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PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT

Joint written statement* submitted by the Europe Third World Centre (CETIM), a non-governmental organization in general consultative status, and the American Association of Jurists (AAJ), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[29 August 2007]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Human rights violations committed by transnational corporations in Colombia¹

Over the past four decades, Colombia has faced a dire social, political and armed conflict.² In this context, it has to be noted that the numerous transnational corporations operating inside Colombia are somehow involved in the conflict, collaborating with public and private security forces, including paramilitary groups, who despite their alleged demobilization, continue to kill and threaten human rights defenders.³ Transnational corporations are not only abetting human rights violations, they also boost corruption. Failing to respect national and international legislation, these corporations, weaken the rule of law. The present report examines the case of the international consortium that owns the coal mine of El Cerrejón in Colombia.

The transnational owners of El Cerrejón

The El Cerrejón Coal Company operates the world's largest open-pit coal mine. It is located in the Guajira department, in the North-East of Colombia. The El Cerrejón company is owned by BHP Billiton plc (Australia), Anglo American plc (United Kingdom), and Xstrata (Switzerland).⁴

Forced displacements of Indigenous and Afro-Colombian communities

When the El Cerrejón mine began to operate in 1983, constantly expanding ever since, a process of forced displacements of the indigenous Wayuu⁵ and Afro-Colombian communities in the region was triggered. The Wayuu have been present in this region for over 3 000 years, while Afro-Colombian presence goes back some two hundred years.

In September 1981, a large part of the ancestral territory of the Wayuu community of Media Luna was usurped in order to build El Cerrejón Coal's naval port. The mining corporation engaged with the indigenous community in negotiations over a just indemnification that would permit the inhabitants to relocate to another place. However, intransparent discussions and threats to the physical integrity of the inhabitants caused so much pressure that the community eventually gave up their fight for just indemnification and left without being compensated for their loss of land. Similarly, in 1991 the company

¹ ASK, the Swiss-Colombian Working Group (www.askonline.ch) also share the views expressed in this statement.

² Colombia has one of the worst murder and human rights violations records in the world.

³ Amnesty International, Colombia. Killings, arbitrary detentions and death threats – the reality of trade unionism in Colombia, 3 July 2007, see: <http://web.amnesty.org/library/index/engamr230012007>

⁴ The mine was originally owned in two equal parts by Carbocol, a state-owned enterprise, and Intercor, an affiliate of Exxon (United States). In October 2000, the Colombian Government sold Carbocol's 50% ownership to a consortium consisting of subsidiary companies of Anglo American, BHP Billiton and Glencore International. This transaction was required by the International Monetary Fund in the context of its economic adjustment program for Colombia. In January 2002, the consortium acquired the remaining 50% from Exxon. The most recent change of ownership occurred in March 2006, when Glencore sold 1/3 to Xstrata.

⁵ The Wayuu are the most numerous indigenous people of Colombia.

displaced and destroyed the villages of the 350 Wayuu inhabitants of Caracolí and Espinal, comprising 1000 hectares of land.

The largest displacement of people so far took place six years ago in the context of a further expansion phase of the El Cerrejón mine. In August 2001, the Intercor company, along with the local authorities, destroyed a 200-year-old Afro-Colombian *corregimiento*⁶ called Tabaco and forcibly evicted its remaining 1 200 inhabitants. The company had already embarked in 1997 on a process of individual negotiations, offering people money to give up their houses and lands. This project was obviously lacking any kind of social responsibility as it led to the division of the community between those who sold and left and those who refused to abandon their land. The latter continued the struggle for the relocation of the ancient Afro-Colombian population of Tabaco, in order to conserve their social unity and their agricultural traditions permitting to be self-sufficient. In 2000, the company began to exert more pressure on those who refused to accept the absurdly small compensation that was on offer, resorting, among others, to the cutting off public services, the burning of the cemetery and several houses, the prohibition of travelling across the territory, and the diverting of the river for the company's own benefits. With the help of Public forces and in the presence of officials, all the inhabitants were finally evicted.

In the case of Tabaco, the ownership consortium of El Cerrejón, with the complicity and solidarity of Colombian State officials, is responsible for the pillage, robbery and forcible displacement of the whole *corregimiento*. Families who did not sell their property rights to the company saw their houses and properties destroyed and people expelled from their village. Those who sold their goods did so under pressure, thus attesting the sale as illegitimate. Faced with this alarming situation, the resisting people of the Tabaco community initiated a series of legal actions with the end of protecting their rights. Thus, in May 2002, the Colombian Supreme Court ruled that the displaced people from Tabaco must be relocated in such a way that allowed to reconstruct their community.⁷ Although the Junta Pro Reubicación de Tabaco, the Tabaco Relocation Committee, has found a convenient piece of land, and gave precise indications on the reconstruction, the people of Tabaco are still waiting for this decision to be enforced. The transnational owners of El Cerrejón should compensate the community to enable the acquisition of this land and allow Tabaco to be reconstructed. Since the displacement of their village six years ago, the living conditions of the people from Tabaco have been deteriorating constantly and the ethnical and cultural identity of their ancestral community is under grave danger of disappearing.⁸

Deteriorating living conditions in communities surrounding the El Cerrejón mine

In January 2007, El Cerrejón published its intention to engage in negotiations with three townships – Chancleta, Roche y Patilla – that would be affected by displacements in the mine's next expansion phase. The company promise to initiate collective and transparent negotiations with these villages over compensation and relocation, but such discussions have not yet started and no one even knows when they begin. In the meanwhile, the

⁶In Colombia, the word *corregimiento* is used to describe populations living on a same territory but that do not constitute a municipality. During the Spanish colonisation, the *corregimiento* was the territory managed by the *corregidor*, who represented the Real sovereignty. See <http://es.wikipedia.org/wiki/Corregimiento>

⁷Riohacha Superior District Court Decision, Civil Chamber, 7 May 2002.

