



ELAW

SUMMER 2018

advocate

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Connecting Communities
Protecting the Planet

Keeping Coal in the Ground

IN THIS ISSUE:

Keeping Coal in the Ground

(pgs. 1, 4-5)

Protecting Public Parks in Guadalajara

(pgs. 2-3)

Protecting Indigenous Lands in Nicaragua

(pgs. 6-7)

Inside ELAW

Welcome Erick, Lien, and Maxine
(pg. 7)

ELAW Fellows Program

(pg. 8)



Coal kills people, contaminates our water, and devastates the climate. Each year, thousands of people die due to coal pollution. And coal is the single biggest contributor to global climate change.

We must end our reliance on coal or risk planetary collapse.

Rapid progress in solar, wind, and energy storage technology means the tide is turning against coal. But we have lots of work to do. The International Energy Agency reports that global coal demand increased one percent last year, following two years of declines. This data matches preliminary findings that greenhouse gas emissions rose in 2017 after three flat years (*Washington Post*, "Last year dashed hopes for a climate change turnaround," 3/21/18).

The Environmental Law Alliance Worldwide (ELAW) works with partners around the world to tackle every part of the coal machine – from mining, to transport, to burning coal for power. ELAW is working to protect communities from dozens of proposed coal-fired power plants and coal mines in Argentina, Colombia, Dominican Republic, India, Indonesia, Kenya, Philippines, Poland, South Africa, Sri Lanka, and Thailand. We are also challenging abuses at existing coal operations, including plants in the Czech Republic, Laos, and Pakistan.

Over the past two years, ELAW has collaborated with partners to challenge proposed coal-fired power plants that would have emitted an estimated 188 million metric tons of carbon dioxide every year. That's the amount of carbon dioxide emitted by 40 million average passenger vehicles in one year.

Shutting down coal is a high impact way to protect the climate.

A few highlights of our work to keep coal in the ground:

CZECH REPUBLIC

Linking lung cancer to polluted air

Citizens in Ostrava, Czech Republic, are at high risk for lung cancer. The area is part of the infamous Black Triangle, with many coal-fired power plants and other polluting industries. ELAW partners at Frank Bold in the Czech Republic are working with ELAW's science team to explore connections between the high risk of disease and polluting emissions.

CONTINUED ON PGS. 4-5

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The Environmental Law Alliance Worldwide (ELAW) helps communities speak out for clean air, clean water, and a healthy planet. We are a global alliance of attorneys, scientists and other advocates collaborating across borders to promote grassroots efforts to build a sustainable, just future.

The ELAW Advocate is a publication of the ELAW U.S. and does not represent the views of ELAW partners around the world.



Mexicaltzingo Square.

Dr. Raquel Gutiérrez Najera founded Jalisco State's only grassroots environmental law organization more than 20 years ago. Under her leadership, **Instituto de Derecho Ambiental (IDEA)** has won impressive victories. Dr. Gutiérrez's team helped put in place a national water law, secured international Ramsar recognition for the Lake Chapala watershed, saved the Huentitán Canyon from the proposed Arcediano Dam, shelved a polluting thermoelectric project proposed for the mountains of San Luis Potosí, and helped suspend an iron ore mining operation that threatened indigenous Nahua communities.



ELAW Fellow Damaris Santana
Staff Attorney
Instituto de Derecho Ambiental (IDEA)
Guadalajara, Mexico



Guadalajara, the cultural center of western Mexico, is the nation's second largest city after Mexico City. Green spaces in the greater metropolitan area (pop. 5+ million) are under siege from developers seeking land for shopping malls, hotels, apartment complexes, parking lots, and more.

"Parks are key to sustainable cities," says Damaris Santana who leads IDEA's Parks Network project. "As residents succeed in their fight for public space, our movement has grown. We are now working with communities to protect 16 parks."

Damaris has spent her life in Guadalajara. Her team launched "Caravan of the Parks," a campaign to help neighborhoods raise awareness about the value of their green spaces. These educational events, held in the parks, feature games for children, tree plantings, volunteer clean up, guest experts, and information for community members about rights to public spaces and how to participate in decision making processes.

"Parks provide more than recreation and social well-being," says Damaris. "Green spaces purify water and air, reduce wind and noise, provide wildlife habitat, and serve as a carbon sink to protect the climate."

