

# BANKTRACK

## HUMAN RIGHTS IMPACT BRIEFING #2: DRUMMOND AND PARAMILITARY VIOLENCE IN COLOMBIA

MAY 2016



Photo: Daniel Maissan.<sup>1</sup>

### INTRODUCTION

Drummond Company Inc. is a privately-owned coal mining company headquartered in Birmingham, Alabama, United States, with the majority of its coal production located in the Cesar mining region of Colombia. This region, including the area in the vicinity of the company's mines, has been beset by paramilitary violence, the impacts of which have been profound for the local population. Conservative estimates suggest paramilitary units drove over 55,000 farmers from their land and killed at least 3,100 people in the period from 1996 to 2006.

The Dutch peace movement PAX has investigated reports of links between mining companies and the paramilitary violence in Cesar. The paramilitary groups were established to defend the interests and properties of the local economic elite against guerrilla activities, and there is little doubt that Drummond and other mining companies, as part of this economic elite, benefitted from their activities. Further to this, legal testimonies examined by PAX indicate that mining companies including Drummond supported the paramilitaries in several ways, including requesting their establishment and providing financial support<sup>2</sup>

Seven banks, from Europe, the United States and Japan, have been identified as providing loans to Drummond between 2010 and 2015. This briefing investigates how these banks have fulfilled their responsibilities under the UN Guiding Principles on Business and Human Rights, including to seek to prevent or mitigate human rights impacts linked to their services, and to account for how they address such impacts. We presented these banks with a draft version of this briefing, and requested details of the due diligence processes they have used to assess the human rights risks presented by the company, and how they have responded to the issues identified. We analyse the banks' responses below.

1 Photo: Edilsa Bareto holds the ID card of her son, who was killed by paramilitaries in Cesar in 2002.

2 Drummond strongly denies the validity of these testimonies and the allegations.

## DRUMMOND: BACKGROUND

Drummond Company Inc was founded in 1935 by Heman Drummond and has remained privately-owned by the Drummond family ever since. The company ranks 189th on the Forbes list of America's Largest Private Companies in 2015, falling from 162nd place in 2014.

Drummond operates mines in Alabama and in the department of Cesar, Colombia. Its Colombian operations are conducted by its wholly-owned subsidiary, Drummond Ltd. Colombia. (The whole company group is referred to as Drummond in this briefing.) The company began operating in Cesar in 1995 with the Pribbenow coal project in La Loma, and started operating a second mine, El Descanso, in 2009.

As a private company, Drummond makes only limited financial information available, although it is reported to have 6,000 employees and revenues of US\$2.4bn ([Forbes, 2015](#)). The company has stated that it shipped approximately 25 million tons of coal in 2014, and that it controls reserves in Colombia of more than two billion tons. Drummond's coal extraction site in Alabama was reported in 2010 to produce 1.6 million tons of coal per year ([AL.com, 2010](#)), and this has decreased considerably since. This indicates that over 95% of Drummond's coal output is generated from Colombia. As such, bank finance for Drummond can be considered to predominantly support the company's Colombian operations.



*Drummond cable shovel photographed in Alabama, United States. Photo: Kelly Michals, [Flickr](#).*

## BOX 1: THE BANKS AND HUMAN RIGHTS CASE STUDY SERIES

This briefing forms the second in a series of BankTrack Human Rights Impact Briefings, which investigate how banks manage specific adverse human rights impacts caused by companies or projects that they are involved in financing. The first briefing in the series is available on the BankTrack website, [here](#).

The series hopes to shed light on the extent to which banks are living up to their responsibilities under the UN Guiding Principles, which we consider present the clearest expression so far of the human rights responsibilities of business.

The cases we focus on in this series are companies and projects linked to significant, recent and well-documented human rights impacts, financed by a number of large commercial banks.

The series of briefings intends to:

- draw attention to the specific human rights impacts and challenge banks linked to them through their finance to explain how this fits with their human rights policies and responsibilities;
- provide real-life examples of human rights impacts linked to the banking sector to inform ongoing debates on implementation of the Guiding Principles (e.g. the OECD's Proactive Agenda Project);
- explore how banks respond to human rights impacts in practice, allowing for a comparison of responses and analysis of good and bad practice; and
- push for banks to meet their responsibilities under the UN Guiding Principles to account publicly for how they address specific human rights impacts.

This second briefing has been prepared in collaboration with the Dutch peace movement [PAX](#).

# HUMAN RIGHTS IMPACTS

## ALLEGATIONS OF LINKS TO PARAMILITARY GROUPS

The Dutch peace movement PAX has worked in Colombia for over 25 years, and begun researching the experiences of victims of violence in the Cesar mining region in 2011 following requests from victims. In 2012 PAX examined numerous public testimonies of ex-paramilitary commanders who had operated in the region and of ex-contractors of the mining companies. It published its research findings in a June 2014 report, '[The Dark Side of Coal: Paramilitary Violence in the Mining Region of Cesar](#)'. The report aimed to contribute to the truth-finding process in Cesar and to further the reparation of the consequences of the violence for the victims.

The report describes how, from 1996 onwards, paramilitaries from the United Self-Defence Forces of Colombia (AUC) started operating in the vicinity of Drummond and Prodeco mining concessions and along Drummond's railway line in Cesar.<sup>3</sup> The AUC created a new front in this area, the Juan Andrés Álvarez Front, which quickly grew to 600 members. This front spread fear and terror among the local population: on the basis of national police figures, it is conservatively estimated that between 1996 and 2006 it is responsible for driving over 55,000 farmers from their land, committed at least 2,600 selective killings, murdered an estimated 500 people in massacres, and 'disappeared' more than 240 people.

