
ENVIRONMENTAL LAW PROGRAM

First Year Report FY 1996

Prepared for

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Executive Summary

USAID's Environmental Law Program (ELP) was established in October 1995 as a joint activity of Office of Environment and Urban Programs in the Global Bureau's Center for Environment (G/ENV/UP) and the Environment Team in the Office of Regional Sustainable Development in the Latin America and the Caribbean Bureau (LAC/RSD-E).

Designed to provide environmental legal and regulatory policy expertise to the Agency both in Washington and the field, and to improve USAID's ability to access external expertise, ELP's work in Washington has supported G/ENV/UP's strategic objective for sustainable urbanization (SO2) - addressing legal and regulatory policy issues relating to the delivery of urban environmental services, and LAC/RSD's Hemispheric Free Trade Expansion project - promoting the resolution of key market issues impeding environmentally sound and equitable free trade (SO1).

During its first year, ELP built a foundation from which USAID can more effectively promote improvements in environmental laws and regulations, and strengthen the institutions that implement them. At the same time, the Program has emphasized participatory dialogue and learning as tools for legal and regulatory policy reform and implementation.

ELP activities in Washington included designing and executing a workshop on combining incentive-based and enforcement-based environmental regulatory models (co-hosted with EPA, OAS and the Inter-American Bar Association); supporting the development of a strategic framework for the LAC/RSD HFTE Program, designing a legal policy component for G/ENV's EP3 program, developing a pilot program for expanding Internet access to environmental laws and policies, and helping to design and implement a Bolivia Summit preparatory conference on civil society's role in sustainable development policy. ELP has also designed and supported the production of a series of case studies on the effective use of legal and regulatory policy as environmental protection tools.

In the field, ELP provided direct assistance to missions in Paraguay, Nicaragua, Peru, and Guatemala during its first year. Successes include supporting the design of environmental policy components of Mission and regional programs; working directly with host governments to revise environmental laws and regulations and produce national workshops on legislative drafting and reforms; and supporting institutional strengthening through direct assistance to newly-established environmental offices and governmental institutions.

ELP also strengthened environmental legal policy awareness within USAID, among key US agencies, and other institutions, while working with environmental professionals and students engaged in environmental law and development in countries where USAID works. These activities helped to identify specialists who can assist USAID offices to implement law and policy-related activities, and create opportunities for future collaboration and for leveraging USAID resources.

Environmental Law Program First Year Report (FY 1996)

Background

USAID has long recognized the essential role that legal and regulatory policies play in making development sustainable. To further this role, the Agency has increasingly worked to strengthen environmental legal frameworks and institutional capacity, particularly through its field missions. In October 1995, USAID initiated the Environmental Law Program (ELP) to help develop and focus these activities by providing direct technical support for strengthening environmental legal policies and programs in countries and regions where USAID is active, and by improving USAID's ability to identify and engage outside expertise.

ELP is a joint program formed under an agreement between the Office of Environment and Urban Programs in the Global Bureau's Center for Environment (G/ENV/UP) and the Environment Team in the Office of Regional Sustainable Development in the Latin America and the Caribbean Bureau (LAC/RSD-E). These offices contracted an Environmental Law Advisor through the Center for International Environmental Law in Washington (CIEL) to serve as the Program's Senior Attorney. G/ENV/UP added capacity to the program by hiring a second lawyer through its International Development Associate program, and assigning him as Staff Attorney for the new program.

Supporting USAID Strategic Objectives

The Environmental Law Program was designed to be global, cross-cutting, and multi-sectoral in scope, while specifically bringing value added to programs and activities under strategic objectives for both G/ENV and LAC/RSD, and for field offices. ELP's approach for providing assistance has included:

- providing environmental legal and regulatory policy expertise;
- promoting understanding of and improvements in environmental legal policy;
- supporting efforts to strengthen institutions that design and implement environmental policy; and
- furthering and open and participatory dialogue about environmental policy among governments and civil society at local, national and regional levels.

