

Bogotá, 31 July 2019

VAPC 276.19

Richard Solly, London Mining Network  
ABColumbia, UK and Ireland  
ASK, Switzerland  
Coal Action Network, UK  
Colombia Solidarity Campaign, UK  
Indepaz, Colombia  
Kolko - Menschenrechte fuer Australien, Germany  
Re:Common, Italy  
Urgewald, Germany  
War on Want, UK

Dear all:

We wish to thank you for raising your concerns about the issues involving Cerrejón and mentioned in your recent letter, dated 8 July 2019, and for providing us with an opportunity to respond to those concerns. We respect your work with and the advocacy role you take for the La Guajira communities. We are committed to acting responsibly with the communities neighbouring our operation and in our environmental management.

We believe that some significant inaccuracies or misunderstandings in that letter have distorted your conclusions on the diversion of the Arroyo Bruno. We would like to take this opportunity to clarify some of the issues referenced.

We recognise the importance of the Arroyo Bruno to our surrounding communities and the role it plays in La Guajira's water system and as a tributary flowing in to the Rio Rancheria. The diversion project, in compliance with law, moved a 3.6 kilometres of the stream's riverbed 700 meters to the north in order to preserve and protect the Arroyo Bruno from the expansion of our mining operation. Through applying high standards and innovative technologies, our approach has ensured that the Arroyo Bruno continues to provide ecosystemic services. Following the diversion and for over a year, the stream's diverted riverbed has performed in accordance with the expectations of its design and build; we have no reason to believe it will not continue to flow sustainably. We share our ongoing monitoring (that includes physical, chemical and hydro-biological status) with the environmental authorities responsible for approving and monitoring this project.

We note the Constitutional Court's Ruling SU-698 of 2017 that granted protection of the rights to water, food assurance and health of the case's plaintiffs. The Ruling confirmed the establishment and constitution of an Inter-institutional Roundtable ("**Roundtable**"), chaired by the Ministry of the Environment. The purpose of the Roundtable is to ensure the relevant technical, environmental and community impacts are properly considered in an impartial manner and that Cerrejón cannot unduly or disproportionately influence its conclusions. The Roundtable is carrying out a full technical study to evaluate the environmental feasibility of the project and the uncertainties raised by the plaintiffs in the *tutela*. The conclusions of this study will be included in the project's environmental management plan ("**EMP**").

The Roundtable was also mandated to consider whether the river should be returned to its original course while the technical study takes place. As legally required, the Roundtable considered the matter within 30 days of the notification of the judgment and concluded that the river did not need to be returned. As noted above, the diverted riverbed is operating effectively with no identified adverse impacts either to the flow of the Arroyo Bruno or the Rio Rancheria.

Cerrejón respects the rule of law, has complied with its obligations under and in the spirit of the Constitutional Court's judgement; we have also participated in the Roundtable in an open and transparent manner.





We would like to correct the following inaccuracies or misunderstandings in your letter:

**1. Regarding the structure of the Inter-institutional Roundtable**

Ruling SU-698 of 2017 from the Constitutional Court established that this Roundtable is made up of 16 public entities and Cerrejón, as set out below<sup>1</sup>:

**TERCERO.-** En armonía con la decisión del Tribunal Contencioso de La Guajira del 2 de mayo de 2016 así como con la del Consejo de Estado del 13 de octubre del mismo año (Rad. 44-001-23-33-002-2016-00079-00), **DAR** continuidad a la mesa de trabajo interinstitucional integrada por el Ministerio del Interior- Dirección de Consulta Previa-; el Instituto de Hidrología, Meteorología y Estudios Ambientales - IDEAM-; Carbones de Cerrejón Limited; la Autoridad Nacional de Licencias Ambientales -ANLA-; la Agencia Nacional Minera -ANM-; el Ministerio de Ambiente y Desarrollo Sostenible; la Agencia Nacional de Tierras y la Agencia de Desarrollo Rural (INCODER)<sup>1</sup>; el Instituto Geográfico Agustín Codazzi; el Ministerio de Hacienda y Crédito Público; el Departamento de La Guajira; el Municipio de Maicao; el Municipio de Albania; la Defensoría del Pueblo; la Procuraduría General de la Nación; la Contraloría General de la República y el Servicio Geológico Colombiano –SGC-.

In addition, the ruling recognizes that the Roundtable should ensure the participation of representatives from the plaintiffs and their communities. Before making any decision regarding the uncertainties raised in the tutela, the timetable agreed by the Roundtable requires the involvement of the representatives through these participatory seats. It is expected that through these seats, the representatives and experts who participated in the *tutela* process will present, together with supporting information, the communities' concerns. This will allow these concerns to be considered during the reaching of the final decisions that will be presented by the Roundtable at the end of the process. The Roundtable has already respected participation via these seats in a meeting and two visits to the Arroyo Bruno. It is expected to expand the number of participatory seats to ensure that the consultation process is sufficiently broad.

