

Negotiating and Implementing MEAs: A Manual for NGOs



UNITED NATIONS ENVIRONMENT PROGRAMME

MODULE IX

IMPLEMENTATION, MONITORING AND COMPLIANCE OF MEAs



IN THIS MODULE:

- Learn what happens once MEAs are agreed and ratified
- Implementation and enforcement efforts
- Some definitions: compliance and enforcement
- Examples of civil society roles in implementation and enforcement

From adoption to implementation and enforcement: the path of MEAs

As was described in Module One, there is no doubt that the last few years have witnessed a proliferation of multilateral treaties that deal with environmental issues. On the other hand, however, there is a general coincidence that this proliferation in instruments has not been adequately reflected in the application of the norms agreed upon internationally. Many sectors in the international community have expressed concern about this and concur that there is a need for a strong impulse in order to move towards better implementation and enforcement of these instruments.

Governments and regional organizations have taken on a series of international commitments by signing and ratifying MEAs. Yet, purely adopting an MEA is not sufficient. Efforts need to be made to apply these norms and to employ practices that catalyse environmental improvements. Currently there is a call to effectively implement, apply, and enforce the international environmental governance instruments that countries have negotiated and adopted in the last few years.

Civil society has a strong role to play in this matter at all levels: locally, nationally, regionally and internationally. This Module provides basic information for MEAs compliance and enforcement steps. In addition, this section offers information on practices and cases where civil society has aided with very diverse strategies in implementation processes.

Implementation and enforcement

Once a country becomes a party to a multilateral environmental agreement, it should commence implementation and enforcement efforts. These are of two broad types:

- **Substantive:** moving toward employing specific measures that improve the particular environmental issue committed to in a particular MEA; and,
- **Procedural:** meeting with the procedures established by the MEA, such as, for example, reporting on the status of national implementation.

Often, the implementation of MEAs indicates that nations must approve relevant national laws and policies as well as adapt or adopt national institutions and standards. It is in this arena that implementation and compliance factors come into play.

Note that **this module focuses on the actions and strategies that NGOs can take**, rather than implementation or compliance by States per se.

For guidance on national implementation and enforcement, refer to UNEP's Manual on Compliance with and Enforcement of Multilateral Environmental Agreements. The document thoroughly discusses a series of means, measures, and courses of action that nations can adopt to streamline compliance with and enforcement of MEAs. A major purpose of the Manual is also to make available facts, methods, and experiences to be used for compliance and enforcement plans (available free of charge at www.unep.org/DEC/docs/UNEP_Manual.pdf).

Some definitions: compliance and enforcement

According to the UNEP Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements, compliance and enforcement are defined in this fashion:

- **“Compliance”** means the state of conformity with obligations, imposed by a State, its competent authorities, and agencies on the regulated community, whether directly or through conditions and requirements in permits, licences and authorizations, in implementing multilateral environmental agreements; and,
- **“Enforcement”** means the range of procedures and actions employed by a State, its competent authorities, and agencies to ensure that organizations or persons, potentially failing to comply with environmental laws or regulations implementing multilateral environmental agreements, can be brought or returned into compliance and/or punished through civil, administrative, or criminal action.

In general, then, *compliance* is brought into play in the international framework while *enforcement* is a concept to be used in national perspectives.

Roles of non-governmental actors in implementation and compliance with MEAs

As seen in different sections of this Manual, the role of non-state actors in the international arena has been fortified in recent times, in particular after the watershed event that was the United Nations Conference on Environment and Development (UNCED) of 1992. Yet, in the end, whilst MEAs are international commitments, they are operative mainly at the national level.

Civil society should and does have roles to play at the national levels with relation to MEAs. These roles vary from country to country, from situation to situation. Nevertheless, there are tasks and responsibilities by stakeholders that can be agreed upon or used as relevant examples.

