

GLENCORE CASE IN COLOMBIA:

VIOLATIONS OF HUMAN RIGHTS AND LACK OF DUE DILIGENCE DURING THE CLOSURE OF MINING OPERATIONS IN CESAR AND MAGDALENA



1. Context of the behaviour displayed by Glencore and its subsidiary Prodeco in Colombia during the closure of the Calenturitas and Jagua mines in Cesar and Magdalena:

Glencore and subsidiary business group Prodeco CI¹ have operated in Colombia for more than 25 years, exploiting the Calenturitas and La Jagua mines. Suddenly in June 2020, 10 years before the date set for their definite closure, Prodeco decides to give the mining titles back to the Colombian State without previous consultation with the unions or communities involved in its operation, proceeding in a completely unexpected and irregular manner. A few months after the premature relinquishment of the titles, Glencore buys the totality of the shares of Empresa Carbones del Cerrejon in La Guajira, thus becoming its only owner, and therefore, the biggest coal exporting company in Colombia.

The process, lacking any sort of planning and failing to comply with due diligence standards for mine closure, has generated one of the worst financial and environmental crises in the mining zone of la Jagua de Ibirico, unleashing a severe social conflict. Glencore was supposed to provide compensation for all the environmental, social and labour liabilities acquired during more than 25 years of exploitation, as well as restoring the territory and hydric sources.

However, it is now refusing to carry out a closure plan and has asked for a reduction of its obligations. Instead, Glencore is developing a transition plan that will not involve the environmental restoration of the area, recuperation of the diverted rivers, or mitigation of the effects caused by contamination with coal dust.

It also refuses to carry out an economic transition plan that truly ensures a complete and productive labour reconversion for all the workers that due to the closure were prematurely made redundant between 2020 and 2022. Its actions have therefore created an environmental, social, financial and violent crisis for the mining corridor whilst completely dismissing the just transition of the decarbonisation process.

1. This business group is formed by: Prodeco CI, Empresa carbones de la Jagua, Empresa Carbones del Tesoro and Consorcio Minero Unido.

2. Systematic violations of Human Rights by Glencore and its business group Prodeco CI, failing to comply with due diligence during the mine closure, hence contributing to a profound social conflict that has put the life of environmental defenders at risk:

Due diligence during the operation and closure of a mine is mandatory for the business sector. The behaviour of Prodeco business group has caused the following systematic violations:

2.1 Violation of the right of a healthy environment and to good health in the context of climate change, due to irregular exploitation and lack of an environmental restoration plan during the closure stage:

According to official reports issued by the environmental control bodies of the State,² Glencore has caused severe environmental damages to the area during the 25 years of exploitation of the Calenturitas and la Jagua mines; these operations have been specifically detrimental to human health due to atmospheric contamination with coal dust, which has been exceeding WHO³ standards for years. Another factor affecting human health is the contamination of surface and underground water sources with lead and other toxic components.

According to the IDEAM⁴ this area will be severely affected by drought during the next few years due to the desertification process ensued by climate change in Colombia and to the severe deterioration of the dry tropical forest, an ecosystem currently endangered at global level. Therefore, it is paramount to carry out an adequate closure plan that is compliant with international agreements on the matter of climate change; a plan that takes into consideration the restoration of the exploited territories and that creates a mechanism for loss and damages during the process of transition and closure of the mines.

2. Four reports about mining operations in Cesar released by the Contraloría General de la República de Colombia (CGR) that analyse and provide proof of the operations carried out by Prodeco/Glencore during 2009, 2014, 2018 and 2022.

3. World Health Organisation

4. IDEAM - Instituto de Hidrología, Meteorología y Estudios Ambientales. Report IDEAM. IDEAM- UNAL, Climatic variation and climate change in Colombia, Bogotá, D.C., 2018. This critical situation has additionally left the



This critical situation has additionally left the local farmer, indigenous, and afro-descendent communities without access to drinking water. Contamination of the air and water has led to an increase in cardio-respiratory diseases as well as an elevated rate of stomach cancer and, according to research from Colombian universities, genetic mutation in animals amongst others.

2.2 Violations resulting from the lack of a mechanism that guarantees effective participation, access to information and freedom of speech during the mine closure:

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Glencore has not developed a real mechanism to guarantee the effective participation, access to information, and freedom of speech of the communities affected by the socio-environmental conflict ensuing from their practices. There is a striking lack of access to the internet and absence of digital platforms that enable people to learn about, assess, and comment on any programs and reports regarding the sustainable practices and corporate social responsibility of the company; additionally, the socialisation processes regarding operations and social plans are irregular and incomplete. All of this constitutes a clear violation of what the UN has defined as the right to access digital media in processes of environmental participation, which in this case are specific to mine closure. On this matter, we are asking Europe to find mechanisms to monitor what is happening along the commercial chain of coal.

