



ABCColombia
CAFOD, Christian Aid, Oxfam GB, SCIAF, Trócaire
Working for Peace and Human Rights in Colombia

Delegation of Parliamentarians to Colombia 2022

Business, Environment and Human Rights, Justice and
Sustainable Peace, Women and Conflict Related Sexual Violence



CAFOD
Catholic Agency for
Overseas Development

Forward

At the beginning of April 2022, we accepted an invitation from ABColombia to visit the remote tropical regions of Sierra Nevada and La Guajira in north-east Colombia. Primarily we went to see how the lives of indigenous peoples and Afro-Colombian communities in some of the most economic fragile areas of Colombia are being severely impacted by the activities of multinational mining concerns, armed paramilitaries, and to better understand why they believe the government in Bogotá remains indifferent to their plight.

For centuries, the forests, rivers, and fertile lands of the high, mountainous regions of Sierra Nevada and La Guajira have provided the indigenous and Afro-Colombian communities with everything they need to thrive, and while on paper, the rights of these communities to pursue their quiet, deeply spiritual, agricultural way of life is protected and guaranteed in Colombian law, the reality is very different.

In recent years their constitutional rights have been under relentless attack from the demands of multinational coal mining corporations, who, particularly following economic sanctions on Russia, see an opportunity to expand their coal extraction activities to feed European demand. There is currently a David-and-Goliath type battle between those impoverished local communities and the multinational mining corporations, for access to the land and the water of La Guajira and Sierra Nevada. The power imbalance is further exacerbated because despite having the constitution on their side, the indigenous and Afro-Colombian communities know from bitter experience that the Colombian government in Bogotá, as well as regional politicians have acted as little more than facilitator of the demands of the mining companies.

While in Sierra Nevada and La Guajira we walked the dry beds of what were once thriving rivers, and we saw for ourselves how the short-term desire to profit from the extraction of coal trumps everything else, whether that's the desire to reduce global warming or the destruction of indigenous communities. We met with brave local community leaders standing up for their constitutional rights and against multinational conglomerates. We heard about the dangers facing human rights defenders who take a stand for their communities and their land, against powerful vested interest, in a country which is awash with heavily armed paramilitary groups.

Wherever we went, we heard similar stories of increasing acts of violence, intimidation and murder against community leaders, and of an alarming use of sexual violence in the conflict. Equally worrying was how this was being carried out with impunity and in the expectation that no one, or no organisation would ever be called to account for their actions.

Our visit to Colombia made a profound impression on us and we came away knowing that to stay silent on the suffering of the people whose lives, livelihoods and basic human rights are being destroyed by our desire for cheaper power, would make us complicit... because once you know, you cannot pretend that you do not. And once you know, you have a moral responsibility to speak out and bear witness to what you have seen. That is why we will use our privileged position to speak for those who desperately want their stories to be told. We promised the communities of the Sierra Nevada and La Guajira that that will speak to our governments, to our parliaments and directly to those multinational mining companies who are causing so much damage to the environment, the climate and their traditional way of life that is under threat as never before. That was our promise to the people of the Sierra Nevada and La Guajira, and this report is a small part in us fulfilling that.

Brendan O'Hara, Member of the UK Parliament, and International Spokesperson for the Scottish National Party
Claire Hanna, Member of the UK Parliament for the Social Democratic and Labour Party
Gary Gannon, Member of the Dáil Éireann for Social Democrats

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Summary

ABColombia took a Delegation of parliamentarians to Colombia in the first week of April 2022, consisting of Brendan O'Hara MP, Claire Hanna MP and Gary Gannon TD. Ciara de Mora Deputy Irish Ambassador to Colombia and Maria Alejandra Navarrete from the UK Embassy joined the Delegation for the visits to the Communities. The Delegation was also accompanied by Conor O'Neil from Christian Aid and Louise Winstanley from ABColombia. The Delegation met in La Guajira with Afro-Colombian and Indigenous Peoples impacted by the *Carbones de Cerrejón* (Cerrejón) open pit coal mine, and the Cañaverales community in the area of impact of the proposed Best Coal Company (BCC) mine. In Sierra Nevada de Santa Marta (SNSM) and met with four indigenous tribes, Kogi, Kankuamo, Wiwa and Arhuaco and visited the site of the proposed Besotes Dam. The thematic areas covered by the Delegation were Business, Environmental and Human Rights, the Peace Process and Women, Violence and Transitional Justice.

The Delegation visited the largest open pit coal mine in Latin America, Cerrejón, and spoke with the communities and the mine company. This mine company was jointly owned by multinational giants BHP, Anglo American, and Glencore until January 2022; Glencore is now the sole owner. Glencore and the previous joint owners are registered on the London Stock Exchange, whereas their coal sales arm, the Coal Marketing Company (CMC), is registered in Ireland, and Ireland's Electricity Supply Board (ESB) is a prominent purchaser of the coal.

The Delegation went to La Guajira to hear from the Wayuu Indigenous Peoples and the Afro-Colombian Communities impacted by the mine and engaged in decades of struggle to have their fundamental rights upheld, to protect their sacred spaces and the biodiversity of their territory. Over the years the Courts have recognised the violation of human and environmental rights and issued a list of orders with which Cerrejón has largely not complied, or only partially.

Legal rulings and policies on climate change

Since 1992, the Wayuu and Afro-Colombian Communities have obtained at least 10 rulings from the Constitutional Court and other Courts in relation to Cerrejón's mining activities, referring to the violation of their fundamental rights by Cerrejón. These include their right to water, health, food, a healthy environment, prior consultation and decent living conditions. In addition to these violations, the rulings refer to large consumption and contamination of water by the mine. These have led to water and food scarcity and the identification of high concentrations of harmful metals in the blood of those living near the mine, which can cause diseases such as cancer.

There have also been a range of health reports and technical studies showing how Cerrejón's mining activities have caused widespread, persistent, and extreme pollution of the air and water in the vicinity of the mine, generating concerning levels of respiratory conditions. Serious damage to the environment and the health of the Indigenous Peoples led UN Special Rapporteur David Boyd and seven other rapporteurs to call on the Colombian State to suspend some of Cerrejón's mining operations. In January 2021, a complaint was filed with the OECD's corporate human rights monitoring bodies (National Contact Points – NCPs) against all three parent companies, (CMC) and Ireland's Electricity Supply Board (ESB).

Despite the Wayuu Indigenous Peoples and Afro-Colombian communities using all the legal measures available to them and obtaining scientific research supporting their health and environmental claims,

they are still engaged in a struggle to obtain redress and to have their rights respected and their lands, culture and sacred spaces protected.

The failure of all Colombia's legal procedures to hold Cerrejón and its multinational parent companies to account for their operations in Colombia, only serves to highlight the need for British and Irish governments to fulfill their extra-territorial responsibilities in relation to companies that are headquartered and/or registered in their jurisdiction, for their actions overseas. The UK and Ireland should therefore introduce new binding laws for corporate accountability that include the establishment of mandatory human rights, environmental and governance due diligence obligations in domestic law for all companies.¹

The Delegation expressed its concern that, instead of responding to and implementing the various Court rulings, Cerrejón had contested the decisions, even to the extent of accusing the Court of placing unacceptable conditions on the company in relation to noise and pollution.²

Members of the Delegation raised questions with Cerrejón about Glencore and Anglo-American filing a case against the Colombian state before the International Centre for Settlement of Investment Disputes (ICSID), an investor-State dispute settlement mechanism (ISDS).³ The case is seeking compensation for losses associated with the Constitutional Court ruling SU698/2017 which ordered the suspension of the mine expansion for exploiting the coal beneath the Arroyo Bruno riverbed pending the results of environmental and other technical studies. The Arroyo Bruno is a stream that not only provides water but is also of cultural and spiritual importance to the communities, in a semi-arid region of Colombia.



... corporate actors...play the game of purporting to be responsive to local, national, and international pressures while all the while marching full steam ahead in putting their own profits ahead of serious concerns relating to human rights, environmental sustainability, and the basic health of affected communities."

Philip Alston, former UN Special Rapporteur on extreme poverty and human rights

ISDS are a component of most International Investment Agreements (IIAs) and/or investment chapters in free trade agreements (FTAs), that have significant influence on how disputes between States and investors are resolved. These international arbitration proceedings have been increasingly used by companies to sue Governments. Their proceedings have raised major concerns as they lack transparency, victims are hardly ever admitted to the proceedings, which are held behind closed doors, and awards to companies are disproportionately high.



IIAs can affect the landscape of business respect for human rights in diverse ways. They can constrain the legal or policy space available to states to regulate the conduct of corporate investors. IIAs also create an asymmetry between rights and obligations of corporate investors vis-à-vis states. Moreover, IIAs can have both direct and indirect impact on affected communities' right to seek effective remedies against corporate investors."

Surya Deva, UN Working Group on Business and Human Rights

Governments have the power to change a system that benefits corporations at the expense of human and environmental rights, especially given the urgent challenge the world is facing in relation to Climate Change, with the need to limit global temperatures to the 1.5C as agreed at COP26 and reduce

CO2 emissions. Governments like Bolivia and Ecuador have terminated many of their international investment treaties, and Australia, for example, excludes the investor-state dispute settlement process from its investment agreements, thereby preventing companies from suing it in international tribunals, which otherwise could dissuade them from introducing the environmental and human rights legislation required.⁴

In March 2022, in response to questions from Gary Gannon TD, having returned from this Delegation, the relevant government officials confirmed to him that Ireland was again sourcing coal from the mine. This has been the subject of sustained controversy and debate in Ireland, raising serious ethical concerns over energy production, decarbonisation and the country's involvement in harmful coal mining in Colombia and other countries.⁵ This is despite the UN Committee on the Elimination of Racial Discrimination (CERD) in 2019 recommending that the ESB stop buying Cerrejón coal, and that Ireland take steps to ensure restitution and compensation to victims of human rights abuses. Furthermore, in 2020, CERD expressed concern that 'the operation of the Cerrejón mine complex in La Guajira..., has been linked with serious abuses of human rights...'⁶

Free Prior and Informed Consent

According to the worldview ("cosmovision") of the four indigenous tribes of the Sierra Nevada de Santa Marta (SNSM), this mountain range has 348 sacred sites contained within the Linea Negra (Black Line). The Linea Negra is a sacred line encircling an area recognised by the Kogi, Wiwa, Kankuamo and Arhuaco Indigenous Peoples of the SNSM as the **"Heart of the Earth"**. The traditional ceremonial activities that the four tribes conduct in this area are, in their cosmovision, essential to the management and preservation of the natural resources and vital for the ecological balance of the world. Decree 1500 was negotiated by the four tribes with the Santos Government. It redefines their ancestral territory and recognises the interconnected sacred places along the Linea Negra as ancestral territory that must be protected due to its spiritual, cultural, and environmental importance as presented in the Law of Origin (Ley de Origin). A few days after the passing of this Decree, a lawsuit was filed with the Council of State objecting to Decree 1500.

It was therefore with considerable disquiet that the Delegation learnt of the proposals for the Besotes Dam, which would flood an area within the Linea Negra, at a time when the Decree is suspended pending a legal decision. In addition to the Dam there are a number of megaprojects either being carried out or planned inside the Linea Negra.

The proposed Besotes Dam and Best Coal Company mine are two projects where the Afro-Colombian and indigenous peoples have a constitutional right to be consulted. Consultations processes with the Afro-Colombian and indigenous peoples impacted by these megaprojects must be carried out with the aim of obtaining their free, prior and informed consent (FPIC) in accordance with their own decision-making processes.⁷ This means that communities have to receive all the information needed for an informed decision-making process, and be able to use their traditional consensus building processes in order to arrive at a decision. Therefore, the expectation placed on the Afro-Colombian communities of *Cañaverales* around the BCC mine to conduct such a process without the information required, and to conclude the process in one day, is altogether highly disturbing and fails to conform to national and international standards. The Afro-Colombian Community at *Cañaverales*, whilst willing to enter a FPIC process, is first insisting on a complete information package, the presence of the relevant state authorities, and to be allowed to use their own consensus building processes. After a considerable

amount of time the company finally passed incomplete information on a hard disk to the community. This however requires the use of information technology and reflects the extent to which the Interior Ministry and the BCC lack an understanding of the rights and realities of the Afro-Colombian communities at *Cañaverale*s, and the process of FPIC. The *Cañaverale*s community has no, or extremely limited, access to the internet. Consequently, the lack of full and accessible information, and insufficient time to engage in meaningful processes of consensus making and dialogue, negates the community's rights.

In the SNSM, the four tribes have already stated that they are not in agreement with the construction of the Besotes Dam. This is a megaproject that would significantly impact their communities, causing displacement and flooding, in addition to damaging sacred spaces and water sources. The Colombian Constitutional Court and the Inter-American Court of Human Rights (IACHR) rulings clarify that the purpose of FPIC is to guarantee respect for the integrity of Indigenous and Tribal Peoples, their territories, and their ability to exercise their self-determination-based rights to participation, autonomy, and self-governance. The right to consultation and consent is therefore integral to their right to autonomy, territory, and self-determined development. The Court has made it clear that, in contexts where the activity of the megaproject has the potential to significantly impact on indigenous peoples' rights, **consent** is a required outcome of consultation processes.⁸

The area where the Besotes Dam is planned is an area of outstanding natural beauty, inside the Linea Negra, where the preservation of biodiversity and sacred spaces has been carried out for centuries by the Arhuaco, Kankuamo, Wiwa and Kogi indigenous peoples. It also has UNESCO Biosphere Reserve status. The mountain range where the four tribes live is exactly the kind of area of biodiversity that Colombia and the other 141 countries in the Glasgow Leaders' Declaration on Forests and Land Use agreed to protect, and this pledge recognised the importance of the role of indigenous peoples in this process. The SNSM and the Besotes Dam present a test of their commitment to this pledge.