In Washington, ELP has provided support under G/ENV/UP's strategic objective for sustainable urbanization (SO2). Environmental law plays a critical role in sustainable urbanization by addressing issues concerning:

- the legal basis for public participation and governmental action and authority;
- the institutional capacity for environmental decision-making and enforcing local

environmental standards; and

- urban pollution, planning and management.

In its first year, ELP worked to design and integrate legal and regulatory policy elements with ongoing urban activities. The principal focus of ELP's assistance has been the office's intermediate result for reduced urban pollution (IR2.3), where ELP established a foundation for legal and policy assistance on specific issues relating to urban and industrial pollution, such as the issues addressed in the Environmental Pollution Prevention Project (EP3).

In support of LAC/RSD's strategic objective for hemispheric free trade expansion, ELP has provided assistance on the resolution of key market issues impeding environmentally sound and equitable free trade in the hemisphere (SO1). Environmental law can play a pivotal role in promoting free trade by strengthening environmental standards and legal capacity, harmonizing legal standards, and strengthening the role of regional organizations. ELP has directly participated in designing and implementing activities supporting increased environmentally sustainable trade in the hemisphere through:

- serving as part of the HFTE core team in Washington;
- participating in trade and environment policy dialogues throughout the region; and
- bringing a sustainable trade perspective to field support activities in the region.

In several cases, ELP has served as a bridge between USAID Mission objectives and HFTE objectives, providing opportunities to leverage resources and design more comprehensive and integrated programs formulated under offices' strategic frameworks.

Supporting Democracy and the Environment

As ELP has worked to promote specific environmental strategic objectives in USAID, the Program has sought to emphasize the essential connection between legal and policy reform and democratic institutions and practices. One important underlying theme for ELP during its first year has been the integration of democracy and environmental protection efforts, reflecting the strong commitment of G/ENV and LAC/RSD to these ideals, and the institutional philosophy of CIEL. Every legal policy intervention undertaken by ELP over the past year has: (1) integrated principles of public participation and transparency to the maximum extent practical, and (2) sought to build local capacity for collaborative public policy making while offering technical legal expertise. For example, the Program's support for mission-funded environmental legislation activities in Nicaragua and Paraguay was specifically undertaken through open public workshops that maximized public input, and interaction among policy makers and stakeholders.

Program Activities

In creating and implementing its activities, ELP made substantial progress during its first year in the following key activities: (1) technical support, (2) intra-agency cooperation, (3) network building, (4) inter-agency cooperation, (5) information dissemination and awareness building, and (6) foreign environmental lawyers/interns program.

1) Technical support

a) USAID/Washington: ELP has provided direct advice and policy support to AID/W in developing strategic and results frameworks, and assisting with program planning for FY96 and FY97 along with a number of specific services. ELP has established a working relationship with the Environmental Pollution Prevention Project (EP3), and initiated planning efforts with EP3 for developing and implementing policy components under EP3's FY97 Washington and country strategies. ELP has supported G/ENV/UP coordination with the Environmental Health Project (EHP) in creating a program strategy on ISO 14000, as well as supporting follow-up to the 1996 U.N. Conference on Human Settlements (Habitat II) which, along with EP3, will become an integral core activity for ELP in FY97. Another effort includes supporting legal policy approaches to lead phaseout in the Americas, in collaboration with the World Bank, U.S.EPA, and the Organization of American States. ELP has also provided input to program planning for environmental law proposals to South Africa under the Gore-Mbeki Bi-National Commission.

ELP has worked closely with the LAC Bureau on a number of specific activities involving legal and policy issues. ELP worked with LAC core team members on: (1) assessing and developing the Legal and Regulatory Policy sub-Intermediate Result; (2) developing and refining the strategic objectives for HFTE; and (3) drafting a new results framework for the program. ELP has also been involved in developing the Environmental Law On-line activity, through which USAID will establish pilot programs for new internet environmental law and regulatory policy databases. In addition, ELP has been participating in the development of activities relating to mining policy, pollution prevention and ISO 14000 in the Latin America and Caribbean region. In coordination with LAC/RSD and the Paraguay Mission, ELP has helped design a Trade and Environment Conference to highlight the importance of environmental issues in free trade expansion in the southern cone of South America. Finally, ELP has joined LAC and G staff in efforts to conform the HFTE environmental components with trade policy priorities articulated by the U.S. Trade Representative (USTR).

