

ENFORCEMENT AND COMPLIANCE PROGRAMS IN CENTRAL AMERICA

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SUMMARY

This paper provides an overview of environmental legislation in Central America. Regional legal instruments have been developed and have gone into effect at the initiative of the Central American Commission on Environment and Development (Comisión Centroamericana de Ambiente y Desarrollo) including Central American Agreements on biodiversity and protected areas, forestry resources, climatic change, and dangerous waste. More recently a political proposal has been made for an Alliance for Sustainable Development (Alianza para el Desarrollo Sostenible).

An incipient juridical framework exists at the national level. There are constitutional grounds for environmental protection. There are important gaps in the development of juridical instruments, especially regarding environmental sanitation matters; at present, the main challenge is the imposition of quality standards. In other cases, such as forestry resources, an effort has been made to promote an administrative organization with its corresponding procedures, but real results in the reduction of the deforestation rates have not been achieved.

The general conclusion is that environmental legislation in Central America is very weakly applied and has low compliance.

Four main obstacles to the actions that are needed to overcome this problem were deduced from legal advice given over the last two years to the Wildlife Program for Central America (Programa de Vida Silvestre), in the Regional Office for Mesoamerica (Oficina Regional para Mesoamérica), of the World Conservation Union, which are:

- The absence of institutional conditions that assure a Rule of Law.
- The growing poverty in the region.
- The scarce participation in the elaboration of juridical instruments.
- The weakening of the State.

1 REGIONAL ENVIRONMENTAL LAW

1.1 Central America environmental integration process

The Central American Integration Process continues its development and consolidation. It was organized and executed by the Central American Integration System. The Tegucigalpa Protocol instituted it and included among its objectives:

“To establish concerted actions directed to preservation of the environment through respect and harmony with nature, ensuring a balanced development and rational exploitation of the region’s natural resources, with the perspective to establish a New Ecological Order in the region.”

The system now has four clearly identified sectors:

- Economical Sector: Economical Integration System.
- Social Sector: Social Integration Commission.
- Educational and Cultural Sector: Educational and Cultural Commission.
- Environmental Sector: Central American Commission for Environment and Development.

The Central American Commission for Environment and Development has become the focal point for the development of action plans and strategies in the region, as well as the implementation of agreements concluded during periodic high-level political meeting, the “Central American Presidential Summits.”

The Commission is formed by the leaders of the institutions responsible for the management of natural resources and the environment in each Central American country. The treaty setting up this body has been ratified by all regional states. The Protocol of San Salvador included the participation of Panama and Belize as formal members.

The Central American Commission for Environment and Development guided the preparation of the “Environmental and Development Central American Agenda”, submitted at the United Nations Conference on Environment and Development. A major theme of this agenda is the development of regional legal instruments based on principles set out in the conventions signed at Rio.

This fact has produced the development of the international environmental law in Central America via regional conventions, by now in four areas:

- Biodiversity and the protection of prime wilderness areas.
- Management and conservation of forest natural ecosystems and the development of forestry plantations.
- Transboundary hazardous wastes.
- Climatic change.

This regional framework would aim to harmonize national regulations bearing on natural resources and the environment and promote sustainable development at national level, while maintaining common regional elements.

1.2 Central American environmental conventions

1.2.1 Convention on the conservation biodiversity and the protection of prime wilderness areas in Central America

Virtually simultaneously with United Nations Conference on Environment and Development, an “Convention on the Conservation Biodiversity and the Protection of Prime Wilderness Areas in Central America” was signed during the Presidential Summit in Managua, June 5, 1992. Its objective is the conservation of terrestrial and marine-coastal biological diversity. To further this purpose, it calls for the establishment and strengthening of eleven protected areas between two or more countries. It creates a Central American Council of Protected Areas to coordinate regional efforts to harmonize policies regarding the regional system of protected areas. As a mechanism for monitoring compliance with the Convention, the Central American Commission for Environment and Development, based on information obtained from national authorities, is called upon to submit annual reports to the Presidential Summit.

1.2.2 Convention on transboundary movement of hazardous wastes in the Central American region.

Following the United Nations Conference on Environment and Development, at the Presidential Summit held in December 1992, in Panama, the “Convention on Transboundary Movement of Hazardous Wastes in the Central American Region” was signed. “Hazardous waste” is defined by categories established in Annex I, and by characteristics listed in Annex II. Annex III lists activities with hazardous waste disposal. The Agreement declared the importation of hazardous waste an illegal and criminal act, subjecting it to sanctions pursuant to the national law. These regional agreements are open for membership by the Mesoamerican states. A reflection, in part, of the fact that Mexico participates as an observer in the Central American Commission for Environment and Development.

1.2.3 Central American agreement on climatic change

During the meeting of the Foreign Relations Ministers, in Guatemala City on the October 29th, 1993, the “Convention on Climatic Change” was signed by the following countries: Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica and Panamá.

It is based on the “United Nations Convention on Climatic Change”, but its approach to this global problem intends to be from a Central American perspective. Its objective is the protection of the climatic system to insure food production and continuous economic development. It defines “climatic system”, as the atmosphere, hydrosphere, biosphere lithosphere and their interactions as a whole.

The Convention contains general mandates. Many of the articles are declarations of principle, such as the necessity to maintain the climactic conditions for the conservation of the natural resources. It does not establish specific guidelines nor does it specify parameters. It reiterates the sovereignty of each countries' use of its natural resources, but only if these activities are not detrimental to the global climate. It promotes the evaluation of gas emanations which produce the greenhouse effect, the rational use of soils and watersheds, and sustainable agriculture that will not conflict with the conservation of the environment.

Emphasis is placed on scientific investigation. For example, learning the factors that regulate the climate, as well as strengthening the Meteorological and Hydro-meteorological Services.

Following the trend of preceding Regional Conventions, the executive agency is the Central American Commission for Environment and Development. The Regional Committee of Hydraulic Resources and Meteorological Services provides technical assistance to the Commission. They are in charge of elaborating an Action Plan for 1993-2005.

The Convention created the Central American Council on Climactic Change and is integrated by the Directors of the Meteorological Services; its purpose is the coordination of policies at the national level as an associate agency to the Central American Commission for Environment and Development. It becomes effective when at least four members ratify it, whereas preceding Regional Agreements required ratification by three signatories.

1.2.4 “Regional convention for the management and conservation of forest natural ecosystems and the development of forestry plantations”

The “Regional Convention for the management and conservation of forest natural ecosystems and the development of forestry plantations”, was signed during the meeting of Foreign Relations Ministers, on October 29, 1993, and was later approved by the Presidents' Summit. It contains a regional framework for the management and conservation of natural forest ecosystems and the development of forestry plantations. Its objective is to avoid a change in the

use of land in forested areas and to recover those areas that have been deforested. This agreement is very interesting because it offers a set of principles that will guide institutional, judicial, and financial policies in pursuit of its objective.

It proposes the consolidation of a National and Regional System for Protected Wildlife Areas, the rehabilitation of degraded forests, forestry management of primary natural forests, reforestation programs, and the maintenance of inventories.

Regarding financial aspects it recommends the creation of specific funds, reinvesting mechanisms, credit assistance, important international cooperation and a modification to the National Accounts System to include depletion of the natural resources when calculating the Gross National Product.

It includes a chapter on public participation, where it recognizes the necessity to respect cultural diversity: indigenous population, communities, women, non-governmental organizations, and industrial sectors.

At the institutional level it recommends the strengthening of National Forestry Action Plans, the creation of Environmental Ombudsmen and obligatory Environmental Impact Assessment. The reason for this is that no legal framework for environmental impact studies existed in Central America until very recently. Consequently the institutional capacity for their reception, analysis and approval has been insufficient. This is an area that recently has begun to develop. In Panamá there is draft legislation, in Honduras the General Environment Law takes it into consideration. In Costa Rica it began fifteen years ago as a requisite for mining activities; this requirement has now been extended to other activities.

The Central American Forests Council is created, integrated by the Directors of Forestry Services from each country and national coordinators of the National Tropical Forestry Action Plans. It will come into effect once it has been ratified by three signatories.

The major concerns at the moment is to stop the change in the use of land in forested areas, which constitute 60% of Central American territory. Currently deforestation is one of the major environmental problems in the region. This is a consequence of inadequate management of other sectors, a lack of territorial order, the process of colonization and inefficient forestry management systems. For this reason the legal regulation of forestry resources, in an effort to conserve and restore them, is a common theme in the countries of the area. All Central American countries are reviewing and modifying their forestry legislation. Honduras and Panamá have already proclaimed new dictates in this aspect. Guatemala, Costa Rica and El Salvador have defined forestry policies, which provide a referential framework for forestry activity for the next five years. Here the State assumes a regulatory and supervisory role and the non-governmental sector is the executor.

These facts reflect that for the first time in the forestry sector, the policies and legislation of each country are trying to respond to the requirements established in the Diagnostics of the Forestry Situation.

In 1995, the Central American Council of the Protected Areas created by the "Convention on the Conservation Biodiversity and the Protection of Prime Wilderness Areas in Central America" and the Central American Council on Forests, constituted by the "Regional Convention for the management and conservation of forest natural ecosystems and the development of forestry plantations", merged into one body, with one Executive Secretary, in order to coordinate actions and to strengthen them.

As observers a few regional organizations were also incorporated, which represent different sectors of the civil society such as: women and development, indigenous-farmers of community forestry, forestry producers, local governments, forest professionals, Parliament Commissions for environment and development, regional members of World Conservation Union (CR/ONG's).

1.3 Central American environmental policy

On 12 October 1994, the Presidents of Central America Panama and Belize, met in Managua, Nicaragua, to hold the “Central America Ecological Summit for Sustainable Development”. At this summit they adopted a holistic strategy for sustainable development in the region, called the Alliance for Sustainable Development.

