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ENERO DE 2005****THE EVOLUTION OF COLOMBIAN ENVIRONMENTAL
INSTITUTIONS:
1971 - 2004****EDUARDO URIBE BOTERO¹****Abstract**

This document presents an analytical description of the processes by which Colombian environmental institutions and regulations evolved between 1971 and 2004. The methodology used was based on the analytical framework of the 2003 World Bank Development Report: "Sustainable Development in a Dynamic World: Transforming Institutions, Growth, and Quality of Life". For this analysis, the recent history of environmental management in Colombia is divided in four periods. The first period begins in 1971 and ends with the approval of the Constitution of 1991. The second period begins in 1991 and ends in 1993 with the approval of Law 99. The third period extends from 1994 to 2002; during this period the environmental institutions and regulations created by Law 99 of 1993 were developed. The last period begins in year 2002 when new reforms to the institutional environmental framework were proposed and implemented by the government. For each of those four periods the document analyzes the means by which society became aware of environmental problems; the mechanisms that generated social demand for their solution; and the mechanisms to balance legitimate, competing social interests and by which adopted solutions were executed. Finally, the document includes a list of conclusions.

Key words: environment, institutions, regulation, history, Colombia**JEL Classification:** N5, O13, Q20

¹ Universidad de los Andes - CEDE

EVOLUCIÓN DE LAS INSTITUCIONES AMBIENTALES EN COLOMBIA: 1971-2004

Resumen

Este documento presenta una descripción analítica del proceso de evolución de las regulaciones y las instituciones ambientales de Colombia entre 1971 y 2004. La metodología utilizada se basó en el marco analítico del Informe sobre el Desarrollo Mundial del año 2003 del Banco Mundial: “Desarrollo Sostenible en un Mundo Dinámico: Transformado Instituciones, Crecimiento y Calidad de Vida”. Para este análisis la historia reciente de la gestión ambiental en Colombia se dividió en cuatro periodos. El primero inicia en 1971 y termina con la promulgación de la Constitución de 1991. El segundo periodo inicia en 1991 y concluye en 1993 con la aprobación de la Ley 99. El tercero se extiende entre 1994 y 2002; durante este periodo se desarrollaron las instituciones y regulaciones ambientales creadas por la Ley 99 de 1993. El último período se inicia en 2002 cuando el gobierno propone e implementa nuevas reformas al marco institucional para la gestión ambiental. Para cada uno de estos cuatro periodos el documento analiza los mecanismos a través de los cuales la sociedad se hizo conciente de los problemas ambientales; los mecanismos por medio de los cual se generó demanda social para su solución; los mecanismos existentes para balancear intereses legítimos y en conflicto y los mecanismos mediante los cuales las soluciones adoptadas fueron implementadas. Finalmente, el documento incluye una serie de conclusiones.

Palabras clave: medio ambiente, instituciones, regulación, historia, Colombia

Clasificación JEL: N5, O13, Q20

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Introduction

The main message of the World Development Report 2003² is that “...sustainable development requires that a broad portfolio of assets thrives in order for people to thrive, and that managing this broad portfolio well requires better institutions.” This document applies the framework of that report to the Colombian environmental institutions as they have evolved and attempted to protect environmental assets since 1971.

To present the arguments in a chronological order, this document divides the recent history of environmental management in Colombia in four periods. The first period begins in 1971 and ends in 1991 with the approval of the Constitution of 1991, which created a favorable political milieu for a profound reform of Colombia’s environmental institutions. The second period begins in 1991 with the approval of the Constitution and ends with the approval of Law 99 of 1993, which transformed the institutional framework for environmental management in Colombia. The third chapter describes the decade of the nineties, when the framework created by Law 99 of 1993 was implemented and strengthened. The final chapter begins in year 2002 when president Uribe was elected and new reforms to the institutional environmental framework were proposed by the government and implemented. Each of these periods is treated in a separate chapter.

Between 1971 and 1991 environmental institutions, regulations and management were mainly concentrated in rural areas. The constitutional framework which existed at that time (Constitution of 1886) favored the development of a centralized framework of environmental management, in which public participation was limited. This period was characterized by frequent conflicts of interests within institutions with environmental responsibilities. Urban environmental control, under the responsibility of the health authorities, focused primarily on air pollution problems. This was a fertile period for the growth of environmental institutions and regulations. During this period the government adopted the Code of Natural Resources in 1974 and the Sanitary Code in 1979; additionally, most of the regional environmental authorities (the Corporations) were created. The national and regional environmental institutions which existed during this time, including the Corporations and INDERENA³, implemented programs and projects for the protection of the forested lands, watersheds, protected areas and natural resources.

The second chapter of this text describes the period between 1991 and 1993. During this short period the environmental institutions of Colombia were deeply transformed. This rapid process of transformation was triggered by the approval of the Constitution of 1991. The new Constitution included a series of articles relevant

² World Development Report 2003 - Sustainable Development in a Dynamic World: Transforming Institutions, Growth, and Quality of Life. 2003. The World Bank. Washington.

³ The *Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of Environmental and Natural Resources.

to the environmental management of the country. The most important of these refers to the rights of the citizens to a clean environment, and to the judicial mechanisms to protect those rights. Shortly after the Constitution of 1991 was approved, the government adopted an environmental policy document which included the basic elements for a profound reform of Colombia's environmental institutional framework. Following a wide public consultation process across the country with the participation of a wide range of different stakeholders, a legal proposal was presented to Congress for its consideration. That proposal was largely enriched by the contributions of the different stakeholders. This period ends with the approval of Law 99 in December of 1993, when Colombia's environmental institutions were reformed.

The third chapter of this text covers the period from 1993 to 2002. During this decade the reforms approved by Law 99 of 1993 were implemented; and the institutions that integrate the National Environmental System (SINA) were created and strengthened. During this decade, environmental institutions, policies and regulations were built. Public and private environmental investments increased, and the media became more interested in environmental issues. Environmental education became a central element in the agendas of the government and the NGOs. The role of NGOs at the local level in the implementation of community projects and at the national level in the monitoring and evaluation of environmental policies increased. During this period, the role of the judiciary system in the protection of environmental and ethnic rights grew significantly.

Nevertheless towards the end of the decade, the transparency of the Corporations, vital elements of environmental management and control at the local and regional levels, was questioned. In addition, the government faced severe fiscal restrictions. These two situations prepared the ground for a new institutional reform undertaken by president Uribe, elected in 2002.

Finally, the fourth chapter of this text covers the period from 2002 to the present day. This chapter presents the reforms undertaken by President Uribe. Among these was the transfer of functions of the Ministry of Development to the Ministry of the Environment, and its transformation into the Ministry of the Environment, Housing and Regional Development, with responsibilities in the areas of land use regulation, low income housing and sanitation. An attempt by the government to modify Law 99 of 1993 as a strategy to control the alleged corruption problems of the Corporations is described in the fourth chapter. President Uribe's proposed reforms can be considered progressive, as they attempted to control the allegedly existing corruption problems of the Corporations, and aimed at rationalizing environmental administration. However, some stakeholders have reacted negatively to some aspects of those reforms. The chapter describes the rationale behind the reforms that were implemented as well as those that were proposed; it also describes the roles of participating actors.

Each of the four chapters is divided into two main sections. The first section describes the events and processes that took place during the period; the second

section analyzes them in light of the framework of the 2003 WDR⁴. In accordance with the 2003 WDR, the second section of each chapter analyzes the means by which society became aware of environmental problems; the mechanisms that generated social demand for their solution; and the mechanisms to balance legitimate, competing social interests and by which adopted solutions were executed. Finally, the document includes a chapter of conclusions.

4 World Development Report 2003 - Sustainable Development in a Dynamic World: Transforming Institutions, Growth, and Quality of Life. 2003. The World Bank. Washington.

1. Institutional Framework, 1971 1991

The first section of this chapter describes the institutional framework between 1971 and 1991. As will be discussed under this first chapter, during those 20 years there was a significant growth in the development of environmental institutions and regulations in Colombia; particularly with respect to the management of rural areas, forested lands, watersheds, protected areas and natural resources. Urban environmental control, under the responsibility of the health authorities, was mainly related to air pollution. This chapter describes the frequent conflicts of interests which existed between governmental agencies with environmental responsibilities during this time period.

The second section of the chapter describes the mechanisms by which society became aware of environmental problems, those which generated social demand to solve those problems, as well as those mechanisms which were in place to balance legitimate, competing social interests and to execute adopted solutions.

1.1. Description of the Framework, 1971 - 1991

INDERENA (*Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of Environmental and Natural Resources) was created in 1968 and was made part of the Ministry of Agriculture. This institution was mainly responsible for the enforcement of the Code of Natural Resources (Decree 2811 of 1974) and of Decree 1594 of 1984 related to water quality. INDERENA's territorial jurisdiction was gradually diminished by the creation of eighteen Regional Autonomous Corporations⁵ (from now on "the Corporations").

⁵ The Corporations were created on the following dates: CVC (*Corporación Autónoma Regional del Valle del Cauca*; Regional Autonomous Corporation of the Cauca Valley) in 1954; CAR (*Corporación Autónoma Regional de Cundinamarca*; Regional Autonomous Corporation of Cundinamarca) in 1961; CRQ (*Corporación Autónoma Regional del Quindío*; Regional Autonomous Corporation of Quindío) in 1964; Codechocó (*Corporación Autónoma Regional de Chocó*; Regional Autonomous Corporation of Chocó) in 1968; Corpouabá (*Corporación Autónoma Regional de Urabá*; Regional Autonomous Corporation of Urabá) in 1968; Corpocaldas (*Corporación Autónoma Regional de Caldas*; Regional Autonomous Corporation of Caldas) in 1971; CVS (*Corporación Autónoma Regional del Valle del Sinú*; Regional Autonomous Corporation of the Sinú Valley) in 1973; CDMB (*Corporación Autónoma Regional para la Defensa de la Meseta de Bucaramanga*; Regional Autonomous Corporation for the Defense of the Bucaramanga Plateau) in 1979; Cortolima (*Corporación Autónoma Regional del Tolima*; Regional Autonomous Corporation of Tolima) in 1981; Carde in 1981; Corponariño in 1982; Corponor in 1983; CRC (*Corporación Autónoma Regional del Cauca*; Regional Autonomous Corporation of Cauca) in 1983; CAP (*Corporación Autónoma Regional del Putumayo*; Regional Autonomous Corporation of Putumayo; today Corpoamazonía) in 1983; Corpoguajira (*Corporación Autónoma Regional de la Guajira*; Regional Autonomous Corporation of Guajira) in 1983; Corpocesar (*Corporación Autónoma Regional del Cesar*; Regional Autonomous Corporation of Cesar) in 1983; Cornare (*Corporación Autónoma Regional Río Negro Nare*; Río Negro Nare Regional Autonomous Corporation) in 1983 and Corpamag in 1988.

The Corporations were also responsible the enforcement of the environmental regulations of the Code of Natural Resources (Decree 2811 of 1974) and of Decree 1594 of 1984 related to water quality. Additionally, they were also responsible for the promotion of regional development. These institutions were created in the more populated and industrialized regions of the country. INDERENA⁶ maintained a jurisdiction over sparsely populated areas of the Andean region, in the Amazon and Orinoco watersheds and in some valleys of the Atlantic Coastal Plain.

Before 1993 the Corporations were coordinated by DNP (*Departamento Nacional de Planeación*; Department of National Planning) through its *División Especial de Política Ambiental y Corporaciones Regionales*⁷. This *División Especial* was responsible for coordinating and orienting the financial, technical and administrative activities of the Corporations and for approving their projects and budgets⁸. The budgets of other environmentally relevant agencies such as INDERENA⁹ and the Ministry of Health were also approved by the Department of National Planning¹⁰, through its units of Agrarian Studies and Social Development, respectively¹¹. The *División Especial de Política Ambiental y Corporaciones Regionales* also had the responsibility to “guide, promote and develop environmental policies, projects and programs, in coordination with relevant agencies”¹².

INDERENA¹³ and the Corporations concentrated most of their budgets in rural areas¹⁴, due to the traditional importance of the rural sector in the Colombian economy. During the early eighties, the rural sector represented 23% of the country’s economic output¹⁵. However, it is estimated that it currently represents only 2.1% of the Gross Domestic Product¹⁶.

Until 1993, the Ministry of Health was responsible for the enforcement of the Sanitary Code¹⁷ throughout the country; this code was the legal framework for issues related to air pollution. The Ministry of Mines enforced the compliance of the

⁶ *Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of Environmental and Natural Resources

⁷ Decrees 3152 of 1986; and 2410 of 1989.

⁸ Articles 71, 72, 73 and 74 of Decree 2410 of 1989.

⁹ *Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of Environmental and Natural Resources

¹⁰ Article 4; Decree 2410 of 1989.

¹¹ Articles 31 to 41; Decree 2410 of 1989

¹² Articles 71 of Decree 2410 of 1989.

¹³ *Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of Environmental and Natural Resources

¹⁴ Sánchez E., E. Uribe. 1994. Contaminación Industrial en Colombia. DNP. PNUD.

¹⁵ Ocampo J.A., J. Bernal, M. Avella, M. Errázuriz. 1994. La Consolidación del Capitalismo Moderno en Colombia 1945 - 1986. *En* Ocampo J. A. (ed.) *Historia Económica de Colombia*.

¹⁶ Plan Nacional de Desarrollo: Hacia un Estado Comunitario. 2003. Departamento Nacional de Planeación. Bogotá.

¹⁷ Law 02 of 1979 and of Decree 2 of 1982

environmental standards contained in the Code of Mines¹⁸ within the mining industry, particularly in relation to the development of EIAs.

In summary, four institutions at the national level had responsibilities related with pollution control and environmental policy and management: the Ministry of Agriculture (INDERENA¹⁹), DNP²⁰ (the Corporations), and the Ministries of Health and Mines. The ministers and the directors of these institutions were appointed directly by the President.

The national agencies with environmental responsibilities had different mandates, and their actions were often uncoordinated²¹. INDERENA²² which was principally guided by the legal mandate of the Code of Natural Resources²³ assigned a high priority to the preservation of natural ecosystems, forests, national parks, flora and fauna resources. The Corporations, under the coordination and supervision of DNP²⁴ and following their legal mandates, promoted the use of natural resources as means to foster regional economic development. The Ministry of Mines promoted the development of the mining industry. The Ministry of Health's mandate was to control air emissions and to attend to other health related urgent priorities.

The budgets of INDERENA²⁵ and of the Corporations were primarily spent in rural areas, watersheds and National Parks²⁶. This can partially be attributed to the nature of regulations that this institution enforced, which were mainly related to rural environmental issues²⁷, as well as to the lack of social information about and awareness of urban environmental problems and their social impacts.

The Code of Mines²⁸, the Code of Natural Resources²⁹ and the air pollution regulations³⁰ were approved by the President. The Sanitary Code³¹ was approved by Congress. The elaboration of the Code of Natural Resources was coordinated

¹⁸ Decree 2855 of 1988.

¹⁹ *Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of Environmental and Natural Resources

²⁰ *Departamento Nacional de Planeación*; Department of National Planning.

²¹ *Una Política Ambiental para Colombia*; Departamento Nacional de Planeación; Documento DEPAC 2544. Agosto, 1991.

²² *Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of Environmental and Natural Resources

²³ Decree 2811 of 1974

²⁴ *Departamento Nacional de Planeación*; Department of National Planning.

²⁵ *Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of Environmental and Natural Resources

²⁶ Sánchez E., E. Uribe. 1994. *Contaminación Industrial en Colombia*. DNP. PNUD.

²⁷ *The Code of Natural Resources* (Decree 2811 of 1982).

²⁸ Decree 2855 of 1988

²⁹ Decree 2811 1974

³⁰ Decree 2 of 1982

³¹ Law 02 of 1979

by Mr. Julio Carrizosa, who was then Director of INDERENA³² with the “...help of a technical team and members of the academia”³³. There is no reference to or evidence of public consultations in the processes of developing the above-noted regulations.

The Code of Natural Resources³⁴ was considered the “...the most important environmental regulation of Colombia before Law 99 of 1993 was approved”³⁵. Most of its content is related to the administration of forests, water, fauna, flora, watersheds, and National Parks³⁶. This Code included requirements to charge effluent fees and to conduct environmental impact assessments (EIA’s). However, the implementation of fees and EIA’s was limited. Effluent fees were only charged by CVC (*Corporación Autónoma Regional del Valle del Cauca*; Regional Autonomous Corporation of the Cauca Valley).

EIA were seldomly required³⁷. According to the Code of Natural Resources, INDERENA³⁸ and the Corporations required the elaboration of Environmental Impact Assessments (EIA) for those projects that could cause “significant environmental impacts”³⁹. However, the expression “significant environmental impacts” was subject to interpretation, and consequently those assessments were required on a discretionary basis, depending on the individual judgments of government officials⁴⁰. This discretionary authority was problematic because of the uncertainty that it generated in the private sector and in infrastructure projects subject to EIA.

After 1945, Colombian society underwent important transformations⁴¹. Between 1945 and 1986, the country’s Gross Domestic Product grew by a factor of seven, the population grew by a factor of 2.8 and the economy grew at an average rate of 4.8 % per year. While in 1949 the agricultural sector represented more than 40% of the economic activity of the country, by the early eighties it represented 23%. As the economic importance of the agricultural sector declined, the role of other sectors such as manufacturing, transportation, communications, financing and domestic public services grew from 23% in the late 40’s to about 40% in the early

³² *Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of Environmental and Natural Resources

³³ *Las Voces del SINA*. 2002. Ministerio del Medio Ambiente.

³⁴ Decree 1594 of 1984

³⁵ *Las Voces del SINA*. 2002. Ministerio del Medio Ambiente. (page 33).

³⁶ Decree 2811 of 1974

³⁷ Moncayo V.M. Sanchez E. *Aspectos Jurídicos del Control de la Contaminación Industrial*. 1994.

En. Sánchez E. and E. Uribe. *Contaminación Industrial en Colombia*. DNP. PNUD

³⁸ *Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of Environmental and Natural Resources

³⁹ Decree 2811 of 1974: *The National Code for Renewable Natural Resources and Environmental Protection*.

⁴⁰ Szauer M.T. 1994. *Las Licencias Ambientales como Instrumentos de Gestión Ambiental*. *En* Rodríguez M. *ed*. *La Política Ambiental del Fin del Siglo*. CEREC.

⁴¹ Ocampo J.A., J. Bernal, M. Avella, M. Errázuriz. 1994. *La Consolidación del Capitalismo Moderno en Colombia 1945 - 1986*. *En* Ocampo J. A. (*ed*) *Historia Económica de Colombia*.

80's. While the urban population during the early fifties represented 39% of the total population, it had grown to nearly 70% by the mid eighties.

With rapid industrialization, urbanization, and economic and demographic growth, new environmental problems emerged⁴². Among these were air and water pollution, toxic waste production and solid waste accumulation. Deterioration of intra urban zones and noise and visual pollution also grew. INDERENA⁴³ and the Corporations which had directed their efforts mainly to the rural areas did not have the human and budgetary resources to deal with these problems. Moreover, they did not have the technical tools to quantitatively assess and monitor pollution levels in urban areas. Urban environmental control was largely unattended⁴⁴. The economic affects of the prevalent pollution problems (e.g. urban and water pollution) were also largely unknown⁴⁵.

1.2. Analysis of the Framework, 1971 – 1991

1.2.1. How Society Became Aware of Environmental Problems.

This section describes how Colombian society became aware of environmental problems between 1971 and 1991, and the contributions of environmental education, the media, the NGOs and the government to increase public environmental awareness. The effect of those efforts will be discussed.

During the late seventies, environmental non-governmental organizations in Colombia began to develop environmental education programs⁴⁶. Among the first NGOs to develop such programs were the GER - *Grupos Ecológicos de Risaralda*. Other environmental NGO's were created during the eighties: *Fundación Natura*, *Fundación Prosierra Nevada de Santa Marta*, *Fundación Penca de Sábila*, *Fundación Manzanares*, *Fundación Yarigüies*, *Grupo Ecológico del Cauca*, *Fundación Colegio Verde de Villa de Leyva*, *Fundación Herencia Verde*, and *Fundación Alma*. All of these organizations developed environmental education programs at the local level.

Before 1991, environmental education was not included in National Development Plans. However during the eighties, INDERENA⁴⁷, through its Division for

⁴² Sánchez E., E. Uribe. 1994. Contaminación Industrial en Colombia. DNP. PNUD.

⁴³ *Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of Environmental and Natural Resources

⁴⁴ Sánchez E., E. Uribe. 1994. Contaminación Industrial en Colombia. DNP. PNUD.

⁴⁵ At the time, the methodologies used to asses the economic impact of environmental deterioration had not been applied in Colombia.

⁴⁶ Álvarez H. 1997. *Movimiento Ambiental Colombiano: Como un pájaro blanco cegado por la nieve*. En. *Se hace Camino al Andar: Aportes para una historia del Movimiento Ambiental Colombiano*. ECOFONDO.

⁴⁷ *Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of Environmental and Natural Resources

Environmental Education, conducted environmental education projects⁴⁸. The Corporations had similar projects⁴⁹.

INDERENA⁵⁰, under the Direction of Mrs. Margarita Marino (1983 – 1986), created the green municipal councils (“*Consejos Verdes*”). These councils were headed by municipal mayors and were integrated by representatives of local communities and environmental groups⁵¹. They had the objective positioning the environmental priorities of local populations in the agenda of local governments. By 1992 “...there were about 500 green municipal councils”⁵². That is to say that about 50% of Colombia’s municipalities had a green council.

Little is known about the effects of all those early educational efforts on the environmental awareness of the general public. Although it is possible that a significant part of the population became more aware of evident environmental problems such as the pollution of the Bogotá River, it is also possible that in the absence of information related to the social and economic effects of environmental deterioration, people did not consider the solution of these problems to be a priority. Interestingly, the Development Plan of the City of Bogotá for the 1987 – 2000⁵³ which was elaborated through a process of public consultations⁵⁴ does not even address environmental problems, such as air or water pollution. The chapter of the Plan dedicated to the solution of health problems, for example, does not mention pollution problems. Issues such as public transportation, security, education, employment, health, the maintenance of roads and public areas, water and sewage systems, and low income housing appeared to be more pressing at the time.

During the late eighties and early nineties, international information related to global environmental issues, such as ozone depletion and climate change, increased the interest of the Colombian media in environmental issues⁵⁵. As a result, the frequency of environmental news in the media grew during the late eighties and early nineties. Nevertheless, environmental journalism gave priority to global environmental problems (climate change, ozone depletion and biodiversity losses). It also pointed out rather than analyzed nationally relevant environmental problems. The lack of adequate training for journalists in relevant areas limited the

⁴⁸ División de Educación Ambiental INDERENA. 1990. Educación Ambiental y Desarrollo Social. *En*. Primer Seminario sobre Educación Ambiental y Desarrollo Social. Bogotá 1990.

⁴⁹ Restrepo. L. 1990. Anotaciones sobre el Programa de Educación Ambiental de CORNARE. *En*. Primer Seminario sobre Educación Ambiental y Desarrollo Social. Bogotá 1990.

⁵⁰ *Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of Environmental and Natural Resources

⁵¹ Personal communication with Mrs. Margarita Marino

⁵² Rodríguez M., 1998. La Reforma Ambiental en Colombia: Anotaciones para la Historia de la Gestión Pública Ambiental. Fundación FES. Bogotá

⁵³ Bogotá Para Todos 1987 – 1990. Plan de Desarrollo Social y Económico. Alcaldía Mayor de Bogotá; Cámara de Comercio de Bogotá.

⁵⁴ Eleven public forums during 1986

⁵⁵ Comunicación y Medio Ambiente. Elementos para la Definición de Estrategias Informativas en Temas Ambientales. 1993. INDERENA, PNUD.

capacity of the media to educate the public about environmental issues⁵⁶. The access of local media to relevant environmental information was scarce. Under these circumstances, the capacity of the media to contribute to increasing social awareness about environmental problems, particularly about local environmental problems, was limited.

In sum, environmental education programs were conducted by both government and by NGOs. The presence of environmental issues in the media increased during the late eighties; mainly as a result of international information related to global environmental problems. Environmental information and awareness was largely concentrated in a few institutions, such as environmental NGO's, the Corporations and INDERENA⁵⁷. There is no evidence that those environmental education projects increased the interest of citizens in the solution of environmental problems.

1.2.2. Mechanisms that Generated Social Demand for the Solution of Environmental Problems

This section describes the mechanisms which generated social demand to act upon Colombia's environmental problems between 1971 and 1991. This section identifies the private and public stakeholders which generated social demand to address Colombia's environmental problems as well as the analytical basis for future environmental strategies. As will be described in this section, government agencies and officials with access to environmental information played an important role in the generation of future solutions to the country's environmental problems.

Colombia has had a long research tradition in rural natural resources and ecosystems, and its related problems. INDERENA⁵⁸ had a Research Unit⁵⁹ that published scientific findings⁶⁰ related to the nature and problems of the country's natural resources and ecosystems. The *Instituto Geográfico Agustín Codazzi* gathered and published⁶¹ geographic information, and the *Universidad Nacional* through its *Instituto de Recursos Naturales* which was founded in 1940, also published information on the nature of Colombia's ecosystems and natural resources. The data, results and the information provided by those public

⁵⁶ Comunicación y Medio Ambiente. Elementos para la Definición de Estrategias Informativas en Temas Ambientales. 1993. INDERENA, PNUD.

⁵⁷ *Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of Environmental and Natural Resources

⁵⁸ *Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of Environmental and Natural Resources

⁵⁹ Federico Medem Research Unit "UNIFEM"

⁶⁰ *Trianea*

⁶¹ *Colombia Geográfica*

organizations constituted the basis for the development of conservation strategies⁶².

The Ministry of Agriculture, through HIMAT (*Instituto Colombiano de Hidrología Hidrometeorología y Adecuación de Tierras*; Colombian Institute of Hydrology, Hidrometeorology and land Restoration) monitored river flows; this information was mainly used for irrigation planning and for the management of public irrigation systems.

With respect to the urban environment, the Panamerican Health Organization and the Ministry of Health operated 19 air monitoring stations between 1967 and 1974 in the cities of Bogotá, Cali, Medellín, Barranquilla, Bucaramanga and Cartagena. Those stations detected high concentrations of sulfur dioxides and particulate matter⁶³. At the time, the country had not adopted ambient standards for air pollution. In 1991, the air concentrations of particle matter were measured in Bogotá, Barranquilla, Bucaramanga and Cali. The concentration of ozone, hydrocarbons and carbon monoxides in Bogotá were above the ambient standards defined in Decree 2 of 1982 which regulated air pollution. Monitoring of the Bogotá River, which drains the most densely populated region of Colombia around Bogotá, was conducted by Corporation of the Bogotá Savanna CAR⁶⁴. The levels of BOD₅, dissolved oxygen, mercury, lead and coliform bacteria were above the ambient standards defined during this period in Decree 1594 of 1984⁶⁵.

Technical information relative to the environmental quality of rural and urban areas of the country only circulated in limited circles within the national government and academia. Results of research projects concerning Colombia's environment and the country's environmental problems were published in local scientific journals⁶⁶. Air and water quality data was gathered by the Ministry of Health and by the Corporations of Bogotá and Cali. INDERENA's staff was well aware of the development and results of research projects related to the country's natural resources and ecosystems⁶⁷. The Ministry of Health gathered data from air monitoring stations that were under its control, and DNP⁶⁸, which coordinated the Corporations, had access to the technical information which the institution produced.

⁶² Personal communications with Julio Carrizosa and with Margarita Botero and Manuel Rodriguez; former Directors of INDERENA (*Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of Environmental and Natural Resources)

⁶³ Sánchez E., and C. Herrera. 1994. El Estado del Ambiente en Colombia. En Sánchez E. and E. Uribe. Contaminación Industrial en Colombia. DNP. PNUD.

