VENEZUELAN LEGISLATION AND PUBLIC ADMINISTRATIVE ORGANIZATION RELATIVE TO ENVIRONMENTAL PROTECTION

JUDITH RIEBER DE BENTATA *

The political executive group that in presidential government is usually called Administration, may contribute substantially to the protection of environment. This contribution, however implies a previous requisite of legal competence.

Environmental problems demand immediate responses that should be always adequate and scientifically correct. To reconcile fast action and legal authority, laws on environmental matters must contain only sets of general dispositions. Public administration may then develop these general rules into detailed regulations. The individualized dispositions generated in this manner will constitute the legal framework needed to institute and put into operation the required legal mechanisms. These mechanisms will, obviously, vary from one country to another as the degrees and modes of contamination differ also among nations.

At this point we should note that it is a highly convenient policy for developing countries to profit by the experience of highly industrialized nations. This means anticipating pollution crisis by preventive measures, instead of waiting until a grave critical situation arises. Once this stage is reached, there is no alternative but to enforce drastic legal limitations that impose high-priced strategies against contamination which are gravely detrimental to national economy.

Public administration may avail itself of different means to fight contamination. A first type of such means is embodied in legal limitations to private personal activities. Limitative provisions may adopt the form of a system in which a certain activity of an individual would require prior authorization. It may also consist of relative or partial prohibitions aided by absolute prohibitions in the case of highly contaminant substances or in the event of very persistent materials. A different approach is represented by legal delimitation of protective zones, reserve areas, and so forth.

* Assistant Professor at the Institution for Public Law.

Another form of administrative action in this question may be to subsidize activities that may help in the struggle against contamination: i.e. the construction of treatment plants or the financial aid to a conversion in production systems to attain reduction in the quantity or quality of contaminating emissions.

Subventions may also be granted to promote anti-contamination research, and to create scholarship funds favoring the training and education of specialized scientists and technicians.

Administration can also be empowered to use tax-exemption or tax-reduction stimuli to promote the adoption of anticontamination procedures by industrial and commercial concerns.

A different legal mechanism may consist of the economic penalization of those whom could be called "contamination delinquents". That which contaminates must pay the price of decontamination. If this contamination refers to industrial or commercial activities, there will be, of course, a transference of costs to the consumer or user. The negative aspects of such a transference will probably be offset by the public's preference towards less contaminating products. In the case of prime-necessity goods, in which an increase in price is not desired, the Administration may apply the subvention procedure outlined above.

It should be clear from what has been stated, that administrative authorities have access to a wide range of legal mechanisms to regulate contaminating conducts.

Venezuela has not defined an orderly and systematic set of governmental policies pertaining to the protection of environment. There are some disperse legal dispositions that endeavor to regulate separately different aspects of the problem.

A great number of such regulations are entirely outdated and were originated by the legislator without definite purposes of environment protection, and their meagre effectiveness in the field is only an accidental occurence.

The distribution of legal competences among governmental agencies of different hierarchy aggravates the situation, originating in some instances and undue duplication of functions, creating, in other cases, antagonistic authority action, and generally causing undesirable omissions in the environment-protection activity of the Administration.

Let us now proceed to examine the legislation in force on these matters. Related administrative organization shall be analyzed later in this report.

The Constitution of Venezuela [1] declares, in the section relative to economical rights, that "the State will attend to the defense and preserva-

[1] National Constitution, January 23, 1961. Article 106.

tion of natural resources within its territory"... The sovereignty, authority, and vigilance over the territorial sea, the neighbouring maritime zone, the continental plattform and the aerial space of the State will be exercized and performed in the manner and extension prescribed by the law. Ownership and utilization of useful materials and natural resources existing in the zones and space indicated before, will also conform to the dispositions of the law.[2]

Venezuela has signed and ratified international conventions on these matters, such as the "Convención para la Protección de la Flora, de la Fauna y de las Bellezas Escénicas Naturales de los Países de América". This convention was signed on October 15, 1940, and was ratified by Congress on October 9, 1941. Venezuela was also a signatory of a treaty for the constitution of the "Unión Internacional para la Protección de la Naturaleza", approved by the law of July 31, 1961. The nation has also been a party in a series of treaties relating to sovereignty rights of ocean waters, and to the utilization of these, as well as to contamination of sea waters by oil.

