

COLOMBIA

Implementation of the 2030 Agenda: Are 'partners' delivering?

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The report for Colombia, by the Asociación Ambiente y Sociedad focuses on the performance of Public Private Partnerships (PPPs) and the major role of private companies in infrastructure development. Colombia's National Development Plan 2014-2018 introduced the Sustainable Development Objectives 2030, outlining the strategic priorities of the government. Infrastructure, mining, energy and hydrocarbons are deemed essential for those objectives and a legal and institutional framework for PPPs was created. The report looks at some of the problems created by this scheme in the areas of infrastructure and health.

National Development Plan 2014-2018 and the productive sectors

Colombia's National Development Plan (PND) 2014-2018 prioritizes the development of the different productive sectors, mainly the infrastructure sector, energy and mining, as well as hydrocarbons, encouraging the participation of private firms. One of the lines of action of the Plan, called Competitiveness and Strategic Infrastructure, aims to: 1) increase the productivity of Colombian companies, based on the sophistication and diversification of the productive apparatus; 2) contribute to productive development and to the solution of social challenges of the country through science, technology and innovation; 3) promote ICT as a platform for equity, education and competitiveness; 4) provide infrastructure and logistics and transport services for territorial integration; and

5) consolidate the mining-energy development for regional equity.²

The Colombian government proposes that the mining-energy and hydrocarbon sectors will play a key role in ensuring sustained and inclusive economic development, as they will generate significant resources to finance investments that serve to consolidate peace and fight against inequality. However, the productive sectors mentioned have been one of the main focuses of social conflict in the country because of their impact on human rights and the environment. In this sense, although the PND 2014-2018 incorporates strategies to implement the 17 sustainable Development Goals outlined in the 2030 Agenda for Sustainable Development, the policy to boost these sectors generates major concerns. Among these concerns, for example:

In the case of the mining-energy sector, the national government identified 15 mining projects and 11 energy projects of national interest (PINES). Its legal framework is headed by the mining code Law 685 of 2001, widely criticized for the absence of express prohibitions of the activity in vital zones of environmental biodiversity. The Constitutional Court has ruled on central issues in several decisions, such as Judicial Decision C-339 of 2012 where it reiterated that there is a state duty to delimit areas of special ecological importance, especially of the páramos, a tropical mountain system in the Colombian Andes.

² Plan Nacional de Desarrollo 2014-2018 Tomo 1. Consultado en: <https://www.dnp.gov.co/Plan-Nacional-de-Desarrollo/Paginas/Que-es-el-Plan-Nacional-de-Desarrollo.aspx>

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In the energy sector, the current government is promoting the consolidation of important hydroelectric projects that have already triggered significant environmental conflicts, including: the hydroelectric dam in El Quimbo, in the department of Huila on the Magdalena River in the south of the country; the Hydrosogamoso Dam, on the Sogamoso River in the Santander Department in the north of the country; and Hidroituango, an embankment dam in the Department of Antioquia also in the north.

The hydrocarbon sector has 20 projects of national interest. In addition to the regulation of the sector in the Mining Code, the government is constructing a scenario to facilitate the exploration and exploitation of unconventional crude oil, regulated through Resolutions 180742 of 2012, 90341 of 2013 and 0421 of 2014, some of which require the fracking technique for their extraction, which represents a danger because of the effects that the technique generates on water resources. Likewise, it has been announced that the departments of Caquetá and Putumayo in the southwest of the country will be two of the departments where the largest amount of exploration and exploitation of hydrocarbons would be concentrated, a fact that has raised concerns about the possible effects on the Colombian Amazon.³

Similarly, the infrastructure sector is seen as essential to accelerate economic growth for which private investment needs to be attracted. In total there are 29 projects of national interest in the infrastructure sector. These projects are implemented through the Public Private Partnerships, mainly the Fourth Generation Company's (4G) road infrastructure programme, which involves 47 projects of road construction plus the expansion of ports, airports and railways.⁴ The private sector leads the design, construction, operation and maintenance of the works.

