Instituto de Ciencia Política
Hernán Echavarría Olózaga

Confecámaras
Red de Cámaras de Comercio

GUIDE TO RESPONSIBLE INVESTMENT IN POST-CONFLICT ZONES

A Perspective for Boards of Directors 2017

From Responsible Investment to Responsible Investment in Post-Conflict Zones

JA&A
JAIME • ARTEAGA • & • ASOCIADOS
Sinapsis para el desarrollo

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INTRODUCTION

Colombia has achieved great successes despite having experienced various forms of violence and conflict since the mid-twentieth century. For several decades its economy has grown steadily, without fluctuations or significant crises. The country has been characterized by a strong democracy, to the point of being the only Latin American nation that has an uninterrupted electoral legacy since 1830, the year in which the division of the Republic of Great Colombia occurred. Perhaps one of the best examples of the country's paradoxical effort to advance in spite of the conflict, is the fact that Colombia is the only country in the world that has initiated reparations processes for victims in the middle of the conflict.

That is why the Agreement for the Termination of the Conflict signed between the National Government and the oldest guerrilla group on the continent, the FARC, removes one of the last obstacles that the country has to advance more quickly on the path of development, opening opportunities for private investment. The economic opening of huge areas of territory that were isolated, under the control of diverse illegal groups, together with the opportunity for the State to reorient economic resources for development investment in the regions, will allow society to focus on the necessary institutional reforms to fight corruption, strengthen the State's presence and broaden economic growth throughout the country.

The national and international private sector faces the challenge of responsibly taking advantage of the post-conflict opportunity in Colombia. To avoid repeating mistakes, the full involvement of the highest governing bodies of companies is essential: the boards of directors. Such close attention should ensure that prior to making an investment, due diligence has been done to ensure that the presence of the private sector will generate wealth for companies within a framework of sustainability for the regions, where the fundamental factors are respect for human rights, the exercise of good corporate citizenship and the generation of local productive capacities.

That is why the Center for International Private Enterprise (CIPE), in partnership with the Colombian Confederation of Chambers of Commerce (Confecámaras), the Institute of Political Science Hernán Echavarría Olózaga (ICP) and

Jaime Arteaga y Asociados (JA&A), is advancing the project "Responsible Investment in Post-Conflict Zones" an initiative that seeks to promote a dialogue within the regions that are transiting from a situation of violence and insecurity to a scenario of greater opportunities, thus enabling the development of standards for boards of directors to guide early private investment in these areas. For this, the project invited businessmen, representatives of civil society, academia and governments to engage in dialogue in regions where there is an expectation of further development associated with the signing of the Accord, during which they discussed opportunities, expectations and recommendations that are necessary for large investors. These spaces for conversation allowed an understanding of the perspective of local business that enables the opportunity to make investments that are properly suited to local markets, that generate capacities and bring sustainable development to the regions where they enter.

The results of these conversations are reflected in this Guide, which is intended to motivate the members of the boards of major companies to ask the questions outlined before approving an investment in those areas that have been most affected by the conflict. The boards of directors can thus ensure that in addition to focusing on financial returns to investment, companies do the due diligence, prepare their productive and investment schemes to link with local capabilities and, in particular, conduct themselves as good corporate citizens committed to the creation of sustainable development contexts in the long term.

In this way, CIPE, together with Confecámaras and ICP, will contribute through this project to business opportunities in the post-conflict to be taken advantage of by investors and regions that are opening up to a new reality for development. The success of this initiative will be to make the private sector take a leadership role in the transformation of historically marginalized territories and which today have become the "new window of opportunity" for responsible private investment.

ABOUT THIS GUIDE

An important trend has emerged in the world regarding responsible investments as a result of the recognition by investors about the importance of the impact of their resources and the types of businesses that leverage them. In Colombia, through the regional transformation that is happening in various areas with the process of pacification, there is a particular situation regarding responsible investment: national or multinational companies that decide to undertake business in areas that were affected by violence and which are committed to generating dynamics that contribute to development in the zones.

Accordingly, this document is an instrument that considers three dimensions: i. the universe of responsible investments; ii. specifically for investments in areas affected by violence; and iii. which is focused on the decision-making process of the boards of directors of the companies – investors.

