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**Evaluation of the Dutch foreign policy with  
respect to Latin America**

**Thematic study Sustainable Development**

**Case Study: Coal production in Colombia**

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## Abbreviations and Acronyms:

ANLA	National Agency of Environmental Licenses
ANM	National Mining Agency
BuZa	Ministerie van Buitenlandse Zaken (Ministry of Foreign Affairs)
CEO	Chief Executor Officers
CETEC	Colombian NGO
CME	Comité Minero Energético or Mining & Energy Committee on Human Rights and Security
CNV	Christelijk National Vakverbond
CSR	Corporate Social Responsibility
DCD	Dutch Coal Dialogue
EC	European Commission
EIA	U.S. Energy Information Administration
EITI	Extractive Industries Transparency Initiative
EL&I	Ministerie van Economische Zaken, Landbouw en Innovatie (Ministry of Economic Affairs, Agriculture and Innovation)
EU	European Union
FIB	Fundacion Ideas para la Paz
FNV	Federatie Nederlandse Vakbeweging (Dutch Federation Union)
FTA	Free Trade Agreement
GoC	Government of Colombia
GSP	Generalized System of Preferences
IDH	Initiatief Duurzame Handel (The Sustainable Trade Initiative)
IEA	International Energy Agency
IFC	International Finance Cooperation
FPIC	Free Prior Informed Consult
ILO	International Labor Organization
LAC	Latin American and Caribbean
MEDS	Ministry of Environment and Sustainable Development
M&E	Mines and Energy
Mt	Million tons
MVO	Maatschappelijk Verantwoord Ondernemen
NCP	National Contact Point
NTCs	Non-trade concerns
OECD	Organisation for Economic Co-operation and Development
OESO	Organisation voor Economische Samenwerking en Ontwikkeling
RNE	Royal Netherlands Embassy
SER	Sociaal-Economische Raad (Social Economic Council)
SOMO	Centre for Research on Multinational Corporations
SRSG	Special Representative of the Secretary-General
SWAp	Sector Wide Approach to Policy
UN	United Nations
VNO-NCW	Confederation of Netherlands Industry and Employers
VPI	Voluntary Principles Initiative on security and Human Rights

## List of people interviewed

### In the Netherlands

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Fulco van Deventer	Cordaid and Dutch Coal Dialogue
Martin Christie	Better Coal Initiative
Pierre Huppert	Dutch Coal Dialogue
Joseph Wilde-Ramsing	SOMO

### In Colombia

María Constanza García	Director National Mining Agency (ANM)
Omar Franco	Ecosystems director MESD
Mauricio Olivera	Viceminister Ministry of Labor
Joel Brounen	Senior Officer Economic Affairs - Embassy of the Netherlands
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Carlos Franco Echavarría	Manager - Social Standards Department and International Affairs Cerrejón
Abraham Korman	Mining expert
José Rafael Unda	President - Mining and Energy Committee (CME)
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## Executive Summary

The Netherlands is an important coal hub for the EU. In 2010, coal imports in the Netherlands were about 50 Mt, which represents about 25% of all the coal traded in the Atlantic market. Dutch power plants only use a fraction of this coal (approximately 9 Mt, or 18% of all coal entering the Netherlands), while the remaining (41 Mt, 82%) is re-exported to other European countries such as Germany and France. In 2009, in total 33.2% of Dutch coal imports originated from Colombia and in 2010 42.1%. Recent data suggest that coal consumed (not only imported) in the Netherlands originates by around 50% from mines in Colombia. The majority of the consumption (70-80%) originated from Cerrejón and Drummond companies (slightly larger proportion from Cerrejón).

Coal production is very important for Colombia and has increased from 59.7 Mt in 2005 to 85.8 Mt in year 2011, with an expected 93 MT for 2012. Whereas most of the world's 50 coal-producing countries use coal for domestic energy production, Colombia is relatively unique as it exports over 90% of its coal. The USA and Europe are the most important buyers of Colombian coal. Coal has been Colombia's second-largest export product since 2001. The three largest mine companies are the Cerrejón open pit mines (37 Mt in 2011), Drummond (25 Mt) and Glencore / Prodeco (14 Mt), together accounting for 90% of Colombia coal production.

Demand for coal from Colombia is expected to increase over the coming 20 years. All scenarios show that with an internationally growing energy demand, coal continues to play an important role in the global energy mix up to 2035. Although the exact share of coal in the energy supply varies according to the policy frameworks in place, coal demand is expected to increase over the coming decades even if all the commitments contained in the Copenhagen Accord are fully delivered. However, recent developments show a declining price of coal, due to the sharply increasing use of shale-gas in the USA, one of the major markets for coal fired power plants.

Coal mining has social and environmental impacts, with coal mines often failing to meet international standards for the protection of workers, communities and the environment. Coal production commonly disrupts ecosystems and contaminates water supplies. It emits other greenhouse gases like nitrogen oxide and methane, as well as black carbon and toxic chemicals like mercury and arsenic. Leaking waste ruins fish stocks and agriculture, and therefore also livelihoods. Coal production directly contributes to health problems like black lung disease. Land occupied for coal production often disrespects the rights of local communities and communities are commonly displaced.

The issue came on the Dutch political agenda in the summer of 2010 after impacts related to coal mining in Colombia and South Africa were portrayed and linked to the Netherlands in a documentary by the television programme *Netwerk*. As a response, in July 2010 the Dutch Coal Dialogue (DCD) was launched at the initiative of the private sector (EnergieNed, 2010). This was the start of a process that should lead to increased transparency and sustainability in the coal sector. The subject has a high political and public priority, given the fact that in the evaluation period four times questions were asked about the progress of the Dutch Coal Dialogue, and the need to ensure that the production of coal imported in the Netherlands does not contribute to violation of human rights.

There is increasing attention in Dutch policies for the need to assure sustainability and transparency in value chains. This policy objective is highlighted in the Dutch biodiversity policy, raw materials policy and CSR policy. It has so far been mainly operationalised in the forestry and agricultural sectors. For the mining and energy sectors concrete targets, initiatives and experiences on enhancing sustainability in the value chain do not exist. For these sectors, in Dutch policy reference is made to international frameworks, especially the OECD Guidelines for Multinational Enterprises and the Extractive Industries Transparency Initiative (EITI). The OECD Guidelines for Multinational Enterprises encourage companies to publicly disclose information about their relationships with suppliers and potential adverse impacts caused by those suppliers.

There is no Dutch policy on coal from Colombia. The Dutch policy developments show that the government has been dealing with the subject of sustainability of the extraction of imported coal since 2008. In 2010 it appeared that the Government was quite strongly advocating transparency of coal imports as a first step towards increased sustainability. In 2010 the Dutch Coal Dialogue started. After that several Parliamentary debates on this subject took place. The position of the Dutch government seems to have shifted from proactive to a position that can be better characterised as one of wait-and-see. In response to questions in Parliament, the tone changed towards one of explaining the lack of transparency with arguments of confidentiality, sector self-regulation and the time needed for internal dialogue. We did not find evidence of the government taking concrete policy measures. The DCD did not receive government funding.

The DCD has now entered in its second phase. According to NGOs progress has been too slow. After two years of being operational has a start been made of disclosing information about origin of coal. In Colombia the DCD is also perceived as a slow initiative. Nevertheless, the RNE and the CME are optimistic about its usefulness to develop a more comprehensive CSR management system in the sector. At European level the Better Coal initiative has benefitted from the DCD and has now made available a first draft of a standard for sustainable coal.

The RNE in Bogotá has been pro-active in taking initiatives relevant to this case study, especially by raising awareness on CSR within the government and among private companies, bringing together multiple stakeholders. The RNE has been instrumental in the adoption by the GoC to adopt the Voluntary Principles as a set of principles for CSR. The initiative has focussed on the mining and energy sectors since these are the ones where human rights violations have been most frequently reported. In doing so, the RNE has followed a collaborative approach between public institutions, private companies and NGOs. The RNE has been acknowledged as a “*third party guarantor*” that facilitates cooperation, dialogue and agreement between the parties. The RNE has also contributed to capacity building within the ministry of environment, which has contributed to improved legal enforcement. The RNE has responded adequately in 2010 to the sudden Dutch public attention to coal mining in Colombia and the DCD. These events were not approved in Colombia because it diverted from the cautious and collaborative approach that had been taken so far. There has been good communication between the RNE in Colombia and the DCD.

The Colombian government has in recent years made progress in terms of compliance with international guidelines on CSR and human rights. Notably, it complies with the Voluntary Principles Initiative since 2009 through the Mining & Energy Committee on Human Rights and Security (CME) and the OECD Guidelines for multinational enterprises since 2012 through the Ministry of Trade as National Contact Point (NCP). The NCP can receive and handle complaints related to alleged abuses of the OECD Guidelines by multinational companies operating in Colombia and by Colombian companies operating abroad. CSR is now being considered by the Government as an emergent policy priority needed to modernize the sector. The National Mining Agency (ANM) reckons there is an opportunity to engage with the major coal companies to promote CSR and best practices with a demonstration effect across all production scales. If the new Code is not passed, the 2001 version (Law 685) will prevail, posing environmental and social threats derived from its shortcomings. In the mining sector infrastructure, institutional capacity, political stability, labor issues, environmental governance and security are still weak. Colombia has ranked in the bottom half of the policy index for the mining sector, with a decrease in the 2011/2012 period to position 64/93 (Fraser Institute, 2012)

There is an important contribution made by the RNE to progress in the area of CSR, with contribution to the mining sector. It appears the RNE adopted a collaborative approach which may be relatively slow but is consistent and aimed at building up trust. Yet, there is still a way to go. For instance, the NCP is still being established and coordination with other relevant national agencies is weak; Mines & Energy and Environment sectors are not involved in the OECD guidelines implementation.

Efforts that enhance sustainability in coal production can have a positive *spill over* effect over other mining activities. This includes ecological zoning, CSR good practices and management. Although coal is the focus of attention, positive results may be expanded in a relatively easy way to other mining activities.

The Colombian government also approves of the budget support which has benefitted the Ministry of environment in recent years. This has been important in building capacities for environmental protection and has certainly contributed to enhance law enforcement in the mining sector.

With respect to coal companies in Colombia, there has been some progress in terms of application of CSR and sustainability in the mining and specifically coal production sector. Cerrejon is currently the most advanced. It appears to comply with major international standards, such as the OECD standard and the IFC resettlement standard, although it seems that some improvements can still be made. It can be considered as a benchmark in Colombia. So far Cerrejón is the only coal producing private company that participates in the CME (Mining & Energy Committee on Human Rights and Security). Other Colombian coal companies are lagging behind. In terms of labour conflicts only Cerrejón has been exempt of strikes since 1990. It appears that legal cases and allegations against Drummond based on its past involvement in paramilitary actions have not yet been solved in a satisfactory way. Both Drummond and Prodeco have had recurrent strikes during the past decade and annually in the last five years, evidencing better labor standards and working conditions with Cerrejón.

The above progress can be partly attributed to Dutch initiatives, both by the RNE and by Colombian NGOs that have partnerships with, and receive funds from, Dutch NGOs working in this sector. Colombian NGOs have been very active in the mining sector in recent years. The Dutch Coal Dialogue has not significantly contributed to this progress as its activities have only recently come to a stage of discussing pilots in coal production countries. Colombian companies only recently been involved in the DCD.

In terms of trade outcomes, there is no sustainability standard for coal so there are no data with respect to coal production meeting sustainability standards. Dutch power companies do not provide sufficiently detailed about the origin of their coal imports, nor information about sustainability standards in the supply chain. However, it appears that by now Cerrejon through its CSR and sustainability policies would be expected to meet most sustainability criteria, in contrast to Drummond.

If they are properly designed and thoroughly carried out, the pilot audits that are to be conducted on sustainable coal mining as a result of the Dutch Coal Dialogue have the potential to contribute to the sustainability pathway. This has been further strengthened by the new national policy context which is more prone to responsible mining. Work so far promoted with major companies such as Cerrejón appears to be a proper and effective way to enhance sustainability considering their dominant share of the market and their apparent compliance with international standards. However, the DCD pilots have not yet started.

The contribution by the RNE in Bogota to the positive trends on CSR can be related to a consistent approach of building trust, diplomacy convening multi-stakeholder platforms. It is characterised at the collaborative approach. This has increased awareness on CSR and contributed to strengthening of environmental protection institutions in Colombia. There has been good communication between the RNE in Colombia and the DCD, and the RNE has taken a proactive approach, for instance in motivating Colombian companies to be involved in the pilot audits. Colombian government and coal producing companies see the Netherlands as an important coal importer and consider Dutch policies as relevant for the design and implementation of sustainability standards. Other countries such as Germany and Switzerland increasingly also give critical signals about the sustainability of coal mining.

Secondly, there is an influence of Dutch NGOs, through their partnerships with Colombian NGOs. They have been instrumental in keeping the subject of coal and its sustainability on the political and public agenda, both in the Netherlands and in Colombia.

The sudden public attention in the Netherlands on coal from Colombia in 2010 altered the pace of the agenda between the RNE, coal companies and the GoC. It negatively affected the image of companies and nurtured radical positions delaying the participation of local civil society organizations in the CME. A lesson from this event is the convenience of promoting responsible mining in a highly sensible context such as the Colombian through a collaborative approach focused on open participatory scenarios for conflict resolution between stakeholders as well as the promotion of sound practices, rather than using mechanisms that undermine confidence between the parties.

The DCD is perceived in Colombia as being slow. Indeed, there are actually no tangible outputs yet. Dutch power companies have not played a proactive role; they still do not fully meet transparency principles. Neither has the Dutch government played a proactive role. The role of the Dutch government has shifted towards one that can be characterised as 'wait-and-see'.

Overall, there is a contrast between the rather passive role taken by the Dutch government ('wait-and-see', self-regulation and observer role) and the more proactive role taken by the RNE (convening, facilitating, stimulating and promoting). Options for the Dutch government are:

- Stimulate the implementation of the OECD Guidelines for Multinational Enterprises and that Dutch companies and other multinationals active in the Netherlands are operating in line with these guidelines.
- Develop and implement legislation that requires electricity companies to disclose information about their supply chain, including disclosing and reporting regularly on their suppliers and the origin of their raw materials.
- Stimulate companies to identify, prevent, and mitigate potential adverse impacts caused by suppliers and that companies be transparent about their management processes.

Within the Netherlands there is a lack of coherence between on the one hand CSR policies putting an emphasis on sustainability and transparency in the value chain as well as commitment to comply with international standards such as the OECD Guidelines for multinational enterprises, and on the other hand the closed character of the energy sector and the high priority given to expansion of coal-fired power plants in order to meet future energy needs disregarding origin of the coal imports. The OECD Guidelines and the UN Guiding Principles on Business and Human Rights (both officially endorsed in the Dutch Government's CSR policies) both refer to (i.e. 'apply' to) all business partners/relations of Dutch companies, including companies that supply materials for import and consumption in NL. This raises questions about the position taken by the Dutch government on the subject of transparency of coal imports from Colombia, justified by arguments on confidentiality, self-regulation and business-competitiveness.

The Netherlands has not raised the subject of coal and human rights violations in the negotiations for the FTA between the EU and Colombia. Yet, if so much priority is given to human rights, then the priority sector for the Netherlands should be mining (coal). Likewise, at EU level it is somewhat surprising that the subject of human rights violations in the mining sector is not specifically mentioned in the FTA between Colombia and the EU. Why are forestry and fisheries mentioned, but not mining, while 67% of the exports (2011, in terms of value) from Colombia to the EU are mining and fuel products? This also suggests a lack of coherence within the EU.

