

BOLIVIA

BRINGING JUDICIAL REFORM IN LINE WITH ENVIRONMENTAL CONCERNS

Since 1993, Bolivia has been pursuing a comprehensive reform of its judicial system, to make it more independent, transparent, accessible and efficient. The Lawyers Committee for Human Rights, an American-based NGO, has initiated a review of this process, selecting environmental law as its entry point, for a number of reasons.

First, the objective of judicial reform is to bring about adequate enforcement of public law. This is in many respects analogous to the question of how to best preserve and ensure 'public goods', first and foremost among which is the environment. In this sense, protection of the environment is intrinsically an area of public interest law. A judiciary's support of - or lack of concern with - environmental protection sends a strong signal about how well and impartially the judiciary functions in general.

Second, the underlying question in reform is how to open up the judicial system to private citizens, and especially to permit them, through the use of public interest law tools, to contribute to the enforcement of laws and policies. NGOs - and perhaps human rights and environmental groups in particular, who often represent affected citizens - have an important perspective on judicial reform, and a practical sense of how the day-to-day, front-line users of the legal system view the need for improvement.

Thus there is a two-way relationship between judicial reform and environmental concerns: judicial reform can improve the ability of citizens to defend 'public goods' and the environment through better access to legal systems, while the experience of users of the judicial system, often represented by NGOs or public interest lawyers, can make a valuable contribution to the identification of reform needs and priorities.

To establish such a relationship, the Lawyers Committee and the La Paz-based League for Defence of the Environment (Liga de Defensa del Medio Ambiente - LIDEMA) organised a workshop on 'The Enforcement of Environmental Laws in the Framework of Judicial Reform in Bolivia' in 1998. Participants included representatives of Bolivian environmental and human rights groups and senior government representatives, such as the Vice-Minister of Justice and legislators from the Natural Resources Commission.

The workshop used case studies of legal actions brought to enforce environmental laws to identify

obstacles to such enforcement from a public interest perspective. The case study approach was difficult to follow, as almost no environmental group in Bolivia currently turns to the judicial system for redress of violations of environmental laws. This reluctance to use the judicial system is in itself a strong indicator of the further reforms that are necessary to make public interest law in general and environmental law in particular effective for the defence of collective interests.

However, the available case studies were analysed, on the basis of which a number of reforms were suggested, including:

- allowing environmental groups or directly affected individuals the right to bring or join legal enforcement actions or to press the government to meet its obligations.

- Ensuring that the cost of legal actions is not excessive, particularly for those of limited means, thereby making it easier for environmental NGOs to support civil cases on behalf of individuals or groups who suffer material damage from violation of an environmental law.

- Training for judges and prosecutors on environmental principles in general and on the provisions of Bolivian environmental laws in particular

- Consideration of the establishment of a special court, with specialised judges, with jurisdiction over environmental cases.

The workshop showed how the perspective of one group of users (or potential users) of a judicial system can lead to a better understanding of what is needed to strengthen that system - and its focus on environmental justice was particularly informative in testing the strength of a judicial system in delivering justice around public goods.



Mr. Jeffrey A. Clark
Coordinator, Latin America
Lawyers Committee for
Human Rights
333 Seventh Ave., 13th Floor
New York, NY 10001-5004
USA

tel: +1 212 845 5200
fax: +1 212 845 5299
clarkj@lchr.org
lchrbin@lchr.org



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<http://darkwing.uoregon.edu/~caguire/bolivia.html>