

Colombia's Cundinamarca Eastern Perimeter Corridor project In the public interest?

The Cundinamarca Eastern Perimeter Corridor is a public-private partnership (PPP) road logistics project that aims to increase connectivity in Bogota, Colombia. The project is part of Colombia's fourth generation (4G) highway plan, which is the country's most ambitious programme to create a toll road network in recent years. To accommodate and attract foreign investors, the Colombian government created a new bank – the National Development Finance Institution. However, this project illustrates conflicts in infrastructure development that cannot be underestimated, including:

- failure to prove that this project was in the public utility
- increased tax burden for Colombia's citizens
- lack of meaningful consultation and accountability
- social and environmental impacts.

It is critical to establish better mechanisms for the implementation of safeguarding policies for all of the financial institutions involved in infrastructure projects. This is as important as reflecting critically about the processes, the knowledge and financial participation in the early stages of infrastructure projects.

Project details

The Eastern Perimeter Corridor project aims to develop a road axis from north to south in the eastern part of Bogota, the capital of Colombia. It consists of the rehabilitation, construction, improvement, operation and maintenance of 152.08 km of roads in eight municipalities within the department of Cundinamarca. The stated objective is to provide an alternative way of reaching the capital and eastern part of the country, thereby alleviating traffic in the outskirts of Bogota.

This work has been declared to be of both "public utility" and "national interest". But the project also crosses areas close to different protected and productive forest reserves that are rich in water resources, as well as territories of high cultural significance.

The project is part of Colombia's 4G highway plan, which is the country's most ambitious programme to create a nationwide toll road network in recent years. The 4G plan seeks to build nearly 8,000 km of roads, with an investment of approximately US\$ 1.3 billion (nearly 50 trillion Colombian pesos). To implement this programme, a regulatory package was developed to enable the financial participation of private actors through PPPs.

Institutional outlook and the role of international financial institutions

In Colombia, the existence of a specific agenda to implement PPPs is clearly identifiable in multilateral development bank policies and practices.² This agenda has consisted of a package of investment projects and technical assistance for regulatory and institutional adequacy in the field of PPPs. One example is the programme of support in the process of private participation and concessions in infrastructure (PPCI – to use its Spanish acronym).³ This was supported technically and financially by the World Bank (WB) and the Inter-American Development Bank (IDB).⁴ The latter is one of the main funders of the Eastern Perimeter Corridor. Among the main results of the programme was the structuring of the PPP Act N°1508 of 2012, which established the legal regime for PPPs at the national level.⁵

Another issue to consider is the creation of the National Development Finance Institution (Financiera Nacional de Desarrollo – FDN, to use its Spanish acronym) as a national development bank to look for sources of funding, especially from the private sector. The FDN is a mixed entity, linked to the Ministry of Finance, with the participation of several foreign banks. For instance, 8.9 per cent of its shares are owned by the WB's International Finance Corporation (IFC), 8.9 per cent by the Japanese Bank Sumitomo Mitsui Banking Corporation and 8.7 per cent by the Development Bank for Latin America and the Caribbean (CAF). The national government, through Grupo Bicentenario S.A.S (a holding company comprising some of the companies in which the state has participated in a financial conglomerate made up of state companies) owns 73.4 per cent of the shares.

The Eastern Perimeter Corridor: a national priority project

Over the last decade, Colombia saw its domestic regulations being reformulated to make a new case for infrastructure projects to be implemented. The declaration of “public utility” and “project of national interest” of road projects is made on the basis of Law N°1682 of 2013,⁶ and document N°3762 of 2013 from the National Economic and Social Policy Council (CONPES) on Policy Guidelines for the Development of National Interest and Strategic Projects.⁷ These established measures and provisions to expedite road construction processes in relation to the acquisition of land, prior community consultation, permits and environmental formalities, issues that were considered “problematic” by the national government.

Projects declared as “public utility” are works that, in consideration of the national government, will benefit the interest of a society as a whole; therefore, particular interests must yield to the general. Specifically, the Eastern Perimeter Corridor was declared a project of “public utility” by the National Infrastructure Agency (ANI, to use its Spanish acronym) Resolution N°309 of 2014. This topic is relevant in relation to the acquisition of land for the construction of the project (see below).

