

Colombia

EXECUTIVE SUMMARY

Oil and mining has had a significant impact on Colombia, particularly from an economic and public finance perspective, as can be seen from development indicators. From a social and environmental perspective, however, the results are contradictory. While extraction seems to have generated wellbeing for some groups or regions, it has also been the source of conflict and negative environmental effects throughout almost the whole country.

The successive governments of Colombia have, for more than a decade, focused on promoting reforms in the oil and mining sectors: including of their legal frameworks, institutional design and the distribution of income. The government has overall sought to increase investment in and generate income from these sectors to sustain economic development. However, it is still too early to fully see the impact of these reforms and how these could be affected by the international context.

This country strategy note lays out the approach that NRGi will take in Colombia in 2015 and 2016. It first provides a detailed contextual analysis of Colombia's extractive history and offers an overview of the country's oil and mining sector, followed by a summary of relevant stakeholders. The note then uses the Natural Resource Charter framework to outline the key challenges and opportunities that Colombia faces in harnessing extractive resource wealth for development. We then outline NRGi's strategic response with the two objectives and related targets that form the basis of the organization's two-year operational plan.

CONTEXTUAL ANALYSIS

The Colombian constitution of 1991 was approved at a time when Colombia was not thinking about oil and mining as leading sectors for economic growth and sustained development. It established strong provisions regarding the environment and territorial and consultation rights for Indigenous and Afro-Colombian peoples. These provisions later proved to hamper mining and hydrocarbons from becoming primary drivers of growth and prosperity.

President Uribe's administrations (2002-2010) took the first steps to effectively turn Colombia into a mineral- and oil-producing country. Ecopetrol (which existed as the *Empresa Colombiana de Petróleos* since 1951) was re-launched in 2003 and a number of tax measures were implemented to attract direct foreign investments in mining and oil.

ABOUT THIS DOCUMENT

This country strategy note summarizes an NRGi analysis of country context and reform priorities. It also outlines NRGi's engagement in Colombia, complementing the work of other actors. Developments will naturally affect the assessments and objectives described herein. Updates to this synopsis may be made as events require.

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The first administration of President Santos (2010-2014), seeking to capitalize on the super cycle, consolidated the importance of the extractive industries which were defined as one of the four drivers of economic growth and development in the National Development Plan. During his administration, reforms in the management of the extractive industry continued but in 2014 prices and demand had already started their descent. In addition, the courts defended the enforcement of constitutional environmental provisions and the Indigenous and Afro-Colombian rights to territory and consultation, creating barriers to speedy investments in the sector. Many new investments also faced steep social resistance from local populations. With some additional investments and high international prices, mining and oil grew in importance, but the ambitious goal of turning the sector into the driver of growth was not realized.

The Santos Administration made a substantial reform to the SGR (Sistema General de Regalías), the system by which royalties generated by the extractive sector are allocated (to funds and territories) and managed (by different institutional mechanisms). The new system continues to allocate revenues to the producing territories but also allocates resources to non-producing territories, and also to a number of funds designed to: invest in science technology; save for periods of less rent generation, and support the regional public pensions system. The new system also established the Órganos Colegiados de Administración y Decisión (OCADS), subnational multi-level and multistakeholder bodies that decide on the projects on which the revenues should be spent.

In parallel, Colombia experienced an unchecked growth of informal and illegal mining, in many cases controlled directly or indirectly by illegal armed groups. These developments pose a social, environmental and political challenge that requires an urgent policy response. However, all attempts at formalization have been denounced as a move to facilitate the control of the gold resources by large international corporations displacing the poor local miners, and have been met with massive social resistance.

President Santos was re-elected (2014-2018) with opportunities to promote change towards a more democratic governance and sound policies regarding the extractive sector. This includes the decision to make Colombia a member of the OECD, which will entail adherence to certain demands with regards to governance and environmental standards.

There are three new key elements to take into account to imagine future scenarios and to define our strategic goals, lines of action and counterparts in Colombia for the near future.

The first element is the macro-economic situation of the country. Colombia's economy has been growing steadily in the last years and in the first half of 2014 registered a growth of 5.4 percent – one of the highest in the region. But Colombia is now starting to experience decline in its exports of minerals and oil, and in the flows of foreign direct investment.

