

# Strengthening Environmental Rule of Law: Enforcement, Combatting Corruption, and Encouraging Citizen Suits

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## INTRODUCTION

National legislation alone cannot reverse the engines heading toward environmental degradation and redirect them toward environmental sustainability.<sup>1</sup> Rather, an effective environmental regulatory program depends heavily on its enforcement system, which must adopt cooperative approaches among the government, the private sector, and individual citizens to solve environmental problems.<sup>2</sup> In developing countries with weak or imbalanced cooperation among these actors, “environmental rule of law” suffers.

Understanding the concept of environmental rule of law begins with the following basic principle: a nation with strong rule of law has a regulatory system in which laws are public knowledge, clear in meaning, and equally applicable to everyone.<sup>3</sup> Those who help promote rule of law also include in their definitions of the principle the following: government and private sector accountability, protection of fundamental rights, fair and efficient access to the lawmaking process, and timely deliverance of justice.<sup>4</sup> Considering that laws in the environmental context aim to achieve two policy objectives—the protection of public health from environmental risk, such as exposure to pollutants, and the protection and preservation of natural resources<sup>5</sup>—environmental rule of law may describe a system of environmental laws that are consistently and equally applied to everyone and are effectively and fairly enforced against violators.<sup>6</sup>

Achieving environmental rule of law largely depends on the extent to which laws can exert control over behavior that causes environmental harm, which in turn depends on the interaction between the government and the private sector. This interaction, however, creates opportunities for corruption. In many countries, the abuse of public power for private gain may easily upset or delay environmental law goals.

This note analyzes how increasing access to environmental citizen suits helps combat corruption and strengthen the establishment of environmental rule of law in developing countries. Part I provides an overview of the development of environmental law in developing countries, from creating environmental statutes to delegating enforcement authority to executive agencies and allowing judicial review of environmental decisions. Part II explores the problem of environmental

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1. See A. Dan Tarlock & Pedro Tarak, *An Overview of Comparative Environmental Law*, 13 DENV. J. INT'L L. & POL'Y 85, 97 (1983) (“Legislative declarations of environmental policies are meaningless without the creation of institutions to implement them.”).

2. See Matthew D. Zinn, *Policing Environmental Regulatory Enforcement: Cooperation, Capture, and Citizens Suits*, 21 STAN. ENVTL. L.J. 81, 83 (2002).

3. Thomas Carothers, *The Rule of Law Revival*, 77 FOREIGN AFF. 95, 96 (1998).

4. See MARK DAVID AGRAS ET AL., THE WORLD JUSTICE PROJECT RULE OF LAW INDEX 3 (2013).

5. See A. Dan Tarlock, *The Future of Environmental ‘Rule of Law’ Litigation*, 17 PACE ENVTL. L. REV. 237, 239 (2000).

6. See Elizabeth Barrett Ristorph, *The Role of Philippine Courts in Establishing the Environmental Rule of Law*, 42 ENVTL. L. REP. 10866, 10867 (2012).

corruption, including bribery of officials to obtain environmental permits, inconsistent enforcement of environmental standards, and governments' reluctance to hold violators liable. Part III examines environmental citizen suits as a mechanism for holding the government accountable for its environmental duties, discusses the obstacles to bringing suit, and presents potential solutions for lowering the barriers of access to courts. Lastly, Part IV suggests methods to measure the success of the framework to uphold environmental rule of law and to identify problem areas so that the system may continually improve.

## I. ENVIRONMENTAL LAW IN DEVELOPING COUNTRIES

Since the early 1970s, developing countries have devoted more attention and resources to environmental problems by establishing new environmental programs, passing regulations to protect the environment, and creating new government agencies to handle environmental affairs.<sup>7</sup> Factors accounting for variations among countries' levels of environmental protection and the means chosen to attain such levels include industrialization, political organization, ideological values, and general public demand for governmental action to solve environmental problems.<sup>8</sup> While understanding a country's environmental policies requires thorough knowledge of its history, culture, and political organization,<sup>9</sup> many countries' environmental protection programs consist of at least three basic building blocks: (A) specific statutes or constitutional provisions setting environmental standards or creating environmental rights; (B) the expansion of regulatory authority to manage environmental policies; and (C) the judiciary providing remedies to environmental harms and upholding environmental rights. Additionally, (D) countries can strengthen their environmental rule of law in the broader context of political organization, level of industrialization, and technological development.

### A. CREATING ENVIRONMENTAL STATUTES

Before a country can establish environmental rule of law, the country must first enact environmental laws. Attitudes among developing countries toward environmental protection changed in the 1970s, specifically after the 1972 United Nations Conference on the Human Environment in Stockholm (the "Stockholm Conference").<sup>10</sup> Previously, developing countries considered environmental problems to exist only in more advanced, industrialized countries and found the

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7. See H. Jefferey Leonard & David Morell, *Emergence of Environmental Concern in Developing Countries: A Political Perspective*, 17 STAN. J. INT'L L. 281, 283 (1981).

8. See Tarlock & Tarak, *supra* note 1, at 90.

9. See *id.*

10. See John Ntambirweki, *The Developing Countries in the Evolution of an International Environmental Law*, 14 HASTINGS INT'L & COMP. L. REV. 905, 905 (1990).

conflict between environmental and economic development irreconcilable.<sup>11</sup> Now, many developing countries have implemented national environmental programs, often borrowing statutory language and structures from developed countries.<sup>12</sup> Many countries address environmental gaps by adopting general policy statements to protect the environment, or by forming specific legislation in areas such as agriculture, food, mining, health, forestry, and transportation.<sup>13</sup> Some countries go even further by amending their constitutions to include environmental goals, which can provide an additional layer of authority for solving environmental problems that a country's existing legislative and regulatory frameworks do not address.<sup>14</sup> The Sri Lankan Constitution's obligation for the government to "protect, preserve and improve the environment for the benefit of the community"<sup>15</sup> provides an example of one developing country's strong commitment to environmental policy objectives through legislation.

#### B. DELEGATING ENFORCEMENT AUTHORITY TO EXECUTIVE AGENCIES

Although many developing countries are willing to support and establish environmental legislation, their governments must also create institutional capacity to ensure the legislation's success—a task that proves to be complex. One scholar explains that countries wishing to respond to environmental problems must confront the problem of choosing among various modes of institutional reform.<sup>16</sup> A country may decide to expand the jurisdiction of an existing regulatory body, coordinate existing jurisdictions through a central coordinating body, or create new regulatory institutions to manage environmental policy.<sup>17</sup> Most often, countries choose to create new national regulatory institutions to promulgate environmental standards. For example, by 1980, less than a decade after the Stockholm Conference, developing countries that had established national environmental agencies or commissions included India, Malaysia, the Philippines, Turkey, Singapore, Thailand, Iran, Bangladesh, Venezuela, and Nigeria.<sup>18</sup>

This centralization of regulatory authority allows the government to formulate uniform standards at a high level and may be the most cost- and time-efficient

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11. See Whitman Bassow, *The Third World: Changing Attitudes Toward Environmental Protection*, 444 ANNALS AM. ACAD. POL. & SOC. SCI. 112, 113 (1979).

