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NEWS & ANALYSIS

Legitimacy, Trust, and the Environmental Agenda: Lessons From Armenia

by Ruth Greenspan Bell

Lake Sevan is land-locked Armenia's chief water resource. The largest alpine lake in the Caucasus, Lake Sevan's catchment basin is one-sixth of Armenia's total geography. Almost one-half of the fish for the kitchens of Armenia come from Lake Sevan. Lake Sevan is a source of recreation, hydropower, croplands irrigation, habitat for fish and shellfish, nursery zones for aquatic and amphibian species, and a resting place for migratory birds. Not surprisingly, the lake figures importantly in Armenia history, literature, and culture.

Lake Sevan is also in severe danger. Its declining environmental health is one of the many problems Armenia inherited from the Soviet Union. Stalin-era decisions to rely heavily on lake water for irrigation caused Lake Sevan water levels to be lowered by 19 meters in 40 years. Combined with pollution from municipal sewage, agriculture, and industry—when industry was active in Armenia—the quality of Lake Sevan water has dropped significantly. Lake Sevan is a major reason why Armenia considered an environmental sector loan from the World Bank to support comprehensive environmental management reform, including law drafting and capacity building.

Although there is unanimity in Armenia about the importance of Lake Sevan and the considerable damage it has sustained, there are also substantial reasons to be concerned about Armenia's capacity to manage the lake or any of its environmental problems, with or without World Bank support. This is because Armenia's other legacies from the Soviet Union include a legal system that does not work, deep-rooted cynicism about government and its motives, and a tolerance for corruption that taints law enforcement and government and private-sector decisionmaking.

This Dialogue argues that the search for legal solutions to address problems such as Lake Sevan's water quality, often in the form of more perfect laws, does little if the attitudes and institutions to support those laws do not exist. It goes on to suggest a number of small steps that could help develop trust and credibility, and in turn more positive attitudes toward law and government, which are a prerequisite for workable laws. Although the Dialogue focuses on these issues in the context of Armenia and environmental requirements, the failure of rule of law is a significant problem for

all areas of society, including economic reform, in Armenia, in other parts of the former Soviet Bloc, and elsewhere.

Environment is a good vehicle for sowing the seeds for civil society and rebuilding public trust because people usually care about their air and water and natural heritage. Armenia is a good vehicle for examining these ideas because, in its troubled heritage, Armenia faces the same challenges as all of the countries that were created when the Soviet Union expired. It is a classic example of the problems pointed out by Joseph Stiglitz when he said that the chief lesson of assistance to the former Soviet Union is that "issues of governance, issues of legal infrastructures, issues of institutions are absolutely central."¹ Armenia is a proxy for many countries struggling to manage severe environmental damage, and it presents a classic conundrum: Is it possible to pursue an environmental agenda in such troubled conditions? Can environmental laws be made to work?

Armenia's Troubled Past

In fact, Armenia faces paradoxes and challenges that would faze countries with greater resources and institutional strengths. Armenia is at the same time one of the oldest nations on earth and one of the many new countries that were spun off when the Soviet Union disintegrated. Graced with many of the ingredients for effective self-government—including a well-educated workforce—Armenia was denied this opportunity for many years. Soviet policies provided the trappings of sovereignty and autonomy but none of the substance. When the Soviets departed, Armenia was left with genuine autonomy but no self-governing experience. Armenians are now forced to do "on the job" learning in a highly stressful circumstance. Armenia was also left without much to build a viable economy on. The country was heavily dependent on Moscow for subsidies when it was part of the Soviet Union. Much of the industry located by the Soviets in Armenia supported the Soviet Union's defense effort, but now has no market.

All these problems are compounded by geography. Armenia's relationship with two of its neighbors is dominated by conflicts that range from a trade embargo on the Turkish side to sporadic armed conflict with Azerbaijan. Armenia's third border is shared with Georgia, a country embroiled in internal hostilities that have come close to war.

