

## COLOMBIA:

Colombia is a country located to the northwest of South America, with sovereignty in the Caribbean Sea, the Pacific Ocean, the Amazon Rainforest, the Orinoco basin and the Andes. In 1886 it took the name of the Republic of Colombia.

Article 10 of the political constitution of Colombia establishes Castilian as the official language, as the languages and dialects of ethnic groups in their territories.

Because of its privileged geographical position, Colombia is a country rich in fauna and flora, with 45,000 species of plants and a variety of animals, among which are the jaguar, the puma, the anteater, the sloth, the armadillo, several species of monkeys and deer, among others; birds such as the condor, the vulture, the toucan, the parrot, the cockatoo, the stork and the hummingbird.

The Colombian climate is defined by geographical and atmospheric aspects that generate a wide mosaic of climates and microclimates in the country, these can range from the hottest, between 30 ° C on the coasts and plains, to the coldest, with temperatures below 0 ° C in the peaks of the mountains of the *Cordillera de los Andes* and the *Sierra Nevada de Santa Marta*.

Regarding the economy, Colombia is characterized as a producer of primary goods, strong in agriculture, livestock, mining and fishing. According to the DANE in the third quarter of 2017, the Colombian economy grew by 2.0%.

Colombia stands out in the international arena due to the important growth it has had in the last decade in issues related to exports of goods and services and the attractiveness and security it offers to foreign investment. The Colombian economy is considered the fourth largest in Latin America, after Brazil, Mexico and Argentina.

The current development model is structured in the concept of green growth, which aims to: promote economic competitiveness, protect and ensure the sustainable use of natural capital and ecosystem services, promote resilient economic growth for disasters and climate change and ensure social inclusion and well-being.

Currently, Colombia is implementing a peace agreement that ended more than 50 years of conflict and the demobilization and abandonment of weapons of one of the oldest guerrillas in the world. However, this implementation has not been easy due to the opposition from various sectors of the far right of society. This has generated that a large part of the society does not share the terms in which the peace agreement was agreed and they prefer to continue in the conflict, except for the surrender and imprisonment of the members of the armed group with whom the Agreement was signed.

It is important to highlight that the Peace Agreement established actions to protect biodiversity, water and even payment for environmental services. The latter was already regulated and its constitutionality guaranteed by the Constitutional Court.

## **1. POPULATION**

According to the National Department of Statistics - DANE, Colombia is a country with 48,956,627 inhabitants, with a current growth rate of 0.98% per year. A statistic revealed by the same entity specifies that multidimensional poverty in Colombia has maintained a downward trend since 2010: it went from 30.4% at the beginning of the decade to 17.8% in 2016. This means that the country went from having 13'719,000 people in multidimensional poverty in 2010 to 8'586,000 in 2016, equivalent to a reduction of 5'133,000 people in that period.

Including the Island of *Malpelo*, *Cayo Roncador* and *Banco Serrana*, the country covers an area of 1,141,748 km<sup>2</sup> of continental area and 928,660 km<sup>2</sup> of maritime area, which is why it is considered the 26<sup>th</sup> largest country in the world, and the seventh largest in America. It limits to the east with Venezuela and Brazil, to the south with Peru and Ecuador and to the northeast with Panama.

## **2. POLITICAL ORGANISATION**

Colombia is a unitary, social and democratic state of law, whose political regime is the presidential one.

Article 113 of the political constitution, proclaimed on July 4<sup>th</sup>, 1991, establishes that the branches of public power are the legislative, executive, and judicial and review that there are other autonomous and independent entities such as the National Television Authority, the Bank of the Republic, National Electoral Council, Regional Autonomous Authorities, General Comptroller of the Republic, Ombudsman's Office, Attorney General's Office, National Registry of Civil Status, Public Universities, among others, which are alien to the three branches of power established by the State, but contribute to the fulfillment of their functions.

Currently Colombia is organized territorially by departments, headed by governors, who are in charge of the autonomous administration of the resources granted by the State; Municipalities, led by mayors, who govern along with the municipal councils, both figures elected by popular vote; and Districts, considered territorial entities with a special administration. Due to its national relevance in Colombia, the cities of Bogotá, Cartagena, Barranquilla, Santa Marta and Buenaventura carry that distinction.

