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REVIEW OF THE BILL ON THE
ENVIRONMENT AND NATURAL RESOURCES

Ivon Pires
September, 1986

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Date: 11 September 1986.
To: Dennis McCaffrey, IIED.
From: Ivon d'Almeida Pires Filho, Special Consultant.
Re.: Report on Environmental Legislation in Bolivia.

Prior to leaving for Bolivia I read the materials sent from the USAID Mission in La Paz concerning the preliminary work done by the Bolivian Vice-Presidential Commission for the Environment and its draft of an environmental bill, as well as the 1980 State of the Environment and Natural Resources of Bolivia (Environmental Profile) prepared under USAID sponsorship. These documents provided me with a general background of the country and its existing environmental framework.

Upon my arrival in La Paz, on September 1, I met with the members of the Environmental Commission: Mr. Wagner Terrazas, an agronomist and president of the Commission; Dr. Carlos Brockman, geologist and specialist in oil development; Mr. Felipe Ochoa, agronomist and member of the Senate Commission on Agriculture; Mr. Mateo Ilijic, geologist and member of the Senate Commission on Public Health; Mr. Carlos Pelaez, head of the environmental section of the Ministry of Planning and Coordination; Mrs. Julia Elena Fortún, anthropologist and subsecretary of the Bolivian Vice-Presidency; and Mr. Victor Quinteros, lawyer and legal assistant to the Vice-Presidency.

This first meeting was of a general nature. Each member of the Environmental Commission was introduced and they explained the work done since the Commission was formed by the Vice-Presidential Resolution of May 15, 1986. Prior to this date, in March 1986, an environmental bill (attached), supported by several representatives of the Bolivian Congress, had been drafted but apparently never came under consideration by the House (Cámara de Diputados). This was, as a matter of fact, a rather limited bill, since it only considered the management of renewable resources and the creation of an Environmental Institute under the control of the Ministry of Agriculture - MACA (Ministerio de Agricultura y Asuntos Campesinos), thus not including non-renewable resources; measures to prevent, control and restore contaminated environments; and an institutional system independent of existing institutions.

The newly formed Environmental Commission considered this previous bill and the Environmental Profile of Bolivia mentioned above as antecedents to their work. The draft of the Commission's Environmental Act, however, was based on a series of documents its members prepared, such as the Plan of Work Methodology (attached); the Institutional Framework (attached); a compilation of primary Bolivian laws affecting the environment (attached); the National Conservation Strategy (attached); the Development of Bolivia by Ecological Regions (attached); the Legal and Institutional Criteria (attached); and some comparative legislation. Thus, its Environmental Law draft (attached) consisted of chapters on: (1) environmental principles; (2) environmental objectives; (3) definitions; (4) a national council for the environment; (5) natural

resource uses; (6) prohibitions; (7) sanctions; and (8) final provisions. This was the draft which I was asked to review.

On the following day, September 2, I proposed a plan of work (attached), whereby we would discuss the general framework of the bill and the provisions of each chapter individually. Although this program of work was accepted by all members, it was subsequently altered to conform to the new outline of the Environmental Bill I had suggested. Thus, the new outline (attached) would rearrange the previous draft within clear and specific categories, such as: (1) General Provisions; (2) National Environmental Policy; (3) National Environmental System; (4) Special Environmental Fund; (5) Incentives; (6) Civil Liability; (7) Sanctions; (8) Final Provisions. Much of the previous draft was kept in this arrangement but within concepts that were introduced for the first time, such as: the establishment of a national environmental policy; the creation of an environmental institutional system; and the focus on incentives and civil liability rather than only prohibitions and sanctions. In addition, a special environmental fund was created, and several management tools were introduced.

The National Environmental Policy section is subdivided into general and sectoral policies which are resource specific, such as air, water, land, flora, fauna and protected areas. It incorporated and expanded sections (2), (5) and (6) of the previous Commission draft, the difference being that it now established a clear national policy for the environment, its objective, and its management instruments or tools, e.g. air and water quality standards, zoning, environmental impact assessments, licensing, the creation of protected areas, incentives and sanctions, and an environmental registry. This is followed by sectoral policies to focus on resource specific conditions and problems existing in Bolivia.

