



November 7

Glencore persists in its behaviour of denial and evasion of accountability

Response to the company's letter dated 2 October 2023

(...) In rulings SU-698 of 2017, T-704 of 2016, T-256 of 2015 and T-528 of 1992, this Body¹ analysed cases that displayed several similarities to that of the Provincial community, in which we examined the severe effects caused by open-pit coal mining and the danger it poses to life around it. (...) Thus, the company failed to comply with the international due diligence standard required by the Guiding Principles on Business and Human Rights, also known as the 'Ruggie Principles', to avoid violating the human rights of populations at risk of being affected.

Colombian Constitutional Court, ruling T-614 of 2019²

Over two decades, extensive evidence of human rights violations associated with open-pit coal mining operations in La Guajira has been collected. United Nations³ and Inter-American system rapporteurs⁴ have noted the constant complaints and judicial rulings by the Colombian High Courts, and different information sources, technical studies and journalistic investigations, several of which are cited in the report, document continuous problems, human rights violations and criticism associated with the company Carbones del Cerrejón Limited.

Likewise, the findings of organizations Centro de Investigación y Educación Popular/Programa Por La Paz (Cinep/PPP) and Asociación Centro Nacional Salud, Ambiente y Trabajo - Censat Agua Viva are based on many years of work accompanying, investigating and documenting the testimonies, memory and experiences of social and community leaders from the Wayuu indigenous and Afro-descendent communities regarding abuses resulting from mining operations.

Faced with all this evidence, the Carbones del Cerrejón Limited company, together with its three transnational corporation owners up until 2022, following which Glencore became its sole proprietor,

¹ The Constitutional Court is referring to itself.

² [Corte Constitucional de Colombia \(2019\), ruling T-614/19.](#)

³ See: [OHCHR, 'UN expert calls for a halt to mining at controversial Colombia site'](#) and <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial>

⁴ IACHR. (November 30, 2022). [Visit to Colombia: REDESCA observes serious challenges for the guarantee of ESCER in La Guajira.](#) Press release.



has never once changed its position of completely denying and disavowing any kind of responsibility for the impact and effects associated with operating Latin America's largest open-pit coal mine.⁵

We are very familiar with the format of the response the company develops every time a report is produced that gathers complaints regarding its operations, in order to discredit these complaints. All these responses cite the guidelines, principles and declarations related to business and human rights that the company claims to be committed to and comply with. They include information on water quality, the construction of infrastructure and compliance with court rulings **not verified or supported by any independent data or research**. The company's systematic disregard of repeated complaints reflects a deliberate blindness and a lack of genuine interest in addressing grievances and monitoring the continued effectiveness of measures in place to ensure compliance with its due diligence and corporate responsibility duties and obligations.⁶

This behaviour of continued denial represents a re-victimization that prohibits holistic and effective remedy based on international human rights standards, which include guarantees of non-repetition, as well as the right to truth. In this regard, complaints and reports of violations linked to mining operations have not stopped; on the contrary, they have been increasing in number and severity over the years. The denial of corporate responsibility can only be interpreted as an attempt by the company to discredit repeated complaints by communities and human rights organizations and to divert attention from continued impunity regarding its activities.

It is also worth mentioning the remarks of Aura Robles, the Wayuu leader defending Arroyo Bruno. In response to the company's repeated denials, she notes: *"their answers shouldn't surprise us anymore, because their actions are even worse."*

It is concerning that there is a common thread of lack of recognition of and adequate response to the negative consequences and effects of Glencore's mining investments not only in Colombia but also in all other countries in the Global South, as demonstrated by the multiple complaints received during Glencore's AGM with shareholders this year.⁷ As part of a call to establish a *sincere dialogue*, South African Glen Mpufane, the director of IndustriALL mining union, puts it as follows:

*Glencore paints a beautiful self-portrait, speaking of how it sources responsibly, operates ethically and contributes to local development, of how they support global decarbonization engaging their stakeholders and creating value for their investors. This is pure spin and greenwashing, because today you will experience something completely different. What Glencore says and does is real fact versus fiction.*⁸

Disregard for judicial decisions

⁵ Business & Human Rights Resource Centre. (March 23, 2023). [Cerrejón Coal in Colombia: Access to justice and reparation become a chimera](#).

⁶ See some responses here: <https://www.abcolombia.org.uk/cerrejon-lack-of-compliance-with-court-rulings/>

⁷ See: [Glencore shareholders push back against climate strategy](#), <https://londonminingnetwork.org/2023/06/the-worst-of-the-worst-the-2023-glencore-agm/>, https://twitter.com/CNV_Internat/status/1663830990257627137?s=20,

⁸ IndustriALL. (May 25, 2023). [Unions demand sincere dialogue with Glencore ahead of AGM](#).



