



A New Regulation for Protected Areas in Colombia: An Analysis of Decree No. 2372 of 2010

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“Protected areas remain the fundamental building blocks of virtually all national and international conservation strategies, supported by governments and international institutions such as the Convention Biological Diversity.” (IUCN Report, 2008)

Introduction

Despite its relatively small size, Colombia is the second most biologically diverse country in the world. It is home to about 10 per cent of the world's species. In a nutshell, more than 1821 species of birds, 623 species of amphibians, 467 species of mammals, 518 species of reptiles, and 3,200 species of fish reside in Colombia. About 18 per cent of these are endemic to the country. Colombia has a mind-boggling 51220 species of plants, of which nearly 30 per cent are endemic. 53 per cent of its territory is covered by forests.

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This rich biodiversity stems largely from the country's location, geography, topography and varied ecosystems. Colombia is for instance the only country on earth to host five characterized and geographically-distributed ecosystems, namely: the Pacific Coast and its Coastal Cloud Forests; the Caribbean Coast; the Andes; the Orinoco Basin; and the Amazon basin and its tropical rainforest shared with Brazil, Venezuela, Equator and Peru.

Although 11 per cent of Colombia's territory is under some form of protection, its rich biodiversity and the ecological services stemming from it, is increasingly threatened by anthropogenic activities. These include: deforestation resulting from oil exploitation, mining, legal and illegal logging; the increasing demand of land for farming, cattle and drug trafficking; the expansion of urban areas; the increasing pressure on renewable resources like overfishing; and water consumption. Overall, the natural equilibrium is jeopardized by population growth, climate change, the rapid deterioration of natural ecosystems and the low environmental legal compliance. These pose major concerns for current and future citizens of Colombia.

International leaders have recognized the need and value of protecting and restoring critical ecosystems. At COP10 of the *Convention on Biological Diversity* held in Nagoya late last year, the parties adopted a historical agreement which establishes a target of 17 per cent of terrestrial and inland water protected areas, 10 per cent of marine and coastal protected areas and the restoration of at least 15 per cent of degraded areas by 2020.¹ This agreement reflects the growing interest in seeking to balance the competing imperatives of sustainable use and conservation. It is furthermore clear that the conservation of biodiversity is seen as the core of sustainability.

The current challenge facing many domestic policy-makers and communities is designing and implementing coherent conservation policy and legislation that gives effect to the above commitments. Protected areas are undoubtedly a fundamental

¹ Official Press Release, Nagoya Biodiversity Summit, COP 10 of the *Convention on Biological Diversity* (available at <http://www.cbd.int/doc/press/2010/pr-2010-10-29-cop-10-en.pdf>.)

tool in any such regime and are recognized as 'essential providers of ecosystem services and biological resources; and key components in climate change mitigation strategies'.² Colombia has ratified the *Convention on Biological Diversity* and continues to struggle to implement a coherent protected areas regime in order to enable it to adhere to its commitments under the *Convention*.

Several factors have undermined the development of a comprehensive conservation regime in Colombia. Firstly, the fact that conservation has not been accorded a priority in public policy with the State-Agency on National Parks having been established only in 1993. Secondly, the absence of a clear and consistent legal framework for protected areas. Thirdly, the lack of resources and capacity of conservation agencies that has undermine compliance and enforcement efforts.

In an attempt to overcome these challenges, the Colombian Government recently published the *National System of Protected Areas (SINAP)* in *Decree No. 2372 of 2010 (Decree 2372)*. The purpose of this report is to highlight Colombia's path towards a more efficient protected areas regime. It commences with a critical analysis of the old conservation regime and than analyses the impact of the new regime contained in *Decree 2372*.

Critical Evaluation of Colombia's Historic Approach to Conservation and Protected Areas

Despite being one of the most biologically diverse countries on earth, Colombia has not historically had an appropriate legal framework governing conservation and protected areas. The first regulation related to 'areas of relative ecological importance' was *Law No. 2a (1959)*. It provided for the declaration of 'protective forest reserves' for the primary purpose of guaranteeing the protection of the water supply. The law was not therefore introduced to protect the biodiversity situated in these areas and its effectiveness in conserving the country's' forests must be

² N. Dudley (ed), *Guidelines for Applying Protected Area Management Categories* (2008) IUCN, Gland, Switzerland.

questioned if one considers that during its tenure, forest cover in Colombia shrunk from 80 million hectares to 30 million hectares. This amounts to a deforestation rate of 170 000 hectares per annum.³

Types of Protected Areas

In 1974, the Government issued *Decree-Law No. 2811*, the '*Natural Resources Code*'. It refers to the need to preserve fragile ecosystems that are full of natural resources and may potentially offer environmental services such as water. Moreover, the *Natural Resources Code* regulates the management of forest reserves declared under *Law No. 2a* (1959). It furthermore imposes an obligation on the Government to: '*...establish or reserve special and determined areas to implement an integrated and comprehensive protection, propagation or breed hydro-biological species, in accordance with technical criterion*'. The *Natural Resources Code* allows the Government to declare 'areas of relative ecological importance' based upon their hydro-biological characteristics. It therefore constituted a step forward in the development of Colombia's conservation regime as, for the very first time, it imposed administrative obligations on authorities to declare protected areas and factor conservation issues into their decision-making.

Article 327 of the *Natural Resources Code* furthermore established a *System of National Parks*, which includes the following categories: a) national park; b) natural reserve; c) unique natural area; d) fauna sanctuary; e) flora sanctuary; and f) parkway. These categories do clearly not match the internationally recognized typologies promoted by the IUCN.⁴ They rather reflect the conception domestic policy-makers had at the time of conservation and the purpose of protected areas. As far as we know, Colombia is the only country to include the 'parkway' category in its protected areas regime. The inclusion of this category was a response to some local and specific situation where local authorities sought to construct a road through a mangrove swamp that formed part of large wetlands located nearby Santa Marta. Several pre-existing categories of protected areas (such as 'municipal reserves', 'river star zones', 'eco-parks' and 'regional parks') were incorporated within this

³ See further: National Committee on REDD, *Avoided Deforestation, A Guide for REDD + in Colombia* (2010) Bogota DC, Colombia.