The following are examples of IDEA's current work protecting parks. In the year ahead, they hope to expand their efforts across Jalisco State.

in Guadalajara, Mexico

“The children need to see that we can win. They approach me in the park and ask me to help. We show them that we can struggle together and win green spaces for everyone.”

Damaris Santana
Staff Attorney, IDEA



Huentitán Canyon

The Barranca de Huentitán is a canyon carved by the Río Grande de Santiago River on the northeast side of Guadalajara. The area is rich in flora and fauna. At over 1,000 meters above sea level, the canyon represents a micro-climate, which serves as a climate regulator for Guadalajara, as well as a natural barrier limiting the city's growth. In 1997, the canyon was declared a Natural Protected Area by the Guadalajara City Council. There are amazing views from the Huentitán Lookout and from within the protected area.

Neighbors have volunteered to protect the park, planting trees and rehabilitating a common area. Working with concerned residents, IDEA successfully challenged plans for the Arcediano dam, which would have devastated the canyon. IDEA is now helping citizens challenge the Huentitán Master Plan — a proposed mega project that includes a mall, nine residential towers, a 62-floor business center, a hotel, and a parking lot. The municipality sold 13 hectares of the park to develop this project.

IDEA worked with residents to file a case challenging the decision to sell the park land to developers. The case is pending.

Mexicaltzingo Square

Parque el Deán

This historical garden in one of Guadalajara's oldest neighborhoods is a popular recreation area. It is of historical significance, settled in the 1500's by the indigenous Nahuatl people. Community members have worked hard to protect the Square. Meanwhile, the Guadalajara City Council has approved plans to transform the garden into a parking lot for a local theater. IDEA is working with residents to challenge the project. The case is pending.

San Rafael Park

Three residential towers have been built near San Rafael Park, with plans for 11 more. Polluted run off water from the towers drains to an underground catchment tank in the park. Developers say this is “rainwater catchment,” but residents say private investors should not use public spaces for their polluted water. The park includes playing fields for children. IDEA challenged the developers in court. The project was suspended.

Parque El Deán

The 26-hectare Parque el Deán is nestled in a densely populated industrial area. Neighbors love the park and have planted many trees there. When it rains, polluted water from city streets flows through canals into a large artificial lake inside the park, built without environmental studies or a permit. “Children play in and around the lake,” says Damaris. “It is highly polluted, birds and squirrels are dying, and the whole park smells bad.”

When the city proposed a second artificial lake within the park, IDEA challenged the project and filed suit to protect local children and their right to a healthy environment. The community celebrated when the project was put on hold.

“The children need to see that we can win,” says Damaris. “They approach me in the park and ask me to help. We show them that we can struggle together and win green spaces for everyone.”



IDEA is working to protect 16 parks:

- Cerro de la Reyna
- Parque Arboledas sur
- Parque el Deán
- Parque san Rafael
- Parque arcos de Guadalupe
- Parque Rojo
- Cerro del Junco y el Cantaro
- Jardín de Mexicaltzingo
- Cerro del 4
- Jardin de Tlaquepaque
- Villa Fantasia
- Parque Angel Romero
- Estadio Panamericano de Atletismo
- Bosque Pedagógico del Agua
- Colomos
- Parque Metropolitano

COLOMBIA***Protecting indigenous peoples from coal mining abuses***

Wayuu children in Colombia are suffering from respiratory problems allegedly tied to operations of Latin America's largest open pit coal mine - the Cerrejón mine in La Guajira. ELAW drafted an *amicus curiae* brief for the Colombian Court supporting constitutional claims on behalf of the children whose health is endangered by the mine.



Wayuu peoples gather outside Colombia's Congress, wearing face masks to protest air pollution in La Guajira.

INDIA***Coal mine expansion in Chhattisgarh on hold***

At the request of local partner Shweta Narayan, ELAW Staff Scientist Dr. Mark Chernaik critiqued the environmental impact assessment (EIA) for the Gare Palma Sector II coal mine proposed for Raigarh, Chhattisgarh. Women from 14 villages impacted by the mine are protesting the expansion plans.

Community members translated Dr. Chernaik's critique into Hindi and shared it with residents and village councils. ELAW lawyers provided Shweta with cases from other countries in which courts required decision makers to evaluate the impacts of the eventual burning of the coal when permitting coal mines.

Shweta is now circulating a letter endorsed by public health experts across India demanding a health impact assessment in the region before considering expansion of current coal operations. A public hearing on the proposed project has been delayed until further notice.

