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DEL TRABAJO**



**Specific Instance  
OECD Guidelines for Multinational Enterprises  
against  
Drummond Company, Inc.**

**Regarding violence against labour/human rights in its operations and coal  
exploitation in the Cesar Department in Colombia**

**Complainants**

**National Trade Union of Diseased and Disabled Workers of the Mining Sector  
(*Sindicato Nacional de Trabajadores Enfermos y Discapacitados del Sector Minero*  
(SINTRADEM), Colombia**

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**Presented on Tuesday, 19 July 2016 to:**

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## 1. INTRODUCTION

The case presented is against Drummond Company, Inc., a company that extracts and markets coal and coal by-products, which are used in various industries such as construction, automotive, etc. Its headquarters are located in the United States.

In 1987, Drummond Co. Inc. established a subsidiary in Colombia, Drummond Ltd., which was granted the rights to the exploration, exploitation and export of coal located in the department of Cesar, specifically in the area between the municipalities of El Paso, La Jagua de Ibirico and Chiriguaná.

Some of the problems presented in this case are not new, and involve serious health and safety conditions at work within the company in its operation in Colombia, as well as conducts that jeopardise rights to freedom of association.

An association of Drummond diseased workers condemned in 2013<sup>1</sup> the large number of sick workers in the company, and other studies have shown social conflicts in relation to coal mining and transport in the Cesar Department in the last 15 years.

The functioning of the social security system in Colombia has made it easier for the company to evade its responsibilities regarding disease of its workers, despite evidence of an increasing number of disabling diseases associated with coal mining.

There are three alleged main violations of the OECD Guidelines (“the Guidelines”) by Drummond Ltd. against workers in this case: 1) violation of the right to free association (chapter V, paragraph 1a of the Guidelines), 2) violation of the right to collective bargaining (chapter V, paragraph 1b of the Guidelines) and 3) violation of health-related human rights of workers (chapter IV, paragraphs 2 and 3 of the Guidelines).

The accusations against and dismissal of trade union leaders and attempts to dissolve the trade union put these bad corporate practices back on the table. In addition, we witness a failure by Drummond Ltd. to implement due diligence, i.e. in identifying, preventing and mitigating these negative impacts and reporting on how it reacts to these impacts (Chapter II, paragraphs A10, A11 and A12 of the Guidelines).

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<sup>1</sup> See <http://www.elespectador.com/noticias/actualidad/vivir/pedimos-drummond-se-haga-responsable-de-sus-enfermos-articulo-405586>. News article from 18 February 2013. This association claimed it was created in 2010.



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## **2. PROFILE OF THE COMPANIES INVOLVED IN THE CASE**

Drummond Co. Inc. is a company based in Alabama, USA, where it controls the Twin Pines Shannon mine. Its operations in Colombia are its only coal mining activities outside the U.S. Drummond Ltd., a subsidiary created in Colombia in 1987, started operations in 1995.

In 2011, Drummond Company Inc. (parent company) sold 20 percent of its assets in Colombia to Japan's Itochu Corporation for US\$1,523.5 million, establishing a new company called Drummond International, which was to handle all operations in Colombia.

Gary Neil Drummond, one of the seven children of the founder of the company, currently holds 100 percent of the shares of the parent company, Drummond Corporation Ltd. Drummond's assets in Colombia comprise two coalfields (La Loma and El Descanso) and a deepwater ocean port in Ciénaga Magdalena (Puerto Drummond).

Drummond Ltd. exports coal to various markets, the European market being one of its main customers. The coal imported by European countries like the Netherlands, Germany, France and Italy fuels their power generating systems. The main buyers of Drummond coal include RWE (based in Germany), Vattenfall (Sweden), E.ON (Germany), Engie (France), EDF (France), EnWB (Germany), STEAG (Germany) and Enel (Italy).



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### **3. ORGANISATIONS PRESENTING THE CASE**

#### **SINTRADEM**

The trade union of diseased and disabled workers of the mining sector (SINTRADEM) was created on April 3, 2014, as per record incorporation with the Ministry of Labour No. 003 of 8 April 2014 and Tax I.D. number 900723145-7. SINTRADEM and its leaders are directly affected by the actions of Drummond Co. Inc. through its subsidiary in Colombia, Drummond Ltd.

SINTRADEM advocates for the sick workers involved in this case.

#### **GENERAL FEDERATION OF LABOUR CGT – CESAR OFFICE**

The General Federation of Labour CGT – Cesar Office is a second-degree trade union that brings together workers and trade union and social organizations, created since 2012, operating in the Department of Cesar, as per record of incorporation with the Ministry of Labour No. 022246 of 30 August 2012 and Tax Identification Number (NIT) 900589079-4.