⁶⁴ Today under the name of Regional autonomous corporation of Cundinamarca, with jurisdiction over the entire Departamento of Cundinamarca.

⁶⁵ EPAM. 1993. Estrategia de Saneamiento del Río Bogotá. Informe Final. FONADE. EAAB-ESP

⁶⁶ Revista Trianea; Colombia Geográfica

⁶⁷ Mr. Jorge Hernandez Camacho was an important scientist from INDERENA (*Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of Environmental and Natural Resources) who directed most of the research work of that institution.

⁶⁸ *Departamento Nacional de Planeación*; Department of National Planning.

The environmental concerns of government officials and members of the academic world were discussed in the First National Environmental Forum which took place at the *Universidad de los Andes* in 1971. This forum discussed the lack of information and public awareness regarding urban environmental problems⁶⁹.

It was within academic and governmental circles, mainly in INDERENA⁷⁰ and DNP⁷¹, where the need for an institutional reform began to be discussed. Since the mid seventies, "...the employees of INDERENA began to discuss the need for an institutional reform that would strengthen the capacity of the government to control the rapid environmental deterioration of the country's natural resources"⁷². However, it was not until 1993, with the approval of Law 99, that such a reform became a reality.

In sum, although Colombia had a tradition of environmental research and environmental monitoring, public information related to environmental issues was scarce, particularly at the local level. Environmental information and data was available within limited governmental and academic circles. It was within these circles that a discussion began towards the second half of the eighties, regarding the need for an environmental institutional reform.

1.2.3. Mechanisms to Balance Legitimate, Competing Social Interests.

This section describes the mechanisms that were in place between 1971 and 1991 to balance environmental protection interests with other social interests. This includes the balance of interests between economic development, cultural protection and ecosystem conservation. The contradictions between the priorities and interests of governmental agencies, investment projects and social groups will be described, as well as the limited participation of vulnerable groups in decision making processes.

Conflicts of interests within government agencies, including environmental authorities, were frequent before 1991. For example, the Ministry of Mines promoted the interests of the mining industry while simultaneously acting as an environmental control agency for the sector, in compliance with the existing Code of Mines⁷³. CVC⁷⁴ is another example of an institution which had conflicting mandates during this time, as it was both an electric company and an environmental control agency.

⁶⁹ Rodríguez M., 1998. *La Reforma Ambiental en Colombia: Anotaciones para la Historia de la Gestión Pública Ambiental*. Fundación FES. Bogotá.

⁷⁰ *Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of Environmental and Natural Resources

⁷¹ *Departamento Nacional de Planeación*; Department of National Planning.

⁷² *Las Voces del SINA*. 2002. Ministerio del Medio Ambiente. (page 33).

⁷³ Decree 2855 of 1988.

⁷⁴ *Corporación Autónoma Regional del Valle del Cauca*; Regional Autonomous Corporation of the Cauca Valley.

Other Corporations also had the legal mandate of building sanitation and irrigation projects, in addition to their environmental control responsibilities. Examples of these are the Corporations of the *Departamentos* of Cundinamarca, Quindío, Caldas, Córdoba, Guajira, Chocó, Cauca, Magdalena, and Putumayo. The Boards of Directors of these Corporations did not include environmental advocates that could argue in favor of environmental priorities, when competing interests arose⁷⁵.

On the other hand, conservation interests did not always coincide with those of the traditional communities that inhabited those areas. The procedures contained in the Code of Natural Resources⁷⁶ for the creation of National Parks do not include public consultations⁷⁷. Although more than 40 indigenous groups⁷⁸ and several traditional black communities inhabit the areas of national parks created before 1991⁷⁹, there is no reference of a public consultation process during the creation of the following protected areas, with overlapping jurisdictions with the territories of traditional ethnic communities: *Catatumbo Barí, Sierra Nevada de Santa Marta, Tayrona, Nevado del Huila, Cahuinarí, Puinawaí, Paramillo, Katios, Darien, Orquideas, Tatamá, Utría, Farallones, Munchique, and Sanquianga*. Legal mechanisms did not exist to balance the national interest to conserve biodiversity with local interests of traditional indigenous communities that inhabited territories that eventually became parks.

The construction of large infrastructure projects is another example where the legitimate interests of the national government did not always coincide with those of local communities. The Code of Natural Resources⁸⁰ contained relevant provisions for environmental impact evaluation, which did not include public consultations during those evaluation processes. Mechanisms to consult the expectations and opinions of traditional indigenous and black communities during the processes of environmental impact assessment were not in place, and according to these communities their interests were not taken into account^{81,82}.

⁷⁵ The author of this case study was, between 1990 and 1994, the head of the “*División de Política Ambiental y Corporaciones Autónomas Regionales*” of the Department of National Planning. In that capacity he attended the meetings of the Board of Directors of these institutions and was responsible for the approval of their projects and budgets.

⁷⁶ Decree 2811 of 1974.

⁷⁷ According to the Code of Natural Resources, to declare a National Park the national park's authority has to conduct a scientific study⁷⁷. This study has to be reviewed by the Colombian Academy for Exact Physical and Natural Sciences (*Academia Colombiana de Ciencias Exactas Físicas y Naturales*) before the Park is formally created by a Presidential Decree. No public consultations is required.

⁷⁸ Barí, Inga, Sicuani, Piaroa, Piapoco, Curripaco, Puinave, Cunbeo, Kogui, Arhuaco, Arzarios, Huitotos, Wiwa, Nasa, Miraña, Embera Chamí, Emnbaera catio, Tule, Waunaan, Empera Siapidada etc.

⁷⁹ *Política de Participación Social en la Conservación*. 2001. Unidad de Parques Nacionales de Colombia.

⁸⁰ Articles 27 and 28 of Decree 2811 of 1974

⁸¹ Jiménez R. *Ámbito de la Participación de las Comunidades Indígenas en la Evaluación Ambiental*. En. *Memorias del Primer Seminario Internacional de Evaluación Ambiental en el Contexto del Desarrollo*. Cartagena de Indias Agosto 1997. Ministerio del Medio Ambiente.

Two examples where large infrastructure projects were constructed despite the opposition from local communities and NGOs were: the *Urrá* hydroelectric power plant and the road that crosses the Salamanca National Park between Santa Marta and Barranquilla⁸³

By the early nineties, the private sector's knowledge of and compliance with environmental regulations was low⁸⁴. The environmental regulations related to water standards⁸⁵, the Code of Natural Resources⁸⁶, and the Sanitary Code⁸⁷ did not include mechanisms for coordinating and consulting environmental policies with the private sector. However, the private sector's lack of knowledge and low compliance with environmental regulations, as well as the limited institutional capacities of INDERENA⁸⁸ and of the Corporations to enforce environmental norms⁸⁹, suggests that the interests of the private sector were not threatened by the environmental policies, regulations and institutions of the government. In fact, it was not until 1991 that ANDI (*Asociación Nacional de Industriales*; National Association of Manufacturing Industries) created an Environmental Office to advise its associates and to participate in environmental negotiations with the national government⁹⁰.

The prevalent mechanisms for the design and approval of the budgets of environmental authorities did not facilitate consensus building around environmental priorities between different social actors. The definition of priorities and budgets within environmental agencies was the responsibility of their respective boards of directors. That was the case of INDERENA⁹¹ and of the Corporations. INDERENA's board of directors included members of the central government or their delegates⁹². The Board of Directors of the Corporations was presided by DNP⁹³; and with the exception of the *Gobernador* of the

⁸² Mosquera J. L.. *Ámbito de la Participación de las Comunidades Negras en la Evaluación Ambiental*. En. *Memorias del Primer Seminario Internacional de Evaluación Ambiental en el Contexto del Desarrollo*. Cartagena de Indias Agosto 1997. Ministerio del Medio Ambiente.

⁸³ Hidrovo J. 1997. *La Defensa de los Parques y los Recursos Naturales*. En.. *Se hace Camino al Andar: Aportes para unan historia del Movimiento Ambiental Colombiano*. ECOFONDO.

⁸⁴ Sanchez T., G. Medina. 1994. *Cumplimiento y Aplicación de la Legislación Ambiental*. En Sánchez E., E. Uribe (ed.). *Contaminación Industrial en Colombia*. DNP. PNUD.

⁸⁵ Decree 1594 of 1984.

⁸⁶ Decree 2811 1974.

⁸⁷ Decree 02 82

⁸⁸ *Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of Environmental and Natural Resources

⁸⁹ Sanchez T., G. Medina. 1994. *Cumplimiento y Aplicación de la Legislación Ambiental*. En Sánchez E., E. Uribe (ed.). *Contaminación Industrial en Colombia*. DNP. PNUD.

⁹⁰ Interview with Mr. Manuel Felipe Olivera manager of ANDI's (*Asociación Nacional de Industriales*; National Association of Manufacturing Industries) environmental office from 1991 to 1997.

⁹¹ *Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of Environmental and Natural Resources

⁹² Ministry of Agriculture, Department of National Planning, Codazzi Geographic Institute and the Delegate of the President.

⁹³ *Departamento Nacional de Planeación*; Department of National Planning.

*Departamento*⁹⁴ and the Mayor of its capital city, the rest of the members of the board were appointed by the national government. Representatives of local communities or social organizations were not included in those boards of directors.

In sum, before 1991, conflicts of interests were frequent within public organizations which had responsibilities in the area of environmental enforcement. Additionally, national conservation interests did not always coincide with those of traditional local communities, and there were no legal mechanisms in place to balance these contradictions. In the construction of large infrastructure projects, the interest of the national government was often juxtaposed to that of local communities, and EIA regulations did not include provisions to ensure public consultations. Additionally, the economic interests of the private sector did not seem to be significantly affected by public environmental policies, regulations and institutions. There was little public participation in the design and approval of the priorities, projects and budgets of environmental institutions.

1.2.4. Mechanisms by Which Adopted Solutions were Executed.

This section describes the mechanisms by which environmental priorities were defined, executed, monitored and evaluated between 1971 and 1991. The roles of the environmental institutions and different stakeholders will be described. The roles of environmental constituencies and of the judicial system will also be analyzed.

As previously indicated, several institutions at the national level made decisions related to local environmental policy: the Ministries of Agriculture (INDERENA⁹⁵) and Health, and DNP⁹⁶, through the Corporations. In most cases, these institutions represented the interests of one of the two traditional Colombian political parties⁹⁷. The fact that the Directors of the Corporations and of INDERENA were political appointees of the President and that their projects were approved by the Department of National Planning⁹⁸ ensured that the priorities of those institutions were close to those of the central government. The institutions with environmental functions executed projects under the control of the national government, and had little social participation and vigilance. As a result, their local accountability was limited⁹⁹. In spite of this, local economic and political interests frequently managed to gain control of the Corporations¹⁰⁰.

⁹⁴ The *Gobernador* is the highest political and administrative authority of a regional administrative entity or a *Departamento*.

⁹⁵ *Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of Environmental and Natural Resources

⁹⁶ *Departamento Nacional de Planeación*; Department of National Planning.

⁹⁷ *Liberal and Conservador*

⁹⁸ Articles 71, 72, 73 and 74 of Decree 2410 of 1989.

⁹⁹ Uribe. E., O. Acosta. 1994. Las Entidades Territoriales y las Corporaciones Autónomas Regionales. *En* Rodríguez, M. (ed.), *La Política Ambiental del Fin del Siglo*. CEREC

¹⁰⁰ The author of this case study was, between 1990 and 1994, the head of the "*División de Política Ambiental y Corporaciones Autónomas Regionales*" of the Department of National Planning. In that

During most of this period, the participation of the judicial system in environmental conflicts was mostly limited to the solution of water disputes between private individuals¹⁰¹. The Civil Code was the main legal instrument used for this purpose. Water allocation conflicts were primarily solved through an analysis of the property rights over land and water needs by different communities and individuals.

For its part, the Penal Code of 1980 defined a series of crimes against natural resources and the environment. These offenses included clearing forests in National Parks and forest reserves, as well as the illegal emission of pollutants. There is no evidence that the Penal Code of 1980 was ever used to convict offenders¹⁰². During this time period, popular access to the judicial system was more limited than it is today¹⁰³. The fact that people did not press legal actions involving environmental offenses could be attributed to their lack of familiarity with their legal rights and their lack of access to the judicial system.

By the late eighties, the judicial system began to play an important role in the defense of environmental rights, with the expedition of Law 472 of 1988 which created popular actions. These actions can be used to protect collective environmental rights¹⁰⁴, and can be presented by an individual on behalf of an undetermined group of people. The NGO FUNDEPÚBLICO¹⁰⁵ (*Fundación para la Defensa del Interés Público*; Foundation for the Defense of the Public Interest) was the first to use this type of action to defend collective environmental rights, and had the specific objective of promoting legal actions to protect environmental rights. During the late eighties and early nineties, FUNDEPÚBLICO undertook the first successful legal actions on behalf of the public¹⁰⁶. In 1990, in response to a case brought forth by FUNDEPÚBLICO, a judge ordered the Administration of Bogotá to improve its waste collection processes. In 1991, following another lawsuit by this NGO, a judge forced a chemical company in the municipality of *Zipaquirá* to close down.¹⁰⁷

capacity he attended the meetings of the Board of Directors of these institutions and was responsible for the approval of their projects and budgets.

¹⁰¹ Personal communication with Gustavo Guerrero, Environmental Lawyer and advisor to the Director of the Unit of National Parks. November 2003. Mr. Guerrero is currently the Secretary General of the CAR.

¹⁰² Personal conversation with Mr. Manuel Rodriguez, Mr. Julio Carrisoza and Mrs. Margarita Marino former directors of INDERENA (*Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of Environmental and Natural Resources)

¹⁰³ Quintero R. Iguarán. M., 2001. *Acceso a la Justicia Ambiental. Una Mirada desde la Ecología Política*. En. *Justicia Ambiental*. Universidad Externado de Colombia; Instituto de Estudios del Ministerio Público; CAR. Bogotá.

¹⁰⁴ Collective Environmental Rights include the right to a clean environment and the right to participate in the decisions that may affect it (Article 79 of the Constitution of 1991).

¹⁰⁵ Created by Mr. Germán Sarmiento; a lawyer and environmental activists.

¹⁰⁶ Sanchez E., and G. Medina. 1994. En. Sánchez E., E. Uribe. 1994 (ed). *Contaminación Industrial en Colombia*. DNP. PNUD.

¹⁰⁷ Álcalis de Colombia

In sum, between 1971 and 1991, public institutions at the national level were largely responsible for defining, implementing and monitoring local environmental priorities and policies. The Ministries of Agriculture and Health, and DNP, oriented and controlled the activities of the Corporations¹⁰⁸. Despite the role of the central government, local economic and political interests managed to gain control of the Corporations. However, by the end of the decade, the role of the judiciary system in the defense of the environmental interests of local communities began to increase. FUNDEPÚBLICO played a pioneering role in this respect.

1.2.5. Summary of the Analysis of the 1971 – 1991 Framework.

Between 1971 and 1991, Colombia experienced rapid economic growth and urbanization¹⁰⁹. These changes brought new environmental problems to urban areas¹¹⁰. Despite this fact, INDERENA¹¹¹ which was a part of the Ministry of Agriculture, and the Corporations, which were coordinated by DNP,¹¹² concentrated their activities in rural areas. The Ministry of Health was responsible for controlling air pollution in urban areas. The Ministry of Mines controlled the environmental performance of its own sector¹¹³. There were frequent conflicts of interests within all of these institutions, as their environmental mandates did not always facilitate the development of their other objectives and priorities. These national level institutions defined and implemented environmental actions at the local level, and their local accountability was limited. Institutional mechanisms to balance conflicting interests did not exist.

With the creation of legal actions in 1988, the judicial system began to play an important role in the defense of public environmental interests, although social participation in public environmental matters and local accountability of environmental institutions were limited.

Government agencies and NGOs conducted environmental education programs, and global environmental issues captured the attention of the media. However, there is no evidence of a wide social interest in the solution of environmental problems. The need for an institutional environmental reform was first discussed within those governmental circles with greatest access to environmental information.

¹⁰⁸ *Departamento Nacional de Planeación*; Department of National Planning.

¹⁰⁹ Ocampo J.A., J. Bernal, M. Avella, M. Errázuriz. 1994. La Consolidación del Capitalismo Moderno en Colombia 1945 - 1986. *En* Ocampo J. A. (ed.) *Historia Económica de Colombia*.

¹¹⁰ Sánchez E., E. Uribe. 1994. *Contaminación Industrial en Colombia*. DNP. PNUD.

¹¹¹ *Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of Environmental and Natural Resources

¹¹² *Departamento Nacional de Planeación*; Department of National Planning.

¹¹³ Code of Mines (Decree 2855 of 1988)

2. Institutional Reforms, 1991 - 1993

Between 1991 and 1993, environmental institutions in Colombia were transformed. A special Assembly approved a new Constitution, the government adopted a new environmental policy, and Congress created a new legal framework for environmental institutions and regulations. The reformed constitutional framework included new mechanisms for the protection of social and environmental rights. These policy and legal reforms led to the creation of a Ministry of the Environment and of several regional and urban environmental control agencies, research institutes and environmental control mechanisms. The first section of this chapter describes those reforms. The second section analyzes the roles of relevant events and actors in those reforms. Finally, the third section of this second chapter describes the mechanisms by which society became aware of environmental problems, those that generated a social demand to solve them, as well as the mechanisms which existed to balance legitimate, competing social interests and to execute adopted solutions.

2.1. Description of the Reforms, 1991 – 1993

2.1.1. The Constitution of 1991.

In August of 1990, President Cesar Gaviria was elected and called for a public referendum in favor of a constitutional reform. A Constitutional Assembly was elected by popular vote in 1991. The Political Constitution was approved in June of 1991. The Constitution defined Colombia as a democratic, participatory, pluralistic and decentralized country¹¹⁴, where all of its citizens had the right to participate in decisions relative to environmental management¹¹⁵. The new Constitution included the principle of Sustainable Development as a pivotal element of the economic and social life of the country¹¹⁶.

The new Constitution created the concept of “Collective Environmental Rights”. Those rights include the right to a clean environment and the right to participate in the decisions that may affect it¹¹⁷. In addition, the Constitution provided citizens with several new mechanisms to defend their rights; including their environmental rights¹¹⁸. Those mechanisms include the Citizens’ Rights Action¹¹⁹ (*Acción de Tutela*), the Compliance Action¹²⁰ (*Acción de Cumplimiento*) and the Popular Action¹²¹ (*Acción Popular*).

¹¹⁴ Article 1 of the Political Constitution.

¹¹⁵ Article 79 of the Political Constitution.

¹¹⁶ Article 80 of the Political Constitution

¹¹⁷ Article 79 of the Political Constitution

¹¹⁸ Articles 86 87 and 88 of the Political Constitution.

¹¹⁹ Article 86 of the Political Constitution of 1991.

¹²⁰ Article 87 of the Political Constitution of 1991.

¹²¹ Article 88 of the Political Constitution of 1991.

The Citizens' Rights Action (*Acción the Tutela*) is typically presented to a judge by an individual who considers that the exercise one of his/her fundamental rights (the rights to life, to work to equality, etc.) is threatened by the decisions, omissions or actions of another person or institution¹²². Although the right to a clean environment was defined by the Constitution of 1991 as a collective right and not as a fundamental right, it has been connected to fundamental rights.

The Compliance Action (*Acción de Cumplimiento*) can be presented by anyone who considers that a state agency has been negligent and has not fully undertaken its legal responsibilities¹²³. This includes, for example, the inaction of environmental authorities with respect to industrial pollution problems.

The Popular Actions (*Acción Popular*) are legal mechanisms to protect collective rights such as the right to a clean environment¹²⁴. The Popular Action can be used against a person or an institution (private or public) that violates environmental legislation and that, in doing so, causes damage to a group of people.

The Constitution of 1991 mandated the state to prevent and control factors that could cause environmental degradation, to sanction those who inflict environmental damages and to demand restoration¹²⁵.

According to the Political Constitution of 1991, every elected national government must write a National Development Plan for its Presidential Period¹²⁶. Before this Plan is approved by the National Congress it is evaluated by the National Planning Council (*Consejo Nacional de Planeación*), an instrument created by the Constitution of 1991¹²⁷. This Council is integrated by a group appointed by the President. The Council includes municipal mayors, the *gobernadores* of the *Departamentos*¹²⁸, members of ethnic minorities and rural communities; and members of the economic, environmental, education and health sectors. The National Planning Council acts as a consultative body of the national government during the elaboration of the National Development Plan. This Council began to operate in 1994; therefore it did not play a role in the development of the Environmental Policy of 1991 which will be described in the next section.

¹²² Iguarán. M., 2001. La Acción de Tutela como Mecanismo de Protección del Derecho a un Ambiente Sano. *En*. Justicia Ambiental. Universidad Externado de Colombia; Instituto de Estudios del Ministerio Público; CAR. Bogotá.

¹²³ González J. E. 2001. Las Acciones de Cumplimiento y su Perspectiva Ambiental en Colombia. *En*. Justicia Ambiental. Universidad Externado de Colombia; Instituto de Estudios del Ministerio Público; CAR. Bogotá.

¹²⁴ Amaya O.D. 2001. Justicia Constitucional Ambiental en Colombia. 2001. *En*. Justicia Ambiental. Universidad Externado de Colombia; Instituto de Estudios del Ministerio Público; CAR. Bogotá.

¹²⁵ Article 80 of the Political Constitution.

¹²⁶ Article 339 of the Political Constitution.

¹²⁷ Article 340 of the Political Constitution

¹²⁸ The *Gobernador* is the highest political and administrative authority of a regional administrative entity or a *Departamento*.

2.1.2. The Environmental Policy of 1991.

The mechanism by which the National Government of Colombia formally adopts the social and economic policies in Colombia is the CONPES (*Consejo Nacional de Política Económica y Social*; National Council for Economic and Social Policy)¹²⁹. The CONPES is the maximum planning authority at the national level¹³⁰. The President presides over the meetings of this council, which are also integrated by several ministers of the government¹³¹. The Department of National Planning acts as the Technical Secretariat of CONPES. In this capacity, DNP coordinates the design of national policy proposals.

In August of 1991, the CONPES¹³² adopted major changes in environmental policy at both the national and local levels, in a policy document entitled “An Environmental Policy for Colombia”¹³³. That policy document included the following eight strategies:

- i. The creation of a Ministry of the Environment that would be responsible for coordinating regional environmental management, and writing national environmental policies and regulations.
- ii. The creation of a National Environmental Council, responsible for the approval of environmental policies, presided by the Minister of the Environment, with the representation of different economic sectors.
- iii. The creation of Environmental Units within governmental agencies which had projects of potential environmental significance.
- iv. The creation of an institution assigned to the Ministry of the Environment responsible for the management of the National Parks’ System.
- v. The strengthening of the role of the existing eighteen Corporations as environmental authorities, and the creation of more of these institutions to attend the areas which were then under the jurisdiction ofINDERENA¹³⁴.
- vi. The creation of urban environmental authorities in large cities.

¹²⁹ CONPES was created by Law 19 of 1958.

¹³⁰ www.dnp.gov.co

¹³¹ The Ministers of Foreign Affairs, Finance, Agriculture, Environment Regional Development and Housing, Social Security, Transportation, Foreign Trade, and Culture.

¹³² *Consejo Nacional de Política Económica y Social*; National Council for Economic and Social Policy.

¹³³ Una Política Ambiental para Colombia; Departamento Nacional de Planeación; Documento DEPAC 2544. Agosto, 1991.

¹³⁴ *Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of Environmental and Natural Resources

- vii. The promotion of the participation of social and community organizations in environmental management and control, and the creation of institutional mechanisms to facilitate such participation.
- viii. The development of economic instruments as mechanisms to create the necessary incentives to promote the socially efficient use of the environment and its natural resources.

In order to implement the eight environmental policy strategies that were adopted by CONPES¹³⁵, the government needed to propose legal reforms to the National Congress.

2.1.3. Law 99 of 1993.

Law 99 of 1993 was approved by Congress in December of 1993. This Law essentially approved the basic elements of the institutional reform approved by the CONPES¹³⁶ in its Environmental Policy document of 1991. Nevertheless, the reforms approved by this Law went beyond the proposals set forth in the Environmental Policy of 1991. These additions resulted primarily from a wide public consultation process undertaken during the discussion of the Law, which will be described in section 2.2.1. The main reforms included in Law 99 of 1993 were:

- i. The creation of the Ministry of the Environment with the main responsibility to enact environmental regulations and to design and coordinate the implementation of environmental policies throughout the country¹³⁷. Law 99 of 1993 also ordered the government to close¹³⁸ INDERENA¹³⁹.
- ii. The creation of SINA (*Sistema Nacional Ambiental*; National Environmental System)¹⁴⁰, headed by the Ministry of the Environment¹⁴¹. The System includes thirty-four Corporations and four urban environmental agencies. It also includes five institutes for environmental research and the Administrative Unit of National Parks¹⁴².

¹³⁵ *Consejo Nacional de Política Económica y Social*; National Council for Economic and Social Policy.

¹³⁶ *Consejo Nacional de Política Económica y Social*; National Council for Economic and Social Policy.

¹³⁷ Article 2, Law 99 of 1993.

¹³⁸ Article 98, Law 99 of 1993

¹³⁹ *Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of Environmental and Natural Resources

¹⁴⁰ Article 4, Law 99 of 1993

¹⁴¹ Today it has the name of Ministry of Environment Housing and Regional Development.

¹⁴² IDEAM (*Instituto de Hidrología, Meteorología y Estudios Ambientales*; National Institute of Hydrology, Meteorology and Environmental Studies), Von-Humboldt, SINCHI, INVEMAR, Von Newman.

- iii. The creation of the National Environmental Council¹⁴³ headed by the Minister of the Environment, integrated by representatives from different economic and social sectors and institutions¹⁴⁴. This Council was created to ensure coordination in the design and implementation of environmental policies, as well as fair balance of interests among different social groups.
- iv. The creation of 16 new Corporations and the transformation of the 18 that previously existed into decentralized entities, under the supervision of a Board of Directors integrated by municipal mayors, local NGOs, organizations of the private sector, ethnic groups and the delegates of the Ministry of the Environment and of the President¹⁴⁵. The Board of Directors appoints the Director of the Corporation for renewable periods of three years and approves the Corporation's strategies, programs and projects¹⁴⁶. Additionally, the Corporations have a Corporate Assembly¹⁴⁷. This body which includes all the local mayors in the Corporation's jurisdiction appoints the members of the Board of Directors.
- v. The creation of specialized environmental authorities in urban centers with more than one million inhabitants¹⁴⁸. These authorities are part of the city's administration. In essence, their responsibilities are the same as those of the Corporations. However, they do not have a Board of Directors.
- vi. The creation of the Special Administrative Unit of National Parks' System¹⁴⁹. This National Parks' authority is a part of the Ministry of the Environment. According to Law 99 of 1993, this Unit can delegate the administration of National the Parks to the Corporations.
- vii. The creation of five institutes for environmental research¹⁵⁰. The Alexander Von Humboldt Institute was created to research the biological resources of the country. IDEAM (*Instituto de Hidrología, Meteorología y Estudios Ambientales*; National Institute of Hydrology, Meteorology and Environmental Studies) was created to collect, interpret, manage and publish environmental information and data. SINCHI¹⁵¹ was created to conduct research of the Amazon ecosystems. INVEMAR (*Instituto de Investigaciones Marinas y*

¹⁴³ Among the members of this Council are the representatives from the municipal and regional governments (Gobernaciones); and of the Indian and black communities, the associations of producers (agricultural, mining, forest, old manufacture) and exporters, the NGOs, the Universities and the Ministers of Agriculture, Social Protection, Mines and Energy, Education, Transportation, Defense, Foreign Trade and National Planning.

