

Eighteenth progress report on the social commitments of Cerrejón following the 2008 Third Party Review Panel report

Letter from Roberto Junguito, CEO of Cerrejón
November 15, 2017

Once again, we share with our stakeholders the biannual progress report on the projects resulting from the recommendations presented by the third party panel following their review of Cerrejón's social performance in 2008. This report includes the status of the last three projects that remain open: improvements to the Media Luna houses, the relocation of all families eligible for resettlement, and building the Tabaco community centre. We have made strides that are increasingly bringing us closer to the final closure of these commitments. We hope that this information and the details presented in the tables are of use to you.

Media Luna

After having built and handed over the 19 houses in the Pioula and Pioulekat communities of the Media Luna sector, the process of contracting the firm to build the two remaining homes in the municipal capital of Uribia is estimated to be finalized in December 2017. It is important to recall that it was unanimously decided that these two families, because they were not members of the family clan, should not reside in their community. Nevertheless, having been included among the beneficiaries of the homes from the very start of the project, Cerrejón reached an agreement with the mayor's office of Uribia to build dwellings for them in the town. Once the contract is awarded, the estimated building time is two months.

Resettlements

Our main result in the past six months is having successfully reached relocation agreements with 100% of the families eligible for resettlement in the Roche, Patilla, Chancleta, Tamaquito II, and Las Casitas communities. On July 14 of 2017, we signed an agreement with the last family in Las Casitas that was pending. As mentioned in the April 2017 report, agreements were attained with the last families eligible for relocation from Chancleta on December 14 of 2016, after having conducted the prior consultation process with free, prior and informed consent about the resettlement measures demanded by the Constitutional Court in Ruling T-256 of 2015. All families from Tamaquito II were collectively moved in August 2013, the Patilla families in 2012, and the last family from Roche was relocated from the original site in 2016.

Today, our work with these communities focuses on implementing the post-resettlement programs, with special emphasis on completing the infrastructure projects, and searching for options to enable them to restore their livelihoods. We highlight these issues:

- The new treatment plant for drinking water in Tamaquito II was formally handed over to the community in June and is fully up and running, supplying water meeting the quality stipulated by law.
- We have had problems with rehabilitating the treatment plant for drinking water that supplies the families of Roche, Patilla, Chancleta, and Las Casitas, as well as cleaning the distribution systems, due to the opposition and extra-legal recourses by the leaders of the Chancleta and Roche communities. They argue they were not informed of these works, despite the joint work that was done and the public statements of Asoawinka, the community operator, who has requested that the authorities allow him to continue with the works for the good of the community.

- We have made progress in solving the water problems for the agricultural projects on the properties available for the communities. Currently, 25 Roche families and 46 Patilla families have an infrastructure for irrigating their properties. The infrastructure upgrade for the properties of the 38 Chancleta families will be finished in November of this year. Additionally, progress is being made in building the pipelines for water from the Ranchería River for the Las Casitas and Tamaquito II families.
- Concerning the repairs to houses, action has been taken on 35 out of a total of 109 in Roche, Patilla, and Chancleta. The model for that work is for associations made up of the families themselves to perform the actual repairs with resources provided by Cerrejón. Currently, there are agreements signed with the Patilla Community Action Board, the Patilla Association of Resettled Families, and the Roche Joint Action Board for this purpose. A total of 74 families have signed agreements with these associations to carry out repairs to their houses.

Tabaco

The Committee for the Physical Rebuilding of Tabaco, made up of Cerrejón, the Tabaco Pro-Relocation Board, and the Hatonuevo Mayor's Office, are continuing with their joint efforts directed at building the community centre and making progress in the rebuilding of the town. Although the Board continues to restrict reports on any progress, we can share with you the facts that are public knowledge, including the joint definition of criteria for identifying the members of the Tabaco community who would be eligible according to a master list of those affected. We hope the Committee presents the criteria shortly. Meanwhile, the handing over of 175 hectares to the municipality of Hatonuevo specifically targeted for the physical and social rebuilding of Tabaco was formalized and finalized in June 2017, for a total of 189 hectares delivered. The detailed engineering studies for building the community centre are expected to be ready by the end of October.

We continue awaiting the Constitutional Court's decision regarding the review process of the application for the protection of constitutional rights (*tutela* action) presented by the municipal ombudsman of Hatonuevo and the Pro-Relocation Social Board of Tabaco. In that legal action, they are asking for the suspension of Cerrejón's license, to be compensated once again, and to restart the negotiation process with the community under the retroactive application of standards and legal precedents. Two lower courts have already ruled in Cerrejón's favour in the case.

Prior consultations

Although this issue is not part of the commitments made with the third party panel, we would like to bring our stakeholders up to date on the current status of some prior consultation processes that were previously underway.

a. Consultations related to the La Puente Pit expansion project (Bruno Creek):

The Ministry of Interior only certified a single community as being impacted by works related to the La Puente pit expansion due to the effects resulting from the partial modification of Bruno Creek. Despite this, the Council of State mandated in January 2017 that a consultation process should be performed with the La Horqueta 2 indigenous community within 30 days, and requested that the Ministry of the Interior review what other communities could also be in the same circumstances.

