WFD's Environmental Democracy Series

Environmental Institutions

Parliamentary Oversight of Environmental Governance and Legislation

June, 2020

William Wilson

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Disclaimer

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Photo on the cover page: UNclimatechange / Youth Demonstration

Introduction

There is a major gap between the rapidly growing number of countries that have enacted framework environmental laws, and the lack of effective implementation and enforcement of these laws[1].

Modern environmental laws increasingly reflect a greater recognition of finite resources, and the finite capacity of the environment to assimilate man-made pollution and waste. The links between environment and public health in key areas such as air quality have become more evident. As environmental issues become increasingly international, so do the measures necessary to address them.

The potential for constitutional provisions to protect the environment and to deliver for citizens' basic rights to live in a healthy environment are important to note. However, this is only one element of an effective overall application of environmental laws. While there are some features that are distinct to environmental laws, such as the importance of data and science and the impacts of some international agreements, on the whole environmental laws are much like other laws and require active oversight by parliaments and the willing support of citizens and civil society to be fully effective.

Environmental data and environmental science are of the utmost importance to ensuring environmental laws are well informed and fully effective. This has some important implications for the way that laws are written and overseen by parliaments. To make oversight effective, parliaments, as well as regulators, need access to good data, and clear, understandable science, as well as whatever resources may be needed to make both available.

Effective implementation and enforcement of environmental laws require political will, the allocation of adequate resources for the enforcement body and some degree of political and commercial independence for the bodies or institutions chosen to implement these laws.

This is only one part of what is needed to address climate and environmental challenges of unprecedented seriousness and urgency; but environmental laws are part of the delivery mechanism of the changes that are needed, and parliaments have a vital role in shaping them and monitoring the effectiveness of their implementation. As United Nations Climate Change Executive Secretary Patricia Espinosa has said: "While we have made enormous progress in 25 years, the world is still running behind climate change. Today, the urgency to address climate change has never been greater. But because of the work begun 25 years ago, we are also better coordinated to take it on. We have the Paris Agreement, and we have the guidelines strengthening that agreement. What we need now are results."

Meanwhile, in a Global Assessment Report on Biodiversity and Ecosystem Services published on 6 May 2019, the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services reported that one million species of plants and animals are at risk of extinction[2].

The Westminster Foundation for Democracy (WFD) has commissioned this research to explore different models of environmental governance. The report seeks to consider the key features of seven different environmental institutions around the world. It considers whether fully effective enforcement derives from the structure of the bodies given that task, or rather from the ways that different countries demonstrate the political will to enforce their laws, allocate resources for that, and ensure that the enforcement body has sufficient functional independence to be able to do its job without political interference. In doing so, it explores how interactions with parliaments can strengthen governance and improve environmental outcomes.

The report has two main parts:

I.
An overview of the main elements and key issues of environmental laws and the role of parliaments in providing oversight on these, as well as the importance of accurate and accessible environmental data and science.

Examples of key topics in environmental laws are also described, including air quality, water quality, land, including land-use planning, waste and recycling, habitats, climate, natural resources, sustainability and restoration, and pollution control. These core elements of environmental laws can be expected to be at the heart of any effective system of environmental legislation, and parliamentary oversight needs to be equipped to make effective contributions to them. This report identifies some examples of international models which may be a starting point for parliamentary oversight.

II.
A focus on the implementation of environmental laws is then provided. This begins by considering the issue of implementation and enforcement, and the relative importance of political will, resources and independence in the implementing bodies chosen to apply environmental laws. Seven case studies are presented to consider different implementation models, including examples of environment ministries, environment agencies, three different variations on the parliamentary commissioner model, and one example of an effort to combine the parliamentary commissioner role with substantive enforcement powers. This part seeks to consider some of the advantages and disadvantages of these different models for the effective implementation and enforcement of environmental laws.

This report has a limited scope: the methodology started from the author's own knowledge, experience and familiarity with some of the institutions considered and then used desk-based research to look outwards for material with which to compare and contrast initial findings as far as the scope of the project would allow.

The report addresses one main issue: the importance of effective implementation and enforcement. It seeks to refer this back to the role of parliaments in the oversight of that aspect of environmental laws. To do so, it considers examples of different implementation models, and bodies with various mandates and structures in applying environmental protection and the very important role that parliaments can play in enhanced oversight of implementation and enforcement.

1. Framing effective environmental laws

The first part of this report is concerned with the way that environmental laws are made. It suggests that there are some aspects of these laws which make them distinct, either through subject matter such as air quality or climate change, or through their reliance upon environmental data and science for full effect. However, it also notes that in other ways, environmental laws are like all other laws and benefit from close parliamentary attention and oversight. This part of the report considers some of the current influences on environmental laws, the increasingly important emphasis on implementation and enforcement, and the role of parliaments in pre-legislative and post-legislative scrutiny and oversight.

1.1. Changing Emphasis in Environmental Laws

Environmental laws today reflect a wider understanding of several key issues. First, there is much greater recognition of finite resources, and the finite capacity of the environment to assimilate man-made pollution and waste. The first views of the Earth from space in films like NASA's Blue Planet helped to bring home the fragility of its atmosphere in space. More recent understanding of the global impacts of human activity has emerged from issues such as the damage to the ozone layer from ozone-depleting substances and the long-term and accelerating trends towards global warming, contributed to by the use of fossil fuels and observed in successive reports from the United Nations Intergovernmental Panel on Climate Change, or more recent reports of the worldwide impacts of plastics on the marine environment and the accelerating pace of species extinctions.

Secondly, the links between the environment and public health in key areas such as air quality are even clearer: in many areas of the world there is a direct correlation between gross contamination and pollution and rates of premature death or lowered human life expectancy.

Thirdly, the international aspects of some environmental issues, and any legislative or implementation action to address them, are much clearer. To be fully effective, parliamentary responses to environmental issues need to take account of these new factors.

Photo: CCO Public Domain

1.2. Implementation and Enforcement

In 2019, the United Nations Environment Programme (UNEP) published a major study entitled the 'Environmental Rule of Law: First Global Report'. The UNEP report considered a wide range of aspects of environmental laws, including institutions, civic engagement, rights, justice and future directions. However, in one of its key conclusions the authors identified a wide gap between environmental laws as enacted and the way in which they are, or are not, implemented and enforced. The authors concluded in the report: "One of the greatest challenges to environmental rule of law is a lack of political will".

The UNEP report goes on to make clear that "shortcomings in implementing environmental laws" are by no means limited to developing nations. It cites a 2017 European Commission review of member states' implementation of environmental law, with implementation gaps in waste management, nature and biodiversity, air quality, noise, and water quality and management. Member states showed ineffective coordination between local, regional and national authorities, a lack of administrative capacity and financing, a lack of knowledge and data, insufficient compliance assurance mechanisms, and a lack of integration and policy coherence.

Examples of non-compliance from the USA at both federal and state levels included failures to meet inspection targets for all major air permit holders and all major water permit holders.

By way of a non-scientific survey of 33 countries where the Westminster Foundation for Democracy has offices[3], and according to the UNEP report cited above:

- Thirty-one out of 33 countries have framework environmental laws;
- Twenty-six out of 33 countries have what the UNEP report terms as environment ministries;
- Five out of 33 countries have what the UNEP report terms as independent environment agencies;
- Twenty-five out of 33 countries have either a constitutionally protected right to a healthy environment or constitutional provisions for a healthy environment.

However, these factors in themselves are not enough to guarantee and deliver healthy environments in all of the countries reviewed. This report is in full agreement with the central importance of implementation and enforcement and therefore the need for parliaments to reconfigure some of their oversight of environmental laws and institutions to investigate implementation and enforcement.

Text Box 1: Environmental Rule of Law, UNEP Report 2019

"While environmental laws have become commonplace across the globe, too often they exist mostly on paper because government implementation and enforcement is irregular, incomplete and ineffective. In many instances, the laws that have been enacted are lacking in ways that impede effective implementation (for example by lacking clear standards or the necessary mandates). Many developing countries prioritise macro-economic development when allocating government funds and setting priorities. This results in environmental ministries that are under-resourced and politically weak in comparison to ministries for economic and natural resource development. While international technical and financial aid has helped scores of countries to develop environmental framework laws, neither domestic budgeting nor international aid has been sufficient to create strong environmental agencies, adequately build capacity for agency staff and national judges in environmental law, or create enduring education about and enforcement of the laws. As a result, many of these laws have yet to take root across society, and in most instances, there is no culture of environmental compliance."

(see: www.unenvironment.org/resources/assessment/environmental-rule-law-first-global-report, p.3)

They should not assume that their job is done once the laws have been enacted. However, this report suggests that it is not the choice of body to implement and enforce environmental laws which matters most – whether that is to be an environment ministry or an "independent" environment agency. What is paramount is whether or not that body is supported by the required political will, resources and effective day-to-day independence from political interference.

