

## Introduction

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The Constitution of the Kingdom of Thailand, B.E. 2540 (1997) clearly states that the State has duty to promote public participation in environmental management as shown in Section 79 as follows:

*The State shall promote and encourage public participation in the preservation, maintenance and balanced exploitation of natural resources and biological diversity and in the promotion, maintenance, and protection of the quality of the environment in accordance with the principle of sustainable development as well as in the control and elimination of pollution affecting public health, welfare, and quality of life of the people.*

Moreover, Section 76 also requires that the State shall promote and encourage public participation in policy-making, making decision on political issues, preparing economic, social, and political plans, and inspecting the exercise of State power at all levels.

Thailand presently has experienced growing concern and awareness of the importance of public participation in environmental management and accordingly revised laws and regulations to ensure meaningful public participation. However, when Thailand Environment Institute and its coalition conducted the first national assessment on public participation (pilot testing of indicators) in 2001, it was found that there still were gaps between laws and practice concerning access to information, public participation, and access to justice, and that there was significant room for improvement. To develop an effective national system of public participation, an important process to stimulate the implementation towards this goal is monitoring, evaluating, and promoting public participation in environmental management on a regular and continuing term.

**Thailand's State of Environmental Governance Report 2005 (2<sup>nd</sup> Assessment)** presents the findings of the second national assessment following **Measurable Good Governance: Indicators for Public Participation in Environmental Management** (Thailand Environment Institute, King Prajadhipok's Institute, and NGO-Coordinating Committee on Development, 2002), which is the first national assessment (pilot testing of the indicators) on public participation in environmental management mentioned above.

### **The Development of Indicators for Public Participation in Environmental Management**

During the United Nations Conference on Environment and Development (UNCED), also known as the "Earth Summit", held in Rio de Janeiro, Brazil, in 1992, 5 important documents were signed. One of them was the "Rio Declaration on Environment and Development", which over 170 UN-member countries have adopted it as guidelines for their own national development. The international community agreed, as documented in the Principle 10 of the Rio Declaration, that environmental issues are best handled with public participation, with the public authorities playing a supportive role in enabling people to access information, decision-making process, and justice. These three "access principles" are recognized by countries worldwide that are very important concepts for environmental management and should be incorporated into national legal framework and actual implementation.

By realizing the importance of monitoring government's progress on national implementation of Principle 10, five civil society organizations from five countries (covering five continents) have come together to develop indicators to measure public participation in environmental management. The five organizations that initiated such indicator framework include the World Resources Institute (United States, North America); the Environmental Management and Law Association (Hungary, Europe); the Corporacion Participa (Chile, South America); the Advocates Coalition for Development and Environment (Uganda, Africa); and the Thailand Environment Institute (Thailand, Asia). These indicators are based on the three pillars highlighted in Principle 10 of the Rio Declaration as follows:

- 1) Access to information
- 2) Access to decision-making
- 3) Access to justice

Because these three access principles focus on the importance of "access", the core team organizations called their initiative "**The Access Initiative**" (TAI)<sup>1</sup>. The development of the methodological framework underwent systematically through the process of collaborative reviews by experts from governments, international organizations, the academic community and non-governmental organizations (NGOs). As a result, the indicators of TAI are recognized as international-level indicators. The indicator framework has been pilot-tested in nine countries in different regions of the world, including Chile, Hungary, India, Indonesia, Mexico, South Africa, Thailand, Uganda, and the United States (in California and Ohio). In each respective country, the pilot-test was conducted by a national coalition comprising a lead organization, interest organizations, academics, and other experts.

In addition, the results of the national pilot tests in the nine countries were compiled and published in a global report, **Closing the Gap: Information, Participation, and Justice in Decision-Making for the Environment**. This publication was launched at the World Summit for Sustainable Development (WSSD) during August 26 to September 4, 2002 in Johannesburg, South Africa. One outcome of this gathering was the launching of "Type 2" partnerships, which are collaborations between non-governmental organizations (NGOs), governments, and international organizations. TAI launched a type-2 initiative, The Partnership for Principle 10 (PP10), which emphasize the implementation of the Principle 10 of the 1992 Rio Declaration. To date, PP10 partners include 10 governments, 4 international institutions, and 22 non-governmental organizations. For more detailed information on PP10, please see [www.pp10.org](http://www.pp10.org).