Cost, financing and fiscal impact of the project

The Eastern Perimeter Corridor has been developed as a PPP – under the Concession Agreement N°002 of 2014 signed on 8 September 2014 – between the POB S.A.S. consortium and the ANI.⁸ The private partner (concessionaire) is made up of the Israeli company Shikun & Binui and InfraRed Capital Partners, an investment management fund.⁹ The contract lasts for 30 years and is worth approximately US\$ 450 million – Colombian pesos 1,647,776,111,169 – (valued as of December 2012).

The project finance model establishes that the payment of the project (to the private partner) will be made in two ways:

- the payment of road fees by users (tolls), and
- a flow of earmarked yearly budgetary transfers, called “vigencias futuras” (in Spanish), which in Colombia allows to plan and finance projects with a medium- and long-term perspective.

It is worth noting that “vigencias futuras” are not accounted as debt, but as contingent obligations, which contributes to the objective of not increasing debt levels.¹⁰ However, this means that debt is being created in a hidden way.

The Concession Agreement states that the concessionaire (or private partner) has the responsibility of managing and obtaining the financing and resources needed to execute all of the obligations/tasks established in the contract. The ANI reported that the financing of the project has legal reservation, in accordance with the provisions contained in Article 18 of Law N°1712 of 2014 (Law on Transparency and the Right to Access National Public Information), in which it is established as one of the exceptions to the right to access information that relate to data on the financial behaviour of persons.¹¹

Despite this restriction, it has been possible to identify some sources of financing. The project is mainly financed by a combination of modalities comprising domestic bank loans, loans from multilateral development banks and private bank resources:

- a US\$ 156 million loan by the IDB (approximately 470 billion pesos)¹²
- a syndicated loan between Brazil's Corpbanca, Colombia's Bancolombia and the FDN,¹³ worth approximately US\$ 227 million (Colombian pesos 870 billion).

The total of loans is approximately US\$ 350 million (Colombian pesos 1.34 trillion), making it possible to close the project financially in May 2016.

In terms of the calculations of economic gains and benefits for the country, some evaluations have determined that the 4G project expectations have not been met. In the case of the Eastern Perimeter Corridor, CONPES N°3761 of 2013¹⁴ estimates that the project would have a rate of return of 12.70 per cent for project implementers.¹⁵ This means that it would be the least profitable of all pioneering 4G projects in the country (according to the ANI, the national average is 18.36 per cent).¹⁶ In line with this low return, the cost-opportunity analysis determined that the profits were almost equal to the amount of the investment, i.e. the profit is close to zero.¹⁷

The declaration of public utility must estimate the profitability margin of a project. However, in the case of the Eastern Perimeter Corridor, there are at least two critical issues to consider:

- A. Risks and potential environmental impacts were not considered as a part of the assessment. Surprisingly, the project only requires the Environmental Licence for 20 per cent of the layout. Therefore, the estimate does not include the future costs that must be borne by the state in the case that liabilities materialise or environmental impacts have to be addressed. As a result, the declaration of public utility was not based on a scenario in which projected economic benefits are weighed up with potential environmental impacts.
- B. Due to plot changes and the suspension of construction in two of the sections of the road (see below), new costs have been generated. As a project with little profitability, the true economic benefits of the project estimated by the ANI are in doubt.

Main project conflicts

Throughout the project there have been conflicts over the design of the road layout. From the initial phase of the development of the project, the communities requested the revision of the layout, as it crosses areas of water interest, such as aqueducts and springs, putting at risk the availability and quality of the water. In this context, in 2017, the private company advanced a study for two of the five segments of the road, so-called units 4 and 5, due to their proximity to various water sources. On 1 August 2018, an act of recognition of a force majeure event (the exempt liability event, EER – to use its Spanish acronym)¹⁸ was formalised. Through this, the parties agreed to suspend the execution of activities and works associated with units 4 and 5, because the studies determined possible impacts on different water points.

Currently units 4 and 5, which account for 60 per cent of the investment, are suspended because the ANI and the concessionaire must change the layout of the project to preserve areas of water interest. This situation unveiled gaps and lack of information in the project's social and environmental studies. Moreover, it illustrated poor planning and design failures, as it did not consider the knowledge of local communities through a process of effective public participation.