1.3. Constitutions and Environmental Law

Environmental laws and their application can be strengthened by the statement of high-level aims that constitutional rights can represent. Such rights can promote the importance of environmental objectives, and public expectations that ministries, agencies and public bodies will be committed to achieving[4]. One example of such a right can be found in the constitution of Namibia, the adoption of which, in the newly independent country, sent important early signals of its commitment to environmental protections. There is also a need for "down to earth", functional, clear and specific provisions in environmental legislation, for example on levels of pollutants that must not be exceeded in water, air, land, food or products. Constitutional rights need to be matched by practical and affordable means by which members of the public can become informed about environmental issues that affect them, access to justice and effective means by which to seek redress.

Text Box 2: The Constitution of the Republic of Namibia
Chapter 11 PRINCIPLES OF STATE POLICY
Article 95

1. The State shall actively promote and maintain the welfare of the people by adopting, inter alia, policies aimed at the following: ...

...(l) Maintenance of ecosystems, essential ecological processes and biological diversity of Namibia and utilisation of living natural resources on a sustainable basis for the benefit of all Namibians, both present and future; in particular, the government shall provide measures against the dumping or recycling of foreign nuclear and toxic waste in Namibian territory.

Constitutional provisions containing such rights can take many forms, for example, provisions such as Article 191 of the Treaty for European Union, which "stand above" and guide interpretation of other European Union environmental laws, and national laws within member states that apply them.

Text Box 3:
Part of Article 191 of the Treaty for European Union provides that:

1. Union policy on the environment shall contribute to pursuit of the following objectives:
   - Preserving, protecting and improving the quality of the environment,
   - Protecting human health,
   - Prudent and rational utilisation of natural resources,
   - Promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.

2. Union policy on the environment shall aim at a high level of protection....

High-level rights in a constitution or treaty need to be matched by the means to implement them, as well as more concrete provisions to address specific forms of pollution. In the case of the European Union, the treaty, or "constitutional" provisions, are implemented by European Union environmental laws, which in turn are enforced by the European Commission; where member states are alleged to have breached union laws they can also be referred to the Court of Justice of the European Union. This court ultimately has the power to levy fines against member states which remain in breach.

Furthermore, European Union citizens have the right to make complaints to the European Commission about any breach of European Union laws by their national governments, so there is available to them a slow, but cost effective, means of implementing their rights, which does not necessarily depend upon having the resources to bring legal cases in the courts.

1.4. Environmental Data and Science

The quality of data and science available to the enforcement authority is one of the keys to effective implementation and enforcement of environmental laws. It is essential to know from a representative and reliable network of monitoring stations what air quality sampling is showing and any pollution trends almost on a real time basis. Water quality depends in part upon accurate sampling and analysis, sometimes to show trace levels of pollutants which can nevertheless be highly significant: half a cup of the chemicals used in some forms of sheep dip and pesticide control is sufficient to kill invertebrates and fish life for many kilometres downstream. Licensing and regulatory control of chemicals and pesticides depend on the ability of regulators to be sure about chemical analysis and where to apply testing as part of the controls. Food safety and food standards rely upon similar science. This has some important implications for parliaments.

To make oversight effective, parliaments need access to good data, clear and understandable science, and whatever resources may be needed to make them available to parliaments and the wider public. There are several ways in which this can be done. First, there may be a need to secure scientific input and support for parliamentary oversight and investigations. Scientific advisors can be used to assist select committee inquiries. Scientific witnesses can be called to help explain the issues in particular cases. Assistance can also be derived from government advisory committees with regular reports copied to parliament. Secondly, it is important that parliaments take note of the need for regulators to have the means to keep up-to-date with environmental science, to have the resources to do that, and the means to collect sufficient data to do their jobs effectively. Thirdly, regular reporting, and the environmental data that it provides, from government departments, environmental agencies or even their own commissioners or staff is essential to parliaments' oversight role. Without it, parliamentarians are being deprived of the information necessary to make their work effective.

1.5 Environmental Legislation

Text Box 4:
Pre-Legislative Scrutiny: The Environment (Principles and Governance) Bill, UK Parliament.

In December 2018 the UK government published draft clauses of an Environment (Principles and Governance) Bill. These were supposed to address the arrangements for the effective enforcement of environmental laws in England after the UK left the European Union, when enforcement by the European Commission and the Court of Justice of the European Union would no longer be available. The clauses envisaged the establishment of an Office for Environmental Protection for England, with powers that would enable the government and public authorities to be called to account for breaches of environmental laws.

Publication of the clauses followed a lengthy consultation which yielded an unprecedented 176,746 responses over three months, demonstrating at least the high level of public interest in arrangements to apply environmental laws. The clauses were intended to be part of a wider Environment Bill to be introduced in 2019, covering: air quality, protection and enhancement of landscapes, wildlife and habitats, more efficient handling of resources and waste, and better management of surface, ground and waste water. This early consultation in turn allowed time for two specialised committees of the House of Commons, the Environment, Food and Rural Affairs Committee and the Environmental Audit Committee, to conduct their own pre-legislative scrutiny of the Environment (Principles and Governance) Bill between January and March 2019, with the committees reporting in April 2019. Witnesses called to give evidence included environmental lawyers and academics, representatives of non-governmental organisations (NGOs) and civil society, and the Secretary of State for the Environment, Food and Rural Affairs, his deputy Minister and the head of the Environment Agency for England. Each committee reported to parliament and other MPs in April 2019, with significant and wide-ranging criticisms of the draft Bill and demands for substantial improvements before its introduction. The full Environment Bill was introduced to Parliament in 2019, and following a general election in December 2019, was re-introduced to Parliament on 30 January 2020.

(See: House of Commons Environmental Audit Committee 18th report, 'Scrutiny of the Draft Environment (Principles and Governance) Bill', www.parliament.uk and a 25 April 2019 press release entitled 'MPs call for urgent action to plug gaps in environmental protection'; and House of Commons Environment, Food and Rural Affairs Committee report 30 April 2019 'New environmental watchdog needs greater independence and sharper teeth'.)

Some aspects of environmental laws may be particular in their reference to the obligations of multilateral environmental agreements, or in their reliance upon environmental data or environmental science to give expression to particular outcomes. But for the most part environmental laws are like other laws and stand or fall upon the same practices and principles which make other laws effective or ineffective. In all cases, parliaments have the potential to secure major improvements in their effectiveness.

Text Box 5: 1996 US Presidential Election Campaign

In the US presidential election campaign in 1996, the Republicans ran on a ticket promising lower taxes, smaller government and rolling back the state, and this included proposals for drastic reductions in the scope and effect of environmental laws and the agencies that applied them. The Democrats in contrast judged that while the public did not favour high taxes or "big government", they did nevertheless support the Clean Water Act and the Clean Air Act. This was legislation which they understood and appreciated, and they did not want it done away with by means of overenthusiastic deregulation. Protection of the environment therefore became a central plank in the Democrats' winning electoral strategy in that campaign.

Pre-Legislative Scrutiny

There are significant benefits in making arrangements for legislation to be published in draft in advance of it being introduced in parliament. Policy approaches can be explored, drafting solutions tested and investigated, and public opinion tested before the commitment is made to the final form of legislation. Shortcomings can be identified and avoided. Often corrections and improvements can be made in response to public or parliamentary comment, and governments can be helped to anticipate areas that need further work before final legislation is enacted.

Passage of Environmental Legislation

Parliaments obviously have a vital role in ensuring that environmental laws are subject to rigorous scrutiny before they are passed. Parliaments may well find that the widest possible forms of public participation and the involvement of all the resources of civil society in scrutiny, comment, challenge, amendment and improvement result in much more robust laws which the public recognise and whose implementation it may support.

Text Box 6: ClientEarth Air Quality Litigation against the UK government

In a celebrated series of legal cases brought against the UK government in the national courts, up to and including the Supreme Court, and also in the Court of Justice of the European Union, the environmental NGO ClientEarth challenged the UK government's failure to comply with the standards and prescribed levels of nitrogen dioxide supposed to have been achieved in all areas by 2010. Essentially, the UK government argued that it was too difficult and too expensive to achieve compliance within that timescale, which was nevertheless a requirement of EU law. Eventually ClientEarth won a whole series of cases, requiring the UK government to come forward with revised and more robust plans for tackling air pollution in a more timely manner. Factors which were relevant in these cases included: the existence of a framework of strictly applied EU environmental law, and the willingness of the courts to enforce it (including the power for the Court of Justice of the European Union to fine the UK for continued breaches); the availability of an experienced and well-resourced NGO; and very clear and specific legal provisions which made it relatively straightforward to show whether they had been complied with.

(See: R(ClientEarth No 3) v (1) Secretary of State for Environment, Food and Rural Affairs, (2) the Secretary of State for Transport and (3) Welsh Ministers [2018] EWHC 315 (Admin)).

