

TRACK F: CREATING A CULTURE OF COMPLIANCE

Good governance relies on culture, laws and norms. Facilitators and participants of workshops in Track F discussed issues associated with creating a culture of compliance. Making environmental compliance everyone's business is an essential component to rule of law and sustainable development.

1F NATIONAL COMPLIANCE PLANS FOR THE IMPLEMENTATION OF MEAs

Facilitators: Iwona Rummel-Bulska, United Nations Environment Programme
Rosalind Reeve, Chatham House

Rapporteur: Tom Higdon, INECE Secretariat

BACKGROUND

The successful implementation of multilateral environmental agreements (MEAs) requires individual countries to implement domestic laws, policies, and compliance programs as part of coordinated national implementation plans. Certain features of these national implementation plans have helped ensure the successful implementation of MEAs.

THE WORKSHOP DISCUSSION

Iwona Rummel-Bulska presented a brief history of national implementation of MEAs, noting how MEAs played a leading role in stimulating enactment of national environmental legislation in much of the developing world. She noted the important role convention secretariats have played in helping parties develop and implement national laws and highlighted the role of United Nations Environment Programme (UNEP) in this regard, noting particularly the 2002 UNEP Guidelines on Compliance with and Enforcement of MEAs. Ms. Rummel-Bulska outlined three important issues for workshop discussion:

- The advantages and drawbacks associated with verifying MEA compliance through reporting and other "self policing" by the parties.
- The adequacy of national legal provisions for liability and damages under MEAs, particularly in developing countries.
- The adequacy of MEA national focal points for communication and coordination, particularly in developing countries.

Rosalind Reeve presented a brief history of MEA national implementation plans (also referred to as national compliance plans). She also discussed the Convention on International Trade in Endangered Species (CITES) National Legislation Project that, since 1992, has helped evaluate national laws and assist parties with developing effective legislation that adequately implements CITES. Ms. Reeve outlined three important points:

- There is a gap between MEA requirements and national laws.
- Many MEAs do not have adequate resources to promote implementation (the obvious exceptions being the Ozone and Climate regimes). This is especially true for pre-Rio (1992) MEAs, which have little, if any, dedicated funding mechanisms.
- The UNEP Guidelines, while valuable, are just a starting point.

A lively discussion ensued that drew input from each workshop participant. While touching on a number of specific points, the following were the recurring themes:

- There is an urgent need to provide assistance to countries, particularly in the developing world, to build national capacity to implement MEA commitments.
- Many countries join MEAs without first evaluating their ability (or even the domestic political will) to comply.
- There is little coordination or prioritization of environmental policy at the level of MEA negotiation or at the level of national implementation.
- In instances where adequate substantive requirements have been enacted in national law, there is often still a deficit in enforcement provisions (such as civil, administrative, and criminal remedies).

THE OUTCOMES

Participants in this workshop suggested that INECE and its partners could undertake the following activities:

1. Build national capacity to improve coordination and prioritization with regard to MEA commitments, stressing the need to evaluate the ability (and wiliness) to accept new international commitments.
2. Study gaps in national implementation of MEAs with the goal of identifying common problems that can be met with common solutions.
3. Review and identify strategies to improve the role of civil, administrative, and criminal enforcement in compliance with MEAs.

2F USING SOCIETAL VALUES TO MARKET ENVIRONMENTAL COMPLIANCE

Facilitators: Antonio Oposa, The Law of Nature Foundation, The Philippines
 Brahim Zyani, Secretariat Chargé de l'Eau et de l'Environnement;
 Head of NECEMA, Morocco

Rapporteur: Davis Jones, Environmental Protection Agency, United States

BACKGROUND

Law is designed to change behavior, but the actual legal code is only 20% of equation. To truly change behavior, we must recognize other forces such as altruism, thinking about the future of our children, fear of being shamed, and religious beliefs including traditional spiritualism, and other values that exist in both developed and developing countries. These societal norms and cultural values establish and clarify the relationship between individuals and their neighbors as well as between individuals and nature. The workshop focused on how we can use those values, particularly at the local level, to solve complex, international environmental problems such as climate change.