The fundamental mission of CGT CESAR OFFICE is the defence of the collective and individual interests of the workers. We are a subsidiary of the General Confederation of Labour (CGT), advocating for its principles, values, platform of struggle and claims, and we commit ourselves to its qualitative and quantitative strengthening. The Federation endorses the claim of its affiliate SINTRADEM.

#### **GENERAL CONFEDERATION OF LABOUR - CGT**

The General Confederation of Labour (CGT) is a third-degree trade union organisation that groups workers and trade unions and social organisations, established in 1971 and with legal registration No. 002230 of 14 July 1975, as published in the official gazette No. 34382 of 21 August 1975 in Colombia. SINTRADEM is affiliated to the General Federation of Labour – Cesar Office, and to the national confederation CGT. The CGT endorses the demand filed by its members. CGT-Colombia is a member of the NCP Advisory Committee of Colombia.



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#### **4. NEGATIVE IMPACTS RELATED TO VIOLATIONS OF OECD GUIDELINES**

##### **4.1 DRUMMOND LTD. FILED A LAWSUIT FOR DISSOLUTION OF SINTRADEM**

SINTRADEM was created and its directors elected on 3 April 2014. SINTRADEM notified this fact to the Chiriguaná office of the Ministry of Labour on April 8, attaching the statutes of the trade union and a list of members of its Board of Directors.

After receiving the information from the trade union, the Ministry of Labour notified Drummond Ltd. on April 8 about the establishment of the trade union and the board of directors.<sup>2</sup>

After the company was notified by the Ministry, and in use of its legal powers, the directors of SINTRADEM requested Drummond Ltd. trade union permits for its directors between April and May 2014.

The company established a dialogue with SINTRADEM granting some of the requested permits and denying others. These facts indicate acknowledgment by the company of the new organisation and its directors.

On 3 June 2014, Drummond Ltd. informed SINTRADEM that its refusal to grant trade union permits was due to operational reasons. It also indicated that they have granted permits before and that they will continue to do so if possible.<sup>3</sup>

After this, and despite the fact that the Ministry of Labour had notified the company on the establishment of SINTRADEM on April 8, to which the company expressed no opposition, keeping normal communication with SINTRADEM on permits and other issues, the company suddenly filed a lawsuit against SINTRADEM, after threats reported by trade union leaders, and demanded the dissolution of the trade union and elimination from the respective trade union registry, arguing that it infringed one of the mandates of Title I, Section II of the Labour Code, specifically a misclassification, based on the argument that "a physical condition of a person does not constitute a profession or occupation that would warrant an association<sup>4</sup>.

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<sup>2</sup> See Documents 1 and 2

<sup>3</sup> See Documents 3, 4 and 5

<sup>4</sup> See Document 8



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Through its legal advisors, SINTRADEM replied to this lawsuit claiming it represents an act of harassment against trade union freedom and thus, impinges on the right to freedom of association enshrined in the Colombian Constitution and the ILO conventions ratified by Colombia<sup>5</sup>. The demand for dissolution of the trade union is an attempt to restrict the right of workers to form freely a trade union, which generated uncertainty and fear among its members through the entire process.

A labour judge of first instance issued a judgment in favour of SINTRADEM, rejecting the arguments of the lawsuit filed by Drummond Ltd. Despite this, the company appealed the ruling and continued to seek the dissolution of the trade union at the High Court.

Finally, on 8 June 2016, the High Court ruled on the matter, and upheld the judgment issued in the first instance, dismissing the claims of Drummond Ltd., also pointing out that the company was not legally entitled to file such a lawsuit. Colombian labour justice confirmed what the Ministry of Labour had already recognised, i.e. the validity of SINTRADEM to represent their members against the company<sup>6</sup>.

Notwithstanding previous rulings in favour of SINTRADEM, the company keeps on trying to dissolve trade union organization through an injunction filed before the Supreme Court against the High Court decision<sup>7</sup>.

Drummond has directly caused the damages due to its repeated refusal to accept SINTRADEM and its attempts to dissolve it. This restriction of its right to exist as an organisation and to represent its members has also brought about economic consequences due to the costs of legal defence, and the loss opportunities to growth as a trade union organisation.

Guidelines infringed by Drummond Ltd. are contained in Chapter V on Employment and Industrial Relations; paragraph 1a indicates that enterprises should:

*“Respect the right of workers employed by the multinational enterprise to establish or join trade unions and representative organisations of their own choosing.”*

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<sup>5</sup> See Documents 9 and 10.

<sup>6</sup> See Document 11.

<sup>7</sup> See Document 17.



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## **4.2 THREATS AGAINST TRADE UNION LEADERS**

### **THE CASE OF CARLOS ANDRES OCHOA**

On 22 May 2014, Carlos Andrés Ochoa, president of SINTRADEM, received a call on his cell phone at 8 p.m., where someone threatened him and asked him to leave the trade union.

