



GLENCORE IN PERU

THE ANTAPACCAY CASE AND AN
ANALYSIS OF COMPLIANCE WITH
INTERNATIONAL HUMAN RIGHTS DUE
DILIGENCE STANDARDS

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ACRONYMS

CENSOPAS	National Centre for Occupational Health and Environmental Protection for Health (<i>Centro Nacional de Salud Ocupacional y Protección del Ambiente para la Salud</i>)
DIRESA	Regional Directorate of Environmental Health (<i>Dirección Regional de Salud Ambiental</i>)
EQSs	Environmental quality standards
EIA	Environmental impact assessment
ICMM	International Council on Mining and Metals
IFC	International Finance Corporation
ILO	International Labour Organization
IPEN	Peruvian Institute of Nuclear Energy (<i>Instituto Peruano de Energía Nuclear</i>)
MEIA	Modified environmental impact assessment
MINAM	Ministry of the Environment (<i>Ministerio del Ambiente</i>)
MINCUL	Ministry of Culture (<i>Ministerio de Cultura</i>)
MINEM	Ministry of Energy and Mines (<i>Ministerio de Energía y Minas</i>)
OECD	Organisation for Economic Co-operation and Development
OEFA	Agency for Environmental Assessment and Enforcement (<i>Organismo de Evaluación y Fiscalización Ambiental</i>)
PCM	Presidency of the Council of Ministers (<i>Presidencia del Consejo de Ministros</i>)
SENACE	National Environmental Certification Service for Sustainable Investments (<i>Servicio Nacional de Certificación Ambiental para las Inversiones Sostenibles</i>)

1. EXECUTIVE SUMMARY

This report looks at Glencore's operations in Peru, focusing on the environmental and social impacts of Antapaccay's mining activities in Espinar Province, in the southern Andean region of Cusco, which is an ancestral territory of the Quechua and K'ana Indigenous peoples.

It finds that Glencore is not fully complying with international environmental, social or Indigenous rights standards. On the contrary, Glencore consistently does the minimum required by national legislation, which in Peru has large gaps in these areas.

The report reveals serious omissions by the company and includes recent information about the environmental impacts of the mining activities and the land negotiation processes in the company's expansion plans. It also offers recommendations on how Glencore could bring its performance in line with its international commitments.

Key findings

- Recent official reports¹ offer new information that shows a causal link between Glencore's operations and pollution in Espinar. A due diligence approach should lead the company to take the initiative in determining this causality and taking measures to resolve it.
- The expansion of the mining project into a new area called Coroccohuayco would involve a significant enlargement of more than 20,000 hectares, an area larger than a country such as Liechtenstein.² However, in the negotiation process for the acquisition of land from Indigenous communities, Glencore does not appear to adhere to the principles of due diligence and best practices to guarantee the collective rights of Indigenous peoples. The process is being carried out with contradictory information and without providing communities with the objective studies necessary to value the land.³ In addition, the company has not been clear in acknowledging that the proposed enlargement⁴ would almost obliterate at least one community (Pacopata) and would therefore require a resettlement plan, in accordance with the recommendations of ILO Convention 169⁵ and IFC Performance Standard 5.⁶
- Consultation and free, prior and informed consent are fundamental rights of Indigenous peoples, recognized by international instruments. For the Coroccohuayco project, the Peruvian state is conducting an irregular consultation process, which ignores Peruvian regulations and does not take into account the recommendations of the Ombudsman's Office.⁷ **Glencore claims to respect this consultation. However, in order to comply with the principles of human rights due diligence, it should not shirk its responsibilities based on the decisions of the Peruvian government; rather, it should demand proper prior consultation to ensure the meaningful involvement of the affected communities,** and substantive agreements on how this should be carried out.
- Since they began in the 1980s, mining activities in Espinar have given rise to a series of environmental and social violations that have caused constant conflict. We hope that this report will be a useful tool for Glencore to avoid repeating the mistakes that owners of the Tintaya-Antapaccay project have made in the past. We also hope that it will enable the company and its investors to thoroughly evaluate its current performance and bring it in line with the best international standards and practices.



2. GLENCORE IN PERU AND THE ANTAPACCAY CASE

In Peru, Glencore has significant investments in several mining companies: Antamina, Antapaccay S.A., Los Quenuales and Volcan.⁸ This report focuses on Antapaccay S.A., which operates a major copper mining unit in the district and province of Espinar, Cusco Region, which is an ancestral territory of the Quechua and K'ana Indigenous peoples.

The mining unit is an open pit operation. Box 1 provides a timeline of the history of the mine. Initially it covered an area called Tintaya which, from 1985, was operated by a state-owned company. In 1994, it was purchased by Magma Copper Company and in 1996 it was taken over by Broken Hill Proprietary Company (BHP). In 2001, this group merged with Billiton and in 2006 Xstrata purchased the mining unit.

In 2012, the mine expanded into the Antapaccay area, and a new expansion process into the Coroccohuayco area is currently underway.

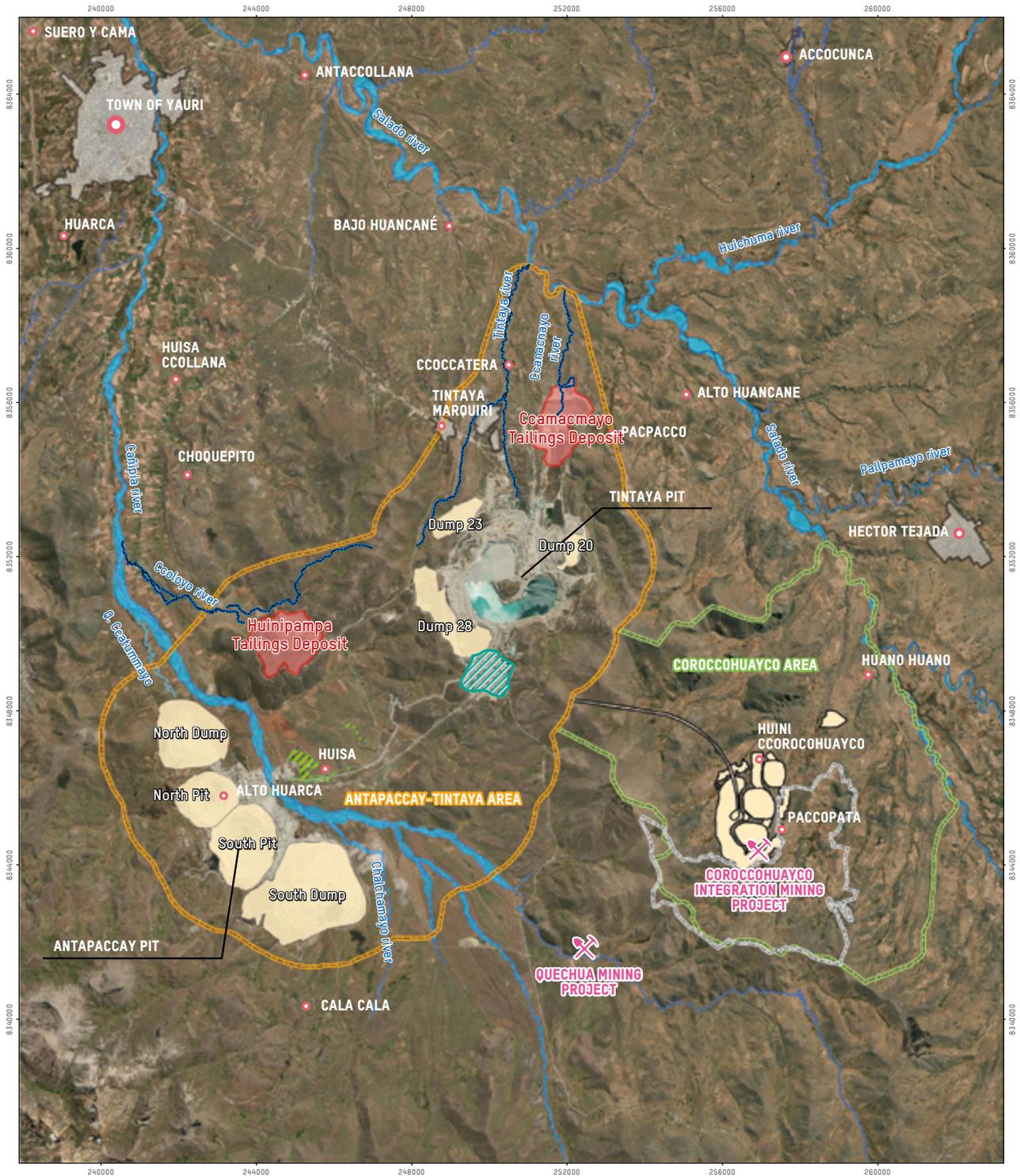
In 2013, Xstrata was taken over by Glencore, which became the new owner of the mining unit.

Box 1. Timeline: Glencore and mining in Espinar



Source: Prepared by CooperAcción.

Map 1. Area of influence of the Antapaccay-Tintaya mine, Espinar Province, Cusco



LEGEND

- Provincial capital
- District capital
- Population center
- River
- Ravine
- ⚡ Mining project
- Urban limit
- Mining project components
- Wetland
- Mine tailings
- Processing plant
- Antapaccay-Tintaya area
- Coroccohuayco-Exp area

Universal Transverse Mercator (UTM)
 Vertical Datum Mean Sea Level
 Horizontal Datum WGS 84
 Zone 19 South

CooperAcción

Map:
Area of influence of the Antapaccay-Tintaya mine, Espinar Province, Cusco

Prepared by: CooperAcción Team	Date of preparation: August 2023	Map N°: M-01
Location: Espinar Espinar - Cusco	Scale: 1:90,000	

Sources:
Community Information - National Map 1:100 000 - IGN, DEM Alos Pizarar and Aster (2008).
INEI (2017) - MTC (2016) - MINAGRI (2014) - Folio LB-06 Figure:3.1.3-3
MEIA ANTAPACCAI TINTAYA EXPANSION - COROCCOHUAYCO INTEGRATION

Source: Prepared by CooperAcción.

By 2022, the mine was projected to expand by more than 20,000 hectares: 13,568.6 hectares in the Antapaccay-Tintaya area and 6,810.98 hectares in the Coroccohuayco area (Map 1).⁹ This is an area larger than Liechtenstein or the Marshall Islands.

However, these figures are currently being revised. The project was in the feasibility stage and its modified environmental impact assessment (MEIA) was approved in 2019, but in 2021 it reverted to the pre-feasibility phase.¹⁰ In a letter on 8 September 2023,¹¹ Glencore stated that the data from the 2019 MEIA should be ignored, and that the company will prepare a new EIA.

Over three decades, the mining unit has grown larger and larger and there have been constant changes to its environmental permits.¹² This makes it difficult for communities to have a full picture of the project and its impacts.

2.1 GLENCORE AND HUMAN RIGHTS DUE DILIGENCE STANDARDS

In Peru, national legislation on the environment and the rights of Indigenous peoples has been found by various studies to contain gaps, contradictions and weaknesses. **Peruvian legislation therefore offers a very weak standard for considering that due diligence has been fully complied with in the areas of human rights, environmental protection and Indigenous rights.**

Glencore has signed up to numerous statements of commitment and initiatives concerning respect for human rights, due diligence and the free, prior and informed consent and participation of communities. Glencore claims¹³ to be committed to the UN Guiding Principles on Business and Human Rights and the Universal Declaration of Human Rights. It supports the 10 principles of the UN Global Compact and the Sustainable Development Goals, as well as the Due Diligence Guidance for Responsible Business Conduct of the Organisation for Economic Co-operation and Development (OECD). It states that it operates in accordance with the Voluntary Principles on Security and Human Rights, Performance Standard 5 of the International Finance Corporation (IFC) on land acquisition and involuntary resettlement, and the Position Statement on Indigenous Peoples and Mining, which forms part of the Declaration of Mining Principles of the International Council on Mining and Metals (ICMM). In addition, Glencore has developed its own standards on free, prior and informed consent,¹⁴ together with other instruments such as a code of conduct and a human rights policy.¹⁵



3. CRITICAL POINTS IN THE RELATIONSHIP BETWEEN GLENCORE AND ITS ENVIRONMENT

3.1 POLLUTION

Pollution in Espinar is an established fact that has been proven in numerous independent and official studies (see Box 3). The discussion is not about whether there is pollution, but rather its origin. While people living in the vicinity of Antapaccay mainly associate the pollution with the mining operations, the company maintains that the origin of this problem is natural, due to the geological characteristics of the area (see Box 2).

In this report we present new official studies indicating that there is pollution that has a causal link to the mining activity.

Box 2. What does the company say?

Glencore rejects any responsibility for pollution in Espinar. It states that 'the 13 rural communities living around Antapaccay draw water from springs, separate from the Salado and Cañipía rivers. Due to natural causes, these springs contain naturally occurring heavy metals', and that 'the water used by the Antapaccay mine is not connected to the province's source of drinking water'.¹⁶ It also says that Antapaccay 'does not draw or discharge water from the same catchment area used for the Espinar urban area and treats the small amount of water that is discharged into the Salado and Cañipía rivers'.¹⁷ The company claims that in the Participatory Health and Environment Monitoring Report¹⁸ 'no causal link was made to Antapaccay's operations'.¹⁹

Box 3. Documented pollution in Espinar

In Espinar, the presence of toxic metals in the environment and in people has been documented for more than 10 years.

2010

A study²⁰ by the National Centre for Occupational Health and Environmental Protection for Health (CENSOPAS) showed that the residents of Espinar were exposed to mercury and arsenic through the water they consumed.

2013

A Participatory Health and Environment Monitoring Report²¹ confirmed the presence of contamination in the areas of the mining operations.

2013

A CENSOPAS study showed that residents of Alto Huanané and Huisa were exposed to dangerous levels of arsenic, cadmium, manganese, mercury, lead and thallium (100 %).²²

2018

The Regional Directorate of Environmental Health of Cusco (DIRESA) analysed samples from the drinking water treatment plant in the town of Yauri, Espinar.²³ It found that the levels of aluminium, arsenic, iron and manganese exceeded the maximum permissible limits and warned of an imminent risk to public health.

2021

The monitoring of water for human consumption for 13 communities in Espinar presented by General Directorate of Health and Food Safety for the Multisectoral Commission²⁴ found that 82 % of the 157 samples analysed exceed the maximum permissible limits for arsenic, aluminium, iron, mercury, lead and other contaminants.

3.1.1 Cause of the pollution

Six environmental assessment studies produced by the Agency for Environmental Assessment and Enforcement (OEFA) between 2022 and 2023²⁵ link the pollution to the Antapaccay operations. The main findings of these studies are presented below.²⁶

■ Air quality

Two OEFA reports on air quality²⁷ show that pollution levels exceeded the environmental quality standards (EQSs) on numerous occasions, due 'to emissions of PM10 particulate matter from the activities carried out by the Antapaccay auditable unit, confirmed by the analysis of back trajectories, mineralogy and receptor modelling'.²⁸

■ Water quality and quantity

Three OEFA reports address the causality of surface water and groundwater contamination.

The first and second²⁹ concludes that mining effluents did not comply with the water quality standard for irrigation and livestock use at six of the locations studied,³⁰ and that 'these results differ from CMA's³¹ commitments to supply good quality water for irrigation and livestock drinking purposes as indicated in the EIAs'.³² It also finds that in at least two locations (Chalchamayo River and Ccatunmayo ravine) leachates from the north and south dumping sites are affecting water quality, including the presence of metals.³³ This is due to the fact that these leachates flow through ravines or infiltrate into the ground because there is no impermeable barrier between the filtration and the soil.³⁴

The third report³⁵ establishes that the physicochemical composition of various groundwater and surface water courses are being influenced by the mining installations. This report also mentions lowering of the water table and drying up of springs as being related to the drainage of the pits. **Its findings reveal that:**

Source: Prepared by CooperAcción.

the project has had a greater impact than anticipated in the initial studies. The decrease in groundwater levels in peripheral areas and the occurrence of subsidence underline the need to pay special attention to the effects on the hydrogeological system and the stability of the land.³⁶

■ Impact on flora and fauna

Three reports³⁷ assess the contamination of flora and fauna, finding heavy metals in wild species of Andean grass³⁸ and other plant tissues in areas around the mine,³⁹ as well as in reptiles and birds.⁴⁰ Regarding domestic animals, one report notes that:

it has been proven that there are concentrations in excess of the maximum tolerable levels in the food for livestock (pastureland and plants associated with pastureland) due to the presence of PM10 particulate matter from the mining components, pits and dumps north and south of the Antapaccay auditable unit. That is believed to be causing the various impacts on domestic (ruminants) and wild fauna.⁴¹

Moreover, it is proposed that some areas should be considered 'unsuitable for grazing',⁴² which was not one of the expected environmental impacts.

3.1.2 Proven causality?

The recent OEFA studies are a new milestone, but indications of causality have been documented in previous studies.⁴³ This is important because there were already sufficient reasons for Glencore to take measures.

How many studies are needed for it to be accepted that the contamination comes from the mine?

For the residents of the area, this has been clear for many years, but their perceptions have been minimized and denied (Box 4).

The new evidence seems to confirm the opinion of the local population that there is contamination that has its origins in the mining activities and not in the local geology.

