

## CERREJÓN'S COMMENTS ON THE FORUM SYD "AS BLACK AS COAL" REPORT

July 11, 2016

Cerrejón appreciates the opportunity provided by the Business and Human Rights Resource Centre (BHRRC) to comment on the report *As Black as Coal*, published by the Forum Syd organization. We appreciate that this organization visited La Guajira, met with members of communities, and experienced firsthand the challenges of operating in this department. We also welcome their interest in approaching Cerrejón officials before publishing the report, but we regret that the ample information provided was not included in this study in a balanced manner. Quite the contrary, the report privileges the opinions and accusations of third parties without any scientific backing as well as decontextualized information and generalizations.

Cerrejón is respectful of Colombian law and we are known for undertaking our operations in accordance with the highest social and environmental standards. In addition to other standards on labour, environmental, and social issues, Cerrejón has also adopted the UN Guiding Principles on Business and Human Rights since 2011. We also have human rights due diligence model that seeks to identify, prevent, mitigate, and compensate our impacts.

Consequently, we feel we should clarify the following:

### **1. The accusations of health impacts on communities from air and water pollution are untrue.**

- Cerrejón's Environmental Management Program (implemented since the start of our mining activity) continuously monitors water and air quality, determining the control measures to prevent, mitigate, and compensate any potential environmental impacts of our operations.
- Existing control measures include continual wetting of waste rock and coal haul roads with low-quality water (not apt for human, farming, or livestock use) with 37 20,000-gallon tankers and four 10,000-gallon tankers. In addition, further measures include the use of fog canons and additives for dust suppression.
- Cerrejón has 18 TSP and PM10 sampling stations located in our neighbouring communities for monitoring air quality and for verification of the emission-control systems. Furthermore, there is an air quality oversight committee composed of members of communities, representatives of government authorities, the University of La Guajira, the Barrancas Hospital, and Corpoguajira.
- When the climate conditions are extremely dry, as in the past months of severe drought, Cerrejón has reduced operations in several pits out of respect for the environment and neighbouring communities.
- Most of the water used in Cerrejón's operations is low quality, employed for wetting the roads in an environmental mitigation measure to control dust levels. As mentioned, this water is unsuitable for human, farming, or livestock consumption.
- In the last seven years, we have reduced our uptake of high-quality water (from 41% to just 7%). By the end of 2015, 93% of water used at Cerrejón was low quality and just 7% was high quality.
- In 2015, Cerrejón used only 11% of the total amount of water from the Ranchería River licensed to us by Corpoguajira.
- Cerrejón regularly monitors water quality. Every year, we take more than 4,000 lab samples of water from different points in the river. Cerrejón's laboratory uses the US Standard Methods for the Examination of Water and Wastewater and it is accredited under the ISO NTC 17025:2005 standard.
- Cerrejón performs monthly measurements of marine water quality in Puerto Bolívar to verify the effectiveness of control measures at the port.

