

COUNTRY REPORT: COSTA RICA

Energy and the Environment: A New Dilemma for Costa Rica

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Since the 1960s, Costa Rica has made outstanding progress towards environmental protection. Reformist actions include the Forest Credit Certificate project, the Payment for Environmental Services programme, recent open-pit mining bans and the plan to become carbon neutral by 2021.¹ Perhaps the most progressive action was the 1994 entrenchment of environmental rights in *the Costa Rica Constitution*:

Every person has the right to a healthy and ecologically balanced environment, being therefore entitled to denounce any acts that may infringe the said right and claim redress for the damage caused. The State shall guarantee, defend and preserve that right. The Law shall establish the appropriate responsibilities and penalties.²

Subsequent laws and jurisprudence opened the possibility for an extensive interpretation of this constitutional provision. Today, the right applies to a wide range of environmental matters.

Despite these advances, a recent State of the Nation report made strong recommendations for Costa Rica to improve its environmental management and pay greater attention to a range of environmental issues, not just conservation. Other areas meriting attention include

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¹ The deforestation of the 70s and 80s that had the country with a 26 per cent forest coverage in the 1980s to 52 per cent as of 2010. Both programmes have helped biological diversity. It has been accepted that in 50.000 square km Costa Rica has 4 per cent of the world's biodiversity. Most of our information will come from the "Estado de la Nación", (State of the Nation) the most recent edition in 2014 and from 2012 editions also. Available in www.estadonacion.or.cr/files/biblioteca_virtual/018/Cap-4-Armonia-con-la-Naturaleza.pdf.

² Ley Orgánica del Ambiente, 7554 of 4 of October 1995.

² Costa Rica Constitution s 51.

maritime protection, fossil fuel reliance, and effective land use planning. Water pollution is a particular concern as Costa Rica has the highest per capita use of pesticides in the world.³

The El Diquís Dam Construction Project

The El Diquís project involves the building of a new dam and hydroelectric plant on the Río Grande de Térraba. There is concern that the project will affect Indigenous and non-Indigenous communities living within this area of the country.⁴ A related concern is the lack of consultation with affected communities. The dam is also likely to impact the environment as it changes the course of the river and stamps out part of the Térraba-Sierpe wetland.⁵ A 2011 report by the Special Rapporteur on the Rights of Indigenous Peoples recommended the Costa Rica Government engage with Indigenous peoples that may be affected by the dam, 'bearing in mind that the consultation should be undertaken with the goal of obtaining the free, prior and informed consent of the Indigenous peoples affected.'⁶ The report also recommended the Costa Rica Government 'develop clearer guidelines for effective consultation with all stakeholders' and 'translate complex scientific and technical information into language that is easily accessible and comprehensible to non-experts'.⁷ The Costa Rica Government has delayed dam construction in order to implement these recommendations.

The Production of Geothermal Energy in National Parks

Costa Rica law generally prevents extractive, commercial and industrial projects within national parks. Exempt areas include those within two kilometres of the craters of Barba,

3. John H. Knox, Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment on his mission del Costa Rica (28- 1 of August 2013). A/HRC/25/53/Add.1

⁴ James Anaya on his report on Costa Rica(A/HRC/18/35/Add.8, para. 2) on the situation of the indigenous peoples affected, he indicated, the reservoir and part of the dam would cover about 10 per cent of the territory of the indigenous Teribe people, and the reservoir would also flood a portion of the China Kichá indigenous territory of the Cabecar people. Furthermore, the Rey Curré and Boruca indigenous territories, which belong to the Brunca people, are located downstream of the proposed dam and therefore could be affected by changes in the course of the river. The project could also affect indigenous areas upstream, including the Cabagra and Salitre indigenous territories of the Bribri people, the Ujarrás territory of the Cabecar people, and the Coto Brus territory of the Ngobe people. The project would also displace, in whole or part, a number of non-indigenous communities.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

Poas, Arenal, Chato, Tenorio, Santa Maria, Rincon de la Vieja, Miravalles and Irazu. These areas may be important geothermal sources of power. The geothermal capacity of Costa Rica and El Salvador make up 73% of the total Central American geothermal capacity.⁸ The expectation is that Costa Rica will transform its capacity into power supply. The problem is that there is no law obliging the Costa Rica Government to consider the social and environmental impacts of geothermal projects carried out in exempt national park areas. This is particularly concerning in light of the finding that geothermal exploration, construction and operation all impact the environment.⁹ Exploration and construction might involve building trails and roads, eliminating vegetation, noise pollution, fuel handling, waste generation and wastewater production. The operational phase 'can produce hydrogen sulfide emission and pollution of nearby waters with substances such as arsenic and ammonia':¹⁰

*Thermal pollution and deterioration of the landscape is also produced by the power plant and in particular the power transmission lines. Because of all this, it requires a detailed and thorough Environmental Impact Assessment.*¹¹

Complicating the issue further is Costa Rica's ratification of the *Convention for the Protection of Flora, Fauna and Scenic Beauty of the Americas*. This commits Costa Rica to maintaining national park boundaries and ensuring national park resources 'are not exploited for commercial purposes'.

The Costa Rica legislature is currently considering four legislative bills that make vastly different recommendations with regards to the regulation of geothermal exploitation in national parks.¹² The number of geothermal projects under consideration is indicative of the importance of the subject in Costa Rica today. Even projects that do consider the environment raise concerns. For example, one proposal specifically addresses measures to

⁸ MINAE. (Ministry of the Environment), VI Plan Nacional de Energía 2012-2030. San José, Costa Rica, diciembre, 2011.

⁹ Estado de la Nación, 2014 sobre la explotación de energía geotérmica en parques nacionales.

¹⁰ Estado de la Nación, 2014 sobre la explotación de energía geotérmica en parques nacionales.

¹¹ Estado de la Nación, 2014 sobre la explotación de energía geotérmica en parques nacionales.

¹² The law project number 18789 (Ley de Biocombustibles) and the number 16788 (Ley de Generación de Electricidad) and the number 19.233.

repair environmental damage and carry out feasibility and environmental impact studies.¹³ On the other hand, there is strong opposition to the proposal with regards to its impact on native flora and fauna and the 32 rivers that begin in the project area, and the potential loss of connectivity between biological corridors.¹⁴ This highlights the urgent need for innovative approaches to geothermal exploitation and proposals to ensure the environmental sustainability of our national parks.

As the authors of the recent State of the Nation Report emphasise, a main challenge facing the Costa Rica Government today is the need to achieve economic growth without discriminating against the environment or Indigenous peoples. This requires strengthening participatory structures and social institutions, and ensuring a transparent, efficient, independent and accountable public administration.¹⁵

¹³ 19233 called 'Authorization to the Instituto Costarricense de Electricidad to exploit geothermal energy in protected areas'.

¹⁴ Declaration of the assembly of the University of Costa Rica School of Biology the 29 de Octubre de 2014.

¹⁵ PNUD, Gobernanza sistémica y desarrollo en América Latina, Revista de la CEPAL 85 • Abril.