There are other special divisions that are the provinces, the indigenous territorial entities and the collective territories adjudged to the Afro-Colombian population that predominates in the Pacific area.

### **3. DOES THE CONSTITUTION COVER ENVIRONMENTAL RIGHTS?**

In Colombia, rights that favor the protection of ecological wealth, biodiversity, protection of natural resources, among other issues considered important to guarantee a healthy environment are enshrined in the Political Constitution.

Article 79 establishes as a collective right of all people to enjoy a healthy environment, and guarantees the participation of the community in the decisions that may affect it, it is the duty of the State to protect the diversity and integrity of the environment, to conserve areas of special ecological importance and to promote education to achieve these ends.

Article 80, states that the State must plan the management and use of Natural Resources, to ensure their sustainable development, conservation, restoration or replacement. In addition, the State has the responsibility to prevent and control the environmental deterioration factors, impose sanctions, and demand reparation of the damages caused, as well as cooperate with other nations in the protection of the ecosystems located in the border areas.

Article 95 establishes the responsibilities that citizens must assume, among which are: protecting the natural and cultural resources of the country and ensure the conservation of a healthy environment, and contributing to the investment of the State within the concepts of justice and equity.

Article 268, establishes as powers of the General Comptroller of the Republic, to present to the Congress of the Republic, an annual report, about the state of natural resources and the environment.

On the other hand, article 313 establishes that is the responsibility of the councils, to issue the necessary norms for the control, the preservation and defense of the ecological and cultural patrimony of the municipalities.

The general direction of the economy will be in charge of the State, article 334 establishes that this will intervene, by mandate of the law, in the exploitation of natural resources, in the use of land, in the production, distribution, use and consumption of goods, and in public and private services, to rationalize the economy in order to achieve the improvement of the quality of life of the inhabitants, the equitable distribution of the opportunities and benefits of development and the preservation of a healthy environment.

Article 339 establishes a national development plan consisting of a general part and an investment plan of public entities of the national order. In the general part, the long-term national purposes and objectives and the strategies and general orientations of the economic, environmental and social policy will be indicated.

The public investment plan will contain the multi-year budgets of the main programs, strategies, and national public investment projects and the specification of the financial resources required for their execution.

The territorial entities will elaborate and adopt in a concerted manner between them and the National Government, the Development Plans in order to ensure the efficient use of their resources. The plans of the territorial entities must be based on a strategic part and a short and long term investment plan.

#### **4. WHO IS THE ENVIRONMENTAL CONTROLLER?**

In Colombia Law 99 of 1993 *"By which the Ministry of the Environment is created, the Public Sector in charge of the management and conservation of the environment and renewable natural resources is reorganized, the National Environmental System - SINA is organized and dictated Other provisions"* provides for the creation of the Ministry of the Environment, today the Ministry of Environment and Sustainable Development, as the governing body for the management of the policy of the environment and renewable natural resources, in charge of promoting a relationship of respect and harmony of man with nature, and to define in the terms cited by the same Law, the policies and regulations for the repair, conservation, protection, management, use and exploitation of renewable natural resources and the environment of the Nation in order to ensure sustainable development.

The Ministry of Environment and Sustainable Development has the responsibility, together with the President of the Republic and guaranteeing the participation of the community, the national environmental policy and renewable natural resources, so as to guarantee the right of all people to enjoy a healthy environment and protect the natural heritage and sovereignty of the Nation.

Also, the aforementioned law created the National Environmental System -SINA. as the set of guidelines, norms, activities, resources, programs and institutions that allow the implementation of the general environmental principles contained in the law. The SINA is integrated by the Ministry of the Environment, the Regional Autonomous Authorities, the Territorial Entities and the Research Institutes assigned and linked to the Ministry. It is the responsibility of the Ministry of the Environment to coordinate the SINA.

At the national level, in addition to the Ministry of Environment and Sustainable Development, there is the National Environmental Licensing Authority - ANLA, which has administrative and financial autonomy and is responsible for the environmental licensing process of the projects, works or activities of its competence.