Audit reports carried out by ANI during the first half of 2020¹⁹ indicate that this fact has led to possible contractual breaches due to delays in the generation of the instruments and actions necessary for the continuity of the implementation

of the contract, within the time limit agreed in the EER. They also reported risks, such as a possible loss of validity of the Environmental Licence granted for the construction of the Choachí alternative road,²⁰ due to delays in the implementation of units 4 and 5. On this point, the ANI reported that no contractual modifications had been made to date establishing any change in the layout. Currently, the concessionaire and the ANI are evaluating and analysing the alternatives in working-table dialogues with the Office of the Comptroller General of the Republic.²¹ These dialogues are part of the Office's "Commitment Colombia" programme, which includes projects that have had problematic implementation.

The project also experienced problems relating to the acquisition of land. As mentioned above, the declaration of public utility allows the limiting of the right to property. In the case of the Eastern Perimeter Corridor, the initial design of the project required the acquisition of 1,524 properties, corresponding to 453 families, of which 385 required physical displacement and 68 faced some economic impact. Importantly, the acquisition process raised uncertainty, disagreement and false expectations in local populations, and it has been reported that intimidation has been used many times during negotiations.²² However, there are questions about what will happen to this land (properties) if the layout is changed in units 4 and 5, and whether it will be necessary to buy new properties to finish the project.

In terms of citizen participation, the ANI reported that, to date, there have been different informative meetings, which have involved the communities of the different sites and urban centres that are part of the Direct Influence Area of the project. The ANI indicated that, during the project implementation stage, the participation of the inhabitants of the area and users of the road has been promoted through the Community Information and Participation Programme.²³

However, communities argued that the company's socialisation of the Environmental Impact Study was poor and that there was no active community involvement in identifying the potential impacts of the project, nor in formulating management measures to mitigate them. It is also important to mention that the space where the alternatives for road layout are being evaluated and analysed has not had the participation of the Citizen Audit and Oversight of Choachí. Moreover, communities have requested public hearings, submitted petitions and have organised mass mobilisations, with collective actions such as protests and sit-ins. They have also sent petitions to the ANI in opposition to the construction of the road, drafted and disseminated statements, briefings and documents, among other measures.

Overall outcomes

This case illustrates conflicts in infrastructure development that cannot be underestimated. There must be more public information on, and public debate about, infrastructure in the region and how it is understood, the type of infrastructure being built and for whom. It is necessary to develop different narratives about infrastructure and reflect critically about the processes, the “technical” knowledge and financial participation in the early stages of project structuring and design.

There are also significant failures at the implementation stage. The conflicts outlined above, indicate that are doubts about the correct application of the social and environmental safeguards of financial institutions, specifically the IDB policy framework, and compliance with the Performance Standards of the IFC that are required by the FDN for the development of the project. It is critical to establish better mechanisms for the implementation of safeguarding policies for all of the financial institutions involved in financing the project (multilateral banks, FDN, commercial banks and investment funds).

Declarations of public utility should also have an environmental licence issued as a mandatory prerequisite. In the case of the Eastern Perimeter Corridor, this was issued several years later after its construction started. Environmental impacts should be considered in the analysis of the benefits of a particular project, before its declaration as a public utility.²⁴

Going forward, a different approach is needed to ensure that infrastructure projects respond to the needs of local communities, support their development and do not harm the environment.

