

Colombia's challenges

Colombia's deepwater and unconventional oil and gas resources are about to be explored for the first time. **Kyriaki Karadelis** examines the challenges facing these burgeoning industries, from delays in environmental licensing, to ethnic communities and social unrest

Colombia held its latest oil and gas bidding round in November 2012, in which several deepwater and ultra-deepwater fields and some onshore blocks with unconventional resources were up for grabs.

The results of the round were positive for the offshore blocks, with six of the 13 fields on offer being awarded: a 46 per cent success rate. But they were not so positive for the unconventional oil and gas areas, where only four of the 30 blocks with prospective unconventional reserves seeing success.

Amid the winners that did pick up blocks in the November round were US company Anadarko, which entered Colombia for the first time through the round, Spain's Repsol and India's national oil and gas company ONGC. The fields available in the round – 115 in all – fell into three categories: type one blocks, for which technical information was available; type two blocks, which had new prospectivity; and type three, located in frontier regions.

Many of the unconventional blocks were type two and three, with the Magdalena river valley garnering the most interest.

Álvaro José Rodríguez, a partner at Posse Herrera Ruiz in Bogotá, says the outcome of the 2012 bid round showed some sector-specific challenges within the areas auctioned that the government needs to address, and some issues common to all areas, such as delays in environmental licensing, zoning and community unrest.

Deepwater

For Colombia's fledgling deepwater offshore sector, the most pressing issue is the regulatory framework in place, which needs to be consistent with companies' operational reality. Rodríguez explains that one of the key issues around offshore activity is who will ultimately regulate it. Several government authorities are currently vying for jurisdiction over different aspects of offshore activity, from the new Environmental Licensing Authority (ANLA) created in 2011, to the Ministry of the Environment, the National Maritime

Authority (DIMAR) and the Ministry of the Interior.

He adds that the government has traditionally been concerned about issues related to the offshore oil and gas industry that are just not relevant to deepwater and ultra-deepwater drilling – such as coral reefs and submarine grasslands. The government has also made some very specific requests to companies drilling offshore, such as asking them to use water-based rather than oil-based drilling mud, because it believes there is a risk of contamination. These types of specific requests are difficult for companies to follow.

"It's very difficult for companies that are used to operating in challenging environments to address these issues," Rodríguez says. It often means they have to sit with local authorities and have very technical discussions, creating delays. "Technical issues that seem very routine for most countries are very difficult in ours because you have to get all the entities together," he adds.

More pressing is the fact that regulators have yet to issue the terms of reference

for deepwater activity to help companies prepare environmental impact assessment (EIA) forms. “Most of the offshore activity to date has been in shallow water, where the terms of reference in the local impact assessment are very different, so it is very difficult to present an EIA case,” he tells *Latin Lawyer*.

By way of example, it took Ecopetrol around three years to get a permit for one block it is operating in the offshore Caribbean, where an environmental licence shouldn't really take more than four or five months to obtain if all the terms are met.

Another problem is the presence of submarine cables in the blocks that Colombia auctioned off in its latest bid round, something the government failed to mention when the round was announced. Each cable comes with an isolation area, preventing companies from working in big swathes of the blocks – and more cables are planned for the same blocks next year. Rodríguez jokes that these are the types of “growing pains” that a country has to go through when it enters a new sector.

Unconventionals

The absence of terms of reference for environmental impact statements is also a problem in the onshore sphere, specifically with regards to unconventional resources. In this sector, public perception and political opposition also seem to have played a role in discouraging a big take-up of the available acreage.

Rodríguez explains that the Colombian government struggled to define unconventional resources in the past, which led to widespread confusion over the allocation of rights within licenced areas. The government made a first “useless” attempt at a definition in 2010, but following issues over who owned the rights to develop what, it returned with a “better job” in 2012.

Before 2006, oil and gas contracts in Colombia allowed you to exploit “any hydrocarbons” within your licensed area, he explains. In 2006, coal bed methane was excepted from “any hydrocarbons”, after coal mining operations came into conflict with other rights holders. Then in 2010, contracts explicitly excluded all unconventional resources from “any hydrocarbons”, specifying that companies with the capability of

exploiting unconventional resources could eventually do so, subject to some technical terms that would be released by the government. Finally, in 2012, the government came up with a new draft contract that explicitly awards rights to all hydrocarbons, including conventional and unconventional resources, for qualified companies.

The problem, Rodríguez notes, is that it is the 2010 contracts apply to Colombia's 2012 bid round where of course some unconventional plays were awarded. “If you have a contract that was issued in the 2012 round... you may need to convert your contract to the new 2012 terms,” he notes. The government has issued some general regulations to facilitate this.

Within the new 2012 contract terms, the government included some incentives for unconventional resources development, including benefits in terms of royalties and relief on a “windfall price” clause. There is also more flexibility in the contractual terms, providing for a nine-year exploration and 30-year production period, as opposed to six years and 24 years for conventional resources. Moreover, there is no mandatory relinquishment of areas until the end of the exploration period, “so you can do your exploration and then decide which areas you want to keep, for nine years,” Rodríguez says.

