

The Open Wounds of Coal Mining in Colombia



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AGUA VIVA



indepaz

Impacts of the Cerrejón coal mine on the environment and population in the

LA GUAJIRA

department





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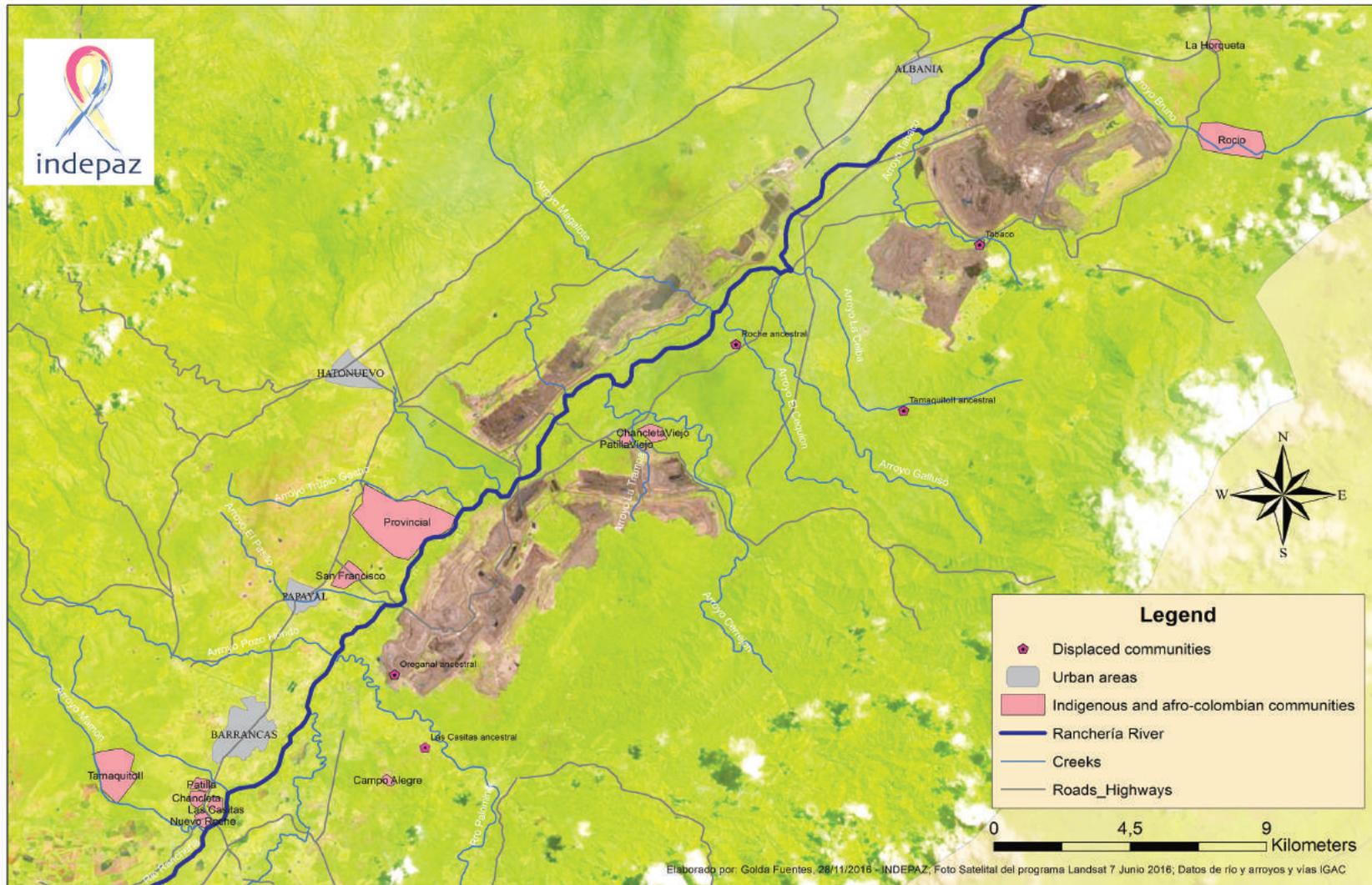


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Chart I. Map of the Cerrejón coal mine's land area in La Guajira in 2016



Source: own illustration



I. Coal mining in Colombia and Germany's role

As a result of international decisions regarding sustainable energy production, since 2005 coal production in OECD member states has been reduced by 12%¹ and global warming risks are being taken seriously. In stark contrast to these global dynamics, Colombia continues with a development model based on the exploitation of natural resources such as coal, which not only fuels climate change, but also slows down or even impedes investment to develop sustainable energy sources.

Colombia is the world's fourth largest hard coal provider with an export rate of 80.5 million tons in 2015. Of which roughly 70 percent was exported to Europe, the remaining coal goes to North and South America, and to a lesser extent Asia. The departments of Cesar and La Guajira have the country's principle coal mining production sites.²

Correjón is Colombia's largest coal producer and extracted a total of 33.2 million tons of hard coal in 2016.³

Coal's contribution to global energy production and thus to global climate change

is a fact that can no longer be denied and requires urgent action in order to avoid catastrophic consequences. A wide range of scientific studies exist, based on investigations from around the world, showing the social, environmental and health impacts related to coal mining. The socio-ecological problems in the areas and populations surrounding Correjón's activities are exemplary of these studies' findings.

II. Peace process in Colombia? – Coal fuels conflicts!

Colombia finds itself in a historical peace process, allowing for the end of a 50-year-old internal conflict with the FARC-EP guerrilla. It is hoped that other actors in the conflict, such as the ELN guerrilla and paramilitaries, will soon follow suit. The peace negotiations between the FARC-EP guerrilla and Government were concluded successfully in November 2016. There is now hope of tackling, in a sustainable manner, the structural violence in the South American country with the fourth largest land mass.

One of the conflict's causes has been unequal land distribution, with 62% of the Colombian territory in the hands of 0.4% of the landowners.⁴ With a GINI index of 53.5 Colombia is ranked number 11 in the most unequal countries in the world in terms of income distribution.⁵ The exploitation of natural resources, such as coal, harbours a new potential for conflict due to high social and ecological costs, as well as the scarcity of water resources, especially in dry ecosystems such as La Guajira. Rural areas are generally the most affected by these dynamics. The populations living close to mines are promised welfare and progress, but instead large-scale mining brings about displacement and limits their right to free development. In this scenario, companies working in these contexts must comply with their obligations in terms of human rights due diligence.