Transitional Justice and Conflict-related sexual violence

The Delegation also spoke to the Special Jurisdiction for Peace (JEP), the judicial component, and the Truth Commission, non-judicial component, of the Transitional Justice System. The JEP is tasked with investigating, prosecuting, and punishing the most serious crimes committed during the internal armed conflict with the task of grouping the most representative war crimes and crimes against humanity into macro-cases on a thematic issue (national cases) or geographic region.

An area of concern for the Delegation was how the JEP was going to ensure the implementation of the gender perspective and fulfil the commitment in the Peace Accord that there would be no amnesties for conflict-related sexual violence. In addition to talking to the JEP, the Delegation also spoke with representatives from women's organisations and CSOs (civil society organisations) regarding these issues.

The JEP was still considering whether it would be possible to open a national case on conflict-related sexual violence committed during the armed conflict. It was not clear to the JEP how, with the current evidence available, they would be able to investigate the chain of command and identify those most responsible, thereby fulfilling their mandate. Nevertheless, a national case is essential if the JEP is to fulfil the commitment in the Peace Accord to 'no amnesties for conflict related sexual violence', and Colombia's international obligations to act with due diligence to prevent, investigate, and prosecute sexual violence perpetrated by state and non-state armed actors.

Meanwhile the JEP is integrating strategies for investigating conflict-related sexual violence as a cross-cutting theme in three new national cases. However, CSOs say this is too limited. Furthermore, by examining sexual violence as one of a group of violations, it will appear to be an isolated or opportunistic crime rather than the systematic practice by all armed actors, legal and illegal, which is how the Colombian Constitutional Court (092/2008), identified the practice. Given the historically high level of impunity for these crimes, along with the low level of acknowledgment by those responsible, the JEP has a responsibility to create the conditions to overcome these barriers and guarantee the victims' right to truth, justice, reparation and non-repetition.

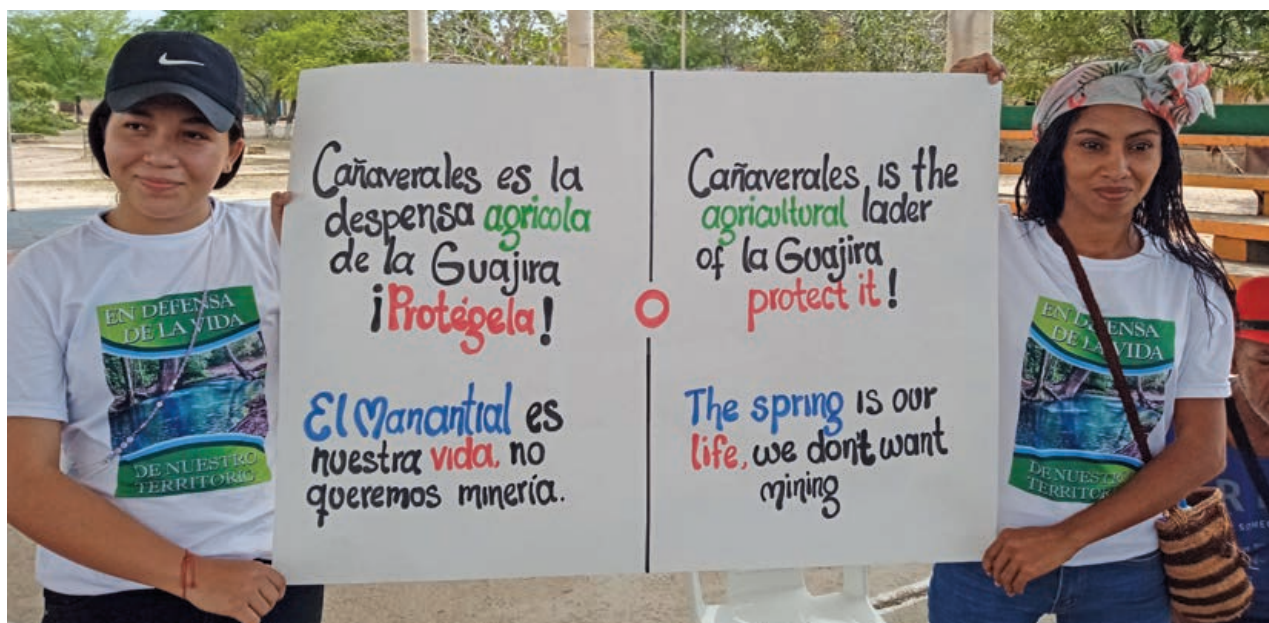
British and Irish Government's International Obligations

“

[When] corporate actors ... avoid or evade responsibility ... it is governments which are best placed to put an end to what clearly are major abuses of human rights and of the environment.”

Former UN Special Rapporteur, Philip Alston

Issues that the Delegation encountered are ones that the British and Irish Governments have international obligations to address. These range from human rights violations, climate change and biodiversity protection, to promotion of sustainable peace and prevention of sexual violence in conflict. The cases outlined in this report highlight the need for companies to be held to account for their actions by governments where they are registered or headquartered. Voluntary principles are no longer sufficient on their own, rather adherence to mandatory human rights, environmental and governance due diligence obligations for all companies is essential. Companies should be required to conduct “due diligence”, that is to identify and take steps to address risks to human rights and the environment that their activities pose across their operations and in their supply chains.



Recommendations to the UK

- To enact a **Business, Human Rights and Environment Act** which will hold companies accountable for their failure to prevent human rights and environmental abuses, wherever in the world they operate. This binding corporate accountability legislation for UK businesses should ensure that it aligns with English Common Law, international human rights law, as well as standards of the UN Guiding Principles on Business and Human Rights, OECD Guidelines for Multinational Enterprises and ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.⁹
- To develop this binding regulation, the UK should start with a public consultation requesting evidence on how a new UK law mandating human rights and environmental due diligence, with an accompanying liability regime, could be developed.¹⁰

Recommendations to the UK and Ireland

- That the UK and Ireland terminate where possible, and in future exclude, the investor-state dispute settlement process from UK and Irish trade and investment agreements.
- The UK and Ireland introduce new, binding laws for corporate accountability, including the establishment of mandatory human rights, environmental and governance due diligence obligations in domestic law for **all** companies, and support the introduction of a proposed UN Binding Treaty on Transnational Corporations and Other Business Enterprises (UN Binding Treaty).
- To continue to support the Peace Process in Colombia and in particular the launch of the Truth Commission's Report and the implementation of the recommendations of the report
- To monitor the implementation of the Truth Commission's Report recommendations, calling on the Security Council Mission of Verification to report within its mandate on a quarterly basis to the Security Council on the implementation of these recommendations.
- Encourage, via training and support of the work of the JEP and CSOs, a National Case in the JEP on conflict-related sexual violence.
- Ireland should stop buying coal from Colombia (as it has done from Russia) based on the human rights abuses documented by local and international civil society organisations and fully implement the recommendations made by the UN Committee on the Elimination of Racial Discrimination (CERD)

1.0 Human Rights Situation at the National Level

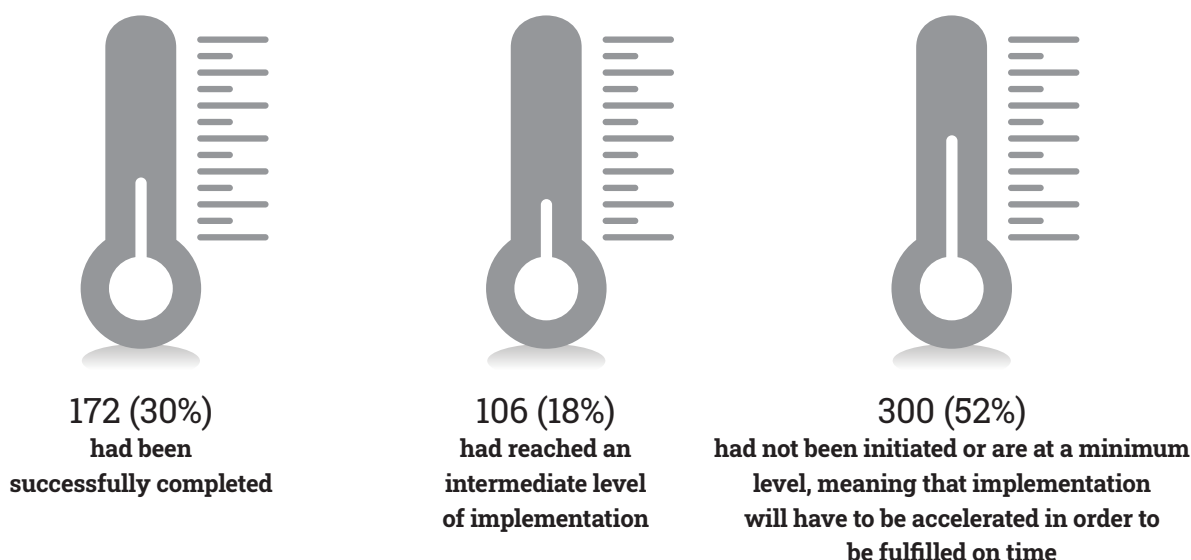
The series of presentations given to the Delegation on the first day in Bogota covered the human rights situation in Colombia under the thematic headings of the peace process and implementation to date of the Peace Accord, the situation of human rights defenders (HRDs) with reference to the implementation of security guarantees mechanisms in the Accord, and the situation of women and violence with specific reference to the Transitional Justice mechanisms established in the Peace Accord. The last day of the Delegation, when we were in Bogota again, we met with representatives of the Special Jurisdiction for Peace (Transitional Justice Tribunal - JEP) and the Truth Commission. Section 1.4 on Women, Sexual Violence and Transitional Justice is based on the information provided in the meetings with the JEP and the Colombian women's organisation, Sisma Mujer.

1.1 Peace Process and the implementation to date of the Peace Accord

The first five years since the signing of the Peace Accord (September 2016 to 31 October 2021) have been used to establish the legal, regulatory, and institutional frameworks required for the implementation of the agreements made in the Peace Accord. Other specific activities include the design and implementation of public policies and consultations, such as those on the Development Programmes with a Territorial Focus (PDETs).¹¹ During this time the Peace Process has faced immense challenges, which include increased violence especially in rural areas, political polarisation, killings of HRDs, community leaders and former combatants, and the devastating social and economic impacts of COVID-19.

The information presented by the National Secretariat for the Social Pastorate-Caritas Colombiana (SNPS) to the Delegation on the Peace Accord's implementation was produced using the Barometer Initiative. The Barometer initiative is an alliance between the SNPS and the Kroc Institute, created to monitor the implementation of the Peace Accord signed between the government and the FARC-EP. SNPS presented these findings on the status of implementation as of October 2021.¹² The Barometer Initiative measures against 578 stipulations contained in the six chapters of the Peace Accord. They also identify the main implementation milestones for these chapters and for the cross-cutting ethnic and gender approaches.

From 1 December 2016 to 31 October 2021, of the 578 stipulations





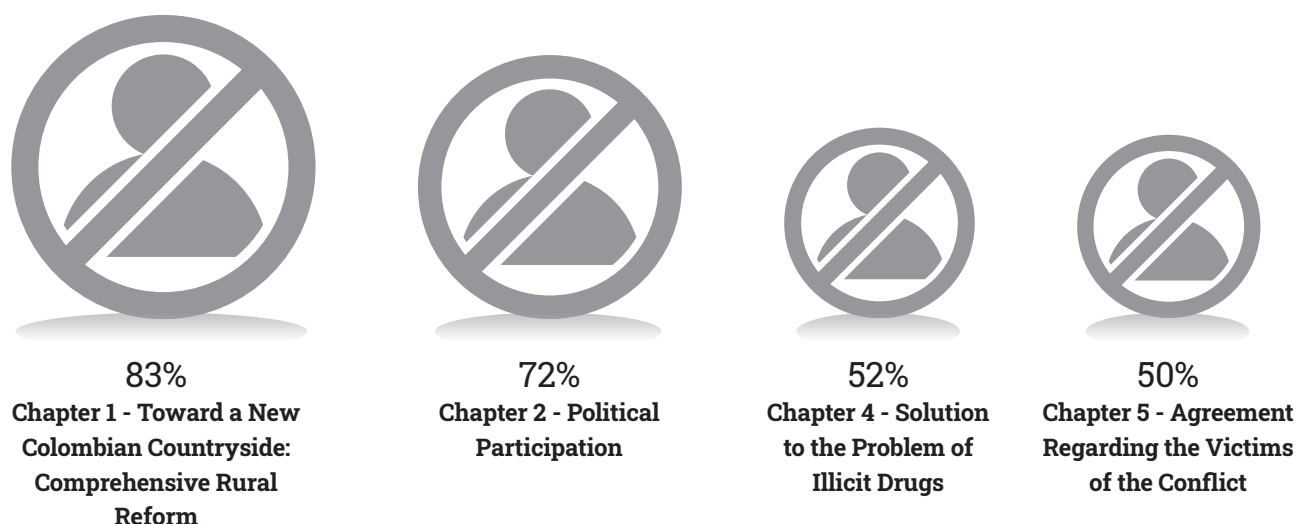
...violence was used with greater intensity to silence those defending land rights, the rights of ethnic peoples, the environment, victims of the armed conflict, and implementation of the peace agreement.”

UN OHCHR

Although there has been some growth in implementation since 2018, with action on medium and long-term commitments and an increase at the territorial (that is, rural) level, implementation across the six chapters¹³ and the two transversal (cross-cutting) themes (gender and ethnic) varies considerably. Notably only 13% of the ethnic stipulations¹⁴ have been completed and 12% of the gender perspective, meaning that at least 75% of the ethnic and gender stipulations are not likely to be completed on time.