Through its wholesale denial of the human rights violations and other types of violations committed to pave the way for the enlargement of its open-pit coal mine, Glencore is disregarding the substance of Colombian court rulings confirming the violation and threat of violation of the human rights of different ethnic communities situated around the mining complex. Disregarding violations for which the company Carbones del Cerrejón Limited has been found responsible implies disrespecting and disregarding the binding nature of the decisions of the judicial authorities, which are underpinned by the principles of legal certainty and *res judicata*.⁹ Some of these decisions can be consulted, to verify that they were reached through due process, following extensive debates and argumentation that included comparing and evaluating the evidence brought by the company and government institutions, as well as technical reports requested by the courts. This is not to mention that the rulings represent a tiny fraction of the human rights violations that have occurred, given the huge asymmetries, power imbalances and barriers to accessing justice that the Wayuu and Afro-descendent communities in La Guajira face.

Disregard for duties to provide special protection, care and enhanced due diligence

Companies should pay special attention to and enhance or heighten their due diligence obligations when operating in armed conflict situations,¹⁰ where there are populations that are marginalized, discriminated against or that experience greater or particular kinds of vulnerability. In this regard, the context Glencore describes, of striking inequality, poverty, corruption, institutional fragility and weaknesses in guaranteeing the rights of communities in the region, is illustrative of the particular conditions in which the mining complex has been operating, while displaying a marked failure to protect populations historically subjected to a process of cultural extermination, a fact recognized by the Constitutional Court in the case of the Wayuu indigenous people in Auto 004 of 2009.

Having made these statements, we proceed to rebut specific aspects of Glencore's response to the research report just produced by Censat Agua Viva and Cinep/PPP.

Glencore's denial of any involvement in community displacement

The displacement suffered by Afro-descendent and indigenous communities in La Guajira as a result of the expansion of the Carbones del Cerrejón mining boundary has been documented not only through the memories of victim communities and research by organizations but also, and in particular in the case of the Afro-descendent community of Tabaco, by the Colombian Constitutional Court:

*4.4. The effects of this type of resettlement are so serious, that when the decision to resettle a community is not adequately justified, it is considered **forced displacement**.*

(...) 4.5. The Court¹¹ should observe that in the process of expanding the Cerrejón mine and in the acts supporting it there was no demonstration of 'the best or overriding interest of the

⁹ A number of these court rulings are brought together in the following summary: <https://www.colectivodeabogados.org/wp-content/uploads/2022/11/Documento-Cuando-la-impunidad-se-vuelve-paisaje-2.pdf>

¹⁰ UNDP. (2022). [Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts](#); UN Guiding Principles on Business and Human Rights, pages 9 & 23.

¹¹ The Court is referring to itself.

public' permitting the disappearance of a village to make way for the expansion of the mining project.

(...) 4.6. **This case is an example of what is referred to within specialist doctrine as development-induced displacement.**^[46] Such displacement, even if not caused by the use of physical violence or other illegal measures, has similar effects on the population to those resulting from forced displacement. In the 1990s, empirical research on the issue around the world indicated that in processes of development-induced displacement, people face, inter alia, the following associated risks: landlessness, joblessness, homelessness, marginalization, food insecurity, loss of access to community resources, increase in disease and community disarticulation.

(...) 4.7. In light of the characteristics of this case, the issue of the resettlement of the Tabaco community cannot be treated exclusively as one of compensation for the expropriation that has taken place. **When a community is displaced by a company, the law provides for extensive duties of reparation^[48] to that community, which should be diligently complied with by the bidding company and the State.**

Colombian Constitutional Court, ruling T-329 of 2017¹²

It is untrue that the 2019 Constitutional Court judgement regarding Tabaco endorses or supports the evasion of accountability by the company for the violation of community rights. On the contrary, the judgement rules in favour of the complainant communities, warning that:

*“It is not justifiable, in any case, that there is currently no significant, genuine, timely and effective protection to remedy the state of disintegration experienced by the Afro-descendent community. Because, as recorded in the ‘tutela’,¹³ the state of neglect the community is experiencing, its disintegration and **the impossibility of its resettlement**, represent a current and ongoing violation of its fundamental rights. Despite actions taken by the company, the current conditions of the Tabaco community, and the persistent absence of genuine and **adequate compensatory measures that extend to all its inhabitants, cannot be justified either by the company or by the Hatonuevo municipality.**”¹⁴*

Colombian Constitutional Court, ruling T-329 of 2017

The Court ordered that adequate and necessary measures be taken to facilitate the *resettlement* and *rebuilding* of the Tabaco community within a timeframe of five months from the date of the notification of the judgement. That notification was given in 2019 and, as of today, Tabaco has not been rebuilt. That the village was completely destroyed is indisputable. More than 20 years since, the

¹² [Corte Constitucional de Colombia \(2017\), ruling T-329 of 2017.](#)

¹³ Action to enforce constitutional rights.

¹⁴ [Corte Constitucional de Colombia \(2017\), ruling T-329 of 2017.](#)



community has disintegrated, its eldest inhabitants have died and despite two court rulings¹⁵ and agreements signed with the company in 2008, its reconstruction is now impossible.

The Court is of the opinion that the case of the Tabaco community **is an example of development-induced displacement**. According to its ruling, in the process of mine expansion by Carbones del Cerrejón and in the acts supporting it there was no demonstration of ‘the best or overriding interest of the public’ that might have permitted the disappearance of a village to make way for the expansion of the mining project.

Impacts on water sources and quality and quantity of available water

It was determined that the surface water and groundwater sources of the complainant community were being affected by Cerrejón’s operations, as a result of the introduction of polluting sediments and the disappearance and altering of watercourses and aquifers. (...)

