
SUMMARY OF WORKSHOP: CITIZEN ENFORCEMENT

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GOALS

Discussions were designed to address the following issues:

- Mechanisms used to empower citizen enforcement: what authorities exist in different countries and how this authority has been exercised to provide for a citizen role as private enforcer of environmental law, including:
 - Citizen ability to bring enforcement cases (standing and other issues).
 - Citizen ability to ask for review of government decisions.
 - Remedies available to citizen enforcers.
- How these provisions are working and what impediments exist to realizing their potential; how such provisions can be supported and encouraged in countries without this citizen authority.
- Relationships that might be established between governmental agencies mandated to enforce requirements and citizens empowered to enforce the law and what are the advantages and disadvantages of different relationships.
- Citizen role as support to government enforcement efforts, including:
 - Government cooperation with citizens during enforcement proceedings.
 - Citizen ability to join government enforcement efforts.
 - Citizen review of government and violator settlements before they are finalized.
- How these kinds of opportunities for cooperation and support are working; what impediments exist to realizing their potential.
- “Meaningful access to information” and how important a role it plays as a prerequisite to effective citizen enforcement, including:
 - Access to monitoring information as discussed at earlier workshops.
 - Access to other relevant government-held information.
 - Access to information concerning government enforcement efforts.
 - Access to privately-held information.
- What would be needed to move countries in the direction of the set of citizen participation opportunities identified at the Fourth International Conference.

1 INTRODUCTION

Citizens around the world understand the importance of compliance and enforcement. Citizen goals are similar to government goals: to protect the environment through achieving compliance. Citizens also believe in the use of enforcement strategies to deter and punish when necessary. Citizens believe that they can contribute in an effective manner to this common goal of protecting the environment through achieving compliance among the regulated community and through holding the government accountable for implementing and enforcing the law. However, although in theory citizens in many countries have a range of options available to them from citizen enforcement suits in court to negotiation and lobbying, in practice, government enforcers often are wary of citizen enforcement efforts and citizens face this and other obstacles in their initiatives.

2 PAPERS

A Capacity Building Support Document was prepared by the Conference sponsors on Citizen Enforcement: Tools for Effective Participation with international examples. The document includes discussion on and examples of a range of approaches and tools for citizen enforcement from both the government and citizen perspective.

Papers related to this workshop include:

- Citizen Environmental Enforcement in Russia: The First Successful Nation-Wide Case, *V. Mischenko and E. Rosenthal*
- Environmental Compliance and Enforcement through Public Litigation in the Godavari Area in Nepal, *N. Belbase*
- Civil Enforcement of Environmental Laws in Australia, *J. Johnson*
- Public Interest Environmental Litigation: A Tool to Ensure Compliance and Enforcement, *E. Habib*

Finally, a cooperative coordinated approach is needed between affected programs like the police, the environment agency, prosecutors, fire and hazardous materials teams. Defining roles, responsibilities and assigning accountabilities is essential.

In addition, the Proceedings of past International Conferences on Environmental Compliance and Enforcement contain a wealth of papers on the role of citizens in environmental enforcement from the perspective of various countries. A full list of these papers is appended to the Capacity Building Support Document.

3 DISCUSSION SUMMARY:WORKSHOP 3C

3.1 Common Issues in Citizen Enforcement

Many of the participants acknowledged the important role that the ability of a citizen to go to court to enforce the law plays in overall environmental compliance and enforcement efforts. Limited standing to enforce the law in court was identified as a common barrier to the use of this tool. Many participants also wanted to explore how citizens could participate in environmental enforcement beyond the use of the courts and litigation. They acknowledged

the many obstacles to effective citizen enforcement and identified a need to develop tools to strengthen citizen enforcement, including the implementation of the new Convention on Access to Information, Public Participation, and Access to Justice in Environmental Matters.

3.2 "Standing" for Citizens to Sue in Court to Enforce the Law

The participants discussed the diversity of the aspects of standing among the different countries represented in the workshop. In some countries, standing to enforce the law is granted exclusively in civil cases, while in other countries, standing to enforce the law is more common (at least in theory) in criminal cases. Citizens also derive the right to go to court to enforce the law from both constitutional sources and statutory sources. Finally, participants noted the role of the ombudsman in representing the public interest and in some cases, in facilitating standing.

Criteria for being granted standing also differ greatly from country to country. Some participants described standing based on actual damage to the plaintiff, while other participants described standing based on violations of procedures, such as public hearings, that affected the public. Many participants identified the need to have sufficient proof of harm and causation before standing would be granted and some participants described a system where the Attorney General allowed only cases concerning personal injuries to go before the court, on the theory that only the Attorney General can represent the public interest.

The trends described by the participants showed growing limitations on standing in some countries and broadening standing in others. Yet other participants described a lack of consensus among national courts in interpretation of standing rules.

Finally, the group agreed that broad standing is at the core of citizen enforcement. To facilitate future broadening of standing, the group identified the following needs:

- Solutions to the current burden on citizens to show harm and causation.
- Greater access to justice in domestic courts.
- Greater access to justice in international forums.
- Access to courts in the country where the violator originates.
- Law reform for clearer citizen enforcement provisions.