This Declaration includes a definition of Sustainable Development which takes into account the characteristics of the Central American region, the principles in which this strategy is based, the requirements to allow it to happen, the objectives, and the tools.

Sustainable Development is defined as: “a process of gradual change in the quality of life of people that sees them as the center and the pivotal subject of development. This should be achieved through economic growth with social justice and through the transformation of the means of production and consumption patterns, based on the region’s ecological equilibrium and vital support. This process implies the respect for regional ethnic and cultural diversity, at both the national and local levels. It also requires the strengthening and full participation of their citizens, in peaceful coexistence and in harmony with nature, without detriment to, and assuring the quality of life of future generations.”

The guiding principles were defined as:

- A respect for life in all its expressions.
- The improvement of the quality of human life.
- The respect for, and sustainable use of, the lands, vitality and diversity.
- The promotion of peace and democracy as basic forms of human coexistence.
- The respect for the region’s cultural pluralism and ethnic diversity.
- The attainment of greater degrees of economic integration among the countries in the region, and of these with the rest of the world.
- The intergenerational responsibility for sustainable development.

The bases on which it is grounded are:

- Democracy.
- Socio-cultural development.
- Sustainable economic development.
- Sustainable management of the natural resources and improvement of the environmental quality.

The strategy promotes the establishment of National Councils for Sustainable Development, as instruments of implementation. These will be with participation by the public and private sectors, and by the Central American Council for Sustainable Development, which is composed of the Central American Presidents and the Prime Minister of Belize.

The Alliance document includes an Annex, where the specific objectives by areas are: political, economic, social and environmental. In the latter, clear statements are included regarding to the need to harmonize and modernize the environmental parameters, the laws and the national entities that are in charge. The need to strengthen the capacity to regulate, supervise and apply the environmental norms is also underlined, as well as the need to typify the environmental offenses.

On this occasion, at the foot of the Masaya volcano, another document was signed, known as “The Masaya Volcano Commitments,” with the official title of “Commitments Regarding the Environment and Natural Resources. Masaya Volcano, Nicaragua.”

These commitments try to set up concrete actions, with well defined and stringent timetables, for the implementation of the Alliance for Sustainable Development.

1.4 Convenio entre Centroamérica y Estados Unidos de América (agreement between Central America and the United States of America)

During the Summit of the Americas, the Convenio entre Centroamérica y Estados Unidos de América declaration was signed. This was the only document added to the Declaration of Principles and the Plan of Action. Thus, the United States of America became the first partner, from outside the region, in the Alliance for Sustainable Development. The Agreement defines a Plan of Action that establishes the individual responsibilities of each one of the governments of the United States and those of the Central America countries.

1.4.1 Plan of action

In this Plan of Action the following elements are included:

- Conservation of Biodiversity: identification, preservation, and sustainable use of the unique biodiversity in the region.
- Energy: promotion of a clean and efficient use of energy.
- Environmental Legislation: strengthening of the legal and institutional frameworks of the instruments for implementation, and the improvement and harmonization of the environmental protection norms.
- Sustainable Economic Development.

In addition to the specific components of its Plan of Action, Convenio entre Centroamérica y Estados Unidos de América also voices general support for the implementation of the Alliance for Sustainable Development.

1.4.2 Legislation

Environmental legislation has seen a strong thrust in the region. The national initiatives are taking shape within a Central American framework. The development perspectives found in regional and national legal instruments can be read as summaries of the main elements incorporated into the previously mentioned documents. The following perspectives are worth mentioning:

- The participation of civil society, including native communities, indigenous groups and other groups at the fringe of society, in the environmental decisions.
- The evaluation of environmental impact, with the definition of principles, minimum content, methodology, provision of consulting services, venues for consultation of civil society, and others.
- The management of natural resources:

a) Forestry Resources

Requirements and procedures are established for management plans, certification of timber-yielding products from sustainable forests, plans for the prevention of, fight against, forest fires, participation by municipalities and local authorities in the administration.

b) Biological Diversity

The conservation of this resource and the specific actions for this purpose are becoming an ever increasing relevance in the region. Since the signing of the Agreement on the Conservation of Biodiversity and the Protection of Prime Wilderness Areas in Central America, in June 1992, some Regional Projects have taken shape. These are the Central American Biological Corridor, which is a linkage of protected areas for the conservation and migration of species; the establishment of Centers of Biodiversity and Botanical Gardens; and the preparation of a Central American list of endangered species of wild flora and fauna.

In addition to these specific proposals, a space is being opened up for a more holistic proposal for conservation of the biological diversity. Proof of this is found in the agreements reached during the first week of February 1995, in Panama City, by the Interparliamentary Commission on Environment and Development.

It is acknowledged in them that, to fulfill what was approved in the Convention on Biological Diversity, the countries need to define Strategies and Plans of Action on Biodiversity. This must happen at both the national and regional levels, in order to evaluate this resource, and should include inventories, and knowledge and participation of civil society.

For this reason this Commission supports a diagnosis and proposals for a legal and policy framework that strengthen the conservation of biodiversity. Some of the recommended orientations include the exercise of sovereignty on Biological Diversity by the Central American States, the establishment of the intellectual property rights of over natural and cultural resources, and the right of access to information and technological transfer.

c) Hydrographic Basins

Policies and laws on the management and conservation of water resources are included, as well as studies on hydrographic basins.

- Instruments of territorial ordering to unify the classification of lands, and to set up strategies for the protection and recuperation of depleted soils.
 - a) Energy.
 - b) Central American energy policies and a master plan are included.
 - c) Transportation.
 - d) Control and prevention of water, air, and land pollution.

This section includes a plan for the elimination of lead in gasoline; regulations to control air pollution by mobile sources; regulations to monitor and control water, air, land, noise, and visual pollution.

1.5 Conclusion on legislation

A consensus has been development in Central America regarding the urgent need to strengthen the implementation of the environmental legislation, both at an international and national levels. For this reason all the documents contain, as a political commitment, the ratification of Regional and International Agreements on the environment and natural resources, and the development of the institutional capacity to make their implementation possible.

At the regional level environmental protection has been advancing rapidly. However, implementation of these advances within the national legal framework, has been at a much slower pace. In particular, the institutional response has also been slow reflecting the fact that national bureaucracies are significantly less enthusiastic about regional integration than political leaders.

We have witnessed a great effort to include the environmental concerns within the political agenda. What used to be a dream is now a fact, and we can observe it in each of the Declarations of the Presidential Summits. However, there has not been an improvement of the quality of life for people in Central America, where poverty has been increasing. Now, and hereafter, an additional effort is required to include the environmental aspects in the economic development model and make it become part of the concerns of the productive sectors; which seems the best way to improve the enforcement of and compliance with environmental law.

2 ENVIRONMENTAL LAW IN CENTRAL AMERICA

2.1 History

The history of environmental law as a Western legal concept in Central America stems from Civil Code, enacted in all Central American countries in the nineteenth century. Early cases decided under that Code include cases pertaining to hunting, fishing and forest resources, all of which were viewed as part of the property where they were found. Water resources, always of great value for community development, began to be regulated in the first-half of this century. Forest resources began to acquire value and importance in the second-half of this century. Given their strategic value, both mineral resources and the coastal zone have been declared to be in the public domain under the constitutions of the Central American countries.

The defining characteristic of the first stage of environmental law in Central America is compartmentalization. In this stage, the law has not taken into account that nature is composed of interrelated ecosystems, requiring integrated global regulation to preserve the environment as a whole. This systematic view is a product of the last twenty years, and has not yet developed sufficiently in Central America. Democratic states typically adopt legislation in response to established problems, resulting in uncoordinated regulation that mitigates rather than solves the underlying problems.

The second stage of environmental law in Central America is characterized by an effort to classify and systematize existing environmental law, revealing gaps in the law, overlapping institutional jurisdictions, conflicts of law, etc. Efforts to systematize the environmental laws have been underway for approximately the last seven years. Unfortunately, many of these efforts have been isolated projects, not undertaken in any coordinated fashion.

The current stage of environmental law development is characterized by a legislative effort to integrate and amplify existing law. In 1993, for example, Honduras approved a "General Environmental Law" which recognized the most advanced principles in the field. The legislatures of El Salvador, Nicaragua, Costa Rica and Panama are currently discussing proposed general environmental laws. This legislative effort to establish comprehensive environmental regulation, balancing conservation and development, to reorganize the administrative structure and to strengthen the means of enforcement of the law, sets new horizons for environmental law in the region.

Additionally, while legal scholarship has traditionally remained somewhat outside of the developments in environmental thinking, there are now a number of lawyers who have formed non-governmental organizations in each of the Central American countries, all seeking to assist in the enforcement of environmental law.

2.2 Constitutional treatment

All Central American countries, with the exception of Costa Rica, amended their Constitutions during the 1980's to specify the obligations of the State with respect to protection of the environment. Costa Rica finally amended its Constitution in 1994. The treatment of this issue in the various Constitutions is not identical, but the following general trends can be deduced:

- They tend toward the recognition of the right to enjoy a healthy environment as a human right (with greatest clarity in Panama, Nicaragua and Costa Rica).
- There is a significant controversy concerning the conceptual parameters of this human right, a subject of great importance, not only academically, but also practically, in order to define the bases on which this right can be exercised.
- They recognize that production and development must be based on rational use of natural resources and environmental conservation.
- They contain a declaration that the following resources are in the public domain: waters, coastal zone, continental shelf, air space, subsoil, and nonrenewable resources (hydrocarbons and minerals).

The Constitution of Nicaragua has the broadest sweep, declaring all natural resources to be the "national heritage."

The most sensitive subject is the protection and exercise of the human right to a healthy environment in the context of other equally well established human rights, such as the right to private property, and the right to free enterprise. This balance of individual and social rights is a daily struggle, framed not only by the applicable constitutional provisions, but also by the value accorded the individual in each society.