Also, there are the Regional Autonomous Corporations, entities of the national order but with local competences, which are foreseen in Law 99 of 1993.

In the local order, environmental functions are granted to municipalities and districts with more than one million inhabitants, who have the power to create local-level entities to exercise functions of environmental authority within the urban perimeter of municipalities and districts. The powers of these entities will be the same as those provided in Law 99 of 1993 for the Regional Autonomous Authorities. In recent years, environmental authority functions have been granted to other municipalities.

Likewise, by constitutional and legal mandate, territorial entities, such as Departments and Municipalities, have environmental police functions and also the faculty to issue norms for the protection of ecological heritage within their jurisdiction.

On the other hand, there are national authorities that give technical and scientific support to the SINA, these are: Institute of Hydrology, Meteorology and Environmental Studies - IDEAM-; the Institute of Marine and Coastal Research "José Benito Vives de Andreis" - INVEMAR-; the Research Institute of Biological Resources "Alexander Von Humboldt"; the Amazon Scientific Research Institute "SINCHI"; the Institute of Environmental Research of the Pacific "John Von Neumann".

## **5. OVERVIEW OF THE LEGISLATION**

In Colombia there are regulations that promote the protection of the environment and its wealth, and promote the sustainable development of the country by endorsing issues that seek to mitigate the damage that man may cause to the environment in the exercise of any economic activity, and even as a natural person. However, and despite the advances in legislation, we still have flaws in the application of some rules that leave subjective spaces for interpretation.

Since 1959 standards of environmental protection have been issued, in 1968 the first institution for the management and administration of renewable natural resources was created. In 1973, the first law establishing a framework of policy and principles in environmental matters was issued, in 1974, Decree 2811 *National Code of Renewable Natural Resources - CNRNR* was issued. In 1979, Law 9 of the 1979 *Sanitary Code* was issued, which contains provisions on environmental matters. In 1991, a new constitution was drafted and enshrines various articles related to environmental protection and in 1993 a new institutional stage began with the issuance of Law 99 and the creation of the Ministry of the Environment. On the other hand, Colombia has signed most of the international treaties on environmental matters, having already issued the law that approves the Paris Agreement, pending of the prior control of its constitutionality.

In 2015, and as part of one of the requirements to be part of the Organization for Economic Co-operation and Development - OECD, Colombia issued Decree 1076 of 2015, which compiles all regulatory decrees on environmental matters, into a single Law. Additionally, with lower regulatory hierarchy we have the resolutions that develop each of the issues addressed in Decree 1076 of 2015 and the other administrative acts on

environmental regime issued by the various environmental authorities, under the principle of subsidiary rigor.

### **5.1. ENVIRONMENTAL IMPACT ASSESSMENT – ENVIRONMENTAL LICENSE**

In Colombia, the Environmental Impact Assessment is materialized in the environmental license. This means that when reference is made to this environmental control instrument in the country, it must be understood what in other countries refers to the environmental impact assessment.

The environmental license was defined by Law 99 of 1993, as *"the authorization granted by the competent environmental authority for the execution of a work or activity, subject to the compliance by the beneficiary of the license, of the requirements that it establishes in relation to the prevention, mitigation, correction, compensation and management of the environmental effects of the work or authorized activity."*

For the granting of the environmental license the interested party in executing the activity, work or project specifically listed in articles 2.2.2.3.2.2. and 2.2.2.3.2.3. of Decree 1076 of 2015, must submit an Environmental Impact Assessment - EIA, which is constituted as *"the basic instrument for making decisions about projects, works or activities that require an environmental license"*.

With Law 99 of 1993 this process becomes more evident, but the desire to apply principles of efficiency and economy in administration over time and the exclusion of activities from this process have influenced in transforming the environmental license into a simple requirement, being able to be an instrument of true monitoring and control on the execution of projects, works or activities. All of the above, together with an absence of public policy on Environmental Impact Assessment that defines the activities that must be submitted to it, framing them in the country's sustainable development.

