so when there are four or more trucks forming one line is even harder. In some stretches, the visibility is almost zero due to the dust that they remove as they go. Some towns, such as Bosconia, turn, at times, into ghostly towns because they are covered by the dust left by this monumental convoy.”*<sup>23</sup>

Even though this is a national highway of great importance, the coal companies have took hold of it in order to transport the coal towards the ports on the Caribbean Coast:

*“This situation is especially critical between Bosconia (Cesar) and Plato (Magdalena), because the road is in bad shape, even though it has one of the most expensive tolls of the whole stretch. According to the users, the sinking of some of the road stretches and the holes have been caused, mainly, by the 18 wheelers loaded with coal that travel this road.”*<sup>24</sup>.

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<sup>22</sup> eltiempo.com Economy Section, published on may 28, 2007 Author: Juan Guillermo Londoño Publicidad.

<sup>23</sup> Carlos Fernando Gaitán *The Coal Crossroad*. Dinero Magazine, Bogotá, Cundinamarca September 2007.

<sup>24</sup> Eltiempo.com. *The Good, the Bad and the Ugly of Travelling by Land During Vacation Time*. Published on August 29, 2008..

## 5.2 Railroad problems

The railroad corridor for the train that transports coal towards the ports, runs across the savanna towns that García Márquez described in his book *“One hundred years of solitude”*; one of these towns is Aracataca, where the writer was born. It is a town suffering from the lack of basic necessities, the inhabitants of which are victims of the noise and the contamination by coal dust.

*“Marco Tulio López Vargas says that in Aracataca (Magdalena) nobody can sleep during the day or at night. The old man clarifies that it is not due to “the insomnia plague.” that contaminated Macondo as a consequence of the caramel candy that the Buendías used to prepare in their house. It almost caused, according to Gabo in “One hundred years of solitude”, people to lose their sense of understanding of the written word. This illness – says the man in whose face there is no space for one more wrinkle but that stretches like an accordion when he speaks – started 10 years ago after the reactivation of the train that carries coal and crosses the town”.*

According to DRUMMOND, the company that transports coal through this line, 13 to 15 machines drag 90 to 95 wagons that carry approximately 50 tons of the mineral. This means that in each trip 4,500 tons of coal is transported. The train goes through Aracataca between 26 and 30 times a day, back and forth. This year the multinational company will export 22.5 million tons of coal. Besides to the insomnia of old Marco Tulio, there are other complaints of the residents of Aracataca. Martín Arévalo says that, due to the vibration, houses are developing cracks, and some people are already affected by the coal dust released by the trains.

However, what does not allow the people of Aracataca to sleep is the news about the construction of a second railroad line by Drummond. With this new line, the multinational company wants to expand its operations in order to be able to export 30 million tons of coal per year so that coal becomes the second export product of the country.

*“There won’t be 26 trains but 52, which mean that for us to go to the new hospital we would have to wait half an hour. Patients would die”, says the Mayor. He does not want this new line to go through the center of the town because families who have lived in this corridor for more than 100 years will be forced to demolish their houses. “Hopefully the train will not cross the town. I am not going to permit people’s rights to be violated”, warns the Mayor. Among the houses that are in danger of disappearing is “The wood board house”, a corner house made of wood that is currently a place to play billiards, but that was built more than 100 years ago by Nicolás Ricardo Márquez - known as the Colonel, the grandfather of Nobel prize winner Gabriel García Márquez<sup>25</sup>.*

It is not only the noise and the coal dust but the railroad corridor and the high frequency of the trains through the town what has altered the mobility and the tranquility of local life. It has also affected the safety of agricultural tasks between la Serranía del Perijá and Ciénaga, or in other words, all the Colombian Coastal plains of the departments of El Cesar and Magdalena. The biological corridors of the wild animal life between the Sierra Nevada of Santa Marta, La Serranía del Perijá, and the coast have also been affected. There are three different bioclimatic structures with great biodiversity, where the most representative habitats are the dry tropical forest that are buried under tons of sterile material when it is removed in order to extract the coal from the

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<sup>25</sup> eltiempo.com / file *The Train That Does Not Let Aracataca Sleep*. The Nation section. Published on December 24, 2005. Author: Leonardo Herrera.

geological seams. Approximately 7 to 10 tons of subsoil material has to be removed in order to extract coal. When the deposits are under the mountain - as is the case of La Serranía del Perijá – the removals may be higher; complete mountains change their place, and the same happens with the rivers while the habitats of wild species are irreversibly destroyed. Because the Environmental Impact Studies do not show quantifiable data, the lost biodiversity wealth cannot be measured.<sup>26</sup>.

#### **D. Social Impact**

The peoples and regions that provide the coal maintain an index of Unsatisfied Basic Need (NBI in Spanish) of 65.1% in La Guajira, 60.53% in the Barrancas Mining District, 44.7% in the department of El Cesar, and 55.65% in the La Jagua Mining District. These indexes of NBI classify both the departments and the towns of the mining districts as one of the poorest regions of Colombia.

##### **1. Destruction of towns and people's resettlements**

There are three examples of displacement and stripping of homes in El Cerrejón: i) Roche Section (Barrancas); ii) Los Remedios; y iii) El Tabaco (Hatonuevo).