Given the fact that most of Dutch power companies are multinationals active in multiple European countries and the fact that the Netherlands is a coal hub for north-western Europe, the EU could take the initiative to promote transparency in the coal supply chain. The EU could ensure that legislation, such as currently being drafted by the Directorate General for Internal Markets on non-financial disclosure, includes requirements related to supply chain transparency.



Engagement on voluntary CSR international initiatives generates a virtuous triangle of cooperation and improved performance between governments, civil society and private companies.

International governments play a key role as *third party guarantors*, of special relevance in the midst of conflict. The role of the RNE could remain important in coming years, to advance the best practices in the mining sector and support the government in creating an enabling policy context.

Supply and demand side approaches are required to ensure progress towards sustainability. Supply effective measures in Colombia can be stimulated by the Dutch Government with recognition of best practices through standards for disclosure of information to the final consumer and incentives to companies that invest on sustainability. This also implies treating all suppliers on a common basis and avoiding asymmetric information.

There would be an opportunity of developing the main coal hub in Rotterdam as the first location where coal produced in a sustainable way is delivered. This would be also form an important stimulant for Colombian coal companies to respect social and environmental sustainability regulations.

# 1 Introduction

## 1.1 Background

Almost half of the world's primary energy demand over the past ten years was provided by coal. Power generation is a key driver of the growing coal demand, followed by industry and transformation processes such as blast furnaces and coke ovens. Coal-fired power plants generate 41% of the world's electricity. The International Energy Agency (IEA) estimates that global electricity demand could double between 2009 and 2035, with an increasing number of the world population receiving basic access to electricity and growing household energy consumption especially in the developing world (World Coal Association, 2012).

In the Netherlands, in 2011 about 10% of the total primary energy production is generated by coal-fired power plants. The largest proportion of coal imported in the Netherlands originates from Colombia (around 50% in 2010) and is expected to further increase. In 2010, critical publications were released about the sustainability of coal production in Colombia. This resulted in questions in the Dutch Parliament, and eventually the set-up of a multi-stakeholder dialogue, bringing together key actors to discuss sustainability principles related to coal mining. In Colombia the Dutch Embassy was also strongly engaged in this initiative, by stimulating CSR related activities in the mining sector and by coordinating discussions between government and coal companies and other actors in the sector.

## 1.2 Definitions

This report focuses on what is known as 'thermal coal' – hard, bituminous coal that is the primary type of coal used for steam-based electric power generation. Thermal coal is often also referred to as 'steam coal'. On the other hand, 'coking coal' – also known as 'metallurgical coal' – is the type of coal that is suitable for use in blast furnaces and is primarily used in steel factories such as the Corus plant in IJmuiden, the Netherlands. Thermal coal and coking coal are both forms of 'hard' coal, which can be distinguished from other types of 'low rank' coal such as lignite and sub-bituminous coal. In this report, the general term 'coal' used in this report refers to thermal coal used in coal-fired power plants.

In addition to the different types of coal, coal from different sources (i.e. each coal mine) has different physical-chemical characteristics that make it unique and that make it suitable or unsuitable for use in electric power generation. The most important characteristics examined by traders and users of coal are the energy value, the sulphur content, the CO<sub>2</sub> content, the moisture content and the quantity of ash. In general, hard coal has a higher energy value and lower moisture content than low rank coal (SOMO, 2012).

## 1.3 This case study

In 2012, the Inspection and Evaluation Department of the Dutch Ministry of Foreign Affairs (BuZa) started a policy evaluation of the effects of Dutch policy in Latin America between 2004 and 2011. This evaluation contains policy studies on economic co-operation, sustainable development, economic diplomacy, and human rights. The present case study is part of the policy evaluation on sustainable development. The work included a desk study of available literature and interviews with people that have been working on the case of sustainability of coal production, both in Colombia and in the Netherlands. The study was carried out in collaboration with a local consultant in Colombia. It must be said that it has been difficult to acquire the necessary information in the Netherlands, especially within government agencies. Ultimately, we believe that sufficient information has been acquired to be able to draw relevant conclusions based on reliable evidence.

Below, the main research questions of the present case study are listed:

- What are the Dutch policy intentions and objectives relevant to imports of coal from Colombia? Which outputs have been promised?
- How have the policy intentions with respect to the use of coal been implemented, in terms of activities, collaboration, strategies and funding mechanisms?
- What have been the results of Dutch (policy and other) influences on the conditions for the increased sustainability of coal production in Colombia?
- What has been the effectiveness of these influences on coal imports from Colombia and its sustainability?

The case studies generally follow a similar evaluation framework (see annex 1). Interpreting this framework, the following are the main specific themes and related interventions and results for this case study.

*A: Enabling Politics and Policies:*

1. Strengthening of institutions and government policies in Colombia to enable and enhance CSR and sustainable production of coal;
2. Strengthening of private sector in CSR and sustainable production of coal, both in Colombia (coal companies) and the Netherlands (power companies);

*B: Sustainable Production and Trade:*

3. Production and trade of coal that meet sustainability standards;
4. Reduced incidence of unsustainable or illegal production of coal.

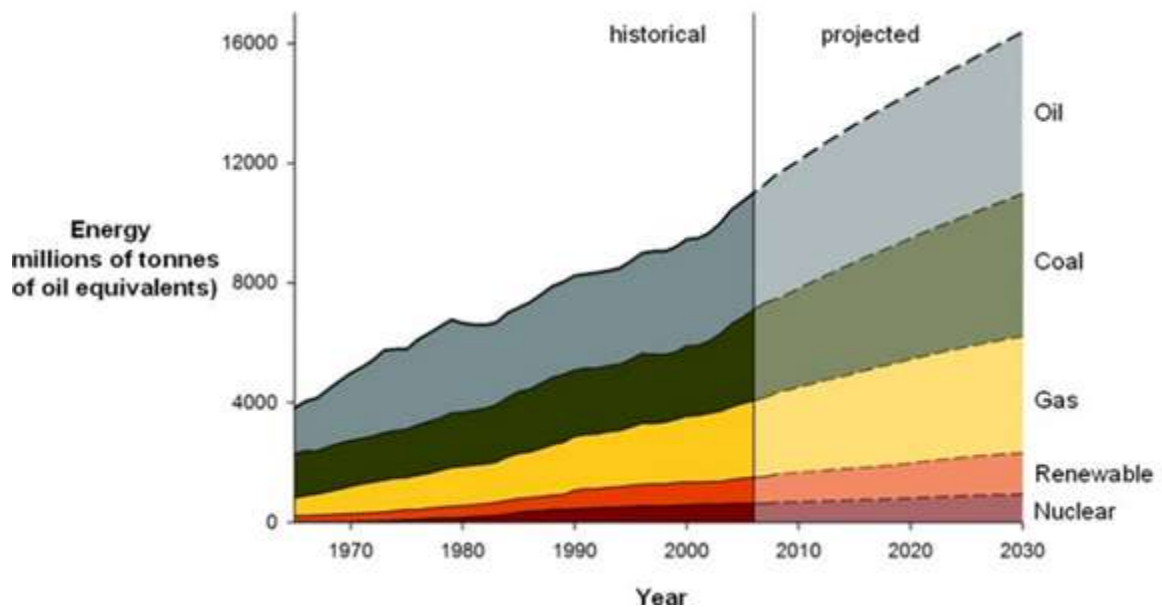
## 2 Status trade relations

### 2.1 Coal demand and consumption

#### *Global demand for coal*

In 2007, coal represented 25.1% of total energy use in the world and coal-fired power plants generated 41% of the world's electricity. This is more than any other fuel. Coal is also a vital resource for industry and is needed to produce 68% of the world's steel (World Coal Association, 2012). Figure 1 gives an overview of the increase in demand for primary energy from 2000 up to 2010, and projections for up to 2030. It shows that coal is the world's second largest source of energy, providing more than one quarter of the world's energy and has been the fastest growing energy source for the last five years. Demand is expected to increase substantially over the coming 20 years. All scenarios show that with an internationally growing energy demand, coal continues to play an important role in the global energy mix up to 2035. Although the exact share of coal in the energy supply varies according to the policy frameworks in place, coal demand is expected to increase over the coming decades even if all the commitments contained in the Copenhagen Accord<sup>1</sup> are fully delivered (World Coal Association, 2012). However, recent developments show a declining price of coal, due to the sharply increasing use of shale-gas in the USA, one of the major markets for coal fired power plants.

**Figure 1: Incremental world primary energy demand by fuel type, 2000-2030 (Mtoe)**



Source: Sigma Xi, the Scientific Research Society: <http://energy.sigmaxi.org/?p=551>

#### *Coal consumption in the Netherlands*

Within the Atlantic market, the Netherlands is an important hub and plays a key role in supplying the rest of Europe with coal. In fact, together with the port of Antwerp, the combined trading at the ports of Rotterdam and Amsterdam is seen as indicative for the entire European market. Import data from the ports of Amsterdam and Rotterdam reveal that approximately 36.4 Mt of coal was imported into these two ports in 2010 (13.2 Mt in Amsterdam and 23.2 Mt in Rotterdam) (SOMO, 2012). In addition, smaller ports of entry include Vlissingen in Zeeland and Willemshaven in Friesland. Energie-Nederland, an industry group representing energy companies active on the Dutch market, indicates that a total of 50 Mt of coal entered the Netherlands through all ports in

<sup>1</sup> The Copenhagen Accord is the closing document of the Climate Change Conference of 2009, fifteenth session of the UNFCCC. Major commitments address the conjoint combat of climate change, including the development of adaptation programs, reduction of CO<sub>2</sub> emissions and the reduction of deforestation and forest degradation. See: [http://unfccc.int/meetings/copenhagen\\_dec\\_2009/items/5262.php](http://unfccc.int/meetings/copenhagen_dec_2009/items/5262.php).

2010. Based on these figures, coal flowing through the Netherlands represents approximately 25% of all the coal traded in the Atlantic market in 2010 (SOMO, 2012).

Dutch power plants only use a fraction of this coal (approximately 9 Mt, or 18% of all coal entering the Netherlands), while the remaining (41 Mt, 82%) is re-exported to other European countries such as Germany and France (SOMO, 2012). In the Netherlands, 10% of the total primary energy production is currently generated by six coal-fired power plants. The composition of the six coal fired power plants in the Netherlands is as follows: E.ON, EPZ (owned by Delta and RWE/Essent), GDF Suez/Electrabel, RWE/Essent, Vattenfall/Nuon and DONG Energy (does not have electricity generation capacity in the Netherlands, but does have coal-fired plants in Denmark). With the six coal fired power plants, the Netherlands has a total installed capacity of more than 4,100MW (SOMO, 2012). With several companies planning to build new coal-fired power stations, the capacity for coal-based electricity generation in the Netherlands will more than double.

#### *Origin of Dutch coal imports*

The origin of Dutch coal imports has been subject of much debate because of the lack of transparency on the subject.

Between 2002 and 2006, an average of 85% of coal imported (and consumed) in the Netherlands originated from three countries: Colombia, South Africa and Indonesia (EnergieNed, 2012). Future scenarios for Indonesia predict an increasing focus of Indonesian coal exports to China and other Asian countries, which entails a decrease of coal exports to Europe. Coal imports from Colombia and South Africa to Europe are therefore deemed to increase.

The SOMO report indicates quite accurately (based on port import data) that in 2009 33.2% of Dutch coal imports originated from Colombia and in 2010 42.1% (SOMO, 2012). Remaining coal imports (in 2010) are from Australia (13%), USA (10%), South Africa (10%) and Russia (10%). In 2010 there were no more coal imports from Indonesia. The majority of the coal from Colombia is generated by two mining companies: Cerrejón (a joint venture between BHP Billiton, Xtrata en Anglo American) and Drummond.

Recent disclosure of import data by the electricity companies in the Netherlands are difficult to interpret as they provide aggregated data. However, the data suggest that coal consumed (not only imported) in the Netherlands by the energy companies E.ON, Essent, GDF Suez en EPZ originated by 48.7% (2010) and 50.0% (2011) from mines in Colombia.<sup>2</sup> The Nuon-based document on the origin of coal imports suggests that in 2010 about 47% of overall coal consumption in the Netherlands originated from Colombia.<sup>3</sup> The majority of the consumption (70-80%) originated from the Cerrejón and Drummond companies, with a slightly larger proportion from Cerrejón.

## **2.2 Coal production in Colombia**

Colombia is well-endowed with minerals and energy resources. It has the largest coal reserves in Latin America with approximately 6,288 million tons (Mt) or 90% of the regional reserves (Fedesarrollo, 2011). Colombia's coal output has increased consistently from 4 million tons (Mt) in 1981 to 65.6 Mt in 2006, when it contributed 1.4% of the world's coal production. By 2011 the constant positive trend reached 85.8Mt and current government projections expect an annual output of 124 Mt for 2014 (DNP, 2012). Furthermore, 94% of Colombia's coal is of very good quality and is classified as hard, with high heat-generating capacity. Whereas most of the world's 50 coal-producing countries use coal for domestic energy production, Colombia is relatively unique as it exports over 90% of its coal. The USA and Europe are the most important buyers of Colombian coal. Coal has been Colombia's second-largest export product since 2001.

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<sup>2</sup>[http://www.essent.nl/content/Images/99430\\_12-7436%20Notitie%20Herkomst%20Kolen%20Nederlandse%20Elektriciteitscentrales.pdf](http://www.essent.nl/content/Images/99430_12-7436%20Notitie%20Herkomst%20Kolen%20Nederlandse%20Elektriciteitscentrales.pdf)

<sup>3</sup> [http://www.nuon.com/nl/Images/Transparency Document Nuon\\_tcm164-253063.pdf](http://www.nuon.com/nl/Images/Transparency Document Nuon_tcm164-253063.pdf)

The largest coal mines—and the ones that generate the most exports—are located in the north of the country, in the departments of La Guajira and Cesar. Cerrejón is one of the largest open-pit coal mines in the world. Since 2000 government participation in the production of coal has been decreasing, and there has been a shift to private domestic and foreign investors. Major changes have occurred in the institutional framework of the coal industry in recent years. In 2000 the government sold the stakes that Colombia Coal, a state-owned company, had in Cerrejón, and the new mining code introduced in 2001 led the government to concentrate on its role as regulator through the Ministry of Mines and Energy.

Major multinational coal mining companies active in Colombia include Anglo American, BHP Billiton, Rio Tinto, Xstrata, Drummond, Amcoal, and Glencore International. The country’s largest mines are the Cerrejón open pit mines, which produced in 2011 more than 37 Mt of coal and are owned by the consortium of BHP Billiton, Anglo American and Xstrata, which each hold 33.33% of shares. American coal mining company Drummond, with its mines in the La Guajira and El Cesar regions, is Colombia’s second largest exporter of coal with 25 Mt. Glencore, through its subsidiary Prodeco is the third major producer with 14 Mt. Altogether the above mentioned large scale multinational companies account for 90% of total coal production and added value in Colombia. The remaining 10% is produced by several small and medium sized companies oriented to the domestic market, mostly informal with low technical and financial capacities.

As can be observed from the overview of the top ten coal producing countries (figure 2) and the top ten coal exporting countries (figure 3), Colombia is not among the top-10 coal producing countries in the world, but it is among the top-5 coal exporting countries.

**Figure 2: Top ten coal producing countries 2011**

<b>PR China</b>	3471Mt	<b>Russia</b>	334Mt
<b>USA</b>	1004Mt	<b>South Africa</b>	253Mt
<b>India</b>	585Mt	<b>Germany</b>	189Mt
<b>Australia</b>	414Mt	<b>Poland</b>	139Mt
<b>Indonesia</b>	376Mt	<b>Kazakhstan</b>	117Mt

Source: World Coal Association, <http://www.worldcoal.org/resources/coal-statistics/>.