As for the progress of TAI assessment, the results of pilot-test assessments in nine countries contributed to the improvement of the TAI methodological framework. Currently, national TAI coalitions (led by civil society organizations) of more than 20 countries worldwide have evaluated or currently assessing degree of their public participation by using TAI indicators. For more detailed information on TAI, please see [www.accessinitiative.org](http://www.accessinitiative.org).

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<sup>1</sup> At present, TAI is led by six organizations, in which the latest member is Iniciativa de Acceso-México (IA-Mex), a civil society organization in Mexico.

## **The Assessment on Public Participation in Environmental Management in Thailand**

In this 2<sup>nd</sup> assessment, Thailand Environment Institute, together with King Prajadhipok's Institute, Sustainable Development Foundation, Project Policy Strategy on Tropical Resource Base and experts from various organizations jointly established a **"Thailand's Coalition for Good Environmental Governance"** in order to track the progress of public participation in environmental management in the country. In this assessment, five experts from governmental sector were invited to join the Research team in order to create coordination between the government and civil society organizations in promoting meaningful public participation. The number of national coalitions, therefore, has been increased totaling of 17 persons (11 researchers and 6 research assistants). To assure the quality of the findings from the assessment, a National Advisory Panel was established. The Panel included a total of 16 experts in relevant fields and representatives from stakeholder organizations associated with the case studies. In this assessment, 22 case studies were used to evaluate the degree of access to information, public participation and capacity building in practice and the assessment was conducted during late November 2004 and beginning of March, 2005.

After having three Review Forums, where the Advisory Panel provided comments and suggestions regarding the findings and the indicators, and the subsequent revisions of the findings, the coalition held a **"Seminar on Good Environmental Governance: Public Participation Indicators for Thailand's Sustainable Development (2<sup>nd</sup> Assessment)"** on July 25, 2005. The purpose of organizing the seminar was to disseminate the findings, collect opinions and suggestions from participants, raise public awareness and stimulate dialogues with the government on the implementation of the Access principles. Approximately 200 participants from all sectors including government agencies, private enterprises, local administrations, non-governmental organizations focusing on environment and legal issues, community groups, academics, press, and general public, attended the seminar. The Research Team has included opinions and recommendations from the seminar in the Thai edition of this report. Moreover, the opinions and recommendations from the seminar together with those from the advisory panel meetings have also been submitted to the global TAI coalitions for further improvement of the indicators.

Thailand Environment Institute and the National Coalition for Good Environmental Governance hope that this report will stimulate interests, create understanding and enhance awareness of general public and government officials in good environmental governance and public participation. This assessment also showed a good collaboration between civil society organizations and government agencies as representatives from government agencies had joined the Research team and involved in the Advisory Panel. This is viewed as a starting point for further collaboration in supporting a regular and continuing monitoring of government's efforts to promote public participation. It is expected that the findings and recommendations will contribute to policy and action changes in such a way that they proactively ensure people's access to information, decision-making and justice, and thus responsive to the intentions of both Thailand's Constitution and the Principle 10 of Rio Declaration.

Urbanization and Environment Program  
**Thailand Environment Institute**  
July 2005

## Acknowledgements

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The Urbanization and Environment Program of the Thailand Environment Institute (TEI) would like to sincerely thank every individual and organizations for their kind cooperation during the project "Good Environmental Governance: Public Participation Indicators for Thailand's Sustainable Development (2<sup>nd</sup> Assessment)". We would like to express our deep gratitude to all researchers from various organizations as shown their list on page vii, who dedicated themselves to the assessment. We are grateful to the Advisory Panel who kindly provided recommendations on the assessment, the selected case studies, and reviewed the draft findings of the assessment which had helped assure the quality of the report. We would like to thank everyone who participated in the "Seminar on Good Environmental Governance: Public Participation Indicators for Thailand's Sustainable Development (2<sup>nd</sup> Assessment)" on July 25, 2005, and for their useful opinions for this assessment and further assessments.