3 Caquetá y Putumayo, las regiones donde se concentrará la exploración petrolera. Consultado el 06/04/2017 en: <http://www.portafolio.co/economia/caqueta-y-putumayo-las-regiones-donde-se-concentrara-la-exploracion-petrolera-499965>

4 <http://www.theworldfolio.com/news/colombia-thinks-big-with-70-billion-infrastructure-program/3959/>

Implementation of Public Private Partnerships

Through Decree 0280 of 18 February, 2015, the High-Level Inter-Institutional Commission was created for the enlistment and effective implementation of the Post-2015 Development Agenda (now the 2030 Agenda for Sustainable Development). The Commission is composed of the Ministries of Foreign Affairs; Treasury and Public Credit; Environment and Sustainable Development; the Administrative Department of the Presidency; National Planning Department; National Administrative Department of Statistics and the Administrative Department for Social Prosperity. Its main objectives are to implement the SDGs through public policies, plans, actions and programmes, with prospective planning monitoring and evaluation of these objectives.

The Decree establishes that one of the functions of the Commission is "to structure public-private partnership schemes, to promote spaces, mechanisms for national and international cooperation, exchange of experiences and ideas, and capacity-building of entities that facilitate the achievement of the SDGs".⁵ In this sense, the Colombian state has a developed legal framework that allows for the execution of projects under PPP schemes. Law 1508 of 2012 "establishes the legal regime of Public Private Associations (PPPs)" and is regulated by Decree 1467 of 2012 which addressed such issues as terms and conditions for the selection of the associate, celebration and execution of the contract, procedures and criteria for the selection of public and private initiatives, contributions from public entities and the conditions for compliance with the availability, levels of service and quality standards to be met by PPPs. In Colombia, the concessions must last for 30 years and the investment must be higher than 6000 percent of the minimum wage then in force (now 737717 pesos, or US\$ 246/month).

5 Agenda de Desarrollo Post-2015 de la Organización de las Naciones Unidas. Departamento Nacional de Planeación. Consultado en: <https://colaboracion.dnp.gov.co/CDT/Prensa/Publicaciones/05%20Objetivos%20de%20Desarrollo%20Sostenible%20para%20la%20web.pdf>

The PND 2014-2018 strengthened the regulatory framework for PPPs by introducing significant changes such as facilitating greater participation of the state and decentralized local or municipal entities in the financing of PPP projects to provide or operate urban public transport systems. In addition, the National Planning Department (DNP) and equivalent entities at the departmental level were empowered to evaluate and prioritize PPP projects other than transport, since these are regulated by Law 1673 of 2013 and their planning is carried out by the National Agency of Infrastructure (ANI).

It is also noteworthy that the implementation of the normative and institutional framework to generate a favourable environment for PPPs has been supported by the main agencies of Multilateral Banking. For example, the Inter-American Development Bank (IDB) and the IMF have developed technical assistance projects in Colombia, such as the Private Participation and Infrastructure Concession Support Programme (PPCI), whose objective was to strengthen institutions and encourage private investment in infrastructure. In the first two phases (phase 1, 1996-2001 and phase 2, 2002-2007), support was given to the development of regulatory and regulatory frameworks for the energy, transport, water and sanitation sectors, as well as technical studies, as well as to structure projects for airport concessions, the conduction of studies on river navigation, support to concessions and the regulation of mass urban transport and the regulation of the infrastructure, hydrocarbons and mining sectors. Phase three (2008-2013) focused on the institutional strengthening of the DNP (policy development and regulatory frameworks).

For its part, the World Bank, through the Public - Private Infrastructure Advisory Facility (PPIAF), has carried out 17 activities in the country to a value of approximately US\$ 3 million. Among these are the construction of the Ruta del Sol, a regional cycling race, to which the IFC provided advice on structuring the financial model and project evaluation. Another example is the general advice in the planning of the Bogotá Metro, 2010. The National Development Finance (FDN) corporation has since October 2013 established a strategic alliance with

the IFC for the transfer of knowledge about PPPs and for support in the identification of attractive projects for the private sector.