## 2. On water scarcity in La Guajira

- La Guajira is a semi-arid region with a significant portion of desert.
- Most of the water released by the El Cercado dam to the Ranchería River is used by huge farmlands before it even enters Cerrejón property. Due to this situation and the severe drought in recent months, Cerrejón is capturing water for the use of our employees, contractors, and families from wells in the river's alluvial aquifer, as authorized by Corpoguajira.
- Cerrejón is aware that access to water is difficult in this region. Consequently, we have organized programs to support communities by creating the Cerrejón Water Foundation in 2008 and implementing programs for water supply, strengthening water governance, and protecting watersheds. Cerrejón has invested over USD 1.3 million in these programs since 2014.
- To address the drought emergency in La Guajira since 2014, we have aided 353 communities (totalling 44,100 residents) by:
  - Delivering over 42 million litres of water to communities (24,000 inhabitants).
  - Repairing 68 windmill-driven water pumps that now provide 2.9 million litres of water a day for 57 communities.
  - Delivering 1,249 water tanks to 196 communities to store water.
  - Building 16 traditional water ponds (*jagüeyes*) and repairing another 13.
  - Installing 47 solar-powered pumps and manual pumps for withdrawing water.
- The resettled communities have had access to water since their relocation:
  - Each of the five communities undergoing resettlement has had access to water from deep wells or through distribution in water tankers during the drought period. The communities have received over 200 litres of water per person per day (double the minimum per person established by the WHO).
  - For the communities of Patilla, Chancleta, Roche, and Las Casitas, Cerrejón built an uptake facility that captures Ranchería River water and pipes it to the treatment plant. This water is destined for human consumption and for farming and livestock production projects on common properties. This engineering work is expected to be operational in August of 2016.
  - The resettled indigenous community of Tamaquito has three groundwater sources. By community request, we changed the well supplying water for human consumption as the residents prefer the quality of the water from the well built in 2014. The new pipeline has been built and tests are underway at the treatment plant.
  - Since the severe drought started, Cerrejón has supplied 33,000 litres of water in water tankers every week.
  - Regarding the accusations on the disappearance of bodies of water in La Guajira, we would like to state that Cerrejón diverted Tabaco Creek in 2002 and Aguas Blancas Creek in 1991. Both projects were approved by the environmental authorities and both are enjoying good conservation status, continuing to discharge water into the Ranchería River.

## 3. On the accusations of a lack of consultation with communities

- Cerrejón is respectful of Colombian law and of social standards related with prior, free, and informed consultation.
- It is true that no prior consultations were carried out in the 1970s or 1980s as there was no legislation or standards on the subject at that time. We have publicly expressed the difficulty and limitations of retroactive application. However, the negotiations carried out at the start of the operation were undertaken in good faith.

#### **4. The resettlements are always a last resort measure and are undertaken in accordance with the international standards of the IFC**

- Cerrejón considers resettlements to be measures of last resort that are necessary to prevent impacts on our neighbouring communities. We are also aware that resettlements generate significant impacts on people. Therefore, we undertake them following internationally recognized guidelines that define the use of participatory processes and the provision of compensation packages corresponding to the impacts and allowing them to re-establish their lives in the new villages.
- The report's recommendation on the payment of compensations to resettled communities is rigorously met. Unfortunately, the report does not mention that Cerrejón's compensation package is comprehensive and was agreed on with the families to achieve improved standards of living. The package includes:
  - Payment of 250% of the value of the properties and improvements.
  - Payment for impacts specific to each family.
  - A new dwelling with a public instrument and public services.
  - Seed capital to undertake a production project chosen by each family and with consulting provided.
  - Access to educational reinforcement programs.
  - A hectare of land on common property for farming and livestock production projects and extra land for families with large livestock activities.
  - Economic support for seniors for a period of ten years.
  - Community facilities: a sports field, a community centre, a church, and a healthcare centre.
  - Psychological-social support before, during, and after relocation.
  - Technical assistance for carrying out production projects.
  - Financial support for post-secondary studies (university or technical) for members of resettled families.
- The location of the new settlements, as well as the type of housing, urban layout, and building materials were agreed on with the communities. There have been no impositions to urbanize communities. We are aware that some houses have defects and we are working with the communities on a repair plan to resolve it together.
- On the mention of lack of education and employment, it must be noted that the compensation package includes educational strengthening for children and youths (resulting in improved school performance) and the payment of university or technical studies for family members at any institution in the country. Currently, 185 members of resettled families have benefited from the educational aids offered by the company, an average of more than one per family. In addition, 113 people are receiving Cerrejón assistance for their university or technical education.
- We share the report's statement that resettlement should offer every opportunity for relocated families to have better standards of living at the new site. Consequently, we perform regular measurements of their standard of living based on the UNDP Multidimensional Poverty Index. The results reveal that access to decent housing, public services they did not have previously, education, and healthcare are fundamental factors contributing to improvements in their standard of living.
- Concerning the comments about resettled families returning to their sites of origin, to date four Patilla families have made use of the properties they still have at the sites of origin out of the 93 that moved to the new settlement. Despite their argument of breaches by Cerrejón, in fact the company has delivered all the agreed-on indemnity and compensation.
- We understand that the sustainability of these families faces significant challenges both before and after their relocation. We have been working on improving support for production projects,

but clearly the success of income-generation projects is challenging everywhere and requires the willingness and active participation of the resettled families.

