

CLOSING THE GAP:

INFORMATION, PARTICIPATION, AND JUSTICE IN DECISION-MAKING FOR THE ENVIRONMENT



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CONTENTS

National Teams	v	4. Windows of Opportunity:	
Acknowledgments	vii	Access to Participation	65
Foreword	ix	Introduction	
Executive Summary	1	Access to Public Participation: The Law	
1. Introduction	11	Public Participation in Practice	
Purpose		Conclusions	
“Good Governance” and		5. Reinforcing the Structure:	
Sustainable Development		Access to Justice	91
Global and Regional Norms		Introduction	
Organization of the Report		Factors Influencing Access to Justice	
2. The Methodological Framework	21	Conclusions	
Measuring Governance		6. Building a Future:	
Description of the Framework		Capacity for Public Participation	107
Application of the Framework		Introduction	
Strengths and Weaknesses		Investment by Government in Capacity Building	
Conclusions		A Supportive Environment for Public Participation	
3. Opening the Door:		Conclusions	
Access to Information	33	7. Conclusions and	
Introduction		Recommendations	121
Access to Information: The Law		Summary of Findings and Conclusions	
Environmental Emergencies		Recommendations	
Air and Water Quality Information		Appendixes	135
Information About Environmental		1. Selection of Emergency Cases	
Performance by Industrial Facilities		2. Examples of Initiatives to Develop Public	
General Information about the		Access to Information about Industrial	
Environment Through State of		Facilities	
the Environment Reporting		3. Laws and Voluntary Approaches to Facility	
Conclusions		Reporting in Place in the Pilot Countries	
		Bibliography	143

BOXES

- 1.1 The Access Initiative
- 1.2 The Three Access Principles
- 1.3 Commitments to the Three Principles:
Access to Information, Access to Participation
in Decision-making, Access to Justice
- 1.4 Some Common Elements of National Public
Participation Systems
- 3.1 Freedom of Information in the United States
in the Wake of September 11
- 3.2 New Approaches to Making Facility-Level Data
Publicly Available
- 4.1 Women's Access to Decision-making
- 4.2 Commitments to Access to Information
and Participation in Multilateral Agreements
and Institutions
- 4.3 Public Participation Provisions of EIA Laws in
Latin America and the Caribbean
- 4.4 The Link Between Access to Information and
Access to Participation
- 5.1 The Ombudsman of the European Union
- 6.1 Public Interest Groups in Africa
- 7.1 Illustrative Recommendations for Action
at the National Level
- 7.2 Recommendations for Specific Institutional Actors

FIGURES

- 2.1 Access Initiative Countries
- 3.1 Public Access to Industrial Pollutant Information
- 3.2 Access to Information Scorecard
- 4.1 Stages in the Decision-making Cycle
- 4.2 Environmental Impact Assessments in Latin America
- 4.3 Access to Participation Scorecard
- 5.1: Access to Justice Scorecard
- 7.1 The Access Scorecard

TABLES

- 2.1 Methodological Framework
- 2.2 Sample Research Question Evaluating Conditions
for Public Participation
- 3.1 Indicators of Quality and Accessibility of Access to
Information
- 3.2 Presence of Law and Provisions Supporting
Public Access to Environmental Information
- 3.3 Quality and Accessibility of Access to Information
in Selected Emergency Cases
- 3.4 Case Selections Evaluating Quality and Accessibility
of Air Quality Information
- 3.5 Case Selections Evaluating Quality and Accessibility
of Water Quality Information
- 3.6 Facility-level Information Laws and Case Selections
- 3.7 Summary of Recent State of the Environment Reports
- 4.1 Indicators of Quality and Accessibility of
Participation in Decision-making
- 4.2 Articulation of Participation Rights in
Constitutional and Legal Frameworks
- 4.3 Public Participation Provisions in
Latin American and Caribbean EIA Laws
- 4.4 Overview of National Environmental and
Sectoral Decision-making Processes
- 4.5 Overview of National Energy Policy Cases in
Central and Eastern Europe
- 4.6 Overview of Participation in Regional, State,
or Local Decision-making Cases
- 4.7 Overview of Participation in Project Decision-making Cases
- 5.1 Indicators for Quality and Accessibility of Access to Justice
- 5.2 Enabling Conditions for Access to Justice:
Quality of Legal and Regulatory Framework
- 5.3 Enabling Conditions for Access to Justice:
Accessibility of Institutional Infrastructure
- 5.4 Enabling Conditions for Access to Justice:
Affordability of Justice
- 5.5 Access to Justice Summary Comparisons
- 6.1 Indicators for Quality and Accessibility for Capacity Building
- 6.2 Government Efforts to Build its own Capacity
- 6.3 Government Efforts to Build the Capacity of the Public
- 6.4 Supportive Environment for NGOs
- 6.5 The Role of the Media

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FOREWORD

In 1992, the governments of the world endorsed a truly revolutionary concept. In Principle 10 of the Rio Declaration, they affirmed that the public's right of access to information, participation, and justice in decision-making is instrumental in protecting the environment and in integrating environmental values into development choices.

Implementation of Principle 10 would change the world. The challenge of environmentally sustainable development can only be met with the engagement of an informed and empowered public. In the ten years since Rio, however, how much progress has the world actually made in implementing Principle 10?

In *Closing the Gap: Information, Participation, and Justice in Decision-making for the Environment*, Elena Petkova and her Access Initiative colleagues address the status of access to information, participation, and justice in nine countries around the world, asking the question, What have national governments done—and what do they still need to do—to create effective systems of public participation in their countries?

The report is the first publication resulting from The Access Initiative, a global coalition

launched by the World Resources Institute in November 2000. Together with colleagues from nine countries, the authors pilot-tested an innovative methodology to assess how well governments are performing in providing public access to environmental decision-making. This methodology represents the first attempt to measure not just the laws governing access but also the practice of access in a variety of national contexts. The first application of the methodology suggests that effective national public participation systems share common elements and that governments can learn from each other. It also suggests that these common elements can be assessed with a common framework of indicators and that regular, independent monitoring is likely to accelerate further progress.

The authors of this report suggest that governments in the nine countries assessed are taking their international commitments seriously. Over the past decade they have worked to introduce relevant legislation and develop infrastructure for implementation of the access principles. This first international assessment, however, also shows that citizens still have only limited opportunity to participate in economic decisions that affect the environment and their well-being. Public scrutiny cannot act as an incentive for

improved environmental performance without easily obtainable and accurate information, yet such information is often muddled, incomplete, and difficult to obtain in the majority of the countries studied. Citizens are frequently unable to participate in decisions that have profound impacts on their surroundings. Numerous obstacles also stand between citizens and the right to enforce existing laws providing for access to information and participation.

The authors recommend that governments devote more time and energy to the practice of access, rather than focusing primarily on the law. More resources must be devoted to capacity building both on the supply side—the training of government officials, the creation of the appropriate institutional infrastructure—and on the demand side—empowering non-governmental organizations to organize public demand for information and to elicit better performance from governments. Because national systems of public participation continue to fall short of aspirations, independent civil society monitoring is necessary to track progress in these national systems and also to generate information for policy change. International donors could help by supporting the access principles both in their funding priorities and in their own practice.

Closing the Gap: Information, Participation, and Justice in Decision-making for the Environment is a call for action on the part of civil society organizations—to independently monitor the evolution of their national public participation systems and be an engine for implementation. Access is a two-way street. The impact of Principle 10 depends on users as well as providers of the rights of access.

Support for this report and for The Access Initiative comes from the Bauman Foundation, the C.S. Mott Foundation, the Danish Ministry of Foreign Affairs, the Italian Ministry of Environment and Territories, the Netherlands Ministry of Foreign Affairs, the Spencer T. and Ann W. Olin Foundation, the Swedish International Development Agency, the Trust for Mutual Understanding the United Kingdom Foreign and Commonwealth Office, the U.S. Department of State, and the Wallace Global Fund. I am pleased to express our appreciation for their generosity and foresight.

JONATHAN LASH
PRESIDENT
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EXECUTIVE SUMMARY

Ten years ago, 178 governments committed to an idea with profound implications for sustainable development: Every person should have access to information about the environment, opportunities to participate in decision-making processes affecting the environment, and access to redress and remedy. Articulated in Principle 10 of the Rio Declaration that emerged from the 1992 Earth Summit, these three “access principles” represent fundamental global norms of equitable and environmentally sound decision-making. (See page 11 for the full text of Principle 10).

Access to environmental information enables citizens to make informed personal choices and encourages improved environmental performance by industry and government. For example, citizens need to know whether water is safe to drink, and public knowledge of contamination creates pressure for pollution control.

Informed and meaningful public participation is a mechanism to integrate citizens’ concerns and knowledge into public policy decisions that

affect the environment. Decisions that incorporate public input generally result in outcomes that are more effective and environmentally sustainable than those that do not.

Access to redress and remedy—or access to justice—gives individuals and public interest groups the opportunity to protect their rights to information and participation and to contest decisions that do not take their interests into account.

The international community increasingly stresses the importance of governance principles—such as transparency, inclusiveness, and accountability—as keys to sustainable development in the political declarations of the United Nations and regional fora. Meanwhile, accumulating evidence suggests that public participation in decision-making can improve the quality as well as the acceptance of resulting decisions and is a tool for poverty reduction.

Closing the Gap: Information, Participation, and Justice in Decision-making for the Environment reports on the early findings of an innovative

This executive summary was written by Frances Seymour, Director of the Institutions and Governance Program at World Resources Institute, based on the data and analysis presented in Closing the Gap: Access to Information, Participation, and Justice in Decision-making for the Environment by Petkova et al.

approach to measuring progress in implementing Principle 10 at the national level. In 2001–2002, research teams in nine countries—Chile, Hungary, India, Indonesia, Mexico, South Africa, Thailand, Uganda, and the United States—employed a common methodological framework on a pilot basis to assess the performance of their governments in meeting the Rio commitment. Their work was conducted under the auspices of The Access Initiative, a global coalition of civil society groups seeking to promote public access to information, participation, and justice in decision-making affecting the environment. (For more about the Access Initiative, see Box 1.1 on page 12).

The research efforts in the nine countries shared two objectives. The first was to identify the strengths and weaknesses of specific national systems of public participation in environmental decision-making. To what extent have governments integrated the access principles into law and implemented them in practice? Reports prepared in each of the nine pilot countries provide a basis for dialogue and action to improve national-level implementation. Moreover, because of the diversity of geography, economies, and cultural and political traditions encompassed by these countries, collectively the reports provide a snapshot of global progress.

The second shared objective of the pilot assessments was to test the methodology and evaluate the usefulness of the assessment tool itself. Could a common framework be used to assess government performance in diverse national contexts? Are national systems of public participation sufficiently similar to benefit from common tools to measure progress?

THE APPROACH

The approach used to generate the findings in *Closing the Gap* is unique. It goes beyond previous attempts to measure progress in the development of legal frameworks for information, participation, and justice to provide an assessment of the practice as well as the law of implementing the access principles. It combines original data produced at the national level and a specific focus on environmental governance with independent assessment and application to multiple countries. Most important, it addresses the primary objective of catalyzing and evaluating progress in individual countries rather than facilitating cross-country rankings.

The methodological framework was designed to capture progress in implementing key elements of each of the three access principles, as well as overall enabling conditions for effective national systems of public participation in nine countries. It builds upon articulations of those elements in international and regional instruments, including Agenda 21, the Inter-American Strategy on Public Participation, and the Convention on Access to Information, Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention). Box 1.4, derived from these and other sources, lists common elements of national systems of public participation (see page 18).

The experience from the nine assessments revealed weaknesses in the methodological framework and in its initial application. Nonetheless, it is possible to identify areas of relative strength and weakness across the three principles, as well as patterns emerging across the

nine countries. These findings are further buttressed by a comparative review of findings from studies conducted in regions and countries other than the nine countries represented in this pilot assessment.

THE FINDINGS

Can diverse national systems of public participation be assessed within a common framework? Our findings:

Yes. Teams from nine countries³ representing different legal traditions, cultural and political conditions, income levels, development paths, and economic dependency on natural resources³ were able to apply the methodological framework developed for this study to assess national performance in implementing the access principles. Only relatively minor modifications were required to capture the unique national contexts in these countries. The initial response from governments as diverse as Chile, Hungary, Indonesia, and Uganda has been to welcome the findings of these assessments as a useful tool to identify accomplishments and gaps, and to prioritize action to improve performance.

This experience suggests that the methodological framework is sufficiently robust to be applicable in diverse national contexts and thus holds promise as a globally applicable tool to evaluate progress in national implementation of the three access principles. While individual countries approach the process from different starting points and with different priorities for short-term improvement, a common frame-

work can identify strengths and weaknesses and support progress toward common long-term objectives.

What is the status of implementation of Principle 10 around the world? Our findings:

While significant progress has been made, much remains to be done. Most countries have put in place the basic elements of a legal framework to support public access to environmental information, and all have taken key steps toward meaningful information disclosure and public participation. However, no country scored strong on all elements of the system, and specific gaps in law and practice were identified in every country studied. Although the nine pilot countries are not fully representative of the global community of nations, comparative reviews of policy and practice in other countries and regions support our findings.

Implementation is uneven across the three access principles. In most of the pilot countries, governments perform best³ in law and in practice³ in providing access to information; they perform less well in facilitating participation and least well in providing access to justice. The interdependence of the three principles makes this finding highly significant. Each access principle is essential to overall system effectiveness; weakness in the implementation of any one principle can compromise the entire system of public participation.

Legal frameworks supportive of the access principles are rapidly evolving. Indeed, Mexico passed a Freedom of Information Act while this

report was in preparation. Development of legislation to make facility-level information on pollutant emissions available to the public is progressing steadily in many countries and regions. Although the evolution of national systems has tended predominantly toward increasing levels of access, restrictions on public access to information in the United States in the wake of the September 11 terrorist attacks indicate that such progress is not irreversible.

Improvements in practice lag behind improvements in law. In most of the pilot countries, the institutional infrastructure necessary to implement the access principles often is insufficient. For example, among the nine pilot countries, only Thailand and Uganda provide an explicit constitutional right to public participation in decision-making; even so, laws and regulations concerning environmental impact assessment lack provisions guaranteeing public notice and comment. In other cases, such as Indonesia and Hungary, a persistent “culture of secrecy” pervades the bureaucracy, undermining information disclosure policies.

What are the patterns of strength and weakness in each of the three principles? Our findings:

While the nine national assessments revealed significant variation in performance in some areas, they also illuminated some remarkable commonalities, considering the diversity of national contexts. (See Figure 7.1 on page 123 for a scorecard assessing country performance in each of the three principles).

Access to Information

Access to information is strong in high-profile emergencies that threaten public health. For example, the quality and accessibility of information provided to the public after a volcano eruption in Mexico, cyanide pollution of a river in Hungary, and cholera outbreaks in South Africa and Uganda were highly rated. An exception was the lack of timely and adequate information about the catastrophic flooding in Indonesia’s capital, Jakarta, in early 2002.

Pilot countries perform well in providing reports on the state of the environment. Most of the pilot country governments have produced such reports regularly over the past decade, providing citizens with nontechnical data on various environmental trends, including maps and charts to make the information accessible to the nonexpert. Such reports generally are disseminated widely and are available at little or no cost to the public. However, the United States stopped producing meaningful federal-level reports in 1997, and Indonesia has produced only one in the past decade (in 1998) in response to Agenda 21 reporting requirements.

Access to information about air and water quality is mixed. Integrated air quality monitoring systems are in place in many urban centers, such as Bangkok, Thailand, and Santiago, Chile, and several governments make this information publicly available on a daily basis through the popular press and/or on the Internet. However, the usefulness of this information is often compromised because of insufficient detail. Hindered by a lack of integrated information systems, governments in the pilot countries

scored weaker in providing access to information on water quality. For instance, in Hungary, requests for information on surface water quality submitted to 12 environmental inspectorates and for information on drinking water quality submitted to 19 public health offices met with widely differing response rates, procedures, and costs. Better scores were received in South Africa, where RandWater makes available via its website a regularly updated map highlighting areas with unsafe drinking water in regions where Rand Water is a supplier. Indeed, only in South Africa and the United States is information on water quality actively disseminated.

Access to information about private industrial facilities is particularly weak. Accidents that occur behind factory gates are often concealed from the public. For example, in cases from Chile and India, the public was denied timely, adequate information about industrial fires. An exception was found in Hungary, where local authorities took steps to provide the public with prompt, accurate information about a gas well explosion and fire and the immediate risks to the surrounding community. In most of the pilot countries, citizens cannot obtain information that would tell them whether companies, and especially individual facilities, comply with pollution emission standards. And in many countries, facility-level reporting on emissions is not required. Only the United States has a comprehensive, fully operational, facility-level Pollutant Release and Transfer Register (the so-called Toxics Release Inventory), although Mexico and Hungary are taking steps in this direction.

Access to Participation

Participation is strongest in “environmental” sectors and weakest in “real” sectors. Government performance in facilitating public participation in decision-making varied widely in the limited number of national-level cases, depending on the type of decision. For example, development of a national forest policy in Uganda and the mapping of water management areas in South Africa were both characterized by extensive consultation with affected communities. In contrast, a “nautical tourism” planning process in Mexico and policy-making related to private electricity generation in Thailand were relatively closed to the public. In a comparative review of five cases of national energy policy development in Central and Eastern Europe, only in Slovakia—where there was a strong and vocal demand for participation by public interest groups—were decision-making processes accessible.

Participation in state and local planning decisions is mixed. Experience in a limited number of countries and cases indicates that, while most state and local authorities—such as those responsible for regional development plans in Hungary or municipal environmental impact assessment processes in the State of California in the United States—perform well at making draft plans available to the public, they are not proactive in soliciting public input. In addition, public consultation tends to occur late in the process, when key parameters of the planning effort have already been determined. Yet evidence from the pilot assessments indicates that meaningful public participation improves the quality of the resulting decisions. For example, in an ecological zoning process in the Federal

District of Mexico, community consultations yielded valuable suggestions that enhanced the conservation benefits and social protections of the plan.

Participation in decisions concerning specific projects, permits, and concessions is weak. For the most part, public authorities in the cases assessed failed to inform affected communities or public interest groups that they were initiating a process to grant an operating license for a factory, award a forest concession, or approve a development project. In Thailand, failure to involve affected communities early on in decisions concerning siting of a power plant and a wastewater treatment facility has led to protracted conflicts. Although environmental impact assessment regulations often require consultation with affected communities, in both India and Indonesia, such “consultations” have sometimes been used merely to extract local socioeconomic data rather than to seek informed opinion. The cases examined reveal few examples of public involvement in the earliest stages of project conceptualization and virtually no cases of continuing public involvement in monitoring or review after the permit, concession, or project approval is granted. An exception is the power-plant permitting process of the State of Ohio in the United States, which requires public notice and comment on permit renewals.

Access to Justice

Access to justice is hampered by unclear laws. In most of the nine pilot countries, the legal and regulatory framework governing access to information and participation is insufficiently

comprehensive and detailed to provide an adequate legal basis for citizens to seek redress. For example, only in South Africa and the United States does the legal framework attempt to clarify which agencies are responsible for disclosing information, the types of information to be disclosed and how regularly, and the procedures to be followed for making a request. And in many of the pilot countries, including South Africa and the United States, it is not clear what information is in the public domain, leaving wide discretion to government officials to disclose or withhold information as they see fit. Limited or restrictive interpretation of legal standing, as well as a lack of legal definitions of what constitutes “the public” or “the public interest,” often constrain citizens’ ability to use the justice system to demand access to information or participation. For example, in Mexico, an individual or organization must show proof of harm to gain access to the courts to enforce environmental procedural rights.

Access to justice is constrained by limited mechanisms for redress. Access to justice can be facilitated by the availability of multiple mechanisms for redress, including administrative courts and alternative dispute-resolution mechanisms, in which citizens can seek redress. A few pilot countries are experimenting with new mechanisms for redress, such as administrative courts in Thailand and special environmental tribunals in India. However, in most countries, these venues are not yet fully developed. In fewer than half the decision-making processes reviewed for public participation were administrative or judicial processes available for citizens to contest the resulting decisions.

High costs are an effective barrier to access to justice. While the costs of administrative and court fees varied across the pilot countries—and in some countries could be waived for individuals or public interest groups—expenses for legal representation were found to be prohibitive in many cases. In Chile, for example, the national team estimated that the cost of legal representation could exceed 50 percent of average annual income. In some countries, such as Indonesia, a national network of pro bono lawyers can provide assistance, but in Hungary, India, and Uganda, these lawyers are limited to urban areas. In South Africa, administrative and court fees are prohibitively high, but a government-sponsored legal aid board finances legal help (which can be given by normal attorneys). The South African Legal Resources Centre and various university law clinics also provide free legal assistance to the poor in connection with environmental cases.

What factors appear to drive or hinder improved performance? Our findings:

The nine national assessments suggest that several factors are particularly important in spurring or hindering the development of national systems for implementing the access principles.

Lack of government capacity constrains public access. Many lapses in providing access to information, participation, and justice can be attributed to a lack of government capacity, including staff, equipment, procedures, and training. For example, officials in Thailand suggested seeking facility-level information directly from private companies, as it would be

too time-consuming to assemble the requested reports from the disorganized files in government offices. Municipal officials in the State of California in the United States claimed that more proactive solicitation of public participation would place an undue burden on the limited personnel of resource-constrained city governments. Because many laws and procedures related to the access principles are relatively new, training civil servants on their importance and implementation is an important first step toward closing the gap between law and practice. Among the nine pilot countries, only South Africa was found to have an extensive program of building staff capacity at all levels of selected agencies dealing with environmental information or decision-making. Training offered at selected agencies in other countries was found to be absent, incomplete, or unevenly available.

Lack of capacity in civil society also constrains performance. Mechanisms for providing access will be ineffective if citizens are unaware of environmental issues and procedures for obtaining information and providing input to decisions. Governments in most of the pilot countries are investing in the development of environmental education programs, and some are also investing in related teacher training. Performance is less impressive regarding the availability and comprehensiveness of information about agencies charged with information disclosure or decision-making. Nongovernmental organizations (NGOs) can play a crucial role in building civil society capacity; yet several pilot countries restrict either the formation or the sources of financing available to these organizations. In Chile, Hungary, Indonesia, and Uganda, regula-

tions require significant financial assets or impose limits on the scope of work of NGOs in the process of legal registration. In India, NGOs face restricted access to international sources of funding. A comparative review of enabling conditions for public interest groups in six countries in East and Southern Africa found similar restrictions on NGO activity.

Media attention and public scrutiny spur improved performance. Evidence from the nine pilot assessments attests that increased demand can result in enhanced opportunities for access. Governments perform better in providing access to information when the media are watching. Performance was strongest in large-scale emergencies covered by the press, and weakest for smaller-scale incidents taking place behind factory gates. In national assessments of media coverage of environmental issues, only three of the pilot countries scored strong on the level of coverage, and only four scored strong on the quality of coverage. Thailand alone scored strong in both categories, in recognition of regular environment features, presentation of different points of view, and accompanying analysis. Governments anticipating or reacting to public scrutiny also performed better in providing access to participation. In Mexico, for example, public consultations were conducted for two environmentally sensitive projects that were the focus of attention from public interest groups but not for two other projects with significant potential environmental impacts that had not attracted such public scrutiny. In Hungary, local public interest groups successfully petitioned to be included in a panel to review a construction permit for an industrial redevelopment plan.

The international community has a key role to play. The international community can support improved national performance in implementing the access principles, both through donor assistance and by integrating the access principles into international agreements and the operations of multilateral institutions. International donor agencies have provided financial and technical assistance to several of the pilot countries to introduce pollutant release and transfer registers (PRTRs), publish state of the environment reports, create environmental information systems, provide staff training, and perform other activities supportive of the access principles. In addition, donor agencies can, through the example of their own operations, either bolster or undermine norms of transparency and public participation. In Uganda, programs with significant donor funding tended to be more open and inclusive, while in Thailand, a wastewater treatment project financed by the Asian Development Bank failed to comply with the Bank's own public participation policies. International agreements are a powerful lever for upward harmonization of the access principles and have stimulated national-level activity in most of the pilot countries. In Hungary, for example, participation in the Aarhus Convention has spurred the creation of new laws and institutions related to public participation, while legislation mandating a PRTR was developed in response to requirements for accession to the European Union.

RECOMMENDATIONS

The findings and conclusions summarized above suggest a number of recommendations³ directed to both national and international policy arenas and to actors spanning various government and nongovernmental stakeholder groups⁴ to stimulate improvements in national systems of public participation. Taken together, these recommendations constitute an agenda for accelerating the implementation of Principle 10.

National governments and the international community as a whole should support independent assessment and monitoring as a first step toward improved performance. Initial response to the findings of the nine national assessments indicates that such assessments are a powerful tool to stimulate dialogue and action to improve performance.

The international community should support refinement and application of a common assessment tool to support national implementation. To improve the quality of assessments, further investment is needed in the refinement of a common methodological framework, guidelines for its application, and a global mechanism for sharing best practices across countries.

Efforts to improve national systems should include attention to all three principles. Balanced investment across all three principles is required if national systems of public participation are to function effectively.

Where the legal framework for access is in place, efforts should focus on closing the gap

between law and practice. To this end, investments in government capacity to implement elements of the national participation system as well as developing public capacity to use that system should be high priorities for governments and donor agencies.

Public interest groups and the media, two engines driving demand for access, should be encouraged to play their roles vigorously and responsibly. Governments must relax onerous registration requirements for nongovernmental organizations and reform regulations that constrain the financing of public interest advocates. Media outlets should improve the level and quality of their coverage of environmental issues.

The international community should support national efforts through donor assistance and incorporation of access norms into international institutions and agreements. International donor agencies can promote access both by supporting the development of access systems as a funding priority and by revising their policies and practices to ensure greater access to information, participation, and justice in their own operations.

Clearly, implementation of these recommendations requires action from a variety of stakeholders operating in both national and international policy arenas. It further requires collaboration among those stakeholders, working together toward common objectives. (See Box 7.2 on page 133 for our recommendations to specific institutional actors.)

INTRODUCTION

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

—Principle 10 of the Rio Declaration

I. PURPOSE

At the 1992 Earth Summit in Rio, the international community agreed—in Principle 10 of the Rio Declaration—that governments and other decision-making bodies should provide environmental information to their citizens, encourage public participation in decision-making processes, and offer opportunities to seek redress and remedy. These three “access principles” represent fundamental norms of transparent, equitable, and accountable decision-making that are the basis for sound environmental governance.

A decade later, and for the first time, this report assesses progress made by selected countries to date in achieving the goals laid out in Principle 10. It also reports on the experience of applying a common assessment tool to measure performance across diverse national contexts.

The findings presented in this report are the first results of The Access Initiative (TAI), a global coalition of civil society groups collaborating to promote national implementation of commitments to access to information, participation, and justice in decision-making that affects the environment. (See Box 1.1.) TAI research teams in nine countries—Chile, Hungary, India, Indonesia, Mexico, South Africa, Thailand, Uganda, and the United States—undertook pilot assessments of the progress made by national governments in implementing the access principles. Their national reports, supplemented by selected analyses of additional topics and countries, are the primary basis for this report. In addition, the national teams were asked to critique the assessment methodological framework itself as an instrument to capture progress in their own unique national circumstances and to propose modifications necessary to improve its effectiveness.

BOX 1.1

THE ACCESS INITIATIVE

The Access Initiative (TAI) is a global coalition of civil society groups collaborating to promote national-level implementation of commitments to access to information, participation, and justice. Launched in November 2000, The Access Initiative has since grown to include 25 civil society organizations in nine countries on five continents.

The goals of The Access Initiative are:

1. *To strengthen the capacity of public interest groups to track progress toward and build a global constituency for national-level implementation of a set of common participation and access standards.*
2. *To raise the awareness and commitment of governments toward building national access and public participation systems to implement Principle 10 of the Rio Declaration and public participation provisions of Agenda 21.*

The Access Initiative's strategy is to:

1. *Establish common guidelines for national-level access to information, public participation, and justice in decision-making affecting the environment.*
2. *Develop and promote the use of a toolkit and common methodology to quantify and assess the performance of government institutions.*
3. *Build capacity of civil society groups to engage government agencies in using national assessments to*

examine their performance and develop national action plans.

4. *Build The Access Initiative community at three levels: in-country coalitions, a global Access Initiative network, and a broad international constituency.*

The Access Initiative has completed an initial assessment of public access to environmental decision-making in nine countries around the world. These pilot tests—conducted in Chile, Hungary, India, Indonesia, Mexico, South Africa, Thailand, Uganda, and the United States—detail the progress these countries have made in implementing Principle 10 of the Rio Declaration. The Access Initiative's findings reveal accomplishments and weaknesses of national-level efforts, as well as common patterns and variations among countries. They also reveal the common elements of a public participation system relevant to countries with diverse cultural and political traditions, development levels, and other variables.

The Access Initiative website features additional information about the project as well as summaries of the national assessments, the toolkit of indicators for groups interested in assessing the performance of their own governments, and information on how to get involved. (<http://www.accessinitiative.org>)

The purpose of this report is twofold. First, it provides a snapshot of progress toward meaningful public participation in environmental decision-making in a diverse set of countries 10 years after Rio. It answers such questions as:

- To what extent have governments incorporated the access principles into national legal frameworks?
- To what extent have governments adapted institutions and procedures to supply access to information, participation, and justice?

- What are the barriers faced by individual citizens and public interest groups that attempt to exercise their access rights?
- Are there common patterns in the development of national public participation systems across diverse cultural, socioeconomic, and political settings?

Second, it reports on the lessons learned from assessing national performance utilizing a common methodological framework. It answers such questions as:

- Are there common elements that make up comprehensive public participation systems in all countries?
- Is it possible to track national implementation of commitments to Principle 10 in diverse countries utilizing a common methodological framework?
- What characteristics of the framework and its application are essential for feasibility and for the credibility and comparability of results?

This report goes beyond previous attempts to measure progress in the development of the legal framework for information, participation, and justice to include an assessment of its practice. It identifies common trends in the incorporation of the access principles into constitutions and laws in the pilot countries. But it also presents preliminary findings on the practice of information disclosure, solicitation of public input, and access to justice based on assessments of selected case studies in the pilot countries.

Due to the limited number of case studies and limitations of the initial application of the methodological framework, the national reports do not support overall comparisons of performance across countries. Nevertheless, they do support general conclusions about the relative strengths and weaknesses of different parts of national public participation systems, and they provide an initial basis for benchmarking progress within individual countries.

The analysis of the national reports summarized in this volume suggests that the nine pilot countries have made significant progress toward implementing global norms of environmental governance. But it also suggests that there is significant room for improvement in all countries.

II. “GOOD GOVERNANCE” AND SUSTAINABLE DEVELOPMENT

The three principles that are the focus of this report are key characteristics of “good governance,” a concept that has emerged as an important element of the discourse on sustainable development in recent years. Increasingly, commitments to good governance are enshrined in international political statements. The United Nations’ Millennium Declaration, for example, states that “if we are to capture the promises of globalization while managing its adverse effects, we must learn to govern better, and we must learn how better to govern together” (United Nations, 2000). More recently, the so-called “Monterrey Consensus” that emerged from the International Conference on Financing for Development in 2002 accepts that “good gover-

nance is essential for sustainable development” (United Nations, 2002).

“Governance” has been defined as “the set of values, policies, and institutions by which a society manages economic, political, and social processes” (Cheema, 2000); as “the manner in which power is exercised in the management of a country’s economic and social resources for development” (World Bank, 1992); and as “the process of decision-making and the process by which decisions are implemented” (UNESCAP, 2002). It has also been defined as “the framework of rules, institutions, and practices that set limits and provide incentives for the behavior of individuals and organizations” (UNDP, 1999). Governance is thus not limited to government, but involves the interaction of a multiplicity of actors.

The United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) has identified eight major characteristics associated with good governance, including transparency, participation, equity and inclusiveness, and the rule of law (UNESCAP, 2002). The international community repeatedly invokes the absence of these characteristics to explain failures to address real-world problems. Better, stronger governance is called for to reduce poverty, manage globalization and markets for the benefit of all, make new technologies work for human development, and improve corporate social and environmental performance (UNDP, 1999, 2000, 2001; World Bank, 2002a).

There is accumulating evidence that transparent, participatory, and accountable governance is

essential to realizing sustainable development objectives. A growing body of evidence points to the linkages between development effectiveness on the one hand, and improved access to information, participation in decision-making, accountability, and organizational capacity of the poor, on the other (Nayaran, 2002). A World Bank (1998) study found that projects that require a full environmental assessment with public participation “have a better track record on average in terms of their implementation than other Bank projects,” suggesting a connection between development outcomes and good environmental governance. Similarly, the World Commission on Dams (2000) found that projects that did not allow for public participation in the planning process or resettlement decisions resulted in the most unsatisfactory social outcomes. More broadly, another study has suggested that “good governance broadly conceived enhances environmental sustainability” and that “those seeking to improve environmental performance should pay attention to the fundamentals of governance” (World Economic Forum, 2002a). A recent Organization for Economic Cooperation and Development (OECD) study suggested that well-governed societies are “well equipped to carry forward the complex challenges of sustainable development” (OECD, 2001c).

Public opinion surveys indicate that there is demand for more government attention to environmental issues and more accountable governance overall. The Gallup International Millennium Survey, conducted in 2000, revealed a near-universal frustration over lack of government attention to environmental issues. Only in a very few countries—five out of the 60

surveyed—did a majority of people agree that “their government had done the right amount to address environmental issues” (Gallup, 2000). This same survey showed that “corrupt” and “bureaucratic” were the two most common descriptions people used to characterize their governments. Only about one in 10 respondents endorsed positive perceptions of government, such as “efficient,” “just,” and “responds to the will of the people” (Gallup, 2000).

This report is based on the premise that public policy decisions that take into account the views of all relevant stakeholders are more likely to lead to sustainable development and a fair distribution of benefits. An informed and educated public is better able to participate meaningfully in decisions that affect the environment. Informed and meaningful public participation is an effective instrument for integrating social and environmental concerns into decisions about economic policies and the management of natural resources such as energy, water, and land. Public access to redress and remedy is a way to hold decision-makers accountable to the public interest. Ensuring public access to information, participation, and justice in decision-making is a crucial step toward sustainable development.

III. GLOBAL AND REGIONAL NORMS

A decade ago, Principle 10 of the Rio Declaration articulated global norms of public access to environmental information, participation in decision-making, and access to judicial and administrative recourse (UNCED, 1992). Agenda 21 provided further elaboration of these

BOX 1.2

THE THREE ACCESS PRINCIPLES

ACCESS TO INFORMATION is defined as the ability of citizens to obtain environmental information in the possession of public authorities. “Environmental information” includes information about air and water quality, for example, and information about whether any hazardous chemicals are stored at a nearby factory.

ACCESS TO PARTICIPATION is defined as the opportunity for citizens to provide informed, timely, and meaningful input and influence decisions on general policies, strategies, and plans at various levels and on individual projects that have environmental impacts. Individuals may, for example, engage in electoral processes, testify at hearings and meetings, serve on advisory committees, have direct contact with public officials, express views and opinions through the media, or engage in some form of protest action.

ACCESS TO JUSTICE is defined as the ability of citizens to turn to impartial arbiters to resolve disputes over access to information and participation in decisions that affect the environment. Such impartial arbiters include mediators, administrative courts, and formal courts of law, among others.

Source:

D.L. Dresang and J.J. Gosling. 1999. *Politics and Policy in American States and Communities*. Boston: Allyn and Bacon Publishers.

norms, including the role of civil society in decision-making. Box 1.2 provides working definitions of the three principles. In recent years, several regional initiatives have reaffirmed and extended commitments to these key environmental governance principles.