As a result of the PPPs in Colombia, official data from the National Registry of Public Private Partnerships (RUAPP) of the National Planning Department show the following statistics:

Until the fourth quarter of 2016, 5,442 projects were included, of which 219 were rejected.

The main sectors with PPP projects are: Road Infrastructure, Urban Transport, Education and Airports. In the transport sector, 55.1 percent include roads, airports, and urban transport; the remaining 44.9 percent corresponds to social projects in sectors such as public parking, water and sanitation, urban renewal, public buildings, education and road control, among others.

By geographical location, Bogotá and Cundinamarca are the territories with the highest number of PPP projects. In total, there are 262 projects corresponding to these territories, mainly in sectors such as roads, airports, urban transport, public parking, public parks, sports scenarios, water and sanitation, health, among others. Other territories such as Cartagena, Santander, Antioquia, Cali and Medellín have also had significant participation in the PPP project initiative.

It is also important to mention that the health sector in Bogotá, the country's capital, is in the process of planning the development of hospital infrastructure under the PPP scheme, which would strengthen the model of privatization in the sector, given that data from the Special Registry of Health Service Providers (REPS) of the Ministry of Health and Social Protection show that in 2012, 90 percent of the health service providers in Bogotá were private and 10 percent public.⁶

6 Corcho, C. (2017) La salud en Bogotá. Corporación Latinoamericana Sur. Consultado, available at: <https://www.sur.org.co/la-salud-en-bogota/>

Outside the capital, the District Development Plan 2016-2019 outlines the modernization and construction of hospital infrastructure through Public Private Partnerships. To this end, on 27 December, 2016, the Ministry of Health signed an agreement with the National Development Finance (FND), inter-administrative contract 1796 of 2016, in order to carry out the technical, legal and financial structuring for the adjudication of the public-private partnership projects for the construction of hospital infrastructure.

Problems with and impacts of PPP projects

With the development of PPP schemes conflicts have arisen on several fronts. For example, the contract of Public Private Partnership 01 of 2014, the country's first PPP, signed between the Navalena Consortium and Cormagdalena, the government agency overseeing the project, aims to recover the navigability of the Magdalena River. From the beginning, the project had a variety of different complaints from civil society because it had not consulted with local communities, and it did not have sufficient studies on environmental and social impacts. This is compounded by the scandal of the Brazilian multinational company Odebrecht, which initially had 87percent of the Consortium and was unable to bring it to completion, and in addition, is subject to a number of corruption charges in Brazil.

The project did not achieve financial closure and in April 2017, Cormagdalena announced the expiration of the contract.⁷ Problems have also been detected with PPPs for road projects. This is the case of the Perimetral de Oriente de Cundinamarca, which is being built by Perimetral de Oriente de Bogotá SAS, an alliance between the Israeli company Shikun & Binui and the Grodco business group, which included the IDB as a financier for the sum of US\$ 158.10 million. The project confronts the builders with problem of how to deal with the affected population in zones of natural reserve like the moor of Chingaza. Another example is the construction of the third lane of the Bogotá-Girardot road, a case in which the presidents of the two principal companies, Conalvías and Conconcreto were recently questioned for collusion, that is, agreeing with contractors to participate and win a tender.

In short, because of the experiences in the country, and in general in the world in this modality, the concerns revolve around the great costs for public finances that the projects entail, in addition to the strengthening and privileging of the interests of private enterprise above the social benefits of the projects. There is also concern about the lack of transparency in contract negotiation processes and participation of local communities, who are often the most affected by the mega-projects involved in PPP projects.

⁷ Caducan contrato de recuperación de la navegabilidad del río Magdalena. Consultado el 27/06/2017, available at: <http://www.elespectador.com/economia/caducan-contrato-de-recuperacion-de-la-navegabilidad-del-rio-magdalena-articulo-689762>