

Latin American and Caribbean Dialogue on Environmental Law Approaches, Trends and Challenges

Regional Meeting of National Focal Points for Latin America and the Caribbean on the Programme for the Development and Periodic Review of Environmental Law

Panama City, Panama, 20-22 June 2018

REPORT

Background

Countries in the Latin America and the Caribbean region (LAC) are home to a variety of biodiversity and natural wealth, resources that make up the foundations of many of the region's economies. However, the region still faces significant environmental challenges characterized by land degradation, biodiversity loss, pollution, vulnerability to climate change, and unsustainable production and consumption patterns.

The strengthening of environmental governance, through appropriate laws and institutions is key for implementing the Agenda 2030¹ and achieving in this diverse region the Sustainable Development Goals (SDGs). While the legal and regulatory landscape is also characterized for its diversity, it is evolving rapidly, and the trend is clear when it refers to environmental protection: countries in the region have environmental rights enshrined in their constitutions, and they have also developed environmental legislation and are Parties to multilateral environmental agreements (MEAs). Existing framework environmental laws are being complemented by new laws and regulations, and emphasis is being placed to effective compliance and enforcement. The United Nations Environment Programme (UN Environment) works with a broad range of partners in the region to support the development or strengthening of environmental laws and their enforcement, as well as to advance environmental justice.

The Programme for the Development and Periodic Review of Environment Law (Montevideo Programme) refers to a series of ten-year programmes that constitute a broad strategy for the international law community and UN Environment in formulating activities in the field of environmental law. The current and fourth programme (Montevideo Programme IV) runs from 2010 to 2020. At its second session in 2016 the United Nations Environment Assembly (UNEA) adopted Resolution 2/19 which requested UN Environment, in close collaboration with the national focal points, to prepare an assessment of Montevideo IV and proposals for the work of UN Environment in environmental law for a specific period beginning in 2020, for consideration by UNEA in 2019. The findings and recommendations of UN Environment latest (sixth) flagship Global Environment Outlook (GEO-6) assessment, a regional assessment conducted from May 2015 to April 2017 by a team of over 120 experts from the region, as well as relevant UNEA resolutions, served as a basis to discuss priorities from the region.

The consultations held in Panama were part of a series of regional consultations which have also taken place in Africa, West Asia and Asia Pacific between the months of June and July 2018.

¹ General Assembly resolution 70/1, *Transforming our World: the 2030 Agenda for Sustainable Development*, A/RES/70/1 (25 September 2015).

Purpose of the meetings

The key purpose of the meetings was to provide a forum for Montevideo national focal points from countries of the LAC region to:

- (a) share and exchange information on latest developments, trends, and good practices in the development and enforcement of environmental law in their countries, as well as regionally and globally; and
- b) contribute to UN Environment's preparation of the assessment of the Montevideo Programme IV, including through sharing information on the status of implementation of the Montevideo Programme IV in their countries, and identifying proposals for the work of UN Environment in environmental law for the next period commencing 2020.

Priorities already identified by focal points and relevant UN Environment Assembly resolutions were discussed in the meetings in the context of the theme of the fourth Assembly: "Innovative solutions for environmental challenges and sustainable consumption and production".

The meetings also served to create an important platform to increase partnerships and networks in the region for Montevideo focal points and other stakeholders working on environmental law issues.

Participation

The meetings were attended by national delegates who had been designated as Montevideo focal points (Antigua and Barbuda, Bahamas, Belize, Bolivia, Brazil, Chile, Cuba, Haiti, Mexico, Suriname, and Uruguay) and from representatives from Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Jamaica, Panama, Dominican Republic, Saint Kitts and Nevis, Saint Vincent and the Grenadines. Additionally, eight experts from Argentina, Cuba, Jamaica, Panama, Paraguay, Peru, Trinidad and Tobago, and the Central American Commission on Environment and Development took part in the meetings, providing expertise and views from different relevant stakeholders, such as the academia, parliament, enforcement community and the judiciary.