**Figure 3: Top ten coal exporting countries 2011**

	<b>Total of which</b>	<b>Steam</b>	<b>Coking</b>
<b>Indonesia</b>	309Mt	309Mt	0Mt
<b>Australia</b>	284Mt	144Mt	140Mt
<b>Russia</b>	124Mt	110Mt	14Mt
<b>USA</b>	97Mt	34Mt	63Mt
<b>Colombia</b>	75Mt	75Mt	0Mt
<b>South Africa</b>	72Mt	72Mt	0Mt
<b>Kazakhstan</b>	34Mt	33Mt	1Mt

Source: World Coal Association: <http://www.worldcoal.org/coal/market-amp-transportation/>.

In Colombia, coal production increased from 59.7 Mt in 2005 to 85.8 Mt in year 2011, with an expected 93 MT for 2012 (Ministerio de Minas y Energía, 2011). Large scale multinational companies account for 90% of total coal production and added value. Cerrejón itself accounts for 43.2% of total added value of coal activity. The other major share is controlled by Drummond with

29.1%.<sup>4</sup> The multinational companies are responsible for the sustained production growth rate in the study period and expected in coming years. These companies also account for 96% of Colombian coal exports, and 99% of their production is exported (Fedesarrollo, 2012). The coal production by small and medium size companies is mostly directed to the local market. Considering that the large companies control 85% of proven reserves, much of what is to happen will depend on their environmental, social and economic performance.

### 2.3 Sustainability of coal production in Colombia

Civil society organisations have long warned that social and environmental conditions at coal mines often fail to meet international standards for the protection of workers, communities and the environment. Both negative environmental and social impacts are commonly taking place. In 2008 Greenpeace produced a report on the sustainability aspects of coal, with a report in Dutch that specifically focused on the contribution by the Netherlands and the role of Dutch energy companies, with a chapter on the social and environmental impacts of coal production in Colombia.<sup>5</sup> Coal production commonly disrupts ecosystems and contaminates water supplies. It emits other greenhouse gases like nitrogen oxide and methane, as well as black carbon and toxic chemicals like mercury and arsenic. Leaking waste ruins fish stocks and agriculture, and therefore also livelihoods. Coal production directly contributes to health problems like black lung disease. Land occupied for coal production often disrespects the rights of local communities and communities are commonly displaced. It is argued that costs of producing coal exceed the economic benefits.<sup>6</sup>

The issue came on the Dutch political agenda in the summer of 2010 after impacts related to coal mining in Colombia and South Africa were portrayed and linked to the Netherlands in a documentary by the television programme *Netwerk*.<sup>7</sup> As a result, in July of 2010, Dutch parliamentarians posed questions to the Dutch government about what the government was doing about electricity companies “that import irresponsibly-mined coal”. On 18 November 2010 a hearing was held in the Dutch Parliament on the topic of ‘Blood Coal’ in developing countries and the link with electricity generation in the Netherlands. Politicians and civil society groups demanded that the electricity companies be held responsible for importing the ‘blood coal’ into the Netherlands. However, the electricity companies would not identify the coal mines from which they source their coal, so it was impossible to know who was responsible for importing the irresponsibly-mined coal. The lack of transparency in the coal supply chain should be the first step for the power companies to take responsibility for the social and environmental effects of coal production.

In response to these allegations, in July 2010 the Dutch Coal Dialogue (DCD) was launched at the initiative of the private sector (EnergieNed). This was the start of a process that should lead to increased transparency and sustainability in the coal sector. The subject has a high political priority, given the fact that in October 2012 questions were asked about the progress of the Dutch Coal Dialogue, and the need to ensure that the production of coal imported in the Netherlands does not contribute to violation of human rights.<sup>8</sup> In December 2012 an article appeared in the *Volkscrant* reporting that the Colombian company Cerrejon was starting to show increased transparency of its coal production.<sup>9</sup> This also shows that the subject has a high public priority in the Netherlands.

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<sup>4</sup> 2009 figures according to Fedesarrollo (2011); See also Drummond (2012)

<sup>5</sup> Greenpeace, 2008. De wereld achter kolenstroom.

<http://www.greenpeace.nl/Global/nederland/report/2010/5/de-wereld-achter-kolenstroom.pdf>

<sup>6</sup> Greenpeace, 2008: The cost of coal.

<sup>7</sup> *Netwerk*, “Factsheet steenkool” (document accompanying *Netwerk* report “Energiebedrijven medeplichtig aan moord”). See: <http://www.netwerk.tv/data/files/factsheet%20steenkoolwinning.pdf>.

<sup>8</sup> ah-tk-20122013-202 ISSN 0921 - 7398 's-Gravenhage 2012

<sup>9</sup> *Volkscrant* vrijdag 7 december 2012: Kolenleverancier opent zijn deur

### 3 Policy developments 2004-2011

In this chapter the policies related to coal production and relevant to sustainable coal (minerals) production are presented, in the Netherlands and within the European Union (EU). This forms the basis for evaluating to what extent these policies have been realised and expected outputs and outcomes have been achieved. First we will elaborate on a number of relevant policy frameworks in the Netherlands, then in the EU, followed by the main policy developments with respect to sustainability in the coal sector. The chapter is concluded by a short section which summarises the main policy objectives as a reference to this evaluation study.

#### 3.1 Policy frameworks in the Netherlands

##### *Energy Policy*

The 2011 Dutch Energy sector report (EL&I, 2011) outlines three main objectives of the policy:

- The shift to cleaner energy sources, associated with the transition to a low-carbon economy in 2050;
- The relation with economic growth, innovation and employment in the energy sector;
- The security of energy supply

The policy underlines attention for renewable energy sources and a Green Deal. The latter includes attention for energy efficiency measures as well as CSR. However, initiatives will have to come from society or energy companies. Sustainability is mainly interpreted in terms of climate change policies and carbon reduction. Reference to sustainability principles for biomass (as a sustainable energy source) is also mainly related to climate and carbon emissions. One of the priorities of the report/policy is to secure Dutch energy supply and to strengthen relations with supplying countries.

The Netherlands subscribes to the European target of carbon emission reduction of 16% between 2005 and 2020. Apart from that, it subscribes to the European target for renewable energy in the Netherlands to reach 14% in 2020. Currently, in 2010, in the Netherlands the proportion of renewable energy is only 4% of the national energy use. To achieve this target, the Government has foreseen investments of around EUR 1.4 billion a year to stimulate renewable energy. However, this target cannot be achieved by renewable sources of energy only. Therefore, with regards to coal energy production, reference is made to the need of mixing with biomass in order to reduce carbon emissions. The exact targets will be defined in consultation with the energy companies. No reference is made to CSR policies in (coal) supply chain management.

##### *Policy on raw materials: 'Grondstoffenbeleid'*

In December 2010 the Nicolai /Ormel motion took place (32500V81).<sup>10</sup> This motion prompts the Dutch government to make a statement about how to secure our access to raw materials and the role of producing, mostly developing, countries, with explicit attention for anti-corruption, sustainable extraction, strengthening of local governance and transparency of financial flows.

The resulting 2011 Netherlands raw materials policy (Rijksoverheid, 2011) has as main objectives to secure the supply of raw materials and where possible recycle or reduce raw materials. Following on the explicit reference in the above mentioned motion, it is indicated that the Netherlands will enhance transparency in contracts and financial flows, and to do so will support the Natural Resource Charter, the Kimberley Process, the regional initiative for raw materials certification of the International Conference on the Great Lakes Region and the Extractive Industries Transparency Initiative (EITI). This will be done by giving priority to companies to comply with the EITI principles, as well as production countries that comply with this initiative.

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<sup>10</sup> 32500 V 81 Motie van de leden Nicolai en Ormel Vergaderjaar 2010-2011



The policy also aims to promote the OESO 'Due Diligence Guidance for Responsible Supply Chain of Materials from Conflict- Affected and High Risk Areas' as well as the UN guidelines proposed by Ruggie. One of the specific policy intentions is to share experiences and 'best practices' in making supply chains more sustainable (with reference to IDH and round tables). In that regard, reference is made to the promotion of legal sourced and sustainable produced timber and the need to apply similar principles to other commodities.

#### *Biodiversity policy*

The biodiversity policy of 2008-2011 has as one of its objectives to make commodity trade chains more sustainable. As relevant trade chains were selected: timber, soy, palm oil, biomass and peat. Coal or minerals are not one of the selected chains, and are not mentioned in a general sense.

#### *CSR - Maatschappelijk Verantwoord Ondernemen (MVO) Policy*

The 'Kabinetsvisie MVO 2008-2011' indicates that CSR will be promoted at national and international level. The SER is stimulating international MVO from 2009 onwards and specifically refers to CSR in supply chain management. It is indicated that the Netherlands will in particular stimulate companies to comply with the 2011 OESO guidelines on CSR and the UN Guiding principles on business and human rights. The Netherlands has been closely involved in the development of the updated OESO guidelines for multinational enterprises (participation by VNO-NCW, FNV en CNV in stakeholder meetings and in the Business and Industry Advisory Committee of the OESO). VNO-NCW and the Ministry of EL&I organised in December 2011 a conference to inform the private sector on the new OESO guidelines and the Guiding Principles on Business and Human Rights. The Parliament accepted in April 2012 a motion stating that companies who benefit from Dutch financial resources and participate in international trade missions should comply with these CSR principles.<sup>11</sup> The Dutch government also supports the *Extractives Industry Transparency Initiative* (EITI) (see below) and proposes to only provide technical and diplomatic support to companies that comply with the EITI regulations (October 2011).<sup>12</sup>

#### *Policy on sustainable supply (Duurzaam inkopen)*

There is no policy available on sustainable supply of coal (similar to for instance that on supply of sustainable timber).

#### ***Sustainable minerals in Dutch LAC regional policies***

The subject of mining sector products and coal is not specifically mentioned in any policy document dealing with the Latin American and Caribbean (LAC) region. Reference to CSR and non-trade concerns mainly relates to biomass and agro-commodities. Specific reference is made to labour conditions in line with ILO conventions.

## **3.2 Policy frameworks at global and European Union level**

Relevant policy frameworks at international and EU level for this case study are related to CSR and transparency initiatives in supply chains, in a general sense and related to the mining (extractive industries) sector. With respect to CSR and transparency, at international and European level, new sets of normative guidelines and standards have recently become available and have specified in detail what is expected of companies with respect to supply chain responsibility and transparency. In relevant Dutch policy papers there is frequent reference to these international frameworks, especially the OECD Guidelines for Multinational Enterprises (see below).

#### *Overview*

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[http://www.fairpolitics.nl/nederland/cases/mvo/2012\\_04\\_11\\_gl\\_sp\\_cu\\_cda\\_pvda\\_en\\_d66\\_stel len\\_vragen\\_tijdens\\_ao\\_mvo\\_over\\_oeso\\_richtlijnen\\_en\\_transparantie](http://www.fairpolitics.nl/nederland/cases/mvo/2012_04_11_gl_sp_cu_cda_pvda_en_d66_stel len_vragen_tijdens_ao_mvo_over_oeso_richtlijnen_en_transparantie)

<sup>12</sup> <http://www.fairpolitics.nl/nederland/cases/grondstoffen>

The Organisation for Economic Cooperation and Development's (OECD) has been the first to reflect CSR principles in its guidelines for multinational enterprises, in 1976. This has gradually evolved in international CSR guiding principles, with the most recent 2011 update of OECD Guidelines for Multinational Enterprises<sup>13</sup>. Another major global guiding framework is the 2011 United Nations (UN) Guiding Principles on Business and Human Rights<sup>14</sup>. These international standards and recommendations provide guidance for companies and can be used as a benchmark for their performance on supply chain responsibility and transparency. At United Nations (UN) level the major initiative is that of Global Compact, launched in 2000, which in a voluntary initiative that urges companies to implement principles on human rights, environmental protection, workers' rights and anti-corruption. Relevant is also the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy from 1977, with a 4<sup>th</sup> update from 2006, which is based on the conventions of the International Labor Organization (ILO) that are binding for states, but voluntary for companies.

The above standards generally state that companies identify, prevent and mitigate negative impacts in their supply chain and encourage companies to disclose information about their relationships with suppliers (SOMO, 2012)

Specific for the mining sector is the Extractive Industries Transparency Initiative (EITI) initiative, launched in 2002, which is a globally developed multi stakeholder coalition for extractive industries including the coal mining sector.

We will now provide more details of the above initiatives, with an indication of the relation with the coal sector and any specific references within Dutch CSR policy.

#### *UN Global Compact*

In 2000, the United Nations (UN) launched the initiative Global Compact.<sup>15</sup> It urges companies to join and implement ten principles on human rights, environmental protection, workers' rights and anti-corruption. The UN Global Compact is not a regulatory instrument, but a voluntary initiative that relies on public accountability, transparency and disclosure to complement regulation and to provide a space for innovation. It is based on a culture of dialogue and learning. The principles do not provide *due diligence*<sup>16</sup> measures. However, it develops additional guidance material for the implementation of the Global Compact principles.

Several energy, mining and coal using companies, such as Essent, BHP Billiton, Rio Tinto, Newmont Mining Corporation, Shell, Eskom, DONG, Vattenfall and Tata Steel, have joined the UN Global Compact. As part of the Global compact's program, a Dutch Network was established in 2007 that holds a secretariat within the Confederation of Netherlands Industry and Employers (VNO-NCW). A Business and Human Rights Initiative of the Dutch Network has published a Guidance Tool for Companies, entitled 'How to do Business with Respect for Human Rights'. It is partly based on the human rights agenda and experiences of ten Dutch companies, including Essent (Business & Human Rights Initiative, 2010).

#### *ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy*

The Declaration of Principles concerning Multinational Enterprises and Social Policy is based on conventions of the International Labor Organization (ILO) that are binding for states, but voluntary for companies. It has its origins in the support of governments, employers and employee associations. Further, the Declaration covers several areas related to the human rights of workers such as: benefits and conditions of work, trade union rights and health and safety issues. Given the

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<sup>13</sup> OECD, OECD Guidelines for Multinational Enterprises: 2011 Edition, 25 May 2011. See: [http://www.oecd.org/document/28/0,3746,en\\_2649\\_34889\\_2397532\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/28/0,3746,en_2649_34889_2397532_1_1_1_1,00.html). (December 2011).

<sup>14</sup> UN Human Rights Council, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, Geneva: UN, March 2011. See: <http://www.businesshumanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf>. (December 2011).

<sup>15</sup> For more information on the Global Compact, please visit <http://www.unglobalcompact.org/>.

<sup>16</sup> The expression due diligence refers to background verifications of a business investment, before realizing any transaction.

universal nature of the ILO and its tripartite structure, the territorial and business reach of the Declaration is technically broader than the OECD Guidelines. While the Declaration has a promotional character, companies are encouraged to engage with employee associations, to provide information, to take protective health and safety measures and to establish grievance mechanisms for employees and voluntary conciliation procedures for the settlement and prevention of industrial disputes (Aidenvironment, 2010). Mining and other companies generally refer to the Declaration in policies or statements.

#### *UN Human Rights and Business framework*

John Ruggie has served as the Secretary-General's Special Representative for Business and Human Rights (SRSG) between 2005 and 2011. In 2008, he proposed a three-pillar framework entitled 'Protect, Respect and Remedy: A Framework for Business and Human Rights'. In 2009 and 2010, this publication was followed by suggestions on how to operationalize the pillars. Endorsing Ruggie's framework, the UN Human Rights Council officially adopted a formal statement about human rights responsibilities of businesses, for the first time in its 60-year history. Since then, the framework has been embraced by civil society organizations, businesses and governments worldwide. Although not legally binding, this framework has the potential of being accepted as an international standard, and thus become part of the international human rights regime. The OECD in its annual report on the OECD guidelines for multinational enterprises (OECD, 2011) mentions a Human Rights Council resolution that endorses the United Nations Guiding Principles on Business and Human Rights as an authoritative normative platform. The framework includes recommendations for supply chain management (Aidenvironment, 2010).