Canadian Application of Funds from Penalties to Environmental Benefit

Canada in 1995 set up an Environmental Damages Fund as a mechanism for directing funds from fines and enforcement actions into priority projects to benefit the environment. The Environmental Enforcement Directorate of the Ministry of Environment and Climate Change Canada issues regular reports on the sums directed towards environmental projects from this source. This is an example of a distinct improvement in the operational effectiveness of an environmental law, by requiring enforcement to benefit the environment.

It may well be necessary and effective to set overall high-level aims and objectives in environmental legislation, and to express high-level principles – be it a constitutional right to a healthy environment, or a statutory requirement for all public authorities to contribute to the achievement of a high level of protection of the environment. But it should also not be overlooked that in certain environmental areas (air, water, land), it is absolutely necessary to have very specific threshold levels in order to facilitate effective enforcement.

A member of the public or a non-governmental organisation (if it can show that legal rules on "standing" allow for citizen suits of this kind to be brought within that jurisdiction), might be in a position to challenge that the right to a healthy environment was being infringed by the continuation by a government of a particular policy. But a regulator trying to enforce an environmental law will find it much more straightforward if the law has clear provisions showing that particular threshold levels have been exceeded: for example, whether ambient air contains twice the World Health Organisation levels of nitrogen dioxide or fine particulates such as PM2.5, or drinking water contains more than permitted levels of lead, or whether the licence conditions of an industrial emissions permit have been met.

Looking Ahead to Implementation and Enforcement

As suggested in later sections of this report, all parliamentarians need to recognise that without effective implementation and enforcement, the environmental laws on which they are working may be redundant and ineffective. Parliamentary time and effort will not be wasted where it is applied towards: securing a clear and robust mandate for the enforcement authority, ensuring sufficient resources in terms of funding and trained staff to make that a reality, delivering penalties and systems of monitoring and enforcement, where monitoring is a realistic expectation and compliance a realistic expectation in the regulated community. Again, drawing on the assistance of outside resources and civil society can help.

Post-Legislative Scrutiny

Environmental laws, like other laws, can be greatly improved and made more effective by means of post-legislative scrutiny. The WFD Report on 'Post Legislative Scrutiny – Comparative Study of Practices of Post-Legislative Scrutiny in Selected Parliaments and the Rationale for its Place in Democracy Assistance'[5] offers valuable insights into ways in which this can be made more effective. All public institutions – schools, universities, the police, the armed forces, prisons, environmental regulators – can benefit from monitoring, insight, investigation and public scrutiny, or can suffer from neglect if that oversight is absent.

Text Box 7: Oversight in Action – Parliament of India

"9.4 The committee is of the view that pollution, whether it be air, water or noise, has gone beyond permissible limits during the last few years and has serious consequences for the health and wellbeing of the citizens of the country. However, the committee finds that the performance of the ministry/Central Pollution Control Board in a scheme relating to providing assistance for abatement of pollution is not impressive at all. The ministry could not achieve the physical targets relating to ambient air quality monitoring stations and new noise monitoring stations while other targets set have been stated to be under process.

Further, the ministry could utilise only nearly 35 per cent of the allocation up to December, 2015, which too reflects very poorly on the performance under this scheme. At a time when the ministry is required to address the grave and critical challenge of deteriorating air and water quality and increasing noise pollution, the ministry has not been able to fully utilise the allocations made for a scheme providing assistance for abatement of pollution. The committee, therefore, recommends that the ministry should take a serious note of its performance under this scheme and take all necessary measures to ensure that the targets under the scheme are achieved in future and funds allocated are optimally utilised."

(See: Parliament of India, Rajya Sabha Department-related Parliamentary Standing Committee on Science, Technology, Environment and Forests 238th Report, Demand for Grants (2016-2017) of the Ministry of Environment, Forest and Climate Change (Demand No. 32) http://rajysabha.nic.in).

1.6. Citizens and Civil Society

"The effective engagement of civil society results in more informed decision-making by government, more responsible environmental actions by companies, more assistance in environmental management by the public, and more effective environmental law.

When civil society has effective access to environmental information and meaningful opportunities to participate, it is better equipped to hold violators to account and ensure compliance with environmental protections and thus to support the development of environmental rule of law. It can also help to monitor environmental management and ensure that ministries and other governmental authorities undertake actions required by law and that are in the public interest. Involving vulnerable and marginalised populations that are often excluded from decision-making and yet are most affected by environmental and natural resource decisions is a challenging but integral aspect of civic engagement. Including the public in decisions about the environment and natural resources is a cornerstone of good governance that has the benefit of building trust of local communities in government, which increases both social cohesion and environmental rule of law."
UNEP Environmental Rule of Law: First Global Report 2019[6].

The UNEP Environmental Rule of Law Report of 2019 refers to three pillars of environmental democracy and civic engagement: access to justice, access to Information and public participation[7]. It measures these by examples and tables of countries with secured access to information, such as pollutant release and transfer registers, constitutional or national laws on public participation, environmental assessment laws and other measures. The three pillars and the important concepts that they embody, reflect and take forward the provisions of the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, 1998, known as the Aarhus Convention. This well-developed model came into force in 2001 and has now been widely incorporated in European Union law.

This convention has set the international standard for public rights in the three areas mentioned, and is a model for similar initiatives internationally, such as the Escazú Agreement (Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean) adopted under United Nations auspices on 4 March 2018[8].

In its 1988 Rules and Guidelines for Effective Risk Communication, the US Environmental Protection Agency gave as the first of its Cardinal Rules of Risk Communication: "Accept and Involve the Public as a Legitimate Partner."

Parliaments that take that approach and are genuinely committed to it are able to generate new levels of public support for environmental laws, a partnership approach and a shared interest in monitoring, oversight and enforcement.

1.7. International Agreements

Most international environmental law is actually applied and made effective by means of international peer pressure between countries, rather than the much less frequent recourse to international tribunals or arbitration. International treaties, conventions or agreements on the environment (multilateral environmental agreements) are nevertheless significant in terms of: international or regional benchmarking, a means to articulate national ambitions to achieve better outcomes for the environment in particular areas and to be seen to do so, raising the profile of problem issues, and setting aims and objectives which can translate into national legislation and national parliamentary oversight.

Text Box 8: Basel Convention

In some cases, multinational environmental agreements have highly specific required outcomes which are of direct importance to local environmental conditions. An example would be the Basel Convention on the Control of Transboundary Movements of Hazardous Waste, 1989. As the 187 state parties to the Basel Convention celebrated 30 years of its operation in response to instances of the dumping of hazardous waste in countries with few resources to tackle them securely, the challenges remain as great as ever.

The convention secretariat noted in March 2019 that by 2050 on current trends an estimated 12 billion tonnes of plastic would enter landfills or the natural environment, with an estimated 50 million tonnes of electronic waste generated each year, projected to triple by 2050. The Basel Convention includes specific bans on international dumping of hazardous wastes which, against that backdrop, have never been more important. Other types of international agreement set high-level aims, but then require national programmes of action which national parliaments can then monitor, such as the Nationally Determined Contributions which 182 countries have agreed to make towards the Paris Agreement on Climate Change.

See: http://www.basel.int/

The 1987 UN report 'Our Common Future: Report of the World Commission on Environment and Development', known as the Brundtland Report, after its Chair Gro Harlem Brundtland, gave the first and simplest definition of the concept of sustainable development as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs". This has been applied by a number of parliaments in national legislation, or adapted, varied and in some cases re-interpreted, with mixed success. The Sustainable Development Goals of the United Nations 2030 Agenda for Sustainable Development can also be a useful pointer for parliamentary review, and parliaments will play a key role in implementing both.

2. Key topics in environmental laws and relevant sources

2.1. Air Quality

The World Health Organisation (WHO) estimates that there are 4.2 million deaths every year as a result of exposure to ambient (outdoor) air pollution, and 3.8 million deaths per year as a result of household exposure to smoke from dirty cookstoves and fuels, while 91 per cent of the world's population lives in places where air quality exceeds WHO guidelines[9].

Effective regulation of air pollution will depend upon the main contributory causes, which can vary by region, for example from diesel vehicle emissions of particulates in the UK to air pollution from deforestation burning in Indonesia, waste burning in Lebanon or the widespread burning of coal in settlements around the city of Ulaanbaatar in Mongolia.

Systematic and representative monitoring of air quality across a country, and analysis of results of monitoring against recommended national and international guidelines for particular pollutants require sufficient financial and human resources in terms of skilled personnel and the availability of scientific back-up, monitoring stations and laboratories, together with implementation and enforcement capacity to regulate polluting activities and industries. In some cases, air pollution with transboundary results can involve issues of compliance with international treaties, conventions and agreements. WHO guidelines on ambient and indoor air quality are a good starting point for parliamentary scrutiny of whether national air quality standards are comparable, the reasons for any variance and the scope and quality of monitoring, implementation and enforcement.