3.3 Non-Court Alternatives for Citizen Enforcement

Most participants saw citizen enforcement in court as an "end of pipe" solution to lack of enforcement or severe violations. In addition, participants noted the importance of alternative citizen enforcement mechanisms for times when the option of going to court is not the most appropriate to deter or halt a violation. Participants identified the following citizen enforcement strategies:

- Direct action, such as boycotts and blockades.
- Use of public opinion and mass media.
- Participation in negotiations, for example of compliance agreements or settlements.
- Lobbying for law reform and for stronger measures to deter or halt violations.
- Public access to information to raise citizen awareness.

- Pursue the funding source for projects with violations, for example through international financial institution complaint processes.
- Provide citizen complaint mechanisms, such as hotlines and green telephones.

3.4 Potential for Citizen and Government Cooperation in Enforcement Efforts

Many participants noted that government enforcers and citizen “enforcers” did not usually work closely together. The group identified a number of reasons for government enforcers to take advantage of citizen enforcement efforts, including heightened public support of government enforcement efforts, additional resources to government enforcement efforts (e.g., citizen monitors and inspectors), and achievement of environmental protection goals through improved compliance and enforcement.

The group also identified how citizen and government enforcers might work more closely together, including through:

- Coalitions or working groups to approach compliance problems.
- Adding citizen knowledge and public pressure to compliance or settlement negotiations.
- Providing greater public access to information about how to participate, as well as environmental information, such as discharge reports, monitoring data, etc.
- Direct communication among citizens and government enforcers.
- Delegation of certain monitoring and inspection tasks to citizens, for example in nature reserves.

3.5 Obstacles and Solutions

Common obstacles and solutions were identified by most of the participants, including a lack of funding, that citizens often do not know what their options are, institutional barriers in the judicial review process, the need for laboratory analysis and other scientific testing without technical and financial resources, a judiciary uninformed about environmental law, and a long judicial review time.

Common solutions for the future were also identified, including:

- Improved public access to information.
- Clear environmental standards, to ease the burden of proving harm and causation.
- Quicker judicial processes, including a judiciary well-informed about environmental law.
- Broad standing for citizens to go to court to enforce the law.

3.6 Public Participation Convention

Finally, the participants discussed the elements of the new Convention signed in June 1998 by the UNECE on the three principles pillars of public participation: access to information, public participation in decision making, and access to justice in environmental

matters. Participants from outside the UNECE region expressed an interest in seeing their countries join the Convention, while participants from the UNECE region expressed an interest in seeing accelerated implementation of the Convention.

4 DISCUSSION SUMMARY: WORKSHOP 3CC

4.1 Improving Workshop Relationships Between NGOs and Regulatory Agencies

We identified a set of problems and discussed possible solutions to these problems.

4.1.1 Problems

The participants felt that problems preventing better relationships between NGOs and regulatory included:

- agency personnel taking criticisms of the agency itself personally;
- NGOs who cooperate with regulatory agencies being accused by their colleagues of “selling out;”
- intolerance of opposing or differing views;
- excessive centralization of decision-making (so that field personnel who work more closely with NGOs can’t make decisions);
- agencies viewing their role as helping industry, rather than regulating industry; and
- a reluctance by agencies to voluntarily share information with NGOs.

4.1.2 Solutions

The participants felt that solutions to these problems would have to include teaching more tolerance for discord, understanding the value of debate, dialogue and criticism as a process for developing better solutions to environmental problems, more recognition of the common environmental goals of regulators and citizens, a better understanding on the part of regulatory agencies of how citizen enforcement can make industry appreciate regulatory agencies, and more personal accountability within agencies.

4.2 Making Citizen Enforcement More Effective

4.2.1 Education

The participants felt that to be effective, citizen enforcement efforts should be part of a larger comparison to educate legislation, the public and regulatory agencies about the environmental problem being addressed through citizen enforcement.

4.2.2 Funding

The participants discussed various methods of funding citizen enforcement actions and agreed that funding is important for such actions.

4.2.3 Accountability for Multi-National

The participants also discussed that need for citizen enforcement actions to be able to hold multi-national corporations accountable in their home countries, and cited two examples of international instruments that recognized this principle:

- the North American Agreement on Environmental Cooperation; and
- the 1997 Convention on Uses of Transboundary Waters.

4.2.4 Access to Independent Scientists/Technical Experts

The participants recognized a need for more good and independent scientists to provide technical expertise and testimony in citizen enforcement actions, and a need for NGOs to participate from the beginning in the environmental laws and regulations, training judges, and developing a regulatory infrastructure in which citizen enforcement efforts can succeed.

5 CONCLUSION

Citizen participation in enforcement is an important part of a country's environmental compliance and enforcement strategy. Citizen enforcers have some tools available to them, but there is much further to go in creating opportunities for effective and useful citizen enforcement efforts that succeed in achieving the common goal of environmental protection.