Participatory Rights in the Honduran Renewable Energy Sector
An International Environmental Law perspective

Alicia Vargas
Acknowledgements

First, I would like to praise and thank God for countless blessing He has giving me, and for this journey been one of them. I express my sincere gratitude to the Swedish Institute for the funding of this master program as part of the SI Scholarships for Global Professionals program, and for making me be part of this incredible leaders’ network.

Further, I would like to thank my supervisor Brita Bohman for the guidance, comments and recommendations on this thesis. Thanks to all the professors in Environmental Law program and classmates that made this journey interesting through the knowledge and experiences sharing. Also, I would like to recognize my mentors from my last job, who inspire me to discover passion for environmental law.

Last but not least, I would like to extend my gratitude to my family and friends who have been cheering me up, giving me support, strength and love from miles away so I could complete this experience.

¡Gracias!
Participatory Rights in the Honduran Renewable Energy Sector

An International Environmental Law perspective

Abstract

This study approaches participatory rights regime that includes Access to Environmental Information, Public Participation in decision making and Access to Justice in relation to environmental matters. It explores the Honduran law with the purpose of verifying if the regulations that control and manage the renewable energy sector are compatible with the participatory rights regime that International Environmental Law and Human Rights Law states. Renewable energy specifically hydropower generation has marked the development of the entire energy system in Honduras, however it is going to explain how a hydropower energy dominated system became a thermal energy dominated system. The purpose of this thesis follows the idea that, to change this thermo-energy policy it is vital the application of a participatory rights regime, this is why it is going to identify the participatory rights provision inside its national law.

The conclusion of this study is that Honduran law recognizes basic environmental rights and participatory rights provisions in the broad hydropower framework, primarily due to its international commitments. But fails to accomplish the norm objectives due to the fact that the law itself doesn’t establish a procedural framework, on the foundation of respect (requires states to refrain from interfering with the enjoyment of the right), protection (requires states to prevent others from interfering with the enjoyment of the right), fulfillment (requires states to adopt appropriate measures to ensure the full realization of the right).
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Spanish</th>
<th>English</th>
</tr>
</thead>
<tbody>
<tr>
<td>ATIC</td>
<td>Agencia Técnica de Investigación</td>
<td>Technical Agency for Criminal Investigation</td>
</tr>
<tr>
<td></td>
<td>Criminal</td>
<td></td>
</tr>
<tr>
<td>CNE</td>
<td>Comision Nacional de Energía</td>
<td>National Energy Commission</td>
</tr>
<tr>
<td>COPINH</td>
<td>Consejo Cívico de Organizaciones</td>
<td>Civic Council of Popular and Indigenous</td>
</tr>
<tr>
<td></td>
<td>Populares e Indígenas de Honduras</td>
<td>Organizations of Honduras</td>
</tr>
<tr>
<td>DESA</td>
<td>Desarrollos Energéticos S.A.</td>
<td>Energy Developments Corp.</td>
</tr>
<tr>
<td>ECLAC</td>
<td></td>
<td>Economic Commission for Latin America and the Caribbean</td>
</tr>
<tr>
<td>ENEE</td>
<td>Empresa Nacional de Energía Electrónica</td>
<td>National Electricity Utility</td>
</tr>
<tr>
<td>ESMAP</td>
<td></td>
<td>Energy Sector Management Assistance Program</td>
</tr>
<tr>
<td>ICF</td>
<td>Instituto de Conservación Forestal, Áreas Protegidas y Vida Silvestre</td>
<td>Institute of Forest Conservation, Protected Areas and Wildlife</td>
</tr>
<tr>
<td>MADJ</td>
<td>Movimiento Amplio por la Dignidad y la Justicia</td>
<td>Broad Movement for Dignity and Justice</td>
</tr>
<tr>
<td>NAAEC</td>
<td></td>
<td>North American Agreement on Environmental Cooperation</td>
</tr>
<tr>
<td>OAS or OEA</td>
<td>Organización de Estados Americanos</td>
<td>Organization of American States</td>
</tr>
<tr>
<td>SERNA</td>
<td>Secretaria de Recursos Naturales y Ambiente</td>
<td>Secretary of Natural Resources and the Environment</td>
</tr>
<tr>
<td>SINEIA</td>
<td>Sistema Nacional de Evaluación de Impacto Ambiental</td>
<td></td>
</tr>
</tbody>
</table>
Table of Content:

Acknowledgements........................................................................................................ ii
Abstract.......................................................................................................................... iii
List of Abbreviations: ...................................................................................................... iv
Table of Content: .............................................................................................................. v
1. INTRODUCTION ........................................................................................................ 8
  1.1. Background description .......................................................................................... 8
  1.2. Purpose and research questions ............................................................................ 9
  1.3. Limitation ............................................................................................................... 9
  1.4. Method and materials .......................................................................................... 10
  1.5. Disposition ........................................................................................................... 11
2. PARTICIPATORY RIGHTS FRAMEWORK .................................................................. 12
  2.1. What are Participatory Rights? ............................................................................. 12
  2.2. International Human Rights Law .......................................................................... 14
  2.3. Aarhus Convention .............................................................................................. 15
  2.4. Escazu Agreement ............................................................................................... 15
  2.5. Access to Environmental Information ................................................................. 16
  2.6. Public Participation in decision making ............................................................... 17
  2.7. Access to Justice .................................................................................................. 18
  2.8. Analysis to Jurisprudence ..................................................................................... 19
3. PARTICIPATORY REGIME IN HONDURAN LAW & INSTITUTIONS ..................... 21
  3.1 Legal background ................................................................................................... 21
  3.2 Energy background ............................................................................................... 22
    3.2.1 Energy crisis in Honduras ................................................................................. 22
    3.2.2 Actions taken by the government ..................................................................... 23
    3.2.3 Crisis developed between projects, communities, and government ............... 25
  3.3 Pillars of the Participatory Regime ........................................................................ 26
    3.3.1 Access to Environmental Information ............................................................ 26
    3.3.2 Public Participation in decision making ........................................................... 27
    3.3.3 Access to Justice ............................................................................................. 28
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.4</td>
<td>Institutions involved</td>
<td>28</td>
</tr>
<tr>
<td>4</td>
<td>COMPLIANCE ASSESSMENT</td>
<td>29</td>
</tr>
<tr>
<td>4.1</td>
<td>Access to Environmental Information</td>
<td>30</td>
</tr>
<tr>
<td>4.2</td>
<td>Public Participation in decision making</td>
<td>31</td>
</tr>
<tr>
<td>4.3</td>
<td>Access to Justice</td>
<td>32</td>
</tr>
<tr>
<td>5</td>
<td>CONCLUSIONS</td>
<td>37</td>
</tr>
<tr>
<td>5.1</td>
<td>Conclusions</td>
<td>37</td>
</tr>
<tr>
<td>5.2</td>
<td>Recommendations</td>
<td>37</td>
</tr>
<tr>
<td>6</td>
<td>BIBLIOGRAPHY</td>
<td>39</td>
</tr>
<tr>
<td>6.1</td>
<td>Literature</td>
<td>39</td>
</tr>
<tr>
<td>6.2</td>
<td>Articles</td>
<td>40</td>
</tr>
<tr>
<td>6.3</td>
<td>Honduran Laws</td>
<td>40</td>
</tr>
<tr>
<td>6.4</td>
<td>Treaties</td>
<td>41</td>
</tr>
<tr>
<td>6.5</td>
<td>Websites</td>
<td>41</td>
</tr>
<tr>
<td>6.6</td>
<td>Reports</td>
<td>41</td>
</tr>
<tr>
<td>6.7</td>
<td>Court Cases</td>
<td>42</td>
</tr>
</tbody>
</table>
1. INTRODUCTION

1.1. Background description

The world is facing rising of extreme weather with heatwaves, wildfires, storms, and floods, leaving devastation. Arctic sea ice is disappearing faster every year and biodiversity is decreasing, among other climate change consequences. Leaders and scientific community suggest the transition to low emission economies driven by renewable energy, sustainable food systems and nature-based solutions. United Nations proposed net zero emissions by 2050, cut global emissions by 45% by 2030 from 2010 levels, and support developing countries in achieving a just transition from fossil fuels to renewable energy-based economies.