Testimonies made under oath in legal proceedings by ex-paramilitary leaders and Drummond's ex-contractors, supplemented with detailed interviews conducted later by PAX, indicate that the mining companies Drummond and Prodeco supported the paramilitaries in several ways.

These witnesses state:

- that Drummond requested the establishment of Juan Andrés Álvarez Front, specifically to defend the company's mine and railway operations;
- that both mining companies supported the paramilitaries financially and materially. A Drummond contractor who has been convicted for this support has handed over his entire administration, disclosing what according to him shows the financial ties between Drummond and the paramilitaries;
- that the mining companies cooperated with the paramilitaries by sharing intelligence and discussing the general paramilitary strategy in the mining region with AUC commanders.

Drummond has denied the allegations, and a summary of its response is given in the [Dark Side of Coal](#) report. In March 2015 Drummond also filed a lawsuit against American and Colombian human rights lawyers ([Colombia Reports, 2015](#)).

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<sup>3</sup> Prodeco Group S.A., a subsidiary Glencore plc, is also linked to many of the same human rights violations discussed in this briefing. We focus on Drummond in this briefing primarily as its Colombian operations are its main activity.



## BENEFITTING FROM PARAMILITARY VIOLENCE

In addition to the evidence of these testimonies, it is clear that Drummond has, in various ways, benefited from the human rights abuses committed by the AUC, and that they continue to do so to this day. For example, forced displacement of communities carried out by the Juan Andrés Álvarez Front has cleared the path for land to be sold to Drummond for the expansion of its mining projects (detailed in Chapter 7 of the Dark Side of Coal report). In addition, the violence and threats by the paramilitaries against trade union leaders and civil society organisations has weakened and curtailed the activities of these groups.

## HUMAN RIGHTS IMPACTED

This briefing and the PAX research concentrates on egregious human rights abuses including selective killings, massacres, enforced disappearances, and forced displacement. Human rights impacted include *inter alia* the right to life, liberty and security of person; the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment; and the right not to be arbitrarily deprived of property.

Other important impacts of coal mining in Cesar, including environmental impacts, the effects of the mining industry on the health of the population, the issue of involuntary resettlement, the inadequate prior consultation of indigenous and Afro-Colombian peoples, the way royalties and tax income are spent, as well as the social and cultural impacts of 20 years of mining activity in the region, are outside of the scope of this briefing.



*Pedro Vega (58), who was forced to leave his house, livestock and land behind in 1999 after repeated threats by the paramilitaries. He shows the title deed of the plot he used to live on. Photo: Ronald van Hommel.*

## DEVELOPMENTS SINCE THE “DARK SIDE OF COAL” REPORT

In November 2014, after the publication of The Dark Side of Coal, the Dutch Minister of International Trade and Development Cooperation visited Colombia on a trade mission together with representatives from the energy sector, NGOs and trade unions. Drummond refused PAX entry into its mine. However, both the Minister and energy companies acknowledged the case of the victims and publically called upon the mining companies Drummond and Prodeco to pursue a road towards reconciliation.

In June 2015 Drummond and Prodeco together fired a total of 26 leaders of the regional section of the largest independent labour union in Cesar, Sintraminergética. This move has hugely damaged the already weakened independent labour movement. The companies argue that they were involved in a strike in 2012 that was later declared illegal ([PAX, 2015](#)).

In May 2015 a former executive of Drummond was interrogated over his alleged involvement with the murder of two trade unionists, after former paramilitaries claimed they were financed by Drummond and coordinated the murders with the company. This case is now to be decided by Colombia’s Courts of Justice. The case followed from the conviction of a former Drummond contractor in February 2013, who was sentenced by a Colombian court to 38 years in prison for organizing the killing of two labour leaders in 2001 ([BHRRC, accessed May 2016](#)).

## FINANCIERS OF DRUMMOND

Research carried out by Profundo for BankTrack identified the following finance for Drummond by large private-sector banks since the start of 2010.<sup>4</sup> The research scope was restricted to a group of 45 large private-sector banks (see Appendix).

- A US\$550 million loan (revolving credit facility) issued in 2010 by eight participating institutions, maturing on 02/12/13. Participating banks included Bank of America, BBVA, Wells Fargo, HSBC, BNP Paribas and Citigroup.
- A US\$750 million loan (revolving credit facility) issued in 2012 by five participating institutions, maturing on 30 June 2017. The participating banks were Bank of America, BBVA, Wells Fargo, HSBC, Mizuho Financial.

Bank	US\$m finance since 2010 (estimated contribution)	Finance details
Bank of America	232.5	Involvement in 2010 and 2012 loans
BBVA	232.5	Involvement in 2010 and 2012 loans
HSBC	232.5	Involvement in 2010 and 2012 loans
Wells Fargo	205.0	Involvement in 2010 and 2012 loans
Mizuho Financial	150.0	Involvement in 2012 loan
BNP Paribas	55.0	Involvement in 2010 loan
Citigroup	55.0	Involvement in 2010 loan

## BANK RESPONSIBILITIES AND RECOMMENDATIONS

The victims' movements in Cesar consider that the prevention of future human rights abuses in the Cesar mining region can only be achieved when the legacy of past injustices is satisfactorily resolved. Drummond must now fulfil its responsibilities to respect human rights and provide access to remedy for victims of human rights abuses in the zone of impact of their mining operations. This requires their active engagement with the victims of violence in the mining region in an effort to remediate the scars of the past. To do this, Drummond should cooperate in a judicial or non-judicial path towards a regional and collective reconciliation process. Unfortunately, it is apparent that the company is not planning to start a credible process for compensating victims, and indeed so far the mining company has sought to evade its responsibilities (see [PAX, 2014](#)).