“Up to 1,200 new coal-fired power plants are planned around the world. If all of these plants were built, it would lock in decades of hazardous emissions into our air and water and would continue coal’s heavy toll on human health. On top of that, the greenhouse gas emissions from these plants would put us on a path of catastrophic climate change.”

Coal Factsheet #1, endcoal.org
<https://endcoal.org/about/why-coal/>

INDONESIA***Challenging expansion of coal-fired power in Bali***

ELAW's science team is helping partners working to overturn plans to expand the Celukan Bawang power station in Bali. ELAW provided an expert statement that partners submitted to the State Administrative Court of Denpasar that revealed the flaws in the project's EIA.

KENYA***Setback for Kenya's first coal-fired power plant***

In a stunning win for communities in Lamu, Kenya, the government was ordered to pay more than \$17 million USD to 4,600 fishermen for damages caused by an enormous infrastructure project: the Lamu Port, South Sudan, Ethiopia Transport Corridor (LAPSSET). This project includes what would be Kenya's first coal-fired power plant.

ELAW Staff Attorneys and Scientists collaborated with the Katiba Institute, Natural Justice, and Save Lamu to ensure the proposed Lamu Port does not devastate coastal communities, mangroves, coral reefs, and sea turtle habitat. The 32-berth cargo and container port would service the coal-fired power plant, and export oil and other natural resources from East Africa. Another case is challenging the proposed coal plant.

Last year, ELAW Staff Scientist Mark Chernaik and Ernie Niemi, an economist from Natural Resource Economics, Inc., traveled to Kenya and provided expert testimony at hearings at the Malindi High Court.

PAKISTAN***Challenging the Sahiwal coal-fired power plant***

Partners in Pakistan are asking the High Court of Punjab to protect citizens from the proposed 1320 MW Sahiwal coal-fired power plant. ELAW is helping local advocates show that the coal-fired power plant is inconsistent with Pakistan's commitments to protect the climate under the Paris Agreement and will burden electricity consumers with substantially higher costs compared to generating electricity from solar or wind.

PHILIPPINES

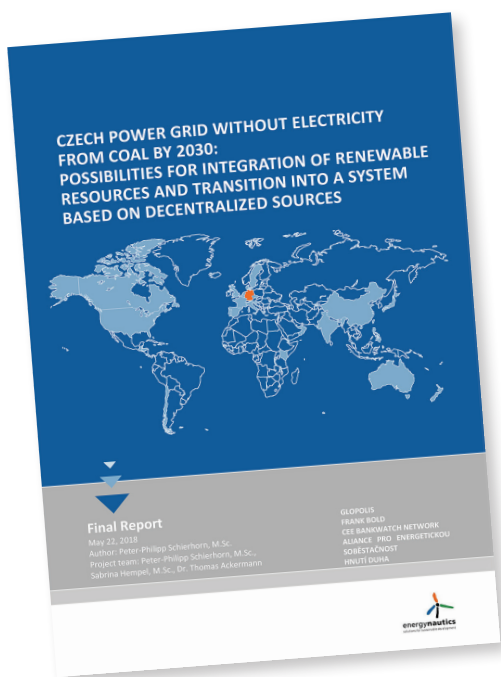
A call for renewables

ELAW is collaborating with attorneys in the Philippines to challenge coal-fired power plants and advance sustainable alternatives. Partners called on ELAW to help with a lawsuit calling on the Department of Environment and Natural Resources (DENR) to update ambient air quality standards and emission standards for power plants, and the Department of Energy (DOE) to issue Renewable Portfolio Standards and establish a Green Energy Options Program. On June 4th, the Court of Appeals required the DOE to issue overdue renewable energy rules within 90 days. Despite admitting that air standards are outdated, the court found the DENR did not have a duty to update them. The court lauded our partners "zealous fight to protect the environment," while acknowledging that its "hands are tied by the limits" of Philippine laws. ELAW partners will continue working to uphold the rights of citizens to clean air and a livable climate.

POLAND

Challenging lignite, the dirtiest form of coal

The Government of Poland has approved a license to excavate new lignite deposits. ELAW is working closely with partners in Poland to challenge the permit for this enormous open pit mine project, which would feed the Belchatow Power Station, the largest coal-fired power plant in Europe. ELAW is helping show that the approval process failed to assess climate impacts correctly. A *New York Times* report says Poland has some of the dirtiest air in the European Union, "largely a result of the country's love affair with coal" (April 22, 2018, "Smothered by Smog, Polish Cities Rank Among Europe's Dirtiest").