5. Lawyers visiting the area state that this could be labelled a true Ecocide. Arguing a corporate financial crisis, this Company is currently requesting to be allowed to close operations without complying with the environmental restoration plan it should have developed in the next 8 to 10 years in order to recover the territory, water sources and other impacts resulting from the contamination of the exploitation phase.

2.3 Violations of labour rights and freedom of association during mine closure:

As explained before, Glencore is the current owner of Grupo Prodeco in Cesar. It also became the sole owner of the Empresa Carbones del Cerrejon in the Guajira, after acquiring the entirety of its shares only a few months after renouncing its mining titles in abrupt and premature manner and without consulting with the unions and communities of a territory that has been ravaged by extractivism. Grupo Prodeco then requested the protection of sick and unionised workers to be lifted so that it could make them redundant in order to outsource labour, thus keeping its ongoing operation from the union leaders.

In the meantime, Grupo Prodeco continues to operate in the Colombian territory, selling coal to Europe and making millions in profit⁶ whilst using the figure "relinquishment of mineral titles" to exterminate the unions through a judicial request to lift the union protection, and harassing sick workers seeking to ultimately dismiss them.⁷

The Colombian justice hasn't allowed the union protections to be lifted, arguing that Prodeco Group is still active in Colombia, which means that both unionised and sick workers should receive training and be reintegrated to other activities developed by the company in the territory, which would be entirely possible considering how vast Grupo Prodeco's operation is. According to the media, in January 2023, Colombia became the biggest non-European exporter of coal with nearly 4 million tons.⁸

In light of Convention 87 of the ILO, Prodeco is still in debt with the unions and communities in the area, as it has failed to establish an honest, horizontal dialogue in good faith to reach agreements for labour reconversion, social protection and economic diversification for the more than 7000 direct and indirect workers that have been affected by Grupo Prodeco's decision.

6. See, https://www.youtube.com/watch?v=wOGOShV7lCO&ab_channel=CNVInternationaal

7. See, <https://justtransition.cnvinternationaal.nl/es/Actualidad/Articulos/2023/alerta-laboral-y-sindical-en-el-cesar> 8. 8. Colombia achieved record figures in coal exports in 2022. Coal sold for USD1,7 billion, twice as much as in 2021. Thermal coal was sold for over USD 9,500 million with over 65 million tons; metallurgical coal, its 15th export product, was sold for USD 456 millions for 2 million tons.

In the case of Carbones del Cerrejon, operating in la Guajira, on the 23rd of February 2021 the company decided to unilaterally dismiss hundreds of workers arguing a drop in coal prices. Additionally, it implemented a shift pattern that deeply affected the family and social life of the workers, as well as increasing the risk levels for work related accidents and disease. Fortunately, due to the unwavering work of the unions, this was modified, and the reviewed agreement will soon be implemented. However, failure to comply with health and safety rules, has put young apprentices to fatal and non-fatal accidents⁹

These young apprentices, who are currently responsible for the mine's productivity, have no contracts to fulfil all the obligations of an employee. They have no guarantees, no protection and no job stability, which constitutes a clear example of labour exploitation and precariousness within the mining company.

In August last year, the Ministry of Labour carried out an inspection that revealed there was a potential unlawful retention of wages¹⁰ taking place, for the extra hours were not being payed as they should have. If the law does declare there was unlawful retention of wages, this would mean another accrued liability.¹¹

The death shift implemented two years ago added three days of work that were supposed to be payed as extra time but never were. This shift also meant an increase on the risks to the workers lives, who during the last two years were victims of different fatal accidents at the workplace.

We want to point out that the company Carbones del Cerrejon has opted for outsourcing labour as part of its policy to cut labour costs. This has meant that employees and outsourced workers work hand in hand in the company's grounds, carrying out the same type of jobs but with staggering differences in wages that amount up to 50% less for the outsourced labour, clearly indicating a violation of the right to equal pay for equal work, and directly contradicting Convention 111 of the ILO. This is currently under investigation by the Single Entry Point of the European Commission, which evaluates compliance of the trade agreement between the EU and Colombia.¹²

9. <https://sintracarbon.org/sala-de-prensa/comunicados-sala-de-prensa/nueva-fatalidad-en-cerrejon-genera-preocupacion-colectiva-por-contrales-en-seguridad-y-salud-en-el-trabajo/>

11. Ministerio del Trabajo [2022, Agosto]. Report of the administrative visit to Empresa Cerrejón, on the 16th, 17th, 18th and 19th of August. 12. Ministerio del Trabajo [2022, Agosto].

