

A large graphic featuring a map of South America in a light green color, set against a circular background. A stylized green leaf icon is positioned in the lower right corner of the map area. The text is overlaid on the map.

ENVIRONMENTAL CONTROL FOUNDATIONS WITHIN THE FRAMEWORK OF THE
SOUTH AMERICAN NETWORK
FOR ENVIRONMENTAL CONTROL AND
COMPLIANCE

The Agency for Environmental Assessment and Enforcement (OEFA) ensures that the economic activities in Peru are developed in accordance with the right of people to enjoy a healthy environment. Therefore, this agency is responsible for the assessment, supervision and control in environmental matters, as well as implementing incentives in mining, energy, fishery and manufacturing. OEFA was created as a specialized-technical agency of the Ministry of Environment in 2008.





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COMPLIANCE

**Environmental Control Foundations within the Framework of the
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Andean cock-of-the-rock (*rupicola peruviana*) in a lek from Kosñipata valley, Cusco (Peru)
Photo: Walter Wust



Preface

This document aims to inform the national and international community about the constitutional and legal foundations of environmental control in South American countries of the Network for Environmental Control and Compliance, which consists of public institutions conducting control in Peru, Chile, Ecuador and Colombia.

Therefore, the international legal framework that protects the environment in the region is discussed, and a comparative analysis of the legislation governing environmental control actions of the countries concerned is carried out, in order to cooperate with the sharing of information and experiences among the administrative authorities leading environmental protection in the countries that are part of the South American Network.

The *Organismo de Evaluación y Fiscalización Ambiental* (Agency for Environmental Assessment and Enforcement, OEFA) as the lead entity for environmental control in Peru, presents this academic work in order to strengthen the fraternity and cooperation in the region. Likewise, OEFA recognizes the efforts made by the *Superintendencia del Medio Ambiente* (Environmental Superintendency of Chile) in the formation and promotion of the South American Network for Environmental Control and Compliance, and appreciates the commitment shown by the *Autoridad Nacional de Licencias Ambientales* (National Environmental Licensing Authority) of Colombia and by the Ministry of Environment of Ecuador, after its incorporation.

Hugo Gómez Apac
Chairman of the Board
OEFA





Cloudscape of a summer day reflected on Imiría lake, Ucayali (Peru)
Photo: Walter Wust





Limestone formations in the Utcubamba river valley, Amazonas (Peru)
Photo: Walter Wust



Introduction

Environmental protection came of age in 1972 with the *Declaration of the United Nations on the human environment*¹. For the first time there was a debate on the issue of environment and its importance to human life. Since then, many organizations and governments around the world have adopted national instruments and constitutions recognizing the right of people to live in an environment that permits a life of dignity and well-being (UNEP 2014), establishing in return for this right the duty to protect and improve it. Thus, Principle 1 of the Declaration stated:

Principle 1:

Man has the fundamental right to freedom, equality and *enjoys adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations (...)* (emphasis added)

From that moment on, considering the intrinsic and inseparable relationship between the environment and human life, the member countries of United Nations (UN) signed a series of charters, declarations and conventions designed to establish, promote and spread environmental awareness to ensure the maintenance of a suitable environment for human life.

1 Adopted in the *United Nations Conference on the Human Environment* on June 16, 1972 in Stockholm, Sweden.



Rocky shore covered by guano in Hornillos town, Islay, Arequipa (Peru)
Photo: Walter Wust

“Regarding environmental protection, there are the *Declaration of the United Nations on Human Environment (1972)*”

Charters and declarations are inserted into what the doctrine called *soft law*². Although these two types of instruments are not binding for the UN member states, both are important tools to clarify the content of rights, to enforce rules on the subject and to interpret its meaning and purpose. Regarding environmental protection, there are the *Declaration of the United Nations on Human Environment*³ (1972), the *World Charter for Nature*⁴ (1982), the *Declaration on the Right to Development*⁵ (1986) and the *United Nations Conference on Environment and Development (Summit 1997)*, known as the “Earth

-
- 2 *Soft law* means “flexible or weaker law”, and refers to legal instruments that are not mandatory, but influencing the legislative situation. These are rules which lack the element of fact or legal consequence that the legal provisions have, since their failure does not carry a penalty, but instead a reproach or public disrepute, as they are standards lacking of imperative nature that the legal provisions possess. See Iñigo Valverde, *European Commission* (May 7, 2014), at <http://ec.europa.eu/translation/bulletins/puntoycoma/63/pyc633.htm>. Original text in Spanish; free translation made by the Agency for Environmental Assessment and Enforcement.
 - 3 The *United Nations Declaration on Human Environment* establishes criteria and common principles for inspiring and guiding in order to preserve and improve the environment for the nations
 - 4 The *World Charter for Nature* proclaims general principles of nature conservation on the basis of which should guide and judge any act that affects man.
 - 5 The *Declaration on the Right to Development* proclaims for the first time the right to development as an inalienable human right, and places the human person as the central subject of development and should be the active participant and beneficiary of the right to development. Furthermore, this decla-



Summit”⁶ (1992). Through this three environmental agreements, the following three environmental instruments were also approved: *Agenda 21, the Rio Declaration on environment and development and the Statement on forest principles* (Valverde 2014).

On the other hand, conventions on the environment constitute binding international legal instruments and have a mandatory nature on the countries that ratified them. These include the *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal*⁷ (1989), the *Vienna Convention for the Protection of the Ozone Layer*⁸ (1985), the *United Nations Convention on*

ration states that the full implementation of civil and political rights without the enjoyment of economic, social and cultural rights is impossible; and the primary responsibility for implementing the right to development lies with national governments.

- 6 At the Earth Summit, three major agreements to guide future work were adopted: Agenda 21, a global action plan to promote sustainable development; the Rio Declaration on Environment and Development, a set of principles that define civil rights and obligations of States; and a Declaration of Forest Principles, which contains a series of guidelines for the sustainable management of forests worldwide.
- 7 The *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal* aims to protect human health and the environment against adverse effects resulting from the generation, management, transboundary movements and disposal of hazardous wastes. The Basel Convention came into force in 1992.
- 8 The *Vienna Convention for the Protection of the Ozone Layer* is dedicated to the protection of the Earth’s ozone layer, by reducing the consumption of controlled substances that deplete it.





 Humpback whale (*megaptera novaeangliae*) in Los Órganos sea, Piura (Peru)
Photo: Walter Wust

“The State has the duty to promote respect for the environment through policies aimed at preservation”

*Biological Diversity*⁹ (1992), the *United Nations Convention to Combat Desertification*¹⁰ (1994) and the *United Nations Framework Convention on Climate Change*¹¹ (1992), based on which the Kyoto Protocol¹² (1997) was adopted.

-
- 9 The *United Nations Convention on Biological Diversity* aims at the conservation of biological diversity, the sustainable use of components of biological diversity and the fair and equitable sharing of benefits arising from the utilization of genetic resources.
 - 10 The *United Nations Convention to Combat Desertification* aims to improve the living conditions of people in the drylands, to maintain and restore land and soil productivity, and to mitigate the effects of drought. It also encourages the participation of local people in the fight against desertification and land degradation; and facilitates cooperation between developed and developing countries; particularly around knowledge and technology transfer for sustainable land management.
 - 11 Under the *United Nations Framework Convention on Climate Change*, the Member States are obliged to act in the interests of human security, even in the absence of scientific certainty, acknowledging that the problem of climate change is real. The Convention recognizes that it is a “framework” document, and should therefore be amended or developed over time so that the efforts against global warming and climate change can be better targeted and more effective.
 - 12 The *Kyoto Protocol* implements the United Nations Framework Convention on Climate Change and is based on its principles to commit industrialized



Due to how the environment is measured in all mankind, the States establish methods and instruments seeking a rational exploitation of the natural environment, so that future generations receive as a legacy an environment with enough quality resources to develop their communities. Therefore, the State has the duty to promote respect for the environment through policies aimed at preservation by establishing a reasonable and useful environmental regulation. On that basis, the State is obliged to conduct permanent environmental control and compliance work, so as to achieve the desired objective: a healthy environment.

In this scenario was established the South American Network for Environmental Control and Compliance¹³ (the Network hereinafter), which currently is composed of the Agency for Environmental Assessment and Enforcement - OEFA (Peru), the Environmental Superintendency - SMA (Chile), the Ministry of Environment of



countries to stabilize emissions of greenhouse gases. However, the aforementioned convention only encourages countries to do so.

- 13 The South American Network for Environmental Control and Compliance was established through the signing of the *Declaration of Santiago* on November 6, 2013, at the headquarters of the Economic Commission for Latin America and the Caribbean (ECLAC) in Chile.



Moraines around Solteracocha lake, Huayhuash mountain range, Ancash (Peru)
Photo: Walter Wust

“The Network was created to improve environmental control and compliance throughout the region, ratify the commitment to make progress in the environmental protection work in South America”



Ecuador - MAE (Ecuador) and the National Environmental Licensing Authority - ANLA (Colombia). Similarly, it is worth mentioning that the countries belonging to such institutions are members of the UN, having ratified the conventions on the environment indicated in the preceding paragraphs.

The Network was created to improve environmental control and compliance throughout the region, ratify the commitment to make progress in the environmental protection work in South America, and strengthen the role of the agencies involved in environmental control and compliance. Therefore, the member countries of the Network seek to solve the problems and transboundary environmental effects, developing indicators for environmental control and compliance regionally, strengthening the capacity of professionals through training and sharing international practices, information and approaches on environmental issues in different countries.

Ongoing control processes are the necessary tools and instruments needed to protect, conserve and preserve the environment. These are meant to curb or discourage offending behaviors of environmental regulation to create awareness that promotes economic development in harmony with environmental protection, and to ensure the development of human life in a suitable environment.

Thus, in the context of the Network's creation, these *Environmental control foundations in the framework of the South American Network for Environmental Control and Compliance* have been prepared, with the aim of spreading the constitutional and legal protection that the environment is given in each member country, and making known the role that is played by the authorities involved in environmental control and compliance.

This document seeks to generate greater trust among institutions that are part of the Network, informing them how the environment is constitutionally protected; and what the relevant authority is for environmental control in their respective countries. Furthermore, the exchange of experience and information will allow and promote the improvement and development of the Network institutions and will strengthen existing environmental control systems.

1 CONSTITUTIONAL PROTECTION OF THE ENVIRONMENT IN THE NETWORK COUNTRIES

“The constitutional recognition of the right to a healthy environment is the core on which the environmental legislation of each Network country member is based”

The constitutional recognition of the right to a healthy environment is the core on which the environmental legislation of each Network country member is based. The environment implication in the development of all human beings is vital, and this is a precondition for the enjoyment of human rights such as life and health and, therefore, placed as a legal right subject to constitutional protection¹⁴. Thus, the constitutional protection of the environment recognizes the right of all people to live and develop in a healthy environment. Likewise, it represents the starting point for creating the proper regulatory and institutional relationship, ensuring the protection and preservation of the environment in each State.

1.1. Constitutional Protection in Peru

Paragraph 22, Article 2° of the *Constitución Política del Perú de 1993* (Political Constitution of Peru of 1993) recognizes the fundamental right of every person to live in a healthy environment, as noted in the following quote:

Political Constitution of Peru of 1993

Article 2°.- Every person has the right:

(...)

22. To peace, tranquility, enjoyment of leisure time and to rest, as well as to a *balanced and appropriate environment for the development of his life* (emphasis added).

(...)

14 The importance of protecting the environmental rights in the Constitution is that this stands as the supreme law of all legal system, and that law is the driving force that invigorates and radiates to society and the State. See Giuseppe de Vergottini. *Diritto costituzionale comparato*. (CEDAM, 9 ed. 2004), at. 115-116 (It.). Original text in Spanish; free translation made by the Agency for Environmental Assessment and Enforcement.

This is a legal concept of a generic nature (Lamadrid 2011: 77), which has required development through legal instruments regarding environmental management¹⁵; natural resources¹⁶ and protected natural areas¹⁷; environmental impact evaluation of economic activities¹⁸; control for environmental obligations of companies¹⁹; and restoration of negative environmental impacts. Thus, the Constitution of 1993 -unlike the Constitution of 1979- does not expressly states aspects such as preservation of landscape and nature, the duty to preserve the environment and the State's duty to prevent and oversee environmental pollution²⁰.

The Constitutional Court of Peru defines the environment as:

-
- 15 Act No. 28611 – Ley General del Ambiente [General Environmental Law], published on October 15, 2005 (Peru).
- 16 Act No. 26821 - Ley Orgánica para el Aprovechamiento Sostenible de los Recursos Naturales [Organic Law for the Sustainable Use of Natural Resources], published on June 26, 1997 (Peru).
- 17 Act No. 26834 – Ley de Áreas Naturales Protegidas [Natural Protected Areas Law], published on July 4, 1997, and its Regulation approved by Supreme Decree No. 038-2001-AG, published on June 26, 2001 (Peru). Note: in the United States the President signs the Supreme Decree. However, the use of the Supreme Decree is recognized internationally because they are laws issued especially by countries with a roman-germanic system (see UNO pages).
- 18 Act No. 27446 Ley del Sistema Nacional de Evaluación del Impacto Ambiental [National System of Environmental Impact Assessment Law], published on April 23, 2001, and its Regulation approved by Supreme Decree No. 019-2009-MINAM, published on September 25, 2009 (Peru).
- 19 Act No. 29325 – Ley del Sistema Nacional de Evaluación y Fiscalización Ambiental [National System of Environmental Assessment and Enforcement Law], published on March 5, 2009 (Peru).
- 20 **Political Constitution of Peru of 1979**
“Article 123°.-
Every person has the right to live in a healthy, ecologically balanced and suitable environment for the development of life and the preservation of landscape and nature. Everyone has the duty to preserve that environment. The State is obliged to prevent and monitor environmental pollution”.