Collaborating to Defeat Coal

Grassroots advocates working within their home country's legal and regulatory frameworks know and trust ELAW and call on us for legal and scientific tools and expertise. ELAW's law and science teams provide the help these advocates need:

- Expert affidavits identifying the public health and climate impacts of proposed coal projects.
- Documentation of an existing coal mine's failure to comply with reclamation requirements, to make the case against expansion.
- Explanation of the impacts of transporting coal by open rail cars and legal rulings against this practice.
- Critique of energy planning processes improperly tilted toward coal.
- Legal precedents granting standing to challenge a coal plant to persons living nearby and suffering health impacts.
- Review of an environmental impact assessment (EIA) for a coal plant to identify health and environmental impacts that are ignored in the EIA.
- Scientific testimony regarding energy sources cleaner than a proposed coal-fired power plant.
- Help developing litigation strategies to defeat coal.
- Scientific support in developing a program to monitor the impacts of coal mining, transport, and burning.
- Economic analysis and testimony regarding the true costs of a proposal to mine and burn coal.
- Scientific critique of a flawed plan to dump coal ash in a flood plain.
- Legal critique of failed measures ostensibly aimed at allowing citizens to participate in decisions about a proposed coal plant.
- Legal rulings sanctioning a coal-fired power plant for harming people's health by polluting the air.

By providing critical legal and scientific tools to local advocates, ELAW empowers those advocates to win battles against coal and builds lasting local capacity to move past coal.

COAL LITIGATION STRATEGIES

www.elaw.org/coal

Are you challenging proposals to build or expand coal-fired power plants? Visit elaw.org/coal for legal strategies that have been used successfully around the world. We also have a database of administrative and court decisions to help support legal arguments. Many thanks to the Philip Stoddard and Adele Smith Brown Foundation for making this website possible.

In May, ELAW partners at Frank Bold and their European colleagues published a road map for a coal-free Czech Republic by 2030. Kristina Sabova, Head of the Responsible Energy Section at Frank Bold and 2016 ELAW Fellow, thanked ELAW staff for helping frame the project.

Defending the Defenders: Protecting Indigenous



Juana Bilbano



Delvin Rosalio

PHOTOS: Todd Cooper, Eugene Weekly

ELAW partners on Nicaragua's North Atlantic Coast have spent years defending the traditional lands and livelihoods of indigenous peoples. Taking the lead is Miskito attorney Lottie Cunningham Wren, founder of Centro de Justicia y Derechos Humanos de la Costa Atlántica de Nicaragua (CEJUDHCAN).

ELAW has worked with Lottie for nearly 20 years to build the capacity of her organization and win justice for indigenous and Afro-descendant peoples.

"The close relationship that indigenous peoples have with their land is the foundation of their culture, their spiritual life, their integrity, and their economic survival," says Lottie.

In 1995, the Government of Nicaragua granted a Korean corporation a timber concession on indigenous Mayangna lands in the community of Awás Tingni, a densely forested area on the River Wawa. The community rebelled, and Lottie negotiated the dispute with the State of Nicaragua and then accompanied the community before the Inter-American Court of Human Rights.

A landmark ruling by the Court in 2001 ordered the State to demarcate and title indigenous lands, but Nicaragua never completed the process.

Many settlers without legal title now occupy the territory of the Miskito, Mayangna, Rama, and Afro-descendant peoples on Nicaragua's

North Atlantic Coast. The result has been violent conflict over the fertile lands rich in timber and gold, leaving more than three dozen indigenous people dead and thousands displaced.

Lottie and colleagues at CEJUDHCAN have received threats for opposing Nicaraguan government inaction over the violence.

Attorneys Juana Bilbano, CEJUDHCAN's Executive Director; and Delvin Rosalio, head of CEJUDHCAN communications; sought respite in Eugene this spring to escape the violence. They were able to recharge and work one-on-one with ELAW staff. Financial support from Front Line Defenders made their visits possible.

In an interview in *Eugene Weekly*, Juana described receiving many threatening text messages. One was from someone claiming to have planted bombs in her walkway. Another suggested she prepare for her own funeral.

Grassroots advocates like Juana, Lottie, and Delvin, who stand up for communities and challenge environmental abuses, face serious risks. *The Guardian* reports that 197 environmental defenders were killed in 2017, making it the deadliest year ever for environmental defenders.