The second element is that the Santos administration, very likely realizing that the promotion of the extractives for economic growth generates strong political and social opposition, has apparently chosen to downplay its importance in the new national development plan for 2014-2018. It is too early to say if mining will indeed lose its centrality for the Colombian government or if this is a political decision to cool down the public debate over the matter. It is also important to note that in any scenario, oil

will continue to be important because of the role it plays in providing energy security—and not necessarily because it is a source of rent.

The third element is that the eventually successful results of the peace negotiations with the Fuerzas Armadas Revolucionarias de Colombia (FARC), and also with the Ejército de Liberación Nacional (ELN), will likely include a significant increase in social expenditures which will in turn demand new sources of public revenue. In contradiction with the public downplaying of the extractive sector in the new national development plan, the government will probably still be forced to maintain the fiscal measures designed to promote private investments and to confront legal impediments and social resistance to new projects to meet this demand.

OVERVIEW OF THE EXTRACTIVE SECTOR

In recent years, the reorganization of the extractive sector has been one of the priorities of the Colombian government. In order to strengthen the control and oversight functions the government has reformed the structure and competencies of the sector entities and created new public agencies.

The National Plan for Development 2010-2014, “Prosperity for All”, hoped to increase the generation of new employment and exports, especially of oil, coal and ferronickel, as well as drive innovation and increase the amount of resources generated by royalty payments to promote regional development.

In fact, the performance of the extractive sector has been crucial to economic growth in Colombia in recent years. In 2013 the GDP reached USD 379.9 billion and sectors of mining and petroleum represented 7.7 percent of GDP. During the last decade, minerals and oil and gas exports represented 48 percent of the total of national exports. In 2013, mining and oil exports reached USD 38.2 billion, amounting to 69.7 percent of the exports of the year.

Nevertheless, due to the decline in prices and gains by companies, in 2014 the Colombian extractive sector generated 17 percent less royalty than in 2012.

Mining

The contribution of mining to GDP has increased in recent years, in 2013 representing 2.5 percent of total GDP.

The most important product of the Colombian mining sector is coal, which reached a production of 88 million tons in 2014, placing the country first in Latin America and tenth in the world. Coal has the greatest weight in mining GDP, with a 66 percent stake in mining and 1.54 percent in the total GDP. Increased activity and prices of gold, iron, and ferronickel resulted in a 20 percent share of metallic ores in mining GDP in 2012. During 2012, an increase of 18 percent was recorded in gold as compared to the 2011 production. However, gold production did not reach the same levels of 2009 and 2010. Similarly, in 2012 there were 1.46 tons of platinum and 19 tons of silver (down 19 percent compared to the previous year). As for nickel, the growth in that year was 36 percent. Colombia is also a very important global producer of emeralds, but production and exports experienced a strong decline from 3.4 million carats produced in 2011 to 1.2 million carats in 2012, the lowest production figure since 1991.

The income tax paid by mining companies in 2012 amounted to USD 950 million, which shows a sustained growth of revenues when compared with the 650 million USD generated in 2005.

Oil and natural gas

The hydrocarbon sector in Colombia has been administered differently than the mining sector. After the reforms of the last decade, a National Hydrocarbons Agency was established and the state-owned company Ecopetrol became a mixed company with private investors controlling 15.5 percent of its shares. The growth of the Colombian oil sector in the last ten years reflects better established processes and reforms.

Colombia is one of the 30 largest producers of crude oil in the world and ranks fourth in Latin America—after Mexico, Venezuela and Brazil. Oil production has grown significantly in the last ten years and in 2014 reached an average of 1 million barrels per day, nearly double the production recorded at the beginning of the decade.

The government has actively promoted rounds of bidding for exploration and exploitation contracts. In 2012, 54 such agreements were signed, four times more than in the previous year. However in 2014 the result of the bidding process were very low, with just 26 agreements signed from 95 areas (and only five of them were offshore—the rest are conventional areas). These represented only USD 1.4 billion in exploration investments. The oil sector is strongly limited by the low hydrocarbon potential of the country, with a rate of success of only 6.8 percent. As a result, the level of reserves is low and production is in decline. At the end of 2013, oil reserves were estimated at 2.445 million barrels, which assured oil provisions for the next 6.6 years, and for natural gas, the estimated reserves of 6.4 trillion cubic feet assure provision for 15.5 years.

Box 1: Failure in the implementation of the new mining code

The 1382 Act of 2010 passed major reforms to the mining code of 2001, which had given particular attention to the protection provided by the state to the national strategic ecosystems. The new code proposed the introduction of objective criteria for the selection of investors; the revision of aspects related to the granting of mining concessions and the extension of these contracts; as well as issues concerning the formalization of artisanal mining and the mining integration.

