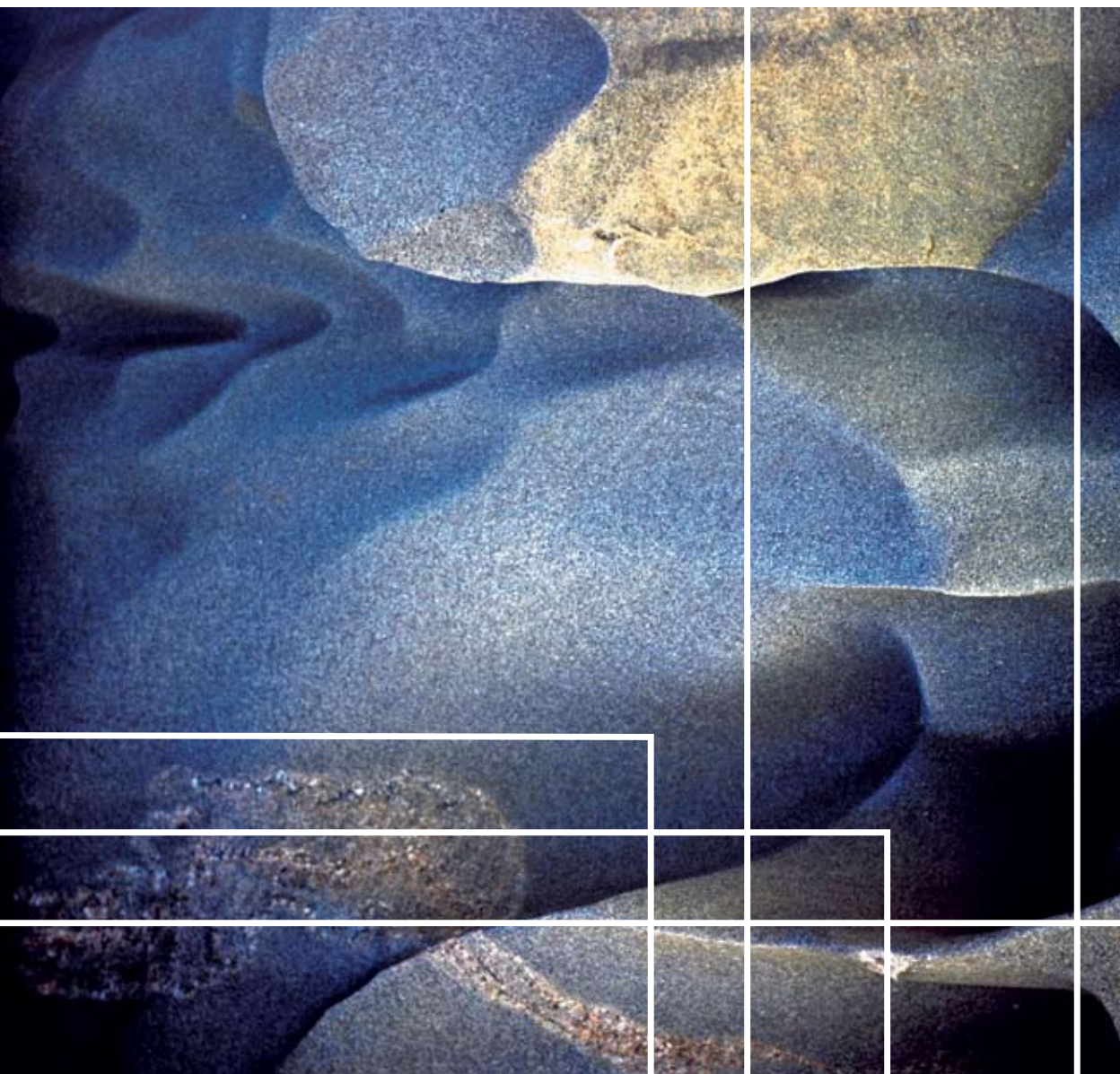


# *Manual on Compliance with and Enforcement of Multilateral Environmental Agreements*



UNEP

UNITED NATIONS ENVIRONMENT PROGRAMME

# Chapter I

## Compliance With MEAs

## National Implementation Plans

- [14]** (b) *National implementation plans could be required in a multilateral environmental agreement, which could potentially include environmental effects monitoring and evaluation in order to determine whether a multilateral environmental agreement is resulting in environmental improvement;*

National Implementation Plans (NIPs) seek to promote compliance in a deliberate and proactive manner. Generally, these plans set forth in a protective manner how a State will strive to reach its obligations under an MEA. Components can include identifying sources of non-compliance (e.g., laws, institutions, lack of capacity, social norms, public and private sector considerations, etc.), methods for addressing these sources, monitoring implementation, and identifying funding resources. NIPs can also provide for the establishment of a national implementation agency or organisation that works with the MEA Secretariat to promote implementation.

Several MEAs require Parties to develop NIPs that detail how they intend to comply with their obligations under an MEA. These include, for example, the Convention on Biological Diversity (CBD), the Cartagena Protocol, the Convention to Combat Desertification (UNCCD), the Stockholm Convention on Persistent Organic Pollutants (POPs), and the Rotterdam Convention on Prior Informed Consent (PIC). The case studies below highlight many of these.

For other MEAs, NIPs might be required to access funding. Thus, while the Montreal Protocol does not require Parties to prepare NIPs, those developing countries wishing to access financial and technical assistance from its financial mechanism, the Multilateral Fund must develop a comprehensive national survey that the State plans to follow to eliminate its consumption and production of Ozone Depleting Substances (ODS), known as a “Country Programme” (see following case study). The procedures for the development of a country programme for the Multilateral Fund can be found in the Policies, Procedures, Guidelines and Criteria of the Fund, available at <http://www.multilateralfund.org>.

The specific process for developing a NIP and the contents of a NIP are usually set by the particular MEA and the MEA Secretariat, although financial mechanisms such as the Multilateral Fund and the Global Environment Facility (GEF) that provide funding to nations to develop country programmes and NIPs may also develop guidelines covering the preparation of such plans. For example, the UNCCD requires each Party to the Convention to develop a National Action Plan (NAP). The NAP is one of the essential implementation tools of the UNCCD, and its production is guided by principles provided in the Convention. These principles stress the importance of consultation and participation in its implementation. The NAP preparation process begins with community and regional consultations to sharpen awareness among the various stakeholders. The second stage is the holding of a National Forum to formulate priorities. The drafting of the NAP is, therefore, partly the product of a consultative, participatory, multi-stakeholder process.

In addition to promoting the objectives of MEAs, NIPs can assist States in many ways. NIPs can identify legal, policy, and institutional strengths and weaknesses. The process can also assist States in identifying and evaluating the costs of implementation. As implementation can impose significant economic burdens at different stages, States may wish to assess costs at all stages in the process to allow for sufficient planning and budgeting. Thus, for example, national implementation plans can assist States in identifying priorities for requests for donor funding, as well as necessary allocations of domestic budgetary resources to implement MEAs. [For more information on cost-benefit analysis, see the discussion at the beginning of the Compliance Chapter of this Manual and the discussion following Guideline 40].



**[40]**

In addition to NIPs that address a specific MEA, NIPs can apply to a group of MEAs. For example, GEF and its implementing institutions have supported the National Capacity Self-Assessment (NCSA) process in many States. As described in case studies following Guideline 41(n), States conducting an NCSA review national laws, policies, institutions, and initiatives to assist in identifying priorities for capacity building and to provide a framework for national implementation of the Rio Conventions (CBD, UNCCD, and UNFCCC) and possibly other MEAs.



**[41(n)]**

A variety of national and international institutions are involved in funding, preparing, reviewing, and implementing NIPs. The MEA Secretariats and COPs usually provide the initial mandate, and they generally monitor the development and submissions of NIPs. Through COPs, MEA Secretariats and Parties can — and sometimes do — establish a core group of experts to provide advice and assistance to States in developing NIPs. The Global Environment Facility (GEF) and its implementing agencies (especially UNEP, UNDP, and the World Bank) provide funding to many States to facilitate the development of NIPs under various MEAs, through GEF “enabling activities.” These include NIPs (by one name or another) pursuant to the UNFCCC, CBD, Cartagena Protocol, and POPs Convention. Many of these are summarised in the case studies that follow.

For those interested in more information on NIPs, a number of other Guidelines include relevant experiences and analysis. Guideline 21 provides more information on the process of elaborating NIPs. Guidelines 40 and 41 include information on National Environmental Action Plans (NEAPs) and other plans and strategies, which although not necessarily oriented toward a particular MEA which often need to take MEAs and NIPs into account (and vice versa). Increasingly, NIPs also provide opportunities to identify and promote synergies with other MEAs. In addition to the case studies relating to this Guideline, Guidelines 34(h) provides additional discussion and case studies regarding synergies and interlinkages.



