COUNTRY REPORT: DEMOCRATIC REPUBLIC OF COLOMBIA
Climate Change Governance: Existing Legal Tools, Regional Best Practices and Challenges for Colombia

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Introduction

This report is based on a study conducted by the Centre of Studies for Sustainable Development - Colombia (CEID) and the Legal Preparedness for Climate Change Initiative (IPJCC) of the International Development Law Organization (IDLO).[1] The study was carried out through a process of multi-stakeholder consultation in the field that allowed constructing a diagnosis of the legal and governance state of affairs, to systematically identify major barriers and legal and institutional innovations in Colombia, Ecuador, Guatemala and Mexico. To develop this country report on Colombia, we will start by analysing the country's main climate governance challenges, subsequently we will describe the existing legal tools and innovations, and lastly we will describe some of the identified best climate governance practices in the region. We will end the analysis with some recommendations for the particular situation of Colombia.

Colombia's Main Climate Governance Challenges

As a country with a high level of income concentration[2] and about 45% of its population living under conditions of poverty, Colombia`s vulnerability to climate change is considered

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[1] IDLO and CEID, *Preparación Juridica para el Cambio Climatico y el Deasrrollo Rural en América Latina: Resumen Transversal de Mejores Prácticas y Lecciones Aprendidas* [Legal preparedness for climate change and rural development in Latin America: Cross Summary of best practices and lessons learned], 2013.

[2] Despite being the fourth largest economy in Latin America, Colombia has a Gini coefficient of 53,5 (2012), one of the highest in the region. The World Bank, "GINI Index," 2014 <http://datos.bancomundial.org/indicador/SI.POV.GINI>.

as significant.[3] The country's geological conditions and location make it especially vulnerable to heavy floods in some areas and extreme droughts in others. This happens both in coastal and mountainous regions during rainy seasons when the intensity of precipitation is affected by El Niño and La Niña climate phenomena.[4] Amongst other effects, climate change in Colombia is likely to cause deaths, loss of property, damage to agriculture and it threatens biodiversity and food security. Moreover, due to armed political conflicts Colombia has one of the highest rates of internally displaced people in the world; these approximately 4 million people are especially vulnerable to the adverse effects of climate change.[5]

The issues raised above highlight adaptation as the most important climate related challenge for Colombia. In addition, mitigation measures remain a matter of concern for the country. Even though Colombia's emissions of greenhouse gases (GHG) do not surpass 1% of total global emissions, human induced deforestation and changes in land use are significant problems for the country. Deforestation affects the rainforest of the Amazon and Pacific regions significantly, which are among the world's richest in biodiversity and key GHG sinks. Amid factors contributing to deforestation in Colombia are increasing levels of economic activity that substitute tropical forests for mono-plantations such as palm oil, and armed conflict dynamics. Interestingly, also drug cartels are believed to have had a significant impact on deforestation in Colombia due to the plantation and harvest of illegal corps.[6]

In this line of thought, climate change impacts are expected to pose significant and long-term effects on Colombia´s ecosystems, to accelerate the speed of deforestation, impact water quality and agricultural production, contribute to a decline in biodiversity and to increase the exposure of citizens to socio-economic vulnerability.[7] In short, the country

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[3] Leonardo Freire de Mello, *Colombia*, ed. by S. George Philander, *Encyclopedia of Global Warming and Climate Change*, 2 edition (SAGE Publications, 2012), p. 353.

[4] Ibid.

[5] The World Bank, Global facility for disaster and recovery and Climate change team, *Climate Risk and Adaptation Country Profile*, 2011 <http://sdwebx.worldbank.org/climateportalb/doc/GFDRRCountryProfiles/wb_gfdrr_climate_change_country_profile_for_COL.pdf>.

[6] Ibid.

[7] The World Bank, Global facility for disaster and recovery and Climate change team.

clearly faces serious governance challenges.[8] Thus, the Colombian State requires legal innovations and institutional reform so as to protect the rights of vulnerable populations and minimize the effects of climate change on its natural resources.