The highest levels of implementation across the six chapters of the Accord are concentrated in the ‘End of the Conflict’ (Chapter 3) and ‘Implementation, Verification, and Public Endorsement’ (Chapter 6) with 70% and 71% respectively completed or at the intermediate level of completion. This can be explained by the fact that these two chapters mainly cover more short-term actions, like ceasefire and disarmament and, in the case of Chapter 6, creating the foundation for the immediate institutional and regulatory implementation infrastructure needed. It is notable that, of the measures outlined in Chapter 3, it is those aimed at guaranteeing security conditions after the end of the conflict which have the lowest recorded implementation levels.

Agreements related to victims are the slowest at being implemented. The percentage of stipulations per chapter that have either **not been** implemented or only have a minimum level of implementation are:



Chapters 1 and 2 cover highly important transformational elements of the Peace Accord, especially for victims of the conflict living in the rural areas. Chapter 1, for example, relates to the democratisation of land access and the Development Programmes with a Territorial Focus (PDETs), as well as the National Plans for Comprehensive Rural Reform. These agreements require long term implementation plans to achieve the substantive changes that will address the structural causes of the conflict.

The rapid and integrated implementation of the National Comprehensive Program for the Substitution of Crops Used for Illicit Purposes (PNIS), in combination with the PDETs, was designed to address the 170 municipalities most impacted by the conflict and to bring about significant rapid gains in peace

dividends for these communities. However, despite this, many commitments are still uninitiated or at a minimal level of implementation, particularly those in the community-level Immediate Action Plans (PAIs) and those dealing with livelihoods.

With regard to the stipulations within the Political Participation Chapter, these required legal and regulatory reforms and a high degree of political consensus, for example, reforms to increase guarantees for the right to protest:

- **Creation of the Special Transitional Peace Constituencies (CTEPs):** these were strongly opposed by Congress and finally enacted through a Court decision. This reform aims to improve victims' representation in the House of Representatives, by creating 16 new constituencies broadly corresponding to the 16 regions where the 170 PDET municipalities are located, and which have experienced state abandonment for decades. Candidates must be proposed by civil society organisations, victims' organisations or social movements and cannot be members of political parties. The first CTEP elections were held in March 2022.
- **Reactivation of the National Council for Peace, Reconciliation and Coexistence (CNPRCs) and the Territorial Councils for Peace, Reconciliation, and Coexistence (CTPRCs).** The aim is to facilitate a new relationship between institutional actors and civil society, focussed on inclusion, and encouraging institutions and civil society groups to work together to create a shared vision for social change.

Key achievements over the past five years include:

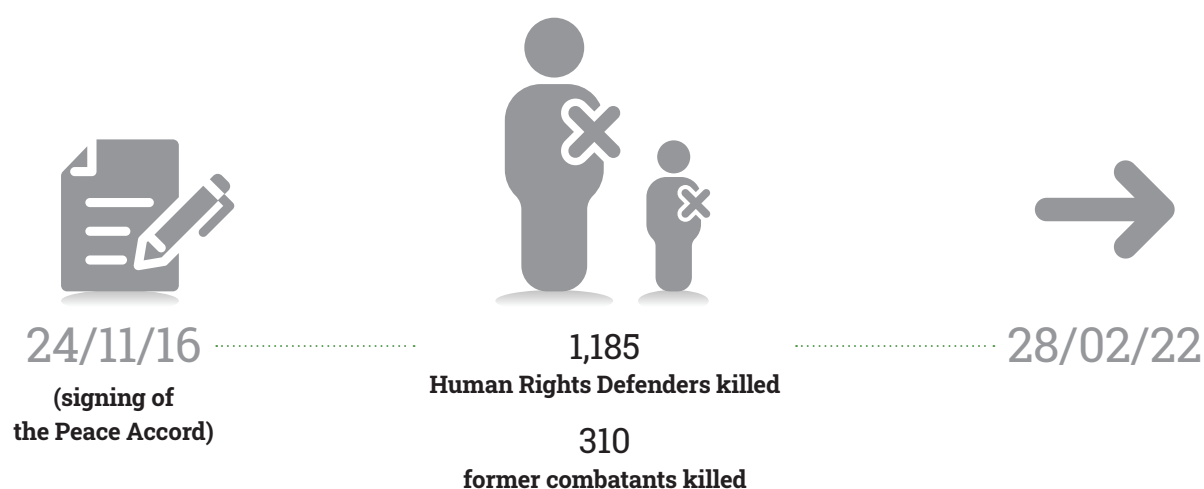
- **Rural Reform:** Regulation of the procedure for land access, land registration and a Multipurpose Cadastre. Communities engaged in a participatory planning process for the Development Programmes with a Territorial Focus (PDETs) and 16 Action Plans for Territorial Transformation (PATRs). However, in 2020, only 11,000 of the 32,808 PDET initiatives were included in Municipal and Departmental Development Plans. This falls far short of what is needed to ensure their rapid implementation for the transformation of areas most impacted by the conflict, the original idea of these plans.
- **Political Participation:** Creation of the Special Transitional Peace Constituencies (CTEPs), Reactivation of the National Council for Peace, Reconciliation and Coexistence (CNPRCs) and the Territorial Councils for Peace, Reconciliation, and Coexistence (CTPRCs). Creation of the Commission for Monitoring, Promoting, and Verifying the Implementation of the Final Agreement (CSIVI) and the International Verification Component (CIV). The CSIVI was established as a forum to resolve disputes in interpretation between the signatory parties. (However, it has not functioned as it should since the Duque Government came into office).
- **Ceasefire, laying down of arms, reincorporation:** Fulfilment of the bilateral ceasefire and laying down of arms. Creation of the Comunes Party, with 10 guaranteed congressional seats until 2026. The party consists of ex-FARC-EP members and was formally established as a means of reincorporating them into political life.
- **Transitional Justice:** Establishment of the bodies forming the transitional justice process – Special Jurisdiction for Peace (JEP), the Truth, Coexistence and Non-Recurrence Commission (Truth Commission – CEV) and Unit for the Search for Persons Deemed as Missing in the context of and due to the armed conflict (UBPD). These bodies began activities within two years of the signing of the Peace Accords, as a result of an intensive legislative schedule

Cross-cutting themes - key achievements:

- **Creation of the Special Forum for Monitoring the Gender Approach and Guaranteeing Women's Rights and the Special High-Level Forum with Ethnic Peoples:** These came about because of the intense advocacy of women's CSOs and ethnic community organisations.
- **Inclusion of an ethnic and gender approach in the PDET initiatives:** Almost 13,000 out of the 32,000 initiatives adopted have a gender or ethnic focus.

1.2 Situation of Human Rights Defenders (HRDs)

The security situation for HRDs and communities has been deteriorating consistently since the signing of the Peace Accord, culminating in 2020, when 321 HRDs were killed, the highest number since the Accord was signed. Levels of killings of HRDs and social leaders in 2022 are set to be at similar levels to 2021, with 33 killings in just the first two months. Killings of ex-FARC-EP combatants in 2022 is also on a similar trajectory to that of 2021. According to data produced by the Colombian Commission of Jurists, between 24 November 2016 (signing of the Peace Accord) and 28 February 2022, a total of 1,185 HRDs and social leaders have been killed, and 310 former combatants. This equates, on average, to **more than one HRD killed every other day** and one former combatant every week. Colombia has by far the highest number of killings of HRDs in the world, as well as specifically of land and environmental HRDs.¹⁵



Indigenous woman from the Sierra Nevada de Santa Marta

1.2.1 Implementation of the Peace Accord and rural communities

The slow implementation of the PDETs is having a very negative impact on security. These areas have seen a resurgence of the conflict, reconfiguration of illegal armed groups, an increase in social control and territorial disputes resulting in forced displacement and confinement as armed actors vie for control of illicit economies. This has led to greater vulnerability for environmental HRDs as they speak out about the violation of the rights of indigenous, Afro-Colombian and campesino communities. Community leaders are also at the forefront of the implementation of

the crop substitution processes which has put them in a very vulnerable position. Collusion between the security forces and the illegal armed groups in regions like Chocó has also increased the vulnerability of communities and environmental defenders.

1.2.2 National Commission for Security Guarantees

The National Commission for Security Guarantees (NCSGs), established in the context of the Peace Accords, should theoretically be a key instrument for the protection of HRDs and communities. The NCSGs' composition, as laid down in the Peace Accords, includes the President of the Republic, and the state control bodies – the Offices of the Inspector General (*Procuraduría*), the Human Rights Ombudsman (*Defensoría*) and Attorney General (*Fiscalía*), and the Director of the Special Investigation Unit, three experts and two representatives from networks of human rights organisations. Subsequently, in compliance with the gender perspective, and after considerable insistence by women's networks, two representatives from networks of women's organisations were added. Nevertheless, as invitees, they only have restricted participation. The Accord sought to ensure that the composition of the NCSGs had sufficient political weight to enact the policies it designs.

The Commission's main objective is to define and oversee a public policy for dismantling criminal groups, including the successor paramilitary groups, responsible for attacks on human rights defenders, social leaders, communities, and peace activists. Its specific functions total 16, and include: -

- Developing a permanent Action Plan to dismantle those groups
- Recommending legal reforms to prevent agents of the state colluding with such groups
- Recommending reforms to modify and prioritise intelligence actions and strategies

Despite the importance attached to the NCSGs within the Peace Accords, it has so far failed to deliver, and is being **actively undermined by the Duque government** (August 2018- August 2022). For example, the Commission should meet once a month, but by April 2022, at the time of the Delegation, it had been convened only 7 times during the 44 months of the Duque government. Additionally at these meetings, there had been no engagement around its main objectives. Whilst the previous government of Juan Manuel Santos had also failed to keep to the monthly timetable, it had at least engaged in work related to the main objectives, such as the financing of paramilitary groups, a review of legal and administrative norms that allowed or stimulated the activity of paramilitary groups, as well as a gender perspective on security policies.



Delegation with Irish Ambassador Fiona Nic Dhonnacha, Ciara de Mora, Deputy Irish Ambassador, Tim Hemmings, UK Deputy Ambassador and Maria Navarrete, UK Embassy

Furthermore, in November 2018, in a move which further undermined the NCSGs, the Duque government created a parallel body called Timely Action Plan on Prevention and Protection for Human Rights Defenders, Social Leaders and Journalists, known by its Spanish acronym, PAO. This programme has the same representatives on it, **with the exception of Civil Society**, there are no CSO representatives on it. The first PAO director appointed was Leonardo Barrero, a former army general. He had been Commander-in-Chief of Military Forces from 2013 to 2014 but was forced to resign because he suggested to a Colonel under investigation for extrajudicial executions that he should

organise a “mafia” against the prosecutors dealing with the case. Such was the concern of CSOs that the then Interior Minister assured them (January 2019) that she herself would be director of the PAO. However, despite his record, General Barrero was employed instead as liaison between this programme and the Security Forces. In February 2022, General Barrero, who had close links to members of the then ruling party as well as to President Ivan Duque, was accused of being an important member of the Clan de Golfo paramilitary group.¹⁶ His alleged role, as “The Godfather”, was to coordinate the support of this group by active and retired members of the armed forces.

A number of factors explaining the Commission's lack of activity and effectiveness: -

- Resistance by the state security agencies to the participation of civilians in security matters - not only members of civil society but also government ministers, and State officials belonging to control bodies, but who are not part of the armed forces or intelligence community;
- Opposition to the Peace Accord by the Duque Government;
- Possibly, the collusion of some actors with paramilitary groups (such as, potentially, General Barrero)

Due to the high rate of socio-political killings in Colombia, it is vital to preserve the NCSGs and to strengthen it under the new government (which will take office in August 2022), in order to effectively implement its crucial mandate of dismantling paramilitary and other criminal groups who are killing HRDs, social leaders, peace activists and threatening communities.

The Delegation was concerned to learn that two human rights defenders whom they had met during their visit had since suffered serious security incidents.



Misael talking with Brendan O'Hara MP

Misael Socarrás Ipuana, leader of the activist community of La Gran Parada and member of the *Fuerza de Mujeres Wayuu*, has been one of the community leaders at the forefront of resisting the destruction of the Arroyo Bruno. On the night of 12 April 2022, only a few days after the Delegation's departure, three men armed arrived at La Gran Parada on motorbikes and circled the community for a number of hours. It appeared that they were searching for Misael, as they tried the door of his mother's house and said 'he must be in one of these houses'. Misael called the police, but it was only the following morning that they indicated that they would take the situation seriously. In an earlier incident, on 8 April 2022, eight men in military clothing

stopped a son of Misael in a neighbouring village and asked him who he was, who he lived with and where he was going.¹⁷ Misael has been constantly threatened and has suffered various security incidents. As a result, he is under a collective security scheme organised by the *Fuerza de Mujeres Wayuu* and is the recipient of measures provided by the National Protection Unit.

Luz Ángela Uriana¹⁸ is one of the leaders of the Wayuu community of Provincial who filed writ T-614/19 with the Constitutional Court concerning the air pollution produced by Cerrejón. On the night of 21 May 2022, a number of men on motorbikes shot at her house while she was inside with her husband and eight children. Fortunately, nobody was hurt. Cerrejón issued a statement a couple of days later, expressing concern at the attack and urging the authorities to investigate it.¹⁹

1.3 Women, sexual violence and Transitional Justice



When the FARC arrived in the territory, some [Wiwa Indigenous] women were raped by them. When the paramilitaries arrived together with the Colombian army [they raped], for example, there were some girls who were training to become 'sagas' - wise women, spiritual women. They were taken from this training, and some were raped. Some had children as a result of the rape. They became mothers when they were only children themselves" ...

"One of the cases is filed with the Court, it concerns a girl from ... the Wiwa community. The girl was 12 years old. She was sitting in on a training, and nine soldiers from the Colombian army raped her. This girl has been marked for the rest of her life."