(...) the environment in which life unfolds and in whose creation human action has not intervened (...) [The] environment refers to the compendium of natural elements -living and nonliving- social and cultural existing on a determined place and time, which influence or determine human life and other living things (plants, animals and microorganisms)²¹.

Hence, the importance of granting constitutional protection, raising the environment right to the fundamental right level and setting the State's duty to carry out its validity and provide mechanisms for its security and protection in case of violation²².

The content of the fundamental right to a balanced and suitable environment for the development of a person is defined by two elements. The first is the *right to enjoy this balanced and suitable environment*; i.e., this is about the right to enjoy not any environment, but only the proper one for the development of the person and his dignity. The second is *the right to preserve this environment*, which creates the obligation of public authorities to maintain environmental goods in appropriate conditions for their enjoyment. This duty also extends to individuals engaged in an economic activity that may impact on the environment²³.

21 Constitutional Court Ruling on Case No. 0048-2004-AI, Legal basis 27, second paragraph (Peru).

22 **Constitutional Court Ruling on Case No. 0048-2004-AI (Peru)**

“Legal basis 17:

Political Constitution of 1993 (article 2, subsection 22) states as fundamental the right of the individual «(...) to enjoy a balanced and suitable environment for the development of life.» The constituent, including that right in Title I, Chapter I, regarding the fundamental rights, has had as purpose to categorize the right of people to enjoy a healthy environment, as an individual right. (...) Our Constitution has raised that right to a fundamental level; therefore, the State has a duty to carry out in full force, and to provide mechanisms for its security and defense in case of transgression (...).”

23 **Constitutional Court Ruling on Case No. 0048-2004-AI (Peru)**

“Legal basis 17:

(...) The content of the fundamental right to a balanced and suitable environment for the development of the individual is determined by the following factors: 1) the right to enjoy that environment and 2) the right to preserve the environment (...). “



Yumbilla waterfalls, Cuispes, Amazonas (Peru)
Photo: Walter Wust

Similarly, the right to a balanced and suitable environment implies a negative and positive duty for the State:

(...) its negative dimension results in the State's obligation to refrain from any acts affecting a balanced and suitable environment for the development of human life and health. In its positive dimension it imposes duties and obligations to preserve a balanced environment, which in turn, translate into an array of possibilities. It is clear that this not only involves conservation efforts but also prevention duties affecting [sic] that balanced environment²⁴. (...)



The Constitution of 1993 establishes a financial regime based on a social market economy, in which the free-private enterprise is the

24 Constitutional Court Ruling on Case No. 4223-2006-PA, Legal basis 5 (Peru).



Inambari river in heightening running through Lechemayo town, Puno (Peru)

Photo: Walter Wust

principle that defines the economy and thus the development of their activities. However, this social market economy conditions the participation of business groups to carry out activities that are always in harmony with the common good and respect for the public interest. This is the interpretation outlined by the Constitutional Court as stated in the following:

Case N° 03610-2008-PA/TC

Legal basis 28:

(...) The common good and respect for the public interest (...) [are] limits so that constitutional democracy is not a space where the positions of the most economically powerful people are imposed at the expense of the legally protected goods by the Constitution, as *wealth of the country in different forms and whatever might be its ownership is subordinated to the public interest*, so it is necessary (...) to try to *harmonize the right to development (...) with the constraints arising from the protection of the environment*²⁵ (emphasis added).

Thus, the State must plan a policy to reconcile the tensions between environmental protection and exercise of economic freedoms²⁶.

The State's obligation to establish a national environmental policy depends on its commitment to undertake measures to develop or promote the environment, in order to preserve

25 Constitutional Court Ruling on Case No. 3610-2008-PA, Legal basis 28 (Peru).

26 **Political Constitution of Peru of 1979**

"Article 67°.-

The State determines the national environmental policy, promoting the sustainable use of natural resources. "

Correspondingly:

Constitutional Court Ruling on Case No. 3610-2008-PA (Peru)

"Legal basis 25:

The duty of the State is in planning policy that reconciles, through weighting, the tensions arising between environmental protection and exercise of economic freedoms; and on the other hand, to the individuals, the solidarity duty to preserve the environment, since to get a decent life, is the joint responsibility of the society, the individual and the State itself, but not exclusively of the last one (...)"





Potato Crops and wild turnip flowers around Huaypo lake, Chincheros, Cusco (Peru)
Photo: Walter Wust

and conserve it against human activities that might affect it; to guarantee, in this way, the comprehensive development of all generations, and to ensure the environment conservation for future generations. In this vein, the National Environmental Policy²⁷ aims to:

National Environmental Policy

4.- General objective:

(...) To improve the quality of life of individuals, ensuring the existence of healthy, viable and functional ecosystems in the long term; and sustainable development of the country through prevention, protection and recovery of the environment and its components, the conservation and sustainable use of natural resources in a responsible manner and consistent with respect for the fundamental rights of the person (...)

In order to enforce the protection of environmental rights, the legal framework governing the development of economic activities that can produce consequences in the environment is established; and actions of monitoring, assessment, supervision, enforcement and sanction aimed at establishing improvement, restoration and protection of environmental quality and natural resources are set up. Thus, compared to the breach with environmental regulations, a State action, would always exist, based on the exercise of its disciplinary powers, by applying provisions of reparation, prevention, and precaution²⁸.

27 National Environmental Policy approved by Supreme Decree No. 012-2009-MINAM on May 22, 2009.

28 **Constitutional Court Ruling on Case No. 3048-2007-PA (Peru)**



The ideal is to promote and regulate the sustainable use of natural resources taking into account the constitutional framework and environmental regulations that have been issued. In order to achieve this, it is essential the work of control and compliance with environmental obligations.

1.2. Constitutional protection in Chile

Paragraph 8, Article 19° of the Political Constitution of Chile of 1980 ensures the right of all people to live in a pollution-free environment and it imposes on the State the duty to ensure that this right is not affected. In addition, it provides the possibility of constraints on the exercise of certain rights in order to protect the environment:

Political Constitution of Chile of 1980

Paragraph 8, Article 19°:

The Constitution guarantees all persons: *the right to live in an environment free from contamination*. It is the duty of the State to watch over the protection of this right and the preservation of nature. The law may establish specific restrictions on the exercise of certain rights and freedoms in order to protect the environment (emphasis added).



“Legal basis 9:

Thus, the protection of the healthy and proper environment is not only a question of reparation for damage caused, but, and especially relevant of preventing them from happening. In this way, protection of the environment may be achieved from the provision of reactive measures addressing the damage that has already occurred, through measures addressing known risks before they are produced (prevention) until measures to anticipate and prevent threats from unknown or uncertain damages (precaution)”.

The Chilean Constitution recognizes the right to live in a healthy environment as a fundamental right and guarantees its exercise, elevating it to constitutional status. Paragraph 8, Article 19° quoted above, uses an open formula of protection to that right and, thus, the Chilean Constitutional Court considers that this “(...) generates in the legislator a wide range to choose the best strategies to satisfy the tutelary role of the State in environmental matters (...)”²⁹, which is positive for its exercise³⁰. The referring court considers the following:

FILE N° 2386-12

Recital 44:

The clause of nature preservation, which is an indeterminate legal concept, has been interpreted by the legislator in Act No. 19.300, as ‘the set of policies, plans, programs, policies and actions aims to ensure the maintenance of the conditions enabling the evolution and development of species and ecosystems of the country’ (Article 2: letter p)³¹.

Similarly, a clear example of these constitutional duties is Chile’s Environmental Policy for Sustainable Development³², whose objective is the preservation of the environment:

National Environmental Policy

General objective:

To promote the environmental sustainability of the development

-
- 29 Constitutional Court Ruling on Case ROL No. 2386-2012, Recital 34 (Chile)
- 30 The main laws in this issue are: Act No. 19300 – Sobre Bases Generales del Medio Ambiente [General Environmental Framework Law], published on March 9, 1994; Act No. 20417 – Crea el Ministerio, el Servicio de Evaluación Ambiental y la Superintendencia del Medio Ambiente [Creates the Ministry, the Environmental Assessment Service and the Environmental Superintendency], published on January 26, 2010; Act No. 20600 – Crea los Tribunales Ambientales [Creates the Environmental Courts], published on June 28, 2012 (Chile).
- 31 Constitutional Court Ruling on Case ROL No. 2386-2012. Recital 44 (Chile).
- 32 Environmental Sustainable Development Policy of Chile approved by the Ministers’ Governing Council of the National Environmental Commission (CONAMA) at the meeting on January 9, 1998.

process in order to improve the quality of life of citizens, ensuring a pollution-free environment, environmental protection, nature preservation and environment preservation.

The constitutional protection to the environment provides, for the State, two duties in particular: on the one hand, the obligation to ensure that the right to live in a pollution-free environment is not violated through preventive actions (conservation of environmental heritage); and, on the other hand, the duty to promote the conservation of nature, so that it is not depleted (nature preservation) (Lucas 2006: 9-10). On this basis, the case law considers the following:

FILE N° 2386-12

Recitals 36, 37, 38 y 40:

(...) The protection of nature preservation is a collective good (...) We all benefit from nature and its preservation extends to all without distinction (...) as a collective good that is, the State has a special duty to safeguard it, that is, to 'protect, guide and defend' the preservation of nature (...) Therefore, the State's duty is active and is not only a conservative circumstantial prevention task regarding this issue (...) *the State duty to protect nature preservation is given in the framework of the right to live in a pollution-free environment (...) [and] results in a special State mandate*³³ (...) (emphasis added).

The Constitution emphasizes the importance of the environment on the lives of people and, on this basis, puts a limit or parameter of performance against other rights such as the right to private property and free enterprise. The Chilean Constitution establishes a social market economy, and presents the autonomy of the person as the pillar and the center of economic development, as long as this does not violate a higher value like the environment³⁴.

“The Constitution emphasizes the importance of the environment on the lives of people and, on this basis, puts a limit or parameter of performance against other rights”



33 Constitutional Court Ruling on Case ROL No. 2386-2012. Recitals 36, 37, 38 and 40 (Chile).

34 See Axel Kaiser *La amenaza a la economía social de mercado en Chile* [The Threat to the Social Market Economy in Chile] In: El Portal Cato. *Libertad individual, gobierno limitado, mercados libres y paz* [Individual Liberty, Limited Government, Free Markets and Peace]. (January 10, 2014), <<http://www.elcato.org/>



Sunset light illuminating La Catedral cliffs,
Reserva Nacional de Paracas (Paracas National Reserve) (Peru)
Photo: Walter Wust



The right to enjoy a pollution-free environment is based on the State developing actions aimed at preventing contamination, carrying out decontamination or, if necessary, requiring certain actions or omissions of individuals in order to make people's lives possible in a suitable environment (Nogueira 2009). Only through proper environmental policy, that is to say, through preventive and remedial actions -among them, the issuance of environmental protection regulations, the establishment of agile and safe procedures, the effectiveness of such procedures, and the education and dissemination of an environmental culture- are people guaranteed the right to live in a pollution-free environment (Lucas 2006: 12-13).

Therefore, for example, Subsection 2 Paragraph 24 Article 19° of the Chilean Constitution defines property rights and establishes as their social function the conservation of the environmental heritage, inserting rules for granting concessions of natural resources³⁵. This exercise of state sovereignty is limited by the essential rights inherent in human nature³⁶, within which the right to live in a pollution-free environment is located.

la-threat-the-economy-social-of-market-in-chile>. Similarly, see Andrés Bordini, *Constitución Económica y protección del medio ambiente* [Economic Constitution and Environmental Protection], *Revista de Derecho* (Legal Magazine), Volume 9, Special Supplement (1998) (Chile), at 4354 (March 2, 2014), http://mingaonline.uach.cl/scielo.php?pid=S071809501998000100006&script=sci_arttext.

35 **Political Constitution of Chile of 1980**
"Paragraph 24 of Article 19°.-

The right of ownership in its several forms over all types of tangible or intangible property. Only the law can set the way of acquiring the property, to use, enjoy and dispose of it and the limitations and obligations deriving from its social function. This includes all the requirements of the Nation's general interests, national security, utility and public health and the conservation of environmental heritage. (...) The law has to determine which substances from those described in the preceding paragraph, except for liquid or gas hydrocarbons, may be subject to concessions for exploration or exploitation (...)"

36 **Political Constitution of Chile of 1980**
"Article 5°.-

Sovereignty resides essentially in the Nation, which is conducted by the people through a plebiscite and periodic elections and also the authorities estab-



The constitutional protection afforded to the environment promotes the right to live in a pollution-free environment, for which the control of the compliance of environmental instruments and environmental obligations in general obtained special significance, provided that this work contributes to the sustainable development of the country consistent with environmental safeguard.