1. *Oei/Mendelevitch* (2016), Perspectives on Colombian coal exports on the international steam coal market until 2030, Rosa-Luxemburg-Stiftung, available at: <https://www.rosalux.de/publication/42810/perspectives-on-colombian-coal-exports-on-the-international-steam-coal-market-until-2030.html> (last access 01.03.2017).
2. *Verein der Kohlenimporteure (VDKI)*, Jahresbericht 2016, page 67, available at: <http://www.kohlenimporteure.de/aktuelles/jahresbericht-2016.html> (last access 01.03.2017).
3. *Mining Weekly*, Correjón's Colombia coal exports, output fall 2016, 17.01.2017, available at: <http://www.miningweekly.com/article/correjons-colombia-coal-exports-output-fall-in-2016-2017-01-17> (last access 01.03.2017).
4. *Reuters*, Latin America has most unequal land distribution, Colombia fares worst: charity, 30.11.2016, available at: <http://www.reuters.com/article/us-latam-landrights-idUSKBN13P2NX> (last access 01.03.2017).
5. World Bank (2014), <http://data.worldbank.org/indicator/SI.POV.GINI?locations=CO> (last access 30.11.2016). *Index Mundi*, GINI index (World Bank estimate) - Country Ranking, available at: <http://www.indexmundi.com/facts/indicators/SI.POV.GINI/rankings> (last access 01.03.2017).

III. The Cerrejón coal company and La Guajira

La Guajira is the second poorest department in Colombia and has a GINI Index of 55.1.⁶ More than half of its population (53.3%) live in monetary poverty, which means they do not have the minimum income necessary for their daily sustenance.⁷

La Guajira exhibits one of the highest child mortality rates in Colombia, with 32 of 1,000 live births not surviving their first five years.⁸ 27.9% of children under five years of age suffer from chronic undernourishment.⁹ In February 2015, some of the indigenous Wayúu communities living in the area desperately reached out to the Inter-American Commission on Human Rights, alerting that - according to their own registries - in the past eight years almost 5,000 children have died due to malnutrition.¹⁰ Faced with these circumstances, in December 2015 the Inter-American Commission on Human Rights requested that precautionary measures be adopted in order to guarantee access to health services and sufficient water and food supplies for indigenous children and adolescents in La Guajira.¹¹ Nevertheless, the living conditions in La Guajira have not changed substantially, and children continue to die of malnutrition and a lack of water.

For more than three decades hard coal has been exploited in the southern part of La Guajira. Since 2002, operations have been run by the company “Carbones de Cerrejón Limited”, which is owned, in equal parts, by the global commodity corporations Anglo-American, BHP Billiton and Glencore. The Cerrejón coal mine, La Guajira’s largest coal producer (97% of the total volume), ended 2016 with a slightly lower production than 2015, totalling 33.2 million tons of coal.¹² Cerrejón is responsible for 39% of all the coal sold in Colombia in 2016; while Cerrejón’s share of the international coal market is 3.9%.¹³ Cerrejón’s concession is a total of 69,000 hectares, of which 13,439 hectares have been exploited since 1986, yielding a total of 630 million tons of coal.¹⁴

IV. The impacts of Cerrejón’s coal mining activities on the environment and health

Massive coal extraction in one of the world’s largest open-cast mines has serious impacts on the surrounding indigenous and Afro-Colombian communities and on the environment.

Although the right to a healthy environment is recognized by the Colombian Constitution, the legal environmental standards¹⁵ are very lenient and situated considerably below international standards, such

6. *Departamento Administrativo Nacional de Estadística (DANE)*, 16 of the 24 departments studied reduced extreme poverty in 2015 and 13 diminished monetary poverty, p. 3, 18.05.2016, available at: https://www.dane.gov.co/files/investigaciones/condiciones_vida/pobreza/2015/cp_pobreza_departamentos_R2015.pdf (last access 01.03.2017).
7. *Departamento Administrativo Nacional de Estadística (DANE)*, 16 of the 24 departments studied reduced extreme poverty in 2015 and 13 diminished monetary poverty, p. 2, 18.05.2016, available at: https://www.dane.gov.co/files/investigaciones/condiciones_vida/pobreza/2015/cp_pobreza_departamentos_R2015.pdf (last access 01.03.2017).
8. *Encuesta Nacional de Salud y Situación Nutricional (Ensin 2010). Defensoría del Pueblo*, Informe 2014, p. 14. See also *El Tiempo*, Regiones pobres no cumplirán meta de reducción de mortalidad infantil, 16.04.2015, available at: <http://www.eltiempo.com/estilo-de-vida/salud/mortalidad-infantil-en-colombia/15583061> (last access 01.03.2017).
9. The Colombian average is 13,2%. *Defensoría del Pueblo*, Informe 2014, p. 136.
10. Of which only 8% were registered, see *Inter-American Commission on Human Rights*, Temporary Actions Nr. 51/15, Resolution Nr. 60/15 of 11.12.2015, para. 1 and 7D and para. 5B, available at: <http://www.oas.org/es/cidh/decisiones/pdf/2015/MC589-15-Es.pdf> (last access 01.03.2017).
11. *Inter-American Commission on Human Rights*, Precautionary measures No. 51/15, Resolution No. 60/15 of 11 December 2015, available at: <http://www.oas.org/es/cidh/decisiones/pdf/2015/MC51-15-Es.pdf> <http://www.oas.org/es/cidh/decisiones/pdf/2015/MC589-15-Es.pdf>. See also *El País*, La comunidad que se muere de sed, 22.05.2015, available at: http://internacional.elpais.com/internacional/2015/05/22/actualidad/1432256383_171660.html (last access 01.03.2017).
12. *Mining Weekly*, Cerrejón’s Colombia coal exports, output fall 2016, 17.01.2016, available at: <http://www.miningweekly.com/article/cerrejon-colombia-coal-exports-output-fall-in-2016-2017-01-17> (last access 01.03.2017).
13. *Portafolio*, Cerrejón cerraría el año con 33,4 millones de toneladas exportadas, 29.11.2016, available at: <http://www.portafolio.co/negocios/empresas/cerrejon-cerraria-el-ano-con-mas-toneladas-exportadas-501962> (last access 01.03.2017).
14. *Portafolio*, Cerrejón cerraría el año con 33,4 millones de toneladas exportadas, 29.11.2016, available at: <http://www.portafolio.co/negocios/empresas/cerrejon-cerraria-el-ano-con-mas-toneladas-exportadas-501962> (last access 01.03.2017).
15. Resolution 601 of 2006 (valid until 2010) or Resolution 610 of 2010 (valid since 2010) on air quality.





pliance of these stricter standards from the companies they oversee.

(1) Air pollution and respiratory illnesses

The negative impacts of open-cast coal mining on the health of workers and surrounding communi-

ties are well known and documented.¹⁹ There are studies, for example, which show that in times of increased fine dust pollution (PM 10) children living near an open-cast mine register more medical appointments due to respiratory illnesses than children living further away.²⁰ According to a 2015 decision from the Colombian Constitutional Court, in the municipality of Barrancas— one of the largest populations in the area, located less than 5 kilometers from the Cerrejón mine— 48% of all registered medical appointments in 2014 were due to acute respiratory diseases.²¹

Meanwhile, there is international consent²² on the fact that especially fine particles (PM 2.5, particulate matter smaller than 2.5 μm) are highly harmful to health. Nevertheless, in its monitoring stations Cerrejón still registers TSP (total suspended particulate matter; non-inhalable particles with a size of up to 100 μm) and PM 10 (particulate

matter smaller than 10 μm). In the USA TSP monitoring had already been suspended in 1987 as the monitoring of PM 10 and later PM 2.5, which have direct health impacts, was prioritized. Cerrejón has the technology to measure these values, and the company carried out these measurements for three years (2011 – 2013). Then, Cerrejón stopped them using the argument that the results were

as the European Union (EU) or World Health Organization (WHO).¹⁶ The precautionary principle of environmental law, however, has a firm legal basis¹⁷ in Colombia, and Colombian jurisprudence has positively interpreted environmental standards related to this and other international commitments (e.g. the Convention on Biological Diversity of 1992).