Venezuelan legislators have made ample use of the mechanisms of authorization and prohibition described before to protect the environment Delimitations of reserve zones have also been widely used.

The "Ley Forestal de Suelos y Aguas", in force since December 30, 1965, regulates matter pertaining to the preservation, protection, and utilization of renewable natural resources. This body of law utilizes legal mechanisms of prohibitions, authorizations, and delimitation of specially protected areas. A general principle of this law states that any natural or juristic person applying for the obtention of any type of authorization, permit, or franchise relative to the subject matter of this law, shall justify the right to do so. If the applicant is acting on behalf of a third party, the application shall be made on power from the rightful owner.

Any activity that may cause destruction of vegetation must be authorized by the government agency called Ministerio de Agricultura y Cría, in charge of these matters. This rule applies both for publicly or privately owned lands (Article 34).

Article 64 of this law states that the exploitation and utilization of forestal products must be conducted in accordance with its provisions. This rule applies both to public and private forestlands. If the utilization of forestal resources takes place in nationally owned forestland and implies destruction of productive species in zones which must be mantained as forested areas, said utilization will be effected in conformity with the officially approved plan on forestal resources management. Private entities

[2] National Constitution cited, Article 7.

may be authorized to carry into effect a certain plan. This authorization may take the form of a contract, a concession, or a franchise (Article 65, first paragraph) and will never exceed a term of 50 years (Article 68).

Utilization of privately owned forestal resources is also conditioned by the observance of the corresponding plan of forestal resources management. This plan must be previously approved by competent authorities (Article 74) and its provisions can only be modified by authorization proceeding from the same authorities (Article 76). When the owner of a forest abandons its exploitation, such a course of action must be notified to the abovementioned Ministerio. The fact that exploitation is suspended, precludes any other kind of utilization of the forest resources by the owner, who is held responsible for any violation of the plan and can be correspondingly penalized, except in a case of *force majeure* (Article 77).

The law we are studying indicates that soils will be only utilized in accordance with their specific agrological capacity. A competent agency will perform the research activity required to effect a general classification of the nation's territory, considering its declivity, state of erosion, soil fertility, and climatic factors (Article 83). To our knowledge, no such research has been effected.

Any utilization of soil must be done without destroying the physic integrity of the soil and its productive capabilities. The technical standards for utilization of soil are determined by additional by-laws. (Article 84.)

Authorities in charge of these matters can decide whether it is convenient or not to perform research work on soil preservation cases and to put practical preservative measures into practice (Article 85). If the owner of the land on which research and protective measures are to be effected does not grant permissions to proceed, the Ministerio will, nonetheless continue the work until its completion. To safeguard the owner's rights, the law requires prior order from a judge of the first instance of the respective jurisdiction. Expenses will be covered by the uncooperative owner. If the economical status of an owner is not adequate for the covering of such expenses, the Ministerio will supply technical and financial help.

Only publicly-owned water is regulated by the law we are examining (Article 88). Privately-owned water is regulated by the civil law. Any person that intends to utilize water by virtue of acquired rights, must obtain a concession from the Executive Power (Article 89).

The right of the state to grant such a concession suffers from a limitation in the case of rivers having their source in a privatelyowned land. In this case, the river remains private property as long as it runs within the limits of the property and the owner can not be deprived of his right to use the water, unless it can be proved that the owner's utilization of

water is impairing a third party's rights or endangers public health (Article 90). Any concession granted by the state should safeguard those rights pertaining to third parties.

The contract executed with the purpose of granting a concession to utilize publicly-owned waters, must be approved by the National Congress. Such contracts may be gratuitous or onerous. They cannot be executed when the utilization of water affects navigational activities or when there is interference with the potable water supply of cities, villages or towns.

This priority systems that favours navigation and potable waters needs, does not seem adequate. A generally held opinion contends that in any case of multiple utilization of waters, the Administration discretionally determine the relative importance of each manner of utilization, considering the peculiarities of the zone.

Even in the case of potable water supplies that at first sight appear as a top priority utilization, a sound consideration may, in some instances, lead to different conclusions. It may be more economical and convenient to bring potable water from some other sources and let the local body of water be used for different purposes.

It should be noted, besides, that cost and benefit are not the sole valid reasons in problems of this kind, which always imply a social element.