⁸Report of the Lawyers' Collective José Alvear Restrepo, *La comunidad de Tabaco*, 12 April 2005.

company is now putting pressure on the community and is engaging in individual negotiations. Given the dire economic situation of the inhabitants, the latter are likely to give in to the pressure that is exerted upon them by the mine officials, and to sell their properties at prices that bear no relation to their actual value. In so doing, the company undermines the communities' unity, self-determination and will to resist.

The situation of the two townships that are closest to the mining zone is particularly alarming. The Roche village is on the verge of being displaced in order to give way to the mine. It is of utmost urgency to find suitable collective solutions for the inhabitants of this town. Similarly concerning is the special situation of Tamaquitos, a Wayuu township. Tamaquitos finds itself in immediate proximity of the mine, however it is not threatened with displacement, but isolation. All of the surrounding farms have already been occupied by the mining company and, as mentioned previously, Tabaco, with which Tamaquitos interacted socially and economically, has been totally destroyed. The remaining people of Tamaquitos have been completely deprived of land to cultivate crops and raise cattle. In addition, the community has been cut off from all access to public transport, education, health services and food stores. The current owners of El Cerrejón, indifferent to the fate of this Wayuu community, show no interest in engaging in negotiations. In conclusion, the displaced community of Tobacco, as well as the inhabitants of Roche, Chancleta, Patilla and Tamaquitos are facing a very critical situation.

The operations of the El Cerrejón mine contribute to the deteriorating general health and to serious environmental pollution

In the Guajira department, the indigenous Wayuu group and the Afro-Colombian communities who live close to the coal mine have been historically oppressed and are still struggling for their lives and for the community existence. The open-pit mine not only systematically besieges the surrounding communities, it also contaminates the air in and around the mining zone so that inhabitants of the surrounding villages breath injurious coal particles the whole day long, potentially leading to premature death. Furthermore, the inhabitants say that the mining activities pollute the river water used by them for washing, drinking and irrigating their land. It is very likely that the environmental pollution affecting the surrounding communities by way of contaminated air and polluted water significantly contributes to the poor health situation of the inhabitants of this zone.⁹ In addition, the people, and especially the children, in these villages are suffering from malnutrition. The Afro-Colombian and indigenous communities of this part of the Guajira department are impoverished because they have had to leave all their cultivatable land to the mine. This precarious situation, in combination with the constant presence of private security forces and paramilitary groups that are supposed to guard the mining zone has been proven to have adverse psychological effects in similar situations.¹⁰ This situation of isolation created by the mine, impedes these people's access to health care, which is one of their basic rights.

⁹ "Selected Key Studies on Particulate Matter and Health", American Lung Association, March 5, 2001.

¹⁰ Charles Clements, *Witness to War*, Bantam, New-York, 1985

Conclusion

The companies managing the El Cerrejón mine claim to be exemplary economic players in the human rights and community development sphere. However, the present statement shows that, contrary to El Cerrejón's affirmations and aspirations¹¹, the consortium composed of Anglo American, BHP Billiton and Xstrata ignores the rights of the indigenous Wayuu and Afro-Colombian communities. El Cerrejón displays a systematic violence towards the community living on the periphery of the mine. It is a well-documented fact that these ancient communities have suffered greatly from the reckless coal mining on their ancestral territories and that they are being systematically besieged by the El Cerrejón company. The mining company always begins by buying up the productive lands surrounding the communities, encircling each community and destroying its inhabitants' sources of work, pasture and food. In addition, massive environmental pollution due to mining activities contributes in the short and in the long term to markedly adverse effects on the health of the surrounding communities. The United Nations has established categories of "poverty" and "extreme poverty", but these communities have been reduced to conditions we could call 'living dead.' They do not have even the most minimal conditions necessary for survival. They are suffering from constant attacks and violations of their human rights by the El Cerrejón mining consortium.

It has to be stressed that, notwithstanding the fact that all of the mentioned companies have joined the Global Compact, not one of them respects the terms of their engagement. This untenable situation once more shows that voluntary codes are inconsistent, inefficient and inadequate. For this very reason, it is essential to create a strong legal framework applicable to the international activities of transnational corporations.

Based on the above, the Europe-Third World Centre (CETIM) and the American Association of Jurists (AAJ) demand the following:

- that the Colombian government exercise its duty to respect and enforce the respect of international norms regarding human rights and national rules concerning transnational corporations operating on its territory in general, and those specifically related to Anglo American, BHP Billiton and Xstrata;
- that the governments of Australia, the United Kingdom and Switzerland ensure that their national enterprises operating on foreign territory respect all human rights and to investigate in case of a violation of these rights;
- that the Human Rights Council establish a Working Group with the objective to examine and adopt the Norms applicable to transnational corporations adopted in 2003 by the former Sub-Commission on the promotion and protection of human rights, and to implement appropriate follow-up mechanisms.

¹¹ El Cerrejón homepage: www.cerrejoncoal.com, 5 August 2007.