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Argentine - Argentinien

**L'AGRICULTURE ET LES EXIGENCES DU
DÉVELOPPEMENT DURABLE – AGRICULTURE AND THE
REQUIREMENTS OF A SUSTAINABLE DEVELOPMENT – DIE
LANDWIRTSCHAFT UND DIE ANFORDERUNGEN AN DEREN
NACHHALTIGE ENTWICKLUNG**

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1. In which way does the concept of the sustainable development reflect itself in your country's legislation?

1.1. Which are the legislative levels of such regulations: constitution, act, other ways of regulation?

1.1. In Argentina, the protection of the principle of sustainable development has the highest legislative level since it is a constitutional right. In 1994, a major reform of the Constitution¹ was carried out and among numerous developments that were incorporated we can find Article 41 - known as the "environmental clause" - in which, without mentioning it, the principle of sustainable development is incorporated stating: *All inhabitants are entitled to a healthy and balanced environment suitable for human development and productive activities to meet present needs without compromising future generations, and have the duty to preserve it.*

This clause was a direct result of the impetus given to the issue of the Earth Summit in Rio 1992.

Evidence of the emergence of sustainable development through environmental protection in the farm and the resulting regulation was the VI International Congress "Agricultural Law, Natural Resources and Rural Environment" held in Rosario, Argentina, from 29 June to 1 July 1994, sponsored among others by the Argentine Institute of Agricultural Law, chaired at that time by the famous advocate-agrarian Fernando P. Brebbia. This congress took place during the Constitutional Convention that made the above mentioned reform and several of the papers presented reflected the relevance of the issue. As an example, it was proposed to include in the Constitution the following clause: "All men are entitled to live in a natural, healthy and ecologically balanced environment and have the obligation to preserve it for themselves and future generations."²

1.2. Does the realization take place by means of act, plan, administrative measures or by means of other mechanisms?

1.2. The realization of the constitutional mandate of protecting the environment and its paradigm, the sustainable development, is carried out by rules of different levels and in different jurisdictions.

It is important to note that Article 41 of the Constitution makes a *sui generis* distribution of power in this area by establishing a system of minimum

¹ B.O. 24/08/94.

² MATÉ, Susana y Riva, Gabriela, "La protección jurídica del medio ambiente", en VI Congreso Internacional "Derecho Agrario, de los Recursos Naturales y del Medio Ambiente Rural", edit. Facultad de Ciencias Jurídicas y Sociales, UNL, Santa Fe., 1995, pág. 110.

environment protection budget, which is issued by the National Congress, while the provinces must promulgate rules necessary to reinforce this.

Another element to consider is that natural resources located in provincial areas, by Article 124 of the Constitution, belong to the original domain of each province.

As a result of these constitutional provisions, especially Article 41, the Nation issued in 2002 Act No. 25.675³, called General Environmental Law, to regulate and make it operational. In article 1, to define the legal right protected, it is determined that this law establishes the minimum budget to achieve a sustainable and proper management of the environment, preservation and protection of biodiversity and sustainable development implementation. As noted, unlike the constitutional provision, this Act makes explicit reference to sustainable development.

With reference to sustainable agriculture it's possible to identify the following national acts on minimum environment protection: n° 25.688⁴ of environmental management of water, n° 26,331⁵ of native forest protection and n° 26.562⁶ to ban the burning of pastures.

We also found numerous regulations on sustainable development in lower rank and provincial legislation regulations. As an example of this, Act n° 11.717⁷ about Environment and Sustainable Development has governed in Santa Fe province since 2000. This local rule specifically incorporates the terminology and contents of sustainable development in its title and articles. Thus, Article 2 reads: *"The preservation, conservation, improvement and restoration of the environment includes, but is nonrestrictive to: a) The lowland regulation and planning of processes of urbanization and industrialization, economic deconcentration and population, depending on sustainable development of the environment, b) The rational use of soil, subsoil, water, air, wildlife, landscape, geology, energy sources and other natural resources, in terms of sustainable development, c) the conservation of biological diversity and rational ecological management of biotechnology, d) Preservation of cultural heritage and the promotion and development of cultural processes, framed in sustainable development, g) ecological, economic and social sustainability of human development, h) Formulation of policies for sustainable development, and specific laws and regulations in accordance with provincial and regional reality,... n) The promotion of consumption patterns and sustainable production, o) The development and promotion of efficient energy technologies, new sources of renewable energy and sustainable transport*

³ B.O. 28/11/02.

⁴ B.O. 03/01/03

⁵ B.O. 26/12/07

⁶ B.O. 16/12/09

⁷ B.O. S.Fe 11/04/00

systems,... s) cooperation, coordination, harmonization and standardization of inter-jurisdictional environmental policies, and joint management of shared ecosystems towards the improvement of natural resource use, the environmental quality control, defense against emergencies and disasters and, in general, sustainable development. "

There are also many rules of lower rank, especially of executive decrees and resolutions of provincial ministries. As an example of lower-level standards, recently resolution n° 136/11⁸(MASPMA⁹), of the Province of Santa Fe, banned the agricultural uses of the provincial roadsides, based on "*the opportunity to save storage space available for protection of biodiversity from the perspective offered by Landscape Ecology*" and "*that the recovery of the roadsides as biological corridors provide an opportunity to improve connectivity and facilitate gene flow for species allowing more and better spaces for movement, preventing the loss of biodiversity, restoring native species and preventing genetic erosion, as well as improving the flow of regulation and homeostasis specific to balanced and natural ecosystems that contribute to the conservation of conditions for regional sustainability*".