In coordination with LAC/RSD and the Bureau for Policy and Program Coordination, ELP has been active in studying and promoting the integration of democracy and environment themes as a key to promoting equitable and sustainable development. ELP made a presentation on the importance of environmental issues as catalysts for democratic change to the annual meeting of the Global Bureau's Office of Democracy and Governance, and has been working with G/DG to identify opportunities for further collaboration. Related to this work, ELP helped develop and write a preliminary plan for

a new integrated environment and democracy initiative of LAC/RSD called Society Engaged in Development (SED). ELP also participated in the development of a Western Hemisphere initiative on public participation in sustainable development, and was instrumental in drafting language for the proposal, which will be presented to the heads of state for consideration at the Bolivia Summit in December. ELP also helped plan a Bolivia Summit preparatory conference on civil society held in Montevideo in August, and joined the US delegation at the conference as a technical advisor.

b) Direct field support: Through Mission buy-ins, and through CIEL's efforts to leverage opportunities under separately funded activities, ELP has provided direct field support in four LAC countries. Field activities accomplished with Mission financing or buy-ins include:

USAID/ Paraguay: From January 1996 to the present, the program has worked through a separate CIEL contract with the Paraguay Mission to design and implement a comprehensive environmental law support program, which has included: (1) revising national protected areas regulations; (2) designing a collaborative process to develop and pass a national law to assure the sustainable development of the Chaco region of Northwest Paraguay; (3) adapting and implementing Environmental Law On-line (ELO) for Paraguay; (4) providing institutional strengthening and policy support to the new controller General for the Environment; and (5) designing a national trade and environment conference to be executed in FY97.

USAID/Nicaragua: From April to October 1996, the program has helped to design and support the implementation of an environmental law policy program undertaken by the mission with ELP input for Nicaragua's Ministry of Environment. Activities have included: (1) national workshops to analyze and develop Nicaragua's draft Fisheries and Toxic Substances Laws; (2) an inter-ministerial workshop on drafting regulation under Nicaragua's new General Environmental Law; and (3) the design of a national biodiversity legislative strategy.

USAID/Peru: ELP worked with the USAID Mission in Lima to design and draft Terms of Reference for a legal and regulatory policy Technical Assistance Provider to work as a chief advisor to the country's new National Environment Commission for the next five years.

RHUDO/Guatemala: Working with the RHUDO and the Mission, ELP joined EPA attorneys in strategic planning for a series of legal and regulatory policy activities to be implemented by EPA and local partners under the PROARCA program.

Inter-American Conference on Public Participation in Sustainable Development, August 1996, Montevideo, Uruguay: ELP played an instrumental role in designing and executing this conference in which Government representatives and NGOs participated to discuss civil society's role in sustainable development policy making. This conference served as a preparatory conference for the Bolivia Summit, and ELP co-drafted the Plan of Action that was approved at the conference, and will be

submitted to the Summit working group for consideration by the heads of state in Bolivia.

In addition, ELP made preliminary visits to the USAID Missions and RHUDOs in Jakarta, Indonesia, and Quito, Ecuador to discuss possible future support for projects there.

2) Intra-Agency cooperation

ELP can play a major role in identifying and coordinating environmental law activities within USAID. Towards this end, ELP has engaged in significant outreach to environment offices throughout USAID, including: (1) coordination with G/ENV's bureau liaisons for ENI, ANE, and AFR; (2) initial coordination the environment team in the Office of Strategic Economic Analysis in the Bureau for Asia and the Near East (ANE/SEA); (3) contacts with staff involved in environmental law development in the Rule of Law and Governance Division in the Office for Democracy and Governance, Bureau for Europe and the Newly Independent States (ENI/DG/RLG); and (4) initial dialogue with the Environment and Natural Resources Division in the Office of Environment, Energy and Urban Development in the ENI Bureau (ENI/EEUD/ENR).