1.3. Constitutional protection in Ecuador

Article 14° of the Constitution of the Republic of Ecuador 2008 widely recognizes the right to live in a healthy environment; it states the following:

Constitution of the Republic of Ecuador

Section 14°:

It recognizes the right of the population to live in a healthy and ecologically balanced environment that guarantees sustainability and the good way of living, sumak kawsay.

Environmental conservation, the protection of ecosystems, biodiversity and the integrity of the country's genetic assets, the prevention of environmental damage and the recovery of degraded natural spaces are declared matters of public interest (emphasis added).

However, so as to define the constitutional environmental protection, it is necessary to take into account the protection that Article 71° grants to nature, whereby it is recognized as subject of law:

Constitution of the Republic of Ecuador

Article 71°:

Nature or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and

lished by this Constitution. No section of the population nor any individual can claim to exercise it. The exercise of sovereignty recognizes as limitation the respect for the essential rights inherent in human nature. The duty of the Government bodies is to respect and promote the rights guaranteed by the Constitution as well as international treaties ratified by Chile, which are in force".

regeneration of its life cycles, structure, functions and evolutionary processes (...)³⁷.

Thus, Ecuador became the first country to recognize nature as a subject of law granting it the same level of protection that people have. With this, the Constitution of Ecuador marks a breakthrough in the field of environmental protection, promoting coexistence in harmony with nature by nurturing biodiversity, natural resources, biosphere and natural heritage³⁸.

Ecuador's Constitutional Court, the highest body for constitutional interpretation and oversight, specifies in regards to protection and management of non-renewable natural resources the following:

Ruling 0011-13-SIN-CC

Page 17:

(...) It is clear that *the management of non-renewable natural resources, handled by both the National Government and local governments, should always be aligned to a joint, balanced and respectful environmental protection of competence areas that every level of government addresses (...)*³⁹ (emphasis added).

37 Political Constitution of Ecuador of 2008

"Article 71°.-

The nature or Pacha Mama, where life is reproduced and occurs, has the right to be fully respected for its existence and the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes. All persons, communities, peoples or nations can call upon public authority to enforce the rights of nature. To enforce and interpret these rights, the principles set forth in the Constitution shall be observed, as appropriate. The State shall give incentives to individuals and companies, and to communities to protect nature, and to promote respect for all the elements comprising an ecosystem".

38 For more details about the national environmental policy which Ecuador adopts, see the provisions of Article 15° of the Political Constitution of Ecuador of 2008, as well as the rights of nature in Articles 71° - 74° of the Constitution, and those related to biodiversity and natural resources in Articles 395° - 415° of the Constitution.

39 Constitutional Court Ruling on Case No. 0048-11-IN. Ruling No. 0011-13-SIN-CC (Ecuador).





Taulli flowers (*lupinus webbaueri*) with the breathtaking the Nevado Taulliraju as the frame, Santa Cruz defile, Parque Nacional Huascarán (Huascarán National Park), Ancash (Peru)
Photo: Walter Wust

The Ecuadorian Constitution, Title II, Chapter Seven “Rights of Nature”, recognizes not only the right to exist, but also the right to the restoration of the natural environment, and the obligation of the State to apply precaution and restriction measures for activities that could generate the extinction of species, destruction of ecosystems or the permanent alteration of natural cycles⁴⁰.

The constitutional protection afforded to the environment is aimed at achieving a good living. This was literally pointed out by its Article 14°, which introduces the “*Sumak Kawsay*” concept related to the Andean Amerindian worldview which is understood as achieving optimal living conditions and development in harmony with the environment (Quintero 2008: 39-47). Environmental protection has two dimensions: first, it is an individual right, through which everyone has the right to a healthy environment; and, secondly, it is also a collective right, since the State recognizes the people’s right to live in a healthy environment (Guaranda 2010: 33).

Therefore, as provided in Paragraph 3, Article 395° of the Ecuadorian Constitution, the State is committed to ensure

40 **Political Constitution of Ecuador of 2008**
“Article 71°.-

Nature or Pacha Mama, where life is reproduced and occurs, has the right to be fully respected for its existence and the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes (...).”

“Article 72°.-

Nature has the right to be restored. This restoration shall be apart from the



the participation of individuals, communities, peoples and nations affected by activities generating environmental impacts. Likewise, Paragraph 1 of Article 397° is explicit in stating that in the case of environmental damage, the State must act immediately and in a subsidiary manner, to ensure the health of ecosystem.

This Constitution also recognized, as environmental principles, that the State is responsible for ensuring a sustainable development model; that environmental management policies will be applied in cross-cutting manner and shall be enforceable; that participation of citizens in the planning of activities that generate environmental impacts shall be ensured; and that in case of any doubt about the scope of legal provisions on environmental matters, those that are more favorable to nature protection⁴¹ will always be applied. Thus, the Constitutional

obligation of the State and individuals and companies to compensate individuals and communities that depend on affected natural systems (...)"

"Article 73°.-

The State shall apply preventive and restrictive measures on activities that might lead to the extinction of species, the destruction of ecosystems or the permanent alteration of natural cycles (...)"

"Article 74°.-

Persons, communities, peoples and nations have the right to benefit from the environment and the natural resources enabling them to enjoy the good way of living (...)"

41 **Political Constitution of Ecuador of 2008**

"Article 395°.-

The Constitution recognizes the following environmental principles:





Lake in Huampoqocha, Ausangate mountain range, Cusco (Peru)
Photo: Walter Wust

Court of Ecuador, in terms of environmental protection, states the following:

Ruling 0011-13-SIN-CC:

(...) protection is translated and materialized in the respect to the principles stated in the Constitution (...) mainly on *ensuring a model of sustainable development, environmental balance, conserver of biodiversity and under the capacity of natural regeneration of ecosystems*⁴² (...) (emphasis added).

In order to comply with the constitutional protection of the environment right -in the framework of the principles established by the Constitution and referred to in the previous paragraph- the State establishes measures to ensure the enjoyment of the right, establishing effective mechanisms for cases in which it is threatened, and creating an appropriate regulatory framework ensuring their protection and conservation, setting “(...) the principles and guidelines for environmental policy; determines the duties, responsibilities, levels of participation in the public and private sectors in environmental management; and points

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1. The State shall guarantee a sustainable development model, one that is environmentally balanced and respectful of cultural diversity, conserves biodiversity and natural regeneration capacity of ecosystems, and ensures meeting the needs of present and future generations.
 2. Environmental management policies shall be applied cutting cross all sectors and dimensions and shall be mandatorily enforced by the State at all of its levels and by all individuals or companies in the country’s territory.
 3. The State shall guarantee the active and permanent participation of affected persons, communities, peoples and nations in the planning, implementation and monitoring of all activities exerting environmental impacts.
 4. In the event of doubt about the scope of legal provisions for environmental issues, these shall be applied in the most favorable sense to nature protection.”

42 Constitutional Court Ruling on Case No. 0048-11-IN, Ruling No. 0011-13-SIN-CC (Ecuador).



out the permissible limits, oversights and sanctions in this matter”⁴³.

The Ecuadorian State highlights the importance of establishing constitutionally the right to a balanced environment, addressing the agenda of political and legal action on the issue. Therefore, the oversight of economic activities is essential, as well as public and social activities that could generate negative consequences on the environment.

1.4. Constitutional protection in Colombia

Article 79° of the 1991 Political Constitution of Colombia recognizes the right of all people to enjoy a healthy environment and states the following:

Political Constitution of Colombia of 1991

Article 79°:

Every individual has the right to enjoy a healthy environment. The law shall guarantee the community’s participation in the decisions that may affect it. It is the duty of the State to protect the diversity and integrity of the environment, to conserve the areas of special ecological importance and to foster education for the achievement of these ends (emphasis added).

The Constitution also states that the law guarantees the participation of the community in all decisions that may affect the environment. Likewise, it establishes the State’s duty to protect, preserve and promote an education aimed at the attainment of those goals. Thus, the normative relationship of Colombian society and nature are *deeply amended*. Thus, the Constitutional Court of Colombia has established that:

Ruling C-126/98

Legal basis 18:

(...) The Constitution of 1991 deeply changed the regulative relationship of Colombian society with nature. Thus this Court has

“Therefore, the oversight of economic activities is essential, as well as public and social activities that could generate negative consequences on the environment”

43 Article 1° of the Environmental Management Law, Codification 19, Official Gazette 418, September 10, 2004.

noted, in previous decisions, *the environmental protection occupies such an important place in the legal system that the Charter contains a true 'ecological constitution', consisting of all the provisions governing the relationship between the company and nature and seeking to protect the environment(...)*⁴⁴ (emphasis added).

Thus, the environmental protection is established as internal constitutional value that is projected on the text of the Constitution and spreads its effects on the legislation.

The elements that generally make up the right to environment are: "(...) the right to the conservation and enjoyment of a healthy environment, and the promotion and preservation of quality of life as well as the protection of property, wealth and ecological and natural resources (...)"⁴⁵. On the other hand, the constitutional protection granted to the environment is characterized for establishing a triple dimension: the first, refers to the protection of the environment spreading throughout the legal system; the second, is the right of all people to enjoy a healthy environment; and finally, the third corresponds to the set of obligations that accrue to the State authorities and individuals⁴⁶.

The Colombian Constitution contains a set of provisions to legally support the aim of ensuring the right to enjoy a healthy environment. Therefore, Article 8° establishes the obligation of the State and people to protect cultural and natural resources of the Nation; Article 49° refers to environmental sanitation as a public service by the State; Article 58° indicates that the ecological function is pursuant to private property; Article 67° contains the role of education in protecting the environment;

44 Constitutional Court Ruling C-126 1998, on Case D-1794. Legal basis 18 (Colom.).

45 Constitutional Court Ruling C-495 1996, on Case D-1285. Legal basis 3 of paragraph X, called Consideraciones de la Corte (Considerations of the Court) (Colom.).

46 Constitutional Court Ruling C-495 of 1996, on Case D-1285 (Colom.).
"Ecological Constitution Paragraph - Dimensions:
(...) The Court has stated that this ecological Constitution has three dimensions within the Colombian legal system: first, protecting the environment is a principle that spreads throughout the legal system since this is State's





Chestnut Tree (*Bertholletia excelsa*) in Amazonian rainforest, Aleria, Madre de Dios (Peru)
Photo: Walter Wust

and Article 80° establishes the duty of the State to prevent and control environmental degradation factors, to impose legal sanctions and to claim compensation for the damage caused (Villarte 2006: 21-35).

Accordingly, the State creates administrative and legal structures in line with the constitutional requirements, in order to promote the use of natural resources that is compatible with environmental protection. Another objective is to comply with obligations imposed by the Constitution (Amaya 2006: 260). The Constitution's purpose is to overcome the tension between economic growth and environmental preservation through the idea of sustainable economic development enshrined in the Constitution itself, which requires sustainable and rational use of resources. Likewise, this is reflected in its constitutional jurisprudence:

Ruling C-126/98

Legal basis 21:

(...) Sustainable development is not incompatible with economic growth or with the idea that natural resources should be used and

duty to protect the natural resources of the Nation (CP art 8). On the other hand, as the right of all people to enjoy a healthy environment appears, constitutional law is enforceable by several litigations (CP art 79). And finally, from ecological constitution a set of obligations imposed on the authorities and individuals is derived. Moreover, on several occasions, the Court has emphasized the importance of the environment in the Constitution implying for the State, in ecological matters, 'some qualified protective duties'. Similarly, and as stated by the actors, the Court has also pointed out that the Constitution constitutionalizes one of the most important concepts of modern ecological thinking, knowing the idea that development must be sustainable".



“environmental planning responds to the issuance of a national policy providing for the active participation of the community and the citizen”

exploited to meet human needs. (...) So (...) the State’s obligation to protect the diversity and integrity of the environment (CP Article 79 paragraph 2) must not be understood in a purely conservationist sense, this is like the inability to productively use natural resources to meet the people’s needs, since ‘human beings are the center of concerns related to sustainable development’ (Principle 1 of the Rio Declaration on Environment and Development). Therefore, the constitutional mandate requires a sustainable use of such resources (...)”⁴⁷ (emphasis added).

In the same vein, environmental planning responds to the issuance of a national policy providing for the active participation of the community and the citizen, and, moreover, it must be articulated between the nation and the relevant local authorities, as may be seen from the following ruling of the Constitutional Court:

Ruling C-495/96

Legal basis 3, Paragraph X:

(...) The Constitution grants the State the responsibility of planning and use of natural resources so that sustainable development is achieved, thus ensuring the conservation and preservation of the ecological environment. It should be recalled that the right to enjoy a healthy environment assisting to all people, so that its preservation, through its impact nationwide, and even internationally, goes beyond any territorial limitation at the district and departmental levels⁴⁸ (emphasis added).



47 Constitutional Court Ruling C-126 of 1998 on Case D-1794. Legal basis 21 (Colom.).

48 Constitutional Court Ruling C-495 1996, on Case D-1285. Legal basis 3, paragraph X called Considerations of the Court (Colom.).



Canoe glides Tambopata river, Infierno town,
Madre de Dios (Peru)
Photo: Walter Wust

The Colombian constitution guarantees the right to enjoy a healthy environment, and the achievement of this objective involves the implementation of environmental legislation that revolves around the conservation, management, or handling, surveillance and oversight of the environment. With regard to the sanction aspect, it focuses on those who violate environmental regulations, and in which sustainable development is set as the principle that is in all environmental legislation (Villarte 2006: 22).

