The Access Initiative

Environmental Governance in Asia:

Independent Assessments of National Implementation of Rio Declaration's Principle 10

Editors: Somrudee Nicro, Richard Friend and **Suphasuk Pradubsuk**

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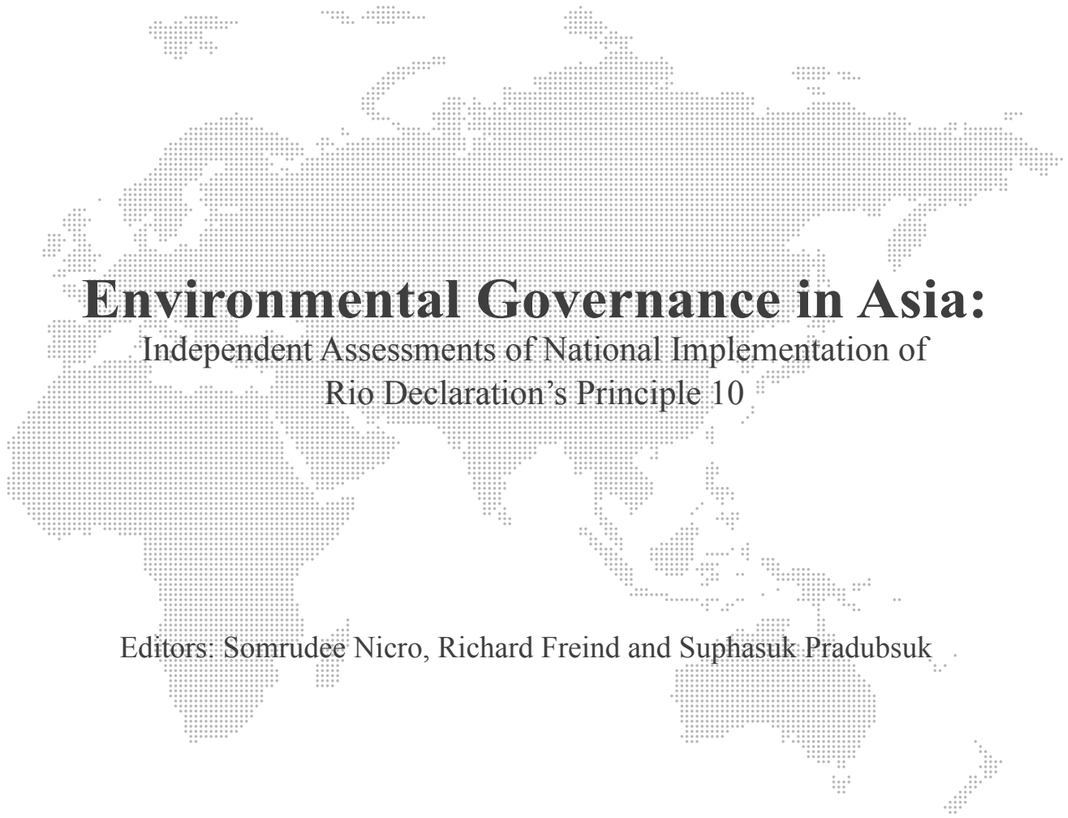

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Foreword

The Access Initiative (TAI)[1] coalition's first TAI Asia Report is a unique collection of collaborative work set on the continent of greatest diversity in cultural, geo-political and socioeconomic underpinnings. Jointly authored by TAI coalitions in Bangladesh, India, Indonesia, Nepal, the Philippines, Sri Lanka, Thailand, Vietnam and Yunnan Province of China, this report explores issues relating to 'access rights' – (a) access to environmental information, (b) public participation in environmental decision making and (c) access to justice in environmental matters – which are components of Principle 10 of the 1992 Rio Declaration as well as pillars of environmental governance from the rights-based perspective. The rights-based approach advocates governance from bottom up, through empowering people and respecting their rights.

This collection of studies begins with introduction to TAI and TAI research methodology, followed by a scene-setting overview of the Asia region. The synthesis chapter, then, provides an insight into generality and diversity of access rights in different economic, social and environmental contexts throughout Asia. In country reports chapter, access rights in the nine Asian countries through the lens of over 160 case studies are examined in a critical fashion: ideal frameworks *versus* existing legal structures, constitutions *vis-à-vis* organic laws, prescribed laws and regulations against efforts to put them into practice, as well as attempts to strengthen access rights as opposed to effectiveness of the performance on both capacity building and policy implementation aspects. Finally, with findings on access rights and capacity of key players and stakeholders uncovered, policy recommendations to reinforce access rights are crafted and presented in the conclusion chapter.

The authors hope that as a consequence of this publication, environmental governance in Asia would be better understood by both general public and policy makers. We also hope that this report would aid different sectors to work together to bring about positive policy change (e.g. legal reforms), cultural change (e.g. the culture of secrecy re-examined) and behavioural change (e.g. the extent to which access rights are actively exercised by citizens) that not only ameliorate sustainability and environmental democracy in Asia but also inspire rights-based transition elsewhere, where applicable.

Thailand Environment Institute, as the lead for the production of this report, would like to express indebtedness to the participating authors and their organisations, whose names can be found in the 'Contributors' section. We would also like to convey gratitude to all parties involved in the studies, from each and every interviewee who supplied firsthand information, to experts and advisory panels whose opinions help shape the structure of and add invaluable insights to each national report, especially the TAI Core Team. Extra appreciation goes to The Access Initiative Latin America and Environmental Management and Law Association (EMLA), for their leadership in accomplishing the first two TAI regional reports for Latin America and Europe respectively, both of which ignite inspiration in TAI Asia coalition to have our own. Special thanks are due to everyone who respectively edited this report: Richard Friend, Suphasuk Pradubsuk, Nathan Badenoch and Patcharapol Limpiyawon.

[1] The Access Initiative's website is www.accessinitiative.org.

Last but not least, we are particularly grateful to Swedish Environmental Secretariat for Asia (SENSA) for their continual support for promoting the implementation of Principle 10 and for supporting our efforts to enhance capacity of TAI partners (CSOs) in Asia. SENSA's support on Principle 10 does not only make TAI studies in a number of countries and the production of this publication possible, but also contribute to the strengthening of access rights in the region of developmental and environmental significance.

Somrudee Nicro, Ph.D.
Senior Director, Thailand Environment Institute and
TAI core team member for Southeast and East Asia

Executive Summary

Introduction

The Access Initiative (TAI) was formed in 1999 as a coalition of civil society groups across the world working together to promote national-level implementation of the access rights-commitments to access to information, public participation and access to justice. As of 2010 the TAI includes 150 civil society organisations from over 50 countries around the world.

TAI was created within the context of the Rio Declaration of 1992, where 178 governments from around the world committed themselves to Principle 10 and the three access principles: access to information, access to public participation in government decision-making, and access to justice. This commitment to access principles aims at achieving "transparent, equitable and accountable decision making" that constitute the pillars of good environmental governance.

Principle 10 of the 1992 Rio Declaration

> "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."

Adopted by 178 nations at the United Nations Conference on Environment and Development, Rio de Janeiro, June 1992

These commitments from governments across the globe were reinforced when a further commitment to Principle 10 was made at the World Summit on Sustainable Development (WSSD) in 2002 through the signing of the Johannesburg Plan of Implementation (JPOI).

It is in Europe that the most significant international progress in realising these access principles was made. In 1998 European countries signed the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters. This is more commonly known as the "Aarhus Convention" and is seen as a landmark commitment and a model for other parts of the world, including Asia.

Significantly, there are no international agreements on access principles in Asia, either within the framework of regional co-operation in South or South-East Asia. Yet Asia has a special place in the global environment. As the most populous continent with the fastest growing industrial economies, Asia is a growing producer and consumer of world resources, as well as a growing producer of greenhouse gases. Moreover, Asia is also home to the largest number of poor people

in the world, and despite enormous social and economic progress in the last few decades, poverty and inequality are persistent problems for all the TAI countries in Asia. Addressing these challenges is of global importance.

The Access Initiative

The Access Initiative (TAI) is founded on the principle that people have the right to participate in decisions that affect their environment. In order to exercise this right, they must have access to information and the opportunities to represent their interests, as well as the right to influence how decisions are made and implemented. Ensuring the effective implementation of these rights also requires access to redress and remedy in cases of environmental harm, and cases in which their rights are violated. These rights are referred to as 'access rights'.

The Access Initiative has grown out of a concern among civil society organisations around the world. Since the earliest days, Asian partners have participated actively in membership and management (TAI Core Team) activities, including the formulation of TAI methodology and pilot test of TAI national assessments (India, Indonesia and Thailand).

Ensuring these access rights is both a means to and an end for good environmental governance. By guaranteeing access rights, the quality of decisions and actions on the environment is likely to be improved. Improving access to information allows for a better understanding of environmental issues and their social consequences, and thus allowing for better informed debates and decision making. Equally, ensuring that people of diverse viewpoints, knowledge and interests are able to engage in making decisions about their environment allows for better quality of decisions, and greater social acceptance.

But the language of rights also affirms that the ultimate purpose of good environmental governance is defined in terms of guaranteeing rights of access to information, participation and justice. Access rights cannot be separated from transparent and accountable governance. Fundamentally access rights are concerned with good governance and citizenship.

The nature of access rights goes beyond what are often seen as the traditional boundaries of environmental concerns. Increasingly, access rights bring together concerns for the environment, development and human rights.

- **Access to Information** - The ability of citizens to obtain environmental information in the possession of public authorities. "Environmental information" includes information about air and water quality and information about whether any hazardous chemicals are stored at a nearby factory.

- **Access to Participation** - The ability of citizens to provide timely and meaningful input to and influence on decisions, general policies, strategies and plans at various levels and on individual projects that have environmental impacts and implications.

- **Access to Justice** - The ability of citizens to turn to impartial and independent arbiters to resolve disputes over access to information and participation in decisions that affect the environment, or to correct environmental harm. Such impartial arbiters include mediators, administrative tribunals, and courts of law, among others.

The TAI Asia Report

This report synthesises a research initiative to assess the progress of implementing these access rights in nine countries in Asia – Bangladesh, China (Yunnan Province), India, Indonesia, Nepal, Philippines, Sri Lanka, Thailand, and Vietnam.

In carrying out the assessment, each of the countries established working groups of civil society organisations and advisory committee with diverse expertise in environmental, legal, social development and human rights. This kind of multi-stakeholder coalition also allows for more effective uptake of the findings and recommendations that emerge from the assessment.

The TAI assesses the legal framework, performance, and considers issues of capacity of both the state and of civil society. The assessments have been carried out using the established TAI methodology based on an agreed set of indicators of performance. Central to the TAI approach is the use of case studies, selected according to their relevance to the three access principles and their significance to the country's development. The assessments' findings are used for advocacy for legal, institutional and practice reforms, raising public awareness, and for engaging with national governments in constructive dialogues for reform.

This report provides important insights into environmental governance in Asia. It is now nineteen years since the Rio Declaration. Yet performance in ensuring the access rights has been mixed. While there has been significant progress in some areas, there are several areas where there are serious weaknesses.

Legal Framework

Across all the TAI countries in Asia, there has been greater recognition of access rights in the legal framework. The constitutions provide a sound basis of support for access rights, with newly passed constitutions in some of the countries containing more explicit provisions for access rights. Important legislation has been passed in recent years in many of the countries supporting access to information, participation and justice. However, implementation of legislation continues to be an area of weakness. This is mostly attributed to issues of capacity among the state, civil society and the public, and a general lack of awareness of rights and procedures among the general public. But in some cases, more systemic problems have been identified as failures in the legal system, particularly in settling disputes and supporting the rights of poorer people. Additionally, lack of confidence in the legal system and state institutions, and a lack of accountability remain major stumbling blocks.

Access to Information

Generally, access to information across the Asian TAI is considered as improvement, with the state making greater efforts to release information for the general public and drawing advantages from utilising print and electronic media. On the whole, information is most readily accessible where it is concerned with environmental monitoring, such as air and water quality monitoring, or in the preparation of State of the Environment reports. Access to information also tends to be better in environmental emergencies, but with some important exceptions. However, conflicts of interest continue to hamper access to information. These are most closely associated with information that might be somehow related to political and economic interests of the state, or influential

commercial interests. Information at facility level continues to be least accessible, an area of weakness across all the countries. Civil society and the media continue to play important roles in generating information, and in holding the state and private sector accountable.

Access to Participation

Each of the countries has some legal provisions for public participation in environmental decision-making, and the rhetoric of participation appears more prominently in legislation and policy. But the level of manifestation differs greatly between the countries. The political systems and cultures of the countries are significantly different, so are state interpretations of what constitutes good public participation. As a whole, implementation remains weak in the area of public participation. This is attributed to a number of factors – lack of clarity in legal framework, institutional culture of state agencies, political influence, and lack of capacity, both within the state and civil society. There is limited experience in the countries implementing strategies for public participation, with public forums being the most common platform. These kinds of a pproaches are considered necessary, albeit with limited success.

Access to Justice

The principle of access to justice to all citizens is clearly affirmed in the constitutions and legislation of all countries. But here again, there are weaknesses in how legislation is framed, and performance is mixed. Key areas identified are related to the very nature of environmental problems and the definition of locus standing, and legal support for pursuing legal action in public interest cases. Environmental cases are considered to require specialised legal knowledge and expertise, with an interest in establishing Green Benches and alternative dispute resolution mechanisms. Legal action continues to be a course of action that members of the public are reluctant to follow. The whole process of taking legal action is complex and often intimidating. There are serious financial costs, and a lack of legal aid support in each of the countries acts as an impediment for most. In addition, there is limited confidence in the legal system to hear cases that are brought, and even when judgements are made, to ensure that they are implemented fully. However, there are also examples of how the legal system has been used to good effect, whether by recourse to the constitution or specific sectoral legislation.

Capacity Building

The need for more strategic capacity building, with specific legal guidelines and budgetary support is identified in each of the countries. Ensuring access rights requires specific sets of knowledge and skills for the state, civil society and the general public. But it is also recognised that this need for capacity building must also be placed in a broader context that recognises that failures to ensure access rights may also be due to a lack of political will and vested interests.

An important finding from the assessments is that there appears to be a correlation between poverty and marginalisation, and the inability to ensure access rights. For all the countries, poor and marginalised people, including women, ethnic minorities and migrants, are the least able to exercise access rights. To many, such rights simply do not exist.

1 Background

1. Background

1.1 Introducing The Access Initiative (TAI) coalition

Principle 10 of the 1992 Rio Declaration

> "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."

Adopted by 178 nations at the United Nations Conference on Environment and Development, Rio de Janeiro, June 1992

The TAI global network works to hold national governments accountable for their Principle 10 commitments by conducting independent assessments of the law and practice supporting access to information, public participation, and access to justice.

At the heart of TAI research, including independent assessments conducted by national CSO coalitions, is the endeavour to pinpoint strengths and weaknesses in environmental governance in their countries and identify opportunities to make positive changes and conduct advocacy work based on the assessment data. Typically, a national coalition brings together organisations with expertise in research, law, advocacy, communications, human rights, and a variety of specific environmental issues. Based on an internationally recognised assessment framework of case studies and indicators, TAI coalition members can evaluate both laws on the books and government practices on the ground and use these law-practice gap findings to make recommendations, prioritise reforms and allow domestic CSOs to work with their government to improve access.

Organisations from Chile, Hungary, Thailand, Uganda, and the United States launched TAI in 2001, and coalitions from India, Indonesia, Mexico, and South Africa joined the founding organisations in piloting the TAI assessment framework (TAI toolkit V 1.0, interactive CD-ROM). Within four years following the pilot phase, 23 additional assessments (TAI toolkit V 2.0, interactive web-based assessment tool) were completed in 20 countries. In 2010, TAI was active in more than 50 countries.

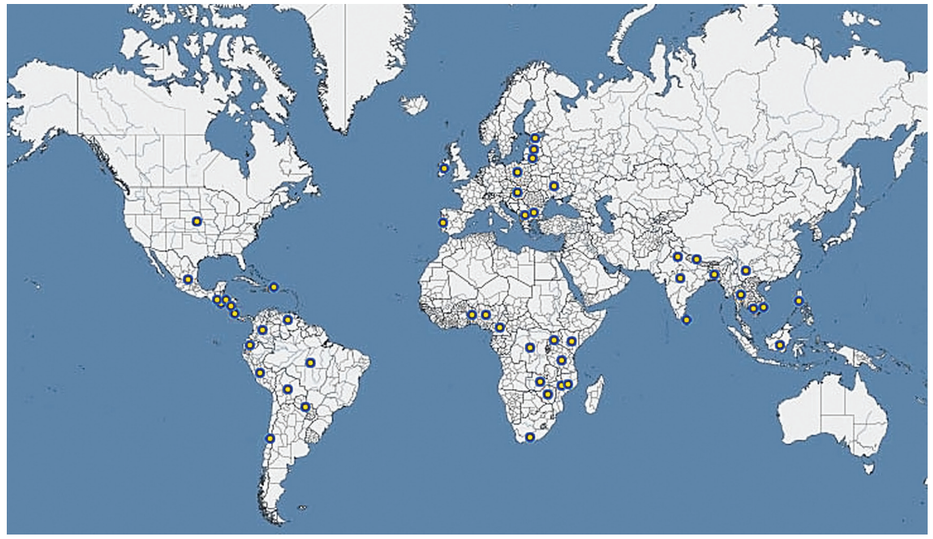

Figure 1. Countries where TAI assessments have been completed as of 2010

1.2 TAI methodology

A TAI assessment consists of three major components: a national law evaluation, a capacity building evaluation, and a minimum of 18 case studies (Fig. 2). Each of these components is addressed using a set of research questions, or "indicators," which break the Principle 10 into discrete parts or measurable characteristics. The indicators (148 research questions) are organised into four categories:

> ***Access to information*** – Information is the cornerstone of decision making, providing the public with knowledge and evidence to make choices and monitor the state of the environment.
>
> ***Public participation*** – Participation allows citizens to express opinions, challenge decisions, and shape policies that could affect their communities and environment.
>
> ***Access to justice*** – Mechanisms for justice enable citizens to seek remedy if their access rights have been denied or they have suffered an environmental harm.
>
> ***Capacity building*** – Efforts by the government to ensure that government agencies and civil society both have the necessary capacity to facilitate public access to information, participation, and justice.

Each TAI category includes both **law** indicators and **practice** indicators. Law indicators evaluate the overall legislative and judicial framework for guaranteeing access, while practice indicators are applied to selected case studies to examine real-world conditions. The practice indicators

include the "Effort" and "Effectiveness" sections. By applying both types of indicators, a TAI coalition identifies gaps between its country's policies and the actual implementation of the three Rio Declaration access principles: information, participation and justice.

Law Evaluation		
16 General Law indicators applied once per assessment		
+		
Capacity Building Evaluation		
12 General Capacity Building indicators applied once per assessment		
+		
Case Studies in Access to Information, Public Participation, and Access to Justice		
A2I – At least 8 case studies, each comprising 27 indicators	PP – At least 6 case studies, each comprising 31 indicators	A2J – At least 4 case studies, each comprising 33 indicators

Figure 2. Major components of a TAI assessment

For each national assessment conducted, TAI research teams apply the practice indicators to at least 18 case studies. Each case study falls into one of the three categories: information, participation and justice. Capacity building indicators are also included in each category; in addition, some capacity building indicators are assessed without specific reference to the case studies, together with the law indicators.

The assessment framework provides research guidelines that assist researchers in conducting interviews, reviewing documents, studying the law, compiling statistics, or visiting key sites relevant to a case study.

An assessment is critically important because it creates cohesion in a coalition, often giving the basis for beginning work in the TAI network. Hence, to ensure the standardised quality of the reports and to create an identity for the network, each assessment report is reviewed through national and global processes, starting from a national research team's submission of its draft report of TAI assessment, in which the team analyses its finding and makes policy recommendations, to the advisory panel and to a relevant regional lead for a review of content and form. Regional leads then solicit feedback from Core Team members for TAI assessment reports before posting the reports on the TAI Research website to make them accessible by the public. After the report approval is finalised by the regional lead and TAI Secretariat, each coalition can use the findings of its TAI assessment to produce additional outreach materials, hold public meetings, and engage government officials.

In order to provide more in-depth and qualitative analysis, the Access Initiative methodology also employs case studies. These are selected in order to reflect the access rights. Case studies do not only provide greater details on specific issues but also allow for deriving lessons that are more generally applicable. Case studies selected must cover case types listed in Table 1.

Table 1: Types and examples of TAI case studies

TAI case types	Example cases
Access to Information: a minimum of 8 case studies are selected, consisting of at least	
Environmental emergency	Information for Tsunami, Thailand
Air-quality monitoring	Vehicular air pollution in Dhaka City, Bangladesh
Water-quality monitoring	Water quality in the Nhue River valley, Vietnam
Industrial facility compliance records	Air quality monitoring in Kunming City, Yunnan province of China
State of Environment report (optional)	Irregular Dissemination of State of Environment Reports, India
Public Participation: a minimum of 6 case studies are selected, consisting of at least	
Policy making	The national strategy for environmental protection for the year 2010 and the orientation towards 2020, Vietnam
Regulatory decision	Drafting Regional Regulation of West Kalimantan No. 4 of 2007 on distribution and use of mercury and alike substances, Indonesia
Project-level decision	Kandy Colombo Expressway, Sri Lanka
Access to Justice: a minimum of 4 case studies are selected, consisting of at least	
Denial of right to information	Pesticide residue information in food, Yunnan province of China
Denial of right to participation	Benefit sharing from community forestry, Nepal
Claim for an environmental harm	Pollution from Marcopper Mining in Marinduque, Philippines
Claim for non-compliance (optional)	Unlawful privatisation of Electricity Generating Authority of Thailand (EGAT), Thailand

1.3 TAI in the Asia region

To date, civil society coalitions have conducted TAI national assessments in nine Asian countries: Bangladesh, India, Indonesia, Nepal, the Philippines, Sri Lanka, Thailand, Vietnam and China (Yunnan province). In addition, a sectoral TAI assessment was conducted in Maptapud, Thailand's largest industrial estate and one of the largest independent power producer (IPP) investments in Southeast Asia. Most of the data in this report was synthesised based on TAI assessments conducted in the aforementioned countries during 2003 and 2009, which can be downloaded in its original format at *www.accessinitiative.org*.

The TAI method is designed with the primary objective of catalysing and benchmarking progress in individual countries, rather than facilitating cross-country rankings. Considerably, the TAI approach to assessing the practice of access rights through selected case studies has its advantages

and disadvantages. Selected cases are likely to demonstrate typical variations in performance that the coalitions sometimes found it difficult to make conclusions about standard practices from differences in performance across different cases.

In order to use the national assessment data for regional analysis of general trends in government provision of access, we consider the issues arising in each country and compile a list of the main findings rather than calculating average values across the countries and overlook some significant issues. Some national coalitions turn out to be very pressing while others show a more compromising attitude, depending on the relationship between the government and environmental groups as well as the degree of access to decision-making process. Hence, when conducting regional overview, instead of having scores ranking countries for each case study issue, we chose to leave the case approach with enough room for comparability of national research findings that allow the teams to see trends and tendencies within particular environmental issues.

TAI regional leaders select national TAI coalitions based on criteria, which may include the presence of CSOs with sufficient capacity to carry out an assessment and further advocacy, the availability of funding, and the presence of professional connections. As a result, the emergence of new environmental laws in Asia together with civil society and their demands to participate in the decision-making process has driven TAI network to grow quickly throughout the region. Environmental movements evolve habitually from the concern of poverty-related environmental problems since local communities depend at various levels on natural resources for their livelihood.

2 Regional Overview

2. Regional Overview

This chapter provides an overview and discussion of findings from the assessments that have been carried out in the nine countries in Asia. In order to provide some context, we begin with a review of some of the social development challenges facing the countries, drawing also on complementary assessments of corruption and press freedom. The chapter concludes with a discussion of the overall performance of meeting access rights.

2.1 Setting the scene

The findings of the TAI can be put into a broader context of political change in several of the countries, and the emergence of high-profile environmental issues and cases. Environment and access rights are clearly on the political agenda in Asia in a way that was not the case previously.

The nine countries differ significantly according to a range of criteria – population, economic development, incidence and rates of poverty, and political institutions.

Simply in terms of population the study covers the two largest and most populous countries in the world, China and India together with the small island state of Sri Lanka and Himalayan country of Nepal, and the archipelagos of the Philippines and Indonesia. Each of the countries hosts a rich ethnic and linguistic diversity as well as geographical and ecological diversity. Such diversity clearly presents obstacles in ensuring access rights.

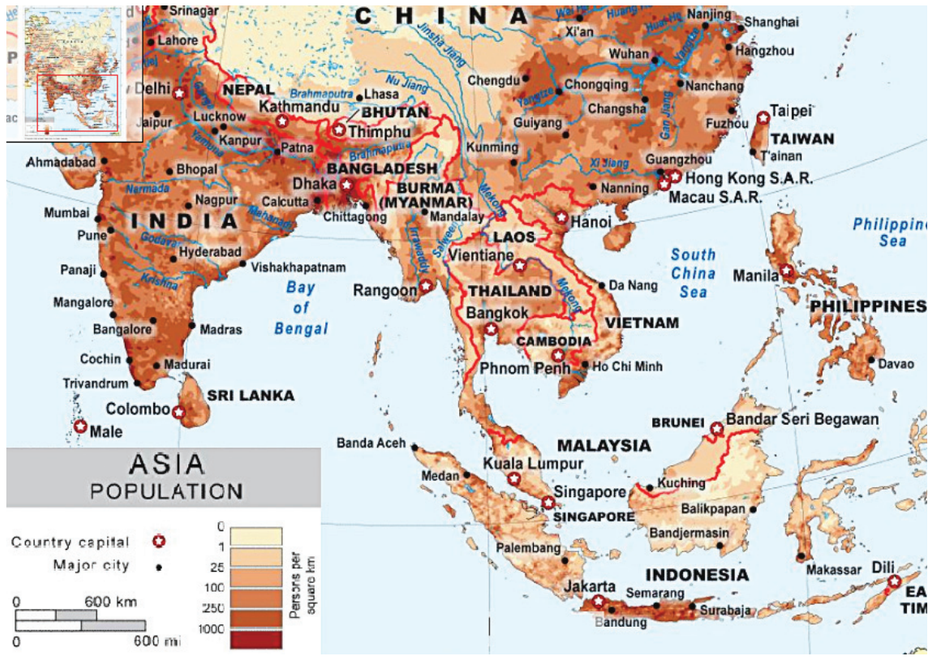

Figure. 1: Population density in Asia Source: Stock map agency, 2008

Poverty and social development are important factors in assessing access rights. As the TAI country reviews for Bangladesh and Nepal point out, the low literacy rates, particularly in national languages and among women and ethnic minorities, combined with the high rates of poverty act as serious impediments to people's ability to benefit from the access rights, while also strengthening the institutional obstacles to greater transparency and accountability. But equally, effective implementation of access rights can in itself contribute to reducing poverty, strengthening people's capacity to protect their natural resources base and livelihoods, and to better participate in the political process.

Table 1: Social development indicators

The following table is taken from the UNDP Human Development Index (HDI) for 2006, comparing a range of indicators for 179 countries. Source: Human Development Report 2008, available online at http://hdr.undp.org/en/statistics/

	UNDP HDI Value 2006 (ranking)	Life expectancy at birth (years) 2006 (ranking)	Adult literacy rate (% ages 15 and above) 2006 (ranking)	Combined primary, secondary and tertiary gross enrolment ratio (%) 2006 (ranking)	GDP percapita (PPP US$) 2006 (ranking)
Bangladesh	0.524 (147th)	63.5 (130)	52.5 (134)	52.1 (154)	1,155 (153)
China	0.762 (94th)	72.7 (69)	93.0 (53)	68.7 (113)	4,682 (104)
India	0.609 (132nd)	64.1 (127)	65.2 (118)	61.0 (134)	2,489 (126)
Indonesia	0.726 (109th)	70.1 (101)	91.0 (62)	68.2 (116)	3,455 (121)
Nepal	0.530 (145th)	63.0 (132)	55.2 (127)	60.8 (135)	999 (161)
Philippines	0.745 (102nd)	71.3 (90)	93.3 (49.9)	79.6 (57)	3,153 (122)
Sri Lanka	0.742 (104th)	71.9 (83)	90.8 (63)	68.7 (114)	3,896 (115)
Thailand	0.786 (81st)	70.0 (103)	93.9 (47)	78.0 (67)	7,613 (80)
Vietnam	0.718 (114th)	74.0 (55)	90.3 (64)	62.3 (127)	2,363 (129)

The nine countries of TAI all fall within the group of countries categorised as representing medium human development according to the UNDP Human Development Index (HDI). Table 2 presents a summary of key social development indicators according to the HDI with global rankings for each of the indicators presented in brackets. The table indicates a significant range among the countries with Nepal and Bangladesh lying within the lower group of medium development countries and Thailand towards the higher end. Importantly for consideration of access rights, adult literacy for Bangladesh, Nepal and India is significantly lower than for the other countries which all achieve rates above 90%. The Philippines and Thailand achieve high percentages of combined secondary and tertiary educational enrolment, markedly higher than for the lowest scoring country of Bangladesh. Life expectancy also remains significantly lower for Bangladesh, Nepal and India, with Vietnam achieving the highest life expectancy.

Table 2: Distribution of poverty

Based on data from Human Development Report 2008, available online at http://hdr.undp.org/en/statistics/

	Population living below $1 a day %	Population living below $2 a day %	Population living below the national poverty line %
	1990-2005	1990-2005	1990-2004
Bangladesh	41.3	84	49.8
China	9.9	34.9	4.6
India	34.3	80.4	28.6
Indonesia	7.5	52.4	27.1
Nepal	24.1	68.5	30.9
Philippines	14.8	43	36.8
Sri Lanka	5.6	41.6	25
Thailand	<2	25.2	13.6
Vietnam	n/a	n/a	28.9

The proportion of the population living below poverty indicators – of income of $1 per day, or of income of $2 per day, and of those below nationally defined poverty lines is presented in Table 3. This clearly indicates the high levels of poverty in some of the countries, and the very low levels of income for significant proportions of the population. However, it should also be noted that these figures cover a 15-year period up until 2004 and do not necessarily reflect more recent progress in poverty reduction.

When seen in terms of distribution of wealth and poverty, Table 4 illustrates how in all of the countries the poorest people only enjoy a fraction of the national wealth, and that conversely, a high proportion of wealth is concentrated in a relatively few hands. Even for countries that score well in other aspects of social development, inequality in wealth distribution is striking. This kind of analysis only provides a snap shot of equality but at least gives an indication of the kinds of structural challenges to ensuring that those who enjoy few economic benefits might still benefit from access rights.

Table 3: Income distribution

Based on data from Human Development Report 2008, available online at http://hdr.undp.org/en/statistics/

	Share of income or consumption poorest 10% (%)	Share of income or consumption poorest 20% (%)	Share of income or consumption richest 20% (%)	Share of income or consumption richest 10% (%)	Inequality measures, ratio of richest 10% to poorest 10%	Inequality measures, ratio of richest 20% to poorest 20%
Bangladesh	2.7	6.3	49	33.4	12.6	7.7
China	1.6	4.3	51.9	34.9	21.6	12.2
India	2.2	5.4	50.6	34.2	15.5	9.3
Indonesia	3	7	48	32.7	11.1	6.9
Nepal	4.2	9	44.3	28.8	6.9	4.9
Philippines	3.6	8.4	43.3	28.5	7.8	5.2
Sri Lanka	3.6	8.1	45.3	31.1	8.6	5.6
Thailand	3.7	8.6	42.7	27.9	7.5	4.9
Vietnam	2.6	6	54.6	40.6	15.8	9.1

The differences between the countries also appear when considered according to indicators of corruption and press freedom. Such indicators are notoriously complex but at least provide some additional context for the TAI. Interestingly, China, Thailand, India, closely followed by Sri Lanka all score within the top group of one hundred countries, suggesting lower levels of corruption in these countries. As with the HDI (see Table 1) Bangladesh achieves the lowest score according to this indicator. Somewhat surprisingly, the score of the Philippines is also low, despite achieving high levels of literacy and education, and despite a reputation for an active and influential civil society. This relationship between an active civil society and access rights is one of the key issues emerging from the TAI assessment, and is discussed in more detail below.

Table 4: Corruption perception and press freedom

	Corruption Perception Index 2008[1] CPI rating (rank)	Press Freedom Index 2008[2] (rank)
Bangladesh	2.1 (147)	136
China	3.6 (72)	167
India	3.4 (85)	118
Indonesia	2.6 (126)	111
Nepal	2.7 (121)	138
Philippines	2.3 (141)	139
Sri Lanka	3.2 (92)	165
Thailand	3.5 (80)	124
Vietnam	2.7 (121)	168

[1]A total of 180 countries are included in the ranking. the score ranks between 10 (highly clean) and (0 (highly corrupt)
Source: Transparency International, http://www.transparency.org/news_room/in_focus/2008/gcr2008

[2] A total of 173 countries are included in the ranking
Source: Reporters sans Frontieres (RSF), http://www.rsf.org/

The countries' performance is once again quite different, according to indicators of press freedom (see Table 4). Despite scoring well in terms of corruption, China receives the lowest score for press freedom while Indonesia achieves the highest position for press freedom despite a much lower score in terms of corruption. While the distribution of scores puts all of the countries apart from Indonesia and India in the lower 30% of countries surveyed around the world, China and Vietnam sit very much at the bottom of the global table. This index only considers the press, but it is still worth noting that the role of the media in improving access rights is identified as a key factor in the Asian assessment, as well as in global assessments.

By considering a range of indicators, it is clear that while many issues are common to all the countries in this assessment, there are significant differences in circumstances, and the specific challenges that each country faces. As well as the differences in population, political circumstances differ. For two countries – Nepal and Sri Lanka – there has been a period of intense internal violent political struggle with ongoing internal conflict linked to separatist causes in Thailand and the Philippines. For other countries, such as China, Thailand and Vietnam, there has been a period of unprecedented economic growth that in turn has fuelled social and political change, and a climate of greater political openness with a more active civil society operating in each of the countries. The relationship between economic and such openness is not clear-cut, and it is difficult to draw any clear conclusions from these countries' experience.

2.2 Legal framework

The legal framework across all the countries is increasingly supportive of access principles, with important recent changes in legislation in some countries, and a broad trend towards more effective performance from the state. But the review also clearly illustrates that the gap between the legal framework and practice remains wide in many cases, with many persistent and familiar challenges. The extent to which the legal framework is respected and put into practice varies from case to case even within countries, with a wide range of factors influencing outcomes both within and between countries. For example, while there may be reference to access rights, the legal framework has been found to lack clarity, with guidelines on implementation weak, thus creating barriers to effective implementation. Several case studies have raised concerns about the inconsistency and poor cohesion across different areas of legislation. And all countries have discussed the perennial problems of poor implementation and limited capacity of the state, but also the limited capacity of civil society.

The reviews in each of the countries considered different aspects of the legal framework from the constitution to more specific areas of legislation, governing access to information, public participation and access to justice.

It is at the level of the national constitution that all countries have some reference to the access principles. The constitutions of all countries are broadly supportive of access principles, but not necessarily with specific reference to environmental concerns. Moreover, the rights of people to manage their natural resource and to engage in local decision-making processes on development and environment are increasingly being recognised in law, as are the rights to a clean and safe environment. New constitutions have been passed in Nepal and Thailand within the last two years. These are considered to be stronger constitutions, and in Thailand, the constitutional rights to information and participation are strongly asserted. In contrast, the constitution in India does not make specific reference to the right to participation in decision making.

In the absence of clear legislation on access rights, invoking constitutional rights – such as to basic needs such as safe water, freedom of speech and assemble, to pursue one's chosen occupation, right to determine one's place of residence, and the rights to traditional livelihoods – has been a mechanism to bypass the weakness of the legislative framework and take legal action in support of access rights. In India, the Right to Life as contained in Article 21 of the Constitution has been expanded by the interpretation of the Supreme Court to include the right to clean and healthy environment and, through various decisions, the right to a pollution-free environment. Similarly in Bangladesh, a case of consumer protection regarding contaminated milk powder affirmed that the constitutional right to life also includes the right to a clean and safe environment.

Legislation governing environmental impact assessments (EIA) is central to access rights in the countries. But the EIA process faces similar difficulties. The scope of EIAs is generally project-based – only allowing for consultation at the latter stages of the decision-making process. There is less engagement at the level of assessing strategic options and alternatives to projects proposed. In all of the countries, many projects are able to go ahead without the legal requirement of EIA.

State-sponsored institutions are often weak and lack independence. But the case of India also indicates how the legal process can be used to challenge ineffective environmental institutions.

As well as the constitution and legislative framework, the establishment of independent mechanisms and institutions – such as the National Human Rights Commissions that have been established in Nepal and Thailand – represent significant moves forward in Asia. Through such institutions there are greater opportunities to investigate and hold to account infringements by state agencies, with specific avenues open to citizens to exercise their constitutional and legal rights. In Bangladesh, the establishment of Environmental Courts to deal with environmental cases is a significant move that has been followed recently with the establishment of Green Courts in the Philippines.

As we discuss below in greater detail, the role of civil society has proved to be central in all countries in ensuring that legislation can be enforced effectively. The media in particular has taken on an increasingly influential role in raising public interest in issues and at times putting pressure for more effective access and disclosure of information.

2.2.1 Legal framework regarding access to information

Access to information is fundamental to access rights. Specific legislation has been passed in six of the nine countries but in all of these cases, only within the last few years. For example, in Indonesia the Law on Public Information Disclosure was promulgated in 2008, with a similar law in Bangladesh, the Right of Information Ordinance also being passed in 2008, while in Nepal the Right to Information Act was passed in 2007. In India, the Right to Information Act, considered by the review to be a landmark piece of legislation was passed in 2005. In Thailand, legislation on access to information dates back to the Official Information Act 1997 with a later state-sponsored Official Information Commission providing guidelines for state handling of public information, endorsed by Cabinet in 2004. The process of developing the law on access to information is continuing in Vietnam.

Each of these acts stipulates the rights of individuals to access information from the state, and establishes the responsibilities of state agencies to make information available to the public in an accessible and timely manner, with provision for non-compliance.

For the other countries reviewed, access to information is covered within the legal framework loosely under the national Constitution, and additionally under the regulations covering state agencies' practice. This does not necessarily mean that performance is directly related to the presence of specific legislation, however.

Table 5: Summary of legal framework on access to information

	Constitution	Specific Legislation	Other Legislation	Overall Assessment Strong, Intermediate or Weak
Bangladesh		Right of Information Ordinance		Intermediate
China		Regulations of the People's Republic of China on Open Government Information (2007)		Intermediate
India	No direct reference but the Supreme Court had held that Right to Information is an essential part of the fundamental rights	Right to Information Act 2005	Environment Impact Assessment Notification 2006 provides for access to EIA documents as well as minutes of public hearing.	Strong
Indonesia	Article 28H of the 1945 Constitution: "Everyone is entitled to prosperous live of spirit and birth, having domicile and get a good healthy environment"	Law on Public Information Disclosure (2008)	▪ Amendment of Anti-corruption Law 2001 (No. 20) ▪ Witness and victim protection Law 2006 (No. 13) ▪ Environmental Management Law 1997 (No. 23) – amended by Law No. 32 of 2009 on Environmental Protection and Management ▪ Oil and Gas Law 2001 (No. 22) ▪ Geothermal Law 2003 (No. 27) ▪ Disaster Management Law 2007 (No. 24) ▪ Water Resources Law 2004 (No. 7)	Intermediate
Nepal	Article 27 of the Constitution: "Every citizen shall have the right to demand or obtain information on any matters of his/her own or of public importance"	▪ Right to Information Act 2007 ▪ Right to Information Regulation 2008	Environment Protection Act 1997	▪ Strong (for timing and penalty) ▪ Weak (implementation and compliance)

Philippines	People's Right to Information is enshrined in the 1987 Philippine Constitution Section 7, Article III			
Sri Lanka	Part of constitutional right to freedom of speech and expression		▪ National Environmental Act ▪ Coast Conservation Act	Intermediate
Thailand	Thai Constitution 2007: right to access information possessed by state agencies (Section 56), right to receive information and explanation from state agencies before they approve or implement a project (Section 57), right to submit complaints, and receive the results of consideration of such complaints without delay (Section 59)	Official Information Act 1997		
Vietnam	Constitution 1992 – amended in 2001 Citizens have the right to have access to information and the State has responsibility to develop information	Ongoing development of the law on access to information Law on Environmental Protection (2005) Law on the Press (2005)		Intermediate

The Constitution of all countries has at least some reference to issues regarding information, if not dealing with this directly. However, this tends to be in terms of citizens' basic rights to freedom of speech and assembly, and rights to a free press. In the case of Sri Lanka, while the right to information is not specifically guaranteed in the Constitution, the right to freedom of speech has been judicially interpreted to also refer to the right to information. While this case indicates the potential legal space for applying broad constitutional principles, this also means that court action would be required in order to establish such an interpretation.

The Constitution is explicit on rights to access data and information in Thailand, which affirms the right of individuals to receive information from state agencies ***before*** the approval or implementation of a project that might have an effect on environment, health or quality of life. But while there are not such explicit provisions in the constitutions of the other countries, peoples' rights to a clean and safe environment, and guarantees of access to a viable natural resources base are also enshrined in the constitutions. These provisions also refer to information associated with these rights.

