Promoting Active Citizenry: Public Access to Redress and Legal Recourse*

Introduction

This Guidance Note presents tools that government policy makers and leaders may use to engage citizens and promote public action on matters relating to pollution by providing public access to complaint mechanisms, and by providing public access to legal recourse. Appropriate complaint mechanisms provide the public with avenues for seeking redress of their grievances relating to pollution.

Description and Application of Promoting Active Citizenry: Public Access to Redress and Legal Recourse

Public access to redress and legal recourse can be a powerful tool for pollution management, since it provides a means for individuals and organizations to access a country’s justice system as a means to protecting the environment. Access to redress and legal recourse makes it possible for the public to hold decision makers in the public sector and those in the private sector accountable for their actions. There are multiple approaches governments can use for increasing public access to redress and legal recourse. These approaches include legal frameworks (legislation and regulation), capacity building, alternative dispute resolution, legal aid, citizen monitoring and enforcement, and international networks.

Prerequisite Factors for Promoting Active Citizenry: Public Access to Redress and Legal Recourse

Governments can facilitate citizen access to justice by establishing clear information and participation laws that provide adequate legal grounds for citizens seeking redress (see Guidance Notes on citizen access to information and public participation for more information).

Programs that build the capacity of officials, judges, and citizens to effectively use complaint mechanisms...
and legal recourse can bolster citizen involvement. Governments can also expand the processes used for redress to include administrative courts and alternative dispute mechanisms. Government-sponsored legal aid also helps defer the costs for citizens and groups to lodge a complaint.

Comprehensive systems providing access to information and public participation are most effective when citizens and government officials (administrative, legislative, and judicial) have a thorough understanding of the laws and its practice.

Rule of law is a fundamental requirement to ensure public access to legal recourse institutions. In the absence of rule of law, seeking legal recourse lacks legitimacy and dissuades active citizenry.

**Advantages and Limitations of Promoting Active Citizenry: Public Access to Redress and Legal Recourse**

The ability of citizens to seek redress or challenge decisions is a fundamental element of good environmental governance. Box 1 identifies the foundational components for public access to redress and legal recourse. Public access to redress and legal recourse allows citizens to protect their rights to information and participation, and to dispute decisions that do not take the interests of the community into account. When citizens are able to hold decision makers accountable with regard to environmental decisions, the monitoring and enforcement of regulations is enhanced, the interests of underrepresented stakeholders are better protected, and disputes over natural resources are more likely to be resolved.

In many countries, citizens encounter barriers when they try to access administrative and judicial proceedings. Among the barriers that citizens encounter are the following:

- lack of awareness of legal rights and remedies;
- lack of understanding of the processes for engaging the system;
- significant delays in the processing of claims;
- high costs of litigation;
- geographic location and physical accessibility of the courts, especially if a case is sent to the country’s high court; and
- lack of ability to bring cases to court or lack of standing.

**Interaction with Other Tools and Possible Substitutes**

Policy tools relating to public access to information, and policy tools relating to public advocacy and
participation in decision making, are the tools that most interact with public access to redress and legal recourse (see Guidance Note on public access to information and Guidance Note on public advocacy and participation in decision making).

Conventions such as Aarhus (UNECE 2006) and global mechanisms such as the World Bank Inspection Panel (see World Bank Inspection Panel Web site) are especially important in resolving trans-boundary pollution cases. These instruments encourage harmonization of policies and practices among countries, and provide a forum for global citizens seeking justice.

**Practical Examples of Promoting Active Citizenry: Public Access to Redress and Legal Recourse, and Lessons Learned**

Figure 1 identifies approaches to redress and recourse, and provides examples of the approaches.

Legal frameworks include laws and regulations. In the context of promoting active citizenry as a tool for pollution management, two important examples are freedom of information legislation (Freedom of Information Act, FOIA) and Environmental Impact Assessment (EIA) regulations. For further information, see the Guidance Note on promoting active citizenry: public access to information and the Guidance Note on environmental impact assessment.

