

Stakeholder Feedback Report

Cóir Environmental Code Project 2021-2022

Stakeholder engagement and research team:

Demetra Herdes
Ruairí McCabe
Deirdre Ní Fhloinn BL

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Introduction

The team involved in gathering feedback from stakeholders was headed by Deirdre Ní Fhloinn BL, along with the support of two interns – Demetra Herdes and Ruairí McCabe. The primary goal for this stage of the Project was to establish connections with individuals who work in the environmental justice field, and to learn what we could from their collective experiences.

Through a series of interviews and questionnaires, we hoped to accumulate our findings into a well-rounded and representative document, which could be used to inform many of the decisions of Comhshaol in respect of the final Code.

This is a crucial step in the process, as we seek to engage those who understand the struggles on the ground, in day-to-day work in the environmental field. These are the people for whom the Code will have perhaps the greatest impact and for that reason, their voices must be heard in the drafting process for the Code.

The stakeholders may see Comhshaol as an essential resource in the future, and similarly, Comhshaol would benefit from gaining key partners across the country, working in different ways to protect the environment and promote environmental justice.

In this report, we will explain the methodology behind our information gathering, as well as the subsequent findings and any recurring themes which became apparent during the interview phase. Furthermore, with the permission of our respondents, we have included transcripts of the interviews and the questionnaires which were carried out. In this way, we hope that our report will provide guidance during the drafting of the final Code and help the group to address many of the issues which were brought up by the stakeholders.

Methodology

Drafting the Questionnaire

Early in the process, we met to brainstorm a questionnaire, which would serve as a means of obtaining a greater volume of feedback from stakeholders who may not have been available to interview. After a process which involved editing drafts, reworking our questions and continued dialogue amongst the team, Demetra put together a series of questions and set up a document in the Drive. The questionnaire questions can be found in the appendix of this report.

The questions were selected in such a way that we could address legal issues - inviting respondents to reflect upon the current state of environmental legislation, its implementation, and its shortcomings. Our intention was that these questions would be of relevance to the legal minds and the local politicians to whom we extended invitations to take part in interviews or complete our questionnaire. With that being said, there was still an opportunity for all respondents to give their view on the current legislative landscape. In some ways, it can be just as useful to hear from those without a legal background, as they will have more experience as to the true operation of the legislation. The lawyers should then be able to add to this with a knowledge of how the legislation is *supposed* to operate, and how we may bridge that gap between intended outcomes and reality.

Furthermore, we included several questions relating to common areas of complaint, which either the respondents themselves have witnessed, or which the respondents have received

complaints about, in their day-to-day work. This should in turn, help to inform the committee when putting forward proposals of areas which must be addressed. With these questions, we hoped to receive a wide and varied range of responses, all depending on the area in which the respondent operates. For example, a representative from [NGO], will deal with different complaints to a representative from [NGO]. NGOs in general will handle situations in a different way to local councillors, etc.

We hoped that we would be able to find themes running through all the feedback, which is how we could effectively utilise what could otherwise be disjointed and disconnected information from various sources.

Selection of Stakeholders

After putting together our questionnaire, the next step was to decide the individuals and organisations to whom we should send out the questionnaire. Of course, we wanted to make sure that we sent it to a wide range of stakeholders but at the same time, we could not send the questionnaire to every single NGO we could find. We needed to be selective, while still covering all our bases. We knew from early on that we wanted to involve NGOs, climate activists, politicians, and environmental lawyers, and with this in mind, we set out in search of candidates. Ruairi put together a spreadsheet which could be updated, with the names, organisations, contact details, etc. of our stakeholders. This was updated regularly, if there were any further suggestions or if we felt that we were missing any particular groups.

Along the way, Ruairi heard about an EJNI virtual seminar, which was focused on cross-border environmental issues, and, conveniently, Aarhus Convention compliance. Both Demetra and Ruairi attended this, collecting notes on the event, and picking out potentially important contacts.

We tried to find representatives from NGOs which dealt with as many areas of environmental protection as possible, from habitat and animal conservation organisations, to the EPA, a state-body. As with all our work, we hoped that having a wider range of organisations would provide us with more data and importantly, give us an idea how the current legislative regime affects all these organisations.

To find interested parties who were not connected to an organisation, we looked to universities - social policy and law professors, and then to those involved in high-profile environmental initiatives such as Climate Case Ireland. The academics identified, it was hoped, could bring legal expertise, while many others would have experience with environmental justice, class actions, and issues of *locus standi* in environmental cases in Ireland.

One concern which Deirdre brought up, which unfortunately was difficult to rectify, was the perceived lack of diversity in our list of stakeholders. It should be imperative that any discussion around the climate crisis involves ethnic and class diverse stakeholders, particularly minority groups who are so often side-lined in these discussions, despite being at the highest risk of being negatively affected by climate change.

Arranging Interviews

- Demetra used an innovative online voting and scheduling tool in order to set up the timetable for interviews.