Photo: DFID / Wind farm, Lake Turkana (Kenya)

2.2. Water Quality

Water quality is generally addressed by domestic legislation, but can also be an international issue, for example with international watercourses, or upstream dams. For drinking water quality there are readily available reference standards, such as the WHO Guidelines for Drinking Water Quality[10], or the European Union's Drinking Water Directive[11], which can act as a point of reference and comparison in parliamentary and other inquiries. Similarly, there are international guidelines on wastewater best practice, such as the UNEP Good Practice for Regulating Wastewater Treatment – Legislation, Policies and Standards[12].

International comparators for what constitutes good water quality more generally include the European Union's Water Framework Directive, which includes detailed specifications of "good status" of water, made up of specified "good chemical status" and "good ecological status". For example, the EU Water Framework Directive, and related EU Directives on water quality, have been used as the basic model for the development with UNECE support on new water legislation for Georgia.

2.3. Land, including Land-Use Planning

Competing access to land and land-use tends to be more of a national legislative priority rather than an international one, so parliaments seeking to exercise oversight need to rely more upon their scrutiny of national laws and their effects, and this can cover some of the most contentious of national issues. Land laws can cover land tenure, rights and access to land, farming and forests, protected areas and land-use planning. They may also cover prevention of land degradation, soil erosion and the issue of contaminated land sites and how to deal with them. Relatively few international conventions touch on this area, but one notable exception is the United Nations Convention to Combat Desertification[13].

2.4. Waste and Recycling

The UNEP Guidelines for Framework Legislation for Integrated Waste Management[14] may be a useful starting point for parliamentary reviews. There is a wide variety of other international examples of best practice, both from a legislative perspective and from a more technical point of view. The European Union's Waste Framework Directive[15] is a significant regional update, taken with the Union's most recent policies towards a circular economy, with ambitious recycling targets, aims to reduce single-use plastic, and policies to promote the designed reduction of waste, as well as its longer-established system for restricting hazardous substances, for example in electrical and electronic goods.

European Union structured legislative precedents are in evidence with the new Law No 80 of 10 October 2018, Integrated Solid Waste Management in Lebanon. This sets out a comprehensive set of principles and structures for waste management, and the test will now be to ensure its effective implementation and enforcement.

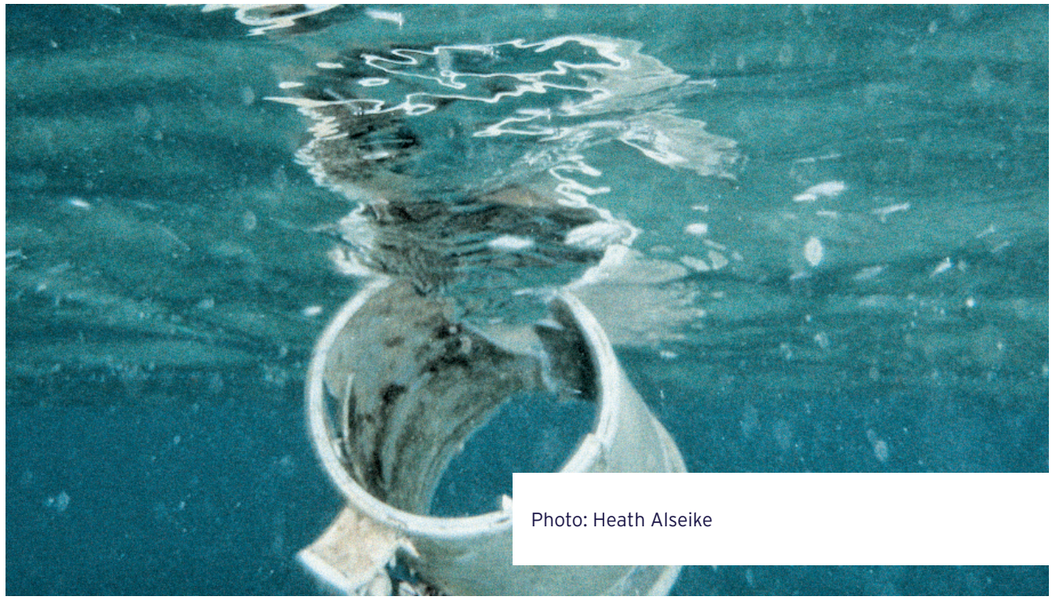

Photo: Heath Alseike

2.5. Habitats and Biodiversity

There is a range of materials about best practice in the areas of the protection of key habitats and biodiversity, including the International Union for Conservation of Nature (IUCN) series of guidelines on best practice for protected areas. An example is the IUCN's "A Global Standard of the Identification of Key Biodiversity Areas"[16]. Some national ministries work with a range of delivery agencies, and the willing cooperation of non-state actors. For example, Conservation Evidence is a free open-access journal and resource summarising evidence from scientific literature about which approaches to conservation projects work best.

The Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) 'Global Assessment Report on Biodiversity and Ecosystem Services'[17] put together by 145 expert authors from 50 countries with 3,010 contributing authors and reviewing 15,000 scientific and government sources is an urgent reminder of the pressing need for biodiversity protection and measures to address the factors which are putting a million species of plants and animals at risk of extinction.

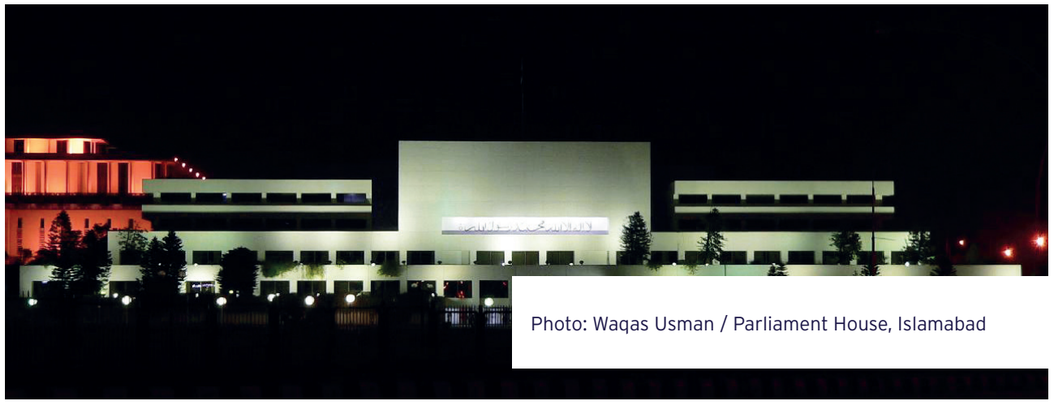

Photo: Waqas Usman / Parliament House, Islamabad

2.6. Climate

The Paris Agreement on Climate Change of 2015[18] committed its signatories (most of the nations in the world) to reduce emissions of greenhouse gases with a view to limiting global warming to well below two degrees Celsius and as close as possible to 1.5 degrees Celsius compared to pre-industrial levels. Climate change is an urgent priority not only in terms of each country's contribution to global warming, but also in terms of its adaptation and plans and preparedness for the changes which are already under way.

Global temperatures are rising. Combined graphs from the NASA Goddard Institute for Space Studies, the Hadley Centre/Climatic Research Unit, the NOAA National Centre for Environmental Information and the Japanese Meteorological Agency show a global temperature anomaly already at 0.8 degrees Celsius. Carbon dioxide levels in the Earth's atmosphere are at their highest for 800,000 years, and in contrast to the Paris Agreement targets, rose a further 1.7 per cent in 2018. Arctic ice caps and the glaciers are melting faster than expected, sea levels are rising and so are sea temperatures.

"Human influence on the climate is clear, and recent anthropogenic emissions of greenhouse gases are the highest in history. Recent climate changes had widespread impacts on human and natural systems."
Intergovernmental Panel on Climate Change 5th Annual Report

With the signature in 2015 and ratification by most of the world of the Paris Agreement, and the Katowice Agreement of December 2018[19] on its implementation, 182 state parties have now submitted their first Nationally Determined Contributions (NDCs) under the Paris Agreement, and a country's expressed policy in this NDC would make a good starting point for any future parliamentary scrutiny of its progress and future plans. The next major review of the Paris Agreement is scheduled to take place at the meeting of the Conference of the Parties, "COP 26", in Glasgow, UK, in 2021.

It is also possible to lead by example: Pakistan recently took measures at its Parliament House to convert the building to become a sustainable and green building by reducing energy losses and introducing renewable energy.

2.7. Natural Resources, Sustainability and Restoration

The extraction and use of a country's natural resources, be they fisheries or minerals or timber or otherwise, can represent powerful economic drivers when efforts are made to balance this with sustainability. Parliaments can aim to take a longer-term view, by questioning the balance between short-term economic gains with longer-term sustainability.

