



Inter-American Congress on the **Environmental Rule of Law**



Selected Abstracts

Environmental Rule of Law Trends in the Americas



Organization of American States



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SELECTED ABSTRACTS



I. LEGAL FRAMEWORKS FOR WATER RESOURCE MANAGEMENT

The Americas has been endowed with 30% of the world's water resources. Issues related to water governance have been highlighted for over a century. The first international environmental agreements signed in the region were focused on water resource governance¹, and laws date back to 1906, when the first Bolivian water law was enacted². In recent years, the importance of water governance has been reflected in water legislation and management reform processes in most of

the countries in the region, as well as in programs and proposals for reforming water-related public services, particularly urban drinking water supply and sanitation utilities³. Disaster emergencies that result from floods and droughts, as well as landslides triggered by intense rainfall, further highlight the need of an integrated approach to address water and land management effectively. Abstracts on this sub-theme address emerging trends and challenges.

¹ Organization of American States, Department of Sustainable Development, Policy Series Number 9, March 2006. "Water Management and Climate Change: Lessons from Regional Cooperation".

² Ley de Aguas Vigente, 28 de noviembre de 1906. <http://www.oas.org/dsd/EnvironmentLaw/WaterLaw/home.htm>

³ ECLAC. Water governance for development and sustainability. June 2006.

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1.1 International Water Law in Latin America: A critical assessment of existing agreements for improved governance

Alejandro Iza, Juan Carlos Sánchez and Antonio Razeto Cáceres.

Transboundary river basin
International water law
Treaties
Latin America



ABOUT THE AUTHORS



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Mr. **Antonio Razeto Cáceres** works as an intern at the International Union for the Conservation of Nature (IUCN) - Environmental Law Centre (ELC) since January 2015. He holds a law degree from the Pontificia Universidad Católica de Chile and is

currently studying a Master of Environment at the University of Melbourne.

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ABSTRACT

Worldwide, there are 276 transboundary river basins, of which 69 extend over the territory of one or more Latin American States (UNEP 2013). During the last three decades, Latin American countries have implemented reforms to improve water management (Akhmouch, A 2012). However, and in order to ensure an equitable and reasonable use of shared waters, it is necessary to increase States' cooperation and shift towards joint management of water resources, coordinating legal, policy and institutional frameworks at both international and national levels (Aguilar & Iza 2011). There is relevant literature on shared water governance in different areas of Latin America (Boeglin 2012; Dourojeanni 2001; López & Sancho 2013; Querol 2003). However, there are no systematic analyses. This article aims to assess the legal preparedness of countries in the region regarding their transboundary river basins, by means of surveying water agreements and treaties between co-riparians, and by assessing the quality of these legal arrangements against the "state of the art" rules and principles of International Water Law.

This assessment will look at the rules and principles set forth in the 1997 Convention on the Law of the Non-navigational Uses of International Watercourses, which incorporates modern principles for legal frameworks of international watercourses, most of which are accepted under customary international law. Additionally, this recently entered into force Convention is considered the legal authority on the subject matter, because of its global legitimacy after being negotiated within the framework of the United Nations and adopted by a General Assembly Resolution. To evaluate the treaties currently in force this article will use the analytical framework provided by Wouters et al. (2005), which includes an assessment of scope, substantive rules, procedure, institutional and dispute settlement mechanism. Using this framework, the article intends to identify major gaps in treaties and revise what aspects can be strengthened to progressively improve regulation of transboundary waters in Latin America.

1.2 Human Right to Access Water and Sanitation in the Context of Integrated Water Resource Management (IWRM)

Lilliana Arrieta Quesada

IWRM,
Human Rights
HRBA
Standards
Indicators
Implementation



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ABSTRACT

Human Rights are civil, economic, political, and cultural rights inherent to every human being, and apply regardless of nationality, race, sex, sexual orientation, ethnicity, religion or place of birth, without any discrimination. The human right to water and sanitation is a “basic human right for the enjoyment of life and all human rights” in accordance to the provisions of the Agreement of the United Nations General Assembly, A/64/L.63, 2010. These rights generate in their holders the legitimacy to demand their respect, protection and fulfillment, and as a counterpart produce the same obligations of the State and guarantee the protection in instances of international justice.

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However, how can we make sure if a State complies to the satisfaction or not with the regulatory framework of human rights? For such, standards and benchmarks have been created in order to compare the performance of a State in such given situation. In the case of the human right to access to clean water and sanitation, General Comment No. 15 of the Committee on Economic, Social and Cultural Rights, establishes that States must comply with the following parameters: services must be sufficient and continuous for personal and domestic uses. WHO has considered necessary between 50 and 100 lts. of water per person per day. The water source must be within 1,000 meters, and the necessary time to have the water available should not exceed 30 minutes. In this paper, we seek to establish the link with IWRM, which has emerged as a change in paradigm in water resources management, interpreting parallel global processes, which are interconnected in practice, in relationship to water cycles and basins, to overcome the distribution for use and competition.

1.3 Water Protection and Mining: Environmental Law Challenges in the Andean Region

Carlos Lozano Acosta

Conflicts of jurisdiction
Environmental damage
Mining
Basins
Water



ABOUT THE AUTHOR



Carlos Lozano Acosta is a Colombian environmental lawyer. Mr. Acosta works with the program “Agua Dulce de la

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ABSTRACT

The development of mining projects with serious impacts on water sources, both on the surface and groundwater, has been increasing in several Andean countries, including Colombia. These countries have a strong constitutional tradition of protecting the environment and different levels of incorporating international environmental law into their domestic legal systems. Thus, the strongest environmental regulations are associated to the protection of water as a fundamental basis to prevent violations of the right to a healthy environment and the right to health.

