

Government entities and Carbones del Cerrejón disregard the orders and guidelines of the Constitutional Court for the exploitation and diversion of the Bruno, the last great tributary of the Ranchería River in La Guajira

On June 5th and 6th 2019, the Interinstitutional Roundtable for the Arroyo Bruno convened within the framework of the SU-698 Sentence of 2017. In this sentence, the Constitutional Court safeguards the fundamental rights to water, food security and health of more than 30 Wayuu communities in la Guajira, which are under threat due to the diversion of the Arroyo Bruno by the company Carbones del Cerrejón. To modify this important tributary, the most abundant stream that feeds the Ranchería River, an artificial riverbed 3.6 kilometers long was constructed, and the original waterway blocked. The Constitutional Court suspended the construction due to grave uncertainties in the license with respect to the environmental, social and cultural impacts of the project. This sentence then ordered that these uncertainties be resolved by the Interinstitutional Roundtable in order to determine the social and environmental viability of the project.

The Interinstitutional Roundtable, created by the Tribunal of Riohacha in May of 2016 and legally confirmed by the Council of the State, was intended to protect the rights of the claimant communities and attend to the uncertainties presented by the Constitutional Court. However, to this day, our right to participate in the roundtable has been repeatedly ignored on various occasions, even though, in line with the Court's ruling, **the impacted communities and the associated parties that have participated in the process have repeatedly *insisted* on effective involvement in the debates and decision making of the roundtable. Yet the response has been to deny access to the information, acts and relevant documents from prior closed-door meetings of the past 2 years** between the different state entities. Additionally, we were informed of the time and place of the meeting by email with only 10 days' notice, **without receiving any information** and without being consulted about the date and time.

We attended the roundtable meeting, because we recognize the importance of what is being decided in this space. **We publicly and formally expressed our disagreement with the proposed agenda and with the imposed dynamics of the meeting, and we requested a participatory establishment of the agenda and methodology for the meetings moving forward.** We also publicly demanded access to the decisions that the roundtable had *already* made behind closed doors and insisted on guarantees for the attendance and participation of the independent experts that are an integral part of the debate. **We demanded, in accordance with the sentence, to participate in the decision around the reestablishment of the Bruno to its natural channel (EIGHTH ORDEN of the Sentence SU 698/17).** The independent experts and professionals involved in the judicial process couldn't attend given the absence of guarantees of participation. Without a doubt, it was evident that the intention of the institutions involved was to deny our participation as active and integral members of the interinstitutional roundtable, contrary to what the sentence dictates.

During the session on June 5th, Wayuu and Afrocolombian communities of Paradero, La Gran Parada, La Horqueta, Cuatro de Noviembre, Coveñas, Los Remedios, Charito, Tabaco, Arroyo Bruno y La Esperanza, El Rocío, Kamenachan, Piturumana, Itaka, together with the participating organizations CCAJAR,

Cinep/PPP and Censat- Agua Viva, informed the company and the participating entities of the roundtable of *our proposal* for the timetable, methodology, and “established rules.” We insisted that the departure point be to discuss the EIGHTH ORDER of the sentence.

The prior requests and proposals were made under the framework of the guidelines and orders of the Constitutional Court. Nevertheless, the government entities, in particular the delegates of the Ministry of the Environment and Sustainable Development (MADS) constantly disregarded the communities as members of the roundtable, making a limited interpretation of the SU 698/17 Sentence. However, the ruling clearly dictates that the company and entities of the roundtable integrate civil society and academics that participated in the judicial process (recommendation 5.8.3 to the Interinstitutional Roundtable and the Fourth Order).

In response to our proposal, representatives of Cerrejón and of state entities, such as the moderator from the Ministry of the Environment, met separately and had discussions together throughout the meeting on June 5th, as they have done for two years. They accepted the basic points of the proposal **but for the matters that they consider to be “of great depth,”** they declared that the entities are in charge of decision making, classifying our participation as less qualified, legitimate and valid, despite that the Sub Director of Participation and Education announced at the onset of the meeting that this was a space of full and effective participation. **To our surprise, from the words of the Ministry of the Environment, we learned that upon being notified of the sentence, the previous roundtable had *already* made a decision regarding the EIGHTH ORDER to maintain the hydraulic barrier that diverts the Bruno. The water would not be returned to its original stream, a decision made based on technical and economic arguments (which were refuted during the evidentiary debate) and without informing or consulting all of the parties concerned, namely the petitioning communities.**

Our surprise was due to the fact that in the very same meeting earlier in the day, the lawyer from MADS declared that the roundtable had *not* made any far-reaching decisions in previous meetings, that these were just preliminary meetings. In reality, they had already closed the door on resolving one of the most important orders of the sentence. This was a striking demonstration of the absence of guarantees of participation and of protection of the rights of communities.

Diversion of the
Arroyo Bruno.
06 June, 2019.



During the meeting on June 6th, a preliminary visit to the area of the Bruno diversion project on the company's property, mediated by supervisory bodies, it was noted that **2 years after the intervention by Cerrejón, and despite constant efforts by the company and by environmental authorities (Corpoguajira and ANLA), the flow of the Bruno is reduced to its minimum expression. Put simply, its channel is dry despite that La Guajira is in the midst of a rainy season.** A verification visit to the 3.6km-long area of intervention of the Bruno, with participation of experts and acknowledgement of the sociocultural and environmental expertise of the local authorities and community members, is necessary and urgent.

We reiterate that the representatives of the Ministry of the Environment and of the entities present deliberately made a narrow interpretation of the Constitutional Court's ruling. They are acting in bad faith, with negligence and violations of a judicial sentence of such importance, a sentence that has the potential to change the value we have for water and for those who would be most impacted by this decision. It is important to highlight that **the Bruno stream is protected by three different legal instruments, as it is an ecological corridor and an ecosystem of strategic and special importance: the POMCA of the Ranchería River (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, which forms part of the National Parks system, since it comprises 3% the country's protected dry tropical forest tropical, one of the most threatened and ecologically important ecosystems in the face of Climate Change.**

In light of this situation, we ask the *Defensoría del Pueblo*, the *Procuraduría General de la Nación* and the *Contraloría*, all of which participated in these meetings, to guarantee the rights of the communities. We also ask that the Constitutional Court guarantee the effective participation of the communities, as well as the participation of civil society organizations and independent experts in the process of decision making around resolving the uncertainties as well as the provisions and orders established by the Constitutional Court, keeping in mind that we are talking about a department in the midst of a humanitarian crisis caused by water scarcity.

La Guajira, 7 June 2019

Signed:

Communities of La Gran Parada, Paradero and La Horqueta

CCAJAR Colectivo de Abogados José Alvear Restrepo

CINEP/PPP Centro de Investigación y Educación Popular/Programa por la Paz

Censat-Agua Viva