Governments have been implementing ‘environmental-friendly’ policies, to achieve United Nations goals, this includes the generation of renewable energy. Nevertheless, behind this purpose, a crisis has emerged between governments, companies, and communities. This situation is causing energy crisis, contaminated ecosystems, and violence against environmental defenders. This is the case of renewable energy projects in Honduras.

Energy is a crucial element for economic development and quality of life in any economy. The supply of reliable and quality energy services at a reasonable cost is essential for economic growth. In Central America, energy security is a major concern due to the fact that these countries are net oil and fossil fuel importers. With exception of two countries, which have small amounts of crude oil reserves, there are no proven hydrocarbon reserves in the rest of the region.1

Communities’ involvement or public participation is essential for the development of renewable energy projects, transition of low carbon emission industries and protection of environment. The principal issue is that in most cases the interaction between locals and developers is not handled efficiently. This leads to excessive delays in project completion which inflicts a cost on society; or social acceptance is never attained, in which case disgruntled locals are victims of negative externalities.2

A ‘participation explosion’ has been occurring throughout the world over the last four decades. By whatever name – ‘public participation’, ‘citizen involvement’, ‘indigenous peoples’ rights’, ‘local community consultation’, or other variants – the concept that the governed should engage in their own governance is, quite literally, gaining ground and rapidly expanding in both law and practice. Public participation promises to define and redefine the major economic development projects of the Twenty-first Century – and few sectors will be more impacted on by this that the mining, energy, and resources-development industries. New international and national laws and practices are injecting this ‘human dimension’ into resources planning, financing, licensing, and

operating activities on a global scale. Until recently, the development of any major project was typically controlled by the project developer, financer, landowner, and the government with jurisdiction over the site. While those relations will continue to be critically important, the new public participation laws are introducing a spectrum of additional ‘players’, such as environmental and human rights organizations, local communities, indigenous peoples and their advocates, citizen advisory boards, and other new voices.\(^3\)

1.2. Purpose and research questions

This study aims to research if and how Honduran law ensures local communities’ influence in decision making and meaningful consultation on issues that affect them when installing and operating renewable energy projects. It also aims to analyze the 3 pillars of the international framework in this regard: access to environmental information, public participation, and access to justice.

In order to fulfill this purpose, this study focuses specifically on the following questions:

1. What is the participatory rights framework that international law entails?
2. How is Honduran law reflecting participatory rights framework in its national law, concerning renewable energy projects?
3. How do Honduran law and institutions apply participatory rights in practice and what are the potential obstacles?

1.3. Limitation

This thesis will be addressing the Participatory Rights regime mainly focusing on the Aarhus Convention framework. Although it is a treaty applicable to Europe, the Caucasus region, and Central Asia, is the most advanced treaty establishing provisions on access to information, public participation in decision-making, and access to justice in environmental matters. Other regional UNECE environmental conventions have been created that are applicable in parallel to the Aarhus Convention.\(^4\) This includes the Escazú Agreement that applies to Latin America and the Caribbean and considering a focus on Honduran law, this thesis is also addressing the Escazu Agreement as well and other rights granting instruments. Respecting the renewable energy sector, it entails a variety of technologies, but the focus of this paper will be only on hydropower projects in Honduras.

---


1.4. Method and materials

The study in this thesis will be based on the legal dogmatic method. The formal legal dogmatic approach is aimed at identifying legal principles that characterize the system of law, its institutions and branches. The legal dogmatic method is associated with the application of the rules of logic and language, since the existence of law is inherent in the normative material: legal acts, treaties, orders, judgments, etc., and their interpretation in connection with specific events.\(^5\)

For this study the specific event is the installation and operation of hydropower projects in Honduras. Thought out the method it will be analyze relevant legal sources, such as statutes, case law and legal literature, in order to determine what constitutes the current state of the legal regime and how certain legal issues should be solved. Furthermore, as the purpose is to investigate the Participatory Rights framework in International Environmental Law and linked it to Honduran National Law is necessary to review it through the Teleological Interpretation. Teleological interpretation is used for three purposes: (1) to promote the objective for which the rule of law was made, the review of 2 important principles of the Escazu Agreement; (2) to prevent unacceptable consequences to which a literal interpretation might lead, and (3) to fill gaps which may otherwise exist in the legal order.\(^6\)

With the use of the legal dogmatic method and teleological interpretation, this thesis will try the answer the main issue on how do Honduran law ensures local communities’ influence in decision making and meaningful consultation on issues that affects them when installing and operating renewable energy projects, in light of the compatibility of International and National Environmental Law. By defining first, the international law framework and then linking it to the Honduran national law framework.\(^7\)

The materials chosen for this study are primary sources of international environmental law such as treaties, focusing on Aarhus Convention and Escazu Agreement regime, and judicial decisions of international law. For the examination of the domestic law, this paper uses constitution, national environmental legislation, administrative laws, and specific regulations Also uses secondary resources such as literature, articles, report from multilateral banks or other international entities, and electronic resources. The author mentions statistics from reports of international organizations, this is due to the lack of measured data in the government’s entities official sites.

---


\(^7\) This focus follows, Ebbesson, J. (1996). *Compatibility of International and National Environmental Law.* Iustus Publishing Company., as a tool for the study of this thesis.
1.5. Disposition

This study starts in section 1 with a background introduction and setting the objectives of this study through research questions. The following section (Section 2) it illustrates the participatory rights international framework, starting with the human rights law perspective, then addressing the two most relevant convention in which this paper is going to be focusing on: Aarhus Convention and the Escazu Agreement. Further it develops the 3 basic pillars of the Participation Rights Regime: Access to Environmental Information, Public Participation, and Access to Justice, once the reader could have a vision on the international law, it could be easier to examine the national law. Section 3 will focus more on Honduran domestic law, in order to respond to the research questions this section introduces a short historical background on energy market and crisis generated, legal actions taken by the government that led to the reforms that Honduran law has today. Additional it develops on the legal framework that contains participatory rights provisions, starting broadly in the Constitution and narrowing to specific laws. Then, it builds up in what happens in practice, mentioning the institutions that regulates renewable energy projects and their function. Section 4 provides a compliance assessment, using indicators to verify to what extend Honduran law complies with them. Section 5 finalizes with conclusions and recommendations according to the given legal provisions and the problem identified.
2. PARTICIPATORY RIGHTS FRAMEWORK

This section provides an examination of the Participatory Rights regime, the aim is to set the legal framework in which the subsequent sections are going to be referring to.

2.1. What are Participatory Rights?

Environmental Rights include procedural environmental rights and substantive environmental rights. Procedural Rights also known as Participatory Rights, include the right to information, the right to participate in the decision-making process, and the rights to remedies. The idea behind the mobilization of participatory rights rests upon the argument that because of their paramount importance, environmental issues should not be left to the discretion of governments.8

Background

The Stockholm and Rio Declaration represent major milestones in the evolution of international environmental law, bracketing what has been called the “modern era” of international environmental law.9 Principle 10 of the Rio Declaration states:

“Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”10 (emphasis added)

Although Principle 10 has some antecedents in, for example, the work of the Organization of Economic Co-operation and Development, it nevertheless represents a trail blazer, laying down for the first time, at a global level, a concept that is critical both to effective environmental management and democratic governance.11

Three Pillars

Rights in environmental matters includes three mayor forms by which the legal regime is constitute today, this are access to information, public participation in decision making and access to justice. Each form is treated differentially in the law, but without losing sight of their interrelationship, as no one of the three can succeed without the other two. As reflected in

---

numerous hard and soft law pronouncements, these three categories or ‘pillars’ of rights are considered to be ‘a prerequisite to effective national and international management and protection in matters relating to environment and development’.\textsuperscript{12}

i. The right to \textbf{access to environmental information} means that all environmental information should be publicly available on request, unless refusal to disclose information is justified on any of the listed grounds.

