

**Cerrejon Coal and Social Responsibility:
An Independent Review of Impacts and Intent**

February, 2008

Executive Summary

In late August, 2007, Cerrejon and its shareholders announced the commissioning of an independent “social review” of the company’s past and current social engagement.

The objective was to work with all community stakeholders to identify community priorities, assess current programmes, and highlight areas of good performance or outstanding issues of concern.

It was agreed that the review would be conducted independently of Cerrejón management by highly credible individuals with specific experience of social development both from within Colombia and from an international perspective.

It was further agreed that the review panel would be supported by an internationally recognized consultancy able to undertake intensive field work. The review panel chose the Social Capital Group, of Lima, Peru.

The review panel held numerous meetings in Colombia, both in Bogota and in La Guajira, where it was privileged to meet with stakeholders not only at the mine site but in their communities, from Puerto Bolivar and Riohacha to Tamaquito.

Colombia was, only a few short years ago, described in the European press as the closest thing to a failed state in Latin America. Colombia did seem, to outsiders, to be at the harsh mercy of left-wing guerrilla groups, right-wing paramilitaries, and, of course, the drug cartels.

In the past five years, the cities have become safer, kidnappings are fewer, crime rates are down and the primary road system is free from guerrilla and other attacks, while business investment is growing, accounting for 35% of GDP in 2007. According to the 2005 census, population is over 43 million. The population in the cities is extensively covered by the health system and enjoys the use of most public utilities. However, poverty remains widespread.

Colombia went through a deep recession in 1999, compounded by the perception of a growing risk posted by guerrillas and organized crime. It has rebounded. Growth has been driven by the commodities boom which includes exports of oil, nickel and coal but also of industrial and agricultural goods.

The La Guajira region is one of the poorest of the country. Poverty is especially appalling among the rural population. Most of this rural population is Wayuu, others of Afro Colombian descent.

The traditional sources of livelihood for the people of La Guajira is the raising of goats, some cattle, fishing, trade and agriculture in the south of the department.

For many years La Guajira was isolated, and witnessed high levels of smuggling and the growth of “illicit” products. It appears that only with the development of extractive industries did La Guajira acquire national relevance.

Coal is located in the two northeast departments of La Guajira and Cesar, which share a geological seam of the mineral that continues into Venezuela. Though artisanal coal mining seems to have begun in the 1970s, it was not until the 1980s that production picked up. Since the beginning of that decade, some 400 million tons have been extracted from the soil of La Guajira.

In 1984, the government of Colombia combined with foreign investors, primarily the giant MNC, Exxon, to create what is now understood to be the world’s largest open-pit coal mine, at Cerrejon in La Guajira.

In 1999-2000, annual production was around 17 million tons. Now, production has exceeded 31 million tons, and the current owners, Anglo American PLC, BHP Billiton, and Xstrata Coal, have invested more than 800 million dollars.

The “new” owners of Cerrejon are technologically advanced and, in assuming ownership, they assumed obligations. And each of those companies has, particularly in the last decade, developed corporate approaches to the management of relationships and risks pertaining to their obligations in the field of social impacts of their business operations.

Each of the shareholder companies which own Cerrejon is a signatory to the Extractive Industries Transparency Initiative. The first principle of the EITI reads as follows: “We share a belief that the prudent use of natural resource wealth should be an important engine for sustainable economic growth that contributes to sustainable development and poverty reduction, but if not managed properly, can create negative economic and social impacts”.

To foster sustainable development and poverty reduction in La Guajira, **Cerrejon should increase efforts to encourage and attract civil society organisations, Colombian and international development agencies, donor governments and multi-lateral institutions.** This is essential for the future of Cerrejon and La Guajira.

Whether the focus is on current and future community engagement practices or on the addressing of legacy issues, it is clear to the panel that the Resettlement issue is central, and challenging. Sometimes it occurs without the affected people having the power to refuse and it can have far-reaching and serious impacts, including disaffection and social breakdown.

It is impossible to think of Resettlement and Cerrejon without thinking about Tabaco.

It will be necessary for action on Tabaco to be accompanied by the realization that there may be hold-over issues from earlier efforts which then come to the fore again, requiring comprehensive and planned action.

According to the original Environmental Impact Assessment which preceded coal mining at Cerrejon, it was anticipated that Tabaco would, in fact, grow, because of the economic activity generated by the mine. In 1997, Intercor and its partner Carbocol made known their intention to acquire the land for an expansion of the mine site. Tabaco was on track to achieving international status.

It appears that the former Tabaco community is now a very divided one, with many members being led and represented by Jose Julio Perez, himself a former resident, and others, who appear to have moved on in a psychological sense as well as a physical one, opting to work with Cerrejon to attempt to fashion new lifestyles and capture new opportunities.

The fact is that the initial resettlement left the Tabaco community divided and bitter. It is easy to record the bitterness, less so to quantify just where it now rests and numbers are not the issue.

Tabaco was destroyed, it is alleged, between August 2001 and April 2002, and for the intervening years, those families involved with the Relocation Committee have been waiting for financial compensation as well as believing that a new community will be developed.

It seems appropriate, in the eyes of the panel, that all parties focus on what can now be done to help divided communities and otherwise affected communities share better in the positive impacts of mining at Cerrejon.

It appears to us that from Colombia to Berne, people are vitally interested in a sign that the long dispute over Tabaco can be ended, and we think that, without apportioning blame and now worrying over facts which are hard to assess or establish, there is a window of opportunity, through which a ray of light can be shone on a troubling situation.

It seems to us that **Cerrejon** can afford, and **should** afford, to **address the situation all the Tabaco families find themselves in, whatever their stand on negotiation was in 2002.** This does not mean that everyone should receive compensation and nor does it mean that intransigence must be rewarded, or initiative penalized.

It should mean that the monies currently in escrow for compensation now be paid, with an inflation correction plus interest, to all those entitled.

Other families should receive a development bursary provided through Red Tabaco. All families could be invited to constitute a collective to work a communal plot of land, preferably that which has been set aside for some time.

The development projects of the collective could be assisted by Cerrejon foundations and the collective plot should contain a community centre and church, both useful to necessary reconciliation.

Needless to say, this kind of solution will only be sustainable if **a fully participatory consultative process involving stakeholders** supports it, and this **should be commenced as soon as possible**.

During the more than twenty years of operations at Cerrejon's mine, several land acquisition processes have been implemented, and at present, re-settlement plans are in process for a line of small communities, Roche, Patilla, Chancleta, and Tamaquito.

Regarding the resettlement process going on for these locations, the panel considers that there are a number of ways that the transition period can be carried out by the company in such a way that it effectively addresses the communities' concerns.

It is a matter of fact that international standards in use today by the company are different from what little was in place some twenty years ago, with an emphasis today placed on effective consultation towards collective solutions. We urge Cerrejon to **ensure that the spirit of these standards fully informs the activities of its staff** as plans for the intended resettlement are finalized and implemented.

We could see for ourselves how the prospects of the community at Tamaquito were slowly being constricted, not so much by mine activity but by the impact the mine site has had and is continuing to have on communities which have in the past served to provide Tamaquito with inputs, markets, and plain old social interaction.

We understand that talks about resettlement have been initiated but also that progress is proving very slow, and trust gradually eroding. **We hope that before the communities further up the line actually move on, a sense of optimism can return to the people of Tamaquito**, based, as it can only be, on confidence that a new site can be found.

It has been argued that Cerrejon's approach to land acquisition and re-settlement is built around a thesis of "Strangulation", under which efforts are undertaken in the hope that residents of a community will be driven away because of such things a lack of work, tainted water or limited access to any water, restricted access to neighbouring communities, all with the effect of enabling the company to acquire land without having to pay for expropriation and relocation.

It is clear to the panel that senior managers at Cerrejon do not have a “Strangulation Policy” in play but it cannot be denied that some communities have found it difficult to maintain past activities or develop new ones during the time in which Cerrejon has been in operation.

We believe it is possible for Cerrejon to do more to contribute to a better life for people in affected communities, and one fundamental step it has taken is to recognize that not only when lands are needed for mine activity should resettlement be on offer and be framed in respect of appropriate international standards, but this should also be triggered when, as has been the case with Tamaquito, a community is affected by the very proximity of the mine and its impact on other communities which have constituted a meaningful element of the context within which a community like Tamaquito functions. Too little is known about the impact of the mine, though much is claimed. Communities are affected, that much is certain.

A broad conception of “affected community” must be embraced by Cerrejon as a key driver of its approach to both resettlement and good neighbourliness, how it deals with communities “affected” but not “displaced”.

Displacement can certainly be economic or social as well as physical. In addition, **it would be appropriate for Cerrejon to view past resettlements as “pasivos” which need addressed rather than as “legados” from past days, and in addressing them, fashion a new approach which does emphasize clear consultation and negotiation practices and strategies. It might be appropriate, furthermore, to continue to promote group as opposed to individual re-settlement, as is advocated in modern standards covering re-settlement.**

First, a word about the “environmental situation”. Cerrejon has set in place a set of standards to diminish the environmental impact of its operations and appears to offer the best practices in use in Colombia. **However, the Union complains that the company minimizes the number of incidents of dust related diseases and that their operation should be classified as high risk with the labor benefits that accompany such definition. Cerrejon should pay serious attention to such complaints, especially as these are also heard in the communities surrounding the mine. We believe that public confidence, and public protection, would be enhanced were Cerrejon to partner with universities so as to ensure that its emissions monitoring was effective, credible, and transparent.**

The operation of the mine has also impacted wagon roads or minor accesses used by some localities close to the operation. In some cases, the residents have been denied the accesses they formerly used to communicate with the cities of Albania, Hatonuevo and Barrancas, increasing the time necessary to travel. Offsetting this has to be the fact of Cerrejon providing the main highway along the route of the railway.

The dislocation brought about during the development of the mine has involved whole populations, and in many cases, given rise to the disruption of social networks, and the loss of “territorial security”, understood as the autonomy of each family to manage its relations with its neighbors, carry out its economic activities and have access to goods and services that allow for subsistence.

According to the last national census (2005), the department of La Guajira recorded the largest presence of individuals self-defined as “indigenous; in their majority, they are Wayúu.

The Wayúu have become used to the presence of the mine operation, and in general, their relationship with the company is free from serious conflict, while many families benefit from its social programs. Also, the interaction with Cerrejon has played a key role, bringing the Wayúu into contact with the political and social context of Colombia.

Although the Wayúu are indigenous to La Guajira and Colombia, and legal provisions have been enacted for indigenous groups, there is a noticeable absence of the state and civil and social organizations which can represent their interests.

According to Cerrejon’s planning documents and progress reports in the Social Management area, the program in place between Cerrejon and the Wayuu aims to “promote the ethno development of the indigenous communities in the service area, in harmony with their cultural traditions, and to improve their training and productive education and business processes giving timely support to their needs.”

In spite of all these efforts, it is probable that the Wayuu have benefited the least by the mine’s presence, while they are the most vulnerable and the most impacted segment of the local population. **This needs to be addressed as a central issue in Cerrejon’s social responsibility practices as it looks to the future.**

It is not acceptable that the Wayuu face major impediments due to a lack of employability skills should they actually wish to embrace modernity and seek employment with the mine or some other facet of an emerging economy in La Guajira. **This is a matter which Cerrejon could usefully discuss with the International Labour Office**, which actively seeks to promote Convention 169, a piece of international law safeguarding the rights of Indigenous People.

Tradition is bumping against modernity, and adjustments are not free of complications. In this reality, the company has to exhibit great sensitivity in dealing with the Wayuu.