If the discretional power of decision should be vested in the authorities, it would be necessary to complete the system with a set of rules, aimed at protecting the basic citizen's rights involved.

In this law, the utilization of subterranean waters is regulated by a separate section. The owner of the terrain is free to drill a well or to dig ditches in it. A new drilling must always be done without interfering with a neighbouring well operation. This means that drilling must be done with a separation of a certain distance and, in the case of wells feeding aqueducts, each drilling must be situated at a minimum distance of 400 meters from each other. When drilling artessian wells, the owners must apply adequate measures to preserve the aquiferous layer (Article 94).

This separate regulation of surface and subterranean waters is violatory of a fundamental postulate pertaining to the scientifical utilization of water. The principle in question states that the fall of rain water that may concur to form a river is the same that filters itself into the ground and becomes subterranean water. Both may be evaporated later, turn into a cloud and pour again as rain. This constitutes what is called the hydrological cycle.

A similar criticism may be directed against our legal distinction between publicly and privately-owned water. It becomes extremely difficult to determine the moment in which a spring (that is private property according

to our laws) enhances its volume of water to the point of turning into a publicly-owned river.

In its Article 95, the law we are discussing contains a disposition that directs the government agencies to take an inventory of subterranean and superficial waters existing in the country. This inventory has never been taken, althought its usefulness wass perceived and its formulation ordered in several laws more than 30 years ago.

Another body of law, the "Ley de Protección a la Fauna Silvestre", dated August 11, 1970, regulates the protection and rational utilization of the wild fauna and its products. It also controls hunting activities.

The system of prohibitions and authorizations, and the issue of licenses, are widely employed throughout this law, as means to the attainment of its objectives.

Hunting must be licensed (Article 9). The preys of the furtive hunter shall be confiscated (Article 10). Any license can be discretionally revoked by competent authorities (Article 59). The competent Ministerio may demand, if it is deemed necessary, the fulfillment of special requisites in order to issue a license (Article 56). In this law, hunting is also the capture and collection of wild fauna products (Article 8). There is a distinction between commercial, scientific, and sport hunting. The destruction of harmful animals represents yet another category of hunting.

The animals obtained in scientifical hunting expeditions must be shared with the respective Ministerio, in the terms stated in the corresponding license (Article 64).

Sport licenses may be general and special. The first kind enables the hunter to go after any type of animals, whereas the second allows only the capture of a certain species.

The Ministerio de Agricultura y Cría, that is legally in charge of these matters, may prohibit, partially or totally, the hunting of certain animals and also forbid the collection of its products, to avoid the extinction of the species (Article 11). However, the underlying general principle in this law seems to be the tendency to allow hunting in all terrains not expressly vetoed for the purpose, whether publicly or privately-owned. The obtention of a prior license is the only means of control. Hunting on private land requires the consent of the owner (Article 49).

National Executive Authorities, acting through a competent Ministerio, may determine dates for hunting seasons and hunting zones (Article 70).

Hunting is not allowed in National Parks. It is also forbidden in wild fauna refuges and sanctuaries. Other vetoed areas are the "Reservas de Fauna Silvestre" y las "Reservas Forestales", save dispositions to the contrary from the corresponding Ministerio. Similar prohibitions make

hunting illegal in areas close to populated zones (Article 73 specifies diverse prohibitions in its paragraphs 1 to 8).

There is also a set of limitations protecting certain types of animals that are only valuable when alive, and those species useful to agriculture and silviculture (Article 78). Rare species are equally protected (Article 77) as well as those whose products may be collected or utilized without necessarily killing them.

There are several exceptions to the preceeding rules. Hunting those species may be authorized for scientific purposes, for sanitary reasons, or for the sake of protecting agriculture, silviculture, and so forth (Article 78).

A series of dispositions deal with acceptable and unacceptable hunting methods (Articles 81 to 85). Commercialization and industrialization of wild fauna is also regulated by means of necessary licenses, that are equally required to export and import wild fauna and its products (Articles 86 to 89).

Penalties for violations to this law consist of fines, confiscation of hunting equipment and preys, as well as of their products. Fines may be converted into temporary arrests (Articles 100 a 103).

The "Ley de Pesca de Perlas" was enforced in October 6, 1944 and regulates several types of fishing and diving both in public and private waters. It refers to all kinds of animals life in ocean, river or lake waters (Article 1). It also contains dispositions pertaining to the collection of eggs.