12. The Philippines, for example, has adopted many laws similar to those of the United States. See, e.g., Ristroph, *supra* note 6, at 10872.

13. William Onvizu, *International Environmental Law, the Public's Health, and Domestic Environmental Governance in Developing Countries*, 21 AM. U. INT'L L. REV. 597, 644 (2006).

14. Carl Bruch et al., *Constitutional Environmental Law: Giving Force to Fundamental Principles in Africa*, 26 COLUM. J. ENVTL. L. 131, 134 (2001).

15. Bassow, *supra* note 11, at 116.

16. Tarlock & Tarak, *supra* note 1, at 98.

17. *Id.*

18. Bassow, *supra* note 11, at 115-19.

method.<sup>19</sup> However, too much centralization may fail to account for a specific country's diverse regions with differing environmental protection preferences and needs.<sup>20</sup> Nevertheless, in most cases, effective protection against environmental hazards requires an arm of the central government with an exclusive mandate to promote environmental goals.<sup>21</sup> This government arm must have the power to decide how to allocate environmental costs, which, in most countries, translates into the ability to license discharges or to mandate what fuels, chemicals, or other inputs to industrial processes that cause environmental degradation may be used and under what circumstances.<sup>22</sup>

### C. ALLOWING JUDICIAL REVIEW

The judiciary also plays an important role in implementing the environmental rule of law by providing remedies to environmental harms and upholding constitutional rights to the environment. Courts have produced numerous decisions to balance environmental and economic considerations, promote conservation, achieve environmental justice, and implement the goals of sustainability.<sup>23</sup> The Indian Supreme Court, for example, has had notable success in issuing orders to protect natural resources as well as address air pollution and waste disposal in urban areas.<sup>24</sup> At the same time, many courts in developing countries lack resources or remain too disempowered to render just decisions on environmental laws.<sup>25</sup> At the World Summit on Sustainable Development, over 120 judges from over 60 countries gathered to discuss the role of the judiciary in promoting the rule of law in the field of the environment. They concluded that the deficiency in knowledge, relevant skills, and information with regard to environmental law contributed to the lack of effective enforcement of environmental law.<sup>26</sup> As a result of this summit, the United Nations Environment Programme set

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19. See Tarlock & Tarak, *supra* note 1, at 99-100.

20. For further discussion on the weaknesses of centralization and the advantages of decentralizing environmental regulatory authority, see Richard L. Revesz, *The Race to the Bottom and Federal Environmental Regulation: A Response to Critics*, 82 MINN. L. REV. 535 (1998).

21. See Tarlock & Tarak, *supra* note 1, at 108.

22. *Id.*

23. LAL KURUKULASURIYA, *THE ROLE OF THE JUDICIARY IN PROMOTING ENVIRONMENTAL GOVERNANCE AND THE RULE OF LAW* 8 (2003).

24. *E.g.*, T.N. Godavarman Thirumulpad v. Union of India & Ors, Writ Petition No. 202 of 1995 (restricting logging in national parks and wildlife sanctuaries), available at <http://judis.nic.in/supremecourt/imgs1.aspx?filename=41309>; M.C. Mehta v. Union of India, Writ Petition No. 13381 of 1984 (enforcing measures to combat air pollution such as a ban on coal-based facilities near the Taj Mahal); M.C. Mehta v. Union of India, (1997) 3 S.C.C. 715, 720 (1996) (India) (issuing injunctions to close hazardous industries in Delhi).

25. Ristroph, *supra* note 6, at 10870 (describing situations in Ecuador, where the court lacks power to impose sanctions on the government, and in Kenya, where the courts are out of the realm of the rural poor who might seek redress under environmental laws because courts do not conduct business in the vernacular and court fees remain too high).

26. KURUKULASURIYA, *supra* note 23, at 12-13.

an agenda to help carry out national activities to strengthen the role of the judiciary in environmental governance and began to develop a series of environmental law training materials, such as training manuals and handbooks on environmental law.<sup>27</sup> As the international community recognizes the role the judiciary plays in providing for the environmental rule of law, individual countries, in partnership with global organizations, have invested in building the capacity of their courts to adjudicate environmental cases.<sup>28</sup>

#### D. STRENGTHENING ENVIRONMENTAL ENFORCEMENT

While many developing countries have taken leaps in establishing environmental law in their jurisdictions, many agree that the complete chain of environmental enforcement in these countries still needs strengthening.<sup>29</sup> Lawmakers may need to rework their environmental laws, many of which have been adopted from developed countries, to fit the specific economic, political, and ideological conditions of a developing country.<sup>30</sup> Additionally, many environmental agencies are still far away from implementing and enforcing standards to reduce pollution and environmental degradation. Lastly, courts are still building capacity in order to knowledgeably uphold environmental protections.<sup>31</sup> Nevertheless, many developing countries have established a basic framework for achieving their environmental goals. Identifying specific obstacles to effective environmental protections will be key to strengthening these countries' frameworks.

These obstacles and competing interests frequently depend on the country's commitment to industrialization, political organization, culture, ideology, and public awareness of environmental problems.<sup>32</sup> Countries hoping for economic growth might find environmental protection counter-productive to this goal. Also, whether democratic or authoritarian regimes better address environmental issues remains a subject of debate.<sup>33</sup> A country's political ideology also influ-

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27. *Id.* at 14-15.

28. For example, in 2010, the United Nations Environment Programme and the Asian Development Bank sponsored the Asian Judges Symposium on Environmental Decision-Making, the Rule of Law, and Environmental Justice, where judges gathered to collect information and knowledge on what Asian and developed countries are doing on environmental adjudication. ASIAN DEV. BANK, ASIAN JUDGES SYMPOSIUM ON ENVIRONMENTAL DECISION MAKING, THE RULE OF LAW, AND ENVIRONMENTAL JUSTICE iv (2010) [hereinafter ADB SYMPOSIUM].

29. *Id.* at v.

30. See Ristroph, *supra* note 6, at 10869 ("In environmental law and other legal areas, developing countries have often borrowed statutory language and structures from developed countries. As many have pointed out, these models often fail due to limited capacity, corruption, and various social, economic, political, and geographical factors.").