Woman leader of Wiwa indigenous group

The JEP is the judicial component of the Comprehensive System of Truth, Justice, Reparation and Non-Repetition created by the Peace Agreement signed between the Government of Colombia and the FARC-EP in November 2016. It is tasked with investigating, clarifying, prosecuting, and punishing the most serious crimes committed in the context of over 50 years of Colombia's internal conflict. It has the task of grouping the most representative war crimes and crimes against humanity that occurred during the conflict. These groupings of cases are known as macro-cases with a thematic focus (national cases) or regional.

Representatives of the JEP told the Delegation that the JEP is still considering whether to open a national case on sexual violence committed during the conflict. They informed us that in recent consultations, victims across the country have told them that they want a national case on conflict sexual violence as this would improve their situation. However, it is not yet clear to the JEP how, with the current evidence available, they would be able to investigate the chain of command and identify those most responsible, which is what they are mandated to do. Nevertheless, if the JEP is to fulfil Colombia's commitment in the Peace Accord to no amnesties for conflict related sexual violence, and international obligations to act with due diligence to prevent, investigate, and prosecute sexual violence perpetrated by state and non-state armed actors, then a national case is essential.

Meanwhile the JEP are going to integrate strategies for investigating conflict-related sexual violence as a cross-cutting theme in three new national cases. Within these three national cases, sexual violence will be investigated as one of a group of human rights violations that are considered socially and culturally serious. Women's organisation and NGOs, both nationally and internationally, whilst considering integrated strategies for the investigation of sexual violence as a cross-cutting theme is a step in the right direction, regard it as too limited in terms of investigation, and will not reveal the true extent of the violence committed against women and girls in the conflict. Furthermore, by examining sexual violence as one of a group of violations, it will appear to be an isolated or opportunistic crime, thus failing to investigate and analyse conflict related sexual violence as a pattern of behaviour, or an unspoken policy. If this happens then the JEP will not have the evidence to prosecute those most responsible in the chain of command. This is despite the fact that in 2008, the Colombian Constitutional Court identified in Judgment 092/2008 that conflict related sexual violence in the internal armed conflict was a systematic practice carried out by all armed actors.

By considering it as one of a group of violations, it fails to address the seriousness of this crime, with corresponding consequences for the repetition of violence against women and girls, both inside and

outside of conflict. It is likely that only in exceptional cases will it be possible to investigate sexual violence, when a women's organisation is involved and has already documented the case.

CSOs consider that what is needed is for the JEP to develop a methodology for investigation and analysis that takes into account the fact that cases of conflict related sexual and gender-based violence are massively under-reported and unlikely to be voluntarily confessed by armed actors. The JEP would need to develop a methodological strategy that allows them to obtain as much information as possible through questions establishing context, to enable them to, for example, understand the internal norms of the armed group, the gender arrangements in the armed structures, and social control exerted over women. In this way, it will allow the facts to be elicited.

Experience from the demobilisation of the paramilitary groups in 2005 where voluntary confessions of their crimes formed part of the Transitional Justice Process (known as the Peace and Justice Process), sexual violence was rarely admitted or acknowledged, and yet, the paramilitaries were the group most extensively involved in perpetrating this crime. These crimes have therefore remained in impunity. If the JEP rely only on the voluntary testimony of the armed actors, they are unlikely to reveal that they or their unit were involved in sexual violence against women and girls.

According to CSOs, another area that needs addressing is the definition of sexual violence that the JEP is using, based on penetration, which is too narrow. The definition needs to be in line with international standards, thereby guaranteeing access to justice for victims, both in its definition of sexual violence in armed conflict, as well as sexual violence and the behaviours it encompasses.



I was 14 when we arrived in the town [having been forcibly displaced by the conflict], it was very hard, as I had to be not only a sister, but also a mother, because my mother had so many children. The Wiwa culture means that women have 10 children and my mother had 14 and my sisters were very small, so I had to work... I was taken to a lady and was enslaved. I didn't receive any pay, they didn't give me anything, they took away my manta, stopped me speaking my native language, this is what happened to many young people from the territory, and some were raped. So, this is the fate we had to suffer, this ill-treatment, this violence against women. Some of those who came from the Sierra married non-indigenous men who ill-treated them and abandoned them with children. This is also a dimension of violence against women."

Violence is a continuum that moves between the public and the private. In the case of sexual violence against women, this continuum is often normalised when it happens outside the armed conflict. Transitional justice offers the possibility of understanding, explaining, and therefore laying the foundations for non-repetition. If there is no national case for sexual violence, then what has happened to women in the conflict is not acknowledged, and the opportunity for laying the foundations for non-repetition lost.

The challenges for the investigation of the sexual violence are related to the problems of under-reporting, very high levels of impunity, resistance, denial and/or underplaying by the aggressor and failure to recognise their behaviour as a crime. A national case on conflict sexual violence would have a greater probability of success, it would also promote the development of methodologies that could strengthen the incorporation of a gender approach, generally, in transitional justice processes.

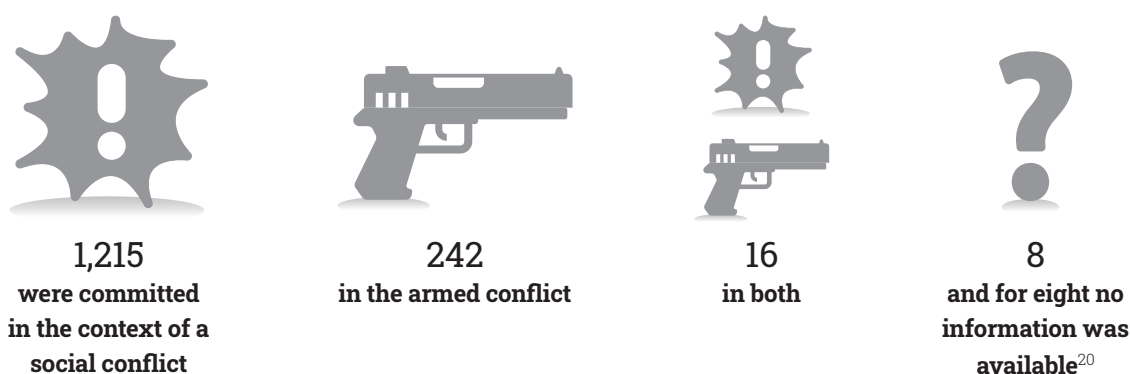
1.4 Indigenous Women and Violence in Northern Cauca

Human rights situation for the Nasa women of the Çxhab Wala Kiwe-ACIN in Norte del Cauca

Norte del Cauca has a diverse population which has historically faced enormous human rights challenges. Its strategic location makes it an attractive area for illicit economies such as drug trafficking, mining, and monocultures. This economic model accentuates and perpetuates racist and patriarchal violence, which impacts the lives of Nasa Indigenous women in general, and particularly, survivors of sexual violence in the armed conflict and women activists offering peaceful resistance in defence of their territories and the survival of their peoples.

The Indigenous Women's Observatory on Human Rights and Violence (*Observatorio de derechos humanos y violencias de las mujeres indígenas*) was created in response to the need to monitor, analyse and follow up on cases of human rights violations and breaches of international humanitarian law against Nasa women. It is a joint initiative of the *Tejido Mujer* (Women's Network) of the Çxhab Wala Kiwe-ACIN (Association of Indigenous Councils of Norte del Cauca) and CODACOP (Corporation for the Support of Grassroots Communities) which supports community organisations in their efforts to achieve social change, justice and peace building. The Observatory is a political tool whose aim, using *Tejido Mujer's* own statistics, is to address the under-reporting of violence against Nasa women, and the difficulties in accessing the justice system, whether the state system or indigenous peoples' own justice system, particularly in the case of sexual violence. The Observatory also aims to achieve greater recognition and commitment from indigenous and state authorities regarding the specific problems faced by Nasa women.

In 2019, the Observatory presented an analysis of records from 2015 to date, identifying a total of 1,481 cases of violence against Nasa women in Norte del Cauca. Of these:



These figures highlight the huge human rights challenges faced by indigenous women in Norte del Cauca, a region disproportionately impacted by the armed conflict with a clear differential impact on the lives of women. The low figures for incidents in the context of armed conflict can be explained by the risks associated with reporting them to the authorities, as Nasa territories are still militarised, and the intimidation of its population continues. The high incidence of domestic violence can be directly attributed to the armed conflict, with its social impacts including increased violent masculinity, family disintegration, and the loss of traditional values and practices.

1.4.1 Violence during the COVID lockdown (2020)

In Norte del Cauca, movement within and outside communities was highly restricted due to the lockdown measures introduced to prevent the spread of the COVID-19 virus. However, these combined with illegal checkpoints imposed by armed groups increased the level of risk for the Nasa population. The Observatory was therefore unable to systematically document incidents, as the women leaders involved were in danger of being attacked. Consequently, the main sources of information, at this time, were the media and social networks. In 2020, 50 cases of aggression against women were identified, 28 in the context of social conflict and 22 as a result of the armed conflict. There were 10 femicides, eight homicides, eight threats, seven injuries, seven direct cases of psychological abuse and six attempted homicides. The victims included seven women leaders, two of whom were murdered.

1.4.2 Sexual violence in the Nasa territories

In 2021, the Tejido Mujer presented a joint report, with the Tejido de Salud (Health Network), to the indigenous authorities on incidents of sexual violence during 2020 in Norte de Cauca. The figures were mainly obtained from local health centres. In total, 91 cases of victims of sexual violence were recorded. Most of the victims were adolescents and girls:



Tejido Mujer consider this sexual violence as an outrage perpetrated since colonial times to attack and divide the Nasa people, exacerbated by structural causes such as: the presence of armed actors, impoverished living conditions which cause family breakdown, and the failure to recognise the seriousness of these acts of sexual violence, leading to impunity and repetition.

In response, the women demand measures such as:

- Strengthening of the Nasa justice system and closer coordination with state entities
- Implementation of the legislation on sexual violence mandated during the 3rd Regional Congress of the Çxhab Wala Kiwe in 2017.
- Creation of a single monitoring system to compile statistics.
- Compliance with Law 1257 of 2008 (laying down rules on awareness-raising, prevention and punishment of all forms of violence and discrimination against women) which requires the implementation of differential ethnic and gender protocols to address cases of sexual and other types of violence.

1.4.3 Leaders at risk

The Nasa women's activities and organisations are increasingly gaining recognition, not only within the Nasa government structure and communities, but also externally, through dialogue and coordination with CSOs and with national and international institutions. However, **this greater prominence also means greater exposure to attacks**, threats, intimidation and assassinations - according to the Observatory, nine indigenous women leaders (HRDs) have been murdered in the department of Cauca since 2019. In response to the heightened risks caused by the armed conflict, Tejido Mujer created a Protection Protocol, a document that includes strategies, proposals and reflections to safeguard the lives of women leaders (HRDs).

According to Observatory statistics from January to March 2022, there are currently no signs that the dangers faced by Nasa women leaders are abating. Of the total of 41 Nasa women subject to attacks in this period (sexual or non-sexual), 14 were leaders, suffering threats and persecution. Most of these occurred in the context of the armed conflict, suggesting that these leaders, as with others, are considered an obstacle to the armed actors.

Safeguards for women leaders and HRDs should include, speedy investigation and punishment of crimes against women, demilitarisation of indigenous territories, and implementation of international regulations on the protection of the life and integrity of women in armed conflict.²¹

Nasa indigenous women work ceaselessly in defence of human rights and indigenous territories, yet they are stigmatised by the state. Therefore, it is essential that the state and its institutions fully respect the life, dignity and survival of the indigenous peoples engaged in resistance and in a struggle for a country **where building peace should not have to be at the expense of their own lives.**



Communities from the area of the proposed Best Coal Company Mine. T-shirts read In defence of the life of our territory.

2.0 Sierra Nevada de Santa Marta

“

To throw this away, to destroy this is really an act of cultural vandalism, that is the only way I can think to describe it. And even that doesn't describe it because you would have to see and experience this to appreciate how stunningly beautiful it is. In the mountains, over to my right, are just colossal, to lose this would be a crime against culture for us all.”

Brendan O'Hara MP

The Delegation visited the four indigenous tribes: Kogi, Wiwa, Kankuamo and Arhuaco who live in their ancestral territory in the Sierra Nevada. According to their worldview (“cosmovision”), the Sierra was the first thing to form spiritually and physically on earth. For them it is the heart of the Earth (El Corazón del Mundo), the source of all life, without which nothing would exist. Their mission is to maintain the balance and harmony of this complex system, caring for and preserving the Sierra's 348 sacred spaces, in order to ensure the continuance of life on earth. These sacred spaces are contained within the Linea Negra (Black Line), the boundary to the sacred area of the Sierra Nevada.



Makumake Indigenous Village

Before meeting with the tribal leaders, the Delegation attended a ceremony led by the Mamos (spiritual leaders). Here they were able to explain key aspects of their worldview: the importance of the Heart of the Earth for maintaining the balance of the Universe and how caring for Mother Earth and its biodiversity is an essential part of this balance. They explained how the planned mining, dams and infrastructure projects would destroy the biodiversity, the land and that balance, with devastating

consequences in terms of climate change. As those coming from the part of the world benefiting from the destruction of the environment due to our energy needs which was driving climate change, the Delegation recognised their responsibility.



We have a responsibility to these communities. We cannot be indifferent to their plight... when I stand here looking into the whites of the eyes of the people impacted by our decisions, it's very hard not to come away with a sense of responsibility to make right the wrongs we have inflicted onto these communities..."

