

Parliamentary Briefing Glencore's Toxic Legacy in Colombia.

28 November 2023

Glencore PLC is the sole owner of the Cerrejón mine, La Guajira, Colombia, which is one of the largest open pit coal mines in the world, covering approx. 69,000 hectares. The persistent expansion of the mine over the past four decades has led to ruinous environmental degradation and serious human rights impacts. The air in La Guajira contains particulate matter, in excess of the limits recommended by the WHO and the limits imposed on Cerrejón by the Colombian courts.

Annually there are over 400 emergency room visits and over 336,000 respiratory symptom cases directly attributable to the mine.ⁱ Studies have shown that air pollution is driving elevated levels of cellular damage, in turn raising the risk of cancer, DNA damage, and chromosomal instability for those living in the region.ⁱⁱ

In 2020, Cerrejón's activities were denounced by seven UN Special Rapporteurs. David Boyd stated, *'the situation that was brought to my attention recently regarding the 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 [UN] Special Rapporteur on human rights and the environment.'*ⁱⁱⁱ

As well as contaminating the air, the mine consumes and contaminates significant quantities of water, using approx. 24 million litres of water per day. In 2019, it dumped 578 million litres of liquid waste into natural bodies of water. Studies on the Ranchería River have found unsafe levels of harmful metals in the water, including mercury and lead. Cerrejón's diversion, consumption, and contamination of water has led to water scarcity, food scarcity, and health impacts for those who live in La Guajira.^{iv}

These harms have been expedited because of the mine's various structural interventions into the hydrological system in Guajira. The Ranchería River is the principal waterway in the region, and many communities once relied upon it for their domestic and farming activities. The river's flow was previously fed by 23 main tributaries, many of which have now been destroyed or diverted. The recent diversion of a tributary, called the Arroyo Bruno, was carried out despite a court judgment finding that the diversion could violate fundamental rights. The Arroyo Bruno supports the ecosystem of a tropical dry forest, which is in critical danger of extinction globally.

Guajira is the ancestral land of the Wayúu indigenous people and many Wayúu communities have been displaced to make way for the mine. Afro-Colombian and campesino communities (subsistence farmers) in the region have faced similar displacement. At times, evictions have been carried out with armed guards, tear gas, and metal projectiles.^v In 2016, bulldozers were used to destroy an Afro-Colombian village. Even when Cerrejón claims to have consulted with displaced communities, it has not enabled a genuinely free choice as to relocation, as consultation is premised on the assumption that expansion will continue.

In a recent judgment, Colombia's Constitutional Court stated that the mine's impacts arise within 'a general context characterised by indigenous communities that present a high degree of vulnerability, and large-scale mining exploitation puts their environment and health at risk'.^{vi}

In 2034, Cerrejon's licence will run out and a just transition is essential for communities and mine workers. Following considerable pressure from communities, NGOs and international organisations and questions from MPs and TDs^{vii}, the company recently published its mine closure plan. The plan primarily addresses biotic and physicochemical aspects, but completely neglects the significant social impacts on the Wayuu and Afro-descendant communities, particularly concerning air, water, and soil pollution and long-term environmental impacts, including acid water drainage and landscape changes. The company also fails to include any unresolved damages, meaning that the state may ultimately have to bear the responsibility for addressing these. Communities affected by the Cerrejón mine cannot be left to pick up the pieces of a devastated environment. **Accountability for the cumulative and ongoing impacts of the mining operations, a just mine closure and proper reparations are essential.**

In addition, an unprecedented number of environmental human rights defenders, and community leaders have been killed in recent years in Colombia, making defending rights in the context of mining activities extremely dangerous: *'the main economic sectors involved, representing 90% of attacks on HRDs that are business-related in Colombia between 2015 and 2019, are mining, fossil fuels, agriculture, hydroelectric plants and dams ...Most of the HRDs under attack were leaders and members of affected communities, unionists, and Afro-Colombian and indigenous people ... the companies that were most often the subject of advocacy by HRDs who were attacked were AngloGold Ashanti, Cerrejón Coal (Glencore) ...'*^{viii}

In an effort to undermine the Colombian Constitutional Court decision regarding the Arroyo Bruno (Bruno Stream) Glencore is suing Colombia in International Tribunals using the investor-to-state dispute settlement (ISDS) mechanism that is in international investment and trade agreements **including the Colombia-UK Bilateral Investment Treaty**. This demonstrates Glencore's lack of willingness to accept the need to protect indigenous and Afro-Colombian rights and to fulfil the Court decisions to protect the environment and access to water.