In fact, all the tactics and strategies already mentioned in other sections are applicable at the national levels. Some examples of activities that civil society groups use around the globe regarding national implementation issues and MEAs include:

- Developing national campaigns to promote adoption of a certain multilateral accord;
- Providing research to relevant state actors on the MEA and its implementation;
- Providing information to relevant state actors on the MEA and its implementation;
- Training relevant stakeholders and decision-makers in implementation and enforcement practices;
- Taking part in expert groups related to multilateral environmental accords;
- Participating in consultations for the establishment of national implementation plans or strategies;
- Using international agreements a country is party to as leverage for domestic application of norms;
- Providing informed opinions regarding implementation of MEAs at the national level, articulating domestic limitations and priorities.

Furthermore, many civil society groups act as facilitators in the implementation and compliance field, working with parliaments and the judiciary (as well as other branches of governments), providing training to decision-makers in content and form of multilateral environmental issues, and facilitating implementation processes.

In fact, some of the specific UNEP Guidelines for implementation of MEAs specifically deal with the role of non-state actors (for example, Guideline number 27). As is typical with regard to non-governmental engagement in the global environmental field, the opportunities and strategies are countless. When strategizing at the national level, these need to be adopted not only to each

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particular MEA but also to each particular national situation. Yet, it can be concluded that the key word is engagement, implying that non-state actors have a myriad of possible opportunities, examples, and strategies for encouraging implementation of and compliance with MEAs.



UNEP GUIDELINES ON COMPLIANCE WITH AND ENFORCEMENT OF MULTILATERAL ENVIRONMENTAL AGREEMENTS

Section E - National implementation - Guideline 28

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.

Steps in MEAs implementation processes: compliance

Although countries, regional blocks, and the international community have productively negotiated and generated mechanisms, such as MEAs, that confront international environmental issues, their successful instrumentation, and application is still a slow process matter. Countries do have to cogently apply a series of steps; many at the domestic level, in order to ensure that MEAs are complied with by establishing a set of rules and to further ensure that these rules are enforced where relevant. Compliance with MEAs is achieved through the establishment of norms, laws, permits, licenses, authorizations, and national plans imposed for implementing multilateral environmental agreements. Following are some instances of mechanisms to be developed in order to implement MEAs and the possible roles of different stakeholders in each one of them.

National Action Plans or National Strategies

One early step that can be taken for MEA implementation is the development of national action or strategy plans. The national implementation plans or strategies can:

- take stock of the issue at the national arenas, involving all relevant sectors of the state and stakeholders;
- express how a state will meet its MEA-related requirements;
- recognize which are the gaps present in national policies or domestic situations that can forestall the application of multilateral treaties; and
- generate consciousness; engender collaboration and exchange between different relevant areas of the State dealing with a subject, and to bring in stakeholders' opinions, knowledge, and diagnostics in early stages of plan's development.

UNEP Guideline 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;



WHAT ARE THE POSSIBLE STAKEHOLDER ROLES IN DEVELOPING NATIONAL STRATEGIES? TAKING PART IN OR LEADING NATIONAL PLANS.

A very first step for all national strategies and plans is to identify and involve stakeholders.

Furthermore, there are many examples of national strategies where civil society groups have taken a leading role in developing them. An assessment of the GEF-funded enabling activities for the implementation of the Convention on Biodiversity found several best practices whose key was stakeholders' lead. For example, for Egypt, the success of establishing the national biodiversity strategy and action plan was, according to the assessment, due to civil society involvement:

"Where the academic community is strong, the selection of universities as lead in local consultations had several advantages. This is the experience of Egypt, where universities are regarded as centres of knowledge, have very high credibility, and the word of a university President is 'heard.' If the lead to such consultations is given to politically powerful local leaders, there is the potential disadvantage that when they issue invitations, people would come because they were 'obliged.' With universities inviting, people came voluntarily."

Source: Establishment of guidelines for the Second National Reports, including indicators and incentive measures: An interim assessment of biodiversity enabling activities: national biodiversity strategies and action plans: a study for the Global Environment Facility, UNEP/CBD/SBSTTA/5/INF/9, 13 December 1999.