BOX 1.3**COMMITMENTS TO THE THREE PRINCIPLES: ACCESS TO INFORMATION, ACCESS TO PARTICIPATION IN DECISION-MAKING, ACCESS TO JUSTICE****1992****The Rio Declaration on Environment and Development:**

The Declaration is a nonbinding commitment endorsed by 178 governments. The Governing Council of the United Nations Environment Program (UNEP) has directed UNEP to address Principle 10 of the Rio Declaration, which calls for access to information, participation, and justice in decision-making for the environment. UNEP is paying particular attention to the freedom of access to environmental information.

Agenda 21: A nonbinding strategy for action to move countries toward sustainable development. Chapters 23 and 40 treat the issues of access to information and participation of civil society in decision-making. Many countries have established Agenda 21 units, committees, or other bodies charged with the implementation of Agenda 21. The Commission on Sustainable Development is working to implement Agenda 21.

1998**The United Nations Economic Commission for Europe's (UNECE) Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters:**

The so-called "Aarhus Convention" is a regional binding instrument of the UN Economic Commission for Europe. The convention's "three pillars" are access to information, participation, and justice in decision-making for the environment. While a regional instrument, the Aarhus Convention is open for non-UNECE countries to accede to it. Accession requires countries to modify their national laws to align them with convention provisions. The Aarhus Convention Secretariat is currently focusing its attention on implementing the convention in the UNECE region.

The Organization of American States (OAS) has facilitated agreement on an Inter-American Strategy for Participation, which articulates seven principles for public participation in sustainable development decision-making, including openness, access, transparency, and capacity-building as key elements of good governance (OAS, 1999). The three countries in the East African Union have signed a Memorandum of Understanding (MOU) promoting access to information and public participation (East African Community, 2001).

A major landmark in codifying these norms is a new multilateral agreement negotiated under the auspices of the United Nations Economic Commission for Europe. The Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters—generally referred to as "The Aarhus Convention"—has been signed by 45 countries and ratified by 20 as of April 2002. (See Box 1.3.) The Aarhus Convention is significant not only because its provisions are binding and bring together previously scattered legal and institutional elements into an integrated system, but also because it regionalizes environmental

1999

The Inter-American Strategy for the Promotion of Public Participation in Decision-making for Sustainable Development (ISP): The ISP articulates nonbinding principles and a strategy to promote transparent, effective, and responsible public participation in decision-making and in the formulation, adoption, and implementation of policies for sustainable development in Latin America and the Caribbean. The ISP was approved by the member governments of the Organization of American States.

2000

Malmö Declaration of UNEP: At their meeting in Malmö, Sweden, Ministers of Environment meeting under the auspices of UNEP endorsed a declaration acknowledging that the role of civil society should be strengthened through freedom of access to environmental information by all, broad participation in environmental decision-making, and access to justice on environmental issues.

East Africa Community Environmental Memorandum of Understanding (MOU): The MOU between the governments of Kenya, the United Republic of Tanzania, and the Republic of Uganda for cooperation in environmental management promotes, among other things, access to environmental information.

2002

World Summit on Sustainable Development (WSSD): Public participation in environmental decision-making is likely to be a major theme of the Summit. UN Secretary-General Kofi Annan has proposed that the 2002 Special Session of the UN General Assembly consider how the Aarhus Convention's provisions may be used to strengthen global observance of Principle 10 of the Rio Declaration.

governance by recognizing the procedural rights of affected persons across national boundaries (Petkova and Veit, 2000). The ratification of Aarhus and other developments indicate a growing international consensus on a core set of environmental governance norms.

Globally accepted norms must be translated into national-level policy frameworks in countries with different cultures, political systems, and natural resource bases. Regional efforts by the UNECE and the OAS represent a promising first step in setting regional norms, which may then be embedded in national legal codes and

practices. Ultimately, it is national governments that have the primary responsibility to implement global and regional norms of good governance. The process requires adopting laws, building institutional infrastructure and capacity, requiring accountability, and changing organizational cultures. Even countries with long traditions of transparent and accountable governance face considerable challenges in building effective and comprehensive national systems of public participation (Regional Environmental Center, 1998; European Ecoforum, 2001).

Access to Environmental Information requires:

- Constitutional guarantees and special laws and provisions for freedom of information and access to environmental information.
- Provisions defining environmental information in the public domain and mechanisms for disclosure. Information in the public domain should include information about environmental quality and impacts on health, factors that influence it, information about legislation and policy, and advice about how to get information.
- Reporting and public disclosure of environmental performance and compliance by industrial facilities.
- Organizational infrastructure and capacity to respond to requests and to actively disseminate information.

Participation in Environmental Decision-making requires:

- Mechanisms for public input into national sectoral policies, strategies, and plans.
- Mechanisms for public input into sub-national (regional, state or local) decision-making, especially land-use planning.
- Mechanisms for public input into project-level decisions.

A Comprehensive National System for Access to Justice requires:

- Constitutional guarantees for access to justice.
- Broad and inclusive interpretation of standing.
- Impartial administrative, judicial, and alternative venues for resolution of conflicts and remedy.
- Affordable and timely legal services.
- Active education by government on the participation and environmental rights of the public and how the public can use the legal system to protect those rights.

Building on many existing agreements and programs, this report seeks to lay the foundation for national systems of public participation based on the three principles articulated by Principle 10 of the Rio Declaration. It translates these principles into specific elements that can be implemented in diverse national contexts.

Box 1.4 identifies some common elements of effective national systems of public participation. The chapters that follow examine the extent to which these elements have been successfully integrated into national law and practice in nine diverse countries.

IV. ORGANIZATION OF THE REPORT

Chapter 2 of this report provides a brief review of efforts to measure performance in governance and presents the methodological framework used to conduct the pilot national assessments. Chapters 3, 4, and 5 present the findings of the national assessments on access to information, participation, and justice, respectively. Chapter 3 identifies common patterns of access to four types of environmental information in the pilot countries. Chapter 4 examines the presence, quality, and effectiveness of participation in national sectoral and environmental

policies, regional decision-making, and project-level decisions in the pilot countries. Chapter 5 is dedicated to the law and enabling conditions for access to justice. Chapter 6 analyzes capacity-building efforts and the role of the media in promoting the access principles. Chapter 7 summarizes the findings of the previous chapters and offers a comprehensive portrait of common strengths and weaknesses in the national public participation systems of the pilot countries. The report concludes with a series of policy recommendations to accelerate implementation of Principle 10 in countries around the world.

THE METHODOLOGICAL FRAMEWORK

This chapter presents the methodological framework used in the nine national assessments of access to information, participation, and justice in decisions that affect the environment. It describes the overall structure of the framework and how indicators of performance were scored, clustered, and summarized across countries. The chapter also documents lessons learned about weaknesses in the methodology and its initial application, and it concludes with suggestions for improvement. The chapter opens with a brief review of other approaches to measuring environmental governance and an explanation of how this effort is unique.

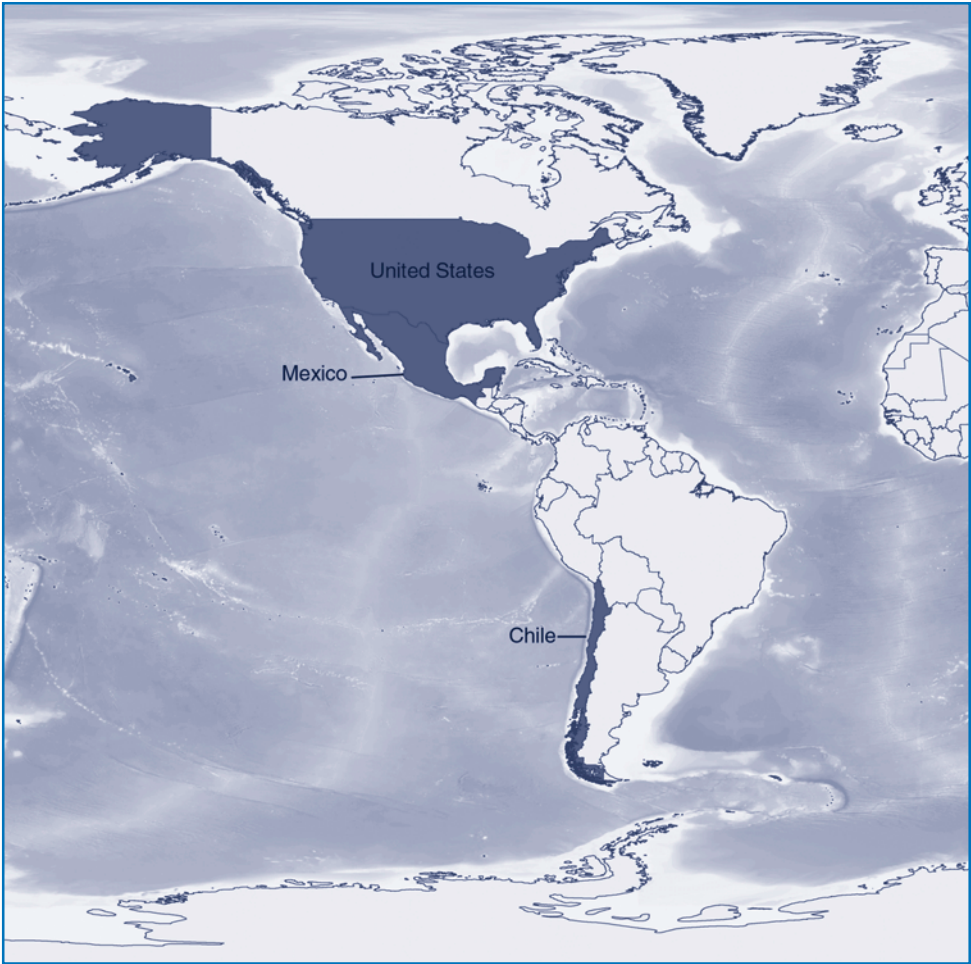
I. MEASURING ENVIRONMENTAL GOVERNANCE

The increased attention to the role of governance in sustainable development has led to numerous attempts to measure performance. Most global efforts are designed to compare countries in the context of environmental sustainability, economic growth, or human development. The Environmental Sustainability Index (ESI) has developed indicators of

sustainability, including “capacity for debate,” in a comparative index of 142 countries. Indicators of a country’s capacity for debate include IUCN (The World Conservation Union) member organizations per million population, civil and political liberties, democratic institutions, and percentage of ESI variables in publicly available data sets. Data for the indicators were obtained from studies carried out by other organizations (World Economic Forum, 2002a). The World Bank uses a much broader understanding of governance in its set of six clusters of indicators applied to 175 countries. Governance is defined as “the traditions and institutions by which authority in a country is exercised.” One of the indicator clusters captures characteristics of the political process, civil liberties, and political rights, including citizen participation in the selection of government and independence of the media (Kaufmann et al., 2002). *The Wellbeing of Nations* presents a measure of governance in the context of an evaluation of wellbeing and sustainability in 180 countries. In this study, governance encompasses respect for human rights, freedom of citizens to choose how decisions are made and who makes them, and openness, accountability, and effectiveness of decision-making bodies (Prescott-Allen, 2001).

FIGURE 2.1

ACCESS
INITIATIVE
COUNTRIES



High Income Countries

United States
Population: 281.6 million
Literacy rate: Not available
GDP per capita: \$34,142
Population below poverty line: 11.8%
Unemployment rate: 5.5%
Internet users: 95.4 million

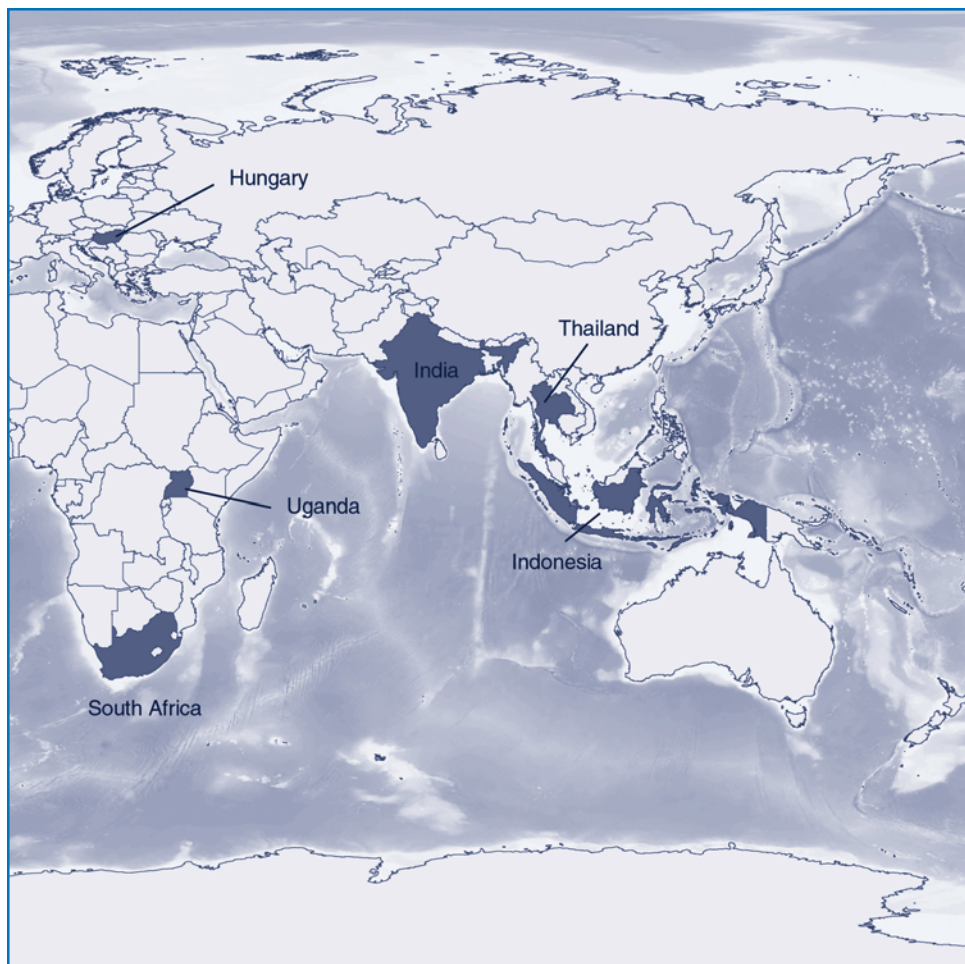
Upper Middle Income Countries

Chile
Population: 15.2 million
Literacy rate: 96%
GDP per capita: \$9,417
Population below poverty line: 21.2%
Unemployment rate: 10% (1999 est.)
Internet users: 2.5 million

Hungary
Population: 10.0 million
Literacy rate: 99%
GDP per capita: \$12,416
Population below poverty line: 8.6% (1993 est.)
Unemployment rate: 7%
Internet users: 1.5 million

Mexico
Population: 98 million
Literacy rate: 91%
GDP per capita: \$9,023
Population below poverty line: 10.1%
Unemployment rate: 2% (1999 est.)
Internet users: 2.7 million

South Africa
Population: 42.8 million
Literacy rate: 85%
GDP per capita: \$9,401
Population below poverty line: 45%
Unemployment rate: 23% (1999)
Internet users: 2.4 million



Projection: Geographic

Lower Middle Income Countries

Thailand

Population: 60.7 million
Literacy rate: 95%
GDP per capita: \$6,402
Population below poverty line: 13.1%
Unemployment rate: 2%
Internet users: 2.3 million

Low Income Countries

India

Population: 1.0 billion
Literacy rate: 57%
GDP per capita: \$2,358
Population below poverty line: 35%
Unemployment rate: Not available
Internet users: 5.0 million

Indonesia

Population: 210.4 million
Literacy rate: 87%
GDP per capita: \$3,043
Population below poverty line: 27.1%
Unemployment rate: 6%
Internet users: 2.0 million

Uganda

Population: 22 million
Literacy rate: 67%
GDP per capita: \$1,208
Population below poverty line: 55%
Unemployment rate: 7% (1997) est.
Internet users: 40,000

Sources of Information:

<http://www.worldbank.org/data/countrydata>
<http://devdata.worldbank.org/dataonline/>
<http://www.undp.org/hdr2002/>
<http://www.undp.org/hdr2001/>
US Census Bureau (2000)

All of these studies recognize transparency, inclusiveness, and accountability as key characteristics of governance and try to capture them with various proxies and survey responses. Many of the indicators in these three studies use data available from global sources, such as Freedom House and Transparency International's Corruption Perception Index (Freedom House, 2002; Transparency International, 1999b). They have the advantage of covering large numbers of countries, but the disadvantage of relying on inexact proxies for the actual practice of several key governance characteristics.

There are also efforts to generate new data more specifically targeted to improving environmental governance at the national level. The United Nations Commission on Sustainable Development (UNCSD) has developed Indicators of Sustainable Development that include two governance themes—institutional framework and institutional capacity. National sustainable development strategies and implementation of global agreements are used as country indicators of the institutional framework for sustainable development. Scores for sustainable development strategies are based on, among other things, the involvement of all sectors of society in initiatives and action plans. These indicators are self-assessed by countries and submitted to the UNCSD Secretariat (UNCSD, 2002).

An ongoing effort in Russia, the Access to Information Index, assesses governance practices related to freedom of information (Russian Journalists' Union, 2001). Developed by a coalition of organizations of journalists and lawyers, research institutes, the Commission on

Freedom of Information, and others, the index ranks access to information in each region of Russia. The index is made up of indicators measuring freedom of access to information, freedom to generate information, and freedom to disseminate information. Data for the indicators are generated through analysis of national and regional legislation; analysis of rules for accreditation of journalists; field assessment of media and its access to information, including environmental information; and surveys of government officials.

The assessment offered in this study, which combines features of each of these efforts, is a unique approach. It is based on original data generated at the national level, focused specifically on environmental governance, the result of independent assessment, and applied to multiple countries. Most important, it is designed with the primary objective of catalyzing and benchmarking progress in individual countries rather than facilitating cross-country rankings.

The Access Initiative indicator framework was tested in nine countries: Chile, Hungary, India, Indonesia, Mexico, South Africa, Thailand, Uganda, and the United States. These countries were selected to represent different income levels, development paths, literacy rates, resource dependency, cultures, and political traditions. As a whole, the governments of these countries are rated as slightly more accountable and effective than an "average" national government, according to a recent study.¹ Figure 2.1 highlights the pilot countries on a map and provides basic national-level data on population size, literacy rates, GDP per capita, poverty rates,

unemployment rates, and the estimated number of internet users in each country.

II. DESCRIPTION OF THE FRAMEWORK

The Access Initiative methodological framework is designed to generate indicators assessing the performance of national governments in implementing the three access principles articulated in Principle 10 of the Rio Declaration. A first draft of the framework was generated by an interdisciplinary team convened by the World Resources Institute and the Environmental Law and Management Association. For content, the team drew on elaborations of Principle 10—such as the provisions of the Aarhus Convention and the Inter-American Strategy for Public Participation—previous efforts to assess national implementation,² and input received at a workshop in Washington, DC, in November 2000. The first draft of the methodological framework underwent review in mid-2001 and was revised to integrate feedback from an advisory group composed of experts from governments, international organizations, the academic community, and nongovernmental organizations (NGOs).

The framework breaks the three principles of access to information, participation, and justice into discrete parts, categories, and measurable characteristics. The framework is organized in four major parts: (1) general legal and institutional conditions for public participation; (2) access to information; (3) participation in decision-making affecting the environment; and (4) capacity-building efforts for informed

participation. Access to justice is captured by grouping relevant research questions from each of the four parts into clusters that reflect the extent to which citizens can seek judicial redress if their rights to information and participation are denied. This approach provides tools to identify and evaluate the important elements of a national public participation system as well as the connections among them.

Each part is divided into categories. Table 2.1 illustrates the four main parts and the categories in each part.

Categories are further subdivided into research questions that measure specific characteristics of law or practice. A range of values in an ordinal scale ranging from lower to higher performance is assigned to each question. The values are the scoring options that national teams could choose in assessing how a country or a specific case scores with respect to a question. An example of a research question is given in Table 2.2.

Research questions are designed to generate indicators and to assess the law and practice of public participation in a country. The research questions for the law measure the presence and the scope of the law, its breadth and support for access, and whether it provides sufficient guidance for implementation and enforcement. The majority of the research questions and the resulting indicators are designed to measure the practice of information disclosure and public participation through analysis of selected cases. The research questions for practice measure such characteristics as the timeliness and scope of government efforts to dis-

TABLE 2.1

METHODOLOGICAL FRAMEWORK

PART I General legal and institutional conditions for public participation	CATEGORY A	Conditions for public participation in laws and regulations not specific to environmental protection
	CATEGORY B	Provisions for implementation of access in the environment
	CATEGORY C	Enforcement of laws and regulations governing public access
PART II Access to information	CATEGORY A	Environmental emergency information
	CATEGORY B	Air and water monitoring information
	CATEGORY C	General information on the environment
	CATEGORY D	Compliance and performance information from facilities
PART III Participation in decision-making affecting the environment	CATEGORY A	Decision-making on national policies, plans, or programs
	CATEGORY B	Regional, state, or local decision-making
	CATEGORY C	Individual project or activity
PART IV Capacity-building efforts for informed participation	CATEGORY A	Efforts to build capacity of the government
	CATEGORY B	Efforts by the government to build the capacity of the public

seminate information or facilitate public input to decisions.

III. APPLICATION OF THE FRAMEWORK

Over the course of 2001, the nine national teams tested the methodological framework. The national teams were provided general guidance regarding how to apply the framework, including suggested criteria for selecting case studies and methods for collecting data. In most countries, a member of the team that had developed the framework participated in an initial workshop to introduce the methodology to the

national team. All teams were encouraged to convene a national-level advisory group to review the findings, and all were linked by a listserv to enable the sharing of experience as the assessments progressed.

Despite these attempts at standardization of approach, the national teams were also encouraged to adapt the methodology to national circumstances. For example, rather than all teams reviewing cases in the same sector, teams were encouraged to select cases in sectors most significant to their national economy. Thus, a degree of comparability of results across countries was intentionally sacrificed in the interest of country-specific

TABLE 2.2

SAMPLE RESEARCH QUESTION EVALUATING CONDITIONS FOR PUBLIC PARTICIPATION

PART I General Legal and Constitutional Conditions for Public Participation in Decision-making Affecting the Environment	CATEGORY A: Conditions for public participation in laws and regulations not specific to environmental protection
	RESEARCH QUESTION: Treatment of freedom of access to public interest information by national law
	RANGE OF VALUES <ul style="list-style-type: none"> i. National law prohibits freedom of access to public interest information. ii. National law does not treat freedom of access to public interest information. iii. National law guarantees freedom of access to public interest information with exceptions and restrictions. iv. National law guarantees freedom of access to public interest information with no exceptions and restrictions. v. National law guarantees freedom of access to public interest information with no exceptions and restrictions and contains general guarantees of actual implementation.

relevance. As discussed below, unintentional compromises to a standard approach were also introduced by the inadequacy of guidance on methods and by different interpretations of case selection criteria.

This report uses the information gleaned from the national assessments to measure the nine countries' collective performance for each of the principles and the specific practices examined by the national teams. The methodological framework is used to assess whether and how the pilot countries as a group are providing access to certain types of information and creating opportunities for the public to participate in certain types of decisions, based on the cases assessed by the national teams. The report seeks to identify common strengths and weaknesses of existing

systems of public participation and understand their causes so as to develop strategies and target actors that can improve performance. It does not attempt to arrive at an overall rating for individual countries or to rank the performance of the nine countries.

The national assessments produced by the pilot tests used more than 100 indicators, yielding a wealth of information that has been integrated into this report. While not all teams applied all 100 indicators, 79 indicators were applied by all or most of the national teams and allow for some general conclusions about performance. These indicators form the basis of this report and of the indicator scoring (described below), and are summarized in tables in Chapters 3, 4, 5, and 6.

To translate the information in the national reports into a more accessible form, the authors of this report have clustered the indicators into two aspects of access—quality and accessibility—and have assigned relative scores. With a few exceptions, each indicator is assigned to one of two groups: indicators of effort by the government to build the infrastructure for access (broadly defined as *quality*) and indicators of whether the information type or the decision-making process under analysis is actually accessible to the public (broadly defined as *accessibility*). Indicators for quality include the presence of appropriate mechanisms, procedures, products, rules, timing and lead time, or other variables characterizing the system of public participation or its elements. Indicators for accessibility measure the degree of inclusiveness and ease of accessibility to information or participation processes. Accessibility includes geographic coverage and diversity of information products or availability of information on decisions. Aspects of quality and accessibility are defined separately for each access principle. “Overall” ratings are an average of quality and accessibility.

Based on the selection of values by the national teams, indicators related to legal frameworks and selected cases were assigned a value of “weak,” “intermediate,” or “strong.” A characteristic of a case or of a legal system—for example, the accessibility of information about water quality—would score “weak” if it performs in the lower range of values of the applied indicators. A cumulative scoring of “strong”—for instance, for the legal framework for access to information or for large-scale, visible emergencies—indicates that most of the countries or

most of the cases in this category perform well as measured by the set of indicators applied to them. A “strong” score does not indicate “best” or “perfect”; it only suggests that a category performs better than another category in the public participation system. A “weak” score, conversely, suggests a poorer performance than the other elements of the public participation system.

IV. STRENGTHS AND WEAKNESSES

The pilot application of the methodological framework designed by The Access Initiative revealed several strengths and weaknesses in the approach. Overall, the nine national teams were able to apply most portions of the framework without making significant modifications. In most cases, assessments were completed in a matter of months, without incurring excessive costs. In several countries, national teams have been able to utilize assessment results to enter into a constructive dialogue with national governments regarding how the findings can be used to improve performance. It thus appears that the framework passes a minimum test of appropriateness across countries, feasibility for public interest groups to apply periodically, and acceptability as a basis for multistakeholder dialogue.

However, the pilot assessments also revealed many weaknesses. As the national teams started collecting data—reviewing laws and court decisions, conducting interviews, analyzing media, requesting information, and conducting surveys—they identified weaknesses in the categories, research questions, and values. Based

on the experience in the pilot tests, new categories were created, and the three access principles were better integrated into the methodological framework based on repeated revisions and feedback from the national teams. Some research questions and values were dropped and others added, and many of these minor adjustments were made in time to be included in the pilot assessments. Others are included in the revised version of the methodology.³ For example, at the suggestion of the Thai national team, additional values capturing government efforts to reach marginalized groups have been added to several research questions related to participation.

The pilot tests also suggested that the methodological framework had more fundamental weaknesses that could not be addressed in the initial applications. For example, the framework is relatively weak on measuring access to justice, relying on assessment of avenues for redress available in specific cases of access to information and participation. The framework was not effective in capturing the experience of attempts to use those avenues, and thus does not capture the “practice” of access to justice through actual cases analogous to those assessed for the other principles.

The indicator framework used in the pilot assessments was better suited to comprehensiveness of coverage than to simplicity. A leaner, simpler indicator framework may in fact prove to be a more effective means of evaluating national systems of public participation. National teams were encouraged to identify “minimum necessary indicators” in an effort to reduce redundancy and maximize value added

for time spent, but teams tended to suggest additions rather than deletions. The successful assignment of co-variation among the indicators—tracking one indicator over time to see if it is consistently able to predict the value of another indicator—would enable the use of fewer indicators as proxies for a variety of other trends and developments.

Another weakness, which was not unexpected, is the limited ability of the framework to support comparisons across countries. The research methods for the assessment of law include document and law review and support overall conclusions about the legal framework and its treatment of public participation in a country. This legal analysis can support comparison across countries. By contrast, the assessment of practice is based on selected cases, which means that the credibility and comparability of the “practice” aspects of the national assessments will depend on the number and selection of these cases. The methodological framework will support overarching conclusions only if national teams meet a number of conditions, including:

Number of cases examined to assess practice: A critical mass of cases—either in a sector or across sectors—is needed to allow conclusions about the public participation system as a whole.

Selection of cases: Consistent criteria for case selection must be applied to the assessment of access to information or decision-making to ensure a representative sample.

Research methods and assignment of values: The methodological framework requires application of a variety of methods such as document

review, interviews, and surveys. Specific methods and standards for assignment of values are required for each indicator.

National review of findings: The credibility of the national assessments also depends on a rigorous review by national review teams, including experts, government officials, and other relevant organizations or individuals.

The first national assessments applied the methodological framework to a limited number of cases to test the methods. The findings do not therefore support broad conclusions about the practices of public participation in all sectors, or even in a single sector in each country. They are only indicative of the experience in a specific event or decision-making process. As a group, the cases illustrate similar patterns of public access and support broader conclusions about specific types of information or decision-making processes. For instance, in cases involving large-scale, visible emergencies, the public usually has access to relevant information. But in another “emergency” cluster—fires and explosions in facilities—the public usually has no access to information.

Another weakness is the way cases were selected. In applying the methodology, the national teams were asked to follow common criteria for selecting the cases. Suggestions for how to make selections were given for each category. But national teams did not consistently apply these selection criteria. For example, some of the national teams chose “typical” cases, whereas others chose cases that were arguably “atypical.” Radioactive spills of Cobalt-60, for example, are hardly an everyday occurrence in

most parts of the world. This limits our ability to make comparisons among cases in the same category from different countries. In addition, the number of cases assessed was, in several instances, simply too small to allow for generalized conclusions about the sector in question. In several sections of Chapter 4, for example, there were far too few cases to draw any definitive conclusions. In future assessments, more cases in selected areas would allow for more robust conclusions.

Some indicators and values were relevant or useful for some countries but not for others. As a result, not all indicators were applied by all national teams, or the suggested values were replaced by proposed alternatives. Nor did all teams apply the same research methods for specific indicators. For instance, the South Africa team conducted an extensive survey to assess the investment of the government in environmental education, and complemented it with additional research, including document review. No other national team used a survey method for these specific indicators. The variance in the methods used affects the standards for the assignment of values across countries. The methodology in its first variant did not provide sufficient guidance on what research method should be used for each indicator. Neither did it provide sufficiently specific guidance on how to assign values. As a result, national teams are unlikely to have used common standards for assigning values, especially to the cases.

The national teams were also asked to establish review panels, including governments and other stakeholders. Most of the reports have already

gone through national review; others, such as the assessment by the South African team, were still going through review at the time of this writing. In Indonesia, the national research team joined The Access Initiative significantly later than the others and was still completing its assessment at the time of this writing. As a result, different national assessments were not subject to a consistent level of review prior to this synthesis of results.

This summary analysis of the nine pilot-test national assessments therefore has its limitations. Indicators for the assessment of law allow ranking among countries and areas of law, but the national teams in the pilot tests may not have used common standards for assigning values. The methodology is not designed for, nor does its application support, overall ranking of countries' practices in public participation. The assignment of values suggests relatively better or worse performance for clusters of cases but does not support ranking of case clusters. That is why this report adopts a scoring approach, which illustrates areas of better and worse performance common to all or a majority of the nine countries.

V. CONCLUSIONS

The pilot tests helped to demonstrate the strengths and weaknesses of the methodological framework. They also demonstrated that a common methodological framework can be used to assess implementation of Principle 10 by countries with widely varying characteristics. Each national team was able to adapt the indicator framework to its unique national circum-

stances with relative ease. Representatives of the national teams met in Budapest in November 2001 and in Bali in May 2002, and discussions comparing results across countries revealed a significant degree of convergence in common themes and messages emerging from the national assessments. This indicates that public participation systems have common elements and that it is possible to evaluate each of the pilot countries within a common framework. The experience disputes the claims of critics who assert that cultural and economic differences among countries make assessment within a common framework impossible. That governments of countries as disparate as Chile, Hungary, Indonesia, and Uganda have all expressed a marked willingness to engage with the national teams—and to improve their national systems of public participation based on the findings in the national studies—suggests that the approach is viable.

Nevertheless, the national teams discovered many weaknesses in the framework, which in turn translate into weaknesses in this report. For example, the lack of “practice” indicators for justice—as well as the lack of a separate part of the indicator framework devoted exclusively to justice—weakened the analytical power of this section of the report; by focusing exclusively on enabling conditions and the laws on the books as opposed to their practice, we undoubtedly missed valuable insights illustrating the gap between theory and practice that were illuminated in the chapters examining access to information and participation.

Additionally, the pilot assessment revealed numerous improvements that need to be made

in the application of the framework. For example, national teams discovered that the reporting format was unable to capture the richness of their findings. Oftentimes observations or insights gleaned from analysis of the national system of public participation could not be included because the framework was not flexible enough to accommodate them. In addition, the need for clearer and more strictly applied guidelines for methods and case selection became apparent when the time came to synthesize the results of the national reports. More consistent methods and case selection oriented toward “typical” cases would allow for a higher degree of comparability, while more rigorous national-level review would enhance the credibility of results.

Despite the weaknesses of the methodology and its initial application, we believe that many of our findings are sufficiently robust to support conclusions about general patterns of strengths and weaknesses in national public participation systems. The following chapters will summarize those results.

ENDNOTES

1. For the study’s set of indicators measuring “Voices and Accountability,” the Access Initiative countries averaged .47 on a scale in which -2.5 represented a lack of government accountability and 2.5 represented an ideal outcome (Kaufmann, Kraay & Zoido-Lobaton, 2002). Among the nine countries, the United States and Hungary had the highest values, with 1.24 and 1.19 respectively, while Uganda and Indonesia had the lowest, with -.79 and -.40 respectively. For the set of indicators measuring “Government Effectiveness,” the Access Initiative countries averaged .32 on a scale in which -2.5 represented an ineffective government and 2.5 represented an ideal outcome. The United States and Chile had the highest values, with 1.37 and 1.17 respectively, while Indonesia and Uganda had the lowest, with -.53 and -.25 respectively.
2. See, for example, Regional Environment Center 1998a, 1998b, 1998c.
3. Available at www.accessinitiative.org.

OPENING THE DOOR: ACCESS TO INFORMATION

On the morning of April 28, 1986, the nuclear reactor at Chernobyl, Ukraine, exploded, setting off the single worst nuclear disaster in human history. The resulting steam and fire released about 5 percent of the radioactive reactor core into the atmosphere. Large swaths of Belarus, Ukraine, Russia, and beyond were contaminated (World Nuclear Association, 2001).

At the time of the explosion, the people of the affected areas were told little about what had occurred. The state-controlled radio and television networks initially did not report the accident. The first terse report came two days after the explosion and was the fourth item in Moscow Radio's evening news bulletin (BBC Online, 2001).

The long-term health impacts have been significant. Authoritative studies have shown a substantial increase in the incidence of thyroid cancer among children living in contaminated areas of Russia, Belarus, and the Ukraine at the time of the accident (UNSCEAR, 2000). Trace deposits of released radionuclides were measurable in all countries of the northern hemisphere (UNSCEAR, 2000). The town of Pripyat—a

mere two miles from the plant—is today a ghost town, considered unsafe for human habitation.

Apart from its role in the demise of the Soviet Union, Chernobyl is a powerful example supporting the argument for guaranteeing access to information about the environment. It demonstrates that access to information—about an environmental emergency, about the safety of the air and the water, about an accident at an industrial facility—is vital. This chapter examines the extent to which countries have made progress since Rio in providing access to information.

I. INTRODUCTION

When a comprehensive system of public participation is in place, governments regularly collect information about environmental emergencies, air and water quality, and industrial facilities. This information is made available in simple, nontechnical prose on the Internet, in public libraries, and at government agencies. Electronic databases, which synthesize information gathered from a variety of geographical regions and economic sectors, are established and regularly

updated. Anyone can obtain and use this information for different purposes with little trouble. In addition, people can write to specific government agencies to request information not disseminated to the public. These requests are answered promptly and consistently. The government produces a state of the environment report on a regular basis, giving an overall picture of the nation's environmental health.

This chapter assesses the progress made by the nine pilot countries toward a basic standard of access to information. It reviews the forces driving increased attention to improving access to environmental information; examines the status of legislation guaranteeing access to information in the pilot countries; assesses the performance of governments in providing information in specific cases of environmental emergencies, air and water monitoring, pollutants from industrial facilities, and the general status and trends of the environment; and identifies several common themes about access to information.

