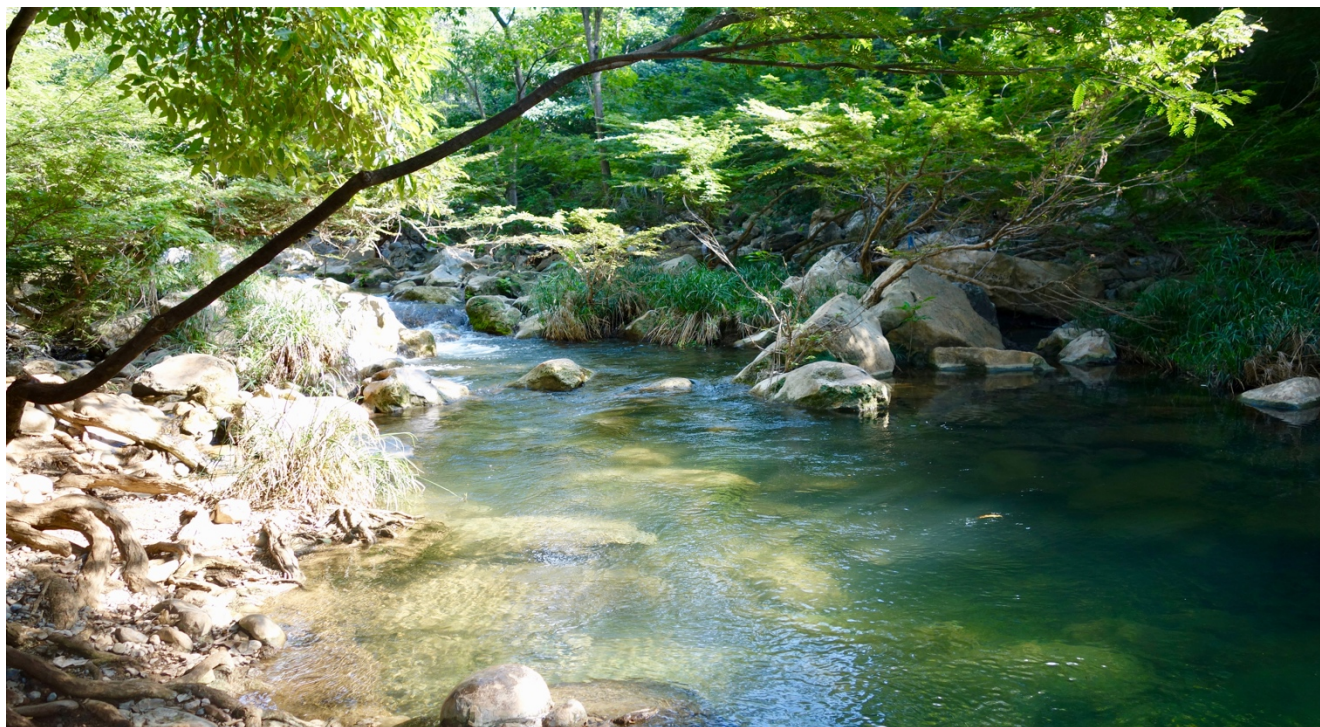


# Debate over the diversion and exploitation of the biggest stream in la Guajira, the Arroyo Bruno, by the transnational corporation Carbones del Cerrejón

Colectivo de Abogados "José Alvear Restrepo" (CAJAR) - April 2019



In the 2017 sentence SU-698 in Colombia, the constitutional court ruled on a suit filed in order to protect right to water, health and food security of more than 30 Wayuu communities that depend on the Bruno Stream for access to water. Additionally, the sentence recognizes that the municipalities of Albania and Maicao also rely on this important water source, whose diversion would directly affect more than 200,000 people.

Even though the diversion project has already been initiated with the river's original course already blocked and the construction of a new artificial riverbed 3.6 kilometers long, the Constitutional Court ruled that there are grave uncertainties regarding the real impacts of the project. Studies conducted by the environmental authorities that licensed the project, ANLA and Corpoguajira, opted for a limited study that only evaluated the ways in which the expansion would impact the immediate area of intervention, which occurs within property of the company Carbones del Cerrejón.

The planning of the Arroyo Bruno project neglected to evaluate 1) the effect that the diversion and exploitation of the original riverway could have on the water flow where the stream joins the Ranchería River; 2) the consequences of deforesting as many as 150,000 hectares of dry tropical forest; 3) the stress that this will place on the aquifers and the subterranean water via the removal of subsoil; 4) the impacts related to the uses and customs of the Wayuu communities that depend on its vital ecosystem services; and 5) the link between the diversion and climate change, and its impact on a

region that already suffers from water shortage. The court also called for an investigation of the ten interventions in the rivers and waterways that the company has already carried out.

