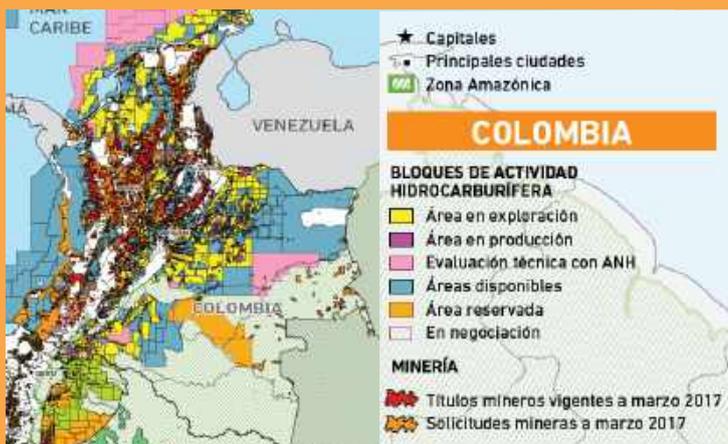


Mining, Infrastructure and Large-Scale Development Projects

Land Management: In favour of mining and other large-scale development projects

Here is a lack of clarity in Colombia about land management in relation to extractive projects. The 1991 Constitution establishes that “the State owns the sub-soil and non-renewable natural resources, without prejudice to rights acquired and refined in pre-existing laws”. However, the Mining Code establishes that local authorities are not permitted to exclude mining activities from their territory, a prohibition which was extended to Land Management Plans (Planes de Ordenamiento Territorial - POT). In Colombia, 100% of oil production and 90% of mining, in particular gold, coal and nickel mining, is currently concentrated within 111 municipalities. According to the National Planning Office (Departamento Nacional de Planeación - DNP), “the vast majority of Colombian municipalities in which mining and oil exploration is concentrated, need to should update their POTs to guarantee more organised development”. The National Mining Agency (Agencia Nacional de Minería - ANM) has been using the legal grey area to develop 'municipal agreements' and organise public hearings which according to experts are an unconstitutional means of implementing mining projects in Colombian regions.

Mining Concessions



Map: Mining Concessions, CEDIB, 2018

Civil society participation in land management



Photo: Minga

In 2016, the Constitutional Court ordered local participation to be ratified through grassroots consultations and municipal autonomy, so that citizens could decide on the implementation of mining-energy projects in the regions. However, in 2018 the same Court decided that these mechanisms could no longer be used to veto mining or oil extraction projects. Between 2013 and 2018, 10 votes were held in departments such as Tolima, Casanare, Santander, Cundinamarca, Quindío and Meta. In all of these consultations the population voted against mining in their regions. These municipalities are currently using locally-developed municipal agreements as a solution.

CONSULTAS POPULARES AMBIENTALES



In Colombia, indigenous and Afro-descendant peoples also have the right to free, prior and informed consultation. It is these peoples' fundamental right to be able to decide on the legislative and administrative measures that affect them, and to participate in decisions on projects, works or activities in their territories. This right seeks to protect their cultural, social and economic integrity, their autonomy and guarantee the right to participation, in line with ILO Convention 169. Nevertheless, the United Nations Committee on Economic, Social and Cultural Rights expressed concern about the poor implementation of prior consultation in Colombia and the limited progress in the implementation of Constitutional Court decisions in favour of Afro-descendant and indigenous populations.

Colombian State commitments on business and human rights: the Ruggie Principles and National Action Plan

In 2015, the Colombian government adopted the first National Action Plan on Business and Human Rights (Plan Nacional de Acción en Derechos Humanos y Empresas - PNA) to implement the UN "Guiding Principles on Business and Human Rights", making Colombia the first non-European country to adopt a national action plan on these issues.

Civil society has strongly criticised the PNA because it ignores the power imbalance in dialogues between business and communities affected by human rights violations and promotes multi-actor forums and non-judicial mechanisms. The PNA does not offer any kind of guarantee for victims of human rights violations committed by companies and moreover, the process to develop the PNA was carried out without the participation of communities affected by human rights violations committed by companies.

The European Parliament can play a role in the following ways:

- Follow up on the Parliament's Resolution 2628 of 2012, which called for a roadmap as part of the provisional application of the Trade Agreement between the European Union and Colombia and Peru, to monitor progress on a number of issues including environmental protection, biodiversity and impunity.
- In the evaluation reports on the Trade Agreement with Colombia, Peru and Ecuador, include an analysis of the impacts of European investments in mining and infrastructure projects on the human rights of ethnic peoples and the environment.
- Show support for citizen participation mechanisms such as prior consultation and grassroots consultation and ask the EEAS to express support for these mechanisms in its bilateral dialogue with the Colombian Government.
- Participate in missions to Colombia visiting regions affected by mining and infrastructure projects, meet with organisations and communities that work for the protection of the environment and for the rights of ethnic peoples.
- Request that the European Commission - anticipating the implementation of legislation on conflict minerals in 2021 - begins discussions with the different stakeholders involved on how to improve monitoring of natural resource chains, such as Colombian gold, taking into account that mining is a source of financing for illegal armed groups.

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