**Building capacity for government and citizens.**

Many governments are investing in public education programs and judicial training to build their government’s capacity to provide access and encourage citizens to demand it. Latvia recently established a program to train judges on implementing national access laws (see box 2). Collaborating with civil society organizations can increase the reach of these programs and the expertise used to develop them.

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**Figure 1. Types of Approaches with Examples to Redress and Recourse**

<table>
<thead>
<tr>
<th>Redress &amp; Legal Recourse</th>
<th>Example</th>
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<tbody>
<tr>
<td>Legal frameworks</td>
<td>FOIA, EIA, etc</td>
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<td>Capacity building for government and citizens</td>
<td>Latvia judges training</td>
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<td>Alternative Dispute Resolution</td>
<td>Ghana Judicial Services</td>
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<td>Citizen monitoring and enforcement</td>
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<td>International networks</td>
<td>ELAW</td>
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The Ecuadoran Center for Environmental Law (CEDA, Centro Ecuatoriano de Derecho Ambiental; see Cárdenas 2006) is a nonprofit organization established in 1996 by lawyers with the goal of promoting national and international legislation as a means to protect the environment. The group has led many capacity-building workshops throughout Ecuador, training more than 2,500 representatives from civil society, academia, and central and local governments on access to justice (Cárdenas 2006). The group also reviews litigation cases where citizen access rights have been denied and drafts policy recommendations to government. Groups like CEDA help ensure that citizens are aware of their rights and have access to legal recourse, which has resulted in a more active community.

*Box 2. Training for Judges in Latvia*

In 2008, the Latvian Ministry of Environment, the Aarhus Convention Bureau, and the non-governmental organization REC-Latvia jointly hosted a “Constitutional and Administrative Courts Judges Capacity-Building Seminar” for 35 judges from three different Latvian courts: Constitutional, Administrative, and Supreme. The event reinforced specific roles for judges implementing access laws in the country. Programs like this can harmonize implementation of laws and encourage public access to justice.

In Ghana, ADR is a part of the adjudicating process of the Judicial Service of Ghana and available to parties who file cases in the court. In the first two years of the program, more than 151 mediators were trained and assigned to 41 district courts throughout Ghana. Of the cases referred to mediation in these courts, approximately half were successfully resolved. Today the program is expanding to all district, circuit, and high courts (see Judicial Service of Ghana Web site).

The Alternative Dispute Resolution Center at the International Law Institute (ILI) offers seminars in mediation and arbitration law and practice for government officials, lawyers, judges, and the private sector. It also offers a program in international commercial arbitration at its center in Uganda and has trained mediators and arbitrators in Chile, Egypt, Ghana, Kenya, Nigeria, and Turkey. The group has also advised lawyers and government officials on the drafting of laws and ADR mechanisms in Armenia, Bulgaria, and the Republic of Georgia.

**Legal aid.**

In many countries, the high cost of representation is a barrier to citizen participation in the legal system. Legal aid programs help ensure more equitable public access to justice regardless of the economic status of those involved. Public interest organizations often provide legal services free or at reduced cost. Governments can provide incentives for attorneys
who participate in these programs. Such incentives include tax breaks, subsidies for services, expense waivers, or attorney compensation after a trial.

Earthjustice, formerly called Sierra Club Legal Defense Fund, is a nonprofit public interest law firm dedicated to defending citizens’ rights to a healthy environment. Earthjustice monitors US environmental law, and this organization challenges authorities who fail to enforce the laws and industries that break them. Earthjustice works on behalf of local communities and environmental groups, providing free legal services (see Earthjustice Web site).

Australian Network of Environment Defender’s Offices (ANEDO) provides legal services and environmental education directly to communities that would otherwise not have access to such services. In 2006, ANEDO established an Indigenous Engagement Officer position to provide free legal support for indigenous communities. In 2008, the group defended critical water rights for indigenous populations and raised concerns over the lack of participation of these communities in consultations for the nation’s Water Amendment Bill.