THE WORKSHOP DISCUSSION

Societal values should be given greater priority and recognition, and must be integrated into national law to make them enforceable. By codifying those values, we take them from their origins but they cease to be spontaneous social values. For example, in Islam, waste is forbidden and water must be used efficiently, as reflected in the methods for religious washing and purification before prayer. Even if water is abundant, the Koran calls for its efficient use. Therefore, in Islamic nations such as Morocco, these religious values should be considered even though the rules about water conservation may be embodied in secular laws.

Appropriate cultural and religious traditions must be used to reach communities in a way they understand. For example, immigrant business owners who come from other cultures may not understand the local societal norms. Working with traditional leadership to incorporate traditions and transfer the control and protection of an area to the local people instead of putting it under outside control makes communities feel that they are preserving their own home rather than living in someone else's preserve. Environmental education in schools to sensitize school children early has advanced in response to societal pressure. Organized faith communities and leadership should be involved, like imams addressing God's relationship with humans and the earth, Pope Benedict XVI declaring that environmental degradation is a sin, and the US Episcopal Church's writing of the Catechism of Creation (http://www.episcopalchurch.org/19021_58393_ENG_HTML.htm).

These societal pushes are also reaching into corporate policies. Wal-mart's "Sustainability 360" plan (<http://walmartstores.com/Sustainability/>) brings the company's two million associates, numerous stores, and various suppliers toward sustainable practices. These efforts are saving the company significant resources while responding to society's call for sustainable development and pulling global suppliers toward more compliant practices.

THE OUTCOMES

What can INECE do to promote these ideas? The group suggested that INECE capture and publicize examples of how people have used traditional values to help communities pull from within to achieve increases in desire to comply rather than pushing to compel compliance. This should include corporate examples, environmental education efforts, and religious activities. In addition, INECE could set up a virtual dialogue focused on societal pressures toward compliance and invite educators and religious leaders to participate and share their contributions. The workshop participants can help identify whom to engage in the dialogue, including major religions and local communities.

3F RESPONSES TO CORRUPTION

Facilitators: Olya Melen, Environment-People-Law, Ukraine

Kate Mumladze, Inspection for Environmental Protection, Georgia

Lawrence I. Sperling, Department of State, United States

Rapporteur: Tom Higdon, INECE Secretariat

BACKGROUND

Corruption can cause severe environmental harm even where the established law and enforcement scheme is otherwise sound. Examples abound where corrupt environmental officials issue weak permits undermining enforcement options or approve inappropriate impact assessments thus allowing illegal activities. Compliance can also be undermined by the unreliability of police, inspectors, prosecutors, or judges who have been unduly influenced by violators.

THE WORKSHOP DISCUSSION

Workshop participants discussed efforts used to prevent, deter, detect, and prosecute corrupt practices in their respective countries. The workshop also addressed environmental impacts resulting from corruption, as well as obstacles corruption presents to environmental compliance promotion, effective environmental enforcement, and to enterprises that may otherwise wish to comply.

Many participants pointed out that corruption is the single greatest obstacle to economic and social development. It undermines development by distorting the rule of law and weakens the institutions on which economic growth depends. The harmful effects of corruption especially hurt the poor.

The facilitators noted that no universally agreed upon definition of corruption exists, although several regional and global treaties and other instruments promote programs to assure integrity and reduce corruption. There are a lot of widely accepted ideas about the factors that increase the risk of corruption, such as culture, mentality, low salary (although not all the participants agreed), and poverty. It was noted that in the chain from policymaking to enforcement there are a number of different occasions in which corruption could occur. One of the greatest impacts of corruption is the credibility of the system as a whole. Other negative political, economic, environmental, human development and security impacts result from corruption as well. Governments' efforts to weed out corruption within their own ranks are important, since continued government corruption will undermine the rule of law and spread corruption into all levels of society. Governments can pass legislation, adopt codes of conduct, and institute training and incentive programs. Adequate legal authority and prosecutorial capacity for identifying and responding to corrupt practices are also critical. Participants noted that corruption often involves collusion between government and private actors. As a result, it is helpful to complement laws, policies, and procedures affecting government employees with laws and programs to discourage private actors from participating in corruption.