1.3. Which of the above measures (1.2.) do you consider most efficient?

1.3. None of these measures separately may lead by itself to the objective of effective delivery of sustainable development. Argentina has numerous environmental protection regulations at various different levels, but it's the integral application which secures maximum effectiveness. I can point two important aspects for obtaining that goal, which to my belief are the engines of sustainable development: environmental education, which has led to a general awareness of the importance of natural resources protection and economic, environmental and social sustainable use, and the establishment of a Supreme Court which has issued some illustrative judgments in the field. We can say without fear of contradiction that this is a "Green Court" and through its judgments has set a course to the lower courts and other jurisdictions in this area.

This is possible because the amendment to the Constitution of 1994 also incorporated the guarantee of the right to sustainable development, including in art. 43° a special expedite action with extended active legitimacy standing for the protection of certain new collective rights, including those protecting of the environment.

The area in which we can point troubles in the assimilation of this paradigm is precisely the public administration, especially the provincial administrative

⁸ B.O. S.Fe 23/3/11.

⁹ Ministry of Water, Public Utilities and Environment

authorities, who are under that role in terms of provincial ownership of the above mentioned natural resources.

1.4. The principle of sustainable development has no binding force. What measures can therefore be taken in order to ensure application and observation of the latter?

1.4. It should not be the case in Argentina where, as already noted, this principle has binding force. However, in the specific aspect of sustainable agriculture there is no mandatory legislation and its implementation depends greatly on the diffusion of private institutions of tillage techniques more environmentally friendly, so the situation is not the most desirable. To encourage sustainable agriculture, establishing rules and, in particular, creating incentives would be convenient. We can mention as an old standard comparable to it, the ban on irrational exploitation for tenants and the ability for owners to terminate contracts for their violation¹⁰. Furthermore, it is essential the establishment of implementing agencies at different levels with enough independence in terms of decision-making and resource management, as well as a trained and committed staff. In many cases it is observed that being these organisms new in the structure of public administration, it is intended for the same employees in other departments with very little training on environmental matters, which undermines their effectiveness.

1.5. Are there in your country specially designed political institutions (ministries, councils, commissions etc.) for the promotion of the sustainable development? What are the means by which the aims can be achieved? What do you think about the effectiveness?

1.5. At the national level we have the Secretary of Environment and Sustainable Development within the President's office and reporting directly to the Chief of Cabinet of Ministers. Unfortunately there has been a management closely linked to politics, in some cases, appointments made for cyclical reasons, so as to satisfy a particular pressure group¹¹ or a particular political group¹². Most provinces, in turn, have ministries, secretaries or departments. In the case of Santa Fe province, in 2007 the Secretary of Environment was established

¹⁰ Section 8° act n° 13.246

¹¹ As when it was appointed in the post the attorney of one of the Gualeguaychú's environmental groups in a conflict with the sister republic of Uruguay over the construction of a mill by the firm Botnia in Fray Bentos, Uruguay.

¹² Now is in the post a former mayor of the group so-called "conurbano barons" of the city of Buenos Aires

within the Ministry of Works, Utilities and Environment. We can observe an involution since this was formerly part of the Secretary of State, reporting directly to the governor of the province, under ministry hierarchy. This means budget management and greater autonomy in making decisions.

Furthermore, in 1990 it had already been created - under an agreement of the national government with the provinces - the Federal Council on the Environment (COFEMA) as a permanent body for consultation and preparation of an environmental policy coordinated among state members. Act 25.675 included its constitution as annex.

At the provincial level, Santa Fe has recently established the Interministerial Committee for Environmental Health under the aegis of the Ministry of Health, also integrated by this others Ministries: the Government and State Reform, of Production, Labour and Social Security and of Water, Utilities and Environment.

2. Are the principles and the specific aims of the sustainable development or the sustainable agriculture specified in strategies, plans or in legal disposals?

2. As I noted, in our country is there not so much legislation specifically concerning sustainable agriculture.

However, we can consider -indirectly referred to it- the already named act n° 26.331 about the Protection of Native Forests, whose primary objective is to promote conservation through their lowland regulation and expansion of the agricultural frontier regulation and any other changes in land use, forcing provinces to carry out a lowland regulation in connection with it, indicating highly protected areas which due to their value should not be changed; mid-protected, including degraded but recoverable forms and subject only to sustainable land use previously approved; and low-protected where agricultural activities can be carried out.

There are general rules in the General Environmental Act n° 25.675, already mentioned, which in section 2, among the objectives of the national environmental policy includes the promotion of *rational and sustainable use of natural resources, prevent harm or danger deriving from anthropogenic activities on the environment to enable ecological, economic and social development sustainability, promote changes in social values and behaviors that enable sustainable development through environmental education, in both formal and non-formal systems.*

At the same time, in section 4 it lists the principles to be observed for its interpretation and application, like any other standard through which the environmental policy is executed, including specifically that of sustainability when ordering that *economic and social development and natural resource use must be made through proper management of the environment, so as not to compromise the potential of present and future generations.* The same section also includes among the principles of mandatory application that of prevention,

precaution and intergenerational equity, which are inherent to the concept of sustainable development and foundation of sustainable agriculture.