It would be an act of some significance for the indigenous people of La Guajira were Cerrejon to memorialize the previous generations of Wayuu. First, **the company could work with the Wayuu clans to organize ceremonies which would recognize the burial sites along the railway line or the fact of them.**

Second, acting in co-operation with the appropriate public authorities, **the road could be renamed and signed as the Wayuu Memorial Highway, following a practice not uncommon in North America today.**

Attempting to re-unite the community at Media Luna, socially if not physically, should be a priority for the social management of impacts at Cerrejon.

La Guajira is poor; the reasons for the department's poverty are complex; part historical, part environmental, part geographic and part political. For a long while considered "lawless", La Guajira has suffered from poor governance, weak capacity and low revenues. This is reflected in the scarcity of public services, particularly outside the main urban centres, the paucity of employment opportunities, limited transport infrastructure and high levels of criminal activity.

Coal has begun to change all this. In La Guajira coal means Cerrejon, if not exclusively then predominantly, and capitalising on the potential benefits which coal can bring, and avoiding the damage natural resource extraction has so often caused elsewhere, is a daunting challenge; for the country, the region and for Cerrejon itself.

To date, neither central nor local government has succeeded in serving the basic needs of the population and the absence or unresponsiveness of the state means that Cerrejon is often the only means through which communities can seek to address their basic needs or voice their frustrations. To Cerrejon's credit, it has accepted its own responsibility in helping to meet these challenges. **Its aim should be to explore how its existing role and capacity can be better harnessed for sustainable and equitable socio-economic development in La Guajira.**

Cerrejon's social investment strategy has recently undergone a major rethink, expanding from a single entity, the 'Cerrejon Foundation' with a focus on education, health, indigenous communities and physical infrastructure to create now four Foundations, each with a specific function; to strengthen entrepreneurship and stimulate employment, to increase the quality and coverage of water in the region and improve the water distribution system in the communities, to build capacity and expertise within public and private organisations, and to promote and support traditional Indigenous culture.

The strategic objectives and specific activities of each of the Foundations need to be developed through an extensive and participatory consultation process with relevant stakeholders. These should be published and disseminated, both as a means of providing clarity and as a way of managing expectations. The independence of the Foundations should be strengthened and made explicit, and if the Foundations are not seen to be properly informed, expertly guided and sufficiently independent, their potential impact may be undermined from an early stage.

It cannot be underestimated that Cerrejon has had and continues to have an enormous employment impact in Colombia and particularly, in both real and relative terms, in La Guajira itself. Currently, Cerrejon has a labour force of just under 5,000 direct hires and almost as many employees of various contractors on site. Speaking only of the former group, the 2006 salary and benefits bill for Cerrejon was almost US\$135 million; the average compensation (salary and benefits) was, in that same year, over ten times the Colombian minimum wage.

Currently, upwards of 75% of company employees originate from La Guajira with a further 20% coming from nearby coastal regions. In addition, the company now has a clear policy on the recruitment of Wayúu workers, insisting that 20% of newly hired workers come from Wayúu communities. **A clear strategy for achieving this, based on indicators for measuring progress, should be developed.**

Training for future local employees should be complemented by parallel process of business development support to enable local companies to meet the standards required by Cerrejon in delivering certain products and services.

In 2006, the company paid taxes to the Colombian State of \$US204 million, and Royalties of US\$113 million. It has been reported that the Royalty payments for 2007 will be US\$166 million. It appears however, that institutional and governance failings in La Guajira mean that revenue is not being fully used for the benefit of the population as a whole, nor for the benefit of those communities living close to the project site. It is difficult to avoid concluding that insufficient transparency attends to the ways in which the Royalties, once paid, are built into public budgets and actually used.

Cerrejon is certainly trying to encourage civic responsibility on the question of transparency. The publication of royalty payments in line with the company's voluntary commitments under the EITI is a welcome first step. **Cerrejon should explore means of disseminating the information more widely, perhaps through local media and/or holding regular forums for discussion, with the objective of stimulating awareness and active debate amongst the population. It should encourage the establishment or growth of organisations capable of sustaining civil society's engagement and interest in the management of the royalties and of monitoring and holding local government accountable for their use. Finally, it should address the problem of state capacity, perhaps through the Foundation for Institutional Strengthening.**

In the long-term, the manner in which royalties paid by Cerrejon are used will be a hugely significant determinant of La Guajira's prosperity and, in turn, the speed and nature of La Guajira's development will be a key indicator of Cerrejon's success as a company.

Cerrejon asserts that it is its policy to maintain its relationship with private security companies and the State security forces within a framework of high standards and with the greatest degree of transparency possible.

We had meetings with the regional Police and Army representatives, both spoke very highly of the Human Rights training conducted by Cerrejon, and they are pleased to assign their men to take this course.

Both the policeman and the soldier thought that the security situation in La Guajira was not in bad shape, and it is important to note that most La Guajirans, on balance, feel the benefit of the enhanced security situation in the region.

Of most importance to the panel is the perception of security as experienced by those living closest to the mine. During the field work underpinning this report, our consultants were asked to be particularly alert for any reports of violations by security forces, private or State. The first point to note is that at no time were any allegations lodged concerning extra-judicial killings or disappearances.

Allegations have been made by some within local communities of harassment by public and private forces. The communities claim harassment by security guards whilst attempting to access Cerrejon-owned land for fishing or hunting. The company argues it is concerned with preventing attempted theft of mine property as well as being concerned about safety.

The balance between legitimate attempts to provide security and the legitimate rights of local communities to go about their daily lives without fear of intimidation or harassment is often a precarious one, particularly in Colombia. In general, the balance has been maintained, nevertheless, some useful improvements can be made. **Cerrejon should take advantage of the process currently underway in Colombia (and in which it has been involved) to develop clear indicators for implementation of the Voluntary Principles. Piloting and refining these indicators will provide a proper mechanism for recording, monitoring and addressing alleged violations. It should also provide a system for evaluating the results of its extensive human rights training programme.**

Finally, establishing a more transparent process for handling complaints about security and putting in place a systematic mechanism for dialogue with communities around security concerns will help to engender greater levels of trust and help prevent further incidents.

Standards are both a guide to performance, and yardsticks by which performance can be measured, results properly assessed. It is insufficient to record activities without assessing and registering results or impacts. It is in the company's interest to foster a culture of feedback, monitoring, and the transparent assessment of performance, and to get there requires both standards and, we maintain, success in transforming the operating culture of the company itself.

Change is in progress at Cerrejon; a consequence has been the perception in La Guajira that Cerrejon is keen on projecting itself through openness, in a positive departure from a perceived "low profile" past. This appears to be widely appreciated.

However, social programme management does not yet seem to be fully integrated into the general mining planning processes. We think that the absence of any coherent and unifying strategy for social management inhibits long-term planning and retards the development of appropriate tools. It has the effect of fostering an ad hoc approach which may, in turn, impede the emergence of trust between company and communities.

Cerrejon must develop its corporate character and image strongly, not to differentiate itself from the corporate cultures of its owners, each an entity concerned with its own approach to sustainable development and the image which goes with it, but from antecedent companies. Cerrejon has to build its own corporate culture and image in its own interest and, it would appear, the interests of local communities in La Guajira both affected by and dependent on socially responsible behaviour by the dominant entity which is Cerrejon.

Cerrejon could follow what appears to have characterized the re-tooling in a mechanical sense to help guide re-tooling with respect to “social impacts” and the management of how to handle these.

An effort should be made by Cerrejon to ensure that all stakeholders, from the local, to the national and international, better understand what the company is trying to do and how it goes about it. The mining industry in Colombia continues to have a poor reputation, often deserved. Cerrejon has an important role to play in elevating industry standards by working closely with both government and other companies, and drawing on appropriate civil society inputs as it does so, to develop common guidelines.

Cerrejon places importance on training with respect to the process aspects of its operations in La Guajira. In 2006, it spent US\$1.3 million on training, an average of US\$308 per worker. The company has instituted a training programme on human rights and international humanitarian law for public security officials, and more than 2000 officials, including indigenous leaders and Cerrejon employees, received such training in 2006.

It was interesting to us, given the great importance of Resettlement affecting the image and performance of the company, that officials engaged with it have acknowledged the need for more and better training in this area.

It would be useful were the company to also initiate training on the matter of transforming the operating culture of Cerrejon. In addition, there is merit in Cerrejon reporting in public on its total engagement with training.

Assertions have been made that Cerrejon shareholders have hidden behind their partial ownership. This may be a question more of perception than reality.

Nevertheless, it is useful, and appropriate, for the shareholders to continue to provide oversight, and, where necessary, support to the transformative efforts of the team being built by the CEO, and senior management of Cerrejon must make sure that this support is fully internalized into its structures and operating culture.

Cerrejon is building new relationships with the communities it affects and is affected by. These do require the nurturing which appears to be in evidence as the senior management gradually defines its aims and organizes its instrumentalities. **Among them, we repeat, must be standards, a commitment to monitoring and feedback, and openness.**

We have been struck by the strong sense in La Guajira, and this has its echoes in the company itself, that, yes, legacy issues need to be addressed, but the Mine is vital and, indeed, its possible expansion is accepted, sometimes welcomed. The prospect of such effort necessitates more, not less, concern to get right the management of “Social Impacts”, and especially to focus on proper participation and consultation on the part of communities likely to be affected.

A future based more fully on “trust” is likely to be vitally important, and this is a condition which has to be earned. This can only come through engagement, sensitivity, and constancy; this would certainly add to trust.

The senior management team seems to understand this; the shareholders recognize the accomplishments of the senior managers in this regard and believe that what they are accomplishing does represent “best practice” in many ways. **Both the shareholders and senior management should recognize that while much was accomplished during the previous ownership times, success in production was more marked than success in building trust,** and one major factor was the previous approach to social management as being dominated by that which was permitted in law or prohibited by law.

There is more to life than law, and legalism has its limits, which do not prove conducive to best practice. Cerrejon is a work in progress but also a work of and towards progress, and only best practice can serve. The shareholders and the people of La Guajira deserve nothing less.

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Introduction

In late August, 2007, Cerrejon and its shareholders announced the commissioning of an independent “social review” of the company’s past and current social engagement.

Cerrejon President Leon Teicher said the review was initiated to enable Cerrejon to “benefit from an independent assessment of our social engagement to date and to gain strategic guidance to enhance Cerrejon’s future performance”.

Basically stated, the objective was to work with all community stakeholders to identify community priorities, assess current programmes, and highlight areas of good performance or outstanding issues of concern.

Mandate and Modalities

It was agreed that the review would be conducted independently of Cerrejon management by highly credible individuals with specific experience of social development both from within Colombia and from an international perspective.

It was understood from the outset that no member of the independent review panel would have business links with Cerrejon or its shareholders.

The company agreed to provide all relevant information and ensure full access to the company’s facilities, staff, and records. It was further agreed that the review panel would be supported by an internationally recognized consultancy able to undertake intensive field work. The review panel chose the Social Capital Group, of Lima, Peru, and charged it with undertaking field work and reporting directly to the review panel.

It was further agreed that the review panel would, at the end of the process, present a comprehensive report to Cerrejon and its shareholders that will include specific recommendations on current and future community engagement practices, including those addressing legacy issues. It was agreed that an executive summary of the report would be made publicly available. President Teicher told the press that “This review underlines our commitment to address the priorities of our stakeholders in the region and to international best practice in social engagement.”