**i) Roche (Barrancas).** This section of the town of Barrancas was inhabited by 510 families and had, until 1994, all basic utilities. Currently, due to the problems experienced by its inhabitants, there are only 32 families left. Real estate has suffered great damage because properties had to be sold below commercial value. In this case, the district was called “settlement” in order to devalue properties, and as a result, Electrocaribe cut the electric power<sup>27</sup>. Families were relocated and moved to the property called San Francisco (Barrancas) that has 25.4 Hectares. In the process it was obvious the existing lack of respect for the territory and the origins of African peoples, because their land was categorized as “zone with no commercial value”.

**ii) Los Remedios (Albania).** This community experiences conditions of confinement due to the closing of communication roads, and the prohibition of travelling during night hours. This is done because they are obeying orders from Carbones del Cerrejón that alleges insecurity due to some attacks to the railroad. *“The three indigenous ethnic groups of this zone, one of which is the Wayúu, have been relocated several times by the transnational company. However, in this new residence, they cannot move freely either”*<sup>28</sup>. To this condition of confinement and people's isolation, the forced displacements of inhabitants must be added.

**iii) El Tabaco (Hatonuevo).** In February, 1999 the Ministry of Mines and Energy authorized the expropriation of a “property called El Tabaco”, by means of a routine administrative act that

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<sup>26</sup> The Nobel Prize winner remembers that “Macondo was then a village with 20 houses made of clay and bamboo built on a river of clear waters that came from a bed of polished, white and enormous stones that look like prehistoric eggs”. Even though the river waters still run from the town to the coal zone, thanks to the Sierra Nevada of Santa Marta which provides the precious liquid, in Aracataca there is no drinkable water despite the millions of dollars that run daily through it on the railroad wagons, towards Ciénaga, just as the dead passed by during the days of the banana massacre in 1928. Richness and tragedy have travelled the same railroad in the last century, and the situation does not seem to have changed due to the power that the coal companies have which, in the game of national decisions, replaced the banana companies.

<sup>27</sup> Collective Lawyer Corporation José Alvear Restrepo, “The Cerrejón Coal Megaproject”, In: Social Observatory of Transnational Companies, Megaprojects and Human Rights, *People and Territory No. 1*, Second semester 2005. p. 29.

<sup>28</sup> *Ibíd.*

disregarded the existence of a town section in which a whole community lived. The issue of an administrative act brought the occurrence of a series of violations by the company in order to expedite the appropriation of properties: electric power cuts, suspension of telecommunications, closing of the health clinic and of the school, burning of the cemetery and of some houses, control over the roads, etc. All this forced the Afro-Colombian inhabitants of this section to leave their homes and abandon their territory. In the year 2002, the Civil Appeal Court of the Supreme Court decided in favor of the inhabitants of this section, and forced the Mayor of Hatonuevo to relocate the people in conditions of dignity and to rebuild the infrastructure and the social web of the town.<sup>29</sup>

**The Case of El Tabaco.** The population of El Tabaco is 700 people. They are mainly Afro descendents whose ancestors settled on this territory more than 4 centuries ago. The purchase of land and displacement were executed by INTERCOR. During the last phase of the process, after the properties had been bought, the company, supported by private security and by the police, entered with bulldozers and destroyed the village. When EL CERREJÓN became part of the liability framework, the people who examined their responsibility decided that there was merit for this topic to be analyzed. In 2007, the owners and the CEO of EL CERREJÓN had an act of contrition before an International Panel of social professionals of the highest level. The panel made a general evaluation of the social responsibility regarding all the things that were happening in this area.

This gave way to a series of recommendations that sought to bring the community together and to work together the subject of indemnifications and help for the community. In 2007, El Cerrejón gathered the old El Tabaco residents and created the Endogenous Network of El Tabaco. The company created numerous socio-economic projects with an investment of more than 3,600 million pesos, seeking to generate a genuine and mutual trust.

In the year 2008, following the recommendations of the international panel, a committee of social agreement was created between El Cerrejón and the people who led El Tabaco community complaints. The committee erased the pending liabilities and reached an agreement where 160 people, approximately, obtained an indemnification to complement the money that INTERCOR had already paid for the properties before 2002. This agreement covered, also, 60 more people who were not represented by the agreement committee. Adding what both groups received, the indemnification was of 5,000 million pesos.

The agreement includes a sum for 3,000 million pesos to buy some land and to create a community center where El Tabaco shall be rebuilt. This project is under execution; there is a preliminary agreement for the purchase of more than 400 hectares of land near the town of Hatonuevo. It is expected that the local authorities, with help from the community of El Tabaco, will make feasible the reconstruction of their town, with some productive projects that permit the network to becoming self-sustainable.

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<sup>29</sup> The sentence says: "...The Mayor of Hatonuevo (Guajira), in a maximum of 48 hours (...) must initiate the formalities to crystallize effective solutions for building the community infrastructure and for developing a housing plan in favor of the members of El Tabaco community, (...) so that housing and education needs of the minors belonging to claimant families be met; also, it is ordered that, once the investment plan is approved, its execution be initiated immediately".

From the point of view of the communities, many of their members consider that what was done in La Guajira was a reorganization of the use of lands, and that the people were stripped of their ancestral territories in order to give them new settlement places, thus breaking their thousand-year-old traditions.

