

The Ruggie principles: a remedy for Colombian communities facing the environmental and human rights impact of multinationals?

A report on the Alliance for Lawyers at Risk mission to Colombia in 2012



"Welcome to the reservation of Provincial, the indigenous Wayuu community... Cerrejón -responsible mining"

Sign erected by the Cerrejón corporation at the entry to indigenous territory which it has fenced off into a reservation with a border adjoining one of the world's largest open-cast coal mines

INTRODUCTION

The Brief

In August 2012, the Alliance for Lawyers at Risk sent a delegation of four UK lawyers to Colombia (accompanying the Colombian Caravana of international lawyers). Our mission was to research the role UK lawyers could play in supporting Colombian human rights lawyers and defenders in implementing the UN Guiding Principles on business and human rights (the “Ruggie” principles). Was there a need for assistance to Colombian lawyers who represent communities facing human rights and environmental violations by corporations, especially those with UK links?

How?

The mission considered written research materials, and held meetings in person and later by skype:

in Colombia with: human rights lawyers; the judiciary; indigenous/ campesino/Afro-Colombian human rights defenders; trade union reps and lawyers; NGOs and networks working on human rights and the environment; the British embassy; consultants working with corporations;

in the UK with: law firms, international and national human rights organisations; the FCO; exiled Colombian human rights defenders.

Why now?

- The Ruggie Principles were adopted by the UN Human Rights Committee in June 2012, and UK institutions are considering how best to implement them. The Principles aim to provide an authoritative global standard for preventing and addressing the risk of adverse human rights impacts linked to business activity. Ruggie re-interpreted the international human rights law framework of “protect, respect, remedy”. His framework emphasises the state duty to *protect* against corporate human rights abuses; corporations’ responsibility to *respect* human rights; and the need for effective *remedies* (see further: www.business-humanrights.org/Documents/UNGuidingPrinciples). So the Guiding Principles are a descriptive or aspirational document rather than a legal instrument. We were aware that some Colombian human rights lawyers, disappointed about the lack of new enforceable obligations, were sceptical about the Principles, but were interested in identifying the possibilities.
- In 2011, Peace Brigades International (PBI) UK held a conference: *A Dangerous Business: The human cost of advocating against environmental degradation and land rights violations*. The conference highlighted that in Colombia’s conflict zones, the presence of multinational corporations was increasingly a factor in human rights violations. There were demands for the legal entitlement to full prior informed consent (*FPIC*) to proposed development by James Anaya, UN Special Rapporteur on the Rights of Indigenous Peoples, and others.
- In August 2012, the Colombian Caravana of international lawyers was due to pay its third, high profile visit to Colombia to raise awareness of the risks faced by Colombian human rights lawyers on a daily basis.

Who

The delegation consisted of lawyers from different backgrounds who all participated in the first Caravana visit to Colombia in 2008:

- Professor Sara Chandler (chair of the Colombia Caravana/solicitor/ chair of the Law Society's human rights committee);
- Mark Cunningham QC (commercial law silk at Maitland Chambers);
- Sue Willman (human rights solicitor at Deighton Pierce Glynn);
- Neena Acharya (solicitor, now of Lambeth Law Centre) as observer.

In addition, the delegation benefited from the support and expertise of other members of the Colombia Caravana group, including Alan Bacarese (Peters and Peters); Stephanie Grant (Harrison Grant); Siobhan Lloyd (I Mitre Court Building Chambers); and the co-ordinator Andrea Righetti. We are particularly grateful for advice from Peter Drury of *Amnesty*, Louise Winstanley of *AB Colombia* and Richard Solly of the *London Mining Network*, as well as the indispensable support of staff at *PBI UK*.