31. ADB SYMPOSIUM, *supra* note 28, at 96 ("Although institutional mechanisms will vary from country to country, the emphasis should be on strengthening the capacity for environmental decision making and the integrity of the process . . .").

32. Tarlock & Tarak, *supra* note 1, at 90-91.

33. Compare *id.* at 91 (asserting that environmental problems are less likely to engage the attention of ruling elites in totalitarian regimes, who are more concerned with economic, military, and internal security matters),

ences the allocation of regulatory authority among different units of government, the division of power between formal institutions and the public, and the receptivity of the government to pressure for increased environmental protection.<sup>34</sup> Lastly, the extent to which a country's political system allows interest groups to organize and participate in the political process influences how a country solves environmental problems.<sup>35</sup> In sum, environmental goals and substantive standards often correspond to the level of industrial and technological development of a country, while regulatory strategies reflect its political, economic, and social organization.<sup>36</sup>

## II. CORRUPTION AND THE ENVIRONMENT: A COMMON PROBLEM IN DEVELOPING COUNTRIES

A single solution cannot address the obstacles to environmental rule of law; rather, a combined effort among various sectors to improve efficacy across all parts of an environmental regulatory system is necessary. The relationship between the private sector and government authorities is part of the regulatory system that is particularly susceptible to weakness. Environmental regulation creates numerous contact points between these actors, creating opportunities for corruption. This section explores (A) how widespread corruption exists and how it is carried out in the environmental sector; (B) how corruption negatively impacts the environment; and (C) how developing countries are particularly susceptible to corruption in the environmental sector, thus increasing the need to deter environmental law violators. Accordingly, addressing and eliminating corruption remains an important objective for developing countries that seek to strengthen environmental rule of law.

### A. COMMON CORRUPTION PRACTICES

Corruption in the environmental sector may occur in a variety of ways. The United Nations noted that practices such as embezzlement during the implementation of environmental programs, corruption in the issuance of permits and licenses for natural resource exploitation, and petty bribery of law enforcers have had devastating impacts on the environment.<sup>37</sup> In Peru, for example, a nonprofit environmental investigative agency exposed numerous companies and govern-

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with RICHARD LAZARUS, *THE MAKING OF ENVIRONMENTAL LAW* 19 (2004) (noting that many predicted only authoritarian regimes could accomplish environmental goals).

34. Tarlock & Tarak, *supra* note 1, at 92.

35. *Id.* at 93.

36. *Id.* at 95.

37. See UNITED NATIONS OFFICE ON DRUGS AND CRIME, *IMPACT OF CORRUPTION ON THE ENVIRONMENT AND THE UNITED NATIONS CONVENTION AGAINST CORRUPTION AS A TOOL TO ADDRESS IT* 1 (2011), available at [http://www.unodc.org/documents/treaties/UNCAC/COSP/session4/side-events/Programme\\_of\\_special\\_event\\_on\\_corruption\\_in\\_the\\_environment\\_-\\_19\\_October\\_2011.pdf](http://www.unodc.org/documents/treaties/UNCAC/COSP/session4/side-events/Programme_of_special_event_on_corruption_in_the_environment_-_19_October_2011.pdf).

ment officials engaging in illegal logging.<sup>38</sup> The agency revealed that the Peruvian authorities issued false documents, which they sold on the black market, where they were used to launder wood extracted illegally from national parks and other public lands.<sup>39</sup> Bribery and nepotism have plagued the awarding of licenses in the water sector as well.<sup>40</sup> The Lesotho Highlands Water Project was another highly publicized example.<sup>41</sup> In 2002, the project's chief executive was sentenced to prison for accepting bribes from eighteen multinational companies vying for construction contracts.<sup>42</sup> Reportedly, Japanese fishermen also paid bribes to Russian officials to obtain fishing rights.<sup>43</sup> In the African coastal states, allegations of officials with a direct interest in the fishing industry illegally issuing fishing licenses have also surfaced.<sup>44</sup> These are just a few examples of how corruption continues to undermine effective environmental regulation.

## B. RESULTS AND IMPACT

The environmental and economic results of environmental crimes enabled by corruption are tremendous, causing the loss of natural resources, the degradation of habitats, and negative impacts on the livelihood of local communities. For example, illegal logging generates approximately \$10 billion to \$15 billion in criminal proceeds<sup>45</sup> and contributes to an unprecedented loss in biodiversity, threat to endangered species, and increase in carbon emissions that cause climate change.<sup>46</sup> In many parts of the world, corrupt practices have prevented water supplies from reaching the most vulnerable, resource-starved populations. According to the United Nations Development Programme, corruption increases the costs of water infrastructure by as much as forty percent, equating to an additional \$12 billion per year spent on providing clean water.<sup>47</sup> As demonstrated

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38. See Marcus Asner et al., *The Foreign Corrupt Practices Act and Overseas Environmental Crimes: How Did We Get Here and What Happens Next*, BLOOMBERG BNA (July 13, 2012), <http://www.bna.com/overseas-environmental-crimes/>.

39. See *id.*

40. See UNITED NATIONS OFFICE ON DRUGS & CRIME, CORRUPTION AND THE ENVIRONMENT, available at [http://reliefweb.int/sites/reliefweb.int/files/resources/corr12\\_fs\\_ENVIRONMENT\\_en.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/corr12_fs_ENVIRONMENT_en.pdf).

41. See Richard Matthews, *Corruption Undermines Environment Protections*, THE GREEN MARKET ORACLE (July 19, 2013), <http://www.thegreenmarketoracle.com/2013/07/corruption-undermines-environmental.html>.

42. *Id.*

43. See Asner et al., *supra* note 38.

44. See *id.*

45. See MARILYNE PEREIRA GONCALVES ET AL., WORLD BANK, JUSTICE FOR FORESTS: IMPROVING CRIMINAL JUSTICE EFFORTS TO COMBAT ILLEGAL LOGGING vii (2012), available at [http://siteresources.worldbank.org/EXTFINANCIALSECTOR/Resources/Illegal\\_Logging.pdf](http://siteresources.worldbank.org/EXTFINANCIALSECTOR/Resources/Illegal_Logging.pdf).

46. See *id.* at 2.

47. See JEROEN VOS, UNITED NATIONS DEV. PROGRAMME, FIGHTING CORRUPTION IN THE WATER SECTOR: METHODS, TOOLS AND GOOD PRACTICES 18 (2011), available at <http://www.undp.org/content/dam/undp/library/Democratic%20Governance/IP/Anticorruption%20Methods%20and%20Tools%20in%20Water%20Lo%20Res.pdf>.



by these two sectors, corruption adds dramatically to the costs of environmental protection.

