

SUMMARY OF PANEL 1: RELATIONSHIP BETWEEN GOOD GOVERNANCE AND ENVIRONMENTAL COMPLIANCE AND ENFORCEMENT

Moderator: Sir John Harman, Chairman, Environment Agency (England & Wales)

Panelists: Jonathan Allotey, Executive Director, Environmental Protection Agency, Ghana
Ladislav Miko, Deputy Minister of the Environment, Czech Republic
Kenneth Ruffing, Deputy Environment Director, Organisation for Economic Co-operation and Development (OECD)
Pieter van Geel, State Secretary for the Environment, The Netherlands

Rapporteurs: Sandy Rowden, Environment Agency (England & Wales)
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1 INTRODUCTION

The panel demonstrated how compliance and enforcement are building blocks for the rule of law and good governance and, ultimately, for sustainable development, and emphasized the need for improving communication between lawmakers and enforcement practitioners to ensure better legislation. The panelists explored the roles of civil society, environmental ministries, parliamentarians, judges, and the press in environmental compliance and enforcement and ways to confront corruption and ensure transparency.

2 PRESENTATIONS

2.1 Presentation by Sir John Harman

Sir John Harman opened the panel by saying that he hoped the panel would be able to identify why good governance was important for compliance and enforcement (and vice versa) and why it was essential to have good cooperation between implementing authorities. Regulators are certainly accountable to ministers but also to regulated businesses and individuals. Where there is a clash of accountabilities, there is a question over which is the most important: in other words, there is a question

over whether compliance and enforcement standards should be left to politicians.

Society demands high environmental standards. There is a pressing need to tackle a legacy of harm to the environment on a global scale, but protection, conservation, and good governance can only take place within a framework of good governance and respect for the rule of law.

Businesses can compete on equal terms where regulations are enforced fairly. Effective environmental compliance, compliance assurance, and enforcement, where necessary, are key tools for delivering good governance. However, if governments and regulators expect companies to respect the law and accept increasing regulatory standards, they should also recognize that regulators are accountable to the public and to the regulated community, as well as to ministers, for aspects of their regulatory practice.

Despite the global differences in legal frameworks and administrative systems, there is general agreement on the concept of good governance. Good environmental regulation is central to good governance, while regulatory regimes can also give incentives for good governance in businesses. Compliance and enforcement are powerful tools that underpin good governance.

2.2 Presentation by Secretary Pieter van Geel

Secretary Pieter van Geel said that the Dutch government is deeply concerned about the enforcement of environmental regulations, whether in the Netherlands, the European Union, or on a global scale. That is why the government supports and participates in the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL) and the International Network for Environmental Compliance and Enforcement (INECE). These networks help to protect the environment for future generations and at the same time create a level playing field for companies.

Many international organizations have emphasized the importance of good governance and the rule of law. They are both essential conditions for achieving sustainable development. Weak legal and judicial systems, where non-compliance is the norm, undermine the rule of law and cause environmental degradation while slowing progress towards sustainable development. Weakness in the rule of law has serious consequences for the confidence of economic actors and hinders investment. Lack of investment in turn deprives governments of resources to invest in education, social welfare nets, and sound environmental management.

The rule of law could be strengthened in many ways. To date, most efforts have concentrated on developing new laws and creating new institutions rather than on building capacity for ensuring compliance with existing rules and making sure that these are clear and are not contradictory. A culture of compliance should be developed to replace a culture of non-compliance or corruption. International assistance for building capacity should expand efforts aimed at the deeper goal of increasing compliance with laws, and it is here that INECE has a critical role to play. There should be increased focus on compliance, but it is not possible to build a culture of compliance overnight. Often it is necessary to change long-standing practices,

entrenched interests, cultural habits, social norms, and even religious norms.

2.3 Presentation by Mr. Kenneth Ruffing

Mr. Kenneth Ruffing said that there are several definitions of good governance. The Organisation for Economic Co-operation and Development (OECD) has adopted a set of six principles: rule of law, accountability, transparency, efficiency and effectiveness, responsiveness, and forward vision. There are examples to illustrate that good governance supports environmental improvement and also that lack of good governance hampers countries' efforts to maximize the benefits of environmental policies and minimize the negative impacts of sectoral policies on human health, the environment, and natural resources.

