



INVESTIGATING THE IMPACT OF CORPORATE COURTS ON THE GROUND

CASE NAMES:

ANGLOAMERICAN v COLOMBIA¹
GLENCORE v COLOMBIA²

SUMMARY:

UK and Swiss companies are suing Colombia after a Colombian court prevented the companies from expanding a coal mine, using ISDS provisions in the UK-Colombia and Switzerland-Colombia BITs.

STATUS: In process

AT STAKE: Undisclosed

DETAILS:

The companies have sued over a court order preventing them from expanding mining operations in what is already the biggest coal mine in Latin America



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Cerrejón open-pit coal mine in northern Colombia

WHAT IS THE CASE ABOUT?

The Cerrejón mine in northern Colombia is the biggest open-pit coal mine in Latin America and one of the biggest in the world. The companies who own the mine, London-listed Anglo American, Glencore and BHP (BHP and Anglo American recently sold their shares to Glencore) have been engaged in protracted struggles over the exploitation of land and resources, particularly water, in this very dry region of Colombia. Since the mine started 35 years ago, African descent and indigenous communities living around the mine have endured forcible displacement, the devastation and loss of their communities, livelihoods and natural resources, as well as militarised repression and death threats.

In 2013 Cerrejón announced plans to divert the sacred Arroyo Bruno – a stream which provides water to some 40,000 people – in a bid to extract 35 million tonnes of coal from the riverbed. The diversion of the river and exploitation of the river bed would not only mean the increased exploitation of one of the world's most polluting energy sources, but would result in the forcible eviction of

indigenous communities from one of the only arable parts of the region into the inhospitable desert, and a deepening of the social, economic and spiritual harm that the mine has inflicted upon local people.

The communities started a campaign to stop the diversion of the river in 2015 and called for the river to be returned to its natural course. They took legal action in 2016, with support from around the globe including from War on Want³, London Mining Network, Global Justice Now and our allies. In 2017, Colombia's Constitutional Court suspended the development over the concerns raised about the impact of the diversion on the community and the ecosystem⁴. It was a victory for people power – but the celebration was short-lived. The company refused to comply with the Constitutional Court's order, and had already started work diverting the river, which is causing irreparable damage and loss of underground water storage capacity in an area of water scarcity already highly vulnerable to climate change. They told communities they would not be returning the river to its natural course in

2019, but have also not been able to make progress on extracting coal from the river bed due to some restrictions placed on them by the Court order.

In 2021 the companies initiated proceedings to sue the government of Colombia using ISDS provisions in the UK-Colombia and Switzerland-Colombia bilateral investment treaties.

CORPORATION'S COMPLAINT

Neither the provisions of the bilateral investment treaties the corporations say Colombia has breached, nor the sum of money being demanded, have yet been made public. However, it is not unreasonable to suspect that the mining companies may be using ISDS cases to force the Colombian government into stepping up pressure on communities to abandon the area or on the Courts to overturn the ruling, or forcing the Government into a hefty pay-out if they don't. Activists report that the Government has been reassuring the Companies behind closed doors that they won't have to comply with the Constitutional Court's ruling.

Mine workers on the "Shift of Death"

It's not only the people living near the mine who are fighting for justice. The Cerrejón mine workers have been engaged in disputes with their employers over pay, unfair dismissal and working and living conditions damaging to workers' health. Pro-union workers have reportedly been intimidated or sacked and replaced with casual workers who are paid less than permanent employees, and workers have been dismissed without cause or consultation⁵.

Resistance culminated in a three-month long strike in 2020 over an attempt to introduce what workers called a "Shift of Death" because of the risks to workers health, safety and jobs. Justice in La Guajira will mean not only respecting the rights of indigenous and African descent communities living near and displaced by the mine, but reinstating employees and respecting the workers' rights to decent work, as well as ensuring a just transition when the mine is set to close in just over a decade.

"This coal is drenched in blood. We have lost everything. We invite people in Europe to look towards Colombia, and to see that there is a community suffering to meet their basic needs because of corporations from your countries like BHP, Glencore and Anglo"⁶

Samuel Arrogoces

Ancestral Black Community Council of Tabaco

OUR VERDICT

Coal mining is fundamentally incompatible with tackling climate change, and this ISDS case that threatens to punish communities for standing up for their rights is yet another slap in the face for those who have already been through decades of devastation and disenfranchisement at the hands of international mining corporations. The voices of people affected by the mine, and the diversion of the Arroyo Bruno have been utterly disregarded, while those resisting the mine have been subjected to militarised repression and death threats. At this point, even if Colombia doesn't lose the case, the government will likely spend tens of millions of dollars to defend themselves in this case. We are calling on Anglo American and Glencore to drop the cases against Colombia, restore the natural course of the Arroyo Bruno and implement a just transition for all communities and mine workers throughout a planned and managed closure of the Cerrejón mine.

References

1. <https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/21/30>
2. <https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/21/31>
3. <https://waronwant.org/news-analysis/stop-diversion-arroyo-stream-la-guajira-colombia>
4. The decision of the Colombian Constitutional Court SU-698 of 2017
5. <https://www.industrial-union.org/colombian-worker-perspectives-from-cerrejon-coal-mine>
6. <https://www.youtube.com/watch?v=3t99gGwpKNM&t=374s>

Investor-State Dispute Settlement (ISDS) or 'corporate courts', gives corporations far reaching privileges and access to their own legal system to enforce them. This mechanism threatens society, democracy and the planet. **STOP ISDS!**

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