### C. ELIMINATING CORRUPTION IN DEVELOPING COUNTRIES THROUGH DETERRENCE

The impact of environmental corruption has special significance for developing countries. First, environmental degradation affects the poor the most.<sup>48</sup> Second, there is a correlation between the countries most vulnerable to environmental degradation and most affected by corruption.<sup>49</sup> These findings demonstrate a link between poverty, environmental degradation, and corruption in developing countries.

Thus, developing countries urgently need to strengthen their capacity to prevent corruption, which often has dramatic negative impacts on the environmental sector. Factors that encourage corruption fall into three categories: motive, opportunity, and low probability of detection and prosecution.<sup>50</sup> The promise of financial gain in exploiting natural resources often provides motive. The points of contact between the private sector and government authorities create the opportunity for corruption.<sup>51</sup> Lastly, continued corruption in the environmental sector demonstrates that the low probability of detection and prosecution in many countries has not deterred violators.

Addressing this last factor may be the most effective method of eliminating corruption in the context of environmental regulation enforcement. First, many environmental regulations fundamentally depend on interactions between the government and private parties to impose environmental controls. Second, as long as natural resources remain valuable, potential violators' financial motive for illegal exploitation will still exist. In fact, the more that environmental laws attempt to conserve depleting natural resources, the more valuable these resources will become according to the basic economic theory of supply and demand. Therefore, countries plagued with corruption in the environmental sector benefit most from attempting to deter violators with the prospect of exposure and sanctions. Doing so involves addressing the invisibility and tolerance of corruption; a country must first take notice of corruption occurring within its jurisdiction and lower its tolerance of corruption by imposing punishments.

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48. KURUKULASURIYA, *supra* note 23, at 13.

49. For example, not even one of the twenty countries most impacted by climate change scored high on a report on global corruption, which ranks countries based on their risk for corruption, where zero means "extremely corrupt" and ten means "very clean." See Matthews, *supra* note 41.

50. See WORLD BANK, WORLD DEVELOPMENT REPORT 1997: THE STATE IN A CHANGING WORLD 103 (1997), available at <https://openknowledge.worldbank.org/handle/10986/5980>.

51. Selçuk Akçay, *Corruption and Human Development*, 26 CATO J. 29, 29 (2006), available at <http://achc.org.co/documentos/investigacion/recomendados/R4.pdf> ("Corruption . . . is most likely to occur where public and private sector meet.").

### III. ENCOURAGING CITIZEN SUITS TO DISCOURAGE CORRUPTION

This section explores ways in which citizens can play a role in exposing and eliminating corruption in the environmental sector. One method—perhaps the most practical one—is environmental citizen suits. This section discusses the necessary factors for enabling citizens to bring environmental suits and the obstacles citizens may face in bringing them. Lastly, efforts in the Philippines and India provide practical examples of how countries can enhance access to courts for environmental lawsuits.

#### A. PUBLIC PARTICIPATION IN ENVIRONMENTAL ENFORCEMENT

One method of increasing the visibility of environmental corruption is to involve citizens to improve the fairness and effectiveness of environmental enforcement. The importance of public participation in environmental enforcement was affirmed by many countries in the 1992 Rio Declaration on Environment and Development, in which countries agreed that:

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.<sup>52</sup>

There thus exists a strong international consensus that civil society plays a crucial role in enforcing environmental regulations. In fact, the benefits of public participation in environmental enforcement include the ability to utilize the direct, immediate connection between individuals and their environment as well as the improved quality of enforcement decisions through the injection of varied non-institutional perspectives and information sources.<sup>53</sup>

Citizens have unique knowledge of and interest in protecting the environment in which they live daily. For example, a government agency might not consider a small environmental issue significant enough to justify action on a national level, but a small rural community might find remedying this problem vital.<sup>54</sup> Because citizens can make daily observations about their environment, they have a

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52. United Nations Conference on Environment and Development, Rio de Janeiro, Braz., June 3-14, 1992, *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. I), at 5 (Aug. 12, 1992).

53. E. ROBERTS & J. DOBBINS, *THE ROLE OF THE CITIZEN IN ENVIRONMENTAL ENFORCEMENT*, available at <http://www.inece.org/2ndvol1/roberts.htm> (last visited Mar. 12, 2015).

54. *Id.*

perspective that other institutions and actors simply do not have. After all, their interests may align differently with regard to the environment than those in the government or private sector. Citizens may be more inclined to value the environment for its aesthetic and recreational uses<sup>55</sup> as opposed to solely for its economic use. Therefore, citizens provide an indispensable resource for filling gaps in environmental enforcement.

Citizens can become involved in environmental enforcement in a number of ways. Citizens can contribute to environmental enforcement through gathering information and reporting environmental standards.<sup>56</sup> They can participate directly in government regulatory or enforcement actions by, for example, commenting on regulations and permits or intervening in lawsuits brought by the government against violators.<sup>57</sup> Lastly, citizens can bring lawsuits themselves, prompting the government to take nondiscretionary action or taking actions against violators directly.<sup>58</sup> Although various factors, such as knowledge and opportunity costs, influence citizens' ability to employ these mechanisms, each of them may be helpful and possibly necessary to establish effective environmental regulatory regimes.

#### B. FOCUS ON ENVIRONMENTAL CITIZEN SUITS TO ADDRESS CORRUPTION

Creating access for citizens to file suits may be the most practical option to fight environmental corruption. Although mechanisms such as information gathering and formulation of regulations through notice and comment help fortify environmental rule of law with regard to enforcement, they may be less effective in combating corruption. Government agencies colluding with the private sector to break environmental laws perpetuate corruption in the environmental sector.<sup>59</sup> Therefore, government authorities already intending to place other interests over environmental goals may render reporting on environmental harms or offering comments on regulations fruitless.

Courts have the ability to hold enforcement agencies accountable to their legislative mandates by balancing competing interests between economic development and people's well-being.<sup>60</sup> They provide concrete remedies, such as

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55. See, e.g., Janet Frey Talbot & Stephen Kaplan, *Perspectives on Wilderness: Re-Examining the Value of Extended Wilderness Experiences*, J. ENVTL. PSYCHOL. 177, 187 (1983), available at <http://deepblue.lib.umich.edu/bitstream/handle/2027.42/26050/0000124.pdf?sequence=1> ("The individual is inclined to take an active part in the functioning of [the wilderness], and to become immersed in observing its physical details. The richness of this experience, the satisfying quality of functioning within a supportive physical setting, often leads individuals to deeper levels of personal understanding . . .").

56. In the United States, for example, most state and federal agencies are set up to receive information through both formal and informal citizen monitoring. ROBERTS & DOBBINS, *supra* note 53.