To assess practice, national teams selected and examined cases in a cross-section of four important categories of environmental information that cover a range of purposes, levels of urgency, and audiences:

1. Information about emergencies enables people to take immediate action to protect their health or environment.
2. Regular information about air and water quality helps people make informed choices in their everyday lives. It can also be used to pressure government to take measures to improve the quality of air and water.
3. Information about industrial facilities informs people whether a company is complying with environmental standards and tells them the amounts of pollutants being released into the air, water, soil, and waste stream. It helps communities hold facility managers and companies accountable for improving their performance.
4. Information on trends in the many aspects of environmental quality enables policy-makers and citizens to contribute to more informed public policy-making.

While recognizing that other types of environmental information are also important, we propose that, as a minimum standard, governments actively provide these four categories of information to the public.¹

Context and Influences

The importance of developing and sharing environmental information through scientific exchange, educational programs, and the media has been recognized at the international level at least since the UN Conference on the Human Environment in 1972. In the decades since, advocates for the public interest have argued that the right to know is a critical tool in fighting corruption and waste (Blanton, 2002). At least in the developed world, these arguments have largely succeeded. Whereas only six OECD countries had laws regarding access to information on the books before 1980, 24 had adopted them by 2000 (OECD, 2001c). Worldwide, 44 countries had passed access to information legislation as of 2000 (World Bank, 2002a).

Democratic societies generally support the public's basic right to be informed about what the government is doing (Stiglitz, 1999). Some theorists argue that laws mandating access to environmental information prompt governments to collect and manage it more efficiently and disseminate it in more useful forms. The more widely shared and usable information, in turn, empowers people previously shut out of the process to participate in public decision-making (Che and Earnhart, 1997; Grant, 1997). Others contend that government provision of environmental information mobilizes the public to demand a cleaner environment, which prompts polluters fearing negative publicity to reduce their emissions and waste (Stephan, 2002). Still another argument holds that transparency can complement or replace coercion by government in many areas, enabling citizens to take the place of the state to a certain extent in monitoring the behavior of polluters (Florini, 1998). In addition, standardized environmental information can spur collective action by highlighting disparities between neighborhoods or provinces (Stephan, 2002).² By highlighting the relevance of environmental issues to equity, information can spark an interest in redistributing environmental costs more fairly throughout society.

These arguments are not mutually exclusive, and their logic can be simplified into three basic lessons: Better information enables decision-makers to make better decisions; broad access to information promotes better decisions by mobilizing demand for sustainable solutions to problems; and access to information empowers citizens to take a more active role in providing improved environmental performance independently of the state.

Theories aside, worldwide demand for access to information has grown in recent years, as evidenced by the growth in countries with freedom of information acts (FOIAs) on their books. At least three interrelated forces have driven this phenomenon: the urgency and scope of environmental problems, the increasingly active character of civil society, and the revolution in information technology.

Because of the urgency and scope of environmental problems, there is a broad consensus supporting better information. It is generally agreed that such information is necessary to support decisions on how to address these problems. This consensus is reflected in such global agreements as Agenda 21, which specifically mentions the need for access to information (United Nations, 1992), and regional agreements such as the Aarhus Convention. Further, improved public understanding strengthens the realization that these problems cannot be addressed by governments alone. Viable long-term solutions rely on government and intergovernmental action as well as the engagement of a wide range of other actors—from global coalitions and corporations to the individual citizen. Information is needed to mobilize these actors, who in turn need access to information to play their role effectively.

The upswing in activism on the part of civil society represents a second force driving the demand for access to information. Public use of the Freedom of Information Act in the United States continues to rise; in fiscal 1999, nearly 2 million FOIA requests were filed with federal agencies (National Security Archive, 2002). The independent operation of right-to-know sites,

such as “RTK-Net” and the “National Security Archive,” show that NGOs are using freedom of information laws to meet the public demand for accessible, user-friendly environmental information (National Security Archive, 2002; RTKNET, 2002). In Mexico, anecdotal evidence suggests a growing demand for environmental information from the private sector, environmental NGOs, and other interest groups (Doyle, 2002). More than half a million Thai citizens used the Official Information Act in its first three years of existence, and when requests were denied, they followed up with the Official Information Commission, filing 150 complaints and 88 appeals in 2001 (Banisar, 2002). Public demand for access to information is increasing at an unprecedented rate, leading to the passage of freedom of information legislation in many countries.

The revolution in information technology represents a third force driving demand for access to information. The advent of communication tools such as mobile phones, faxes, e-mail, the Internet, satellite communications, analytical tools such as geographic information systems (GIS), and new sources of information such as remote sensing have given rise to levels of interconnectedness unprecedented in human history. The information revolution has helped civil society to raise awareness of environmental problems through analysis, presentation, and dissemination of information, while enabling groups to work more effectively across national boundaries to encourage access to information (Florini, 2000).

The Methodological Framework³

To assess the four categories identified as critical for access to environmental information (emergencies, air and water quality, industrial facilities, and state of the environment reports), the national teams applied a total of 57 indicators, though not all of these indicators are used in this report. The indicators seek to capture the characteristics of a comprehensive system for collection, organization, and dissemination of information. They also seek to measure the legal framework for public access to environmental information. These indicators cover both the existence and quality of the legal framework supporting access to information, as well as how well legal mandates and guarantees are implemented in practice. The indicators are then clustered for scoring on two characteristics—those characterizing the quality of government efforts to disseminate information and those characterizing the accessibility of this information to the public.

Quality generally refers to efforts on the part of a government to produce information. It seeks to evaluate (1) how the information is collected; (2) how the information is presented; (3) how frequently written reports are issued disseminating information; (4) the “breadth” of coverage of the information; and (5) how well electronic reporting and databases are used to synthesize and disseminate information.

Accessibility generally refers to the extent to which the public can obtain information. It seeks to evaluate (1) how easy it is for the public to access information in different forms, ranging from rating systems to detailed raw data; (2)

TABLE 3.1 INDICATORS FOR QUALITY AND ACCESSIBILITY OF ACCESS TO INFORMATION		
Section	Characteristic	Indicators
Legal framework	Overall	<ul style="list-style-type: none"> • Constitutional guarantees to access to information • Freedom of Information Acts (FOIAs) or equivalent legislation • Access to environmental information provisions
Environmental Emergencies	Quality	Efforts to prevent future emergencies: <ul style="list-style-type: none"> • Establishment of ex post investigations • Tracking of emergencies Quality and content of information to the public: <ul style="list-style-type: none"> • Indicators assessing quality and content of information provided by different actors involved in emergencies
	Accessibility	Timeliness of access to information in an emergency: <ul style="list-style-type: none"> • Indicators measuring timeliness of information provision from different actors involved in emergencies Coverage and distribution of information to the public: <ul style="list-style-type: none"> • Indicators measuring scope of distribution of information to different audiences
Air and Water Quality	Quality	Comprehensiveness of monitoring effort: <ul style="list-style-type: none"> • Air/water quality parameters monitored • Duration and periodicity of monitoring • Geographic coverage and diversity of institutions monitoring air/water quality
	Accessibility	Distribution and accessibility of air/water monitoring information: <ul style="list-style-type: none"> • Regularity of distribution • Ease of obtaining information from source (i.e. monitoring system)

continued next page

whether there are mechanisms for timely response to requests, and whether the information is easily accessible through the Internet; (3) the length of time it takes for requests for information to be answered; and (4) whether the information provided can serve the purposes of different audiences.

See Table 3.1 for a comprehensive list of indicators that determined the scores for “quality” and “accessibility.”

TABLE 3.1

CONTINUED

Information about Environmental Performance by Industrial Facilities	Quality	<p>Legal mandates for different types of facility reporting</p> <ul style="list-style-type: none"> • Mandates to disclose information about compliance with air and water quality standards; • Requirements for PRTRs <p>Collection and reporting amounts of emissions/waste:</p> <ul style="list-style-type: none"> • Use of standardized identifiers • Periodicity of reporting • Specificity of facility contact • Policies on confidentiality • Requirements for electronic reporting <p>Management of data:</p> <ul style="list-style-type: none"> • Effort to share data • Effort to establish an electronic database
	Accessibility	<p>Availability of performance and compliance data:</p> <ul style="list-style-type: none"> • Ease of getting specific data about multiple facilities • Ease of getting specific data about selected facilities
General Information on the Environment Through State of the Environment Reporting	Quality	<ul style="list-style-type: none"> • Number of reports published over the past decade and legal mandates for reporting • Framework and organization of reporting process • Diversity of representation of information in reports • Data and indicator richness of reports
	Accessibility	<ul style="list-style-type: none"> • Number of reports printed • Sources and cost of obtaining report • Audiences who can obtain report

Source: Access Initiative National Team Reports

II. ACCESS TO INFORMATION: THE LAW

Three types of legal instruments form the basis for access to information: (1) constitutional guarantees to information; (2) freedom of information laws that provide access to information held by government agencies; and (3) laws or legal provisions specifically governing access

to environmental information. The presence of these three elements in national law characterizes a comprehensive and supportive legal framework for access to environmental information held by the government. Table 3.2 presents an assessment of the strength of the legal

TABLE 3.2

PRESENCE OF LAW AND PROVISIONS SUPPORTING PUBLIC ACCESS TO ENVIRONMENTAL INFORMATION

Indicator	Weak	Intermediate	Strong
Constitutional guarantees to access to information	The constitution does not guarantee the public's right to information: Chile, United States	The constitution does not guarantee the public's right to information, but interpretations of the right to free speech and press include the right to information: India, Hungary	The constitution guarantees the public's right to information: Indonesia, Mexico, South Africa, Thailand, Uganda
Freedom of Information Acts (FOIAs) or equivalent legislation	Neither FOIA nor equivalent legislation is in place: Uganda	FOIA or equivalent legislation is in legislature: India, Indonesia	FOIA or equivalent legislation is in place: Chile, Mexico, Hungary, South Africa, Thailand, United States
Access to environmental information provisions	No special provisions exist governing access to environmental information, or access to different types of environmental information is treated in separate laws: Hungary, India, Uganda	No value offered; only two indicator choices were "strong" and "weak"	Provisions for access to environmental information are in place: Chile, Indonesia, Mexico, South Africa, Thailand, United States

Source: Access Initiative National Team Reports

framework supporting access to information in each of the nine pilot countries.

The constitutions adopted by Uganda, South Africa, and Thailand after 1990 all guarantee the right of the public to information. Indonesia amended its constitution in 1999 to include the right to information. Older constitutions, by contrast, treat the public right to information with other civil rights such as freedom of speech and freedom of the press. Article 61 of the Hungarian constitution states that "In the

Republic of Hungary everyone has the right of free expression of opinion, including learning and spreading information of public interest." This provision is commonly interpreted to include the right to information. In India, decisions by state courts and the Supreme Court have set precedents to allow the constitutional rights of freedom of expression and press to include the right of the public to information.

With some specific exemptions, FOIAs make information held by government ministries

public. Six of the nine pilot countries have FOIAs (Chile, Hungary, Mexico, South Africa, Thailand, and the United States). In many of the pilot countries, the legal framework has been developed only recently and is still evolving. As of May 2002, Indonesia's Parliament was deliberating the adoption of a framework freedom of information law, and India has a draft act that has been awaiting approval by the legislature since 2000. In 1999, Chile for the first time introduced a law to facilitate access to information, while Mexico passed such legislation in June 2002.

Special provisions for public access to environmental information have been adopted into the legal frameworks of six of the nine pilot countries (Chile, Indonesia, Mexico, South Africa, Thailand, and the United States). In all of these except the United States, access to environmental information is also treated in broader environmental protection laws. These provisions complement general access to information laws and emphasize the importance of environmental information for the public. They acknowledge that the quality of the environment is of immediate concern to the public and that environmental information should be widely accessible. Thailand's Enhancement and Conservation of National Environmental Quality Act of 1992 states that any person is entitled to information about the promotion and conservation of environmental quality from government agencies. The Constitution of the Kingdom of Thailand, adopted in 1997, provides guidance on classes of environmental information in the public domain. Section 59 of the Thai constitution reads that public information should cover all information related to any activity that may

affect environmental quality, health, and other interests of the local communities. The Thai Official Information Act of 1997, which allows public access to all types of information held by the government, also applies to environmental information. Among the pilot countries, only India, Hungary, and Uganda have not yet adopted provisions governing access to environmental information.

Only three of the pilot countries (Mexico, South Africa, and Thailand) embrace all three types of law that characterize a comprehensive legal framework for access to information. Four other countries (Chile, Hungary, Indonesia, and the United States) have at least two of the three types in their legal frameworks. India is in the process of adopting some of the missing legislation. In only one country—Uganda—must citizens rely on a single legal instrument to support their rights of access to information. These findings illustrate that generally favorable legal conditions exist for access to environmental information in the majority of the nine pilot countries. In part, these developments likely stem from a growing acceptance of common global norms of transparency and accountability.

The one exception to this trend toward greater openness is the United States. Particularly following the events of September 11, access to information has been constrained in some areas. (See Box 3.1.)

III. ENVIRONMENTAL EMERGENCIES

At 12:29 p.m. on August 18, 2000, a gas well outside the town of Pustazölös, Hungary,

BOX 3.1**FREEDOM OF INFORMATION IN THE UNITED STATES
IN THE WAKE OF SEPTEMBER 11**

In the wake of the terrorist attacks of September 11, 2001, events in the United States have demonstrated that a constitutional guarantee is a fundamental element of a framework for access to information. The 1966 FOIA, amended in 1974, has provided for transparency in federal decision-making for 35 years. Without a constitutional guarantee, however, the executive branch can move unilaterally to take information out of the public domain.

In October 2001, for example, the United States Attorney General John Ashcroft issued a memo to all federal agencies. The memo stated, “when you carefully consider FOIA requests and decide to withhold records, in whole or in part, you can be assured that the Department of Justice will defend your decisions unless they lack a sound legal basis...” The earlier standard promoted disclosure of government information under FOIA unless it was “reasonably foreseeable that disclosure would be harmful.” Tom Blanton, executive director of the access advocacy group National Security Archive, explained, “The cumulative message from the White House and from Ashcroft is: Stall. Don’t release.” Public interest groups, both liberal and conservative, expressed concern about Ashcroft’s memo. Mark Zaid, executive director of the James Madison Project, a group promoting government accountability, felt that the memo had the effect of intimidating FOIA officers via the “informal threat that secrecy should reign ... because your job is on the line.”

Also in October 2001, the United States Environmental Protection Agency (EPA) removed from its website information related to Risk Management Plans (RMPs) for industrial facilities. These plans inform workers and communities about the potential consequences of a major chemical release. They aim to prevent accidents. By mid-2002, two legislative proposals demonstrated approaches to improving chemical security with differing implications for access to information. One would require the highest-priority facilities to go beyond preparing a plan to conducting vulnerability assessments and evaluating options for improving security and reducing chemical hazards through safer materials or processes. Another would eliminate all public access to the risk management plans and take no steps toward use of the plans to reduce the risk of accidents.

As many countries move toward greater transparency and access to information, the United States serves as a timely reminder that securing the right of access to information is a continuing challenge.

Sources:

“Bush View of Secrecy is Stirring Frustration; Disclosure Battle Unites Right and Left.” 2002. The Washington Post. (March 3, 2002): A04.

OMB Watch. 2002. “Battle of the Bills.” The Watcher 3(13). Online at: <http://www.ombwatch.org/article/articleprint/859/-1/126>.

erupted in a column of flame. About two and a half hours later, the Bekes County Disaster Relief Directorate (DRD) issued a press release

to the Hungarian News Agency alerting it to the accident. After some initially confusing and contradictory media accounts, timely and

accurate information was conveyed to the public via news reports based on interviews with government officials and with the plant operators. On August 23, printed materials prepared by City Hall, the MOL Corporation (which owned the plant), and the DRD were distributed locally concerning the eruption's impact on health and on the environment. The immediate health effects included three people who reported impaired hearing resulting from the initial explosion. The immediate environmental effects included contamination of the local soil and groundwater. Longer-term assessments of health and environmental implications of the explosion conducted by the government and the report generated by the MOL Corporation remain confidential.

While not a model of best practice, the gas well explosion at Pusztazölös was generally well managed. There was a press release shortly after the accident, timely and accurate information from plant owners and government officials appeared in the media, and written materials circulated with estimates of the accident's impact. Not all government agencies and companies, however, provide such timely and accurate information about accidents at private facilities. This issue is explored in the following section, which examines the quality and accessibility of information provided to the public during and after an emergency or an accident.

The Cases

Accidents and emergencies such as the gas explosion in Pusztazölös occur weekly in every country of the world. They usually affect only

small areas and a limited number of people. Other environmental emergencies, such as the nuclear disaster at Chernobyl, are less frequent; they threaten large areas and millions of people. In all cases, access to accurate, reliable, and up-to-date information about emergencies is essential if citizens are to make informed choices amid the initial confusion that so often accompanies these events.

The national teams reviewed the practice of access to information in 17 cases of environmental emergency. These cases are summarized in Appendix I; the details of their scoring are provided in Table 3.3.⁴ The 17 cases illustrate different types of emergencies: natural disasters, forest fires, disease outbreaks, air pollution, transport accidents, fires or explosions in private facilities, large spills or pollution of water bodies, and the dumping of radioactive material. The duration of the emergency, impact on the general population, and environmental damage was different in each case. The cases reveal considerable variation in agencies' responses to emergencies, as well as in the systems in place to deal with them.

The governments of the pilot countries generally have well-established systems to track and provide information for most health or larger, recurrent emergencies. In four cases—the cholera outbreaks in Uganda and South Africa, the volcano eruption close to Mexico City in 1997, and the emergencies stemming from atmospheric pollution in Santiago, Chile, in 1999—authorities could rely on established monitoring systems that facilitated the rapid diffusion of information about the emergency to the affected public. Largely because of these

systems, accessibility ranked strong in each of these cases.

In cases where monitoring systems were not already in place, large emergencies have prompted their creation. The Tisza spill in Hungary in February 2000, for example, led to the development of a general disaster relief and damage mitigation plan for specific sectors, which the public can obtain upon request.

Emergencies have also led to the establishment of ex-post investigations, as in the cases of heavy metal pollution of the Silva Reservoir in Mexico, the Tisza spill in Hungary, and the severe atmospheric pollution event in Santiago. An ex-post team also examined an unusual event in Thailand: the dumping of radioactive Cobalt 60 in February 2000.

The research by the national teams suggests that large disasters that attract media attention and/or international attention tend to generate public access to information. This was true in the case of the pollution of the Silva Reservoir in Mexico, the cyanide spill in the Tisza River in Hungary, and the poisoning of fish in Lake Victoria, Uganda, among others.

National teams discovered that authorities could also perform adequately in more localized emergencies. This was the case in Thailand after a truck accident involving hazardous material and an emergency caused by dumping of radioactive material. The diesel spill in South Africa caused by a railroad accident falls in the same category of a local event with adequate performance on the part of government agencies. In Indonesia, the state oil company

Pertamina provided some information to the local community after a natural gas leak in 2002.

In cases of fires or explosions in private facilities, by contrast, information is rarely made available to the public. The official information available during the fire in Viña del Mar, Chile, was neither timely nor clear. Residents living in the vicinity of the fire could not get information on the magnitude of the event or the level of danger and thus could not make informed decisions. No information was provided during either of the industrial accidents in Gwalior, Madhya Pradesh, India, though the law required notifying the surrounding community and the authorities. In the case of the tire fire in Stanislaus County in the United States, the public had access to some chemical release data and basic information on health effects. Researchers for this case study, however, concluded that more timely and better-quality information was required for this situation.

The Püsztaföly fire represents an exception, therefore, rather than the rule when it comes to the accessibility of emergency information at private facilities. In Püsztaföly, after the initial confusion, both the company and public authorities provided up-to-date and relevant information to the affected population during the emergency. One factor that may well explain why Püsztaföly was different is the national media attention garnered by this emergency—a common factor in emergencies in which performance by government agencies was strong.

The evidence is consistent with a hypothesis that public authorities tend to be more forth-

TABLE 3.3

QUALITY AND ACCESSIBILITY OF ACCESS TO INFORMATION IN SELECTED EMERGENCY CASES

Type of Emergency	Case	Quality		Accessibility	
		During	After	During	After
High-profile, large-scale emergencies with media coverage	Volcano eruption Popocatepetl, Mexico City, Mexico	Strong	Strong	Strong	Strong
	Cholera outbreak Kwa Zulu Natal, South Africa	Strong	Strong	Strong	Strong
	Cholera outbreak Kampala, Uganda	Strong	Strong	Strong	Strong
	Cyanide pollution Tisza River, Hungary	Strong	Strong	Strong	Strong
	Heavy metal pollution of Silva Reservoir Guanajuato State, Mexico	Not assessed	Strong	Not assessed	Strong
	Fish poisoning with toxic chemicals Lake Victoria, Uganda	Intermediate	Intermediate	Intermediate	Strong
	Air pollution emergency Santiago, metropolitan area, Chile	Weak	Strong	Weak	Strong
	Flooding disaster Jakarta, Indonesia	Weak	Weak	Weak	Weak

coming with information if somebody else is responsible for the accident and no government agency can be blamed for lack of oversight or enforcement. Access to information becomes more difficult when information is regarded as economically sensitive, or when institutions cannot gauge the scope of potential criminal investigations or legal liabilities. An ongoing court case related to the Pusztazölös fire in

Hungary, for example, blocked access to information on scenarios of possible causes and responsibility for the fire, in contrast to exemplary information access during and immediately after the emergency.

In general, the cases suggest that the larger the scale of the emergency, the greater the quality and accessibility of information.

TABLE 3.3

CONTINUED

Type of Emergency	Case	Quality	Accessibility	Type of Emergency	Case
Emergencies in private facilities (factory waste site, etc.)	Gas well fire Pusztaszölös, Hungary	Strong	Strong	Strong	Strong
	Fire in chemical factory Viña del Mar, Chile	Weak	Strong	Weak	Strong
	Fire in tire dump Westley, Stanislaus County, California, United States	Intermediate	Weak	Intermediate	Weak
	Fire in Flex Industries Gwalior, India	Weak	Weak	Weak	Weak
	Fire in Supreme Industries Gwalior, India	Weak	Weak	Weak	Weak
More localized emergencies	Dumping of unshielded radioactive material (Cobalt 60) Pra Pradaeng District, Samut Prakan Province Thailand	Strong	Strong	Strong	Strong
	Acrylonitrile truck accident Bangkok Toll Way, Thailand	Strong	Strong	Strong	Strong
	Railroad accident with diesel spill Swatruggens, South Africa	Strong	Strong	Strong	Strong
	Natural gas leak Sumber Village, Indonesia	Intermediate	Intermediate	Intermediate	Intermediate

Source: Access Initiative National Team Reports

IV. AIR AND WATER QUALITY INFORMATION

The “mineral” water produced by the LASKA Pure Water Plant in Hai Duong City, Vietnam, was until recently distributed nationally. In 2000, the company sold 217,000 bottles (Cac &

Thuy, 2001). These bottles were not, however, sold in cafés in Hai Duong, because the people of Hai Duong refused to drink it. One gave the reason: “We know from what and how it is made.”

TABLE 3.4

CASE SELECTIONS EVALUATING QUALITY AND ACCESSIBILITY OF AIR QUALITY INFORMATION

Country	Case Selection	Quality ^a	Accessibility
Chile	Information from the Atmospheric Monitoring System (AMS) situated in the Metropolitan Valley and Santiago City	Strong	Strong
Hungary	Information from four networks in the process of being linked into a National Environmental Information System under the Ministry of the Environment (KIR): <ul style="list-style-type: none"> • ANTSZ—County Public Health Officer's Service covers 100 settlements and 11 territorial units • RIV—regional emission analyzing stations cover entire country • PHARE network monitors major cities and territories • Monitoring of chemical pollution in rainwater^b 	Intermediate	Strong
India	Information from the National Ambient Air Quality Monitoring network (NAAQM) This information was accessed through Ministry of Environment and Forests and central and state pollution control boards	Intermediate	Strong
Indonesia ^c	Information from the Blue Sky Program and Emission Reduction monitoring system operated by the Ministry of Environment in Jakarta	Weak	Weak
Mexico	Information from the Atmospheric Monitoring System of the Mexico Valley Metropolitan Area	Intermediate	Strong

What did the citizens of Hai Duong know that the rest of the country did not? When the LASKA plant's mineral spring went dry sometime in 1999, hundreds of thousands of printed labels marketing the bottles as containing "mineral water" were still on hand. These labels were subsequently affixed to bottles containing nothing more than filtered river water, which the company attempted to pass off as mineral water. Inspectors soon halted the sale of the fake

mineral water by sealing the remaining containers at the factory, but it is easy to see the important role played by accurate information in this particular case. Those with unfettered access to information about LASKA's so-called "mineral" water were able to preserve their own health and wellbeing. Those who lacked this information thought they were drinking healthy mineral water, but they were not.

TABLE 3.4

CONTINUED

South Africa	Information drawn from an air monitoring system in Johannesburg/Kempton Park	Intermediate	Intermediate
Thailand	Information from a monitoring system operated by the Pollution Control Department (PCD), which works in conjunction with 12 regional offices	Strong	Strong
United States: Ohio	Information from a monitoring system operated by the Hamilton County Department of Environmental Services under contract to the Ohio Environmental Protection Agency. Hamilton County includes the city of Cincinnati	Intermediate	Strong

a. We used three indicators to measure quality (number of air quality parameters, duration of monitoring effort, and geographic coverage and comprehensiveness of monitoring effort.) Indicator values for the first two clustered at the same level except for Indonesia. Thus the response to the indicator on geographic coverage largely determined the rankings. Country teams interpreted that indicator differently, some for the entire country and some for the particular case example. More sensitive and clearer indicators are proposed for the revised indicator framework. For this report, we have ranked all countries intermediate except Indonesia, which does not have comprehensive parameters, and Chile and Thailand, which reported broad coverage and comprehensive monitoring systems.

b. This is an overall score for all four systems.

c. Indonesia submitted a single value for both air and water quality information.

Source: Access Initiative National Team Reports

Information about the water we drink and the air we breathe allows us to make personal choices that can protect us or improve the quality of the environment. For the public as a whole, information also is important as a tool to force polluters or the government to change their behavior and practices so that water and air quality are improved. This section looks at the extent to which governments provide access to such information.

The Cases

To evaluate public access to information on air and water quality, the national teams identified the largest national monitoring efforts for air quality and for water quality—both drinking and surface—in their respective countries. The monitoring systems examined were somewhat atypical, since they tended to collect data from many monitoring stations in heavily populated areas. Nonetheless, these case studies establish a baseline to assess future performance for those locations and to make comparisons with monitoring performance in other locations.

TABLE 3.5

CASE SELECTIONS EVALUATING QUALITY AND ACCESSIBILITY OF WATER QUALITY INFORMATION

Country	Case Selection	Quality	Accessibility
Hungary ^b	Information from four networks: <ul style="list-style-type: none"> • KoFe, the Environment Inspectorate has 12 regional institutes that monitor surface water quality • ANTSZ –County Health Officers Service Network has 19 institutes and supervises drinking water quality • VIZIG—Water Management Directorate • RIV—regional emission analyzing stations cover entire country 	Intermediate	Weak
India	Information from the rivers network (MINARS) as well as Ministry of Environment and Forests, Central Pollution Control Board and 11 state Pollution Control Boards Assessed drinking water supply in municipalities of <ul style="list-style-type: none"> • Gwalior • Chiplun • Chandigarh 	Intermediate	Weak
Indonesia ^c	Information from the Jakarta Clean River Program monitoring the Ciliwung River, a primary source of water for Jakarta	Weak	Weak
Mexico ^d	Information from the Lerma-Cutzamala Monitoring System, the principal water supply for Mexico City	Strong	Weak
South Africa	Information from RandWater, a national supplier of drinking water	Intermediate	Intermediate

As Tables 3.4 and 3.5 show, the national teams assessed 16 cases of access to information from systems to monitor air and water quality. These 16 cases were evaluated, as in the previous section, by two criteria: quality and accessibility.⁵

All national teams found the air or water quality monitoring systems they assessed had operated for more than three years. All monitoring systems except those in India, where reports were available but inconsistent, have

provided regular reports at least over this period. Some of the monitoring systems have operated for decades: Chile's air monitoring system in Santiago City started in 1987, while RandWater in South Africa started operating in 1927.

In terms of the breadth of parameters monitored, monitoring systems are categorized as either comprehensive or basic. National teams in five countries (Hungary, India, Mexico, South

TABLE 3.5

CONTINUED

Thailand	Bottled water information from the Food and Drug Administration. Tap water information from: <ul style="list-style-type: none"> • Metropolitan Waterworks Authority (MWA) • Provincial Waterworks Authority (PWA) • Universal Utilities, a private water supply company in Chachengsoa province 	Weak	Weak
Uganda	Information from a system monitoring the wastewater discharged into the Rukoki River (a source of water for local communities and their livestock) by the Kasese Cobalt Company Ltd., which extracts cobalt from pyrite about 400 km from Kampala. Information from a drinking water monitoring system in Kampala	Weak	Weak
United States: California	Information from the California Department of Health Services, Division of Drinking Water and Environmental Management, which oversees 8,700 public water systems; 35 county health departments cover smaller systems.	Intermediate	Strong

a. Monitoring systems score weak on quality when they collect information for only a few parameters characterizing the quality of water.

b. Obtained data from almost all 12 inspectorates and from 7 of 19 public health offices in four weeks. Seven of 19 offices responded on drinking water.

c. Indonesia submitted a single value for both air and water quality information.

d. Mexico disseminates drinking water information at the state level but not by individual water supply.

Source: Access Initiative National Team Reports

Africa, and the United States) found that the systems chosen monitor a comprehensive set of physical, bacterial, chemical, and viral parameters in water. Systems in two countries (Thailand and Uganda) monitor a more basic set. All five plus Thailand monitor a comprehensive set in air. Even in countries with a comprehensive set, however, the national teams expect that the number and type of substances monitored will

continue to grow. Hungary will add parameters as it implements regulations issued by the European Union.

The quality of the system for providing air and water quality information also depends on how the monitoring networks are coordinated. Monitoring systems can cover a single urban area, as in Mexico or Indonesia; entire coun-

tries, as in Hungary, India, Chile, and Thailand; or large regions within a country, such as the State of California in the United States.

In Thailand, for example, 51 air monitoring stations cover 19 provinces under the Pollution Control Department (PCD), working in conjunction with 12 regional offices under the Office of Environmental Policy and Planning. The monitoring of drinking water from the tap, by contrast, is divided among several bodies—the Metropolitan Waterworks, Provincial Waterworks Authorities, and the private Universal Utilities company. The monitoring of bottled water comes under another body—the Food and Drug Administration. Thus, while the Thai air monitoring networks are relatively coordinated, numerous agencies and organizations are monitoring and collecting information about drinking water quality.

The situation is similar in Hungary, which is combining air monitoring systems into a new National Environmental Information System known as the KIR. Different aspects of drinking and surface water monitoring, however, are managed by different agencies, and neither the system nor the data are coordinated or integrated. The lesson to be drawn from both the Thai and the Hungarian examples is straightforward: Unified and integrated systems provide a more coherent picture of air or water quality and present less of a challenge in obtaining information.

The Thai team also found that, while it could obtain some analytical data on the quality of tap water from water authorities, the country's Food and Drug Administration (FDA) provides no

analytical monitoring on contaminants in bottled water. The FDA only notes the conclusion of its analysis: whether the quality of the drinking water of the selected brand is "safe." This policy means that consumers cannot check for the presence of specific contaminants. This lack of detail can be particularly relevant to vulnerable populations such as children, pregnant women, and older people.

The Ohio team in the United States noted that data about air quality placed on the Internet are often similarly limited. The conclusion that air quality is "good" may be enough to help citizens decide whether to bicycle to work or stay inside if they suffer from a respiratory disease. It is not enough information, however, to explain what sources might be contributing to the problem. Nor is it enough to spark changes in air pollution policy-making that might require knowing more about the specific levels of particular pollutants. Not having access to data disaggregated at different levels, in short, is a significant limit on access to information.

Information technologies facilitate public access to information. Websites increasingly provide an opportunity for the public to learn more about air and water quality monitoring issues. In Hungary, the National Health Action Program website provides widespread coverage of environmental and health issues. In California, a website for the Environmental Justice Coalition for Water encourages citizens to become involved in monitoring the water quality in their communities.

The Hungarian team made extensive efforts to learn about practices in providing water quality

monitoring data by requesting it from 12 environmental inspectorates and 19 public health offices. It obtained data from the majority of inspectorates on surface water quality but from just half the health offices on drinking water. The Hungarian team also found that responses to its requests for water data varied widely. Some agencies provided raw data free of charge. Others asked for clarification on the specific questions and types of data needed to answer them. Others also requested reimbursement. The range of responses highlighted that standard procedures are needed for answering requests for data at an appropriate level of detail and cost.

Two countries provide examples of how water data can be disseminated. In South Africa, RandWater uses a website to provide users with updates on water issues. A map highlights in red areas where water should not be used for drinking without treatment and where contact should be avoided because of microbiological health effects, for example. In the United States, water suppliers disseminate annual reports to customers about their drinking water.

Air quality information is, on the whole, widely accessible to the public in the pilot countries. Some information about daily averages of air pollution and trends in air quality is available to the public in urban areas in six countries (Chile, Hungary, India, Mexico, Thailand, and the United States). The air quality information—often in terms of ratings or averages—is reported in the daily press, on the radio, and/or on the Internet. In Hungary, more detailed emissions information is available on the Internet.

Detailed information on drinking and surface water quality, on the other hand, is difficult to obtain in all but two of the pilot countries: the United States and South Africa. Under the 1996 amendments to the Safe Drinking Water Act, the United States requires water suppliers to provide customers with annual reports. These reports are usually mailed with bills; many are also posted on the Internet. Teams in five countries (Hungary, India, Mexico, Thailand, and Uganda) found no active dissemination of data on drinking water quality for the public on the Internet or in the press. In Mexico and Uganda, teams could not obtain the data at all; in India, data could be obtained only through a personal contact.

In short, there are considerable differences in the performance of government agencies in providing information to the public about air quality in urban centers and drinking or surface water quality. Collectively, air quality information scores strong, while performance in providing water quality information scores weak.

V. INFORMATION ABOUT ENVIRONMENTAL PERFORMANCE BY INDUSTRIAL FACILITIES

After enduring years of “noxious odors” generated by the release of toluene into the air at a nearby factory owned by Auto Alliance International (AAI), the citizens of East Rock, Michigan, in the United States decided to investigate the problem. Working with an environmental group, they accessed the national Toxics Release Inventory (TRI)—known internationally as a Pollutant Release and Transfer Register

(PRTR)—which tracks the pollutants released by more than 23,000 factories each year. They discovered that between 1991 and 1993, AAI had increased its annual toluene air releases from 100,000 pounds to 800,000 pounds. Moreover, they discovered that AAI was the fourth largest polluter in Michigan overall and the second largest source of toluene emissions. After confronting the company with these figures in early 1994, the residents received a commitment from the company president to embark on an aggressive solvent reduction program. The company was able to save money by recapturing solvents; the people of East Rock were able to breathe deeply again (OMB Watch and Unison Institute, 1995).

The TRI gave East Rock citizens the information they needed to spur improved performance at the facility. Such information allows citizens to make comparisons among facilities. It tells them about the pollutants various facilities release into their water, air, or soil or transfer to waste management sites. It helps them analyze the environmental performance of whole industrial sectors. Other information from facilities tells the public whether the industries operating in their towns comply with local or national environmental standards. Both types of information enable facility employees, neighbors, local officials, investors, government managers, researchers, and others to reduce the environmental impacts of corporate decisions.

The Cases

The national teams assessed both the law and practice of access to facility-level information about environmental compliance and performance.

Law on access to facility-level information about compliance and performance

To assess information about industrial facilities, the national teams investigated whether there were laws requiring public access to facility compliance reports and PRTRs.⁶ PRTRs are government-operated systems that collect and disseminate data on environmental releases and transfers of toxic chemicals from industrial facilities. With access to this information, citizens can trace facilities' progress in reducing or avoiding pollution.