¹⁴⁴ Article 13, Law 99 of 1993

¹⁴⁵ Title VI (articles 23 to 41), Law 99 of 1993

¹⁴⁶ Article 27, Law 99 of 1993

¹⁴⁷ Article 25, Law 99 of 1993

¹⁴⁸ Article 66, law 99 of 1993

¹⁴⁹ Article 10, Law 99 of 1993

¹⁵⁰ Title V (articles 16 to22), Law 99 of 1993.

¹⁵¹ It means "knowledge" in the native language of the indigenous *Ingano* families of the Amazonian region.

costeras “José Benito Vives de Andreis”; National Institute for Marine and Coastal Research) was transformed into an institute which conducts marine research in the Pacific and Atlantic territorial seas, and the Von Newman Institute was created to coordinate investigations regarding the resources in the Pacific Coast¹⁵². These five institutes were assigned to the Ministry of the Environment. They have the mandate to gather the technical and scientific information required by the Ministry to design environmental policies and regulations. The Minister of the Environment heads the Board of Directors of all the institutes. With the exception of IDEAM¹⁵³, the directors of these institutions are appointed by their respective boards of directors, and not by the Minister.

- ix. The creation of the Technical Advisory Council for Environmental Policy and Regulation, which advises the Minister on issues related to environmental policy and regulation. ¹⁵⁴ This Council is headed by the Viceminister of the Environment and includes two university experts and delegates from the agricultural, mining, manufacture and oil sectors.
- x. The strengthening of environmental impact evaluation processes¹⁵⁵. Law 99 of 1993 defined the cases in which EIAs are required, defined the steps which are part the process of impact evaluation, including public meetings, and indicated the basic content of related EIA studies. The Law also assigned differentiated responsibilities to the Ministry and to the Corporations and urban environmental authorities with respect to the environmental impact evaluation process¹⁵⁶.

Law 99 of 1993 also made other valuable contributions to the Colombian environmental institutional and regulatory framework. Some of these are: a system of sanctions for the violation of environmental regulations; economic instruments and incentives for better environmental performance; and new sources of financing for environmental management at the regional level.

A schematic presentation of the National Environmental System is presented in the next page.

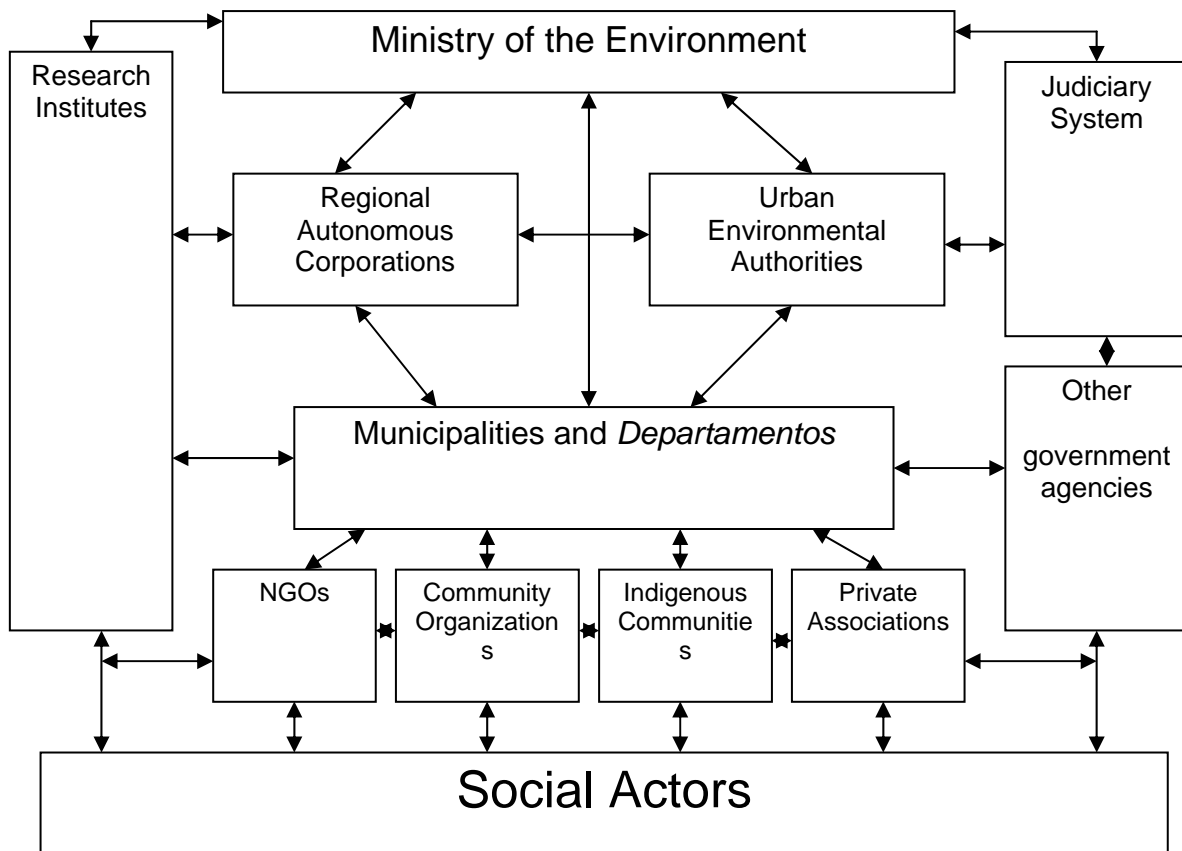
¹⁵² It was alter re-named to *Instituto de Investigaciones del Pacífico*

¹⁵³ *Instituto de Hidrología, Meteorología y Estudios Ambientales*; National Institute of Hydrology, Meteorology and Environmental Studies.

¹⁵⁴ Article 11, Law 99 of 1993

¹⁵⁵ Title VIII (articles 49- 62), Law 99 of 1993.

¹⁵⁶ Title VIII of Law 99 of 1993.



2.2. The Roles of Relevant Actors and Events in the Reform Process, 1991 - 1993

2.2.1. The Rio Conference on Environment and Development.

According to Mr. Manuel Rodríguez¹⁵⁷, first Minister of the Environment, the Rio Conference on Environment and Development (UNCED) influenced the content of Law 99 of 1993, because it helped to educate government officials and senators about the environmental importance of different issues, such as population, urban planning, regional development and international trade. In fact, the first chapter of Law 99 of 1993 stipulates: "The process of economic and social development of the country shall be guided by the universal principles of sustainable development contained in the Rio de Janeiro declaration of June of 1992 on environment and development". Some of the members of the Colombian government that participated in the 1992 Rio Conference on Environment and Development, and its preparatory meetings, were involved in the design and debates that lead to the approval of Law 99 of 1993¹⁵⁸. Members of the Colombian Congress¹⁵⁹ were also

¹⁵⁷ Rodríguez M., 1998. La Reforma Ambiental en Colombia: Anotaciones para la Historia de la Gestión Pública Ambiental. Fundación FES. Bogotá.

¹⁵⁸ President Gaviria participated in the Rio Conference on Environment and Development. Manuel Rodríguez and Jorge Hernandez from INDERENA (*Instituto Nacional de Recursos Naturales y del*

present at the UNCED meetings. The Constitutional Assembly which approved the Political Constitution of 1991¹⁶⁰ also adopted the concept of Sustainable Development, making the term widely popular in Colombia during those years.

2.2.2. The Constitutional Assembly

During the first half of 1991, before the Constitutional Assembly was created, President Gaviria called for the organization of open working meetings in different areas of interest to the general public. Some of those working sessions included discussions regarding possible constitutional environmental reforms. Government officials from INDERENA¹⁶¹ and from DNP¹⁶² were instructed by the Government to guide and to facilitate those meetings, and to provide information to its participants¹⁶³. The members of the Assembly received the proposals of those working groups. Popularly elected members of the Assembly, representing a wide range of political affiliations and backgrounds, were receptive to and regarded those proposals as useful inputs¹⁶⁴. They discussed those proposals with the directors of INDERENA¹⁶⁵ and of the Department of National Planning¹⁶⁶, both which represented the environmental interests of the government in negotiations with the Assembly¹⁶⁷.

Mr. Gustavo Willches-Chaux, a well-known environmental activist, presented his name as a candidate to the Constitutional Assembly, but was not elected. However, the Assembly included representatives from a wide range of different political affiliations and backgrounds. The interests of the traditional black communities were advocated by an elected member of the indigenous communities of the Pacific Coast¹⁶⁸. He included an article of important social and environmental consequences in the Constitution¹⁶⁹. This article ordered the

Medio Ambiente; National Institute of Environmental and Natural Resources) and Armando Montenegro and Eduardo Uribe from the Department National Planning were members of the Colombian delegations to this conference and its preparatory meetings. They were latter involved in the writing and in the political discussions in Congress that lead to the approval of law 99 of 1993.

¹⁵⁹ Luis Guillermo Sorzano (*Liberal*), Mario Laserna (Independent representing the M-19 political organization) and Gustavo Galvis (*Liberal*).

¹⁶⁰ Article 80 of the Political Constitution of 1991

¹⁶¹ *Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of Environmental and Natural Resources

¹⁶² *Departamento Nacional de Planeación*; Department of National Planning.

¹⁶³ Nancy Vallejo and Edgar Cabezas from INDERENA and Alfredo Múnera and Eduardo Uribe from the Department of National Planning

¹⁶⁴ Guillermo Perry (*Liberal*), Maria Teresa Garcés (*Conservador*), Iván Marulanda (*Liberal*), Fransico Rojas Birry (*Indigenous communities*), Juan Carlos Esguerra (*Conservador*), Maria Mercedes Carranza (*Independent*) Jaime Benitez (*Liberal*).

¹⁶⁵ *Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of Environmental and Natural Resources

¹⁶⁶ Mr. Manuel Rodriguez and Mr. Armando Montenegro.

¹⁶⁷ Rodríguez M., 1998. *La Reforma Ambiental en Colombia: Anotaciones para la Historia de la Gestión Pública Ambiental*. Fundación FES. Bogotá.

¹⁶⁸ Mr. Francisco Rojas Birry

¹⁶⁹ Transitory Article 55.

recognition of collective ancestral property rights of rural black communities over the territories that they had traditionally occupied.

2.2.3. Technical Support in Creating the National Environmental Policy of 1991

The information generated by a series of studies conducted by DNP¹⁷⁰ during the late eighties and early nineties supported the content of the Environmental Policy of 1991. The technical documents with the greatest influence on the content of the Environmental Policy were:

- The National Water Study¹⁷¹;
- Industrial Pollution in Colombia¹⁷²;
- Oil Policy: Economy and the Environment¹⁷³;
- The Environmental Profile of Colombia¹⁷⁴;

The “National Water Study” recommended the adoption of a decentralized administration of natural resources, the creation of a national environmental agency and the creation of independent institution for the management of National Parks. “The Industrial Pollution in Colombia Study” made a first approximation to the environmental performance of the manufacturing sector, diagnosed the deficiencies of the environmental institutions for pollution control, and highlighted the importance of adequate institutions for urban environmental management. “Oil Policy: Economy and the Environment,” pointed out the strategic role that environmental planning and management could have on the international competitiveness of the oil industry. Finally, the “Environmental Profile of Colombia” supported strengthening citizen participation and decentralization in decision-making and in environmental control.

Finally, DNP¹⁷⁵ included the development of economic instruments (“incentives, restrictions and prices”) to control pollution, the deterioration of forests and ecosystems, and the rational consumption of energy and fuels¹⁷⁶ in its Environmental Policy of 1991, based on international technical literature¹⁷⁷, but without additional supporting studies.

¹⁷⁰ *Departamento Nacional de Planeación*; Department of National Planning.

¹⁷¹ Estudio Nacional de Aguas. 1987. Departamento Nacional de Planeación. Bogotá.

¹⁷² Sánchez E., Uribe E. 1994. Contaminación Industrial en Colombia. United Nations Development Program and the Department of National Planning.

¹⁷³ Perry Rubio Guillermo. 1992. Política Petrolera: Economía y Medio Ambiente. FESCOL, CEREC.

¹⁷⁴ Pombo, D., E. Gonzalez, et al. 1990. El Perfil Ambiental de Colombia. DNP, COLCIENCIAS, U.S. Agency for International Development and others.

¹⁷⁵ *Departamento Nacional de Planeación*; Department of National Planning.

¹⁷⁶ Una Política Ambiental para Colombia; Departamento Nacional de Planeación; Documento DEPAC 2544. Agosto, 1991

¹⁷⁷ An example of this body of literature is: Baumol, W. J. and Oates, W. E. 1988. The Theory of Environmental Policy. Cambridge University Press.

2.2.4. The Writing of the National Environmental Policy of 1991

The Department of National Planning coordinated the writing of the Environmental Policy that was approved by CONPES¹⁷⁸ in 1991¹⁷⁹. A series of meetings were held during the first half of 1991 with several relevant governmental institutions, although no form of public consultation was undertaken. The draft of the Environmental Policy was enriched with the opinions of those institutions. The following organizations were among those that participated: INDERENA¹⁸⁰, the Corporations, HIMAT¹⁸¹, INGEOMINAS (*Instituto de Investigación e Información Geocientífica, Minero-Ambiental y Nuclear*; Institute for Geological, Mining and Environmental Research and Information.), DIMAR (*Dirección General Marítima*; General Marine Direction), COLCIENCIAS (*Fondo Colombiano de Investigaciones Científicas*; Colombian Fund for the Financing of Science), ECOPETROL (*Empresa Colombiana de Petróleos*; Colombian Oil Agency), and the Ministries of Agriculture, Education, Energy, Transportation and Development. INDERENA was, by far, the institution that participated most actively in the discussions.

Originally, DNP¹⁸² was opposed to the creation of a national agency such as a Ministry of the Environment. Instead, it advocated for the creation of a National Environmental Commission with representatives of different interests and backgrounds to coordinate the design of environmental policies and regulations. Nevertheless, President Gaviria ordered the Environmental Policy of 1991 to include the creation of a Ministry of the Environment. He felt that "...the Government did not have the capacity to comply with the eventual responsibilities that could result from international environmental agreements, nor the capacity to guarantee the environmental rights of the Constitution of 1991"¹⁸³. Representatives of the different national agencies consulted, particularly INDERENA¹⁸⁴, also considered that such a Ministry was necessary. To ensure the participation of a diverse group of interests in the design of environmental policy, the DNP included the creation of a National Environmental Council with the participation of representatives of different economic sectors in the Policy Document of 1991, in

¹⁷⁸ *Consejo Nacional de Política Económica y Social*; National Council for Economic and Social Policy.

¹⁷⁹ The author of this case study coordinated those consultations as the Head of the "*División de Política Ambiental y Corporaciones Autónomas Regionales*" of the Department of National Planning- DNP.

¹⁸⁰ *Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of Environmental and Natural Resources

¹⁸¹ *Instituto Colombiano de Hidrología Hidrometeorología y Adecuación de Tierras*; Colombian Institute of Hydrology, Hidrometeorology and land Restoration.

¹⁸² *Departamento Nacional de Planeación*; Department of National Planning.

¹⁸³ President Gaviria's introduction of Mr. Manuel Rodríguez book: *La Reforma Ambiental en Colombia: Anotaciones para la Historia de la Gestión Pública Ambiental* Publisher in 1998.

¹⁸⁴ *Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of Environmental and Natural Resources

order to "... ensure the balance of interests and to serve as a scenario for the coordination among different sectors in relation to the use of natural resources"¹⁸⁵.

Several national sector agencies consulted in the process felt that they would need to strengthen their institutional capacities to comply with stricter environmental institutions and regulations in the future. As a result, the Environmental Policy indicated that "...governmental agencies which could in any way harm the quality of the environment should have Environmental Units to advise them in the design of their programs and projects"¹⁸⁶.

2.2.5. Discussions of Law 99 of 1993 by the Civil Society and Congress

A first draft of Law 99 was written jointly by the Ministry of Agriculture, DNP¹⁸⁷ and INDERENA¹⁸⁸. Article 79 of the Constitution of 1991 indicated that the State had to guarantee the right of all citizens to participate in decisions with environmental implications. Consequently, the National Planning Department and INDERENA undertook a process of wide public participation. The opinions of different related national and local environmental institutions, local and regional governments, NGOs, government officials, the private sector, and the different productive sectors of the economy gathered to evaluate the reform before submitting the Government's proposal to Congress. The Director of INDERENA¹⁸⁹ and a delegate of the Director of the Department of National Planning represented the national government throughout that consultation process¹⁹⁰.

Some NGOs intervened in the public forums and meetings which were part of this consultation process. They were: *FUNDEPÚBLICO*¹⁹¹, *Fundación Penca de Sávila*, *CINEP* (*Centro de Investigación y Educación Popula*; Center for Research and Popular Education), *Fundación Pro Sierra Nevada de Santa Marta*, *Fundación Alma* and *Fundación Herencia Verde*. *FUNDEPÚBLICO*, *CINEP*, and *Fundación Penca de Sávila* advocated for the inclusion of mechanisms for public participation. *FUNDEPÚBLICO* made particular contributions with relation to the development of the Popular Action, (*Acción Popular*).

The manufacturing and mining industries, through their associations, were the most active civil society participants¹⁹². These industry associations were

¹⁸⁵ Una Política Ambiental para Colombia; Departamento Nacional de Planeación; Documento DEPAC 2544. Agosto, 1991

¹⁸⁶ Una Política Ambiental para Colombia; Departamento Nacional de Planeación; Documento DEPAC 2544. Agosto, 1991

¹⁸⁷ *Departamento Nacional de Planeación*; Department of National Planning.

¹⁸⁸ The heads of these institutions were personally involved in the writing of the draft.

¹⁸⁹ Mr. Manuel Rodríguez

¹⁹⁰ Mr. Manuel Rodríguez from INDERENA and Mr. Eduardo Uribe from the Department of National Planning.

¹⁹¹ *Fundación para la Defensa del Interés Público*; Foundation for the Defense of Public Interests

¹⁹² This corresponds to the recollections of the author who was present in the debates.

particularly opposed to those provisions of the law which they felt would threaten their private interests, in particular those provisions related to pollution fees and environmental impact assessments. As indicated in section 1 of this document, before Law 99 of 1993 was approved, the Ministry of Mines was responsible for the environmental control of the mining sector. The mining industry saw the transfer of that responsibility to the environmental institutions as a threat to their future expansion plans.¹⁹³ Several associations of miners and constructors¹⁹⁴ published an open memorandum in which they expressed their opposition to this change, as well as to the public participation mechanisms proposed in environmental impact evaluation processes¹⁹⁵.

Representatives from the universities and the academic sector, in particular from the Institute of Natural Resources of the National University, (*Instituto de Recursos Naturales de la Universidad Nacional*) an organization that had been founded in 1940 and that had a long tradition in the research of natural resources, lobbied to ensure that research and technical information played a central role in the definition of environmental policies and regulations¹⁹⁶.

In August of 1992, a public forum on the proposed Law was held in Santa Marta, with the participation of four members of Congress¹⁹⁷, and a number of local majors, NGOs and universities, the local corporation¹⁹⁸, the Regional Council of Planning of the Atlantic Coast, and the local Chamber of Commerce and chapter of ANDI¹⁹⁹. In September, a month later, the project was discussed in the same city at a forum with all of the *Gobernadores* of the *Departamentos*²⁰⁰. In general, the *Gobernadores* requested a more decentralized institutional framework in which the *Departamentos* would play a more important role in the direction of the Corporations. Between September and October of 1992, similar events took place in *Cali*, *San José del Guaviare*, *Bucaramanga*, *Capurganá* and *Pereira*²⁰¹.

¹⁹³ This assertion could not be documented but author of this case study negotiated with them various chapters of the law. Among them those related to pollution fees, environmental impact assessments, mechanisms of public participation and their participation in the different Councils and Boards of Directors of the Corporations.

¹⁹⁴ *Sociedad Colombiana de Ingenieros*, *Cámara Colombiana de la Construcción*, *Asociación Colombiana de Ingenieros Civiles*, *Fedecarbón*, *Asomineros*, and *Asogras*.

¹⁹⁵ Rodríguez M., 1998. *La Reforma Ambiental en Colombia: Anotaciones para la Historia de la Gestión Pública Ambiental*. Fundación FES. Bogotá.

¹⁹⁶ Rodríguez M., 1998. *La Reforma Ambiental en Colombia: Anotaciones para la Historia de la Gestión Pública Ambiental*. Fundación FES. Bogotá.

¹⁹⁷ Mr. Luis Guillermo Sorzano (*Liberal*); and Mr. Salomón Nader (*Liberal*); Mrs. Claudia Blum (*Coservador*); Mr. Gabriel Mujuy (*Indigenous communities*);

¹⁹⁸ CORPAMAG

¹⁹⁹ *Asociación Nacional de Industriales*; National Association of Manufacturing Industries

²⁰⁰ The *Gobernador* is the highest political and administrative authority of a regional administrative entity or a *Departamento*.

²⁰¹ Rodríguez M., 1998. *La Reforma Ambiental en Colombia: Anotaciones para la Historia de la Gestión Pública Ambiental*. Fundación FES. Bogotá.

In addition, Congress organized a series of meetings in universities and with NGOs and private organizations. President Gaviria himself attended one of those local forums in the city of *Florencia* in March of 1993.

The following modifications and additions, resulting from these open meetings, were included to the proposed law that had been presented by the Government to Congress²⁰²:

- i. Most of the consulted parties, particularly the *Gobernadores*²⁰³ and the local mayors felt that the draft prepared by the national government presented an extremely centralized framework, and that their participation in the orientation of local and regional environmental policies was limited. The Congress and Government accepted the arguments presented by the local and regional authorities in favor of a more decentralized regime for the Corporations. As a result, the Corporations became organizations that associate municipalities around environmental objectives, and which do not have strong administrative relations with the Ministry of the Environment.
- ii. Representatives from different Universities indicated that the Ministry of the Environment would need solid scientific bases to make decisions relevant to the design of environmental policies and regulations. As a result three research institutes were assigned to the Ministry of the Environment: The Von Humboldt Institute, INVEMAR²⁰⁴, and IDEAM²⁰⁵.
- iii. Local NGOs, communities, ethnic groups and, in general, most participants argued that the legal draft contained insufficient mechanisms for public participation and social control. Participants requested adequate mechanisms for public participation in EIA processes. Indigenous communities demanded provisions to ensure that interventions in their traditional territories by mining, oil and timber enterprises as well as by governmental infrastructure projects be adequately consulted. As a result, the draft was modified and new provisions were included to:
 - Guarantee the right of all citizens to intervene in the administrative processes that grant environmental licenses and permits²⁰⁶.
 - Include public consultations in the environmental impact evaluation²⁰⁷ processes.

²⁰² Rodríguez M., 1998. La Reforma Ambiental en Colombia: Anotaciones para la Historia de la Gestión Pública Ambiental. Fundación FES. Bogotá.

²⁰³ The *Gobernador* is the highest political and administrative authority of a regional administrative entity or a *Departamento*.

²⁰⁴ *Instituto de Investigaciones Marinas y costeras "José Benito Vives de Andreis"*, "José Benito Vives de Andreis" National Institute for Marine and Coastal Research

²⁰⁵ *Instituto de Hidrología, Meteorología y Estudios Ambientales*; National Institute of Hydrology, Meteorology and Environmental Studies.

²⁰⁶ Article 69 law 99 of 1993.

²⁰⁷ Article 72 law 99 of 1993.

- Protect the territories of traditional black and indigenous communities so that the use of their natural resources would not affect their cultural social and economic integrity.²⁰⁸ According to this provision, relevant decisions in their territories require the approval of these communities.
- iv. The territorial jurisdiction of some of the Corporations was modified. Six additional Corporations were proposed²⁰⁹. The issue of the territorial jurisdiction of the Corporations generated special interest from different individuals and organizations. The NGOs, representatives of the universities, INDERENA²¹⁰, DNP²¹¹ and some members of Congress proposed that those jurisdictions be defined according to ecological criteria such as watersheds or ecosystems. However, local political actors, namely the *Gobernadores* of the *Departamentos*²¹² and the local mayors, preferred that limits of the Corporations coincide with the limits of their *Departamentos*.

Debates in Congress continued once these modifications and additions were included in the text of the proposed law.

Within Congress, discussions with respect to the Corporations were of primary interest to the members of the Senate and House of Representatives', in particular those related with the limits of their geographic jurisdiction. This can be attributed to the political role of the Corporations at the local level, as they were often used to favor the interests of traditional political parties²¹³. The limits of watersheds and ecosystems do not always coincide with political constituencies. Thus, the use of environmental criteria for the definition of the jurisdiction of the Corporations could have been seen by some local actors as a potential interference in their traditional manner of implementing their political agendas.

As indicated in section 1.2.4., these institutions were frequently controlled by local political interests. Some members of Congress saw the Law as an opportunity to increase their local influence. This could explain why 10 more Corporations were approved by Congress, in addition to the 24 new Corporations which the Executive proposed to the legislature. Although the Government was opposed to the creation of those ten additional Corporations, it only resisted mildly. During this time period, the fiscal situation was not considered to be a major limiting factor²¹⁴, and the environmental reform was of high interest to the government.

²⁰⁸ Article 76, law 99 of 1993.

²⁰⁹ The draft presented to Congress by Government proposed 24 Regional autonomous Corporations.

²¹⁰ *Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of Environmental and Natural Resources

²¹¹ *Departamento Nacional de Planeación*; Department of National Planning.

²¹² The *Gobernador* is the highest political and administrative authority of a regional administrative entity or a *Departamento*.

²¹³ This is the opinion of the author of this case study.

²¹⁴ Interview with Mr. Hector Cadena, who was the Vice Minister of Finance in 1.993. Bogotá. December 1993.

Senators Luis Guillermo Sorzano (*Liberal Party*), Claudia Blum (*Conservative Party*) and Gabriel Mujuy (indigenous communities) coordinated the debates in the Senate. In the House of Representatives, Juan José Chaux (*Liberal Party*), Antenor Durán (*Liberal Party*), and Hernado Torres (*Conservador*) coordinated the debates. None of them had previously advocated for environmental interests. It was later affirmed that they used the visibility gained during this process for electoral purposes²¹⁵. However, Mr. Sorzano, the most visible of all of the Senators throughout the process, was not reelected.

Mr. Gabriel Mujuy and Mr. Edgar Ulises Torres represented the interests of the indigenous communities of the Amazon and of the black ethnic groups of the Pacific Coast in Congress, respectively²¹⁶. They made certain their communities were represented in the Boards of Directors of the Corporations and at the National Council for the Environment, to ensure their participation in discussions relative to the definition of local and national environmental policies and priorities. They also ensured the Corporations would have responsibilities related to environmental sanitation, as well as the mandate to develop conservation and sustainable use projects in their traditional territories. According to Law 99 of 1993, the use of natural resources in the traditional territories of the black and Indian communities requires their previous consultation and approval²¹⁷.

The Mayor of Bogotá²¹⁸, who at the time was also the President of the Colombian Federation of Municipalities, participated actively in the debates in Congress. His participation contributed to ensure that an important role was assigned to the municipal governments in the new institutional structure, and that new financial resources were assigned to urban environmental management²¹⁹. Local mayors ensured their ample participation in the Boards of Directors of the Corporations²²⁰. Thus, they acquired large influence in the nomination process of the Directors of these institutions, in the allocation of their budget and in the definition of their management priorities and investment projects.

In December of 1993, Law 99 was approved by both the Senate and the House of Representatives.

²¹⁵ Rodríguez M., 1998. *La Reforma Ambiental en Colombia: Anotaciones para la Historia de la Gestión Pública Ambiental*. Fundación FES. Bogotá.

²¹⁶ Several of the assertions of the following two paragraphs could not be referenced based on Congress files. Many correspond to the recollections of the author of this case study who was present at the events described and have been confirmed with Mr. Manuel Rodríguez who was also present.

²¹⁷ Article 76, law 99 of 1993

²¹⁸ Jaime Castro (*Partido Liberal*)

²¹⁹ Article 44; Paragraph 2.