Seven banks have been identified as providing finance to Drummond since 2010. Drummond's Colombian operations dominate the company's activities to such an extent that bank finance for the company must be considered as direct support for the individual operating sites in Cesar which are the subject of credible allegations of human rights violations. While the loans were made after the 1996 – 2006 period in which the paramilitaries were in operation, efforts by the victims of their human rights abuses to access justice have been ongoing since this time.

<sup>4</sup> The initial research was carried out by Profundo in April 2014, and Profundo has confirmed that no evidence of additional finance had been found as of December 2015.

In line with the UN Guiding Principles on Business and Human Rights, banks have a responsibility to perform human rights due diligence, including assessing actual human rights impacts, acting upon the findings, accounting for how they have addressed human rights impacts, and providing access to remedy for those whose rights are impacted. The Guiding Principles also give businesses including banks a responsibility, under Principle 21, to report on how they address their human rights impacts, particularly when concerns are raised by or on behalf of affected stakeholders, and in particular to make sure such information is sufficient to evaluate the adequacy of the response to the particular human rights impact (see Box II, below).

Given that Drummond has certainly benefitted from, and is alleged by witnesses to have contributed to, grave human rights impacts, banks supporting the company have a responsibility under the UN Guiding Principles to seek to mitigate these human rights impacts. In practice, given Drummond's lack of response or engagement on the need to redress these impacts, we consider this requires suspending finance for Drummond, at least until the company has contributed substantially to processes to effectively remediate human rights abuses suffered by the victims of violence from 1996 onwards.

We put the following questions to the seven banks financing Drummond:

1. Can the bank please outline the due diligence process it has conducted to assess risks of actual or potential human rights impacts caused by Drummond?
2. Can the bank please provide an overview of its response to the issues identified and its efforts to prevent and/or mitigate the adverse human rights impacts outlined?
3. Can the bank please provide an overview of any undertakings it has made to attain remedy for victims of the human rights violations in this case?



*Juan Evangelista Guerra, fled his home due to paramilitary massacres in 1996*



*Claudia Balcero, former coordinator of the Victims' Movement in Cesar, whose husband was killed by paramilitaries in 2000.*

*Photos: Ronald van Hommel.*

## BOX 2: UN GUIDING PRINCIPLES 13 AND 21

Principle 13 of the UN Guiding Principles states: “The responsibility to respect human rights requires that business enterprises:

- (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
- (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.”

Principle 21 states: “In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders. [...] In all instances, communications should:

- (a) Be of a form and frequency that reflect an enterprise’s human rights impacts and that are accessible to its intended audiences;
- (b) Provide information that is sufficient to evaluate the adequacy of an enterprise’s response to the particular human rights impact involved;
- (c) In turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.”



## OVERVIEW OF RESPONSES

All of the seven banks identified as financing Drummond responded to BankTrack, although only two – Citigroup and BNP Paribas – referred to the specific issues raised. BNP Paribas responded that it has suspended finance with Drummond, for human rights and other ESG reasons. This is a laudable move, which effectively prevents the bank from being further linked with adverse human rights impacts in this case. In contrast, Citigroup has engaged with Drummond on issues including security and human rights, but appears satisfied that human rights are well-managed at the company.

The other five banks provided no (public) information about their assessment of human rights risks in connection with Drummond, their efforts to prevent or mitigate the adverse human rights impacts outlined, or any efforts to attain remedy for the victims of the human rights violations. With the exception of BBVA, they did not confirm their involvement in financing Drummond.

Banks were notified that their responses would be published in full, unless they chose to provide a confidential response, and we have included such responses in full in Appendix I below. (Bank of America, in its response, arranged to speak with BankTrack by telephone, but asked that the discussion remain confidential.) As with the previous Human Rights Impact Briefing, we categorised responses into four broad camps for analysis purposes. However we emphasise that this should not be taken as a simple hierarchy or score, and that responses varied significantly within these categories as well as between them.

## HOW THE BANKS RESPONDED

### 1. Response outlining some action taken in response to the issues raised:

BNP Paribas

Citigroup

### 2. Confirmation of link with Drummond, but no comment on the specific issues raised:

BBVA

### 3. No confirmation of link with Drummond, and no comment on the specific issues raised:

Bank of America

HSBC

Mizuho Financial

Wells Fargo

### 4. No response

None, all banks responded

## 1. Responses outlining some action taken in response to the issues raised

**BNP Paribas** stated that after financing Drummond in 2010, it declined to provide further finance in 2012, and decided in 2014 not to provide financial services to the company until further notice, due to “ongoing ESG (including human rights) controversies”. This suspension of finance is welcome, in line with our recommendation to banks, and we consider it an appropriate step to ensure the bank is no longer linked to the human rights impacts in this case.