We do not agree with your submission that the process has not been sufficiently participatory and we are disappointed to that no reference is made to the consultation process that has already been undertaken. In addition, we have already:

- (i) successfully conducted prior consultation with the Campo Herrera community (the only community previously identified by the Ministry of the Interior and consequently the only community we were required to consult with under Colombian law);
- (ii) developed a consultation process with La Horqueta and will be shortly commencing a consultation process with the El Rocío and Tigre Pozo communities following later judicial decisions that broadened the consultation process to communities located upstream of the Arroyo Bruno diversion.

<sup>1</sup> Ministry of Interior (Office of Prior Consultation), Institute of Hydrology, Meteorology and Environmental Studies (IDEAM), Cerrejón, National Environmental Agency (ANLA), National Mining Agency (ANM), Ministry of Environment and Sustainable Development, National Land Agency, Rural Development Agency (INCODER), Geographic Institute Agustín Codazzi, Ministry of Finance, La Guajira Governor's Office, Maicao Mayor's Office, Albania Mayor's Office, National Ombudsman's Office, Prosecutor General's Office, Comptroller General's Office and the Colombian Geological Service (SGC).



In addition to the formal consultation processes, we have promoted extensive spaces to share information on the project and to date over 15,000 people have visited the project areas to find out about its scope and the mitigation measures to manage the impacts.

We understand the interest of the communities that you represent in taking a role in the Roundtable, however, this was not what the Constitutional Court, as the highest court in Colombia, determined to be a fair and proper administrative process. In addition, their participation was not required under the previous Council of State decision in 2016, which initially defined the Roundtable's composition and membership. At the time, the Roundtable's composition was not objected to or queried by critics of the process or by the communities.

## **2. In regard to the accusation of agreements made behind closed doors**

We strongly reject your accusation that decisions are made in "prior closed door meetings" between Cerrejón and Roundtable members. Cerrejón is respectful of the impartial and transparent process required by the Roundtable - each Roundtable member is required to make a considered analysis from an independent position that is supported by scientific evidence, submissions and consultation.

Cerrejón's participation in the Roundtable is in compliance with the Constitutional Court requirements; failure to participate would make Cerrejón liable to sanctions.

Other than determining that there was no requirement for returning the river back to its original course, the Roundtable has not yet expressed any official position on the uncertainties raised by the plaintiffs in the *tutela* and the Constitutional Court process is still underway. Each of the Roundtable members has specialised knowledge and a particular position. Its process is structured to ensure the rights of the communities are appropriately considered and protected – not undermined.

## **3. On restoration of the riverbed**

The Arroyo Bruno was diverted in accordance with Cerrejón's EMP and followed the consultation required by Colombian law at the time. With respect to the eighth order of Ruling SU-698 of 2017, the Constitutional Court established that the Roundtable should decide within thirty days following notification of the judgment if the Arroyo Bruno should return to its original course as a temporary measure. It is not correct to suggest that Constitutional Court ordered the "restoration of the Arroyo Bruno" as set out in your letter.

As noted above, the Roundtable members, following an analysis, made a recommendation that the stream remains in its new riverbed noting that this is the most sustainable short-term option to avoid potential impacts that could negatively affect the Arroyo Bruno or its surrounding communities.

It is also important to clarify that this decision is not final, and that the ultimate decision will be made by the Roundtable at the end of the process, which reflects all the facts presented and submissions made. The process provides opportunities for the plaintiffs, the community representatives and other interested third parties to present their concerns and supporting information.

We note that you indicate that one of the effects of the diversion is an impact on the water scarcity in La Guajira. This concern has not been substantiated by any of the submissions or technical reports received by the Roundtable. It is clearly a matter that will be carefully assessed throughout the process to ensure that there are no current or potential adverse impacts. There is a requirement for the Roundtable to consider the issue of climate change while also acknowledging the role of thermal coal in providing affordable energy in a number of developing countries as well as the socio-economic benefits that Cerrejón provides to its surrounding communities. All of these issues will be carefully weighed by the Roundtable.

The Constitutional Court recognised that while the stream could be returned to its original riverbed, it would not be a responsible course of action without the Roundtable first assessing its environmental and social effects as well as

considering that this was the most viable alternative on a sustainable basis. We hope that you will be willing to respect the Constitutional Court decision.

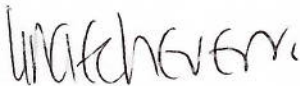
**4. On the proposal for an international panel**

We note the proposal to create an international panel to monitor this process. Cerrejón supports transparent, participative and constructive processes that seek to responsibly manage possible impacts through the utilisation of technical information. However, since the Roundtable includes the Colombian institutions with the appropriate technical expertise, carries on consultation with the affected parties, and is subject to oversight from control institutions such as the Prosecutor General's Office and the Comptroller General's Office and the National Ombudsman, we do not believe that an international panel is required to supervise the work of the Colombian institutions.

We would like to thank you for your continued support for the plaintiff communities. In the interest of transparency and in respect for the Roundtable's autonomy, we will share with them both this letter and your correspondence.

We look forward to maintaining our constructive and informed dialogue on the diversion and other matters of mutual interest.

Best regards,



Lina Echeverri  
Vice President of Public Affairs and Communications