## **2. Armed actors and Dynamics of Conflict in the Department of El Cesar.**

2.1 The department of El Cesar is strategic for the different actors of the armed conflict because it is a connecting point for the different regions and departments. El Cesar permits the armed groups to have mobility between Magdalena, Bolívar and La Guajira; and it is the “bridge” between the west of the country and Norte de Santander and Venezuela. The department is divided into three zones for the effects of the study of the dynamics of confrontation<sup>30</sup>. For the effects of this document, the interest is the center zone conformed by El Paso, Becerril, Astrea, La Jagua de Ibirico and Chiriguana. In each of the above-named municipalities and zones, the parts that are at war are present: the ELN and the FARC-EP guerrillas, as well as the Autodefensas Unidas de Colombia, AUC (an illegal paramilitary group).

From 1998 to 2002, the crime rate in El Cesar increased as a result of the confrontation between the AUC and the guerrillas. The maximum rate was 90 homicides per each one hundred thousand inhabitants in 2002. This surpassed, widely, the national rate of 66<sup>31</sup>. Also, the number of massacres and victims of violence increased due to the violations of human rights.

Forced displacement<sup>32</sup> in the department of El Cesar increased significantly after the year 2002: it went from 2,821 people to 10,099, being this year the one when the highest number of mass displacement occurred. The Colombian Caribbean region (north of the country), has the highest proportion of abandoned land. The Colombian Atlantic Coast reports a concentration of lands of 78.86%<sup>33</sup>; Cesar and Córdoba have the highest percentages of concentration of where land has been stripped from the owners and of abandonment<sup>34</sup>.

## **2.2 Lawsuits against DRUMMOND**

In the case of the exploitation site administered by DRUMMOND, this company has been accused of having made an alliance with the North Block of Autodefensas Unidas de Colombia, AUC, the one that, as part of its activities, ordered the assassination of the SINTRAMINERGETICA leaders

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<sup>30</sup> Vice-presidency of the Republic – Presidential Program for Human Rights, *Department of El Cesar Diagnosis* [http://www.derechoshumanos.gov.co/observatorio\\_de\\_DDHH/departamentos/2007/cesar.pdf](http://www.derechoshumanos.gov.co/observatorio_de_DDHH/departamentos/2007/cesar.pdf)

<sup>31</sup> Source: Vice-presidency of the Republic – Presidential Program for Human Rights, Department of El Cesar Diagnosis. [http://www.derechoshumanos.gov.co/observatorio\\_de\\_DDHH/departamentos/2007/cesar.pdf](http://www.derechoshumanos.gov.co/observatorio_de_DDHH/departamentos/2007/cesar.pdf)

<sup>32</sup> This figures come from the Single Registration of Displaced Population (RUPD in Spanish) contained in the System of Information of Displaced Population, SIPOD of the Presidential Agency for the International Cooperation and Social Action. Date: June 30, 2009. [Online database] <http://www.accionsocial.gov.co/Estadisticas/publicacion%20junio%20de%202009.htm>

<sup>33</sup> A report prepared by the World Bank, in August, 2004, titled “Colombia: a policy of lands in transition” states: [the inequality in the possession of land in Colombia is high, compared to the international standards..... The use of cadastral data regarding properties permits to suggest that inequality is still high, because the cadastral valuation has a GINI coefficient of 0.85, in comparison with Korea with 0.35 or with Japan with 0.38. In order to overcome the negative impact of the high levels of inequality that may undermine the efforts made by the poor in order to get out of poverty, it is necessary to make institutional reforms so that they are more open, transparent and participatory in Colombian regions that show higher inequality with regards to the possession of land are the Atlantic Coast and Antioquia].

<sup>34</sup> Reyes Posada, Alejandro. *Warriors and Peasants: The Fleecing of Land in Colombia*. Editorial Norma. 2009. 1st edition.

Valmor Locarno Rodríguez and Víctor Hugo Orcasita Amaya, occurred in 2001<sup>35</sup>. The case of union leaders was taken to court before the American District Court of the District of the North of Alabama, USA, in March 2002. This court declared Drummond not guilty, and this decision was confirmed in 2008 by the Eleventh Federal Appeal Court of the District. The process was initiated by the victims and by the Workers Association of the Iron & Steel Industry of the United States and Canada (USW).

Later on, the assassination of and harassments to other union leaders such as Gustavo Soler Mora took place. He was assassinated by paramilitaries in October, 2001 when he became the Head of Sintraminergética (after the homicide of Locarno and Orcasita). At the end of August 2008, Jesús Escorcía and Pablo Flórez were assassinated. Escorcía was a defender of human rights who rendered legal services to some Drummond workers. Flórez, a Drummond employee, was a union leader affiliated to Sintramienergética, Ciénaga – Magdalena Branch.

The harassments and threats to union members have occurred in different occasions – especially during meetings and marches made by unions. The threats have been made by members of paramilitary groups as well as by the police, who openly express that their objective is to protect the interests of the company. In April 2009, the AUC paramilitary ex-commander Salvatore Mancuso, after having demobilized and after being extradited by the Colombian Government after request from the American judges for the crime of drug trafficking, declared in the U.S. that “Providing security to the Drummond Company in El Cesar was one of the priorities of the Block led by Jorge 40<sup>36</sup> and we needed union members to be aligned with such instructions”<sup>37</sup>.