2.2.1 Guatemala¹

The Political Constitution of the Republic of Guatemala, in Title II, "Human Rights," Chapter II, "Social Rights," contains two important references consistent with the trends noted above.

Article 64 (Natural Patrimony), Second Section (Culture) states as follows:

The conservation, protection and improvement of the natural patrimony is declared to be in the national interest. The State is responsible for the creation of national parks, reserves and natural refuges, which are inalienable. The law is to guarantee their protection and that of the flora and fauna which exist in them.

The Tenth Section (Economic and Social Regime) of Article 64 contains the following Articles that refer to the Public Domain of the State: Article 121 (Property of the State), Article 122 (Territorial Reserves of the State), Article 125 (Exploitation of Nonrenewable Resources), Article 126 (Reforestation), Article 127 (Regime of Waters), Article 128 (Use of Waters, Lakes and Rivers).

2.2.2 Panama²

The Political Constitution of Panama is the only Constitution in Central America that contains an independent, complete, chapter on the "Ecological Regime," contained within Title III "Individual and Social Rights and Responsibilities." It provides as follows:

Article 114:

It is a fundamental obligation of the State to ensure that the population lives in a healthy environment, free of contamination, in which the air, water, and foodstuffs, satisfy the requirements for the adequate development of human life.

Article 115:

The State and all of the inhabitants of the national territory are responsible for social and economic development that prevents the contamination of the environment, maintains the ecological balance, and avoids the destruction of ecosystems.

Article 116:

The State will regulate, enforce and apply in a timely fashion those measures necessary to guarantee that the use of the flora and fauna of the land, rivers and seas, the forests, land and waters, is carried out in such a way that precludes their depredation and assures their preservation, restoration and continued existence.

Article 117:

The law is to regulate the use of nonrenewable natural resources, with the goal of avoiding social, economic and environmental damage.

Moreover, the Constitution of Panama is the only Constitution in Central America that specifically addresses the prevention and control of environmental pollution. All other countries focus exclusively on the protection of natural resources.

Title IX, The Public Treasury, Chapter 1, "Property and Rights of the State," identifies the property of the State as follows: mineral resources, salt mines, mines, subterranean and geothermal waters, hydrocarbons, quarries and springs (Article 254); territorial waters, flowing and standing waters, their shores and banks, navigable waters, ports, deltas, air space and the continental shelf (Article 255).

Chapter 1 also includes an interesting provision not found in any other Constitution in Central America. This provision leaves open the possibility of the creation of additional public property by action of law, stating that, "in all cases in which private property is converted to public use, the owner of the property shall be compensated."

2.2.3 Costa Rica³

In 1994, Article 50 of the Political Constitution of Costa Rica was amended to establish the right to a healthy and ecologically balanced environment as a human right, as follows:

The State will ensure the overall well being of all inhabitants of the country, organizing and stimulating production and an adequate distribution of wealth.

Each person has the right to a healthy and ecologically balanced environment, and is empowered to denounce acts which infringe on this right and to recover damages for the harm done.

The State will guarantee, defend and preserve this right. The law will determine the responsibilities and the corresponding sanctions.

Prior to this amendment, the Constitutional Chamber of the Supreme Court of Costa Rica had already stated that this was a fundamental right, relying on other constitutional provisions, such as Article 21 which establishes the right to life and Article 89 which establishes as a cultural goal the protection of natural beauty.

Article 121 prohibits the State from relinquishing public control of hydroelectric resources, based on the nationalization of these resources which occurred prior to the drafting of the Constitution in 1949. Deposits of coal, oil, other hydrocarbons and radioactive minerals as treated in like manner.

Article 6, concerning territorial limits and sovereignty, creates a 200-mile zone of territorial waters, with the aim of protecting and conserving the natural resources of this zone, and ensuring Costa Rica's exclusive use of them.

2.2.4 El Salvador⁴

The Political Constitution of El Salvador sets out the following in Article 117, concerning the public's interest in natural resources, Title V, "Economic Order":

The protection, restoration, development and use of natural resources is declared to be a public interest. The State will create the economic incentives and provide the technical assistance necessary for the development of adequate programs. The protection, conservation and improvement of natural resources will be the subject of special legislation.

Although there is no express reference to environmental rights in Title II, "Fundamental Rights and Guarantees of the Person," this provision does establish, as part of the right to public health and social assistance, the obligation of the State to control environmental conditions that can affect health and well-being. (Article 69)

The public domain is identified in several different articles. Article 103 establishes that the subsoil is property of the State and that the State may grant concessions for its exploitation. Article 84 establishes that the territory over which El Salvador exercises sovereignty and jurisdiction includes the territorial waters, air space, subsoil, continental shelf and the seas, seabed and subsoil up to 200 miles from the low tide line.

2.2.5 Nicaragua⁵

The Political Constitution of Nicaragua includes the right to a healthy environment as a human right. Title IV, "Rights, Obligations and Guarantees of the Nicaraguan People," Chapter III, "Social Rights," Article 60 states:

Nicaraguans have the right to live in a healthy environment. It is the obligation of the State to ensure the preservation, conservation and remediation of the environment and of the natural resources.

Moreover, Title VI, "National Economy, Agrarian Reform and Public Finances," Chapter I, "National Economy," Article 102 establishes that,

Natural resources are part of the national heritage. The preservation of the environment and the conservation, development and rational exploitation of them are the responsibility of the State, which may enter into contracts for their rational exploitation when the national interest so requires.

Law 192, a partial reform of the Constitution passed in 1995 which precipitated a constitutional crisis in Nicaragua based on its rejection of the executive power, did not change any of the foregoing provisions concerning the environment.

2.2.6 Honduras

In the Political Constitution of Honduras, the basic obligation of the State to conserve natural resources is located in the provisions pertaining to the economic regime. Nevertheless, in Title III, "Regarding Declarations, Rights and Guarantees," Chapter VII, "Regarding Health," Article 145 states: "The State will conserve the environment adequately to protect human health."

Title VI, "Regarding the Economic Regime," Chapter I, "Regarding the Economic System," Article 340 states:

The technical and rational exploitation of the natural resources of the nation are declared to be of public utility and necessity. The State will regulate their use according to the public interest and will establish the conditions under which they may be granted to the citizens. Reforestation of the country and the conservation of the forests is declared to be of national convenience and collective interest.

2.3. Jurisprudence

2.3.1. Citizen rights and enforcement authorities

A practical consequence of the recognition of the right to a healthy and ecologically balanced environment as a human right is the procedural use of the established instruments for the protection of the constitutional right.

The Constitutional Chamber of the Costa Rican Supreme Court has been able to develop a substantial jurisprudence concerning the protection of the environment through the issuance of constitutional injunctions, issuing opinions concerning a wide variety of subjects related to the environment. In fact, the Constitutional Chamber had already recognized the right to a healthy and ecologically balanced environment as a human right before the Constitutional amendment expressly so stating was actually passed. In order to recognize this right, the Court relied on the relationships between various existing constitutional provisions as set out in the following paragraphs:

"Human life is inviolate." This is the constitutional principle from which arises the undeniable right to health, physical, mental and social well-being, human rights which are inalienably tied to the right to health and the obligation of the State to protect human life.

Moreover, from a psychological and intellectual point of view, the emotional state is also dependent on nature. Therefore, given the value of the countryside as a place for rest and leisure, it is the obligation of the State to preserve it.

Additionally, the Court has interpreted the concept of standing in Article 50 to include a private right of action for any citizen seeking to use established legal means to protect the environment, as paraphrased below:

With respect to the environmental right, the traditional narrow conception of legal rights must be abandoned. The right must be understood as universal, belonging to all people, rather than arising from limited notions of property ownership, rights or concrete actions that can be exercised under conventional rules of law. A legal action under this right can accordingly be described as an action in the “diffuse interest” (public interest). Therefore, all members of the public equally affected by any particular environmental wrong are empowered to bring an action to remedy that wrong.

The Supreme Court of Panama also issued an important opinion in 1994 establishing jurisprudence concerning the “diffuse interest.” In that opinion, the Court recognized the standing of the National Association for the Conservation of Nature, a non-governmental organization, as a party which could oppose a logging permit. The National Association for the Conservation of Nature presented an opposition before the National Institute of Renewable Natural Resources, in which they argued that logging was not permitted in the area in question.

In the opinion, the Court expressly recognized the existence of diffuse interests or rights, defined as “those rights whose holders are indeterminate, that have a supra-individual character, that are indivisible under law and where there is no legal relationship between the holders of the rights. These rights deserve the protection of legal process, and the jurisdiction of the Court should be interpreted broadly in these cases.

The Court concluded that The National Association for the Conservation of Nature, an organization created specifically for the public purpose of conserving nature and the environment, had standing to oppose a logging concession and had the right to file an administrative complaint seeking the nullification of the concession and the right to recover damages, all based on the consideration that the alleged wrongful act harmed the “diffuse interests.”

The growing interest in environmental problems and the increase in the number of organized groups seeking resolutions to those problems suggests that there will be greater citizen participation in demanding the enforcement of already existing environmental laws. In addition to the daily pressure brought to bear in Central America, such as communities demanding potable water and responses to the problem of solid waste, etc., the public will begin to exercise its established procedural rights. It is here that the administration of justice will play a crucial role in the near future.

This growing public interest in the search for solutions to environmental problems will be strengthened by the enactment of the general environmental laws currently under discussion in all of the Central American countries, which have as one of their aims the promotion of public participation in environmental issues.

This objective is one of the general principles identified above as characterizing environmental law, and is growing stronger all the time. This is reflected in the Rio Declaration, which states in Article 10: “The best method of dealing with environmental questions is with the participation of all interested citizens at all appropriate levels.”