ii. \textbf{Public participation in environmental matters} refers to the rights and opportunities for members of the public to engage in a wide range of environmental decision-making.\textsuperscript{13}

iii. \textbf{Access to justice in environmental matters} means that representatives for interests that enjoy protection under the law are able to defend those interests by taking legal action in an independent and impartial court or tribunal.\textsuperscript{14}

There are different regional instruments created to regulate participatory rights, provisions have been drafted according to the region’s environmental reality, culture, and history. Some of them include:

- Aarhus Convention is one of the most important ones, because it is the first document completely about public participation in environmental matters, and also because it establishes a strong link between environmental procedural rights and substantive rights to environment.
- Escazu Agreement is another important instrument applicable for Latin America and the Caribbean, the Agreement has similar pillars as Aarhus Convention: i.) Guarantee the full and effective implementation of the Rights of Access to Environmental Information. ii). Promote public participation in the decision-making process. iii). Promote access to justice in environmental matters, as well as the creation of instruments that allow the protection and security of environmental defenders.
- In North America, where the Escazu Agreement does not apply, the 1993 North American Agreement on Environmental Cooperation (NAAEC) provides for public participation in environmental matters. By comparison, the minimum standards for public participation in decision-making and access to information in the NAAEC are less ambitious than in the Aarhus Convention and Escazu Agreement. However, the approach to access to justice in the NAAEC is broader in scope. The parties are obliged to generally ensure judicial and administrative enforcement proceedings, whereby violations of domestic environmental laws can be sanctioned and remedied, and to ensure due process and private remedies for suing private actors, requesting governmental action, and seeking injunctions.\textsuperscript{15}

\textsuperscript{13} Ebbesson, J. (2021).
\textsuperscript{15} Ebbesson, J. (2021).
2.2. International Human Rights Law

Almost all international human rights instruments that exist in different regions commonly lack “environmental rights”. This can be explained partly by reasons of age – they were formulated in times when the environmental notion did not exist as a protected interest in legislation – and partly from political resistance. However, many human rights – such as the right to property, to private and family life, the rights of children and, not least, a fair trial – have undergone a certain “greening” in the jurisprudence of the commissions and courts responsible for enforcement in this area.16

Protection of human rights and safeguarding the environment, along with achieving peace and security, are fundamental values of modern international society. Modern international human rights law origins consist of enumerating the fundamental human rights which are internationally guaranteed and protected, along with the state duties to respect and ensure them. After the United Nations adopted the International Covenants on Economic, Social and Cultural Rights and Civil and Political Rights in 1966, many human rights activists turned their attention to developing effective compliance and enforcement procedures to supervise state implementation of human rights. Other individuals and groups have continued to devote their attention to the articulation of new norms or the further elaboration of existing ones in response to new problems that detrimentally impact human dignity and well-being. The issue of environmental degradation impairing or undermining human rights emerged in this context.17 Consequently, the increasing awareness of the need for environmental protection and sustainable development has called for an international standard on information, public participation, and access to justice in environmental matters.

Dupuy and Viñuales makes a classification of human rights into ‘substantive’ and ‘procedural’ nature of a given right. They have identified procedural components (evaluation, monitoring, participation, etc) within a number of substantive general rights. Procedural rights that are specifically environmental where initially outline in Principle 10 of the Rio Declaration, then a subsequent number of instruments have been created, particularly the Aarhus Convention, Bali Guidelines, and Escazu Agreement.18

Human rights law interprets internationally-guaranteed human rights to include an environmental dimension when environmental degradation prevents full enjoyment of the guaranteed rights. Also, Human rights law seeks to ensure that environmental conditions do not deteriorate to the point where the right to life, the right to health, the right to a family and private life, the right to culture, and other human rights are seriously impaired.19 As Judge Weeremantry expressed in the Gabčikovo-Nagymaros Case ruling of the International Court of Justice: “The

---

16 Darpö, J. (2018)


2.3. Aarhus Convention

The Aarhus Convention is a regional instrument that it is consider both the first of its kind and the only one where a sufficient body of practice is developed. The main purpose of this instrument is ‘to contribute to the protection of the rights of every person of present and future generations to live in an environment adequate to his or her health and wellbeing’. With this aim, the Convention requires States parties to implement in their domestic legal systems three clusters of environmental procedural rights. I) Access to environmental information – articles 4 and 5, II) Public Participation in decisions regarding specific activities, plans, programmes and policies relating to the environment, as well as public participation during the preparation of executive regulations and/or legally binding instruments of general application – articles 6, 7 and 8. III) Access to justice in connection with access to environmental information and public participation – article 9. The Aarhus Convention is motivated by the claim that environmental protection policy requires participation from ordinary citizens as well as from scientists and other experts.

2.4. Escazu Agreement

The Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean was adopted at Escazú, Costa Rica, on 4 March 2018 after two years of preparatory meetings (2012-2014). The agreement is open to 33 countries in Latin America and the Caribbean, of the 24 signatories, it has been ratified by 12: Antigua and Barbuda, Argentina, Bolivia, Ecuador, Guyana, Mexico, Nicaragua, Panama, Saint Vincent and the Grenadines, Saint Kitts and Nevis, Saint Lucia, and Uruguay. Honduras is still not part of the agreement.

---

21 Darpö, J. (2018)
23 ECLAC (n.d.) Observatory on Principle 10 in Latin America and the Caribbean. United Nations. [link]
The Escazú Agreement, administered by Economic Commission for Latin America and the Caribbean (ECLAC) is heavily influenced by and follows the structure of the Aarhus Convention, although it more explicitly links the obligations of the parties to the rights of the public. Thus, the parties ‘guarantee’ minimum rights for the public to access to information, participation in decision-making, and access to justice. It also relates the participatory elements to a broader range of principles and concepts intended to guide implementation by the parties, such as non-discrimination, no regression (ie not to reduce the rights), prevention, precaution, and intergenerational equity. 24

In principle of non-regression and principle of progressive realization, States must not allow actions that have the effect of undermining the legal protection of the environment or access to environmental justice. This aspect is fundamental in the Latin American and the Caribbean region, where it is frequently observed little consistency on the part of the political class with environmental issues, which is aggravated when there are changes of government. Given the lack of safe and stable environmental governance, the Escazu Agreement stands as a legal instrument capable of curbing the irrational deterioration of the environment through respect and the submission to the principles of non-regression, and the promotion of better policies through the principle of progressiveness. 25

Moreover, the Escazu Agreement places greater emphasis on persons and groups in vulnerable situations and on indigenous peoples than the Aarhus Convention. The agreement also obliges the parties to guarantee the public’s rights of access to information on request, subject to possible grounds for refusal, and to guarantee that relevant environmental information is indeed generated, collected, and disseminated.

2.5. Access to Environmental Information

Access to environmental information is a prerequisite to public participation in decision-making and to monitoring governmental and private sector activities. It also can assist enterprises in planning for and utilizing the best available techniques and technology. The nature of environmental deterioration, which often arises only long after a project is completed and can be irreversible, compels early and complete data to make informed choices. Transboundary impacts also produce significant demands for information across borders. 26

The definition of environmental information stated in the Aarhus Convention includes 3 types of information: (a) information on the state of elements of the environment; (b) information on factors affecting or likely to affect the elements of the environment; (c) information on the state of human health and safety, conditions of human life, cultural sites and built structures, etc. 27 The definition given in Escazu Agreement is less detail, but it contains the same intention as Aarhus’, which include: elements, environmental risks, impacts (or factors) affecting or likely to affect. A

27 Aarhus Convention Article 2.3
“right to information” can mean, freedom to seek information, or, a right of access to information, or even a right to receive it. Both conventions define the timing of response to information request and lists the reasons allowed for refusing a request for such information.

Corresponding duties of the state can be limited to abstention from interfering with the public efforts to obtain information from the state or from private entities, or expanded to require the state to obtain and disseminate all relevant information concerning both public and private projects that might affect the environment. If the government duty is limited to abstention from interfering with the ability of individuals or associations to seek information from those willing to share it, then it little may actually be obtained. A governmental obligation to release information about its own projects can increase public knowledge, but fails to provide access to the numerous private-sector activities that can affect the environment. Information about the latter may be obtained by the government through licensing or environmental impact requirements. Imposing upon the state a duty to disseminate this information in addition to details of its own projects provides the public with the broadest basis for informed decision-making.