- We found, however, that respondents generally preferred to complete the questionnaire in their own time rather than take part in interviews, or it proved difficult to find suitable times for the interviews. For this reason, the responses are via completed questionnaires.
- Work and college demands also made it difficult to arrange for meetings with all three of us present, hence the switch of focus to obtaining questionnaire responses.

Key Findings

Recurring Themes

The recurring themes included both expected and unexpected issues that became apparent in the course of our work:

- enforcement of environmental legislation is a significant problem identified across all our respondents;
- legislation protective of the environment tends to be piecemeal, which is a barrier to enforcement;
- there is an overarching need for an effective national enforcement strategy which is implemented consistently;
- cultural factors (such as unwillingness to report one's neighbours for breaches of environmental regulations) may be a significant barrier to enforcement even if access to enforcement is enabled at an individual/local level;
- some environmental harm is occurring gradually and out of sight of citizens, which suggests that enforcement may be proactive and comprehensive and not rely on the efforts of NGOs and concerned citizens. This has been described by one Local Authority Heritage Officer as "*the shifting baseline downwards each year where an environmental resource or ecosystem is declining in quality are invisible and quiet*".
- Poor regulation of activities that have the potential for significant environmental harm, such as commercial peat extraction and turbary (where a licence holder is allowed to cut turf for family), which one respondent told us "*has never been properly regulated,*" resulting in discharge of water from peat silts and chemicals into waterways, and direct loss of biodiversity and carbon sequestration from the loss of the peatland habitat.

Lack of Knowledge

One of the primary responses which cropped up repeatedly was the lack of knowledge on environmental laws, particularly in rural areas, where this kind of information is most important and would be most impactful.

Many of our respondents noted that even where legislation may exist to prohibit certain environmental breaches, such prohibitions are not widely known, or else the consequences/damage of such actions are not recognised sufficiently. The problems that this lack of awareness leads to are plentiful.

Primarily regarding farmers, landowners, or small rural businesses, who can cause huge harm to the environment and their local communities, without fully comprehending the detrimental effects of their actions. Furthermore, those who may have a desire to tackle these issues suffer from a lack of resources, to understand what steps are available to them to

Worryingly, there was no consensus at all in answering our question about where the public currently goes for information or resources about environmental enforcement. This lends evidence to our existing belief that there is no destination with a comprehensive set of resources for the public. This reveals the need for a project such as ours, and reveals a need for campaigns in rural communities, to inform citizens of common environmental breaches, how to report them, and what they can personally do to ensure that these breaches do not reoccur in their areas.

Enforcement Issues

As one would expect, given the lack of information available to the public, many of our respondents commented on enforcement issues. One of the overarching themes from our respondents was the feeling of helplessness, again mostly in rural communities. In rural areas, it is harder to police actions such as hedge cutting, hillside burning and illegal dumping, for obvious reasons.

Unregulated and unlawful activities such as illegal peat extraction and quarrying were specifically mentioned by respondents.

The general feeling however, is that there are insufficient deterrents in place to stop these things from happening. Furthermore, the feeling is that there is nowhere to turn for individual citizens, whether that be in the form of national organisations who may be able to assist citizens in reporting these illegal actions, or community groups with knowledge and experience in tackling these issues.

There was a consensus that the system tends to favour the larger landowners or farmers, and that there is a culture of complacency, which prevents reporting against more powerful or financially strong parties. Much of this complacency stems from the fact that there is no real track record of successful legal action being taken against such parties, who seem never to be held accountable for their actions. Many citizens believe that current legislation provides too many loopholes, which seem to conveniently get more financially powerful offenders off the hook.

It seems clear from our respondent's answers that existing sanctions do very little to prevent reoffending. There is a sense that even where there are pecuniary sanctions, the offending parties are rarely the ones left to foot the bill, but it is left to the State.

Lastly, a major issue, again mostly affecting the public in smaller, rural communities, which tend to be remarkably close, is the reluctance to report environmental breaches out of fear for one's safety or fear for one's reputation. Often the biggest environmental offenders are also large employers in these communities, and with no real support system in place for whistleblowers, along with a history of threats to environmental activists, often characterised as 'serial objectors,' it is no surprise that the situation on the ground does not favour well-intentioned members of the public.

Compliance Issues

It is evident that many of our respondents do not have the utmost faith in the government to fully comply with many of their obligations, particularly with EU Directives. This ties in with the previous issues discussed, as there remains very little confidence in the system of enforcement, from the top down.

Suggested Actions

- There is a need for recognition of **personhood rights to ecosystems** or **rights of nature**. One observation from a Local authority heritage officer who took part in the questionnaire is worth quoting in full:

“The entire thing needs to be turned on its head. Rights of Nature recognition is essential or the ecosystems on which we depend will continue to be nibbled away, and environmental trends continue to decline. The recognition of the rights of nature to thrive and survive is a missing piece of the jigsaw. The legislation as it stands is simply “permitting” or penalising or compensating for environmental losses.”