However, significant legal tension exists between several Andean countries between environmental water legislation and mining rights. This tension seems to resolve in favor of a weakening of environmental law and an advantage to the profile of mining regulations, which in some laws,

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has been elevated to the category of public interest, which means that it prevails over other norms and rights. In the resolution of such tension, the constitutional provisions and the relevant environmental laws have been ignored. This tension should be resolved through consistent application of relevant international environmental law and constitutional provisions on the environment; very vigorous in several countries in the region. In order to achieve this, I propose to develop rules, that will be explained throughout the article, to solve issues such as conflicts of jurisdiction between environmental and mining authorities, as well as local and national authorities; questions regarding ownership rights and exploitation of resources; prevailing provisions in overlap cases between mining projects and protected areas; regulatory approaches for watershed protection; legal management devices for underground water sources and legal assessment of its connectivity with surface waters; the legal assessment of cumulative impacts of water resources; the rules of evidence of damage to water sources and the interaction with rules on biodiversity and hazardous waste.

1.4 The Judges Boundaries in Deciding Water Access Rights

Ambassador María del Luján Flores and Carlos Sapriza Flores

Conflicts of jurisdiction
Environmental damage
Mining
Basins
Water



Carlos Sapriza Flores: lawyer, diplomat, Foreign Service Director Uruguay, Master of Laws and Policy Integration. Has served as Deputy Chief of the Embassy of Uruguay in Guatemala, Saudi Arabia and Switzerland.

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ABSTRACT

This paper analyzes the impact of the jurisprudence of the Inter-American Court in the evolution of the right to water as a human right. The investigation is focused on an empirical and quantitative legal approach.

One of the characteristics of the adopted approach is to assign the a greater scope to the jurisprudence than the provisions of Article 38 of the Statute of the International Court of Justice, demonstrating that the effect of judgment goes beyond the specific case, and at the same time, changes the perception of the relationship between legal orders with the Inter-American system. At the same time, the paper takes into account the links generated between internal norms and the existing norms at the Inter-American system.

Two relevant variables are examined, one is the degree to which an institution has been treated by the case of the Inter-American Court, and the other is the impact that the institution poses in the domestic legal systems. In this process, it can be seen that if a subject has been addressed further by the Court, its degree of incorporation will be grater. An example of such is the case of access to information.



II. TRADE, INVESTMENT AND ENVIRONMENT

In pursuit of economic growth and development, the Western Hemisphere continues to support economic integration and the benefits of globalization, including through increased trade. Trade represents one important development driver, but it can also be a source of environmental pressures. Trends regarding sustainability in investment, linkages with climate change law and policy, and supporting environmental compliance by using market based instruments and planning tools as well as challenges regarding Environmental Impact Assessment are analyzed in abstracts submitted under this sub-theme to inform decision making from the national to the global dimensions.

2.1 The Flexibility of the Rules: Environmental Legislation in Times of Economic Slowdown and Crisis

Martha Aldana

Environmental Legislation
Environmental Permits
Environmental Enforcement



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Martha Aldana is a Lawyer with an LLM in Environmental Law (American University, Washington DC). She has been an advisor on environmental legislation to the Congress, the Ministry of Agriculture, the Ministry of Health; and also served as Legal Supervisor for the Agency of Investment in Energy and Mining. She has been an advisor to the Deputy Minister of Environmental Management and Control, Director of Compliance and Coordinator of Legal Projects of the Peruvian Agency on

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ABSTRACT

The state of the world economy has a direct impact on environmental management in developed countries as well as in the Latin American region. Indeed, the global and regional economy is suffering a crisis that has direct impact on the implementation of environmental legislation from the perspective of environmental permits as well as in the field of environmental enforcement.

The proposed paper will analyze this hemispheric trend from the environmental management experience in Peru.

In regard to environmental permits, a legislation is under approval that would allow the joint issuance of the approval of environmental impact assessment (EIA) and additional permits. In turn, it is proposed to validate the use of baselines of studies already approved, in order to avoid the cost of collecting that information from the field.

In regard to environmental enforcement, there is already a legislation which provides that the audit authority will only sanction an environmental offense when the affected party has not remedied the infraction based on an

administrative measure issued requesting that a remedy be implemented. That is, the non-compliance is not punished but the offender is given an opportunity to rectify and only if it does not comply with adopting this measure correction is punished. This sanction, according to Peruvian regulation, is not to be applied for the full amount of the fine but for an amount not exceeding 50% of the fine (except in the serious cases, where the full amount can be applied). Likewise, the audit authority regulates incentives to encourage voluntary compliance with environmental legislation and encourages the consideration of rights to supervise the offender.

In this context, the article ponders if, indeed, “flexing” environmental management is the only way to survive downturns and crises or are rather, we are going back to times when it was considered that the environmental protection was a luxury we could only afford if we lived in developed countries having to survive on the environmental cost of needed economic growth.