*(...) Breaches of discharge regulations and the presence of oily wastewater from the company were identified, as was coal-like matter in the Ranchería river. Furthermore, there was evidence of discharge being released **without the appropriate permit**.*

Colombian Constitutional Court, ruling T-614 of 2019

In its response, Carbones del Cerrejón Limited claims to be aware of the challenges faced by the department of La Guajira due to water scarcity and highlights the efforts being made within its operations to reduce the use of surface water and groundwater from the Ranchería river basin. However, the company disavows the relationship between its mining operations and the worsening water crisis in the region, denies negative impacts on water quality and quantity, and disregards any perpetual impacts on the hydro-social territory of the Ranchería river basin resulting from more than 40 years of its open-pit mining operations.

With regard to impacts on water quantity, the report shared documents how, during their own monitoring of the area, the communities of La Guajira verified the disappearance or reduction in size of more than seventeen (17) streams that are vital to water access, including: La Puente, Cerrejoncito, La Chercha, Aguas Blancas, Sequión, Luis, Trampa, El Mamón, El Hatico, Manantial, La Ceiba, Medianía, Macanal, Gayuso, Morocónlo, Ciénaga, Tabaco, Aguas Blancas, Bruno, and Pupurema. The report also includes photos from the monitoring of streams affected by Carbones del Cerrejón that show how several of these bodies of water have almost or completely disappeared, as well as a map with the location of the streams and the stopping points along the monitoring route.¹⁶

¹⁵ Ruling pursuant to ‘tutela’ of the Civil Chamber (Sala Civil) of the Supreme Court of Justice of May 2002 and Colombian Constitutional Court ruling T-329 of 2017.

¹⁶ See figure 10 in the report, which shows drainage and floodplains destroyed during the mine’s expansion.



Similarly, and in view of statements by Cerrejón, it is worth recalling that in its ruling T-256 of 2015, the Constitutional Court issued a warning to the environmental authorities to “control and monitor surface water and groundwater reserves, in light of operations being carried out by the defendant company (Carbones del Cerrejón), since the massive pumping of water is leading to the depletion of aquifers that currently supply the population with water” (...) given that “it would be paradoxical to allow the defendant company to continue extracting significant quantities of water at a rate greater than that of the natural recharge of the aquifers or, worse still, allow rivers and streams to be diverted in a clear affront to the protection of water resources, the environment and human life in that area of the country.”¹⁷

What is more, in response to a right of petition request, the departmental environmental authority Corpoguajira identified at least ten (10) bodies of water that have been impacted by Carbones del Cerrejón Limited’s mining activity. According to Corpoguajira (2023):

“These are some of the bodies of water that may be affected in some way by the operations of the Cerrejón mining company:

- Río Ranchería (Ranchería river)
- Arroyo Cerrejón (Cerrejón stream)
- Río Palomino (Palomino river)
- Arroyo Tabaco (Tabaco stream)
- Arroyo Bruno (Bruno stream)
- Acuífero Aluvial del río Ranchería (Ranchería river alluvial aquifer)
- Acuífero Patilla (Patilla aquifer)
- Acuífero del arroyo Paladines (Paladines stream aquifer)
- Acuífero de la Formación Cerrejón (Cerrejón Formation aquifer)
- Acuífero aluvial del Río Palomino (Palomino river alluvial aquifer).”¹⁸

With regard to impacts on water quality, it is important to note that Corpoguajira’s response to the right of petition request (2023)—in which information was requested on complaints received about and sanctions imposed on the mining project—mentions 11 sanctions proceedings against Carbones del Cerrejón in the last five years, which are currently at the stage of formulating sanctions to be imposed. The majority of these sanctions proceedings relate to non-compliance with discharge permits (8) and the remainder to environmental complaints and non-compliance with different obligations. Given that most of the sanctions proceedings result from non-compliance with discharge permits, it can be inferred that the company is mismanaging its discharge, as well as the information it supplies to the environmental authorities, which could imply impacts on water quality and an imminent risk to the communities that use it.

¹⁷[Corte Constitucional de Colombia \(2015\), ruling T-256/15.](#)

¹⁸ Response from the Corporación Autónoma de La Guajira (Corpoguajira) to the right of petition submitted by Censat no. 202309113010036952 of 11 August 2023.



It is also important consider that, in its ruling SU-698 of 2017, the Constitutional Court emphasizes that coal mining activity in particular uses vast quantities of water in its extractive processes and has been shown to negatively affect the state of the water footprint through water contamination as well as impact water supply for communities that use aquifers adjacent to the mine. Considering these points from the ruling, it is essential that exercises to sample and monitor the physical-chemical properties of the water go beyond the information provided by the environmental authority, as well as by the company itself, given that, as stated by the Contraloría General de la República (Comptroller General of the Republic) in his 2020¹⁹ and 2022²⁰ audit reports, there is evidence of serious moral conflicts associated with decisions made by the authorities using information supplied solely by the company.