Our activities

Before our departure we obtained a perspective from respected NGOs working on Colombia, as well as representatives of the UK Foreign and Commonwealth Office. In Bogota, we met numerous representatives and networks of NGOs, including AIDA, DIAL, Justicia y Paz, ONIC, RECLAME, Tierra Digna, PBI Colombia, MOVICE. We met a human rights defender from Sur de Bolivar's small mining network, AGROBISMOL, and trade union lawyers, representing SINTRACARBON, the coal miners' union. We met some of Colombia's leading human rights lawyers working on corporate accountability issues: Dora Lucy Arias, Eduardo Carreno and Alirio Uribe of CCAJAR, Judith Maldonado of CCALCP, and Jorge Molano, all of whom have been or are accompanied by PBI due to being personally threatened, including death threats. We also spoke to representatives of the judiciary, and business. In Bogota, we met the British Ambassador and Ian Gill of the British embassy, and Carlo Natale, of the EU mission and discussed corporate accountability issues with them. The sub-delegation divided for regional visits with a visit to Bucamaranga and Yopal; and a visit to the far north region of La Guajira, where one of the world's largest open cast coal mines, Cerrejón is based. Finally, at the request of our hosts, ACADEHUM, we delivered two seminars in Spanish for Colombian lawyers at Rosario University on the Ruggie principles; and environmental law/ remedies against multinationals.

PART 1: The research

“When a Colombian human rights defender tries to intervene in a case which involves a significant risk to business interests, they are likely to receive threats which in some cases will result in death.”

member of the Colombian judiciary,

The regional visits

In **Bucamaranga** we met Jaqueline Rojas, a human rights defender from a women’s organisation who had been forced to relocate from Barrancabermeja to the city due to threats. She was keen to expose the link between the state and the paramilitaries, and the economic projects in Magdalena Media. She referred to megaprojects in mining by Gold Anglo Gold Ashanti (AGA). She said the company La Quedada affiliated to Anglo Gold Ashanti extracted gold in the sur de Bolivar area, which had led to many deaths and displacements. She commended the help received in Magdalena Media by the visits from international organisations which helped protect the communities by showing the violators that there was international support. She spoke about how multinationals had resulted in displacement and loss of livelihood whether in the case of small scale mining being replaced by multinationals like Drummond, or subsistence farming being replaced by large scale palm oil/bio fuel cultivation. She spoke about the use of rape against women as a weapon of war.



Meeting with community activists affected by oil exploration in Yopal

In **Yopal** we met the families of campesinos who had experienced the adverse effects of paramilitary activity since 2003- being displaced from their land, murders, and disappearances. For example one man had lost seven family members – he had found remains of their bodies including his parents, with signs of torture. The campesinos' view was that a common approach was for the the army to enter the area first, followed by paramilitaries with leaflets telling people not to oppose the mining development. Because local paramilitary organisation, Autodefensa Campesina de Casanares (AAC) had announced its return to the area, campesinos had formed a new protective organisation, Alianza Social. Members of the delegation were privileged to witness their launch ceremony (see photo).



In **Yopal**, we also met with representatives of the Ministry of Defence and were told that the district (which borders Venezuela) was one of greatest areas of army activity in the country. We heard of environmental damage such as constant burning of gas, and damage to mountains due to power lines. Campesinos reported that they had lost land due to landslides caused by the explosions used in explorative operations, and contamination of water by mining companies. We also heard that the area was a focus for oil exploration and extraction by companies such as BP, Total, Ecopetrol, Talisman, and Equion. The account of paramilitary abuses and army activity in an area of multinational extractive industry had by then become a familiar one for the mission. But it was difficult to pin down clear evidence of links or finance from a corporation to the paramilitaries. We heard from human rights defenders, such as from an organisation called ASOVEC who were intimidated having experienced surveillance, having their photos taken and threats. We also met the local police and heard there were 30 defenders with protection measures but the early alert system was in its infancy. We heard that the army had helipads in the forest where the indigenous people live, but we did not meet any members of the IWA indigenous community because the road to their territory was blocked.

In **La Guajira**, we visited indigenous and Afro Colombian leaders living in the shadow of **Cerrejón coal mine**, as well as trade union representatives from the coal miners union, SINTRACARBON. Cerrejón is 2/3 controlled by subsidiaries of British linked companies, BHP Billiton and Anglo-American, and 1/3 controlled by Swiss corporation Xstrata. The British embassy officials had told us it represented the best example of corporate social responsibility in Colombia, one of the few unionised corporations. We observed examples of investment in schools, roads and health clinics. However we visited the Provincial indigenous *Wayuu* community whose leaders said the effect of the mine was that they had been forced to relocate from land they have roamed across for centuries into reservations. They explained that in the 30 years since the mine was developed they had gradually lost their traditional knowledge as trees and medicinal plants had died. They said some of their children and livestock were now born with disabilities or even still-born. One evening we met a very anxious indigenous community leader from the Tamquitos community who was in the midst of complex negotiations with the company with no legal representation. Although he had received no threat, he felt that his life was in danger after negotiations had broken down over access to the community's traditional burial site. We met representatives from the local miner's union, SINTRACARBON who complained of health and safety and environmental breaches. They are involved in a class action on behalf of members experiencing coal-related diseases and cancers. (The Alliance is now assisting them with an amicus curiae on the right to health and the rights to a healthy environment). We were shown a lump of carbon from the local river Rancheria and a bottle of black rainwater, product of air pollution. We had requested a meeting with the Cerrejón corporation, but we did not receive a response; we have now written to them with requests for information and proposals arising from our visit.



