

**SUMMARY OF WORKSHOP: ENCOURAGING PUBLIC ROLE**

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**GOALS**

Discussions were designed to address the following issues:

- The role of citizens and citizen organizations in compliance monitoring.
- The impact of their activities in enforcement presence and supporting follow up.
- What support citizens need from government.
- Program implications of public access to information on compliance and environmental monitoring.
- Impact on program effectiveness.
- Roles the public and citizen groups may play.
- How to foster the public role.
- How dependent is an effective public role on disclosure of compliance information.

**1 INTRODUCTION**

Citizens and nongovernmental organizations are playing an increasingly important role in assuring compliance with environmental requirements. Effective governmental programs often include strategic partnerships among environmental NGOs, community groups, unions, business trade organizations and others. All parties in these arrangements should be aware of the opportunities and risks involved.

**2 PAPERS**

Papers related to this workshop include:

- Citizen's Environmental Enforcement in Ukraine, *Kravchenko, Svitlana*
- UN ECE Convention to Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters: Towards More Effective Public Involvement in Monitoring Compliance and Enforcement in Europe, *Jendroska, Jerzy*
- Good Governance and Community Participation as Tools to Make Environmental Enforcement and Compliance Happen, *Karanja, Mary*

- Experience of Malawi: Public Role in Enforcement, *Makawa, Ernest*
- Public Access to Compliance Monitoring and Enforcement Data: A Look at the Sector Facility Indexing Project and Other Agency Initiatives, *Stanley, Elaine and Teplitzky, Andrew*
- Public Influence on the Supervision and Enforcement of Environmental Law in the Netherlands, *van Dijk, Jaap*
- Public Access to Environmental Information - Legal and Practical Problems: A Case Study of Tanzania, *Ringia, Deogratias William*

### 3 DISCUSSION SUMMARY:WORKSHOP 2B

#### 3.1 The Economic and Social Impact of Citizens and NGOs

Participants agreed that the impact of citizens and NGOs occurs best when they develop the "critical mass" to become a political force. Direct economic impact could occur, for example, through a consumer boycott of products from a polluting company. It could also occur through a political movement to reduce subsidies to polluting industries or to impose taxes on pollution. The most important social force they can produce is strong general support for environmental programs. Even when they have limited resources, communities which are directly affected by pollution can and do act to attack the problem. Both economic and social pressure can result from legal action by citizens against polluters or government agencies that fail to effectively enforce environmental laws. In some countries, however, the economic situation is such that both the industry and the local citizens prefer jobs rather than environmental protection.

#### 3.2 Roles the Public and Citizen Groups May Play

Early involvement can include participating in the development of standards. Citizens may also be involved in the development of permit terms and conditions for particular facilities. Later in the process citizens can stimulate government enforcement action (ranging from inspection to formal enforcement proceedings) by reporting problems and demanding government action. Citizens can participate in government-industry negotiations to settle formal enforcement proceedings. If applicable laws provide for it, in some countries citizens may directly enforce requirements by starting an administrative or court proceeding, presenting evidence of violations, and requesting a order requiring the company to comply.

#### 3.3 Barriers to Effective Involvement

The group agreed that there is only a limited amount of time and energy citizens can spend. The more complicated requirements are, the more difficult it is for citizens to participate in their enforcement. Even when citizens have a formal opportunity to participate, limited hearings with predetermined outcomes can prevent citizens from having input and discourage future participation.

### 3.4 Support Needed from the Government

The group agreed that it is helpful to have a recognition of a *real* public role in the legal framework of a country's environmental program. The law should provide for public hearings and other opportunities for negotiations among different interests.

At the stage of drafting requirements, governments should make them as clear and simple as possible to allow for effective citizen understanding and participation in enforcement. Where complex problems require complex laws and regulations, governments should provide resources to help citizens to understand them.

Other necessary assistance identified by the group includes:

- Training.
- Technical and legal support for participation in particular proceedings.
- Information. Citizens require monitoring information from the government. They can also help to ensure the quality of that information by overseeing government monitoring.
- Funding assistance, possibly through taxes on pollution. But NGOs must diversify their sources of funding. Also note: if the government starts directly paying individuals to act as inspectors that could generate conflicts of interest and political manipulation of citizen involvement.
- The government should demonstrate responsiveness to citizen concerns. That will encourage future involvement.

