EXTRACTION INDUSTRIES AND ENVIRONMENTAL REGULATION IN POST-CONFLICT COLOMBIA

Key Questions for the New Government

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Foreword

We are pleased to present the report “Extractive Industries and Environmental Regulation in Post-Conflict Colombia: Key Questions for the New Government,” by Lorenzo Morales, a journalist and professor at the Center for Journalism Studies at the Universidad de los Andes.

In the wake of the peace accords signed with the Revolutionary Armed Forces of Colombia (FARC) in 2016, Colombia must pursue new strategies to ensure sustainable development of natural resources. Oil and mining are important sectors of the economy, making a significant fiscal contribution to cover the costs of implementing the peace deal. Improved security could even encourage companies to expand extractives activity in former conflict zones.

Yet there is a lack of consensus about how to manage environmental concerns related to these sectors. Many business and political leaders argue that inconsistent policies and inefficient regulation have stifled oil and mining production. In contrast, many civil society leaders and communities are strongly opposed to extractive industries on environmental grounds and have even vetoed a number of projects. The peace negotiations have further emboldened some communities to oppose oil and mining projects.

In this context, the new government will be tasked with outlining a fresh approach to environmental regulation of extractive industries in the post-conflict period.

Based on objective, evidence-based analysis and interviews with a wide range of experts from government, industry and civil society, this report analyzes the key challenges to environmentally and socially sustainable development of the oil and mining sectors in Colombia and raises important questions for policymakers.

One of the major criticisms of recent extractives policy from environmental and community rights activists as well as industry is that the government failed to clearly demarcate strategic environmental areas. The report discusses why the new government should clearly define which areas will be open to hydrocarbons and mining development and which areas will be protected as national parks or indigenous reserves. The report also examines how the new government could improve the process for citizen consultation on the environmental impact of extractives projects while providing clarity for investment.

To manage the post-conflict effectively Colombia’s new leader will have to not only strengthen institutions but also determine which entities will be responsible for implementation. The report discusses why the new government should review local governance structures and determine whether local authorities are equipped to handle environmental management. In addition, the author discusses why policymakers should disseminate accurate information to local communities about the environmental impacts of extractive industries.

In order to allay concerns about environmental degradation associated with mining and hydrocarbons development, the new government needs to define how it can promote sustainable technologies in extractive industries. The report discusses the importance of introducing policies to promote the use of technologies that reduce environmental impact and alternative forms of integration and access to land. The report also explores how the government can reduce the environmental impact of informal mining.

We hope that by identifying the main environmental risks of oil and mining development and outlining the critical policy questions that need to be addressed, this document will contribute to strengthening environmental protection and making sustainable development of natural resources the foundation for social and economic conditions that lead to a lasting peace.

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Executive Summary

Colombia’s new president will take over a vastly different country from the one inherited by the previous administration eight years ago. The peace agreement with the FARC and improvements in security in many former conflict zones open up an opportunity to better coordinate economic development plans for large swathes of territory that were neglected by the government for years. This new context has also generated interest from some industries looking to expand into former conflict zones and beyond. The next government will face the challenge of integrating former conflict zones into the market while ensuring that industry expansion does not interfere with environmental preservation or Colombia’s international conservation commitments.

The mining and oil sectors present a particular challenge due to their environmental and social impacts. Oil and mining companies new to former conflict zones as well as firms that were already operating these areas will have to adapt to changing conditions. Although there are important differences between the mining and oil sectors in Colombia, both face similar challenges, such as growing resistance from local communities, regulatory uncertainty for investors, and lack of clarity about land use planning in the post-conflict period.

In order to take advantage of this unique opportunity, the next administration will have to address key concerns, such as where extractive industries should be permitted to operate, who should be responsible for oversight, and how to make operations more environmentally sustainable. These concerns give rise to many questions which the new administration must be prepared to answer, such as:

- What central government institution should be tasked with coordinating land use planning with a focus on environmental protection?
- How can overlaps between different post-conflict land use planning and coordination tools be reconciled?
- What tools can the government use to improve information about the mining and hydrocarbons sectors and ensure strategic projects meet the requirements to obtain an environmental or social license?
- How can the government ensure that dialogue with communities begins early in the process, and not after the announcement that a land title or environmental license has been granted?
- Should companies operating in former conflict zones be required to adhere to international social, environmental and operating standards?

To decide where extractive industries will be permitted to operate, Colombia must determine which government entity will be responsible for national land use planning, update local land use planning tools, and coordinate national and municipal plans. The new administration must also look for ways to improve the collection of critical information on extractives projects, especially in the mining sector, and leverage data provided by companies. The government could also seek to link available conservation funding with incentives to improve economic development in former conflict zones.

At present, there is a lack of clarity about which government agency can approve the location of extractives operations, whether individual communities have the right to veto projects, and how conflicts should be resolved. As a result, numerous strategic extractives projects have been blocked on environmental grounds and social mobilization in former conflict zones is growing.

The new administration will have an opportunity to improve the public consultation process and create more transparent and coherent guidelines.
for awarding oil and mining concessions as well as environmental and social licenses in order to avoid further conflicts. Investing in technical and institutional capacity building and promoting access to reliable information would also help to resolve ongoing disagreements between environmental and extractives authorities and with communities. The government will also have to decide whether to become a more active mediator between companies and communities.

The new government must also develop better policies to ensure that once projects have been approved, operators use best practices to reduce environmental and social risk, mitigate impacts and compensate damages. The administration will have to take a position on specific issues such as the development of unconventional oil and gas resources. Colombia’s oil regulator has already published rules for unconventional exploration and production, but environmental authorities have not authorized development of these resources. By requiring companies to adhere to certain international operating standards and creating additional voluntary guidelines, the government could reduce the negative impacts of extractive industries and ensure better relationships between companies and local communities.

Informal mining, illegal mining and especially mining associated with criminal groups continue to cause grave environmental damage. The presence of armed groups that profit from illegal mining and other illicit businesses has led to threats and violence against environmental leaders, including assassinations. The new government will be tasked with finding more effective solutions to stop environmental damage from illegal mining, halting attacks against environmental leaders and guaranteeing their safety to remain in these areas.

Finally, the new administration can look for ways to promote greater transparency and efficiency in the collection of mining and oil industry taxes and royalties. Funds collected from these industries could be better allocated to balance associated environmental costs.

The next administration will need to define its positions with respect to these questions as it develops public policies. The answers will determine whether Colombia can achieve a balance between environmental sustainability and the development of natural resources.

By requiring companies to adhere to international operating standards and creating additional voluntary guidelines, the government could reduce the negative impacts of extractive industries and ensure better relationships between companies and local communities.