For example, if a country is in receipt of payments for the use of its fishing quotas within its exclusive economic zone, parliaments may well want to know: the best available scientific opinion as to the effects of this level of exploitation on fish stocks; the best available economic opinion as to the benefits derived from this use; and the long-term effects that this may have on its own fishing communities. If a proposal is made by a multinational mining company for mineral extraction, parliaments may want to know: what laws and arrangements are in place to protect the health and safety of the workforce and local people, including indigenous people; what measures will be proposed to monitor and protect the environment; and what insurance, bond or other assurance is in place to ensure the full and comprehensive environmental clean-up after any accident or the operations themselves.

At a UNDP/UNEP workshop in Vientiane in 2014, representatives of the National Assembly of the Lao PRR made similar observations about foreign investment projects in the areas of mining, hydropower, industrial tree plantations and the agricultural sector not complying with local environmental laws and regulations.

Photo: UNclimatechange / Year of Action to Accelerate Climate Adaptation

2.8. Pollution Control

Examples of materials on international best practice for pollution control include the OECD 'Best Available Techniques for Preventing and Controlling Industrial Pollution – Approaches to Establishing Best Available Techniques around the World'[20]. Pollution control generally entails some form of licencing of regulated and potentially polluting activities, with a licencing authority capable of applying conditions to licences, monitoring compliance, and implementing and enforcing the relevant pollution control laws.

Parliamentary strategies for monitoring and oversight would therefore include regular reporting by the relevant ministry or agency, both on licencing and enforcement statistics, pollution incidents and prosecutions or other enforcement actions, but also on a comparison between this and the reported state of the environment, to be able to gauge the effectiveness of the monitoring, implementation and enforcement.

"Many countries make effective use of outside skills and resources, for example a European Environment Agency report as part of its Horizon 2020 Mediterranean reports outlined factors in Jordan, including the population increase from 4.2 million in 2000 to 6.4 million in 2012, not including refugees from the Syrian Civil War: and it helped to make priority recommendations on solid waste, waste water and air pollution, including from uncontrolled industrial emissions." EEA
Technical Report No 6/2014.

3. Implementing environmental laws

Enacting environmental laws is only a beginning. Work is needed to ensure that the laws are effectively implemented and enforced.

This demands political will, adequate resources for the enforcement body, and sufficient independence for that body to make enforcement decisions without political interference or commercial resistance from regulated industries or individuals. These key factors are required whatever the institutional delivery mechanism.

Photo: UNclimatechange / Asia Pacific Climate Week (Day 1), NDC Dialogue

3.1. Political Will

The political will to ensure the effective enforcement of environmental laws is necessary whether they were implemented by a ministry or an agency: without such political will, environmental laws will be equally ineffective.

In Russia, for instance, the Russian scientist A.P. Dobroslavin introduced the concept of maximum permissible levels for individual substances in drinking water as part of quality assessment in a textbook published in 1903. Yet Russian President Boris Yeltsin's adviser on the environment in 1995 reported that 75 per cent of surface water in Russia was undrinkable. The implication is that Russia was well ahead of the rest of the world in terms of analysis of the issue and the enactment of early legislation; but implementation and enforcement of such laws was never given priority[21].

Text Box 9: Political will and diesel emissions in the UK

Political will is not simply a matter for governments and the executive: it is something to which parliaments can themselves give expression, and it matters to all countries, not just developing countries. For example, it is instructive to compare and contrast the political will by which the car manufacturer Volkswagen was pursued by civil and criminal enforcement and civil suits in the USA for placing 500,000 vehicles on the market with defective emissions devices, against the absence of civil or criminal enforcement, and therefore the absence of political will, in the UK when the company admitted to placing 1.2 million vehicles with similarly problematic emissions controls on that market.

(See: The House of Commons Environmental Audit Committee, 'Diesel Emissions and Air Quality Inquiry', HC506 2015.)

Where an environment ministry signs up to a Multilateral Environment Agreement or passes a framework environmental law and then lacks the means or the will to enforce it, it will not necessarily make much difference if it then delegates the responsibility for implementation and enforcement to an independent environment agency. The results will be the same, because the environment agency also needs political will to support its work: to secure a clear mandate, sufficient resources to do its job, and political support in applying environmental laws robustly and fairly, often against powerful vested interests. In both cases, parliaments can support the process by reflecting the political will to have environmental laws applied effectively, and by providing monitoring, oversight, encouragement or challenge where that is not done.

3.2. Resources

The resources necessary to implement and enforce environmental laws effectively are a key consideration. Resources include: financial resources so that monitoring and enforcement actually take place, regulated entities are encouraged to comply, and institutional capacity to undertake enforcement is developed. But it is clear that in the nature of environmental laws, resources also mean the capacity to collect data, the capacity to understand and apply relevant science, and the training and skills of a sufficient number of people to make implementation and enforcement credible and effective. To take enforcement seriously, regulated industries need to know that environmental regulators have sufficient resources to undertake regular monitoring of emissions and pollution, and to take enforcement action where it is needed. One environment ministry visited by the author had the lights out because the rest of the government had not settled its electricity bill. Enforcement can be undertaken within an environment ministry, but it is sometimes more effectively done by a separate and independent environment agency. Relatively few environment ministries are in a position to recruit, train and equip a sufficient staff of properly qualified enforcement personnel and to deploy them across the country in the places where regulated activities take place. This can be done, but sometimes it is harder, and this is one area in which a separate and independent agency can confer a distinct advantage in delivering effective implementation and enforcement. Parliamentary oversight of budgets can also play a vital role in ensuring that the regulators' needs are properly addressed, and this is an area worth keeping under regular review as parliaments question the executive about its proposals.

3.3 Independence

Effective enforcement requires regulatory independence and freedom from political interference with enforcement decisions. It can be harder to deliver this kind of independence where enforcement is undertaken within a central government ministry as opposed to an independent or separate environment agency. Countries have choices as to how enforcement is to be delivered. Some opt for criminal law provisions to back up non-compliance with environmental laws, which require the preparation and prosecution of criminal cases, and for those skills to be available to the enforcement authority. Other countries rely more heavily on alternative means of enforcement, such as civil or administrative enforcement, which can be a less legalistic form of procedure, but still requires the availability of experienced staff to make it effective. Where an industry generates emissions and potential pollution, if the same ministry is responsible for the licencing process and for any subsequent enforcement, it is harder to demonstrate effective regulatory independence. Even if the relevant ministry has sufficient prosecutors or enforcement personnel in house, and can overcome the resourcing issues, it is harder to maintain independence from political and commercial pressures when enforcement decisions are taken within a ministry as opposed to an "arm's length" independent agency.

In some comparable regimes such as nuclear law, the independence of the regulator from the regulated industry is an international legal requirement. Article 8.2. of the Convention on Nuclear Safety[22] states that: "Each contracting party shall take the appropriate steps to ensure an effective separation between the functions of the regulatory body and those of any other body or organisation concerned with either the promotion or utilisation of nuclear energy."

Article 20.2. of the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management[23] states that: "Each contracting party … shall take the appropriate steps to ensure the effective independence of the regulatory functions from other functions where organisations are involved in both spent fuel or radioactive waste management and in their regulation."

The underlying assumption of the nuclear law provisions quoted above is that a regulator's effectiveness is going to be compromised by the perception of "industry capture", unless the regulator's independence is established and protected by law. The regulator needs to be fair but fearless in applying nuclear safety practices, and for that purpose it needs to keep its distance from the industries which it regulates**.** While the circumstances of the nuclear industry are particular and the demands of nuclear safety paramount, the benefits of having a regulator that is effectively independent from the bodies and industries which it regulates can also be considerable in the environmental field.

For a consideration of wider questions of parliamentary supervision of independent bodies, see the February 2019 WFD report 'Independent Oversight Institutions and Regulatory Agencies and their Relationship to Parliament – Outline of Assessment Framework' by Franklin De Vrieze.

Parliaments may not wish to become too closely involved with individual licencing, implementation or enforcement decisions where this would affect the independence of the enforcement authority, unless the circumstances require intervention of this kind. But they can certainly add much value by close attention and scrutiny of the enforcement policy, the enforcement practice and the overall results of implementation and enforcement. Requirements within legislation and within the mandates of the enforcement authorities for regular reporting to parliaments and for parliamentary oversight can result in much improved implementation and enforcement. Environmental laws which provide for regular reporting to parliament – including on the penalties imposed, the application of enforcement and penalties that actually benefit the environment and the achievements and shortcomings of the enforcement function – provide the "raw material" for effective parliamentary oversight, monitoring, scrutiny and challenge. The importance and value of parliamentary oversight was underlined in the Global Parliamentary Report (GPR) for 2017 from the Inter-Parliamentary Union and UNDP[24].

4. Different implementation models

The following section considers three examples of executive institutions which carry out the enforcement of environmental legislation (I. Environment and Climate Change Canada, II. the Environment Agency, England and III. the Inspectorate of the Environment, Slovakia) and three institutions established to provide advice directly to parliaments on environmental issues (I. Commissioner of the Environment and Sustainable Development, Canada, II. Committee on Climate Change, United Kingdom and III. Parliamentary Commissioner of the Environment, New Zealand). It also considers a current proposal for an Office for Environmental Protection, England, which would combine some features of a parliamentary commissioner for the environment with direct responsibility for enforcement of some environmental laws against government departments and public bodies.

