LEGAL REMEDIES FOR RESOURCE EQUITY DIALOGUE CONFERENCE

APRENDER
Ações para Preservação dos Recursos Naturais e Desenvolvimento Econômico Racional

DEVELOPMENT OF A NEW MINING CODE IN BRAZIL

MAURO FIGUEIREDO / BRAZIL

The new Mining Code adopts provisions concerning mining activities, creates the National Council of Mineral Policy and the National Agency of Mining. The text proposes, in general, three changes in legislation: Change the method for granting mining licenses; reformulate the management and organization of public agencies; and institute a new tax policy for the sector.

One change sought to this new law is also to create mining free zones, including protected areas, sites of historical importance and water catchment basins for urban centers, primary forests, among others. An existing example is the west of São Paulo where areas are classified into three categories: preferential (no restrictions for operations), subsidiary (mining must comply with certain restrictions) and blocked (banned due to legal, environmental or local occupancy).

However, proposed changes from the rapporteur of the matter in the Chamber of Deputies are making the text worse. The deputy was founded from mining companies in his election campaign. Brazilian civil society is working to improve the text and to remove the rapporteur from the process, since it is evident that his parliamentary behaviou violates the code of ethics of the Chamber of Deputies.

DATE OF ISSUANCE

Bill published on 20 June 2013

NAME OF LEGISLATION

Bill 5807/2013 (New Mining Code)

TARGET OF LEGISLATION

Mining companies / Public bodies

MAIN TOPICS

Transparency / Definition of no mining zones / Protected areas / Access rights

SOURCES

Link to Legislation: http://tinyurl.com/py36j4g
Interview with Raul do Valle: http://tinyurl.com/k8v3mwm
Public Debate: http://tinyurl.com/mt3ttus

CONTACT

Mauro Figueiredo: mauro@aprender.org.br

September 15, 2014 . Berlin

LEGAL REMEDIES FOR RESOURCE EQUITY

DIALOGUE CONFERENCE

Environmental Law Centre
UNIVERSITY OF VICTORIA

INDEPENDENT REVIEW PANELS FOR EIA

MARK HADDOCK / CANADA

For some major projects in Canada, the federal government appoints independent expert review panels to carry out environmental assessments. These panels use a quasi-judicial hearing process that allows for sworn evidence given under oath, cross-examination of witnesses, orders for document production and other "inquiry powers" to ensure that the quality of evidence concerning a proposed project is credible, and that it is reviewed by independent experts not employed by the proponent or government.

The benefits of this independent review process can be illustrated by the proposed "Prosperity" copper-gold mine in British Columbia. This mine was assessed by two levels of government: 1) the British Columbia (provincial) government, which used an internal, bureaucratic process that only identified one "significant adverse effect," and approved the mine on the basis that the effect could be mitigated by an artificial lake; 2) the Canadian (federal) government appointed an independent review panel that found eight significant adverse effects, and determined that they could not be mitigated. These findings and the rationale for decision-making show that independent experts engaged in a quasi-judicial hearing process can be superior to and more credible than bureaucratic processes in assessing environmental impacts of large development projects. The use of independent panels has resulted in rejection of several large mining projects, when compared to bureaucratic assessment processes. The difficulty we face is that this type of independent assessment is discretionary, and is not applied as frequently as it should be.

DATE OF ISSUANCE

06 July 2012

NAME OF LEGISLATION

Canadian Environmental Assessment Act

TARGET OF LEGISLATION

Major industrial project proponents / Mining, oil & gas companies

SOURCES

Canadian Environmental Assessment Act; Prosperity Mine Federal Review Panel Report; Comparison of the BC and Federal Environmental Assessments for the Prosperity Mine
http://northwestinstitute.ca/images/uploads/NWI_EAreport_July2011.pdf

CONTACT

Mark Haddock: mhaddock@uvic.ca

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EQUITY

CONFERENCE

DIALOGUE

FOR RESOURCES

REMEDIES

LEGAL

FIGHTING FOR REGULATION OF MINING ACTIVITES IN GOA

CLAUDE ALVARES / INDIA

The small state of Goa has suffered gross environmental damage to its ecosystems from indiscriminate iron ore/mangagese mining and complete lack of regulation by the statutory authorities. From being a source of income to miners, the activity turned into a nightmare for all, except a few powerful mining companies (including Vedanta) which ran away with windfall profits.

The Supreme Court blocked all mining once the petition was placed before it. Mining was eventually shut down for two full years. In the third year, it is yet to commence. However, it is to be expected that the regulatory authorities will be better placed to enforce regulations.

The Court itself has imposed a cap of 20 million tonnes annual extraction in the interests of intergenerational equity and directed that 10% of the sale proceeds of mining activity will henceforth be deposited in a Permanent Fund.

DATE OF DECISION

21 April 2014

NAME OF THE CASE

GOA Foundation vs Union of India & Ors.

MAIN TOPICS

Mining, intergenerational equity, interpretation of mining law on renewal, illegal mining, permanent fund

SOURCES

www.goafoundation.org/mining;
Decision can be found at: www:judis.nic.in

CONTACT

Claude Alvares: goafoundation@gmail.com

LEGAL REMEDIES FOR RESOURCE EQUITY

DIALOGUE CONFERENCE

INDIGENOUS LAND RIGHTS AND EXTRACTION OF RESOURCES

ANTOINETTE MOORE / BELIZE

The Maya people in the Toledo district of Belize employ a traditional governance system in each of their villages, which incorporates collective control over the lands and resources. The communities had historically negotiated with government for the recognition of their rights and ownership of the lands. Nevertheless, the government essentially behaved as if these lands were nationally owned. Thus, after other measures had failed, the Maya leadership and communities decided in the mid-1990's to pursue litigation to affirm and protect their rights. Several decisions from the Supreme Court established that Maya customary land tenure exists in southern Belize in the claimants' villages. As a consequence, the Maya people who occupy these villages have rights to the land and resources on the land they traditionally use and occupy. In these cases, the government and third parties were enjoined from doing anything to affect the value and use of Maya land, without the consent of the Maya people who own, use and occupy that land. Even if the following appeals have been trying to dilute these findings, this cases have established a new paradigm in the treatment of the Maya people as well as opened public discourse about oil drilling in a national park.