While the existence of good governance is a necessary condition to ensure better environmental management, it is not a sufficient condition on its own. Specific elements are necessary to achieving the desired objectives. For instance, policies, laws, and regulations should reflect consensus and science-based objectives. Attention should be paid to the full regulatory cycle with suitable mixes of policy instruments, sectoral policy integration, and compliance monitoring, assurance, and assessment. The institutional framework should have a clear allocation of responsibilities and powers to national and sub-national levels of government. Finally, it is necessary to ensure provision of environmental information, public participation, and access to an impartial judiciary.

Effective public administration is fundamental to good governance. In many OECD countries, environmental agencies or ministries have been at the forefront in developing good governance practices. At the same time, many environmental concerns have been championed by the general public demanding that governments protect the environment. Thus, parliamentary bodies and regulators, an independent judiciary, and an engaged citizenry each have essential roles to play in strengthening gov-

ernance for improving environmental outcomes.

The OECD has been supporting countries in the region of the former Soviet Union and in Asia in strengthening their enforcement systems. It has contributed towards developing laws and encouraging compliance with them in a number of ways. It fostered agreement on environmentally effective and economically efficient policies and on their underlying principles; it identified good practice; and it adopted legal instruments, usually establishing monitoring and “peer review” mechanisms aimed at fostering compliance. OECD wants to continue to play an active part within INECE by exchanging good practices and supporting the development of effective and efficient policies and compliance assurance based on good governance principles.

2.4 Presentation by Mr. Jonathan Allotey

Mr. Jonathan Allotey gave an African perspective on good governance and environmental compliance. Governance and environmental management are universal and involve norms and values. These are both informal (customs and practices) and formal (written rules and instructions). In Africa there are many traditions and systemic taboos and rituals. Traditional governance was responsive and delivered at a local level. With colonization, major changes in governance were imposed. It was centralized, and informal groups were no longer part of the system. Rules were now written down.

Indigenous rules were time-honored and adaptive. However, the traditional view was no longer seen as legitimate. For example, when forest reserves were established, local people were hostile because they saw their livelihood as threatened. On the other hand, there were traditional forest reserves based on traditional rules which now stood as islands in the midst of degraded lands.

A particularly good example was a monkey sanctuary in an area where mon-

keys were seen as sacred. They lived with people and were not seen as a threat to people, just as people were no threat to them. Local rules and traditions worked well in this situation. In an urban area, there was a period of ban on the use of drums to allow a peaceful period before farming and fishing seasons – a traditional equivalent for modern regulation for noise control. Another example was the protection of lagoons and wetlands where there were closed and open seasons for fishing. It was quite possible for traditional knowledge and concerns to co-exist with modern systems of ownership, etc. It was necessary to go back to roots and to examine enduring concepts on which systems had developed.

2.5 Presentation by Dr. Ladislav Miko

Dr. Ladislav Miko recognized that environmental compliance and enforcement are very important and effective tools in supporting good governance. However, he suggested that their use and effect could be strongly influenced by different national and international factors. In particular, he quoted some of the lessons learned by the Czech Republic in moving away from the former totalitarian regime.

In the national context, there is a tradition of non-compliance and of breaking the law because the law was often used as a tool against the demands of the general public. This behavior persists for a long time, even after the political change. Environmental goals tend to be set either very low, representing the current environmentally harmful situation in the country, or very high and unattainable. Although the public recognizes the value of the quality of the environment, low standards of living mean that they prefer cheap products to more expensive, environmentally safe ones. Environmental measures taken by the government are often seen as a burden in achieving a better standard of life.

There was a lack of trust in state bodies under totalitarian regimes, such that, when they had gone, there was a tendency to limit the size of the state as much as possible. This limited the resources

available in terms of finance and personnel for good governance. The approach taken to implementation of laws and compliance and enforcement is bureaucratic, so it is not possible to simplify the system. There is little coherence between the bodies of the state, and traditional ways of behavior are often environmentally unacceptable (for example, wastewater disposal or hunting of birds). Finally, there is no feedback, even if the legislation is in place.

In the international context, small countries with less developed economies are greatly influenced by the broader region. If some countries in the region do not follow international environmental standards, the advance towards environmental targets is very limited. Developing countries often do not have trust in the fact that they gain internationally with good environmental behavior. Environmental goals set by international bodies are seen as being too ambitious and unrealistic.