- Currently, 101 production projects are active in different stages of implementation and another 40 projects are inactive. The operational projects cover farming and livestock (43%), commerce and services (25%), and real estate investment (31%).
- Based on a request by representatives from the resettled communities, in 2015 we commissioned the local organization Guajira Competitiva to evaluate the production projects (with the participation of the resettled families). The study determined that the main causes of difficulties in making the projects successful were flaws in the business plans and a lack of skills and focus by families. The evaluator's recommendations were to promote associations, boost follow-up, partner with public and private entities, and provide psychosocial assistance for families.
- Support for collective projects is going forward with the communities of Las Casitas and Tamaquito II. Implementing these recommendations has been slow with Patilla, Chancleta, and Roche. However, we are beginning to define income-generation plans for their leaders to take into consideration.

## 5. **Tabaco**

- In 2008, Cerrejón's shareholders requested a Third-Party Review Panel be formed to evaluate the case of the community of Tabaco and other matters related to the company's social performance. The panel recommended Cerrejón adopt certain social standards and contribute to reunifying this village. Based on a decision by the Supreme Court, the municipality of Hatonuevo is in charge of rebuilding.
- In addition, the company and community members agreed on additional compensation to that paid in 2008.
- To contribute to reunifying Tabaco, Cerrejón committed to purchasing the land chosen by the community. Consequently, the La Cruz property was bought by Cerrejón and handed over to the municipality. The company is also committed to building a community centre at the new settlement, for which we have set aside funds to begin once the municipality starts the civil works.
- After community differences on where to locate the new site and delays on the part of local authorities, in the last year there has been significant progress in the rebuilding. The mayor of Hatonuevo has appointed a project manager, the Tabaco Pro-Relocation Committee has been re-activated, and a community baseline is being drawn up.

## 6. **The Bruno Creek diversion project is backed by solid studies guaranteeing its technical and social feasibility.**

- The La Puente Pit expansion project (requiring the diversion of 3.6 km of Bruno Creek 700 m further north) is the result of studies by Colombian and international experts. In contrast to diversion projects that channel waters, this innovative environmental engineering project aims to reproduce the creek's natural conditions (sinuosity, gradients, flora and fauna, etc.) in order to ensure continued functioning of all the ecosystem dynamics.
- Cerrejón has complied with all Colombian regulatory requirements since the project was first presented in 1998 and then when it was combined with the Integrated Environmental Management Plan in 2005.
- The necessary engineering works will be carried out near the creek's confluence with the Ranchería River. Therefore, communities living along and using the creek upstream will not be impacted.

- Urban populations in the municipality of Albania will not be affected either since this town's water mains do not tap the creek. However, if they wish to capture water from it in future, they would be able to do so.
- Since there will be an impact on the winter and summer volumes of water, the environmental authority has raised the need for offset plans focused on protecting the middle and upper creek basin, which will be implemented with Conservation International.
- Concerning prior consultation for this project, the Ministry of the Interior established that consultation was only necessary with the indigenous community of Campo Herrera downstream. The prior consultation was carried out rigorously with the community's participation, reaching agreements to be carried out as the project progresses.
- In June of 2016, the Upper Court of La Guajira ruled on a *tutela* action presented by the indigenous community of La Horqueta 2 (4.7 km from the intervention area) in which it ordered the permits issued by Corpoguajira be suspended until the Ministry of the Interior reviews whether other prior consultations are necessary. We have complied with the ruling and are awaiting the Ministry's decision. However, the ruling was also appealed by the company since all steps required by current regulations were met.
- We are aware of certain communities or groups that oppose this project, but we do not agree with the statement that there is massive opposition to it.
- In addition to the prior consultation, the project has been socialized with over 13,000 people, including local, regional, and national communities and authorities, NGOs, news media, and others.

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