DATE OF DECISION

October 2007, June 2010, July 2013

NAME OF THE CASE

Maya Leaders Alliance and Toledo Alcaldes Association and others vs Government of Belize

MAIN TOPICS

Indigenous rights to land and resources / Requirement of Free, Prior and Informed Consent from the indigenous group for any activities on their lands

CONTACT

Antoinette Moore: moorelawbze@gmail.com

September 15, 2014 . Berlin

LEGAL REMEDIES FOR RESOURCE EQUITY

DIALOGUE CONFERENCE

UNIVERSIDAD NACIONAL DE COLOMBIA
SEDE MEDELLÍN
FACULTAD DE MINAS

GAIA DERECHO AMBIENTAL

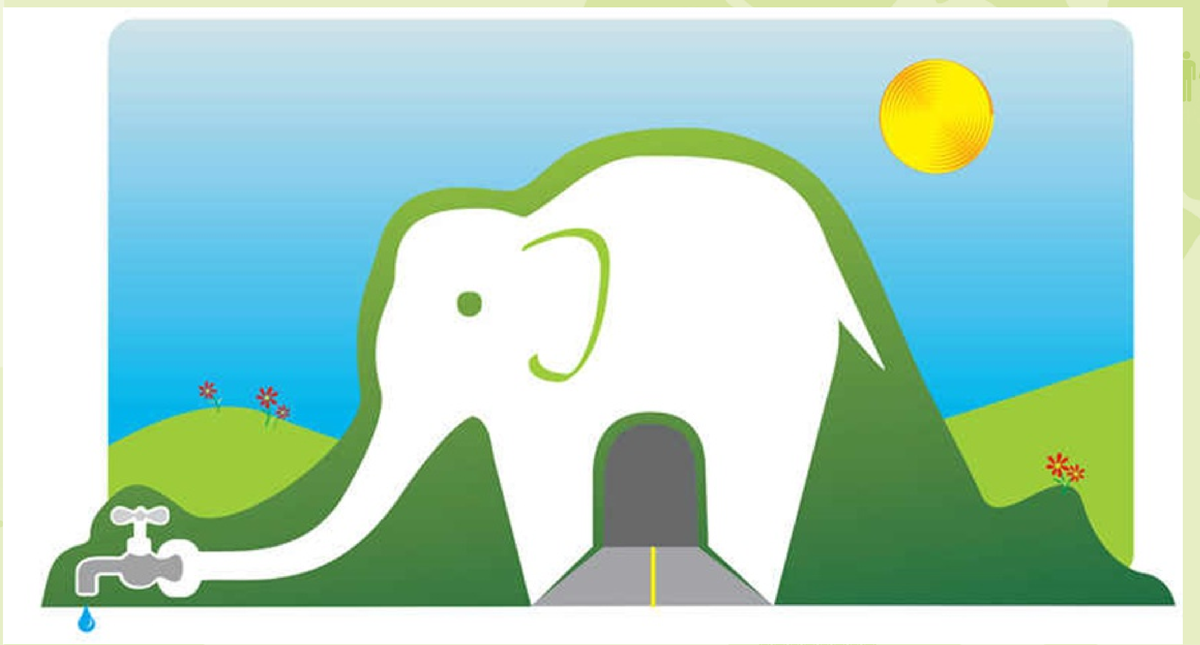
A NEW REGIONAL FRAMEWORK FOR PARTICIPATION

CAROLINA NEME / URUGUAY

Due to a lack of public resources, countries of Latin America qnd the Carribean need to find alternative sources of funds in the private sector - through the so-called 'concession agreements' - in order to meet the challenges of economic liberalization.

These 'semi-privatized' infrastructure projects have significant negative impact on the environment and the communities dependent on it. In light of these events, the rights embodied in the P10 (access to information, participation and justice rights in environmental matters) and established at the 1992 Rio Conference are instrumental to the transparency and legitimacy of public policies and also for democratic government. They represent a new governance model, which has become a condition for the prevention of socio-environmental conflicts.

As a case in point, the comparative case study is based on two road infrastructure projects, the Western and Eastern Bridge, in the department of Antioquia in Colombia. In spite of environmental disasters, financial losses and high level of conflict linked to the lack of implementation of the P10 tools in the construction of the Western Tunnel, once again history is repeating itself on the construction of the Eastern one, on the other side of the city of Medellín. This tunnel, however, is double the size of its predecessor while causing the same levels of social conflict and the same intentions of regional and international development undeterred by local needs or wishes.



DATE OF ISSUANCE

14 June 1992

NAME OF LEGISLATION

Principle 10 Rio Declaration

MAIN TOPICS

Governance and transparency in public environmental policies

TARGET OF LEGISLATION

Investors / Public authorities / Civil society

SOURCES

The Access Initiative:
http://www.earthtrends.wri.org/es/sobre-tai

CONTACT

neme.carolina@gmail.com

Special thanks goes to the project MGSAI for its generous support.

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DIALOGUE CONFERENCE

TRANSPARENCY & PARTICIPATION IN SHALE GAS DEALS

YELYZAVETA ALEKSYEYEVA / UKRAINE

In what happened to be the last year of President Yanukovich's ruling, his Government entered into its first deals on shale gas exploration with two multinational oil&gas corporations. Two of these contracts, which concern a territory of over 140 000 km2, were sealed and concluded without the preparation of an environmental impact assessment and adequate public participation. It is yet to be established whether bribery or a conspiracy was involved, but the complete limitation of public access to any information on the issue suggests just that. Furthermore, the secrecy of the agreements made it impossible for environmental NGOs to oversee the likely environmental performance of the planned operations.

The unanimous position of all public authorities was that since the parties agreed on the confidentiality of the terms of the agreement, the authorities are in no position to provide any third party with any draft, signed text, or any information on the terms of the agreements. However, various provisions of Ukrainian law as well as the Aarhus Convention provide strong indications that the non-disclosure of the agreement is indeed illegal.

EPL brought a challenge to the administrative courts

DATE OF DECISION

1 April 2014

NAME OF THE APPLICATION

Environment-People-Law vs Cabinet of Ministers of Ukraine & State Service for Geology and Mineral Resourses of Ukraine

MAIN TOPICS

Lack of transparency and public participation in product sharing agreements on shale gas exploration between the State of Ukraine and multinational oil and gas corporations

SOURCES

http://epl.org.ua/en/lawnbspnbspnbsp/access-to-information/cases/challenging-confidentiality-of-the-agreement-on-hydrocarbons-sharing/

http://epl.org.ua/en/lawnbspnbspnbsp/access-to-information/cases/challenging-the-decision-of-the-state-agency-of-geology-and-mineral-resources-of-ukraine-about-classification-as-insider-information-of-the-agreement-with-shell-company/

CONTACT

Yelyzaveta Aleksyeyeva: e.aleksyeyeva@epl.org.ua

LEGAL REMEDIES FOR RESOURCE EQUITY

DIALOGUE CONFERENCE

NATURAL JUSTICE

COMMUNITY PROTOCOLS AND EXTRACTIVE INDUSTRIES

MARIE WILKE / SWITZERLAND

There remains an undeniable link between environmental, social and cultural destruction caused by extractive industries and threats to the rights of Indigenous peoples and local communities. The consultation of affected communities by public and private implementers of investment projects is key to mitigating these threats and to realizing communities' rights even in the context of large-scale resources extraction projects.