Glencore confirmed in a letter from September 2023 that it is aware of these studies and notes that 'the reports were shared with Antapaccay for review. This review process is ongoing and Antapaccay will continue to collaborate with the Peruvian authorities to provide feedback.'⁴⁴

In accordance with OEFA's Evaluation Regulations, these reports have been sent to the Directorate of Environmental Supervision in Productive Activities; if applicable, that agency will issue a supervision report recommending that an administrative sanctioning procedure be opened. To date, no supervision report has been issued.

We hope that the results of this evaluation do not reaffirm the belief that civil society organizations have held for many years: that the evidence is there, but officials in state institutions avoid clearly attributing responsibility.

Box 4. Testimonials

'WE ARE SICK'



Photo credit: Jacob Balzani-Lööv.

Cristina Choque Castillo, 64, and her 21-year-old son, Fran, on their land near the Ccoccareta ravine, three kilometres downstream of the Tintaya-Antapaccay tailings deposit. Cristina associates Fran's disability with the fact that she continued to drink water from the Ccoccareta River when she was pregnant.

'WE LIVE OFF OUR SMALLHOLDING. WE GROW POTATOES, CAÑIHUA AND QUINOA, BUT IT'S NOT LIKE IT USED TO BE; THE LAND NO LONGER GIVES A GOOD HARVEST. I DON'T KNOW WHERE WE'RE GOING TO GO, WHO'S GOING TO SOLVE THIS PROBLEM. WE'RE SICK AND WORRIED.'⁴⁵

'LOOK AT MY LITTLE SON; THIS BOY IS 21 YEARS OLD. HE COULD BE OKAY, BUT HE'S LIKE A WAWA [BABY]. HE CAN'T DO ANYTHING; I HAVE TO WASH HIM, COOK FOR HIM, FEED HIM, WASH HIS CLOTHES, SORT HIM OUT. HE'S ALWAYS WITH ME; HE DOESN'T LEAVE MY SIDE. IT'S SO SAD. IT WORRIES ME; I DON'T KNOW WHEN I'M GOING TO DIE, I DON'T KNOW WHO'LL LOOK AFTER MY SON. I KNOW I'M GOING TO DIE BECAUSE I HAVE A DISEASE. I DON'T KNOW WHERE I'LL BE ABLE TO TAKE HIM. I CAN'T DO ANYTHING.'

'ALL THE WOMEN ARE SICK. THIS MORNING MY NEIGHBOUR CAME, TOO, AND TOLD ME THAT SHE'S UNWELL. I USED TO HAVE LOTS OF FAMILY. MY MOTHER-IN-LAW DIED OF CANCER OF THE STOMACH AND KIDNEY ... I HAD AN AUNT WHO DIED OF KIDNEY CANCER. NOW THERE ARE ONLY A FEW OF US LEFT.'

'THIS RIVER USED TO BE CLEAN ... NOW WE'VE ALL BEEN AFFECTED BY HEAVY METALS. THERE ARE LOADS OF CHILDREN LIKE HIM [FRAN]. IN ALTO HUANCANÉ AND BAJO HUANCANÉ THERE ARE FIVE OR SIX CHILDREN WHO'VE BEEN AFFECTED LIKE HIM. THEY'RE SPECIAL; THEY CAN'T READ OR COUNT. I'M TEACHING HIM, BUT HE DOESN'T GET IT.'

Cristina Choque's land is located on the lower terraces of the Tintaya (Cocccareta) River, which is frequently mentioned in OEFA reports as an area affected by the Tintaya tailings deposit: 'It is established that the leachates from said tailings deposit are affecting the chemical composition of the groundwater and that those underground flows go towards the waters of the Tintaya and Salado rivers'.⁴⁶ In addition, Dump 23 presents the 'potential for leaching by meteoric water to surface water, groundwater, sediments and soils adjacent to the dump,' and 'it is established that leachates from Dump 23 are affecting the chemical composition of the groundwater, infiltrating into those subterranean environments (groundwater), with underground flows towards the Tintaya and Salado rivers'.⁴⁷

3.2 LAND

Glencore states that for the Coroccohuayco project, 'the land acquisition will be performed in accordance with Peruvian law and IFC Performance Standard 5'.⁴⁸

However, the land negotiation process is repeating the mistakes of the past and we believe that it does not meet the international standards recommended for Indigenous peoples. The population of the area is mainly made up of Indigenous communities⁴⁹ and their collective existence is closely linked to the territory and their ownership of the land. In such cases, there are special protection standards that are recognized by ILO Convention 169 (Article 16, paragraph 2), the UN Declaration on the Rights of Indigenous Peoples (Article 10) and the IFC Performance Standards.

From the beginning and through its successive expansions, the mining operation has caused the fragmentation of communities and loss of territory, affecting communal ownership of their lands and their very existence as Indigenous peoples. The Coroccohuayco expansion is repeating that story.

3.2.1 Background: the long history of fragmentation of Indigenous territory

This section presents background information on how communities' territories have been fragmented over several decades since the start of mining activities in the area, which is relevant to understanding the current situation of Indigenous communities and their territory. We believe these are mistakes that Glencore (which acquired the project in 2013) should not repeat.

The mining operation has, at several stages, involved the expropriation or purchase of land from peasant communities, adopting a private negotiation approach that would be suitable for standard property but not for lands that can be considered communal territory, as indicated in ILO Convention 169.

The reduction of communal territory by expropriation and purchase generated social unrest and, in 2001, a dialogue table was formed to address this issue. As a result, affected families

were compensated with land in different locations, far from their community's territory.

In 2010, a new expansion process began into Antapaccay, on land that mainly belonged to the Alto Huarca and Huisa communities.

For the third expansion zone (Coroccohuayco), the first lands (400.85 ha) were purchased from the Huano Huano community in 1997,⁵⁰ 26 years ago, in the area corresponding to its Pacopata and Huini Coroccohuayco annexes.

With the sale of the land, the annexes became disconnected from each other and lost access to the Huano Huano River and collective goods such as pastureland, animal bathing areas, ancestral trails and areas of significant cultural and religious value.⁵¹

3.2.2 Coroccohuayco: repeating the same story

In the Coroccohuayco project, these past mistakes are being repeated, leading to greater fragmentation of communities, loss of territory and the risk of their disappearance.

We have identified a lack of transparency and contradictions regarding the amount of land the company needs to acquire for the project. This has made it impossible for the community to negotiate in an informed manner.

In the Coroccohuayco MEIA, Antapaccay stated that it needed to acquire land from four communities (Huano Huano, Huini Coroccohuayco, Pacopata and Alto Huarca). However, there has been a significant difference between what it officially informed the Peruvian government via the MEIA⁵² and what has been said to communities in bilateral dialogue on the acquisition of the land, which we have been able to verify directly for the case of the Pacopata community.

■ Bilateral dialogue on land acquisition

Since 2020, at the height of the COVID-19 pandemic, people from the company began visiting the communities to discuss the land acquisition process.⁵³

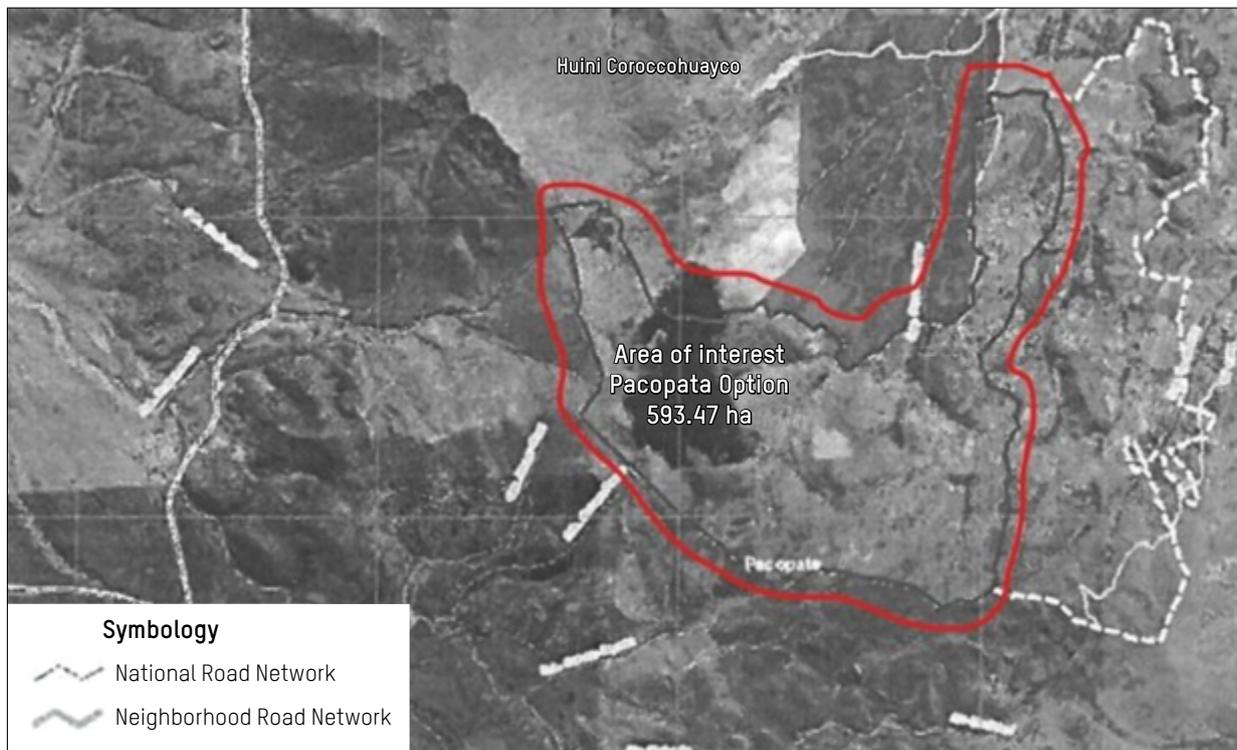
In the case of Pacopata, a community that CooperAcción has advised directly, in April 2022 the company and the community signed an agreement to carry out baseline, census, land registry and inventory studies. As a result of that agreement, Glencore had access to the communal territory and the possibility of engaging in dialogue with every community member.

The company began its studies and set up the dialogue committee. At that time, it sent a purchase offer to the community of Pacopata. This is noteworthy because **the studies should have provided information for the land negotiation**

process and should not have been conducted in parallel to it.

According to the accounts of community representatives and a copied document that was given to them, Glencore proposed to acquire 593.47 hectares (Map 2), an area much larger than that stated in the MEIA (70 hectares, 6 % of its territory). The proposal was accompanied by a printed PPT. This is not an appropriate way to present a land negotiation proposal, which should have been delivered as a formal document, signed by the company representative, with accurate and clear information about what was being requested.

Map 2. Map provided as a PPT by Glencore to the community representative of Pacopata in 2022



Source: Personal communication with community representative.

The community, with the help of CooperAcción, georeferenced the image, which revealed a larger area than indicated (810.25 hectares). The community representative told us that following a complaint made by the community, in June 2022 they received a map from the company that had an image indicating an area of interest of 960 hectares.

The community also georeferenced this second image, which again calculated the area as

higher than that stated in the proposal (at 1208.62 hectares). **This meant that only 211 hectares would remain in the communal territory, a significant reduction that would jeopardize the community's very existence.**

The lack of transparency in the information provided is remarkable. Table 1 summarizes the contradictions in the Pacopata negotiation.

Table 1. Differences between the area stated in the company’s purchase offers and the area calculated using georeferencing

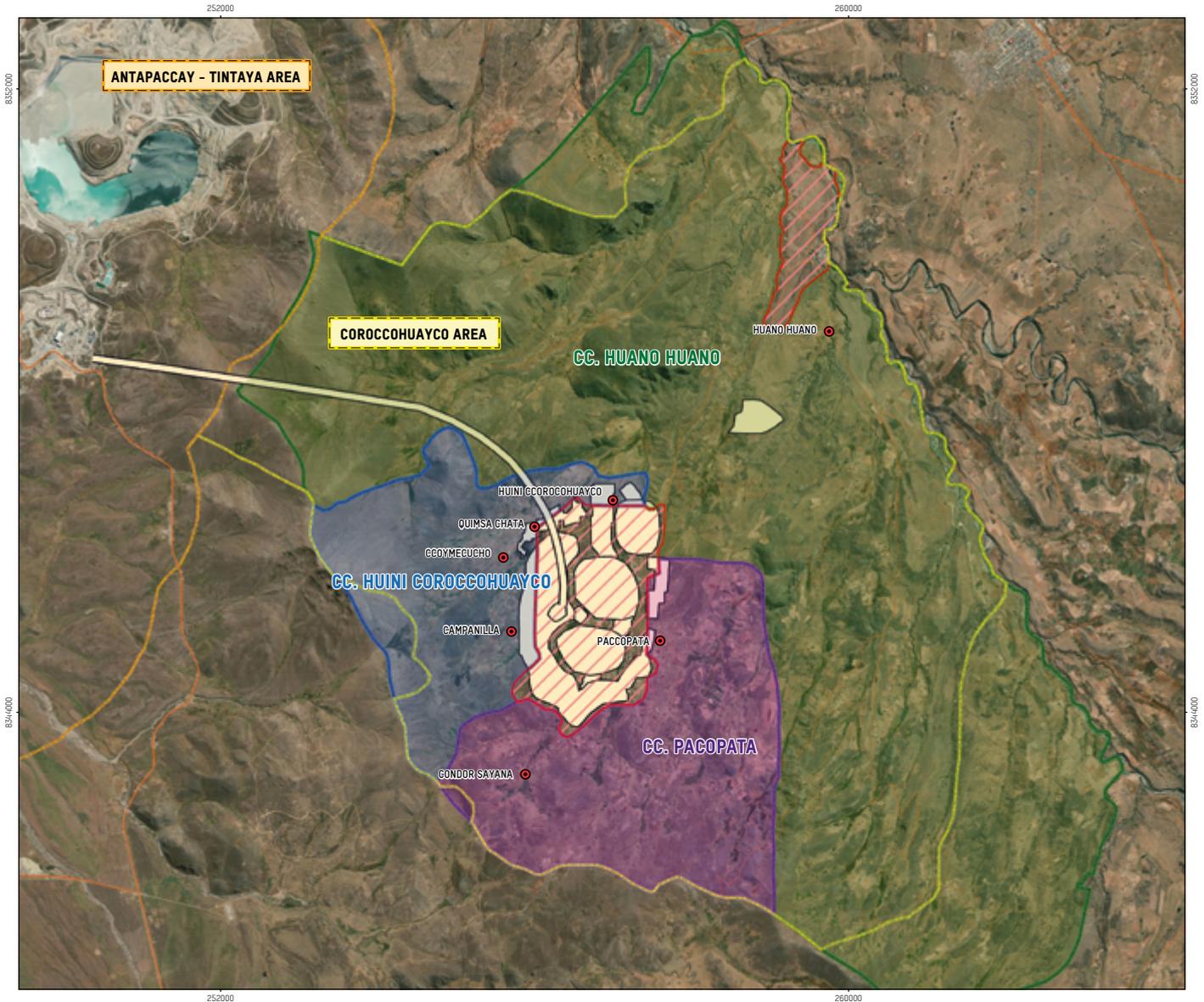
	Amount of area occupied by Pacopata
Report No. 1017-2019-SENACE-PE/ DEAR approving Coroccohuayco MEIA (p. 221)	70 ha (6 % of the community’s territory)
First purchase option proposal*	593.47 ha (42.02 % of the community’s territory)
Georeferencing on image included in the purchase option proposal sent by the company (Map 3)	810.25 ha (57.37 % of the community’s territory)
Second map provided by the company**	960 ha (67.99 % of the community’s territory)
Georeferencing of the second map provided by the company in June 2022 (Map 4)	1208.62 ha (85 % of the community’s territory)

Notes: *This appears on the map provided by the company to the then-president of the community of Pacopata; ** Provided by the company to the then-president in June 2022.

Source: Prepared by CooperAcción.