OUTCOMES

INECE should consider including discussions about corruption in its capacity building course. INECE should also consider making an integrity platform on its website to disseminate best practices and provide links to conventions and other materials. In addition, INECE might consider developing a brochure on the subject.

4F THE ROLE OF THE JUDICIARY IN IMPROVING ENFORCEMENT PROGRAMS

Facilitators: Pradeep Bakshi, Asia-Pacific Jurist Association, India
 Judge Susan Biro, Environmental Protection Agency, United States
 Sedfrey Candelaria, Judicial Academy, The Philippines

Rapporteur: James McDonald, Environmental Protection Agency, United States

BACKGROUND

The judiciary upholds the rule of law and ensures that national and international laws are interpreted and applied fairly, efficiently, and effectively. This workshop emphasized the vital importance of the judiciary in addressing enforcement and compliance of environmental laws. During this session, justices and practitioners from India, the Philippines, the US, and other countries discussed the role of the judiciary in strengthening environmental compliance and enforcement and explored how enforcement programs can better represent themselves before courts.

THE WORKSHOP DISCUSSION

Judge Susan Biro discussed how cases are brought through the administrative law process. As an Administrative Law Judge, Judge Biro presides over enforcement actions initiated by USEPA for the assessment of civil penalties. These enforcement actions and permit proceedings are in accordance with the US Administrative Procedures Act. Administrative proceedings are brought before Administrative Law Judges under a number of environmental statutes.

Judge Biro indicated that Administrative Law Judges are viewed like federal judges and are able to hear cases involving many different areas of the law. She indicated that environmental law is seen as a divisive issue: either you are part of the Agency or part of the regulated community. Therefore, Judge Biro expressed that as Administrative Law Judges, judges attempt to indirectly encourage compliance through the following methods:

- **Training:** Here she views her role as telling the regulated community and United States Environmental Protection Agency (USEPA) about the process/procedures to help them become better litigators (enforcement attorneys) and helping the regulated community come into compliance with the law.
- **Improving the law:** Judge Biro indicated that environmental law has become very important and the regulations are complicated. She views her role as helping to clarify the issues and the rule of law, so that all parties have an understanding of what is required.
- **Encouraging compliance:** Compliance with environmental laws is the main goal. The regulated community needs to understand what is required. Environmental laws should be in simple terms. Legal decisions should be published and distributed broadly among the regulated community using trade publications and other periodicals.

Judge Biro indicated that many of the cases filed by USEPA are generally settled using alternative dispute resolution.

Pradeep Bakshi noted that in India, Article 21 of the Constitution guarantees a fundamental right to life for all citizens. This provision of the Constitution has been expanded to include the fundamental right to live with dignity and with a clean environment. Under the principle of public interest litigation, citizens play a vital role in protecting the environment. The citizens are coming forward to assist in resolving environmental law cases and are bringing matters before the court to investigate entities that violate environmental laws. He expressed the importance of involving nongovernmental organizations (NGOs) in the process early so that they can help address environmental compliance and enforcement. He noted that NGOs play a vital role in India through their networks and training programs. Mr. Bakshi concluded by stating: 1) the Courts appear ready to deliver judgments that should result in greater environmental protection or reduced environmental harm; 2) judges advance the development of environmental law by their traditional task of interpreting and filling the gaps in the legal texts; 3) judges, as guardians of the rule of law, are uniquely positioned to give environmental law force and effect; and 4) judges can bring integrity and certainty to the process of environmental protection and help to ensure environmental responsibility and accountability within the government and the private sector.