One tool for empowering communities to initiate and engage in constructible and proactive dialogue are bio-cultural community protocols; or simply community protocols. The term is used to describe both a process and an outcome that documents a community's territory, customary laws, institutions and decision-making systems as well as many other elements.

Natural Justice, with the support of the Heinrich Böll Foundation is supporting communities in Argentina, India, Kenya and Zimbabwe in developing community protocols and in engaging with mining investors in their areas on the basis of the protocols and the related processes.

The aim is twofold: to provide direct, context-specific support to the communities in their communities in their engagements with external investment stakeholders; and to learn from the processes with a view to identifying best practices.

START & END DATES

2014-2016

TARGET OF THE CAMPAIGN

Communities in the respective areas/ Investors and relevant public stakeholders

MAIN TOPIC

Extractive industries

LINK TO CAMPAIGN

www.naturaljustice.org

SOURCES

S. Booker, M. Wilke et al, Exploring The Development And Use Of Biocultural Community Protocols To Help Secure Community Interests And Rights In Relation To Extractive Industries: A Framework Methodology (Natural Justice 2014).

CONTACT

Marie Wilke: mcawilke@gmail.com

September 15, 2014 . Berlin

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ECOLEX
CORPORACIÓN DE GESTIÓN Y DERECHO AMBIENTAL

ISSUES AROUND ITT INITIATIVE IN YASUNI NATIONAL PARK

MANOLO MORALES / ECUADOR

The Yasuni-ITT Initiative was the proposal by the government of Ecuador to refrain indefinitely from exploiting the oil reserves of the Ishpingo-Tambococha-Tiputini (ITT) oil field within the Yasuni National Park, in exchange of 50% of the value of the reserves, or $3.6 billion over 13 years from the international community. The aim of the initiative was to conserve biodiversity, protect indigenous peoples living in voluntary isolation, and avoid the release of CO2 emissions. In July 2013, a commission on the Yasuni-ITT Initiative concluded that the economic results were insufficient, leading Ecuador's president to scrap the plan the following month. Civil society organizations are still attempting to save Yasuni-ITT from oil activities even if their participation has been limited during the whole process. In this regard, Ecolex aims to obtain a referendum so the Ecuadorian citizens can decide; stop drilling oil form block 31 of the Yasuni National Park; achieve that the decision given by the national assembly authorizing the government to start this activity be motivated; obtain the facilities to observe the oil activities which already started in the park; and build strategies to defend pubic interests at national and international courts.

START & END DATES

2012 - Ongoing

TARGET OF THE CAMPAIGN

National and local governments

MAIN TOPIC

Oil exploitation and governance conflicts / Land-use planning and management of the Yasuni National Park

GOAL OF THE CAMPAIGN

Organizing a comprehensive management for Yasuni territories / Obtain free prior and informed consent from the local communities for oil drilling projects

CONTACT

Manolo Morales: mmorales@ecolex-ec.org

September 15, 2014 . Berlin

LEGAL REMEDIES FOR RESOURCE EQUITY

DIALOGUE CONFERENCE

STRATEGIC LAWSUIT AGAINST PUBLIC PARTICIPATION

JESSICA BINWANI / MALAYSIA

An application for judicial review was filed in 2008 against the Department of Environment and Raub Australian Gold Mining, questioning the approval of an EIA for a gold extraction plant using sodium cyanide, which commenced operations only 10 years after the EIA approval. The residents of the affected area asked for a detailed EIA (which requires public participation) in view of the use of cyanide compounds in the carbon-in-leach plant set up by the company.

The court threw out the judicial review application on the basis that the community came too late to court for relief, and did not give sufficient reasons for the delay. The court also found that the refusal to allow a detailed EIA did not amount to a justiciable decision.

In early 2009, the plant began operations and almost immediately the villagers began to suffer all sorts of ailments, including shortness of breath, skin irritation, watery eyes, etc. After trying to convince the authorities that the cyanide plant had something to do with what they were suffering, and the authorities continuously denying this, the villagers held press conferences.

Resulting from these press conferences, the mining company has now filed five strategic lawsuits against public participations (SLAPP), three against three villagers, and two against online portals which carried the news. How can these SLAPP suits be fought?

DATE OF DECISION & NAME OF THE CASE

2012 - People Of Bukit Koman Village in Raub, Malaysia vs Raub Australian Gold Mining and Department Of Environment

Pending - Raub Australian Gold Mining vs Wong Kin Hoong & Hue Fui How

MAIN TOPICS

Inadequate Environmental Impact Assessment / Lack of disclosure / Libel / Slander

CONTACT

Jessica Binwani: jessrb@gmail.com

September 15, 2014 . Berlin

LEGAL REMEDIES FOR RESOURCE EQUITY

DIALOGUE CONFERENCE

DEFICIENT EIA PROCEDURE FOR MINING OPERATION

LUISA ARAUZ / PANAMA

The Canadian mining company Petaquilla Gold, S.A. began mining operations in a sensitive rainforest area in 2005 without an approved EIA. During this period, Petaquilla destroyed over 100 hectars of rainforest, as well as polluting several important rivers through the use of lead nitrate for the leaching process. The company finally presented an EIA only two years after it had begun operations, but it was initially rejected by the National Environmental Authority. However, less than six months after, Petaquilla presented a new, EIA application which did not include a risk prevention plan, a fauna rescue and relocation plan, a contingency plan, or an environmental-post operation rescue plan. In spite of the negative technical opinions of several government authorities involved in the EIA process which stated that the project would impact 53% of the river basin, lead to pollution of air and land, loss of forest coverage and collapse of walls and tailings dams for water, and use inappropriate waste material disposal, amongst many other irreversible impacts, the National Environmental Authority approved the EIA presented by Petaquilla Gold, which clearly breached the Panamanian environmental law framework.

