Extractivism & Indigenous Rights:
A Case Study of the Wayuu People and their Struggle for Water

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“I have seen that it is always the same people who are excluded. It is the marginalized, the poor, those without political voice. Such lack of access is not simply an unfortunate situation nor a coincidence, but is a direct result of policies and politics which exclude certain segments of the population.” (Catarina de Albuquerque’s Statement to the Permanent Forum on Indigenous Issues, May 2011)
ABSTRACT

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The subjugation of the indigenous right to sovereignty and the basic right to life is illustrated in the experiences of the Wayuu people and their battle with El Cerrejon coal mine. Although both the Colombian State and El Cerrejon appear to uphold the rights of the Wayuu by citing pro-indigenous legislation and enacting projects through corporate social responsibility, these initiatives have failed to protect the Wayuu, resulting in the continued oppression and marginalization of the indigenous. Despite appearing to protect and promote the rights of indigenous peoples, legislation is not implemented, development projects are not carried out to their fulfillment and promises are not kept, whereas foreign interests are made a priority. These superficial attempts to address the needs of the Wayuu along with historically weak state presence in the region have resulted in the uninterrupted exploitation of the Wayuu indigenous people since the colonial era. The difference today is that the State and corporation have created the illusion of an environment that supports indigenous peoples by drafting legislation promoting their rights and by carrying out incomplete development projects. Despite these initiatives, the Wayuu continue to die from dehydration, water related illness, and malnutrition.
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Introduction:

“Our major need is water. Water is life for us. We can go a few days without eating but thirst is different, thirst can kills us”. -Isabel Uriyana, from El Ahumado

The Indigenous Wayuu people of La Guajira, Colombia are in the midst of a water scarcity crisis that has made extreme thirst a part of everyday life. In the hot desert heat of La Guajira, a historically neglected region of Colombia, Isabel Uriyana of El Ahumado, a Wayuu community located near the capital city of Riohacha, explained that water is sacred in her Wayuu culture. As it rains, water brings life to her desert home allowing her people to draw water from wells, raise crops and care for their animals. For the past three years however, rain has not come to replenish the Wayuu’s traditional water-collecting reservoirs called jagueys. During these hard times, El Ahumado and four other surrounding communities have had to rely on water-trucks that bring water once a week. Isabel explains that this water runs out quickly as there is not enough for all five communities. As result, the people of El Ahumado drink the little water that remains in their jaguey. The yellow water that comes from the jaguey is turbid and known to cause illness in young children but, like Wayuu communities throughout the region, the people of El Ahumado are forced to drink it out of desperation. The dirty water is used to bathe in, wash clothes, given to the animals and consumed by people without any filtration or even boiling.

A 2015 government report found that 89% of Wayuu households do not treat the water they consume.¹ Lack of safe-water sources has led to dehydration, water related illness and malnutrition due to the inability of growing crops. Since 2010, more than 4,000 Wayuu children have died from these causes, contributing to one of Colombia’s most notable humanitarian

Meanwhile, in the southern part of the region, El Cerrejon coal mine, the largest open-pit mine in Latin America, uses 34 million liters of water a day in the mining process. This is a sharp contrast between the less than .7 liters of water that the average Wayuu person consumes in a day. The mine has had a profound impact on La Guajira’s natural water sources through its pollution and diversion of rivers and streams, which will leave lasting impacts on the Wayuu’s ancestral home long after the mine is gone. El Cerrejon’s activities have been supported by the State which issued legislation promoting the interests of the mine over that of the Wayuu in regard to controlling water sources and the forced displacement of communities.

Meanwhile, the Wayuu have not received the same level of State support. Although the Colombia State carried out development projects to address the crisis, the projects are often not carried out to their fulfillment, leaving communities with false hopes of progress. Presidents have promised change through various initiatives and the Colombian Constitutional Court has even ruled in favor of the Wayuu’s right to water but, despite these measures, no real change has occurred. El Cerrejon has also enacted “water-solution” projects that it proudly promotes on its website. The corporation has won multiple awards for its corporate social responsibility and its sustainable mining practices but it has not yet made a significant difference in the lived experiences of the Wayuu. With these ineffective interventions on the part of the State and El Cerrejon, the Wayuu continue to struggle for water as innocent children die from preventable causes.

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Sources and Methodology:

By using a historical and socio-political lens, this research paper aims to understand why the water scarcity crisis has continued for so long despite interventions by the State and El Cerrejon. It is a case study of the struggles of the Indigenous Wayuu people as they deal with El Cerrejon coal mine on their ancestral lands along with the role the mine has played in the water crisis and the State’s response to this involvement. What is the nature of the Colombian government’s relationship to the Wayuu people? What consequences has coal mining had on the Wayuu people? In particular, what has the impact been on water accessibility and quality in the region? What role has the Colombian government played in the mine’s activities? Has the government intervened on behalf of the Wayuu or the mine? The methodology of this project is based off of a qualitative analysis of primary sources including newspaper sources, government reports, studies completed by international institutions and in person interviews with Wayuu communities conducted during a weeklong trip to La Guajira in 2015. The case study also works off of secondary sources including the previous research of scholars studying the Wayuu case including Dr. Aviva Chomsky, Emma Banks, Dr. Harvey Kline, Shane Boeder and others.

The paper is divided into four main sections that describe and analyze the Wayuu’s historic and present struggles. The first section situates the case study in the broader international struggle of Indigenous peoples fighting for their rights, especially against resource extraction. It focuses on the impact of neoliberalism on Latin American countries and emphasizes the particular willingness of the Colombian State to adopt neoliberal economic policies, allowing foreign multinationals to extract resources in the country. This section looks at policies that support mining in Colombia and policies that promote Indigenous rights, revealing an
environment that aims to support both, something that the State has failed to do in an equitable manner.

The second section is a historic analysis of the Wayuu’s experience as Indigenous peoples living in a colonial State. It summarizes the historic marginalization of La Guajira and resulting State neglect that has allowed issues of poverty and corruption to flourish uninterrupted since the Colonial Era. This section frames the Wayuu experience today and the current water-crisis by showing that limited State intervention has been the norm for the region for centuries along with negative perceptions based off of a lack of understanding between the rest of Colombia and La Guajira. The section documents the experience of the Wayuu from the first encounter with the Spanish leading up to the creation of El Cerrejon in the 1970s and attempts to show a historic trend of marginalization and exploitation of this Indigenous group.

The third section examines the social and environmental impacts that El Cerrejon has had on the Wayuu people and their land, since its opening. It covers the damaging effect of the construction of the mine and its railways, on the nomadic lifestyles of the Wayuu and the forced displacement of communities to make room for the mine. Other impacts of El Cerrejon include the contamination and depletion of surface and groundwater. These are the most egregious violations considering the life-threatening water crisis facing the rest of the region. It pulls from health reports conducted by the Colombian government and international researchers, along with news articles that have documented El Cerrejon’s activities and impacts.

The fourth section looks at how the Colombian State addressed the water-scarcity crisis including, the building of El Cercado dam and the supposed benefits it would bring to La Guajira. Projects carried out by El Cerrejon are also covered, including its basin protection projects and its “water-solutions” for the Wayuu people. An analysis of these projects reveals
that both the State and the corporation fail to address the roots causes of the humanitarian crisis which has prevented any real change from occurring in the lived experiences of the Wayuu. This section also argues that the failure of the State to hold the mine accountable has allowed El Cerrejon to continue its tremendous water exploitation while the Wayuu people die of thirst, thus revealing that the State is complicit with the mine’s activities.

Although the State attempts to appear to be on the side of the people through its pro-indigenous legislation and court rulings that side with the Wayuu, none of these measures have successfully halted El Cerrejon’s extremely high-water usage in a region severely lacking in this precious resource. Therefore, without any meaningful intervention or serious attempt to halt the mine, the Wayuu continue to die of thirst while the mining corporation generates exuberant amounts of wealth at the expense of this Indigenous group.

Section I: Indigenous Peoples, the State & Multinational Corporations

The term “Indigenous” has increased in popularity in international governance over the last five decades. It has appeared in UN resolutions promoting the unalienable rights of groups that identify as such, and in charters that outline what States are obligated to do for their Indigenous peoples. The term is highly contentious because the authority to define who is and who is not Indigenous has traditionally been the role of the colonial State, its agencies and institutions. In many cases claiming Indigenous identity does not guarantee membership in the eyes of the State, if the person claiming this identity does not fit the mold of what the State has defined Indigenous to be.³

Typically, those who identify as Indigenous are descendants of groups that were subjugated by colonial powers and often continue to face this subjugation. They have faced the imposition of foreign social, economic and political forces that attempt to “convert or civilize” their traditional ways of life. As Sawyer & Gomez (2012) write, Indigenous peoples have suffered the trauma of inhumane treatment and oppression for centuries, often in the form of “genocide, famine, epidemics, forced labor, resettlement and varying degrees of cultural suppression, and political and economic inequality, marginalization and indifference”. Indigenous peoples today, continue to live with the legacy of this oppression, as it has evolved into modern forms of subjugation and marginalization. Indigenous communities face a variety of social problems that are directly connected to a long history of oppression, forced assimilation and violent extermination.

The Indigenous peoples of Colombia form at least 81 distinct pueblos and speak 64 languages. According to the International Work Group for Indigenous Affairs, the Indigenous population of Colombia is about 1,500,00 or 3.4% of the total population, making Colombia one of the Latin American countries with the lowest percentage of Indigenous peoples. These groups live on approximately 30 million hectares of reserve land that take up 28% of the country. Although an impressive number, most of this land is not suitable for significant agricultural production. Due to the incredible biodiversity found on their land and wealth of resources, Colombia’s Indigenous peoples are often vulnerable to violence form outside forces seeking to control these resources.

4 Sawyer & Gomez, 2012, 18.
For a long time, the Colombian State passed policies designed to forcibly assimilate and civilize Indigenous peoples. As an “oligarchic democracy” run by elites of European descendant, the early Colombian State displayed a tendency to view Amerindians as “subhuman”. Elite authors at the time portrayed Indigenous peoples as “less intelligent than the Europeans and mestizos”, reflecting the severe discrimination of the era.\(^7\) *Mestizaje* or the mixing of Indigenous peoples and Europeans, meant the “whitening” of the Indian population while “eliminating their backward culture and bad economic behaviors”.\(^8\) This discrimination even extended into Colombia’s national identity since Spanish intellectuals had a monopoly on the construction of nationality which “effectively excluded indigenous populations from the national identity”.\(^9\)

For decades, legislation sought to disempower Indigenous peoples and weaken their claim to their ancestral lands. More recently from, 1976 to 1981, paternalistic laws were passed giving the State significant power over Indigenous peoples including the ability to determine who is and is not a member of official groups. However, the treatment and perception of Indigenous peoples began to change in the early 1990s with the passage of the 1991 Colombian Constitution. Known as one of the most far-reaching constitutions in Latin America in terms of Indigenous rights, the 1991 Constitution grants the rights of a bilingual education, university scholarships, free health services and more to Indigenous peoples. Indigenous peoples were given a voice in the creation of this new Constitution with three representatives, Francisco Rojas Birry, Lorenzo Muelas and Alfonso Pena Chepe who participated in the negotiations. The Constitution also confirms the right to collective landownership, Prior Consultation and has provisions against the discrimination of Indigenous peoples. The 1991 Colombian Constitution

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\(^8\) Green, 2003.

provides a legal framework outlining the official rights designated to Indigenous peoples, a promising environment for improving the status of these marginalized groups.

Colombia’s Indigenous groups are also protected under international charters that the State has ratified. The major international binding convention concerning the rights of Indigenous peoples is an International Labor Organization Convention, known as ILO-Convention 169. Passed in 1989, ILO Convention 169 has only been ratified by 22 out of 192 UN member states, Colombia being one of the few that has ratified the convention. It protects the right of Indigenous peoples’ to their traditional lands, customs and traditions by ensuring that states pass legislation allowing these groups to maintain their social and economic systems. ILO Convention 169 also includes the incredibly significant provision of “free, prior and informed consent” that obligates States to obtain approval from Indigenous peoples before carrying out any extraction or development project on their land. This provision ensures the land ownership rights of Indigenous peoples and gives them the right to be consulted on decisions that will impact their overall welfare. Another important international resolution is the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the General Assembly in 2007. Colombia absented from voting for UNDRIP even though it is a non-legally binding resolution. UNDRIP outlines the collective and individual rights of Indigenous peoples, ranging from language, culture, identity, health, employment, education and more. It prohibits discrimination and like ILO Convention 169, emphasizes the right of Indigenous peoples to be consulted on all matters that concern them. Despite international charters and legislation
promoting the rights of Indigenous peoples, it has been found that these groups to continue to face discrimination, exploitation, dispossession and racism regardless.¹⁰

In 2010, upon a visit to Colombia, James Anaya, the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples told the UN General Assembly that, “Colombia’s Indigenous peoples find themselves in a serious, critical and profoundly worrying human rights situation”.¹¹ Anaya cited the State’s readiness to recognize the rights of Indigenous peoples but also added that laws, programs and policies are not enough to protect these vulnerable groups. He spoke of a gap between progressive legislation and the institutions charged with implementing this legislation. A major concern of his was the need to bring Colombia’s public policy in line with the ILO-Convention 169 protecting Indigenous peoples’ rights to lands and resources. Even the State has ratified the Convention, its Indigenous peoples still suffer at the hands of natural resource extraction and the agro-industry. Anaya touches on the ineffectiveness of legislation alone for protecting a people’s fundamental rights, the proper institutional mechanisms need to put in place for these rights to mean anything significant.

