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# PILOT PROJECT ON ENVIRONMENTAL COMPLIANCE AND ENFORCEMENT INDICATORS IN LATIN AMERICA: THE CASE OF ARGENTINA

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## SUMMARY

This paper presents an analytical account of the Argentine experience based on a research project started at the beginning of 2004, which aims at identifying and analyzing environmental compliance and enforcement (ECE) indicators regarding selected water and air indicators in order to identify which critical needs and aspects are needed to create a system of indicators, using an interdisciplinary perspective that congregates the legal, economic, and environmental management aspects. Preliminary conclusions regarding the Argentine system, which lacks a systematic environmental compliance and enforcement indicators approach, basically include considerations related to: legal rationale and needs; role of enforcement authorities and bodies of control of public services; governmental authorities with institutional powers of control; the necessity of an adequate information system and use of existing capacities; interrelation of output with intermediate and final outcome indicators; program's budget and interrelation of indicators; and citizen participation during ECE indicator design and use.

## 1 INTRODUCTION

Environmental compliance and enforcement are basic concepts, the basis of which are the analysis and assessment of the implementation of the law. Consequently, it is very important to count elements that allow an evaluation of such assessment. Precisely, the need to have indicators that facilitate the evaluation of environmental compliance and enforcement and the possible trends for their improvement, responds to this framework. An indicator is an evaluation and management tool, useful to strengthen programs or/and activities of environmental compliance and enforcement. The compliance and enforcement indicators are used to assess the level of application of the environmental regulation, and to measure the level of compliance of such regulation com-

ing from the regulated community.<sup>2</sup>

This paper presents an analytical account of the Argentine experience based on a research project started at the beginning of 2004, the pilot project on ECE indicators in Latin America, which is substantively and financially supported by the World Bank Institute. Fundación Ambiente y Recursos Naturales (FARN) works on the research in Argentina, and partners of the initiative for the region are: Centro Interdisciplinario de Biodiversidad y Ambiente (CeIBA) from Mexico, Lawyers for a Green Planet from Brazil, the Economic Commission for Latin America and the Caribbean (ECLAC) and the International Network for Environmental Compliance and Enforcement (INECE).<sup>3</sup>

This project aims at identifying and analyzing environmental compliance and enforcement indicators in Argentina regard-

ing selected water and air indicators in order to identify which critical needs and aspects are needed to create a system of indicators, using an interdisciplinary perspective that congregates the legal, economic, and environmental management aspects.

The objective is to know the state of selected environmental compliance and enforcement indicators for air and water quality and to suggest recommendations to improve the process in Argentina. Research has been carried out at the national, provincial, and municipal levels and using a pilot action in the Municipality of Morón, Province of Buenos Aires – which has been chosen by diverse factors. Among them:

- Three levels of government are involved in addressing issues related to water and air quality (Federal Government, Province of Buenos Aires, and Municipality of Morón). Analysis of ECE indicators in the three governmental levels and their interaction are fundamental in a federal country like Argentina.
- The Mayor of the Municipality of Morón is very interested in the project, to such a point that an agreement between this Municipality and FARN was signed in order to develop it together.

The methodology used to carry out the present research in Argentina was developed considering the document of the ECE Indicators Experts group from INECE. Likewise, this methodology has been refined and improved taking into account the experiences of the World Bank Institute, ECLAC, the project on indicators of access to information and to public participation in Argentina under the coordination of FARN, the contribution from Dr. Michael Stahl, the work of the research teams from Brazil and Mexico, the analysis of the research team from Argentina, and the workshops with officials and stakeholders.

It is important to highlight that ongoing activities of the pilot project are focusing the analysis on specific ECE national and sub-national indicators select-

ed due to their importance, and will be presented in a future publication.

## 2 TRENDS

After preliminary work that shows the existence of diverse indicators lacking a systematic approach in Argentina, the most important issue we can conclude is that there is a need to create a system of environmental compliance and enforcement indicators. We understand that the elaboration of the system should consider the following guidelines.

### 2.1 Legal Rationale and Needs

The development and use of the environmental compliance and enforcement indicators should be included in the annual environmental report that the National Executive Power must elaborate according to the Environmental General Law in section 18. In addition, section 18 states that National, Provincial and Municipal authorities must inform about the state of the environment. The national budget, regarding its elaboration and execution, constitutes a very useful base and framework in relation to indicators of this kind. Despite the mentioned grounds, it would be very useful to pass a law of minimum standards (applicable to the whole country and the different levels of government) requiring the development and use of ECE indicators by the three levels of government.

### 2.2 Enforcement Authorities and Bodies of Control of Public Services

The Entities that control public services carried out by private companies have concrete guidelines regarding the obligation of generating concrete ECE indicators. This situation is not presented with the same emphasis as when enforcement is exercised directly from the state over the regulated community. On the one hand, it is necessary for the enforcement authorities to incorporate these indicators systematically. On the other hand, it is important to promote entities that control public services

supplied by private companies to systematize the information on ECE indicators.

