

Protecciones legales ambientales: reflexiones de la experiencia peruana

*Environmental Legal Protections:
Reflections from the Peruvian Experience*

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RESUMEN: este artículo analiza el fraccionamiento, la heterogeneidad y la dispersión del sistema legal ambiental peruano. La relevancia de esta propuesta es su consideración de los problemas de nivel de aplicación para las reglas ambientales del juego, cómo lo abordan las entidades públicas competentes y las entidades que supervisan los sistemas ambientales funcionales actuales. Finalmente, y considerando el principio de transectorialidad, se propone como mecanismo correctivo la necesidad de articular y coordinar las acciones del OEFA con respecto al SINEFA.

PALABRAS CLAVE: medio ambiente, ordenamiento jurídico, aplicación sectorial, principio de transectorialidad, protección ambiental.

ABSTRACT: this article discusses the fractionation, heterogeneity and dispersion of the Peruvian environmental legal system. The relevance of this proposal is its consideration of application-level problems for environmental rules of the game, as addressed by the competent public entities and the entities overseeing the current functional environmental systems. Finally, and considering the principle of transectoriality, it proposes as a corrective mechanism the need to articulate and coordinate the actions of the OEFA with respect to the SINEFA.

KEY WORDS: environment, legal order, sectoral application, transectoriality principle, environmental protection.

INTRODUCTION

The first environmental protection milestone, as a new and integral concept through a regulation with the rank of law, occurred on September 9, 1990, when the Environmental Code, Legislative Decree No. 613, entered into force. Prior to this code, there were sectoral legal systems that separately regulated the exploitation of various natural resources. At that time, total and complete environmental guardianship did not exist. Protections existed only for the natural resources that were important for the national economy.

The Environmental Code incorporated environmental protection instruments to which the economic sectors exploiting various natural resources, mining, fishing, forestry, genetic, etc., were compulsorily subject. It should be noted that these new protection techniques, in addition to being mandatory, posed the challenge of promoting their application transversally and in parallel, avoiding contradictions with specific sectoral legislation (mining, fishing, waste, forestry, water treatment, etc.) and introducing environmental obligations, as part of their components and as a *prevailing right* over sectorial rights⁵⁶.

The National Environment System was also created with great expectations that were truncated. It was repealed just one year later through Subparagraph a) of the First Final Provision of Legislative Decree No. 757 published on November 13, 1991.

In 2005 the Environmental Code was repealed tacitly and entirely by the Fourth Transitory, Complementary and Final Provision of Law N ° 28611, General Law of the Environment published on 15 October 2005 and explicitly excluded from the current law by Article 1 of Law No. 29477, published on December 18, 2009 .

Since 1990 and up to now, environmental regulations have undergone progressive and exponential growth, forming an exuberant conglomerate of standards in addition to sectoral norms. This undoubtedly marks the exceptional complexity and diversity of Environmental Administrative Law and the environmental administrative organization built for its execution. The classification of norms made by Lozano (2008) is highly

56 Prevalence Of The Environment Code.

XII. This Code prevails over any other legal norm contrary to the defense of the environment and natural resources.

applicable. He says that the long chain of environmental laws can be divided into two large groups:

“Environmental laws of a horizontal or transversal nature, whose purpose is to introduce environmental protection instruments applicable in various sectors or areas of activity. This is the case with environmental impact assessment regulations or companies’ ecological management techniques.

Sectoral environmental laws, aimed either towards the protection of different mediums (air, water, natural spaces ...), or to the regulation of pollutants and specific environmental problems (waste, toxic or dangerous substances, contaminated soil ...).”⁵⁷

Almost thirty years after implementation of the Environmental Code, the environmental legal order remains fragmented, heterogeneous and dispersed. This poses problems for its application by public entities with environmental competencies and the governing bodies of environmental functional systems; however, efforts to articulate and coordinate actions, as stated in the principle of transectoriality, a task in which the governing entities of functional systems, such as the OEFA with respect to SINEFA, play a fundamental role.