Given these benefits, why were only four unconventional blocks awarded in the 2012 bid round? Rodríguez points out that the super majors such as Shell and ExxonMobil seemed merely to be “dipping their toes in the water” with Ecopetrol. He blames uncertainty over environmental licensing as one of the reasons why companies didn't bid as expected.

Environmental licensing

As in a lot of countries around the world, unconventional resources in Colombia are facing opposition from environmental groups, NGOs, local communities and even politicians who are “trying to create noise” over fears of groundwater contamination. “Sometimes the level of discourse is very low. Discussions tend to revolve around fear and perception rather than fact,” Rodríguez notes.

Indeed, the Comptroller-General of the Nation, whose job it is to oversee

accounts and public finances, advised the Colombian environmental authorities not to grant licences for unconventional resources. “This has scared public officials and created distrust,” Rodríguez says.

As with deepwater activities, the Colombian government has not yet released the terms of reference for unconventional resources to help prospective explorers prepare environmental impact statements. The terms of reference for unconventional resources were actually expected in August 2013, but they had not been released at the time of going to press. Draft terms prepared by an international consultancy are currently before the government and will be published for comments from the industry in the near future.

But Rodríguez notes that oil and gas investors should rest assured that up until now the government has always developed draft contracts and new regulations very closely with the industry. “That creates lots of trust and if they are adequate, these terms of reference will help promote the industry,” he suggests.

One additional complication in environmental licensing onshore, is the high chance of a block falling within one of Colombia's many protected areas that are governed by additional regulation. That adds time to the licensing process, which is anyway fairly sluggish. Statistics from the Colombian Petroleum Association (ACP) show that in 2011, the average time it took to obtain an environmental licence was 9.7 months. This grew to 13.9 months in 2012 and data for the period from October 2012 to February 2013 suggests an average of 11.8 months for this year so far. Getting an amendment to an environmental licence shows similar waiting times of around a year. While these statistics seem bad, they do represent a drop in the average time it took to get a permit between 1997 and 2000, which was over two years.

Despite the time delays, there have been attempts at improvements – starting with the creation of a new agency, ANLA, which specialises in granting environmental licences. The new agency has hired a large number of people to help speed up licence processing, but as a result, the quality of the work has become inconsistent and the outcomes unpredictable, Rodríguez says. “You will get companies in similar



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situations with similar requirements having very different obligations imposed on them, simply because of the fact that their file is being dealt with by someone with more or less experience,” he notes.

However, the agency can be credited with trying to amend the terms of reference for environmental impact statements relating to exploration of conventional resources onshore so that only relevant information needs to be presented. It is also aiming to compile a database of regional baseline information so that EIA applicants need only to submit specific facts relating to their project, rather than the region as a whole.

Meanwhile, there have also been attempts to scrap another time-consuming process: in their environmental impact assessment applications, companies must define their project’s “area of influence”, which often requires gathering samples of flora and fauna – an activity that requires an additional permit under Colombian law. Rodríguez says it has been difficult to get this changed.

The new agency is also keen to get standardisation across the compensation measures imposed on companies and to encourage shared assessment exercises. “The idea is to have shared databases so that the authority and the industry can speak the same language,” he says.

Local communities

Ethnic community rights remain a big issue for oil and gas companies in Colombia, which has ratified the International Labour Organization’s Convention No 169. The Convention requires consultation with indigenous people if natural resources are to be exploited in their territory. Colombia’s courts are interpreting this requirement ever more broadly and the mandatory consultation is close to becoming a veto right for communities, according to Rodríguez.

The consultation process requires that companies identify the communities affected, transfer knowledge to them so they can participate in the consultations and, though unclear, appears to go far towards commanding the communities’ approval for large infrastructure projects. This makes the life of the oil and gas companies “quite difficult”, he says.

Aside from indigenous communities, the Colombian oil and gas industry has faced community unrest from all walks of life in the regions where it operates. According to Colombian news reports, there were more than 80 roadblocks by local communities against oil and gas companies from May 2011 to May 2012. The unrest is a result of changes in legislation that provided for the redistribution of royalties from oil and gas production across

all parts of Colombia, not just the regions where it is produced. “Communities feel – and are sometimes manipulated by local politicians [to think] – that royalties are being taken away from them and the natural response is to hold a blockade,” Rodríguez explains.

He says the government has run campaigns to promote knowledge about the re-distribution of royalties law – that it’s effectively going to “spread the jam over the toast” – but the issue is a difficult one and community relations are very tricky at the moment.

The next round

With Colombia holding bid rounds more or less every two years, observers will not need to wait too long to find out whether tidying up the regulations for deepwater activities and improving the process for environmental licensing across the oil and gas industry might encourage more participation in future bid rounds. Allaying community fears about unconventional resources and the redistribution of royalties could also serve to improve the public perception of oil and gas in the country. In the meantime, lawyers such as Rodríguez will be observing the impact of these challenges on the winners of the latest round as their exploration phases kick off.