### 2.3 Governmental Authorities With Institutional Powers Of Control

It is also very relevant at the federal level to consider the governmental authorities that have control over the public administration according to their different functions (Ombudsman, National Legal Audit (control of the Executive Power from the Legislative Power), General Trustee of the Nation (Department of the Executive Power, which controls other departments of the Executive Power)). Such authorities can interact in this framework and give more objectivity to the choice and the application of ECE indicators, avoiding a slant from the unique evaluation of the enforcement authority.

### 2.4 Information System And Use Of Existing Capacities

An information system within the framework of transparency and free access should be developed, according to what was already established by the Environmental General Law and the Law of Access to Environmental Public Information. Consequently, the existing capabilities should be used and enhanced.

A clear example was the identification of diverse information systems, which could be pivotal for the comprehensive development of ECE. (Examples: Register of authorized interjurisdictional transport and register of claims of the National Commission of Regulation of Transport, reports from Aguas Argentinas (the supplier of drinking water and sewage services) and reports and claims register from ETOSS (the entity which controls Aguas Argentinas), necessary interrelation and links with the Information System of the Federal Environmental Authority).

### 2.5 Interrelation of Output With Intermediate And Final Outcome Indicators

It is very important to compare

information of the output, intermediate and final outcome indicators. The analysis is two-fold: on the one hand, the existence of diverse indicators on different areas of the government and its impact in the environment; on the other hand, the possible and important interaction of technical and academic institutions to support this framework. We have detected that academic and technical institutions have, in many occasions, appropriate techniques and staff that could be useful for the government in the development of ECE indicators (Example: air monitoring developed by a research institute of the University of Buenos Aires (INQUIMAE), agreement between the Technology University and the Municipality of Morón)

### 2.6 Program's Budget And Interrelation Of Indicators

Another important aspect is the need to link the information regarding output and outcome indicators with the expenses budgeted and executed. In this sense, program's budget system (that counts on, with its different dates in motion, a major development in the Federal Administration, a minor one in the Province of Buenos Aires, and a tiny one in the Municipality of Morón) constitutes an adequate framework for the development of compliance and enforcement indicators. Nevertheless, to achieve that result, an improvement in the implementation of the present system is needed, as are a major development of general indicators in the programs, more details in environmental programs, and a desegregation of the goals and activities according to the affected natural resource.

Currently, there is a trend, which is about carrying out, in the budget department, a management evaluation to be presented to the public. This is a recent trend that is being perceived in the budget-areas of the three analyzed governmental levels and in the auditing areas of the different departments. This trend implies the use of indicators in a more continuous basis. Another aspect that is not included in the

budgetary calculations, but would be important to take into account, is the cost of existing deficiencies on environmental compliance and enforcement issues to the state.

### 2.7 Citizen Participation, Indicators Design and Use

In relation to this issue, it is very important to consider the role of the community and the importance the indicators have when contributing to the improvement of environmental management. It is fundamental that work on ECE indicators be more than a formal report, whose content tries to justify actions of the government in its processes and in its results. Consequently, it is fundamental that from the identification, design and use of indicators, there exists not only intergovernmental coordination, but also institutionalized participation of the civil society, in order to put in motion a process that responds to a global and not a partial view of the problem.

## 3 REFERENCES

<sup>1</sup> Thanks to Adriana Bianchi for her suggestions regarding this paper.

<sup>2</sup> The need to count on indicators was identified in the: 6<sup>th</sup> INECE Conference in Costa Rica and in the First International Conference on Environmental Compliance and Enforcement in Latin America in Buenos Aires, 2002 organized by FARN, with the support of the World Bank Institute and (WBI) the Government of the

Netherlands, and the endorsement of the following institutions: Federal Environmental Authority, Environmental Authority of the City of Buenos Aires, Environmental Commissions from the Legislative, U.S. Embassy, Business Council for Sustainable Development in Argentina, Lawyers for a Green Planet Institute Brazil, Peruvian Society of Environmental Law (SPDA), Bolivian Society of Environmental Law, IUCN Environmental Law Program and International Network for Environmental Compliance and Enforcement (INECE). <http://www.farn.org.ar/investigacion/enforcement/conferencia.html>. Likewise, this issue was considered highly important in the Symposium of Judges and Prosecutors of Latin America – Environmental Compliance and Enforcement. Steering Committee – Executive Board: FARN, WBI, United Nations Environmental Program and the Lawyers for a Green Planet Institute Brazil. Steering Committee – Advisory Board: Defense of the Environment (FIMA)- Chile-, Institute of Environmental Law and Economy (IDEA) -Paraguay-, SPDA- Peru, INECE, IUCN Environmental Law Program and ECLAC, carried out on September 23<sup>rd</sup> & 24<sup>th</sup> 2003. For further information, see <http://www.farn.org.ar/investigacion/enforcement/simposio.html>.

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