**Citizen monitoring and enforcement.**
A well-informed and active public leads to increased demand for transparency and accountability on the part of decision makers in government and industry. The result is better enforcement of environmental laws and policies. Through independent monitoring, citizen groups involved in monitoring and enforcement elevate citizen voices and help ensure improved industry compliance with environmental laws. These groups also alert government to possible violations of law and potential threats to public health. This is especially true in the case of Pollutant Release and Transfer Registers (PRTRs) and other public disclosure schemes that are addressed in the Guidance Note on citizen access to information.

In some countries, like Estonia, governments have contracted citizen groups to assist in local inspection efforts. These contracted “public inspectors” monitor compliance with laws, regulations, and permits relating to hunting, fishing, and forestry, and document any violations they encounter. In Poland, the Nature Protection Guard is comprised of citizens who have powers similar to forest rangers. They enforce local conservation laws and have the right to ticket violators and impose fines. Article 16 of the Mexico Constitution grants citizens the right to arrest any person caught in the act of committing an offense.

The Chemical Weapons Working Group (CWWG) is an international coalition comprised of citizens who live near one of nine storage sites for chemical weapons in the United States, Russia, and the Pacific. The group opposes incineration of chemical weapons and works with policy makers to ensure safe disposal of these munitions, and of other chemical warfare and toxic materials. As governments comply with international obligations to dispose of chemical weapons, CWWG works to ensure that this is done safely and in a transparent manner. In 1996, CWWG successfully convinced the Pentagon and Congress to use $300 million dollars for the safe disposal of more than 880,000 chemical weapons in the US.
International networks.

The rapid growth of environmental civil society organizations in recent years has led to a rise in international networks, partnerships, and collaborative efforts across borders. Armed with modern technology and expertise, these groups help promote citizen engagement in environmental legal matters. New technological tools like Facebook and Twitter help groups to connect with citizens and to share up-to-date information at an unprecedented rate. Some groups are formal organizations, while others are ad hoc. Some exist outside the state, while others may have quasi-state status.

International networks can be useful instruments in advocacy for citizens’ rights to live in a healthy environment. In the case of Nadezhda Fadeyeva, efforts by the Environmental Law Alliance Worldwide (ELAW) resulted in government acknowledgement of the negative health impacts of pollution and a commitment to relocate citizens who were exposed to toxins. See box 3.

Sometimes, groups act on behalf of citizens, without any broad public mandates. In India in the 1990s, two Civil Society Organizations (CSOs) brought public interest lawsuits that compelled the government to enforce, and be accountable to, legal requirements regulating air pollution. The CSOs were highly successful in their pursuits; however, the groups themselves did not represent the opinions of the broader public. Both groups were self-appointed to protect the interests of the public, but neither had any mandate nor any groundswell of public support. Essentially, they were small elite organizations, and local citizens were informed of the lawsuits rather than involved in them.

Table 1 presents a summary of means to promote active citizenry through public access to redress and legal recourse.

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Box 3: Protecting Citizens from Pollution

Started in 1989 by a handful of lawyers, Environmental Law Alliance Worldwide (ELAW) now connects more than 300 public interest advocates across 60 countries. The network promotes effective environmental protection through law using common strategies and shared legal and scientific experiences. Partners work with citizens to challenge environmental abuses, strengthen environmental laws, and build local capacity to defend the environment.

In 2005, ELAW US helped win an important ruling from the European Court of Human Rights on pollution-related illnesses. The group presented compelling scientific evidence showing that Nadezhda Fadeyeva, a Russian citizen who lived near the Severstal steel plant, suffered serious health problems as a direct result of the plant’s toxic emissions. The court ruled that the factory’s pollution violated Mrs. Fadeyeva’s human rights and ordered the Russian government to uphold its 1965 commitment to relocate citizens living in the “security zone” around the plant. The case reaffirmed that people have a human right to live free from toxic pollution and opened the door for more citizens to pursue justice.
# Guidance Notes on Tools for Pollution Management