The Constitutional Court declared Act 1382 to be non-implementable, as it had been approved without a formal process of free prior, informed consultation with indigenous peoples. The court granted the national government two years to produce a new law and to consult the indigenous peoples, allowing in the meantime the application of some articles related to environmental aspects in order to avoid irreparable damage. However, the government failed to meet the new deadline set by the court, so the previous mining code of 2001 was re-entered into force in May 2013.

In the face of this situation, the government decided not to insist in passing a new mining code but instead chose to produce specific legislation, such as the protection of moors and wetlands (Law 1450 2011); mining formalization and legalization (Decree 933 2013); the competences of the mining and environmental authorities in the definition of restricted and excluded zones (Decree 934 2013), and the requirements and processes for the application of mining titles (Decree 935 2013). In this way, the government was able to reform certain aspects of the mining sector without embarking in a new modification of the entire code as such, which would have meant a consultation process as mandated by the court.

The country's income tax and dividends from oil fell from a peak of USD 9,000 million in 2013 to an estimated USD 3.547 million in 2015. By 2013, the participation of hydrocarbons in the total GDP was 5.6 percent. Meanwhile mining contributed 2.5 percent to GDP and maintains an upward trend.

As for natural gas, in 2014 production was 1043 millions of cubic feet per day. Gas production has maintained a steady growth with rates ranging between two and three percent, and doubled production in less than ten years.

STAKEHOLDERS OVERVIEW

Civil society

Colombia has a vibrant civil society built around issues such as, among others, human rights and the armed conflict, indigenous peoples' rights, the environment, decentralization and state reform, transparency and accountability. The Colombian NGO Confederation (Confederación Colombiana de ONG, CCONG) for instance represents around 850 NGOs and brings together eight department-level federations, six national associations and networks and nine national NGOs.¹

In recent years, growing sectors of civil society have increasingly paid attention to issues related to the extractive industry from a variety of angles. For example, at the national level, Avina Foundation supports a *Mesa de Diálogo Minero* (MDM), in which CSOs and private sector companies get together to address issues in the mining agenda. There is also the *Mesa de la Sociedad Civil para la Transparencia de la Industria Extractiva* (MSCTIE) which brings together the CSOs engaged in the EITI process.

Among civil society organizations, we have chosen Fundación Foro Nacional por Colombia (FFNC) as our strategic partner, and have collaborated with them over the last three years. We chose to work with FFNC as it is one of the few organizations that adopts a holistic approach to the extractive industries and works at the national level, also having presence in two regions. Their profile is a mix of a think tank and activist NGO, that combines the capacity to do research and in-depth analysis, while at the same time engaging in campaigns for change and participating in multistakeholder work at the national and subnational levels.

In fact, FFNC monitors the evolution of the extractive sector by means of their annual reports, belongs to both the MDM and MSCTIE, and is one of three CSO representatives on the EITI multi-stakeholder group. At the regional level, FFNC belongs to the Red Latinoamericana sobre las Industrias Extractivas (RLIE) and is a part of its executive committee.

Our work with FFNC has included financial support to sustain monitoring, research and advocacy initiatives. But, most importantly, it has included technical assistance to identify and address new issues. Such has been the case of the inclusion of royalties and concessions in the FFNC's monitoring work, and of the research initiatives looking into mining, direct local economic impacts of extractive activities, and a territorial perspective on governance. In the same way, it has been in dialogue with NRGi that FFNC decided to engage in the EITI process and defined a specific approach centered on the need to include subnational and environmental information.

1 http://ccong.org.co/ccong/quienes-somos/quienes-somos_

Our work with FFNC has had a multiplying impact on the CSO platforms it belongs to. In fact, the FFNC's annual reports and their specific perspectives regarding EITI have been influential in the decisions made by these platforms regarding their agendas for monitoring, consensus building and advocacy. FFNC's work allows these platforms to access a more holistic view of the extractive sector, update their information and analysis, and develop their capacities.

While FFNC is a primary partner for the reasons explained above, with additional resources, it would be important to directly engage with MSCTIE in a capacity building effort to make sure we share a broad and holistic perspective regarding the extractive industry, and also to go in-depth on certain issues in which we have strong capacities and/or are central to their own agendas. For example: indigenous rights to territory and consultation and consent, the role of subnational governments in decision making regarding extractive industries, economic diversification, mining, energy and water, social conflict and social conflict management.

