

ENVIRONMENTAL LEGISLATION IN VENEZUELA

EXECUTIVE SUMMARY

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1. The use and exploitation of natural goods and resources are recognized within the sphere of the sovereignty of States and the geographic space in which they have jurisdiction. On the other hand, people's individual and collective right to development is recognized.
2. Since the last third of the twentieth century and so far in the twenty-first, the international community and global civil society, together with States, have assumed that both the exercise of law in its individual and collective dimension and the efficient use and exploitation of natural resources cannot be carried out at any price, that not everything is fair to achieve current development and that this must be achieved without compromising the welfare and quality of all generations, present and future generations both immediate and remote.
3. Environmental regulation in Venezuela underwent a transformation with the 1999 Constitution, which introduced the postulates that will frame the "Environmental Constitution," or if you prefer, the "Ecological Constitution."
4. The Magna Carta recognizes, in the first place, the individual and collective human right to enjoy a healthy life and environment. It also stipulates the intergenerational duty to protect and maintain the environment, to benefit present and future generations. And finally, it contemplates the obligation of all those who carry out activities that may cause damage to ecosystems to carry out a prior environmental impact study to guarantee the conservation of the ecological balance and sustainable development.
5. Secondly, the fundamental text imposes on the State to exercise a triple dimension: declarative (recognition of the right), preventive (respect, protection, and effective guarantee of the right), and reparatory and punitive (in the event that the right is affected or injured, investigation of what happened, reparation to the victims, sanctions to those responsible and adoption of measures that guarantee non-repetition), which ensures the exercise of the individual and collective human right to a healthy and protected environment.
6. Likewise, the State has the duty to develop a policy of environmental democracy (access to information, consultation and citizen participation, as well as effective judicial recourse) and land use planning oriented toward the postulates of sustainable development.
7. And finally, the fundamental text established the environmental clause of conservation of the ecological balance and restoration of the environment to its natural state, which must be in all administrative authorizations that allow activities susceptible to affect natural resources.
8. In environmental matters, there are five laws in force (organic laws for Land Management, Urban Planning, Health, Environment and the Environment Criminal Law), as well as a decree containing the Norms on the environmental assessment of activities likely to degrade the environment.

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9. In terms of air quality, there is a law (on Water and Air Quality) and five decrees containing regulations on emissions to regulate and control the consumption, production, import, export, and use of ozone-depleting substances, as well as others on emissions from mobile sources, for the control of activities likely to generate atmospheric pollutants and those related to smoke-free environments.
10. In the water sector, there are five laws in force (on Surveillance to Prevent Water Pollution by Oil, on Water, on the Provision of Drinking Water and Sanitation Services, on Meteorology and National Hydrology, and Water and Air Quality) and nine decrees with different regulations such as those related to activities capable of obstructing watercourses and sedimentation problems; for the surveillance of hydraulic works; for the classification and control of the quality of water bodies and liquid discharges of effluents; for the use of water resources and river basins; for the management of water quality in the basins of the Yaracuy River and Lake Valencia; for the control of drinking water transported in tanker trucks; for the construction and maintenance of wells drilled for drinking water supply and on the national registry of users of water sources.
11. Meanwhile, concerning the management of hazardous materials and wastes, there are two laws (on Hazardous Substances, Materials and Wastes, and on Integrated Management of Socio-natural and Technological Risks), one regulation (on pesticides), and four decrees containing, among other things, technical standards and procedures for the management of radioactive material; for the control of the recovery of hazardous materials and the management of hazardous wastes; and for the registration and authorization of handlers of dangerous substances, materials and wastes.
12. In terms of non-hazardous waste management, there is a law (on Integral Waste Management) and two decrees that contain the sanitary norms for the design and operation of a sanitary landfill for solid waste of a non-toxic nature and the management of solid waste of domestic, commercial, industrial or any other non-hazardous nature. A ministerial resolution also prohibits the dumping of scrap metal and debris in areas not provided for such purposes.
13. In the area of noise, there is a decree containing the Rules on the Control of Noise Pollution. In addition, there is also a Biodiversity Management Act.
14. In forestry matters, there are two laws (Soil and Water Forestry Law and Forest Law), as well as eleven decrees (Partial Reform of the Regulations of the Soil and Water Forestry Law; on the Regulation of Activities Involving the Destruction of Vegetation for Agricultural Purposes; on the Rules on Commercial and Multiple Use Forest Plantations; which strictly prohibits the occupation and carrying out of activities contrary to the purposes of their creation, in forest reserves and wooded lots; on the Regulations for the protection of morichal forests; on the Partial Regulations of the Soil and Water Forestry Law on Reforestation in Forestry Operations; on the Regulations for the protection of mangroves and their associated living spaces; on the administration of forestry activities