The decision-making process at the level of the company's board of directors must contemplate a panoramic evaluation, which considers long-term variables and manages strategic risks. This Guide therefore considers aspects of context, recommendations on best practices, and specific questions that should be asked by the boards of companies that decide to operate in post-conflict zones, with the ultimate purpose of increasing the probability of success of these types of business initiatives.

Businesses cannot be conceived as the only ones responsible for development, or substitutes for the State in these regions. On the contrary, it requires contributions and shared leadership between the State, the business sector, and the civil society organizations, represented by chambers of commerce, professional associations, and unions, in order to create social fabric. Therefore, companies that take on the challenge of investing in post-conflict environments must be appreciated and recognized for assuming the risks and uncertainties that result from a process such as this one. At the same time, they must be understood as co-managers of development, with a clear separation of responsibilities between the State, the communities, and the company itself. In this sense, this document also hopes to help communities and different public and social sectors understand the business perspective when they decide to conduct business in these environments.

Finally, this Guide is a "product under construction" and recognizes that the Colombian post-conflict has a high dose of complexity, of which little is still known and where there are no comparable models. However, this process is so important and the expected benefits so relevant for the country that it is the duty of all of us to commit to contribute, learn, and innovate so that it is successful.

The business sector plays a fundamental role because companies are the engine of sustainable development and because business development is only possible if it is accompanied by democracy. Therefore, although various challenges and obstacles will be presented along this path, this Guide and its creators seek to promote and encourage the business sector to assume the risk, genuinely committing to a collective mission: to develop Colombia in a sustainable and comprehensive manner.

ABOUT INVESTMENTS

Generally, investments occur in three main phases: i. the assessment of its viability; ii. the moment of its execution and development; and iii. the process of exit of the investor.

The recommendations proposed in this document only refer to the moment of the “assessment of its viability” (pre-operational stage); that is, prior to the decision made by the board of directors. In a later stage of this Project, complementary analyses of recommendations, risks and good practices will be carried out for the two subsequent moments of the process: execution and exit.

The recommendations are addressed based on six aspects that are critical for companies that consider making investments in a responsible manner in post-conflict scenarios (Scheme 2) and materialize in a series of recommended questions to be asked by the board of directors when evaluating the viability of the investment. The questions are structured in the following order: those that refer to the identification of risks or impacts generated by the investment; those regarding the conditions of the investment, the environment, other actors and interest groups, as well as the relationships that can be established with the company; and those that identify the contributions, positive impacts, and the generation of value of the investment.

These elements must be complemented and contextualized by consideration of the reality of the area of influence where the investment is made, the type of industry, and the specifics of the adjacent communities.

A.
ASPECTS FOR THE BOARD OF DIRECTORS TO EVALUATE

1 Interaction with Communities

In post-conflict scenarios, the company-community interaction is especially sensitive because it can determine the viability, success or failure of investments. Various business projects in Colombia have been frustrated as a result of inadequate management of the relationship with communities, which may be more complex because it is occasionally mediated by the economic or political interests of local actors.

An inadequate relationship with the community can generate resistance to the development of the company's operations in the area of influence, delays in the execution of projects, emergence of reputational risks, economic losses, and can even lead companies to abort investment projects. In this scenario, most of the short-term solutions imply a serious risk for companies in the long term.

On the other hand, several situations have been presented where the company-community relationship involves managing risks in the area of human rights. In their relationship with communities, companies must act diligently, promote a framework for action that is based on the promotion and respect of human rights, and remedy possible cases where these rights are vulnerable or violated. In this sense, best practices for a framework for action should be based on the respect and promotion of human rights, effective communication, and high levels of transparency with communities to present the company's vision.

In terms of interaction with communities, the board of directors should inquire about the following aspects:

- What kinds of positive and negative impacts could the investment generate in the community?
- Have we identified risks, implications for or violations of human rights in which we could be involved as a result of the investment, and what precautions or measures can we take to manage these risks?
- What are the formal (institutional) and informal channels of engagement with the community?
- What are the motivations, demands, and requirements of the channels of engagement with the community?
- Does the investment demand a specific consultation process (for example, prior consultation with ethnic communities)?
- What is the history of outside relationships (from our company or from other companies) with this community?
- Should we allocate additional resources or make other adaptations so as not to negatively affect the relationship with the community?
- What kind of expected benefits can we present to the community regarding the proposed investment?

