
ENFORCING ENVIRONMENTAL LAW IN CENTRAL AMERICA: A REGIONAL ENVIRONMENTAL LAW PROGRAM EXPERIENCE

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SUMMARY

This Paper describes the The Central American Environmental Law Program, an initiative under the Program for Environment and Natural Resources in Central America (PROARCA Project). The paper describes the background and history that led up to the program's formation, its goals and its future directions.

1 INTRODUCTION

The Central American Environmental Law Program is administrated by the Central American Commission on Environment and Development, a regional intergovernmental institution created by an international treaty signed in December 1990 and currently ratified by all Central American countries (including Belize and Panama).

The financial and technical support for the program by the U.S. Agency for International Development (USAID) was possible thanks to a political commitment by the presidents of Central American and the U.S. who committed joint efforts to "raise the standards of environmental legislation and its enforcement". This agreement, signed in Miami in December 1994 at the America's Summit, is known as the Conjunta Centroamerica-USA (CONCAUSA) Declaration. Unique in this declaration is that the signatories made commitments of their own in jointly established areas, including environmental legislation and its enforcement, and provided funds and technical assistance thereto.

CONCAUSA culminates a process that started in Managua, Nicaragua where the heads of state and governments of Central America, witnessed by U.S. Vice President Al Gore, signed the regional strategy for development known as the Central American Alliance for Sustainable Development (ALIDES) which for the first time put economic growth, social development and environmental protection at the same level with political democracy. ALIDES include goals and commitments in all fields of development, including environmental legislation and its enforcement. The United States became the first extra-regional partner to the Alliance.

2 BACKGROUND

When the CONCAUSA Declaration was signed, the situation of environmental legislation in Central America was in the midst of change. Nevertheless, in some the countries there were no environmental protection framework laws. In fact, only Belize, Guatemala, and Honduras had specific environmental protection laws, while the other countries had only drafts of such laws in the administrative or legislative pipelines waiting to be approved. Not all countries

had governmental institutions created solely to ensure proper environmental management. At the national level, there generally were no attorneys offices, branches or legal officers to deal specifically with the enforcement of environmental legislation. Environmental crimes were nonexistent in the law, and the existing environmental regulations were scattered within sectorial legislation (dealing with forest, water, soil and natural resources management) which was not necessarily aimed at ensuring environmental protection. One very positive fact in this context was that, by the start of the Program in the region, there were a number of professionals and NGOs with some experience and commitment in environmental law issues, even if this subject was not taught formally at any law school.

3 PROGRAM GOALS

Thus, the basic goals of the Environmental Law Program may be stated as follows:

- Approval of comprehensive environmental legislation.
- Higher levels of environmental law enforcement.
- Dissemination of environmental law.
- A regional cadre of lawyers trained in environmental law.

The instruments to achieve these goals are:

- networking;
- access to data through an environmental law data base; and
- training in enforcement techniques with a “train the trainer” approach.

4 PROGRAM ACCOMPLISHMENTS

4.1 Training

From the beginning, the program started by a process of training the trainers. This was done in three components: training in multimedia environmental inspection techniques, training in enforcement techniques; and training judges in environmental law and legislation. To start these activities, it was necessary to prepare manuals, something which was especially burdensome in the training of judges as that required compiling, classifying and ordering - in a systematized way - national environmental legislation and presenting the procedural alternatives in order to enforce the laws and regulations. As a result of the process, there are seven national manuals on environmental law enforcement (including the ratified international treaties dealing with environmental protection), one manual for multimedia inspector training and one for enforcement techniques that includes local case studies. In terms of people trained, the figures include:

- 600 judges who are trained in environmental law;
- 200 legal advisors to environmental agencies, public attorneys and prosecutors, environmental officers, and lawyers working for legal offices of environmental NGOs, who are trained in enforcement technics; and

- 40 people in various environmental fields who are trained in multimedia inspection procedures and techniques.