Finally, like many other post-Soviet countries, Armenia contends with bad habits of lawlessness. Václav Havel, President of the Czech Republic, has spoken eloquently

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1. Robert Lyle, *Has Transition Failed in Former USSR?*, Radio Free Europe/Radio Liberty (Prague, Czech Republic) (Newsline, Apr. 29, 1999) available at <<http://www.rferl.org/newsline/1999/04/290499.html>>.

about the need for respect for law to “take root in human minds,” such that “everyone should deem it an honour to obey the law, not to break or circumvent it.”²

This need is very real in Armenia, where a U.S. Embassy analysis states that “Armenia has inherited the corrupt practices that had been common throughout the USSR state-controlled economy” including the predominant use of cash in the economy, widespread bribery, and the absence of effective law enforcement mechanisms.³ The embassy analysis notes a particular kind of corruption that affects both the economy and environmental regulation: powerful officials acquire control over emerging private firms using hidden partners or close relatives and friends.⁴ These practices “promote protectionism,” create monopolies or oligopolies, “hinder competition and undermine the image of the Government as a facilitator of private sector growth.”⁵ Armenian authorities estimated the shadow economy in June 1997 to make up 40 to 53% of gross domestic product (GDP).⁶

All sectors are profoundly affected by these conditions. What does it mean to be a legislator where corruption and bribery is a way of life? Parliamentarians know very well about “aspirational” laws, but have no experience with robust working legal systems. The learning curve is equally steep for nongovernmental organizations (NGOs) and the private sector. Environmental NGOs were engines of protest in communist times. In meetings in Yerevan, even reasonable statements by government officials were immediately booed by frustrated, deeply suspicious NGO representatives. Additionally, considerable confusion reigns about ownership issues, particularly who owns and controls industry.

Impacts for the Environment

All efforts to write effective laws are affected by this troubled history, but the difficulties are particularly vivid with respect to environmental laws. The contrast between this floundering and the early burst of enthusiasm for solving environmental problems that followed the split from the Soviet Union is vivid and depressing.

Like many of its neighbors, Armenia started with ambitious plans to end environmental degradation. In part, this reflected a more complicated set of interactions, and one that observers in the West may have misread at the time. In many of the countries under Soviet domination, environmental activism was a surrogate for political activism, and a way to point out the destruction wrought by the socialist economy. Once communism fell, many of these activists moved on and put their attention directly to economic and political change. Their rage about the environment was very real, but their experience in finding solutions was less developed. It gradually became apparent that promises to shut

down polluting plants carried a heavy cost in a poor society gasping for economic breath.

Expectations are now much more subdued. Officially, the Armenian Constitution recognizes the environment as a priority.⁷ Owners of property are constitutionally restricted from causing damage to the environment, and the state is charged with preserving the environment. Off the record, Armenians (like their counterparts in other countries spun off from the Soviet Union) say that it is a matter of priorities. A cleaner environment must wait until the economy is stronger, institutions are viable, roles have been better defined, and popular support for enforcing the law will revive.

Deferral is not a satisfactory answer for Armenia. Neither, unfortunately, is much of what has transpired to date—largely formal planning and drafting exercises supported by international funding and assistance institutions. Joint teams of Armenian and foreign experts have developed environmental action plans, using a sensible “worst-things-first” approach. They have conferred with stakeholders and tried valiantly to think about how to achieve efficient resource allocation. Typically, action plans call for more plans, master plans and policies. In Armenia, plans extend to water, forestry, and transport; the development of laws and economic instruments; and institutional strengthening of environment ministries, and the offices and personnel assigned to environmental regulation.

Many of these efforts have succeeded in improved analysis. In countries farther along in this type of process, there are more up-to-date laws and procedures, but they sit on the books, unused. Orderly and sensible, these processes for creating an environmental regulatory regime don’t work. Few of the suggestions provided by such efforts have any real expectation of breaking the logjam of distrust and institutional inexperience that has paralyzed efforts. Even thoughtful laws and master plans are not achieving their goals.

Observers can reasonably ask what difference environmental loans and outside assistance can make in conditions so bleak. Armenia’s task is to get a little environmental traction, but how is this to happen?

Rebuilding Trust and Legitimacy

No one really knows the answer to this perplexing problem that paralyzes Armenia and most of its post-Soviet Union neighbors. It is possible, however, that Armenian culture and some small, largely unnoticed efforts provide some clues for Armenia and more generally for Armenia as a prototype for other similarly situated countries. These suggest that a slow rebuilding process for the legitimacy of laws can be instituted through more modest efforts that demonstrate in very concrete ways why obeying the law is in the people’s interest. Building a level of accountability for the environment is the beginning of building a level of support for implementation of environmental laws.