Independent media

Colombia has a strong and good quality mass media, with respected newspapers, TV news and analysis, and radio programs. Nevertheless, mass media outlets tend to have relations with the political elite and with large private sector corporations, which limits the mass media's willingness to address some of the more controversial issues related to the extractive industries. At the same time, there are some new and more independent outlets—mostly virtual in character—that are willing to address precisely those issues that mass media tends to avoid. Among them, we can mention *Colombia Punto Medio*, *Red De Medios Alternativo, desde Abajo*, *La Silla Vacía*, and even some like ANNCOL (Agencia de Noticias Nueva Colombia) that appear to act as the informal voice of FARC.

We have identified *La Silla Vacía* as a potential counterpart because it has a less academic and activist profile and a stronger research and journalism one, and also because it has an explicit interest in the extractive sector. Indeed, it has created a special section called *La Silla Minera* which has already developed certain research and virtual debate capacities in addressing the extractive sector.

Parliamentarians

The Colombian National Congress is dominated by the party in government. The National Congress Fifth Commission—in charge of natural resources and extractive industries - has demonstrated an interest in developing its capacities to understand, oversee and legislate the extractive industries.

The Netherlands Institute for Multiparty Democracy (NIMD) and FFNC are already collaborating on a project that includes outreach to the political party leaderships and their MPs to develop capacities regarding the extractive sector agenda, including the new rent management system. NRG could join forces with them to provide a broader global and regional perspective to the issues under debate and an in-depth expertise dealing with some of the chosen issues, that both NIMD and FFNC lack.

The executive

There are multiple public actors involved in the decision making process regarding the extractive sector in Colombia. In fact, while the Ministerio de Energía y Minas is in charge of promoting investments, Colombia has an Agencia Nacional de Minería (ANM)

and an Agencia Nacional de Hidrocarburos (ANH) with regulatory and oversight functions. Also, Ecopetrol is the national oil company in charge of hydrocarbons exploration, production and commercialization, while the Dirección de Regalías (DR) of the Departamento Nacional de Planeación (DNP) is directly in charge of the allocation and use of the extractive rent.

The DR has solid capacities regarding the internal monitoring of royalties, including their allocation to territorial and central funds and use. However, its capacities are weaker when it comes to institutional bottlenecks in the mining sector and the social impact of royalties and the extractive sector at large.

We have started a conversation with DNP and DR to provide technical assistance on some issues in the mining sector, such as tripartite dialogue mechanisms for conflict resolution, coordination between national and subnational levels of government and the implementation of mandatory corporate social responsibility activities. We see this as a critical opening in the process of establishing working relations with the Colombian government and are exploring how best to respond to such demand.

In perspective, if we had additional resources, we could engage the Ministry of Economy and Finance to explore the possibility of working together on the adjustments to the fiscal regimes in the times of the super cycle.

Universities

Many of Colombia's universities engage in teaching and research activities regarding the extractive sector, but none of them has developed the capacity to combine a holistic view with in-depth technical capacities on specific issues.

The Universidad Externado de Colombia (UE) is a private university with which we have collaborated over the past two years. As a result, with technical and financial support from NRGI, UE has already run two annual replicas of the Latin America Regional Knowledge Hub adapted to Colombian reality and needs.²

The idea now is to deliver training modules on revenues management. These modules would combine an introduction to extractive revenues governance with a concentration on royalty management and practical exercises regarding project selection and presentation procedures.