Sectoral legislation and policy also covers issues of access to information, even in the absence of an overall legislative framework. Environmental legislation in all the countries covers issues related to access to information, whether in terms of regular monitoring and reporting, undertaking impact assessments and producing state-of-the-environment reports.

For all the countries, there are a number of areas in which the legal framework is still found to be weak regarding access to information. There are also some significant areas of legislation in which no reference is made to access to information, for example in Sri Lanka. In India, there is no provision for emergency and disaster-related information.

In each of the countries, there are restrictions on the type of information that can and cannot be made available. Confidentiality of certain categories of information is also established in law and in practice. This allows the state to restrict access to information and is a common practice across all the countries.

There are several ways in which distinction is made between information that is and is not accessible to the public. The first is by categorising certain types of information as confidential or 'official secrets'. Certain sectors that are state development priorities may also be exempt, as in the case in Indonesia of the Law on Oil and Gas that stipulates that all related information is closed to the public. In other cases, there may be exemptions that allow for detailed information to be withheld. For example, lack of clarity in the National Environment Impact Assessment Notification 2006 in India means that full EIA documentation is available only for reference at select places, with only summary chapters being made accessible a few days prior to the Public hearing.

These kinds of restrictions also put pressure on government workers not to reveal information to the public, for fear of prosecution. In the absence of legal mechanisms to protect whistle-blowers, institutional cultures within state institutions can constrain government workers to reveal information for fear of retribution within their agencies, even in cases in which the information is not sensitive. Without clear guidelines, and recognition of the right to reveal state information that is in the public interest state agencies can be expected to continue to be reluctant to disclosing information at the risk of exposing themselves to public criticism.

Information disclosure is normally a requirement of environmental assessments, as covered in environmental legislation, and it is in this context that people are able to gain access to information. However, the process of determining what kinds of facility projects require environmental assessment can constrain peoples' access to information. The decision as to which projects should be covered by EIAs is often discretionary. In the absence of statutory guidelines on what projects are required to go through such an assessment process, or when implementation of existing guidelines is weak, many projects avoid assessments, thereby denying peoples rights to information.

There are several examples of how this occurs. For example, while the National Environment Act (NEA) in Sri Lanka states the requirement for access to information and public participation in EIA process, the requirement for an EIA was restricted to 'prescribed projects', allowing the agency responsible for project approval to determine which projects require a full EIA, or only an initial environmental examination (IEE). In the case of an IEE, there are no such requirements regarding information and participation.

In India, even though the Right to Information Act 2005 only places limited restrictions on the type of information that is prohibited from public disclosure. However, this restriction covers projects that are defined as 'commercial secrets' with large infrastructure projects such as hydropower and mining often excluded from disclosure. But when appeals have been filed with the Central Information Commissions, they have tended to rule in favour of public disclosure.

The discretionary power of state agencies in determining whether information should be made publicly available is also considered to be a continuing impediment. In many cases state officials do so without adequate understanding of their own legal requirements.

There are also concerns regarding press freedom, and the pressures that can be put on the media, sometimes indirectly, and sometimes in the most direct manner, for example, with killings of members of the press reported in the Philippines. Some sectors look to media to expose issues and cases of public concern as a powerful if not last resort to address corruption and violation of environmental policies, with the hope that doing so enlarges/heightens awareness of the people, and result in nipping the violations in the bud. Recent reports of incidences of intimidation, harassment, and killing of media people that has earned the Philippines the moniker 'the most dangerous country for media' would present to be a major draw back in Civil Society's bid to fast track the passage of the bill on freedom of information, and is a damper for mobilizing media support for transparency of information and participation in decision making

2.2.2 Legal framework regarding public participation

The legal position on public participation is largely confined to the Constitution. None of the assessment countries have specific legislation on public participation, and this is considered to be a major weakness.

However, constitutional rights to participate in national development and to participate in the political process can be interpreted to refer to access to participation more generally.

Table 6: Summary of legal framework on public participation

	Constitution	Environmental Legislation	Other Legislation	Overall Assessment (strong, intermediate or weak)
Bangladesh	▪ Right to freedom of Speech ▪ Right to Life	▪ Laws on Environment Management ▪ Environment Court Act 2000	Right to Information Act 2009	Intermediate
China		Law of the People's Republic of China on Evaluation of Environmental Effects 2002		Intermediate
India	Right to Life and Freedom of Speech and Expression	Environment Impact Assessment process		Weak
Indonesia	Article 28E "Everyone has the right to freedom of association, assembly, and opinion"	Law No. 23 of 1997 on Environmental Management	▪ Law on the making of laws 2004 (No. 10) ▪ System of National Development Law 2004 (No. 25) ▪ Regional Government 2004 Law (No. 32) ▪ Spatial Arrangement Law 2007 (No. 26)	Intermediate
Nepal	The Interim Constitution of Nepal 2007	Environmental Protection Act and Regulation1997	▪ Local Self Governance Act 1999 (Sec. 49, 117 & 205) ▪ Good Governance Act 2007 (section 20)	

Philippines	In the Declaration of Principles and State Policies of the Philippine Constitution, the role of women and youth in nation building, and the rights of indigenous cultural communities within the framework of national unity and development are recognised. It also states that non-government, community-based, or sectoral organisations that promote the welfare of the nation shall be encouraged.		Local Government Code of the Philippines	
Sri Lanka	Nil, other than the franchise	Limited participation under NEA and CCA.	No legislation, but some court decisions have been constructive.	Weak
Thailand	The 2007 Constitution: rights to participate on local governmental organisations (Section 287), an inspection mechanism of the work of the local governmental administration (Section 282), and a mechanism enabling the local community to participate with the local government agencies in the work to promote and protect the quality of the environment (Section 290)		▪ The Prime Minister's Office Regulation on Public Hearings B.E. 2548 (2005) ▪ The State Enterprise Capital Policy Committee Regulation on Public Hearing B.E. 2543 (2000), under the State Enterprise Capital Act B.E. 2542 (1999)	
Vietnam		Law on Environmental Protection (2005) Government Decree on Organisations, Activities and Associations (2003)		

Public participation operates at different levels. There is a general policy trend towards decentralisation further supporting participation at the local level for example, in regional regulation in Indonesia. This marks an important trend in opening space for engagement in decision making and planning.

The legal space for participation in environmental issues is largely established in terms of public hearings and consultation. This is late in the planning cycle, or is dealing specifically with impacts of a decision, and thus provides limited space for discussion of options, including the possible option of not going ahead with the project

In some cases, there are legal requirements on public consultation. In many cases, this centres around consultation processes for specific projects. In the case of Thailand, however, while there is no specific law on public participation, the Office of the Prime Minister Regulations on Public Hearings 2005, has attempted to clarify the process for such consultations. There are also broad commitments for the state to consult with the public. In the Philippines, for example, there is a commitment to periodic consultations with the local government agencies and NGOs. But in most cases, the legal requirements are vague, and clear guidelines of what should occur in practice are not available or, if they are, tend not to be followed in practice.

Although public hearings are held in India, there is argued to be no effective participation in the decision-making process, with no requirement for the views of the public to have any weight in the final decision. Even though the EIA process provides for 'detailed scrutiny' of the minute of the public hearing by the Expert Appraisal Committee, such scrutiny never occurs. To date, there has not been a single case of a project being rejected due to opposition at a public hearing.

There is a clear lack of mandatory guidelines on how to conduct public hearings – whether they are held, the level and quality of participation, and the degree of representation, particularly of poor and marginalised peoples (including women and ethnic minorities). This is also further undermined by a lack of capacity building requirements for the state on participation

Being able to establish an NGO or similar organisation represents an important mechanism to engage. Rules for establishing NGOs are becoming clearer, and in most cases, are considered to be quite straightforward.

Additionally there are many examples of participation in management of certain kinds of resources. Participatory approachesto natural resource management, for example in Community Forestry. Various institutions bringing together different stakeholder interests are now operating, such as the Philippines Sustainable Development Council.

In Vietnam the Law on Environmental Protection has strong stipulations for supporting public participation in decision-making processes as well as consulting affected communities while conducting EIAs for projects. However, implementation remains weak.

2.2.3 Legal framework regarding access to justice

The constitutions of all countries guarantee principles of access to justice, as well as remedy and redress. In some countries, the constitution clearly spells out responsibilities of the state to

protect the environment for people's benefits, and the rights and duties of people to a clean and safe environment (e.g. Sri Lanka, Thailand and Vietnam).

Constitutional commitments to fundamental rights, while not addressing environmental issues directly, have been applied to support environmental claims. For example, the constitutionally enshrined right to life has successfully been applied in cases of environmental harm.

One of the major challenges affecting access to environmental justice relates to legal definitions of who has suffered injury and who is responsible, as well as the legal mechanism for taking proactive action before environmental injuries become manifest. There are limited opportunities for taking legal action in cases that affect the general public. In the case of Sri Lanka, clauses in the constitution, however, have been used as the basis for Public Interest Litigation (PIL). In Nepal, the Civil Code Chapter on Court Procedure Section 10 also provides *locus standi* to any individual to bring a case to the judiciary if the case is of public interest. However, the Supreme Court of Nepal has established the principle of *substantial interest and meaningful relationship of the petitioner with the claim*.

The importance of creative interpretation of established rights, either within the constitution or specific areas of legislation, is identified as an important mechanism to ensure that the existing legal framework can be applied effectively. However this also indicates the need for skilled and creative legal support to build such a case.

Rights to a healthy environment – defined according to rights to manage natural resource base at the local level, rights not to have the environment and key public resources such as air and water degraded – are established in law.

Table 7: Summary of legal framework on access to justice

	Constitution	**Environmental Legislation**	**Other Legislation**	**Overall Assessment Strong, Intermediate or Weak**
Bangladesh	▪ Right to freedom of Speech ▪ Right to Life	▪ Laws on Environment Management ▪ Environment Court Act 2000	Right to Information Act 2009	Intermediate
China		Environmental Protection Law of the People's Republic of China 1989		Weak
India	Right to Life Freedom of Speech and Expression Right to Constitutional Remedies	National Environment Appellate Authority Act 1997 National Environment Tribunal Act 1995 [yet to come into force]		Strong
Indonesia	Right to a healthy environment "Everyone has the right to promote themselves in the struggle for their rights collectively to build the nation and country"	Law on Environmental Management	▪ Forestry Law 1999 (No. 41) ▪ Spatial Arrangement Law of 2007 (No. 26) ▪ Criminal Procedural Law 1981 (No. 8) ▪ Het Herziene Indonesisch Reglement (HIR)	
Nepal	Right to live in clean environment	Environment Protection Act and Regulation 1997	Several environment related legislations	Weak enforcement and implementation
Philippines	The Philippine constitutional guarantees to the right to a clean and safe environment, access to justice, freedom of expression and right to freedom of association are clear and inclusive. It guarantees the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.			
Sri Lanka	Constitution	▪ National Environmental Act ▪ Coast Conservation Act	A decision made in violation of any law can be challenged in a court of appropriate jurisdiction.	Strong

Thailand	The 2007 Constitution: rights to participate on local governmental organisations (Section 287), an inspection mechanism of the work of the local governmental administration (Section 282), and a mechanism enabling the local community to participate with the local government agencies in the work to promote and protect the quality of the environment (Section 290)	▪ The National Environmental Quality Act 1992 ▪ The National Health Act 2007	▪ The Official Information Act 1997 ▪ Office of the Prime Minister Regulations on Public Hearings 2005	
Vietnam	Right to enjoy a healthy and safe environment; Public access to justice, to claim for damages and repair	Law on Environmental Protection (2005); Civil Procedure Code (2004); Civil Code (2005); Law on Organisation of the People's Court (2002)		Intermediate

A common concern identified in the country reports relates to the existence of effective independent institutions to promote access to justice, and mechanisms that allow for easy access. One of example of such an institution comes from India, in the form of the Central Empowered Committee (CEC), which was established by the Supreme Court and has the authority to bring different stakeholders into the legal process.

Ultimately, access to environmental justice cannot be easily separated from broader issues of access to justice and the ability to hold governments, state institutions and the private sector to account. In each of the countries, such capacities face significant constraints.

2.3 Access to Information

Overall, there are greater opportunities for access to information with states becoming increasingly open to disclosing information within agreed time frames, while at the same time, information technology provides greater opportunities for dissemination and access. Yet across all the countries, similar problems persist in terms of timeliness, reliability, accessibility and acceptability of information, the extent to which political and commercial influence outweigh environmental considerations, and the extent to which the needs of more marginalised peoples are being met.

Much of the environmental information generated by the state is highly technical and often difficult for the wider public to understand. State institutions can use this technical complexity to obfuscate the process of gaining access, and whether deliberately or not, information that is not easily understood by a lay person is not always what is most required.

Often, this is a matter of language. The language in which information is presented can restrict broad public access. In most cases information is made available in national languages. Across all countries, information is not made available in minority languages, thereby further denying rights of access to already marginalised groups.

The continuing issue of political will and capacity of the state to collate, prepare and disseminate information emerges in each of the countries. Institutional culture of state agencies also tends to work against proactive provision of information. This is more prominent when there may be concerns regarding sensitivity of the information and possible consequences (whether political, commercial or professional) of making this widely available in public.

This reluctance to disclose information for fear of exposing the state to public criticism has been documented to have occurred even in circumstances of no obvious political risk or tension. For example, the state's initial reluctance to reveal information on the extent of the bird flu epidemic in Thailand is argued to have been concerns for the economic impact this might have had on an important export industry.

In some cases, such as the earthquake related tsunami, the state agencies were ill-prepared, under capacity, and did not have the information that was required. While this is perhaps to some degree understandable in extreme emergencies, several countries also point to the lack of institutional capacity and preparedness even in dealing with more predictable and regular emergencies.

In all countries, guidelines for state officials regarding disclosure of information are inadequate. This means that performance is often erratic and determined by discretionary powers of institutions or senior government officials.

The value of monitoring and evaluation of state performance, for example through the establishment of key performance indicators, has been introduced in Thailand with specific indicators now established to consider transparency of information disclosure and public participation. But it remains to be seen how poor performance against such indicators might be dealt with, or how public such a process might be.

The review also indicates the value of different sources of information, including processes in which citizens can generate their own information and better represent their own interests. This is both a means to ensure broader sources and improved quality of information with lower costs associated, and also a means to broaden the decision-making arena. But there is also a risk in that if information derived from different sources is contradictory, there needs to be some dialogue and review mechanism.

In all countries civil society – NGOs, academia and the media – has played a crucial role in improving access to information. Often, merely raising the profile of certain issues acts as a powerful influence on the state to disclose information, and to do so proactively. In other cases,

the media has brought environmental issues to a wider public and also provided an avenue for information dissemination. As well as being active players in campaigns for access rights, the media has also been effective in countering moves to amend earlier legal provisions. For example, the media in India has been active in campaigning against efforts to dilute the Right to Information Act by placing certain categories of information outside the purview of the public. But there are also concerns that the media has tended to be most interested in high-profile controversial cases, rather than less glamorous cases related to regular monitoring.

Additionally, civil society has played a role in taking legal action to ensure disclosure of information, as has happened in Sri Lanka. But while this has been effective, legal action requires considerable commitments or capacity, time and budgets.

Civil society has also played a critical role in mobilising grassroots and community groups to campaign for and exercise their access rights. From 1997-2005, civil society in India did not engage with the National Environment Appellate Authority so that this was a period in which few appeals were lodged. The lack of civil society engagement is thus seen as a factor in limiting the effectiveness of institutions that have a mandate for ensuring access rights.

The nature of civil society across the TAI countries differs significantly. In China and Vietnam, mass organisations sponsored by the state as ways of engaging citizens and ensuring greater reach of the state are the most dominant 'civil society organisations'. But in both countries there have been recent moves to support the establishment of grassroots organisations, and these too are becoming increasingly active in environmental matters.

While recognising the important role that civil society has played in promoting access rights, it is also important to avoid assuming that the state itself is incapable or unwilling to represent the interests of its citizens. For example in China, the role of state agencies that have a 'real commitment to public welfare' has been instrumental in address access rights, and in taking up deficiencies of other state agencies.

Positive stories

The most positive findings regarding access to information cover those related to emergencies and regular monitoring of the environment. For all countries, the state has been found to have been largely proactive and reasonably effective in producing and disseminating information related to emergencies. For example, in Sri Lanka, the government has managed to provide necessary warnings about floods in time that have reached the majority of people, and that people consider to have been useful. However, in Nepal, the review found that flood-warning systems were inadequate. This performance is partly attributed lack of clarity between relative responsibilities of different government agencies, and between the Central and District levels. Vietnam has also provided similar findings that are attributed to inadequate technical support in government agencies with no clear plan of action to provide emergency related information. But sometimes the sheer scale of emergencies can overwhelm the state institutions, as in the case of flooding in Nepal and the tsunami that affected Thailand and other countries.

However, in India, the lack of clear legal provision on information in cases of emergencies is argued to have led to delays and high human costs, even in areas that are regularly subject to floods, and would thus be expected to be better prepared. The review found that there is no regular information collection system that might contribute to an early-warning system, and that due to the geography of the area and proximity to international borders, it is considered an area of national security.

There are also practical aspects to consider in ensuring information reaches more remote areas and more marginalised peoples. These kinds of challenges are often exacerbated in times of emergency. This is an aspect of emergency information in which performance has been found to be weakest.

An area of marked improvement in all of the countries is that of regular monitoring of the environment. Information is increasingly available in public media, whether in newspapers or the internet. Much of this regular monitoring is related to air and water quality, and government capacity is relatively able to deal with this level of monitoring. But there are also continuing challenges of managing a high volume of complex data.

In some cases where there are pressing environmental and health problems, the state is less able to cope with the demands of regular monitoring. For example, the issue of arsenic contamination in drinking water in Nepal has proved to require a level of monitoring, technical capacity and required infrastructure that the state has struggled to meet. In this case, NGOs have helped to fill the gap by partnering with the government, taking on some of the responsibilities and providing information through the environment ministry's official website. The lack of an integrated information management system has been highlighted as a problem in Indonesia, and in Thailand, where environmental and health data are not brought together.

Regular monitoring of facilities, often associated with environmental pollution, health and livelihood impacts, is found to be weak. There are many factors that can contribute to this situation. Commonly the cases identify that conflicts of interest – particularly related to commercial and political interests – constrain opportunities for such regular monitoring.

There are enormous challenges for ensuring effective monitoring. Despite requirements for monitoring the resources, capacity is not always available. In India, the number of approvals given to projects has increased manyfold, but at the same time, the number of staff employed to deal with these approvals has decreased.

In each of the countries, state of the environment reports have been produced reasonably regularly. The process of producing these reports has involved some degree of public participation, with generally what are considered to have been clear timelines and capacity building efforts. These reports are considered to be generally accessible but perhaps through limited media and with limited reach. The accuracy, reliability and usefulness of the assessments are also questioned. In the case of India, the reporting is considered to have been a stand-alone activity, with little effort to disseminate the findings at the local level. The linkages between compiling regular reports on the state of the environment and policy change are also unclear, with a concern that even government agencies are either not aware of the reports or do not pay them much serious attention. These problems again relate to both the process of compiling

such reports, and the political will and influence of those involved. By opening the process to greater public participation, involving the private sector and a wider range of government agencies, with a clear strategy for dissemination, the influence of these reports would become stronger. While these are areas that have seen improvements, there are still some concerns regarding the extent to which regular monitoring information is relevant and useful, and the degree to which such information influences policy decisions.

Most difficulties arise when environmental information is deemed to be 'sensitive' in some way, or where there are tensions between economic development and environmental concerns, with potential conflicts of interest between the state and private sector. In most cases, commercial and political interests are considered to have prevailed. The review from the Philippines highlights the need for political commitment from the state. Where there are no conflicts of interest, the state is argued to have been forthcoming in generating and disseminating information. But only a few such cases have been documented.

For all the countries, performance has scored relatively low in these areas. A number of the case studies have been concerned with specific project development, such as construction of roads, hydropower plants, industrial facilities, and pollution cases. The assessments from all the countries have drawn similar conclusions. On the whole, the process of conducting environmental assessments has been poor, with much of the information difficult to obtain or inaccessible within a reasonable time frame. In some cases, the costs of accessing relevant information have been extremely high. Significantly many projects still evade the need for any formal environmental assessment process due to weaknesses in the legal frameworks and the discretionary powers of concerned government agencies.

Facility-level information is also less accessible. The priority for ensuring economic investment overrides environmental concerns. This has been noted in industrial plants and also larger Special Economic Zones (e.g. Sri Lanka). In India, Special Economic Zones have been established with a great deal of secrecy that has continued through the operation stages.

The assessments also point to the difficulties in ensuring compliance with the private sector. The media and civil society play an important role in ensuring some degree of accountability. Similarly, when the people impacted are poor, marginalised or ethnic minorities, the cases suggest that access to information and compliance are weaker. Additional challenges arise when projects involve more than one country, and their development is related to inter-state political relations.

Each of the assessments points to the issue of capacity of the state actually being able to prepare and deliver information as it is required. It is here again that civil society has played an influential role for example in providing additional technical support as in the case of Nepal, where NGOs supported the compilation of the state of the environment reports.

Several constraints to people gaining access to information are common across all the countries. For example, the costs associated with accessing information can be prohibitive to poor and marginal people, but also in some cases prohibitively expensive to all stakeholders. Much of the information can be of a technical nature that is difficult to understand, and the sheer volume of information can be so overwhelming that it is difficult to determine which pieces of information are most relevant. Additionally, institutional practices and limited capacity within

the state agencies, together with lack of dedicated budget to support access to information, continue to act as obstacles.

What appears to work and why

Ensuring access rights requires a combination of networking among concerned stakeholders, legal knowledge and skills, being politically astute as well as the ability to advocate around legal arguments and present a convincing case. For all the countries, the achievements of strengthening access rights have required a sustained, long-term commitment.

The Indonesian case study of success indicates many of these factors with civil society organising itself specifically around issues of transparency and access to information under the Indonesian Centre for Environmental Law (ICEL) over many years. A coalition of civil society organisations became active in the post-Suharto reform period, first proposing the act to the House of Representatives, and then persistently lobbying for its adoption. This whole process took from 2000 until 2008, through two democratically elected governments – indicating the type of commitment that might be necessary in order to ensure that effective legislation is passed. The ICEL has also been influential in pushing for the establishment of Information Commission (Presidential Decree No. 48/P/2009 issued in 2 June 2009), as agreed under the Law on Public Information Disclosure.

For Nepal, Sri Lanka and India, The Access Initiative itself is seen as an example of a success story. The kind of review of access rights and the process it has followed has provided a basis for pursuing specific issues, such as lobbying in response to the poor performance of the National Environmental Appellate Authority in India. TAI could further operate as a mechanism for monitoring the performance of the state, and for engaging with broad stakeholders to identify opportunities for improvement.

2.4 Participation in decision making

People's rights to participate and state guidelines on how to implement participatory processes are not necessarily clearly identified in the legal framework. While constitutions tend to at the very least make reference to citizen's rights to participate in the political process, what this might mean in practice remains unclear, and is very much contested. Very often, legal requirements are inadequate, and guidelines for the state agencies are vague, leaving participation *ad hoc.*

Participation in environmental decision making needs also to be seen in the context of broader political reform that can be seen to both drive and be driven by concerns for environmental issues. The kinds of case studies brought together under this regional assessment reveal that the environmental issues addressed are closely linked to everyday priorities of citizens, and thus linked to broader political dimensions of power, transparency and accountability.

Decentralisation appears as a policy priority in many countries, creating greater opportunities for the public to engage at a more local level. In many cases, local concerns have strong linkages with environmental concerns. For example, issues of encroachment on common property, pollution of local livelihood resources, water and air quality, all appear on the local political agendas.

Alongside this trend towards decentralisation of political and administrative authority, community management of natural resources such as forests and fisheries is increasingly incorporated in sectoral policy, with the adoption of participatory principles and approaches.

Performance on public participation in decision making is extremely mixed, both across and within the countries, and between sectors and types of issues. This performance is not only influenced by the type or the scale of engagement, but also by the way that the responsible agencies manage the process and the ways in which civil society are allowed or able to engage. But participation can often be a loose concept that means different things to different people, and is a concept and value that is not easily implemented.

In the majority of cases, participation is taken to refer to public hearings and consultation. These two terms are often used interchangeably but it is important to distinguish between a process of consultation that assesses options well before decisions are made, and public hearings as specific events within a broader process of public participation. There are two main levels of public hearings and consultations that have been reviewed – those at the policy level, and those associated with specific projects (such as infrastructure projects or pollution cases) based around some form of environmental assessment process. There is a concern that despite notable improvements in some situations, consultation is rare and public hearings are inadequate, with neither allowing space for meaningful participation. In the worst cases, public hearings are a form of political ceremony that lacks meaningful representation and has no influence on the decision making, but merely providing a means to legitimise what has already been decided.

2.4.1 Participation in policy making

At the policy-making level the degree of public participation is mixed. On the one hand, national policy directions are often decided without much public engagement, and with limited information being available. For example, the case of Bangladesh joining the GATT, and the development of national a gro-biodiversity policy in Nepal are considered to have occurred without any significant public participation or consultation.

On the other hand, some important aspects of national policy development more directly related to environmental concerns have occurred with a relatively high degree of participation that is considered to have been meaningful and influential. For example, in Sri Lanka during the drafting of the National Policy on Bio-Safety, the government actively encouraged public participation even though there was no legal requirement to do so. Similarly in Indonesia, public input into environmental and pro-health policy choices is acknowledged as being reasonably effective, but there has been far less input into project and licensing levels. In India, there is no constitutional or even legal requirement for public participation in policy making, so that it is either non-existent or largely cosmetic.

2.4.2 At project and facility levels

For all countries, participation at the project level is considered to be weak, although there are exceptions. This is generally attributed to the weakness of legislation regarding the process for environmental assessment, the lack of guidelines and standardised procedures on how to conduct public participation. In general, minimum requirements for public participation are followed.

Where participation does occur it is often late in the decision-making process. Public participation tends to occur once the project is reasonably advanced, leaving limited opportunity for influencing the overall decision. There is no evidence of public participation having taken place at the project development stages of options assessment, screening and scoping.

The process tends not to be inclusive enough with people to be affected by project development, particularly the poor and marginalised, or not given the space and opportunity to represent their interests. In some cases, narrow representation is actually defined in the law.

The way in which public participation is managed also raises concerns. Generally, the main mechanism that has been practiced is some form of public hearing. Yet experience from the assessments highlights that the notification for public hearings tends to be late, so that participants are not able to prepare themselves adequately. Given the complexity of many environmental concerns and the great deal of technical detail associated with project development, such as large infrastructure, it is essential that adequate time is provided for technical review of relevant documentation. In cases where the background documentation is made available, it may be too much and too technical to be absorbed. Civil society organisations have also struggled to respond to lengthy technical reports, or to provide their comments within the required time frame. Information may not be made available, and there may not be any systematic means of maintaining records. There is a need not only for a more accountable and transparent process for planning and managing public hearings, but also for greater capacity building to allow different stakeholders to engage on a more level-playing field.

The failure of public hearings to have any real influence risks undermining public confidence in the whole process. Ultimately, this means that even when opportunities for meaningful participation are created, there may be very limited engagement of concerned people. There are, however, also cases in which more than minimum requirements have been met and in which public participation has been influential.

Where there is a clear broad public interest and where there are potential political risks associated with projects, the state can be proactive in ensuring an acceptable degree of public participation. For example, the Colombo-Kandy Expressway project in Sri Lanka represents a positive case of the state being proactive in promoting public participation in the EIA for the project.

The experience from Vietnam illustrates the potency of national symbols and the way in which evidence-based dialogue, bringing together different sides of a dispute including the state and private sector, can influence decision making. In this case, planned development on a mountain recognised as a National Park became an issue of broad public concern and allowed for effective mobilisation.

But equally, where there are potential conflicts of interest, or influential political and commercial interests at play, the space for meaningful participation and informed dialogue can be constrained. There are many cases associated with large-scale infrastructure development in which public participation has been inadequate. Again in Sri Lanka, the Eppaweal Phosphate Mining Case demonstrates that in the case of powerful political and commercial interests, the government is able to avoid public participation despite legal requirements to do so.

Further problems arise when the jurisdiction of government agencies over projects is not clear, with competition between government agencies, or the lack of clarity allowing responsible agencies to avoid their responsibilities and possible exposure to criticism.

Somewhat contradictory signs of improvements appear in terms of space for participation. But generally, the assessments illustrate that in most cases, participation in environmental decision making is restricted to public hearings and forum to a limited degree, covering policy debates concerning non-controversial issues, environmental emergencies or crises, and specific projects. There is less experience of open consultation to assess a range of options.

Given the inherent difficulties surrounding participation in decision making, the record of mixed performance across the countries should not be a surprise. We need to be cautious about seeing issues of participation as managerial technical issues – without forgetting that there is an inherent political dimension about opening up governance processes and addressing structural factors that have led to certain ways in which problems are framed, and in which the environment and the benefits it generates have been accessed and distributed to the benefit of some and the exclusion of others.

Legislation to define the character of meaningful public participation, as well as the roles and responsibilities of various actors, can help overcome these kinds of difficulties. Thailand has built on the experience of the TAI and begun the process of pushing for a Public Participation Act. This kind of legal development has a significant potential for other Asian countries.

2.5 Access to justice

Ensuring environmental justice poses several challenges related to the very nature of environmental problems. Environmental justice is often concerned with environmental and related social impacts. Often, these impacts are complex, not always easily attributed to one single factor, and can often take many years for their full significance to become clear. Identifying the impacted and the perpetrators may also be difficult. The evidence required for legal proceedings may be difficult to obtain and of a highly technical nature, opening scope for argument and counter-argument and taking a long period of time to be resolved. Equally, this complexity can act as a barrier for people to engage in formal legal processes. Environmental justice requires addressing these legal, administrative and technical dimensions.

The assessment found that performance with regard to access to justice has been mixed. While the legal framework does provide the basis for ensuring access to justice exercising these rights has been found to be extremely difficult in practice. But this is not a problem that is restricted to environmental justice. There are certainly specific challenges associated with environmental justice, but access to justice is also a weakness that cuts across the board, affecting a wide range of issues and stakeholders. Yet these general constraints are perhaps exacerbated in cases of environmental justice.

The legal process is complex, time-consuming and expensive. This makes it difficult to bring cases, and certainly acts against lay people, and particularly poorer, more marginalised people in taking legal action. The ability of such people to exercise their legal rights is often dependent on

the capacity of NGOs and the availability of some form of legal aid support. In these areas again, performance is mixed. Where legal aid is available, it is considered to be inadequate, and the technical and financial capacity of NGOs is also often limited.

The costs associated with taking legal action are often prohibitive. However, in some cases there are mechanisms for court support. For example, the provision of legal aid and the Bar Association's own efforts (e.g. Sri Lanka) plus those of NGOs and civil society organisations have helped to pursue legal cases. But on the whole, the provision of legal aid is inadequate.

The effectiveness of the legal system in dealing with cases once they are brought through the legal process also depends on the operation of courts of appeal and independent institutions and forum. The mix of technical, administrative and judicial representation has been found to be influential in determining positive outcomes in India.

Yet in some cases, the capacity and independence of appeals mechanisms and institutions are questioned. For example, in India the National Environment Appellate Authority (NEAA) comprises bureaucrats often from the Ministry of Environment and Forest itself whose decision they are supposed to examine as 'technical members' of the authority, and does not involve non-state stakeholders, even academics. It is reluctant to take action against the state institution in which many of its members were previously employed. Indeed, its record would appear to be poor, with all cases but one dismissed during the last 12 years. The Delhi High Court in a judgment delivered in February 2009 assessed the members as 'not competent' for the post and the NEAA as 'neither an effective nor independent'.

The presence of independent watchdog institutions, such as the National Human Rights Commissions (NHRC) in Nepal and Thailand, which that cover a range of constitutional rights including those associated with the environment, is a positive trend. However, the effectiveness of independent institutions remains limited with mixed results.

There is considerable interest in exploring the potential for Alternative Dispute Resolutions (ADR). Yet where such mechanisms do exist, they have not always been used. For example, in Nepal, the Environmental Harm Compensation Committee under the leadership of the Chief District Officer (CDO) provides a forum for local people to seek redress, but this forum has hardly been used.

The very nature of environmental issues requires that the definition of the damaged party needs to be broadened to allow for due process in cases that affect public interest, or in which the damaged party is not an individual, or in which the damages are potential and anticipated.

There have been some successes in Public Interest Litigation (PIL), for example in Bangladesh and in Nepal, but these remain rather limited. In Thailand, while the Administrative Court has laid down guidelines that enable juristic persons to sue in court on behalf of its member, it does not accept taking a case to court to protect the public interest in a general sense. Drawing on constitutional requirements for the state to protect the environment for community benefits, PIL has been launched in Sri Lanka

There are some areas of change that are remarkably recent and directly attributable to the kind of process that has been supported under the TAI. In April 2009, the Supreme Court of the Philippines convened an Environmental Justice Forum of government and civil society institutions, organisations and individuals. This produced two concrete outcomes: an agreement to pursue environmental justice based on the access principles, and draft rules of court that would enhance environmental justice, including tools for citizens to utilise these rules.

The question remains whether people are able and willing to take legal proceedings if their legally established rights are infringed. In both China and Indonesia, the argument is that they are not. The review in China suggests that the credibility of the legal system has been broadly undermined, and that this situation is intensifying with widespread public protests largely based around environmental and social issues. For example, the China country assessment found that there are 100,000 registered environmental disputes in China annually, but less than 1% of these issues finally came to litigation proceeding. The vast majority of lawsuits, from 60% to 70% were defeated, and even when victims have won the suits, they faced obstacles in getting redress.

Obviously, the lack of knowledge among the general public (and the legal profession in many cases) on people's rights and how to pursue these is a key factor. It would also seem that unless there are proactive mechanisms and actors in place to encourage and support the process, people would continue to be reluctant or unable to go through the legal process. The case studies in which legal action has been brought all involve the active engagement of legally competent NGOs, often with direct support from legal professionals and the media, taking collective action, and sustaining their efforts over a considerable period of time.

Given the particular challenges with ensuring environmental justice, there is also interest in establishing specific courts to deal with these challenges, for example through creating environmental courts, Green Courts or Green Benches. Yet there are no working examples of such mechanisms in operation.

The long time delays associated with the legal process acts as a major yet common impediment to justice. In Nepal, cases have taken from one month to a decade to be resolved. There are other cases in which the legal process has gone on unresolved, or in which court decisions have not been acted. For example, Klitty Creek case and Mae Moh Power Plant cases in Thailand indicate the length of time for the legal process even in high-profile cases. But drawing on the experience of Klitty Creek in Thailand, where the party involved is a marginalised ethnic minority, the process is even more easily delayed.

Once the legal process has been followed, there are also concerns about the decisions of courts and how these are implemented. Overall implementation of court decisions has been poor. For example, in Nepal only 54% of court decisions have been implemented.

The types of decisions that are made by the courts also vary in scope. In many cases, these have dealt with halting projects and providing damages. In Sri Lanka, despite a court ruling that found against not conducting an EIA on a revised route of the Southern Expressway, the project itself was not halted, but compensation was paid. However, in a similar case of a multi-national company's phosphate mining, the project was halted after local people petitioned the Supreme Court after they were excluded from the process. Courts in Sri Lanka have also handed out heavy penalties

against government agencies. This experience illustrates how procedural irregularities rather than constitutional rights and principles can be the basis of legal action, and that this requires specialist legal skills.

The review clearly indicates the potential social and political risks associated with failure to address access to justice, with the fallout of these failures going way beyond immediate environmental concerns. Ensuring access to justice is at the very heart of the legitimacy and credibility of government. As environmental problems intensify, and the numbers of people affected grow, ensuring environmental justice must be a high priority for the state and civil society in Asia. It is the one area of study that the TAI across the countries identifies as requiring further investigation.

From all the countries, the need for legal reform comes across as a strong recommendation. Such reform will depend on active engagement of civil society. That reforms have been instituted relatively recently but after prolonged campaigns and debate indicates that the path of future reform is likely to be long and, to some degree, uncertain.

2.6 Overall performance

The very nature of environmental issues is changing, from earlier association with conservation to a much closer association with human well-being, livelihoods and rights, including fundamental rights of citizenship concerned with how state make decisions, and the transparency and accountability of decisions and action of the state and increasingly of the private sector.

The experience of The Access Initiative in Asia clearly indicates that there has been considerable progress in strengthening access rights within recent years across all of the assessment countries, but that many of the issues and constraints identified in earlier reports of the initiative and in other parts of the world persist. The TAI itself is clearly regarded as a catalyst in this process, with significant outcomes in countries such as the Philippines.

From all the national reviews, there is a clear trend towards growing openness and progressive legislation from the governments of Asia. This also incorporates broader political and bureaucratic change such as public sector reform, decentralisation initiatives, and greater space for civil society to operate more effectively.

The legal framework across all countries increasingly takes on access rights, whether in the constitution, legislation on rights to information, or in environmental legislation governing information and public participation. For all the countries, for many years a key mechanism for ensuring access rights is in the form of consultations around EIA processes, but while these processes are gaining ground, there are still many weaknesses. In particular, the institutions and mechanisms in place for ensuring access rights in the environment remain weak and often ineffective. But significantly, the case studies in the nine countries cover more than EIA processes, addressing environmental quality monitoring, reporting as well as facility and project level issues.

The clearest improvements come in areas related to regular environmental monitoring, but even these improvements have come about, due to the political pressure that civil society and the media

have exerted. The performance in terms of facility monitoring is more mixed and it is in this area that competing political and commercial interests are more influential in determining outcomes.

Civil society is also emerging more strongly in each of the countries and is now generally better informed, more articulate and more proactive in engaging with the state, and representing public interests. Civil society and the media are playing an important role in ensuring accountability and transparency, and in many cases, working together in partnership with the state. Critically, the media has played an important role in bringing issues to the public's attention and in helping to put the environment on the wider political agenda.

However, it may be premature to make any strong conclusion about the relationship between civil society, freedom of the media, and the strength of access rights. Current evidence does certainly suggest that the stronger the civil society, the better respect for access principles. But clearly an assertive civil society is not enough on its own. The case of the Philippines provides important insights. Despite a strong legislative framework and an assertive civil society that has engaged closely with the state, problems of implementation of access rights, and environmental legislation and regulations persist. And indeed, Philippines scores very poorly in Transparency International's assessment of corruption. In each of the countries, civil society and the media continue to face many challenges to being effective and influential.

It is important to note that the positive trends that are discussed in the TAI reports are in many cases rather recent, and in some cases following periods of protracted political struggle, with long-term outcomes uncertain. In other cases, such as China and Vietnam, the space provided to civil society is itself very recent. Despite the stated importance of the media in ensuring access rights, all of the countries in the TAI lie within the bottom third of global assessments of press freedom. Given the persistence of certain kinds of constraints against access rights and the growing intensification of environmental problems, there is no reason for complacency or to assume that initial positive trends will continue unchallenged.

There is a growing public interest in environmental issues, and thus a broadening of the environmental constituency beyond lobby groups to a wider public, bringing environmental issues more firmly into public political interest. We see this from the range of case studies that are covered in the review and the kinds of issues that emerge from these cases. Whereas the environment agenda used to be associated with conservation interests, increasingly environmental issues are directly linked to concerns for public health, safety and general well-being, and the very basis of the state's decision making.

Equally, these concerns for access rights are not confined to the environmental sector. Transparency of information has been a central platform in broader political struggles for transparency, accountability and representation, and purposively linked to securing human rights and good governance.

Issues of citizenship and representation emerge in each of the countries. Across the assessment, more marginalised people have less access to information, participation and justice. Moreover, they are less able to exercise their access rights effectively. Despite moves towards strengthening access rights, these alone are not sufficient to address existing inequalities, particularly of wealth and power.

Each of the country reports points to issues of capacity – of the state, civil society, the media and general public – as constraints on realising access rights. The capacity of the state to respond positively to these emerging trends is still limited. The state's available budget, human resources (in terms of numbers of staff and technical capacity), and organisational culture are all often constrained and over-stretched, increasingly being required to perform in new ways with new sets of skills. For example, in most of the countries in the TAI assessment, principles of transparency, accountability and public participation do not fit easily with the institutional culture of state agencies or with the technical capacities of government agents. The national reviews frequently point to institutional constraints, as much as to constraints of legislation. These kinds of institutional constraints need to be incorporated into understandings of capacity building.

This valid concern with capacity, however, should not divert our attention from issues of political will and power. There is a risk in framing access rights simply as a matter of capacity that the underlying political dimensions of governance are obscured. Access rights are fundamentally about ensuring transparency, holding the state (and increasingly the private sector) accountable, and providing space for the public to engage in how decisions are made. Inevitably, access rights come up against established power and influence that can only be partly addressed through capacity building. There is a clear need for the political will of the states and state institutions. Yet conclusions on what drives such political will are not easily reached.

Each of the reviews points to the frequent tensions between commercial interests and the full exercise of access rights, with widely reported cases of compromise of access rights and legal process in favour of political and commercial interest. Self-regulation and performance of the private sector is likely to emerge as a key area for future work on access rights, with a potentially more proactive role for the private sector to encourage corporate social responsibility (CSR) through such mechanisms as the application of the Equator Principles.