57. *Id.*

58. *Id.*

59. See Akçay, *supra* note 51, at 29.

60. KURUKULASURIYA, *supra* note 23, at 7.

upholding constitutional rights to a clean environment and providing compensation for environmental harms to those who bring claims.<sup>61</sup> If government agencies are unwilling to file suits against violators because they are in fact cooperating with them, then citizens must be able to bring these suits.

Relying on citizen suits to achieve environmental goals has some disadvantages. For many citizens, going to court simply is not feasible. Lawsuits are costly: They require hiring attorneys, paying court fees, and investing much time in preparing case materials and attending hearings. Poverty, a lack of education, and a marginalized position in society compromise the ability of environmental victims to bring suits.<sup>62</sup> Thus, citizens in poorer developing countries are less likely able to bring environmental suits, even if they have a meritorious cause of action. Some consider an emphasis on environmental litigation to pose societal disadvantages. For example, commentators have criticized that public interest environmental lawsuits clog courts and strain judicial resources with frivolous claims.<sup>63</sup> Others take issue with the potential for citizen suits to discourage cooperation among actors working to achieve environmental goals by creating adversarial hostility.<sup>64</sup> Nevertheless, citizen suits may still be a valuable enforcement tool if countries take these disadvantages into account and overcome them.

### C. BARRIERS TO ENVIRONMENTAL CITIZEN SUITS

Legislators must carefully tailor statutory provisions to provide the authority citizens need to bring actions against environmental law violations. First, statutory provisions allowing citizen suits are necessary to overcome strict rules of standing.<sup>65</sup> In other areas of law, citizen suits are permitted only where a personal economic interest coincides with the claimed public right.<sup>66</sup> Under environmental statutes, such economic interest may not necessarily be affected. Statutory provisions for citizen suits can equip citizens with the authority to represent purely public interests. Second, citizen suits allow for civil enforcement in addition to criminal enforcement. Generally, where criminal sanctions exist, there are strong policy reasons to deny civil remedies.<sup>67</sup> However, imposing criminal sanctions in many cases requires government prosecutors to bring

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61. See Ristroph, *supra* note 6, at 10868.

62. ADB SYMPOSIUM, *supra* note 28, at 46.

63. ROBERTS & DOBBINS, *supra* note 53.

64. *Id.*; see also Zinn, *supra* note 2, at 82 (noting that many commentators think that the adversarial interest group politics of pollution regulation create massive transaction costs, which should encourage agencies and interest groups to adopt cooperative approaches to problem solving).

65. DAVID MOSSOP, CITIZEN SUITS: TOOLS FOR IMPROVING COMPLIANCE WITH ENVIRONMENTAL LAWS 3 (1995), available at [http://www.aic.gov.au/media\\_library/publications/proceedings/26/mossop.pdf](http://www.aic.gov.au/media_library/publications/proceedings/26/mossop.pdf) (explaining how in Australia, any potential applicant must rely on statutory provisions liberalizing standing or have a "direct interest" for standing, a common law requirement difficult to overcome in environmental cases).

66. ROBERTS & DOBBINS, *supra* note 53.

67. MOSSOP, *supra* note 65, at 3-4.

claims against environmental law violators, which may not occur in cases of corruption. Statutory provisions, therefore, allow plaintiffs to seek civil remedies for breaches of environmental statutes in situations where they otherwise could not.

### 1. Lack of Citizen Suit Provisions

In most countries, however, no statutory provisions exist that specifically allow citizen suits. The development of citizen suits has come primarily from the United States, where all but two major federal environmental statutes include specific provisions for citizen suits.<sup>68</sup> Although other countries have allowed forms of citizen suits to move forward, the United States is one of only a few countries to grant specific powers to citizens.<sup>69</sup> As a result, while citizens may bring environmental suits, private plaintiffs in many countries often cannot overcome barriers such as standing requirements.<sup>70</sup> An alternative to creating specific statutory provisions is establishing a general right to a healthy environment in a country's constitution. However, even substantive constitutional provisions that ensure a "right to a healthy environment" or a "right to life" are subject to the reviewing court's interpretation and do not necessarily guarantee that a plaintiff will overcome standing requirements.<sup>71</sup> Legislative intervention to provide plaintiffs with statutory rights to bring suit may allow them to overcome such obstacles.<sup>72</sup>

### 2. Lack of Information for Litigants

A lack of citizen suit provisions that create pathways for citizens to bring environmental lawsuits is not the only obstacle to improving environmental enforcement; the lack of information is another obstacle for litigants. For effective citizen participation in environmental enforcement, the public needs access to information about toxic release discharges or emissions, permit conditions, and regulatory standards to prove violations of environmental laws. This

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68. *Id.* The National Environmental Policy Act ("NEPA"), which in part requires federal agencies to prepare environmental assessments, is one major environmental statute that does not contain a citizen suit provision. 42 U.S.C. § 4332 *et seq.* (2015). The other major environmental statute without a citizen suit provision is the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136 *et seq.* (2015).

69. ROBERTS & DOBBINS, *supra* note 53, at n. 42.

70. In a symposium on environmental decision-making and rule of law, environmental officials and decision makers from around the world found that major obstacles to environmental justice include, among others, the lack of standing to file suit in some jurisdictions. ADB SYMPOSIUM, *supra* note 28, at 44.

71. Bruch et al., *supra* note 14, at 132 (noting that almost all African constitutions include such substantive provisions, but to date these constitutional provisions have gone largely underutilized in protecting the environment).

72. ADB SYMPOSIUM, *supra* note 28, at 44 (explaining in countries where standing to bring a suit is still a problem, judicial and legislative interventions are needed to liberalize standing).

information is often not readily available to the public,<sup>73</sup> as many countries limit or prohibit access to this information.<sup>74</sup> Some countries have amended their constitutions and laws to allow citizens to access this kind of information but have ultimately failed to implement and enforce information provisions.<sup>75</sup> In 2001, a group of countries in Europe and Central Asia signed the Aarhus Convention in an effort to ensure public rights to environmental information.<sup>76</sup> Still, many countries in other areas of the world do not allow citizens to request environmental data and reports from the government and thus force plaintiffs to collect their own data and produce their own reports, a near impossible process according to experienced environmental litigators.<sup>77</sup>

### 3. Lack of Strong Incentives: Costs and Technicalities

Lastly, potential environmental plaintiffs often lack strong incentives to bring suits because of the cost and technicalities of environmental litigation.<sup>78</sup> The costs of filing suit, retaining counsel, and collecting evidence are common to all types of litigation. Complicated filing procedures also create an obstacle, especially for litigants who may be illiterate or face language barriers.<sup>79</sup> Furthermore, in environmental cases particularly, the cost of obtaining expert evidence and the scarcity of experts in various technical fields pose challenges for potential plaintiffs.<sup>80</sup> The prospective gains from pursuing environmental litigation may appear too intangible to possible litigants as well. For example, the cost of litigation often occurs instantaneously—an environmental litigant must immediately invest time, take off work and lose wages, or pay court fees—while the remedy sought at the time of filing may seem intangible. Not only are the discovery process and the length of the trial uncertain, judges in many jurisdic-

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73. *See id.* at 44 (identifying the “lack of transparency in government agency databases (e.g., on air or water quality); permits and conditions; and the proceedings before courts and tribunals” as an obstacle to access to environmental justice in the courts).

