

Bogotá, June 8, 2020

Information Center on Business and Human Rights (CIEDH)
Attention: Amanda Romero
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Subject: Drummond's perspective on a report presented by the José Alvear Restrepo Lawyers' Collective (CAJAR) to the Commission for the Clarification of Truth, Coexistence and Non-repetition (the Commission).

Dear Amanda,

We received an invitation to present Drummond's points of view on the report that CAJAR presented to the Commission, entitled *"Report to the Commission for the Clarification of Truth, Coexistence and Non-Repetition: 'The Role of Companies in the armed conflict and Sociopolitical Violence'"*. As we work on a more detailed document, our preliminary insights are as follows:

1. We value the work of the CIEDH. At Drummond, we believe that the CIEDH's work in simultaneously publishing and responding to accusations against companies is valuable in enabling its readers to form a more informed opinion.
2. Discrepancies. In general, we disagree with the opinions of CAJAR.
3. Opinions vs. facts. CAJAR's writing does not express proven facts, but opinions we do not share, but to which they have a right.
4. Duty to report. The duty to report as per Colombian law does not make exclusions: if the CAJAR has evidence, or at least the conviction that the law was violated, it should file it officially with the Judiciary.
5. Accusatory spirit vs. encouragement for truth, coexistence and non-repetition. The CAJAR report shows an accusatory spirit in relation to alleged crimes, which is very serious, that belong in the judicial branch. As per the formation of the Commission and its functions, in our opinion, this is not the legitimate scenario for such unfounded allegations.
6. About the introduction in the CAJAR brief:
 - a. This Collective believes there is a direct relationship between the companies and the armed conflict that Colombia has experienced. That opinion does not reflect reality: the companies, especially those that have

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managed to overcome the challenges of the Conflict, acting within the law, as is the case of Drummond, have contributed to reducing the terrible effects of that violence on society. Clearly, they have also been able to do so thanks to the progressive respect for rights, and to the fact that the State is in a better condition to offer the corresponding human rights guarantees.

- b. We believe that the Conflict is the result of many factors, among which is the historical absence of the State in the territories, and this deserves to be highlighted at least. Some groups outside the law, which represent a minority of the population, adopted ideologies that justified violence for the advancement of society. Other illegal groups, also representing a minority, felt that, in the absence of the effectiveness of the State to protect them, it was valid to resort to violence to defend themselves. Many became Organized Armed Groups (GAOs) or Organized Delinquent Groups (GDOs), engaged in illegal activities such as drug trafficking, smuggling, extortion, and kidnapping.
7. About the context section:
- a. CAJAR intends to grant the Commission powers that it does not have.
 - b. CAJAR suggests that communities deal with their differences with state institutions and with companies through armed conflict, which is false, unfair and dangerous.
 - c. CAJAR bases its opinions on press reports and third party investigations, and fails to analyze, or at least acknowledge, judicial decisions that do not fit well with its opinions: for example, it refrains from saying that the conduct of Drummond executives have been examined by the Judicial branches in Colombia and the United States. In all cases, the decisions have been favorable to them.
 - d. It is not a small matter: one jurisdiction in Colombia, whose decisions have been in favor of Drummond officials due to lack of merit, and three jurisdictions in the United States (the District Court of Birmingham, Alabama, the Court of Appeals for the Eleventh Circuit and the District of Columbia Court), which have also always ruled in their favor. With all this, CAJAR ignores the right to the presumption of innocence, the right to due process, and acts as if the decisions of the afore mentioned jurisdictions could be ignored. This may be due to CAJAR's relationship with Terrence Collingsworth, an American attorney who has been reprimanded by a federal judge in the United States after paying for false testimonies in legal proceedings in that country against the company.
8. About the section, that CAJAR calls "Patterns of corporate malpractice and Human Rights violations".

- a. About Pattern 1, we disagree: the hiring of private security companies is only intended to reduce the security risks that companies certainly face, and this is done in accordance with the law. Without them, business performance and, therefore, the generation of employment, taxes, royalties and the revitalization of local economies would not have been possible, given the effects of the GAOs and the GDOs. At the same time, they help the State to be in a better condition to attend to its duties of protection and guarantee of the rights of people.
- b. About pattern 2, we disagree: The countless attacks on civilian property and civilians committed by GAO do not constitute a "potential risk", but a notorious fact, and it is rude to ignore it.
 - i. The purpose of the agreements with the Ministry of Defense to which the Collective refers is not confidential, but of public knowledge: to improve security for all citizens in the regions where companies operate and, thanks to them, protect the interests of society as a whole.
 - ii. The crimes committed in the regions in which the companies operate cannot be blamed on them or on the security forces just because they are there. Whoever is guilty must be investigated and punished.
 - iii. The interaction between law-abiding citizens, such as communities and those who work in companies, and the Public Force, is a key piece for the prevention of security risks for the inhabitants.
 - iv. The statement about actions against human rights, as a result of this interaction, is a serious accusation against the Public Forces, the Attorney General's Office, and against companies, which does not deserve to be part of a letter addressed to the Commission, but rather of criminal complaints filed before the Judicial branch.
- c. Pattern 7. In this regard we want to state the following:
 - i. Drummond believes that forced displacement is one of the most serious human rights violations in Colombia, as expressed by CAJAR, and which gives rise to dispossession. At the same time, we definitely disagree about the causes of the dispossession, about which the Collective seems to blame to companies, while we describe them as criminal activities of GAOs and GDOs, together with a relatively weak presence of state institutions.
 - ii. In Drummond's case, we carry out thorough, in-depth and careful studies in order to buy land, investigating the nature, tradition and composition of the titles. In no way do we exercise violence against any citizen. Neither do we use intermediaries to buy them. We