In order to achieve these objectives, an oversight and monitoring mechanism was introduced through adequate control to economic activities. The balance between environmental protection and development of the country is reached, ensuring sustainable development and thereby the right of people to a healthy environment.

2 ENVIRONMENTAL CONTROL AND COMPLIANCE IN THE NETWORK COUNTRIES

The States have the duty to regulate economic activities in order to ensure the fundamental right of citizens to live in a clean and healthy environment. Within this regulatory framework, environmental control and compliance are the key elements ensuring the right balance between economic development and environmental protection to ensure thereby, sustainable use of resources and to preserve the environment for present and future generations.

For the reason mentioned before, the network countries have a watchdog entity or body that observes economic development activities, which could have severe impacts on the environment, with the aim that those that carry them out comply with their obligations.

2.1. Regulation in Peru⁴⁹

2.1.1. What is the relevant authority?

OEFA is the public-specialized-technical body responsible for environmental control in Peru, and it is the governing agency of the *Sistema Nacional de Evaluación y Fiscalización Ambiental* (National System of Environmental Assessment and Enforcement, SINEFA). It was created by Legislative Decree No. 1013, approving the Law of Creation, Organization and Duties of the Ministry of Environment.

Act No. 29235 - National System of Environmental Assessment and Enforcement Law, amended by Act No. 30011, created SINEFA. This is a functional system aimed



⁴⁹ This paragraph has been developed from the publication: The ABC of Environmental Control prepared by OEFA. Available on its institutional website <www.oefa.gob.pe>.

to ensure compliance with environmental legislation by all individuals or companies. Moreover, it ensures that the assessment, monitoring, supervision, control duties and sanctioning power in environmental matters, granted to state entities, are conducted in an independent, impartial, prompt and efficient manner⁵⁰.

SINEFA is made up of the *Ministerio de Ambiente* (Ministry of Environment, Minam), the OEFA and the Environmental Control Institutions (EFA). This system, in turn, is part of the *Sistema Nacional de Gestión Ambiental* (National Environmental Management System, SNGA), whose governing body is Minam.

2.1.2. What role develops?

OEFA conducts *direct environmental control duties*, including assessment, supervision, control and sanction in mining subsectors⁵¹ (medium-and-large-scale mining), energy (hydrocarbon and electricity), fishery (industrial fishing processing and larger-scale aquaculture) and manufacturing (beer, tannery, paper and cement)⁵².

50 **Act No. 29325 - National System of Environmental Assessment and Enforcement Law**

“Article 3°.- Purpose

The system is aimed to ensure compliance with environmental legislation by all individuals or companies, as well as to supervise and guarantee the assessment, monitoring, supervision, control functions and sanctioning power in environmental matters by several State entities are conducted in an independent, impartial, prompt and efficient manner, according to the provisions of the Act No. 28245, Framework Law on National Environmental Management System, in the Act No. 28611, General Environmental Law, in the National Environmental Policy and other regulations, policies, plans, strategies, programs and actions to contribute to the existence of healthy, viable and functional ecosystems, the development of productive activities and sustainable use of natural resources that contribute to effective management and environmental protection”

51 Detailed responsibilities to February 14, 2014.

52 It is worthwhile pointing out OEFA will gradually assume the responsibilities to control consulting firms authorized to prepare environmental impact

On the other hand, in the other sectors in which it has no direct competition, OEFA -as governing entity of SINEFA- carries out a *supervisory duty to public entities* at local, regional, or national, level with competence to perform environmental control. This duty includes the tracking and verification of environmental-control-duty performance by EFA⁵³. Therefore, OEFA has, among others, the following powers:

- To issue recommendations, mandates or provisions to EFA and, subsequently, to make its compliance tracking and monitoring.

studies in accordance with the provisions of Act No. 29969 - Law establishing the National Service of Environmental Certification for Sustainable Investment – SENACE.

53 **Reglamento de Supervisión a Entidades de Fiscalización Ambiental [Regulation of Supervision to Environmental Control Entities], approved by Board of Directors Resolution No. 016-2014 OEFA-CD**

“Article 3°.- Definitions

For purposes of this Regulation, it is appropriate to establish the following definitions:

(...)

b) Environmental Control Institution (EFA): It is the public body for national, regional or local level that some or all duties of environmental control had been broadly attributed. Environmental control can be conducted by one or more EFA organizational units. Exceptionally, by law, EFA may be considered an entity that is authorized to perform duties of environmental control.

(...)”

“Article 8 °.- OEFA’s duties and responsibilities related to EFA supervision

Under supervision, OEFA conducts the following duties and responsibilities:

- a) To track and verify the performance of environmental control duties by EFA through supervisions carried out in their departments and/or facilities, which may include visits to areas under environmental control by EFA, and requirements of documentary information.
- b) Demanding, if necessary, the presence of the head of the area performing EFA environmental control duty or the person acting in the department and/or facility where supervision will be taken place in the field.

(...)”



- To request documents and/or to have access to information necessary for exercising its supervisory duty to EFA and setting a deadline for delivery. The information and documentation submitted is subject to verification by OEFA.
- To systematize and to incorporate annually information on the implementation and compliance of the Environmental Assessment and Enforcement Annual Plan (PLANEFA, for its Spanish Acronym)⁵⁴ of each EFA.
- To provide technical assistance to EFA about the duties of environmental control in its charge.
- To provide technical opinion on regulatory proposals under consideration by EFA.

The breach of duties by EFA brings operational-administrative responsibility, which, if it be the case, is communicated by OEFA to the *Contraloría General de la República* (General Comptroller Office of the Republic of Peru) in order to begin the corresponding procedures.

On the other hand, OEFA, through its Prosecutor, informs the Attorney General's Office the actions or omissions of government officials or employees, which may involve criminal liability. Likewise, it reports on incidents committed by individuals or companies that may cause

54 **Aprueban Lineamientos para la formulación, aprobación y evaluación del Plan Anual de Evaluación y Fiscalización Ambiental [Guidelines for the preparation, approval and evaluation of the Environmental Assessment and Enforcement Annual Plan], approved by Board of Directors Resolution No. 004-2014-OEFA/CD**

"Article 3°.- Definitions

(...)

- c) The Environmental Assessment and Enforcement Annual Plan (PLANEFA): planning instrument through which each EFA plans the environmental control actions, which are responsible for, to be made during the corresponding calendar year. Regular exercise of environmental control by each EFA is not limited to what is established in their corresponding PLANEFA".

or cause serious risk or damage to the environment or people's health, and could set up environmental crimes.

OEFA regularly publishes the results of EFA performance supervision through reports, press releases, public reports, and other means.

OEFA also conducts a *regulatory duty*⁵⁵, which includes the power to issue, in the scope and in its jurisdiction, the regulation governing the exercise of environmental enforcement under the SINEFA, and other rules of a general range referred to the verification of environmental control duties compliance of the entities under its responsibility; as well as those necessary for the exercise of the supervision duty to EFA, which are mandatory for those entities in the three levels of government.

55 **Act No. 29325 - National System of Environmental Assessment and Enforcement Law.-**

"Article 11°.- General duties

(...)

11.2 OEFA, as governing body of the National System of Environmental Assessment and Enforcement (SINEFA), performs the following duties:

- a) **Regulatory duty:** It includes the power to issue, in the scope and its jurisdiction, the rules governing the exercise of environmental control under SINEFA, and others of a general nature referred to the verification of compliance with controlled-environmental obligations of the managed in its charge; as well as those necessary for the exercise of the supervisory duty of environmental control agencies, which are mandatory for those entities in the three levels of government.

In exercise of regulatory duty, OEFA is relevant, among others, to categorize administrative violations and to approve the scale of corresponding sanctions, as well as their graduation criteria and the scope of preventive, precautionary and corrective measures to be issued by the corresponding relevant authorities.

In exercise of regulatory duty, OEFA is relevant, among others, to establish administrative violations and to approve the scale of corresponding sanctions, and the graduation of these criteria and scope of preventive, precautionary and corrective measures to be issued by the corresponding relevant authorities.



In exercise of its regulatory duty, OEFA is competent also to classify administrative offenses and approve the scale of corresponding sanctions, as well as to approve the criteria for graduation of these and the scope of preventive, precautionary and corrective measures to be issued by the respective competent authorities.

2.1.3. How is its work carried out?

It is important to point out that OEFA is not allowed to grant environmental permits, since this is a matter for the relevant sector authority. In this regard, OEFA does not control the *ex ante* aspects at the beginning of activities or operations of the managed; that is, the aspects linked to the necessary permissions for the beginning of controlled-activities, *but ex post* aspects, i.e., from the initiation or the implementation of such activities or operations.

OEFA, in the framework of its direct environmental control duties, through its PLANEFA, plans the environmental-control actions to be carried out during the year, and it orders and guides the technical performance of its environmental assessment, supervision and control duties⁵⁶.

OEFA's *assessment duty*—conducted by its Environmental Assessment Department—consists in the determination of

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- b) **Local, regional or national supervisory duty of Environmental Control Entities (EFA):** it includes the power to conduct monitoring and verification of the performance of control duties by environmental control entities at the local, regional or national level, which article 7 refers".

56 To a large extent, environmental control comprises assessment actions (monitoring) of environmental quality, supervision, enforcement, sanction and implementation of incentives made by EFA in order to ensure compliance with environmental obligations. Environmental control, strictly speaking, is understood as the power of the State to impose sanctions for the breach of environmental obligations at administrative level. This is without prejudice to the punitive power of the State in environmental matters may also be conducted by the courts through repression of environmental offenses under the Criminal Code.

environmental quality status through the development of specialized environmental studies, and systematic monitoring of environmental components (water, air, soil, flora, wildlife, etc.). It comprises also the analysis of external factors that would affect environmental quality associated with activities that could impact the environment under the macro-control by OEFA⁵⁷.

Among the assessment-duty objectives there are: the generation of environmental diagnostics that contain a comprehensive analysis of the status of several environmental components and external variables that influence them (which constitute an input for environmental control). In addition, it provides support to actions of direct supervision and public entities, and it gives consent to the studies which are required as a result of the supervisory duty. This duty allows the assessment of environmental quality in an integrated and continuous manner, with emphasis on those activities controlled by OEFA.

The *supervision duty* –in charge of its Supervisory Department⁵⁸- including the role of direct supervision and EFA’s supervisory duty.

Such supervisions can be performed through field supervision in areas of influence of economic activity competent to OEFA or -EFA supervised, and through



57 The assessment duty differs from environmental impact assessment, regulated under the National Environmental Assessment and Impact System (SEIA), since the latter is a primary-preventive-nature environmental management instrument seeking to analyze (ex ante) the likely consequences of an investment project on the environment. The SEIA also comprises in regards to the environmental analysis of plans, policies and programs through the Strategic Environmental Evaluation (EAE). OEFA controls the compliance with Environmental Impact Studies (EIA), as well as other environmental studies, and supervises the compliance with the provisions of EAE reports.

58 The regulation governing this duty in OEFA is Direct Supervision Regulation, approved by Board of Directors Resolution No. 007-3013-OEFA/CD February 28, 2013.

documentary supervision, which consist in the analysis of relevant documentary information that the control authority has.

In addition, supervision may be scheduled or unscheduled. The latter arises from informal or illegal activities, environmental accidents or complaints.

It is important to mention that, as a mechanism for citizen participation, OEFA has implemented the *Servicio de Información Nacional de Denuncias Ambientales* (National Information of Environmental Complaints Service, SINADA), through which any citizen is allowed to report nationwide potential negative impacts to the environment without it being necessary to have a direct interest in the facts alleged⁵⁹. If OEFA has no jurisdiction to deal with an environmental complaint because it is the responsibility of another EFA, SINADA submits the complaint to the competent EFA, without prejudice to OEFA's prerogative to supervise that the competent EFA deals properly and timely with environmental complaints⁶⁰, given its role as the governing body of SINEFA.

If there are findings of alleged administrative violations in direct supervision, the supervision authority submits a technical report accusing the investigating authority so as to evaluate the possible beginning of an administrative

59 The right of people for citizen participation in environmental matters is conducted through environmental complaints. Environmental complaints brought before administrative authorities should not be confused with reports of environmental crimes submitted before the Attorney General's Office or the Peruvian National Police.

60 **Reglas para la atención de denuncias ambientales presentadas ante el Organismo de Evaluación y Fiscalización Ambiental – OEFA [Rules for dealing with environmental complaints filed with OEFA] approved by Board of Directors Resolution No. 015-2014 OEFA-CD**

“Article 25°.- About the monitoring of complaint submitted to an EFA

The entity of OEFA, which conducts the supervision duty of environmental control agencies, will be responsible for monitoring how environmental complaints that have been submitted to EFA are dealt with. This entity

disciplinary proceeding⁶¹. Likewise, a preventive measure could also be issued, ordering the execution of a given immediate obligation to do or not to do, if an imminent danger or high risk of generating serious damage to the environment and its components is identified.

In the exercise of its supervisory function of EFA, if it is verified a breach in the duties of environmental-control in charge of supervised public entities, the Supervision Authority may issue mandates or enforcement provisions for EFAs, notifying the Comptroller General's Office, the alleged operational administrative responsibility that would involve such breach⁶².

