

**Questionnaire for Businesses by the
UN Special Rapporteur on the situation of human rights defenders
Mary Lawlor, September 2020**

Contact Details

Please provide your contact details in case we need to contact you in connection with this survey. Note that this is optional.

Type of Stakeholder (please select one)	<input type="checkbox"/> Business
Name of Stakeholder	CARBONES DEL CERREJON
Name of Survey Respondent	████████████████████ ██ ██
Email	██
Telephone	
Address	██
Can we attribute responses to this questionnaire to your Business publicly?	<input type="checkbox"/> Yes <input type="checkbox"/> No Comments (if any): YES

Questions

Human rights defenders are persons, who individually or in association with others, work peacefully to promote and protect universally recognized human rights and fundamental freedoms, in accordance with the UN Declaration on Human Rights Defenders.

1. How do you ensure free, prior and informed consent with the affected community before you undertake extractive mining, hydroelectric dams, logging etc.?

Cerrejón respects the right to prior consultation and respects the right to free, prior and informed consent, in accordance with the ILO 169 Convention adopted by Colombian legislation, national jurisprudence and international standards. This is reflected in our policies and processes.

Being a 35-year operation, at the beginning of our activity there were no consultation processes, since at the time of the start of operations, there were no applicable regulations or standards in Colombia. However, as legislation, jurisprudence and standards have evolved, Cerrejón has adjusted its policies and processes to ensure that, before implementing any project that may pose a significant impact on local communities, we engage in prior consultation processes, in close coordination with Government agencies, through participatory, and good faith processes seeking to achieve community consent.

Cerrejón has carried out several prior consultations where clear definitions on methodology, external advisors, schedule, decision-making processes are jointly defined. These processes have allowed to reach

agreements on potential impacts as well as on the mitigation and compensation measures that need to be in place before the start of the activity. Joint follow-up activities are also included to ensure that agreements are properly implemented.

Cerrejón maintains respectful and permanent engagement with neighbour communities and is also respectful of consultation processes requested by judicial rulings on past projects as well as the inclusion of additional communities in consultation processes.

2. What mandatory human rights and environmental due diligence measures do you implement to assess the impact your operations may have on the affected communities?

In addition to the Social and Environmental Impact Assessments required by Government agencies for specific projects, permits and licenses, Cerrejón has a human rights due diligence process, aligned to the UN Guiding Principles on Business and Human Rights, that consists of conducting a Human Rights Risks and Impacts Assessment (HRIA) carried out by an independent expert every three years, a revision of existing and new prevention and mitigation measures; integration of risks within the company's corporate risk management system; conversation on impacts and measures with employees, contractors and neighbouring communities to identify possible new management measure; implementation of a rights-based grievance mechanism designed in 2010 (as part of a Professor John Ruggie pilot that led to defining the remedy pillar within the UNGPs); and the definition and implementation of an assurance system.

In addition to these standards, we have been in a continuous improvement process that seeks to enhance our social and environmental performance. In this sense, we have adopted international standards such as the guidelines from the International Finance Corporation (IFC), the UN Global Compact, EITI and the Sustainability Framework of the International Council on Mining and Metals (ICMM).

We would like to share with you our performance related with these standards, as follows:

- **Formal engagement processes with local communities** are based on principles of transparency, participation, inclusion, dialogue and cultural appropriateness. Cerrejón is committed to maintaining meaningful engagement with all our stakeholders. Our goal is to develop strong and long-lasting relationships that create a climate of trust and the possibility for collaborative approaches in the territory. We are committed to two-way communication, implemented by a dedicated team who is knowledgeable on indigenous traditions and customs, many of them being members of the Wayuu community which help us to ensure a respectful engagement.
- **Risks and Impacts Assessment** in social, environmental, cultural and human rights. We have carried out two independent Human Rights Impact Assessments, the first one was in 2011 and the most recent one in 2017. These assessments have been carried out by external parties with inputs from the communities and they are, in addition to our Environmental Management Plan, a roadmap to the definition of mitigation and compensation measures, allowing us to better understand the concerns of the affected communities. The results of both assessments have led to the enhancement of specific impact mitigation measures. In 2020 we had scheduled our third Study, but due to Covid-2019 we have postponed it.
- **Grievance Mechanism** (Complaints Office), operational since 2010 and designed under the UN Guiding Principles on Business and Human Rights framework. This office is responsible for a dialogue-based approach to community concerns on potential impacts caused by our operation on employees, contractors and local communities. The Complaints Office seeks to fulfil the principles defined for these types of mechanisms, which are guided by the remediation pillar: to be legitimate, accessible, predictable, equitable, compatible and transparent. In addition to effectiveness criteria that is defined by the UNGP, our Complaints Office is designed to be proportional, culturally appropriate and offer adequate protection to those involved. Within the process established in the Complaints Office, gathering information is carried out jointly with the complainant, seeking to understand their concerns, as well as agreeing on solutions, monitoring and compensation when required. The Complaints Office, which was audited in 2020 by the Colombian organization Fundación Ideas para la Paz, keeps track of the total number of complaints received and closed and currently has an improvement plan in place to enhance response times, enhance feedback on status of complaints, speed delivery of agreed compensations, among others.