DATE OF DECISION

pending

NAME OF THE CASE

Environmental Advocacy Center of Panama (CIAM) vs National Environmental Authority, Petaquilla Gold

MAIN TOPICS

Lack of approved Environmental Impact Assessment, breach of administrative environmental law, Human Rights violations, environmental damage to protected areas

SOURCES

http://www.prensa.com/impreso/panorama/petaquilla-fuera-de-sus-limites/175716
http://www.petaquilla.com/projects.aspx

CONTACT

Luisa Arauz: larauz@ciampanama.org

The endangered Donoso region is home to sensitive species such as the Three-Toed Sloth.

September 15, 2014 . Berlin

LEGAL REMEDIES FOR RESOURCE EQUITY

DIALOGUE CONFERENCE

GREENPEACE

GREENPEACE'S CLIMATE LIABILITY PROJECT

KRISTIN CASPER / JASPER TEULINGS
THE NETHERLANDS

An informal but effective network of campaigning organisations and lawyers have teamed up to use the force of law to block further climate destruction, force solutions, deter investments in ecologically destructive activities, and create long-term systemic change. They are doing this by developing and implementing climate change legal actions paired with strong political and mobilization strategies. Regarding this climate liability project Greenpeace has three main objectives: First, to revoke the social license of fossil fuel companies by closing the myth-gap that we are all equally responsible for climate change, and all equally benefit from carbon producing activities, by demonstrating that the fossil fuel extractors are primarily responsible for current and future climate impacts. Second, to create climate change liability as a new regulatory, litigation, financial and reputational risk for big polluters by demonstrating uncertainty in the future profitability of selected projects. Third, to establish legal precedents in several countries with transnational implications that serve to undermine the ability of fossil fuel companies to continue to drill and mine. Achieving those goals will get us closer to the aim of breaking the stranglehold the fossil fuel industry has on the future we all want and deserve.

START & END DATES

2013 - ongoing

TARGETS OF THE CAMPAIGN

Fossil fuel companies / investors / insurers / securities regulators / others

MAIN TOPICS

Climate accountability / Liability / Responsibility, and risks arising from fossil fuel extractors / GHG emissions and involvement in denial

SOURCES

This poster is based on research and publications produced by the Center for International Environmental Law, Climate Justice Programme, Greenpeace offices worldwide, WWF International, and many others.

For background information on Greenpeace's climate liability project, please see: Greenpeace International , "Climate liability: Who pays the bill for climate denial?", 28 May 2014, available at: http://www.greenpeace.org/international/en/campaigns/climate-change/impacts/liability/

CONTACT

Jasper Teulings, General Counsel & Advocaat :
jasper.teulings@greenpeace.org

Kristin Casper, Legal Counsel Campaigns & Actions :
kristin.casper@greenpeace.org

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LEGAL REMEDIES FOR RESOURCE EQUITY DIALOGUE CONFERENCE

CRUCITAS GOLD MINE SHUT DOWN

RUTH SOLANO / COSTA RICA

In 2008, the Costa Rican State declared of public and national interest the Crucitas mining project, which was undertaken by the Canadian company Industrias Infinito S.A., and involved an open-pit gold mine previously authorized by Setena, which granted its environmental viability, and by the Mine and Geology Agency, which declared that the project was fully-compliant with the technical criteria, allowing gold mining in the region. Civil society organizations requested the Court Of First Instance - in charge of civil and administrative disputes - to hold a hearing with a demand of invalidity of the actions arising from Setena, Mine and Geology Agency, Ministry of Energy, Mines and Telecommunication, and the Executive Order who declared the Crucitas mining project of public and national interest. Therefore, such rulings as well as the Executive Order are rendered null and void because they constitute a violation of the constitution and the law, as well as fraud of law and due process. The Court partially accepted to review the claims brought by plaintiffs and sentenced the defendant Industrias Infinito S.A., the State and the National System of Protected Areas to provide full compensation for the environmental damage caused by clear-cutting in the land of the mining company. Moreover, the judgment was forwarded to the Public Prosecutor's Office in order to decide whether a criminal case against several representatives of those state agencies should be filed. The legal, social and economic impact of this landmark decision has been warmly welcomed throughout the nation.

DATE OF DECISION

14 December 2010

NAME OF THE CASE

Asociación Preservacionista de Flora y Fauna Silvestre (Association for Preservation of the Wildlife, hereinafter referred to as APREFLOFAS) , Jorge Arturo Lobo Segura vs the State, Industrias Infinito S.A., Sistema Nacional de Áreas de Conservación

MAIN TOPICS

Public authorities abusive authorisation for minings / Environmental viability / Liability of State and private companies / Environmental compensation