²²⁰ In most cases there are four local mayors at the Board of Directors of the Corporations.

2.3. Application of the WDR 2003 to the Reform Process, 1991 – 1993

2.3.1. How Society Became Aware of Environmental Problems and the Mechanisms that Generated Social Demand

Between 1991 and 1993 when the environmental institutional reforms were coordinated, agreed upon and finally approved by Congress, the mechanisms in place by which society became aware of environmental problems were essentially the same as those of the previous period (1971 - 1991). The information related to the state of the Colombian environment was scarce and mainly available within academic and governmental circles. That information and some technical studies conducted during the late eighties and early nineties provided inputs for the basic elements of the reforms that were debated and approved between 1991 and 1993.

Global environmental issues appeared more frequently in the media during the early nineties, when the preparatory meetings for the Rio Conference on Environment and Development and for the Climate Change Convention were taking place²²¹. The national media also covered the decision to create a Ministry of the Environment and its subsequent debates²²². The increased presence of environmental news in the media contributed to increase public environmental awareness during these years²²³. However, the lack of appropriate technical training by the journalists limited the capacity of the media to educate society with respect to environmental matters.

The public meetings organized by INDERENA²²⁴ and DNP²²⁵ to discuss the successive drafts of the law proposal and the related debates in Congress included the participation of senators and representatives from different regional origins, political affiliations and ethnic backgrounds. As a result, these groups contributed to inform the Government and Congress of the environmental realities and expectations of their regions.

2.3.2. Mechanisms to Balance Legitimate, Competing Social Interests.

The Constitution of 1991 modified the mechanisms that generated social demand to do something about the environment, to balance competing interests and to execute solutions.

²²¹ Comunicación y Medio Ambiente. Elementos para la Definición de Estrategias Informativas en Temas Ambientales. 1993. INDERENA, PNUD.

²²² El Espectador: Nov. 11 and Nov 26 1990; Nov 9 1991; May 30, Dec. 22, and 23 of 1993; El país Septiembre 1 1993;

²²³ Comunicación y Medio Ambiente. Elementos para la Definición de Estrategias Informativas en Temas Ambientales. 1993. INDERENA, PNUD.

²²⁴ *Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of Environmental and Natural Resources

²²⁵ *Departamento Nacional de Planeación*; Department of National Planning.

As described in section 2.2.3, the Environmental Policy of 1991 only contained the views of the national government regarding the environmental institutional reform, and the Policy was supported by technical studies and inter-agency consultations within the central government. That Policy was not coordinated with other relevant actors such as NGOs, ethnic groups, local mayors and the private sector. However, as indicated in section 2.3.1, the Government promoted a series of forums to facilitate the participation of a wide range of stakeholders, which preceded the approval of Law 99 of 1993.

The interests of the diverse range of participating stakeholders in the debates that led to the approval of Law 99 of 1993 were often in contradiction. For example, as described in section 2.2.4, the representatives of the mining industry were opposed to the mechanisms of public participation in the environmental impact evaluation process, while the NGOs and the representatives of the indigenous and black communities defended them. While the national government²²⁶ advocated for the use of economic instruments for pollution control, the manufacturing industry opposed their use.

As indicated in section 2.2.4, two Senators represented the interests of black and indigenous ethnic groups²²⁷. All the regions of the country were also represented in Congress. The representatives of the manufacturing, mining and oil industries continued to lobby Senators and government officials directly. FUNDEUBLICO, an NGO that advocated for the inclusion of public participation mechanisms also lobbied members of Congress and the Government. Its participation was important in the definition of the title X of Law 99 of 1993 which refers to public participation mechanisms²²⁸.

DNP²²⁹, INDERENA²³⁰ and the Senators²³¹ responsible for coordinating the debates in Congress, gathered the information provided by different stakeholders. They adjusted the proposal and initiated debates in Congress, based on those inputs. Final decisions regarding the content of the reform approved by Law 99 of 1993 were not made during the meetings described in section 2.2.4. Congress made those final decisions.

²²⁶ The Department of National Planning

²²⁷ Mr Gabriel Mujuy from the indigenous communities of the Amazonian region and Mr. Edgar Ulises Torres from the Pacific Coast.

²²⁸ Articles 69 to 76.

²²⁹ *Departamento Nacional de Planeación*; Department of National Planning.

²³⁰ *Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of Environmental and Natural Resources

²³¹ Mr. Luis Guillermo Sorzano from the *Partido Liberal*; Mrs. Claudia Blum from the *Partido Coservador*, Mr. Gabriel Mujuy who represented the indigenous communities of the Amazonian Region;

2.3.3. Mechanisms by Which Adopted Solutions were Executed.

The institutional environmental reform which begun with the approval of a policy document by CONPES²³² was enriched through a process of consultations and debates, which are described in section 2.2.4. A national law approved by Congress in December of 1993 constitutes the mechanism by which those agreements were formally adopted. This period ends with the approval of the institutional reform by Congress in December of 1993.

2.3.4. Summary of the Analysis of the 1991 – 1993 Framework.

Finally, and before moving on to the third section which describes the 1993 – 2002 period, the following elements from the 1991 - 1993 period should be kept in mind. The Political Constitution of 1991 played an important role in the content of the environmental reforms that were approved by Law 99 of 1993. The relevance of the constitution can mainly be attributed to the creation of new environmental rights and of the judicial mechanisms to protect them.

In the presence of a new constitutional framework, the national government (CONPES²³³) adopted a new environmental policy in 1991. The content of this policy is based on a small group of studies conducted by DNP²³⁴, and on a series of consultations coordinated by this institution among several agencies of the national government; notably the Ministry of Agriculture and INDERENA²³⁵.

In addition, the Colombian Government actively participated in the 1992 Rio Conference on Environment and Development and its preparatory meetings. This participation influenced the content of Law 99 of 1993 as it was an educational experience for government officials and Congressmen who were involved in the debates that lead to the approval of Law 99 of 1993. Congress approved this Law, which includes a large reform of Colombia's environmental institutions and regulations, in December of 1993, after wide public consultations. Those consultations enriched the proposed reforms contained in the Environmental Policy Document, approved by CONPES²³⁶ in 1991.

Between 1991 and 1993 the information available related to the state of the Colombian environment provided technical inputs for the basic elements of the institutional and legal reforms. Global environmental issues and the decision to

²³² *Consejo Nacional de Política Económica y Social*; National Council for Economic and Social Policy.

²³³ *Consejo Nacional de Política Económica y Social*; National Council for Economic and Social Policy

²³⁴ *Departamento Nacional de Planeación*; Department of National Planning.

²³⁵ *Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of Environmental and Natural Resources

²³⁶ *Consejo Nacional de Política Económica y Social*; National Council for Economic and Social Policy

create a Ministry of the Environment increased the presence of environmental issues in the national media. A wide range of public meetings coordinated by government and Congress enriched the content of the government's institutional and legal environmental reform proposal. Those meetings also contributed to inform the Government and the Congress on the environmental demands of different social groups. They constituted democratic mechanisms to balance opposing interests among a wide range of social groups, including indigenous peoples, NGOs and the private sector.

3. The Period form 1993 - 2002

The implementation of the environmental institutional reforms approved by Law 99 of 1993 occurred primarily between 1993 and 2002. The first section of this chapter describes how the government implemented the new institutional framework and the principal activities of those institutions. It also includes a description of the government's priorities in the areas of environmental policy and regulation.

The second section of this chapter describes the mechanisms by which society become aware of environmental problems, those which generated social demand to solve those problems. The mechanisms created to balance legitimate, competing social interests and to execute adopted solutions are also discussed.

3.1. Description of Developments, 1993 - 2002

In February of 1994, the Ministry of the Environment was created and INDERENA²³⁷ began its final chapter - its closing process. DNP²³⁸ was restructured²³⁹. Its Special Division for Environmental Policy and Regional Corporations (*División Especial de Política Ambiental y Corporaciones Regionales*) was transformed into the Unit of Environmental Policy (*Unidad de Política Ambiental*). This Unit was no longer responsible for coordinating the financial and administrative activities of the Corporations, but maintained its functions related to the formulation of environmental policy. In the year 2000, DNP²⁴⁰ was restructured once again²⁴¹. The Environmental Policy Unit was renamed the Direction of Environmental Policy, but its essential functions were maintained.

In accordance with Law 99 of 1993, between 1994 and 1998, the Government created sixteen new Corporations in areas that had previously been under the

²³⁷ *Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of Environmental and Natural Resources

²³⁸ *Departamento Nacional de Planeación*; Department of National Planning.

²³⁹ Decree 1273 of 1994.

²⁴⁰ *Departamento Nacional de Planeación*; Department of National Planning.

²⁴¹ Decree 1363 of 200

jurisdiction of INDERENA²⁴². Urban environmental authorities were established in Bogotá, Cali, Medellín and Barranquilla. The government also created two new institutes for biodiversity research²⁴³, and restructured three institutes for environmental research and information²⁴⁴.

Two loans which had been negotiated with the World Bank²⁴⁵ and the Inter American Development Bank²⁴⁶ between 1990 and 1993 by the national government, through the DNP²⁴⁷, financed a large portion of the institutional building process. Those loans included components for the capacity building of the institutional framework approved by Congress in December of 1993. Their implementation became effective during the second semester of 1993.

The regulations approved by the Ministry of the Environment between 1994 and 2002 are presented in table 2 of Annex 1. During the first years of that period, the Ministry placed a large emphasis on developing the regulations needed for the institutional transition of the old environmental framework into the new National Environmental System. Perhaps one of the most relevant regulations approved during that period is related to environmental licensing (Decree 1753/94). This Decree was written by the Technical Advisory Council for Environmental Policy and Regulation created by Law 99 of 1993. The legal instrument defined in greater precision the cases in which EIAs were required, the content of those assessments, the procedures to obtain environmental licences, the responsibilities of the holders of those licenses, amongst other issues. The government considered this regulation a priority, as did the private sector, because until then government officials had had substantial discretionary authority over EIA process.

In 1997, the Ministry of the Environment developed a regulation that enabled the Corporations and the environmental urban authorities to charge the pollution fees included in Law 99 of 1993²⁴⁸. During that period, the pollution fee charge system (*tasa retributiva*) was implemented in the following Corporations: Cornare²⁴⁹, CVC²⁵⁰, CDMB²⁵¹, Cortolima²⁵², CRC²⁵³, Coralina²⁵⁴, Corporguajira and in the Área

²⁴² *Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of Environmental and Natural Resources

²⁴³ The Von Humboldt and the Von Newman Institutes.

²⁴⁴ INVEMAR (*Instituto de Investigaciones Marinas y Costeras*; Institute for Marine and Coastal Research); the SINCHI Institute of the Amazon, and IDEAM (*Instituto de Hidrología, Meteorología y Estudios Ambientales*; National Institute of Hydrology, Meteorology and Environmental Studies.).

²⁴⁵ BIRF 3692 - Co

²⁴⁶ BID 774/OC-CO and BID 910/SF-CO

²⁴⁷ *Departamento Nacional de Planeación*; Department of National Planning.

²⁴⁸ Decree 901 of 1997

²⁴⁹ *Corporación Autónoma Regional Río Negro Nare*; Río Negro Nare Regional Autonomous Corporation.

²⁵⁰ *Corporación Autónoma Regional del Valle del Cauca*; Regional Autonomous Corporation of the Cauca Valley

²⁵¹ *Corporación Autónoma Regional para la Defensa de la Meseta de Bucaramanga*; Regional Autonomous Corporation for the Defense of the *Bucaramanga* Plateau.

²⁵² *Corporación Autónoma Regional del Tolima*; Regional Autonomous Corporation of Tolima.

²⁵³ *Corporación Autónoma Regional del Cauca*; Regional Autonomous Corporation of Cacuca

Metropolitana de Medellín and DADIMA²⁵⁵. By year 2002, Col \$ 25.000 million had been paid in polluter fees to these environmental authorities²⁵⁶.

In December of 1994, under the administration of President Ernesto Samper (1994-1998), the CONPES²⁵⁷ adopted a new Environmental Policy document under the title "The Social Leap to a Sustainable Social Development". The *Instituto de Estudios Ambientales* of the *Universidad Nacional* (IDEA), and the *Centro de Estudios Regionales* of the *Universidad de los Andes* (CIDER) provided the Ministry of the Environment with the bases of this policy document. The final content of that document was written under the direction of Environmental Policy Unit of the Department of National Planning²⁵⁸.

During President Ernesto Samper's administration (1994 and 1998) there were three different Ministers of the Environment²⁵⁹. During that period, the National Environmental Council, created by Law 99 of 1993²⁶⁰ (section 2.1.3), operated as a mechanism to facilitate the coordinated design and implementation of environmental policies and the fair balance of interests among different social groups. This Council presided by the Minister of the Environment and integrated by representatives from a wide range of economic and social sectors and public institutions²⁶¹ approved the following policy documents:

- The Biodiversity Policy.
- Policy Guidelines for the Environmental zoning of the Territory.
- Policy Guidelines for Social Participation in Environmental Management.
- Policy for Environmental Education.
- Policy for the Management of Wild Fauna.
- Policy Guidelines for the Integral Management of Water Resources.
- Strategies for the National System of Protected Areas.
- Policy for the Integrated Ecological Zoning and Sustainable Development of Coastal areas.

²⁵⁴ *Corporación para el Desarrollo Sostenible del Archipiélago de San Andrés, Providencia y Santa Catalina*; Corporation of the Sustainable Development of the San Andrés, Providencia and Santa Catalina Archipelago.

²⁵⁵ *Departamento Administrativo Distrital del Medio Ambiente de Barranquilla*; Environmental Department of Barranquilla.

²⁵⁶ *Tasas Retributivas por Vertimientos Puntuales. Evaluación Nacional. 2002. Ministerio del Medio Ambiente.*

²⁵⁷ *Consejo Nacional de Política Económica y Social*; National Council for Economic and Social Policy.

²⁵⁸ Rodríguez M., 1998. *La Reforma Ambiental en Colombia: Anotaciones para la Historia de la Gestión Pública Ambiental.* Fundación FES. Bogotá.

²⁵⁹ Mrs. Cecilia López, Mr. Jose Vicente Mogollón and Mr. Eduardo Verano de la Rosa.

²⁶⁰ Article 13, Law 99 of 1993

²⁶¹ Among the members of this Council are the representatives from the municipal and regional governments (Gobernaciones); and of the Indian and black communities, the associations of producers (agricultural, mining, forest, old manufacture) and exporters, the NGOs, the Universities and the Ministers of Agriculture, Social Protection, Mines and Energy, Education, Transportation, Defense, Foreign Trade and National Planning.

- Guidelines for a Population and Environment policy.
- Policy for Pesticide Use and Management.
- Policy for the Integrated Management of Solid Wastes
- Forest Policy.
- Strategic Plan for the Restoration and Establishment of Forests.
- Clean Production Policy.
- Financial Sustainability Strategy for the Environmental Management System – SINA²⁶².

Clearly, the production of environmental policy documents was profuse during SINA's early years²⁶³. However, the process by which those environmental policies were constructed evidences weaknesses. Policy document preparation used only available secondary information. Only two policy documents specified the financial resources needed for their implementation and the sources of those funds. None of the documents have quantitative targets of environmental quality, and their objectives are generally broadly stated. Only four of a total of 243 references and footnotes included in those policy documents included information provided by the research institutes of SINA. Only five cases provide evidence that the opinion of the Corporations was considered.

During 1995 and 1996, the Environmental Policy Unit of DNP²⁶⁴, under the direction of Mr. Ernesto Sánchez, prepared a number of documents that provided the basis for the development of urban environmental policies. Those documents were prepared jointly by national and international experts, but were never published. The list of those documents, their authors and main recommendations are presented in table 1 of Annex 1. With these documents, DNP continued a line of work that had initiated with a series of studies conducted between 1900 and 1993, also under the Direction of Mr. Sanchez. These were published in 1994²⁶⁵.

The Government of President Andrés Pastrana, elected for the 1998 – 2002 period, adopted an Environmental Policy under the title “The Environmental Collective Project”. Mr. Juan Mayer was designated Minister of the Environment during for this four year period. Mr. Mayer came from the environmental movement, after having been the Director of the *Fundación ProSierra Nevada de Santa Marta*, an NGO that had developed various community conservation projects in the Sierra Nevada of Santa Marta during the late eighties. The Minister's previous experience in the design and implementation of local environmental agendas with grassroots organizations and communities contributed to determine the emphasis of the national government in the decentralized construction of local priorities during this period²⁶⁶.

²⁶² *Sistema Nacional Ambiental*; National Environmental System.

²⁶³ *Sistema Nacional Ambiental*; National Environmental System.

²⁶⁴ *Departamento Nacional de Planeación*; Department of National Planning.

²⁶⁵ Sánchez E., E. Uribe. 1994. Contaminación Industrial en Colombia. DNP. PNUD.

²⁶⁶ Interview with Mr. Juan Mayer. March 2004. Bogotá.

The “The Environmental Collective Project” emphasized the restoration and conservation of ecosystems and eco-regions considered strategic because of “...the environmental services that they provided and ... the demand for those services by rural and urban centers”²⁶⁷. To achieve its objectives, this policy proposed strengthening the capacity of local governments and civil society to participate in the design and implementation of regional agendas for environmental management.

During the Government of President Andrés Pastrana (1998 – 2002), the National Environmental Council approved the following policy documents:

- Policy for Social Participation in Conservation (National Parks Policy)²⁶⁸.
- National Policy of Environmental Education²⁶⁹.
- National Policy for Environmental Research²⁷⁰.
- National Policy for the Management of Continental Wetlands²⁷¹.
- National Policy for the Management of Islands and Marine and Coastal Areas²⁷².
- National Forestry Plan²⁷³.
- Strategic Plan for Green Markets²⁷⁴.
- Policy guidelines for Climate Change²⁷⁵.
- Bases for urban-regional environmental policy²⁷⁶.

Most of these policy documents dealt with the conservation and management of natural resources and ecosystems. The “Policy for the Social Participation in Conservation” resulted from a wide and collective participatory process. Fifty workshops were undertaken with the participation of all of the employees of the Unit of National Parks, NGOs, and the indigenous communities of the protected areas, as well as members of Congress and multilateral agencies²⁷⁷.

²⁶⁷ Logros y Avances de la Gestión Ambiental en Colombia: “Proyecto Colectivo Ambiental”. Informe de Gestión 1998 – 2002. Ministerio del Medio Ambiente.

²⁶⁸ Política de Participación Social en la Conservación. 2001. Unidad Administrativa del Sistema de Parques Nacionales de Colombia. Ministerio del Medio Ambiente.

²⁶⁹ Política Nacional de Educación Ambiental. 2002. Ministerio del Medio Ambiente.

²⁷⁰ Política Nacional de Investigación Ambiental. 2002. Ministerio del Medio Ambiente. 2002.

²⁷¹ Política Nacional para el Manejo de Humedales Continentales. 2002. Ministerio del Medio Ambiente.

²⁷² Política para el Desarrollo Sostenible de los Espacios Oceánicos y las Zonas Costeras e Insulares de Colombia. 2001. Ministerio del Medio Ambiente.

²⁷³ Plan Nacional de Desarrollo Forestal. 2000. Ministerio del Medio Ambiente.

²⁷⁴ Plan Estratégico Nacional de Mercados Verdes. 2002. Ministerio del Medio Ambiente.

²⁷⁵ Lineamientos de Política de Cambio Climático. 2001. Ministerio del Medio Ambiente. 2001.

²⁷⁶ Lineamientos Ambientales para la Gestión Urbano Regional en Colombia. Ministerio del Medio Ambiente. 2003.

²⁷⁷ Política de Participación Social en la Conservación. 2001. Unidad Administrativa del Sistema de Parques Nacionales de Colombia. Ministerio del Medio Ambiente.

The regulatory agenda during the 1998 – 2002 included the development of a few Decrees (Table 2 Annex 1). These are mainly related to areas of environmental trade, management and research of flora, fauna and biologic resources.

Between 1994 and 2002, Bogotá, Medellín, Cali and Barranquilla made important progress in environmental management. Emissions of industrial water pollutants began declining in those cities in 1995²⁷⁸. In Bogotá, the air monitoring network was installed. Likewise, Bogotá began a program to transfer environmentally sound technologies to small and medium industrial enterprises, known as ACERCAR²⁷⁹. Colombia's capital also implemented a massive transportation system based on articulated busses running on exclusive corridors²⁸⁰. This massive transportation system known as Transmilenio has proved to have positive effects on pollution control²⁸¹. Bicycle paths were also constructed and there was a significant increase and improvement of the quality of public areas²⁸².

According to Law 99 of 1993, the Corporations must provide technical support to the municipalities so that they can fulfill their constitutional responsibility to approve land use regulations, under the general guidance of the Ministry of the Environment²⁸³. Given the relevance of land use regulations for environmentally sound and economically efficient local and regional development, the interests of the municipalities and of the Corporations have, in this case, coincided. During this period, municipalities and the Corporations developed a particularly fruitful cooperation process for the development of land use regulations in the *Departaments* of Risaralda, Caldas, Quindío and Valle. In these *Departments* all the municipalities approved land use regulations by year 2000²⁸⁴. For this to occur, the Corporations provided technical and financial assistance to the local governments²⁸⁵.

3.2. Application of the WDR 2003 to the Reform Process, 1993 - 2002

²⁷⁸ Tasas Retributivas por Vertimientos Puntuales. Evaluación Nacional. 2002. Ministerio del Medio Ambiente. Bogotá.

²⁷⁹ Gestión Ambiental con el Sector Productivo en el Distrito Capital: 2001- 2003. DAMA, Alcaldía Mayor de Bogotá. 2003.

²⁸⁰ www.transmilenio.gov.co

²⁸¹ Méndez, M. 2003. Análisis de Intervención: Efectividad de las Políticas para Reducción de la Contaminación por Fuentes Móviles en Bogotá. Master's Thesis. Facultad de Economía. Universidad de los Andes. Bogotá.

²⁸² Bogotá, Como Vamos. Cambios en la Calidad de Vida de la Ciudad: 2000 – 2002. 2003. Cámara de Comercio de Bogotá, EL TIEMPO, Fundación Corona.

²⁸³ Article 313, numeral 7 of the Constitution of 1991

²⁸⁴ Acevedo. G., 2002. Ordenamiento Territorial y Gestión del Riesgo. *En*. El Resurgir del Eje Cafetero. Presidencia de la República, DNP, FOREC, Banco Mundial and others.

²⁸⁵ Uribe E., 2002. Plan de Manejo Ambiental par la Reconstrucción del Eje Cafetero. *En*. El Resurgir del Eje Cafetero. Presidencia de la República, DNP, FOREC, Banco Mundial and others.

3.2.1. How Society Became Aware of Environmental Problems.

After 1994, with the approval of the new institutional arrangement in Law 99, the frequency of Colombian environmental matters in the media increased²⁸⁶. The media has frequently covered issues of national relevance such as ecotourism, national parks, green markets, ecosystem restoration, urban environment, toxic wastes, air pollution and sustainable business. Between 1998 and 2002, the number of weekly hours dedicated to environmental programs on National Public Television increased by 100%²⁸⁷.

During this period, both local and national media became attentive to the activities and performance of the environmental authorities. With some frequency, press editorials, opinion columns and television news covered the performance of the National Environmental System and its institutions. A national newspaper developed a monitoring program known as “*Bogotá como Vamos*” for the city of Bogotá²⁸⁸, with the Corona Foundation and the local Chamber of Commerce. This program monitors the local administration’s progress in different areas, including the environment. In addition, national television and regional television broadcast 15 and 13 programs, respectively, related to environmental issues on a weekly basis. Hundreds of programs aired every week in national and local radio stations. Most national and local newspapers contained weekly sections dedicated to environmental issues²⁸⁹.

After 1993, with the creation and strengthening of the institutions belonging to the National Environmental System, monitoring data and quantitative information about Colombia’s state of the environment became increasingly available. The Corporations and environmental urban authorities periodically published environmental data and technical information relative to the state of the local environment in their web pages²⁹⁰. This type of information was also published frequently in the national media²⁹¹.

From the beginning of the National Environmental System, environmental Education has always been important. In 1996, the National Environmental Council approved a National Policy for Environmental Education²⁹². During the last decade

²⁸⁶ Information provided by Diana Serrato of the Press Office of the Ministry of the Environment Housing and Regional Development.

²⁸⁷ Logros y Avances de la Gestión Ambiental en Colombia: “Proyecto Colectivo Ambiental”. Informe de Gestión 1998 – 2002. Ministerio del Medio Ambiente.

²⁸⁸ Bogotá, Como Vamos. Cambios en la Calidad de Vida de la Ciudad: 2000 – 2002. 2003. Cámara de Comercio de Bogotá, EL TIEMPO, Fundación Corona.

²⁸⁹ Information provided by Diana Serrato of the Press Office of the Ministry of the Environment Housing and Regional Development.

²⁹⁰ www.dama.gov.co; www.car.gov.co; www.cvc.gov.co; www.cornare.gov.co; www.carder.gov.co;

²⁹¹ see CAR’s web page for a list of environmental articles in EL TIEMPO during the last six months: www.car.gov.co

²⁹² Política de Educación Ambiental. 1999. *En* Políticas Ambientales de Colombia. Ministerio del Medio Ambiente.

all of the Corporations have had environmental education projects and activities, and in the year 2001, 4.5% of the budget of the Corporations was allocated to environmental education and research programs²⁹³. During the same year these institutions dedicated 2.6% of their budgets to public information projects.

The *Proyectos Ambientales Escolares* -PRAES are environmental education programs which are part of primary and secondary curricula in public and private schools²⁹⁴. Every school in Colombia has to develop such programs, in a process in which teachers and students actively participate. Those programs seek to integrate environmental considerations into the curriculum as a means of increasing environmental awareness²⁹⁵. As of 2002, 400 PRAES had been formulated in 228 municipalities and in 14 *Departamentos*²⁹⁶.

Although the efficacy and the efficiency of environmental education programs conducted by the agencies of SINA²⁹⁷ and by the public and private schools has not been formally evaluated, recent environmental economic evaluation studies show high levels of environmental awareness in Bogotá. When people surveyed²⁹⁸ and asked to rank the importance of wetland restoration from 1 to 5, the average answer was 4.6. When they were asked to rank the importance of the decontamination of the Bogotá River, the average answer was 4.7. As a part of another Contingent Evaluation Survey, 84% of the respondents said that they routinely develop recreation activities in natural environments²⁹⁹. In a similar study³⁰⁰, 78% of the respondents said that the conservation of National Parks was very important. Nevertheless, although the program “*Bogotá Como Vamos*”³⁰¹ found that most people in Bogotá consider that the city is very polluted, only 5% of consider environmental matters are a priority. Other priorities such as transportation, safety and public health are considered more important³⁰².

²⁹³ Ibañez A., E. Uribe. 2003. Medio Ambiente y Desarrollo Económico: Priorización de de la Inversión Ambiental con Criterios Económicos. Documento CEDE No 33. Universidad de los Andes. Bogotá.

²⁹⁴ Decree 1743 of 1994 by the Minsitry of Education

²⁹⁵ Política de Educación Ambiental. 1999. *En* Políticas Ambientales de Colombia. Ministerio del Medio Ambiente.

²⁹⁶ Logros y Avances de la Gestión Ambiental en Colombia: “Proyecto Colectivo Ambiental”. Informe de Gestión 1998 – 2002. Ministerio del Medio Ambiente.

²⁹⁷ *Sistema Nacional Ambiental*; National Environmental System.

²⁹⁸ Rocha. R. et. al. 2004. Análisis Socioeconómico del Programa de Saneamiento Ambiental de Bogotá-Etapa I. Acueducto de Bogota. Universidad de los Andes.