Utilization of explosive materials under the water requires a previous authorization by two government agencies: the Ministerio de Defensa and the Ministerio de Agricultura y Cría (Article 7). A similar authorization must be obtained in the event of scientific explorations. In this late case, if the capture of animals is implied, the Ministerio de Agricultura is entitled to a specimen of every different kind (Articles 6 and 12).

Permits are also needed for pearl diving in general, without legal distinction between commercial, scientific or sport aims (Article 13). Special permits are required for sponge diving, for the capture of river turtles, and for fishing in reserved areas (Article 14). No permit is necessary if fishing is done for domestic consumption, or if it is to be practied in ocean waters or lakes communicating with the sea (Article 13).

The competent Ministerio will determine fishing and non fishing seasons, as well as fishing areas. It also may reserve certain zones, issue regulations on the stages of fish life when fishing is permissible, and accept or reject fishing methods.

The law that is being examined prohibits fishing in amounts that exceed those that may be consumed, utilized or sold (Article 25). Finally, there

is a disposition prohibiting the discharge of oil, petroleum and any other harmful materials into bodies of water (Articles 20 to 24).

Penalties for infringement of this law are fines that fluctuate from 50 to 50,000 bolivares.

In the subject of environmental contamination, a very important body of law is the *Ley de Vigilancia para Impedir la Contaminación de las Aguas por el Petróleo*, a law dating from November 25, 1937.

The legal mechanisms of this law consist basically of prohibitions.

Crews of oil transportation ships can only discharge ballast in apropriate sites (Article 6). There is a similar disposition for crews of ships that use oil as combustible, prohibiting them to throw crude petroleum, diesel oil, petrol, greasy materials, or mixed waters carrying greasy substances in a proportion sufficient to form on the water surface a visible iridiscent film that can be detected with the naked eye in a calm atmosphere into bodies of water (Article 9). The prohibition applies to ships of any nationality.

Infringers are penalized with fines ranging from 100 to 5,000 bolivares.

The law under discussion does not regulate in an efficient manner the problem of water contamination by oil. Fine penalties appear inadequate nowadays, and it is obvious that the amounts implied are not proportional either to the damage that may be caused nor to the cost of oil elimination from the water. Big companies will surely find it cheaper to pay the fine than to adopt the required preventive measures.

Another chapter on the subject of this report is opened by the *Ley de Abonos y demás Agentes susceptibles de operar una acción beneficiosa en plantas, animales, suelo o agua*, of July 3, 1964.

It gives the Nation's Executive Power competency to regulate the "manufacture, importation, exportation, inspection, storage, sale, purchase, distribution, and use" of an assortment of materials. The main items in a long series are: fertilizers, fungicides, bactericides, insecticides, herbicides, defoliators, nutrients, prime materials, and nutritional complements for the use of animals (Article 4).

Importation, exportation, selling, manufacture, and distribution of such substances requires an authorization (Article 5).

Notice that the list of activities requiring authorization does not include private use. This is a capital omission. Unreasonable utilization of this type of materials by average citizens may bring about serious damages.

We have already pointed out in the previous analysis of the legal system of Venezuela, that our legislators have employed as legal mechanisms of regulation, a system of prohibitions and authorizations, complemented in several instances by the legal delimitation of reserve zones and protective zones. This areas appear in our laws under different names. The purpose

behind the delimitation of such areas is to exert a restriction of the activities to be performed within their boundaries. Reasons for this limitation may be found to be different in every particular case.

We will now present some pertinent instances.

The above mentioned Ley de Pesca de Perlas (August 10, 1944) regulates pearl diving by the prior authorization method (Article 11). The Ministerio de Agricultura y Cría, is legally able to dictate special resolutions to demarcate pearl-forming zones, and to prohibit, except through special authorization, the practice of any other activity alien to pearl-diving, that implies underwater use of rakes, or utilization of diving head equipment (Article 4).

In the same direction, the already cited *Ley Forestal de Suelos y Agua*, declares as national parks, all regions that by virtue of their natural beauty of scenery, or by reason of the national importance attributed to their fauna and flora should merit that type of qualification (Article 10).