## NATIONAL ADAPTATION PROGRAMMES OF ACTION (NAPAs) UNDER THE CLIMATE CHANGE CONVENTION

In 2001, the 7th COP of the UNFCCC recognised that developing countries needed assistance in developing plans to address the adverse effects of climate change. In particular, the COP decided that the Least Developed Countries (LDCs) “should be assisted in preparing National Adaptation Programs of Action (NAPAs) to address urgent and immediate needs and concerns related to adaptation to the adverse effects of climate change.” The COP also requested the Global Environment Facility (GEF) to provide funding for preparing NAPAs as the first activity supported by the LDC Fund (which the COP had just established). The next month, the GEF Council authorized GEF support to LDCs for the preparation of NAPAs.

NAPAs seek to provide a basic framework for communicating “the urgent and immediate adaptation needs of the LDCs.” The 7th COP recommended that NAPAs should be action-oriented, country-driven, and widely endorsed. To achieve this, the COP issued several recommendations regarding the process for preparing NAPAs. For example, NAPA teams should include Government and civil society, and the teams should “identify key climate-change adaptation measures, based, to the extent possible, on vulnerability and adaptation assessment.” However, “if a State wishes to depart significantly from the process recommended by COP 7”, the GEF will consider the reasons for the alternative process.

NAPAs also provide an avenue for linking issues associated with implementing the three Rio Conventions (CBD, UNCCD, and UNCCC).

The implementing agencies through which GEF will provide assistance are UNEP, UNDP, and the World Bank. Because NAPAs and initial national communications are closely interlinked, GEF recommends that a State keep the same agency for both. The preparations of NAPAs are expected to be completed within 12 to 18 months of the availability of funds, but it depends on each State’s situation.

*For more information,*

see [http://www.gefweb.org/NAPA\\_guidelines\\_revised\\_April\\_2002\\_.pdf](http://www.gefweb.org/NAPA_guidelines_revised_April_2002_.pdf)



### Additional Resources On National Implementation Plans

Winston Anderson, “Domestic Programs for Implementing Multilateral Environmental Agreements: Establishing MEA Implementation Mechanisms,” in Proceedings of the Sixth International Conference on Environmental Compliance and Enforcement Vol. 1 (INECE 2002), available at <http://www.inece.org/conf/proceedings2/22-DomesticPrograms.pdf>

Implementation of Multilateral Environmental Agreements for Efficient Water Management (2005), by the Foundation for International Environmental Law and Development (FIELD) (examining how national implementation plans under various MEAs can provide guidance in designing and applying national water policies and promoting integrated water resource management).

See also the text and case studies following Guideline 21.

## Reporting, Monitoring, and Verification

- [14]** (c) *Reporting, monitoring and verification: multilateral environmental agreements can include provisions for reporting, monitoring and verification of the information obtained on compliance. These provisions can help promote compliance by, inter alia, potentially increasing public awareness. Care should be taken to ensure that data collection and reporting requirements are not too onerous and are coordinated with those of other multilateral environmental agreements. Multilateral environmental agreements can include the following requirements:*
- (i) *Reporting: Parties may be required to make regular, timely reports on compliance, using an appropriate common format. Simple and brief formats could be designed to ensure consistency, efficiency and convenience in order to enable reporting on specific obligations. Multilateral environmental agreement secretariats can consolidate responses received to assist in the assessment of compliance. Reporting on non-compliance can also be considered, and the parties can provide for timely review of such reports;*
  - (ii) *Monitoring: Monitoring involves the collection of data and in accordance with the provisions of a multilateral environmental agreement can be used to assess compliance with an agreement, identify compliance problems and indicate solutions. States that are negotiating provisions regarding monitoring in multilateral environmental agreements could consider the provisions in other multilateral environmental agreements related to monitoring;*
  - (iii) *Verification: This may involve verification of data and technical information in order to assist in ascertaining whether a party is in compliance and, in the event of non-compliance, the degree, type and frequency of non-compliance. The principal source of verification might be national reports. Consistent with the provisions in the multilateral environmental agreement and in accordance with any modalities that might be set by the conferences of the parties, technical verification could involve independent sources for corroborating national data and information.*

MEAs can require that Parties monitor, report, and verify environmental compliance data. Reporting, monitoring, and verification measures can assist States in tracking their compliance under the respective MEAs. These requirements vary in formality and reporting methodologies. As technology has evolved, compliance-related information systems with computerised databases are increasingly used to collect, sort, and process this information (see, for example, the TIGERS database, described in a case study following Guideline 48(c)). The advantages of using compliance-related information systems include increased transparency, ease of data analysis and verification, and increased efficiency, organisation, and prompt compilation of data.



Where limited resources mean that computerised databases are not available to track environmental data, other more traditional methods can be used.

The most important feature of reporting is that it requires Parties to MEAs to assess — in a transparent manner — the measures that they have taken to implement their commitments and consider the effectiveness of those measures. This helps the Parties, the MEA Conference of Parties (COP) and Secretariat, and other interested bodies to discern potential trends in compliance and enforcement, identify innovative approaches that might serve as models for other States, and allocate resources to improve compliance and enforcement.

Two reports by the United Nations examined national reporting under MEAs. In 2003, the Division for Sustainable Development of the UN Department of Economic and Social Affairs (DESA) prepared a provisional matrix containing the UN national reporting provisions relating to issues of concern to the Commission on Sustainable Development (CSD). In 2004, the UN Secretary-General submitted a report to the 12th session of the CSD that reviewed the improvements made in national reporting and highlighted further work to be undertaken on indicators of sustainable development. Together, these studies identify many common approaches and lessons learned, as well as some new innovations.

They noted that national reports are one of the main instruments by which MEA COPs fulfill their mandate to monitor and review activities undertaken by Governments to implement the treaties. The MEA Secretariat is usually the lead organisation for developing the report format, receiving and disseminating the reports, and generally administering the national reports, although other agencies are sometimes involved. For most MEAs, the national focal point prepares the national report. Usually, the national focal point (for MEAs) is the Ministry of Environment, but sometimes they are other ministries such as the Ministry of Agriculture, Foreign Affairs, or Industry.

For most MEAs, national reporting is mandatory and reports are usually submitted in advance of COP meetings. The periodicity of national reports varies from one MEA to another: from every six months for developed countries under the UNFCCC, to triennial reports for the Ramsar Convention. Reports for international meetings not associated with a particular MEA — for example, the 2002 World Summit on Sustainable Development (WSSD) and the annual CSD reports — are often generated voluntarily. In some instances, reports are prepared by regional groupings of States.

Reporting methodologies tend to be generally qualitative, although some statistical data often is incorporated. Many MEA Secretariats have developed guidelines or manuals to assist States in fulfilling their reporting obligations. These guidance materials usually are available on the Secretariats' web sites.

In 2002 and early 2003, the CSD Secretariat analysed experiences with UN national reports. The analysis revealed that the guidelines prepared prior to the WSSD for national reporting to the CSD were too lengthy and technical. It attributed these difficulties to "attempts to meet the information needs of various United Nations organisations and agencies that were consulted on the formulation of the guidelines." It was also apparent that some questions in the previous reporting guidelines "were too open-ended, resulting

in a wide range of responses that were difficult to aggregate into regional or global trends on implementation.” Based on these lessons learned, the CSD Secretariat adopted a more streamlined approach to guidelines for national reporting to the CSD for the first post-Summit reporting cycle.

For national reporting on the three themes under review (water, sanitation, and human settlements), instead of formulating an extensive set of guidelines as was done before the WSSD, the 2003 guidelines for national reporting (for the 2004-2005 cycle), were pared down to a generic set of national reporting parameters, which also can be used in future cycles.

To reduce the burden of national reporting, the CSD Secretariat has sought ways to improve the use of existing national information as a basis for future reporting. The Secretariat asked States, in preparing for the 2004-2005 cycle, to build on and update the existing information in light of the adoption of the Johannesburg Plan of Implementation. To make that task easier, the Secretariat undertook to prepare draft thematic profiles on water, sanitation and human settlements for each reporting State as a basis for updates. The CMS Secretariat similarly assists Parties in reporting by helping to prepare parts of the national reports, which the Parties then confirm.

For more information on national reporting under MEAs, see [http://www.un.org/esa/sustdev/csd/csd11/background\\_docs/csd11background3.pdf](http://www.un.org/esa/sustdev/csd/csd11/background_docs/csd11background3.pdf) For information on national reporting to the CSD, see [http://www.un.org/esa/sustdev/csd/csd12/csd12\\_docs.htm](http://www.un.org/esa/sustdev/csd/csd12/csd12_docs.htm) (Document E/CN.17/2004/17 (in the six UN languages)).

### Standardised Reporting

To assist States in reporting as required by the MEA, many Secretariats have established standardised reporting formats. This also makes it easier to identify potential compliance problems (or successes) for a particular nation, facilitates the use of electronic databases for analysing the data, and assists in trend analysis over time and across countries.

CITES has standardised a number of its reporting documents. These standardised forms include recommended formats for annual and biennial reports, as well as the ICPO-Interpol ECOMESSAGE and ivory and elephant product seizure data collection form and explanatory notes (e.g., see Annex XI of this Manual).