From the technical point of view the sustainability of the agricultural-farming systems implies the preservation and / or improvement of the system productive capacity from the quality of renewable and nonrenewable resources involved. Direct seeding without tillage, rotation and soil fertility and crop nutrition contributes to maintain and/ or improve Organic matter (OM) content. In direct seeding, lack of soil removal and crop residues maintenance in surface result in a larger content of OM on surface layers in comparison to similar situations with removal tillage. Crop rotations allow the accumulation of greater amounts of waste of varying quality that represent significant contributions of carbon to the soil¹³.

From the social point of view, this involves the adoption of effective policies for rural development, which existence and widespread application beyond low-impact programs, in Argentina are not verified. *"To achieve sustainable rural development ... Argentina should apply massive and continuing funds on their formal and informal education ... support measures and legislation to regulate the use and possession of the earth"* (widespread problem in the extra-Pampa) *"promote participatory environmental and lowland regulation and ensure permanent support for diversified farming, integrated production, small and medium rural enterprises (SMEs), rural family and youth, technical training and promotion and all farming-market participants"*¹⁴.

Act No. 25,127¹⁵ of Organic, biological or organic farming systems establishes an optional system of production that can be considered a true manual of good agricultural practices and to which I refer to the answer to question No. 8.

In turn, the Resolution No. 323/09¹⁶ created the National Commission on Good Agricultural Practices, which has its background in standards of voluntary adoption of good hygiene and agricultural practices for fresh vegetables (Res.

¹³ GARCÍA, Fernando, "Agricultura Sustentable y Materia Orgánica del Suelo: Siembra Directa, Rotaciones y Fertilidad", available on line in www.produccion-animal.com.ar/sustentabilidad/13-agricultura-sustentable-y-materia-organica

¹⁴ PENGUE, Walter, "El desarrollo rural en la Argentina del siglo XXI", available on line 21-05-11 http://webcache.googleusercontent.com/search?q=cache:-EgU7Ax55-kJ:www.ecoportal.net/Temas_Especiales/Desarrollo_Sustentable/El_desarrollo_rural_en_la_Argentina_del_siglo_XXI+desarrollo+rural+en+argentina&cd=1&hl=es&ct=clnk&source=www.google.com

¹⁵ B.O. 13/09/99

¹⁶ Of the Secretary of Agriculture, Livestock, Fishing and Food

No. 71/99 SAGPyA), aromatic (Res. SENASA N ° 530/01) and fresh fruit (Res. SENASA N ° 510/02).

For its part, the Government implemented through the Ministry of Environment and Sustainable Development, Environmental Management Programme for Sustainable Production Productive Sector, with funding from the Inter-American Development Bank (IDB) of U\$ 40 million¹⁷. This program has a sub-program "Clean Production Action"(CPA), to which funding has been put in place some provincial initiatives as the implementation, as explained under the constitutional scheme of allocation of responsibility for sustainable development will be in charge of the enforcement authority of each jurisdiction¹⁸.

The Secretary of Environment of the Province of Santa Fe is implemented¹⁹ within this framework, the Cleaner Production Programme, having signed agreements with the syndicates of the dairy producers (Association of Small and Medium Dairy Producers) and gatherers grains (Union of Grain Storage).

3. Which do you consider the difficulties or preferences realizing the principal aims of a sustainable development:

3.1. to ensure the food health guarantee; the preservation of the environment and the mineral resources, which the agriculture needs;

3.1. The phrase "food safety"²⁰ in Spanish has two meanings: a) from the qualitative point of view is what is known in English as "food safety" which is broader than "food health guarantee", as expressed here. It is linked to agricultural products markets conformed by high-spending consumers with satisfied basic needs and concerns the quality of food. The demand of these consumers not only meets the requirements relating to human health care, but also extends to taste, the presentation and even the way they have been produced with consideration of ecological - and even in some cases –ethical requirements. b) In a quantitative sense, for its part, the term "food safety" refers to food availability, the need for sufficient supply for all sectors and for these to reach a proper nutritional level, which would be "food security ". It is tied to consumer markets with little or no purchasing power that allows them to

¹⁷ Federal Program with funding and support from the Environmental Management Programme for Sustainable Production in the Productive Sector, Sub-Promotion of Clean Production and Project 1865/OC-AR PNUD/ARG/08/015 BID.

¹⁸ www.cnpm.org.ar disponible 3/10/09

¹⁹ 12/06/08

²⁰ See more in: BORGHI, Paolo, *"Sicurezza alimentare e commercio internazionale"* y FACCIANO, Luis, *"Influencia sobre las regulaciones sobre productos agrarios, seguridad alimentaria y biotecnología en la evolución del Derecho Agrario"*, pto.5, both in VIIº Congreso Mundial de Derecho Agrario de la Umu, Giuffrè editore, Milano 2003, tomo II, pág. 451 y 332.

select or choose the best goods and even have to rely on secondary markets to purchase agro-food of lower quality, certainly not consumable in refined markets. This sector comprises lower-income sectors in the more developed countries and most people in poor countries where hunger, malnutrition and child mortality due to lack of proper nutrition, food insecurity, the uneven distribution of wealth are high impact²¹. Once reached with its own production, it's referred to as "food sovereignty". In both aspects it is essential for the existence of sustainable agriculture being key objectives of it.