Endnotes

- 1 The author appreciates the contributions and testimonies of Edwin Novoa, researcher of the Asociación Ambiente y Sociedad, and Ricardo Perdomo, from the Citizen Audit and Oversight of Choachí (Veeduría y Auditoría Ciudadana de Choachí).
- 2 Cruz, D. (2016). Public-Private Partnerships from multilateral banking. Implementation in Latin America. Part II. Asociación Ambiente y Sociedad: <https://www.ambientesociedad.org.co/asociaciones-publico-privadas-desde-la-banca-multilateral-implementacion-en-america-latina/>
- 3 See: <https://www.dnp.gov.co/programas/participacion/C3%B3n-privada-%20y-en-proyectos-de-infraestructura/Paginas/participacion/C3%B3n-privada-y-en-proyectos-de-infraestructura.aspx>
- 4 For more information on the role of the IDB Group in the promotion of PPPs in Colombia, see IDB (2019). Public-Private Partnerships (PPPs) for Infrastructure: Spotlight on Colombia. Development Effectiveness Briefs N°6 /2019.
- 5 Law 1508 of 2012: <http://wsp.presidencia.gov.co/Normativa/Leyes/Documents/Ley150810012012.pdf>
- 6 See: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=55612>
- 7 The CONPES is a national planning authority and serves as the government's advisory body on economic and social development aspects. For this purpose, it produces documents on the development of general policies. The CONPES N°3762 2013 can be accessed here: <https://colaboracion.dnp.gov.co/CDT/Conpes/Econ%C3%B3micos/3762.pdf>
- 8 The contract and project documents can be consulted in the Electronic System for Government Procurement: <https://www.contratos.gov.co/consultas/detalleProceso.do?numConstancia=13-19-1611851>
- 9 See: <https://pob.com.co/quienes-somos/>
- 10 See references to the use of "vigencias futuras" in the 2018 WB loan to Bogota Metro Company, with the guarantee of the Republic of Colombia: <http://documents1.worldbank.org/curated/en/771821533439847685/pdf/PAD-final-07162018.pdf>
- 11 Response to Petition Law with Radicado ANI 2021-409-017020-2 of 15 February 2021.
- 12 IDB Loan Information: <https://www.iadb.org/es/project/CO-L1159>
- 13 See: https://www.fdn.com.co/sites/default/files/fdn_comunicadocierreperimetraldeorientemay25_002_2.pdf
- 14 Document CONPES N°3761 of 2013: <https://colaboracion.dnp.gov.co/CDT/Conpes/Econ%C3%B3micos/3761.pdf>
- 15 The analysis is carried out through the Internal Rate of Economic Return, calculating all the profits generated during the lifespan of the project minus the costs generated by the project, without taking into account the costs of payment to capital and interest.
- 16 Novoa, E. (2020). Public utility: infringed rights and environmental impacts. Association of Environment and Society. See: https://www.ambientesociedad.org.co/wp-content/uploads/2020/04/Utilidad_Publica_Derechos_Vulnerados_Impactos_Ambientales_AAS.pdf
- 17 These indicators can be questioned both by the methodologies, the limitations of their variables and by the conceptualisation on the development and wellbeing they generate. This text does not give such a discussion. However, some of its limitations are presented. See: Novoa, E. (2020). Public utility: infringed rights and environmental impacts. Association of Environment and Society. See: https://www.ambientesociedad.org.co/wp-content/uploads/2020/04/Utilidad_Publica_Derechos_Vulnerados_Impactos_Ambientales_AAS.pdf
- 18 The concessionaire submitted an offer for work considering the structuring made by the ANI, under this argument the Exempt Event of Responsibility for the dealer is justified.
- 19 Audit report to the management of the ANI regarding the monitoring and control of environmental obligations during the implementation of PPP projects (2020): https://www.ani.gov.co/sites/default/files/auditoria_a_la_gestion_de_la_ani_al_seguiemiento_y_control_de_las_obligaciones_ambientales.pdf; Audit report to the management of the ANI regarding the recognition of events exempt from responsibility during the implementation of PPP projects (2020): https://www.ani.gov.co/sites/default/files/auditoria_al_reconocimiento_de_eventos_eximentes_de_responsabilidad.pdf
- 20 Environmental licence granted by Resolution N°0248 of 10 March 2016: http://portal.anla.gov.co/sites/default/files/res_0248_10032016.pdf
- 21 Response to Right of Petition with Radicado ANI 2021-409-017020-2 of 15 February 2021.
- 22 It has also been reported that the firm's parent company Shikun & Binui (S&B) is being investigated for the alleged payment of bribes to officials in other countries. See: <https://www.elespectador.com/noticias/bogota/perimetral-de-orientelagente-tenia-la-razon/>
- 23 See also: Prieto, A. (2017). Socio-Environmental Conflicts in the Páramos of the Sabana de Bogotá. Asociación Ambiente y Sociedad: <https://www.ambientesociedad.org.co/conflictos-socioambientales-en-los-paramos-de-la-sabana-de-bogota/>
- 23 Response to Right of Petition with Radicado ANI 2021-409-017020-2 of 15 February 2021.
- 24 This, and other recommendations on public utility, can be found in Novoa, E. (2020). Public utility: infringed rights and environmental impacts. Asociación Ambiente y Sociedad: https://www.ambientesociedad.org.co/wp-content/uploads/2020/04/Utilidad_Publica_Derechos_Vulnerados_Impactos_Ambientales_AAS.pdf