2.3.2 Honduras

The General Environmental Law of Honduras is a good example of this approach, given that it is the most recent and comprehensive legal instrument addressing environmental issues in Central America. This law contains a public right of action:

A public right of action is recognized in judicial and administrative matters in order to obtain sanctions against anyone who contaminates or degrades the environment and damages natural resources.⁶

This action has the following characteristics:

- It can be brought by any person. Consistent with the “diffuse interest” theory discussed above, standing does not require that there be a subjective personal interest or right implicated.
- The objective is to denounce (file a complaint). Nevertheless, a serious limitation or restricted interpretation may result if the emphasis is placed on the mere filing of the complaint without adequate attention to the resolution of the underlying issue in the continued litigation. Public actions of this nature promote greater participation in the initial complaint stage and in the subsequent proceeding.
- Acts subject to protest include polluting acts or activities.
- They must be brought before the proper authorities. The Central American countries have a wide range of institutions in the environmental area, with occasionally overlapping expertise and jurisdiction. This may present an obstacle to the exercise of the right of public action.
- A case must be officially opened in order to bring in evidence to prove the allegations and to adopt the necessary remedial measures.

Section III of the Regulations under the General Environmental Law establishes the following proceedings: the investigation must be initiated within five days, the investigation must be completed within one month, and a finding that there has been no violation of law may be appealed by any citizen.

2.3.3 Nicaragua

Article 179 of Title XV, “Regarding Administrative, Civil and Penal Sanctions,” of the General Environmental and Natural Resources Law Project of Nicaragua identifies the following characteristics of an environmental action:

The following are entitled to bring action:

- All Nicaraguan citizens.
- Registered environmental organizations.
- Representatives of State agencies responsible for Natural resources, including municipal authorities and autonomous governments.
- The Attorney General.

The intent is to increase the participation of all sectors of society in the enforcement of the law. The action must be presented before the authorities or judge of the location where the affected resource is located.

Liability is based on an objective standard, without regard to intent. Liability is established upon a showing of proof of damage and the identity of the responsible party, without the need to analyze that party’s subjective intent. The only defense is that the harm was caused either by the sole fault of the victim or by a third person for whom the accused is not responsible. The law also provides for joint liability, the liability of legal entities, and the payment of compensatory damages.

These brief commentaries indicate that the reinterpretation of traditional legal forms, such as the expansion of the concept of liability, will increase public participation and render the role of the administration of justice more relevant.

2.4 Administrative organization⁷

The form in which the State is organized to respond to environmental issues has been influenced by the established model of development.

During the last 60 years, following an economic model based on agricultural exports, the Ministries of Agriculture and Livestock obtained control over the exploitation of natural resources. Gradually, agencies were created corresponding to each of the resources, each with a utilitarian perspective: the Division of Fishing Resources (for the exploitation of marine resources), the Office of Wildlife (for continental hunting and fishing) and the Forestry Office (for timber exploitation).

Although the names vary between countries, ("Office," "Division," "Department,") the reality is the same, i.e., administrative agencies charged with the exploitation of a specific resource on a compartmentalized basis. These agencies typically have neither an integrated vision of ecosystems nor policies based on sustainability.

In the 1980's, the economic model emphasized the reduction of imports and a concomitant increase in exports, resulting in tremendous stimulation of the industrial and agro-industrial sectors. At the same time, the conservationist movement was gaining strength, which influenced the transformation of the various agencies from autonomous institutions into parts of the existing state ministries or secretariats, changing their focus from exploitation to conservation. Various protected areas began to be established at this time.

At the present time, the grave deterioration of natural resources and environmental degradation is so obvious that the public is demanding action on the part of the government, and the responsibility of the government to take action has been established as a constitutional obligation. The compartmentalized agencies in charge of environmental issues have been strengthened and transformed into official government organs, including for example, the Secretary of the Environment in Honduras and the Ministry of the Environment and Natural Resources in Nicaragua. Legal projects are underway to develop comprehensive environmental regulations and to establish the functions and otherwise strengthen the institutions involved. Notwithstanding this, the Ministries of Agriculture and Livestock, Industry and Commerce continue to exist, demanding greater coordination and continuity in the government policies to achieve sustainability.

2.4.1 Guatemala

In Guatemala, the National Protected Areas Council is the agency in charge of regulating the use and conservation of wildlife. It is organized as follows:

It reports directly to the President of the Republic.

The Council is composed of 14 representatives of the following institutions:

- National Commission on the Environment.
- General Forest and Wildlife Administration.
- Guatemalan Institute of Tourism.
- National Institute of Anthropology and History.
- Center for Conservation Studies.
- National Institute for Agrarian Transformation.

- Office of Control of Nation Reserve Areas.
- National Association of Municipalities.
- Friends of the Forest.
- Technical Education Board.
- Defenders of Nature.
- National Urban and Rural Development Board.
- One representative from the Committee of Associations of Commercial Agriculture, Industries, and Finance Institutions.
- One representative from the non-governmental conservation organizations that will be created in the future and registered with Consejo Nacional de Areas Protegidas.

This form of organization, intended to encourage greater public participation, has produced a significant obstacle to the functioning of the Council, i.e., it is difficult to obtain the quorum required for a meeting. Decision making is a lengthy process, and is subject to appeal before the Ministry of Agriculture, Livestock and Foodstuffs. Some merely mechanical issues such as preparation of the calendar of the agency are subject to the approval of the Congress of the Republic.

2.4.2 Honduras

There are two Secretaries of State in Honduras with related jurisdictions: the recently created Secretary of State in the Office of the Environment, and the Secretary of Natural Resources.

The Secretary of Natural Resources has responsibilities in the areas of agriculture, livestock, forests, mines, hydrocarbons, water resources and fisheries. The Honduran Corporation for Forestry Development is an executive institution whose Protected Areas and Wildlife Department is supervised by the Ministry of Natural Resources.

Secretary of State in the Office of the Environment has coordination functions rather than executive responsibilities. It was created under the General Environmental Law of 1993. It is responsible for carrying out environmental legislation, formulating and coordinating in an integrated manner national policies concerning the environment, monitoring to ensure that these policies are carried out, and coordinating public and private institutions. It has a Consultative Board, composed of the Subsecretaries of State of the Offices of Planning, Coordination and Budgeting, Natural Resources and Public Education, and representatives of the Association of Municipalities, Institutions of Higher Education, the Federation of Non-governmental Environmental Organizations, the Honduran Private Business Board, organizations of workers and farmers. It also has a Technical Advisory Committee.

As a example of the dispersion of institutional authority, the Environmental and Developmental Action Plan assigns the following aspects of watershed management to the indicated agencies and institutions:

- The Secretary of Communications, Public Works and Transport handles channelization projects and the protection of banks.
- The National Energy and Electrical Enterprise handles water resources for the production of energy.
- The Honduran Corporation for Forestry Development handles forestry management plans for the conservation of watersheds.

- The National Geographic Institute handles the preparation of hydrogeologic maps.
- Financial and technical agencies such as the Center for Tropical Agronomy Research and Teaching and the Food and Agriculture Organization of the United Nations are also involved.

Notwithstanding the number of institutions involved in watershed management, the majority of watersheds are seriously degraded from their highest reaches, as a consequence of a lack of available water for various uses and frequent natural disasters such as droughts, floods and erosion of the soil.

2.4.3 El Salvador

In El Salvador, since the creation of the National Environmental Board in 1991, the Executive Secretary has been responsible for preparing environmental policy proposals and coordinating and supervising their implementation. The Board is comprised of the Ministers of Agriculture and Livestock, Public Health and Social Assistance, Justice, Treasury, Public Works, Planning, Economy, Defense and Public Security, Education, Interior, Labor and Foreign Relations. Finally, a representative of the Salvadorean Municipal Development Institute is on the Board.

The Executive Secretary is the entity responsible for coordinating and monitoring environmental policies and strategies issued by the Board to ensure their implementation as a means of fulfilling the established goals of defending natural resources and controlling environmental contamination. One of its first actions was the preparation of the Environmental Agenda and Plan of Action.

Nevertheless, as in the rest of the Central American countries, there is "institutional dispersion and fractionalization, administration of a resource by multiple institutions, resulting in jurisdictional conflicts, duplication and rivalry with respect to the use and care of the resource."⁸

2.4.4 Nicaragua

In Nicaragua, the Ministry of the Environment and Natural Resources has the legal capacity to regulate the use of the natural resources of the country. This institution, which became a Ministry in 1993, was formerly an autonomous legal entity with an independent jurisdiction over its own resources. It has unified a number of dispersed agencies, among them the General Administration for Renewable Natural Resources, formerly located in the Ministry of Livestock Development.

2.4.5 Costa Rica

In Costa Rica, there are two principal relevant institutions, the Ministry of Natural Resources, Energy and Mines, responsible for renewable natural resources, and the Ministry of Health, through the General Administration of Environmental Sanitation.

The Ministry of Natural Resources, Energy and Mines is composed of the National Park Service and the General Administrations of Forestry, Wildlife, Geology and Mines. To achieve consolidation of these functions, it is currently necessary to reinforce its mechanisms of internal coordination in an equitable manner.

The discussion of watershed management in Honduras, illustrating the problem of scattered institutional authority, is equally applicable to Costa Rica. Watershed management in Costa Rica is accomplished through a large number of different institutions, with overlapping jurisdictions, and no clear means of coordination between them. Moreover, these institutions have different structures; some are Ministries, others are autonomous institutions or local governments. These institutions include the following:

- The National Electrical Service, which regulates the use of public waters, and grants concessions for their use.
- The Costa Rican Institute of Aqueducts and Sanitary Sewers, which supplies potable water, collects and removes sewage, and operates the system of storm sewers.
- The National Subterranean Waters, Irrigation and Drainage Service, which is responsible for the development of farming through its irrigation and drainage systems.
- The Costa Rican Electricity Institute, which is responsible for the development of hydroelectric energy. The Ministry of Natural Resources, Energy and Mines, which is responsible for watershed conservation.
- The Municipalities, which are responsible for the provision of potable water and the removal of used water AQUAS SERVIDAS.