Map 3. First map georeferenced by CooperAcción for the community of Pacopata



LEGEND

● Population centers	Peasant communities
— National Road Network	CC. Huano Huano
— Departmental Road Network	CC. Huini Coroccohuayco
— Neighborhood Road Network	CC. Pacopata
⊕ Mining project components	
⊗ Private property	
Project areas	
Antapaccay-Tintaya area	
Coroccohuayco area	

CooperAcción

Map: **Intervention Map**
Mining Project Components - Peasant Communities

Prepared by: CooperAcción Team	Date of preparation: May 2021	Map N°: P-01
Location: Espinar Espinar - Cusco	Scale: 1:45,000	

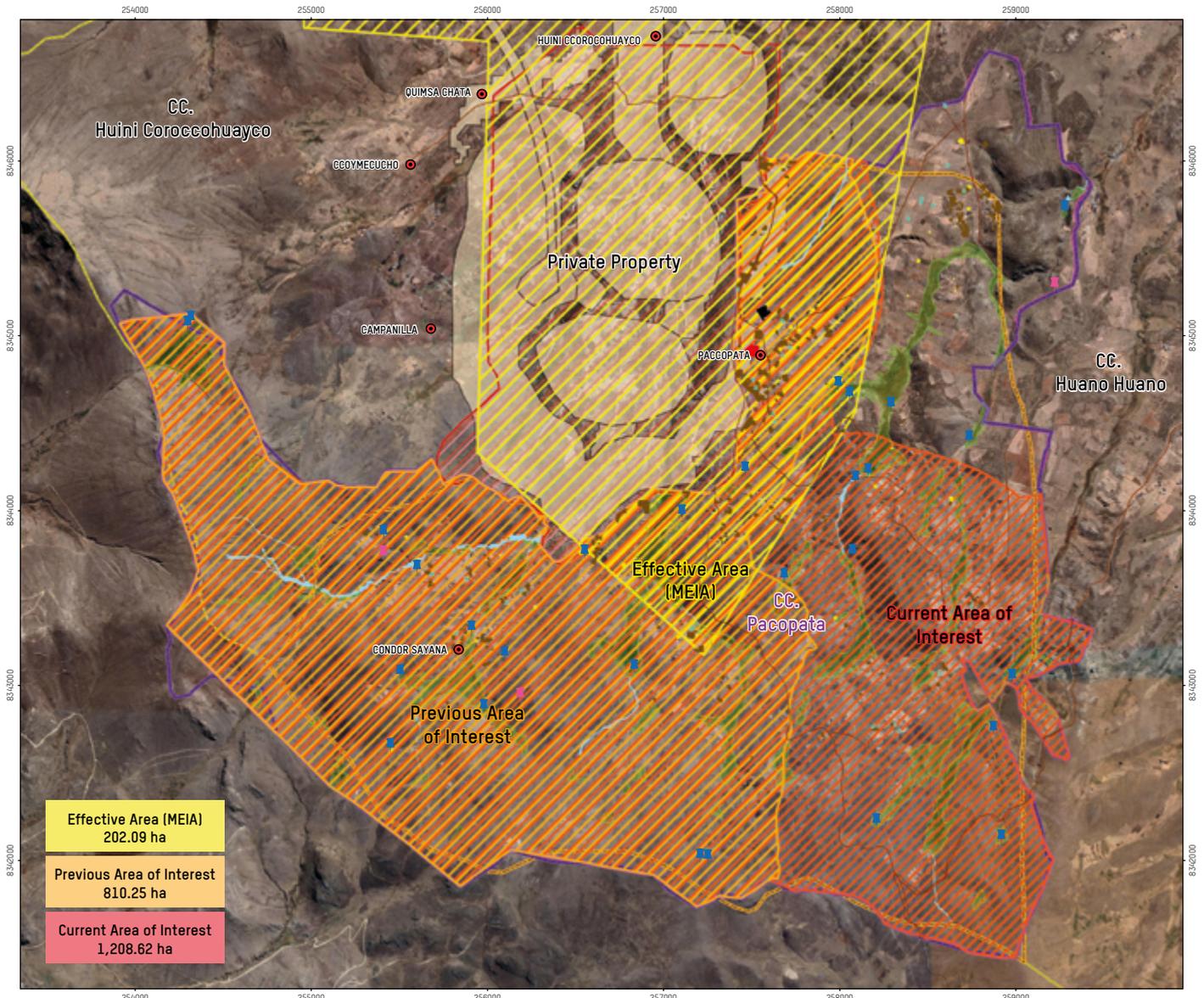
Source: National Map 1:100 000 - IGN, DEM Alps Palsar and Aster (2008), INEI (2008) - MTC (2016) - MINAGRI (2014) - Folio L8-06 Figure 3.1.3-1 MEIA ANTAPACCAY TINTAYA EXPANSION - COROCCOHUAYCO INTEGRATION

Universal Transverse Mercator (UTM)
 Vertical Datum Mean Sea Level
 Horizontal Datum WGS 84
 Zone 19 South

1 0.5 0 1 Km

Source: CooperAcción.

Map 4. Second map georeferenced by CooperAcción for the community of Pacopata



LEGEND	
Archaeological Sites	Current Land Use
Springs	Communal premises
Population Centers	School
Neighborhood Road Network	Housing
Effective Area	Micro-reservoir
Previous Area of Interest	Mini Stable
Current Area of Interest	Ravines
Private Property (MEIA)	Bofedales
Mining project components	
Referential Limit CC. Pacopata (CooperAcción)	
Limit CC. Pacopata (Company)	
Limit CC. Pacopata (MEIA)	
CC. Huini Corocochuayco (MEIA)	

CooperAcción

Map of the Areas of Interest
Development of the mining company's areas of interest in the indigenous peasant community of Pacopata.

Prepared by: CooperAcción Team	Date of preparation: October 2022	Map N°: M-02
Location: Espinar - Cusco	Scale: 1:20,000	

Source:
Prepared by CooperAcción - National Map 1:100 000 - IGN, DEM Alos Paltar and Aster (2008).
MEI (2008) - MTC (2016) - MINAGRI (2014) - Foto LB-08 Figure.3.1.3-1
MEIA ANTAPACCAI TINTAYA EXPANSION - COROCCHUAYCO INTEGRATION

N
↑

Universal Transverse Mercator (UTM)
Vertical Datum Mean Sea Level
Horizontal Datum WGS 84
Zone 19 South

Source: CooperAcción.

■ **Displacement and resettlement**

Although the proposed purchase by Glencore would encompass 85 % of the community’s territory, according to our georeferencing, **the proposal did not consider collective resettlement. The company was asking to purchase such a large area that the community’s territory would practically disappear, but it was not transparent in explaining this** and did not raise on its own initiative the need for resettlement or relocation, thus failing to fulfil its commitment on due diligence and best practices regarding human rights and Indigenous peoples.

The community realized that the reduction of the territory could cause its disappearance, which is why it raised the need for resettlement under equal or better conditions, a development fund, compensation and other benefits. In response, the company made a counterproposal setting out three options: financial compensation, individual resettlement, or collective resettlement.⁵⁴ Thus, it was not until the community, by its own means and based on independent advice, understood the consequences of the project, that the company was forced to raise the possibility of resettlement. In its handling of the situation, the company violated the principle of due diligence that requires it to make all necessary efforts to respect human rights.

To mitigate the impacts of the reduction of the communal territory, during the Coroccohuayco MEIA evaluation process, Glencore proposed a land acquisition plan in response to the demand for a resettlement plan. However, that plan does not meet the requirements of IFC Performance Standard 5, which states that: ‘The client will establish procedures to monitor and evaluate the implementation of a Resettlement Action Plan or a Livelihood Restoration Plan.’⁵⁵

A resettlement or livelihood restoration plan cannot be replaced by a mere land acquisition plan. The former involve guaranteeing the right to collective existence of Indigenous peoples, while the latter amounts to fragmenting the communal territory, leaving each family to resolve its situation individually, which ultimately leads to the disappearance of Indigenous communities.

The National Environmental Certification Service for Sustainable Investments (SENACE) considered that as population displacement was involved, Glencore should submit a resettlement proposal in accordance with ILO Convention 169 and other national and international standards. However, this request was dismissed by the company using a legal argument in a Resolution of Observations drafted by the consultancy Golder Associates, dated March 2019 (p. 544): ‘a Relocation Plan is not appropriate either. This is because in Peru there is no legal or regulatory standard that establishes the assumptions or the requirement of carrying out a Population Relocation Plan in relation to mining investment projects’.⁵⁶

Instead, the company proposed a land acquisition plan. Accepting this reasoning, SENACE approved the MEIA in December 2019, disregarding the need to protect collective rights.

The company therefore exploits weak Peruvian legislation, ignoring the requirements of the IFC Performance Standards, ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples. Similarly, it ignores the UN Human Rights Due Diligence Policy.

It should be noted that the need for resettlement is one of the scenarios in which not only consultation but also the consent of Indigenous peoples is required, according to ILO Convention 169 and international jurisprudence on human rights, as well as Article 8 of the Law on Internal Displacement, Law 28223.

3.3 CONSULTATION AND FREE, PRIOR AND INFORMED CONSENT

Glencore has stated that:

in accordance with Peruvian environmental and social regulations for mining activities and the UN Guiding Principles for Business and Human Rights, Antapaccay has carried out public consultations in communities surrounding the Coroccohuayco project as part of its environmental impact assessment. As part of the permitting process, the Ministry of Energy and Mines, with support from Antapaccay, is carrying out targeted consultations of the local communities in accordance with Peruvian legislation.⁵⁷

What is certain is that prior consultation of Indigenous peoples is being carried out in an irregular manner,⁵⁸ in breach of the requirements of Peruvian law and disregarding the substantive rights protection measures sought by international law. This section outlines how this is the case.

3.3.1 Coroccohuayco and prior consultation

In 2018, Antapaccay submitted the MEIA for the Coroccohuayco project to SENACE, the state agency responsible for evaluating detailed EIAs and their modifications. At that time, the communities of Tintaya Marquiri and Huini Coroccohuayco requested a prior consultation process.

Peru's Ombudsman's Office⁵⁹ considered that this request was in accordance with the law, as the best time to conduct a consultation is during the EIA, since it provides concrete and specific information on the various components of a project, and measures can be incorporated to prevent, minimize or correct such impacts. The Inter-American Court of Human Rights has also issued similar decisions in several judgments, including the case of the Saramaka People versus Surinam in 2007.⁶⁰

SENACE stated that it was not appropriate to carry out prior consultation because Peruvian legislation includes it in a later decision (the authorization

to commence operations) issued by the Ministry of Energy and Mines (MINEM). In response, the communities of Pacopata and Huini Coroccohuayco made a judicial demand for prior consultation and free, prior and informed consent.

In its letter from September 2023, Glencore states that according to Peruvian legislation prior consultation 'does not apply for the approval of environmental impact assessments or their amendments'.⁶¹ This is a strictly legal interpretation. We wonder what proactive steps Glencore takes to ensure that this process complies not only with Peruvian legislation but also with the international due diligence guidelines and IFC standards, among other instruments that the company has signed. How has it ensured that communities' opinions can influence the substantive aspects of the project?

In addition to these substantive aspects, there are formal aspects that mean that the process currently being carried out by the state is irregular.

In order to calm the communities' protests, in February 2020 MINEM approved a plan for the authorization to commence mining operations, an administrative decision whose approval procedure includes prior consultation. At that time (and to date) the company had not requested the authorization to commence operations. Despite this, MINEM began the prior consultation 'ex officio'.⁶² We believe that, given the manner in which these events took place, the consultation became an irregular process.

Glencore then decided to revert the project to its pre-feasibility stage and stated that it will prepare a new EIA. This would void the environmental certification that has been granted, since the project no longer exists as it was initially formulated. Nonetheless, a consultation is currently ongoing based on a project that formally no longer exists. We wonder whether, in a consultation, it is possible to discuss the impacts of a project whose new design is not yet known.

To date, the process has taken more than three years and MINEM has repeatedly extended the timeframe for its completion, exceeding the maximum duration established by law (120 calendar days).

In saying that it 'supports these consultations', Antapaccay is giving its backing to a clearly irregular process.

4. RECOMMENDATIONS TO GLENCORE AND INVESTORS

In relation to pollution

- Given the new evidence presented by the official studies, and the indications provided by previous studies, we believe there is worrying information about the existence of a causal link between the Antapaccay operations and impacts on the surface water, groundwater, air and biosphere. Therefore, the company should adopt a response that is in keeping with the principles of human rights due diligence, which would involve:
 - urgent actions to address the immediate causes of pollution and their consequences;
 - a comprehensive review of its policies and practices in order to correct this serious situation; and
 - complying with the relevant authorities concerning liability for this pollution and any reparations and compensation resulting from it.

In relation to the land negotiation process

- All land negotiations must be paused until the new EIA has been completed, together with objective and independent studies that provide adequate information for communities to reach a decision.
- The company must be transparent and provide accurate information about its land acquisition needs and the consequences for communities.
- If the project requires the acquisition of such a large proportion of land that it threatens the very existence and livelihoods of communities—as we have found would occur in at least one case—the company must comply with the IFC standards and international law (ILO Convention 169 and the UN Declaration on

the Rights of Indigenous Peoples) to ensure the continued existence of Indigenous communities, avoiding fragmenting their territory through a resettlement plan that includes replacement of their livelihoods and the infrastructure for their continued existence (schools, health centres, etc.).

In relation to consultation and consent

- Glencore should not support a ‘consultation’ process led by the state that is irregular and disregards the procedures and deadlines established by Peruvian regulations.
- In line with the recommendations of the Ombudsman’s Office and the jurisprudence of the Inter-American Court of Human Rights, the company should demand that the state ensure that the prior consultation is carried out based on the decisions of the governmental authority, where the opinions of Indigenous communities actually have the potential to influence the substantive aspects of the project, in particular the environmental assessments.
- Where the project involves the resettlement of Indigenous people, the company must ensure that communities can express their free, prior and informed consent, in accordance with international standards and ILO Convention 169.

NOTES

- 1 A series of reports on causality prepared by the Agency for Environmental Assessment and Enforcement (OEFA) between 2022 and 2023, which are cited throughout this report.
- 2 This data comes from the modified environmental impact assessment (MEIA) approved in 2019. However, this data could change since Glencore has decided to revert the project to the pre-feasibility stage and said in a letter dated 8 September 2023 that it will prepare a new EIA. See Glencore. (2023). *Letter to Scott Sellwood, 8 September 2023: Response to Oxfam/CooperAcción Antapaccay Reports*. Accessed 9 October 2023.
https://cooperaccion.org.pe/wp-content/uploads/2023/09/230908-Response-Oxfam-Cooperaccion_Final.pdf.
See CooperAcción's response to said letter at: CooperAcción (2023).
https://cooperaccion.org.pe/wp-content/uploads/2023/10/response-CooperAccion-to-Glencore-word_EN.pdf
- 3 In its letter from September 2023, Glencore stated that it has not yet signed any land acquisition agreements but is only undertaking 'a dialogue process to discuss the framework for land acquisition with communities'. See Glencore. (2023). *Letter to Scott Sellwood*, op. cit. In reality, land acquisition proposals, including maps, have been presented to communities; see Section 3.2.
- 4 As per the purchase proposals given to community leaders; see Section 3.2.
- 5 International Labour Organization (ILO). (1989). *Indigenous and Tribal Peoples Convention, 1989 (No. 169)*. Accessed 9 October 2023.
https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169
- 6 International Finance Corporation. (2012). *IFC Performance Standards on Environmental and Social Sustainability*. Accessed 9 October 2023.
<https://www.ifc.org/content/dam/ifc/doc/mgrt/ifc-performance-standards.pdf>
- 7 Ombudsman's Office. (2019). *Report No. 001-2019-DP-AMASPPI-PPI* [Spanish]. Accessed 9 October 2023.
<https://cooperaccion.org.pe/wp-content/uploads/2023/09/2019-Defensoria-del-Pueblo-Informe-No-001-2019-DP-AMASPPI-PPI.pdf>
- 8 MIMEN. (2023a). *Mining Statistics Bulletin April 2023*, pp. 4–5 [Spanish]. Accessed 9 October 2023.
<https://cdn.www.gob.pe/uploads/document/file/4645710/BEM%2004-2023.pdf?v=1685903626>.
In addition, it has capital in Perubar, a storage and logistics company, and through Volcan has a stake in Terminales Portuarios Chancay, which is building a mega port in north Lima.
- 9 Golder Associates. (2018). *Executive Summary of the MEIA for the Antapaccay-Tintaya Expansion Project, Corocochuayco Integration*, p. 25 [Spanish]. Accessed 9 October 2023.
https://www.senace.gob.pe/wp-content/uploads/filebase/comunicaciones/eia-meia/antapaccay/Resumen-Ejecutivo_Antapaccay.pdf.
- 10 MINEM. (2021). *Portfolio of Mine Constructions Projects 2021*, p. 7 [Spanish]. Accessed 9 October 2023.
[https://www.minem.gob.pe/minem/archivos/file/Mineria/INVERSION/2021/CPM2021\(1\).pdf](https://www.minem.gob.pe/minem/archivos/file/Mineria/INVERSION/2021/CPM2021(1).pdf)
- 11 Glencore. (2023). *Letter to Scott Sellwood*, op. cit.
- 12 According to Report No. 1017-2019-SENACE-PE/DEAR, there have been 30 environmental management instruments linked to the Tintaya and Corocochuayco expansion projects, as well as the Corocochuayco MEIA of 2019 and its modification based on the supporting technical report in 2022. National Environmental Certification Service for Sustainable Investments (SENACE). (2019). *Final Technical Report on the Modification of the Detailed Environmental Impact Study of the Antapaccay-Tintaya Expansion Project: Corocochuayco Integration*. Report No. 1017-2019-SENACE-PE/DEAR [Spanish]. Accessed 9 October 2023.
<https://cooperaccion.org.pe/wp-content/uploads/2023/09/2019-SENACE-INFORME-Nº-1017-SENACE-PE.DEAR-Informe-Tecnico-Final-MEIA.pdf>
- 13 See summary of commitments at Glencore. (n.d.) *Human Rights – Our Approach*. Accessed 9 October 2023.
<https://www.glencore.com/sustainability/esg-a-z/human-rights>
- 14 Oxfam International. (2015). *Community Consent Index 2015: Oil, Gas and Mining Company Public Positions on Free, Prior and Informed Consent*. Oxfam. Accessed 9 October 2023.
https://oi-files-d8-prod.s3.eu-west-2.amazonaws.com/s3fs-public/file_attachments/bp207-community-consent-index-230715-en.pdf
- 15 Glencore. (2021). *Human Rights Policy* [Spanish]. Accessed 9 October 2023.
https://www.glencore.com/.rest/api/v1/documents/3cb1c0857261355855817159c1229ba6/Human+Rights+Policy_Spanish.pdf
- 16 Glencore. (2022). *Responses to MSCI*. Accessed 9 October 2023.
<https://www.glencore.com/sustainability/esg-a-z/esg-rating-agencies>
- 17 Ibid.
- 18 Ministry of the Environment (MINAM) and the Espinar Dialogue Table. (2013). *Integrated Final Participatory Health and Environment Monitoring Report for Espinar Province* [Spanish]. Accessed 9 October 2023.
https://www.minam.gob.pe/espinar/wp-content/uploads/sites/14/2013/10/Informe_aprobado.pdf
- 19 Glencore. (2022). *Responses to MSCI*, op. cit.