The CBD also has a standardised reporting format. As noted above, this facilitates analytic reviews, and there is a thematic analyser on the CBD’s website <http://www.biodiv.org> that draws upon the standardised reports.

Adopted at the first Meeting of the Parties of the Aarhus Convention, the Format for Aarhus Convention Implementation Report Certification Sheet is available on the Internet at <http://www.unece.org/env/pp/reporting%20intro.htm>



## Review of the Effectiveness of an MEA

**[15]** *The conference of the parties of a multilateral environmental agreement could regularly review the overall effectiveness of the agreement in meeting its objectives, and consider how the effectiveness of a multilateral environmental agreement might be improved.*

Periodic review of an MEA's effectiveness can help to ensure that the MEA is meeting or moving toward its desired goals. Such reviews may be mandated by provisions in the MEA. Alternatively, the Parties to an MEA may initiate such a review through mutual agreement, for example by decisions at the Conference of the Parties (COP) (e.g., see following case study on CBD). The review may be broad, reviewing all aspects of the MEA; or it could focus on specific aspects that Parties identify as entailing particular difficulties in compliance and enforcement.

Indicators provide one framework for assessing the effectiveness of an MEA. Performance indicators, on the one hand, can help to identify areas where Parties are complying with their obligations and areas where compliance is problematic. These indicators seek to answer questions related to: "Are countries doing what they said they would?" These indicators tend to assess governmental actions (development of laws, institutions, etc.) and sometimes private sector actions. Output indicators, on the other hand, seek to address whether the measures are actually effective. These indicators seek to answer questions related to: "Is the MEA having the desired effects?" These indicators often assess environmental conditions (as well as social and economic, depending on the MEA).

Usually, both types of indicators are necessary. Even if the performance indicators show that States are doing everything they said they would, this might not be enough and environmental conditions continue to degrade. In this instance, the MEA may need to be amended (for example, through a protocol) to take more stringent measures to protect the environment. Alternatively, States may be taking alternative measures to address the environmental problem. In which case, the performance indicators might indicate poor compliance, but the output indicators would suggest that the environmental conditions are doing well. In this situation, the MEA may need amendment to reflect alternative ways of complying so that States are not deemed to be in non-compliance when the goals are being met.

Assessments of the state of the environment can identify the extent to which MEAs and other measures are meeting their goals, whether it is to protect biodiversity, halt desertification, or restore the ozone layer. Examples of such assessments include:

- Global Environment Outlook (GEO), as well as the other regional and national environmental outlook reports (by UNEP and numerous collaborating centres) <http://www.unep.org/geo/>
- Global Biodiversity Outlook (GBO) (under the CBD) <http://www.biodiv.org/gbo/gbo-pdf.asp>
- State of the World (by the Worldwatch Institute) <http://www.worldwatch.org/pubs/>

- World Resources Report [http://projects.wri.org/project\\_description.cfm?ProjectID=86](http://projects.wri.org/project_description.cfm?ProjectID=86) and EarthTrends <http://earthtrends.wri.org/> (by the World Resources Institute)
- National State of the Environment (SOE) reports (see, e.g., <http://ncseonline.org/cms.cfm?id=518> and <http://countries.eea.eu.int/SERIS>)

The GEO process is now in its fourth iteration (GEO-4). This iteration — which is directed at policymakers and has a theme of “environment for development” has adopted a participatory and consultative approach to the assessment. In addition, the GEO process has launched a number of thematic reports, such as GEO-Cities [http://www.grid.unep.ch/activities/assessment/geo/geo\\_cities.php](http://www.grid.unep.ch/activities/assessment/geo/geo_cities.php), GEO for Deserts, and GEO Health (with the Pan-American Health Organization (PAHO)).

A number of MEAs have undertaken reviews of their compliance mechanisms. These include the Montreal Protocol [see case study on “Compliance Mechanisms in Various MEAs: Montreal Protocol on Substances that Deplete the Ozone Layer” following Guideline 14(d)].



**[14(d)]**



## ASSESSMENT OF CONTROL MEASURES UNDER THE MONTREAL PROTOCOL

The Montreal Protocol requires a regular review of effectiveness of its “control measures,” or compliance mechanisms. Article 6 of the Protocol provides that:

Beginning in 1990, and at least every four years thereafter, the Parties shall assess the control measures provided for in Article 2 and Articles 2A to 2I, on the basis of available scientific, environmental, technical and economic information. At least one year before each assessment, the Parties shall convene appropriate panels of experts qualified in the fields mentioned and determine the composition and terms of reference of any such panels. Within one year of being convened, the panels will report their conclusions, through the Secretariat, to the Parties.

One of these panels — the UNEP Technology and Economic Assessment Panel (TEAP) — is a standing subsidiary body established by the Meeting of the Parties to the Montreal Protocol. It is comprised of hundreds of government, industry, and NGO experts from around the world and is coordinated by the UNEP Ozone Secretariat. The TEAP is responsible for conducting this assessment and reporting to the Parties about: (a) the state of the art production and use of technology, options to phase out the use of ozone-depleting substances, and techniques for recycling, reuse, and destruction; and (b) economic effects of ozone layer modification and economic aspects of technology.


*For more information on the assessment panels, see <http://www.unep.org/ozone>*

## D. National Measures to Implement MEAs

Although negotiations leading to an MEA's adoption and the careful drafting of its provisions are vital elements in ensuring its implementability, the ultimate responsibility for complying with its terms generally rests with the Parties. Implementation at the national level is at the core of an MEA's effectiveness, and each Party to an MEA is responsible for complying with the obligations it imposes and for taking the necessary measures to bring about that compliance.

There are a number of processes by which a State can become party to an MEA, including ratification, accession, acceptance, and approval. These are summarised in the "Primer on Negotiating and Ratifying MEAs," at the beginning of Chapter I.

Given the central role of national implementation, the Guidelines place particular emphasis on the variety of measures and approaches a State can take to ensure that it meets its obligations under an MEA. These measures cover a wide range of activities: from formal institutional and legal review to public awareness campaigns. The measures set forth in the Guidelines devoted to national implementation may be tailored to suit the needs of an individual State, but each one is worthy of consideration, as each offers a different and unique avenue for improving implementation at the national level. Guidelines 18-32 set forth many of these national measures. In some cases, national measures to promote implementation — namely for a Party to comply with its obligations under an MEA — are also included in the chapter of the Guidelines addressing enforcement. In these instances, the full discussion of the measure is included only in one chapter, with a cross-reference from the other chapter.

  
**[18-32]**

As a practical matter, States can reduce the likelihood of non-compliance with the obligations of an MEA after ratification by undertaking the necessary national measures (and subnational measures, as appropriate) to implement the MEA before becoming party to the agreement. Accordingly, Guideline 8 of the UNECE Guidelines for Strengthening Compliance with and Implementation of Multilateral Environmental Agreements in the UNECE region provides that:

All legal and other appropriate measures required to implement the agreement should be in place, in order to ensure that a Party is in a position to comply with its international obligations at the time of entry into force of the MEA for that Party.

## CHECKLIST FOR RATIFICATION AND ACCESSION

As noted in the Primer on Negotiating and Ratifying MEAs (at the beginning of Chapter I of this Manual), every State has its own rules and procedures governing how it becomes a Party to an MEA. To the extent that their constitutions and national laws permit, States may consider the following actions related to ratification:

- Identify or develop clear procedures for becoming a Party to an MEA.
  - In establishing these procedures, the scope of treaties should be defined broadly enough to include all MEAs of likely significance to the State.
- Provide a role for Parliament in deciding whether the State should become a Party to an MEA. Engaging Parliament in this phase can build parliamentary “ownership” of the MEA and facilitate the development of the necessary laws, institutions, and financing to implement and enforce the MEA.
  - Such a role could range from providing for Parliamentary discussion and debate of the MEA to requiring Parliamentary approval.
  - The parliamentary discussion and debates may be made available by radio or television broadcast, or otherwise publicly disseminated.
  - To the extent that the State may wish to withdraw from an MEA, Parliament may be granted the same role in discussing and debating (and perhaps being required to approve) the decision.
- Ensure that the rules governing becoming a Party to an MEA require the political focal point or other relevant governmental body to communicate the State’s acceptance to the Depository and the MEA Secretariat within a specific timeframe.
- Developing legislation to implement the MEA simultaneously or in advance of becoming a Party.
- Guarantee that once the State has signed an MEA (but has not yet ratified the MEA) that it refrain from any activities that would undermine or be counter to the MEA.
- Provide courts with the power to take judicial notice of MEAs that have been signed by the State.

This Checklist builds upon a similar checklist in the 1999 CARICOM Guidelines for MEA Implementation.

\* For a summary of the differences between ratification, accession, approval, adoption, and signature, see the “Primer on Negotiating and Ratifying MEAs,” at the beginning of Chapter I.