²⁹⁹ Mendieta J. C. et. al. 2002. Valoración Económica Ambiental de la Restauración y Uso Sostenible del Humedal Juan Amarillo. Acueducto de Bogota. Universidad de los Andes.

³⁰⁰ Uribe E. Jaime H. 2003. Valoración Económica de Una Mejora en la Seguridad y la Conservación del Parque Nacional Natural Chingaza. Acueducto de Bogota. Universidad de los Andes

³⁰¹ jointly conducted by the Chamber of Commerce of Bogotá, the EL TIEMPO newspaper and the Corona Foundation

³⁰² Giraldo E. Bogotá, Como Vamos en Medio Ambiente. *En* Bogotá Como Vamos. Cambios en la Calidad de Vida de la Ciudad: 2000 – 2002. 2003. Cámara de Comercio de Bogotá, EL TIEMPO, Fundación Corona.

Between 1993 and 2002, environmental NGOs played an important role in environmental education, mainly through the implementation of projects at the local level. Their role was strengthened with resources from two debt for nature swaps negotiated by DNP³⁰³ with the governments of the United States³⁰⁴ and Canada³⁰⁵ during 1992 and 1993. To channel the resources, and in accordance with the subscribed agreements, the national government promoted the creation of ECOFONDO. Today ECOFONDO associates more than 140 environmental NGOs, and during its first ten years of existence channeled more than US 16 million for the implementation of 357 local projects³⁰⁶. Almost invariably, each of those projects included components of environmental education, environmental awareness and transfer of technologies for sound environmental management in urban and in rural areas³⁰⁷.

The Administration of Bogotá organizes the “day with no car” once or twice a year, with the objective of “...increasing the awareness of citizens regarding their environmental responsibilities, and to call their attention about the benefits of alternative means of transportation.”³⁰⁸ The effects of the “day with no car” on air quality are published by DAMA (*Departamento Administrativo del Medio Ambiente de Bogotá*; Environmental Department of Bogotá) on the internet. Additionally, the Administration controls the number of cars that can transit in the city, by plate number. These measures have also contributed to increase social awareness in Bogotá about air pollution problems.

Finally, environmental research also played a role in increasing environmental awareness. With their publications, the research institutions created or transformed by Law 99 of 1993 have increased the public availability of scientific information related to the quality of the environment and its natural resources³⁰⁹. Notwithstanding the importance of these efforts as mechanisms to increase environmental awareness, the role of research and technical information in the definition of priorities of environmental policy can be strengthened. In fact, the Policy for Environmental Research approved in year 2001 by the National Environmental Council indicated that “the main problem of environmental research in Colombia is that it is not clearly articulated, oriented and prioritized in

³⁰³ *Departamento Nacional de Planeación*; Department of National Planning.

³⁰⁴ Convenio entre el Gobierno de Colombia y el Gobierno de los Estados Unidos de América Relativo al Establecimiento de la Cuenta y el Consejo Administrativo de la Iniciativa para las Américas. Junio 18 1993.

³⁰⁵ Convenio entre el Gobierno del Canadá y el Gobierno de Colombia para la Constitución de la Cuenta ODA CANADA. Agosto 2. 1993.

³⁰⁶ Col \$ 46.000'000.000

³⁰⁷ Interview with Mr. Rafael Colmenares the Director of ECOFONDO. Feb 2004

³⁰⁸ www.dama.gov.co

³⁰⁹ Among those publications are the four volumes on biological diversity published by the Von Humboldt Institute in 1997 that compile and all of the available information in that area; and the book “*El Medio Ambiente en Colombia*” published by IDEAM in 1998, and reedited in 2002.

accordance to the national and regional environmental policies, plans, programs and projects.”³¹⁰.

3.2.2. Mechanisms that Generate Social Demand for the Solution of Environmental Problems

This section describes the important role NGO's and indigenous communities played in generating demands to help solve environmental problems. It describes the important role of rural communities in generating a demand for environmental quality and the less visible role of urban communities in this same respect.

The total number of environmental NGOs in Colombia is not known³¹¹. However, since 1996, the Environmental Action Fund³¹² has approved 418 projects executed by local NGOs in all of Colombia's *Departamentos*, worth a total value of US \$ 21.5 million³¹³. The proposals presented by NGOs and social organizations are evaluated by independent parties appointed by the Board of Directors of the Environmental Action Fund³¹⁴. The areas of project financing include the following: agro-ecosystem management (36%), conservation (25%), urban environment (36%) childhood and the environment (6%) and others (10%)³¹⁵. Most of the projects have components related to the solution of local economic problems in rural communities, by improving the productivity, stock and quality of natural resources and ecosystems³¹⁶. In most cases, the direct beneficiaries and the implementing organizations of these projects are indigenous, black and peasant communities and their organizations. Some of these projects are conducted in the areas of National Parks and their buffer zones.

ECOFONDO's large number of members (140) grants this organization the capacity to represent a wide range of social groups in national scenarios. For this reason it often represents NGOs in forums such as at the National Environmental Council and the Council for the Americas, which assigns the resources of the Fund for Environmental Action (FFEA) to environmental projects. According to ECOFONDO's Director³¹⁷, Colombian NGOs play a very important role in the definition of environmental priorities at the local level. According to this source, this

³¹⁰ Page 14 of the National Policy for Environmental Research. August 2.002. The Ministry of the Environment. Bogotá.

³¹¹ Interview with Mr. Rafael Colmenares the Director of ECOFONDO. Feb 2004

³¹² This fund administers the resources from a debt-for-nature swap negotiated in 1991 between the Colombian and of the United States Governments. The total amount of the swap was US 50 million.

³¹³ Col \$.59.573'000.000

³¹⁴ The following NGOs and universities: Alma mater, CINCET, CIPAV, CODESARROLLO, ECOFONDO, FEDECARIBEFES, Fundación Natura. Universidad de los Andes, Universidad Nacional, Universidad del Norte, PBA, Conservation International.

³¹⁵ Report of the Secretary of the Fund for Environmental Action to the Board of Directors, January 2004.

³¹⁶ The team that is conducting this study has evaluated 130 of those projects and advises 25 communities in their implementation.

³¹⁷ Mr. Rafael Colmenares.

could be attributed to the large concentration of such organizations at the local level, where they have an important role in the development of community projects.

Additionally, with the approval of Law 99 of 1993 environmental NGOs have had a seat in the Boards of Directors of the Corporations. Nearly 200 NGOs from all over the country participated in the last selection process which elected the NGO delegates to the Corporations' Boards of Directors³¹⁸. The transparency of the election process of the delegates from the NGOs has been questioned by some members of the environmental movement³¹⁹. They have argued that those processes have occasionally been manipulated. However, others have argued that in their Board positions, the NGOs have made very significant contributions to the design of regional and local environmental strategies, programs and priorities. It has also been argued that their inputs have been valuable because of their knowledge of local social and environmental realities³²⁰.

On another front, the National Development Plan for the 1998 - 2002 period included a chapter on environmental policy under the title "The Environmental Collective Project". This environmental policy sought to promote the decentralized elaboration of regional environmental plans with wide community participation. As a result, regional plans have been prepared through local agreements between relevant social and institutional actors. Some of these actors are the Corporations, the municipal governments, the governments of the *Departamentos*, the local NGOs, ethnic groups, and universities³²¹. Regional environmental plans have been agreed upon and are under implementation in the Pacific Coast, the Amazonian Region, the Central Coffee Zone, and in the *Departament* of *Santander* in North East area of the Country³²².

Map number 1 shows the location of those regions.

³¹⁸ Interview with Mr. Rafael Colmenares, Director of ECOFONDO; January of 2004.

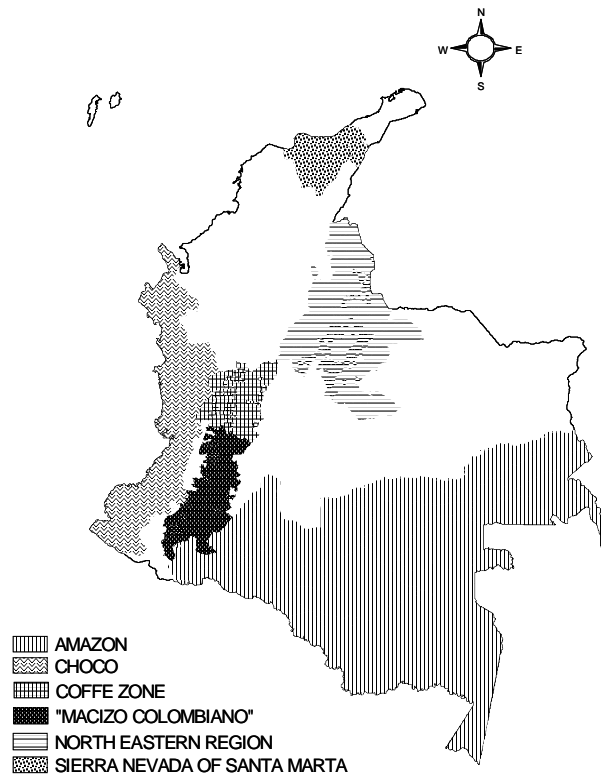
³¹⁹ Londoño, B., Las Organizaciones Ambientales en los Consejos Directivos de las Corporaciones Autónomas Regionales. *En*. Herramientas para la Participación en la Gestión Ambiental. FES. DNP. 2000.

³²⁰ Latorre E., El Consejero y su papel en la Gestión Ambiental Regional. *En*. Herramientas para la Participación en la Gestión Ambiental. FES. DNP. 2000.

³²¹ Logros y Avances de la Gestión Ambiental en Colombia: "Proyecto Colectivo Ambiental". Informe de Gestión 1998 – 2002. Ministerio del Medio Ambiente.

³²² Logros y Avances de la Gestión Ambiental en Colombia: "Proyecto Colectivo Ambiental". Informe de Gestión 1998 – 2002. Ministerio del Medio Ambiente.

Map One: Eco-regions where regional environmental plans have been developed



The Government approved the “Policy for the Social Participation in Conservation”³²³ in 2001 as an extension to the “The Environmental Collective Project”. The implementation of this policy is under the coordination of the UAESPNN (*Unidad Administrativa de Parques Nacionales*; Unit of National Parks). The Policy for the Social Participation in Conservation seeks to promote the development of methodologies to build conservation strategies at the local level. The Policy includes a mix of objectives related to the strengthening of the capacity of social organizations and communities to find peaceful solutions to local conflicts, including those related with the use of natural resources. It also aims at increasing public awareness regarding the social value of the National Parks’ System, at the local and at the national level. Between 1998 and 2002, through consultation processes and agreements with local communities, four new areas were added to the National Parks System³²⁴.

³²³ Política de Participación Social en la Conservación. 2001. Unidad de Parques Nacionales de Colombia

³²⁴ Parques con la Gente II. Selección de Avances 2000 – 2001. Unidad Administrativa Especial de Parques Nacionales Ministerio del Medio Ambiente.. 2002.

From August of 1998 to January of 2004, the UAESPNN³²⁵ was directed by a traditional leader of the conservation movement in Colombia³²⁶, who founded an environmental NGO in 1982 that specialized in community work for the promotion of sustainable agricultural systems in the municipalities of *Salento* and *Buenaventura*³²⁷. This could partially explain the participatory emphasis of the approved National Parks' policy.

Between 1994 and 2002, community land rights were formally recognized over 2.910.958 hectares of forested lands in the Pacific Coast³²⁸. This has been considered by the Government as a conservation strategy as it gives local populations incentives (property rights) to protect those areas against the exploitation of forest and mineral resources by external agents³²⁹.

The role of urban communities in environmental issues has not been as visible. In fact, a recent study conducted in the city of Bogotá revealed that the environmental decisions and investments of the manufacturing industry are not affected by community pressure³³⁰. Contrary to what has been found in comparable societies³³¹, the pressure from the environmental agency³³² and not the pressure from the community constitute the main driving force of those decisions and investments in Bogotá. The same study also found that the pressure exerted by urban communities increased as their income augmented. Organizations such as neighbor associations, youth groups and NGOs coordinate efforts around environmental issues of local interest in Colombian cities³³³. Their main areas of action revolve around issues such as the maintenance of neighborhood parks, trees and green areas. With growing frequency, these local urban organizations have coordinated their initiatives and obtained the support of urban environmental authorities.

The quality and the quantity of the natural resource stock in local economies could partially explain the more visible role of rural societies in the generation of social demand for the solution of environmental problems, as well as their ample

³²⁵ *Unidad Administrativa de Parques Nacionales*; Unit of National Parks

³²⁶ Mr. Juan Carlos Riascos

³²⁷ Fundación Herencia Verde

³²⁸ Since Law 70 of 1994 which granted property rights to black communities over their traditional territories was approved, legal titles have been granted over a total area of 3'728.168 hectares. This has benefited about 220.000 persons (32.000 families).

³²⁹ Interview with Mr. Juan Carlos Riascos, Director of the Administrative Unit of National Parks. Dec. 2003.

³³⁰ Cruz G., E. Uribe, 2002. Regulator and Community Effects on Industrial Environmental Performance in Bogotá, Colombia. CEDE. Bogotá.

³³¹ Panayotou T., Schatzki T., Limvorapitak Q.; "Differential Industry Response to Formal and Informal Environmental Regulations in Newly Industrializing Economies"; Harvard Institute for International Development (1997).

³³² In this case from the DAMA (*Departamento Administrativo del Medio Ambiente de Bogotá*; Environmental Department of Bogotá).

³³³ Plan de Gestión Ambiental 2001 – 2009. Alcaldía Mayor de Bogotá. DAMA. 2002.

participation in their resolution³³⁴. In fact, as indicted earlier in this section, most of the 418 projects financed by the FFEA³³⁵, and executed by local NGOs and communities, have components related to the solution of local economic problems. These projects seek to improve the productivity, stock and quality of natural resources and ecosystems. In addition, traditional indigenous communities have given high priority to the conservation of their ancestral territories, in the formulation and implementation of their projects³³⁶.

Finally, in order to foster citizen demand in the solution of environmental problems, most environmental authorities have e-mail directions and telephone numbers which channel complaints. No information is available related to the effectiveness of these mechanisms.

3.2.3. Mechanisms to Balance Legitimate, Competing Social Interests.

As described in the previous section, there has been an increase in mechanisms to create social demand in the solution of environmental problems after 1993. This section describes several mechanisms which have been developed or strengthened to balance competing social interests, with the approval of Law 99 of 1993. Those mechanisms include the EIA process which was improved by Law 99 of 1993 and subsequent regulations. They also include various councils created at the national and at the local levels to coordinate the design and implementation of environmental policies, regulations and investments.

Law 99 of 1993 redefined the process, content and scope of EIAs. This Law defined the types of projects which require EIAs in greater precision³³⁷. The Corporations or the Ministry of the Environment, depending on the geographical influence of the project, are responsible for evaluating EIAs. A positive evaluation of an EIA leads to an Environmental Licence. This Licence is a necessary condition to develop projects listed in Law 99 of 1993. According to Law 99 of 1993, public meetings are part of the EIA evaluation process. These auditions have to be organized by the environmental agency responsible for evaluating the EIA, upon the request of either of the following: a group of three NGO's, 100 citizens, the General Attorney, the People's Ombudsman, the Minister of the Environment, the local mayors or the *Gobernadores* of the *Departamentos*³³⁸.

Indigenous communities have been active in the public meetings associated with EIA evaluation processes. The most visible of those processes during the 1993 - 2002 period were: i. the Environmental License granted in 1995 to

³³⁴ This is the opinion of the author of this case study.

³³⁵ Fund for Environmental Action.

³³⁶ Política de Participación Social en la Conservación. 2001. Unidad Administrativa del Sistema de Parques Nacionales de Colombia. Ministerio del Medio Ambiente.

³³⁷ Titel VIII Law 99 of 1993.

³³⁸ The *Gobernador* is the highest political and administrative authority of a regional administrative entity or a *Departamento*.

ECOPETROL³³⁹ and to the Occidental Petroleum Company for the exploration of the oil reserves in the *Departament of Boyacá*, in areas of interest for *U'wa* indigenous communities³⁴⁰. This process resulted in the extension of this indigenous community's reservation to a total area of more than 220.00 hectares.

ii. the Environmental License granted in 1993 by INDERENA³⁴¹ and modified in 1999 by the Ministry of the Environment, for the construction of the Urrá hydroelectric power plant in territories of the *Embera Katio* indigenous communities³⁴². Agreements between the interested companies, the government and the indigenous communities were reached through judicial decisions (*Acciones de Tutela*) and negotiations; compensations were granted.

The inclusion of social considerations has improved the comprehensiveness and the equity of EIAs³⁴³. The reformed EIA process has led to better environmental monitoring of the projects, as well as better coordination between the private and the public sectors. It has also strengthened the capacity of environmental management in governmental agencies and in the private sector, and led to the inclusion of environmental considerations in the early planning phase of projects.

In addition, Law 99 of 1993 created the National Council for the Environment as a mechanism to reach agreements on national environmental policy matters, among the representatives of diverse social groups³⁴⁴. Representatives from Indian and black communities, the *Gobernadores*, local mayors, producer associations (agricultural, mining, forest, old manufacture) and exporters, NGOs, and universities participate in this Council. The Ministers of Agriculture, Social Protection, Mines and Energy, Education, Transportation, Defense, Foreign Trade and DNP³⁴⁵ also have a seat in this Council. The meetings of this Council have become quite open and virtually any interested person can be present. However, with increasing frequency, the Ministers do not attend those meetings³⁴⁶. The declining interest of the Ministers of the different sectors could be attributed to the content of the discussed policy documents³⁴⁷. As presented in section 3.1, those policies mainly address ecosystem management and issues related to biological and natural resources. They rarely address environmental issues directly related to

³³⁹ Empresa Colombiana de Petróleos; Colombian Oil Agency

³⁴⁰ Logros y Avances de la Gestión Ambiental en Colombia: "Proyecto Colectivo Ambiental". Informe de Gestión 1998 – 2002. Ministerio del Medio Ambiente.

³⁴¹ *Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of Environmental and Natural Resources

³⁴² Logros y Avances de la Gestión Ambiental en Colombia: "Proyecto Colectivo Ambiental". Informe de Gestión 1998 – 2002. Ministerio del Medio Ambiente.

³⁴³ Herrera C. M. 1998. Desarrollo y Perspectivas de la Evaluación Ambiental en Colombia. *En* Memorias del Primer Seminario Internacional de Evaluación Ambiental en el Contexto del Desarrollo. Cartagena de Indias. Agosto 1997. Ministerio del Medio Ambiente.

³⁴⁴ Article 13, Law 99 of 1993

³⁴⁵ *Departamento Nacional de Planeación*; Department of National Planning.

³⁴⁶ The author of this case study has been present in the majority of the meetings of this Council since 1995.

³⁴⁷ This is the opinion of the author of this case study.

transportation, energy, fuels, international trade, industry, competitiveness, rural development, health, etc.

Law 99 of 1993 also created the Technical Advisory Council for Environmental Policy and Regulation, as another mechanism to coordinate environmental policies and regulations amongst different interests³⁴⁸. This Council is integrated by representatives from the private sector, the NGOs and the universities. It has the objective of drafting proposed environmental regulations. EIAs were the first subject discussed in the Technical Advisory Council for Environmental Policy and Regulation. As mentioned previously, the Council's discussions generated a Decree³⁴⁹ which determined the basic content of EIAs, the evaluation process, and the requirements and conditions to obtain an Environmental License. During the working sessions of the committee³⁵⁰ which lead to the approval of the EIAs regulation, representatives from the industrial, oil, mining and agricultural sectors advocated to lower environmental requirements and reduce the depth of the environmental impact assessments³⁵¹. They also advocated to shorten evaluation periods and to limit public participation in the process. Despite their requests, upon the EIA regulation's approval, the representatives of the industrial sector³⁵² wrote a letter to President Gaviria expressing their "...satisfaction for the operation of the Technical Advisory Council for Environmental Policy and Regulation as a consulting and coordination mechanism"³⁵³. This Committee also discussed other regulations, with potential economic implications for the private sector, which were later approved by the Ministry of the Environment³⁵⁴.

Law 99 of 1993 also created mechanisms to coordinate and approve environmental priorities at the local level. This Law transformed the Boards of Directors of the Corporations, responsible for determining the environmental priorities and budgets of these organizations³⁵⁵. According to Law 99 of 1993, these Boards are composed by representatives of the indigenous communities, the NGOs, the private sector, the local mayors and the *Gobernadores* of the

³⁴⁸ Paragraph 1, article 11, Law 99 of 1993.

³⁴⁹ Decree 1753 of 1994

³⁵⁰ integrated by the Vice-minister of the Environment, a delegate from the National University of Colombia, a delegate from a private University, delegates from the industrial, oil, mining and agricultural sectors, from the Department of National Planning, the Ministry of Health, ECOPETROL (*Empresa Colombiana de Petróleos*; Colombian Oil Agency), and the Colombian Business Council for Sustainable Development.

³⁵¹ The author of this case study headed those meetings.

³⁵² ACOPI (Association of Small and Medium Manufacturing Industries); ASOCAÑA (Sugar Cane Producers); ANDI (National Manufacturing Industries); ECOCARBON (Coal Miners); SAC (Association of Agricultural Producers); ECOPETROL (Colombian Oil Agency); ACP (Association of Oil Producers).

³⁵³ Letter of the 18th of June of 1994 to President Cesar Gaviria.

³⁵⁴ Decree 948 of 1995 by which air pollution control is regulated. Decree 1224 of 1996 by which the quality of fuels is regulated. Decree 1791 of 1996 by which permits for wood harvesting are regulated. 883 of 1997 by which general provisions to control environmental deterioration are determined.

³⁵⁵ Literal *i*, article 27, Law 99 of 1993.

*Departamentos*³⁵⁶. These Boards act as mechanisms for coordinating environmental priorities between diverse social actors. Their composition allows diverse views to be channeled to the administrators of the Corporations. The participation of diverse groups of social actors also gives them the capacity to monitor and evaluate the performance of the Corporations³⁵⁷. In 2001, members of the Board of Directors reached decisions and agreements regarding the distribution of the budgets, among the following different programs³⁵⁸:

Table 1: Distribution of Environmental Investments by the Corporations in 2001.

Program*	%
Water (water sheds)	19.2
Biodiversity	6.3
Forests	6.4
Urban Environment (Env. Control)	21.0
Clean Production	2.2
Green Markets	0.3
Information	2.6
Research and Education	4.6
Inst. Capacity building	29.3
Land Use Planning	8.1

*These are the categories used by DNP³⁵⁹ to classify environmental projects.

The Boards of Directors of the Corporations assigned almost 70% of the budgets to projects related to water, urban environment, and to strengthening of institutional capacities. Those Boards of Directors have also selected the Directors of the Corporations every three years, through public and open processes.

After 1993, Clean Production Agreements were also developed as mechanisms to negotiate environmental targets between the government and the private sector. These are ad-hoc mechanisms in which private sector associations and environmental authorities, mainly the Ministry of the Environment and the Corporations, have coordinated the design of environmental regulations, administrative processes, economic incentives and environmental evaluation and monitoring methods³⁶⁰. During the last decade, the Government signed thirteen (13) Clean Production Agreements with private sector associations, which include the manufacturing, mining and oil industries, the flower, sugarcane and oil palm producers, and the electric companies. These agreements, which have occurred

³⁵⁶ The *Gobernador* is the highest political and administrative authority of a regional administrative entity or a *Departamento*.

³⁵⁷ Article 27 Law 99 of 1993.

³⁵⁸ Ibañez A., y E. Uribe. 2003. Medio Ambiente y Desarrollo Económico: Priorización de de la Inversión Ambiental con Criterios Económicos. Documento CEDE No 33. Universidad de los Andes.

³⁵⁹ *Departamento Nacional de Planeación*; Department of National Planning.

³⁶⁰ Esterling A. 2003. Evaluación y perspectivas de los convenios de concertación para una producción más limpia en Colombia. Informe de Consultoría. Ministerio del Medio Ambiente.

aside from the coordination mechanisms created by Law 99 of 1993³⁶¹, namely the Technical Advisory Council, have operated without the participation of representatives of other diverse interests such as NGO's and universities, and could have lead the regulator to be captured by the industry³⁶². However, there is no objective evidence to support this assertion.

Finally, upon the approval of Law 99 of 1993, discrepancies have arisen within the government in relation to environmental legislation. Many of those differences have been discussed and resolved in Congress. Soon after Law 99 of 1993 was approved, its content became a source of disagreement. Mrs. Cecilia Lopez, the first Minister of the Environment during the government of President Ernesto Samper (1994- 1998) proposed Congress to change the system for the nomination of the Directors of the Corporations³⁶³. She argued that under the system approved by Law 99 of 1993, the Ministry of the Environment did not have the capacity to control the Corporations and to ensure the implementation of national environmental polices at the local level. The Minister also argued that the Corporations were "very politicized"³⁶⁴, and consequently proposed that the Directors of the Corporations be nominated by the Minister of the Environment, and not by their Boards of Directors. In this case, Congress acted as the mechanism to resolve the conflict between those in favor and those against a more centralized environmental management. On that occasion, Congress did not approve Minister Lopez's initiative.

3.2.4. Mechanisms by Which Adopted Solutions were Executed.

This section discusses several mechanisms which have been implemented to execute and to adjust environmental solutions after 1993, namely institutional, and judicial mechanisms. In addition, this section describes the role which governmental control agencies, such as the offices of the General Attorney and of the General Accountant, have played in the evaluation of public environmental management. The role of NGOs is also described. In addition, this section presents some of the evaluations that environmental institutions have undertaken of their own projects and initiatives.

In adopting Law 99 of 1993, the Colombian Congress created a new institutional framework for the implementation of natural resources and the environment policy. As described in chapter 3, following the approval of Law 99 of 1993, several institutions were created and transformed, and a number of regulations and policies for the management of natural resources and the environment have been adopted. SINA's³⁶⁵ public institutions have increased their expenditures for

³⁶¹ Technical Advisory Council for Environmental Policy and Regulation

³⁶² This is the opinion of the author of this case study.

³⁶³ Rodríguez M., 1998. *La Reforma Ambiental en Colombia: Anotaciones para la Historia de la Gestión Pública Ambiental*. Fundación FES. Bogotá

³⁶⁴ Interview with Mrs. Cecilia López. April 2004. Bogotá.

³⁶⁵ *Sistema Nacional Ambiental*; National Environmental System.

environmental management.³⁶⁶ Public investments grew from Col \$150.000 million in 1993 to almost Col \$ 600.000 million in 1995. Since 1995, central government allocations have gradually declined, reaching values of around 400.000 million per year between years 2000 and 2002³⁶⁷. By year 2000, private sector investments in environmental management reached a similar amount, and total environmental investments (private plus public) reached a total value equivalent to 0.5% of the national GDP³⁶⁸. These figures evidence long term financial and institutional commitments to address the country's environmental problems, and the effectiveness of the financial and institutional framework created by Law 99 to induce government and the private sector investments.

NGOs has have also played an important role in the execution of environmental initiatives. As presented in section 3.2.1, ECOFONDO has channeled resources to hundreds of projects implemented by local NGOs throughout the country. Between 1996 and 2003 those projects amounted to more than US \$ 35 million, including counterpart contributions³⁶⁹. According to ECOFONDOS, "...beyond the discourses, ECOFONDO works on day to day basis accompanying local organizations in the implementation of projects for the sustainable use of natural resources, the protection of ethnic and cultural rights and the conservation of biodiversity"³⁷⁰. Nevertheless, an independent evaluation of the impact of ECOFONDO in matters of environmental policy is lacking.