Opening Session

Welcome remarks were made on behalf of UN Environment, by Ms. Sylvia Bankobeza, Legal Officer, Law Division, who used this opportunity to inform participants of the Montevideo process that would culminate in a UNEA decision, as well as from Ms. Andrea Brusco, Regional Coordinator – Environmental Law and Governance, who also made a statement on environmental law priorities and explained to participants what was expected from the consultations.

Mr. Marcelo Cousillas, National Focal point from Uruguay, welcomed participants in his role as President of the Meeting of Senior Government Officials Expert in Environmental Law on the Midterm Review of the Montevideo Programme IV (Montevideo, 11-15 September 2015), and referred to the strategic importance of the Montevideo Programme and the need for the region to have a substantive engagement both in the review process and in the design of the next programme.

Mr. Jose Antonio Ayu Prado, Justice of the Supreme Court of Panama, welcomed participants of the region to Panama. He referred to the growing role of the judiciary in addressing complex environmental challenges and highlighted the supporting role that UN Environment had been providing to the judiciary of the region, including promoting regional dialogue and the exchange of best practices, and providing training.

INTRODUCTORY SESSION

Ms. Brusco introduced the sessions with an overview of environmental priorities and challenges in the region, based on the GEO-6 report.

Latin America and the Caribbean is a biologically rich region with complex political, social and natural contrasts. The future of its economies depends heavily on the region's natural capital, mitigating and adapting to climate change, and decoupling economic growth from resource consumption. According to the report, the five key areas for environmental management in the region are: air quality, freshwater quality and access, health of oceans, seas and coasts, habitat loss and land degradation, and biodiversity.

Ms. Brusco then summarized some of the regional responses to environmental challenges mentioned in the report, including the Regional Plan of Action on Atmospheric Pollution, the Regional Action Plan for Marine Litter for the Wider Caribbean Region, the implementation of Integrated Coastal Zone Management in a number of countries of the region, Payment for Ecosystem, certification and verification schemes, and the increasing of terrestrial and marine areas designated as protected areas-. It was also noted that one of the main overall recommendations for the region was to have stronger and focused intergovernmental coordination at the regional and sub-regional level to improve governance issues that were of regional priority.

This session continued with an Overview of Environmental Law at the Regional and Global Levels, presented by Ms. Bankobeza.

At the global level, trends included combatting environmental crime focusing on Illegal trade of environmental resources; enhancing synergies among multilateral environmental agreements (MEAs), implementation of National Biodiversity Action Plans, and the MEA uptake of 2030 targets of the SDGs. The following important challenges were identified at the global level: the coordination among MEAs, achieving compliance, and addressing global trade through MEAs, such as through the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

At the regional level, trends included the negotiation and adoption of regional legal instruments, and a better engagement, coordination and consultation on negotiations positions. Among the challenges at that level, the lack of adequate budgetary resources to review and implement MEAs was highlighted.

Ms. Bankobeza also provided an overview of UN Environment work in the field of environmental law, which included support to countries for the progressive development of environmental law; development of legal and institutional frameworks; strengthening enforcement and compliance; legal guidance materials and online information products; legal support to international processes and negotiations; and strengthening partnerships with environmental law stakeholders and nexus with other areas. She explained that the scope of the work had evolved in recent years as countries gained experiences and learned valuable lessons for tackling environmental issues in enforcement which could be useful to their peers.

SESSION I – ENVIRONMENTAL LAW AT GLOBAL AND REGIONAL LEVEL

a) Dialogue on recent developments of environmental law in the region

Mr. Cousillas (Uruguay) and Ms. Judy Daniel (Trinidad and Tobago) provided an overview of the trends and recent developments of environmental law in Latin America and in the Caribbean, respectively.

The trends highlighted in their presentations were:

- Important progress has been made in the development of national environmental law in the region, through national constitutions, general laws on the environment and relevant sectoral legislation.
- Countries of the region shared similar principles and instruments of environmental law, with stronger presence of “command and control” approach and a more recent tendency to introduce incentives to promote compliance.
- International environmental law had a strong influence in the development of environmental law in Latin America and Caribbean countries.
- Recently there has been advancement in the strengthening of environmental governance and institutions, but that path needed to continue and to be reinforced.
- There was a growing presence of enforcement and judicial activity in environmental matters.