The review panel has held numerous meetings in Colombia, both in Bogota and in La Guajira, where it was privileged to meet with stakeholders not only at the mine site but in their communities, from Puerto Bolivar and Riohacha to Tamaquito. A further meeting was held in Miami, where a full discussion with the Social Capital Group was taken into account in the drafting of the review panel's report.

Our thanks go to SCG for their hard work, undertaken in trying circumstances on occasion, and their sensitive engagement with stakeholders in La Guajira. In fact, appreciating, as we do, the help of SCG, we recommend it to Cerrejon and suggest that the company discuss with SCG to ascertain just how it can be useful to the company, as our recommendations are implemented. The panel, however, accepts full responsibility for the report we have prepared and which is presented here.

The panel was aware from the outset of Cerrejon's own Vision, as set out in its 2006 Sustainability report:

“To be recognized in the international thermal coal market and in Colombia as the world's most efficient and trustful producer and exporter as well as an excellent partner that fulfils the highest safety, health, environmental, and sustainable development standards: and as a company of exemplary ethical behaviour, respectful of human rights and one that contributes effectively to the welfare and development of the communities where it operates, one that promotes participation, development, the excellence of its people and achieves the best cost-effectiveness for its shareholders”

We have not attempted to judge every aspect of Cerrejon's behaviour against this challenging standard, albeit a self-imposed one, but we hope to have shed useful light on how the company has operated, is operating, and should operate so as to meet its obligations. Of particular interest to the panel was the matter of “trust”, and we will highlight this at the end of our report.

Colombia, and La Guajira

Colombia was, only a few short years ago, described in the European press as the closest thing to a failed state in Latin America. This was clearly exaggerated and took no notice of the continued contribution of strong institutions, but the image persisted. Colombia did seem, to outsiders, to be at the harsh mercy of left-wing guerrilla groups, right-wing paramilitaries, and, of course, the drug cartels. It might be noted that in one of her first public speeches as CEO of a Cerrejon shareholder, Anglo American PLC, Cynthia Carroll noted of Business that “we cannot succeed if the societies where we work fall apart.”

No-one now speaks of Colombia as near falling apart.

In the past five years, the cities have become safer, kidnappings are fewer, crime rates are down and the primary road system is free from guerrilla and other attacks, while business investment is growing, accounting for 35% of GDP in 2007.

According to the 2005 census, population is over 43 million, and Colombians have on average 9.3 years of education. The population in the cities is extensively covered by the health system and enjoys the use of most public utilities. However, poverty remains widespread.

Nearly half the population does not consume a minimal basket of goods and services, thus defining it as poor, and close to 20% is indigent. Inequality is extremely high in Colombia, with a Gini of 0.6 in 2005.

Following the civil war that ended in the 1950's, a remnant of Communist guerrilla forces remained, later to become known as FARC. Student movements and other forces constituted other insurgent groups like the Catholic ELN and the populist M-19.

These groups provided protection for the business of narcotrafficking and coca production, especially the FARC in more recent times. It expanded its territorial control in the jungles of the south and some areas around the cities of Cali, Medellin and Bogota. This threat was not at first faced by strengthened state security forces, but by paramilitaries initially financed by narcotrafficking and then by landowners, professionals, and businesses affected by kidnappings and extortions.

The M19 and some other groups demobilized in 1990 and contributed to a new constitution approved in 1991 by an assembly that, among other things, rebuilt the judicial system so as to confront organized crime. Another peace process was advanced in the 1990's with the FARC that failed under the intensification of their operations and the quiet expansion of the government's military might, helped by Plan Colombia, a \$700 million per year program financed by the U.S. government. Colombians spent another six billion dollars per year on defence (in all, 6.3% of GDP).

President Uribe was elected in 2002 under an anti-guerrilla campaign. He won by a landslide and proceeded to further strengthen the security forces and to demobilize the paramilitaries. The FARC appears now to be cornered in the deep jungle of the south of the country, its communications broken, sources of extortion diminished; desertion is on the rise and many front commanders have been killed or captured, and their coca growing zones disorganized. Paramilitaries, in the meantime, have produced some truth about their criminal and terrorist activities, including the displacing more than 2.5 million people, killing, torturing and disappearing thousands of victims. Their influence has been reduced in many regions although they are still present, especially on the North coast.

These are the circumstances that produced a strong revival of confidence in the future of the country and explain the strong boom that will have lasted 5 years in 2008. Colombia went through a deep recession in 1999, compounded by the perception of a growing risk posted by guerrillas and organized crime. It has rebounded.

Growth has been driven by the commodities boom which includes exports of oil, nickel and coal but also of industrial and agricultural goods. Colombia in 2007 had a per capita income of US\$5000 dollars, equivalent in parity purchasing power to US\$7500, or 18% of the US level.

The La Guajira region is one of the poorest of the country. Poverty is especially appalling among the rural population. La Guajira, of which 92% present unsatisfied basic needs, especially for water.

Most of this rural population is Wayuu, others of Afro Colombian descent. Infant mortality is 42 per 100.000 inhabitants, while the national rate is 23.4 and that of Bogota 20.5. The fertility rate is 4 children per woman, against 2.5 at the national level and 2 in Bogota. Thus poverty breeds more poverty in a mortal trap.

Politics in La Guajira is a special case of clientelism and patronage. An entrenched anti-state culture of contraband and evasion of local taxes is shown in the extremely low collection of property taxes and the burning of the equivalent of the internal revenue services building twice in the town of Maicao.

The traditional sources of livelihood for the people of La Guajira is the raising of goats, some cattle, fishing, trade and agriculture in the south of the department. These have been complemented and enhanced by the mining industry that has provided a more secure environment and has also become a source of extra demand for meat and foodstuffs.

Some 2% of the Colombian people live in La Guajira, often thought of as a peninsula which thrusts out into the Caribbean Sea. It is, in reality, a territory bounded on the west by the Sierra Nevada de Santa Martha, a mountain range isolating it from the rest of Colombia, and on the east by the border with Venezuela.

For many years La Guajira was isolated, and witnessed high levels of smuggling and the growth of "illicit" products. It appears that only with the development of extractive industries did La Guajira acquire national relevance. In the 1930s, oil operations began in Venezuela's Lake Maracaibo region, and in the 1970s, coal began to figure in the economic activity of La Guajira itself.

A short history of Coal in Colombia

Coal is located in the two northeast departments of La Guajira and Cesar, which share a geological seam of the mineral that continues into Venezuela.

Population in La Guajira - most of which is a desert, especially its northern part - is disseminated throughout the countryside and almost half are Wayuu aborigines, many of whom do not speak Spanish nor are they Catholic in religion as are most Colombians.

Populations which could not be integrated even by the Spanish colonizers have a very hard time trying to integrate into modern capitalist organizations.

Though artisanal coal mining seems to have begun in the 1970s, it was not until the 1980s that production picked up. Since the beginning of that decade some 400 million tons have been extracted from the soil of La Guajira. Coal is already half of Guairá's gross product but profits, high salaries, and national taxes paid by the mining companies, are not heavily spent within the region and more than half of the gross product is spent elsewhere. What remains are wages of the workers who live there, the flow of local contracts and royalties.

In 1984, the government of Colombia combined with foreign investors, primarily the giant MNC, Exxon, to create what is now understood to be the world's largest open-pit coal mine, at Cerrejon in La Guajira.

In 1999-2000, Colombia sold its share. At that time, annual production was around 17 million tons. In 2006, the year Xstrata joined the other two as a one-third owner, production at Cerrejon was 28 million tons, all of it exported to international markets. Now, production has exceeded 31 million tons, and the current owners, Anglo American PLC, BHP Billiton, and Xstrata Coal, have invested more than 800 million dollars and are developing plans for expansion. When Xstrata developed its Proposal of Acquisition in 2006, the saleable reserve base of Cerrejon was estimated as 900 million metric tons.

Cerrejon: New Owners, Old Obligations

The President of Cerrejon, Leon Teicher, was quoted in the British press in 2007 as follows: "When your company's shareholders are the three biggest mining firms on the planet, that gives you access to capital, know-how, technology, and mining knowledge".

Just how vital are these was underscored in Colombia early in 2007, when two mining disasters claimed 40 lives, one that of a 13 year-old boy. In the aftermath of the disasters, the relevant international trade union bodies wrote to Colombia's President, Alvaro Uribe, urging him to ensure that his government ratifies and observes conventions of the UN's International Labour organization concerning safety and health in coal mining. The letter observed that, "with the exception of the major mining companies of the world, which operate vast mineral export businesses in your country, the level of technical and other modern safety devices is totally inadequate..."

The "new" owners of Cerrejon are technologically advanced and, in assuming ownership, they assumed obligations. These are set out in a broad panoply of domestic and international laws, regulations, agreements, and undertakings, none of which are strange to three of the world's largest mining companies.

And each of those companies has, particularly in the last decade, developed corporate approaches to the management of relationships and risks pertaining to their obligations in the field of social impacts of their business operations.

For example, Anglo American PLC has developed the Socio-Economic Assessment Toolbox; each of the other shareholders has embedded the evaluation of effectiveness of its CSR focus in its Business Principles.

A Focus on Partnerships

Each of the shareholder companies which own Cerrejon is a signatory to a number of international standards and groupings of the same. The UN's Global Compact is one such, and it is not surprising, then, that it figures in how Cerrejon judges its own corporate performance. Each shareholder is also signatory to the Extractive Industries Transparency Initiative. The first principle of the EITI reads as follows: We share a belief that the prudent use of natural resource wealth should be an important engine for sustainable economic growth that contributes to sustainable development and poverty reduction, but if not managed properly, can create negative economic and social impacts.

The International Council on Mining and Metals, in which the shareholders participate, seeks to help companies, including Cerrejon, to fashion best practice with respect to both transparency and operationalizing progress towards sustainable development. These sets of goals require partnerships and Cerrejon seems genuinely concerned to meet their demands as effectively as possible. In this regard, we have to note that, to our knowledge, the company has responded to issues raised in connection with the OECD Guidelines, following the lodging of a complaint, directed at one shareholder, BHP Billiton, concerning the actions of Cerrejon over Re-settlement.

This we will deal with later in this report but here it should be noted that we could detect no cavalier attitude on the part of the company towards the importance of the system of encouraged behaviour represented by the OECD Guidelines.

Not only with various international standard setting bodies has Cerrejon established Strategic Partnerships. In promotion of its stated commitment to Human Rights, the company has developed a co-operation agreement with the Colombian Red Cross and interfaces with both the Ombudsman office as well as the Office of Colombia's Attorney General and the Ministry of National Defence.

In meeting the challenges touched on in this report, Cerrejon itself will need help and support. There is always a danger in overestimating the capacity of a company, however large and however wealthy, to address even a fraction of the complex social, economic and political problems confronting a region such as La Guajira. Cerrejon itself has direct control only over its own operations. Outside of this, it can assist and it can influence but it cannot dictate.

Cerrejon's ability to meet these challenges will depend to a great extent on the relationships and partnerships it can develop with a range of other actors – local and international. Beyond government and municipalities, beyond suppliers, **Cerrejon should increase efforts to encourage and attract civil society organisations, Colombian and international development agencies, donor governments and multi-lateral institutions.**

Such bodies provide not only much-needed finance but also expertise and, crucially, the mandate to intervene in areas, for instance revenue management, which can be controversial for any company.

We were struck in visiting La Guajira by the absence of such organisations. One critical contribution Cerrejon can make is to attract them to La Guajira to stimulate a more collective effort towards sustainable development in the region.

Part 1: Tabaco to Tamaquito –from Resettlement to Sustainability

Whether the focus is on current and future community engagement practices or on the addressing of legacy issues, it is clear to the panel that the Resettlement issue is central, and challenging.