2.6. Public Participation in decision making

The Aarhus Convention defines the rules on public participation in various forms of decision-making: (i) specific activities, (ii) plans, programmes and policies, and (iii) the preparation of generally applicable instruments. Activities under art 6 generally include activities subjected to the EIA procedure under the UNECE Espoo Convention on Environmental Impact Assessment in a Transboundary Context. Escazu Agreement specifies the rules on public participation in article 7.2 and 7.3, dividing them in 2: i) projects and activities and ii) land-use planning, policies, strategies, plans, programmes, rules and regulations.

Many activities referred to under article 6 of the Aarhus Convention are likely to have a potential impact at the local level. For such activities, the Convention prescribes a fairly formal and detailed public participation process. Required elements include public notice of the proposed activity, detailed information on the proposed activity, transparent opportunities for public comment and participation, reasonable timeframes for participation, and full information disclosure on all relevant aspects of the decision-making process. Participation should take place early in the process when options are still open, and due account must be taken of the outcome of the public participation. Escazu Agreement entails in article 7 similar provisions in the process for public participation, including timing, early participation, information of the proposed activity, opportunity to present observations, international participation etc. This provisions also

29 Aarhus Convention Article 4.2 Timing of 1 month an extension for 1 month / Escazu Agreement Article 5.12. Timing of 30 business days and 10 business days extension.
30 Aarhus Convention Article 4.3 and 4.4. / Escazu Agreement Article 5.5, 5.6.
32 Ebbesson, J. (2002)
emphasis that States must ensure the means to facilitate their understanding and participation for public affected that speaks a different language from the states official one.

Participation requirements related to plans, and programs (article 7 Aarhus Convention) are not specified in similar detail. Public participation should take place in a transparent and fair framework and follow several of the principles established in article 6, including reasonable timeframes, early participation, and due consideration of the outcome of the participation. As far as the development of policies is concerned, article 7 merely specifies that each party shall, to the extent appropriate, endeavor to provide opportunities for public participation, without further defining the concept.33

Article 8 of the Aarhus Convention addresses public participation in the preparation of executive regulations and legally binding normative instruments. It stipulates that draft rules be published or otherwise be made publicly available, that the public should be given the opportunity to comment directly, or through representative consultative bodies, and that the results shall be taken into account as far as possible. This article is even less precise than article 7 and hence gives considerable leeway for individual countries to interpret the provision differently.34 Escazu Agreement includes rules, regulations and policies in the same provisions of Article 7: Public participation in the environmental decision-making process, it doesn’t specify in detail as Article 8 in Aarhus Convention does.

2.7. Access to Justice

Access to justice, is a means for having erroneous administrative decision on environmental issues corrected by a court or another independent and impartial body established by law. The right to access to justice pertains to two kinds of situations.35 First, any person who considers that his or her request for environmental information has been ignored, refused or not dealt with in accordance with the Convention shall be ensured to access to a review procedure before court or another independent and impartial body.36 Second, any member of the public having sufficient interest or maintaining impairment of a right shall be ensured a review procedure before a court of law or another independent and impartial body, to challenge the substantive and procedural legality of any decision, act or omission concerning ‘specific activities’, which may affect the environment.37 This second provision includes the access to administrative or judicial procedures which contravenes provisions of its national law relating to the environment.38

34 Ibid
36 Aarhus Convention, Article 9.1
37 Aarhus Convention, Article 9.2
38 Aarhus Convention, Article 9.3
Access to justice focuses on procedural and administrative matters rather than substantive rules on environmental protection; it centres on the means and remedies available – the opportunities – for members of the public, to have administrative decisions concerning the environmental legally reviewed, corrected and/or annulled – and, ultimately, to have the environment better protected.\textsuperscript{39} The guarantee of access to justice in the Aarhus Convention is provided for violations of rights directly related to access to information and/or participation. The Escazu Agreement is not only guaranteeing the same assumptions, but that extend them to “any other decision, action or omission that affects or may adversely affect the environment” \textbf{article 8.2.c}, which opens the possibility that other principles of international environmental law may be invoked through jurisprudence as \textit{in dubio pro natura} and \textit{in dubio pro aqua}.\textsuperscript{40}

\textit{Institution}

Theoretically, such reviews may be carried out by a variety of institutions, such as administrative authorities, (with different constellations and representations), courts and ombudsmen, but the independence and impartiality of the reviewing institution are essential elements.

\textbf{2.8. Analysis to Jurisprudence}

The participatory rights are recognized not only by non-binding instruments such as the Rio Declaration but also by various bilateral and multilateral treaties. It has also been detailed in the ruling of various international and regional bodies. International judicial bodies play a key role in the determination of the content of international law and can contribute to the recognition of the customary nature of a norm, also they can participate to its development.\textsuperscript{41}

- Pulp Mills case [Argentina v Uruguay]: In this case the ICJ has not yet recognize the right to public participation as a principle of customary international law. Indeed, it refused to recognize the existence of a legal obligation to include public participation in the decision-making process for choices affecting the environment. Argentina argued public consultation based on articles 2.6 and 3.8. of the Espoo Convention, article 13 of the 2001 International Law Commission draft articles on Prevention of Transboundary arm from Hazardous Activities, and Principle 7 and 8 of the UNEP Goals and Principles.\textsuperscript{42} “The Court is of the view that no legal obligation to consult the affected population arises for the Parties from the instruments invoked by Argentina.”\textsuperscript{43} Argentina could have argued that there is a human rights obligation to consult populations. Therefore, despite the fact that the ICJ has not yet recognized the existence of an obligation to include the public in environmental decisions, the right to public participation could be acknowledged later as a general principle of law or as a customary

---

\textsuperscript{39} Ebbesson, J. (2002)
\textsuperscript{40} Jiménez, H. (2020)
\textsuperscript{42} Pulp Mills case on the River Uruguay (Argentina v Uruguay). Paragraph 215.
\textsuperscript{43} Pulp Mills case on the River Uruguay (Argentina v Uruguay). Paragraph 216.
norm, most probably on the basis of globally recognized texts, including human rights instruments and soft law instruments such as the Rio Declaration.\(^{44}\)

- Önerylidiz v Turkey: Applicants submitted a claim grounding on articles 2 (Right to Life), 8 (Right to respect for private and family life) and 13 (Right to an effective remedy) of the Convention for the Protection of Human Rights and Fundamental Freedoms. In this case the International judicial body acknowledge that living in a high-risk zone is enough to trigger a right to participation. If the activities under scrutiny are highly hazardous, the court is most likely to declare a violation.\(^{45}\) The ECtHR stated, “Where such dangerous activities are concerned, public access to clear and full information is viewed as a basic human right.”\(^{46}\) Also court placed that a ‘particular emphasis’ on the public’s right to information about dangerous activities that posed a threat to life.\(^{47}\)

**Concluding remarks**

As it is mentioned earlier, this study will focus on Aarhus Convention and Escazu Agreement framework. Both agreements have the same source of origin, which explains the symmetry that exists in their contents; however, the differences are due in particular to the realities that both correspond to regulate and, in some way, to the development experienced in the twenty years that separate the adoption of the Aarhus Convention versus the Escazu Agreement.\(^{48}\) The Escazu Agreement still faces plenty of challenges in Latin American region, for being practically a new set of laws for social, legal and environmental problems the region has been facing for years. The aim of the following section is to find if the provisions that originated Aarhus Convention and Escazu Agreement could be found in a national law.

\(^{44}\) Duvic, L. (2012).

\(^{45}\) Duvic, L. (2012).

\(^{46}\) Case Oneryylidiz v. Turkey paragraph 62.

\(^{47}\) Duvic, L. (2012).

3 PARTICIPATORY REGIME IN HONDURAN LAW & INSTITUTIONS

3.1 Legal background

Honduras is a civil law country; its General Law of Public Administration Decree No. 146-86 establishes normative hierarchy:

![Figure 1: Honduran Normative Hierarchy.](source)

Source: General Law of Public Administration article 7, Graphic: self-made.