Thus, as early as 2013 and due to the serious discrepancies between national and international standards, the Colombian Constitutional Court ordered the environmental authorities to apply WHO standards, especially those related to large-scale open-cast coal mining.¹⁸

Despite the explicit ruling to implement these higher environmental standards, the environmental authorities have inadequately fulfilled their duty and rarely call for the com-

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16. See comparative chart on the next page.
 17. Article 1 (6) of Law Nr. 99 of 22 December 1993.
 18. *Colombian Constitutional Court*, Decision T-154/2013, 7.8 (p. 45) and operative para. 3 (p. 48), available at: <http://www.corteconstitucional.gov.co/RELATORIA/2013/T-154-13.htm> (last access 01.03.2017).
 19. *Hendryx / Palmer et al.*, Consequences of mountaintop mining, *Science* 2010, 327, 148-149; *Hendryx*, Personal and family health in rural areas of Kentucky with and without mountaintop coal mining. *Journal of Rural Health* 2013, Vol. 29, 79-88; *Jesús Olivero Verbel*, Efectos de la Minería en Colombia sobre la Salud Humana, p. 13, available at: http://www1.upme.gov.co/sites/default/files/forum_topic/3655/files/efectos_mineria_colombia_sobre_salud_humana.pdf; *Physicians for Social Responsibility/ Lockwood et al.*, Coal's Assault on Human Health, 2009, available at: <http://www.psr.org/resources/coals-assault-on-human-health.html>; *Kentucky Environmental Foundation/ Walker et al.*, Health Impact Assessment of Coal and Clean Energy Options in Kentucky, 2012, p. 6, available at: http://www.kyenvironmentalfoundation.org/uploads/1/8/5/9/18595042/kef_health_impact_assessment_energy_report_web.pdf (last access 01.03.2017).
 20. *Pless-Mulloli et al.*, Living near opencast coal mining sites and children's respiratory health, *Occupational and Environmental Medicine* 2000, Vol. 57: 145-151, available at: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1739923/> (last access 01.03.2017); *Bakonyi et al.*, Air pollution and respiratory diseases among children in the city of Curitiba, Brazil, *Rev. Saúde Pública* 2004, Vol. 38 No. 5, 695-700.
 21. *Colombian Constitutional Court*, Decision T-256/2015, p. 13, available at: <http://www.corteconstitucional.gov.co/relatoria/2015/T-256-15.htm> (last access 01.03.2017).
 22. *World Health Organization (WHO)*, Health Effects of Particulate Matter, Policy Implications for Countries in Eastern Europe, Caucasus and Central Asia, available at: http://www.euro.who.int/__data/assets/pdf_file/0006/189051/Health-effects-of-particulate-matter-final-Eng.pdf (last access 30.11.2016); *European Commission (EC)*, Science for Environment Policy, Global Health Impact of PM 2.5 Air Pollution Assessed, available at: http://ec.europa.eu/environment/integration/research/newsalert/pdf/global_health_impact_of_particulate_matter_air_pollution_assessed_410na5_en.pdf (last access 01.03.2017).

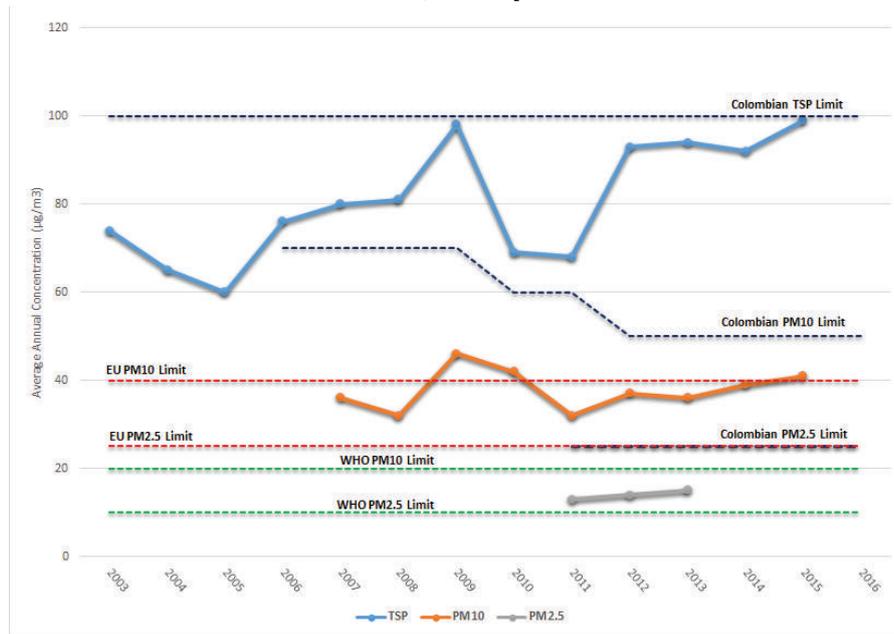
considerably below national standards. The truth is that the results for PM 10 are above the limits established by the WHO²³ and EU,²⁴ and those for PM 2.5 are above the limits recommended by the WHO, as illustrated in the following chart.²⁵

The discrepancy between national standards and WHO recommendations can also be observed in other air pollutants, such as sulphur oxides (SOx). Colombian legislation allows a value of 250 µg/m³, whereas the WHO recommends a maximum value of 20

µg/m³. If the WHO standard is to be applied to the analysis of sulphur oxide values in the areas surrounding Cerrejón²⁶, it can be observed that 2011 values surpass the standards at three sites:

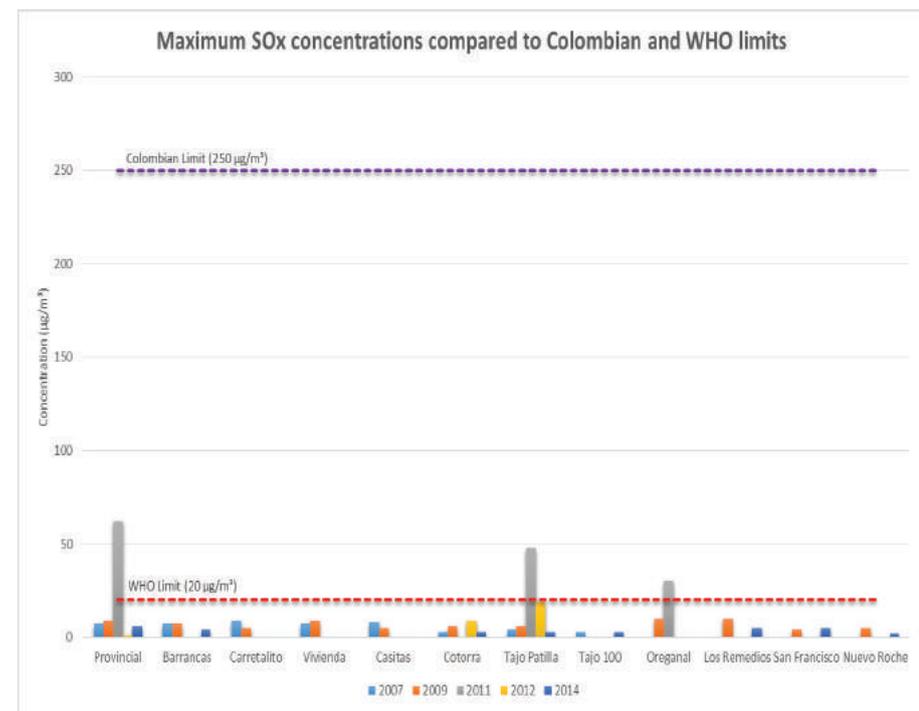
Chart 2. Concentration of coal dust in the community of Provincial 2003 - 2016

