

Educating Chile's Judges About Environmental Law

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The Environmental Law Institute

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January – March, 2009 Progress and Final Report

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Introduction

During the period of January – March, 2009 ELI has concluded the project on *Training Chile's Judges about Environmental Law*. Working with our Chilean project partners, ELI completed the planning for the course, conducted the course in Santiago, and carried out follow-up activities. This report describes activities undertaken during the quarter January – March, 2009 and overall project results.

Expected Results and Indicators

<u>Indicators</u> ¹	<u>Target</u>	<u>Progress during last report</u>	<u>Progress during this period</u>	<u>Cumulative Progress</u>	<u>Progress %</u>	<u>Comments</u>
Revise and refine prior judicial training program (process)	New training program	Partner groups reviewed and commented on the program	Finalized the program	Have a complete program	100%	No comments were received to indicate that the program should be significantly altered in the future
Train judges (output)	25 – 30 judges	Selected a date for the event that is convenient for all collaborating agencies	Trained 30 judges from across Chile	Trained 30 judges from across Chile	100%	Our expectations were more than met with the attendance of 30 judges from across Chile for the full two days who expressed great satisfaction with the course
Train faculty to provide training (output)	Sufficient faculty to put on the program prepared to do so	Identified and contacted institutions/faculty to present on particular topics	Faculty conducted the course	Faculty conducted the course	100%	Comparative topics were presented by ELI and Judge Lucero

Establish the capacity of the judicial academy for sustained training on environmental material (process)	Environmental law in the curriculum of the judicial academy	Further information about existing curriculum, staffing, how to contribute to resources	Determined that the academy does not have teaching faculty and does not chose curriculum	Understand that the academy is receptive to the course but only offers what judges request; will support other institutions	75%	The academy did participate by officially inviting the judge participants to the event
Establish the capacity of Chilean institutions for sustained training on environmental material (process)	Environmental law education consistently available to Chilean judges	Learned about the structure of the judicial academy, worked with other institutions	Determined that FIMA, CONAMA, prosecutor office and the Ministry of Exterior Relations are interested and capable of conducting such courses	Reliance on the Academy alone will be insufficient to hold such courses consistently, but that is more likely with involvement of the other partners	75%	ELI is maintaining contact with FIMA and other partners to promote continuation of the courses after the end of the grant period

1. Identify whether the indicator is an input (process) associated to activities or an output indicator associated to the expected results.

Activities

During this quarter ELI finalized the planning process, conducted the second training course for Chilean judges on March 18 & 19, 2009, and carried out follow-up activities.

Thirty Chilean judges from across the country participated in the course, hosted by the Environment Division of the Ministry of Exterior Relations. The faculty comprised leading environmental law experts from North and South America, including Judge Carlos Lucero of the U.S. Court of Appeals for the Tenth Circuit, Minister Enrique Navarro Beltran of the Constitutional Court of Chile, pre-eminent Chilean environmental law professor, Sergio Montenegro, Director of the Environmental Law Center, the University of Chile, ELI Senior Attorney and Director of the Judicial Education Program, John Pendergrass, leading Chilean environmental attorneys, and environmental agency staff.

The two-day course included in-depth coverage of Chile's constitutional protections of the environment, procedural issues, and comparative analysis of Chilean and U.S. jurisprudence. Day one began with an introduction to basic concepts in Chilean environmental law; the institutionalization of environmental management; and resolution of environmental conflicts. Day two of the workshop focused on procedural aspects of environmental law including a comparison of approaches to the process of establishing legal standing from the U.S. and Chile; a comparison of proof in environmental cases; legal checks on actions of the government; and the role of the Constitutional Court in resolving environmental matters.

The final session of the event delved into specifics of environmental jurisprudence including a comparison of administrative actions; administrative jurisprudence; comparative visions of jurisprudence regarding environmental damage; and validity and application of international environmental norms in Chilean tribunals.

In the wake of the workshop, the Constitutional Court invited Judge Lucero and ELI for a formal visit to the Court. Five justices, including Marisol Pena Torres, the sole female justice on the Chilean Constitutional Court, met with the American contingent. The group discussed environmental law in both countries and potential future collaboration based on the fact that the evolution of U.S. constitutional rights could serve as a model for giving life to the Chilean constitutional provision on the environment.

Challenges

Representatives of the Judicial Academy were unable to attend the workshop or meet with ELI during the mission in Santiago. After numerous conference calls with staff of the Academy, ELI has determined that the structure of this institution is less suited for sustaining the course than we had thought at the start and through much of the development of the project. This is because the Academy has no faculty of its own and the choice of curriculum each year is based on the expressed interest of the judiciary. Thus, future efforts towards training of judges on environmental issues should be in partnership with other institutions in addition to the Academy, such as the NGO FIMA that has conducted such courses in the past with the Academy and has expressed interest in doing so in the future.