On the other hand, Law 99 of 1993 granted the offices of the General Accountant (*Contraloría General de la Nación*) and of the General Attorney (*Procuraduría General de la Nación*) specific control responsibilities. These two Offices are responsible for controlling the performance of environmental institutions and investments. Among its functions, the Office of the General Accountant must "... present an annual report to Congress on the state of the natural resources and the environment."³⁷¹ Typically, these reports include evaluations of the institutions which integrate the National Environmental System, and of their operation, management and budgets. Additionally, the central Office of the General Accountant and its regional offices monitor and control the management and use of financial resources assigned to the national and regional environmental agencies. Congress appoints the General Accountant for a period of four years³⁷², and this

³⁶⁶ Ibañez A., y E. Uribe. 2003. Medio Ambiente y Desarrollo Económico: Priorización de de la Inversión Ambiental con Criterios Económicos. Documento CEDE No 33. Universidad de los Andes.

³⁶⁷ Colombina pesos of 2000.

³⁶⁸ Uribe E. La Gestión Ambiental y sus Efectos sobre la Competitividad de la Industria Colombiana. *En*. Del Valle M., (ed). 2003. Competitividad y Contaminación Industrial en la Región Andina. CAF.

³⁶⁹ Report of the Secretary of the Fund for Environmental Action to the Boar of Directors, January 2004.

³⁷⁰ ECOFONDO. 2003. 3652 días Construyendo Ambientalismo, Democracia y Sostenibilidad en Colombia. Boletín número 24. Bogotá

³⁷¹ Numeral 7, Article 268 of the Political Constitution.

³⁷² Article 267 of the Political Constitution.

position has always been affiliated to one of the two traditional political parties of the country: the Liberal Party or Conservative Party.

The Office of the General Attorney has a Delegate Office for Environmental Matters (*Procuraduría Delegada para Asuntos Ambientales*)³⁷³. In accordance with the Political Constitution of 1991, this delegate is responsible for controlling the compliance of constitutional and legal precepts by public institutions³⁷⁴. As in the case of the General Accountant, Congress appoints the General Attorney for a period of four years³⁷⁵. This appointee has always been affiliated to one of the two traditional political parties of the country. National media frequently publishes the findings or opinions of the General Attorney³⁷⁶.

Finally, in addition to implementing environmental projects of local interest, NGOs have followed and informally audited the development of the National Environmental System during the last ten years. Recently, some of these organizations have specialized in discussing and evaluating national environmental policy. That is the case of the National Environmental Forum (*Foro Nacional Ambiental*), integrated by five NGO's³⁷⁷, and by *Universidad de los Andes*. The National Environmental Forum organizes periodic public meetings to present and discuss the government's environmental policies³⁷⁸. Frequently, the Ministers and Vice-ministers of the Environment present national policies during those public meetings.

In spite of all of the above, the National Environmental System has not adopted a sustained process to systematically monitor and evaluate policies³⁷⁹. International organizations have conducted occasional evaluations of selected policies and projects of their interest. Although an analysis of the results provided by those evaluations is beyond the scope of this document, some of them will be mentioned to illustrate the point. In 2001, CAF (*Corporación Andina de Fomento*) financed a study to evaluate the effects of environmental regulations on the competitiveness of the Colombian industry³⁸⁰. This study was developed within the framework of a regional study, which included the cases of Venezuela, Ecuador, Perú and Bolivia. In 2003, with financing from the IDB (Inter-American Development Bank), a study

³⁷³ It was originally created by article 97 of Law 99 of 1993. Then it was modified by Laws 201 of 1995 and 617 of 2000.

³⁷⁴ Article 277

³⁷⁵ Article 276 of the Political Constitution.

³⁷⁶ In February 14, 2004, the New paper EL TIEMPO published that the Attorney General considered that the air quality data provided by the environmental authority of Bogotá, DAMA was not reliable.

³⁷⁷ FESCOL, *Universidad de los Andes*, the German Agency of International Cooperation GTZ, ECOFONDO, the *Angel Escobar* Foundation.

³⁷⁸ Interview with Mr. Manuel Rodriguez; Director of the National Environmental Forum

³⁷⁹ Interview with Francisco Canal head of the Association of Regional autonomous Corporations. January 2004.

³⁸⁰ Uribe E. *La Gestión Ambiental y sus Efectos sobre la Competitividad de la Industria Colombiana*. En. Del Valle M., (ed). 2003. *Competitividad y Contaminación Industrial en la Región Andina*. CAF.

evaluated the contributions of the SINA's³⁸¹ environmental projects to economic development and to the alleviation of poverty³⁸². This evaluation had the objective of gathering information for the design of IDB's future environmental projects in Colombia. Multilateral agencies have also periodically conducted loan evaluations³⁸³.

Several environmental authorities have evaluated their projects. In 1997, the CONPES³⁸⁴ discussed the advances of the National Environmental Policy for the 1994 -1998 presidential period³⁸⁵. In 2002, DAMA³⁸⁶ evaluated its clean production policy in an open public forum at the Universidad de los Andes. The forum had the objective of "...evaluating the advances and the difficulties of the policy of clean production and to propose the needed reforms³⁸⁷". In 2002, the Ministry of the Environment evaluated the institutional, economic, social and environmental aspects of its national pollution fee program³⁸⁸. During 2003, the Ministry of the Environment evaluated the development and advances of the "Clean Production Agreements", signed with an ample number of associations of the private sector³⁸⁹. Although these evaluations constitute valuable efforts, the lack of a systematic process for evaluating the benefits and costs environmental policies and projects is salient.

The Judicial System has played an important role in the implementation and orientation of environmental policies and projects, and in the defense of environmental rights. As indicated in section 1.2.4, since the late eighties, FUNDEPÚBLICO³⁹⁰ presented popular action suits, based on Law 472 of 1988 which protects collective rights. Later in 1991, the Political Constitution included "the right to a clean environment" among collective rights³⁹¹ and stipulated that popular actions can be used to protect environmental rights³⁹². Legal actions

³⁸¹ *Sistema Nacional Ambiental*; National Environmental System.

³⁸² Ibañez A., y E. Uribe. 2003. Medio Ambiente y Desarrollo Económico: Priorización de de la Inversión Ambiental con Criterios Económicos. Documento CEDE No 33. Universidad de los Andes.

³⁸³ Logros y Avances del Programa Ambiental. Créditos BID 774/OC-CO y 910/SF-CO. Ministerio de Ambiente Vivienda y Desarrollo Territorial.2003.

³⁸⁴ *Consejo Nacional de Política Económica y Social*; National Council for Economic and Social Policy.

³⁸⁵ Evaluación de la política nacional ambiental hacia el desarrollo humano sostenible. CONPES 2910. DNP, Febrero 1997. Bogotá

³⁸⁶ Departamento Administrativo del Medio Ambiente de Bogotá; Environmental Department of Bogotá.

³⁸⁷ Julia Miranda, Director of DAMA (*Departamento Administrativo del Medio Ambiente de Bogotá*; Environmental Department of Bogotá), at the opening ceremony of the forum on clean production at the *Universidad de los Andes*. Bogotá. June 2002.

³⁸⁸ Tasas Retributivas por Vertimientos Puntuales. Evaluación Nacional. 2002. Ministerio del Medio Ambiente. Bogotá.

³⁸⁹ Esterling A. 2003. Evaluación y perspectivas de los convenios de concertación para una producción más limpia en Colombia. Informe de Consultoría. Ministerio del Medio Ambiente.

³⁹⁰ *Fundación para la Defensa del Interés Público*; Foundation for the Defense of Public Interests

³⁹¹ Article 79 of the Political Constitution

³⁹² Article 88 of the Political Constitution.

forced a group of propane distribution companies in Bogotá to relocate their storage facilities in year 2000. Popular actions have also been used in Bogotá to protect the city's wetlands³⁹³. In the year 2000, the *Fundación la Conejera*, an environmental NGO whose main objective is the protection of the "*Humedal la Conejera*", won a popular action suit that ordered the waterworks of Bogotá (*El Acueducto*) to construct a series of collectors to prevent the pollution of that wetland. During the years 2000 and 2002, through similar actions, judges ordered the water utilities of Bogotá to implement solutions to prevent and control pollution in the wetlands of *Capellanía* and *Córdoba* in Bogotá.

When environmental deterioration threatens human life or health, the right to a clean environment is considered a fundamental right³⁹⁴. As such, it can be protected by means of the Citizens' Rights Action (*Acción de Tutela*). This action "...can be used to demand the Judicial System the immediate protection of fundamental rights³⁹⁵ when these have been violated or threatened, by the actions or omissions of public agents; and in some cases by private agents."³⁹⁶ The frequency in the use of *Acción de Tutela* grew from 33.300 in 1995 to 63.400 in 1999³⁹⁷. Action suits related to the protection of the rights to health and to life, which include the right to a clean environment, grew during the same period from 6.100 to 20.500. This action has been considered "...a true revolution in matters of environmental justice in Colombia"³⁹⁸.

The *Acción de Tutela* has been used by indigenous communities to protect their environmental and social rights. In 1995, as a result of a conflict related to oil explorations in the traditional territories of the *Uwa* indigenous community, a judge suspended an environmental license that the Ministry of the Environment had granted to the Occidental Petroleum Company, based on an *Acción de Tutela*³⁹⁹.

The Political Constitution of 1991 also created Compliance Actions (*Acciones de Cumplimiento*)⁴⁰⁰. According to the Constitution of 1991, "every person can request the Judicial System to order a governmental agent to comply with the law." The Judicial System can thus order any type of public authority, including an

³⁹³ ECOFONDO. 2002. El Fortalecimiento Regional Propósito del 2002. Boletín número 23. Bogotá.

³⁹⁴ Iguarán. M., 2001. La Acción de Tutela como Mecanismo de Protección del Derecho a un Ambiente Sano. *En*. Justicia Ambiental. Universidad Externado de Colombia; Instituto de Estudios del Ministerio Público; CAR. Bogotá.

³⁹⁵ They are: the rights to equality, work, education, due process, life, health. Chapter I of the Political Constitution of 1991

³⁹⁶ Iguarán. M., 2001. La Acción de Tutela como Mecanismo de Protección del Derecho a un Ambiente Sano. *En*. Justicia Ambiental. Universidad Externado de Colombia; Instituto de Estudios del Ministerio Público; CAR. Bogotá.

³⁹⁷ Estadísticas sobre la Acción de Tutela. 1999. Corte Constitucional. Consejo Superior de la Judicatura. Bogotá.

³⁹⁸ Amaya O.D. 2001. Justicia Constitucional Ambiental en Colombia. 2001. *En*. Justicia Ambiental. Universidad Externado de Colombia; Instituto de Estudios del Ministerio Público; CAR. Bogotá.

³⁹⁹ Logros y Avances de la Gestión Ambiental en Colombia: "Proyecto Colectivo Ambiental". Informe de Gestión 1998 – 2002. Ministerio del Medio Ambiente.

⁴⁰⁰ Article 87 of the Political Constitution

environmental authority compliance with the law⁴⁰¹. These actions have mainly been used against the Corporations to demand the enforcement of environmental regulations. Statistics regarding the frequency of their use are not available.

Additionally, the Political Constitution of 1991⁴⁰² opened the possibility for the creation of Alternative Dispute Resolution mechanisms⁴⁰³. Environmental disputes can be solved by using these mechanisms, which favor agreements between people in conflict with the mediation of a conciliator. Although these mechanisms have not yet played a role in the solution of environmental disputes, it is expected that "...in the future they should become tools for the rapid resolution of environmental conflicts."⁴⁰⁴

Finally, the participation of a broad range of stakeholders in the Boards of Directors of the Corporations can also be considered a mechanism by which the policies, activities and projects of public environmental institutions can be monitored and adjusted. As mentioned previously, these Boards have the responsibility of nominating the Directors of the Corporations, of evaluating their performance and of making necessary adjustments⁴⁰⁵. The Directors can even be removed by the Boards in cases of poor performance. To this day, no case has been documented of a Director of a Corporation being removed by its Board⁴⁰⁶. This may be explained by the Directors' capacity to capture the board, or some of their members, with favors such as contracts, investments for their political benefit and jobs in the Corporation⁴⁰⁷. The Office of the General Attorney suspended 7 directors of the Corporations during the second semester of 2003 and ordered investigations against them for possible faults related to the management of financial resources of the Corporations.

3.2.5. Summary of the Analysis of the 1993 – 2002 Framework.

Between 1994 and 1998, the environmental institutional framework designed by Law 99 of 1993 was implemented. The government created the Ministry of the Environment and closed INDERENA⁴⁰⁸. Sixteen new Corporations were created in areas that had previously been under the jurisdiction of INDERENA. Urban environmental authorities were established in Bogotá, Cali, Medellín and

⁴⁰¹ González J. E. 2001. Las Acciones de Cumplimiento y su Perspectiva Ambiental en Colombia. *En. Justicia Ambiental*. Universidad Externado de Colombia; Instituto de Estudios del Ministerio Público; CAR. Bogotá.

⁴⁰² Article 116 of the Political Constitution.

⁴⁰³ The Alternative Dispute Resolution mechanisms were regulated by Law 640 of 2001

⁴⁰⁴ Rodas J. C. 2001. La Conciliación y los Conflictos Ambientales. *En. Justicia Ambiental*. Universidad Externado de Colombia; Instituto de Estudios del Ministerio Público; CAR. Bogotá. (page 100)

⁴⁰⁵ Article 27, Law 99 of 1993

⁴⁰⁶ Interview with Mr. Francisco Canal; President of the Association of Corporations. ASOCARS. Jan 2004.

⁴⁰⁷ This is the opinion of the author of this case study.

⁴⁰⁸ *Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of Environmental and Natural Resources

Barranquilla. Two new institutes for environmental research were created⁴⁰⁹; and three were restructured⁴¹⁰. Private and public expenditures in the environment by SINA institutions⁴¹¹ increased⁴¹². Between 1998 and 2002, the government approved an Environmental Policy under the title “The Environmental Collective Project”. This policy emphasized on the restoration and conservation of strategic ecosystems and eco-regions, by strengthening of the capacity of local governments and civil society to participate in the design and implementation of regional environmental plans.

After 1994, the frequency of environmental issues in the media increased⁴¹³. The media became attentive to the activities of the SINA institutions⁴¹⁴. Technical and quantitative information related to the state of the environment also grew and became more available. By year 2001 the public institutions the SINA⁴¹⁵ allocated 4.5% of their budgets to environmental education. Schools and NGOs also increased their environmental education programs. ECOFONDO channeled more than US 16 million for the implementation of local projects⁴¹⁶ which included components of environmental education⁴¹⁷. Although there is evidence of high levels of social environmental awareness in Bogotá, environmental management is not considered an important priority⁴¹⁸.

Environmental research was also strengthened during this period. By year 2001, 2.6% of the budget of SINA⁴¹⁹ was dedicated to research. Those research efforts have increased the public availability of scientific information related to the quality of the environment and its natural resources⁴²⁰. However, they seem to have played a lesser role in the definition of priorities of environmental policy⁴²¹.

⁴⁰⁹ The Von Humboldt and the Von Newman Institutes.

⁴¹⁰ INVEMAR (*Instituto de Investigaciones Marinas y Costeras*; Institute for Marine and Coastal Research); the SINCHI Institute of the Amazon, and IDEAM (*Instituto de Hidrología, Meteorología y Estudios Ambientales*; National Institute of Hydrology, Meteorology and Environmental Studies.).

⁴¹¹ *Sistema Nacional Ambiental*; National Environmental System.

⁴¹² Ibañez A., y E. Uribe. 2003. Medio Ambiente y Desarrollo Económico: Priorización de de la Inversión Ambiental con Criterios Económicos. Documento CEDE No 33. Universidad de los Andes.

⁴¹³ Information provided by Diana Serrato of the Press Office of the Ministry of the Environment Housing and Regional Development.

⁴¹⁴ *Sistema Nacional Ambiental*, National Environmental System.

⁴¹⁵ *Sistema Nacional Ambiental*, National Environmental System.

⁴¹⁶ Col \$ 46.000'000.000

⁴¹⁷ Interview with Mr. Rafael Colmenares the Director of ECOFONDO. Feb 2004

⁴¹⁸ Giraldo E. Bogotá, Como Vamos en Medio Ambiente. *En*. Bogotá Como Vamos. Cambios en la Calidad de Vida de la Ciudad: 2000 – 2002. 2003. Cámara de Comercio de Bogotá, EL TIEMPO, Fundación Corona.

⁴¹⁹ *Sistema Nacional Ambiental*, National Environmental System.

⁴²⁰ Among them the four volumes on Biological diversity published by the Von Humboldt Institute in 1997 that compile and all of the available information in that area.

⁴²¹ Page 14 of the National Policy for Environmental Research. August 2.002. The Ministry of the Environment. Bogotá.

Between 1994 and 2002, NGO's and indigenous communities played an important role in the generation of demands for the solution of environmental problems. The role of urban communities in environmental issues has not been as visible. The role of NGO's was particularly noticeable in the execution of local environmental projects related to agro-ecosystem management, conservation and urban environment⁴²². Additionally, since 1993 environmental NGOs and indigenous communities have had a seat in the Boards of Directors of the Corporations. From those positions they have participated in the definition of regional and local environmental agendas.

After 1993, several mechanisms were developed to balance competing social interests. They include the process of formulation and evaluation of EIAs, and the various councils created by Law 99 of 1993. According to this Law, the EIA evaluation process must include public meetings. Indigenous communities have been active in the public meetings associated to the evaluation processes of EIAs.

The National Environmental Council was created as a mechanism to reach agreements among the representatives of diverse social groups on matters of national environmental policy⁴²³. Between 1994 and 2002, this Council approved numerous policy documents. With time, while the production of those documents diminished, their viability increased as they began to define financial and institutional mechanisms and requirements for their implementation. However, the interest of the Ministers who integrate this Council has gradually declined. This could be related to the contents of the policy documents approved which are mainly related to the management of ecosystems and biological and natural resources.

Additionally, Law 99 of 1993 created the Technical Advisory Council for Environmental Policy and Regulation⁴²⁴, as a mechanism to resolve divergent interests. As mentioned previously, EIA was the first matter addressed by the Technical Advisory Council for Environmental Policy and Regulation. Over the last few years, the Council's activities have declined, and the private sector and the Ministry of the Environment have agreed on regulations, without the participation of other actors.

At the local level, Law 99 of 1993 transformed the Boards of Directors of the Corporations. The participation of an ample range of social groups on those Boards improves their capacity to monitor the performance of the Corporations⁴²⁵. However, it has been argued that the Directors of the Corporations have the capacity to control those Boards by granting favors to their members.

⁴²² Report of the Secretary of the Fund for Environmental Action to the Board of Directors, January 2004.

⁴²³ Article 13, Law 99 of 1993

⁴²⁴ Paragraph 1, article 11, Law 99 of 1993.

⁴²⁵ Article 27 Law 99 of 1993.

After 1993, the Government and the private sector developed Clean Production Agreements for the negotiation of environmental targets, regulations, administrative processes, economic incentives and methods for environmental evaluation and monitoring⁴²⁶. These ad-hoc mechanisms could have led the regulator to be captured by the industry⁴²⁷.

The offices of the General Accountant (*Contraloría General de la Nación*) and of the General Attorney (*Procuraduría General de la Nación*) control and audit the public institutions of SINA⁴²⁸. While the former monitors and controls the management and use of the financial resources, the latter is responsible for ensuring the compliance of legal precepts by public institutions⁴²⁹. NGOs have also monitored the development of SINA. In this respect, the role of the National Environmental Forum (*Foro Nacional Ambiental*) is noticeable.

International organizations and, in some cases, environmental authorities have occasionally conducted evaluations of selected policies and projects. However, a systematic process for monitoring and evaluating the benefits and costs of the environmental policies and projects implemented by SINA⁴³⁰ is lacking.

Finally, the Judicial System has played an important role in the implementation and orientation of environmental policies and projects. Legal actions have been widely used to protect environmental, ethnic and social rights. The Citizens' Rights Action (*Acción de Tutela*) the Popular Action (*Acción Popular*) and the Compliance Action (*Acción de Cumplimiento*) have been the most widely used.

4. The Period from 2002 to the Current Day

As described in the previous section, between 1993 and 2002, SINA's institutions, policies and regulations⁴³¹ developed in accordance with the precepts defined in Law 1993. In 2002, President Alvaro Uribe was elected, and introduced important changes to the structure of SINA. As will be described in this section, some of the functions of the Ministry of Development were transferred to the Ministry of the Environment, as a strategy to reduce fiscal problems and improve the coordination of government agencies with overlapping functions. In addition, the government of President Uribe also intended to reform the Corporations. This decision sought to address concerns regarding possible corruption problems in those institutions.

⁴²⁶ Esterling A. 2003. Evaluación y perspectivas de los convenios de concertación para una producción más limpia en Colombia. Informe de Consultoría. Ministerio del Medio Ambiente.

⁴²⁷ This is the opinion of the author of this case study.

⁴²⁸ *Sistema Nacional Ambiental*; National Environmental System

⁴²⁹ Article 277

⁴³⁰ *Sistema Nacional Ambiental*; National Environmental System

⁴³¹ *Sistema Nacional Ambiental*; National Environmental System

Noticeably different views existed between environmental authorities and the national and local agencies responsible for urban sanitation and land zoning, before the 2002 institutional reforms. A visible case was that of the design of the Land Use Plan (*Plan de Ordenamiento Territorial POT*) for the city of Bogotá in year 2000. In this case, the Administration of Bogotá and CAR⁴³² could not agree on basic criteria needed for the design of the land use regulations for the expansion of new areas of the city⁴³³. While, the Ministry of the Environment intervened to propose criteria that would be acceptable to both parties, this decision was challenged by the Administration of Bogotá and is currently in the hands of the Judicial System.

Lack of coordination around environmental issues was also visible in the restoration of the Bogotá wetlands. In this case, while the Waterworks of Bogotá (*El Acueducto*) favoured restoration strategies that included the construction of infrastructure such as bike-paths for recreation⁴³⁴, the Ministry of the Environment favoured a restoration oriented towards the development of contemplative, aesthetic and research activities⁴³⁵. Their differences have been taken to court through legal actions (mainly popular actions)⁴³⁶.

Corruption of the Corporations has been an issue of traditional public concern in Colombia⁴³⁷. In a survey conducted during 2002⁴³⁸, the representatives of the manufacturing industries graded the honesty of the Corporations with a 3.76 on scale from one to five⁴³⁹. The perception that corruption problems were prevalent in some of those institutions was one of President Uribe's motivations to propose the reforms discussed in this chapter. As a presidential candidate, Mr. Alvaro Uribe promised to "...eliminate corruption from the Corporations and to review their structure"⁴⁴⁰. As indicated in section 3.2.4, the Office of the General Attorney suspended 7 directors of Corporations from their positions and initiated investigations against them. The Office of the General Attorney has undertaken

⁴³² The Regional Autonomous Corporation of *Cundinamarca*

⁴³³ Logros y Avances de la Gestión Ambiental en Colombia: "Proyecto Colectivo Ambiental". Informe de Gestión 1998 – 2002. Ministerio del Medio Ambiente.

⁴³⁴ Medellín H., Gutiérrez M. A. 2003. El Sistema Hídrico Dentro de la Estructura Urbana de Bogotá y la Estrategia de Conservación y Manejo. *En*. Los Humedales de Bogotá y la Sabana.

Conservación Internacional. Acueducto de Bogotá.

⁴³⁵ Andrade A., F. Navarrete. 2003. Política Nacional de Humedales y Humedales de la Sabana de Bogotá. *En*. Los Humedales de Bogotá y la Sabana. Conservación Internacional. Acueducto de Bogotá.

⁴³⁶ Personal communication of the author of this case study with Mr. Juan Daniel Ávila, head of the Environmental Division of the Waterworks of Bogotá (*El Acueducto*); February 2004.

⁴³⁷ Interview with Mrs. Adriana Guillén, Head of Environmental Matters of the Office of the General Attorney. December 2003. Bogotá.

⁴³⁸ Uribe E. La Gestión Ambiental y sus Efectos sobre la Competitividad de la Industria Colombiana. *En*. Del Valle M., (ed). 2003. Competitividad y Contaminación Industrial en la Región Andina. CAF.

⁴³⁹ Uribe E., G Cruz, H. Coronado, J. García. 2001. La Gestión Ambiental y la Competitividad de la Industria Bogotana. Proyecto Andino de Competitividad. Informe Final. Universidad de los Andes. Bogotá.

⁴⁴⁰ Manifiesto Democrático item 64. www.alvarouribevelez.com.co

“more than 1000” investigations against the public servants of the corporations and the members of their boards of directors during the last ten years⁴⁴¹. However, there is no objective evidence that indicates that the problem of corruption in the corporations is greater than in other government agencies.

Different public events and opinions suggested that the Government for the 2002 – 2006 presidential period could make institutional changes within SINA⁴⁴². The first section of this fourth chapter describes the developments that took place. The second section of this chapter analyzes the process using the World Bank Development Report 2003 framework.

4.1. Description of Events, from 2002 to the Current Day

Congress approved the National Development Plan for the 2002 – 2006 presidential period (“*Hacia un Estado Comunitario*”) in June of 2003⁴⁴³. Instead of incorporating environmental matters into just one chapter, the Plan describes these subjects into several sections. The chapter on “Environmental Sustainability”⁴⁴⁴ deals mainly with the policies for natural resources and protected areas. In addition, the Plan has three relevant chapters: “Urban Quality”, “Natural Disaster Prevention”, and “Strengthening of Ethnic Groups”⁴⁴⁵.

There are several common elements between the environmental proposals of the National Development Plan for the 2002 – 2006 presidential period and those included in previous National Development Plan⁴⁴⁶. Among them are those related with: i) the conservation of National Parks; ii) the improvement of public areas in urban zones, iii) the monitoring and control of pollution in the urban environment; iv) the prevention of natural disasters; v) the creation of economic incentives for conservation; vi) the promotion of green markets; vii) the strengthening of municipalities for the development of land use plans; viii) the update of regulatory instruments; ix) and the strengthening of ethnic groups. In fact, the National Development Plan for the 2002 – 2006 presidential period explicitly proposes to continue to develop several environmental policies and plans approved in past Administrations. Amongst these are the National Policy for the Zoning and Management of Coastal Areas⁴⁴⁷; the National Plan for the Management of

⁴⁴¹ Interview Mrs. Adriana Guillén Head of Environmental Matters of the Office of the General Attorney. March 2004. Bogotá.

⁴⁴² *Sistema Nacional Ambiental*; National Environmental System

⁴⁴³ Law 812 of 2003

⁴⁴⁴ Plan Nacional de Desarrollo: Hacia un Estado Comunitario. 2003. Pages 149 – 155. Departamento Nacional de Planeación.

⁴⁴⁵ Plan Nacional de Desarrollo: Hacia un Estado Comunitario. Pages 242 - 256

⁴⁴⁶ Proyecto Colectivo Ambiental. 2000. Plan Nacional de Desarrollo Ministerio del Medio Ambiente.

⁴⁴⁷ Política Ambiental para el Desarrollo Sostenible de los Espacios Oceánicos y las Zonas Costeras e Insulares de Colombia. 2000. DNP- Ministerio del Medio Ambiente. CONPES 3164.

Wastewaters⁴⁴⁸, the Strategic Plan for Green Markets⁴⁴⁹; the National Policies on Environmental Research⁴⁵⁰ and Environmental Education⁴⁵¹; the National Plan for Disaster Prevention⁴⁵²; the National Forest Plan⁴⁵³; and the National Policy for Ethnic Groups⁴⁵⁴. Additionally, the National Development Plan for the 2002 – 2006 includes objectives similar to those presented under previous policies, including those related to the conservation of national parks⁴⁵⁵, climate change⁴⁵⁶ and urban environmental management⁴⁵⁷.

More than a change in policy objectives, Mr. Uribe's government tried to change the mechanisms to attain those objectives. The changes than he proposed and subsequently made have been subject to disagreement and debate. Those changes will be described next, and analyzed in section 4.2.