Historical Annual concentrations of TSP, PM10 and PM 2.5 in AQMS Provincial



Source: Adapted from: Values based on a Cerrejón report for proceedings in the Moisés Guette case.

Chart 3. Analysis of sulphur oxide values in the surroundings of Cerrejón



Source: Adapted from: Values based on a Cerrejón report for proceedings in the Moisés Guette case.

Sulphur oxides have multiple impacts on human health. They irritate the eyes, nose, throat and lungs after an exposure of only 10 to 15 minutes. If inhaled directly, in the worst

case, they can cause pulmonary edema. Even one single exposure can cause permanent asthma, and longer exposure can lead to diverse respiratory illnesses.²⁷

23. World Health Organization (WHO), Air quality guidelines, Global update 2005, Particulate matter, ozone, nitrogen dioxide and sulfur dioxide, available at: http://www.who.int/phe/health_topics/outdoorair/outdoorair_agq/en/ (last retrieval 01.03.2017).
 24. Directive 2008/50/EG of the European Parliament and Council from 21.05.2008 on air quality and clean air for Europe.



(2) The case of the three-year-old Wayúu boy Moisés Guette

Since his birth, now three-year-old Moisés, suffers from respiratory illnesses. He belongs to the indigenous Wayúu community of Provincial, living in close proximity to three coal pits (approx. 1,500 m away). Each day at noon the walls of his house shake due to coal blasts, and a dust cloud appears. Dust settles on the roof of his home, on nearby plants, and on his toys. Again and again he has to go to the doctor. The paediatrician recommends his parents leave their home given the environmental conditions.

This is, however, unthinkable for the indigenous family. In September 2015, they – represented by the lawyers' collective CAJAR – presented a tutela (a constitutional complaint) against Cerrejón and the corresponding authorities as well as against the healthcare provider. They request the closure of the nearby coal pits until there is an examination of the health impacts caused by coal

mining and adequate health services be guaranteed for Moisés. In November 2015, the judge ruled in the first-instance recognizing the risk to fundamental rights. The decision also mandated that the environmental authorities comply with the precautionary principle, carry out the necessary studies and guarantee that Cerrejón will reduce dust and gas emissions within the next two months, and determine whether damages to the houses are caused by the blasts. In addition, the court ordered the responsible healthcare provider to guarantee the patient access to necessary medical experts who are independent of Cerrejón. In February 2016, the second-instance decision confirmed this judgment.²⁸ To date, there is only a partial compliance of these legal obligations. Therefore, Luz Ángela Uriana and CAJAR are currently demanding the decision's full implementation.²⁹

Even based on Colombian environmental standards, Cerrejón's violations of these limits and infractions on their environmental license can be seen: In its 2015 environmental compliance report, Cerrejón reached the limit of 100 µg/m³ for TSP matter pollution at the Las Casitas monitoring station; at the Patilla-Chancleta station it surpassed the limit with 106 µg/m³. For the PM 10 24-hour mean, all seven stations, with average values between 81 and 104 µg/m³, are considerably above the 50 µg/m³ limit recommended by the WHO and EU. Furthermore, the Patilla-Chancleta station was above the Colombian standard of 100 µg/m³ with a value of 104 µg/m³.

The day after the value exceeded the limit, this station was relocated, arguing it had been damaged by vandals and was not showing representative data. The new location was the monitoring station's original site, from where it had been relocated the pre-

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25. Values based on a Cerrejón report for the proceedings in the of Moisés Guette case. The international standards (horizontal lines) were added later for comparison.
 26. Values based on a Cerrejón report for proceedings in the Moisés Guette case. The international standards (horizontal lines) were added later for comparison.
 27. *Australian Government – Department of the Environment and Energy, Sulfur Dioxide (SO₂)*, available at: <https://www.environment.gov.au/protection/publications/factsheet-sulfur-dioxide-so2>; *Canadian Centre for Occupational Health and Safety, Sulfur Dioxide*, available at: http://www.ccohs.ca/oshanswers/chemicals/chem_profiles/sulfurdi.html (last access 01.03.2017).
 28. CAJAR, Juez confirma orden a Cerrejón de reducir contaminación y fija plazo de 2 meses, 10.03.2016, available at: <https://www.colectivodeabogados.org/?Juez-confirma-orden-a-Cerrejon-de-reducir-contaminacion-y-fija-plazo-de-dos> (last access 01.03.2017).
 29. A documentary about this case titled "The wrong neighbour" can be found here: <https://www.colectivodeabogados.org/?Documental-El-mal-vecino> (last access 01.03.2017).

vious year, also due to claims of vandalism. After its relocation, the station displayed considerably lower values. Colombian legislation stipulates that if the PM 10 limit is surpassed, PM 2.5 must be measured; this, however, did not happen.³⁰ Also, it is quite alarming that Cerrejón does not need state permission to relocate monitoring stations. This casts serious doubts on the monitoring stations' positioning and the values they report.

(3) Water consumption and contamination

La Guajira is one of Colombia's driest regions, with repeated extreme dry periods and

draughts. The Ranchería River and the ground water around the river are the sources of drinking water for about 55,000 people in La Guajira.³¹ Thus, the Ranchería River is the main artery for the region's water supply. On several occasions it was necessary for the Army and humanitarian organizations to provide water to indigenous communities to avoid a humanitarian catastrophe.³²

In contrast, Cerrejón, according to its own data, registered a daily water consumption around 48 million litres of water in 2015.³³ Given the communities' precarious water supply, it is completely unacceptable that the living area for Cerrejón's executive employees has swimming pools and green golf courses.³⁴

Apart from this water distribution, clearly in the company's favour, the limited water sources are also being contaminated by mining activities. Cerrejón's incomplete environmental compliance reporting³⁵, which according to water monitoring legislation,³⁶ should include heavy metals, shows direct measurement values only for a few years. In the 2015 environmental compliance report, five different streams registered values surpassing the Colombian standards for cadmium, lead, chlorine or sulphates. With respect to data³⁷ on water catchment from run-off water and depressurization wells, the company erroneously combined the correspond-

ing values and limits in order to give the impression of complying with legal limits, even though values from surface source samples considerably exceeded the limit. In spite of reporting this transgression, there was no sanction from environmental authorities.

