

Part C of the Affidavit of Stephan Suhner and Lisa Huber, Swiss-Colombian Working Group.

Formal Notice

For Service upon:

Xstrata plc
Bahnhofstrasse 2
PO Box 102
6301 Zug
Switzerland

Corporate Communication:

Ms Claire Divver

Chief Executive:

Mr Mick Davis

Copies:

SNCP, State Secretariat for Economic
Affairs SECO

Concerning responsibility of Xstrata as co-owner of the group known as Cerrejón Coal, whose conduct has been prejudicial to Communities, whether previously or presently existing in the vicinity of the Mine in the Department of La Guajira, Republic of Colombia.

1. The Notice is served on behalf of former residents of the township of Tabaco (destroyed between August 2001 and April 2002) and former as well as current residents from the following townships: Los Remedios, Chancleta, Patilla, Roche and Tamaquitos (a Wayuu pueblo).

The names of those individuals and associations are withheld for fear of retaliation and victimisation.

The Notice is also served, by agent in Switzerland, on behalf of the following, who have agreed to be named;

-Dr. Armando Perez, legal practitioner of Maicao, Department of La Guajira – solicitor in the successful Case no 0014-01 in the Supreme Court of Colombia, in which the Mayor of Hatonuevo was ordered to proceed with the relocation of Tabaco. The Judgement never complied with. The Cerrejón Group remains in possession of the land that previously comprised the township of Tabaco.

-Senor Jose Julio Perez, Convenor of the Tabaco Residents Relocation Committee (Junta Social Pro Reubicación de Tabaco).

-Senor Alirio Uribe Munoz, senior legal practitioner, with the Corporacion Colectivo de Abogados- *Jose Alvear Restrepo*- of Bogotá, Colombia; recipient of numerous international prizes and awards for achievement in the field of Human Rights Law - inter alia - *Republica de Francia 1996, Republica de Weimar 1996, Premio Martin Ennals 2003, American Bar Association 2006.*

2. **This notice is served** so that the Company is formally advised of the situation at the commencement of any action before the OECD Point of Contact (SNCP).

We are well aware that Xstrata, jointly with the other two shareholders of El Cerrejón, has launched an independent panel in August of the current year. The aim of this initiative is to review Cerrejón's past and current social policy and practices in order to gain strategic guidance to enhance Cerrejón's future performance. Fact is, however, that the company is still not responding to the most urgent needs of the immediately affected communities. The latter have expressed many times their wish to hold collective negotiations with the firm's management in order to discuss their claim for just indemnification and collective resettlement. They have repeatedly uttered their wish to be legally advised by a trusted third party as most of them do not have higher education contrary to the company's executives.

We sincerely welcome the creation of the independent social review panel and hope that it will come up with its ambitious

objective. It has to be considered, however, that some of the communities have been waiting no less than seven years for a just indemnification. They suffer hunger as they can no longer cultivate land and thus do not have much energy left to resist, discuss and negotiate. A prompt and effective reaction to the affected community's actual misery caused by the presence of the mine, is therefore what we ask for from El Cerrejón's shareholders.

Previous attempts to raise the matter and request action from the company have lead to some meetings between the company's executives and representatives of the displaced communities, yet to no actual enhancement of the community's situation on the ground.

The company cannot credibly maintain:

- That it is making every reasonable effort to alleviate the situation of the immediately affected communities, namely the expelled community of Tabaco and former as well as still resisting residents of Los Remedios, Chancleta, Patilla, Roche and Tamaquitos;
- That it does not hold any responsibility for incidents occurred before buying Cerrejón Coal shares from its major shareholder Glencore International AG and
- That it cannot influence the decisions taken by the operating company Carbones del Cerrejón.

The objective of the present notice and the formal complaint deposited with the SNCP is to show the Company that it needs to accept responsibility and act to rectify the situation. The affected people in La Guajira have a right to be notified, to be consulted during and incorporated in the whole negotiation process, to be relocated at a place as good or better as the one they have been expelled from and to have their human rights respected. The

Federal Government has a duty to ensure that Swiss-based companies act ethically, whether it be in accord with the OECD Guidelines or common decency- especially in a third world environment where standards of conduct can be low.

3. The Agents in Switzerland have been further instructed to proceed and meet with the OECD Contact Point in Switzerland, and to proceed with a formal complaint against Xstrata co-owners of Cerrejón Coal, for multiple breaches of the OECD Guidelines for (conduct of) Multinational Enterprises (see Part B of the Affidavit).
4. ABUSES AND VIOLATIONS complained of - together with the variously responsible co-owners – Carbocol (Colombian state-owned, until 2000), Intercor (subsidiary of Exxon, until February 2002), Glencore (until March 2006) Anglo-American and BHP-Billiton (to the present day); which became Carbones del Cerrejón LLC.

In summary, the actions of Cerrejón Coal, with Xstrata jointly responsible as co-owners, have been designed to de-populate the zone to allow for the expansion of a very lucrative coal mine. The Afro-Colombian township of Tabaco was the subject of a purported expropriation which appears to be a device designed to clear the land for expansion of the mine. For this end, Tabaco's infrastructure was bulldozed and the remaining population expelled and now dispersed. The many residents had been subjected to false information, intimidation and threats designed to force people to sell their interests, often undervalued or to accept compensation under these types of pressures. At the end, those not willing to sell under any circumstances were driven out with none at all.

