

Response to the case study “Does Cerrejón always win? Between corporate impunity for human rights violations and the search for comprehensive reparation in times of transition”

2 October 2023

Glencore appreciates having the opportunity to review and comment on the case study on our Cerrejón coal mine in Colombia, drafted by Oxfam’s partners CENSAT and CINEP. We are disappointed that neither CENSAT nor CINEP tried to contact Cerrejón during their process to produce the case study.

Glencore is committed to respecting human rights in line with the United Nations (UN) Guiding Principles on Business and Human Rights (the Guiding Principles). We uphold the dignity, fundamental freedoms and human rights of our people, communities and others potentially affected by our activities. Our ambition is to uphold and promote respect for human rights within the Group and throughout our value chain to enable people’s basic rights and freedoms.

We are committed to implementing the Guiding Principles and uphold the UN Declaration of Human Rights and the International Labour Organization Declaration on Fundamental Principles and Rights at Work.

We support the UN Global Compact and follow the principles set out in Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises and OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.

We operate in accordance with the Voluntary Principles on Security and Human Rights (Voluntary Principles), International Finance Corporation’s Standard 5 and ICMM’s Position Statement on Indigenous Peoples and Mining.

We articulate these commitments in our Code of Conduct and Group policies, including our Group Human Rights Policy and Social Performance Policy.

La Guajira – background context

La Guajira, in the north-eastern part of the South American continent, is characterised with extreme climate conditions as a semi-desertic region that is water deficit. Over the past 40 years, its demographic structure has changed drastically with the population quadrupling in size from 200,000 to over 1,000,000 people. This rapid population growth has resulted in social and economic tensions, which are further exacerbated by a significant migration of people from Venezuela. According to official figures, in the past 10 years, La Guajira’s population grew by 33.5% moving from 818,740 to over one million people.

La Guajira has some of the worst poverty conditions in Colombia, with 47% of its population classified as experiencing poverty and a further 15% living in extreme poverty. This is due to historical under development, institutional weakness and instability, high corruption rates and illegal economic activities.

Cerrejón occupies just 0.7% of La Guajira's territory (just 160km² of 20,848km²). As a private enterprise, Cerrejón contributes to La Guajira’s socio-economic development through local employment and procurement, payments to government and its voluntary social initiatives, including:

- US\$2.9 billion paid to the government in taxes and royalties during 2017-2022;

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- Over 12,000 workers (both direct employees and contractors); and
- More than 60,000 people benefiting from Cerrejón's operation.

In 2022 alone, Cerrejón:

- Paid US\$917 million to government in taxes and royalties; US\$13 million paid to La Guajira department and the six municipalities in Cerrejón's area of influence;
- Spent US\$56 million in procurement and contracts in La Guajira;
- Invested US\$29 million in social initiatives (both voluntary and mandatory);
- Spent US\$87 million on environmental initiatives; and
- Distributed over 42 million litres of potable water to communities living around its operations.

However, these efforts need to be accompanied by an acknowledgement of state responsibility and for both the national and department governments to undertake actions that provide sustainable solutions for the region's citizens.

Cerrejón's approach to human rights

Cerrejón's approach for human rights is one of continuous improvement. In addition to implementing Glencore's Group policies, Cerrejón's site-specific human rights and social performance policies align with the Guiding Principles. These policies are updated to reflect the requirements of international standards as they are developed and include references to the Voluntary Principles on Security and Human Rights, the International Finance Corporation performance standards, and the International Council on Mining & Metals Mining Principles, among others.

Cerrejón has established an assurance model that includes third-party auditing for compliance with legal requirements and the international standards implemented.

Responding to the humanitarian crisis in La Guajira

The causes of the humanitarian crisis in La Guajira are complex. Insufficient efforts by local and national governments ¹have contributed to the situation.