All governments in the nine pilot countries require industrial facilities to report on their compliance with environmental standards. Such reports provide important information about whether facilities are obeying the standards that limit releases into air and water. Though governments in the pilot countries collect compliance reports, these reports are rarely available to the public. Six of the nine pilot countries—Chile, India, Mexico, South Africa, Thailand, and Uganda—lack specific legal provisions for public access to industry environmental compliance reports.

Of the countries surveyed, only the United States has an operating PRTR. Hungary and Mexico have recently adopted legislation mandating the introduction of PRTRs in the foreseeable future. Chile, South Africa, and Thailand are exploring how they might establish these inventories. The attention to PRTRs in five of the nine pilot countries reflects a growing interest worldwide in promoting greater corporate environmental accountability at the facility level. It also illustrates the role of international

agreements and collaboration on access to specific types of information, such as information about facility performance. For instance, Hungary's legislation was developed partially in response to the European Union requirements for accession.

Despite this growing international interest in PRTRs—and the recent legislation mandating their future introduction in some countries—current law in the majority of the pilot countries does not make facilities accountable to the public for the pollution they generate. Collectively, national assessments of the legal requirements for public access to facilities' reports on environmental compliance and performance are weak. In most countries, there are no requirements for public access to facility-level compliance information or for PRTRs or similar systems. Box 3.2 identifies several new approaches to guaranteeing public access to facility-level compliance information, while Appendix II provides examples of progress made to date in making available information about the environmental performance of industry at the local, provincial, national, regional, and global level. Appendix III lists laws and voluntary approaches to facility reporting in place in the pilot countries. Figure 3.1 illustrates the status of the development of PRTRs worldwide.

The practice of access to facility-level information about environmental compliance and performance

For the assessment of access to facility-level information in practice, the national teams selected one or more industrial sectors important to the economy of their respective countries

BOX 3.2 NEW APPROACHES TO MAKING FACILITY-LEVEL DATA PUBLICLY AVAILABLE

New approaches to collecting and disseminating facility pollution data started at the local and state level in the 1970s and 1980s. While some efforts at these levels continue, initiatives at the national and international levels—including Pollutant Release and Transfer Registers (PRTRs), public rating systems, and standardized company reports—dominated in the 1990s. In North America and Europe, initiatives to develop consistent frameworks at the continental level allow comparison and aggregation of facility data among countries. But much work remains to be done before most communities and individuals have access to information about the environmental performance of facilities operating in their neighborhoods.

Sources:

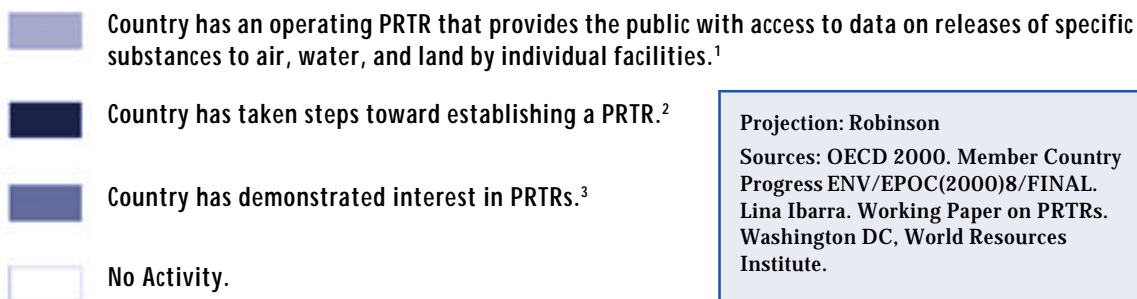
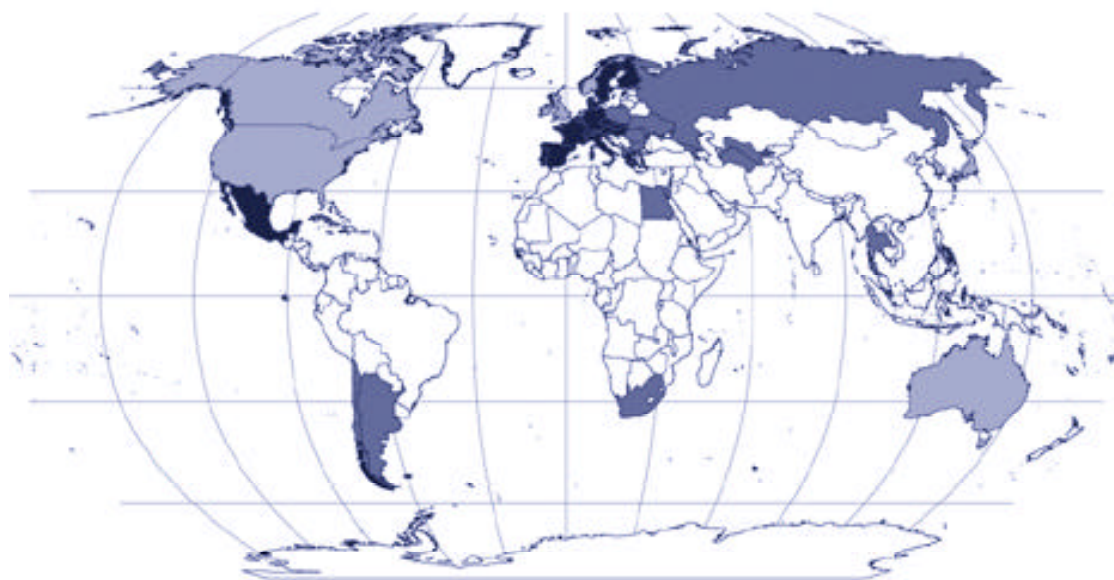
Frances Irwin. 2002. "Information about Pollution from Industrial Facilities." Draft report. Washington, DC: World Resources Institute. On file with author.

and up to five facilities in that sector or sectors.⁷ Most teams chose extraction and processing industries, which dominate the beginning of the cycle of materials through an economy. The selections for each of the countries are described in Table 3.6.

The indicators applied to specific facilities in the pilot countries suggest that in many of them, barriers to learning how a factory is performing include:

FIGURE 3.1

PUBLIC ACCESS TO INDUSTRIAL POLLUTANT INFORMATION



Projection: Robinson

Sources: OECD 2000. Member Country Progress ENV/EPOC(2000)8/FINAL. Lina Ibarra. Working Paper on PRTRs. Washington DC, World Resources Institute.

1. A full PRTR also includes information transfers of substances in waste. Australia, Norway, and the United Kingdom, for example, do not now provide transfer data or provide it in a limited form. Japan's first data are expected in spring of 2003.
2. Mexico is writing regulations to implement a 2002 law requiring facilities to report PRTR data and for the information to be made public. Hungary has a law mandating the creation of a PRTR. Denmark, Italy and Slovakia now provide some public data on release in one or two environmental media. Sweden has pilot-tested a PRTR system. All members of the European Union are included in this category because the EU requires members to submit facility release data on 50 pollutants to air and/or water by June 2003.
3. Interest is indicated, for instance, by regular participation in the Working Group on PRTR Protocol under the Aarhus Convention, or by working with an international organization through a workshop or other process.

- A lack of standard ways of identifying the mine or factory or waste site and where it is located. Each report a factory submits to government may use a different spelling of the company's name or describe its location in a different way.
- A lack of standard ways of identifying pollutants released. Different facilities or even the same facility may refer to the same substance in a different way in reports submitted under different laws.
- A lack of centralized repositories for reports. For example, reports may go to different offices in the government and be submitted at different times of the year.

Other limitations include unclear policies governing the handling of trade secrets. Uganda, for example, permits broad claims of secrecy for economically sensitive data. Five of the other pilot countries have no clear policy regarding the treatment of proprietary information. In India, a regional officer of the Maharashtra Pollution Control Board in Chiplun, citing policies on trade secrets, said that a government circular prohibited sharing information about facility releases. However, he also refused to provide a copy of the policy to the assessment team.

The United States does have an explicit policy on confidentiality. This policy is articulated by the United States Toxics Release Inventory, which provides public information about environmental performance at the facility level. The policy allows only the name of the substance to be kept secret. When this exemption is invoked, a generic name is given to the pollutant in question and the amount of this "generic

pollutant" released must be reported. In the United States, the reasons for asserting claims of confidentiality must be submitted along with a company's PRTR report (Orum, 2002).

A promising opportunity for countries seeking to guarantee access to this category of information is the establishment of electronic reporting mechanisms. All of the pilot countries are in the process of developing electronic information systems to assist in channeling information from facilities to the public. This drive comes in response to one of the most serious problems in handling information from facilities: its fragmentation. When information is scattered across multiple government agencies, presented in different forms, and lacking consistent spelling of the names of the facilities in question, the need for standardized electronic reporting and databases becomes clear. When the Thai national team submitted an information request to the Thai government, the government told the research team to request the information directly from the facilities. It would be prohibitively time-consuming, the team was told, for the agency in question to locate its own copies of the documents requested. In the United States, the California team obtained data on the selected electronic facilities from government databases over the Internet, in some cases through sites run by NGOs.

In India, Thailand, and Uganda, data about individual facilities could not be obtained from the government at all without a personal contact. In addition, national teams in Mexico and South Africa did not attempt to obtain facility data through the government, assuming they could not do so under current practices and laws.

TABLE 3.6

FACILITY-LEVEL INFORMATION LAWS AND CASE SELECTION

Country	Compliance ^a	PRTR ^b	Voluntary ^c	Case Selections ^d	Quality	Accessibility
Chile				Sectors: Copper smelting; Construction; Solid waste disposal Location: Santiago metropolitan area and Region V Facilities: Fundición y Refinería Ventanas (copper smelter); Constructora Arquín (construction); Lepanto landfill (solid waste disposal)	Weak	Weak
Hungary	•*	•*	•	Sectors: Chemicals; Oil; Paper; Packaging Location: Northeast Hungary, near cities of Miskolc and Diosgyor Facilities: Borsodchem Ltd. (chemicals) Sajobabony Chemical Facilities Ltd. (chemicals); Diosgyor Paper Ltd. (paper); MOL Ltd. (oil); Dunapack Ltd. (packaging materials)	Strong	Intermediate
India			•	Sectors: Chemicals; Various manufacturing Locations: Lote-Parshuram Industrial Belt, Chiplun, Maharashtra; Malanpur-Ghirongi Industrial Belt, Bhind, Madhya Pradesh Facilities: Gharda Chemicals Ltd. (chemicals); De Nocil, Rallies India Ltd. (chemicals); Vashisti Detergents Ltd. (chemicals); Cadbury (chocolate); SRF (textiles); Surya Rashani Ltd (glass); Godrej Soaps Ltd. (soaps)	Weak	Weak
Indonesia	•		•	Sector: Oil and gas exploration Location: East Java province, a center of economic growth in eastern Indonesia where the density of both population and industrial development is high Facilities: P.T. Exxon—Bojonegoro (oil); P.T. Devon—Tuban (oil) Reason selected: Facilities were selected due to their potential to produce toxic waste; in the Devon case, local people had reported a “stinging odor” and conflict with officials.	Intermediate	Weak
Mexico		•*	•	No facilities examined	Weak	Not assessed
South Africa				No facilities examined	Weak	Not assessed

TABLE 3.6

CONTINUED

Country	Compliance ^a	PRTR ^b	Voluntary ^c	Case Selections ^d	Quality	Accessibility
Thailand			•	Sectors: Electricity; Various manufacturing and processing Location: Samut Prakan Province at mouth of Chao Phraya River on Gulf of Thailand Facilities: TJC Chemicals Co. Ltd. (fertilizers, pesticides); Bangkok Spring Industry Co. Ltd. (metals, vehicle parts); Thai Union Public Co. Ltd. (paper); Lim-Silp Tannery Co. Ltd. (tannery); Kingfisher Co. Ltd. (food products)	Weak	Weak
Uganda				Sectors: Mining; Various manufacturing Locations: 400 kilometers from Kampala; Kampala City Facilities: Kasese Cobalt Company Ltd (cobalt mining); Mukwano Industries (soap and edible oil manufacturer) Reason selected: Kasese Cobalt Company has permit to discharge wastewater in Rukoki River, a source of water for local people and livestock	Weak	Weak
United States	•	•	•	Sectors: Electronics; Metals; Petrochemicals Locations: Silicon Valley, California; San Diego, California; various areas in Ohio Facilities: Apple Computer (hardware manufacturing); Cypress Semiconductor (semiconductor fabricating); Hackett Enterprises (computer recycler); Hewlett-Packard (semiconductors); Hewlett-Packard Computer Recycling Plant (computer recycler); Intel (microprocessor manufacturing facility); STMicroelectronics, (semiconductor fabricating facility); Eramet (steel components); AK Steel (steel); BP (petrochemical plant); Brush-Wellman (beryllium producer)	Strong ^e	Strong

- a. This indicator assesses whether laws and provisions are in place requiring that reports submitted by facilities to the government about their environmental compliance be made available to the public. A mark in this column indicates that such laws or provisions requiring public disclosure are in place; a lack of a mark indicates that they are not. An asterisk indicates that the country is introducing a system for public access to reports. See Appendix III for more detail.
- b. This indicator assesses whether a PRTR is required by law and is operational in a country. A mark in this column indicates that PRTRs are mandated and operational; a lack of a mark indicates that they are not. An asterisk indicates that the country plans to introduce a PRTR in the next two years. See Appendix III for more detail.
- c. This indicator assesses whether some facilities are involved in voluntary reporting initiatives. A mark in this column indicates that some are; a lack of a mark indicates that the national teams were unable to identify any facilities participating in voluntary reporting. See Appendix III for more detail.
- d. Mexico and South Africa did not assess individual cases to evaluate accessibility; they felt that given the state of national legislation at the time of their assessments, such efforts would be unproductive. They did provide information about quality, however, based on interviews with government officials.
- e. The public can obtain raw Toxics Release Inventory (US-PRTR) data about individual facilities and analyze it. Some compliance data are also organized by sector.

Other countries have had a positive experience in making facilities' compliance information easily understandable and accessible. The Indonesian government has developed, with donor assistance, an easily understandable Program for Pollution Control, Evaluation, and Rating (PROPER) to publicize how well companies are complying with standards for discharges into water (Afsah et al., 2000). Facilities are graded on a five-level scale from black to gold. The system led to a significant increase in compliance with water laws by large facilities in Indonesia, as owners and managers responded to reputational pressures (Afsah and Vincent, 1997), before being put on hold in the wake of the financial crisis that swept through Asia in 1997-1998.⁸ The World Bank is working with other countries—including China, India, the Philippines, and Thailand—to introduce similar rating systems (World Bank, 2002b). In North America, the Commission on Environmental Quality has issued annual reports comparing PRTR systems and analyzing the results from Canada and the United States since 1994. Canada, the United States, and international agencies have worked with Mexico to help develop a PRTR, which is expected to start operating in 2003 (NACEC, 2001).

National teams in Hungary and the United States were able to obtain facility-level data. The Hungarian team was able to get data both in print and electronically for all five selected facilities in the chemicals sector in Borsod-Abaúj-Zemplén County from the North-Hungary Environmental Inspectorate. It got detailed 12- to 18-month-old data about releases of defined substances, as well as trends over five to 10 years in published environmental reports.

However, they were unable to find analysis of the environmental performance of the chemical-processing sector as a whole, although it accounts for a significant portion of the country's economy. The United States Environmental Protection Agency has organized facility data for five sectors and posted it on the Internet.

In some countries, when governments did not respond to requests for information, companies themselves proved to be a fairly reliable source of individual facility data. Four of the five Thai facilities provided the information to the team within days. Two provided detailed analytical data on air and water quality in printed reports for several reporting periods. The data were all less than three years old, and less than a year old in one case. However, facilities in the electricity sector provided no data in response to the team's requests.

After the Indian team found no government officials or industry associations willing to share specific information about facility emissions, members approached three companies. One manager with whom they had good personal rapport shared the company's Environmental Statement for his facility, which makes compact fluorescent lights.

In most countries, the information provided by governments about the environmental performance of facilities is weak. This state of affairs is a result, in large part, of the lackluster reporting systems currently in place. Although the pilot countries all require industrial facilities to report to government about compliance with laws that limit air and water pollution, these laws usually cover only a few major pollutants

with set standards that limit, for example, the levels of sulfur dioxide emissions into the air. Ambiguous policies governing the handling of trade secrets further hamper efforts to compile centralized databases with facility information, as many companies avoid disclosure by claiming that the information requested is economically sensitive. In short, much work remains to be done in the pilot countries before access to industrial facility information is widespread.

VI. GENERAL INFORMATION ABOUT THE ENVIRONMENT THROUGH STATE OF THE ENVIRONMENT REPORTING

State of the environment reports take disaggregated facts about the environment—the rate of deforestation, for example, or the amount of carbon dioxide in the atmosphere—and integrate them into a coherent whole. They summarize environmental trends over a given geographic region over a set period of time. Access to such sweeping overviews can inform citizens of wide-ranging environmental problems currently faced by their country (or state or province). Thus, these state of the environment reports can be crucial sources of information for citizens.

The Cases

For each pilot country, the national teams investigated state of the environment reports published over the past decade. A state of the environment report can be defined as a document that is (1) concerned with environment and natural resource issues; (2) supported by

numerical data and charts, tables, and maps; (3) countrywide or regional in coverage; (4) useful to policy-makers and others concerned with development planning; and (5) publicly available at reasonable cost. Ideally, state of the environment reports are produced on a regular basis, but resource constraints and other reasons may prevent this.

Examples of state of the environment reports include Agenda 21 National Reports, OECD Environmental Performance Reports, UNCED National Reports, Environmental Synopses, and Environmental Status Reports. All of the pilot countries have produced some or all of these documents over the past decade. One of the main benefits of these reports is the provision of comprehensive information about the environment, which is typically collected by many different institutions within and outside government. State of the environment reports represent one information type that is explicitly mentioned under the active information provision guidelines of the Aarhus Convention.

Table 3.7 lists the reports the nine national teams selected for examination. In countries where various institutions published different reports, reports from the public authority that had a national mandate on environmental issues were selected. For India, the team examined both national- and state-level reports. For the United States, national-, state-, and local-level reports were examined. Thailand brought out its eighth national report, covering 1992-2001, in 2001. South Africa released its first post-apartheid national report in 1999. The vast majority of the reports were published and produced by government organizations, although in Chile

TABLE 3.6		SUMMARY OF RECENT STATE OF THE ENVIRONMENT REPORTS		
Country		Title	Publishers	Year(s)
Chile		Perfil Ambiental de Chile (Chilean Environmental Profile)	CONAMA (national environmental authority)	1995
		Informe Pais 1999: Estado del Medio Ambiente en Chile (Country Report 1999: The State of the Environment in Chile)	CONAMA (national environmental authority)	2000
		Por un Chile Sostenible: Propuesta Ciudadana para el Cambio (Toward a Sustainable Chile: A Citizen Proposal for Change)	NGO Programa Chile Sostenible	1999
India	National	The Citizens Report	Centre for Science and Environment	1997 (4th report) 1999 (5th report)
	Madhya Pradesh (state)	Madhya Pradesh Status Report	Environmental Planning and Coordination Organization	No dates provided
Indonesia		National Agenda 21	Ministry of the Environment	1998
Hungary		Environmental Indicators of Hungary	Ministry of Environment	2000
		Environmental Indexes in Hungary	Central Statistical Office	1992 and 1994
		Attachment B to the National Environmental Program (overall environmental status report)	Ministry of Environment	1996
		Data about Hungary's environmental status	Environment Management Institute	No dates provided

and India, teams also looked at reports produced by NGOs.

Almost all examined reports are of high quality. They rely on multiple conceptual frameworks, are rich in data and indicators, and use various presentation tools such as graphs, tables,

and maps. They include discussions of policy issues, integrate information from various sources, identify trends in environmental quality, and present that information in diverse ways for various audiences. Some of them even use scenario development to investigate different policy options. The majority of countries

TABLE 3.7		CONTINUED		
Mexico		The Environmental Statistics: General State of the Ecological Equilibrium and the Environmental Protection Report	National Secretary for Environment, Natural Resources, and Fisheries and National Institute for Geographic Statistics and Information	1997 1999
		Report of the General Situation on Ecological and Environmental Protection	National Institute of Ecology	1989–92 1993–94 1995–96
South Africa		State of the Environment Report of 1999	Department of Environmental Affairs	1999
Thailand		The State of Thailand's Environment	Office of Environmental Policy and Planning	1992–2001 (8th report)
Uganda		State of the Environment Report	National Environment Management Authority (NEMA)	1996 1998 2000
USA	National	Environmental Quality	Council of Environmental Quality (CEQ)	1995, 1997 ^a
	California (state)	California Environmental Indicator Reports	California EPA	1995 1996
	San Mateo County (local)	Indicators for a Sustainable San Mateo County: A Yearly Report Card on our County's Quality of Life	Sustainable San Mateo County (SSMC), a public interest group	2001

a. 1997 marked the cessation of U.S. state of the environment reporting in a meaningful way; post-1997 reports are referred to as CEQFOIA reports

Source: Access Initiative National Team Reports

have produced more than two reports over the past decade. In five case studies—India, the United States (national level), California (state level), Mexico, and Thailand—three or more reports have been released. They are a good source of information for decision-makers and for the public at large.

In selected countries, NGOs have taken on the responsibility to produce national state of the environment reports to fill perceived information gaps. The Center for Science and Environment in India has regularly produced status reports on India's environment. Hindu, a major Indian newspaper, publishes an annual survey

that highlights key articles on the environment and includes some data tables.

Wider distribution and spin-off products could improve the reach of environmental reporting efforts. Public authorities make copies of most of the reports available free of charge to a broad range of institutions, including libraries. Most of them have a hardcopy and an electronic version. However, all pilot countries could do better in reaching mass media with additional products. This is especially important where rates of literacy are still low. Similarly, all pilot countries could improve on the number of spin-off products (e.g., teachers' guides, posters, and translation in local languages). This is very much a budget issue. Most countries reported a desire to reach a wider audience and would welcome a recommendation to top policy makers for increased and regular funding.

Most reports are easily accessible in the pilot countries. Once a state of the environment reporting process has been established, accessibility of these reports becomes less of an issue. Because public authorities are increasingly relying on multiple distribution channels such as direct distribution of hardcopies to libraries, direct sales of reports, and Internet versions, each of the national teams could examine a full set of reports. However, not all reports could be found or read free of charge at the selected libraries.

International processes can drive state of the environment reporting. Many national state of the environment reporting processes are motivated by international processes such as becoming a member of OECD, acceding to the EU, or

participating in international discussions on sustainable development. Some reporting processes, for example in Uganda, have to rely significantly on international development assistance to establish an operating budget.

CONCLUSIONS

Figure 3.2 presents an overview of the state of access to environmental information in the pilot countries, ordered from strong to weak.

While the law supporting access to information is strong, practice lags behind. The pilot countries have, on the whole, demonstrated a commitment to international norms of information disclosure by guaranteeing the public's right to information in their constitutions, adopting Freedom of Information Acts, and making special provisions for access to environmental information. Yet the national teams discovered that practice in many cases remains weak.

Citizens can learn about the state of the environment. Pilot country governments perform best in preparing reports analyzing the state of the environment. Once public authorities and their partners have established a state of the environment reporting process, the reports tend to be of high quality.

In emergencies that generate substantial media attention, governments performed well in ensuring public access to information. The evidence strongly suggests that media attention can spur governments and private facilities to be more proactive and more forthcoming with regard to information about environmental

FIGURE 3.2 ACCESS TO INFORMATION SCORECARD			
Type	Quality	Accessibility	Overall
Legal guarantees and provisions for access to information	Strong		
Emergencies: large and visible emergencies with extensive media coverage	Strong	Strong	Strong
State of the environment reports	Strong	Strong	Strong
Monitoring information: air quality	Intermediate	Strong	Intermediate
Monitoring information: water quality	Intermediate	Weak	Weak
Industrial facility information: based on air and water compliance monitoring and PRTRs	Weak	Weak	Weak
Emergencies: accidents or fires at private facilities	Weak	Weak	Weak

emergencies. Because newspaper, television, and radio coverage reaches a broad audience, shifts in public opinion can pressure authorities to be more open to information requests when the issue is under direct media scrutiny.

Information about air pollution is easy to obtain; information about water quality is not. While the public can relatively easily get information on air quality in urban areas where pilot country governments have invested in a monitoring network, it is considerably more difficult to obtain information about water quality. Among the pilot countries, information about drinking water quality is easily available only in South Africa and the United States.

Environmental information about industrial facilities is difficult to obtain. Accidents and fires at industrial plants are seldom reported

adequately or in a timely manner to surrounding communities. Similarly, information about facility compliance with air and water pollution laws is seldom available, even through the government collects reports on compliance. In a few cases, individual facilities themselves will provide some data to the public upon request, but the success rate for this type of approach is highly variable and may require personal contacts. Information about the performance of industrial sectors as a whole is rarely available in pilot countries.

Media coverage and international attention can improve access to information. The cases also suggest that international attention can lead to improved performance, in that it helps to keep the spotlight on the authorities providing information. This was the case for the Tisza spill, which affected all countries within the

lower Danube watershed, and the Silva reservoir pollution in Mexico, which led to the involvement of international organizations interested in the wellbeing of migratory birds. In both cases, this attention motivated public authorities to handle the situation professionally and appropriately. In the case of fish poisoning in Lake Victoria, Uganda, which led to a ban on fish imports from that region by the European Union, it did not lead to excellent performance from the authorities, but ensured that the emergency was not just treated as a local event.

International processes and donors can encourage access to environmental information. They have played a role in encouraging both the development of PRTRs and the publication of state of the environment reports.

ENDNOTES

1. These information types are a subset of types listed under Article 5 of the Aarhus Convention, which outlines the obligation of public authorities to actively collect and disseminate specific types of information (UNECE, 1998).
2. When not otherwise indicated, the sources of information for this report are the national reports completed by the national teams of NGOs working as part of The Access Initiative in the pilot-test countries. In Indonesia, government officials from the Ministry of the Environment also participated in the research.
4. Access to information was scored as weak when information was provided too late or did not reach the affected public. Performance scored strong in cases where the information provided was timely and accurate and the government had or established a system to investigate the emergency and to track future emergencies. In the cases where some but not all relevant information was provided, where information was delayed, or where no system to investigate and track future emergencies existed, performance was scored as intermediate.
5. With the exception of Indonesian cases, the air and water quality cases were scored separately based on collective performance against all indicators grouped to assess quality and accessibility. Performance is scored weak if the information is not accessible or the quality of the monitoring effort does not produce usable information. It is scored strong if there is relatively easy public access to information that is usable and understandable by different audiences. Just as “weak” does not mean the worst performance, so “strong” does not imply an ideal performance.
6. A weak legal system for access to facility information does not contain provisions for disclosure of compliance reports or a PRTR program. An intermediate system requires that governments release to the public compliance reports from facilities. A strong system contains requirements for both compliance reports and PRTRs. It ensures that the public can monitor compliance, track the amounts of pollution released to the environment, and compare performance among facilities. Such a system provides important elements of a coherent picture of corporate environmental performance.
7. Facilities are sites where a process or group of processes is carried out. A company may have just one or two facilities or it may have tens or even hundreds of facilities.
8. Personal communication with David Wheeler, Lead Economist in the Environment Unit of the World Bank’s Development Research Group. July 23, 2002.

WINDOWS OF OPPORTUNITY: ACCESS TO PARTICIPATION

Over a period of 50 years, chaotic urban development in Mexico City caused a rapid loss of agricultural land and natural vegetative cover. In February and March 2000, Mexico City's Federal District government sponsored a broad consultation on an ecological land-use plan and conservation program for the Valley of Mexico that would address these issues. Working with the National Autonomous University of Mexico, the Government of the Federal District (D.F. in Spanish) consulted with the 46 remaining agricultural communities in the Valley of Mexico, as well as municipalities with remaining open space. As a result of this consultation, the zoning plan incorporated a number of citizen suggestions, including emphasizing conservation of areas that recharge groundwater aquifers; establishing clear definitions of public and private activities that are compatible with preservation of natural vegetative cover; implementing land-use regulations that encourage landowners and agricultural communities to undertake conservation and reforestation activities; and ensuring that the plan had legal standing to permit judicial defense of communal and conservation land. Despite this valuable input, the government of the D.F. made no effort to communicate or disseminate the final plan to the

communities that were consulted. Furthermore, the government of the D.F. did not follow through on its plan to create a body made up of citizen and public sector representatives to review progress on implementation.

This case illustrates both the benefits to be reaped from public participation and the continuing challenges citizens and decision-makers face in ensuring that participation enhances public decisions and their implementation.

I. INTRODUCTION

Public participation can add value to decision-making in a number of ways. It can ensure that all relevant issues—ranging from defining the scope of a problem to developing solutions for it—are addressed. It can contribute to an honest accounting of the social, economic, and environmental costs and benefits of a decision and of how the burdens and benefits will affect different segments of society. It can serve as a tool to integrate environmental and social concerns into decision-making processes and thereby produce decisions that support sustainable development. Finally, public participation can

serve as a mechanism to manage social conflicts by bringing different stakeholders and interest groups to the same table to discuss a negotiated agreement. At the outset of a project, a forward-looking investment in public participation can minimize both the number and the magnitude of conflicts arising over the course of the project's life. For public participation to add value, however, it must be meaningful, contributing substantively to defining the parameters and outcomes of a decision-making process.

This chapter examines a range of experiences with public participation in decisions about national policies, state or local planning, and specific projects. The intention is to illustrate both the degree to which laws and policies guarantee public participation and the extent to which governments promote meaningful public participation at various levels. The analysis begins with an overview of context, followed by a review of legal commitments to public participation within seven of the pilot countries and a group of Latin American and Caribbean countries. The chapter then evaluates the practice of participation by examining actual decision-making experiences drawn from the pilot countries and five Central and Eastern European (CEE) nations.

Context and Influences

The past 30 years have seen a sea change in the role of public participation in environmental decision-making. Requirements for public notice and comment or public hearings have expanded to include consensus building, policy dialogues, stakeholder advisory committees, citizen juries, and multi-stakeholder regulatory negotiations

(Beierle and Cayford, 2002). The purpose of public participation has also shifted over time and includes keeping governments accountable for their actions, identifying and understanding the public interest, and developing the substance of policy (Beierle and Cayford, 2002).

Public participation is difficult to define. It can cover a wide range of actions, from a consultant appearing in a village to announce an irrigation scheme to individual or collective efforts to organize a participation process (Adnan et al., 1992). The Aarhus Convention emphasizes that “there is no set formula for public participation, but at a minimum it requires effective notice, adequate information, proper procedures, and appropriate taking into account of the outcome of public participation” (UNECE, 2000).

In academic, advocacy, and political discourse, the desirability of public input into environmental decision-making now commands broad assent. Surveys yield some lessons about when public participation is most effective. First, participation that moves beyond simple information exchange to enhance the accountability of institutions that affect people's lives increases the public's influence over decision-making (Cornwall, 2001). Second, public institutions increase incentives for citizens to remain engaged in decision-making processes by communicating their purpose in seeking public participation and by communicating how public input will be used to inform decision-making (USEPA, 2002). Third, participation that explicitly recognizes social exclusion and differences in power balances among stakeholders permits more effective negotiation of consensus or resolution of conflicts (Colletta, et al., 2001). Box 4.1 highlights

Women comprise a disproportionate number of the world's poor. They suffer from gender biases in the labor market and from inequitable resource allocation within households. Women on average have higher illiteracy rates, lower life expectancies at birth, and less access to education than men.

One of the keys to addressing poverty, environmental degradation, and women's lack of opportunity is to deepen their role in decision-making processes. Only eight countries have achieved the target endorsed by 189 governments at the United Nations World Conference on Women in Beijing (1995)—that women should have a 30 percent share of decision-making positions (UNIFEM, 2000). In many societies, women are systematically excluded from village- to national-level decision-making bodies. Getting advocates for women a seat at the table—and thereby greater access to participation—is essential if the situation of women worldwide is to improve.

An example from Nepal demonstrates how omitting women from decision-making can lead to measures that are both impractical and unfair. When the national government devolved power over local forests to community user groups, the committees set up at the village level to manage the forests were dominated by men. In an effort to protect forests degraded by years of mismanagement, these community user groups issued an edict that villagers could only enter the forests at stipulated entry points that were to be guarded at all times. For the men, who rarely entered the forest, this was hardly an inconvenience. For the women, who gathered firewood every day—and who made up 80 to 90 percent of forest users—it was a decidedly less convenient solution. Women who had previously gathered firewood close to home

were forced to walk for miles in order to gain access at one of the “approved” entry points, an arduous undertaking that imposed severe economic hardship upon the women.

Among citizens' groups organizing for environmental justice, women already have a prominent role. Women hold leadership positions in movements to protect productive lands, such as Kenya's Green Belt movement to halt desertification; to monitor and seek compensation for the effects of environmental disasters, such as the campaigns surrounding the Chernobyl nuclear disaster and Russia's radioactively contaminated Chelyabinsk region; and to protect freshwater and fisheries, such as the protest movement against India's Narmada Valley dam project. In some cases, these citizens' groups are composed solely of women. The success of these groups—and examples such as the one above drawn from Nepal—suggests that advocates for the poor, and hence for women, would do well to give women a greater voice in decision-making. Participation may not be sufficient for women to lift themselves out of poverty, but it is an important first step.

Sources:

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how power imbalances suffered by women handicap efforts to negotiate environmentally sound and socially equitable decisions. These lessons and others are stimulating efforts to develop mechanisms for popular accountability in environmental affairs that reduce the monopoly of public authority (Fiorino, 1996).

In a number of industrialized countries, moves in this direction date back to the inception of the contemporary environmental movement in the early 1970s. In the United States, for example, the 1972 National Environmental Policy Act mandated public consultation as part of the environmental impact assessment process (Roberts, 1995; Sands and Werksman, 1995). The European Union has responded to criticisms that its institutions and policies suffer from a “democratic deficit” by introducing measures aimed at enhancing opportunities for public participation in environmental decision-making (Sands and Werksman, 1995). Increasingly, international organizations and agreements have incorporated commitments to participation as well as information disclosure in their stated policies. Box 4.2 summarizes a review of such processes for a selection of multilateral environmental agreements, international trade regimes, regional economic bodies, and multilateral development banks.

Correctly used, public participation can help integrate environmental and social concerns and support sustainable development objectives. To achieve this purpose, it should be encouraged in all sectors and at all levels and at all stages of the decision-making process.

The Methodological Framework

Eight national teams applied 33 indicators to evaluate a number of characteristics of public participation in specific decision-making cases in the pilot countries (the national team in Chile did not apply the indicators on participation). Some of these indicators examine the law and regulations governing public participation. Others focus on practice illustrated by selected decision-making processes. The indicators for practice were organized along five general stages of a decision-making cycle: notification, consultation, dissemination of final decision, monitoring of implementation, and review. Assessment of the notification and consultation stages considered efforts to communicate the intent to initiate a decision-making process, as well as efforts to seek participation in deliberations during a decision-making process. Assessment of the decision and implementation stages focused on communication of outcomes or of how public input contributed to a decision taken by a public authority. The indicators also measured whether steps were taken to incorporate public participation in the implementation or monitoring of a policy or activity. Finally, the review stage considered whether public authorities sought public input in decisions to extend, modify, or reevaluate existing plans, policies, or development activities. See Figure 4.1 for a diagram demonstrating the various stages in the decision-making cycle. Measuring participation at all stages of a decision-making cycle is important to gauge how systematic government efforts are to incorporate public participation and at what point in decision-making processes governments seek public input.

Given the central role the international community has played in promoting the access principles—for example, through the Rio Declaration and regional instruments such as the Aarhus Convention—it is useful to examine how well international institutions have performed at incorporating the access principles into their own policies. A review of the information and participation policies of a sample of multilateral environmental agreements (MEAs), international trade regimes, regional economic bodies, and multilateral development banks reveals a mixed picture with respect to their own operations and obligations imposed on members.