Through the *control and sanction duty* –executed by the Department of Control, Sanction and Incentive

should move promptly -to the National Information Service of Environmental Complaints - the information related to the dealing with the environmental report for the corresponding communication to the complainant that made his complaint with or without condition of anonymity”

61 **Reglamento de Supervisión Directa del Organismo de Evaluación y Fiscalización Ambiental [Direct Supervision Regulation of OEFA] approved by Board of Directors Resolution No. 007-2013 OEFA-CD**

“Article 9°.- About Preliminary Reports of Supervisory Actions

9.1 If the Supervisor, after making the field supervision, finds alleged administrative violations warranting immediate formulation of an Adversarial Technical Report, he must submit to the Direct Supervision Authority a Preliminary Report of Supervisory Actions.

9.2 If the Supervisor finds in the field findings shaping the course for the disposition of a particular-nature mandate, he shall submit immediately to the Direct Supervision Authority a Preliminary Report of Supervisory Actions for its processing.

9.3 If the Supervisor finds in the field findings shaping the course for the provision of preventive measures, he shall submit immediately to the Direct Supervision Authority a Preliminary Report of the Supervisory Actions for its processing”.

62 **Reglamento de Supervisión a Entidades de Fiscalización Ambiental [Supervision to Environmental Control Entities Regulation], approved by Board of Directors Resolution No. 016-2014 OEFA-CD**

“Article 16°.- Results of EFA Supervision

16.1 Supervision Report should be determined whether or not the EFA complies with environmental control duties, in supervised aspects.



Application⁶³ – possible administrative offenses are investigated and sanctions and/or administrative measures⁶⁴ (such as fines or corrective measures) are imposed or issued, respectively, for breach of environmental obligations⁶⁵.

Thus, among the corrective measures that OEFA might issue, there is the order to the responsible party for the damage to restore, rehabilitate or repair the altered situation, as appropriate. If this is not possible, the party who perpetrates the damage has an obligation to compensate in environmental or economic terms.

Finally, OEFA has a *Tribunal de Fiscalización Ambiental* (Environmental Enforcement Administrative Tribunal, TFA) performing functions as the final administrative

16.2 Compulsory-compliance conclusions and provisions to be issued in that report shall be communicated to EFA, giving it thirty (30) working days to submit a schedule for actions to be performed in order to implement those provisions.

16.3 Breach of these provisions creates operational and administrative responsibility”

63 The regulation governing this duty in OEFA is the Administrative Sanctioning Procedure Regulation, approved by Board of Directors Resolution No. 012-2012-OEFA/CD December 13, 2012.

64 OEFA can impose fines up to 30,000 tax units (UIT), which is currently tantamount to S/. 114,000,000 new soles (PEN). That is to say, approximately up to 41 million American dollars.

65 Act No. 30230 – Ley que establece Medidas Tributarias, Simplificación de Procedimientos y Permisos para la Promoción y Dinamización de la Inversión en el País [Law that states Tax Measures, Simplification of Procedures and Permits for the Promotion and Revitalization of Investment in the Country], published on July 12, 2014, and regulates the handling of exceptional administrative procedure before OEFA. By Board of Directors Resolution No. 026-2014-OEFA/CD, published on July 24, 2014, the entity adopted regulations to implement the provisions of Article 19° of this Act.

Thus, for a period of three (3) years, the prevention and correction of offensive conduct will be privileged, applying exceptional disciplinary procedure, in which if OEFA determines the existence of an offense, it will only issue a corrective measure aimed to change the offensive conduct and it will

authority. The decision of TFA is mandatory and constitutes a binding precedent on environmental matters, provided that this shall be stated in the same resolution, in which case it should be published according to law⁶⁶.

2.2. Regulation in Chile⁶⁷

2.2.1. What is the relevant authority?

In Chile, the Environmental Superintendency (SMA) -created by Act No. 20417- Law establishing the Ministry, the Environmental Evaluation Service and the Environmental Superintendency (Internal Organization Act of SMA hereinafter)- is responsible for ensuring compliance with the environmental management instruments. SMA is the governing body of environmental control and, according to it, the sectorial agencies and accredited technical entities that perform environmental control duties, should adopt and respect the criteria that SMA establishes in regards to how to execute control actions. In addition, SMA should comply with the

suspend the administrative procedure. Then, if OEFA verifies the compliance with such measure, the procedure will be terminated; otherwise, this agency shall resume it being empowered to impose the appropriate sanction. The sanction may not exceed 50% of the fine that would correspond to use, according to the methodology approved by OEFA.

This exceptional sanctioning procedure is not applicable in the following circumstances: (a) very-serious-offense commission generating real and very serious damage to people's life and health; (b) carrying out activities without an environmental management instrument or in prohibited areas; and (c) recidivism, meaning that the commission of the same offense within a period of six (6) months. In these cases, taking into account the severity of the offensive conduct and the importance of affected legal interests, the comprehensive sanction must be imposed, and also the corresponding corrective action.



66 After exhausting administrative remedies, the offender has the right to appeal to judicial authority through an administrative process.

67 This paragraph has been developed from the document: "Strategies for environmental control 2013" prepared by the Environmental Superintendency in February 2013 (Chile).



Paujil defile, Parque Nacional Yanachaga (Yanachaga National Park) - Chemillén, Pasco (Peru)
Photo: Walter Wust

general-nature technical instructions, and those related to the protocols, procedures and methods of analysis defined therein⁶⁸.

2.2.2. What role develops?

SMA has unique and exclusive responsibilities in monitoring and control of compliance with the obligations set up in several environmental management instruments under its jurisdiction⁶⁹ (Environmental Superintendency/ Government of Chile [SMA] 2013a: 25), as well as in the exercise of sanctioning power over offenses related to their breach. SMA performs its duties through direct control (through its own staff) and by the control carried out by officials of sectoral agencies. This entity also mandates activities through subprogramming and through the control implemented by technical entities accredited and authorized before the SMA.

At this point it is important to emphasize that the sectoral agencies performing environmental control duties retain their control responsibilities and powers in all matters and instruments other than the jurisdiction of the Superintendency. In the case that responsibilities match, the Internal Organization Act of SMA provides some

68 **Act No. 20417 – Law establishing the Ministry, the Environmental Evaluation Service and the Environmental Superintendency**

“Article 2°.-

The Environmental Superintendency shall aim to implement, organize and coordinate the monitoring and control of Environmental Qualification Resolutions, measures of Prevention Plans and, or Environmental Decontamination or content of Environmental Quality and Emission Standards and Management Plans, where appropriate, and all those other environmental-nature instruments established by law (...).”

69 “The control actions that are executed directly by the Superintendency for the technical entities accredited or competent-line agencies must comply with the technical general instructions issued by it regarding the protocols, procedures and analysis methods defined in them”. See SMA. Public Account: Control Programs and subprograms 2013 (July 04, 2014) <http://www.sma.gob.cl>, Original text in Spanish; free translation made by the Agency for Environmental Assessment and Enforcement.



preference rules in favor of SMA⁷⁰. Specifically, whether a particular activity is the responsibility of SMA or sectoral agency, it is necessary to know if it can be linked to an instrument for environmental management. If it is not possible, the sectoral agency will be the responsible; otherwise, SMA will be.

The environmental management instruments for which SMA executes, organizes and coordinates the monitoring and control are⁷¹:

- Environmental Qualification Resolutions (RCA for its Spanish acronym): authorizations that set the standards, conditions, measures and requirements to be met by the holder to execute the project or activity. RCA, in authorizing the project or activity, initiates the link between the public administration and the managed, for the length of the project.
- Environmental prevention and/or decontamination plans: monitoring measures aimed at improving

70 **Act No. 20417 - Law establishing the Ministry, the Environmental Evaluation Service and the Environmental Superintendency**

“Article 2°.-

(...) The line agencies, performing duties of environmental control, shall retain their control responsibilities and powers, on all matters and instruments other than the jurisdiction of the Superintendency (...).”

“Article 59°.-

Once the administrative sanctioning procedure is begun by the Superintendency none of the environmental line agencies with jurisdiction for the same conduct may initiate any administrative sanctioning procedure of their own competences or to report to the civil courts, unless the Superintendency is declared incompetent.

Line agencies with environmental competence, in the exercise of their duties, taking cognizance of these offenses will be obliged to report to the Superintendency. If any of these entities initiate procedure regarding issues, which is the responsibility of the Superintendency, ex officio or at the request of the concerned person may request to be declared incompetent and to forward all records to begin the respective procedure”.

71 *See* Article 2° Act No. 20417 - Law creating the Ministry, the Environmental Evaluation Service and the Environmental Superintendency.

the quality standards based on the current quality standards.

- Environmental quality and emission standards: the first define the level of risk associated with the presence of contaminants in the environment⁷² (SMA 2013b: 22); the latter regulates the operation of facilities, projects or activities by controlling the emission of the pollutant source⁷³.
- Handling plans: regulate the use or exploitation of natural resources in a determined area. The handling plans are not required for those projects or activities, for which an environmental study or impact declaration is approved⁷⁴.
- Other environmental-nature instruments established by law.

72 SMA itself and by technical entities accredited to it, performs this control work. Unlike the rest of environmental management instruments controlled by this Superintendency, the law does not stipulate that it must establish environmental control subprograms of quality standards. The latter is due to environmental quality standards only impose obligations regarding measures and instruments for public bodies, and therefore does not correspond subprogramming services that self-control, so the Superintendency by itself, and by technical entities accredited to it, should conduct the control and monitoring of those measures and instruments.

73 To control them, SMA subprograms much have the monitoring and control entering into agreements of entrusting actions with line agencies.

74 **Act No. 19300 - General Environmental Framework Law**
“Article 42°.-

The Ministry of Environment along with the public body entrusted by law to regulate the use or exploitation of natural resources in a given area shall demand, where appropriate, the presentation and the implementation of management plans for them, to ensure conservation. Including, among others, the following environmental considerations:

- a) Maintenance of environmental flows and soil conservation
- b) Maintenance of landscape wealth
- c) Protection of species classified in accordance with the section.

The provisions in this article is without prejudice to that established in other legal bodies on management plans of renewable natural resources, and it will not apply to projects or activities, which a Study or Environmental Impact Statement have been adopted”.



Thus, SMA's responsibility is determined by these environmental management instruments, and sectoral agencies retain the responsibilities and control powers for which SMA are not responsible (SMA 2013a: 25). In addition to control the environmental management instruments mentioned, SMA is also responsible for controlling compliance programs⁷⁵ and repair plans⁷⁶.

Furthermore, SMA performs a regulatory duty, through which it issues technical guidelines, standards and general instructions, for its regulated, sectoral control agencies and accredited technical institutions. It also receives environmental complaints, which are made in writing and contain information on the place and date of the presentation, as well as the complainant. If, according to SMA, the complaint has sufficient merit, disciplinary proceedings will be initiated; otherwise, control actions of the alleged offender will be arranged. If there is no reason to do so, the complaint will be filed, through a reasoned decision⁷⁷.

75 When a sanctioning procedure initiates, the offender may file, within 10 days from the action that initiates it, a compliance program, the same that once approved by SMA results in suspending the sanctioning procedure. Otherwise, the breach of obligations contained in the program, leads to the procedure restarting. Only after completing the compliance program within the deadlines and in accordance with the goals specified therein, the administrative procedure should be terminated. Cf. Article 42 ° of the Act No. 20417 - Law establishing the Ministry, Environmental Evaluation Service and Environmental Superintendency.

76 When the SMA's resolution is notified, which concluded the sanctioning procedure, and without prejudice to the administrative sanctions imposed, the offender may submit voluntarily a repair plan proposal that is supported by an environmental technical study. SMA receives the repair plan, and its corresponding acceptance by the Environmental Evaluation Service, and proceeds to its approval as well as the control of its compliance. Cf. Article 43° of Act No. 20417 - Law establishing the Ministry, the Environmental Evaluation Service and the Environmental Superintendency.

77 See Article 47° of Act No. 20417 - Law establishing the Ministry, the Environmental Evaluation Service and the Environmental Superintendency.

2.2.3. How its work is carried out?

SMA's control duty is exercised through environmental control programs⁷⁸ (SMA 2013a: 26) which are established annually and by which the general guidelines that will direct the exercise of the control authority are determined⁷⁹. This happens without prejudice to its right to arrange for inspections that are not listed in the programs, as well as the ability to update them, as long as there are reasons based on the efficiency of the control system⁸⁰.

The *environmental control duty* –conducted by Control Department- divided into four stages. The first stage is called *inspection*, which includes the set of activities undertaken by one or more controllers, and it seeks to ascertain in the environmental management instrument compliance field as well as the compliance programs and repair plans. The second stage is the *information examination*, by which SMA performs a review of all records required by it and those that should be referred to it as constituting obligations under any of the environmental management instruments. The aim is, through the *information examination*, to make a quantitative and/or qualitative enhancement of the background.

78 The Environmental Control Program is an administrative management instrument, in which, depending on the objectives and the means available to achieve them, the control priorities for a calendar year are identified. Collaboration of sector agencies, reporting their control priorities, corresponding budgets and performance indicators to evaluate the commendation of activities within SMA jurisdiction through the subprogramming are contemplated.