- There is a need to build a consensus across Irish society for strong climate action in order to have the support of people living in Ireland for the measures that will be required in order to protect the environment against harm and climate change.
- Examine what measures have been taken to improve enforcement in other countries, to see what could be learned for Ireland.
- A strong campaign should be implemented nationally to show the damage done by those polluting the environment to flora and fauna and river systems, etc.
- A re-balancing is necessary towards environmental protection and away from the industrial processes that are most harmful such as intensive agriculture and data centres. This must be Government-led as the Department of Agriculture, for example, is amongst those driving intensification of dairy farming.
- There should be strong and serious consequences for those deliberately causing environmental harm such as setting fires. There should be significant penalties for crimes against wildlife such as hedgerow destruction and the killing of birds and animals, illegal tree felling, etc..
- Citizens need to see the know where to find information about what action they can take to deal with environmental harm and need to see credible and effective enforcement. We need to be seen to be taking environmental harm very seriously.
- Resourcing of environmental protection by public bodies is essential. One respondent pointed to the extreme under-staffing and under-resourcing of the National Parks and Wildlife Service, which is responsible for designated sites and wildlife crime.
- Citizen engagement in enforcement will also need to be resourced, as costs and lack of civil legal aid was identified as one of the barriers to citizen action.

- Education and accessible information for citizens is key to citizen engagement in enforcement.
- Simplification of laws and consolidation of responsibility into fewer public bodies was also identified as a means of improving citizen engagement and enforcement.

Limitations to Findings

- The sample size was limited. The respondents are listed below and included one academic expert, two Local Authority heritage officers, four NGO members. However, they all provided different perspectives and a rich level of detail in their responses which informed this work considerably. The respondents were all based in Ireland and it was not possible within the time available to generate a more international sample of respondents or a sample that fully reflected Ireland's demographic diversity and the many voices that could contribute to this research (for example, we regret that we did not have the opportunity to establish links with the Travelling community or with people living in Direct Provision who might have hugely different perspectives to offer).

List of Questionnaire Respondents/Interviewees

Questionnaire Respondents have been anonymised but included several representatives of NGOs and advocacy groups active in environmental protection in Ireland, a retired TD and Local Councillor, a University Professor, and several Local Authority Heritage officers.

Appendix

Questionnaire Respondees:

Respondent 1: former public representative

1. In your experience, what are the environmental issues most often litigated/complained of? (pollution, unauthorised cuttings, etc)

A: Illegal dumping and littering in both town and countryside, leaking septic tanks and farm pollution, air pollution from vehicles in built up areas.

2. What do you think are 3 most common areas where there is insufficient enforcement of environmental legislation?

A: Those listed in response to Q.1.

3. What national and European laws (environmental or otherwise) are most used in practice, when legal action is brought against entities that harm the environment?

A: N/A

4. Could you provide examples of laws where the mechanism of enforcement can be more efficient?

A: The laws to tackle illegal dumping.

5. Are there International environmental law principles that are used in practice that you think should be codified into national law? Can you provide examples?

A: I am sure there are. An examination as to what works best in other countries would be worthwhile to try to improve the situation in Ireland.

6. Over the course of your career, have you noticed any trends related to why legal action against genuine breaches of environmental regulations fail? (any arguments, legal provisions, or technicalities)

A: For litter wardens it is difficult to pursue cases if there are no names and addresses in amongst the dumped rubbish. Also, those involved in illegal dumping sometimes hang garments over CCTV cameras to prevent identification.

7. What gaps in the current ensemble of laws that protect the environment do you feel need to be patched?

A: N/A

8. What do you think prevents Irish citizens from bringing legal action against agents (individuals, companies, institutions) that harm the environment?

A: Fear and a sense that people do not want to be seen as snitches.

9. What do you think aids/would aid Irish citizens in bringing legal action against such agents?

A: A strong campaign to indicate the damage those polluting the environment due to fauna and flora, river systems etc.

10. Where are people currently going to get environmental information and information on legal enforcement of environmental laws?

A: The internet.

11. Who do you (or citizens) contact after becoming aware of an environmental breach?

A: Co. Council/ Gardaí.

12. Do you think sanctions for breaches of environmental laws are appropriate? Do they function well in practice?

A: No and no.

Respondee 2: NGO Representative

1. In your experience, what are the environmental issues most often litigated/complained of? (pollution, unauthorised cuttings, etc)

A:

- Extinction of native species or sub-species by Invasive Alien Species.
- Destruction of Hedgerows/native vegetation and replacement with non-native cultivars.
- Intensive industrial farming at the expense of the environment, causing critical biodiversity loss, nature, and environment.
- Intensive farming uses single species grassland, wiping out native vegetation, they use pesticides, herbicides and excess fertilisers causing pollution of waterways and soil destruction.
- Burning of hillside vegetation such as heather and gorse wipes out wildlife and nature.

2. What do you think are 3 most common areas where there is insufficient enforcement of environmental legislation?

A:

IF such legislation exists then it is not sufficiently well known or promoted.