12. Report of the administrative visit to Empresa Cerrejón, on the 16th, 17th, 18th and 19th of August

At the moment, for every direct employee there are three outsourced ones, experiencing extended working hours and work overload. According to the sustainability report of 2021, there are 8.199 outsourced workers and only 4.889 direct employees, which is a clear indicator of a policy of precarious labour.

We demand that these policies stop and that the fundamental rights of the workers are respected.

2.4 Contributing to the conflicts that endangers the life of environmental leaders in the mining area during the closure stage by not taking any measures to prevent them:

In the year 2022 we managed to create a participation board through extraordinary legal action brought forward by more than 14 communities present in the mining corridor including indigenous and afro-descendant communities along with unions, victims and civil society organisations, represented by TIERRA DIGNA, a Centre of Studies for Social Justice. The legal action demanded effective participation and access to information for all the people in the mining corridor with regards to the social and environmental responsibilities resulting from the premature and irregular closures of the Jagua and Calenturitas mines. However, the security situation for the environmental defenders on the board has become aggravated during the last few months.

In March 2023 there was an assassination attempt against Esneda Saveedra, indigenous leader of the Yukpa people, who took part on the legal action. Additionally, other leaders of the board have received threatening phone calls and visits demanding they step down. There is clearly a systematic threatening strategy that seeks to disarticulate the dialogue board and weaken the negotiations for the closure plan.¹³ Lastly, by continuing to dilate the process, the company is refusing to generate spaces for dialogue and effective participation, therefore contributing to the aggravation of the conflict.

13. Public statement from the board for just transition and defense of the territory. March 2023.

2.5 Violation of women's rights and lack of gender focused measures in their closure plan:

Tierra Digna¹⁴ found that the company is violating the rights of women in different roles, such as workers, directors and housewives. This topic has received little exposure and constitutes a level of structural violence that systematically generates a great amount of human rights violations.

There are very few studies on this matter and mining areas haven't been thoroughly investigated with regards to gender and sexual violence. Within our last publication we found that only in the year 2021 the Instituto Nacional de Medicina Legal y Ciencias Forenses [National Institute of Legal Medicine and Forensic Sciences] recorded 55.582 gender-related violent acts, of which 106 were femicides, 21.434 were sexual violence and 34.042 were intimate partner violence. These represent a 19% increase in relation to 2020, where gender-related violent acts amounted up to 44.614.

There are few studies available on gender based violence in the regions of Magdalena and Cesar, let alone studies focusing on gender based violence in the mining corridor. Any records found come from press releases¹⁵ reporting on the situation.¹⁶

However, field work carried out by Tierra Digna with a small but representative focus group, managed to establish that 53% of the women polled in the communities of Santa Marta, Ciénaga, Cordoba, La Loma, El Paso, Valledupar and La Jagua suffered gender-related violence in their territories. Additionally, 92% stated there is discrimination against women in the mining sector, since most of the job vacancies opened by the mining companies are addressed to men, leaving women with fewer employment opportunities. 86% considers that the arrival of the mining industry to their communities also increased certain types of violence against women.

We therefore demand that Glencore and the mining industry implement gender-focused protocols and complaint mechanisms during the closure of their operations. We also believe that it is urgent to carry out independent studies that assess the gender-related problems within the coal mining industry.

14. Booklet VIOLENCIAS CONTRA LA MUJER EN EL CORREDOR MINERO DEL CESAR Y MAGDALENA. Propuestas de ideas para un protocolo y denuncia en tiempos de transición. Tierra Digna. Febrero 2023

15. <https://elpilon.com.co/la-jagua-de-ibirico-invadida-de-problemas/>

16. <https://www.pressreader.com/colombia/el-heraldo-colombia/20180610/282802127042258>

2.6 Systematic violations of human rights against the Yukpa people which may lead to their physical and cultural annihilation:¹⁷

The Yukpa is an indigenous community inhabiting the Serranía del Perijá, located between Colombia and Venezuela. They currently administer 6 reservations in the north of Cesar, to the North of Colombia. They are semi-nomadic hunter-gatherers, fishermen and farmers that have inhabited their ancestral territories for hundreds of years. A 2005 source estimates there are around 4,761 people who identify as Yukpa. (DANE, 2005).