As such, independent studies and community monitoring of water bodies, despite coming under criticism from Carbones del Cerrejón Limited for ‘lacking technical rigour’, a fact which simply serves to highlight power imbalances in terms of the ability to obtain expensive equipment, represent valid efforts to assess the quality and availability of the water that has historically sustained all forms of life in La Guajira; and even if there are some uncertainties pertaining to the results of independent studies, the presence of concentrations of contaminating agents should not de facto be discounted, given the evidence that also exists in terms of health impacts²¹ in communities that are in constant contact with the water bodies in which Carbones del Cerrejón Limited has intervened.

Finally, it is important to note that the 2014 Plan de Manejo Ambiental Integral (Integrated Environmental Management Plan–PMAI) considers that in the course of its mining activities and as part of the mine expansion known as the P40 project, the impact on water quality and quantity is related to impacts on natural flows of surface water bodies resulting from alteration or loss of afferent area (by intervening in associated alluvial aquifers and using this resource for mining activities), as well as to impacts on available volumes of aquifers (as a result of direct exploitation during pit excavations) and to the generation and discharge of runoff water.²² However, Carbones del Cerrejón does not consider these impacts noteworthy insofar as these points are already covered in the 2014 PMAI approved by the environmental authorities and as such the company does not regard mine expansion activities as an ‘additional impact’ in relation to the project.

The case of Arroyo Bruno

¹⁹ Contraloría General de La República. (June, 2020). *Informe Auditoría de Cumplimiento Aspectos Ambientales de La Sentencia SU-698/17 en relación con el proyecto de desvío del cauce del Arroyo Bruno* (Audit report on compliance with environmental aspects of ruling SU 698/17 in relation to the project to divert the Arroyo Bruno watercourse). CGR-CDMA No. 015.

²⁰ Contraloría General de La República. (December, 2022). *Informe Auditoría de Cumplimiento a las órdenes impartidas en las sentencias Arroyo bruno SU-698/17 y Cerrejón T-614/19* (Audit report on compliance with orders issued in rulings Arroyo Bruno SU-698/17 and Cerrejón T-614/19). CGR-CDMA No. 047.

²¹ Corte Constitucional de Colombia, rulings T-329 of 2017, T-614 of 2017 and SU-698 of 2017.

²² Cerrejón. (2014). *Plan de Manejo Ambiental Integral-Cerrejón; Institutional Environment and Entrepreneurial Cognitions: A Comparative Business Systems Perspective. Entrepreneurship Theory and Practice*, 564, 1–73.



Consulting Constitutional Court ruling SU-698 of 2017 can debunk Glencore’s assertions regarding the rigour of studies that supported the diversion of and plans to exploit Arroyo Bruno. The Court found that significant environmental and social impacts were overlooked, to the detriment of the rights to water, health and food security of indigenous communities:

*“On the other hand, from a technical perspective, the Court finds that there are a number of uncertainties that make it impossible to establish whether the project to divert Arroyo Bruno offers guarantees of protecting ecosystem services provided by this body of water. These uncertainties have arisen because the analysis carried out by the company itself and by the environmental authorities focused on determining effects on the water supply based on information **the reliability and relevance of which was questioned**, and underestimated the importance of different variables that are relevant in the context of the Política Nacional para la Gestión Integral de la Biodiversidad y de sus Servicios Ecosistémicos (National Policy for the Integrated Management of Biodiversity and its Ecosystem Services) and that determine the potential impact of the work proposed and partially implemented by Carbones del Cerrejón.*

(...) 6.4. The aforementioned uncertainties constitute a threat to the rights of water, food security and health of the communities that depend on the ecosystem services of Arroyo Bruno.”

Colombian Constitutional Court, ruling SU-698 of 2017

It is untrue that the company has complied with the orders of this ruling. Since 2020, judicial **proceedings for non-compliance with these orders have been underway**, and the case is now being heard by the Constitutional Court.

The Comptroller General of the Republic has submitted two audit reports in which it corroborates the non-compliance both of the public bodies involved and of the company with the Arroyo Bruno court ruling.²³ In these reports, the Comptroller pointed to asymmetries and a bias in public information giving undue favour to the mining company, and recognized the non-compliance with Constitutional Court orders and the ongoing violation of rights to water, health and food security of the Wayuu communities of La Gran Parada, Paradero and La Horqueta.

The company only refers to water withdrawal and disregards any perpetual and irreversible impacts being caused, such as the effects on the aquifer and on the capacity for groundwater storage as a result of mining in an area like La Guajira, which is characterized by water scarcity and is highly vulnerable to climate change.