Carlos Ochoa, after the events occurred, appeared at the Immediate Response Unit of the District Prosecutor at Valledupar, requesting protective measures for his life, based on the threat he received, a record of which was filed with the prosecutor's office.<sup>8</sup>

Although there is no evidence that Drummond is directly responsible for this threat, this fact is extremely serious within the Colombian context and clearly indicates a risk faced by SINTRADEM workers which Drummond Ltd. should be actively seeking to prevent and mitigate.

In the case of the President of SINTRADEM, Mr. Ochoa, although Drummond is not directly responsible for these events, the company must take into account the possible risks to which trade unionists are exposed in Colombia for exercising their right to organise. There is no evidence that Drummond has implemented the due diligence to prevent or mitigate this risk.

Guidelines infringed by Drummond Ltd. are contained in Chapter II - General Policies, paragraphs A10 and A12, which state:

*"Enterprises should:*

*...Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts... and account for how these impacts are addressed. [...]*

*Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship."*

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<sup>8</sup> See Document 6.





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#### **4.3 REFUSAL TO ACCEPT COLLECTIVE BARGAINING WITH SINTRADEM**

On 4 July 2014, in a general assembly three months after the establishment of SINTRADEM, affiliates approved a list of demands and appointed their leaders to represent them on the bargaining committee<sup>9</sup>.

On 7 July 2014, the company was notified of the list of demands, through a letter to the labour relations manager, Mr. Ricardo Barrios<sup>10</sup>. The company called SINTRADEM to initiate the arrangement phase of negotiations, but expressing its refusal to all demands<sup>11</sup>.

Refusing to negotiate any issue while advancing a lawsuit for dissolution of the trade union seems to be the company's strategy to encumber and delay the bargaining process.

The company maintained its position of ignoring SINTRADEM as an organisation that represents the workers of Drummond Ltd., and at the same time denied them their right to a collective agreement to determine their collective working conditions.

In face of the failure to reach an agreement on the list of demands in the direct negotiation stage, SINTRADEM requested the Ministry of Labour to order the appointment of an arbitration tribunal.

In response, the Deputy Minister of Labour Relations and Inspection issued Resolution (No. 04779) on 28 October 2014, ordering the appointment of the arbitration tribunal. Drummond Ltd. appealed that decision on 3 December 2014, which was finally resolved on 20 April 2015, when the Ministry of Labour, under Resolution 01400, dismissed the request of the company<sup>12</sup>.

With the aim of reaching an agreement on the list of demands submitted in June 2015, the trade union organisation requested the Special Commission for Conflict Management before ILO to arrange a conciliation meeting, in which Drummond Ltd. had no intension to reach an agreement<sup>13</sup>.

It has been over two years months since SINTRADEM presented its demands, to no avail, due to Drummond Ltd.'s delaying tactics.

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<sup>9</sup> See Document 12

<sup>10</sup> See Document 13

<sup>11</sup> See Document 7

<sup>12</sup> See Document 14

<sup>13</sup> See Document 15



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They have directly refused not only the express request of SINTRADEM, but they have also ignored the request from the Labour Authority, which has recognised this right of SINTRADEM and is trying to realise it through an arbitration tribunal. Also evident is the negative economic impact suffered by members by not having collective bargaining, which could have potentially improved their current individual working conditions. The trade union organisation has also been economically affected.

Guidelines infringed by Drummond Ltd. are contained in Chapter V of Employment and Industrial Relations, paragraph 1b, which indicates that enterprises should:

*"Respect the right of workers employed by the multinational enterprise to have trade unions and representative organisations of their own choosing recognised for the purpose of collective bargaining, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on terms and conditions of employment."*

#### **4.4 THREATS OF DISMISSAL TO TRADE UNION LEADERS**

##### **THE CASE OF JAIRO CORDOBA**

Jairo Córdoba is the vice-president of SINTRADEM since its establishment on 3 April 2014<sup>14</sup>. He is a leader with trade union immunity, a guarantee enjoyed by the members of the board of a trade union not to be dismissed, transferred or demoted in their working conditions.

Since February 2015, the company has been carrying out a series of acts against Mr. Córdoba which can be described as anti-union harassment for being a trade union leader.

On 9 February 2015, the company initiated a disciplinary procedure against Mr. Córdoba, alleging improper conduct violating the internal regulations, by refusing to return to work after a break. The company, based on a testimony of another worker, accused Mr. Córdoba of refusing to return to work and to be transported to his work area, after which a Report of Disciplinary Proceedings was drafted at the request of Mr. Nelson Díaz, Road Safety Senior Supervisor<sup>15</sup>.

