

Bogotá, March 03, 2021

PRE006-2021

Mrs Rachel Owens  
Head of EU Office & Advocacy  
Global Witness

***Ref. Cerrejón comments to 02/26 request from Global Witness***

Dear Mrs Owens,

We thank you for the opportunity to offer our views and address inaccuracies on the 13 issues raised. We hope that this helps to clarify and correct misinformation that circulates widely. In the past, we have provided multiple responses to these accusations, many of them are published in our website as well as in the BHRRC's portal. We hope that this information is useful and helps to have a balanced view in the panel you mentioned. We are willing to engage with you in a meaningful and constructive engagement on this occasion and in the future.

Firstly, we would like to express that at Cerrejón we are aware of our duty to develop an operation respectful of Colombian legislation and recognized international standards. We are committed to respecting the rights of workers, the environment and neighbouring communities, which is why we make on-going efforts to constantly improve in identifying, preventing and lessening the impacts produced by our operation, and to compensate for them when necessary. We also strive to contribute to improving the living conditions of the communities and the surroundings by aligning with Sustainable Development Objectives.

Our respect for human rights is a significant part of all our activities. This commitment is formalized in our Human Rights policy, published for the first time in 2005 and reformulated in 2011 to align with the United Nations Guiding Principles on Business and Human Rights (UNGP), as well as in our Social Management Policy. In this process we have been continually implementing standards, such as the Voluntary Principles on Security and Human Rights, the International Finance Corporation performance standards, and the Sustainability Framework from the International Council on Mining & Metals (ICMM), among others, and we have a system to ensure compliance through internal and external oversight.

Our due diligence process for human rights includes identification of social, environmental and human rights impacts, definition and implementation of measures to manage impacts, integration of these measures into our corporate risk systems, and remedy of complaints via our Complaints Office, which was designed under the UNGP as part of a rights-based grievance mechanism and led by former United Nations Special Representative for Business and Human Rights, John Ruggie. We have a performance verification and continual improvement plan in place for the entire process.

You may not be aware of the positive impact that Cerrejón has not only in the La Guajira region and the country, including:

- Being the main private sector employer in the La Guajira region, with more than 10,000 workers (direct and indirect). Of these, more than 60% are originally from La Guajira.
- Cerrejón is a major economic contributor to the region representing 45% of La Guajira's GDP and the company has paid around USD 8 billion over the past 19 years in taxes and royalties.
- In 2020, Cerrejón invested USD 43 million in environmental management programs including impact management (air and water quality, waste management, land rehabilitation, biodiversity protection, environmental offsets, etc).
- In addition, Cerrejón invested USD 4 million in social investment programs in 2020 alone. These voluntary and culturally appropriate programs aim to enhance the living conditions of the local communities. Some examples are: access to water, educational strengthening, capacity building programs to promote livelihood projects,

cultural heritage programs, and employment opportunities. These programs have benefitted approximately 400 communities

Please find below our specific comments to your statements.

**1. Colombia's La Guajira region is home to many indigenous and Afro-Colombian communities, who have been disproportionately affected by land grabs and forced evictions to make way for the Cerrejón mine site.**

The statement is false. Cerrejón has operated for over 30 years in the region of La Guajira, Colombia, operating in good faith, and in compliance with the law and applicable standards, constantly seeking to find the correct balance between the business of mining and a positive and productive way to coexist with our neighbours in La Guajira. We firmly deny participating in illegal land grabbing. The development of a mine requires the purchase of land, either to carry out mining activities or for off-set measures. Throughout our history, all the requirements relating to the purchase of property from the communities in the area were made in good faith, in compliance with the national regulations in place at the time, and always paying fair prices, often above market value.

Since adopting the International Finance Corporation's social and environmental performance standards in 2006, land purchases and resettlement processes have applied these standards to ensure participatory and dialogue-based processes to identify and manage impacts; determine the properties for transfer; design houses and villages; deliver new dwellings; provide access to basic services; purchase land for agricultural work; provide technical support; and, introduce programs for educational and psychosocial development as well as initiatives which support the elderly. These standards did not exist when Cerrejón first started operating.

Cerrejón always prefers to reach agreement between parties; but, in a few cases where it has been impossible to do so, expropriation has been a measure of last resort, carried out within the framework of Colombian law and international standards and in the presence of public oversight institutions and those defending human rights.