2.4.6 Panama

In Panama, the National Institute of Renewable Resources is relatively new. Created in 1986, its functions are centralized. It is an autonomous legal entity with its own resources. It has a board of directors composed of nine representatives:

- Minister of Planning and Economic Policy, the Vice Minister presides.
- Minister of Government and Justice.
- Minister of Education.
- Minister of Agricultural Development.
- Minister of Commerce and Industry.
- A representative from the conservation groups.
- A representative of the Union of Industrial Workers.
- A representative of the Association of Employees of the Institute.
- A representative of the loggers' union.

It is the obligation of the Director General, who is responsible for the technical and administrative administration of the Institute, to designate and remove the executive body.

2.5 Legal regulations

The environmental laws in Central American are totally scattered. Natural resources are regulated in a compartmentalized manner and regulations are promulgated based on different uses of the same resources resulting in overlapping jurisdictions and limited instruments of control and application.

The law suffers from deficiencies, inconsistencies, duplications, and superimpositions with respect to its substance. Regulations have not been promulgated for the majority of the laws, presenting legal gaps in decisions and regulations. Regulations concerning resources are scattered, creating institutional competition and turf battles with respect to resource management, rather than working together to strengthen environmental protection. Some laws are very general, others refer to regulations that were not approved in a timely manner, which makes application of the law difficult.⁹

2.5.1 Protected areas, forest resources and wildlife

The regulations concerning protected areas, forest resources and wildlife have principles in common, but the instruments for their rational use are different. Nevertheless, in Central America, due to the pressure to develop environmental laws, there are common regulations.

In El Salvador, Nicaragua and Panama there are no integrated laws regulating protected areas. "The majority of the existing declarations have responded to political pressures of the moment. There is no legal definition of "protected area" nor is there a definition of what should be the categories for such areas."¹⁰

There is a regional trend to revise the policies concerning protected areas based on the Convention for the Preservation of Biodiversity and Protection of the Priority Wild Areas in Central America. There are also initiatives promoting proposed legislation in each country to reform the law concerning protected areas. The objective is to conform the law of protected areas to the actual circumstances. There is also a desire to make the categories of management and use uniform. One of the most controversial subjects is whether and how private activities may be carried out inside areas in the public domain.

Forest resources have been the object of legislative attention since the middle of this century. The law and institutional coverage of this issue are ample. Some commentators are of the opinion that there is excessive regulation of forestry issues, interfering with both the use of this resource and its conservation.

In Guatemala, El Salvador, Honduras, Nicaragua and Costa Rica there is proposed legislation to reform the existing laws.

On February 3, 1994, Panama approved Law No. 1 "which establishes the Forestry Law in Panama and makes other provisions." On November 23, 1992, Panama approved Law No. 24, "which establishes incentives and regulates the activity of reforestation in the Republic of Panama." This is the most recent forestry legislation in the region.

There is also a Regional Convention for the management and conservation of natural forest ecosystems and the development of forest plantations, signed by the presidents of the Central American countries on October 29, 1993.

With respect to wildlife, Costa Rica, Panama and El Salvador have general wildlife laws. These laws incorporate a focus on management of the resource for its conservation in the context of regulating hunting and fishing as a use of wildlife. They also regulate other uses such as animals raised in zoos, scientific collection, and other activities such as the import and export of wild species, the introduction of exotic species and taxidermy.

In Nicaragua and Guatemala there are scattered provisions in the forestry regulations concerning protected areas and in the 1956 and 1969 hunting laws.

The principal problem with respect to wildlife is the low perceived value of this resource. Wild plants, excluding forest species, have not been subject to regulation, and have not been assigned to the jurisdiction of any particular agency.

There has always been a close relationship between the administration of protected areas and wildlife, which has resulted in shared jurisdiction over both resources within the same agency. Perhaps the primary result has been the failure to protect wildlife outside of protected areas.

There is no clearly defined concept of wildlife. It could be deduced that the concept is implicitly restricted to the larger vertebrates. This is reasonable, given that the regulations primarily address hunting and fishing.

Each of the countries in the region administer continental and marine wildlife separately. Marine wildlife is regulated in each Central American country by a law concerning marine hunting and fishing, dating from the 1950's. The object of this law is the exploitation of marine resources, pursuant to a licensing system. Methods of fishing are regulated in some cases, but controls are generally weak, as are the norms and policies established for the conservation of the resource.

It is very rare that any country (developed or developing) achieves efficient use of the seas. Like the land, the sea is a multiple-use resource, which provides food, transport, minerals and quarries, the production of oil, recreation and elimination of wastes. But contrary to the land, there are few efforts intended to regulate this multiple-use.

The organization of the administration of marine wildlife is even more complicated than the regulation of continental wildlife. Administration is through decentralized and centralized autonomous institutions with jurisdictions over specific resources. These institutions make no effort to operate in an integrated manner, resulting in duplicative and conflicting efforts and dispersion of resources.

The following charts, setting out the existing law on protected areas, forest resources and wildlife summarize the legal norms applicable to renewable natural resources. As noted, these laws are oriented to resource exploitation, the instruments of control and application are very weak, and the focus is on specific sectors.

To avoid the errors of the past, a legal standard should be enacted which allows the use of resources, but which also guarantees their conservation, with an institutional structure sufficient to exercise adequate control. Such a standard should be based on parameters of renewability and respect for those species which may not have current economic value, but which may acquire such value in the future. This is the heart of the concept of sustainability, which seeks to not foreclose the development options of future generations.

2.5.2 Water resources

The grave problem of administrative dispersion in relation to environmental competencies and jurisdictions over natural resources is manifested even more clearly with respect to water resources. Although this issue is discussed with reference to Honduras and Costa Rica, the situation is unfortunately similar in the rest of the countries of the region.

Many laws and regulations are addressed to the use and management of water ... but there is no law which combines the various aspects of water management, just as there is no law that regulates water quality.¹¹

2.5.3 Conclusions

There are defects, gaps and duplications in normative texts, but the major problem is a legal structure that has not been applied, not by private individuals and not by the State. The real challenge is to ensure the application of existing law, through respect for the law on the part of the citizens and by the application of it by public institutions.

3 REFLECTIONS ON THE ENFORCEMENT AND COMPLIANCE OF ENVIRONMENTAL LAW IN CENTRAL AMERICA

3.1 A concrete experience: the wildlife program for Central America

Since 1993, legal and institutional assistance has been provided to the Wildlife Program for Central America, of the Regional Office for Mesoamerica, of the World Conservation Union. It has been a challenge to be able to work on wildlife management, with the objective of improving the quality of life of the people, especially with the most impoverished sectors of the society. An interdisciplinary work team has been consolidated. Environmental law is characterized for being interdisciplinary and transectorial. We have had to pass over from the theory to the practice. The professional and personal enrichment has been enormous and important.

This final part of the work, is centered exclusively on the most relevant aspects of this experience, trying to extract some lessons that can be useful to the Law. The characteristics of the World Conservation Union, as a regional institution of the Program where assistance is provided, the lessons learned from the Demonstration Projects and a general conclusion on the most important aspects to be taken into account in the development of effective and efficient juridical instruments will be briefly presented.

3.1.1 The wildlife program for Central America, of the regional office for Mesoamerica of the World Conservation Union

The World Conservation Union is an international non-governmental organization, constituted since 1948. It is a Union of sovereign States, governmental entities, and non-governmental organizations. Its primary interest is to encourage scientifically founded action which establishes links between the environment and development, with the aim to promote improvement in the world populations' quality of life. There is a commitment to try to assure that the human utilization of natural resources occurs in an appropriate, sustainable and equitable manner.

The World Conservation Union has a Regional Office for Mesoamerica, with headquarters in San José, Costa Rica. Its purpose is to provide services that are required by its members in Mexico, Central America and Belize.

Wildlife is one of its programs. It is founded on the premise that the controlled use of wildlife is an alternative to the strict protection of the resource. By effectuating a sustainable use of the wild resource, biodiversity is preserved, as the ultimate aim, which is vital for its development and that of future generations.

The Wildlife Program for Central America, came to being at the adoption of Resolution 18:24 in the 18th is sustained on the principles and criteria of "Caring for the Earth" (A Strategy for Sustainable Living); whose basis is the establishment of an ethic for the care for nature and people, and sets up actions that are reinforced by acquiring an individual, local national and international character.

The program of the Regional Office for Mesoamerica, parallel to the Strategy for Caring for the Earth, tries:

- To respect and care for the community of life, by proposing actions that directly benefit the conservation of wildlife and the habitat that sustains it at the long-term.

- To improve the quality of human life. This work is based on a triangle where the user's role is of equal importance to that of the wild populations' or the habitat. Here, any action should be based on a serious analysis of the social and economic situation of the human communities.
- To enable communities to care for their own environment, by promoting and facilitating the management of species which are of interest to the rural communities, as well as securing a just profit for the traditional users from the resources' exploitation .

The Wildlife Program for Central America, has achieved actions:

- To promote the sustainable use of wildlife resources for the improvement of the quality of life of the rural population in the Central American region.
- To assist the Central American governments and non-governmental groups in their wildlife resource management programs with technical, administrative, legal and inter-governmental cooperation aspects.
- The implementation of demonstration projects for the sustainable use of natural resources in Central America.

Community wildlife demonstration projects have been developed in:

- Guatemala: community management of fauna species in *Uxactún*, within the Mayan Biosphere Reserve, in Petén.
- Nicaragua: community management of garrobo in semi-captivity.
- El Salvador: community wildlife management project in La Laguna de Jocotal.
- Costa Rica: community management of alligator in the Caño Negro Wildlife Reserve.
- Panama: management of paca and green iguana.

These demonstration projects are carried out through governmental and non-governmental organizations in each of the countries. As well, the program has proposed the establishment of a network of technicians who work in the region. It will be formed by those professionals interested in wildlife management, and will permit a better transfer of information and technology in the aspects related to this subject.