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2.2 Challenges in Environmental Impact Assessment

Nestor Cafferatta, Federico Zonis, Lorena Gonzalez and Pablo Lorenzetti

Policy instruments and environmental management
Cumulative strategic or integrated environmental impact assessment
Environmental Governance



ABOUT THE AUTHORS



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ABSTRACT

The environmental policy instrument of environmental impact assessment, is one of the most suitable tools to protect the environment. However, we consider it necessary to extend its legal, executive and judicial structure, including the strategic variant of the cumulative or integrated environmental assessment to ensure greater suitability or effectiveness, the necessary planning, environmental governance, sustainability, forecast or prediction of works, activities, investments, or economic developments (industrial or commercial).

The Argentinean Court has considerable experience in relation to a case "SALAS, Dino and other c / Salta, Province" 29/12/2008 pronouncements, because of a series of forest enterprises or expansion of the agricultural frontier (of sojera activity), owned by private investors, with probable detriment by removing or cutting of more than one million (1,000,000) hectares of native forests, stationed in four departments in the north of the Province, and in particular the local peasantry with indigenous communities (wichi) that inhabit the affected region.

In the case, investors had authorization or clearance permits granted by the Provincial State, for filing individual environmental impact assessments, without a prior all-encompassing environmental impact study, so the Court ordered the permits suspended until the Province of Salta, jointly with the Ministry of Environment of the Nation, undertake a study of cumulative, comprehensive or strategic impact.

The same solution resulted in a case resolved by the Constitutional Court of Costa Rica, in the case of Marino THE BAULAS Guanacaste National Park. ("Padilla Gutiérrez, Clara Emilia and others. 16.12.08, Supreme Court of Costa Rica c / SETENA, National Environmental Technical Secretariat).

The importance of the environmental assessment of projects, policies and programs, with a holistic, all-encompassing and comprehensive, or strategic, cumulative or collective vision should be strengthened, not only at the executive level, but also legislative and judicial.

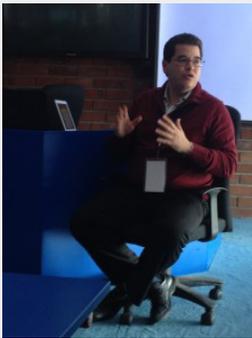
2.3 Investment and Access Rights: Water Usage Decision Making, the public right to challenge decisions apparently taken to promote energy related investment

Alejandro Posadas

Investment and Energy Resources
Justice Access Rights
Enforcement
Water



ABOUT THE AUTHOR



Alejandro Posadas is Law Professor and Director for law graduate programs at the School of Government of the Tecnológico de Monterrey, in Mexico City. He was formerly

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ABSTRACT

Energy reform in Mexico is creating an expectation of increased investment in shale gas in the Northeastern part of the country. This will require availability of sufficient amount of water to explore and exploit reserves. Water is not abundant in the area and overall the Nation has yet to cover 100% of the population's basic water consumptions needs. Given water scarcity, water infrastructure projects can be justified on its face around human water consumption future needs. Access to information would provide none or only inferential information whether water projects such as an aqueduct bringing water from a different area of the country would be used in large part to develop energy projects. Currently, access rights and courts are ill equipped to deal with inferential evidence regarding subsequent uses of water.

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The article will argue that it is necessary to establish appropriate standards of review, evidence, and standards of deference, as well as specific remedies within the civil law tradition in the hemisphere that can provide effective substantive access rights, while providing authorities the opportunity to explicitly justify actions upon balanced and equitable policies that promote investment and protect the environment and water resources. The proposed article will suggest how this can be done drawing from the experience of courts in countries in the hemisphere. It will also argue that such an approach is more effective and efficient than legislating, as it can strike an appropriate balance on a case-by-case basis between development needs and environmental and human health protection.

2.4 Trade, Investment and Environment: Challenges in Today's Cuba

Marcia Edwards Oakley

Environmental Protection
Investment Promotion
Comparative Law
Economic Growth
Harmonization
Challenges
Integration



ABSTRACT

The Constitution of the Republic of Cuba includes among its postulates the protection of the environment and does not conceive an economic growth that causes the loss of biodiversity, water pollution and soil degradation.

The Environmental Law No. 81 gives the legal force to the above, by setting the Cuban environmental policy and the special protection to specific areas of the environment.

Law No. 118, the Foreign Investment Law and Decree-Law No. 313 of the Special Development Zone Mariel, recently came into force.

Law No. 118 strengthens the protection of the environment and heritage of the nation. Article 20 provides that, there shall not be approved investments that cause damage to the environment and an evaluation is mandatory from an

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Marcia Edwards Oakley has a Law degree from the Faculty of Law of the University of Havana, Cuba and a Master in Management of Intellectual Property by the Cuban Office of Industrial Property. She is a Legal Specialist in the Ministry of Science, Technology and Environment of Cuba. She has completed postgraduate courses on "Contemporary International Environmental Law and its current problems" and "International Trade Law", both at the Higher Institute of International Relations, Ministry of Foreign Affairs of Cuba.

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environmental perspective, by the Ministry of Science, Technology and Environment, unlike Law 77 that only indicated for some cases.

Decree Law 313 creates the Special Development Zone Mariel seeking investment promotion with environmental feasibility that provide clean technologies and contribute to local development. The Ministry of Science, Technology and Environment is a permanent representative in the Commission that approves investment proposals, together with the Ministry of Economy and Planning and the Ministry of Foreign Trade and Foreign Investment, among others.

This paper aims to demonstrate that trade, foreign investment and environmental protection can be harmonized. The Cuban experience will extend to the rest of Latin America and the Caribbean, as part of the new integration mechanisms. It would be useful to conduct a comparative study of the laws of other countries in the region on these issues, with a view to improving our performance to the above mentioned challenges.