#### *OECD Guidelines for Multinational Enterprises*

The OECD Guidelines are voluntary recommendations to businesses from 42 OECD and non-OECD member states.<sup>17</sup> They concern business conduct in areas such as environmental protection, labor conditions, human rights, consumer interests, accountability and transparency<sup>18</sup>. The Guidelines provide limited and mostly non-specific recommendations on due diligence issues such as development of management systems, engagement with trade unions, environmental impact assessments, monitoring and the encouragement of suppliers to follow the guidelines (Aidenvironment, 2010)

The adhering states have committed themselves to promote these guidelines amongst multinational enterprises that operate in or from their territories. The Dutch government emphasizes the Guidelines' potential to clarify what the government expects from Dutch companies operating on a multinational basis. The Dutch government prompts companies both receiving governmental grants or subsidies and delivering services or goods to the government, to subscribe to the OECD Guidelines. Several European-based companies refer to the OECD Guidelines in policies or statements (Aidenvironment, 2010)

In 2009, an OECD-hosted working group was founded, composed of states, international organizations, industry-, trade and civil society organizations and mining and metal companies. The working group was set up to clarify the nature of due diligence in the mining and minerals sector and develop user-friendly practical guidance for due diligence in conflict-affected and high-risk areas. This joint effort resulted in a guide for responsible supply chain management of minerals from conflict-affected and high-risk areas (OECD, 2011)

#### *Extractive Industries Transparency Initiative (EITI)*

In 2011 The EITI was launched. The EITI is a globally developed multi stakeholder coalition for, amongst others, the coal mining sector. Its main goal is to promote revenue transparency at the local level. The methodologies countries need to follow to become fully compliant with the EITI are documented in the EITI rules. The EITI is a multi-stakeholder coalition composed of governments, companies, investors, civil society organizations (i.e. Oxfam), and partner

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<sup>17</sup> India, Indonesia, South Africa and China have been invited to start discussion rounds on becoming OECD-members.

<sup>18</sup> For further information about the OECD guidelines for multinational companies, please visit [http://www.oecd.org/department/0,3355,en\\_2649\\_34889\\_1\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/department/0,3355,en_2649_34889_1_1_1_1_1,00.html).

organizations. Also the Netherlands is involved in this coalition through the Ministry of Foreign Affairs (BuZa). Although Colombia is not a compliant country thus far, Colombia officially stated their will to implement the EITI standard. The European Commission is a partner organization and OECD is one of the donors of the initiative. The international community supports EITI implementation both bilaterally and through the EITI Multi-Donor Trust Fund, managed by the World Bank. The Secretariat is funded by the supporting countries and supporting companies. Implementing country governments pay for implementation and validation of their EITI process.

#### *Voluntary Principles Initiative on security and Human Rights (VPI)<sup>19</sup>*

The Voluntary Principles Initiative on Security and Human Rights was created in year 2000 by Human Rights Watch, Amnesty International, four mining and energy multinational companies, and the governments of England and the United States. The government of Netherlands joined formally in 2001 and the government of Colombia was accepted in 2010. Its aim is to provide guidance to oil, gas and mining companies on keeping safe and secure operations and respect for Human Rights. The VPI supports companies in<sup>20</sup>:

- Assessing Human Rights risks related to security
- Maintaining appropriate relations with public and private security in conflict prone areas
- Ensuring proportional and legal use of force
- Adopting a proactive position on Human Rights screening
- Developing systems for reporting and inquiring on Human Rights abuses

It follows that the VPI is relevant in regions affected by conflicts or low levels of security such as the mining and oil exploitation zones in Colombia.

#### *2011 Communication on CSR by the European Commission*

At European level the European Commission has played a pioneering role in the development of public policy to promote CSR since its 2001 Green Paper and the establishment of the European Multistakeholder Forum on CSR. In 2006 the Commission published a new policy whose centerpiece was strong support for a business-lead initiative called the European Alliance for CSR. The policy also identified 8 priority areas for EU action: awareness-raising and best practice exchange; support to multistakeholder initiatives; cooperation with Member States; consumer information and transparency; research; education; small and medium-sized enterprises; and the international dimension of CSR. This has culminated most recently in 2011 in the Communication on CSR by the European Commission.<sup>21</sup>

The 2011 EC communication on CSR explicitly extends the CSR concept to the broader supply chain, referring to the need for risk-based due diligence within supply chains and the disclosure of non-financial information from the supply chain. By giving public recognition to what enterprises do in the field of CSR, the EC aims to disseminate good practice, foster peer learning, and encourage more enterprises to develop their own CSR strategies. The EC has launched a wide range of programmes to work with enterprises and other stakeholders on critical social and environmental issues. All large European enterprises are to make a commitment by 2014 to take account of at least one of the following sets of principles and guidelines when developing their approach to CSR: the UN Global Compact, the OECD Guidelines for Multinational Enterprises, or the ISO 26000 Guidance Standard on Social Responsibility, and to respect the ILO Tri-partite Declaration of Principles Concerning Multinational Enterprises and Social Policy.

The aim is to improve the coherence of EU policies relevant to business and human rights, with an emphasis on human rights issues and core labour standards, including child labour, forced labour, human trafficking, gender equality, non-discrimination, freedom of association and the right to

<sup>19</sup> For further information on the Voluntary Principles, see <http://www.voluntaryprinciples.org>.

<sup>20</sup> Based on the fact sheet of the US Department of State page on the VPI. See: <http://www.state.gov/j/drl/rls/fs/2011/154204.htm>

<sup>21</sup> European Commission, A renewed EU strategy 2011-14 for Corporate Social Responsibility, Brussels: EC, October 2011. See: [http://ec.europa.eu/enterprise/newsroom/cf/\\_getdocument.cfm?doc\\_id=7010](http://ec.europa.eu/enterprise/newsroom/cf/_getdocument.cfm?doc_id=7010). (December 2011).

collective bargaining. CSR will be promoted through advocacy and complementary legislation, to disseminate CSR guidelines and principles more widely and enable EU businesses to have a positive impact in foreign economies and societies, mainly in the field of trade-and-development.

### 3.3 Policy developments in the Netherlands

The subject of coal imports and the relation with social and environmental sustainability concerns was raised well before the 2010 documentary on ‘irresponsible coal’ from Colombia. In April 2008 questions were asked in Dutch parliament as a consequence of a report by Greenpeace on coal imports.<sup>22</sup> Questions in Parliament were answered by the minister of the Ministry of Environment. She said that the origin of coal imports is difficult to trace as electricity companies do not provide this information. The minister stated that electricity companies will be stimulated to be more transparent and electricity companies are expected to verify whether CSR and human rights requirements are met.

Following the documentary on sustainability of coal mining in Colombia in June 2010, highlighting poor social and environmental conditions at coal mines in Colombia, the issue came on the Dutch political agenda. In July 2010 parliamentarians posed questions about what the government was doing about electricity companies “that import irresponsibly-mined coal”. The discussion evolved around a number of subjects, about which more information was provided on 15 September 2010. On CSR, it is stated that the Dutch CSR policy for international activities requires that every company adheres to national laws and legislation, but should in addition comply with the OESO Guidelines for Multinational Enterprises. A company has the task to assess the ethical, social and environmental consequences of its activities and on the basis of that take responsible decisions. Accountability must be based on transparent reporting and dialogue with stakeholders. Companies have a range of different tools and methods at their disposal to do so, they can choose what suits them best. It is stated that therefore the first step of this dialogue in the coal sector should be to enhance transparency about the origin of the coal that is being imported. On non-trade concerns, it is mentioned that there is not much international commitment to discuss this issue within the WTO. However, one way of addressing these issues beyond the WTO is that of integrating attention for environmental and social sustainability concerns in economic partnership agreements and free trade agreements.

On 18 February 2011 questions were asked in Dutch parliament about progress on this subject, more specifically about the relation between the electricity company RWE/Essent and the Colombian company Drummond.<sup>23</sup> It is indicated that Drummond, supplying about 50% of Dutch coal consumption, has been sued for violation of human rights in the USA. The response refers to the fact that problems with Drummond mainly relate to the period 2001 to 2004, but these are not object of the allegations. It also states that allegations in the USA have not yet been concluded but a similar court case in 2007 was concluded in favour of the mining company. Lastly, it states that electricity companies are taking measures to assess the risks in the value chain. This suggests that the allegations against Drummond are not very significant and will be settled in a satisfactory way. This is not the case since allegations continue to be raised against this company by victims of earlier involvement in the paramilitary and the company continues to be affected by miners strikes and seems to continue to violate workers rights (see below box). In further responses, the minister refers to the need to comply with OESO guidelines and to the progress made within the Dutch Coal Dialogue (DCD). The fact that there is no transparency on the origin of coal by the electricity companies is explained for confidentiality reasons.

*The case of Drummond in the USA*

<sup>22</sup> Greenpeace, 2008. De wereld achter kolenstroom.

<http://www.greenpeace.nl/Global/nederland/report/2010/5/de-wereld-achter-kolenstroom.pdf>

<sup>23</sup> ah-tk-20102011-1498 ISSN 0921 - 7398 's-Gravenhage 2011

The Drummond Company (operator of la Loma mine) has been the subject of numerous lawsuits regarding the murders of 70 union miners and railroad workers, collectively. The murdered Colombians were killed by the notorious paramilitary group, United Self Defense Forces of Colombia (AUC), which had been hired by Drummond to act as security. In addition to those killed, a lawsuit against Drummond describes "how hundreds of men, women, and children were terrorized in their homes, on their way to and from work... innocent people killed in or near their homes or kidnapped to never to return home, their spouses and children being beaten and tied up, and people being pulled off buses and summarily executed on the spot." The Colombian Sintraminercol mining union has alleged international mining companies already working in Colombia to have a record of paramilitary collaboration, as well as environmental negligence. After several law suits where the accusations to Drummond were dismissed,<sup>24</sup> a new lawsuit was to take place in August 2012 in Alabama where the company is accused of compliance in 1100 murders.<sup>25</sup>

The problems with Drummond operations in Colombia, with violation of human rights as the main allegation, has been one major reason why the FTA between Colombia and the USA has been held up for several years. The FTA between Colombia and the USA has had much difficulty passing Congress for years due to the persistence of these issues. However, political violence had greatly lessened in Colombia over the past decade and objections to the FTA have been criticized by Colombians and the Republican party, accusing opponents of trade deals as "standing in the way of the development of the prosperity of Colombia," adding that "we can't block the progress of a country like this for protectionist reasons and try to use human rights as a front for doing that."<sup>26</sup>

In March 2011 the Minister of Foreign Trade F. Heemskerk was interviewed and stated that the DCD would increase transparency to such a degree that consumers of electricity in the Netherlands will be able to choose between electricity generated from responsibly and electricity from irresponsibly-mined coal remains unfulfilled.<sup>27</sup>

On 7 February 2012 the Parliament provides responses to questions with respect to the SOMO report on coal mining and transparency. It is indicated in the responses that the Dutch government expects electricity companies to be transparent on the origin of the coal, but also understands that this information might be commercially sensitive. In October 2012 the Minister of LE&I reports about progress with the Dutch Coal Dialogue.<sup>28</sup> Up to then, no transparency had been provided on Dutch coal imports by the electricity companies. The responses referred to the fact that it is the responsibility of the companies to comply with international standards such as the OESO, but the government cannot force companies to be transparent and has confidence that self-regulation will lead to the desirable outcome.

On 6 March 2013 another series of questions was asked to the Dutch Parliament with respect to coal from Colombia. In reaction to claims of environmental and social problems related to coal production, the response is that primary responsibility is with the Colombian government and that claims can be reported to the National Contact Point for OESO guidelines in Colombia. Apart from that, it is stated that Dutch energy companies will make agreements about audits of Colombian companies exporting coal to the Netherlands, with reference to the DCD and the Better Coal initiative. It is also stated that promoting sustainable trade is one of the Dutch policy priorities with Colombia and activities are being carried out by the Dutch embassy to strengthen CSR with coal companies. It is stated that Dutch companies have shown their commitment to transparency by making available information on the origin of the coal imports at an aggregated level and there is no direct need to provide more information. However, further progress in the DCD is required. Reference is made to the focus at self-regulation.

<sup>24</sup> <http://kolko.net/agrokraftstoffe-ressourcenkonflikte-und-megaprojekte/case-profile-drummond-lawsuit-re-colombia/>

<sup>25</sup> <http://www.noticias.nl/moordopdracht-van-drummond>

<sup>26</sup> [http://en.wikipedia.org/wiki/United\\_States-Colombia\\_Free\\_Trade\\_Agreement](http://en.wikipedia.org/wiki/United_States-Colombia_Free_Trade_Agreement)

<sup>27</sup> F. Heemskerk, interview by M. Persson, "Interview Frank Heemskerk, Voorzitter Commissie Bloedsteenkolen: 'Er is een veelbelovend zaadje geplant', *Volkskrant*, 1 March 2011, p.24.

<sup>28</sup> ah-tk-20122013-202 ISSN 0921 - 7398 's-Gravenhage 2012

### **3.4 Conclusions with respect to policy objectives**

There is increasing attention in Dutch policies for the need to assure sustainability and transparency in value chains. This policy objective is highlighted in the Dutch biodiversity policy, raw materials policy and CSR policy. It has so far been mainly operationalised in the forestry and agricultural sectors. For the mining and energy sectors concrete targets, initiatives and experiences on enhancing sustainability in the value chain are not yet apparent. For these sectors, in Dutch policy reference is made to international frameworks, especially the OECD Guidelines for Multinational Enterprises and the Extractive Industries Transparency Initiative (EITI). The OECD Guidelines for Multinational Enterprises encourage companies to publicly disclose information about their relationships with suppliers and potential adverse impacts caused by those suppliers.

There is no Dutch policy on coal from Colombia. The Dutch policy developments show that the government has been dealing with the subject of sustainability of the extraction of imported coal since 2008. In 2010 it appeared that the Government was quite strongly advocating transparency of coal imports as a first step towards increased sustainability. In 2010 the Dutch Coal Dialogue was started, but it took the companies more than two years to start disclosing any information. In the mean time several Parliamentary debates on this subject took place. Looking at the debates, the position of the Dutch government seems to have shifted from proactive to a position of wait-and-see. In response to questions in Parliament, the tone changed towards one of explaining the lack of transparency with arguments of confidentiality, sector self-regulation and the time needed for internal dialogue. We did not find evidence of the government taking any concrete policy measures. The Dutch Coal Dialogue did not receive government funding.

## **4 Modalities and pathways**

The Evaluation Framework of this study shows that outputs and outcomes can be achieved through the use of different modalities applied by the Dutch government (dialogue, diplomacy, financial support, facilitation) as well as various pathways through which the intended outcomes can be facilitated (multilateral, bilateral, private sector and non-governmental organisations). In this chapter we focus upon the main policy modalities, pathways and interventions linked to the theme of sustainable coal production, within the period 2004-2011. Modalities and pathways strongly interact and there are different ways of structuring this chapter. We have chosen for the following main themes:

- The NGO initiated process leading to the Dutch Coal Dialogue
- The multi-stakeholder process of Dutch Coal Dialogue
- Dutch diplomacy and political dialogue
- Activities at multilateral level (EU).