1. EVOLUTION OF THE CONCEPT OF ENVIRONMENT

1.1. In the doctrine of environmental administrative law and global regulations

As a legal branch of law, environmental administrative law emerged during the second half of the twentieth century, with systemic environmental awareness⁵⁸. It existed prior to this, however. Of course, since ancient times there has been a relationship between man and nature, which conceived -and continues, at least, for indigenous and native peoples- of a worldview and harmonious union with the

57 Lozano, B. (2010). *Derecho ambiental administrativo*. España: La Ley, p. 48.

58 Nature as a system, understood as a *dynamic set of interrelated elements*, comes from the biologist Ludwig Von Bertalanffy, who is quoted by Alli Turillas in *La protección jurídica de la biodiversidad (mecanismos de protección de los espacios y las especies naturales)*. España: Editorial Montecorvo, 2005, p. 17.

natural environment. This has been the source of the most diverse civilizations and cultures which explain our historical origins and evolution⁵⁹. Referring only to the juridical edge throughout the ages, this man-nature relationship has been subject to various regulations of a legal nature.

Changes in the economy starting at the end of the eighteenth century shaped the capitalist economy based on large industrial production, which involved the emergence of new regulation; for example, regulation of free competition and intellectual property, which protected invention as a pillar of a capitalist system. The exponential development of textile production and of iron, railroads, and the growth of cities and populations, caused serious environmental impacts, and “in some places some protected areas began to be formed into reserves at the end of the XIX century”⁶⁰.

But there came a moment in which it became necessary to put a stop to increasingly abusive, invasive and destructive uses of the environment (extensive crops, foundries, wood for fleets, the iron and steel industry, industrialization, large livestock herds, etc.). This situation manifested itself -at the dawn of environmental protection- during the 19th century, although a true “environmental conscience” would not arise until the 20th century.

Alli Turillas says that in the nineteenth century some resources were safeguarded by regulations with specific purposes, such as avoiding

59 “(...) the environment has been the basis of human existence; it is the natural environment in which man meets his needs and it is the source of the goods necessary for human life. (...) Visibly, a consubstantial element to diverse human productive activities -oriented towards the satisfaction of man's basic needs- is the influence these activities have on the environment, since they imply an economic and utilitarian use of the goods and wealth provided by nature. Since we understand that through any of the forms of economic production, influences the environment in different ways and with different intensity, we must also note (...) that this exploitation and use of the environment began millennia ago and must continue to be exercised over millennia, so that humanity must ensure that the foundations of its existence are not destroyed.” Ver. Rojas Montes, V. (2016). *El derecho administrativo y la protección del medio ambiente en el Perú*. *Revista aragonesa de Administración Pública*. N° 28.

60 Alli Turrillas, J. (2005). *La protección jurídica de la biodiversidad (mecanismos de protección de los espacios y las especies naturales)*. España: Editorial Montecorvo, p. 12.

indiscriminate felling (hills), for reasons of hygiene (wastewater), or to tend to good relations between neighbors and private property (crops, forests). He calls this a protectionist phase. Then, at the end of the century, steps were taken to protect landscapes and natural areas of special importance. It was in the twentieth century that environmental consciousness originated - and then evolved - during a phase that he calls a conservationist. This was conceived of primarily in international conferences during the 60s and 70s⁶¹ (as discussed below).

Within the systemic approach of the environment and its protection, for the new environmental administrative law - which our country is not alien to - looking for, finding and grasping a legal concept of "environment" is a legal vicissitude, in order to delimit the scope of what is protected by the regulations and state organization, along with the adequate techniques and systems. And as we have seen previously, the environmental order is heterogeneous and "logically marked by an extremely great complexity, by a 'dilemma of complexity' (as expressed by E. Schmidt-Assmann), which constitutes a challenge to Law and forces it to establish a complex network of protection systems, in which new techniques are incorporated or existing ones are modulated in order to provide an effective response to the objective requirements posed by environmental protection"⁶².

The environment, as macro-good, should always be considered a system that works with all its *component* parts (micro-goods) which interact harmoniously, as a *dynamic set of interrelated elements* (Von Bertalanffy)⁶³.