III. CONFLICT PREVENTION AND MANAGEMENT IN SHARED NATURAL RESOURCES

Physical coexistence on earth inevitably results in the sharing of natural resources, thus, sharing a border may mean shared forests, ecosystems and water resources. However, sharing is not limited to geographical borders. The commons that is earth invariably dictates that all countries and all peoples collectively take part in sharing certain of its natural resources. In doing so, there is a corresponding responsibility to manage them soundly. The increased number and intensity of disasters currently experienced by the region impact availability and access of natural resources resulting in tensions that further highlight the need for sound management of border and other natural resources, through the consideration of key approaches and principles of environmental management and international law. Abstracts under this sub-theme theme consider innovative schemes in the management of shared resources and tools for conflict prevention.

3.1 Collective Responsibility for Sound Marine Resource Management

Prof. Cymie R. Payne

Marine Environment
Global Commons
Law of the Sea
Deep Seabed
Erga Omnes
UNCLOS



ABOUT THE AUTHOR



Cymie R. Payne is Assistant Professor at Rutgers University. Payne was a member of the Berkeley Law faculty and attorney with the

US Department of the Interior; Goodwin, Procter; and the UN Security Council. She has appeared as counsel before the International Tribunal for the Law of the Sea in its deep seabed mining and fisheries advisory opinion cases. The Fletcher School of Law and Diplomacy, MA; University of California, Berkeley, JD.

ABSTRACT

International law recognizes that there is a collective interest in protecting the marine environment. The Law of the Sea Tribunal's Advisory Opinion on sponsoring state responsibility and liability for deep sea mining activities in "The Area" affirmed the erga omnes nature of such obligations for deep seabed resources. The Tribunal's new advisory opinion on illegal fishing (anticipated in April 2015) further define legal obligations to common resources. The common heritage nature of marine resources implies that all states share these rights. However, states' rights and duties to enforce governance of high seas resources need to be clarified. This paper will trace the emergence of the erga omnes principle at the International Court of Justice, the development of collective interest and collective enforcement doctrines, and will then consider how it can be applied to protect ocean resources.

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The International Seabed Authority's recent work on regulations for exploitation of deep seabed mineral resources may be discussed as an example of an international organization coordinating with states sponsoring mining in high seas regions, as deep sea mining moves from experimental to full-scale industrial status. The paper ends with consideration of the legality of states acting alone or in partnership to exercise collective rights.

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3.2 Strategic Environmental Assessment: The Role of the Judiciary in its Implementation

Gustavo Rinaldi and Guillermo Marchesi

**Strategic Environmental Assessment
Role of the Judiciary
Enforcement
Planning**



ABOUT THE AUTHOR



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ABSTRACT

An increase in social and environmental conflicts has been evidenced in recent times. Certain social groups with greater conscience of the problematic, are increasingly calling upon the Judiciary seeking solutions to the challenges that affect them. Consequently, to a certain degree the judicial power is required to broaden its knowledge regarding specific instruments for environmental management.

Judges have a first degree role in enforcement of new instruments that despite having potential for environmental conflict prevention are not duly implemented by political bodies.

The analysis is centered in strategic environmental assessment as a key tool for environmental policy management. The relevance of this instrument lies in its capacity to gather environmental facts and knowledge for the adoption of policies, plans and programs, even when these are not necessarily focused on environmental protection. At the same time, the strategic environmental assessment has virtues or positive attributes in the context of sustainability and improvement of the decision making process, in the early

identification and prevention of potential conflict and furthermore for development planning.

Given strategic environmental assessment in sets limitations to the executive power, it is considered that in the majority of cases, within the Republican balance, the judicial powers of the region will face the challenge of granting citizen protections through the effective implementation of this instrument.

Finally, it is important to recall the relevance of this instrument in the management of shared natural resources, by highlighting European Community Law in the framework of the adoption of the Kiev Protocol to the Espoo Convention on strategic environmental assessment on May 21, 2003.

3.3 The role of the Brazilian House of Representatives' Human Rights and Minorities Committee to help provide for liability and redress from global mining and smelting corporations

Gisela S. de Alencar Hathaway

Liability
Redress
Lead poisoning
Human rights
Environment
Mining



and of the Oversight and Control Proposal n. 149, of 2013, in charge of seeking liability and redress for social and environmental damages related to mining and smelting activities in Brazil.

ABSTRACT

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The Brazilian House of Representatives has taken an active role in the last two years in helping provide for liability and redress from global mining and smelting corporations. The House's Committee on Human Rights and Minorities has conducted investigations that unearthed a complex web of corporations, both Brazilian and foreign-owned, which have been evading their responsibilities for serious damage to the environment and to the health of thousands of Brazilian citizens.

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The Committee's works have revealed that the Plumbum/Peñarroya group is active throughout the country, leaving a tragic wake of liabilities. In cooperation with the Office of Public Prosecutors, the House is studying the feasibility of out-of-court negotiations to settle the various suits, through civil and labor redress and through compensation to the Brazilian state for all the investments it has made and will still have to make to treat its people and the environment polluted with lead and other heavy metals.

Achieving a resolution to this conflict, with such alarming social and environmental consequences, now looks like a feasible objective. The millions of tons of lead slag that have been dumped haphazardly around Brazilian cities are apparently no longer just waste or tailings. Today they seem to have become a valuable resource. The company ultimately liable for that pollution, through its various national and international personae, now has the technology and the wherewithal to recycle and reuse those pollutants. This hopeful circumstance opens up a useful avenue for negotiation.