In response to the situation, Cerrejón has increased its social investment, both mandatory and voluntary, to strengthen the impact on the traditionally dispersed communities. During 2022, Cerrejón invested around US\$28 million in mandatory and voluntary projects aimed at improving the quality of life in the region. The initiatives and investments it undertook in 2022 included:

- *Improving access to water:* Cerrejón delivered 42 million litres of water to 163 communities neighbouring its operations. It also undertook repairs to windmills for groundwater extraction, aided in designing and constructing water systems and constructed and maintained wells and deep well systems;
- *Capacity building:* Cerrejón invested US\$12.2 million to support over 17,000 people through scholarships for professional, technical, and technological career development and in primary and secondary education. Through this initiative, it supported sports, music, and cultural protection programmes that included equipping computer classrooms and providing school uniforms.
- *Increasing income generation:* Cerrejón supports and funds community livelihood projects, including a network of four community nurseries that provide plants for land rehabilitation, annually producing 400,000 plants and employing around 500 people, an oil palm cultivation project in Oreganal community that benefits 45 families, a corn silo initiative in the Chanqueta community, and a bakery plant for the women of the Roche community;

¹ As an example, see The Guardian [article](#), *Colombia's pipes to nowhere*

- *Improving community infrastructure*: Cerrejón invested US\$3.3 million in projects that include connecting public utilities' networks to resettlement communities, constructing 'enramadas' (community meeting sites), and building bridges to improve the passage of pedestrians; and
- *Improving access to health and public health institutions*: Cerrejón constructed and equipped the Provincial Indigenous reservation health centre, which is benefiting over 700 people, and remodelled the Hatonuevo Hospital, accessed by more than 17,672 individuals.

Addressing community displacement

Cerrejón rejects the accusation of being involved in community displacement. The development of a mine requires the purchase of land, either to carry out mining activities or for offset measures. At the beginning of its activity, over 40 years ago, Cerrejón purchased land based on existing legislations and in good faith as no standards or legislation on resettlements or consultation had been developed in the 1980s and 1990s. Cerrejón is committed to enhancing performance through implementing standards as they develop and, since 2006, has followed the International Finance Corporation's standards for land acquisition and resettlement management, the latter only carried out as a last resort and in consultation with the local communities. Today, it respects the right to Free, Prior and Informed Consent (FPIC).

Under the International Finance Corporation's standards, Cerrejón has participated in the resettlement processes of five communities: Roche, Patilla, Chancleta, Tamaquito II and Las Casitas. Today, 100% of the families in these communities have been resettled at the new site (a total of 188) and have received the agreed compensation. Cerrejón has continued to provide its support through additional voluntary activities aimed at strengthening their sustainability. In 2022, Cerrejón's programmes for the resettled communities totalled more than US\$5.2 million. These included:

- Individual and collective livelihood projects at Patilla, such as agricultural, livestock, bakery, and nurseries;
- Connecting the resettled communities to public utilities networks (gas, water and roads);
- Strengthening the education support programme, which provides 100% of tuition for technical, undergraduate and graduate studies with a monthly budget for living expenses;
- A programme for senior citizens, through which Cerrejón provides support with a lifetime monthly financial contribution; and
- An agreement to provide 30 jobs at Cerrejón to members of the resettled communities by 2024.

During 1997 and 1999, Cerrejón reached agreements for the purchase of land with 96% of the families of the Tabaco community. It did not reach an agreement with three families, which led to an expropriation process in 2001, undertaken in accordance with Colombian law and international standards. In 2008, following an agreement between the Tabaco Relocation Board and Cerrejón, compensation and indemnities were provided to all of the families.

In 2002, the Colombian Supreme Court of Justice ruled that the Hatonuevo municipality was responsible for rebuilding the town of Tabaco. This ruling was confirmed by a ruling from the Colombian Constitutional Court in 2019. To support the process, Cerrejón purchased the plot of land selected by the community for the town and donated it to the municipality. In addition, Cerrejón agreed to build a community centre on the new plot. The community centre was progressed with detailed designs, but in 2018, the community members halted its construction stating that it should only be built once the houses were completed by the municipality.