Multilateral Environmental Agreements

The information and participation policies of four MEAs—the Montreal Protocol, the Convention on Biological Diversity (CBD), the United Nations Framework Convention on Climate Change (FCCC), and the Stockholm Convention on Persistent Organic Pollutants—were examined. All four MEAs contain strong commitments to sharing information about the environmental problem they address, negotiations processes, and the outcomes of negotiations. Each maintains a public information center or office, operates internet clearing houses, and provides information in multiple languages. In addition, all four MEAs post the outcomes of their decisions and national communications summarizing parties' progress in implementation.

MEA convention secretariats and official documents reflect a general openness to participation. This openness includes general recognition of the value of public participation, and numerous examples of consultations with non-parties both on the process and substance of negotiations. Both the CBD and the FCCC require that parties report on progress made in

promoting public participation at a domestic level as well as on efforts to build the public's capacity to participate. By contrast, the Montreal Protocol and the Stockholm Convention include weaker commitments that urge or encourage parties to ensure participation or to create capacity, and do not require any reporting on progress made in these arenas.

International Trade Regimes and Regional Economic Bodies

The information and participation policies of the World Trade Organization (WTO), the North American Free Trade Agreement (NAFTA), the Association of Southeast Asian Nations (ASEAN), the European Union (EU), and the East African Community (EAC), were also examined. Among these five organizations, the WTO and the EU make the most extensive commitments to information disclosure. By comparison, NAFTA and ASEAN have comparable, but less extensive rules for information disclosure. NAFTA provides little or no information on meetings of parties, but deems all negotiations non-confidential. The EAC is the least robust in terms of transparency, given that it has articulated few if any rules or policies on information disclosure. While the treaty establishing the EAC officially incorporates a memorandum of understanding (MOU) for cooperation on environmental management that includes broad commitments on access to information, participation, and justice, the commitments have yet to be translated into operational policies by the EAC secretariat.

continued next page

In the area of public participation, the European Union has made the strongest commitments. It recognizes the importance of public participation in its own decision-making processes, makes a commitment to consult and exchange information with civil society, and its environmental departments and policies specifically incorporate public participation procedures. Though less comprehensive in its policies than the EU, ASEAN recognizes the utility of information exchange with civil society and officially recognizes civil society groups. Similarly, WTO documents and policies include general statements about consultation with civil society as well as examples of collaboration; however, official commitments to public participation in its negotiation processes are absent. The NAFTA secretariat is weak on public participation, but the Agreement's Commission on Environmental Cooperation and its dispute resolution mechanism are both strong and transparent. The EAC secretariat generally has not articulated an interest in or need for public participation, and has not translated the general support for public participation expressed in the MOU for cooperation on environmental management into specific policies.

Multilateral Development Banks

The information and participation policies of five multilateral and regional development banks were examined: the World Bank, the African Development Bank (AfDB), the Asian Development Bank (ADB), the European Investment Bank (EIB) and the Inter-American Development Bank (IADB). The majority of this group has commitments in place to allow public access to project documents and descriptions as well as environmental impact assessment (EIA) findings before their boards

approve a loan for a development activity. By contrast, four out of the five do not mandate the disclosure of country assistance strategies or lending priorities to the public in the recipient country; the sole exception is the AfDB. At national levels, public interest groups and citizens are only guaranteed access to information about individual project activities, and are not ensured access to plans that provide a prospective view of multilateral assistance activities.

Commitments to public participation follow a similar pattern to that observed with regard to access to information. All of the banks, with the exception of the EIB, articulate a general commitment to public participation, and mandate public consultations in project EIAs. In addition, the last decade has seen increased opportunities for NGOs that operate at a regional or international level to participate in strategy-setting exercises carried out centrally by banks' headquarters. But most of these banks, with the exception of the AfDB, do not, as a matter of policy, require client governments to consult assistance strategies or lending priorities with domestic constituencies.

The bank with the most comprehensive policies on access to information and participation is the World Bank. The ADB, AfDB and IADB, have less comprehensive policies than those of the World Bank. The EIB has the weakest policy framework on access to information and participation, with little or no articulation of specific commitments.

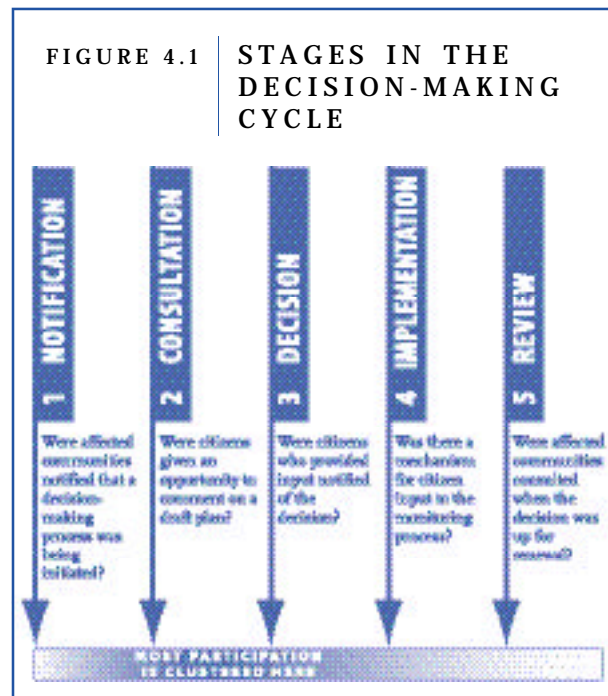
Source:

Maurer, Crescencia 2002. Commitments to Public Participation in Multilateral Agreement and Institutions. Unpublished report. Washington, DC: World Resources Institute. Available at www.accessinitiative.org.

Like the indicators of access to information, indicators of opportunities for public participation are clustered into two groups to illuminate the quality and accessibility of the process being assessed.

Quality generally refers to how early or how extensively the government seeks to incorporate public participation in its decision-making processes. The lead time given for public comment on drafts and the number of affected or interested parties consulted were the primary measures used to assess quality. The quality of participation is scored weak when the government allows no public comment or does not seek public comment from external experts or interest groups in a decision-making process, or when participation happens late in the decision-making cycle or not at all. The quality of participation is scored intermediate when the public is given less than 30 days to comment on a policy, program, or project proposal, or when fewer than three organizations representing civil society interests or external experts are consulted in a decision-making process. The quality of participation is scored strong when the public is given more than 30 days to comment on a draft policy, program, or project proposal, and when more than three independent experts or civil society groups are consulted or provide comment in a decision-making process.

Accessibility, in this chapter, refers to the ability of affected or interested parties to obtain information about how to participate, the state of a decision-making process, or the outcome of a decision. The principal measures of accessibility include government dissemination of information on public consultation processes; the



existence of public registries that communicate government decisions to award permits, concessions, or operating licenses; and the public's ability to obtain draft and summary environmental impact assessments from government authorities or project sponsors. See Table 4.1 for a complete list of indicators evaluated to measure quality and accessibility.

Access to decision-making is scored weak when no public documents exist that summarize or explain a policy, plan, or program, or if such a document is available in only one public location. In the case of development projects, accessibility is weak when summaries of environmental impact assessment (EIA) findings or a management plan cannot be accessed or

TABLE 4.1

INDICATORS FOR QUALITY AND ACCESSIBILITY OF PARTICIPATION IN DECISION-MAKING

Section	Characteristic	Indicators
Legal rights to public participation	Overall	<ul style="list-style-type: none"> • Constitutional guarantees of public participation • Provisions for public notice and comment in sectoral policies and project level development activities • Public notice and comment requirements for EIAs
National level decision-making	Quality	<ul style="list-style-type: none"> • Lead time given for public comment on draft • Comprehensiveness of consultation in defining parameters of policy
	Accessibility	<ul style="list-style-type: none"> • Information about public participation process • Lead time and comprehensiveness of notification process • Dissemination of information about policy
State or local decision-making	Quality	<ul style="list-style-type: none"> • Lead time given for public comment on draft • Comprehensiveness of consultation in defining parameters of policy
	Accessibility	<ul style="list-style-type: none"> • Information about public participation process • Lead time and comprehensiveness of notification process • Dissemination of information about policy • Existence and accessibility of public registers of permits, concessions, and facilities
Project-level decision-making	Quality	<ul style="list-style-type: none"> • Lead time for public comments
	Accessibility	<ul style="list-style-type: none"> • Accessibility and comprehensiveness of EIA reports • Accessibility of facility or concession management plan

obtained within 60 days of a formal request. Accessibility is scored intermediate when a summary document of the decision in question is accessible to the public at more than one public location, or if full EIAs (or management plans) can be obtained by request within 60 days. Accessibility is scored strong when documents explaining or summarizing decisions can be promptly accessed in more than one public location and in more than one format (poster,

brochure, audiovisual, written report, etc.). Specific projects are scored strong when governments or project sponsors disseminate information for the public on how to obtain full or summary EIAs or management plans, and these can be obtained within 60 days of a formal request.

In order to evaluate participation in practice, it was necessary to evaluate actual cases or experi-

ences of decision-making. When the term “case” is used, it refers to specific experiences, such as the formulation of a sectoral policy, the development of a municipal plan, or the permitting or approval of a specific project. The overall scoring relies on a comparison of practice across cases at each of three scales: national, state or local, and project-level. No attempt is made to use the cases to score countries’ performance as a whole, given that practice varies within a country, depending on the government authority and level evaluated. In addition, the relatively small number of cases per country does not allow generalization about the overall state of public participation.

Among the nine pilot countries, the national team in Chile was unable to apply the indicators on participation in decision-making. However, the Chilean national team did assess constitutional and legal rights to participation in Chile’s national legal framework. These results are included in the analysis.

II. ACCESS TO PUBLIC PARTICIPATION: THE LAW

Three types of legal instruments and interpretations form the basis for participation: (1) constitutional guarantees supportive of public participation in decision-making; (2) provisions for notice and comment in sectoral policy-making; and (3) public participation provisions in EIAs. The presence of these three elements in national law provides a comprehensive and supportive legal framework for participation. Table 4.2 summarizes how well the pilot countries articu-

late participation rights in constitutional and legal frameworks.

Among the nine pilot countries, only Thailand and Uganda provide an explicit constitutional right to public participation. The constitutions of the other seven pilot countries do not contain explicit guarantees of participation in decision-making.

Legislation in only four of the pilot countries—Indonesia, Mexico, South Africa, and the United States—contains provisions establishing public notice and comment in decision-making for sectoral policies. The absence of public participation provisions for sectoral policies in the remaining pilot countries inhibits the integration of environmental concerns into decisions on policies and plans in such sectors as extractive industries, energy, water, and other infrastructure development.

Environmental impact assessments have recently become a recognized and widely accepted tool for managing environmental implications of proposed projects. In many cases, they have also encouraged public participation in project-level decision-making. All nine pilot countries have EIA regulations, many of which were adopted in the 10 years following the 1992 Earth Summit. Many of these regulations, however, are deficient in several respects. In Thailand, for example, the EIA laws and regulations lack provisions guaranteeing sufficient time for public notice and comment. The provisions for public participation in other pilot countries—Hungary, India, Indonesia, Mexico, and Uganda, for example—have significant flaws: participation occurs either too late or at

TABLE 4.2

ARTICULATION OF PARTICIPATION RIGHTS IN
CONSTITUTIONAL AND LEGAL FRAMEWORKS

Indicators	Weak	Intermediate	Strong
Constitutional guarantees to public participation	Constitution does explicitly guarantee right to public participation in decision-making: Chile, Hungary, India, Indonesia, Mexico, South Africa, United States	No value offered; only two indicator choices were “strong” and “weak”	Constitution guarantees the right to public participation in decision-making: Thailand, Uganda
Comprehensiveness of notice and comment in different types of decision-making processes	Types of policy- and project-level decisions requiring public notice and comment are not specified: Indonesia, Thailand	Types of project-level decisions requiring public notice and comment are specified, but types of policy-level decisions are not: Chile, Hungary, India, Uganda	Types of both policy- and project-level decisions requiring public notice and comment are specified: Mexico, South Africa, United States
Public notice and comment requirements for EIAs	No requirements for public notice and comment for EIAs: Thailand	EIAs require public notice and comment at final stage: Hungary, India, Indonesia, Mexico, Uganda	EIAs require public notice and comment at various stages: Chile, South Africa, United States

Source: Access Initiative National Team Reports

too few stages in the decision-making process. Many of these provisions also contain limitations on who can participate. A study of public participation provisions in EIA laws and regulations for 15 Latin American and Caribbean countries revealed similar patterns. (See Box 4.3.)

With the exception of South Africa and the United States—both of which possess robust legal provisions but no constitutional guarantees for public participation—no clear distinctions emerge among countries with regard to legal provisions requiring access to decision-making. One reason may be that public participation is

usually enshrined in soft law or institutional practice and is not captured through a legal analysis. Indeed, some anomalies emerge. Despite the fact that Thailand is one of only two pilot countries to include an explicit constitutional guarantee of public participation, its legal framework generally scores weak in the absence of requirements for public notice and comment.

The majority of the national legal frameworks provide limited support for participation, either because they limit the decisions to which public participation provisions apply or guarantee participation only late in decision-making

cycles. Given the weakness of legal provisions for participation, practice can also be expected to be weak or, at best, intermediate. It is also likely that there are differences in the performance of different line agencies, since common standards for participation in sectoral policy-making are generally absent.

III. PUBLIC PARTICIPATION IN PRACTICE

This analysis of how public participation operates in practice considers decision-making at three levels: national, state or local, and project-level. For each decision-making category, the national teams applied draft indicators to specific decision-making cases. The analysis begins with decision-making at the national level, proceeds to regional or local decision-making, and concludes with an assessment of public participation in decisions made at the project level. Collectively, the national teams assessed eight cases of national decision-making, five cases of regional or local decision-making, and 15 cases of project-level decisions.

The assessments in the pilot countries are supplemented by reviews of public participation in energy policies in five CEE countries. National teams in Bulgaria, Estonia, Poland, Romania, and Slovakia applied the indicators to selected national-level policy decisions in the energy sector as they relate to their countries' commitments under the UN Framework Convention on Climate Change and the Kyoto Protocol.¹

National-Level Decision-making

The national teams examined public participation in policy-making related to biodiversity, EIA laws, energy, forestry, mining, tourism, and water. (See Table 4.4.) All of these cases fall into one of two groups: (1) decision-making specifically related to the management or protection of the environment and (2) decision-making related to sectoral policies that govern infrastructure development or natural resource exploitation. Examples of environmental policy cases include the development of national biodiversity policies in India and the creation of a national forest policy in Uganda. The latter policy case was classified as environmental rather than sectoral because it is designed to address the conservation and sustainable management of forests outside protected areas or reserves. Although it does not exclude the sustainable use and development of forest resources, it is principally guided by environmental and social objectives. Examples of sectoral policy cases include mining and road concession policies in Hungary and a federal plan to build infrastructure to support nautical tourism in Mexico. All five cases of decision-making processes in the energy sector in Central and Eastern Europe are classified as sectoral. (See Table 4.5.)

Among the national environmental policy cases, government efforts in the pilot countries to solicit public comments on a policy proposal or draft proposal were generally scored intermediate or strong. For the most part, public interest groups were given at least 30 days to comment on policy proposals, and more than a single consultation took place. Nonetheless, such consultations usually occurred after the formula-

BOX 4.3 | PUBLIC PARTICIPATION PROVISIONS OF EIA LAWS IN LATIN AMERICA AND THE CARIBBEAN

Since the 1992 Earth Summit, many countries have adopted national EIA laws and policies to mitigate environmental damage resulting from economic development activities. The countries of Latin America are no exception.

Despite the broad trend toward the adoption of EIA laws and frameworks in Latin America, there is considerable variation among the specific provisions for public participation. (See Figure 4.2.) The forms of participation specified in Latin American legislation include requirements for public comment periods, meetings between authorities or project

developers and affected parties to discuss findings, and, in a few cases, formal public hearings. In just over half the countries surveyed, the provisions incorporated into law provide for opportunities to comment on EIAs before they are final or officially approved by governments. The other half limit participation to comments on final or approved EIAs.

Source: Lina Ibarra. 2002. Public Participation Provisions in Environmental Impact Assessment: Law and Policies of Latin American and the Caribbean Countries. Unpublished summary of indicator results. Washington, D.C.: World Resources Institute.

FIGURE 4.2 ENVIRONMENTAL IMPACT ASSESSMENTS IN LATIN AMERICA

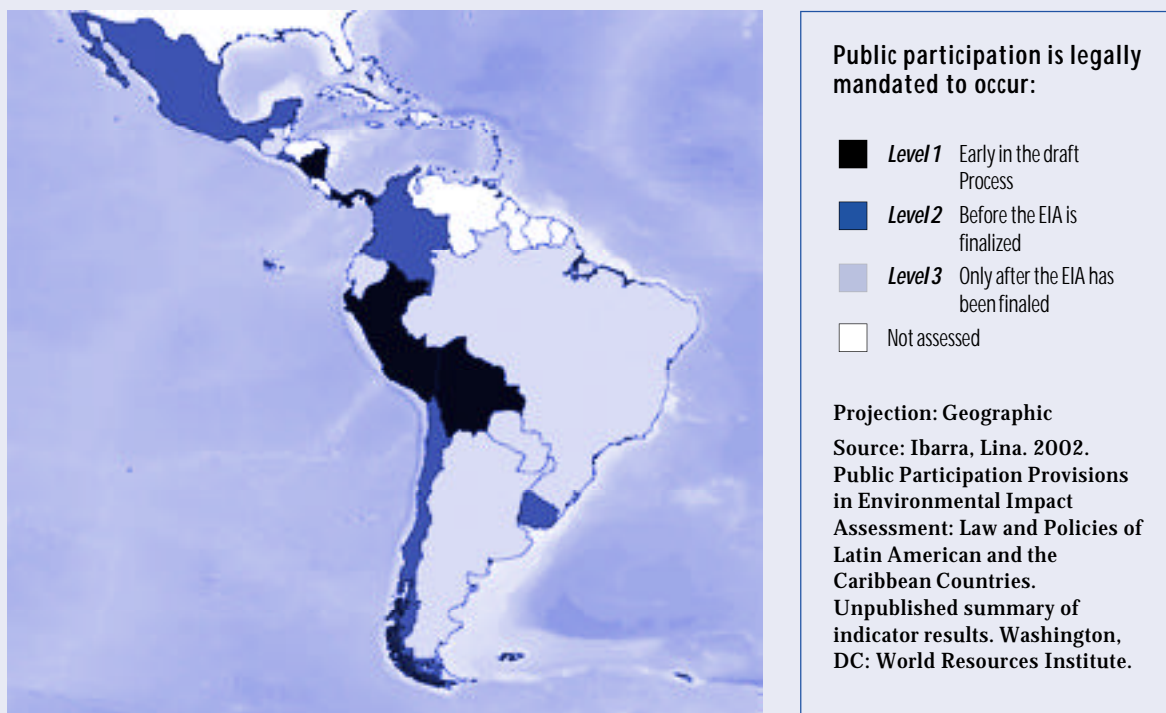


Table 4.3 Public Participation Provisions in Latin American and Caribbean EIA Laws

(❖ = In Place)	Andean			Southern Cone					Central America and Caribbean					
Indicator	Bolivia	Colombia	Ecuador	Perú	Argentina	Brazil	Chile	Paraguay	Uruguay	El Salvador	Guatemala	Jamaica	Mexico	Nicaragua
1. National law or policy exists that establishes the framework for the conduct of EIAs.	❖	❖ ^a	❖	❖		❖	❖	❖	❖	❖	❖	❖ ^b	❖	❖
2. National (or at least two sectoral) EIA law or policies clearly state that they apply to both public and private development activities.	❖			❖	❖ ^c	❖	❖	❖	❖					❖
3. National (or at least two sectoral) EIA laws, policies, or guidelines include public participation provisions after EIA is finalized/approved.	❖				❖ ^d	❖		❖				❖		❖
4. National (or at least two sectoral) EIA laws, policies, or guidelines include public participation provisions before final approval of EIA.		❖ ^e		❖			❖		❖	❖			❖	❖
5. National (or at least two sectoral) EIA laws, policies, or guidelines include public participation provisions at scoping or draft stages.	❖			❖										❖
6. National (or at least 2 sectoral) EIA laws, policies, or guidelines include public participation provisions in monitoring compliance or implementation of EIA mitigation measures.														
a. Colombia was the first Latin American country to implement EIA provisions. b. The Jamaican National Resources Conservation Act includes EIA and public participation provisions. Although the document was not available through the web, other documents were found supporting the existence of these provisions. Furthermore, the Natural Resources Conservation Authority produced guidelines in 1998 for conducting environmental impact assessments. c. Argentina does not have a federal EIA framework. However, most of the provinces have their own frameworks. For those provinces that do not have their own, there are national sectoral frameworks, which they follow. d. Public participation provisions are mainly included within EIA provinces frameworks. e. Colombia includes public participation provisions as mandatory but only for ethnic minorities (Decree No. 1320/98) (Ibarra, 2002).														
Source: Ibarra, Lina. 2002. Public Participation Provisions in Environmental Impact Assessment Law and Policies of Latin American and the Caribbean Countries. Unpublished summary of indicator results. Washington, DC: World Resources Institute.														

tion of the policy—usually when a white paper or draft policy had already been drafted through an internal process—rather than at the initial scoping stage.

Uganda's national forest policy and South Africa's water catchment maps and policy documents were both publicly accessible in physical locations. In South Africa, all regional water authorities posted draft maps and demarcations of water catchment areas for public comment and feedback. Considerable efforts were also made to consult with affected communities and public interest groups, and sufficient lead time was provided for public comment, so Uganda and South Africa score strong on both quality and accessibility. Both countries receive significant donor support and have undergone major reform programs in the past decade. These factors may explain the exceptional levels of participation observed in these two cases. India's national biodiversity planning and EIA laws score high on quality but low on accessibility. Although Indian law requires public notice and comment on EIAs and draft policies, it is very difficult to access full EIAs or obtain information on public participation mechanisms. This is not a robust number of cases on which to draw conclusions, but generally, the environmental cases appear to be accessible to the public. Results on quality and accessibility are shown in Table 4.4.

Among pilot country governments, attempts to seek meaningful input into sectoral policies were weaker than attempts to solicit input into environmental policies. Three of the five sectoral cases evaluated demonstrated extremely weak public participation: Mexico's Sea of Cortez

Nautical Tourism Plan and Thailand's Independent Power Producer (IPP) Program, and Indonesia's implementation of national logging concession policies. Mexico's Nautical Tourism Plan, although developed and revamped over a number of years, never underwent any form of review or consultation with affected populations or public interest organizations until its relaunch in 2001-02. As a result, it scores weak on quality. The same is true of Thailand's IPP Program. The policy deliberation process involved only a small group of policy-makers at the highest levels. A similar pattern is observed in Indonesia, where no outside parties or experts are invited to define criteria to award concession policies, and bids are evaluated solely on their cost and technical merits. These three cases also score weak on accessibility. It was difficult to obtain full documents and details for either the Nautical Tourism Plan or the IPP Program, and in both cases outreach efforts were directed largely at potential foreign investors rather than at domestic constituencies. Accessibility is also weak in the Indonesian case, where the registry of concessions is located in just one location, and the Ministry of Forestry only periodically publishes a directory of concession holders. At the time of the assessment, the most current directory dated to 1997.

The two other sectoral cases, Hungary's mine and road concession policies and South Africa's mining policy white paper, demonstrated somewhat better performance. In the Hungarian case, while concession policies and registries of concession agreements could be obtained, it was necessary to invest time and energy in tracking down the correct office or contact. In South Africa, NGOs organized consultations on

TABLE 4.4

OVERVIEW OF NATIONAL ENVIRONMENTAL AND
SECTORAL DECISION-MAKING CASES^a

Country	Cases	Environmental	Sectoral	Quality	Accessibility
Hungary	Mining concession policy, 1993–2000, and road concession policy, 1991–2000 ^b		❖	Intermediate	Intermediate
India	National environmental policies, including the biodiversity action plan and environmental impact assessment (EIA) laws, 1995–2000 ^c	❖		Strong	Weak
Indonesia	National Logging Concession Policy, 2000		❖	Weak	Weak
Mexico	Sea of Cortez Nautical Tourism Plan, 1980–1999		❖	Weak	Weak
South Africa	Demarcation of Water Management Areas, 1999–2000	❖		Strong	Strong
	National Mining Policy White Paper, 1998		❖	Strong	Strong
Thailand	Independent Power Producer (IPP) Program, 1994		❖	Weak	Weak
Uganda	National Forest Policy, 2000	❖		Strong	Strong

- a. Cases in four countries (Mexico, Uganda, South Africa, and Thailand) examined participation in the formulation of national policy instruments. In three countries (India, Indonesia and Hungary) national teams assessed the implementation of existing national policy instruments, plans or programs.
- b. The Hungarian team combined two cases and provided a single indicator result for the two cases combined. It is treated as a single overall case.
- c. The India team applied indicators to general environmental policy-making, some aspects of National Biodiversity Planning and EIA laws and regulations. These are treated as a single case.

Source: Access Initiative National Team Reports

the minerals and mining policy that were attended by relevant government officials. The mining policy itself was available in public libraries and on an electronic database, and

could be purchased from a government printing office. See Box 4.4 for a discussion of the link between access to information and access to participation.

TABLE 4.5 | OVERVIEW OF NATIONAL ENERGY POLICY IN CENTRAL AND EASTERN EUROPE

Country	Cases	Quality	Accessibility
Bulgaria	National Strategy for Development of Energy and Energy Efficiency (until 2010) Adopted 1998	Intermediate	Intermediate
Estonia	Action Plan for Restructuring Oil-Shale Energy Industry Adopted 2001	Weak	Weak
Poland	Renewable Energy Policy Adopted 2001	Intermediate	Intermediate
Romania	Law Regarding the Efficient Use of Energy (no. 199) Adopted 2001	Weak	Intermediate
Slovakia	New Energy Policy of the Slovak Republic Adopted 2001	Intermediate	Strong

Sources: Chobanova and Peeva, 2002; Dupleac, 2002; Jeszke et al., 2002; Obrtalova and Popovych, 2002; and Poltimae, 2002.

Public participation in energy policy-making in the CEE countries varied considerably. For the most part, cases that focused on renewable energy in Poland and energy efficiency in Romania scored intermediate on accessibility and weak or intermediate on quality. The Bulgaria, Estonia, and Slovakia cases demonstrated more variation, scoring from weak to strong, with no clear trend among them. The five cases averaged intermediate on accessibility and intermediate to weak on quality. For example, draft policies and decisions were generally available on the Internet, but only 20

percent or less of the population in these countries have access to the Internet. In addition, most of these policy documents lacked information concerning the anticipated impact of new energy policies on a country's greenhouse gas emissions. Indicators of quality scored somewhat lower because, for the most part, governments made little or no effort to consult the public, even though in some cases consultations were held with experts. Slovakia's New Energy Policy is the sole exception. In Slovakia—faced with strong and vocal public demand for participation—the government

BOX 4.4**THE LINK BETWEEN ACCESS TO INFORMATION AND ACCESS TO PARTICIPATION**

Access to information is critical if citizens are to participate meaningfully in decisions that affect the environment. This connection between access to information and participation is highlighted by a number of observations made by the national teams that were not captured by the indicators.

In their case research and investigations, national teams discovered that many government agencies required parties to submit written justifications for requests for policy documents and then determined whether or not such information would be provided (Mexico and Thailand), or would supply only excerpts they deemed relevant. Thus, although laws or regulations mandated disclosure of documents, government officials exercised discretion concerning to whom or how such documents were disclosed. In addition, although governments proved willing to

produce summary written materials that describe policies, strategies, or programs, it was generally more difficult for the national teams to obtain technical or full policy documents.

In Hungary, Mexico, and Thailand, national teams found that gaining access to policy documents often required a fairly sophisticated knowledge of the agency in question or personal acquaintance with decision-makers or staff. The Thai national team conducted an interesting test. It requested identical information through personal contacts as well as via formal letters from organizations not known to the agency. The documents were obtained promptly in the first case, while there were no replies or late replies to the letters in the second case.

Source: Access Initiative National Team Reports

responded by engaging in a public dialogue. This suggests that public interest and demand raises the level of government performance in regard to public participation. Results on quality and accessibility for the Central and Eastern European cases are shown in Table 4.5.

Overall, the environmental policy-making cases in the pilot countries illustrate a greater effort by the government and greater accessibility of decisions than the cases of decision-making in sectoral and infrastructure sectors. Compared with environmental cases, the five sectoral cases were less accessible and, with the exception of South Africa, also scored low on quality. The cases drawn from studies in Central and Eastern Europe tended to demonstrate weak

government performance in public review and comment on policies, plans, or programs.

Regional, State or Local Decision-making

At the regional and local levels, the cases selected by national teams were highly heterogeneous. Three cases involved development or land-use planning at the state or local level (or policies that affected such plans), while two cases involved decision-making processes in productive or extractive economic sectors. The five decision-making cases are shown in Table 4.6.

Two cases of development and land-use planning (Hungary's Regional Development Plans

TABLE 4.6

OVERVIEW OF PARTICIPATION IN REGIONAL, STATE, OR LOCAL DECISION-MAKING CASES

Country	Cases	Land-use	Productive or Extractive Activities	Quality	Accessibility
Hungary	Regional development plans, 1996–2001	❖		Weak	Strong
Mexico	Federal District Ecological Zoning Plan, March–May 2000	❖		Strong	Strong
Uganda	Budongo Forest concession award process, 1999–2000		❖	Weak	Weak
United States	California municipal EIA processes, various dates	❖		Weak	Strong
	State of Ohio power plant siting policies, 1999–2001		❖	Strong	Strong

Source: Access Initiative National Team Report

and Mexico City's Ecological Zoning Plan), together with a case examining the implementation of California municipal EIA regulations are grouped together for evaluation. The remaining cases, the Ohio State power plant siting policies and Budongo forest concession award process, are examined separately.

In the land-use planning and municipal EIA cases, accessibility is measured by government efforts to disseminate drafts or outcomes of land-use plans or EIA policies affecting urban land use. Although robust conclusions are not possible given the limited number of cases, the assessments suggest that information about decisions on local and regional land-use policies tends to be accessible to the public. Local plan-

ning documents are often deposited in public places, ensuring that they are accessible to local populations. Governments also make available easy-to-understand summaries or maps of the plans. It was, for example, relatively easy for citizens of California to obtain a summary or the full technical reports on environmental impact assessments under way or completed in their municipalities.

The quality of participation—measured by state or local government efforts to actively involve the public in decision-making—is inconsistent. Consultation is often limited, and participation tends to occur late in decision-making stages, when parameters for spatial plans have already been defined. Many of the

same California municipalities that disseminated technical EIA reports (or provided easy access to the reports) failed to make a substantial effort to seek public input, citing the administrative burden that such an active facilitation of participation could impose on city governments with limited resources and personnel. Local California authorities also appeared to narrowly interpret who should participate and when participation should occur. Certain decisions, such as monitoring of development projects, were defined as technical matters that did not require extensive public participation. The Hungarian national team assessed public participation in seven regional plans at different stages of development and implementation. Almost all of them included participation by civil society groups in a number of capacities: technical advisors, representatives of important constituency groups, and vehicles for monitoring and information dissemination. Likewise, the Federal District government of the Mexico City Metropolitan Area consulted 46 communities and hundreds of individuals in the development of an ecological zoning plan designed to protect remaining agricultural land, natural vegetative cover, and the city's groundwater.

The remaining two cases—The State of Ohio Public Utility Commission's (PUC's) power plant siting policies and the Budongo Forest concession award process—scored at two extremes both in terms of quality and accessibility. The strong performance in the Ohio case appears to be the result of specific regulatory requirements in Ohio's administrative code. For example, the PUC is required by the administrative code to hold public hearings, and to publicly communicate its decision, which it usually does

through standard press releases or in the body of permit approvals. In the case of the Budongo Forest, local district forest officers, in collaboration with the national standards committee, award concession licenses. Local forest officers do not notify the public of their intent to award a license, nor do they consult external experts or parties in screening applicants. Consequently the case scored weak in terms of quality. Although a comprehensive public registry exists in the central offices of Uganda's Forest Department, no list of license holders is available at the district office in closest proximity to concession areas. For this reason, the case scored weak on accessibility as well.

Much as in national decision-making cases, regional and local governments scored weak with regard to participation at the earliest stages of the decision-making cycle (notification) as well as the later stages (implementation and renewal). In other words, few state or local governments excelled in promoting participation in setting the parameters of a public debate or ensuring continued participation after a development was approved or a policy implemented. The Mexico Federal District Ecological Zoning Plan again illustrates this point. The government of the Federal District Government did not follow through on a commitment to create a multi-stakeholder committee to support monitoring and enforcement or to include the public in biennial reviews of the zoning plan.

Table 4.6 scores the case results for regional, state, and local decision-making processes. The variability in quality may also have some relation to the political commitment, capacity, and resources available to local authorities. Neverthe-

TABLE 4.7 | OVERVIEW OF PARTICIPATION IN PROJECT DECISION-MAKING CASES

Country	Cases	With EIA	No EIA	Quality	Accessibility
Hungary	Dorog hazardous waste incinerator, Sanyo battery factory, and Eger solid waste landfill approval and licensing, 1994–present ^a	❖		Intermediate	Intermediate
	Hungarian Optical Works (MOM) redevelopment plan, no dates provided		❖	Intermediate	Intermediate
India	Rallies Ltd. industrial belt, West Bengal, no dates provided	❖		Weak	Weak
Indonesia	Hutan Domas Raya Ltd. logging concession renewal, 1999-2000		❖	Weak	Weak
	Wana Agung Asa Utama Ltd. logging concession license, 1999-2000	❖		Weak	Intermediate
Mexico	Campeche nitrogen plant operating license, no dates provided	❖		Strong	Intermediate
	Topolobampo port terminal Facility, Sinaloa state, no dates provided	❖		Weak	Weak
	Topolobampo port concession Award, Sinaloa state, no dates provided		❖	Weak	Weak

less, this set of cases suggests that some local and regional government officials explicitly recognize the value of giving citizens a voice in decision-making processes.

Project-Level Decision-making

The national teams were asked to select at least two individual specific projects with significant environmental footprints and to ensure that at least one, if not two, involved an environmental impact assessment process. The teams evaluated

16 cases: four in Mexico, three in Thailand, two in Indonesia, two in South Africa, two in Hungary, and one each in India, Uganda, and the United States. As a result, the richest and most detailed analysis of public participation is possible for project-level decisions. The cases reviewed in this section are divided into two categories: projects that include an EIA process and those that do not. The majority, 11 of 16, are cases that involve an EIA process. Table 4.7 lists all the cases and identifies cases that involved an EIA process.

TABLE 4.7 | CONTINUED

Mexico	Xcacer-Xcacerito hotel complex, Cancun-Tulum corridor, 2000	❖		Intermediate	Intermediate
South Africa	Premier diamond mine expansion, 2000–01	❖		Strong	Weak
	Skuifraam hydroelectric dam approval, Western Cape, 1995–1997	❖		Strong	Strong
Thailand	Hin Krud coal fired power plant siting and operating license, no dates provided	❖		Weak	Strong
	Klong Dan wastewater treatment plant siting, no dates provided		❖	Weak	Weak
	Siam Industrial Land (SIL)	❖		Weak	Weak
Uganda	Kasese Cobalt Corporation Ltd. (KCCL) wastewater discharge permit, no dates provided	❖		Intermediate	Intermediate
United States	Cogentrix power plant operating license, state of Ohio, 1999–2000		❖	Strong	Intermediate

a. The Hungary team combined two cases and provided a single indicator result for the two cases combined. It is treated as a single overall case.

Source: Access Initiative National Team Reports

Across all project cases, regardless of whether or not they included an EIA, most public authorities scored weak with regard to accessibility in communicating to affected communities or public interest organizations that plans or processes were under way to grant an operating license, award a concession, or approve a development activity. Generally, governments published announcements of the intent to award a concession or grant an operating permit in official government gazettes or newspapers with a national circulation. But only a few required

that these announcements be published in journals routinely read by potentially affected populations. The national teams also found that the difficulty of obtaining the rules on how permits, concessions, or operating licenses are awarded varied considerably—some were accessible on the Internet, while others required individuals requesting the information to justify their need for such information. Consequently, opportunities for the public to define the scope or parameters of particular projects or development activities are generally absent.