- 20 National Centre for Occupational Health and Environmental Protection for Health (CENSOPAS). (2010). *Recognition of Risks and Environmental Assessment of Metals in Locations Near the Quechua-Cusco Mining Project. Districts of Espinar and Pallpata, Espinar Province, Cusco Region* [Spanish]. Lima: CENSOPAS.
- 21 MINAM and the Espinar Dialogue Table. (2013). *Integrated Final Participatory Health and Environment Monitoring Report*, op. cit.
- 22 Ombudsman’s Office. (2015). Official Communication 0330-2015-DP/OD-CUSCO/ap, p. 16 [Spanish]. Accessed 9 October 2023.
https://cooperaccion.org.pe/wp-content/uploads/2023/09/2015_Defensoria-del-Pueblo_0330-2015-DPOD-CUSCOap.pdf
- 23 Ombudsman’s Office, Official Communication 01256-2018-GR-CUSCO/DRSC/RSCCE/DE. Cited in Espinar Municipality. (2019). *Agreement of the Council of the Municipality of Espinar, 10 January 2019*, p. 1.
<http://www.muniespinar.gob.pe/documents/Acuerdos%20de%20Concejo/002%20ACUERDO%20DE%20CONCEJO%20N%202019-CM-MPE-C.pdf>
- 24 Presidency of the Council of Ministers (PCM). (2021). *Multisectoral Commission in Charge of Evaluating Possible Damages Affecting the Indigenous Communities of Huano Huano, Huini Corocchohuayco, Pacopata, Alto Huanané, Bajo Huanané, Tintaya Marquiri, Alto Huarca, Cala Cala, Huarca, Suero y Cama, Huisa Ccollana, Huisa y Anta Ccollana in Espinar Province, Department of Cusco: Commission Report June 2021* [Spanish]. Accessed 9 October 2023.
<https://cooperaccion.org.pe/wp-content/uploads/2023/09/COMISION-MULTISECTORIAL-ESINAR-JUNIO-2021.pdf>
- 25 Obtained by CooperAcción in August 2023, following a request to access public information.
- 26 For a full summary, see CooperAcción. (2023). Anexos, Annexes 1 to 3 [Spanish]. Accessed 9 October 2023.
<https://cooperaccion.org.pe/wp-content/uploads/2023/09/Anexos-Oefa-Antapaccay.pdf>
- 27 OEFA. (2022). *Environmental Assessment of Air Quality Causality in the Tintaya and Antapaccay Areas of the Auditable Unit of the Antapaccay-Tintaya Expansion-Corocchohuayco Integration-2022. Report No. 0438-2022-OEFA/DEAM-STEAC* [Spanish]. Accessed 9 October 2023.
https://cooperaccion.org.pe/wp-content/uploads/2023/09/2022-OEFA-N_00438-2022-OEFA-DEAM-STEAC-aire.pdf;
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<https://cooperaccion.org.pe/wp-content/uploads/2023/09/2023-OEFA-00064-2023-OEFA-DEAM-STEAC-aire-informe-complementario.pdf>
See summaries in CooperAcción. (2023). Anexos, op. cit., Annex 1.
- 28 OEFA. (2023a). *Report No. 00064-2023-OEFA/DEAM-STEAC*, op. cit., p. 8.
- 29 OEFA. (2023b). *Environmental Assessment of Causality of the Environmental Components Surface Water, Sediment and Hydrobiological Communities Within the Scope of the Auditable Unit of the Antapaccay-Tintaya Expansion-Corocchohuayco Integration of Compañía Minera Antapaccay. Report No. 00095-2023-OEFA/DEAM-STEAC* [Spanish]. Accessed 9 October 2023.
https://cooperaccion.org.pe/wp-content/uploads/2023/09/2023-OEFA-N_00095-2023-OEFA-DEAM-STEAC-agua.pdf;
OEFA. (2023c). *Environmental Assessment of Causality of the Environmental Components Surface Water, Sediment and Hydrobiological Communities Within the Scope of the Auditable Unit of the Antapaccay-Tintaya Expansion-Corocchohuayco Integration of Compañía Minera Antapaccay. Clarifications 00184-2023-OEFA/DEAM-STEAC* [Spanish]. Accessed 9 October 2023.
<https://cooperaccion.org.pe/wp-content/uploads/2023/09/2023-OEFA-00184-2023-OEFA-DEAM-STEAC-precisiones-al-00095-agua.pdf>
See summary in CooperAcción. (2023). Anexos, op. cit., Annex 2.
- 30 OEFA. (2023b). *Report No. 00095-2023-OEFA/DEAM-STEAC*, op. cit., pp. 16-24.
- 31 Compañía Minera Antapaccay.
- 32 OEFA. (2023b). *Report No. 00095-2023-OEFA/DEAM-STEAC*, op. cit., p. 18.
- 33 *Ibid.*, pp. 16-24.
- 34 *Ibid.*, pp. 20-22.
- 35 OEFA. (2023d). *Environmental Assessment of Causality to Determine the Possible Effect of Mining Activity and Other Risk Factors on Wetlands, Groundwater and Soil, Within the Scope of the Auditable Unit of the Antapaccay-Tintaya Expansion. Report No. 00144-2023-OEFA/DEAM-STEAC* [Spanish]. Accessed 9 October 2023.
https://cooperaccion.org.pe/wp-content/uploads/2023/09/2023-OEFA-N_00144-2023-OEFA-DEAM-STEAC-agua.pdf.
See summary in CooperAcción. (2023). Anexos, op. cit., Annex 2.
- 36 OEFA. (2023d). *Report No. 00144-2023-OEFA/DEAM-STEAC*, op. cit., p. 23.
- 37 OEFA. (2023f). *Environmental Assessment of Flora and Fauna in the Areas of the Huinipampa tailings Deposit, North Dump, South Dump, Wetlands, Ccamacmayo Tailings Deposit, Dump 23, Dump 20 and Surrounding Areas at the Antapaccay Expansion Auditable Unit. Report No. 00146-2023-OEFA/DEAM-STEAC* [Spanish]. Accessed 9 October 2023.
https://cooperaccion.org.pe/wp-content/uploads/2023/09/2023-OEFA-N_00146-2023-OEFA-DEAM-STEAC-flora-y-fauna.pdf;
OEFA. (2023g). *Environmental Assessment of Causality to Determine the Effect of Mining Activity on Water, Soil, Flora, and its Impact on the Health of Domestic Animals, Within the Scope of the Auditable Unit of the Antapaccay-Tintaya Expansion-Corocchohuayco Integration. Report No. 00167-2023-OEFA/DEAM-STEAC* [Spanish]. Accessed 9 October 2023.
https://cooperaccion.org.pe/wp-content/uploads/2023/09/2023-OEFA-N_00167-2023-OEFA-DEAM-STEAC-animales-domesticos.pdf;

- OEFA. (2023e). *Environmental Assessment of Flora and Fauna in the Tintaya and Antapaccay Areas. Report No. 00067-2023-OEFA/DEAM-STEC* [Spanish]. Accessed 9 October 2023.
https://cooperaccion.org.pe/wp-content/uploads/2023/09/2023-OEFA-N_00067-2023-OEFA-DEAM-STEC-flora-y-fauna.pdf.
See summary of the three documents in CooperAcción. (2023). Anexos, op. cit., Annex 3.
- 38 OEFA. (2023e). *Report No. 00067-2023-OEFA/DEAM-STEC*, op. cit., pp. 2-3.
- 39 OEFA. (2023f). *Report No. 00146-2023-OEFA/DEAM-STEC*, op. cit., pp. 3-7.
- 40 OEFA. (2023e). *Report No. 00067-2023-OEFA/DEAM-STEC*, op. cit., pp. 2-3.
- 41 [OEFA. (2023g). *Report No. 00167-2023-OEFA/DEAM-STEC*, op. cit., p. 14.
- 42 OEFA. (2023f). *Report No. 00146-2023-OEFA/DEAM-STEC*, op. cit., p. 3.
- 43 In two unpublished reports commissioned by CooperAcción, based on comprehensive reviews of several studies. H. Nuñez del Prado Simons. (2021). *Summary Report on the Information Reviewed Regarding the Causality of Heavy Metal Pollution in the Espinar Mining Area*. Lima: CooperAcción (unpublished); E. Zamalloa-Skoddow. (2022). *Evidence of the Causality of Environmental Pollution Related to Mining in Espinar*. Lima: CooperAcción (unpublished). See summary in CooperAcción. (2023). Anexos, op. cit., Annex 4. Also see Peruvian Institute of Nuclear Energy (IPEN). (2013). *Determination of the Relationship Between the Water from the Ccamacmayo and Huinipampa Tailings Ponds and Their Surrounding Hydrogeological Environment Through the Use of Isotopic Tracers. Technological Service Report No. 003-2013* [Spanish]. Lima: IPEN; IPEN. 2017a. *Service to Assess Possible Leaks from the Ccamacmayo and Huinipampa Tailings Dams of the Mining Unit of Compañía Minera Antapaccay SA in Espinar Province, Department of Cusco, Through the Injection of Tracers and the Use of Isotopic Techniques. Contract 50-2015-OEFA. Volume I* [Spanish]. Accessed 9 October 2023.
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OEFA and Advance Engineering & Research SAC. (2015a). *Geophysical Study Using Geoelectric Tomography at Huinipampa Tailings Dam, Espinar 2015* [Spanish]. Accessed 9 October 2023.
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https://cooperaccion.org.pe/wp-content/uploads/2023/09/2015b-OEFA_AER_ESTUDIO-TOMOGRAFICO-RELAVERA-DE-CCANACMAYO.pdf;
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<https://docplayer.es/45407032-Estudios-especializados-en-areas-de-actividad-minera-en-el-peru.html>
- 44 Glencore. (2023). *Letter to Scott Sellwood*, op. cit.
- 45 All quotes from Cristina Choque Castillo here are taken from an interview conducted by Thomas Niederberger on 16 September 2022.
- 46 OEFA. (2023d). *Report No. 00144-2023-OEFA/DEAM-STEC*, op. cit., p. 24.
- 47 *Ibid.*, p. 25.
- 48 Response sent to the rating agency MSCI and published on its website. Glencore. (2022). Responses to MSCI, op. cit.
- 49 This is how they self-identify and have been recognized by the state, which has officially incorporated them in the Database of Indigenous Peoples of the Ministry of Culture. See Ministry of Culture. (n.d.). *Database of Indigenous or Native Peoples* [Spanish]. Accessed 9 October 2023.
<https://bdpi.cultura.gob.pe/index.php/buscador-de-localidades-de-pueblos-indigenas>.
Furthermore, according to the national census of 2017, 88 % of the population of Espinar Province self-identify as Indigenous Quechua, rising to 92 % in rural areas, which is where the peasant communities in question live.
- 50 When BHP owned the mining operation.
- 51 See *Contribution for Compliance with RM 174-2020-PCM. Proposal for the Reparations Plan* (presented by the community of Pacopata, June 2021) and *Proposed Reparations Plan* (presented by the community of Huini Corocohuayco, June 2021), documents submitted to the Presidency of the Council of Ministers (PCM) within the framework of the Working Group on Reparations to the 13 Communities of the Espinar Mining Area, created by Ministerial Resolution 174-2020-PCM. El Peruano Official Gazette. (2020). *Ministerial Resolution No. 174-2020-PCM, Creating the Working Group called Multisectoral Commission in Charge of Evaluating Possible Damages Affecting 13 Indigenous Communities in Espinar Province, Department of Cusco, and the Corresponding Reparations Plan* [Spanish]. Accessed 9 October 2023.
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- 52 As mentioned in Section 2, Glencore stated that the data in the MEIA should no longer be taken into account, as the project has reverted to the pre-feasibility phase and a new EIA will be prepared. However, this section shows how bilateral dialogue between the company and communities was carried out following approval of that MEIA and throughout the period that Glencore considered it to be valid.
- 53 In its September letter, Glencore states that ‘Antapaccay is undertaking a dialogue process to discuss the framework for land acquisition for the Coroccohuayco project with communities. To date, Antapaccay has not signed land acquisition agreements with communities.’ Glencore. (2023). Letter to Scott Sellwood, op. cit.
- 54 Information provided in an interview with community members (name withheld at the request of the person concerned).
- 55 International Finance Corporation. (2012). *IFC Performance Standards on Environmental and Social Sustainability*, op. cit., IFC Performance Standard 5: 14.
- 56 Golder Associates. (2019). *Levantamiento de observaciones, 18 de marzo 2019*. (unpublished).
- 57 Response sent to the rating agency MSCI. See Glencore. (2022). Responses to MSCI, op. cit.
- 58 In its September 2023 letter, Glencore indicates that ‘as established in Peruvian legislation, the prior consultation process is carried out by the competent government entity’. Glencore. (2023). *Letter to Scott Sellwood*, op. cit. Indeed, it is not the company but MINEM that carries out consultations in the case of mining projects.
- 59 Ombudsman’s Office. (2019). *Report No. 001-2019-DP-AMASPPi-PPI*, op. cit.
- 60 Inter-American Court of Human Rights. (2007). *Judgment in the Case of the Saramaka People v. Suriname 2007* [Spanish]. Accessed 9 October 2023. https://www.corteidh.or.cr/CF/jurisprudencia2/ficha_tecnica.cfm?nld_Ficha=288
- 61 Glencore. (2023). *Letter to Scott Sellwood*, op. cit.
- 62 Confirmed by Glencore in its September letter: ‘The prior consultation that is currently underway at Antapaccay was started ex officio by government.’ Glencore. (2023). Letter to Scott Sellwood, op. cit.





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Does Cerrejón always win?

Between corporate impunity for human rights violations and the search for comprehensive reparation in times of transition

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**Does Cerrejón always win?
Between corporate impunity for human rights violations and the quest for
comprehensive reparation in times of transition**

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Introduction

“Just like all the judgements issued against the company, they don’t change anything...”
Misael Socarrás, Wayuu community leader

Numerous research studies, technical reports, documentaries and public accusations have exposed the systematic violation of the human rights of the Wayuu and Afro-descendant communities in La Guajira, Colombia. Many of these violations are linked to the mining activities of the company Carbones del Cerrejón Limited, which is owned by Glencore. Carbones del Cerrejón operates Latin America’s largest open-pit coal mine and has been the subject of multiple court rulings by different judicial bodies, including the Colombian High Courts, and of declarations made by the United Nations (UN), European parliamentarians and international organizations.

This report aims to denounce the ongoing violation of human rights resulting from Glencore’s mining activities. Glencore is a Swiss company which has acquired increasing control over El Cerrejón: in 1995 it became the owner of the mine’s central zone; from 2002 to 2021 it held a one-third stake in mining operations; and in 2021 it acquired full ownership of the mine. Its actions have been characterized by social and environmental injustice and corporate impunity, with the La Guajira region paying a heavy price. The report also seeks to highlight the risk of Glencore’s eventual exit from the coal business in Colombia without it meeting its historic obligations to communities or providing comprehensive reparation, as happened with its mines in the department of Cesar.

In this regard, the report describes:

- 1.** The relationship between La Guajira’s humanitarian crisis and Glencore’s operations.
- 2.** The systematic violation of the human rights of Wayuu and Afro-Guajira communities by the company Carbones del Cerrejón.
- 3.** The struggle of the people of La Guajira to access justice in the context of the impunity in which the transnational corporation is operating and the failure to comply with human rights standards and climate commitments.
- 4.** The mine closure plan, which disregards cumulative impacts caused and possible perpetual impacts.
- 5.** Conclusions and recommendations.

1. Glencore and La Guajira's humanitarian crisis: four decades of coal mining

La Guajira is situated in the northernmost part of Colombia. It is characterized by environmental and geographic conditions dominated by tropical dry forest cover. With three natural parks that act as biological corridors, as well as the Ranchería river, the area's main river basin,

the region has a unique biodiversity. It is the territory of Colombia's largest indigenous people group, the Wayuu, with Afro-Colombian and peasant farming communities also making up the region's inhabitants.



Figure 1. Map showing La Guajira and the location of the Carbones del Cerrejón mining project

Glencore has been active in the area since 1995, as Figure 2 demonstrates:

North and South Zones	Central Zone
<p>1976-2000: companies Colombiana de Carbón (Carbocol) and Intercor (a subsidiary of Exxon)</p> <p>1981-1994: Morrison Knudsen International appointed to construct the mining complex</p>	<p>1973 - 1975: Peabody Coal</p> <p>1982 - 1994: Mining operations in the Central Zone of the Cerrejón mining complex led by the Domi-Prodeco-Auxini consortium</p> <p>1995 - 1999: Mining operations in the Central Zone led by the Glencore-Anglo American consortium</p>
Carbones del Cerrejón Integrated Project	
<p>2000 - 2022: Acquisition of Intercor-Carbocol shares by Glencore, Anglo American and BHP</p> <p>2002 - 2020: Glencore, Anglo American and BHP own equal shares in the mining complex, giving the integrated project (Central Zone, South Zone and North Zone) the name Carbones del Cerrejón Limited</p> <p>2021-present: Glencore acquires 100% shares in the Carbones del Cerrejón company</p>	

Figure 2. Timeline of Glencore's presence in La Guajira. Source: authors' own, based on data from Garcia et al. (2015) and Cinep (2020).