Gary Gannon TD

The Sierra Nevada de Santa Marta on Colombia's Caribbean coast is the world's highest coastal mountain range, with its tallest peaks reaching almost 5,800 meters. It has a wealth of water sources and this, together with the sheer changes in elevation, has resulted in a wide diversity of ecosystems within a relatively small area. It is rich in endemic species. In 1979, UNESCO designated the mountains as a Biosphere Reserve. The Sierra Nevada is also extremely important as a water reserve, with 36 watersheds that supply over three million people. It irrigates the coastal flood plains and valleys of Ariguaní and Cesar rivers, and the semi-arid area of Guajira, especially the valley of the Rancheria River, and supplies as well as the indigenous tribes, the aqueducts of several cities around the Sierra.

All four tribes have suffered grievously in the context of the armed conflict as they have struggled to stay in their territory and maintain their way of life. They and their territory have been the targets of a range of attacks, including homicides, forced disappearances, kidnappings, forced displacement, and threats to their leaders. The biodiversity of their environment, their culture and their efforts to maintain the balance of the world is also threatened by a range of economic activities including mining and infrastructure projects and the Besotes Dam - these are either under way or proposed. These are also a major threat to their sacred spaces,²² and therefore, in the cosmovision of the indigenous groups, also to the balance of the world, which they are seeking to maintain. The Colombia's Constitutional Court has declared them as peoples at risk of physical and/or cultural extermination.²³

2.1 Linea Negra (Black Line) - Decree 1500 of 2018

After years of negotiation with successive governments, the Arhuaco, Kogui, Wiwa and Kankuamo peoples finally achieved Decree 1500 of 2018 recognising the Linea Negra. This Decree was adopted under the Santos government. The Decree recognises the area within the Linea Negra as sacred and of special spiritual, cultural and environmental value, as an interconnected and living being whose various natural elements (water, forest, animals) have rights protected under law. The indigenous peoples of the Sierra explained that they consider it to be *"one of the most important legal instruments for the protection and guarantee of [their] fundamental rights."*

The Decree contains a range of guarantees. The indigenous peoples of the Sierra consider some of its most important to be:

- Environmental guarantees: contributing to preserving the ecological and environmental balance of nature and the conservation of natural resources
- Legal recognition of the indigenous authorities and their role as official representatives with regards to the state authorities and private individuals

- Cultural-traditional guarantees: these include free movement within the territory, particularly in relation to carrying out traditional practices in sacred spaces. Access to sacred sites has been hampered by increased settlements and construction.



Indigenous man from SNSM

They consider that this Decree as a recognition of the Indigenous Peoples' worldview of the Sierra, and with it an acceptance of their special relationship to the land. Nevertheless, mineral resources in the Sierra Nevada have led to attempts to declare Decree 1500 null and void. Only a few days after the Decree was passed, a lawsuit was filed with the Council of State²⁴ requesting its annulment, on the grounds that the Decree failed to consider the state's ownership of the subsoil and its exclusive prerogative to make use of, and dispose of, non-renewable natural resources. It also argues that the Decree ignored the rights and private property of third parties as well as the authority and powers assigned to state authorities to control and manage geographical areas. The lawsuit contained a

cautionary measure (*medida cautelar*) suspending the judicial effects of Decree 1500. In 2020, the Indigenous Peoples of the Sierra made a call, to the organisations that make up the 'Friends of the Sierra Nevada', to submit an amicus curiae to the Court outlining how international law and norms supported Decree 1500. ABColombia, who is part of this group, was one of the organisations to do this.²⁵

In January 2021 the government broadcast its development plans in the Sierra, with President Duque insisting that industrial expansion in the region would be key to the nation's post-COVID economic recovery. The National Mining Agency (ANM) announced that investors and prospectors could apply for copper mining titles. As of February 2021, mining corporations held land titles for 3% of indigenous resguardos (Reserves) in the Sierra Nevada, but the indigenous leaders highlighted this could soon be 14% given the number of pending applications.²⁶ Armed groups are already illegally mining the zone. Mining is already affecting the surrounding land, contaminating and eroding watersheds. The potential expansion of both legal, as well as illegal mining, could jeopardise the water supplies of three departments.

In December 2020, there was a change in director of natural national parks at the Environment Ministry. The new appointee, who lacks environmental experience, has generated concerns about the possible expansion of tourism in the national parks, particularly hotel-building, in the tropical jungle in Tayrona, where the Kogui tribe live.

2.2 Los Besotes dam



One of the latest grave threats in the Sierra is the proposed Los Besotes Dam which President Duque, in a televised speech (January 2021), called a "necessary instrument" for economic recovery following the COVID-19 pandemic. However, Los Besotes Dam would be built on one of the Sierra Nevada's most important rivers, both environmentally and culturally - the Guatapuri. According to the four indigenous tribes of the Sierra, the Guatapuri is the mother river basin since it connects the mountain peaks to the paramos, rivers, lagoons, and wetlands, finally



Above and previous page: Area that would be flooded by the Besotes Dam

terminating at the sea, and irrigates the tropical dry forest on its way. They oppose the dam as it will forcibly displace several communities, flooding their villages and destroying over 40 sacred sites. As well as causing irreversible environmental damage, as it would entail the felling of ancient trees, the loss of diverse species of flora and fauna and threaten a forest reserve. It would be located on three geological faults, which the tribes fear will increase the risk of earthquakes.

President Duque in his televised speech also suggested that the Dam was needed to supply water for the rapidly expanding town of Valledupar. The four tribes are sceptical about the intended benefits of the dam, given the example of the Ranchería river, another important watercourse of the Sierra Nevada. In this case, the El Cercado Dam, built in 2011, was designed to provide water for 9 municipalities of La Guajira, as well as irrigation for agriculture, but 10

years later the department is dry and the indigenous people there are suffering a humanitarian crisis. Their question is therefore who will pay the cost? Time and again it is the indigenous peoples who suffer whilst others benefit.

“

We are all “going to have to get involved in this because the communities here have right on their side. They have morality on their side, they have decency on their side, but what they need is a political voice as well, to amplify that. So that when it’s a company, whether it’s Bogota, whether it’s London, whether it’s Dublin, we can work together to find a solution, a solution which saves this incredibly beautiful natural environment.”

Brendan O’Hara MP



Wiwa Indigenous village of Arimaka

In December 2021, days after the four tribes had publicly rejected the Besotes Dam, two *Kankurwas* (ceremonial buildings) and a meeting house were partially incinerated in the Kankaumo Indigenous village of Minakalwa and sacred buildings were burnt in the Wiwa Indigenous village of Arimaka.²⁷

“

We must take care of the territory of the Sierra Nevada in its entirety, the water represents the vein that runs through our body. In that sense, when we cut a vein that part of the body doesn’t work, the same happens with the land. That is why the Mamo (spiritual leader) from the millenary ancestral knowledge, have strongly rejected the construction of a dam or the plugging of a river or stream, because from then on, the river begins to lose its life, it begins to disappear, it loses the energy force of the territory, therefore, this brings consequences for diversity, diversity of diseases, social environmental problems, which reduces the quality of human life and also of the environment”

Indigenous Leader

3.0 La Guajira



Mining in Colombia is destroying the land. It is destroying the people. It is destroying the future for us and our children and ultimately it will destroy you too."

Wayuu community leader to the Delegation

During the visit to La Guajira the Delegation met, in the town of Albania, with the Wayuu communities affected by mining operations and the diversion of the Arroyo Bruno (Bruno Stream), El Rocío, Paradero, Charito, Resguardo 4 de noviembre, La Gran Parada, Ware Waren, Patsuarari, Moneraja, Karenachon, Nueva Esperanza, Cuatro Vías. The Delegation also met with the Cerrejón company and went on a morning visit to see the impacts on the Arroyo Bruno from the company tapping and diverting it. The Delegation also visited the Afro-Colombian community of Cañaverales, under threat from a new mining project.

The department of La Guajira is an arid, semi-desert area in the north-east of Colombia and as such is ecologically fragile. It is a region highly vulnerable to climate change, with a recognised humanitarian crisis due to water and food shortages. Its indigenous inhabitants, the vast majority Wayuu indigenous peoples, number 394,000,²⁸ and account for 48% of its population, making it the department with the highest number of indigenous people in Colombia. Afro-Colombians account for a further 7%, with much of the rest of the population consisting of peasant farming (*campesino*) communities.

3.1 Proposed new Best Coal Company (BCC) open cast mine at Cañaverales

The village of Cañaverales is in the municipality of San Juan del Cesar in the south of the department of Cesar. It is a community of Afro-Colombians, numbering some 1,800, who live from agriculture and who have a rich cultural heritage. It is represented by the Afro-Colombian Community Council of Cañaverales (*Consejo Comunitario de Negros de Cañaverales*). This community live in an area where the ecosystem is fragile. However, the community benefit from a spring, a river and several irrigation ditches that supply water to the village itself as well as to 15 others, and which irrigate 5,000 hectares of farmland.



River Manantial

During the Delegation's visit, they were taken by the Community Council to see these watercourses, including the Manantial spring, sacred to the people in the region, and the source of drinking water which they explained due to its purity, can be consumed untreated.

The latest threat to Cañaverales comes from the Best Coal Company (BCC), a subsidiary of the Turkish company Yilmaden, which bought the mining titles from MPX Colombia in 2016. BCC plans to extract thermal coal for exportation, through open-cast mining only 800 metres from the community. BCC claims that its operations would not affect the village. However, the community of Cañaverales has grave concerns about its potential socio-environmental impact, having witnessed the experience of the communities surrounding the Cerrejón mine.

BBC's mining activities would be only 1.2 km from the underground cavern which is the source of the natural spring feeding the Manantial river. The area above the cavern, which extends over 3 hectares, has been designated a Protected Forest Area by Corproguajira (the local environmental authority for La Guajira). The community fears that explosions from the mine could cause the cavern's roof to collapse, with devastating consequences for the region's water supply.

BCC is also purchasing land traditionally used for agricultural production, *"the eco genocide and uprooting will affect 79,000 hectares, affecting not only the community but also 113 species that inhabit the ecosystems and water resources"* explains a community leader.



River Manantial, Cañaverales

Although BCC claims that the Cañaverales operations would be small-scale, according to a community leader it is to be part of a "...planned megaproject, two open-cast mines [including Cañaverales] and one underground mine, along with the construction of a 150 km railway line connecting the mining complex with a port in the municipality of Dibulla, through which 35 million tonnes of coal would be exported annually." Community leader

Despite the potential impacts of the mine, on the community of Cañaverales and neighbouring villages, there have been serious failings in the consultation process. Initially, the Ministry of the Interior did not even recognise Cañaverales' right to prior consultation, forcing the community to obtain a court ruling (2019) establishing their ethnic status.²⁹

Despite the ruling, there has been a systematic failure on the part of the authorities and BCC to provide information to the community on the potential impacts of the mine, such as the preliminary studies of the project, even though they are available. The community wished to have the information analysed by independent experts in geology, hydrology and engineering before the consultation meetings took place, in line with the principle that the consultation should be free, prior and informed.

BCC and the Interior Ministry failed to provide any written information **prior** to the first pre-consultation meeting (20 October 2021), nor at the meeting itself, making any meaningful discussion impossible. At the time of the Delegation's visit (six months later), the company had provided some but not all the information requested, including a Work and Construction Plan, a requirement for the consultation process. BCC has repeatedly refused requests for information in paper form, so that it can be disseminated widely within the community, the partial information supplied has been on hard disc, when Cañaverales has no computers (nor internet).

Although the community has repeatedly stressed its willingness to participate in prior consultation, its insistence on full information and that the process be carried out in the presence of the Ombudsman and Inspector General's Office, as guarantors, which is their right, has led to accusations that it is being obstructive. Since 2021, the company has requested the application of the "proportionality test" on the grounds of non-attendance and obstruction of the prior consultation process by the community. This was distressing for the communities, because the proportionality test is a legal instrument employed, by State institutions so that they can take a decision without the presence or participation of the community.

Cañaverales is the only community of nine affected by the BCC mine where the consultation process is still ongoing. In the other eight cases, these processes were completed by 2020. CSOs accompanying the Delegation expressed concern at the speed with which these processes were conducted. The stages of analysis and identification of impacts and formulation of management measures were completed in just one day, impossible for a true evaluation of the social, environmental, spiritual, cultural and human rights impacts of a mining megaproject.

3.2 Cerrejón Coal Mine



Cerrejon Mine

The Delegation visited and spoke to communities affected by the coal mine. Coalmining operations began in 1976, at a time when the region's economy was centred on agriculture and trade. Carbones de Cerrejón (Cerrejón) took over as the operating company in 2002, as a jointly owned company by BHP Billiton, Anglo-American and Glencore until January 2022. Today, it is wholly owned by Glencore, an Anglo-Swiss company. The mine extends over a vast area, reportedly 69,000 hectares (270 square miles), making it the largest open-cast coal mine in Latin America. The state has granted a licence to operate until 2034.

La Guajira is divided into three zones: High Guajira, Middle Guajira, and Low Guajira. Cerrejón concentrates its mining operation in the Middle and Low Guajira zones and is located in the basin of the Ranchería, the region's only major river. The Low Guajira used to be fertile, as it was where the water resources were concentrated, and was once the 'breadbasket of La Guajira', the place that provided agricultural products to the rest of the department. The most productive lands in Low and Middle Guajira are precisely those that have been appropriated for the extraction of coal.