In its Guidance on Conflict-sensitivity for Extractive Industries, International Alert has identified Resettlement as a critical flashpoint. Resettlement can be defined as what happens when the acquisition of lands for business projects, on whatever basis, results in the relocation of people or their loss of assets and livelihoods. With extractive industries, it usually involves an affected group of people having to move to another location.

Sometimes it occurs without the affected people having the power to refuse and it can have far-reaching and serious impacts, including disaffection and social breakdown.

A short history of Resettlement around Cerrejon

It is impossible to think of Resettlement and Cerrejon without thinking about Tabaco. There were relocations before Tabaco, just as there will be after it, but Tabaco remains, if not in physical form, then as a rallying point for all with a perspective on resettlement and Cerrejon. In fact, **it will be necessary for action on Tabaco to be accompanied by the realization that there may be hold-over issues from earlier efforts which then come to the fore again, requiring comprehensive and planned action.**

According to the original Environmental Impact Assessment which preceded coal mining at Cerrejon, it was anticipated that Tabaco would, in fact, grow, because of the economic

activity generated by the mine, and Intercor hired some of its workers from there. In 1997, Intercor and its partner Carbocol made known their intention to acquire the land for an expansion of the mine site. Tabaco was on track to achieving international status.

This is underscored by recent efforts to have the OECD rule that Cerrejon and its shareholders have violated OECD Guidelines with respect to the resettlement at Tabaco, with accompanying references to neighbouring communities, including those facing imminent resettlement such as Roche, Chancleta, and Patilla.

The complaints are numerous but they centre round claims that the process of engagement was flawed, and people lacking in power were expected to simply accept what Cerrejon had in store for them; their removal was not really voluntary, and not all of them received fair compensation.

It appears that the former Tabaco community is now a very divided one, with many members being led and represented by Jose Julio Perez, himself a former resident, and others, who appear to have moved on in a psychological sense as well as a physical one, opting to work with Cerrejon to attempt to fashion new lifestyles and capture new opportunities. These community members, joined together in the “Red Tabaco” network, do work closely with company officials. In a meeting the panel had with Red Tabaco, a number of the members voiced their readiness to view Jose Julio Perez as a bona fide member of the community and felt no animus towards him, but they also felt right in the choice they have made.

The network has the purpose of assisting the former residents of Tabaco “in their recovery, in the wide geographic environment they currently occupy.” Members seek to identify the potential of their people and put it to work for their own welfare as well as regional and local development.

They claim to enjoy support from not only the Cerrejon Foundation but bodies such as the Office of the Mayors of Albania and Hatonuevo and the Office of the Governor of La Guajira.

When the panel met with Jose Julio Perez and a cross-section of his community support, at a meeting in Albania, no corresponding words of goodwill were extended to the Red Tabaco network, which some might view as a divisive off-shoot from the fact that the initial resettlement left the Tabaco community divided and bitter.

It is easy to record the bitterness, less so to quantify just where it now rests and numbers are not the issue. Protagonists have different data. Cerrejon, for example, maintains that when the Tabaco process began, there were 213 owner-families and 205 of them negotiated. The handful of others did not and were expropriated, within a legal framework. Jose Julio claims that some 20 families are with him now.

Concrete Plans, Concrete hopes

Red Tabaco, which has said it includes 140 families, is busy sharpening a strategy for development, weaving, as they put it, their network for endogenous development. Plans are being talked about for such things as Internet cafes, perhaps the production of Aloe Vera; some of them have received “scholarships” to focus on plans. In August 2007, it was reported that they have presented 128 ideas, with 70 of them being seen as viable.

In the meeting with the panel, network members were forceful in saying there was no sense in trying to re-build Tabaco somewhere else at this point and it would be better to find a way of providing “territorial security” and with it, opportunity. It was their view that the initial resettlement approach of negotiating with each family was a mistake as the process should have been a collective one. This, of course, has its echo in the current work of Jose Julio.

His part of the divided community, now perhaps consisting of no more than 20 families and formally styled the Tabaco Residents Relocation Committee, continues to feel that proper compensation was never paid, that legal processes were ignored, and their hamlet destroyed around them. They want it back; or rather, they want land for the emergence of a new Tabaco. Their international supporters maintain that a “vast majority of ex-residents now dispersed, would move to an appropriate new site”, such as one at a site known as “La Cruz”. This, we have learned, is a site with many legal questions as to current ownership.

Tabaco was destroyed, it is alleged, between August 2001 and April 2002, and for the intervening years, those families involved with the Relocation Committee have been waiting for financial compensation as well as believing that a new community will be developed. This can be understood as “Rectification and Restitution” and it is worth noting that the shareholders of Cerrejon have on a number of occasions expressed doubt about the obligation they are asked to assume with respect to acts occurring before their time. **It seems appropriate, in the eyes of the panel, that all parties focus instead on what can now be done to help divided communities and otherwise affected communities share better in the positive impacts of mining at Cerrejon.**

A New Dawn, Old Values, a New Generation

Few slogans outlast bitter divisions, and the slogan coined by and for the “Red Tabaco” network, “Tabaco, the dawn of a new enterprise”, might not have much of a shelf-life, but it is worth noting nonetheless. Something newer than the restatement of old grievances might be possible, and would be stimulating.

It appears to us that from Colombia to Berne, people are vitally interested in a sign that the long dispute over Tabaco can be ended.

We think that, without apportioning blame and now worrying over facts which are hard to assess or establish, there is a window of opportunity, through which a ray of light can be shone on a troubling situation.

It is noticeable that the activist members of Red Tabaco are young, and seemingly adaptable and determined. And it should be accepted that, on the other side, the relocation committee is headed, and energized by, someone still holding the respect of more than a few of the Red Tabaco activists. Between them, can they not serve to usher in a new generation of Tabaco families?

We know that the Red Tabaco approach of taking into account the fact that many families have dispersed across La Guajira has its merits, but it seems to us that Cerrejon can afford, and should afford, to address the situation all the Tabaco families find themselves in, whatever their stand on negotiation was in 2002. This does not mean that everyone should receive compensation and nor does it mean that intransigence must be rewarded, or initiative penalized.

The panel feels it should mean that the monies currently in escrow for compensation now be paid, with an inflation correction plus interest, to all those entitled. Other families should receive a development bursary provided through Red Tabaco. All families could be invited to constitute a collective to work a communal plot of land, preferably that which has been set aside for some time. If it is now unsuitable or otherwise not accessible, Cerrejon should find a solution, perhaps by a buy-back from Hatonuevo and using proceeds to acquire a new plot, notwithstanding the fact that the Municipality of Hatonuevo was charged by the courts years ago with making land available and did receive a gift of land from Cerrejon for this purpose.

The development projects of the collective could be assisted by Cerrejon foundations and the collective plot should contain a community centre and church, both useful to necessary reconciliation.

Details of how this all is established can be left to others, hopefully through a form of interaction which can rise above suspicions and animosities. One step in such a process should be willingness from the Tabaco Relocation Committee to withdraw any continuing legal challenges and a commitment from the company that third party facilitation will be drawn on to move things forward quickly, with recourse to mediation a possibility if necessary.

We believe that apportioning blame is neither appropriate nor constructive and we feel that were the original exercise to have been conducted under standards in use today, what we advocate would be seen as quite normal.

Needless to say, this kind of solution will only be sustainable if **a fully participatory consultative process involving stakeholders** supports it, and this **should be commenced as soon as possible.**

- The community and the company, with third party facilitation, promptly establish the list of families which have so far never received compensation in any form
- The community, with help from a Cerrejon foundation and with third party facilitation, determines the parameters of the collective
- The collective and the company, with third party facilitation, identify the lands to be used for the collective purposes as set out above
- Concurrently, the development bursaries be paid to those entitled
- Centred on the launch of the community centre and church, the community and company hold a celebration of accomplishment to date in furtherance of reconciliation

People must be free to live as a community or to make their way outside it.

More than Tabaco

During the more than twenty years of operations at Cerrejon's mine, several land acquisition processes have been implemented, and at present, re-settlement plans are in process for a line of small communities, Roche, Patilla, Chancleta, and Tamaquito.

One Cerrejon analyst is in charge of plans relating to each of these communities, co-ordinating with the social support programs available through the community. The processes are at different stages, and the pace of operations also varies. In Patilla and Chancleta, the people were alerted in 2003 to the intentions of the company. Socio-economic data were gathered between then and 2005, and an Assessment conducted early in 2006. But time is passing, and we hope that all delays can be minimized or avoided.

Regarding the resettlement process going on for these locations, the panel considers that there are a number of ways that the transition period can be carried out by the company in such a way that it effectively addresses the communities' concerns. Given that through delays lives are put on hold, it is essential that an overall plan for the relocation not only be carefully put together, but then be fully disclosed to them and discussed with them. It seems that currently there is a perception of fragmented communication, and the waiting period lacks specific actions - such as ensuring access to roads and to sources of income - which would diminish the anxiety caused by uncertainty. An important component of this anxiety is the "piece by piece" or "one step at a time" standards-based approach to the overall planning process which needs to be accompanied by a focus on communications.

What is happening over Roche, Patilla and Chancleta might suggest that the company considers their relocation more as a voluntary action than as compensation for the economic impacts that occur as a consequence of the operation of the mine, but the company does indeed accept that involuntary relocation is involved.

The communities' perceived lack of information on this point leads to additional long term problems, such as power imbalances between the affected people, some of whom can negotiate better than others, and to an overall eroding of necessary trust between the parties, no matter how sound their intentions.

It is a matter of fact that international standards in use today by the company are different from what little was in place some twenty years ago, with an emphasis today placed on effective consultation towards collective solutions. We urge Cerrejon to ensure that the spirit of these standards fully informs the activities of its staff as plans for the intended resettlement are finalized and implemented.

It appears to us, in sum, that Cerrejon does not hold the view that Roche, Patilla, and Chancleta are located outside the area of influence of the mine and should be resettled more as a well-meant preventive measure, to avoid future impacts that may be caused by the growth of mining operations.

This would fly in the face of a modern, standards-based approach, which is in fact being applied to the affected communities, though this is too little understood. The communities are small, but they are important, and they are Next in Line.

The End of the Line, Tamaquito

We went to the end of the line, and, due to adverse weather and ground conditions, we went on foot for a good part of the way. It is easy to appreciate how isolation can grow from reality to nightmare.

We could see for ourselves how the prospects of the community at Tamaquito were slowly being constricted, not so much by mine activity but by the impact the mine site has had and is continuing to have on communities which have in the past served to provide Tamaquito with inputs, markets, and plain old social interaction.

In 2000, a resident of Tamaquito observed that "...it is not possible to sow, raise cattle, or hunt and the neighbouring localities, such as Tabaco, in which we could occasionally get jobs as farm labourers have been shut down. There is no work, no schools, no neighbours. We are alone and isolated. This is why we want to go away."

We understand that talks about resettlement have been initiated but also that progress is proving very slow, and trust gradually eroding. We hope that before the communities further up the line actually move on, a sense of optimism can return to the people of Tamaquito, based, as it can only be, on confidence that a new site can be found where their community can try once again to make sustainable livelihoods out of traditional pursuits and new openings.

No Room for Strangulation, No Room for a Narrow Approach

It has been argued that Cerrejon's approach to land acquisition and re-settlement is built around a thesis of "Strangulation", under which efforts are undertaken in the hope that residents of a community will be driven away because of such things a lack of work, tainted water or limited access to any water, restricted access to neighbouring communities, all with the effect of enabling the company to acquire land without having to pay for expropriation and relocation.