**The Colonial Context of Latin America’s Extractive Economies:**

Colombia’s historic “oligarchic democracy” run by elites whose power is rooted in colonial legacies of white dominance continues to formulate economic and political policies that oppress indigenous peoples to this day. The same wealth that attracted the conquistadors to

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¹⁰ Sawyer & Gomez, 2012, 18.
South America during the colonial era continues to attract capitalistic corporations ready to take advantage of wealth opportunities. In the words of Dr. Aviva Chomsky of Salem State University, an expert on extractive industries in Colombia, this is a process of “colonization led by corporations instead of conquistadors”. The system of wealth extraction leaves Latin American countries poorly developed because as natural resources are exported so is the nations’ wealth. This is especially concerning for Indigenous peoples; whose land often holds the natural resources that these corporations so desperately seek.

Many scholars write of “the resource curse” or the “paradox of plenty” that plagues developing nations. Despite rich natural resources found in the developing world, poverty is still prevalent, leading to the presumption that economies based on extracting natural resources and exporting them lead to under-development. Within this context of extraction and exportation, the mining industry has been able to flourish throughout Latin America. This is especially true in Colombia where 40% of the territory has been solicited over the years to foreign companies that develop the land and extract its resources. Often these corporations go into regions that the Colombian State has not even established a presence in, so the corporations are the first to establish a sense of sovereignty. Before foreign corporations entered into Colombian territory, structural changes first occurred to economic policy throughout Latin America. The 19th century saw the spread of neoliberal economics that opened the door to foreign multinational corporations ready to take advantage of the region’s natural resources.

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14 Chomsky, 2016.
Neoliberalism in Colombia:

Beginning in the 1980s and 1990s, Latin American governments began implementing neo-liberal economic policies that allowed for a greater role for the private sector within the economy and society. Neoliberal policies included a shift toward privatization, deregulation, free trade and austerity, all of which are a part of the list of reforms supported by the Washington Consensus.\(^{15}\) The Washington Consensus, designed by economists from the “global north”, is a set of policy prescriptions that favor growth of the private sector, economic stabilization, removal of trade barriers and the expansion of market forces. Through international financial organizations such as the World Bank and the International Monetary Fund, neoliberal policies from the Washington Consensus were spread throughout the developing world.

In the 1980s, as developing nations began facing debt crises, the IMF and World Bank “managed to pry open the economies of, and impose drastic bouts of neoliberal restructuring on, developing nations through debt management practices”\(^ {16}\). For many Latin American presidents and dictators, neoliberalism seemed like the solution to hyperinflation and massive debt. Structural adjustment brought with it increases of Foreign Direct Investment (FDI) and as a result the establishment of more multinational corporations in the region. The opening up of Latin American economies to the global market in the 1990s, allowed for an environment where:

“multinationals from the North gained unprecedented access to the economies and natural resources of developing countries, disposesssing billions of people of these resources in the process”\(^ {17}\).

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\(^{17}\) Gordon & Webber, 2003.
Gordon & Webber suggest that as multinationals gain access to new economies, they claim resources belonging to other groups, thus dispossessing people in their own territory.

Multinationals spread at very high rates, as FDI increased by over 200% in Latin America from the 1980s to the 1990s. While from 2002 to 2010, FDI increased by 172%, reaching levels higher than those of the 1990s.\textsuperscript{18} Much of this FDI was directed toward the mining industry. In the 1990s alone, mineral investment in Latin America quadrupled.

During this time, Colombia experienced some of the highest levels of foreign investment in the region. This is largely due to the philosophies of administrations that favored “modernization” and attracting foreign capital. Chomsky writes that this trend reveals the favoring of foreign interest over that of the Colombian people.\textsuperscript{19} A series of mining law passed in the late 1990s helps to illustrate this claim. The new mining code drafted at the end of the 1990s attempted to bring Colombia into line with the neoliberal economic policy that was being spread at the time. The resulting 2001 Mining Code implemented under the Pastrana Administration sought “to remove the State from its role in the exploitation of mineral resources” thus making these resources more easily exploited by transnational business.\textsuperscript{20} The code which was drafted in part by a law firm that represented more than half of the mining companies in Colombia, opened the national territory to mining, and “deliberately proposed restricting Indigenous rights”\textsuperscript{21}.


\textsuperscript{19} Chomsky, 2016.


It granted foreign corporations certain privileges that directly threatened and limited rights, that were granted to Indigenous peoples under the 1991 Constitution. Under this code, titles issued for mining on indigenous territories increased and the length of mining concessions extended from 25 to 90 years. Article 227 of the Mining Code, reduced royalties from 10-15% to only .4%. It also establish the provision that no new taxes could be enforced on a company even if environmental or other damages were caused. This legislation created an incredibly favorable environment for foreign extractive industries while at the same time undermining the newly acquired rights of Colombians.

In 2004, the National Indigenous Organization of Colombia (ONIC), issued a report to the government stating that the new mining legislation,

“gives a free reign to the indiscriminate exploitation of resources on the part of transnational companies, without establishing any protective measures for Indigenous peoples”. Although the 2001 Mining Code was challenged as unconstitutional by Indigenous groups including ONIC, the Constitutional Court ruled in favor of the law in 2002. The blatant lobbying of multinationals for favorable legislation makes the abolishment of the Colombian State’s control of its own natural resources all the more egregious. This new mining code and its effects on, not only Indigenous rights, but also State sovereignty itself, sheds new light on Chomsky’s claim that the Colombian State has favored corporate and foreign interests over that of its own people. Today, in the continual pursuit of modernization and development, the State continues to grant mining concessions and plans to expand this even further. In his election campaign,

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22 Cuellar, 2005, 59.
President Santos, the current president of Colombia claimed that the mining-energy sector is one of the five “locomotives of the economy” driving the nation toward development, showing that the same tendency toward extraction has persisted until today. It is within this backdrop of favorable mining legislation and the ensuing subordination of Indigenous rights that the experience of the Wayuu people must be analyzed.

Section II: A Historic Overview of La Guajira

“Traditionally La Guajira remained isolated, like a pirate society, deprived of opportunities for progress and development. Their isolation, abandonment, the colonial agenda, the discriminatory treatment by the state, kept La Guajira for a long time indifferent to the possibility of exploring its own social, economic, cultural and historical realities.” – Pepe Palacio Coronado, La Guajira, Realidad Magica (2013)

The department of La Guajira that is bordered by the Caribbean Sea on one side and Venezuela on the other, has for centuries been isolated from the rest of the country. As Coronado, a historian and journalist from La Guajira writes, the region’s isolation has been accompanied by State abandonment that has inhibited the department’s development since the Colonial Era. To the Wayuu people, the largest indigenous group in Colombia, this neglected region is home. Scholars have even referred to the Wayuu as the “forgotten people of the Colombian desert”, further emphasizing the disconnect between La Guajira and the rest of Colombia. Despite its rich natural resources including coal, salt, exotic trees and pearls, La

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25 Isa Ponce-Jimenez, Wayuu Women: Indigenous Responses to Neoliberal Adjustments and Constitutional Reforms in Colombia (Norther Arizona University, 2006), 44.
Guajira is one of Colombia’s most impoverished regions. This is largely due to the Colombian state’s weak presence in terms of delivering necessary resources and services.

Located in the northern most peninsula of Colombia, La Guajira is a semi-arid desert known for its harsh climate, especially in the northern municipality of Uribia, where precipitation can be as low as 14 inches a year.26 Because of its harsh environment and distance from Colombia’s major cities, many Colombian scholars write of an “aura of courage and mystery” that has shrouded the region since the arrival of the Spanish. 27 The fact that writers today, including Coronado, continue to use the same language of remoteness and impenetrability to describe the region, shows that La Guajira holds an element of mystery to this day. It is no surprise that Colombia’s most famous author, Gabriel Garcia Marquez used the literary tool of magical realism in some of his most famous works, including One Hundred Years of Solitude, to describe the country’s most enigmatic region.

La Guajira is divided into 3 zones that, like the rest of Colombia, encompass tremendous differences in biodiversity and climate. The zones include La Alta Guajira, La Media Guajira and La Baja Guajira. La Alta Guajira is the most arid of the regions with an average temperature of 86° F and high temperatures that range from 95° F to 113° F (CITE). Since 2012, the region has experienced a severe drought known as El Nino which has intensified the already harsh temperatures in La Alta Guajira. The draught and poor water management policies in the department have caused food shortages causing high death tolls especially among young children. Before the draught, the water and vegetation were historically scarce in this area,

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26 Esteban Ferrero Botero, "The experiencing of the Wayuu lucha in a context of uncertainty : Neoliberal multiculturalism, political subjectivities, and preocupación in La Guajira, Colombia". UC San Diego (2013) from https://escholarship.org/uc/item/80j5m96g

27 Pepe Palacio Coronado, La Guajira Realidad Magica. (Riohacha La Guajira, Centro Editores 2013), 10 -11.
making daily life a struggle for its inhabitants. Even consumable ground water is limited because most of it is highly saline, making it unsafe to drink without significant treatment. This is especially true in Uribia which is known as the “driest” municipality in La Alta Guajira. Uribia is also coincidentally known as the “indigenous capital of Colombia” because it’s the home of the Wayuu people, Colombia’s largest indigenous group.  

La Media Guajira is home to the municipalities of Manaure known for its salt reserves and Maicao historically known as an entry point of contraband to and from Venezuela. This area experiences more of a rainy season than La Alta Guajira so therefore has more vegetation. Riohacha, the capital of La Guajira, is also located in this zone. The city is famously known as the first producer of pearls in the Americas because of their abundance. During the colonial era, the pearl industry made Riohacha vulnerable to numerous pirate attacks which often left the city completely destroyed. La Guajira’s main water source the Rancheria River cuts through this zone as it leaves the Sierra Nevada de Santa Marta mountain range, then flows into the Caribbean Sea. The Rancheria River is a vital source of life in the Guajira Desert both for the Wayuu and non-indigenous peoples.

The Rancheria River begins in La Baja Guajira, where vegetation is more plentiful than the rest of the region. Here, the River is bordered by fertile lands where agriculture is possible. The presence of more vegetation is also due to a longer rainy season that lasts from late September to December. It is under the Rancheria River in La Baja Guajira where large coal reserves have been found, possibly up to 500 million tons.  

28 Coronado, 2013, 10.
29 Botero, 2016, 43.
extract coal, gas, salt, copper and gold. El Cerrejon is one of these many multinationals that benefit from La Baja Guajira’s natural resources. It forms a significant portion of the regional economy through the royalties it pays. La Baja Guajira is also home to the majority of the mestizo and white community who live in small towns and rural communities.

La Guajira is home to an array of different ethnic groups, including indigenous peoples, those of African-descent, mestizos and some who don’t identify with any specific ethnicity. The total population is approximately 623,000, of which 44.9% is made up of indigenous peoples, including the Arhuaco, Koguis, Wiwa, and Wayuu tribes. The Wayuu number about 144,00, making them the largest indigenous community in all of Colombia. The Wayuu live in 16 indigenous reserves distributed across 10 of the 15 municipalities of La Guajira. For most of history, the Guajira Peninsula has been considered indigenous territory because of the control the Wayuu have been able to exert over their lands. To this day, Wayuu culture and traditions are an integral part of the culture of the entire region, including for the non-indigenous. This is best illustrated by the unique dialect of Spanish spoken in La Guajira which combines elements of the Wayuu language.

**Colonial History**

Like the rest of Latin America, the region’s colonial past has had a profound impact on La Guajira today, largely shaping who has power and who has access to important resources.

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30 Weildler Guerra, Paola Quintero, Jorge Quintero & Ana María Maldonado, *Observatorio del Caribe Colombiano: Grupo Regional de investigación en economía y competitividad en el Caribe colombiano* (Gobierno Colombiano).
Although the colonial state has exerted control over the region, the Wayuu are unique because they are one of the few indigenous groups to have successfully “resisted” 500 years of contact. The Wayuu proudly claim to be one of the few tribes to have never be fully subjugated by the Spanish.\textsuperscript{33} Scholars attribute this to the Wayuu’s “indomitable belligerence” and ability to adapt to European lifestyles when necessary.\textsuperscript{34}

The Spanish first became interested in La Guajira in 1499 when the conquistador Alonso de Ojeda sailed around the peninsula without setting foot on land. It wasn’t until 1502 that Juan de La Cosa officially landed on the shores of La Guajira. The first few expeditions of conquistadors to invade the region were met with fierce resistance by indigenous peoples which first contributed to shaping La Guajira’s aura of impenetrability and fearsomeness. Once the Spanish did set up encampments along the Caribbean Sea, they were routinely attacked by the Wayuu through guerilla-style warfare. Due to the fierceness of the Wayuu and La Guajira’s harsh desert environment, the Spanish never became fully invested in the region. Some scholars even suggest that the region was not considered a center of “first order” by the Spanish because of its “hostile terrain and lack of economic interests”.\textsuperscript{35} For this reason, La Guajira is one of the few region’s in Colombia to have experienced a period of isolation during Spanish colonization. This allowed the Wayuu to maintain their distinct lifestyle and a large degree of autonomy.