### **4.1 NGO activities leading to the Dutch Coal Dialogue**

Civil society organisations have frequently raised the issues of social and environmental conditions at coal mines in Colombia which fail to meet international standards for the protection of workers, communities and the environment. The issue was frequently raised by the Colombia platform. The platform was established in 2000 in order to join forces and together lobby for influencing the Dutch policy to pay more attention to human rights and labour issues in Colombia. Members of this platform include Cordaid, the labour unions FNV and CNV, Pax Christi and Amnesty International. The platform has regular contacts with the RNE in Colombia.

In 2008 a report on coal mining was written by Greenpeace,<sup>29</sup> leading to a Parliamentary hearing. In summer 2010, the issue came on the Dutch political agenda after impacts related to coal mining in Colombia and South Africa were portrayed in a documentary by the television programme *Netwerk*.<sup>30</sup> The documentary was based on research by Both Ends, an organization receiving subsidy from the BuZa. As a result, in July of 2010, Dutch parliamentarians posed questions to the Dutch government about what the government was doing about electricity companies “that import irresponsibly-mined coal”. The Dutch NGO Cordaid participated in the coal dialogue. CETEC is the main partner of Cordaid working in Colombia on the coal subject. Founded in 1984, CETEC works to consolidate a strategy of social, economic and environmental development in resource-poor rural communities, through supporting and strengthening concrete initiatives. It strengthens local communities in their dialogue with mining companies. Friends of the Earth Colombia is another partner working on this theme. Both organisations receive substantial support from Dutch NGOs such as Cordaid.

In 2012 the Dutch NGO SOMO produced a report called ‘the black box’ in which the imports of coal and their origin, as well as the question of transparency were researched. The report led to questions in Parliament (see above).

## 4.2 The Dutch Coal Dialogue

The Dutch Coal Dialogue (DCD) was launched in the summer 2010 at the initiative of the private sector (EnergieNed, 2010) Civil society organizations were invited to join. The DCD has 2 main objectives:

- To improve transparency in the coal supply chain.
- To apply on-the-ground processes to improve environmental conditions as well as labour standards and living circumstances of local communities and identify the key issues that will be taken into account with the assessments protocol. The objective is not to design a standard (this is an objective of the Better Coal Initiative). These shall first be tested in one or two mines, to later be applied on a broader scale.

The DCD has a closed character, in the sense that publications and meetings are only accessible for members. DCD participants include electricity and mining companies and Dutch civil society organizations: Cordaid, IKV Pax Christi, Niza, FNV, CNV, Energie-Nederland, Electrabel, E.on, EPZ, Essent, Nuon, Tata Steel, Anglo American, BHP Billiton and Xstrata. The Ministry of Economic Affairs, Agriculture and Innovation (EL&I) acts as an observer of the initiative and its actions. This corresponds to the position of the Dutch government on self-regulation, meaning that the sector should organize itself through a multi-stakeholder approach and the government does not play a proactive role. The meetings were led by an independent chairman, Frank Heemskerk (former Minister for Foreign Trade).

The DCD has two phases, starting with Phase I in 2010, which was financed by EnergieNed. During phase I, knowledge and experience was exchanged between the members. A report of the 1<sup>st</sup> phase (dated February 2011) concludes that key achievements of the first phase included:

- a sharing of knowledge and information between stakeholder groups
- information and lessons learned from other supply chains
- improved understanding of the distinct roles and concerns of the different stakeholder groups
- an agreement that there should be a second phase to the dialogue, which will include key stakeholders
- a shared vision for the process and an outline of the work in the next phase.

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<sup>29</sup> Greenpeace, 2008. De wereld achter kolenstroom.

<sup>30</sup> *Netwerk*, “Factsheet steenkool” (document accompanying *Netwerk* report “Energiebedrijven medeplichtig aan moord”). See: <http://www.netwerk.tv/data/files/factsheet%20steenkolwinning.pdf>.



For phase II, the DCD requested a subsidy from the Dutch government. This request was not granted, because the government considers DCD financial support to be a responsibility of the private sector (EL&I, 2011). The decision to not provide financial support to the DCD initiative is coherent with its policy of promoting self regulation in the sector.

Phase II started in July 2011, jointly financed by EnergieNed and Dutch civil society organizations (e.g. Cordaid). The aim of phase II is to audit pilots of sustainable coal production in Colombia and South Africa. With the results from the audits, tools can be developed to comply with international sustainability standards (MVO, Kabinetsvisie Maatschappelijk Verantwoord Ondernemen 2008-2011, 2011). Also international mining companies participate in meetings, financing their own participation. As a final activity of the DCD, the aim is to present a report that depicts results of the pilots and audits.

The SOMO report “the black box” (SOMO, 2012) provides information on the legal arguments related to transparency on the origin of coal, and provides data on the origin of coal imports in the Netherlands. It is concluded that by not being transparent about the names of the mines and mining companies that provide coal, the electricity companies are not following the recommendations provided by OECD standards. The OECD Guidelines state that companies should conduct due diligence to identify, prevent and mitigate potential adverse impacts caused by their suppliers and encourage companies to publicly disclose, rather than withhold, this information about their relationships with suppliers. Many companies insist that information about the coal mines and mining companies from which they source their coal is “commercially confidential” or “competition-sensitive” and that this prevents them from providing more transparency. SOMO conducted an analysis of EU law which reveals that the law does not prevent electricity companies from being transparent about the coal mines and mining companies from which they source their coal. Electricity companies often include so-called ‘non-disclosure clauses’ in their contracts with coal suppliers (which penalise either party to the contract if it publishes the details of the contract). However, there exists no law that requires them to do so.<sup>31</sup>

The subject remains very sensitive. For instance, there is a response by the Groningen municipality (March 2012) on transparency of coal imports to the Eemshaven coal-fired electricity company, stating that these data are not available because of fluctuations in supply.<sup>32</sup>

In August-September 2012 two documents were provided that provide insight in the origin of coal imports, one for the electricity companies Essent, E.ON, GDF Suez and EPZ,<sup>33</sup> the other for Nuon.<sup>34</sup> Both documents provide data on coal imports and production in an aggregated way which does not allow one to know the exact origin of the coal imports (country and company).

With respect to the second objective of the DCD, 11 sustainability issues have been identified and are being translated into an assessment guideline. Key issues are: human rights, community engagement (FPIC), land issues. Labour issues, integrated land and water use/management. However, it is not yet clear which company will do the assessment.

In October 2012, the Minister of LE&I in his response to questions mentioned the recent results of the Dutch Coal Dialogue, as follows, and these results were repeated by the Ministry of Economic Affairs (6 march 2013):

- A joint inventory of the most important CSR issues related to the extraction of coal;
- The development of a protocol to undertake inspections of mines
- Contacts were laid with relevant mines for inspections in Colombia and South Africa
- End September energy companies will show origin of coal imports.

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<sup>31</sup> SOMO, 2012. The Black box.

<sup>32</sup> Response by Groningen municipality to Provincial Stae; see:

[http://www.provinciegroningen.nl/fileadmin/user\\_upload/Documenten/Statenvraag/2012-05715.pdf](http://www.provinciegroningen.nl/fileadmin/user_upload/Documenten/Statenvraag/2012-05715.pdf)

<sup>33</sup> [http://www.essent.nl/content/Images/99430\\_12-7436%20Notitie%20Herkomst%20Kolen%20Nederlandse%20Elektriciteitscentrales.pdf](http://www.essent.nl/content/Images/99430_12-7436%20Notitie%20Herkomst%20Kolen%20Nederlandse%20Elektriciteitscentrales.pdf)

<sup>34</sup> [http://www.nuon.com/nl/Images/Transparency Document Nuon\\_tcm164-253063.pdf](http://www.nuon.com/nl/Images/Transparency Document Nuon_tcm164-253063.pdf)

### 4.3 Diplomacy by the Netherlands on coal production

#### *RNE intentions according to annual plans*

The subject of coal is first mentioned in the 2010 annual report of the Royal Netherlands Embassy (RNE) in Colombia (it does not feature in the 2008-2011 strategic plan), where it is indicated that “the Parliamentary questions regarding the supposed human rights violations by coal companies in Colombia are a clear example on how CSR is becoming an increasingly important part of international trade flows. Addressing the CSR issues is requiring more capacity of the embassy.”

The subject is further worked out in the annual plan for 2012:

- (p4): “We will continue our (and promote *civil society*) involvement in the implementation of the Voluntary Principles in Colombia and furthermore take an active role in promoting a local version of a coal dialogue in Colombia between Dutch and Colombian stakeholders.”
- (p7): “In 2010 the Dutch Coal Dialogue was set up by Dutch companies, NGOs and Ministry of EL&I as a response to the concerns of NGOs that the coal imported from Colombia (and South Africa) was not complying with international standards for trade and human rights. In 2011 this multi-stakeholder dialogue continued with a second phase. On the other hand a new business-driven initiative was set up by a group of six companies (Nuon, RWE-Essent, E.ON): the Better Coal Standard (which the embassy still needs to study more). Colombia is the principal origin of the Dutch coal imports and offers interesting opportunities to implement an in-country process of the dialogue and possibly also the Better Coal Standard.”
- (p7): “Actions: Promote a local chapter of the Dutch coal dialogue with stakeholders from NL and Colombia and possibly implement a pilot with the Better Coal Standard. Budget: €1.25 million in 2012 (and €1.25 million in 2013/2014/2015; total €5 million).”

In the above, there is a clear relationship between the activities implemented on the subject of responsible coal and the implementation of the Voluntary Principles, as a way of working out attention for CSR in (coal) companies. With respect to the implementation of the Voluntary Principles in Colombia, this is elaborated in the 2010 annual plan, as follows:

- (p5) Colombia has been included in the pilot project regarding human rights and corporate social responsibility (MVO). In the last few years the issue of the impact that companies can have on human rights has become more visible. As awareness increases, claims and lawsuits against companies for complicity in human rights abuses or violations have also gone up. Since 2008 the Embassy is working with international NGOs, companies, the Colombian government and other social actors on the initiative of Voluntary Principles that aims to address specific aspects of corporate impact on the operational environment and to clarify the responsibility of business on human rights and peace issues (see chapter 3).<sup>35</sup> The Embassy plans to increase its attention to this programme by financing the activities of Fundacion Ideas para la Paz (FIP) that serves as the technical secretary of VP in Colombia, as long as the process seems substantial and not only window dressing. At the same time we will increment our participation in the dialogue on human rights, and by doing that, anticipating on the expected discussion in 2010 regarding this topic during the ratification process of the free trade agreement between the EU and Colombia.

#### *Outputs*

Apart from above intentions according to the RNE Colombia annual plans, there is no reference to outputs on the subjects of (sustainable) coal or Voluntary Principles Initiative (VPI) in annual reports over the period of 2004-2011. From our interviews with local stakeholders and review of documents it appears that the RNE has worked on sustainability issues related to Human Rights and security in the mining and particularly coal industry progressively during the study period (CME, 2012). In 2003, thanks to diplomatic efforts lead by the Ambassadors of The Netherlands,

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<sup>35</sup> Reference is made to 2008, but in fact the RNE Colombia has collaborated (informally) on the VPI since the start in 2003 (see below).

USA and UK, the Colombian Vicepresident endorsed the VPI and starts its official promotion locally, together with main companies of the mining and energy sector. Yet, due to concerns about Human Rights performance of Colombian State institutions in these sectors the country has only been admitted officially to the VPI in 2009 (*ibid*). The initiative has been locally renamed as the Mining & Energy Committee on Human Rights and Security (CME in Spanish) since its creation in 2003<sup>36</sup>. Its aim is to promote the VPI principles in the mining and energy sectors.

The RNE has followed a collaborative approach between public institutions, private companies, and NGOs, gaining recognition and wide respect among these. Interviewees so far acknowledge the Embassy as a “*third party guarantor*” that facilitates cooperation, dialogue and agreement between the parties, being determinant in the continued operation of the CME since its creation in 2003 and encouraging the GoC to engage on the VPI<sup>37</sup>.

The Dutch Embassy assumed the Presidency of CME in 2008 and will again take up this role in 2012. The RNE participates actively in the Colombian in-country process for the implementation of the VPI. Among its outputs so far, the CME has contributed to the design and implementation of the National Policy on Defense and Human Rights. It has also created risk management instruments related to Human Rights that are applied by participating companies and a set of performance indicators that is verified independently by its civil society members. Since 2010 the CME has initiated dialogues with local NGOs and is currently taking into account their perspective on Human Rights promotion.

Another area of influence of the RNE in the mining sector has been the Sector Wide Approach to Policy (SWAp) program in the Ministry of Environment between 2007 and 2010. Thanks in part to the SWAp, the Ministry has overcome a critical stage of institutional downturn that subdued environmental policy to urban development and compromised its role as environmental authority. During the period 2002-2010 the Ministry was demoted to a Viceministry as part of the Ministry of Housing and Territorial Development. National budget allocation was diminished in real terms compared to the previous decade, personnel reduced and its capacity to guarantee environmental compliance of economic activities was weakened (Rudas, 2011). Requirements for environmental licenses were relaxed and so titles grew exponentially without proper zoning or planning, despite open criticism from civil society. For instance, licenses were granted in ecologically sensible highlands (*páramos*) considered key water factories, as well as protected forest areas. In the case of coal mining, titles grew from 582 in 2005 to 1,594 in year 2010 without proper control and assurance of environmental and social compliance (Ministerio de Minas y Energía, 2011)

The SWAp contributed to evidence and mitigate this pitfall preventing from a further breakdown in the licensing and control management capacity of the Ministry. It strengthened the Viceministry financially and technically, and fostered (*inter alia*) the adoption in 2010 of an inter-sector agenda with the Ministry of Mines and Energy to promote sustainability.

The sudden public attention in the Netherlands on coal from Colombia in 2010 altered the pace of the agenda between the RNE, coal companies and the GoC. It negatively affected the image of companies and nurtured radical positions delaying the participation of local civil society organizations in the CME. A first lesson from this event is the convenience of promoting responsible mining in a highly sensible context such as the Colombian through a collaborative approach focused on open participatory scenarios for conflict resolution between stakeholders as well as the promotion of sound practices, rather than using mechanisms that undermine confidence between the parties.

In Colombia, the Dutch Coal Dialogue is now expected to be pursued through voluntary pilots with the companies Drummond and Cerrejón. But the DCD is perceived as a centralized and rather slow

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<sup>36</sup> Information on the CME and its achievements is available at <http://www.cmecolombia.co>

<sup>37</sup> Views expressed by Jose Rafael Unda, President of the Mining and Energy Committee; Omar Franco, Ecosystems Director of the Ministry of Environment; Tatiana Roa Director of NGO Censat.

initiative. The RNE and the CME are optimistic about its usefulness to develop a more comprehensive CSR management system in the sector.

There has been good communication between the RNE in Colombia and the DCD, and the RNE has taken a proactive approach, for instance in motivating Colombian companies to be involved in the pilot audits.<sup>38</sup> Colombian government and coal producing companies see the Netherlands as an important coal importer and consider Dutch policies as relevant for the design and implementation of sustainability standards. Other countries such as Germany and Switzerland increasingly also give critical signals about the sustainability of coal mining.

#### 4.4 Activities at EU and multilateral level

##### *Better Coal*

Better Coal is an initiative at European level, which started in early 2011, with an independent stakeholder advisory group established in December 2011. The energy companies involved are all international companies and they aim for a broader European (global) initiative. Only coal buyers can become a member. CEOs of the Energy companies must sign a declaration to become member of Better Coal. There are currently 8 electricity companies with a membership. Better Coal's main objective is to improve the social and environmental performance in the supply chain by developing a better coal code/standard on ethical/social/environmental issues. Coal buyers will demand compliance with this code from the mines (mines have to do an assessment). In September 2012 a global consultation process was opened on the draft Bettercoal Code available for stakeholder review. The assessment can be done through self assessment however also 3<sup>rd</sup> party verification will be developed. The assessments will only be available for the members of the group.