Existing Governance Tools and Innovations

Institutional design can have an inhibiting or facilitating effect on climate governance. They can prohibit or encourage certain activities, but also provide an enabling framework that guides the activities of the public and private sectors towards the desired ends. During the last decade, the Colombian agenda for climate governance has gained some prominence in the context of global climate change negotiations. In this section we will describe some of the legal and institutional measures that Colombia has implemented to tackle its very own climate challenges. To date the most significant legal tools relevant for climate governance are to be found in Colombia's: (i) Political Constitution, (ii) National Development Plan 2010-14, (iii) National Climate Change System (SISCLIMA), (iv) Adaptation Fund created by Decree-Law 4819 of 2010, and (v) Law 1523 of 2012 on Risk Management.[9]

The Colombian Political Constitution (1991), known as "*la Constitución ecológica*" [the "ecological constitution"][10] contains some aspects relevant to climate change. Amongst these are: (i) the collective right to a healthy environment, (ii) a right to public participation, (iii) actions to enforce the implementation and protection of collective rights, (iv) a shared constitutional obligation between the State and individuals to protect biodiversity and environmental integrity and to preserve areas of special ecological importance, (v) the stated ecological function of private property (vi) environmental obligations of the State, (viii) environmental rights and duties of citizens, (ix) the formulation of environmental policies

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[8] According to a quantitative analysis by Wheeler, Colombia could be on the Top 20 Countries running extreme weather risk in 2015. David Wheeler, *Quantifying Vulnerability to Climate Change: Implications for Adaptation Assistance* (Washington, 2011) <http://www.cgdev.org/files/1424759_file_Wheeler_Quantifying_Vulnerability_FINAL.pdf> [accessed 17 November 2014].

[9] See IDLO and CEID.

[10] The 1991 Constitution has been referred to as "ecological" by the Colombian Constitutional Court for having a significant number of articles, which transversally effect environmental protection. This happens in contrast to previous Colombian constitutional texts where environmental and ecology matters were not a priority. To expand on this issue see: Colombian Constitutional Court - Judge Vladimiro Naranjo Mesa, Rulling C-431, 2000 <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=14510>.

under the National Development Plan, and (x) the notion of sustainable development as a goal for society. In this Constitution environmental matters reached maximum legal hierarchy when compared to previous Colombian constitutional texts.

The National Development Plan 2010 - 2014 'Prosperity for All' adopted by Law 1450 of 2011, is the formal, legal instrument under the Constitution by which the objectives of the government are set out allowing the subsequent evaluation of their management. The plan states that the government should develop four strategies related to climate change, namely: (i) a national plan for adaptation to climate change, (ii) a low carbon emissions development strategy (iii) a national Reduced Emissions from Deforestation and Forest Degradation REDD+ strategy, and (iv) a strategy for financial protection in case of environmental disasters.

The National Climate Change System (SISCLIMA) was created by a legal document on strategic national policy planning known as CONPES 3700 (2011),[11] which allows for building an institutional architecture to articulate the functions and roles of public and private stakeholders on climate change. This system is not yet in operation, but this innovation will provide Colombia with a great opportunity to create cross-sectorial synergies, develop actions and coordinated projects on mitigation, adaptation and access to international climate finance. [12]

The Adaptation Fund created by Decree Law 4819 of 2010 was designed in order to finance concrete adaptation projects (infrastructure, housing, forestry and land use) to respond to damage from the climate phenomenon La Niña in Bogotá and other Colombian cities in 2010 and 2011. This adaptation fund was in essence implemented to allow for a better management of climate change associated risks. The Colombian General System of

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[11] National Planning Oficce of Colombia, "Conpes 3700: Estrategia Institucional Para La Articulación de Políticas Y Acciones En Materia de Cambio Climático En Colombia [Institutional Strategy for the Articulation of Policies and Actions on Climate Change in Colombia]," 2011 <http://www.andi.com.co/Archivos/file/Gerambiental/Conpes3700.pdf> [accessed 17 November 2014].