The National Executive Power, will determine the expropriations of private property pertinent to the purpose, carrying them into effect with regard to respective laws. Save in the case of land dedicated to agriculture or cattle raising, the owners of expropriated lands have no right to indemnification (Article 15).

National parks can only be utilized for recreational and educational purposes, and as sites of touristic interest or scientific investigation (Article 12).

Another form of the same idea may be found in protective zones.

In terms of the law, protective zones are areas surrounding water springs or other sources of water currents; areas in paralellism with chains of mountains; marginal areas of rivers and other water courses, and areas bordering lakes and lagoons, in the extension determined by the law (Article 17). Other potential protective zones may be the areas related to hydrographic basins, if pertinent; the areas required to sustain wind breaking curtains; the zones close to centers of population, if they serve the end of regulating climatic or environmental conditions (Article 18).

Agricultural and cattle-raising activities, and other that may lead to vegetal destruction are vetoed in protective zones, except in the cases permitted by law (Article 19).

It is apparent that when a protective zone is so created, a serious curtailment of the rights to private property enters into effect. Yet, there is no indemnification to private owners that could be adversely affected (Article 20).

The Executive Power is competent, according to the law, to create

forestal reserves. These reserves will consist of vast masses or clumps of trees, that due to their geographical situation, or the quality and quantity of their timber, or else because they are the sole mass of trees available in a given demarcation, are essential for the operation of the national timber industry (Articles 54 and 55).

Another limitation to the scope of private property is carried into effect by the dispositions of the abovementioned "Ley de Protección a la Fauna Silvestre". This body of law declares the creation of Reserves, Refuges or Sanctuaries for wild fauna a matter of public utility (Article 5).

Wild-Fauna Reserve Zones are those dedicated to put into practice plans pertaining to the management of wild-animal groups, and in which hunting activities may be performed (Article 11).

Wild-Fauna Refuges, are those areas required to protect, preserve and promote reproduction of wild animals. The animals in question may be resident or migratory, and species in danger of extinction are specially protected (Article 31). A Wild-Fauna Sanctuary is a piece of land that serves as a means of protection or a site or reproduction for native wild animals, and that may also fulfill the same functions with respect to imported species or relative to wild animals brought from diverse regions of the country.

ADMINISTRATIVE ORGANIZATION [3]

The Administration agencies legally apt to intervene in environmental problems are numerous and of unequal hierarchy. These two circumstances, operating simultaneously, greatly complicate matters. They also serve to explain the absence of a nationally coordinated and integral plan to face environment questions.

Thus, the Dirección de Recursos Naturales Renovables, a section of the Ministerio de Agricultura y Cría, is competent to formulate policies and devise plans of action pertaining to natural renewable resources. The Oficina Nacional de Pesca (a subsection of the already cited Ministerio) is competent with respect to sea fauna. And both the Oficina Nacional de Sanidad Vegetal and the Dirección de Investigaciones (components of the same Ministerio) are competent on questions of vegetal sanitation.

Programming activity performed at these levels of hierarchy, is defective because its objectives are fragmentary: The environmental problems are not visualized as an interrelated whole. Solutions or strategies are put forward and carried into practice separately. Flora, fauna, soils, water,

[3] The "Comisión de Administración Pública" is the author of a most interesting work on the subject. (Renewable Natural Resources Sector) that has not been published. It has been the source of data in this section of my Report.

etc., are related environment factors but they are considered as isolated and unique problems.

Even the Dirección de Recursos Naturales Renovables of the multicited Ministerio de Agricultura y Cría, that by its administrative importance should formulate overall plans, is only concerned in practice with forestal resources, and particularly with timber exploitation.

A different official agency, the Comisión del Plan Nacional de Aprovechamiento de los Recursos Hidráulicos (COPLANARH), an administrative dependency of the Ministerio de Obras Públicas, seeks as its main objective the formulation of a national plan for water. We find here again the same defficiency, because water is only one factor of environment.

National budgeting follows the same pattern. Budgetary allowances are made specifically for agriculture, timber industrialization and so forth, but there is no allocation for natural resources or environment protection. The operation of the budget is made with a system of priorities and the distribution of funds is adjusted to said priorities. The degree of urgency is determined by immediate needs and sometimes by the pressure of public opinion.

In this way, the general plan for protection of environment, a plan that could be called the Nation's plan becomes a simple aggregate of sectional programs with no possibility of coordination at national level.