CONTACT

Ruth Solano: rsolanov05@gmail.com

September 15, 2014 . Berlin

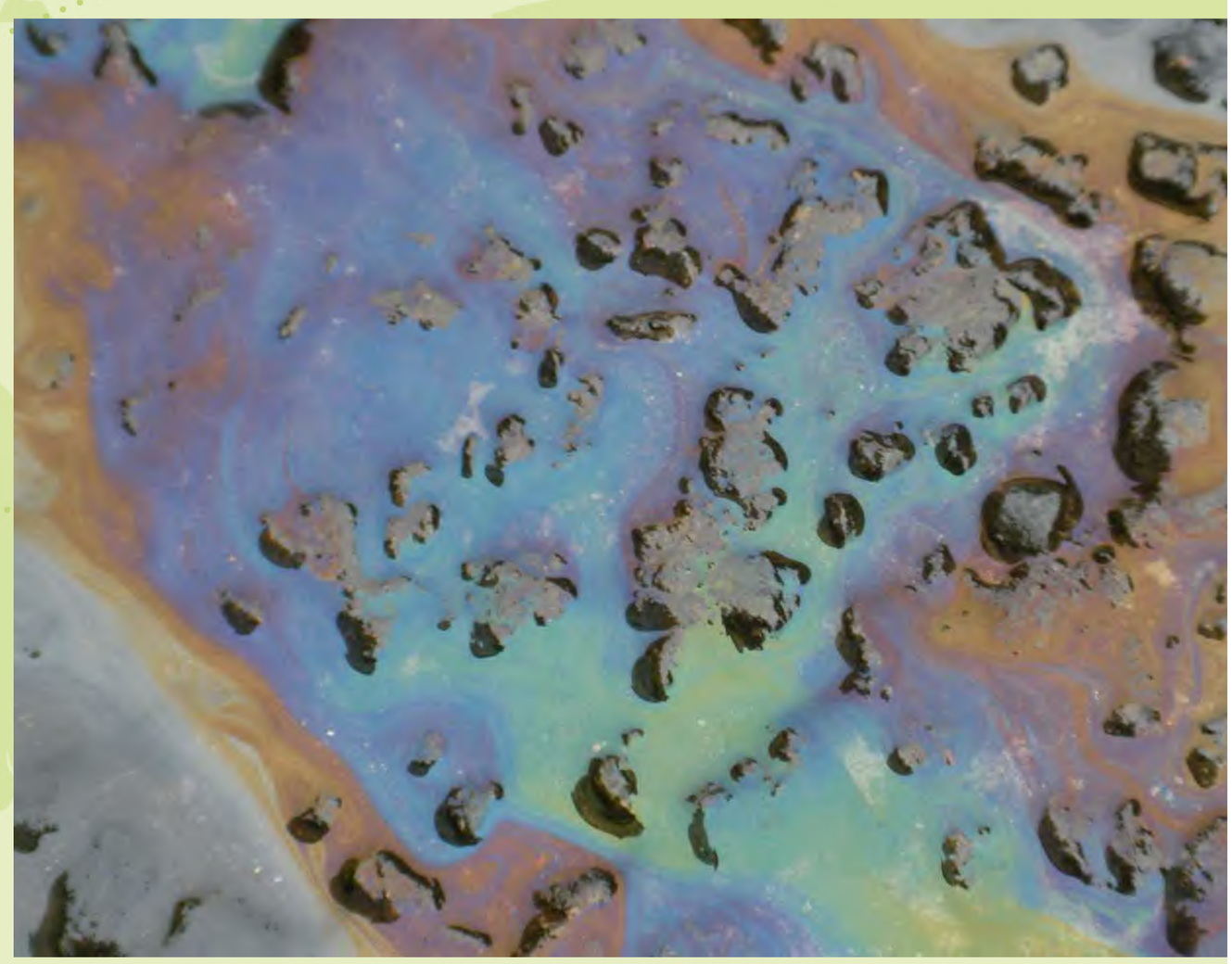
LEGAL REMEDIES FOR RESOURCE EQUITY DIALOGUE CONFERENCE

COMMUNITY DEFENSE LAW FOUNDATION

THE PETROLEUM INDUSTRY BILL

SIMON AMADUOBOGHA / NIGERIA

The “Petroleum Industry Bill” (PIB), as it is popularly called, has been intensely debated for years in Nigeria and beyond. The first bill as proposed in 2008 was harshly criticized by social and environmental groups as it failed to provide adequate legal guarantees for oil communities. And despite several amendments, the bill ultimately failed to be passed by the National Assembly. In 2012 a new bill has been proposed. Even if it is seen as a bold attempt to make access to laws governing oil and gas industry easier both for investors and regulators, that is not the case as most of the regulations are left for the Minister in charge to make. Among other critics that can be made to this bill, there is still the need to improve the environmental protection provisions. Especially, to provide for a ban on gas flaring and adopt the polluter pays principle. In relation to the acquisition of land for oil and gas activities, the bill should make it mandatory for oil and gas companies to meet the land owners in their communities, enter into agreement with them, and pay all rents and compensation before entering the land to commence any form of activity. Though one of its section urges the oil and gas companies to have developmental programmes, the PIB did not provide for Community Development Agreements to be entered between communities and the operating oil and gas companies. It is strongly recommended do so. Finally, for any natural resource rights to be effectively and successfully canvassed for in Nigeria, there must be a repeal of the obnoxious Land Use Act.



DATE OF ISSUANCE

Bill proposed on 18 July 2012

NAME OF LEGISLATION

The Petroleum Industry Bill (PIB)

MAIN TOPICS

Law-making Process and NGO participation & Transparency / Community Participation and Environmental Rights / Resource ownership

TARGET OF LEGISLATION

Government Agencies / IOC / National Oil Companies / Indigenous Companies / Host Communities / Investors

CONTACT

Simon Amaduobogha: amadusway@yahoo.com

September 15, 2014 . Berlin

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LEGAL REMEDIES FOR RESOURCE EQUITY DIALOGUE CONFERENCE

PowerShift

RESPONSIBLE LEGISLATION ON MINERAL SOURCING IN E.U.

MICHAEL RECKORDT / GERMANY

For decades the trade in minerals, precious stones and other commodities has played a central role in funding and fuelling some of the world's most brutal conflicts. Natural resources that have funded war and human rights abuses around the world are used and traded internationally, including by EU-based companies. As a result, companies operating in the EU risk fuelling the very conflicts that are the focus of European aid flows, international post-conflict reconstruction efforts and UN peacekeeping operations. In the absence of a law compelling European companies to responsibly source the natural resources they use, consumers and governments have no guarantee that products sold in the EU containing these resources do not fuel violence and conflict. The EU-Core-Group was formed before this campaign started. The organizations worked together on raw material issues before. AK Rohstoffe analysed the EU process on the legislation and see it as one possibility to tackle human rights violation in the context of mining. AK Rohstoffe / PowerShift joined the campaign in autumn 2013, also because German industry is an important consumer of raw materials and particularly so called "conflict minerals" (gold, tantal, tin, tungsten). They published a German position and they are lobbying for binding due diligence standards within Germany as well as supporting the European network.

START & END DATES

2013 - Ongoing

TARGETS OF THE CAMPAIGN

European Union Commission and Parliament / European companies in extractive industry

MAIN TOPICS

Raw Materials / Due Diligence / Human Rights / Conflict Minerals

GOAL OF THE CAMPAIGN

Ensuring robust EU legislation on responsible mineral sourcing

SOURCES

vgl. http://www.globalwitness.org/sites/default/files/library/BreakingtheLinks_ENG.pdf

CONTACT

Michael Reckordt: michael.reckordt@power-shift.de

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LEGAL REMEDIES FOR RESOURCE EQUITY

DIALOGUE CONFERENCE

OPEN GOVERNANCE IN THE EXTRACTIVE INDUSTRY

COLLINS ODOTE / KENYA

The oil and mineral finds that should bring excitement and pride to African countries also come with considerable anxieties illustrated by the well-known phrase: “African resource curse”. Many are expressing concern that exploration and extraction of oil and minerals may lead to further impoverishment of local communities, serious environmental degradation and resource-based conflicts. It is against this backdrop that Institute for Law and Environmental Governance (ILEG), in partnership with The Open Society Initiative for East Africa (OSIEA), are working to establish the Open Governance in the Extractive Sector Initiative (OGISI). The idea is to build a constituency and consolidate ideas on how best to promote and influence open and transparent governance in the oil & extractive sector in Kenya and Africa. This Phase comprises a series of constructive dialogues among civil society organizations on understanding the salient issues germane to this vast challenge. Questions raised seek to underscore the range and scope of policies, laws and procedures for land, environment and mining sectors, as well as ways and models of securing the socio-economic rights and livelihoods of rural communities in mineral rich localities. The main activities in this development phase include research and a series of expert, national, and regional conventions.