We mentioned above that in the international arena in the 70s various instruments for environmental protection began to be proposed. Between June 5 and 16, 1972, the United Nations Conference on the Human Environment was held in Stockholm, in which nineteen (19) principles were established to determine future actions on environmental care and protection. In this regard, Principle No. 1 states that man has the fundamental right to freedom, equality and adequate living conditions in an environment whose quality allows him to live a dignified life and enjoy well-being, while Principle No. 2 notes

61 Cfr. Alli Turillas, p. 29-30.

62 Lozano, p. 51.

63 Cited by Alli Turrillas, p. 17.

that natural resources must be preserved for the benefit of present and future generations, as detailed in the following⁶⁴:

“Principle No. 1

Man has the fundamental right to freedom, equality and adequate living conditions in an environment of such quality that allows him to lead a dignified life and enjoy well-being, and he has the solemn duty to protect and improve the environment for present and future generations. (...)

Principle No. 2

The earth’s natural resources, including air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be preserved for the benefit of present and future generations through careful planning or management, as appropriate. “

On the other hand, at the Earth Summit held from June 3 to 14, 1992 in Rio de Janeiro, the Convention on Biological Diversity was adopted⁶⁵, ratified by Peru through Legislative Resolution No. 26181 of May 11, 1993. This agreement defines what biological diversity and ecosystem would be understood to refer to, as indicated:

“Article 2. Terms used

“Biological diversity” means the variability of living organisms from any source, including, inter alia, terrestrial and marine ecosystems and other aquatic ecosystems, and the ecological complexes of which they are a part; it includes diversity within each species, between species, and the diversity of ecosystems.

“Ecosystem” refers to dynamic complex of plant, animal and microorganism communities and their non-living environment that interact as a functional unit (...).”

64 United Nations Environment Program. Declaration of the United Nations Conference on the Human Environment. Available at: <http://www.un-documents.net/unchedec.htm>. [Consultation made on December 30, 2018]

65 Convention on Biological Diversity. Available at: <https://www.cbd.int/doc/legal/cbd-es.pdf>. [Consultation made on December 30, 2018]

Additionally, the “Rio Declaration on Environment and Development” was made at the Earth Summit⁶⁶, in which twenty-seven (27) principles regarding the environment and development were established. Within this, Principle No. 11 elaborates on the importance of the State’s regulatory role in environmental issues, as indicated:

“Principle 11

States must enact effective environmental laws. The objectives and priorities of environmental management should reflect the environmental and developmental context to which they are applied. The standards applied by some countries may be inadequate and represent an unjustified social and economic cost for other countries, in particular developing countries.”

From what has been formulated on international concepts, we find a coincidence between that indicated by the doctrine of environmental administrative law and the concept of environment with a systemic approach, the vital importance for human beings and the development of future generations, as well as the State’s role and the regulations which must be issued to protect the environment.

We can affirm this, since the environment is maintained as the set of interrelated natural resources and the State’s duty is to issue the relevant environmental regulations to protect these resources and ensure their sustainable use.

As a final note, it should be mentioned that, today, we are in a phase in which the the risk management approach has been added to the system approach. This refers not only to the prevention principle and climate change management, but to all kinds of risks, including disaster risks in all sectors of public action.

66 Rio Declaration on environment and development. Available at: <http://www.un.org/spanish/esa/sustdev/agenda21/riodeclaration.htm> [Consulta realizada el 30 de diciembre de 2018]

1.2. Legal concept of environment in Peruvian legislation: Constitution and Constitutional Court

Natural resources are public property. Since the origin of Peruvian environmental legislation in the nineteen-nineties, they have always been considered an integral part of the environment, under a systemic approach. The Environment Code of 1990 (repealed since 2005) established the following, verbatim:

“ENVIRONMENT AS A COMMON HERITAGE OF THE NATION.

II. The environment and natural resources are the Nation’s common heritage. Their protection and conservation are of social interest and can be invoked as a cause of public necessity and utility.

NATURAL RESOURCE CONSERVATION AND USE.

XI. The maintenance of essential ecological processes, the preservation of genetic diversity and the sustained use of species, ecosystems and renewable natural resources in general, is mandatory.

The use of non-renewable natural resources must be carried out under rational conditions compatible with the environment’s purification or recovery capacity and the regeneration of these resources. “

Later, in 1993, our current Fundamental Charter recognized the environment as the fundamental right to enjoy a balanced and adequate environment in which to live (Article 2, Num. 22), with respect to which the Constitutional Court’s jurisprudential development has drawn a clear line according to the systemic environmental approach.

