

International Commission of Jurists visited Carbones del Cerrejón in Colombia to assess the company's grievance mechanism

From 9-13 December, a delegation from the International Commission of Jurists (ICJ) visited the company Carbones del Cerrejón LLC (El Cerrejón) to analyse the operation and effectiveness of its grievance mechanism. The company, owned by Glencore plc, Anglo American and BHP Billiton, is located in the department of La Guajira, Colombia. The visit took place within the framework of the ICJ's initiative on the effectiveness of grievance mechanisms established by companies to remedy negative impacts and human rights abuses.

The ICJ appreciated the collaboration of the Institute of Studies for Development and Peace (INDEPAZ) in the organization and facilitation of the visit. It also acknowledges and thanks the company Carbones del Cerrejón for the welcome and all the facilities provided to the mission as well as the information shared with the delegation. The ICJ also thanks the communities of Afro-descendants, peasants and indigenous Wayuu who welcomed and spoke with it. This statement contains preliminary views and recommendations from the delegation regarding the company's grievance system and the context in which it operates. Subsequently, the ICJ will prepare a full report and will use this evaluation in the context of a general evaluation and recommendations on operational level grievance mechanisms.

The objective of the mission was to learn about and analyse the operation of the grievance mechanism established by the company and to evaluate in a preliminary way its effectiveness.. Cerrejón is one of the companies in the coal mining sector that started the process of establishing grievance and / or complaint mechanisms early. Between 2009 and 2011 it was part of five pilot projects carried out by a team of the Special Representative of the UN Secretary General on business and human rights.

Contextualize the mechanism: Coal mining in La Guajira

La Guajira - province of Colombia on the border with Venezuela - besides its natural beauty and the friendliness of its people surprises visitors by the sharp contrast it presents between the great wealth generated by the extraction of coal and the poverty prevalent among its population. The majority percentage of the population of La Guajira is made up of indigenous Wayuu populations and Afro-descendant communities, who generally live in poverty. There is a lack of water and of employment opportunities or economic activities that are not linked to the operations of El Cerrejón, which accentuates the apparent dependence of the regional economy on the extractive activity of coal and raises doubts and questions about sustainability of the regional economy sitting on these bases in the short, medium and long term.

The information received by the delegation of the ICJ points to corruption as one of the main factors that influence and determine the lack of better health and education services, infrastructure and economic investment in the region by the State. Corruption is more visible among the political class. Senior

officials of the regional government were or are currently being prosecuted for corruption and murder. La Guajira has had eight different governors in five years, which is a destabilizing and paralyzing factor in a highly centralized political system of government. In this context, although considerable efforts are made by various actors, including El Cerrejón, distrust among the population is significant.

El Cerrejón, which operates in La Guajira, is one of the largest open-pit coal mining operations in the world and has an integrated operation that includes the extraction of coal, its transport by private railroad to Puerto Bolivar (150 kilometers away) and its cargo and transportation to consumer countries. About 40 percent of the coal exported by Colombia goes to European markets. El Cerrejón is presented as an example of responsible mining both in the Colombian coal mining region and in the world and it has recently developed a series of social responsibility policies, including a due diligence process in the field of human rights. The ICJ was informed that the experience and lessons learned from the grievance mechanism have influenced the design of these policies.

The complaints mechanism

The ICJ delegation had the opportunity to become familiar with the design, process and results of the company's complaints mechanism thanks to the information it provided and interviews with communities using the system. It must be recognized that El Cerrejón has designed a fairly professional and sophisticated system, which, however, is not fully utilized and works in a limited way due to a series of factors.

The mechanism, as it works at the moment, presents a number of positive elements among which can be highlighted:

- Accessibility of the mechanism through two central offices near the mine, as well as a network of railway watchmen, analysts and promoters who regularly interact with the population within the area of influence. Affected people may also contact the grievance office by telephone, and the company disseminates information related to the mechanism through brochures and cards.
- Original advances in the way the process is conducted with due regard to the particular elements of the Wayuu culture: the grievances may be of a collective nature, the respect of negotiation protocols pertaining to their culture, and their consideration of what constitutes adequate reparation in the circumstances. This shows flexibility regarding the modalities of negotiations, as well as remedies.
- A proactive strategy in the identification of negative impacts through early detection mechanisms in non-formalized contexts. The company makes efforts to implement mechanisms to detect people's concerns in different contexts outside the complaints mechanism and follows up so that these concerns are formulated formally before the grievance mechanism.

