An Introduction to the System of Environmental Dispute Resolution in Korea

Introduction

This commentary explores the South Korean system for settling environmental disputes. The focus is on the *Environmental Dispute Settlement Law* 1997 (South Korea), which was enacted in order to provide administrative dispute resolution mechanisms as an alternative to the courts.

Administrative approaches to environmental dispute resolution can supplement judicial methods and contribute to the efficient resolution of disputes. The period for mediation and arbitration prescribed by the legislation is significantly less than lengthy litigation.[1] Cheaper and quicker outcomes are facilitated through dispute settlement based on the consent of the parties to recommendations. In addition, administrative bodies can act as repositories for detailed information that would facilitate consistent and efficient determinations regarding contentious questions such as causation of environmental damage and quantification of damage sustained.

Identifying the source of pollution can often be extremely difficult. Just as smokers have had difficulty in proving liability on the part of a tobacco company, so too victims of environmental damage have had difficulty in proving the liability of environmental polluters. In order to sue a cigarette company successfully, it must be shown that the smoker has consumed the same brand of cigarettes (and perhaps even the same strength) for an extended period of time. Similarly, in the field of environmental law a party who has suffered loss as a result of pollution must identify the source of the pollution in order to bring a suit. Just as there are many different brands of cigarettes, so too there are many different sources of environmental pollution. Traditional judicial approaches have not been able to resolve issues of liability in a timely manner. Factors such as elapsed time, distance and multiple causes mean that a considerable amount of court time is spent dealing with argument as to the nexus between the alleged polluter and the damage incurred. Arguably a less formal administrative approach can be more effective in this field.

1 See further Yun-Goang Kang "Reform of the Administrative Dispute Settlement System" (1998) 91 *Journal of National Economics* 117 at 117–118.

Types of Dispute Resolution Procedures

Judicial Dispute Resolution

The civil approach may comprise an order of injunctive relief and/or compensation. A grant of injunctive relief is generally employed to prevent imminent environmental pollution or to halt current polluting practices. A person who suffers as a result of environmental pollution can demand a stop to the polluting practice. The person must demonstrate to the court that damage has been sustained, the damage sustained is irreparable, and the source of the pollution can be identified

In addition, a victim may seek monetary compensation by way of an action in tort. To prove liability of a polluter, the person must demonstrate personal financial loss and show that the polluter caused this. The exact amount of the loss must be determined.

Ordinarily, the defendant in legal proceedings will be a polluter. However, government authorities may also be the subject of proceedings if it can be shown, for example, that regulatory activity is not adequately deterring pollution or that emission permits are being issued illegally or improperly. [2]

Civil proceedings, however, have a number of problems. First, the court procedures are formal and inflexible as opposed to the administrative process, which is more accessible, both financially and in practical terms, and can be adjusted to suit varying circumstances. Secondly, the civil process requires that parties make submissions by way of pleadings. This may further entrench any factual disagreements between the opposing parties especially when neither can produce concrete evidence to support their position. The administrative body, on the other hand, is not required to rely so heavily on the parties submissions. Thirdly, in civil matters compensation can only be demanded from the parties to the suit. Liable third parties must be joined in order to obtain compensation from them. This may have the affect of amplifying the magnitude of both the proceedings and the costs. Finally it should be noted that civil courts in South Korea cannot enforce recommendations made by an administrative body. A strict separation between administrative and judicial powers is observed.

Given the demonstrable inefficiencies of the judicial process, it is not surprising that the majority of South Korean people affected by environmental pollution choose the administrative dispute resolution method.[3] This trend can be seen in

2 An administrative suit can also be invoked against decisions of environmental dispute settlement committees.

other countries, such as Japan and China, where administrative dispute resolution is the preferred method of settling environmental disputes.

Administrative Dispute Resolution

The administrative dispute settlement process is usually initiated by way of a written petition submitted to an environmental dispute settlement committee by the party claiming damages. The petition is a statement of claim demanding the administrative resolution of the environmental dispute.[4] Generally the party who has suffered damage must apply to the committee and the committee may then use its discretion to actively resolve the conflict. In some limited circumstances the committee can order compulsory administrative dispute resolution and make recommendations. If the recommendations are not accepted by either of the parties, the committee can conduct further investigation, and can ultimately report any illegal activity to the authorities. In such circumstances, the wrongdoer can avoid criminal prosecution by subsequently agreeing to obey the committees recommendations.[5]

The committee has three procedures it can follow: pre-mediation, mediation and arbitration. The first two procedures carry no legal force unless both parties voluntarily submit to the committees jurisdiction, while the latter may attract some legal authority subject to the condition that the parties do not subsequently pursue civil proceedings.