The activities of the Wildlife Program for Central America are developed according to the following conceptual framework:

- That biodiversity is a vital resource, indispensable for survival, important for the economic, social, cultural, esthetic use which should be conserved for the benefit of present and future generations, in all of the Central American territory, within as well as outside of the protected areas.
- That wildlife is a shared resource, which doesn't admit geographic or administrative divisions and that requires, in many cases, measures for protection and regional controls for its adequate conservation at the long range.
- That rural communities depend and have depended on wild resources throughout the years for their well being and development. That the sustainable use of biodiversity improves the quality of life of human communities.

- That the traditional knowledge of native communities regarding the use and exploitation of wildlife resources is very valuable.
- That women have knowledge and fundamental experience in the use and exploitation of wildlife resources, as well as in the education for its sustainability.
- That the State should regulate the distribution and the equitable access to the resources, balancing between the inclination for profit at the short term and social interests at the middle and long range.
- That the law is an instrument that can promote community participation in wildlife management, and that the norms that regulate the sustainable use of natural resources should be based on scientific and traditional knowledge.

3.2 The wildlife program for Central America: the juridical and institutional emphasis

Since 1993, the Wildlife Program of the Regional Office for Central America of the World Conservation Union has developed actions on environmental legislation matters, specifically regarding wildlife.

One of the objectives of the Wildlife Program is “to contribute to the development of basic elements for the elaboration of a strategy in environmental legislation that permits community participation in wildlife management, through effective and efficient instruments”.

The Program’s juridical and institutional aspects have elaborated a plan of activities which include:

3.2.1 A diagnosis, in each country of Central America, of the situation concerning legislation and institutional structures, for wildlife conservation matters

Its analysis was focused on the possibilities for community participation in its management. This research project had a duration of 2 years and involved natural science and law professionals, with the aim to obtain a interdisciplinary focus. At the end of 1994 a book entitled “A necessary encounter: the management of wildlife and its juridical regulations. A Central American diagnosis” (“Un encuentro necesario: el manejo de la vida silvestre y sus regulaciones jurídicas. Un diagnóstico centroamericano”), was edited by M.Sc. Vivienne Solís and Lic. Patricia Madrigal.

The general objective of publishing this book was to motivate an awareness of the need for each country’s political authorities to tend to administrative aspects and wildlife management more rigorously, while also providing systematic information which is of interest to different organizations and academic and research institutions.

3.2.2 Legislative assistance in the elaboration of wildlife conservation laws

According to the above mentioned diagnosis the regulation of wildlife in the broad sense is one of the gaps at the Central American level. Therefore, at the request of the corresponding legislative bodies, Costa Rica and Panama have been assisted in the elaboration of Law Projects on this matter, which are now in effect, and a process has been initiated in Nicaragua.

3.2.3 Research and diffusion

Interdisciplinary work and “demonstration projects”, as spaces for observation and learning, have permitted the systematization and analysis of the main conclusions for the consolidation of a juridical outline.

This enrichment offers the possibility of providing juridical assistance with knowledge of the reality and an adequate evaluation of the socio-economic circumstances.

In the search for ways to reach the proposed objective of promoting the sustainable use of wildlife resources to improve the quality of life of the rural population in Central America, demonstration projects have been established in various countries of the Region.

3.2.3.1 The sustainable use project in La Laguna de Jocotal

The Project is developed in La Laguna de Jocotal which is located in the southeastern zone of El Salvador. This lagoon has a great variety of wildlife including aquatic plants and resident fauna, especially birds, some migratory and in danger of extinction. Its size changes according to the dry and rainy seasons that causes legal problems regarding its boundaries.

The Project is implemented by different organizations that promote community organization and education for the sustainable use of their natural resources. Nesting cages have been installed for patos arbóreos or “piches”, harvesting their eggs for consumption and exchange.

3.2.3.2 Community management of the black garrobo (*ctenosarura similis*) and the green iguana (*iguana iguana*) project in Cosigüina

This Project is located in the Cosigüina Peninsula, in the northeastern zone of Nicaragua. The Cosigüina Volcano is found in the Peninsula, which was declared a Wildlife Refuge in 1956 and as a Natural Reserve in 1983. The activities of the Project are carried out in the buffer area.

Its objective is to promote community participation in the sustainable use of wildlife, with emphasis on the reproduction of the iguana and *garrobo*. This is accomplished by developing new productive options and a diversification of economic activities to improve the quality of life and the sustainability of the Project.

3.2.3.3 Community management of wild fauna resources project in Uaxactún

The Project is developed in the community of Uaxactún, located in the heart of the Mayan Jungle, in Flores of the Petén Department, Guatemala.

Its objective is to develop community management plans for the sustainable exploitation of the fauna species which are used by the community for consumption. These plans will incorporate traditional knowledge and be supported by scientific and social research.

3.2.3.4 Institutional strengthening for the control and conservation of wildlife resources project in Panama

Its objective is to increase the capacity of the Institute for Renewable Natural Resources (Instituto de Recursos Naturales Renovables so it can provide extension services to rural communities, for wildlife management, in the Cañas Island with marine turtles and in Cabuya with the green iguana.

These projects have motivated the following reflections around real situation.

During the first trimester of 1995 an exchange was held between the technicians of each one of the projects, to visit and learn about the experiences developed by the others. The following reflections are the product of this systematization process. From the local experience, great inputs are extracted for a global analysis, trying to transcend the problems for local development to the obstacles that are found at the national level.

3.2.3.4.1 Strengthening the rules of law and the expansion of democracy, indispensable requisites of environmental legislation. The teachings of the “La Laguna del Jocotal” project.

“The campesinos don’t have property titles. This is the reason that they don’t invest”.

Land tenancy is one of the conditions required to undertake conservation actions. See for example, the situation in El Salvador, in relation to the absence of an up-to-date and reliable Registry System, that guarantees the juridical security of the land.

In order for grassroots groups to approach a conservation strategy, there are relevant juridical aspects to be defined. The most important without a doubt is the definition of land ownership. This factor causes serious obstacles in our countries where Democratic Systems are barely in a process of establishment, since the governments have been elected “democratically” only five years ago.

Great differences exist between the catastral and registered information. The case of La Laguna de Jocotal, from the strictly juridical point of view, doesn’t offer major problems. Based simply on the Legislation which is currently in effect, a lagoon is of public domain, and therefore is inalienable and inadvisable; it can’t be inscribed by any one person, and in the case that it has been doesn’t grant him/her any acquired rights.

Nevertheless, reality is totally different. La Laguna del Jocotal has been inscribed by its adjacent landowners. According to the Property Registry, the lagoon doesn’t exist, it is an “optical illusion”. Even though judicially it can not have generated any right, if a protected area were to be established, the supposed owners would have to be indemnified.

Groups that have greater access to the inscription of properties have economic, political power and strongly defend their interests. For this reason, it is not of interest to look for alternative ways for granting property titles to the persons who live in the villages that border the natural areas. Due to the lack of property titles in these extremely rich areas, pressure groups have tremendous interest to inscribe them as their own, despite the fact that the villagers are the real owners.

To develop a Conservation Policy, the State as an organization of society, definitely should exercise a Rule of Law and having advanced democratic society place more attention to these structural requisites:

- Free electoral systems.
- Representativity of public positions.
- Anticipation of civil society.
- Administration of autonomous and independent justice.
- Reliable property registry systems.

The strengthening of the Rule of Law implies the struggle against corruption; this is extremely important for the control of one of the causes of irrational exploitation of natural resources.

3.2.3.4.2 “No one can be obligated to do the impossible”. With hunger there can not be conservation. The teachings of the “Cosigüina” Project.

Carlitos is a nine year old. While visiting the Project in Cosigüina he asked us to take him to Chinandega. A Military Police check point was searching the vehicles this day. In his knapsack Carlitos carried a *garrobo* (black iguana) and three baby parakeets, still without feathers. Seeing our surprise, he calmly told us after they had taken away the animals from him and we had started on our way again: “Thankfully they didn’t find the biggest iguana that I have with me which is pregnant”.

Trying to contain all of the mixed emotions that this event produced in us, we understood that in the Chinandega market the equivalent of US \$ 0.70 was paid for these iguanas and US \$ 0.10 for the parakeets. The day before Carlitos had also gotten three parakeets. Each day he had to climb higher up the mountain of the Cosigüina Volcano, to reach the parakeets’ nests.

When we affirm that the communities live from the resources that are found in the woods, many times we are saying that they “survive” thanks to these resources. The animal protein in their diet comes from these resources; they use the leather; extract seeds, mushrooms, wood, water...

Unfortunately the use of the woods at this rhythm doesn’t permit the recuperation of the ecosystem. In all the Demonstration Projects that we visited it is recognized that “day by day it is harder” to obtain the resources. It is extremely difficult to break the circle of misery and allow for the rational management of the natural resources. For these communities, even an income of US \$ 4.00 is a benefit to its quality of life.

Therefore, it is imperative that Demonstration Projects enable the observer to transcend each country’s structural reality and analysis of economic and social policies. It is here where a feeling of frustration and impotence stems from.

The Law as regulator of social harmony, is a product and forms part of this political and social structure, one of the consequences being the despairing poverty of our countries.

Its response has been slow. Only sanctions have been included as application instruments in the laws that are intended to conserve the fauna, Not only pecuniary sanctions, like fines, which surpass the majority of rural families’ incomes by various months to a year, but with penalties that restrict freedom, in other words, jail. Without even mentioning the problems that are encountered in the Administration of Justice in each country, sanctions have been established that are due to the non-application of the laws.

This repressive juridical system has to change, it must be modified, and converted into a preventive juridical system, which procures environmental conservation objectives, providing opportunities for its management.