Mr. Cousillas addressed also the current challenges of environmental law in the region. He stressed that to be effective, environmental law had to evolve and go beyond the classic approach of conservation, prohibition and limitations. In that regard, the current challenge was to transform environmental law into an effective tool to regulate social, economic and environmental needs in an integrated manner. It was also important to continue strengthening environmental institutions, ensuring their relevance for decision making and their coordination with other relevant areas for the development and implementation of public policies, as well as to develop further the relation between environment and human rights and to consider the approach of rights of nature. Another relevant task was to continue working towards the consolidation and application of new principles and instruments, such as the non-regression principle, the environmental function of property rights, and other economic instruments and environmental insurance.

This session continued with a presentation of Ms. Natalia Camacho Arguello (Costa Rica) who referred to the Costa Rican experience of reviewing and updating environmental legislation and secondary regulations as part of the process of accession to the Organisation for Economic Co-operation and Development (OECD).

Ms. Arguello shared information on recent legal and regulatory developments at the national level, aligned with the outcome of the analysis and recommendations from the OECD. This included the following:

- Environmental licenses: due to fragmented regulations there were excessive requirements to obtain licenses and the processes were too long. To overcome that situation, a Single Permit System had been created to integrate all environmental licenses, which would function as a common platform for users and the administration, ensuring access to information, transparency and time saving.
- Improving water allocations system and promoting water efficiency: to be able to face changes of weather patterns or in exceptional circumstances, a new legal mechanism had been introduced to grant the Ministry of Environment flexibility to adjust the volume of water assigned in the concessions.

- The National Policy on Sustainable Consumption and Production 2018-2023 had been approved.
- National Law 96518/2017 to promote electric mobility: the law established economic incentives to promote electric transport and provided for the adoption of the National Electric Transportation Plan, which would contribute to the reduction of emissions from the transport sector.

b) Dialogue on recent developments in the field of Multilateral Environmental Agreements

- **Minamata Convention on Mercury**

Ms. Brusco provided a background on the Minamata Convention on Mercury, milestones in the negotiation process towards its adoption and the key provisions established in its substantive provisions. In the discussions on this matter, participants agreed that the Minamata Convention was of great importance for the region, due to the environmental and health issues associated with the use of mercury in illegal and artisanal mining activities in many countries in the region.

The status of ratifications in the region was discussed. Only few countries of the region had not become parties to the Convention, namely Chile, Colombia, Guatemala and Paraguay. In this regard, Paraguay announced that the instrument of ratification of the Convention had been approved by the Parliament in April 2018 and that the instrument would be deposited soon. In the case of Colombia, on 23 March 2018 the Parliament approved the Law to ratify the Convention; in accordance with the procedure foreseen in the national Constitution for approval of international treaties, this law must be reviewed by the Constitutional Court before the instrument can be deposited with the depositary as the final stage of treaty ratification.

- **Kigali Amendment to the Montreal Protocol**

Ms. Mirian Vega Pintos (UN Environment) provided an overview of the Montreal Protocol and its amendments, with a focus on the Kigali Amendment that would come into force in January 2019. The status of ratification in the region was discussed.

- **The Regional Agreement on Access to Information, Public Participation and Justice in Environmental matters (Escazú Agreement)**

Ms. Danielle Andrade (Expert) presented an overview of the Agreement and its main provisions on access to environmental information (art 5 and 6), public participation (art 7), access to justice (art 8) and human rights defenders on environmental matters (art 9). She referred to the process of negotiation of this agreement and the engagement of civil society. She noted that the regional agreement would be opened for signature on 27 September 2018.

Mr. Robert Currie (Chile) referred to the implementation of access rights in Chile, including the national legislation in place for access to information, public participation and access to justice in environmental matters.

In the discussions following the presentations, participants agreed on the importance of the Escazú Agreement as an instrument for environmental democracy. After its adoption, countries faced the challenge to implement the Agreement through legal and institutional mechanisms, to devote

financial and human resources to such implementation, and to prioritize regional cooperation to strengthen capacities and increase resource mobilization. Chile and Costa Rica announced that they had already initiated domestic processes for signature of the agreement.

c) Dialogue on Environmental Damage and Liability

Ms. Silvana Terzi (Expert) provided a general introduction to the theme and reviewed the different national legislation in Latin America and Caribbean countries on environmental damage, identifying common elements and existing gaps, followed by the presentation of Ms. Virginia Sibilio (Dominican Republic) on national experiences and good practices in the prosecution of environmental crimes.