- 1) Hedgerows are ripped out and replaced with barbed wire with no consequences, nature and wildlife not even considered. Huge 'get-outs' are allowed by current legislation. Departments seem to turn a blind eye.
- 2) Little control over intensive agriculture - if someone wants to create a massive dairy operation there seems to be no restriction over them doing that - regardless of the effects

on the planet or on their neighbours e.g., sudden expansion of dairy herd threatens the water supply in neighbours' wells because of the massive daily amounts of water required for dairy cows. Wildlife is destroyed if they are perceived to 'get in the way' of industrial farming.

- 3) Burning land and hillsides happens regularly and it appears that everyone knows it was set deliberately but there appear to be no consequences.

Further Comments:

- The official advice from Teagasc re hedgerows includes "Three large native Irish trees are frequently found in hedges - oak, ash and willow provide a habitat for numerous invertebrates as well as birds such the two Irish owls - barn owl and long eared owl. Ivy is a plant of immense biodiversity value... The most predominant shrub in our native Irish hedges is whitethorn (hawthorn... Such 'sceach' or thorn hedges also include blackthorn ... Deep within these thorny bushes is a safe nesting place for songbirds such as blackbirds and thrushes. Flowering climbers such as bramble or blackberry are a valuable food source for bees and fruit for birds and mammals. Key criteria for routinely trimmed hedges are a) at least 1.5m high above ground level, b) contain occasional thorn trees and c) only cut one year in 3 etc., etc.,".
- Despite this, hedgerows are regularly slashed and everything depending on them destroyed
- Ireland is losing an abundance of its hedgerow heritage every year – with at least 3,000km cut back by local authorities since 2018 during the prohibited season between March and August. (noteworthy.ie)
- The latest review of the Birds of Conservation Concern in Ireland provides alarming reading, with a 46% increase in the number of Red-listed species, those of highest conservation concern" - Irish birds are faring worse than ever before - BirdWatch Ireland

3. What national and European laws (environmental or otherwise) are most used in practice, when legal action is brought against entities that harm the environment?

A:

- The Habitats Directive.
- The Wildlife Act 1975-2000.

4. Could you provide examples of laws where the mechanism of enforcement can be more efficient?

A: N/A

5. Are there International environmental law principles that are used in practice that you think should be codified into national law? Can you provide examples?

A:

- Invasive Alien Species regulations (EU No 1143/2014) could be used in Ireland to protect the native Irish honeybee, *Apis mellifera*.
- The Habitats Directive.
- The Convention on Biological Diversity, Council Decision 93/626/EEC.

6. Over the course of your career, have you noticed any trends related to why legal action against genuine breaches of environmental regulations fail? (any arguments, legal provisions, or technicalities)

A: Since dairy quotas went, intensification of dairy farming has been driven hard by the Department of Agriculture, Food, and the Marine at the expense of the environment, particularly biodiversity which tends to be ignored.

7. What gaps in the current ensemble of laws that protect the environment do you feel need to be patched?

A: N/A

8. What do you think prevents Irish citizens from bringing legal action against agents (individuals, companies, institutions) that harm the environment?

A:

- Very little evidence of successful legal actions being taken.
- Penalties are so small - is it worth the effort?
- Fear of retribution - reluctance to provoke in case you get a 'tankful of slurry through your door'
- The 'system' appears to favour 'big' intensive farmers and landowners. TDs and government appear to be in thrall. Government agencies e.g., Teagasc provided wrong advice in the past and should correct that now. When laws change there should be major investment in communicating the new rules and regulations AND they should be taken seriously.

9. What do you think aids/would aid Irish citizens in bringing legal action against such agents?

A:

- Better understanding and communication of the law.
- Visible successful legal actions.
- Higher penalties for crimes against wildlife particularly hedgerow destruction and killing of birds and animals.
- More education for the media so that they know the questions to ask when interviewing relevant parties. More focus from the media on the environment, biodiversity, and nature.

10. Where are people currently going to get environmental information and information on legal enforcement of environmental laws?

A: Europe, AIPP, Biodiversity Ireland, Irish Wildlife Trust.

11. Who do you (or citizens) contact after becoming aware of an environmental breach?

A: The Hedgecutter or landowner - but you will just be laughed at and ignored.

12. Do you think sanctions for breaches of environmental laws are appropriate? Do they function well in practice?

A: The 'official' stance e.g., from Teagasc says X or Y is illegal BUT when someone does not abide by the law, it is described by Teagasc ConnectEd broadcasts as 'unfortunate' whereas it should be severely stamped on, to set an example. Illegal slurry spreading for example is described as unfortunate, but it should be regarded as an absolute no. Anyone can see the effect in rural Ireland of 'out of season' slurry spreading.

Respondee 3: Local Authority Heritage Officer

1. In your experience, what are the environmental issues most often litigated/complained of? (pollution, unauthorised cuttings, etc)

A: Ecological issues, habitat destruction, tree felling.