**2. For nearly forty years, the communities who live near the Cerrejón mine have been inhaling poisonous dust from the mine; their water contaminated by the toxic waste dumped in their rivers.**

Cerrejón has a robust Environmental Management Plan that complies with Colombian legislation and aligns with international standards for environmental management. It is certified ISO 14001. This Plan is also aligned with the environmental permits granted by the ANLA (National Environmental Licensing Authority) and Corpoguajira (regional environmental authority), which monitor Cerrejón's compliance on an ongoing basis. Cerrejón is committed to open communication regarding the environmental impact of its operation and information on its environmental compliance is made publicly available in the annual Environmental Compliance Report (ICA, for its acronym in Spanish).

**Air quality**

We acknowledge that it is in the nature of an open-pit mining operation to emit a certain level of particulate matter emissions into the air. Cerrejón is committed to the ongoing mitigation of impacts on air quality in La Guajira. With the goal of controlling emissions and avoiding health impacts on our employees and neighbour communities, we have been striving to apply the best tools commercially available for air quality control. In respect of applicable Colombian legislative standards, we consistently monitor particulate matter and have done so for many years.

Since 2017 have developed and employed an air monitoring mechanism, TARP (Trigger Actions Response Plan), which complements the real-time forecasting system we have implemented. This is a World-class system. Based on the actual probability of risk according to the prevailing wind direction, a plan is established to take preventive actions or to react. Among other measures, we water roads with low-quality water to lower the particles in the air, use barriers as well as a network of spray cannons above pits and landfills to reduce the volume of particulate matter, wet and compact the coal in train cars, and reduce and even suspend operations when necessary.

Based on the actual probability of risk (according to the prevailing wind direction) a plan is established to take preventive actions or to react. Our Integrated Environmental Management System, closely monitored by national and regional environmental authorities, have defined several mitigation measures to control particulate matter such as:

- Frequent watering of roads (with water not apt for human consumption or agriculture) to reduce dust generated by the trucks that transport coal and sterile material.
- Use barriers as well as water sprinklers prior to loading sterile material on mining levels, to moisten the soil, ensuring control in both loading and unloading of the material.
- Wetting and compacting the coal in train cars
- Temporary or definitive closure of roads not required by the operation.
- Rehabilitation of lands intervened by mining and released by the operation to establish plant cover and prevent the emission of particles from wind erosion.
- Changes to the mining plan as well as the temporary reduction or suspension of operations during certain wind conditions.
- An interdisciplinary team to control spontaneous any events of combustion of coal (generated by the increase of the temperature of the coal surface when exposed to specific environmental conditions) at the pits
- In addition, a rigorous monitoring system is in place consisting of using the latest technology to control dust levels in the air

Cerrejón's management of air quality is compliant with Colombian air quality standards and ongoing compliance is overseen by the ANLA and Corpoguajira.

### **Water quality**

At Cerrejón we are aware of the challenges that exist in La Guajira due to the traditional water deficit in the region. This is why we have long been in a process to reduce our consumption of higher-quality water (coming from the Ranchería River and its aquifer) and have managed to reduce this by half over the past 10 years.

We are in full compliance with our environmental requirements. As it passes through Cerrejón, 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 30% as it passes through the mining area. We take samples of the water quality monthly, and it is demonstrated by independent laboratories that our operation complies with all water quality parameters imposed by Colombian legislation. In relation to heavy metals, we take monthly measurements of over 60 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. Results show that the levels are significantly below the regulatory limits (in compliance with the standard) for water consumption for domestic use.

We make continuous efforts to reduce the consumption of higher-quality water in our operation. Currently only 11% of the water taken from the Rancheria river is higher quality water, used mainly for human consumption. The rest of the water used (89%), is to control particulate matter and maintain air quality in order to prevent any health impacts on employees, contractors and these neighbouring communities. The water used for these purposes is low-quality water - not suitable for human or animal consumption or to irrigate crops.

We monitor the volume of the Ranchería River water before, during and after it passes through the mine at 12 flow monitoring stations and at two stations that monitor the flow in real time located all along the body of water. This online monitoring network is made up of 29 sensors that measure different variables at key sampling points, which allow real-time observation of current conditions. Over 4,000 samples are taken every year and analysed in accredited independent laboratories. These samples show that Cerrejón's operation does not negatively impact or put at risk the survival of the aquatic flora and fauna and does not negatively affect the health of the communities located downstream from the mining operations. The annual results are reported in the Annual Environmental Compliance Report, which is sent to the environmental authorities and is publicly available at ANLA or Corpoguajira's offices.