The creation of a national institutional system for the environment was perhaps the most welcomed suggestion, since it was unclear to the Commission how the Council was going to operate from its previous draft. In my suggested option, the newly created and existing environmental institutions will function within a framework, which consists of a National Council, directly linked to the Presidency and formed by representatives of several ministries and private institutions, which will establish national and regional guidelines; an Executive Secretariat, linked to the Council, which will be the enforcement agency and will also function as coordinator of the activities from the other institutions that make up the system. These are, on a horizontal level, public and private support institutions of a national scope; and on a vertical level, public and private institutions of regional, provincial, cantonal and local scope.

Several principles have been put forward by the new Bill. These include: the need to balance socio-economic development with a healthy environment (arts. 16 and 17); the inclusion of private section participation in decisionmaking, implementation, and adjudication (arts. 7, 13, 14 and 58); and the polluter's obligation

to pay for the pollution, with emphasis on restoration (Chapters IV and VI). Special consideration should be given to the newly created Environmental Fund which will provide immediate funds to cleanup, control and restore environmental emergencies and degradation, when this is not done by the polluter immediately. Any expenditures from the Fund must be reimbursed by the responsible party in 48 hours, otherwise the amount will be adjudicated in double.

My only remaining concern is in the area of civil liability where the concept of liability without fault was not introduced because the present tort system in Bolivia allegedly covers all cases of damages as long as a causal connection is proven. The section on sanctions can still use some improvement not to consider every infringement of environmental provisions as a crime and to create categories of civil sanctions for different degrees of infractions.

These changes and additions were introduced as we revised the previous Environmental Law draft from Tuesday, September 2, to Friday, September 5. The schedule of work was punctually from 9:30 to 12:30 and 14:30 to 18:30. I used the evenings to review the day's work and draft suggestions for the chapters to be revised or drafted in the following day. On the weekend, September 6 and 7, I revised the week's work for typographical errors, consistency, and gaps. I also drafted a report to the president of the Commission, Ing. Wagner Terrazas, on the status of the Bill. The Bill was totally revised by us (the members of the Commission and I) on Monday and Tuesday. A new draft (attached) was ready on Wednesday when I presented and discussed my report (attached) with the Commission.

It is my opinion that this new draft of the Bolivian Environmental Act not only utilizes international concepts, principles and techniques but also addresses Bolivian social, cultural and economic realities, such as regional differences, the trend toward decentralization, financial constraints, etc. The need to balance international experience with national concerns was emphasized throughout the entire drafting effort, and the Vice-Presidential Commission fulfilled this role very responsibly. Its members were serious, dedicated, and highly qualified Bolivian professionals, who were both a pleasure and a challenge to work with. The high quality of draftsmanship in this Bill must be credited to each and all of them.

Next month, the Commission will hold a week-long national symposium to discuss this draft of the Bill with a wider audience that will include public and private institutions and the public at large. Copies of the Bill will be distributed and specialized working groups will be formed for detailed analysis of the legal provisions throughout the week, after the general introductory remarks of the first day. If subsequently approved by the Legislature and the Executive, this Environmental Act will need a series of regulations to be implemented. These regulations will be crucial to determine the success or failure of the present effort. It will be the regulations, for example, that will give shape to the institutional mechanisms created and the operations of the Special

Environmental Fund. I have suggested to the members of the Vice-Presidential Commission and the USAID Mission in La Paz that it would be desirable for the same members who drafted the Environmental Bill to be the ones to draft the regulations for the sake of continuity and consistency. Otherwise, they may run the risk of regulations that will weaken or distort the concepts, principles and techniques introduced in the Act.

The Bolivian Vice-Presidency could also consider, for instance, the creation of a permanent Environmental Commission within the Senate, similar to existing commissions on several matters, such as agriculture and public health, which would provide consistency to the ongoing environmental legislative process. It is common knowledge in Bolivia that existing environmental legislation in most areas is either inadequate or needs regulations to be effective. A clear example of this is the Biological Station of Beni, which was created a few years ago by decree, while the law for protected areas did not provide for the creation of biological stations. Recently, the government is considering "promoting" the previous decree to the status of law in order to legalize the creation of that biological station.