BNP Paribas could improve on this position by explicitly linking its suspension of finance to a demand that the company contribute substantially to a process to remediate human rights abuses in Colombia, and by showing how it can ensure that its disengagement takes into account the interests of the affected population.

**Citigroup**, which also financed Drummond in 2010 but did not participate in the 2012 loan, stated that its due diligence included direct engagement with Drummond, in which the bank sought to understand issues including stakeholder engagement, security management and performance against the IFC Performance Standards, which includes human rights issues. The bank further states that in its engagement “Citi has received and reviewed numerous documents related to the allegations, as well as information about their human rights policy, management plans to proactively engage local communities, and grievance mechanisms. Drummond also adheres to the Voluntary Principles on Security and Human Rights, an area Citi raised in its initial due diligence in 2010.” The bank states: “if a transaction proceeds, Citi continues to engage the company on ESRM issues and only gives final approval if we determine human rights risks are adequately managed.”

It is positive that Citigroup has engaged with Drummond on human rights issues, and that it has acted with transparency regarding its finance for the company and its engagement. However the bank’s response indicates it has judged that Drummond is adequately managing human rights issues, on which we strongly disagree. We also regret that the bank has not indicated that it has made any steps towards ensuring or encouraging remedy for the victims of human rights violations in Cesar.

## 2. Confirmation of link with Drummond, but no comment on the specific issues raised

**BBVA** confirmed that “Drummond Company is currently a BBVA Compass customer”, and outlined details of its policy framework and corporate values. However, beyond this it did not detail any response to the specific issues outlined in this briefing.

## 3. No confirmation of link with Drummond, and no comment on the specific issues raised

**Bank of America** stated that it does not comment on past or present client relationships. A representative of the bank arranged to speak with BankTrack by telephone, but asked that the discussion remain confidential. The bank requested that reference be made to its [Coal Policy](#), which includes a commitment to “continue to reduce our credit exposure to coal extraction companies”.

**Mizuho Financial** and **Wells Fargo** outlined details of their policy frameworks for managing human rights impacts and their due diligence procedures, but stated that they do not discuss specific transactions or relationships (see Box 3, below).

**HSBC** responded in some detail, but did not address the specific questions outlined in this briefing. BankTrack and PAX had previously written to HSBC asking it to suspend its finance for Drummond, and HSBC's letter provided a response to both this briefing and our previous letter to the bank. Its response states that "HSBC does not and cannot discuss individual customers", and provides further detail on its reasons for taking this approach. As client confidentiality and willingness of banks to disclose information regarding their customers, we consider this response in more detail in Box 3. The bank also outlined details of its policy framework, and stated that it is reviewing its Mining and Metals Policy, principally to look closely at the impacts of coal mining, but also to consider human rights issues.

### **BOX 3: TRANSPARENCY AND "THE FARCE OF CLIENT CONFIDENTIALITY" REVISITED**

For banks to meet their responsibilities under the UN Guiding Principles to account publicly for how they address their human rights impacts, they need to be prepared to discuss their finance for specific companies and projects where such impacts arise, and to square this with their duty to their customers to keep certain commercially sensitive information private. Client consent may be needed for banks to disclose information on the human rights impacts of their clients, and we recommend that banks make provision of finance conditional on such consent being given.

This series of briefings challenges banks to discuss their finance for specific clients. In our last briefing, which looked at the labour standards impacts of IOI Corporation, seven of the 14 banks which responded to us did not confirm their link with the business, with many citing customer confidentiality concerns. In this briefing, four of the seven banks we approached did not comment on their links to Drummond (which were found through subscription databases which most banks access routinely). In all cases, this was presented as a general policy.

- **Bank of America** stated that it "does not comment on past or present client relationships".
- **HSBC** stated that it "does not and cannot discuss individual customers, nor do we confirm whether an individual or business is or has been a customer, for reasons of client confidentiality".
- **Mizuho** stated that "as per our policies, we cannot refer to any specific transaction".
- **Wells Fargo** stated that "as a general rule, Wells Fargo does not disclose details regarding specific relationships".

In contrast, **Citi**, **BBVA** and **BNP Paribas** all confirmed that Drummond was, or had previously been, a customer. (The banks covered in both briefings are HSBC, Mizuho and Citi; these banks have been broadly consistent in their level of transparency.) This raises the question of how some banks have been able to make such disclosures, while others have not. We note that Citi and BNP Paribas only participated in the 2010 loan to Drummond, which has already matured, and that this may allow these banks greater scope to disclose their finance. BBVA, however, also participated in a 2012 loan which has not yet matured. It is not clear whether any of the banks sought Drummond's consent before making their.

BankTrack has engaged with **HSBC** on its finance with Drummond over a longer period than the other banks, and its response to this briefing discusses the issue of client confidentiality in particular detail. (It can be viewed in full or downloaded below; see Appendix I.) When we first wrote to HSBC on this issue in April 2015, the bank responded that it “does not and cannot discuss individual customers, nor do we confirm whether an individual or business is or has been a customer, for reasons of client confidentiality.” In a follow-up letter in February 2016 we challenged HSBC on the reasons it is unable to discuss specific customers, when, for example, such information is available on public databases, and when the bank does discuss certain customers in its sustainability reporting. Its response to this briefing addresses these questions.