Ms. Terzi explained that environmental damage and liability was a key and distinctive issue of environmental law. Countries of the region, in Latin America, had regulated environmental damage in their domestic legislation, and there was a common approach to the concept of environmental damage and the different kinds of liability (civil, administrative, and criminal). She provided various examples and made a comparative review of the domestic legislation of different countries of the region.

In the interventions following her presentation, participants highlighted that the proof of environmental damage and its quantification remained a challenge for the region. As court cases always depended on evidence, it was usually difficult to prove all relevant aspects of the case, regarding infrastructure or extractive industries large-size projects allegedly causing environmental and health damages.

It was also noted that the prevention and precautionary principles were regulated in national legislation as foundational principles of environmental law and they had been extensively developed through jurisprudence. They were very valuable tools and they had led to the introduction of administrative remedies to address future damages, which could then have a preventive effect. However, it was frequently challenging to present evidence about the level of risk to the environment and the associated social and health effects.

As a result of the discussions, participants agreed that proof and quantification of environmental damage were key areas for capacity building and training, to legal practitioners and judges, who had to apply environmental law principles to specific situations. In that regard jurisprudence was more developed in some countries of the region, and judges had been at the forefront of the advancement of environmental law. The sharing of information and exchange of good practices within the region should continue and be strengthened.

Ms. Sibilio referred to the national experience in the Dominican Republic regarding the application of environmental sanctions, indicating that the development of an effective environmental sanctions system required an integrated approach to administrative, civil and criminal sanctions, which should be effective, proportional and dissuasive. At the administrative level, some countries of the region had created law enforcement agencies to address environmental violations, while others had foreseen this function within the competences of the ministry responsible for environmental matters. In both cases, there was a need to strengthen the capacities of stakeholders, not only the regulators and legal practitioners, but also to sensitize the private sector and the community.

One recent legal development in the region was the 2014 Federal Law on Environmental Liability of Mexico. The law recognized two types of liability: fault-based liability resulting from negligence or error, and strict liability where a company was held responsible for environmental damage regardless of fault. In both cases, a company causing environmental damages, whether by

negligence, error or accident, would be responsible for all of the clean-up costs and the costs of restoring the environment to its natural state before the damage. The law also required the company to compensate anyone harmed by the damage, including individuals, companies and local communities.

SESSION II - THEMATIC DIALOGUES ON INNOVATIVE LAWS TO ADDRESS ENVIRONMENTAL CHALLENGES

Three thematic dialogues were held, addressing approaches, challenges and solutions on the three selected topics, i.e. on chemicals and waste management, biodiversity conservation and ecosystem management and on climate change. Panelists' presentations on national experiences and good practices regarding legal and institutional approaches on each topic in the region were followed by interactive discussions in plenary where participants shared and exchanged information on latest developments and trends, aiming to document good practices in the development and enforcement of environmental law in their countries, as well as regionally and globally.

- **Thematic Dialogue on Chemicals and Waste management**

This dialogue was introduced by Ms. Lourdes Lopez Hall (Expert) followed by Ms. Ivette Patterson's (Suriname) presentation on the legal framework for chemicals and waste management at country level and in the Caribbean at large.

The national Law of Paraguay on Air Quality (No. 5211/2014) was commented on. With the enactment of the law and the subsequent acceptance of the country as a member of the Climate Change Atmospheric Coalition, an inter-institutional coordination mechanism enabled Paraguay to achieve lower sulphur content in diesel vehicles (from 1300 ppm to 500 ppm). A proposal to adjust the Selective Consumption Tax to petroleum fuel, was being developed to encourage cleaner fuels and discourage the more polluting ones.

Regarding the Caribbean, it was noted that Caribbean states did not possess a comprehensive waste management legal framework. Generally, the collection, transfer and disposal of waste was covered by various pieces of legislation relating to public health, sanitation, environmental protection and management and solid waste management itself. Furthermore, to reflect the realities of current waste management challenges, there was a need to revise out-of-date legislation.