This charge is strenuously denied by Cerrejon and its shareholders, and they claim that, in fact, communities have been helped to lease lands and develop employment opportunities.

It is clear to the panel that senior managers at Cerrejon do not have a "Strangulation Policy" in play but it cannot be denied that some communities have found it difficult to maintain past activities or develop new ones during the time in which Cerrejon has been in operation.

We have seen the argument made that before Cerrejon, communities were vibrant communities where people lived a modest rural life as campesinos, often in idyllic surroundings. Subsistence living is hard and has always been hard. The panel sees no reason to romanticize, but every reason to Do No Harm, in the words of the Collaborative for Development Action. Indeed, we believe it is possible for Cerrejon to do more to contribute to a better life for people in affected communities, and one fundamental step it has taken is to recognize that not only when lands are needed for mine activity should resettlement be on offer and be framed in respect of appropriate international standards, but this should also be triggered when, as has been the case with Tamaquito, a community is affected by the very proximity of the mine and its impact on other communities which have constituted a meaningful element of the context within which a community like Tamaquito functions.

Too little is known about the impact of the mine, though much is claimed. Communities are affected, that much is certain.

A broad conception of "affected community" must be embraced by Cerrejon as a key driver of its approach to both resettlement and good neighbourliness, how it deals with communities "affected" but not "displaced".

Displacement can certainly be economic or social as well as physical. In addition, it would be appropriate for Cerrejon to view past resettlements as "pasivos" which need addressed rather than as "legados" from past days, and in addressing them, fashion a new approach which does emphasize clear consultation and negotiation practices and strategies. It might be appropriate, furthermore, to continue to promote group as opposed to individual re-settlement, as is advocated in modern standards covering re-settlement.

These standards reflect a real awareness of “community”, and so now does the thinking, and the actions, of Cerrejon, and this should be better understood in the communities themselves.

Depending on the area of the operation, there are some key subjects on which the local population has, in fact, developed adverse perceptions: the access to resources, the social organization, and the environmental situation of neighboring populations.

First, a word about the “environmental situation”. The open pit mining process has an enormous impact on the geography and environment of the region of operations. Whole mountains are removed and holes dug into the ground. Towns and rancherías have to move from where they are; inhabitants disperse. The coal dust disseminates in and around the pit and along the route of the transport of the mineral. Rivers are sometimes moved and access to land and hunting grounds restricted. Uncontrolled particle dissemination can cause health affects.

Cerrejon has set in place a set of standards to diminish the environmental impact of its operations and appears to offer the best practices in use in Colombia, if not world-wide: its transport system is based on a wide track train, the coal is humidified, and when it arrives at Puerto Bolivar on the very tip of the peninsula, it is loaded into ships through a conveyor, minimizing the dispersion of the coal’s dust.

Other operators use open trucks that not only destroy the roads along which they travel but also disperse enormous amount of dust as they do so. Then the coal is transferred to open barges in the port of Santa Marta or Ciénaga, polluting the sea and the beaches with the black sand. The narrow track train being used to transport the coal from the Cesar is very long and it does not guarantee control of dust dispersion; the inhabitants of the numerous towns it spans are demanding additional royalties to compensate for the health damages being inflicted upon them.

Cerrejon also uses copious amounts of water to fix the particles of the coal being extracted and then moved. However, the Union complains that the company minimizes the number of incidents of dust related diseases and that their operation should be classified as high risk with the labor benefits that accompany such definition. While this could be seen as a “bargaining position”, **Cerrejon should pay serious attention to such complaints, especially as these are also heard in the communities surrounding the mine**, most frequently about the dust particles and the frequent blasts. We understand that Cerrejon’s environmental management is certified under ISO 14001 but we believe that **public confidence, and public protection, would be enhanced were Cerrejon to partner with universities so as to ensure that its emissions monitoring was effective, credible, and transparent.**

Cerrejón’s Environmental Department has a Unified Environmental Management Plan (PMAU for its acronym in Spanish) in place, which contains the commitments it assumed to manage the impacts of the company’s coal mining outside of its area of influence.

This includes an assessment of Cerrejón's social impacts and proposes adopting at least 9 prevention and management programs to deal with these impacts. These programs are required to be reported on an annual basis to the Ministry of Environment, Housing and Territorial Development.

These include community participation, a program of information, environmental education, institutional strengthening for the territorial governments in such matters, management of damages to third parties, industrial security, occupational health and environmental management for employees and contractors, and actions to be undertaken in order to preserve the archeological patrimony found in the areas of influence. This will be even more important should a project proceed to divert the Rancheria, a river which has lost volume due to deforestation by settlers and coca cultivators in the higher parts of the Sierra Nevada de Santa Marta. The problem is compounded by the fact that upstream a dam is being built in order to provide irrigation to some landowners in the foothills of the Sierra, probably worrying the communities around the river near the mine.

This situation of negative perceptions could be considered a logical consequence of the development of the mine, which has been accompanied by the purchase of properties and actions aimed at the necessary protection of the facilities. Some individuals have exercised their "right of way access" to lands which give them the possibility of continuing with their farming and cattle breeding or even hunting, but the communities located near the mine have seen their access to the forest and fishing areas on the Ranchería River severely restricted.

The operation of the mine has also impacted wagon roads or minor accesses used by some localities close to the operation. In some cases, the residents have been denied the accesses they formerly used to communicate with the cities of Albania, Hatonuevo and Barrancas, increasing the time necessary to travel. Offsetting this has to be the fact of Cerrejon providing the main highway along the route of the railway.

According to some company reports with respect to railway accidents, the death of goats is the most recurrent type of incident. Up to September 2007, the death of 112 goats, 25 donkeys, 12 horses and 11 cows were identified.

The Wayúu have a major presence in the area of the railway and port and the breeding of animals, especially goats, is one of their most important activities. The practice of this activity is extensive and the herds are left free to graze under the care of one or two people, sometimes children.

The dislocation brought about during the development of the mine has involved whole populations, and in many cases, given rise to the disruption of social networks, and the loss of "territorial security", understood as the autonomy of each family to manage its relations with its neighbors, carry out its economic activities and have access to goods and services that allow for subsistence.

This territorial security is the basis of social networks in La Guajira and the disappearance of one implies an impact on the other. It may easily lead to an increase in social tensions, perhaps especially in Wayuu communities, as is clearly evidenced among the Wayuu of Media Luna adjoining the port serving Cerrejon. More will be said about this particular situation later in our report.

Indigenous Sensitivity: The Wayuu

According to the last national census (2005), the department of La Guajira recorded the largest presence of individuals self-defined as “indigenous”: 278,254. This represents 20.2% of all the Colombian indigenous population and 44.9% of the population of La Guajira. The majority are Wayúu, but there are also Arhuacos, Kogui and Wiwas.

At present, there are 20 indigenous reserves (resguardos) in the department, most of which are the Wayúu reserves. They comprise the Reserves of Alta and Media Guajira which include the jurisdiction of the Municipalities of Riohacha, Maicao, Manaure and Uribia, and eight additional reserves located towards the south of the department.

In the six municipalities in the area of influence of El Cerrejón, the Wayúu population is also significant. It is found in a higher proportion in the port and railway area of the Municipalities of Uribia and Manaure.

For centuries, this region has been a shelter area for the Wayúu, in rural localities known as *rancherías* (especially in the Alta Guajira area) and since the 1990s in the “resguardos” or designated indigenous reserves.

At present, the Wayúu maintain a relative control over their territory and over some aspects of their traditional economy, in the Media and Alta Guajira. They are, however, socio-economically subordinated to the urban centers of Maracaibo (oil industry, Venezuelan trade), Maicao (in the 1940s a centre for the smuggling of goods into Colombia), Riohacha (political-administrative centre), Barrancas (Cerrejón mine), and the southern agricultural or cattle breeding villages.

The integration of economic activities is related to the demographic distribution of the Wayúu in the peninsula and the seasonal changes, especially when they usually return to their homes in the rainy season. Accordingly, the Wayúu are not uniformly distributed in their traditional territory

Wayuu and Cerrejon

The Wayúu have become used to the presence of the mine operation, and in general, their relationship with the company is free from serious conflict, while many families benefit from its social programs. However, according to company data, the Wayúu employed by Cerrejon account for no more than 1% of the labour force.

It is also apparent that the relationship is a challenging one, given the deeply rooted traits of Wayuu culture: their respect of traditional authorities, their profound attachment to the land, their concept of justice and reparation, their settlement patterns and their religious beliefs. The fact that they lack social and political support is also relevant.

In the Wayúu clans, the old “Alaula” are the traditional authority. However, the process of adaptation to the environment has brought about some changes in the traditional authorities, and other figures have become prominent, such as district governors or legal representatives, depending on the context. The old Wayúu have lost and continue to lose authority faced with the emergence of new leaderships in an era much influenced by the Cerrejón operation, and, on the other hand, factors such as illegal trade and drug trafficking.

Notwithstanding these changes, the central figure of the old Wayúu continues playing a predominant role that external parties do not readily recognize or take into account. In this scenario, the interaction with Cerrejón has played a key role, bringing the Wayúu into contact with the political and social context of Colombia.

The attachment of the Wayúu to the land is strongly rooted in them, as the core of their self-conception as Wayúu. In consequence, the emergence of an operation in territories considered “theirs” has given rise to tensions that are still present in some clans.

Regarding their conception of justice and damage, in the Wayuu tradition, reparation has to be considered in proportion to any damage caused as a way of reestablishing the balance and harmony among the parties. This situation is particularly complicated in the perceptions that the Wayuu have on how they are impacted by the company, especially in relation to the loss of goats along the railway. Thus, they do not only expect economic compensation, they also need acknowledgement of the damage done to them.

Even though the Wayúu have a strong attachment to their land, they exhibit a high seasonal mobility that could take them to live for long periods in different places. It is frequent that the families will temporarily move to another location when the pasture is exhausted or when the rainy season is over (3 or 4 months a year) in which they move to Venezuela.

As many other indigenous groups, for the Wayuu, religious beliefs are first and foremost. This fact may make social investment difficult in their communities when it is based on western life quality and development standards.

Although the Wayúu are indigenous to La Guajira and Colombia, and legal provisions have been enacted for indigenous groups, there is a noticeable absence of the state and civil and social organizations which can represent their interests. This situation is relevant in the context of permanent negotiation with Cerrejón and others.

It is also relevant because the Wayuu agenda is in no sense part of any political alternative. In fact, it has been observed that Wayúu mayors have not represented their population or exalted their ethnicity as part of their agenda.

Today and Tomorrow

According to Cerrejon's planning documents and progress reports in the Social Management area, the program in place between Cerrejon and the Wayuu aims to "promote the ethno development of the indigenous communities in the service area, in harmony with their cultural traditions, and to improve their training and productive education and business processes giving timely support to their needs."

The main programs are implemented in coordination with the PAICI (Integral Assistance Program for Indigenous Communities) created in 1982, now administered by the Cerrejón Foundation, and the Program for Indigenous Communities of the Department of Social Responsibility. The main projects of the program:

- PAICI farm, a center of technical training in farming activities, improvement of species and goat management
- Training and assistance projects for communities on the follow up of royalties, healthcare, literacy and handicraft-business development.
- Nutrition programs and care to pregnant mothers and infants in alliance with the Colombian Institute of Family Welfare (ICBF).
- Intercultural Program of the Kamisuchiwo'u Ethnoeducation Center, that provides educational support services and expansion of the coverage for Wayúu families in the northern area of La Guajira. According to reports of the program, assistance has been given to 700 children in the central facilities of Kamusuchiwo'u and 2700 children have received educational support services in villages and schools of Alta Guajira. Bilingual education, Wayuunaiki-Spanish, is provided.