The UK-based bank states that “The duty of confidentiality by a bank to its client is clearly understood in English law; there are, broadly, only four exceptions to this duty: where we are legally required to disclose; where we have a public duty to disclose; where our legitimate business purposes require disclosure; and where the disclosure is made with [the client's] consent. Clients referenced in our sustainability reports [...] appear only because they have consented to be included.” We would argue that this framework gives the bank adequate scope to disclose relationships with clients, either by obtaining their consent, or where the bank can argue a public duty to disclose.

BankTrack has argued that the relationships between banks and companies identified in these briefings are not confidential, as they are accessed from subscription databases which rely in turn on information provided by banks themselves. In response to this point, HSBC states that “these companies are aggregators and distributors of information which is in the public domain [...]. The responsibility for making this information public lies with the company concerned and not the financial institutions that may be arranging or underwriting any issue.” This is at odds with our understanding of the sources used by these databases, and indeed Thomson Reuters has stated that “the bankers themselves provide us information through submission forms” (Oxfam Australia, 2014).

We thank HSBC for providing more clarity on the reasons for its stance on customer confidentiality, however clearly this still leaves questions unanswered. We see a need for more research to fully understand the legal requirements for banking confidentiality in different countries, and how these should be interpreted in the context of the requirements of the UN Guiding Principles. However it is clear that some banks are able to disclose their financial links with specific companies as well as their responses to specific human rights issues, in line with their responsibilities to account publicly for how they address their impacts, while others (often in the same legal jurisdictions) state that they do not, or even cannot do so. When it comes to discussing specific relationships, it seems that where there's a will, there's a way.



# CONCLUSION

This briefing is published in the context of an ongoing campaign by PAX and other NGOs to support the thousands of victims of violence in Cesar in their efforts to secure remedy for the gross human rights violations they have suffered. The campaign has seen some recent breakthroughs – for example, in April 2016 the Danish electricity company Dong announced that it has chosen not to renew its coal imports from the Colombian mining company Prodeco/Glencore, and made clear it will not enter any new contracts with the company until its standards for responsible sourcing are met - including mitigation and remedy for human rights violations. However the campaign has not yet yielded concrete results on the ground, and mining companies including Drummond have not yet taken any steps towards a reconciliation process for the victims (PAX, [December 2015](#) and [April 2016](#)).

Indeed, rather than cooperating constructively with efforts to mitigate and remedy the human rights violations which occurred in the region of Drummond's operations over a period of at least a decade, the company has taken a hard-line, antagonistic approach which has included making false and derogatory statements against the legitimate work of NGOs such as PAX. BankTrack joined over 40 other NGOs in May 2015 in signing a [declaration](#) regretting this approach from Drummond and supporting the work of PAX.

The seven banks identified in this report have together provided Drummond with US\$1.3 billion in finance via loans in 2010 and 2012. These banks are all linked, via this finance, to severe human rights violations, and although they have not caused them directly, they have responsibilities under the UN Guiding Principles to take steps to prevent or mitigate these impacts. We have argued that, given Drummond's approach, this requires suspending finance for the company, contingent on it taking steps towards remediating the violations. However, five of the seven banks have disclosed no response to the issues identified, whether to promote remedy for the victims of human rights abuses or otherwise. There is no evidence that these banks are meeting the requirements of the UN Guiding Principles in this case. Only one bank, BNP Paribas, has taken the necessary step of suspending finance with Drummond.

All banks with outstanding exposure to Drummond, specifically those involved in the 2012 loan, which remains outstanding (i.e. Bank of America, BBVA, HSBC, Wells Fargo and Mizuho Financial), should engage with the company, using their influence to urge a change of approach and the beginning of a reconciliation process between the company and the victims of violence in Cesar. They should make clear that further finance for Drummond will be contingent on substantial progress in this area. We urge all banks to phase out their coal finance rapidly and completely - however while most remain at the table they can and should make all available efforts to pursue justice for those impacted by their finance, and account for this publicly.

## Acknowledgements

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## APPENDIX I: BANK RESPONSES IN FULL

### BANK OF AMERICA

*Bank of America stated that it does not comment on past or present client relationships. A representative of the bank arranged to speak with BankTrack by telephone, but asked that the discussion remain confidential. The bank requested that reference be made to its Coal Policy, which includes a commitment to “continue to reduce our credit exposure to coal extraction companies”.*

### BBVA

Thank you for the opportunity to provide our feedback before the publication of this briefing.

As stated in your letter, Drummond Company is currently a BBVA Compass customer. In response to the questions addressed in your letter, we would like to point out the following points:

4. Respect for the dignity of the individual and fundamental human rights constitutes a core value of BBVA Compass. BBVA Compass’s commitment to human rights promotes observance and respect for human rights, in accordance with the Universal Declaration of Human Rights, the United Nations Global Compact and the operating principles and recommendations for the development of business activities published by the United Nations, the Organization for Economic Cooperation and Development and the International Labor Organization.
5. BBVA Compass endeavors to act with (i) due respect for the applicable laws and regulations, (2) integrity, and (3) the prudence and professionalism appropriate to the social impact of the financial industry. BBVA Compass disapproves of any behavior which departs from its core values or any type of behavior which is inconsistent with industry standards.
6. BBVA Compass’s Risk and Portfolio Management Principles and Underwriting Guidelines contain principles for most industries, including mining. These underwriting guidelines provide direction on how BBVA affiliates should proceed when managing the activity of credit admission, under criteria of sound practices and within the context and constraints of the markets in which they operate. The underwriting guidelines for mining recognize and consider social and environmental factors associated with mining. BBVA Compass applies the values and principles mentioned above when managing the activity of credit admission by considering political, regulatory, social and environmental factors before making a credit decision.

