

II Inter-American Congress on the Environmental Rule of Law



Environmental Rule of Law Trends from the Americas: Pollution Free, Peaceful and Inclusive Societies
for Sustainable Development

KEY MESSAGES AND SUMMARY OF PROCEEDINGS



Santiago, Chile, September 4-6, 2017



Towards achieving peaceful, just, inclusive and pollution-free societies for sustainable development in the Americas - Key Messages:¹

The following key messages regarding the trends and progress in advancing environmental rule of law were highlighted as a result of the deliberations of the II Inter-American Congress on Environmental Rule of Law:

- 1- The levels of pollution, including of water, air, land and other natural resources in the Americas are of deep concern. Pollution negatively affects the rights of all people, communities and sustainable development. Our collective goal must be a pollution free region. Urgent action is our responsibility.

Pollution, directly related to population growth, is a recurrent and increasing problem in many areas of the region. Close to 100 million of the region's inhabitants are exposed in their daily lives to concentrations of ambient air pollutants in excess of the maximum permissible levels. In the Americas, 93 000 deaths in low and middle income countries (LMIC) and 44 000 in high income (HI) countries are attributable to ambient air pollution. Enforcement and control of the existing air quality regulations is also limited, as only 19 of the 35 countries in the Region of the Americas provide information on ground level air quality measurements.

Sources: 2016 UN Environment Programme GEO LAC 6; 2013. PAHO Guía de Análisis de Impacto en Salud and 2016. World Health Organization. Ambient air pollution: A global assessment of exposure and burden of disease.

- 2- Adequate and implementable laws, access to justice and information, public participation equity and inclusion, accountability, transparency, liability for environmental damage, fair and just enforcement, and human rights should be applied and interpreted jointly as the framework for the environmental rule of law and bearing in mind that addressing environmental issues like pollution requires complex, medium- and long-term remedies;
- 3- The environmental rule of law is not a matter of ideology; it is grounded in collective responsibility for the common good. Employing a rights-based approach to sustainable development in the implementation of the 2030 Agenda for Sustainable Development is

¹ This document sets out the insights and views expressed by the participants of the II Inter-American Congress on the Environmental Rule of Law, co-organized by the Organization of American States, the United Nations Environment Programme, the IUCN World Commission on Environmental Law, the Global Judicial Institute on the Environment, the Supreme Court and the Judiciary of Chile and the Environmental Law Center of the University of Chile amongst other partners. It is not a negotiated document, but rather a reflection of the broad perspectives and thinking of the participants that does not necessarily represent country or institutional positions or consensus on each and every issue. These messages complement and should be read and interpreted jointly with the key messages resulting from deliberations of the I Inter-American Congress on the Environmental Rule of Law, held in Montego Bay, Jamaica on March 30th-31st, 2015: http://www.oas.org/en/sedi/dsd/ELPG/aboutELPG/Events/summary_proceedings_jamaica_2015.pdf.

essential and will lead to better and more just outcomes for people and communities in the Americas;

- 4- Constitutional environmental rights, along with emerging principles in the Americas such as the minimum ecological threshold, the protection of the ecological function of property within property rights, and in *dubio pro natura* are an important contribution to sustainable development and must be realized to achieve living in a pollution free world and for the benefits of all people in the Americas;
- 5- The environmental rule of law contributes to closing the existing gaps between recognition and implementation of environmental rights, including the right to water. Processes such as the World Water Forum should continue to include stakeholders such as parliamentarians, judges, prosecutors and auditors amongst other;
- 6- Effective enforcement represents a challenge to the environmental rule of law in the Americas and requires effective laws, independent oversight, enhanced capacities and involvement of prosecutors, judges, parliamentarians and all other relevant stakeholders.
- 7- National Laws, international cooperation and capacity building should be strengthened for the prevention and prosecution of crimes that have serious impacts on the environment;
- 8- Environmental protection is not possible without judicial expertise on environmental matters and an independent judiciary. Impartial decision making and application of the principles of the rule of law to environmental issues is essential to effectively tackling corruption, to conflict resolution and prevention of environmental damages;
- 9- Specialized expertise among judges including in environmental courts and tribunals has contributed significantly to the development of effective environmental adjudication; The establishment of the Global Judicial Institute on the Environment, the efforts of the Environmental Justice Committee of the Ibero-American Judicial Summit and the specialization of Judges, Courts and Tribunals in the Americas should continue to be supported;
- 10- The parliaments and parliamentarians of the Americas have a critical role to play to ensure the coherent national implementation of Multilateral Environmental Agreements (MEAs) and the existence of adequate, clear and implementable environmental laws;