In addition to the coordination of these projects, the Indigenous Communities program is in charge of monitoring and responding to any event or emergency involving the Wayúu communities, especially in the area of influence of the railway track and Puerto Bolívar, a territory of more than 250 Wayúu communities.

In spite of all these efforts, it is probable that the Wayuu have benefited the least by the mine's presence, while they are the most vulnerable and the most impacted segment of the local population. **This needs to be addressed as a central issue in Cerrejon's social responsibility practices as it looks to the future.**

We have seen the work of the broader Cerrejon Foundation and we are pleased at the main focus of the dedicated new one. It seems to us imperative that more effort be made to make an impact in two areas. First, it is not acceptable that the Wayuu face major impediments due to a lack of employability skills should they actually wish to embrace modernity and seek employment with the mine or some other facet of an emerging economy in La Guajira. **This is a matter which Cerrejon could usefully discuss with the International Labour Office**, which actively seeks to promote Convention 169, a piece of international law safeguarding the rights of Indigenous People.

Second, the Foundation has to gear itself to respecting and strengthening these rights through respectful engagement with the Wayuu as projects and programs are developed on their behalf. In this regard, it is vital that the Foundation be peopled by individuals who themselves exhibit strong sensitivity towards Indigenous people and issues and are equipped with a full understanding of the culture they must interact with.

Everywhere that Cerrejon operates there is a need for, and the clear possibility of, an improved social performance. As noted, strategic guidance towards such is what CEO Teicher expressed hopes for in calling for this current review. This can be seen as a “new approach” but in truth, and as we will expand on later, the panel has seen that CEO Teicher has clearly begun a process of transforming Cerrejon’s approach towards international best practice, to be demonstrated by proud Colombians.

Tradition is bumping against modernity, and adjustments are not free of complications. In this reality, the company has to exhibit great sensitivity in dealing with the Wayuu; some may see, for example, the Wayuu concern about goats along the railway as a small matter, but handling it well goes hand in hand with other shows of respect for traditional ways and religious beliefs.

The new approach to be suggested here relates to what can be done about the road and rail corridor between the mine and the port. It is, in fact, a corridor along which the Wayuu have travelled and lived, and died, over countless generations.

It would be an act of some significance for the indigenous people of La Guajira were Cerrejon to memorialize the previous generations of Wayuu in two ways. First **the company could work with the Wayuu clans to organize ceremonies which would recognize the burial sites along the railway line or the fact of them**. Second, acting in co-operation with the appropriate public authorities, **the road could be renamed and signed as the Wayuu Memorial Highway, following a practice not uncommon in North America today**.

The significance of burial grounds for the Wayuu people is also seen at the terminal point of the railway. At Media Luna, the Wayuu community has been divided in two by a disused fence delineating one bound of the Cerrejon lease area. Some Wayuu are now separated from the ground where their ancestors are interred. Those inside the fence are glad to be near their dead, but their livelihoods are constrained, and their relations with those outside the fence fractured.

Attempting to re-unite the community at Media Luna, socially if not physically, should be a priority for the social management of impacts at Cerrejon. Here is also a clear role for Cerrejon's new Foundations, especially as access to clean water is one of the community needs.

Water is scarce in La Guajira, and no-where more dramatically so, perhaps, than among the Wayuu at Media Luna. Water is important to them. The Wayuu are important to La Guajira, and La Guajira is important to Cerrejon.

Part 2: La Vida, La Guajira: wealth generation and distribution

La Guajira is poor. Within Colombia as a whole, it has the third highest proportion of the population with at least one unsatisfied basic need (UBN) - defined as necessary for subsisting in the society. The critical problems remain access to basic services (in particular drinking water), provision of social services (health and education) and continued dependence upon subsistence agriculture as the primary source of livelihoods.

The reasons for the department's poverty are complex; part historical, part environmental, part geographic and part political. For decades, La Guajira was largely isolated from the rest of Colombia. Its frontier location and extreme environment has hindered the establishment of large settlements and the development of adequate infrastructure, both within the department and in respect of connections to other parts of the country.

Its isolation has extended to its relationship with central government. In common with other rural departments, it has suffered from state neglect in comparison with the central regions of Bogota, Medellin, Cali and Barranquilla. The state's limited contribution to development in La Guajira has been reciprocated, with the department historically offering little to the country's economy as a whole.

The predominance of, on the one hand, illegal activities (smuggling and trade in illicit products) and, on the other, farming - livestock and crops - have not provided it with the means to keep pace with growth in other parts of Colombia.

Crucially, its isolation has also hampered the emergence of the kind of political culture and institutional structures and systems necessary for long-term and equitable development. For a long while considered "lawless", La Guajira has suffered from poor governance, weak capacity and low revenues. This is reflected in the scarcity of public services, particularly outside the main urban centres, the paucity of employment opportunities, limited transport infrastructure and high levels of criminal activity. It is also evident in the high levels of inequality, a problem not confined only to La Guajira, and the growing urban/rural divide.

Coal has begun to change all this. La Guajira is strategically important. It is attracting increasing attention from central government as well as from private business eager to cash in on the lucrative contracts on offer. Coal is driving the economic growth of the region, contributing nearly 50% of GDP. Royalties amounted to some \$130 million in 2007 and purchases of local goods and services are fuelling a mini-boom, at least in some urban areas.

In La Guajira coal means Cerrejon, if not exclusively then predominantly. The company has set itself laudable if ambitious objectives in a difficult environment: “to promote and support the sustainable development of the communities in the area of influence of our operations for contributing to the effective development of the region and the country.”

Capitalising on the potential benefits which coal can bring, and avoiding the damage natural resource extraction has so often caused elsewhere, is a daunting challenge; for the country, the region and for Cerrejon itself.

The company’s primary aim is to extract coal for profit. In return it pays royalties and taxes to government. In many contexts, that would be the end of the matter; meeting the economic and social development objectives and targets of the communities and the wider region would rest primarily with the state.

The reality in La Guajira is different. To date, neither central nor local government has succeeded in serving the basic needs of the population and Cerrejon finds itself confronted with a series of complex management challenges, including high levels of poverty, the presence of armed groups, social and political exclusion and corruption. The implications of this go beyond the practical difficulties of operating in this kind of environment. The absence or unresponsiveness of the state means that Cerrejon is often the only means through which communities can seek to address their basic needs or voice their frustrations. The company itself inevitably comes to be seen as the primary source not only for employment but also for basic services such as education, health, electricity, water, and transport. These exaggerated expectations can themselves be a source of tension and dispute and whether or not Cerrejon can or ought to bear the burden of these expectations is, in practice, overcome by a pressing reality.

As Cerrejon has found, it is necessarily far more responsive to local demands than the government, particularly when the project is threatened with financially punitive delays through blockades.

To Cerrejon’s credit, it has accepted its own responsibility in helping to meet these challenges. Quite what this means in practice is not without controversy. Cerrejon is not set up to be a development institution, nor does it have the mandate of an international aid organisation. Its aim is not, and should not be, to attempt to redefine its own mandate but rather to explore how its existing role and capacity can be better harnessed for sustainable and equitable socio-economic development in La Guajira. There are three main areas in which this is happening:

Social Investment

Cerrejon's social investment strategy has recently undergone a major rethink, expanding from a single entity, the 'Cerrejon Foundation' with a focus on education, health, indigenous communities and physical infrastructure to create now four Foundations, each with a specific function:

- La Guajira Resources – to strengthen entrepreneurship and stimulate employment;
- Water for La Guajira – to increase the quality and coverage of water in the region and improve the water distribution system in the communities;
- Institutional Strengthening - to build capacity and expertise within public and private organisations;
- Indigenous Foundation – to promote and support traditional Indigenous culture.

The new strategy comes with an enhanced budget, up from US\$3.5 million in 2006 to US\$6 million in 2007 and no doubt rising in 2008, and a new management structure making them more independent from the company.

The Foundations are an innovative idea, responding to some of the critical issues in La Guajira whilst recognising that the nature of the problems demands a more hands-off approach. In intent at least, they strive to comply with four key principles of any social investment strategy: (i) address real needs at the local level; (ii) be sustainable; (iii) avoid creating a dependency culture and; (iv) empower beneficiaries. Whilst strongly supported financially and administratively by Cerrejon, particularly in the early years, the Foundations will be expected to become increasingly self-sufficient drawing their funding from both private and public sources.

It is too early to evaluate the success or otherwise of the Foundations but the panel would be concerned if their potential value was not strengthened by ensuring the proper mechanisms are in place and the proper processes followed. In this regard, **the strategic objectives and specific activities of each of the Foundations need to be developed through an extensive and participatory consultation process with relevant stakeholders. These should be published and disseminated, both as a means of providing clarity and as a way of managing expectations.**

The independence of the Foundations, in presentation and substance, should be strengthened and made explicit. Board Members should be drawn from a cross-section of La Guajiran and Colombian society and should be genuinely representative of the constituencies benefiting from each of the Foundation's focus areas. Recruitment of staff for the Foundations, from Executive Director down, should be guided by the Board, based on merit and the result of a transparent and open process.

Ultimately, the success of the Foundations will depend not only on the quality of the initial design but also on the way in which they are perceived. Good intentions, even good ideas, are never sufficient. If the Foundations are not seen to be properly informed, expertly guided and sufficiently independent, their potential impact may be undermined from an early stage.

Employment and Contracts

It cannot be underestimated that Cerrejon has had and continues to have an enormous employment impact in Colombia and particularly, in both real and relative terms, in La Guajira itself. Indeed, employment, whether within the company itself or through contracted services, is the single most important direct contribution Cerrejon can make to La Guajira.

What does this contribution consist of? The starting point has to be the number and kind of jobs generated by the mine.

Currently, Cerrejon has a labour force of just under 5,000 direct hires and almost as many employees of various contractors on site. Speaking only of the former group, the 2006 salary and benefits bill for Cerrejon was almost US\$135 million; the average compensation (salary and benefits) was, in that same year, over ten times the Colombian minimum wage.

The company has introduced a “Housing Acquisition Programme” to help workers buy or improve their own homes; some 2,931 workers have been assisted and the amount spent so far is \$35.6 million. Also of relevance here is the inclusion in the negotiated collective agreement covering the work force of an Educational benefit to enable an employee’s children to benefit from university education.

But are these things enough? Are they to be judged not in relation to what may or may not be common practice elsewhere in Colombia but judged in the context of the enormous wealth generated by Cerrejon?

The critical issue must be the extent of local employment. Cerrejon has an excellent track record in this regard, at least in respect of direct hires, largely as a result of a concerted effort in the 1990s and the establishment of a technical training centre in the city of Barranquilla. Currently, upwards of 75% of company employees originate from La Guajira with a further 20% coming from nearby coastal regions. In addition, the company now has a clear policy on the recruitment of Wayúu workers, insisting that 20% of newly hired workers come from Wayúu communities. **A clear strategy for achieving this, based on indicators for measuring progress, should be developed.**

Perhaps as a result of the uncertainty over the mine's lifespan, some of the earlier focus on training for La Guajirans seems to have been lost. With the concession now secure until 2034 and further expansion plans in the pipeline, this issue should be accorded increased attention, not least because of the large numbers of employees approaching retirement age in the next few years. Drawing on its past success in this area, Cerrejon should revitalise its commitment to training local workers, ensuring a new generation of La Guajirans can benefit directly from the mine's extended operation.