### **2.3 The Human Rights Situation in La Guajira**

In the region where EL CERREJÓN is located, according to Social Action (a governmental entity), the situation is really bad if we take into account that 59,250 people were expelled. This is close to 10% of the population which is of about 735,974 people according to the DANE data of 2007. The forced displacement increased drastically between 2001 and 2002 when the number of displaced people in the department went from 2,663 to 8,538. After 2002, the forced migration has had an annual average of 7,200 people. The main municipalities where people are expelled from are the towns of Dibulla, Riohacha, San Juan del Cesar, Maicao, Villanueva, Fonseca, Barrancas, Uribia, Urumita and El Molino.

### **2.4 Company Position: Respect for Human Rights**

According to El Cerrejón’s policies, the company carries out its operations in a way that protects, respects and fosters the Human Rights of its employees, contractors, third parties involved, clients

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<sup>35</sup> To clarify the responsibility for these assassinations, the testimony of the ex-director of Informatics of DAS Rafael García has been important. In 2006 he declared that he witnessed a meeting between Augusto Jiménez, President of DRUMMOND in Colombia, and some commanders of the North Block of the AUC. In this meeting Jiménez gave US\$200.000 in cash to pay for the assassination of the two union members.

Recently, on August 7, 2009, when the guilty verdict for the homicides of these union members was reached, Criminal Court 11 of the Specialized Circuit of Bogotá gave 30 years of prison to the paramilitary JESUS CHARRIS CASTRO, as material co-author of aggravated homicide. In this same process, RODRIGO TOVAR PUPO, alias JORGE 40, commander of the North Block of the AUC was linked.

<sup>36</sup> Jorge 40 was the alias of RODRIGO TOVAR PUPO, a wealthy and prestigious citizen of Valledupar who formed the North Block of the AUC. He is responsible for the assassination of union leaders, students, community leaders and peasant leaders, and of human rights defenders in the Colombian Caribbean coast.

<sup>37</sup> <http://colombia.indymedia.org/news/2009/04/101316.php>

and the public in general. The company also requires the same commitment from its contractors who through all and each of their employees are the ones responsible for the promotion, respect and protection of Human Rights in each of the work areas where they execute works and/or services.

Part of the commitment made is the responsibility of guaranteeing the respect for human rights, in their place of work as well as in a wider scope of influence. The ethical imperative is the one that is necessary for protecting civic behavior. Besides, it is well known that the respect for Human Rights contributes to EL CERREJÓN competitiveness.

The Company expects compliance to all Human Rights standards (Voluntary Principles and World Pact of the United Nations<sup>38</sup> by the whole Organization. The tolerance for the violation or possible violation of laws and of human rights by an employee or a contractor is not permitted in EL CERREJÓN.

For EL CERREJÓN, violations of Human Rights are unacceptable. Employees, contractors or third parties are not allowed to reach objectives by not complying with this policy or the principles contemplated by the Voluntary Principles. The Company will make sure that employees comply with this policy pursuant to the dignity of people and their peaceful coexistence.

EL CERREJÓN has a policy, as part of its best practices and standards, of total transparency in its relationship with the Private Security Companies and with the Security Forces that are legally created by the State. The corporate behavior is carried out pursuant to the Voluntary Principles. EL CERREJÓN, therefore, constantly promotes Human Rights among the security officials (private or state) that work to keep EL CERREJÓN safe.

### **3. Labor Situation**

After the paramilitary attacks that ended up in selective assassinations and forced displacement of union leaders, the strengthening processes to reorganize the union organizations of the mining and energy sectors in Colombia is facing many difficulties. The ICEM<sup>39</sup>, a union entity that gathers chemical, mining and energy workers, has stated, in many reports, its rejection towards the modality developed by different coal mining multinational companies. Some of these labor modes are “the labor outsourcing”<sup>40</sup> and the “hiring by agencies”<sup>41</sup> which, in essence, are bad work

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<sup>38</sup> The U.N. World Pact is an initiative of ethical voluntary commitment so that companies around the world adopt, as an integral part of their strategy and their operations, the Ten Principles of Behavior and Action in matters related to Human Rights, Work, the Environment and the Fight against Corruption. The objective of the World Pact is to promote the creation of a global corporate citizenship that permits the conciliation of the interests and processes of the company activities, with the values and demands of the civil society, as well as with the projects of the U.N., international organizations, Unions, and NGOs.

<sup>39</sup> ICEM stands for International federation of Chemical, Energy and Mining Workers. To date it has 22 million members from organizations around the world. It has relationships with different international organizations like the International Labor Organization (OIT in Spanish), and with different governments around the world. In Colombia it installed “Sección país” in 1996.

<sup>40</sup> For the effects of the present document, labor outsourcing means that a company “subcontracts” a specific work from another employer. This new employee could be, eventually, the former employee who is going to perform the same activities as before but under the figure of “outsourcing”. The relevant characteristic of the hiring modality is that, most of the time, the work is for a fixed period of time. This permits the gradual “dumping” of workers.

relation models. This type of contracting becomes a commercial and civil relation in which the worker takes all the risks for his/her activity. In the case of coal extraction, this activity can cause incapacitating illnesses. One is caused by the permanent exposure to coal dust.