START & END DATES

Ongoing

TARGETS OF THE CAMPAIGN

African Governments / Public authorities/ Civil society / Local communities

MAIN TOPICS

Governance and transparency / Extractive industry

GOAL OF THE CAMPAIGN

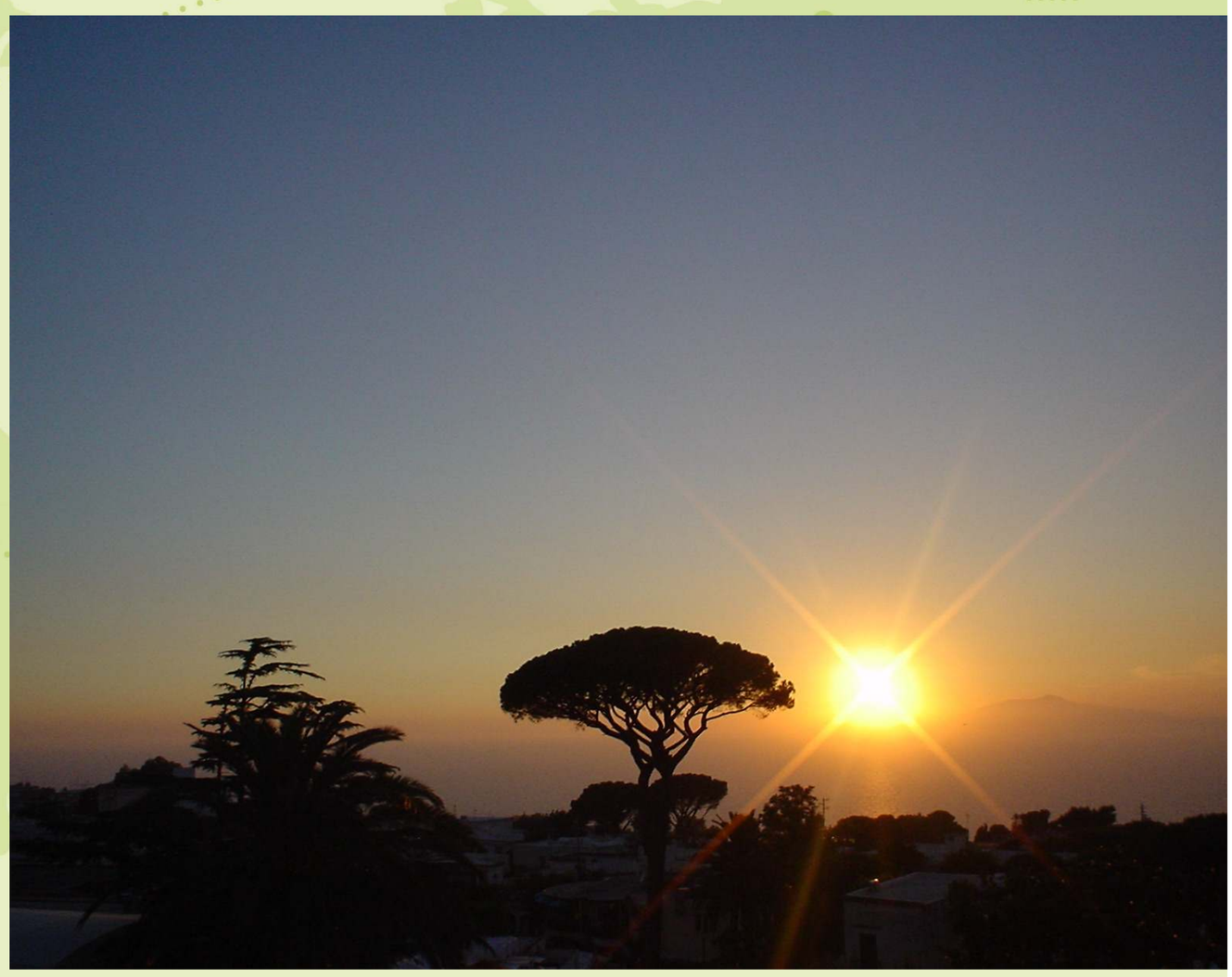
Achieve progressive legal reforms in the Constitution and Ongoing Legal Bills

SOURCES

www.ilegkenya.org/indexphp/advancing-transparent-and-sustainable-governance-in-kenya-s-oil-and extractive-sector

CONTACT

Dr. Collins Odote: c.odote@ilegkenya.org



LEGAL REMEDIES FOR RESOURCE EQUITY

DIALOGUE CONFERENCE

PUBLISH WHAT YOU PAY EXTRACTING THE TRUTH

MARINKE VAN RIET / THE NETHERLANDS

The mandatory disclosures campaign is at the core of PWYP and has been so right from its inception in 2002. Research showed that a lack of financial transparency in the gas, oil and mining sector abetted mismanagement, corruption and in some cases conflict and hence the call was made for the companies to 'publish what they pay' and the communities to 'publish what they receive'. In response to the campaign the voluntary multistakeholder Extractive Industries Transparency Initiative was set up which PWYP supports. However due to its voluntary nature PWYP has continued the demand for mandatory disclosures through a well-coordinated, evidence-based, professional advocacy approach combining the northern PWYP coalitions (US, UK, Canada, EU) working with southern coalitions. The results have been a wave of successes from the US- Dodd-Frank Section 1504 (2010) and the EU Transparency and Accounting Directives (2013) to Canada committing to mandatory disclosures by April 2015. What is particularly worth noting is that in the last couple of years the campaign is focused more on ensuring a fair deal for citizens and optimizing revenues rather than on anticorruption. This is especially true for recent resource discoveries in East and Southern Africa combined with the declining aid climate in which domestic resource mobilization becomes paramount.