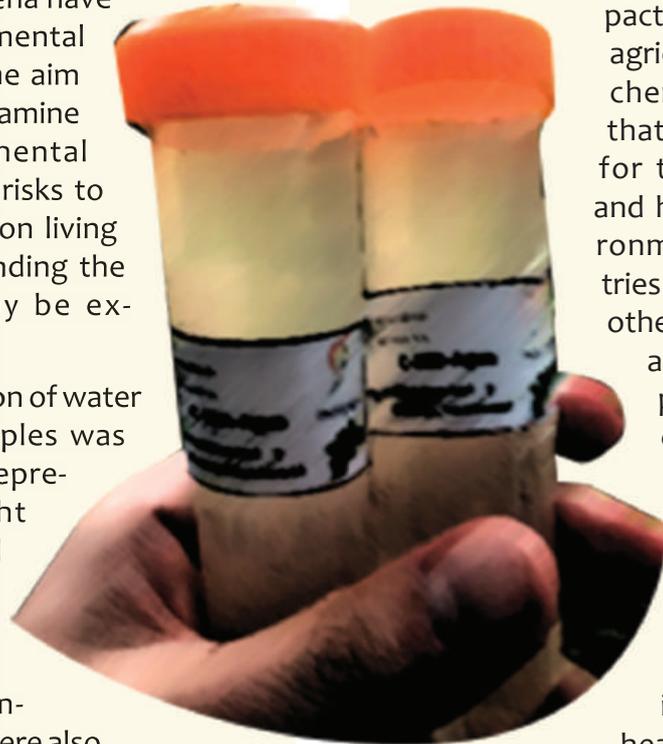
30. When asking the environmental agency whether this measurement would be required from Cerrejón and how it could be so easy to relocate a measuring station, CAJAR received this answer: The increased PM 10 value was related to an atypical, natural contamination that day; this could be evidenced from the higher values of a background measuring station on the same day and had happened only on one day in the year. Therefore, the order to measure PM 2.5 could not be justified. There was no explanation as to why the measuring station had been relocated on the day following the standard's transgression. It was stated that Cerrejón had informed the agency about the relocation. CAJAR, however, could not find any correlation when comparing the values of the "Sol y Sombra" background station to the Padilla-Chancleta measuring station. On some days, both show increased values, on other days, one station shows higher values while the other station has lower values.
31. *Universidad de Antioquia*, Contexto sobre las Aguas Subterráneas en la Cuenca del Río Ranchería, Presentation on August 2015, p. 12.
32. *El Espectador*, Cuarenta mil litros de agua serán llevados a los indígenas Wayúu, 11.08.2015, available at: <http://www.elespectador.com/noticias/nacional/cuarenta-mil-litros-de-agua-seran-llevados-los-indigena-articulo-578426>; *El Tiempo*, Sequía y hambre siguen matando a los niños Wayúu, 08.02.2016, available at: <http://www.eltiempo.com/colombia/barranquilla/nina-wayu-muere-por-desnutricion-en-barranquilla/16504140> (last access 01.03.2017).
33. *Carbones del Cerrejón* (2016): Balance hídrico general de la mina y puerto año 2015, p. 12, in Environmental Compliance Report 2015. This number is calculated based on the groundwater consumption registered by Cerrejón for 2015. This value combines water consumption from mining, coal transportation, coal shipping as well as the consumption of employees and providers, such as Army battalion and Police. Total consumption in 2015: 17,418,487,000 litres; this equals 1,451,540,583 l/month or 48,384,686 l/day.
34. These contradictions also become evident in the documentary "La Buena Vida" (Das Gute Leben) directed by Jens Schanze; see <http://www.dasguteleben-film.de/start/> (last access 01.03.2017).
35. Between 2007 and 2015, Cadmium was only measured in three years; the values lay considerably above the Colombian standard and should therefore be classified as harmful to health. Nevertheless, the environmental authorities did not impose sanctions.
36. Resolution No. 2079 of 2005; Resolution No. 1632 of 2006.
37. *Carbones del Cerrejón* (2016): Balance hídrico general de la mina y puerto año 2015, p. 12, in: Environmental Compliance Report 2015 (LAM 1094).



(4) Study on environmental toxic risks in La Guajira

In the context of their work of accompanying communities in La Guajira, Indepaz together with the Institute of Environmental Chemistry of the Universidad de Cartagena have begun an environmental risk assessment. The aim of this study is to examine possible environmental and health related risks to which the population living in the area surrounding the coal deposits may be exposed.

The first collection of water and sediment samples was accompanied by representatives of eight communities as well as different state authorities. In addition to water and sediment samples, local animals were also examined. This chemical-analytical data is complemented by nearly eighty household surveys on eating habits, water consumption and existing health problems. The household surveys were carried out in several indigenous and



Afro-Colombian communities which are located around the Cerrejón coal mine.

What is environmental toxicology?³⁸

Environmental toxicology is a scientific discipline that researches the impacts of industrial and agricultural waste and chemical substances that may be relevant for the environment and health. Thus, environmental toxicology tries to identify, among others, to what extent a population is exposed to harmful chemical substances, for example from industry, what possible routes of contamination exist, and what impacts on human health and the environment these substances may have. The US Environmental Protection Agency (EPA) has relied on this kind of studies since the 1990s and was used as a reference for the research carried out by Indepaz.

(5) Planned river diversions: Ranchería River and Bruno Stream

Repeatedly, Cerrejón's expansion plans envisage the diversion of waterways that have coal reserves under them. Thus, some years ago the company planned to divert the region's main river, the Ranchería River, which is the only water source for many communities. In addition, this river has an important socio-cultural significance for the indigenous communities.³⁹ After national and international protests, Cerrejón withdrew expansion plan "P 500" in November 2012.⁴⁰

Cerrejón, however, carries on with other expansion plans that foresee the diversion of tributaries to the Ranchería River, which in the long run constitutes a strategy to gradually dry out the river basin. At present, a diversion is pending for the Bruno Stream ("Arroyo Bruno"), one of

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38. *US Environmental Protection Agency (EPA): Guidelines for Ecological Risk Assessment*, US EPA (1998); University of Arizona, available at: <https://superfund.arizona.edu/node/580> (last access 01.03.2017).
 39. *Arbeitskreis Schweiz-Kolumbien (ASK)*, Cerrejón: *Massiver Widerstand gegen Flussumleitung*, 01.09.2012, retrievable from: <http://www.askonline.ch/themen/wirtschaft-und-menschenrechte/bergbau-und-rohstoffkonzerne/el-cerrejon-und-xstrata/widerstand-gegen-flussumleitung/> (last access 01.03.2017).
 40. *ASK*, *Umleitung des Ranchería-Flusses vorerst gestoppt: Cerrejón hat ihr wichtigstes Expansionsprojekt aufgeschoben*, 13.11.2012, available at: <http://www.askonline.ch/themen/wirtschaft-und-menschenrechte/bergbau-und-rohstoffkonzerne/el-cerrejon-und-xstrata/expansionsprojekt-mit-flussumleitung-aufgeschoben/> (last access 01.03.2017).

