Public interest captured by foreign investment: the Cerrejon coal mine in Colombia

By:

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The idea of the paper presented at the IEL Collective inaugural conference came after a workshop that was held in Bogota in August of 2018 about foreign investment in natural resources exploitation. The purpose of this contribution is to present some thoughts on the features that characterise the relationship between foreign investors and local communities in the Colombian context. It will show how the exploitation of natural resources leads to the prioritisation of property and investment rights of the transnational actors at the expense of local communities for whom the systematic violation of the most basic human rights is commonplace. For this blog, I will focus mainly on the Cerrejon case and the coal extraction to show that the exploitation of natural resources serves to promote the capital accumulation of those transnational actors which shape the law accordingly to their interest, and in doing so enhances their share of participation in the global supply chain in which transnational

companies operates.

Since the 1990s the Colombian State has adopted foreign capital as the key driver of the economy. The government and the law allowed the participation of the private sector in areas such as health services and pension funds while cutting public funding for public universities, research, science and technology. A large majority of companies providing public services, telecommunications, banking, ports, airports were privatized, and may were sold to foreign capital. With the exception of the oil sector, which is still publicly owned today, transnational actors have taken control in other sectors of natural resources exploitation like coal, gas and nickel. Investment into these sectors is protected under 24 international agreements that refer to the protection of international investment.

The last feature of the transnational project is the neo-colonization of the Colombian economy, symbolised by the incorporation of the country to the OECD and NATO, where natural resources projects have become neo-colonial enclaves. Although Colombia is one of the largest exporters of coal, it does not belong to the largest producers of the resource and falls behind China, the US, India and Australia in terms of production. Nevertheless, coal extraction is a lucrative industry in Colombia for the transnational corporations operating in the country. One of the most aggressive projects against local communities today is the *Cerrejon* coal mine in la Guajira, which has been a site for large-scale coal extraction since 1970. In 1976 the Colombian government signed a contract with Intercor (a subsidiary of Exxon) to explore, exploit and commercialize the Northern Zone. Under this agreement, both the exploitation and commercialization of coal would have a duration of 23 years, from which both the mine and the railroad, the port, the buildings, other properties, contracts and fixed assets that are necessary for the development of the business would return to Carbocol, a state-owned enterprise.

The Colombian State was represented with 50% in the participation of this mine, in Carbocol, but this was sold in 2001 to Xtrata (a company that subsequently merged with BHP Billiton in 2013), Glencore and Anglo American, all of which have a joint participation in the coal exploitation that is done in the area with 33% of the share for each of them.

But, are the local communities and Colombia really beneficiating with the large-scale coal mining project? *Centro de Investigación y Educación Popular*, CINEP identified 11 indigenous or afro-descendant communities that were resettled from 1986 to 2001 due to the expansion of the coal extraction project developed by Cerrejon: Las Mulas, Cabeza de Perro, Caracolí, Manatial, El Espinal, Jamiche, Sarahita, Oreganal, Palmarito, Descanso and Tabaco. One of the most important eviction and resettled cases is Tabaco, in which the complete town was displaced by the military forces and the security forces of Cerrejon.

Almost all of coal that is exploited in the Guajira, over 30 tons annually, is exported. Annual revenues of Cerrejon are $2100 million dollars. However, the resource that is exported lacks added social value. It does not comes with an industrialization process and, to date, taxes and royalties have been insufficient to compensate environmental and social damages. La Guajira is one of the poorest departments in Colombia. Agricultural, industrial and commercial jobs have been lost to make way for the large-scale mining activity and Cerrejon only accounts for 4% of the jobs in the department.. Water from rivers and tributaries, as well as groundwater and the environment have been directed towards mining exploitation to the detriment of the rights of the population. Air pollution and high levels of noise are also a drawback surrounding the coal exploitation. In some cases, humans rights violations have been taken before the Colombian Constitutional Court, which has reinforced the need to protect the human rights of local communities including prior consultation, water and housing. Often, the government or transnational corporation simply disregards the finding(s) of the court.

In exceptional circumstances, like in Guajira, the domestic judicial body protects the human rights of local communities and indigenous and afrodescendants people. Nonetheless, this protection is limited in scope and effectiveness because administrative authorities at a national and a domestic level do not comply with the remedies. The systematic violation of human rights of the Wayúu indigenous communities committed by Cerrejon, contrast with the largest profits and revenues of the three transnational companies that owns Cerrejon, as can be demonstrated analysing each report of the London Stock Exchange Office of Anglo America, BHP Billiton and Glencore, which

indicates that financial aspect is significant component of the current neo-colonial international legal and economic order.

In contrast, the international arbitration regime is conceived to get a prompt an effective response to transnational agents that pretend to allege a breach of an international obligation ratified by the host state, as recently shown with an arbitral decision awarded with almost $50 USD millions dollars including interest, and legal expenses to Glencore that the Colombian State have to return to them because of “a breach of the BIT with Switzerland.” One of the most famous novels of the magical realism of Gabriel García Marquez has been the “Autumn of the Patriarch”. In one part of that novel the dictator sold the sea to a foreign power. It was one of exaggeration regarding what could happen with the Latin American authorities who gave away the territory, the air, the sea. Nowadays, this particular fragment of García Marquez may become true under the new rules for “modernization” and “development” that the transnational companies and foreign capital bring to the region.

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