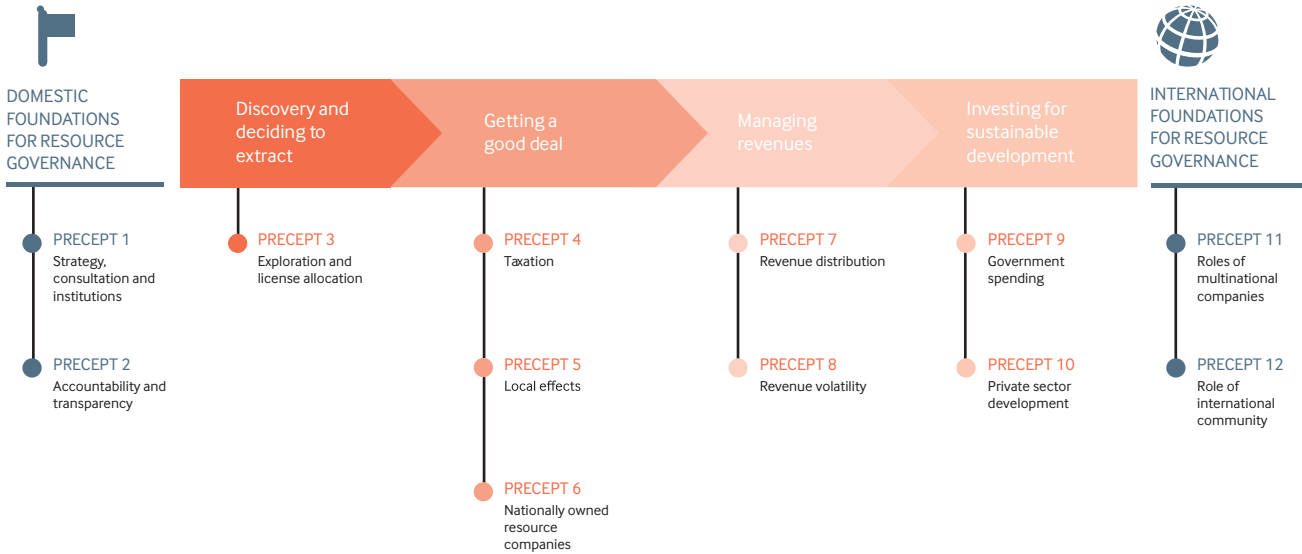
Donors

Only a few private donors support civil society, media, and parliamentary engagement on extractive issues. However, other larger donors collaborate with the government to strengthen its sector management capacities. NRGI will use its modest resources to help fill the gaps in CSO funding and complement bilateral and multilateral funding and technical assistance to the government.

2 http://portal.uexternado.edu.co/pdf/noticias/industrias_atract.pdf

NATURAL RESOURCE GOVERNANCE ASSESSMENT

Overview of the Natural Resource Charter



Domestic foundations for resource governance

Precept 1: Strategy making and public participation. *Resource management should secure the greatest benefit for citizens through an inclusive and comprehensive national strategy, clear legal framework and competent institutions.*

National planning is a tradition in Colombia and has a solid institutional framework. In fact, national development plans have been produced every four years since 1970 and there are mechanisms to consult with subnational governments, private sector and civil society.

The National Constitution of 1991 and the Law 152 of 1994 established the contemporary criteria for the formulation of the National Development Plan. The formulation of the plan is carried out by the National Planning Department, which consults on the draft with a variety of public, private and social actors before presenting it to the National Congress for debate and final approval. After its approval, the congress and the comptroller's office have the mandate to oversee and assess the implementation of the plan.

The Mining National Development Plan - Vision 2019, formulated by the Unit of Planning Mining Energy (UPME), defined as basic lines of action:

- The conversion of the state into a facilitator, with a strong institutional structure able to manage access to resources, the promotion of sustainable development of mining, and the control of the use of resources
- The development of programs to promote mining in development plans, in particular those of the departmental level
- The elimination of illegal mining

Precept 2: Accountability. *Resource governance requires decision makers to be accountable to an informed public.*

There is accessible and reliable public information regarding investments, production, rent generation and rent management in Colombia, which allows for public, media and CSO oversight. Colombia scores 74/100 in the Resource Governance Index, ranking 9th of 58 assessed countries. Colombia is also a member of the Open Government Partnership and a candidate to the Extractive Industry Transparency Initiative. Nevertheless, it should be noted that there is less information available regarding environmental and social impacts than there is on extractive revenues.

In the parliament there is a “Fifth Commission,” in charge of overseeing extractive industries. It is composed of thirteen members of the senate and nineteen members of the house of representatives. The Comptroller’s Office has oversight functions of the sector management.

Colombia has recently approved Law 1712 of Transparency and Right of Access to National Public Information and is also working to be accepted as an OECD country.

Discovery and deciding to extract

Precept 3: Exploration and license allocation. *The government should aim to reduce geological uncertainty under a transparent licensing regime that allocates rights efficiently.*

Minerals

In general, license areas have been assigned to specific entities on a first-come-first-served basis. License allocation is publically available on the cadastre database, alongside geological data. Recently, the government has defined strategic special areas (Mining Law 1450) where it will conduct studies and subsequently grant concessions. The idea is to develop geological studies as well as consultation processes, and on that basis grant concessions following “objective selection” processes.