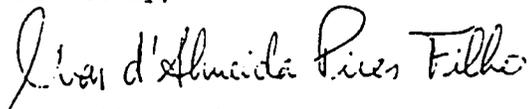
Other meetings held during my stay in La Paz were: (1) on several occasions, with Alfred Nakatsuma, USAID officer in charge of environmental affairs in Bolivia, who was kept up-to-date with the work; (2) on September 3, with Guillermo Mann, Director of Science and Planning for Nature Conservancy International Program, and Maria Teresa Ortiz, Program Director for Nature Conservancy in Bolivia, with whom I discussed several aspects of environmental law enforcement in Bolivia; and (3) at the invitation of USAID, on September 9, with the private environmental groups that operate throughout Bolivia.

This last meeting was held at the building of LIDEMA (Liga de Defensa del Medio Ambiente), the Environmental Protection League which may serve as the coordinating body for the other environmental groups. These were represented by Elvira Salinas de Mesa from CIEC (Centro Interdisciplinario de Estudios Comunitarios); Maximo Liberman from CEEDI (Centro de Estudios Ecologicos y de Desarrollo Integrado); Guillermo Crespo and Manuel Posnansky from SOBE (Sociedad Boliviana de Ecologia), Cynthia Gonzalez from PRODENA (Asociación Boliviana Pro-Defensa de la Naturaleza); Oscar Siles and Juan Carlos Quiroga from CUMAT (Capacidade de Uso Mayor de la Tierra); Gabriela Rodrigo de Walker, Director of the "Museo de Historia Natural (A.N.C.B.);" Cecile Belpaire de Morales, Director of the "Instituto de Ecologia" of UMSA; and Carmen Miranda from "Estación Biológica Beni." Representing LIDEMA were José Lorini Lapachet, its President, and Javier López Sonir, its executive secretary, who presided at the meeting. In this meeting, each representative presented a summary of their previous and planned future activities. At the end, I was asked to say a few words concerning the work on the new environmental law.

Without any doubt, the meeting proved how important it is for Bolivia to begin operation of the new environmental system right away, whereby the Executive Secretariat can bring together the various forces that are dispersed in activities that range from environmental education to land use studies, and orient them according to national priorities.

As to the assistant consultants to the Commission, there was no time left to meet any of them. An unfortunate event during my stay there was the murder of the scientist Noel Kempft Mercado, an assistant to the VicePresidential Commission on matters concerning flora and fauna. This murder happened while he visited a National Park area to observe but, apparently, came across a narcotics ring and was assassinated. His death caused a wave of indignation in the country. To some extent, this incident typifies how difficult and remote the control of protected areas is in such a large country with a limited budget.

Sincerely,

A handwritten signature in cursive script that reads "Ivon d'Almeida Pires Filho". The signature is written in dark ink and is positioned above the typed name.

Ivon d'Almeida Pires Filho

Vicepresidencia de la República de Bolivia

R E P O R T

La Paz, September 10, 1986

TO: Ing. Wagner Terrazas
Chairman, Commission on the
Environment and Natural Resources

FROM: Dr. Ivon D'Almeida Pires Filho
IIED/USAID Adviser
Special Consultant on
Environmental Laws

RE: REVIEW OF THE BILL ON THE ENVIRONMENT
AND NATURAL RESOURCES

I am pleased to present you this Advisory Report drafted in conjunction with the Commission over which you preside in such a distinguished fashion. As the IIED/USAID Special Consultant, I examined the Bill on the Environment drafted by the Commission, and background documents that I was given. I also analyzed the opinions put forth during the work of reviewing the Bill from September 1 through 10. It thus behooves me to inform you that this Bill has incorporated the most up-to-date environmental principles and techniques found in Comparative Law and in Manuals of the UNEP and the IUCN. I should also note that this Bill is fundamentally consonant with Bolivia's interests and realities.

The Bill establishes a general policy, as well as sectoral policies, for the environment and natural resources, in a summarized, clear, and concise fashion. It establishes a System for coordinating, administering, and protecting the environment and its resources. It also introduces a system of incentives and penalties. The innovative aspects of this Bill are: the

establishment of an environmental fund, and the development of sectoral policies for natural resources.