Beyond convictions, Brazil's victims of poisoning by lead and other heavy metals are crying out for redress and for the recognition that their rights as

citizens and workers have been and are still being violated. These victims want justice, whether in the form of a Conduct Adjustment Agreement (TAC) or through a court order. In spite of its complexity and overwhelming proportions, this is a strategic international social and environmental conflict that screams for resolution for decades already.

3.4 Sustainable Development: Linking the environmental and humans rights protection with mining projects in developing countries

Lina Muñoz

Sustainable Development
Environmental Conflicts
Environmental Law
Human Rights
Mining



ABOUT THE AUTHOR



Lina Muñoz is an Attorney with a Post graduate degree in Constitutional Law and a Ph. D.

candidate in Law with work experience in government, NGOs and academia regarding Human Rights, Environmental Law and Constitutional Law. Nowadays, serves as Clinical Professor and Researcher in the Human Rights Research Group of Law School at Universidad del Rosario in Bogota, Colombia. In the last three years, Ms. Muñoz has worked in environmental projects,

funded by Environmental and Sustainable Development Ministry and other environmental authorities of Colombia on environmental participation mechanisms, environmental conflicts and human rights based approach.

ABSTRACT

The proposed paper seeks to present the main advances in a doctoral thesis research on the subject of Environmental Sustainability, Human Rights and Large Scale Gold Mining projects in developing countries like Colombia and Brazil. I have selected two gold mines as cases of study, one in Colombia and the other one in Brazil, both executed by the same mining company in similar geographical and environmental conditions. The aim is to make a comparative study of the different environmental and mining legislations, institutions, national politics and human rights protection of the communities impacted by the mining projects in each country.

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The methodology consists in reviewing the literature available in Spanish, English and Portuguese, doing fieldwork in each of the selected mines, interviewing experts in both countries, working with environmental authorities and finally, analysing the different speeches of the government, the company, the community and the NGO's about environmental mining conflicts and protection of human rights.

Some of the conclusions of this research to guarantee the effectiveness of environmental law and sustainable development in mining projects indicate the need to:

- Strengthen the national environmental legislation and legal institutions.
- Strengthen the capacity of public prosecutors and judges to decide on environmental cases.
- Recognize the key role of the procedural environmental rights to resolve environmental conflicts: The empowerment of communities with quality information, effective participation mechanisms and environmental justice for the adequate protection of collective rights.
- Incorporate the rights-based approaches in environmental management.

An aerial photograph showing a large body of water partially covered in ice. A ship is visible in the open water, moving towards the right. The ice is broken up into various sizes of floes. The sky is clear and blue.

IV. ENVIRONMENTAL ENFORCEMENT

One of the main challenges in the Americas is effective enforcement of the vast legal and institutional framework to guarantee the rule of law. Trends and emerging issues in enforcement are addressed by abstracts under this sub-theme.

4.1 Applying the Principle In Dubio Pro Natura for Enforcement of Environmental Law

Prof. Nicholas Brynner

Precautionary principle
In dubio pro natura
Enforcement
Judiciary



ABOUT THE AUTHOR



Nicholas Brynner is a Visiting Associate Professor of Law and Environmental Program Fellow at The George Washington University Law School in Washington, DC. He holds a J.D. and M.A. in Latin

American & Hemispheric Studies from The George Washington University. His areas of research include the intersection of property law, environmental law, and natural resources, as well as climate change law and international environmental law.

ABSTRACT

One of the fundamental duties of governments is to protect and safeguard the rights and interests of vulnerable parties and minorities. Drawing on Aldo Leopold's famous description of a land ethic in *A Sand County Almanac*, this ought to extend to the environment as well; ecosystems hold valuable interests that are often not adequately represented in the legislative process or in administrative decision-making.

Several States in the Inter-American region have incorporated and developed an emerging principle of law, *in dubio pro natura*, in which uncertainties are resolved in favor of a result that will lead to more robust protection or conservation of nature. This principle is analogous to the civil law principle *in dubio pro reo* in the context of criminal law and common law presumptions of innocence, as well as the principle *in dubio pro homine* in human rights law.

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Recognizing the principle in dubio pro natura can be a critical element in establishing the environmental rule of law. It is connected to the precautionary principle in international law which addresses issues of action in the face of scientific uncertainty. Both principles work in tandem toward ensuring a greater margin of environmental safety, but are designed to address different decision-making challenges. In dubio pro natura can hold broader applications for ensuring effective enforcement of environmental law. For example, judiciaries have applied the principle in interpreting constitutional and statutory provisions, and have also applied it to shift the burden of proof in environmental disputes, in order to give environmental laws greater effectiveness in preserving the environment.

This paper discusses how the principle in dubio pro natura has been applied in the Inter-American region, including judicial decisions in Brazil and Costa Rica, as well as constitutional provisions in Ecuador. It then suggests further applications for the principle in the region toward ensuring effective enforcement and the environmental rule of law.

The proposed Essay will provide an important up-to-date comparison of the approaches that several countries in the Inter-American region are taking at incorporating the principle in dubio pro natura. This will illustrate the trends in the hemisphere and describe the theoretical basis for using this principle to promote effective enforcement of environmental law.