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<sup>14</sup> See Document 2

<sup>15</sup> See Document 20



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On February 11, the company sent a letter to Mr. Jairo Córdoba pointing out the alleged violations of the internal rules and summoning him to an audience for 12 February 2015<sup>16</sup>. It should be noted that the company sent the summons electronically to SINTRADEM's e-mail. SINTRADEM replied by e-mail noting that in addition to Córdoba, Ambrosio Flores and Gian Carlos Herrera would also be attending on behalf of the trade union.

Finally, the hearing took place on 23 February 2015 at the Human Resources offices of Drummond Ltd. The company insisted on the accusations, and Mr. Córdoba and the trade union claimed that they did not refuse to go to work or to ride in the transport vehicle, and that they even called the driver because he would not return to pick them up<sup>17</sup>.

Despite the hearing, the company sent a letter to Mr. Córdoba on 9 March 2015 indicating the termination of his contract for just cause<sup>18</sup>, which was rejected by SINTRADEM, which filed on 11 March 2015 an appeal against the decision.

The company rejected the request and insisted on the termination of the contract<sup>19</sup>. The company requested the labour judge on 7 May 2015 to remove the trade union immunity from Mr. Cordoba so he could be laid off<sup>20</sup>. On 16 December 2015, Mr. Córdoba appeared before the labour court to be informed of the process of removal of trade union immunity, as a condition to be laid off, filed by Drummond Ltd.<sup>21</sup>.

Also, we must highlight that Drummond Ltd. has used videos from 2013<sup>22</sup> filmed at a town square, to accuse and terminate the contract of several company workers. One of the cases is Mr. Edwin Centeno, affiliated to SINTRADEM, who at the time had immunity. That is, almost two years after these events, and after SINTRADEM was created, the company used old footage and made accusations to dismiss workers<sup>23</sup>.

It should be noted that the tactics used by Drummond Ltd. of filming its workers in public spaces, to use later this unauthorised footage against them, is an unprecedented fact and

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<sup>16</sup> See Document 21

<sup>17</sup> See Document 16

<sup>18</sup> See Document 22

<sup>19</sup> See Document 23

<sup>20</sup> See Document 24

<sup>21</sup> See Document 24

<sup>22</sup> See link: <https://youtu.be/zKIJBH3fdOc>

<sup>23</sup> See Documents 25, 26, and 27



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denotes a police-like regime not limited to the work area of the company, but invading the privacy of workers.

Freedom of association and trade union freedoms in general are a key component of the ILO Declaration of Fundamental Principles and Rights of 1998. These rights are enshrined in ILO Conventions 87 and 98, which have been ratified by Colombia and are applicable throughout its territory. These are also enabling rights, i.e., they allow the exercise of other rights, hence their importance and the severity of their infringement.

The facts described above, which have affected SINTRADEM directors, are the direct responsibility of Drummond Ltd. and have been carried out by company officials.

The guidelines infringed by Drummond Ltd. are contained in Chapter V on Employment and Industrial Relations, paragraph 1a, which states that enterprises should:

*“Respect the right of workers employed by the multinational enterprise to establish or join trade unions and representative organisations of their own choosing.”*

#### **4.5 SICK WORKERS**

The issue of health and safety at work in Drummond Ltd. is a very sensitive matter that gave rise to the creation of SINTRADEM. Sick workers at Drummond have been expressing their concerns for years, denouncing the health situation they have been experiencing. The cases presented herein are a sign of a larger problem affecting hundreds of workers, and show that work at Drummond Ltd. in Colombia is making workers sick, and entails consequences that can lead to death, and are totally unprotected by law and by the company that generated the negative impact on their health, i.e. Drummond Ltd.

#### **THE CASE OF RUBÉN CUADROS**

Mr. Rubén Cuadros joined Drummond Ltd. in 2004. On July 2 of that year he was assessed by the medical division of Drummond, which stated in his pre-employment medical examination record that he was “physically and psychologically fit to perform the job without restrictions.”<sup>24</sup> By that time, he showed no pathology.

On 18 September 2006, at 10:00 p.m., Cuadros was involved in a work-related accident at the pump area, where he was hit by a blast of high-pressure water in his right arm and hip which threw him at a distance of 4 meters. Rubén Cuadros was taken to the

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<sup>24</sup> See Document 18.



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Occupational Risk Administrator (ARP) COLSEGUROS<sup>25</sup> for medical attention, which issued a report on this work-related accident<sup>26</sup>.

Mr. Cuadros received treatment for pain, which did not diminish. Therefore, he took his case to the Regional Disability Classification Board (JRCl) of the Departments of Cesar and Guajira, which determined on 18 December 2007 that his condition is of occupational origin (as a result of the work-related accident)<sup>27</sup>.

Rather than supporting the sick worker, the ARP COLSEGUROS tried to evade its responsibility, filing an action for reversal with ancillary appeal, requesting a declaration that Mr. Cuadros' condition had a common origin and is not the result of his work or the accident he suffered.