At the same time, it was impossible to fully evade European influence in all aspects of life. In order to coexist with the foreign ways of the Spanish, the Wayuu adopted certain aspects of Spanish lifestyle. They were especially good at adapting practices that made living in the

\textsuperscript{33} Deborah Pacini Hernandez, “Socio-Cultural and Environmental Studies Impact of the Cerrejon on the Wayuu”, \textit{The People Behind Colombia Coal: Mining, Multinationals and Human Rights} (Colombia, Casa Editorial Pisando Callos, 2007), 38.
\textsuperscript{34} Hernandez, 2007, 37.
\textsuperscript{35} Botero, 2014, 24.
harsh desert easier. One of these practices was the raising of animals such as cows, goats, sheep and horses, which the Wayuu continue to this day. The Wayuu also traded their pearls and salt for animals and firearms from the British and Dutch who had a strong presence in the Caribbean.

Other than the adoption of certain economic practices, the Spanish and the Wayuu were more or less in a permanent state of war. The Spanish made numerous attempts to enslave the Wayuu for slave labor which was always met with severe retaliation, giving the Wayuu a reputation of being “savage and bloodthirsty”. To meet their labor needs, the Spanish brought over slaves from Africa which contributed to the ethnic and racial mixing that has become a central characteristic of La Guajira today. From this web of distinct racial and ethnic identities, the mestizos or those of European and indigenous descent, took on important leadership roles as intermediaries between the Spanish and indigenous peoples. Some scholars argue that the role of the mestizos allowed the Wayuu to maintain “less oppressive relationships” with the Europeans while maintaining Wayuu autonomy.36

**State Absence and the Spread of Illegal Activity**

Another defining trait of the region is a history of contraband and illegal activities related to a lack of state presence enforcing the rule of law. This “pirate society” developed due to the absence of legal means of earning a living, weak institutional support enabling market access and poor law enforcement.37 In this vacuum of opportunities and state support, the inhabitants of the La Guajira have expressed a tendency toward contraband and the marijuana trade. Smuggling commodities in the Caribbean has been a longtime source of wealth and power. Beginning in the

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36 Botero, 2014, 46.
37 Coronado, 2013, 55.
18th century, the Wayuu were able to participate in this trade by assuming roles in protecting, unloading and transporting contraband throughout the region.\textsuperscript{38} Smuggling cheap gasoline from neighboring Venezuela has been a profitable business to this day.

In the 1970s, a marijuana boom occurred in La Baja Guajira, where the climate allowed for marijuana to be grown in large amounts. The Wayuu took on menial tasks in the marijuana trade by growing the plant, protecting it, loading it and transporting it. All of which brought wealth to Wayuu families that could not be matched by other legal forms of production. The media made a point of covering the marijuana trade in La Guajira which made the term \textit{Guajiro} synonymous with the illegal trade.\textsuperscript{39} Jimenez (2014) writes that because of the media’s coverage of marijuana activity in the region “negative feelings still prevail against the people of La Guajira”, furthering distancing La Guajira and its inhabitants from the rest of the country.\textsuperscript{40}

Beginning in the 1950s, the region also fell into the trend of \textit{paramilitarismo}, a nation-wide phenomenon of right-wing paramilitary armies working on behalf of wealthy landlords. Paramilitaries have been a problem throughout Colombia, so this is not a unique phenomenon to La Guajira. However, isolation and lack of media coverage of paramilitary activities in La Guajira made it so that these violent groups could got away with atrocities virtually unchecked. These paramilitary groups often worked on behalf of the State itself, which is particularly troubling, since the region had historically had such weak ties to the State in the first place. The presence of paramilitaries as one of the few connections to the State reveal the attitude of the

\textsuperscript{38} Ponce-Jimenez, 2006, 55.
\textsuperscript{39} Ponce-Jimenez, 2006, 56.
\textsuperscript{40} Ponce-Jimenez, 2006, 57.
national government toward La Guajira. The region was only of interest once the State could profit.

In the late 1990s, the national level paramilitary group known as the *Autodefensas Unidas de Colombia* divided La Guajira among its members, forming a part of the Northern Block. In order to protect the interests of the wealthy, the paramilitaries formed alliances with wealthy families who had profited off of years of smuggling and the marijuana trade. However, Jaramillo (2011) writes that the paramilitaries soon took on an “independent structure” and began killing entire families while securing strategic areas for smuggling.41 The Colombian army assisted paramilitaries on the ground, which contributed to killings, forced displacement and disappearances, all for the purpose of controlling the trade of contraband, which had proven to be extremely lucrative. Jaramillo lists paramilitaries along with neo-liberalism and multiculturalism as the key factors that led to the fall of Wayuu families that had gained some wealth in the smuggling and marijuana trade.42

It is within these geographic and social conditions that the Wayuu have expressed their resilience in the face of an unforgiving natural environment, foreign invaders, state abandonment, and illegal activity.

**The Wayuu Way of Life**

The Wayuu, as previously mentioned, are the largest indigenous group in Colombia, remembered historically as fierce resisters of colonization and known today as an impoverished and neglected people. How did the Wayuu’s wellbeing and way of life shift so drastically? The

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42 Jaramillo, 2011, 340.
Colombian Constitutional Court points to local corruption and the El Nino draught as the main causes. While some scholars note that the Wayuu have always struggled to survive because of the harsh desert environment they live in, only now has the world been concerned with their state of being. In an interview with El Tiempo, a major Colombian newspaper, a Wayuu leader named Matilde Lopez shared:

“Here, there has always been drought, there has been hunger and children have died, but nobody had dared speak about it. If there is concern about the statistics of recent months, what has occurred in the past was as catastrophic” (El Tiempo, 2014)

Solely blaming climate conditions for this dire situation paints an incomplete picture. If the Wayuu have always suffered in their desert home because of lack of water and difficulty growing crops, their struggles were never met with State intervention or support. Instead, the Wayuu experience has been exacerbated by colonial and State forces that have worsened their chances of survival rather than improving them. Local corruption and draught have complicated the situation but State action and inaction ranging from restricting the Wayuu nomadic lifestyle, diverting and depleting existing water sources and failing to provide public services, has further damned a people already facing difficult circumstances.

The Wayuu live in scattered Rancherias which are clusters of 5 to 10 households all belonging to the same matrilineal clan, within walking distance from each other. The maternal uncle is the leader of each clan, making decisions for the family. Each Rancheria is organized around a family cemetery and a corral for herd animals; they are also usually strategically located near some form of a water source. A traditional Wayuu house is made from sticks and

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clay, sometimes open on one side where hammocks are hung to use during the day when the
desert heat is too strong to work [Figure 1]. The Wayuu are governed primarily by small
domestic units living within the Rancherias. There is no political organization between existing
familial clans, rather relationships between different clans are governed by a set of cultural
norms and laws dating back hundreds of years. The keepers of traditional laws are known as the
puchi or “the speakers” that speak on behalf of their clan in a form of traditional dispute
settlement. These Wayuu leaders are often respected by the surrounding Rancherias.45 The social
organization of the Wayuu is unique because they do not operate as a traditionally “united tribe”;
instead the Wayuu operate as individual clans that are occasionally at odds with each other.
Therefore, the term “tribe” is not accurate for describing the organizational structure of the
Wayuu. What does unite the Wayuu are a shared language known as Wayuunaiki and traditions
ranging from spiritual beliefs and myths to economic practices.

In the desert climate of La Guajira it is difficult to successfully grow crops especially
with the absence of sufficient water. In the past when the rainy season allowed, the Wayuu grew
corn, beans, yucca, pumpkin, cucumbers, melons and watermelon.46 However, the recent draught
has prevented these forms of farming today. The Wayuu have traditionally relied heavily on
animal herding as an important source of food and income. The most common herd animal are
goats which are central to traditional Wayuu and Guajiro dishes. As a semi-nomadic people, the
Wayuu traditionally have cared for their goats by moving their entire Rancherias in search of
pasturing grasses and water. In the past 40 years their semi-nomadic lifestyles have been
impacted by the modern age and by multinationals buying up surrounding lands. The water

shortage and the inability of providing pasturing grass for the goats, has made raising and shepherding goats much harder for the Wayuu. In reports released about the draught, the Wayuu often cite high death tolls of their animals as a tragic consequence.\(^{47}\)

Another important economic practice is the sewing of traditional Wayuu bags known as *mochilas* [Figure 2]. Women of all ages sew these brightly colored handbags by hand. They form a central part of the Wayuu economy as the entire community relies on the profits made from the bags. Once crafted, Wayuu women will travel to nearby towns and cities such as Riohacha or Maicao to sell them on the streets. In Riohacha, Wayuu women from all over *La Alta Guajira* can be found selling handbags to the small but growing pool of tourists visiting Colombia’s Caribbean coast. *Mochilas* are well known in Colombia and can be easily identified in any major Colombian city by their bright colors and elaborate tribal patterns. *Mochilas* are even known internationally because of non-Wayuu entrepreneurs setting up online businesses selling the bags abroad.

Figure 1: Wayuu Home
Taken by Kimberly Maida

Figure 2: Mochilas
Taken by Kimberly Maida

Figure 3: Women Collecting Water from a Jaguey
Taken by Kimberly Maida
Traditional *Rancherias* are found scattered in the desert of *La Alta Guajira* where water is extremely scarce. Water either comes from artisanal wells installed by NGOs or some by the State (which are rare) or by water trucks that deliver water once a day. Most commonly water is drawn from man-made rain collecting holes called *jagueys* [Figure 3]. Some families have to walk for miles to reach a *jaguey* which are simply hand-dug depressions often surrounded by cracked and scorched desert earth. Water from *jagueys* is depleting because the rainy season that used to refill these traditional reservoirs are becoming shorter to the point of non-existence. In an article for the *Bogota Post*, Javier Rojas a leader of the indigenous organization *Wayúu Shipia*, stated that in the past you had to dig just 5 meters down to find water but now in some areas you have to dig up to 40 meters down just to find poor-water quality water, reflecting the depletion of ground water throughout La Guajira. 48

The water collected from *jagueys* is very cloudy and often salty since fresh water can only be found at much lower depths that are very difficult to reach without proper machinery. The water is usually consumed without any filtration or without being boiled which has caused severe water related illness, especially in young children. This same water is rationed to use for all household activities including bathing and washing clothes. It is also shared with herd animals that often drink directly from the *jagueys* just as the Wayuu do. Some communities are fortunate enough to have water trucks deliver water once a day, these Rancherias are often located off main roads leading to the capital city of Riohacha. It has been documented that these water trucks refuse to travel to *Rancherias* that are harder to reach because the “roads are too risky”. 49

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48 The Bogota Post, 2016.
49 The Bogota Post, 2016.
A 2016 *El Tiempo* article revealed that 90% of people in La Guajira drink untreated water which causes gastrointestinal illnesses, parasites and diarrhea.\(^{50}\) Severe diarrhea has even led to death among children because of the dehydration it causes.\(^{51}\) According to the Inter-American Commission on Human Rights (IAHCR), 4,770 Wayuu children have passed away in the past 8 years.\(^{52}\) Colombian newspapers support these numbers, while local Wayuu leaders urge that the number underestimates the true amount of deaths because of cases that go unreported.\(^{53}\) These deaths are caused by water-related illness, dehydration and malnutrition which is due to a lack of food tied to limited water for growing crops.\(^{54}\) There are few hospitals in La Guajira so modern medicine is difficult for the Wayuu to access. In 2017, Human Rights Watch released a study showing that of 6,500 Wayuu children under five, 70% did not visit the doctor.\(^{55}\)

Water scarcity and its tragic consequences are a sad reality that has plagued La Guajira for many years. It’s a national crisis that has been called out by international institutions such as the World Bank and the United Nations, however the Colombian state has yet to make any significant steps toward addressing the tragedy. After two trips documenting the crisis in 2016 and 2017, Human Rights Watch released a report describing the root of the crisis as,

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54 Dupre-Harbord, 2017.

“the Colombian government’s serious failures of governance including extremely poor access to basic services, limited government efforts to root out local corruption and an insufficient response to the crisis” (Human Rights Watch, 2017).\textsuperscript{56}

For Human Rights Watch, the Colombian State plays a central role in perpetuating the crisis in La Guajira by failing to pass policies, plans or programs to address the needs of the Wayuu.\textsuperscript{57}

Although the State been called out numerous times by international institutions and NGOs, inaction reflects the State’s historic relationship to the region. The national government has exhibited a policy of ignoring and neglecting La Guajira long before these calls to action. For this reason, feelings of inferiority and discrimination are often used to describe the subordinate situation of La Guajira, Jimenez writes that this has caused the region to feel disconnected to the rest of the country, she writes:

“Today, many people believe that isolation, abandonment, and a feeling of discrimination against this region contributed to the existence of a territory that did not feel integrated into the rest of the Colombian nation” Jimenez, (Wayuu Women) pg. 50

Although the inhabitants of La Guajira feel distanced and marginalized from the State and the rest of the country, one distinct aspect of the region has drawn State interest and intervention to La Guajira since the late 1800s. This object of desire that has overshadowed the needs of the Wayuu people is the high-quality coal laying under the Rancheria River and El Cerrejon coal mine, which the State has proven to side with time and time again.

