



## Cerrejón's open pit mine (Colombia)

**Sector:** Mining

**Issues:** Indigenous peoples' rights, rights to health, water, and an adequate standard of living

**The companies:** **BHP Group, Anglo American** and **Glencore** which are all listed on the London Stock exchange, were the joint owners of the Cerrejón coal mine in La Guajira, Colombia, the largest in Latin America and one of the largest in the world.<sup>1</sup> The trio became sole concessioners of the mine in 2002 when they acquired the remaining 50% of shares from Intercor (ExxonMobil).<sup>2</sup> In early 2022, BHP and Anglo American transferred their ownership to Glencore, which is now the sole owner.<sup>3</sup>

**Affected rights holders:** The mining operations have led to the dispossession and displacement of 35 Wayúu Indigenous and Afro-descendant communities from their ancestral land, at times by brutal police evictions.<sup>4</sup> The Wayúu communities, who have deep affinities with their land and water, are deeply impacted by the environmental harms caused.<sup>5</sup>

### Details:

The companies have been continuously expanding the mining operations and diverting streams used by the local communities throughout its operation. In 2005, Cerrejón extended its rail line and expanded its port and area of operation without conducting any environmental impact assessments.<sup>6</sup>



More than 17 streams have been redirected or polluted due to mining operations and Arroyo Bruno, a sacred water source of the nearby communities, has been diverted so that the land above its natural source can be mined for coal.<sup>7</sup> The communities suffer with air pollution, noise pollution and an estimated 40% of the region's water sources have been lost as a result of the mining activities.<sup>8</sup>

Local communities have criticised the companies for failing to heed calls for the mine's operations to be suspended from a number of UN human rights experts.<sup>9</sup> The UN Special Rapporteur on human rights and the environment called on the Colombian Government to suspend some of the operations at Cerrejón due to its serious damage of the environment and health of the country's largest indigenous community.<sup>10</sup>

In 2017, Colombia's Constitutional Court decided to suspend a project to further expand the mine and held that those responsible for operations at Cerrejón had failed to properly assess the impacts of its diversion of the Arroyo Bruno which is of spiritual and cultural importance for local people and an essential water source.<sup>11</sup>

In 2021, Glencore and Anglo American filed arbitration claims against Colombia for the suspension of this project under the terms of the Swiss and UK Bilateral Investment Treaties with Colombia, using investor-state dispute settlement (ISDS) mechanisms in those treaties. Anglo American withdrew its suit against Colombia on 1 July 2022 after it sold its portion of Cerrejón to Glencore.<sup>12</sup>

In January 2021, a group of NGOs filed simultaneous complaints to the OECD National Contact Points (NCPs) in Australia, Ireland, the UK and Switzerland alleging "serious human rights abuses and devastating environmental pollution" at Cerrejón.<sup>13</sup> The complaints against BHP and Anglo American were transferred to the Swiss NCP to consider joint remediation with Glencore. However, in December 2022, the Swiss NCP issued its final statement to close the process, citing the view of the submitting NGOs that negotiations on the terms of reference for the mediation had irrevocably failed.<sup>14</sup> In addition, NCPs do not have the power to hold the accused companies accountable or to ensure that they provide remedy to affected communities.<sup>15</sup>

In April 2022 a technical working group, chaired by the Ministry of the Environment, was established to address issues at the Cerrejón mine.<sup>16</sup> The group published a study favourable to the company which approved diversions from the natural course of the Arroyo Bruno. This report was criticised by Colombian civil society organisations as it disregarded guidelines from the 2017 Constitutional Court decision and failed to take into consideration participation of the Wayúu communities.

## How could a UK Business, Human Rights and Environment Act have made a difference?

In our assessment, under a UK Business, Human Rights and Environment Act, **BHP Group, Anglo American** and **Glencore** would have been expected to engage with the communities potentially affected by the mining operations. This would have included seeking their free, prior and informed consent (FPIC) as part of environmental impact assessments before interfering with the land on which they live.

An adequate consultation process would have taken into account the communities' concerns and recommendations, which arguably might have led to an outcome whereby the rights of indigenous peoples and other local communities were fully respected. In the absence of satisfactory engagement, and in light of the negative impacts on communities' human rights to health, water and an adequate standard of living, among others, UK courts would likely have held the companies liable for causing harm to the communities.

Civil liability might have led to remedy for the communities, as well as environmental rehabilitation, ensuring that the closure of the mine were done responsibly and that full and effective remedy was delivered.<sup>17</sup> Such a process should include engagement with affected communities to ensure that any remedies provided are satisfactory in the circumstances.



# Endnotes

- 1 Banktrack, "[Cerrejón coal mine](#)". Accessed 23 January 2023; London Mining Network (11 February 2022), "[The UK needs a new Business, Human Rights and Environment Act](#)".
- 2 Anglo American (1 February 2022), "[Anglo Coal further consolidates its position to meet global coal demand](#)".
- 3 Glencore (11 January 2022), "[Glencore completes acquisition of Cerrejón](#)"; Glencore (28 June 2021), "[Glencore agrees to acquire JV partners' shares in the Cerrejón mine and strengthens climate commitments](#)".
- 4 London Mining Network (1 November 2022), "[Should Do Better: Anglo American's mining operations and affected communities in Latin America](#)"; Global Justice Now (13 September 2022), "[Colombian courts must not be undermined by shadowy international tribunals, say campaigners](#)".
- 5 CAFOD (6 July 2021), "[Protecting our common home: land and environmental human rights defenders in Latin America](#)", p. 9.
- 6 GLAN (19 January 2021), "[Non-compliance with the OECD Guidelines for Multinational Enterprises](#)", p. 53.
- 7 London Mining Network (1 November 2022).
- 8 CAFOD, "[It's time to tackle corporate abuse of human and environmental rights](#)". Accessed 23 January 2023.
- 9 AB Colombia (28 September 2020).
- 10 AB Colombia (28 September 2020); GLAN (19 January 2021).
- 11 Global Justice Now (13 September 2022); GLAN (19 January 2021), p. 53.
- 12 Global Justice Now (13 September 2022).
- 13 OECD, "[Global Legal Action Network \(GLAN\) and six other NGOs & CMC Coal Marketing DAC](#)". Accessed 23 January 2023; [Mining.com](#) (20 January 2021), "[NGOs file complaint before OECD, demand closure of Cerrejón coal mine in Colombia](#)".
- 14 NCP of Switzerland (20 December 2012), "[Specific instance regarding Glencore International AG submitted by the Global Legal Action Network \(GLAN\)](#)".
- 15 London Mining Network (11 February 2022), "[The UK needs a new Business, Human Rights and Environment Act](#)".
- 16 Institute for Policy Studies, TerraJusta, IPS, War on Want y Red Minera de Londres (September 2022), "[Summary of Amicus Curiae to the Constitutional Court of Colombia urging implementation of decision in favour of the Wayúu Indigenous people and protection of the Bruno River affected by the Cerrejón open-pit thermal coal mine](#)".
- 17 CIDSE (29 November 2021), "[Human rights defender Luis Misael Socarras Ipuana writes to Commissioner Reynders and Breton](#)".