The situation with the Cerrejón mine shows how disproportionate investor protection can impact human rights protections, as the very prospect of claims being filed against a government creates a "regulatory chill", as international investor protections generally place **enforceable obligations only on states**, meaning that **investors can win cases even if they have violated domestic law or other international norms**. The awards are also disproportionate, amounting to millions of dollars, and the secrecy of Arbitration Tribunals undemocratic. The use of ISDS has raised legitimate questions from multilateral bodies, governments, and civil society organisations, highlighting the risks of ISDS being used to challenge climate policies and policies to protect human rights.^{ix}

All the human rights and environmental impacts raised in this briefing have been recognised by various Colombian Court decisions, and the mine's failure to comply with domestic court rulings has seriously undermined the rule of law in Colombia.

Recommendations

To ensure that UK registered and/or domiciled companies are held to account for their environmental and climate change impacts and that they uphold human rights. It is essential to introduce a UK Business, Human Rights and Environment Act.^x A UK mandatory human rights and environmental due diligence law, based on a failure 'to prevent' tax evasion and bribery found in the Criminal Finances Act 2017 and the Bribery Act 2010, as called for by the UK Parliament's Joint Committee on Human Rights, and found to be legally feasible by the British Institute of International and Comparative Law. Such legislation has the potential to transform the way fossil fuel corporations conduct business and would mark a crucial step against corporate misconduct.

The UK should, like Australia, Brazil, and other governments, **omit ISDS mechanisms from its trading agreements**. In the case of the Colombia-UK BIT this should be terminated, and the Sunset Clause neutralised. UK registered and headquartered companies would then be prevented from undermining the rule of law, environmental and human rights protections. Furthermore, Colombia's efforts to uphold human and environmental rights and make the policy changes necessary to achieve sustainable peace would be supported, and the UK's tangible commitment to support Colombia on climate change, human rights, and sustainable peace would also be demonstrated. Additionally, it would create an enabling environment for Colombia to reach their climate goals.

It is essential to ensure that Glencore Plc., as a UK registered company, implements a just transition and mine closure plan. It is the responsibility of the **UK, which has ratified the Paris Agreement, and more recently the Glasgow Climate Pact (COP26)**, binding on States Parties, to take robust climate measures to disincentivising and regulating British registered companies engaged in coal extraction abroad.

As the UK benefits from Glencore's Colombian thermal coal extraction, it should also contribute to the financing of public policies and energy transition programmes in Colombia, given their responsibilities and debts to the country for regularly purchasing coal that is a product of human rights violations and environmental devastation. Thereby, considering issues of comprehensive justice and reparation in a context of transition, funding should not only be earmarked for the promotion of renewable energies, **but for ensuring just mine closures in coal regions**.

-
- ⁱ OECD Complaint <https://www.abcolombia.org.uk/wp-content/uploads/2022/01/Parent-Companies-FINAL.pdf>
- ⁱⁱ OECD Complaint <https://www.abcolombia.org.uk/wp-content/uploads/2022/01/Parent-Companies-FINAL.pdf>
- ⁱⁱⁱ ABColombia, 'Digging Deeper: UN Special Rapporteur David Boyd's video statement – El Cerrejón and the need for TNC Treaty' at 1:30. <https://www.youtube.com/watch?v=ffWTT9Q69g8>
- ^{iv} OECD Complaint <https://www.abcolombia.org.uk/wp-content/uploads/2022/01/Parent-Companies-FINAL.pdf>
- ^v OECD Complaint <https://www.abcolombia.org.uk/wp-content/uploads/2022/01/Parent-Companies-FINAL.pdf>
- ^{vi} Colombian Constitutional Court, T-614 of 2019 para 9.10.
- ^{vii} UK MPs and Irish TD's questioned Cerrejón in La Guajira on an ABColombia Delegation to Colombia in April 2022.
- ^{viii} The Business & Human Rights Resource Centre (March 2020) Report, "Defenders in Colombia"
- ^{ix} [The 2022 Intergovernmental Panel on Climate Change](#); UNCTAD [Investment Treaties Regimes need Reforms in order to ensure](#) that they Support Climate Action, 6 September 2022
- ^x Corporate Justice Coalition (CJC), [A 'Business, Human Rights and Environment Act' – Principal Elements](#)