3.2.3.4.3 For broad participation in the elaboration of juridical instruments. The teachings of the “Uaxactún” project.

For some years, the National Council for Protected Areas (Consejo Nacional de Areas Protegidas) has been preparing a Hunting Seasons Calendar. The elaboration of this wildlife conservation instrument has taken five years, and still has not been approved, since the Bylaws of the Law of Protected Areas establishes the need for it to be approved by the Congress of the Republic.

It is definitely inadequate to demand the approval of a technical conservation instrument, which in addition should be reviewed and modified periodically, by a deliberative political body such as the Congress of the Republic.¹²

This is precisely the reason that the Hunting Seasons Calendar Project has not yet been put into effect. The existing norms regarding the continental wildlife resource are found mainly in the Law of Protected Areas and its bylaws. A General Hunting Law of 1970 also exists, which has practically fallen into disuse.

For the inhabitants of Uaxactún, where the Demonstration Project is being developed, hunting has a high economic and social value; it is essential to sustain their daily diet. So, it is not just a casual interest that brought them to discuss this Hunting Seasons Calendar Project.

The Demonstration Project in Uaxactún originated in the discussion of this juridical instrument project with the inhabitants of this community, and is a real example which demonstrates the importance of holding discussions with those groups that will be the most affected by the approval of a juridical norm. This is important for the enrichment of the process of elaboration of the norms, which without a doubt will lead to a better application of them and fulfill the established objectives.

The technicians who work in this Project began a process for diffusion and discussion with the community's inhabitants, which has a broad hunting seasons tradition. The following are the main aspects that came out of this process:

Both the Consejo Nacional de Areas Protegidas Law, which was just approved, and the first draft of the Hunting Seasons Calendar Project, evidenced a great contradiction between the prohibition of many activities and the reality of a rural community which is accustomed to an intense and diverse use of the woods.

Originally they had been conceived more for sports hunting than for subsistence hunting; they hadn't sufficiently evaluated the importance that hunting has as a source of animal protein in this country's family diet.

The Mayan Biosphere Reserve (Reserva de la Biósfera Maya), an extremely rich extension, still has a woods with a broad surface area which is expansive enough to sustain large, healthy and stable seasonal animal populations.

Some conclusions have been drawn from this Consultation Process with the local hunters, who with great pragmatism and common sense gave their opinions on the Hunting Seasons Calendar Project. As follows are some examples of the opinions that have were expressed:

With regard to hunting licenses which could be granted per family, the Project limited the license's use to three family members, but in this community the families are large, with an average number of 5 persons.

It outlined specific days for hunting; sports hunting from Thursday to Sunday and subsistence hunting from Monday through Thursday. This was qualified as being absurd; the days of the week are not the factor that defines when a person is going to go hunt. This is a point where traditional practices that have been developed by these communities for thousands of years should be taken into account and be respected.

It makes it obligatory to carry a booklet with the species hunted, which should be handed over to the Municipality every year. Hunting quotas for the next year will then be defined using this information. Without a doubt this point will provide a good quantity of very valuable up-to-date information. With regard to this aspect, the Community also manifested their wish to have this information.

The only hunting techniques established included fire-arms and bows and arrows. As well, the use of other hunting techniques which are used locally such as snares, slingshots, lures for mammals, bait, dogs, tiger traps (tigreras) is prohibited; the calibers of fire-arms which are included are unknown to the inhabitants and do not correspond to those fire-arms that they possess. The prohibition should be restricted to poisons, toxic substances or artificial light (flashlights, lanterns, etc.).

It establishes that the hunters who hunt for domestic consumption should not hunt more than that which will be used to feed their own families, but in *Uaxactún* the inhabitants eat half of what they hunt and sell or exchange the other half within the community for other goods. There is no profit in this exchange or sale; the community doesn't want the price of meat to go up.

With regard to "sports hunting", the community prefers that it not be allowed in the surrounding areas, or at least that limits be established. For example, that a local guide be used or that a hunting fee be paid.

In spite of the fact that the intention is to elaborate a prevention law, for conservation of the fauna, it includes few control instruments, and these are limited to vigilance by the Municipality and the community, but they do not give them defined attributes. The orientation of the laws which are in effect in the Central American region continues to establish sanctions of fines on these aspects. These fines are set at five hundred quetzals which presently is equivalent to some 75 to 80 US dollars; this is the annual income of a family in *Uaxactún*.

The Consultation Process which was carried out is an example that should be followed in the elaboration of juridical instruments which will have an impact on the rural communities.

3.2.3.4.4 Institutional commitment in the elaboration of regulations. The case of Panama.

The legislative initiative is shared by the Deputies, as members of the Legislative Power, and by the Executive Power. Approval of the laws is an exclusive capacity of the Legislative Power. Nonetheless, in reality the Executive Power normally exercises the legislative initiative, submitting for approval the Law Projects of its interest, and directly influencing on the establishment of the Legislative Agenda.

In Panama the Environmental Commission of the Legislative Assembly has taken up this function by seeking advise needed to elaborate a General Wildlife Law Project, looking for support for the process from the Executive Power. This example constitutes a revindication of the Legislative Power in its function to elaborate the legal legislative framework.

The Wildlife Program and in the Environmental Legislation Center, of the World Conservation Union responded to the request for support for the elaboration of this Law Project.

The former, providing technical assistance through the Regional Office and the Committee of Panamanian Wildlife Specialists, professionals, scientists, from governmental and non-governmental bodies, met for eight months to discuss what should be included in a norm related to this subject in their country.

The Environmental Legislation Center contributed juridical assistance through a regional advisor and a national advisor, who participated in this process by collecting the recommendations made by the Group of Specialists and reflecting on the most suitable juridical instruments.

An important part of this process was the consultation made in the governmental institutions directly related to this subject and in the non-governmental conservation organizations and users of this resource, whose purpose was to collect their recommendations and opinions. This consultation workshop was not an expository event to gather the participants' endorsement, but rather was an activity of intense work; for 3 days, 45 people dedicated an average of 8 hours daily, to substantially modify and enrich the foundation document that had been presented to them.

The Environmental Commission of the Legislative Assembly and the Department of Protected Areas and Wildlife of the Institute for Renewable Resources (Instituto de Recursos Renovables) maintained close contact during the entire Process, supporting and recognizing the work being carried out. The notable participation of the Supreme Court of Justice and the

Office of the Environmental Ombudsman should be emphasized, due to the importance they should play in the elaboration of the juridical instruments and the care taken in the aspects of Justice Administration.

This process, where coordination among the Powers of the Republic, institutions, and between the State and civil society converged, while maintaining a balance between scientific and juridical aspects, is an example that brings us closer to a correct elaboration of the law.

4 CONCLUSIONS

There are two levels of final reflections, first in global terms for Environmental Law and the State; and second, in specific terms for regulations concerning wildlife matters.

4.1 Global reflections on environmental law and the state

According to the activities developed during the past two years, four main conclusions can be made which are obstacles to the actions needed to overcome the weak enforcement and low compliance of the Environmental Law:

- The absence of structural conditions which assure a Rule of Law.
- The growing poverty in the region.
- The scarce participation in the elaboration of juridical instruments.
- The weakening of the State.

Little by little, Central America should overcome the difficult period of social confrontation that it has been affected by, achieving a social concentration that permits the strengthening of the Rule of Law, that satisfies the basic needs of the people.

The Rule of Law doesn't just come to be "per se", it must be constructed. In our Region institutional forms that diminish poverty should be found.

We have witnessed a reform of the State, in each and every one of the countries of the area; a large number of public officials have mobilized trying to reduce non-essential services and be more efficient. This process has weakened the State as we have known it up to now. Although it is true that the figure of the assistentialist State is not sustainable, public obligations which permit a country's development cannot go unfulfilled.

One of these public obligations, undeniable and non-transferable, is the conservation of natural resources and of the environment. The contrary would be to mortgage the options for development. If the state's present orientation recommends the decrease of activities where the State is executor, its function as comptroller, as auditor, should be strengthened.

Two fundamental events should occur:

- A way to reduce poverty is the promotion of the sustainable use of natural resources. The rural communities should be capable of using their natural resources, in accordance with their cultural and millenary traditions, accompanied with scientific assistance, permitting the resources' sustainability.
- A greater participation in the establishment of norms that regulate this sustainable use, guaranteeing the best enforcement and compliance.

4.2 The elaboration of norms should first take into account the socio-economic-cultural conditions of where they will be enforced

This conclusion has led us to think that Environmental law should stem from two sources. Traditional knowledge which collects the habits, knowledge and traditions that historically have regulated the relationship between the native communities and the use of natural resources.

Traditional knowledge coming from the autochthonous groups, should be recovered and analyzed, to discover principles for environmental management. These millenary traditions, experienced by native groups, should enrich the present reality. The past is a source for analysis of the present.

4.3 Scientific-technical knowledge

Scientific-technical knowledge helps when providing explanations or solutions to the historical environmental problems and can offer current development instruments.

Environmental Law is converted into a catalyst from these sources, where the different sectors of society interact according to their interests, to find new forms of harmony. In this sense, the State has a fundamental role to try to balance these interests for the common good.

4.4 Specific reflections for legislation on wildlife

Based on the legislative assistance which has been provided over the last years to regulate the wildlife resource, these should procure that:

4.4.1 The object of a wildlife law should encompass a broad concept of this resource

Wildlife legislation, during the first half of the century, has been fundamentally oriented towards the regulation of hunting. For this reason, its objective has mainly been fauna, leaving aside other components of this resource, such as flora, fungus, microorganisms, alga, etc.

Presently wildlife legislation encompasses a concept which is much broader than just vertebrate animals, and includes all the kingdoms that Science, in its development has identified and classified (see figure 1).

Wildlife is defined as a union of living organisms including the monera, protista, fungi, animalia and plantae kingdoms; these live in natural conditions in the national territory and do not require care by human beings for their survival or else live, temporarily or permanently, in non-natural conditions.