4.2 Information dissemination

Currently, there is a web site (www.ccad.com.gt) at the Program's headquarters in Guatemala City that offers manuals and matrices on national and regional environmental legislation in an updated version. This component has been undertaken with support from interns from Berkeley University Law School who spend one semester every year working as trainees at the Program office. The data base offers electronic information and access to all sectorial legislation on natural resources and environmental regulations in Central America, as well as to more than 40 international and regional environmental treaties and political accords dealing with environmental protection, including data on ratification and dates the treaties entered into force.

4.3 Networking

But, the most successful instrument of the Program has been networking. At present, there are few networks functioning internationally. The most important thing to start networking has been the openness of the concept. Networks have been characterized as something that has a lot of holes and a lot of threads, allowing at the same time to bind and to let go through. This means that the networks are not formal, obligatory or discriminating. Rather they are a space of communication and participation without discrimination of those who want to participate. The emphasis has been on people and on how to put these people face to face, to interact, cooperate, and become friends. It has to be stressed that the frequent separation of legal experts working for the public sector and those working privately has not taken place in Central America.

The meeting of the Network of Experts in Environmental Law held in Tegucigalpa, Honduras in March of this year is a good illustration of this process: there were members who work for universities, environmental law NGOs, legal offices of environmental NGOs, prosecutors offices, public attorneys' offices, ombudsmen offices, environmental agencies' legal departments, private law firms, law schools students, and environmental units at general comptrollers offices. 38% of the participants were women, which reflects a good gender diversity. At the meetings of the Network of Experts, case studies of successful experiences of enforcing environmental legislation, both by civil society organizations and from the environmental national agencies, are presented. Besides this network, there are regional networks of experts in pollution prevention, environmental impact studies, and environmental auditing.

This approach and experience in building networks in Central America seems to break with the traditional approach to networking in environmental enforcement in other areas and regions. The traditional approach separates those who work for the private sector from those working for public institutions. Inclusive networks are a typical Central American feature due to many reasons:

- the absence of a strong civil service, which implies that many lawyers are only temporarily public officers;

- the current stage of internalizing environmental law in the public sector, which often requires legal officers of the environmental national agencies to confront the rest of the public institutions - often the biggest polluters and law breakers; and finally
- the small number of legal experts on this new field of law.

The aforementioned circumstances result in a need to work together. Once the process of approving environmental laws and regulations and their enforcement has become a widespread reality in the region, with its need for the private sector and polluters to hire environmental law specialists to represent them in court or before the administrative enforcing institutions, then there will be a need for separate (private and public) expert networks. Before that happens, any separation seems artificial and costly, since the region still needs to reach a critical mass of experts, no matter where they come from.

5 THE FUTURE

This year, Central America is going to have general environmental framework laws approved everywhere. The environmental protection law in El Salvador was approved in March thus leaving Panama as the only country that is still discussing its environmental protection law in their national legislative body. It is due to be approved by the middle of the year. There are environmental standards all over the region for waste and sewage water disposal, for car air polluting emissions, and for import of toxic and hazardous wastes. The harmonization process is being developed in other fields like the implementation of Environmental Impact Assessment and environmental auditing legislation. As a result of the process, but on a parallel track, environmental crimes have been incorporated into the national criminal codes or into the criminal code drafts in all countries, a process that implies that new environmental public attorneys offices will have to be opened and capacity building is being developed for this. On top of that, NGOs specialized in environmental law have been created in all countries and the oldest environmental NGOs, already in place for many years, have started to create their own legal offices, thus allowing the civil society organizations and the citizenry to have access to environmental justice.

The task ahead, once comprehensive environmental legislation and public judicial and administrative structures for its enforcement are in place, is to strengthen local and regional capacity to enforce environmental law. In the coming years, the Program will emphasize involving local authorities and civil organizations in the effort to enforce environmental law and regulations. Further, it will emphasize incorporating environmental law into formal and informal legal education. It has, until recently, been neglected in the curricula of academic and training programs of the judicial schools. Dissemination efforts will be duplicated and information will be made available to the public, since public participation in enforcing the law implies that the public knows its rights and the procedures for defending them. In pursuing this goal, the Regional Environmental Law Program seeks to facilitate these initiatives rather than implement them, thus building strategic alliances with universities, NGOs and national public institutions to make them able to incorporate the activities of the Program into their permanent programs, which may ensure their sustainability after the funding for the Program ends.