The environmental dispute settlement committee operates as a quasi-judicial body and its recommendations are not legally enforceable. However the advantage of this type of administrative dispute resolution is that it can restore a measure of equality to the distribution of power between the parties. The costs incurred in judicial proceedings are greatly reduced through the less formal administrative proceedings. For example, legal representation is not required. Further, the duration of proceedings is shortened by the committees power to call in its own information or expertise. This enables the committee to actively coordinate the hearing and avoids the protracted nature of adversarial proceedings. It also avoids the danger in civil actions of available expert testimony being excluded due to a party's financial constraints.[6]

3 Ji-Tai Ryu "Problems with the Environmental Dispute Settlement System" (1994) 219 Human Rights and Justice 42 at 42–43.
4 South Korean Government *Environmental Dispute Settlement: The Application Process* (1989) 7–8.
5 See Hyung-Chung Kim *The Environmental Protection Law* (1983) 339.
6 Jai-Gon Sim *The Korean Environmental Dispute Settlement System* (1992) 5.

In summary, the Korean administrative dispute settlement system may be seen as preferable to the judicial method for the following reasons:[7]

- rapid resolution of environmental disputes;
- procedural simplicity;
- less conflict through a non-adversarial approach, the committee having some fact-finding investigative powers; and
- facilitation of greater equality between the parties, the committee being able to supplement the victims lack of expertise and resources.

The Administrative Dispute Settlement System

Environmental Dispute Settlement Committee

The Environmental Dispute Settlement Committee is established by the *Environmental Dispute Settlement Law* 1997 (South Korea).[8] The committee is divided into two bodies: one for mediation and the other for arbitration. The law enables the Committee to make unilateral recommendations to the parties so that, rather than there being only consultation between the parties, the administrative system enables the mediator, the Committee, to take a more active role in the matter. The Committee may further present (and even give argument for) proposals to settle the dispute. In this way, the Committee is able to scrutinise the respective claim of each party and suggest any necessary adjustment, such as the amount of compensation claimed. The administrative dispute settlement system is thus able to supplement and support the judicial process. It can also operate independently of the judicial system provided all parties consent. Thus the administrative system is only effective when the parties consent is manifest.[9]

The Environmental Dispute Settlement Committee consists of a central committee and local committees. Members of the central body are appointed by the South Korean President, in council with the Environment Minister. Local committee members are appointed directly by the governor of the local government.

7 Sang-Kyu Lee "The Legal Character of the Administrative Settlement of Environmental Disputes" (1994) 219 *Journal of Human Rights and Justice* 34.
8 *Environmental Dispute Settlement Law* 1997 (South Korea) s. 33(1).
9 Ibid 34–36.

Both the central and local committees have the following functions:[10]

- mediation of environmental disputes;
- investigation of complaints;
- hearing of, and giving advice in response to, petitions by victims of environmental pollution;
- research into preventative approaches to environmental disputes; and
- education of the public in relation to environmental issues (e.g. prevention of pollution, resolution of disputes).

There are ten positions on the central committee, three of which may be held in a full-time capacity. A local committee consists of 20 members: a chairperson, who works full-time, and 19 part-time members. Members are appointed for a two-year period, after which time they may be reappointed. To be appointed as a committee member individuals are required to demonstrate an expert knowledge and understanding of environmental pollution.

Certain types of environmental dispute may only be resolved by the central committee. For example, when the dispute occurs between parties in separate regions of the country, the central body is charged with overseeing the matter. Similarly, the central body intervenes where a dispute involves more than two local governments. In certain circumstances, local committees are able to refer matters to the central committee. Disputes that involve more than one hundred complainants must be heard by the central body. Unlike the local bodies, the central body is able to employ some *ad hoc* measures. For instance, it may initiate arbitration or conciliation without an application from the affected party.[11]

Both the central and the local committees are divided into three departments: pre-mediation, mediation and arbitration. Committee members are permanently assigned to one of these departments, although the chairpersons of the various committees are able to re-assign committee members in response to particular cases.