At the beginning of 2012, there was a backlog of 19,629 concessions requests that had not been processed. The ANM established a moratorium on new applications in order to concentrate on solving the existing backlog. In the end, it accepted only 1,515 applications and rejected the vast majority. Applications were rejected because of overlaps, lack of documentation, lack of legal capacity and failure to meet various requirements. When the application process reopened, 18 months later, 3,637 new requests were received in six months.

Petroleum

Hydrocarbons licensing is based on bidding processes for exploration and perforation rights. Blocks have been licensed over competitive bid rounds. There is geological information on the hydrocarbons sector which is used to attract participants to bid.

Getting a good deal

Precept 4: Taxation. *Tax regimes and contractual terms should enable the government to realize the full value of its resources while attracting necessary investment, and should be robust to changing circumstances.*

The oil and mining sectors contributed on average 27.5 percent of government revenue for the period between 2006 and 2011. The share for the oil sector was 23.4 percent, while the mining sector contributed 4.1 percent. Colombia has a nominal corporation tax rate of 33 percent and a rate of 1-12 percent for royalties – these are among the highest in the region.

The Comptroller Office has published a series of four volumes on mining issues, titled “Mining in Colombia: fundamentals to overcome the extractive model.” The first volume discusses the tax regime, particularly chapter four which discusses the participation of the state and society in the mining income. Authors Guillermo Rudas and Jorge Enrique Espitia report that tax breaks had led to a situation in which Colombia collects only half of what it should from the extractive sector.

Minerals

The studies by the Comptroller Office state that mining companies receive such a range tax exemptions and deductions that Colombia collects only 55 percent of what it should.

The fiscal regime includes a number of tax benefits that allow deducting the tax on the income. Among the most important are:

- Special deduction for investments in fixed assets
- Deduction for the mandatory payment of royalties
- Deduction for depreciation of fixed assets
- Deduction for accelerated for depreciation of investments.

Additionally, problems have been detected regarding transfer prices, especially in the coal industry. There are, in addition, other tariff benefits that mining and oil companies use (even when these do not correspond to extractive industries) such as for example import of inputs without paying taxes. There is no access to details of discounts and exemptions for individual companies as individual statements are not published. The calculation of the real rate for income tax profit in mining is 17.4 percent (Rudas 2013).

Petroleum

Ecopetrol is the main source of tax revenues from the oil sector. By concept of dividends and income tax Ecopetrol transferred USD 35 billion to the Colombian government in 2012.

The Comptroller Office study states that hydrocarbon companies receive such tax exemptions and deductions that Colombia is collecting only 64 percent of what it should. The deductions and exemptions are similar to the mining companies. The calculations of the real rate for income tax in hydrocarbon sector 20.1 percent.

Precept 5: Local effects. *Opportunities for local benefits should be pursued, and the environmental and social costs of resource projects should be accounted for, mitigated and offset.*

The constitution of 1991 was a milestone in defining contemporary Colombian institutional and political structures. The constitution established a broad framework of fundamental rights and freedoms, deepened the decentralization processes, and recognized the diversity and plurality of the Colombian State.

These advances are evident in the environmental field with the approval of Law 99 of 1993, which created the national environmental system and introduced the concept of sustainable development. As a result, the competency to issue environmental licenses for large-scale projects is in the hands of the Ministry of the Environment, while small-scale mining is handled by the regional autonomous corporations (CAR).

As has been mentioned before, territorial and consultation rights for Indigenous and Afro-Colombian peoples were granted in the 1991 Constitution. Later, Colombia signed the ILO Convention 169 in 1991 (Law 21) and regulated it in local legislation in 1998. Prior consultation has been recognized, and there have been a large number of processes of consultation in the hydrocarbons sector, but the procedures are still subject to criticism and debate.

Colombia needs to approve a new mining code, particularly to include environmental and social issues, as the existing law of 2001 does not have provisions regarding these matters. Several decrees have been approved to preserve protected areas (especially the highlands “paramos” because of their importance in water generation), but at the same time the government has in fact expanded the mining frontier, granting out concessions in many cases affecting protected areas or indigenous sites or “resguardos.”

Beyond the existing legal mandates regarding territorial and consultation rights and the environment, the absence of the state in mining regions and the expansion of illegal mining over vast tracts of the territory impede the concrete enforcement of environmental and social provisions and standards.

