
THE ROLE OF INSTITUTIONS AND NETWORKS IN ENVIRONMENTAL ENFORCEMENT

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SUMMARY

This paper discusses the roles that institutions and networks play in environmental enforcement. Within that role, institutional frameworks are necessary to provide guidelines for institutions as well as define roles and responsibilities for governments, civil society and individual citizens. Agenda 21 has recognized the role played by international institutional arrangements in the integration of environment and development issues at national, sub-regional, regional and international levels (Chapter 38). In part, Chapter 2 of the UNEP Guidelines urges states to consider institutional frameworks that promote effective enforcement of environmental laws and policies. As such, institutional and network influence has grown at the local, national and international levels in the past 10 years.

1 INTRODUCTION

Many formal institutions, intergovernmental at various levels exist today, and are prime movers in environmental policy development and implementation. Such institutions have mushroomed at the global and regional levels and have direct implications at the national level; the most important being ineffective implementation because of lack of human, financial, scientific and technical resources. Equally significant are increasing trends to evade laws and regulations put in place. Clearly, therefore, enhanced and streamlined institutions are needed as well as a network of informal networks, springing from national, regional to global level to enhance enforcement measures. Such is the challenge offered in this discussion.

2 INSTITUTIONAL FRAMEWORK

Legal and institutional arrangements for environmental management have gradually evolved and changed as scientific

understanding of the dynamics of environmental processes and the impact of anthropogenic activities on such dynamics has increased. Trends indicate a move from sectoral approaches that isolate and exploit the environment, to a holistic eco-system approach that is concerned with sustainability and promotes an integrated and coordinated approach to environment and the economy. Institutional arrangements have also been influenced by participatory approaches to development and the devolution of power to sub-national levels, including the empowerment of grass-roots communities to decide and act on the political, economic and social issues that affect them.

Environmental laws and regulations are considered indispensable frameworks and basis for the effective implementation. They establish mandates for institutions as well as define roles and responsibilities for governments, civil society and individual citizens. These rights then have the backing of the law and, hence, are enforceable.

Thus, when one discusses the implementation of environmental laws and

regulations one is also speaking about the implementation of the environmental management frameworks.

Since environment is an area that transcends all sectors, it is now accepted that its management requires the coordination of a multitude of stakeholders. In other words, its management requires inclusiveness. Effective management of the environment requires diverse national and international institutions and individuals with a wide range of skills to work in harmony.

National and international institutional arrangements for environmental management inevitably will compose all stakeholders in the formulation and implementation of environmental laws, including their enforcement. These will include: government institutions (coordinating bodies, line agencies, legislative/judicial branches, and the police); academic institutions; NGOs and CBOs; professional associations; and the private sector as well as international and regional networks.

3 AGENDA 21 CHAPTER 38

Agenda 21 recognizes in Chapter 38 the importance and the role played by international institutional arrangements in the integration of environment and development issues at national, sub-regional, regional and international levels. Chapter 38.21, for instance, emphasized the need for an enhanced and strengthened role of UNEP and its governing bodies. Agenda 21 also recognizes the specific roles played by other UN bodies including specialized agencies within their field of expertise, competence and comparative advantage including the need for these international bodies to cooperate and coordinate their relevant activities to avoid duplication in the implementation of agenda 21. Consequently, UNEP has cooperated and will continue to cooperate with other relevant bodies to

implement Agenda 21 in general and in particular in order to ensure coordinated action in implementation and enforcement of environmental law and policies.

4 THE ROLE OF INSTITUTIONS AND NETWORKS

The past decade or so, in particular, after the 1992 UNCED process, the international community has witnessed phenomenal growth, establishment and strengthening of institutions both at national, regional and global level dealing with different aspects on environment. With the growth in importance on the subject of environmental management came also the development of institutions to ensure and facilitate effective coordination and management of natural resources at all levels. Institutions at global and regional levels refocused their activities and environment became an important activity in a number of them. At national level, likewise, environmental management has been institutionalized with the establishment or designation of national institutions by law. Framework environmental laws of many countries today establish environmental management and/or inter-ministerial bodies to oversee enforcement of environmental laws and regulations in a country (see: Compendium of Laws in African Countries Vol. I Framework Laws and EIA Regulations).

Similar development is witnessed in the development of formal and informal environmental networks to support international, regional and national institutions in the enforcement of environmental laws and regulations. These networks both internationally, such as INECE, and regionally, such as Implementation and Enforcement of Environmental Law - EU Network (IMPEL) and Network for Environment and Sustainable Development in Africa (NESDA), to mention but a few, have become important mechanisms to reckon

with. They support government efforts in their endeavor and activities on environmental enforcement of multilateral environmental agreements (MEA) and national laws. It is satisfying to see how networks have grown in recent years to ensure that no developments at national level pass unnoticed without the global chain of members being aware in virtually all countries. INECE and IUCN networks effectively use information technology facilities (email, internet and tele and video conferences) to reach their constituencies and instantly keep them abreast of developments in the field of environment, globally. These developments will inevitably continue to grow and offer opportunities for regional and international networks to work together to enhance environmental enforcement.