the Ranchería River's tributaries.⁴¹ Climate forecasts for 2040 for the La Guajira mining region predict a 10% to 20% reduction in rainfall and consequently rate the region's environmental vulnerability as high. With this backdrop and faced with an unequal water distribution between the coal mine and local population, such diversions could

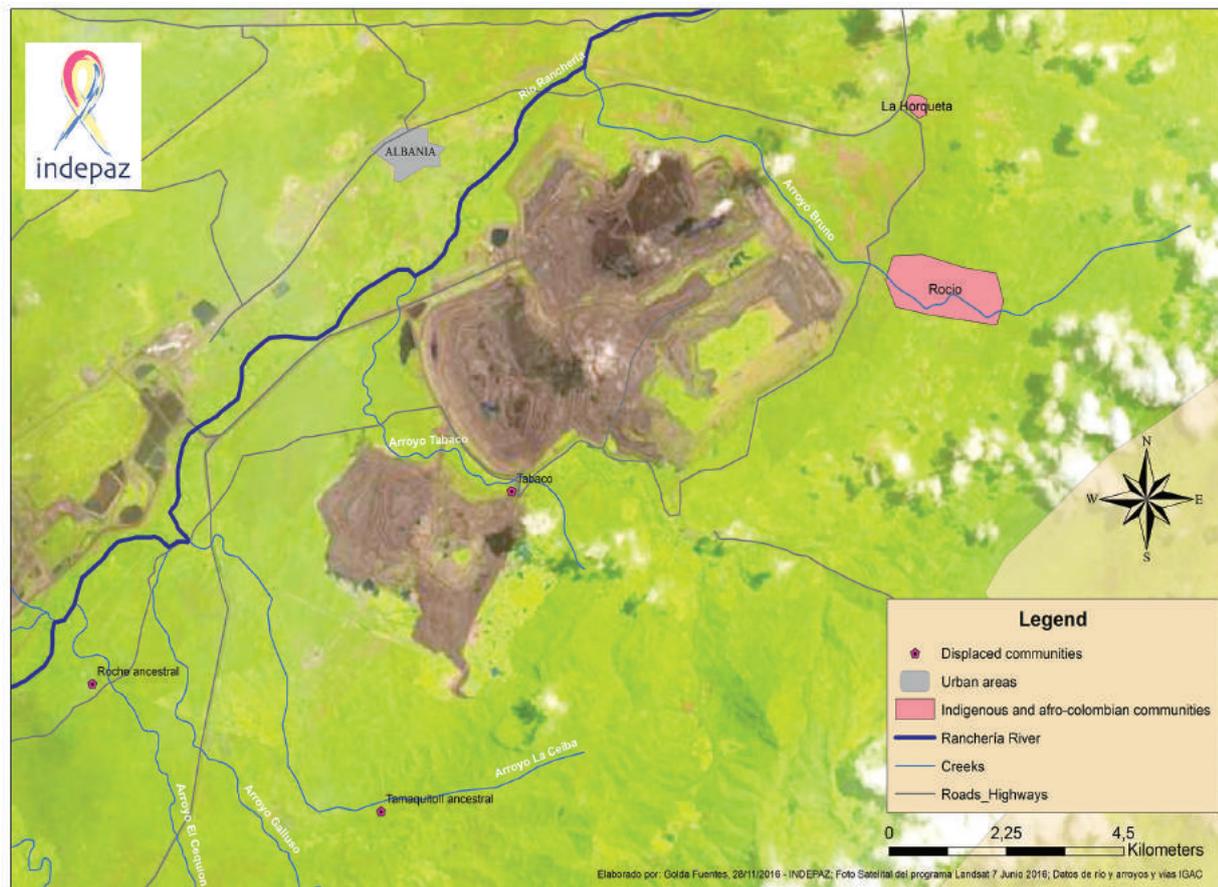
have dramatic consequences for the communities dependent on these waterways.⁴²

As often happens, not all the affected communities were adequately informed, listened to and asked for their consent. Specifically, communities neighbouring the Bruno Stream, such as La Horqueta and Rocío, were excluded (see map below).

Besides this direct violation of the right to free, prior and informed consent, the proceedings related to the granting of environmental permits for the diversion were irregular, as was the departmental environmental authority's intervention. The works were initiated without consulting the affected communities and disregarding the precautionary principle, which many sectors had insistently called for in order to protect the tropical dry forest and the tributary's water basin.

In response to the incompliance and irregularities, the communities living in the region and other organizations have started a legal action in order to request a precautionary measure for the diversion works as well as a tutela to demand the rights of the neighbouring Wayúu community that have been violated. In consequence, at the end of 2016 the State Council (Consejo de Estado) temporarily suspended the environmental permits until the surrounding communities are consulted.⁴³ Further

Chart 4. Cerrejón northern pit and communities near the Bruno Stream



Source: Own illustration.

41. *El Espectador*, El arroyo que se le atravesó al Cerrejón, 07.03.2015, available at: <http://www.elespectador.com/noticias/medio-ambiente/el-arroyo-se-le-atraveso-al-cerrejon-articulo-548145> (last access 01.03.2017).
42. *Colombian Institute for Hydrology, Meteorology and Environmental Studies (IDEAM)* (2010 and 2016). Mapa Segunda Comunicación nacional sobre cambio climático 2011-2040; Mapa Cambio en porcentaje de la precipitación 2011-2040.
43. Consejo de Estado – Sala de lo Contencioso Administrativo Sección Cuarta, Decision of 13 October 2016, Radicación número: 44001-23-33-000-2016-00079-01, available at: http://consejodeestado.gov.co/documentos/sentencias/13-01-2017_44001233300020160007901.pdf; *El Espectador*, "Consejo de Estado frena desviación del arroyo Bruno en La Guajira, 19 de diciembre de 2016, available at: <http://www.elespectador.com/noticias/judicial/consejo-de-estado-frena-desviacion-del-arroyo-bruno-gua-articulo-671201> (last access 01.03.2017).

constitutional actions are currently being studied by the Colombian Constitutional Court, and it is hoped that these actions will protect the water basin from present and future interventions.

V. Impacts on rural communities

Besides the aforementioned serious damages to the environment and health, which directly affect the surrounding communities, the mining activities have considerable social and cultural impacts. Regardless, the communities' fundamental right to free, prior and informed consent is frequently disrespected.

(1) The forced displacement of the Afro-Colombian communities of Tabaco and Roche

Since the 1990s, several communities in La Guajira were relocated as a result of mining activities. Some left their lands after negotiations to be resettled in new communities, whereas others were violently displaced. One emblematic case is the very violent displacement of the Afro-Colombian community of Tabaco. On the 9th of August 2001, the Police appeared, beat and detained community members and destroyed the village in order to dedicate the land to mining.⁴⁴ Even though in 2003 the Colombian Supreme Court stipulated that the Tabaco com-

munity be given new collective lands and that the buildings be reconstructed,⁴⁵ this ruling has never been fulfilled.