An interesting example of this kind of approach already exists, illustrating how to construct a program that achieves environmental results without relying on laws or official bureaucracies. Reforestation is an official environmental goal of the Armenian government. But when the Armenian Tree Project (ATP) tried to work with government officials to re-

2. Address by Václav Havel, President of the Czech Republic, Before Members of Parliament, Prague (Dec. 9, 1997) available at <<http://pes.eunet.cz/97/50/0050ar15.htm>>.

3. U.S. DEPARTMENT OF STATE, FY 1998 COUNTRY GUIDE FOR ARMENIA ¶ 7.8 (1997) available at <<http://www.arminco.com/Armenia/CCG/chapter7.html>>.

4. *Id.*

5. *Id.*

6. *Id.*

7. Articles 8 and 10 of the 1995 Armenian Constitution.

place trees lost during the Armenian energy crisis of the early 1990s, few of the new trees survived. The ATP had to invent another way.

The ATP is an energetic, free-standing part of the Armenian Assembly of America, a diaspora umbrella organization that lobbies on behalf of Armenia and funds humanitarian and development programs for this very poor country. The financial support for the ATP's reforestation efforts is generated in the United States, but the organization's work takes place in Armenia in an office in Yerevan and a tree nursery located a few hours by road outside of the capital. Both are staffed principally by Armenians.⁸

The ATP has now successfully planted over 200,000 trees. Fueled by a folk culture that has 150 curses for those who abuse nature, its program emphasizes suitability, training, and individual responsibility for tree survival. The ATP works with local institutions. It starts with a survey of the appropriateness of the recipient to receive and grow trees, using clear criteria such as water availability. If an institution or community—these can include schools, senior centers and private individuals, or more recently with decentralization, district greenery departments—is accepted for the tree planting program, the ATP trains them to receive the trees.

The relationship with the ATP is based on a signed contract in which the recipient institution or group agrees to replace the trees if less than 75% survive. The contract's real significance is more moral than legal, however.

Relying on the courts to fix problems in Armenia is not a realistic option. The extraordinary physical disrepair of the local Yerevan court seems an apt metaphor for Armenia's weak legal traditions. The local court is located in a tenement-like building in what seems like a back alley. Visitors walk up several flights of eroded stairs, avoiding holes in the steps where large pieces of structural concrete are missing, to get to the judge's chambers. Shabby, narrow hallways are crowded with people waiting to be heard. The judge's chamber is a poorly lit room with flimsy furniture. The obvious earnestness and sincerity of the judges is not enough to overcome the sense that law and legal processes do not play an important role in Armenia.

Recognizing that it had to work around these problems, the ATP's form of enforcement relies on carrots and sticks of its own invention, rather than on official legal processes, sanctions, or litigation. The ATP inspects each site every three months. The chief consequence of noncompliance is the threat that the community may not receive the remainder of the trees to be planted—in many cases, only 30% of the tree commitment is provided initially—and of being cut from the program. Positive incentives include eligibility for additional trees and recognition in the form of donor visits, as the recipient community proves it can achieve the goals of the program. Some trees are fruit-producing, and a new program works with farmers to improve their packaging and marketing skills.

By harnessing self-interest, and using informal incentives and discipline to enforce adherence to its rules and regulations, the ATP is working—albeit on a small scale—where Armenian forestry laws are failing.

One of the wonderful characteristics of the tree project is that it is completely practical and unpretentious. Its declared

purpose is to plant trees, and its funding comes almost entirely from Diaspora Armenians who want to do something for their homeland, not from international funding institutions. I learned about it almost by accident, when I happened to sit next to one of its chief sponsors on the airplane between London and Yerevan. The ATP's beautifully maintained nursery is on reclaimed land—soil was brought in and boulders removed—and many of its on-site employees are Armenian refugees from the Nagorno-Karabakh conflict. Its very anonymity leaves the hope in observers like me that dozens of other, small projects might exist to develop individual responsibility for the environment where the laws and official institutions are broken.

The ATP's modest program provides interesting hints about alternatives to formal, top-down environmental programs that do not appear to be working well. Instead of starting with formal priority-setting exercises and law drafting—these are too similar to five-year planning and the old ways of writing laws—why not start at a local level to see what communities want and are willing to support?