**Coal in La Guajira and the Beginning of Exploitation by El Cerrejon**

The Cerrejon coal deposit was first discovered in *La Baja Guajira* in 1872 but it took more than 40 years before anything was done with it. Kline (1982), who extensively studied El

\textsuperscript{56} Vivanco, 2017.

\textsuperscript{57} Vivanco, 2017.
Cerrejon contract, writes that the delay in exploration was due to the coal’s location in a “poorly defended and integrated” region known for its “savage Indians, contraband and marijuana cultivation”.\textsuperscript{58} Despite its negative reputation, preliminary studies showed that La Guajira was likely to become the home of “one of the most important coal deposits in the world”.\textsuperscript{59} Kline’s prediction was eerily accurate because El Cerrejon went on to become the largest open-pit coal mine in Latin America and 9\textsuperscript{th} largest in the world.

Today, El Cerrejon is owned and operated by a consortium comprised of Anglo-American, BHP Billiton and Xstrata, three British multinationals with equal shares in ownership. The mine is located in the Cesar-Ranchería Basin from which the Rancheria River flows (see Figure 4). The mine itself is composed of seven open-pits in an area that is 30 miles long and 5 miles wide.\textsuperscript{60} Every day, about 85,000 tons of high-quality coal are extracted and about 30 million tons are extracted a year, creating enormous amounts of wealth for the owners of the company.\textsuperscript{61} El Cerrejon’s success rests on the oppression of the people of La Guajira who have been abandoned by a State that is more interested in reaping the benefits of the mine’s success rather than protecting its own people. The history behind the company’s arrival to La Guajira is complicated but it reveals important truths about the national government’s priorities and interests.

\textsuperscript{58} Harvey Kline, “Exxon and Colombian Coal: An Analysis of the Northern Cerrejon Debates”, University of Massachusetts Amherst, (1982), 2.
\textsuperscript{59} Kline, 1982, 14.
\textsuperscript{60} Shane Boeder, “At Any Cost: Big Coal Crushes Fragile Communities in Colombia”, Journal for the Study of Peace and Conflict, (2012), 52.
\textsuperscript{61} Boeder, 2012, 52.
In 1972, Colombia held an international bidding for the mining rights of the Cerrejon zone. The contract was awarded to Intercor, a subsidiary of Exxon because, of the six proposals, Exxon offered the highest royalties at 15%. The contract was signed between the Colombian Coal Company (Carbocol), created one month before the contract was signed, and Intercor. The Intercor-Carbocol contract pertained to the Northern and Central Cerrejon zones, which at the time contained about 2 billion metric tonnes of high-quality coal. The contract was divided into three phases: exploration (1977-1980), installation (1981-1986) and production (1986-2009). During the exploration period, Intercor determined the “commercial feasibility” of mining based on the quantity and quality of the coal. This phase of the contract was accomplished at the complete risk of Intercor which was beneficial to the State who lacked the financial and technical resources to do the exploration themselves. During the installation period, Intercor built infrastructure including a railroad from the mine to the port located at Bahia Portete, 150 kilometers from the mine, along with the port facilities. Both Intercor and Carbocol shared investment costs during this phase. Initial production of the mine was meant to last 23 years with Carbocol taking over responsibility of the mine in 2008.

In his studies about the history of El Cerrejon contract, Kline notes that there was little support for a solely “Colombian contract” following the nationalist tendencies that were spreading in Latin America at the time. A nationalist route was not seen as feasible because Colombia lacked the “capital, technology and managerial know-how” to carry out the project.

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62 Kline, 1982, 7.
itself. Kline also notes that few newspaper outlets at the time wrote negatively about the contract except for papers with Communist ties including Voz Proletaria and La Republica, that called for a “national solution” to coal mining. Within the Congress the largest criticisms of the contract had to do with expected financial losses and “special rights” granted to the multinational. One stipulation of the contract granted exemptions from tariffs on machinery imported for mining which meant large financial losses for Colombia. This exemption was part of general Colombian mining laws, Kline points out however that Exxon lobbied for the passing of this law in the executive branch of the Colombian government. The company was also exempt from paying the coal tax which meant the loss of about $4.276 billion dollars.

Another set of criticisms had to do with the amount of royalties that would be paid. Intercor had won the contract with its offer of 15% royalties but this percentage only applied to its half of the enterprise, so in reality Intercor was only paying 7.5% royalties, a point that some congressmen only realized after the fact. Criticisms also centered on the amount of coal that would be left after the contract period for future generations of Colombians. The contract called for a minimum production of 15 million tonnes a year, but Exxon was advocating for a minimum of 25 million tonnes a year. Many believed that most of the coal would be gone after the 23 year period of extraction or at the very least all of the “best” coal would be gone. In a show of just how disadvantageous this contract was perceived, an entire team of consultants for Carbocol who were hired to represent national interests, resigned as a group because they believed the government was not considering the true value of Cerrejon coal. Other opponents believed that

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65 Kline, 1982, 17.
66 Kline, 1982, 23.
67 Kline, 1982, 18.
the contract favored only the power-prestige class and that Carbocol simply served to put a “Colombian face” on Intercor thus facilitating situations where Colombian nationality was needed for obtaining permits and leases.\textsuperscript{69} Interestingly, during the initial contract debates, one of the selling points of the project was the promised integration of La Guajira into the rest of the country, a first in the nation’s history. With this integration came talks about schools and hospitals, sadly very little came from these idealistic talks.

Under Colombian law, it is mandatory to complete an environmental and social impact study before any mining activity occurs. El Cerrejon’s Environmental Impact Study (EIS) was completed in 1983 after the road from the mine to the port had already been built. The EIS is a giant four volume assessment of the environmental, social and archaeological impacts of the proposed project. Despite how seemingly thorough the study looks to be, the Wayuu aren’t referred to by name in the entirety of the document.\textsuperscript{70} Hernandez writes that the study gave the impression of:

“a wasteland inhabited by a few unorganized and insignificant indigenous groups, in which the construction of the road, railroad, port and workers’ camps can proceed without a problem” Hernandez, pg. 40

The study lacked any real understanding of the Wayuu people who at 144,000 are hardly “insignificant”. As the original inhabitants of La Guajira, the study fails to give the Wayuu the fair assessment they deserved in the face of a giant mining project. In addition, Integral, Ltda., the company that carried out the study, admitted that it completely excluded an analysis of the impacts on the Upper Guajira, the region where the road and port were built and also the area

\textsuperscript{69} Ponce-Jimenez, 2006, 137.
\textsuperscript{70} Hernandez, 2007, 39.
with the largest Wayuu population.\textsuperscript{71} As a final blow to the Wayuu prior to the signing of the contract, the government declared Wayuu land as \textit{balidos} or land not in productive use, despite being the ancestral homeland of the Wayuu since before the arrival of the Spanish. Since the Wayuu lacked legal title to the land, this decision was allowed despite its negative effects on the nomadic lifestyle of the Wayuu, which required their constant migration throughout the region. El Cerrejon was deemed a “public utility” and so 29,704 hectares of indigenous land were granted to Carbocol and Intercor for mining, displacing 110 indigenous families with road construction alone.\textsuperscript{72} This occurred despite the existence of Law 31 of 1967 that protected the ancestral claim to land in some parts of lower La Guajira. Production of the mine began in 1985.

After entering the production phase, in 1999, the production contract was extended from 2008 to 2034. Before the end of the contract multiple transfers occurred ending in the arrangement of El Cerrejon today. First, in 2000, in line with neo-liberal economic policy calling for privatization, the Colombian government sold Carbocol and their 50\% share of El Cerrejon coal mine, for $384 million to BHP Billiton, Anglo-American and Glencore (whose share was then sold to Xstrata in 2006).\textsuperscript{73} In 2002, this new consortium then bought the remaining 50\% share belonging to Intercor, making them the sole owner of the mine to this day.

At the time of the original contract signing, many feared a situation where Colombia would be reduced to a mere recipient of royalties on their own natural resources. Unfortunately, this has become the reality of today. The MNC reaps all the profits from Colombian coal while paying a comparatively small amount in royalties at the expense of an incredibly high human cost. On one hand El Cerrejon has paided millions of dollars to the Colombian government in

\textsuperscript{71}Curvelo, 2007, 47.
\textsuperscript{72}Ponce-Jimenez, 2006, 129.
\textsuperscript{73}Ponce-Jimenez, 2006, 131.
royalties, but, on the other hand, they have been the cause of forced displacement of families, severe environmental degradation and water depletion. The people most impacted by the mine are the least likely to see any of the royalty money because the money disappears into the hands of corrupt officials. The existence of El Cerrejon, the atrocities it has gotten away with and state compliance are all a part of the continued oppression of the Wayuu and the people of La Guajira dating back centuries.

Section III: El Cerrejon’s Impact on the Wayuu People and the Environment

“It’s a company that does responsible mining for the benefit of La Guajira, more importantly for its people...Its story reflects its commitment to the environment and community.” - From, Somos El Cerrejon (2017)

The above quote is taken from a promotional video released by El Cerrejon with the caption, #MineriaBienHecha which translates to “Mining Well Done”. The video, which features the smiling faces of Wayuu children and a positive outlook on El Cerrejon’s presence in La Guajira, creates the impression that the company is committed to La Guajira and its people, that they are a priority in its business model. The MNC also has a long list of development programs found on its website, including a social strategy, integrated water management programs, biodiversity preservation and more. If it weren’t for the long list of grievances made by Wayuu leaders and both local and international NGOs, the story that El Cerrejon has carefully articulated may actually be believable. Although El Cerrejon may be considered a sustainable and responsible mine because it complies with certain international regulations and has won awards for responsible mining, the reality for the Wayuu paints a completely different picture. From the forced displacement of communities in the early phases of the mine, to collaboration
with police, to threatening existing water sources, the Wayuu and the world at large through international NGOs and journalists have a vastly different understanding of El Cerrejon.

**Forced Displacement of Communities**

On September 28th 2017, the “infamously brutal” anti-riot police known as ESMAD destroyed the farm of Eneida Diaz de Barbosa, as reported by the London Mining Network.\(^{74}\) Eneida had been renting the land from El Cerrejon and was in the process of negotiating a turnover of the property back to the mine so the MNC could expand operations. However, instead of peacefully negotiating terms and giving Eneida the three months she had been promised to find a new plot of land, the riot police, working on behalf of the mine, seized her cows, horses and goats and destroyed her farm. At the time, Eneida was allowing a Wayuu family to live on her property because they were homeless and living in extreme poverty, their home was also destroyed. Since El Cerrejon is the legal owner of the land, it has offered no compensation for the incident and the Colombian government has remained complacent as it supports the rights of the corporation over those who live on the land. Eneida’s struggle is one that has been repeated since the mine began operations in 1983. The mine’s continuous expansion of about 1,482 acres a year, has caused the forced displacement of countless Wayuu and Afro-Colombian communities.

Even before the mine began operating, communities were being forcibly displaced as roads and settlements for Cerrejon workers were built. The 167-mile road that connects El Cerrejon to its accompanying port runs through the ancestral lands of the Wayuu, including

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burial grounds. In the process of building the road, indigenous communities found themselves forced to dig up their ancestor’s remains to accommodate for the road. The terrain was also altered as fences and homes were erected in areas that had been untouched by settlements. Although the road has improved transportation and reduced travel costs for the region as a whole, it has altered the traditional nomadic lifestyle of the Wayuu. As animal herders, the Wayuu are accustomed to moving their herds in search of water and pasture land, especially in the dry season. The railroad has effectively cut off mobility between one side of the territory to the other. Jimenez writes that officials from the mine had promised to build access roads allowing for safe passage across the railroad but in most cases these roads were not completed.

One of the most egregious and well documented accounts of forced displacement was experienced by Tabaco, a community of about 700 Afro-Colombians and Wayuu located near El Cerrejon’s mine. In 1997, El Cerrejon first approached Tabaco seeking to appropriate their land to expand the open-pit mine in the Northern Cerrejon Zone. As with other documented cases, El Cerrejon officials approached communities by offering promises of “development” and “progress”.

Remedios Fajardo Gomez, a member of the Yanama Indigenous Organization located in La Guajira, describes that these development promises meant:

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75 Curvelo, 2007, 45
76 Ponce-Jimenez, 29006, 151
77 Boeder, 2013, 43
“the solution to the problems of water supply, education, health and sustainable development. The plan offered us the possibility of reaping some of the advantages of an area as rich in minerals as ours”

By offering communities participation in the benefits of coal mining, Gomez notes that some communities ceded their ancestral lands as a “loan” to the corporation. Many residents of Tabaco ceded their land in response to this offer. However, with time, the relationship between the people and the mine deteriorated as “the implications of the mining company’s proposals and interests” were revealed. Residents who refused the offer soon came to see their water polluted and their pasture lands destroyed. Gomez writes that:

“The Guajira people have been tricked into believing a false promise of development. The company has no friends in the Guajira, only interests.”