There are of ways of avoiding or solving these problems. There should be open environmental information about compliance with multilateral environmental agreements. There might be financial support for countries developing effective compliance and enforcement systems, as well as support in terms of providing experts and practitioners for direct transfer of experience. There should be support for developing national systems of environmental education, and international minimum standards of inspectors' expertise should be set. There should also be a road map of effective enforcement, defining the necessary conditions and starting points for implementing particular approaches and methods.

3 DISCUSSION

Dr. Bill Clark, Nature and National Parks Protection Authority, Israel, began the discussion session by asking how an authority or regulator can avoid liability when they publish negative data and information about companies on the internet. Mr. Kenneth Ruffing believed that if the published information is publicly available

anyway, this avoids the liability and provides information that can stimulate the local community to participate in environmental compliance and enforcement. Sir John Harman provided an example from the Environment Agency (England & Wales), where company data is made widely available on the internet, allowing searches by postcode (zip code) that yield local sources of pollution and environmental risk. This process makes publicly available data publicly accessible.

Mr. Lee Paddock, Director of Environmental Law Programs, Pace University New York, highlighted the issue that many environmental compliance and enforcement staff have limited experience and training outside their own areas (for example, in economics), and asked how capacity, training, and experience of these staff can be expanded. Secretary Pieter van Geel stated that environmental compliance and enforcement inspectors could not live in isolation but must live and work in their social and economic contexts. Dr. Ladislav Miko believed that inspectors need training on issues such as economics, as well as communication skills. With this training, they are more capable of explaining the environmental compliance and enforcement and environmental goals to others. It is essential that inspectors operate in multidisciplinary teams with a wide range of skills in order to achieve their environmental compliance and enforcement aims and contribute towards sustainable development. Mr. Kenneth Ruffing proposed that capacity building is most effective at the national level, though efforts are also being made at an international level, and indicated that training courses and programs are available to assist in this capacity building.

Dr. Palamagamba Kabudi, Tanzania, in response to the key points made by Mr. Jonathan Allotey, noted that in Africa the issue of traditional versus modern styles of regulation is a problem across the continent. Modern environmental legislation in many African countries has excluded the role of the indigenous institutions, and cooperation is required between countries to restore a more holistic approach. Mr.

Allotey indicated that one way to resolve this is by bringing local authorities into environmental compliance and enforcement, as for example occurred with the Monkey Sanctuary. One method to help achieve a holistic approach, merging traditional and modern regulation, is to create an inventory of indigenous practices and to study these to identify where the conflicts between tradition and modernity occur, to allow these issues to be resolved with participation of all parts of society. One powerful example in Ghana was a nature protection measure to prevent the extinction of local animal species. Traditionally, the local cultural or ethnic groups use one species as the symbol of their authority. If these species become rare or extinct, this could be seen as the loss of that group's authority. By using this argument, groups have been persuaded of the need to protect the wildlife to preserve their traditional society customs and beliefs.

Dr. Kabudi from Tanzania also asked, in response to the comments of Dr. Ladislav Miko, how the balance between international and national demands could be found so that national priorities are not displaced. Both Mr. Kenneth Ruffing and Dr. Miko agreed that the best way to achieve this is by ensuring that all environmental compliance and enforcement proposals are subject to rigorous cost-benefit analysis. However, there is a need to overcome the problem of how to communicate complicated cost-benefit analyses to the wider community in a manner that is understandable. New, innovative ways of communicating these ideas are needed. Dr. Miko further added that while international demands provide an impetus for national action on issues, there are too many international demands at one time, and there is a need for countries to prepare road maps of the way forward for that country, to allow prioritization of action.

Mr. Chris Dekkers, Ministry of Housing, Spatial Planning and the Environment (VROM), in the Netherlands, raised the issue of emissions trading. Monitoring and reporting of emissions trading is not an issue that many find interesting or impor-

tant, and there is a general reluctance to address the enforcement, compliance, and verification of emissions trading, despite these being essential activities. The Panel was asked what the role of INECE could be in resolving this problem. Secretary Pieter van Geel believed that policy makers are only interested in compliance if things go wrong: only if there is no level playing field in Europe on emissions trading will there be a focus on compliance and enforcement. Dr. Ladislav Miko added that fair and properly functioning environmental compliance and enforcement systems would have to be in place to allow trading to occur. People need to be made aware of the full costs and benefits of particular environmental proposals.