The preservation of the environment in general and natural resources in particular are also priority objectives of sustainable agriculture. No doubt, in Argentina the main agri-environmental problems are focused on this element; the proper solution results in sustainability. Although, as I have long argued in various events and publications²², the Agrarian Law has been a pioneer in environmental protection since it has been involved in both their doctrine and specific legislation²³ - in particular the protection of soil resources and other natural resources - there is currently another more holistic perspective on the issue that in its regulation takes into account farming collateral environmental impact, exponentially increased by the incorporation of today assisting technology package. The agri-environmental problems detected in the central area of Argentina, the so-called "pampas", are mainly pollution from misuse of agrochemicals, also resulting from feed lots exploitation and cereal related activity, monoculture and harvest time issues. A special mention must be made of the agricultural frontier landslide at the expense of native forest, a feature common to all provinces that include part of Parque Chaqueño within their boundaries.

A paradigmatic case in Santa Fe is the cultivation of transgenic soya, which has expanded from the naturally suited area, like the "pampa", at the expense of native forests as well as livestock farming activities such as farming or dairy and regional crop and also by replacing, in areas suitable for traditional crops such as wheat, maize and sunflower, moving dangerously into consolidation as a monoculture.

Current patterns of land use resulting from the exploitation of this oilseed are spontaneous and do not reflect the need to consider soil and water as a scarce

²¹ ZELEDON ZELEDON, R., "Sistemática del Derecho Agrario", edit. Porvenir S.A., S.J. de Costa Rica, 2002, pág. 311/313.

²² V.g. FACCIANO, Luis A, "El Derecho Agrario: pionero en la protección ambiental", ponencia al "VI Congreso internacional: Derecho Agrario, de los Recursos Naturales y del Medio Ambiente Rural", Rosario, junio de 1994, Colección Jurídica y Social n° 43, Santa Fe 1995, pág. 60.

²³ An example of this in Argentina, the section 8° of Act n° 13.246 of 1948 of Rural leases and tenant partnerships, which at that time prohibited the irrational exploitation by the dealer.

resource for which decisions about its use are often irreversible²⁴.

I should note that the change in the agricultural frontier is an unwanted effect of phylogenetic benefits of transgenic varieties, which have led to a drastic reduction in exploitation costs, simplified cultivation techniques and adjustment to areas where this was previously impossible, but whose profit margins at the expense of other agricultural activities, sometimes even punished by populist policies with boomerang effect have driven the industry to monoculture. The result is well known: the progressive destruction of ecosystems that are crucial for biodiversity and thus to humans.

It is instructive to observe data extracted from the Strategic Action Programme "of the Guarani Aquifer"²⁵. A multitemporal analysis made in the used area²⁶, shows that in the last 30 years there was an important breakthrough in agricultural areas on natural forest areas. Use types with stronger changes were: agricultural use, using 22% of the territory in the period 1973-1980, shifted to 47% in the current scenario; dense forest use (native forest), using 9% of the land in the period 1973-1980, shifted to 2%; degraded forests, which used 33% of the land, shifted to 6%. In turn, the expansion of the agricultural-using class had the second variation (25%) since the stronger development took place in areas of native vegetation.

For that reason, besides from biosafety²⁷ standards which rule transgenic production, public policies for lowland regulation are also required – and, taking into account the general interest in respect to non-renewable resources, these should establish reserve areas for certain crops or activities such as forestry and the obligation of crop rotation and agricultural activities to ensure sustainable exploitation, as well as serious policy for rural development.

3.2. support the feasibility of the agricultural activities and improve the quality of life of the farmers and the society in general;

²⁴ Secretaría de Ambiente y Desarrollo Sustentable (SADS), Ministerio de Salud, "Política Ambiental Sostenible para el Crecimiento y la Equidad: Bases para una Agenda Ambiental Nacional", B.A., 2004.

²⁵ Final rapport of "Proyecto para la Protección Ambiental y Desarrollo Sostenible del Sistema Acuífero Guaraní (SAG)", program managed by OAS and financed by the Global Environmental Found (GEF), and others and by each one of the four states that share it, which was implemented between May 2003 and January. Available on line in www.sg-guarani.org.

²⁶ The Guarani Aquifer is the third largest groundwater reservoir in the world and is located in east central South America between 12° and 35° south latitude and 47° and 65° west longitude. Its area is about 1,190,000 km² shared by four countries: Argentina (220,000 km²), Uruguay (45,000 km²), Brazil (840,000 km²) and Paraguay (72,000 km²).

²⁷ Set of rules and procedures to ensure the safe use of biotechnology.