To date, Cerrejón has supported work carried out by the Hatonuevo municipality and members of the Coordinated Agency of the Tabaco Community to define the beneficiaries of the housing in the new town.

Water quantity and quality and heavy metals

Cerrejón is aware of the challenges in La Guajira due to the regional water scarcity. It is a responsible user of this resource and complies with relevant environmental requirements.

Cerrejón has made significant efforts to reduce the use of surface and underground water from the Rancheria River basin and does not use any water from its tributaries. As a result of these efforts, today Cerrejón is one of the lowest consumers of water from the Ranchería River. Based on the water concession granted by Corpoguajira (the regional environmental authority) for various uses, 83% of the water is used for agriculture and livestock and 12% for services or domestic use, while Cerrejón uses only 1.3% of the water from the river. The water from the river taken by Cerrejón is used for human consumption on the site and to distribute to local communities.

Cerrejón rejects the allegations relating to its activities negatively impacting water volumes. The flow of the Rancheria River is measured at three stations (before, during and after the mining operations). The data shows that the flow rate increases by up to 39% as it passes through the mining area due to protection of the water basins during the transit through the mine and of basins of the tributaries that are protected from deforestation.

Monthly samples taken by independent laboratories show that Cerrejón complies with all water quality parameters imposed by Colombian legislation. Monthly measurements of over 60 heavy metals parameters – including iminium, arsenic, barium, beryllium, boron, cadmium, calcium, cobalt, copper, iron, lithium, manganese, magnesium, mercury, molybdenum, nickel, lead, selenium, sodium, zinc, chrome, and cyanide – show that the levels are significantly below regulatory limits. In addition, testing shows that these heavy metals are present upstream before the Ranchería River enters the mine. Upstream of Cerrejón are rice and palm plantations and a tourist site, as well as discharge points for wastewater from the treatment systems of the municipalities of Hatonuevo, Fonseca and Barrancas. We are aware that studies that support claims of water contamination use indicative methods that are not comparable to standard methodologies and are not accredited by the Colombian Institute of Hydrology, Meteorology and Environmental Studies (IDEAM).

The historical concentrations registered at the RIO 111 station (10°59'4.67"N 72°45'50.87"W) show that the Ranchería River suffers of water pollution prior to entering the mine complex:

- DBO: 1.78 mg/L
- DQO: 20.64 mg/L
- C. Fecal: 30,832 NMP/100 mL
- C. Total: 62,718 NMP/100 mL

The case study references 11 sanctioning processes, all of which are currently under investigation and awaiting a ruling on whether there has been non-compliance. Cerrejón continues to present evidence showing it has contaminated or breached permit obligations.

Bruno Creek diversion

The partial modification of the Bruno Creek riverbed has formed part of the Environmental Management Plan since 2005, and its detailed engineering was approved by the National Authority of Environmental Licenses (ANLA) in 2014. The work, which began in 2016 and finished in 2017 consisted in modifying 3.6 kilometres of the Bruno Creek riverbed, shifting it 700 metres north of its original location. The work on Bruno Creek utilised knowledge on environmental engineering gained through extensive international experience and used rigorous studies developed by national and international experts.

Ahead of and during the diversion, Cerrejón shared information on the proposed engineering works, including the technological, social and environmental impacts and mitigation measures, with various stakeholders — employees, authorities, communities, NGOs, and media. Cerrejón conducted a prior consultation with Campo Herrera, the downstream community impacted as identified by the Ministry of Interior, and later with three additional upstream communities as defined by judicial rulings.