10 Ibid s. 5.
11 Ibid s. 6(1). See Office of the Environment Minister, South Korea *Commentary on the of Settlement System of Environmental Disputes* (1999) 8.

The Elements of the Administrative Dispute Settlement System

Pre-mediation

Opposing parties are able to engage in pre-mediation negotiations. This procedure is overseen by between one and three committee members although it is more common for a single member to preside.[12] The role of the committee in pre-mediation is to provide a forum for both parties to establish their respective positions. Ideally, any facts relevant to the dispute are ascertained during this meeting. This enables the parties to establish what they believe to be the facts of the dispute – the committee is not permitted during pre-mediation actively to seek out the facts. While it is able to take a more active role during mediation and arbitration (e.g. by making recommendations and conducting specific investigations) the committees influence is more constrained in the first instance. Should it feel that there is a prospect for early settlement of the dispute, the committee is able to encourage the parties to resolve the matter.[13] Conversely, the mediator is permitted to terminate pre-mediation in the event that resolution is unlikely.[14] The main purpose of pre-mediation is not only to resolve the dispute but also to allow each party to inform the other of their respective demands.

For each local committee, as for the central committee, there is a designated list of active committee members. Sitting members are selected from these lists by the chairpersons of the respective committees. In theory, all the committee members are equally qualified to handle any pre-mediation In practice, however, members become more expert in particular kinds of disputes and are more frequently assigned to their areas of expertise. The same is true at other stages of a dispute.

Once a member has been selected to pre-mediate a dispute, the parties are informed in writing. They are also informed of the name of a government investigator who will assist in the administration of the dispute. Primarily, the role of this investigator is to assist with matters such as inspecting pollution sites, examining documents (including documents containing trade secrets) and conducting interviews. In the event of ambiguity, the committee member may apply to the chairperson to allow additional expert advice through a designated external representative.[15]

12 Once the dispute has been reported to the committee, it must appoint a pre-mediator within seven days: *Environmental Dispute Settlement Law* 1997 (South Korea) s. 27(1).

13 Ibid s. 28. See Office of the Environment Minister, note 11 at 12.

14 *Environmental Dispute Settlement Law* 1997 (South Korea) s. 29. See Jin-Sang Son "A Comparative Study of the Korean and Japanese Environmental Dispute Settlement Systems" (1994) 6 *An-Dong University Journal of Social Science* 39 at 43.

15 *Environmental Dispute Settlement Executive Law* 1997 (South Korea) s. 21. See Young-Kil Jeon "The Central Issues in Environmental Dispute Settlement" (1994) 219 *Journal Human Rights and Justice* 53 at 56.

The Mediation Procedure

The procedure for appointing committee members as mediators, and the notification of parties, mirrors the pre-mediation process.[16] The key difference is in the composition. Legislation mandates that no less than three members preside during mediation. As with pre-mediation, government officers are appointed to assist with investigation. But unlike pre-mediation, investigative powers are extended to the committee thus enabling it to enter pollution sites, view and duplicate commercially sensitive documents and hear evidence from relevant persons. The committee is prevented, however, from pursuing its own investigations at the expense of the parties submissions.[17]

A major power of the mediation committee is its ability to propose a settlement plan to the parties and recommend that it be accepted within 30 days. This may contribute to an efficient resolution of the conflict. However, this power of the committee may only have effect with the consent of the parties. The law stipulates that the committee cannot impose, and must retrospectively terminate, proposals and/or recommendations made without the parties express consent.[18]

If the parties consent to the recommendation, they must inform the committee to proceed with the proposal and resolve the dispute. If the committee believes that the parties will not negotiate in good faith, it may pre-emptively terminate the proceedings.[19] If, within 30 days, explicit consent by the parties is not received, termination is automatic.[20]

If the administrative settlement system fails due to non-consent by one or other of the parties, civil litigation may be invoked. The parties are informed that any subsequent civil claim must be initiated within thirty days. Should a party choose to file a statement of claim as a result of termination of mediation, the statement will be held to have come into effect on the date of application for the failed mediation. The rationale for backdating these statements of claim is to avoid injustice to the plaintiff through the claim becoming statute-barred. In addition, this procedure serves as a check against the use of the administrative system as a method for delaying claims to compensation.

