Organic Law of Territorial Organization in Colombia: Strengths, weaknesses and challenges

Introduction

For more than 50 years, in the world, territorial planning has been a planning instrument through which different political and National Government can achieve goals. In that sense, in Colombia, the Political Constitution established that territorial planning should allow territorial autonomy (art. 1) and the decentralization required to generate development from the local level. Since then a number of laws have been issued which, and contrary to the principles established in the 91, have limited the ability of incidence of local authorities in decision-making processes.

Recently, through the issuance of the law 1454 of 2011 – the Organic Law of Territorial Planning – LOOT 1 -, the regulation of Territorial Planning was sought and therefore "to promote the increase of the capacity of decentralization, planning, management and administration of their own interests for entities and instances of territorial integration". However, facing the international trends on Territorial Planning, this legal instrument has multiple gaps that do not seem to fill the expectations and requirements in this matter for the country.

Therefore, this essay will analyze law of Territorial Planning - LOOT. To do this, initially, I will examine a series of background data on Territorial Planning in Colombia in order to contextualize the process and advancements that has had this issue in the country. With this precedent, the main contents of the LOOT and what this has regulated it would be exemplified. In a second moment, I will analyze the Colombian case against the Constitution and some international trends. Finally, I will conclude reflecting about the merits and shortcomings of the LOOT.

Territorial Planning Background in Colombian Context

In Colombia, the main approaches to Territorial Planning have privileged political-administrative notions; spatial planning with environmental and economic purposes. Without that necessarily state action to

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1 Acronym for its name in Spanish: Ley Orgánica de Ordenamiento Territorial.
established clear guidelines for mitigating spatial imbalances in development. Between 1940 and 1969, for example, the state began to regulate territorial planning against urban development (Law 188 of 1947), the use and exploitation of Colombian forests (Decree 2278 of 1953), forest areas (Law 2 of 1959), and the tenure and usufruct of rural land (Law 135 of 1961).

During the 1970s decade several guidelines for the management and protection of natural resources were established, municipalities with over 20,000 inhabitants were forced to formulate development plans and regulations "for the urban planning referred to location of industrial areas, management of public space, prevention of illegal settlements and water quality for domestic consumption and disposal of liquid and solid waste" were issued.

In the 1980s, aspects concerning the use of urban land and indigenous mining areas were defined. Also, starting from the Constitution of 1991, the vision of territorial planning as a tool for territorial autonomy was expanded: the powers and functions of the national and subnational territorial entities were established, also decentralization and local and regional development.

Later, it tried to establish organic standards in terms of resources and competencies based on the Constitution. In particular, in 1997, the law 388 proposed the creation of a new scheme of planning through the Land Ordering Plans; which articulates the financing, land management, intervention and urban governance with economic, social and environmental development of the local level.

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2 It took place the adoption of the following: The National Code of Renewable Natural Resources and Protection of the Environment (Decree 2811 of 1974), the National Parks System (Decree 622 of 1977), Areas of Protection, Study and Spread of Wildlife (Decree 1608 of 1976), Soil Conservation Districts (Decree 1947 1969), Water Zones of Special Protection (Decree 1541 of 1978), Special Areas of Integrated Management for the Protection, Propagation or Living Aquatic Breeding of Species (Decree 1681 of 1978), the Areas of Preservation of the Landscape (Decree 1715 from 1978), Areas that Comprise the National Parks System (Decree 622 of 1977), the Law of the Sea (Law 10 of 1978), and there were rules to prevent pollution of the marine environment (Decree 1875 of 1979).

3 En 1978 was adopted the Law 61 and it reglamentary Decree 1306 of 1980.


5 The following aspects were define: Municipal Regime Code (Decree 1333 of 1986), the Indigenous Mining Zones (Decree 2655 of 1986), Law of Urban Reform (Law 9 of 1986).


7 Territorial Planning is "is conceived as a set of administrative and physical planning concerted actions, undertaken by the municipalities or districts and metropolitan areas in order to have efficient instruments for guiding the development of the territory [...] and regulate the use, transformation and occupation of space, according to socio-economic development strategies and in harmony with the environment and historical and cultural traditions" Massiris 2004.
However, this legal evolution - from 1940 to 1998-, not necessarily resulted in integrated territorial management plans, strong Territorial Planning management institutions, high participation, income redistribution - between rich and poor regions or the improvement in the quality of life of the inhabitants.

**Law of Territorial Planning and Ordering**

The Law 1454 of 2011 dictates organic standards on Territorial Planning and Ordering and sets as its primary goal:

“Dictate the organic standards for the political and administrative organization of Colombian territory; framing in them the exercise of the legislative activity in the field of the political administrative organization of the State in the territory; establish the guiding principles of the territorial planning; define the institutional framework and tools for territorial development; define competencies in the area of territorial planning between the nation, territorial entities and the metropolitan areas and establish general rules for the territorial organization” (Law 1454 of 2011).