Currently, companies like El CERREJÓN in la Guajira and DRUMMOND in El Cesar are developing “multiple layer” models, in which the contractual relationships are so complex and diverse that it is difficult for the Union to take actions. The following and some modalities used by these companies: short-term workers with direct contract; part-time workers; workers outsourced by agencies; day laborers; informal workers or piece worker (hired for one job only); and in the worse cases there are contracting companies that carry out the requested job under the modality of outsourcing.

The ICEM, an international federation, has documented and denounced to the international community the fact that that the energy and mining sectors in the world where these contractual modalities are used more frequently are the carboniferous and the diamond sectors<sup>42</sup>. The Federation study analyzes the DRUMMOND and EL CERREJÓN cases, and point out that these types of relations happen more often with activities related to cleaning, storing, restaurant, transportation, safety, maintenance, repairing, loading and unloading, engineering and clerical jobs. This is due, according to the conclusions of the study, to the fact that other types of jobs that are related to the extraction activity require more expertise and knowledge of the activity. These types of workers have been, so far, covered by strict collective work agreements. However, once these workers retire and get a pension, the new hired people will work under these precarious contracting modalities.

Result from the ICEM study show that the number of outsourced workers is growing exponentially which is detrimental for permanent workers<sup>43</sup>. This growth goes together with a reduction of labor rights of these people who have been hired under this contractual modality. A study conducted by FITIM<sup>44</sup> shows that in Australia 1 out of 3 workers that are working with the iron and steel industry are not permanent workers; they receive 21% less wages that other workers who have different types of contracts and they lack certain benefits such as sick leave, or paid holidays. Unfortunately, the recent Colombian legislation has incorporated and developed the so-called labor flexibility which means that they have practices that ignore some rights.

In an open letter to the President of Colombia, German NGOs, worried for the violations of human rights and the environmental damage created by coal exploitation in Colombia - coal that is imported from Colombia in order to operate German thermo-electric plants - expressed their “concern for the high level of impunity in the cases of human rights violations. They regret, also, the poor labor conditions of coal workers and other existing deficiencies such as occupational

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41 For the effects of the present document, “hiring by agencies” means that the company that needs new workers, instead of hiring the workers directly, hires employees through an agency. The agency is the one that provides the necessary workers. With this, any type of labor relation is excluded.

<sup>42</sup> ICEM’s manual about labor contracting and contracting through agencies. ICEM publication – Colombia, April 2009. Luciano Torres Amaya editors. Page 17.

<sup>43</sup> To date the number of Cerrejón’s and Drummond’s permanent workers that belong to Unions is of approximately 7,000. The number of outsourced workers has increased 60% between 2006 to 2009.

<sup>44</sup> International Federation of Iron and Steel Industry Workers. The study point out, also, that in Canada 40% of working women lack the standard labor rights. In Japan, also, close to 30% of workers are atypical or outsourced; in Thailand, 80% women working in mines are outsourced.

health. Coal to be exported is exploited in Colombia – especially in La Guajira and El Cesar in huge open-pit mines who belong to transnational companies such as X- Strata, BHP Billiton, Anglo American, Glencore, and Drummond. As for the environmental licenses “the interests of mining companies (national or international) take precedence over the environment preservation and the welfare of rural communities”. We express our solidarity with the Campaign for the defense of Life, Nature, Territory and Culture that peasant and indigenous communities are carrying out in the Catatumbo region (Department of Norte de Santander), says the open letter<sup>45</sup>.

### **3.1 The fight for the defense of rights.**

Coal workers of the Departments of El Cesar and La Guajira have began resistance activities towards the multinational companies Drummond, Billinton BH, Glencore, Xtrata and Anglo-American in order to demand the respect for their association and contracting rights. The Sintraminergética, Sintraime, and Sintracarbón Unions – working in coordination with Funtraenergética and the deputy directors of the Central Unitaria de Trabajadores de Colombia CUT, of Cesar, La Guajira and Magdalena – have been carrying out tasks to organize the workers of employment exchange offices, contractor’s firms, outsourcing and services, who work for the multinational companies and the number of which is close to 10,000 people. Only 7,000 are protected by the different collective work agreements.

Temporary contract workers with the Carbogranales Company, which is in charge of loading the coal in the port of Santa Marta, organized a union. After a long strike, they were recognized as such and signed a collective work agreement. Also, close to 400 casino workers - mostly women - who provide food for the Drummond’s mine workers, went on strike for 15 days. They founded a Sinaltrainal branch, and obtained substantial improvement of their work conditions. They are currently negotiating the specifications. Other workers (drivers and maintenance workers), who work for the contracting company Sotrans and who transport the CERREJÓN consortium personnel, created a union and are in the process of presenting the list of specifications with the advice services and support of Sintracarbón.