The report Glencore referred to as once again endorsing its diversion and exploitation of Arroyo Bruno is currently being reviewed by the Constitutional Court. Concerning the project’s impacts on

²³ Contraloría General de la República. (May 13, 2022). [*Contraloría notifica a la Corte Constitucional incumplimiento de dos órdenes sobre protección ambiental del arroyo Bruno, en La Guajira*](#) (Comptroller notifies Constitutional Court of non-compliance with two environmental protection orders relating to Arroyo Bruno in La Guajira). Press release.



aquifers, the reports of the Colombian Defensoría (Ombudsman) and Procuraduría (Attorney General)²⁴ emphasized the following:

Defensoría:

“Although the study concludes that there is no impact on the groundwater connected with the lower part of the stream, it states that ‘There are no users that could be affected by the alteration of the watercourse’, which fails to shed light on the original assertion. There is no impact on water supply resulting from clearing aquifers and redirecting the watercourse because there are no users in that part of the basin, and even though technical aspects are presented that support this conclusion, it is not sufficiently clear if the two actions outlined (clearing aquifers and redirecting the watercourse) actually impact water supply in hydrogeological terms regardless of possible use.”²⁵

Procuraduría:

*“According to this Oversight Body, this uncertainty is not adequately addressed, because the impacts of the diversion works on the aquifer are assessed, but not those generated by the expansion of the mining pit over the original bed of Arroyo Bruno, since the development of mining activities involves the removal of soil and underlying geological formations, **which implies the loss of associated aquifer**, which, as demonstrated in some extracts from the document, has a direct relationship with surface water, particularly during the dry season. Lastly, it must be borne in mind that in an area with an obvious water deficit for most of the year and that is experiencing a trend of decreasing precipitation which may lead to reduced recharge and a consequent depletion of the aquifer, the possibility of supplying water to communities at sites other than the catchments currently being used is denied, based on the argument that by using an aquifer that is not affected by mining activities, communities would not experience supply problems in the future, thus ignoring the precautionary principle.”²⁶*

All the monitoring information presented by the company on the stream is in fact related to the artificial canal into which the water from the stream’s natural watercourse has been diverted.

The consultation carried out with different communities was not carried out **PRIOR** to the works, as prescribed by International Labour Organization Convention 169 on Indigenous and Tribal Peoples, and was only carried out by the company following a court order to guarantee the right to consultation to all communities affected by the diversion and not just the one community the company had identified (Campo Herrera).

²⁴ Often translated as Attorney General, the Procuraduría is the highest organ within Colombia’s Prosecution Authority, and is responsible for representing and defending citizens vis-à-vis the State.

²⁵ *Comentarios respecto al análisis de las incertidumbres del estudio técnico presentado por la MIT* (Comments with regard to the analysis of uncertainties in the technical study submitted by MIT). Defensoría del Pueblo (Public Ombudsman) document dated 8 April 2022 addressed to the secretariat of the Mesa Interinstitucional (inter-agency round table).

²⁶ *Observaciones informe consolidado incertidumbres arroyo Bruno* (Comments on the consolidated report on Arroyo Bruno uncertainties). Report dated 2 November 2021 and presented to the Constitutional Court by the Procuraduría Delegada para Asuntos Ambientales y Agrarios (Attorney General delegate for environmental and agricultural issues).



Despite extensive evidence of non-compliance with ruling SU 698/2017, Glencore submitted a request to the International Centre for the Settlement of Investment Disputes (ICSID) challenging the court ruling.²⁷ The UN Working Group on Business and Human Rights has emphasized that businesses should not trigger actions that undermine the right to effective remedy or contribute or be directly linked to such actions, that is, they cannot adopt any measure that eliminates or reduces the ability of an individual to enjoy that right.²⁸

OECD

We reaffirm the fact that the Swiss OECD National Contact Point (NCP) handled the complaint poorly by not focussing on the role's main task, that is, to promote the observance and implementation of the OECD guidelines for multinational enterprises. The Swiss contact point, as the company acknowledges, did not carry out an assessment of Glencore's non-compliance with the guidelines, as it was his duty to do.²⁹

The complainants' withdrew from the mediation process in response to the lack of guarantees provided during the process, including the lack of access to information for complainants and the absence of participation guarantees for affected Afro-descendent and Wayuu communities. However, according to the text of the OECD guidelines, mediation is just one mechanism in a series of additional actions that the Swiss NCP could have used to support further examination of the complaint and lend his good offices, through measures such as seeking expert advice and information, from NGOs, consulting with the Investment Committee, actions which were not employed despite having been proposed by the complainants.

The final statement issued by the Swiss NCP contained hollow and empty recommendations given the level of evidence, documentation and gravity of the problems detailed in the complaint. Calling on Glencore to observe due diligence is of no practical consequence when, on the one hand, the company should do so as a matter of principle, and, on the other, it is precisely the company's systematic breach of these duties and its subsequent denial that prompted the Swiss NCP to be approached.

With regard to the recommendation to establish a dialogue with complainant stakeholders, the company has not taken any proactive initiative to observe this recommendation following the issuing of the statement. The way the complaint was handled by the Swiss contact point illustrates what can happen in cases such as these, as the UN Guiding Principles warn: "*Poorly designed or implemented*

²⁷ More information can be found at the following sources: <https://www.opendemocracy.net/es/glencore-col-carbon-demandas-arbitraje/>; https://www.tni.org/files/2023-05/ISDS_Colombia_MAY23.pdf

²⁸ For more information, see the Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, A/HRC/14/31, 21 March 2011.

²⁹ See <https://aida-americas.org/en/press/swiss-oecd-point-of-contact-calls-on-glencore-comply-with-due-diligence-on-coal-mine-in-colombia>



*grievance mechanisms can risk compounding a sense of grievance amongst affected stakeholders by heightening their sense of disempowerment and disrespect by the process.*³⁰

Actions by the Swiss NCP disregard the majority of recommendations to improve accountability and access to remedy for victims of human rights violations resulting from business activities through non-judicial State mechanisms included in United Nations report A/HRC/38/207.