2 Relationship with Local Authorities

The territories that have been affected by violence and conflict are usually characterized by institutional weakness. In some cases, these areas they have illegal economies, poor governance, and high levels of corruption. These phenomena can generate instability in the execution of investment projects and, eventually, affect the companies.

Therefore, a challenge for companies is the prevention of fraud and corruption in the management of resources destined for the territories prioritized in the post-conflict, as well as the development transparency and accountability mechanisms regarding their operations.

In terms of transparency and anti-corruption, companies must develop actions and strategies that, beyond meeting legal obligations, contribute to the construction of transparent and ethical operating environments. For companies to make responsible investments, it is necessary to promote institutional strengthening; this implies operating under a culture of high transparency, seeking to be part of inter-institutional cooperative relationships and making "social pacts" that overcome the weaknesses of local organizations and institutions.

In this sense, the board of directors should inquire about the following aspects:

- To what extent is the State present in the area of investment and how effective is it?
- What is the situation in terms of institutional stability in the area of influence where the investment is to be made and in what way it can affect its viability?
- Which are the key actors with which the company could establish relationships for institutional coordination?
- Are we delivering some type of advantage, benefit or incentive that could be considered later and in a context of high public scrutiny, as an act of corruption or an unethical practice?
- What mechanisms does the company have to promote transparent and ethical actions among the investment's interest groups?
- How can we contribute to strengthening the institutional framework of the area?

3 Environment

One of the main concerns of communities that receive investments has to do with the possible effects on the environment that may arise from the operations of the companies. However, these impacts cannot only come from productive activities of companies, but also from economic activities that take place illegally and informally, including by groups operating outside the law.

In this context, on several occasions this has led to deep conflicts between communities and companies that want to make investments. Therefore, the identification and management of impacts and public commitments regarding the protection of water sources and ecosystems of high importance in each territory are fundamental factors of responsible investment.

The interaction of the company with the environment must be based on protection, minimization of environmental risks and impacts, and comprehensive compensation.

In this sense, the board of directors should inquire about the following aspects:

- What type of natural resources or ecosystem services would be affected by the investment?
- Are we causing material impacts to water sources? If so, what is considered material from the perspective of managing these effects?
- Were alternatives to the project evaluated that reduce negative side-effects?
- Can negative side-effects be compensated? What are the expectations of the community regarding the management of the environment and the use of natural resources in the area of influence of the investment?
- Are there community initiatives for the preservation of ecosystem services? How can the company, through its investment, contribute to the development of these initiatives?
- Are there preliminary risks in terms of resistance or social protest for the use, access, or exploitation of resources or territories with the arrival of the investment?
- How does the company plan to prevent, mitigate, correct, or compensate the impacts, damages, or risks generated in the environment resulting from the investment?

4 Local Development

Companies are key actors for the generation of sustainable development in territories that have been affected by the conflict through inclusion, economic empowerment, and improving the socioeconomic conditions of their populations.

In this regard, companies can generate incentives for the creation of quality jobs for the inhabitants of their areas of influence, among other things. This implies taking into account employability, both of the inhabitants of the territories as well as people disconnected from the conflict or who have been displaced from the territories by violence. Companies can also promote initiatives of a social or cultural nature and productive projects, capable of generating well-being and competitiveness, in place of illegal alternatives.

In particular, companies that operate in these types of zones have the opportunity to establish voluntary commitments to contract with local companies; facilitate the development of enterprises with the population of the area; and establish programs that allow local suppliers to strengthen their production, quality, and safety standards so that they progressively gain competitiveness and become market players.

From the perspective of this Guide, local development in Colombia requires the commitment of all the key actors in the economic dynamics of the regions. In this regard, it is expected that civil society institutions such as unions, chambers of commerce, and professional associations will exercise co-leadership in this effort, and that the companies will promote development in the regions not as a substitute for the responsibilities that correspond to the State, but through voluntary practices that go beyond legal compliance.