I have been asked, Why a Law and not an Environmental Code?

In my view, a Law will help to resolve Bolivia's environmental problems -- which result more from a lack of policy or environmental orientation and institutional coordination than to a lack of codified legislation -- without having to get involved in a long and costly process of codification at this time.

Furthermore, one must bear in mind that natural resource management and the implementation of environmental laws -- which require the coordination and cooperation of many public entities and private institutions -- is still at an experimental stage. Thus, it would be premature to consider developing a code without the experience that is needed for doing so. One of the main activities of the National Executive Secretariat for the Environment and Natural Resources, an entity established by this Bill, should be precisely to compile all environmental legislation in Bolivia and to carry out the necessary changes or set forth regulations needed for improved implementation.

It is recommended that the current technical commission, made up of professionals from several environment-related disciplines, participate in this process, in accordance with their experience in this sector. Their contribution should be primarily in matters regarding drawing up regulations for the Law. If codification is considered necessary in the future, it can be drafted at that time. At present, I believe that the methodology adopted by the commission is the best one to follow.

Another question that might be asked is: Why does the Commission

suggest establishing an Environmental Council and not a Ministry of Environmental Affairs?

Although the establishment of a Ministry of Environmental Affairs could be the ideal objective, the commission was realistic in determining that a Council will better assist the work of coordinating the various Ministries and other entities that have an interest in or may affect the environment.

Likewise, and considering the current economic crisis affecting the nation, the budget required for establishing a new Ministry would not be available.

Several fundamental principles, concepts, and techniques were adopted in this Bill so as to yield sound and effective environmental legislation. These include:

- 1) The endeavor to achieve equilibrium between the imperative of socio-economic development and the need to maintain a healthy environment through rational or sustained use of natural resources.
- 2) Utilization of the holistic concept of the environment.
- 3) Private participation in the environmental process.
- 4) Decentralization in participation in and implementation of environmental standards extending to regional and local levels, as part of a dynamic system of environmental action.
- 5) Establishment of environmental quality standards.
- 6) Introduction of the Environmental Impact Study.
- 7) Establishment of an Environmental Register.
- 8) Establishment of incentives so as to reduce pollution.
- 9) Obligatory restoration and/or payment for damages caused by

polluting activities.

- 10) Establishment of a Special Fund for cleaning and environmental improvement.
- 11) Promotion of environmental education.

What follows is a detailed analysis of these points:

- 1) The first of these principles, which calls for achieving equilibrium between national development and environmental conservation, is very clear, since total protection of the environment and its resources would not eliminate the "pollution of poverty" that afflicts a large segment of the population. Therefore, cost-benefit analyses must be used to ensure that all measures that may have an environmental cost bring about a greater benefit for the community.
- 2) The holistic concept embraced in this Bill reflects an advanced legislative technique, in which not only man is taken into account; the functioning of ecosystems, as part of a system in equilibrium, is also considered.
- 3) As regards the principle of private participation, the Bill considers three aspects:
 - (a) Participation on the Council, which will establish norms for implementing environmental policy;
 - (b) Participation of supporting and regional entities interested in the environment;
 - and, (c) Participation in civil suits.Private participation is, first of all, a key factor for ensuring that the public administration plays a dynamic role in defending the interests of those who suffer the physical and economic effects of environmental pollution

or degradation of natural resources. Secondly, participation in legal actions to obtain compensation for damages will help ensure that environmental costs are considered in the production costs of the activities causing damages. In this way, when the cost of paying compensation is greater than the costs of preventive measures, the polluter will opt for prevention.

- 4) Decentralization as regards implementing environmental standards is other important principle for effective implementation of environmental policy. First, it is important because the local and regional entities are directly linked to the problem of pollution and degradation, and can take action more rapidly. Secondly, participation of the entire population is necessary for successful control actions, since central government entities do not have sufficient financial and human resources for inspecting the entire country. At present, all of these entities are part of the national environmental system to be established, and in the future they should work under the direction of the Council and the Executive Secretariat for Environment and Natural Resources.
- 5) Establishment of environmental quality standards is fundamental for ensuring adherence to the environmental norms established by the Law. Such standards will determine the optimum level of environmental quality for the country so as to be able to determine the degree of environmental pollution and thus take the necessary measures for pollution control and environmental improvement.