It also must be emphasized that the Arroyo Bruno's watershed is an area under the protection of three different legal instruments that expressly prohibit mining: POMCA (Development and Management Plan of the Ranchería River Basin), the EOT (Basic Territorial Management Plan) of the municipality of Albania, and the forest reserve of the Montes de la Oca in the Serranía del Perijá, which recognized the Arroyo Bruno as the natural corridor between the Sierra Nevada of Santa Marta and the Serranía del Perijá.

The expansion of mining along the Arroyo Bruno poses great risk to health and water contamination. The humanitarian crisis has cost the lives of 5,000 children and has put more than 40,000 individuals at risk for advanced stages of malnutrition due to the lack of food and water. Due to the fact that Cerrejón plans to divert several other rivers of great importance – Arroyo Tabaco, the Palomino River, among others – the debate over whether or not the Bruno will be diverted is greatly important.

### **The interinstitutional roundtable between the government, the company, and the affected communities**

The Constitutional Court has confirmed the uncertainties inherent in carrying out this mining expansion regarding the environmental and social impacts of the exploitation and of the modification of the Arroyo Bruno. As part of the judicial process, it ordered that an interinstitutional roundtable be created in order to resolve the issues brought forward by affected communities. Although the ruling intends to protect people's rights to water and to a healthy environment, those participating in the discussions of this negotiation process will decide whether the stream should be diverted and the coal underneath exploited or whether they should remove the plug that currently prevents water from passing through its original course, thereby protecting this important water source.

The ten uncertainties that the interinstitutional table will resolve are:

- (i) the consequences of intervention in a dry tropical forest;
- (ii) the current health of dry tropical forest in the country;
- (iii) the impacts of climate change and global warming on the Department of La Guajira, and the consequences of intervening in an area that is already vulnerable to these phenomena;
- (iv) the type and magnitude of exploitation already realized in the department of La Guajira by extractive activities that now give way to the diversion of the Arroyo Bruno, and the subsequent harm to ecosystems;
- (v) the impacts of the interventions Cerrejón has carried out on water sources of La Guajira throughout its history, and of those that the company currently has planned;
- (vi) the impact of the diversion on the guarantee of cultural uses, supply, regulation, and maintenance of the Arroyo Bruno;
- (vii) the impact that the diversion could have on the waters upstream;

(viii) the impact that the depletion of the aquifers and the diversion of surface water into other channels of different geomorphologic characteristics would have on the water supply;

(ix) the possibility that Cerrejón would intervene at other points along the Arroyo Bruno and the accumulative effects of subsequent interventions of the same river;

(x) the biological value of the Arroyo Bruno basin in the context of the Development and Management Plan of the Ranchería River Basin and of the Territorial Management Plan of the municipality of Albania.

These concerns have been part of the reflections and denunciations of the communities in La Guajira for many years. Cerrejón has not heard them and the state has not attended to them with diligence; rather, they have ignored the precautionary principle and the necessary prevention of harms caused by mining throughout the last 40 years of operation. Despite numerous risks, the government continues to authorize expansion of this activity. They also have not acknowledged or analyzed that fact that the Wayuu have lost a large portion of their territory.

Extractivism in Colombia must be evaluated based on its environmental, social, and economic viability; moreover, the public benefits of mining should be weighed against its risks and potential for causing irreparable damages. After so many years of exploitation by the largest mine in Latin America, one must ask why La Guajira is so poor and underdeveloped, with such high indices of malnutrition, child/infant mortality, and unmet basic needs.

Macroeconomic principles that are used to justify the implementation and continuity of these extractive activities should take into account that the mining pits are located in the region of the department that is most rich in food and water. The mining titles extend to all of the valleys from Albania to Villanueva, precisely the area where the majority of the rivers and streams that supply water to the subterranean aquifers of the middle and upper Guajira circulate.

It is worth noting that agriculture, which 30 years ago made up 30% of the department's GDP, today only accounts for 3.5% of the GDP of a population that is, according to the Departmental Development Plan of la Guajira (2016-2019), "90% rural and dispersed." The subsistence of the communities depends on the integrity of the territory, which mining severely impacts in terms of water access, health, and food security.

Even without knowing all of the content of the Court's decision, the sentence clearly demonstrates the need for a wider demarcation of the "direct area of influence," which is often minimized. More attention must also be paid to the importance of the sociocultural connection between the communities and their territories, and the impacts of this extraction on future generations.

We hope that, in adherence to the precautionary principle, the "Interinstitutional Roundtable" decides to remove the plug that Cerrejón has placed in the original channel of the Arroyo Bruno as soon as possible so that the river is allowed to flow freely, protected by the forest and accessible to the communities and animals that rely on it for their survival.

Link to the ruling: <http://www.corteconstitucional.gov.co/relatoria/2017/SU698-17.htm>

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