



In search of a remedy for human rights and environmental violations: the community response to the Cerrejon coal mine in Colombia

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# Colombia overview

- third in the world for its biodiversity
- half of its land mass is forested
- 40,000 deaths, 2 million displaced people in civil war
- Half the world's murdered trade unionists
- Mining the “locomotive” of the economy



# Cerrejón- the corporation

- A company incorporated in Anguilla a British overseas territory. Shareholders, subsidiary companies of Xstrata plc, Anglo American plc, and BHP Billiton plc.
- Colombia's largest exporter and 2<sup>nd</sup> generator of foreign currency
- \$2284m in exports in 2010

# 2010 social responsibility report

- 31.4 million tonnes coal exported: Europe (46%)
- 20 species threatened
- 84,745,591 gallons of diesel used; 5846 gallons water; 1,439,979 gallons oil
- 578 tonnes of hazardous waste, 9331 non hazardous
- 1105 Direct emission of greenhouse gases (thousands of tonnes of CO2 equivalent) = 200,000 cars yr

# Guajira- before

- For hundreds of years, home to the indigenous Wayúu people, mestizo campesinos and Afro-Colombians
- traded products and customs, creating a unique Guajira culture
- Largest pop. of indigenous people in Colombia
- The upper indigenous peoples were nomads, traveling across the peninsula hunting, fishing, and collecting fruits of the forest

# Rainwater, Guajira, August 2012



# Guajira- after

- After 30 years of massive coal exploitation, 63% of the community live in poverty and 37.4 % in extreme poverty
- 4000 people “relocated” by 2010. The open cast coal mine, Cerrejón, has taken over tens of thousands of hectares of fertile land destroying farms, water sources and towns.
- The Rancheria River, a source of drinking water, foul and brown with toxic run-off from mining.
- Coal dust and pollution >surrounding areas uninhabitable.
- Loss of sacred spaces, a rise in death rates due to poisoning and pollution from the mine and its wastes, a loss of cultural integrity and traditional knowledge

# Sustainable development?

After 30 years of massive coal exploitation, 63% of the community live in poverty and 37.4 % in extreme poverty

“What a paradox,” says Eder Arregoces Pinto, a councillor from the town of Chancleta... “We are surrounded by the world’s largest coal mine, and we don’t have enough to eat! Most of the families here can only eat one meal a day, all because we don’t have land anymore. The environmental situation is worse than critical. The government pursues people who plant bombs and kill people. But what about a company that is slowly killing off people with pollution?”





**Tabaco-“*Lost happiness of a people robbed by mining*”**

2007 formal complaint to the National Contact Point

August 2012 not fully implemented 12 yrs post displacement

# Displacement: Tabaco community

*The Wayúu believe the spirits live with them in their communities and when they are relocated they fear the spirits will not find them in their new territory.*

- Tabaco faced violent eviction
- Domestic court judgement in their favour ignored
- After community complained to OECD, the company initiated independent investigation which upheld main part of their complaint and recommended communal reparations
- But this has still not been paid in full.

# The Tamaquitos community

- When a new baby is born in Tamaquito II, a Wayúu indigenous settlement in La Guajira, in northern [Colombia](#), the child's family digs a hole near its *pichi* (hut) and buries the umbilical cord. The Wayúu practice this ancestral ritual to connect to the land, to remind themselves where they come from.
- The Tamaquitos have been negotiating with Cerrejon lawyers for several years about their “relocation” away from this land, to make way for the mine...

# The company perspective

- Cerrejón's Human Rights Policy is aligned with the Cerrejón Way, the company's vision on Sustainable Development and other company policies, on Ethics, Social Labor Responsibility, and Health, Safety, Environment, and Communities.
- Includes respect for the customs and traditions of the indigenous communities and the proper engagement with them.
- We undertake environmentally responsible mining by identifying the environmental aspects and impacts associated with our operations and implanting prevention methods, mitigation, and compensation of these impacts.

# International Council on Mining and Metals Sustainable Development Framework

## **Principle 02. Integrate sustainable development considerations within the corporate decision-making process.**

- Integrate sustainable development principles into company policies and practices.
- Plan, design, operate and close operations in a manner that enhances sustainable development.
- Implement good practice and innovate to improve social, environmental and economic performance while enhancing shareholder value.
- Provide sustainable development training to ensure adequate competency at all levels among our own employees and those of contractors.
- Support public policies and practices that foster open and competitive markets.

BIENVENIDOS  
RESGUARDO INDÍGENA WAYUU

Provincial



Resolución Número 085 -27 de Septiembre de 1988



Cerrejón

Minería responsable





# The River: Provincial community

- Controlled explosions to extract ore have scared animals such as monkeys, lions, tigers, rabbits and pigeons such as the chilora, agouti and peccaries.
- Cultivated cassava, corn, beans, taro, maize, yucca and yam- no longer
- Gradually losing their traditional knowledge as trees and medicinal plants had died.
- Some of their children and livestock are now born with disabilities or even still-born



# River Rancheria deviation

- The Rancheria is the most important source of water in Guajira
- Aim to divert 26km of the river bed 26 km to exploit nearly 500m tonnes of ore
- 40%, approximately. i.e., some 32 million cubic meters of underground water storage capacity would be lost due to the relocation
- 90% of the community drink the river water, they fish in it, their animals live in it. Water levels have already decreased due to mine.

# The fight to save the River

- We will not wait until the last man is poisoned or sick and the last fish dead ... we cannot eat money", Corey Red, civic leader, La Guajira, June 2012, el Tiempo newspaper.
- The community came together in a march of 4000 people along the proposed diversion
- A tutela was issued against inadequate "Free Prior Informed Consent" consultation process

# Loss of water-loss of indigenous culture

- Guajira is one of the most arid and semi-arid zones in South America, with long periods of drought, vulnerable to climate change
- Temperatures reach 45 °C and rainfall averages 500 mm per year, often concentrated into a few days of the year.
- Wayuu activist Angela Gonzalez : “We can live without coal. We can’t live without water.”

# Remedies pursued so far

- Bar Human Right Committee amicus in Colombian Constitutional Court re Muriel Mining argues free prior informed consent (FPIC) needed b4 major economic projects on land occupied by indigenous communities- orders stay on exploration.
- Cerrejon Coal > National Contact Point complaint under OECD guidelines re Tabaco displacement
- Attorney General claim v Cerrejon re poor working conditions in mine and damage to the environment. Miners Union as interested party. Amicus by Colombia Carvana and Bar Human Rts Comittee
- Tutela v Cerrejon re decision to divert the River Rancheria- order for more consultation

# Future actions in Colombia

- Amicus drafted by UK lawyers;
- Training on “Ruggie” and environmental remedies;
- Visits by lawyers and judges to observe court hearings; meet Colombian lawyers /judges;
- Environmental studies;
- Resources for Colombian lawyers and NGOs
- Support Colombian lawyers to argue for stronger legislation and enforcement esp. re free prior informed consent

# Future actions in the UK

- Monitoring and research re UK corporations' activities in Colombia: BHP Billiton; BP; Anglo-American; Rio Tinto;
- UK pension funds investment in Colombian corps;
- Corporate lawyers – awareness raising/compliance
- Non-judicial remedies;
- Improving UK and EU legislation and enforcement;
- Compilation of training materials eg internet-based;
- Civil or criminal litigation in UK;

## The future?

Reforms to facilitate civil litigation in the UK/EU?

Greater use of company/financial reporting requirements?

Ecocide and other prosecutions in the International Criminal Court?