In some cases, the failure to actively engage affected populations early on in the definition of individual development activities generated serious social conflicts. The Thai national team recorded severe and drawn-out conflicts among the government, project sponsors, and local communities regarding the approval of the Hin Krud power plant and the Klong Dan wastewater treatment plant. The Thai analysis indicates that the absence of any public input when the national government defined the scope of the project and alternatives is at the root of ongoing conflicts about the plants' siting and operation. Overall, most project-level cases failed to engage external stakeholders in the definition of the scope of the project, the identification of mitigation measures, or the exploration of alternatives.

Although EIA laws or regulations prompt project sponsors to consult with potentially affected communities about proposed project plans, contact with communities is sometimes used to extract information rather than to discuss the scope of a project or initial EIA findings. This was the case in India, where the consultants carrying out an EIA characterized their interaction with potentially affected communities as a means of extracting socio-economic data necessary to complete their report. Likewise the Indonesian national team found that local communities adjacent to the forest concession had been visited by EIA consultants, but that the community leaders did not understand the purpose of the visit. They also indicated that the consultants asked questions about village conditions rather than consulting them about the proposed logging concession. In most EIA processes, little or no effort is made to include marginalized socio-economic groups. The national teams found that

drafts of EIA reports were rarely produced in local dialects or in formats accessible to populations with low levels of literacy or limited education. One obstacle to such consultation, identified by the Indonesian national team, is low levels of education and literacy among some potentially affected populations. In such cases, consultation requires an investment in explaining the EIA process and its purpose to ensure meaningful participation.

Although EIA processes can include attempts to fulfill legal requirements for public consultation, many national teams found that the onus is often placed on affected communities and public interest groups to engage in the EIA process. For example, EIA findings or reports are open for public comment, but government agencies do not actively seek such comments. EIA reports can be obtained in public libraries or are listed in public registries, but only rarely are full or summary findings distributed to affected populations or public interest groups that provided comments or participated in official consultations.

Government authorities and project proponents make the greatest effort to consult the public in projects that receive media attention or considerable public scrutiny. The Mexican national team examined four project cases that illustrate this point. Two of the cases involved projects constructed close to protected areas—a hotel complex and a nitrogen plant. Because of their proximity to extremely sensitive protected areas, these two projects were subjected to considerable scrutiny from both local and federal authorities as well as environmental groups and local residents. The projects' spon-

sors solicited public input into their proposed management plans, as well as the design of the facilities. The plan for the hotel concession was published in local newspapers, and public consultations were organized in both cases.

The two other cases examined by the Mexican national team—the award of the Topolobampo port concession and a subsequent EIA for construction of a port terminal within this concession—received little, if any, public scrutiny. The decision-making process for the Topolobampo concession and the EIA involved only state-level authorities, commercial associations bidding for or managing port concessions, and groups active in managing ports. Despite the projects' potential impacts on the coastal environment, public interest groups demonstrated little or no interest in either decision-making process, and public participation was limited to providing comments on the final EIA for the port terminal.

Projects examined by the Hungarian team—redevelopment of an industrial park and siting of a hazardous waste incinerator—echo the Mexican team's findings. In Budapest's District XII, local officials entered into negotiations with a private investor to redevelop what had been an optical works plant, known as MOM-Park, into a commercial retail property. Despite the fact that the project did not conform to zoning or land-use requirements, local authorities approved a construction permit. Subsequently, local groups successfully petitioned to be included in a panel that reviewed and approved the redevelopment plans. As a result, the project sponsor was forced to modify and scale down the project. Also in Hungary, public concern over a hazard-

ous waste incinerator in the city of Dorog forced the environmental inspectorate to require a more detailed impact assessment than the one previously conducted. This more detailed assessment convinced the environmental inspectorate not to approve the proposed waste disposal site on the planned location.

Governments performed better in communicating decisions taken or disseminating final project EIAs. In most of the pilot countries, registries or records containing basic information about the location and scope of concessions or permits and the identity of concessionaires or permit-holders can be obtained either through direct request or by visiting a publicly accessible place. In some cases, however, the ability to obtain such information grew out of requirements to make EIAs public or to transmit the findings of an EIA to the public. The Indian national team's analysis of industrial development and redevelopment sites in Western Bengal (Rallies Ltd. industrial belt) was possible because the team was able to access relevant EIAs, not because existing laws require disclosure of management plans. Teams also experienced difficulty obtaining management plans for the Hin Krud power plant in Thailand and the Topolobampo port concession in Mexico.

Another consistent pattern observed among pilot country projects involving EIAs is weak performance in monitoring the implementation of EIA covenants, the approval of closeout plans, and the renewal of an operating license for a development project. Few national teams found or could access project closeout or remediation plans. This was also the case for the renewal of a forest concession license in Indonesia, where

public participation was virtually absent. Among the cases evaluated, only the Ohio Congentrix power plant was subject to a legal requirement for public participation in a decision to renew, extend, or modify its operating license. A possible reason for this gap is that EIAs are carried out to identify the environmental consequences of the construction or initiation of a development activity. Implementing and monitoring mitigation measures contained in the EIA are perceived by the project proponent and the public authority to be their responsibility.

For project-level decision-making, the national teams found that accessibility varied but tended to be weak or intermediate, with only two cases scoring strong on accessibility.

Indicator results for quality (lead time, comprehensiveness, and meaningfulness of participation) as well as accessibility (dissemination of project plans or communication of project approvals) varied considerably across all cases. Efforts to ensure meaningful public participation reflected the same variability across projects both with and without EIAs. Participation tended to occur in the middle or late stages of a decision-making process. For example, in Indonesia, EIAs are approved by committees comprised of government officials, outside experts, and NGO representatives. However, these committees simply approve or reject already completed EIA reports. Across the cases, there was generally little participation at the scoping stage, the monitoring stage, and the renewal stage. Furthermore, whether or not an environmental impact assessment was part of a decision-making process did not appear to systematically affect the accessibility or quality

of government efforts to promote public participation in this small number of cases.

IV. CONCLUSIONS

The findings in this chapter are summarized in Figure 4.3, ordered from strongest to weakest performance.

This analysis covers a wide range of experiences at the national, regional, and project levels. Despite the heterogeneity of the countries and the cases evaluated, it is possible to draw some larger conclusions about the quality of participation in different decision-making categories.

Public participation rights are insufficiently articulated in most pilot country legal and constitutional frameworks. With the exception of Thailand, public participation rights are not guaranteed in any of the constitutions or most of the legal frameworks of the pilot countries evaluated in this report. Public participation is usually articulated in soft law or government documents—such as public participation guidelines or manuals of best practice—that are not legally binding. Nevertheless, soft law and bureaucratic cultures do influence whether and how decision-making incorporates public participation. EIAs are a widely used mechanism for public participation in project-level decision-making. Most countries have adopted EIA regulations over the past 10 years. As the study of EIAs in the pilot countries and Latin America suggests, a significant number of EIA laws include provisions for public participation, but the majority place limits on who can participate and the timing of participation.

FIGURE 4.3 ACCESS TO PARTICIPATION SCORECARD			
Type	Quality	Accessibility	Overall
Legal guarantees and provisions for participation	Intermediate		
National policy-making on environmental issues	Strong	Intermediate	Intermediate
Regional, state, or local decision-making (state or local planning efforts)	Intermediate	Intermediate	Intermediate
Specific projects with or without an EIA process	Weak	Weak	Weak
National policy-making outside the environment	Weak	Weak	Weak

National-level environmental policy-making cases recorded the strongest rankings for quality and accessibility. Although the number of cases was limited, two of the three cases were scored strong for both accessibility and quality. These strong cases were in Uganda and South Africa. Both countries receive significant donor support and have undergone major reform programs in the past decade. These factors may explain the exceptional levels of participation observed.

Regional or local planning processes demonstrated intermediate or strong levels of accessibility but considerable variability in the quality of effort made by public authorities. In the cases examined, regional and local administrations responsible for land-use and development planning were very accessible to the public and effectively communicated opportunities to participate. The quality of effort to promote participation, however, tends to reflect two extremes: strong (Mexico's Federal District Ecological Zoning Plan) or intermediate to weak (California municipal EIAs). The variability in quality may have some relation to the political commitment and resources invested by local

authorities. The pilot assessments also indicate that local authorities sometimes perceive public participation as encroaching on responsibilities—such as monitoring and enforcement—they believe to be the exclusive function of government.

In productive, extractive, infrastructure, and other sectors at the national level in the pilot countries, decision-making is generally less accessible to the public. Such decisions often involve a small set of stakeholders, and authorities sometimes do not perceive local communities or public interest groups as legitimate stakeholders. Agencies responsible for sectoral policies often respond only when there is external pressure for participation.

Project-level decisions recorded highly variable public participation, in terms of both quality and accessibility. Most cases, whether they involved an EIA or not, illustrate that opportunities for the public to participate are limited and that the onus to initiate or seek participation rests on the public. The level of public scrutiny affecting a particular project, as well as any association with

negative environmental impacts, had more influence in determining both the quality and timeliness of participation. Cases that scored weakest included industrial belts, logging concessions, and port facilities. Cases that exhibited stronger levels of participation included highly visible projects such as large power plants and mines.

Participation tends to be weak at the earliest stages of decision-making and in the monitoring of implementation or review of performance. In the decision-making cases examined at all three levels (national, state or local, and project), participation is weakest when the terms of a development activity or policy are in the process of definition and again during their implementation and monitoring. Participation occurs mainly in the middle stages of decision-making, when the parameters of the problem or solution are already defined and before they are actually implemented or adopted. Particularly striking is the near absence of participation after policies go into effect or projects or concessions begin to operate.

Decision-making processes usually place the onus of initiating participation on the public or affected communities. Only a minority of cases demonstrated active efforts on the part of public agencies or relevant third parties to ensure that public participation occurred. Even countries

with policies or laws requiring public notice and comment often placed the burden of initiating or demanding participation on affected populations. This appears to be true across the pilot countries, regardless of economic development or income levels.

Meaningful public participation improves decisions. In the cases where the pilot country government invested in supporting meaningful participation and actively solicited input—or where civil society organized, initiated a dialogue, or provided input to which the government responded—the decisions adopted incorporated environmental and social aspects.

ENDNOTES

1. In 2001, WRI, in conjunction with the Regional Environmental Center for Central and Eastern Europe (REC) and local research partners, completed an assessment of national energy policy-making in five countries: Bulgaria, Estonia, Poland, Romania, and Slovakia. This assessment focused on public access to information and decision-making regarding national-level policy-making in the energy sector. Under the Climate Convention and the Kyoto protocol, countries have committed to implement policies and measures to reduce their greenhouse gas (GHG) emissions. The energy sectors of these countries are their main sources of GHG emissions. See Chobanova and Peeva, 2002; Dupleac, 2002; Jeszke et al., 2002; Obrtalova and Popovych, 2002; and Poltimae, 2002.

REINFORCING THE STRUCTURE: ACCESS TO JUSTICE

On August 28, 2001, an Indonesian district court handed down a decision in the case of WALHI vs Freeport. WALHI (Wahana Lingkungan Hidup, an environmental forum for NGOs and community organizations in Indonesia) had argued that Freeport-McMoRan Copper & Gold Inc., which has extensive mining operations in Indonesia, had provided false information to the public about its operations in connection with a landslide in Wanagoon Lake, West Papua. According to the Indonesian Environmental Management Act (IEMA) of 1997, “Every person carrying out a business or other activity must provide true and accurate information regarding environmental management.” The district court accepted WALHI’s claim that Freeport had violated the provisions governing access to environmental information spelled out in IEMA and held the company accountable for violating the law (ICEL, 2001). The case has since been appealed to the High Court.

In April 2001, the Natural Resources Defense Council (NRDC), an environmental organization based in the United States, submitted a Freedom of Information Act (FOIA) request to

the U.S. Department of Energy asking for the records of an energy task force led by Vice President Dick Cheney. Specifically, NRDC was trying to gain access to the list of people the task force had consulted in drafting the country’s energy policy in order to identify who had been given a chance to participate in drafting the policy and who had not. The Department of Energy failed to respond to NRDC’s request for information, prompting NRDC to file suit in a federal district court in December that same year. In March 2002, the court ruled that the Department of Energy had violated FOIA and its provisions for public access to the records of government agencies. It ordered the department to release the documents NRDC had requested (Millbank and Allen, 2002).

As these cases illustrate, when access to information is lacking or access to participation has been denied, the law must provide the opportunity for affected individuals and groups to seek redress to ensure that they have access to information and participation. This chapter considers the characteristics of the justice system and the instruments that render the system accessible to the average citizen.

I. INTRODUCTION

A comprehensive legal system that supports public access to environmental decision-making includes constitutional guarantees on access to information and participation, and laws requiring public consultation early in decision-making processes. It provides multiple venues for citizens to seek redress in the event they are denied access to information and participation. The law contains an expansive definition of what constitutes “the public” and “the public interest,” thereby allowing all stakeholders access to the courts. In such a system, laws and regulations contain explicit commitments to judicial review processes, and all government agencies are legally bound to consider problems and concerns raised by affected parties after a policy enters into force. A comprehensive and clearly articulated legal system is thus the basis for access to justice.

Giving the public the opportunity to use judicial, administrative, or other mechanisms of dispute resolution ensures that the responsible agencies are kept accountable if they fail to produce and disclose information or involve the public in decision-making. The public can pursue access to justice only if it is clear who is responsible, what information should be disclosed and how, and for what decisions public notice and comment are mandatory. The more inclusive and clear the interpretation of such concepts as “the public,” “the public interest,” and “environmental information,” the clearer the responsibilities of government agencies.

The scope of the analysis in this chapter is narrow. It focuses primarily on the procedural

aspects of the law—whether citizens can seek redress and remedy when they are unable to obtain information they are entitled to or participate in decisions that affect them. The ability of the public to contest the content of the decisions and to seek remedy for environmental damage are beyond the scope of this chapter, though these remain important aspects of environmental justice.

Drawing upon the analysis of the legal frameworks for access to information and participation presented in Chapters 3 and 4, this chapter seeks to evaluate whether citizens in the pilot countries are able to seek redress when there is a failure to provide information or to involve them in decisions. It presents a brief overview of the variations that exist among national legal systems, then explains the methodology used in the assessments. It examines the presence of specific provisions, interpretations, rules, and mechanisms that support the enforcement of laws to ensure accessibility.

Context and Influences

There are three primary mechanisms to resolve conflicts over access to information and participation in decision-making. One of them, known as alternative dispute resolution, seeks to resolve conflicts through mediation. In mediation, an independent third party listens to the arguments put forth by the disputing parties and helps them resolve their dispute. Agreements reached through this mechanism are not legally binding; their implementation depends on the goodwill and commitment of the parties involved. Another mechanism to deal with claims and grievances is administrative in nature. Citizens

can, for example, appeal to an ombudsman or lodge a formal complaint with a government agency. These decisions are legally enforceable, but their jurisdictional reach is often limited. The third mechanism is formal legal proceedings before courts with the power to enforce their decisions. Formal judicial review tends to be more costly and lengthy than alternative dispute resolution and administrative mechanisms (World Bank, 2002a). Three elements—state-backed decisions, independent fact-finding, and power to enforce prevailing social norms—distinguish courts of law from mediation and administrative review (World Bank, 2002a).

Which mechanism is used depends on the nature of the legal system, public perceptions of the judiciary, cultural traditions, the efficiency of the judicial system, and a country's wealth, among other factors.

The basic nature of a country's legal system—common law or civil law—is central to any discussion of access to justice. In common law countries such as India and Uganda, a judgment handed down in one case is binding upon all future cases (the rule of *stare decisis*). This means that judges can “make law” to the extent that their rulings will be looked to as “precedent” in all relevant future cases. In common law countries, public interest groups and individuals frequently use the courts to broaden the interpretation of constitutional or legal provisions. In countries with legal systems based on civil law, such as Hungary and Chile, the rule of *stare decisis* does not apply. Each judgment handed down is relevant to that case only and has no automatic effect on future cases. In civil law countries, for example, a judge could write a

decision granting access to a set of documents, but this decision could be ignored in all future cases. If legal provisions are to be expanded (or narrowed) in civil law countries, then the changes must be made by the passage of new legislation (Suite 101, 1998).

The public perception of a country's judicial system is another factor that affects the ability of the public to seek judicial redress. In the United States, for instance, the judicial system has evolved as a strong, generally trusted, and widely used instrument for enforcing the law. In Indonesia, by contrast, the judiciary is seen as one of the country's most corrupt public institutions (Partnership for Governance Reform in Indonesia, 2002). Attitudes toward a country's system of justice can significantly affect citizens' willingness to engage in formal legal proceedings. In many parts of Asia, the legal system is approached only through the channels of a patron or a personal friend or relation. One recent study found that the Thai justice system was widely perceived as unfair, costly, and burdensome (Asian Development Bank, 2000). A recent survey of Chilean attitudes toward their country's judiciary found that almost two-thirds (63.5 percent) believed that judges behaved differently based on whether the litigants were rich or poor (Sutil, 1999).

Cultural differences can also affect access to justice. Some cultures are tolerant of the expression of conflicts. This makes the act of going to court or seeking administrative resolution of grievances not only acceptable, but a public duty. Such is the case in the United States, where going to court to settle a dispute is common. In other cultures, however, public expressions of

conflict are rare. This is the case in many Confucian-based societies, where tradition dictates that disputes be settled privately, with minimal involvement of the community or courts (Colatrella, 2000). Cultural and social factors may also lead to the rejection of formal laws by certain groups within a society. Marginalized groups such as the poor, women, and minorities often feel separated from the formal framework of governance in a country (UNODCCP, 2001).

Another factor that influences whether citizens take their grievances to court is the efficiency of the judicial system. A survey conducted by Harvard University and the World Bank in 109 countries indicates that the poorer the country, the less efficient and effective its judicial system (World Bank, 2002a). One of the indices used in the survey to determine judicial efficiency is “complexity of litigation,” which measures how complicated, long, and costly it is to successfully litigate simple commercial disputes.¹ The duration and affordability of simple civil litigation at the national level varies widely from country to country, but one constant is that rich and poor countries alike tend to have complex legal systems. The problems arising from the complexity of litigation in rich countries, however, are often mitigated by factors such as rules affecting judges’ incentives and promoting greater transparency (World Bank, 2002a). Such factors tend to be absent in poor countries. Poor countries also have difficulty in enforcing court decisions, providing speedy judicial redress, and offering legal representation to those who cannot afford it. Taken together, these factors tend to make the judicial system less accessible

to the layperson in poor countries than in rich ones.

All of these considerations must be kept in mind when assessing the question of whether citizens in the nine pilot test countries have access to justice to support access to information and participation in environmental decision-making. The legal systems of the nine pilot countries are differentiated by type, degree of popular trust, culture, and wealth. These variables influence not solely the mechanism by which citizens choose to seek redress in pursuing access to justice but the character of the national system of justice as a whole.

The Methodological Framework

The analysis examining access to justice in the nine pilot countries draws on 11 of the indicators applied in the national assessments. These indicators are scattered across all four parts of the methodology. It should be noted that the indicators presented in this chapter did not attempt to measure the practice of access to justice in the same way that the indicators in Chapters 3 and 4 sought to measure the practice of access to information and participation. The national teams did not track the progress of actual cases through the courts, for example, or evaluate actual claims submitted to administrative bodies. The indicators do evaluate, however, whether procedures for judicial and administrative review exist for specific examples of decision-making and can be used by citizens to seek redress. See Table 5.1 for a complete list of indicators evaluated for both quality and accessibility.

TABLE 5.1

INDICATORS FOR QUALITY AND ACCESSIBILITY OF ACCESS TO JUSTICE

Section	Characteristic	Indicators
The legal and regulatory framework	Quality	<ul style="list-style-type: none"> • Inclusiveness of mandates for public agencies to disclose environmental information • Government obligations to maintain public information systems about the environment • Comprehensiveness of the definition of environmental information in the public domain • Legal interpretations of “the public” and “the public interest”
Institutional infrastructure	Quality	<ul style="list-style-type: none"> • Administrative review for national, regional, and local policies, strategies, rules, and plans • Judicial review process for national, regional, and local policies, strategies, rules, and plans • Review and standing for project-level decisions including EIAs
	Accessibility	<ul style="list-style-type: none"> • Diversity of mechanisms for access to justice
The affordability of justice	Accessibility	<ul style="list-style-type: none"> • Affordability of fees for processing administrative claims • Affordability of court fees • Affordability and accessibility of independent legal representation

Source: Access Initiative National Team Reports

II. FACTORS INFLUENCING ACCESS TO JUSTICE

While acknowledging the differences among the nine national judicial systems assessed in this report, a broad analysis suggests that some conclusions are common to all nine pilot countries.

The constitution of each pilot country guarantees a citizen’s right of access to justice. The public’s ability to take advantage of this constitutional guarantee, however, depends largely on

the extent to which enforceable laws are in place. Two basic conditions are necessary for access to justice:

Legal guarantees and provisions for access to information and participation. These guarantees and provisions must be integrated into a comprehensive legal framework that enables individuals and organizations to build a case for justice. The conclusions in this section draw from the analysis in the chapters on information and participation.

Enabling conditions for access to justice.
Enabling conditions for access to justice within a country encompass a wide range of elements, including the country's legal and regulatory framework, its institutional framework, whether diverse mechanisms for redress and remedy are present, the affordability of fees, and the availability of pro bono legal assistance. These elements determine whether people can access the mechanisms for redress, whether they can choose among different mechanisms, and whether it is clear that a refusal or a failure by an agency to provide them with information is justified.

Each of these conditions will now be examined in turn.

1. Legal guarantees and provisions for access to information and participation

Chapters 3 and 4 found that, on the whole, legislation governing access to information is strong, whereas legislation governing public participation in decision-making is less developed in the pilot countries. Please refer to these chapters for more detailed analysis of the legal frameworks in question.

Given this state of affairs, it is likely that citizens seeking judicial redress in connection with access to information legislation would fare better than those seeking redress in connection with access to participation legislation.

2. Enabling conditions for access to justice

The enabling conditions for access to justice can be broken down into three broad categories: the legal and regulatory framework, the institutional infrastructure, and the affordability of justice.

Legal and regulatory framework supporting enforcement

The effectiveness of laws guaranteeing access often hinge on those specific provisions or interpretations that support their implementation and enforcement. National law might mandate that environmental information be made available to the public but fail to identify which government agencies are required to disclose this information, thereby making the law ineffectual. And even the best-intentioned and most carefully worded access laws might prove useless if they are not supported by clear guidance on what environmental information is in the public domain, leaving the decision in the hands of officials who may choose to disclose or not to disclose at their discretion. In short, it is important to look beyond the general intent of the laws to consider whether sufficiently detailed provisions are in place to support implementation.

The quality of the legal and regulatory frameworks in the pilot countries were first assessed by evaluating the regulations and provisions requiring that public agencies disclose environmental information. In India, Mexico, South Africa, Thailand, and Uganda, these regulations and provisions require that all public agencies disclose environmental information. (See Table 5.2). In Chile, Hungary, and the United States, by contrast, only the agency dealing with the environment is legally required to disclose environmental information to the public. Such a framework excludes agencies such as ministries of forestry, mining, energy, and others from the obligation to implement legislation dealing with access to environmental information. It also

TABLE 5.2

ENABLING CONDITIONS FOR ACCESS TO JUSTICE: QUALITY OF LEGAL AND REGULATORY FRAMEWORK

Indicator	Weak	Intermediate	Strong
Inclusiveness of mandates for public agencies to disclose environmental information	It is unclear what agencies are responsible for disclosing information: Indonesia	A specific agency is charged with disclosing environmental information, while other public agencies are excluded from such obligations: Chile, Hungary, United States	All public agencies at national, regional, or local levels are obliged to disclose environmental information: India, Mexico, South Africa, Thailand, Uganda
Government obligations to maintain public information systems about the environment	No regulations exist: Indonesia	Regulations exist but define only two of the following: responsible agencies, information products, regularity, mode of distribution, recipients, procedures: Chile, Hungary, India, Mexico, Thailand, Uganda	Regulations define responsible agencies, information products, regularity, mode of distribution, recipients, procedures: South Africa, United States
Comprehensiveness of the definition of environmental information in the public domain	It is unclear what information is in the public domain or wide discretionary power is given to officials: Hungary, South Africa, Thailand, United States	Environmental information in the public domain includes two or three of the following information types: status and quality of the environment, measures affecting the environment; licenses for use of natural resources and the environment; evaluations concerning the environment: Chile, India, Indonesia, Mexico, Uganda	Environmental information in the public domain includes all of the following information types: status and quality of the environment, measures affecting the environment; licenses for use of natural resources and the environment; evaluations concerning the environment: None
Legal interpretations of “the public” and “the public interest”	There is no definition of the public or the public interest in legal frameworks: Chile, India, Indonesia, Thailand, Uganda	The public and the public interest are defined broadly in the constitution, but supporting legal regulations almost always restrict definition to persons affected or harmed by an action or a decision: Mexico	The public and the public interest are broadly defined: Hungary, South Africa, United States

Source: Access Initiative National Team Reports

limits the opportunities of citizens to seek redress for these agencies' refusal or failure to provide them with environmental information, as well as opportunities to participate in decision-making.

Even in countries where all government agencies are legally required to disclose environmental information, the national teams found that disclosure is often haphazard and disorganized. Officials have limited guidance as to the information products they have to produce, how regularly these products must be distributed, and to whom these products should be distributed. Only the United States and South Africa provide their civil servants with sufficient guidance on (1) how to identify the responsible agencies or the types of information products to be produced for the public; (2) how regularly environmental information is to be disseminated; and (3) the procedures the public must follow in order to access information. In Chile, Hungary, India, Mexico, Thailand, and Uganda, in comparison, civil servants are provided with sufficient guidance on only two of these three criteria. As a result, a citizen seeking redress for the government's failure to provide information could be deterred by the lack of clarity regarding who is accountable for this function and how it is to be discharged.

In Hungary, South Africa, Thailand, and the United States, it is unclear what environmental information is in the public domain. In these countries, wide discretion is frequently given to individual government officials as to what classes or types of information should be made available to the public. In other countries—such as Chile, India, Indonesia, Mexico, and

Uganda—interpretations of what information is in the public domain exclude some classes of environmental information. Such lack of clarity or restrictive interpretations limit the public's ability to seek justice for a government's refusal to disclose information.

The legal and regulatory framework enabling access to justice was also evaluated by researching the legal definitions of "standing" and what constitutes the "public" and the "public interest." These definitions determine who can be a party to a dispute.

The question of standing and the official definition of what constitutes the public interest are both crucial determinants in evaluating whether the legal and regulatory framework supports access to justice. When individuals and organizations must meet restrictive requirements to qualify for standing, access to justice is limited. Likewise, when definitions of the public interest are restrictive, environmental or community groups are likely to be denied standing in courts and are therefore unable to initiate lawsuits or contest environmental decisions. In Mexico and Indonesia, for example, an individual or organization must show proof of individual damage or harm to gain access to the courts in cases that pertain to the environment or access to information. In Chile, India, Indonesia, Thailand, and Uganda, there are no legal definitions of the public interest, which can make it difficult for groups representing the public interest to qualify for standing.² In Hungary, South Africa, and the United States, however, broad definitions of the public interest ensure that citizens and organizations representing the public interest may be parties to

disputes and use judicial mechanisms to enforce their access rights.

Institutional infrastructure

Indicators evaluating the presence of administrative and judicial review processes and examining the existence of alternative judicial venues are used as proxies for an assessment of the quality and accessibility of the institutional infrastructure. (See Table 5.3.)

Several of the pilot countries have made significant progress in establishing mechanisms outside the formal judicial system. Thailand, for instance, recently created an administrative court to deal with public claims against government agencies. India has established special environmental tribunals to address all cases related to the environment, including disputes about access to environmental information. Examples of administrative mechanisms range from ombudsmen to administrative courts to simple administrative procedures for filing claims. Box 5.1 provides information about the Ombudsman of the European Union. In the majority of the pilot countries, however, the administrative mechanisms are either new or not fully developed. In India, for example, the public rarely uses the new tribunals because they are not considered reliable.

A telling factor in evaluating practices of access to justice is whether the public can use processes of administrative and judicial review to contest how national or regional policies are made. The national teams examined the presence of administrative and judicial review processes and the interpretation of standing in

connection with the specific decision-making processes on policies and plans at national, regional, and local levels, as well as the project-level decision-making processes discussed in Chapter 4. The national teams found these processes to be present in less than 50 percent of the cases assessed. No administrative review processes exist or are accessible, for example, to affected parties for mining concession policies in Hungary or the Budongo Forest concession award process in Uganda. A similar situation prevails with regard to administrative review processes in the cases examining national, regional, or local decision-making on policies, plans, or siting in Chile, Hungary, and Thailand. Judicial review processes are not in place or are not accessible to affected parties in Chile, Hungary, India, Mexico, and Thailand. In only three pilot countries—Indonesia, South Africa, and the United States—are both judicial and administrative review available to the parties affected by these decisions.

The situation is similar in the cases of project-level decisions. In most of these cases, there is either no administrative or judicial review in place, or the law forbids parties who have not participated in the decision from challenging it. There are only a few cases in which a review process is in place whereby interested parties, including public interest groups, can contest project-level decisions.

The affordability of justice

National teams assessed the enabling conditions for access to justice by looking at the cost of administrative and court fees and the presence of pro bono legal help. These are proxies for the

TABLE 5.3

ENABLING CONDITIONS FOR ACCESS TO JUSTICE: ACCESSIBILITY OF INSTITUTIONAL INFRASTRUCTURE

Indicator	Weak	Intermediate	Strong
Diversity of mechanisms for access to justice	Courts of law are the only mechanisms by which citizens can seek access to justice: None	Citizens can seek access to justice via both courts of law and administrative means, but one of these is not fully developed or easy to use: Chile, Hungary, India, Indonesia, Mexico, South Africa, Thailand, Uganda	Citizens can seek access to justice via both courts of law and administrative means, and both mechanisms are well-developed and easy to use: United States
Administrative review for national, regional, and local policies, strategies, rules, and plans	Implementing or sectoral agencies have no process in place to consider problems and concerns raised by affected parties after policy comes into force: Chile, Hungary, Indonesia, Mexico, Thailand, Uganda	No value offered; only two indicator choices were “strong” and “weak”	Implementing or sectoral agencies have a process in place to consider problems and concerns raised by affected parties after policy comes into force: India, South Africa, United States
Judicial review process for national, regional and local policies, strategies, rules, and plans	Sectoral or regional laws and regulations governing selected cases do not include an explicit statement on judicial review procedures to address challenges to the policy decision: Chile, Hungary, India, Mexico, Thailand	Sectoral or regional laws and regulations governing selected cases do include an explicit statement on judicial review procedures to address challenges to the policy decision: Uganda	Sectoral or regional laws and regulations governing selected cases include an explicit statement on judicial review procedures and indicate that affected parties or public interest groups may invoke judicial review: Indonesia, South Africa, United States
Review and standing processes for project-level decisions, including EIAs	Administrative review procedures do not exist to address challenges to the validity of a decision-making process OR the review procedures prohibit parties not participating in the process from invoking a challenge: Chile, Indonesia, Mexico, Thailand, Uganda	Administrative review procedures do exist to address challenges to the validity of the decision-making process and to establish when parties not participating in the process may invoke a challenge: India, United States	Administrative review procedures do exist to address challenges to the validity of the decision-making process and establish when as well as how parties not participating in the process can invoke a challenge: Hungary, South Africa

Source: Access Initiative National Team Reports

Critics accuse the European Union (EU) of being an opaque, secretive, and distant organization. Repeated surveys have shown that fewer than 10 percent of Europeans claim to know “a lot” about how the EU works. European politicians from both ends of the political spectrum have denounced the so-called “democratic deficit” in EU decision-making and called for a fairer, more transparent, and more accountable EU. Direct elections to the European Parliament—previously an appointed body—began in 1979 in an attempt to respond to such concerns. A new round of treaty revisions in 1992 sought to continue this trend by creating the position of European Ombudsman.

Charged with investigating citizen complaints about maladministration, the Ombudsman serves as an official watchdog over the EU. Anyone holding the position is forbidden from requesting or accepting instructions from any government or organization, or even engaging in any other professional activity, paid or unpaid, during his or her time in office. The Ombudsman, on his or her own initiative or following a citizen complaint, conducts all the inquiries necessary to clarify any suspected maladministration. The institutions and bodies of the EU are obliged to provide the Ombudsman with

any requested information and any relevant files. They can refuse to do so only on justified grounds of confidentiality.

The first person to hold the post, Jacob Söderman, was appointed by the European Parliament in July 1995 and reelected to a second term in 1999. On his initiative as Ombudsman, all the European institutions (the Parliament, the Commission, the Council, the Court of Justice, and the Board of Auditors) have adopted clear and liberal rules on access to documents. On February 24, 2000, however, Söderman published an article in the *Wall Street Journal Europe* lashing out at new proposals made by the European Commission that he claimed would create a new class of “exemptions from access” whereby access to documents could be refused on such grounds as “the stability of the Community legal order” or “the deliberations and effective functioning of the institutions.” Such exemptions, he argued, would lead to a scenario in which there would scarcely be a single document in the EU that could not legally be withheld from public scrutiny.

continued next page

affordability of the system, although they are not indicative of all the costs associated with litigation, for example. However, many of the national reports supplemented the indicators by discussing the cost of litigation. (See Table 5.4.)

Administrative and court fees and litigation costs can be a barrier to access to justice by the general public. Here the performance of the

pilot countries varies widely. In some countries, such as South Africa and Uganda, administrative fees are prohibitively high. In other countries, such as Hungary, court fees are high, while administrative fees are scored as intermediate. In Thailand, both administrative and court fees are intermediate. In India and Mexico, by contrast, administrative and litigation fees are both low.

Söderman's article created a storm within the EU. Romano Prodi, president of the European Commission, sent a letter to the president of the European Parliament in which he rejected Söderman's charge and reiterated his own commitment to reducing secrecy. Prodi went on to criticize Söderman's article as "polemical and extreme" and "emotional and seriously erroneous." For the Ombudsman to express his views publicly was "detrimental to the normal functioning of the institutions," he added. Söderman's response was simple: "I have sworn to perform my duties with complete independence. I remain convinced that European citizens are entitled to a better law than the one the Commission has proposed."

After considerable wrangling, several court cases, and lobbying on the part of civil society groups, the EU adopted a new code of access to documents in May, 2001. While some observers complained that the code did, in fact, bring about a new class of "exemptions from access," many believed that the public debate over the issue—prompted in part by Söderman's article—helped to remedy the initial proposal's flaws. Nonetheless, the Söderman-Prodi

exchange reveals the very real tensions within the EU over which documents should be made available to the public and which must remain secret. It highlights the problems relating to access to information created by ambiguous phrasing and sweeping exemptions in policies governing disclosure. Finally, the incident demonstrates the usefulness of an official Ombudsman capable of acting in an extra-judicial capacity to ensure that Europe's citizens retain their legal rights to access information.

Sources:

Ian Black. 2000. "Prodi rebukes EU Ombudsman for urging openness." *The Guardian* (March 15, 2000).

Desmond Dinan. 1999. *Ever Closer Union: An Introduction to European Integration*. Boulder, Colo.: Lynne Rienner Publishers.

European Union. 2000. "The European Ombudsman at a Glance." Online at: <http://www.euro-ombudsman.eu.int/glance/en/default.htm#Target1>. (May 4, 2002.)

Richard Rawlings. 2000. "Engaged Elites, Citizen Action, and Institutional Attitudes in the Commission Enforcements." *European Law Journal*. March edition.

Statewatch. 2000. "EU: Prodi Attacks Ombudsman." *Statewatch Bulletin* 10(2).

