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## Governance Stream - Governance and the Law

### ‘Globalisation and decentralisation: the role of legal frameworks’

**Pedro Solano \***

Peruvian Society for Environmental Law

#### 1. Background and general aspects

Globalisation has become a key influencing element in internal decision making processes within developing countries. These days, most public decisions on projects for railroads, hydrocarbons, mining, fishing, etc. have to consider conditions for ensuring loans from the multilateral development banks and comply with their standards and rules; they must also consider compromises related to international agreements such as the Andean Community or the MERCOSUR, just to mention two cases from South America; most importantly, these decisions and projects must ensure wider involvement from civil society.

Clearly, international trends have considerable influence on national decisions. Similarly, from another perspective, what is happening inside a country such as Peru is also influencing other countries. Globalisation is a two way process which implies some opportunities, duties and challenges.

Current trends for protected areas have a lot to do with a new paradigm where protected areas cannot be seen anymore as individual islands to preserve resources within them. The present challenge for an ever growing population implies that every space in the world needs to have a function, a reason to exist and even an owner. In the case of developing countries, the great failure of protected areas in the past was considering them as isolated places where you need to preserve resources for the “future generations”, without taking into account actual people living in or around them, preventing them not to use them or put themselves in the position to turn into illegal users of their resources.

Current ideas on protected areas “beyond their boundaries”, ecological corridors, hotspots, high biodiversity areas, etc. are based on the need to start understanding protected areas within the context of “sustainability “ or a sustainable world, and not only as places where to keep “representative samples of the world biodiversity”

In the case of Peru, this new trend is highly beneficial, considering that it provides an answer to historical problems of our protected areas system. This new shift is clearly being implemented in Peru.

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Another aspect is that the last few years showed a decreasing interest of international cooperation for public protected areas. A big emphasis has been made on other areas of interest such as the private lands conservation efforts - private reserves or ecological easements; climate change or even genetic resources conservation. In this sense, after years of having public protected areas as the sole beneficiary of financial and technical assistance and interest in the conservation field, there are now new “ issues” and “topics” receiving similar attention. In the case of private conservation efforts, for example, this is a trend that is probably providing some benefits to some countries where private land is the major percentage of available land for conservation but has the negative effect of: decreasing the budget and interest for public protected areas, where most of our countries have invested for over 50 years in establishing, organizing and managing them. Bear in mind these are the places that most certainly harvest most of the world's unique ecosystems and natural resources (and indigenous communities). Private conservation efforts in most cases concentrate on relatively small areas, which in fact do have some important biodiversity. However, their real attractiveness is having an owner willing to protect the land, which is very good in a way but not good in terms of indirectly reducing the amount of financial resources available for public protected areas.

## **2. How do these trends affect Peruvian legislation**

Peru, is probably the country with the most complete legal framework for protected areas in Latin America. During the last 6 years, around ten norms applicable to the entire System were passed and more than 15 new protected natural areas were created. As a reflection of the beneficial effects resulting from these new laws, the size of the coverage of the national system of natural protected areas – SINANPE, almost doubled.

This new legal history of natural protected areas really began in 1993, with the discussion and elaboration of the Plan Director for the SINANPE. This process brought to light the need for a Natural Protected Areas law, which was finally passed in 1997 by the Republic's Congress.<sup>1</sup> The Plan Director or National Strategy for the Natural Protected Areas was formally passed in 1999.<sup>2</sup> Finally, an extensive Regulation on the Law of Natural Protected Areas was passed in 2001, completing the System's general framework.<sup>3</sup>

Later, specific regulations were also passed on topics such as private administration of natural protected areas, management committees, registration and rights of possession of natural protected areas, among others.

There are some main tendencies and ideas encapsulated in these norms: in the first place, private participation<sup>4</sup> in the System's and individual areas' administration is prioritized as a fundamental line of work. This correlates with the redefinition of the State's role as one of regulator, promoter, and controller.

The private participation in administering protected areas is based on the idea that the incorporation of civil society facilitates that areas begin to truly incorporate within the local, regional, and national development contexts. As mentioned, the goals for protected areas are being revised worldwide in order to discourage their perception as islands within a country,

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<sup>1</sup> Law 26834.

<sup>2</sup> Decreto Supremo 010-99-AG.

<sup>3</sup> Decreto Supremo 038-2001-AG.

<sup>4</sup> This is understood as private with regard to not being public, with regard to profit, local populations, including indigenous and *campesino* communities.

and that their only function is the preservation of existing resources without touching or taking advantage of them. The new worldwide tendency requires that areas integrate with their surroundings in a social, cultural, and economic context. The Peruvian legislation is guided by this tendency, and seeks the participation of civil society in the administration of protected areas to integrate the areas with their local, regional, and national development contexts.

Participation begins with the elaboration of the legal norms, where most of the laws and regulations result from extensive dialogue between members of the civil society and public sector. This process gives the legislation credibility and facilitates its implementation.

Another important topic related to the new legislation is the conceptual definition of the System's objectives and instruments, clarifying possible goals and paths. It has been important to define fundamental concepts, such as the areas' master plans; buffer zones; the areas' levels, categories and zones; use of permitted and restricted resources; local populations system, among others.

The organization of a Legal System of Natural Protected Areas is a notable success. In addition to the huge expansion of the System's conservation coverage, there are almost 20 Management Committees, an officially recognized private conservation area, almost \$50 million raised by the PROFONANPE<sup>5</sup>, around 40 applications related to new instruments of the System that still need to be resolved, the imminent incorporation of a network of coastal marine areas within SINANPE, among others.

### **3. The future**

The long term survival of natural protected areas will depend really on their capacity to be part of modern society. And modern society needs to incorporate these areas in the context of local and national development. So the big challenge is to turn protected areas into relevant areas for economic, social and cultural livelihoods of the people.

In another aspect, for developing countries it is difficult to see the future still in terms of protected areas relying indefinitely on international cooperation. We need to develop better legal and policy and economic instruments to make protected areas self sustainable.

But in the short and medium term, we need to emphasize that our protected areas are playing a key role for the future of the planet, in terms of information and opportunities derived from the genetic resources and biodiversity, so there is a need for better alternatives of financing the operation of these areas, not only in terms of research but basically for monitoring, education and social components.

Legislation is just the instrument that should reflect all these trends and regulate to reach certain objectives. Legislation needs to be revised and adapted periodically, and modified if necessary.

Finally, globalisation is proving also to have an impact in the regulatory process. It will not be surprising to see a very near future where countries share very similar legal norms on issues related to conservation. International economic agreements are proving to be the first step into this.

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<sup>5</sup> Peruvian Fund for Natural Protected Areas