74. SUSAN CASEY-LEFKOWITZ ET AL., *THE EVOLVING ROLE OF CITIZENS IN ENVIRONMENTAL ENFORCEMENT* 4 (1996), available at <http://www.inece.org/4thvol1/futrell.pdf>.

75. *See id.* at 4 (explaining how in the Czech Republic, the constitution guarantees a right to information, but the government has been reluctant to draft an implementing law providing for public access to government-held environmental information).

76. The Aarhus Convention, formally known as the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, provides that any citizen should have the right to get wide and easy access to environmental information and public authorities must collect all information required and disseminate it and in a timely and transparent manner. Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, June 25, 1998, 2161 U.N.T.S. 447.

77. CASEY-LEFKOWITZ ET AL., *supra* note 74, at 5.

78. ADB SYMPOSIUM, *supra* note 28, at 44 (identifying the costs of filing suits and complicated filing procedures as obstacles to accessing environmental justice in the courts).

79. *Id.* at 44 (listing illiteracy and language barriers as challenges that judges found have to be addressed in order to achieve access to environmental justice in their countries).

80. *Id.* at 34.

tions are not yet equipped with remedies to address environmental harms specifically.<sup>81</sup> To encourage citizen suits to enforce environmental laws effectively, therefore, citizens must be further motivated to do so either by lowering the costs or increasing the perceived gains from litigation.

#### D. IMPLEMENTING SOLUTIONS FOR OPENING ACCESS TO ENVIRONMENTAL CITIZEN SUITS

The ways to address the obstacles to potential environmental plaintiffs include prompting legislatures to include citizen suit provisions in legislation, promoting information disclosure, and lowering the overall costs of bringing lawsuits. While these solutions may on the surface appear obvious, they are very difficult to achieve in practice. Nevertheless, some developing countries such as the Philippines and India have made notable efforts to improve access to courts for environmental plaintiffs.

##### 1. The Philippines

The Philippines has made remarkable advances in adopting environmental laws and increasing access to courts. While Philippine environmental laws do not specifically provide for citizen suits, the Supreme Court has a liberal standing doctrine based on the constitutionally granted right to a balanced and healthful ecology<sup>82</sup> with little resistance to allow standing in Philippine environmental actions.<sup>83</sup> In 2010, the Philippine Supreme Court implemented its Rules of Procedure for Environmental Cases.<sup>84</sup> The purpose of these rules is to “provide a simplified, speedy and inexpensive procedure for the enforcement of environmental rights and duties under the Constitution, existing laws, rules and regulations, and international agreements.”<sup>85</sup> Hence, the rules allow citizen plaintiffs to defer court filing fee payments until after judgment and allow them to recover litigation expenses and attorney fees if they win their cases.<sup>86</sup> In addition, plaintiffs can seek injunctive relief through both temporary and long-term environmental protection orders, which require defendants to take action to restore or protect the environment.<sup>87</sup> The rules also created the writ of *kalikasan*, a special civil action, which anyone can file without a fee to seek injunctive relief against unlawful acts

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81. *See id.* at 45 (noting the inadequacy of judges’ and courts’ capacity to impose remedies to address environmental harm).

82. CONST. (1987), art. II, sec. 16 (Phil.).

83. *See, e.g.*, Ristroph, *supra* note 6, at 10878.

84. Rules of Procedure for Environmental Cases, AM. No. 09-6-8-SC, (S.C., Apr. 13, 2010) (Phil.), available at [http://plj.upd.edu.ph/wp-content/uploads/2012/12/Environmental\\_Rationale.pdf](http://plj.upd.edu.ph/wp-content/uploads/2012/12/Environmental_Rationale.pdf) [hereinafter *Environmental Rules*] (last visited Mar. 12, 2015).

85. *Id.* R. 1, sec. 3(b).

86. *Id.* R. 5, sec. 1.

87. Ristroph, *supra* note 6, at 10880.

or omissions that involve environmental damage prejudicing life, health, or the property of inhabitants in two or more cities or provinces.<sup>88</sup> The writ may also compel information necessary to prove environmental litigants' cases.<sup>89</sup> Thus, the rules attempt to lower all previously mentioned barriers to citizen suits by establishing a general citizen suit provision through judicial rules of procedure (as opposed to through a legislative statute), which lower the costs for plaintiffs to bring environmental suits and mandate information disclosure.

Although the rules are still relatively new, they have been used in a few noteworthy cases. In *West Tower Condominium Corporation v. First Philippine Industrial Corporation*, residents filed the first writ of *kalikasan* over health and environmental concerns regarding a leaking fuel pipeline.<sup>90</sup> The Supreme Court responded in favor of the plaintiffs and directed the pipeline company to stop operating its pipeline until ordered otherwise.<sup>91</sup> The Supreme Court issued the second writ of *kalikasan* in *Hernandez v. Placer Dome, Inc.*, in which residents living along a river petitioned the Indian Supreme Court to hold the defendant liable for releasing toxic industrial waste into the river.<sup>92</sup> The Supreme Court issued a resolution referring the case to the Court of Appeals for hearing, reception of evidence, and rendition of judgment; the case is still ongoing.<sup>93</sup>

While few published decisions have utilized the Philippine Rules of Procedure for Environmental Cases to date, the cases that proceeded to court under the new rules have encouraged practitioners. They note that environmental litigants now have better access to information and timely injunctive relief.<sup>94</sup> Regardless, the Philippines is the first nation to implement rules of procedure specific to environmental cases,<sup>95</sup> and thus has set the stage for other countries to follow by implementing similar rules.

## 2. India

India is another well-known example of a country attempting to improve access to courts for environmental citizen suits. Similar to the Philippines, the Supreme Court of India has interpreted its constitution's right to life to include a right to a healthy environment—an expansive constitutional interpretation.<sup>96</sup> The

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88. Environmental Rules, *supra* note 84, R. 7.

89. *Id.*

90. *W. Tower Condo. Corp. v. First Philippine Indus. Corp.*, G.R. No. 194239 (S.C., May 31, 2011) (Phil.), available at <http://www.chanrobles.com/scresolutions/2011mayresolutions.php?id=161>.