- Cerrejón implements the *Voluntary Principles on Security and Human Rights* through specific strategies: i) inclusion of clauses in the agreements and contracts with security providers, ii) training of public and private security providers on human rights, Voluntary Principles as well as on customs and traditions of the Wayuu indigenous population who are neighbours to our operation, iii) conducting risks and impacts assessment with a focus on security and human rights, and its inclusion in our Corporate Risk processes, iv) closely monitoring our agreements and contracts, v) promotion of dialogue sessions and roundtables where local communities, public and private security providers, local institutions and Cerrejón gather to discuss security concerns, vi) addressing security related complaints through our Complaints Office and providing compensation when required, and implementing an assurance and monitoring system. We acknowledge that we can improve in some areas, as identified by the analysis of complaints and by our internal and external audits on Security and Human Rights. This is why we work with external experts and participate in different company initiatives related to human rights such as the Mining and Energy Committee (CME), the Global Business Initiative on Human Rights (GBI), and the Colombian Coal and Human Rights working Group, which comprises the major coal producers from the Cesar and La Guajira regions and national governmental institutions.

Recognizing the importance of improving our social performance, two years ago we began to implement our *Social Assurance Model*, to ensure compliance of the social standards adopted by the company and respect for human rights. This model includes three phases: i) a self-assessment of standards adopted and level of implementation, with an action plan for results. After a period for implementation of the action plan and follow-up, we conduct an ii) internal audit that analyses the level of management and appropriation of standards on company teams, and iii) implementation of an international audit to identify the level of effectiveness of our standards management.

The first standard to go through this process was the Voluntary Principles on Security and Human Rights. We are currently concluding the third phase with an external auditor that will provide greater insight on levels of compliance and effectiveness of the measures in place, the goal being to ensure that our security contracts and agreements do not cause any harm to people.

3. Do you have a human rights policy, which recognizes the legitimacy of human rights defenders and has a proper right of access to remedy clearly articulated?

Cerrejón's commitment to respecting and promoting Human Rights is reflected in our Human Rights Policy and our Social Performance Policy. Our commitment to respect Human Rights was explicitly stated in 2005 in our first Human Rights Policy after we adopted the Voluntary Principles on Security and Human Rights, launched in 2000. This policy was updated in 2011 once the UN Guiding Principles on Business and Human Rights were approved by the UN Human Rights Council. (See: http://www.cerrejon.com/wp-content/uploads/2018/min/Cerrejon_Human_Rights_Policy-min.pdf)

This policy states that dialogue is the mechanism to interact with its stakeholders, which implicitly includes defenders and states our commitments to pay special attention to the rights of vulnerable groups, which may include human rights defenders. Likewise, it states our commitment to preventing, mitigating our impacts and providing remedy whenever it's required. It establishes that any breach of the policy must be made known to the Company and the Complaints Mechanism in order to carry out the pertinent investigations.

Both the Human Rights Policy and the Social Management Policy reinforce the commitments to respect human rights and dialogue and to access to remedy. (See: <https://www.cerrejon.com/wp-content/uploads/Cerrej%C3%B3n-Social-Performance-Framework.pdf>)

4. If a human rights defender(s) or his/her organization is threatened in connection with your operations, what steps do you take to help protect them?