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in forest reserves, woodlots, wooded areas under protection and wooded areas on privately owned land intended for permanent forestry production; on the Rules to regulate the introduction and propagation of exotic species of wild and aquatic flora and fauna; which provides that rural properties, whether privately owned or in the private domain of the Republic, states or municipalities, on which permits are requested to intervene or exploit renewable natural resources, and especially permits for deforestation and/or the exploitation of forest resources, must set aside an area of the total surface area of the property being requested as a wildlife reserve, which must remain essentially unaltered; on the Regulation on the retention, confiscation and adjudication of forest products; which declares the portion of the national territory specified therein (Arapo-Santa Fe coastal axis, Sucre State) to be an area of environmental protection and recovery; the one that dictates the procedural norms of the partial regulation of the Forestry, Soil and Water Law; and that which establishes the rules for the preparation of development and management plans in areas to be used for permanent forest production in forest reserves, vacant lots and other lands in the public or private domain of the Nation, as well as private property) and ten ministerial resolutions (the one which prohibits, throughout the country, the felling, deforestation and exploitation or use of the species drago (*Pterocarpus* species) and jobo (*Spondias* species) in natural forests on lands in the public or private domain of the Nation; which prohibits the felling, exploitation and deforestation of the laso pine (*Decussocarpus rospigiosii*) and any other species of the Podocarpaceae family, found on land belonging to the public or private domain of the Nation; The one that transfers to the Venezuelan Forest Service, for its administration and integral management, all forest products resulting from logging and deforestation works made available to the Office by the holders of mining and oil concessions located on uncultivated land; the one that prohibits logging, deforestation and the exploitation or harvesting of the species indicated therein; The decree granting the Directorate of Vegetation of the Sectoral General Directorate of Environmental Information the authority to process and grant permits for the collection of botanical species indicated therein; the decree protecting mahogany, cedar, mijao, pardillo negro, acapro and saquisaqui; the decree establishing the regulations on authorizations and permits for rational use, deforestation and logging in urban areas; the decree establishing the technical forestry regulations on the selection and preservation of seed trees; the technical forestry standard on minimum cutting diameters, and the Rules for regulating the use, affectation and sustainable harvesting of the saman species).

15. In the field of wildlife there are two laws (for the protection of wildlife and for the protection of free and captive domestic fauna), six decrees (that which issues the Partial Regulations of the Wildlife Protection Act on the National Wildlife Council; that which issues the Rules for regulating the introduction and propagation of exotic species of wild and aquatic flora and fauna; on hunting in special areas and natural ecosystems; that which declares the species included or not on the official list of game animals indicated therein to be off-limits to hunting; that which

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declares the species included or not on the official list of game animals to be endangered; and that which issues the Regulations of the Wildlife Protection Act on the National Wildlife Council; which provides that the species indicated therein are considered to be in danger of extinction; and which establishes the Regulations of the Wildlife Protection Act); and a ministerial resolution (which provides that the exercise of sport hunting shall be governed by the provisions contained in this resolution and by the specifications contained in the hunting calendar to be drawn up by the Ministry of the Environment and Natural Resources).

16. In terms of mineral regulation, there is a law (Mining Law), two decrees containing the Regulations of the Mining Law and another decree that establishes the rules for regulating the impact on renewable natural resources associated with the exploration and extraction of minerals. Finally, a ministerial resolution that contains the rules on requirements for the environmental assessment of mining programs and projects and the exploration and production of hydrocarbons.
17. To regulate the areas under the special administration regime, two decrees that establish that the national Executive will not recognize indemnifications that are claimed for occupations or uses of such lands in the lands qualified as national parks, forest reserves, natural monuments, protective zones, hydrographic basins and reserves of virgin regions, and another one by which the partial Regulation of the Organic Law for the Territorial Regulation on Administration and Management of National Parks and Natural Monuments is dictated. There are also two ministerial resolutions to regulate fishing may be permitted in national parks and which prohibited off road driving in national parks and natural monuments.
18. Continuing in the area of national parks, two decrees regulate the recreational areas of the reservoirs and another that contains the partial regulation of the Law of the National Parks Institute for the administration of parks for open-air recreation or intensive use. Finally, ministerial resolution prohibits the illegal occupation of spaces declared as national parks, natural monuments, as well as recreational parks.
19. The beaches also have a Beach Conservation and Sanitation Law.
20. Concerning the execution of works, five presidential decrees contain, among other things, rules on the use of reservoirs built by the Venezuelan State and their adjacent areas; rules for the opening of pikes and construction of access roads; those that regulate activities capable of causing changes in flow, obstruction of watercourses and sedimentation problems; those related to earthworks and environmental conservation; and for the location, construction, protection, operation and maintenance of wells drilled for the supply of drinking water.
21. A presidential decree issued the regulations establishing the actions to be taken to combat forest fires.