Professor Sedfrey Candelaria indicated that, “courts have characteristically been viewed as conservative and cautious in approaching new development in law.” Further, he stated that the complexity of environmental law cases has challenged sitting judges as they grapple with finding innovative solutions to these cases. Empowering the judges through judicial education, coupled with institutional reform, could lead towards effective adjudication of environmental cases. Professor Candelaria provided a brief overview of what the Philippine Judicial Academy (PHILJA) is doing to assist judges in understanding environmental laws.

He also indicated that PHILJA is focusing on the establishment of “green benches.” The Supreme Court, through some “champions” on environmental law issues within the judiciary, wants a system of specialized treatment of environmental cases on account of the need to understand: 1) the nature of environmental law cases; 2) the urgency and timely resolution of cases; 3) the complex process of handling evidence; and 4) the application of creative penology.

Professor Candelaria concluded his presentation by outlining three factors that have contributed to successful advocacy for the green courts in the Philippines. They are: 1) judicial leadership; 2) judicial education and training; and 3) strengthening networks. He noted that PHILJA anticipates many environmental cases will be handled through the green benches, and that judicial education and training on environmental issues is paramount if we are to address the environmental concerns of today and tomorrow.

THE OUTCOMES

INECE is in a unique position to provide significant support for the judiciary in helping to address environmental compliance and enforcement. The recommendation from the workshop participants is that INECE create a judicial network of judges, court administrators, lawyers, and other practitioners to assist with training and other educational opportunities to advance environmental law issues. Further, INECE should work with IUCN to develop a forum on environmental law, which would allow for the sharing of learning tools among different countries that can be used as models of success. Other recommendations include: 1) using different approaches for addressing environmental issues; 2) strengthening legislation that the judiciary can use; 3) better training of the judiciary on environmental law; and 4) using alternative dispute resolution to encourage settlement of environmental law cases.

5F SUPPLY CHAIN COMPLIANCE

Facilitators: Phyllis Harris, Wal-Mart Stores

Melissa Fourie, Department of Environmental Affairs and Tourism, South Africa

Rapporteur: Fred Kok, LOM Secretariat, The Netherlands

BACKGROUND

Responsible corporations seek not only to comply with their own responsibilities, but also to work to ensure that their vendors and suppliers produce their products in using environmentally-sound methods. This workshop presented examples of Wal-Mart's efforts to improve its environmental performance and the performance of its suppliers and South Africa's experience with this emerging focus area.

THE WORKSHOP DISCUSSION

Phyllis Harris made the first presentation about supply chain compliance at the Wal-Mart. Ms. Harris presented the environmental strategy of Wal-Mart as exploring new technologies; working on environmental issues suppliers; improving the environmental performance of Wal-Mart; and encouraging improved the performance of all partners.

To reach these goals, Wal-Mart seeks a more energy efficient future; a supply chain for the future; and product innovation. In general, Wal-Mart wants their products to be 25% more energy efficient. They are also working on fleet efficiency, supply chain organization, and a packaging scorecard. Competition was noted as the greatest driver for this attitude.

Melissa Fourie from South Africa's Department of Environmental Affairs and Tourism gave insight to the general enforcement and compliance situation in South Africa and how Department of Environmental Affairs and Tourism is attempting to change the status quo. Ms. Fourie noted that as companies become larger and more integrated internationally, there is a growing influence from standards and benchmarks developed abroad. She felt that 95% of South African industries are not concerned with environmental issues and one should not expect voluntary compliance. Ms. Fourie gave an example of Department of Environmental Affairs and Tourism's experiences with the Engen Refinery at Durban. Inspections, education, and a realization by the company that compliance could save money helped change the company culture.

The group discussed their perspectives on the influences of shareholders, consumers, the financial bottom-line and ISO 14001 -- an international standard for environmental management systems that helps companies operate efficiently and meeting environmental requirements -- on compliance behavior.

THE OUTCOMES

Many participants noted the value of networks such as INECE, organizations such as OECD, and business organizations such as the Global Environmental Management Initiative (see <http://gemi.org>) and suggested that these networks and organizations be supported. They also noted that INECE should be sure to include the private sector in its activities and suggested that regulators and enforcers would benefit from the perspectives of businesses.

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