In all the pilot countries, the costs of legal representation are prohibitively high for the general public. As a result, many citizens rely on pro bono representation. Because most pro bono lawyers are concentrated in national capitals, such legal representation is either not available or not easily accessible to many citizens. Indonesia, however, does have relatively low court fees and a network of independent pro bono lawyers who operate through the Legal Aid

Foundation. South Africa has a government-sponsored program—the Legal Aid Board, with centers in the provinces—that provides free legal help to the poor in connection with environmental or access-to-information cases.

The indicators on the three elements of the enabling conditions for access to justice show wide variations among countries. Overall, the majority of the countries cluster in the interme-

TABLE 5.4

ENABLING CONDITIONS FOR ACCESS TO JUSTICE:
COST OF JUSTICE

Indicator	Weak	Intermediate	Strong
Affordability of fees for processing administrative claims	Administrative fees for processing claims and grievances on environmental issues are prohibitively high: South Africa, Uganda	Administrative fees for processing claims and grievances on environmental issues are significant: Hungary, Thailand	There are no administrative fees for processing claims and grievances on environmental issues, or fees can be waived for individuals or public interest groups: Chile, India, Mexico, United States
Affordability of litigation fees	Fees for environmental cases are prohibitively high: Hungary, South Africa	Fees for environmental cases are significant: Indonesia, Thailand, United States	There are no fees for environmental cases, or fees may be reduced or waived for individuals or public interest groups: Chile, India, Mexico, Uganda
Affordability and accessibility of independent legal representation	No affordable, independent legal representation is available to the public: Chile, ^a Mexico	Affordable, independent legal representation can be found in the capital: Hungary, India, Uganda	There is a network of affordable, independent legal representation operating in different parts of the country: Indonesia, South Africa, Thailand, United States

a. Chile does not charge administration and litigation fees, but the cost of legal representation in Chile is estimated to be more than 50 percent of the average Chilean's annual income.

Source: Access Initiative National Team Reports

diate and weak range. These indicators demonstrate that the regulations supporting implementation of the rights to information and participation do not match the generally positive development and performance of the legal frameworks in the pilot countries. In no country does the institutional framework or the affordability of access to justice score consistently strong, though a country might perform well for some indicators in each of the elements. However,

enabling conditions depend on the presence of all three elements and a strong score for each indicator.

Though limited in number and scope, these indicators suggest that the enabling conditions for access to justice are weak. While there are variations among countries, they tend to cluster in the weak performance range. Only a few of the pilot countries demonstrate strong perfor-

mance for individual indicators. No country, however, scores high on all indicators, which suggests that there are gaps in even the best systems among the nine pilot test countries.

III. CONCLUSIONS

Table 5.5 offers a snapshot of the strengths and weaknesses of the pilot countries in ensuring that their citizens have access to justice with regard to information and participation in environmental decision-making. The legal frameworks of the pilot countries contain constitutional guarantees and specific laws providing for access to environmental information. The legal framework for participation in decision-making affecting the environment is less developed; as a result, it is more difficult for the public to enforce its rights to participation through courts or administrative mechanisms for redress.

The analysis presented in this chapter leads to several conclusions:

Despite general guarantees and/or specific laws in the pilot countries, enforcement of these laws remains problematic. This is partly because provisions defining what information is in the public domain, who should disclose it, and how are either ambiguous or altogether missing. The absence of such specific provisions and interpretations is a particular problem in civil law countries, where the judiciary relies on explicit interpretations in the law. Limited or restrictive interpretation of standing and a lack of legal definitions of what constitutes “the public” or “the public interest” exclude individuals or groups from using the system of justice to demand information or participation. Overall, the pilot country governments have not created a sufficiently robust legal and regulatory framework to enable implementation and enforcement of law.

TABLE 5.5 ACCESS TO JUSTICE SUMMARY COMPARISONS			
	Weak	Intermediate	Strong
Legal guarantees and provisions for access to information			
Legal guarantees and provisions for public participation			
Enabling conditions for access to justice			
Dark blue boxes indicate those areas where most countries are clustered. White boxes indicate where the fewest countries are clustered.			
Source: Access Initiative National Team Reports			

Though countries are increasingly diversifying the mechanisms for resolving disputes, administrative mechanisms are not present everywhere, nor are they fully developed and reliable. As the examples from the sections dealing with decision-making indicate, the conditions for seeking redress in connection with specific decision-making processes are particularly weak in the pilot countries. Administrative or judicial review processes for specific decision-making processes are few and far between, and the interpretation of standing is limited in these cases. These two obstacles limit accessibility of the system of justice for the general public.

The costs of access to justice are, by and large, too high for most people in the pilot countries to seek redress. In many countries, the cost of justice is high and limits the access of the public to justice. The availability of pro bono legal help is limited.

Figure 5.1 offers an overview of the findings from this chapter, ordered from strongest to weakest performance.

ENDNOTES

1. The index of complexity of litigation measures how complex judicial litigation of simple commercial disputes is, and therefore how difficult it is for a layperson to pursue a legal procedure in defense of his/her interests. The index comprises five equally weighted variables: complexity of the legal language or jurisdiction, complexity of the notification procedure, requirements for legal representation, complexity of the complaint, and suspension of enforcement because of appeal.
2. Although a lack of any definition of the public interest in these countries can (and often does) make it difficult for public interest groups to gain standing, such a lack does not necessarily mean they can never gain standing. In Indonesia, for example, any public interest organization working in the fields of environmental protection, consumer protection, or forestry management may bring a lawsuit.

FIGURE 5.1 ACCESS TO JUSTICE SCORECARD			
Type	Quality	Accessibility	Overall
Affordability of justice	Not assessed	Intermediate	Intermediate
Institutional infrastructure	Intermediate	Weak	Weak
Legal and regulatory framework supporting enforcement	Weak	Not assessed	Weak

BUILDING A FUTURE: CAPACITY FOR PUBLIC PARTICIPATION

In June 2000, recognizing that “environmental policies in South Africa emphasize the need for environmental learning and capacity building in all walks of life,” the South African Department of Education (SADE) announced the launch of its National Environmental Education Programme (NEEP) (National Ministry of Education, 2000). Within months, SADE had created an enabling framework designed to facilitate the implementation of environmental education in all programs and phases of the public education and training system. SADE negotiated with five departments—Health, Water Affairs and Forestry, Environmental Affairs and Tourism, Agriculture, and Public Works—to support the implementation of environmental learning in the education system. It hired a full-time director for environmental education based in Johannesburg. It also ensured that all nine provincial departments of the Department of Education had a dedicated Environmental Education (EE) manager to work with schools and other educators at the provincial level. The National Department of Environmental Affairs and Tourism appointed a dedicated staff of EE specialists to provide booklets and posters to the public. In 2000, a booklet entitled “Enviro Days

2000” was distributed to 29,000 schools around the country. A press release celebrating the launch noted that “this booklet is particularly significant in the history of South African education as it represents the Department of Education’s commitment to environmental education as an integral part of formal education” (National Ministry of Education, 2000).

By making concrete investments in the staff and materials required to educate the public about the environment, the government of South Africa was working to build the capacity of its citizens to understand environmental problems. This example illustrates the important point that a national system for public participation can generate meaningful environmental outcomes—better performance and better decisions—only if both the government and the public have the knowledge and the capacity to make use of it.

I. INTRODUCTION

To be effective, a national public participation system requires capacity on both the supply side and the demand side. On the supply side, capac-

ity building means training competent civil servants in all branches of government. It means constructing an institutional infrastructure that enables civil servants to generate, manage, and provide information. On the demand side, capacity building means working to educate the public and make citizens aware of how they can obtain, understand, and evaluate environmental information or participate in decision-making. It is the responsibility of the government to build its own capacity as well as that of the public.

Capacity of both the supply and demand sides also depends to a large extent on a variety of social actors who draw attention to specific issues, spur private or government actors into action, substitute for missing capacity, or facilitate the operation of national public participation systems. Two social actors—NGOs and the media—perform these and other roles. Other actors and factors also influence capacity for public participation either directly or indirectly. The roles of international donor agencies and information technology in building capacity, for example, have been discussed in previous chapters.

This chapter examines a limited number of factors and efforts to build the capacity of both the government and the public. It first looks at some aspects of government investment in capacity building. It then examines the conditions for the operation of nongovernment organizations. Finally, it examines the extent and quality of media attention paid to the environment.

Context and Influences

Over the past 30 years, the concept of capacity building has evolved from a process undertaken by private firms with the goal of improving their individual output to a comprehensive, multifaceted approach to the development of everything from communities to countries (Morgan, n.d.). The term “capacity building” is both complex and ambiguous. A commonly accepted definition, presented in Agenda 21, is “[efforts to improve a country’s] human, scientific, technological, organizational, institutional and resource capabilities” (United Nations, 1992). In this report, capacity building is discussed as a mechanism to enhance effective and meaningful public participation in decisions that affect the environment.

The role of capacity building has been recognized by governments, civil society, and international organizations. International environmental agreements and treaties have adopted provisions calling for the development of human and institutional capacity. Principle 9 of the Rio Declaration, for example, speaks directly to the need for endogenous capacity building, highlighting information exchange and technology transfer as means for improving a nation’s capacity to realize sustainable development (UNCSD, 1997). Chapter 37 of Agenda 21 emphasizes capacity building in developing countries, beginning with the statement “The ability of a country to follow sustainable development paths is determined to a large extent by the capacity of its peoples and its institutions....” (United Nations, 1992). Regional instruments and strategies such as the Aarhus Convention and the Inter-American Strategy for the Promo-

tion of Public Participation also contain language about the need to promote the capacity of the public to engage in informed environmental decision-making. The fact that these global agreements and regional instruments negotiated by national governments emphasize the role of capacity building exemplifies the extent to which national governments have acknowledged their responsibility for building their own capacity and that of their citizens.

International institutions also take capacity building seriously. The UN General Assembly has, for example, mandated that all UN agencies follow an approach to development that relies heavily on capacity building as a means of improving participation in decision-making processes (UNDP, n.d.). This approach typically involves a four-step process that begins with policy dialogue, moves to capacity or needs assessment, then to identification of support, and ends with implementation. UNDP's Capacity 21 is based on three principles: participation of all stakeholders; integration of economic, social, and environmental practices; and information about sustainable development for informed decision-making (UNDP, 2002). The World Bank has taken cues for its capacity building practices from the UNDP, including country-based approaches to development that rely on NGO and community participation in both the formulation and implementation stages of a policy, and improved policies for government and donor transparency and accountability (World Bank, n.d.). These programs illustrate the importance of a holistic approach to capacity building involving different stakeholders and social sectors.

Thus far, the discussion has focused largely on government engagement in building capacity—both its own and that of civil society. Yet government investment in capacity is by itself inadequate to guarantee balanced participation. Civil society groups have long maintained that their job is to encourage government efforts to build capacity by mobilizing individuals and communities to participate in environmental decision-making and by providing information and policy alternatives to both the public and governments. NGOs thus serve a vital intermediary role between individuals and governments or other institutions, allowing the voices of the public to be heard and advocating on behalf of underrepresented groups (World Bank, 1996a).

The media likewise play a crucial role in building the capacity of the public. By disseminating information about the environment and environmental problems, the media encourage more informed and effective public participation in decision-making. By providing otherwise unavailable information to rural and marginalized sectors of the population, the media create a more uniform and equitable basis for involvement (World Bank, 2002a). To effectively increase the capacity of their audience, however, the media must function outside the government as fully independent entities (World Bank, 2002a). A study conducted for the 2002 World Development Report found that, in the 97 countries surveyed, family monopolies and the state tended to dominate ownership of media outlets. This study also found that monopoly control and/or high levels of state ownership of the media tend to reduce their effectiveness in providing checks and balances on public sector behavior (World Bank, 2002a).

TABLE 6.1 | INDICATORS FOR QUALITY AND ACCESSIBILITY FOR CAPACITY BUILDING

Section	Indicators
Investment by government in capacity building	<ul style="list-style-type: none"> • Efforts to build capacity of staff of selected institutions to support access to information and participation by the public • Availability and comprehensiveness of information from selected agencies • Government investment in environmental education
Supportive environment for NGOs	<ul style="list-style-type: none"> • Requirements governing registration of public interest groups • Conditions for financing of NGO activities
The media	<ul style="list-style-type: none"> • Level of coverage of environmental issues in the media • Quality of coverage of environmental issues in the media

The Methodological Framework

The national teams looked at four elements or conditions that support building capacity for implementation of the access principles:

1. Investment by the government in its own capacity for disclosure of information and facilitation of participation.
2. Investment by the government in building the capacity of the public to understand environmental problems, to access information, and to participate in decision-making processes.
3. The conditions for the operation of NGOs.
4. The coverage of environmental issues by the media.

The national teams measured investment in capacity building by the government in three government agencies, an administrative court (if one existed), and a mid-level court. The three

government agencies usually included the Ministry of Environment and two sectoral agencies, such as mining and forestry. The teams also analyzed coverage of environmental issues in selected media and studied legislation and sources of funding for NGOs. The assessments looked at a one-year period, ideally the year 2000.

The national teams used only a limited number of indicators, which were designed as proxies for different measurements of the four conditions defined above. These are summarized in Table 6.1.

Not all national teams were able to select an appropriate value for each indicator. They did, however, provide extensive descriptions and analysis in their reports. This chapter summarizes the indicators and the descriptive analyses in the national assessments.

II. INVESTMENT BY GOVERNMENT IN CAPACITY BUILDING

The government and the public are the two sides of the public participation process. Civil servants and elected officials provide information, opportunities for participation, and justice. To fulfill these roles, they need skills and knowledge to create information systems, respond to requests, establish processes for meaningful participation, and deal with disputes.

The public, in turn, needs to know its rights to information, participation, and justice, and how citizens can use them. The public also needs knowledge and skills so that citizens can use the available information in a meaningful way, provide relevant and constructive input to decisions, and seek redress in disputes.

Investment is needed to build the capacity of both the supply side—the government—and the demand side—the public—so that the public participation system can work for better environmental outcomes.

Building the capacity of the supply side: government

The capacity of the supply side includes such factors as knowledgeable public officials and robust infrastructure. Such infrastructure includes “hardware” (such as computer technology) as well as “software” (processes to generate, manage, and provide information and to engage the public in decisions). Establishing a clear set of government procedures and practices is also essential to guide public officials on how to

respond to requests or engage the public in decision-making.

In many countries, laws on access to information and commitments to public participation are relatively new components of the legal system. One of the first steps in building government capacity and infrastructure, therefore, is to make sure that civil servants know that these provisions exist, why they are important, and how to implement them. National teams assessed whether there is any effort on the part of public agencies in their countries to train staff so that civil servants are aware of new legislation and its implications for their work. If the government does not invest in training its staff, staff will not be aware of their legal obligations and the merits of providing information or participation to the public. Without such training, it is unlikely they will be able to improve existing information infrastructure to expand public access or actively engage the public in decisions.

As a proxy for investment by the government in building its own capacity to implement access to information and participation laws, the teams assessed investment in training in three agencies that deal with environmental information or decision-making. While some national teams selected values for this indicator, others provided extensive comments and commentary on government investment in training its own staff. The conclusions for this indicator combine both the selected values and the comments from the reports.

TABLE 6.2 | GOVERNMENT EFFORTS TO BUILD ITS OWN CAPACITY

Indicator	Weak	Intermediate	Strong
Efforts to build capacity of staff of selected institutions to support access by the public	The staff at three selected institutions have received neither guidelines nor training to support access to decision-making processes by the public over the past year: Hungary, Indonesia, Mexico, Uganda	Some, but not all, of the staff at three selected institutions have received guidelines and training to support access to decision-making processes by the public over the past year: Chile, India, Thailand, United States	The staff at three selected institutions have received both guidelines and training to support access to decision-making processes by the public over the past year: South Africa

Source: Access Initiative National Team Reports

In Mexico and Uganda, no training was offered in the selected agencies, while in Hungary and the United States, training was characterized as opportunistic (see Table 6.2). In Thailand, training of staff was inconsistent across agencies—staff at one agency were formally trained in public participation topics, while others had knowledge of access issues and practices from external seminars. Only teams in Chile and South Africa recorded government investment in training staff on public participation and access to information in at least two of the institutions selected for evaluation. Only South Africa had an extensive program to build the capacity of staff at all levels. Several national reports noted the significance of official attitudes, remarking that some authorities still think that the most secure way to handle information is to deny access (Hungary) and continue to perceive public participation as “meddling” in the state

apparatus (Indonesia). In Indonesia, the national team indicated that limited investment in training is part of an entrenched “culture of secrecy” among public servants, often perpetuated by a failure to appropriately reprimand those who do not comply with their legal obligations.

Overall, government investment in building its own capacity was weak in the pilot countries. As a result, it can be expected that few civil servants know the implications of existing laws and regulations for their work or how to apply them. It is not surprising, therefore, that many of the national teams had to spend significant time to get environmental information. Agencies did not know how to deal with their requests, and responses varied among agencies. Similarly, it is not surprising that public participation, even when mandated by law or policy, was rarely timely or meaningful.

Building the capacity of the demand side: the public

Public authorities have a responsibility to build—directly or indirectly—the capacity of the public in their countries to exercise rights to information, participation, and justice. Two proxies were used in the national assessments to measure how seriously governments at all levels take that responsibility. One of the proxies is government support for integrating environmental knowledge into public education. Another proxy is the effort to provide information about where, how, and from whom to obtain environmental information. For the first, the national teams investigated whether the government had any staff dealing with environmental education. For the second, the teams assessed whether information about points of contact, mandates, and procedures for how to obtain information were easily available from three national agencies, one of which is the national environmental authority.

Basic environmental knowledge is necessary so that the public can evaluate the significance of environmental information. As seen in the South African example described earlier, governments can and do invest in building the capacity of the public through environmental education. South Africa's NEEP program, while not without its flaws, is in many ways an example of best practice. Within the South African Department of Education, several people are responsible for developing environmental education materials and curricula. There is considerable exchange and support for the program across government agencies; resources have been committed to support staff in both the capital and the prov-

inces to develop environmental education materials and train teachers. Government efforts to build the capacity of the public through environmental education programs in Hungary, India, Mexico, Thailand, and Uganda are likewise impressive, though the efforts in India and Uganda have yet to encompass teacher training. Investment in environmental education programs is, on the whole, robust in the pilot countries. (See Table 6.3.)

Each of the national teams looked at three government institutions with some responsibilities for providing information. In no country did all three make available to the public information about their mandate, point of contact, and procedures for making requests for information. While Mexico and South Africa provided greater availability of information, in no country did all three agencies provide all necessary logistical guidance on how to obtain information at minimal cost. In India, for example, information had to be searched for or collected through personal visits. In Thailand, while an assessment of four agencies' websites showed opportunities for feedback and contact information for officials, none provided a clear idea of the procedures for requesting information. While it is easy to contact the agencies, it is not at all clear when, whether, or how there will be any response. In the United States, studies at the state level indicated problems finding where information is located, what the hours are to obtain that information, and how much it might cost, both in time and in fees. In Uganda, few public officials are designated to handle information requests. Without an appointed contact person, information requests are often delayed, stalled, and passed from one office to another.

TABLE 6.3

GOVERNMENT EFFORTS TO BUILD THE CAPACITY OF THE PUBLIC

Indicator	Weak	Intermediate	Strong
Availability and comprehensiveness of information from selected agencies	Information about mandate, points of contact, and procedures to make administrative claims is not publicly available at any of the selected institutions: Hungary, Indonesia	Information about mandate, points of contact, and procedures to make administrative claims can be obtained upon request at one or more of the three selected institutions: Chile, India, Mexico, South Africa, Thailand, Uganda, United States	Information about mandate, points of contact, and procedures to make administrative claims is publicly available for all three selected institutions: None
Government investment in environmental education	There is no department or person at the Ministry of Education or the Ministry of Environment responsible for the development of environmental education materials: None	There is a person or a group of people/department, at either the Ministry of Education or the Ministry of Environment responsible for the development of environmental educational materials: India, Indonesia, Uganda	There is a group of people/department at either the Ministry of Education or the Ministry of Environment responsible for the development of environmental educational materials and training of teachers: Hungary, Mexico, South Africa, Thailand

Source: Access Initiative National Team Reports

Most national teams obtained information via the Internet, phone calls, or personal visits. People outside national or regional capitals and without regular or low-cost access to Internet service would need to travel or incur unexpected costs to obtain the same information.

The findings from the national teams suggest that while governments in the nine pilot countries invest in environmental information, they rarely provide the necessary guidance on how to get that information.

III. A SUPPORTIVE ENVIRONMENT FOR PUBLIC PARTICIPATION

Meaningful public participation is not solely an outcome of government investment. A variety of social actors can influence the way national public participation systems work. Two of these actors—NGOs and the media—play critical roles through supporting, informing, or generating demand by the public and stimulating the provision of information and participation by the government.

National teams assessed the conditions for registration and diversity of funding sources for NGOs—two factors that have a significant impact on their ability to perform a variety of public interest functions. The teams also assessed the quality of coverage of environmental issues by the media, a necessary undertaking given the powerful role played by the media in shaping the public perception of environmental issues. By disseminating timely and accurate information about the environment, the media can encourage meaningful and informed public participation in environmental decision-making.

Supportive Environment for Nongovernmental Organizations

An environment favorable to the activities of NGOs and independent experts willing and able to promote public participation and offer assistance to individuals and groups is indispensable for an effective public participation system. NGOs can build the capacity of the public by raising awareness and providing environmental education. They can generate information or integrate previously fragmented information and make it easier to use. As a link between society and government, they can organize (or inform) the public for meaningful participation, represent the public interest in court, and perform a variety of other roles and services that build capacity and generate both demand and supply.

In many countries, NGOs work with governments in drafting policies and legislation to support access to information, participation, and justice. For instance, the Environmental Man-

agement and Law Association of Hungary, a TAI partner, contributed to the drafting of the Aarhus Convention and to critical legislation in Hungary. The Thailand Environment Institute, another TAI partner and core team member, worked on the Asia-Europe Meeting (ASEM) Guide for Public Participation. A large number of the 161 regional and local organizations dealing with environmental education in South Africa are NGOs or other private organizations. They produce materials, work with experts, and provide other environmental education services, which support and complement the ambitious and wide-reaching efforts of the South African government to improve environmental education.

To perform such tasks, NGOs need favorable conditions for operation. The national teams applied two indicators to assess these conditions: ease of registration of organizations and diversity of funding sources.

The Access Initiative pilot countries vary widely in their treatment of and tolerance for independent nonprofit activity focusing on a common interest in the environment. (See Table 6.4.)

The most liberal regime is in South Africa. Here, public interest groups do not have to register in court or in an administrative agency to be recognized as legal organizations. Instead, they can simply adopt a mission statement and pursue common activities. In other countries, such as Chile, Hungary, and Uganda, the conditions for registering new NGOs are restrictive rather than supportive.

TABLE 6.4 | SUPPORTIVE ENVIRONMENT FOR NGOS

Indicator	Weak	Intermediate	Strong
Requirements governing registration of public interest groups	Rules or regulations do not allow the formation of NGOs: None	Rules and regulations significantly restrict the formation of new NGOs, for example by requiring significant assets or limiting their scope of work: Chile, Indonesia, Hungary, Uganda	Legal registration of NGOs takes less than one month, and they do not have to meet special financial or other prohibitive requirements: India, Mexico, South Africa, United States
Conditions for financing of NGO activities	No sources of financing of NGO activities are available: None	Either national or international sources of funding for NGOs are unavailable, or there are restrictive conditions that make it difficult for NGOs to access funding: India, Indonesia, Uganda	Both national and international financial support for NGOs is available without restrictive conditions: Chile, Hungary, Mexico, South Africa, Thailand, United States

Source: Access Initiative National Team Reports

The availability of diverse sources of funding frequently determines whether NGOs can develop and perform a variety of activities and services that support access to information, participation, and justice in decision-making. Availability of funding sources is particularly important for nonmembership NGOs, which often provide such services as generating information, representing the public interest in seeking redress, and proposing and drafting policies. Such NGOs are frequently the source of innovative solutions that integrate environmental concerns into decision-making. This was the case in Poland, where the NGO community studied the environmental and social implications of transport sector strategies and proposed alternative options to achieve the strategies' objectives of mobility in a more

environmentally sustainable manner (Jeszke et al., 2002).

In the majority of the pilot test countries, NGOs have access to a diversity of domestic and international sources of financing. Teams in Mexico and the United States report significant financial support for NGOs, including tax codes that allow donors to deduct charitable donations from their taxes and exempt NGOs from taxation, though the Mexican team notes that these tax breaks are at times difficult to obtain. The environment is not as favorable in India and Uganda—two low-income countries. NGOs in Uganda are largely dependent on foreign donor funding. In India, they need a special permit from the government to be able to receive foreign funds. India's restrictions on NGOs'

access to international donors limit the NGOs' ability to operate.

The findings suggest that significant obstacles exist for the operation of NGOs in some countries. A survey of conditions for public interest groups in six countries in East and Southern Africa (described in Box 6.1) produced similar findings. Such obstacles limit the ability of NGOs to play their critical role in support of both the demand and supply side of public participation.

The Media

The media are a powerful factor in generating both supply and demand for information, participation, and justice. Media scrutiny can push the government to disclose information, consult the public on some decisions, identify public preferences for certain options, and hold both public and private actors accountable for their environmental performance. By attracting attention, the media spur better performance by the government, as indicated by the study of emergency cases in Chapter 3.

Various forms of media can reach incredibly large swaths of the population—rich and poor, people living in urban centers and distant communities—and instantly mobilize public opinion. Reports and articles in the media can educate, alert, or mislead.

The national teams measured the level of media attention to environmental issues and the quality of coverage. (See Table 6.5.) Each national team was asked to review three newspapers that represent a mix of national, regional, and local

media and one TV channel or radio station during three non-consecutive and randomly selected weeks of 2001. They looked at the number of items appearing in selected media and the representation of different points of view and information sources.

According to the national teams' findings, many newspapers, radio stations, and television channels have regular programs on environmental issues. For example, in just three weeks of 2001, four selected newspapers and one television channel in Thailand published or broadcast 185 environmental news items. These five media sources together averaged almost nine pieces of environmental news a day. The situation is similar in Mexico. In other countries, the number of articles or pieces of news was smaller than in Thailand and Mexico, but attention to environmental issues was regular and frequent. Thus, the national assessments suggest that environmental issues receive a high level of media attention.

The quality of coverage, however, does not match its frequency and regularity. In Mexico, most of the information presented in the studied media outlets during three random weeks was not accurate, thereby presenting a challenge to efforts to raise public awareness of environmental issues. In Chile, Hungary, Uganda, and the United States, the stories rarely present a diversity of opinion or the full complexity of key issues. Thus, while the volume of coverage is strong, the quality is generally only intermediate in terms of presentation of different views and inclusion of some analysis of the information. The implications are that the public does not always obtain full or accurate information or

BOX 6.1 | PUBLIC INTEREST GROUPS IN AFRICA

A limited number of indicators were used to study the conditions for public interest groups in Botswana, Kenya, Mozambique, Tanzania, Uganda, and Zimbabwe. Each of these countries has constitutional provisions that guarantee freedom of association, but there are laws that restrict the activity of public interest groups. In all the countries studied, the national government assigned line ministries exclusive oversight over registration or deregistration of NGOs. For example, Zimbabwe's Private Voluntary Organizations Act gives the minister of Public Service, Labour, and Social Welfare the power to suspend the entire staff of an NGO without explanation (Veit, 1999).

In all the countries in East Africa, the government creates informal mechanisms, not codified in law, to impede the process of registration. For example, in Uganda an NGO must get a letter of authorization from the appropriate line ministry before the executive will grant registration.

In cases where public interest groups challenge the government, oversight authority allows the government to tighten regulation of the group. For example, in Tanzania, BAWATA (the National Women's Council) was registered in 1995 after an uphill battle to convince the Registrar of Societies to grant approval. Its early work—as articulated in its constitution—focused on issues such as inheritance rights, the right to own land, and political representation of women in parliament. Nevertheless, the government soon accused

BAWATA of being a political party. In September 1996, the government, without affording BAWATA a chance to be heard, decided to deregister the NGO and demanded that BAWATA amend its constitution and become a research institute. In March 1997, at a general meeting, BAWATA yielded and amended its constitution in accordance with government demands. Even so, the government went ahead to deregister BAWATA. While the case is still pending in court, the lengthy legal battle has taken a toll on the organization: its charismatic leader has left and donors have pulled out.

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TABLE 6.5 | THE ROLE OF THE MEDIA

Indicator	Weak	Intermediate	Strong
Level of coverage of environmental issues in the media	No coverage during three, non-consecutive, randomly selected weeks by two national media outlets—a local newspaper, a television channel, or a radio station: None	One or two environmental reports during three, non-consecutive, randomly selected weeks by two national media outlets—a local newspaper, a television channel, or a radio station: Hungary, India, Indonesia, South Africa, Uganda, United States	All selected newspapers and the television channel, or radio station have a regular environmental focus: Chile, Mexico, Thailand
Quality of coverage of environmental issues in the media	Most of the information that was presented in the reviewed reports did not provide any meaningful information (photo opportunity only): Mexico	The information that was presented in the reviewed reports presented only one side of the issue: Chile, Hungary, Uganda, United States	The information in the reviewed reports presented different views and included some analysis: India, Indonesia, South Africa, Thailand

Source: Access Initiative National Team Reports

different views and ideas about the environmental issues under discussion. In short, the public is denied the full story.

IV. CONCLUSIONS

The assessments in the nine pilot countries suggest the following:

Investment by the government in its own capacity is limited. Governments seldom offer adequate training to civil servants, and in several of the pilot countries the organizational cultures of the bureaucracy were actively hostile to involving the public in decision-making pro-

cesses. As a result, government agencies and staff rarely have the knowledge and capacity to support access to information, participation, and justice in environmental decision-making.

Environmental education is emphasized; guidance on how to get information is not. The governments of the pilot countries understand the importance of environmental education in building the capacity of the public to engage in decision-making that affects the environment; most have invested in compulsory environmental education programs. However, these governments have done significantly less to provide guidance on how to get environmental information.

Conditions for operation of NGOs are not as favorable as they could be in some pilot countries. Difficulties in or restrictions on registration and the absence of diverse sources of funding limit the opportunity for NGOs to compensate for capacity that is lacking in the government or the public. Without formal recognition, NGOs are hampered in their ability to mobilize the public or research policy innovations. Without funding, their activities are severely curtailed.

The media are important agents in stimulating the supply of and demand for public participation. While media attention to environmental issues is high, the quality of coverage could be significantly improved. Stories rarely present the complexities inherent in many environmental issues or offer all interested parties a chance to comment. Without comprehensive information, the public's ability to participate meaningfully in decisions is limited.

CONCLUSIONS AND RECOMMENDATIONS

The assessments of nine national systems of public participation summarized in this report indicate that countries representing diverse regions, cultures, and levels of development are internalizing global norms of public access to information, participation, and justice in decision-making affecting the environment. Most of the countries assessed have put the necessary legal framework in place, and many have begun to build the institutional infrastructure required for implementation. The national assessments provide examples of innovation and best practice in promoting transparency, inclusiveness, and accountability; they also illustrate persistent barriers to information disclosure, closed deliberations on policies and projects, and limited avenues for redress. There is clearly a long way to go before national public participation systems in these countries are sufficiently developed to ensure informed and meaningful participation of the public in decisions that affect the environment.

This chapter will synthesize the findings presented in previous chapters regarding the common strengths and weaknesses of national public participation systems. In addition, the chapter will describe common factors that

appear to influence national performance. The chapter concludes with recommendations for a forward-looking agenda to promote accelerated implementation of Principle 10 at the national level.

I. SUMMARY OF FINDINGS AND CONCLUSIONS

The assessments conducted by the national teams support preliminary conclusions about common strengths and weaknesses of national public participation systems, taking into account the limited number and diversity of the cases examined. They also suggest preliminary conclusions about the feasibility of measuring the performance of diverse national systems with a common assessment tool. Figure 7.1 summarizes the assessment of performance for each of the three access principles, with elements arranged from strongest to weakest within each principle. The summary suggests both general findings about the characteristics of national systems and specific conclusions about their component parts.

General Findings and Conclusions

National systems of public participation share common elements and can be assessed using a common methodological framework. National teams from nine countries representing different regions, cultural traditions, and levels of economic development were able to use the methodological framework designed by The Access Initiative to generate useful assessments of accomplishments and gaps in national performance. This suggests that diverse national systems of public participation share common elements and a common methodological framework can be used to benchmark progress in implementing the three access principles. While individual countries begin the process at different starting points and have different priorities for improvement, a common framework can identify strengths and weaknesses and support progress toward common objectives.

Governments perform best in providing access to information, less well in facilitating participation, and least well in providing access to justice. In previous chapters, this report examined the status of access to information, public participation in decision-making, and justice as separate and distinct concepts. Yet the three principles must be integrated into a single, comprehensive system of public participation if citizens are to have a meaningful voice in the decisions that shape their environment. Limited access to justice, for example, can exclude broad swaths of the population from seeking judicial redress for the government's failure to provide information. Without the information requested, these excluded groups are ill-equipped to participate meaningfully in decisions that affect their

environment. This example illustrates the central insight that each access principle is essential to the system's effectiveness; if one principle is weak, the entire system of public participation is compromised.

It is thus significant that in the nine countries assessed, implementation of the three principles has been uneven. In the years since the Rio Summit, the pilot countries have made impressive progress in improving state of the environment reporting and providing for access to information in their legal frameworks. The legal frameworks and practices necessary to guarantee meaningful participation in decision-making are less well developed; decisions that matter are rarely shaped by public input. In most pilot countries, implementation of access to justice is the weakest among the three principles. Far too often, this tool to correct shortcomings in the public participation system is either not accessible to the public or does not effectively protect rights of access to information and participation.

Improvements in practice lag behind improvements in law. The third general finding from the national assessments is that law outstrips practice in the pilot countries, suggesting that law by itself is not sufficient to ensure access. Implementing provisions that translate the law into regulations that guide the day-to-day actions of government agencies are also essential, as are efforts to train officials to perform new roles. For example, while the general legal framework for access to environmental information is in place in the majority of the pilot countries, these same countries lack the institutional infrastructure to implement those laws. "Cultures of

FIGURE 7.1 THE ACCESS SCORECARD			
ACCESS TO INFORMATION			
Type	Quality	Accessibility	Overall
Legal guarantees and provisions for access to information	Strong		
Emergencies: large and visible emergencies with extensive media coverage	Strong	Strong	Strong
State of the environment reports	Strong	Strong	Strong
Monitoring information: air quality	Intermediate	Strong	Intermediate
Monitoring information: water quality	Intermediate	Weak	Weak
Industrial facility information: based on air and water compliance monitoring and PRTRs	Weak	Weak	Weak
Emergencies: accidents or fires at private facilities	Weak	Weak	Weak
ACCESS TO PARTICIPATION			
Legal guarantees and provisions for participation	Intermediate		
National policy-making on environmental issues	Strong	Intermediate	Intermediate
Regional, state, or local decision-making (state or local planning efforts)	Intermediate	Intermediate	Intermediate
Specific projects with or without an EIA process	Weak	Weak	Weak
National policy-making outside the environment	Weak	Weak	Weak
ACCESS TO JUSTICE			
Affordability of justice	Not assessed	Intermediate	Intermediate
Institutional infrastructure	Intermediate	Weak	Weak
Legal and regulatory framework supporting enforcement	Weak	Not assessed	Weak

secrecy”—such as those that characterize the activities of some government agencies in Indonesia and in Hungary—can also inhibit the implementation of well-intentioned laws. Similarly, the presence of environmental impact assessment regulations that include provisions for public consultation do not guarantee meaningful participation in project-level decision-making.

Laws providing for public access to information, participation, and justice are relatively new in many of the pilot countries. The failure of many of these laws to have tangible impact is likely the result of bureaucratic inertia and a lack of sufficient investment in the necessary institutional infrastructure to ensure their implementation. In the meantime, the failure to translate laws into actual practice compromises their ability to have any real impact on citizens' access to decision-making.