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22. Coastal, maritime, and island areas are regulated by five laws (Law on the Territorial Sea, Continental Shelf, Fisheries Protection and Airspace; Navigation; Conservation and Sanitation of Beaches; Coastal Areas and Aquatic Spaces). On the other hand, marine ports are regulated by five laws (Navigation; Reactivation of the National Merchant Marine; Maritime Procedure; General Ports and Marinas and Related Activities).
23. Fishing and aquaculture are regulated by a law (on Fishing and Aquaculture), a presidential decree that contains the conservationist technical norms to control the exercise of fishing activities; a ministerial resolution that stipulates the order to regulate the capture, exchange, distribution, trade, and transport of sharks; and an administrative order to regulate the fishing or capture of the hydrobiological resource sardine (*Sardinella aurita*).
24. The exploitation of land is regulated by two legal texts (Law on Special Zones for Sustainable Development and Law on Land and Agrarian Development), as well as by a presidential decree regulating the installation of pig farms and a ministerial resolution containing rules on chicken manure.
25. There are three presidential decrees in the area of environmental protection, the one that dictates the Regulation of the Organic Law of the Environment on the Boards for the Conservation, Defense, and Improvement of the Environment, the one on the Regulation on Environmental Protection and the one that creates the Environmental Police.
26. The Venezuelan legal framework is also nourished by the different international treaties that the Republic has signed on environmental matters. Thus, in the area of flora and fauna, eight instruments have been signed since 1941 (the Convention for the Protection of the Flora, Fauna and Natural Scenic Beauty of the Countries of the Americas; the Constitution of the International Union for the Protection of Nature; the International Plant Protection Convention; the Convention on International Trade in Endangered Species of Wild Fauna and Flora; the Amazon Cooperation Treaty, the Convention on Wetlands of International Importance as Waterfowl Habitat and its Amending Protocol, the Convention concerning the Protection of the World Cultural and Natural Heritage of UNESCO and the Protocol concerning Specially Protected Areas of Wild Fauna and Flora).
27. Venezuela has signed three treaties on climate change: the United Nations Framework Convention on Climate Change, the Kyoto Protocol, and the Paris Agreement.
28. The Republic has signed five covenants related to protecting the ozone layer: the Act Approving the Vienna Convention for the Protection of the Ozone Layer; the Montreal Protocol on Substances that Deplete the Ozone Layer; and the three amendments it has undergone over the past 20 years.

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29. It has also signed seven treaties aimed at combating hydrocarbon pollution. These texts are: The International Convention on the Prevention of Pollution of Seawaters by Oil and its 1962 Amendment; the Protocol Concerning Cooperation in Combating Oil Spills in the Caribbean Region; the International Convention on Civil Liability or Damage Caused by Pollution of Seawaters by Oil and its Protocols of Amendment; the International Convention on Oil Pollution Preparedness, Response and Cooperation; and signed an agreement with the Netherlands to establish an Oil Spill Contingency Plan to protect shorelines and marine environments.
30. It also signed the Agreement between the Member States and Associate States of the Association of Caribbean States for Regional Cooperation in the Area of Natural Disasters.
31. It also signed three agreements related to the management of polluting products or wastes. These texts are: The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal; the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade; and the Stockholm Convention on Persistent Organic Pollutants.
32. On desertification, it has signed the International Convention to Combat Desertification, while it has signed six instruments on biological diversity and biotechnology. These are: The Statute of the International Centre for Genetic Engineering and Biotechnology and its amendments, the Convention on Biological Diversity; the Cartagena Protocol on Biosafety to the Convention on Biological Diversity, the International Treaty on Plant Genetic Resources for Food and Agriculture; and the Nagoya Kuala Lumpur Protocol on Liability and Redress Supplementary to the Cartagena Protocol on Biosafety.
33. The Convention on Fishing and Conservation of the Living Resources of the High Seas; the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region; the 1978 Protocol to the International Convention for the Prevention of Pollution from Ships; the Inter-American Convention for the Protection and Conservation of Sea Turtles; and the Agreement on the International Dolphin Conservation Programme).
34. Likewise, in the last decades, the Republic has signed six other instruments that deal with different matters, such as the Convention of the International Hydrographic Organization; the Agreement between the Government of the Republic of Venezuela and the Government of the Kingdom of the Netherlands for the Supply of Raw Water to Aruba; the Amending Protocol to the Andean Subregional Integration Agreement or Cartagena Agreement of 1997; the Agreement between the Republic of Venezuela and the Government of Suriname on Cooperation in the Conservation and Exploitation of Hydrobiological Resources; the Agreement between the Governments of the Republic of Venezuela and the Kingdom of Spain on the Araucaria-Los Roques Programme and the Agreement for the Establishment of the Sustainable Tourism Zone of the Caribbean.