Mr Uribe's government adopted a severe fiscal strategy that included the reduction of 20% of the government's operational costs⁴⁵⁸. As a part of that strategy, three Ministries were closed⁴⁵⁹ and their functions were transferred to other ministries. The Ministry of Development was closed and its functions related to low income housing and the formulation of general policies and regulations for land use, water provision and sanitation were transferred to the Ministry of Environment⁴⁶⁰. The content of the reform was not discussed publicly; it was only discussed within the national government⁴⁶¹. The Ministry of the Environment was reorganized and given a new name: *Ministerio del Ambiente, la Vivienda y el Desarrollo Territorial* (MAVDT): The Ministry of the Environment, Housing and Regional Development.

In January of 2004, DNP⁴⁶² was also reorganized and the Direction of Environmental Policy disappeared⁴⁶³. Its responsibilities were mainly transferred to

⁴⁴⁸ Acciones Prioritarias y Lineamientos para la Formulación del Plan Nacional de Manejo de Aguas Residuales. 2002. DNP- Ministerio del Medio Ambiente. CONPES 3177.

⁴⁴⁹ Plan Estratégico Nacional de Mercados Verdes. 2002. Ministerio del Medio Ambiente.

⁴⁵⁰ Política Nacional de Investigación Ambiental. 2002. Ministerio del Medio Ambiente.

⁴⁵¹ Política Nacional de Educación Ambiental. 2002. Ministerio del Medio Ambiente

⁴⁵² Estrategia para consolidar la ejecución del plan nacional para la prevención y atención de desastres-PNPAD en el corto y mediano plazo. 2001. DNP. CONPES 3146.

⁴⁵³ Plan Nacional de Desarrollo Forestal. 2000. Ministerio del Medio Ambiente.

⁴⁵⁴ Hacia una Nación Pluriétnica y Multicultural. 1998. Departamento Nacional de Planeación.

⁴⁵⁵ Política de Participación Social en la Conservación. 2001. Unidad Administrativa del Sistema de Parques Nacionales de Colombia. Ministerio del Medio Ambiente.

⁴⁵⁶ Lineamientos de Política de Cambio Climático. 2001. Ministerio del Medio Ambiente.

⁴⁵⁷ Lineamientos Ambientales para la Gestión Urbano Regional en Colombia. 2003. Ministerio del Medio Ambiente.

⁴⁵⁸ Plan Nacional de Desarrollo: Hacia un Estado Comunitario. 2003. Departamento Nacional de Planeación. Bogotá.

⁴⁵⁹ The ministries of Justice, Development and Labor.

⁴⁶⁰ Decree 216 of 2003

⁴⁶¹ Personal communication with Dr. Alejandro Gaviria; former Under Director of DNP (*Departamento Nacional de Planeación*; Department of National Planning) (2002-2004), and presently at CEDE- Uniandes.

⁴⁶² *Departamento Nacional de Planeación*; Department of National Planning.

⁴⁶³ Decree 195 of 2004

a new Direction of “Urban Development and Environmental Policy”. Other new Directions with relevant responsibilities are the Direction of “Sustainable Regional Development”, “Infrastructure and Sustainable Energy”, and “Sustainable Rural Development”.

To reform the Corporations and to make some additional adjustments to SINA⁴⁶⁴, the MAVDT⁴⁶⁵ presented a legal proposal to Congress⁴⁶⁶. That proposal included changing the mechanisms to direct the Corporations. The reform included abolishing the Assembly of Local Mayors as their highest level of direction. Additionally, it also contemplated reducing the participation of local mayors in the Boards of Directors from 4 to 2 members and increasing that of the national government from 2 to 4 members, with two additional delegates of the Ministry⁴⁶⁷. Local NGO and private sector representation was to be lowered from 2 members to 1, in both cases. The legal proposal also included the creation of a Board of Directors for the urban environmental authorities⁴⁶⁸ with a composition similar to that of the Corporations, and the creation of *Consejos de Cuenca* (watershed councils)⁴⁶⁹. As will be discussed in section 4.2, the government did not persist with this legal reform and withdrew it from Congress during the first semester of 2004, largely as a result of public opposition.

Some regulatory changes have occurred since 2002. A new regulation reforming pollution fees was approved in 2003⁴⁷⁰. The new regulation took into account the results of a study which evaluated the impact of the pollution fees⁴⁷¹, which had been previously charged based on 1997 regulations⁴⁷². In writing these new regulations, the opinions of the regulated sector, the Corporations and the environmental urban authorities were considered⁴⁷³. According to this new regulation, pollution fees will only be charged in those watersheds that are

⁴⁶⁴ *Sistema Nacional Ambiental*; National Environmental System

⁴⁶⁵ *Ministerio del Ambiente la Vivienda y el Desarrollo Territorial*; Ministry of the Environment, Housing and Regional Development.

⁴⁶⁶ Proyecto de Ley por el cual se reforma parcialmente la Ley 99 de 1993, en cuanto a la organización y funcionamiento de las Corporaciones Autónomas Regionales, de Desarrollo Sostenible y Grandes Centros Urbanos, establecen normas para asegurar la oferta del recurso hídrico y se dictan otras disposiciones. www.minambiente.gov.co

⁴⁶⁷ The Director of the Unit of National Parks and the Director of one of the research institutes.

⁴⁶⁸ As today urban environmental authorities do not have boards of directors.

⁴⁶⁹ These councils that would include the participation of municipalities, Corporations, and local actors would be responsible for the coordination of the planning, evaluation and monitoring of the use of natural resources. However, the legal proposal did not define their legal nature, their financing sources and their mechanism of coordination with the Corporations. As it was presented to Congress, the limits of jurisdiction between these councils and the Corporations were not clear.

⁴⁷⁰ Decree 3100 of 2003

⁴⁷¹ *Tasas Retributivas por Vertimientos Puntuales. Evaluación Nacional. 2002. Ministerio del Medio Ambiente. Bogotá.*

⁴⁷² Decree 901 of 1997

⁴⁷³ Personal communication of the author of this case study with Mr. Javier Blanco; Head of the Office of Economic Analysis of the Ministry of the Environment Housing and Regional Development. January of 2004.

considered to be a priority, base on Watershed Management Plans⁴⁷⁴. Every five years, the Corporations or the urban environmental authorities will define a pollution reduction target, in consultation with the regulated sector, and a minimum pollution fee (“*tasa minima*”) will be defined by the MAVDT⁴⁷⁵.

In 2003, new regulations relative to EIAs were also approved. During 2002, the Ministry of the Environment coordinated a series of meetings with representatives of different economic sectors⁴⁷⁶, the Corporations and the environmental urban authorities. These meetings had the purpose of updating EIA regulations⁴⁷⁷. The new regulations of EIA defined the cases where EIAs were required, in greater precision. This reform “...aimed at preventing the Corporations and the environmental authorities of urban centers to continue to require EIAs when they were not really necessary”⁴⁷⁸. In addition, according to Law 388 of 1997⁴⁷⁹, or “Law of Territorial Zoning” (*Ley de Ordenamiento Territorial*), the “environmental aspects” of land use regulations have to be evaluated and approved by the Corporations or by the environmental urban authorities⁴⁸⁰. The Ministry of the Environment and the regulated sector agreed that in those cases where the “environmental aspects” of land use regulations had been evaluated and approved by environmental authorities, the EIA process for individual projects could be circumvented⁴⁸¹. Decree 1180 of 2003 introduced this change, which opens the potential for the future development of regional strategic environmental evaluations as part of land use regulations⁴⁸².

Additionally, the Ministry approved a new water charge regulation in 2004. Since 2002, the Ministry of the Environment had held a series of meetings with the regulated sector to analyze proposals for a new water charge regulation. The mining and manufacturing industries, the aquaculture, water, oil and agriculture sectors, the Corporations and the waterworks of Bogotá (*El Acueducto*)⁴⁸³, all made proposals. In December of 2003, the Constitutional Court declared articles 159 and 160 of the Code of Natural Resources⁴⁸⁴ no longer applicable; these had

⁴⁷⁴ Elaborated according with Decree 1594 of 1984.

⁴⁷⁵ *Ministerio del Ambiente la Vivienda y el Desarrollo Territorial*; Ministry of the Environment, Housing and Regional Development.

⁴⁷⁶ Manufacture, mining, oil, coal, agriculture, transportation.

⁴⁷⁷ Interviews with Mr. Carlos Herrera and Mr. Carlos Tamayo who represented ANDI (*Asociación Nacional de Industriales*; National Association of Manufacturing Industries) and DAMA (*Departamento Administrativo del Medio Ambiente de Bogotá*; Environmental Department of Bogotá) at those forums.

⁴⁷⁸ Interview with Mr. Alvaro Viña Director of EIAs of the Ministry of the Environment (1998 2003)

⁴⁷⁹ Article 24

⁴⁸⁰ Article 10 Decree 1180 2003.

⁴⁸¹ Interviews with Mr. Carlos Herrera and Mr. Carlos Tamayo who represented ANDI (*Asociación Nacional de Industriales*; National Association of Manufacturing Industries) and DAMA (*Departamento Administrativo del Medio Ambiente de Bogotá*; Environmental Department of Bogotá) at those forums.

⁴⁸² Interview with Mr. Alvaro Viña Director of EIAs of the Ministry of the Environment (1998 2003)

⁴⁸³ *Memorias del Taller Conjunto para la Reglamentación de las Tasas de Uso de Agua*. 2002. Ministerio del Medio Ambiente. Ref. MMA/TU/2002/4

⁴⁸⁴ Decree 2811 of 1974.

constituted the legal framework by which environmental authorities had been collecting water charges⁴⁸⁵. The Office of Economic Analysis of the MAVDT⁴⁸⁶ drafted a regulation⁴⁸⁷, approved in January of 2004,⁴⁸⁸ based on the proposals which had been made by the regulated sector since 2002. According to this regulation, the Ministry defines a minimum charge (“*tasa minima*”) for the economic use of water. This charge, which was defined in 2004⁴⁸⁹, will be adjusted on a yearly basis by the Corporations and by urban environmental authorities, depending on local water availability, socioeconomic conditions, and the water management and control costs by the local environmental authority⁴⁹⁰. In some cases, the new minimum water charge corresponds to 2.75% of the water fee that the CAR⁴⁹¹ had been charging up until 2003. This new charge is between a hundredth and a thousandth of the marginal value of water for the industrial sector of Colombia⁴⁹².

4.2. The Roles of Relevant Actors and Events in the Reform Process from 2002 to the Current Day

The mechanisms in place during the 1993 - 2002 period by which society become aware of environmental problems are essentially the same as those of more recent periods. These are: the media, environmental education by schools, environmental institutions and NGOs, information published by research institutes and environmental authorities through different means. The mechanisms that generated social demand to act upon Colombia’s environmental problems and balance legitimate, competing social interests also remain in place. However, as described in section 4.1, the Ministry of the Environment and DNP⁴⁹³ were restructured, the national government proposed a reform of the Corporations to Congress, and new regulations were approved.

⁴⁸⁵ The *Sociedad de Agricultores de Colombia* (Colombian Society of Farmers) sued articles 159 and 160 of the Code of Natural Resources. The Colombian Constitutional Court (decision C-1063 of 2003) decided that those articles had been replaced by article 43 of Law 99 of 1993 and that since specific regulations for the application of this article had not been approved, those fees could not be charged.

⁴⁸⁶ *Ministerio del Ambiente la Vivienda y el Desarrollo Territorial*; Ministry of the Environment, Housing and Regional Development.

⁴⁸⁷ Personal communication with Mr. Javier Blanco; Head of the Office of Economic Analysis of the Ministry of the Environment Housing and Regional Development. January of 2004.

⁴⁸⁸ Decree 155 of 2003

⁴⁸⁹ *resolución* 240 of 2004 defined that the price of the water charge can vary between Col \$ 3.5 and Col \$ 42.

⁴⁹⁰ The adjusting factor can not be lower than 1, nor greater than 12.

⁴⁹¹ *Corporación Autónoma Regional de Cundinamarca*; Regional Autonomous Corporation of Cundinamarca

⁴⁹² Cruz M. P., Uribe E. and H. Coronado. 2003. El Valor de la Productividad Marginal del Agua en la Industria Manufacturera Colombiana. Documento CEDE No 38. Universidad de los Andes. Bogotá.

⁴⁹³ *Departamento Nacional de Planeación*; Department of National Planning.

The chapter on “Environmental Sustainability” of the National Development Plan for the 2002 – 2006, which deals primarily with natural resource and protected area policies, was jointly elaborated by the Ministry of the Environment and the Direction of Environmental Policy of the Department of National Planning⁴⁹⁴. The chapters on “Urban Quality”, “Natural Disaster Prevention”, and “Strengthening of Ethnic Groups” were elaborated by DNP⁴⁹⁵.

The environmental policy of the National Development Plan was discussed in 34 regional forums throughout Colombia, between November and December of 2002⁴⁹⁶. Those discussions were coordinated by the National Planning Council⁴⁹⁷. As a result, the Council wrote a report with series of recommendations⁴⁹⁸. In its report, the Council indicates that the fact that environmental considerations were included in various chapters of the National Policy is an important improvement. However, it also pointed out that those considerations are frequently included as “marginal elements of sector policies” and not as a central element of sectoral planning.

The recommendations of this Council were presented to DNP⁴⁹⁹ in December of 2002. According to Dr. Alejandro Gaviria, then Deputy Director of DNP⁵⁰⁰ and the person responsible for coordinating the elaboration of the National Development Plan, the contributions of the National Planning Council were “marginal”⁵⁰¹. He attributes this to four main causes: **i.** the limited technical support of this Council to conduct in depth evaluations and to propose alternatives to the content of the government’s National Development Plan, **ii.** the lack of a clear social mandate of the members of the Council⁵⁰², **iii.** the limited time that the Council is given to

⁴⁹⁴ Interview with Dr. Alejandro Gaviria; Under-Director of DNP (*Departamento Nacional de Planeación*; Department of National Planning) during the elaboration of the National Development Plan (2002- 2006), and presently at CEDE- Uniandes.

⁴⁹⁵ *Departamento Nacional de Planeación*; Department of National Planning.

⁴⁹⁶ Colombia se Pronuncia sobre el Plan Nacional de Desarrollo Comunitario 2002-2006. 2003. Consejo Nacional de Planeación. Bogotá.

⁴⁹⁷ National Planning Council was created by the Constitution of 1991 (article 340). It is a consultative body of the national government during the elaboration of the National Development Plan. This Council includes municipal mayors, the *Gobernadores* of the *Departamentos*, members of ethnic minorities and rural communities; and members of the economic, environmental, education and health sectors.

⁴⁹⁸ In this report the Council recognized that the chapter on “Environmental Sustainability” proposed to give continuity to previous environmental policies. It accepted that the challenge is not to write new documents of environmental policy but rather to effectively implement those that have been written. The Council recommended that a systematic program for the evaluation of the environmental policies that have been approved should be undertaken. It also recommended that mechanisms be developed to ensure that the institutes of environmental research conducted research activities that generated the information that the Ministry of the Environment requires for policy development.

⁴⁹⁹ *Departamento Nacional de Planeación*; Department of National Planning.

⁵⁰⁰ *Departamento Nacional de Planeación*; Department of National Planning.

⁵⁰¹ Personal Conversation with Dr. Alejandro Gaviria; former Under Director of DNP (*Departamento Nacional de Planeación*; Department of National Planning), and presently at CEDE- Uniandes.

⁵⁰² They are appointed by the President.

elaborate its recommendations (two months). Additionally, it is worth noting that the members of the Council do not receive remuneration for their work.

On the other hand, President Alvaro Uribe decided to add new functions to the Ministry of the Environment in the areas of land use, water and sanitation, based on the arguments provided to him in his presidential campaign. The environmental arguments in favour of this decision were⁵⁰³:

- i. “The responsibilities to issue regulations and policies for land use planning and zoning are divided between the Ministry of Environment and the Ministry of Development. These two institutions have different views on those matters, and those views need to be unified. Given the fact those regulations and policies are at the very center of environmental administration they should be unified under the responsibility of environmental authorities.”
- ii. “The regulations and policies for the water and sanitation sectors (aqueduct, sewer systems, sewage treatment, and waste management and disposal) are under the responsibility of the Ministry of Development. The Ministry of the Environment also issues regulations and policies relevant to the development of those sectors. However, the policies and regulations of those two institutions are often not coordinated or complementary. To ensure unified criteria these regulations and policies should be the responsibility of one agency.”

These arguments were not based on the results of any particular study. They were based on the experiences and judgments of the authors of the memorandum⁵⁰⁴. The closing of the Ministry of Development and the addition of new functions to the Ministry of the Environment did not require the approval of Congress. It was possible by means of a Presidential Decree⁵⁰⁵. This is because Congress had given President Uribe special and ample attributions to reform the Administration of the Central Government⁵⁰⁶.

As indicated in section 4.1 the Environmental Direction of DNP⁵⁰⁷ was closed in January of 2004 by means of a Presidential Decree⁵⁰⁸. The decision to close this Direction was adopted for two main reasons⁵⁰⁹:

- i. The Ministry of the Environment had been transformed into the MAVDT⁵¹⁰ which became responsible for areas relevant to urban development and land

⁵⁰³ Uribe E. 2002. El Ministerio del Desarrollo Sostenible: Razones por las cuales Sería Defendible una Fusión de los Ministerios del Medio Ambiente y Desarrollo. Memorandum.

⁵⁰⁴ The author of this case study was also a co-author of that memorandum.

⁵⁰⁵ Decree 216 of 2003.

⁵⁰⁶ Law 790 of 2002

⁵⁰⁷ *Departamento Nacional de Planeación*; Department of National Planning.

⁵⁰⁸ Decree 195 of 2004.

⁵⁰⁹ Interview with Dr. Alejandro Gaviria; former Under Director of DNP (*Departamento Nacional de Planeación*; Department of National Planning), and presently at CEDE- Uniandes.

planning. In accordance, and to facilitate coordinated communication between the Ministry and DNP⁵¹¹, the functions of the directions of Environmental Policy and Urban Development were placed under a new Direction: “Urban Development and Environmental Policy”.

- ii. In compliance with the fiscal strategy of the National Development Plan⁵¹², all the institutions of the government had to reduce by 20% their operational costs.

The National Environmental Forum mentioned in section 4.1 organized two public meetings in 2003 to debate the draft of the law which would reform the Corporations, and transfer functions from the Ministry of the Development to the Ministry of the Environment⁵¹³. The participants in those debates were mainly environmental advocates from NGO's, (including ECOFONDO), former Ministers of the environment and government officials from environmental agencies. Memories of those events have not been published.

Some of the assistants to the meetings of the National Environmental Forum criticized the transformation of the Ministry of the Environment into the MAVDT⁵¹⁴. They argued that those reforms diminished the importance of environmental issues in the agenda of the new Ministry, as issues related to housing, sanitation and water provision would receive higher attention. Others argued that the responsibilities of the new Ministry would increase the social relevance of the SINA⁵¹⁵ and that they would allow for a more comprehensive approach to environmental management in Colombia.

The draft of the law that would reform the Corporations was designed by the MAVDT⁵¹⁶, under the coordination of the Vice-minister of the Environment⁵¹⁷. The project was presented at a public meeting held in Congress in February of 2004⁵¹⁸. On that occasion, the Minister of the Environment⁵¹⁹ said the proposal responded to “... the President's commitment to generate mechanisms for transparency and efficacy in the institutions of SINA; particularly for the Corporations”⁵²⁰ and that it

⁵¹⁰ *Ministerio del Ambiente la Vivienda y el Desarrollo Territorial* ; Ministry of the Environment, Housing and Regional Development.

⁵¹¹ *Departamento Nacional de Planeación*; Department of National Planning.

⁵¹² Plan Nacional de Desarrollo: Hacia un Estado Comunitario. Chapter IV. 2003. Departamento Nacional de Planeación. Bogotá.

⁵¹³ The author of this case study was present in those four forums.

⁵¹⁴ *Ministerio del Ambiente la Vivienda y el Desarrollo Territorial* ; Ministry of the Environment, Housing and Regional Development.

⁵¹⁵ *Sistema Nacional Ambiental*; National Environmental System.

⁵¹⁶ *Ministerio del Ambiente la Vivienda y el Desarrollo Territorial* ; Ministry of the Environment, Housing and Regional Development.

⁵¹⁷ Interview with Mr. Juan Pablo Bonilla, Vice Minister of the Environment. Dec. 2003.

⁵¹⁸ The author of this case study was present.

⁵¹⁹ Susana Suárez.

⁵²⁰ Intervention of the Minister of the Environment at the Public Audience in Congress for the reform of Law 99 of 1993. www.minambiente.gov.co

took into account the "...reports of the General Accountant in relation to the mismanagement of contracts and to the political nature of the corporation's decisions". In reference to the changes in the composition of the Boards of Directors of the Corporations, the Minister indicated that the changes were proposed with the objective of "...increasing the technical level of the boards"⁵²¹.

The draft of the legal proposal presented to Congress, by which the Corporations would be reformed, was criticized at the National Environmental Forum meeting held in Bogotá in April of 2003⁵²². After that meeting, the former Ministers of the Environment⁵²³ and a group of environmental advocates⁵²⁴ wrote a letter to President Uribe in which they expressed their disagreements with the proposed reform⁵²⁵. In that letter, they requested an audience with the President to discuss the issues. Their request was not granted⁵²⁶. Additionally, the national media published recent editorials⁵²⁷ that question the benefits transforming the Ministry of the Environment into the MAVDT⁵²⁸. The central arguments presented by the environmental advocates against the reform were⁵²⁹: **i.** to solve the supposedly existing corruption problems of the Corporations, the government did not need to change the content the actual legal environmental framework⁵³⁰; **ii.** The present legal environmental framework includes several provisions that represent important conquests for the environmental movement, and the discussion of a new environmental law in Congress would place those gains at risk; **iii.** Other reforms included in the legal draft (for example the watershed councils or the Boards of Directors for the urban environmental authorities) could be created or reformed through alternative legal instruments, such as presidential decrees or local regulations.

The national government withdrew its proposal from Congress, after meeting with Congress and participating in National Environmental Forum, where the draft of the reform was presented and debated. It is widely accepted that this decision resulted from the social pressure exerted, and because the reasons presented by different stakeholders opposing the reform convinced the government. It is also possible

⁵²¹ Intervention of the Minister of the Environment at the Public Audience in Congress for the reform of Law 99 of 1993. www.minambiente.gov.co

⁵²² The author of this case study was present.

⁵²³ Manuel Rodríguez, Cecilia López, José Vicente Mogollón, Eduardo Verano, Juan Mayr

⁵²⁴ Julio Carrizosa, Margarita Marino, Ernesto Guhl, Claudia Martínez, Fabio Arjona.

⁵²⁵ Letter to President Alvaro Uribe. April 21 2003. Signed by Manuel Rodríguez, Cecilia Lopez, José Vicente Mogollón, Eduardo Verano, Juan Mayr, Julio Carrizosa, Margarita Marino, Ernesto Guhl, Claudia Martínez, Fabio Arjona and Eduardo Uribe.

⁵²⁶ Personal communications with several of the signatories of that letter. February of 2004.

⁵²⁷ Samper D. A Envenenar los Parques. February 25 2004. EL TIEMPO. Bogotá.

⁵²⁸ *Ministerio del Ambiente la Vivienda y el Desarrollo Territorial*; Ministry of the Environment, Housing and Regional Development.

⁵²⁹ Interviews with former ministers of the environment (Mrs. Cecilia Lopez, Mr. Eduardo Verano de la Rosa, Mr. Manuel Rodriguez, and Mr. Juan Mayer), with a series of environmental advocates including ECOFONDO's director (Mr. Rafael Colmenares) and with former directors of INDERENA (Margarita Marino and Julio Carrisoza).

⁵³⁰ Law 99 of 1993.

that national government assigned a higher priority to other reforms being discussed in Congress, among them the re-election of the President⁵³¹.

To face the allegedly existing corruption problems of the Corporations, the MAVDT⁵³² coordinated public open processes for the selection of the Directors of those institutions for the next three year period. The new and the re-elected Directors of the Corporations began their period during the first semester of 2004.

Finally, it is important to note that the some of the most important regulations approved during this period (Decree 3100 of 2003 on water pollution and fees, Decree 155 on water use and fees and Decree 3100 of 2003 on environmental licenses) were, as indicated, the result of consultation processes between the government and the private sector. The author of this case study could not find evidence that NGOs or other relevant stakeholders participated in those processes. The Technical Advisory Council for Environmental Policy and Regulation that had been created by Law 99⁵³³ as a mechanism to consult diverse and perhaps opposing interests in the process of environmental regulation design was not used. This closed procedure of agreements regarding the contents of environmental regulations poses risks with respect to the possible capture of the regulator, and could affect the transparency of the regulating process. In the absence of other relevant stakeholders such as ethnic groups, NGOs, local authorities and universities, the contents of regulations may not reflect divergent environmental quality interests and preferences. However, there has been no public reaction in relation to procedure used for writing environmental regulations.

⁵³¹ Interviews with Mr. Juan Mayer and Mr. Manuel Rodriguez, former ministers of the environment.

⁵³² *Ministerio del Ambiente la Vivienda y el Desarrollo Territorial*; Ministry of the Environment, Housing and Regional Development.

⁵³³ Article 11, Law 99 of 1993

5. CONCLUSIONS

The following are the main conclusions which can be drawn from this document:

1. Colombia's environmental regulations⁵³⁴ and institutions, mainly INDERENA⁵³⁵ and the Corporations, traditionally focused their activities on the environmental management of rural areas⁵³⁶. Urban environmental management was limited, and air pollution was monitored by health authorities. However, after 1970, Colombia experienced rapid economic growth, industrialization and urbanization⁵³⁷. As a result, the importance and social relevance of urban environmental problems gradually increased⁵³⁸.

Before 1993, environmental institutions frequently had conflicting mandates, as they played the double role of promoting regional and rural development and protecting environmental assets. Protected areas were created over the traditional territories of ethnic groups⁵³⁹ without consultation. Environmental institutions had limited accountability and mechanisms to balance conflicting environmental interests were not in place. Nevertheless, the judicial system began to play an important role after 1988, when legal actions were created to defend public environmental interests.

2. Public and private agents have promoted environmental education efforts since 1970^{540,541,542}. However, there is no evidence that those efforts generated a wide social interest for the solution of environmental problems before 1991. With time, the interest and the involvement of local communities in the solution of environmental problems increased. This was especially the case after the Constitution of 1991 and of Law 99 of 1993 came into place. Nevertheless, while rural and indigenous communities have actively participated in the protection of their social and environmental

⁵³⁴ The Code of Natural Resources

⁵³⁵ *Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of Environmental and Natural Resources

⁵³⁶ Sánchez E., E. Uribe. 1994. Contaminación Industrial en Colombia. DNP. PNUD.

⁵³⁷ Ocampo J.A., J. Bernal, M. Avella, M. Errázuriz. 1994. La Consolidación del Capitalismo Moderno en Colombia 1945 - 1986. *En* Ocampo J. A. (ed.) *Historia Económica de Colombia*.

⁵³⁸ Sánchez E., E. Uribe. 1994. Contaminación Industrial en Colombia. DNP. PNUD.

⁵³⁹ Barí, Inga, Sicuani, Piaroa, Piapoco, Curripaco, Puinave, Cunbeo, Kogui, Arhuaco, Arzarios, Huitotos, Wiwa, Nasa, Miraña, Embera Chamí, Emnbaera catío, Tule, Waunaan, Empera Siapidada etc.

⁵⁴⁰ División de Educación Ambiental INDERENA. 1990. Educación Ambiental y Desarrollo Social. *En*. Primer Seminario sobre Educación Ambiental y Desarrollo Social. Bogotá 1990.

⁵⁴¹ Ibañez A., y E. Uribe. 2003. Medio Ambiente y Desarrollo Económico: Priorización de de la Inversión Ambiental con Criterios Económicos. Documento CEDE No 33. Universidad de los Andes.