Precept 6: Nationally-owned resource companies. *Nationally-owned resource companies should be accountable, with well-defined mandates, and seek to be commercial efficient in the long-term.*

Mining

Colombia does not have a state-owned mining company.

Petroleum

Ecopetrol operates as a commercial firm, with a nine-member board of which only three seats are for the government, despite the fact that the government controls 84.5 percent of the shares, (the rest of the shares are privately owned.) National oil company management follows clearly-established roles and Ecopetrol has been identified as a model of good corporate governance. The board accounts to shareholders annually, and has implemented a number of mechanisms to provide information and communicate with shareholders. The ANH as an oversight agency is in charge of contracts, holding licenses, monitoring their execution and advising government.

Managing the revenues

Precept 7: Revenue distribution. *Resource revenues should be invested to achieve optimal and equitable outcomes for both current and future generations.*

Savings

There has been a savings fund since 1996 but it is currently in liquidation. A new fund was created in 2012 (Law 1530), but it is too early to assess its performance. The new fund has an expanded directory, is administered by the central bank of Colombia and is regularly audited by the comptroller office.

Allocation and distribution

The new royalty system (SGR), which entirely reformed the previous royalty allocation and use system, was approved in 2012 (Law 1530). In addition to the savings and stabilization fund, there is a science and technology fund, a regional development fund, and a pensions fund. Local projects are approved by regional boards called OCADs. There were some difficulties in the initial implementation of the OCADs and their performance, but it is still too early to make a full assessment. The administration of the entire system is under the charge of the Dirección de Regalías and it is audited by the general comptroller.

Precept 8: Revenue volatility. *Domestic spending of resource revenues should be smoothed to take account of revenue volatility.*

Colombia uses a multi-year investment planning procedure (the current one covers 2011-2014), which defines fiscal rules, control of volatility, deficit, and other factors that guide the preparation of the annual budget in the different levels of government. The new saving and stabilization fund established in 2012 receives 30 percent of the royalties from each region. Regions keep the ownership of resources, and 10 percent of the savings can return to regions in periods of deficit.

Investing for sustainable development

Precept 9: Government spending. *The government should use revenues as an opportunity to increase the efficiency of public spending at the national and subnational levels.*

Strong arguments in favor of the reform of the royalty distribution system were that resources were being used inefficiently, developmental goals were not being met and that it was plagued by corruption. The new system seems to be facing start-up problems generated by the lack of management capacities of the new local governments receiving parts of the extractive rents. However, more research is needed to establish whether the allocation of revenues through projects approved by the OCADs will indeed improve economic and social development.

Colombia's economy does not have a heavy dependence on the mining and the oil sector. The boom of prices—and now their fall—therefore did not have such a significant impact in terms of revenues. Yet the current budgetary constraints and the increasing fiscal deficit promote an interest in the extractive industries because its ability to mobilize the economy through foreign direct investment and generation of revenues for the state. The Colombian state would otherwise need to consider other alternatives such as increasing revenues through tax increments or reducing expenditures, both alternatives with a high political cost.

Precept 10: Private sector development. *The government should facilitate private sector investments to diversify the economy and engage in the extractive industry.*

Colombia has a higher level of economic diversification than other Andean countries. In recent years it has made progress in peace talks with the FARC to solve the armed conflict (talks with ELN are also about start). The armed conflict has been one of the main problems for investment in all sectors of the economy, including in many cases the bribes that companies had to pay to operate in some areas of Colombia.

Ecopetrol has a local content policy regarding road maintenance, infrastructure works and workers transportation. Furthermore, most of the oil extracted is refined and used for internal consumption, adding value to the process. In the mining sector there are no legal local content mandates. Companies have corporate social responsibility policies which are not linked to local development plans. There is no state body overseeing the CSR or local content practices by companies.

International foundations for resource governance

Precept 11: Roles of multinational companies. *Companies should commit to the highest environmental, social and human rights standards, and to sustainable development.*

A range of multinational companies have invested in Colombia. Companies engage with the government and civil society through existing forums, notably including the MDM and the EITI multi-stakeholder group. However, in both cases, their involvement is through their respective associations rather than at the company level, and as a result we do not really know which companies are more willing to contribute. In fact, in filing its application for EITI candidacy, the Colombia Government listed the Asociación Colombiana de Petróleo (ACP), the Asociación Colombiana de Minería (ACM) and Ecopetrol as industry representatives. Looking ahead, CSO representatives on the EITI MSG will need to identify which individual companies are more inclined to collaborate with a healthy EITI process.