Because of these growing risks, ELAW has stepped up its work to support and protect partners through its Defending Defenders Program.

Decades of good work by CEJUDHCAN and the current violence facing indigenous communities on the North Atlantic Coast are featured in two short documentaries, available on YouTube: *Acceso a Justicia* (Access to Justice) and *Injusticia e Impunidad Contra Indígenas en el Caribe norte de Nicaragua: Conflictos de la tierra* (Injustice and Impunity Against Indigenous Peoples in North Caribbean Region of Nicaragua: Land Conflicts).

These documentaries will soon be available in English. Many thanks to Professor Gabriela Martínez at the University of Oregon School of Journalism and Communication, and ELAW Intern Quincy Gill for making this translation possible.



Lands in Nicaragua

People who stand up for vulnerable communities and human rights often are attacked, threatened, and criminalized. Now, attacks on Land and Environmental Defenders (LEDs) are on the rise. ELAW advocates have been physically assaulted, attacked in the media, threatened with death, sued by rich corporations, and unjustly accused of crimes. They have had family members attacked, and had information stolen or hacked — the diversity and sophistication of attacks is growing. In addition to those attacks, advocates around the world face conservative governments that aim to shut down civil society organizations by imposing unreasonable registration and reporting requirements, restrictions on foreign financing, and laws that restrict access to information and freedom of expression.

DEFENDING DEFENDERS

Protection, Deterrence, Resilience

To keep our partners safe, ELAW's Defending Defenders Program focuses on three strategies:

Protection

ELAW trains partners to assess risks and improve their personal, organizational, and digital security.

Deterrence

ELAW helps partners become less attractive targets by raising their profiles through domestic and international media, and engaging domestic, regional, and international human rights protection mechanisms.

Resilience

ELAW works with partners to build robust organizations and support community allies, so they can stay strong in the face of sustained pressure.

Inside ELAW



Welcome Erick and Lien

We are pleased to welcome two French-speaking attorneys, now working on contract with ELAW. **Erick Kassongo** and **Lien De Brouckere** will provide legal assistance to environmental advocates in Africa, with a focus on Francophone Africa.

Erick is Chair of the Centre Congolais pour le Droit du Développement Durable (Congolese Center for Sustainable Development Law, CODED), based in Kinshasa, Democratic Republic of Congo. He is a member of the Working Group on Extractive Industries, Environment and Human Rights Violations, established by the African Commission on Human and Peoples' Rights. Erick received his law degree from the Free University of Kinshasa.

Lien is the founder and principal of Communities First LLC. She provides technical advice on human rights, corporate accountability, and natural resource governance. Lien received her law degree from McGill University. She is fluent in English, French, German, and Dutch.

Welcome Maxine

Welcome new ELAW Board Member **Maxine Burkett**.

Maxine is a Professor of Law at the William S. Richardson School of Law at the University of Hawaii, and a Global Fellow at the Woodrow Wilson International Center for Scholars. At Richardson, she teaches Climate Change Law and Policy; Torts; Ocean and Coastal Law; and International Law. She has written extensively in diverse areas of climate change law with a particular focus on climate justice. Maxine has presented her research on the law and policy of climate change throughout the United States and in West Africa, Asia, Europe, and the Caribbean. She has been cited in numerous news and policy outlets, including BBC Radio, the *New York Times*, the *International Business Times*, and *Nature Climate Change*.





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ELAW Fellows From Colombia and Estonia

ELAW Fellows **Aura Tegria Cristancho** (left) from Colombia and **Kadi-Kaisa Kaljuveer** from Estonia were in Eugene in March for capacity building ELAW Fellowships. Aura is an indigenous U'wa attorney and legal advisor to the U'wa Association of Traditional Authorities and Councils (ASOU'WA). Aura helps the U'wa challenge gas, petroleum, mining, and other projects that threaten native lands. Kadi-Kaisa is an attorney at the Estonian Environmental Law Center. Her work focuses on access to justice and protecting the climate. Many thanks to host families Penny Salus and Jared Rubin, Jeya Aerenson, and Ralph and Patty Jaszowski!



THINK GLOBALLY. ACT GLOBALLY.

Charity Navigator and **GuideStar** give ELAW their highest rating for fiscal management, accountability, and transparency. To support our high impact work defending the environment and human rights in communities around the world visit www.elaw.org/give to make a secure, online gift.