- 11- Effective Environmental impact assessments and strategic environmental assessments are important—to make sure critical information to predict future impact on the environment is supplied and considered in the decision-making process. They also help ensure the democratic consideration and coherence amongst socio-economic and environmental objectives in the Americas;
- 12- Further investment into enhancing the environmental rule of law, the observance of rights and obligations, and into enhanced capacities of all relevant stakeholders will advance peace and security in the Americas as well as social and economic wellbeing;
- 13- The multi-dimensional characteristics of the environmental rule of law emphasize the importance of dialogue and cooperation amongst branches of government for it to contribute to environmental protection. Constructive dialogue and exchange of information, experiences and best practices among the public state authorities of the region with respect to the environmental rule of law should be encouraged;
14. Partnerships such as between the OAS, UN Environment and the IUCN World Commission on Environmental Law, other intergovernmental organizations, civil society, other key governmental and non-traditional stakeholders, particularly financial institutions should be strengthened to support the environmental rule of law for achievement of the 2030 Agenda for Sustainable Development, increased peace and justice, inclusive societies and strong institutions;
15. The OAS, UN Environment, the IUCN World Commission on Environmental Law and their partners should continue to support the identification of trends, the advancement of goals and principles on the environmental rule of law, including in the context of initiatives and instruments such as the Global Pact on the Environment and the IUCN “World Declaration on the Environmental Rule of Law”, as well as capacity building and dialogue amongst the different branches of government;
16. Continued support to the governments of the Americas, judges, prosecutors, parliamentarians and auditors in the development and implementation of environmental law in the areas of pollution prevention and control, water law, trade investment and environment, conflict prevention and management, access rights and environmental enforcement is key.

Overview

The General Secretariat of the Organization of American States (OAS), UN Environment, the World Commission on Environmental Law of the International Union for the Conservation of Nature (WCEL), and the Supreme Court of Justice of Chile, together with the Global Judicial Institute on the Environment and the Environmental Law Center of the University of Chile, among other key partners, joined in hosting the **II Inter-American Congress on the Environmental Rule of Law** that took place in Santiago, Chile on 4-6 September 2017.

The three-day event brought together more than 130 participants including Chief Justices, Attorneys General, legislators, prosecutors, government officials, high-level practitioners and civil society representatives. The objective of the Congress was to advance in a common understanding of the concept of the environmental rule of law, while also identifying its current trends to better respond to the need to intensify Inter-American efforts to achieve pollution free, peaceful, and inclusive societies for sustainable development.

Dialogue within the Congress had a thematic and procedural focus under the umbrella of the environmental rule of law, the 2030 Agenda for Sustainable Development, and the calling by the United Nations Environment Assembly (UNEA) towards a “Pollution Free Planet.”

The Congress was divided into two high-level panels; the first one dealt with the “challenges, opportunities, trends, and the future of the environmental rule of law in the Americas,” and the second was mainly about the challenges in the implementation of Goal 16 of Agenda 2030 (the promotion of peaceful and inclusive societies for sustainable development, the provision of access to justice for all, and building effective, accountable institutions at all levels) in the context of the environmental rule of law. Both panels took place after the inaugural session and prior to the closing remarks, and were also transmitted online via Chile’s Judicial branch channel, which had approximately 5,000 views. The program was organized into thematic sessions based on a call for abstracts for publication of short articles that addressed the following themes:

- Legal Frameworks for Water Resource Management
- Trade, Investment and Environment
- Conflict Prevention and Management in Natural Resources
- Environmental Enforcement
- Access Rights: Information, Justice and Process

Each thematic session had a High-Level expert that served as Session Chair and four (4) speakers that presented the selected articles prepared for the Congress. In addition to the thematic sessions, a session for dialogue and exchange was held amongst stakeholders. This session was divided into 7 working groups (one per stakeholder category), which included a high-level expert as session chair per group to lead the discussions through questions linked to the five thematic sessions of the Congress, with the aim to gather the perspectives of the

different stakeholders. Subsequently, these were used during the plenary session of the dialogue and exchange amongst key stakeholders to address the trends and emerging themes of the environmental rule of law.