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35. Although there is abundant international, constitutional, legal and administrative regulation on environmental matters, which could give the impression that everything is duly regulated, the truth is that there are several aspects that have been developed in the international sphere and, specifically, in the American continental environment, which are still pending incorporation and development by the Venezuelan State.
36. The Kyoto Protocol and the Paris agreement on climate change, which establishes the commitment to reduce the emission of greenhouse gases to reduce global warming, require that nationally appropriate, adequate, and effective legislative, administrative and judicial measures be adopted so that all actors involved in the country act with due diligence, to honor the obligations undertaken and make the contributions to the reduction of greenhouse gases, as well as the fulfillment of the commitments made.
37. Venezuela has not signed the Escazú Agreement, the first regional treaty on human rights and the environment signed by most of Latin American and Caribbean states. This text laid the foundations of the so-called "environmental democracy."
38. Regarding the international recognition of the environment as a human right, it should be pointed out that it is a declaration established within the framework of the Inter-American System of Human Rights in the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) and that more recently it has been recognized by the United Nations Human Rights Council, through a resolution of 28 July 2022, in which it declared that a clean, healthy and sustainable environment is a universal human right.
39. The foregoing leads us to propose an agenda of tasks pending for the Venezuelan State to ensure the effectiveness of Human Rights related to the environment and to comply with the commitments freely and sovereignly acquired.
40. A first task would be to advance in the energy transition, which requires planning and state responsibility to achieve the decarbonization of the economy in the shortest possible time without sacrificing people's quality of life. It means continuing to take advantage of energy resources of fossil origin, invest in them and increase the use of energy resources of renewable origin, which allow sustainability in its triple dimension. Beyond the slogans, no concrete plan has been drawn or made public.
41. Tackling the climate crisis calls for measures to reduce greenhouse gas emissions and adaptation-oriented actions compatible with human rights from an intergenerational perspective.
42. Guarantee access to safe drinking water and sanitation. Although they are independent rights, they are interrelated and are a guarantee of the exercise of other human rights such as life, health, food, and decent housing, especially for those groups of people in situations of greater vulnerability.

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43. The express recognition of environmental democracy to guarantee real access to public information in general and on environmental issues in particular, both formal and material participation in decision-making related to public affairs, and the existence of an effective judicial recourse for the protection of human rights, all oriented towards strengthening the "glass house" which should be the State, in transparency and accountability to society and the international community. Thus, it has been demonstrated that without the participation of society to achieve the development of environmental issues, the action of the State is not enough. On the contrary, it must establish accurate and effective co-management and co-administration mechanisms, which unfortunately are alien, beyond the official slogans, to the activity of the Venezuelan public administration.
44. An institutional reform aimed at giving real importance to the environmental issue and ensuring that environmental and socio-cultural impact studies are carried out per international and inter-american standards to prevent negative consequences from project execution. The tragic example of the Arco Minero shows how the lack of these studies leads to systemic and repeated human rights violations without the State even recognizing the problem's existence.
45. The great challenge for the Venezuelan petro-state is to assume its share of environmental responsibility and sustainable development as a hydrocarbon producer and to initiate and accelerate the significant shift toward a new development model that is not anchored solely to the extractive industries, that is less polluting, that is oriented towards a circular economy and more compatible with the effective exercise of human rights of present and future generations.

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