4.4.2 The sustainable use of wildlife should be promoted, above all by rural communities

To achieve wildlife conservation different systems have been used, like resource conservation in the place where these are found; for example, "conservation in situ" through the establishment of protected areas. It has also been accomplished by "conservation ex situ", which is to say the conservation of wildlife resources outside of the areas where they are found in a natural manner, for example in zoos, botanical gardens, etc.

The term conservation is used in a broad sense, accepting wildlife management activities. For example, a rational use of this resource can be achieved through farming and ranching of wild animals. The reproduction of wild animals can have commercial ends, which is characterized by their objective to make a profit, but it also can be undertaken by the communities.

The participation of the communities in wild animals ranching and farming allows for the improvement of their alimentary diet, by including more protein content; it achieves the conservation of forest coverage and thus, of water nascents; and can provide additional income stemming from the exploitation of woods products and wild animals.

4.4.3 The law should be enforced by the authorities and should be complied by everyone

At this time, the greatest challenge to the Law is the enforcement of the juridical regulations and their forms of control.

When the difference is established between formal "reality" which is set up in the juridical texts and the objective "reality" that we see day to day, we become aware of the divorce between both. Today, this is the subject of major reflection by jurists and by all the society in general.

The real possibilities for enforcement and compliance of the reglamentation that is sought to be established, should be questioned. This question should be present from the very moment of the regulations' elaboration, because it affects each one of the matters that are posed.

The communities should participate and understand the existing regulations and their importance for the conservation of local resources. A growing interest exists to recover "traditional knowledge" which is the key to the rational use of natural resources by a portion of autochthonous groups. The recognition of its importance should not solely be academic, but should influence on the elaboration of policies and regulations, in a manner that permits the inclusion of ethnic considerations and the enrichment of the juridical and institutional system with other types of instruments.

4.4.4 Control instruments for application of the law should be preventive and exceptionally repressive

The penalization of the conduct that attack wildlife conservation has been used as a control instrument in the norms that regulate this resource.

Practice has demonstrated that aggressions against wildlife resource still are not penalized, which is needed for them to be converted into penal crimes, and sanctioned with prison terms.

Judicial authorities do not see this as important, comparing them with other aggressions like those against property, such as theft or robbery, or against human life, in the case of lesions or homicides. Due to the volume of legal proceedings that are managed in a judicial office, it is difficult for these denouncements to be resolved, and even harder to obtain an exemplary sanction.

The classification of conduct should be directed towards really grave conduct, like the trafficking of species.

The use of penal law is the "last step", an instrument that should be used as the last consequence in an environmental policy. The legal proceedings of the State should be oriented somewhat according to the Precautionary Principle, which is included in the Rio de Janeiro Declaration, which demands that actions be taken even though no scientific certainty regarding the causes of a determined problem exist.

4.4.5 Implications of wildlife legislation on biodiversity

Wildlife is an important part of biodiversity. At this time, the pressure exercised on biodiversity, occurs in the wild part. A type of legislation is required that sees to the conservation of this resource in an integral manner, but most of all one which answers the need to establish controls that permit its enforcement and compliance.

At this time some regulations on wildlife exist, on hunting aspects, but there is a total absence on biodiversity. The establishment of controls and regulations should be gradual, according to the institutional capacities of each country, but with a vision of sustainable use of the resources in benefit of their quality of life.

Recently, at the request of the Commission for Environment and Development of the National Assembly of Nicaragua, we have initiated a diagnosis on the juridical and administrative situation of this country's biodiversity.

The goal that we have established is the preparation of a law project that will fill the existing legal gaps, procuring effective (enforcement) and efficient (compliance) instruments.

Nonetheless, this legal initiative should be placed within a conceptual framework which procures that the management, control and distribution of the resources, as well as the benefits derived from the use of the biodiversity, are carried out with:

- Community participation.
- Respect for traditional knowledge.
- Equity (between men and women).
- An evaluation of the impact of the economical policies on conservation.

Nicaragua has a national strategy on biodiversity. Its objective is to search for alternatives for a juridical strategy that consolidate a juridical legal framework according to these purposes.

The following has been defined as the work structure:

There has been a great discussion over the concept of biodiversity which will be used. For now, it has been defined with an emphasis on wildlife, continental and marine resources; the resources which will be considered wild resources are those previous to human manipulation, whose aim is domestication.

Regarding biological and biotechnological resources, there is a discussion about what is the order of domain: who does this resource belong to? What the concept of property implies as far as domain, use and benefit are concerned.

- The regime of intellectual property.
- The access to genetic resources.
- The evaluation of environmental impact for the control of exotic species.
- Research and technological transfer.

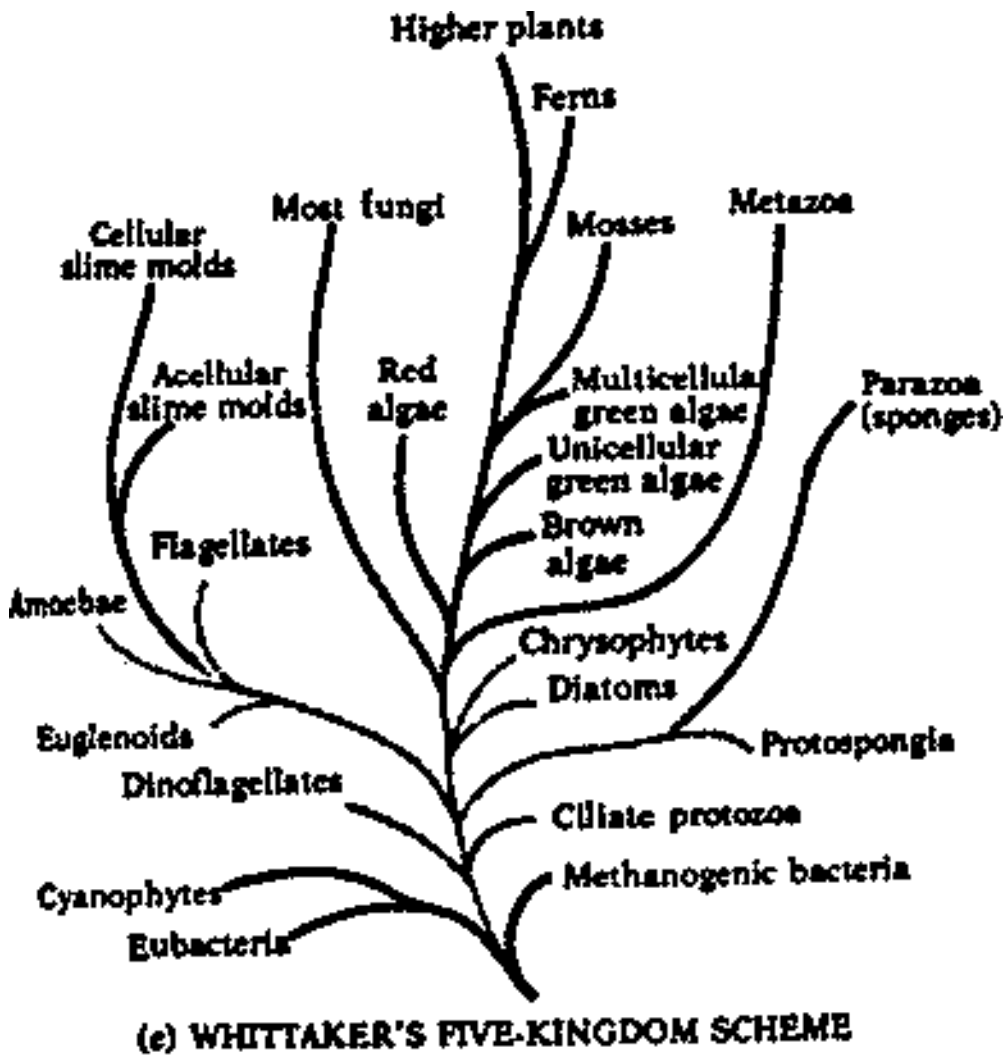
As far as conservation in situ:

- Protected Areas: The efforts to grant the administration of protected areas to local organizations such as municipalities or autonomous regions; or the systems of associated property, which grants the property to men and women, in buffer areas.
- Lists of threatened species.
- Traffic.
- Research (the departure of endemic species from the country, forms of control).

Conservation ex situ:

- Zoos, botanical gardens, seasonal farms, animal farms/ranches, germoplasm banks.
- Reintroduction of wild species: recovery centers.

Figure 1



Robert A. Wallace, Jack L. King, Gerald P. Sanders
 "BIOLOGY, THE SCIENCE OF LIFE"
 Editorial; Scott, Foreman and Company. 1981.
 p.403.

Incentives

In each one of these subjects the following items will be analyzed:

- International norms.
- Background regulations.
- Administrative procedures.
- Institutional capacity.
- Enforcement-compliance analysis.

This process for the elaboration of a wildlife law, which develops the orientations established by the Biological Diversity Convention, has been designed using a broadly participative methodology, mostly because this country is the most advanced as far as social organization.

Finally, in this era of demystification, the Law should surpass some premises, such as:

- “No one can plead to be unknowledgeable of the law.” If permanent diffusion programs, training and the discussion of juridical norms do not exist, this aphorism doesn’t apply to reality. The reality is that the majority of the citizens are ignorant of the laws.
- “Norms should be general, enforceable for all.” In a region of great cultural wealth, diverse ethic and autochthonous groups, immigrants, some differences should be recognized. In order to respect cultural dignity, principles for interpretation should be included in the law which recognize these differences.

There is an estrangement between the moral and legal content in the Law, there is a lack of ethic, revalidating forms of authoritarian organization and materialist attitudes. This is the origin of the frustration and social discontent in which we live. A movement for the humanization of the Law, which questions why, for what and for whom the juridical systems are necessary.

In my opinion, the Law is justified as a regulator of social harmony, for the well-being of the citizens, in benefit for all, but mostly is for those who are the most deprived.

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