3.2. Argentina has an agro-export model based on agricultural production. The harvest of the agricultural year 2010-2011 has a record of around 100 million tons. (wheat 4,374,000 hec. And 14,720.000 tons, malting barley 755.000 hec. And 2,960,000 tons, soya 18.650.000 hec. and 50.400.000 tons, sunflower 1,655,000 hec and 3,540,000 tons, corn 4,315.00 hec. and 20,900,000 tons, sorghu, 1,235,000 hec. and 4,200,000 tons, others 3,500.000 tons)²⁸ Currently, there is an economic boom, derived from this fact and the high price of commodities. Because of the high purchasing power of farmers, in particular those of the pampas, the rest of the economy has been in motion, like agro-mechanical industry, automotive and construction. Therefore it is essential to maintain that model, ensuring its economic, ecologic and social sustainability as parallel to the boom there is a large sector of the population living in poor conditions. Most of those marginalized groups are the result of internal migration, often of indigenous peoples, who can not find proper living conditions in their areas and move to live in the slums of large cities, especially Buenos Aires and others such as Rosario and Cordoba. It is therefore essential to implement serious policies for rural development to replace the current welfare system and create conditions to prevent such migration. Therefore, as stated in the introduction, a truly sustainable agriculture must be economically sustainable, environmentally sound and socially equitable, and this is the direction that agricultural policy in our country should take beyond political speeches.

3.3 the participation of the public in the adoption of resolutions. Does a specific right on access to information concerning the environment exist?

3.3. This issue is vital to build a true sustainable development. In Argentina, it was issued in 2003 Act n° 25.831²⁹ about minimum budget of Free access to public environmental information, which is a crucial step towards achieving that goal. It states that access to environmental information will be free of charge, not being necessary to provide credit reasons or interest in order to obtain it. It is mandatory for competent authorities of public bodies and holders of public service provider companies, whether public or private to provide these.

4. Which do you consider the best measures to be taken in order to lead to a sustainable agriculture? Which experiences has your country made?

4.1. The financial aids? In which form (investments, support, from European funds and/or help by the government?)

²⁸ Available <http://www.minagri.gob.ar/site/index.php>

²⁹ B.O. 07/01/03.

4.1. In Argentina, to achieve sustainable agriculture, there must be a balance between the need to maintain and / or increase production of more profitable varieties, such as soya, with those less profitable and with extensive livestock production, essential to make a rotation in the soil use to allow recovery of their natural physical / chemical conditions. Reality shows a disturbing trend for monoculture in soya, which has moved livestock from the most suitable areas and, also other agricultural products such as corn and, to a less extent, wheat and in turn has expanded the agricultural frontier at the expense of the native forest (see above for more data provided on this).

There is a tax collection structure based on "taxes on agricultural exports,"³⁰ which technically are "export duties." The tax reaches soya (35%), wheat (23%) and corn (20%). Also, inexplicably, livestock production has been discouraged by banning or limiting exports, with the feeble argument that local consumers should be protected. The result is that cattle stock has fallen by 20% in a few years and the price of cattle has been doubled in a few years due to shortage. In turn, fattening cattle exploitation now takes place mostly in feed lots, with the environmental problems this creates.

At the same time, we have a complex, bureaucratic and quite ineffective cross-subsidy system for flour mills for the purchase of wheat³¹, and at some point, for the owners of feed lots for beef production, among other holdings. Similarly, licences for livestock (through the granting of the so-called "red ROE") and agricultural ("green ROE") exports is quite complex.

This information may be unusual to Europe, being used to a policy of subsidies and promotion of agricultural production but is our reality.

4.2. We consider it essential to have a program to encourage alternative products but through simplified systems, such as eliminating the deductions for such production, promoting exports of meat products with less expensive cuts for local consumption, supporting small farmers³², etc.

So, to achieve sustainable agriculture it is required the implementation of measures, both for land use and taxation, to encourage agricultural production alternate to soya and maintenance of native forest, and also the implementation of strong rural development measures.

³⁰ In 2008 there was a great conflict between the farmers and the government to increase the retention rate, which according to the mobile system implemented by resolution 125 of Ministry of Economy at that time amounted to about 45% of Soya. Objecting to it as unconstitutional because as a tribute was to be implemented by law and not by a provision of executive and affected also by the principles of reasonableness and confiscatory. It was finally repealed maintaining a fixed 35% on the price of soybeans

³¹ It would be more convenient give incentives to farmers, not to industrial

³² There are some measures for small producers as smaller deductions to which have harvested less than 800 ton. Of wheat or corn (resolution 57/10 Ministry of Agriculture and Livestock) but they are isolated, bureaucratic and insufficient

In Argentina there are few cases involving economic constraints to be in compliance with certain environmental requirements, similar to the principle of "conditionality" or "cross compliance" in the EU. Examples include those established for the granting of compensation in Act of minimum protection of native forests n° 26,331 and the granting of incentives for biofuels in Act 26,093. Probably we need to generalize this principle as a tool to achieve sustainable agriculture.

5. Which role plays the democratization of the social relations and the participation of the public in the adoption of resolutions in the process of the sustainable development? Which are the legal consequences of a decrease of the participation of the public?

Argentina is going through an incipient process of direct citizen participation in environmental issues in general by means of consultation systems such as public hearings, among others. A leading case³³ is pending in the Supreme Court for the granting of licenses for native forest clearing in significant areas in the province of Salta, northwest of the country on the border with Bolivia, in which it was issued, as preventive measure, the application of the precautionary principle which banned such clearings until there is a cumulative environmental impact study with the participation of indigenous communities and small local producers. This decision - while not binding in our judicial system - clearly indicates to the lower courts a direction to follow in terms of citizen participation.