On 29 January 2008, the JRCl of Cesar and Guajira reviewed the action filed and decided to ratify the occupational origin of Mr. Cuadros' disease<sup>28</sup>. This Board decided to allow the appeal filed by ARP COLSEGUROS.

National Classification Board (JNC) reviewed the case in Bogotá. Mr. Cuadros continues to struggle against his insurer, which seeks to evade its responsibility.

In the end, the JNC changed the JNR's decision, declaring the condition of common – not occupational – origin. The JRC notified Mr. Cuadros and issued decision No. 1909 on 9 December 2010<sup>29</sup>.

The patient has had to struggle against the insurance company for almost two years, ultimately unsuccessfully, when the decision of the JRC was modified by the JNC, despite successive appeals by Mr. Cuadros against this unfair measure<sup>30</sup>.

In addition to chronic lower back pain, Mr. Cuadros began to show symptoms of a pulmonary disease. On February 13 and 19, Mr. Cuadros underwent medical tests indicating bronchial problems<sup>31</sup>.

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<sup>25</sup> ARP COLSEGUROS is a private insurance company hired by Drummond Ltd. for its workers, which must deal with occupational diseases.

<sup>26</sup> See Document 28

<sup>27</sup> See Document 29

<sup>28</sup> See Document 31

<sup>29</sup> See Document 32, note on page 3.

<sup>30</sup> See Documents 32, 33 and 34

<sup>31</sup> See Document 35



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On 22 April 2013 the hospital *Fundación Cardioinfantil* conducted lung pathology studies and determined that Mr. Cuadros had anthracosilicosis (also known as coal miners' disease)<sup>32</sup>.

On 01 August 2013 EPS Salud Total determined that Mr. RUBÉN CUADROS suffers from anthracosilicosis and coal miners' pneumoconiosis, both of occupational origin<sup>33</sup>.

The case was reviewed by the Regional Board, which determined that the disease was occupational, through Resolution No. 3771 of November 26, 2013, which was then appealed by the ARL and resolved by the National Board, which confirmed the diagnosis on day June 12, 2014<sup>34</sup>.

ARL COLMENA accepted the decision but assessed Mr. Cuadros' disability degree at 0%<sup>35</sup>. Mr. Cuadros must continue struggling against his insurer and challenging this assessment of the ARL.

Therefore, he resorted to the Regional Disability Qualification Board of Cesar in order to obtain a greater percentage of loss of his working capacity, a decision that was resolved by Resolution No. 5273 on 1 September 2015<sup>36</sup>, which determined that the worker suffers from coal miners' pneumoconiosis with loss of working capacity of 21.50% and of occupation origin.

Mr. Cuadros suffers from chronic lower back pain, and now anthracosilicosis, which in turn generates other sequelae such as chronic cough and apnoea. Psychiatrist Franklin Escobar, who is treating Mr. Cuadros, said on 29 September 2015 in a report to Drummond Ltd. that Ruben Cuadros suffered from chronic insomnia, severe obstructive apnoea, heart rhythm disturbances, major depressive episodes, in addition to his previous conditions<sup>37</sup>. Since the work-related accident in 2006, Mr. Rubén Cuadros faces not only health-related consequences as a result of his work, but the lives of his family, his wife and two children, have been disrupted dramatically.

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<sup>32</sup> See Document 37

<sup>33</sup> See Document 19

<sup>34</sup> See Document 19.1

<sup>35</sup> See Document 38

<sup>36</sup> See Document 38

<sup>37</sup> See Document 39



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Currently, despite being in the company payroll and having job security, Mr. Cuadros does not receive a salary. He has three children, all under the age of 12.

### **THE CASE OF YADER DEL CRISTO PEREZ RICARDO**

Mr. Pérez Ricardo started working in Drummond Ltd. on 31 October 2001 as a mechanic, specifically as front-end loader mechanic until 2005, when he became a pump mechanic with 12-hour shifts in a 7x4 or 7x3 rotation.

In 2010, as reported by the Healthcare Promotion Entity (EPS) *Salud Total*<sup>38</sup>, the company had not provided any entry or periodic tests, although the job assessment shows that the worker has been exposed to risk factors that explain his various pathologies.

Mr. Pérez Ricardo showed symptoms such as cough, lung pain, difficulty breathing, which led him to seek medical attention at his EPS Salud Total on 20 June 2009. But the initial tests did not show anything.

On 21 April 2010, an X-ray before a spinal surgery Mr. Pérez Ricardo also needed showed some disturbing images, so it was decided to do a computed tomography (CT)<sup>39</sup> on 5 June 2010, which showed the need for a segmental lobectomy of the right lung for pathological analysis<sup>40</sup>.