"Cerrejón built and equipped the health centre in the Provincial reservation, from which more than 700 people are benefiting."

It is untrue that the construction of the health centre is already complete and that it is benefiting more than 700 people. As of today, the health centre is still under construction. It is worth clarifying that, in the agreement signed regarding this health centre, the company limits its responsibility exclusively to its construction, leaving the indigenous community and its authorities **with a disproportionate burden** of responsibility in terms of ensuring the centre's running, maintenance, staffing and supply of inputs, as well as of obtaining operating permits from the state health authorities. As such, all the company took responsibility for was the construction of a building.

The construction of the health centre is part of a sham agreement the company reached with some traditional authorities and a Provincial reservation *cabildo* (indigenous local governance structure). This situation has been the subject of complaints made since 2020 by the women claimants in ruling T-614 of 2019 and community members,³¹ since these measures had the covert aim of silencing accusations made by the group of indigenous women leaders of the reservation, who testified to the United Nations rapporteurs, as well as to the Constitutional Court in case T-614 of 2019, regarding the serious health problems experienced in particular by the children of the community, which is situated less than one kilometre from the mine's pits and dumps.

These women did not sign the agreements with the company, and they continue to denounce the fact that they do not resolve the issue of the impacts on and harm to their children's health caused by mining operations, demanding effective measures to protect them from and end the risks of and exposure to serious harm to their lives and health.

In ruling T-614 of 2019, the Constitutional Court noted that the veracity of complaints regarding health risks and effects had been confirmed at different times by the public authorities, organizations and academic institutions.³² In this regard, the Court urges the company to take note of the damages

³⁰ For more information, see the Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, A/HRC/14/31, 21 March 2011.

<https://globalnaps.org/ungp/guiding-principle-31/>

³¹Resguardo indígena de Provincial, la Guajira. (November 10, 2020). [*CARBONES DEL CERREJÓN MIENTE Y ACTÚA DE MANERA FRAUDULENTO*](#) (Carbones del Cerrejón lies and acts fraudulently); Business & Human Rights Centre. (November 11, 2020). [*Carbones del Cerrejón miente y actúa de manera fraudulenta frente a sentencia judicial y respuesta a los Relatores Especiales de Naciones Unidas*](#) (Carbones del Cerrejón lies and acts fraudulently in face of court rulings and reports to UN Special Rapporteurs)

³² Espitia Perez, L. (2017). [*Evaluación y caracterización de mezclas complejas generadas en una mina de carbón a cielo abierto y de sus efectos biológicos en linfocitos humanos*](#). Research by Colciencias, the universities of Sinú and Cauca (Colombia) and of Federal do Rio Grande do Sul and Luterana do Brasil (Brazil); J. Olivero-Verbel and J.C. Valdelamar. [*Caracterización de algunos indicadores de contaminación*](#)



it can cause, highlighting that its oversight should go beyond merely checking quantitative compliance with standards in order to discredit or deny community complaints.

“With regard to the public health perspective, it was argued that this aspect cannot be limited to examining whether or not PM10 limits for particulate matter were exceeded. This is due to the fact that the combination of and exposure on a daily basis to PM2.5 particles and different chemical substances produced by the coal oxidation process progressively harms the inhabitants of the region at a micro-cellular level, which ‘would merit the application, at the very least, of the precautionary principle.’¹¹”

Colombian Constitutional Court, ruling T-614 of 2019

Instead, it assigns the company the duty to facilitate an open, continuous and sincere dialogue that seeks to adopt effective measures to guarantee the protection of the ecosystem and the people living around it.

However, the company has not complied with this order; and instead, has employed several strategies that seek to create divisions within the community,³³ while continuing to disseminate PR messaging that denies the damages proven in court.

The reality, on the contrary, is as follows:

Studies cited by the Colombian Constitutional Court in ruling T-614 of 2019 that support claims of serious health impacts include the following information:

1. The study ‘Evaluación y caracterización de mezclas complejas generadas en una mina de carbón a cielo abierto y de sus efectos biológicos en linfocitos humanos’ (Evaluation and characterization of complex mixtures produced in an open-pit coal mine and their biological effects on human lymphocytes) produced by Colciencias,³⁴ the universities of Sinú and Cauca (Colombia) and the universities Federal do Rio Grande do Sul and Luterana do Brasil (Brazil) maintains:

• **“In the air surrounding these communities we found highly enriched elements** such as sulphur (S) and other moderately enriched ones such as chromium (Cr), copper (Cu) and zinc (Zn). These elements **were not found in an enriched state in the air in MAYAPO**³⁵

[ambiental asociada a la actividad minera en el sur del Departamento de La Guajira](#). Research produced by the PhD programme in environmental toxicology in the University of Cartagena; Espitia-Pérez, L. et al. (2018) [Cytogenetic instability in populations with residential proximity to open-pit coal mine in Northern Colombia in relation to PM10 and PM2.5 levels. Ecotoxicology and environmental safety](#), Vol. 148, February 2018; See more research into health problems caused by open-pit coal mining here: <https://scholar.google.com/citations?user=nHenx68AAAAJ&hl=es>

³³ Ibid.