In Armenia, as an alternative to formal law drafting programs initiated at the national level, communities could be assisted by “friendly visitors” to develop pilot projects closely connected to their own needs and consistent with their own traditions. The expression “friendly visitors” was suggested by one Armenian to emphasize that the motivation for environmental improvement must come from the community, not from outsiders or foreigners. The bottom line from a community point of view is to develop programs that improve the environment in ways communities care about. The bottom line from a development point of view is to teach by example the value of environmental rules.

In the end, local values may prove to be consistent with priorities selected in the most systematic worst-things-first exercises. In Armenia, reforestation and improvements in water quality are obvious concerns for everyone. One community is seeking to restore a lake that had been drained by government decree for planting corn. Restoring the lake would improve quality of life, produce reeds with export value, help in the process of reforestation, and could lead to tourism. The important difference from the formal processes approach followed by the international assistance institutions and the ideas generated by examples like the ATP is the emphasis on solutions that are rooted first in value systems, traditions, or needs of the community, rather than in centrally driven laws.

Armenia is on the end of the spectrum where people don't believe enough to give the laws legitimacy. Community involvement could begin to build the foundation of public support for an effective environmental regulatory regime. In time, the necessary trust can be rebuilt and eventually legal requirements might be met.

In both highly law-based societies and in places where law is a weak instrument, environmental protection, in the end, is based on individual efforts, guided by laws or other forms of joint agreements. In nontotalitarian societies where laws are effective, the laws can be said to memorialize a commitment at all levels of society to achieve mutually agreed ends. Academic studies of why people obey the law in the United States emphasize the issue of legitimacy, “the belief that one ought to obey the law,”⁹ and procedural fair-

8. See Armenian Assembly of America, *Armenia Tree Project* (visited July 31, 2000) available at <<http://aaainc.org/treeintro.htm>>.

9. TOM R. TYLER, *WHY PEOPLE OBEY THE LAW* 161 (Yale Univ. Press 1990).

ness. The important elements of legitimacy include feelings that decisions were reached in conditions of procedural fairness, that those involved believed that they had an opportunity to take place in the decisionmaking process, and that decisionmakers are neutral and unbiased and reach their decisions based on objective information. As a result, people believe they can gain something through cooperation, even if cooperation involves some compromises.

In places where laws are not effective, one reason may be because no such agreement has been reached. The governed may feel that the process that produced the laws was not fair or objective. Without the foundation of legitimacy—or a police state—the reasons for obeying the law evaporate. People will work around the law or ignore it, as has been the case with environmental requirements in much of the former Soviet Bloc.

The ATP demonstrates a way to think about rebuilding trust so that official environmental requirements can be effective. Consistent with the many paradoxes that characterize Armenia, the ATP is at the same time showing the irrelevance of the existing laws and demonstrating the viability of rules and responsibilities that people care about.

Increasing Transparency and Responding to Citizen Concerns in the Process of Law Creation

The ATP project is not the only way to show the coincidence of self-interest, community ethics, and environmental goals. Another promising way to think about activating environmental protection is to think about a demand-driven model. In the United States and western Europe, environmental protection is propelled by public demand, in a vivid expression of environmental democracy. The public expresses its concern about or tolerance for an environmental stress. Numerous interest groups weigh in. A resolution is found and implemented. The results are often imperfect compromises. Indeed, the U.S. Congress is sometimes criticized for rashly acting in response to public demand, giving undue emphasis to problems with public visibility. Some think that the restrictions placed on medical waste in response to random syringes washed on to beaches are one such example.

In countries like Armenia, individuals, and what the West calls interest groups, don't play a significant role in formulating environmental objectives. Environmental protection has been the domain of officials and experts. In the Soviet Union, researchers wrote laws but the laws were not tested in any public process. There was no avenue for any part of the public to weigh in to say whether the laws were capable of implementation. Nor did that seem to matter. The Soviet attitude toward law had its roots in earlier Tsarist practices where laws were often kept secret from the public and sometimes not shared between different government offices. In the U.S.S.R. and the countries it controlled the important decisions took place behind closed doors. Personalities, negotiations between government ministries, and bureaucratic or party decisions had more to do with the actual level of environmental control than did the laws. Of course, this was facilitated in the environmental arena by the total state control of what in the West are called the regulated industries.