5.1. Do the international conventions with the EU and/or with your country, as well as, the European regulations and the territorial regulations concerning the access of the public to information and the access to the judiciary, become actually applied?

No doubt that the right to a correct and accurate environmental information is central to crystallize the democratic principle of citizen participation and allow it to work as an effective mechanism to protect the environment.

In our country, the already mentioned 1994 reform to the Constitution gave precedence over the laws to the international treaties ratified by the National Congress (art 75 ° inc.22). However, the Aarhus Convention, governing the matter has not been ratified and the matter is governed by Act n° 25.831, which states that "*total or partial access denial to information should be justified and, in the case of administrative authority, comply with the requirements of reasonableness of administrative act provided by the rules of such jurisdiction*" (art. 7) In practice there is a reluctance of public servants and employees to freely provide information, often due to ignorance of applicable law. But as noted, the tools to ensure free access to justice as required by Article 9 of the

³³ "SALAS, DINO y ot. vs/ Provincia de Salta y otros s/ Amparo" S.1144.XLIV SCJN

Aarhus Convention are actually available, keeping in mind that this is more extensive, requiring the State to produce environmental information while on our legislation's sole obligation is to provide it when requested.

5.2. Do legal guarantees and sanctions exist for the case that these rights get breached? Is there any jurisdiction on the subject? Is an inclusion of the public and the non-government organizations realistic in case of adoption of resolutions? Do obligatory legal procedures exist concerning this matter?

5.2. The aforementioned Act No. 25,831 about minimum protection in this area provides a mandatory procedure. It states that "*resolution of requests for environmental information will take place within a maximum of thirty (30) working days from the submission date of the request*" (Article 8°). Finally they "*shall be considered violations of this law, obstruction, deceit, concealment, failure to respond within the prescribed period in the previous article, or unjustified refusal to provide the requested information, and any act or omission - without justified cause - affecting the regular exercise of the right established by this law. In such cases, an extremely summary, direct judicial approach will be enabled before a competent court. All public official or employee whose behavior falls within the requirements of this Article shall be subject to the penalties provided by Act n° 25,164³⁴ or those established by each jurisdiction, without prejudice to civil and criminal liabilities that may correspond. Public utility companies that do not comply with the obligations prescribed by this Act shall be liable to the penalties provided in the rules or agreements governing the granting of the public utility concerned, without prejudice to civil and criminal liabilities that may correspond.*" (Article 9 °).

There is not much case-law, within which we mention an example: "Briones vs. / Environmental Policy Secretariat, Ministry of Environment of the province of Salta - Amparo" which resolves a case where the plaintiff claims the demand should be ordered to provide environmental information about land clearing, which had not been provided by law. In the ruling, while declaring the question abstract because the information was provided in the *interregnum*, in its justification some interesting concepts emerge, such as the *in dubio pro actione* principle, accepting the approach chosen and the active legitimacy of the recurrent citing Act n° 25.831 and considering the Aarhus Convention universally applicable.

Regarding citizen participation, it is regulated in Articles 19 to 21 of Act n° 25.675, which states that "*The authorities should institutionalize procedures for consultations or public hearings to be mandatory for granting authorization of activities that can generate significant and negative effects on the environment*", though "*the opinion or objection from the participants shall not be binding for the convening authority, but if they present views contrary to the results*

³⁴ Regulatory framework of national public employment.

achieved at the hearing or public consultation, they should justify it and make it public. "

We can consider that the actual incidence of citizens' views and NGOs is still low, but is growing.

6. The first step in the direction of a sustainable development demands to include the environment and to respect its necessities in the development process. Another approach suggests the integration of the sustainability in the economic issue. Is the connection between the application of the preventative measures, with the idea of the pollutant who has to pay, inseparable? How are these principles applied in your country? Which are the rules, the procedures and the jurisdiction in that issue?

6. Both approaches are two sides of one coin since it is important to find a balance between economic issue and respect for the environment, and also social equity, which is the essence of sustainable development. I believe that the polluter-pays principle does not work together with sustainability. Moreover, its application can be a license priced to pollute. In turn, the precautionary principle is incompatible with the responsibility, at least in the Argentine legislation, as it can only be the basis of temporary protection measures in cases of scientific uncertainty, while responsibility, in terms of compensation, arises when environmental damage has already occurred.

7. Which are the main instruments available to protect the environment and to improve the quality of the environment, the landscape and the mineral resources (instruction, authorisation, approval)? One could say in this respect: the water resources necessary for the agriculture (application of the directive 9 concerning the water); the soil (the directive concerning the contamination of soil); the biological variety (the directive Natura 2000); the preservation of the landscape (the directive concerning the preservation of the landscape in Europe).

7. In Argentina, the individual protection of natural resources has traditionally been done. In this regard we can cite national Act n° 22.428 about soil protection, Act n° 13.273³⁵ (text decree n° 710/95³⁶) for the Defense of forests and forestry, Act n° 22.421³⁷ about Protection and Conservation of Wildlife, Act n° 22.351³⁸ about creation of National Parks, among others. Currently, we deal with integral protection following holistic criteria, generally taking the resource as part of an ecosystem. This was observed in minimum environmental budget

³⁵ B.O. 06/10/48.

³⁶ B.O. 24/11/95.

³⁷ B.O.12/03/81.