⁴ See specifically those contained in N. Dudley (ed), *Guidelines for Applying Protected Area Management Categories* (2008) IUCN, Gland, Switzerland.

category which contributed to the misunderstanding and inefficient implementation of the conservation regime under the *Code* and increased the confusion around this specific type of protected area.

In other words, the Colombian system lacks clarity and tends not to meet the internationally recognized categories and standards established by the IUCN. This confusion has led to poor conservation management. The current regime is characterized by the inefficient assignment of financial resources. Furthermore, inconsistencies in its implementation have deepened competition for land-use and management between national and local authorities, and communities. This is evidenced by the Government allowing 'ancestral territories', administered by native or black communities, to be declared over land situated in certain protected areas. This has resulted in increased tension between conservation authorities and communities seeking to exploit the natural resources situated in protected areas.

Institutional Framework

The Special Administrative Unit of the System of National Parks (SAU), which is attached to the Ministry of the Environment, Housing and Territorial Development, is in charge of national parks. It has got both administrative and financial autonomy. In 1993, the SAU was strengthened by the creation of the Ministry of the Environment in terms of *Law No. 99* of 1993. Before that, natural resources were managed by the National Institute of Renewable Natural Resources (INDERENA), which was attached to the Ministry of Agriculture. INDERENA had its own administrative and organization chart and included a 'Department of National Parks', which has subsequently been transformed into the SAU. The SAU is currently in charge of the 56 national parks.

Legal Inconsistencies

The fragmentation of conservation management and administration arising from the many categories of protected areas at local, regional and national level, has undermined the establishment of a coherent and effective protected areas regime in

Colombia. The above problem is compounded by the prevalence of several contradictory regulations, including the following:

- *Law No. 99* (1993), which defines the powers and functions of the environmental authorities at the regional level and enables these authorities to manage ‘cushion areas’ in national parks.
- *Law No. 70* (1993), which provides for ethnic group rights within ancestral territories.
- *Law No. 685* (2001), the ‘Mining Code’, which provides for the possibility of mining within protected areas and fragile ecosystems.

Towards a Revised Conservation and Protected Areas Regime – *Decree 2372*

In response to the above challenges, the Government has sought to create a more efficient conservation and protected areas regime through the introduction of *Decree 2372*. It establishes the *National System of Protected Areas (SINAP)*, which is defined as follows: ‘a group of protected areas, social actors and institutions, as well as a set of strategies and tools which aim to meet the overall purposes of conservation’ (article 3). *SINAP* lays the foundation for a new protected areas regime, one which seeks to substitute a more global and accurate protected areas system incorporating local and regional protected areas. It specifically highlights that ‘the *SINAP* and the Protected Areas it includes, is the main element for the conservation of biodiversity in the country’ (article 4(a)).

The following characteristics in *Decree 2372* are noteworthy. Firstly, it includes regional and local areas. Secondly, it provides for a far more participative approach to protected areas governance by civil society, state agencies and local agencies. Thirdly, it provides the framework for conservation in Colombia. Fourthly, it appoints the ‘Unit of National Parks’ to coordinate the implementation of the *SINAP*. This should ensure that there is one central authority tasked with overseeing and harmonizing its implementation across all levels of government. Fifthly, it clarifies and sets a hierarchy to prioritize revised-goals and methods to meet these goals. Sixthly, it establishes regional sub-systems of protected areas as well as thematic sub-systems. Seventhly, it redefines the categories of protected areas and creates both

public and private areas. Public areas include: a) national parks; b) protective forest reserves; c) regional national parks; d) integrated management districts; e) land conservation districts; f) recreational areas. Private areas are based on the now-called 'natural reserves of civil society', which allows private landowners to convert their property into natural protected areas. *Decree 2372* does not repeal the rules established in the *Natural Resources Code* or *Law 2a* (1959) and these therefore have to be read and applied in conjunction with it.

Conclusion

Decree 2372 seeks to reorganize and unify Colombia's system of protected areas by introducing a simpler framework that redefines the types of protected areas and alters the rules regulating their use and management. It tends to centralize authority at the national level and restructures the relations between national and local levels of government, and between the public and private sector. In addition, it provides evidence of the political will of the Government to afford greater priority to conservation and ensure the development of a more participative and efficient protected areas regime.

However, *Decree 2372* does not unfortunately provide for the domestic recognition of the full range of types or categories of protected areas promoted by the IUCN. Some critics are of the opinion that domestic policy-makers have pulled the wool over the general populace, as although certain semantic adjustments have been introduced by *Decree 2372*, the bulk of the old regime remains intact.

Nonetheless, the success of the revised *SINAP* will largely depend on the level of compliance and enforcement with the *Decree*, and the intrinsic capacity of government authorities and civil society to implement it. Traditionally, Colombia is characterized by low levels of environmental compliance and enforcement. Therefore, the success of *Decree 2372* will significantly depend on the capacity of political leaders, public servants, governmental institutions and state agencies to mobilize all the actors around the transcendental challenge of conservation. This may involve changing their current short-term rational approach in favour of a long-term

perspective. The key therefore remains the education of communities and leaders in order to raise awareness of the importance of respecting the legal framework and to discredit some tragic habits such as bypassing the current rules and regulations. In addition, authorities in charge of monitoring the implementation of the new regime must be empowered to ensure the strict implementation of its principles, methods and tools.