In order to decide a case of mediation, all the presiding committee members must convene. The chairperson oversees this meeting of committee members and facilitates a decision. For a decision of the committee to be valid, it must be given

16 Committee members must be appointed within seven days of the application for mediation: *Environmental Dispute Settlement Law* 1997 (South Korea) s. 27(1).
17 Ibid s. 32(2).
18 Ibid s. 35(2), (4).
19 Ibid s. 35(1). See Office of the Environment Minister, note 11 at 12.
20 *Environmental Dispute Settlement Law* 1997 (South Korea) s. 35(2). See Young-Kil Jeon, note 15 at 57.

by a majority of the presiding members.[21] For the committee to make recommendation during mediation, the support of at least half the committee members is required.

Ad-hoc Mediation

In addition to the process of normal mediation, *ad hoc* mediation is also permitted. Through this procedure, the committee is able to initiate mediation without the express consent of both parties.[22] The consent of one party will suffice. This is done in cases where serious damage has been sustained, where a resolution is not forthcoming, and where it is in the public interest to seek a solution.[23] Events which are said to meet this public interest requirement include:

- where a death has resulted;
- where public health is placed at risk; and
- where the damage in question amounts to no less than US$4,000,000.

It is the role of the chairperson of the committee to determine whether any of these conditions are met. In addition, the chairperson appoints the *ad hoc* committee and the supporting departmental investigators. The committee must inform affected parties in writing when it launches *ad hoc* mediation.[24]

Ineligibility of Committee Members

Parties may demand the removal of committee members when it is established that there may be a perception of bias.[25] This type of removal may also apply to investigation officers. The regulations provide an exhaustive list of scenarios in which there may be a possibility for prejudice.[26] A perception of bias exists where committee members:[27]

- are related to a party;
- have a shared commercial/personal interest with one or more of the parties;

21 *Environmental Dispute Settlement Law* 1997 (South Korea) s. 31(1), (2). See Jin-Sang Son, note 14 at 44.
22 *Environmental Dispute Settlement Law* 1997 (South Korea) s. 30. See Jin-Sang Son, note 14 at 44.
23 *Environmental Dispute Settlement Law* 1997 (South Korea) s. 30. See Office of the Environment Minister, note 11 at 19.
24 *Environmental Dispute Settlement Executive Law* 1997 (South Korea) s. 23(1), (2).
25 *Environmental Dispute Settlement Law* 1997 (South Korea) s. 12(1).
26 Ibid s. 12(1).
27 Office of the Environment Minister, note 11 at 15.

- have previously represented, or directly consulted with, one or more of the parties;
- have previously given expert evidence in the dispute; and
- have an interest in companies operating in the field of the dispute.

Parties may apply to the central or local committee for the removal of the member(s) to whom a perception of bias has been attributed. Alternatively, the committees may of its own motion decide to remove a member or the member may opt to stand down. This flexibility allows the committees to retain credibility in the face of both perceived and real conflicts of interest. Prior to removal, each member is presented with the reasons for the application and is obliged to respond personally.[28] This response is communicated to the committee, which decides the issue. Its decision cannot be appealed by the committee member in question. Once a member is removed, the procedure is recorded in an official document.[29] Any administrative settlement procedure that is in progress must be suspended until issues of bias are resolved.

Arbitration

Arbitration of environmental disputes commences with the submission of an application to the committee. The chairperson of the committee appoints either three or five members to an arbitration committee. In disputes of no more than US$160,000, a committee of three members will preside.[30] If the amount of the dispute is greater than US$160,000, five members will be appointed.