This second assessment of public participation and the publication of the findings would not happen if we did not receive kind supports from the British government (UK Government's Global Opportunities Fund), which is an active partner of Partnership for Principle 10 (PP10), for their financial support for the assessment. We are also grateful to the Canadian International Development Agency (CIDA), the Development Cooperation Foundation (DCF), and the Research and Development Office of the King Prajadhipok's Institute (KPI) for their financial support for organizing the Public Review Seminar and publishing this report.

The Urbanization and Environment Program of the Thailand Environment Institute (TEI) are deeply grateful to the British government and all organizations mentioned above for their support in promoting good environmental governance in Thailand.

On behalf of the Research team, we would greatly appreciate further comments and suggestions, as well as possible corrections, for the continued improvement of the indicators. Finally, we apologize for any possible mistakes that appear in the findings.

Urbanization and Environment Program  
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July 2005

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# The Methodological Framework

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The part describes the assessment method undertaken by the Research team that used a set of indicators assessing how well the government promotes public participation in environmental management. The assessment was conducted through case studies and reviewed by a National Advisory Panel. The details of the assessment methodology are given accordingly.

## 1. Research Team

In the assessment, the Research Team consists of researchers who had invaluable knowledge, experience and interest in the area of public participation in environmental management. The researchers are representatives from civil society organizations including Thailand Environment Institute, King Prajadhipok's Institute, and the Sustainable Development Foundation, and academics from other institutes. A full list of the members of the Research team (17 persons in total) can be seen on page vi. It should be noted that a collaborative assessment approach was used in this assessment rather than an independent assessment used in the previous assessment (pilot test in 2002). Accordingly representatives from government sector were also invited to join the Research team.

By using the collaborative assessment, it was expected that researchers from civil society sector and government sector would learn problems concerning public participation which are outcome of the assessment together. This collaborative assessment also gave a chance for both sectors to learn each other and share their experiences, which could lead to a sense of ownership among researchers. In this light, the assessment was expected to create a common understanding of public participation and to develop the collaboration into a collective effort towards improving public participation in accordance with the Principle 10 of the Rio Declaration.

## 2. The Access Initiative (TAI)'s Indicator Toolkit

Principle 10 of the "Rio Declaration on Environment and Development" states that

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

The Access Initiative (TAI), a global coalition of public interest groups, has developed a set of indicators (research questions) to help civil society groups

measure how well is the government performing on public participation in environmental management. The indicator framework is framed under three pillars highlighted in Principle 10 of the Rio Declaration as follow:

- 1) Access to information
- 2) Access to decision-making (public participation)
- 3) Access to justice

The TAI indicator toolkit also includes a set of indicators measuring the government's efforts to build the capacity of the public to ensure that people have knowledge, skills, and support to obtain environmental information, and meaningfully participate in decision-making process.

The indicator framework used in this assessment was tested and subsequently improved by nine pilot-test national teams including Thailand, which was led by Thailand Environment Institute since 2001. This assessment had used the latest set of indicators named **Assessing Access to Information, Participation, and Justice for the Environment: A Guide (version 1.1)**. At present, the TAI research team is in the process of developing the next version of the TAI indicators- Version 2.0, which is built on the assessment experience of TAI national coalitions in over 20 countries. The TAI Version 2.0 indicators are expected to be released to the public by the beginning of 2006.

The indicator version 1.1 has 125 indicators in total, comprising 1) law indicators and 2) practice indicators. Law indicators evaluate the general legislative and judicial framework for guaranteeing access, while practice indicators are applied to selected case studies to examine real-world conditions. Using both types of indicators allows the Research teams to identify gaps between a country's policies and its actual implementation of the Access Principles.

These indicators are applied to measure access to information, participation in decision making, and capability building for meaningful public participation. However, the set of indicators measuring access to justice is still under development. Hence, the assessment of access to justice has not yet undertaken in this assessment.

In this report, law indicators concerning access to information, participation in decision making, and capability building are grouped into Chapter I. Practice indicators appeared in Chapter II (access to information), Chapter III (public participation) and Chapter IV (capacity building), are designed to evaluate performance in certain case studies selected by the Research team. The relation between the chapters is shown in Table 1.