It becomes impossible to obtain a good coordination due to the fact that each ministerial entity occupies itself with a particular sector and its activity is equally sector-minded. The broad conception of a general effort aimed at protection of environment as a whole simply does not exist.

This situation is aggravated by the activities of the autonomous institutes that are legally competent in environmental matters. The operation of these institutes is coordinated personally by the President through yet another entity, the Consejo de Institutos Autónomos. This council is a section of the Oficina de Coordinación y Planificación de la Presidencia de la República.

The operation of the aforementioned council has not been very efficient, insofar as natural resources are concerned.

With a planning system as the one described, it is not possible to expect a good administrative action. As stated before, the lack of a complete visualization of the whole field implied, leads as stated before, to duplication of efforts and functions, or laternately, to a total administrative inaction.

There is also the question of a disorderly distribution of competences and supervisory power.

In the Ministerio de Agricultura y Cría there are three competent offices in the sector of natural resources. There are also four subordinate

sections endowed with similar competency, but their supervisory authority is not any of the three mentioned offices. Within the same Ministery one can find still four more sections, but these are under the control of an autonomous institute (Instituto Agrario Nacional).

Competency for the same sector is also vested in the Ministerio de Obras Públicas. Three dependencies of this Ministerio, namely the Dirección de Recursos Hidráulicos, la Dirección de Información Básica, and COPLANARH are legally enabled to act in the matter of natural resources. The Instituto Nacional de Obras Sanitarias (organizationally a part of the Ministerio) has two divisions also working in this field.

The Ministerio de Minas e Hidrocarburos may also lend a hand through one of its divisions. Even the Ministerio de la Defensa has something to say in these matters, because one of its divisions, a department, and a section can equally intervene in the sector of natural resources and environment. The picture is completed by the existence of municipal competences on the matter.

If the preceeding exposition is not sufficient to put across our contention, we may add two more specific examples.

In the study of soils one can find, working without any frame of common coordination: *a*) the División de Conservación de Suelos y Aguas de la Dirección de Recursos Renovables; *b*) the Sección de Suelos de la Dirección de Investigación del Ministerio de Agricultura y Cría; *c*) the División de Edafología de la Dirección General de Recursos Hidráulicos of the Ministerio de Obras Públicas; *d*) the Dirección de Geología y Suelos of the Departamento de Estudios y Proyectos del Instituto Agrario Nacional; *e*) some activities of the Instituto Nacional de Canalizaciones; *f*) the Corporación Nacional de Turismo; *g*) the Comisión para el Desarrollo del Sur, and *h*) the Corporaciones Regionales de Desarrollo. That is a total of 13 official entities with different hierarchy.

And now for the second example. On the gathering of information related to water resources, and in the utilization of said resources, there is a concurrence of activities of the following administrative entities. *a*) the División de Conservación de Suelos y Aguas, controled by the Dirección de Recursos Naturales Renovables, a dependence belonging to the Ministerio de Agricultura y Cría; *b*) the group of Hidrología y Climatología, a fraction of the Sección de Geología e Hidrología del Instituto Agrario Nacional (also a part of the Ministerio de Agricultura); *c*) the División de Hidrología of the Departamento de Estudios y Proyectos del Instituto Nacional de Obras Sanitarias (a part of the Ministerio de Obras Públicas); *d*) the División de Hidrología of the Dirección General de Recursos Hidráulicos, of the aforementioned Ministerio de Obras Públicas; *e*) the División de Hidrología of the Dirección de Geología of the Ministerio

de Minas e Hidrocarburos; *f*) the COPLANARH; *g*) the Departamento de Meteorología (that belongs to the Air Forces command); *h*) the División de Meteorología, and finally, *i*) the observatory named after José M. Cajigal. The two entities cited at the last belong to the Dirección de Hidrografía y Navegación, that, in turn, belongs to the Naval Force command. One can still add to this long list, the activities of some regional organizations.

The question of air pollution is theoretically under the charge of municipal authorities. It should be remembered that air pollution is not a thing that dissipates by itself at the sight of a municipal boundary.

We believe that the preceeding digression constitutes sufficient proof of the grave dispersion of functions that can be found in the administrative organization of Venezuela in matters pertaining to environment protection and to natural resources. Something effective must be urgently done to put an end to such a confusing situation.