## Compliance Assessment and Compliance Plans

**[18]** *Compliance assessment: Prior to ratification of a multilateral environmental agreement, a State should assess its preparedness to comply with the obligations of that agreement. If areas of potential non compliance are identified, that State should take appropriate measures to address them before becoming a party to that agreement.*

**[19]** *Compliance plan: If a State, once it becomes a party to a specific multilateral environmental agreement, subsequently identifies compliance problems, it may consider developing a compliance plan consistent with that agreements obligations and inform the concerned secretariat accordingly. The plan may address compliance with different types of obligations in the agreement and measures for ensuring compliance. The plan may include benchmarks, to the extent that this is consistent with the agreement that would facilitate monitoring compliance.*

Compliance assessments are important to conduct prior to ratifying an MEA. Such an assessment provides a State the opportunity to assess its ability to comply with the terms of the MEA before ratifying it, as failure to do so could result in non-compliance the instant it becomes a Party. As such, the compliance assessment allows a State to identify and correct areas of potential non-compliance so that it is able to meet its obligations immediately upon ratification. In many cases, the compliance assessment will identify changes that need to be made to national, sub-national, and local laws to ensure compliance. Because the adoption of implementing law can be a long process, depending on the State's legislative system, it can be important to conduct compliance assessments early in the negotiating process so that the State can negotiate with the full knowledge of what national measures might be necessary. Moreover, a compliance assessment can assist in the early development of necessary framework and sectoral laws to implement the MEA (see the discussion of Guideline 20, below, devoted to implementing laws and regulatory frameworks).



Even States that have taken all necessary steps prior to ratification, however, may find that they subsequently identify areas of non-compliance after becoming a Party. In such



### **BIODIVERSITY COUNTRY STUDY IN GEORGIA**

After Georgia ratified the CBD in 1994, it undertook a Biodiversity Country Study. This study was required by the CBD. Published in 1997, this study gathered and compiled existing information on the status and trends of Georgia's species and habitats. It identified gaps and made recommendations for conserving the nation's biodiversity.

*For more information on the study, contact the NGO Nacres at [striped.hyena@nacres.org](mailto:striped.hyena@nacres.org)*

instances, states are encouraged to consider developing a compliance plan to address these areas of non-compliance and to inform the Secretariat of the MEA of the plan. The plan may identify the specific areas of non-compliance, measures to correct the situation, and benchmarks for determining if the problems are being corrected.

The procedures and mechanisms on compliance under the Cartagena Protocol on Biosafety adopted by the COP-MOP at its first meeting, mandate the Compliance Committee to request or assist, as appropriate, Parties in non-compliance to develop a compliance plan within a timeframe to be agreed upon between the Committee and the Party concerned (Decision I/7).



In addition to the case studies below, many of the considerations set forth in the Checklist for Developing National Implementation Plans (following Guideline 21) may be relevant to compliance assessment and the development of a compliance plan.



### **NEW ZEALAND: PREPARING TO IMPLEMENT THE KYOTO PROTOCOL**

The Government of New Zealand announced its intention to ratify the Kyoto Protocol to the UNFCCC at the 2002 World Summit on Sustainable Development (WSSD). Some months before, implementing legislation – the Climate Change Response Bill – was presented before New Zealand’s Parliament. This Bill aimed to:

- Provide for the establishment of the administrative powers and bodies that are required under the Protocol (or that are necessary if New Zealand is to benefit from the compliance mechanism under the Protocol) with a view to allowing for ratification; and
- Formalise the powers and institutions necessary for New Zealand to continue to meet its obligations under the UNFCCC.

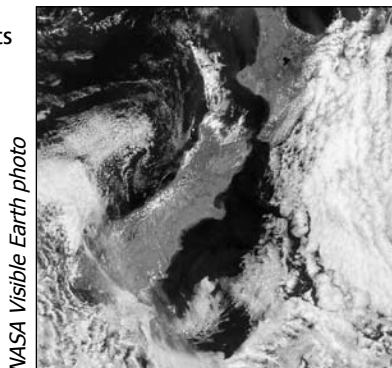
The Government of New Zealand also released its Preferred Policy Package, which details the policies that it intends to put in place to respond to climate change and to meet its obligations to reduce greenhouse gas emissions pursuant to the Protocol’s requirements. According to the Preferred Policy Package consultation document, the Government intends that the following measures will be utilised in the pre-commitment period (i.e., before 2008):

- Building on existing “foundation policies”, including the National Energy Efficiency and Conservation Strategy, the New Zealand Transport Strategy, the New Zealand Waste Strategy, Resource Management Act reform, research, and public awareness. These measures are already under way and will proceed whether or not the Protocol comes into force.
- The introduction of Negotiated Greenhouse Agreements (NGAs) for “Competitiveness-at-risk” firms. An NGA is a contract between the Government and a firm or sector to reduce emissions toward an agreed level in return for partial or full exemption from an emissions levy or charge.

## New Zealand: Preparing to Implement the Kyoto Protocol (cont'd)

A particular advantage of NGAs is that an agreed "emissions path" can be tailored to a firm's individual circumstances. NGAs might also include opportunities for a firm to get involved in off-site projects or emissions trading, if the regime were established, to reduce costs.

- The introduction of Government- and industry-funded research in the agricultural sector.
- The introduction of funding and projects to promote efficient emissions reduction and sinks creation. In this context, projects are specific recognised activities that seek to deliver defined reductions in emissions but which would be uneconomic without the payment of an incentive from the Government. Projects are intended to deliver a reduction in emissions that would not have otherwise occurred.
- The introduction of an emissions charge for carbon dioxide (CO<sup>2</sup>) approximating the international price for emission units, but capped at \$25 per tonne of CO<sup>2</sup> equivalent. There will be no charge on emissions of non-CO<sup>2</sup> gases during the first commitment period.
- The Government is to retain sink credit assets and liabilities.



NASA Visible Earth photo

Runoff from flooding in New Zealand.

Notably, none of the new policies identified in the Preferred Policy Package will be implemented for the first commitment period until the Protocol comes into force. In other words, the new policy measures are specifically designed to deal with the State's potential Protocol obligations and will only apply once the protocol is effective.

The advantage of this preliminary policy planning is that New Zealand already has in place clearly defined measures to address many of the issues that may have kept some States from ratifying the Protocol. These measures can also be further fine-tuned as time goes on. Through these preliminary measures, New Zealand has mapped out a proactive roadmap that will serve to ease its compliance and implementation process.

# Implementing Laws and Regulation

**[20]** *Law and regulatory framework: According to their respective national legal frameworks, States should enact laws and regulations to enable implementation of multilateral environmental agreements where such measures are necessary for compliance. Laws and regulations should be regularly reviewed in the context of the relevant international obligations and the national situations.*

Development and adoption of implementing laws and regulations are among the most vital steps a Party will take to comply with an MEA. Depending on its governmental structure, however, a State may encounter difficulties in ensuring the necessary laws are enacted. Moreover, some developing countries have found it an uphill struggle to enact all the necessary legislation to come into compliance with the different MEAs to which they are a Party, due to insufficient capacity. Each State should be aware of the challenges and advantages its governmental structure offers in this context. Such self-awareness can lead in turn to taking advantage of the unique benefits its structure offers and to seeking assistance in capacity building where necessary.

Further detail on implementing laws and regulations is set forth in Guidelines 40 and 47 and the accompanying discussion. Additionally, some of the MEA guidance discussed following Guideline 34 (e) is designed to assist States in developing implementing legislation.



**[34(e)]**

**[40]**

**[47]**




## National Implementation Plans


**[21]** *National implementation plans: the elaboration of national implementation plans referred to in paragraph 14(b) for implementing multilateral environmental agreements can assist in integrating multilateral environmental agreement obligations into domestic planning, policies and programmes and related activities. Reliable data collection systems can assist in monitoring compliance.*

As described in Guideline 14(b), above, numerous MEAs require or encourage Parties to elaborate National Implementation Plans (NIPs). This Guideline reiterates the importance of national implementation plans in integrating (or “mainstreaming”) an MEA’s obligations into domestic legal, policy, and institutional frameworks. It also provides additional detail on the process for developing the implementation plans.

NIPs can identify policies, programmes, and plans in related sectors through which specific measures may need to be taken in order for the MEA to be effectively implemented. For example, long-term national development plans in various States (e.g., Iran) that articulate a national vision for economic, social, and environmental development now highlight environmental issues and MEA obligations.

 In many instances, NIPs would do well recognize national priorities placed on poverty reduction and consider potential synergies and conflicts with the national Poverty Reduction Strategy Paper (PRSP). For example, the African Ministerial Conference on Environment (AMCEN) is working to mainstream MEAs into PRSPs. Armenia’s NCSA process (described in Guideline 41(n)) linked to the discussions regarding the State’s PRSP. Similarly, the Government of Belgium is supporting a four-year programme (2004-2007) by which UNEP will enhance the capacity of four States – Uganda, Rwanda, Mozambique, and Tanzania – to integrate and institutionalise environmental management into national poverty reduction programmes and related activities. This programme has three components: (1) integration and mainstreaming of key environmental issues into Poverty Reduction Strategy Papers (PRSPs); (2) capacity building to alleviate poverty through synergistic implementation of Rio MEAs; and (3) capacity building for the development of national legislation implementing Rio MEAs taking into consideration the impact of implementation of poverty reduction. Through this programme, development and implementation of national environmental related laws to implement the Rio Conventions – namely the CBD, UNFCCC, and UNCCCD – UNEP will seek to implement MEAs while also promoting poverty reduction. For another example of linking to poverty reduction and alleviation, see the case study on “Cameroon’s National Project for Participatory Development” following Guideline 41(k).