With regard to the scope of the assessment, TAI has provided a guideline on how to adapt the methodology to fit each country's goals and situation. Subsequently, two kinds of indicators are identified, which are **priority indicators** and **non-priority indicators**. Priority indicators are those considered most important by TAI and that all national assessment teams are required to choose in order to maintain a minimum baseline of information. Non-priority indicators are those which each national assessment team can choose where appropriate. Moreover, new indicators, can be added to address topics not included in this toolkit but important in that country.

To indicate which ones are priority indicators, an asterisk (\*) was marked after the end of the indicator title, for example, **I.A.1 The right to access to public information\***. It is worth of note that the priority indicators are arranged firstly in the table of indicators in all categories and chapter.

**Table 1: Relations between chapters and categories**

<b>Chapter I General Legal Framework Supporting Public Access to Information, Participation and Capacity Building for Public Participation in Environmental Management</b>		
Category I.A. General legal framework supporting access to information	Category I.B. General legal framework supporting participation in decision-making affecting the environment	Category I.C. General legal framework supporting capacity building
<b>Chapter II Access to Information</b>	<b>Chapter III Public Participation</b>	<b>Chapter IV Capacity Building</b>
Category II.A. Information about environmental emergencies	Category III.A. Participation in national or sub-national decision-making on policies, strategies, plans, programs, or legislation	Category IV.A. Efforts of the government to build its own capacity to provide information, utilize public participation and ensure justice
Category II.B. Information from regular monitoring	Category III.B. Participation in project-level decision-making	Category IV.B. Government efforts to build the capacity of the public to exercise the access principles
Category II.C. State of the environment reports		
Category II.D. Facility-level information		

### **3. Case Studies (For Chapter II-IV)**

Measuring only the existing laws supporting public participation may not effectively reflect the actual implementation of the government in promoting public participation as articulated by the laws. Case studies, or cases, are examples that allow the Research team to examine access in practice and to gain insight into that particular area. Also, given the environment covers a wide range of subject areas, specific sectors and cases considered important for the public were selected.

Applying the indicators to selected case studies help the Research team examine whether the Access Principles are actually being implemented. Case studies are very important to the researchers to be able to study the incidents or events in detail. Also, because the environment issue is very broad, the researchers have selected only the cases that are crucial to the public.

In the context of this assessment, "case study" refers to a study of an example used for assessing practice in providing access to information, participation, or capacity building. A case study may be about an event (such as an environmental emergency), a decision-making process (such as development of an environmental impact assessment), or a particular government office or agency. The TAI global coalition has suggested case types and numbers of cases in each category shown in Table 2 below.

**Table 2 Case Type and Number of Cases in Each Category (Chapter II-IV)**

Chapter	Access to Environmental Information (Chapter II)		Public Participation in Environmental Decision-making (Chapter III)					Capacity Building of the Public for Meaningful Participation (Chapter IV)		
Category	II.A. Information about Environmental Emergencies		III.A. Participation in Decisions on National or Sub-National Policies, Strategies, Plans, Programs or Legislation					IV.A. Government Efforts to Build its Own Capacity		
Case Type	Large-scale emergency	small-scale emergency	Policy	Strategy	Plan	Program	Legislation	Three government agencies		Two courts (administrative and mid-level courts)
Category	II.B. Information from Regular Monitoring		III.B. Participation in Project-Level Decisions					IV.B. Government Efforts to Build the Capacity of the Public		
Case Type	Air-quality monitoring system	Drinking water quality monitoring system	Project			Project		Point of contact (government institutions chosen in IV.A.)	Environmental NGOs	Government agencies responsible for environmental education
Category	II.C. Information from State of the Environment Reports									
Case Type	State of the Environment (SOE) reports published by the government									
Category	II.D. Facility-Level Information									
Case Type	5 Facilities									

#### **4. Data Collection**

The Research team conducted the assessment on public participation in environmental management following the TAI indicator framework. The information was gathered from both primary and secondary sources as follows.