During the plenary session on trends, the representatives of the different groups of stakeholders highlighted the need to promote dialogue amongst branches of government, considering their independence, given the fragmentation in legal and institutional systems in the Americas to address the environmental challenges in the region. During the Congress, the participants urged for the environmental rule of law to be included in the OAS Sustainable Development Agenda, and for the Organization and its partners to continue holding the Congress on a periodical basis as a common space for the exchange of information and experiences among the executive, legislative, and judicial branches.

Opening Session

During the opening session, the President of the Supreme Court of Justice of Chile, H.E. Hugo Dolmestch Urra, stressed the need to strengthen the state to achieve environmental protection, as well as promoting values, such as peace, inclusion, accountability and equality. Following, an audiovisual message from the Secretary General of the Organization of American States, H.E. Luis Almagro, was transmitted, which is available on the following link: <https://vimeo.com/231100885>.

High-Level Panel: Challenges, Opportunities and Trends of the Environmental Rule of law

The panel was chaired by H.E. Sergio Muñoz, Minister of the Supreme Court of Justice of Chile and OAS Goodwill Ambassador for Environmental Justice.

Jorge Canals, Deputy Minister of the Environment of Chile offered welcoming remarks as well. Afterwards, an audiovisual message was broadcasted from H.E. Edgar Gutiérrez, Minister of Environment and Energy of Costa Rica, President of the UN Environment Assembly. The message is available on the following link: <https://vimeo.com/229576951>

The following speakers participated in the debate:

- **H.E. Ricardo Lorenzetti**, Chief Justice, Supreme Court of Justice of Argentina, OAS Goodwill Ambassador for Environmental Justice.
- **H.E. Antonio Benjamin**, Minister, High Court of Brazil, OAS Goodwill Ambassador for Environmental Justice.
- **H.E. Andrés Zaldívar Larraín**, President of the Senate of Chile.
- **H.E. Jorge Bermudez**, Comptroller General of Chile.

An interactive session was held during the dialogue between the OAS Goodwill Ambassadors for Environmental Justice and UN Environment Council, Members of the Global Judicial Institute on the Environment and representatives from different branches of the government about the challenges, opportunities, trends and the future of the environmental rule of law in the Americas. Taking into account the Sustainable Development Goals, the critical importance of the environmental rule of law was highlighted, and particularly, the need to facilitate access to inclusive justice in the face of environmental conflicts associated with development throughout the region. The environmental rule of law was defined as an essential requirement for peaceful and inclusive societies, and for achieving the ambitious sustainable development goals. The role of the different branches of government was highlighted, as well as the importance of coherence regarding the challenges posed by the decisions related to environmental resources. Finally, significant progress was identified as a result of the established linkage between environmental law and the rule of law.

Thematic Sessions

The Congress was divided in sessions that addressed the following themes:

1. Legal Frameworks for Water Resource Management

Chair: Michael Hantke Domas, President, Third Environmental Court of Chile

Session Overview: *During the session, it was stressed that water resource management must be integrated with diverse relevant perspectives in the Americas. In this regard, it was recognized that water plays a fundamental role in the environment, and thus, environmental and water laws must complement each other. Likewise, the progressive recognition in the region of the access to this resource as a human right was noted. Also, the session stressed the need to include participatory, gender and equity approaches in the public policies for water resource management. The recent developments in the region received special emphasis, such as the recognition of the Atrato River as a legal subject of rights, and its right to restoration and remediation in Colombia; and the possibility of using Anglo-Saxon law institutions, such as ‘trusts,’ for the management of fresh water in countries such as Chile.*

Selected and presented papers:

- *Water Rights: Water Resource as a matter of reparation in the Americas; Julián Álvarez Restrepo.*
- *Models for In- Stream Management of Freshwater Resources in Chile; Patrick J. Lynch and Pía Weber.*
- *Citizen Participation as a central element in the Institutionality of Sanitary Services in Chile; Denisse Charpentier and Pablo Aranda Valenzuela.*
- *The evolution of the right to water as a ‘unitary concept’ in the Inter-American Human Rights System; Alberto Quintavalla and Raimy Reyes.*