79 Resolutions of Environmental Control Programs should ensure the participation of SMA and line agencies and their proper implementation, safeguarding appropriate coordination among control entities and avoiding duty duplication. Cf. Article 17° of Act No. 20417 - Law establishing the Ministry, the Environmental Evaluation Service and the Environmental Superintendency.

80 **Act No. 20417 - Law establishing the Ministry, the Environmental Evaluation Service and the Environmental Superintendency**
"Article 16°.-
For the development of control activities, the Superintendency shall establish annually the following programs and sub-programs:



The third stage involves *analysis* and *measurements* that must be performed in accordance with the provisions of environmental management instruments in general and mandatory technical regulations, environmental regulations, and technical guidelines, protocols and analysis methods, which are established by the Superintendency, or failing that, those validated for its use. Finally, the fourth stage called *control report*, in which ends the control and whose copy is forwarded to the Superintendency Control Department of National Environmental Information Control System (SNIFA).

Regarding the *sanction duty* –the responsibility of of the Compliance and Sanction Department- it is the Environmental Superintendency which has the unique and non delegable duty to apply, to private and public entities, the appropriate sanctions in case of breach of an environmental obligation. Sanctions imposed by

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- a) The control programs from Environmental Qualification Resolution for each region, including the Metropolitan City.
 - b) The control sectorial sub-programs of Environmental Qualification Resolution, where control activities for each competent line service or agency shall be identified.
 - c) The control programs from Prevention and, or Decontamination Plans for several regions in which they operate.
 - d) The control sub-programs from Prevention and, or Decontamination Plans, where control activities for each competent line service or agency shall be identified.
 - e) Control programs from Quality Standards and Emission Standards for each region, including the Metropolitan City.
 - f) The control sectorial sub-program from Emission Standards, in which control activities for each competent line service or agency shall be identified.
 - g) Other programs and sub-programs, in accordance with the instructions issued by the Superintendency or the provisions of the Act No. 19.300 or other statutory bodies, establishing control activities in environmental matters, of Superintendency's jurisdiction".

"Article 19°.-

Control activities will adhere to the programs and sub-programs defined, without prejudice to the power of Superintendency to provide for inspections not covered by those, if complaints or claims and any others in which it becomes aware, by any means of non-compliance or offenses within its jurisdiction.

SMA range from written admonishment, fines from 1 to 10,000 annual tax units⁸¹ (Service Tax 2014), temporary or permanent closure and Environmental Qualification Resolution revocation⁸².

The corresponding sanction to apply to each offense is determined by its severity as minor, serious and very serious offenses⁸³.

The sanctioning procedure is carried out by an official of SMA - the instructor -, who issues an opinion that gives an account of the results of the disciplinary proceedings and proposes to the Superintendency the absolution or sanction. Complaints against the resolutions of SMA are

Notwithstanding the foregoing, once a year and subject to the procedure set forth in Article 17, control programs and sub-programs may be updated when reasonable grounds based on the efficiency of the control system are needed”.

81 SMA can impose fines up to 10,000 Annual Tax Units, which is currently tantamount to 5,061,360 Chilean pesos (CLP). I.e., up to approximately US\$ 9 million.

82 **Act No. 20417 - Law establishing the Ministry, the Environmental Evaluation Service and the Environmental Superintendency**

“Article 38°.-

Offenses, whose knowledge rests with the Superintendency, shall be liable to the following sanctions:

- a) Written admonishment
- b) Fine from 1 to 10,000 annual tax units
- c) Temporary or permanent closure
- d) Environmental Qualification Resolution Revocation”.

83 **Act No. 20417 - Law establishing the Ministry, the Environmental Evaluation Service and the Environmental Superintendency**

“Article 39°.-

The corresponding sanction to be applied to each offense is determined by severity, within the following ranges:

- a) The very serious sanctions may be subject to environmental resolution revocation, closure, or a fine of ten thousand annual tax units.
- b) Serious violations may be subject to environmental resolution revocation, closure, or a fine up to five thousand annual tax units.
- c) Minor offenses may be subject to written admonishment or a fine up to one thousand annual tax units”.





Waterfall on the eastern mountain range foothills, San Gabán, Puno (Peru)
Photo: Walter Wust



the responsibility of environmental courts⁸⁴.

Additionally, SMA also conducts an *informative duty*; i.e., it is responsible for ensuring that the environmental information is available and easily accessible. Therefore, it relies on the SNIFA, through which it makes available relevant information related to SMA's duties. SMA also develops a *promoting duty*, through which it protects the effective implementation of environmental regulations, and it develops the necessary and appropriate actions to ensure the proper compliance with the technical requirements and environmental regulations.

2.3. Regulation in Ecuador

2.3.1. What is the relevant authority?

The Ministry of Environment as National Environmental Authority is responsible for environmental prevention and oversight in Ecuador. The Environmental Quality Subsecretariat of the Ministry of Environment is the one which, through the Prevention National Department of Environmental Pollution and Environmental Control Department, as well as the entities accredited by the National Environmental Authority⁸⁵, is responsible

84 **Act No. 20600 - Law establishing Environmental Courts**
"Article 17°.-

Jurisdiction. The Environmental Courts are responsible for:

(...)

- 3) To know complaints against the resolutions of Environmental Superintendency, in accordance with Article 56, Organic Law of the Environmental Superintendency. The Environmental Court of the place where the offense has originated has the jurisdiction to deal these complaints.

(...)."

85 Among the entities accredited by the National Environmental Authority, there are provincial and municipal decentralized autonomous governments as well as strategic-sector entities. It should be noted the National Environmental Authority through the accreditation authorizes these entities to provide corresponding environmental permits, and thus to exercise monitoring and oversight projects.



for implementing mechanisms of prevention, control and tracking of all activities that may have a negative environmental impact. Its objective is to ensure the quality of natural resources: healthy water, clean air, and healthy and productive soil⁸⁶. Environmental pollution monitoring is based on the verification of compliance with the rules and corresponding administrative authorizations.

Thus, public, private or mixed works, as well as public and private investment projects that may cause environmental impacts, shall be assessed prior to implementation by the competent environmental authority under the Single Environmental Management System (SUMA)⁸⁷.

86 **Texto Unificado de la Legislación Secundaria del Ministerio de Ambiente [Unified Text of the Secondary Legislation of the Ministry of Environment], approved by Supreme Decree No. 3399 November 28, 2002, published in Official Gazette No. 725 December 16, 2002**
Book I – About the environmental authority.-

**“7.2.2 NATIONAL ENVIRONMENTAL CONTROL DEPARTMENT
MISSION:**

To promote the environmental performance improvement of productive activities, services to ensure the quality of healthy water, clean air and healthy and productive soil resources. Pollution monitoring relies on the verification of compliance with regulations and corresponding authorizations, as well as the international conventions ratified by the country.

This administrative body is represented by the National Director of Environmental Control.

DUTIES AND RESPONSABILITIES:

- a) Development of technical instruments to gauge the environmental pollution problems (studies, monitoring, inventories, etc.)
- b) To regulate the monitoring of environmental pollution through laws, quality standards, emission standards, regulations, etc.
- c) To propose strategies for solving environmental pollution problems
- d) To improve the efficiency in environmental monitoring processes
- e) To coordinate the formulation of projects for negotiation of international technical and financial assistance
- f) To coordinate technical assistance projects to regional governments
- g) To propose plans for hazardous materials monitoring (chemicals and hazardous waste)”.

87 **Ley de Gestión Ambiental [Environmental Management Law]
Codification 19. Official Gazette Supplement 418 on September 10, 2004**

2.3.2. What role develops?

The National Environmental Pollution Prevention Department has the necessary responsibilities to prevent environmental degradation. It is responsible for pre-qualifying the performance of a public (private or mixed) work and public or private investment projects, which can cause environmental impacts and those with national-nature need. In performing this duty, this department promotes environmentally sustainable production and consumption, and in turn it promotes mechanisms and alternatives to minimize environmental impact⁸⁸.

Meanwhile, the National Environmental Monitoring Department develops technical instruments such as auditing, monitoring, inventory, among others, which allows measurement of environmental pollution, in order to comply with its environmental monitoring and follow-up. Likewise, this entity regulates environmental pollution monitoring through laws, decrees, ministerial decisions, resolutions, quality standards, emission standards, regulations, etc. Furthermore, this Department proposes strategies for solving problems of environmental pollution; it improves efficiency in the processes of environmental monitoring; it coordinates the formulation of projects for the negotiation of international technical and financial assistance; it projects of technical assistance to sectorial governments and proposes hazardous-material monitoring plans⁸⁹.

“Article 19°.-

Public, private or mixed works and public or private investment projects that may cause environmental impacts, will be pre-qualified to their execution by decentralized monitoring bodies, as the Single Environmental Management System, whose guiding principle should be precautionary”.

88 *See* Article 7.2.1 of the Unified Text of the Secondary Legislation, Environment, Part I. Approved by Supreme Decree No. 3516 - Official Gazette Supplement 2, March 31, 2003 (Last amendment on August 14, 2012) (Ecuador).

89 *See* Article 7.2.2 of the Unified Text of the Secondary Legislation, Environment, Part I. Approved by Supreme Decree No. 3516 - Official Gazette Supplement 2, March 31, 2003 (Last amendment on August 14, 2012) (Ecuador).



2.3.3. How its work is carried out?

The projects, works or new-and-in-operation activities must comply with the environmental regulation process, according to the applicable environmental legislation for obtaining the corresponding environmental license. Failure to do so will mean they are subject to sanctions by the competent environmental authority, without prejudice to any civil, criminal or administrative action arising from the breach.

Environmental oversight and monitoring of a project, work or activity is a technical process of control aspect, made by the competent environmental authority or by third parties contracted for this purpose, aimed at removal of complementary data to the internal monitoring of the project, work or activity. This process can occur through environmental audits.

The duties and responsibilities are delegated to Provincial directors and the head of *Parque Nacional Galápagos* (Galápagos National Park) in order to, on behalf of the National Environmental Authority, exercise the enactment of environmental permits for projects, works or activities, except those that are considered strategic or of national priority, which will be processed by the Environmental Quality Secretariat of the Ministry of Environment, i.e. in central government, because they are not procedures that can be decentralized⁹⁰.

The Environmental Authorities of Responsible Implementation, established by law, which have the elements and meet the necessary requirements to establish environmental management subsystem, may apply to the National Environmental Authority, the accreditation to SUMA, as long as the proposed subsystem is adjusted to

90 See Ministerial Decision No. 100 Official Gazette Second Supplement 766, August 14, 2012 (Ecuador).

the parameters set forth in this legal instrument, and to the applicable environmental regulations⁹¹.

It should be noted that environmental licenses and accreditations before SUMA are subject to suspension or revocation.

It is also worth noting that the management for the prevention and monitoring of environmental pollution and preservation or conservation of environmental quality in Ecuador is made through planning at different levels of government. The first level, called specific, is developed through the Environmental Management Plan of the Regulated; the second level, composed of the provincial, sectorial and local level and resource, through the plan of monitoring environmental entity of sectorial-regulator entities and resource; and finally, the third level, which is national, is developed through the National Environmental Authority plan, i.e. the Ministry of Environment⁹².

In the run-up to the implementation of a project or activity, instruments such as the Environmental Impact Assessment (EIA) and environmental management

91 See Ministerial Decision No. 006 on February 18, 2014. For further details see Chapter II of the Ministerial Decision No. 068, published in Official Gazette 033 on July 31, 2013 (Ecuador).

92 **Reglamento a la Ley de Gestión Ambiental para la prevención y Control de la Contaminación Ambiental [Regulation of the Environmental Management Law for Prevention and Monitoring of Environmental Pollution]. Approved by Supreme Decree No. 3516, Official Gazette Supplement 2 on March 31, 2003.**



“Article 54°.- Planning Levels

The management planning for prevention and monitoring of environmental pollution and preservation or conservation of the environmental quality in Ecuador, consists of the following levels:

- a) Specific: Environmental Management Plan of the regulated
- b) Local/Provincial/Line/Resources: Plan of environmental monitoring entity and sectorial regulator and by resource
- c) National: Plan of the National Environmental Authority.”



Cattails on the shores of Jahuacocha Lake, Huayhuash mountain range, Áncash (Peru)
Photo: Walter Wust



plan (PMA) are prerequisites to obtain the appropriate environmental permit. The Prevention National Department of Environmental Pollution is competent to do so. Monitoring and tracking is carried out later through audits, monitoring reports, among others, and the National Environmental Monitoring Department is in charge of this⁹³.

Faced with environmental offenses or breaches, environmental Ecuadorian disciplinary procedure begins with the complaint by an individual, interested third party or ex officio. The particularity of this method is that administrative actions depend on each sector (mining, oil, forestry) and institution (Ministry of Environment, provincial or municipal government) that, in the applicable legal instrument field, establish the forms of regulation and sanction procedure; however, there are not substantial differences and the process has similar characteristics (Guaranda 2010: 207).