The communities told the Delegation the mining companies came with promises to bring employment and a decent standard of living. Instead, the constant expansion of the mine over almost five decades has led to severe environmental degradation with serious human rights impacts, predominantly on communities of the Wayuu indigenous people, for whom La Guajira is their ancestral land, and of Afro-Colombians, who have lived in the region for the past 500 years. The impacts include displacement, contamination of the air, water and land, loss of cultural identity and their traditional economic activities, and damage to the social fabric.³⁰



Women of the Provincial community dancing

3.2.1 Cerrejón's diversion, consumption, and contamination of water, has led to water and food scarcity and health impacts

Air quality: The communities explained that the dust and noise pollution from the mine and the transportation of the coal to the port by rail in open carriages had caused a deterioration in the health of the communities. They reported an increased number of cancers³¹ and respiratory problems.³² In the Delegation's meeting with Cerrejón they said they had a 'solid air-quality management system

that combines best practices for emission controls' with the concentration of particulate matter in the air around the mine below the limits set by Colombian regulations. Nevertheless, the Colombian Constitutional Court (T-614/2019) expressed concern about Cerrejón's emission levels, finding that the level of coal dust particles in the air, in and around, the Wayuu settlement of Provincial exceeded WHO guidelines and were double those of Colombian regulations, and ordered the mine to reduce air pollution as an 'urgent transitional measure'.

PROVINCIAL



...the situation ... regarding the El Cerrejón mine and the Wayúu indigenous people is one of the most disturbing situations that I have learned about in my two and half years as Special Rapporteur on human rights and the environment..."

David Boyd³³

The Delegation visited the Provincial community home to about 900 Wayuu people and located about 400 meters from Cerrejón's waste dump. As a result of the mine being so close to their village, women at Provincial explained, it was having devastating consequences in terms of air and water quality and health of the Wayúu community and especially the children. The lack of action on the part of the State and Cerrejón, the Provincial indigenous women, stated is proof of 'environmental racism.' They therefore turned, in 2019, to the Constitutional Court and presented a tutela (*constitutional writ*) to demand the urgent protection of their fundamental rights to life, personal integrity, health³⁴ which were in serious danger due to the particulate matter emitted by Cerrejón's mining operations, including the use of heavy machinery and explosions. Studies had found high concentrations of various metals in their blood, including sulphur, chromium and bromine, (which can cause DNA damage and diseases such as cancer) and that 10% of the population of Provincial had damage to their lung function.

In December 2019, after reviewing all the available evidence, the Colombian Constitutional Court (Judgment T-614/2019) found that the noise levels from explosions and the activity of the machinery in the area was continuous, and higher than legal limits. Complex mixtures of heavy metals associated with coal burning were found in the air, and the level of coal dust particles exceeded WHO guidelines and were double those of Colombian regulations. Coal dust was present throughout the settlement, including in houses, in water sources and on vegetation.

The Court ordered Cerrejón to 'carry out exhaustive cleaning of coal dust in the houses of the *resguardo* (reservation), the water wells used by its inhabitants and the surrounding vegetation', and to 'reduce the noise level generated by its activities [to a maximum] of 65 decibels during the day and 55 decibels at night'. It further instructed Cerrejón to 'control its emissions of particulate matter' as an '*urgent transitional measure*' until an agreement on limits could be reached with the Environment Ministry and the affected communities.

Rather than accepting the need to comply with this order, Cerrejón applied for it to be annulled. It also criticised the judgment in its 2019 Sustainability Report,³⁵ complaining that ruling T-614/19 had imposed certain air-quality measures that are more restrictive for Cerrejón than those in effect for the rest of Colombia and Latin America. **As a result, Provincial continues to suffer from air, water and noise contamination from the mine.**

Water supply and quality: The mine consumes and contaminates significant quantities of water, approximately 24 million litres per day. That quantity of water would be enough to supply 150,000 people in regions without shortage problems.³⁶ The Guajira peninsula is one of the most vulnerable areas to climate variability in the country, and one of the regions with the largest water deficit.³⁷



Placard reads: 'Mining has only brought us poverty displacement and misery.'

“

...water for us is life, and the call that I make, is for you to help us preserve the water in la Guajira, not only the Arroyo Bruno but also other water sources that they [Cerrejón] are affecting... including the Rancheria River... The Colombian state has allowed corporate interests to trample over our rights. They have allowed mining companies to destroy communities that stand in the way of the industry's interests... **The message we would like you to give the company when you meet them is that we are tired of them trampling us underfoot and that they must respect our territory.**”

Wayuu Women (our emphasis)

In 2019, the company dumped 578 million litres of liquid waste into natural bodies of water. Studies carried out on the Ranchería River found unsafe levels of harmful metals in the water, including mercury and

lead. Approximately 40% of the water courses of the Rancheria River have been affected or lost due to Cerrejón's mining area³⁸ these are vital for sustaining life in an ecosystem suffering from water stress.

Lack of independent monitoring: On a day-to-day basis state institutions rely on Cerrejón's **own** reports when monitoring water and air quality. The failure by the state to undertake its own independent studies creates a vacuum filled by the company's own narrative e.g. Cerrejón told the Delegation that in the case of respiratory problems, these are caused by cooking with firewood or keeping animals, while the Ministry of the Environment, despite Court rulings to the contrary, has made statements claiming, for example, that the Ranchería river is contaminated by human sewage, not heavy metals. Repeated comments like these by Cerrejón and the State, along with a failure to generate spaces for informed and intercultural participation have led the communities to believe that the Cerrejón and the State act in collusion to advance socio-environmental permits, without taking into account the communities' own knowledge and experience.

Food security: Cerrejón's activities have caused deforestation and a decline in the agricultural productivity of the surrounding lands with major consequences for food security. The expansion of the mine has put an end to the self-sufficiency of the Wayúu and Afro-Colombian people. The combined effects of loss of land, loss of bodies of water, their contamination, and pollution from coal dust and the products of coal production have harmed the trees and plants on which they have relied for nutrition and medicinal purposes for generations. Despite having a multimillion coal mine project in La Guajira, one indigenous child under five, on average, died of malnutrition every week between 2016 and 2018, and it is the second poorest department in Colombia.³⁹ The Inter-American Commission on Human Rights (IACHR) in 2015, highlighted high levels of infant mortality amongst the Wayúu people and directed the Colombian government to take immediate precautionary measures to safeguard the lives and personal safety of the Wayúu people.⁴⁰ The IACHR decision was prompted by the documented deaths of 4,770 Wayúu children during the preceding 8 years, as a result of thirst, malnutrition and preventable disease.



The tragedy of La Guajira has no end; it seems that the government and the authorities are not interested in children dying of hunger and thirst..."

Senator Aida Avella

Destruction of cultural heritage: The mine's destruction of La Guajira's environment, as well as forced displacement and relocation of communities, has led to irreparable cultural harm. According to rulings of the Riohacha Administrative Court, the Council of State and the Constitutional Court of Colombia, Cerrejón's mining operations directly impact a population of more than 300,000 people, across an area of 20,000 has. The cultural heritage of the Wayúu and Afro-Colombian people is inextricably linked to their ancestral lands, with which they have a spiritual connection. Through displacement, or through environmental degradation of the land, these peoples are losing their sacred places and their access to ancestral medicines. Many traditional plants are threatened due to water shortages.



The territory is a living subject. The sacred spaces themselves have life and this life is based on their connection to the principles of origin. Likewise, each living being is connected to these same principles ... for indigenous peoples the ancestral territory is a living subject and enjoys rights of protection."

Indigenous People of the Sierra



The train which runs 24 hours a day, from the mine to the port, not only causes air pollution from coal dust along the 147 km of its route, but also deep cultural and spiritual harm to the Wayuu people, dividing and fragmenting their territory, and emitting noise pollution. This noise is spiritually damaging to the Wayuu people, as they are a tribe who receive important messages for their protection through their dreams. Now their sleep is disrupted by the trains and the dreams are lost or only partial.

“

... coal is noisily and dustily trucked out. We drove past [the length of the] train ... for 10 minutes ... that at all hours of the day and night spills out coal dust so that these communities'... basic human right to...live as they have done for years is not being protected. They have not had the opportunity to feel the benefits of peace and security that they should have been able to at the end of the conflict...”

Claire Hanna MP

The Wayuu have a deep connection with water, a relationship of life where spirits reside. Talking about the Arroyo Bruno a community leader explained “we have a relationship with the water “...it's a relationship of life with the water, a spiritual relationship with the water ... when [the mine] impacts this number of lakes, streams, rivers ... it kills many sacred places... which the communities use to purify themselves and pay tribute to the spirits...” In the Arroyo Bruno lives a spirit that the Wayuu call “Puloi”. They offer tributes to her, as she is a spirit that cares for the water, and they say that she has been enraged by the damage the company has inflicted on the Arroyo Bruno. Before the Arroyo Bruno at least 17 other creeks, streams, and aquifers had been diverted and/or destroyed to allow Cerrejón's coal mine to expand.

3.2.2 Arroyo Bruno

“

... I walked along the dry bed of what was once a thriving, living river. I was amazed at what I can only describe as the circular insanity of allowing the destruction of one of the most beautiful, biodiverse places in the planet, to get access to water that will allow further coal extraction, the burning of which has contributed to rising global temperatures, which have directly contributed to the scarcity of water in the tropical forests of northern Colombia.”

Brendan O'Hara MP

Arroyo Bruno is one of the main tributaries of the Ranchería and has a central role in the traditions and culture of the Wayuu people to whom it is known as Yo'uluna, a sacred site. Arroyo Bruno is surrounded by a tropical dry forest, a critically endangered ecosystem, dependent upon the stream for its survival.

In 2015, the Wayuu indigenous communities supported by lawyers from CAJAR, together with the CSOs CINEP (Centre for Research and Popular Education) and CENSAT (Friends of the Earth Colombia), filed a tutela (Constitutional writ) to prevent Cerrejón's proposed diversion of the Arroyo Bruno to expand the mine. The Constitutional Court analysed the issue, with submissions by academic and technical experts

and a judicial inspection, and issued Judgment SU698/2017, which recognised that the diversion of Arroyo Bruno would violate the communities' fundamental rights to water, health and food sovereignty. However, just before the legal decision was issued Cerrejón installed a hydraulic tap and diverted the Arroyo Bruno.



Delegation in dried riverbed of the Arroyo Bruno

Judgment SU698/2017 ruled that there were grave uncertainties regarding the real impacts of the project. The environmental authorities that licensed the project - ANLA and Corpoguajira (the national and departmental agencies, respectively) - had undertaken limited studies that only evaluated the impacts on the immediate area of expansion. The studies fail to evaluate the effect that the diversion and mining of the original riverbed could have on the flow of the river where the stream joins the Ranchería River; the consequences of cutting down about 150,000 hectares of dry tropical forest; the stress that would be put on aquifers and underground water through the removal of subsoil for mining; the impacts on the 'uses and customs' of the Wayuu communities that depend on the streams vital ecosystem services; the link between the diversion and climate change and its impact on a region that already suffers from water shortages. The Court also ordered an investigation of the ten interventions already carried out on rivers by the company.

The Court orders stated that an interinstitutional technical roundtable should be established with the participation of communities affected as well as CSOs, the company, state agencies, academics, and other experts, considering them 'indispensable' for 'a genuine open, broad and diverse debate on the environmental viability of the stream' with the communities having an intimate knowledge of the Arroyo Bruno. The Court ordered the Roundtable to address the areas of concern in its ruling on the

environmental and social impacts of the diversion of the Arroyo and the mine's expansion and agree a way forward. The Roundtable would decide whether the stream should be diverted, and the underlying coal mined, or the creek's original course restored by removing the hydraulic tap which currently diverts its flow. In the meantime, work on the mine's expansion would be suspended.

In 2021, the Paradero and La Gran Parada Wayuu Indigenous Communities asked the Constitutional Court, to reopen the case and for the Judge to monitor implementation of its orders. This was because Cerrejón and the Inter-Institutional Technical Roundtable had failed to comply with the Court ruling. The company opposed the petition, and the government institutions on the Roundtable stated that the Court orders were being complied with.

However, two days before the Delegation left Colombia the Court accepted the communities' petition and issued a ruling, Auto (Order) 100/22,⁴¹ effectively reopening the case, having considered the reports of the three control entities (Comptroller's Office, Inspector General's Office and Human Rights Ombudsman's Office) which had been monitoring compliance with Judgment SU698/2017. These pointed out major irregularities and failings.

The Comptroller's Office (*Contraloría*) stated that it rated compliance with SU698/2017 as 'inefficient'. It identified 14 areas of concern, including ones related to the participation of the communities and environmental assessments. The Human Rights Ombudsman's Office identified two main areas of non-compliance - the Roundtable's reports failed to reflect the findings of the technical experts and affected communities, and these experts and communities also had difficulty in accessing information and participating in the discussions and decisions of the Roundtable, despite the Court ordering it **to guarantee their effective participation**. The Ombudsman's Office also noted that the communities affected, especially the plaintiffs that had taken the original case SU698/2017, had reported security incidents - they had been the victims of threats, surveillance and incursions onto their land. For its part, the Inspector General's Office stated that the Roundtable's preliminary technical report lacked rigour in the methodologies used and there was a lack of substantive responses regarding the areas of concern ('uncertainties') raised in SU698/2017.

In Auto 100/22, the Constitutional Court expressed concern that, given the passage of time since the original judgement, and continuing non-compliance with it, the risk of violation of the rights of the Wayuú communities would be even greater, as the longer Arroyo Bruno remained diverted, the greater chance that the environmental damage to it could become irreparable. The Court therefore concluded that urgent measures should be taken to ensure the protection of the rights to health, access to drinking water and food security of the plaintiffs and requested new evidence from all parties.

Only a day after this decision was communicated by the Court to the communities, they heard that the secretary of the Roundtable had issued a letter dated 30 March 2022, stating that the Roundtable had concluded its study and that Cerrejón had met with the technical requirements of the Constitutional Court ruling, SU698/2017. The diversion of Arroyo Bruno should therefore remain, paving the way for the expansion of the mine.

In a statement on 21 April 2022,⁴² the Delegation expressed their serious concern at this development, and strongly urged the Inspector General to take Urgent Provisional Actions to prevent the multinational company from permanently destroying the natural channel and the stream. They also called on the Ombudsman's Office and Comptroller's Office to take action to monitor the member institutions of the Inter-Institutional Roundtable, as well as guarantee the participation of the communities in the decision-making process.