Gomez cites the destruction of the communities of Manantial, Caracoli, Espinal, Sarahita and Tabaco as proof of her claims. Although these communities were approached with promises of development initially, they were eventually faced with expulsion from their ancestral lands, carried out by the mine and, occasionally state sanctioned police forces.

For the 100 residents of Tabaco who resisted false promises of development, their eventual destruction was set in motion by Resolution 80244, passed by the Ministry of Mines and Energy that decrees “the expropriation of a plot of land”. This “plot of land” refers to the town of Tabaco which isn’t even referred to by name in the resolution, a move that Armando

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79 Gomez, 2007, 19
80 Gomez, 2007, 17
81 Armando Perez Araujo, “Human Rights and Health Reports: A Legal View of the Case of Tabaco”, The People Behind Colombian Coal: Mining, Multinationals and Human Rights (Colombia, Case Editorial Pisando Callos, 2007), 95
Perez Araujo, the lawyer representing Tabaco, says was an attempt at undermining the rights of the community. Araujo notes that the document “hid, avoided and disguised” the collective rights and interests of those living in the community. The required protocol for passing a resolution such as this one, is to carry out an inspection of the “good or goods whose expropriation is being solicited”. This process never occurred so the “cemetery, church, school, Telecom office, roads, plazas and paths” existing in Tabaco were all dismissed along with the basic human rights of the town’s residents. 82 From this moment on, the Ministry of Mines treated Tabaco as “a mining reserve”, as a “totally uninhabited, empty space”. 83 At the same time, health, education and Telecom services were cut off from Tabaco. As an entity of the national government, this move by the Ministry of Mines and Energy reveals the stance of the government by overriding the basic rights of its people.

Boeder writes that in response to Resolution 80244, the people of Tabaco appealed the decision by citing the 1991 Colombian Constitution that recognizes the rights of indigenous peoples to “free prior and informed consent”. This right mandates that indigenous peoples must be consulted before decisions are made regarding changes to their territory. 84 Despite their right to consultation, on August 9, 2001, a judge ordered that the people of Tabaco vacate their homes without prior warning. Hours later, 500 soldiers and 200 policemen violently removed residents from their homes and then proceeded to bulldoze them. 85 Today, those 100 former residents of Tabaco are forced to live in the nearby village of Albania because the mine completely appropriated their land with state backing.

82 Araujo, 2007, 97
83 Boeder, 2013, 13
84 Boeder, 2013, 14
85 Boeder, 2013, 17
About a year after the destruction of Tabaco, Araujo, the lawyer representing Tabaco, attempted to fight for the opportunity for these displaced residents to be relocated as a community. In 2002, he won a significant legal battle in the Supreme Court, declaring that “the village, demolished last year by the mining company Intercor, must be reconstructed on a new site, as the villagers have been demanding”. On paper, the judge awarded former residents of Tabaco the right to be relocated as a community to the nearby town of Hatonuevo along with some financial reparations for their loses. The Constitutional Court also declared that mining projects cannot be carried out on indigenous land without prior consultation, echoing existing Colombian law. Despite this promising decree in favor of Tabaco, residents have yet to be relocated or receive compensation for their tremendous losses. In response to this failure of law and justice, in 2007 Araujo wrote:

“Nobody can understand how, five years after the Colombian Court weighed the dignity of the Colombian justice system against the arrogant power of the mining companies, the balance continues to come out in favor of the companies. The Colombian legal system has not worked. As far as fulfilling the court’s sentence is concerned Colombian law lost out to the mine’s power”

Although the Colombian court sided with the people of Tabaco on paper, no concrete results have come from the favorable ruling. Lack of enforcement on the part of the government reveals another trend of state abandonment by being complacent in the atrocities committed by the mine, even when the law so clearly sides with the people. This failure also sets the precedent that the Wayuu people and others impacted by the mine, cannot rely on the state to hold the mine accountable. Another critical moment occurred when Araujo was temporarily imprisoned

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86 Ponce-Jimenez, 2006, 147
87 Araujo, 2007, 96
without any clear charges while representing Tabaco. At the same time, mine officials have been granted positions of power such as Hernan Martinez, the president of Intercor who fought against the relocation of Tabaco, who was made the Minister of Mines and Energy in 2006.\textsuperscript{88} The story of Tabaco is a clear case revealing who has power when confronting the mine. Unfortunately, overtime, more cases such as this one have developed.

The communities of Media Luna, Caracoli and Espinal have had similar fates as Tabaco, marked by false promises, forced eviction and state abandonment. Media Luna, for example, was located at the site of the port that is currently being used to export Cerrejon coal. The town of 750 Wayuu residents entered negotiations with the company for their collective relocation, these negotiations tended to be paired with violent threats from the company.\textsuperscript{89} The homes of residents who refused to negotiate with El Cerrejon were locked behind a chain link fence with armed guards watching day and night. This strategy of containing residents, as if in a concentration camp, was used as a tactic to wear down their resistance. However, this plan failed as residents continue to live in inhumane conditions behind the chain linked fence.\textsuperscript{90} The communities of Caracoli and Espinal were also asked to relocate for the mine’s expansion. They were granted two plots of land donated by the mine which are now declared an indigenous resguardo or reservation land. Residents continue to live on these plots of land in “subhuman conditions”, Gomez writes that the people “have not been able to recover from the blow to their economy and way of life”.\textsuperscript{91}

\textsuperscript{88} Araujo, 2007, 97
\textsuperscript{89} Gomez, 2007, 20
\textsuperscript{90} Ponce-Jimenez, 2006, 149
\textsuperscript{91} Gomez, 2007, 22
The Social and Environmental Impacts of Mining on La Guajira

As El Cerrejon makes billions of dollars in revenue, the people of La Guajira are forced to live with the negative externalities that come with generating vast quantities of wealth. Lucrative, open-pit coal mining is notoriously bad for the environment, as it strips away layers of soil with blasting techniques that leave the earth barren and contaminated long after the mine is gone. As the largest open-pit mine in South America, El Cerrejon has had a tremendous impact on the landscape of La Guajira, its wildlife and waterways. Noise and dust pollution are immediate byproducts of the large explosions needed in open-pit coal mining. The dust has been known to cause respiratory illness in those living close to the mine, while noise pollution 24 hours a day is a deafening reminder of the mine’s existence. Ore extraction also requires tremendous amounts of water at almost every step of the process. To satisfy its need for water, El Cerrejon seeks water resources in whichever manner possible, including river diversion which can be debilitating for a region already scarce in this precious resource. Paired with water pollution due to “waste” material coming from the mine, El Cerrejon’s harmful relationship to the land and its insatiable need for water, are changing the Wayuu’s ancestral homeland in immeasurable ways.

The process of open-pit coal mining begins with clear cutting forests and ripping out topsoil to expose a layer of rock where coal can be found. Since the 1980s, El Cerrejon has deforested over 13,000 hectares of land in an area already facing desertification.92 Once cleared, giant industrial machines are used to drill and blast the earth to expose the coal layer by layer. Then a dragline, a giant piece of excavating equipment, is used to gouge out the ore. Unused

92 Banks, 2017, 2
rock and soil are dumped on the land surrounding the mine, this waste is called overburden which Boeder claims is:

“dumped between tiny communities and along the periphery of open pit mines. It swallows farmers’ fields, impedes the movement of grazing animals, disrupts rivers and streams, and leaches poisons into the earth and water”

This destructive process changes the landscape forever, as the waste begins to fill valleys and pollute water sources. Excess rock and soil are not the only disruption caused by open-pit mining. Boeder writes that when extracting coal “dust settles for miles in all directions” as the blasting unearths layers of soil and sand into the air. The daily trek of large trucks and the train to and from the mine to El Cerrejon’s port also causes the generation of large dust clouds in the air. The dust seeps into homes, settles on vegetation and is breathed in by all who live around the mine. The dust is even known to completely to overpower communities downwind from the mine.

Although dust generation is supposedly monitored by the company and within the amount allowed under national and international law, it nevertheless has negative consequences for the people forced to live with it in the air. Jaime Ernesto Bahamon, a civil engineer who coordinated El Cerrejon’s Environmental Management plan from 2002-2003, writes that the Health Departments of Hatonuevo and Barrancas, two communities located near the mine, cite respiratory illness as the main causes of death. Other specialists who have worked with the community of Media Luna, where air pollution is said to be the worst, write of “eye irritation,

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93 Boeder, 2013, 51
94 Jaime Ernesto Salas Bahamon, “El Cerrejon and its Effects: A Socio-economic and Environmental Perspective”, The People Behind Colombian Coal: Mining, Multinationals and Human Rights (Colombia, Casa Editorial Pisando Callos, 2007), 92
skin rashes and respiratory complainants”. In Media Luna it is also said that “everyone has a cough”. In addition, a health survey of 130 households located near the mine conducted by Claudia Llanten, a researcher from Columbia University, found that 37% respondents reported having a respiratory illness. Llanten also documents persistent coughs and colds among children. Health specialists and researches correlate the massive generation of dust from the mine as the cause of the rising rates of respiratory illness among those living close to the mine.

To address the amount of dust in the air, El Cerrejon uses a strategy that contributes to its incomprehensibly high-water usage. Boeder describes that every 12 hours, 20 tank trucks holding 18,000 gallons of water a piece, spray water on the surrounding landscape to keep dust settled. As the trucks attempt to ameliorate the dust problem, water, one of the region’s most scarce resources is wasted. Water is also used to “wash” the coal ore once its extracted to separate it from rock and soil. The amount of water needed in this stage of mining is astounding. It is estimated that for the 7 billion tons of coal that are mined a year around the world, 200 liters of water per ton is used to process it, showing how central water is to the coal mining process.

With annual production of up to 33 million tonnes a year, El Cerrejon uses up to 34 million liters of water a day. The company maintains that most of the water they use is considered “industrial”, meaning that it comes from the mining process itself and so is unfit for consumption. El Cerrejon asserts that only 7-12% of the 34 million liters a day that they use

95 Bahanmon, 2007, 92
96 Claudia Llanten, “Health Conditions in Five Communities in La Guajira: Tamaquito, Roche, Patilla, Chancleta and Tabaco”, The People Behind Colombian Coal: Mining, Multinationals and Human Rights (Colombia, Casa Editorial Pisando Callos, 2007), 117
97 Boeder, 2013, 52
99 Dupre-Harbord, 2017
comes from groundwater and small streams located near the mine.\textsuperscript{100} Despite these claims, the mining company has been accused of using up superficial water sources and groundwater to satisfy its incredible need for water. In a region where water is already so scarce, El Cerrejon’s usage of water has led to conflicts over proper water resource management and debates over who should have priority use of water in the first place.

In addition to high water consumption, the washing phase of coal mining threatens existing water sources because of the toxic byproducts that result from the process. The solution used to wash the coal has hundreds of chemicals including carcinogens that are needed to process the coal. The byproduct of washing with this solution, is a toxic brew of liquids called \textit{slurry}, composed of water, coal dust and chemicals ranging from carcinogens used to wash the coal and naturally occurring toxic heavy metals found in the coal, including arsenic and mercury. It is estimated that for each tonne of coal El Cerrejon produces, 17 tonnes of this waste material is produced.\textsuperscript{101} Properly storing this liquid waste is crucial for protecting surrounding communities, their water-ways and ground water. Like other open-pit mines, El Cerrejon stores liquid waste in ponds known as \textit{impoundments}. Impoundments are risky because the slurry can leach into ground water, therefore contaminating well water for anyone living close to the mine. Although El Cerrejon maintains that they properly monitor and manage possible water contamination, many locals claim they can no longer use their water.\textsuperscript{102}

The \textit{Rancheria River}, the region’s main water source, that the Wayuu have depended on since time immemorial, has the highest risk of pollution from waste material. The river is the “richest and almost only source of fresh water in La Guajira”, so its preservation is crucial for the

\textsuperscript{100} Dupre-Harbord, 2017  
\textsuperscript{101} Dupre-Harbord, 2017  
\textsuperscript{102} Dupre-Harbord, 2017
survival of the region’s inhabitants. Wayuu members have come forward with claims of contamination, one testimony given to the London Mining Network on the status of the river stated:

“The multinational has destroyed so many rivers and the only big river left is the Rio Rancheria but everyone knows it is polluted and no one can swim in it or use the water. It passes next to the mine”-(Wayuu from La Horqueta 2)

Communities are painfully aware of the importance of the river basin as a source of life yet they are witnessing is degradation without a means to stop it. Testimonies from locals are backed up by hard data from scientists testing the water quality of the Rancheria River. A 2016 study of pollution in the Rancheria River found that in 2007, 2014 and 2015, the river contained levels of cadmium and lead above acceptable environmental norms.\textsuperscript{103} Cadmium and lead are highly toxic and are known to cause cancer, renal, gastrointestinal and respiratory problems. Since the arrival of the mine, locals claim that overall health in La Guajira has deteriorated. In the company’s 2016 sustainability report, El Cerrejon admits to discharging industrial, mining and domestic water, (it is not deemed “waste” in the report), into the Rancheria River “after treatment”.\textsuperscript{104} The report notes that this is done in accordance to permits granted by environmental authorities.