## Table 1. Summary of Means for Promoting Active Citizenship through Redress and Legal Recourse

<table>
<thead>
<tr>
<th>Category and Resources</th>
<th>Example</th>
<th>Description</th>
<th>Application</th>
<th>Pros</th>
<th>Cons</th>
<th>Good Practice</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Legal frameworks</strong></td>
<td>FOIA, EIA</td>
<td>Laws that guarantee the public’s right to participate in decision-making.</td>
<td>National, provincial, and regional levels.</td>
<td>Legally binding, enforceable right to legal redress.</td>
<td>Laws can be weak, lack administrative rules and operational policies. Wide exemptions.</td>
<td>Laws should provide citizens adequate grounds for redress and include administrative rules, operational policies.</td>
</tr>
<tr>
<td><strong>Capacity building for government and citizens</strong></td>
<td>Training programs for judges</td>
<td>Initiatives to enhance government officials’ ability to implement laws and build citizen awareness of rights.</td>
<td>Workshops, certificate programs.</td>
<td>Ensures broad implementation of laws, wide use by citizens.</td>
<td>Can take time to design, implement. Significant start-up costs.</td>
<td>Government partnership with civil society organizations and universities to create and implement programs.</td>
</tr>
<tr>
<td><strong>Alternative dispute resolution</strong></td>
<td>Ghana Judicial Services; Alternative Dispute Resolution Center</td>
<td>Means to resolve conflict outside the formal legal system.</td>
<td>Includes negotiation, mediation, neutral evaluation and arbitration.</td>
<td>An affordable, accessible and faster means for resolving disputes. Alleviates court backlogs, increases access to justice for poor.</td>
<td>No “checks and balances”, sometimes used by people who are not trained in the collection of evidence. Non-traditional approach may be inappropriate for some cases.</td>
<td>ADR has wide public acceptance and government support. Sufficient funds, training and encouragement provided. Voluntary, flexible and expeditious.</td>
</tr>
<tr>
<td><strong>Legal aid</strong></td>
<td>Australia EDO; Earthjustice; government programs</td>
<td>Programs or groups that provide low-cost or free legal assistance to citizens.</td>
<td>Free legal services, government incentives (tax breaks, subsidies) for participating attorneys.</td>
<td>Citizens are able to exercise right to legal recourse regardless of financial stature.</td>
<td>Increase in legal cases contributing to backlog in courts.</td>
<td>Aid reaches those most in need of services. Administrative and court fees are not barriers to justice. Independent legal representation is available, accessible.</td>
</tr>
<tr>
<td><strong>Citizen monitoring and enforcement</strong></td>
<td>Chemical Weapons Working Group</td>
<td>Programs or groups that monitor laws and inform citizens of policies and industry compliance.</td>
<td>Informed citizens alert government of possible violations of law.</td>
<td>Enhances industry accountability, transparency. Alerts authorities to public health threats, early warning.</td>
<td>Can be viewed as threatening to industry and government.</td>
<td>Mutually beneficial relationships between citizen groups, industry and government. Collective support.</td>
</tr>
<tr>
<td><strong>International networks</strong></td>
<td>ELAW</td>
<td>Partnerships that promote citizen engagement in legal matters.</td>
<td>Some groups are formal organizations and others are ad hoc. Some have quasi-state status.</td>
<td>Rapid learning across different legal systems, countries. Emergence of international best practice. Ability to mobilize large stakeholder groups.</td>
<td>Groups may act on behalf of citizens without any broad public mandate.</td>
<td>Action based on common strategies and shared legal and scientific experiences. Broad public support.</td>
</tr>
</tbody>
</table>
References and Resources on Promoting Active Citizenry: Public Access to Redress and Legal Recourse

Access Initiative, www.accessinitiative.org

--------, “Diagnostic Toolkit,” http://accessinitiative.info/


International Environmental Law Research Centre, http://www.ielrc.org/content/n0401.htm


This guidance note is part of World Bank Group publication: Getting to Green—A Sourcebook of Pollution Management Policy Tools for Growth and Competitiveness, available online at www.worldbank.org