- *The criteria for vulnerability in the jurisprudence of the Inter- American Court: Is it an obstacle to achieve universal protection of the right to a healthy environment in the face of water pollution in urban areas?; Julio David Arnado Rivera².*

2. Trade, Investment and Environment

Chair: Gustavo Alanis Ortega, President, Mexican Center for Environmental Law and Vice-President of the Joint-Advisory Committee of the North-American Free Trade Agreement (NAFTA)

Session Overview: *This second thematic session ratified that trade, investment, and economic activities are necessary for development, however, these may also cause environmental impacts that should be regulated through legal mechanisms. The panelists raised different perspectives and impacts that the existing regulations may not fully address, and concluded that jurisprudence is key to achieve economic development, while also respecting principles of environmental governance. The debate focused on how the different tools for environmental legislation are necessary to prevent the misconception on business models regarding the environment as a burden. Some of these tools include mechanisms such as, payment for environmental services, environmental waste regulations, the “greening” of private law, and the inclusion and representation of bio-economy in national legislation.*

Selected and presented papers:

- *The relationship between Environmental Law and Bio- economics; Monica Navas*
- *Socio- Environmental Protection in Latin American Countries in The Hypothesis of Reverse Logistics of the Technological Waste: the Impact of Free Trade Agreements; Matheus Bassani and Ricardo Serrano*
- *Trade, Investment and Environment; Gabriela Eslava*
- *Consumption and Environment: Microsystemic Dialogues; Pablo Lorenzetti*

3. Conflict Prevention and Management in Natural Resources

Co-Chairs: Eduardo Abbott, Former Executive Secretary, World Bank Inspection Panel and Peter Lallas, Conflict Resolution Commissioner, Global Environment Facility (GEF)

Session Overview: *This session highlighted the collective interest to act and prevent conflicts associated with projects and development initiatives and the use and protection of natural resources in the context of acts of violence or conflict situations. It was emphasized that conflict management not only requires effective laws-including climate related- but also public education and awareness that promotes a discipline of effective conflict resolution and preventive diplomacy. In this regard, environmental courts integrated by judges with legal and scientific knowledge were discussed as a successful example on solving conflicts. In this context the interaction amongst specialist of different disciplines addressed by these courts in a transdisciplinary approach, was analyzed. Other methods and efforts in conflict resolution were analyzed such as the use of mediation requiring different approaches within civil law, and*

² The selected author was unable to participate in the session, but his work will be included in the final publication of the selected articles for the Congress.

common law systems, thus both mainly facilitate public participation. In addition, the important relationship between social and environmental conflicts with economic development was highlighted, taking into account its implications, socio-political, socio-economic, and socio-environmental focuses as well as the relation to vulnerable groups, gender equity, and extractive industries, among others, was highlighted. Finally, the session emphasized the relevance of social compact and that citizen awareness is a key factor for conflict resolution, considering the promotion of cooperation and collective responsibility in developing adequate legal and institutional frameworks as well as in the management and prevention of conflicts associated to natural resources, economic and social development.

Selected and presented papers:

- *Special Presentation: Margarita María Restrepo Arango, Representative, House of Representatives of the Congress of Colombia.*
- *Environmental Courts in Chile: Disciplinary integration or Transdisciplinary?; Sibel Villalobos.*
- *Reconciliation of Environmental Conflicts in the Americas; Angelina Valenzuela.*
- *Socio- environmental conflicts from Mining in the countries of the Pacific Alliance: regarding the implementation of SDG 16 of the United Nations 2030 Agenda; Ricardo Serrano Osorio and Guillermo Acuña.*
- *Climate justice and legislation: the Mesoamerican experience; Antonella Furlato and Juan Carlos Sánchez³.*

4. Environmental Enforcement

Chair: Scott Fulton, President, Environmental Law Institute (ELI)

Session Overview: *This session identified enforcement and compliance of existing norms and regulations as the primary vehicle for ensuring the environmental rule of law. The panelists addressed trends and emerging issues to ensure the environmental rule of law as it is one of the most difficult challenges faced by governments in the region. In this regard, two main dimensions of the environmental rule of law were discussed: the substantive and procedural in relation to the challenges for enforcement and compliance. The panelists identified and assessed the evolution of the concept of environmental rights, and the change of status towards consolidation as constitutional rights with the resulting implications of such status including control mechanisms. In line with the criteria of the Inter-American Commission on Human Rights (IACHR) to enforce judicial protection of the human right to the environment through an interpretation of the provisions of the American Convention on Human Rights. Finally, the session identified the need to address these challenges through development of an integrated approach that guarantees observance and compliance with environmental obligations.*

Selected and presented papers:

³ The selected authors were unable to participate in the session, but their work will be included in the final publication of the selected articles for the Congress.

