

# ENVIRONMENTAL COMPLIANCE AND ENFORCEMENT INDICATORS IN ARGENTINA: PRIMARY CONCERNS

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## 1 EXECUTIVE SUMMARY

Argentina needs to develop and implement ECE indicators in order to evaluate how legal rules are complied with and enforced. There are different challenges that must be improved in order to analyze and design ECE indicators in Argentina, such as:

- A new legal environmental framework, which needs to be regulated and implemented,
- Different levels of government with environmental responsibilities
- A need for environmental strategic plans and systematized environmental compliance and enforcement programs,
- Lack of prioritization of environmental issues in the public budget,
- An incipient implementation of the right to get access to environmental information, public participation in the decision-making process, and access to justice regarding environmental issues.
- The need for an environmental information system, which the authorities must organize and implement to provide information.

The current project, *Developing Effective Environmental Compliance and Enforcement Indicators in Argentina*, that FARN is initiating in Latin America together with the Economic Commission for Latin America and the Caribbean (ECLAC), Centro Interdisciplinario de Biodiversidad y Ambiente (CeIBA) (Mexico), the Law for a Green Planet Institute (Brazil), and the International Network for Environmental Compliance and Enforcement (INECE), with the financial and substantive support of the World Bank Institute (WBI), aims at developing and implementing ECE indicators in Argentina.

## 2 CURRENT SITUATION

### 2.1 Legal Aspects

In Argentina, Article 41 of the National Constitution amended in 1994 established the human right to a healthy environment and the concept of sustainable development. In addition, this article established that the nation should set forth minimum standards for environmental protection. The provinces can then complement these minimum standards with more stringent provincial law. Article 43 of the amended constitution established an environmental injunction (*amparo ambiental*) to guarantee the human right to the environment.

In 2002, eight years after the National Constitution was amended, the minimum standards for environmental protection have started to be established by the National Congress.<sup>1</sup> The most important law of this environmental legal framework is the General

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<sup>1</sup> The Water Statute (25.688 - Gestión Ambiental de Aguas), B.O.: 03/01/2003; The General Statute of the Environment (25.675 General del Ambiente), B.O.: 28/11/2002; The PCBs Management and Elimination Statute (25.670 - Presupuestos Mínimos para la Gestión y Eliminación de los PCBs), B.O.: 19/11/2002;

Environmental Law (GEL), which includes the basic environmental policies, goals and tools that every authority and inhabitant has to respect. The GEL encompasses different issues such as basic environmental principles (e.g., precautionary principle), basic concepts of land use planning, environmental impact assessment, and environmental education. In addition, it establishes the right to get access to environmental information, creates a national information system, and requires the environmental authorities to provide environmental information. It specifically sets forth that the National Executive Power has to present to the National Congress an annual report including the environmental situation of the country. The GEL also requires public participation on environmental decision-making process. Finally, it includes a chapter about environmental damage and access to justice.

## 2.2 Institutional Aspects

Argentina is a federal country with different levels of government (Nation, provinces, municipalities, and City of Buenos Aires). Each level exercises environmental police power, with an important role of the provinces and the City of Buenos Aires. Environmental enforcement and compliance requires intergovernmental and administrative coordination. Although Argentina has no tradition of intergovernmental and administrative coordination, it is important to mention the Environmental Federal Council (COFEMA), which groups environmental authorities of the provinces, the Nation, and the City of Buenos Aires. This entity was created in 1990 because environmental authorities needed to exchange information and coordinate environmental policies in the country. Nowadays both the GEL and sectorial minimum standards laws award COFEMA fundamental functions regarding coordination of environmental policies.

## 2.3 Civil Society Concerns

The civil society in Argentina is working on different issues, which have important influence in environmental enforcement and compliance such as, consensus-building projects regarding law making and implementation.<sup>2</sup> In addition, it has an important role regarding access to information, public participation, and access to justice. It works on different fields, e.g. promoting awareness of environmental compliance and enforcement issues, training officials, prosecutors, and judges, participating in public hearings, developing environmental information in partnership with academia, and working on environmental administrative and judicial actions.