For this reason it is necessary to understand what the Law establishes in terms of environmental licensing, and that the environmental license is the materialization of an environmental impact assessment process, and above all that a public policy is necessary to be set in this matter, particularly focused on the control and monitoring process.

### **5.2. WATER, AIR AND FORESTRY PERMITS**

**WATER:** In Colombia, regional environmental authorities grant water concessions through an administrative act and after a procedure that must comply with a series of technical and legal requirements.

In the case of groundwater, an exploration permit is required beforehand, and then the Authority will grant the concession if it is viable. It is important to bear in mind that in Colombia the water concession does not generate any acquired right; it can be modified,

suspended or even revoked in case of water shortage or due to non-compliance with the conditions established in the administrative act that grants the concession.

In the case of discharges, Decree 1076 of 2015 established that *"any natural or juridical person whose activity or service generates discharges to surface water, marine, or soil, must request and process before the competent environmental authority, the respective permit of discharges"*. This permit must be obtained prior to the start of the discharge of the wastewater.

Likewise, discharges to water bodies or public sewage systems must comply with the maximum permissible limits established in Resolution 631 of 2015.

**AIR:** In terms of air, there is a policy on air quality, and a control of atmospheric emissions through permits and compliance with parameters or maximum limits. This scheme exists since 1982 and now Decree 1076 of 2015 compiles Decree 948 of 1995 that regulated in general the whole issue related to air. This standard, in accordance with Resolution 619 of 1997, establishes the cases in which a permit for atmospheric emissions is required.

It is worth noting that even if permission is not required; all the activities that carry out emissions must comply with the permissible limits and other requirements, set forth in Resolution 909 of 2008.

In 2010, the Ministry of Environment, Housing and Territorial Development, issued the policy of prevention and control of air pollution, in order to mitigate environmental damage caused by air pollution that had become one of the main environmental problems of the country.

Recently Resolution 2254 of 2017 was issued, *"Whereby the ambient air quality standard is adopted and other provisions are issued."* This Resolution establishes the air quality standard or level of immission and adopts provisions for the management of the resource air in the national territory, in order to ensure a healthy environment and minimize the risk to human health that may be caused by exposure to pollutants in the atmosphere.

**FORESTRY:** In accordance with Chapter 1, Title 2, Part 2 of Book 2 of Decree 1076 of 2015, forest of wild flora uses were regulated, understood as: *"It is the extraction of products from a forest and includes from the moment of obtaining to its transformation."* Thus, in Colombia, for the felling of trees from non-commercial plantations, the corresponding permit must be requested and obtain before the competent environmental authority.

### 5.3. HAZARDOUS MERCHANDISE

In Colombia, Decree 1076 of 2015, *"Through which the Single Regulatory Decree of the Environment and Sustainable Development Sector is issued"*, establishes in titles 6 and 7 everything related to the handling of waste and hazardous merchandises, compiling

Decree 1443 of 2004, *"By which partially regulate the decree law 2811 of 1974, the Law 253 of 1996 and the Law 430 of 1998 in relation to the prevention and control of the environmental contamination by the handling of pesticides, waste or hazardous residues coming from it, and other determinations are made"* and Decree 1079 of 2015 in part 2, section 8 *"By which the management and ground transportation of hazardous merchandises is regulated."*

This in order to minimize the risks, ensure safety and protect life and the environment by arranging the issues related to the transport of hazardous merchandises and the handling of waste derived from them.

#### **5.4. WASTE MANAGEMENT AND RECYCLING**

In Colombia there is a comprehensive waste management policy that proposes the conceptual elements to move towards the integrated management of solid waste including hazardous waste, addressing the issue from an initial diagnosis of the management of solid resources in the country, and ending with the strategy and the action plan for waste management.

The country promotes the generation of circular economy, in a continuous cycle of effective development that conserves and improves natural capital, optimizing the use of resources.

The public and private sectors establish policies to promote recycling and reuse of products, generating awareness among final consumers of the importance of recycling, reusing and reducing consumption.