In 2021, Glencore acquired sole ownership of the company Carbones del Cerrejón Limited.¹ Despite promises of social and economic development and after four decades of mining by Carbones del Cerrejón, not only has there been no reduction in poverty, but there has been a deepening and unprecedented humanitarian crisis. La Guajira is currently experiencing:

- i) high levels of extreme poverty and child malnutrition, with more than 5,000 Wayuu children having died of hunger and thirst.
- ii) unmet basic needs affecting 81.63% of the department's indigenous population.
- iii) just 4% of the rural population with access to potable water.

iv) a state of economic, social and environmental emergency² as a result of the severe humanitarian crisis and the effects of coal mining on the right to water and food, with risks and vulnerabilities compounded by the El Niño phenomenon and the climate crisis.

The urgent humanitarian and environmental crisis experienced by the communities of La Guajira has been aggravated by the cumulative damages caused by Carbones del Cerrejón's mining activities and systematic human rights violations, as demonstrated by numerous investigations and court rulings,³ official communications of UN Special Rapporteurs,⁴ visits by European parliamentarians,⁵ and in the report of the Special Rapporteur on Economic, Social, Cultural and

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1. Cerrejón (2021). *Sustainability Report*. https://www.cerrejon.com/sites/default/files/2022-09/SUSTAINABILITY%20REPORT%202021-FINAL_compressed_0.pdf
2. Decree 1085 of 2023 declared a state of economic, social and environmental emergency in La Guajira. For further information see <https://petro.presidencia.gov.co/prensa/Paginas/Con-la-declaracion-del-Estado-de-Emergencia-Economica-Social-y-Ecologica-en-La-Guajira-el-Gobierno-prioriza-230703.aspx>
3. Court rulings and judgements on the issue include: i) Constitutional Court rulings T-528/92, T256/15, T-704/16, SU-698/17, T-614/2019, T-329/2017, T-302/2017, T-445/2016; ii) Supreme Court of Justice 13/09/12, 0014-01 of 07 May 2002; iii) Consejo de Estado (Council of State): 2016-00079 of 13 October 2016; and, iv) Juzgado Promiscuo de Barrancas (mixed jurisdiction municipal court of Barrancas): 2015-00473.
4. <https://www.ohchr.org/en/press-releases/2020/09/un-expert-calls-halt-mining-controversial-colombia-site>
5. https://www.abcolombia.org.uk/wp-content/uploads/2023/01/FINAL-ESP-ABColumbia-Delegation-Report_ESP_US-Letter_Online.pdf

Environmental Rights of the Inter-American Commission on Human Rights (IACHR).⁶

Particularly in the southern part of La Guajira, which is the centre of coal mining activity, the natural landscape

has been drastically transformed. The expansion of the mine involved land dispossession and involuntary displacement and resettlement,⁷ as well as restricting access to ancestral paths, sacred land, water and other common natural assets (Cuenca et al., 2017).



Figure 3. Expansion of the La Puente pit in the vicinity of Arroyo Bruno. Source: Cinep (2023).

Areas where people once moved freely have been enclosed, thus denying access to spaces used for meeting, play and building identity. Passage has also been restricted to former grazing areas and forest where communities could access plants and trees important in traditional medicine, source materials for building houses, gather fruit and hunt animals, as well as collect water (Arboleda & Cuenca, 2015).

Access to water is particularly important to the life and livelihoods of communities in the department of La Gua-

jira, given its vulnerability to climate change, and projections of average temperature increases of 2.3° C and a 20% reduction in rainfall by the end of the century in the department (Ideam, 2015). Against this backdrop, both the government and civil society organizations are engaging in climate action⁸ and making emergency declarations to respond to the crisis and tackle the environmental racism that has plagued the region.

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6. <https://oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2022/265.as>

7. <https://indepaz.org.co/comunicado-de-las-comunidades-reasentadas-por-cerrejon/>. For further information see <https://www.facebook.com/laguajirahabla/>

8. <https://censat.org/tribunal-ordena-al-gobierno-adaptar-medidas-concretas-para-cumplir-los-compromisos-climaticos-del-pais/>



Figure 4. Carbones del Cerrejón warning sign in the Ranchería river watercourse. Source: Censat Agua Viva (2013).



Figure 5. Wayuu woman on a diverted stretch of Arroyo Bruno. Source: Cajar (2021).

2. Human rights violations and social and environmental conflict caused by Carbones del Cerrejón

“My only battle is with Cerrejón. I don’t have problems other than the ones mining has left me with.”

La Guajira leader

Since Carbones del Cerrejón has been active in la Guajira, widespread and systematic violations of the rights of Afro-descendant and Wayuu communities have been recorded, and hydro-social relationships fundamental to community life and survival have been disrupted.



Advierten sobre vulneración de derechos en La Guajira por parte de empresas

El organismo hizo un recorrido por esta región. **FOTO:** Relatoría Especial DESCA - CIDH

Proponen que se pase de un modelo de Responsabilidad Social Empresarial a uno de Empresas y DD. HH.

RELACIONADOS: DERECHOS HUMANOS | CIDH | LA GUAJIRA | NOTICIA | VULNERACIÓN DE DERECHOS

Figure 6. Press release. Source: El Tiempo, 2023.

2.1. Dispossession and land grabbing

Over the four decades of Cerrejón's coal mining operations, a range of dispossession, confinement and forced eviction tactics have been used that have resulted in more than 25 Wayuu and Afro-Colombian communities losing their land. The Colombian State and Carbones del Cerrejón have adopted various land dispossession strategies over the years of mining operations. Here however, we will highlight four key approaches:

- i) In the 1970s, the Colombian State declared La Guajira an area designated for the mining of coal.⁹ From that time on, it granted mining titles and contracts to transnational corporations in Wayuu and Afro-Guajira territories.
- ii) Between 1975 and 1989, the Instituto Colombiano de la Reforma Agraria (Colombian Agrarian Reform Institute–Incora) caused the fragmentation of Wayuu and Afro-Guajira communities' collective land by granting individual land titles.
- iii) Between 1981 and 2003, state authorities inappropriately allocated rights over public lands in favour of subjects that did not fulfil the requisites as agrarian reform beneficiaries. Thus, public land (tierras baldías) irregularly shifted their legal nature through several mechanisms including the acquisition of property, sales, collective sales, auction and aggregation. These property rights over previous public land were then aggregated and transferred to the transnational corporations through sales contracts, the corresponding records were closed, and new property registration numbers obtained.¹⁰

- iv) Since the 1980s, other land dispossession and appropriation strategies have been used in order to expand the area of the mine, causing the displacement and disappearance of more than 25 Wayuu and Afro-Guajira communities (CINEP, 2020).

2.1.1. Land dispossession

Seventeen communities became victims of dispossession of their land through sham negotiations, irregular land purchases, threat of expropriation for public utility, and direct expropriation. Emblematic cases include the communities of Manantial, Las Mulas, Jamiche, Oreganal, Caracolí, Palmarito, El Descanso, Sarahita, Cabezaperro, Tabaco, Las Casitas, and Roche, among others.

2.1.2. Forced displacement and confinement

- Nine communities were displaced to different municipalities or nearby communities.
- Tabaco is the only community recognized by the Constitutional Court as a victim of development-induced displacement (Ruling T-329/17).
- Just four communities were partially resettled, involuntarily (Roche, Patilla, Chancleta and Las Casitas), and one community was resettled in its entirety (Tamaquito II); however, despite having been resettled, the community has not recovered its former levels of well-being, nor has it received adequate reparation or fair and respectful treatment.¹¹

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9. On 25 August 1973, Decree no. 1704 declared a number of coal-rich zones special reserves, including El Cerrejón, which is situated between the Carraipia and Cuestecitas villages and Buenavista inspectorate.

10. "A direct consequence of this finding is that the transactions and subsequent accumulation of ownership rights in contravention of legal requirements should have been declared invalid, despite this accumulation having happened more than thirty years before Law 160 of 1994 came into force, because this should not have precluded compliance with the restrictions on accumulation that already existed in articles 37, 38 and 51 of Law 135 of 1961." (García et. al, 2016, p. 17).

11. For further information see: https://www.cinep.org.co/publi-files/PDFS/20211004_Negras_hoscas.pdf https://cinep.org.co/publi-files/PDFS/20170302.las_casitas_2.pdf

- Twenty-one communities were subjected to confinement through the fencing off of roads and restrictions on their movements as well as their ability to remain on their land and engage in livelihoods work. Restrictions on movement inhibited

access to town centres, hospitals, educational services and other communities with whom they were trading, including Tamaquito II, Las Casitas, Patilla, Manantialito.



Figure 7. School forcibly destroyed as a result of mining expansion in Las Casitas, Barrancas. Source: Cinep (2020).

2.1.3 Forced evictions

The Tabaco and Roche communities, among others, were evicted from their land in 2002 and 2016 respectively by Carbones del Cerrejón and aided by the force of the Escuadrón Móvil Antidisturbios (Mobile Riot Brigade-ESMAD).¹² These evictions, carried out by municipal authorities, have not observed due process guarantees and have been marred by irregularities, arbitrariness and disregard for international human rights norms and standards.



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¹². <https://www.business-humanrights.org/es/%C3%BAltimas-noticias/desalojo-violento-de-comunidad-afro-roche-la-guajira-para-favorecer-intereses-de-carbones-de-cerrej%C3%B3n/>



Figure 8. Evictions in Tabaco on August 9, 2001, using violent force. On the left and in the centre, the population confronts ESMAD to prevent its heavy machinery from knocking down their houses; on the right, a woman points to what used to be her home, now destroyed. Source: Photo stills from the video 'Desalojo de la comunidad de Tabaco' (Eviction of the Tabaco community), by the Comité Cívico por la Defensa de la Guajira (2012).

The strategies used to expand the mine in La Guajira have irreparably destroyed the social fabric of communities and caused the permanent loss of land and the slow death of hundreds of people from sadness, desolation and destitution.

2.2. Carbones del Cerrejón and the breakdown in the hydro-social territoriality of La Guajira

The Ranchería river is La Guajira's primary water source. Around 450,000 people depend on its supply both of groundwater and surface water, which is fed by multiple streams and gorges (Terrae, 2019b). However, La Guajira experiences specific climatic conditions that make it prone to water stress, meaning the area is particularly vulnerable to climate crises (Contraloría General de la República, 2016).

Water thus represents an axis that connects and fosters the development of community life. The middle Ranchería river basin is a hydro-social territory in which a variety of actors come together, often leading to dis-

putes over the control of water (Ulloa et al., 2020). In the context of mining activities, these disputes can be understood in terms of privatization, since the control over water by private actors limits its use as a common resource (Urrea & Rodríguez, 2014). In the case of mining in the south of La Guajira, the privatization of water not only entails its monopolization and restricted access to it, but also a decrease in water quality, due to contamination, and quantity, due to the reduction of, depletion of or direct interference with natural watercourses (Caro, 2018).

Numerous reports have been produced that document at least four strategies used by Carbones del Cerrejón to privatize water sources:

2.2.1. Privatization through the appropriation of water

The Carbones del Cerrejón mining complex is situated along the middle Ranchería river basin, thus benefiting from the river's water for its mining activities. In 2020, the volume of surface water withdrawn from the Ranchería river and its tributaries equalled 1,004,473 m³/year, while groundwater concessions for the same year equalled 104,103 m³/year (Corporación Autónoma de La Guajira, 2022). It is important to note that this data corresponds to water withdrawal permits granted by the environmental authorities.

2.2.2. Privatization through restricting access to water sources

The expansion of the mine involved land grabbing and enclosure, including restricting access to different water sources such as rivers, streams, gorges, mills, ponds and wells. These water sources, as well as being used to meet needs related to household consumption, productive activities, and food sovereignty, hold great significance for the life and culture of Wayuu, Afro-Guajira and peasant farming communities (Arboleda & Cuenca, 2015).

2.2.3 Privatization through compromising the quality of or contaminating water

According to information provided by Corpoguajira, between 2018 and 2013 eleven (11) sanctions proceedings were initiated against Cerrejón, the majority of which relate to non-compliance with water discharge permits.¹³ Meanwhile, independent technical studies have identified the presence of manganese, barium and copper in the Arroyo Bruno basin that exceed allowable limits for human water consumption (Terraé, 2019b). The detection of selenium in the lower part of the stream is a cause for concern, given that, when present in high concentrations, it is a pollutant hazardous to human health (Terraé, 2019b). In addition, samples collected by independent studies revealed an upward trend in alkaline levels, which can create a hospitable environment for metals such as arsenic, molybdenum, zinc and cadmium that are more mobile at that pH level (Terraé, 2019b).

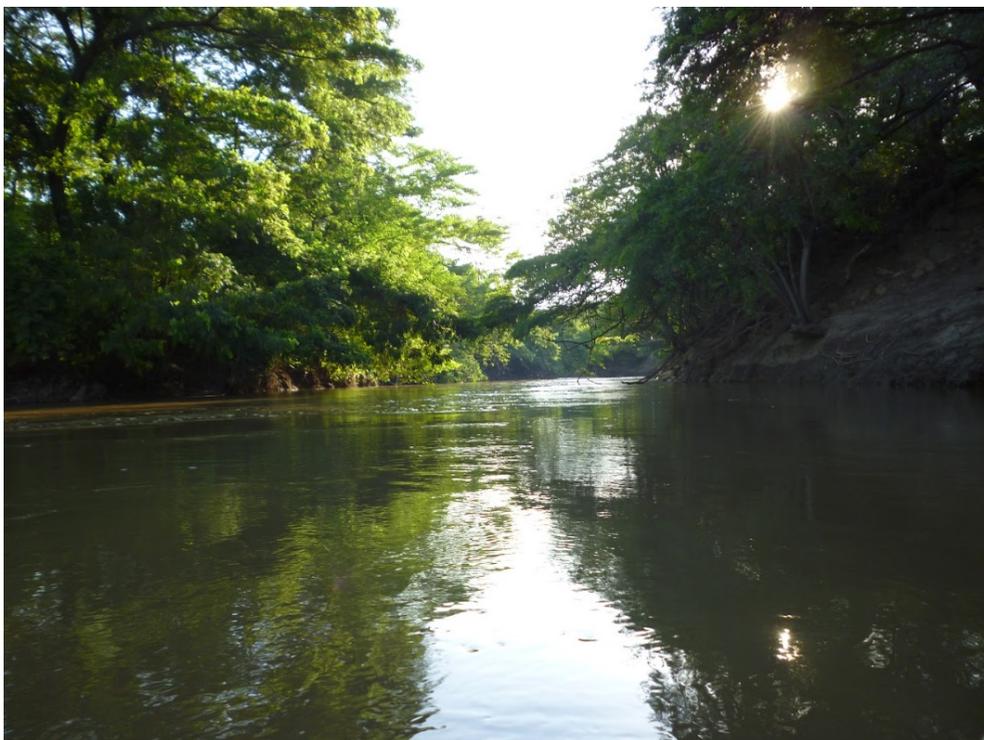


Figure 9. The natural watercourse of Arroyo Bruno. Source: Censat Agua Viva (2013).

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13. Six (6) for non-compliance with discharge permits, one (1) for not being in possession of a discharge permit, one (1) for environmental pollution in Provincial, one (1) for not complying with a range of permit obligations, two (2) unspecified, according to Corpoguajira's response to the right of petition (2023).

2.2.4. Privatization through reduction, depletion or direct intervention in natural watercourses¹⁴

According to information provided by Carbones del Cerrejón to the Autoridad Nacional de Licencias Ambientales (National Environmental Licensing Authority—ANLA), at least 38 interventions in surface water sources in the mining project area have been carried out in the context of Carbones del Cerrejón’s operations.¹⁵ At the same time, independent studies have documented physical changes in water bodies as a result of Carbones del Cerrejón’s mining activities: 68.67km or 39.42% of watercourses have been lost, including 0.18km (1.83%) of Arroyo Bruno, 0.19km (2.45%) of Arroyo Tabaco, and, even though the Ranchería river itself remains the same, 68.3km (51.25%) of its tributaries’ watercourses have disappeared (Terraes, 2019a).

Community assessments have also noted significant changes and a reduction in water availability in the Palomino and Mapurito rivers, alongside the disappearance and/or reduction in size of more than 17 streams¹⁶ belonging to the Ranchería river basin (Cinep, 2022), as shown in figures 10 and 11.

In addition, to assess the current state of the streams that Carbones del Cerrejón has intervened in, and the perpetual impacts caused by its mining activities, on 25 and 26 March 2023 Cinep/PPP carried out a monitoring walk around several of the streams near the La Puente pit and other nearby pits under Cerrejón’s charge, during which the effects on streams near Arroyo Bruno were evident. This shows the cumulative impact on the area’s water dynamics. The photographic evidence below demonstrates the effects on and depleted state of the impacted streams in the areas near Arroyo Bruno.