It is important to point out that the La Horqueta 2 community is located 4.7 kilometres away from the site where the works for the project are taking place. Cerrejón, the community, and the Ministry of the Interior began the consultation process on February 9 of 2017, and difficulties arose when the community requested a longer time period for conducting it. As we informed in the April report this year, due to the impossibility

of reaching an agreement within the timeframe provided, the Ministry of the Interior declared the prior consultation closed with no agreement despite Cerrejón's appeal to keep the dialogue open. On May 4 of 2017, the Council of State requested the reopening of the consultation process, which started up again on July 14 of 2017 with an initial meeting. Currently, the meetings for identifying the impacts are moving ahead with the participation of the community and its advisors.

In turn, the Ministry of the Interior complied with the same ruling by the Council of State and carried out a verification of indigenous communities for whom the *Intercommunis* effect applied in accordance with Resolution 498 of 2015. Its conclusion was that the communities of El Rocío and Tigre Pozo had the same characteristics as La Horqueta 2. That is why preparations were started for initiating the consultation process with these communities, in anticipation of the Ministry of the Interior officially ordering the processes to begin.

b. Consultation on resettlement processes

The two prior consultations ordered by the Council of State with the Afro-Colombian community of Roche, in a final appeal ruling that overturned the two previous rulings, is now underway. The first seeks to have the 25 resettled families determine the type of property they wish to have at their new site (collective ownership or joint freehold). The second consultation seeks for the Roche families who sold their properties and improvements to Cerrejón between 1997 and 2003, and did not take part in the formal resettlement under standards, to receive the same treatment and compensations.

To ensure that the 25 resettled families from Roche have sufficient information regarding the form of property question, various day-long seminars were conducted with the National Land Agency (ANT) and the Ministry of the Interior. However, the 25 families filed a contempt motion since they interpreted that the order was dealing with the economic livelihood of the families. The court ruling turned out to be unfavourable for the plaintiffs and clarified that the scope of the ruling referred to the physical and cultural subsistence of the Afro-Colombian community, and not the economic livelihood. It is important to note here that Cerrejón continues to implement the post-resettlement programs with these 25 families, including educational programs, and is working towards strengthening the restoration of their livelihoods.

The second consultation will evaluate and define the measures that should be adopted so that the benefits and compensations delivered to the resettled families are awarded to all the Roche settlers who sold and lived on their properties from 1997 until June 10 of 2003. The Roche Ancestral Community Council presented a list of 514 people to Cerrejón. After reviewing the list against the previously defined criteria, Cerrejón found that 27 residents comply with the criteria that makes them comparable to the families that were collectively relocated. Given the wide disparity in the figures, the Council requested that the Ministry of the Interior conduct a detailed analysis of the families on the list they presented, reconsider the defined date for sale of properties in 1997, and extend the date until the onset of negotiations. Additionally, they presented a contempt of court request against the company for the vast difference in the number of potential beneficiaries. We are awaiting the decision regarding the completion of the tutela ruling.

c. Consultation on Puerto Bolívar projects

In compliance with ruling T-704 by the Constitutional Court on December 13 of 2016, notified to the company in March 2017, the consultation process was initiated for the partial expansion of the desalination plant in Puerto Bolívar, the only work of the planned expansion that ultimately is going to be undertaken. Although the Court ordered the consultation be done with just three communities, it was decided to extend the consultation to the 16 communities that make up Media Luna.

The consultation is already underway with the definition of the methodological plan and visits to the plant in the port area within the impact analysis stage and although the community, represented by its lawyer, are requesting a broadening of the scope of this consultation process to include all the impacts derived from the port operations, it has been clarified that the discussion around general impacts will be undertaken within the framework of another order from the Court, as detailed below.

d. Review of the Comprehensive Environmental Management Plan (CEMP) and mitigation and compensation plan

The T-704 ruling from the Constitutional Court established that in addition to the consultation with the Media Luna communities, ANLA had to review the CEMP to determine if it is sufficient to mitigate Cerrejón's impacts, and for the company to immediately design and implement an initial plan aimed at reducing environmental, social, and cultural impacts, and to complement this plan with the required compensations. These compensations will be identified by mutual agreement with the communities affected and they will furnish the basis for the prior consultation process (where applicable), aiming to establish the final compensation plan for reducing impacts related to the coal mining operation.

The Immediate Reduction Plan was made known to over 2,600 people at 46 meetings. Concerning the order of conducting the consultations with all the communities affected, Cerrejón has been in an internal preparation process to ensure sufficient capacity. At the moment, three major groups of communities have demonstrated interest in initiating social dialogue: the Association of Wayuu Indigenous Authorities of Albania (AIWA), the Wayuu Nation Indigenous Movement, and the 16 communities in Media Luna.

We are attentively following the decisions by the ANLA about the CEMP review process and are ready to work with the appropriate authorities in complying with this ruling.

Cerrejón considers this a great opportunity to sustain meaningful and significant dialogues with all the stakeholders and communities in our area of influence on the impacts derived from our operation, as well as the appropriateness of the management measures. Through these dialogues, we hope to achieve a clear understanding, strengthen confidence and trust amongst all parties, and confirm our commitment to the well-being and development of the communities neighbouring our operation.

We will look forward to your comments on these and other issues.

Sincerely,



Roberto Junguito
CEO
Cerrejón