have not obtained benefits from the conflict, nor have we paid below-market prices.

- iii. It is unacceptable that the Collective has decided to include in paragraph 2 of page 23 statements that, although they have been repeated a number of times, do not correspond to the truth, as has been pointed out in the decisions of the Colombian and US judicial branches.
 - iv. The statement in paragraph 4 of page 23 tries to link Drummond to displacements and massacres that, in addition to being totally false, constitute crimes of the highest severity. If the CAJAR has evidence of these alleged crimes, or at least the conviction that Drummond has any relationship to them, the appropriate thing is to file the corresponding criminal complaints.
 - v. Finally, regarding Drummond's land purchases, CAJAR forgets to mention that this company bought the properties following instructions of the National Government, which described the owners as legitimate. The prices paid were higher than those set by the State, after a negotiation table that held sessions for 18 months, with the active participation of the owners, the Attorney General's Office and the Incoder.
- d. Pattern 9. Regarding the statements of the CAJAR in this section of its report, we must make the following clarifications:
- i. It is not clear if the Collective values that there are multi-stakeholder initiatives such as the "Energy Mining Committee for Security and Human Rights" (CME) and "Guias Colombia" (whose secretariat is in the hands of the Ideas for Peace Foundation - FIP), or if it belittles them as it seems to do. Aside from our inability to understand this approach, we want to point out that Drummond appreciates all the initiatives that lead to better human rights risk management, and the respectful and constructive dialogue that takes place in them, such as the two mentioned by CAJAR. Drummond is proud to be a part of the CME, and we have worked with the FIP within the framework of the Human Rights and Coal Working Group.
 - ii. We agree with the statement of the Collective regarding the relationship between Corporate Social Responsibility (CSR) and human rights management. Legal responsibilities are not something voluntary, discretionary or outside the rules of Human Rights.
 - iii. It is deeply mistaken to affirm that there are affectations to society caused by business actions in environments of violence, as pointed

out by CAJAR. On the contrary, it should be appreciated that there are those who act within the framework of the law in those environments, providing opportunities to the citizens around them, bringing in the State, which as a result has better conditions to provide public goods, generating benefits for society as a whole. From CAJAR's statement, it would follow that, wherever there is a violent conflict, private initiative must refrain from carrying out any activity. That discussion, which CAJAR does not seem to know, was overcome in 2000, precisely with the formulation of the "Voluntary Principles on Security and Human Rights" (VPs), and ratified in 2011 by formulating the "United Nations Guiding Principles on Business and Human Rights" (PRNU), two standards that are a part of Drummond's human rights policy. Contrary to what follows from CAJAR's statement, society should encourage careful private initiatives in these environments, precisely to create better opportunities for citizens in those regions and reduce the options that organizations outside the law may try to impose.

9. About the section that the CAJAR calls "Conclusions and recommendations".
 - a. This section should be called "Affirmations and Recommendations," since nothing stated by the Collective can actually be concluded from the document. The statements correspond to opinions that we do not share.
 - b. Some recommendations correspond to the functions of the Commission, and many others do not.
 - c. We regret that almost all of CAJAR's recommendations stem from prejudices about companies, steering away from the truth, and that they have an accusatory spirit, which hinders the conditions of peaceful coexistence and distract the attention of the Commission from the true causes of the Armed Conflict, thereby increasing the risk of recurrence. We hope that they would amend them, eliminating the insinuations and affirmations against the companies or their officials, so that they don't violate the right to the presumption of innocence and due process. With this, they would help with the construction of a more balanced truth, improving cohabitation conditions and building trust. Ideally, we should all focus on how to strengthen the presence of the State and increase effectiveness in the fight against GAOs and GDOs, which would reduce the risk of repetition of so much violence that we have been victims of in Colombia.

We appreciate the opportunity to present our point of view and, apart from this particular case of the CAJAR report, we trust that, if the CIEDH puts together a report with its own

appreciations in the future, it will take into account the perspective of the accused companies, instead of relying solely on that of those who accuse them.

Sincerely,

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Drummond Ltd.