Although it has been documented that health has continuously declined in La Guajira, it is difficult to attribute this decline to one single cause. In the complicated web of factors that have contributed to poor health in La Guajira, Dover, Zapach & Rincon (1997), point to two factors that are irrefutably linked to poor health conditions, one of them being the mining industry and the other, the lack of governmental support. These researchers cite contamination of

\begin{footnote}
\textsuperscript{103} Dupre-Harbord, 2017
\textsuperscript{104} El Cerrejon, Sustainability Report: Year of Partnerships with the Territory, (El Cerrejon, 2016) Retrieved from http://www.cerrejon.com
\end{footnote}
surface water and ground water sources and forced displacement of communities as major contributors to deteriorating health. They also believe the government is to blame for “lack of political will” to address the issue.\textsuperscript{105} Despite the acknowledgment that the mine has “indisputably” affected the river basin, some scholars argue that environmental and social impact studies by El Cerrejon have not successfully measured their true impacts on the river.\textsuperscript{106} Scholars, activists and locals are calling for studies that examine total water loss, leaching, the diversion of surface streams and the impact of massive deforestation.\textsuperscript{107} In 2007, the World Bank also called for in depth studies of the watershed specifically on the quality and availability of existing ground water for the sake of future sustainability.\textsuperscript{108}

In addition to contaminating water sources, El Cerrejon has led campaigns to divert streams and rivers to gain access to new coal deposits and to facilitate water access for mining. According to government officials as cited by the London Mining Network, 25 streams have been modified by El Cerrejon in order to reach coal deposits. Most recently, El Cerrejon has begun the process of diverting a 3.6km section of the Bruno stream, a tributary of the Rancheria River, to gain access to 35Mt of coal laying beneath it.\textsuperscript{109} Despite fierce opposition from locals who depend on this stream for daily use, Corpoguajira, the environmental authority in La Guajira, approved of the diversion in 2014. The project was allowed to proceed after El Cerrejon consulted with the community of Campo Herrera in 2013 and 2014. The company only arrived at

\textsuperscript{106} Dover, Zapach, Rincon, 2007, 73
\textsuperscript{107} Dover, Zapach, Rincon, 2007, 65
\textsuperscript{109} Dupre-Harbord, 2017
an agreement with Campo Herrera, even though 25 communities have been identified as dependent on the Bruno stream.

According to El Cerrejon’s website, Resolution 03 of 2013 by the Ministry of the Interior certified “the indigenous community of Campo Herrera as the only one potentially impacted by the engineering works”. Campo Herrera was considered as the only community that could be impacted because of its “occasional” fishing activities downstream of the worksite. However, it has been documented that the communities left out of the prior consultation process use Bruno for bathing, cleaning, cooking and drinking. One member of La Horqueta 2, a community near the stream, claimed that most families go to Bruno daily to fill jugs of water. In response to a *tutela* or a “writ for the protection of constitutional rights” filed by La Horqueta 2 about its dependence on Bruno and need for prior consultation, El Cerrejon began consultation with the community in October of 2016, only after the project had been completed. The 24 other communities who have claimed connection to the stream have yet to be consulted about the Bruno project even though it has the potential to alter their lives permanently.

The company also has the license to divert an additional 9.6 km of Bruno located upstream, close to the stream’s headwaters where the aquifers recharge. It is in this area where El Cerrejon notes on their website that communities use Bruno for “occasional water withdrawals” because of “temporary water shortages in wells”. The company clearly acknowledges the fragile relationship communities in the area have with water but this acknowledgment may not

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111 Dupre-Harbord, 2017
be enough to prevent another diversion of Bruno. El Cerrejon has continuously expanded since it began operation in the 1980s as it exhausts coal pits and seeks to replace lost production. With its license to divert the upper portion of Bruno, El Cerrejon could legally carry out the project as long as it maintains the perception of consulting local communities, even if it only happens after the fact as it did with La Horqueta 2.

The struggle over Bruno has led to high levels of distrust in the company and government for not taking into account the views of those most impacted. Conflict is not only rooted in the immediate impacts of the project but of the future implications of a foreign corporation monopolizing waters resources. Many fear that the diversion of Bruno has set the precedent that El Cerrejon can tamper with water resources without being challenged and that state ambivalence will allow future diversions as well. In her study of the Bruno conflict Banks (2017) shared a quote by Jazmin Romero Epiayu, one of the principal organizers against the Bruno diversion, on the implications of the project:

“They are thinking of violating all these environmental norms, to go around them, because this is a strategy of the mine. The best ally they have is the government who every day sells our sovereignty… we cannot trust a government that is selling our sovereignty”113

For the Wayuu, the diversion of Bruno has made clear the position of the government and has defined who has control and power over water. This is incredibly concerning because the company has had their sights set on diverting the Rancheria River since 2011. El Cerrejon has mining titles covering 69,000 hectares of land and has requested another 275 titles in the Rancheria River basin which may mean future water conflicts. With the possibility of future

113 Banks, 2017, 18
expansion for El Cerrejon and plans to divert more waterways, the Wayuu people and other local communities are under the constant threat of having their water jeopardized.

In La Guajira, where not a single municipality has access to potable drinking water or aqueduct coverage, El Cerrejon’s enormous daily use of 34 million liters of water a day is hard to even conceptualize. The company has been accused of polluting water sources including the Rancheria River, has diverted waterways that communities depend on and has future plans to continue additional diversions, all while water scarcity is causing a severe humanitarian crisis throughout the region. The state has contributed to these actions by passing resolutions allowing the mine to achieve its goals of displacing communities and diverting steams. Therefore, it can be said that the state has played a significant role in allowing the outrageous disparity of access to water seen between El Cerrejon and the Wayuu.

A telling example of the disparity of who has privileged access to water and who does not can be seen within the mining complex where 18 ground-water wells and a private dam deliver 24-hour access to potable water.\textsuperscript{114} The company’s 12,000 employees and contractors drink this water coming from the Rancheria River and its aquifer.\textsuperscript{115} Meanwhile, outside of the mining complex in the hot desert heat, Wayuu mothers walk for miles to fill plastic jugs with turbid water from their traditional jagueys. The cloudy yellow water is given to Wayuu children without purification or even boiling. In their desperation for water, Wayuu families find themselves forced to survive in these subhuman conditions without alternatives. Animals collapse from thirst and children are dying without adequate medical services. How is it that El

\textsuperscript{114} Banks, 2017, 11
\textsuperscript{115} El Cerrejon, Sustainability Report: Year of Partnerships with the Territory, (El Cerrejon, 2016)
Cerrejon is able to gain access to so much water but the region’s ancestral inhabitants have not?

What actions has the Colombian state taken, if any, to address this crisis?

Section IV: Responses by the Colombian State & El Cerrejon to Address the Water Crisis

“Our biggest need is water, it’s an issue that covers all of La Guajira and it impacts all of us, including our animals. I have personally tried to contact local politicians to have them build a well for my community but I was ignored. I tried for a year to do this. I have given up waiting for them to help us.” -Maria Conchita, leader of El Tablazo #2

Maria Conchita, like other Wayuu leaders, has faced continuous disappointment in the face of an inactive and inefficient government that has failed to provide clean water in the midst of a water crisis. Maria Conchita shared that after years of seeing young children pass away in her community from water related illness and malnutrition, she began pleading with local officials for assistance. The complete ambivalence demonstrated by municipal governments led to Maria Conchita “giving up waiting” on local government to do anything proactive about her community’s dire situation. Fortunately, El Tablazo #2 finally had a well built for them by an international NGO dedicated to the water crisis in La Guajira. Like many other Rancherias in La Guajira, El Tablazo #2 was forced to rely on a foreign entity to fulfill its most basic needs. In the vacuum of power, international NGOs, institutions like the World Bank and even El Cerrejon have built wells throughout La Guajira, something that has come with its own complications including the dangerous depletion of aquifers due to over drawing by wells. In addition, scholars have written that intervention by actors outside the state has the effect of legitimizing state absenteeism by furthering reducing the need for immediate action on the part of the state. It allows for states to get away with not doing anything because other actors come in to “fix” the

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116 Interview with the Author, (Riohacha, Colombia, 2015)
117 Banks, 2017, 14
problem. These projects can also be seen as unsustainable because foreign aid can only be given for so long before the state is expected to take responsibility. Despite these shortcomings, interventions by foreign entities have amounted to more than the empty promises of the state. Projects that the state has carried out have been riddled with implementation problems and/or have not been carried out to their fulfillment. As stated in the *Manual on the Right to Water and Sanitation* written by UN-Habitat, states have the ultimate responsibility in providing access to safe drinking water, something the Colombian state has failed to do for the Wayuu since independence.

According to the United Nations Special Rapporteur on the right to safe drinking water and sanitation, water must be “sufficient, safe and physically accessible”.\(^{118}\) For most Rancherias, water sources fail to meet all three of these criteria. The Colombian state has been called out on multiple occasions by international institutions and watchdogs for failing to uphold the right to water. International awareness has been raised about the humanitarian crisis but shaming and awareness raising have not resulted in concrete action by the state. For example, in 2010, James Anaya, the Special Rapporteur on the rights of indigenous peoples gave a report to the UN General Assembly stating that Colombia’s indigenous peoples, “find themselves in a serious, critical and profoundly worrying human rights situation”. He explains that the human rights situation “reflects the gap between progressive domestic legislation and the ineffectiveness of the institutions responsible for protecting these peoples”.\(^{119}\) The Special Rapporteur lauded


Colombia for acknowledging the rights of indigenous peoples on paper. However, Anaya added, that laws, programs and policies alone, are not enough to protect indigenous peoples if they are not enforced or implemented.

In December 2015, the Inter-American Commission on Human Rights (IACHR) requested that the Colombian government take immediate measures to address the “emergency” facing Wayuu children in Uribia, Manaure, Riohacha, and Maicao. Following this request, Colombian high courts ordered the government to address the situation in multiple rulings. One of these rulings, by the Colombian Constitutional Court in August 2016, found “no concrete evidence that the policies, plans, and programs implemented by the State have achieved positive results” to protect Wayuu children.120 Yet, as has been demonstrated, nothing substantial has come of these rulings. In 2017, the Organization for Economic Co-operation and Development (OECD) declared that the water-crisis is rooted in “the government’s serious failure of governance-including extremely poor access to basic services, limited government efforts to root out local corruption, and an insufficient response to the crisis”, making the Colombian state’s weakness visible to the international community121 Echoing these accusations, Human Rights Watch issued its own declarations, repeating much of what has been said about the government’s failed response to the crisis. After two visits to Colombia in 2016 and 2017 to analyze the government’s response to the crisis, Human Rights Watch urged the Colombian government to commit to “serious and concrete measures”.122

122 Angel Gurria, 2017
Demands for change and action are not only coming from outside actors but also from the Wayuu themselves who have organized marches and protests in the capital of Bogota. In May 2016, 140 Wayuu leaders arrived at Simon Bolivar Plaza in Bogota carrying boxes made to look like small coffins, representing Wayuu children who have died. Simon Bolivar Plaza filled with crying mothers denouncing the deaths of their young children. Remedios Uriana, one of the Wayuu leaders present at the march, declared the mining practices in the region to be “nothing more or less than an extermination of a community.”

Despite condemnation from abroad and from within the country, the state continues to support the expansion of El Cerrejon and its insatiable need for water while also attributing the water crisis to local corruption and climate change. Although these two factors play central roles in the water crisis, the national government who has sided with El Cerrejon time and time again through court rulings and police assistance, has failed to give the same commitment to the Wayuu people. The role the national government has failed to play in protecting its own people simply can not be understated.

**What the State Blames: Local Corruption**

As a frontier region, local corruption has been a severe issue in La Guajira since the Colombian nation was formed. With little attention paid to La Guajira by the national government, governors, politicians and paramilitaries have gotten away with atrocities at the expense of the people, making La Guajira one of the most corrupt departments in Colombia.

In a region where government is simply not held accountable, the water crisis has flourished. An August 2017 article by *El Tiempo*, Colombia’s most circulated newspaper, highlighted

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124 Coronado, 2013, 60
corruption that has plagued the region’s last five governors who are still in the midst of legal battles. The most famous case is of former Governor Francisco “Kiko” Gomez who was arrested by national forces in 2016 after homicide accusations. The article notes that embezzlement, electoral fraud and violence have been rampant in the past two decades.