In the discussion following the presentations, the disposal of waste tyres and plastic bags were signaled as a major problem in the region. Countries in Latin America and the Caribbean were increasingly using taxes, bans, and technological innovation to restrict the production and consumption of plastic bags and reduce their harmful impact on oceans and marine species. Some countries had already promulgated legislation, including: Antigua and Barbuda (2016 ban of plastic bags), Colombia (2017 tax to large plastic bags and changes to their design for greater resistance and reusability), Panama (2018, ban of polyethylene bags), Costa Rica (national strategy to reduce the use of disposable plastics by 2021), and Chile (2017 ban on the use of plastic bags in 100 coastal communities, and 2018 nationwide ban on single use bags). Others were in the process of preparing legislation, including Belize, Bahamas, Bermuda and Peru. Ecuador mentioned that its aim was to transform the remote Galápagos Islands into a plastics-free archipelago.

- **Thematic Dialogue on Biodiversity Conservation and Ecosystem management**

This dialogue was introduced by Mr. Carlos Ernesto Alvarez Perez (Expert) followed by presentations of Ms. Nneka Nicholas (Antigua and Barbuda) on National Experiences on Access and Benefit Sharing, and Mr. Sidarta Costa de Azeredo Souza (Brazil) on the Allocation and Application of Environmental Compensation Resources.

Mr. Alvarez Perez explained that countries of the region already had in place national legislation and regulations on the conservation and sustainable use of biodiversity and its components. However, many challenges remained for these to be effective. In that regard, he mentioned that many regimes were not coherent and led to conflicts of mandate and competence between public authorities, weak institutional coordination and weak participation of relevant stakeholders in decision making processes. There were also new laws in the region promoting land and agricultural management, which could have negative effects on the environment and local communities.

Participants agreed that it was key to implement mechanisms for compliance and enforcement of domestic legislation as well as biodiversity related MEAs. This required strengthening of capacities and enhanced cooperation and coordination between all relevant actors and the enforcement community, prosecutors and judges.

An important area for strengthening environmental rule of law mentioned was wildlife crimes and illegal trade, mainly through enhanced enforcement of CITES, by strengthening, inter alia, the capacities of prosecutors to address environmental crimes.

The region's strong history of conservation and awareness of the importance of biological diversity by indigenous peoples and local communities was noted. For example, large areas of the Amazon were under the management of indigenous groups. This community-based management of biological diversity resources had been formally recognized in the laws of several countries, such as the Law No 27811/2002 of Peru establishing a protection regime for traditional knowledge associated with biological resources.

On national legislation, Ms. Nicholas presented the legislation on access and benefit sharing (ABS) in Antigua and Barbuda. The 2015 Environmental Protection Management Act included a specific section regulating ABS by providing the establishment and maintenance of a Natural Resources Inventory, which would be accessible to the public. As a provider country of genetic resources, all the access requests received to date were for research purposes. The inventory, currently being populated by the Department of Environment in collaboration with researchers, would help to gather data about the flora and fauna of Antigua and Barbuda, create research opportunities for students pursuing tertiary level education and provide information about conservation.

Also, on national developments, Mr. de Azeredo Souza shared information on Brazil's Law Nº 13,668, of 28 May 2018 on Allocation and Application of Environmental Compensation Resources. In Brazil there was a National System of Conservation Areas, and in cases of environmental licensing of projects with significant environmental impact the entrepreneur was obliged to support the implementation and maintenance of an Integral Protection Conservation Unit. The new law allowed the Instituto Chico Mendes, an independent agency linked to Brazil's Ministry of Environment, to select a public financial institution, exempted from bidding, to create and administer private funds to support conservation efforts. The designated financial institution would be responsible for the direct or indirect execution and centralized management of the environmental compensation resources devoted to the conservation units.

- **Thematic Dialogue on Climate Change:** approaches, solutions and challenges of climate change, energy efficiency and electric mobility.