A committee, appointed by the Attorney General, has lately completed the preliminary draft of a new *Ley de Conservación, Protección y Mejoramiento del Ambiente*, that has been submitted to Congress for discussion and, eventually, approval. This new law project considers as a viable solution of the problems involved, the vesting in the President and his council of Ministers, of "the supreme conduction of a national policy aimed at the preservation, protection and improvement of the environment" (Article 12).

The proposed law provides also for the creation of a national council.

This Consejo Nacional para la Conservación, Protección y Mejoramiento del Ambiente is to be directed by a presiding member, appointed or dismissed directly by the President. The remaining members of the council will be representatives of each Ministerio or Instituto with an interest on the subject. The list of Ministerios involved may be seen in Articles 16 and 17 of the proposed law.

The above mentioned national council must proceed to the formulation of a national plan of preservation, protection, and improvement of the environment. It will also suggest the budgetary assignations required to put into effect this national plan.

The national council will coordinate the activities required for the execution of the plan, acting besides as the supervisor of activities and as an evaluator of their results.

Another function of the aforementioned council, will be to act as an advisory group in the formulation of new laws on the subject. This council will promote the unity of action of public powers with diverse levels of authority, and will seek to achieve cooperation between private citizens and authorities.

It can be seen that in this manner a single government agency will be in charge of all the aspects of the problem.

CONCLUSIONS

We have examined some aspects of the laws of Venezuela that directly or indirectly regulate environmental problems and try to protect the environment.

This examination has revealed a grave dispersion of the respective regulations, that unconnectedly float around in different laws. There is also evidence of a separation in time, that manifests itself in differences of approach and objectives. A law on sanitary, vegetal, and animal deffension dating from 1941, contains derisive penalties, fines ranging from 10 to 500 bolivares for diverse infringements of its rules. The law on bactericides, defoliators, insecticides, etc. quoted and commented above does not make more sense in the question of penalties. This law falls short of its objectives in the use of the authorization system, as evidenced by several important omissions already noted.

It is also clear that the legislation in force in Venezuela was not formulated as a result of a well-planned overall policy aimed at a general protection of environment. Much to the contrary, it appears to be only the response to different needs arising in diverse moments. This explains its lack of coherence. The legislator has been forced to pay attention to many seemingly unrelated problems such as basal contamination, human activity contamination, protection of the fauna and the flora, and so forth.

The existence of a vast body of laws relative to the subject under discussion is undeniable. The analysis of a few representative samples has shown, however that the utilization of traditional mechanisms of prohibition and authorization, aided by severe limitations to private property disguised under different names, have vainly attempted to protect animal and vegetal species.

Looking around us, we can perceive that other countries have put into effect diverse legal means to protect environment as a whole. Foreign legal mechanisms in use nowadays include, as measures aimed to prevent contamination, a policy of stimulus. Good examples of this policies are the subsidization granted to private enterprises and citizens to meet legal exigencies. We favor a policy of subventions.

So far, our best accomplishments are the proposed Ley sobre Conservación, Protección y Mejoramiento del Ambiente, that was examined above, and another proposed law on the subject of water contamination by oil.

And yet, none of these two preliminary drafts are truly satisfactory. The mechanisms of protection against water contamination by oil, are founded on the idea of responsibility. In the case in question, responsibility is the less determinable factor. No efficient and rapid courses of action to be followed by the Administration or by the culprit have been included in this proposed law.

Returning now to the proposed law on preservation, protection and improvement of the environment we find again a very unpromising situation. Its texts appear to be only a digest if already existing dispositions, supported by the same structure of prohibitions and authorizations.

An honest appraisal of the Venezuela situation shows a dangerously advanced environmental degradation, that increases with the passing of days. This critical condition is partly a result of the people's unobservance of the law and partly a consequence of the negligence of administrative authorities to enforce existing laws. It is only reasonable to assume that if former laws have not been observed and enforced, those to come will be born to an identical destiny.

The chaos of administrative organization has been vividly presented and there is nothing more to be added.

Nothing really effective for the protection and improvement of environment can be done as long as the lack of a wilful determination to protect and improve ambient conditions remains as a prevailing factor.

A radical change of attitude will bring forth better laws and an improved governmental organization. Then and only then shall we have the basic tools for working out a true policy of environmental protection.