Mr. Georges Kremlis, European Commission, provided some additional points on how law can be better informed in order to contribute to good governance. He stated that there is a need for better law making, and there should not be over-regulation. All parties need to cooperate in the development of laws, which should ensure that the laws are also enforceable. In the European Union, they are undertaking Regulatory Impact Assessments, which also improve legislation. In addition, sanctions need to be fair and proportionate. With greater decentralization of power within countries, there is also a need to build capacity in local authorities to deal with environmental compliance and enforcement. The European Union's Aarhus Convention is a key way of helping with environmental compliance and enforcement and supporting good governance.

Ms. Katia Opalka, Commission for Environmental Cooperation, Canada, asked the Panel how governments should enhance the profile of the regulator with industry and the public. Ms. Linda Duncan, environmental law and policy consultant, Canada, also asked how the credibility of environmental regulators in many countries could be improved. Dr. Ladislav Miko said that the government should use top specialists and should ensure positive public presentation of the regulator to the public and industry. Secretary Pieter van Geel

explained that the roles of government and society cannot be split. He highlighted how, in the Netherlands, general society reacts when they feel that the government is not fully backing environmental enforcement. If the government does not do this, it leads to the government losing its moral integrity.

Mr. Bakary Kante, United Nations Environment Programme, raised the issue of sanctions in international environmental agreements. He stated that it is very challenging for all governments in the multilateral agreement to agree on sanctions. For example, under the Basel Convention it is virtually impossible to enforce the agreements, as there is no scheme to do this. Dr. Ladislav Miko added that the public finds it difficult to understand the system of sanctions. Mr. Kenneth Ruffing asserted that it is important to recognize the difference between national and international sanctions. Nationally, proportionate fines must be based on an estimate of the environmental damage, multiplied by a factor for punitive damage. Internationally, it is not always necessary to include sanctions at this level. However, sanctions have been included on an international basis in the Kyoto Agreement. Sir John Harman explained that, in the European Union, the ability to take issues to the European Courts of Justice and to apply sanctions on governments had been very powerful in environmental compliance and enforcement cases.

Ms. Linda Duncan asked the Panel how to overcome the tension between strict compliance and softer environmental compliance and enforcement options. Mr. Jonathan Allotey stated that a mixture of options should be used within a country depending on the context of the issue being tackled. Mr. Kenneth Ruffing highlighted an OECD study on voluntary approaches that concluded that it was useful to use voluntary approaches to complement the traditional approaches, particularly where there was little capacity for environmental compliance and enforcement. The research also provided a list of approaches that have been successfully applied in different contexts. Secretary Pieter van Geel outlined

the approach taken in the Netherlands where environmental compliance and enforcement start with voluntary agreements, but at a later stage, more formal regulations are implemented if the environmental targets are not being met. This approach has delivered many positive outcomes, and therefore the Netherlands use a mix of the traditional and softer options. Sir John Harman stated that voluntary agreements can be used as the forward edge of environmental compliance and enforcement, but need to be accompanied by the understanding that if voluntary agreements are not delivering the desired environmental outcomes, then traditional regulation will be used. Reductions in pesticide use in agriculture have been achieved through voluntary agreements in the UK, as the government threatened to tax the use of pesticides if the use did not decrease. Dr. Ladislav Miko also agreed with this approach and added that regulation in the later stages helped create a level playing field for businesses by not allowing those not in the voluntary agreements to gain advantage.

Mr. Sibusiso Gamede, Basel Resource Centre, South Africa, stated that environmental compliance and enforcement include improving the knowledge of the judiciary and their ability to preside in environmental cases. He asked the Panel how the learning process for the judiciary and support for inspectors can ensure compliance and enforcement. Sir John Harman noted that the question of judicial education is not just a South African concern, and Mr. Jonathan Allotey echoed that judges' knowledge is often low (and sometimes they admit it).

4 CONCLUSION

In conclusion, Sir John Harman summarized the key points of the panel discussions on how environmental compliance and enforcement are building blocks of good governance.

The main outcomes of the discussion were as follows:

- Compliance and enforcement does not happen in isolation but in a wider political and social context.
- Regulators need to be aware of the limitations of top-down standard setting.
- Specify the end result but be flexible about the means.
- The principles of subsidiarity should apply to environmental compliance and enforcement, but how they can be applied is rarely considered.
- Enforcement is there for a purpose, and outcomes should take priority in measuring its effectiveness.
- Lawmakers and policy makers should make use of the practical experience of those responsible for enforcement.