The Better Coal initiative has benefited from and has been inspired by the DCD initiative. The two initiatives share information and experiences.<sup>39</sup> It was also noted that many companies involved in the coal supply chain see the DCD as a Dutch initiative and therefore now prefer to work with the Bettercoal initiative.

##### *Free Trade Agreement*

With the intention of establishing a Free Trade Agreement, the EU has been negotiating with the Andean Community, and later on only Peru and Colombia. Through the Generalized System of Preferences (GSP)<sup>40</sup>, Colombian products benefit from preferential access to the EU market. This means that most exports of industrial and agricultural products from Colombia are exempt from or granted reductions in their customs duties. In 2005, a new GSP entered into force for a period of 10 years. The far majority of EU imports from Colombia are primary products, mainly fuels and mining products (increasing in value from 42% to 67% between 2007 and 2011).

In the FTA between EU and Colombia paragraph 271 refers to the Parties to promote best business practices related to corporate social responsibility. The agreement does not include any specific reference to the mining sector in Colombia (nor coal for that matter) and any sustainability issues involved. No agreements have been made about transparency of energy companies in the supply chain. For forestry and fishery there are paragraphs about sustainability requirements.

#### 4.5 Dutch funding for sustainable coal initiatives

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<sup>38</sup> Personal communication DCD representative

<sup>39</sup> Personal communication Better Coal Initiative

<sup>40</sup> The GSP is a formal system that allows exemptions for countries from the more general rules of the World Trade Organization (WTO), which was formerly called the General Agreement on Tariffs and Trade or GATT.

Dutch funding of the initiatives to more sustainable coal mining policies and practices in Colombia has been indirect. The following financial relations can be highlighted:

- First is the support by public funds of civil society organisations that raised awareness on the sustainability of coal production in Colombia, such as Cordaid and Both Ends, as well as their partners in Colombia, which all receive core funding from the ministry of BuZa;
- Second are time and efforts put by the RNE in supporting the adoption of the VPI in Colombia and progress within the CME;
- Third is the sector budget support programme which has contributed to strengthening the public institutions in Colombia which are responsible for law enforcement in the environmental sector.

It should be emphasised that no public funds have been directly allocated to the Dutch Coal Dialogue, which was mainly funded by private companies.

## 4.6 Conclusions

Dutch NGOs, together with their partners in Colombia, have been and still are influential in raising public and political awareness in the Netherlands and in Colombia on the subject of sustainable extraction of coal. They can do so partly because of government subsidies, part of which is channeled through to partner organizations in Colombia.

The DCD has now entered in its second phase. According to NGOs progress has been too slow. Only after 2 years of being operational has a start been made of disclosing information about origin of coal. In Colombia the DCD is also perceived as a slow initiative. Nevertheless, the RNE and the CME are optimistic about its usefulness to develop a more comprehensive CSR management system in the sector. At European level the Better Coal initiative has benefitted from the DCD and has now made available a first draft of a standard for sustainable coal.

The RNE in Bogotá has been pro-active in taking initiatives relevant to this case study, especially by raising awareness on CSR within the government and among private companies, bringing together multiple stakeholders. The RNE has been instrumental in the adoption by the GoC to adopt the Voluntary Principles as a set of principles for CSR. The initiative has focussed on the mining and energy sectors since these are the ones where human rights violations have been most frequently reported. In doing so, the RNE has followed a collaborative approach between public institutions, private companies and NGOs. The RNE has been acknowledged as a “*third party guarantor*” that facilitates cooperation, dialogue and agreement between the parties. At the same time, the RNE has contributed to capacity building within the ministry of environment, which has contributed to improved legal enforcement. The RNE has responded adequately in 2010 to the sudden Dutch public attention to coal mining in Colombia and the Dutch Coal Dialogue (DCD). These events were not approved in Colombia because it diverted from the cautious and collaborative approach that had been taken so far. There has been good communication between the RNE in Colombia and the DCD.

Overall, there seems to be a contrast between the passive role taken by the Dutch government (‘wait-and-see’, self-regulation and observer role) and the proactive role taken by the RNE (convening, facilitating, stimulating and promoting).

Lastly, the human rights issues in the mining sector have been one of the reasons for the delay of the USA giving its final agreement on the FTA with Colombia. In the FTA between the EU and Colombia, the subject of human rights in relation to the mining sector does not seem to have been a subject of particular attention. While particular articles have been adopted for the sector of forestry and fisheries, nothing is mentioned about the mining sector (the words mining, minerals or coal do not feature in the FTA text).

## 5 Enabling politics and policies

### 5.1 Policy development in Colombia

In 2001 the Colombian government issued a Mining Code under Law 685 to encourage new investment in mining, facilitate mining activity and to grant stability for investments. One of the main changes was the extension of the licensing period from 5 years (that could be renewed for another 10 years), to 45 and 50 years (that can be renewed for another 45 and 50 years). This long-term perspective allows investors to develop the mineral deposits, extract resources, and recover the investment with attractive yields. The Code included several guarantees for exploration and exploitation, fiscal prerogatives such as tax exemptions, and concession facilities aimed at attracting large scale investors (Law 685, August 15 2001 Chapter XXII). With respect to sustainability issues, the Code was limited to require compliance with national environmental legislation, particularly environmental impact studies and licensing (ibid, chapter XX). Chapter XXIV covered prohibitions on child labor and favored local work force hiring. The Code did not develop a comprehensive approach to sustainability or mentioned CSR (Swiss Colombian Chamber of Commerce, 2011). A major limitation of the Code was the delimitation of zones for mining activities. Only national and regional parks were considered exclusion zones, totaling about 11% of the Colombian land area. Forest reserves and collective lands of indigenous and afro-colombian people were treated as restricted, yet amenable for commercial exploitation. In the first case allowing reserve downsizing through bureaucratic procedures; in the second place by conditioning traditional rights to fulfillment of modern exploitation parameters. (Law 685, August 15 2001 chapter III). This also implied that strategic areas that generate environmental services, such as water provision were not excluded. *Paramos* (highlands) ecosystems and Ramsar reserves were considered amenable of exploration and exploitation, accounting for an additional 2% of the territory.

In 2010 the Mining Code was reformed through Law 1382, yet the Constitutional Court declared it null after determining that it posed potential threats to Indigenous and AfroColombian people and they were not consulted during the Law's definition (Sentencia 366 de 2011). The Court provided a two year deadline to the Government in order to revise the Law and undertake proper consultations before passing it. If a new Law is not passed before May 2013, then the original version of Law 685 will continue to regulate the sector. Currently consultations are underway, not exempt from sustainability concerns of NGOs, traditional communities, academics and environmentalists ( El Espectador , 2011; Indepaz, 2012; Indepaz, 2012) On the one hand, these stake holders are keen on the fact that Law 1382 and the new draft define *Paramos* and Ramsar Wetlands as exclusion zones for mining and considers for the first time CSR practices. Yet, previous provisions are still kept such as forest reserve subtraction and forcing traditional use to follow a commercial logic. A new controversial aspect is the conditioning of territorial planning to geological zoning; an attempt that reduces the autonomy of sub-national governments and forces them to favor mining over alternative activities.

The legal framework was complemented by National Mining Development Plans focused on increasing production and competitiveness by:

- providing legal certainty to investors
- facilitating exploration, titling and exploitation
- developing transport and port infrastructure
- improving geological information and zoning

The Plans covered the periods between 2002 and 2006 and 2006/2010 and shared these priorities (UPME, 2002; UPME, 2007) A national policy on *Democratic Security*, aimed at recuperating military and institutional control of rural regions occupied by illegal armed groups, underpinned the growth strategy.

Altogether these aspects, coupled with improved security conditions and high international commodity prices fostered an exponential increase in mining production during the past decade. Mining exports more than doubled between 2005 and 2010, growing from US\$ 4.302 million to US\$9.421 million (FOB). Coal represented more than 60% of these exports (Ministerio (Ministerio de Minas y Energía, 2011). Illegal mining grew as well, albeit at a minor scale in terms of income, generating sensible social, labor and environmental costs. Existing institutions were not capable of handling adequately this mining boom and titles as well as environmental licenses were granted without proper legal compliance or control of management plans. By 2010 8,832 mining titles had been granted, growing from 3,330 granted by 2005, with coal representing more than 18% of the total (*ibid*). The area granted increased from 1 million hectares in 2002 to more than 8.4 million hectares in 2010 of which 122,000 hectares were located in *Paramos* (Rudas, 2011)

Due to this situation the current Mining Strategic Plan 2010-2014 (Ministerio de Minas y Energía, 2010) prioritized institutional reform and reduction of illegal mining. To illustrate the point, in 2010 2,690 requests for title legalization were lodged, compared to 91 between 2005 and 2009 (Ministerio de Minas y Energía, 2011)

Two key institutions were created in year 2011, the National Mining Agency and the National Agency of Environmental Licenses (ANLA). The main goal of the National Mining Agency (ANM), attached to the M&E Ministry, is to exert a comprehensive control to mining activities through all the product cycle. Its control includes ensuring legal compliance in titling, payment of royalties, adequate corporate practices and environmental management. The Agency is designing a policy on CSR for the first time in Colombia, and will also focus on promoting best standards and practices in the sector<sup>41</sup>. Its enforcement capacity and managerial structure is well beyond previous institutional limitations of the precluded Mining Institute INGEOMINAS. The National Agency of Environmental Licenses (ANLA), attached to the Ministry of Environment and Sustainable Development, was also created to overcome managerial, financial and technical shortcomings of the previous office.

Recently, thanks to a joint effort that started in 2008 between The Nature Conservancy (NGO), Conservation International, WWF and the Ministry of Environment (MEDS), a mechanism to compensate biodiversity loss was published and officially endorsed by the Ministry (MEDS, 2012). This instrument will serve to calculate and implement compensation measures based on ecological zoning as a requisite for all environmental licenses granted by the National Agency of Environmental Licenses (ANLA). The mechanism is innovative and overcomes traditional compensations that lacked an approach based on ecosystem impact and were insufficient in their time frame (3 years) to guarantee restoration<sup>42</sup>. Also conservation of wild areas is introduced as a valid compensation measure.

It is also worth mentioning two policy developments aimed at improving environmental performance of mining activities during the study period. The first was the Decree 3083 of year 2007 that compelled coal companies to undertake direct ship loading by 2010 in order to reduce particle contamination. Up to date this has not been achieved, although major companies (Drummond and Prodeco/Glencore) that operate their ports in the Caribbean department of Magdalena are finalizing the necessary investments for this purpose and will start to comply by 2013<sup>43</sup>. The second was the commitment of the Ministry of M&E and the Ministry of Environment to develop a Mining Sector Inter-ministry Agenda in 2010. The Agenda was formally adopted and since then has improved coordination between the Ministries on environmental compliance issues. To highlight, cooperation and feedback mechanisms on climate change mitigation and adaptation,

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<sup>41</sup> Constanza Garcia, Director of NMA (interview held on November 9 2012)

<sup>42</sup> Shirley Saenz, Infrastructure Specialist, The Nature Conservancy (interview held on October 31 2012)

<sup>43</sup> Port Rio Cordoba owned by Vale, a Brazilian multinational that operates a medium sized mine in Cesar, also needs adequation. This company started business in 2009 and due to high operating costs relative to the major companies is selling its rights on El Hatillo mine in Cesar; its annual output reaches 3Mt.

## 5.2 Colombian coal production policies

Coal production policies during the study period have emphasized investment attraction and provision of a competitive business climate for large scale mining companies. Observed trends in exports (see section 2.3) demonstrate relative success in this goal, triggered as well by high international prices, macroeconomic stability and improved security. Yet, infrastructure, institutional capacity, political stability, labor issues, environmental governance and security are still weak on an international basis. The policy potential index applied by the Fraser Institute in its annual survey demonstrates these limitations. Colombia has ranked in the bottom half of the index with a decrease in the 2011/2012 period to position 64/93 evidencing weaknesses of its mining policies (Fraser Institute, 2012)

Sector reform has evolved positively after the perverse boom of illegal mining and inadequate environmental licensing, titling and government control observed between 2002 and 2010. The recently created agencies, National Mining Agency (ANM) and National Agency of Environmental Licenses (ANLA), appear to have the managerial, technical and financial capacities necessary to improve governance, legal compliance and promote competitiveness of companies. CSR is now being considered by the GoC as an emergent policy priority needed to modernize the sector. The ANM reckons there is a meaningful opportunity to engage with the major coal companies to promote CSR and best practices with a demonstration effect across all production scales.

Consultation with traditional communities and approval of the new Mining Code are still an unresolved matter. If the new Code is not passed, the 2001 version (Law 685) will prevail, posing environmental and social threats derived from its shortcomings (see section 2.3). In the case of coal production the main risk is associated to a *tyranny of small decisions*, due to numerous small and medium scale mining activities that account for less than 10% of the output, yet highly informal and lacking CSR practices. In terms of exports this is irrelevant, but their potential impact over strategic ecosystems and environmental services is considerable. The social dimension of the new Code remains an open question, since outcomes of consultations are not yet known.

Albeit recent decreasing trends in international prices, Colombia still expects to increase its coal production by an 8% annual growth rate. A recent announcement by President Santos in Rio+20 may be an indicator of the mining sector political and economic importance for the GoC. His speech served to declare 17 million hectares in the megadiversity regions of Chocó, the Amazon and Orinoquia as *strategic mining areas* (Resolución 0045 de Julio de 2012) without any previous assessment of environmental issues by the Ministry of Environment. Open controversy and public opposition lead afterwards to an announcement by the Ministry of Environment to halt any mining activities in these areas until proper zoning and assessment of impacts was done. Thus, the risk of unsustainable expansion is latent.

A key front that still demands strengthening is the planning and ecological zoning capacity of the Ministry of Environment (MEDS) to prioritize areas for conservation or restricted management as well as those amenable for mining. This must be a joint effort of the inter-ministerial agenda of MEDS and the Ministry of Mines and Energy that crosses mining potential with adequate zoning and allows better institutional management of coal production districts. The 2004- 2009 period is critical in this respect, and only in 2010 ecological zoning starts to be taken into account. Effective implementation of the mechanism to compensate biodiversity loss will serve to calculate and implement compensation measures as a requisite for all environmental licences granted by the National Agency of Environmental Licenses (ANLA), representing an important step forward in this respect.



### 5.3 Initiatives in Colombia on CSR

#### *Voluntary Principles Initiative on security and Human Rights*

As mentioned in previous sections, the Voluntary Principles Initiative (VPI) has been adopted since 2009 in Colombia through the Mining & Energy Committee on Human Rights and Security (CME). The CME is a public and private alliance with the following goals<sup>44</sup>:

- To strengthen the capacity of State institutions in Human Rights and security management.
- To strengthen the capacity of private companies in Human Rights and security management.
- Develop and share good practices
- Create a forum between the State, civil society and M&E companies
- Interact with the VPI and endorse its code of conduct.

So far Cerrejón, one of the main coal exporters in Colombia, is the only coal producing private company that participates in the CME. The CME has served as a proactive setting for Cerrejón to promote leading standards on Human Rights in the mining sector, such as legal clauses with all of its security contractors to comply and report on VP. Training based on a VP manual developed by Cerrejón and an annual work plan based on performance indicators are developed by the Department of Social Standards of the company to guarantee VP compliance. These achievements are endorsed and promoted by the CME as good practices, yet so far no other mining company is implementing them yet.