4.2 The challenges of enforcing nature rights and other regulatory advances in Ecuador

Maria Amparo Alban

Natural Resources Extraction
Rights of nature
Enforcement
Constitution
Justice



ABOUT THE AUTHOR



María Amparo Albán. Is a lawyer with a master in economic, sustainable development and international law. She is the founder, former President and Executive Director of the Ecuadorian Center on Environmental law. Maria Amparo Alban has worked for more than 15 years in Environmental law and in the development of public policies for Sustainable Development with governments, multilateral organizations, civil society and the private sector. She is a lecturer in environmental law at the national and international level and is currently in private practice.

ABSTRACT

At the regional level it is known that in 2008 Ecuador adopted a new constitution. In it a series of new rights for the environment were introduced as well as procedural rules which had no visibility in any previous regime. This undoubtedly accounts for a significant doctrinal evolution and involves great challenges for implementation as well as in reconciling an existing legal regime with the expectations of implementing these new guarantees, in an economic environment that is strongly oriented to the extraction of natural resources.

While no one can detract merits to a legal system that innovates by introducing additional protections to commonly existing constitutional regimes such as the right to a healthy and ecologically balanced environment, it is necessary to analyze this forward looking development in the context of

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sustainable development policies and the coherence that must exist amongst a legal system and the effectiveness of the application of justice.

The article proposes a proper understanding of the proposed normative architecture unique in the Inter-American system, which has introduced several new rights such as the rights of nature and the human right to water. In addition to a strict liability regime on environmental issues, procedural rules such as non-statute of limitation with regards to environmental damage and the *In dubio pro Natura* principle, among others. All this will be analyzed in the philosophical framework of sustainable development and the "good life" the latter extracted from the indigenous worldview, which preaches harmony with our surroundings.

It's easy to be tempted into thinking that in a crowded system with environmental guarantees; any cause for the rights of nature would have prevalence over economic or social rights. However this has not proven to be the case. The constitutional scaffolding itself establishes a weighting system of rights and in case of conflict only the judge will be called upon to resolve the priority issues based on the application of rights and constitutional principles,

and among which is the right to development.

The article will illustrate that regulatory environmental progress must go hand in hand with the effective implementation of justice and the correct interpretation of the objectives of sustainable development.

4.3 Supporting Policy, Law and MEA implementation: Lessons and Experiences on accountability and compliance (of trails, streams, people and rivers in the Americas)

Eduardo Abbott and Peter Lallas

Enabling environment
Influencing models
Lessons learned
Accountability
Enforcement
Compliance
GEF
Safeguards
Inspection Panel



Peter Lallas is an Advisor in the Front Office of the GEF, former Executive Secretary at the WB Inspection Panel after Mr. Abbott (2007-2014), and previously Director of International Environmental Law Office of the US EPA.

ABOUT THE AUTHORS



Eduardo Abbott is a former Executive Secretary of the WB Inspection Panel (1994-2006) and previously Principal Counsel at the World Bank and Labor Lawyer in Chile.

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ABSTRACT

The proposed paper and presentation will consist of two main parts. The first part will review experiences and lessons in the field of accountability and policy compliance especially environmental and social safeguard policies of the World Bank Inspection Panel. The analysis will describe how the Panel, and similar independent accountability mechanisms at other international organizations, respond to concerns of local communities around the world to address concerns about non-compliance and potential harm from projects financed by these organizations. The discussion will highlight key findings from specific cases and investigations, and results achieved. The second part will review experience and lessons in projects designed to support enhanced policy and regulatory systems at the national level in the field of environmental protection, drawing on the experience of the Global Environment Facility (GEF). This analysis will consider some best practices and lessons in supporting these “enabling environments” in support of the global environmental agenda, noting that the new GEF 2020 Strategy for the Global Environment identifies these types of

“upstream” projects as one of the five main “influencing models” of the work of the GEF. The paper and presentation will conclude with observations on the role and importance of both "upstream" initiatives (supporting policy/law and regulatory systems) and more "downstream" interventions (accountability and reviewing policy compliance), and linkages between the two. Practical lessons and insights from work in the field, as well as emerging issues and trends, will also be highlighted.

4.4 Network Performance by Prosecutors: The Experience of Latin America's Environmental Prosecutor's Network

Silvia Capelli

Environmental Prosecutors
Latin American Experience
Network performance
Enforcement



ABOUT THE AUTHOR



Silvia Cappelli is a Superior Prosecutor in Brazil with action in the environmental area for 24 years. She is Coordinator of the Latin American

Network of Environmental Public Ministry. President of the Brazilian Committee of IUCN. Director of the Institute for Law Planeta Verde and Brazil. She was President of the Brazilian Association of Environmental Prosecutors. Professor of Environmental Law in the graduate program in environmental law at the Federal University of Rio Grande do Sul.

ABSTRACT

Pollution, environmental degradation and organized crime know no boundaries. However, the state response by the Prosecutor and other public officials to environmental offenses is legally limited to the territorial area of attribution of that agent, which obstructs effective action planning.

