

JURIDICAL FEASIBILITY OF CIRF APPROACH IN TWO LATIN AMERICAN CASE STUDIES: HYDROPOWER DEVELOPMENT (RALCO DAM) ON THE RIO BIOBIO (CHILE) AND RESTORATION OF RIO BOGOTA (COLOMBIA) (Hellen Pacheco-CIRF and CIRPS, Università La Sapienza, Roma) (15')

First case-study: Chile, South America, Biobío Region (VIIIth Administrative Region) of Chile.
Title: A conflicting legal framework.

Chile is an emergent country with a growing economy, so that there are a lot of environmentally related issues, including hydropower development and indigenous settlements. The Biobío river basin is the most important hydrologic system in Chile (24.260 km²). At the moment, there is an installed capacity of 1860 MW in the basin, which will be increased by Ralco Powerplant, a 155 m tall dam on the river, starts operating in 2004. The hydroelectric project involves flooding 3,467 hectares of land belonging to 131 Pehuenche families in the areas of Quepuca Ralco and Ralco Lepoy in Chile's southern Region VIII. Eight indigenous families have refused to sell their ancestral lands to allow the project to go ahead. The conflict has lasted for over six years. ENDESA, a Spanish company in charge of the dam, proposes to relocate the Pehuenche to farms in the highlands above the dam. Environmentalist and Indigenous rights groups oppose the project and have presented legal action to the Concepción and Santiago Appeals Courts unsuccessfully. They presented also other court actions to Chilean Supreme Court, but ENDESA compensated generously the indigenous families, who finally consented to leave their territories.

A different, integrated approach is needed, where scientific data can be collected and analysed, involving holistic planning, from all parties in order to improve the legislation. Chilean law needs to create a strategic environmental evaluation study and to consider a peaceful negotiating methods.

The legal framework of this case-study is the following: the 1980 Political Republic Constitution, the 1993 Indigenous Chilean Law (No. 19.253), the 1981 Water Code, the 1982 General Law on Electric Services, the 1994 Environmental Bases Law (No. 19.300) and 1997 specific regulations for the environmental evaluation study (Regulation No. 30).

Second case-study: Colombia, South America, Bogota District.

Title: a comprehensive legal framework for a participatory approach.

Brief description of the case-study: the Bogota River and surrounding tributaries are badly polluted. This is of huge environmental impact for the water river and it produces serious problems for the health and quality of life of the surrounding population. In addition, the poor quality of the river water has highly detrimental consequences on the operation and maintenance of three hydroelectric plants situated downstream on the Bogota River.

The sewage contains waste from residential communities, leather factories, industries and slaughterhouses without water-waste treatment systems. Therefore the river contains a high level of BOD (biological oxygen demand) and suspended solids, as well as heavy metals including mercury and cadmium.

The authorities has developed a pollution control program for the Bogota River financed by the InterAmerican Development Bank. This program has been implemented independently by the bank and authorities without of the participation of the community. This program aims to reduce the level of contaminants that are discharged into the river. Another deterrent involves an industrial "pollution tax," together with the construction of a series of wastewater treatment plants. The "pollution tax" created many conflicts between authorities, environmentalists, the community and industrialists.

In this specific case-study, the legal framework is more or less satisfactory from the participation point of view, but doesn't work, why?, What can we do? Education, reinforcement of environmental values and increased community participation is necessary.

Legal Framework: the 1991 Political Republic Constitution, the 1993 Natural Resources Code, the 1993 Environmental Law, the 1991 Decret N° 901 "the pollution tax", the Management Territorial Plan of Bogota District.