Reporting, monitoring, and verification

In order to comply with MEAs it is not enough to just abide by the set requirements. States must also report, monitor, and verify these conditions. These so-called compliance information systems include the generation of databases with relevant information as well national reporting to COPs. MEA secretariats gather this information and play an active role in generating and standardizing reporting methodology and format, as well as advancing (with other agencies) the support of report funding for developing countries.

A significant element in reporting, monitoring, and verification activities is that it allows stakeholders, governmental administrations, and the international community to gauge what have been the accomplishments in MEA application and how to steer this further. It is not only an instance to give an account but also an opportunity to take stock of situations and identify gaps and deficiencies.

By generating and managing these reports, all those involved also tangentially fulfil other mandates. Not only do the statements, data gathering and verification exercises explicitly accomplish reporting requisites, they also can and are used as a means for access to information by the most diverse stakeholders.



UNEP GUIDELINE 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:

- Reporting (. . .);
- Monitoring (. . .); and,
- Verification (. . .).



WHAT ARE THE POSSIBLE STAKEHOLDER ROLES IN REPORTING, MONITORING, AND VERIFICATION PROCEEDINGS? DEVELOPING PARALLEL REPORTS OR INPUTTING INTO NATIONAL REPORTS

Civil society groups can play many parts in reporting and verification activities related to MEAs. Certainly, they can provide expert advice and information on the many and complex aspects involved in these activities. Although some countries only use official data for national reporting, many nations also include stakeholder-generated information (for example, from academics, from the private sector and so on).

Furthermore, when civil society groups do not agree with situations as presented in official reports, they can (and do) present alternative reports in formal or semi-formal circumstances. These alternative reports can provide additional or divergent data than that presented in official statements.

Some MEAs have imbedded mechanisms for specific stakeholder participation in reporting procedures. For example:

- The Aarhus Convention requests that national reporting be conducted through a “transparent and consultative process involving the public.” The national reports themselves have to detail how the public was consulted and how the outcome of the public consultation was taken into account for preparing the statements. Further information on this is available at www.unece.org/env/pp/documents/mop1/ece.mp.pp.2.add.9.e.pdf
- For CITES, information and data from non – governmental organizations can also be accepted as part of the reporting processes. Further information on this is available at www.cites.org

Implementing laws, regulations and national policies

Although the international domain in multilateral agreements is of course of utmost importance, it must be clear that implementation and enforcement is a domestic issue in most cases. It is at the national level that much activity needs to still be carried out to improve compliance with and enforcement of international environmental accords.

A key step is the normative framework that must be in place nationally to meet with international environmental commitments. The development and adoption of germane and comprehensive rules as well as robust institutions is a juncture that many countries face with difficulty.

On the other hand, it has been pointed out repeatedly that, in a great deal of cases, MEAs are the sole source of domestic norms. That is, rules regarding a particular environmental issue do not exist and are only adopted as a result of a country being party to an MEA, in a sort of benign “trickling down” effect of the global norm to the national sphere.

UNEP Guideline 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.



WHAT ARE THE POSSIBLE STAKEHOLDER ROLES IN IMPLEMENTING NORMS AND POLICIES? PROVIDING TRAINING AND CAPACITY BUILDING FOR THE DEVELOPMENT OF DOMESTIC NORMS

The need for capacity building is high, particularly in developing countries, in the areas of developing rules, enabling legislation, and policies related to environmental international accords. There are numerous examples of projects where academics and research-oriented non-governmental organizations provide training for decision-makers in this theme. For example, the Chilean Centro de Derecho Ambiental of the University of Chile together with FIELD of the UK have completed a project for creating institutional capacity in norms and policies related to biosafety issues with special considerations to the international commitments Chile has taken on recently in this subject.

Civil society groups of all types engage in campaigns and information dissemination to apply pressure on countries to adopt and implement MEAs. Information dissemination is one of the ways that non-state actors try to sway public opinion to press the case for implementation of MEAs by decision-makers.