## 3 CHALLENGES FOR DEVELOPING AND IMPLEMENTING ECE INDICATORS

Regarding the current legal and institutional context, Argentina presents a challenging scenario for developing and implementing ECE indicators. We can consider the following to be among the most important challenges:

- A new environmental legal framework, which has to be regulated and implemented.

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The Industrial Waste Statute (25.612 de Gestión Integral de Residuos Industriales y de Actividades de Servicios), B.O.: 29/07/2002.

<sup>2</sup> e.g., *1<sup>a</sup> International Conference on Environmental Compliance and Enforcement in Latin America* and the *Symposium of Judges and Prosecutors of Latin America – Environmental Enforcement and Compliance*, both activities were organized in the framework of the Program of Environmental Compliance and Enforcement in Latin America of FARN. More information is available in: [http://www.farn.org.ar/investigacion/enforcement/en\\_index.html](http://www.farn.org.ar/investigacion/enforcement/en_index.html) and the *Special Brief about the Matanza – Riachuelo Basin*, December 2003 (Informe Especial sobre la Cuenca Matanza-Riachuelo, diciembre 2003) made by the National Ombudsman in cooperation with Asociación Vecinos de la Boca, Centro de Estudios Legales y Sociales (CELS), Defensoría Adjunta de la Ciudad de Buenos Aires, Fundación Ambiente y Recursos Naturales (FARN), Fundación Ciudad, Poder Ciudadano, Universidad Tecnológica Nacional (UTN).

- Environmental strategic plans. Currently there is no prioritization of strategies in the environmental national agenda.
- Systematized environmental compliance and enforcement programs. Currently there are atomized sectorial activities and registers.
- Optimization of existing resources. Environmental issues are not a priority in the public budget. Consequently, it is necessary to maximize existing resources to developing and implementing ECE indicators.
- Selection and development of adequate methodology. The situation in Argentina has to be analyzed considering the local reality and the comparative expertise.
- Furthering the implementation of access to environmental information, public participation, and access to justice. Although there are experiences of implementation of these concepts at some provinces and the City of Buenos Aires, environmental authorities have to fulfill their duty to organize an information system and to provide information. The incipient stage of implementation is a clear obstacle to develop and implement ECE indicators because the information is spread and sometimes it does not exist.

#### **4 KEY ISSUES**

Regarding the identified challenges, it is necessary to develop and implement the ECE indicators taking into account the situation of implementation of the right to get access to information, the development of an information system, the public participation in decision-making process, and the environmental access to justice. Thus, ECE indicators need to be related to access indicators. In addition, the federal structure of the government in Argentina requires a clear consideration of the relationship among the different levels of government, and their methods to coordinate enforcement and compliance efforts to develop and implement ECE indicators.

Another important issue is that there is no report about the status of the environment in Argentina. Nevertheless, there is different information about specific areas, natural resources, and environmental issues. Consequently it would be necessary to consider this situation to relate input and output indicators with outcome indicators in the Argentine scenario.

Argentina needs to develop and implement ECE indicators in order to evaluate how legal rules are complied with and enforced. Enforcement indicators as well as compliance indicators are helpful tools to improving enforcement and compliance with environmental laws and policies, measuring their effectiveness and efficiency. This is the main goal of the current project, *Developing Effective Environmental Compliance and Enforcement Indicators in Argentina* that FARN is starting to develop in Latin America together with the Economic Commission for Latin America and the Caribbean (ECLAC), Centro Interdisciplinario de Biodiversidad y Ambiente (CeIBA) (Mexico), the International Network for Environmental Compliance and Enforcement (INECE), and the Law for a Green Planet Institute (Brazil), with the financial and substantive support of the World Bank Institute (WBI).