2. What do you think are 3 most common areas where there is insufficient enforcement of environmental legislation?

A: Planning, Wildlife Regulations, and the provisions of the Forestry Act, specifically felling licenses.

3. What national and European laws (environmental or otherwise) are most used in practice, when legal action is brought against entities that harm the environment?

A: Planning regulations, Habitat Directive.

4. Could you provide examples of laws where the mechanism of enforcement can be more efficient?

A: In relation to ecology many of the issues come to the council from the NPWS. There is a certain amount of duplication. There is also a lack of resources in planning enforcement and a dearth of suitably qualified ecological personnel.

5. Are there International environmental law principles that are used in practice that you think should be codified into national law? Can you provide examples?

A: Polluter pays principle, more honoured in the breach than in observance.

6. Over the course of your career, have you noticed any trends related to why legal action against genuine breaches of environmental regulations fail? (any arguments, legal provisions, or technicalities)

A: It has got more complex and sometimes focuses more on legal procedure than actual ecological or environmental damage. In one sense this defeats the purpose of the law in that it becomes more about semantics than preventing ecological damage.

7. What gaps in the current ensemble of laws that protect the environment do you feel need to be patched?

A: Their actual enforcement.

8. What do you think prevents Irish citizens from bringing legal action against agents (individuals, companies, institutions) that harm the environment?

A: There are a few factors, lack of information access to suitably focused legal people and sometimes cost.

9. What do you think aids/would aid Irish citizens in bringing legal action against such agents?

A: Dispensing information on the issue of the legal background.

10. Where are people currently going to get environmental information and information on legal enforcement of environmental laws?

A: Websites such as FOIE, Heritage and Environmental Awareness Officers.

11. Who do you (or citizens) contact after becoming aware of an environmental breach?

A: Planning Enforcement usually or NPWS. I work In Planning.

12. Do you think sanctions for breaches of environmental laws are appropriate? Do they function well in practice?

A: No. It all depends on enforcement and adequate penalties being put in place in court. It is very much a hit or miss affair.

Respondee 4: Local Authority Heritage Officer

1. In your experience, what are the environmental issues most often litigated/complained of? (pollution, unauthorised cuttings, etc)

A: The calls I get from the public generally relate to a direct loss/removal of environmental resources such as tree felling, hedgerow cutting, wetland infilling. These activities are immediately apparent, that cause changes in the landscape which are therefore “noticed” by members of the public. The insidious nature of other environmental changes is not noticed – the shifting baseline downwards each year where an environmental resource or ecosystem is declining in quality are invisible and quiet, and therefore are not complained about to the same degree. Often these are much more serious issues.

The issues I see getting the most media attention are the legal cases brought by Peter Sweetman, where he is using the courts to build precedent and Irish interpretation to EU directives at site and consent levels, and to highlight gaps in the implementation of the directives here.

2. What do you think are 3 most common areas where there is insufficient enforcement of environmental legislation?

A: In my opinion the lack of enforcement starts with an inadequacy of the legislation in the first instance. I do not consider most of it fit for purpose in the current climate (no pun, or full pun intended.) Anything outside a “protected” site is at risk with no or little punitive

deterrents, even if there are provisions dotted around in various legislative acts to prevent or control damaging activities. Wetlands, hedgerows, cumulative impacts of agricultural enterprises all come to mind.

The infilling, drainage of wetlands remains an issue despite changes in 2011 to planning and agricultural regulations.

Hedgerows do not really have any protection that is meaningful. The wildlife act provisions are inadequate and do not deal with the different types of hedges – townland boundaries, hedges that link to native woodland sites, hedges that are remnants of old ancient woodlands are all more species rich than the average but have no specific protection. A new report that will be published for Monaghan Heritage Office in the next couple of weeks show terrible results for this habitat over last 10 years, despite the legislation.

Ammonia levels and nitrogen deposition is an issue here, due to concentration of intensive poultry, pig, and bovine practices. Extremely poor link up between agricultural regulation and planning applications, which has caused proliferation of these enterprises here with no real examination of the potential impacts before consents were given.

3. What national and European laws (environmental or otherwise) are most used in practice, when legal action is brought against entities that harm the environment?

A:

- EU Habitats and Birds Directives
- EIA directives
- Nitrates Directive will become the big one I suspect
- Aarhus Access to environmental information

4. Could you provide examples of laws where the mechanism of enforcement can be more efficient?

A: See my previous answers.

5. Are there International environmental law principles that are used in practice that you think should be codified into national law? Can you provide examples?

A: The entire thing needs to be turned on its head. Rights of Nature recognition is essential or the ecosystems on which we depend will continue to be nibbled away, and environmental trends continue to decline. The recognition of the rights of nature to thrive and survive is a missing piece of the jigsaw. The legislation as it stands is simply “permitting” or penalising or compensating for environmental losses.

The attribution of legal standing / personhood for natural resources such as large bog sites or rivers or wetlands has potential too by giving a voice to these essential resources in a universal system approach to decision making.