**3. Some of these people were violently forced out of their homes to make way for the mine - footage from a 2016 eviction in the Roche community show riot police dragging women along the ground and loading them onto trucks. This eviction was reportedly carried out using tear gas and metal projectiles, with bulldozers sent in to flatten people's homes.**

In 2003 Cerrejón began negotiations with the community of Roche to carry out a resettlement of 25 eligible families, which started in 2011 with agreements reached with the first families, following IFC guidelines. After 12 years of conversations, agreements were reached with 24 of the Roche families between 2011 and 2016. However, only one expropriation process took place on 24 February 2016 due to the non-compliance by the family of Mr Tomás Ustate with the agreements reached voluntarily in October of 2015 as part of a resettlement process. The proceedings were led by a judge from the municipality of Barrancas accompanied by officials from the Public Ombudsman, the Public Prosecutor's Office, the Colombian Institute of Family Welfare, and the Barrancas Family Services Agency.

The judge requested the presence of the police authorities as a common practice in Colombia in these types of matters in order to provide security for the authorities and ensure compliance with the proceedings.

On the day of the hand over, there were around 50 community residents on the property, some of whom threw rocks and sticks at the institutional delegation and Cerrejón officials. In response, the ESMAD used tear gas and rubber bullets to establish control, protect the delegation and officials and allow access to the area. Cerrejón ensured that ESMAD members were trained in human rights before the process, in accordance with the Voluntary Principles on Business and Human Rights and undertook due diligence to make sure the proceedings would take place with the greatest care. Cerrejón requested that the competent authorities investigate the performance of the public security forces.

Cerrejón did not request the presence of police and does not condone any violence.

Mr Ustate and his family, as well as the other 24 families from Roche are currently living in the new site and received the agreed upon compensations and are benefitting from post-resettlement programs. However, Mr Ustate never accepted to receive the land offered in compensation nor claimed the money for the animals that the Judge requested Cerrejón to place in a fund for them to claim. Both remain available to the family.

**4. The mine is also very hazardous. It emits pollutants that are invisible to the human eye but can cause a multitude of health issues, ranging from eye damage to heart disease and premature births.**

For details on Cerrejón air and water quality management please see our response to question 2.

It is well known that public health services in this region are weak. The Health Services Network in La Guajira puts its focus directly on providing primary care. For several years Cerrejón has signed cooperation agreements with the hospitals in the municipalities of Hatonuevo, Barrancas, Albania and Uribia to provide support for health services. The agreements have given people in these municipalities access to 20,522 medical consultations. Cerrejón has supported several health campaigns that have included health care services from outside the area to provide medicine and services, among them in internal medicine, pediatrics and diagnosis. In June 7, 2020 Cerrejón renovated the public Health Center that serves the community of Provincial.

It is important to understand that there are several factors unrelated to Cerrejón's operations which exacerbate air quality issues in La Guajira. These include both natural and anthropogenic factors such as marine aerosols, desert sands, open unvegetated / dust-producing areas, and forest fires. Cerrejón measures these regional background conditions at recording stations located upwind from its operations (meaning that these stations do not record emissions from

Cerrejón's operations) to understand how they are impacting air quality. The combination of these conditions has sometimes caused air quality readings that are above WHO guidelines.

The Javeriana University in Bogotá is developing a study on whether there is a connection between respiratory diseases and Cerrejón's mining operation. This study has had involvement from both unexposed and exposed communities in the area of influence of the mine. However, the Provincial communities (through their Governor) expressed their wish to not be included as part of this study. This study, initiated in 2018, aims to identify any links between the existing respiratory conditions of local communities and their closeness to mining and railway operation, considering Cerrejón's activities as well as other factors that affect air quality. Until now, three information-gathering cycles have taken place in participating households (surveys, diagnosis, follow-up to symptoms, and air quality sampling). Cerrejón is expecting the final results by mid-2021.