- 6) The Bill introduces another internationally accepted tool, the "Environmental Impact Study." Impact studies will be compulsory whenever new activities that may have a significant negative impact on the environment are undertaken. Environmental Impact Studies are a planning technique to ensure that several alternatives are considered before implementing new industrial activities or other activities that may cause irreparable damages, or activities the costs of which are greater than the benefits. The environmental authority, depending on the circumstances, will or will not extend authorization for the proposed activity.
- 7) The establishment of an environmental register, also provided for in this Bill, will make it possible to keep track of polluting activities or products in the country, so as to determine the causes and effects.
- 8) The establishment of incentives to bring about changes in destructive techniques and replace them with others that make possible the rational and sustained use of natural resources is another positive aspect of the Law. In this way the Law aims to encourage conservationist practices through legislative and economic mechanisms, instead of simply punishing the agricultural or industrial producer. Incentives will also be established to encourage use of new technologies geared to optimal use of natural resources and which make possible maintenance of environment quality within the standards to be established.

- 9) The principle that the polluter -- not the public -- should pay for the pollution he causes, was also incorporated into the Bill. The Bill proposes, first, restoration of the environment, and secondly, compensation. The price of products of a polluting activity reflect all of their production costs, including the social costs, which to date have been absorbed by the community, and not by the direct consumers of such products. The Bill is clear in that there is no such thing as an acquired right to pollute, so as to ensure that already-existing companies or activities and authorities not basing themselves on the new environmental quality standards not continue to degrade the environment and thereby to cause damages to the public and the government. This means that ongoing polluting activities will have to adjust to the new quality standards, even if changes are incorporated or new technologies applied.
- 10) An innovation in this Bill is the establishment of a Special Fund with the objective of cleaning or improving the quality of the environment. This fund is the first of its kind in this type of holistic legislation; but it is based on the experiences of funds established in laws relating to oil spills and toxic materials spills, such as federal and state water pollution control laws in the United States, and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 in the United States.
- The Poliviar Bill restricts the Fund to providing financial resources for clean-up and pollution control, and for restoration of degraded areas. Thus, a fund to pay

compensation for damages was not set up, as those suffering losses deriving from damage to the environment can no doubt be compensated through the civil courts.

Nor was a fund for sustaining the environmental bureaucratic apparatus considered, for such an office should be supported by virtue of a formal commitment on the part of the government. The government should specifically allocate a budget for the environmental offices, which would be a show of its political support. This is why the sole purpose of this Fund should be to seek improvement of the environment -- not including or deriving from this definition other activities -- so as to ensure that the resources of the Fund are used solely for the purpose for which it is to established.

- 11) Finally, another principle that has been included, and that has been considered the most important one for long term success of the environmental policy, is that of environmental education at all levels. The function of education is to increase voluntary compliance with ecological norms and principles, which in turn will reduce and facilitate the oversight activity of the environmental agencies.

All of these points have been set forth taking into consideration Bolivia's social, cultural, political, and economic situation, understanding that Bolivia is divided into specific regions and peoples of varied origins. Thus, the Bill provides for the participation and input of

regional and local public and private institutions into the work of the national entities established, so that the specific problems of each region and municipality can be considered more directly.

Likewise, substantive and serious problems were specifically considered in the Bill. These include soil erosion, slash-and-burn of the flora, the indiscriminate destruction of wild fauna, and air and water pollution. Finally, this Law is to be implemented by institutions and legal norms currently in force, in a process of coordination and integration directed by a new institution dedicated to the environment. The Bolivian government is in a position to guarantee the operability of such an institution by providing appropriate financing.

Given the foregoing, I believe that this Bill, which could consider including other suggestions as it is evaluated by all the other public and private entities, as well as by citizens interested in participating, contains all the requirements for a pioneer Law for Bolivia, and will be an example for Latin America.

This completes this report to yourself and to the members of the Vice-presidential Commission on the Environment, with my highest and most distinguished esteem.

[signature]

IVON D'ALMEIDA PIRES FILHO
SPECIAL CONSULTANT - IIED/USAID

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