Constitutional Provisions

The Constitution has a social orientation and does not include any specific reference to the right to a healthy and ecologically balanced environment, as it is recognized in most of the Latin American Constitutions. The most specific environmental provision is article 145, in the Health Chapter, that establishes that “It is a duty of the State to conserve the environment suitable to protect the health of its people.” Reformed in 2013, adding a declaration of access to water and sanitation as a human right, guaranteeing the preservation of water.” Further the Chapter on Education and Culture (article 172) states that “the sites of natural beauty, monuments and cultural patrimony of the nation will be under the State’s protection.”

In the Title related to the Economic Regime, Article 340 of Honduras’ Constitution declares that “The technical and rational exploitation of the nation’s natural resources is declared to be of public utility and necessity. The reforestation of the country and the conservation of forests will be declared of national convenience and of collective interest.”

Historically, this type of Constitutional provision is used to give government direct discretion and control over resources that are, or could be, of strategic interest. Typically, this type of authority is used to allow for land use planning, forestry, hydropower, mining, and other activities...

---

49 Article 7, General Law of Public Administration.
[https://www.academia.edu/3010981/Environmental_Policy_Analysis_Report_on_Honduran_Environmental_Laws_and_their_Real_or_Potential_Impact_on_the_Intermediate_Result](https://www.academia.edu/3010981/Environmental_Policy_Analysis_Report_on_Honduran_Environmental_Laws_and_their_Real_or_Potential_Impact_on_the_Intermediate_Result)
activities. It is this constitutional authority that permits the government to declare protected areas and determine appropriate use of natural resources within them and around them.

Treaties Provisions

As it has mentioned earlier, Honduras is not party of the Escazu Agreement, nevertheless, the country is party to other important environmental agreements. Some of them include: Paris Agreement, Kyoto Protocol, the Cartagena Protocol on Biosafety to the Convention on Biological Diversity, Convention 169-ILO on Peoples Indigenous and Tribal, Additional protocol to the American Convention on human rights in the area of economic, social and cultural rights (Protocol of San Salvador), etc.

3.2 Energy background

Planet Earth is facing an energy crisis owing to an escalation in global energy demand, continued dependence on fossil-based fuels for energy generation and transportation, and an increase in world population, exceeding seven billion people and rising steadily. Excessive burning of fossil fuels is not only depleting natural resources, but is resulting in a steady increase of carbon dioxide emissions, which experts believe is responsible for increasing average global temperatures.\(^51\)

Hydroelectric projects are a hemispheric priority to meet the increased demand for energy and water, especially in cities, industry and tourism. These projects, on the one hand, are seen as options to promote economic development, particularly in times of financial crisis, reduce poverty conditions, improve people’s access to and quality of water, and provide clean energy, among others. However, due to several issues, but mainly the lack the application of national and international norms and standards, hydroelectric energy generation have caused severe impacts, both to the environment and to the human rights of the people and communities affected.\(^52\) In the following section I briefly explain the energy system in Honduras and the crisis that only worsen as years pass by, the legal solutions that the government has proposed and its results.

3.2.1 Energy crisis in Honduras

The current structure of the energy sector in Honduras is the result of reforms and policies that date back to the 90s. Energy is managed by the National Electricity Utility (Empresa Nacional de Energía Eléctrica, ENEE), this is a state-owned autonomous organization responsible for the production, transmission, and distribution of electricity in Honduras. Nowadays, the electricity subsector has a single public buyer (ENEE) who buys more than 50% of its energy needs from private generation companies. Regarding access to energy generation information ENEE manages it though statistical bulletins published as monthly reports in PDF format. The public

---

\(^{51}\) Coyle, E.; Simmons, R. (2014). *Understanding the Global Energy Crisis*. Purdue University Press
West Lafayette, Indiana URI: https://directory.doabooks.org/handle/20.500.12854/34143

\(^{52}\) Interamerican Association for Environmental Defense (AIDA). (2009). *Grandes represas en América ¿Peor el remedio que la enfermedad?* https://aida-americas.app.box.com/s/ltm2m8vg8yp2fmxhbcn6lq3id97xvqlz
has access to this data information since 2007. The bulletins show information regarding system capacity, power generation, demand by sectors, etc.\textsuperscript{53}

ENEE was founded on February 20, 1957, before that there was no national power grid, the supply consisted of small grids isolated from each other. These grids were operated by private companies, municipalities or by the government. During its first years ENEE expanded quickly, the small isolated grids were connected to one national grid, several hydroelectric power plants were constructed and the national grid was strengthened.\textsuperscript{54} Then, ENEE introduced the Francisco Morazan hydropower plant also know was “El Cajon”, it was an ambitious hydroelectric expansion of 300-MW construction, of about a capital cost of $680 million, the dam increased installed capacity by 144\%.\textsuperscript{55} When El Cajon was finished, to be able to find markets for the excess energy the system had, and to pay the loans created by the construction of El Cajon, ENEE launched an intensive program for electrification of rural areas.

In the early 1990s, the electricity sector in Honduras experienced a severe financial crisis when electricity tariffs were not adjusted to cover the debt service of the El Cajon hydroelectric project commissioned in the mid-1980s, and ENEE’s performance was poor (electricity losses of about 28%, overstaffing, and poor maintenance of thermal plants). The financial crisis led to the energy crisis of 1993, when a severe drought coincided with a lack of generation reserve capacity. All this caused an urgent need to mobilize private financing to expand generation capacity and to improve ENEE’s performance.\textsuperscript{56}

\textbf{3.2.2 Actions taken by the government}

The response to this crisis was the sector reform of 1994, based on a new Electricity Law that established a competitive power market (vertical unbundling, freedom of entry to all sector activities, open access to transmission and distribution networks, and freedom of choice for large users); the separation of the roles of policy making, regulation, and provision of electricity services; application of cost-recovery tariffs and targeted subsidies; and private provision of electricity services.\textsuperscript{57} The Honduran government was strongly committed to using private sources...
for the future growth of generation, and was also motivated by the offer of balance-of-payments support under the reform operation. The law sought to:  

- Strengthen ENEE’s financial situation by institutionalizing cost-based tariffs overseen by a sector-specific regulator.
- Promote private investment through privatizing distribution and PPAs in generation.
- Increase efficiency (ENEE was heavily overstaffed and inefficient on standard international comparisons, such as system losses).

This new market model did not result as it was expected to. Honduras still has a small power system, a traditional clientelism, and weak institutions. ENEE’s performance is still poor. Electricity losses increases because of theft, fraud and illegal connections. The hydro-dominated generation system of the mid-1990s was converted to a thermo-dominated system, and Honduras was dependent for several years of imported fuels, for about 70% of its power generation. Over the past two decades access to the electrical grid in Honduras more than doubled, but around 20% of the country still lacks access to grid coverage. In the absence of grid connectivity, firewood is used as the key source of fuel. This is particularly true in rural areas, where firewood accounts for over 80% of household primary energy supply, this dependence on firewood entails a number of negative social, economic, and ecological consequences.

With this scenario in mind, the national government took action to improve the operating conditions of the electric system in order to incorporate diverse energy sources by introducing new low environmental impact technologies consistent with a more sustainable supply, which responds to the needs of different productive and economic groups. Also government approve a regulatory framework to promote the generation of energy through renewable resources: Decree No. 70-2007, “Law for the Promotion of Electricity Generation with Renewable Resources” fostering the development of renewable energy; Decree No. 144-2007, “Law for the production and consumption of biofuels”; Decree No.404-2013, “Law of Electrical Industry”. With this set of laws approved, the government issued decrees of river concessions on several rivers throughout the territory.