This law defines Territorial Planning as:

“A planning and management instrument of territorial entities and a process of collective construction of country, which is usually progressive, gradual and flexible way with taxing responsibility, aimed at achieving a proper political administrative organization of the State in the territory, to facilitate institutional development, the strengthening of cultural identity and territorial development, understood as economically competitive development, socially just, environmentally and fiscally sustainable, regionally harmonious, culturally relevant, according to the cultural and physical diversity of Colombia” (Law 1454 of 2011).

In the same way, the law argues that Territorial Planning is intended to encourage decentralization in the country as well as schemes of planning, management and administration of the territorial entities and their integration schemes. In general, was of vital importance to solve the distribution of competences and resource transfers between the nation and its territorial entities - and although to some extent had made progress in a number of previous standards⁸-, the law largely is only limited to make "a transcript of rules and provisions of the Constitution, concerning territorial planning delegated functions that will end up being at the head of the central Government" (Institute of Political Science 2011).

In general, given the provisions of the Constitution in relation to the LOOT, the objective of this, and the time elapsed before its adoption had created a sort of expectation that the LOOT would be a solution to legal loopholes and weaknesses of the territorial scheme of Colombia. Despite this, the law establishes a

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⁸ The Laws mention above as: Law 60, Law 715, Law 1176, etc.
series of associative figures several that existed in previous way, which seem to arise as the exit that intends
to give solution to the territorial problems and solve the institutional problems at the local level.

These Association figures include associations of departments, associations of municipalities, associations of metropolitan areas; figures that are generally established for the execution of construction works, carrying out administrative functions and exercise of some concerted powers. However, in the case of associations of municipalities and departments these may not generate costs of operation and additional bureaucracy, which mean that in pursuing their objective and functions they are limited association schemes.

In the same way, the law allows the creation of administrative regions of planning and other types of forms and patterns of partnerships between local authorities. However, unlike the provisions of the Constitution, this law establishes some bases for the formation of regions and does not elevates them to territorial entities or create political constituencies tied to them. These regions are thought out as a scheme that facilitates the presentation of projects.

Also, the law introduces administrative and planning provinces that could be established to provide services, run regional projects and preform environmental management. However, the law holds that "in any case (...), they may constitute a special constituency within the political Administrative Division of the country (...)"[and its] funding (...), will not be charges either to the General budget of the nation, the General system of Transfers, or to the General System of Royalties" (Law 1454 of 2011), with which the fulfillment of its functions can be something complicated and somewhat diffuse.

The law establishes two types of regions, in one side, the planning and management regions, which are a kind of Bank of regional strategic projects, and they have given powers to intervene in the planning and implementation of the resources of the Regional Development Fund of the General system of Royalties. On the other hand, the administrative regions of planning, are created with the purpose of promoting regional development, investment and competitiveness, but its Constitution is limited to the concept of the Territorial Planning Commission and the approval of the departmental assemblies, and are limited also by the inability
to generate operating costs - and as it has been said, they do not constitute a territorial entities or a political constituency.-.

In regards to financing, the law proposes different mechanisms to successfully fund the projects that the regions present. The most prominent is the possibility of accessing resources from the funds of the General System of Royalties. At the same time, the law establishes special investment zones to overcome poverty, which facilitate access to the national policies that base their investments considering indicators such as unemployment and the Unsatisfied Basic Needs Index.

Likewise, the Territorial Planning Commission is created as "an agency of technical advisor character that is intended to assess, review and suggest to the national Government and the special commissions of follow-up to the process of decentralization and territorial planning of the Senate and the House of representatives, the adoption of policies, legislative developments, and criteria for the better organization of the State in the territory" (Law 1454 of 2011).

LOOT in the perspective of the Colombian Constitution

It is worthwhile to start recalling the article 288 of the Colombian Constitution that states the following: "The Organic Law of Territorial Planning and Ordering will establish the distribution of powers between the nation and the territorial entities. (...)" (Political Constitution of Colombia, 1991). The article 286 stipulates, "(...) the law will give the character of territorial entities to the regions and provinces that would be constitute according to the terms of the Constitution and the law"(Constitution politics of Colombia, 1991). On the other hand, article 307 adds that:

"The respective law, prior concept of the Territorial Planning Commission, will establish the conditions to request the conversion of a region into a territorial entity. The decision taken by the Congress shall be submitted in each case to referendum of the citizens of the departments concerned. (...) The same law shall establish powers, organs of administration, and the resources of the regions and their participation in the resources of the General System of Royalties. It would also define the principles for the adoption of the special status of each region"(Colombian Constitution, 1991).

Finally, the article 329 argues that:

"The establishment of indigenous territorial entities will be subject to the provisions of the organic law of Territorial Planning and its delimitation will be made by the national Government, with participation of the representatives of the
According to the statement above, the LOOT does not "develops any of the fundamental issues that orders the Constitution: the distribution of powers between the nation and the territorial entities, the regulation of regions and provinces as territorial entities or the establishment of indigenous territorial entities" (Maldonado, 2011). According to Maldonado (2011), the majority of the articles in the law already made part of provisions of the Constitution and other laws, then the contribution of the law in strengthening territorial planning in the country is not significant and there are no deep solutions to the legal loopholes in this matter.