The dialogue on climate change was introduced by Mr. Cesar Ipenza Peralta (Expert), followed by presentations by Mr. Rodrigo Garcia Galindo (Mexico) and by Mr. Salvador Nieto (Central American Commission on Environment and Development), who addressed climate change priorities for central American countries.

Mr. Ipenza Peralta presented the Latin American and Caribbean context in dealing with climate change and made available up to date information on the progress in climate legislation with emphasis on the recent normative developments. He explained that there were two trends to address climate change in the region, one through general and comprehensive laws adaptation and mitigation and the other through mainstreaming climate change in sectoral legislation. The most recent developments in the region were in Paraguay (Law no. 5875/17 on Climate Change and Peru, Law N° 30754, of 18 April 2018).

The national law of Paraguay established a normative framework for mitigation and adaptation. It aimed at implementing actions that reduce the country's vulnerabilities to climate change and actions which allowed it to reduce its greenhouse gas (GHG) emissions. These actions would be developed in a National Plan for Climate Change which will would and actualize the dedicated policies.

The Framework Law of Peru established the principles, approaches and general provisions to coordinate, articulate, design, execute, report, monitor, evaluate and disseminate public policies for the integral, participatory and transparent management of adaptation and mitigation to climate change. The law aimed at reducing the vulnerability of the country, take advantage of the opportunities of low carbon growth and fulfill the international commitments assumed by the country. The law established responsibilities for the Ministry of Environment of Peru in relation to the country's nationally determined contribution (NDC): The Ministry had to submit an annual report to Parliament which included progress on the NDC, ensure the compliance of the NDC targets and receive reports on sectoral NDC progress from other ministries and public entities. Peru's NDC was identified by the law as one of the country's instruments of climate management, with binding nature for the competent authorities and to be considered in their institutional budgets.

Mr. Garcia Galindo presented the key elements of the Climate Change Law in Mexico and the instruments and tools developed since then for its implementation. Mexico was the first developing country and the second one in the world to pass a General Law on Climate Change in 2012. The approval of the law had given certainty and continuity to climate policy in the country and set it on a path to a low carbon economy. It established the basis for the creation of institutions, legal frameworks and financing to move towards a low carbon economy. As a General Law, it specified the different responsibilities of the Federation, and provided legal status to the Inter-ministerial Commission on Climate Change, initially created by presidential agreement in 2005. Considering Mexico's vulnerability to climate impacts, the Law put a strong emphasis on adaptation measures. The objective was to reduce social and ecosystem vulnerability by strengthening the resilience of natural and human systems to reduce damage and risk.

The Law stated that the national mitigation policy should include diagnosis, planning, measurement, reporting, verification and assessment of national GHG emissions. The national mitigation strategy would be implemented gradually. The Law also created a climate change fund and establishes a voluntary market for emissions trading to promote GHG reductions in a cost-effective, verifiable,

measurable and reportable manner. The law was amended in 2014 to establish a tax on fossil fuels, and in 2016 at article 94 to frame a carbon market.

SESSION III – GOOD PRACTICES IN COMPLIANCE AND ENFORCEMENT OF ENVIRONMENTAL LAW

The main speaker in this session was the Judge of the Supreme Court of Justice of Panama, Judge Jose Antonio Ayu Prado, who spoke on the “role of the judiciary in environmental matters”, followed by Mr. Morjorn Wallock (Jamaica), who addressed the topic “Prosecution of environmental crimes, the role of judges and the impact of environmental jurisprudence, and Ms. Angela Amaya (Colombia), who tackled “The role of the judiciary in environmental matters”.

Judge Ayu Prado referred to the traditional and non-traditional methods for dispute resolution under the judicial and administrative systems, and how environmental law had become an independent and important branch of the law that required special institutions, tools and mechanisms to be effective. He referred to the important role of the judiciary in the consolidation of environmental law in the region, and how the judiciary had evolved to be able to address environmental conflicts of great complexity.

After his presentation, Ms. Wallock explained the legal framework for prosecution of environmental offences in Jamaica and how it was being implemented. The National Environment and Planning Agency (NEPA), an Executive Agency under the Ministry of Economic Growth and Job Creation, was the primary body responsible for the environment in Jamaica. NEPA was the competent authority for implementation of the Natural Resources Conservation Act which provided for the management, conservation and protection of the Jamaica’s natural resources.