While the TAI illustrates clear positive trends despite persistent obstacles, we should be cautious in assuming that the positive trends would continue on their current trajectory uninterrupted. All of the country assessments illustrate mixed performance according to access rights, and discuss the importance of maintaining vigilance – in strengthening the legal framework and the performance of key institutions, in improving capacity and strengthening political will, and of an engaged civil society and media.

Table 9: Law framework and government efforts to capacity building

Indicators	Weak	Intermediate	Strong
Framework law supporting broad access to government information (7)	No framework law	Framework law clear but not inclusive: *Bangladesh, China, Indonesia, Thailand*	Framework law clear and inclusive
Laws supporting broad public participation in decision making (47)	No support for broad public participation: *Bangladesh*	Limited support for broad public participation: *China, Indonesia, Thailand*	Extensive support for broad public participation
Timeframe for forum decisions (103)	Law is silent on timeframe: *Bangladesh, China*	The law establishes an unreasonable timeframe for forum decisions: *Indonesia*	The law establishes a reasonable timeframe for forum decisions: *Thailand*
Government efforts to build its own capacity			
Guidelines or training on access to information and public participation (123)	No guidelines or training offered to government agencies in the last 3 years	Limited guidelines or training in the last 3 year: *Bangladesh, China, Indonesia*	Regular guidelines and training in the last 3 years
Government efforts to build the capacity of the public			
Government investment in environmental education (145)	No department or programme responsible for the development of environmental education materials: *Bangladesh*	There is a department or programme responsible for the development of environmental educational materials: *China, Indonesia, Thailand*	There is a department or programme responsible for the development of environmental educational materials and training of teachers
Supportive environment for NGOs			
Requirements governing registration of public interest groups (137)	Rules of regulations do not allow the formation of NGOs	Rules and regulations significantly restrict the formation of new NGOs and their scope of work: *China, Indonesia, Thailand*	Legal registration of NGOs takes less than one month, and they do not have to meet special financial or other prohibitive requirement: *Bangladesh*
Conditions for financing of NGO activities	No sources of financing of NGO activities are available	Either national or international sources of funding of NGOs are available but with restricted conditions that make it difficult for NGOs to access funding: *Bangladesh, China, Indonesia, Thailand*	Both national and international financial support for NGOs is available without restrictive conditions

3

Synthesis: Documenting Progress in Promoting Access

3. Synthesis: Documenting Progress in Promoting Access

The Access Initiative works on a number of fronts to promote the principles of access with its Asian coalition of members. For almost a decade (since 2002) of work in the region, TAI Asia has catalysed several encouraging success stories. These stories, many arising out of the national assessment exercises, demonstrate the steps taken in the diverse countries of the region. Working in a multitude of socio-economic and political situations, the TAI coalition is also illustrating how to advance the access principles at the regional level.

This synthesis chapter presents the success stories as cases, organised thematically under the larger framework of access. First, progress made towards integrating access into the legal framework is described. This section shows the importance of fundamental legal instruments, such as the constitution, as well as specific legislation. Second, advances in securing access to information are discussed. These stories illustrate concrete approaches to implementation of access legislation. Third, these stories demonstrate the real-time processes and implications of enhanced participation in decision making. Fourth, application of judicial process in rectifying environmental and social damages from development that illustrates breakthroughs in access to justice is explored. Finally, stories discussing institutional, technical and administrative skills within the access framework underscore the linkages between capacity and governance outcomes. There is some variety in the scope and detail of these stories, but this should be understood as affirming the importance of diverse approaches to access work in the region.

1. Legal framework

One of the first aspects of access to be analysed in the TAI assessments is the legal framework, which provides the most fundamental basis for discussing the strengths and weaknesses of a nation's environmental governance. This first section describes how some TAI partners in Asia have addressed gaps in the legal framework, approaching the issues from national constitutions down to specific legislation and regulations.

1.1 Access language into constitution in Thailand and Nepal

Access language has been injected into the constitutional drafting processes in Thailand and Nepal. TAI efforts in each country have been crucial in this encouraging development. At the same time, the Thai effort served as a stimulus to a similar movement in Nepal.

1.1.1 Advocacy for good governance in the Thai Constitution development process

As the new constitution was being drafted in 2007, TEI held a Dialogue on Environmental Dimensions of the New Constitution and Related Laws and Regulations (22 January, 2007) to bring together key participants to discuss and make recommendations related to access rights in three specific laws: the new Constitution, Public Participation Act (not yet in existence) and the amendment of the Official Information Act 1997. TEI's recommendations were submitted to the National People's Assembly (NPA) and Constitution Drafting Assembly (CDA) in order to influence the Constitution context, while at the same time the document was disseminated to the public.

Once the draft Constitution was completed, the government allowed a period for people's comments. TEI and 12 partner organisations held a Dialogue on the State and the Governance of Natural Resources and Environment (NRE) on 30 May 2007. This meeting brought together 428 participants from different sectors through out the country to learn about the results of the 3rd TAI assessment in Thailand, as well as to analyse the draft Constitution and make specific comments on the issue of environmental governance to the Government (Ministry of NRE, Ministry of Social Development and Human Security and the Prime Minister Office) and the CDA. In addition, the forum called for further advocacy efforts, including meaningful public participationin the decision-making process, appropriate time bound regarding information disclosure and decision-making process, and capacity of the government to implement in accordance to the Constitution.

1.1.2 Access language in the new Constitution of Nepal

Nepal is in the midst of a participatory Constitution drafting process. There are efforts to ensure that the Constitution writing process is people-driven, broad based and inclusive, rather than being dominated by the interests of political parties. However, general public awareness – among both citizens groups and the media – of environmental rights and governance issues remains low, while exposure of some Constitutional Assembly (CA) members to the technical substance of access issues is thin. TAI research and advocacy have focused on incorporating access rights into the new Constitution of Nepal. In order to achieve this, it was deemed necessary to sensitise CA members to jurisprudence of access rights, and an intensive and interactive campaigning programme was undertaken with CA members.

The CA is divided into several thematic committees that are tasked with producing a concept note of their respective themes (including such issues as preserving national interest, strengthening the basis of cultural and social solidarity, establishing fundamental rights and directive principles, management of natural resources, elaboration of economic rights and clarification of taxes, to name a few). The drafting committee would then produce a draft of the Constitution based on the concept notes prepared by the thematic committees. It is therefore highly relevant to examine the concept notes.

Four thematic committees out of ten have not yet submitted their concept notes formally to the CA full house, but environmental issues are already under active consideration within the committees. This committee had already submitted its concept note to the house. The concept paper includes various aspects of environmental rights and provides two sets of recommendations for their protection. This document recommends that two sets of rights are included: one set of fundamental rights and another set to be included as a 'responsibilities, directive principles and policies of the state'.

Within the discussion of fundamental rights, there is specification of the right to protection of national heritage which stipulates that every person shall have the right to protect and utilise the country's natural resources and cultural heritage. The set of responsibilities, directive principles and policies of the state covers a somewhat more expansive area, stating that the State shall pursue a policy to identify, preserve and promote the natural and cultural heritage of the country and to ensure inter-generational equitable rights of present and future generations over such heritage. Furthermore, it recommends that the state shall pursue a policy to encourage

the participation of women, landless and impoverished groups in local communities, in the conservation of natural resources and cultural heritages of the country and to ensure the right to equitable access to the benefits earned through the conservation and promotion of such heritage.

Some of the CA members who also participated in the TAI sensitisation program have taken the initiative to form a 'parliamentarian action team on environment, climate change and disaster risk reduction' to engage parliamentarians in the field of environmental action. This action group is working to ensure environmental rights in the new Constitution as well as working as a parliamentary watch dog and lobby group on environmental issues. Initially, 13 CA members or parliamentarians were engaged in this process but the number is growing constantly, and the CA has expanded its interacted with local people across the country.

Pro Public is one of the leading civil society organisations in the country and has conducted three consecutive interaction programs with around 100 CA members from various political parties and ethnic groups, with men and women from diverse backgrounds. Pro Public has coordinated with various national experts to have them act as a resource persons for the program, as well as with the media and civil society groups to reach out to a larger section of the general populace. Expert papers and guidelines on all the relevant materials regarding access rights have been distributed to CA members to raise awareness and deepen understanding. Interactions with CA members were completed before the original concept note submission deadline, in hopes that these developments will influence the debate in other CA thematic committees as well.

1.2 Commitment to PP10 in Sri Lanka

The relatively short history of work on PP10 in Sri Lanka has made significant progress in overcoming some of the formidable barriers to access to information and public participation within the strong culture of non-disclosure that permeates Sri Lankan officialdom. The fundamental difficulties of access are evident in documents such as the Establishments Code, under which a public officer cannot disclose information without the approval of his Head of Department. In the event of unauthorised disclosure, the Department concerned is required to conduct an enquiry to find the source of the disclosure and potentially bring about disciplinary proceedings. Access to information was further undermined in 2000 with the removal of the requirement of prior disclosure and public participation in the evaluation of development projects that were deemed to require only an initial environmental examination (IEE), as distinct from an environmental impact assessment (EIA). As the project approving agencies have the discretion to decide whether a project should require an IEE or an EIA, this led to some very environmentally sensitive projects being approved with only an IEE, without any public input.

Nevertheless, in December 2005, when the TAI program was launched in Sri Lanka by the Public Interest Law Foundation and the TAI Sri Lanka National NGO Coalition, the Hon. Dinesh Gunewardene, Minister of Urban Development, stated in his keynote address that Sri Lanka was a signatory to the Rio Declaration and that the Government was supportive of Principle 10 of this Declaration. Following on from this statement of Government commitment to PP10, the Ministry of Urban Development submitted a Cabinet Paper proposing that Sri Lanka to join PP10 in the second half of 2007. The Cabinet Paper was approved in September 2007 and the Secretary to the Ministry, Dr. P. Ramanujam attended the Partnership for Principle 10, Fourth Committee Meeting of the Whole in Mexico, in October 2007. This was the first PP10 meeting attended by Sri Lanka. The purpose of the meeting was to update partners on the status and successes of PP10 thus far

and submit commitments for the Partnership. The Secretary noted at the meeting that Sri Lanka had obtained Cabinet approval to join PP10 and pledged to draft commitments to implement Principle 10. In accordance with the Cabinet Memorandum and this announcement, the Ministry of Urban Development was required to meet two obligations. First, the Ministry would establish a National Steering Committee (NSC) to lead the drafting of the commitments to PP10 and promote activities for PP10 in Sri Lanka. Second, the Ministry would submit these commitments to the PP10 Committee of the Whole.

The process was initiated in September 2008 when the Minister appointed the members of the NSC. The main task of the NSC was to propose specific commitments for furthering PP10 and ensuring that these are implemented on the ground. The NSC, chaired by the Secretary the Ministry of Urban Development, has commenced work on this activity and has met four times so far. The Public Interest Law Foundation, which serves as the secretariat for the TAI in Sri Lanka, is facilitating and coordinating these obligations. There has been regular interaction between the Public Interest Law Foundation and relevant government officials.

As a first step towards concrete implementation activities, the Urban Development Authority (UDA) agreed in principle to provide a list of documents that could be made public. At the NSC meeting held in early November 2008, it was further agreed that a set of Ministerial Guidelines to disseminate information to the public would be drafted. The guidelines, currently under development, will include a listing of the types of documents and information that will be made public and those that will have restricted access, and set out the procedure for requesting information and appeal, if not granted. The possibility of assigning an information officer to assist the public will also be a feature of the guidelines. Additionally, the NSC proposed that relevant officers of the UDA and other relevant agencies be trained in implementing the guidelines. The Public Interest Law Foundation will facilitate and assist in all of the above matters.

Thus, the public statement of government commitment to the access principles has been taken up, and the first fundamental steps to establishing a local constituency for change have been taken. Sri Lanka can become a full member of PP10 once the necessary commitments are drafted and submitted to the PP10 secretariat, opening the way for further development of a legal and institutional framework for the access principles.

2. Access to information

As one of the most fundamental areas of access, the state of disclosure of public information is of high interest. Experience from TAI shows how access to information is promoted through both the implementation of legal instruments and 'ground-level' practice that is promoted in the absence of a strong legal framework.

2.1 Best practices for implementing Public Information Disclosure in Indonesia

The Indonesian Center for Environmental Law (ICEL) has supported the Law on Public Information Disclosure, as described above. ICEL also simultaneously supports the development and dissemination of best practices for transparency on information, so that the order for Law No. 14 of 2008 can be effectively implemented after its enactment. The ICEL strategy

consists of a two-pronged approach that simultaneously strives to strengthen State institutions (capacity from within) and support civil society groups (external pressure). The six best practices documented below illustrate how TAI is advancing access within the Indonesian context, through a range of approaches including training, advising and facilitation.

Strengthening access at District level with procedures, training and awareness

In Gunungkidul District ICEL facilitates the creation of Operational Procedures (SOP) for information services at the Information and Communication Office and Environment Management Office. Training on the procedures is provided to staff of the district government. At the same time, demand for information is strengthened by raising awareness of rights to information within local society. The Dynamic Group for Information Access, created to help stimulate the demand for information, works to access and circulate important information.

Facilitating ministerial information procedures

ICEL facilitates the creation of Standard Operational Procedure (SOP) information service in the Ministry for Environment. ICEL will also collaborate with State Ministry for Environment to develop mechanisms of public complaint for the victims of environment pollution or damage.

Participating in judiciary reform

In the Supreme Court of Republic of Indonesia, ICEL is part of a coalition that is developing a Supreme Court Decree on Judicial Transparency (SC No. 144 of 2007). As a follow-up on the drafting of this decree, ICEL is also conducting readiness assessments for the implementation of SC 144. Assessments have been conducted in 12 provinces, and the results of the exercise will become a tool to develop information service standards for Indonesian courts.

Advising national commission on information

On 12 May 2009 the government established a National Information Commission, consisting of seven commissioners. The Commission's mandate includes several advisor functions, including developing technical guidelines on information management for public agencies and technical guidelines for dispute settlement, in addition to setting up a Provincial Information Commission. Currently, ICEL is engaged in collaboration with the National Information Commission to develop the technical guidelines to assist public agencies to fulfil information requests.

Training on dispute resolution

ICEL has conducted basic training on dispute settlement for the seven information commissioners. The training will be continued, aiming to improve the commissioners' skills in settling disputes through mediation and adjudication procedures.

Disseminating information on the legal framework

ICEL has collaborated with the Information Commission to launch a Legal Annotation on Indonesian Public Information Disclosure Act. The legal annotation aims to provide public agencies and readers in the general public with information about legislative debates concerning the law, including the basic concept of each article and how each article should be interpreted.

ICEL will continue these activities, working in collaboration with state institutions such as Information Commission, the Ministry of Environment and Supreme Court to further promote transparent government. At the same time, it will strengthen civil society demands for clear and accessible rights to information, especially with regards to environmental matters. The next steps forward in Indonesia include:

1. Developing technical guidelines on dispute settlement in collaboration with National Information Commission
2. Conducting training for judges and court staff to implement access to information in court
3. Strengthening public agencies' capacity, especially at local levels, to implement the law
4. Conducting training for paralegals to strengthen people's rights to information
5. Using legal procedures to bring cases to Information Commission and court with the aim of strengthening the system for dispute settlement

Thus a multifaceted approach that integrates training, advocacy and advisory functions will be employed to take next steps in strengthening the legal framework and related processes. Collaboration with government agencies, in addition to civil society groups, is crucial to making concrete progress.

2.2 Building a coalition to amend the Official Information Act in Thailand

The Official Information Act 1997 is a core piece of Thailand's legislation that explicitly prescribes the right to access official information. However, the cataloging criteria used by state agencies that determines which information is eligible for disclosure, and which is not, is still unclear. There are many types of environmental information handled by a wide range of state agencies. Some types of information, such as annual reports on the pollution situation published by the Department of Pollution Control, are disseminated widely among the general public. In other cases, however, the public faces accessibility problems because some types of information affect private businesses. For example, pollution information and environmental management in industrial plant operations, data on health and sanitation of workers in business establishments have implications for the commercial operation of businesses, and are sometimes more difficult to access.

Recognising the need to elaborate a policy solution to remedy this unclear situation, TEI built up a coalition of 36 organisation partners. The coalition conducted a consultation with key persons from the Office of the Official Information Commission (OIC) about ways to influence types of information related to environment and public health to be specified in Section 9(8) of the Official Information Act of 1997. Subsequently, multi-stakeholder dialogues of 200-300 participants were held on 9 July and 7 October 2009. The first of these dialogues explored options for *influencing types of information related to environment and public health to be specified in Section 9(8) of the Official Information Act of 1997*. The second in this series discussed way to *improve access to environmental information relating to the EIA process and to strengthen the amendment process of the Official Information Act of 1997*. In addition, TEI published the recommendations for a new

draft of the Act and disseminated these to the public to help increase the level of understanding among affected communities, and thus raise their capacity to defend their interests in the future.

The OIC meeting, chaired by the Minister to Prime Minister's Office, already approved in principlethe recommendations submitted by TEI and coalition partners on 16 February 2009. An OIC subcommittee was assigned to consider the implementation of this Article, with regard to information pertaining to international agreements and other information that may harm life and intellectual property, and consult relevant agencies who have the requested information for steps towards information disclosure.

2.3 Advocating for access within a weak legal framework in Sri Lanka

The conclusions and recommendations of the TAI Assessment in Sri Lanka and the Poverty Study 2 are now being actively canvassed by the Public Interest Law Foundation with relevant government officials and agencies. These efforts seek to link access principles and socio-economic development through networking on specific projects and initiatives. The specific recommendations are mainly centered around proposed amendments to the National Environmental Act (NEA) and the Urban Development Authority Law (UDA Law). The proposed amendments to the NEA directly address the issues identified in both studies. In respect to the NEA, the Public Interest Law Foundation has recommended greater transparency at the scoping stage of a project where the decision is taken whether to require an initial environmental examination (IEE) or an environmental impact assessment (EIA). It is also proposed that public participation in the IEE process, which was removed from the requirement in 2000, be restored along the same lines presently provided for in the EIA. The Public Interest Law Foundation has convened meetings with the relevant officials, and successfully engaged members of the University academic community in the quest for law reform in this regard.

Despite the lack of legal requirements, success can be observed at the ground level, where local approaches to activism for transparency have emerged. Several examples from the two studies mentioned above illustrate how access issues are being advanced at this level of governance:

- Local officials have taken proactive measures to ensure that relevant information about flood protection reaches the people in remote areas that are vulnerable to flooding in Ratnapura district.
- The funding agency of an Air Quality Monitoring project in the city of Colombo wrote information disclosure requirements into the terms of the project.
- Draft National Policy Documents are put up for public comments prior to being finalised with increasing frequency.
- Although public hearings are an option and not a legal requirement under the EIA process (the mandatory right to comment on the EIA does not include a hearing) the Central Environmental Authority held three public hearings at different locations along the route of the planned Colombo-Kandy Expressway.
- In the Galle Face Green case, it was held that a recognised environment protection organisation has a right to obtain environment-related information in the pursuance of its constitutional right to freedom of expression and its right to carry on its work.

These cases show that despite the lack of specific legal mechanisms to ensure access, progress is being made on a number of fronts in Sri Lanka. For example, courts continue to be supportive of information disclosure, certain sectors of the government move to increase transparency in projects.

2.4 Freedom on Information Bill in the Philippines

As presented by the Country Assessment, the major gap in the functioning of the right to information in the Philippines is the absence of a comprehensive statute that will complement the existing Constitutional guarantee and relevant jurisprudence. As part of the recommendations to scale up access to information, the passage of the FOI Bill became the primary objective of TAI – Philippines in 2008.

The Access Initiative (TAI) Philippines has been actively involved with the Access to Information Network (ATIN), a group of NGOs and other networks advocating for the passage of the Freedom on Information Bill in the Philippines. TAI Philippines, along with ATIN, became part of the Technical Workshop Group to draft and deliberate on the Bill for submission to the Access to Information Committee in the House of Representative. The Freedom on Information (FOI) Bill was passed at the 14th Philippine Congress, 12 May 2008. The next task of TAI with ATIN is to lobby the Senate to pass its counterpart bill and to scale up advocacy activities to bring Access to Information to the legal forefront.

2.5 Law on Public Information Disclosure in Indonesia

Citizen groups in Indonesia have been pressuring for increased transparency in information since 1980, largely as a form of resistance towards the lack of transparency during the Suharto regime (1965-1998) and as an effort to advance human rights in general. The fall of the Suharto regime in 1998 ushered in a new chapter in the governance of Indonesia. One of the mandates of this so-called reformation era is statement of new freedoms in public access to information (Decision of People's Legislative Assembly (MPR) Republic of Indonesia No. VIII/MPR/2001).

The draft Law on Freedom for Obtaining Public Information (RUU KMIP) was first promoted by the Indonesian Center for Environmental Law (ICEL) in the year of 2000, as an effort to get the new freedom enshrined in specialised legislation. Afterwards, ICEL, in collaboration with other citizens' groups, established a "Coalition for Freedom of Information" (Coalition) to trigger the enactment of the RUU KMIP. Along with the Coalition, the RUU KMIP was redrafted until a comprehensive version was achieved. In 2001, the Coalition proposed its own RUU KMIP to be adopted by House of Representatives of Republic of Indonesia (DPR RI). Various efforts were made get the proposal accepted, including intensive meetings with members of House of Representatives, assistance in drafting for members of House of Representatives and the Government, and various public campaigns. The Coalition also facilitated several members of House of Representatives and Government to conduct comparative studies in several countries where similar laws had already been enacted.

In the Plenary Meeting of House of Representatives in May 2002, the Coalition draft was adopted by the House of Representatives. Since then, the draft has been under deliberation by the House

of Representatives. By the end of President Megawati Soekarno Putri's term, the draft had not been finalised by the House of Representatives or the government. However, the discussion of RUU KMIP was then restarted during the administration of President Susilo Bambang Yudhoyono (2004-2009). This discussion was revived by legalising the RUU KMIP as a legislative initiative of the House of Representatives on 5 July 2005. After almost six years of arduous debate in the House of Representatives, the draft of Law on Freedom for Obtaining Public Information was enacted as Law on Public Information Disclosure (Law No. 14 of 2008) on 30 April 2008, and officially promulgated on 30 April 2010.

The Coalition faced various challenges in enacting the Law on Transparency of Public Information, for example in the form of resistance from groups with a military orientation, powerful groups with vested economic interests, and "anti bureaucracy reformation" and "anti-corruption eradication" groups. The general challenges to democratic governance in Indonesia intensified the difficulty faced by the Coalition in sustaining its efforts to promote transparency in public information.

3. Participation in decision making

Addressing on-the-ground, real-time issues of decision making provides one very concrete option for promoting access. Often, participation in decision making is the main vehicle for these efforts. The two cases presented in this section illustrate how project-based decision making can provide opportunities to make advances in setting standards and precedents that may have implications for the overall governance situation. However, as long as there are no specific legal mechanisms to legally support public participation and environmental claims, and the scope of compensation is not yet well defined, litigation may often tend to be deficient in terms of the redress and remediation it can produce. Although there have been positive responses from government agencies at the local level, such as in Yunnan province, reaching champion government agencies at the nation level is still a steep challenge. However, it is believed that showcasing examples of good practice in environmental governance will help bring further post-assessment work to the attention of the central government.

It is critical to note that none of the assessment countries have specific legislation on public participation, and the practical experience with implementing strategies for public participation are still limited in the countries of the region. Public forums are the most commonly applied vehicle for public participation. Experience shows that these are necessary, but not sufficient for ensuring access to participation. A number of additional factors complicating public participation including the institutional culture of state agencies, multiple sources of interest-based political influence, and lack of capacity both within the state and civil society are shared broadly in the region.

3.1 Influencing national park development project in Vietnam

The Tam Dao National Park is located in an ecologically sensitive and culturally important area of mountains, providing a range of ecosystem services to society. Endemic biodiversity values are high, and Tam Dao is one of the key areas of biological research in Vietnam. The Tam Dao 2 project, a joint initiative of the Vinh Phuc provincial government and the Vietnam Partners LLC (USA) to transform a 300 ha area of land within core area of the Tam Dao National Park into

a luxury tourism and recreation area that will have a golf course, hotels, casino, dancing halls, animal cages, and other attractions. The proposed location for Tam Dao 2 is at 1,200 masl, in a setting that would have serious negative implications for biodiversity and ecosystem services, upsetting the ecological balance of Vietnam's heritage. Moreover, the project is in violation of Vietnam's regulations on national park and forest management.

The project has encountered a lot of opposition from society from its inception. The Vietnam Association for Conservation of Nature and Environment (VACNE) organised a working meeting with the Vinh Phuc People's Committee on the issue, and twice sent letters to relevant ministries, sectors, and provinces to protest against the Tam Dao 2 project. Taking on the role of representingpublic opposition to the project, VACNE has formed several working groups for conduct in-depth studies of the issues, drawing on findings from existing studies and bringing in experts' knowledge.

According to the judgment of VACNE, if this project is implemented, the Tam Dao National Park will lose a unique habitat, a wetland area just at the top of a mountain chain. If this wetland area is surrounded by roads and villas, it will be closed to wild animals who would otherwise populate this habitat. It would be a great loss for the national park because the conservation of habitats is the most effective way to protect species diversity. The Tam Dao 2 project would cause many acute environmental problems, and especially when the facilities are brought into operation, it would reduce the water regulation capability of the Tam Dao mountainous area and might cause drying up of rivers.

On the other hand, the idea of building the luxury entertainment area Tam Dao 2 on the top of a high mountain is a Western concept that is not appropriate for the local setting. This approach to development may be relevant for new urban areas but not for an ecologically sensitive, culturally valuable and spiritually important mountainous area such as Tam Dao. The development of tourist facilities in such a setting is in violation of the regulations for eco-tourism stipulated in several Vietnamese laws and regulations.[1]

On 25 September 2007, with support from the Swedish International Development Agency (Sida), VACNE conducted a workshop on "environmental issues relating to the idea of Tam Dao 2 project" in Hanoi. The meeting was attended by 85 representatives from managerial agencies, mass media, local agencies, and experts. Participants were able to listen to review reports on the Tam Dao National Park, the idea of the Tam Dao 2 project proposed by the two companies of Vietnam Partner LLC and Belt Collin Hawaii Ltd., and a summary report of comments from VACNE's Advisory Board. At the workshop, nine presentations and 18 speeches were delivered, and 60 people answered questionnaires expressing their opinions on environmental issues relating to the idea of Tam Dao 2 project. The respondents were VACNE members, officers representing managerial agencies, people from places surrounding Tam Dao, and journalists.

In general, most of participants agreed with the VACNE's summary report, particularly sharing deep concerns about short-term as well as long-term damages to biodiversity, the environment, and related cultural, historical, and religious issues. Moreover, it was widely agreed that

[1] In particular: Item 19, Clause 4 of the Tourism Law of Vietnam (2005); Clause 55 of Governmental Decree No. 23/2006/ND-CP of 3 March 2006 on implementation of the Law on Forest Protection and Development; Clause 14 "Environmental protection in tourist activities at forest areas with specific values" and similar regulations of relevant ministries/sectors. Additionally, the operation of the Tam Dao 2 project would violate regulations on activities of the Tam Dao National Park stipulated in Prime Minister's Decision No. 136/1996/TTg of 6 March 1996 on establishment of the Tam Dao National Park.

implementation of the project will result in violation of several relevant laws and regulations. Based on participants' contributions at the workshop, VACNE quickly elaborated a set of recommendations and submitted them to the relevant authorities for consideration. After receiving and studying the petition from VACNE, these government agencies, at central and local levels, have showed positive responses, and have expressed their written opinions to the Prime Minister.

Currently, two years after VACNE's petition, there is no sign of continuing with the implementation of the project. VACNE does recommend that the Tam Dao National Park should continue to develop eco-tourism in the Park, based on more comprehensive planning, increased organisation alcapacity and consideration of domestic and global experience. VACNE's intervention in the Tam Dao 2 project demonstrates the power of combining advocacy with a solid foundation of scientific data in influencing project's decision making.

3.2 Halting high-impact dam project in China

China's premier, Wen Jiabao, again halted work on a controversial dam-building project on the Nu (Salween) River, one of the country's last free-flowing waterways, the South China Morning Post reported in 22 May 2009. The newspaper wrote, Wen ordered a halt to work on the Liuku hydropower station in Yunnan Province in April, calling for further environmental assessment. The premier told authorities not to resume preparation work until the dam's impact on the ecology and on local communities was fully understood. Because of the project's "far-reaching impact", Wen said the authorities should "widely heed opinions, expound on thoroughly and make prudent decisions". This is the second time that Wen has backed calls to put the Liuku plan on hold. In February 2004, after public outcry, he ordered that the project be suspended until social and environmental impacts had been "carefully discussed and scientifically decided".

The premier's statement must be considered a victory for Chinese civil society organisations (CSO) and the media. During the assessment process called for by the premier, many government officials and powerful enterprise managers cited benefits from the building of the Nu River dam. CCTV, the Chinese national television network, added more controversial information, informing the public of more of the risks associated with the project. Yunnan-based CSOs and the local media cooperated with partners from all over the world to fight against the authorities by lobbying the CPPCC members and making proposals to higher-level government. The environmental media played a particularly important role during this counter-proposal process, and in the end the project was brought to a stop by the top political leader of the country. In a large country like China, this story demonstrates how actors at different levels can network to bring information, analysis and counter-proposals to the appropriate level of authority for consideration, while raising the profile of the issue with the public through media channels.

4. Access to Justice

TAI's work on access to justice encompasses a range of activities. Some coalition partners are working on specific cases to improve access to justice in environmental matters, while others work on advancing the framework and processes for environmental justice through a combination of drafting legal instruments, advocacy and networking.

4.1 Legal action to stop construction of ship-breaking yards in Bangladesh

The ship-breaking industry operates in the country on two main pleas. It is said that the industry that basically imports obsolete ships of the western countries supplies 80% of the country's iron demand. Second, the industry employs 20,000 workers and thus eases the burden of poverty. While the government's patronage for the industry has relied on these two pleas, the extreme dangerous operation of the industry and resultant pollution, deaths and casualties have given a rise to serious criticism against justification of this industry. The government allows import of ships for breaking without collecting necessary information as to the toxics contained, nor do they monitor how the toxics are being disposed of in the fragile coastal areas. The labourers remain exposed to toxic substances like asbestos, PCBs, PVCs and others. All these can lead to cancer, liver damage, reproductive impairments and immune system damage, and ulceration of the respiratory tract. The labourers, however, have no information about the hazards they are exposed to, nor is there any monitoring by the statutory agencies of their health conditions. The assessment targeted the possibilities of checking whether information could influence the way the industry operates and the choices of the workforce.

In February 2009, Bangladesh Environmental Lawyers Association (BELA) served a legal notice demanding that construction of ship-breaking yards that was causing deforestation in coastal areas of Shonaichori Mouja, Sitakunda Upzila be stopped. This notice was sent to the full range of Ministries and senior national and local officials of state agencies involved, as well as to the Bangladesh Ship Breakers Association and the owners of the ship breaking yards.

The legal notice referred to the Gazette Notification that mandates the Ministry of Environment and Forest to be responsible for reforestation in order to protect new *char* lands from land subsidence in coastal regions, transferring these lands from the Ministry of Land to Ministry of Environment and Forest for 20 years. Accordingly, the Forest Department had developed a green belt in 1990. In accordance with the circular issued on 30 October 1996 and existing forest policy, demarcated *khas* Land cannot be leased out without permission from Ministries of Land and Environment and Forest. However, in this particular case the District Commissioner leased out land illegally for one year for the construction of ship-breaking yards. As the construction of the ten ship-breaking yards progressed, fences were put up and forests, previously planted by the Forest Department, were destroyed. The local law enforcement agencies were reluctant to take action, even though Forest Department has filed FIR in local police stations. Rather than accepting the FIRs against the influential owners, they were accepted only against the employees.

A BELA's notice asserted that the existing laws and regulations of the country prohibit destruction of trees in green belt regions for the purpose of constructing ship-breaking yards, and that therefore the actions of both public and private sectors in this regard are argued to be illegal and contrary to the public interest. Moreover, before construction of ship-breaking yards begins, it is mandatory to obtain the environmental clearance certificate, but in the case of Shonaichori Mouja, there has been no such formal environmental approval. BELA has requested that concerned authorities take appropriate action immediately in order to stop construction of such ship-breakingyards in Shonaichori Mouja. The notice argues that the leasing of the lands for construction of ship-breaking yards in the coastal green belt area is illegal, and the yard should be handed over to the Forest Department. Additionally, BELA has demanded compensation against the destruction of the trees in the green belt of coastal region.

4.2 Enforcement of environmental regulations in industrial zone in Thailand

The Maptapud Industrial Estate is located in Rayong province and consists of 117 industrial plants which include 45 petrochemical factories, 8 coal-fired power plants, 12 chemical fertiliser factories and 2 oil refineries. Operations at the industrial estate began in 1990. About 25,000 people live in the Maptapud municipality. According to the reports of Pollution Control Department and related academic studies, 40 volatile organic compounds have been detected in the air in the Maptapud areas with 20 of them carcinogenic and in amounts exceeding safety levels.

TEI and the TAI Thailand coalition have actively involved in Maptapud since 2007 through the research study entitled Environmental Governance of Maptapud Industrial Zone in Rayong Province, Thailand, based on the assessment of environmental governance of the Petrochemical Industrial Development Master plan (Phase III), the Pollution Reduction and Mitigation Action Plan for Rayong Province, and the Maptapud Town Plan. The study revealed that the government has continuously promoted heavy and petrochemical industries in Maptapud at the expense of the environment, coastal resources and the health of its residents. This clearly goes against Article 67 of Thailand's 2007 constitution that calls for projects deemed harmful to health and the environment to pass the scrutiny of an independent body comprising health experts, environmentalists and academics before operation.

On 29 September 2009, Thailand's Central Administrative Court issued an injunction halting construction work in 76 projects in the Maptapud area that had failed to conduct an EIA. After an appeal, 11 projects were allowed to proceed when the Supreme Administrative Court deemed them environmentally harmless to their surroundings and nearby communities, whereas another 65 projects were still left pending a final decision. Inevitably, the current government has had to bear pressure, both in terms of huge investment loss and unemployment.

Dr. Somrudee Nicro, TEI Senior Director joined the four-party panel formed in November 2009 to help resolve the Maptapud crisis. This 18-member panel, chaired by former Prime Minister Anand Panyarachun, includes representatives from the government, the private sector, academia and the general public. The panel speedily deliberated the criteria to form an independent body under special regulations from the Prime Minister's Office to regulate anti-pollution measures and cope with legal matters to ensure that health-and environment-related assessments are conducted as required by the section 67(2) of the Constitution. On 12 January 2010, the cabinet approved a draft proposal to help establish an *ad hoc* body to advise the government on the approval process of projects deemed harmful to the environment and public health. This is to provide a legislative bridge until the permanent independent health and environmental body is formed.

This latest crisis is a fresh reminder of the growing power of the civil society to influence harmful chemical-project activity. It also provides a valuable lesson to all investors that they have to be socially responsible and take into consideration the well-being of the people living in close proximity to the sites of their projects. Failure to do so can ultimately lead to serious financial losses. The experience from Maptapud represents a new face of Thailand's industrial development.

4.3 Environmental justice forum in the Philippines

On 16-17 April 2009, the Supreme Court of the Philippines convened a summit – officially named the Environmental Justice Forum – of government and civil society institutions, organisations and individuals. There were two concrete outcomes of the summit: (a) an agreement by high-level officials (Department secretaries and agency heads) and civil society to vigorously pursue environmental justice based on the access principles; and (b) consultations on a draft of new environmental rules of court that would enhance access to environmental justice.

Both outcomes were directly influenced by TAI Philippines, in this particular case the Ateneo School of Government which leads the environmental justice work.

The TAI Philippines Team, headed by Dean Tony La Viña of Ateneo School of Government, drafted the agreement signed by the government agencies and civil society representatives. A review of this agreement would indicate a direct commitment to enhance implementation of all three access principles, a promise to concretise this commitment with specific measures, and a commitment as well to assess government compliance with what is promised.[2]

TAI Philippines also had a direct impact on the draft environmental rules of court that were presented in the summit. The TAI Philippines environmental justice team had led the drafting of the environmental rules of court with the former chairing a Technical Working Group that included a Supreme Court Justice, Justices of the Court of Appeals, Prosecutors, civil society lawyers, private law practitioners, government agency lawyers, and Supreme Court lawyers, among others. The rules were presented to over 600 lawyers and stakeholders, including environmental citizen groups and community groups, in Baguio and through video conferencing in two other sites in the Philippines. The rules were well received, with most proposals supported by the summit participants. There were many suggestions on how to improve the rules and these were all recorded so these could be incorporated in the finalisation of the rules of court. It should be noted, that the draft rules emphasise not only greater and enhanced access to environmental justice but also provides new tools that citizens could use for this purpose.[3] Currently, the TAI environmental justice team is working with the Technical Working Group on the Environmental Rules of Court to finalise the rules. The goal is still to have the rules promulgated by 5 June 2009, World Environment Day but there is a possibility of a 1-2 month delay. In the meantime, the team is also working on a Benchbook that would be based on the new rules. The Benchbook would guide judges of the Green Courts (specially designated environmental courts) and environmental practitioners so that environmental justice is easier achieved.

5. Capacity building

Capacity building has appeared in many of the stories presented above. Indeed, it has been widely recognised that capacity building must be a part of all efforts to promote access. TAI took the decision early on, however, to give capacity building the specific attention it deserves, as an area of investigation and promotion in and of itself. The cases presented here show how capacity comes to the center of access, demonstrating how governance outcomes can be directly related to capacity.

[2] See http://sc.judiciary.gov.ph/publications/ejforum/moa_actual.pdf to review the signed agreement and the signatories.
[3] A copy of the draft can be accessed at http://sc.judiciary.gov.ph/publications/ejforum/draft_rule_ejforum.pdf

5.1 Drafting the Benchbook Manual: Guidelines for the Philippine Environmental Courts

The Philippines Country Assessment recommended for Environmental Courts to be set up. The Capacity Building Project in preparation of the setting up of Environmental Courts (approved last January 2008 by the Supreme Court) was initiated in partnership with Philippine Judicial Academy of the Supreme Court and CSOs including the Ateneo School of Government (ASoG).

In June 2008, TAI-Philippines conducted a Consultation Workshop on the Philippine Benchbook for Trial Judges. During the workshop, ASoG was tasked with drafting the Environmental Rules of Court and writing the Benchbook, a tool to ensure the delivery of fair, impartial, equal, and swift justice in the trial of environmental cases. The workshop assessed the judges' needs and gathered their inputs in relation to the Benchbook, and gathered suggestions on enhancing access to justice on environmental matters. The activity also provided the opportunity for government and citizen groups to work together to ensure access rights are incorporated in the Environmental Rules of Court and the Benchbook. TAI-Philippines, through the ASoG, is currently in the process of finalising both the rules and the Benchbook.

5.2 Demonstrating linkages between capacity and governance in India

The TAI Himalayan Coalition was established in February 2008 and is led by Legal Initiative for Forest and Environment (LIFE) and the Environics Trust, and is comprised of 12 civil society groups from across the states of Himachal Pradesh and Uttarakhand. The Coalition adopted the name 'Himalayan Assessments' as both the states are located in the Himalayan Mountain ranges. As part of the TAI Assessment on Access to Justice, the coalition considered the response of the National Environment Appellate Authority (NEAA) to the Appeal filed by local people against an approval given to a large hydropower project, the Pala Maneri Hydel Power Project in the State of Uttarakhand.

The National Environment Appellate Authority (NEAA) is the statutory authority established to hear grievances on account of approval given to various projects based on Environment Impact assessment and public Hearings. Any person aggrieved by the grant of environmental clearance can appeal to the NEAA against the decision of the Government. The case study revealed glaring gaps in the functioning of the NEAA, significantly:

1. Despite being a judicial authority, none of the existing members of the NEAA had any legal expertise. The post of chairperson had been vacant for the last 9 years, with no attempt to appoint the head of the Authority.
2. The existing members were all retired bureaucrats and had no expertise on EIA-related issues.
3. No capacity building programmes had ever been conducted for the existing or past members of the NEAA.
4. The NEAA had dismissed almost all the appeals brought before it.
5. There is no code of ethics for the Members, nor is there a proper system to select the Members of the Authority. Selection is completely arbitrary and depends on individual officials and Ministers of the MoEF.

The results of case study were used by Vimal Bhai of the Matu People's Organisation, a local group working to protect rivers against hydropower dams, to apprise the Delhi High Court of the sorry state of affairs of the NEAA. In a landmark decision, the Delhi High Court agreed to the issues raised by the Petitioner and delivered a judgment that stated that "the court cannot be expected to remain a mute witness to the unfortunate rendering of a statutory body ineffective by an unwilling executive". The Court further observed that

> "the Government of India has by its unwillingness to take effective steps, rendered the NEAA an ineffective body, thus defeating the very purpose of the NEAA Act… The intention of Parliament in requiring the government to constitute an independent body for quick redressal of public grievances in relation to grant of environmental clearances has thus been defeated… By rendering the NEAA ineffective, the government has denied the citizens the right of access to effective and efficacious justice in matters concerning the environment."

The court determined that the NEAA as it exists is a neither effective nor independent mechanism for redress of grievance of the public affected by grant of environmental clearances.