In this sense, the board of directors should inquire about the following aspects:

- What kind of products or services could we obtain from local suppliers? What is the percentage that this value represents (purchase from local suppliers) with respect to the total value of the investment in the area?
- What adjustments should be made to our hiring policies to facilitate the participation of local suppliers?
- What current businesses run by the local population can we leverage with the dynamics of our investment?
- Do our procedures for money laundering and terrorist financing require any adjustment to adapt to the reality of the investment?
- How does the investment generate value to the population or the surrounding area in terms of employability and economic empowerment?
- What strategy can we develop to support initiatives of a social nature and local productive projects?
- Is it viable / convenient to have a strategy of linking people directly or indirectly affected by the conflict?
- Can support for social initiatives and productive projects generate benefits in tax terms?

5 Security

A safe operating environment is essential for business growth. Thus, the risks for both workers as well as facilities and infrastructure of the company should be reduced to the maximum extent possible. Without security in the area of influence of the company, the problems associated with the conflict may resurface.

Although the Colombian State is solely responsible for ensuring compliance with the law, local public order and security, companies must contribute positively through the establishment of legitimate relationships with State security agencies, private security companies, and other institutions responsible for public order in their area of influence.

In this sense, the board of directors should inquire about the following aspects:

- What are the main risks in terms of security and local public order for investment?
- What is the constellation of actors generating risks to public order and security in the area (armed groups operating outside the law, criminal groups, persistent threat systems, other actors) and the factors that generate these risks (illicit or informal activities, poverty, displacement, impunity, culture of illegality)?
- Is the area controlled by the State security forces or is it an area in dispute among organized armed groups or other criminal entities? Is it a rearguard or mobility corridor for actors operating outside the law?
- Is it necessary to resort to State security forces or to private security to guarantee operations?

6 Land Rights

The Colombian armed conflict was intimately linked with the problem of territorial control. For years, violent actors (guerrillas, paramilitaries, and drug traffickers) carried out countless illegal expropriations, mainly in rural areas of the country, leaving as a result a high concentration of property, peasants deprived of thousands of hectares of land, uncultivated vacant lots owned by the State, land without titles and without clear registration information.

This historical problem has meant that in some areas of the country there is no clarity regarding property rights of the land and, as a result of the reallocation of properties, there are demands, possible expropriations and, in general, significant problems regarding land claims or interpretations of regulations on these issues.

This situation could represent one of the greatest threats to investments in these areas, destabilize their operation and, ultimately, discourage companies from investing. Consequently, it is a factor to be considered within the viability analyses of responsible investments.

In the post-conflict context, the restitution of rights associated with land is being addressed, and the Final Agreement for the Termination of the Conflict and the Construction of a Stable and Lasting Peace is based on the implementation of agreements on comprehensive rural development.

In this sense, the board of directors should inquire about the following aspects:

- Is there clarity regarding the ownership of the land required to make the investment?
- What does the territorial ordinance instrument establish regarding permissible land uses in the investment's area of influence?
- Is there a risk of expropriation of lands by declaring them of public interest?
- Do the negotiation processes for the purchase of land or property titles mean any kind of legal risk in the future?
- Do the properties where the investment will be made have some connection with politically exposed families or people?
- Is there clarity about the owners of the territories adjacent to the development of the investment (people, communities, companies, or other actors)?
- What are the risks, effects, or impacts in terms of coexistence with those owners on the development of the investment?
- Does the historical study of land titles and information from other sources point to the existence of land forfeiture or people (formally or informally) that have been linked to drug trafficking, illegal mining or other illegal activity?

B.
FINAL CONSIDERATIONS

The present Guide for Responsible Investment in Post -Conflict Zones: A Perspective for Boards of Directors" is the first document produced in Colombia with the objective of understanding the processes of responsible investment, corporate governance, and good practices of corporate citizenship in post-conflict dynamics.

At the time of producing this document, the information is incomplete and the business community is still learning about these issues. However, this tool seeks to lay the foundations for future developments that allow the compilation of good practices, successful cases, experiences, and problems that should be considered in a responsible decision-making process in companies that operate in environments that have been affected by the armed conflict.