The report considers examples of implementation and enforcement carried out within an established and well-resourced environment ministry in Canada; and compares this to the different approach of delegating enforcement to an independent environment agency, as in England. It notes the enforcement undertaken by a separate inspectorate in Slovakia, but also compares that to indications in a major EU review that more emphasis is needed on enforcement and making it effective. The report considers examples of the practice of having a form of parliamentary commissioner of the environment, usually but not invariably without specific enforcement powers, as a powerful addition to the "reach" of parliamentary oversight.

Finally, the report notes the most recent reports of House of Commons committees undertaking pre-legislative scrutiny of the Environment (Principles and Governance) Bill, and the proposal in England to have a new Office for Environmental Protection able to challenge non-compliance by government departments and public bodies: the reports were both highly critical of the proposed body's perceived lack of independence, and shortcomings in the approach to enforcement.

Photo: UNclimatechange / Climate Strike

Executive enforcement models

4.1. ENVIRONMENT MINISTRY: Environment and Climate Change Canada

Environment and Climate Change Canada[25] is a federal ministry with responsibility for:

- "The preservation and enhancement of the quality of the natural environment, including water, air and soil quality, and the coordination of the relevant policies and programs of the Government of Canada;
- Renewable resources, including migratory birds and other non-domestic flora and fauna;
- Meteorology; and
- The enforcement of rules and regulations."

Environment and Wildlife Canada is a federal government department with a headquarters and offices of the federal enforcement branch in five separate regions. The Environmental Enforcement Directorate[26] has about 222 people working for it, with backgrounds in law enforcement, science, engineering, criminology and natural resource management. The directorate works with the Public Prosecution Service of Canada, its provincial and territorial counterparts and government scientists.

The Canadian federal parliament's Standing Committee on Environment and Sustainable Development "studies the programmes and legislation of Environment Canada, Parks Canada and the Canadian Environmental Assessment Agency as well as reports of the Commissioner of the Environment and Sustainable Development".

The Environmental Enforcement Directorate of Environment and Wildlife Canada publishes its own Annual National Enforcement Plan. Environment and Wildlife Canada itself publishes the following additional reports to parliament on:

- Access to Information,
- Canada Water Act,
- Privacy Act,
- Species at Risk annual report,
- Canadian Environmental Protection Act annual report,
- Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade, and
- International Rivers Improvement Act.

In addition, the department publishes: quarterly financial reports, a Five-Year Departmental Evaluation Plan for 2018 to 2023 and a two-year risk-based audit plan for 2018 to 2020.

It can be harder to demonstrate an enforcement body's arm's-length independence from government if it is within the same organisation and ministry that sets the policy and issues the licences for activities which impact the environment. Canada is generally regarded as having strong federal and provincial environmental laws and effective means to enforce them, with well-established public participation, transparency and effective parliamentary oversight. However, points worth noting include:

I. The Enforcement Branch's transparency about its compliance and enforcement policy – having a published enforcement policy indicating compliance priorities and aggravating and mitigating factors in advance can make enforcement more predictable and fairer.
II. Its transparency about enforcement outcomes, for example in its published Environmental Offenders Registry;
III. Its publication of enforcement notifications and penalties; and
IV. The detailed, regular and wide-ranging reports from this Federal department to Canada's Parliament, which can only enhance and assist effective oversight and close involvement, not only in law making but also in results.

4.2. ENVIRONMENTAL AGENCY WITH ENFORCEMENT FUNCTIONS: Environment Agency, England[27]

Within England, the Environment Agency is a non-departmental public agency with statutory functions, and is responsible to the Department of the Environment, Food & Rural Affairs (DEFRA) for:

- Regulating major industry and waste
- Treatment of contaminated land
- Water quality and resources
- Fisheries
- Inland rivers, estuary and harbour navigation, and
- Conservation and ecology.

It is also responsible for managing the risk of flooding from main rivers, reservoirs, estuaries and the sea.

It is therefore both a licencing authority (for example issuing environmental permits for a range of regulated and potentially polluting activities) and an implementation and enforcement body, preparing and conducting monitoring and compliance programmes and bringing prosecutions against companies and individuals in breach of environmental laws.

The agency was originally established under the Environment Act 1995, and brought together the waste management activities of local authorities, the water pollution, regulation and flood defence responsibilities responsibilities of the National Rivers Authority, and the licencing and oversight of permitted installations undertaken by Her Majesty's Inspectorate of Pollution. Further responsibilities have been added under subsequent legislation. It is an agency reporting to and funded through a central government department, the Department for Environment, Food and Rural Affairs (DEFRA), with some additional cost recovery through, for example, charges for environmental permits.

Parliamentary oversight of the agency is achieved through parliamentary scrutiny of DEFRA and its agencies, but the effectiveness of this is enhanced by requirements for regular reporting and having the agency's forward plans and annual reports laid before parliament. The House of Commons Environment, Food and Rural Affairs Committee[28] and the Environmental Audit Committee conduct regular inquiries, and agency officials attend and participate in inquiries by those committees and in other parliamentary inquiries in the House of Lords. In addition to its annual report, which is laid before both Houses of Parliament, the Environment Agency publishes its Enforcement and Sanctions Policy, which sets out how it approaches the task of the implementation and enforcement of environmental laws.

The Environment Agency has undertaken prosecutions and enforcement from its inception. It was established with experienced staff and developed both a published Enforcement and Sanctions Policy and a practice of giving publicity to fines and sanctions as a means of deterring other violations of the environmental laws which it applies. It has been relatively slow to develop new civil and administrative enforcement as an alternative to prosecutions, but now has access to a wider range of regulatory sanctions and has begun experimenting with enforcement undertakings as a further alternative to lengthy and expensive prosecutions.

In common with many regulatory bodies internationally, the agency has to battle for resources, suffers from spending cuts, and is not always assisted by legislation which, for example, mandates that fines are paid to a central Treasury or that it cannot retain more than a proportion of tax recovered in prosecutions for offences such as illegal waste sites. However, on balance it almost certainly benefits from being at arm's-length from its sponsoring department, and both of them are thereby able to maintain a proper distance between individual enforcement decisions and political pressures.

4.3. INSPECTORATE OF THE ENVIRONMENT: Slovakia

In Slovakia, the Ministry of Environment of the Slovak Republic[29] is the central ministry responsible for environmental protection and development including:

1. Nature and landscape protection;
2. Water management, flood protection, protection of water quality and quantity and its rational usage, fisheries with the exception of aquaculture and sea fishing.
3. Air, ozone layer and climate protection;
4. Environmental aspects of planning;
5. Waste management;
6. Assessment of environmental impacts;
7. Provision of a unified system of environment and area monitoring;
8. Geological research and exploration;
9. Protection and control of trade in endangered species of wild fauna and flora; and
10. Genetically modified organisms.

The Slovakia Environment Agency[30] states that its main tasks and areas of responsibility are:

- Fulfilment of selected international obligations of the Slovak Republic in the field of environmental protection;
- Environmental management;
- Waste management, packaging waste and chemical substances in the environment;
- Landscape, its creation and protection and landscape planning;
- Care for the environment and environmental risk assessment;
- Environmental impact assessment and environmental regional planning;
- Assessment of environmental situations and green growth assessment;
- Environmental education and promotion;
- Environmental monitoring and informatics; and
- Environmental projects programming and implementation.

Each year it publishes a 'State of the Environment Report'. The ministry also hosts an analytical unit, the Institute for Environmental Policy. However, the Slovak Inspectorate of the Environment "is a specialised supervisory authority providing for the state supervision and imposing fines on the matters concerning environmental protection and carrying out the municipal administration in the field of integrated pollution prevention and control[31]". It appears to deal with implementation and enforcement matters in water management, air protection, waste management and nature protection, integrated pollution prevention and control and biosafety.

The Agricultural and Environmental Committee of the National Council of the Slovak Republic states that the work of that committee focuses primarily on:

- "Discussing, within its scope of competence, the principal issues of development of the Slovak Republic, especially the implementation of the government manifesto, proposal for the state budget and its implementation, and the final state account;
- Submitting bills and other recommendations for the National Council on matters falling within the competence of the committee;
- Monitoring compliance and implementation of the laws and whether regulations issued for their implementation are consistent with them; and
- cooperating with the state and public administration authorities and professional public and utilizing their ideas and suggestions for its activities."