³⁸ B.O. 12/12/80.

laws which we referred to in point 2.1. of this report. We cannot fail to note that Argentina has ratified many international conventions on the subject, including the Framework Convention on Climate Change by Act n ° 24.295³⁹, the Ramsar Convention on Wetlands by Act No. 23.919⁴⁰, the Convention on Biological Diversity by Act No. 24.375⁴¹, the Convention of the United Nations to Combat Desertification by Act No. 24.701⁴², the Rotterdam Convention on Prior consent for pesticides by Act n ° 25.278⁴³, the Stockholm Convention on reduction of Persistent organic pollutants (POPs) by Act n ° 26.011⁴⁴, among others, which under the Constitutional Reform of 1994 take precedence over the laws.

8. How do you estimate the role and the importance of the participation of the social market participants (producer, public and private institutions, labor unions) concerning the political decision-making, the elaboration of plans concerning the regulation of sustainable agriculture? Which are the forms of participation in your country? Which social influence does this form of participation have? Is it of importance, not so important or does it not exist at all?

8. The role of market stakeholders in sustainable development is to achieve the balance necessary for its viability. In Argentina is legally provided the involvement of stakeholders through consultations and public hearings, which are a mandatory instance, although not binding, the procedures of environmental impact assessment of activities that can have significant negative effects. However, in practice, especially in the field of this report, the setting, that instance is not verified, since in general there is not yet aware that it may have significant adverse effects.

The law (Article 21 General Environmental Act n ° 25,675) will also likely participate in the plans and programs of land use. Act n° 26,331 in the case of cuttings of native forests must ensure strict compliance with the provisions on public participation prior to the issuance of permits for such activities (Article 26). Like the vast majority of the cuttings are made for farming, especially cotton or soya, indirectly in such cases is ensuring citizen participation.

The same Act required to comply with the rules on environmental information in articles 16, 17 and 18 of the General Environmental Law, "*and in particular take the steps necessary to ensure access to information on indigenous peoples*

³⁹ B.O. 11/01/94

⁴⁰ B.O. 24/04/91

⁴¹ B.O. 06/10/94

⁴² B.O. 22/10/96

⁴³ B.O. 03/08/00

⁴⁴ B.O. 17/01/05

originating from rural communities and other related, on permits are granted for the clearing "(Article 27).

We also note the orderly public participation in judicial decisions. A paradigmatic case is the issuance in March 2009 of an injunction by the Supreme Court in an appeal brought by representatives of Guarani and Wichi communities and associations of small producers⁴⁵, suspending the cuttings in the province of Salta until a cumulative environmental impact study takes place, with strict participation, especially among indigenous communities and associations of small producers in the area.

You can not go unmentioned, the participation of NGOs promoting demands for defense especially through misuse of agrochemicals. In this regard, it has been a significant demand for environmental protection, filed before the Court of San Jorge, Santa Fe⁴⁶, brought by a group of residents and NGOs⁴⁷ demanding for the establishment of a buffer zone around the town more stable than applicable law in the field for spraying chemicals. Applying the precautionary principle rather than the judge did, in a ruling that was appealed, the Appeals Chamber⁴⁸ confirmed the ban on spraying at distances fixed for six months and sending reports on the toxic effect to the University and the Ministry of Production and Health. These reports were issued that are not yet conclusive so the 1st instance court decided to keep the ban permanently, in a decision now appealed again. But we can also take as a result of maintaining the buffer zone, the production of scientific studies and also the formation of a Ministerial Committee for Environmental Health under the aegis of the Ministry of Health, is integrated by the Government and State Reform, Production, Labour and Social Security and Water, Utilities and Environment. Following recommendations of the above ministries have issued several joint resolutions agro environmental matters.

In conclusion, the social influence on sustainable agriculture, can be considered incipient but strong growth.

9. Other factors for a sustainable agriculture.

9.1. Does organic agriculture exist in your country? Which are the measures that can be taken in order to make the organic agriculture more attractive? Are these measures limited to politics, the plans or are there also instruments like the protected indication of origin, protected geographic designation or 10

⁴⁵ “Salas, Dino y otros vs. Provincia de Salta y Estado Nacional – Amparo”, file n° 1140/2008 T° 44.

⁴⁶ Peralta, Viviana y Ot. c/ Municipalidad de San Jorge y otros s/ amparo" , file N° 208/09.

⁴⁷ N° 11.273.

⁴⁸ File n° 198/09.

guaranteed traditional specialties? Is there a label for organic products? Do institutional aspects concerning the organic agriculture exist already?

In Argentina, Act n° 25.127⁴⁹ of 1999 created the system of ecological, biological or organic production, regulated by the decrees of the Executive Branch No. 97/01⁵⁰ and 206/01⁵¹. Understood to be an optional system of production and its corresponding agro industry, as well as collect, capture and hunting systems, sustainable in time that tends the sound management of natural resources to obtain wholesome, maintaining biodiversity and use of sustainable work systems, inter alia, through a system of handling subject to certification. The label will only name ecological, biological or organic product to those meeting the legal conditions and having the certification of private entities controlled by the National Health Service and Food Quality (SENASA). Not only the production is qualified but the entire food chain; this will be subject to traceability "*from seed to shelf*". As an example, those products obtained through chemical synthesis, genetically modified organisms and livestock production where animal welfare is not preserved will not be considered as such.