According to the maximum interpreter of the Constitution, the environment is the area in which life is carried out. It includes natural, living and inanimate, social and cultural existing elements in a specific place and time, which influence or condition human life and the lives of other living beings (plants, animals and microorganisms). The environment likewise includes the biotic and abiotic elements interacting in a given space and time⁶⁷.

67 Constitutional Court ruling handed down in File No. 0048-2004-AI of April 1, 2005, which declared the claim of unconstitutionality filed against Law No. 28258, Mining Royalties Law to be unfounded.

It is worth highlighting several substantive issues regarding the foundations commented upon, because they delineate the constitutional pillars for environmental protection and its conceptualization.

(i) The Constitution recognizes the enjoyment of a balanced, adequate environment to be a fundamental right⁶⁸.

(ii) The environment is considered a system whose micro-components (material and immaterial), of animal or anthropogenic origin, interact with each other in harmony. This environment in turn interacts with society, which is protected, so that it does not degrade or lose its harmony in a way that prevents the enjoyment of the right (systemic approach).

(iii) The environment, in its interaction with economic activities, is governed by a series of principles.

(iv) Their protection is the responsibility of the State as well as of individuals, on whom, in their capacity as social contributors, a set of obligations falls.

In the same line, the General Environmental Law (LGA) in numeral 2.3 of article 2, prescribes that the environment comprises the physical, chemical and biological elements of natural or anthropogenic origin that, individually or in association, make up the environment in which life takes place.

These are the factors that ensure the individual and collective health of people and the conservation of natural resources, biological diversity and the cultural heritage associated with them; among others. In the words of De La Puente, the elements described in the LGA “(...) can be classified into three groups: a) the natural environment, which includes air, water, soil, flora and fauna, and the interrelationships between these; b) the environment built by man, which includes cities and infrastructure works; and, c) the social environment, which includes the social, political and cultural systems (...)”⁶⁹.

68 As a fundamental right, it is protected by a guarantee of protection through the corresponding constitutional process before the Judicial Power and the Constitutional Court.

69 De La Puente, L. Responsibility for pure environmental damage and the Peruvian civil code, Lima: *Revista Themis* N° 60, p. 296.

The environment is understood by the jurisprudence of the Peruvian Constitutional Court as a system in which all elements interact with each other in harmony. This environment in turn interacts with society, which is protected, so that it does not degrade or lose its harmony in a way that would impede enjoyment of the right or, still worse, that would affect the life of the living beings in it and the forests that are part of it.

2. CONSTITUTIONAL BASIS FOR ADMINISTRATIVE TECHNIQUES FOR PROTECTION OF THE ENVIRONMENT: THE “ECOLOGICAL CONSTITUTION”

The Judgment of the Constitutional Court kept in file N° 03343-2007-PA/TC - 02/19/2009⁷⁰ has clarified the foundation of administrative intervention; that is, the general interests that justify the intervention of the State. This is considered the “Ecological Constitution”.

9. Hence, a set of actions that the State is committed to carry out and promote, in order to preserve and preserve the environment against human activities that could affect it. This national policy must allow the integral development of all generations of Peruvians who have the right to enjoy an adequate environment for their well-being.

10. Developing the scope of the constitutional articles referred to, article 9 of the General Law of the Environment, Law No. 28611, establishes: “The National Environmental Policy aims to improve people’s quality of life, ensuring the existence of healthy, viable and functional ecosystems in the long term; and the country’s sustainable development, through the prevention, protection and recovery of the environment and its components, the conservation and sustainable use of natural resources, in a responsible manner consistent with the respect for the fundamental rights of the person” (underlining added).

The “Ecological Constitution” thus allows for the design of policies and regulatory frameworks for the sustainable exploitation of natural resources and other elements of the environment, with a systemic approach and sustainable development, provided that such exploitation is in favor of the community in general and is done in a sustainable

70 Ruling Available in:

<http://www.tc.gob.pe/jurisprudencia/2009/03343-2007-AA.html>.

fashion. In this constitutional framework, Peruvian environmental law uses a series of administrative intervention techniques; mainly, the following:

(i) Administrative police activity, through the Environmental Impact Assessment System (SEIA) through prior approvals (environmental certifications) of the respective environmental management instruments (IGA)⁷¹ of the investment projects which, according to the Law of the Environmental Impact Assessment System, must have an IGA usually those that can cause significant negative impacts to the environment.