   Forced resignations on corruption charges are commonplace in La Guajira, so it was not entirely surprising when in 2017, national forces took over La Guajira’s government under President Santos’ administration and installed a new governor. Santos installed the Wayuu anthropologist Weildler Guerra as the new governor, after pleading with him to accept the position. Perhaps in a show of good faith on the part of the national government, Guerra, an outspoken opponent of El Cerrejon’s activities, was appointed to the notorious position. As an anthropologist born in Riohacha, Guerra has written extensively on the history and culture of his Wayuu people. He has also written essays denouncing the negative effects of El Cerrejon and the state’s inability to hold the company accountable because as Guerra writes, the state has many functions in relation to the company including as, “a partner in the project, and at the same time, the recipient of royalties, the provider of public services and the regulator of environmental effects”, Guerra has not shied away from calling out the government for its multiple roles it plays with the company which he argues furthers confuses accountability.\footnote{Guerra-Curvelo, 2007, 46} Guerra also has a strong relationship with Wayuu communities as he served as the secretary of the General Directorship of Indigenous Affairs of the Interior Ministry (DGIA). After the implementation of the 1991 Constitution that granted indigenous peoples certain rights for the first time, Guerra traveled throughout La Guajira, explaining these newly granted rights to the people.
Despite his relationship with the Wayuu and his thoughts on the mine, the future governor of La Guajira had no interest in local politics. Initially, Guerra was not even open to the idea of being governor. With an invitation to the University of British Columbia for anthropology, he was planning on fulfilling his “academic dreams”. However, after relentless insistence and personal phone calls from President Santos, Guerra finally gave in to the president’s request. In the *El Tiempo* article, Guerra adds that he denied the offer on multiple occasions but President Santos “disarmed” his arguments against the appointment.\(^\text{126}\) In the wake of controversy over State inaction and local corruption, Santos’ appointment of Guerra could be seen as politically “smart” because of Guerra’s strong reputation as an ally and indigenous rights defender. Although this appointment is promising in terms of potentially addressing corruption, scholars point out that the focus on departmental corruption alone is not sufficient because it negates the connection that national decisions and inaction have on local contexts. Banks writes that national government:

> “has refused to acknowledge how the change in allocation of royalties and lack of national support for regional development have led to La Guajira’s political mismanagement, corruption and inefficiency”.\(^\text{127}\)

In other words, remedying local corruption through Guerra’s appointment alone will not solve La Guajira’s problems. There needs to be concerted immediate action on the part of the state to address issues of royalty allocation and its failed development strategy. As of now, the state’s answer to the water crisis has been a new governor chosen by the President himself. In the absence of other state led interventions in the crisis, El Cerrejón has developed its own


\(^{127}\) Banks, 2014, 23
development projects and programs through corporate social responsibility. These projects are controversial in their own way because in some instances they further legitimize the corporation’s presence in the region by acting as a “pseudo-state” providing services to the people.128

**El Cerrejon’s Answer to the Water Crisis:**

In El Cerrejon’s 2016 Sustainability Report, the company acknowledges the draught in La Guajira stating that “from the region’s point of view, the main challenge is water management and access”.129 In the entirety of the report, the mine refers to the human rights situation in La Guajira as a “crisis”, only one time. The lack of urgency and severity used to describe what is clearly a humanitarian crisis, shows a level of insensitivity to what is actually going on in the region. El Cerrejon also hints at its awareness of the region’s water scarcity by noting the “lesser availability” of surface and groundwater, especially in the Rancheria River basin. In addition, the company clearly acknowledges the importance of the basin with its recycled phrase of “at Cerrejon, every drop of water counts”.130 With these phrases and remarks, the sustainability report hints at the water crisis occurring in La Guajira and the mine’s relationship with water in terms of usage but it fails to describe any possible connection between the two. In other words, it fails to acknowledge any role that El Cerrejon may have played in depleting the region of its limited water sources. This might be a lot to expect in a sustainability report that is supposed to highlight the company’s positive contributions to La Guajira along with its “sustainable” existence, regardless it is concerning that the report fails to consider the ways in which the

128 Banks, 2014, 35
129 El Cerrejon Sustainability Report 2016
130 El Cerrejon Sustainability Report 2016
mining operation might impact water quality and quantity for everyone. It is simply a very positive portrayal of El Cerrejon’s mining activities.

While avoiding directly addressing the water crisis in any meaningful way, the report does a thorough job at describing the company’s “water-solutions” with its Comprehensive Water Management plan that includes three main pillars: efficient water use in the production process, focus on river basin protection and participation in water-access solutions. As part of the Comprehensive Water Management plan, the company implements conservation projects to protect biodiversity, initiatives to partner with communities to design water-access solutions and repairs broken windmill-driven water pumps. Information about these projects are highlighted all over the company’s public website, annual reports and marketing materials, showing a clear initiative to promote a socially-responsible image for the mine.

According to its website, the company ensures that its water withdrawals are regulated by the appropriate environmental authorities which is complimented by self-monitoring through the yearly collection of over 1,000 water samples from the Rancheria River to test for quality. To assist local communities in facilitating access to water. El Cerrejon has implemented an integrated water management project that includes the installation of 173 water capture and storage units for domestic, livestock and agricultural use. According to the mine’s website, 3,000 people from 17 communities in in Albania, Barrancas, and Hatonuevo have benefited from this project. The mine also claims that 37,502 individuals from 266 have benefited from “water solutions” including the repair of 79 windmill-driven water pumps that provide 3.2 million liters

131 El Cerrejon Sustainability Report 2016
of water a day, in addition to providing more than 1,640 water storage tanks to communities. In all, El Cerrejon boasts of having provided over 80 million liters of drinking water to communities since 2014.\textsuperscript{133}

A concerning problem with El Cerrejon’s water solutions is that they primarily target communities within the mine’s “impact zone”. The impact zone includes communities that live around the mine, railway and port. El Cerrejon is only legally obligated to provide access to water to those living within the impact zone which leaves out communities living in the Upper Guajira, the same communities that have the least water due to the drought. El Cerrejon feels no obligation toward these communities because they are not directly impacted by mining activity, the same way a community next door to the mine would be. This is problematic because communities distant from the mine are still forced to live with its negative externalities. The most pressing being, the depletion of groundwater and surface water that impacts the entirety of La Guajira, a phenomenon that El Cerrejon clearly acknowledges in its sustainability report as previously stated. In addition, studies of groundwater show problems of salinization and depletion of aquifers throughout La Guajira.\textsuperscript{134} Since there is no definitive proof that El Cerrejon’s use of groundwater wells and the Rancheria River is not impacting water depletion throughout the region, it is problematic to have such a limited definition of the mine’s impact zone. A more holistic approach by El Cerrejon to addressing development needs of the region, would target all communities facing water scarcity in La Guajira because it has yet to be proven that El Cerrejon’s impact zone is as small as it is defined to be.

\textsuperscript{133} El Cerrejon, Sustainable Development Webpage, found at https://www.cerrejon.com/index.php/desarrollo-sostenible/medio-ambiente/integrated-water-management/?lang=en

To its credit, El Cerrejon acknowledges its role as “part of the solution” for meeting the region’s development needs. This role is seen as limited because “the needs of La Guajira are a national problem that transcend [its] capacities and responsibilities”. It sees the State as the ultimate responsible authority for meeting development needs while seeing itself as a crucial partner in the strategy for change. The company realizes that in order to thoroughly meet development needs, an integrated approach between the State, NGOs and communities themselves needs to be developed in order to promote change in the medium term. El Cerrejon demonstrates at the very least an attempt at addressing social issues in La Guajira in its reports and in its limited development projects, particularly in regard to promoting access to water. However, as has been found in cases throughout the world, corporate social responsibility (CSR) can be limited in its capacity to promote sustainable development because corporations stay in host countries for temporary periods of time and because their projects fail to address the root causes of social problems.

The company itself has admitted that: “contributions in the past have not necessarily brought about changes in the local economic and social reality”. Interestingly, despite more than 10 years of producing yearly sustainability reports lauding the mine’s social interventions, “change” has not been observed. This is a concerning phenomenon that may be indicative of the effectiveness of CSR strategies overall. Frynas argues that CSR often produces projects that are driven by “short-term expediency” rather than long-term development goals which can limit the effectiveness of these projects. Projects that demonstrate short-term expediency are cheap solutions providing immediate results that often fail to address roots causes of social problems.

135 El Cerrejon, Sustainability Report 2016
136 El Cerrejon, Sustainability Report 2016
Young-Imbun echoes this same concern with his understanding of CSR as predominately “micro-level solutions” that do not address broader issues that the company maybe be contributing to.\(^{137}\) For El Cerrejon, repairing broken windmill driven wells and providing water storage tanks, can be seen as tackling the water crisis piecemeal, rather than targeting the root causes of the crisis. These solutions fail to address the depletion of groundwater and surface water, two issues that require long-term solutions such as severely scaling back water usage so that aquifers can replenish themselves. These longer-term solutions are not necessarily favorable to the mine as a massive consumer of the region’s water. For this reason, the mine will only engage in short-term solutions that maintain the status quo. In regard to El Cerrejon’s water interventions, Banks has alluded to this same principle, she writes

“Cerrejon monopolizes La Guajira’s water reserves, giving back to local communities when its convenient and easy to maintain its public image as a model corporate citizen”\(^{138}\)

Banks is echoing the assumption that the company will only give back water as long as it does not interfere with its own water usage and thus its business interests. This is problematic if El Cerrejon is a perpetrator of the water crisis in the first place, as many Wayuu communities believe it is. Therefore, El Cerrejon may not be the most qualified actor in adequately addressing water scarcity if it is a perpetrator of the issue itself. Its interventions simply will address the heart of the problem.

Critics of CSR often question the company’s motivations behind contributing to social initiatives in the first place. Frynas argues that the four main motivators for CSR include

\(^{137}\) Imbun, Benedict Young. “Cannot Manage without the ‘Significant Other’: Mining, Corporate Social Responsibility and Local Communities in Papua New Guinea.” *Journal of Business Ethics* 73, no. 2 (2007): 177-92

\(^{138}\) Banks, 2014, 15
obtaining a competitive advantage, maintaining a stable working environment, managing external perceptions and keeping employees happy.\textsuperscript{139} These motivations contribute to the “business reasoning” behind CSR that allow companies to achieve corporate objectives through social initiatives. “The business case for CSR” as Frynas puts it, severally limits the effectiveness of corporate social interventions.\textsuperscript{140} Other critics attribute CSR to a company’s desire to create a public perception of a “moral” company, again to boost its competitive advantage over less socially-conscious companies.\textsuperscript{141} Others refer to CSR as corporate “greenwashing” of business as usual or in some cases, “unethical and irresponsible business behavior”.\textsuperscript{142} These criticisms are rooted in an understanding of corporate behavior as being driven by profit over social responsibility. At the end of the day, a corporation is a for-profit entity and has certain fiduciary responsibilities to abide by, so if a company does engage in social responsibility it is ultimately done to further profit-motivated goals.

In 2006, Leon Teicher, the President at the time of El Cerrejon, made some comments on the responsibilities of his company that reflect many of the criticisms stated against CSR. At a meeting for the International Commission in Support of Sintracarbon and the Communities Affected by Cerrejon, Teicher claimed that not only is the Cerrejon management team not responsible for “the actions of its predecessors” but it is also the responsibility of the State to protect its citizens if their rights are being violated.\textsuperscript{143} According to Teicher all obligations that

\textsuperscript{140} Frynas, 2005, 45
\textsuperscript{141} S. L. Reiter, “The Ethics of Cerrejon and the Multinationals” \textit{The People Behind Colombian Coal: Mining, Human Rights and Mining Companies}, (Colombia, Casa Editorial Pisando Callos, 2007) 30-31
\textsuperscript{142} David Littlewood, “Cursed Communities? Corporate Social Responsibility (CSR), Company Towns and the Mining Industry in Namibia” \textit{Springer}, No. 120 (2013). 41-42
\textsuperscript{143} Reiter, 2007, 30
El Cerrejon does have, are to its shareholders. Teicher’s understanding of El Cerrejon’s obligations shines a new light on its social initiatives. If El Cerrejon is ultimately motivated by the interests of its shareholders, that being increasing profit margins, how can its social strategy in La Guajira be effective? According to Frynas and other critics of CSR, these social initiatives simply cannot produce real change only “false promises of development”.  

Banks provides an even more skeptical understanding of El Cerrejon’s CSR by connecting it to state responsibility, she writes,

“Cerrejon’s CSR programs have at times allowed state institutions to further neglect the responsibility to provide sustainable access to water, while allowing the mine to legitimate its presence by being more responsive than the state to local needs for water.”

So by providing social programs, El Cerrejon at times is taking responsibility off the State, which is exacerbating State neglect in La Guajira. This is incredibly concerning and problematic considering the previously mentioned criticism of these social programs. If the State is distancing itself from addressing water scarcity in La Guajira, leaving responsibility to El Cerrejon has the potential to worsen already disastrous conditions. It is clear that the State needs to step-up its role in addressing the crisis because reliance on El Cerrejon to do the same is not only wrong because it is a perpetuator of the crisis, but it is also the State’s responsibility to ensure that its citizen’s rights are upheld. A foreign multi-national cannot be expected to have the same long-term commitment to the community as the State and nor is it realistic to expect it to do so.

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144 Frynas, 2005, 40
145 Banks. 2014, 13
**State Intervention in the Water Crisis:**

To truly address the water crisis, the national government needs to uphold the rights of its citizens over that of the foreign multinational corporation. Without this reversal of power, initiatives to address the crisis are completely undermined. Legislation and court rulings have been issued that appear to support the rights of the Wayuu including the 2016 Colombian Constitutional Court Decision declaring that El Cerrejon and the Colombian state violated “the fundamental right to water”.\(^{146}\) The court upheld the State’s obligation to protect the rights of its citizens over that of extractive industries while declaring that regional, municipal and national institutions along with El Cerrejon need to cooperate in providing clean water to La Guajira. Although this legislation seems promising it fails to hold El Cerrejon accountable by addressing its water usage, diversion of river and streams and contamination of water. It is complicit in allowing the mine to continue is activities that violate local’s water rights while at the same time declaring the company’s obligation to provide clean water. It’s contradictory and almost hypocritical to allow the company’s mismanagement of water to coexist with the need of the company to provide water. By allowing El Cerrejon to continue to control crucial water sources, the people of La Guajira will always be at a disadvantage and at the mercy of the company to receive clean water. Through this Court decision, the state showed no intention of addressing the root of the problem by allowing the company to continue business as usual.