³⁴ Colciencias is the Department of Science, Technology and Information. It promotes public policies to foster science, technology and information in Colombia. Activities relating to the fulfilment of its mission involve agreeing policies that foster knowledge production, build capacity in science, technology and information and encourage the spread and use of such capacities for the comprehensive development of the country and the welfare of the Colombian people.

³⁵ Wayuu community located on the Colombian coast, far from Glencore’s operations.



that we used as a control. (...)

• **Compared with the MAYAPO inhabitants, people living around the mining corridor had high concentrations of chromium (Cr), nickel (Ni), manganese (Mn) and bromine (Br) in their blood.**

• Elements such as sulphur (S), chromium (Cr) and bromine (Br) **can damage the cells of the body. We also found cellular damage in the inhabitants of the mining corridor.** This damage may **be related to respiratory, heart, skin and stomach diseases and cancer.**

2. Research from the inter-faculty PhD programme in public health at the National University of Colombia also maintains:

“There is no doubt that the area experiences particular risk conditions **related to the exposure** of the community to particulate matter, especially that 2.5 micrometres or smaller (PM2.5) in size, given it is related to the increased presence of respiratory problems, cancer and respiratory disease.

(...) the presence of substances such as sulphur, chromium, copper, bromine, nickel, manganese and zinc in the area’s air and its inhabitants’ blood **‘should be considered a severe health risk**, in particular for children, specifically because of changes it can cause to the neurological, skeletal and immunological development of this child population’^[38]”

3. The PhD programme in environmental toxicology at the University of Cartagena submitted its research ‘Caracterización de algunos indicadores de contaminación ambiental asociada a la actividad minera en el sur del Departamento de La Guajira’ (Profile of some indicators of environmental pollution linked to mining activity in the south of La Guajira department), which was developed on the basis of environmental quality monitoring in the zone. Its conclusions were:

- Overall, the study confirms that the toxicity of coal mining is directly related to the **duration of exposure, the size of particles** (with higher toxicity at PM2.5 or smaller) and the **presence of chemical pollutants such as heavy metals** (Ni, Pb, As, Hg, and others) and aromatic hydrocarbons, among other substances.^[11] This can cause changes at a cellular level, pneumoconiosis, asthma, progressive massive fibrosis, chronic bronchitis, COPD and/or cancer.^[12]
- Pulmonary function impairments were found in 10% of people tested “*which is a cause for concern given the proximity of the mines, since the particulate matter usually emitted through such activities negatively affects respiratory system functioning.*”^[16]
- Exposure to PM10 and PM2.5 and different chemical pollutants can cause changes at a cellular level, pneumoconiosis, asthma, progressive massive fibrosis, chronic bronchitis, chronic obstructive pulmonary disease (COPD) and/or cancer, **even more so if such exposure persists over time.**
- The presence of metals in the area of Provincial suggests the existence of ecological and environmental effects that could be harmful to biodiversity and human health.

Planning for mine closure

There are multiple concerns about the projected closure of the Carbones del Cerrejón Limited mine that the response from Glencore does not properly address, creating the latent risk of the company withdrawing from the coal enterprise in La Guajira with impunity. As has been repeatedly stated, including in this response, non-compliance with the multiple orders of the Colombian Constitutional



Court testify to the company's violation of human rights, and its failure to guarantee remedy and redress provide clear evidence of the risk that the cumulative damages caused by its mining activities will result in social and environmental liabilities. If the company continues to shirk responsibility for these damages, their economic, social and human toll will continue to be born in part by the Colombian State and primarily by the affected communities. That is, the vulnerability of these communities will be exacerbated, thus condemning them to a life without dignity in which they unfairly shoulder the social and environmental consequences of mining activities.

We therefore reiterate our demand to Glencore to provide clear information about the timeframes and remedy measures it is proposing, both for the closure and the post-closure phase of Carbones del Cerrejón Limited's operations in the La Guajira department as well as the funding mechanisms for said measures. Is clearly questionable that, just 11 years before the mine's closure, the closure planning documents lack information about funding sources for these two phases, which the company is responsible for implementing. In addition, the overlapping timeframes of the post-closure and reversal stages, a matter Glencore ignored in its response, represent a risk to the necessary oversight and monitoring required from companies following completion of the closure phase.

Moreover, in line with Glencore's expressed interest in contributing to just transition through support to building an economically diverse future in the region, we signal the need for the company to promote effective participation spaces for future land use planning. The territorial redevelopment implied by a post-mining scenario must be based on the vision and proposals of a variety of stakeholders, in particular the longstanding inhabitants of the region and the Colombian State, and not on a corporate vision. In this sense, we also draw attention to the questions and demands raised by the communities and authorities about the company's rehabilitation plans, which reveal several inconsistencies in terms of the outcomes presented and also in relation to Glencore's response on the matter.

Human rights defenders and social leaders

The increasing risks to human rights defenders cannot be seen in a vacuum or divorced from the underlying root causes of attacks. Human rights defenders are often attacked because they shine a light on underlying patterns of harmful business conduct and investment, As businesses, often in collaboration with the State, seek access to natural resources and land, for example, they may engage in economic activity that adversely impacts the rights of communities, including water, environmental and land rights.