[12] The Colombian Government has not yet issued legislation to establish the SISCLIMA. Under CONPES 3700 of 2011, once it has been established, a body called "The Inter-sectorial Commission on Climate Change" will govern it. See further: The REDD Desk, "Intersectorial Commission on Climate Change (Colombia)" <http://theredddesk.org/countries/actors/intersectorial-commission-climate-change-colombia> [accessed 17 November 2014].

Royalties has also opened up opportunities for financing renewable energy projects, environmental recovery and stabilization, reforestation, ecosystem recovery and adaptation programs specific for Afro-Colombian communities.

Similarly*, Law 1523 of 2012* introduced a new approach to risk management. It shifted institutional risk management from a post-disaster assistance and relief intended method, to a more comprehensive risk-prevention approach. Risk management now aims to provide protection to the population, improve security, increase wellbeing and quality of life and contribute to sustainable development. This approach focuses on the protection of citizens. Amongst other issues, this law mandates the creation of a National System for Disaster Risk Management, which is to be a network of institutional associations to coordinate, plan and execute the actions and responsibilities outlined by the law itself. Beyond the allocation of roles and responsibilities, the National System will also help promote the participation of government, private sector and the public, to stimulate the social, economic and environmental development of the country, recognizing the responsibility that all stakeholders carry in the protection and promotion of sustainable development.

In addition to the above, Colombia has made several efforts to counteract the adverse effects of climate change. Among these actions are the research projects outlined below.

National Adaptation Pilot (INAP), this project had a five-year development period and was financed by The World Bank.[13]. During this time, the country acquired necessary technical knowledge for installation, operation and maintenance of marine automatic weather stations. The data obtained has allowed forecasting and better understanding of certain climate events where weather stations are installed.

Lastly, in the Pacific area there is an on going project called “Conservation Corridor Chocó-Darién”, which includes about 13,500 acres of rainforest located in the northeast region of Colombia. It used the Verified Carbon Standard (VCS) approach and received certification to reduce deforestation, avoiding issuing a hundred thousand tons of carbon in less than two years. It is the first project whose direct beneficiaries are Afro-Colombian collective landowners.

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[13] See further The World Bank, “Colombia: Integrated National Adaptation Program,” 2011 <http://www.worldbank.org/projects/P083075/colombia-integrated-national-adaptation-program?lang=en> [accessed 17 November 2014].

Best Practices

As a result of the analysis of legal and institutional frameworks for climate change impacting rural development in Colombia and other Latin American countries that was conduced by CEID and IDLO[14] some enabling practices whose scope could be considered for replication in Colombia were identified. The aim of a compilation of these practices is to strengthen legal preparedness for climate change and to enhance strategies that impact rural development for the most vulnerable communities.

Sustainability Criteria and State Commitments with a Long-Term Vision:

Laws may establish enabling frameworks and operating rules to address climate change in a sustainable and comprehensive manner. Importantly, this could be achieved through State commitments beyond electoral and political cycles. Political commitment is needed to ensure continuity, accountability and transparency of processes and actions to mitigate and adapt to climate change. It can also contribute to constructing an appropriate environment for establishing and maintaining the institutions and frameworks created for such purposes.

This good practice has been identified in Mexico. The General Law on Climate Change recognizes climate governance efforts as a State commitment that must be addressed with transversal and long-term vision, and that establishes responsibilities at different levels of government to promote inter-sectorial collaboration. Similarly, Ecuador's Constitution demands the State to take on the responsibility for appropriate and transverse action to mitigate climate change. Also in Guatemala, the new Framework Law on Climate Change is to establish the necessary regulations to prevent, plan for and to respond adequately to, the sustained impacts of climate change in the country. In a similar way, the National Climate Change System of Colombia (SISCLIMA) has a design that allows for articulating the roles of public and private stakeholders on climate change. Unfortunately, as mentioned earlier, this system is not yet in operation. However, when it will be, it will constitute a great opportunity for cross-sectorial synergies and State commitment.

[14] See IDLO and CEID above.