National systems are evolving rapidly. Another general finding of this report is that national systems of public participation are evolving rapidly. Indeed, the bulk of pilot country legislation in support of the access principles has taken place in the past decade, a fact that illustrates how rapidly systems of public participation can change. Early attempts to develop PRTRs at local and national levels in the 1980s have now evolved into efforts to harmonize emissions reporting at regional and international levels. Attempts by civil society to monitor the creation and implementation of systems of public participation must evolve alongside these systems. New legislation, increased government investment in its own capacity, or the drafting of new regulations, for example, can substantially

alter a system of public participation and shift priorities for action to improve performance. The indicator framework used to conduct the pilot assessments can be applied repeatedly to track this evolution and identify new priorities for action.

Specific Findings and Conclusions

The nine national assessments, taken together, also highlight commonalities among the national systems within each of the three principles. These include specific areas of accomplishment, areas in which some progress has been made, and still other areas that require much more work and development.

Common areas of accomplishment

Governments provide detailed state of the environment reports. Most pilot country governments have produced comprehensive state of the environment reports on a regular basis in the past decade. These reports are, by and large, accessible at little or no cost to citizens and contain a wealth of information about the local environment. Colorful charts and nontechnical language often make these reports easier for the general public to understand than more technical research reports or raw data.

Government performance in providing information about large-scale emergencies is strong. When environmental emergencies are of sufficient magnitude to attract widespread media coverage and/or international attention—the volcano eruption outside Mexico City, for example, or the gas well explosion in

Pusztazölös, Hungary—government performance in providing access to information tends to be strong. In such cases, government agencies quickly disseminate timely and accurate information to affected populations. The cause of the emergency is identified and publicized, as is its potential short-term impacts on both human health and the surrounding environment.

Common areas of progress, with room for improvement

Air quality information is available but insufficiently detailed. Integrated systems of air monitoring in urban centers have helped to guarantee citizen access to information about air quality. In Santiago and Bangkok, for example, integrated air monitoring systems make it easy for people to find out when pollution in their city's air is approaching an unhealthy level. However, the information available to the public frequently lacks specific details on the sources and composition of pollutants, or it is offered in only one form, which is insufficient to meet all needs.

Participation in decision-making processes is concentrated in the middle of the decision-making cycle. Citizens in the nine pilot countries were frequently afforded opportunities to participate in selected cases of national environmental policy-making and local and regional planning. Individual examples, such as the drafting and implementation of the National Forest Policy in Uganda, demonstrate how valuable this participation can be in shaping better decisions incorporating both development and environmental objectives. However, govern-

ment efforts to encourage participation proved highly variable, tended to occur too late to meaningfully affect the scope and nature of the decision, and did not continue through the implementation phase of the decision-making cycle.

Common challenges

Environmental information about industrial facilities is inaccessible. In most of the pilot countries, citizens cannot get information that would tell them whether an industrial facility complies with environmental standards. Official reports on facilities' compliance with environmental standards, when they even exist, are inaccessible to the public. For example, when the Thai assessment team submitted an information request to a government agency, they were told that it would be prohibitively time-consuming for the agency to locate its own copies of the documents requested. Though some pilot countries are considering new systems for reporting on facility-level environmental performance, similar to the U.S. Toxics Release Inventory, most of these systems are years away from being implemented.

Information about water quality is difficult to access. In many of the pilot countries, information about water quality is scattered among numerous agencies, making it difficult to obtain. In the absence of easy access to integrated information about water quality, citizens cannot know if the water they are drinking—whether drawn from a river or a well, from a lake or from the tap—is safe. Integrated systems of electronic information maintained by the government—and analysis of that data, such as

has been provided by NGOs in California and Rand Water in South Africa—would help to ensure that citizens could access information about the quality of their water. As yet, however, few of the pilot countries have such integrated water monitoring information systems in place.

Meaningful participation in sectoral policy-making is rare. Examples of decision-making processes not explicitly focused on the environment in the pilot countries suggest that citizen participation is minimal. Major decisions on energy sector reform, forestry, and mining are often made without broad public input and consideration of environmental concerns and ideas. Authorities sometimes do not perceive local communities or public interest groups as legitimate stakeholders in such decisions. By categorizing these decision-making processes as “technical”—and therefore the prerogative of “experts”—governments relegate citizens to the role of observers despite the insights they may have to offer on unanticipated environmental impacts, how to manage anticipated environmental impacts, or what risks are acceptable to the public. As a result, the environmental concerns and knowledge of the broad public are rarely incorporated into development decisions.

Meaningful participation in project-level decision-making is limited. All cases examined illustrate that participation in project-level decision-making is limited with regard to who participates or when this participation takes place. As a result, project-level decisions rarely benefit from public knowledge or reflect public concerns, particularly because most public

consultation takes place well after the project design and/or siting has been drafted by government authorities or corporate officials. High-visibility projects such as the Mexican Xcel-Xcelito Hotel Complex—situated close to an extremely sensitive protected area—attracted more attention from the public and from public interest groups, and elicited greater government efforts to promote participation. Other projects, such as Mexico’s Topolobampo Port Facility, attracted less attention and elicited fewer government efforts to promote participation.

Enabling conditions for access to justice are inadequate. There are wide variations in the enabling conditions for access to justice in the nine pilot countries. In many of the pilot countries, limited or restrictive interpretations of standing and a lack of legal definitions of what constitutes “the public” or “the public interest” constrain the ability of individuals or groups to use the system of justice to demand access to information or participation. Administrative or judicial review processes for specific decision-making processes are rare. And the costs of access to justice are, by and large, too high to enable ordinary people in the pilot countries to seek redress.

These strengths and weaknesses—considered side by side—offer a useful snapshot of the current state of national public participation systems in the pilot countries as a group. They make it possible to identify factors that support or hinder better performance and suggest several broad recommendations. Each of these will now be examined in turn.

Factors Affecting Performance

The nine national assessments suggest that several common factors influence the ability and the effort of government agencies to provide information to the public, engage citizens in decision-making, and create enabling conditions for access to justice.

Domestic Factors

Media attention drives improved performance. The media are clearly a powerful factor in generating both supply and demand for information, participation, and justice. Cases drawn from the pilot countries and selected countries in Central and Eastern Europe suggest that media coverage can push governments to disclose certain information, consult the public on some decisions, and hold both public and private actors accountable for their environmental performance. The media can draw public attention to environmental issues or the environmental consequences of pending decisions, provide a forum for dialogue and public input, and play a vital capacity-building role in educating citizens through regular reporting on environmental issues. While the national teams found that levels of media attention to environmental issues were high, the quality of coverage was variable. This suggests that the media have not yet fulfilled their potential as a catalyst for promoting public participation in decision-making affecting the environment.

Public demand for access drives improved government supply. The national assessments also strongly suggest that public demand is a critical factor that results in improved government performance in providing access to

information, decisions, and justice. Active public demand for implementation of the access principles is particularly important, given that in many of the cases of decision-making processes that were assessed, the onus of initiating participation was placed on the public or affected communities. As representatives of the public interest, NGOs are frequently the engine driving the demand for access, calling for increased public participation while simultaneously proposing alternative solutions to environmental problems. For example, the Slovakian government—faced with strong and vocal public demands for public participation in the drafting of its energy policy—consulted with various groups and ultimately incorporated several of their suggestions in the energy policy. Yet governments all too often fail to create conditions that support NGO activity; in some cases, they actively seek to control the behavior of NGOs by imposing onerous requirements for registration or by restricting their access to diverse sources of funding.

Performance is constrained by limited institutional infrastructure and capacity. A third factor affecting performance is that government agencies in many of the pilot countries lack the capacity to create effective systems of public participation. Once legislation is passed mandating implementation of the access principles, provisions to implement these laws must follow. Yet even with such provisions in place, there are still no guarantees that good practice will result without further investment in institutional infrastructure. Water quality information is fragmented in most of the pilot countries because the governments have not created centralized systems for integrating such information.

Development of staff capacity in government agencies to implement public participation procedures is also essential. For example, a government agency might be willing to disclose information about industrial facilities' compliance with environmental regulations but may lack staff designated to respond to requests. The pilot assessments reveal that governments frequently fail to provide the training necessary for their officials to understand that they need to do to comply with existing laws and procedures. Investment in public awareness of the elements of the national participation system and how to use them—or development of capacity on the demand side—is also necessary for the system to function effectively. Yet according to the national assessments, information on how to obtain information or whom to approach with a request is often hard to come by.

In summary, there are several factors at the national level that drive or constrain improved performance. Media attention can catalyze public demand for access to information and decision-making processes, which can in turn drive improved government response. However, both the government “supply side” and the public “demand side” require strengthening through the development of institutional infrastructure and staff capacity in the former, and improved conditions for NGO activity and public awareness in the latter.

International Factors

International attention prompts improved performance. Just as domestic media attention can generate public demand and improved government performance with regard to provid-

ing public access to information in environmental emergencies, so too can international attention. In three of the cases examined in this report—the fish poisoning in Lake Victoria in Uganda, the Tisza River spill in Hungary, and the heavy metal pollution of the Silva Reservoir in Mexico—international attention played a crucial role in encouraging governments to be forthcoming with information about the emergencies.

International donors can support or undermine national law and practice. International donors—both bilateral and multilateral—can play an important role in promoting implementation of the access principles at the national level. International donor agencies have supported the introduction of PRTRs, the publication of national state of the environment reports, the development of legislation, the creation of central national systems for environmental information, the training of civil servants, and other activities supportive of access in the pilot countries. In Indonesia, for example, the World Bank helped the government develop the PROPER system for tracking industrial pollution, and it is now working with the governments of China, India, the Philippines, and Thailand to introduce similar systems.

The Ugandan national team observed that “government sectors/programs that have significant donor funding seem to be more systematic in generating and disseminating information and have a more open policy of information disclosure. These sectors or programs are also more effective in engaging the public in decision-making processes.” The improved performance associated with donor support may result

from the availability of additional resources, pressure to conform to donor policies, or a combination of the two. However, donor agencies do not always exercise their influence in support of access. In its financing of the Klong Dan wastewater treatment facility in Thailand, the Asian Development Bank did not require the Thai government or the project developer to respond to demands for participation in accord with its own policies. Thus, donors can influence national public participation systems in two ways: by providing funding and expertise to build capacity, and by adhering to the principles of public participation in their own operations in recipient countries.

International agreements and institutions can promote upward harmonization of access. International agreements and institutions have also played a role in promoting the integration of the access principles into national legal frameworks. Through their participation in various vehicles for regional and global cooperation, national governments take on both binding and nonbinding commitments to improve the framework for implementation of the access principles. For example, the widespread adoption of environmental assessment regulations requiring information disclosure and public consultation is in many countries an expression of government efforts to implement the commitments they made in Rio. In Hungary, participation in the Aarhus Convention has spurred law-making and infrastructure development related to public participation. Hungary's legislation mandating the development of a PRTR was developed in response to the European Union's requirements for accession.

In summary, attention from the international community—including the media spotlight and donor resources—can support improvements in access at the national level. In addition, international agreements and institutions can spur upward harmonization of national access policies to conform to emerging international norms.

II. RECOMMENDATIONS

The findings and conclusions summarized in this chapter suggest a number of recommendations to accelerate the development of effective national systems of public participation. These general recommendations are directed to both national and international policy arenas, and to actors spanning various government and non-government stakeholder groups.

General recommendations

Independent assessment and regular monitoring should be supported as the first step toward improved performance. This report makes clear the urgent need for civil society to assess national public participation systems and monitor government efforts to improve performance. The initial response to the findings of the nine national assessments indicates that such assessments are a powerful tool to stimulate dialogue and action to improve performance. Independent assessment by civil society can identify gaps in law and practice and provide a platform for multi-stakeholder dialogue about priorities for investment in new legislation, institutional infrastructure, and capacity building on both the supply and demand sides. Regular monitoring

can track government progress in addressing gaps. Public interest groups and the media can use the results of independent assessments and monitoring to nudge, cajole, or shame governments into guaranteeing not just law but also effective practice of the access principles, and recognize achievements over time.

The international community should support refinement and application of a common assessment tool to support national implementation. The nine national assessments summarized in this report suggest that governments of diverse countries can be assessed using common standards of performance. The methodological framework used in the pilot assessments required only minor modifications to be adapted to specific national conditions. However, the pilot assessments also revealed many ways that the methodology could be strengthened and streamlined to support more effective and efficient applications. In addition, clearer guidelines on case selection, research methods, and review can improve the credibility and comparability of results. Thus, further investment is needed in refining the methodology and providing assistance to ensure adherence to common standards in its application.¹

As national systems of public participation evolve and norms of best practice evolve along with them, so too must monitoring efforts be continuously improved. The availability of results from other countries using a common framework provides a comparative perspective, spurring efforts toward upward harmonization of law and practice. Thus, the international community should support efforts to continu-

ously upgrade a common assessment methodology and a mechanism for sharing best practices across countries.

Efforts to improve national systems should include attention to all three principles. For national systems of public participation to be effective, each of the three principles must be sufficiently well developed to play its role in supporting the other two, in terms of both law and practice. Without detracting from continued progress in promoting access to information, increased effort is needed to improve the law and practice supporting public participation, and a particular emphasis is needed to improve the enabling conditions for access to justice. Balanced investment across all three principles is required if national systems of public participation are to function effectively. Box 7.1 provides specific examples of actions needed to improve performance for each of the three principles.

Where the legal framework for access is in place, efforts should focus on closing the gap between law and practice. Investment is needed within each of the access principles to address gaps between law and practice. Proponents of improved access—within governments, donor agencies, and advocacy groups—may be tempted to think their work is done when framework legislation is in place. But the national assessments demonstrate that the law is only the first step. Continuing effort is needed to elaborate implementing provisions and regulations that give effect to the law, and institutional infrastructure and staff capacity must be built to realize its intent.

In order to close the gap between law and practice, governments must invest in their own capacity to implement elements of the national participation system, while at the same time building the capacity of the public to use that system. Strengthening the “supply side” requires, among other things, greater investment in training government officials and political leadership to change bureaucratic cultures hostile to transparency and accountability. Strengthening the “demand side” requires environmental education programs as a long-term investment in the capacity of the public at large to provide informed input to decision-making. In the near term, investment is needed to make the public aware of the specific offices and procedures that are in place and responsible for disseminating information, facilitating input into decisions, and offering avenues for redress.

Public interest groups and the media should be encouraged to play their roles in facilitating access both vigorously and responsibly. Improving the performance of national public participation systems also requires the creation of a supportive environment in which public interest groups and the media—two engines driving demand for access—can flourish. Governments must relax onerous registration requirements for NGOs and reform their tax systems to encourage citizens to support public interest advocates. Newspaper, radio, and television outlets should be encouraged to investigate cases where government officials have unlawfully withheld information or excluded citizens from decision-making processes. At the same time, media coverage of environmental issues must be held to a high quality standard, presenting

BOX 7.1

ILLUSTRATIVE RECOMMENDATIONS FOR ACTION AT THE NATIONAL LEVEL

For improving access to information:

- Clarify definitions of what information is in the public domain and what information is confidential to reduce administrative discretion.
- Introduce common reporting standards for industrial facilities and procedures for public access to facility-level reports.

For improving public participation:

- Establish mechanisms for public notice and comment on projects and policies beyond the narrowly-defined “environmental” arena.
- Revise participation procedures to extend them to the earliest phases of the decision-making cycle, as well as to the implementation and review stages.

For improving access to justice:

- Broaden the interpretation of “the public” and “standing” to open the system to public interest groups and citizens who may not be able to prove direct harm.
- Invest in the training of judges and other officials to ensure that they are familiar with rapidly changing laws related to environmental procedural rights.

even-handed analysis alongside the viewpoints of a variety of different stakeholders.

The international community should support national efforts through donor assistance and incorporation of access norms into international institutions and agreements. International donor agencies can promote access both by supporting the development of access systems as a funding priority and by revising their policies and practices to ensure greater access to information, participation, and justice in their own operations. Bilateral donor agencies are well placed to provide direct support to the demand side of national public participation systems, including public interest groups. Multilateral development banks, in particular, must set the bar high in modeling best practices in information disclosure, participation, and accountability in the context of both lending operations and policy advice to national governments. In addition to adhering to standards in their own operations, which government agencies can seek to emulate, all donors can assist national governments with the necessary financial, institutional, and political support to create working systems of public participation.

International institutions and treaties must also continue to play a role in promoting the implementation of the access principles at the national level. By mandating that signatories maintain a certain minimum standard of information disclosure, international agreements such as the Aarhus Convention can have a positive impact on national systems of public participation. Trade blocs such as the European Union and the North American Free Trade Area can require their members (or even prospective members) to establish PRTRs. In short, international agreements and institutions can be

used—either explicitly or through nonbinding arrangements—to incorporate access into national policy frameworks. In addition, international institutions can model best practice in information disclosure, participation, and accountability within their own deliberations.

Recommendations for specific institutional actors

Clearly, implementation of these general recommendations requires actions from a variety of stakeholders operating in both national and international policy arenas. It further requires collaboration among those stakeholders, working together toward common objectives. Specific roles for specific institutional actors are summarized in Box 7.2.

Final thoughts

Ten years after the Earth Summit in Rio, the implementation of Principle 10 at the national level remains an unfinished project. While much progress has been made in ensuring meaningful public access to information, participation, and justice in environmental decision-making, much remains to be done. The need for continuing commitment, investment, and attention to this agenda at both national and international levels and across stakeholder groups is clear. The findings presented in this report suggested that independent assessment and regular monitoring should be a priority instrument for leveraging improved performance in the decade following the World Summit on Sustainable Development in Johannesburg.

RECOMMENDATIONS FOR SPECIFIC INSTITUTIONAL ACTORS

Government agencies should:

- Support independent assessment and monitoring, and collaborate with other stakeholders to identify gaps and set priorities for improvement
- Balance efforts to improve law and practice across all three principles
- Once a legal framework is in place, focus on closing gaps between law and practice through development of institutional infrastructure and staff capacity
- Invest in improving the capacity of the public to access the public participation system
- Create favorable enabling conditions for public interest groups and the media

Civil society organizations should:

- Undertake independent assessment and regular monitoring using common frameworks and methods
- Collaborate with government and other stakeholders to identify gaps and set priorities for improvement
- Stimulate and channel public demand for access to information, participation, and justice
- Build their own capacity, and that of affected communities and the general public, to access the public participation system

Media outlets should:

- Investigate and call attention to lapses in performance by governments in providing access to information, participation, and justice
- Provide high-quality coverage of environmental issues and a forum for diverse views on environmental decisions

Donor agencies should:

- Support continuous improvement of a common assessment methodology and mechanisms for international exchange of best practice
- Provide financial, institutional, and political support for development of national public participation systems
- Support capacity building on both the supply and demand sides
- Model best practices of information disclosure, participation, and accountability in their own operations

International institutions and agreements should:

- Incorporate provisions to stimulate the upward harmonization of implementation of the access principles in participating countries
- Model best practices of information disclosure, participation, and accountability in their own deliberations

Endnote

1. The Access Initiative is developing a manual to serve as a “how-to guide” to accompany a revised version of the methodological framework used in the pilot assess-

ments. Information on the forthcoming manual is available at <http://www.accessinitiative.org>.

APPENDICES

APPENDIX 1

SELECTION OF EMERGENCY CASES

CASE	IMPACTS ¹	RESPONSE (Actors) ²	INTERVENTIONS ³
Volcano eruption Region surrounding Popocatepetl and Mexico City Mexico June 1997	<ul style="list-style-type: none"> No deaths Thousands of people evacuated Property damage 	<ul style="list-style-type: none"> Local, state, and federal National 	<ul style="list-style-type: none"> Information provided to population at risk and general public Evacuation of high risk areas Monitoring of situation
Flooding disaster Jakarta Indonesia January - February 2002	<ul style="list-style-type: none"> 55,000 evacuated 54 people killed 	<ul style="list-style-type: none"> Center for Controlling Social Tension Search and Rescue Team of Jakarta 	<ul style="list-style-type: none"> Information from mass media Evacuation conducted by private sector Disaster Preparedness Brigade, Health Department has conducted health assessments since the flooding began
Cholera outbreak Kwa Zulu Natal South Africa August 2000 – April 2001	<ul style="list-style-type: none"> 86,107 cases reported and 181 deaths 	<ul style="list-style-type: none"> National, provincial, and local authorities involved in emergency response task force 	<ul style="list-style-type: none"> Daily tracking of reports Regular media reports Media releases, posters, leaflets, road shows in local languages Rehydration centers and water tanks
Cholera outbreak Kampala Uganda 1997-1999	<ul style="list-style-type: none"> A total of 13,911 cases of cholera and 1,777 deaths were reported in September 1998 	<ul style="list-style-type: none"> Cholera task forces were established at different levels of government 	<ul style="list-style-type: none"> Field treatment clinics were established A comprehensive public awareness campaign was launched
Fish poisoning with toxic chemicals Lake Victoria Uganda 29 March 1999	<ul style="list-style-type: none"> 300 fish landing sites closed 	<ul style="list-style-type: none"> A national task force was created to address the problem; Task forces from national landing sites were established to monitor use of poison on the lake. 	<ul style="list-style-type: none"> Approximately 30 people jailed and sentenced to a term of 7 years or a \$2,000 fine A comprehensive public awareness campaign was launched A delegation of Ugandan government officials visited the European Union to pre-empt the possibility of a ban on Uganda's fish exports New regulations on fish quality standards promulgated. Fisheries Resources Department was given mandate for quality control of fish.

¹ Health impacts, deaths, property damage, environmental impacts

² Authorities responding immediately to emergency and "highest" authority handling emergency

³ Changes as a result of the incident, information provided

APPENDIX 1 SELECTION OF EMERGENCY CASES			
CASE	IMPACTS ¹	RESPONSE (Actors) ²	INTERVENTIONS ³
Atmospheric pollution emergency Santiago, Chile 26 July 1999	<ul style="list-style-type: none"> • Millions in the metropolitan region were exposed to dangerous concentrations of air pollutants • No deaths or long-term injuries reported 	<ul style="list-style-type: none"> • Metropolitan and federal authorities • National 	<ul style="list-style-type: none"> • Ex-post investigation conducted • Information was provided one day after the emergency
Acrylonitrile truck accident Bangkok toll way Thailand 5 September 2001	<ul style="list-style-type: none"> • People close to the accident felt "unwell" • No deaths reported • No property damage reported • No environmental impacts reported 	<ul style="list-style-type: none"> • Local police, fire fighters, Bangkok Metropolitan Administration, and Department of Medical Sciences • National 	<ul style="list-style-type: none"> • Temporary evacuation of local population • Physical check ups and testing of affected population
Railroad accident with diesel spill Swatuggens South Africa 18 July 1997	<ul style="list-style-type: none"> • No deaths reported • Isolated cases of illness from contamination • Diesel spilled into river used for irrigation and livestock • Fire • Secondary incident (downstream pollution when containment dam collapsed) 	<ul style="list-style-type: none"> • Disaster team including local military, local council, provincial authorities, and rail organization • Provincial 	<ul style="list-style-type: none"> • Information was rapidly disseminated via existing community structure • Verbal communication and notices in local languages • Communication was not timely for secondary incidence
Fire in tire dump Westley Stanislaus County California, USA 22 September – 6 October 1999	<ul style="list-style-type: none"> • Multi-category event including fire, hazardous material release, and oil spill • No deaths or injuries reported • Environmental impacts 	<ul style="list-style-type: none"> • Local, state, and federal authorities • Federal 	<ul style="list-style-type: none"> • Monitoring station established • Citizens exposed to the smoke were given incomplete and untimely information
Fire in Oxiquim chemical factory Viña del Mar Chile 22 March 2000	<ul style="list-style-type: none"> • Two injured; several poisoned • No deaths • Property damage on site of facility, but none reported for surrounding community • More than 30,000 liters of fuel was burned, creating a toxic cloud that covered part of the city • Chemical spill into river 	<ul style="list-style-type: none"> • Company and local fire fighters, police, and mobile medical unit • Regional 	<ul style="list-style-type: none"> • Incomplete and untimely information provided to neighboring communities during emergency • Broad-based and high quality information was available after the emergency

¹ Health impacts, deaths, property damage, environmental impacts

² Authorities responding immediately to emergency and "highest" authority handling emergency

³ Changes as a result of the incident, information provided

APPENDIX 1

SELECTION OF EMERGENCY CASES

CASE	IMPACTS ¹	RESPONSE (Actors) ²	INTERVENTIONS ³
Pusztaszölös gas well fire Pusztaszölös Hungary 18 August - October 2000	<ul style="list-style-type: none"> • 3 people suffered hearing damage • No deaths • No property damage off site • High noise pollution and some air and waste pollution 	<ul style="list-style-type: none"> • Company and local and national authorities in response team • National 	<ul style="list-style-type: none"> • A small number of people moved away from Pusztaszölös for the duration of the event • People in surrounding communities were regularly informed
Fire in Flex Industries Gwalior, Madhya Pradesh, India 2001	<ul style="list-style-type: none"> • 13 workers were injured; 3 were killed • Property damage to facility, no other damage reported • No environmental impacts reported 	<ul style="list-style-type: none"> • Response by company and local fire fighters, police, and mobile medical unit • Local/district 	<ul style="list-style-type: none"> • High risk of explosion of LPG storage tank • No emergency action taken in neighboring communities • No information distributed in neighboring communities • Injured workers were treated
Fire in Supreme Industries Gwalior, Madhya Pradesh, India 2001	<ul style="list-style-type: none"> • No information on injuries • No information on deaths • Property damage to factory grounds, no other damage reported • No environmental impacts reported 	<ul style="list-style-type: none"> • Response by company staff, local fire fighters, and local police • Local/district 	<ul style="list-style-type: none"> • No specific threat to community reported • No emergency action taken in neighboring communities • No information distributed in neighboring communities
Tisza River cyanide pollution Tisza River Hungary 30 January - February 2000	<ul style="list-style-type: none"> • No reported health impacts • No reported deaths • Property damage not quantified • Large numbers of fish and other aquatic species died 	<ul style="list-style-type: none"> • Local and national in emergency task force • National authorities 	<ul style="list-style-type: none"> • Monitoring system created • Ex-post investigation conducted • Health warnings issued • Information provided to affected population and general public
Heavy metal pollution of Silva Reservoir Silva Reservoir, Guanajuato State Mexico 4 December 1994	<ul style="list-style-type: none"> • No reported health impacts • No reported deaths • Property damage not quantified • More than 25,000 birds killed 	<ul style="list-style-type: none"> • Local, provincial, and national • National and provincial authorities 	<ul style="list-style-type: none"> • Ex post investigation of emergency only

¹ Health impacts, deaths, property damage, environmental impacts

² Authorities responding immediately to emergency and “highest” authority handling emergency

³ Changes as a result of the incident, information provided

APPENDIX 1 SELECTION OF EMERGENCY CASES			
CASE	IMPACTS ¹	RESPONSE (Actors) ²	INTERVENTIONS ³
Natural Gas Leak Sumber Village, Kradenan City, Blora, Central Java, Indonesia 25 February 2002	<ul style="list-style-type: none"> • 2 people had difficulty breathing • Noise 	<ul style="list-style-type: none"> • Community health center • Local government of Blora • Task Force of Natural Disaster Management • Pertamina (state oil company) • Blora Police • General Directorate of Gas and Oil 	<ul style="list-style-type: none"> • Evacuation • Information from Pertamina • General Directorate of Gas and Oil established investigation team
Dumping of unshielded radioactive material (Cobalt 60) Pro Pradaeng District, Samut Prakan Province Thailand 18 February 2000	<ul style="list-style-type: none"> • 9 persons admitted for radiation sickness • 3 deaths • No property damage • No environmental damage reported 	<ul style="list-style-type: none"> • Local police, mobile medical unit, Governor's office • National agencies 	<ul style="list-style-type: none"> • Temporary exclusion of local people from site • Medical check-ups of affected population • Ex-post investigation conducted

Source: Access Initiative National Team Reports

¹ Health impacts, deaths, property damage, environmental impacts

² Authorities responding immediately to emergency and “highest” authority handling emergency

³ Changes as a result of the incident, information provided

APPENDIX 2

EXAMPLES OF INITIATIVES TO DEVELOP PUBLIC ACCESS TO INFORMATION ABOUT INDUSTRIAL FACILITIES

	1970–1989	1990–2003
Local	<ul style="list-style-type: none"> • 1974: Netherlands pilot-tests a voluntary pollutant release inventory at the local level. • 1981: Worker right-to-know law adopted in Philadelphia (U.S.). • 1982-1985: Santa Clara county (California, U.S.), Cincinnati, Akron, and Cleveland (Ohio, U.S.) adopt right-to-know laws. 	<ul style="list-style-type: none"> • 1998: Australia conducts PRTR trial in Kalgoorlie. • 1999: Nakaru, Kenya, issues report based on PRTR data.
State/ Province	<ul style="list-style-type: none"> • Later 1970s-1982: Netherlands operates provincial pollutant release inventories. • 1979: New Jersey (U.S.) conducts Industrial Survey. • 1985: California adopts right-to-know law along with at least a dozen other U.S. states in 1980s. • 1989: Massachusetts (U.S.) adopts Toxics Use Reduction Act. 	<ul style="list-style-type: none"> • 1996: Mexico pilot-tests a PRTR in state of Queretaro. • 2000: Aguascalientes, Mexico, starts mandatory PRTR reporting.
National	<ul style="list-style-type: none"> • 1983: Netherlands starts voluntary inventory at national level. • 1986: U.S. Congress adopts Toxics Release Inventory in Environmental Planning and Right to Know Act. 	<ul style="list-style-type: none"> • 1990: United States adopts Pollution Prevention Act. • 1990: United Kingdom adopts Environmental Protection Act and collects data for its first Chemical Release Inventory. • 1992: Norway adopts Pollution Control Act requiring facility reporting. • 1993: Canada collects first data under its National Pollutant Release Inventory. • 1994: Sweden runs pilot PRTR. Denmark adopts “green accounts” law. • 1995: Indonesia issues first public environmental rating of facilities. • 1996: Egypt and Mexico work with UN Institute for Training and Research, which has developed guidelines on PRTRs. • 1997: Netherlands adopts law requiring large companies to report PRTR data starting in 2000. • 1998: Australia collects first data under National Pollutant Inventory. • 2002: Japan collects first data under its PRTR. • 2002: Mexico adopts law making facility reporting mandatory and public.

APPENDIX 2

EXAMPLES OF INITIATIVES TO DEVELOP PUBLIC ACCESS TO INFORMATION ABOUT INDUSTRIAL FACILITIES

	1970–1989	1990–2003
Regional		<ul style="list-style-type: none"> • 1994: North American Commission on Environment publishes first PRTR report. • 1995: EU establishes EcoManagement and Audit Scheme requiring facility reports by companies participating. • 1996: OECD issues PRTR Guidelines and adopts Recommendation on PRTRs. • 1996: EU adopts Integrated Pollution Prevention and Control Directive providing public register of facility emissions. • 1998: Aarhus Convention signed with provision to develop legal instrument on PRTRs. • 1998: Central Asian Republics work with UN Environment Programme on PRTRs. • 2003: EU members to submit first data for European Polluting Emission Register. • 2003: Aarhus PRTR Protocol (open to all countries) to be signed.
Global		<ul style="list-style-type: none"> • 1992: Agenda 21, Chapter 19, calls for countries to establish public chemical inventories. • 1993: International coordinating committee meets to plan implementation of Rio mandate and labels public chemical inventories "Pollutant Release and Transfer Registers (PRTRs)." • 1998: Japan hosts OECD international conference on PRTRs. • 2000: Intergovernmental Forum on Chemical Safety meeting in Brazil issues PRTR Action Plan. The plan calls for report on linking PRTRs to reporting requirements under international agreements and sets goal of two more PRTRs in each region. • 2002: Global Reporting Initiative issues revised guidelines on corporate sustainability reporting. • 2003: Japanese NGOs plan international PRTR conference as first Japanese PRTR data are released. • 2003: Intergovernmental Forum on Chemical Safety meets in Thailand.

Source: Frances Irwin. 2002. "Information about Pollution from Industrial Facilities." Draft report. Washington, D.C.: World Resources Institute. On file with author. Irwin working paper.

APPENDIX 3

LAWS AND VOLUNTARY APPROACHES TO FACILITY
REPORTING IN PLACE IN THE PILOT COUNTRIES

Country	Status
Chile	<p>COMPLIANCE</p> <p>Air and water pollution control laws require compliance but have no provisions for providing data to public.</p>
Hungary	<p>COMPLIANCE</p> <p>1995 Environmental Code requires companies to report compliance with emission limits but has no specific provision to disseminate data to public.</p> <p>Government maintains public registers of facility information, but access to these is not always easy.</p> <p>PRTR</p> <p>PRTR authorized under chemical safety law in 2000; draft order at stage of interdepartmental harmonization. Currently focused on developing EU's European Pollutant Emission Register.</p> <p>VOLUNTARY</p> <p>About 20 companies issued independent voluntary reports about their environmental performance; four companies issued reports under the EU's Eco-Management and Audit Scheme; 281 companies issued reports to comply with ISO (International Standards Organization) 9000/14001.</p>
India	<p>COMPLIANCE</p> <p>Water (Prevention and Control of Pollution) Act of 1974 and Air (Prevention and Control of Pollution) Act, 1981, require state Pollution Control Boards to maintain public registers containing conditions in permits but not results of monitoring.</p> <p>VOLUNTARY</p> <p>Some companies participate in ISO but provide only general policy information.</p>
Indonesia	<p>COMPLIANCE</p> <p>Environmental Management Act #23, 1997, recognizes right to environmental information, including results of compliance monitoring and license for activities with environmental impact.</p> <p>Program for Pollution Control, Evaluations, and Reporting (PROPER) publicizes company ratings from gold to black based on compliance data. Put on hold in wake of financial crises of 1997-1998.</p>

APPENDIX 3

LAWS AND VOLUNTARY APPROACHES TO FACILITY
REPORTING IN PLACE IN THE PILOT COUNTRIES

Country	Status
Mexico	<p>COMPLIANCE</p> <p>Companies must submit a Certificate of Operation (COA) and keep it updated, but are under no obligation to make data public. In the past, facilities were required to report air emissions.</p> <p>PRTR</p> <p>The RETC (a PRTR) is voluntary. Legislation adopted in 2001-2002 will make reporting of the RETC mandatory and make the information public.</p>
South Africa	<p>COMPLIANCE</p> <p>Laws on air pollution and waste require reporting to government. Reports from waste sites public. Some companies provide data to public voluntarily.</p> <p>Law reform includes plan for integrated waste management with database covering facilities accessible to the public.</p> <p>PRTR</p> <p>Exploring possibility of PRTR.</p>
Thailand	<p>COMPLIANCE</p> <p>Legal mandate to report compliance on air and water releases to Department of Industrial Works quarterly, but no mandate to disseminate the data and no explicit commercial confidentiality policy.</p> <p>PRTR</p> <p>Some exploration of PRTR and rating systems.</p> <p>VOLUNTARY</p> <p>Thailand Industrial Standards Institute (TISI) promotes ISO 14000.</p>
Uganda	<p>COMPLIANCE</p> <p>Law requires reporting to government but does not mandate making data public. Broad protection of commercial confidentiality.</p>
United States	<p>COMPLIANCE</p> <p>Permits require monitoring, record keeping, and reporting to government under Clean Air Act and Clean Water Act. Much of data accessible to public through Environmental Protection Agency databases.</p> <p>PRTR</p> <p>Under Toxics Release Inventory, facilities report amounts of any of about 650 chemicals released to air, water, or soil, and transfers in waste. Data made available electronically through EPA and non-governmental group databases.</p> <p>VOLUNTARY</p> <p>National Performance Track requires participating companies to have an environmental management system and to set goals and report performance. Several hundred participating companies. First reports in spring 2002.</p>

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