Even today, the post-Soviet understandings of what it takes to write a successful law are very different from a western model. Environmentalists put enormous faith in scientific inquiry as the principal means of deriving envi-

ronmental requirements. Some have also often accepted literally the western literature on the values of risk assessment and cost-benefit analysis, without understanding the context in which these tools are used in the West or their limitations as decision tools for important policy decisions.

Good science is important, but environmental requirements that work rarely rest on science alone. The questions that are not yet asked in the post-Soviet context are questions of will and means: Whether the society has the capacity, determination, and resources to carry out its environmental goals. Are there institutions sufficient to support the implementation of the laws? What is the society willing to spend to reach the goals that it sets for itself? Are individuals willing to take personal responsibility to see that legal requirements are achieved? The process of answering these questions necessarily widens the dialogue. The laws that result from asking these questions will reflect a more realistic assessment of capabilities as well as goals.

Of course, demand for a healthier environment in Armenia competes with even more compelling demands for jobs, adequate running water, and reliable electricity. But following the cultural clues suggested by the ATP's program, and experience gained from the more mature environmental regimes, opportunities for building legitimacy do exist.

One potentially fruitful avenue is that even in very hard times, Armenians care deeply about their families and are willing to take unusual measures to protect them. A promising Armenian student decided that she could not take a scholarship to the United States if it meant being separated from her mother, who would otherwise be alone. These values can be a foundation for developing realistic laws that people care about and are willing to follow.

In Armenia, as in every country in transition, people suspect—with justification—that the air they breathe and the food they eat is injuring their children. But their only experience is with protest, and their expectations about what can be done and in what time period may have little to do with the complexity of the problem or the resources available to manage it. At NGO meetings in Armenia, small local protest groups express their frustration about the impacts of unclean drinking water. Armed with suspicions and concerns but few facts, they are motivated to act, but know no other way than to hurl abuse on government officials.

There are two parts to this suggestion. One is to empower individuals and NGOs with skills and information. The other is to look at environmental programs in a different way and to stress incremental progress over major change. On the first point, for people who care about their children's health, the next step is to arm them with information and realistic possibilities to protect their children. Supplied with specific information about the connections between children's health and environmental degradation, and some constructive ideas about solutions, these same groups may be able to mobilize others in their communities to act in support of targeted environmental health activities.

From Heroic Solutions to Incremental Progress

An equally important goal should be to develop realistic possibilities for action—to move from abstractions to something both concrete and attainable. Often it seems that Armenians have thus far only been presented with all or nothing solutions—the environmental equivalent of the nuclear

bomb or disarmament. In Armenia and many of her neighboring countries, the only tools for disciplining environmental malefactors are extraordinary penalties like plant shutdowns, fines, and criminal enforcement. Faced with these choices, the dearth of environmental progress should not be a surprise. Enforcement is used in only the most extreme cases and plants continue to pollute at will, so long as they provide employment.

The shift in expectations called for is from heroic change to incrementalism. Here, lessons from the mature environmental regimes might be useful. Compliance, rather than punishment for punishment's sake, is generally the most important goal in the West. The environmental enforcement arsenal in the West is replete with bridging devices. To reach its goals, the United States and western Europe have developed scheduling and phasing devices, along with more conventional enforcement tools. The instruments in a fully packed enforcement toolbox nudge, cajole, and otherwise move polluters toward legal requirements. Extreme penalties are reserved for extreme situations.

Even more interesting are the ways in which onerous, often unrealistic, legal mandates are reconciled with limited appropriations and resources in the West. Schedules for action—generally put into place by courts—produce results in an orderly fashion.

If these means of mediating demands and resources are essential in the United States, where the U.S. Environmental Protection Agency (EPA) alone has 18,000 employees and substantial resources, they would seem even more appropriate in Armenia, where 107 employees in the central Environment Ministry work on a (1999) budget of 55.712 million drams (equivalent to about \$107,140).¹⁰

The Armenian experience with environmental impact assessment (EIA) requirements illustrates how constructive this approach could be. EIA has been promoted internationally as a way of assuring that environment is considered in development. EIA requirements are designed to force proponents of activities that affect the environment to consider what those impacts might be and whether alternatives exist. Armenia, like many other countries, has adopted an ambitious EIA law. It identifies a very long list of activities that must be evaluated for their environmental impact before they receive approval to proceed, including service, energy and non-energy sectors and infrastructure construction.