Should you have any further questions, please let us know.

### BNP PARIBAS

Let me provide you with the following detailed information:

- BNP Paribas participated in a corporate loan in 2010, before publishing its CSR sector policy on Mining.
- BNP Paribas declined participating in refinancing the company in 2012.

- In early 2014 remaining services provided to the company, even if only concerning the US parent company, were suspended when Drummond lost licences due to lack of compliance with Colombia’s environmental regulation.
- BNP Paribas further reviewed the company against the criteria of its Mining sector policy in 2014. Several reports by external stakeholders were taken into account within this review. Following this, the BNP Paribas’ Due Diligence flagged the company for ongoing ESG (including human rights) controversies and decided not to provide financial services to the company until further notice.

Regarding our processes and ESG (including Human Rights) risk management, please read the following sections of our 2015 Registration Document, chapter 7 (dedicated to CSR): <https://invest.bnpparibas.com/en/registration-documents-annual-financial-reports>

- Commitment 3: Systematic integration and management of ESG risks, especially “a specific ESG risk assessment system for products and services”, pages 460 to 462
- Commitment 8, the section called “BNP Paribas is committed to respect for HR” (pages 483 to 486, especially the section dedicated to the “management of indirect salient risks”)

## CITIGROUP

[\[Download PDF\]](#)

Thank you for your letter dated March 21, 2016 regarding BankTrack’s upcoming Drummond Company Inc Case Study. Understanding how finance can support human rights is a priority of ours, and respect for human rights is critical to Citi’s vision of enabling our clients and global communities to make progress. Citi is particularly active with human rights and environmental issues as a founder and steering committee member of The Equator Principles, a risk management framework adopted by financial institutions, for determining, assessing and managing environmental and social risk in projects.

### *Policy Commitment*

Citi published its first Statement on Human Rights in 2007, and we released an updated Statement in 2014 ([http://www.citigroup.com/citi/citizen/data/citi\\_statement\\_on\\_human\\_rights.pdf](http://www.citigroup.com/citi/citizen/data/citi_statement_on_human_rights.pdf)). In the Statement, Citi publicly states its support for the key international human rights instruments, including the Universal Declaration on Human Rights, the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work, and the UN Guiding Principles on Business and Human Rights. This Statement provides a summary of our policies and practices that help us fulfill our corporate responsibility to respect human rights. These policies and practices apply to Citi’s activities across the value chain, to our employees, suppliers, clients and communities, and countries where we do business. Prior to publishing the updated Statement in 2014, we engaged with several external human rights experts on the update and incorporated much of the feedback they provided.

## *Due Diligence Processes*

An important element of our implementation of the UN Guiding Principles is our due diligence, particularly as it relates to client transactions covered by Citi's Environmental and Social Risk Management (ESRM) Policy (<http://www.citigroup.com/citi/environment/policies.htm>). Citi's ESRM Policy builds on and expands the environmental and social risk framework of the Equator Principles to a broader range of financial products. Citi was the Chair of the Equator Principles from 2010-2012 and led development of the EP III updating process during our term. Using our influence and leadership in this role, we worked to focus greater attention on a variety of social issues, including Free, Prior and Informed Consent (FPIC) for projects adversely impacting indigenous peoples in emerging markets. The resulting 2013 EP update included more robust and specific human rights standards.

Prior to participating in the loan issued to Drummond in 2010, Citi's specialized ESRM team conducted due diligence on the company, including their Colombia asset, and specifically on the issues related to the civil suit against Drummond that followed the Alien Tort Claims Act lawsuit filed in 2002 in Alabama.

Citi engaged directly with the company to gain a better understanding of the following issues:

- Regulatory compliance
- Performance benchmarked against the IFC Performance Standards, which covers human rights issues such as labor rights, stakeholder engagement, and grievance mechanisms
- Internal controls, including payments to vendors
- Security management in Colombia benchmarked against the Voluntary Principles on Security and Human Rights

Transactions screened by the ESRM team, including the 2010 loan to Drummond, which have potential human rights issues are tracked in a database and tagged if they involve resettlement, impacts to indigenous peoples, labor rights, or security risks. If a transaction proceeds, Citi continues to engage the company on ESRM issues and only gives final approval if we determine human rights risks are adequately managed.

In our engagement with Drummond, Citi has received and reviewed numerous documents related to the allegations, as well as information about their human rights policy, management plans to proactively engage local communities, and grievance mechanisms. Drummond also adheres to the Voluntary Principles on Security and Human Rights, an area Citi raised in its initial due diligence in 2010.



We will continue to monitor this issue and engage the company as needed, and appreciate Banktrack's partnership in sharing perspectives on our clients.

## HSBC

[\[Download PDF\]](#)

Thank you for your letter of 17 February 2016 addressed to Douglas Flint, Group Chairman of HSBC Holdings plc, concerning the mining company Drummond. I have been asked to reply, and this response can also be used as our response to Ryan Brightwell's request of 21 March 2016 for comment on the forthcoming Bank Track Human Rights Impact report, scheduled for publication in May 2016, and which also concerns Drummond.