Independent studies by IDEAM show that the Bruno Creek diversion has not affected the water quality or quantity. There is also no impact on the groundwater or surface water of the stream basin. Flora and fauna monitoring has demonstrated the presence of 380 aquatic species, 46 fish species, 66 ant species, 42 dung beetles, 125 butterfly's species, 19 amphibious species, 46 reptile's species, 218 bird species and 51 mammal's species in the area.

Cerrejón respects the court rulings related to the Bruno Creek. From 2019 until 2022, members of the Interinstitutional Roundtable met and produced a final report that established that the project was viable. This report identified additional environmental and social recommendations that will benefit communities, and which should be incorporated into the Environmental Management Plan. The Constitutional Court did not order the diversion project to end nor to return the flow of water from the new channel to the old channel. This project was completed in 2017 (prior to the ruling being issued). As such, Cerrejón has complied with the stipulations of SU-698 of 2017.

Supporting human rights defenders and social leaders

Cerrejón rejects any accusation of being directly or indirectly involved in threats or attacks to social leaders or other human rights defenders. Cerrejón has a zero-tolerance policy towards threats and attacks to human rights defenders in La Guajira and has publicly condemned these acts. Cerrejón has a process to publicly reject these situations and to request authorities to take immediate action to protect the life and dignity of these leaders as well as to investigate the incidents so that the perpetrators can be found and brought to justice.

Cerrejón partnered with the Colombian NGO CREER² to enhance trust in La Guajira with key actors and to strengthen local capacities to prevent and investigate these cases. Additionally, Cerrejón works along with national governmental institutions such as the Office of the Presidential Advisor on Human Rights, the Ministry of Interior, the Ministry of Mines and the National Mining Agency, that addressed the common concern over the increased number of cases of threats, attacks or assassinations of social leaders in the country.

Despite differences with some community leaders, Cerrejón promotes a culture of participation and openness to dialogue, and it does not accept any type of intimidation to any community member. The community Any concerns can be presented by to Cerrejón's ethical hotline or to the Cerrejón Complaints Office.

Swiss OECD National Contact Point (NCP) Process

The Swiss NCP promotes the observance of the OECD Guidelines for Multinational Enterprise on Responsible Business Conduct and discusses with the parties concerned all relevant issues so as to contribute to the resolution of any problems which might arise.

In response to the complaint raised against Cerrejón to the OECD, its three shareholders (Anglo American, BHP and Glencore) engaged in the development of terms of reference by the Swiss NCP and indicated their willingness to participate in mediation subject to the terms of reference being

² Centro Regional de Empresas y Emprendimientos RESPONSABLES ([CREER](#))

acceptable to all parties. The complainants withdrew at short notice from the first mediation discussion. In August 2022, the complainants withdrew completely from the process prior.

In October 2022, the Swiss NCP issued a final statement, which is available [here](#). It did not conduct any investigation into the allegations raised by the complainants. Instead, it recommended that Glencore should maintain a dialogue with stakeholders and ensure that its due diligence policies and measures foster responsible business conduct in Cerrejón. Glencore accepted these recommendations, which are in line with established business practices.

Planning for closure

Cerrejón is committed to a responsible delivery of mining assets and infrastructure, along with operational areas once the mining contracts end in February 2034. From the start of operations, it prepared and continues to maintain a closure and reversion plan that includes progressive closure measures, associated with the responsible management of environmental and social impacts. These measures include:

- The rehabilitation of areas impacted by mining;
- The declaration of reserve areas for the conservation of biodiversity; and
- The development of social initiatives that contribute to developing resilient communities through income generation initiatives, strengthening capacities, improving local community infrastructure for access to water and health.

Cerrejón is committed to engaging with communities, its workforce, local authorities, and other impacted stakeholders on the steps needed for this process. However, the final decisions on land use, use of infrastructure, etc., will be made by the Colombian State.

Cerrejón understands that a Just Transition requires efforts and commitments from multiple actors and is participating and engaging in scenarios with a wide range of stakeholders for the design and execution of a post mining vision that supports an economically diversified future for the region.