The surgery was performed and samples were sent to the pathology department. The pathology on 19 November 2010, clearly indicates that Mr. Pérez Ricardo had nodular anthracosilicosis<sup>41</sup>. As noted above, anthracosilicosis is qualified as an occupational disease in Colombia.

Mr. Pérez Ricardo became sick because of his work and exposure to risk factors (coal and silica dust). EPS Salud Total sent a letter<sup>42</sup> to Mr. Pérez Ricardo detailing the medical care he received and the diagnosis, so that from that moment on the Occupational Risk Insurer (ARL) Colmena could take care of the patient and ratify the origin of his illness – his work at Drummond Ltd., based on Decree 1295 of 1994 and Article 1 of Law 776 of 2002.

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<sup>38</sup> See Document 40

<sup>39</sup> See Document 40.1

<sup>40</sup> See Document 40.2

<sup>41</sup> See Document 40.3

<sup>42</sup> See Document 40.



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As in other cases, the ARL, far from supporting the affected workers, subjects them to long disputes in an attempt to, first, have their occupational disease not be considered as such, and secondly, to classify these diseases as mild in severity. The sick workers, instead of resting, must assume their own defence in countless procedures.

In the case of Mr. Pérez Ricardo, the JRC on 29 October 2011 established the diagnosis: coal miners' pneumoconiosis, an occupational disease; loss of physical capacity: 42.40%. ARL Colmena appealed that decision indicating that Mr. Perez Ricardo's disease may have developed prior to his work at the company, of common origin, and that the tests indicate that his physical capabilities are optimal<sup>43</sup>.

On 19 December 2012, the National Qualification Board modified the decision issued by the Regional Disability Qualification Board, diagnosing coal miners' pneumoconiosis with loss of working capacity of 26.2.<sup>44</sup>

Mr. Yader went to the ARL Colmena, which issued a final rehabilitation decision on 16 and 19 March 2015, stating that the worker has a current diagnosis of coal miners' pneumoconiosis and bronchial hyperactivity, noting that there is not treatment or cure available for that disease, that the current prognosis is poor, and he will tend to worsen if exposure to coal continues<sup>45</sup>.

Despite this decision, Mr. Yader has been left totally unprotected, he receives no salary since 2015. He has 8 children; the eldest is 28 and the youngest is 8. Yader had to take two of his sons out of college, because he can no longer afford it.

## **THE CASE OF ADOLFO ACUÑA PATIÑO**

Mr. Acuña Patiño works as a workshop and field welder in Drummond Ltd. since late 2001. As indicated in the job medical evaluation<sup>46</sup>, the worker is exposed to chemicals associated with his current main disease, pneumoconiosis.

Health-related discomfort became apparent in 2012. On 22 February 2012, he had chest X-rays taken<sup>47</sup>, which suggested pneumoconiosis. On 21 April 2012, a chest CAT scan<sup>48</sup>

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<sup>43</sup> See Document 41 page 3 par. a

<sup>44</sup> See Document 41 page 6

<sup>45</sup> See Document 41.1

<sup>46</sup> See Document 42

<sup>47</sup> See Document 43

<sup>48</sup> See Document 44





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indicated the presence of calcified granulomas, which are associated, based on the patient's history, with pneumoconiosis.

On 17 May 2012 Mr. Acuña was admitted in Clínica Asunción for surgery to remove a tumour in the bronchi and lung<sup>49</sup>.

Pneumoconiosis diagnoses are once again observed and appealed by ARP Colmena, where the company workers are registered, in an attempt to have the disease be classified as of common origin. The JRC of the Atlántico Department decided on 6 July 2012<sup>50</sup> that the disease was pneumoconiosis, and that the source was occupational. ARL Colmena action for reversal with ancillary appeal of the resolution but JRC ratified the resolution in its entirety. The JNC was informed, and on 6 February 2013 ratified the decision by JRC in its entirety<sup>51</sup>.

As in the case of other workers, a severe depression accompanies these complications. Mr. Acuña's Psychiatrist, Dr. Patricia García, mentioned in a report the sequelae of the patient's depression: sleep disorders, cognitive impairment, emotional lability and impulsivity. The persistence of depression and memory disorders facing Mr. Acuña are of grave concern<sup>52</sup>.

Mr. Acuña stopped receiving his regular salary, and is currently receiving only minimum wage.

### **THE CASE OF JAIRO DAGIL**

Mr. Dagil has been working in the company for 20 years in the area of drilling and explosives, and he is exposed to all risks associated with toxic dust, etc. Mr. Dagil joined Drummond Ltd. healthy and became sick while working there.

Symptoms began in 2013 with an increasingly acute dry cough. In July 2014, Drummond Ltd. ordered clinical tests, including a high-resolution chest CT scan<sup>53</sup>.