Honduran government issue in 2010 the National Vision 2010-2038 and National Plan 2010-2022, consisting in government’s vision and strategies for development over the period of 2010-2038, which are align with sustainable development goals (Agenda 2030). The National Vision and Plan establish the target of increasing the exploitation of hydropower resources from the current 5% to 25% by 2034. By 2022 the government aims to reverse the present fossil fuel and renewable

---

59 ESMAP (2010).  
energy ratio to achieve 60% renewables and 40% fossil fuels, and by 2034, 80% renewables and 20% fossil fuels.\textsuperscript{62}

During 2014 nearly 60% of the energy produced in power plants was generated by internal combustion engines, gas and steam plants (thermal generation), while the remaining 40% was renewable energy.\textsuperscript{63}

\subsection*{3.2.3 Crisis developed between projects, communities, and government}

Large and small hydroelectric projects in Honduras have been in the eye of the storm after being linked, by human rights organizations and indigenous movements, with the persecution of environmental leaders who at some point opposed them. The most emblematic case is the murder, in 2016, of the Lenca indigenous leader Berta Cáceres, a crime that was commissioned, according to the judgment of the court with national jurisdiction in criminal matters, by executives of the company Desarrollos Energéticos (DESA) linked to public officials, among they are active military and retired.\textsuperscript{64}

People who oppose these large infrastructure projects often argue that the construction of these mega-projects can cause serious environmental impacts on rivers. Several factors origin or contribute to the creation of opposition and later crisis between companies, communities, and government, these factors include: the lack of adequate planning, lack of rigorous environmental and social impact studies, lack of effective participation and consultation processes, lack of comprehensive energy and water policies, and lack of the application of national and international norms and standards. The impacts produced by large dam projects in the hemisphere vary in nature and severity, but tend to follow a common and systematic pattern. Most of the frequent and serious damage includes the destruction of important ecosystems, the forced displacement of people and communities, the contamination of rivers by heavy metals, the increase in diseases transmitted by poor water quality and insects, the loss of food sources and life forms, the production of greenhouse gases and even seismic impacts. In some regions, large dams can bring more costs than benefits.\textsuperscript{65}

The energy crisis and the wave of river concessions and constructions of hydropower plants without the involvement of communities in Honduras, led communities to organizes themselves and to ask for help of international organization. The two biggest organization are “Consejo Cívico de Organizaciones Populares e Indígenas de Honduras (COPINH)\textsuperscript{66}” and “Movimiento

\textsuperscript{63} ECPA (2016).
\textsuperscript{65} AIDA, (2009).
\textsuperscript{66} \url{https://copinh.org/quienes-somos/} site visited May 2022.
Amplio por la Dignidad y la Justicia (MADJ). They often argue and claim: questionable bidding processes; Start of construction of dams without sufficient technical studies, to corroborate if there is a risk of life in the inhabitants who live in the communities located near the concession rivers; Fraudulent project approval processes; Lack of information; Construction of dams will hinder water for human consumption; and Abuse of authority by government officials.

3.3 Pillars of the Participatory Regime

Honduras has a vast body of national laws that regulates the promotion, development and control of natural resources and the environment. Constitutional provisions, environmental laws, land use laws, energy laws, infrastructure laws, and administrative law all specifically and generally address different aspects of environmental protection.

3.3.1 Access to Environmental Information

Access to information is protected by the American Convention on Human Rights. Article 13.1 of the Inter-American Convention states that the right to freedom of thought and expression "includes the freedom to seek, receive, and impart information and ideas of all kinds regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice."

The legal provision established in article 80, states that: “All persons or associations of persons have the right to present petitions to authorities for reasons of individual of general interest and to obtain a prompt response within the legally specified period of time.” There are also other provisions in other laws such as: The Law of Organization and Powers of the Tribunals (Ley de Organización y Atribuciones de los Tribunales) establishes that the acts of the tribunals are public, with the exceptions provided by law. Additionally, Articles 3 and 5 of the Administrative Simplification Act (Ley de Simplificación Administrativa) establish the obligation of every organ of the State to develop systems for the organization of public information so as to guarantee its updating and easy access by the administration.

Within the framework of access to information rights and to guarantee their effective compliance, government approved in 2006 the Law on Transparency and Access to Public Information. Which include provisions that are contradictory and could jeopardize the right of Access to Public Information. On a country visit, the Office of the Special Rapporteur highlights the Transparency and Access to Information Act and the subsequent creation of the Institute for Access to Public Information. Nevertheless, Articles 17 (classification of information as secret) and 39 (information covered by the law) could be open to restrictive interpretations that could hinder the effective exercise of the right to access to information. The report urges the adoption of implementation decisions that are consistent with the standards on the issue, to guarantee the effective exercise of the right of all persons to access to information. Principle 4 of the Declaration of Principles

67 https://madj.org/que-es-el-movimiento-amplio-y-cual-es-nuestra-razon-de-ser/ site visited May 2022
states: “Access to information […] is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right.”

### 3.3.2 Public Participation in decision making

**a) General Environmental Law, Decree No. 104-93**

The General Environmental Law is the primary law governing the allowable environmental impact of business operations. The law sets forth as its general objectives that include the protection, conservation, restoration and sustainable management of the environment and natural resources.

The law contains important provisions about the different resources, divided in categories in Titles III and IV, which include: I. continental and maritime waters; II. Protection to nature: wild flora and fauna, forests, soils for agricultural, livestock and forestry use, soils for urban and industrial use, coastal and marine resources, the atmosphere, minerals and hydrocarbons, solid and organic wastes, toxic agrochemicals and dangerous pollutants, and historical, cultural and tourism resources and human health. The law reiterates the obligation to carry out an environmental impact assessment for any public or private activity that involves the aforementioned natural aspects.

**Participatory Rights provisions:**

The Honduran’ General Environmental Law recognizes Participatory Rights, with provisions that include the following:

Preamble no. 4 and 5, considers that “The community participation is essential to achieve the protection, conservation and rational use of the natural wealth of the country and the environment in general.” “That the Honduran people urgently demand the issuance of appropriate legislation for environmental management that allows the formation of a national conscience and the participation of all citizens in the search for solutions of collective benefit.”

Article 9.d: “Are specific objectives of the law: … d) Promote the participation of citizens in activities related to the protection, conservation, restoration and proper management of the environment and natural resources.”

Article 11.a: “The following functions correspond to the Secretary of State in the Environment Office: a) Coordinate the activities of the different centralized or decentralized public agencies, with controls in environmental matters, and promote the participation of the population in general in these activities.”

Article 102: “The inhabitants of local communities must participate directly in actions to defend and preserve the environment and the rational use of the country’s natural resources. The participation of private organizations of any kind in the conservation of the environment and

---

68 Preamble No. 4 & 5 Honduran General Environment Law
natural resources is of public interest. These organizations will be consulted for the elaboration of the plans and measures that are adopted in this matter.”

### 3.3.3 Access to Justice

Article 80 of the General Environmental Law, Decree No. 104-93 confers “standing” to “any person”, to sue before the competent authority any project which has contaminating or degrading effects. In theory, this should allow for citizens and civil society organizations to take action against violators of environmental laws.

Articles 55 of the Administrative Procedures Act (Ley de Procedimientos Administrativos) establish that: “The holders of subjective rights or legitimate interests that promote it and those whose subjective rights or legitimate interests may be affected by the resolution to be issued and who spontaneously appear in the administrative procedure, are considered interested parties in the procedure, or by summons of the competent body to resolve when it notices its existence during the substantiation of the procedure.”

### 3.4 Institutions involved

Natural resources are managed by numerous of national and municipal institutions. Environmental issues are subject of the competency of this institutions and the working coordination between them.

The Secretary of Natural Resources and the Environment (SERNA) is responsible for implementing and enforcing environmental legislation in Honduras. It is also responsible for developing, coordinating, and monitoring compliance with national environmental policies, to ensure that policies are followed, and that there is coordination between institutions on environmental matters, energy and mining development.

The electricity sub-sector in Honduras is mainly driven by two state agencies: the National Energy Commission (CNE) and ENEE. The CNE is the regulator and ENEE are responsible for the entire operation of the electric power system.

The Institute of Forest Conservation, Protected Areas and Wildlife (ICF) is the State entity in charge of managing policies, plans, programs and projects related to forest resources to guarantee their rational and sustainable management at the public, private and community levels, guaranteeing environmental sustainability. and ensuring the social, cultural and economic development of people.