**[41(n)]**

 **[41(k)]**

Many MEAs emphasize the important role of a transparent, inclusive, and participatory process for developing the NIPs. Experience in many nations suggests that such approaches are also effective in building the necessary support to implement the NIPs effectively.

As a practical matter, the relevant staff in government agencies sometimes does not have the necessary capacity or time to prepare a NIP. In such instances, consultants may be engaged (see below), but in these cases the transparent, inclusive, and participatory processes become even more important to ensure public ownership of the final plan.



## USE OF CONSULTANTS IN DEVELOPING NATIONAL IMPLEMENTATION PLANS IN THE GAMBIA

Once The Gambia has become a Party to an MEA, a national strategy or action plan is generally prepared to determine the State's approach to implementing the MEA. For both the Stockholm and Rotterdam Conventions, consultants are preparing NIPs. Under a National Capacity Needs Self Assessment project, action plans were prepared under the leadership of the focal points for the three Rio Conventions, who worked with national consultants.

*For more information, contact Mr. Kebba Bojang at [nea@gamtel.gm](mailto:nea@gamtel.gm)*

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In many instances, a State may be called upon to develop a NIP when the necessary data is limited or nonexistent. In such cases, it is wise to adopt an approach of "Adaptive Environmental Management." Adaptive management recognises that data is limited — often it is impossible to have enough data — so management measures are provisional. Under this approach, a State will use the data available to develop a NIP. During the implementation of the NIP, the relevant governmental agency or ministry will monitor the environment and the effectiveness of the measures articulated in the NIP. At some point, the Government will revisit the NIP to identify measures that are working and areas in which further development is necessary. The NIP is revised accordingly. Still, information is limited, so the revised NIP is provisional. Accordingly, more monitoring is necessary in this phase.

The process of developing management measures (such as an NIP), monitoring, assessing, revising, and so forth is a long-term commitment. Increasingly, though, environmental professionals are recognising that adaptive management approaches are necessary to address many (if not most) environmental problems. Recognising this at the outset can help to avoid confusion and disillusionment in the long run when the gaps in the NIP (or other management measures) are identified. [Indeed, Guidelines 13, 15, and 34(d) recognize the need to review the effectiveness of MEAs at the international level, and Guideline 41(n) envisions a review of the effectiveness of national environmental measures. Similarly, numerous Guidelines address monitoring.]



[13]

[15]

[34(d)]

[41(n)]

The Checklist below highlights considerations in developing a NIP. Where no competent national environmental agency or Ministry exists, a State can establish a steering committee to oversee such a process. To be effective and to be able to make decisions, such

a steering committee should have a mandate from the Cabinet or relevant Ministries. As described in various case studies throughout this Manual — and particularly those following Guidelines 10(d) and 42 — such a steering committee usually benefits from the involvement of multiple governmental agencies as well as NGOs, universities, and other civil society actors.



**[10(d)]**  
**[42]**

For more information on NIPs, see Guideline 14(b) and the accompanying text. Guideline 34(e) and the accompanying text discuss various guidance documents, including some relating to the development of NIPs.



**[14(b)]**  
**[34(e)]**



## **DEVELOPING STRATEGIES FOR IMPLEMENTING THE AARHUS CONVENTION IN SOUTH EASTERN EUROPE**

With assistance from the Regional Environmental Center (REC) for Central and Eastern Europe, six States in South Eastern Europe developed national strategies for implementing the Aarhus Convention. The six States were Albania, Bosnia and Herzegovina, Bulgaria, FYR of Macedonia, Romania, Serbia and Montenegro; UN-administered Kosovo also participated.

A broad range of governmental and non-governmental stakeholders participated in the development of the national strategies. This transparent and participatory process built broad ownership of the strategy, as well as capacity to implement the Aarhus Convention.

The project activities also included capacity building workshops, local pilot projects on practical implementation of the Aarhus Convention, and preparation of guidance materials and manuals for officials and NGOs. The project was funded by the Ministry for Foreign Affairs of the Netherlands.

*For more information, see*

**<http://www.rec.org/REC/Programs/PublicParticipation.html>**

*or contact Ms. Magdolna Toth Nagy [tmagdi@rec.org](mailto:tmagdi@rec.org)*

## CHECKLIST FOR DEVELOPING NATIONAL IMPLEMENTATION PLANS

In developing a National Implementation Plan for a specific MEA, a State may wish to:

- Identify the relevant governmental and non-governmental stakeholders with an interest in the MEA. These stakeholders should include anyone who is affected by or is otherwise interested in the MEA or its implementation.
- In a broad, participatory, and transparent manner – with the relevant governmental agencies, Ministries, and authorities, as well as the relevant stakeholders – discuss the requirements of the MEA and what measures may be necessary to implement it.
  - These stakeholders should be engaged early in the process, while options are still open, to identify and respond to potential challenges and to build broad ownership of the final plan.
- Identify the requirements, obligations, and rights of an MEA. These may be specific or general, mandatory or advisory, and often include a combination of such requirements.
  - Developing countries should pay attention to whether and to what extent the MEA recognizes the particular needs and contexts of developing countries.
  - Determine whether developing countries can modify these obligations (including providing for longer timeframes to come into compliance) if necessary to account for economic, social, and other needs.
- Identify the resources available to assist in implementing the MEA. These resources can relate to legal, policy, scientific, technical, educational, financial, and other aspects of implementation. Personnel resources can include local and foreign experts in Government, the private sector, NGOs, and universities, as well as experts in international organizations.
  - In particular, States should identify the types of assistance (financial, technical, advisory, etc.) that might be available through the Secretariat, COP, or other MEA-based body. This can include funding mechanisms, technology transfer, etc.
  - After identifying these resources, ensure that the State accesses (or tries to access) all the financial and technical resources that may be available.
- Assess the likely impacts of the MEA on economic growth, development, investment, and international trade.
- Assess the likely impacts of the MEA in catalyzing or strengthening domestic (national and local) environmental protection and management initiatives.
- Identify the existing national and sub-national legal, policy, and institutional frameworks that relate to the MEA. In addition to the obvious frameworks, a particular MEA may well touch on other sectors, such as transportation, energy, land use, industries, etc.
- Identify potential barriers to effective implementation. These may be legal, policy, and institutional, as well as cultural, religious, or social.
- With reference to the potential barriers, identify potential mandatory (“command-and-control”) and voluntary (e.g., market-based) mechanisms that could facilitate implementation.

### **Checklist for Developing National Implementation Plans (cont'd)**

- Identify potential projects to build governmental, private sector, and civil society capacity for the State to come into compliance.

This Checklist builds upon a similar checklist in the 1999 CARICOM Guidelines for MEA Implementation.

## Enforcement Programmes and Frameworks

**[22]** *Enforcement: States can prepare and establish enforcement frameworks and programmes and take measures to implement obligations in multilateral environmental agreements (chapter 2 contains guidelines for national environmental law enforcement and international cooperation in combating violations of laws implementing multilateral environmental agreements).*

As nations adopt implementing laws and regulations, attention increasingly turns to the framework for enforcement to ensure that the regulated community (that is the individuals and/or entities whose actions the State seeks to address) complies with the legislative and regulatory framework.

Governments establish enforcement programmes to deter, punish, and redress violations. Deterrence is particularly important. An effective enforcement programme can help to create an atmosphere in which the regulated community is stimulated to comply, because the Government, through its various agencies, has demonstrated a clear willingness and ability to act when non-compliance is detected within the regulated community. Enforcement can be handled in numerous ways, and the Second Chapter of the Guidelines and the corresponding Chapter (II) of this Manual expand upon the details of effective enforcement programmes and frameworks. In particular, Guideline 39 and accompanying discussion focuses on structuring enforcement programmes; Guideline 41(d) and the accompanying text highlights guidance for investigation and prosecution; and Guideline 43 discusses training programs for police, prosecutors, and other enforcement officials.



**[39]**

**[41(d)]**

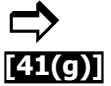
**[43]**

## Economic Instruments to Facilitate Implementation

**[23]** *Economic instruments: In conformity with their obligations under applicable international agreements, parties can consider use of economic instruments to facilitate efficient implementation of multilateral environmental agreements.*

Economic instruments can be a very effective way of inducing compliance, raising funds for enforcement activities and environmental protection and cutting compliance and enforcement costs.

Economic incentives are basically approaches to environmental management that use market forces, e.g. fees, tradable permits, tax incentives, subsidies, pollution taxes etc. to achieve desired behaviour changes in the regulated community. Guideline 41(g) and the accompanying discussion, expand upon the scope, diversity, and application of economic instruments.