The maintenance workers of Ferrocarriles del Norte de Colombia, Fenoco S.A. Railroad Company, which has the concession for the infrastructure that belongs to the state company Ferrovías (owned by Drummond and Glencore) created a branch of Sintraime, produced a list of specifications and began a strike when the term for the negotiation expired. Fenoco, however, did not listen to what the negotiating commission had to say. The strikers occupied the buildings for 17 days with support from the people of Fundación, Aracataca and Bosconia until, with approval from the Ministers of Social Protection and of the Interior, strikers were violently removed from the buildings. Six of the leaders were arrested, arbitrarily, and coal trains were reinstated. Because the Labor Court of Valledupar had declared the strike legal, the Ministers disregarded the Constitution and the labor laws.<sup>46</sup>

In the case of the national union of the coal industry workers “Sintracarbón” the situation is as follows: it has 5,000 direct workers. Of these, 3,300 are members of the Union. On the other hand, there are about 600 temporary workers with a fixed term contract who are in the process of affiliating. Additionally, there are close to 1,000 workers whose type of contract does not permit them to become union members. Also, there are approximately 5,000 contractors that carry out

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<sup>45</sup> Press release. *Open Letter to the President of Colombia. German citizens make a demand: Coal imported from Colombia must comply with the human rights standards.* Emden, Germany, July 6, 2009.

<sup>46</sup> Taken from the Rural Press Agency. /www.prensarural.org/

mechanical maintenance jobs, various jobs, cooking, transportation, surveillance, etc. The situation of these contract workers is critical because they must work between 12 and 14 hours daily and most of them earn minimum wage, only; this situation has been denounced by the union of SINTRACARBÓN to the Ministry of Social Protection and, as a result, there have been audits. Thanks to these complaints, some of these points have been included in the collective work agreement. This, however, is not enough. It is necessary to affiliate them to the union, so that they can have the right to vote and, therefore can protect their rights.

### 3.2 Occupational health

As per the workers reports, there is a serious health problem because cases of workers with a diminished work capacity are increasing. They have different illnesses caused by their labor activities in the mines. One is, for example, operating large and heavy machinery which creates vibrations that affect the organs of machinists. In order to represent these people, the DRUMMOND'S Association of Sick Workers (ASOTRED in Spanish) was founded. It has 300 members with different pathologies: disc hernias, cervical problems, discopathy of the spine, renal and lung problems, allergies, hearing problems, leukemia, cancer, cirrhosis of the liver, etc.

In the case of El Cerrejón, SINTRACARBON, the mine's union protested at the ARP (Workplace safety unit) of the Social Security office in the city of Riohacha, in order to complain against the state of poverty suffered by workers whose sick leave is longer than 180 days – which is the maximum term for which the worker is covered. After this, nobody pays the worker's salary, so this is one of the loopholes of the Colombian legislation.

EL CERREJÓN, owned by the multinational company BHP Billinton and others, is not the exception. Currently, there are approximately 793 sick workers whose situation is described by Sintracarbón as follows:

*“If we observe carefully, Osteo-muscular pathologies are the most common ones among the mine workers. This is due to the fact that they have to manipulate huge machinery. The open pit mining is classified as Risk 5, the maximum there is: however, when it comes to Pensions, it is not Risk 5 anymore – a curious thing of the Colombian legislation. For pensions they are considered “common risk”, because the only activity categorized as Risk 5 is tunnel mining. This work is very hard. There are many back problems among workers. One of the causes is an absurd procedure that they have implemented: the big rocks are not crushed before being thrown into the bulldozer, so as they fall into the truck, the strong vibration experienced by the drivers, who are inside the cabin, ends up affecting negatively their spine<sup>47</sup>”.*

#### 3.2.1 Company position

According to EL CERREJÓN Company, pursuant to the World Bank and the International Financial Corporation they comply with the indicators of quality of life and follow-up, which stipulate that after the resettlement, a community must have the same or better life conditions than the ones that it had before the resettlement. In 2009, EL CERREJÓN built, with the help of specialized social consultants, a methodology to be applied to resettlements. This methodology

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<sup>47</sup> Statement by union leader of SINTRACARBON, Mr. GABRIEL PINTO, He is a psychologist specialized in occupational health and is in charge of the Health Department of the Union. Interview carried out in Barranquilla on July 22, 2009, for the research consultant.

measures the quality of life and the sustainability of communities. It is based on the U.N. Index of Human Development and on the Method of Unsatisfied Basic Needs of the Economic Commission for Latin America and the Caribbean (CEPAL). The main indicators included have to do with topics such as income, education, health, housing, community organization, community participation, community autonomy, social integration, institutional actions in the affected communities, and trust in the institutions that participate in the resettlement process. The first data obtained with those indicators shall start in June, 2009.

With regards to the health issue, EL CERREJÓN explains that they do not render medical or dental services directly, but through specific agreements with the different entities and professionals of La Guajira. Many programs of great benefit for the community, in general, have been developed. They seek to maintain and consolidate satisfactory levels of health. With this objective, they make donations to hospitals and health clinics so that they can acquire medical equipment.

In the urban centers of far away zones where it is hard for a person to consult a doctor, EL CERREJÓN has organized health brigades with support from the hospitals of the towns of Barrancas, Albania, Fonseca. EL CERREJÓN provides a mobile medical unit with medical personnel, an assistant and a driver. They go to villages and “Rancherías” (indigenous settlements) and provide medical and dental services (diagnosis, clinical tests), and, if a problem is detected through the tests that requires medical attention, the patient is taken to a hospital where they may complement the attention. Thanks to this service, it has been possible to prevent the appearance of cervical cancer, which is one of the exams performed by the unit. This medical service is, mainly, for pregnant women, children and senior citizens that live in the communities located in the Company’s influence area.