#### *OECD Guidelines for multinational enterprises*

The Colombian government has recently (2012) endorsed the OECD Guidelines for Multinational Enterprises, through the Ministry of Trade as National Contact Point (NCP). The NCP can receive and handle complaints related to alleged abuses of the OECD Guidelines by multinational companies operating in Colombia and by Colombian companies operating abroad. Yet, the Colombian NCP is still being established and appears to be passive in the case and no instance was raised by it in the evaluation period. Moreover, coordination with other relevant national agencies appears to be weak, as Mines & Energy and Environment sectors are not involved in the Guidelines implementation.

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<sup>44</sup> The GoC including its Military Forces and the Superintendencia de Vigilancia y Seguridad Privada are national public members. International members are the Netherlands, United States, United Kingdom and Canada. Private members are AngloGold Ashanti, Oxy, Rio Tinto, Isa, Isagen, and Cerrejón (among others). Civil Society members are International Alert and Fundación Ideas para la Paz (CME, 2012).

## 6 Outcomes 2004-2011

### 6.1 Trends in CSR within coal companies - Colombia

According to the International Center for Human Development, evolution of CSR can be explained in terms of a framework with four evolution stages. This framework serves to classify main coal companies operating in Colombia considering their progress in corporate governance and overall implementation of CSR.

Evolution stages of CSR	
<b>Third stage</b> New economy wide model	<ul style="list-style-type: none"> <li>• Multistakeholder alliances</li> <li>• Public CSR policies</li> <li>• Institutional development for CSR</li> <li>• Active promotion of CSR</li> </ul>
<b>Second stage</b> Strategic CSR of companies	<ul style="list-style-type: none"> <li>• Competitive sustainability</li> <li>• Effective dialogue and participatory mechanisms and response to social stakeholders</li> <li>• Value chains and transparency</li> <li>• Development and implementation of standards</li> </ul>
<b>First stage</b> Short term and scope	<ul style="list-style-type: none"> <li>• Philanthropy</li> <li>• Short term risk management (reaction)</li> </ul>
<b>Conformity</b> Normative compliance	<ul style="list-style-type: none"> <li>• Legal compliance (environment, labor, health, safety, consumer rights)</li> </ul>

Source: International Center for Human Development as quoted by (Fedesarrollo, 2008).

The mining companies in Colombia can be classified as follows:

1. *Cerrejón* can probably be classified in the second generation stage, with a possible shift to a third generation if the GoC had policies supporting CSR, with capacities for strong law enforcement. Cerrejón developed a CSR approach that includes the product cycle, covering:
  - Social, human rights and environmental compliance in the supply chain
  - Transparency, external verification, reporting and evaluating progress
  - Implementation of dialogue and participatory mechanisms
  - Best practices and standards to prevent and mitigate environmental and social impacts
  - Strategic thinking to contribute to regional sustainable development.

In spite of above achievements, there continue to be reports in newspapers about events where Cerrejon did not comply with these regulations, for instance a recent article in *Elespectador* about the decision to suspend the process of opening up a new mine by Cerrejon due to non-compliance to social and environmental regulations.<sup>45</sup> The report was checked and although difficult to verify was probably not to blame the mining company.

2. *Glencore/Prodeco* may be classified in a transition between the first and second generation stages. Although it has achieved progress on standards, transparency, external verification, reporting and evaluating progress, it still follows a philanthropic approach to CSR. Risk management is reactive as evidenced by continued strikes and labor conflicts during the last five years.
3. *Drummond* has followed a classical first generation approach, based on philanthropy investments and short term risk management. There are pending law cases and there have been strikes and labor conflicts in recent years (see box section 3.3).

<sup>45</sup> <http://www.elespectador.com/noticias/actualidad/vivir/articulo-384775-los-reparos-de-contraloria-cerrejon>

4. Finally *small and medium scale companies* are characterized for marginal or null CSR practices, with several not even in the conformity stage (Fedesarrollo, 2008, p. 84)).

A comparative view of the three main companies serves to illustrate the above classification.

<u>Aspect</u> <sup>46</sup>	<u>Cerrejón</u>	<u>Glencore/ Prodeco</u>	<u>Drummond</u>
GRI A+ (independent verification) <sup>47</sup>	✓	✓	×
Publication of 2011 Annual sustainability report	✓	✓	×
Publication of 2010 Annual sustainability report	✓	✓	✓
Implementation of UN Guiding Principles on Business and Human Rights	✓	×	×
Adoption of IFC – World Bank sustainability framework; involuntary resettlement protocol	✓	✓	×
Engagement in the VPI and Colombian CME	✓	×	×
Observes OECD guidelines for Multinational Enterprises	✓	×	×
Participates in the Dutch Coal Dialogue	✓	×	×
Certified in ISO 14001	✓	✓	×
Certified in OHSAS 18001	✓	✓	✓
Participates in the Extractive Industries Transparency Initiative (EITI) <sup>48</sup>	✓	✓	×
Member of the International Council of Mining and Metals; implements the ICMM sustainable development framework	✓	×	×
National legal compliance <sup>49</sup>	✓	✓	✓
Human capital investment and local hiring	✓	✓	✓
Direct ship loading	✓	×	×
Implements a comprehensive land rehabilitation and restoration program in mining areas <sup>50</sup>	✓	×	×
Implements policies or initiatives on:			
Human Rights	✓	×	×
Indigenous People	✓	×	×
Environment	✓	✓	✓
Community Development	✓	✓	✓
Labor and equal opportunities	✓	✓	✓
Regional development	✓	×	×
Institutional strengthening and governance	✓	×	×

Legend: ✓ = complies; × = does not comply

Overall Cerrejón leads CSR in Colombia, providing an interesting benchmark for other companies to adopt. Its good practices are worth further analysis in order to define a sustainability pathway

<sup>46</sup> Prodeco, 2012; Cerrejón, 2012; Cerrejón, 2011; Drummond, 2011.

<sup>47</sup> GRI database web page [www: database.globalreporting.org/search](http://www.database.globalreporting.org/search) only displays Cerrejón. Yet Prodeco claims its GRI A+ status in its report (Prodeco, 2012).

<sup>48</sup> All companies except for Drummond participate in EITI. Colombia is non compliant.

<sup>49</sup> Except for direct ship loading by Drummond and Prodeco. It should be implemented since 2010 and is still expected for 2013.

<sup>50</sup> The land rehabilitation program covers more than 2.800 ha completely restored so far in a joint effort with the NGO Conservation International (Cerrejón, 2011).

for the mining sector. Prodeco and Drummond invest locally on social and environmental programs of a more philanthropic type with active involvement of local citizens.

## 6.2 Trends in CSR within energy companies – the Netherlands

In the report ‘The Black Box’ an overview is given of the state of progress with respect to CSR policies by the main electricity companies in the Netherlands (SOMO, 2012). The following summary is based on their report and analysis carried out in 2011. This information has not been updated for 2012.

None of the Dutch electricity companies is in line with the OECD Guidelines’ recommendations with regard to supply chain transparency. The OECD Guidelines recommend that companies “encourage...suppliers...to apply principles of responsible business conduct compatible with the Guidelines”. Most of the electricity companies profiled here do this through an ethical charter, commitment statement, or code of conduct with which they expect their suppliers to comply. The supplier codes of most companies (e.g. E.ON, Vattenfall/Nuon, RWE/Essent) are based on the principles of the UN Global Compact. Only GDF Suez/Electrabel, in addition, in its supplier policy makes reference to the OECD Guidelines for Multinational Enterprises, ILO standards, and the UN Universal Declaration of Human Rights. EPZ is the only company that does not appear to have any code of conduct for suppliers.

Some of the companies provide more detail about the process by which they aim to ensure that their suppliers are abiding by their code of conduct. For example, Vattenfall/Nuon indicates that the code of conduct for suppliers was included as part of all new or renegotiated supplier contracts in 2009. GDF Suez/Electrabel requires that all its suppliers sign a CSR Commitment Statement. RWE/Essent has set a target of having at least 95% of the group-wide procurement volume meet internationally-recognised social and environmental standards. Electricity companies have recently begun to monitor and verify their suppliers’ implementation of the code of conduct through audits or site visits at coal mines. Three electricity companies (E.ON, Vattenfall/Nuon, and DONG Energy) confirmed that they have conducted third-party audits of coal suppliers. Vattenfall/Nuon asserts that, as of 1 January 2011, 6% of the company’s coal suppliers (representing 17.9% of the total quantity of coal used by the company) for its own operations has undergone auditing. E.ON conducted audits of two coal mines in 2010 (one of which was Cerrejón in Colombia) and had another two audits planned for 2011, all using independent auditors. RWE/Essent also indicated that it makes periodic visits to coal mines to assess the conditions prevailing there, but did not indicate whether it also conducts independent, third-party audits. Neither GDF Suez/Electrabel nor EPZ indicates whether they conduct any audits or site visits at supplier coal mines. None of the companies provides any transparency regarding the findings, outcomes or results of any audits that they have conducted.

Except for DONG Energy, the electricity companies participate in the Dutch Coal Dialogue, which aims to improve transparency and social and environmental conditions in the coal supply chain. In addition, all companies (including DONG Energy, but except for EPZ) participate in the Better Coal Initiative, which is striving for the continuing improvement of the coal supply chain, focusing on coal mines in particular.

With respect to transparency, the following table gives an overview of the situation in 2011. It portrays an overview of the degree of transparency provided by each company with regard to the quantity, origin (both countries and specific mines), and port of entry of the coal they use, both at the level of the company as a whole, as well as at the level of the individual Dutch power plant. It can be observed that none of the companies provided information about the specific coal mines or mining companies from which they source their coal (with the exception of E.ON). Most companies provide information about the quantity of coal consumed each year (with the exception of GDF Suez/Electrabel and E.ON). All companies except RWE/Essent are transparent about

which Dutch ports are used to import coal to their respective coal-fired power plants. None of the companies provided full information about the specific mine or company of origin.

**Figure 4: Transparency provided by Dutch power companies in 2011 (SOMO, 2012)**

Transparency on coal	E.ON	EPZ (DELTA)	GDF Suez/ Electrabel	RWE/ Essent	Vattenfall/ Nuon	DONG Energy
At company-wide level						
Quantities	GREEN	GREEN	RED	GREEN	GREEN	GREEN
Countries of origin	GREEN	RED	RED	GREEN	RED	GREEN
Mines of origin	ORANGE	RED	RED	RED	RED	RED
Used in Dutch power plant						
Quantities	RED	GREEN	GREEN	GREEN	GREEN	n/a
Ports of import	GREEN	GREEN	GREEN	RED	GREEN	n/a
Countries of origin	RED	RED	GREEN	GREEN	RED	n/a
Mines of origin	RED	RED	RED	RED	RED	n/a

Based on: Company websites and public documents; company responses to SOMO questionnaire in May 2011.

Legend: GREEN = high degree of transparency; ORANGE = some degree of transparency; RED = no transparency, n/a = not applicable.

The above situation end 2011 changed in August/September 2012 when two documents were provided by the electricity companies that provide insight in the origin of coal imports, one for the electricity companies Essent, E.ON, GDF Suez and EPZ,<sup>51</sup> the other for Nuon.<sup>52</sup> Both documents provide data on coal imports and production in an aggregated way which does not allow one to know in detail the origin of the coal being consumed and being traded by every company. Thus, the Dutch power companies are still not in compliance with the first objective of the DCD, which is that of showing transparency on origin of coal imports.

### 6.3 Development of the Dutch Coal Dialogue

After almost two years following the start of the DCD, some progress has been made in terms of transparency by a recent disclosure by power companies of aggregated data about the origin of their coal. It should be noted that the degree of additional disclosure by the power companies falls short of the level of transparency civil society organisations consider necessary to contribute to improving social and environmental conditions in the coal supply chain. It is not yet clear which company will be involved in the pilots.

Pilots with Cerrejón and Drummond are expected to start in 2013 in Colombia on sustainable coal production according to the criteria for sustainable coal production as developed by the Dutch Coal Dialogue. If they are properly designed and thoroughly carried out, the pilot audits that are to be conducted on sustainable coal mining as a result of the Dutch Coal Dialogue have the potential to contribute to the sustainability pathway. However, it seems that the pilots are still being discussed and have certainly not started. It is far too early to have any volumes produced or to be able to state when such volumes can be expected.

### 6.4 Trends with respect to sustainability issues in Colombia

<sup>51</sup> [http://www.essent.nl/content/Images/99430\\_12-7436%20Notitie%20Herkomst%20Kolen%20Nederlandse%20Elektriciteitscentrales.pdf](http://www.essent.nl/content/Images/99430_12-7436%20Notitie%20Herkomst%20Kolen%20Nederlandse%20Elektriciteitscentrales.pdf)

<sup>52</sup> [http://www.nuon.com/nl/Images/Transparency%20Document%20Nuon\\_tcm164-253063.pdf](http://www.nuon.com/nl/Images/Transparency%20Document%20Nuon_tcm164-253063.pdf)

### **Social impacts**

At a national scale social issues related to mining, including coal mines, are likely to become more frequent because of expansion of mining activities. This will depend on the titling expansion rate due to unavoidable use conflicts in rural areas. A key issue will be the consultation process of the new Mining Code. If indigenous and Afrocolombian rights and traditional use of the territory are respected, adverse impact will decrease. Also the effectiveness of the Ministries of Environment and Energy in developing an adequate zoning that does not compromise biodiversity values and ecosystem services will be key in maintaining traditional land use.

As an example, following are some developments with respect to Cerrejon. In the 2011 annual report (OECD, 2011) there is reference to a specific social case notified in 2007 by the National Contact Point of Switzerland. The issue was raised by the community of El Tabaco represented by an Australian lawyer and a Colombian legal defense NGO (Colectivo de Abogados Alvear Restrepo), arguing social and environmental negative impacts due to involuntary resettlement of the El Tabaco Township. Thanks to the Australian NCP mediation, Cerrejón complied with a program that included satisfactory indemnization, social support projects and improved air quality control and monitoring. Since then resettlement processes (such as La Roche, Patilla, Remedios, Tamaquitos and Chancleta communities) have been better dealt in a proactive and inclusive way with independent facilitators and lead by the Manager of the Department of Social Standards, a top level officer that has directly addressed community concerns (NCPS, 2009). Cerrejón now complies with the IFC framework and approved practices on resettlement, which have been systematically applied.

The experience has followed an adaptive trend with progressive outcomes in terms of conflict management, active citizen engagement in oversight and participation in operational decisions. A project undertaken by the Harvard Kennedy School demonstrated Cerrejón has developed effective company stakeholder grievance mechanisms and is keen to improve its CSR to improve social performance (Rees, 2011). Its recent decision to stop the River Rancheria diversion proves their assessment of social and environmental costs. Thus, it can be affirmed that potential for better social performance depends on the replication of Cerrejón good practices in the Guajira region, as well as in the small and medium scale mines that operate in the Andean region of Colombia.

In terms of labour conflicts only Cerrejón has been exempt of strikes since 1990. Drummond and Prodeco have had recurrent strikes during the past decade and annually in the last five years, evidencing better labor standards and working conditions with Cerrejón.

### **Environmental impacts**

The recent reform in the mining and environment national institutions appears to be an adequate step of the GoC in terms of control, zoning, and effective enforcement of mining activities, including illegal mining reduction. Altogether, provided adequate ecological zoning is observed in the expected mining expansion, overall environmental impacts may be managed and irreversible biodiversity loss avoided. This having been said, the ecological foot print of coal mining remains considerable. Massive uncontrolled small scale mining may also worsen the problem, representing a *tragedy of the commons* case in which their aggregate negative impact may be greater than that of open pit large scale mines due to multiple affectations of sensible ecosystems. CSR policies and nationwide implementation of CSR in its third stage is a necessary condition in order to improve environmental performance of the activity.