Stakeholders around the world hold countless numbers of events (seminars, workshops, etc.) where the different technical and policy aspects of MEA enforcement are debated. These events are also a way to move forward the debate, increase public awareness regarding norms and institutions, and to some extent steer domestic implementation processes.

Soft law and normative frameworks at the national level

As seen in Module One, soft law is also a driver in domestic policy-setting and legal framework implementation regarding various sustainable development issues and related matters. Principle 10 of the Rio Declaration (see box), for example, has permeated into national norms in most, if not all, regions of the world¹.



RIO DECLARATION ON ENVIRONMENT AND DEVELOPMENT PRINCIPLE 10

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.



EXERCISE 9A

Identify norms that have been incorporated into national legislation due to a particular country's adoption of an international environmental agreement.

Steps in MEAs' implementation processes: enforcement

Adopting the right norms and policies for MEA application is a first step for the application of an international agreement. Although adoption of norms is of course a necessary and imperative stage in the implementation process, in and of itself is insufficient for the thorough application of an international agreement. This is so given that domestic policy should also be oriented to enforcement of these norms.

¹ For analysis of Principle 10's incorporation into relevant national legislation, with particular focus on its regional and global implications, see Carl Bruch, ed., *The New "Public" – the Globalization of Public Participation* (Washington, DC: Environmental Law Institute, 2002). Available at www.eli.org. Also see www.accessinitiative.org



WHAT ARE THE POSSIBLE STAKEHOLDER ROLES IN MEA ENFORCEMENT? RIGHT TO STAND APPEALING TO MEAs

The right to stand in national courts and to argue a case based on MEAs is a rising course of action for many civil society groups. This is what is meant when “leverage” of multilateral agreements in domestic legal systems is invoked. Stakeholders (as part of interest groups or as concerned organizations) play an active role and invoke MEAs in enforcement proceedings. Some cases are as follows:

- An Indian NGO brought – and won – a public interest case to determine that the export of ‘shahtoosh’ (wool from the underbelly of the endangered Tibetan antelope) from Jammu and Kashmir is indeed a violation of India’s CITES laws, and required that State to amend its laws accordingly.
- Groups in Brazil have accessed courts to challenge the safety of Genetically Modified Organisms, following principles in Article 23 of the Cartagena Protocol on Biosafety. This section of the Protocol (called Public awareness and Participation) indicates that the Parties shall: (a) *“Promote and facilitate public awareness, education and participation concerning the safe transfer, handling and use of living modified organisms in relation to the conservation and sustainable use of biological diversity, taking also into account risks to human health. . .”*. These groups, through this action, have achieved moratoria in the use of GMOs until their safety is considered. They have also used legal actions to pressure for more public participation in the national policy-making debate on the production of GMOs.



WHAT ARE THE POSSIBLE STAKEHOLDER ROLES IN MEA ENFORCEMENT? RESEARCH AND TRAINING PROVIDED BY CIVIL SOCIETY

MEA enforcement requires a range of mechanisms, many of them new and innovative. Civil society groups (among them academics and research-oriented non-governmental organizations) play a fundamental role in carrying out original policy-oriented research in MEA enforcement.

Moreover, civil society groups also work at making these new enforcement measures operational. This is vital for many nations where laws resulting from multilateral agreements are pioneering in the normative configuration of a country. Countless universities and professional groups around the world assume the task of training in these areas. For example, the organization Centro de Estudios Ambientales (CEDEA) of Argentina carried out training together with the Unión de Empleados de la Justicia of that country (union of justice department workers) for the enforcement of new norms in that national legal system. The training for workers and judges in the justice branch aimed at enforcing new norms, many of them arising out of international commitments with MEAs.

There are innumerable instances where a norm that has been adopted by a country to meet with an MEA is not imposed at the national level. The enforcement of national instruments, and by correlation the international agreement that a national law in theory applies, is done by combating violations to the norms. This is basically what is meant by enforcement in this respect.