In response to the original ruling, SU698/2017, which ordered suspension of the expansion of the mine pending the results of the technical studies, in mid-2021, Glencore and Anglo American took the Colombian state to the International Centre for Settlement of Investment Disputes (ICSID), an institution of the World Bank.⁴³ They are seeking compensation for the losses associated with this suspension.

These International Arbitration proceedings are held behind closed doors, the victims are rarely permitted to take part in them, and they award incredibly high sums of money. This has had the general impact of weakening of social and environmental regulations and increasing the tax burdens for the citizens of the states affected. In this case, it could potentially, have a cooling effect on the decisions of the Constitutional Court when it comes to its rulings and orders upholding the fundamental rights of the communities.

The Constitutional Court has been issuing rulings against the Cerrejón coal mine since 1992,⁴⁴ and as of April 2022, Cerrejón had a total of 14 Constitutional Court rulings against it covering issues such as human rights violations, displacement due to development, diversion of streams, damage to health and to the environment, water sources and failure to carry out prior consultation with affected communities. **All orders from the Court have either not been respected or, if so, only poorly.**

The indigenous and Afro-Colombian communities the Delegation spoke to, highlighted how the millions of tonnes of coal taken from the vast open pit coal mine of Cerrejón were destined for Europe, including Ireland.



Cerrejon 40 years of Death, Destruction and Human Rights Violations

“

European countries, with total hypocrisy, send us messages about decarbonisation, about abandoning the use of fossil fuels, but then all of a sudden target Colombia and La Guajira once again as a source of coal which they continue demanding, this coal which we have said over and over again is stained with blood, it is stained with the lives of Wayuu men, women, and children.”

Wayuu Woman

The Colombian NGOs (CINEP, CAJAR and CENSAT) and the indigenous and Afro-Colombian communities currently have an OECD complaint pending against the parent companies⁴⁵ filed by GLAN lawyers and supported by Christian Aid, ABColombia and others. They have also filed a complaint against CMC and Ireland's Electrical Supply Board for selling and purchasing this coal.⁴⁶ Over two decades, the ESB imported millions of tonnes of coal from the mine to burn at its Moneypoint Power Plant in County Clare, despite years of well-documented human rights and environmental impacts. In 2018 however, the ESB stated it had stopped purchasing coal from Cerrejón but refused to fully recognise these impacts. Communities were concerned that, with sanctions on coal from Russia following the invasion of Ukraine, Ireland and other European countries would once again turn to importing coal from Colombia to fulfil their energy needs. At the beginning of June 2022 in a response to a question from Gary Gannon TD, the Irish Government confirmed that Ireland was once again purchasing coal from Cerrejón.



There's a worrying double standard in this shift back to Cerrejón. We're rightly saying no to Russian coal following the invasion of Ukraine, recognising the impact our trade decisions can have on human rights. But that standard must be applied everywhere, including in Colombia."

Gary Gannon TD

3.2.3 Displacement and Relocated Communities

So far, at least 35 Wayuu and Afro-Colombian communities have been displaced to make way for Cerrejón, impacting thousands of people. Even when Cerrejón claims to have consulted with displaced communities, it has not allowed a genuinely free choice as to relocation. According to the communities the consultation is premised on the assumption that expansion will continue. During its visit, the Delegation met representatives from the displaced community of Tabaco, as well from the resettlements of Patilla, Roche, and Chancleta.



...we are nine leaders who are engaged in the struggle. We have suffered many attacks from the dark forces that exercise control in Colombia when one asks for their rights, but we are talking about almost 4,000 people who are waiting to be fully compensated, because when it comes to eviction due to mining development, article 15 of the International Labor Organisation (Convention 169) says that we must receive full reparations and should be consulted. Something the Colombian state appears not to be aware of!"

Leader from the Tabaco community

3.2.3.1 Tabaco

Tabaco was an Afro-Colombian community of 1,200 people in the foothills of the Perija mountain range, where the communities were violently evicted by the Security Forces operating in collusion with the company, to make way for coal mining operations. The Tabaco community had lived in the area since colonial times, from agriculture, livestock and fishing.



In Tabaco in 1997 mining arrived ... they wanted to have our land and they entered negotiations but using the intimidation of expropriation of [our] houses and lands ... if we did not sell ...many were forced to sell at the price set by Intercor ... Later, Cerrejón assumed the position that it now has, and since then we have suffered..."

Leader speaking in Delegations meeting with the Tobacco community

The Tabaco community was evicted from its land, without any consultation process, when the mine was owned by Carbocol-Intercor. In 1997 the company created divisions within the community, some sold their land for derisory sums of money as the community was presented with the option of selling or leaving with nothing; some tried to stay to maintain their community and way of life. Those who resisted eviction suffered a range of acts of persecution to persuade them to go – suspension of public services, burning of houses and the destruction of the cemetery and church. The remaining families were violently evicted on 9 August 2001, under a court order carried out by the state security forces, they were not allowed to take their possessions with them. The village was bulldozed to the ground the same day.



[We] "... continue to seek recognition of our rights and compensation ... We emphasise that in article 13 of the political constitution, the right to equality the same as other people who were relocated because of the development of the mine. We still want ... to build our town, ... to weave and develop our culture because we feel that this is still intact."

Statement made during Delegation's meeting with the Tobacco community

The community began a legal struggle to try to achieve reparations, the leaders explained that:

- On 7 May 2002 the Supreme Court ordered the Hatonuevo Municipality to reconstruct the village, an order which still has not been carried out.
- In 2008, the community signed an agreement, with the then owners Cerrejón, to provide a plot of land for relocation and for the mayor to organise the process of relocation
- In 2017 they obtained a Constitutional Court ruling T-329, in a response to a tutela action (Legal Action). The Court recognised that Tabaco had suffered displacement which had a devastating impact on a whole range of rights, ordering fulfilment of obligations for comprehensive reparations, relocation, equality, and cultural identity and provided with the means for a dignified life, amongst other things.
- Five years ago, a *mesa de dialogo* (working group) was established with the company but, despite including representatives of the Human Rights Ombudsman and Inspector General, the have still seen no progress.

The Court stated in 2017 (T-329) '...the continued absence of real measures of compensation that are appropriate, and that include all inhabitants, cannot be justified by the company, or by the Hatonuevo jurisdiction'.



...for us to have a dignified life it necessary to have sustainable life projects... we are agriculturalists and pastoralists... we still have not managed to achieve this."

Women leader in Delegation's meeting with the Tobacco community

Despite Court rulings and agreements made with the company, the community of Tabaco has still not been relocated or compensated.

3.2.3.2 Relocated Communities of Chancleta, Patilla, Roche, Las Casitas and Tamaquito

These communities adjacent to Tabaco were also displaced. All are Afro-Colombian, except for Tamaquito, which is a Wayuu settlement. These five are the only communities to have been resettled, out of the total of 35 displaced. However, the resettlements failed to compensate the families for what they had lost, nor did they take into account their cultural practices. Families of eight or nine people were given houses with only three rooms. They were not given equivalent land, either in quantity or quality. They were farmers and pastoralists but were moved to the outskirts of a town without the land to practise agriculture. This means that it is effectively impossible for them to make a living. As a result, they have been forced into a position of dependency. Cerrejón is currently paying for essential services - light, water and internet - but if this ceased, they could not afford it. They do not have a constant water supply, whereas in their old territory they had the use of the river. The involuntary resettlement of communities has meant that numerous families who wanted to carry on supporting themselves by small-scale agriculture or cattle-raising have been unable to do so because of the inadequacy of the quality and quantity of land provided in the resettlement sites.

3.2.4 Presentation by Carbones de Cerrejón

At the Delegation's meeting in the *Carbones de Cerrejón* office on 3 April 2022, the company gave a presentation on its social and environmental performance. The writers of this report have reflected the substance of what Cerrejón presented. **The following in no way reflects the views of the Delegation but rather those of the company.**



Cerrejón is a large local employer contributing large amounts to regional GDP, taxes and royalties. Despite the concerns outlined regarding implementation of numerous court judgements, the company considers itself to be respectful of Colombian law and implements good practice in health, safety, and environment. From a philanthropic and good neighbour policy in the 1980s and 90s, it had moved to a more strategic social responsibility approach in the 2000's and now has defined strategies to improve impact management investment, aligned to human rights

standards. It has strengthened its relationships with local stakeholders through consultations and day-to-day engagement. The company was committed to continuous improvement and welcomed third-party revisions of company performance.

Human Rights Policy: Introduced in 2005, the policy was adjusted in 2011 to align with the UN Guiding Principles on Business and Human Rights (UNGPs), under which companies must identify, prevent, mitigate and compensate impacts, in a continuous improvement process. Two Human Rights Impact Assessments had been carried out and shared with communities and other stakeholders, with another under way, with the results integrated into company risk assessment systems. Cerrejón launched a rights-based complaints office in 2010 in line with Ruggie Principles. The company was committed to respecting the Voluntary Principles on Security and Human Rights, and had provided state security forces and private security firms with training on its human rights policy, including respect for Wayuu traditions and commitments to the Voluntary Principles, and made references to the policy in contracts etc. The company exercised due diligence by implementing a protocol to address cases of threats or attacks on leaders and had signed a declaration in 2018 between coal companies and the government in respect of human rights defenders. In response to questions over human rights and environmental impacts, the company highlighted its membership of Bettercoal.

Who is Bettercoal?

Bettercoal is an **industry-funded assessment initiative**, to evidence adherence to legal and ethical standards at the mine. Bettercoal was founded in 2012 by European energy companies, including Vattenfall, Enel and Ørsted. Bettercoal is registered as a Company Limited by Guarantee in the UK. According to filings at UK Companies House, its income is exclusively from contributions by Bettercoal Members (i.e. coal buyers). It gives privileged status to certain mining companies that agree to become Bettercoal Suppliers. A Technical and Advisory Committee (TAC) is part of the governance structure, the membership of which includes executives from Glencore and (previously) Anglo-American. Bettercoal has a close relationship with mining companies. For example, in Bettercoal's 2017 Annual Report, a Prodeco executive describes Glencore as "an active member of Bettercoal". Affected communities are not included in the governance structure of Bettercoal, although recent changes have seen a global trade union federation and a business and human rights organisation take on roles in the TAC.⁴⁷ Bettercoal, also **lacks transparency** as it refuses to publish all of its data, making it impossible for communities and CSOs to monitor and or contest, the evidence that it is using for its assessments.

Environmental Policy: Water management - Cerrejón told the Delegation that the water concessions for mining in La Guajira represented only 1.8% of the flow of the Ranchería River granted by Corpoguajira, that its flow increased 30% after going through Cerrejón, and that 85% of the water used by Cerrejón for mining was of low quality and not suitable for human, animal or crop consumption. The Delegation found it difficult to understand how the river's flow increased following its use by Cerrejón, and there was a lack of clarity regarding the quality of the water, if this was the case.

Air quality: The company had introduced a voluntary forecasting and monitoring system on air quality with 16 monitoring stations, one of the largest in the country. The air quality complied with established legal limits and was, they claim, better on average than in certain parts of Bogotá and Medellín

According to Cerrejón, the company was contributing to the formation of a biological corridor, 25,000 has between the Sierra Nevada de Santa Marta and the Serranía del Perijá. Over 4,400 hectares of former mining areas had been rehabilitated and 2 million native trees planted. The company had installed the first laboratory of tropical dry forest in the Colombian Caribbean with the Humboldt Institute.

Arroyo Bruno Project: La Puente pit project involves the diversion of a section of the Arroyo Bruno undertaken to maintain production levels. All licences and permits, according to Cerrejón were granted prior to any works commencing, and the project design based on studies from third parties to ensure that the project was technically, environmentally, and socially viable. They did not mention whether all consultation processes had been concluded before starting any work, however, they did say at the time of the company's presentation, prior consultation processes had been completed only with two communities and were continuing with two more. An Inter-Institutional Roundtable was established in April 2019 following a decision by the Constitutional Court to address concerns over potential impacts on the communities and environmental rights.

When diverting the Arroyo Bruno, the company had reproduced the physical and ecological conditions of its natural course and they claimed that the amount of water feeding the new channel was the same as it had been for the original one. Along the new channel they had planted 12,500 native trees and 2,100 trees had grown naturally. The company concluded that, four years since the diversion, their diverted Arroyo Bruno was very much alive.



Arroyo Bruno after Cerrejón diverted the river

4.0 Meeting with the Inspector General's Office (*Procuraduría*)

The Delegation, accompanied by CINEP, met representatives from the Inspector General's Office. It is an autonomous control body that represents all citizens before the state, and whose purpose to ensure the proper functioning of the administration of the state and its employees.

At the meeting, the Delegation referred to the study undertaken by the Interinstitutional Technical Roundtable, implementing one of the orders of Constitutional Court's judgment SU-698 of 2017 on Arroyo Bruno (see Cerrejón chapter). They expressed their deep concern that the study was deficient, and that the Roundtable had failed to involve the Wayuu communities when producing it. The study had concluded that the Arroyo Bruno should remain diverted and that Cerrejón could start the expansion of the mine in the area of Arroyo Bruno.

In view of this, the Delegation, with CINEP, asked the Inspector General's Office to urgently: i) take formal measures to prevent Cerrejón starting the expansion of mining operations before the Constitutional Court had first monitored compliance with its orders under SU-698 of 2017, as reflected in Auto 100 of 2022; ii) carry out a technical evaluation that included a review of the level of participation of the communities and other contributors, such as technical and academic experts, in the Roundtable's report.