3) Network building

In order to identify and help coordinate access to an environmental law and policy network of lawyers, ELP attorneys have met or worked with numerous government, non-governmental and private sector environmental attorneys from around the world during the Program's first year. The purpose of these meetings were to describe USAID's work in environmental legal policy and discuss how this work might be supported and improved with the assistance of these professionals.

Initial contacts have been made with professional associations and NGOs with environmental legal capacity including: American Bar Association; the Environmental Law Institute (ELI); the Inter-American Bar Association (IABA); the US-Asia Environmental Partnership (US-AEP); the American Bar Association Central and Eastern Europe Environmental Law Initiative (ABA/CEELI); the Environmental Law Alliance Worldwide (E-LAW); the Sierra Club, the World Wildlife Fund, the Audubon Society, the National Wildlife Federation; CEMDA (Mexico); Fundacia Natura and OIKOS (Ecuador); the Regional Environment Center in Budapest, Hungary; Ecojuris (Russia); Ecopravo (Ukraine); the Harvard Institute for International Development (HIID); the Institute for Soviet American Relations (ISAR); SPDA (Peru); IDEADS (Guatemala) and FARN (Argentina).

ELP and CIEL have worked to develop contacts with other donor agencies on behalf of the Program, and to look for opportunities to collaborate with international agencies concerned with the development of environmental law and policy. These contacts have led to:

- a cooperative agreement with the Organization of American States in support of the ELO Internet environmental law library to be financed under LAC's HFTE Program;
- joint sponsorship of a trade and environment conference by the Paraguay Mission and the Inter-American Development Bank; and
- the possible co-publication of a series of environmental law case studies with the World Bank.

Other networking activities ELP has been involved in include:

- The Program has provided technical assistance for two informal networks of environmental attorneys interested policy design and development, one in the Latin America and Caribbean region, and the other in Asia and the Pacific region.
- ELP joined the US delegation to the Fourth International Conference on Environmental Enforcement and Compliance, April 1996, Chaing Mai, Thailand, which convened the meeting of over 100 legal enforcement officials from every geographic region, representing over 50 countries. The Conference was designed to discuss and share environmental enforcement and compliance strategies. As a result of attending this meeting, the ELP was able to support the upward harmonization of compliance and enforcement policies at an international level and make new professional contacts for future USAID collaboration.

One result of this law network was a series of introductory brown bag lunches providing an opportunity for USAID Washington staff to meet environmental policy leaders from around the world. These informal meetings included:

- Raul Brañes, the chief attorney for UNEP's Regional Office for Latin America and the Caribbean, speaking on the role of environmental law in developing countries in the Americas;
- M.C. Mehta, an Indian attorney who filed world-known cases such as the case to preserve the Taj Mahal, and the case for damages resulting from the Bhopal incident, speaking on the role of environmental litigation and the judiciary in safeguarding India's environment;
- Two representatives from the Czech republic, Jerzy Dusik, Director of the Public Environmental Assessment Center, and Pavla Jindrova, Director of the Environmental Impact Assessment Consulting Center, speaking on efforts and experience in public participation in the ENI region; and
- Hongjun Zhang, Deputy Director of the Legislative Office of the Environmental Protection and Natural Resources Conservation Committee for the National People's Congress of China, speaking on his work in redrafting China's national

environmental code.

4) Inter-Agency cooperation

In addition to meetings with interested USAID personnel, ELP attorneys have regularly communicated with US Government departments and agencies, including the Environmental Protection Agency's Office of General Counsel (EPA), Office of International Activities (OIA), and Office of Enforcement and Compliance Assurance (OECA); the Department of Commerce Environmental Technology Export Office; the National Oceanic and Atmospheric Administration (NOAA) Office of Environmentally Sensitive Areas; the U.S. Trade Representative (USTR) Environment Office; and the Department of Interior U.S. Fish and Wildlife Service to discuss legal and regulatory policy activities undertaken by those agencies and to explore how USAID might work collaboratively on environmental law activities.