In relation to the distribution of powers between the nation and their territorial entities, the law fails to solve the existing legal vacuum because while the law 715 of 2001 addresses the issue of the distribution of powers, it only makes emphasis on those from the education and health sectors. Faced with this situation, competencies between levels of Government have ended up being established (in the cases where they are established) by rules that are not organic in nature, as established by the Constitution, and therefore do not have the required hierarchy for this important issue within the framework of the Colombian scheme of decentralization. Additionally, the distribution of powers is dispersed and, therefore, confusing and insufficient to provide clarity about the roles that every level of Government play, it "affects such important issues as the promotion of local economic development, the care of displaced people and populations in extreme poverty, disasters prevention and management prevention, or the preservation of the environment" (Maldonado 2011).

In relation to administrative regions, as stated before, the LOOT does not take care of regulations so that these can be elevated to territorial entities. The law only restates the provisions of the Constitution, leaving the same legal gaps in this respect. The same applies to the indigenous territorial entities and provinces. So, if you consider the analysis from the perspective of Maldiris (2004) and Boisier (1998), the
LOOT fails to articulate and clearly structured a comprehensive vision of the territory, despite of different levels of Government and fails to take the Territorial Planning as a multidimensional issue.

Likewise, in terms of physical planning, the LOOT contains different planning tools that would allow to say that this feature is moderately present across the administrative and planning regions and provinces. However, there is no clarity on hierarchical guidelines nor a strong organization between different levels of Government to manage and articulate the nation with its territorial entities. On the other side, citizens’ participation and social dialogue is limited to some scenarios. The population, municipal councils and departmental assemblies are taking into account in some extent in the creation process of territorial entities and some diagrams of integration between them. But is not a particular high engaging system in terms of dialogue, participation and accountability.

Following the argument, while the aims and purposes of the Law take into account the importance of the achievement of sustainable development, instruments contained therein do not allow to identify that this is going to be pursued decidedly. Except for some strategic regional projects and planning schemes, there are not clear mechanisms to ensure that there is long-term vision included in the planning exercise of the territorial entities. There is also a lack of an effective information mechanisms that supports decision-making process in the area of territorial Planning.

Finally, it is not greater reference to land use, human settlements and other aspects that allow speaking of an integral vision of the territory. With all of the above, it is evident the Colombian LOOT, does not respond to the standards and international trends in territorial planning, limiting itself to aspects related to the political-administrative division of the country (which had already been established in the Constitution) and the schemes of partnerships between local authorities.

**Final Remarks**

Colombian LOOT fails to effectively resolve the legal limbo that exists in relation to the provinces, regions and indigenous territories. However, is worth to mention that after several intents the congress and
the government finally unite to pull out an organic law. In terms of regions is a step forward that this figure is brought up to life although is not elevated to territorial entity. This sets the path for future normative production around the process and requirement regions need to fulfill to become territorial entities, this advancement can be achieve based on precedents such as schemes of association that LOOT has.

Likewise, the law maintains an urban bias, leaving aside aspects of planning in the rural sector and the opportunities that exist in these areas to fostering development processes. In the case of the regional commissions of Territorial Planning it is very difficult for small municipalities to get the experts who must be part in its formation and, in general, financing process of association and integration schemes is still unclear. Especially if we take into account the prohibition of generating operating costs and the inability to charge them to the budgets of the entities that conform this schemes.

Except for some provisions, and what is defined in the objectives, purpose and principles of the law is not clear about which are the mechanisms to strengthen the autonomy and decentralization in the country. Moreover, it seems that the local sphere loses relevance due to some regional schemes that are being pushed by the national Government. Likewise, in regards to the association schemes is not clear the reasons that lead to form a plurality of figures which have functions and purposes so similar, both to the preexisting functions of the territorial entities and within each of the figures. In addition, is not clear why some of these schemes do not have the same benefits than others and that is subject of great concern. ie. Which is the reason why operating expenses are prohibit in some of the forms of integration and others not?

It is pertinent to mention that there is ambiguity in regard to the creation of areas of investment for overcoming poverty, and the use of a single method of measurement of poverty based on the Unsatisfied Basic Needs Index. While not necessarily taking into account prioritized mechanisms in the region for overcoming poverty, socio-cultural conditions or the administrative and fiscal capacity of the territorial entities to maintain in the long run the interventions of the national Government.
On the other hand, it is important to mention that, even though the Bill has many flaws, it brings back to the table the promotion of autonomy and decentralization of local authorities and include some principles and issues that were not as visible as ethnography, good governance, social equity, peace and coexistence, transparency, diversity, solidarity and participation, among others. Unfortunately not at the desire level but is a important step forward.

In general terms, to make the LOOT complied with international standards and trends in Territorial Planning it is necessary to boost a reform based on great political that includes relevant topics and determining features of the TP. For example, participation of the different levels of Government in the resources should be improved, the division of power and competencies should be clear and complied in one clarifying law, the planning capabilities in all levels of government should be improve. And finally, it is important to conceived Territorial Planning as an opportunity to generate development with a shared and agreed vision of the territory with the community.

Bibliography

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