Later the same day, CINEP sent the Inspector General's Office the alert that the affected communities and human rights organisations had issued in response to the Roundtable's announcement of the conclusions of the study.⁴⁸



The Sierra Free from Mining

5.0 Visit to the Territorial Spaces for Training and Reincorporation (ETCR)



Delegation in workshop in Tierra Grata

room and allotments. Despite the growth in construction of their community they told us that much of the support they received had come from embassies rather than the State. Employment remains a key issue.

We also visited former combatants in the Tierra Grata ETCR. The 24 ETCRs are spaces provided by the Peace Accord for former FARC combatants to transition into civilian life. The ETCRs originally envisaged as temporary zones are now permanent and each community of former combatants are engaged in developing their 'village'. Each ETCR is different in how it operates. At Tierra Grata the community take collective decisions on priorities for the development of their village. Tierra Grata had used the money they received from the government and Embassies to equip workshops for the construction of houses. The former combatants were each given a plot of land, they used the workshop machinery to construct their houses and community buildings themselves. Another priority is education, they had a room equipped with a few computers so that young people could undertake university courses at a distance and a nursery for toddlers. In the nursery all the children were lively and happily playing and interacting despite the lack of equipment and toys. There was also a playground for the children, a communal shop, a café, community meeting



Nursery in Tierra Grata

They expressed concerns around security with 318 former combatants killed since the signing of the Peace Accord and 8 April 2022 when we visited. Two Colombian soldiers were positioned at the entrance of Tierra Grata as part of the agreements on security. Another area of disquiet was that the Duque Government, had introduced a new policy framework for the implementation of the Peace Accord - Peace with Legality - which had made important changes to the implementation of the agreements in the Peace Accord. The body established by the Peace Accord, whereby former combatants and the Government discussed progress on the implementation of the Accord - the Commission for the Follow-Up, Promotion and Verification of the Implementation of the Final Agreement, was not meeting regularly nor were the working groups, which added to their overall concerns on the way in which the Accord was being implemented.

6.0 Meeting with members of the Colombian Congress

The Delegation met with members of the Colombian Congress and assistants/advisors. They discussed the impacts of the current development policies on human rights and on communities in La Guajira and Sierra Nevada, as well as the upcoming elections and the humanitarian crisis that was impacting some regions of the country.

The impacts of malnutrition, poverty and thirst experienced in La Guajira was a particular focus. The problem of consumption of water by the mining companies was highlighted as causing a crisis in La Guajira and the death of children in that department from malnutrition.

“

There is enough water in La Guajira to give them. What we want is that they release the water, but above all, that they release the Arroyo Bruno. How is it possible, that this government... has practically handed over this country... to the transnationals?”

Senator Aida Bello

The Congress members highlighted the fact that water was a key issue for them in relation to multinational mining corporations and that they would be bringing a motion in the senate on the “*Kidnapping of water by transnational companies*.” Finally the MPs, TD and members of the Colombian Congress agreed to work together, and to invite politicians from other European countries to form a network that would highlight what is happening to indigenous and Afro-Colombian Communities and to ensure that multinational corporations were held to account for their activities in Colombia.



Delegation with the Indigenous Peoples of the SNSM

7.0 Immediate Actions taken upon the Delegation's return

All of these documents can be found on the ABColombia website

- Parliamentarians issued a public statement
- Claire Hanna MP and Brendan O'Hara MP took part in a Westminster Hall debate in the House of Commons
- Gary Gannon TD has tabled a series of parliamentary questions and spoke about the issue in Dáil Éireann, in the Irish Parliament. Through this he established that the ESB was again purchasing Cerrejón coal, after a four-year hiatus. This was again raised in parliament and in Irish media, reigniting debate on the ethical basis of Ireland's energy production and the continued sourcing of coal from Cerrejón
- A meeting has been requested with Glencore at their Headquarters in London but to date this has not been a possibility for Glencore on the date suggested and the Delegation are still waiting for Glencore to propose dates.
- On 24 May 2022, ABColombia, in conjunction with the Colombia Caravana UK Lawyers Group, filed an *amicus curiae* brief with the Colombian Constitutional Court in support of CAJAR, which has filed a claim for provisional measures with the Court on the basis that the Court's judgment SU-698/2017 on Arroyo Bruno has not been respected. The *amicus* brief refers to key principles in international human rights and environmental law including **due diligence** and the **precautionary principle**, which CAJAR argues are areas that the company and the government authorities have signally failed to apply in their treatment of the Arroyo Bruno case (and more generally).



We ask the international community for its solidarity to accompany the indigenous peoples of the Sierra Nevada to guarantee their rights, to stop this systematic violation of nature and our sacred spaces, and fundamentally, to apply the instruments and international standards and the commitments that the Colombian state has acquired before other countries in environmental matters, in matters of human rights and peace."

Jaime Luis Arias Ramírez,
Governor of the Kankuamo Indigenous Peoples

Endnotes

- 1 Court Ruling T-614/2019 concluded that Cerrejón had breached international standards of due diligence as required by the Ruggie Principles.
- 2 See, for example, Cerrejon's 2019 sustainability report
<https://www.cerrejon.com/sites/default/files/2021-08/informe-de-sostenibilidad-2019.pdf>
- 3 Glencore International A.G. v. Republic of Colombia (ICSID Case No. ARB/21/30) and Anglo American plc v. Republic of Colombia (ICSID Case No. ARB/21/31)
- 4 Corporate Europe Observatory and the Transnational Institute, Profiting from injustice: How law firms, arbitrators and financiers are fuelling an investment arbitration boom, November 2012
- 5 <https://www.rte.ie/news/business/2022/0601/1302482-esb-criticised-for-importing-coal-from-mine-in-colombia/>
- 6 CERD, 2020 Concluding Observations on Ireland
- 7 Colombian Constitutional Court Case T-530/2016
- 8 For example, IACHR, in the Saramaka People vs Surinam judgement of 2007; Colombian Constitutional Court Decision T-769 of 2009
- 9 ABColombia is part of the Coalition for Corporate Justice, which has produced the research and campaign for a Business, Human Rights and Environment Act
- 10 *ibid*
- 11 PDETs are designed to rebuild the legitimacy of the Colombian state within the 16 territories most affected by the armed conflict. Action Plans for Territorial Transformation (PATRs) consist of 32,808 PDET initiatives representing actions and projects identified by the communities to raise their living standards. Each plan is structured around eight pillars and contains municipal and subregional PDET initiatives.
- 12 See [Peace Accords Matrix, Kroc Institute for International Peace Studies. Five Years of Peace Agreement Implementation in Colombia: Achievements, Challenges, and Opportunities to Increase Implementation Levels. December 2016 – October 2021](#)
- 13 The six chapters of the Peace Accord are: 1. Toward a New Colombian Countryside: Comprehensive Rural Reform, 2. Political Participation, 3. End of the Conflict, 4. Solution to the Problem of Illicit Drugs, 5. Agreement Regarding the Victims of the Conflict, 6. Implementation, Verification, and Public Endorsement
- 14 Kroc Institute report on the ethnic stipulations <https://go.nd.edu/KrocColombiaReports>
- 15 See, for example, Global Witness, Last Line of Defence, September 2021.
- 16 By the former paramilitary leader Dairo Antonio Úsuga, alias "Otoniel" In an affidavit to the JEP in connection with crimes against humanity committed in Casanare, Colombia, he stated that General Barrero had links with the AUC paramilitaries and supported its Bloque Centauros
- 17 Alerta urgente por la incursión de hombres armados en motocicletas en la comunidad Wayúu de la Gran Parada, defensora del Arroyo Bruno en La Guajira – Plataforma la Guajira le habla al país, Censat Agua Viva, CINEP CAJAR – 13 April 2022
- 18 [Denuncian ataque contra lideresa wayuu en La Guajira \(elheraldo.co\) – 22 May 2022](#)
- 19 [Colombia: Declaración de Cerrejón sobre atentado contra dirigente indígena de comunidad opositora a la empresa – Business & Human Rights Resource Centre \(business-humanrights.org\)](#)
- 20 For the purposes of the Observatory statistics, violence committed in the context of social conflict relates to that inflicted by members of the community and includes domestic violence, 'armed conflict' is by members of armed groups, and 'both' relates to women who have suffered attacks by members of the community and of armed groups.

- 21 Such as, the Security Council's Resolution 1325 on Women, Peace and Security; the UN General Assembly Resolution on the Protection of Women Human Rights Defenders and Women's Rights Defenders, and the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).
- 22 Some of the sacred spaces are within the boundaries of the Cerrejón mine and are no longer accessible to them
- 23 Constitutional Court Autos (Edicts) 004 of 2009 and 266 of 2017
- 24 The Council of State (*Consejo de Estado*) is the supreme court with jurisdiction over administrative issues in Colombia.
- 25 July 2020, ABColombia submitted an Amicus Brief <https://www.abcolombia.org.uk/heart-of-the-earth/>
- 26 Whilst the indigenous peoples own the collective land title to their resguardos, much of their ancestral territory, and some of the resguardos have yet recognised and/or registered by the Colombian Government. However, even when they are registered the state still owns the sub-soil rights. Indigenous territory is protected by their constitutional rights to free, prior and informed consent. However, the sheer number of cases being presented to the Constitutional Court relating to megaprojects impacting on Indigenous Peoples points to the persistent failure on the part of the State to carry out consultation processes which are truly free, prior and informed, from 1993 to 2006 alone, the Colombian Constitutional Court ruled in favour of Indigenous Peoples in about 18 cases due to the violation of the right to territory and prior consultation by megaprojects. For more details see ABColombia Report, Giving it away: the consequences of an unsustainable mining policy in Colombia
- 27 For more information, see ABC Colombia, Indigenous Sacred buildings repeatedly burnt in Sierra Nevada <https://www.abcolombia.org.uk/indigenous-sacred-buildings-repeatedly-burnt-in-sierra-nevada/>
- 28 DANE 2018 census
- 29 In Colombia, Afro-Colombians have right to free, prior and informed consultation. It is the Ministry of the Interior's responsibility to determine if there are indigenous and/or other ethnic groups that need to be consulted.
- 30 The section on impacts below is based on testimony given to the Delegation, supplemented by information in a complaint lodged with the Organisation for Economic Co-operation and Development (OECD) – Non-Compliance with the OECD Guidelines for Multinational Enterprises (BHP, Anglo American, and Glencore) – submitted by Global Legal Action Network with support from ABColombia and other organisations – 19 January 2021
- 31 A study carried out from 2011 to 2018 found evidence indicating that pollution from the Cerrejón mine is driving elevated levels of cellular damage, in turn raising the risk of cancer, DNA damage, and chromosomal instability among employees and those living around the mine.
- 32 A research project in 2018 assessed almost half of the population living within 23km of the mine, concluded that annually there are 442 emergency room visits and 336,832 respiratory symptom cases directly attributable to the Cerrejón mining operations.
- 33 ABColombia, 'Digging Deeper: UN Special Rapporteur David Boyd's video statement – El Cerrejón and the need for TNC Treaty' at 1:30
- 34 They are suffering from a range of conditions including serious and recurring respiratory and skin diseases, fevers, headaches, and diarrhoea, amongst others.
- 35 [informe-de-sostenibilidad-2019.pdf \(Cerrejón.com\)](#)
- 36 This quantity of water would be enough to supply 150,000 people in regions particularly in La Guajira.
- 37 Colombia's Institute of Hydrology, Meteorology and Environmental Studies in (IDEAM) data was used by the communities when explaining this.
- 38 Complaint lodged with the Organisation for Economic Co-operation and Development (OECD) – Non-Compliance with the OECD Guidelines for Multinational Enterprises (BHP, Anglo American, and Glencore)
- 39 Inter-American Commission on Human Rights (IACHR), directed the Colombian government to take immediate precautionary measures to safeguard the lives and personal safety of the Wayúu people in La Guajira IACHR, Resolution 60/2015

- 40 Inter-American Commission on Human Rights, Resolution 60/2015
- 41 Auto 100/22 -2 February 2022- Order that calls for monitoring of compliance with the orders issued in Judgment SU-698 of 2017
- 42 Public Statement: UK and Irish Parliamentary Delegation to Colombia Express Profound Concerns for the Rights of the Wayuu Indigenous Peoples and Afro-Colombian Communities in La Guajira, Colombia. ABColombia, 21 April 2022.
- 43 Glencore International A.G. v. Republic of Colombia (ICSID Case No. ARB/21/30) and Anglo-American plc v. Republic of Colombia (ICSID Case No. ARB/21/31)
- 44 Constitutional Court, T-704 of 2016.
- 45 Complaint lodged with the OECD - Non-Compliance with the OECD Guidelines for Multinational Enterprises (BHP, Anglo American, and Glencore) – submitted by Global Legal Action Network with support from ABColombia and other organisations - 19 January 2021
- 46 Complaint lodged with the OECD – Non-Compliance with the OECD Guidelines for Multinational Enterprises (ESB) - submitted by Global Legal Action Network with support from ABColombia and other organisations - 19 January 2021
- 47 Information from research conducted by Dr. Chris O'Connell, School of Law and Government, Dublin City University, updated 24 March 2022
- 48 Alerta urgente: Gobierno avala la destrucción del arroyo Bruno – La Guajira le habla al país, 6 April 2022



Provincial: Fuerza de Mujeres Wayuu

About us

ABColombia is a group of leading UK and Irish organisations with programmes in Colombia. We advocate in favour of human and environmental rights and business, peace, justice and sustainable development, women rights and equality, and marginalised communities. ABColombia's members are CAFOD, Christian Aid, Oxfam, Colombia, SCIAF and Trócaire. Amnesty International and Peace Brigades International are observer members. ABColombia develops the collective advocacy work of its members. Our members work with around 100 partner organisations in Colombia, most of whom are marginalised communities with little access to decision-making forums nationally or internationally.

www.abcolombia.org.uk



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DEFENDIENDO LA TIERRA,
EL TERRITORIO
Y EL MEDIO AMBIENTE

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ABColombia

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