Social Participation and Comprehensive Strategies:

Policy planning schemes that involve different levels of government and multiple stakeholders, including local civil society and interested communities, enable better coordination of comprehensive climate responses. They also allow for building strategies beneficial to sustainable rural development. Such has been the case of the *Ley de los Consejos de Desarrollo Urbano y Rural* of Guatemala,[15] which is part of the strategy for public administration's decentralization. Similarly, the creation of structures of multi-sectorial dialogue with social participation is highlighted through the National Roundtable on Climate Change, *Mesa Indígena de Cambio Climático* and *Comité Nacional de Salvaguardas Ambientales.*[16]

Establishing Institutional Powers, Duties and Responsibilities through the Use of Clear Laws

Establishing obligations, roles, powers and responsibilities, and operating procedures through clear and articulated laws, can facilitate the realization of written rules into concrete actions. This not only promotes the development of relevant mechanisms, but also gives institutions the powers needed to perform the tasks that the law requires them to do. In addition, it enables citizens to better know the mechanisms and respective procedures to follow.

Furthermore, climate change is a dynamic, complex and evolving phenomenon. Thus, laws and institutions must be equally dynamic and sophisticated to allow change and adaptation of roles and responsibilities according to new situations. One of the first countries in the world that made legislative progress in this area was Mexico, with its General Law on Climate Change, which clearly defines the powers of the Federation, the States and municipalities, and creates new multi-sectorial agencies dedicated specifically to address climate change.

Meanwhile, the flexibility of the legal system in Ecuador enables the creation of high standards through the issuance of administrative acts that allow for the verification of the

[15] Law of the Boards of Urban and Rural Development. Translation by the authors.

[16] Climate Change Indigenous Bureau and the National Committee of Safeguards in Guatemala, respectively. Translation by the authors.

effectiveness of the law and for taking the necessary corrective measures progressively, with the ultimate aim that environmental authority exercises its role adequately.

Citizen´s Engagement and Public Participation

We think that the most successful models of policies and actions on climate change and rural development lie in inclusive processes that promote the participation of all stakeholders, especially indigenous peoples, rural communities and marginalized groups. This allows for more effective responses against climate challenges that hinder sustainable rural development. Some key elements in achieving these objectives relate to fostering a sense of civic engagement and the encouragement of informed participation of citizens, as well as to the recognition of human rights, particularly those of vulnerable groups such as women and indigenous communities.

In relation to indigenous peoples, the observance of individual and collective rights, and the application of the rules for the Free, Prior and Informed Consent (FPIC) are required. Guatemala, through its Community Development Councils, provides a good example of popular instances of social participation whose function is to provide input for planning and for the recognition of communal rights, like in the case of Guatemalan *forest users groups*.

In turn, in Ecuador there is the Council of Citizens Participation and Social Control, which promotes and encourages the exercise of participatory rights, and develops and establishes mechanisms for social control in matters of public interest.

Creation of Solid Funding Structures

Funding structures are essential to support initiatives, attract investment and distribute economic benefits equitably, particularly for the most vulnerable and marginalized rural sectors of society. Strengthening mechanisms of solid and sustainable funding - with fiscal controls - can ensure transparency, accountability, trust and commitment of investors. We believe funding structures are critical to ensure the adoption and continuation of comprehensive strategies on climate change, to facilitate the transition to an inclusive green economy, and to promote sustainable rural development.

Funding structures should enable the mobilization of financial resources from a broad spectrum of stakeholders: public and private investors, domestic and international institutions. They must also have the ability to channel resources to fulfil the objectives of national development and to fund initiatives for the communities that need it the most. The use of economic incentives, as implemented in the *Progrmana de incentivos forestales* (PINFOR) [17] and *Programa de incentivos forestales para poseedores de pequeñas extensiones de tierra de vocación forestal o agroforestal* (PINPEP)[18] programs and soon the PROBOSQUE [19] program in Guatemala as well as the creation of permanent funding mechanisms such as the National Environmental Fund in Ecuador, demonstrate innovative ways of resource management that promotes sustainable economic development for an integrated response to climate change.