Another contribution made by EL CERREJÓN is the training for the region’s doctors. There is an agreement with Universidad Javeriana of Bogotá, particularly with the School of Medicine and Continuing Education, addressed to solve the deficiencies in basic attention of the area hospitals and their medical teams. Since it would be difficult for all doctors to travel to Bogotá, the agreement contemplates trainings in the influence zone. EL CERREJÓN covers all the cost with the intention of providing a better medical service to the communities.

People that were benefitted directly by the provision of medicines through prescription drugs were more than 10,000 in 2006. There was, also, institutional support to hospitals and strengthening of the area of emergencies through the provision of supplies. Moreover, more than 2,000 packages with elements for the oral protection and health were distributed.

The Wayúu indigenous community receives primary medical attention at the health clinics of Cabo de la Vela, Albania and Cuestecitas, which have been funded by EL CERREJÓN. This program, created in 1984 in coordination with the Health Sectional Service of La Guajira and the School of Medicine of Universidad del Norte of Barranquilla, has a Medical and Dental Mobile Unit and other ambulances so that children and adults are attended to on their own “Rancherías”.

Regarding health matters, EL CERREJÓN has executed a Plan of Action that contemplates a Promotion and Prevention Program for the neighboring communities. This program seeks to favor low-income people – especially indigenous people – through health brigades and programs of medical assistance that provide medical, ophthalmological and dental attention, vaccines, and sometimes lab tests. They are also given medicines for their illnesses.

**Nuestra Señora del Pilar Hospital.** As for the infrastructure of hospitals in this area, EL

CERREJÓN has made investments to refurbish the second floor of the Barrancas Hospital, with an investment of \$4,163 million pesos made by the company. The Ministry of Social Protection, the Departmental Health Secretariat and the Municipal Health Secretariat participated as well.

### **3.4 Education**

One of the biggest worries of EL CERREJÓN, as company, is the low academic level of the communities adjacent to the mine. That is why, in the last three years, one of the Foundations financed by Cerrejón is carrying out the program called “Improvement Plan of the Educational Quality”, the objective of which is to raise the quality of education in the municipalities of El Cerrejón’s area of influence. The following are the Plan’s strategies:

- Updating and training of teachers
- Improvement of schools (infrastructure, supplies)
- Strengthening of educational institutions and support for the pedagogical experiences
- Promotion of science and technology in order to train youngsters as potentially qualified personnel.

This is one of the most ambitious programs of EL CERREJÓN, which has developed several fronts: one is with the Educational Institutions of the Department – particularly with the ones under the area of influence of EL CERREJÓN; and another one is a scholarship program for the young people of the above-mentioned areas. Students chosen must be the ones with the highest academic level and who lack the resources to pursue a university degree. EL CERREJÓN selects 10 of the best High School graduates of the Department of La Guajira, according to the ICFES tests (university admission test) and pays their studies at the University that they chose. The final commitment is for these youngsters to finish their university programs so that they can become the intellectual or the entrepreneurs of this department.

During the last three years, EL CERREJÓN has invested more than \$ 4 billion pesos for the following programs:

- Construction of a CREM (Center of Municipal Educational Resources) in the town of Fonseca with internet service, physics and chemistry labs, meeting rooms.
- Process of School Management of 12 educational institutions in the towns of Fonseca and Distracción.
- Improvement plans of 5 educational institutions in Albania, Barrancas (Papayal) and Hatonuevo.
- Programa Escuela Nueva (New School Program): Project for the strengthening and updating of educational institutions, and teacher trainings.
- Widening of the infrastructure of the ethnic-educational program Kamusuchiwo'u.
- Widening of the Albania School infrastructure.
- Program to prepare high school senior students for the ICFES test.
- Support for pedagogical events and for educational exchange at the departmental and national level; support for research in science and technology and regional educational forums.

Other programs: There is currently a program for Labor Competencies and Articulation of High School education that seeks to provide technical and productive sector trainings so that youngsters develop work skills and have more opportunities in the productive sector.

**KAMUSUCHIWO’U Rural Educational Center:** This educational program has more than 1,500 students divided into 30 classrooms. The main school, the Media Luna pilot school - Kamüsüchiwou-, located in Puerto Bolívar, was created in 1984 as a pioneer school of bilingual intercultural education, Wayunnaiki - Spanish, where 450 indigenous children study primary education with an academic program that makes emphasis on the Wayúu language, culture and values. Currently, the Media Luna School has up sixth and seventh grades but is in the process of opening high school grades.

This project has permitted the preservation of the Wayúu indigenous culture. They used to transmit orally, from generation to generation, their traditions, myths, legends, experiences and beliefs. Currently, the transmission of knowledge is done not only orally but in a written way, which permits to leave a cultural legacy that will remain tangible in the future. In October 2006, the widening of the Ethnic Educational Center Kamüsüchiwo’u was inaugurated. It had a contribution from EL CERREJÓN for the amount of \$280 million pesos. In 2006, The British-Colombian Chambers in London and Bogotá awarded EL CERREJÓN the "The British & Colombian Business and Social Awards, BSA". This distinction belonged to the category “Outstanding Achievements in the Development of Social Programs in Colombia”, and was awarded as recognition for the work carried out in the Ethnic Educational program – especially the Ethnic Educational Center Kamüsüchiwo’u.