Collaborative efforts have been undertaken with: (1) EPA in hosting a joint workshop on the role of enforcement and incentive approaches to environmental compliance; (2) NOAA's Office of Protected Resources, in following up on NAFTA developments; and (3) the Department of Commerce Office of Environmental Technology Export in developing a US export strategy for the HFTE program.

5) Information dissemination and awareness building

a) Case studies: Working to complement a separate contract between G/ENV/UP and CIEL, ELP attorneys have provided CIEL personnel guidance and supported the research and drafting of a series of case studies demonstrating the effective application of environmental law in developing countries. The twelve case studies which have been completed to-date have dealt with a variety of emerging issues in environmental law, including, among other cases: the role of the judiciary in protecting India's environment; public accountability for a mining operation the Dominican Republic; wildlife management in protected areas by indigenous people in Colombia; and examples of legal tools like the Toxics Release Inventory as a means of improving environmental information. These case studies will develop into a cumulative series of important environmental issues as they are raised through the USAID experience, producing a "best practices" collection for how best to make use of environmental law tools to deal with both specific and broad ranging environmental concerns.

b) Workshops: A highlight among ELP's activities in FY96 was a workshop held in May 1996 entitled *"Environmental Policy in the Americas: Combining the Use of Economic Incentives and Legal Enforcement"*, in collaboration with the U.S. EPA, the Organization of American States, and the Inter-American Bar Association. Other participants included representatives from the US Department of Justice, the NAFTA Commission on Environmental Cooperation, and a substantial number of environmental law NGOs such as the Center for International Environmental Law and the Environmental Law Institute, and numerous representatives from the private sector including international consulting firms, environmental engineers, and law firms. The

group's discussion originated from differing perspectives about how best to design an effective environmental compliance system and evolved into wide consensus on the needs for coordination among stakeholders in order to design carefully balanced compliance strategies which employ both enforcement and incentive approaches.

c) Articles: As part of its efforts to promote awareness of and interest in the value added of environmental law to development efforts, ELP contributed an article and a brief case study to the ICMA Cities International newsletter. The article, *Environmental Law—Shaping the Rules for Sustainable Development* addressed the role of environmental law in urban management and in democracy and governance, and outlined the framework for support of ELP at USAID on issues relating to the urban environment. The case study, *Curitiba, Brazil: Zoning for Compatible Land Use in Hazard-Prone Areas*, described the city's use of zoning ordinances to address extreme flooding conditions by limiting development and dedicating areas of land for tree-planting programs and recreational use.

6) Working with foreign environmental lawyers in the field and foreign law interns in Washington

ELP's program philosophy reflects CIEL's institutional commitment to training and working with public interest lawyers throughout the world to provide consulting and legal support services. In its work for USAID, ELP enlisted the aid of environmental lawyers and NGOs from the Philippines, Peru, Paraguay, Argentina and China, as subcontractors and consultants.

In addition, the connection of ELP and CIEL with the American University Washington College of Law has also provided an opportunity for USAID to work with foreign attorneys who come to Washington to complete a Masters in International Law Program at AU. In the past year, ELP has worked in Washington on a variety of activities with interns and foreign law associates from Brazil, Chile, India, Spain, France, the Dominican Republic, Argentina and Poland, providing benefits to USAID from the research and scholarship of these young professionals, and to the attorneys who gain important practical training and experience.



The Environmental Law Program is a joint program of the Global Bureau's Center for Environment (G/ENV) and the Office of Regional Sustainable Development in the Bureau for Latin America and the Caribbean (LAC/RSD). The Program provides environmental law and policy support through USAID's overseas Missions and Washington offices serving USAID clients and partners around the world.

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