(ii) Administrative police activity, through a system of prior qualifications (concessions, authorizations, permits, licenses) for the economic use of natural resources⁷², through the administrative regimes established by the Law of Sustainable Use of Natural Resources, Sectoral Laws on the subject: for example, General Law of Mining, Law of Water Resources, Forestry and Wildlife Law, General Law of Fisheries, Beach Law, among others.

(iii) Promotion, through the incentives system, of clean production and compliance with environmental regulations⁷³.

(iv) Other market mechanisms or those from treaties or international agreements.

(v) Protection of Protected Natural Areas, through the establishment of geographical zones with significant environmental value that must be protected and administered under a legal regime; that is, the National Service of Natural Protected Areas (Sernanp).

71 Environmental impact statement, detailed and semi-detailed Environmental Impact Study.

72 The compliance, by individuals, of carrying out economic activities for exploitation of public domain assets, such as natural resources, with the respective enabling titles (authorizations, concessions, permits, licenses), is supervised by public entities with the authority to grant said titles. Environmental oversight is overseen by other public bodies, such as OEFA, Serfor, Osinfor, and the subnational levels of government.

73 The OEFA is in charge of the incentives regime for compliance with environmental standards.

(vi) The techniques of inspection, control, surveillance and oversight of the environmental elements (natural resources, for example, known as “sectoral control”) and of the environment as a whole (known as “environmental control”), which establishes each sectorial law for the subject, as well as the sanctioning authority, through the National System of Evaluation Environmental Monitoring (SINEFA) whose objective is to monitor, supervise and, where appropriate, sanction illicit environmental administration, articulating these actions through a system whose the governing body is the Agency for Environmental Assessment and Control⁷⁴.

3. THE CONNECTION OF ENVIRONMENTAL FUNCTIONAL SYSTEMS

Environmental management requires vertical and horizontal coordination with all competent State entities. Legislatively this is called *cross-sectoral*. This coordination is executed in part, through the functional systems that, according to Article 45 of Law N ° 29158, Organic Law of the Executive Power (hereinafter, LOPE), are those that “*are intended to ensure compliance with public policies that require the participation of all or several State entities. The Executive Branch is responsible for regulating and operating the Functional Systems. The rules of the System establish the attributions of the System’s Governing Body.*”

There are numerous environmental functional systems, but we will refer to only three of them in this section. The National Environmental Management System, the National Environmental Impact Assessment System (SEIA) and the National System of Environmental Assessment and Control (SINEFA), whose objective is the management of environmental impacts and carrying out environmental control, respectively.

3.1. The National Environmental Management System (SNGA)

With the birth of environmental administrative law in Peru, the SNGA also emerged. The current Article 15 of the LGA provides that the SNGA is a functional system that aims to integrate all systems forming part of the environmental sector. Subsequently, Law N° 28245,

74 There are also environmental crimes regulated by the Criminal Code, but it is not an administrative law technique for the protection of the environment.

Framework Law of the National Environmental Management System, establishes that its purpose is to guide, integrate, coordinate, supervise, evaluate and guarantee the application of policies, plans, programs and actions aimed at environmental protection, and contribute to the conservation and sustainable use of natural resources.

The SNGA is composed of the state institutions, organs and offices of the different ministries, decentralized public bodies (now called public agencies by the LOPE) and public institutions at the national, regional and local level that exercise authorities and functions regarding the environment and natural resources, as well as by the Regional and Local Environmental Management Systems, with the participation of the private sector and civil society.

This system makes it clear that legal protection of the environment requires the unified and harmonious coordination of the entities involved, the systems created, and the objectives of the national policies outlined. All functional systems aim at common objectives, which in turn are derived from a general objective: the protection of the environment. The SNGA's governing body is the Ministry of the Environment. As such, it is the overall national-level coordinator of the execution of national policies related to the environment and compliance with environmental regulations.