Regarding waste there is no kind of permit, concession and/or authorization. However, in accordance with the current legal framework, waste is classified as follows:

- Hazardous waste - Decree 1076 of 2015
- Ordinary or "Non-hazardous" wastes - Decree 1077 of 2015
- Wastes generated in health care - Decree 780 of 2016

The Ministry of Environment and Territorial Development issued the policy for the integral management of Hazardous Waste, whose objective is the generation of work tools for officials belonging to the environmental, sanitary and municipal authorities, in the environmentally sustainable management of waste or hazardous waste, meeting the need to have guidelines and basic concepts that facilitate decision making about the integral management of waste.

This document defines the parameters for the definition and classification of generating sources, elements for risk assessment, management of hazardous waste, instruments for integral management, inventories of hazardous waste, conditioning, storage and transport, treatment and disposal.

## 5.5. CONTAMINATED SITES

Although in Colombia there is no national standard that regulates the issue, the importance of creating it has been identified, so the Ministry has been working on the normative discussion of contaminated sites and environmental liabilities.

For its part, article 2.2.6.1.1.3. of Decree 1076 of 2015 defined "*remediation*" as "*Set of measures to which contaminated sites are submitted to reduce or eliminate contaminants to a safe level for health and the environment or prevent their dispersion in the environment without modifying them.*". In that sense, article 2.2.6.1.3.8. established: "*Those people, who are responsible for the contamination of a site due to improper handling or management of waste or hazardous waste, will be obligated among others, to diagnose, remedy and repair the damage caused to health and the environment, in accordance with the legal provisions in force.*"

Therefore, although there is no comprehensive standard to regulate these aspects, the provisions on hazardous waste are clear in pointing out the responsibility and obligation of remediation when dealing with contamination with hazardous waste.

In Bogotá, the District Department of the Environment issued the technical-environmental guidelines for the processing of soil adaptation permits, in order to evaluate and approve the applications for the land adaptation permit, in accordance with the Directive of December 23<sup>rd</sup>, 2009, issued by the environmental legal direction of the SDA. The document specifies, among other things, that if contaminated soils exist, they must be remediated or given an adequate final disposition.

There is also a national policy for the integral environmental management of the land, issued by the Ministry of Environment and Sustainable Development, created with the aim of contributing to the conservation and sustainable use of the land.

## 5.6. CLIMATE CHANGE

Colombia has been actively working on the development of the climate change policy, after signing the Paris agreement, and committing to reduce polluting emissions by 20% by 2030 (30% if it receives international cooperation and financing), There have been generated a series of strategies among which is the implementation of an international mechanism under the UN Framework Convention on Climate Change, which was called REDD +, whose objective is to help to reduce the carbon dioxide emissions produced by deforestation and degradation of the world's forests, in order to mitigate climate change. Likewise, Decree 298 of 2016 establishes the organization and functioning of the Climate Change System -SISCLIMA-, where public and private strategies are established to manage instruments and methodologies for mitigation and adaptation to climate change. Within this context, rules have been developed to preserve and control deforestation, the control of emissions, for example, by establishing a carbon tax in the

most recent tax reform. Likewise, there are some standard projects that are under discussion, prior to their issuance.

The carbon tax was created by article 221 of Law 1819 of 2016 and defined it as: *"The carbon tax is a levy that falls on the carbon content of all fossil fuels, including all petroleum derivatives and all the types of fossil gas that are used for energy purposes, always if they are used for combustion."* What is intended with this measure is to discourage the use of fossil fuels and promote the implementation of more efficient and cleaner energy technologies

Likewise, the Ministry of Finance and Public Credit issued Decree 926 of 2017 by means of which everything related to the non-causation of the tax and the powers of the authorities in relation to neutral carbon certification procedures were regulated.

Under Resolution 1962 of 2017, the Ministry of Environment set a maximum standard of the coefficient indicator on greenhouse gas emissions for Denatured Fuel Anhydrous Ethanol. In order to fulfil this requirement, Plants that produce Anhydrous Ethanol Fuel to mix with gasoline must calculate and report their Inventory of Greenhouse Gases, based on the methodology defined in ISO 14064-1: 2006.