To make it attractive, in addition of a certification that targets a niche market of higher value, it would be necessary the promotion and concrete measures, such as, tax cuts, relief from export duties, credit support etc., which exist only in isolated and absolutely irrelevant cases.

There are also municipal programs for urban organic gardens, which do not have the required certification but a social certificate, as the Organic Agriculture Program (PAU) of the Municipality of Rosario, which promotes solidarity networks of organic production in most low- income sectors, and has organized a marketing system through the implementation of weekly programs in various locations of the city

9.2. The promotion of the biofuel. Which importance has the production and the use of biofuel in your country? Are there regulations which make the production interesting?

In Argentina Act n° 26.093⁵² about "Regulation and Promotion for Sustainable Production and Use of Biofuel Regulation" was passed in 2006. It had a 15 years validity period and was regulated through National Executive Decree n° 109/07⁵³; and it was then modified by Act n° 26.334⁵⁴. Producers are

⁴⁹ B.O. 13/09/99

⁵⁰ B.O. 30/01/01.

⁵¹ B.O. 20/02/01.

⁵² B.O. 15/05/06

⁵³ B.O. 13/02/07

⁵⁴ B.O. 03/01/08

entitled to tax incentives, such as Value Added Tax (VAT) early repayment. Also, goods assigned to promoted projects will not integrate taxation of Minimum Income Tax and biofuel produced by promoted agents will not be affected by Biofuel Tax. The following are considered biofuel: “bioethanol, biodiesel and biogas produced from raw material of agricultural or industrial origin or organic waste”. Article n° 6 states that the Implementation Authority will only grant authorization to those plants that comply with all requirements regarding biofuel quality and its sustainable production. For this, the presented projects must be subject to Environmental Impact Assessment procedure including effluent treatment and waste management. This would be a case of environmental conditionality in our legislation. In Santa Fe province there is also a local promotion regime, following up the previously mentioned, though Acts n° 12.503, 12.631 and 12.632 establishing promotional benefits basically in taxation, such as exemption and/or reduction and/or provincial tax deferral for 15 years from the date of the implementation of the project. However, its sustainability exercise is less effective since only one of 17 biofuel plants in Santa Fe produce for domestic consumption, while the rest produces nearly exclusively for export⁵⁵. Thus, the actual purpose, range and cause of Santa Fe and Argentina regulation about biofuel production promotion is not sustainable development through environmental protection –global warm mitigation, biodiversity and its importance in socio-rural development- but mainly, to encourage economic growth in one area of Argentina industry: cereal gathering and production of vegetable oil.⁵⁶

10. Which are your suggestions, within the framework of the renegotiations of the CAP (2013-2020) to strengthen the instruments and the cooperation mechanisms within the the EU, considering the aim of a sustainable agriculture or which other criteria should be considered?

10. As my report is about Argentina, this question isn't under my field.

⁵⁵ This information was obtained through an application for a research group at the Ministry of Environment of the Province of Santa Fe under Law No. 25,831 on Public Access to Environmental Information.

⁵⁶ Pull out from the research project under my direction "Biofuels: its regulation in Argentina. effects on rural development "(unpublished).

SUMMARY

In Argentina, the protection of the principle of sustainable development has the highest legislative level since it is a constitutional right.

With reference to sustainable agriculture it's possible to identify national Acts on minimum environment protection about Environmental Management of Water, Native Forest Protection and to ban the burning of pastures and Acts about Ecological, biological or organic production, and about Regulation and Promotion for Sustainable Production and Use of Biofuel.

Argentina has ratified many international conventions on the subject, including the Framework Convention on Climate Change, the Ramsar Convention on Wetlands, the Convention on Biological Diversity, Act No. 24.701, the Rotterdam Convention on Prior consent for pesticides, the Stockholm Convention on reduction of Persistent organic pollutants (POPs).

We also found numerous regulations on sustainable development in lower rank and provincial legislation regulations.

I can point two important aspects, which will be the engines of sustainable agriculture in Argentina: a Supreme Justice Court -we can say without fear of contradiction that this is a "Green Court"- which has issued some illustrative judgments in the field and environmental education, to led to a general awareness of the importance of natural resources protection, economic, environmental and social sustainable use.

At the national level the specially designed political institution for the promotion of the sustainable development is the Secretary of Environment and Sustainable Development within the President's office and reporting directly to the Chief of Cabinet of Ministers. Most provinces, in turn, have ministries, secretaries or departments.

The agri-environmental problems detected in the central area of Argentina, are mainly pollution from misuse of agrochemicals, also resulting from feed lots exploitation and cereal related activity, soya monoculture, harvest time issues and the agricultural frontier landslide at the expense of native forest.

Argentina has an agro-export model based on agricultural production. The harvest of the agricultural year 2010-2011 has a record of around 100 million tons. Currently, there is an economic boom, derived from this fact and the high price of commodities. Therefore it is essential to maintain that model, ensuring its economic, ecologic and social sustainability as parallel to the boom there is a large sector of the population living in poor conditions.

To achieve sustainable agriculture it is required the implementation of measures, both for land use and taxation, to encourage agricultural production alternate to soya and maintenance of native forest, and also the implementation of strong rural development.