### *Confidentiality*

Let me first address the question of client confidentiality. In previous correspondence I have stated that "HSBC does not and cannot discuss individual customers, nor do we confirm whether an individual or business is or has been a customer, for reasons of client confidentiality". This remains the case and, because I am unable to discuss a specific company, I cannot respond to Mr Brightwell's three specific questions. As you know, we are happy to meet BankTrack to discuss issues, most recently in January of this year.

But let me go further and try to explain what you see as the apparent contradiction of our referencing companies in, for example, the 2013 Sustainability Report, and the availability of information through Thomson Reuters or Bloomberg.

The duty of confidentiality by a bank to its client is clearly understood in English law; there are, broadly, only four exceptions to this duty:

- where we are legally required to disclose;
- where we have a public duty to disclose;
- where our legitimate business purposes require disclosure; and
- where the disclosure is made with [the client's] consent.

Clients referenced in our sustainability reports, or indeed the full HSBC Holdings plc Annual Report and Accounts, appear only because they have consented to be included.

With regard to Thomson Reuters or Bloomberg data, these companies are aggregators and distributors of information which is in the public domain, usually because of a regulatory requirement under, for example, the Listing Rules governing publicly traded companies. These usually require companies to make public, via an announcement through a regulatory information system, details of any securities (shares) or debt (bonds). The responsibility for making this information public lies with the company concerned and not the financial institutions that may be arranging or underwriting any issue. Separately, there are (in the UK) requirements under the Companies Act and various accounting standards, for other financial information to be made available through, for example, interim and full year financial results. Again, the responsibility for publication lies with the company and not its banker(s).

## *Sector Policies*

As you are aware, HSBC focuses its policies on sectors which may have a high adverse impact on people or the environment and in which we have a significant number of customers. They are designed to offer measurable commitments, rather than aspirational statements; they are designed to apply globally; they are designed to last for a number of years; and they are not applied retrospectively. Where customers continue to remain non-compliant with our policies, despite our engagement and efforts to move them towards good (or best) practice, then we close our banking relationships as soon as contractually possible. You will know that, at the end of 2014 for example, we decided to exit 60 forestry and 104 palm oil clients who were unwilling or unable to meet the standards we expected of them.

Following the COP21 agreements in Paris in 2015, we started a review of our Mining and Metals Policy, principally to look closely at the impacts of coal mining, but also to look at other potential impacts, such as on human rights. We chose to await the outcome of COP21 so any future policy changes aligned with what many stakeholders sought, and also because it is important to support the political process which will be integral to combating climate change successfully. As with our other sector policies, we will consult widely with interested stakeholders, including customers and non-governmental organisations, as we mentioned in our meeting with you, Johan, in January this year as well as in subsequent correspondence.

## *Human Rights*

At that meeting we also discussed, albeit briefly, HSBC's position on the broad issue of human rights. You will be aware that we published a statement in September 2015, which is available on our website and attached for ease of reference. Human rights are important and banks accept they have a role to play – under the Guiding Principles, business has a responsibility to respect human rights. We are signatories to or have expressed support for a number of international guidelines, all of which are set out in our statement.

HSBC does investigate any credible allegations that customers have committed human rights violations, as specifically mentioned in our Mining & Metals policy. Allegations of human rights abuses or adverse impacts are often complex, and difficult to investigate or substantiate, for example often dating back well before our own policy or even the introduction of UN or government guidelines. We sometimes find court cases have investigated the issues/allegations and the courts' decisions can be a source affecting HSBC's decision to offer banking services.

In mining, as in other sensitive sectors, we work with clients who meet our sustainability standards – including those relating to human rights – and clients who are making credible progress towards meeting them. As demonstrated above concerning forestry/palm oil, where clients are unwilling or unable to meet our standards, we do end the banking relationship.

You will be aware that in response to a previous request for HSBC to comment on one of BankTrack's case studies, my colleague John Laidlow wrote to Mr Brightwell to explain that we could not comment on individual companies and that any response to future requests would have focus on HSBC's policies. This remains the case; all our sector policies and statement on human rights, which guide our approach, are publicly available on our website.

We do welcome engagement with NGOs and others, particularly in the development and implementation of our sector policies as they bring extremely useful experience and perspective to the table. We look forward to hearing from you as we update our Mining policy and no doubt on other issues through the year.

Thank you again for writing to us.

## **MIZUHO FINANCIAL**

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Please see below our reply in blue to your mail dated 21 March 2016.

*Q1: Can the bank outline the due diligence process it has conducted to assess risks of actual or potential human rights impacts caused by Drummond?*

As per our policies, we cannot refer to any specific transaction.

However as a signatory of Equator Principles (EP) Association, Mizuho ensures that the appropriate due diligence and assessment process has been undertaken for all projects falling within EP Scope.

As stipulated in the EPs, we may require the client to complement its Assessment documentation with specific human rights due diligence addressing the social risks such as impacts on affected communities, land acquisition and involuntary resettlement, labor issues etc, if applicable.

In cases where any human rights violations are reported, we conduct appropriate inquiries and ensure that all the related parties are informed of such violations and appropriate next steps to resolve such cases are formulated.

For our internal EP Due Diligence Process, please refer to

<http://www.mizuho-fg.co.jp/english/csr/environment/equator/principles.html>

*Q2: Can the bank provide an overview of its response to the issues identified and its efforts to prevent and/or mitigate the adverse impacts outlined?*

As per our policies, we cannot refer to any specific transaction.