Under Law 1753 of 2015, by which means the National Development Plan 2014–2018 is adopted, the National Government, through the Department of National Planning (DNP), will design a Green Growth Long Policy, which will cover objectives and goals of sustainable economic growth. Likewise, Law 1753 of 2015 sets up the National Registry of Greenhouse Gas Emission Reductions and establishes that any person who intends to opt for Payment by Results or offsets must obtain the previous registration. Based on this last provision, the National Government has issued several regulations regarding the Payment for Environmental Services and Payment by Results.

This year, the Colombian Government submitted a bill which sets guidelines to manage climate change. This bill introduces an Emission Trading Scheme in order to develop a market to negotiate gas emissions allowances. Likewise, it establishes that offsets may be recognized under the ETS, if some requirements are fulfilled. Payment of the new carbon tax can also be discounted from allowances.

The cap on the total emissions allowed within the scheme, the coverage or regulated entities, the auctions, and other issues will be set through further regulation.

## **5.7. CRIMINAL, ADMINISTRATIVE AND CIVIL LIABILITY**

In Colombia, as consequences of events related to environmental issues, three kinds of responsibility can be generated. The first of these is administrative responsibility, regulated by Law 1333 of 2009 *"By which the sanctioning environmental procedure is established and other provisions are dictated"*.

The aforementioned law establishes, what is an environmental infraction, the procedure, the preventive measures and administrative sanctions in the framework of the administrative responsibility process, which is carried out by the competent environmental authority.

Secondly, there is criminal liability, which is derived from the commission of criminal offenses typified in articles 328 et seq. of the Criminal Code, Law 599 of 2000. Among the crimes typified are: the illicit use of renewable natural resources, illicit management of harmful microorganisms, damage to natural resources, environmental pollution, fishing and illegal hunting, invasion of areas of special ecological importance, illegal exploitation of mining deposits and other materials, among others.

Finally, civil liability is commonly derived as a result of class actions regulated by Law 472 of 1998, for the alleged impairment of a collective right, as is the healthy environment, recognized by the article 79 of the Political Constitution.

#### **5.8. ENVIRONMENTAL INCENTIVES FOR THE GENERATION OF CLEAN ENERGY**

As part of the whole policy of green growth and implementation of climate change policy, Colombia has issued law 1715 of 2014 *"By means of which regulates the integration of non-conventional renewable energy to the national energy system"*, whose main objective is to promote the development and use of non-conventional sources of energy, mainly those of a renewable nature, in the national energy system, through its integration into the electricity market, its participation in non-interconnected areas and in other energy uses such as necessary for sustainable economic development, the reduction of greenhouse gas emissions and the security of energy supply.

The Law establishes the legal framework and the instruments for the promotion of the use of non-conventional sources of energy; Chapter III of the law defines the incentives to invest in projects from non-conventional sources of energy, such as promotion of research, development and investment in the field of production and use of energy from Non-Conventional Sources of Energy FNCE, the efficient management of energy, those obliged to declare income that directly make investments in this sense, will have the right to reduce annually their income, for 5 years following the taxable year in which they have made the investment, 50% of the total value of the investment made.

#### **5.9. FINANCIAL GUARANTEE**

In Colombia there is no mechanism of financial guarantee or ecological insurance.

In 1999, the Congress issued Law 491 about ecological insurance, and Article 32 of the Law created a committee consisting of representatives from the insurance companies, other private sectors, and the Ministry of the Environment (currently MADS) to study the applicability of the ecological insurance created by the Law. To comply with the

provisions of Law 491 of 1999 the then Ministry of the Environment convened the committee in reference calling several meetings, and concluded that it was not possible to regulate the Law because:

However, the aforementioned ecological insurance is not applied, because the insurance companies state that the definition of pure environmental or ecological damage cannot be framed in the postulates of insurance technique, therefore no insurance company issues the aforementioned insurance.

On the other hand, article 2.2.2.3.9.2. of Decree 1076 of 2015 that regulates what concerns the phase of dismantling and abandonment of a project subject to environmental license, within the requirements of the mentioned article is to establish a policy that covers the costs of the activities described in the plan of dismantling and abandonment, which must be established in favor of the competent environmental authority.

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