This rather general statement on its website may not do justice to the full range and impact of the committee's activities. However, a much more detailed account of Slovakia's progress towards full integration with European Union environmental laws can be gained from the Union's 'Environmental Implementation Report 2019 Country Report for Slovakia'[32]. This details more specific challenges for environmental policy and law, including the need to improve waste management, to improve air quality in critical areas, to phase out subsidies to environmentally harmful brown coal, and to improve water management. The Union's report on Slovakia notes national progress on some of these key areas, such as the new Institute for Environmental Policy within the ministry. However, it also calls for further progress on the enforcement of new waste legislation, the lack of robust air quality monitoring and air pollution data, the need for central, regional and local administrations to work independently and together, and the insufficient administrative capacities. The Union report states, "although environmental legislation is relatively strict, enforcement is low".

Parliamentary advisory models

4.4. PARLIAMENTARY COMMISSION MODEL: Commissioner of the Environment and Sustainable Development, Canada[33]

Canada's Commissioner of the Environment and Sustainable Development is responsible for:

- Performance audits;
- Monitoring the sustainable development strategies of federal departments;
- Oversight of the environmental petitions process; and
- Auditing the government's management of environment and sustainable development through reports to parliament.

The commissioner's office is part of the Office of the Auditor General of Canada. The commissioner is appointed by the Auditor General of Canada for a seven-year term, and "provides parliamentarians with objective, independent analysis and recommendations on the federal government's efforts to protect the environment and foster sustainable development". This is a different body from the functional environment ministry and the full-scope environment agency which incorporates the enforcement functions described above. The structure and scope of the commissioner's appointment provides quite strong independence from the pressures of day-to-day politics; but the role is an independent advisory one. It is bound to add to the authority, focus and capacity of parliament's own oversight of federal environmental policies and practices, to be a means of calling attention to environmental problems, and to direct parliamentary time towards issues that may otherwise be overlooked.

4.5. INDEPENDENT ADVISORY COMMITTEE: Committee on Climate Change, United Kingdom[34]

The mandate of the UK Committee on Climate Change (CCC) established under the Climate Change Act 2008, is to provide independent advice to the government on building a low-carbon economy and preparing for climate change. The act requires the setting of five yearly carbon budgets, and regular reporting on progress towards a carbon reduction target set for 2050. The committee reviews the carbon budgets and carbon reduction targets, and reports on the measures necessary to achieve them.

This is an independent advisory committee established by statute, with eight independent members and a secretariat of about 30 staff providing analytical and corporate support. Its members include experts in areas such as climate science, economics, behavioural science, and business. There is an Adaptation Sub-Committee reporting on preparations for climate change adaptation. The committee does not have direct responsibilities for implementation or enforcement and is advisory only. However, its statutory structure ensures that it has some authority and status conferred by Parliament and not simply by the executive.

The committee reports to both the UK government and to the devolved administrations. It is therefore jointly sponsored by DEFRA, the Northern Ireland Executive, the Scottish Government and the Welsh Government. Its annual report on progress towards meeting carbon budgets and the 2050 target is therefore put before the UK Parliament, and by relevant ministers to the Scottish Parliament, the Welsh Parliament and the Northern Ireland Assembly. This is of particular significance when responsibility for environment is now a devolved subject within the UK.

When it was established, parliamentary review committees expressed considerable concern that the CCC would lack authority and be unable to enforce targets and climate change protection measures directly. However, an independent report from the Grantham Research Institute on Climate Change and the Environment concluded in 2018 that: the CCC has had a strong influence on UK climate policy; it has made a material difference to climate policy; that CCC analysis is used in Parliament to push for greater ambition; and that the CCC has gained a reputation as an authoritative advisor.

The model is somewhat similar to that of the parliamentary commissioner. The CCC derives its authority from factors including: the experience of its personnel and the respect which its reports attract, its detachment from party politics (politicians of all parties refer to its impartial findings), its dedicated focus, its independent structure and reporting lines to the UK and all devolved Parliaments, and the quality of the constituting legislation and its regular reporting requirements, which mean in practice that the CCC's recommendations are regularly before Parliament and not forgotten.

4.6. PARLIAMENTARY COMMISSIONER MODEL: Parliamentary Commissioner for the Environment, New Zealand[35]
The primary role of the Parliamentary Commissioner for the Environment, New Zealand, is to give independent advice on environmental issues and policies to parliament. The commissioner is an independent officer of the New Zealand Parliament, appointed by the governor-general on the recommendations of the House of Representatives for a five-year term under the Environment Act 1986.

All of the commissioner's reports are tabled in parliament by the Speaker. Some reports contain recommendations for change, while others are primarily educational. The commissioner also makes submissions to select committees on policy proposals, such as proposed changes to legislation.

The commissioner's office states that the "acceptance and effectiveness of the commissioner's advice depends to a large degree on the independence, integrity and quality of the investigations undertaken by the office". In 2014 the commissioner was given a new function: writing commentaries on "state of the environment reports" produced by the Ministry of the Environment and Statistics, New Zealand.

The commissioner states that his assistance to parliament is his highest work priority and is governed by a code of practice developed through the Officers of Parliament Committee. The commissioner also assists parliament through briefings to select committees or by open invitation to members of parliament.

This model, which has attracted wide interest from other jurisdictions, has established an independent advisory office with a protected status as an Officer of the New Zealand Parliament. The commissioner does not derive his or her authority from the conduct of day-to-day enforcement.

Hybrid approach

4.7. Proposal for Office of Environmental Protection, England[36]
In December 2018 the UK government published draft clauses of an Environment (Principles and Governance) Bill. These were supposed to address the arrangements for the effective enforcement of environmental laws in England after the UK left the European Union, when enforcement by the European Commission and the Court of Justice of the European Union would no longer be available. The clauses envisaged the establishment of an Office for Environmental Protection for England with powers that would enable the government and public authorities to be called to account for breaches of environmental laws.

In the course of the pre-legislative scrutiny of the proposed body, the structure became controversial. Whereas in consultation papers the UK government had proposed a robustly independent body, answerable to Parliament and with a parliamentary role in making appointments and overseeing funding, the clauses originally proposed would have had the body appointed and funded by the Secretary of State for the Environment, Food and Rural Affairs.

The submissions of many commentators identified the independence and mandate of the new body as a key issue. If the new Office for Environmental Protection was actually to step into the role currently exercised by the European Union, and to be able to call government departments and public bodies to account, then the original structure proposed appeared to be insufficiently independent. If it gave unpopular advice, it might risk abolition, or having its funding cut off. Parliamentarians and many of those giving evidence to them called for a return to the original proposals made by the UK government's DEFRA, and for Parliament to have a role both in the appointment of the officers of the body and in securing its funding. The reports (referenced above) of the two key House of Commons committees conducting pre-legislative scrutiny of the Bill have now endorsed and amplified the concerns of the majority of witnesses who participated in their evidence sessions.

4.8. Findings from Comparison
This section of the report is not a detailed academic study, but an attempt to assess examples of different institutional approaches to the implementation of environmental laws.

Three examples have been given of the parliamentary advisory model (I. Commissioner of the Environment and Sustainable Development, Canada, II. Committee on Climate Change, United Kingdom, and III. Parliamentary Commissioner of the Environment, New Zealand). Each appears to have been successful and to have contributed significantly to the focus and authority of parliamentary oversight of key environmental issues. In each case, care has been taken to provide the commissioner with standing, authority and functional independence. In Canada, the commissioner's office is part of the Auditor General's department. In the UK, the Committee on Climate Change has functions set out in statute and reports to each of the Parliaments within the UK. In New Zealand, the commissioner is an officer of the parliament itself.

The lesson for the proposed Office for Environmental Protection for England (according to many of the witnesses at the House of Commons committees' pre-legislative scrutiny, and now two House of Commons committee reports) appears to be that if that body is to be given additional duties and functions in the form of being able to call government itself to account, it will certainly need very clear independence and the protection of a relationship with parliament itself, instead of being wholly answerable to and funded by the executive.

Parliamentary commissioners for the environment may also be one model that could be of real assistance in jurisdictions without large resources, as they do not necessarily require large establishments. However, these commissioners do not typically undertake implementation of enforcement themselves.

As is noted elsewhere in this report, the effective independence of the regulator is an international legal requirement in some parallel legal systems such as nuclear law. In the environmental context, it can also bring significant advantages in terms of practical and perceived independence from political interference. However, it is possible for implementation and enforcement to be undertaken successfully within a ministry, as with Environment and Climate Change Canada; but if that is done, it must certainly help to have a dedicated enforcement capability and experienced professional staff, published enforcement policies, maximum transparency and regular reporting to parliament, and close involvement and oversight. Equally, there can be practical advantages in the perception and culture of independent enforcement, as developed by the Environment Agency for England.

The example from Slovakia suggests that notwithstanding the existence of an independent enforcement authority, practical and resource constraints and overall administrative capacity still determine the success or otherwise of enforcement outcomes. This appears to be the right structure to indicate a measure of effective distance and functional independence from government and the executive; however, where the EU report indicates that more needs to be done to make enforcement fully effective, the answer may lie in the area of resources and capacity.