As an Equator Principles Financial Institution (EPFI), we ensure that for all the issues (including the human rights issues) identified in the Assessment process as described in Question 1, appropriate management/mitigation plans are formulated by our clients. We include compliance with these environmental and social management plans in our loan documentation, any breach of which can then result in an event of default.

Also, in our internal checklists, we require front officer to inquire and fill in details related to human rights due diligence. At the time of deal initiation and/or during our periodic checks, front office needs to find out if there is any community unrest, NGO complaints, and negative media attention for/against the project and needs to communicate it to the relevant departments including the Sustainable Development Office, Credit Department and the Corporate Communications Department. Based on the information provided, client is asked to prepare and implement appropriate preventive/mitigation plans; compliance with these plans is also incorporated in the loan documentation.

We conduct periodic checks for our existing products and services to ensure that the human rights are not being violated. In cases where human rights violations are found/reported, we make sure that all the related parties dealing with the transaction are made aware of the same, and appropriate inquiries and due diligence is conducted, as and if applicable.

For more information, please refer to:

<http://www.mizuho-fg.co.jp/english/csr/governance/human/diligence/index.html>

*Q3: Can the bank please provide an overview of any undertakings it has made to attain remedy for victims of the human rights violations in this case?*

As per our policies, we cannot refer any details specific to our transaction.

In cases where such violations are reported, we conduct appropriate due diligence as outlined in our answers above.

Please be assured that we have taken all necessary steps like communicating with the relevant departments/teams/offices on receipt of this letter. We will be continuously following up on this.

We appreciate receiving this information from you, and in case of any new developments, please keep us posted.

## WELLS FARGO

Thank you for reaching out to Wells Fargo.

As a general rule, Wells Fargo does not disclose details regarding specific relationships. However, we are pleased to share with you a general response to your questions.

Our Human Rights Statement, first published in 2013, articulates our commitment to human rights. Wells Fargo recognizes that governments have the duty to protect human rights, and our company has a responsibility to respect human rights. As noted in our Environmental and Social Risk Management Statement, given a number of regulatory, environmental and market factors, Wells Fargo has and will continue to limit and reduce our credit exposure to the coal mining industry.

Our due diligence for customers in the coal and metal mining sector includes an industry-specific assessment of our customers' approach to human rights. The process we use to complete this Environmental and Social Risk Management (ESRM) due diligence includes performing our own research and also analyzing third-party environmental, social and governance (ESG) research and analytics.



We take allegations of customer human rights abuses seriously, and when our research uncovers such allegations or they are brought to our attention, we engage with our customers, understand their risk management approach, and actively monitor developments over time. When there are different viewpoints on an allegation, we document the views and their sources, and we use expert judgment to assess the situation.

Environmental and social risk issues identified during the due diligence process must be included in the ESRM due diligence report and must be considered in the transaction approval process. In addition, the credit approval process requires approval by Wells Fargo's senior credit authorities.

If there are any cases where we are not comfortable continuing to provide financing to a customer for any reason – for credit, ethical or other reasons – we seek opportunities to exit the relationship.

Again, thank you for your interest.

## APPENDIX II: BANKS IN SCOPE

This series of Human Rights Impact Briefings is limited in scope to focus on a group of 45 large private sector banks. The list of banks in scope is included below. Banks have been selected primarily with reference to the list of the world's largest 50 banks by assets. Banks without significant involvement in commercial banking, and national development banks, have been excluded. Some additional changes have been made for better geographic balance (e.g. inclusion of largest Latin American banks).

Bank name	Country	Assets US\$bn
Industrial & Commercial Bank of China (ICBC)	China	3328
China Construction Bank Corporation	China	2704
HSBC	United Kingdom	2634
Agricultural Bank of China	China	2580
JPMorgan Chase & Co	United States	2573
BNP Paribas	France	2527
Bank of China	China	2463
Mitsubishi UFJ Financial Group	Japan	2337
Crédit Agricole	France	2144
Barclays	United Kingdom	2114
Bank of America	United States	2105
Deutsche Bank	Germany	2078
Citi	United States	1843
Wells Fargo	United States	1687
Mizuho Financial Group	Japan	1641
RBS Group	United Kingdom	1636
Société Générale	France	1591
Banco Santander	Spain	1540
Sumitomo Mitsui Financial Group	Japan	1471
Lloyds Banking Group	United Kingdom	1331
UBS	Switzerland	1075
Unicredit	Italy	1027
ING Group	Netherlands	996
Credit Suisse	Switzerland	932
Goldman Sachs	United States	856
Rabobank	Netherlands	828
Toronto-Dominion Bank	Canada	814
Nordea Bank	Sweden	814
Royal Bank of Canada	Canada	810
Morgan Stanley	United States	802
Intesa Sanpaolo	Italy	786
BBVA	Spain	769
Standard Chartered	United Kingdom	726
National Australia Bank	Australia	723
Commonwealth Bank of Australia	Australia	696
Bank of Nova Scotia	Canada	694
Commerzbank	Germany	678
CM11-CIC Group	France	648
ANZ	Australia	632
Westpac Banking Corp	Australia	631
Banco do Brasil SA	Brazil	542
Bank of Montreal	Canada	507
Itaú Unibanco Holding	Brazil	419
Banco Bradesco, Brazil	Brazil	405
Caixa Economica Federal	Brazil	342

Source: Relbanks or bank website, end 2014.