Currently, a round table is under way with participation from the Tabaco community, Cerrejón, and the mayor of the respective municipality, Hatonuevo. However, it seems, that no lessons were learned from the prior case. On the 24th of February 2016, the last family living in the Afro-Colombian community of Roche was violently displaced. Before the judge in charge or company had appeared, anti-riot police (ESMAD) was sent in without any motive and entered the community shooting rubber bullets



44. Video of the destruction of the Tabaco village on 09.08.2001, available at: <https://www.youtube.com/watch?v=mfB9qCd62X4> (last access 01.03.2017).

45. Colombian Supreme Court –Chamber for Civil Cases, Decision No. 0014-01 of 7 May 2002.

and gas cartridges. During the day several people were hurt, some were detained, and an international journalist and photographer was taken away in a company car and his pictures were erased at the police station.⁴⁶ Since 2003, negotiations were under way between the Roche community and Cerrejón; by 2011 most of the families had already been resettled.

Any form of relocation means a loss of cultural sites for the ethnic communities, including burial grounds. Collective buildings such as schools and health stations are lost. The new lands and houses frequently do not correspond to the tradition-

al ways of life and do not offer adequate conditions for animal husbandry and agriculture. The environmental problems and difficulties regarding the water supply continue. Although this problem was pointed out as early as 2014 by the Tamaquito indigenous community and since then has been reiterated time and again-- even during a Glencore shareholder assembly in Switzerland-- the lack of sufficient drinking water and water for agriculture and animal husbandry has yet to be adequately resolved.

(2) Tamaquito – Challenges for the resettled communities in the documentary “La Buena Vida”⁴⁷

„El agua es vida.“

– Jairo Fuentes, Gobernador-cabildo from Tamaquito.

Tamaquito is a Wayúu indigenous community that has conserved its socio-cultural traditions until today. The community was relocated in 2013, due to Cerrejón’s mining activities. Since their relocation, the community’s 38 families depend on the company’s water supply, because the well water on the community land is not apt for human consumption. Until April 2016, the 180 inhabitants of Tamaquito II received 1,000 litres of drinking water every fortnight. Now the water is supplied on a weekly basis; this equals a daily water consumption of 25.7 litres (in comparison:

46. See the joint statement from different national and international organisations, “Brutal evictions of villagers resisting relocation”, 26.02.2016, available (in English) at: <http://londonminingnetwork.org/2016/02/cerrejon-coal-brutal-evictions-of-villagers-resisting-relocation/> as well as the Spanish original with photos on http://www.indepaz.org.co/wp-content/uploads/2016/02/comunicado-sobre-diligencia-de-expo-piacion-en-Roche_version-preliminar-1.pdf (last access 01.03.2017).

47. Documentary “La Buena Vida” (2015) by director Jens Schanze. More information available at: <http://www.dasguteleben-film.de>.



in Germany daily water consumption is 122 litres/person). This ration of water must suffice for human consumption, cooking, washing and for the livestock. Since there is only limited access to clean drinking water, and as it has not rained in the last 16 months in La Guajira, this year in many places the livestock, that constitutes a livelihood for the community, has decreased because the animals die of thirst.

The closest river is the Ranchería River, which in addition to Cerrejón is also used for agricultural purposes (among others, rice and oil palm production) and whose course varies greatly. It should be noted that the middle section of the river dried up during 2015.

Tamaquito II depends on the company and until now does not have any possibility to guarantee its full autonomy, because neither food security nor income sources have been fully provided. Without clean and sufficient drinking water the community cannot raise animals or cultivate crops over time, and thus, possible sources of income diminish. This present situation threatens not only the community's survival but also its member's lives.

The negotiations between the community and the company advance slowly. This is a conspicuous pattern repeated in negotiations with all the resettled communities.

(3) The water issue for the Afro-Colombian communities of Chancleta and Patilla

After its 2012 relocation, the Afro-Colombian community of Chancleta, also registers a considerable list of unfulfilled agreements and promises from the company. Motivated by desperation, some community members returned to their lands in mid February 2016, after two years of negotiations with the company brought no solutions.⁴⁸ In February 2016 a tutela submitted by the community was ruled on by the highest instance of the Constitutional Court in favour of the community. Cerrejón and the authorities in charge were ordered to guarantee an adequate water supply as soon as possible.⁴⁹ Also, a free and in-



48. ASK, Umgesiedelte Gemeinschaften kehren aus Not an die alten Wohnorte zurück, 23.02.2016, available at: <http://www.askonline.ch/themen/wirtschaft-und-menschenrechte/bergbau-und-rohstoffkonzerne/el-cerrejon-und-xstrata/rueckkehr-an-alte-orte/> (last access 30.11.2016).

49. According to WHO, the optimal average for a person lies between 50 – 100 litres, Colombian Constitutional Court, Decision T-256/2015, supra, page 201.

formed consultation, which should have been done before, is to be carried out.⁵⁰

The water problem is not yet resolved. The communities of Patilla, Chancleta, Las Casitas and Roche, who have been relocated by Cerrejón since 2010, obtain water from their own wells. However, the periodical appearance of health problems such as kidney stones, rashes and diarrhoea

has generated serious concerns about the water quality, causing many people to opt to obtain water on their own. Those families who are unemployed and have not had a stable source of income since their relocation spend between 30,000 and 250,000 COP per month on water, according to the families, which equals between 5% and 20% of their household income. There are several families who can cover their costs only using savings from the sale of their former belongings. Additionally, due to this situation, many families collect rain water during the few rainy days and in the rainy season, in order to reduce costs.

There are even some families who have to use the collected rainwater for drinking even though they are aware of the risks of consuming water contaminated by coal dust. This leads to additional vulnerability in their living conditions. Apart from these health con-

cerns, the high lime content of the well water has significant effects on water and waste water pipes, causing damage to the pipes and washbasins. Many inhabitants wonder how they will pay for these additional costs once the liability of accompaniment by Cerrejón ends (four years after the relocation).

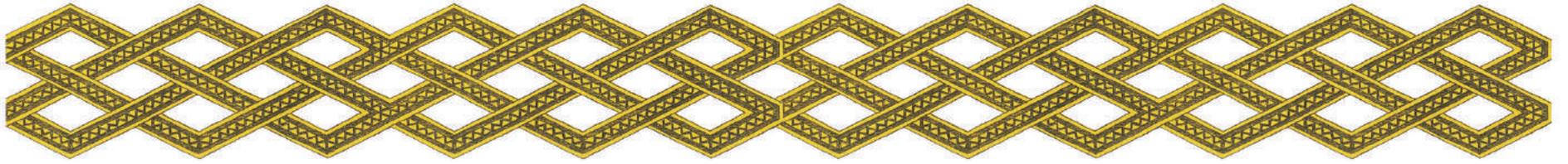
Furthermore, the negotiations, which are often characterized by unequal power relationships, lead to dissent and division within the communities. This is accepted and even promoted by the company, for example by offering financially interesting proposals to only some sectors of the communities. Communities wishing to remain in their territories against the company's plans or claiming compensations for damages suffered are put under great pressure.