members of the Provincial community bathing and collecting drinking water from River Rancheria, next to the Cerrejón coal mine. Plans to divert 26km of the river for expanded exploration are currently suspended.

Case studies- uses of Ruggie remedies

- The lawyers' collective CAJAR helped the Tabaco community bring an OECD complaint which involved the National Contact Points in the UK, Australia and Switzerland about their forced eviction due to the Cerrejón mine. The corporation promptly commenced its own investigation and agreed to some of the community's demands. We were told by CAJAR that although the process appeared to be a success, in fact a decade after the eviction, some reparations were outstanding. Also it had drained their resources, taking a year of research.
- Consumer pressure in the UK forced the Body Shop to conduct a voluntary investigation into forced displacements on land in las Pavas, owned by Daabon Ltd., a Colombian organic palm oil company. Body Shop ended its contract with Daabon, and Daabon pulled out of las Pavas. But we heard that the displaced campesinos have not been able to return to their land.
- A successful *tutela* was recently brought in the Colombian Constitutional Court, ordering the suspension of exploration activities by the Muriel Mining Corporation at the Mandé Norte Project in Chocó, which multinational Rio Tinto has invested heavily in. The UK Bar Human Rights Committee had filed an amicus to support the argument that there had been no "free prior informed consent" (*fpic*). However a member of the judiciary involved in the case suggested that this was a temporary respite and it was likely that the mine would eventually proceed. Lawyers at the Colombian NGO, Comisión Intereclesial de Justicia y Paz which worked on the case as well as other challenges to corporate activities have been slandered by the state in the media, accused of guerrilla activity and murder. They have also been followed and had their offices in Bogota watched.



Delegation meets human rights defenders at the *Justicia y Paz* office in Bogota; the names on the chairs represent the dead or disappeared

Findings

***“Companies are beginning to care about their reputation.
We need to see more cases against them in the courts”.***

Colombian NGO, September 2012

1. We heard consistent accounts of multinationals moving into, or operating in areas where local indigenous, Afro-Colombian and campesino communities had experienced, and continued to experience, serious environmental and human rights violations, including displacement, disappearances and extra-judicial executions. Often there was also a military presence in those areas. We did not receive any written evidence linking the corporations to these abuses. However, it appeared reasonable to draw an inference that in some of these cases, there was at least an indirect link between the multinationals, the paramilitary abuses and the state. Colombian human rights defenders operate in a situation of fear and danger as a result.
2. It was common practice for corporations, including British corporations to establish a subsidiary or use a Colombian agent corporation, apparently to avoid legal liability and adverse publicity. This made it difficult to “pierce the corporate veil”, or establish who was really in control of the human rights abuses.
3. It appeared that the many of the worst abuses implicated corporations which were not either resident in the UK or controlled by UK interests. However, we regret to report that there are UK corporations who are engaged in activities in Colombia against the background of armed conflict and corruption. Inevitably they have some responsibility for the abuses we encountered. It is a matter of some concern that the UK government is promoting investment in Colombia, without sufficiently highlighting the inherent business and human rights risks.
4. The current arrangements for “free prior and informed consent” (*fpic*) or *consulta previa* in Colombia in relation to proposed development projects are ineffective. This is partly due to a combination of weaknesses in the law, for example *fpic* applies to indigenous but not to Afro-Colombian or campesino communities; it does not apply throughout the exploration and development process and it is not fully enshrined in law. But it is also due to an equality of arms- with communities lacking the expertise to challenge the process and corporations employing lawyers to ensure they meet the *fpic* requirement on paper. A further difficulty is lack of enforcement or supervision of the process by the state. There are currently proposals for legal reform to *fpic* which could erode the rights of indigenous people.
5. There was a shortage of expert evidence and lack of capacity or resources with which to conduct expert legal and scientific research eg Tierra Digna re mining licences; Cerrejón re health and environmental impact.
6. Similarly in-depth research was needed in relation to tax avoidance and corruption.
7. There was a lack of co-ordination on corporate accountability issues in Colombia, perhaps due to lack of resources, with the risk of duplication or of one NGO not aware that another NGO could assist them.