The arbitration committee may initiate a number of procedures if it considers it necessary for an efficient resolution of the dispute.[31] These include:

- conducting arbitration in the absence of relevant persons – for example, victims and witnesses (however, the committee retains the discretion to require absent parties to attend);[32]
- requiring the submission, duplication and investigation of materials and documents connected with the dispute;
- ordering investigations of sites of pollution; and

28 *Environmental Dispute Settlement Executive Law* 1997 s. 5(2). The Office of the Environment Minister, above note 11, 13.
29 *Environmental Dispute Settlement Executive Law* 1997 (South Korea) s. 5(1). See Jin-Sang Son, note 14 at 45.
30 *Environmental Dispute Settlement Executive Law* 1997 (South Korea) s. 26. See Young-Kil Jeon, note 15 at 57.
31 *Environmental Dispute Settlement Law* 1997 (South Korea) s. 38.
32 Ibid s. 38(1). See Jin-Sang Son, note 14 at 45.

- Engaging the services of an environmental damage evaluation expert in determining the actual cost of the environmental damage sustained, thus verifying or correcting any amounts claimed by the parties.

The arbitration committee can initiate investigations either with the consent of the parties or on its own initiative. For the session of the committee to be considered legitimate, all the arbitration committee members appointed to the dispute must attend.[33] For decisions to be binding, they must be endorsed by at least half of the sitting members.

Each party is given the opportunity to present their argument to the arbitration committee. Any person who is required to give evidence before the arbitration committee is required to do so on oath.[34] At the conclusion of any investigative procedure conducted by a committee, the parties may be permitted to submit a response to any findings.[35]

In general, the inquiry will be open to the public. However, in cases where it is established that doing so would have negative consequences the committee is able to order otherwise.[36] Circumstances leading to a closed inquiry may include: where it would constitute an unreasonable infringement of a party's privacy; where it is not in the public interest; where the impartiality of the procedure would be threatened; or where commercial secrets would be compromised.[37]

Arbitration must be concluded within nine months of commencement.[38] The chairperson of the committee is permitted to grant one extension of time provided the parties agree to the extension and to the period of extension.[39]

The arbitration committee may assign a case to mediation where it considers this to be preferable. In such circumstances, the mediation may be conducted before the arbitration committee, or it may be referred to a mediation committee.[40] If one or more parties do not consent to such a transfer, then the stalled arbitration proceedings may still continue. If, however, both parties consent, any arbitration proceedings will be cancelled.

33 *Environmental Dispute Settlement Law* 1997 (South Korea) s. 36.
34 Ibid s. 38(4).
35 Ibid s. 38(3).
36 Ibid s. 37. See Yun-Kwang Kang, note 1 at 81.
37 *Environmental Dispute Settlement Law* 1997 (South Korea) s. 37(3).
38 *Environmental Dispute Settlement Executive Law* 1997 (South Korea) s. 12(1).
39 Office of the Environment Minister, note 11 at 14.
40 *Environmental Dispute Settlement Law* 1997 (South Korea) s. 43.

The Legal Effect of Arbitration

The formal result of arbitration is written into an official document, and signed by the committee members. Each party receives an original document containing the decision.[41] With the parties consent, the decision of the committee is regarded as the conclusive resolution of the dispute and thus binding. The parties need not invoke the civil process in order to give effect to the committees decision.[42]

Should further civil action be sought, this must be done within 60 days of the receipt of the decision. Non-invocation of the civil process within this time is deemed to amount to the consent of both parties to the arbitration committee's decision.[43] In cases where an overlap occurs between the administrative and judicial hearings, the civil court may order that the civil matter be adjourned pending the final administrative decision.[44] Similarly, administrative hearings may be adjourned pending civil determination.[45] Where civil action is invoked following an administrative arbitration, the plaintiff's statement of claim will take effect retrospectively to the date of application for administrative settlement.

The law specifies that where it is preferable that environmental damage be reversed, the committee has a discretion to make orders to this effect. Thus, the committee may be required to choose between the competing remedies of restitution and restoration. However, the committee's discretion is circumscribed by considerations of cost and the potential for restoration.[46]

Representative and Third Party Proceedings

Often, environmental disputes affect more than one party. Legal costs and legal proceedings may be unnecessarily duplicated in disputes that have a common factual basis. In South Korea, both the administrative and judicial dispute resolution systems provide for class action settlements. In such actions, between one and three claimants may pursue a ruling on behalf of all the other affected individuals. This may be done either with or without the consent of those other affected individuals.