Precept 12: Role of international community. *Governments and international organizations should promote an upward harmonization of standards to support sustainable development.*

Foreign governments and multilateral agencies are very active in Colombia regarding the extractive industries, on issues that range from the environment to indigenous peoples' rights, to decentralization and state reform and the performance of oversight and regulatory bodies.

Colombia is also active in many international initiatives, particularly the OGP and now the EITI. In both cases, embassies and agencies—such as GIZ or USAID—play a critical role in providing political and technical support to Colombia's participation.

The post-conflict peace process is sure to gather international attention and increase the role of the international community in Colombia, as the country will need to learn from the international experience on how to meet the challenge of consolidating peaceful gains following the successful negotiations.

STRATEGIC RESPONSE

In line with the institutional goal of NRGi, the goal for NRGi programming in Colombia is that citizens benefit from extractive resource wealth. To advance this goal, NRGi will address the challenges and opportunities identified by our contextual analysis by working toward the objectives and related targets outlined below.

Objective 1: Increased transparency, oversight and citizen participation in the extractive sector, especially around subnational revenue management and the environment

- The EITI multi-stakeholder group includes information on subnational revenue management and the environment in annual reports.
- Parliament, also known as the Fifth Commission of the National Congress, effectively oversees the extractive sector.
- Civil society and the media monitor and promote well-informed citizen participation in policy debates on the extractive sector.

Objective 2: Improved performance of the revenue sharing system, known as the Sistema General de Regalías

- Civil society and parliament gain capacity to effectively engage in the revision of the mining and hydrocarbons code.
- The government (DNP and the Ministry of Mines) designs and implements a better approach to mining sector bottlenecks.
- Civil society, the parliament and political parties effectively participate in subnational revenue sharing decisions.

FUTURE CONSIDERATIONS

The following section outlines areas NRGi may wish to consider in the future, based on opportunities and subject to human and financial resources. We view the strategy development process as one of active learning and will seek to seize new opportunities as appropriate.

Role of the extractive sector in the national development plan. We completed this note when the debates on the new national development plan were already well advanced. Nevertheless, the result of our work can help the congress, the general comptroller's office and the media exercise their oversight functions over the extractive industry. Furthermore, we could in the future collaborate with CSOs, universities and media with a national development plan monitoring capacity to see if the policies regarding the extractives considered in the plan are being implemented, or not, and why.

Tax reform in the extractive sector. This would include work to review the special exemptions and deductions clauses or "gavelas" generated in previous administrations to promote investments. However, we have seen that highly specialized institutions, such as the Contraloría itself, are working on the matter. In addition, this is a very divisive political issue on which it would be difficult to find reformist government officials with whom to partner. But, if in the future this becomes an issue for the

government itself, we could contribute with comparative analysis on how other countries in the region and globally are adapting their fiscal regimes to the new times.

Productive diversification and general tax reform. All across Latin America and the Caribbean, governments are exploring ways to add more value to natural resource extraction, use the rent to foster other productive developments, or explore how other economic areas can generate jobs, growth and public rents to compensate for the declining importance of the extractive sector. Given that the extractive industry can no longer sustain a “single-source” approach to public rent generation, tax reform can become a hot new public issue. We could provide some comparative analysis on how this is being done elsewhere to feed into the Colombian debate on the matter if it becomes central in the country’s agenda.

Fiscal regimes in the super cycle. On an opportunistic basis we could also engage the Ministry of Finance and Economy to explore the possibility of working with them on fiscal regimes for the end of the super cycle. However, for 2015-2016 we chose to focus on support to other government agencies linked to the royalty system.

State owned enterprises. With additional resources, we could run an independent analysis of the ways in which Ecopetrol commercializes its oil in external markets, following the lines of analysis of African national oil companies, in turn opening doors for advocacy and monitoring.

LONG-TERM STRUCTURAL ISSUES

A successful peace process will demand a whole range of economic and institutional reforms, many of which will relate to the extractive sector. As mentioned before, one issue will be the role of the extractive sector in funding the increase in social expenditures that a peace agreement will most certainly bring about. Another will be decentralization, subnational decision making capacities and levels of autonomy, including decisions regarding the extractive industries the environment and indigenous territories. We believe that our contributions to these specific issues will in turn contribute to the definition of the role and management of the extractive industries in a post-conflict scenario, based on socio-economic equality and political democracy.