

ENFORCEMENT OF ENVIRONMENTAL LAW: GOOD PRACTICES FROM AFRICA, CENTRAL ASIA, ASEAN COUNTRIES AND CHINA



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Executive Summary

This booklet on Enforcement of Environmental Law: Good Practices from Africa, Central Asia, ASEAN Countries and China compiles and documents good practices on enforcement of environmental laws that were shared from selected countries as a tool to guide other countries when strengthening their enforcement. For any environmental legislation or regulation to be effective it requires to be adequately enforced. Environmental Laws do provide enforcement mechanisms and expect the responsible authorities to enforce the law. Developing countries have however been experiencing weak enforcement that is rendering the national environmental laws and regulations sometimes ineffective in deterring violations.

The fact that the experiences of developing countries on enforcing their environmental laws and regulations differ provides opportunities to learn from each other. This booklet is a collation of good practices on enforcement of environmental law that were generated by countries from the ASEAN region, selected African countries and selected Central Asian countries and China. These best practices were generated at an inter-regional meeting of experts on enforcement of environmental law, which provided a forum for countries to share expertise and learn from each other under the framework of South-South Cooperation.

The design of the booklet is such that the good practices on enforcement are presented in categories of Administrative Enforcement, Civil Enforcement and Criminal Enforcement which provides the reader with the three different perspectives of enforcement. In addition the good practices which were derived from developing countries provide for cost effective options which countries can use to strengthen and or perfect their systems. The regional networks and Institutions also provide a good opportunity to continue collaborating at the regional and sub-regional level to strengthen enforcement of environmental law.

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Chapter 1:

Enforcement of environmental law

1.1 Introduction to the problem

The object of this introductory guide is to provide information to countries and institutions on strengthening enforcement of environmental law.

Examples of good practices in the enforcement of environmental law are provided, with these having been chosen where there is evidence of their being successful in practice. By ‘good practices’ are meant solutions which have been implemented in particular countries, to particular difficulties of environmental law enforcement, and which have been successful in resolving those difficulties – or have at least shown significant promise. Good practices are proposed from selected countries, as the entire range of African and Asian countries could not be covered.

The scope of this guide is limited to enforcement, not compliance. ‘Enforcement’, for purposes of this guide, is defined as meaning:

the range of procedures and actions employed by a State, its competent authorities and agencies to ensure that organizations or persons, potentially failing to comply with environmental laws or regulations, can be brought or returned into compliance and/or punished through civil, administrative or criminal action.

‘Compliance’, by contrast, can be defined as meaning:

the state of conformity with obligations, imposed by a State, its competent authorities and agencies on the regulated community, whether directly or through conditions and requirements in permits, licences and authorizations.

Of course, there will on occasion be overlap – for instance, in order to determine a good practice one might need to investigate compliance issues to see whether the practice has been successful in a particular country.

Within national legal systems it is becoming increasingly apparent that merely having legislation ‘on the books’ is not sufficient – and that even in systems where criminal provisions are enforced effectively, criminal law by itself will never be sufficient. Effective administrative practices and the availability of means for civil society to become involved are just as important. Enhancement of all three of the areas of administrative, civil and criminal practices is needed for enforcement to be optimal. Within each of these three fields, and in the inter-relationships between them, innovation needs to be ongoing – and all actors can benefit from contact with,

and support from, each other. Against a background of internationalization, and significant resource constraints, states and actors within states should seek to learn from each other's experiences.

At the same time, however, environmental degradation is, at least in most countries, increasing; and existing enforcement of environmental laws is not proving as effective as might be hoped. The reasons for this are manifold, including human capacity and access to technology constraints suffered especially by developing countries; nation-wide drives toward rapid economic growth and poverty alleviation, again especially in developing countries; and, crucially, weak international communication and consequent lack of awareness of possible solutions which might be suitable, or adaptable, to countries' environmental enforcement needs.

Unfortunately, it seems that environmental problems are becoming worse and not better. Aside from a few limited success stories, habitats are shrinking, biodiversity's resilience capacity is being weakened, climates are changing, alien invasive species are increasing, and there is greater pressure on natural resources than ever before. Enforcement of environmental law needs to adapt. States have consequently begun to change their implementation and enforcement practices to move away from reliance on only the rigid imposition of sanctions for environmental violations, toward regarding enforcement through criminal sanctions as being merely one of the elements of a suite of actions which national governments need to take to achieve substantial compliance.

The relationship between national and international environmental law is increasingly important and increasingly acknowledged; and it is increasingly understood that effective enforcement of national environmental laws is required if international environmental law is to be effective. As our understanding of the growing complexity of environmental problems has increased, we have developed a more sophisticated understanding of what is required for effective enforcement of environmental law.

1.2 International environmental law and national environmental law enforcement

Although the main focus of this introductory guide is on sharing good practices in enforcement of national environmental law, national environmental law has a relationship with international environmental law. There are national laws that are enacted to implement international environmental agreements; and others that are enacted to manage the environment which are not implementing international environmental agreements. It is therefore important at the outset to understand the relationship between international and national law. States enter into international agreements (also called conventions or treaties) in terms of which they agree to enforce certain obligations within their own national legal systems. States are the main drivers for implementing international rules because international agreements must be incorporated within national legal systems if they are to have any chance of being effective. Whether national legal systems will prove effective depends, in turn, on a range of factors – such as the extent to which society accepts the rationale for laws regulating the environment;

the extent to which the State has the willingness to enact the required national environmental legislation and the capacity to enforce such laws; and the extent to which actors within both the international and national spheres consider the costs of abiding by such laws to outweigh the advantages that might be gained by disobeying them. It is important to note that the core multilateral environmental agreements, such as the Rio Conventions,¹ provide facilities and support to countries to enable them to enforce their laws more effectively at the national level.

Agenda 21, the global blueprint for sustainable development agreed to at the United Nations Conference on Environment and Development (UNCED), 1992, advocates for enforcement as important to make the laws effective in managing the environment and for sustainable development. Chapter 8 of Agenda 21, amongst other things, calls on governments to strengthen national institutional capability and capacity to integrate social, economic, developmental and environmental issues at all levels of development decision-making and implementation. Most specifically in relation to enforcement, Agenda 21 further records that:

amongst the important instruments for transforming environment and development policies into action are laws and regulations suited to country-specific conditions – but much of the law-making in many countries seems to be ad hoc and piecemeal, or has not been endowed with the necessary institutional machinery and authority for enforcement and timely adjustment; and many developing countries have been afflicted by shortcomings of laws and regulations.

Governments, according to Agenda 21 further:

- *should make their laws and regulations more effective;*
- *should establish judicial and administrative procedures for legal redress and remedy of actions affecting environment and development that may be unlawful or infringe on rights under the law;*
- *could usefully receive support from legal reference and support services, including competent intergovernmental and non-governmental organizations; and*
- *could usefully establish a cooperative training network for sustainable development law; and should develop integrated strategies to maximize compliance with its laws and regulations relating to sustainable development.*

In respect of strengthening legal and institutional capacity, Agenda 21 suggests that it is

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