The Department of State proposal to broaden this project to include a day of training for the business sector on environmental law in collaboration with the Department of Commerce was unsuccessful. The Department of Commerce was unable to ascertain whether appropriate Chilean institutions—the Chamber of Commerce—and potential participants were interested and available in a timely manner. General interest in such an activity was expressed and such an activity could be considered in the future.

Collaboration/Coordination

ELI partnered with Chilean institutions including the Ministry of Exterior Relations, the Counsel for the Defense of the State, the Constitutional Court, National Environmental Commission, the University of Chile, the Judicial Academy, the National Association of Magistrates, and an NGO,

FIMA, to develop and present the course. The Chilean Embassy in Washington played an invaluable organizational role.

Institutionalization of Environmental Law in Judicial Education

The Ministry of Exterior Relations, Counsel for Defense of the State, and FIMA expressed interest in collaborating on similar activities in the future. FIMA, in particular, is very interested in continuing the course under the auspices of the Judicial Academy. The Judicial Academy has expressed its willingness to do so as a general matter, but noted that it is constrained to offer courses on the subjects that rate highest on annual surveys from the judges and that environmental law has not been among the most desired subjects in the past. This contrasts with the enthusiasm of the participants and the desire of many that the workshop be repeated and that more in-depth or advanced courses in environmental law be offered. ELI is maintaining contact with the NGO FIMA to provide support for its efforts to encourage the Judicial Academy to repeat the course.

Budget

During this quarter, \$25,879 were spent on labor, travel, and contractual expenses for conducting the training course.

EVALUATION OF THE COURSE

Name: Carmen Escanilla

1. What did you think of the content of the workshop?

A complete vision of environmental subjects that tried to address the direct problems that exist in our field. Overall, very good.

2. Did you think two days was sufficient for the workshop?

It did not seem sufficient. The presentations were limited and lasted little time. There was also limited time for discussion.

3. Did you think the presentations were clear?

In general, the diverse panelists demonstrated their thoughts and experiences on the subjects they exposed.

4. Did you think the facilities were appropriate?

Yes, it was large and comfortable. However I don't know about all cases, as some of the attendants were sitting in the very back seats.

5. What do you suggest for future activities?

6. Finally, what did you think of the initiative?

Name: Maria Alejandra Santibanez

1. Very good.

2. Yes, but it depends on the objectives of the workshops. In two days it is difficult to achieve 100 percent training.

3. Yes

4. Yes, they were very good.

5. Address different themes.

6. Excellent

Name: Matias de la Noi Merino

1. Very good, but preferably aimed at dealing with the resource protection related to the safeguard of article 19N°8 of the Constitution.

2. No, it was insufficient.

3. Yes

4. Yes

5. That the Judicial Academy incorporates more workshops about environmental issues.

6. Very good and useful.

Name: Not given

1. Excellent. The level of the presenters and the presentations were optimal. The same with the organization.
2. At least three of four days.
- 3.
4. Very comfortable for carrying out the activities.
5. Extend the seminar to other areas of international law that include the application of internal law.
6. Excellent.

Name: Not given

1. Very good and interesting. I believe that the things we learned will benefit and affect us and future generations.
2. No, it should be at least three days.
3. Yes, the presentations were quite clear.
4. No, there were people, including presenters, that were in seats that did not allow them to participate in questions/discussion with the presenters. Otherwise it was good.
5. Continue with specific activities like this in other subjects.
6. Very good. Congratulations. I presume that it was not easy to organize and execute this seminar.

Name: Paulina Perez Hechenleitner

1. Very interesting and complete.
2. Yes
3. Very clear, good supporting materials.
4. Yes, adequate and very comfortable.
5. New workshops about Environmental Law.
6. Excellent

Name: not given

1. Excellent
2. Too little, should be four days in total.
3. Yes, especially those from our Chileans colleagues.
4. Yes
5. Conduct this course outside in the center of Santiago, in a garden or plaza.
- 6.

