

## Environment 2010 – Introduction

Rafael Vergara and Paulina Sandoval  
Carey & Cía

As most Latin American countries have begun or begin to celebrate their 200 years of independence, it is time not only to look back but also to look ahead. This statement could not have been more suitable to what environmental law practice is experiencing in Latin America nowadays: a rapid growth and sophistication.

Those days when no specialised authorities or statutes existed for the protection of the environment have been left far behind. Currently, most Latin American countries have environmental institutions in place: either ministries, governmental agencies or intersectoral commissions; specific statutes and legislation to protect the environment and its components; and, environmental impact assessment provisions for the approval of development projects.

Currently, Latin America is exposed to enormous pressure given the richness and diversity of its natural resources, the justifiable aspiration to achieve development and its character as primary goods exporter. In this sense, governments are pressed to raise environmental standards and practice for their products to be admitted in their destination markets. Likewise, national and international civil society pushes for more stringent regulations and the protection of environmentally valuable areas. Additionally, the concentration of competing and sometimes mutually exclusive interests in the use of natural resources in a specific area makes the task of harmonising equally legitimate uses even more difficult.

In this context, environmental law is rapidly evolving and diverse new legislative and administrative requirements are changing the regulatory landscape on an ongoing basis. Considering this, an integrated and comprehensive view of what environmental law entails not only at the national but also at the regional and international level is fundamental to provide precise and sound legal opinions.

Given the historic, social, natural and cultural background shared by most Latin American countries, across-the-board issues are posing interesting challenges

to the day-to-day practice of environmental law. In general terms, they refer to natural protected areas, citizen participation and indigenous people's rights.

Natural protected areas receive different protection in Latin American legislation, ranging from the banning to undertake any activity within its boundaries to the acceptance of certain activities once some requirements have been previously complied with, such as environmental impact assessment procedures. Given the richness and 'untouched' character of natural resources in the region, there is a permanent tension between development objectives and strict conservation interests.

Likewise, citizen participation mechanisms, community involvement in the assessment of development projects and the widespread availability of information have raised people's awareness regarding the effects of environmental issues on their daily lives. Such variables have made the approval of projects increasingly complex, requiring lawyers to develop additional skills to better comprehend all issues involved, not only from an environmental perspective but also from a social and political standpoint.

Similarly, the existence of indigenous people in the majority of Latin American countries and the ratification of the International Labour Organization 169 Convention on Indigenous and Tribal Peoples by such jurisdictions has added new challenges to the allocation of rights over natural resources.

In general terms, the identified issues are driving the legal and jurisprudential development of environmental law in Latin America; however, it remains to be seen how new issues such as climate change, ecosystem payment services, product stewardship and water basin management, among others, will be dealt with.

Finally, the objective of the following section is to provide a wide-ranging view of such legal approaches, thus allowing environmental law practitioners to grasp a general understanding of what is involved and compare different environmental legal regimes across the region.