Legal Frameworks for Sustainable Rural Development

With climate projections predicting an increase in temperature of greater than 2°C, the impacts of climate change on vulnerable rural areas has also moved into the focus of attention. Any detrimental impacts on these areas due to climate change have the potential to reverse the economic gains made over the past decades. As mentioned above, in Colombia, Law 1523 of 2012 on Risk Management addressed this issue with a comprehensive vision creating a new system for risk control based on prevention. To support this new approach, the law calls for the creation of a national network of institutional associations to coordinate, plan and implement the actions identified by the regulations, and to help engage the population, the government and the private sector, who together should promote social, economic and environmental development.

Challenges for Colombia

Despite the value and importance of the legal innovations in Colombia described above, these are not free of tensions and problems. In this section we will mention some climate governance challenges that we consider the most relevant for the country, i.e. land tenure

[17] Forestry incentives program. Translation by the authors.

[18] Forestry incentive program for owners of small extensions of land for forestry or agroforestry. Translation by the authors.

[19] For more information on this programs, see further: FAO, "Lessons Learned from Community Forestry Initiatives, Payment for Environmental Services and Other Incentives," 2014 <http://www.fao.org/docrep/018/i2875e/i2875e05.pdf> [accessed 15 November 2014].

issues and articulation of efforts by different sectors of government. Based on the discussion of these challenges, we will then outline some recommendations.

As we mentioned earlier, property is poorly distributed in Colombia. Big portions of the total land available are owned by a rather small number of citizens. Consequently, informal tenure of land is common, especially in rural areas where conservation projects are most likely to take place. This leads to difficulties in the formalization of the terms of conservation agreements and the distribution of benefits and obligations in places where irregular and unregulated land tenancy is the rule.

Similarly, characteristics of the Colombian population such as ethnic diversity affect the legal property regime. Land tenure in the country can have the form of communal or individual private property, leading to different legal acquisition and possession regimes. Attention then must be paid to bringing clarity to regulatory land use.

Another governance challenge that Colombia faces is the abduction of forest reserve areas by armed parties to the political conflict. The prolonged armed confrontations in combination with the opening of Colombia to international trade treaties have facilitated deforestation through expansion of agricultural frontiers and ranching due to both legal and illegal activity. In this regard, a barrier to achieving well functioning climate governance programs is the lack of legal clarity over forest and environmental services property rights.

Considering the possibilities that collectively owned land offers for climate change mitigation initiatives, where Annex I countries[20] could for instance benefit from REDD+ projects in developing countries, it is vital to fill the gaps in REDD+ processes regarding equitable sharing of benefits, and to make sure communities are informed and properly involved in decision making. Difficulties in interpreting the Convention 169 on the rights of participation of communities is a direct barrier for consolidating REDD+ projects, since there still are many difficulties with the effective application of existing constitutional norms and procedures for prior consultation in Colombia.

Finally, as mentioned above, Colombia shows relevant climate governance efforts coming from different sectors. In this regard, the challenge they face is to achieve proper articulation

[20] State Parties in the frame of the United Nations Framework Convention on Climate Change (UNFCCC).

to allow inter-sectorial coordination, especially considering the lack of a legal framework for interagency coordination in the country.

Recommendations

Based on Colombia's main institutional challenges and considering the best climate governance practices identified at a regional level, we believe it is pressing for the national government to operationalize the SISCLIMA promptly, so it allows it to function, create legally binding State commitments, and permits the system's promising design features to have effects. Also, it is critical to regulate the existing laws on sustainable risk management, which combine sustainable development, natural resources management, and climate change management. A preventive approach based on sustainability criteria is essential for better territorial planning, which reduces environmental risk.

Likewise, the development of a legal framework for environmental services, carbon ownership, emissions reduction, and carbon sinks that is respectful of local communities' rights is also imperative. Implementing tax reduction schemes to incentivize cleaner and more energy efficient production processes is another possible way towards a functioning climate governance system that Colombia could consider.

Regarding REDD+ projects, the Colombian national strategy for reduction of emissions needs to be strengthened in at least two important respects. Firstly, it needs a robust national measuring, reporting and verifying system (MRV) for carbon accounting. The lack of such a system is a barrier hindering the promotion and financing of carbon markets. Secondly, it requires a well-functioning legal process for previous consultation of the communities involved as otherwise it will be difficult to ensure citizens' engagement and public participation.