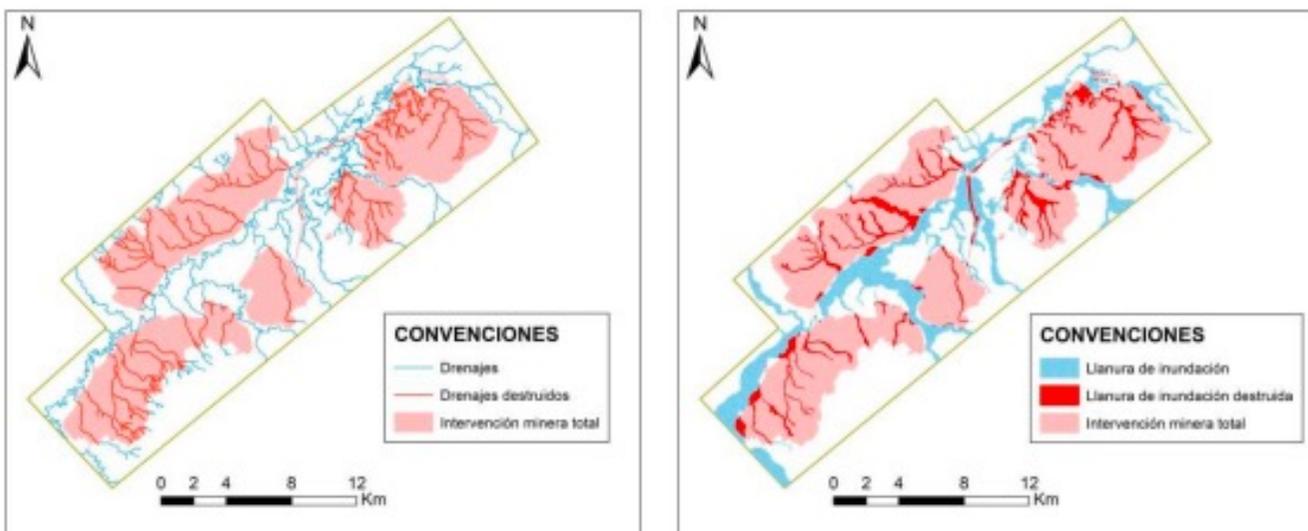


Figure 10. Drainage and flood plains destroyed by Carbones de Cerrejón. Source: Terraes (2019a, 2019b).

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14. In ruling T-256 of 2015, the Constitutional Court issued a warning to the environmental authorities to “control and monitor surface water and ground-water reserves, in view of operations being carried out by the defendant company (Carbones del Cerrejón), since the massive pumping of water is leading to the depletion of aquifers that currently supply the population with water” (...) given that “it would be paradoxical to allow the defendant company to continue extracting significant quantities of water at a rate greater than that of the natural recharge of the aquifers or, worse still, allow rivers and streams to be diverted in a clear affront to the protection of water resources, the environment and human life in that area of the country.”
15. Seven (7) interventions in the North Zone, sixteen (16) in the New Mining Areas and fifteen (15) in the Central Zone, according to ANLA’s response to the right of petition (2023).
16. These include: La Puente, Cerrejoncito, La Chercha, Sequión, Luis, Trampa, El Mamón, El Hatico, Manantial, La Ceiba, Medianía, Macanal, Gayuso, Morocónlo, Ciénaga, Tabaco, Aguas Blancas, Bruno, Pupurema (Cinep, 2022).

Arroyo Aguas Blancas



Arroyo Ceiba



Arroyo Cerrejón



Arroyo Kaurina



Arroyo La chercha



Arroyo La Trampa



Arroyo Cequión



Puntos identificados en el recorrido



Figure 11. Monitoring of streams impacted by Carbones del Cerrejón, showing how several bodies of water have almost completely disappeared. The map in the bottom-right corner shows the location of streams and the stopping points along the route. Source: Cinep (2023).

2.2.4.1. The diversion of Arroyo Bruno

The P40 project aims to expand the output of the Carbones del Cerrejón mine by enlarging the La Puente pit and diverting a 3.6km stretch of Arroyo Bruno that supplies water to more than 40, mostly Wayuu, communities, including La Horqueta, La Gran Parada and Paradero (Colombia Informa, 2021; Terrae, 2019b). Representatives of these communities lodged a ‘tutela’ (action to enforce constitutional rights) to put a stop to this environmental catastrophe that violates their fundamental rights. Despite this, Carbones del Cerrejón went ahead with the first phase of works to divert the stream in 2017. At the end of the same year, in ruling SU-698/2017, the

Constitutional Court found in favour of the communities (Corte Constitucional, 2017)

The ruling states that, due to lack of information or “environmental uncertainties”, among other reasons, the conclusion was reached that “the project to divert Arroyo Bruno constitutes a concrete, credible and direct threat to the rights to water, health and food security and sovereignty of the communities that depend on Arroyo Bruno.”¹⁷ Consequently, it ordered the temporary suspension of works.¹⁸ In spite of this order, the company is continuing to excavate the pit and increase the size of the dump and sedimentation ponds.¹⁹ These actions, together with other evidence, are in the process of being reviewed by the Constitutional Court, since the company has allegedly failed to comply with several orders issued by the Court.²⁰



Figure 12. Upper part of Arroyo Bruno's natural watercourse in the Wayuu indigenous community of Rocío. Source: Cajar (2023).



Figure 13. Natural watercourse of Arroyo Bruno, now diverted. Source: Cajar (2023).

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17. SU698-17 Corte Constitucional de Colombia

18. A419-17 Corte Constitucional de Colombia

19. Cinep/PPP. *Comunidades denuncian reinicio de actividades mineras alrededor del arroyo Bruno en La Guajira* (Communities denounce resumption of mining activities around Arroyo Bruno in La Guajira). Press release.

20. Corte Constitucional. (September 22, 2023). *Corte convoca sesión técnica para verificar cumplimiento de órdenes en la Sentencia que amparó los derechos a tres comunidades étnicas que desarrollan sus actividades en el arroyo Bruno en La Guajira* (Court convenes technical session to verify compliance with orders in ruling protecting the rights of three ethnic communities that carry out their activities in Arroyo Bruno in La Guajira)

2.3. Threats, harassment and persecution: who is responsible?

The increasing risks to human rights defenders cannot be seen in a vacuum or divorced from the underlying root causes of attacks. Human rights defenders are often attacked because they shine a light on underlying patterns of harmful business conduct and investment. As businesses, often in collaboration with the State, seek access to natural resources and land, for example, they may engage in economic activity that adversely impacts the rights of communities, including water, environmental and land rights. (...) If the business enterprise itself is causing or contributing to human rights abuse affecting defenders, their responsibility is clear-cut: they need to end the abuse and address any harm that has occurred.

The UN Guiding Principles on Business and Human Rights: guidance on ensuring respect for human rights defenders (2021).

The operations of transnational corporations cause tensions and contradictions, and businesses that operate in conflict contexts such as La Guajira must enhance their duties to protect and care for the rights of human rights defenders: “The Guiding Principles clearly stipu-

late that business enterprises operating anywhere need to assess whether they are causing, contributing to or are linked to human rights abuses, and this includes risks to human rights defenders.”²¹

Furthermore, according to the UN, in the case of conflict-affected areas, States where transnational corporations are headquartered should help those businesses avoid becoming implicated in human rights violations. Businesses benefiting or aiding armed groups can even incur criminal liability.²²

Colombia is a country with an active armed conflict, and illegal armed groups are present in La Guajira.²³ The violent context has led to the militarization of the area and assistance contracts being signed between state armed forces and Carbones del Cerrejón.

On this basis, Glencore and Carbones del Cerrejón would be expected to pay particular attention to the security situation of social leaders in the region. Instead, there are constant reports of them being threatened, harassed, persecuted and attacked after filing claims, making public complaints, organizing demonstrations or carrying out advocacy tours to expose systematic human rights violations.²⁴

This situation has led to 70 cases of human rights violations being documented in 2022 and 2023 that occurred between 1995 and 2022;²⁵ these cases include 150 violations of fundamental rights to life, integrity and freedom of the person. Attacks were concentrated in the areas where the Carbones del Cerrejón mine is being enlarged and in the immediate vicinity of the railway line that transports coal.

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21. UN Human Rights Council. (2021). The UN Guiding Principles on Business and Human Rights: guidance on ensuring respect for human rights defenders.
22. InsightCrime. (July 30, 2014). Colombia’s Paramilitary-Coal Nexus: Drummond, Glencore Face New Accusations.
23. Fundación Ideas para la Paz. (July 8, 2013). Conflicto armado en La Guajira y su impacto humanitario (Armed conflict in La Guajira and its humanitarian impact).
24. Many statements, press releases and denouncements have been published about attacks on leaders from La Guajira, such as the following blog post by Global Witness: “We are going to kill you.” A case study in corporate power left unchecked.
25. Since 2022, Cinep together with Banco de Datos de Derechos Humanos de La Guajira (La Guajira Human Rights Database) has been carrying out a documentation exercise, gathering primary testimonies, complaints filed with the public prosecutor’s offices and statements. This process has resulted in the documenting of 70 cases involving individual and collective victims in La Guajira related to leaders and other victims of Glencore’s operations. This data represents an underestimate given the countless attacks on communities that have denounced the Carbones del Cerrejón mining project, and which it has not yet been possible to document.

They include the following types of human rights violations:

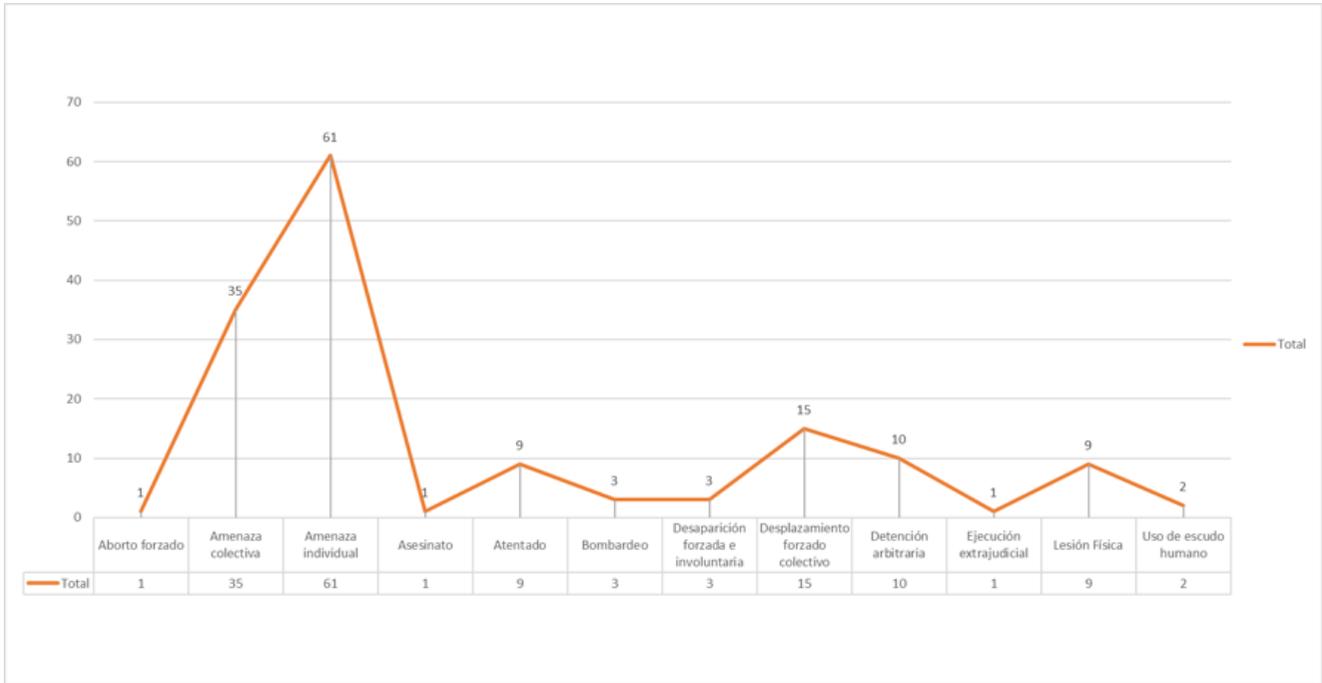


Figure 15. Types of human rights violations. Source: Cinep (2023)

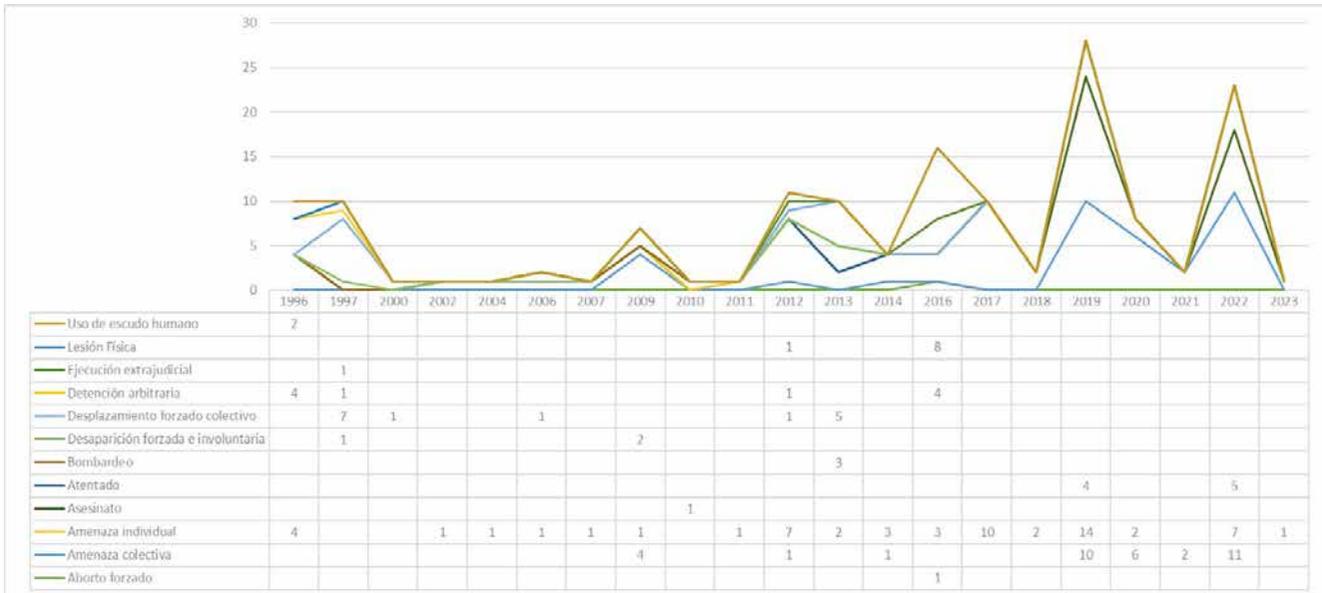


Figure 16. Overview of the types of human rights violations against leaders who have denounced Carbones del Cerrejón between 1995 and 2022. Source: Cinep, (2023).

Figure 16 reveals a pattern concentrated in individual and collective threats against human rights defenders. In addition, and in line with the company's mine expansion strategy, the following can be observed:

1. Between 1996 and 2003, militarization increased across the territory in areas of mining interest,²⁶ as did army and police aggression aimed at intimidating La Guajira's Afro-descendent and Wayuu communities. Their brutal actions were intended to terrorize communities, who ended up selling their land to the company at a low price and/or were displaced by mining activities. Later, militarized action was coordinated through security contracts agreed with Carbones del Cerrejón.²⁷
2. Peaks in attacks on human rights defenders in La Guajira correspond to specific moments in Cerrejón's corporate activities:

- i) From 2007 to 2009, there was a peak in attacks linked to forced resettlement processes, the expansion of mining pits and social mobilization.
 - ii) Between 2012 and 2014, threats against social leaders increased as part of strategy to intimidate and stigmatize them and undermine organizing processes in victim communities.
 - iii) From 2016 to 2023, threats against individual and groups of leaders are seen to peak when Colombian High Court judgements rule in their favour,²⁸ when a simple annulment action against the company's environmental permit is lodged,²⁹ and when a protest³⁰ is organized by communities affected by the project.³¹
3. Among the documented cases, there is a clear systematic nature to attacks on leaders with a high profile due to their activities criticizing Carbones del Cerrejón.³²

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26. Launched in 2001, the 'Plan Fortaleza' (Fortress Plan) ordered 10,000 soldiers to be brought in over four years to carry out defensive tasks. A new aspect introduced by this plan was the development of a 'Plan Especial Energético y Vial' (Special Energy and Roads Plan) that led to the stationing of 'Batallones Especiales Minero-Energéticos y Viales' (Special Mining-Energy and Road Battalions) across the country to safeguard mining and infrastructure operations (Tierra Digna, 2010).
27. The senator Iván Cepeda gave a presentation to Commission II of the Colombian Senate in 2015 entitled 'Convenios entre empresas del sector minero-energético y fuerza pública' (Agreements between companies in the mining and energy sectors and the armed forces). His presentation revealed that between 2008 and 2014 Carbones del Cerrejón Limited's operation, which is owned by Glencore, had a Special Mining-Energy and Road Battalion on its premises, as well as security agreements in place between the company and the armed forces.
28. The following are some of the rulings by the Colombian Constitutional Court resulting from 'tutela' actions brought by La Guajira leaders:
2015 ruling: T-256-15 Corte Constitucional de Colombia
2016 ruling: T-704-16 Corte Constitucional de Colombia
2017 ruling: SU 698-17 Corte Constitucional de Colombia
2017 ruling: T-329-17 Corte Constitucional de Colombia
2019 ruling: T-614-19 Corte Constitucional de Colombia
29. Prensa Cajar. (August 6, 2019). Consejo de Estado estudiará demanda contra la licencia ambiental de Carbones del Cerrejón. (Council of State will review claim against Carbones del Cerrejón's environmental permit)
30. Caracol. (September 1, 2022). Bloquean vías en el sur de La Guajira (Communities block roads in the south of La Guajira).
31. Bolaños, E. (August 14, 2018). "Cerrejón debe ir más allá de rechazar las amenazas contra los líderes de la Guajira": Aviva Chomsky. ("Cerrejón must go beyond just opposing threats against the leaders in La Guajira", says Aviva Chomsky). El Espectador.
32. Public reports of threats against environmental leaders who have confronted Carbones del Cerrejón through media and legal action include:
CAJAR, Censat Agua Viva, Cinep, Plataforma La Guajira le habla al país. (September 4, 2021). Denuncia pública Alerta urgente por la incursión de hombre armado en la comunidad Wayúu de Paradero, defensora del Arroyo Bruno (Public denunciation. Urgent alert relating to incursion by armed man into the Wayuu community of Paradero, defender of Arroyo Bruno).
Business & Human Rights Resource Centre. (May 23, 2022). Colombia: Intenta asesinar a lideresa Wayúu que denunció ante la Corte Constitucional impactos de derechos humanos de Cerrejón (Colombia: attempt to assassinate Wayuu leader who denounced human rights violations by Cerrejón to the Constitutional Court)
El Espectador. (October 21, 2021). Gobierno colombiano, sin voluntad para proteger a líderes ambientales (Colombian government lacks will to protect environmental leaders)
Caracol. (April 14, 2022). Líder Wayuu en defensa del arroyo Bruno denuncia amenazas en La Guajira (Wayuu leader defending Arroyo Bruno denounces threats in La Guajira)
El Espectador. (August 19, 2022). El lío por una tierra wayú que implica a actores armados y al Cerrejón (the mayhem over Wayuu land involving armed actors and Cerrejón)



Figure 17. Photographs of leaflets with threats from the Águilas Negras paramilitaries, received by communities. Source: London Mining Network press release (2018).