Dispute settlement mechanisms

Although it might be an unwanted by-product, conflict is accepted, but always avoided, as a given in the enforcement arena. Putting dispute settlement mechanisms into operation can help to deal preventatively with this issue, and ensure a better implementation process for MEAs. Dispute settlement machineries that effectively attempt to settle disputes do so through an array of elements (mediation, conciliation, panels, etc.).

UNEP Guideline 7:

Dispute settlement provisions in principle, provisions for settlement of disputes complement the provisions aimed at compliance with an agreement. The appropriate form of dispute settlement mechanism can depend upon the specific provisions contained in a multilateral environmental agreement and the nature of the dispute. A range of procedures could be considered, including good offices, mediation, conciliation, fact-finding commissions, dispute resolution panels, arbitration and other possible judicial arrangements which might be reached between concerned parties to the dispute..



WHAT ARE THE POSSIBLE ROLES OF STAKEHOLDERS IN MEA DISPUTE RESOLUTION MECHANISMS? AMICUS BRIEFS AND GRIEVANCES

Here also civil society groups have been playing roles that are more visible over time. Growingly, dispute resolution bodies allow for intercessions by different stakeholders in disputes being settled. These take the forms of amicus briefs. That is, submissions by what are perceived as “friends of the court” (amicus curiae). Some mechanisms also recognize grievances presented by stakeholders.



CASE STUDY: USE OF MEAs DISPUTE RESOLUTION MECHANISM IN THE DANUBE DELTA CASE

The Government of Ukraine, with a German-based company, plans to dig a deep navigational canal through the Ukrainian section of the Danube Delta. The Ukraine's delta is part of a Bilateral Biosphere Reserve. This planned canalisation would have, according to several assessments, profound negative environmental impacts beyond the Ukrainian borders, affecting other countries in Europe, the Mediterranean basin, and Africa.

A Ukrainian environmental law firm (Ecopravo-Lviv-EPL) objected to this intervention and (invoking the many agreements that Ukraine has signed) challenged the canalisation. The firm has filed legal complaints with a number of international bodies that are responsible for administering international law affecting the Danube Delta Bilateral Biosphere Reserve. Among these are dispute resolution procedures.

Below is a brief list of bodies where EPL has filed formal complaints thus far. Besides these, the firm has also presented the case before UNESCO and the Ramsar Convention.

- Presented before the Compliance Committee of the Aarhus Convention (on access to information, public participation in decision-making and access to justice in environmental matters);
- Presented before the Implementation Committee of the Espoo Convention (on EIA in a transboundary context);
- Presented a Letter of Emergency Notification filed with the Secretariat on the Convention on the Conservation of Migratory Species (CMS);
- Filed an Emergency Complaint to the Permanent Secretariat of the International Commission for the Protection of the Danube River; and
- Presented a Letter of Notification with the Secretariat of the African-Eurasian Waterbird Agreement (AEWA).



RELEVANT WEB-SITES

Besides the already mentioned MEA Secretariats and official links, there are large numbers of organizations dealing with MEAs that include information on the application, compliance, monitoring and scientific aspects of MEAs on their web sites. Some of them are included in this box.

- CGIAR Consultative Group on International Agricultural Research www.cgiar.org
- CI Conservation International www.conservation.org
- DIVERSITAS International program of biodiversity science www.diversitas-international.org
- GEF Global Environment Facility www.gefweb.org
- IUCN International Union for the Conservation of Nature & Natural Resources (World Conservation Union) www.iucn.org
- MEA Millennium Ecosystem Assessment www.millenniumassessment.org
- SEI Stockholm Environment Institute www.sei.se

Sources: *Wilson Institute and others*

Summary

- After a State becomes party to an MEA, it is obligated to fulfil formal and substantive aspects of the agreement at the domestic level and before the international community.
- Civil society groups exercise a series of rights and carry out activities related to the application of the MEAs.
- Stakeholders have roles in the implementation of local instruments as well as in the global grounds where there is interaction with MEA compliance and enforcement.
- Monitoring of application is also an activity for civil society groups, often using the MEA itself as international leverage for national policy.

Further Information and Resources

Annex 4: UNEP's Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements

References in this Module

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