Among the limiting factors to the grievance mechanism of El Cerrejón are the following:

- The limited financial and human resources available for the work of the grievance mechanism. The number of employees working in the grievance office is limited but has to cover a vast geographic space with approximately 325 indigenous, Afro-descendent or peasant communities and therefore thousands of people in the area of direct and indirect influence of the company. This small group makes a great effort in an area that requires constant movement and time for the relationship with the population, which should be valued but is clearly insufficient.
- Although the basic design of the grievance mechanism includes a broad scope of all the human rights concerns or abuses linked to the company's operations, in practice about 85 percent of cases received and resolved by the mechanism since its creation (of a total of more than 1800 cases) refer to the death of animals (such as goats, cows and others) belonging to communities or families bordering the railway. Without underestimating the importance of animals for the sustenance and culture of the surrounding communities, the ICJ delegation notes that other human rights problems linked to the resettlement of communities, allegations of water and air pollution, access to land and labour concerns are lodged and resolved in a lesser proportion via the grievance office (about 200 cases in total). There is a separate procedure for labour issues in which union delegates have an important role, but which works in a deficit manner according to the union. The reasons for this limited use of the grievance mechanism are several and include the limited resources available within the mechanism and the lack of knowledge and / or trust of communities in the mechanism.
- Deficit of legitimacy and trust among certain sectors of the population towards the mechanism, which is perceived by some groups as an instrument without independence or impartiality to settle serious cases of human rights abuses. However, other community members recognize that the company meets their claims and complies with the agreements established through dialogue with communities.
- Despite the efforts made to communicate and disseminate the mechanism, its process and possible benefits compared to other alternative media, a deficit remains in this area. Many members of the communities interviewed said they did not know the mechanism. The publicly available information is limited and therefore the ICJ has requested the company make available more complete and detailed information.

The El Cerrejón complaint mechanism operates in a context in which legal and judicial remedies are frequently used, as in many other contexts in which companies operate in Colombia. Many of the human rights cases have been processed using mechanisms established in the country's legal system, such as *Tutela* remedies, petition rights and the use of the pre-judicial conciliation mechanism. The company expresses its respect for judicial decisions,

although it recognizes that some of them present dilemmas and important implications for their operations. The preferential use of mechanisms and resources of a judicial nature demonstrates a good level of trust in the judicial system by those affected by the company but could also mean a limitation of the grievance mechanism as an early warning system and prevention of conflicts in cases of serious human rights problems. The execution of judgments and judicial decisions, however, is slow.

The ICJ delegation has not received any information indicating a company strategy or policy to prevent or discourage access to justice by the affected individuals or groups. The company indicated to the delegation that the compensations granted under agreements with the complainants always leave open to them the possibility of a judicial recourse in cases that the affected parties consider it necessary.

Preliminary recommendations

The ICJ delegation has shared with the company's team these considerations along with a number of preliminary recommendations, including the following:

- Improve the communication and transparency of the grievance mechanism by sharing sufficiently detailed information so that external actors, including those who advise affected communities, can visualize the process as a whole and participate more fully. This will also contribute to a more predictable system.
- The company should consider the incorporation and development of a component of social participation and co-management of the grievance system as a way to increase the legitimacy, scope and effectiveness of the complaints mechanism.
- The company could consider the development of a two-level system that allows it to deal with complex complaints or those related to serious incidents in a collegiate body with the participation of social groups in it. This could also contribute to the perception of the legitimacy and effectiveness of the system.
- Ensure that the grievance mechanism occupies an appropriate place within the structure of the company and that the reporting line of this mechanism is made at the highest possible level within the company. Likewise, the grievance mechanism must have sufficient financial and human resources for its important work.
- Adopt measures so that the complaints system effectively addresses concerns and cases of abuses of all human rights, including those that arise during the resettlement process, air and water pollution, access to decent living standards, among others.