⁵⁴² Álvarez H. 1997. Movimiento Ambiental Colombiano: Como un pájaro blanco cegado por la nieve. *En*. *Se hace Camino al Andar: Aportes para una historia del Movimiento Ambiental Colombiano*. ECOFONDO.

rights and have influenced government and private sector decisions⁵⁴³, there is evidence that urban communities have not played an equal role in this respect⁵⁴⁴. The interest of rural and indigenous communities in environmental matters could be related to the importance of the quality and size of the natural resource stock for their local economies, as well as to the cultural importance given by these indigenous communities to the conservation of their ancestral territories⁵⁴⁵. On the other hand, the lower social participation of urban communities in environmental matters could be attributed to insufficient public information regarding the impacts of environmental deterioration on health and productivity.

3. National and local media interest in environmental matters has increased and evolved. During the seventies and until the late eighties, the media had limited access to environmental information and demonstrated little interest in environmental matters. By the late eighties and early nineties, international negotiations and information related to global environmental problems triggered the interest of the media in global environmental issues⁵⁴⁶. The institutional environmental reform discussed during the early nineties also increased the presence of environmental matters in the media. However, during those years information relative to the state of the local environment was not as readily available as today. Today, environmental matters appear frequently in the media. Likewise, with the increase in environmental monitoring, more information has become available. For example, the environmental reforms proposed by President Uribe have been widely debated in the national and local media. The press has, on occasions, contributed to redirect governmental decisions, such as the application of pesticides to control illicit crops in National Parks⁵⁴⁷.
4. The Colombian government has had a long tradition of research in the area of natural resources⁵⁴⁸. Between 1970 and 1991, environmental research and technical information appeared to play a greater role than social demand in the definition of environmental strategies⁵⁴⁹. The information

⁵⁴³ Logros y Avances de la Gestión Ambiental en Colombia: "Proyecto Colectivo Ambiental".

Informe de Gestión 1998 – 2002. Ministerio del Medio Ambiente.

⁵⁴⁴ Cruz G., E. Uribe, 2002. Regulator and Community Effects on Industrial Environmental Performance in Bogotá, Colombia. CEDE. Bogotá.

⁵⁴⁵ Política de Participación Social en la Conservación. 2001. Unidad Administrativa del Sistema de Parques Nacionales de Colombia. Ministerio del Medio Ambiente.

⁵⁴⁶ Comunicación y Medio Ambiente. Elementos para la Definición de Estrategias Informativas en Temas Ambientales. 1993. INDERENA, PNUD.

⁵⁴⁷ February 25 and 26 of 2004. EL TIEMPO

⁵⁴⁸ The *Instituto de Recursos Naturales* of the *Universidad Nacional* founded in 1940, the Research Unit of INDERENA (*Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of Environmental and Natural Resources) and the IGAC (*Instituto Geográfico Agustín Codazzi*; Agustín Codazzi Geographic Institute) gathered and published research and scientific findings related to nature of Colombia's ecosystems and natural resources.

⁵⁴⁹ Interviews with Julio Carrizosa, Margarita Botero and Manuel Rodríguez; former Directors of INDERENA (*Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of

gathered and published in local scientific and technical journals⁵⁵⁰ constituted an important input for the definition of the country's conservation priorities and strategies, particularly for the creation of the National Parks⁵⁵¹. However, only limited circles within the government and academia had access to the technical information gathered by their institutions⁵⁵²; consequently, the need for an institutional environmental reform first began to be discussed within those circles.

Environmental monitoring data has also been a central input in the design environmental policy. Air and water quality data gathered during the sixties indicated that ambient concentrations of several pollutants were occasionally above the standards of the Sanitary Code and of the Decree 1594 of 1984⁵⁵³. The information gathered by urban environmental monitoring before 1990 provided arguments in favor of creating new institutions specialized in urban environmental administration. This information also influenced the contents of both the Environmental Policy of 1991 and of Law 99 of 1993. Therefore, monitoring data and technical information have effectively contributed to shape decisions relative to the design of the Colombia's urban environmental policies and institutions.

In accordance with Colombia's long tradition in research, Law 99 of 1993 created and restructured five environmental research institutions to provide the technical and scientific information needed for the design of environmental policies and regulations⁵⁵⁴. Although those institutions have increased the availability of public information related to the country's natural resources and environment, the impact of their investigations on the development of regulations and policies has been less evident⁵⁵⁵. This situation can partially be explained by the relatively low participation of national and local sources in funding research projects.

5. The role of NGO's in environmental management and control has increased and evolved over time. Before 1991 these organizations concentrated their activities in environmental education at the local level. By the late eighties

Environmental and Natural Resources). The author of this case study represented the Department of National Planning in the Board of Directors of IDERENA between 1990 and 1994.

⁵⁵⁰ *Trianea and Colombia Geográfica*

⁵⁵¹ *Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of Environmental and Natural Resources

⁵⁵² The Instituto de Recursos Naturales of the Universidad Nacional; the Instituto Geográfico Agustín Codazzi; and the Federico Medem Research Unit of IDERENA (*Instituto Nacional de Recursos Naturales y del Medio Ambiente*; National Institute of Environmental and Natural Resources).

⁵⁵³ Sánchez E., E. Uribe. 1994. Contaminación Industrial en Colombia. DNP. PNUD.

⁵⁵⁴ Title V (articles 16 to22), Law 99 of 1993.

⁵⁵⁵ Page 14 of the National Policy for Environmental Research. August 2.002. The Ministry of the Environment. Bogotá.

FUNDEPÚBLICO⁵⁵⁶, created to defend public interests through the judicial system⁵⁵⁷, played an important role during the debates that led to the approval of law 99 of 1993, by successfully in favor of the inclusion of public participation mechanisms in that law. With the creation of ECOFONDO in 1993, financial resources from two debt-for-nature swaps negotiated by DNP⁵⁵⁸ during 1992 and 1993 were channeled to strengthen the role of NGOs in the implementation of environmental projects at the local level^{559,560}.

NGOs have increased their vigilance over environmental policies and management at the regional level, particularly through their participation in the Boards of Directors of the Corporations. At the national level, NGOs have also strengthened their participation in the design, evaluation and monitoring of environmental policies and management. In this respect, the role of the National Environmental Forum has been noticeable. The public debates organized by the National Environmental Forum during 2003 and 2004 facilitated dialogues between civil society and government, which contributed to the reform of Law 99 of 1993 proposed by President Uribe.

6. National environmental institutions and priorities have also been shaped by developments and discussions in international environmental negotiations. The preparatory meetings of the 1992 Rio de Janeiro Conference on Environment and Development, the Constitutional Assembly of 1991 and the debates leading to the legal environmental reforms approved in 1993 occurred simultaneously. Several senators and government officials, including the President, participated in those three processes. As a result, the Constitution includes the principle of sustainable development as one of its basic precepts⁵⁶¹. Likewise, Law 99 of 1993 includes the notion of sustainable development as a guiding principle.

International agreements between the Colombian Government and the governments of Canada and the United States led to the reduction of the bilateral debts with those countries. ECOFONDO was created as a result of those agreements; this organizations' growth also contributed to increase the participation of communities and NGOs in environmental management. With resources from the debt-for-nature swaps, NGOs and communities have increased environmental awareness, protected the rights of vulnerable groups, and executed environmental solutions.

⁵⁵⁶ *Fundación para la Defensa del Interés Público*; Foundation for the Defense of Public Interests

⁵⁵⁷ Sanchez E., and G. Medina. 1994. *En. Sánchez E., E. Uribe. 1994 (ed). Contaminación Industrial en Colombia*. DNP. PNUD.

⁵⁵⁸ *Departamento Nacional de Planeación*; Department of National Planning.

⁵⁵⁹ ECOFONDO. 2003. 3652 días Construyendo Ambientalismo, Democracia y Sostenibilidad en Colombia. Boletín número 24. Bogotá.

⁵⁶⁰ Report of the Secretary of the Fund for Environmental Action to the Boar of Directors, January 2004.

⁵⁶¹ Article 80 of the Political Constitution of 1991.

7. With the creation of collective environmental rights to a clean environment⁵⁶² and the judicial mechanisms to protect them in the Constitution of 1991, the role of the judicial system in environmental matters has increased and evolved significantly. Urban and rural communities, including indigenous communities, have used legal actions intensively to protect their environmental and cultural rights.^{563,564,565,566} Through legitimate and stable decisions of the judicial system, those legal actions have operated as mechanisms which take into account and ensure the long term protection of the interests and rights of those communities.

8. The constitutional right to participate in decisions with environmental implications⁵⁶⁷ set the basis for the consultation process which led to the profound reform of Colombia's environmental institutions spelled out in Law 99 of 1993. As a result, Law 99 of 1993 represents a social agreement with respect to the institutional mechanisms by which environmental policies are designed, developed evaluated and adjusted in Colombia. This law created mechanisms for the collection and dissemination of environmental information (research institutes and environmental authorities with monitoring and communication capacities); it facilitated the participation of a range of social actors including NGOs, the private sector, the ethnic minorities and the local governments in the definition of national and local environmental priorities; and it created mechanisms for social participation and control, such as public audiences in the environmental evaluation process.

9. Law 99 of 1993 created a series of councils and boards as instruments to balance legitimate, competing social interests in the design of environmental policies and regulations. There are no formal evaluations of the capacity of these instruments to effectively balance competing social interests, and there is no consensus regarding their benefits. However, some objective facts indicate that these still have room for improvement. In the case of the National Environmental Council⁵⁶⁸ the participation and interest of the different Ministers in the Council meetings has declined, because the policy documents presented and discussed bear little relevance to their sectoral policies or it is not evident to them.

⁵⁶² Articles 79 and 80 of the Political Constitution

⁵⁶³ Sanchez T., G. Medina. 1994. Cumplimiento y Aplicación de la Legislación Ambiental. *En* Sánchez E., E. Uribe (ed.). Contaminación Industrial en Colombia. DNP. PNUD.

⁵⁶⁴ ECOFONDO. 2002. El Fortalecimiento Regional Propósito del 2002. Boletín número 23. Bogotá.

⁵⁶⁵ Estadísticas sobre la Acción de Tutela. 1999. Corte Constitucional. Consejo Superior de la Judicatura. Bogotá.

⁵⁶⁶ Logros y Avances de la Gestión Ambiental en Colombia: "Proyecto Colectivo Ambiental". Informe de Gestión 1998 – 2002. Ministerio del Medio Ambiente.

⁵⁶⁷ Articles 79 and 80 of the Political Constitution

⁵⁶⁸ Article 13, Law 99 of 1993

On the other hand, after having operated as a mechanism to balance diverse social interest in the process of writing of environmental regulations, the Ministry of the Environment has not convened the Technical Advisory Council for Environmental Policy and Regulation⁵⁶⁹ since 1998. Since then, environmental regulations⁵⁷⁰ have resulted from negotiations and agreements between the government and the regulated agents, without the participation of other relevant stakeholders such as NGOs.

Finally, the transparency of the decisions of the Boards of Directors of the Corporations, created as mechanisms to balance interests at the regional and local level, has been questioned. Some Directors of Corporations and their Boards have allegedly engaged in the trade of mutual favors to maintain their privileges and positions, although this has not been proven or documented⁵⁷¹. During the second semester of 2003, the Office of the General Attorney suspended seven Directors of Corporations and ordered investigations against them for possible offenses related to the mismanagement of financial resources of the Corporations.

10. The Colombian Congress played a central role in the creation of Colombia's institutional and legal framework for environmental administration. In Congress, senators and representatives of different political affiliations, regions, ethnic groups and backgrounds were responsible for the approval of the final content of Law 99 of 1993. The debates in Congress served as an appropriate scenario for balancing different social interests and priorities. The range of instruments created in Law 99 to facilitate the participation of representatives of different interest groups in the design and monitoring of environmental policies and regulations, reflects the Congress's intention to create mechanisms that ensure the long term balance of interests.
11. The largest reforms in environmental administration since Congress approved Law 99 in 1993 are currently taking place. These include the integration of environmental, water, sanitation, territorial zoning and housing under one Ministry.

As a preamble to these reforms, ANDI⁵⁷² manifested its discontent with the content of environmental regulations⁵⁷³. In addition, the industrial sector gave low marks to the Corporations with respect to their honesty and

⁵⁶⁹ Article 11, Law 99 of 1993.

⁵⁷⁰ Decrees 3100 on Water Pollution and Fees, 155 on Water Use and Fees and 3100 on Environmental Licenses; all approved in 2003.

⁵⁷¹ Interview with several board members who authorized to use this information provided that they not be referenced.

⁵⁷² *Asociación Nacional de Industriales*; National Association of Manufacturing Industries.

⁵⁷³ Mr. Luis Carlos Villegas. President of ANDI (*Asociación Nacional de Industriales*; National Association of Manufacturing Industries) at the Closing Ceremony of the International Congress on Eco Efficiency. Cartagena October 19 2001.

transparency⁵⁷⁴, and a recent study found that some environmental regulations could affect the competitiveness of the industry⁵⁷⁵. Additionally, there was concern over the differing views and interpretations between the environmental authorities and the national and local agencies responsible for urban sanitation and land zoning.

Some of the reforms and proposals of the present government have been criticized by the NGOs, environmental activists and by the media^{576,577}. Opponents to the reforms have argued that the consultation process was limited, that the proposed reforms seek to centralize environmental management, to lower the importance of environmental matters in the agenda of the government, and to decrease the participation of social organizations and communities. The reaction of the media, the NGOs and environmental advocates can have several interpretations. One is that these actors and advocates currently have a larger capacity to contribute to balance competing social interests; in this case the balance of environmental interests versus other government priorities, such as low income housing or economic development. As discussed under numeral 1.1, before the Constitution of 1991 these organizations did not have such influence. Additionally, their public opposition to the reforms can be interpreted to reflect the existence of mechanisms that contribute to the long-term maintenance of the country's commitment with sound environmental administration.

⁵⁷⁴ Uribe E., G Cruz, H. Coronado, J. García. 2001. La Gestión Ambiental y la Competitividad de la Industria Bogotana. Proyecto Andino de Competitividad. Informe Final. Universidad de los Andes. Bogotá.

⁵⁷⁵ Uribe E. La Gestión Ambiental y sus Efectos sobre la Competitividad de la Industria Colombiana. *En*. Del Valle M., (ed). 2003. Competitividad y Contaminación Industrial en la Región Andina. CAF.

⁵⁷⁶ The National Environmental Forum mentioned in section 4.1 organized four public debates between July of 2002 and November of 2003.

⁵⁷⁷ Samper D. A Envenenar los Parques. February 25 2004. EL TIEMPO. Bogotá.

6. ANNEX

ANEX 1

Table 1. Environmental Policy Documents Written in 1996 under the Coordination of the Department of National Planning

Title	Authors	Main recommendations for environmental policy
Issues in Biodiversity Conservation Policy in Colombia	Stephen Polansky ⁵⁷⁸	<ul style="list-style-type: none"> • Biodiversity conservation should be maximized given a limited budget. • Conservation priorities should be an economic decision. • Biodiversity should be measured for the design of conservation policy. • The opportunity costs of conservation strategies should be measured. • The value of biodiversity has to be taken into account in policy design.
Environmental Policies for Waste Management and Disposal en Colombia.	Ernesto Sanchez T. ⁵⁷⁹ James J. Opaluch ⁵⁸⁰	<ul style="list-style-type: none"> • Analysis of the legal / institutional framework of waste management. • Presented the consequences of waste management practices. • Proposed development of: a "National Solid Waste Plan". • Proposed the development of regulatory and institutional changes. • Proposed the development of new financial mechanisms and regulation. • Proposed the development of policies for sanitary, hazardous and toxic waste management. • Proposed the development of economic and fiscal incentives for waste minimization, recycling and reutilization.
Managing Forest Resources	William F. Hyde ⁵⁸¹ Paola Ferreira ⁵⁸²	<ul style="list-style-type: none"> • Land transfers to native black and indian communities are sound and equitable strategies for forest conservation. • Incentives for forest plantations are economically justifiable if they are sufficient to induce new plantations. • Extension programs may be required to complement economic incentives for tree plantations. • Improvement of harvest and processing technologies is needed. • Stumpage fees are too low and the regulation needs to be modified to include a system of auctions. • The impact of trade and macroeconomic policy on forest sustainability should be considered.

⁵⁷⁸ Department of Agricultural and Resource Economics Oregon State University.

⁵⁷⁹ Environmental Studies Institute. Universidad Nacional de Colombia.

⁵⁸⁰ Department of Environmental and Resource Economics. University of Rhode Island.

⁵⁸¹ Virginia Polytechnic Institute and State University.

⁵⁸² Alexander Von Humboldt Institute of Colombia

Title	Authors	Main issues / contributions to national policy
Water Resource Management	James S. Shortle ⁵⁸³ Fernando Gaitán ⁵⁸⁴	<ul style="list-style-type: none"> • Pricing of water is essential for the efficient allocation of water resources and to minimize the costs of water scarcity. • Water should have a price that includes the costs of operation, maintenance and improvement of supply systems; and the costs of conservation of scarce supplies. • The institutional constraints for water pricing have to be considered. • Article 43 of Law 99 impedes the development of a sound system of water charges. • Current water fees are too low to act as an incentive for efficiency. • Pricing practices should be revised to improve efficiency of water use. • Water pricing should be decentralized if it is to be efficient and sensitive to local conditions. • The following principles are needed for efficient allocation of water: flexibility (rights should be transferable), security of tenure, recognition of opportunity costs, fairness, administrative ease.
Environmental Effects of agricultural Policies: Lessons for Colombia	Bruce Gardner ⁵⁸⁵ Carlos F. Jaramillo ⁵⁸⁶	<ul style="list-style-type: none"> • “Benign” technological change in agricultural production should be promoted. • Artificial supports (tax exemptions, cheap credit, price supports) for farming activities with high environmental impact should be eliminated. • Subsidies of inputs should be eliminated. • Policies that pressure deforestation should be adjusted. • Water pricing could be used to control inefficient use of irrigation water. • Rural development projects, such as irrigation systems, should be environmentally evaluated.
Regulation of Point Source Water Pollution: lessons learned.	Maria D. Espino ⁵⁸⁷ John K. Horowitz ⁵⁸⁸	<ul style="list-style-type: none"> • Although the underlying logic of economic instruments is compelling, the efficacy of pollution taxes is largely unknown. • The destination of revenues from pollution taxes has to be defined.

⁵⁸³ Department of Agricultural Economics and Rural Sociology. The Pennsylvania State University

⁵⁸⁴ Universidad de los Andes. Bogotá

⁵⁸⁵ Department of Agricultural and Resource Economics. University of Maryland

⁵⁸⁶ Universidad de los Andes. Bogotá

⁵⁸⁷ Universidad de los Andes. Bogotá

⁵⁸⁸ Department of Agricultural and Resource Economics. University of Maryland

Title	Authors	Main issues / contributions to national policy
Regulating Air Pollution from Fixed Point Sources: Lessons to Colombia from international experiences.	Alberto Galán ⁵⁸⁹ Allen Blackman ⁵⁹⁰ Winston Harrington	<ul style="list-style-type: none"> • Given air pollution levels by fixed sources, it is worthwhile to devote scarce fiscal resources to control them. • Institutional capacity building for pollution control is necessary. • Given local institutional constraints, marketable permits don't seem appropriate; taxes on inputs might be suitable. • Air monitoring systems are needed in large cities.
Mobile Sources and Air Pollution Policy: international Experience and lessons for Bogotá	Alan Krupnick ⁵⁹¹ Eduardo Uribe ⁵⁹²	<ul style="list-style-type: none"> • Since pollution is not severe, a preventive approach should be undertaken. • Policies should be faced-in slowly to prevent economic dislocations. • The cost-effectiveness of alternative policies should be analyzed. • The impact of policies on income distribution should be evaluated. • Fuel prices should reflect true social costs: subsidies should be eliminated. • The focus should be on public transportation. • Environmental institutions have to be strengthened • Public communication and education about air pollution is needed.

⁵⁸⁹ Colombian Department of National Planning.

⁵⁹⁰ Resources for the Future

⁵⁹¹ Resources for the Future

⁵⁹² DAMA (Departamento Administrativo del Medio Ambiente de Bogotá; Environmental Department of Bogotá).

Table 2. Main Environmental regulations issued by the Ministry of the Environment between 1994 and 2003.

Regulation	Year	Objective
Decree 0632	1994	Defines the procedures for the institutional transition to the new legal and institutional regime of the National Environmental System, SINA.
Decree 1868	1994	Defines the organizational structure of the Ministry of the Environment.
Decree 1768	1994	Regulates the organization and functioning of the Regional autonomous Corporations.
Decree 1275	1994	Restructures the Environmental Regional Corporation of the Cauca Valley.
Decree 1339	1994	Regulates the transfer of property taxes in favour of the regional autonomous Corporations.
Decree 1933	1994	Regulates economic transfers of the electric sector to the Regional autonomous Corporations
Decree 1867	1994	Defines the functioning of the National Environmental Council.
Decree 0966	1994	Regulates the functioning of the Technical Council for Environmental Policy and Regulation.

Regulation	Year	Objective
Decree 1277	1994	Establishes and organizes IDEAM ⁵⁹³
Decree 1600	1994	Regulates the functioning of the National Environmental System, SINA, in aspects related to environmental research and information.
Decree 1276	1994	Organizes and restructures INVEMAR ⁵⁹⁴ .
Decree 1603	1994	Organizes and establishes three biological research institutes: The Von Humboldt, SINCHI, and Von Newman.
Decree 1753	1994	Regulates the Environmental Licensing Process
Decree 1865	1994	Regulates the Regional Environmental Plans of the Regional autonomous Corporations, and their harmonization with local and regional environmental management.
Decree 2164	1995	Defines the procedures of land titling to native Indian communities
Decree 1745	1995	Defines the procedures of land titling to native black communities
Decree 948	1995	Regulates the prevention and control of air pollution.
Decree 1791	1996	Establishes the regime for economic utilization of forest resources.

⁵⁹³ *Instituto de Hidrología, Meteorología y Estudios Ambientales*; National Institute of Hydrology, Meteorology and Environmental Studies.

⁵⁹⁴ *Instituto de Investigaciones Marinas y costeras "José Benito Vives de Andreis"*, "José Benito Vives de Andreis" National Institute for Marine and Coastal Research.

Regulation	Year	Objective
Decree 2340	1997	Regulates the organizations for the prevention and attention of forest fires
Decree 900	1997	Creates the economic incentive for forest conservation.
Decree 901	1997	Regulates the use of pollution taxes for the discharge of residual waters.
Decree 337	1998	Regulates the use of natural resources for the preparation of pharmaceuticals.
Decree 1996	1999	Regulates the functioning of Private Natural Reserves.
Decree 309	2000	Regulates scientific research on biological resources.
Decree 2676	2000	Regulates the management of hospital and sanitary residues.
Decree 1609	2002	Regulates the road transport of dangerous substances.
Decree 1729	2002	Regulates the management and administration of watersheds.
Decree 1180	2003	Regulates Environmental Impact Assessments and the licensing process.
Decree 155	2003	Regulates the access to water resources and associated water fees
Decree 3100	2003	Regulates water pollution and its associated fees

ANEX 2
ACRONYMS

Acronym	Spanish Name	English Translation
ANDI	<i>Asociación Nacional de Industriales</i>	National Association of Manufacturing Industries
CDMB	<i>Corporación Autónoma Regional para la Defensa de la Meseta de Bucaramanga</i>	Regional Autonomous Corporation for the Defense of the <i>Bucaramanga</i> Plateau
CAR	<i>Corporación Autónoma Regional de Cundinamarca</i>	Regional Autonomous Corporation of Cundinamarca
CAP	<i>Corporación Autónoma Regional del Putumayo;</i>	Regional Autonomous Corporation of Putumayo (Today Corpoamazonía)
CINEP	<i>Centro de Investigación y Educación Popular</i>	Center for Research and Popular Education
COLCIENCIAS	<i>Fondo Colombiano de Investigaciones Científicas</i>	Colombian Fund for the Financing of Science
CONPES	<i>Consejo Nacional de Política Económica y Social</i>	National Council for Economic and Social Policy
CORALINA	<i>Corporación para el Desarrollo Sostenible del Archipiélago de San Andrés, Providencia y Santa Catalina</i>	Corporation of the Sustainable Development of the <i>San Andrés, Providencia and Santa Catalina</i> Archipelago
CORNARE	<i>Corporación Autónoma Regional Río Negro Nare</i>	<i>Río Negro Nare</i> Regional Autonomous Corporation
CORPOCALDAS	<i>Corporación Autónoma Regional de Caldas</i>	Regional Autonomous Corporation of Caldas
CORPOGUAJIRA	<i>Corporación Autónoma Regional de la Guajira</i>	Regional Autonomous Corporation of Guajira
CORPOCESAR	<i>Corporación Autónoma Regional Del Cesar</i>	Regional Autonomous Corporation of Cesar
CORTOLIMA	<i>Corporación Autónoma Regional del Tolima</i>	Regional Autonomous Corporation of <i>Tolima</i>
CRC	<i>Corporación Autónoma Regional del Cauca</i>	Regional Autonomous Corporation of <i>Cacuca</i>
CRQ	<i>Corporación Autónoma Regional del Quindío</i>	Regional Autonomous Corporation of <i>Quindío</i>
CVC	<i>Corporación Autónoma</i>	Regional Autonomous

Acronym	Spanish Name	English Translation
	<i>Regional del Valle del Cauca</i>	Corporation of the Cauca Valley
CVS	<i>Corporación Autónoma Regional del Valle del Sinú</i>	Regional Autonomous Corporation of the Sinú Valley
DADIMA	<i>Departamento Administrativo Distrital del Medio Ambiente de Barranquilla;</i>	Environmental Department of Barranquilla.
DAMA	<i>Departamento Administrativo del Medio Ambiente de Bogotá</i>	Environmental Department of Bogotá
DIMAR	<i>Dirección General Marítima</i>	General Marine Direction
DNP	<i>Departamento Nacional de Planeación</i>	Department of National Planning
ECOPETROL	<i>Empresa Colombiana de Petróleos</i>	Colombian Oil Agency
FONADE	<i>Fondo Financiero de Proyectos de Desarrollo</i>	Financial Fund for Development Projects
FUNDEPÚBLICO	<i>Fundación para la Defensa del Interés Público</i>	Foundation for the Defense of Public Interests
HIMAT	<i>Instituto Colombiano de Hidrología Hidrometeorología y Adecuación de Tierras</i>	Colombian Institute of Hydrology, Hidrometeorology and land Restoration
IDEAM	<i>Instituto de Hidrología, Meteorología y Estudios Ambientales</i>	National Institute of Hydrology, Meteorology and Environmental Studies
IGAC	<i>Instituto Geográfico Agustín Codazzi</i>	Agustín Codazzi Geographic Institute
INGEOMINAS	<i>Instituto de Investigación e Información Geocientífica, Minero-Ambiental y Nuclear</i>	<i>Institute for Geological, Mining and Environmental Research and Information</i>
INVEMAR	<i>Instituto de Investigaciones Marinas y costeras “José Benito Vives de Andreis”</i>	“José Benito Vives de Andreis” National Institute for Marine and Coastal Research
INDERENA	<i>Instituto Nacional de Recursos Naturales y del Medio Ambiente</i>	National Institute of Environmental and Natural Resources
SINA	<i>Sistema Nacional</i>	National Environmental

Acronym	Spanish Name	English Translation
	<i>Ambiental</i>	System
SINCHI	<i>SINCHI</i>	It means “knowledge” in the native language of the indigenous <i>Ingano</i> families of the Amazonian region
UAESPNN	<i>Unidad Administrativa de Parques Nacionales</i>	Unit of National Parks
USAID	<i>Agencia de los Estados Unidos para el Desarrollo Internacional</i>	The United States Agency for International Development