To overcome difficulties in the implementation of environmental law in Latin America, the Latin American Network of Environmental Public Prosecutor (referred as “Red”) was created, and nowadays has 328 members from 16 countries. The “Red” serves to exchange successful experiences, training on common issues and plan joint actions. Its main tools of communication are a web page (www.mpambiental.org), a mailing list and a WhastsApp group. The “Red” has trained, since its creation in 2008, around a thousand members and advisors of the Prosecutors, it has held six international Congresses,

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published four books, supported the establishment of the Environmental Attorney's Offices and Offices of satellite monitoring to combat deforestation. It also has working groups on hydro-power, CITES and satellite monitoring. Joint operations to combat illegal mining, trafficking of timber, coal, and wildlife have been organized, as well. We still have many challenges to face, but the work of the Prosecutors in the "Red" ensures greater effectiveness and success in implementing environmental law, and allows the training of the Prosecutors between countries by sharing successful experiences.



V. ACCESS RIGHTS: INFORMATION, JUSTICE AND PROCESS

Access rights are the cornerstone of the environmental rule of law. Instruments such as the Inter-American Strategy for the Promotion of Public Participation in Sustainable Development Decision Making and the Bali guidelines have been adopted and applicable in countries of the Americas. Trends and challenges regarding access rights are addressed in the abstracts under this sub-theme, taking into account the three different adjudication procedures that are central to access to justice in member States: (1) to challenge the refusal of access to information; (2) to seek prevention and/or damages for environmentally harmful activities; and (3) to enforce environmental laws directly.⁴

⁴Ved P. Nanda and George Pring, *International Environmental Law & Policy for the 21st Century* (2003), §2.2.1.3 at 52.

5.1 The world's 100 laws on ATI and their impact on the strengthening of environmental law

Ezequiel Santagada

Human Rights
Environment
Litigation
Paraguay
ATI
Law



ABOUT THE AUTHOR



Ezequiel Santagada is a lawyer (University of Buenos Aires), specialized on environmental law (Catholic University of Argentina,

Buenos Aires). He is a professor of Environmental Law and Policy at the Catholic University of Asunción, Paraguay. He is the Executive Director of the Environmental Law and Economics Institute (IDEA) of Paraguay. He is member of the World Commission on Environmental Law of the IUCN since 2004. He has been consultant of UNEP and UNDP.

ABSTRACT

Since September 2014, Paraguay is the 100th country having a law on access to public information. This law is the consequence of the persistent efforts of NGOs working together for almost 10 years through a coalition called the “Task Force on Access to Information” (GIAI, by its Spanish acronym).

The Environmental Law and Economics Institute (IDEA, by its Spanish acronym) has been involved in the GIAI from its beginning and has had a leading role. Not only coordinating the drafting of the Bill on ATI, but also, since 2007, carrying out a strategic litigation process, which included the active involvement of CSO's from across the Americas, whose peak was the Supreme Court Decision 1306 of October 15th 2013, with all of its members participating of the ruling. This sentence declared that the ATI right is a human right following the doctrine of the Inter-American Court on Human Rights in re Claude Reyes vs. Chile. Its political impact still

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remains and was a key element to reach the enactment of the ATI law. This law was conceived according to the OAS Model Law on ATI and includes clear provisions on access to environmental information in the chapter of active transparency, following the recommendations of the Bali Decision.

This article will tell a story of success. It will concentrate on the strategies developed by CSOs and the importance of maintaining them over the time in order to succeed and get the law passed. It will also explain how a sentence built on the Inter-American law on humans rights influenced the procedures established by the ATI law to challenge at the Judiciary the access to information refusals. Finally, it will give details on how the ATI law is fundamental to implement initiatives of environmental governance that have just started, in order to combat illegal deforestation and strengthen the enforcement of environmental laws with the collaboration of local (municipal) governments.

5.2 Specialized Environmental Courts and Tribunals and Access Rights in Latin America and the World

George and Catherine Pring

**Environmental Courts and Tribunals
ECTs**

Access Rights

Access to Justice

Environmental Justice

Sustainable Development

Environmental Enforcement

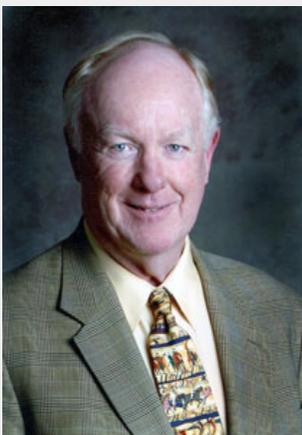
Keywords



Catherine (Kitty) Pring is an award-winning professional mediator, alternative dispute resolution (ADR) expert, and organizational systems analyst; Principal, Global Environmental Outcomes (GEO), consultants;

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ABOUT THE AUTHORS



George (Rock) Pring is Professor of Law Emeritus, Sturm College of Law, University of Denver; JD University of Michigan; BA Harvard University; Principal, Global Environmental Outcomes (GEO), consultants; Co-Director of the University of Denver Environmental Courts and Tribunals Study.

Co-Director of the University of Denver Environmental Courts and Tribunals Study.

ABSTRACT

Judicial courts and administrative tribunals that specialize in environmental, resource, land use, and similar lawsuits are a growing worldwide phenomenon – from a handful in 2000, there are now hundreds of environmental courts and tribunals (ECTs) in dozens of countries in all types of legal systems, and their number is growing. The recent experience with ECTs in Latin America and the Caribbean including Bolivia, Brazil,

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Chile, Costa Rica, El Salvador, and Trinidad and Tobago – shows that ECTs are seen as improving access rights and the rule of law. Extensive global research by the University of Denver ECT Study has documented nine specific mechanisms by which ECTs can improve access to information, public participation, and access to justice.