What the State has provided, however, is a series of empty promises, the continuation of ineffective solutions and projects that have ultimately benefited the mine over the people once again, the most notorious example being El Cercado Dam. Another 2016 Constitutional Court

\(^{146}\) Banks, 2014, 26
ruling found “no concrete evidence that the policies, plans, and programs implemented by the State have achieved positive results” to protect Wayuu children, reflecting the ineffectiveness and futility of state intervention so far.\textsuperscript{147} More recently, in September 2017, the Human Rights Ombudsman’s Office said in a report that it did not find evidence that the government’s projects had improved access to water or other intended goals including improving health conditions or access to food\textsuperscript{148} In combination with El Cerrejon’s praised water-solution projects that fail to address the core of the water-crisis, Wayuu children continue to perish because no real change has been achieved by either the State or the company.

In August 2014, President Santos visited Uribia, the driest municipality in La Guajira, to announce an emergency aid package that the government was putting together to address the humanitarian crisis. The thrust of this plan was the construction of 100 wells by 2018 so that residents could have water on a “permanent basis.”\textsuperscript{149} As of today, only 4 of these 100 wells have been built, reflecting a history of empty promises and failed attempts to address the needs of La Guajira. Human Rights Watch visited some of the wells constructed by the government in 2017 and found that 2 of 3 they visited were not working.\textsuperscript{150} Disappointing as this is, constructing new wells may not be the best solution for the water crisis in the first place, considering that the region already has 1,200 water wells and wind mills, 70\% of which are not in operation because of maintenance issues.\textsuperscript{151} When driving through La Guajira, wind-powered mills with their large towers can be seen scattered throughout the desert landscape, giving the

\textsuperscript{147} Angel Gurria, Letter to OECD Secretary General re: Colombia's accession, (Human Rights Watch, 2017)
\textsuperscript{148} Angel Gurria, Letter to OECD Secretary General re: Colombia's accession, (Human Rights Watch, 2017)
\textsuperscript{150} Angel Gurria, Letter to OECD Secretary General re: Colombia’s accession, (Human Rights Watch, 2017)
\textsuperscript{151} UNDP, UNDP on the frontline of the water crisis in La Guajira, Colombia, 2015. From http://www.co.undp.org/content/colombia/es/home/presscenter/articles/2015/04/10/undp-on-the-frontline-of-the-water-crisis-in-la-guajira-colombia.html
impression that communities have water. However, when speaking with members of the community who own the wells, it is often revealed that they have not be working for years. Mojica & Bhamidipati note that of the wind-powered mills that the government installed between 1953 and 1957, the ones that are still in operation are all located on private farms owned by local politicians, while the others have been idle and out of service for years.\footnote{Mojica, Diana & Bhamidipati, Srirama & Contreras, Sandra. “The Fight of the Wayuu Ethnic Community against the Drought in La Guajira, Colombia” Research Gate (2016) 160-161. Retrieved from https://www.researchgate.net/publication/306569438_The_Fight_of_the_Wayuu_Ethnic_Community_against_the_Drought_in_La_Guajira_Colombia}

According to the UNDP, often when wells are built in La Guajira, locals are not trained on how to repair them if they break. This is problematic since maintenance is especially important for wind mill powered wells that are more technologically advanced and require specific skills and training to repair. When international NGOs, institutions and even organizations from other departments in Colombia build wells and then leave the area without training locals, communities continue to face the same social issues. Perhaps, instead of simply building more wells, the government could put resources toward repairing old ones and training locals on how to repair them on their own. Santos’ promises to build more wells seems to reflect a shallow understanding of the water crisis in La Guajira where 1,200 existing wells has proven to not make a difference. It is important to note that some communities do not have wells at all, so of course building wells for these specific communities is more than necessary. The point is that to be truly effective, a combination of building new wells and repairing old ones would make a tremendous difference, a strategy that has yet to be implemented in a comprehensive way.
A project led by the UNDP, partnered with Colombian agencies, created an initiative in 2014 to train 25 Wayuu technicians on how to repair wind-mill driven wells in the municipalities of Riohacha, Maicao, Manaure and Uribia benefitting up to 646 families. Trainees from the program laud the initiative as not only a way to bring clean water to the region but also as a means of improving the quality of life for the technicians. The UNDP praises the program, since trained locals also reduces dependency on outside forces which is crucial for the region to start re-building some autonomy lost due to the crisis. In the attempt to help, many individuals and organizations simply deliver bags of food or clothing, both of which are only temporary solutions that can do more harm than good. This view is echoed by a Wayuu leader interviewed by the UNDP, he says, “we don’t want more bags with food, what we want is for you to help us build our own food supply.”, the emphasis is on their own supply that the community controls and is responsible for. Communities cannot produce their own supply of food without a stable water source that they also control. Locals themselves see the futility of receiving donations over long-term sustainable projects. The same concept can be applied to water-solutions that fail to return the water sources to communities that have natural ownership of them as ancestral inhabitants of the region. Although, the UNDP’s 25 trained technicians is a modest but promising start, this intervention needs to be paired with a plan to return natural water sources to its rightful owners. New wells and wind-mill repairs are futile when the region’s main water source is exploited by the mine. Unfortunately, rather than reclaim water sources for the people, the State has shown initiatives to do the opposite.
**El Cercado Dam**

The billboard located next to El Cercado Dam on the Rancheria River proudly states, “From here will flow the water that will be the future to the Guajira”. Built in 2010 by the national government, El Cercado was meant to bring clean water to 355,000 individuals in La Guajira through the construction of aqueducts. These aqueducts were supposed to connect to nine of the fifteen municipalities in the region, to help with water needs during cyclical draughts. As promising as this plan seemed and despite the public funding dumped into the project, the aqueducts were never built. Instead, the 198 million cubic metric dam is used by El Cerrejon by tapping into the Rancheria River below the dam. Governmental authorities are completely complicit in this perverse use of the Rancheria River by controlling the flow of the river past the dam to ensure a continuous supply. By the time the river passes the mine and enters the Middle Guajira, where most of the Wayuu live, the Rancheria River is reported to be nothing more than a trickle.

When President Santos visited La Guajira in 2014, he made no mention of the dam, its impact on the river or the aqueducts that were promised. As mentioned, he only pledged to build more wells, leaving the dam and its good intentions uncompleted. Today, eight years after the dam was built, nothing has changed. Locals say that a major reason for the failed project is corruption. The money that was allocated for the project has been stolen time and again by public officials from the regional, municipal and national governments. Despite, the millions of dollars in royalty money that comes from El Cerrejon a year, the money has yet to be put toward

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154 West, 2016

155 West, 2016
completing Santos’ 100 wells or the aqueducts from El Cercado dam. From 1982 to 2002, the mine contributed $120 million dollars to the national and regional governments, meaning that there are available funds for completing the projects. With royalty money disappearing into the hands of corrupt officials, the Wayuu are left with nothing more than empty promises for development.

The failure of development projects to make any lasting region-wide change, suggests a desperate need for a new development strategy. By harnessing available funds and the favorable legislative framework that protects the rights of indigenous peoples, this new development strategy could be created and implemented. This process should begin by enforcing the rights of Colombian citizens that the State itself proudly claims to promote. Before any project is expected to reverse the effect of years of isolation, state neglect, forced displacement and water depletion, the State must recognize the rights of the Wayuu above those of the foreign mining company. This would entail honoring their right to resources in La Guajira including the Rancheria River and groundwater, over the right of the mine to use these precious resources for profit. Legislation protecting the rights of indigenous peoples, laid out by the 1991 Colombian Constitution must be enforced and recent rulings by the constitutional court on water rights must be implemented as well. Promoting these rights would require the State to confront the mine on its water usage, pollution and river diversion. Only by addressing these issues first, can the Wayuu enjoy their right to water, a crucial step for effectively addressing the water crisis in La Guajira. In implementing its own rulings and constitutional rights, the State would need to hold El Cerrejon accountable, something that has yet to happen in any significant way. Once rights and favorable rulings are put into action rather than existing merely as words on paper, the Wayuu, for the first time, will be given the means to challenge the exploitive behavior of El Cerrejon.
Conclusion

In their isolated home of La Guajira, the Wayuu people have been socially, politically and economically excluded by the Colombian State since independence. Historically, the State has done very little to integrate La Guajira, into the rest of the country which has come with serious consequences for the region’s inhabitants. The focus of this study, the water-scarcity crisis that has claimed the lives of more than 4,000 Wayuu children, illustrates the consequences of severe State neglect. It has allowed a multinational corporation to enter into the desert region and seize control of the limited water sources that the Wayuu have depended on for centuries. El Cerrejón’s outrageous water usage that has resulted in the “indisputable” depletion of groundwater and surface water, has been occurring during a time when Wayuu children are dying of thirst and water related illness only hours away from the mine.

The State has been complicit in this devastating situation by failing to limit the mine’s water usage and by failing to prevent the diversion of vital water sources when necessary. The example of the Bruno stream and its diversion, despite outcries by local communities revealed the State’s stance on who ultimately has the right to water in La Guajira. The construction of El Cercado dam further proves this point, since the Wayuu have yet to experience any of the benefits that this “development” project promised to bring to the region. The aqueducts that were to be built from the dam to local municipalities were never built, rather the dam has been used to fulfill the mine’s insatiable water needs. At the same time, promises to build 100 wells by 2018 have also been unfulfilled by the Santos’ Administration, only 4 of these wells has been built, showing a severe lack of credibility on the part of the State.

Many blame local corruption as the main cause for inaction in this crisis. Corruption has been a serious problem for La Guajira as royalty money that was to be used for development
projects has disappeared into the pockets of corrupt officials. After the removal of five consecutive Guajiro governors on corruption charges, the State finally stepped in, in 2017 and put Weilder Guerra Curvelo, a Wayuu anthropologist in place as the new governor. Although this has been a promising move by the State, it is too little, too late. The water crisis has been ongoing for years and the State has had to the ability to crack down on El Cerrejon through the Constitutional Court on several occasions. Even when the Court has ruled in favor of the Wayuu as it did in 2016 by ruling that both the State and El Cerrejon have violated the Wayuu’s “fundamental right to water”, these rulings have not gone far enough to address the root causes of the water issue. These rulings called for the regional, municipal and national governments to provide water for the Wayuu but once again failed to address El Cerrejon’s water usage as a potential perpetuator in the crisis. Even the Constitutional Court has been unable and unwilling to point to the mine as a cause of the crisis, showing who the State has chosen to side with.

The hypocrisy of this situation occurs under the guise of a nation that has a pro-Indigenous constitution, a constitution that has been hailed as one of the most far-reaching in terms of protecting the rights of Indigenous peoples in Latin America. However, these rights have proven ineffective at promoting the interests of the Wayuu people as they struggle over the right to water with El Cerrejon. To the Wayuu, they are simply words on paper. If the water-crisis is to truly be put to an end, legislation protecting the rights of indigenous peoples, laid out by the 1991 Colombian Constitution, must be enforced and recent rulings by the Constitutional Court on water rights must be implemented as well. Promoting these rights would require the State to confront the mine on its water usage, pollution and river diversion. Only by addressing these issues first, can the Wayuu enjoy their right to water, a crucial step for effectively addressing the water crisis in La Guajira. Before any project is expected to reverse the effect of
years of isolation, state neglect, forced displacement and water depletion, the State must recognize the rights of the Wayuu above those of the foreign mining company.
Bibliography:

3. Araujo, Armando Perez “Human Rights and Health Reports: A Legal View of the Case of Tabaco”, The People Behind Colombian Coal: Mining, Multinationals and Human Rights (Colombia, Casa Editorial Pisando Callos, 2007), 95
18. El Cerrejon, “What do the engineering works for the partial modification of the course of Bruno Creek in the La Puente project consist of?”, La Puente Project.
19. El Cerrejon, Sustainability Report: Year of Partnerships with the Territory, (El Cerrejon, 2016)
29. Human Rights Watch, OECD Examine Local Hunger Crisis in Colombia: Development Organization Set to Discuss Country’s Accession (2017)
31. Interview with the Author, (Riohacha, Colombia, 2015)
32. IWGIA, “Indigenous Peoples of Colombia”, IWGIA
44. Reiter, S.L. “The Ethics of Cerrejon and the Multinationals” The People Behind Colombian Coal: Mining, Human Rights and Mining Companies, (Colombia, Casa Editorial Pisando Callos, 2007) 30-31
45. Salamanca, Lizeth. La Guajira No Muere de Hambre, Muere de Abandono, El Tiempo 2014.
47. The Bogota Post, “La Guajira: Estimated 14,000 Dead from Malnutrition”, 2016.
48. UNDP, UNDP on the frontline of the water crisis in La Guajira, Colombia, (2015)
50. Weildler Guerra, Paola Quintero, Jorge Quintero & Ana María Maldonado, Observatorio del Caribe Colombiano: Grupo Regional de investigación en economía y competitividad en el Caribe colombiano (Gobierno Colombiano).