

Mexico

José Juan GONZÁLEZ MÁRQUEZ
Universidad Autónoma Metropolitana

I- ENVIRONMENTAL LAW EVOLUTION SINCE 1992

The progress and difficulties since 1992

Between 1992 and 2001 happened important transformation on the Mexican Environmental Law, for instance, the Ecological Balance and Environmental Protection General Act as well as others environmental Acts (Forest Act, National Water Act, Fishing Act) incorporated new mechanisms and instruments of environmental policy. In addition new pieces of legislation was approved by Congress, for example the Vegetal Varieties Federal Act (1999) and the Wildlife General Act (2000).

This improvement of Mexican environmental Law is a result of four events:

- 1) The Conference of Rio de Janeiro,
- 2) The incorporation of Mexico to the Organisation for Economic Development and Co-operation,
- 3) The signature of the North America Free Trade Agreement; and the increase of the social concern.

Mexico signed the Rio Declaration adopted during the Conference of Rio in 1992, and as a consequence of that Mexico acquires the commitments to incorporate in its legislation the human right to an adequate environment; the right to information and public participation; the principle of sustainable development and the duty to repair the environmental damage.

In order to do that, in 1996 the right to information and public participation was included in the Ecological Balance and Environmental Protection General Act, and in 1999 the Federal Constitution was modified to recognise the human right to an adequate environmental and the principle of sustainable development.

In contrast, the duty to repair the environmental damage has been not established yet by environmental legislation.

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In the other hand, Mexico signed the North America Free Trade Agreement that was complemented by the Environmental Co-operation Agreement, both of them got in force in 1994. In this environmental agreement is established that Mexico must to improve the enforcement of environmental law through voluntary compliance agreements, environmental inspections and audits, environmental information and the liability for environmental damages.

As a consequence of this agreement Mexico has improve an strong program of environmental inspections and audits, and has celebrated many agreements with enterprises in order to get a better compliance of the environmental law.

As a matter of fact, during the negotiations of the North America Free Trade Agreement, Mexico had to create a General Attorney Office for environmental protection in order to show to people from Canada and United States, that in Mexico was an adequate public environmental policy. During march of 1992 to march of 1993, this environmental office made twenty thousand inspections.

So, we can say that the main contribution of the North America Free Trade Agreement signature was the improvement of the enforcement and compliance of the environmental law in Mexico.

Also in 1994, Mexico went in to the Organisation for Economic Development and Co-operation, and it assume the commitment to follow the Recommendations of this organisation related to "*polluters pays principle*". Specifically as a consequence of this event the Ecological Balance and Environmental Protection General Act included in 1996 reform the economic instruments of environmental policy: marketable permits, environmental funds, environmental taxes. Unfortunately in this field there are not substantive progress.

In the other hand, in Mexico, has been happen two relevant environmental accidents. The first one in 1984 when an explosion of fuel deposits in San Juanico, Estado de Mexico causes many dies and damages in private properties; the second one, in 1994, in Guadalajara a complete neighbourhood disappear as a result of an explosion in the drainage polluted by fuel came from olds gas stations.

These accidents have increased the public concern about the environmental risk and the complain for the right to know. In this scenario the non governmental organisations fought strongly in 1996 in order to include the right to information into the Ecological Balance and Environmental Protection General Act.

In concordance with the polluters pays principle, 1996 an amendment of the Forestry Act recognises the private property of the forest and before that, a new National Water Act decreed in 1992 established the first market of water rights.

In 2000 was decree the Wildlife General Act, in which is established the sustainable exploitation of the resources of the biodiversity and introduces the *environmental management units* institution. This act develop many aspects of the Biodiversity Convention of 1992, also it recognises the right of land owners to the exploitation of the biodiversity resources.

In addition, during the decade of nineties the Mexico City government was empowered to decree its own environmental law. In 1996 was decree the Environmental Act of Federal District and in 2000 this was substituted by a new Environmental Act of the Federal District.

In the same way the 31 states of the Mexican Federation decreed their environmental legislation during 1988 to 1994. Unfortunately, the 1996 federal environmental reform compelled the states to reform their own legislation's, and although this second process started in 1996 it is not finished yet.

In consequence, no matter the benefits of the reform of the Ecological Balance and Environmental Protection General Act in 1996, and the approval of the new acts, in fact, this reform was incomplete and there are many aspects of environmental field that nowadays continue without regulation.

Finally, last October The Executive sent to Congress a project to modify many environmental laws: the Ecological Balance and Environmental Protection General Act, the Forestry Act, the National Waters Act and the Wildlife Act, and the Criminal Code.

The principal reforms of this project are related to give to local governments more attributions to develop a local environmental policy, and also to harden the administrative fines and the criminal penalties.

At the same time, Federal Government has established a financial program in order to support the local environmental law reform and the improvement of its administrative offices for the enforcement of compliance.

II- SPECIFIC TOPICS

The fields (desertification, pastoral activities, land)

In the 1940 there was a mexican Land and Conservation Act, but it was abolished in 1996 by the Ecological Balance and Environmental Protection General Act amendment.