### 3.5 Support Needed from the International Community

- Funding to support NGOs and other activist groups would help address the problem of conflict of interest if NGO funds come from the individual governments or industry.
- The World Bank is encouraging governments to work with NGOs and other means of public involvement. NGOs sometimes implement projects for EIA, indigenous assessment, etc. "Learning and Innovation" loans are helping to set up new approaches, e.g. government/NGO collaboration. Must be careful that funding not act to co-opt local groups.

### 3.6 Other Issues and Questions

- "Citizens" are not a unitary group. For example, an "elite" national NGO may have interests contrary to the interest of local citizens in jobs and the local economy.
- What is the role of citizen involvement? Serve as an independent watchdog? Support government activities? Sometimes these roles conflict.
- How to Enhance Potential for Effective Citizen Involvement  
One strategy for successful citizen involvement is to choose "big" targets. Then attract media attention by staging demonstrations and filing lawsuits.
- How do you determine when public participation is effective?

- How does public participation address transboundary problems?

### 3.7 Conclusion

Citizens and organizations are playing an increasingly strong role. Smart government administrators are seeking strategic partnerships with environmental organizations, community groups, unions and business trade organizations.

As a political force, citizen interest can provide important support for environmental programs. Grass roots, local level is a good place to start. Even when citizens have few resources, they can be mobilized by an environmental problem that directly affects them.

Citizens can:

- Push government to inspect and enforce.
- Participate in government - industry negotiations.
- Directly enforce requirements if legal framework allows.

Some Barriers to effective participation include:

- Bureaucratic resistance and public discouragement. Overcoming these may require cultural change.
- "Confidentiality" of information.
- Overly complicated environmental standards.

Support is needed within each country for public participation including:

- Legal authority in environmental laws include provision for real participation.
- Public access to environmental discharge and monitoring information.
- Training.
- Technical and legal assistance.
- Funding (but there is risk of NGO being influenced by funding source).

International Support is also needed:

- Funding.
- World Bank is sponsoring programs to encourage governments to work with NGOs.

## 4 DISCUSSION SUMMARY:WORKSHOP 2BB

After a review of the participants expectations, discussion centered on three issues:

- Mechanisms to raise public involvement
- The Aarhus Convention, especially access to justice
- Role of the NGO's, including public versus private financing

#### 4.1 Mechanisms to Raise Public Involvement

Several participants emphasized the need to start at the local level. A Canadian NGO held community advocacy workshops to educate the public and created community based monitoring pilots. Sweden worked with local authorities to adopt local Agenda 21 plans with the next step being to establish sustainable development goals. The Ukraine held workshops for NGO's on how to use environmental laws. Despite the importance of access to the courts, India felt that you must start from the grassroots and not depend on the courts to do the entire job.

However, other participants believed that it was necessary first to create the rights to public involvement and access to information. While there had been much training about those rights at the local level not enough training had been conducted on how to use those rights.

Another participant stated that in many countries, especially Asia where he worked, the barrier to public involvement was not wealth or "developed" versus "undeveloped" but culture and that there was a need to promote cultural change. Government needed to be convinced that it was important to solicit public input and the public that it is important to "get up out of its cultural slumber." There was a need to enlighten politicians to the benefits of public involvement. Further, he stressed that the relations between NGO's and government must be improved since now government seems to see its role as only pursuing development (at best sustainable) and NGO's see their role as protecting the environment only.

This sparked a discussion as to who was the barrier. It was felt that it was not so much the politicians who were the problem but the bureaucrats who disliked public participation the most. It "was bad enough that they had to deal with the politicians much less the great unwashed."

Many participants observed that the EIA process seemed to be almost everywhere a place where the right to public participation had been acknowledged and had been enshrined in law.

Finally, a disturbing trend was noted mostly in certain African countries where the governments were restricting or tightening controls on public participation, including restricting access to public documents and penalizing the holding of any government documents. In these countries environmental activism was viewed as "economic sabotage." The question was asked how developed countries and NGO's could intervene to support the environmental NGO's in these threatening circumstances.