4.9. Effective Approaches and Resources for Parliaments
To some extent, the debates about available resources apply in all jurisdictions and it would probably be hard to find an employee of any environment ministry or environment agency worldwide who thought that they had all the resources necessary to carry out their responsibilities. However, there are some approaches to effective parliamentary participation where resources are tight which may offer some assistance.

As this report has attempted to show, there is a variety of readily available international material on best practice models which parliaments can use as a starting point in their inquiries and oversight. These absolutely need to be adapted and applied to the particular circumstances of parliaments' local jurisdictions, and simply copying from such models can be a very ineffective way of achieving results. But methods used elsewhere do offer templates, ideas about best practice, categories of issues to consider, models for oversight and scrutiny, and possible areas for parliaments to adapt in achieving their own oversight.

Countries with resource-constrained parliaments may find significant advantages in achieving a common approach by cooperation with similar jurisdictions. Comparisons of effective approaches can reinforce individual parliamentary initiatives in the environmental field.

Parliaments can derive significant civil society assistance in their tasks of oversight, questioning and review by collaborating with the range of effective NGOs, whether international or national.

In most cases, making, reviewing and applying environmental laws will be strengthened by active public participation. Members of the public can see where their participation has made a difference if, for example, laws and practices encourage transparency, there is regular and public reporting on the environment, public attendance is allowed at parliamentary hearings and committee hearings, and there is regular and accessible reporting back to the public. Public participation is not in itself expensive and can be developed in all jurisdictions.

Text Box 10: CPA and UNEP Partnership

The Small Branches Network of the Commonwealth Parliamentary Association (CPA) has established a partnership with the UNEP to examine the role of legislators in combating climate change and to support Parliamentarians in the parliaments and legislatures in some of the Commonwealth's jurisdictions with populations of under 500,000 people.

(See:www.cpahq.org/cpahq/Main/News/News_Items/CPA_Small_Branches_Climate_Change_Workshop_Oct_2018_post_event.aspx)

In many jurisdictions, active participation by local academics, and close collaboration between for example parliaments and experts from local universities, can offer significant advantages, often at lower cost than international consultants. In many instances, locally based academics understand and already work with the local constitution and environmental laws. Academic participation in parliamentary work can take many forms, such as: the provision of expert advisers for particular parliamentary inquiries, writing reports in advance of passage of environmental legislation, reviewing the implementation and enforcement of international environmental agreements, and providing input on those aspects of environmental laws concerned with data and environmental science. They can help parliamentarians to know where to focus their questions, work and inquiries.

Many international aid and development agencies have come to recognise the importance of environmental laws in the overall development picture, and have programmes to assist with, for example, capacity development for environmental regulators. If the UNEP is right that there is a real need to focus on gaps in implementation and enforcement rather than the capacity to pass and enact framework environmental legislation, then parliaments in all countries, not just those which are resource-constrained, need to share this focus.

In some instances, the use of parallel sets of statutory responsibilities applied to the same environmental regulator can enable it to exercise different sets of powers without the costs of establishing completely new bodies and having to find the resources and staff for them. For example, a country wanting to set up an environmental regulator with implementation and enforcement powers may already have a local authority or a regulator for health and safety with an existing set of enforcement powers. In some cases, it may make sense to enact the environmental legislation, set out the necessary powers for environmental inspectors and then appoint personnel from existing regulators as the inspectors, rather than setting up an entirely separate environmental regulator.

Parliaments also need to develop strategies to achieve equality of information and as far as possible equality of bargaining power when considering oversight of long-term or high-value contracts with major environmental implications, such as large-scale use of a country's fish stocks within its exclusive economic zone by another country, or major mining or logging concessions granted to a well-resourced multinational company. It may be the case that the country concerned does not have within its environment ministry or environmental agency as many fisheries scientists as the country offering to exploit its exclusive economic zone; or as many geologists, geoscientists, mining experts and ecologists as the multinational mining company seeking the extractive concessions. There are ways in which this disparity of resources can be evened out, at least in part. For example, a country without the resources to provide an independent scientific report from an authoritative agency to assess the sustainable level of exploitation of fish stocks and then a system of monitoring and inspection to ensure that these limits are adhered to, could specify that these costs must be borne by a company seeking to exploit its resources. Legislation could require that a plan to provide this should accompany any application. Similarly, with the mining example, a project might require a detailed environmental impact assessment by external and independent assessors, continuous near-real-time monitoring, and a credible environmental restoration scheme backed by financial guarantees or bonds after mining has ceased. These could be part of the price of permissions to operate. Active scrutiny of such arrangements by parliaments can confer major advantages.

Many reports and much international practice in all sorts of jurisdictions – large and small, wealthy, developing, more or less democratic – underline that the effectiveness or ineffectiveness of environmental laws lies not so much in their drafting as in their implementation and enforcement. It suggests that parliaments need to augment the attention, oversight and legislative scrutiny given to environmental laws to include the extent needed to help make implementation and enforcement effective. Simply passing the laws is not enough.

Environmental laws have some unique characteristics, such as reliance upon effective data gathering and monitoring, environmental science and in some cases, reliance upon international treaties and conventions. Environmental issues of key concern have also been changing in ways which need to be reflected in updated laws, with a need to protect human health effectively and to recognise and protect finite resources, habitats and species. There is a need to reflect sustainable development, and to participate in coordinated international action in areas of key concern such as climate change and marine protection. However, environmental laws are not different from other laws in many ways, and will benefit from oversight, scrutiny and close attention, or suffer from the lack of it.

How then can implementation and enforcement be made effective? There are many different models within ministries and agencies by which this can be done effectively, and several different approaches from criminal enforcement to civil and administrative enforcement. Some requirements for effective implementation and enforcement apply equally to ministries and agencies. It will always be necessary to have the political will for environmental laws to be enforced: it is not difficult to find entrenched and powerful interests unwilling to comply with environmental laws when compliance is burdensome or more expensive than non-compliance.

5. Conclusions

Parliaments can play a key role in reflecting a determination to enforce the laws and thereby showing the political will for this to be done. The effectiveness of all systems of enforcement depends upon adequate levels of resources, whether this is done in a ministry or an agency. Resources include basic funding, monitoring throughout the environment, and human resources in terms of adequate numbers of sufficiently well-trained inspectors with sufficient powers and resources to do their job. Where necessary, those charged with enforcement need to be able to bring cases, backed up by sufficient science and data. All effective enforcement, whether undertaken by a ministry or an agency, requires clear laws and clear mandates for the enforcement personnel to work with.

For enforcement, independence of the enforcement authority can be key, both at the practical level of avoiding political interference in the enforcement decisions and practice, and in public perception. Here there can be significant advantages in having a separate, arm's-length, independent environment agency seen to be distinct from the political direction of the environment ministry when it comes to individual decisions, for example on whether to prosecute a corporation which is in breach of environmental laws. Enforcement, and even prosecutions, can be done successfully within ministries; but it is harder to achieve that perception of freedom from political interference, and sometimes governments recognise this issue and take steps to underline the statutory authority of any enforcement or prosecution function within their ministries. This was done, for example, by the UK government in statutory provisions to enhance the status of the Drinking Water Inspectorate within the UK government's DEFRA.

Photo: UNclimatechange / UN Climate Change Conference (COP25 2019)e

Separately from the issue of implementation and enforcement, some parliaments have enjoyed considerable success with the parliamentary commissioner model. This can offer improved oversight, better informed and better targeted reports and hearings, and a considerable addition to the authority of parliamentary consideration of the environment which therefore demands an improved response from government. As one example, the UK Committee on Climate Change now seems to command wide respect across party lines, and across all of the devolved administrations to which it reports, with separate reports to the UK Parliament, the Scottish Parliament, Northern Ireland Assembly and the Welsh Parliament. As noted in this report, factors in its success appear to include: its relationship with all of the UK's Parliaments, its leadership by non-partisan recognised experts, and its system of reporting whereby its conclusions are regularly brought before government, parliaments and the public. Its respected impartial expertise is widely referred to and relied upon by politicians of all parties and is therefore very hard to ignore. New Zealand, by making the Parliamentary Commissioner for the Environment an independently appointed Officer of the Parliament underlines the authority of the office.

Many of the most successful approaches will use transparency, public right-to-know legislation and public participation as benefits not threats, and will engage the energies of civil society in support of the environment instead of trying to shut it out. The best environmental laws, with the best prospects of long-term success, are those in which the public shares the objectives of the laws, where it has been involved and consulted, and feels the laws to be its concern and not just the preserve of legislators or the executive.

The fate of some governments and many millions of people in the next decades will be determined by the success or failure of the international community in addressing key environmental issues, including: climate change, water shortages, air pollution, and land and soil degradation. All systems of government, even those which are not recognisable as democracies, come back in the end to the issue of public consent. Parliaments can reflect that consent and harness the energies of the people that they represent and the younger generations for whose futures these laws exist.

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