The Court decision addressed the lack of technical expertise of the members of the NEAA, and directed that after the retirement of these members, the Government of India should appoint persons with special technical knowledge in environmental matters to be members, as required in Section 5 (2) of the NEAA Act. Furthermore, the court stated that the appointment of retired bureaucrats is contradictory to the letter and spirit of the NEAA Act. The High Court directed the Ministry of Environment and Forests to appoint the Chairperson and Vice Chairperson within twelve weeks from issuing the judgment and ensure that only individuals with technical expertise be appointed. This decision is bound to have a far-reaching impact in terms of access to justice.

5.3 Capacity and participation in Nepal

The TAI assessment in Nepal revealed that for almost two decades since the adoption of the Principle 10 of the 1992 Rio Declaration, the government has generated, collected and disseminated very little information on the environment. However, a number of legal instruments that exist support access to information, public participation and access to justice. There are also some areas of potential change, with the strengthening of procedures for initial environmental examinations and environmental impact assessments under way and provision for access to information and public participation. Concurrently, the judicial system is moving towards ensuring environmental rights of the people. The main problem is that there continue to be conflicts regarding the implementation of the declaration. Even where there is some effort from the concerned government agencies, it is generally not of standards that are acceptable to other stakeholders.

The effectiveness of the implementation varies from case to case, from highly effective in the case of air pollution monitoring to not at all effective in the recruitment of environment inspectors. The government did not recruit environment inspectors even after continuous advocacy work or the positive verdict of a public interest litigation filed by Pro Public, TAI Nepal Leading organisation. In addition to this, the TAI Nepal Assessment report clearly identified the lack of required human resources and infrastructure within the Ministry of Environment, Science and Technology

(MOEST), and recommended that the required numbers environment inspectors were recruited. It was also suggested that the required national network and infrastructure be expanded. Pro Public is still supporting the ongoing campaign for recruitment of environmental inspectors by graduate students (potential candidates for this post) with legal and technical backup.

As discussed above, environmental governance is going to be included in the upcoming new constitution. There has been a clear commitment by the Environment Ministers, and capacity of the Constituency Assembly Members, representing various political parties currently engaged in the drafting of the constitution, is being built as well. In this regard, the government should continue to build capacity of its staff to effectively implement the laws, regulation and standards that build a regular monitoring and reporting mechanism.

6. Cross-cutting issues in the promotion of access principles in TAI Asia

The success stories coming out of the activities of TAI Asia partners shows a diversity of approaches to a wide range of issues, across a region that shows great variation in terms of socio-economic development indicators and political systems. These cases reconfirm the working philosophy of TAI that each country needs to address its access issues in a way that is appropriate for its local setting and local stakeholders. Different kinds of partnerships and coalitions are being formed. TAI partners have explored how different levels of governance function and interact under different political contexts, particularly in the diverse range of decentralisation initiatives and administrative systems in Asia. The next challenge is how to integrate diverse and dynamic civil society actors into policy planning processes.

A number of cross-cutting issues relevant to this challenge have emerged from the diverse success stories.

1. *Coalition building within the national context is crucial for bringing about change*. Most all of the stories presented here have an element of coalition building. This highlights the very nature of access as a set of multi-stakeholder interactions. Just as good environmental governance is based on processes involving a diverse range of stakeholders, efforts to promote the access principles require partnerships that cross the lines of the public and private sectors.

2. *Progress is often the result of work on more than one aspect of access*. Understanding and drawing on the inter-linkages between the legal framework, access to information, access to justice, access to participation and capacity is critical to making progress on any one of these aspects. The stories above also suggest that a success in one area may pave the way for progress on another area. Partners who can capitalise on these synergies have demonstrated encouraging achievements in enhancing environmental governance.

3. *Focus on specific cases can be an effective vehicle for legitimising calls for broader reform or development within the access situation in a country.* Many of the stories presented above show how working on concrete cases within society can provide the credible information and concrete suggestions that may be needed to bring about change. While cases involving access within real environmental governance processes may be politically sensitive, they can provide the tangible foundation for substantive interaction among stakeholders.

4. *Active collaboration between NGOs and civil society has resulted in growing public interest in environmental issues, however, the effectiveness of state-let mechanisms in improving access right in environmental issues is rather limited.* It is also necessary to monitor the results of collaboration between state and environmental NGOs with regards to effective policy implementation.

5. *Statements of political will and official commitment to the access principles can empower groups, governmental and non-governmental to pressure for change.* These statements can come from the highest levels of government, or from specific agencies that may be involved in narrower aspects of access. Partners that have been able to catalyse or respond to these statements have often succeeded in creating the political space to advance their issues.

6. In the next step of assessments, *regional cooperation among TAI country partners can be pursued through assessments of transboundary environmental projects* or joint assessments by countries facing similar environmental problems. Such approaches can reduce costs and produce more concrete results. Transboundary cooperation is needed to deal with transboundary governance, which encompasses an expanded range of access issues.

A crucial future challenge to TAI is in *how to get non-environmental people involved more in the network.* Expanding the base of expertise and influence within the access network is necessary for taking TAI to the next level of policy impact. Other actors that could be engaged include:

- other regional networks, with whom synergies around advocacy for access rights can be advanced
- mass media, as they can access information that is unavailable to the public and can help reducing limitation on difficult terms
- private sector actors, which can play a lead role in improving TAI access work with regards to issues such as poverty reduction, community impacts of business operations, environmental destruction and global climate change

The TAI Asia partners have shown that it is necessary to work across a range of access issues, while addressing them from both "top-down" and "bottom-up" perspectives. Along both of these spectrums of environmental governance, the role of collaboration and partnership among diverse actors is of highest importance. These 'lessons learned' provide an insight into the successes observed, and may provide useful guidance as TAI moves forward in Asia and beyond.

4

Country Reports

Bangladesh

Country Report: Bangladesh

Background

Bangladesh is one of the most densely-populated countries in the world, with a land area of 147,570 sq km and a population density of 755 per sq km. The present estimated population of the country is about 129 million. Despite the achievements of some poverty-alleviation programs through micro-credit and other development initiatives, the vast majority of the population in Bangladesh still lives in poverty. Illiteracy and unemployment are rather high. Furthermore, recurrent natural disasters make the poverty situation more critical for the entire population.

The focus for the Bangladesh assessment was based on the three pillars of Principle 10. The assessment was done using law, effort and effectiveness indicators as per the TAI version 2.0 database. In this context, law indicators were used to evaluate the general legislative framework for guaranteeing access, while the effort and effectiveness indicators were applied to selected case studies. The use of the three indicators allowed identification of the gap between the policy framework and practice on the ground in terms of implementation of the Access Principles.

The chosen indicators were used to evaluate the legal framework and practice in terms of the effort and effectiveness of the measures undertaken by government and other stakeholders. Aspects measured include the regularity of information, the presence and quality of the law under each category.

TAI Bangladeshi Research Team and Advisory Panel

In order to implement TAI, Bangladesh Environmental Lawyers' Association (BELA) involved selected civil society organisations to participate in the research component of the initiative. Case studies were selected from various environment and natural resources sectors, using the TAI indicators to measure and monitor government performance in order to identify gaps and recommend priority actions to improve performance.

The TAI core team was selected based on expertise in areas of law and policy, environment and natural resources management, capacity building and public outreach. The team comprised researchers from BELA, Nijera Kori and CFSD (Centre for Sustainable Development). In addition to the research team, an Advisory Panel was setup to review the research results and this report. The panel followed the research process and made observations and recommendations on the findings.

Information Sources

Information for the research was collected based on the guidelines provided in the TAI global network. The indicator worksheets were developed for the research across the categories. The assessment applied both structured and semi-structured interviews. Using the terms of reference developed by the core team, each research team member developed a checklist and questionnaire

for use during consultations with stakeholders. BELA provided a generic official introductory letter for all the teams. The scope of work stipulated that the consultations should be in-depth, of a qualitative nature, using key informants from various sectors and with some form of analysis and interpretation.

Summary of Case Studies

Asian Paper Mill Environmental Pollution
In this case, we found that Asian Paper Mill is illegally constructed in the extended residential area of Nondirhat union of Hathazari thana at Chittagong. A huge volume of hazardous waste water contaminated with untreated chemicals is produced by the mill, and eventually this is discharged to the Halda River. Halda and its adjoining stream are polluted by this discharge. The River Halda is believed to be one of the most important rivers for the conditions suitable for the spawning of important species such as *hilsa* fish and others. Additionally the Halda is the only source of sweet water where fishermen can collect fertilised eggs from the riverbed.

The unauthorised, unregulated operation of the Mill is causing air, noise and water pollution and has caused unbearable sufferings to the villagers in the surrounding areas. The polluted water often overflows and causes damage to adjoining agricultural land. The untreated wastewater discharged to the Halda River poses a serious threat to the ecology as well as the important fishing ground.

Environmental Degradation in St. Martin Island
St. Martin Island is widely regarded for its rich and unspoilt environmental and ecological conditions. It is also widely known as a tourist spot. The island lies in the extreme southeastern corner along the coast of Bangladesh.

The unique set of environmental conditions, biotic and non-biotic, has no parallel in Bangladesh. This island supports significant breeding areas for globally threatened marine turtle species and serves as a stepping stone for several globally threatened migratory waders. Hotels and restaurants have been constructed for business (tourism) purposes without environmental certificates from the Department of Environment (DOE). Illegal and uncontrolled operations are damaging the ecology gradually and degrading its healthy environment. Normally, 1500-2000 tourists visit the island everyday during October-April. The unrestricted movement of tourists is gradually polluting its fresh groundwater, which is available 8-10 feet beneath the soil. For business purposes, some people collect coral and marine faunae, putting its rich biodiversity under threat. Continuous deforestation and over-collection of Pandanus vegetation have resulted in increased andslides on this island.

Modupur Eco Park
Modhupur forest sand lands were under the management of the Garo people and the Koch people. The indigenous people have been living in the Modhupur Forest for centuries. In 1962, the government established an agricultural farm over 500 acres of lands in Modhupur forests where non-indigenous people from other parts of Bangladesh were gradually resettled. At the same time, the government established a national park over 40 acres of land in the same Forests and resettled non-indigenous people there. In 1982, the government designated the other part of the Modhupur forest as a national park without any consultation and consent from the indigenous people. As a result, the Garo and the Koch people did not only lose their territory but also have become absolute minority in their own homeland. In 2000, the Forest Department announced the establishment of a new national eco-park over the Modhupur forests inhabited by Garo, which was implemented in 2003. It changed the name from Eco-park to Modhupur National park Development Project. The Garo people protested against the project and sent representatives to the government.

The Lawachara National Park
The Lawachara National Park is part of the west Begungacha reserved forest and located in the district of Moulvibazar. In accordance with the provision of the Wildlife (Preservation Amendment Act, 1974, about 1250 ha area of the forest was declared through a Gazette Notification in 1996 as the Lawachara National Park and a further proposal was made for extension of the park. There are about 18 villages, two of which are located inside and the rest are located outside the forest area.

Under Bangladeshi law, both an Initial Environment Examination (IEE) and Environmental Impact Assessment (EIA) are mandatory for high-risk activities. Yet without even submitting the EIA, Unocal has already secured permission to cut through a National Park that is specially protected from commercial activities by law. The IEE, a study which by Bangladeshi law must be carried out before site clearance can be given by Department Of Environment (DoE) for such a company whose industry is deemed to have a 'significant adverse environmental impact.' In fact, the IEE report, which is publicly available, downplays the protection status of both the National Park and the Reserve forest. In October, 2004 Unocal was given permission from the Government of Bangladesh to put a 1.5-kilometre gas delivery pipeline through Lawachara National Park.

Madina Tannery Environmental Pollution
Madina Tannery is located at Kulgaon, beside Oxygen moor in the area of Chittagong City Corporation (CCC) in Chittagong. Its production started before 1971. There is no Effluent Treatment Plant (ETP) in this tannery industry. Since its inception, its hazardous chemical pollutants have been discharged without treatment into the Kharnaphuli river. Approximately 35,000 people have suffered from health problems, and the agriculture-based production system has been also harmed. Tannery industry is one of the red-category industries in the Bangladesh Environmental Conservation Rules, 1997.

The pollution of sanctuaries in the Mokosh Beel
Mokosh Beel in Kalikoir Upazilla of Gazipur is one example of highly polluted wetlands, particularly during the dry season. Although poultry farms, pharmaceutical industries, and a tannery have been established in the area, the textile industries, including dyeing and printing units dominate the area. The industries are exploiting the surrounding water bodies by disposing their untreated wastes. It is important to note that in Mokosh Beel floodplain, the local communities have established nine fish sanctuaries. The fisheries and other aquatic resources of the Mokosh Beel are now seriously threatened by the untreated chemical wastes of the dying industries.

Ship Breaking Industry
Bangladesh is heavily dependent on the ship breaking industry for its domestic requirement of steel. The ship breaking workers are permanently exposed to toxic substances. They breathe toxic fumes and asbestos dust. Exposure to PCBs can cause cancer, liver damage, reproductive impairments

and immune system damage; the combustion of PVC produces large quantities of hydrogen chloride gas which, when inhaled, can lead to possible ulceration of the respiratory tract.

Vehicular Air Pollution in Dhaka City
Air pollution in Dhaka takes a serious shape due to increasing population and associated motorisation. Emissions of hazardous smoke and noises from motor vehicles that lack road-worthiness as required by the law in Dhaka are contributing to an unhealthy environment in many places. The problem of air pollution from faulty motor vehicles has been universally identified as a major threat to human body and life. The health of the dwellers in Dhaka city is at stake due to severe air pollution, which is caused significantly by vehicular emissions.

The Water Logging in Bhobodoho
Jessore and Khulna districts are situated at the south-western part of Bangladesh. Khulna Coastal Embankment Rehabilitation Project (KCERP) was implemented from 1986 to 1993, causing indescribable sufferings to at least 0.3 million villagers of Bhobodoho Upazila (subdistrict). People in this area have suffered from permanent water logging during last eight years. The unplanned structural interventions and failure to maintain sluice gates properly led to huge impacts in this area. No land-based production is possible in the area, extreme poverty is widespread and health conditions have deteriorated dramatically.

The local people appealed to the responsible authorities to be compensated for the financial loss sustained due to the water logging. But none of the authorities have acted on such appeals.

Industrial Pollution in River Narod
The Narod River originates from the Padma River at Charghat Upazila of Rajshahi district and merges with the Musakhan River in Kandipara in the Natore district. Unfortunately, the existence of the Narod River is seriously threatened by discharge of a huge volume of untreated waste into its water by the Natore Sugar Mill and Jamuna Distillery Ltd. The Natore Sugar Mill was established in 1985 and has been operating since its inception by Narod River in a location called Jongli. The Jamuna Distillery Ltd. has been operating since 1989. Since their very establishment, both the factories have operated without adopting the legally required affluent treatment devices and dumped their wastes into the Narod; that results in severe pollution of the river and consequent damages to the surrounding environment. The waste is also poisoning the soil and air of the surrounding area. Due to the pollution havoc created by the said industries, people residing around the area have been inhaling the obnoxious air and are increasingly suffering from various diseases such as asthma, diarrhoea, malaria and skin diseases.

Waste dumping at Savar
The Dhaka City Corporation has implemented a project titled "Infrastructure and Environmental Development Project of Various Areas of Dhaka Metropolitan" to develop Waste Dumping Depot for the west zone of the City and have identified approximately 54 acres of privately owned agricultural land within the active flood plain of Konda and Boliurpur mouzas at Amin Bazar of Savar thana in the district of Dhaka. In this area approximately 5,500 people live and earn their livelihood mostly from activities relating to agriculture and fisheries.

Such filling up of the flood flow zone is obstructing the natural drainage system of the city, disrupting the lives of more than one million people.

Untreated waste generated from decomposing garbage enters into the water courses. Groundwater is the significant source of potable water for Dhaka. The impact of groundwater contamination is generally irreversible. Besides, if clinical waste is disposed along with other wastes, there is a possibility that pathogenic organisms enter water courses, resulting in health risks to water users. Insect/mosquito breeding in stagnant water with waste is resulting in spread of diseases. Nuisances in the neighbourhood due to odour, flies and constant movement of transporting vehicles delivering waste to the site are a regular phenomenon here.

Shrimp Cultivation in south-west region of Bangladesh
Small scale farmers of Khulna and Shatkhira have been using their lands for the purpose of cultivating paddy and seasonal crops and earning their livelihood. That area is protected from the salt water with very few embankment and sluice gates of the Water Development Board. But few powerful men have been destroying the sluice gates and using them for taking salt water from the adjoining water bodies outside the sluice gates to their shrimp farms, where they are cultivating *bagda* shrimp. They convince illegally the local administration and the political leaders for their own businesses in the process of taking salt water to their shrimp fields. The shrimp cultivators are washing the agricultural lands of the local farmers with salt water, causing damage to the lands, the crops, fish stock, standing trees and the livestock. As such, unauthorised flows of salt water by the shrimp cultivators sometimes flooded the sweet water ponds that remain the only source of drinking and domestic water of the villagers. The shrimp cultivation in salt water generally causes a negative impact on the surrounding environment: increasing salinity, affecting the agricultural productivity of land and causing loss of biodiversity.

Legal Framework

General Situations
The Constitution of Bangladesh lays down the basic framework of the Government of Bangladesh. Part IV deals with the Executive while Parts V and VI deal with the Legislature and the Judiciary respectively. Article 55(6) of the Constitution empowers the President to make rules for allocation and transaction of the business of the Government. The State shall ensure the separation of the judiciary from the executive organs of the State (Article 22). The State shall not discriminate against any citizen on grounds only of religion, race, caste, gender or place of birth (Article 28(1)).

The Judiciary of Bangladesh consists of a Supreme Court, subordinate courts and tribunals. The Supreme Court of Bangladesh comprises the Appellate Division and the High Court Division. It is the apex Court of the country and other Courts and Tribunals are subordinate to it. The Appellate Division shall have Jurisdiction to hear and determine appeals from judgments, decrees, orders or sentences of the High Court Division. It has the rule-making power for regulating the practice and procedures of each division and of any Court subordinate to it. The High Court Division though a Division of the Supreme Court, is, for all practical purposes, an independent court with its powers, functions and jurisdictions well defined and determined under the Constitution and different laws. It has original jurisdiction to hear Writ Applications under article 102 of the Constitution, which is also known as extraordinary constitutional jurisdiction.

The Law and Justice Wing of the Ministry of Law, Justice and Parliamentary Affairs is entrusted with the duty of providing legal advisory services to other ministries, divisions, departments, and

organisations of the Government. The administrative control, management or relationship with the sub-ordinate/attached departments or offices, namely, the sub-ordinate Judiciary, Administrative tribunals, various other special Courts and Tribunals, Department of Registration, Office of the Attorney-General, Law Commission, Judicial Administration Training Institute, Office of the Administrator General and official Trustee (AGOT), Marriage Registration, Government Pleaders, Public Prosecutors, Notary Public, etc. are exercised through this Wing of the Ministry. To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he or she may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law (Article 31).

The Law Commission is established by the Law Commission Act, 1996. As per section 5 of the Law Commission Act, 1996, the Commission consists of a chairman and two Members. Under the law, the Government is empowered to increase the number of its Members.

Access to Information

General Situation
Right to information creates legal entitlement for people to seek information and includes duty of the public function bodies, both government and non-government, to make information public and easily available. It enables citizens to seek information from duty holders and makes duty holders responsible to disseminate important information proactively even if it is not asked for.

Although the constitution does not make a clear reference on right to information, Article 39 (2) states: "a) the right of every citizen to freedom of speech and expression and b) freedom of the press are guaranteed." Bangladesh Law Commission drafted a working paper on the Right to Information Act in 2002. However, The Ministry of Law, Justice and Parliamentary Affairs has notified and published a gazette of Right to Information Ordinance 2008 in order to ensure free flow of Information and Right to Information of the people.

Research findings
According to Article 4 of the Ordinance, section A states that 'Every citizen shall have the right to information and every citizen, through application or request, shall know any decision, written proceedings of or any work performed or proposed to be performed by any authority'.

Earlier, Bangladesh did not have any specific ordinance that related directly to people's right to know. Rather, what it had were certain clauses that appeared in various acts. These clauses are Official Secrets Act 1923, Evidence Act 1872, Rules of Business 1996, Government Servants (Conduct) Rules 1979, and the oath (affirmation) of secrecy under the constitution acts as an impediment and barrier to getting access to information.

While clause 5(1) of the Official Secrets Act has been designed to protect military and strategic secrets, it has been, on many occasions, the most popular excuse of government officials to deny information. Section 123 of the 135-year old Evidence Act stipulates that only the head of the department of any government machinery holds power to disclose information. The more recent Rules of Business specifically bars government officials from disclosing information to members of the press. Crucially still, government servants are bound by both their oath and service rules to refrain from disclosing information.

The Constitution of the People's Republic of Bangladesh has provisions granting the right to access information, participation in decision-making and access to justice. It is interesting to note that although there is a constitutional provision guaranteeing the right of access to information, the research indicates that public officials are mostly reactive in nature when it comes to providing information on emergencies. Environment and natural resources management sectoral agencies such as the forestry and fisheries enacted their own policy and legislative instruments, which provide for community participation in the management of these natural resources. But these do not deal with access to information or related procedural rights.

Strengthens and Challenges
While the ordinance, in many ways does conform to specific rights of citizens to know, the assessment reveals that the country does not have the infrastructure or system to follow this law.

People do have the right to seek information from public offices in a prescribed form with a fee. The public offices also maintain information so that the people can get information on demand. In the future, all major contracts including that of oil, gas and coal and strategic papers such as the PRSP will come to the public domain through the right to information. People can then decide what is best for them and can avoid such events as those in Phulbari.

Over the years people have been kept in the dark about economic policies pursued by the government and the direction the economy is taking. That Bangladesh has signed the GATT and has become a part of global capital control is known and understood by few. Ordinary citizens, who had to pay for this through a rising cost of living, did not have a say in it.

Recommendations

The public sector itself lacks the required infrastructure to provide adequate information. This is an area that needs attention. The right to information is indeed a valid demand, but the public sector has to be first covered completely before moving on to the private.

There are examples as to how correct information received at the right time has had positive impacts on people's lives. Several NGOs have taken up programs to provide much needed information on health, agriculture, and human rights to people at the local level. Farmers claim that correct and timely information have helped them improve their yield, and poultry farmers averted a major crisis and prevented death of thousands of poultry. The right to information has also helped women to claim rightful dowry and benefits from divorced husbands. The types of information that are most in demand are concerned with people's entitlements from the government, safety net programs, and allocation to local governments.

The Right to Information law has a special significance for the media and journalists. A free media is one of the pillars of democracy and is guaranteed by the Constitution. The media in Bangladesh are perceived as relatively free but still face obstacles limiting their ability to report with neutrality and fairness. They often have to rely on informers, who are exposed to risks, as there is no provision of security of "whistle blowers" per law. Recently there has been a spate of defamation

cases against editors and publishers for publishing articles that went against the vested interest of certain groups. This leaves journalists in a vulnerable situation, hampering their ability to report freely.

While well-known, high-profile editors are not subject to serious harassment, the journalists at local level are often under threat. It is envisioned that a Right to Information law will protect journalists and allow them to perform their duty.

Women face added constraint to access information due to their exclusion from decision making both in private and public sphere. A special attempt should be made to ensure that women are represented in the entire process of providing inputs to the draft law, the enactment of the law, plus its implementation and monitoring.

It is equally important that Right to Information law is not restricted to public and government institutions. Private organisations, NGOs, businesses, and all those who deal with public funds or provide services to the public have to be held accountable and abide by the same standards of maximum disclosure.

It is imperative that a strong enforcement mechanism is set in place. Without such a mechanism, the law will only be on paper. We should learn from examples in other countries where an independent commission has worked wonders in assisting people to get information and addressing grievances when access has been denied.

Lastly, we should all make an effort, at individual and institutional level to move out of the culture of secrecy. For too many years, information has been the monopoly of only a few. Open and timely information has the potential to change the lives of millions. It can only help and assist governments to promote their pro-poor policies and bring benefits to the poor. This cannot and should not be the private domain of only a few.

With the present efforts by civil society organisations to build mass awareness, it is hoped that more and more people will understand the implications of such a law. It is only when the demand for Right to Information law comes from the people that policy makers will take notice and speed up the process for it to be enacted.

Participation in Decision Making

General Situation

The major environmental concerns for Bangladesh are deforestation, deteriorating water quality, natural disasters, land degradation, salinity, unplanned urbanisation, discharge of untreated sewage and industrial wastes. The first environmental activities in Bangladesh were taken as a result of the Stockholm Conference on Human Environment in 1972. As a follow up action to the Conference, the Government of Bangladesh (GoB) funded, after promulgating the Water Pollution Control Ordinance in 1973, a project primarily aimed at water pollution control. Before 1992, there were few regulations assisting environmental protection in Bangladesh, which include the Pesticide Law (1971), the Bengal Law for Irrigation (1976) and Environmental Pollution Control Ordinance (1977).

Research Findings

The current EIA system in Bangladesh is inadequate even to ensure environmental sustainability at the project level, let alone to promote environmental considerations at the strategic level. The major inadequacies are in legislative control of the EIA, procedural appropriateness of current EIA system, institutional capacity and public participation.

There are no specific guidelines for conducting and reviewing the environmental assessment of non-industrial projects. Currently, EIAs done by the project sponsor are sent to the DOE for environmental clearance by the sectoral line agencies of the government. In fact, the DOE is still following an *ad hoc* procedure for giving environmental clearance of non-industrial projects. On the other hand, Strategic Environmental Assessment (SEA) is inherently suitable for taking care of non-project activities.

In Bangladesh, usually in EIA studies, no alternatives in terms of design, technology or location are suggested (for example EIA of Gas Infrastructure Development Project, 1994). In the Jamuna Multipurpose Bridge Project, no alternative to the project site was identified in the EIA report. SEA addresses those shortcomings by offering the possibility of contemplating alternative technologies, lifestyle choices, and resource uses. The State of Environment report is strongly recommending inclusion of environmental issues in various sector policies in Bangladesh, and making the different sector policies coherent regarding environment. These aspects are not considered in the existing policy measures and action programs.

Strengths and Challenges

The degradation of the natural resources base and the environment in Bangladesh started with various human and economic development activities due to a lack of appropriate sector policies, awareness, and integration of environment and development into conventional development strategies. The government of Bangladesh recently realised the need for concern regarding environmental issues, and started incorporating environment into policies dealing with various sectors (Bangladesh: State of the Environment, 2001). Various policies are now under preparation by the relevant ministries that aim for a sustainable approach towards environmental management and development (Bangladesh: State of the Environment, 2001). However, there is no appropriate system in place to examine and assess the environmental soundness of these policies. This shortcoming might hinder the quest of Bangladesh towards sustainability especially at the strategic level.

There is the need to enhance the EIA system by improving the level of public participation, inaugurating a more effective EIA legislation and improving institutional capacity. The EIA legislation should highlight the EIA procedures and the responsibilities of stakeholders. The procedure should ensure that cumulative effects are considered and alternative plans are formulated. Public participation in the EIA process should be enshrined in the legislation and the public awareness should be improved. The NGOs might play vital roles in this aspect. The capacity of government institutions (such as DoE) to implement and enforce the EIA system should be improved through training and promotion of the enabling environment.

Recommendations

Public participation needs to be strengthened in implementation of strategies, plans, programs and projects from sector to sector. Most of the donor-funded programs and projects implemented

by either NGOs or government agencies have very strong elements of public participation, while solely public sector driven initiatives for a number of reasons still demonstrate limited public participation.

Over the years, the government has made an effort to promote participation of a wide range of stakeholders in the preparation of policies, laws, strategies and implementation of projects. However, the assessment found out that there are still specific elements within the existing legislation, which demonstrate continued government control.

In order to ensure the consideration of environmental issues at the decision-making level, the SEA system should be implemented. In the context of Bangladesh, it might be more appropriate to institute SEA as an EIA-based SEA. The present EIA mechanism can be improved by promoting EIA at the strategic level. The DoE has a vital role to play in this context by liaising with various plan and policymaking bodies to ensure the environmental sustainability of plans, programs and policies.

Access to Justice

General Situation

The Constitution of Bangladesh does not explicitly provide for the right to healthy environment either in the directive principles or as a fundamental right. Article 31 states that every citizen has the right to protection from 'action detrimental to the life liberty, body, reputation, or property', unless these are taken in accordance with law. It added that the citizens and the residents of Bangladesh have the inalienable right to be treated in accordance with law. If these rights are taken away, compensation must be paid. Article 32 states: "No person shall be deprived of life or personal liberty, unless it is lawful to do so". These two articles together incorporate the fundamental 'right to life'.

Research Findings

In 1994, a litigation of public interest was initiated before the Supreme Court dealt with air and noise pollution. The Supreme Court agreed with the argument presented by the petitioner that the constitutional 'right to life' does extend to include right to a safe and healthy environment. In a recent case, the Appellate Division and the High Court Division of the Supreme Court have dealt with the question in a positive manner. The Appellate Division, in the case of *Dr. M. Farooque v. Bangladesh* has reiterated Bangladesh's commitment in the 'context of engaging concern for the conservation of environment, irrespective of the locality where it is threatened. This was a full court consensus judgment and the court decided:

> Articles 31 and 32 of our constitution protect the right to life as a fundamental right. It encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life can hardly be enjoyed. Any act or omission contrary thereto will be violative of the said right to life.

The High Court Division in the same case expanded the fundamental 'right to life' to include anything that affects life, public health and safety. It includes 'the enjoyment of pollution-free water and air, improvement of public health by creating and sustaining conditions congenial to good health and ensuring quality of life consistent with human dignity.' The court added that, if the right to life means the right to protect health and normal longevity of any ordinary human being, then it could be said that the fundamental right to life of a person has been threatened or endangered.

These two cases show that the courts are willing to establish the right to a clean environment. Another case presently pending before the High Court deals with commercial shrimp cultivation and its adverse effect on the socio-economic development and on sustainable development. According to the petitioner, commercial shrimp cultivation involves the 'usage of various chemicals and saline water'….which 'eventually makes the soil infertile and unsuitable for soil cultivation… [I]t further damages the environment by causing stunted growth of the trees or their death, reducing the grazing areas for cattle by increasing water logging, and adversely affecting the size of the open water fish catch as a result of the dumping of chemicals into the river….shrimp cultivation will cause irreparable ecological and environmental damage to the community and to the livelihoods of the inhabitants of the said area.' The petitioners submitted that the government orders regarding commercial shrimp farming frustrated the spirit of Environmental Policy 1992 and breachedArticle 32 of the Constitution.

Strengths and Challenges

Section 8(1) of the Bangladesh Environmental Conservation Act 1995 states that any person affected or likely to be affected from the pollution or degradation of environment, may apply to the Director General (DG) in the manner prescribed by the rules for remedying the damage or the apprehended damage. Moreover, Public interest litigation provides a scope for the public to access justice, makes people aware of their rights, and involves the public in ensuring remedy for pollution and to some extent in the decision-making process.

The legislation does not specify the responsibilities of the government and their roles to provide technical support, guide and training to the public to make them aware of their rights to lodge complaint on environment issues to the forums at all levels. The public do not have the right to justice since there is no independent organisation that monitors and initiates the process of demanding compensation for any environmental damage.

Recommendations

Generally, the political and institutional frameworks are very conducive for the implementation of the Rio Declaration. The government has all the necessary policies and legislation in place and has made some efforts to strengthen its capacity and that of other stakeholders in order to achieve sustainable environmental management in the country. However, policy implementation and law enforcement processes have been very weak. Government must invest in strengthening its own capacity and that of other stakeholders.

Conclusion and Recommendation

According to the assessment results, in general, Bangladesh legislation has paid attention to all aspects of access rights as mentioned in the principle 10 of Rio Declaration.

In details, the legislation has not adequately supported the public to access environmental information, access justice and participate in environmental decision making. The legislation has

some regulations supporting the capacity building of staff in state bodies.

The legislation also adds the subject of environmental education into the school curriculum and paves the way for activities and development of civil society organisations as well as media agencies.

However, the remaining shortcoming is that the legislation still does not pay enough attention to technical support, guidance and training of the public to access information and access justice. Therefore, with regard to the legal system, the first priority is making more detailed regulations on building the environmental information system to serve the public on a much wider and easier span.

In fact, the local government, civil society organisations and media agencies fared reasonably well, in the assessment, on public access to information, access to justice and participation to environmental protection activities. Environmental information has been provided mostly free of charge to people.

The procedure to consult the public did not address disadvantageous communities such as women, the poor, and people in remote areas.

There is no sufficient budget allocation in the government agencies for this access practices. Though some government agencies have project-based budget for collecting and disseminating information to the public, the budget and information are not adequate. The guidance for state organisations on the right to justice was poor; the mechanism to implement compensations for environment damages is not effective. The role of social organisations to support public access to justice is not sufficient.

To overcome the above mentioned weaknesses, state organisations have to pay special attention to improve the public capacity in access to information and justice; mobilise systematically, strongly and largely the involvement of different groups of people, especially the poor, women, people in remote areas in the process of handling environmental issues.

The government should have adequate budget to build up the environment information system and support public participation to protect the environment. The government should also have policies to support and facilitate public media agencies and civil society organisations efficiently so that they could play well the bridging role between governmental bodies and the public in environmental protection.

With the above conclusions, we recommend the following actions:

- **Lack of awareness regarding public participation**
  There is little scope in relation to public participation in environmental issues in Bangladesh. There are many statutory laws and by-laws prevailing in Bangladesh, but due to various barriers, most of the laws remain dormant. Public participation has not been encouraged by environmental law and policy. Lack of awareness, lack of effective legislation, sectoral laws, finance and resources, and institutional constraints are the main reasons for this. Reforms should be made to increase the opportunity of public participation in environmental matters in Bangladesh.

- **Increase public awareness with respect to environmental matters**
  To enhance public awareness in environmental matters and to enable people to act as the protector of the environment, it is essential to improve the standards of living of the people who live below the poverty line in Bangladesh.

- **Promotion of constructive literary programs**
  To develop the consciousness on environmental rights, constructive literary programs should be promoted.

- **Adoption of time worthy legislation**
  For proper environmental management, an effective legislation should be adopted. In addition, all sectoral laws should be effectively amalgamated into an environmental code.

- **A right to environment as a fundamental constitution right**
  A "Right to Environment" should be incorporated as a fundamental right in Bangladesh Constitution.

- **Provision of adequate legal aid**
  A provision to provide adequate legal aid should be introduced for suitable and needy applicants to conduct their proceedings.

- **Informal hearing**
  More informal and less intimidating hearings in relation to public enquiries should be introduced in Bangladesh.

- **Opinion on certain development applications**
  There is a need for a specific provision that enables people in the neighbourhood to voice their opinions on certain development projects.

- **Institutionalised EIA process**
  The EIA process in Bangladesh needs to be institutionalised. In doing so, public understanding and appreciation of the environmental issues, trained capacity, and a strong administrative mechanism are necessary.

- **Open procedural legal enactment**
  Environmental law and policy should be made through open procedures and be enforceable by citizens through open access to the court.

India

Country Report: India

Background

India is a signatory to *Principle 10* and has initiated steps to translate these commitments into practice. This includes the start of the Environment Impact Assessment (EIA) process through the EIA Notification of 1994; the introduction of Public Hearing's of select projects requiring EIA and setting up of grievance redressal mechanisms in the form of the National Environment Appellate Authority (NEAA) as well as the National Environment Tribunal (NET). These legal developments are landmark steps both recognising the need to ensure participatory democracy and ensuring compliance with Principle 10.

Thus, to a significant extent, the legal infrastructure for 'access rights' has been established in this country. However, certain disparity exists in terms of development: while *access to information (A2I)* has made the most remarkable progress (in view of the enactment of the Right to Information Act, 2005), the other 'access rights' have unfortunately not gained much ground. The *public participation* (PP) component is woefully lacking in most of the recent enactments. *Access to Justice* (A2J) is being greatly restricted, partly on account of legal and policy development which favours speedier investment decisions in core sectors of infrastructure, mining and other mega projects, and partly, on account of the Courts, including the Supreme Court and the High Courts exercising greater judicial restraints. This disturbing trend is reflective of the global scenario.[8]

In India, the National assessment is currently in progress. The present report is based on the assessment done in the states of Himachal Pradesh and Uttarakhand. Although both states account for only a small percentage of the total land area, the findings are relevant for the country as a whole. The Assessment was called the 'TAI Himalayan Assessment'. TAI Himalayan Assessment started in early 2008 with the formation of a TAI Himalayan Coalition as part of the larger TAI India coalition to facilitate the study and follow-up to its recommendations. Ten groups comprising essentially civil society organisations and one Village Panchayat (local self-governing institution) became the core group engaging in research and collection of information.

Since the case studies are the heart of the assessment, the central idea is selection of cases, which would be representative of the situation in the two states and reflective of the national situation.

Eighteen case studies representing different contexts to which the indicators are applied were selected according to the TAI guidelines. Different case types specified were considered: eight cases as required were studied under A2I while six cases were studied under PP, and the remaining four under A2J.

[8] See for instance TAI Report entitled Voice & Choice that states 'more countries have bedrock framework laws on information than framework laws supporting public participation'.

Cases Studies for the TAI Assessment in Himachal Pradesh and Uttarakhand		
Category	**Case Type**	**Case Name**
Access to Information	Facility level information	Baddi-Barotiwala Pharmaceutical and Chemical Industry hub, Himachal Pradesh.
	Facility level information	Kashipur Industrial Estate, Uttarakhand
	State of Environment reports	State of Environment Report, Himachal Pradesh
	State of Environment reports	State of Environment Report, Uttarakhand
	Information from regular monitoring	Dehradun Urban Water quality Analysis, Uttarakhand
	Information from regular monitoring	Darlaghat-Barmana Cement Plant, Himachal Pradesh
	Information in an emergency	Chamoli Earthquake Vulnerable Villages, Uttarakhand
	Information in an emergency	Dhauliganga Tunnel Leakage, Uttarakhand
Public Participation	Policy making	Hydro Power Policy, Himachal Pradesh
	Policy making	The Schedule Tribes and Other Forest Dwellers (Recognition of Forest Right) Act, 2006
	Project level decision	Askot Multimedia Mining, Uttarakhand
	Project level decision	Himalayan Ski Village, Himachal Pradesh
	Project level decision	Kataldi Limestone Mining
	Regulatory decision	Bhagirathi River Valley Development Authority, Uttarakhand.
Access to Justice	Access to information	Palamaneri Hydroelectric Project, Uttarakhand
	Public participation	Rima Soapstone Mining
	Environmental harm	Road though Corbett Tiger reserve
	Non-compliance	Resettlement of Pong Dam.

Legal Framework

General Situations

The enactment of the **Right to Information Act, 2005** was an important legislation in ensuring that official information is available as a matter of right and not based on official discretion. Prior to enactment of this law, the Courts and specially the Supreme Court had expanded the scope of Article 21 of the Constitution to include the Right to Information. The law to a very large extent has taken care of the information needs of the common citizens and provided information as a matter of right to almost all types of environmental information. The law also provides for a fixed time frame for providing information, and procedures are relatively simple. There are penalty provisions for Non Compliance, and an elaborate system of State Information Commissions at the apex of Public Information Officers at the initial levels have been set up.

Right to Information Act, 2005 is a general law with respect to access to information and does not specifically deal with environmental information. These are dealt with in other special laws, rules and notifications. Thus in respect to projects which require a mandatory Environment Impact Assessment to be done, the provision of the **Environment Impact Assessment Notification, 2006** is relevant in this respect.

The framework for public participation in environmental decision-making is provided in the **Environment Impact Assessment Notification, 2006**. Public Participation is however limited only to specific categories of projects. Public participation consists of the following:

- Public Hearing at the project site or in proximity in order to elicit the opinion of the affected persons or those who have a plausible stake in the grant of environmental clearance.
- Accepting written representation from the affected people and people with plausible stake.

The law provides that public hearing is conducted by a Panel comprising the District Magistrate/ Collector or his/her nominee not below the rank of Additional District Magistrate and a representative of the State Pollution Control Board. The earlier EIA Notification (1994) provided for representation from Panchayats and senior citizens of the area in the Public Hearing Panel. This provision no longer exists in the new EIA Notification of 2006. The Panel has thus been reduced to a purely official platform.

Findings

Some of the other major deficiencies noticed in the law are:

- The assessment reveals that legal enactments with respect to the environment have largely restricted access to justice. This is contrary to not only the constitutional provisions but also various landmark Supreme Court rulings on *locus standi*. Avenues for justice are few and far away and in most instances are either non functional (National Environment Tribunal) or dis-functional (National Environment Appellate Authority and Bhagirathi River Valley Development Authority). Clearly, the intention of Parliament to constitute these authorities has been defeated largely due to administrative and political apathy.
- Only a limited number of projects and activities require public participation.
- The law provides for only 'environmental' public hearing. However, there are many social issues linked to environmental issues such as grazing rights, impacts on traditional livelihoods,

potential economic benefits to the community and cultural impacts of the project. The environmental Public hearing does not provide for a platform for such concerns.