The record on sub-contractors is more mixed. In common with other companies, Cerrejon has long appreciated that security is best ensured through strong local relationships, and including local people as security personnel – currently many of the security guards along the railway are from Wayúu communities. However, this same approach does not yet seem to be systematically extended to the procurement of other goods and services. This represents both a lost opportunity and a potential source of friction.

Setting targets on recruitment and procurement, particularly over the short-term can be a blunt instrument but, carefully designed, can also be invaluable in ensuring that the company's full potential as an engine of growth in La Guajira is realised. **Training for future local employees should be complemented by parallel process of business development support to enable local companies to meet the standards required by Cerrejon in delivering certain products and services.** The individual skills and business capacities built up over time will also promote economic sustainability once the project has closed. This should be in addition to, but closely coordinated with, the specific Foundation being established to stimulate employment in the region.

Taxes and Royalties

In 2006, the company paid taxes to the Colombian State, doing so in compliance with the law and without any reluctance. The amount paid was \$US204 million, up considerably from the annual average of US\$51.4 between 2000 and 2004. In addition, some US\$113 million were paid in Royalties, and the average for the years 2000 to 2004 was US\$47.4 million. It has been reported that the Royalty payments for 2007 will be US\$166 million. The distribution of Royalties is carried out by the State agency, the National Royalty Fund, according to law. Monies are paid to the national, provincial, and municipal levels of government. Cerrejon confirms that 84% of the Royalty payments stay in La Guajira so that ambitious economic and social development projects can be undertaken.

However, it appears that institutional and governance failings in La Guajira mean that revenue is not being fully used for the benefit of the population as a whole, nor for the benefit of those communities living close to the project site. In other words, the payment of royalties is not generating significant development benefits for the vast majority of La Guajirans.

It is difficult to avoid concluding that insufficient transparency attends to the ways in which the Royalties, once paid, are built into public budgets and actually used. Moreover, suspicions of corruption, and, perhaps more worrying, the involvement of extra-legal groups, such as paramilitaries or guerrillas, in capturing the revenues in one form or another, are commonplace.

The extent of Cerrejon's role and responsibility in addressing this fundamental problem is controversial. Although in theory the company should not be held accountable for governmental corruption, incompetence or ineffectiveness, extractive industries adhering to the Extractive Industries Transparency Initiative, EITI, do have a responsibility in this area; and in practice its own self-interest dictates that it should be vigilant and innovative in identifying means of mitigating the problem. This is partly about its own reputation and partly about reducing the demands for service provision with which it is frequently bombarded and for which responsibility properly lies with local and central government.

Cerrejon is certainly trying to encourage civic responsibility on the question of transparency. It publishes royalty payments on its website and, in 2004, established a Royalty Follow Up and Evaluation Committee with the participation of the General Controller's Office, the General Prosecutor's Office, the Government of La Guajira, the mayors of the 15 principalities and civil society representatives. Since its creation, the Committee lost much of its legitimacy and Cerrejon withdrew its support in early 2007, redirecting its anti-corruption efforts. Plans are currently underway to reconstitute the body with an overhaul of its by-laws and greater emphasis on the role of the civil society representatives in its decision-making structures.

It should be noted that Cerrejon's efforts to date in this area place it in the forefront of international company best practice in this area. Nevertheless, given the importance of the issue, much more needs to be done. Whilst Cerrejon cannot and should not dictate to the government how and where to spend its own money, there are a number of areas in which it could go further.

The publication of royalty payments in line with the company's voluntary commitments under the EITI is a welcome first step. But information is only as good as the extent of its communication and the capacity of individuals and organisations to use it productively. **Cerrejon should explore means of disseminating the information more widely, perhaps through local media and/or holding regular forums for discussion.**

Its objective should be to stimulate awareness and active debate amongst the population. The focus on transparency should be extended to include encouraging publication and debate around municipal and regional budgets.

It should encourage the establishment or growth of organisations capable of sustaining civil society's engagement and interest in the management of the royalties and of monitoring and holding local government accountable for their use.

We were made aware of recent initiatives in a number of Colombian cities which warrant serious study and probably active encouragement. Mention here should be made of the “Como Vamos” structures now appearing in cities such as Cartagena and Barranquilla, indications of growing civil society interest in the Royalty issue. Also important are two regional think tanks, one in Cartagena linked to the Banco de la Republica and the other, Fundesarollo, in Barranquilla, which could perform analyses of Royalty management in La Guajira and inform all sectors of society and the media. Support to civil society might usefully be extended to include measures to further professionalise the local media. We were pleased that the Sintracarbon representation also focused on this issue.

Finally, it should address the problem of state capacity, perhaps through the Foundation for Institutional Strengthening. Local and municipal authorities in La Guajira clearly lack the institutional expertise and resources to absorb and expend productively the huge sums involved. Providing expert support and training to state bodies can help to address this capacity deficit over the long-term;

In the long-term, the manner in which royalties paid by Cerrejon are used will be a hugely significant determinant of La Guajira’s prosperity and, in turn, the speed and nature of La Guajira’s development will be a key indicator of Cerrejon’s success as a company.

Security, for Company and Community

Critics of Cerrejon have pointed out that the company relies on private security companies to protect its property and their employees and also maintain relations with the security forces of the Colombian State, both police and military. It is difficult to see how the company could behave otherwise and still maintain its responsibilities. We are aware that the railway line has been bombed ten times, with four derailments.

Cerrejon asserts that it is its policy to maintain its relationship with private security companies and the State security forces within a framework of high standards and with the greatest degree of transparency possible, towards behaviour that is in accordance with the Voluntary principles that it sets great store by. In fact, it claims that it is the duty of each and every employee, contractor, or others involved in its operations to take measures to prevent behaviours that contravene the principles set out not only in the Voluntary Principles but also in the UN Declaration of Human Rights and the UN Global Compact.

We had meetings with the regional Police and Army representatives, following a lengthy and informative discussion with the Security Chief at Cerrejon. Both the policeman and the soldier spoke very highly of the Human Rights training conducted by Cerrejon and they are pleased to assign their men to take this course. The Police like to send their own Trainers so that the lessons learned can be more fully spread throughout their organization.

Both the policeman and the soldier thought that the security situation in La Guajira was not in bad shape; yes, there were “delinquents” to be dealt with, but just a few. Here it can be reported that some Colombians appear to use this label when they really mean right-wing paramilitaries. Similarly, there were only a few FARC guerrillas in the province, and they are more searchers, looking for opportunity, rather than well-trained fighters. Interestingly, the soldier observed that when the Army captured FARC people, never had any been Wayuu, and he put some stress on the fact that there is now in La Guajira a Wayuu auxiliary force alongside the regular army. This, in fact, was later mentioned by a community leader in Tamaquito and he credited it with having led the army to exhibit a much more respectful attitude towards the Wayuu than it used to.

Nevertheless, the continuing presence of these guerrillas, particularly in the border regions, represents a threat which inevitably impacts on the lives of those living in La Guajira. In this context, however, it is important to note that most La Guajirans, on balance, feel the benefit of the enhanced security situation in the region.

In some respects, this approach paralleled that undertaken by the security chief at the mine site; he asserted that his guards make a point of getting on well with local people and this has led them to provide Cerrejon with information that could have a bearing on the security situation, information he was quick to share with the police and the army.

He believed that his task was made easier by the fact that the Human Rights Officer reported to him and their co-operation has led to the design of a training plan which is well received by all concerned, to the point that BHP Billiton has expressed interest in it for its use elsewhere in Colombia and Latin America.

The security chief heads Cerrejon’s Protection Division, which has 34 employees, many of them with a military background. They not only manage the company’s preventive measures and carry out background checks and security assessments, they are the contact point between the company and private as well as public security.

Cerrejon has contracts with two private security companies and there approximately 900 guards working shifts. The vast majority of these guards are unarmed. The Army and police forces are, of course, armed. There are four military bases and seven police stations near the mine. Cerrejon operates a Co-ordination Committee to oversee an Agreement between the company and the Ministry of Defence under which not only is protection rightly afforded to the company, the company assists the security forces through some provision of material resources.

Of most importance to the panel is the perception of security as experienced by those living closest to the mine. During the field work underpinning this report, our consultants were asked to be particularly alert for any reports of violations by security forces, private or State. The first point to note is that at no time were any allegations lodged concerning extra-judicial killings or disappearances. Complaints have been made about Army raids on Wayúu “Rancherías” to confiscate weapons, to which the Wayuu believe they have an ancestral right as Indigenous Peoples.

But no-one, including determined lawyers acting for affected communities on the Resettlement file for instance, ever so much as hinted at murders carried out by the security organs of the State or the private providers engaged by Cerrejon.

Allegations have been made by some within local communities of harassment by public and private forces. Cerrejon has had problems in recent years with people attempting to steal copper cables from the site. This, coupled with the expansion of the mine towards a number of communities, has led to an increase in incidents between private (and occasionally public) security forces and local residents. The communities claim harassment by security guards whilst attempting to access Cerrejon-owned land for fishing or hunting. The company argues it is concerned with preventing attempted theft of mine property as well as being concerned about safety.

Allegations have also been made of intimidation of local communities; by private security guards accompanying Cerrejon staff to meetings with the communities; and public forces patrolling the territory between the mine and the Venezuelan border. In the case of the latter, Tamaquito is most impacted, with armed soldiers permanently present.

Whilst the panel cannot judge the merits, or otherwise, of individual cases, it is clear that incidents have occurred partly as a result of heightened security precipitated by the increase in theft from Cerrejon property and the threat posed by FARC guerrillas moving across the border with Venezuela. The balance between legitimate attempts to provide security and the legitimate rights of local communities to go about their daily lives without fear of intimidation or harassment is often a precarious one, particularly in Colombia. In general, the balance has been maintained; local communities, Tamaquito for example, have also appreciated the significant improvement in the security situation; on occasion, it has not, with security forces sometimes allegedly adopting an unnecessarily aggressive stance. **Such cases need to be rigorously investigated and efforts made to ensure that correct behaviour and attitude by Cerrejon security personnel serve to strengthen rather than undermine relations between the company and nearby communities.**

Cerrejon undoubtedly takes security very seriously, not only the protection of its own operations but also its responsibilities to nearby communities and it is evident that great progress has been made with respect to the cultural sensitisation of the security forces.

Nevertheless, some useful improvements can be made. Security remains insufficiently coordinated with social management processes. The two should be seen as part of a holistic approach to engagement with impacted communities. **Cerrejon should also take advantage of the process currently underway in Colombia (and in which it has been involved) to develop clear indicators for implementation of the Voluntary Principles. Piloting and refining these indicators will provide a proper mechanism for recording, monitoring and addressing alleged violations. It should also provide a system for evaluating the results of its extensive human rights training programme.**

Finally, establishing a more transparent process for handling complaints about security and putting in place a systematic mechanism for dialogue with communities around security concerns will help to engender greater levels of trust and help prevent further incidents. In this regard, we noted that Sintracarbon representatives voiced their determination to resist any increased presence or effectiveness by the FARC or paramilitaries in La Guajira.

Threats against Security in La Guajira Today

It is well understood that over centuries, the inhabitants of the isolated La Guajira region developed strong habits of engaging in smuggling, and in recent years, what they have smuggled includes Venezuelan gasoline, consumer goods, weapons and, of course, drugs. Initially the corridors for such activities were the preserve of the indigenous peoples of La Guajira, primarily the Wayuu, a people divided into clans, which have often been engaged in inter-clan rivalries marked by major violence.