Cerrejón has a process in place to address cases of threats to social leaders, human rights defenders and any person that may be threatened in relation to our operation. This due diligence process is a

result of the work carried out by a group of mining companies from the regions of Cesar and La Guajira in Colombia, along with national governmental institutions such as the Office of the Presidential Councilor on Human Rights, the Ministry of Interior, the Ministry of Mines and the National Mining Agency, that addressed the common concern over the increased number of cases of threats, attacks or assassinations of social leaders in the country. This group (Coal and Human Rights Working Group) launched a Joint Declaration in Favor of Life in June 2018 that condemns these cases and calls on proper institutions to conduct protection, investigation and prosecution of these cases. In addition, the group developed the first version of a protocol to address threats against life and integrity which describes the process that companies and governmental institutions should follow when they receive information or grievances related with threats or intimidation against human rights defenders in the area where we operate.

For companies, the protocol establishes:

- Take into consideration the approach and position of the victim, and alert the competent authorities of any threatening situation
- Evaluate if it merits a public declaration
- Conduct internal investigations and open sanctioning processes, administrative sanctions and/or contractual (should this be the case)
- Follow up of cases

At the same time, Cerrejón has taken actions whenever we have learned of situations that may present a risk to the life and integrity of social leaders in La Guajira. Our step-by-step process includes:

- Receiving information from media, social networks or directly from people affected,
- Identifying if the person is a social leader recognized in La Guajira
- Defining the responsible authorities to respond to cases at the municipal level
- Publishing a statement expressing concern and making a public call to institutions to investigate the case
- Sending letters to Government officials with the details known by Cerrejón and requesting their prompt actions. These letters are sent to: Mayor's Office, Regional and National Attorney General, National Prosecutor's Office and local Human Rights Institution (Personería), Ombudsman Office at local and national level.

The content of these letters is a call for authorities to put in place measures to protect the life and integrity of leaders and to conduct investigations to identify responsible parties.

We have implemented the actions mentioned above in 41 cases between 2016 and 2020. Cases include threats to indigenous women leaders, social leaders in different parts of La Guajira, leaders of communities with whom we have important and close interaction, reporters, amongst others. In most of these cases we have received responses from national level institutions expressing understanding for our concerns, directing it to a specific institution in charge, and in some cases informing us of the detailed actions they have taken.

5. Do you accept the legitimate right to defend human rights and if a human rights defender is killed for opposing your companies' activities and/or its adverse impact, are you ready to publicly condemn it? (Please share examples)

Yes. In our letters we publicly recognize the legitimate right to defend human rights and the important role that human rights defenders have in society. We have applied our protocol regardless of whether the leader is critical of the company or not. Indeed, in the event that a human

rights defender is murdered we would not only share any information we might possess with the relevant authorities but would also use our advocacy to ensure that the case is comprehensively investigated.

6. Could you please share good practices (evidence-based) that have proved effective to: a) respond to death threats against defenders promoting and defending human rights from the adverse impact of your business operations and b) to prevent them from escalating into the killing(s) of human rights defenders?

From our perspective, we can share two good practices. The first one is the creation of the procedure (protocol) to address threats against life and integrity within the Coal and Human Rights Working Group. This joint effort is an example of the will of the industry and not only of a **single** Company, to promote and act in cases that can affect human rights. The protocol has not only allowed us to address specific cases and bring our interest in results from the authorities, but has also allowed conversations with civil society organizations, with the government, with institutions of the United Nations and other actors concerned about the performance of mining companies on this issue, always with the aim of including improvements and continuing to promote respect for human rights, through specific actions. Our public statements calling on authorities are available on our website. Some examples of statement calling on the protection of Wayuu leaders who have been critical to our performance are:

<https://www.cerrejon.com/index.php/cerrejon-rechaza-las-nuevas-amenazas-contra-uno-de-los-lideres-de-la-organizacion-gran-nacion-wayuu/>

<https://www.cerrejon.com/index.php/comunicado-de-prensa-10/?lang=en>

<https://www.cerrejon.com/index.php/cerrejon-rechaza-nuevas-amenazas-contra-lideres-sociales-en-la-guajira/?lang=en>

In addition to public statements, on each of the cases we have sent letters to local and National Government authorities which in many cases have resulted in the implementation of security risk analysis and redefinition of protective measures.

The second good practice is Cerrejón's advocacy action for the national government to initiate specific actions for the protection of leaders in La Guajira. After several conversations with the Ministry of the Interior and showing the problem in the region, the National Government, with all the responsible authorities, held a meeting in October 2019 with approx. 80 leaders in La Guajira, to listen to their concerns and take actions. The Government repeated this scenario in 2020, in the middle of the pandemic in the month of July. This shows that companies can promote efforts for the effective protection of human rights, taking to the State our concern in this regard and promoting and supporting channels of dialogue when necessary.