(4) The unfair negotiations with the indigenous Wayúu community of Provincial

The indigenous community of Provincial conducted an extrajudicial mediation proceeding against Cerrejón in order to obtain compensation for the thirty years of negative impacts from mining activities. Eventually, in

50. Colombian Constitutional Court, Decision T-256/2015, supra, pages 261 and 262.







September 2015, they had to sign an unsatisfactory agreement, which complies with only 0.6% of the original demands.⁵¹ Beforehand, the negotiating community leaders were pressured and claimed they feared revenge if they rejected the agreement. The accompanying NGO, the Lawyers' Collective CAJAR, was excluded from a series of important hearings, and consequently could no longer provide adequate legal advice.

These previous examples demonstrate that several problems reappear repeatedly, contrary to company's Corporate Social Responsibility rhetoric. These are not problems to be solved on a case by case basis; instead they are systematic in nature since they are rooted in an existing power inequality between the company and surrounding communities. In a region with such weak governance, communities are at the mercy of Cerrejón's economic and political power, and its actions which show little comprehension of the indigenous and Afro-Colombian communities' cultures and way of life. Under conditions of dependence a dialogue between equals is impossible. Cerrejón always uses its superiority to its advantage and in the end imposes its will. Voluntary commitment instruments ("UN Global Compact", Ruggie Principles) are insufficient to counter these grievances. They can be useful for specific improvements but do not substitute a lack of sanctions. The respect of human rights as well as social and environmental standards should not be negotiable, nor should they depend on voluntary actions.



More information available from:

CAJAR: www.colectivodeabogados.org

CENSAT: www.censat.org

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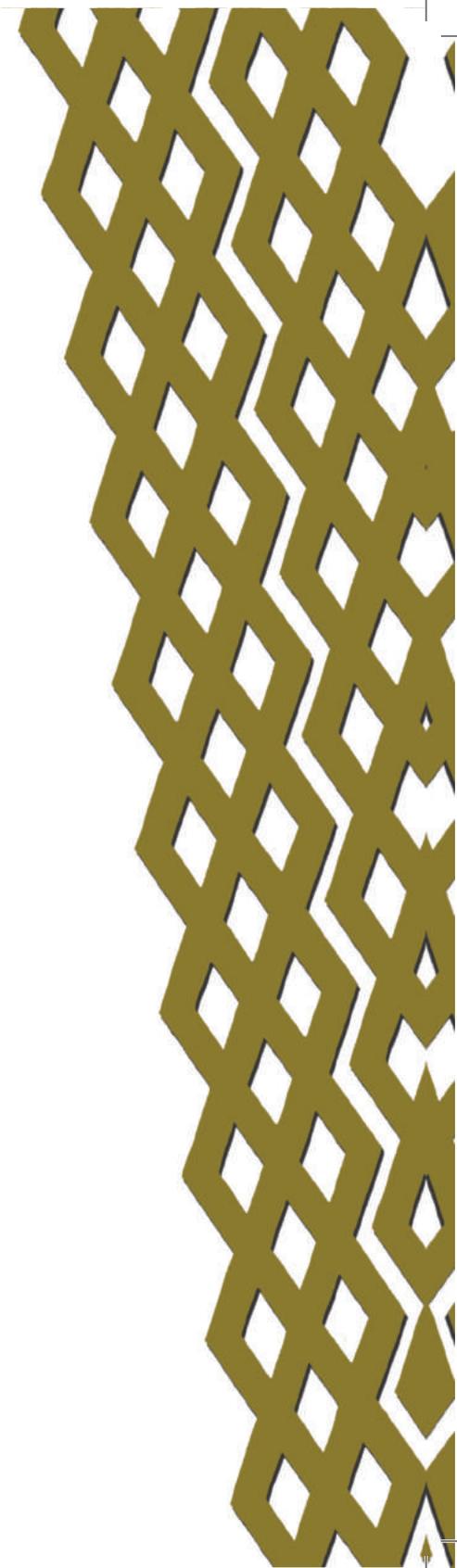
Campaign "La Guajira le habla al país": www.extractivismoencolombia.org

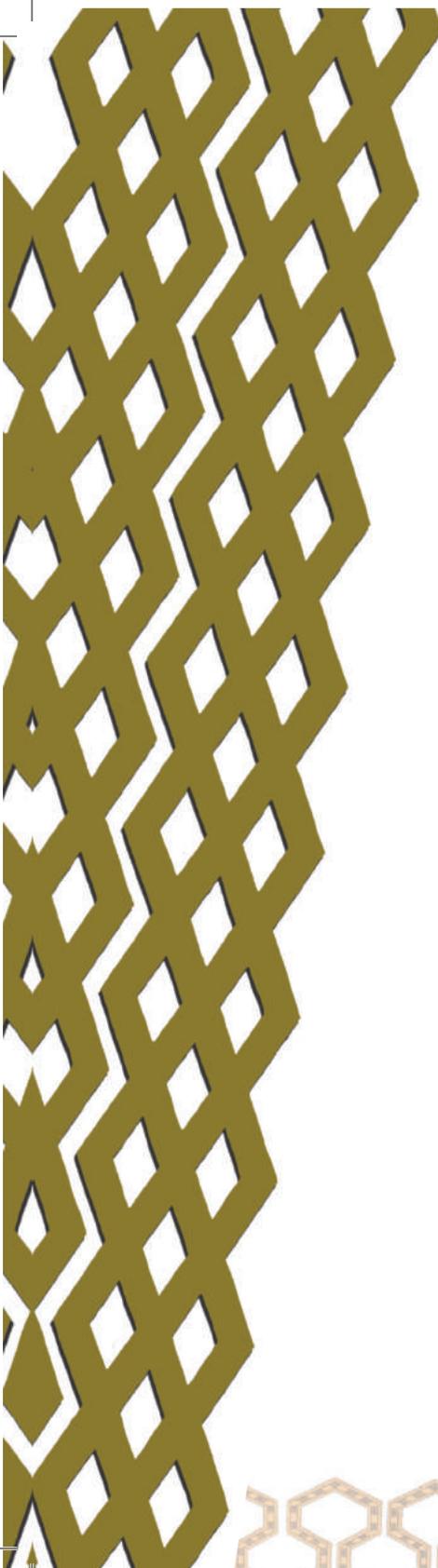
Arbeitskreis Schweiz-Kolumbien (ASK): www.askonline.ch/themen/wirtschaft-und-menschenrechte/bergbau-und-rohstoffkonzerne/el-cerrejon-und-xstrata/ (in German)

Business & Human Rights Resource Centre: <http://business-humanrights.org/en/cerrejon-coal-joint-venture-anglo-american-bhp-billiton-glencore> (mainly in English)

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51. CAJAR, Diálogo, imposición y asimetrías: Comunidades sometidas al abuso de poder corporativo, 26.10.2015, available at: <http://www.colectivodeabogados.org/?Dialogo-imposicion-y-asimetrías-Comunidades-sometidas-al-abuso-de-poder> (last access 01.03.2017).





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