The Prosecution Office has a special prosecutor for the environment, its objective is to protect the general interests of society in environmental matters, collaborating in the protection of the environment and the ecosystem, minority ethnic groups, preserve the archaeological and cultural patrimony and any other collective interest.
4 COMPLIANCE ASSESSMENT

The Honduran national energy system and environment is managed by a series of state agencies, as it was illustrated in the previous section. These dependencies develop and establish their own specific mechanisms according to their competence; however, this diversity of procedures distributed in different dependencies makes it difficult for potential Energy Project Developers to carry out and follow up on the necessary requirements to obtain the respective permits and contracts, not forgetting the participatory rights regulation and requirement difficulties.

With the purpose to develop this section, it is necessary a brief mentioning of the main requirement/permits request by different institutions for the development of a hydropower project according to national law. The main formalities or procedures a hydropower project in Honduras must comply with are the following: Feasibility Study, Operation Contract, Power Purchase Agreement, Water Contract, Construction Permit and Forestry Permit. The following table summarize these formalities and the correspondent institution.

Table No. 1: Procedures required and institution for hydropower projects.
Source: Self-made

<table>
<thead>
<tr>
<th>REQUIREMENT</th>
<th>APPLICABLE LAW</th>
<th>INSTITUTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>FEASIBILITY STUDY PERMIT</td>
<td>• Administrative Procedures Act</td>
<td>SERNA</td>
</tr>
<tr>
<td></td>
<td>• Framework law of the electricity subsector and its regulations.</td>
<td></td>
</tr>
<tr>
<td>OPERATION CONTRACT</td>
<td>• General Environmental Law</td>
<td>SERNA</td>
</tr>
<tr>
<td></td>
<td>• Administrative Procedures Act</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• State contracting law</td>
<td></td>
</tr>
<tr>
<td>ENVIRONMENTAL LICENSE</td>
<td>• General Environmental Law</td>
<td>SERNA</td>
</tr>
<tr>
<td></td>
<td>• Regulation of the National Environmental Impact Assessment System</td>
<td></td>
</tr>
<tr>
<td>WATER CONTRACT</td>
<td>• General Environmental Law</td>
<td>SERNA</td>
</tr>
<tr>
<td></td>
<td>• National water use law</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Administrative Procedures Act</td>
<td></td>
</tr>
<tr>
<td>POWER PURCHASE AGREEMENT (PPA)</td>
<td>• State contracting law</td>
<td>ENEE</td>
</tr>
<tr>
<td></td>
<td>• Framework law of the electricity subsector and its regulations.</td>
<td></td>
</tr>
<tr>
<td>CONSTRUCTION PERMIT</td>
<td>• Municipalities Law</td>
<td>Municipalities</td>
</tr>
<tr>
<td></td>
<td>• Law for the Promotion of Electricity Generation with Renewable Resources</td>
<td></td>
</tr>
</tbody>
</table>
There are several obstacles that all these institutions have regarding the environmental and social conflicts between hydropower projects and communities, that produces incompatibility of International and National Environmental Law. Some of them, as Ebbesson argues might include a correct Distribution of powers, linked with the weakness of the civil service system. There is a complete turnover of ministry staff every four years, when a new government takes over, even when it is of the same political party. Governments should be able to count on a professional group at the ministry, a group with an adequate budget and capable of isolating its staff from the periodic replacement after a new administration takes office.69 Lack of information and communication between different state agencies. Certain municipal bodies perhaps do not have adequate information about what legislation has been introduced or which conventions are signed. Implementation of conventions may require measures by several public bodies, in terms of the application of legislation, supervision and execution. Insufficient knowledge about a convention’s very existence or scope (or even about the legislation which has implemented the treaty) of course increases the risk of non-compliance. Inadequate analyses of governments and parliaments on what the treaty in question requires of the contracting parties. Issues to be considered are, for instance, the required legal situation for individuals and the question whether national framework legislation consisting of vaguely defined principles is compatible with the international obligations, which also may be an unclear character. Another point would be Abstention from entering a convention initially. Governments could receive external and internal pressure to join or withdraw a treaty. It is moreover possible that some states enter treaties for internal and external display purposes, while in practice they pursue business as usual. Conflicting interests of different state agencies may entail discrepancies between a state’s international commitments and domestic measures. And last point is lack of resources, the acknowledgement that states have different economic capabilities.70

4.1 Access to Environmental Information

Access to environmental information includes two key elements: first, the production of information on the environment, and second, the right of citizens to gain access to information

69 ESMAP (2010).
held by public authorities and consequently the obligation of governments to make information easily accessible and available to all.71

Hydropower plants in Honduras are monitored by several governmental institutions, they have the obligation to report all information according to the institution requirements. This means that a lot of environmental information has been produced by public or private companies in places where the government does not reach its monitoring and/or control. Therefore, once the information has been produced, it is reported to the corresponding entity, this is done by physical and digital reports.

The right of citizens is already established in law, nevertheless there is a lack of a clear procedure to obtain it, or confusion in the regulation emitted. Also, once the information is requested, weak institutions do not have proper technological systems in order to register all information in a digital and easier way. This provokes not on time responses, questioning the intentions of the request of the information, etc.

Due to the same reasons of been weak institutions, the state of the environmental reports are not always updated, poor knowledge of institutional staffs causes slow revisions and therefore slow response. In the end, the environmental information is not trustworthy.

Hydropower plants are often developed in remote areas where water sources are found, this means that the immediate public are inhabitants of rural areas. One of the most important reports a Hydropower plant emits is the Environmental Mitigation Measures results every year, this report is usually delivered in Tegucigalpa SERNA office. This creates difficulties to public in rural areas to access this information. So SERNA, recently applied a measure to delivered a copy of this report to the nearest municipal office, so access to information could be guarantee.

4.2 Public Participation in decision making

Environmental Impact Assessment is regulated by the General Environmental Law and the Regulation of the National Environmental Impact Assessment System. What is established in the law, somehow it contradicts with reality, because according to Global Witness in 2017 Honduras was the deadliest country in the world for environmental activism,72 these means that clearly there is a conflict between communities, environmental defenders, and companies, that is nothing been properly address.


Hydropower plants processes starts with a river concession given by the government. Public Participation in decision making process must start from this phase, as this is the spirit of Aarhus Convention and Escazu Agreement. Honduran legislation contemplates citizen consultation in different legislation and regulatory measures, however, in practice mechanisms for participation are rarely used. As a result, laws are passed without citizen consultation, including on environmental issues, while acts of corruption and other abuses of power occur without sufficient citizen oversight. On the one hand, political parties have no interest in using these mechanisms. On the other hand, civil society organizations have not pushed for the systematic use of these mechanisms.\textsuperscript{73}

According to a statement of United Nations Working Group on Business and Human Rights representatives during a visit to Honduras in 2019 they expressed that: “There are a numerous concerns about the way in which the requirement for consultation is implemented in the form of an open public meeting in the municipality. The absence of a comprehensive legislative and regulatory framework on participation rights has contributed to the creation of scattered participation landscape, in which companies have large margins of discretion on how to engage the community. Municipalities have implemented the requirement “to socialize” the projects in a discretionary manner, which further contributes to mistrust among all stakeholders. The practice of consultation is inconsistent and there is no real measure of whether consultation is effective and meaningful. … consultations should take place before granting a license. However, municipalities often hold open public meetings when environmental licenses have already been granted.”\textsuperscript{74}

### 4.3 Access to Justice

During an OAS visit in 2018, the Commission observed that it still persistent, many violence and threats problems to the independence and personal integrity of justice operators in Honduras. In this regard, justice operators face death threats, assassinations, attacks, intimidation, harassment, and interference that make it difficult to carry out their functions with independence and impartiality. Threats against justice operators have reached the highest levels of the State, including the Technical Agency for Criminal Investigation (ATIC), within the Public Ministry.\textsuperscript{75}

Referring again to the isolated location of hydropower plants, courts that have jurisdiction over these cases, are small and located in small towns on the country. United Nations suggest it is necessary having a special environmental court in Latin America. Some countries (including

---


\textsuperscript{74} OHCHR (2019). Statement at the end of visit to Honduras by the United Nations. \url{https://www.ohchr.org/en/statements/2019/08/statement-end-visit-honduras-united-nations}

Honduras) have already special prosecutors for environmental matters, nevertheless, there is a need for a Judicial Special system as well.

