
ROLE OF PUBLIC PARTICIPATION IN ENFORCEMENT

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SUMMARY

Public participation is prerequisite of enforcement even in the countries where citizens do not have standing to use either judicial or administrative mechanisms. In countries where such standing is granted, public participation replaces government authorities in the cases where they do not have political will to enforce environmental laws.

In general, environmental authorities do not move unless public request it specifically if violations come from government activities, government corruption or from private activities that are relevant in national or local economies.

In order to overcome such lack of political will, several countries have opened standing to citizens to defend environment either through judicial or administrative procedures. Citizens may activate judicial mechanisms to obtain injunctions, sanctions or compensations. Also they may intervene in administrative procedures addressed either to grant or cancel licenses.

1 Public Enforcement in Latin America

In Latin America, Brazil and Colombia are countries that have gone further in such a trend. Other countries are beginning. In 1991, Colombia enacted a new Constitution that has been named the "green constitution", because of the extensive protection to the environment as a collective right. Such protection has been insured through different judicial mechanisms that may be used by citizens, communities and non-government organizations on the ground of a very broad standing to access the Courts.

2 Judicial Mechanisms

Those mechanisms are:

- Popular actions, which is a very close tool to the citizen action of the U.S. law;
- Tutela actions, basically addressed to protect fundamental rights but interpreted by the Courts as means to protect environment when violations also affect fundamental rights such as life or health;
- Compliance actions, to enforce laws and regulations that government officers are reluctant to enforce; and
- Nullification actions, that allow citizens to nullify licenses and permits issued without complying with the laws or the Constitution.

Standing is very broad. Tutela action is only limited to the fact that plaintiff belongs to the group of people affected by the violations.

3 Remedies

Powerful remedies may be obtained by citizens through the listed mechanisms. Popular action allows compensation for national resource damages on behalf of the government. They also allow injunctions to be obtained. Successful plaintiffs are awarded with a special compensation as well as legal fees. Tutela action allows only injunctions; no legal fees are granted. Compliance action allows to obtain injunctions against authorities that do not want to enforce environmental laws.

4 Public Participation

As a complementary mechanism, citizens may intervene in administrative procedures addressed to grant or cancel licenses. They may participate in public hearings in order to make comments on the environmental impact studies.

5 Access to Information

As an essential condition to use the above judicial tools, citizens have access to any environmental information. After request, the government officers have 15 days to release it. If it is not, citizens may insist and then the request must be submitted to the court that must decide if the information is or not reserved.

6 CONCLUSIONS

The Environmental Law Institute (ELI, US) has published data showing that the enforcement activity by US citizens is bigger than the U.S. Environmental Protection Agency (EPA). In Colombia it is not true yet as those mechanisms are new and the civil society is just starting to be organized to use them. The true fact is that citizens have become a new actor in the solution of environmental conflicts. It does not depend any more on government and violators. Victims and affected communities have a substantive role.