4.1 Primary sources: in-person/telephone interviews with officials from responsible agencies and other stakeholder groups.

4.2 Secondary sources: documentary research including legal documents, reports, agency files and records, research articles, news, manuals, and websites of responsible agencies or organizations.

#### **5. Review of Findings of the Assessment**

In this assessment, a “National Advisory Panel” was established since the beginning of the project, which is different from the first assessment where a “National Review Panel” was established after the research group had already made its assessment. The advisory panel numbering 16 persons consists of qualified people from stakeholder organizations associated with the case studies. A full list of the members of the Advisory Panel can be found on page viii.

Having the Advisory Panel set up at the earlier stage of the project implementation helped the Research team to be able to receive opinions and recommendations regarding the selected case studies, the assessment method, and the findings of the assessment reviewed. The establishment of the Advisory Panel helped ensure the quality and transparency of the assessment. Summaries of the four meetings between the Advisory Panel and the Research team are available in Thai edition of this report.

#### **6. Assessment period**

The assessment was undertaken for a total of 7 months starting with the first meeting of the Research team in November 2004, to the final revision date, July 31, 1 week after the public review seminar on July 25, 2005.

Throughout the assessment period, seven meetings were held in November 2004, January, February, and March 2005 for the Research team to discuss the framework of indicators and the findings from the assessment. There were also four meetings between the Research team and the Advisory Panel in January, March, and April 2005. In addition, there was a launch event of the assessment held on January 11, 2005. A Seminar on Environmental Governance: Public Participation Indicators for Thailand’s Sustainable Development (2<sup>nd</sup> Assessment) was held on July 25, 2005 in order to present the draft findings and collect opinions and recommendations from a broader audience. The seminar reached a participation of approximately 200 people from government, business, and civil society sectors as well as the media.

## Reading Guide

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This set of indicators is divided into four chapters as described previously in the introduction and methodology. Each chapter consists of categories relating to the contents of that chapter as well as the related case studies (except chapter I). Every category contains table of indicators, in which indicators and their ranges of values are presented in the left column. The right column contains justification of choosing the value, source information, as well as comments from the researchers.

Each indicator has a serial number identifying chapter and category to which it belongs. For example, I.A.1. means Indicator 1 in Category A of Chapter I. However, some indicators were required to be used more than one time. For this case, additional small letters, a, b, c etc., are given to differentiate the research issues. For instance, the indicator **I.B.3 Public participation rules in administrative laws relevant to environmental protection**, which is required by the TAI guidelines to be used for assessing three administrative laws. Therefore, this indicator is used to evaluate the three laws separately and indicated its differences as follows:

- I.B.3.a Public participation rules in administrative laws relevant to environmental protection\*: Factory Act, B.E. 2535 (1992)
- I.B.3.b Public participation rules in administrative laws relevant to environmental protection\*: Mineral Act, B.E. 2510 (1967)
- I.B.3.c Public participation rules in administrative laws relevant to environmental protection\*: Reserved Forest Act, B.E. 2507 (1964)

Each indicator has a range of values, ranging from low to high performance. Values are designed by numerals (i, ii, iii, iv and v) but numbers of values of each indicator are not always equal. For each indicator, the researchers chose the value statement that most closely reflects the situation in the country. Where no any given value is matching, the researcher assigned (0) not applicable/not assessed. The chosen values are underlined.

As stated in the methodology section, national assessment teams are required to use the priority indicators in order to facilitate an international baseline of information and knowledge. New indicators could be added if the Research team considered them vital for their country situation. To help readers to easily grasp which indicators are priority indicators and which ones are not, the priority indicators will be marked with an asterisk (\*) at the title, for instance, I.A.1 the right to access to public information\*. It should be noted that in some cases, the researchers adjusted the indicator names to better fit with the case study.

On the following pages, at the beginning of each category or case study, there is an introduction describing the rationale for the indicators, the general situation of the topic, and the criteria (or the rationale) for the case selections. At the end of each case study, there is an analysis of the assessment of indicators, and recommendations by the researchers for Thailand and for the further development of the indicators. A synthesis of findings and recommendations is presented at the end of each chapter.