Name: not given

1. The subject matter was very interesting.
2. No
3. Yes
4. Yes
5. Less modules overall and more in depth in fewer areas because some were limited and lost context.
6. Good

Name: Rosalía Mansilla

1. Very interesting, not only for the subjects it addressed and the extreme need to address these topics in reality, but also for the focus and support of the panelists.
2. No that is impossible. The theme requires more time. With a duration of only two days, it was very intense and despite interest, full concentration during long hours is impossible. I hope that you repeat the workshop, but with a longer duration.
3. In general, the presenters were clear. I appreciate the effort of Judge Lucero for speaking in Spanish, who at least I understood.
4. In general, they were good.
5. Analyze export legislation and international contracts.
6. Excellent

Name: Andrea Contreras Plaza

1. The content was very interesting, especially that relevant to the application of protection of the environment and legal instruments.
- 2.
- 3.
4. The facilities were excellent and the technological aspects of the course made the experience very agreeable.
- 5.
6. Excellent! You should repeat the course more frequently for the judiciary.

Name: Not given

1. I thought the themes were very well selected as they directly referenced the subjects of environmental damage in the jurisdictional field.
2. Absolutely insufficient. Not enough time to develop the respective themes.
3. In general, sufficiently clear and precise.
- 4.
- 5.
6. Excellent

Name: Julio Aguilar Bustamante

1. A clear and concise vision of themes legal and judicial.
2. No, it limited the depth of each theme. Maybe three or four days.
3. In general yes.
4. Yes.
- 5.
- 6.

Name: Natalia Rencoret

1. Excellent, the presenters were very prepared and clear in their presentations and addressed the diverse aspects of the theme of the environment and the law.
2. No
3. Yes
4. Yes. Beautiful.

5. A longer course to take a deeper look at all topics presented.
6. Very good as judges have little possibility to interact with other entities, colleagues and organizations in our performance, additionally interacting with judges from all over the country contributed to a great experience both personal and professional.

Name: Olaya Gahona Flores

1. Very well chosen subjects, very relative to environmental legislation.
2. Absolutely insufficient.
3. Not all were clear, some were very confusing in their content and conclusions.
4. Sufficiently good, but should consider changing those that are translated. (?)
5. Promote the participation of the attendees and interaction with the panelists.
6. Excellent and very well organized.

Name: Claudia Arenas

1. Very complete and varied.
2. Absolutely not. Yes, the contents of the workshop were necessary for the understanding of the theme, but the little time available lessened the possible level of comprehension.
3. In general yes, though interpretation was sometimes a problem.
4. Yes
- 5.
6. Excellent. I hope the workshops continue.

Name: Not given

1. Excellent
2. No. At least three days.
3. Yes
4. Yes
5. A third meeting about environmental law in 2010.
6. Excellent.

Name: Maria Teresa Maraboli

1. Interesting but very basic owing to the limited time of the workshop.
2. No, should be at least four days.
3. Yes
4. Yes
5. A second phase in depth on the same topic. Address environmental issues in Latin America.
6. Excellent

Name: Casiano Báez

1. I thought it was very interesting, specifically because it tried a strategy specific to the courts.
2. Insufficient
3. Yes, except for when the translation was lacking.
4. Excellent
5. Repeat the workshop
6. Excellent

Name: Ghislaine Landerretche

1. Very interesting, useful, well organized at the right level
2. No
3. Yes, very good
4. Yes, very good
- 5.
6. Excellent

Name: Not given

1. Very explanatory
2. No, it's a large topic to cover and needed more time
3. Excellent
4. Extraordinary
- 5.
6. A major contribution to understanding the environmental question.

Name: Carlos Meneses Coloma

1. Good, in general terms.
2. I believe so, although the time could have been better utilized.
3. Some were. Others were very confusing (because they were so fast).
4. Yes
5. Review the realities (?) of Europe and Latin America in the material.
6. Excellent

Name: Juan Bruna

1. Excellent
2. 2 days was insufficient.
3. Primarily the presentations by the Chileans. They were well done and prepared.
4. Very good
5. Repeat the workshop
6. Excellent

Name: Not given

1. Very good
2. Insufficient
3. In general yes
4. Very good
- 5.
6. Excellent

Name: Not given

1. Excellent. It made me realize the need for urgent legislation on the topic despite the jurisprudence of the Supreme Court.
2. Of course not.
3. Yes
- 4.

- 5.
- 6.

Name: Jenny Book

1. Very good
2. Two days is very short, three or four days would be better.
3. I thought they were clear, though I some of the presenters from the US required more explanation.
4. Yes
5. The workshop should be longer.
6. Excellent

Name: Monica Olivares Ojeda

1. Excellent
2. Yes, it was sufficient.
3. Yes, the presentation by Professor Sergio Montenegro was excellent.
4. Yes
- 5.
- 6.

Name: Gloria Hidalgo Alvarez

1. Very interesting
2. I don't think two days was sufficient for the depth of the subject.
3. Yes, overall the presentations were good.
4. Yes, very comfortable.
5. Another workshop
6. Everything was excellent