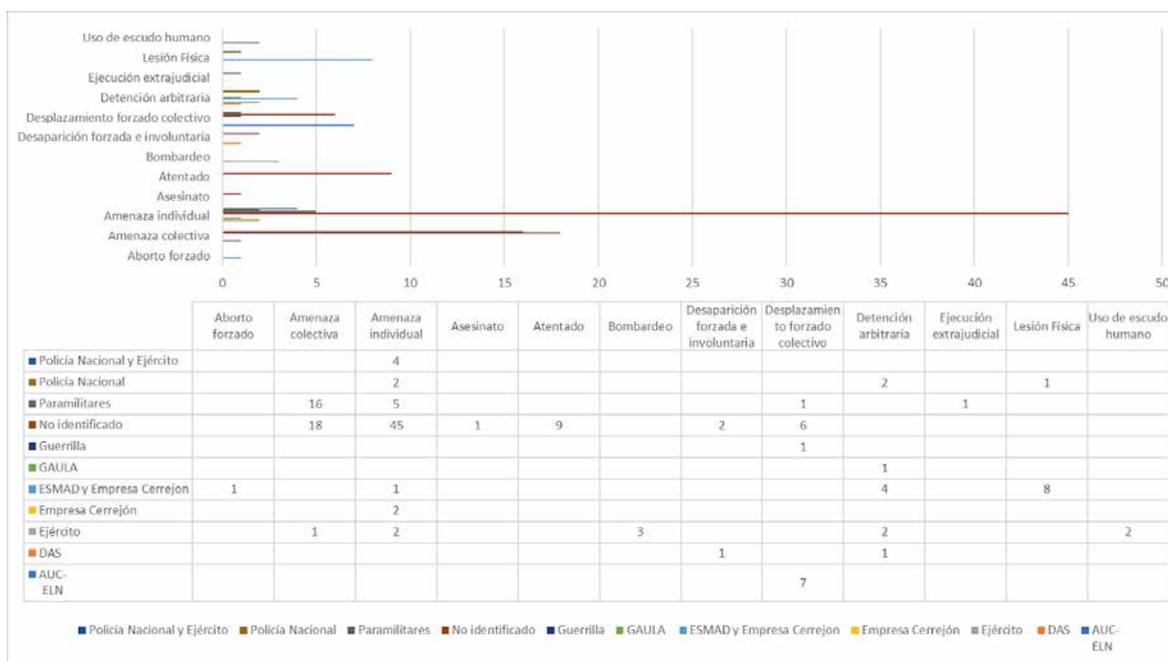


Figure 18. Alleged perpetrators of abuses against leaders in La Guajira, 1995-2022. Source: Cinep (2023).

Findings also revealed that in 54% of cases the perpetrators of abuses could not be identified, in 15% paramilitaries were the alleged perpetrators (the Águilas Negras and Autodefensas Unidas de Colombia), and in 9% the Escuadrón Móvil Antidisturbios (Mobile Riot Brigade - ESMAD) and employees of Carbones del Cerrejón were alleged to be jointly responsible (Figure 18).

Besides some statements issued by Carbones del Cerrejón criticizing the threats, no other strategies adopted by the company to prevent and mitigate these human rights violations have been noted.

3. Glencore in Colombia: between corporate power and impunity

There's a lot of pollution in our indigenous reservation; when we saw it, we knew in our gut that we wanted to do something, to show them that people are dying from lung disease, that the smell and fumes from the coal make the children sick.³³

Young woman from Provincial indigenous reservation (2021)

Faced with systematic human rights violations, communities and their leaders have sought to obtain a response from Glencore by making denunciations and using judicial mechanisms. However, the company continues to operate with impunity, given the lack of effectiveness of national laws and international agreements on businesses and human rights in guaranteeing truth, reparation, sanctions and comprehensive justice.



Figure 19. Coal dust rising in the distance. Source: Censat Agua Viva (2013).

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³³. It is worth noting that, according to some of the research cited below on the relationship between pollution and harm to health referred to in Constitutional Court ruling T-614 of 2017, Provincial is not the only community exposed to serious health risks. Everything in the mining corridor is exposed to environmental pollution and health risks.

There is solid evidence that the transnational corporation has operated with impunity in Colombia. For example:

1) Numerous rulings by the Colombian High Courts corroborate the extensive information demonstrating the systematic human rights violations and environmental damages associated with its mining operations in Colombia. This includes the finding by the Constitutional Court, in ruling T-329/2017, that the displacement of the Afro-descendant community of Tabaco was ‘development-induced’, i.e., that it is a type of displacement

not linked to the internal armed conflict, but rather caused by mining operations.

2) The United Nations³⁴ and the Inter-American Human Rights system have made public pronouncements about human rights violations against the Wayuu and Afro-descendant communities resulting from the company’s mining operations. The area around the mine has also been classified as one of the planet’s 50 most polluted places, referred to as sacrifice zones.

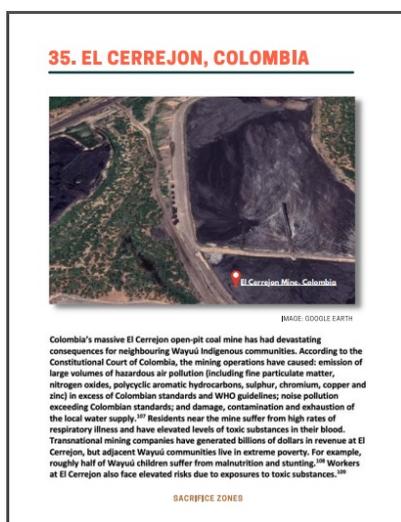
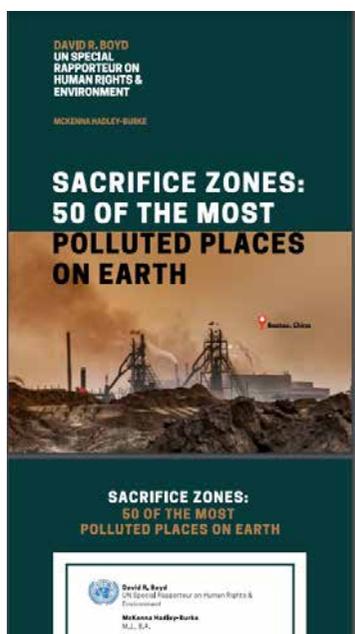


Figure 20. Source: Cover of the report ‘Sacrifice Zones: 50 of the most polluted places on earth’ by Special Rapporteur David Boyd. UN press release ‘UN expert calls for halt to mining at controversial Colombia site’.

3.1. What is the OECD doing?

In 2007, some of the leaders of the Tabaco community approached the National Contact Point (NCP) of the Organisation for Economic Cooperation and Develop-

ment (OECD) in Australia, complaining of the complicity of transnational corporations BHP Billiton, Glencore (formerly Xstrata) and Anglo American in human rights violations against them. As a result of this process, coordination began between the Swiss, U.K. and Australian OECD NCPs, leading to the formation of a panel of experts known as the *Third Party Review*, who published a report with recommendations in March 2008.

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34. See UN report providing supplementary information to the report of the Special Rapporteur on human rights and the environment, David Boyd, *Special Rapporteur on human rights and the environment, and OHCHR (2020)*, UN expert calls for halt to mining at controversial Colombia site.

That year, agreements were signed between Carbones del Cerrejón, the Hatonuevo municipal authorities and some leaders in which compensation and the physical rebuilding of Tabaco were promised; however, these agreements were not reached through a broad-based participatory process or in the framework of the right to consultation, and they failed to provide comprehensive reparation in an appropriate, inclusive, transparent and fair manner (Cajar, 2022). To this day, the members of the Tabaco community continue to have their fundamental human rights violated.

In 2021, fourteen years after the OECD NCPs were first approached, a coalition of national and international organizations—including AIDA, Cinep/PPP, Cajar. ASK!, Christian Aid, ABColombia and GLAN—lodged five complaints with the OECD NCPs in Ireland, the United Kingdom, Switzerland and Australia, denouncing the impacts caused by the Carbones del Cerrejón-operated mine.³⁵

During this process, the Swiss NCP did not follow proper procedure in relation to promoting access to information and guaranteeing participation by the affected communities. At the end, the Swiss NCP's statement centred around reiterating Glencore's human rights obligations—which are the same as those applying to all businesses—, failing to make relevant recommendations. The Australian and U.K. NCPs followed suit, merely restating the Swiss NCP's position.

In light of this experience, it bears mentioning that:

- i. The OECD process is one of the few mechanisms that exist in countries such as Switzerland to assess businesses' compliance with their corporate responsibilities.
- ii. The adoption of the OECD guidelines entails commitments that are voluntary for businesses but binding for States.
- iii. Efforts to pursue justice through non-judicial mechanisms like these expose the pronounced and wearing imbalances that characterize these sys-

tems. They prioritize the interests of businesses with long histories of corruption³⁶ and human rights violations over justice and the life of historically excluded people groups.

- iv. The mechanism thus turns out to be inadequate and ineffective. The final conclusions of the Swiss NCP suggest the intentional adoption of a position of tolerance towards and cover-up of Glencore's activities.

3.2. So, can Glencore not see?

It is not justifiable (...) that there is currently no significant, genuine, timely and effective protection to remedy the state of disintegration experienced by this Afro-descendent community. Because, as recorded in the 'tutela', the state of neglect the community is experiencing, its disintegration and the impossibility of its resettlement, represent a current and ongoing violation of its fundamental rights. Despite the 29 actions taken by the company, the current conditions of the Tabaco community, and the persistent absence of genuine and adequate compensatory measures that extend to all its inhabitants, cannot be justified either by the company or by the Hatonuevo municipality

Colombian Constitutional Court, ruling T-329 of 2017

On several occasions, Glencore has demonstrated a disregard for the consequences of its operations. Instead, it has asserted that its work is faultless. In a statement released on 22 October 2021,³⁷ it guarantees that it is committed to acting as a responsible steward of its 'mining assets', and as such it takes into account their impact on human rights and the environment.

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35. <https://www.oecdwatch.org/complaint/glan-vs-glencore/> and <https://www.elespectador.com/judicial/denuncian-en-la-ocde-a-los-duenos-de-cerrejon-y-piden-que-se-vayan-de-la-guajira-article/>

36. See <https://www.theguardian.com/business/2022/nov/03/london-court-forces-glencore-to-pay-record-281m-for-bribery-in-africa> and <https://www.justice.gov/opa/pr/glencore-entered-guilty-pleas-foreign-bribery-and-market-manipulation-schemes>

37. https://www.glencore.ch/dam/jcr:3741a8a4-af02-48a0-9971-e256deb2e72d/Facts%20on%20Cerrejon%202021%2010%2022_ENG.pdf

The Cerrejón mine does not poison people or the environment. Cerrejón has operated in compliance with Colombian law and has continuously followed international standards to enhance its performance. These standards include the UN Guiding Principles on Business and Human Rights; the IFC's social and environmental performance standards; the Voluntary Principles on Security and Human Rights, the UN Global Compact; and the Sustainability Framework of the International standard for environmental management (ISO14001). (Glencore, 2021).

Two years prior, however, the Colombian Constitutional Court stated, in ruling T-614/2019:

(...)The Court concludes that in Provincial a very specific situation arises: (I) there is a very real danger of damage being done and continuing to be done to the environment and to human health; (ii) this would entail serious and irremediable harm to the community; and (iii) it has been scientifically validated that this risk is not formed of unsubstantiated allegations. (...) In rulings SU-698 of 2017, T-704 of 2016, T-256 of 2015 and T-528 of 1992, this Body³⁸ analysed cases that displayed several similarities to that of the Provincial community, in which we examined the severe effects caused by open-pit coal mining and the danger it poses to life around it. (...) Thus, the company failed to comply with the international due diligence standard required by the Guiding Principles on Business and Human Rights, also known as the 'Ruggie Principles', to avoid violating the human rights of populations at risk of being affected.

Despite all the effects described, the company refuses to accept the legitimacy of claims against it. For example, according to Colombian media outlet El Turbión, during Glencore's shareholder meeting in May 2023 in Switzerland, a shareholder challenged the company's chair, Kalidas Madhavpeddi, regarding the presence of protesters outside the building. Madhavpeddi responded

as follows: "What are those people doing outside? The people outside can say whatever they want to say, but (...) Glencore is a company that focuses on helping the communities and countries in which it operates, and we may not always agree with some people, but personally, I am not aware."³⁹

3.3. International claims: when impunity and contradiction rule

Our dream is that all Arroyo Bruno's waters would be set free. By that we mean that the waters diverted into the artificial canal would return to their natural course and there would be no more mining expansion on our land. We dream of an Arroyo Bruno with no intervention and no mining. Its destruction is an environmental crime. Working to defend Bruno/Youluna has been a long struggle.

Roxana Ipuana and Elsis Sierra (2021).

In the aforementioned shareholder meeting, 29.2% of Glencore's investors rejected the company's climate plan⁴⁰ and voted in favour of a resolution demanding greater clarity on how its thermal coal production aligns with roadmaps to limit global temperature rises. Glencore's 2022 sustainability report states that it adopts "a holistic approach"⁴¹, recognising its responsibility to contribute to global efforts to meet the Paris Agreement objectives, for which it promises an emissions reduction plan.

However, Glencore is directly and indirectly responsible for greenhouse gas (GHG) emissions, as well as for causing irreversible impacts in the communities affected by its coal mining operations. Its climate policy should adopt a social and environmental justice approach, aiming to comprehensively remedy territories transformed into sacrifice

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³⁸. The Constitutional Court is referring to itself.

³⁹. <https://elturbion.com/18337>

⁴⁰. <https://www.swissinfo.ch/spa/economia/los-inversores-presionan-a-glencore-por-el-clima/48446176>

⁴¹. Informe de Gestión y Sostenibilidad 2022 (Management and Sustainability Report 2022): <https://www.glencore.cl/.rest/api/v1/documents/53cf84e-99802c1a88c0f79cd5b74bc89/Informe+de+Gesti%C3%B3n+y+Sostenibilidad+2022+Altonorte.pdf>

zones due to the inequitable distribution of costs and benefits within the global fossil fuel industry's mining-energy model.

Due to the signing of an investment protection agreement between Switzerland and Colombia, Glencore filed a claim against the Colombian State regarding the Constitutional Court's judgement in ruling SU-698/2017, in which it found in favour of the rights of the Wayuu people and ordered the suspension of Arroyo Bruno's exploitation while the project's social and environmental impact was assessed. In that claim, Glencore demands millions of dollars of compensation,⁴² describing the measures taken by the Court as "discriminatory, arbitrary and unreasonable", and warns that it reserves the right to increase its claim if Colombia takes any further action that might aggravate its losses.

These situations prompt the question:

- 1) How can Glencore reconcile its climate commitments with the claim it filed against Colombia for a court ruling ordering the company to assess the impact on the climate and on vulnerable indigenous groups before expanding its coal mine?

- 2) Given that the Intergovernmental Panel on Climate Change (IPCC) has recommended letting coal remain in the subsurface as an effective measure to tackle climate change, it is inconsistent of Glencore to file a claim because it is not permitted to expand one of its coal mine pits to increase extraction.