The big shift in 21st century must be that we move our thinking from masters to custodians to recognising that we are part of nature. Legislation needs to reflect these philosophical, ethical, and scientific parameters.

Rights of Wetlands by the US Society of Wetland Scientists.

6. Over the course of your career, have you noticed any trends related to why legal action against genuine breaches of environmental regulations fail? (any arguments, legal provisions, or technicalities)

N/A

7. What gaps in the current ensemble of laws that protect the environment do you feel need to be patched?

A: I think I said this already in previous answers. May I say that “patching” in my experience often leads to over complication of matters and can lead to box ticking and complicated procedures that do not actually protect anything in the end.

8. What do you think prevents Irish citizens from bringing legal action against agents (individuals, companies, institutions) that harm the environment?

A:

- Lack of knowledge on how to go about it.
- Concern about costs and length of litigation,
- Inter-personal/family/small community/ everybody knows everybody issue,
- Genuine fear of reprisal including threats by those engaged in criminal activity

9. What do you think aids/would aid Irish citizens in bringing legal action against such agents?

A:

- Environmental legal defence fund.
- Explanatory guides – how to do it
- Mentoring or support organisation
- Granting personhood rights to ecosystems so that decision making is put on a different footing from the outset.

10. Where are people currently going to get environmental information and information on legal enforcement of environmental laws?

A: No Idea. Genuinely!

11. Who do you (or citizens) contact after becoming aware of an environmental breach?

12. Do you think sanctions for breaches of environmental laws are appropriate? Do they function well in practice?

A: No and No.

Respondee 5: NGO Representative

1. In your experience, what are the environmental issues most often litigated/complained of? (pollution, unauthorised cuttings, etc)

- The extraction of peat for turbary/energy/horticulture and wind energy developments.
- “Peat Piracy” - unauthorised extraction for turbary, essentially a contractor moving on to turbary banks that they do not own. Industrial extraction complaints also occurs where members of the public who live near a horticultural peat extraction site see their local environment being destroyed and lorry after lorry removes the peat.
- There are also planning issues as such with Wind Farms where turbines have been installed into SACs or near to and affecting the Qualifying Interests.
- There is also Ireland's poor implementation of the EIA directive, evident by the number of bog slides after Windfarm developments and the legal proceedings initiated by the EU Commission.

2. What do you think are 3 most common areas where there is insufficient enforcement of environmental legislation?

- Peat extraction has never been properly regulated. Bord na Mona (BnM) have been the only licensed peat extraction company operating in Ireland (but even Bord Na Mona are applying for substitute consent). All other peat extraction companies have been essentially operating illegally without planning. There is no onus to minimise damage to the environment such as managing the water leaving the site through drainage with all the peat silts and chemicals affecting Ireland's waterways. There is also the direct loss of biodiversity and carbon sequestration from the loss of the peatland habitat. Evident by the recent River Basin Management Plan draft is that peat extraction is having detrimental effects on Ireland's aquatic network. Peat entering rivers from peatland drainage is extremely damaging yet all turbary is unregulated and other than BnM all industrial peat extraction has not been regulated. This is going against Ireland's efforts towards the Water Framework Directive where we must have all waters of “Good Ecological Status” and our SACs need to be of “Favourable Conservation Status.”
- There is currently a land grab for Wind Farm developments where lots of companies are throwing darts at the map and applying for planning permission. We have reached a point where many SACs are being surrounded by these developments. How is this going to affect the birdlife and other qualifying interests that the site was designated for? The developments are not accounting for their impact cumulatively with all the other developments already operating or planned and they are not considering the supporting habitat for these sites. We have also seen many times within planning scoping and planning applications that the developer wants to remove some habitat and replace it somewhere else as mitigation. This is the developers deciding where conservation happens.

3. What national and European laws (environmental or otherwise) are most used in practice, when legal action is brought against entities that harm the environment?

- EU Habitats Directive, but this only applies to designated sites in practice, and the habitats and species listed rarely afford real protection and prosecutions are minimal.
- Irish Wildlife Acts - which actually applies to all species although some have moratoriums to allow predator management on farms etc.
- EIA Directive
- Section 40 of the Irish Wildlife Acts, vegetation removal during the bird nesting season (1st March to 31st August).

- Planning and development acts (IPCC would submit planning enforcement enquiries to County Councils/EPA and NPWS when a member of the public alerts us to what they think is illegal peat extraction).

4. Could you provide examples of laws where the mechanism of enforcement can be more efficient?

- Turbary, while a turbary licence holder is allowed to cut turf for the family, it is not regulated or monitored by anyone. Contractors can operate freely and rarely have they been forced to stop (if ever). County Councils could regulate this by operating an annual ticket service, or something similar. The impact of turf cutting could then be better managed as the extent would be better known and followed.
- Peat extraction needs to be fully regulated; planning laws could be extended to provide protection for carbon stocks remaining in man-modified peatlands.
- As Bord na Mona are licenced, condition 10 of the licence means they must rehabilitate once industrial production of the site has ended. This means that BnM kept extracting until it was uneconomical to do so. If the licence stated “restoration” instead then BnM would have stopped extracting earlier and there would be a greater possibility of restoring the site to a raised bog rather than letting the site birch up or turn into a lake/fen (which is deemed environment stabilisation). The EPA issues the licence. All other peat extraction companies that have been operating do not have any onus to rehabilitate or restore at all.