3.2. The Environmental Impact Assessment System (SEIA)

The National Environmental Impact Assessment System (SEIA) was created through Law N° 27446, with the purpose of (i) creating a unique and coordinated system for identification, prevention, supervision, control and early correction of negative environmental impacts derived from the human actions expressed through the investment project; (ii) establishing a uniform process that includes the requirements, stages, and scope of environmental impact assessments for investment projects; and, (iii) establishing the mechanisms that ensure citizen participation in the environmental impact assessment process. The SEIA thus has under its authority the policies, plans and programs at the national, regional and local levels that can have significant environmental implications; as well as public, private and mixed capital investment projects involving activities, constructions, works, and other commercial and service activities that may cause significant negative environmental impacts.

In this regard, the LGA notes that environmental management instruments are mechanisms aimed at the implementation of the environmental policy. They constitute operational means that are designed, regulated and applied with a functional or complementary character, to achieve compliance with the National Environmental Policy and the environmental regulations governing the country.

These instruments may be planning, promotion, prevention, control, correction, information, financing, participation, and inspection, as well as instruments aimed at conserving natural resources and instruments for environmental control and sanctions.

It is also worth noting that the General Environmental Law states that all human activities involving buildings, works, services and other activities, as well as public policies, plans and programs that may cause significant environmental impacts, are subject, in accordance with the law, to the SEIA, which is administered by the National Environmental Authority.

The SEIA Law states that the execution of projects, services and commercial activities cannot be initiated and that no national, sectoral, regional or local authority can approve, authorize, allow, grant or enable them if they do not hold the prior environmental certification contained in the Resolution issued by the respective competent authority. Both the SEIA Law and its regulations have established the categorization of projects according to their environmental risk in Category I, II and III.

In 2012, a new actor was introduced to the SEIA. Through Law No. 29968, the National Environmental Certification Service for Sustainable Investments (SENACE) was created as part of the SEIA. It is the entity in charge of reviewing and approving the detailed Environmental Impact Studies.

3.3. The National Environmental Assessment and Control System (SINEFA)

The Second Final Complementary Provision of Legislative Decree No. 1013 of May 13, 2008, which approves the Law on creation, organization and functions of the Ministry of the Environment (MINAM), created the Agency for Evaluation and Environmental Enforcement as a specialized

technical agency assigned to the MINAM, responsible for oversight, supervision, control and sanction in environmental matters. One of its basic functions is to direct and supervise application of the common oversight and environmental control regime and the incentive regime provided in the LGA, as well as directly supervising and controlling compliance with the activities thereby corresponding by Law.

After its creation, through Law N° 29325, the National System of Environmental Assessment and Control (SINEFA) was established, with the OEFA designated as governing body. The SINEFA's objective is to ensure compliance with environmental legislation, as well as to supervise and guarantee that the functions of evaluation, supervision, oversight, control and sanctioning authority in environmental matters, under the responsibility of the various State entities, are carried out in a independent, impartial, agile and efficient manner, in accordance with the provisions of the Law of the SNGA, the LGA, the National Environmental Policy and other standards, policies, plans, strategies, programs and actions designed to contribute to the existence of healthy, viable and functional ecosystems, to the development of productive activities and the sustainable use of natural resources that contribute to effective environmental management and protection.

The SINEFA has as actors: the OEFA, as its governing body, the MINAM and the Environmental, National, Regional or Local Enforcement Entities, known by their acronym EFA. It is important to point out that the OEFA, as the governing entity for the SINEFA, has the duty and responsibility derived from the supervisory function of the national, regional or local EFAs, by virtue of which it monitors and verifies performance of the national, regional and local environmental control entities' control functions. For these purposes, the OEFA can establish procedures for the delivery of reports, technical briefs and any information related to the fulfillment of the functions of which the EFA is in charge.

According to Law No. 29325, Law of the National Environmental Assessment and Control System (SINEFA), the audit and sanctioning function is the power to investigate the commission of possible punishable administrative infractions, to dictate corrective and precautionary measures and to impose sanctions for⁷⁵:

75 Enforceable environmental obligations are considered (Article 17 of the SINEFA Law) all those included in the previous paragraphs.