2.4. Regulation in Colombia

2.4.1. What is the relevant authority?

In Colombia, the National Environmental Licensing Authority (ANLA) -created by Executive Order No. 3573, 2011- *“(...) is in charge that the projects, works or activities subject to licensing, environmental permit or procedures comply with environmental regulations, in such a way to contribute to sustainable environmental development of the country”*.⁹⁴

ANLA is part of the National Environmental System (SINA), whose governing body is the Ministry of Environment and Sustainable Development, and it is formed by the set of guidelines, standards, activities, resources, programs and institutions which allows the implementation of general



93 Id.

94 Article 2°, Law Decree No. 3573, 2011- **whereby** the National Environmental Licensing Authority – ANLA is established and other provisions are enacted.

environmental principles on which local Colombian environmental policy is based⁹⁵.

However, ANLA is not the only environmental authority that exercises the environmental control duty in Colombia, since there are regional environmental authorities, under a regime of autonomy established in the Constitution and also as part of SINA. These authorities are autonomous regional corporations, sustainable development corporations and environmental authorities in large urban centers, which serve as environmental authority in each regional or local jurisdiction.

In terms of environmental licenses, distribution of responsibilities, in some cases, depends on the sector -for example, hydrocarbons is the only responsibility of ANLA- and sometimes in the same sector, the responsibility differs depending on the extent of environmental impacts that a project may cause. Therefore, the large-scale mining is the responsibility of ANLA and small-scale mining of regional environmental authorities, like roads, depending on whether they are national or regional⁹⁶.

2.4.2. What role develops?

ANLA grants or denies environmental licenses, permits and procedures under the Ministry of Environment and Sustainable Development, and in case of granting them, is responsible to track them and manage the System of

95 See Article 1° and Article 4° of the Act No. 99, 1993 – whereby the Ministry of Environment is established and the public sector responsible for the management and conservation of the environment and renewable natural resources is rearranged, the National Environmental System - SINA is organized and other provisions are enacted.

96 For further details see: Article 8° and Article 9° of the Decree 2820, 2010 - Whereby the Title VIII of Act No. 99, 1993 on environmental licenses is regulated. In these articles, the list of projects, works and activities subject to environmental licensing, as well as the distribution of responsibilities between two types of authorities, national authority (ANLA) and regional authorities are established.

Environmental Licenses, Permits and Procedures (SILA) and the Comprehensive Counter of Environmental Paperwork Online (Vital). If in implementing the projects under their oversight and monitoring environmental offenses are committed, preventive measures and sanctions can be imposed, according to the regime of Law No. 1333, 2009.

ANLA is responsible for granting environmental licenses, permits and procedures to projects, works or activities in the following cases⁹⁷:

- Implementation of works and activities of exploration, production, transportation, handling and storage of hydrocarbon and refinery construction
- Implementation of large-scale mining projects
- Construction of reservoirs, dams or weirs with more than two-hundred-million-cubic-meter capacity, and construction of electric-power plants in excess of 100,000 kw of installed capacity as well as the laying of transmission lines of the national interconnecting-electrical system and exploration projects and use of alternative energy sources virtually pollutants.
- Construction or expansion of deep-water seaports
- Construction of international airports
- Implementation of public works for national road, river and rail networks
- Construction of irrigation districts for more than 20,000 hectares
- Production and import of pesticides and substances, materials or products subject to controls under treaties, conventions and protocols.
- Projects involving the National Parks System



97 See Article 52° of Act No. 99, 1993 – **whereby** the Ministry of Environment is created and the Public Sector responsible for the management and conservation of the environment and renewable natural resources is rearranged, the National Environmental System - SINA is organized and other provisions are enacted.

- Projects anticipating the Regional Autonomous Corporations⁹⁸
- Diversions from one basin to another water current in excess of 2 m³/s during low flow periods
- Introduction to the country of parentals for the reproduction of native species of wild fauna and flora that could affect the stability of ecosystems or wildlife
- Nuclear power generation

Overall, ANLA ensures that the mechanisms for citizen participation regarding environmental licenses, permits and procedures take effect; it implements strategies for the proper care, custody and management of information from the environmental licenses records, permits and procedures; it supports the development of regulations on environmental matters; it anticipates and completes the research procedure, preventive and punitive procedure in environmental matters⁹⁹; it orders suspension of work or activities; it approves the administrative acts of environmental licenses for mining exploitation and construction of roads and permits and logging concessions; and finally, it settles jurisdictional disputes when the project, work or activity subject to environmental permit or license is developed in the jurisdiction of two or more environmental authorities¹⁰⁰.

ANLA also receives environmental complaints that disclose any fact that violates environmental

98 See Article 19 ° and Article 31° of Act No. 99, 1993 – **whereby** the Ministry of Environment is created and the Public Sector responsible for the management and conservation of the environment and renewable natural resources is rearranged, the National Environmental System – SINA is organized and other provisions are enacted.

99 Act No. 1333, 2009 – **whereby** the Environmental Sanctioning Procedure is established and other provisions are issued.

100 See Article 3° of Law Decree No. 3573, 2011 – **whereby** the National Environmental Licensing Authority - ANLA is created and other provisions are enacted.

regulations¹⁰¹, and these must be made available to the competent authority by ANLA or, where appropriate, to initiate the necessary research to verify the commission of the offense¹⁰².

2.4.3. How is its work carried out?

ANLA, in order to fulfill its purpose and duties, focuses its management on three aspects: the environmental licensing process, environmental permits and procedures, and preventive and sanctioning process¹⁰³ (ANLA 2014b).

The first is the *environmental licensing process* –the responsibility of the Evaluation and Tracking Assistant Department – by which it carries out the necessary activities to issue the required technical and legal concepts and granting or denying requests submitted by users to develop projects, works or activities. Licensing is an environmental-planning instrument that ensures projects, works or activities executed from the planning stage take into account environmental considerations contributing in order to reduce or mitigate the effects that their implementation could have on the environment.

Given the importance and impact these projects can have on the environment, ANLA is required to evaluate and

101 While there are environmental administrative offenses, which are also crimes, ANLA cannot investigate environmental crimes, since this corresponds to the Attorney General's Office.

102 As established by Act No. 1333, 2009 – Environmental Sanctioning Procedure is established and other provisions are enacted, not all sanctioning aspects have preliminary inquiry.

103 For the development of these aspects, the information contained in the Management Report - 2013, under review, and from which have been obtained definitions and general concepts for the three processes or aspects by ANLA has been taken into account.

See National Environmental Licensing Authority (ANLA), *Informe de gestión* [Report management] (2013) (Colombia) (May 2, 2014), <<http://www.anla.gov.co/documentos/Planeaci%C3%B3n/INFORME%20DE%20GESTI%C3%93N%20ANLA%202013%20Versi%C3%B3n%20en%20revisi%C3%B3n.pdf>>.





Field bursting of wild turnip flowers in Maras pampas, Cusco (Peru)
Photo: Walter Wüst

make pronouncements. Once granted, the corresponding actions to the tracking are performed in order to support compliance and effectiveness related to the administrative act. Applications related to the construction, development and operation of projects, works and activities subject to environmental licensing are studied and they receive a statement through the following instruments: Environmental Alternatives Assessment (DAA) -previously, the need for environmental Alternatives Assessment (NDAA) should be evaluated-environmental license, Environmental Management Plan (PMA), Environmental Management Measures (MMA), Environmental Technical Report (DTA) and Modifications (DTA), and post-consumer plans¹⁰⁴.

Regarding *environmental permits and procedures* – responsibility of the Sub department of Environmental Instruments, Permits and Procedures- ANLA currently attends the evaluation and tracking of 12 permits (ANLA 2014a). ANLA performs the monitoring and inspection of permits and proceedings provided through procedures, instruments and schedules by which competent tracking activities -with technical and/or documentary visit- are implemented¹⁰⁵.

104 All instruments mentioned, except the last two, are part of environmental licensing procedure of projects in hydrocarbon, infrastructure, mining, energy and chemicals sectors. Using post-consumer plans and, repayment and disposal of products consumed or used once they become waste or hazardous waste are provided.

105 Twelve (12) permits are the responsibility of National Environmental Licensing Authority, through which activities related to the flora and fauna that are not part of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) are mainly regulated. For example: permits not CITES, study permit of scientific research (including two modalities: collection permits of wild-biodiversity specimen for scientific and non-commercial research and environmental study purposes), channel occupation permit, underground water concession permit, surface water concession permit, wastewater discharge permit, only forestry use permit, among others.



The third aspect is related to *environmental preventive and sanctioning process*. The Legal Adviser Office manages this with technical support from both the Evaluation and Monitoring Sub-department regarding environmental licenses and the Sub-department of Environmental Instruments, Permits and Procedures regarding environmental permits and procedures. Finally, it is the General Department of ANLA, which issues a final decision.

Act No. 1333, 2009 –whereby the environmental sanctioning procedure is established and other dispositions are enacted – determines the environmental sanctioning procedure and grants to environmental authorities, authorizing them the use of sanction in this area. It recognizes ANLA as the authority with powers to impose and execute preventive and disciplinary measures¹⁰⁶ in cases where there are actions that threaten the environment, natural resources or human health, and which represent an environmental offense.

Sanctions will be imposed taking into account the severity of the offense and may be as follows: daily fines up to five thousand legal minimum salaries¹⁰⁷; temporary or permanent closure of the facility, building or service; revocation or expiration of environmental permit, authorization, license, permit or registration and demolition of work at the offender. The final confiscation of specimens, exotic wildlife, products and byproducts, elements, means or devices used to commit the offense;

106 **Act No. 1333 on July 21, 2009 – whereby the Environmental Sanctioning Procedure is established and other provisions are enacted.**

“Article 12°.-

Preventive measures are designed to prevent or inhibit the occurrence of an event, the performance of an activity or the existence of a situation that threatens the environment, natural resources, landscape and human health”.

107 ANLA may impose daily fines of up to 5000 monthly salaries, which currently tantamount to a daily fine of 3,080,000 billion Colombian pesos (COP). That is, up to approximately \$ 1.7 million.

restitution of specimens of wildlife and/or can also be; finally, community work under the conditions set by the environmental authority¹⁰⁸.

108 **Act No. 1333, July 21, 2009 - whereby the Environmental Sanctioning Procedure is established and other provisions are enacted.**

“Article 40°.- Sanctions

The sanctions indicated in this Article shall be imposed as a principal or secondary to the responsible for the environmental offense. The Ministry of Environment, Housing and Territorial Development, the Regional Autonomous Corporations and those of the Sustainable Development, the Environmental Units of large urban centers referred to in Article 66 of Act 99, 1993, public facilities covered by Article 13 of Act 768 of 2002 and the Special Administrative Unit from the National Parks shall impose on the offender of environmental regulations according to the severity of the offense through a motivated resolution, some of the following sanctions:

1. Daily fines up to five thousand (5,000) current legal minimum monthly salaries.
2. Temporary or permanent closure for premises, building or service.
3. Revocation or expiration of environmental permit, authorization, license, permit or registration
4. Work demolition at the offender’s expense.
5. Definitive forfeiture of specimens, exotic wildlife species, products and byproducts, elements, means or implements used to commit the offense.
6. Return of specimens of wild fauna and flora species.
7. Community work under conditions set by the environmental authority”.





Elegant terns (*Sterna elegans*) flock in Lagunillas bay, Reserva Nacional de Paracas (Paracas National Reserve), Ica (Peru)
Photo: Walter Wust

3 ENVIRONMENTAL PROTECTION AT REGIONAL LEVEL

3.1. Inter-American System for the Protection of Human Rights

The entities that integrate the Network belong to countries that are member States of the American Convention on Human Rights- Peru, Chile, Ecuador and Colombia- and, therefore, are part of the Inter-American Human Rights Protection System.

While the American Convention on Human Rights does not explicitly recognize the right to a healthy environment, Article 26° obliges the States to respect the economic, social and cultural rights contained in the Charter of the Organization of the American States¹⁰⁹. Therefore, the Additional Protocol to the American Convention on Human Rights in Economic, Social and Cultural Rights matters -better known as Protocol of San Salvador- expanding the list of those rights, including in Article 11°, the right to environment¹¹⁰, which states:

Protocol of San Salvador

Article 11°:

1. Every person has the right to live in a healthy environment and to have access to basic public services.

“The entities that integrate the Network belong to countries that are member States of the American Convention on Human Rights”



109 **American Convention on Human Rights**

“Article 26°.-

The States Parties undertake to adopt measures, both internally and through international cooperation, especially economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires”.

110 The Commission and the Inter-American Court of Human Rights, due to the legal provisions of Article 11° of Protocol of San Salvador, have arranged a series of obligations the States are responsible for aimed at maintaining a level of quality in the environment allowing people enjoy the rights recognized by the American Convention and ensure environmental protection.

2. States Parties shall promote the protection, preservation and improvement of the environment.

Thus, State's action duty in its role of protecting, preserving and improving the environment stands out; consequently, to fulfill this objective it is necessary that States previously have an environmental regulation encouraging the use of natural resources in accordance with the right to the environment¹¹¹. As noted herein: *adequate control work contributes to ensuring a safe and healthy environment for people.*

In this scenario, the control work carried out by the competent environmental authorities –making up the Network- becomes vitally important. This is because a permanent control of companies or individuals engaged in economic activities, promotes, in turn, full compliance with the environmental regulations and obligations of the latter.

3.2. Regional Agreements on Environmental Matters: Current Status

There have also been efforts to create other international instruments that, at regional level, are intended to protect the environment and its components.

