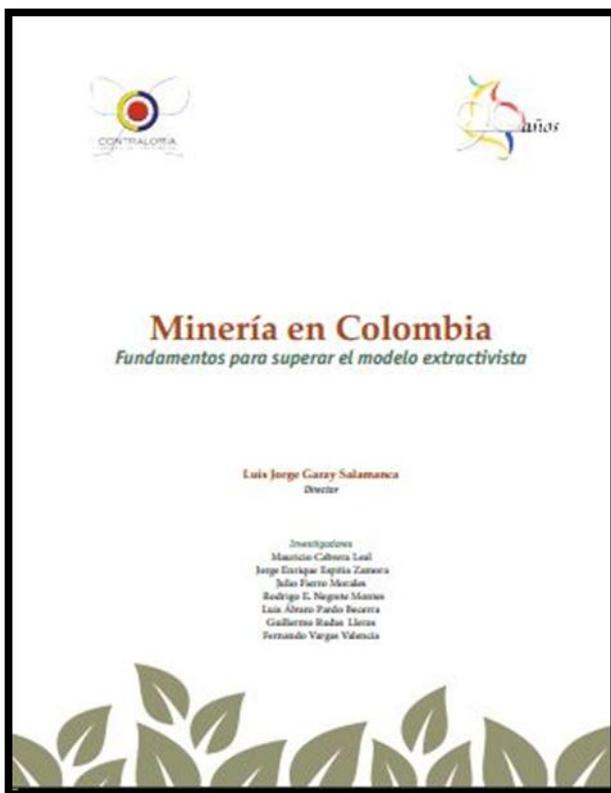


“Mining in Colombia: Basics to overcome the extractive model”

Summary of the Colombian Comptroller General’s Report¹ and Recommendations

June 2013



In May 2013, the Colombian Comptroller General (*Contraloría General de la República*) published a report entitled “[Mining in Colombia: Basics to overcome the extractive model](#)” (*Minería en Colombia: Fundamentos para superar el modelo extractivista*) which was widely covered by the national press¹.

The following are the main conclusions of the report and some reactions after its publication. Finally, ODHACO offers recommendations to address this situation.

1. Contents of the report

The report warns about the significant growth of mining in Colombia and its implications for the country. It highlights in particular the **overlapping of areas where serious human rights violations are occurring, with mining and oil extraction areas**. The report states that, “*according to figures from*

Funtraenergética (2011), '80% of the human rights violations occurring in Colombia, are taking place in the mining and oil municipalities (35% of the national total); 87% of forced displacement occurs in these municipalities and those which receive royalties for mining and energy production; 78% of crimes against trade unionists, 89% against indigenous peoples and 90% against Afro-descendant peoples, are committed in mining and energy areas'”. The report expresses concern at the militarization and the increase in conflict over land, brought by mining. It warns against the priority given, in these cases, to private profit above fundamental rights, including collective rights (land rights, food security, etc.).

¹ The Colombian Comptroller General is the highest body of control of the tax system of the State. It is in charge of the public control and monitoring of tax managing by the administration, individuals or entities dealing with public funds or goods of the Nation.

In terms of the restitution policy for lands stolen or forcibly abandoned, according to the report, **“almost all municipalities targeted for land restitution coincide with the existence of mining titles”** which *“generates a series of challenges to the restitution judge”*. **The report also highlights failings in terms of the right to free, prior and informed consultation.** The UN High Commissioner for Human Rights (OHCHR) has already warned in its latest annual report on Colombia that, after a *“broad participatory process”* on the right to consultation, *“not a single best practice was identified”*, which threatens the survival of many indigenous peoples (A/HRC/22/17/Add.3, January 7, 2013).

From an environmental point of view, the Comptroller’s report emphasizes that: *“The absence of clear environmental, social, cultural and economic measures, coupled with the proliferation of the mining titles already granted, current applications and the declaration of strategic mining areas in several regions of the country, and the lack of appropriate evaluation mechanisms, are endangering the environment in the country and causing serious problems for communities living in these areas. There are no limits to the granting of mining titles, nor to environmental licenses, which is leading to a worsening in environmental social, cultural and economic conflicts, ignoring the hierarchy of rights and, consequently, fundamental rights.”* **The report warns about serious shortcomings on the part of the Colombian State regarding environmental studies, and the control and monitoring of mining activities.** It highlights for example that *“in Colombia 86% of metal production is carried out in mining production units that do not have mining titles (Ministry of Mines and Energy. Colombian departmental mining census, 2010- 2011); and of the 1,997 mining titles reported by MME to the Ministry of the Environment in June 2010, only 194 of them have an environmental license”*. Furthermore, this is occurring in a context of a weakening of the stringency in environmental licensing: it is reported that the Comptroller General’s Office had already shown in a 2006 report *“how there has been a constant change in licensing criteria, with the approval of licenses becoming increasingly less rigorous”*.