- Information sharing with respect to projects which requires Environment Impact Assessment, although legally mandated, suffers in terms of both utility (since only limited sharing of information takes place) and time (limited time to examine the document). The problem is further compounded with respect to projects which do not require EIA. In those instances, RTI application is the only route. However, significant information with respect to these projects is either classified as 'Commercial' or 'Trade Secrets'.

Strengths and Challenges

The existence of laws and rules with respect to access rights provides the essential base for environmental democracy. However, the greatest challenge is how to turn these from being mere letters in the law into practice. Legal provisions specially with respect to public participation is not clearly defined whereas with respect to access to justice, the failure to make the grievance redress forum functional has been responsible for the collapse of the grievance redress system in the country.

Access to Information

Environmental Information itself can take a variety of forms such as EIA reports Compliance Reports, Emergency Information system, State of the Environment Reports and information on regular monitoring on environmental quality. As mentioned above, the Right to Information Act, 2005 provides the legal framework for access to Information. However, other laws and rules also provide for access to information such as the EIA Notification.

Research findings

The TAI assessment reveals the following:

1. **Proactive disclosure of information, although required under the law, is generally absent.** Despite the Right to Information (RTI) Act, information sharing is generally reactive in nature and more so, only in response to an application filed under the Act. With respect to the Environment Impact Assessment reports, only the 'draft' version is accessible to the public and not the 'final' version on which decisions are made. Despite an overall 'transparency' regime ushered under the RTI Act (2005), the new EIA Notification (2006) greatly limits access to information on a range of projects.

2. **There is no specific provision for sharing emergency and disaster related information.** Given the vulnerability of the Himalayan states to flash floods, earthquakes, landslides and forest fires, no specific efforts seem to have been taken to ensure that disaster related information is available well in advance. No lessons seem to have been learnt from previous disasters, and all investment on disaster management research and systems seems to lie outside the realm of information sharing.

3. **The findings from the 'State of the Environment' reports are rarely disseminated.** The State of the Environment reports, presenting data on the air, water, and land quality of every State and the nation is undertaken under a program of the Ministry of Environment and Forests. No legal mandate exists for regularly publishing a State of the Environment Report and almost no effort is put in to disseminate such information to the Indian citizenry. As such these have remained a purely academic exercise.

4. **Information dissemination with respect to industrial facilities (including air and water quality data) is almost absent.** Although facility level information and basic information on air and water quality is mandatory and collected, no effort is made to disseminate the same in a proactive manner.

Strengths and Challenges

The existence of a uniform National legislation in the form of the Right to Information Act is the bedrock on which the whole edifice of access rights rests. However, the law is still cumbersome and difficult to comprehend for the majority of people. Unless this is overcome, the positive impacts of the RTI regime are likely to be highly limited.

Recommendations

1. Greater emphasis must be placed on proactive disclosure of information as opposed to information on specific request. Information sought under RTI Act should be an exception, and proactive disclosure should be the norm.
2. The State should develop a clearing-house mechanism at state, district, and sub divisional levels for collection, analysis and dissemination of environmental information.
3. The Final Environment Impact Assessment Report as opposed to the draft EIA in simple, understandable language should be available to the public. An amendment in the EIA Notification, 2006 to this effect is essential.
4. A legally binding mandate is necessary for publishing and disseminating "State of the Environment Report" – at least once every three years.
5. Emergency and disaster related information must be treated as a special and priority category of information to be easily accessible to all concerned persons, especially in the context of the unique geographical conditions of the Himalayas.

Participation in Decision Making

General Situations

Public Participation within the environmental decision making framework is largely done within the Environment Impact Assessment process. This takes the form of a "public consultation" as Public Hearing. In addition, judicial and quasi-judicial forums provide an opportunity for the public to influence outcomes of the decision making process. Broadly, the legal mechanism for ensuring participation is either lacking in most situations or has limited impact on the decision making process.

Research Findings

In these two states, the findings around public participation are:

1. **Public Participation is limited to a few projects and activities.** The assessment clearly reveals that most projects and activities do not require mandatory public consultations. The most disturbing aspect is that the new EIA Notification of 2006 has been regressive

on this count and has done away with public consultation with respect to a range of projects that required either an EIA or a public hearing under the 1994 Notification. Even the National Environment Policy, 2006 makes no mention of public participation in environmental decision making; rather, it is guided by an 'investor friendly' approach instead of a pro-people and pro-environment emphasis.

2. **Even where a mandatory public consultation process exists, it is regarded as a mere formality.** The outcome of a public hearing rarely, if ever, influences the decision making process. There is very little evidence to show that the proceedings of a public hearing are taken into consideration while taking a project level decision. In fact, genuine public participation rarely ever takes place principally due to the fact that very limited lead time (advance notice) is provided and the information that is made available is either very sketchy or complicated. The most discerning part is that while project proponents get to participate at different stages of the decision making process (scoping, appraisal, public consultation), public involvement is limited only to the public hearing stage and only for the local public.

3. **Policy formulation, including enactment of new laws does not involve any element of public participation.** The dominant thought is that, consultation with elected politicians (as people's representatives) as well as government officials (as servants of the public) will suffice. Thus, the existing legal framework provides no mechanism for involving the public in policy formulation. This was, in fact, amply evident in the case of formulating the Hydro power policy of the two States. Also with respect to the enactment of the law, though some efforts have been made to hold consultations, these were very unsystematic.

Strengths and Challenges

The existence of mandatory public hearing process for a range of projects (though not all) is a positive aspect. However, public participation is limited to projects and does not include plans and policy. Further complications arise in view of the fact that the views expressed during the process of public hearings are rarely given importance in the decision making process.

Recommendations

1. Public participation should be mandatory for a much larger range of projects that have environmental implications including plans, policy and legislations.
2. Public participation should be ensured during the stage of project planning and designed to be effective at all levels.
3. Greater weight to public hearings should be provided at the stage of EIA appraisal and final decision-making.
4. Adequate lead time (advance notice) must be provided for public hearings. Given the poor communication network, in the hilly areas it should be a minimum of two months as compared to the current one-month notice.

Access to Justice

General Situations

If environmental decision makers are to be held accountable, people need access to procedures

and institutions that provide redress and remedy when the government's decisions are incorrect or unlawful. The liberal interpretations of the Supreme Court, so far as the issue of 'standing' is concerned, have greatly facilitated access to justice. The High Court and the Supreme Court are the major avenues of justice. Environmental courts in the form of National Environment Appellate Authority exist but they are mostly weak.

Research Findings

The findings of the assessments reflect on existing judicial and institutional lacunae in this respect:

1. **There is a significant and an ever-widening gap between law and practice.** There is legal recognition of the need to have grievance redress mechanisms other than formal courts. It was for this reason that the National Environment Tribunal (NET) and the National Environment Appellate Authority (NEAA) were constituted. However, in reality, while NET is yet to come into effect (14 years after the law was enacted by Parliament), the NEAA continues to be a 'limping authority' with crucial vacancies at top levels and a manner of functioning that rarely inspires independence or impartiality.

2. **Cost, distance and time act as significant barriers.** The grievance redress mechanisms/ institutions are mostly located in the capital of the country or in the State capital. Access to both locations is generally difficult as well as expensive for most people. Statutory bars on local Civil Courts (Section 22 of the Environment Protection Act, 1986) to entertain environment related issues greatly hinder access to justice especially where the poor and marginal sections of the population are concerned.

3. **Technical considerations tend to limit access to justice.** The assessment reveals that technical considerations, such as the *locus standi* of the person filing a petition/ appeal and unrealistic timeframes within which appeals can be filed, act as significant barriers to access to justice (e.g. NEAA). Absence of norms for appointment of members to the authority affects the quality of decisions and raises the question of integrity. On the other hand, where issues concerning standing have been liberal and procedural considerations have been kept to a minimum, e.g. the Central Empowered Committee (CEC) of the Supreme Court, access to justice has been comparatively easier.

Strengths and Challenges

The liberal rules of *locus standi* have greatly helped access to justice so far as disadvantaged sections of the populations are concerned. The Supreme Court and the High Courts have delivered landmark judgements on access rights. Direct costs in the form of court fees are low. However, the experience with tribunals has not been positive: they lack autonomy, are filled up with retired bureaucrats and the Ministry of Environment and Forests have not shown any interest in making them an effective avenue for redressing grievances.

Recommendations

- Grievance redressal mechanism especially the National Environment Appellate Authority should be overhauled with the appointment of technically qualified persons with appropriate code of conduct and ethics.
- National Environment Tribunal should be made operational at the national and regional levels in accordance with the National Environment Tribunal Act.

- Procedures for filing of appeals/ petitions before judicial and quasi-judicial authorities dealing with environmental issues should be simplified.
- District Courts should be allowed to hear environmental suits by amending section 22 of the Environment (Protection) Act, 1986 (EPA), which bars civil courts from entertaining matters concerning the EPA.

Capacity Building

General Situations
Capacity building consists of mechanisms, efforts, or conditions which enhance effective and meaningful public participation in decisions affecting the environment.

Research Findings
1. **Legal mandate for capacity building is evident only in a few legislations.** Although there is mention of the need for capacity building in the RTI Act, 2005, it finds limited mention in environmental legislations. Thus, there is no mention of capacity building in the EIA laws or in any of the Forest and Wildlife laws of the country.

2. **Capacity building (even if it exists) is only for officials and not for the public.** Effective implementation of a law is critically dependent on both the public and the government officials being aware of the law, its application and its interpretation in terms of both form and substance. While there are positive indicators with respect to capacity building of government officials on access to information (principally on the application of the RTI Act, 2005), capacity building for the public is non-existent and is done sporadically by civil society organisations.

3. **Capacity building is limited only to access to information and does not extend to other access rights.** Public officials including members of the judiciary as well as quasi judicial authorities dealing with the environment remain woefully ill-equipped to facilitate access to justice or involve the public in decision making processes. The public is largely alienated from any capacity building exercise around environmental access rights unless specifically focused by a particular civil society organisation.

Strengths and Challenges
The greatest challenge will be to ensure that the capacity building takes place in a systematic time-bound manner targeting both the civil society and the officials.

Recommendations
1. A legal mandate must be created for building capacities of both the public and government officials in the framework of environmental law. The government should put a greater focus on educating the public either directly or through civil society groups.
2. Capacity building of members of judicial and quasi-judicial forums dealing in environmental issues especially of the NEAA and other related authorities must be a continuing task. This effort should crucially focus on neglected aspects such as disaster related information and problems of the poor and marginalised in accessing justice.

Conclusions and Recommendations

The TAI Assessment of the Himalayan States of Uttarakhand and Himachal Pradesh is largely reflective of the scenario in India. This is due to two principal reasons:

- The laws and rules are generally central/ federal laws and therefore have a largely uniform application throughout the country.
- The administrative and political system and institutions are the same.

However, the crucial distinction arises in view of geographical factors. The Himalayan states have poor communication facilities, and this creates obstacles towards accessing the access rights-be it access to justice, information or participation.

TAI assessment reveals that the states have a great distance to cover. Achieving environmental democracy is no easy task. It requires first of all identification and understanding of the problem and the shortcomings in the existing system: this could range from absence of law and policy, to gaps in existing laws, to financial and cultural barriers to access rights. Enactment of laws and policies as well as appointment of authorities by itself is not a solution. As the assessment reveals: it is easier to set up authorities and committees, but it is a herculean task to ensure that they actually function in a manner that is not only objective-driven but also participatory and justice-oriented.

The assessment reveals that legal enactments with respect to the environment have largely restricted access to justice. This is contrary to not only the constitutional provisions but also various landmark Supreme Court rulings on *locus standi*. Avenues for justice are few, far away and in most instances either non functional (National Environment Tribunal) or dis-functional (National Environment Appellate Authority). Clearly, the intention of Parliament to constitute these authorities has been defeated largely due to administrative and political apathy.

The Environment Impact Assessment process as it exists is plagued with too many loopholes and serves no effective purpose for the affected community or to protect the environment. Simple amendments by itself will not suffice and a fundamental shift in the mindset of the decision makers from an "investor friendly" to an "environment and people friendly" approach is needed. This in turn necessitates an appropriate capacity building of officials and decision makers and to inculcate a 'culture of openness'. As the TAI assessment reveals, this is largely absent: partly due to lack of legal mandates and partly due to lack of prioritisation of government plans and programs.

The enactment of the Right to Information is an historic step. However, unless there are proactive measures to educate the people on how to access information, it is bound to carry no meaning for a vast majority. As the assessment clearly shows, there is neither a legal mandate nor any effort on the part of the government to acquaint the people with making use of Right to Information Act. There is a greater need to make it more relevant for information related to the environment as well as emergency situations.

Indonesia

Country Report: Indonesia

Background

The fulfilment of rights to access is essential in environmental management. The society that has adequate information will be more able to assess their environmental condition and at the end, they will be able to make better, more informed choices. Ensuring people's rights to participate will give them space to express their opinions, review public policy and shape policies that affects all people's lives. If their rights to access information and be involved as well as to have a healthy environment are violated, providing the rights to justice can compensate the loss or act as recovery.

In Indonesia, the rights to access are already stated in many regulations from the constitution, laws, central government regulations and the regulations of regional government. However, the regulations tend to be rather general and do not specifically regulate how to access information, or how to participate in decision-making processes.

The access rights are enshrined in different aspects of the Constitution. The right to a healthy environment is ensured in the 1945 Constitution, Article 28 H. Meanwhile, the rights to have information and to give opinion as a form of participation is clearly regulated in Article 28 F and 28 C (3), while the right to justice is also stated in Article 28C (2).

Law No 23 of 1997 on Environmental Management (the then amended by Law No. 32 of 2009 on Environmental Protection and Management, which was passed almost two years after the assessment had been taken, has also guaranteed people's rights to access information, to participate in environmental policy, planning and management and, to justice. This law brings together the rights to information in Article 5 (2) with the right of every person to a healthy and good environment in Article 5 (1) and the right of every person to participate in the decision making process in Article 6 (1). Meanwhile, the right to justice is regulated in the section on environment dispute resolution both in and outside the court and the rights of non-governmental organisations to take legal action. Some sectoral legislation such as Law on Forestry and Law on Area Management also guarantee these access rights.

These legal assurances, unfortunately, are not being followed sufficiently to fulfil people's access rights. The state, for example, has not yet established a system to provide sufficient information that would make it easier to access information. The information furnished by the state is often made public too late. On the other side, the general public does not understand their rights. Accordingly, whenever there is a violation to their rights, they tend to remain silent and do not take action.

To judge how far the three Access Principles have been applied in environmental management and natural resource in Indonesia, Indonesian Center For Environmental Law (ICEL) in partnership with the Ministry of Environment conducted an evaluation of the government in managing the environment and natural resources in April 2007-January 2008. This evaluation follows up on an evaluation conducted in 2001. In doing the research, the team used the three access indicators (version 2.0) that have been developed by The Access Initiative (TAI). The goal of this research

was to identify the gap between the factual conditions and the ideal conditions in fulfilling the three access.

The assessment team consisted of ICEL team, academics and NGOs activists from five provinces in which case studies were conducted (two cases from each area).

To guide the research and analysis, a steering committee was formed, comprising government representatives (Deputy V State Ministry of Environment), academics (Universitas Indonesia dan Universitas Andalas), non-governmental organisation activists (ICEL, Walhi and Telapak) and also journalists (Kompas and Independent Journalist Alliance).

This assessment provides a greater depth of analysis. In the first assessment in 2001, each access category was represented with only one case/ example. In this second assessment, each access category is represented with five cases/ examples taken from each research site. Those areas are Riau Province, West Kalimantan, East Java, Central Sulawesi, and North Sulawesi. Those five were chosen with the following criteria:

1. The cases represent environmental cases that have arisen throughout Indonesia. For example, cases related to mining exploitation, forest fire, and industrial damage.
2. The cases reflect environmental management conception in Indonesia using Bio-region approaches. This region consists of Sumatera, Java, Kalimantan, Sulawesi, Maluku and Papua (Suma-Papua).
3. Selection of cases take into account geographical distance from central decision maker.

The cases studies under this assessment are summarised below:

Case Type	Location	Case Study
Case Study Information Access		
Information concerning environmental emergencies	Riau	Forest and land burning, 2006-2007
	West Kalimantan	Forest and land burning, 2005
	East Java	Lapindo Brantas Mud, 2006
	Central Sulawesi	Flood in Morowali, 2007
	North Sulawesi	Buyat Gulf polution, 2004
Information concerning air quality monitoring *(air-quality monitoring system)*	Riau	Routine monitoring of air quality at Pekanbaru
	West Kalimantan	Routine monitoring of air quality caused by forest and land burning.
	East Java	Routine monitoring of air quality at Surabaya
	Central Sulawesi	Routine monitoring of air quality for mining at Palu
	North Sulawesi	Routine monitoring of air quality through emission test for machine-equipped vehicles at Manado.
Information concerne water quality monitoring *(water-quality monitoring system)*	Riau	Routine monitoring of water quality at Siak river, Pekanbaru.
	West Kalimantan	Routine monitoring of water quality at Kapuas river
	East Java	Routine monitoring of water quality at Surabaya river
	Central Sulawesi	Routine monitoring of drinking water quality by Regional Drinking Water of Palu
	North Sulawesi	Routine monitoring of water quality at Tondano river, manado
Information regarding industrial facilities	Riau	PT. Riau Andalan Pulp Paper
	West Kalimantan	The activities of PT Eka Tambang
	East Java	The activities of PT. Surabaya Industrial Estate Rungkut (PT.SIER)
	Central Sulawesi	Mining C Project at Donggala
	North Sulawesi	The activities of PT. Newmont Minahasa Raya (PT.NMR)
Information concerning state of the environment reporting	Riau	The status of environment area of Pekanbaru
	West Kalimantan	The status of environment area of West Kalimantan Province
	East Java	Environmental Management Data Base of East Java 2006
	Central Sulawesi	Audit controlling and environmental recovery Report of Palu
	North Sulawesi	The status of environment area of North Sulawesi
Case Study Participation Access		
Participation in policy making	Riau	Drafting of Medium-term Development Plan of Pekanbaru
	West Kalimantan	Drafting Regional Government of West Kalimantan No. 4 of 2007 on the distribution control and the use of mercury and similar substances
	East Java	Drafting of Medium-term Development Plan of East Java Province
	Central Sulawesi	Drafting Regional Regulation of Palu No.5 of 2006 on Transparent and participative government
	North Sulawesi	Drafting Regional Regulation No. 38 of 2003 on Management of ocean and coastal area with society based at North Sulawesi

Participation concerning application of regulations and technical regulatory decision	Riau	Revision of Area Management Plan and area of Riau Province
	West Kalimantan	Drafting Regional Regulation of West Kalimantan No. 4 of 2007 on the distribution and the use of mercury substance and its alike
	East Java	Drafting Regional Regulation of Surabaya No.16 of 2003 on management of ground water
	Central Sulawesi	Drafting Regent Regulation of Tojo Una-una No. 503/0186/2005 on Guidelines of Colleting Wood Forest Result
	North Sulawesi	Drafting of Letter of Governor North Sulawesi no 660/990/SEKR on 2 Februari 2006 on the response of environmental impact anticipation of PT. Meares Soputan Mining (PT. MSM) dan PT. Tambang Tondano Nusajaya (PT.TTN)
Project-level participation	Riau	Environmental impact anticipation making for Legal use of wood for forest plants PT. Riau Andalan Pulp and Paper (PT. RAPP) at Kuala Kampar and Padang island, Riau province
	West Kalimantan	Environmental Proper Permit PT. Duta Pertiwi Nusantara
	East Java	Exploration permit PT. Lapindo Brantas
	Central Sulawesi	Establishment of Mega Project PLTA Sulewana
	North Sulawesi	Drafting of AMDAL of PT Hamparan Pasir Besi
Case Studies of Justice Access		
Claim on rejection of rights to information	Riau	No case available
	West Kalimantan	
	East Java	
	Central Sulawesi	
	North Sulawesi	
Claim on participation rejection	Riau	No case available
	West Kalimantan	
	East Java	
	Central Sulawesi	
	North Sulawesi	

Claim for environmental damages	Riau	class action of forest and land burning, 2005
	West Kalimantan	Ornop claim for no permit gold mining, 2004-2005
	East Java	Lapindo Brantas Mud, 2006
	Central Sulawesi	Dwelling development at reserved area Tinombala mountain, 2004
	North Sulawesi	Buyat Gulf pollution, 2004
Claim on non-compliance	Riau	N/A
	West Kalimantan	Ornop claim for fog caused by forest and land burning , 2006
	East Java	Surabaya river pollution 1995-2005
	Central Sulawesi	N/A
	North Sulawesi	PT. Newmont Minahasa Raya

1. Legal Framework

General situation
In general, Indonesia's legal framework, including the constitution, legislation, central and regional government regulations, has already established access rights. The Law on Environmental Management, for instance, already guarantees people's rights to access. Aside from that, sectoral regulations connected with environmental management such as the Forestry Law, Area Management and Water Resources Law also regulate access rights to access. However, they are insufficiently clear. On the other hand, there is also legislation that effectively blocks people's rights to access, such as the Law on Oil and Geothermal that stipulates that all related information is closed to the public.

Research findings
The 3 Access Principle is guaranteed under Indonesian law. All of the legal instruments studied, including general environmental law, sectoral environmental law and local environmental law, acknowledge rights to information, to participate and to justice. However, the legislations are insufficiently clear and explicit. By "insufficiently clear", we mean that the legal guarantees are not explained in detail. For example, what information may be accessed by the public and what may be kept confidential, the mechanisms through which information may be obtained and participation realised, who is required to divulge information and deal with public complaints, are not clearly defined and addressed. Meanwhile, by "insufficiently explicit", we refer to a lack of enforcement mechanisms against violations of the rights enshrined in the three Access Principles. If the rights to information, to participate and to justice are acknowledged by the State, then specific legislations or regulations are required in order to ensure that these rights can be enforced, particularly when the rights are violated by the State. In addition, an oversight and punishment system is required so as to deter the State from violating these rights.

A. Legislation governing access to information:
The prevailing legislation fails to specifically and expressly regulate the State's obligations to provide a) a full and comprehensive information system; b) mechanisms or procedures for

obtaining information; c) an oversight and punishment system for violators of these rights; d) time limits for the furnishing of responses or dissemination of information; e) rules governing official secrets and restricting access to information; and f) capacity-building for public bodies at both the central and local levels, and for community organizations/institutions.

B. Legislation on access to participate:
The prevailing legislation fails to specifically and expressly regulate the State's obligations to provide a) a system through which participation may be effected at each stage of the decision -making process; b) an information system to support public participation; c) time limits for the notification of the public with regard to opportunities to participate; d) mechanisms and procedures for participation, except in the case of the legislative process and the preparation of environmental impact analysis; e) an oversight and punishment system for those who violate or deny the public's rights to participate; and f) capacity building for public bodies at both the central and local levels, and for community organisations/institutions.

C. Legislation governing the rights to access justice:
The prevailing legislation fails to specifically and expressly regulate the State's obligations to provide a) capacity-building for public bodies at both the central and local levels, and for community organisations/institutions; b) time limits for the resolution of disputes and adjudication of court cases. However, the legislation governing access to justice for people affected by pollution or environmental damage is clearer and more explicit than that governing the remedies available to those who are denied access to information.

The lack of clarity in these areas of legislation means that there are no guidelines on how access rights can be upheld and enforced.

2. Access to Information

General situation
During the period in which the assessment was carried out (before 2008) there was no specific legislation governing access to information in Indonesia. However, during the period of assessment, the Law on Transparency of Public Information No. 14 of 2008 was promulgated on April 2008.[9] Several regions have also established Regional Regulations on Public Transparency, including two out of the five case study regions.

Nevertheless, the Law on Environmental Management and several other sectoral laws do regulate access to information. In summary, it can be said that the available legal guarantees are not yet sufficient to ensure the rights of access to information. The government's efforts to improve public access to information is also still weak, proven by absence of internal regulations on procedure of information distribution in public institutions, and minimum fulfilment of facilities to guarantee the public's right to information.

Research Findings
The highest level of access to information was generally found in the case of information on environmental status (national and local), while the lowest level concerned with information on corporate compliance and environmental performance. The level of access to information on

[9] Law on Transparency of Public Information that was just passed by the Government contains several weak points, such as: 1) it does not regulate the period of limitation to obtain or provide information, 2) providing criminal sanction to information user, 3) complicated dispute resolution procedure, 4) it is possible for public officer to deny request for information with the reason that such information is not documented yet.

environmental status is already rather high as shown by 1) the setting of time limits for responses to requests for information on environmental status; 2) existence of a range of access channels; 3) provision of capacity building for public bodies through allocation of special staff to handle requests for information, the drawing up of performance guidelines, and the allocation of special funding; 4) public capacity-building through provision of manuals and guidelines to assist members of the public in accessing and understanding information.

In contrast, there are still many weaknesses affecting access to information on corporate compliance and environmental performance, including 1) no integrated information management system; 2) no system of oversight and punishment for those who violate their obligations to provide information; 3) deficiencies in dispensing justice and lack of equal access to justice, including absence of systematic and comprehensive efforts to reach out to all stakeholders and marginalised groups; 4) absence of deadlines for collection and dissemination of information; 5) lack of uniform access channels; 6) lack of special staff to manage and provide access to information; and 7) lack of capacity building in the community so as to facilitate people in accessing and using the available information–this includes a lack of guidelines, training and associated aspects.

Government efforts to fulfil rights to access information in Indonesia still suffer from various weaknesses. However, government has strived to collect and disseminate environmental information, such as information on water and air quality, and on reports submitted by third parties, such as reports on the implementation of Environmental Management Plans (RKLs) and Environmental Monitoring Plans (RPLs). The principal weaknesses concern the lack of an integrated information management system; lack of an adequate oversight and punishment system for those who violate their obligations to provide information; the absence of systematic and comprehensive efforts to reach out to all stakeholders and marginalised groups; and weak capacity building in public bodies, particularly at the local government level.

Access to information influences the emergence of efforts to prevent or ameliorate adverse impacts on health and the environment. Strongest influences in this regard arise when environmental emergencies occur, while weakest ones arise in the case of corporate compliance and environmental performance. When environmental emergencies occur, the information available or provided plays a significant role in allowing preventive or ameliorative action. The availability of information on environmental emergencies provides choices regarding the courses of action that should be taken to protect or restore the environment, or to protect public health. This is also closely related to the roles played by the media and NGOs. The high level of media coverage of environmental emergencies, and the information disseminated by NGOs has already influenced public opinion and brought pressure to bear on all sides, particularly government, to take preventive and rehabilitative measures.

The same level of performance in environmental emergencies is not found in the case of corporate compliance and environmental performance. The lack of information provided on corporate compliance and environmental performance in the private sector means that there has been limited progress in protecting or restoring the environment. This situation arises because information that is available on corporate compliance and environmental performance is frequently inaccurate with the result that it misleads the public. This is generally attributed to conflicts of interest involving relevant government departments and the companies concerned.

3. Participation in Decision Making

General situations
Legal guarantees towards access to participation are regulated in various laws, such as the Law on Creation of Laws, the Law on Environmental Management, the Law on Area Management and the Law on National Construction Plan System. Several regions have also regulated the people's rights to participate in their Regional Regulation. However, the available regulations are insufficiently clear. They do not lay out comprehensive mechanisms for participation, and do not define adequately who is entitled to participate.

The government has put some efforts in strengthening public participation. For example, in the process of decision making and making of law in the Long Term Development Plan, the government provides information relating to the process of decision making, the period of submitting opinions and data submission. However, there are still weaknesses in several areas. Although there is also greater public awareness regarding participation in decision, this is only just beginning to emerge.

Research findings
From the practical perspective, public access to participate in the decision-making process is strong despite weaknesses in legislations. However, access to participate in decision-making at the project and licensing levels is weak.

The assessment scored participation in decision making the highest. The strengths of practical access to participate at the policy-making stage are due to the following factors: a) allowing sufficient time for the public to submit views and considerations; b) provision of environmental guidelines and manuals to staff of public bodies; and c) availability of records and recordings documenting the progress of decision-making process. On the other hand, the weaknesses of public access to participate at the project and licensing levels are due to: a) limited provision of information on decision-making process and lack of opportunities for the public to submit views and considerations; b) minimal provision of relevant information to the public on the choices available and the likely environmental consequences of whatever decision is made; c) public participation is not required at each stage of the decision-making process; e) notifications during the decision-making process are inadequate and frequently late; f) lack of records and recordings on the progress of decision making; g) weaknesses in the publication of supporting documents in the Official Gazette; h) lack of capacity-building in public bodies and local governments with regard to the procedures for public and community participation.

Government efforts display several weaknesses in all types of cases. These weaknesses mostly concern limited provision of information on the decision-making process and lack of opportunities for the public to submit views and considerations; minimal provision of relevant information to the public on the choices available and the likely environmental consequences of whatever decision is made; public participation is not required at each stage of the decision-making process; a lack of efforts to systematically involve marginalised groups; lack of notifications and late notifications during the decision-making process; lack of records and recordings on the decision-making process, for both decisions that have already been taken and those that are in the process of being taken; weaknesses regarding the publication of decisions and supporting documents in the Official Gazette; limited number of staff assigned to handle public participation; lack of guidelines and training on public participation for the staff of public bodies; lack of guidelines and training on public participation for local government staff; and lack of encouragement for the public to participate, in the form of issuance of public guidelines and other efforts. However, one of the strengths of the government's efforts is allowing adequate time for the public to submit their views and input, although this was found to be the case only at the policy-making level.

The existence of legal guarantees and the government's efforts to fulfil the rights of access to participate have had a major influence at the policy-making level, but have had little influence in decision making at the project and licensing levels. With regard to policy-level decision making, the input provided by the public has had an influence on the production of more environmentally friendly and pro-public health policies. However, this is not the case with decision making at the project and licensing levels, where the input provided by the public has little influence on the final decision. This is due to absence of legal guarantee for public participation at the project level and in the licensing process.

The media and NGOs generally play a major role in facilitating public access to participate in the decision-making process at the policy level, and in the drafting of ancillary regulations and at the project/licensing level. The media provides information on the decision-making process so that the public is informed of its progress. NGOs are generally involved in the decision-making process, while simultaneously encouraging the government to involve the public at large.

4. Access to Justice

General situations
In general, it can be said that access to justice has been guaranteed in various regulations. The rights to a healthy environment have been ensured in the constitution. The Law on Environmental Management also regulates procedural rights of the society that can be seen as progressive, such as NGO standing, class action, reverse burden of proof. Even though guarantee of access to justice in this Law is rather progressive, the scope is still broad and sometimes unclear, such as: a) capacity development for public institution both in central as well as regional level, and capacity development for the public; b) time limits for the resolution of disputes and for adjudication of cases. However, the legislation covering access to justice for people affected by pollution or environmental damage is clearer and more explicit than that governing the remedies available to those who are denied access to information.

Sectoral regulations also guarantee access to justice although this is not as comprehensive as the Law on Environmental Management. For example, sectoral regulations in the Mining Act do not provide legal guarantees for public complaints or for dispute resolution.

Even though many rules guarantee access to justice, in practice the fulfilment of access to justice is still weak. One of the main causes is the low integrity and limited capacity of law enforcement agencies. Based on the research of Corruption Perception Index conducted by Indonesian Transparency International in 2006, the police (55%), Indonesian National Army (53%) and Court Institution (51%) are perceived as the most corrupt institutions in Indonesia. The general public is not yet aware of their rights or how to exercise their rights. This can be seen by absence of claims against the state when access to information and participation is denied, even though such violations are frequent.

Research findings
The public is already aware of their rights to obtain information and to participate. However, awareness and capacity of the public to take legal action against violation of these rights are weak. In none of the research locations was found a case involving refusal to divulge information that had been brought before a dispute-resolution forum (whether the courts, ombudsman commission, or the Non-Adjudicative Forum for the Resolution of Environmental Disputes (LPJP2SL)). This study found that while people are well-aware of their rights to access information, they failed to see denial of these rights as an abrogation of the rights to access information, and therefore failed to bring the issue before a dispute-resolution forum. A similar finding was made in the case of access to participate, with people failing to bring denial of these rights before formal dispute-resolution forums.

The Government's efforts to encourage access to justice in Indonesia suffer from a number of weaknesses. These are: limited availability of readily comprehensible information on procedures for dispute-resolution forum and a lack of dispute-resolution forums that have the power to order compensation for damages; a lack of regulations to ensure independence and impartiality of dispute-resolution forums; weak capacity building with regard to access to information, participation and the environment on the part of dispute-resolution forums; lack of capacity building at the local government level, such as through provision of guidelines or training on access to information and to participate, and on the environment; frequent failures to present comprehensive facts and evidence to forums to facilitate them to arrive at their decisions; a lack of outreach to marginalided groups on the part of dispute-resolution forums; and a lack of staff specially assigned by dispute-resolution forums to provide information to the public. Nevertheless, the government has already made strong efforts in some respects, particularly in the expansion of *locus standi* to include NGOs and interested third parties that have not directly been prejudiced by the impugned action.

The existing legal guarantees and the efforts made to date by the government are inadequate to uphold the law or to ensure that the public sense of justice is satisfied. This is apparent from the weak enforcement of rulings by dispute-resolution forums, a lack of commitment on the part of dispute-resolution forums to preventing or reducing adverse environmental impacts, and poor performance of the staff of dispute-resolution forums in facilitating access to justice.

The media and NGOs play an important role in encouraging the fulfilment of the public's rights to access justice. The media's role involves the publicising of cases so as to capture the public's attention, while the role of NGOs involves public campaigns and assisting members of the public in the dispute-resolution process.

5. Capacity Building

General situations
Capacity of the state and the general public to fulfil access principles and manage the environment is weak. The state has not put sufficient efforts into building such capacity, either within government institutions or among civil society. Nevertheless, the media and NGOs have contributed in encouraging public understanding the importance of access rights and in securing a safe environment.

Research findings
The existing legislation fails to detail clear requirements for the state to develop the capacity of stakeholders in fulfilment of the Access Principles. However, this has not had an adverse impact on freedom and the performance of the media and NGOs in upholding the three Access Principles. Even though there are no obligations of the state to develop capacity of stakeholders, the media and NGOs are themselves well aware and active in promoting the access principles. Meanwhile, the efforts made by the government to date to develop capacity at both the central and local levels have been weak.

Capacity-building efforts among the public have been carried out by provision of training to teachers and students on citizenship, the environment, and the rights of access. This can be seen from the current curricula that are used in Indonesia's schools. However, these efforts need to be intensified so as to encourage changes in behaviour and improve people's awareness about their rights and obligations,.

With regard to capacity-building at both the central and local government levels, the most significant weaknesses have been the failure to assign specially designated staff charged with ensuring fulfilment of the three Access Principles, the failure to provide guidelines and routine training on fulfilment of the principles, and a lack of funding. Meanwhile, among the public at large, the main weaknesses lie in the failure to provide guidelines and training on how to ensure access to information, to participation and to justice.

From the legal perspective, there are already laws and regulations on the statute books that require public officials to appoint legal counsels for indigent defendants at all stages of the court process. This has been further strengthened by the Advocates' Law 2003 (No. 18 of 2003), which requires advocates to allocate a small amount of their time for *pro bono* work. Unfortunately, by the time of completion of this study, there were still no ancillary regulations in place stipulating how such legal aid is to be provided. In practice, most of legal aid incentives are given to some universities and government institutions.

6. Recommendations

General Recommendations
The government needs to strengthen the legislation on fulfilment of the rights to information, to participation and to justice in the following aspects:

1. The legislation governing access to information, including the types of information that may and may not be accessed by the public; the mechanisms and procedures for obtaining information; the parties who are obligated to provide information; setting of adequate timeframes within which information may be obtained; different channels for accessing information; the mechanisms for resolving disputes over access to information; capacity building.

2. The legislation governing public participation, including the mechanisms be which participation may be effected; the obligation of the government to provide the necessary information to permit effective participation; the obligation of the government to provide space for public participation at different stages of the policy and planning cycles; different means of participation; the timeframes within which people may participate; capacity building.

3. The legislation governing access to justice, and access to information and participation have not been ensured yet due to weaknesses in mechanisms for securing damages. Next important steps would include allowing more relaxed rules of evidence, wider definitions of "legal action" and "public" so as to include all levels of society; and greater efforts to favour marginalised groups.

The government needs to engage in a process of legal reform so as to bridge the gap between the *de jure* legal guarantees provided and the *de facto* practice on the ground. In order to do so, the government will need to develop an integrated system, guaranteeing access to information, to participate and to justice having regard to the findings outlined above.

Both the central and local governments need to develop a set of objective and structured indicators so as to permit the monitoring of their own performances as regards the fulfilment of the three Access Principles. The findings of such monitoring efforts should then be used to develop a strong foundation for the reform of the existing system and to improve institutional performance.

Public stakeholders, including the media and NGOs, have important roles to play in encouraging and facilitating the fulfilment of the three Access Principles. In order to allow these roles to be properly fulfilled, the government needs to engage in a process of capacity building for both the media and NGOs, including better guarantees of press freedom, more relaxed requirements for registration, funding allocation for provision of legal aid to the poor, and various other incentives.

Recommendations for key stakeholders

The government needs to:

- Monitor and appraise the performance of its own institutions with regard to fulfilment of the three Access Principles so as to identify existing constraints and encourage adoption of policies that better guarantee their fulfilment. Such monitoring and appraisal efforts will also need to involve other stakeholders.
- Encourage a process of legal reform so as to bring the *de jure* and *de facto* situations into line.
- Provide an integrated system to guarantee fulfilment of the three Access Principles and to provide greater access to marginalised groups.
- Develop the capacity of its institutions through assignment of specially trained staff, provision of necessary infrastructure and facilities, and allocation of adequate funding.
- Improve collaboration with the media and NGOs, as well as other stakeholders that have the potential to encourage the fulfilment of the three Access Principles.

The media needs to:

- Actively and continuously scrutinise the performance of government with regard to the fulfilment of the three Access Principles.
- Increase the attention it pays to environmental issues, including the making of decisions that are likely to have an adverse impact on the environment.

Non-Governmental Organisations need to:

- Monitor the process of legal reform so as to ensure that the gap between the *de facto* and *de jure* situations can be bridged.
- Collaborate with the government and other stakeholders so as to encourage fulfilment of the three Access Principles.
- Encourage heightened public demand for access to information, public participation and access to justice.
- Develop their own capacities and the capacity of the public, particularly marginalised groups, to secure access to information, public participation and access to justice.

Nepal

Country Report: Nepal

Background

The main purpose of this country report is to explore the legal framework and implementation of the laws relating to access rights in Nepal. The assessment of access to information, public participation, justice and capacity building, has followed the methodology developed by TAI including an assessment of the legal framework, literature review, and fieldwork with interviews with representatives of the government, media and local communities. Interviews have been carried out with key actors. The relevant laws, policies, guidelines, manuals, published and unpublished reports of various agencies, websites and media were also reviewed. The legal and practical gaps and areas for future efforts have also been identified.

Nepal is a small country with an area of 147,181 square kilometres inhabited by 26 million people, with a diversity of ethnicities. The country has been divided politically in to 5 developmental regions, 14 zones, 75 districts, 58 municipalities and 3,914 village development committees (VDCs).

Progress towards meeting access principles, needs to be placed in a broader political and historical context. Nepal has had a turbulent political history during recent years with a protracted civil war, leading to the establishment of a Republic and the passing of an Interim Constitution in 2007. Nepal has adopted the federal republican system but is still in the stage of state restructuring through the Constitutional Assembly, which will enact the new Constitution for new Nepal.

Poverty rates in Nepal are high according to a range of indicators, with over 30% of the population falling below the poverty line. Literacy rates are also low, with only 52 % literacy but with a significant discrepancy between women and men (38% female and 69% male). Corruption remains a serious problem in Nepal. According to assessments by Transparency International (TI) Nepal was ranked 131st (out of 180) with a score indicating rampant corruption.

In Nepal more than 51.2% population speak other languages rather than Nepali, but most of the media uses only the Nepali language. NGOs are active in Nepal (with approximately 20,000 registered) of which 30% are working in the environmental and media sectors.

State of Environment report has prioritised the following environment problems:

- Agriculture and Soil degradation
- Forest and Biodiversity depletion
- Air Pollution
- Water Pollution
- Waste (Solid, Medical, Pesticides, Polychlorinated Biphenyl's (PCBs), Polychlorinated dibenzodioxins/furans (PCDD/F)
- Noise Pollution

But implementation of the proposed actions aiming to address these problems as well as existing legal responses are extremely weak.

The assessment study was carried out under the auspices of the Forum for the Protection of Public Interest (PRO PUBLIC) led by TAI Nepal coalition members, including Federation of Community Forestry Nepal (FECOFUN), Water and Energy Users' Federation-Nepal (WAFED), NGO Forum for Urban Water and Sanitation (NGFUWS), Environmental Camps for Conservation Awareness (ECCA), LEADER Nepal, Nepal Water Conservation Foundation (NWCF), Local Initiative for Biodiversity, Research and Development (Li-BIRD), Jagriti Bikash Manch, PRO PUBLIC (Central and Regional Office) and Forum for Environmental Awareness and Legal Public Concern (FEALPEC). Some individual experts were also involved in the case study assessments.

Case Studies in TAI for Nepal

The TAI assessment is based on 18 environmental cases, as summarised in the table below.