41 The decision document includes details of the purpose of the application, a summary of the arbitration decision, and reasons for the decision. *Environmental Dispute Settlement Law* 1997 (South Korea) s. 40.
42 Ibid s. 42.
43 Ibid s. 42.
44 Ibid s. 45(1). See Jin-Sang Son, note 14 at 57.
45 *Environmental Dispute Settlement Law* 1997 (South Korea) s. 45. See Office of the Environment Minister, note 11 at 14.
46 *Environmental Dispute Settlement Law*1997 (South Korea) s. 41.

Representative Mediation

When representative proceedings are adopted the claimants must choose between one and three representatives, either from among themselves or from a community association. In order to protect each others interests, the claimants may set up a constructive trust between themselves and their representatives, effectively delegating their legal rights to their representatives. In the absence of a selected representative, the committee may recommend that one be chosen.[47] This enables the committee to take an active role in preventing duplication. The claimants are permitted by the regulations to dismiss their representative(s) at will.[48] If they do so, this must be reported to the committee immediately.[49] In addition, persons who are not included in the original class action may later apply to be added to the representative mediation.[50] In these circumstances, the committee must give approval for any retrospective addition of claimants. Those who apply to join the action later must prove that their grievance relates to the same environmental dispute.[51] This must be done before the conclusion of the mediation.[52]

Apart from representation by claimant representatives, the law allows community associations, such as the Environmental Protection Agency (EPA), to act as representatives.[53] The committees consent is not usually required when claimants choose their own representative, but when it is proposed that a community body act as representative the committee must consent.[54] In order to be a representative the community organisation must be a legally recognised, non-profit organisation and have a stated purpose of environmental protection. Legal recognition is given by the Environment Minister.

Generally, those represented may not have an individual bearing on the settlement. Once their legal claim has been entrusted to a representative they are bound by the representative's conduct.[55] However, there are two procedures that require the express consent in writing of those represented: withdrawal of the application for administrative settlement and consent to recommendations of the committee.[56]

47 Ibid s. 19(1).
48 Ibid s. 19(5). See Office of the Environment Minister, note 11 at 18.
49 *Environmental Dispute Settlement Law* 1997 (South Korea) s. 19(5).
50 Ibid s. 20(1).
51 Ibid.
52 Ibid. See Office of the Environment Minister, note 11 at 19.
53 *Environmental Dispute Settlement Law* 1997 (South Korea) s. 26.
54 Ibid s. 26(1).
55 Ibid s. 19(3).
56 Ibid s. 19(3). See Jin-Sang Son, note 14 at 60.

Third Party Mediation

In addition to representative proceedings (i.e. representation by consent) there is also the possibility of third party mediation (i.e. representation without consent). This is especially relevant where the class of victims is not immediately identifiable. In order to proceed down this path prospective third parties must apply for the committees approval.[57] The committee must be satisfied that a number of objective requirements are met before third party proceedings are commenced; namely that:[58]

- the environmental dispute relates to a common cause;
- the number of victims affected is in excess of one hundred, and that representative mediation is impossible;
- the amount of compensation sought on behalf of each victim is less than US$4,000; and
- at least thirty of the victims agree to engage in third party mediation.

In addition, there is a subjective constraint on the third parties. They are required to represent the other parties interests fairly and impartially. This may be enforced unilaterally by the committee or on the application of other victims in the proceedings.[59]

Suggestions for Reform of the Administrative Dispute Settlement System

Practical experience reveals that only 20 per cent of environmental disputes submitted for administrative settlement are resolved by mediation.[60] This is partly explained by the observation that mediation committees have not yet demonstrated an ability to maximise the possibilities for early resolution of disputes. More often than not, these committees provide the parties with very narrow

57 *Environmental Dispute Settlement Law* 1997 (South Korea) s. 47. The prospective third party must provide the committee with their name and address, the name and address of the proposed defendant, a list of the victims, the maximum amount of compensation sought and the purpose/reasons for third party mediation.
58 Ibid s. 47.
59 Ibid s. 50(2).
60 Central Environmental Dispute Settlement Committee *Annual Report* (1998) 55–64; Young-Kil Jeon, note 15 at 59.

recommendations, thus not taking proper account of all affected interests. If the parties do not consent to these recommendations, the mediation procedure ends.[61]