Turning to the new Mining Code, it is expected to include key ecosystems as exclusion zones, yet maintaining the possibility of downscaling forest reserves or compelling territorial planning to mining priorities. Passing of the law is needed or else the obsolete 2001 Code will be reactivated with serious negative effects. Standards and good environmental practices followed by Cerrejon, such as the land restoration program, should be replicated by the other main companies in order to improve their performance.

## 7 Analysis of the effects of policy actions on sustainability

### 7.1 Contribution to enabling politics and policies

Two main themes will be addressed hereunder:

1. Strengthening of institutions and government policies in Colombia to enable and enhance CSR and sustainable production of coal;
2. Strengthening of private sector in CSR and sustainable production of coal, both in Colombia (coal companies) and the Netherlands (power companies).

#### *Public sector*

The Colombian government has in recent years made progress in terms of compliance with international guidelines on CSR and human rights. Notably, it complies with the Voluntary Principles Initiative since 2009 through the Mining & Energy Committee on Human Rights and Security (CME) and the OECD Guidelines for multinational enterprises since 2012 through the Ministry of Trade as National Contact Point (NCP). The NCP can receive and handle complaints related to alleged abuses of the OECD Guidelines by multinational companies operating in Colombia and by Colombian companies operating abroad. CSR is now being considered by the Government as an emergent policy priority needed to modernize the sector. The National Mining Agency (ANM) reckons there is an opportunity to engage with the major coal companies to promote CSR and best practices with a demonstration effect across all production scales. Consultation with traditional communities and approval of the new Mining Code are still an unresolved matter. If the new Code is not passed, the 2001 version (Law 685) will prevail, posing environmental and social threats derived from its shortcomings.

In the mining sector infrastructure, institutional capacity, political stability, labor issues, environmental governance and security are still weak. Colombia has ranked in the bottom half of the policy index for the mining sector, with a decrease in the 2011/2012 period to position 64/93 (Fraser Institute, 2012)

There is certainly an important contribution made by the RNE to progress in the area of CSR in the mining sector. It appears the RNE adopted a collaborative approach which may be relatively slow but is consistent and aimed at building up trust. Yet, there is still a way to go. For instance, the NCP is still being established and is not yet very active. Moreover, coordination with other relevant national agencies appears to be weak, as Mines & Energy and Environment sectors are not involved in the OECD guidelines implementation.

Many efforts that enhance sustainability in coal production will have a positive *spill over* effect over other mining activities. This includes ecological zoning, CSR good practices and management. Although coal is the focus of attention, positive results may be expanded in a relatively easy way to other mining activities.

The Colombian government also approves of the budget support which has benefitted the Ministry of environment in recent years. This has been important in building capacities for environmental protection and has certainly contributed to enhance law enforcement in the mining sector.

#### *Private sector*

With respect to coal companies in Colombia, there has been some progress with respect to application of CSR and sustainability in the mining and specifically coal production sector. It is certain that Cerrejon is currently the most advanced. It appears to generally comply with international standards, such as the OECD standard and the IFC resettlement standard. It can be considered as a benchmark in Colombia. So far Cerrejon is also the only coal producing private company that participates in the CME (Mining & Energy Committee on Human Rights and Security). Other Colombian coal companies are way behind. An article in the Dutch newspaper

Volkskrant recently reported that Cerrejon is opening its doors for a visit by Dutch NGOs.<sup>53</sup> In terms of labour conflicts only Cerrejón has been exempt of strikes since 1990. Drummond and Prodeco have had recurrent strikes during the past decade and annually in the last five years, evidencing better labor standards and working conditions with Cerrejón.

The above progress can certainly be partly attributed to Dutch initiatives, especially through the activities by the RNE in the field of CSR and supporting the DCD with activities in Colombia. In addition, Colombian NGOs that have partnerships with and receive funds from Dutch NGOs have been active in the mining sector in recent years. The Dutch Coal Dialogue has not significantly contributed to this progress as its activities have only recently come to a stage of discussing pilots in coal production countries.

## **7.2 Contribution to production and trade**

Two main themes will be addressed hereunder:

1. Production and trade of coal that meet sustainability standards;
2. Reduced incidence of unsustainable or illegal production of coal.

There is no sustainability standard for coal so there are no data with respect to coal production meeting sustainability standards. Dutch power companies do not provide sufficiently detailed and disaggregated data about the origin of their coal imports, nor information about sustainability standards in the supply chain.

It appears that, given its CSR and sustainability policies, by now coal produced by Cerrejon would be expected to meet most sustainability criteria. Coal imported in the Netherlands comes mainly from the two companies Cerrejon and Drummond, with a slightly larger proportion from Cerrejon. Imports from both companies have increased between 2010 and 2011 (for E.ON, Essent, GDF Suez en EPZ).

Both major coal companies supplying coal to the Netherlands have had law cases against them in recent years. Cerrejon (with a law case in Colombia) has solved the allegations, for Drummond (with a law case in the USA) this is probably not the case. Thus, the overall incidence of illegal production of coal related to Dutch coal imports is likely to have declined.

If they are properly designed and thoroughly carried out, the pilot audits that are to be conducted on sustainable coal mining as a result of the Dutch Coal Dialogue have the potential to contribute to the sustainability pathway. This has been further strengthened by the new national policy context which is more prone to responsible mining. However, the pilots have not yet started, so it is too early to conclude on the effects of the DCD over Colombian coal production. The DCD process is generally considered to be very slow in progress.

It can be concluded that activities by the RNE have contributed to improved CSR policies, and as a result more sustainable production and reduced illegal production. The exact trends and quantities are not known. The DCD has not directly contributed to this plausible improvement.

## **7.3 Effectiveness of modalities and pathways**

As was explained in the above section, there is most likely a positive contribution by the RNE in Bogota to the positive trends on CSR, with contributions to the mining sector. This can be related to a consistent approach of building trust, diplomacy convening multi-stakeholder platforms. It is characterised as the collaborative approach. This has increased awareness on CSR and contributed

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<sup>53</sup> Volkskrant 7 december 2012: Kolenleverancier opent zijn deur.



to strengthening of environmental protection institutions in Colombia. There has been good communication between the RNE in Colombia and the DCD, and the RNE has taken a proactive approach, for instance in motivating Colombian companies to be involved in the pilot audits. Colombian government and coal producing companies see the Netherlands as an important coal importer and consider Dutch policies as relevant for the design and implementation of sustainability standards. Other countries such as Germany and Switzerland increasingly also give critical signals about the sustainability of coal mining.

Secondly, there is an influence of Dutch NGOs, through their partnerships with Colombian NGOs. They have been instrumental in keeping the subject of coal and its sustainability on the political and public agenda, both in the Netherlands and in Colombia.

The sudden public attention in the Netherlands on coal from Colombia in 2010 altered the pace of the agenda between the RNE, coal companies and the GoC. It affected the image of companies and nurtured radical positions delaying the participation of local civil society organizations in the CME. A first lesson from this event is the convenience of promoting responsible mining in a highly sensible context such as the Colombian through a collaborative approach focused on open participatory scenarios for conflict resolution between stakeholders as well as the promotion of sound practices, rather than using mechanisms that undermine confidence between the parties.

The DCD is perceived in Colombia as being slow. Indeed, there are actually no tangible outputs yet. Dutch energy companies have not played a proactive role; they still do not fully meet transparency principles. The Dutch government has neither played a proactive role. The role of the Dutch government has shifted to one characterised as 'wait-and-see'.

Overall, there is a contrast between the rather passive role taken by the Dutch government ('wait-and-see', self-regulation and observer role) and the more proactive role taken by the RNE (convening, facilitating and stimulating).

#### **7.4 Coherence of policy actions to address sustainability issues**

Within the Netherlands there is a lack of coherence between on the one hand CSR policies putting an emphasis on sustainability and transparency in the value chain as well as commitment to comply with international standards such as the OECD Guidelines for multinational enterprises, and on the other hand the closed character of the energy sector and the high priority given to expansion of coal-fired power plants in order to meet future energy needs disregarding origin of the coal imports. The OECD Guidelines and the UN Guiding Principles on Business and Human Rights (both officially endorsed in the Dutch Government's CSR policies) both refer to (i.e. 'apply' to) all business partners/relations of Dutch companies, including companies that supply materials for import and consumption in NL. This raises questions about the rather passive position taken by the Dutch government on the subject of transparency of coal imports from Colombia, justified by arguments on confidentiality, self-regulation and business-competitiveness.

The Netherlands has not raised the subject of coal and human rights violations in the negotiations for the FTA between the EU and Colombia. Yet, if so much priority is given to human rights, then the priority sector for the Netherlands should be mining (coal). Likewise, at EU level it is somewhat surprising that the subject of human rights violations in the mining sector is not specifically mentioned in the FTA between Colombia and the EU. Why are forestry and fisheries mentioned, but not mining, while 67% of the exports (2011, in terms of value) from Colombia to the EU are mining and fuel products? This also suggests a lack of coherence within the EU.

The example of the allegations of human rights in the mining sector in relation to the FTA between Colombia and the USA shows the influence that foreign nations can have. The signing of the FTA has been held up in the USA partly because of human rights violations in the mining sector. The issue has been subject of intense negotiations.

## 8 Conclusions

1. There is increasing attention in Dutch policies for the need to assure sustainability and transparency in value chains. In the mining and energy sectors concrete targets, there are not yet substantial initiatives and experiences on enhancing sustainability in the value chain. For these sectors, in Dutch policy reference is made to international frameworks, especially OECD Guidelines for Multinational Enterprises and Extractive Industries Transparency Initiative (EITI).
2. There is no Dutch policy on coal from Colombia. The Dutch policy developments show that the government has been dealing with the subject of sustainability of imported coal since 2008. Analysing the debates, the position of the Dutch government seems to have shifted from relatively proactive to a predominant position of wait-and-see. In response to questions in Parliament, the tone changed towards one of explaining the lack of transparency with arguments of confidentiality, sector self-regulation and the time needed for internal dialogue. We did not find evidence for the government taking concrete policy measures. The Dutch Coal Dialogue did not receive government funding.
3. The DCD has now entered in its second phase. According to NGOs progress has been too slow. After two years of being operational information has been disclosed about the origin of coal. Also in Colombia the DCD is perceived as a slow initiative. Pilots have still not started. Nevertheless, the RNE and the CME are optimistic about its usefulness to develop a more comprehensive CSR management system in the sector. At European level the Better Coal initiative has benefitted from the DCD and has now made available a first draft of a standard for sustainable coal.
4. The Colombian government has in recent years made progress in terms of compliance with international guidelines on CSR and human rights. Notably, it complies with the Voluntary Principles Initiative since 2009 through the Mining & Energy Committee on Human Rights and Security (CME) and the OECD Guidelines for multinational enterprises since 2012 through the Ministry of Trade as National Contact Point (NCP). However, the mining sector remains characterized by relatively weak infrastructure and institutional capacity.
5. There is an important contribution made by the RNE to progress in the area of CSR in the public sector, with a contribution to the mining sector in Colombia.
6. The Colombian government also approves of the budget support which has benefitted the Ministry of environment in recent years. This has been important in building capacities for environmental protection and has contributed to enhance law enforcement in mining.
7. With respect to coal companies in Colombia, there has been progress in terms of application of CSR and sustainability in the mining and specifically coal production sector. Cerrejon is currently the most advanced. Other Colombian coal companies are way behind. This progress can be partly attributed to Dutch initiatives, especially by the RNE. The Dutch Coal Dialogue has not significantly contributed to this progress.
8. In terms of trade outcomes, there is no sustainability standard for coal so there are no data with respect to coal production meeting sustainability standards. Dutch power companies do not provided sufficiently detailed information about the origin of their coal imports, nor information about sustainability standards. However, by now Cerrejon through its CSR and sustainability policies would be expected to meet most sustainability criteria, in contrast to Drummond.
9. If they are properly designed and thoroughly carried out, the pilot audits that are to be conducted on sustainable coal mining as a result of the Dutch Coal Dialogue have the potential

to contribute to the sustainability pathway. However, these pilots have not yet started. Thus, it is still early to conclude on the effects of the DCD over Colombian coal production considering it has just landed in the country.

10. The contribution by the RNE in Bogota to the positive trends on CSR can be related to a consistent approach of building trust, diplomacy convening multi-stakeholder platforms and looking for opportunities to have an influence. It is characterised as the collaborative approach. Colombian government and coal producing companies see the Netherlands as an important coal importer and consider Dutch policies as relevant for the design and implementation of sustainability standards.
11. Secondly, there is an influence of Dutch NGOs, through their partnerships with Colombian NGOs. They have been instrumental in keeping the subject of coal and its sustainability on the political and public agenda, both in the Netherlands and in Colombia.
12. Overall, there is a contrast between the rather passive role taken by the Dutch government ('wait-and-see', self-regulation and observer role) and the more proactive role taken by the RNE (convening, facilitating and stimulating). Options for the Dutch government are:
  - Stimulate the implementation of the OECD Guidelines for Multinational Enterprises and that Dutch companies and other multinationals active in the Netherlands are operating in line with these guidelines.
  - Develop and implement legislation that requires electricity companies to disclose information about their supply chain, including disclosing and reporting regularly on their suppliers and the origin of their raw materials.
  - Stimulate companies to identify, prevent, and mitigate potential adverse impacts caused by suppliers and that companies be transparent about their management processes.
13. Within the Netherlands there is a lack of coherence between on the one hand CSR policies putting an emphasis on sustainability and transparency in the value chain as well as commitment to comply with international standards such as the OECD Guidelines for multinational enterprises, and on the other hand the closed character of the energy sector and the high priority given to expansion of coal-fired power plants in order to meet future energy needs disregarding origin of the coal imports. The OECD Guidelines and the UN Guiding Principles on Business and Human Rights (both officially endorsed in the Dutch Government's CSR policies) both refer to (i.e. 'apply' to) all business partners/relations of Dutch companies, including companies that supply materials for import and consumption in NL. This raises questions about the rather passive position taken by the Dutch government on the subject of transparency of coal imports from Colombia, justified by arguments on confidentiality, self-regulation and business-competitiveness.
14. The Netherlands has not raised the subject of coal and human rights violations in the negotiations for the FTA between the EU and Colombia. Yet, if so much priority is given to human rights, then the priority sector for the Netherlands should be mining (coal). Likewise, at EU level it is somewhat surprising that the subject of human rights violations in the mining sector is not specifically mentioned in the FTA between Colombia and the EU. Why are forestry and fisheries mentioned, but not mining, while 67% of the exports (2011, in terms of value) from Colombia to the EU are mining and fuel products? This suggests a lack of coherence within the EU.
15. Given the fact that most of Dutch power companies are multinational active in multiple European countries and the fact that the Netherlands is a coal hub for north-western Europe, the EU could promote the issue of transparency in the coal supply chain. The EU could ensure that legislation, such as currently being drafted by the Directorate General for Internal Markets on non-financial disclosure, includes requirements related to supply chain transparency.

16. Engagement on voluntary CSR international initiatives generates a virtuous triangle of cooperation and improved performance between governments, civil society and private companies. International governments can play a key role as *third party guarantors*, of special relevance in the midst of conflict. The role of the RNE would remain important in coming years, to advance the best practices in the mining sector and support the government in creating an enabling policy context.
17. Supply and demand side approaches are required to ensure progress towards sustainability. Supply effective measures in Colombia can be stimulated by the Dutch Government and the Dutch power companies through standards for disclosure of information to the final consumer and incentives to companies that invest on sustainability.
18. There would be an opportunity of developing the main coal hub in Rotterdam as the first location where coal produced in a sustainable way is delivered. This would be also form an important stimulant for Colombian coal companies to respect social and environmental sustainability regulations.

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