START & END DATES

2010 - ongoing

TARGETS OF THE CAMPAIGN

gas, oil and mining companies; political representatives

MAIN TOPICS

transparency and accountability, fair deal for natural resources

SOURCES

www.publishwhatyoupay.org
www.extractingthetruth.org

CONTACT

James Royston:
jroyston@publishwhatyoupay.org

September 15, 2014 . Berlin

LEGAL REGIMES REGARDING EXTRACTIVES IN AFRICA

RUGEMELEZA NSHALA / TANZANIA

In the 1990s sub-Saharan countries started to privatize their mineral, gas and oil resources and allowed foreign mining companies to own these precious resources. They passed laws that offer generous incentives to foreign companies including tax holidays, accelerated depreciation, free repatriation of profit, free transfers of assets, legal and fiscal stability and signing of mineral development agreements and production sharing agreements. The reforms, however, have not brought in the promised results, as mining companies have been able to rake in billions of dollars and pay miniscule revenues to African countries. Lawyers Environmental Action Team's (LEAT) campaign aims at redressing this state of affairs and enabling African countries to receive maximum revenues from their mineral, oil and gas resources.

START & END DATES

2013 - ongoing

TARGETS OF THE CAMPAIGN

Sub-Saharan African Governments / Civil Society Organizations / Members of the public

MAIN TOPICS

Legal regimes governing Oil, Gas and Minerals Exploitation / Mineral Development Agreements / Production Sharing Agreements

GOAL OF THE CAMPAIGN

Enabling Sub-Saharan African nations to receive maximum benefits from mineral, oil and gas resources

CONTACT

Dr. Rugemeleza A.K Nshala: rugemeleza@gmail.com

LEGAL REMEDIES FOR RESOURCE EQUITY

EQUITY

CONFERENCE

DIALOGUE

FOR RESOURCE

REMEDIES

LEGAL

A FAIR DEAL IN EXTRACTIVES

**JOHNNY WEST /
GERMANY**

It has become a truism that many of the big oil and mining companies dwarf the governments they deal with in terms of turnover, technical expertise and sometimes effective personnel. The impact can clearly be seen in contractual arrangements in the extractive industries which result in projects, which all too often result in company super-profits while the host states are left with too little to show for it.
The proposal discussed her is to create a new norm around oil, gas and mining contracts that concentrates not on what the government will receive, but on what the companies get. More specifically, contracts should assure companies a specific rate of return on their investment, or take what might be called a “cost-plus” approach. This would satisfy the legitimate sphere of investor concern, the return on investment of their resources. Then the government gets the rest.
This would challenge governments to truly understand the contracts they have signed and ensure that they are properly implemented. Furthermore, it should help expose the enormous base claimed by companies to proper scrutiny and may lead to projects being reconsidered altogether.

START & END DATES

OpenOil founded in 2010, continuous campaign

TARGET OF THE CAMPAIGN

Big oil and mining companies & host country governments.

MAIN TOPIC

Resource extraction contracts

GOAL OF THE CAMPAIGN

Explicitly modeling company profits and making them the central feature of fiscal agreements

SOURCES

www.openoil.net

CONTACT

Johnny West: johnny.west@openoil.net

LEGAL REMEDIES FOR RESOURCE EQUITY

DIALOGUE CONFERENCE

FINANCIALIZATION OF NATURE IN THE BRAZILIAN FOREST CODE

ANDRE BARRETO / BRAZIL

Terra de Direitos and other civil society partner associations filed a request to qualify as amicus curiae in legal actions alleging the unconstitutionality of the Brazilian New Forest Code (Lei 12.651/2012) in front of the Federal Supreme Court. The cause of action was that the legal effect of this Forest Code implies reduced protection of vegetation cover located in protected territorial areas, violating the fundamental right to an ecologically balanced environment and the constitutional principle of the social function of rural property. Chapter X of the Code, which is questioned in one of the constitutional actions, also establishes Payment of Environmental Services as a form of environmental compensation and an instrument for protecting biodiversity as well as Quotas of Environmental Reserve (CRA), the first instrument of financialization of nature in Brazil. The four legal actions, which have already been filed, now await a public hearing where representatives of civil society will discuss the legal question and lower court holdings. Finally, the decision will be made by 11 judge-ministers of the Court.

DATE OF DECISION

Pending

NAME OF THE CASE

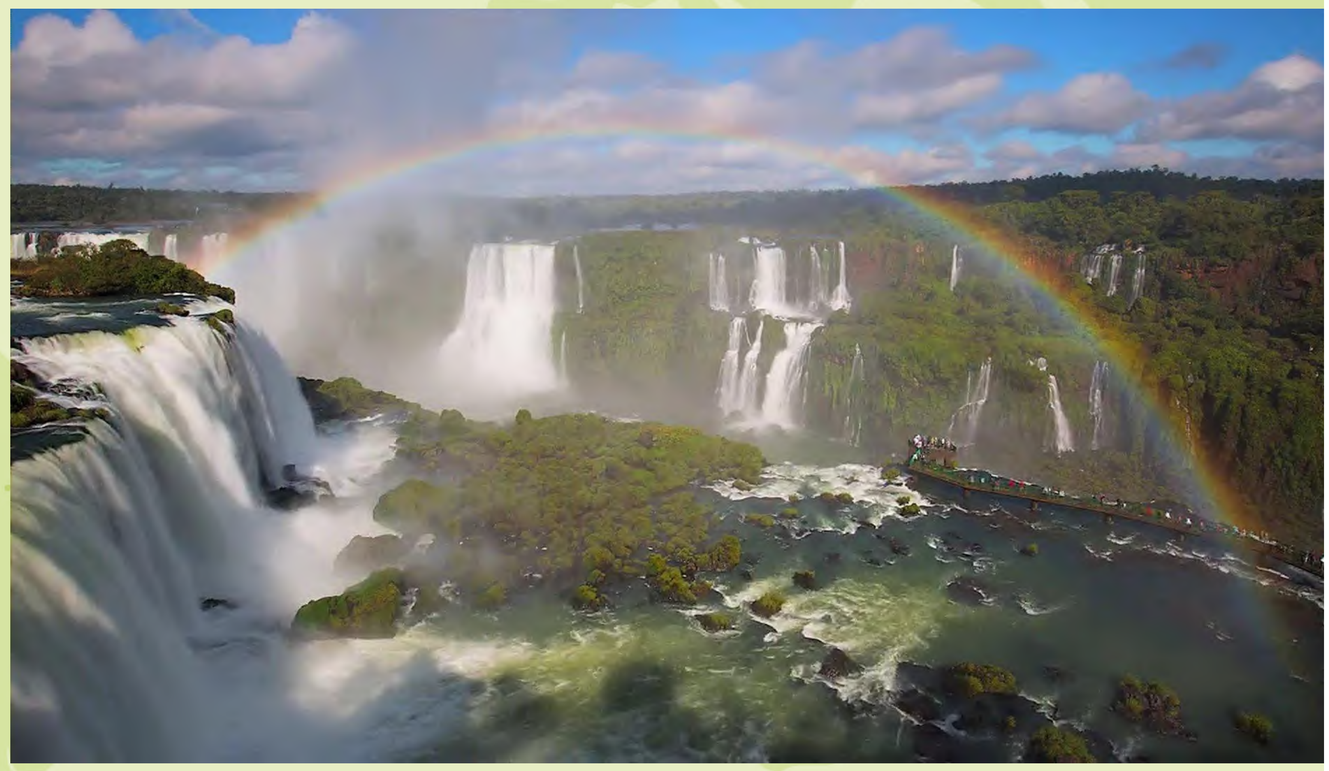
Federal Public Prosecutor's Office and Socialism and Liberty Party; Terra de Direitos and others as “amicus curiae” vs National Congress and Presidency of the Republic