Access to Information (A2I) Sub-Themes		
Case names	**Cases types**	**Identified TAI Coalition Partner**
Air quality monitoring system in Kathmandu	Air quality: information from regular monitoring	Mr. Bipul Neupane
Arsenic contamination in Nawalparasi District	Drinking water quality: information from regular monitoring	LEADERS Nepal
Flooding due to embankment in boarder area	Risk information in an emergency: Information in an emergency	Nepal Water Conservation Foundation (NWCF)
Stone quarry in Chapagau Lalitpur District	Facility-level information	Federation of Community Forestry Users Nepal (FECOFUN)
State of Environment reports	State of Environment Reports	Pro Public
Pesticide (obsolete pesticides issues)	Other: regular monitoring as well as emergency level information	Jagriti Bikash Manch
West Seti Hydropower Project	Other: non compliance of EIA and other legal provision on A2I	Water & Energy Users' Federation-Nepal (WAFED)
EIA for Tinau Stone extraction from river	Other: non compliance of EIA and other legal provision on A2I	Forum for Environmental Awareness and Legal Public Concern (FEALPEC)
Public Participation(PP) Sub-Themes		
Agrobiodiverity policy of Nepal	Policy	Local Initiative for Biodiversity, Research and Development (Li-BIRD)
Industrial pollution control and pollution control certificates	Policy-regulatory	Pro Public (Regional Office, Biratnagar)

Kathmandu River participatory monitoring	Policy-project level	Environmental Camps for Conservation Awareness (ECCA)
Water sector reform process: MPPW	Policy-project level	NGO Forum for Urban Water and Sanitation (NGOFUWS)
Climate change policies in Nepal, with special reference to GLOF, CDM, REED and NAPA	Policy-regulatory	Ms. Rupa Basnet Parsai
Peoples participation in forest management plans of Terai Region in Nepal	Policy-planning	Federation of Community Forestry Users Nepal (FECOFUN)
Access to Justice (A2J) Sub-Themes		
Solid waste dumping in Bagmati River, Kathmandu.	Access to information	Pro Public
Benefit sharing from community forestry	Public participation	Federation of Community Forestry Users Nepal (FECOFUN)
Drinking water case	Environmental harm	Pro Public
Environment inspector recruitment	Non compliance	Pro Public

The Legal Framework

The government of Nepal has endorsed Agenda 21 and the Rio Declaration including Principle 10, as well as the Plan of Implementation of the World Submit on Sustainable Development (WSSD). Nepal is also a party to several multilateral and international environmental agreements that directly or indirectly ensure access rights.

The main acts relating to this study are the Interim Constitution of 2007, the Right to Information Act of 2007 and the Environment Protection Act of 1997. The Interim Constitution addresses all the three Access Principles. Additional laws in particular sectors also have significant bearing on access principles, for example:

- The Constitution of Nepal 1990
- The National Conservation Strategy for Nepal, 1988
- Master Plan for the Forestry Sector, 1988 (including revised policy 2002)
- Water Resources Strategy 2002
- Leasehold Forestry Policy 2002
- Wetland Policy 2003
- Herbs and NTFP Development Policy 2004
- Collaborative Forest Management Guideline 2004

- IEE Guideline for Forestry Sector 2004
- Agriculture Perspective Policy 1995-2015 and New Agriculture Policy 2004
- Biodiversity Strategy of Nepal 2002 and its Implementation Plan 2006
- Industrial Development Policy, 2007
- Three Years Interim Plan 2007-2010
- National Broadcasting Act, 1993 Section (14) and the advertisement section 10;
- Press council Act: 1992 section (13)
- National News Agency Act 1963 section 24
- Income tax Act 2003, section 10(g)
- Good Governance Act 2008 section 43
- Local Self Governance Act 1999
- Corruption control Act 2002, section 60
- Curriculum Framework for School Education (Pre-primary-12- in Nepal)
- Legal aid Regulation 1998
- Environment Protection Regulation 1997
- Solid Waste Mobilization and Resource Management Act 1981

Research Findings

a) *Legal framework on access to information* Under the Interim Constitution (Article 27) every citizen has the right to demand or obtain information on any matter of individual of public concern. However, there are limitations on this right according to the types of information that are defined as confidential by law. The Right to Information Act, 2007 supports public access to information regarding any matter including environmental issues that are deemed to lie within the interests of the general public. This Act also states that it is a requirement for the government to generate and publicly disseminate information and report to the public on a regular basis and in an accessible and timely manner. This Act also provides clear provisions on claims of confidentiality to define limitations on access, as well as the legal requirements to build capacity of government agencies, sub-national agencies and the public. Soon after assessment work, one of the identified gaps of not having Access to Information regulations has been in place since 2009.

b) *Legal framework on access to participation* Various laws supporting participation in environmental matters are in operation. The Interim Constitution stipulates rights of people to participate, specifically targeting marginalised and oppressed people. The Constitution also outlines the state`s responsibilities, with defined principles and policy for public participation especially in the sector of natural resources management and development.

c) *Legal framework on access to justice* The Interim Constitution clearly guarantees the right to redress and remedy with prescribed procedures. Article 32 of the Interim Constitution guarantees the Right to Constitutional remedy for violation of fundamental rights guaranteed by the Constitution. The Interim Constitution further guarantees the right to remedy by empowering the judiciary, placing extraordinary jurisdiction with the Supreme Court. Article 107 of the Constitution provides standing of every citizen to take the case of violation of fundamental rights. There is also the legal right to pursue cases in which there is no provision of remedy, or in which remedy is considered not be effective. In addition, the Constitution also provides standing to bring public-interest petitions to the Supreme Court.

Access to justice is also covered by specific laws. Under the Environment Protection Act (EPA) of 1997 and Environment Protection Rules (EPR) of 1997, a provision for compensation is established through compensation committee formed at Chief District Office (CDO) and the chairmanship of CDO. Section 17(1) of EPA has a provision for compensation in cases of individuals or organizations suffering the consequences of pollution.

Strengths and Challenges

Access principles are addressed in numerous Acts under a broad legal framework. But key legislations, such as the Interim Constitution and the Right to Information Act, have only recently been passed, and are yet to be fully implemented. Implementation of other legislations is also weak. It is implementation at which most stakeholders were critical.

Access to Information

General Situation

The legal framework, as established in the Interim Constitution 2007, the Right to Information Act 2007, and the Right to Information Regulation 2009 provide strong support on public access to information, including matters relating to environmental issues. However, there are restrictions on information that is deemed to be confidential.

Research Findings

- Emergencies: Government agencies are responsible for providing official information that is reliable and accurate. The survey found that the agencies have not set procedures or system in place to monitor whether information collection has been carried out according to needs. Agencies producing particular information cannot be held accountable if they fail to generate required information within a specified time. Although there is a legal basis to ensure the right to information, a commoner may complain about not getting the information at the time of the need but have no way to put pressure on the agencies to generate or disseminate the required information. There is confusion about responsibilities among concerned government agencies, and differences in performance were observed at Central and District levels. Information disseminated through the media after emergencies such as flooding take place has been found to be satisfactory; however, information disseminated through media prior to emergencies has been found to be deficient. Yet the sheer scale of many emergencies is simply beyond the capacity of government agencies to manage.

- State of the Environment: Over the last 13 years, the Ministry of Science and Technology (MOEST) has produced four State of the Environment reports, but with limited dissemination. The reports are considered to be based on the best data available using many different sources. Several meetings were held with relevant government and other environmental experts to gather data on each of the specific issues under the report. The reports are generally accessible to individuals and organisations that make the requests themselves, but beyond this, there is no mechanism to make the reports more widely accessible. All the reports except one were published in English.

- Regular Monitoring and Reporting: Despite a supportive legal framework, the survey found that there are important gaps regarding regular monitoring information. The responsible ministry (MOEST) lacks the capacity to provide accessible monitoring information to the public. From the review of the case study of arsenic contamination in drinking water, the government lacks adequate infrastructure and equipment to maintain a regular monitoring program and to provide appropriate information. However, NGOs and INGOs have helped fill the gap in producing the State of Arsenic Report, State of Environment and other monitoring activities. Information is updated regularly on the MOEST website and published in newspapers. Monitoring of air pollution is generally found to be better than monitoring and reporting of other types of pollution.

- Facility Operating: The legal framework provides a strong basis for EIA procedures, and has provision on pollution control and punishment for releasing pollution in contravention with the prescribed standards and procedures. However, there are serious gaps in practice. A number of high profile cases, including illegal stone quarry industries within community forestry areas, have arisen. But there is no mechanism for regular monitoring and reporting of pollution in such cases. Furthermore, the Environment Protection Act restricts entry and inspection of facilities only to those who are 'authorised'.

- Emerging Issues: The assessment also considered information on Obsolete Pesticide Stockpiles Management (OPSM), and compliance of access to information during the EIA process for the West Seti Hydropower and Stone Extraction projects. The findings from the OPSM assessment indicate that people interviewed in the affected area were totally dissatisfied with the performance of local officials, with information largely coming from civil society sources. Although provisions of penalties for non-compliance have recently being put in place under the Right to Information Act, they are not fully accepted by line agencies. So far, there are no cases of penalties being imposed regarding OPSM. The law on EIA and rights to information, and in particular the dissemination of information in required format and language was also found to have not been followed in both the hydropower and stone extraction case studies. However, penalties have been imposed by MOEST in the case of violations regarding an EIA for a pesticide factory.

Strengths and Challenges

- Significant new legislation has been enacted (e.g. Right to Information Act) but this has not yet been put into practice.
- Most information is required to be available, but in practice this can be highly expensive.
- Timeliness of information has been found to be generally good. But in several cases (e.g. State of Environment report, monitoring of air pollution and pesticides), this required the assistance of NGOs in data collection and analysis on a contractual basis.

Recommendations

- Strengthen decentralised planning of information gathering and dissemination
- Greater efforts should be directed towards regular monitoring information – particularly water quality and arsenic contamination.
- Strengthen the role of private sector, NGOs and international NGOs in generating and disseminating information and in capacity building.
- Target information needs of marginalised people to ensure that appropriate information reaches them in accessible forms and on time.

Participation in Decision Making

General Situation

Numerous laws and national policies address participation in decision making in some way. The Interim Constitution guarantees public participation as a responsibility of the state. However, there are significant problems with cohesion and consistency between legislation and sectoral policy. There are also weaknesses in terms of guidelines and procedures, a lack of clear strategy on participation, and weak implementation.

Research Findings

The legal framework is generally supportive of public participation, though still there is space for improvement in these legal instruments. There are some very clear provisions in law to ensure public participation, from the Constitution to various sectoral laws such as Local Self Governance Act, Environment Protection Act, and Water and Sanitation Act. In addition, the Forest Act 1993 and Forest Regulations 1995 make clear provisions on public participation in forest management. However, in most situations, the scope and quality of public participation has not met the requirements of these laws. There are no clear guidelines on providing information in accessible language and formats, or on covering costs, such as travel, to allow people to participate. For example, in the case of the Agrobiodiversity Policy formulation process, the process of inviting stakeholders was found to be wanting, with agendas not shared in advance and some invitations only being received two hours before the meeting. But there are also examples in which public input has changed final decisions of the government. For example, in the case of the water sector reform processes, strong advocacy from civil society was able to prevent privatisation of the water supply service for the Kathmandu Valley.

Participation in the EIA process has also been found to be weak. For example, obtaining EIA documents can be excessively expensive-as in the case of the West Seti Hydropower project where the price of $625 was requested in order to receive the EIA report. Besides the high cost of obtaining EIA documents, these reports are mostly in prepared in English, with much of the content considered to be too technical to be accessible to the general public and people affected by the project. NGOs and other civil society organisations have found it similarly difficult to review all these technical documents, or to provide written comments and participate in the decision making process. Even when comments have been provided, there has been no additional feedback.

In the case of IEE and EIA process, although there is a provision of public participation and public hearing, it does not mention where, when and how such public hearings should take place. There is no standardised procedure to ensure public participation especially for affected people or marginal and disadvantaged people.

Strengths and Challenges

With the constitutional guarantee through the state's responsibilities with regard to the right to participation and the support of environmental legislation concerning forest and impact assessment, the legal framework is largely supportive. However, the main problems lie in implementation. There are no provisions or required time frames for participation, and no mechanisms for effective compliance and monitoring. The representation of the public in consultation, for example on the Agrobiodiversity Policy, has been extremely narrow. On the

other hand, participation in project level cases, such as the Kathmandu Participatory River Monitoring (KAPRIMO) project, was found to be good, partly due to the nature of the project's objective.

Recommendations

The main recommendations are concerned with the need to clearly establish the procedures, guidelines and mechanisms for public participation. These should address but not be limited to the following issues:

- The need for budgetary provisions to cover the costs for participation – particularly for local people and poorer people
- Ensuring provision of all relevant information in an accessible and timely manner
- Ensuring participation at all stages of project/ policy formulation and improving mechanisms for dissemination and public access of information. Note that most information is technical, available in English, and disseminated through the internet or printed media.

In addition, there is a need for ensuring harmonisation across existing policy that relates to public participation, for example, regarding forests.

Access to Justice

General Situation

The Constitution provides *locus standi* to each individual to bring legal action against violations of rights granted by law of the Constitution, or when no remedy has been provided, or where such remedy is inadequate or ineffective. Similarly the Civil Code Chapter on Court Procedure Section 10 also provides *locus standi* to any individual to bring a case to the judiciary if the case is of a public interest. However, the Supreme Court of Nepal has established the principle of *substantial interest and meaningful relationship of the petitioner with the claim*. In the case of private claim, the claimant must prove the interest and concerns and supporting legal provisions when bringing a claim to the court. There are clearly defined claims of confidentiality in court regarding cases of public interest related litigation. The hearing of the case is carried out in open bench and the information about the proceeding of the litigation is easily available to the parties of the case and lawyers involved. Provision of legal aid and counselling service is also guaranteed although this is normally focused on the legal justice system.

Nepal has also established independent constitutional or statutory bodies to address basic rights and justice. One of the most important of these bodies is the National Human Rights Commission (NHRC), formerly a statutory body, with its status amended to be a constitutional body under the Interim Constitution. In addition, the National Commission on Women and the National Commission for Dailits are publicly funded independent institutions with monitoring and advisory roles on rights violations for these groups.

Research Findings

The Environmental Protection Act 1997 acts as an umbrella legislation dealing with environmental issues, and recognises the liability from environmental harm. The provision of claim of compensation under the EPA is important for addressing the access to justice for any damage

incurred due to environmental harm. However, this provision has not been widely practiced by the public. This is mainly due to two reasons – i) people are not aware of this provision and ii) people do not believe in the authorities prescribed for claiming compensation.

Compliance monitoring is further undermined by the fact that Environmental Inspectors have not yet been appointed. In situations of non-compliance of legislative requirement by the government, there is no other effective remedy other than taking the case before the Supreme Court as Public Interest Litigation (PIL).

The right to safe drinking water is guaranteed as a fundamental right according to the Constitution. In the case in which the water supplier supplies unsafe water, departmental and criminal action should be taken against the authority.

The procedural aspects of access to justice are complicated. The general public and stakeholders lack the skills and knowledge to use them effectively. Gaps between legal provision and court practice also impede access to justice. Decisions of forums and written verdicts are not prepared in time and not made available.

One of the more valuable forums for environmental justice in Nepal is the forum created under the Environmental Harm Compensation Committee under the leadership of the Chief District Officer (CDO). In this forum, affected people and communities can file a complaint to realise the losses and damage caused by environmental degradation. While this forum has a great potential, it remains largely unused.

Strengths and Challenges

The existing legal framework is conducive to ensuring environmental justice in Nepal. From the Constitution through sectoral laws there is adequate provision to take up issues of environmental justice through the courts at various levels of the judicial system. However, forums for environmental justice are still limited and those that do exist remain unused.

So far, only a limited number of civil society organisations have initiated Public Interest Litigation (PIL) for environmental petitions through the courts. Even though there is a provision for free legal aid, this remains inadequate and ineffective. The costs associated with proceeding with such a case are prohibitive for most people, particularly those from remote areas. The time taken for final decisions in these PIL cases ranges from a month to over a decade. Even after the legal process has been followed, the implementation of court decisions remains weak and is undermined by lack of human capacity and financial resources with the responsible executing authorities. The Annual Report of the Supreme Court 2007 clearly illustrates the extent of these challenges, with only 54% of decisions of the court having been implemented.

Despite these challenges there have been some significant achievements. These can be seen in the very fact of establishing a separate ministry responsible for the environment through the passing of the Environmental Protection Act and supporting legislation such as environmental standards, pollution tax, and a ban on leaded gasoline. Another positive sign can be seen in the government establishing a drinking water quality standard, ambient air quality standard in response to a court decision. NGOs and civil society have had an important positive influence.

Recommendations

- Need for clear procedural laws and monitoring mechanism
- Need for consistency between various legislations
- Capacity building programs for the judiciary as well as the public and civil society
- Need for adequate provisions to cover costs–not just legal aid but also the costs associated with a long case (e.g. lawyer's fees, transportation, stationery, documentation, etc.)

Capacity Building

General Situation

Nepal's legal and Constitutional provision has focused on guaranteeing rights, and while the need for capacity building is referred to, it is rare that government agencies pay any serious attention to improve their performance. Equally, there is a need for capacity building of the general public so that they are aware of and are more able to exercise their rights. NGOs, civil society and the media have played an influential role in Nepal but their limited capacity also remains an obstacle for continued effectiveness.

Research Findings

The review found that there are significant differences in capacity building within government agencies at the national and sub-national levels. At the national level, while budget is allocated for capacity building, the weakness lies in performance. At the sub-national level, while agencies are generally supportive, they lack regular training programs and performance manuals. For the general public, there is a degree of awareness but a lack of support from the government in capacity building, and a lack of skills and knowledge. Most of the stakeholders interviewed stated that they lack the skills and knowledge to prioritise information that they might need. Perhaps the strongest capacity lies with the media and NGOs who are actively engaged in raising awareness, but often they do so without a coherent strategy.

For the purpose of enhancing competency and professional development of judges, government attorneys, personnel and law practitioners working in judicial body, the National Judicial Academy was established as an autonomous body that has the responsibility to conduct training, and hold workshops and conferences for the purpose of enhancing the capacity of government agencies relating to justice. In addition, the Academy is also responsible for organising capacity building activities for the quasi judicial bodies as well.

Chapter 5 of the National Judicial Academy Act 2006 contains provision for determining the scope of training programs, and for providing evaluation, training materials and panel of instructions. But the Act is silent on capacity building of members of judicial agencies with regard to the environment. Similarly, environmental laws and regulations are also silent with respect to clear guidelines for capacity building of government agencies. However, Right to Information Act section 4 (d) has the provision of appropriate training to staff of public agencies. Nepal Government (Work Division) Rules 2006 mentions the functions of MOEST, which includes providing training, conducting national and international seminars, conducting research on environmental issues and development of human resources pertaining to the environment. Other than this, Nepalese law does not mention clearly the capacity building of the state employees with regard to the environment.

The Citizen's Charter (in Section 25 of the Good Governance Act 2007) can enhance the capacity of the general public to ensure quality of service delivery from the state, but as it stands, there is limited scope for putting this provision into practice.

Strengths and Challenges

There is provision for capacity building in many areas of legislation. However, again the main weakness lies in implementation. The main obstacles to implementation lie in ensuring that adequate financial resources are made available, and that there is a regular, structured program of capacity building and monitoring of its effectiveness.

As far as environment education is concerned, the curriculum in public schools does include environmental education. However, this is not mandatory, and environmental education is not considered to be adequate.

Recommendations

- Capacity building is required at all levels of government and among civil society, media and NGOs.
- There is a need for a legal mechanism for capacity building, supported by monitoring at local levels.

Conclusions and Recommendations

In general, the legal framework is largely supportive of access principles. However, important elements of the legal framework in Nepal are rather new, and therefore the experience of putting these into practice is rather limited. In other words, the main challenges lie in implementation. The role of the media and civil society organisations in facilitating access to information in most of the case studies has been found to be stronger and more effective than that of government agencies.

The government is not able to raise awareness or build capacity, and has not put the required infrastructure in place so as to facilitate public participation in most of the case studies. Where public participation does occur, it tends to be stronger in project level cases as compared to policy-level decision making. There is very limited effort directed towards ensuring participation of target communities in the decision making process. With regard to allocation of budget for encouraging public participation, either no budget is allocated or where budget has been allocated, it is insufficient.

The Constitution as well as sectoral law is somewhat conducive for the access to justice. The efforts as well as infrastructures and forums available are not enough to ensure justice for all. The lack of awareness and information about the procedures and processes for filing a claim is considered to be a major obstacle. The implementation of court orders is still very weak and hence this remains one of the major challenges. Increasing awareness and building capacity of all concerned is required. Yet currently, the government is not able to raise awareness or build capacity and required infrastructures in place so as to facilitate the access to information, public participation and access to justice.

Philippines

Country Report: Philippines

Background

The experience of the Philippines environmental degradation stems not from a lack of stringent laws and regulations but from a lack of political will to enforce these laws, with environmental costs being sacrificed for economic gains.

Deforestation, industrial pollution, urban congestion, marine and coastal degradation and loss of biodiversity in the Philippines are just some of the environmental problems that are inextricably linked to the questions of social justice, equity, and people's quality of life. Ten years ago, 178 governments, including the Philippines, committed to the Rio Declaration of the 1992 Earth Summit. The Declaration upholds Principle 10, the access principles, which represent fundamental norms of transparent, participatory, and accountable governance that is essential in realising sustainable development objectives in political decision-making.

Institutionalising public access to information, participation and justice in environmental decision-making has progressed in the Philippines. The country is well known for having an assertive civil society that participates actively in government decision-making. Various social and environmental movements have been campaigning for transparency, participation and accountability in decision-making. They have been active in urging the government to improve the law and practice on these access rights in order to achieve sustainable development. These rights are incorporated in various legal instruments such as policies and regulatory mechanisms that address public health and safety, food security and environmental protection. However, weak implementation of these laws has been a problem.

The public's ability to participate in resource-related decisions is still limited. What is needed is a way to bridge the difference of policies to norms and local conditions to the reality. It is important to assess the actual law and practice of these rights and to ask relevant questions to measure the effort and effectiveness of the government in implementing these laws. Civil society organisations in the Philippines can support the government with information and can build a national constituency for improved law and practice of the Access Principles in environmental decision-making.

The Philippines is the third country in Southeast Asia to join TAI after Thailand and Indonesia. TAI was launched in the Philippines in 2005 with the formation of a civil society coalition whose first task was to conduct an independent assessment of the implementation of the Access Principles in the Philippines. At its inception, TAI Philippines was lead by a core team of non-government organisations consisting of Maximo T. Kalaw Institute for Sustainable Development, Environmental Broadcast Circle, and Legal Rights and Natural Rights Center-Kasama sa Kalikasan-Friends of the Earth Philippines. Subsequently, however, the lead role in TAI Philippines was transferred to the Ateneo School of Government.

The TAI assessment looks at how environmental decisions affect communities and provides recommendations for change through its outreach activities, local advocacy and campaigns. Integral to this was taking on the civil society's perspective to consider the capabilities of

people themselves, as the primary movers of development as opposed to organisations or local governments.

Case Studies Conducted

Ecosystem	Case Studies conducted for the TAI – Philippines Coalition	A2I Case	A2P Case	A2J Case
Mining and Biodiversity Ecosystem	1. Cyanide spill in Rapu-rapu Island from pollution from Lafayette Mining Industry	1 A2I	1 A2P	1 A2J
	2. Free and Prior Informed Consent: Subanen's case against TVI Mining Corp. in Siocon, Zamboanga del Norte	1 A2I	1 A2P	1 A2J
	3. Pollution from Marcopper Mining in Marinduque			3 A2J
	4. Environmental and social impacts of coal fire power plant in Mauban Quezon	1 A2I	1 A2P	1 A2J
Lowland Agriculture Ecosystem	5. Participatory mechanisms in the National Biosafety Framework	1 A2I	1 A2P	
	6. Moratorium of agricultural GMOs in Bohol	1 A2I	1 A2P	
	7. Encroachment of Pineapple Plantation in a Protected Area: Mt. Matutum, Mindanao	1 A2I	1 A2P	
	8. Encroachment of Banana Plantation in a Protected Area: Mt. Apo in Mindanao	1 A2I	1 A2P	
Urban Ecosystem	9. Monitoring ambient air quality in Metro Manila and the implementation of the Clean Air Act	1 A2I	1 A2P	1 A2J
	10. Monitoring bottled and tap drinking water in Manila	2 A2I		
Fresh Water Ecosystem	11. Management of the Laguna de Bay, Cardona, Rizal	1 A2I	1 A2P	
Coastal and Marine Ecosystem	12. Fish kills in Bolinao, Pangasinan	1 A2I	1 A2P	
	13. Mangrove destruction in Palawan			1 A2J
	14. The IPs and Small Fishers of Southern Palawan: A Case Study on Local Communities' Participation In the Establishment of Marine Protected Areas	1 A2I	1 A2P	
Forestry and Upland	15. Flooding and landslides in Infanta, Quezon	1 A2I	1 A2P	1 A2J
	16. General Legal Framework on Access to Information, Participation and Justice in the Philippines			
TOTAL CASE STUDIES		14 A2I	12 A2P	9 A2J

NOTE: A2I – Access to Information Cases
A2P – Access to Participation Cases
A2J – Access to Justice Cases

Analysis and Findings

Two frameworks for analysis and data organisation were meshed and used: the ecosystems framework and the TAI methodology. Table 1 shows the breadth and span of the cases studies.

Across the ecosystems case studies, the findings on access rights were similar. No particular ecosystem had better or lesser access to information, participation, justice, or capacity building.

Findings General Law Framework
The assessment of the general legal framework focused on analysis of the most pertinent Philippine constitutional, statutory, and case laws on access to information, participation, justice and capacity building.

Laws that govern access to information and public participation are the administrative and local government codes. Access to justice is governed by the rules of court and of administrative tribunals. Provisions on capacity-building are found in several administrative rules and ordinances.

Access to Information
In assessing the legal framework of access to information, the country's Constitution was examined. Since the Constitution only signifies intent, it was also necessary to look into the various laws that were enacted in order to "enable" the broad constitutional statements of policy. These laws range from the making of policies and laws in which access to information is theoretically required (mostly through consultations at both national and local levels) to laws relating to developing various sectors of the economy. The legal framework for ensuring such rights exists. Nevertheless, there is one weakness in this legal pillar: the absence of a mandate to build the capability of both government and public to information access. In terms of effort and effectiveness, however, this assessment scores government performance significantly lower, much below what could be regarded as adequate.

Access to information is governed by rules found in public officials' Code of Conduct and Ethical Standards and its implementing rules. There is a bill on Freedom of Information, which is undergoing readings in Congress, and there are calls for civil society organisations (CSOs) to lobby and advocate its passage. The study surfaced a number of limitations, including disclosure of information, which is subject to discretionary decisions. Additionally, the absence of a law protecting public officials against suit when they release information discourages public officials from releasing information to the public. The classification of information as 'confidential', a term which is neither defined nor delimited clearly, also limits the public's access to information.

One other principle checked was the support for press freedom. This received good marks as the Philippine media largely self regulates. However, government's respect for free press is seriously tainted with the cases of libel charged against members of the media as well as the reported spate of media killings.

Access to Participation
Under access to participation, the study concluded that the law supports the right to participation of CSOs and the public. Rules for registration are clear, and the costs for registration are deemed reasonable. However, two main factors influence the low score for participation rights:

a) government agencies' 'closed door decisions' which are considered as administrative prerogative and therefore no explanation to the public is required; and b) the requirement of having to qualify to participate e.g., the need for a group or an individual to first prove that they are stakeholders before they can be part of any discussion.

Public participation is part of legal procedures through policy making and planning bodies especially in the preparation of environmental impact assessments. The Constitution of the Philippines is clear about providing its citizens the right to participate in 'nation building' and their rights to development.

In its Declaration of Policy, the 1991 Local Government Code (RA 7160) states, "… all national agencies and offices to conduct periodic consultations with appropriate local government units, nongovernmental and people's organisations, and other concerned sectors of the community before any project or program is implemented in their respective jurisdictions." Such requirement for prior consultation is reiterated in Section 27 of the same Code. Concretely, the code requires the approval and consent powers of LGUs, representing residents or citizens in their respective jurisdictions on projects and programs.

In addition, there are specific laws that require public participation in their various phases of operationalisation. These include the Philippine Clean Air Act (RA 8749), the Solid Waste Management Act (RA 9003), the Fisheries Act (RA 8550), EO 240 mandating the creation of Fisheries and Aquatic Resources Management Councils (FARMC), and Executive Order 15 that created the Philippine Council for Sustainable Development.

Laws and policies adequately provide for public participation in environmental decision-making. This is exemplified by the Constitution of the Philippines, in the Local Government Code, in Department Administrative Orders, and even in some 'Code of Conduct' crafted among NGOs such as the Philippine Council for NGO Certification. However, some vacillation in government policies is noted and is seen as foregoing the benefits of public consultations and ecological values in favour of commercial interests.

Other important gaps are the lack of provisions requiring the government and sub-national government agencies to build their capacity concerning access to information and participation, and the inadequacy of the law on offering technical assistance, guidance and training on access to information and participation.

Access to Justice

Access to justice, freedom of expression, and freedom of association were given a high score as they are examples of the clearest and most inclusive laws. The Constitution of the Philippines provides the promotion and protection of these basic rights.

The assessment, however, reveals that access to justice is still limited by certain provisions in the law stating that only those who are actual stakeholders – those who suffered injury or damage, or who have legal standing can ask for relief, and as a general rule, government bodies cannot be sued without their consent. In certain instances, the Supreme Court can set aside the procedural technicality of legal standing in view of the transcendental importance of the issues raised. In practice though, this has been used quite sparingly.

The Case Studies

Access to Information

There is a gap between what the government signs up to, showing its intent, and what it actually implements. The gap may exist because of constraints of time and other resources but the most telling factor is the lack of political commitment. For there to be transparency, which open access to information and public participation are but manifestations of, there is a need for a pro-active public, with an assertive, independent civil society and media that is aware of its rights and is prepared to demand that these rights be respected.

Information is vital to stop further degradation of the environment and to mitigate negative health impacts. Moreover, information is needed for people and societies to make good choices in their lives. The case studies regarding information access cover issues relating to information on monitoring air quality and water quality, information from facilities that produce pollutants, information in situations of emergency, and information regarding other possible sources of environmental harm.

The cases document only a few instances in which information was made freely available and timely. These, however, were instances in which government had no conflicting interests. There are still gaps in what the regulatory agencies are able to do. As a matter of fact, local governments and sub-national agencies need to be setting up mechanisms for regular and more frequent monitoring. Innovative and low cost ways of monitoring should be employed in lieu of purchasing expensive equipment, which is often unaffordable. Human resource constraints can be overcome with volunteers who are trained to monitor certain environmental elements. Moreover, the harnessing of local or traditional knowledge and integrating these into information provided to communities could avert environmental cases from developing into an emergency or a disaster.

The data that the government currently collects need to be made accessible more easily. This means creating registries and other local venues for storing data so that the public needs not travel to central offices to retrieve information. The use of the internet as a medium for information can be optimised with a database facility so that people can easily acquire data. This should be supplemented by easily readable reports and analyses on what the data mean, particularly for people's health and welfare.

Difficulty in accessing information can also be attributed to a lack of clear standards by which officials can ascertain what information is classified, restricted or can be made available to the public openly. The emergency cases in the fish kills of Bolinao and the flooding and landslide in Infanta demonstrate the government's inability to provide the right information in a timely manner that could have warned the local population of the danger. These cases highlight the need for information on a daily basis.

Access to Participation

The assessment drawn from the twelve cases on access to participation involves four cases on policy planning, three cases on regulatory decisions, and five cases on project-level decisions. The cases cover six sets of environmental issues-lowland agriculture, coastal and marine, forestry and upland, fresh water, urban, and mining and biodiversity.

In general, the cases studied were evaluated as having weak access to participation. In the majority of cases, public participation is not yet fully integrated in decision-making processes. Often, even where there appear to be open participatory processes, there are hurdles to meaningful participation, including insufficient lead time for consultation and project documents not being made available. Consultation is often held too late in the project development cycle to make a significant difference in selection of outcomes. Planning and policy processes as well as the approval and monitoring of projects do not consistently involve public participation. Those cases that did involve public participation varied in terms of how well they facilitated such involvement.

The project-level cases show compliance with the minimum requirements of the law on integrating the public in project management mechanisms such as Protected Area Management Board (PAMBs), Multipartite Monitoring Teams, and Task Forces. These management mechanisms define and set for themselves the tasks and parameters for carrying out their functions. CSO members of these mechanisms are given training on the technical aspects of work, such as community mapping, resource planning, establishment of management zones, and development of management plans. Falling through the 'effective implementation net,' however, are the issues of intrusion in restricted zones of Protected Areas (Pas) and exclusion of stakeholders who held differing positions on the projects. Had the management mechanisms been provided adequate and timely information and had the processes been more inclusive of other stakeholders, the negative impacts of projects might have been minimised. The case studies indicate that inclusion of civil society organisations in such bodies should not be construed as a guarantee of transparency of the system.

Public participation in the case studies on regulatory mechanisms is quite variable. A key concern is how businesses or commercial entities use and generate information to comply with government requirements. In the TVI case, the processes by which it obtained free, prior and informed consent (FPIC) raised questions on legitimacy regarding who represents the legitimate indigenous people (IP) community, quality and timeliness of information. Multi-sectoral regulatory mechanisms such as Task Force Marsman in Bolinao, Pangasinan, had been given technical training on the tasks of the team so that they would be able to provide information to government regulatory agencies and decision makers on the state of the marine and coastal resources. However, they are not deputised to take direct action to deal with some of the main causes of environmental degradation, such as controlling or limiting the number of fish cages. There is a need to delegate sufficient authority to such bodies or groups, even if these groups are formed *ad hoc*, to directly act or spur immediate action on activities that could degrade the environment and cause negative impacts.

At least 3 elements have to be present for the public to participate in critical issues such as ambient air quality:

a) update information regularly and make it more accessible both in terms of format and language;

b) create larger 'doing and action groups' from organised and informed civil society organisations by reaching out to other stakeholders who are affected by the issue; and

c) apprise government regulatory bodies and management of industry or commercial sector of new policies, systems, and processes that call for broader public participation and ensure proactive measures.

Two of the case studies on participatory policy planning highlight the role of NGOs in ensuring that the information that they have gathered is also considered, These cases also illustrate the need for being resolute in engaging government counterparts in the planning process: 1) Crafting the Bohol Provincial Resolution banning GMOs, and 2) Formulation of the National Biosafety Framework (NBF). However, the experience from these two cases also underscores the need for clear integration of NGO inputs and recommendations in the final policy document.

The case of Infanta, Quezon, in formulating a Disaster Mitigation and Preparedness Plan used a recent disaster to bring the community together and spurred broad ownership of the plan. Local government support was indicated by a clear budget provision for the plan's implementation, including allocation of budget for this level of participation. The case on the IP Fishers in Palawan, on the other hand, indicates how the state's capture in the policy processes marginalised a group of people from the resource they traditionally had access to and rights over. The Municipal Ordinance was presented by the government as having been through a process of public consultation, which in fact had excluded the fisherfolk, however.

The experience of providing the information needed to enable the public to participate is highly variable. The cases indicate that the government and the industrial sector are generally not proactive in providing information and data to the public. There were also cases that showed how laws on public participation were skirted to push business agendas at the expense of the communities' access to their resources. Where NGOs are armed with technical information and assert their space in decision making, regulations, policies, and projects could be more responsive and have better chances that the public takes the responsibility for the environment.

The conduct of consultations has not been inclusive in some cases. Generally, only organised groups and NGOs are reached, but a broader public is not given space to participate. In other cases, groups and individuals who held positions that did not favour the project were purposely left out in the consultations. This brings into force the need to define some culturally appropriate ground rules for participation in decision making. Consultations, as they are currently conducted, seem to be at the lower rung of participation. Though it is implied that public views and concerns are to be gathered and fairly considered, there are no obligations to act on these views. A process rule established by the Philippine Council for Sustainable Development (PCSD) on participation of three major stakeholders (government, business and civil society) included consensus building even from the initial phase of agenda setting. The process also instituted a joint analysis of the issues and the agreement to reach decisions as a council with division of the house as the last recourse. If such decision-making ground rules are used in regulatory, policy planning, and project level decision making, these could generate legal and broad community support.

To breathe life into public participation, some points need to be considered:

1. The need to increase the capacity of government to enable the public to participate in environmental decision making. Continuously, updates on laws, policies and practice need to be communicated and harmonised as in the case of LLDA and the provisions of the Fisheries Code that mandates forming of FARMCs.
2. Review the intent and working protocols of management mechanisms (PAMB, MMT, Task Forces) *vis-à-vis* the expectations of the community that these address environmental issues and concerns, and implement capacity building programs for such.
3. Undertake periodic review and monitoring as a measure of building goodwill among stakeholders and communicate how the public/participants' contributions are honoured in the final outcomes.

Access to Justice

The assessment involves six case studies, covering two environmental sectors – mining and coastal/marine. Of the six, five involve suits for environmental harm and/or non-compliance, and one for denial of access rights. Three of the suits are lodged in judicial forums, while three are before administrative forums.

Among the findings of the case studies, the following are most notable:

1. extensive delays associated with pursuing cases in both judicial and administrative forums rendered redress for grievances inaccessible;

2. there is a need to build forum members' awareness on and sensitivity to environmental laws and issues and access rights; and

3. there is a need to build the knowledge for the public on their legal rights and various remedies available to them within the legal system.

Given the foregoing, there is a need to engage with the judiciary for the following purposes:

1. exploring potential avenues and linkages under the Action Program for Judicial Reform and Access to Justice for the Poor Project. The need to improve access to justice is not limited to environmental matters but cuts across all sectors. The immensity of the problem highlights the need to synchronise efforts and build on existing programs and resources;

2. reviewing data in the possession of the judiciary and, if necessary, conducting more assessments on access to justice. Admittedly, given the number and type of case studies involved in this assessment, the data gathered may not necessarily be representative of the general situation. For example, the case studies indicate that pre-trial motions and interlocutory appeals contribute to the slow progress of cases. To be sure, however, there are numerous other factors that were not identified in the case studies, which need to be identified in order to be able to put forward well-founded policy recommendations.

3. exploring the possibility of establishing "Green Benches" or specialised courts dedicated to environmental and natural resource disputes. Questions to determine the required number of environmental courts to be established, their location and recommendations on specialised rules should be included in the scope of the second round of assessments; and

4. exploring the possibility of stepping-up PHILJA's environment-related programs, and its potential as a vehicle for promoting access rights.

The delays associated with pursuing judicial remedies also indicate the desirability of promoting alternative modes of dispute resolution (ADR). Unfortunately, the only case study involving ADR in this assessment (the TVI Study, which involved a case before the MGB's Panel of Arbitrators) did not yield very encouraging results. It should be noted that in 2005, the Department of Environment and Natural Resources issued an administrative order adopting ADR principles and procedures in the resolution of environmental and natural resources conflicts. It may be timely to look into the implementation of this order and examine how it can further be improved.

Conclusion and Recommendations

Conclusion

In general, the Philippines has an extensive set of laws ensuring that the Access Principles are taken into account in government decision-making. However, there are many limitations. These legal mechanisms have often been ignored, with decisions largely being discretionary, based on the government agency's own interpretation of the law. There are also conflicting and overlapping rules and regulations influencing the decisions and actions of the government.

The cases indicate that confidentiality hinders access to information, participation and justice. Agencies usually pass responsibility upwards, and lower officials are unaware of their requirement to provide information. However, opportunities for collaboration between government and stakeholders do appear to emerge during high profile emergencies. When disasters come, the government collaborates with local communities but the opportunity for collaboration concerning emergency cases is weak when the business sector and other sectoral groups are involved.

There are opportunities for collaboration at local and regional levels, but this happens on a case to case basis. It largely depends on the interests of the local government in the area. Participation tends to be restricted to consultation and public hearings. Direct participation of stakeholders is lacking. Participation in local and state planning and implementation is mixed. At the local level, there are opportunities, but collaboration with government agencies suffers when their regional or local offices are not directly involved in the issues. They usually participate but often do not get involved at the level of decision making. On participation and decisions concerning specific projects, permits and concessions are weak. CSOs can prompt the government into action. However, their actions are often viewed with wariness due to a lack of expertise and resources of CSOs.

High costs associated with the legal process are extreme barriers to access to justice. Provisions for justice such as *pro bono* lawyers are quite limited. The extensive delays associated with pursuing cases in both judicial and administrative forums have also rendered redress for grievances inaccessible. There is a need to build forum members' awareness on and sensitivity to environmental laws and issues, and access rights; and to build the knowledge of the public on their legal rights and the various remedies available to them within the legal system.

Recommendations

For the government

1. Rationalise the legal framework. Conflicting laws that have created gaps between national and local governments must be addressed in order to achieve consistency. This requires a review of laws especially conflicting and overlapping provisions on the access principles: Republic Acts, Executive Orders, Administrative Orders, Implementing Rules and Regulations, and local ordinances.

2. Capacity building is the main component for the government to improve their commitment on the access principles. This would create a favourable environment for CSOs and media to become more involved. Invest in closing the gaps and improve the capacity of implementers – concerning institutional infrastructure and staff capacity. While this is dependent on the budget of government agencies, the review team is confident that by lobbying the congress, added budget for advancement of the access principles can be gained. This will require collaboration between local, regional and national levels.