Another explanation for the under-utilisation of mediation may relate to the legal enforceability of this procedure. Victims commonly perceive that arbitration is more favourable due to the broader legal consequences attached to it.[62] By way of contrast, the Japanese experience in administratively settling environmental disputes leans heavily towards mediation. Unlike the South Korean approach, mediation does not terminate once the parties have failed to consent to the committees recommendations. A greater emphasis is placed on early settlement of disputes, and mediation committees are able to suggest further recommendations rather than submitting the case for arbitration.[63]

The South Korean settlement system may benefit from adopting similar practices. Recommendations need to be more conducive to compromise. Rather than making the success of mediation dependent on the acceptance of one set of recommendations, the committee should be able to modify recommendations if this is likely to achieve resolution. Since the legal enforceability of mediation depends on the consent of both parties, committees need to structure their recommendations in such a way as to encourage the consent of the parties. An exception to this would be where it is clear that a partys non-consent is motivated by delaying tactics. In this case modifications to recommendations should be avoided.

Greater public awareness of administrative environmental dispute settlement is another important factor as this should lead to greater utilisation of the mediation procedure. Moreover, where class actions are involved, greater publicity may mean that victims who have not joined the proceedings will do so.

In addition, a number of useful suggestions can be applied to the committees themselves. It was noted earlier that there are between one and three full-time members on each committee. In practice, there is usually only one full-time member – the chairperson. Committee procedures, such as investigation, become neglected. Less time is available for encouraging compromise in the mediation and arbitration stages. More full-time positions need to be created.

61 Central Environmental Dispute Settlement Committee, *Guidelines for Mediation Procedures* (1999). See also Yung-Hee Rho *The South Korean Environmental Administration: Analysis and Reform* (1989) 221.

62 Central Environmental Dispute Settlement Committee, note 50 at 55–64. See also Young-Kil Jeon, note 15 at 62.

63 Ji-Tai Ryu, note 7 at 46. See also Central Environmental Dispute Settlement Committee *The System and Practice of Environmental Dispute Settlement* (1994) 87–88; Jun-Hyung Hong "Problems with the Environmental Dispute Settlement System: Possible Solutions and Alternatives" (1994) *Environment and Life* 76 at 83.

The central committee has the support of an administrative department. This department assists with such matters as investigations and other administrative tasks. This enables committee members to focus on the more substantial issues, assigning clerical duties to support staff. Such a support department is not attached to the local committees. These committees would operate much more efficiently and effectively if provided with proper clerical support.[64]

Furthermore, the number of experts employed by local committees is inadequate. Only a small proportion of the local committee members are experts. The remuneration of local expert members is modest, and does not properly encourage participation by experienced individuals. It often leads to superficial mediation since committee members are not sufficiently knowledgeable in the subject matter of the dispute. Inevitably, many disputes are referred to the central committee where there is greater experience and expertise. In order to ensure that the relevant expertise is available cooperation between the committees and local universities and institutes is desirable. Procedures such as calculation of damages and investigation can be outsourced. The cooperation of government is thus essential in obtaining the additional funds required.

Finally, some observations regarding investigation procedures are called for. In arbitration, the right of the opposing sides to express their positions is protected by law.[65] When there is an investigation, however, the right of the parties to express their opinion is not guaranteed, even though investigative reports about the causes and effects of environmental pollution often influence the final decision of a committee. There is a risk that a committee may neglect one or other of the parties positions. In this scenario, it is unlikely that both parties will consent to the committees recommendations.[66] It is only in the determination of compensation (in arbitration) that true debate is permitted between the opposing parties.

The administrative system may leave the parties feeling that they have not been able to properly express their positions. This may lead them to opt for civil action. The administrative system was set up to avoid this.[67] In order to do so, the parties right to properly participate in investigations, and in the process more generally, must be protected.[68]

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64 Young-Kil Jeon, note 15 at 62.
65 *Environmental Dispute Settlement Law* 1997 (South Korea) s. 47.
66 Suk-Rak Oh "Procedural Difficulties with the Environmental Dispute Settlement System" (1994) 219 *Human Rights and Justice* 37 at 39.
67 Jong-Dal Kim "Principles of Environmental Dispute Settlement" (1996) *Daigu-Gyongbuk Yearbook* 34 at 39.
68 Jun-Hyung Hong, note 68 at 82.