## Designate National Focal Points

**[24]** *National focal points: Parties may identify national authorities as focal points on matters related to specific multilateral environmental agreements and inform the concerned secretariat accordingly.*

Parties to an MEA often designate one or more focal points responsible for the MEA. There are two types of focal points: political focal points and technical focal points. The political focal point is usually responsible for the international processes, such as negotiating MEAs and participating in the Conferences of the Parties. Most States designate their Ministry of Foreign Affairs or a similar body as the political focal point.

The technical focal point often bears the responsibility for implementing the MEA at the national level. Most States designate as their technical focal point the Chief Officer of the nation's Environment Agency or Ministry (i.e. the Administrator, Director General or Honourable Minister of the Federal Environment Protection Agency, or Ministry of Environment). Other government management and scientific authorities or agencies may also serve as focal points for specific purposes under particular agreements.

In some instances, the political and technical focal points are combined, and the (single) national focal point is appointed by the Government to participate in and facilitate the implementation of specific MEA-related activities at the national level. For some treaties, the national focal point is in charge of implementing the State's MEA obligations and is charged with maintaining contact with the MEA Secretariat, attending treaty-related meetings and other administrative tasks. However, in the case of the Ramsar Convention on Wetlands, each State appoints a national focal point to its Scientific and Technical Review Panel. In this case, the Focal Point's duties are a bit different. These duties are highlighted in the case study overleaf. In the case of CITES, there is a Management Authority authorized to communicate with other parties and the Secretariat, as well as a Scientific Authority designated to advise the Management Authority. Thus, a national focal point can have different meanings and duties depending on the MEA.

The respective MEA Secretariats often have produced guidance regarding the terms of reference for the duties that are expected of the focal points. These generic terms of reference can be particularly useful when two (or more) focal points are envisioned for a single MEA. While States may adapt the generic terms of reference to their specific needs, capacity, and circumstances, the MEA-generated terms of reference can be a good starting point.



## CHECKLIST FOR FOCAL POINTS

To enhance the effectiveness of its political and technical focal points in negotiating and implementing MEAs, a State can:

- Clearly designate** the principal political and technical focal points.
- Ensure that the focal points have sufficient **funding and personnel**.
- Provide the political and technical focal points with **clear mandates**.
- Ensure **regular communication and coordination** between the political and technical focal points. This is particularly important when the political focal point is negotiating an MEA, and the technical focal point is responsible for implementing that MEA. Such communication can help the political focal point know what is necessary, feasible, or problematic from the practical standpoint of implementation. Measures to promote such coordination include:
  - Clear procedures requiring the political focal point to notify the relevant institutions and individuals responsible for implementing MEAs.
  - Involvement of the technical focal point in negotiating, concluding, and ratifying MEAs (as appropriate).
  - Procedures designed to prevent a political focal point from communicating final acceptance or ratification of an MEA before implementing legislation and institutional frameworks have been established.
- Ensure regular communication and coordination between focal points for the MEA in question and related MEAs, in order to prevent a State presenting conflicting or contradictory positions in different fora.

This Checklist builds upon a similar checklist in the 1999 CARICOM Guidelines for MEA Implementation.

## Coordinating and Strengthening National Institutions

**[25]** *National coordination: Coordination among departments and agencies at different levels of government, as appropriate, can be undertaken when preparing and implementing national plans and programmes for implementation of multilateral environmental agreements.*

**[26]** *Efficacy of national institutions: The institutions concerned with implementation of multilateral environmental agreements can be established or strengthened appropriately in order to increase their capacity for enhancing compliance. This can be done by strengthening enabling laws and regulations, information and communication networks, technical skills and scientific facilities.*

The efficiency of the government agencies, ministries, and departments responsible for implementing an MEA is an absolutely vital element to a State's compliance. States should ensure that all such government bodies have sufficient capacity and authority to implement the relevant provisions through such measures as strengthening the laws that provide these bodies' authority and improving their technical capacity. Because implementation is often the responsibility of more than one government body, improving cooperation and coordination among all relevant agencies and departments should be made a priority. Sometimes a large number of government agencies at various levels share responsibility for implementing the same MEA's terms. Identifying all such bodies with authority, responsibility, or expertise relevant to the MEA's subject is the first step in ensuring the necessary coordination.

Coordination of governmental agencies and enhancing the efficacy of institutions are addressed in further detail in Guidelines 42(a) and 41, respectively, and the accompanying discussion below. In addition Guideline 10(d) and accompanying text addresses coordination in the development of MEAs.



**[10(d)]**

**[41]**

**[42(a)]**

## Involve Stakeholders, Local Communities, Women, and Youth

- [27]** *Major stakeholders: Major stakeholders including private sector, non-governmental organizations, etc., can be consulted when developing national implementation plans, in the definition of environmental priorities, disseminating information and specialized knowledge and monitoring. Cooperation of the major stakeholders might be needed for enhancing capacity for compliance through information, training and technical assistance.*
- [28]** *Local communities: As appropriate, parties can promote dialogue with local communities about the implementation of environmental obligations in order to ensure compliance in conformity with the purpose of an agreement. This may help develop local capacity and assess the impact of measures under multilateral environmental agreements, including environmental effects on local communities.*
- [29]** *Women and youth: The key role of women and youth and their organizations in sustainable development can be recognized in national plans and programmes for implementing multilateral environmental agreements.*

Local communities, business and industry, citizens groups, and NGOs can all play an important role in promoting the implementation of an MEA and they often have expertise that will enhance the capacity of a State to meet its obligations (such as the ability to offer training or technical assistance). States that consult and otherwise involve these “stakeholders” in implementation efforts have access to a greater range of resources for promoting compliance.

The discussion of Guidelines 41(c), 41(i)-(k) and 44, examines in detail aspects of stakeholder and community involvement in implementing environmental laws, policies, programmes, and plans.



- [41(c)]**  
**[41(i-k)]**  
**[44]**  
**[44(e)]**
- Women and youth must be involved in the decision making processes that affect the environment and natural resources; particularly because of the role of women as “managers” of these resources in their day-to-day activities. UNEP is committed to increasing the involvement of women in providing leadership in caring for the environment.

The discussion of Guideline 44(e), addresses in more detail measures to empower and involve women and youth.

## Utilise Media Tools and Improve Public Awareness

**[30]** *Media: The national media including newspapers, journals, radio, television and the Internet as well as traditional channels of communication, could disseminate information about multilateral environmental agreements, the obligations in them, and measures that could be taken by organizations, associations and individuals. Information could be conveyed about the measures that other parties, particularly those in their respective regions, might have taken to implement multilateral environmental agreements.*

**[31]** *Public awareness: To promote compliance, parties could support efforts to foster public awareness about the rights and obligations under each agreement and create awareness about the measures needed for their implementation, indicating the potential role of the public in the performance of a multilateral environmental agreement.*

One of the most effective tools in promoting compliance is public awareness, particularly through the news media. In an increasingly globalised economy, information is one of the most important tools that states, organizations, and individuals can employ to effect change, particularly where individual purchasing and life-style decisions can drive illegal markets or shape legal markets. Accordingly, public awareness can be important for everything from trade in protected species to ozone-depleting substances, to life-style decisions with implications for climate change, to planning decisions affecting wetlands and habitats for migratory species.

A variety of MEAs have relied on education and publicity to promote compliance. For example, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) has had success in improving compliance through public awareness. Publicity and education have helped to increase public awareness and thereby decrease the demand for commercial trade in species that are threatened with extinction. Public awareness about such wildlife species assists CITES compliance and enforcement efforts in diminishing the demand for those species. The success in reducing illegal trade in ivory serves as one example of the effectiveness of education and publicity in decreasing the demand for an illegally acquired wildlife product.

Education programmes are important in addressing shaping the decisions of individual and institutional consumers. Such programmes can help consumers to understand the environmental and social implications of their decisions to buy a particular product, live in a particular place, or utilise certain services. Educational and public awareness programmes, which are discussed more in Guideline 44, include education about the effects of the particular decisions as well as available alternatives. For example, in the context of CITES, this would include information on the impacts of using products from species that are threatened with extinction (such as certain traditional medicines) as well as indicating the availability of specific alternatives that do not threaten the future of those species (such as other medicines that are derived from species that are not threatened with extinction, commonplace substances, or syn-



thetic medicines). Many organisations and the CITES Secretariat have engaged in publicity and education campaigns.

In addition to affirmative education programmes, negative publicity can also affect the actions of private and public actors. At the national and international levels, negative publicity regarding non-compliance, ineffective implementation, or corruption may affect the ability of the State to attract investment, access funding for projects, engage in diplomacy, and negotiate with other States. Negative publicity about private individuals or institutions can significantly affect their activities, as such publicity can affect their reputation with regulators, customers, and the general public, affecting both their ability to conduct business and their earnings.