In consequence, there is no an environmental regulations in this field. Nevertheless the Forest Act regulate the aspects related to the use land changes and as a general rule establishes that is forbidden to change a forestry land into a industrial, pastoral or agricultural uses.

Unfortunately, as a result of this prohibition in Mexico annually people cause fire forest in order to disappear the forest and to use the land in agricultural or pastoral activities.

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In the other hand, the Environmental Ministry works on specific projects based on the Convention on Wetlands of International Importance Especially as Waterfowl Habitat.

International trade, environment and biodiversity

Mexico is part of the Convention on International Trade in Endangered Species of Wild Fauna and Flora since 1991, and of the Convention of Biological Diversity since 1992, also, is one of the fourteenth megadiversity countries.

Because of that, mexican environmental law has incorporated many rules in order to protect its biological diversity. For example:

- a) The Ecological Balance and Environmental Protection General Act establishes since 1988 ecological reserves, and provide the environmental impact assessment of projects are likely to have significant adverse effects on biological diversity,
- b) All the environmental laws establish rules about exploitation of natural resources, and require to monitor de elements of biological diversity,
- c) The Wildlife Act establishes the Environmental Management Units. And also refers the endangered species.

In addition, mexican Government has decreed an environmental standard that classify the endangered species in accordance with CITES.

Finally, mexican government has an specific inspection program to rescue endangered species.

Forest and the proscpect for a international convention

Mexican government consider that the deforest as a national security issue.

In concordance with the Forestry Act the exploitation of forest resources are conditioned to obtain an authorisation from the Environmental Ministry. Specifically in cases of exploitation in rain forest or ecological reserves an evaluation of impact assessment is required.

Taking in account that the main importance of the forest Mexico would be participated in any international effort to protect it.

New rights and the pact anti-poverty

Since 1988 the Ecological Balance and Environmental Protection General Act recognises the right to enjoy an adequate environment and the duty of the government to protect it. Later, in 1998 a Constitutional reform recognises also this principle as human right.

Nevertheless, this reform did not establish any mechanisms to make effective this right.

Democracy, access to justice and environment

In Mexico, the general rule is that the environmental legislation does not recognize broadly based diffuse juridical interests, in the sense that neither the General Law of the Ecological Balance and the Protection to the Environment nor most of the federal environmental legislation establishes a liability system for damages to the environment. Rather, they rely fundamentally on the application of administrative penalties by the established authorities in the administration of each of those laws. In this way, the LGEEPA recognizes the access to the justice of the communities affected by the authorization of a project that could cause damages to the environment. However, that recognition of juridical interest allows them to work exclusively in the environmental of the public administration and not in the judicial environment.

The exception to this rule is in the Environmental Law for the Federal District (2000), according to which any person can initiate an action for damages to the environment without having to demonstrate that the damage affects him in a direct way. Similarly, the General Law of Wild Life (2000) it introduced some rules as regards responsibility for damages to the environment that supplement the civil legislation.

Legal conditions of the integrated management of the environment

Although in Mexico in 1994 was created the Ministry of Environmental affairs, the environmental management continue being sectorial, because there are many offices in charge of the application of the environmental law.

In addition, some environmental issues are under the federal government and others under the jurisdiction of local governments.

For this reasons, although the Environmental Ministry has put in practice an *unique environmental license* that only includes the issues under the jurisdiction of federal government.

Dangerous substances and activities

The Ecological Balance and Environmental Protection General Act includes a specific section about dangerous activities and two lists on dangerous activities.

This law established that the principals mechanisms to control these activities is the *Risk study* and the environmental impact assesment.

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However, in accordance with the law, many aspects of the dangerous activities has to be develop in an specific statute which has been not published yet.

The financing of the environment

One of the principal issues to environmental protection is the financing, because until now the environmental budgets are the lowest ones of the public sector.

Although in the actual government created in 1998 a fund to preservation and restoration of the ecological balance, in order to support the elaboration and execution of projects for conservation or restoration of the environment and natural resources, as well as the operation of enforcement programs.

Also the Federal Government created in 2000 the Program for the Environmental Institutional Development, to support local programs for improvement the environmental legislation and consolidate the environmental institutions and organisms.

The local management of the environment

Since 1988, local governments created offices in charge of environmental issues, and decreed environmental laws. In some cases the municipalities has their specific offices in charge of environmental matters.

Nevertheless some local governments claim to get more faculties in matters like forest, water management, air pollution and hazardous waste management, which at this moment are under the jurisdiction of the federation.

The point of view of federal government is first that local governments must improve their capacities before they acquire more faculties.

Legal mechanisms of control and follow-up of environmental measures

The main mechanism to control the environmental policy in mexican legislation are the administrative fines and in some cases shut downs.

Although the criminal code includes penalties for environmental crimes until now nobody has been convicted because of a environmental crime.

The administrative files are from 80 USD to 80 000 USD.

Mexican environmental law does not recognise the liability for environmental damages.