While most countries have laws to protect the environment, promote sustainability, and improve access rights, many do not have effective institutions to enforce these laws. Analysis of successful ECTs in the region and elsewhere provides models and guidance for countries considering creating such forums at the national and/or sub-national levels. In addition, international judicial institutions like the Caribbean Court of Justice could evolve into forums for deciding transboundary environmental disputes, thereby contributing to regional stability, sustainable development, implementation of Rio Principle 10 and the Bali Guidelines, and actualizing the Declaration on Principle 10 in Latin America and the Caribbean and the Lima Vision. Sustainable development requires effective local, national, and multinational judicial institutions to balance the needs for economic development and environmental protection, including challenges,

such as climate change; food, water, dwelling, and energy security; loss of biodiversity, flora, and fauna; indigenous rights; and pollution of land, air, and water.

Specialized ECTs, environmental chambers in existing courts, and “green benches” have shown they can be effective means to help achieve these goals.

5.3 Developing a Regional Instrument on Access Rights for Latin America and the Caribbean

Danielle Andrade-Goffe and Karetta Crooks Charles

Access to information
Public participation
Access to justice
Access rights



ABOUT THE AUTHOR



Danielle Andrade-Goffe is a Jamaican Attorney-at-Law with nine years' experience in environmental law. She obtained her Bachelor of Laws from the University of the West Indies and is a graduate

of the Norman Manley Law School in Jamaica. She received a British Chevening scholarship and completed a Masters degree in Environmental Law from Queen Mary, University of London. She is the Legal Director of the Jamaica Environment Trust, a non-governmental organisation. Areas of expertise include environmental policy, litigation, and advocacy.



Karetta Crooks Charles Since 2009, has been the Communications and Advocacy Officer of the Saint Lucia National Trust, a

non-governmental organization mandated to conserve Saint Lucia's natural and cultural heritage. This Jamaican national holds a Bachelor of Arts in Media and Communication from the Caribbean Institute of Media and Communication, University of the West Indies. Areas of expertise include organizing citizen participatory consultations and youth engagements, advocacy and creative use of media to communicate natural and built heritage matters.

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Access rights: access to information, public participation and access to justice are a pivotal element for the promotion and growth of investment and development while at the same time reducing poverty, inequality, and ensuring social peace, good governance and sustainable development. Caribbean countries have made great achievements in access rights with the development of Freedom of Information laws (either in draft or fully enacted) in the majority of countries and the establishment of a Caribbean Court of Justice. At the same time there has been an unprecedented increase in the scale and pace of infrastructure development in the region which has resulted in natural resource related conflicts escalating in legal claims brought by civil society challenging the legality of decisions to approve projects particularly from Jamaica, Belize, Trinidad and the Bahamas.

There have been several international and regional instruments that promote the adoption of legal requirements for access rights in environmental matters including the 1992 Rio Declaration on Environment and Development (Principle 10 of the Declaration), the 2001 Inter-American Strategy for Public Participation in Sustainable Development Decision-making and the 2010 UNEP Guidelines for the Development of

National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters (the Bali Guidelines). More recently, 19 countries in Latin America and the Caribbean have signed the 2012 Declaration on the Application of Principle 10 of the Rio Declaration on Environment and Development with the aim of working towards a regional instrument on the rights of access to information, participation and justice in environmental matters.

There are several advantages to developing an instrument focused on the region: Caribbean countries largely have regional similarities and specificities: common political systems, legal systems, culture and language which could pave the way for achieving a regional standard for access rights and mitigate social conflicts in countries by properly channeling citizens' concerns about environmental issues through a functional framework which promotes sound environmental governance.

5.4 Procedural right to access to justice: Inter-American Strategy for the Promotion of Public Participation in Sustainable Development Decision Making

Dr. Maria L. Banda

Environmental Rights
Emerging principles
In dubio pro natura
Access to justice
Participation



She has written on climate change, global governance, and environmental law.

ABSTRACT

ABOUT THE AUTHOR



Dr. **Maria Banda** is practicing international law in Washington, D.C. She has worked with several international organizations, including the OHCHR, the ILO, and the WTO, as well as the UN Special Representative's team on Business and Human Rights. She is a graduate of the University of Toronto (Hon. BA), Harvard Law School (J.D.), and Oxford University (M.Phil.; D.Phil.), where she studied as a Rhodes Scholar and a Trudeau Scholar.

The procedural right to access to justice, such as that embodied in the Inter-American Strategy for the Promotion of Public Participation in Sustainable Development Decision Making, is central to the realization of the international community's commitment to environmental sustainability. While both international and national courts have a role to play in meeting this objective, this paper focuses on the procedural practice of national courts. In particular, this paper seeks to identify a set of procedural norms and principles that have emerged in domestic adjudication that can be

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used to further study and give meaning to the right of access to environmental justice.

To that end, this paper reviews recent developments in Latin America but also in other countries outside the region to illustrate the kinds of judicial innovations that could help facilitate enforcement of environmental rights, especially for vulnerable populations. After briefly reviewing the practice of international human rights tribunals, this paper describes three key elements of access to justice in national courts. First, it discusses the rules on standing (who can bring a claim), which act as a gatekeeper that regulates access to courts. Second, it reviews the courts' use of interpretive principles like *in dubio pro natura* to deal with legal ambiguity in complex environmental matters. Lastly, it explores new types of remedies courts have devised to address particular challenges arising in environmental cases. As this paper concludes, some of these procedural innovations from both common and civil law traditions point to a common core of principles comprising the right to access to justice.

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Organization of
American States