In April, 2004, in Portete Bay, La Guajira, four people were killed and twelve disappeared. Others were displaced, even to Venezuela. This was deplorable, and we should note that it had nothing to do with Cerrejon or its operations. Was this a conflict between different Wayuu clans or families, or did it involve paramilitaries, and was control over drugs smuggling involved? In late November, 2007, another incident took place near Portete Bay, and early analysis suggests that the victims were, as before, members of the Epinayu and Uriana clans of the Wayuu people and local witnesses suggest that right-wing paramilitaries calling themselves the “Wayuu Counter-insurgency” were the perpetrators.

While the national security situation has much improved in Colombia, there is evidence that things are still fraught in La Guajira and, indeed, some believe that threats to security are worsening and, further, that this might be linked to the very success of extractive industries in generating, primarily through Royalty payments, wealth in La Guajira worth trying to siphon off.

It was reported to us that guerrillas have been seen in the area between Tamaquito and the border with Venezuela. On the eastern side of the valley in which Cerrejon is to be found there is a mountainous range, the Serrania de Perija, that continues in the state of Zulia, Venezuela. The Serrania is an important source of water for the Colombian side and also originates rivers that empty into the Maracaibo Lake. The Venezuelan government has established a national park in the Serrania. The FARC seem to have established at least one encampment in the mountains near the mine, on the Venezuelan side of the frontier, that is perceived to be a source of danger for Cerrejon’s installations. The Colombian security forces are thus under constant alert to control who passes through the border.

Are paramilitaries or guerrilla groups trying to establish bases in La Guajira so as to use extortion against provincial and municipal government authorities to divert Royalty payments? It has been pointed out to us that with much recourse now being had to health budgets being spent via private sector providers, some of these might be fronts for the extra-legal groups who have done so much to destabilize Colombia and threaten its prospects for peaceful and sustainable development.

This has to be a concern not only for the public authorities but also for Cerrejon, and if it is not something discussed at the co-ordinating committee which brings all parties together, then it should be. Earlier in this report, we quoted Cynthia Carroll of Anglo American, to the effect that business cannot succeed if the society falls apart. She had, in fact, herself quoted the English poet, John Donne: “No man is an island, entire of itself”, and nor is Cerrejon, and its sea is La Guajira.

Part 3: La Empresa: Cerrejon, Today and Tomorrow

Standards for the Future

We have seen that the shareholders are companies which have signed on with, and operationalized into business principles, the major standards applicable to extractive industries. We began with a presentation of Cerrejon’s Vision statement and in it the company aims for the highest of standards, without which it cannot contribute effectively to sustainable development as it hopes to.

Standards are both a guide to or even determinant of performance, and yardsticks by which performance can be measured, results properly assessed. Cerrejon is an entity which is often judged by others without reference to actual results or stated goals, making life difficult for the company and for those who do wish to apply critical judgment in an objective manner. Indeed, involving stakeholders in elaboration of goals has something to recommend it. But goals must be set and results measured.

It is insufficient to record activities without assessing and registering results or impacts; in some organizations, officials focus on the first and avoid the second and Cerrejon cannot afford to see any manifestation of such a situation.

It is in the company’s interest to foster a culture of feedback, monitoring, and the transparent assessment of performance, and to get there requires both standards and, we maintain, success in transforming the operating culture of the company itself. This we believe to be well underway.

Transformation

Change is in progress at Cerrejon, witness the emergence of an enlivened annual Presidential Plan, and that change seems to be transformational.

Some four years ago, the shareholders, each a major mining house, set up a committee of and for themselves which incorporates follow-up with respect to the social management portfolio. It audits performance and makes recommendations for the future.

The President of Cerrejon is responsible for implementing the decisions of the Shareholders Committee, but also for much more. Under his guidance, the company has put more reliance on the social environment of its operations. A consequence has been the perception in La Guajira that Cerrejon is keen on projecting itself through openness, in a positive departure from a perceived “low profile” past. This appears to be widely appreciated.

However, social programme management does not yet seem to be fully integrated into the general mining planning processes and a great weight falls on interactions between individuals. Informal channels are always important and we do not downplay their value but for improved performance in the future, more company officials have to see the value of integrated social programme management; it is not a cosmetic add-on. In fact, we think that the absence of any coherent and unifying strategy for social management inhibits long-term planning and retards the development of appropriate tools. It has the effect of fostering an ad hoc approach which may, in turn, impede the emergence of trust between company and communities.

No More Intercor, No more Exxon, More Cerrejon

One of the concerns which has called for some attention is this: some stakeholders, particularly outside La Guajira, have said that the shareholders have tried to deflect responsibility by pointing out that each of them owns only one third of Cerrejon. Another, alluded to above, is the oft-repeated assertion among community members that it is very possible to distinguish between those agents of the company who have been with it since earlier days, before the current arrangement of the three shareholders, and those who have been brought in by the current CEO to help fashion a “new” Cerrejon.

It is hard to ignore the strength of these assertions and we have to conclude that **Cerrejon must develop its corporate character and image strongly, not to differentiate itself from the corporate cultures of its owners, each an entity concerned with its own approach to sustainable development and the image which goes with it, but from antecedent companies, Intercor and Exxon. Which is not to cast these in any negative light, but it is clear that many years ago, some issues were approached differently, and as well as addressing “legacy issues” such as we have suggested here, Cerrejon has to build its own corporate culture and image in its own interest and, it would appear, the interests of local communities in La Guajira both affected by and dependent on socially responsible behaviour by the dominant entity which is Cerrejon.**

The task of this building should be made easier by the fact that the shareholders have developed, witness the Toolbox, their own skills and standards of considerable sophistication.

Cerrejon could follow what appears to have characterized the re-tooling in a mechanical sense to help guide re-tooling with respect to “social impacts” and the management of how to handle these.

In all of this, it seems apparent that **an effort should be made by Cerrejon to ensure that all stakeholders, from the local, to the national and international, better understand what the company is trying to do and how it goes about it.** In this, one outcome may well be a resulting spill-over of “best practice” to other parts of the extractive industrial sector in Colombia, particularly the coal industry. In fact, one aspect of this should be a more explicit industry leadership role. **The mining industry in Colombia continues to have a poor reputation, often deserved. Cerrejon has an important role to play in elevating industry standards by working closely with both government and other companies, and drawing on appropriate civil society inputs as it does so, to develop common guidelines.** This could include the establishment of an industry association.

The Role of Training

It seems clear to us that Cerrejon places importance on training with respect to the process aspects of its operations in La Guajira. In 2006, it spent US\$1.3 million on training, an average of US\$308 per worker. To some notable extent, it also fosters training on matters relating to social impacts, witness the development of modules by the Human Rights officer. In fact, Cerrejon has instituted a training programme on human rights and international humanitarian law for public security officials, and more than 2000 officials, including indigenous leaders and Cerrejon employees, received such training in 2006.

This might serve as a model for an enhanced focus on cross-cultural sensitivity training for the company’s employees and those it relates to in security and social development on Indigenous issues. It would be important to seek the assistance of the Wayuu in further developing this training, and the fact of it should be shared with Wayuu communities.

It was interesting to us, given the great importance of Resettlement affecting the image and performance of the company, that officials engaged with it have acknowledged the need for more and better training in this area. They have been trained on main global standards, but less so on appropriate tools and field application criteria which can be adapted to their daily realities. A transforming company cannot afford to overlook this.

It would be useful were the company to also initiate training on the matter of transforming the operating culture of Cerrejon. Many extractive companies have embarked on transformation, usually following changes in ownership, and training for success is not a rare art form or alien business practice in such circumstances.

In addition, there is merit in Cerrejon reporting in public on its total engagement with training. One extractive industry association, the Canadian Association of Petroleum Producers, expanded, in 2007, its reporting of social metrics to include what it refers to as Employee Skills Enhancement—the number of hours of training provided by or at the expense of the member company to employees at all levels. Cerrejon could do this but with a breakdown showing categories such as process operations, human rights and social impacts, and corporate transformation. It does this with respect to Human Rights and can do so for the others.

Accountabilities, for the Owners, for Cerrejon, and for its Communities

Reference was made earlier to assertions that Cerrejon shareholders hid behind their partial ownership. This may be a question more of perception than reality; if this has been attempted, it is wrong-headed and counter productive, and the owners and the company should present a unified face. **Nevertheless, it is useful, and appropriate, for the shareholders to continue to provide oversight, and, where necessary, support to the transformative efforts of the team being built by the CEO.**

This support should include all effective skills transference, especially around the tool box and other elements which have helped make the owners leaders in the field. For its part, **senior management of Cerrejon must make sure that this support is fully internalized into its structures and operating culture.**

It is, of course, the senior management of Cerrejon which has to be accountable in the first instance, and it must have the standing to meet the demands of this accountability. It can only have this through the appropriate behaviour of the shareholders, which are in turn accountable to a different body of shareholders concerning the great investments they have made and continue to make in La Guajira. Those investments impact on La Guajira and its communities, of that there is no doubt. The exercise of accountability by Cerrejon and its shareholders is, in fact, the best guarantee that the communities can benefit from Cerrejon's presence and can, in turn, behave accountably and responsibly towards it.

Here it can be noted that the very presence of Cerrejon has diverted some municipalities from their responsibilities towards marginal groups in their municipality in the expectation that the company will provide for them. Social responsibility is a company obligation, social investment a community one.

Cerrejon is building new relationships with the communities it affects and is affected by. These do require the nurturing which appears to be in evidence as the senior management gradually defines its aims and organizes its instrumentalities. **Among them, we repeat, must be standards, a commitment to monitoring and feedback, and openness.**

Part 4: Conclusion: A work in Progress, and work is Progressing

We have been struck by the strong sense in La Guajira, and this has its echoes in the company itself, that, yes, legacy issues need to be addressed, but the Mine is vital and, indeed, its possible expansion is accepted, sometimes welcomed.

We are not equipped to judge or comment on speculation about possible expansion, which includes schemes to divert the main river of the region, the Rancheria, but we are forced to conclude that the prospect of such effort necessitates more, not less, concern to get right the management of “Social Impacts”, and especially to focus on proper participation and consultation on the part of communities likely to be affected.

It is also important that consultation should also be prepared for with respect to the eventual closing of Cerrejon’s mine after its productive life.

For both producing and, eventually, reclaiming and closing, a future based more fully on “trust” is likely to be vitally important, and this is a condition which has to be earned. This can only come through engagement, sensitivity, and constancy. Perhaps creativity is also a useful ingredient, and here it might be appropriate to suggest that more attention be paid to just how the community can be brought into discussion of the use of reclaimed lands, which could involve former residents with respect to stewardship and activities which help in the search for sustainable livelihoods.

This would certainly add to trust, as would a clear commitment on the part of the company to ensuring that stakeholders in affected communities can expect any complaints to be taken seriously and can understand just how the company will respond in a timely manner.

The senior management team seems to understand this; the shareholders recognize the accomplishments of the senior managers in this regard and believe that what they are accomplishing does represent “best practice” in many ways. **Both the shareholders and senior management should recognize that while much was accomplished during the previous ownership times, success in production was more marked than success in building trust**, and one major factor was the previous approach to social management as being dominated by that which was permitted in law or prohibited by law.

The panel respects the law, and would not advocate its being disregarded, but there is more to life than law, and legalism has its limits, which do not prove conducive to best practice. Social Responsibility is as much about ethics as law, and it must characterize Cerrejon. It is a work in progress but also a work of and towards progress, and only measured and evaluated best practice can serve. The shareholders and the people of La Guajira deserve nothing less.

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