But the available government resources to supervise and manage such an ambitious program are no more than a handful of people and a miniscule budget. The EIA department's reaction is a typical all or nothing response. Consequently, nothing much is happening. The law and those assigned to implement it await better days, when a stronger economy might fuel higher government support. The resulting paralysis reinforces the view that the EIA law is merely symbolic.

This is where western experience in phasing and incrementalism can provide some help. Experience in the mature environmental regimes shows ways to send a signal

that environmental requirements are being addressed in an orderly way, consistent with available resources.¹¹

The Environmental Ministry could announce publicly that it is establishing criteria to select one or two matters for EIA reviews. It must be crystal clear that favoritism and corruption played no role in the scheduling choices. At the same time, the Ministry could announce that the selected EIAs would be processed and completed in a transparent and public way, in order to emphasize the vital importance of EIA to the environmental process. The key to the entire strategy is fairness and public trust that every government action is being taken in the sunshine. The point is to begin some level of action that begins to build public confidence that laws mean what they say. Indeed, one way to think about this in the context of the Armenian EIA law is as "zero-based" environmental planning, phasing-in environmental programs, and priorities in a manner consistent with available resources.

Adopting this approach would require a substantial change in mentality. For one thing, the art of public compromise was not highly valued in the former Soviet Union. In addition to being unfamiliar with phasing devices, officials and the public are used to "big think" five-year plans but weren't particularly rewarded for thinking about interim steps. They are also legitimately worried about the kind of message that they send when they say that a law will be selectively enforced. Selective enforcement almost always smacked of cronyism, if not outright bribery or corruption.

But the strategy also contains some of the essential ingredients of civil society—genuine compromise between conflicting interests, open processes, and law-based solutions. Phasing, in the face of a dilemma between a broad mandate and limited funding, is a far better choice than tolerating the continued public erosion that occurs when laws are perceived as symbolic rather than real. Moreover, it offers the opportunity for gaining valuable experience in the administration of an important environmental program.

A Public Role in Enforcement

Observers often say that the remedy for poor environmental implementation is better enforcement. In the model of enforcement that we are all familiar with, officials inspect plants and bring offenders to justice. But Armenia is like many countries in which the collection of evidence is not easy. Environmental enforcers don't have vehicles to visit sites, or cannot enter plants to inspect for violations without prior notice, or simply lack independence in the face of opposition by more powerful government bodies and the more powerful individuals who control industry. Even worse, it is well known that inspectors are poorly paid and sometimes take bribes. Environmental enforcement is not credible.

An alternative enforcement option is to introduce creative inspection and enforcement techniques or even to think about enforcement as a community or grass-roots function. Enforcement techniques that are less man-

10. With the so-called subordinated agencies, the total comes up to 3,452 people at a (1999) cost of 747.251 million drams (\$1,437,020). The exchange rate used here is 1\$=520 drams. Even worse, the Chinese national environmental ministry, SEPA, has merely 200 employees. And the Russian environmental agency was recently abolished.

11. The process of adapting compliance schedules into Polish practice was described in Ruth Greenspan Bell & Susan E. Bromm, *Lessons Learned in the Transfer of U.S.-Generated Environmental Compliance Tools: Compliance Schedules for Poland*, 27 ELR 10296 (June 1997).

power-intensive, and techniques that NGOs and community members can use to collect environmental information, can form the basis for public pressure campaigns that may be more successful in reducing pollution than official enforcement campaigns.

The basic concept is a bit like community policing in the United States. An example of how this can happen was explored in an EPA effort in Russia, with the introduction of “smoke reading” to identify unhealthy air emissions. In Russia, the only existing enforcement options require enforcers to enter plants to take measurements from within. The cumbersome and bureaucratic processes for entering plants make surprise inspections, as a practical matter, almost impossible. With plants effectively put on notice that measurements will be taken, the entire concept of enforcement is undermined.

Smoke reading¹² can take place outside the plant. Inspectors are trained to evaluate the smoke emerging visibly from plants. This technique reduces the need for monitoring equipment and for internal plant inspections. It is a technique used routinely in the United States and is the basis of a healthy percentage of air enforcement cases brought in the western United States. In Volgograd, Russia, environmental inspectors were trained to read smoke. Legal experts figured out how to adapt smoke reading so that it could be a viable enforcement tool in the context of the Russian legal system and evidentiary rules.