5. Are there International environmental law principles that are used in practice that you think should be codified into national law? Can you provide examples?

Polluter Pays

Precautionary Principle

6. Over the course of your career, have you noticed any trends related to why legal action against genuine breaches of environmental regulations fail? (any arguments, legal provisions, or technicalities).

- The EU Commission noted that Ireland was the only country that had never implemented an Environmental Impact Assessment, highlighted by the Derrybrien Windfarm case where we are still getting fined for not implementing it in relation to that case.
- Some County Councils also seem better (or more stringent) at implementing planning law regarding the environment. E.g., Wind Farms getting planning within SACs in Donegal.
- Generally planning is not refused because of the environment, but because of other factors such as Defence Forces land requirements etc. Environment is usually down the list of reasons to refuse. It should be at the top as once a habitat is gone, it is gone. Death by a thousand cuts.
- There are also issues with locations and ability of councils to ascertain where an unauthorised development is taking place. We have sent in planning enquiries to planning departments and they have not been able to find the location of the possible illegal development even with directions. (Though they have noted that they will continue to monitor the area).

- Not enough emphasis has ever been put on how important peatland habitats are as a keystone habitat in Ireland. Over 20% of the land area was originally peatland (raised, blanket and fen) which has been regulating climate for 1000s of years and providing refugia for specialist peatland species. Now less than 15% of raised bog is left in a conservation worthy condition and less than 1% is considered actively growing. In terms of raised bog - emphasis has always been on the employment benefits that peat extraction brought. Yet there was a big turnaround as soon as it was deemed uneconomical to continue, so even though the habitat is nearly lost, we still must find more jobs for citizens, which is a double loss. We should have ended peat extraction sooner.

7. What gaps in the current ensemble of laws that protect the environment do you feel need to be patched?

- The protection of designated sites needs to be enforced. 27% of the Active raised bog portions were lost within the designated sites in the years after designation due to ongoing drainage and inability of the National Parks & Wildlife Service to enforce protection. Less than 1% of Ireland's raised bogs are now considered active (in Ireland). Turf cutting has also been continued on SACs. Yet this is not generally considered illegal. It is illegal to open a new bank on an SAC and illegal to re-open a bank that has been left, but if you had not stopped cutting when the designation came in you are entitled to continue.
- Another issue is the screening out of detrimental effects during the planning/screening stage. I have heard from ecological consultants on numerous occasions that they feel bad about the screening process for developments as they know inherently that there are detrimental effects from loss of habitat and from hydrological disruption etc. How can it be made fairer so when an independent ecological consultant is hired and they give their true opinion/report and then the developer loses the planning application, that consultant will not be hired again, or might not get paid even. The only defence here is the local authority or An Bord Pleanála who are meant to be independent.

8. What do you think prevents Irish citizens from bringing legal action against agents (individuals, companies, institutions) that harm the environment?

Cost of litigation and knowledge of how to do this. I think there is a real feeling that planning is not enforced anyway.

9. What do you think aids/would aid Irish citizens in bringing legal action against such agents?

Maybe some sort of information campaign about how to do this and how environmental laws work would benefit members of the public. This should be in an Irish Context (wildlife acts etc) and an international context (Eu habitats, WFD) and disseminated to the public. Environmental law courses would be too strong but information evenings maybe in person in different areas around the country would benefit the members of the public. These could be held in conjunction with government agencies and/ or eNGOS, for instance SWAN (sustainable water network) or LAWPRO, EPA and NPWS.

10. Where are people currently going to get environmental information and information on legal enforcement of environmental laws?

- In [NGO's] experience the public does not generally know where to go. IPCC deals with the public looking to complain about peat extraction and we would pass on the query to NPWS/EPA and Planning departments within the County Councils. It generally fits the habitats in question. Some County Councils have an environmental officer some do not, same with the heritage officer which also covers natural and built heritage.
- The National Parks and Wildlife Service have been extremely understaffed and even though they are responsible for designated sites and wildlife crime, pointing a member of the public to their local ranger has been near impossible. Rangers should be able to inform on legalities around environmental law and enforcement but being so under-funded has hindered this. Many people do not know that there is supposed to be a team of rangers on the ground for each county (or that they even exist as a government organisation).
- In recent years I think Friends of the Irish Environment have won a few cases in the high court and this has raised their profile, so some members of the public are aware that there is an eNGO with legal experience.