91. *Id.*

92. *Hernandez v. Placer Dome, Inc.*, G.R. No. 195482 (S.C., June 21, 2011) (Phil.), available at <http://www.chanrobles.com/scresolutions/2011juneresolutions.php?id=189>; see also Ristroph, *supra* note 6, at 10881.

93. *Hernandez v. Placer Dome, Inc.*, G.R. No. 195482 (S.C., June 21, 2011) (Phil.), available at <http://www.chanrobles.com/scresolutions/2011juneresolutions.php?id=189>.

94. Ristroph, *supra* note 6, at 10886.

95. *Id.*

96. ADB SYMPOSIUM, *supra* note 28, at 63.



Court has had a pervasive role in protecting the environment by shielding the Taj Mahal from air pollution, cleaning the River Ganges from contaminants, and protecting forests and wildlife.<sup>97</sup> In 2010, the legislature passed the National Green Tribunal Act, which established the National Green Tribunal to dispose of civil environmental cases expeditiously.<sup>98</sup> The tribunal consists of judges and technical experts, establishes its own rules of procedure, and renders decisions appealable to the Supreme Court of India.<sup>99</sup> While the National Green Tribunal is newly established, preliminary assessments consider the use of “green tribunals” a useful tool to meet the needs of environmental protection.<sup>100</sup>

The National Green Tribunal Act creates access for individuals to bring environmental suits through several interesting features. First, the National Green Tribunal’s jurisdiction extends to any “substantial question relating to the environment,” which includes direct violations of specific statutory environmental obligations and instances where environmental consequences relate to a specific activity or a point source of pollution.<sup>101</sup> Second, the Act expands standing to include “any person aggrieved,” such as individuals, firms, and associations of persons.<sup>102</sup> These two provisions together effectively constitute a comprehensive citizen suit provision for all of India’s environmental statutes.<sup>103</sup> The Act’s third unique feature is the tribunal’s composition: the tribunal consists of a mix of judges and technical experts with strict qualifications.<sup>104</sup> By establishing the tribunal, the Indian legislature aimed to promote the “effective and expeditious” disposal of environmental cases.<sup>105</sup> The tribunal does so by eliminating procedural problems that may prevent environmental plaintiffs from bringing a lawsuit, such as liberalized standing for “any person aggrieved.”<sup>106</sup> The presence of technical experts with strong backgrounds in environmental matters on the tribunal helps to alleviate issues of collecting expert evidence,

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97. Lavanya Rajamani, *Public Interest Environmental Litigation in India: Exploring Issues of Access, Participation, Equity, Effectiveness and Sustainability*, 19(3) J. ENVTL. L. 293, 295 (2007).

98. The National Green Tribunal Act, No. 19 of 2010 (June 2, 2010) (India), available at <http://www.greentribunal.gov.in/Writereaddata/Downloads/NGT-fin.pdf> [hereinafter National Green Tribunal Act].

99. *Id.* §§ 4(1), 4(4)(b), 22.

100. Domenico Amirante, *Environmental Courts in Comparative Perspective: Preliminary Reflections on the National Green Tribunal of India*, 29 PACE ENVTL. L. REV. 441, 441-42 (2012).

101. National Green Tribunal Act, *supra* note 98, §§ 2(m)(i-ii).

102. *Id.* § 2(j).

103. The National Green Tribunal Act lists the main environmental laws under which aggrieved persons may approach the tribunal. *Id.* § 16.

104. *Id.* § 5. A person shall not be qualified for appointment as an expert member of the tribunal unless he or she has (1) a Master of Science in physical sciences or life sciences with a Doctorate degree or Master of Engineering or Master of Technology and has fifteen years of experience in the environmental field; or (2) has fifteen years of administrative experience including five years in dealing with environmental matters in the government. *Id.* § 5(2).

105. *Id.*

106. *Id.* § 16.

speed up the rate of decision-making, and save plaintiffs time and opportunity costs.

While the establishment of the National Green Tribunal demonstrates the commitment of the Indian government to environmental protection, the tribunal has only been operating since mid-2011, and only more experience and analysis of future judgments can fully determine its effectiveness.<sup>107</sup> Nevertheless, the country's Ministry of Environment and Forest expressed confidence that the National Green Tribunal will provide greater access to justice and reduce the environmental backlog of the courts, including that of the Supreme Court.<sup>108</sup> Some consider the National Green Tribunal the most comprehensive and promising among specialized environmental courts established in Asia.<sup>109</sup> Overall, the National Green Tribunal Act may represent an effective model for other countries to consider in developing their own environmental enforcement systems.

### 3. Comparison of the Examples

These experiences in the Philippines and India represent the most recent developments in environmental enforcement that attempt to improve access to environmental protection through the courts. Many legislators, judges, and practitioners have looked favorably upon these developments and remain optimistic about their success.<sup>110</sup> Although the means by which these two countries attempt to improve access differ greatly—one drafting new rules of procedure and the other establishing an entirely different court for environmental matters—they both target the same goals: formulating ways to address the obstacles to environmental citizen suits through citizen suit provisions, promoting information disclosure, and lowering the overall costs in bringing lawsuits. Another commonality between the Philippines and India is a strong overall commitment to achieve environmental goals by their governments, with each country's supreme court at the forefront of promoting the new environmental enforcement tools. Additionally, both countries have established a general right to a healthy environment through constitutional guarantees and broad court interpretations of these provisions in favor of environmental plaintiffs,<sup>111</sup> eliminating the need for their legislatures to write specific citizen suit provisions in environmental statutes. Therefore, these countries' successes in improving access to environmen-

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107. Amirante, *supra* note 100, at 468.

108. ADB SYMPOSIUM, *supra* note 28, at 5.

109. Amirante, *supra* note 100, at 465.

110. *See* ADB SYMPOSIUM, *supra* 28, at 60 (noting innovations in environmental jurisprudence and designating several court decisions rendered in India and the Philippines as landmark environmental cases).

111. CONST. (1987), art. II, sec. 16 (Phil.); ADB SYMPOSIUM, *supra* note 28, at 63 (noting that India has "proactively interpreted the constitution's guarantee of a right to life, as including a right to a wholesome and pollution-free environment").

tal justice, or at least the positive responses they have received from other practitioners and institutions so far,<sup>112</sup> may be largely attributed to the judiciary's active role in promoting new innovations in environmental decision-making.