This could never have happened in a legal way for these purposes. The scandal surrounding the destruction of Tabaco seems to have led to the abandonment of the flawed expropriation route and the adoption of process of '*estrangulación*' - term used by the communities - continuing now, according to the instructing

parties, with the intent of making life so desperate and uneconomic that the population is driven elsewhere. Amongst other things these policies and actions include:

- Operating the mines in such a fashion that there is pollution of the air, soil and water, causing threats to health, soil fertility and water supply.
- Isolating the communities by buying access roads, and all land around the communities. This has not only the obvious effects to economic activity and education, but also affects traditional work opportunities, hunting, firewood and water access etc. Transport has been made difficult because of the state of roads with the use of mine traffic.
- There is the persistent intrusive and often intimidating presence of the Mine 'Vigilancia' or Private Security.

As a consequence, life has become uneconomic, unhealthy and more impoverished, and the landscape blighted by man-made mountains of coal tailings. Many have had to leave homes and their rural life to find work elsewhere. There is no chance of selling – up, except to the Company causing the problem. These were previous vibrant communities living a modest rural life as self-subsisting farmers.

One of the villages and part of the other communities are Indigenous People - the Wayuu - whose relationship to the land, customs and culture is especially vulnerable to this process - such as exclusion from ancestral graves - or destruction of same as occurred in Tabaco - and the exclusion from the lands. Wayuu have been detained and held in custody for trespass, often seeking water, food, firewood or traditional medical herbs.

There is no reason that these communities should be destroyed simply because they do not have the protection of the law.

5. **RECTIFICATION AND RESTITUTION.** With enormous profits from the Cerrejón, the largest series of open-cut coalmines in the world, there is no financial reason that would prevent the immediate implementation of the program set out below, to correct the situation:

- (a) As there is no effective communication or consultation with the communities, the Company should immediately implement the setting up of a consultation process following, for example, the Australian models (e.g. SA Mining Act and Regulations - providing for effective consultation with stakeholders prior to approval of mining activities and continuing - a MARP process).

This should be with the aim of rectifying past and present abuses of the communities and should include *inter alia*:

- Positions of equal power in the process, with transparency.
- Appropriate process to ensure remedy of past abuses and to ensure the lack of future abuses.
- Written guarantees of the future security of the pueblos, and viability at previous levels, and complementary action to end the strangulation policies and activities such as road ownership and the 'Vigilancia' etc.
- Guarantees with regard to health and water quality and quantity caused by mine activity, including medical care for those currently effected and changes to mine practices causing the problems.
- Protection and improvement of the infrastructure to ensure the viability of commerce, transport, children's education etc.

- Agreements about access to company land for purposes common in the past.
 - Preference in employment.
 - Release of all information concerning rehabilitation of the mine site and genuine consultation concerning such programs.
 - Expansion of the current 'welfare programs' run by the company, often to partially address problems caused by mine activity.
- (b) The same protocol or process could well assist in resolving the problems arising out of the destruction of Tabaco. The bulldozing of the town, homes, cemetery, church, health-clinic and the forced expulsion of residents is something that could never have occurred in Switzerland nor, legally, in Colombia, for these purposes. There are two fundamental flaws in the expropriation process but no doubts about the immorality of that process.

While it seems the site cannot be restored, some items may well be retrievable for a new site. A vast majority of ex-residents now dispersed, would move to an appropriate new site. One has been located at a site known as 'La Cruz'.

The Company, the cause of the hardship, and beneficiary of it, and being in possession of the land, (and considering the results of Supreme Court Case Ref. No. 0014-01) should immediately, working directly with the former residents of Tabaco:

- Making a prominent contribution to the implementation of the Supreme Court Judgement from May 2002, namely by clearing financial resources in order to purchase 'La Cruz' or another appropriate property for resettlement

and to allocate the basic infrastructure on the selected site.

- Assist with relocation.
 - Pay appropriate compensation for loss of land or personal loss.
 - Re-open negotiations, through the protocol above, with those property owners paid inadequate sums by virtue of settlements tainted by intimidation, threats or other duress, whether that be by private sale or by the tainted expropriation process.
 - Compensate those who suffered from physical violence or loss of property by theft or other cause, during the expulsion of residents.
- (c) Through the same consultation process, take action to ensure the special needs of the Wayuu and Afro-Colombians, whether that be in the pueblo of Tamaquitos or the other communities, according to law and international conventions.

This includes, *inter alia*:

- Collective ownership;
- Access to company land, ancestral remains and other cultural needs, and
- The matters referred to in common with other communities in paragraph (b) above.

6. The parties are hopeful and optimistic of a rapid response by Xstrata to contribute to the correction of the situation, both in relation to Tabaco and the five isolated communities.

The forum of the SNCP should be ideal to, with the consensus of the co-owners, rectify the situation as set out in the Affidavit. We want to make clear that we have no agenda to injure the company - the reverse in fact - to limit the damage.

Xstrata and the co-owners have an opportunity to set an example of model conduct to other multinationals in Colombia and elsewhere.

Having given Formal Notice to Xstrata of harm caused to individuals and communities by Cerrejón's policies and actions, - we call on the Company, with the co-owners and operating company, to immediately change direction and put into action the program of RECTIFICATION AND RESTITUTION set out in paragraph 6 above and set an example to other Multinationals of model conduct required by the OECD Guidelines or better.

Served by Agents of the above in Switzerland:

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END OF PART C OF THE AFFIDAVIT