3. The Passage of the Freedom on Information Act should be a priority of the Philippine Government.

4. Join the Partnership for Principle 10. The policy and implementation gaps revealed through the independent assessment by TAI-Philippines will help the Philippine government strategise on how they can fulfil their shared and specific commitments to PP10.

5. To strengthen Access to Justice concerning the environment, potential avenues and linkages can be explored under the Action Program for Judicial Reform and Access to Justice for the Poor Project, and by establishing "Green Benches" or specialised courts dedicated to environmental and natural resources disputes.

6. The Philippine Judicial Academy can be a potential vehicle for promoting access rights.

For civil society organisations

1. Regularly monitor and collaborate with the government and other stakeholders to identify gaps between law and practice and set priorities for improvement.

2. Stimulate public demand for access to information, participation and justice, and build their own capacity and that of the general public (including affected communities) to be able to exercise their rights of participation.

3. The media and public interest groups must play their roles in pursuing greater access vigorously and responsibly. Research needs to be complete and credibility should be unimpeachable.

4. Strengthen Access to Justice by promoting alternative modes of dispute resolution (ADR).

Sri Lanka

Country Report: Sri Lanka

Background

The first Sri Lanka assessment was carried out between 2006 and 2007 by the Sri Lanka National NGO Coalition using the TAI methodology. The main objective of the Sri Lanka study was to assess the government's performance and progress on access to information, public participation and access to justice at the national level in relation to the environment. It is envisaged that the findings, which identify major weaknesses and strengths, will provide the basis for advocacy and reform in environmental governance in these three areas.

Case Studies for the TAI Sri Lanka Assessment
In accordance with the TAI guidelines on case selection, 19 case studies were selected for the assessment in Sri Lanka. Of these, two case studies were studied under two different categories. The table below gives the case list with the categories and case types to which each case belongs.

Category	Case Type	Case Name
Access to Information	Emergencies	Regular Flooding in Ratnapura
	Monitoring	Air Quality Monitoring System in Fort (Managed by the CEA)
	Monitoring	Drinking Water Monitoring System in Ambatale
	Facility	Pollution caused by factories in the Biyagama Export Processing Zone
	(other)	Galle Face Case
	(other)	Genetically Modified Organisms
	(other)	Southern Transport Development Project Case (Decision not to have a supplementary EIAR for the altered route of the expressway)
	(other)	Sethusamudram Ship Canal Project
Public Participation	Policy-making decisions	National Policy on Bio-safety
	Regulatory decision	Bogawantalawa Gem Mining
	Project level decision	Kandy Colombo Expressway
	Project level decision	Biolan Waste to Energy Project
	Project level decision	Eppawala Phosphate Mining
	Project level decision	Galle Port Development Project

Category	Case Type	Case Name
	Regulatory decision/ Project level decision	Galle Face Case
Access to Justice	Access to Information	Southern Transport Development Project
	Public Participation	Protection of the Kantale Bund
	Environmental harm	Protected Areas Management Project- Horton Plains National Park Case
	Environmental harm	Kurunegala Quarrying

Legal Framework

The Constitution

Sri Lanka's Constitution was evaluated on the basis of the extent to which it guarantees the following six rights: a clean and safe environment; right to information; right to public participation in administrative decision-making; access to justice; freedom of expression; and right to freedom of association.

While the Constitution does not contain any specific right to a clean and safe environment, it casts on the State a duty to "protect, preserve and improve the environment for the benefit of the community", and likewise casts a duty on the citizen "to protect nature and conserve its riches". Although not legally enforceable, these provisions have been invoked as an aid to interpretation and a justification for public interest litigation on the environment.

Creative interpretations of the right to equality before the law and the equal protection of the law have been successfully invoked by persons who have been wrongfully denied the benefit of environmental protection or environmental information that other persons similarly placed would be legally entitled to, such as an Environmental Impact Assessment (EIA) process. Other constitutional rights that have been invoked in environment-related cases include the right to pursue one's chosen occupation and the right to choose one's place of residence. The freedom of residence has been mostly invoked where traditional livelihoods (such as rice farming) or basic needs (such as access to clean water) have been threatened.

There is no specific right to 'information' in the Constitution, but the right to freedom of speech and expression under Article 14(1)(a) has been judicially interpreted to include the right to information, though of course this means that a party has to go to the court to enforce it. The right to public participation is not constitutionally guaranteed, although the Constitution guarantees freedom of association and assembly.

Constitutional guarantees on access to justice are strong, inclusive of equal protection and non-discrimination provisions, the presumption of innocence, the right to be represented by an Attorney, and the right to access the courts including a direct application to the Supreme Court in the case of infringement of fundamental rights.

Law on access to information

Sri Lanka does not have a framework of law supporting access to official information. Some environmental laws such as the Coast Conservation Act (CCA) and the National Environmental Act (NEA) are comparatively strong on disclosure requirements, while others such as the National Water Supply and Drainage Board Act contain none at all.

Under the NEA, information disclosure and public participation were originally mandatory under the approval process for all 'prescribed projects' but in 2000 these rights were removed in respect of projects which are deemed by the project approving agency to require only an Initial Environmental Examination (IEE), thereby restricting their operation to projects where the approving agency has determined that an EIA is necessary. As there are no statutory guidelines as to which type of projects should require EIA and which ones may be passed with IEE, this allows the public to be excluded from commenting on projects that could have considerable environmental impacts.

Meanwhile, the Official Secrets Act and the Establishments Code that governs the public service have a strongly negative effect on disclosure of information by public officers. The Official Secrets Act is however rarely invoked.

Judge-made law has also played a part in assisting information disclosure, as when, in 2005, the Supreme Court introduced the principle that where a public authority itself has put a matter into the public domain (e.g. by public advertisement), it cannot refuse requests for further information on that matter.

Law on participation in decision making

Much of what has been said about access to information is equally applicable to public participation. The NEA comes nearest to being a framework law in relation to public participation, but the amendment in 2000 mentioned earlier seriously restricted its operation by taking the IEE process out of the public domain. In a further negative development, it was found that a handbook on public participation published by the Central Environmental Authority (CEA) was no longer in circulation, apparently because some of the steps mentioned therein are not being followed.

Law on Access to Justice

Access to justice is guaranteed by the Constitution as well as a number of other Acts of Parliament. In addition, there are a number of other quasi-judicial tribunals and commissions established by Acts of Parliament, from which reliefs in environmental matters could be sought.

Law on Capacity Building

There would be little purpose in having laws on access to information, public participation and access to justice, if the public lacked the capacity to make use of such laws. Similarly, the relevant official agencies should have the capacity to respond in a manner that is prompt and meaningful.

The TAI indicators regarding the legal framework have revealed that while the law does not seek

to hinder capacity building, it does not specifically require it at the official level, and it was left to the agencies concerned to determine their levels of staffing and staff training, subject to budgetary constraints. It was also found that constitutional provisions relating to the use of the national languages were not always adhered to.

Practice

Access to Information

A pro-active approach towards information dissemination was more visible in respect of emergency situations than in the other case types that were studied. In the *Ratnapura flooding case*, although a few inadequacies such as information not reaching very remote areas were noted, the information available and the flood warnings issued were adequate for the public to either avoid or cope with the floods.

There is no legal requirement to disclose information. In reviewing information from regular monitoring, there was a sharp contrast identified between (a) the favourable attitude to disclosure adopted by the CEA under a project where information disclosure provisions were required by the funding agency, and (b) the attitude of the National Water Supply and Drainage Board which had not been placed under any duty to disclose information. The CEA releases weekly air quality readings and other general information through the web or in response to requests from the public. It has to be noted, however, that there is a delay in processing and updating the data on the web. Obtaining detailed air quality data is very expensive. In relation to water quality data that is released by Water Supply and Drainage Board, only general information on water could be accessed. Data concerning drinking water quality is not accessible to the public.

While the NEA contains certain disclosure requirements with regard to "prescribed projects", access to facility-level information was limited and was directed more towards encouraging foreign investment than protecting the health of the surrounding population. In the *Biyagama case*, information on the waste treatment plant, collected and managed internally, was not released to the public. Some general information on the Biyagama Export Processing Zone was available to the public through websites and other publications.

Court actions have proved to be a useful way of obtaining information, as in the *Galle Face Green case* and the *GM food labelling case*. However, filing of such cases depends on the interest shown by environmental organisations which have the funds and expertise to fight cases in the superior courts.

Outright non-compliance with disclosure and public participation requirements while a project is ongoing proved to be one of the most unsatisfactory areas, as illustrated by the *Southern Expressway (STDP) project*. In this case, environmental clearance had been obtained for the expressway along a certain route. But when the agreed route was changed, there was no additional EIA to review the new route, thus denying the rights of those people who would be affected by the deviation. Despite finding that this was contrary to the law, the court was not inclined to halt the project but ordered monetary compensation for the affected persons.

Another negative area was the impact of an environmentally sensitive project carried out outside Sri Lanka's territorial waters, as illustrated by the *Sethusamudram Ship Channel Project* in neighbouring India. There was no environment-related law under which disclosure of information could be compelled, and the lack of general access to information law was keenly felt.

The role of the media varied from case to case. The media took up the controversial issues such as Galle Face Green, Sethusamudram and genetically modified foods, and also helped disseminate information during flood emergencies in Ratnapura. On the other hand, there was reluctance to devote space to regular monitoring (e.g. air quality data), and some media organisations demanded payment to carry such information.

A number of responsible agencies have utilised the web to provide general and/or specific information. Although the web is an important mode of providing information, only a fraction of the people in the country have the facilities and knowledge to access it.

A further issue that arises is whether access to environmental information should be treated as part of a general Access to Information Act or whether it requires a special Act along the lines of the *Aarhus Convention.*

Participation in Decision Making

Despite a lack of legal requirements, public participation has often been invited in the formulation of national policy, as illustrated by the case study on the draft *National Policy on Bio Safety*. With regard to development projects, the *Colombo-Kandy Expressway* proved to be a positive example with public hearings and a strong public response that secured some environmental and public health safeguards over and above those included in the original EIA Report. It has to be noted that generally, some practical problems within the EIA process prevent effective public participation. These mainly relate to the difficulties in understanding the technical language in the EIA report and unavailability of the EIA report at notified times and places.

On the other hand, the *Eppawela Phosphate Mining Case* indicates that the more powerful the developer (in this case, a large multinational mining company), the more the government was likely to circumvent the law in order to carry out the project. The main concerns regarding this project related to the loss of lands and livelihoods of local people. In this case, despite such serious negative impacts on local people, the right to public participation was initially completely denied to the affected people. However, they were able to defend their rights, and as a result of a successful application to the Supreme Court, they were able to have the project halted.

The *Galle Port Development* study highlighted the difficulties that arise when a number of different agencies have regulatory powers over various aspects of a project, with different procedures and degrees of public participation. This can result in none of the concerned agencies taking full responsibility so that none of the requirements for public participation are followed.

The *Galle Face Green* case highlighted a lack of any mandatory procedure for public participation in the making of regulatory decisions that do not involve "prescribed projects" in terms of the NEA. However, in this case, effective court action by an NGO succeeded in preserving the Green

in its traditional character. While the court invoked some very broad principles relating to the rights of the public, it also found that technically, the agency that was attempting to lease out the Green had no legal power to do so. Similarly, procedural irregularities had to be invoked in order to halt environmentally damaging gem mining in the *Bogawanthalawa* case.

Access to Justice

The Constitution guarantees to every person the right to invoke the jurisdiction of a competent court in person or through an Attorney-at-Law. In addition, there are a number of other quasi-judicial tribunals and commissions established by Acts of Parliament from which relief could be sought in environmental matters.

Many courts including the lowest level of court, namely the Magistrate's Court has some power to address environmental cases by using the public nuisance provisions in the Code of Criminal Procedure. The *Kurunegala Quarry case*, which formed part of the 'access to justice' study, originated in the local Magistrate's Court although it eventually went up to the Supreme Court.

The higher courts serve both as appellate courts from decisions of the lower courts, as well as 'courts of first instance' with regard to certain constitutional and administrative law remedies.

The Southern Expressway

The *Southern Expressway (STDP) case* was a test of access to justice in respect of denial of information. The Supreme Court, where the case went in appeal, limited itself to ordering substantial costs to be paid to aggrieved persons but did not stop the expressway project.

The *Kantale case* involved damage that was being caused to a major road, a part of which ran along the bund (bank) of the Kantale Tank (water reservoir). Load limitations which were applicable to the road in question were suddenly revised to accommodate heavy vehicles of a certain multinational company. The case was filed by a public interest organisation with active participation of the affected people. The State agencies cooperated in restoring the original load limit and agreed to appoint a committee of experts to review what the new load limit should be.

Concerning access to justice, the only significant impediment appears to be the cost factor, which is not entirely mitigated by the assistance provided by State-funded and private legal aid schemes.

While many of the cases under review were settled by the State agencies concerned cooperating to enforce the law, those that were contested such as *Galle Face Green, Eppawala* and *Southern Transport Development cases* saw heavy awards in costs against the errant State agencies. It can therefore be said that the Courts generally consider the infringement of rights relating to the environment to merit serious penalties.

However, it may also be noted that many of the cases that were settled without a contest leave open the question of how effectively the terms of the final settlement can be monitored. It will be up to the petitioners to monitor and report to court if there is non-compliance.

Capacity Building

CSOs/NGOs played a significant role in several of the cases under review. The public interest status of such organisations was not challenged in any of the cases under review.

The Sri Lanka Judges' Institute imparts training to the lower ranks of the judiciary, including grounding in environmental law. Such training is not considered necessary for members of the higher judiciary including Court of Appeal and Supreme Court as appointees to such posts are either very senior lawyers or legal academics, or persons promoted from the lower ranks of the judiciary where they have already had their training. The capacity of the judiciary to appreciate the nature of public interest claims in relation to the environment appears, on the whole, to be well-developed.

On the other hand, capacity building for the general public appears to be weak. A particular weakness is in the education system. Civics had been downgraded as a subject in schools despite the fact that the Constitution places on all citizens a 'fundamental duty' to uphold and defend the Constitution and the law.

Despite a corresponding constitutional duty 'to protect nature and conserve its riches' environmental education has been introduced into the school syllabus only recently. It was not possible to ascertain how widely these standards were maintained, or whether there are any significant differences between the affluent schools and those in poorer areas.

The Legal Aid Law requires the establishment of a state-sponsored legal aid scheme but does not prescribe the extent to which persons should be aided. This is left to the Legal Aid Commission to work out within the limits of its budget, which has been increasing in recent years.

In addition, the Bar Association of Sri Lanka and a number of NGOs run legal aid schemes. There are also a number of NGOs/CSOs which have shown a willingness to file public interest cases on behalf of persons whose environment is adversely affected.

In respect of capacity building within public institutions, an excess of governmental interference could be unhealthy, and the present policy of leaving each institution to determine its training requirements subject to its budget is not necessarily bad in principle, provided however that an overall adequate budget is provided. Public pressure and public interest litigation, when required, also encourage institutions to build up their capacity in areas where they have fallen short. However, it may also be argued that a uniform level of capacity building among official agencies will occur only when there is a uniform law governing access to information and right to public participation.

Conclusions and Recommendations

Conclusions

Constitutional Law

- No specific right to clean and safe environment. Directive principles of state policy and fundamental duties are invoked as an aid to interpretation and a justification for public interest environmental litigation.
- No specific rights to information and public participation. Fundamental rights are judicially interpreted to include the said rights.
- Constitutional guarantees on access to justice are strong.
- Freedom of expression and association is constitutionally guaranteed.

Access to Information Framework Law

- Lack of framework law on access to environmental information hampers access to information by the public.
- Legal provisions on access to information are statutorily specific and vary from one sector to another.

Access to Information Practice

- Access to information in environmental emergencies is adequate.
- Access to information from regular monitoring is not uniform.
- Absence of monitoring systems and penalties for non-compliance on information disclosure.
- Facility-level information-no public access to data on the treatment plant in the selected case.
- Responsible agencies' response to public requests for information varied.
- The internet is not an effective means of providing information to the public.
- Non-disclosure of information leads to court cases.
- Information on projects outside the national territory is poor.
- Role of NGOs/CSOs is very important in access to information.
- There is no tradition or current practice to reach out to the disadvantaged and minority groups.
- Availability of information is necessary to address health problems caused by an unhealthy environment. Availability of information leads to positives steps to improve health and the environment.
- Skills and knowledge are needed to make use of access provisions.
- Southern Transport Development Project approved and implemented openly contravening disclosure requirements.

Participation in Decision–Making Framework Law

- The NEA comes nearest to being a statute specific framework law on public participation. An amendment to the Act in the year 2000 seriously restricted its operation by removing public participation from the IEE process.

Participation in Decision–Making Practice

- Public participation in policy making was satisfactorily solicited in the selected case

of National Policy on Bio Safety. However, no comment can be made (without further research) on whether this case is representative of policy making in general in the country and whether all government agencies act in the same manner.

- Removal of public participation from IEEs is a drawback.
- Enforcement of public participation provisions in Coast Conservation Act in project-level decision making is reasonable.
- Enforcement of public participation provisions in the National environmental Act is not consistent across project-level decision making.
- The efforts to keep the public informed of the decision-making process at the project level are inadequate.
- No public participation in regulatory decisions.
- Absence of monitoring systems and penalties to ensure compliance with obligation to ensure public participation.
- No special strategy to minimise participation costs in EIA process.
- No tradition/practice to reach out to the disadvantaged/minority groups.
- Some practical problems within the EIA process prevent effective public participation.
- Removal of public participation from IEEs is a setback.
- Access to past and pending decisions, supporting documents and comments on final decision in policy making is satisfactory.
- Access to past and pending decisions, supporting documents and comments on final decision at the project level is restricted.
- Access to past and pending decisions and supporting documents in regulatory decisions is not satisfactory.
- The influences of public input into final decisions at the project level are varied but encouraging.
- A lack of opportunities for public participation in regulatory decisions leads to changes in the final decision through litigation.

Access to Justice Framework Law

- Access to justice is guaranteed by the Constitution and a number of other Acts of Parliament.

Access to Justice Practice

- Existing judicial system and access to justice are satisfactory.
- Public access to and understanding of court procedure, rules and claims are limited.
- Costs of litigation are high for the public.
- The role of CSOs/NGOs is positive.
- Intimidation did not prevent legal action.
- Implementation of Court decisions varies amongst cases.
- Most court decisions led to positive outcomes to reduce the negative impacts on the environment and health.

Capacity Building Framework Law

- The best contribution that the State can make towards capacity building is to provide facilities to create a well educated, civic conscious citizenry.
- Public pressure and public interest litigation encourage institutions to build up their capacity.The capacity of the judiciary to appreciate the nature of public interest claims on the environment is well developed.

Capacity Building Practice

Access to Information

- Capacity building for government agencies is inadequate.
- Capacity building for sub-national agencies is poor.
- Capacity building for the public is not adequate.

Participation in Decision-Making

- Capacity building for government agencies in policy-making is good.
- Capacity building for government agencies in project-level decisions is fair.
- Capacity building for government agencies in regulatory decisions is poor.
- Capacity building for sub-national level government agencies in policy-making is good.
- Capacity building for sub-national level government agencies in project-level decisions is reasonable but varied.
- Capacity building for sub-national level government agencies in regulatory decisions is poor.
- Capacity building for the public in policy-making is positive.
- Capacity building for the public in project-level decisions is not adequate.
- Capacity building for the public in regulatory decisions is poor.
- Role of media in capacity building of the public is varied.
- Role of CSO/NGOs in capacity building for the public is positive.
- Lack of skills and knowledge amongst the public to participate in decision making.

Access to Justice

- Capacity building of the Courts has no specific focus on access to information, public participation or access to justice.
- Capacity building for sub-national level agencies is poor.
- Capacity building for the public is poor.
- Role of CSOs/NGOs in capacity building for the public is positive.
- Lack of skills and knowledge amongst the public.
- Role of media in capacity building of the public is significant.

General Capacity Building

- Training on access rights to public school teachers is poor.
- Rules and regulations for registration and operation of CSOs and media are equitably implemented.
- Legal Aid for the general public is adequate.

Recommendations

In summary, the Report of the TAI Sri Lanka assessment recommends, *inter alia*

- Bringing back information and public participation provisions that have been dropped from the NEA and strengthening existing provisions;
- Introducing a proactive approach to dissemination of information to the poor and less educated sections of society;
- Harmonising information disclosure and public participation laws and practices in all institutions dealing with the public;

- Establishing internal mechanisms for monitoring compliance and ensuring that the principles laid down by judicial decisions are incorporated into the practices and procedures of all relevant institutions;
- Greater financial provision for legal aid in environment-related cases.

Thailand

Country Report: Thailand

Background

Thailand Environment Institute and TAI Thailand coalition partners carried out the first TAI assessment in 2001, followed by a second study in 2005 and a third study in 2007. In each assessment, we had 25-30 distinguished persons in our advisory committee. They are from agencies (Director General level) relevant to our case studies and also from Constitution-related agencies. We held a public conference with several hundred participants from various stakeholders after each national assessment. Since then, the coalition partners' efforts have been directed towards promoting the principles of environmental governance and disseminating lessons learned from the policy assessments through advocacy, knowledge management and networking.

This chapter presents findings from the third national assessment on environmental governance in Thailand conducted between August 2005 and August 2007 by TAI Thailand coalition, comprising four non-governmental organisations: Thailand Environment Institute (TEI) King Prajadhipok's Institute (KPI), Sustainable Development Foundation (SDF), and Project Policy Strategy on Tropical Resource Base under the National Human Rights Commission of Thailand. The study applied the TAI indicators as a tool to assess how well the Thai government provides Thai citizens the three fundamental access rights: access to information, access to participation in decision making, and access to justice, with regards to decision making on environment-related issues. Indicators also include questions for assessing general law such as the Constitution and for capacity building the government provided in order to enhance access rights. The following eighteen case studies involving a wide range of sectors, issues, and regions were chosen for the assessment.

Category	Case type	Case name and description
Access to Information	Environmental emergencies	**The Information for Bird Flu Spread**. The case investigates the levels of information access, practices of relevant government agencies (local and state).
	Environmental emergencies	**The Information for Tsunami.** The case investigates effectiveness of the warning system, levels and channels of information access.
	Air quality monitoring	**Air Quality in Bang Plee Industrial Area, Sumutprakan Province** - the province that has highest level of dusts smaller than 10 micron diam. that can cause serious effects to people's respiratory system.
	Air quality monitoring	**Air Quality in Mae Moh Power Plant, Lampang Province.** Mae Moh is Thailand's largest lignite-filed power plant. Sulphur dioxide emitted has had a severe impact on the health of people in the 16 villages.

Category	Case type	Case name and description
	Water quality monitoring	**Water Quality in Songkhla Lake, Songhla Province.** The case investigates the monitoring process of and public relations (PR) on water quality in Songkla lake, where biodiversity is under risk from overexploitation of natural resources.
	Water quality monitoring	**Water Quality in Klity Creek, Kanchanaburi Province.** The case investigate the level of information access in the Klity Creek, where lead contamination from mining operation over the years has caused severe health impacts on a great number of minorities (Karen people).
	Facility-level information	**EIA Report from Navanakorn Industry Area (Tostem Thai Co., Ltd.).** This is a typical case representing energy–intensive industries, and also one of the most polluting kinds of industries.
	Facility-level information	**EIA Report from Bangplee Industrial Area (C.P. Packaging Industry Co., Ltd.).** Located inside the industrial estate, this factory is energy-intensive and produces high-risk waste.
Public Participation	Policy-making decision	**Asset Securitisation of Seafood Bank**. The case investigates public participation in policy decision making on managing coastal areas in the southern provinces as assets and converting them into financial securities.
	Policy-making decision	**Thai-US Free Trade Agreement (FTA)**. The case investigates public participation in the trade negotiation process. This is to respond a controversial issue: the FTA may result in not only economic development but also social conflicts between small producers, macro-industries and exporters.
	Policy-making decision	**Solving the Water Crisis in the Eastern Region.** This area has seen high competition over water allocation for industries, tourism, agriculture, local consumption and restoring for the ecosystem
	Policy-making decision	**Development of Special Tourism Zones on PP Island**. The case investigates public participation in policy decision making of the state on renovation (land expropriation and infrastructure development) of PP Island after the Tsunami incidence, to become a special tourism zone that reflects the concept of sustainable tourism.
	Regulatory decision	**Privatisation of Electricity Generating Authority of Thailand (EGAT).** As the national electricity generating and transmission company, a transparent analysis on the privatisation process of EGAT is needed to assure the public for energy demand-supply, energy security, and social equity.
	Project-level decision	**Development the Construction of Andaman Sea-Gulf of Thailand Landbridge Project (Songkla and Satun Deep Sea Ports)**. The case investigates public participation of local people in the project's development.

Category	Case type	Case name and description
Access to Justice	Denial of rights to information	**A Filing to the Administrative Court on the Right to Information Regarding the Bird Flu Disease.** The case scrutinises the procedures of the Information Disclosure Tribunal with regard to the appeal to the order that withholds information on examination of the infectious disease in chicken.
	Denial of rights to participation	**A Filing to the Administrative Court on Infringement of the Rights and Freedom to Assemble and Express Opinions Regarding the Thai-Malaysian Gas Pipeline Project**. The case investigates access to justice procedures and the understanding of grassroots people towards justice procedures.
	Environmental Harm	**A Filing to the Administrative Court and Civil Court to Demand Compensation for Damages to Health Caused by Air Pollution Released from Mae Moh Power Plant, Lampang Province**. The case investigates justice procedures and the transparency of information disclosure.
	Non-compliance	**A Filing to the Administrative Court to Oppose Unlawful Privatisation of the Electricity Generating Authority of Thailand (EGAT)**. The case investigates the rights to 'access to justice' process and the process of public hearing.

Legal Framework

General Situations

1. The 2007 Thai constitution

The 2007 Thai constitution contains provisions affirming rights and freedoms of the people in the subject of participation in the management of natural resources and the environment. This constitution has provisions covering three dimensions:

1) The right of access to data and information. The constitution states, for example, the following: the individual has the right to know and access data and information possessed by state agencies, and that such access is in accordance with the law (Section 56). The individual has the right to receive information, elaboration, and explanation from state agencies before they approve or implement a project or other activities that might have an effect on the environment, health, and quality of life. The people also have the right to express their opinions to relevant state agencies, in order that the opinions are taken into account in their deliberations. Moreover, for the planning of infrastructure development, urban planning, and the issuance of rules and regulations that might affect the people's interests, comprehensive public hearings before implementation must be held (Section 57). Also, the individual has the right to submit complaints, and receive the results of consideration of such complaints without delay (Section 59). In addition, the constitution provides protection of rights and freedom of mass media, by forbidding closure of mass media businesses (Section 45-46).

2) The right of participation by the people. The constitution recognises communities' rights to participate in management, supervision, maintenance, and utilisation of natural resources, the environment, and biodiversity, in a manner that is balanced and sustainable. For projects to be implemented or activities to be engaged in that might cause a serious impact on the quality of the environment, on natural resources, and on the health of the people: before they are initiated, a process of hearing out the people and stakeholders must be instituted; and an independent body must also provide a considered opinion (Section 67).

At the local level, people also have rights to participate in local governmental organisations (LGOs). They have the constitutional right to express opinions and engage in referendums before actions of LGOs that have an impact on their lives are carried out (Section 287). The local governmental administration must report its work to the people as part of enabling the people to play a participatory role in inspecting and overseeing its administration and management (Section 287). It must also arrange an inspection mechanism of the work and activities of the local governmental administration to be set up, and to be utilised by the people (Section 282). In addition, a mechanism enabling local communities to participate with LGOs in the work to promote and protect the quality of the environment has to be set up (Section 290).

3) The right of access to the justice system. The constitution has provisions which comprehensively spell out key points concerning the basic rights of the people in the judicial process. This is contained in Section 40, which states that the individual has the right to access the judicial process with ease and convenience without delay, and that such rights are equally dispensed to all. Furthermore, consideration is given to disadvantaged sections of society such as children, youths, the elderly, the disabled, and the handicapped so that they would be appropriately protected during their engagement in the court process. Section 212 also acknowledges the right of people to directly file a case to the constitutional court, and to ask the court to adjudicate if a particular law contradicts or opposes the constitution. Also, the community has the right to sue the state bureaucracy, state enterprises, local government agencies and state agencies with the status of a juristic person, in order to get them to act in accordance with the rights of the community with regards to environment matters (Section 67).

Although the 2007 constitution has, in theory, improved the people's access to the judicial system and made the exercise of people's rights and freedoms more efficient, the challenge continues to be in terms of the actual implementation of such rights. Such implementation will prove if people's utilisation of the power of state organs-whether it be the government, parliament, the courts, or state agencies-will result in the genuine protection of their rights and freedoms.

2. The law ensuring the right to have a good environment and ensuring people's participation with respect to health.

The National Health Act of 2007 is another law that places importance on affirming people's right to live in a safe environment. It also deems it a duty of the individual to cooperate with state agencies in creating a good environment. Both points are contained in Section 5 that the individual has the right to live in an environment and surroundings that are conducive to good health, and that "the individual has the duty to work together with state agencies so as to create the type of environment and surroundings".

Even more importantly, this Act also affirms that people are entitled to access data and information on any actions that might affect their health. The Act specifies that state agencies have the duty to promptly reveal and provide data and information to the people, as stated in Section 10, "If a case occurs which affects the people's health, the state agency that has information and data on that case must reveal it and also arrange for the people to know the methods that can protect against damage to their health without delay".

In addition, an individual or juristic body has the right to assess and participate in the evaluation of public policy that impacts their health, and the right to receive information and express opinions on a project or activity that might affect his or her health or that of the community, before it is approved by the state agency in charge of the project or activity (Section 11).

Even though legal guarantees are in place concerning rights of the people, such as the right to live in an environment conducive to health, the right to participate in evaluation of public policies which might have an impact on health, as well as the right to receive information and express opinions on projects or activities which might have an effect on the individual's health or that of the community in accordance with the National Health Act 2007, if the people do not have the opportunity to exercise these rights or there has not been serious utilisation of these rights, then the law would not have any real practical impact.

3. Laws on access to state information

The National Environmental Quality Act B.E. 2535 (1992) has a general provision on access to environmental information but there is no specific prescription that supports access to such information by the public. **Significantly, the Act does not specify a mechanism for enforcement of environmental law.** Thus, a request for the disclosure of environmental information would have to be based mainly on the Official Information Act B.E. 2540 (1997).

The Official Information Act B.E. 2540 (1997) is a core piece of legislation that explicitly prescribesthe rights to access official information by specifying three types of information disclosure:

1) Information published in the Royal Gazette (Section 7). These are rules, regulations, provisions, cabinet resolutions and decrees which must be adhered to by the general public.
2) Information disclosed for public perusal (Section 9) are those related to work plans, projects, budgets and annual expenditure of state agencies; decisions and judgments directly affecting private sector entities, policies, concession agreements, exclusive agreements with a monopolistic nature, and joint venture agreements with private entities for provision of public services.
3) Information disclosed to individuals filing for request on a case-by-case basis (Section 11), that is, other information not described in 1) and 2).

4. Laws on public participation

The Administrative Procedures Act B.E. 2539 (1996) sets out the steps for the public to participate in decision-making processes involving state projects. However, this Act merely provides general

guidance. When making decisions, state officials have to refer to specific laws that apply to their specific areas or fields of activities to determine who can participate. For example, this can be seen in the content of the Mineral Act or the Factory Act.

The Office of the Prime Minister Regulations on Public Hearings B.E. 2548 (2005) provide an opportunity for the public to participate in decision making processes involving state projects. However, state agencies have the final say in the matter as government officials have the ultimate authority to decide whether or not to authorise a hearing prior to implementation of the project. Thus, it can be seen that state agencies still have the final and complete say in the matter.

5. Laws relating to access to the judicial system

The right to take environmental cases to courts in Thailand is subject to many existing laws, for example, the Civil Procedure Code, the Act on Establishment of the Administrative Courts and Administrative Court Procedures B.E. 2542 (1999), the National Environmental Quality Act B.E. 2535 (1992), and the Criminal Code in which penalties are prescribed for environment violations.

- For civil cases, persons having the right to take an environmental case to court must have had their individual rights violated, which is the normal case in civil law.
- For criminal cases, the law says that a the case where an act harming the environment is accepted for examination in a civil court is also judged as a crime under criminal law, so that the injured party can also sue in the criminal court as well.
- For cases handled by the Administrative Court, rights to take an environmental case to court are defined more broadly than such rights in a civil court. Here, standing to sue is determined by whether the individual is injured or may be injured unavoidably by the defendant. The Administrative Court has also laid down guidelines for legal entities to sue on behalf of their members, to protect their rights.
- For environmental cases, the National Environmental Quality Act B.E. 2535 (1992) accepts that a private organisation registered in accordance with the Act could act as a party in a court case and sue for damages suffered.

The Administrative Court enables a broader base to take an environmental case to the court, as compared to the situation in which one is to take a case to a civil court and relies on the National Environmental Quality Act B.E. 2535 (1992). The Administrative Court plays an important role in broadening the definition as to who can participate in decision making at the government official level, including determining who has suffered or may suffer from decisions made by the officials, thus enabling such individuals to take their cases to the Administrative Court–rather than defining it narrowly to allow only people directly related to Administrative Court directives.

Strengths and Challenges

The 2007 Constitution is stronger than the 1997 Constitution in its emphasis on the rights, freedoms, and equality of the people. For example, the current Constitution removes the phrase "as provided by law" from all Sections on rights and freedoms, which means the provisions of the people's rights and freedoms take immediate effect upon the passage of the Draft Constitution, rather than pending their enactment. In addition, this current Constitution states that petitions of 10,000 will automatically initiate a parliamentary bill compared to 50,000 petitions stated by the previous Constitution.

With respect to the dimension of access to information, officials have exercised their own judgment in interpretations of the law. There is a tendency to reject the right of the public to receive information or to reveal it, and there is a lack of an internal monitoring system on the exercise of such judgment in some agencies. This may lead to an increase in the number of appeals to the Examination of Information Release Committee.

There is currently no law on public participation. The existing law, the Office of the Prime Minister Regulations on Public Hearings B.E. 2548 (2005) displays many defects. In many cases, such hearings were held as a form of ceremony, and those affected by government measures may not have really participated in the hearings. This problem has led to severe social division and conflict amongst people in local communities.

With respect to the dimension of environmental justice and the rights of the individual in court, the 2007 Constitution has provisions that spell out key points concerning the basic rights of the people in the judicial process. The individual has the right to access the judicial process with ease and convenience, without delay, and that such rights are equally dispensed to all. Also, the community has the right to sue the state bureaucracy, state agencies, state enterprises, local government agencies, and state agencies with the status of juristic person, in order to get them to act in accordance with the rights of the community with regard to environmental matters. However, the Administrative Court has laid down guidelines that enable juristic persons to sue in court on behalf of its members, but does not accept taking a case to the court to protect the public interest.

Recommendations

1. The judiciary and lawyers should have knowledge and understanding of the importance of Constitutional provisions that address fundamental rights and freedoms of persons related to the environment and natural resources, even though there are not yet organic laws supporting them.

2. A law on public participation should be drafted. In addition, the National Environmental Quality Act B.E. 2535 (1992) should be modified to add a detailed provision on people's participation.

3. The state should support a mechanism that provides remedies outside court proceedings, that is, the Alternative Dispute Resolution (ADR), which could be in the form of mediation of disputes or dialogues. Although court-based remedies are most efficient and effective, many lengthy steps and complex procedures have to be followed, resulting in the damaged party not getting a remedy within a reasonable period of time.

Capacity Building

General Situation

Even though many laws that intend to have and place significance on public participation exist, **none clearly gives power or a specific role to civil society, or clearly states the degree of public participation required**. However, the current environment for state agencies is that they have to act in accordance with the letter of the law. The result is that state agencies are approaching

civil society more, and forums have been organised to solicit the people's opinions. Still, there is a lack of opportunities for civil society to actually participate in the decision-making level, or to take part in the systematic definition of problems, and to set options to solve them.

Research Findings

For environmental NGOs

The registration process to become an NGO in the field of environmental protection and conservation of natural resources is rather difficult and complex. It requires 200,000 baht (approximately US$ 6,000) minimum for capital fund and permission in accordance with the section 14 of the National Culture Act B.E. 2486 (1943). Hence, many active civil society organisations are not interested in registering as a juristic person. What follows is that while those organisations are able to operate without formal registration, they are not eligible to formally apply for budget assistance from environmental donors.

However, Chamber of Commerce Act B.E. 2509 (1966) and the Industrial Council of Thailand Act B.E. 2530 (1987) recognise the legal status of civil society organisations and have enabled them to have a strong and active administrative structure, a clearer role as well as better opportunity to seek funding. Additional research should be conducted to find optimum forms of support to civil society organisations.

For mass-media organisations

Laws on the media are not limiting factors for the provision of independent environmental news to the public. Rather the state agencies' unwillingness to reveal sources of information due to lack of confidence in the information at hand and fear of negative consequences resulting from releasing information seem to be more significant factors. The result is that news is based on only one source with the risks of bias.

The mass media has full freedom to provide news and information without being influenced by the state. They are financially independent of the state, with most of their funds primarily coming from sales of advertisement space. However, the state itself is an important customer of the mass media in almost all fields, because of state policy emphasising public relations and wide dissemination of its achievements. As a result, some government departments use mass media as an advertising tool and seek control of the content of information presented. At the other end of the scale, it has been observed that environmental news is sometimes presented from the angle of environmental conservationism, which may have led to the presentation of biased news.

For educational institutions

A common weakness found is that unless there is a direct policy handed down from the Ministry of Education, most school administrators and teachers tend to rank environmental studies as a low priority, thinking that the primary task of the school and teachers is to teach core subjects, and to engage in other activities or projects specified by the Ministry. The traditional solution to this problem has been to add a separate group of environmental studies subjects. However, this does not actually address the real problem. There is an urgent need to develop the capacities of schools and teachers in management of the learning and teaching process, as well as creating varied forms of incentives for teachers.

For the state sector's efforts

The state has pursued capacity building in order to equip civil society with knowledge, tools, and mechanisms that would facilitate public participation and to access information. For instance, the Department of Environmental Quality Promotion, the Department of Water Resources, and other state agencies have supported civil society organisations at the community level in order to help them understand the process of jointly drafting sustainable community development action plans. They have also promoted dialogue processes as a mechanism to resolve environmental disputes by peaceful means, such as that used to solve conflicts on waste management and in the orange orchard case in Kamphang Petch province. The state's efforts have also been directed to providing various river basin network groups with forums to enable an exchange of viewpoints and lessons learned in order to scale up the learning outcomes and networks.

Strengths and Challenges

1. Cooperation between state and non-state sectors in the public policy process needs to be strengthened on the basis of mutual trust and confidence. Without *de facto* social cohesion and inclusiveness, environmental and natural resources management would be unforesightful, if not ineffective. In this sense, sustainable development should be defined in terms of both means (e.g. meaningful participation) and ends (i.e. economic, social and environmental outcomes).
2. The mass media have to be developed so that they can freely convey socially beneficial messages without supervision and regulation by the state sector.
3. Environmental education must be promoted as a national strategy for sustainable development.

Recommendations

1. Establish independent environmental organisations as a core driver to promote the role of civil society, and this includes non-governmental organisations, philanthropic organisations, mass media, etc. Such bodies should have an autonomous and flexible organisational structure and management, should jointly work with the state sector, and should have clear strategic directions.
2. Develop explicit rules and criteria for state officials to use when they exercise their judgment and interpretation when referring to relevant legal frameworks, such as when they refer to legal provisions for information disclosure on tax exemption and assessment.
3. The Ministry of Education should ensure that every school organises and develops its environmental studies policy in line with the "Holistic School Approach for Environmental Education" theme with local curricula created in accordance with specific natural resources and environmental base of their local communities.
4. Promote environmental education in national and provincial environmental plans. In this respect, local universities have to act as the academic lead, to develop environmental education research that would facilitate the development of learning that emphasises local issues.

Access to Environmental Information

General Situation

Since the Official Information Act B.E. 2540 (1997) was proclaimed, state agencies have gained a better understanding of civil rights relating to access to information and have endeavoured

to disclose information in which people are interested. To a certain extent, people are aware of and have exercised their rights under this legislation. The state-originated Official Information Commission proposed guidelines, which are endorsed by the cabinet on 28 December 2004, for compliance by state agencies in handling of public requests for information. These stipulated that people are to receive requested information within 15 days after filing; or in the case where a large amount of information is requested or the agency cannot fulfil the request within such time frame, the petitioner will be informed accordingly within 15 days.

Other guidelines relating to access to information are: to set up a website to announce purchase and procurement information; and training of state officials in accordance with the Official Information Act B.E. 2540 (1997). In addition, on 11 April 2006, the cabinet resolved to use transparency of information disclosure and public participation as indicators of performance (Key Performance Indicator-KPI) to evaluate performance of all state agencies, beginning in the 2007 fiscal year, with the Official Information Commission and the Office of the Public Sector Development Commission (PDC) being tasked with scrutinising these KPIs in detail.