The initial diagnosis was interstitial pneumonitis of origin to be determined. Due to the symptoms that hindered his normal work, on 28 July 2014, Drummond Ltd., through its

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<sup>49</sup> See Document 45

<sup>50</sup> See Document 46

<sup>51</sup> See Document 48

<sup>52</sup> See Document 49

<sup>53</sup> See Document 59



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Medical Division Pribbenow, decided to refer him to the pneumonology department, concluding that he was not fit to work, and granted him a paid leave to go to the doctor<sup>54</sup>.

Mr. Dagil went to the EPS, which declared his disability, after which he went to the company and received another paid leave. This constant back and forth between the Company and the EPS became a veritable nightmare for the worker, causing serious psychiatric consequences, leading him to state of despair and even a suicide attempt.

Given the initial diagnosis, the Drummond Ltd. referred Mr. Dagil to ARL Colmena for further examination. Once again, ARL Colmena attempted to disqualify any link between the disease and its occupational origin.

In this case, the *Fundación Neumológica* has requested ARL Colmena to conduct tests on Mr. Dagil, seeking to introduce the hypothesis of previous tuberculosis, so the disease can be declared of common origin, in order to transfer the responsibility for the patient to another entity.

Although Mr. Dagil refused the opinion of Dr. Mauricio Durán, the tuberculosis diagnosis was handed down on 3 October 2014<sup>55</sup>. Mr. Dagil requested microbiological examinations at another institution and proved that there was no trace of tuberculosis<sup>56</sup>.

*Fundación Neumológica*, which had claimed Mr. Dagil had tuberculosis, was forced to issue a new diagnosis indicating "exposure to coal," and "images suggesting pneumoconiosis" on 6 March 2015<sup>57</sup>.

On 20 March 2015, Nueva EPS, in charge of of Mr. Dagil's rehabilitation, commissioned more medical studies in order to establish clearly the origin of the disease<sup>58</sup>. These studies conducted by Dr. Zúñiga concluded that the definitive diagnosis was "coal miners' pneumoconiosis." With this result Mr. Dagil continues his struggle with ARL Colmena for the insurer to recognise the occupational origin of his disease and to take responsibility<sup>59</sup>.

ARL Colmena sent on 11 September 2015 a letter to Drummond Ltd. indicating that they the diagnosis recognised by them was INTERSTITIAL PNEUMONITIS of common origin

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<sup>54</sup> See Document 59.1

<sup>55</sup> See Document 60

<sup>56</sup> See Document 61

<sup>57</sup> See Document 62

<sup>58</sup> See Document 63

<sup>59</sup> See Document 63



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and that nothing at work could have triggered it, so Mr. Dagil should be treated by Nueva EPS or the pension fund, but not by them<sup>60</sup>.

On 25 September 2015, Nueva EPS sent a notification to ARL Colmena indicating that studies concluded that Mr. Dagil had pneumoconiosis<sup>61</sup>.

On 13 October 2015, ARL Colmena rejected the diagnosis issued by Nueva EPS and indicated that in face of such discrepancy, all documentation should be sent to JRC so this entity could issue a final diagnosis and determine the origin of the disease<sup>62</sup>.

On 26 April 2016, the Regional Qualification Board determined that Mr. Dagil's disease was occupational. The ARL appealed the decision before the National Disability Qualification Board<sup>63</sup>.

Almost two years have passed and the patient, far from receiving help and support, has been forced to litigate with health system institutions which are seeking to evade their responsibilities. Drummond Ltd. has been hiding behind this tangle of paperwork and has done nothing to support these sick workers or to alleviate their situation, given the origin of their diseases: work at Drummond Ltd.

All four cases – Mr. Cuadros, Mr. Pérez Ricardo, Mr. Acuña and Mr. Dagil – represent a violation of human rights of workers. The events described above collide with various international instruments. The Universal Declaration of Human Rights<sup>64</sup> states that “everyone has the right to life, to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.”

In turn, the International Covenant on Economic, Social and Cultural Rights<sup>65</sup> recognises “the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular, safe and healthy working conditions; the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, in particular the improvement of all aspects of environmental and industrial hygiene; prevention, treatment and control of epidemic, endemic, occupational and other diseases.”

Drummond has caused this negative impact – because the conditions described in the cases above have an occupational origin, as has been established by the respective

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<sup>60</sup> See Document 64

<sup>61</sup> See Document 65

<sup>62</sup> See Document 66

<sup>63</sup> See Document 67.

<sup>64</sup> United Nations, 1948.

<sup>65</sup> United Nations, 1976.



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entities (pneumoconiosis or anthracosilicosis, rightly called the coal miners' disease) – and has failed to identify, avoid and address these negative impacts.

Drummond has failed to identify health risks to which workers are exposed in its operations, which could have prevented the diseases presented in the cases herein.