- (i) Non-compliance with the obligations contained in environmental regulations.
- (ii) Non-compliance with obligations and commitments derived from the environmental management instruments indicated in the current environmental regulations (i.e., Environmental Impact Study, Environmental Impact Statement, Environmental Management Plan, etc.).
- (iii) Non-compliance with environmental commitments derived from concession contracts.
- (iv) Non-compliance with precautionary, preventive or corrective measures, as well as the provisions and mandates issued by OEFA.
- (v) Others that correspond to the scope of its authorities.

It is important to note that the SINEFA has coexisted - and still coexists in some sectors, pending transfer - with the other control regimes that were in force at the time of its creation.

These were part of the individual legal regimes for each natural resource (sectoral regulations or sectoral environmental legislation in the terms of Lozano), and will continue until the process of transferring authorities to the OEFA comes to an end. However, to help understand the legal order of environmental control (quite complex and exuberant) there are some general structural guidelines:

- (i) Regarding the obligations established by sectoral environmental legislation. The absence of enabling titles to exploit natural resources, or the exercise of activities in accordance with the conditions of the enabling title and the applicable legal regime, is overseen by the competent sector; that is, the entity in charge of granting them through its supervising body.

This can be called sectoral control. For example: mining control, fisheries inspection, inspection of the National Water Authority, etc., regarding the substantive aspects of the activity's performance, such as not having the qualifying title to legitimately carry out the activity or doing so with a title but without fulfilling the obligations to which the individual is subject.

(ii) Regarding horizontal or transversal environmental legislation. The other control is directly environmental. This includes the evaluation, supervision, monitoring, and control of the enforceable environmental obligations established in Art. 17 of the SINEFA Law and all the environmental regulations concordant to and developed from it.

This complexity is manifested in practice, for example, when there are economic activities carried out (with or without a qualifying title) on natural resources that in turn affect the environment. There is a tendency to see gray areas, which leads to confusion because, in effect, legal assets are intermingled (environment and natural resources); in light of this, we must then try to be consistent, and clarify the legal regimes, differentiating and separating between control over qualifying titles and the conditions in which they are exercised (sectoral legislation), and environmental control in relation to the effects that those activities (with or without qualification, with or without IGA, etc.) have on the environment.

4. CONCLUSIONS

Environmental protection in Peru has a constitutional basis. The 1993 Constitution recognizes the environment as the fundamental right to enjoy a balanced and adequate environment in which to exist (Article 2, Num. 22).

The environment is considered a system whose microcomponents (material and immaterial), of animal or anthropogenic origin, interact with each other in harmony. This environment in turn interacts with society, which is protected, so that it does not degrade or lose its harmony in a way that prevents the enjoyment of the right (systemic approach).

The challenge for acceptable environmental protection is complicated by profuse environmental regulations (global and domestic) and the administrative organization transformations that accompany it.

5. REFERENCES

Cruz, J. y Ali Turrillas, J. (2005). *La protección jurídica de la biodiversidad (mecanismos de protección de los espacios y las especies naturales)*. España: Montecorvo.

De la Puente, L. (2011). *Responsibility for pure environmental damage and the Peruvian civil code*. Lima: Revista Themis.

Lozano, B. (2010). *Derecho ambiental administrativo*. España: La Ley.

Peruvian Constitutional Ruling. (2009). EXP. N.O 03343-2007-PA/TC. December 30, 2018, de Peruvian Constitutional Ruling. Sitio web: <http://www.tc.gob.pe/jurisprudencia/2009/03343-2007-AA.pd>

Rojas Montes, V. (2006). *El derecho administrativo y la protección del medio ambiente en el Perú*. Zaragoza: Aragon, Departamento de Hacienda y Administración Pública.

United Nations Environment Program. (1972). *Declaration of the United Nations Conference on the Human Environment*. December 30, 2018, de United Nations Environment Program Sitio web: <http://www.un-documents.net/unchedec.htm>.

United Nations. (1993). *Convention on Biological Diversity*. December 30, 2018, de The Secretariat of the Convention on Biological Diversity (SCBD) Sitio web: <https://www.cbd.int/doc/legal/cbd-es.pdf>.

United Nations. (1992). *Rio Declaration on environment and development*. December 30, 2018, de The United Nations Sitio web: <http://www.un.org/spanish/esa/sustdev/agenda21/riodeclaration.htm>

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