- *The adaptation of the classic civil system to the development and implementation of the rights of nature; Maria Amparo Albán.*
- *The Challenge of Discretion in Environmental Regulation; Patricia Farnese.*
- *Progressive incorporation of human rights in the environmental obligations of the state. An analysis from the international jurisprudence perspective; Cristián Delpiano Lira and Belén Olmos.*

5. Access Rights: Information, Justice and Process

Chair: José Ignacio Vásquez, Minister, Constitutional Court, Santiago

Session Overview: *This session analyzed citizen’s rights with respect to environmental laws and policies. Different examples were presented from throughout the Americas to illustrate the link between human rights and the environment. The obligations to ensure good governance contained in international and domestic instruments, including within the OAS, were also analyzed, as well as the consideration of democratic processes of equality before the law and the exercise of Access rights. The session discussed the implications of the relationship between environmental crisis and social awareness, to guarantee that transparent and inclusive management to promote environmental adjudication also respects human rights and the quality of life of individuals. Finally, the importance of harmonization was emphasized to ensure inclusive dialogues and greater public participation.*

Selected and presented papers:

- *Access Rights: Information, Justice and Process; María del Luján Flores and Carlos Sapriza.*
- *The right of access to information as means for environmental democracy; Miguel Ángel García Sánchez.*
- *Public Participation and the Environmental Rule of Law in Brazil – Towards Effective Protection of Indigenous Peoples’ Land and Environmental Rights?; Ricardo Pereira.*
- *Access Rights: Information, Justice and Process; Jorge Iván Hurtado Mora.*

Working Groups

This session was divided in 7 working groups (one per stakeholder category) and each group had a High-Level expert as Chair leading the discussions through questions linked to the five (5) thematic sessions of the Congress. Following, the Chairs presented a summary of the working group deliberations during the final plenary session on “Trends on the Environmental Rule of Law in the Americas”. The outcomes of the Working Groups are included in the summary of the mentioned session.

Working Group on Civil society organizations & Academia

- *Chair: Prof. Nicholas Bryner, University of California, Los Angeles (UCLA)*

Working Group on Youth

- *Chair: Constanza Gumucio, Environmental Law Center, University of Chile*

Working Group on Judiciary

- *Chair: Judge Rafael Asenjo, Minister, Environmental Court, Santiago*

Working Group on Prosecutors

- *Chair: Lorena Fernandez, Environmental Prosecutor, Honduras*

Working Group on Parliamentarians

- *Chair: Ana Belén Marín, Member of the Sovereignty, Integration, International Relations, and Integral Security Commission, National Assembly of Ecuador; and ParlAmericas*

Working Group on Private Practitioners

- *Chair: Dr. Luis Fernando Macías Gómez, partner, Macías Gómez & Asociados*

Working Group on Authorities of the Executive Power, Cooperation, and Organisms

- *Chair: Dr. Arnold Kreilhuber, Head, International Environmental Law Unit, UN Environment*

Session: Environmental Rule of Law Trends and Emerging Themes

Environmental Rule of Law Trends and Emerging Themes (Pollution Free, Peaceful and Inclusive Societies for Sustainable Development, Agenda 2030)

This session was chaired by Dr. Claudia de Windt, Chief of the Environmental Law, Policy, and Good Governance section of the GS/OAS. The session highlighted the trends and key issues to promote the environmental rule of law in the Americas as a result of the exchange of experiences in an open-dialogue and space of intellectual freedom through the deliberations of the chairs of the 7 working groups. The chairs shared their reflections, and highlighted the main challenges and opportunities to advance the applicability of environmental law and regulations.