(...) If the business enterprise itself is causing or contributing to human rights abuse affecting defenders, their responsibility is clear-cut: they need to end the abuse and address any harm that has occurred.

The UN Guiding Principles on Business and Human Rights: guidance on ensuring respect for human rights defenders (2021).

The section of the report that refers to the violation of the rights of male and female leaders defending their territory and the environment sets out:



- i) the UN Guiding Principles on Business and Human Rights guidance on protecting leaders and human rights defenders, reiterating the UN's call for enhanced due diligence in contexts with populations that are highly socially and economically vulnerable, in countries experiencing protracted armed conflict, such as Colombia, and in regions like La Guajira in particular;
- ii) data resulting from an exercise documenting human rights violations experienced by human rights defenders protecting their territory in the context of Glencore's mining activities. This data provides evidence of continuous human rights violations, with attacks peaking when claims or denunciations are made;
- iii) concerns regarding the systematic nature of attacks against leaders with a high profile due to their actions denouncing Carbones del Cerrejón and Glencore. Two examples follow, further details of which can be consulted in the footnotes:
 - a. Death threats³⁶ against a woman leader defending the right to health³⁷ as part of a women's collective, an issue that had been recognized by the Constitutional Court³⁸ and the Juzgados Promiscuos Municipales (mixed jurisdiction municipal courts) of Barrancas and San Juan del Cesar³⁹ in La Guajira, Colombia.
 - b. Threats and harassment⁴⁰ experienced by a Wayuu leader defending Arroyo Bruno;⁴¹
- iv) against this backdrop, i) the unanswered question about who is responsible for these actions and ii) an urgent call for enhanced due diligence, in light of the threats against, harassment of and attacks on women and male leaders defending their territory and the environment,

³⁶Business & Human Rights Resource Centre. (May 24, 2022). [Colombia: Luz Ángela Uriana, indígena wayúu que demandó a Cerrejón sufre ataque; con comentarios de la empresa](#) (Colombia: Luz Ángela Uriana, Wayuu woman who brought an action against Cerrejón is attacked, with comments from the company)

³⁷ CDHAL. (March 29, 2023). [Megaminería y contaminación en Colombia : las mujeres wayuu luchan por el agua y el territorio](#) (Mega-mining and pollution in Colombia: Wayuu women fight for water and land); Ministerio de Minas y Energía. (October 7, 2022). [Minenergía escuchó preocupaciones de comunidades campesinas y étnicas de La Guajira frente a la minería a gran escala](#) (Ministry of Mining and Energy heard concerns of peasant farming and ethnic communities in La Guajira regarding large-scale mining)

Flórez, M. (May 31, 2016) [Una indígena wayuu se enfrentó a Cerrejón por la salud de su hijo](#). ¡PACIFISTA! Tv. (Wayuu woman fought Cerrejón over son's health)

³⁸ [Corte Constitucional de Colombia, ruling T-614 of 2019](#).

³⁹ CAJAR. (March 10, 2016). [Juez confirma orden a Cerrejón de reducir contaminación y fija plazo de dos meses](#) (Judge confirms order to Cerrejón to reduce pollution, imposing a two-month deadline).

⁴⁰ CAJAR, Censat Agua Viva, Cinep/PPP and Plataforma La Guajira le habla al país. (April 2022). [Urgente: Hombres armados en motocicletas dan vueltas alrededor de la comunidad wayuu defensora del arroyo Bruno en la Guajira](#) (Urgent statement: armed men on motorbikes circle around the Wayuu community defending Arroyo Bruno); ABColombia. (2022) [Delegation of parliamentarians to Colombia 2022](#); Organización Nacional Indígena de Colombia (ONIC). (April 30, 2019) [Fuerza de Mujeres Wayuu y varios de sus integrantes reciben amenazas directas por parte de un panfleto publicado por las Águilas Negras](#) (Fuerza de Mujeres Wayuu and a number of its members receive direct threats in a leaflet published by the Águilas Negras); OMCT. (May 14, 2019). [International statement condemning attacks and threats against Afro-Colombian and indigenous leaders](#).

⁴¹ [Corte Constitucional de Colombia, ruling SU-698 of 2017](#); CIDSE. (29, November 2021). [Human rights defender Luis Misael Socarras Ipuana writes to commissioners Reynders and Breton](#).



- which are occurring in a context of vulnerability that Glencore itself describes in its response to the report, in the section entitled ‘La Guajira – background context’;
- v) the fact that, despite some press releases and given the enhanced due diligence that Glencore should be implementing, there have been no other actions taken to effectively address this issue;
 - vi) lastly, the fundamental importance, in view of the above, of Glencore presenting results on the actions it says it is undertaking with NGOs and ministries, as well as an evaluation of the effectiveness and outcomes of these actions. Words alone are not enough; independent reports, sources and results visible to La Guajira’s leaders are essential.

With the above, we would like to reiterate the importance of the report in stimulating public debate on this issue and in pressing for substantial commitments to restore the rights of the communities of La Guajira and protect the future of the region.

5 November 2023, Bogotá, Colombia