#### 4.2 The AARHUS Convention

Much discussion centered around the recent Aarhus Convention and its "3 pillars" as a way to assure the public's role in environmental matters. The three pillars were described as public participation, access to information and access to justice. Participants described the situation in their country against this standard. Participants outside the European Community and North America who were parties to the Convention queried how they could gain access to guarantees similar to Aarhus. However, one participant reminded the others that Aarhus was only a floor and that each country should try to go further.

#### 4.3 Role of the NGO's in Assuring Public Participation, including Public versus Private Financing

NGO's are seen as critical in assuring the public's right to know and access to information.

Next came the question of how can NGO's summon the resources to fulfill this role. One NGO began by describing how they were dependent on grants from foreign sources such as the American Bar Association or the US AID. One European country described how the NGO's were able to receive public funding to carry out their activities. An Asian country stated that in developing nations it was difficult to operate without government funding and to be totally depending on citizens for their income. However, on the other side, several participants were extremely skeptical of government funding in that it might constitute a conflict of interest when contesting government actions. Another participant said that if you have government funding and do not "tow the government's line" you would be in danger of losing your funding.

Another debate revolved around the use of the term "NGO" itself. Several participants felt the term was negative and denigrating to the organizations. They felt that another term was need, such as "community based organizations" or "citizen environmentalists."

Finally, the observation was made that if NGO's were so important to assuring public access to and involvement in enforcement and compliance and the accountability of government organizations, then this conference should have even greater NGO participation that it now did, perhaps even as a co-chair of the conference as evidence of the commitment to the NGO's key role in environmental compliance and enforcement.

## **5 DISCUSSION SUMMARY WORKSHOP 2BBB**

### 5.1 Promote and critically examine the AARHUS Convention

The group agreed unanimously that the "three pillars" provided by the AARHUS Convention (and the Rio convention) i.e., public participation in decision-making, public access to information, and public access to justice, are necessary minimum requirements for successful citizen involvement. However, there was animated discussion about how these abstract principles are applied in specific countries. For instance, several developing countries reported that they had incorporated the "three pillars" into their laws but that in practice they were not being applied. There was a general recognition that application of the principles is a problem in every country.

The group "brainstormed" ways to involve the public. Ways to involve the public included: creation of legal rights to public participation; provision of scientific advice; NGO networking; use of radio and television; green marches; use of handbooks and "comic" books, provision of information in marketplaces (e.g. to involve nomadic publics); plays and puppet shows; support of religious leaders; support of academics; and local public hearings.

The group discussed the roles that NGOs play in setting program and enforcement policy. All countries reported some role for NGOs in setting policy. Some found NGOs to be a "loyal opposition." However, others believed that NGOs distorted priorities. Several Western European representatives believed that in Western Europe government and NGOs tend to share priorities and, therefore, they find less conflict between government and NGOs than in other countries, e.g. the U.S. Many representatives were skeptical about that conclusion.

5.2 The group identified a series of obstacles to public participation

5.2.1 Access to Information from Government and Other Sources

Country representatives reported vastly different universes of government information that is available to the publics. There was a general recognition that both formal and informal systems for dissemination of information were desirable. There was consensus that for formal systems to work there must be clear rights for public access to information.

5.2.2 Insufficient Culture of Public Participation

Some countries (e.g. Guatemala, Kenya, Columbia, Mongolia and Peru) reported an insufficient culture of public participation. Lack of education and literacy were cited as aggravating factors.

5.2.3 Financial obstacles

Effective public participation is often expensive to publics, however defined.

5.3 The Need to be Tolerant of Discord

There was a general recognition that encouraging public roles will inevitably cause discord. In order to effectively bring the public into our debates and decision-making, all of us, government, NGOs and other public representatives will need to develop a tolerance for discord.

5.4 Examine legitimacy of stakeholder process

The group was unanimous that the term “non-governmental organization” was overly broad in that it could be understood to include groups protective of the environment as well as trade organizations devoted to growth of business even at the expense of the environment and could be understood to include non-profit as well as for profit organizations. Similarly, there is an uneasy relationship between the NGOs, even the obviously pro-environmental groups, and the “public.” Who represents the public? How representative are the NGOs. Is there a difference between grassroots and mainstream environmental groups? Who decides who represents the public? Does the government decide? Should NGOs decide?