11. Who do you (or citizens) contact after becoming aware of an environmental breach?

- County Council Planning departments/Environmental Protection Agency/National Parks and Wildlife Service, (An Bord Pleanála possibly), EU Commission. Company responsible (e.g., Bord na Mona).
- We request that the planning department “initiate enforcement procedures” if the said development is found to be deemed unauthorised. The department does not have to get back with an update unless they do find that the development is unauthorised. We also notify the NPWS and/or the local Ranger (if a designated site we would also notify the Designated Sites Unit). We will also issue an environmental complaint to the Environmental Protection Agency.

12. Do you think sanctions for breaches of environmental laws are appropriate? Do they function well in practice?

- If a company is found to be neglecting environmental law and/or not following best practice, then they should not be able to do business in the future. A sanction on their ability to operate here must be a deterrent.
- A financial punishment also needs to be a factor so that the state is not left paying the fine (e.g., Derrybrien), but companies like Apple and Shell are not affected by this as their accounts are massive.

Respondee 6: NGO

1. In your experience, what are the environmental issues most often litigated/complained of? (pollution, unauthorised cuttings, etc)

illegal quarries, inappropriate development of wind farms, nitrate runoff, disrespect and degrading of SACs and SPAs

2. What do you think are 3 most common areas where there is insufficient enforcement of environmental legislation?

as above

3. What national and European laws (environmental or otherwise) are most used in practice, when legal action is brought against entities that harm the environment?

EIA directive, Water framework directive and Habitat directive

4. Could you provide examples of laws where the mechanism of enforcement can be more efficient?

concerning illegal quarries

5. Are there International environmental law principles that are used in practice that you think should be codified into national law? Can you provide examples?

Sustainability: especial concerning circularity, reuse, energy reduction, recycling, and the manufacture design of stuff to accommodate recycling and reuse especially where minerals are concerned such as those used in electronic gadgets and energy production. These are a priority, and such infrastructures and legislation should exist before any planning decisions are considered to mine such minerals in Ireland. To do no significant harm principle should be crystalized especially important her in Ireland due to being on the frontier of the EU

6. Over the course of your career, have you noticed any trends related to why legal action against genuine breaches of environmental regulations fail? (any arguments, legal provisions, or technicalities).

Access to justice is still a hurdle for most people, mainly due to costs

7. What gaps in the current ensemble of laws that protect the environment do you feel need to be patched?

access to justice and costs. Public participation in decision making is not fit for purpose. EIA and AAs cannot be considered independently assessed either by private firms or state authorities due to conflict of interests within.

8. What do you think prevents Irish citizens from bringing legal action against agents (individuals, companies, institutions) that harm the environment?

as above in Q7

9. What do you think aids/would aid Irish citizens in bringing legal action against such agents?

free legal aid for environmental cases that can be verified by a separate established environmental court to be genuine in the interest of our environment

10. Where are people currently going to get environmental information and information on legal enforcement of environmental laws?

Each region should have an Aarhus centre to facilitate the public and to educate

11. Who do you (or citizens) contact after becoming aware of an environmental breach?

Good question! therefore the need for a regional Aarhus centres

12. Do you think sanctions for breaches of environmental laws are appropriate? Do they function well in practice?

they are far from appropriate and are not a deterrent

Respondee 7: NGO

1. In your experience, what are the environmental issues most often litigated/complained of? (pollution, unauthorised cuttings, etc)

Water & air pollution, illegal dumping, environmental health issues relating to housing standards, nuisance/danger caused by derelict sites, flood risk

2. What do you think are 3 most common areas where there is insufficient enforcement of environmental legislation?

Emissions targets, water quality, derelict sites

3. What national and European laws (environmental or otherwise) are most used in practice, when legal action is brought against entities that harm the environment?

N/A

4. Could you provide examples of laws where the mechanism of enforcement can be more efficient?

N/A

5. Are there International environmental law principles that are used in practice that you think should be codified into national law? Can you provide examples?

N/A

6. Over the course of your career, have you noticed any trends related to why legal action against genuine breaches of environmental regulations fail? (any arguments, legal provisions, or technicalities).

N/A

7. What gaps in the current ensemble of laws that protect the environment do you feel need to be patched?

N/A

8. What do you think prevents Irish citizens from bringing legal action against agents (individuals, companies, institutions) that harm the environment?

Costs-lack of civil legal aid. Complexity of law/multitude of state bodies with responsibility. Lack of awareness of how to bring such action i.e., how the law is relevant to their situation, who is their action against, how should they progress it.

9. What do you think aids/would aid Irish citizens in bringing legal action against such agents?

Legal aid in environmental matters/for ENGOs. Education/accessible information

10. Where are people currently going to get environmental information and information on legal enforcement of environmental laws?

Internet-EPA and other websites. Contacting EPA & local authorities

11. Who do you (or citizens) contact after becoming aware of an environmental breach?

EPA, Local Authorities, National Environmental Complaints Line, alleged offender

12. Do you think sanctions for breaches of environmental laws are appropriate? Do they function well in practice?

No, not stringent enough and EPA under resourced. Issue of lack of enforcement of the laws that are there.