As noted, information-based approaches such as public awareness and education can be an effective complement to regulatory approaches. For example, highlighting a particular instance of non-compliance by a party not only applies pressure to that party to come into compliance, but it also serves as a warning to other parties to come into compliance or to take actions to stay in compliance. Thus, awareness and the media can be important tools to promote compliance at the international level, as well as at the national level (which is discussed at length in Guideline 44).



**[34(a)]**

**[41(a)(iv)]**

**[41(m)]**

**[43]**

**[44]**

Guideline 44, focuses on public awareness and education at the national and local levels and includes a more extensive treatment of the topic. Additional relevant material may be found following Guidelines 34(a) (especially the case study on “NGOs Providing News Relating to MEA Implementation”), 41(a, iv), 41(m), and 43.

## Improve Access to Administrative and Judicial Proceedings

**[32]** *Access to administrative and judicial proceedings: Rights of access to administrative and judicial proceedings according to the respective national legal frameworks could support implementation and compliance with international obligations.*

Empowering the public to support implementation efforts through improving access to administrative and judicial proceedings is strongly encouraged. Through improved access, individuals and non-governmental organizations (NGOs) can serve as watchdogs and enforcement partners to the government, identifying and addressing cases of non-compliance.

Promoting legal frameworks for access to justice, including the expansion of legal standing provisions to include NGOs and the public, is one way of improving access to judicial proceedings (see below for an explanation of “standing”). Providing a guaranteed independent judicial mechanism for reviewing instances of alleged environmental non-compliance by businesses, government bodies, and other actors can be an effective means of promoting compliance and deterring non-compliance.

Access to administrative and judicial proceedings is closely related to access to information (including work with the media and public awareness raising, but also providing for more formal mechanisms for the public to obtain information). It is also closely related to public participation by all stakeholders. As such, access to information, public participation, and access to justice are frequently grouped together as key elements of effective environmental governance. This grouping is manifested in Principle 10 of the Rio Declaration on Environment and Development, the Aarhus Convention (which applies to the UNECE region), and other international instruments. Similarly, the Guidelines group the themes in Guidelines 27-32 (in the Compliance Chapter) and Guidelines 41(i)-(k) (in the Enforcement Chapter).

Guideline 41(i) and the accompanying discussion, below, examine standing and access to justice broadly in more detail. Additional discussion and examples relating to judicial matters may be found following Guidelines 41(a, v), 41(c, vi), 41(o), 43(c), 43(d), 46, and 47.



**[27-32]**

**[41(a)(v)]**

**[41(c)(vi)]**

**[41(i-k)]**

**[41(o)]**

**[43(d)]**

**[46]**

**[47]**

## Capacity Building and Technology Transfer

**[33]** *The building and strengthening of capacities may be needed for developing countries that are parties to a multilateral environmental agreement, particularly the least developed countries, as well as parties with economies in transition to assist such countries in meeting their obligations under a multilateral environmental agreements. In this regard:*

- (a) Financial and technical assistance can be provided for building and strengthening organizational and institutional capacities for managing the environment with a view to carrying forward the implementation of multilateral environmental agreements;*
- (b) Capacity-building and technology transfer should be consistent with the needs, strategies and priorities of the State concerned and can build upon similar activities already undertaken by national institutions or with support from multilateral or bilateral organizations;*
- (c) Participation of a wide range of stakeholders can be promoted, taking into consideration the need for developing institutional strengths and decision-making capabilities and upgrading the technical skills of parties for enhancing compliance and meeting their training and material requirements;*
- (d) Various funding sources could be mobilized to finance capacity-building activities aimed at enhancing compliance with multilateral environmental agreements, including funding that may be available from the Global Environment Facility, in accordance with the Global Environment Facility mandate, and multilateral development banks, special funds attached to multilateral environmental agreements or bilateral, intergovernmental or private funding;*
- (e) Where appropriate, capacity-building and technology transfer activities and initiatives could be undertaken at regional and subregional levels;*
- (f) Parties to multilateral environmental agreements could consider requesting their respective secretariats to coordinate their capacity-building and technology transfer initiatives or undertake joint activities where there are cross-cutting issues for cost-effectiveness and to avoid duplication of efforts.*

Developing countries and countries with economies in transition face special challenges in meeting their obligations under MEAs. Even with the best intentions, these countries can still fall short of full compliance and enforcement, due to insufficient financial resources, lack of scientific or technical knowledge, an underdeveloped legal and enforcement infrastructure and related problems.

Capacity building and technology transfer are critical tools without which developing countries and transitional economies will remain disadvantaged and unable to reap the environmental, social and economic benefits offered by full compliance with MEAs.

Many declarations and policy statements underline the importance of capacity building and technology transfer, such as Agenda 21 and the 2002 WSSD Plan of Implementation. More specifically, many MEAs expressly provide for capacity building and technology transfer efforts to improve compliance, taking into account the special situations of developing countries, and countries with economies in transition including Small Island Developing States (SIDS). Examples include the Convention on Biological Diversity (Article 12), the United Nations Convention to Combat Desertification (Article 19), the Montreal Protocol on Substances that Deplete the Ozone Layer (Article 10A and B), and the UN Convention to Combat Desertification (Article 18). The Convention on Biological Diversity has a number of relevant provisions: Article 12 (research and training), Article 16 (access to and transfer of technology), and Article 19 (handling of biotechnology and distribution of its benefits).

Capacity building assistance has been made available to countries by a number of major international organisations including UNEP, UNDP, UNIDO, the World Bank, FAO, UNICEF, and others. Lately, many non-governmental bodies and some advanced countries are beginning to be active in this sphere. A good example of this is the myriad of “Type II partnerships” launched at the World Summit on Sustainable Development in 2002. These partnerships provide an opportunity for international organisations, NGOs, developed and developing countries to all work together to identify the specific needs of developing countries regarding particular environmental problems and to develop programmes and initiatives to address these problems.

Guidelines 34(b) and 43, and accompanying analysis, provide additional examples and detail on capacity building. For information on training and capacity building for MEA negotiators, see Guidelines 10 and 11. Following Guidelines 18 and 19, there is a case study on “Assistance to New Parties to the Ramsar Convention” that highlights capacity building; see also the case study on “Implementing the Clean Development Mechanism (CDM) in Morocco” following Guideline 21.







## THE GREEN CUSTOMS INITIATIVE

It has been estimated that local and international crime syndicates worldwide earn US\$ 22-31 billion annually from hazardous waste dumping, smuggling proscribed hazardous materials, and exploiting and trafficking in protected natural resources [International Crime Threat Assessment, U.S. White House Report (Dec. 2000)]. Illegal international trade in commodities such as Ozone Depleting Substances (ODS), toxic chemicals, hazardous wastes, and wildlife species can seriously undermine the effectiveness of MEAs, harm the environment and human health, and support organized crime.

In its efforts to improve the implementation of MEAs and enhance collaboration, synergies, and linkages among Conventions on issues of common interest (such as illegal trade), UNEP and its partners launched the Green Customs Initiative in June 2003.

The partners in the project include UNEP, Interpol (the international criminal police organization), the World Customs Organization (WCO), and the Secretariats of MEAs with trade provisions: the Montreal Protocol on Substances that Deplete the Ozone Layer, the Basel Convention on the Transboundary Movements of Hazardous Wastes and Their Disposal, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Rotterdam Convention on the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals in International Trade, and the Stockholm Convention on Persistent Organic Pollutants (POPs). The Organisation for the Prohibition of Chemical Weapons (OPCW) is also participating in this project. The Governments of Norway, Finland, and the Czech Republic have supported this initiative.

The Green Customs Initiative recognises that building the capacity of customs officers, who are

GreenCustoms

at the frontline of every State's efforts to combat illegal trade, is vital to the effective implementation of many MEAs. Training is a key component of capacity building, but can be time-consuming and expensive. The Green Customs Initiative seeks to take advantage of economies of scale and offers introductory training to customs officers on several MEAs at the same time. The Green Customs Initiative also aims to improve coordinated intelligence gathering, information exchange, and guidance (such as codes of best practice) among the stakeholders involved. In a first phase of the project, six sub-regional and regional workshops were held between May 2005 and February 2006. Based on comment received from participants, a draft Training Guide for customs officers will be finalized in 2006.

The Green Customs approach has many benefits. It helps States to adopt a coordinated capacity building of national customs officers, encourage more efficient use of national human and financial resources, deter environmental crime, and

### **The Green Customs Initiative (cont'd)**

improve national compliance under five MEAs. For MEA Secretariats, this approach encourages sharing of training infrastructure and experience developed by the Secretariats, and facilitates improved, effective, and sustained compliance with the MEAs. Finally, from an environmental perspective, the Green Customs approach helps to “green” the Customs Services, decrease environmental crime, and ultimately promotes a better and cleaner environment.

*For more information, see <http://www.greencustoms.org>*

## Information on Compliance Status

- [34]** (a) *Generating information for assessing the status of compliance with multilateral environmental agreements and defining ways and means through consultations for promotion and enhancement of compliance;*

As States adopt different approaches to achieve compliance with MEAs, specifically tailored to their State's legal, institutional, and cultural structure, they can learn what might and might not be effective for them. In other words, each compliance effort is a potential lesson learned. Sharing the experience of these lessons through generating and assessing data on the status of compliance can give Parties to an MEA the opportunity to draw on the experience of many States in efforts to improve their compliance.