#### IV. TRACKING SUCCESS AND EVALUATING NEW ENVIRONMENTAL ENFORCEMENT TOOLS

The implementation of new environmental enforcement tools in countries such as the Philippines and India presents the opportunity to track and analyze what policies have been effective in achieving environmental goals and what areas still need improvement. The rule of law field in general has increased its focus on measuring and accounting for implemented initiatives. In 2008, for example, the United Nations Secretary-General emphasized in a report on the organization's rule of law activities the necessity for thorough assessments, baseline data, and ongoing monitoring and evaluation of projects in order to increase recognition of successful methods and encourage new approaches to improving results.<sup>113</sup>

A plan to evaluate policies during early stages of implementation is important to assure the accurate collection of data. Hence, this section proposes general suggestions to measure the success of new mechanisms aimed to improve the environmental rule of law through increased citizen participation such as environmental citizen suits. Establishing the framework to implement these mechanisms includes (A) focusing on goals; (B) selecting a methodical approach; and (C) establishing the capacity to measure and analyze data.

##### A. FOCUSING ON GOALS

Because an effective evaluation assesses the quality and success of a project in reaching its stated goals, designing an evaluation plan logically starts by focusing on these goals. In promoting environmental rule of law, overarching goals fall into two categories. First, environmental rule of law aims to achieve a healthy, sustainable environment. Reducing carbon emissions, purifying water sources, conserving forests, and increasing populations of endangered species are examples of more specific goals that fall under this umbrella objective.

Second, environmental rule of law initiatives more specifically work toward enforcement goals (i.e. accomplishing full compliance with environmental laws), as many countries already have basic environmental legislation in place but struggle with implementation.<sup>114</sup> This category includes punishing violations of

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112. ADB SYMPOSIUM, *supra* note 28, at 63.

113. U.N. Secretary-General, *Strengthening and Coordinating United Nations Rule of Law Activities: Report of the Secretary-General*, ¶¶ 49, 63-64, U.N. Doc A/63/226 (Aug. 6, 2008).

114. *See, e.g.*, ADB SYMPOSIUM, *supra* note 28, at 38 (noting that “[e]ven where Asian countries have appropriate policy, legal, and regulatory frameworks, effective implementation, enforcement, and compliance continue to pose challenges continue to pose challenges.”).

environmental laws, improving access to courts, promoting transparency and free access to information, and increasing public participation in decision-making.

Policymakers should further categorize these defined goals as either short-term or long-term. For example, reducing carbon emissions by a certain percentage may take a country some decades to accomplish, while setting up a new online database to store environmental data accessible to the public may only take a few years. Preparing this step helps ensure all stakeholders understand a project's purpose and expected outcomes, helping to focus on the project's most key elements.

#### B. SELECTING A METHODOLOGICAL APPROACH

The next step in designing an evaluation plan involves identifying what outcomes to measure and what data to collect before selecting a methodological approach to analyze the data. Environmental goals are comparatively easier to quantify in this light. Many organizations worldwide already conduct studies measuring the environment's progress. The United Nations Environment Programme, for example, measures responses to environmental challenges including goals to reduce air pollution, conserve biodiversity, and manage chemicals and wastes.<sup>115</sup> Their report uses atmospheric concentrations, global temperatures, rates of loss of natural habitat, and chemical sales projections as some indicators illustrating environmental progress.<sup>116</sup>

Measuring progress in environmental enforcement may be more challenging but possible. For example, to measure access to courts for environmental citizen suits, possible indicators include the number of cases filed and the time it takes to resolve a claim. An effective evaluation system must also keep accurate records of environmental permit applications, issuances, and renewals including denials and sanctions. This information must be publically accessible not only to deter malfeasance through increased transparency, but also to identify any changes in enforcement practices and their results. If the level of toxic waste in a river, for instance, appears to be increasing, it could be a result of an enforcement agency blindly renewing firms' permits to produce, transport, or dispose of the waste each period. The methodological approach used to analyze this data will vary from project to project, but its underlying purpose will be to connect the data collected to the designated goals of the project. For example, an increased number of case filings may indicate that the perceived opportunity costs of bringing environmental suits have decreased, and thus access to justice has increased. Besides making statistical observations, a variety of qualitative methods may also be used including conducting surveys and focus groups. Many

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115. UNITED NATIONS ENV'T PROGRAMME, MEASURING PROGRESS: ENVIRONMENTAL GOALS & GAPS 6, 11, 15 (2012), available at [http://www.unep.org/geo/pdfs/geo5/Measuring\\_progress.pdf](http://www.unep.org/geo/pdfs/geo5/Measuring_progress.pdf).

116. *Id.* at 5, 9, 15.

different types of data collection may be employed in any evaluation, each with advantages and disadvantages, and methods must be chosen in consideration of the resources available.

### C. ESTABLISHING CAPACITY TO MEASURE AND ANALYZE DATA

In order to develop an accurate evaluation, the capacity to measure and analyze data must first be established. Several factors may affect the ability to conduct these informative evaluations including costs, time constraints, technology, and staff skills, which must be considered and developed during the early stages of implementing environmental rule of law initiatives. Identifying goals, keeping complete and publically accessible databases and records, measuring environmental outcomes, and drawing comparisons between data and environmental outcomes create a basic framework for determining if policies move toward achieving environmental rule of law; however, this framework must be specifically tailored to the project at hand.

### CONCLUSION

Establishing environmental rule of law remains a complex work in progress in many countries, especially developing countries. Several institutional weaknesses have prevented developing countries from establishing a system of laws that regulates significant impacts on the environment, applies consistently and equally to everyone, and is effectively and fairly enforced against violators. Corruption, for example, remains an obstacle to adequate environmental action in many developing countries.

Improving access for citizens to bring lawsuits against environmental violators is one method to strengthen the environmental rule of law in developing countries that are fighting corruption. However, several barriers deter environmental citizen suits. For example, going to court to fight against environmental harms is not feasible for many citizens because of high costs, lack of statutory provisions allowing citizen suits, and inadequate access to information. Therefore, in order to encourage citizen suits to enforce environmental laws effectively, these barriers must be lowered.

Some examples of the most recent initiatives to lower these barriers include new developments in the Philippines and India, which seek to improve access to environmental protection by establishing environmental rules of procedure and establishing a “green tribunal,” respectively. Both countries target the same goals: addressing the obstacles to environmental citizen suits through citizen suit provisions, promoting information disclosure, and lowering the overall costs in bringing lawsuits. While it may be too early to assess these projects’ full success, many remain optimistic about the examples they set. The implementation of new environmental enforcement tools in the Philippines and India, as well as coun-

tries that wish to follow, will require tracking and analyzing how these policies have been effective in achieving environmental goals and what areas still need improvement.

The framework established in this note to promote environmental rule of law extends to only one part of the environmental regulatory chain, specifically encouraging citizen participation in enforcement to keep government and private sector actors accountable. While further opportunities for improvement exist in other areas, providing for and easing access to environmental citizen suits remains an important tool for developing countries to combat corruption and enhance environmental rule of law.