Responsible investment in post-conflict environments is fundamental for Colombia's development. Our view is that the private sector is a key actor, although it cannot be considered a substitute for the State. However, an coordinated action with the State and civil society will help generate a dynamic of democracy and business development for these areas.

From the perspective of the companies, this process requires the development of new capacities to implement their investments successfully and responsibly. Therefore, companies that decide to take on this challenge must be able to not only identify the risks, opportunities, and areas of focus in the analysis of their investments, but also to ensure that they have sufficient resources for their execution.

It is hoped that there will be collaboration with the business community to update this Guide progressively and adapt it to specific developments and lessons learned during this process. To do so, it is essential that new spaces for dialogue, feedback, and evaluation be made available in the future in order to share experiences and lessons learned on these issues.

C.
GLOSSARY

Postconflict: Period of time that follows after totally or partially overcoming armed conflicts. It can be understood as a concept with a single attribute: the reduction of the number of homicides related to the conflict below a certain threshold that indicates the status of active conflict or not.

Internal armed conflict: According to International Humanitarian Law (IHL), internal armed conflict is understood as prolonged armed conflict that takes place between government armed forces and forces of one or more armed groups, or between these groups, that arise in the territory of a state.

Peacebuilding: The United Nations defines peacebuilding as a process that involves a range of measures targeted to reduce the risk of lapsing or relapsing into conflict by strengthening national capacities at all levels for conflict management, and to lay the foundations for sustainable peace and development. Peacebuilding strategies must be coherent and tailored to specific needs of the country concerned, based on national ownership, and should comprise a carefully prioritized, sequenced, and therefore relatively narrow set of activities aimed at achieving the above objectives.

Responsible investment: In line with the Principles for Responsible Investment (PRI), making a responsible investment involves undertaking commitments that go beyond legal and regulatory obligations, as well as acting in the long-term and general interest of the company's stakeholder groups. This means that companies, through their management bodies, must incorporate issues related to the environment, social development, economic development and corporate governance (Environmental, Social, and Governance – ESG) in the analysis of their investments and in the decision-making processes.

Board of Directors: The core and main governing body of the company, with extensive responsibilities for exercising functions in the areas of strategic guidance, control of ordinary management, supervision, and corporate governance.

Civil society: Defined by the Organization of American States as constituted by various components, such as civic and social institutions, and organizations that shape the foundation of a functional society. The presence of a strong civil society is essential to ensure democracy for peace, security, and development.

Community: Defined by the Royal Academy of the Spanish Language as the set of people linked by common characteristics or interests. In this sense, community is understood as the collective cultural process in which codes, symbols and imagery are shared that give meaning to common interests and experiences, establishing boundaries to take on shared enterprises and address conflicts.

Security: In a post-conflict environment, security is defined as the absence of violence and crime, or the reduction of these problems to their minimum level. In general terms, security is understood as people's perception of living in safe environments. This perception is reflected in the construction of relationships of mutual trust with other people, as well as in the certainty that they can develop stable and long-term life prospects in the territory where they live.

Social development: According to the World Bank, social development focuses on the need to "put people first" in development processes. Social development promotes inclusion, cohesion, adaptability, citizen security, and accountability as its operational principles.

Sustainability: Means meeting current needs without compromising the ability of future generations to meet their needs, ensuring the balance between economic growth, care for the environment, and social welfare (known as the Three Pillars of Sustainability).

Regional talks: When regional talks are mentioned, reference is made to the five meetings held between August and October 2017 in the Chambers of Commerce of Barrancabermeja, La Guajira, Tumaco, Urabá and Villavicencio, to analyze the entry conditions of companies in post-conflict zones. The conversations were promoted by the Confederation of Chambers of Commerce of Colombia (Confecámaras), the Institute of Political Science Hernán Echavarría Olózaga, and Jaime Arteaga & Asociados, with the support of CIPE.

Ecosystem services: The Millennium Ecosystem Assessment defines "ecosystem services" as those benefits that people obtain from ecosystems. These benefits can be of two types: direct and indirect.

D.
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