Environmental institutions, as mandated by Agenda 21 and re-emphasized by virtually all governing bodies, place focus on the need and importance to cooperate and collaborate with governments, relevant other bodies (networks and convention secretariats) in all related programmes and activities. Such collaboration and/or coordination of activities has an advantage of ensuring that limited and meager resources are used effectively to avoid waste and duplication. It creates synergy and harmonization of relevant policies and activities to effectively support and build upon existing activities by the partners or constituencies for the common goal. It is the need and importance of such collaboration that institutions like UNEP is a participatory member in the Executive Planning Committee (EPC) of INECE. This ensures that its environmental enforcement and compliance activities and policies are built in and/or complement those of INECE and create synergy and harmony taking into account its comparative advantage. Collaboration with relevant networks, INECE and others regionally and globally, provides a conduit for sharing and exchanging information,

data, experiences and expertise which are vital for the effective implementation and enforcement of environmental laws. Focal points and/or persons have been established or designated in many institutions and networks to ensure smooth flow of data and information. Their importance continue to grow bearing in mind the fluid nature of national boundaries/frontiers and the sophisticated nature of criminal activities in violation of environmental laws and policies. All international, regional and national institutions have to work together with established networks to ensure the success of environmental enforcement and implementation of environmental framework laws.

5 INSTITUTIONAL FRAMEWORK UNDER UNEP GUIDELINES ON MEAs

Part D Chapter 2 of the UNEP Guidelines for national enforcement and international cooperation in combating violations of laws implementing MEAs urges states to consider institutional frameworks that promote effective enforcement of environmental laws and policies. The Guidelines urge states to designate agencies with responsibilities for enforcement of laws and regulations; monitoring and evaluation of implementation of laws and to raise awareness to the public, in particular, regulated community and the general public. The agencies will collect, report and analyze data as well as provide information about investigations. They will assist courts and tribunals, where appropriate, with relevant information and data for their work. Such institutional frameworks will endeavor to control import and export of substances and endangered species at border crossing ports and other areas of know or suspected illegal activities.

The Guidelines urge states to give clear authority to enforcement agencies involved in enforcement activities to enable

them to obtain relevant information, have access to relevant facilities such as ports and border crossings and coordinate with other agencies. They require authority to monitor and verify compliance with national laws and regulations; be able to order action to prevent and remedy environmental law violations as well as impose sanctions including penalties for environmental law violations and non-compliance.

States are expected to promote policies and procedures that ensure fair and consistent enforcement and imposition of penalties based on established criteria and sentencing guidelines. There is also need to establish or strengthen national environmental crime units to complement civil and administrative enforcement programmes. Use of economic instruments has been identified as one of the measures institutions could use to promote compliance. Institutions should invariably promote access of the public and civil society to administrative and judicial procedures to challenge acts and omissions by public authorities and corporate persons that contravene national environmental laws including support for public access to justice. Participation of appropriate communities and NGOs in processes contributing to the protection of the environment ought to be guaranteed to ensure effective environmental enforcement. Use of media to publicize environmental law violations and enforcement actions as well as highlighting examples of positive environmental achievements should be encouraged. Periodic review of the adequacy of existing laws, regulations and policies for the fulfillment of environmental objectives needs to be put on the agenda of such institutions. Courts ought to be given authority to impose appropriate penalties for violations of environmental laws and regulations as well as other consequences.

The Guidelines thus provide a checklist of the functions, tools and man-

dates of a national institutional framework which states may wish to consider to put in place, if they do not yet exist or to strengthen the existing ones, so as to ensure and guarantee effective national environmental enforcement of laws and policies. If requested, UNEP would assist in such efforts and is in the process of preparing a manual that can be used by those in need.

However, for the institutional framework to work, coordination among relevant authorities and agencies becomes *sine quo non* for effective enforcement mechanism. Coordination is inevitable among various enforcement agencies, environmental authorities, tax, customs and other relevant officials at different levels of government. Linkage at the field level among cross agency task forces and points is equally crucial. Coordination by government agencies with NGOs and the private sector is required. Coordination among authorities responsible for promoting licensing systems to regulate and control the importation and exportation of illicit substances and hazardous materials cannot be avoided but should be encouraged.

Furthermore, consistent with relevant provisions in MEAs, national enforcement of laws and regulation implementing MEAs could be supported through international cooperation and coordination that can be facilitated by international institutions such as UNEP.

The Guidelines also encourage states to enhance international cooperation and coordination to contain or prevent environmental crimes with transboundary aspects. States are urged to consider strengthening institutional frameworks and programmes to facilitate international cooperation and coordination by designing and establishing channels of communication and information exchange. Such channels could be with MEAs Secretariats, World Customs Organization, NGOs, international law enforcement agencies such as

International Criminal Police Organization (Interpol) and networks such as INECE and IMPEL.

Although the Guidelines are not binding but advisory in nature, they do provide a useful tool for states to use an instrument guiding their relations with other enforcement bodies or networks. The Guidelines have synthesized various expertise and experiences into a friendly useable document to guide states as appropriate.

Interpol, though not having actual enforcement function, has been active in coordinating and facilitating international cooperation between law enforcement agencies in the world during their investigations of international criminal cases. Interpol mostly pursues cases reported to it by its member countries through established national central bureaus. Hence, for Interpol, the necessity and effectiveness of the multi-agency approach has been recognized and extensively used in many countries is inevitable.

The World Customs Organization, on the other hand, promotes cooperation and communication among members and with other international organizations. It

fosters human resource development, improvement in the management and working methods of customs administrations and share best practices. Members cooperate with each other and with international agencies in order to combat customs and other transborder offences.

UNEP, Interpol and World Customs Organization role in environmental enforcement are provided as examples for illustrative purpose. There are many institutions in the field of environment that deal with enforcement of laws. However, their work still depends on the established networks to further facilitate their work in terms of sharing relevant information, expertise and data. This should be encouraged and strengthened and more so in cooperative arrangement by neighboring countries, sub-regional and regional levels. In many regions there are many sub-regional arrangements dealing with environmental, social, economic and other matters. These constitute possible mechanisms for formal or informal networks that underscore the need for better use of resources in the enhancement of the implementation of MEAs.