But because virtually anyone can be trained to read smoke, smoke reading can also be a way to arm community members with powerful information about the air they breathe. If environmental officials will not bring enforcement actions against polluting plants, trained readers can bring their findings to newspapers and television stations, can post them on meeting boards, or use other ways to bring them to the attention of affected communities. Mobilized neighborhoods can put pressure on plant managers. They can praise managers who try to do something about the plant pollution.

Shame and praise are powerful tools. Smoke reading combined with public information techniques can create public pressure for environmental compliance. This is another way to build environmental accountability without having to rely on courts or environmental ministries.

Lest anyone think this is unrealistic, there are interesting precedents for citizen monitoring even in very dire situations. After the Chernobyl incident, Ukrainian NGOs were provided monitoring equipment by German “green” organizations, so that they could be an effective public check on official radiation reports. The information provided by citizen monitoring proved useful in the fight to compel officials to provide accurate information about the radiation that was being released.

If citizens can generate accurate information about the environmental problems in their neighborhoods, they can lead, rather than follow, the officials that they do not trust. The information can be used to begin the process of redressing their grievances. If the remedy is achievable, which it can be through incremental approaches, progress can be made. The very ability to generate the information can begin the process of building legitimacy.

Developing New Ways of Communicating in Civil Society

The discussion to this point has assumed that environmental groups want to find tools to solve, as well as to protest, environmental conditions—that they have sufficient trust to participate in the system as well as to fight it. But in Armenia, as elsewhere in the countries in transition, environmental protest began as a vehicle for expressing opposition to the existing political regime. Environmental problem-solving requires a different set of skills and a different vocabulary.

The evolution from protest group to participant in environmental policy development is one that has taken place in other parts of the world. The history of the environmental movement in the United States has been one of increasing sophistication. NGOs have learned to lobby, to forge alliances with other groups on particular issues, and to provide technical and economic expertise to the legislative and regulatory process. Similarly, in parts of central and eastern Europe, NGOs have grown from political opposition to multifaceted organizations that research, lobby, provide public information, and fulfill a number of other functions in the environmental dynamic.

Although this change has not yet taken place in Armenia, there certainly would be ways to encourage it and at the same time to encourage the development of civil society. One way is to “twin” green NGOs with equivalent organizations in central and eastern Europe to learn from them how to increase their influence in the environmental decision process. Communication would be facilitated by their common experiences.

Another would be to sponsor the development of different communication skills. Environmental advocates have passion, but often lack an adequate vocabulary and set of skills to become a part of the process of resolving environmental issues. If they are to evolve as the society changes, training could add new dimensions so that conflicts can be expressed for positive change and the peaceful expression of diverse ideas. There is now considerable experience transferring mediation and negotiation skills in the cultural conditions of the countries in transition. These could usefully be applied to voluntary civil organizations in the environmental field to help them influence the policy process.

These are also skills that might advance the goals of environmental government officials who work at a disadvantage in their relationships with the so-called power ministries. Environmental officials are almost always the least powerful forces in their own governments. Their message is thought to conflict with front-burner economic and social challenges. Training in alternative communication skills, along with understanding of how gains can be incremental, can help those who speak on behalf of the environment to assume more prominent roles in their own governments.

Strengthening the NGO Community

There are other ways to strengthen the NGOs that play diverse roles in the environmental dynamic. One is to provide them financial support much in the same way that micro-credit programs provide the small but necessary capital for independent would-be entrepreneurs. Research in Armenia noted that only a few of the over 2,000 NGOs currently registered with the Ministry of Finance and Economy

12. This technique is formally known as “visible emissions testing.”

are active and that their engagement in nature conservation and environmental awareness is severely constrained by lack of financial resources.

Models for providing this critical support exist in programs like the German Marshall Fund's (GMF's) Environmental Partnership in central and eastern Europe, and the Institute for Social Action and Renewal in Eurasia's (ISAR's) small grant program in the former Soviet Union. The GMF's program provides funding up to \$8,000 for grass-roots initiatives. With this help, recipients are able to work on environmental issues as diverse as planting trees or raising awareness of recycling and disposal alternatives. The GMF provides support so that environmental NGOs can strengthen their links with like-minded groups. Grants foster public participation, help de-centralize accountability for environmental protection and build the foundation for civil society and democratic processes.