In addition to the case studies below, there is a case study on "The Montreux Record: A Register of Ramsar Sites Facing Challenges" following Guideline 14(d) which describes a voluntary approach under the Ramsar Convention that collects and highlights information on compliance status, particularly when compliance may be affected by particular circumstances.



**[14(d)]**



### UNFCCC AND THE KYOTO PROTOCOL

A good example of lessons learned in generating information on the status of compliance comes from the experiences gathered under the UNFCCC and the Kyoto Protocol. Under the UNFCCC, Parties undertake to generate information vital to the implementation of the MEA, that is, on existing national inventories of sources of greenhouse gases, with a few exceptions. Significantly, too, under the Convention, the COP mandated to establish a multilateral consultative process for resolving questions relating to implementation. The COP of this Convention has been one of the most dynamic supreme body of MEAs as a forum of international cooperation to promote and enhance compliance, especially in the light of the controversies trailing the Kyoto Protocol and compliance issues under the Protocol since its inception in 1997.

Article 18 of the Kyoto Protocol mandated the COP as the Meeting of the Parties to the Kyoto Protocol (COP/MOP), at its joint session to approve "procedures and mechanisms" to determine and address cases of non-compliance with the Protocol.

At COP 7, Parties adopted a decision on the compliance regime for the Kyoto Protocol, which is among the most comprehensive in the international arena. It makes up the "teeth" of the Kyoto Protocol, facilitating, promoting and enforcing adherence to the Protocol's commitments.

The compliance regime consists of a Compliance Committee made up of two branches: a Facilitative Branch and an Enforcement Branch. The Facilitative Branch aims to

## **UNFCCC and the Kyoto Protocol (cont'd)**

provide advice and assistance to Parties in order to promote compliance, whereas the Enforcement Branch has the power to apply consequences to Parties not meeting their commitments. The Facilitative Branch can make recommendations and also mobilise financial and technical resources to help Parties comply.

A potential compliance problem — known as the “question of implementation” — can be raised by an expert review team or by a Party about its own compliance (for example, if it wishes to seek help from the Facilitative Branch), or by a Party raising questions about another Party.

After a preliminary examination, the “question of implementation” will be considered in the relevant branch of the Compliance Committee. The Compliance Committee will base its deliberations on reports from experts review teams, the subsidiary bodies, Parties and other official sources. Competent intergovernmental and non-governmental organisations may submit relevant factual and technical information on the relevant branch.

*For more information, contact the UNFCCC Secretariat at [secretariat@unfccc.int](mailto:secretariat@unfccc.int)*



## **NATIONAL OFFICES FOR IMPLEMENTING THE MONTREAL PROTOCOL**

With support from UNEP, add developing nations have established national offices (with staff and funding) to assist in implementing the Ozone Conventions (including the Montreal Protocol). There is no fixed level of support, but the specific amount is negotiated based on the particular requirements of that nation. Typically, the funding covers an officer, operating costs, and equipment. Some outreach activities are also funded.

*For more information, see <http://www.unep.fr/ozonaction> or contact [ozonaction@unep.fr](mailto:ozonaction@unep.fr)*

## Experience Sharing and Networking

**[34]** (c) *Sharing national, regional and subregional experiences in environmental management;*

Sharing compliance experiences at all levels can greatly enhance Parties' compliance efforts. Although networking efforts need not be official or global in nature to be effective, networks expressly designed to facilitate compliance can further these efforts. There are a great number of networking initiatives that seek to build capacity and exchange experiences at the national, regional, subregional, and global levels. There is also a great variation in the effectiveness of these initiatives.

Additional examples of networking can be found following Guidelines 11(b) (AMCEN), 44 (CERN), 49(a) (AIMS), and 49(e).



**[11(b)]**

**[44]**

**[49(a)]**

**[49(e)]**



### GLOBAL INITIATIVES TO SHARE EXPERIENCES IN ENVIRONMENTAL MANAGEMENT

#### International Network for Environmental Compliance and Enforcement (INECE)

INECE is a partnership among environmental compliance and enforcement practitioners – inspectors, prosecutors, parliamentarians, judges, and others – from more than 150 States. Founded in 1989 by the Dutch and U.S. environmental agencies, INECE is a global leader in raising awareness of compliance and enforcement; developing networks for environmental cooperation; and strengthening capacity to implement and enforce environmental requirements. INECE is governed by a 30-member Executive Planning Committee; the INECE Secretariat provides technical, analytical, publications, communications, and administrative support for the network.

Key INECE activities include holding international conferences, topical workshops, and capacity building events that bring together practitioners to share experiences and identify solutions; providing extensive resources and country-level enforcement initiatives via its website; supporting the development of regional networks for enforcement cooperation, including in the Maghreb region; and hosting expert working groups on topics including "Environmental Compliance and Enforcement Indicators," "Compliance Aspects of Emissions Trading Systems," "Improving Water Governance," and "Judiciary." INECE compiled and edited 'Making Law Work: Environmental Compliance & Sustainable Development', a two-volume set of

## Global Initiatives to Share Experiences in Environmental Management (cont'd)

literature on topics related to compliance with and enforcement of laws to protect the environment and promote sustainable development.

*For more information, see <http://www.inece.org>*

### Environmental Law Alliance Worldwide (E-LAW)

Some networks, such as E-LAW, focus on exchanging information within a specifically defined constituency. Since its start in 1989, E-LAW has grown into a network of public interest environmental lawyers and scientists in more than 60 States. Since many of the E-LAW members are involved in litigation against government authorities, membership is open only to public interest (NGO) advocates. The network draws its strength from its ability to exchange legal and technical information rapidly, from the strong inter-personal relationships among its members, and from shared goals of its members.



*For more information, see <http://www.elaw.org> (which includes the history of E-LAW at <http://www.elaw.org/resources/text.asp?ID=2661>)*

### IUCN Commission on Environmental Law

The IUCN Commission on Environmental Law (CEL) is the world's largest network of environmental law and policy experts. Created in the early 1960s, CEL has over 975 members from more than 130 States. CEL operates as an integral part of the IUCN Environmental Law Programme, which includes the IUCN Environmental Law Centre (ELC), Bonn, a professional international office with 15 legal and information specialists. CEL has created a series of Specialist Groups, including the Compliance and Enforcement Specialist Group, which includes many of the world's leading experts on such issues. The terms of reference for the Group can be found at <http://www.iucn.org/themes/law/cel03A.html>



*For more information on CEL, see <http://www.iucn.org/themes/law> (which includes a link to IUCN's on-line International Directory of Institutions Active in Environmental Law).*

### Other Global Networks

World Customs Organization (WCO) <http://www.wcoomd.org/>

Interpol <http://www.interpol.int/>

# Review of Effectiveness of Mechanisms for Resource and Technology Transfer

**[34]** (d) *Evaluating by conferences of the parties, in the context of their overall review of the effectiveness of their respective multilateral environmental agreement, the effectiveness of mechanisms constituted under such multilateral environmental agreements for the transfer of technology and financial resources;*

Just as MEAs should be evaluated periodically to assess their effectiveness, so too should their provisions for transfer of technology and financial resources. Without functioning measures for such transfer, the prospects for developing countries and countries with economies in transition to meet their obligations can be greatly diminished.

International institutions can complement and support review by COPs of experiences with the transfer of technology and financial resources. For example, in 2002, UNEP published *Implementation of Renewable Energy Technologies: Project Opportunities and Barriers, Summary of Country Studies*, which identified and addressed potential barriers to implementation of renewable energy technologies that might be transferred.



**[33]**

For additional discussion of transfer of technology and financial resources, see Guideline 33 and accompanying text.



## CONVENTION ON BIOLOGICAL DIVERSITY AND TECHNOLOGY & RESOURCE TRANSFER EVALUATION

The Sixth COP of the Convention on Biological Diversity (CBD) called for an assessment of mechanisms constituted thereunder for the transfer of technology and financial resources. It also adopted a Strategic Plan for the Convention on Biological Diversity.

In the Strategic Plan, it was observed as one of the challenges facing implementation of the CBD that “the provision by developed country Parties of resources to implement the convention is critical and essential.” The COP resolved that the Strategic Plan can promote broad-based action by facilitating action around agreed goals and collective objectives, including “Goal 2: Parties have improved financial, human, scientific, technical and technological capacity to implement the Convention.”

Building on this assessment, the Seventh Conference of the Parties (COP 7) adopted a programme of work on technology transfer and technological and scientific cooperation (Decision VII/29). The purpose of the programme is to develop meaningful and effective action to enhance implementation of Articles 16 to 19 as well as related provisions of the Convention by promoting and facilitating the transfer of and access to technologies from developed countries to developing countries and countries with economies in transition.

*For more information, see <http://www.biodiv.org> or contact [secretariat@biodiv.org](mailto:secretariat@biodiv.org)*