There was in place an enforcement mechanism geared at achieving compliance. Through a fiat from the Office of the Director of Public Prosecutions, NEPA could actively participate in the prosecution of all matters involving environment and planning. Prosecution was initiated as a last resort as the NEPA relied on “soft” enforcement action to achieve compliance, like cessation orders, enforcements notices, stop notices, warning letters and warning notices. As a public body, NEPA was subject to judicial review.

To conclude this session, Ms. Amaya shared information on recent jurisprudence in Colombia. Similarly, to other countries of the region, in Colombia there were different judicial mechanisms of environmental protection, specifically designed for the collective nature of environmental rights, but recently, judicial mechanisms for the protection of individual rights had begun to be used for protection of the environment.

For example, in the case of the Rio Attrato, the Court had recognized the existence of a relationship between the communities and the territory that translated into biocultural rights from both the community and the Attrato river, i.e. the autonomous guardianship rights exercised by local communities over their territories, according to their own laws and customs, and over the natural resources in their habitat, that define the culture, traditions and way of life based on the special relationship they have with the environment and biodiversity. In a recent case law, the Ministry of the Environment had been designated by the President of the Republic as the legal representative of the rights of the Attrato River.

Another precedent was the judicial case of on "the increase of deforestation in the Amazon". The High Court recognized the Colombian Amazon as an entity holder of rights and the Colombian state had the duty to protect, maintain and restore it. The judicial decision ordered the establishment of

an "intergenerational pact for the life of the Colombian Amazon", for the adoption of measures aimed at reducing deforestation and GHG emissions to zero, which should have national, regional and national execution strategies.

MAIN CONCLUSIONS:

At the end of the first meeting, Ms. Brusco facilitated a session on Conclusions on legal approaches, trends, and challenges to address environmental challenges in Latin America and the Caribbean, where participants agreed that:

- Environmental law in the region evolved at a rapid pace and became increasingly progressive.
- Environmental governance had been strengthened through the creation of ministries environment in all countries of the region.
- Latin American and Caribbean environmental law exhibited well-defined anthropocentric tendencies. Within this overall approach, some countries were moving from anthropocentrism toward more ecocentric ways of thinking about the environment, including the granting of legal rights to nature.
- Compliance and enforcement remained main challenges.
- In general, adherence to MEAs was strong. At national level, constitutions had incorporated environmental rights, and environmental law principles, institutions and remedies had been established in the general laws on the environment. But even more, rules of environmental management were increasingly being refined; better requirements on environmental impact assessment processes were developed; individuals and institutions were empowered to seek remedies in the public interest (i.e. even if they were not directly affected); and the kinds of sanctions and penalties possible for environmental infractions were increasing.
- To address more complex and interlinked environmental challenges, countries of the region needed to continue to strengthen their capacities to develop and implement environmental law, advancing greater use of economic incentives and granting public participation and transparency in environmental decision-making, among other important issues.

SECOND PART: Montevideo Programme Assessment and Priorities

Mr. Leo Heileman, Director and Regional Representative for Latin America and the Caribbean of UN Environment participated in the opening session of the regional consultation on 22 June. In his remarks he focused on the importance of strengthening environmental governance for the region, highlighting recent developments in the field of environmental law and regulations, and encouraging participants to contribute to the Montevideo programme process.

Consultant Ms. Johannah Bernstein took the lead in this very interactive session with diverse methodologies where participants were taken through various exercises and discussion.

Focal points were invited to respond to concrete questions for each of the 27 programme areas. Specifically, they were asked to provide evidence of where and how the Montevideo IV programme areas had equipped them with knowledge and resources in all areas related to law-making, monitoring and enforcement, to dispute resolution, mechanisms for environmental damage, public participation, as well as, specific activities related to key environmental policy domains. By contrast,

where countries had not engaged directly with Montevideo IV, they were asked to identify their needs for a new programme on environmental law.

A few general observations are summarized for each of the four pillars following the diagram of the Montevideo IV Programme.