#### **4. Problems suffered by the Wayúu community<sup>48</sup>:**

Despite all the plans described previously in different forums and through different communication media, the leaders of the Wayúu people are still complaining for the different problems, which in sum are:<sup>49</sup>:

- a) They have a serious environmental problem due to the coal exploitation such as the emission of particles in the air. People that live close to the mine are constantly exposed to different contaminants, including the mineral residual dust that floats in the air and that causes irreparable damage to their health;
- b) The Wayúu suffer the effects caused by coal mines. Headaches, respiratory infections, asthma, diarrhea, parasites and poor nutrition are the main health problems of the reservation people;
- c) The military presence goes against the original socio-cultural characteristics of the Wayúu people. They could be seen, wrongly, as a community of warriors. This is a mistake because this indigenous people use their ancestral knowledge for orientating their actions. They use traditional methods as the word, through which they try to solve their internal problems;
- d) The intensifying of the mining exploitation activities in this area has had a negative impact on the communications of the indigenous people and Afro-Colombian communities because the roads

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<sup>48</sup> Fundación Hemera, *The battle of the Wayúu that have to face the war and the transnational companies: For La Guajira, the transnationals and the megaprojects, the Wayúu people don't count*. [Online] Available at: <http://www.gloobal.net/iepala/gloobal/fichas/ficha.php?id=5254&entidad=Noticias&cabecera=medioambiente> Date consulted online: August 3, 2009.

<sup>49</sup> Fundación Hemera, *The battle of the Wayúu that have to face the war and the transnational companies: For La Guajira, the transnationals and the megaprojects, the Wayúu people don't count*. [Online] Available at: <http://www.gloobal.net/iepala/gloobal/fichas/ficha.php?id=5254&entidad=Noticias&cabecera=medioambiente> Date consulted online: August 3, 2009.

that they used to travel have been interrupted permanently, thus eliminating the possibility that they used to have to trade their products in other towns.

e) The development brought by the transnational companies and their megaprojects alters the cultural foundations of the Wayúu and of the Afro-Colombian communities that settled in La Guajira. Several ancestral traditions of these communities that live in the mining complex influence zone have disappeared slowly because it is impossible to practice them. This is due to the sudden changes that the coal exploitation generates in the environment. Activities such as hunting and fishing have diminished because there is no access to the places where these activities were practiced before, or because the wild species have disappeared;

f) Also, the cultural or the economic meetings (for the exchange of products) have stopped due to the closing of roads, the privatization of large portions of land, the disappearance of entire communities and the displacement of some population groups;

g) The Wayúu have been systematically alienated from their traditional territories, which has affected, directly, their conception of the world and their relationship with nature; therefore, their concepts and their uses for the land have been challenged;

h) Communities and families have been displaced, their land has been expropriated and in some cases they have been killed by the illegal armed groups as happened to the Bahía Portete inhabitants. They were massacred, disappeared and displaced from their territory.

As for the way in which violation of rights to the land and to the territory, Sintracarbón has complained about the fact that the Wayúu are affected from the very moment that the company offers to buy their pieces of property, because this has led to the isolation of communities from one of their main sources of sustenance, such as the rivers<sup>50</sup>.

## Conclusions

- Coal mining in Colombia has become very important in the last decades due to the recent exploitation of this resource with the method of open-pit mining. This coal is exported mainly to The Netherlands and to the U.S.
- There are numerous environmental impacts such as noise, water, air and landscape pollution among others that have not been properly quantified or correlated to the price of coal. One of the tasks that results from a study such as this one is, precisely, the need for finding mechanisms that quantify the cost of renewable and non renewable resources that are used in coal production.
- Another factor that is a result of the study is the need for monitoring the final destination of resources that municipalities receive as royalties for the resources. It is a paradox that while these towns have the highest income, the quality of life there leaves a lot to be desired.
- A worrisome aspect are the doubts generated by the different lawsuits and the confessions of paramilitary chiefs about the behavior of companies in their alleged relationship with the

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<sup>50</sup> Sintracarbon, *Impact of mining expansion by El Cerrejón on the communities adjacent to the complex*. November 7, 2006, [Online] Available at: <http://www.minesandcommunities.org/article.php?a=6564> Date: August 3, 2009.

armed actors - as well as the impact that all this has had on Union directors whose deaths are still occurring.

- The situation of the indigenous people and, in general, of all the peasant communities living in towns affected by new coal exploration and exploitation is worrisome since the cultural impact suffered by them is enormous. People from the Wayúu ethnic group say that La Guajira is now “a mine with just a few inhabitants”. This shows their anguish. This situation contrasts with the rights in the Colombian legislation for indigenous people and with the international agreements to protect these communities.

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*This is a true and accurate translation of the document I have seen.*

*Bogota, D. C, November 26th , 2009*

*Consuelo Suárez*

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