**5. According to a recent dossier of complaints filed by the Global Legal Action Network with the intergovernmental Organisation for Economic Co-operation and Development (OECD), over 336,000 people have developed respiratory complications that are directly attributable to the mine, with over 400 emergency hospital visits every year.**

Cerrejón released a statement regarding the allegations presented by GLAN before different National Contact Points, for more information please visit: <https://www.cerrejon.com/index.php/statement-from-cerrejon-on-the-complaints/?lang=en>

**6. The mine also consumes 24 million litres of water every day, which has caused droughts and food scarcity. What little water is left for local people is potentially contaminated - in 2019 the mine reportedly dumped 578 million litres of liquid waste into local rivers and streams, resulting in dangerous levels of mercury and lead.**

The statement is false. The efficient water usage measures in Cerrejón's Environmental Management Plan (EMP) have resulted in a reduction of high-quality water usage, by 70% since 2010. The volume of water in the Ranchería river is monitored before, during and after it passes through the mine at 12 flow monitoring stations and at 2 stations that monitor the flow in real time located all along the body of water, which allows real-time observation of current conditions. Most of the water used in Cerrejón comes from coal seams or rainwater and this is not apt for human consumption or agricultural uses.

Regarding the quality of water, over 4,000 samples are taken every year and analysed in accredited independent laboratories. These samples show that Cerrejón's operation does not negatively impact or put at risk the survival of the aquatic flora and fauna and does not negatively affect the health of the communities located downstream from the mining operations.

Since the beginning of the operation, Cerrejón has implemented a network of perimeter channels surrounding pits and waste dumps which capture fresh water and deliver it to sedimentation ponds to ensure that the water returning to the river complies with all regulatory standards. At present there is more than 80km of perimeter channels, which conduct water to a series of more than 20 sedimentary lagoons, that are distributed over the entire mine area in order to guarantee the control and management of runoff and to ensure the quality of the water that enters to the adjacent rivers and creeks. In 2018 Cerrejón began a project to complement this network by installing 28 waterfall structures from the upper parts of rehabilitated waste dumps to channels on the ground.

The information contained in the 2019 sustainability report mentioned in the question must be presented completely and not in an isolated manner, otherwise it can be misleading. The sustainability report does not mention the discharge of liquid waste, but of water which has been treated in compliance with the Colombian regulations that establish maximum allowable concentrations. Our monitoring shows that mercury or lead levels were minimal, not even traceable.

There is no evidence that Cerrejón's discharges have had an appreciable effect on the concentration of heavy metals or other contaminants in the Ranchería River. There is, however, evidence of contaminants entering the river from sources upstream of Cerrejón. In particular, we note that domestic wastewater is discharged upstream of the mine area from municipal headwaters, which contribute to the presence of total and faecal coliforms in the Ranchería River. In addition, waters upstream from the mine are used to wash vehicles and motorcycles in the river, which puts oils and metals into the water. Fertilisers used for palm and rice crops located upstream of Cerrejón also drain into the river.

**7. In 2019, Colombia's Constitutional Court ordered Cerrejón to comply with health and environmental protection requirements - the latest in a series of court findings denouncing your company's activities. Cerrejón announced it had addressed this by striking a deal with local communities for a series of improvements – a statement local indigenous leaders called “fraudulent” and “lies”.**

We understand that you are referring to the community of Provincial, a single indigenous community in La Guajira. Two of the 194 families from the Provincial community presented a *tutela* action in September 2017 which resulted in ruling T-614 of 2019. The Constitutional Court ruling T-614 of 2019 requires us to implement additional measures to: reduce emissions, decrease noise levels around Provincial, implement additional measures to prevent impacts on water sources and conduct cleaning activities in the housing, water wells and vegetation surrounding the community. These measures aim to enhance our environmental management systems to further mitigate impact on the community, going above and beyond our existing measures which are in full compliance of our permit conditions and all Colombian legislation.

Within this understanding, Cerrejón began discussions with the Town Council Governor of the Provincial Reservation, a representative elected in December 2019 by the entire community, and with eight of the community's 12 traditional authorities, who voluntarily decided to participate in the conversations, on how to fulfil the T-614 ruling orders that involved the community. We reached an agreement with those participating on how to implement the ruling, as well as on other issues that would enhance the community's wellbeing.

Due to the change in leadership of Town Council in December 2020, Cerrejón and the new Governor revised the initial agreement reached in 2020 and on February 26, 2021 signed a new agreement that represents the whole community. This significant milestone will allow us to move forward in the fulfillment of the requirements from the T-614 ruling and will allow us to implement additional programs to enhance their livelihoods.