Pillar 1: Effectiveness of Environmental Law

As regards implementation, compliance and enforcement, there is a broad array of environmental legislation on the books now. The challenge is to improve the enforceability of environmental regulations and to generally improve compliance regimes, especially administrative capacity for enforcement. As to capacity building, there is a need for support to implement and enforce existing environmental law. Noticeably, there is a lack of coordination between the executive and judicial branch and this is undermining implementation.

There is also a need to improve the capacity of environmental policy-makers who are responsible for environmental law drafting. Concerning environmental damage, there is a need to build the capacity of enforcement officers, to improve environmental impact assessment, and to create new approaches to prevent and mitigate environmental damage.

With respect to dispute settlement, there is a broad-based need for more training in alternative dispute resolution techniques. Best practice guidelines are also needed. Regarding the strengthening of international environmental law, more training on MEA implementation is needed. And to achieve harmonization and synergies, systems are needed to support the regular review and updating of laws. Clearly there is a need for inter-sectoral/inter-ministerial coordination committees to improve harmonization of the development of environmental law and policy.

Finally, capacity building remains the biggest need, in particular with respect to specialized training of judges, prosecutors, environmental lawyers and drafters.

Pillar 2: Conservation, management and sustainable use of natural resources

As regards fresh, coastal and marine water and ecosystems, several countries acknowledged that Montevideo IV has helped identify gaps in national water legislation. There is a need among most countries for training to enhance their capacity to implement the water legislation that does exist.

In respect of aquatic living resources, countries highlighted the conflict of interest between the exploitation and the protection of living marine resources. There is a need to support the capacity for the creation of marine protected areas. And in other countries, there is a need to strengthen or refine existing marine legislation, and especially existing fishing laws.

Many countries have developed laws for the conservation of soils and protection against desertification. In many cases these initiatives have been developed in coordination with the Secretariat of the UN Convention to Combat Desertification. The need remains however to enhance capacity for the effective application of laws and programmes in this sector.

In many countries, forest laws and codes are already in place, but more capacity is needed to effectively enforce those laws.

Pillar 3: Environmental challenges

With respect to climate change, many countries are addressing adaptation challenges. This is taking the form of national adaptation plans and the creation of normative frameworks that can be adapted

at country level. However, more work needs to be done to support the development of sectoral plans and to integrate climate change into planning and development laws.

In the field of poverty alleviation, there is a need to strengthen efforts to integrate poverty dimensions into environmental legislation and to consider the environmental consequences of anti-poverty legislation. Access and benefit sharing is a continuing challenge along with the need to support local communities in participating in environmental decision-making.

As regards access to drinking water, water laws have been implemented in several countries, although regulations must be reviewed and updated. Access to clean and safe drinking water remains a challenge in rural areas. Some countries are translating the social ownership to water into legislation.

On ecosystem conservation, protected areas have been developed in many countries. The challenges are to ensure the ongoing political support for them, to ensure the harmonization of their management and to train enforcement officers on a regular basis.

Several countries have created new institutions to deal with environmental emergencies and natural disasters but there is a need for legislation to deal with mandatory evacuation and to assist the public when there is an imminent threat.

Legislation on pollution prevention and control has been adopted throughout the region but implementation and enforcement remain a constant challenge. Some countries highlighted the need for support for better hardware for monitoring and surveillance.

Pillar 4: Relationships with other fields

In the field of human rights and the environment, many countries have adopted legislation that adopts the linkage. That said there is much work to be done to increase awareness of the intersection and further training is needed on the implementation of environmental human rights. The Escazú Agreement has been an important step forward in the promotion of environmental procedural rights. In other countries, there is an increasing trend towards integrating human rights-based approaches into national constitutions. The judiciary is increasingly reflecting the linkages in environmental cases that intersect with human rights.

With respect to trade and the environment, many countries have adopted laws and regulations to integrate trade and environment policy. This takes the form of environmental dimensions being integrated into trade laws and/or trade provisions being integrated into environmental laws. Countries also highlighted the need for ore support in the training of customs officers.

Finally, the relationship between environment and security is clearly an issue where more conceptual work is needed in the region. There is some work being done to incorporate environmental aspects into field operations, but more training is needed for the military to understand the environmental consequences of military activities on the ground.