During this session, the role of individuals, mainly youth, was emphasized as a fundamental requirement to advance the environmental rule of law. The need to consider the limits of state activity, while also truly reflecting on citizen sentiments regarding the public management acts was also stressed. On the other hand, emphasis was made on the importance of a continuous update conveyed by human rights principles, such as the progressive development and implementation of norms, advancing procedural flexibility that environmental issues warrant, and the protection of vulnerable groups; as well as the focus on transdisciplinary approaches to conflict resolution related to environmental issues based on accountability and governmental transparency in the framework of the rule of law to improve and promote stability through confidence-building.

High-Level Panel

Prior to the Closing Session of the Congress, a High-Level panel was held to offer an opportunity for an open, dynamic and inclusive debate about the themes addressed throughout the Congress. The Panel was chaired by H.E. **Sergio Muñoz, Minister, Supreme Court of Justice of Chile and OAS Goodwill Ambassador for Environmental Justice**, and featured the following panelists:

- **Jorge Abbott**, Attorney General, Chile.
- **Rabino Sergio Bergman**, Minister of the Environment and Sustainable Development, Argentina.
- **Juan José Porras Castillo**, Representative, House of Representatives, Guatemala.
- **S.E. Luis Almagro**, Secretary General of the OAS .

The panelists had an exchange on the challenges regarding the implementation of Sustainable Development Goal (SDG) 16 of Agenda 2030, and the commitment to achieve a pollution-free world. During their interventions, the panelists highlighted the importance of a universal vision of humanity and ecology, as well as the relevance of using environmental law for the protection of human rights. Also, emphasis was placed on the need to protect victims of environmental crimes, considering that corruption is one of the main pollution causes in the planet. In this context, the panelists concluded on the importance of the responsibility and ethics of public officials who implement environmental law for the good of our common home.

Closing Session

The President of the Supreme Court of Justice and the Secretary General of the Organization of American States offered the closing remarks of the Congress; available in the following link: <http://www.oas.org/en/sg/commonhome/environmental-rule-law.asp>

*****Meeting of the Environmental Justice Committee of the Ibero-American Judicial Summit**

Prior to the Congress, a working-group meeting was held with the members of the Environmental Justice Committee of the Ibero-American Judicial Summit, under the auspices of the Supreme Court of Justice of Chile. This meeting included an informative session about the Global Judicial Institute on the Environment. In addition to the members of the Committee, the participants included representatives of the World Commission on Environmental Law, the Organization of American States, UN Environment, Global Judicial Institute on the Environment, and the Environmental Law Institute.

The meeting was co-chaired by H.E. Sergio Muñoz, Minister of the Supreme Court of Justice of Chile and H.E. Antonio Benjamin, Minister of the High Court of Brazil. Also, the President of the Supreme Court of Justice of Argentina, H.E. Ricardo Lorenzetti, the Minister of the Constitutional Court of Ecuador, H.E. Pablo Tinajero, and the Minister of the Constitutional Court, Santiago, H.E. José Ignacio Vásquez, participated during the meeting, as well as ministers of the three environmental courts of Chile.

During this meeting, the judges addressed two main topics: the preparation of a set of “Judicial Guidelines on the Environment” jointly prepared with the General Secretariat of the OAS, which will be presented for approval to the Presidents of the Supreme Courts of the Ibero-American countries in the framework of the Ibero-American Judicial Summit in April 2018 in Quito, Ecuador; and the support to the Global Judicial Institute on the Environment. This new platform, led by judges, will support the judiciary around the world and provide spaces to share information and experiences on the adjudication of environmental issues.

The set of judicial guidelines elaborated by the mandate of the Ibero-American Judicial Summit (Plenary Assembly Motion of the XVIII Ibero-American Judicial Summit: Protecting the Common Home: Guaranteeing Rights for More People in the Americas) will serve as an important resource and tool for the judiciary, as it brings together the main emerging principles of environmental law used by judges around the world to ensure the effective and equitable implementation of the environmental rule of law. Additionally, it will support the work of the Global Judicial Institute on the Environment. The participants discussed the ongoing plans for the sub-process on “Judges and Prosecutors” in the framework of the 8th World Water Forum to be celebrated in Brasilia, Brazil from March 18-23, 2018.

All documents and further information on the Congress is available in the following link: <http://www.oas.org/en/sg/commonhome/environmental-rule-law.asp>. The publication with the selected short articles for the Congress will be available in this link as well.