The workers were active in various positions, which suggests that this risk has spread to almost all areas of operation of the mine. These cases indicate direct flaws in monitoring of health and safety policies and practices at work.

Failure of Drummond Ltd. in monitoring cases of sick workers has led to poor service by the EPS or ARLs, while Drummond Ltd., which contracted with these institutions, has not acted in the defence of workers, and has subjected them to countless procedures, or has left them unprotected, with no salaries or compensation.

The events described above violate Chapter IV on Human Rights, paragraphs 2 and 5 of the OECD Guidelines. These state that:

*“Enterprises should:*

*[...] Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur, [...]*

*Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.”*



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## **5. PROPOSALS FOR REMEDIATION**

SINTRADEM and allied organisations presenting this case request from Drummond Ltd.:

### **TRADE UNION FREEDOM:**

- a. The cessation of any judicial or administrative proceedings seeking the dissolution, or elimination from the trade union registry, of SINTRADEM
- b. Public recognition of the trade union and its leaders, expressing respect and guarantee of the right to association and collective bargaining.
- c. The cessation of the legal action initiated by Drummond Ltd. seeking the dismissal of the Vice President of SINTRADEM, Mr. Jairo Córdoba.
- d. The cessation of any hostility against SINTRADEM and its leaders.

### **COLLECTIVE BARGAINING:**

- e. The acceptance by Drummond Ltd. of the arbitration award that will resolve the collective bargaining process with SINTRADEM, which will help build the framework of collective labour relations.

### **HEALTH AND SAFETY AT WORK:**

- f. A solution for sick workers mentioned above, e.g. guaranteeing their salary they were earning while on the job
- g. An economic solution for sick workers in the cases presented herein, who are still owed several salaries
- h. The establishment of a SINTRADEM-Drummond Ltd. Joint Commission, which advisers from both parties may join as observers, to seek practical solutions to the continuing plight of sick workers involved in these cases.
- i. A review of due diligence on human rights with the participation of workers and their organisations, with an emphasis on health and safety conditions at work.
- j. Conducting an audit of all policies and practices on health and safety at work at Drummond Ltd.

### **HUMAN/LABOUR RIGHTS POLICY:**

- k. Effective compliance with the company's Human Rights and Human Resources Policy
- l. Regular training for Drummond Ltd. Supervisors and staff on Human Rights and Human Resources Policy



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- m. Regular training for promotion of a social dialog and an improved working environment

#### **CORPORATE RESPONSIBILITY**

- n. Economic compensation to SINTRADEM, which shall be used for:
  - ✓ Funding of projects to promote trade union freedom and social dialog in the region of Cesar and in Colombia. SINTRADEM, CGT CESAR and National CGT will be counterparts in these projects.
- o. To implement the SCORE methodology, endorsed by the ILO.

#### **6. EXPECTATIONS FROM NCPs IN COLOMBIA AND THE NETHERLANDS**

We expect the NCP Colombia to follow the Procedural Guidance of the Guidelines, including the schedule that indicates that the NCP must make an initial assessment within three months after receiving notification of the specific instance. The organisations presenting this case request the NCP in Colombia to deal with this case urgently, due to the medical condition of the workers involved.

We expect the NCP Colombia to offer good offices to help the parties involved to resolve the issues and to facilitate access to consensual and non-adversarial means, such as conciliation or mediation, to assist the parties in dealing with the issues raised.

In the event that no agreement can be reached or that neither party is unwilling to participate in the procedure, we expect the NCP in Colombia to conduct its own investigation to find out whether the allegations presented herein have merit and to make the conclusion public, along with the recommendations of the NCP to the parties.

Throughout the process, we expect the NCP in Colombia to act impartially, predictably, equitably and consistently with the principles and standards set forth in the Guidelines. We also expect the NCP in Colombia to consult the NCP in the Netherlands and to ask for their advice throughout the process, given the previous collaboration between NCPs of Colombia and the Netherlands, and given the fact that the NCP in the Netherlands has a great deal of experience in dealing with and resolving specific instances.



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We request the NCP in the Netherlands to remain informed of the dealing of the case by the NCP in Colombia and to collaborate/support proactively the NCP in Colombia in this regard.

Yours truly,

**NATIONAL TRADE UNION OF DISEASED AND DISABLED WORKERS OF THE MINING  
SECTOR (*SINDICATO NACIONAL DE TRABAJADORES ENFERMOS Y DISCAPACITADOS  
DEL SECTOR MINERO*) (SINTRADEM), COLOMBIA**

Carlos Andrés Ochoa

**GENERAL FEDERATION OF LABOUR CGT, CESAR OFFICE**

Edwin Armando Guzmán Cruz

**GENERAL CONFEDERATION OF LABOUR (CGT), COLOMBIA**

Percy Oyola Palomar

Miryam Luz Triana Alvis

(Original Signed)