This situation is extremely worrying given that these activities cause significant impacts to the environment: according to data cited in the report, the production of 1 ton of coal generates 10 tons of **waste**. And even more in the case of large scale open pit mining projects, which *“annually generate 25-70 times more waste than Latin American metropolises, given that in the case of coal the waste is 10 to 12 times greater”*. The report also states that *“every gramme of extracted gold means the use of 1,160 litres (of water)”* and that *“if 60% of the water used was re-circulated (AngloGold Ashanti, 2012), the **water footprint** per gram of gold would be of 464 litres”*. In terms of **health** impacts, the Comptroller highlights a weakness in the data available.

From an economic point of view, the report shows the current lack of significant contribution by the extractive sector to the country. According to the report, **this business does not generate significant economic benefits since it produces raw material destined for export** “raw materials are exported from Colombia almost entirely (99% of gold and 92-95% of coal), which is why production chains are not established and, therefore, they do not directly energize the economy, at least in terms of the appreciable value of the extracted materials”. The report concludes that this situation “converts the country into a net exporter of raw materials and into an accumulator of waste pollutants, which favours the reproduction of ecological injustice through the generation of negative external effects”.

In addition there are significant tax losses to the State. The report notes that: “the tax system in Colombia is characterized by its intricate complexity and precarious demands to companies to submit detailed information on their tax returns, with a consequent **lack of transparency**. There is also a wide range of deductions, rebates and exemptions to income tax under the current tax legislation in the country”. According to data published in the report, **the tax expenditure caused by deductions and discounts to income tax** for the mining and hydrocarbons industry was 203% (that is to say “for every 100 pesos actually paid for this concept, mining companies were entitled to discounts which ended up as losses for the State of more than 200 pesos”) and 118% between 2005 and 2010, respectively. Although the situation improved in 2011 – with losses of 82% and 57% respectively - thanks to a “mini-tax reform”, in previous years there were significant losses for the country. The Comptroller also reports **tax evasion** practices by mining companies such as “under-invoicing transfer prices between associated companies” and the failure to declare part of the production, proven by comparing the quantities of ore exported with the production levels declared by the mining authority. Failure to declare a part of the production royalties causes losses in royalties, as well as tax losses such as income tax and VAT. The major difference between declared production and exported ore leads the Comptroller General to speculate whether “this is a simple case of evasion in the payment of royalties; or whether it corresponds rather to a systematic practice of fictitious exports aimed at illicit money laundering” (report to Congress on the State of the Environment and Natural Resources 2011-2012).

“Upon examining the geopolitical map of Colombia, the CG report finds an overlap between the areas in which large displacements have occurred and areas where mining is carried out and areas of high levels of poverty; at the same time these areas coincide with some of the most fertile lands which are used for arable and livestock farming”

Comptroller, Sandra Morelli Rico, May 6, 2013

Finally, the Comptroller warns that: “**illegal and criminal mining continues**, spurred on by high gold prices in the international market, and the State being able to contain its boom, other than by carrying out some arrests and the confiscation of some machinery.”

2. Reactions to the publication of the report: the large-scale mining sector attempts to delegitimize the Comptroller’s report

In response to the Comptroller's report, the large-scale mining sector publicly reacted by alleging that the report lacks impartiality (see article in Spanish in La República: [Los mineros le responden el informe a la Contraloría, May 10, 2013](#)). To which the Comptroller responded that "The study is based solely on official data from the DIAN, DANE and mining companies rather than "hypotheses or half-truths" or "the repetition of myths" as mistakenly alleged". "It is based on judicial decisions (of the Constitutional Court, the Council of State and land restitution judges), case law and data from government agencies such as the Special Administrative Unit for the Management of Land Restitution, which warn about the gaps in norms and legal provisions for mining when compared with Colombia's constitutional norms" ([Press Release in Spanish from the authors of "Mining in Colombia", May 12, 2013](#)).

3. Recommendations

In light of this situation, ODHACO recommends that the EU, its Member States, Switzerland and Norway:

- Express their concern at this situation and urge the Colombian authorities to comply with the recommendations of the Comptroller's report;
- Adopt a normative framework to prevent and punish via the criminal and civil courts the direct and indirect violation of human rights and environmental protection standards by European companies and their subsidiaries both in Europe and in third countries; prevent access to the European market of products whose origin is related to human rights violations; ensure access to justice for victims of human rights violations by businesses.

Moreover, in relation to specific EU tools, Oidhaco requests that:

- The External Action Service implements a consultation mechanism with civil society prior to the dialogue sessions with Colombia on extractive industries;
- The European Commission, the European Council and the European Parliament monitor this situation within the framework of the provisions and mechanisms provided by the EU-Colombia FTA and its roadmap for human rights, labour rights, and the environment.

ⁱ See, for example press articles (in Spanish): [El Espectador, '80% de violaciones a DD.HH. en 2011 fue en municipios mineros', May 7, 2013](#); [El Tiempo, 'Mineras pagan bajos impuestos y reciben millonarios beneficios', May 6, 2013](#); [El Universal.com.co, Los "peros" de la Contraloría General sobre la minería, May 6, 2013](#) ; [RCN Radio, Minería genera desplazamiento y destrucción de tierras, May 6, 2013](#); [El Espectador, 'Colombia no está preparada para la locomotora minera', May 6, 2013](#); etc.