MAIN TOPICS

Forest Code / Payment of Environmental Services / Control of Constitutionality / Fundamental Right to Environment

CONTACT

André Barreto: andre@terradedireitos.org.br



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LEGAL REMEDIES FOR RESOURCE EQUITY

DIALOGUE CONFERENCE

NAMATI
INNOVATIONS IN LEGAL EMPOWERMENT

BANKING ON FOREST LOSS FOR ECONOMIC GROWTH

MANJU MENON / INDIA

Well before the strategies to combat climate change became popular concepts, the Indian government had a system of offsetting forest loss due to extractive industry and infrastructure projects under the legal framework of the Forest (Conservation) Act (FCA), 1980. Initially forests lost had to be matterialy compensated. But since 2005, monetary valuation of forests has been added to the implementation framework. The dual strategies of valuation and compensation that govern the mechanics of the FCA have converted forests into decontextualised, mobile and tradable commodities between regions. Through the case study of the FCA, we see that there is a continuity between domestic regulation on forests and the abstractions created by the climate change discourse. If good outcomes have escaped the FCA, what can we expect from the conservation strategies under the climate change regime?

DATE OF ISSUANCE

25 October 1980

NAME OF LEGISLATION

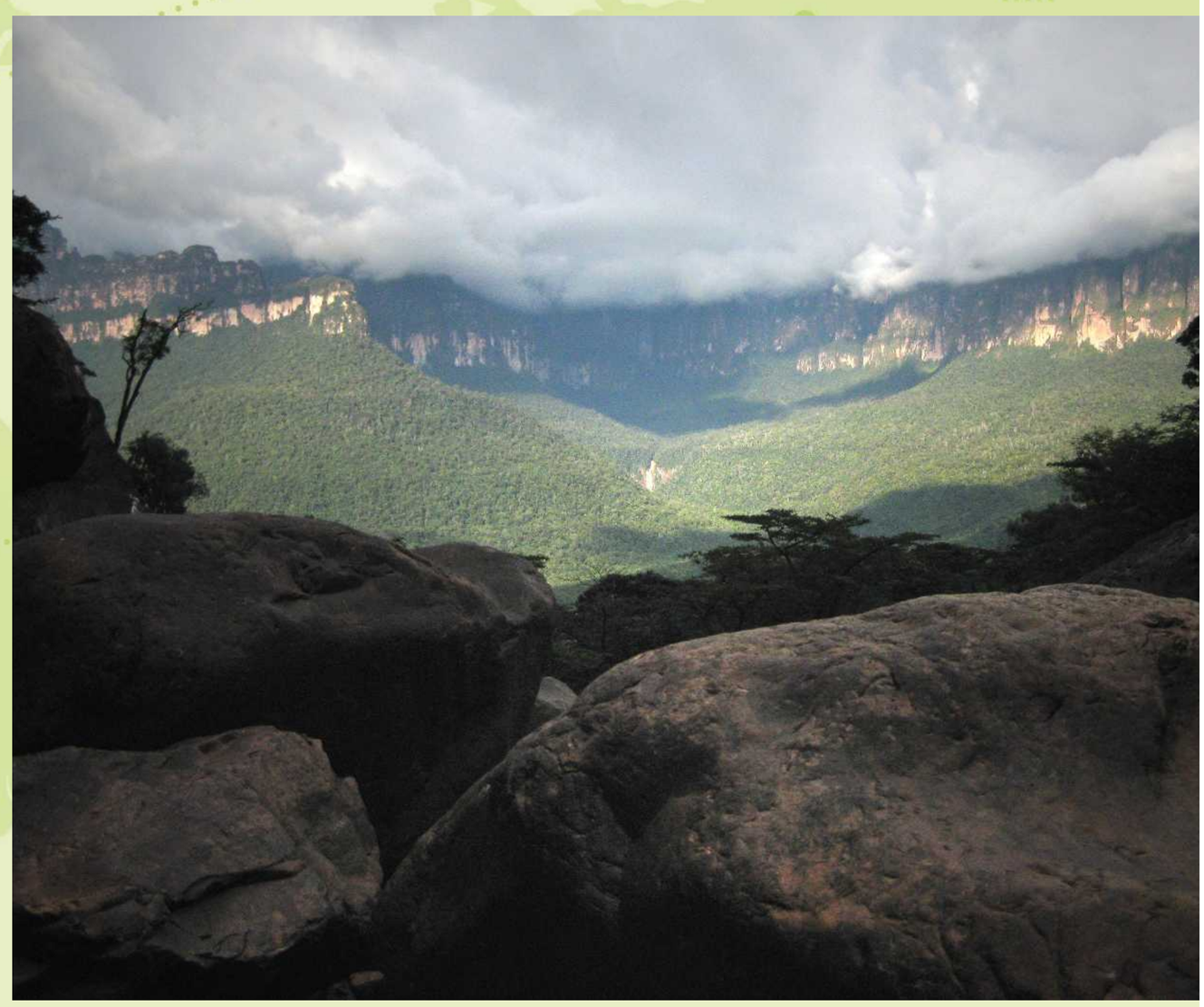
Forest (Conservation) Act

MAIN TOPICS

Evolution of the implementation framework / Pressure of monetary valuation of forests

CONTACT

Manju Menon: manjumenon1975@gmail.com



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ELAW Environmental Law Alliance Worldwide