As expressed in the joint declaration, the Provincial Indigenous Reservation stated that their decision to sign and execute the agreement with Cerrejón was made in exercise of their fundamental right to autonomy, reconfirming their ability to make decisions and without intervention from third parties. In this regard, they do not recognize actions other than their own or statements that do not come from their legitimate authorities.

For more information, please visit: <https://www.cerrejon.com/index.php/declaracion-provincial-y-cerrejon/?lang=en>

**8. Members of local indigenous, women and environmental activist groups have been threatened for taking a stand against the human rights and environmental impacts of Cerrejón's operations.**

**9. Communities claim that some of these threats have been carried out by paramilitary groups who back or are otherwise associated with Cerrejón.**

**10. Local land and environmental defenders say that they and their family members (including children) have suffered a range of intimidation tactics because of their opposition to the mine. These include death threats and other kinds of threats in writing or via anonymous phone calls; being watched and followed; having drones**

flown over their homes; and having photos of them included in leaflets that were distributed locally, falsely claiming that they were members of guerrilla groups and wanted by the military.

11. Some members of groups that are resisting the mine have been forced to live apart from their children and families for fear of what might happen to them.

12. The Business and Human Rights Resource centre have also reported a number of attacks against the mine's opponents.

13. The above threats and intimidation tactics are part of a sustained campaign by Cerrejón and/ or its supporters to silence any opposition to the mine that might threaten your company's business interests.

We would like to address points 8 to 13 in one consolidated answer.

Cerrejón is deeply aware and concerned by the increased threats to social, community and union leaders throughout Colombia. Nevertheless, Cerrejón rejects any accusation of being involved with paramilitary groups or being linked to any case of threats to social or community leaders. Whenever we have learned of threats to leaders, we have publicly denounced these events and taken actions to demand that regional and national authorities conduct timely and effective investigations and protection.

Cerrejón has a process in place to address cases of threats to social leaders, human rights defenders and any person that may be threatened in relation to our operation. This due diligence process is a result of the work carried out by a group of mining companies from the regions of Cesar and La Guajira in Colombia, 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. This group (Coal and Human Rights Working Group) launched a Joint Declaration in Favour of Life in June 2018 that condemns these cases and calls on proper institutions to conduct protection, investigation and prosecution of these cases. In addition, the group developed the first version of a protocol to address threats against life and integrity which describes the process that companies and governmental institutions should follow when they receive information or grievances related with threats or intimidation against human rights defenders in the area where Cerrejón operates.

Cerrejón applies its protocol regardless of whether the leader is critical of the company or not. In addition to the implementation of the protocol that calls on local and national authorities and the engagement with the person threatened to offer support, Cerrejón has led the advocacy action for the national government to initiate specific actions for the protection of leaders in La Guajira. After several conversations with the Ministry of the Interior showing the problem in the region, the National Government, with all the responsible authorities, held a meeting in October 2019 with approx. 80 leaders in La Guajira to listen to their concerns and take actions. The initiative was successful, which led the Government to repeat this workshop in 2020 despite the difficulties of the pandemic.

Details on Cerrejón's position and actions towards threats to social leaders are available in our 07/20 statement rejecting the allegations contained in the Global Witness report "Defending Tomorrow: The climate crisis and threats against land and environmental defenders" (link: <https://www.cerrejon.com/index.php/cerrejon-rejects-allegations-in-global-witness-report-of-links-to-threats-on-human-rights-defenders/?lang=en> ) and in the 07/17 public letter in regard to the 2016 Global Witness Defenders of the Earth Report (link: <https://www.cerrejon.com/index.php/posicion-de-cerrejon-sobre-el-informe-defender-la-tierra-de-global-witness/?lang=en> ).

At Cerrejón, we respect different viewpoints on our performance, recognize and value the role of leaders in the territory, and seek, by means of constructive dialog, to resolve the differences that may arise on these issues in regard to our management.

As mentioned, we hope that this information is useful and sets the proper tone to a constructive, balanced and fair reflection on the challenges in La Guajira.

We invite, again, Global Witness to a constructive dialogue, to learn first-hand about our performance, visiting our operation, when the situation of the COVID-19 pandemic allows it.

Sincerely,



Claudia Bejarano  
CEO