PART 2 Our Recommendations for how UK lawyers and NGOs can help

“It is very useful for the Constitutional Court to receive an amicus curiae from foreign lawyers on business and human rights, citing cases from other jurisdictions”.

member of the Colombian judiciary, August 2012

In Colombia

- Funding/resources for human rights lawyers/defenders such as CAJAR which are working to tackle corporate abuses;
- The above should be linked to an international alert system and accompaniment to help protect them from risk of attack
- Resources for monitoring of corporate activity and for improved co-ordination between NGOs working on these issues;
- The provision of training and awareness raising for corporate management, lawyers, state bodies and the judiciary re corporate liability for environmental damage and human rights violations, and re the Ruggie framework.

From the UK

Accompaniment- international visits to areas in Colombia where multinationals are active/lawyers at risk and attendance at court hearings;

- Research into the extent of British corporations’ activities in Colombia, including investment in Colombian or other corporations based in Colombia eg by pension funds;
- Research and litigation support for litigation in Colombia including amicus curiae;
- Consideration of potential civil and/or criminal litigation in the UK and EU;
- Advocacy and negotiations with UK corporations ;
- Assistance with use of non judicial complaints mechanisms eg drafting complaints to OECD or through World Bank remedies such as the Ombudsman (Colombia has recently become a member of the OECD);
- Improving UK legislation eg Companies Act; financial reporting
- Producing training materials and internet based materials
- Awareness raising amongst the British legal community: publicising the risks faced by Colombian lawyers /and the impact of corporate activity there; also raising awareness of company law and other remedies
- Lobbying re issues identified by the mission with representatives of the UK government and the EU. Raising questions in Parliament re British companies’ human rights obligations
- Co-ordination – via a UK-based existing or new NGO and/or advocacy group

Conclusion

We hope the mission was only a start. Every organisation and human rights defender we met in Colombia had a clear message to lawyers in the UK- asking for urgent action here, preferably litigation, to ensure fair business practices by multinationals operating in Colombia, including British multinationals. If you can offer resources, media skills, legal knowledge, Spanish translation, funding or other help, please get in touch via: alliance@peacebrigades.org.uk.

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Colombia

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UK

AB Colombia; Amnesty International; Bar Human Rights Committee; Colombia Caravana UK Lawyers Group; Colombia Solidarity Committee; The Corporate Responsibility (CORE) coalition; The Foreign & Commonwealth Office; The Law Society of England & Wales Human Rights Committee; Leigh Day & Co; London Mining Network; Maitland Chambers; Peters & Peters



Meeting leaders of the Provincial indigenous community in their community hall

Joining the Alliance for Lawyers at Risk

The Alliance draws on the expertise and resources of the British legal profession to link with lawyers at risk abroad, helping to protect them and promote their work. Members can give their support in various ways:

- Establishing a direct link with individual lawyers or legal organisations in need of protection
- Participating in fact-finding delegations to affected countries
- Voicing concerns in specific cases of danger
- Assisting in the preparation of submissions to governments, and amicus curiae briefs
- Advising on the review of codes and legislation to ensure their compliance with international legal standards
- Helping with the training of local lawyers, including producing training manuals or helping them to access local support
- Providing financial support for PBI's protection work
- Publicly endorsing the objectives of the Alliance

By joining the Alliance, whether as an individual lawyer or through your firm, chambers or other organisation, you will be expressing your support for these efforts and your willingness to play a part in protecting threatened lawyers. You will learn about the cases in which PBI is involved and how you may be able to help, whether in particular cases or more generally. Please contact susibascon@peacebrigades.org.uk for further details on how to join the Alliance for lawyers at risk.



The Alliance for Lawyers at Risk delegation meets indigenous and Afro-Colombian community leaders with CCAJAR to hear about displacement caused by the Cerrejón mine