Environmental and social issues could be originated by private companies, government itself, or even communities. Alternative dispute resolution mandated by SERNA involving all stakeholders involve, could help solve issues and lower the load of the courts.

Section conclusion

Honduran government must ensure that the basic rights of their citizens are protected. “In some instances, procedural rights assume more importance that substantive rights.” The three levels of obligations of states parties with regard to all human rights can be placed under the typology of obligations to respect, protect and fulfill. The obligation to respect requires states to refrain from interfering with the enjoyment of the right. The obligation to protect requires states to prevent others from interfering with the enjoyment of the right. Finally, the obligation to fulfill requires states to adopt appropriate measures to ensure the full realization of the right. These measures can be legislative, administrative, judicial or budgetary, or a combination of these. The obligation to fulfill further contains the obligations to facilitate, provide and promote.

Respect: It is considered that Honduras law, recognizes the basic human rights in relation to environment. By its treaties ratifications, constitutions, and the rest of its legal system.

Protect: the protection duty is highly link to the fulfillment duty, because without the establishment of correct and clear procedures for the implementation of participatory rights, provoke that others interfere with the enjoyment of environmental rights, this is the case of companies in the renewable energy sector.

Fulfill: In the fulfillment aspect, it is considered that Honduras is not complying, because not having correct procedure for enjoyment of environmental rights, is placing these rights in jeopardy. Having institutions with vague provisions regarding participatory rights and the non-coordination between governmental entities, causes harm to environment, non-protection of environmental rights and a harm to economic development, referring to the production of clean energy.

---

<table>
<thead>
<tr>
<th>PILLAR</th>
<th>INTERNATIONAL PROVISION</th>
<th>NATIONAL PROVISION</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACCESS TO ENVIRONMENTAL INFORMATION</td>
<td><strong>American Convention on Human Rights.</strong> Article 13.1 &quot;Freedom of thoughts and expression: ... this right includes the freedom to seek, receive, and impart information and ideas of all kinds regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one’s choice.”</td>
<td><strong>Administrative Simplification Act Articles 3 and 5:</strong> establish the obligation of every organ of the State to develop systems for the organization of public information so as to guarantee its updating and easy access by the administration.</td>
</tr>
<tr>
<td></td>
<td><strong>Law of Transparency and Access to Public Information.</strong> Article 3.6 and article 17.6 define Classified information and indicate that &quot;the information classification process proceeds when the damage that may occur, is greater than the public interest in knowing it or when the disclosure of the information puts at risk or harms, among others, the economic, financial or monetary stability of the country or governance.” On the contrary, <strong>article 13.19</strong> mentions that “The information on the activities of private companies that supply public goods and services on an exclusive basis or into contracts financed with State resources or funds, will be disclosed.”</td>
<td><strong>Regulation of the national environmental impact assessment system Art 25:</strong> ... Information about the Environmental Impact Assessment (EIA) process for any project is public. Any natural or legal person may request information about the projects, if it</td>
</tr>
<tr>
<td>PUBLIC PARTICIPATION IN DECISION MAKING PROCESS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>------------------------------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>American Convention in Human Rights. Article 23.a:</strong> Right to participate in Government: a) To take part in the conduct of public affairs, directly or through freely chosen representatives;</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| **International Labour Organization. Article 6:** ... Governments shall:  
(a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;  
(b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;  
(c) establish means for the full development of these peoples’ own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose. |
| **Article 15**  
1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of |
<p>| <strong>General Environmental Law Article 102:</strong> “The inhabitants of local communities must participate directly in actions to defend and preserve the environment and the rational use of the country’s natural resources. The participation of private organizations of any kind in the conservation of the environment and natural resources is of public interest. These organizations will be consulted for the elaboration of the plans and measures that are adopted in this matter.” |
| <strong>Water Law: Article 3.4, 3.5.:</strong> Principle and Fundamentals of Water Management... 4) Citizen participation will be effective in management planning, use, protection and conservation. 5) The comprehensive management of the resource, linked to the water cycle and the natural environment, will be done with the participation and responsibility of all Government instances, their organizations or the organized people. |
| <strong>Municipalities Law: Art 25 and its regulation:</strong> establishes the principles of the open council and the municipal plebiscite. |</p>
<table>
<thead>
<tr>
<th>ACCESS TO JUSTICE</th>
<th>these peoples to participate in the use, management and conservation of these resources.</th>
</tr>
</thead>
</table>

**American Convention on Human Rights. Article 25. Right to Judicial Protection.** "Everyone has the right to simple and prompt recourse, or any other recourse, to a competent court of tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned..."  

**General Environmental Law, Article 80** confers “standing” to “any person”, to sue before the competent authority any project which has contaminating or degrading effects.

**Administrative Procedures Act Articles 55** establish that: “The holders of subjective rights or legitimate interests that promote it and those whose subjective rights or legitimate interests may be affected by the resolution to be issued and who spontaneously appear in the administrative procedure, are considered interested parties in the procedure...”
5 CONCLUSIONS

5.1 Conclusions

Honduras is a country rich in natural resources and cultural heritage. And due to its geographical location, Honduras is very vulnerable to climate change. Throughout the national and international legal provision reviewed, it is demonstrated that there is a concern about sustainable development, nevertheless the reality affirms that there is unproductive work done in this regard. This study has put in evidence the backwardness of Honduran reality in legislation and in practice, and that there is still a lot of work to be done, not only in environmental matters, but in all governability. The purpose was not to only to point out the ineffectiveness of this regime, but to come up with the points where improvement can be done.

Basics Human Rights and Natural Resources are impossible to protect if there is no procedural rights or participatory rights. This study has shown that Honduran law declares in its general and specific laws the participatory rights framework, also that the government has been developing a normative body on the rights of access to information, participation and justice, but with insufficient capacity to eradicate the recurring human rights violations associated with them. Ensuring the application of a norm or a regime means that, a State must make sure that a problem or situation does not occur, this is where the problem is identified, taking into account that several institutions are involved in a permit/operation of a hydropower project, none of them takes a monitoring function to actually certificate when these rights are been protected or violated. The result of all this causes human rights violations and no protection for environment, and eventually a harm in economy and development.

For Honduras to meet its long-term energy goals, it is necessary to improve its participation rights regime. First by strengthening the guarantees established in national laws and then creating a clear procedural framework and enforce it. The Escazu Agreement is a very useful instrument in the procedural aspects. Having a legal framework is the first stage of improvement, then a hard work on institutions must be done, because of the vital role they play in all this issue.

Citizen involvement in all aspects of governability, could increase the awareness of the function that government staffs do. Helping reduce corruption and ineffectiveness history that Honduras had have throughout the years, considering this the origin of environmental and social conflicts between hydropower plants, investors, communities, NGOs and governments.

5.2 Recommendations

On the basis of this analysis, the following recommendations have been produced:

To the Honduran Government:

1. The signature and ratification of the Escazu Agreement. The Escazú agreement would become a very important tool to respond to the underlying problems, which are behind the policy of natural resource concessions and the environmental crisis, territorial crisis and human rights crisis.
2. Strengthening and coordination of Institutions with Environmental Responsibilities.
3. Strengthening responsibilities to SERNA, which is the highest environmental entity, to be authority in social/environmental conflicts. This will include faculties such as determining the stakeholders in the area of the hydropower Project, and to determine and certificate according to law, when public participation in decision making has been properly done.
4. Incorporating and strengthening the Environmental Component within the Justice Administration Program.
6 BIBLIOGRAPHY

6.1 Literature


6.2 Articles


6.3 Honduran Laws

General Environmental Law. Decree No. 104-93

General Law of Public Administration, Decree No. 146-86.

6.4 Treaties


Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean. 2018. (Escazu Agreement)

Rio Declaration on Environment and Development. 1992


6.5 Websites


https://madj.org/que-es-el-movimiento-amplio-y-cual-es-nuestra-razon-de-ser/ site visited May 2022


6.6 Reports


6.7 Court Cases

Öneryildiz v Turkey. (2004). European Court of Human Rights  
https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-67614%22]}