For example, through the Amazon Cooperation Treaty¹¹² (OTCA 2014), signed in 1978 by Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname and Venezuela, the transboundary nature of the Amazon was recognized, seeking regional cooperation among member countries in order to promote the

111 One example is the Report on Human Rights in Cuba, in which the Commission recommends the State takes specific measures and adopts environmental provisions in order to comply with its obligation to ensure the right to health, whereas an environment promoting the health of the population is essential, and that factors such as water supply, excreta disposal or industrial waste and garbage collection system have a significant impact in this regard. See The situation of Human Rights in Cuba, Inter-Am. Comm'n H.R., Report No. 7/83, OEA/Ser.L./V/II.61, doc.29, rev.1, (1983).

112 For more information, see Organization of the Amazon Cooperation Treaty (February 14, 2014), <<http://otca.info/portal/tratado-coop-amazonica.php?p=otca>>



Chinancocha lake, Llanganuco. Parque Nacional Huascarán (Huascarán National Park), Ancash (Peru)
Photo: Walter Wust

harmonious development of Amazon territories, through the exchange of information, agreements among member countries and the creation of legal instruments.

Another example is the Convention for the Conservation and Management of Vicuña¹¹³, signed on December 20, 1979 by Peru, Bolivia, Chile and Ecuador. In this instrument it was considered that the Conservation of Vicuña was an alternative economic production for the benefit of the Andean people, thus the member countries have committed themselves to their use under strict state control.

On the other hand, it is worth mentioning that the Cartagena Agreement signed on May 26 1969 resulted in the formation of the Andean Group, which today we know as the Andean Community. This integration body – composed of the South American countries of Bolivia, Colombia, Ecuador and Peru -, seek to improve the living standard of its inhabitants through integration and economic and social cooperation.

In this regard, it is important to mention some of the decisions taken in the framework of that agreement (*Comunidad Andina - Andean Community 2014*):



113 It should be noted that the Convention was ratified in Peru by Law Decree No. 22984, published on August 16, 1969.

- (i) Decision 345, which approves the Common Provisions on the Protection of the Breeders of Plant Varieties, for which the Sub-Committee for the Protection of Plant Varieties was created. This Sub-committee is responsible for proposing community regulations on the subject.
- (ii) Decision 391, which approves the Common Regime on Access to Genetic Resources, for which the Andean Committee on Genetic Resources is created, and whose responsibilities are making recommendations at national and subregional levels, and conducting cooperation actions, to mention some duties.
- (iii) Decision 435, which creates the Andean Committee of Environmental Authorities, to which the committees established by the decisions 345 and 391 must periodically report their work. This committee provides advice and support to the General Secretariat of the Andean Community regarding community policy on the environment.

In addition, it is important to highlight the actions taken by the Southern Common Market (Mercosur 2014)¹¹⁴, composed of Argentina, Brazil, Paraguay, Uruguay, Venezuela and Bolivia (acceding State) to create environmental protection regulations at the supranational level:

- (i) The preamble of the Treaty of Asunción, whereby Mercosur is constituted, states that environment preservation must be one of the ways to expand domestic markets of the States parties.
- (ii) In the Program of Action of Mercosur until 2000, approved by Decision CMC No. 9/95, it was agreed to form and propose strategies and guidelines to ensure environmental protection of the States Parties.

114 Mercosur has as associated states Chile, Colombia, Peru, Ecuador, Guyana and Suriname. The participation of States in Mercosur's meetings and the signing of agreements are governed by the provisions of the Decisions CMC No. 18/04, 28/04 and 11/13.

- (iii) The Framework Agreement on the Environment establishes that States should cooperate in the implementation of international environmental agreements and it will deepen the analysis of environmental problems in the subregion.

Indeed, there is interest in the region to develop international cooperation agreements in order to ensure environment protection and to promote sustainable development.

Currently, there is little progress regarding cooperation among agencies that conduct environmental control, which are related to the economic-activity control that by their nature can cause damage to the environment, if this is not made in accordance with the environmental obligations set out in legislation, among other instruments. Therefore, the establishment of the Network is a significant initiative in this issue

There are cases in which the malpractices of companies that develop mining activities and even transboundary impacts have been researched in more than one country in the region, but the lack of international cooperation often prevents that necessary actions to remedy environmental damage are implemented. These experiences demonstrate the importance of having effective cooperation among agencies that conduct environmental control and the need to join efforts to curb realities as described.





Cattails on the shores of Jahuacocha Lake, Huayhuash mountain range, Áncash (Peru)
Photo: Walter Wust

4 LOOKING AHEAD: INTERNATIONAL COOPERATION WITHIN THE FRAMEWORK OF SOUTH AMERICAN NETWORK FOR ENVIRONMENTAL CONTROL AND COMPLIANCE

“The creation of the Network represents a breakthrough in cooperation for environmental control in the region”



The creation of the Network represents a breakthrough in cooperation for environmental control in the region, establishing solutions to transboundary problems, and promoting the exchange of experience and information that can be applied to the improvement and development of each member country.

In this context, one of the points that, for example, deserves to be treated among South American network’s members, is the protection of human rights of indigenous peoples, which are often affected by extractive activities -unless they are performed according to established environmental obligations in environmental legislation- to the extent that much of the natural resources are found close to their lands¹¹⁵.

Despite several problems affecting the countries of the region in relation to environmental protection, it should be noted that all these difficulties can be gradually overcome through cooperation among their agencies, which will require creating working groups, sharing information, training officials, issuance of legal instruments, and investment in research, allowing the development of regional control and environmental protection.

The implementation of the Network is developed in the context of the preparation of the Conference of Parties from the United Nations Framework Convention on Climate Change (COP 20) to be held on December 1-12, 2014 in Peru. This conference aims to achieve a binding global climate agreement to reduce emissions

115 See Report A/HRC/24/41 of special rapporteur on the rights of indigenous peoples, James Anaya.

of greenhouse gases and, thereby, have an updated document to replace the Kyoto Protocol, and is expected to be signed at COP 21 in Paris.

The COP 20 will also be a good opportunity to promote dialogue on environmental control, since the event will bring together more than twelve thousand members of 195 national delegations, among governments, companies and civil society.

The development of cooperation among different countries in the region can not remain just in theory, its effective application to the facts is necessary. Only in this way will the goal set for agencies, entities or bodies involved respond with the capacity of action that the population and the environment actually need to be met.

The member countries of the Network should permanently look to strengthen their systems for environmental control and surveillance of economic-activity development; in this regard, as Dinah Shelton synthesizes it:

(...) Governments should adopt relevant laws and regulations and then enforce them. (...) The government should regulate industrial activities and whatever could produce such negative-degree environmental conditions as to create a risk to health or life itself (2010: 117).

Finally, it is important to note that the ongoing interagency and international efforts that are being made to strengthen the environmental control work should be added to the development of an environmental culture ensuring the responsible participation of people in environment surveillance and generating awareness that protecting the environment is everyone's responsibility. Only in this way, will it contribute to ensuring a healthy environment fit for both the present and future generations.



Bibliography

AMAYA, Oscar

2006 “Marco constitucional para la protección del medio ambiente en Colombia”. En Control fiscal ambiental. Universidad Externado de Colombia: Colombia

AUTORIDAD NACIONAL DE LICENCIAS AMBIENTALES [ANLA]

2014a “Una herramienta de Manejo y Control Ambiental” En Portal de Autoridad Nacional de Licencias Ambientales. Consulta: 04 de julio del 2014.
<<http://www.anla.gov.co/contenido/contenido.aspx?catID=1376&conID=7994>>

2014b “Informe de gestión”. En Portal de Autoridad Nacional de Licencias Ambientales. Consulta: 02 de marzo del 2014
<<http://www.anla.gov.co/documentos/Planeaci%C3%B3n/INFORME%20DE%20GESTI%C3%93N%20ANLA%202013%20Versi%C3%B3n%20en%20revisi%C3%B3n.pdf>>

COMUNIDAD ANDINA

2014 Portal de la Comunidad Andina. Consulta: 14 de febrero del 2014
<<http://www.comunidadandina.org/Documentos.aspx?GruDoc=07>>

CUMBRE PARA LA TIERRA +5

1997 “Periodo extraordinario de sesiones de la Asamblea General para el Examen y la Evaluación de la Aplicación del Programa 21”. En Portal de Cumbre para la Tierra +5. Consulta: 02 de marzo del 2014.
<<http://www.un.org/spanish/conferences/cumbre&5.htm>>

GUARANDA, Wilton

2010 Acciones jurídicas para establecer responsabilidades por daño ambiental en el Ecuador. Quito: Fundación Regional de Asesoría en Derechos Humanos (INREDH).

LAMADRID, Alejandro

2011 Derecho ambiental contemporáneo. Crisis y desafíos. Lima: Editora y Distribuidora Ediciones Legales .

LUCAS, Andrea

2006 “El derecho a vivir en un medio ambiente libre de contaminación: su recepción en la Constitución Chilena reformada”. Ponencia presentada en las XXXVI Jornadas Chilenas de Derecho Público de la Universidad de Chile. Santiago de Chile: Comisión de Derecho Constitucional. Consulta: 02 de marzo del 2014.
<<http://www.derecho.uchile.cl/jornadasdp/archivos/PaperJornDchoPubl06LucasGar%EDn.pdf>>

MERCADO COMÚN DEL SUR (Mercosur)

2014 Portal del Mercador Común del Sur (Mercosur). Consulta: 14 de febrero del 2014.
<http://www.mercosur.int/t_generic.jsp?contentid=3862&site=1&channel=secretaria>

NOGUEIRA, Humberto

2009 “Recensiones”. Revista Jurídica Justicia Ambiental. Santiago de Chile, V. 7, N° 2.

ORGANIZACIÓN DEL TRATADO DE COOPERACIÓN AMAZÓNICA [OTCA]

2014 Portal de la Organización del Tratado de Cooperación Amazónica. Consulta: 14 de febrero del 2014
<<http://otca.info/portal/tratado-coop-amazonica.php?p=otca>>

QUINTERO, Rafael

2008 La Constitución de 2008. Un análisis político. Quito:Abya-Yala.

SERVICIO DE IMPUESTOS INTERNO

2014 Portal del Servicio de Impuestos Interno. Consulta: 09 de julio del 2014.
<<http://www.sii.cl/pagina/valores/utm/utm2014.htm>>

SUPERINTENDENCIA DEL MEDIO AMBIENTE/GOBIERNO DE CHILE [SMA]

2013a “Cuenta Pública: Programas y subprogramas de fiscalización 2013”. En Portal de Superintendencia del Medio Ambiente/Gobierno de Chile. Consulta: 04 de julio del 2014.
<<http://www.sma.gob.cl/index.php/cuenta-publica-2013>>

2013b “Estrategia de Fiscalización Ambiental 2013”. En Portal de Superintendencia del Medio Ambiente/Gobierno de Chile Consulta: 04 de julio del 2014
<<http://www.sma.gob.cl/index.php/documentos/publicacion>>

SHELTON, Dinah

2010 “Derechos ambientales y obligaciones en el sistema interamericano de derechos humanos”. En Anuario de Derechos Humanos de la Universidad de Chile. Consulta: 24 de enero del 2014.
<<http://www.anuariocdh.uchile.cl/index.php/ADH/article/viewFile/11486/11847>>



UNITED NATIONS ENVIRONMENT PROGRAMME (UNEP)

2014 “La Conferencia de las Naciones Unidas sobre el Medio humano”. En Portal de United Nations Environment Programme. Consulta: 17 de febrero del 2014.

<<http://www.unep.org/geo/GEO3/spanish/040.htm>>

VALVERDE, Iñigo

2014 European Commission. Consulta: 07 de marzo del 2014

<<http://ec.europa.eu/translation/bulletins/puntoycoma/63/pyc633.htm>>

VILLARTE, Álvaro

2006 “Marco legal del control fiscal ambiental en Colombia”. En Control fiscal ambiental. Universidad Externado de Colombia: Colombia.



Potato and barley crops in Raqchi town, Chincheros, Cusco (Peru)

Photo: Walter Wust





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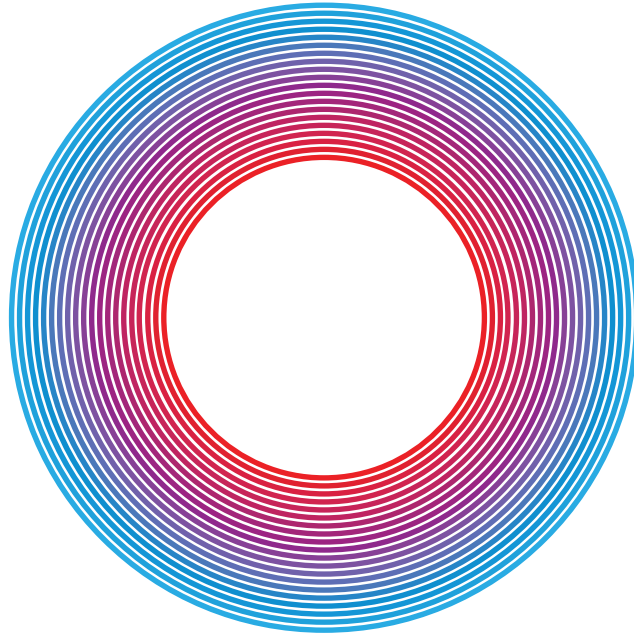
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