One of the strengths of the GMF grant program is that most decisions are made in-country and relatively quickly, with personal, face-to-face contact with grantees. Funding decisions are made by a local board of directors, who are technical experts with the know-how to identify feasible projects. Grant-making red tape is minimized. Most important, in countries where cronyism has governed the distribution of benefits, these grant applications are examined by an impartial board, without favoritism or any hint of corruption. Their independence and fairness sets a model for grant distribution.

Neutral Arbiters Such as Ombudsmen and Other Independent Bodies

The theme running through this entire discussion has been whether it is possible to build credibility and legitimacy and how that might happen. Some suggestions have been to by-pass government initially. Other suggestions have been ways that government might itself remake how it is perceived by the public by being more credible in its actions. It is entirely possible, however, that the history of government in Armenia makes it impossible at this time for government officials to be believed, even when they act in full good faith. If citizens in Armenia are simply unwilling or unable to believe anything government officials have to say, an independent mediating body might be able to develop trust by hearing complaints, free from outside pressure from the government or from political sources or powerful private individuals.

This is what ombudsmen do, if people believe that the office is acting in a completely neutral manner, wherever the referrals come from and whoever they are complaining about. With the power to obtain information from officials, the ombudsman is an objective oversight body that can act as a credible check on official inaction and corruption. Ombudsmen circumvent bureaucratic obstacles and problems in the justice system. They usually act informally and quickly and their reports are completely available to the public. There is no need to hire a lawyer to make a complaint to the ombudsman, nor to demonstrate standing. Where the courts have a reputation for responding slowly, or where courts can only address limited legal issues and cannot engage in or resolve policy issues, the ombudsman is an effective alternative. Importantly, the ombudsman does not just criticize, it offers solutions. Its pronouncements are gener-

ally not binding from a legal point of view, but they have considerable moral force and effect and are often followed because of the credibility of the source.¹³ Ombudsmen findings have often become a guide for good administrative procedures and an inspiration for new legislation.

No country has yet instituted an ombudsman whose sole duties are environmental, but there is no reason why this cannot happen. In countries with no experience with ombudsman offices, an environmental ombudsman can serve as a demonstration, leading toward an ombudsman with more general authority.

Another way of thinking about an ombudsman is as a feedback loop for government to be rated on its environmental performance. Countries that are only beginning to gain experience in self-government and open government¹⁴ do not have good ways of hearing whether they are doing their job. Ombudsmen, or even more primitive devices such as public hearings or simple forms of public outreach, may help to build experience that can evolve into "open government" provisions or traditions of seeking public input into government decisionmaking. Any of these devices can make it easier for the public to make their views—and their dissatisfaction—known to government. Governments that listen to NGOs and the public facilitate law implementation by signaling a willingness to learn and to make revisions where necessary. The entire process can add a degree of reality to legal requirements that is currently lacking in Armenia and its sister countries in transition.

Conclusion

Ten years after independence, Armenia is seeking ways to make good on the environmental promises that people thought were part of a clean slate and a fresh start. One of the lessons we have collectively learned in this unique and interesting transition, however, is that institutions must grow in the soil in which they are planted. The poisons in the particular soil left behind after years of totalitarianism include palpable distrust in government institutions and little taste for law-abidingness. Under these circumstances, it is simply unrealistic to think that reform measures that work in western democracies will be effective.

Societies that have not been "law-driven" need to build the credibility of law through positive experience. Simply using law to direct individuals and communities to do things is unlikely to achieve its intended results. The search for perfect laws that has taken place with the support of assistance organizations steps around the basic governance problem: more complete laws are not necessarily laws that will be respected and followed, any more than are the current incomplete laws. Iterative, if imperfect, learning experiences might be a better solution over time, if they slowly rebuild trust and credibility. Achieving these ends will require substantial patience—old habits are hard to break and old suspicions will be hard to leave behind.

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13. The office of the ombudsman played an important role in the evolution of some countries in transition toward democracy. In the early transition years in Poland, polling showed the ombudsman (then a woman) to be the most trusted public official in the country.
 14. One example is Thailand, which only recently wrote a new constitution that contains open government guarantees. These provisions are only beginning to be implemented. See *In Debris of Economic Crash: Thailand's Faith in Authority*, N.Y. TIMES, Aug. 10, 1999, at A1.