Another point of note is that the Swiss Government's National Action Plan on Business and Human Rights 2020-2023 states that the federal government should ensure that investment agreements are consistent and "provide sufficient domestic policy scope to fulfil the human rights obligations of both Switzerland and the contracting partner."⁴³ In the Switzerland-Colombia case, it is clear that the agreement not only failed to achieve this, but that it is also undermining and interfering with the fulfilment of obligations, sovereignty, the rights of indigenous people and the independence of the judiciary in Colombia.



Figure 21. 'La Guajira le habla al país' (La Guajira is talking to the country) caravan. Source: Cinep (2023).

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42. Due to confidentiality terms, there is no public information that can be consulted to determine the exact amount being demanded.

43. United Nations. Human rights-compatible International Investment Agreements. file:///C:/Users/mmatiz/Downloads/Informe%20Acuerdos%20de%20Inversion%20y%20DDHH%20GTEDHH%20rv.pdf

4. Carbones de Cerrejón's mine closure plan: a failure to address the cumulative impacts of four decades of coal mining or contribute to just energy transition

Given current debates on decarbonising economies as a means of tackling the global climate crisis, the grievances of communities affected by Carbones del Cerrejón Limited's operations are increasingly relevant to the need to plan for a just mine closure. Yet, the company's current mine closure plans compound the socio-environmental injustices prevalent in its operations amid a context of impunity and disregard its responsibilities for the cumulative and perpetual impacts it has caused.

4.1. Climate policies that must extend beyond cutting greenhouse gas (GHG) emissions and actively fund just mine closures

"It is not the climate, it is life."

Censat Agua Viva

In its 2022 annual report, Glencore says it is committed to responsibly managing the decline of its coal portfolio, in line with its targets to reduce polluting emissions by

15% and 50% by the end of 2026 and 2035, respectively. To achieve this, its planning includes the closure of at least 12 coal mines between 2019 and 2035. As part of this, it has reported the safe closure of Calenturitas and La Jagua mines in Colombia, and the Lagisa mine in South Africa. Yet, at the same time, the company is planning to open new thermal coal mines in Australia.⁴⁴

That being said, how does the transnational corporation understand the idea of safe and responsible closures if, with the untimely exit of Prodeco—a Glencore subsidiary active in Colombia's Cesar department—it failed to address the cumulative impacts resulting from decades of mining activities?

As of today, the closure process is in the liquidation phase, during which the Agencia Nacional Minera (National Mining Agency-ANM) verifies compliance with environmental obligations and only upon completion issues a certification to the company. It is worth noting that the updated Plan de Manejo Ambiental (Environmental Management Plan) including its section on closure was only submitted by Prodeco in 2021, after more than 14 communities filed a 'tutela' action. This led to a ruling by the Valledupar administrative court (2022) demanding that the State and the company convene a dialogue table to discuss and share the mine closure plan (El Espectador, 2022).

Of course, once the outstanding social and environmental obligations have been met,⁴⁵ Glencore will be able to

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44. https://www.accr.org.au/downloads/accr_glencoreupdate_sept2023.pdf

45. Compensation for environmental liabilities related with and caused by forest use permits, loss of biodiversity and biotic components, rehabilitation of affected areas such as dumps that have reached maximum levels, rehabilitation of water sources such as Arroyo Caimancito, environmental management of used tyres, water management and control, the resettlement of Hatillo, socio-economic management plan of Boquerón and social management reports, among other obligations (Grupo Prodeco, 2022).

argue that it has fulfilled all the requirements to permanently exit Cesar. However, it does not envisage taking responsibility for other social, environmental and community health impacts.

In fact, before its complete acquisition of Carbones del Cerrejón, Glencore assessed the assets and liabilities on the company's books and concluded that such an

acquisition was prudent (Glencore, 2023). However, its assessment did not include environmental liabilities, cumulative impacts and perpetual damages. As a result, according to the figures in Glencore's 2022 annual report, the acquisition represented a bargain purchase gain of \$1,029 million (Glencore, 2023).



Figure 22. Dead tigrillo in the middle of Arroyo Bruno's natural watercourse, metres from the 'plug' installed by the company to divert the stream. Source: Javier de la Cuadra (2019).

4.2. A mine closure plan that deepens social and environmental injustices

*“There are damages, for example, to our dreams.
How can they be fixed?*

*The ouutsü⁴⁶ have disappeared. How can that be fixed?
Because this talk of a few million isn't going to fix it.”*

Female Wayuu leader from the ‘4 de noviembre’ indigenous reservation (2022)

The company’s mine closure strategy is outlined in its current Plan de Manejo Ambiental Integral (Integrated Environmental Management Plan–PMAI) and the preliminary closure plan approved by the National Environmental Licensing Authority (ANLA) (Cerrejón, 2023a), as well as the more recent draft mine reversal and closure plan, which is currently being reviewed by ANLA (2023). After decades of lucrative profit by transnational corporations, and by Glencore in particular, who will be accountable for the cumulative and perpetual impacts in the territory of La Guajira in 2034, when the mining contract ends?

The draft closure plan takes it for granted that the PMAI is being achieved and that, as such, all that will be required in 2034 are some basic mine closure and reversal operations to return the infrastructure to the State, including the prevention of damages that may be caused by the closure. However, as already noted, neither the company nor state bodies have complied with court rulings from 2012 to 2019 in favour of protecting the rights of communities affected by Carbones del Cerrejón’s activities (Cajar, 2022).

With the impending closure of the mine, there is a risk that social and environmental injustices will be exacerbated, and with them the impunity in which the company has been operating. It should also be noted that there is no mention of social impacts in the closure plan, which focuses primarily on biotic and physico-chemical aspects. For example, the health impacts on Wayuu and Afro-descendent communities resulting from air, water and soil pollution are not considered.⁴⁷

Furthermore, the company does not include perpetual impacts in its closure plan, arguing that there are still 11 years remaining before the end of the contract and therefore they cannot define any impacts that might occur or possible response measures. However, there have been studies looking at perpetual impacts in the context of mega-mining which argue for the need to take such impacts into account in planning for mine closure and post-closure (Ángel, 2019).

Water acidification resulting from acid mine drainage and the modification of the landscape are among the most studied of these impacts, but there are also social impacts, such as health damages, as well as inestimable cultural and spiritual effects for the people who live in the territory (Caro & Portela, 2022; Censat, 2023). The failure to acknowledge these impacts results in social and environmental liabilities⁴⁸ which end up being paid for by the State.

The risk of this occurring is evident in the draft closure plan, in that Carbones del Cerrejón does not present adequate timeframes for post-closure. The preliminary plan refers to a timeframe of five years (Cerrejón, 2015), which is insufficient given the intense requirements associated with this stage. Now, in the updated version of the document, no specific timeframe is proposed and the reversal and post-closures phases overlap (as shown in Figure 24). The assumption is that these

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46. The ouutsüs are older women who guide the community based on their dreams, helping to resolve conflicts and heal disease. Controlled explosions in the mine have caused this gift to be disrupted as a result of insufficient rest and sleep (García et al., 2015).

47. <https://www.rosalux.org.ec/carbon-toxico/>

48. Environmental liabilities are “geographically located and demarcated negative environmental impacts that were not mitigated, compensated, corrected or remedied in an adequate or timely manner; caused by human activity and that can cause risks to human health and the environment.” (quote available at <http://leyes.senado.gov.co/proyectos/index.php/proyectos-ley/cuatrenio-2022-2026/2022-2023/articulo/241-por-medio-de-la-cual-se-establecen-la-definicion-oficial-la-tipologia-y-los-mecanismos-para-la-gestion-de-pasivos-ambientales-en-colombia-y-se-dictan-otras-disposiciones>)



Figure 23. Drainage pond between the Cerrejón complex boundaries and the Wayuu reservation of Provincial, Barrancas, La Guajira. During the winter season this pond fills with water contaminated by mining. Source: online series Still Burning (2020).

phases are one and the same, when in fact they are technically distinct processes.

The proposed timelines are unclear and, even though certain measures are mentioned, such as the development of an analytic hydrogeological model that includes conditions following cessation of operations (Cerrejón, 2023b), there are no corresponding indicators of success. As such, parameters that can be measured and monitored still need to be defined.

In its 2022 Sustainability Report (Cerrejón, 2023a), the company reports a series of achievements with regard to progressive closure, mainly relating to work rehabilitating areas of formerly mined land. According to the report, 4,854 hectares have been rehabilitated to date. However, these figures are at odds with the perceptions of several leaders in the affected area, who question the quality of the rehabilitation process, highlighting that soil infertility and the measures employed impede the

PLANEACIÓN DEL CIERRE					Finalización contratos 2034	CIERRE	
Fase planeación del cierre	Plan preliminar	Plan borrador	Plan detallado	Plan final		Reversión	Poscierre
Tiempo al cierre (años)	25 – 15	15 – 10	10 – 5	5 – 0		1 año	Hasta alcanzar indicadores de éxito
Año estimado de presentación del Plan actualizado*	2016	2023	2028	2033			
Fase ejecución del cierre	Cierre progresivo y poscierre				Reversión		

* Corresponde al año estimado, pero podría presentarse antes.

Figure 24. Closure planning cycle and phases. Source: Cerrejón (2023b), Draft mine closure and reversal plan.

cultivation and preservation of native species with deep roots that are essential to restoring ecological relationships in the region (Censat, 2023). ANLA has also made requests of the company due to inconsistencies in its rehabilitation programme.⁴⁹

An **approach of comprehensive reparation of a territory during the closure phase** is a prerequisite for just and participatory socio-environmental transition (Censat Agua Viva, 2018; Censat Agua Viva, 2023). This approach relies on the company taking responsibility for

the cumulative and perpetual impacts it has caused, comprehensively addressing social and environmental conflicts resulting from its mining activities and enabling compensation for human rights violations of communities that live in region (Censat Agua Viva, 2023). For this to happen, the company, in line with its responsibilities, must also establish optimal financing mechanisms to meet its reparation commitments and implement the required closure and post-closure activities. The current closure plan lacks budgetary allocations to that effect.



Figure 25. Annex mining pit owned by Carbones del Cerrejón. Source: Cinep (2023).

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⁴⁹. According to information provided by ANLA in response to a right of petition (2022), the body has made a number of requests of the company related to its rehabilitation programme. For example, they have requested the development of appropriate indicators to enable them to evaluate the effectiveness of rehabilitation, clarifications regarding information on re-forested areas, and the resumption of stabilization stages where these have been ineffective, among other things (Censat, 2023). These observations call into question the results demonstrated by the company.

5. Conclusions

The inhabitants of La Guajira who report on and testify about serious human rights violations and the impacts of mining activity have been targeted by illegal groups and suffered threats and attacks. Neither Carbones del Cerrejón nor Glencore have publicly acknowledged this situation,⁵⁰ and no court has issued a judicial measure to address it.

Despite rulings issued by the Colombian Constitutional Court, impunity for land dispossession, development-induced displacement and failed resettlement of forcibly displaced communities in La Guajira persists. There is no public acknowledgement from Glencore or Carbones del Cerrejón regarding the harm caused by their mining operations, let alone the resulting cumulative, irreparable and perpetual impacts.

There are also no effective reparation mechanisms in place for affected communities. Existing mechanisms that aim to address abuses by businesses are voluntary or non-judicial in nature, and are thus symbolic and ineffective. There is an absence of a dedicated court or mechanism supporting access to justice and demands for comprehensive reparation in relation to the responsibilities of transnational corporations, while recourse to the OECD National Contact Points proves fruitless.

Existing legal systems lack a suitable mechanism to hold companies accountable. Attempting to prosecute them is excessively costly, complex and fraught with power imbalances, particularly in the pursuit of genuine and effective access for La Guajira's Wayuu and Afro-Colombian communities, the main victims of abuses, who are historically marginalized, excluded and poor.

Open-pit coal mining by Carbones del Cerrejón Limited has dramatically transformed the hydro-social landscape of the middle Ranchería river basin. The cumulative impacts of mining operations on water sources have led to changes in the hydrological cycle in a region highly vulnerable to climate crises. This is directly linked to the humanitarian crisis the department is facing as a result of water shortages. Furthermore, heavy metals have been detected in water sources affected by coal mining, threatening the protection of the fundamental rights to water, health and food sovereignty.

The energy transition scenario has entailed political and economic disputes. This global process demands that a reduced dependency on fossil fuels be coupled with the closure of coal mines accompanied by comprehensive reparations—not their irresponsible abandonment, evading obligations to redress socio-environmental injustices.

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50. See <https://rutasdelconflicto.com/notas/2022-cuatro-paises-latinoamerica-concentraron-el-mayor-numero-ataques-defensores-informe#:~:text=Los%20pa%C3%ADses%20con%20m%C3%A1s%20casos,homicidio%20de%2018%20l%C3%ADderes%20ind%C3%ADgenas>.

6. Recommendations

6.1. Glencore

- It is fundamental that Glencore commits to consistent action with regard to just energy transition and takes responsibility for a process of comprehensive reparation of areas affected by its operations. To achieve this, it must:
 - Include in its climate policy funding to pay for mine closures that ensure environmental, social and climate justice, fully assuming the costs of cumulative impacts and possible perpetual impacts due to human rights violations, as well as the environmental damage caused by its mining activity.
 - Evaluate the possibility of promoting the creation of trusts by its subsidiaries as a mechanism to fund mine closure, so that, through them, they can generate annual and ongoing returns to fund their perpetual obligations.
 - Transition to post-extractive scenarios in which coal mining is limited, in line with international recommendations.
 - Internalize cumulative and perpetual impacts, so that they do not become environmental liabilities, or the costs are not transferred to the Colombian State. This includes socio-environmental impacts, which go completely unacknowledged in its closure plan.
 - Plan adequately for the post-closure phase, which should be differentiated from the closure phase and the reversal process, so that necessary measures can be defined to control and monitor long-term and perpetual impacts, and funding sources can be secured for that purpose.
- Glencore's investors should ensure that the evaluation and update of the company's climate policy includes these recommendations and is in keeping with climate recommendations by international institutions.
- Bearing in mind Glencore's existing climate commitments, we urge it to drop the claim it has filed against the Colombian State with the International Centre for the Settlement of Investment Disputes (ICSID) regarding the Constitutional Court's ruling on protecting Arroyo Bruno and suspending coal mining in the La Puente pit. This claim⁵¹ is inconsistent with its climate obligations, because it demands that the Colombian State pay Glencore millions of dollars for the State fulfilling its obligation to protect the water rights of marginalized indigenous and Afro-Colombian communities.

6.2. Coal buying countries

- It is the responsibility of European Union (EU) Member States that have adhered to and ratified the Paris Agreement, and more recently the Glasgow Climate Pact (COP26), which is binding on States Parties, to take robust climate measures to discourage national contributions to global warming. This includes disincentivising and regulating the coal business.
- We call on EU Member States and countries that buy Colombian thermal coal to contribute to the financing of public policies and energy transition programmes in Colombia, given their responsibilities and debts to the country for regularly purchasing coal that is a product of human rights violations and

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⁵¹. See Investment Policy Hub. (2021). Investment Dispute Settlement Navigator: Glencore v. Colombia (III) – Glencore International A.G. v. Republic of Colombia (III) (ICSID Case No. ARB/21/30). <https://investmentpolicy.unctad.org/investment-dispute-settlement/cases/1122/glencore-v-colombia-iii>

environmental sacrifice. Thus, considering issues of comprehensive justice and reparation in a context of transition, funding should not only be earmarked for the promotion of renewable energies, but most of all for ensuring just mine closures in the coal region.

- Both EU Member States and countries across the world that buy coal mined in Colombia should reassess and include entire supply chain risk analyses in their external trade relations policies, with the aim of preventing situations in which socio-environmental cycles and relations are seriously harmed or altered.

6.3 The Colombian Government should:

- Take the lead in discussions about the Binding Treaty on business and human rights being promoted by several civil society organizations.
- Develop measures that provide comprehensive reparation to communities affected by coal mining, including truth, justice, reparation and guarantees of non-repetition, by means of structural changes to the country's mining-energy model.
- Guarantee respect for the communities surrounding Glencore's operations, through strict compliance with Constitutional Court rulings and the adoption of UN recommendations.
- Investigate and identify actors that are threatening, attacking and harassing leaders protesting mining projects.

- Enshrine the principles of consultation and free, prior and informed consent and develop a comprehensive regulation to ensure their fulfilment.
- Include a definition of perpetual impacts in Colombian law, specifying obligations and mechanisms to address them.
- Define precise timeframes and funding, oversight and monitoring mechanisms for the closure and post-closure phases.
- Improve the oversight and monitoring mechanisms of relevant entities, to enable a rigorous assessment of activities implemented by companies during progressive closure, closure of operations and the post-closure phase.
- Promote appropriate and binding participation mechanisms in which the right to access timely information is respected and the right to review is included, so that affected communities can contribute to planning for the future use and management of their land.
- Maintain and make concrete the aim of implementing a just energy transition, in which the outcome does not end up being the expansion of the energy network, but instead efforts are directed towards substantively changing the prevailing development model, so that it prioritizes people's welfare and sovereignty. It follows that La Guajira must cease to be a sacrifice and experimentation zone for capital now being redirected to the widespread adoption of wind and photovoltaic energy, offering no benefits to the local population.

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