The Yukpas have been forcefully displaced from more than 85% of their ancestral territories due to State and business colonisation. The natural environment that supported their lifestyle and that of their ancestors, and that continues to be of vital importance to the survival of the Yukpas, is suffering severe degradation: rivers have been polluted, drained or diverted; forests are being burnt or cut down and biodiversity is quickly disappearing. According to the Corte Constitucional of Colombia, the Yukpa, who are also the last surviving speakers of the Caribbean language in the country, are in imminent threat of physical and cultural annihilation due to loss of their territories and therefore to the inability to exercise their cultural practices. The biggest threats to the Yukpa people are the mining and oil multinational companies operating in their ancestral territories, such as Glencore, who operated in Cesar for 25 years, violating the constitutional right to community consultation in the decision making process over territories occupied for mining exploitation, as acknowledged by the Colombian law.¹⁸

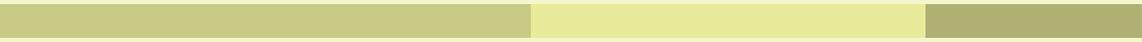
To this day, Glencore hasn't acknowledged their occupation of the ancestral territories of the Yukpa for their mining activity, nor the environmental, cultural, and social impacts that the mining operation in the Jagua and Calenturitas mines has had on the Yukpa people during the last 25 years.

17. RESIST GLENCORE: RED DE SOLIDARIDAD CON EL PUEBLO YUKPA: We are a growing network of people mainly from Colombia, UK, France and Germany, who have come together to support the communities and people at the front line of the resistance against extractivism, mainly in the Global South.. We mainly oppose Glencore, the biggest metal and mineral extraction Company of the world, and whose Headquarters are in Europe. We seek to form an alliance with the Yukpa people, one of the main opposing forces against this corporation in Colombia and who are currently facing risk of complete physical and cultural annihilation. We want to help amplify their voices at global level and to pressure Glencore to respond to their demands. Constitucional, and the ruling again C3g ne rights of the Yukpa

18. In Colombia there are two rulings a community: Ruling T-713 de 2017 of the Corte -Prodeco e State.

e. In 2020, the Consejo de Estado ratified the decision made

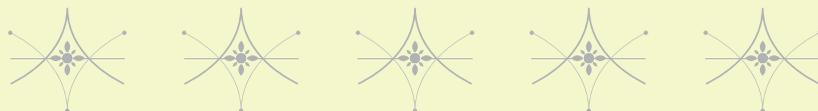
by the Tribunal Administrativo del Cesar, pointing that until the territory of the Yukpa people is clearly defined, it is not allowed to carry out mining activities in the area.



3. Balance of the systemic violations of human, environmental, labour and women's rights and demands made by the communities, unions and social organisations to Glencore:

Considering that Glencore has failed to comply with due diligence standards during the closure of the Calenturitas and Jagua mines since 2020 and that by doing so it has generated serious and systemic violations to the human rights of thousands of ethnic, farming and worker communities, we demand:

1. That Glencore complies with due diligence during the closure phase of the Calenturitas and Jagua mines.
2. That within this closure process, Glencore guarantees the labour rights and freedom of association of the thousands of workers it has made redundant whether in direct or indirect manner.
3. That both Glencore and its subsidiary Prodeco comply with the measures established for the restoration of the air, forests and hydric sites, and that it guarantees the public health of the communities inhabiting the area of direct influence, considering their vulnerability in matters of just transition, climate change and decarbonisation.



4. That the company complies with the standards for effective participation, access to information and access to digital media, in order to guarantee the free dom of expression of the communities and workers impacted by the closure of their mining operations.

5. That the Company guarantees women's rights during the closure stage, implementing a gender focus.

6. That Glencore complies with the standards of due diligence and protection of the environmental defenders in the dialogue process regarding obligations that continue to be unfulfilled, and that is socialises this with all the municipalities within the mining area.

7. That the company pursues a dialogue with the Colombian State and the general society to bring forward urgent economic measures that help solve the crisis of hunger and poverty caused by the premature relinquishment of mining rights and the social, environmental and economic pressure that this decision has brought upon the area.

8. That international organisations such as the UN and the governments of Swit zerland, Germany, the United States of America, the Netherlands and other coal buyers, to closely monitor this closure process, since in the framework of just tran sition, the lack of due diligence is putting the life of environmental defenders in this mining area at risk.