Research Findings

The Official Information Act B.E. 2540 (1997) allows state agencies to prescribe their own regulations and procedures in dealing with public requests for access to information. But the criteria used by the agencies for categorising information that is allowed to be disclosed is still unclear. In practice, some state agencies do not prescribe detailed procedures and criteria for access but instead authorise their official information committees and top executives to apply their own interpretations. In other words, there is a lack of clear standards in the Official Information Act B.E. 2540 (1997) on major responsibility or coordination paths, resulting in overlapped implementation among various agencies.

Regarding channels for access, it was found that in all eight case studies, different channels were used, depending on the category or type of information requested and on the guidelines of each agency. Some state agencies might widely disseminate environmental information to the general public without any concealment, and resort to a variety of dissemination channels, particularly issues keenly followed by the public, for example, in the case of the Regional Environment Office 16 (Songkhla Lake) and the Department of Pollution Control (Mae Moh power plant). However, in cases of environmental information which might affect the image of private businesses or the economy such as pollution management of industrial plants, bird flu outbreak, lawsuits filed against Mae Moh power plant, and water quality in Klity Creek, dissemination of information is still limited and sometimes too technical for local people to understand. In some cases, information disclosure is constrained because of a lack of knowledge, for example, information regarding earthquake-triggered tsunami for which authorities had been totally unprepared.

Last but not least, ethnic minorities such as many Karen people who do not have full Thai citizenship, and migrant workers who are not domiciled in Thailand, still do not have rights to access official information under the current law. This is a cause for concern because such denial of rights might result in public health and safety issues. These migrants are highly prone to contacting communicable diseases because their living quarters are congested and unhygienic. Without information dissemination or promotional campaigns among these people, their health would stay vulnerable, and eventually the general public would also be at risk.

Strengths and Challenges

1. **It takes time to transform attitudes and understanding of state officials and the overall organisational culture regarding disclosure of official information. This requires initiatives from the government and senior executives in state agencies**. For example, concealment of information during the initial outbreak of avian influenza occurred because authorities were apprehensive about possible adverse impacts on the chicken farm industry and chicken exports. In this case, some government executives and officials might have placed less emphasis on public health and safety than on the interests of the business sector.
2. **The Official Information Act B.E. 2540 (1997) lacks clarity in some aspects, notably legal definitions.** The law empowers officials to exercise discretion whether to disclose official information after considering impacts on their state agency's ability to conduct work, as well as considering the benefits to the public, and the interests of concerned private entities.
3. **The law still does not protect state officials who disclose information on corruption**. Even though the Official Information Act B.E. 2540 (1997) provides protection for disclosure of such information in the case that the state official discloses information in good faith, that official is still required to comply with official state secret provisions. If an official violates this provision, he or she risks facing disciplinary investigation.
4. **Environmental and public health information of state agencies are not integrated** because the agencies overseeing environment and public health i.e. the Department of Pollution Control, the Ministry of Public Health, agencies overseeing industrial factories and workers' welfare (the Department of Industrial Works, the Industrial Estate Authority of Thailand, and the Department of Labour Welfare and Protection) have not integrated all the data and information that they produce.

Recommendations

1. On the legal side

- Issue additional notifications from the Official Information Commission regarding principles and methods on providing official information for public perusal in accordance with Section 9 of the Official Information Act B.E. 2540 (1997). It should be specified that official information on the environment and natural resources affecting public health must be available for public scrutiny. Moreover, the scope of discretionary judgment to be exercised by the Official Information Commission and by competent officials in relevant state agencies must be defined, especially in cases relevant to confidential state information.
- Amend Section 15 (6) by adding exceptions in cases where information disclosure serves the public interest, that is, on conservation of environment and natural resources, human safety and public health. With respect to information pertaining to these subjects, officials must be mandated to disclose information despite objections raised or consent not being given by interested private entities or by the owner of the information.
- Amend the Official Information Act B.E. 2540 (1997) and related laws, including the Organic Law on Prevention and Suppression of Corruption B.E. 2542 (1999) and the Organic Law on State Audit B.E. 2542 (1999). This would extend protection to officials who disclose information on corruption.

2. Policy aspects and guidelines for state agencies

- Disclosed official information should be in a format that can be easily understood by an average person. The information should not be complex technical data. In some cases, it should be made available in the local dialect or foreign language(s).
- Official information should be communicated through a variety of dissemination channels and local media that are readily accessible by local communities, such as community radio and village announcement systems.
- Concerned state agencies should create databases that link environmental data to the public health data of local people, and analyse such information holistically for dissemination among the general public in a timely manner. Information accessibility should be aimed at enabling the people to participate in state agencies' decision-making in order to promote the public participation principle. This could later be developed to become general public policy.
- The state sector must foster collaboration between the business sector, civil society organisations, and local administrative organisations to work together in the preparation and dissemination of information, as well in the establishment of communication systems in local communities. The aim is to build up knowledge and awareness among the people, thereby enhancing mutual trust and rapport. To achieve this, the state should provide financial support through the Environmental Fund on a continuing basis.

Participation in Decision Making

General situation

Evaluation of various case studies points to the problem of superficial understanding within the state sector, and of the concept of public participation. Participation activities are merely conducted to fulfil legal requirements, and the state sector does not, in essence, recognise the importance of the participation process.

The 2007 Constitution states that for projects that might cause a serious impact on the quality of the environment, natural resources, and people's health, a process of hearing out stakeholders' views must be instituted before the projects are initiated. However, putting these provisions into practice requires further time to develop appropriate mechanisms for dialogue and consultation. The public has not yet participated fully at the level of decision making, operations, monitoring, and implementation of projects. In many cases, it was found that people only accessed partial and incomplete information, subject to what the state had determined to be information they should receive. Examples can be seen in the cases of water management in the Eastern provinces, asset capitalisation policy, negotiations on FTA, and development of a special tourism zone on PP Island.

Furthermore, state agencies do not collect evidence to show that opinions and recommendations acquired from public hearings have been used in the decisions made by the government and state agencies. It is crucial to note that most public hearings are held after some major decisions had already been taken. Examples include decisions about a project site, land purchase, design of a power plant.

In most cases, those who can participate in state-sponsored activities are from the private sector, especially from large businesses. Small farmers, the poor and marginal people, who normally do not have bargaining power, have little chance to access state-sponsored activities, as seen in the cases of solving water shortage in the Eastern provinces, negotiation on FTAs, the Songkhla-Satun deep-sea port project, development of special zones on PP island, and privatisation of EGAT. These reflect asymmetry of information between the state sector, project owner, and civil society and disparity in the state-sponsored participatory process.

Research findings

Based on the case studies, it can be seen that there are problems arising from a lack of congruence in the legal system and structure. While civil society have been more active, demanding civil rights, and wanting to engage in joint environmental management at all levels, state agencies still adhere to the original legal framework of their organisations or to second tier regulatory laws which contradict the 2007 Constitution for not recognising the rights to participation. Since the state and civil sectors are using different legal frameworks for reference, this has led to, in many cases, conflicts between them.

Furthermore, the sole focus on legal justice in the letter of the law while neglecting fairness or social justice can create problems. For example, the law might rule that opinions be sought for a project or that a project of a particular size would need an environmental impact study. What tends to happen is that some agencies do not carry out the studies for projects not covered by these legal prescriptions, claiming they are not mandated to do so, even though not doing so would lead to social injustice.

Recommendations

A vital issue that should be considered is how to ensure that constitutional provisions are actually put into effect. To address this issue, it is also imperative to have a number of supportive structures, systems and mechanisms as follows:

- Prescribe that such constitutional provisions are enforceable immediately without having to wait for organic laws to be enacted
- Draft a "Public Participation Act", of which the scope covers the complete cycle of policy or project
- Establish an "independent environmental organisation," which is tasked with forming opinions and recommendations on public policy and projects. It is to be a mechanism which formally recognises public participation and has a legal status.
- Establish a "public fund for public participation" to be an integral part of the process of public participation.

Access to Justice

General situation

A key intention of the Thai Constitution of 2007 is to enhance rights, freedoms, human dignity, and equality of the Thai people. These values are enshrined in several sections and the Constitution also prescribes the formation of pertinent organic laws. Moreover, the Constitution also mandates the establishment of independent bodies to monitor and scrutinise various issues and safeguard civil rights and liberty, such as the Office of National Human Rights Commission and the National

Economic and the Social Development Board. Additional judicial bodies are also prescribed, such as the Constitutional Court and Administrative Court.

Such provisions seemed to signify a new beginning whereby the Thai people would receive more justice in the area of environmental management than in the past. However, if we look at the aspect of transforming the provisions or aspirations contained in the constitution into reality, many problems can be found. For example, there was a delay in the transformation of the Prime Minister's Office Regulation on Public Hearing B.E. 2548 (2005) to the Public Participation Act, which would expand the scope of public participation. Essentially, the Act would provide more opportunities for public participation in the complaint review process as well as making it possible to take more types of cases to a court. Other issues include transparency (a) in the dissemination of accurate and clear information to the general public on considerations on complaints and lawsuits, equality of access to the justice system, and (b) in the court's neutrality, independence of independent bodies, the exercise of judicial power, and the problem of integrity of the court's judgments.

Research findings

On the law

Most of the content of relevant laws clearly define the scope and responsibilities of agencies and organisations that handle complaints and appeals. However, such laws require improvement on the determination of time frame to finish trial proceedings. Additionally, there are ambiguous definitions of certain provisions in some laws, thereby requiring a wide degree of discretion by those involved in deliberation. For instance, in the case study on the appeal filed to challenge the order that withheld information on examination of infectious diseases in chicken, the Official Information Act does not prescribe which type of information can be disclosed to the public and which must be withheld and on what grounds. As a result, disputes arose between officials in charge of the information and people who wanted it. Eventually such disputes led to a lawsuit and appeal.

The Administrative Court Establishment and Procedure Act B.E. 2542 (1999) addresses capacity building of the people; however, the law does not specify which agencies to provide technical assistance or other support to develop capacity of local administrative organisations and the general public.

On Efforts

The Administrative Court does have sufficient provisions that ensure independence and impartiality whereas similar provisions for the work of the Information Disclosure Scrutiny Committee are limited. Since information regulatory bodies are under the supervision of the government, they have less independence than the Administrative Court, which is an independent body separate from other powers, having full authority to manage their mandate.

In most cases, complaint handling and delivery of judgment procedures are transparently conducted within a suitable period of time. This can be seen in the following cases: the dispute between state officials and protestors of the Thai-Malaysia gas pipeline project; the opposition to the Royal Decree on Rights, Power, and Benefits of EGAT Plc. B.E. 2548 (2005) and the Royal Decree on Stipulation of Time Frame for Nullification of the Law on the Electricity Generating Authority of Thailand B.E. 2548 (2005); and the appeal of the order to withhold information on examination of infectious diseases in chicken.

With respect to attempts by state agencies accepting complaints and appeals to create a condition of equity and equality, it was found that they have tried to put in place measures to enhance justice and equal treatment for some minorities and disadvantaged groups, including women, children, the elderly, the poor, ethnic minorities with non-Thai mother tongue, and illiterate people. However, the disabled and foreign migrant workers are not given equal treatment in terms of accessing the justice system. This is because in some areas of the country, the offices concerned lack facilities and do not have measures in place to cater for the special needs of the disabled. In addition, the current form of public information is not oriented towards ease of understanding by disadvantaged sections of the population, especially the disabled and ethnic minorities.

On effectiveness

The committees or organisations in charge of handling complaints and appeals **do respond effectively to people's request for justice;** that is, the results of adjudication are implemented rigorously. Staff in the state agencies and civil society organisations have performed their tasks in supporting the people quite well, in all stages of the judicial process; i.e. facilitating their complaints, helping the people to participate by arranging for them to listen to judgment by the court, and dissemination of news and information. Although civil society entities tried to help people access justice, they are as yet not strong organisationally and do not sufficiently network for combined strengths. The result is that their staff have not undertaken adequate capacity-enhancement training, resulting in less-than-ideal effectiveness of their work.

Strength and Challenges

1. The existing laws do facilitate access to the justice system by litigants, specifying the scope and authority of the agencies tasked with receiving complaints and appeals in a complete and clear manner, providing sufficient opportunities for damaged parties to file complaints.
2. Agencies in charge of handling complaints and appeals do make efforts to alleviate the financial burden of litigants and provide alternative channels for complaints. Measures to create equity and equality in access to justice by minorities and the disadvantaged have also been instituted.
3. Laws determining power and responsibilities of committees and agencies receiving complaints and appeals must clearly prescribe independence and impartiality in deliberation of cases and also open up opportunities for the people to participate at every stage of the justice delivery process.
4. In many environmental court cases, it is difficult to find the defendants or perpetrators, and often negative impacts arise only after a period of time has passed. Also, deliberation and correct judgment have to rely on specialised knowledge and expertise, and therefore at times the court-sponsored mediation process is stalled. Thus, the steps to be undertaken in the court enquiry process must be clearly spelled out. Capacities of local agencies and local people must be developed, so they would acquire knowledge about laws relating to the environment and are able to participate in investigations of violations of such laws.

Recommendations

1. In enacting legislation, clear definitions of terms and details on their application are needed in order to have more transparency and develop a standard to guide action, including a clear definition of "environmental cases", without having to rely on the judgment of those in authority or power. Moreover, organic laws that are in accordance with the intention of the Constitution should be enacted, specifying the power and responsibilities of committees

and organisations charged with receiving complaints and appeals, as well as stipulating their independence and impartiality in adjudication.

2. Publicise rights that are available to the people including legal rights. Publicise the process of accessing the justice system to exercise these rights.

3. Create opportunities for minority groups (including disadvantaged and marginal groups, and non-Thai language speakers) to better access the justice system. A policy should be set to assist and facilitate such minority groups in litigation matters and help them to attend case examination hearings.

4. Increase channels for complaints and appeals in order to achieve a higher level of equality and comprehensiveness. Decrease the delay in case examination and adjudication and cancel court fees for litigating environmental cases.

5. Devise a policy on developing capacities of people involved in environment matters in an integrated manner to ensure that agencies accepting complaints and appeals, local administrative organisations, and civil society are able to work together to develop capacities in the agencies and among the general public.

6. In order to build a litigation process that covers solving the problem at the source, the definition of "the damaged party" should be broadened, and opportunities should be opened up for the public to file cases in court where damage to natural resources or the environment is anticipated or expected. In other words, litigation should be possible without having to wait for damages to occur before filing.

7. Establish an environmental court to meet a growing number of natural resources and environmental conflicts so that damaged parties can access justice in a timely manner.

Vietnam

Country Report: Vietnam

Background

After the struggle for national independence, Vietnam has focused on national construction and development. Since 1986 Vietnam has implemented a comprehensive renewal to transform the centrally planned economy to an economy operated in line with market mechanism with socialist orientation. The successful implementation of the Strategy for Socio-economic Stability and Development in the period of 1991-2000 brought Vietnam into a new period of development. In 15 years, from 1990-2004:

1. The GDP of Vietnam nearly tripled, with an average GDP growth rate of 7.5% per year.
2. The ratio of poor households decreased from 58% in 1993 down to 24% in 2004, as domestic sources of development were strengthened.
3. International economic relations, especially in terms of trade and foreign direct investment continued to be expand.

Vietnam is currently striving to implement the Strategy for Socio-economic Development for the period of 2001-2010 to bring the country out of underdevelopment status. Poverty reduction and sustainable development are cornerstones of national development policy.

Despite this progress, Vietnam faces many difficulties and challenges, especially concerning natural resources and environmental issues. The uncontrolled and unplanned exploitation of natural resources is leading to serious environmental degradation. Environmental pollution is also increasing with some serious cases arising. Vietnam is now making its best efforts to fulfil the Millennium Development Goals, and ensure more sustainable development. The government of Vietnam is a signatory to the Rio Declaration, including Principle 10, the action plan of the Rio Summit in 1992 on Environment and Development and the Johannesburg Declaration, which reaffirmed the Principle 10 of the Rio Declaration and the plan to implement Johannesburg Summit's commitments in 2002 during the time of the Summit. Vietnam is among the first countries to adopt National Strategy for Environment and Sustainable Development (1991-2000) and to identify at national level the strategic orientation for sustainable development. Furthermore, the revised Law on Environmental Protection approved in 2005 and the Law on Biodiversity approved by the National Assembly in 2008 also affirm the access principles.

Vietnam's active engagement with these global governance processes highlight the country's commitment to the access principles embodied in Principle 10. With 54 officially recognised ethnic minorities and diverse natural ecosystems, Vietnam's key challenge is to retain its economic performance, making necessary adjustments to ensure that the social and environmental outcomes of development are optimised. One main thrust towards environmentally sustainable and socially acceptable development outcomes is seen in the great importance that Vietnam has attached to community-related solutions to environmental problems.

At the same time, the Vietnamese Government is carrying out a comprehensive program of public administrative reform that emphasises greater accountability of government agencies, and the reorientation of the institutional culture to be "for the people" and to be more responsive to

people's needs. This reform program also affirms the importance of people's participation, and the need for transparency in planning, decision making and implementation, including in matters related to environmental protection.

Process of TAI assessment in Vietnam:

In 2006, Vietnam conducted the first assessment of access rights following the TAI methodology. The Vietnam Association for Conservation of Nature and Environment (VACNE) led the assessment, mainly sponsored by the World Resource Institute (WRI), with active involvement from TEI and IUCN Vietnam.

In April 2006 the Vietnam TAI Assessment Team was formed, with more than 40 participants from 14 different organisations trained in TAI methodology. Members of this team included leading professors, doctors, engineers as well as specialists with good English command and computer skills. At the same time, the Vietnam Association for Conservation of Nature and Environment (VACNE) set up a technical support group, members of which were trained by Thai experts to master TAI method and to provide assistance to research groups during the process of assessment. Twenty case studies were selected for the assessment.

Case studies for the TAI Vietnam assessment

No	Case type	Title of case study
Access to information		
1	Environmental incident	The harm caused by waste import in 2005 and 2006
2		The loss of a box containing radioactive substance in Hanoi, June 2006
3	Air-quality monitoring	Ho Chi Minh City's Air-quality monitoring Network
4	Water-quality monitoring	Water quality in the Nhue River valley
5	Industrial facilities compliance records	Payment of wastewater fee of the Trung Thu Weaving and Dying Company
6		Compliance with environmental standards of the Binh Minh Construction Pottery Factory
7	Environmental Status report	Public announcement of the annual environmental status
8		Public announcement of environmental data
9	Other	Pesticide residues on vegetable at Hoang Mai district, Hanoi
10		ODA projects designed for the Program of water supply and environmental sanitation for small cities in 2005-2012

Public participation		
11	Policy making	The national strategy for environmental protection to the year 2010 and the orientations to 2020
12		Vietnam's Biological Diversity Action Plan (BAP) after 2005
13	Regulatory decision	The revised Environmental Protection Law
14		The Decision on strict dealing with facilities causing serious environmental pollution
15	Decision making at project level	EIA report of the Ho Chi Minh National Highway project, the section passing Cuc Phuong National Park
16		Hotel construction project on Vong Canh hill, Thua Thien Hue
Access to justice		
17	Denial of the right to information	Overview of the handling of issues relating to the community's access to justice in case of denial to environmental information
18	Denial of the right to participation	Overview of the handling of issues relating to the community's access to justice in case of denial to participation in environmental protection activities
19	Environmental damages/impact	Unsatisfied compensation for environmental damages caused by the Pha Lai I Thermo-power Plant (early 21st century)
20	Claim for non-compliance	The suit against the Urban Environmental Company with environmental protection requirements in the Nam Son Dumping Ground

Thus, the assessment provides a broad picture of the environmental access rights in Vietnam, exploring a wide range of issues involving the diverse stakeholders.

Legal Framework:

General Situation
The legal framework in Vietnam provides solid coverage of most all aspects of access rights as mentioned in the Principle 10 of the Rio Declaration. The basket of laws provides regulations to support public access to adequate and comprehensive environmental information, access to justice, and also ensuring public participation in decision-making process in the field of environment. There are also many regulations relating to capacity building, and the responsibility of the state to provide support to the public to participate in environmental protection activities.

As the highest law in the country, the Constitution of the Socialist Republic of Vietnam of 1992, amended in 2001, sets out the most fundamental framework defining people's rights and forms of participation in decision making. Several basic provisions lay the groundwork for the access principles provide that 1) citizens have the right to healthy and safe environment, 2) citizens are entitled to information, 3) the State has responsibility to develop information, 4) citizens are

entitled to participate in the State's management of social matters, including discussion of matters of public interest and making recommendations to government agencies, 5) citizens have the right to claim for damages and compensation, 6) citizens have freedom of speech and association.

Specific legislations thatfurther elaborated these basic principles have been developed.

	Constitutional provisions	Specific legislation
Access to Information	Citizens have the right to have access to information State has responsibility to develop information	Law on Environmental Protection (2005) Law on the Press (2005) Law on Access to Information (under development)
Public participation		Law on Environmental Protection (2005) Government Decree on Organisations, Activities and Associations (2003)
Access to justice	Citizens have the right to enjoy a healthy and safe environment The public has the right to justice in claim for damages and repairs	Law on Environmental Protection (2005) Civil Procedure Code (2004) Civil Code (2005) Law on Organisation of the People's Court (2002)

Research Findings

As shown in the table above, legislation governing all areas of access is in force in Vietnam. However, aside from the pending Law on Access to Information, legal instruments specific to the access principles are lacking; citizen's rights are instead distributed across a number of laws. One major weak point of this framework is that the laws do not have clear stipulations binding the state agencies to provide timely information to the public, to provide technical support, guidance and training for public access to information and justice. Additionally enforcement of laws remains highly problematic. Furthermore, the details of the scope and mechanisms through which these rights are implemented or asserted are not often clear. For example, how the public can access information from state is not specifically spelled out, nor is the scope of what type of information shall be available.

Recommendations

The legal system should prioritise the development of more specific regulations on procedures of information provision to the public, the development of environmental information systems for the public, guiding and training the public on how to access information and appeal regarding the environmental issues. In order to facilitate implementation, there is a need for clear guidelines on how the public can easily and effectively approach the authorised judiciary bodies, including the

courts, to pursue environmental concerns. Furthermore, enforcement of existing legislation needs to be strengthened.

Access to information:

General Situation

With a Law on Access to Information currently under development, the issue of information has become an important public interest issue that is being taken seriously by the government. A combination of factors is driving the effort to secure clear rights to access information. As observed in many countries around the world, fast rates of economic growth bringing increased levels of material prosperity have been accompanied by other environmental and social problems in Vietnam. With high levels of education, citizens are becoming increasingly aware of the need for information to make full use of the legal framework and instruments of the country and protect themselves by drawing on the channels of recourse provided. This momentum is supported by the media, which has used environmental issues to broaden its capacity and mandate in highlighting environmental and social issues. The parallel development of civil society organisations is another contributing force in the advancement of access to information in the country. However, much remains to be done before a solid framework and reliable and transparent processes are sufficient to guarantee the necessary access to information.

Research Findings

The assessment findings show that the Vietnam's laws are supportive of public access to information, such as, the right to get adequate and comprehensive access to related information and to require authorized agencies to report and publicise this information. Environmental information is provided to the public free of charge. The role of the mass media, as well as civil society organisations and local government agencies in supporting public right to information has been identified during the assessment as being very valuable. The Law on Access to Information provides broad support for public access to information. For example, the Law ensures that the public can access to all relevant information, which must be provided by responsible government agencies through efforts to report and disclose information.

The case study on access to information on environmental emergencies highlights some of the key issues. Despite the high level of public interest that is usually associated with environmental emergencies, the current legal provisions are not specific or sufficiently detailed to control many of the risks that can cause emergencies. Violations relating to imports of waste and failure to require management agencies to disseminate emergency information in a timely manner, for example, raise the risk of populations vulnerable to environmental emergencies. However, the media play a critical role in reducing some of this risk by providing information on the imports of waste materials and leakage of radioactive materials. Media also provide information on environmental quality, such as water quality in the Nhue River, where industrial pollution has become an acute problem for local communities.

The formation of networks to facilitate the production and dissemination of information has emerged as an important way of informing the general public of environmental conditions. For example, the Ho Chi Minh City Air Quality Monitoring Network and the National Environmental Monitoring Network have made significant contributions in the area of air and water quality

monitoring, conducted continually to provide a basis for public understanding and awareness of the issues.

The case studies also show that access to information depends on the government agencies responsible for training staff, developing information systems, and providing training and information to the public. Levels of knowledge and awareness within the general public and private sectors are also crucial. Furthermore, capacity, awareness and commitment at the level of local governments have a large impact on the degree to which the public can access information. In practice, many of the case studies conducted in Vietnam show that information often fails to reach the public in a timely manner and in adequate details. Government agencies' facilitation of access to information is insufficient, due to a lack of financial and human resources and technical expertise; this problem is particularly serious in remote and mountainous areas.

The responsibilities of state agencies in providing public access to information are not spelled out in legally binding regulations. The case of environmental emergencies is one area particularly lacking in this regard, which has resulted in serious impacts on people's lives in some of the incidents documented in the case studies. Weak regulations in state information provision to the public also mean that private sector actors are more likely to avoid or break the law, because public awareness of their actions is low or non-existent.

Strengths and Challenges

The Vietnamese assessment exercises found that state agencies at the local level may be one of the most promising channels in providing high-quality environmental information to the public. Local government agencies are seen to be especially well-placed to lead the way in monitoring conditions and changes in the local environment.

The largest challenge faced in the implementation of the law is the absence of a clear and rational roadmap for relevant agencies to disseminate information to the public, as demonstrated in almost all the case studies on access to information conducted here. Furthermore, the law has failed to clearly stipulate the government's responsibility in providing technical support, instructions and training on public access to and use of information, as well as the building of technical infrastructure to support public access to information.

Recommendations

The current laws should be completed by concrete provisions stipulating the state agencies to ensure the public access to information and to provide timely information to the public, especially in emergency cases. The enforcement of these laws should be strengthened. Furthermore, the public should be provided more training and instruction regarding the procedures for to access to environmental information and the skills needed by communities to use these procedures.

To this end, it is imperative to build more specific regulations on the conditions for exercising public access to information into the legal instruments, such as:

1. Developing detailed plans for requiring agencies to provide necessary information to the public
2. Stipulating and elaborating requirements for training, instructions, and technical assistance on access to information for public employees particularly at local levels of government

3. Develop detailed regulations for obligating feedback from relevant organisations and individuals to public comments

Participation in Decision Making

General situation

There are many pressing environmental issues facing Vietnam in different settings across the country, such as degradation and pollution of environmental resources. Line agencies involved in environmental governance in particular, and the government in general, have made many efforts in environmental protection but some fields and sectors have not shown marked improvement, largely because some policies and measures of the government are not in line with reality, responsive to people's development needs, nor easily understandable to the general population. Widely engaging the public in environmental policy-making is therefore very important to ensure the success of the government's efforts to improve environmental management.

Public participation in Viet Nam is based on principles of commitments from both the state and the public. According to the Grassroots Democracy Decree of 1998, the mobilisation of the public in environmental protection, is based on the principle "the people know, do, discuss, and check". This has provided what is considered to be a successful model of communities' participation in environmental protection in Vietnam. For instance, in the field of environmental impact assessment, building on the Law on Environmental Protection 1993, the Law on Environmental Protection in 2005 and the following Decree No 80/2006/NĐ-CP of the Government have very clear and strict regulations on community involvement. The (former) Ministry of Science, Technology and Environment and now the Ministry of Natural Resources and Environment continuously signed joint resolutions with mass organisations-including the Vietnam Fatherland Front, Vietnam Farmers Association, Vietnam Union of Science and Technology Associations, Ho Chi Minh Communist Youth Union and many other non-governmental organisations on contents related to public participation in environmental protection.

Research findings

In principle, the legal framework provides support for public participation in decision making processes. However, in practice, implementation is weak. For example, the Environmental Protection Law does not define clearly what is meant by "the public". Public participation mainly constitutes three main elements: involving the local government administration, stipulating that any organisations or individuals can raise their concerns regarding certain policies or projects, stating that relevant governmental agencies must respond to these concerns.

There have indeed been several cases of NGOs or mass media raising concerns over environmental harm and public health, with the government responding by halting, relocating or making major adjustments to the projects. In terms of high impact projects, the Vong Canh Hotel project in the province of Thua Thien-Hue and the highway project in Cuc Phuong National Park are good examples of how consultation, public feedback and input, and involvement of the media were able to change the directions of development projects, resulting in better environmental and social outcomes. Both of these drew upon the Prime Minister's Decision on Penalisation of Facilities Causing Serious Environmental Pollution, which had been broadly publicised by the media. This decision, with support from the media and other actors, has shown its effectiveness

in providing the space for public input into projects. Thus, the legal framework addresses many of the needs of public participation, with considerable emphasis on ensuring that the state fulfils its responsibilities to the public, and on strengthening the capacity of the public to participate.

The law also has regulations on consulting the community while conducting the environmental impact assessment and strategic environment assessment for development project, although the Vietnam assessment found that government agencies generally do not organise or implement public consultation well. This weakness includes failure on the part of line agencies to assist communities in accessing the necessary information, and general weak support from local government to local communities. The time given for obtaining feedbacks from relevant communities to governmental policy documents is too short, which reflects the fact that the procedure is poor and in some cases relevant agencies might not be serious about getting community feedback. The state does not allocate sufficient budget in support of public participation, for keeping well archives of records and files during the development and amendment of policies as well as for creating favourable conditions for the public to access this type of information.

Strengths and Challenges
As mentioned above, the role of the media has emerged as one of the strengths in raising the profile of areas in need of public participation in decision making. With limited access to information, the public often faces serious difficulty in participation. However, when the media are able to offer timely and high-quality information, a major bottleneck to public participation can be removed, resulting in the solution of environmental problems.

The most urgent challenge to improving public participation in environment-related decision making is poor performance of government agencies in engaging with stakeholder groups. These efforts tend to be limited in scope (of discussion, representation and integration into decision making processes), poor planned and not well coordinated. Meaningful engagement, particularly with disadvantaged groups in society, must be achieved in order to empower the public in influencing decisions that potentially affect them.

Recommendations
The government should move public participation forward to the next step, by elaborating more detailed and clearly defined processes to guide engagement with the public. This should take into consideration the need for special ways to reach disadvantaged social groups, such as women, the poor and people located in remote areas.

Given the success of the mass media in empowering the public in decision making through information provision, the conditions for the media's role in the discussion of environmental matters should be improved. At the same time, enhanced mechanisms for the involvement of non-governmental organisations in discussion and decision making should be created.

Access to Justice

General Situation
Access to justice, particularly in environmental issues, is a very new issue in Vietnam. There is virtually no precedent for lawsuits concerning the lack of rights to environmental justice in general, or the denial of rights to participate in environmental protection activities. There have, however, been cases against companies that have failed to observe environmental regulations and laws, and cases demanding compensation for groups that have been adversely affected by an environmental change stemming from industrial activities, for example. This study has uncovered that many complaints are located in residential areas adjacent to industrial zones, and tend to involve thermal electricity generation facilities, below-standard waste dumping facilities and factories producing harmful chemicals such as pesticides. This means that recent developments in access to justice are closely linked to concerns for public health and safety, and it is not surprising that local communities are often the first to detect environmental problems.

Research Findings
The laws have clear and detailed provisions on publicising information concerning complaints on environmental issues. However, the current Vietnamese legislation does not clearly stipulate the people's right in proactively accessing information. The definition of confidentiality is also unclear, thus creating obstacles to public access of information from state agencies. Confidentiality can be misused by government officials to deny public access to information and participation. On the other hand, the awareness of the public on legal matters is still low, which means that citizens are not confident in pursuing the legal process in cases in which their right to access to information is denied.

Responsibilities and procedures under the law remain unclear. Importantly, the law does not clearly stipulate the people's right to demand information or procedures to protest against environment inspectorates' decisions. Furthermore, the responsibilities of government agencies in providing information to the public, maintaining material facilities to compensate and minimize environmental damages are not elaborated. Nor are there clear procedures to file for compensation for environmental damages. Other provisions requiring the government to take a proactive position in facilitating access to justice are lacking. The laws also do not stipulate clearly responsibilities of the government agencies to provide technical assistance, guide the public in using judging councils, and assist with filing complaints for damages caused by environmental pollution. Judges have not been trained on environmental issues.

Environment inspectorate is currently the unit with the function to handle complaints and requests for environmental damage compensation, yet it has insufficient authority and capacity to make decisions independently. When production units and businesses do not comply with environmental regulations and cause environmental pollution, directly affected people living in surrounding areas, are often the first who detect the violation. Even when it functions, the effectiveness of the environment inspectorate can be low. For example, for many years Pha Lai I Thermo-power Plant has caused environmental pollution affecting the local people in some communes of Bac Giang and Bac Ninh provinces. The people complained to environment inspectorates, demanding compensation for damages. The inspectorates reviewed the case and requested that Electricity of Vietnam compensate for the damages. However, the people found the outcome to be unsatisfactory. For example, the compensation might not be awarded at the expected level, the plant continues to operate with pollution, or full compensation is avoided. In any case, these demonstrate the limits to the authority and effectiveness of the environmental inspectorate.

One other problem is that claimants have no right to choose their court. In this case, pursuant to the law, only the people committee at provincial and district level have the authority to handle

the case. Another weakness is that the people may not trust the judgment of the ruling court. For example, although the inspectorate determined that the Viet Thang Company, a producer of pesticides in Bac Giang province, was not causing environmental pollution, the public continued with the lawsuit. This shows weaknesses on both sides. The inspectorate has limited capacity to establish a case demonstrating that the company is responsible for the pollution. The people themselves often refuse to accept the findings, or do not trust the inspectorate because of suspicions that it will take the side of the company. If the inspectorate was a more powerful and capable institution, and people had a better understanding of the procedures of the protectorate, this type of problem could be reduced or eliminated.

The case studies show that access to justice depends on the qualification and capability of the claimants as well as the staff from relevant agencies, judging councils or courts accepting the lawsuit. The law has no specific regulations on public access to justice, and the government does not pay enough attention to supporting public capacity building; therefore, in many cases, the public does not know how to use their right to access justice to protect their legitimate interests. At the present, through the training courses organised by environment management agencies and via mass media, the public has more and better information on their rights to access justice, as well as how to approach judging councils for complaints.

Strengths and Challenges
The prominent role played by both the media and civil society organisations is one of the strongest aspects of the current situation of access to justice. As was seen in previous sections, the influence of these organisations is to link information with participation, thereby empowering stakeholders. In the area of access to justice, a similar situation is observed, where publicising environmental damage and supporting efforts to use the legal system, even with its flaws, contributes to a stronger position of those in the position of having sustained damages or losses.

There are two main challenges in terms of making concrete progress on access to justice. First, the costs of filing claiming compensation for environmental damages are paid by the claimants and often higher than they can afford. In Vietnam, there are no independent organisations to support claims for compensation for environmental damage. Second, capacity within the system is weak, on both sides of the table. There are no government programs to build capacity of the public, especially the disadvantageous groups, to use their right to lodge complaints to the court system. On the other hand, the law has no specific requirement of capacity building in field of the environment for members of judging councils, meaning that the quality of decision making within the justice system is rather low.

Recommendations

The current legislation should be supplemented by regulations to ensure public access to justice, especially with regards to procedures for people to file protests and complaints against environmental harm and damage. Particularly:

1. More authority and capacity should be given to the environmental inspectorate to handle demands for environmental damage compensations. The enforcement of laws should be also strengthened. This will require further strengthening of the government agencies involved–ranging from specific expertise in the relevant procedures to enhanced understanding of environmental issues–and focusing perhaps on judgment councils at all levels.

2. To improve public access to justice, there is an urgent need for raising awareness of people on legal matters in general and on their rights to make legal appeals about environmental issues when their legal rights relating to the environment are violated.

Capacity Building

General Situation
The importance of capacity building has been a part of much of the preceding discussion of access principles in Vietnam. The needs for capacity building are very high, within both the government sector and the general public. The presence of a legal system and procedures is an important starting point, but without the awareness and skills needed to use it, the situation of access to justice is unlikely to improve significantly. The lacking skills include procedural skills and awareness of rights, not to mention expertise in environmental issues.

Research findings
The laws are supportive of capacity building for the staff of central government agencies on environmental information and public participation in decision making processes affecting the environment. There is also support for local government agencies to participate in decision making processes concerning the environment. However, in practice, the state's efforts to encourage and empower the public to collect environmental information and use their right to justice are still weak, and efforts to build capacity in this regard are haphazard. The relevant laws also have provisions to allow civil society organisations and mass media agencies to strive for financial independence in their activities. This is important because it is recognised at the same time that civil society organisations must play a central role in educating the public about their rights in accessing justice.

The extent of capacity building depends on the expertise of the ministries and sub-national offices. State agencies working in environmental issues are relatively well-trained in the environment, but yet to gain familiarity and expertise in access to justice. On the other hand, personnel of the judicial agencies are well-trained in access to justice but possess insufficient knowledge on the environment. Apart from this, as environmental issues often span a number of institutional mandates, staff are not well-trained in collaborative approaches to management and problem-solving.

Strengths and Challenges
The case studies have identified several examples in which capacity building has been successful in specific sectors or areas of specialty. For example, central-level government managers, facilities possessing radioactive substances and customs agents at ports have been provided with regular training on regulations for the management of imported waste and radioactive materials. This has increased their capacity to carry out preventative measures and react quickly to remedy incidents. This is one approach to building the capacity of multiple stakeholders involved in common issues of environmental management.

Other challenges are formidable. Capacity is low across the board, and will require sustained efforts in building both procedural and technical expertise, not to mention awareness raising within both the government and the general populace. It will be important to simultaneously raise the government's commitment to providing support, resources and know-how to stakeholders and increase the role of the media and civil society organisations in building the capacity of all sectors.

Recommendations

When capacity building is carried out in the state management agencies at the central level, the policies, strategies and laws on environmental protection have performed relatively well. Furthermore, state management agencies at local level are closer to production and the people, and have provided good support to public access to information and justice. Investment in mass media has also enhanced its role in ensuring the flow of information and opinions. However, training has not been done comprehensively at all central levels and is still lacking for local staff, journalists and reporters. In addition, a lack of state support for NGOs has reduced the effectiveness of efforts to mobilise public participation at local and grassroots levels. Thus, the findings of this study recommend that:

1. The current laws should be complemented with concrete provisions to increase human, physical, and financial resources of state agencies committed to environmental management, especially those at the local levels.

2. Knowledge, skills, and procedures pertaining to access to information and the public right to appeal should be strengthened among all local and central stakeholders.

Conclusions and Recommendations

According to the assessment, Vietnamese laws have covered all aspects of access rights as mentioned in the Principle 10 of the Rio Declaration to a certain degree. Specifically, the laws have regulations to support the public access to adequate and comprehensive environmental information, to justice as well as the public participation in the environmental decision-making process.

In practice, local state agencies, civil society organisations and especially media agencies provide good support to the public on access to information, access to justice and participation in environmental protection activities. In all cases, environmental information is provided to the public free of charge. The procedure of handling complaints relating to environmental issues is transparent and with no threat from any related parties.

The priorities for the legal system should be to release more specific regulations (a) on procedures of information provision to the public, (b) on the development of environmental information system for the public, guiding and training the public on how to access information and appeal regarding the environmental issues, and (c) on facilitating the public to easily and conveniently approach the authorised judging bodies, including the court. This entails an ever-more active role for the government in empowering the public to understand and use its rights. It means moving beyond simply providing a framework and set of tools, to actually encourage people to actively seek access to the information, decisions and justice that they require.

The case studies have pointed out serious shortcomings. These include weak implementation of the public rights according to legal stipulations in practice and inadequate attention from the state agencies' public capacity building in accessing information. The state agencies' efforts to mobilise public participation are neither comprehensive nor well planned. The procedures for public consultation are largely ineffective and remain out of the grasp of disadvantaged groups, such as women, the poor, and people in remote areas. Budgetary resources and supporting information are not sufficient to enable the public to make demands based on their access rights.

One are in which progress has seemed to move quickly is that of access to justice in environmental emergencies. Combinations of civil society, community and media efforts to identify, publicise and make claims for environmental damages have been successful in several cases. This is a promising area for future monitoring from the research and lobby communities, because the issues are closely related to public health and safety. Moving into the future, the focus should be on the continued low quality of guidance provided by state agencies to the public on using their rights to get access to justice. Furthermore, the mechanisms for compensation for environmental damages are not yet effective but could be improved with greater involvement of local stakeholders.

The government should focus its efforts to improve the legal framework on promulgating more detailed regulations concerning the development of environmental information systems in support of public disclosure, training and educating the public on access to justice rights and procedures for lodging environmental complaints. Clear processes to facilitate public access to competent agencies in charge of environmental issues, including the courts should be enshrined in the national legal framework.

Additionally, the state should generally enhance the conditions for mass media agencies and civil society organisations to participate in environmental governance, capitalising on the bridging role these organisations play between government agencies and the public on environmental issues.

Among many non-governmental media associations in Asia, there has so far been little consideration of whether they might benefit from joining the TAI coalition. Southeast Asian countries lie within the lower 30% of countries surveyed across the world for press freedom, illustrating significant pressures on the media (Reporters sans Frontiers[10], 2008). Strengthening the role of the media in improving access rights is a key to success. The TAI assessment in Vietnam points out the important role the media and environmental NGOs play in ensuring some degree of accountability. The Vietnam Forum of Environmental Journalists (VFEJ) is a member of the TAI Vietnam coalition, showing how effective collaboration with the media can help increase roles of NGOs recognised by the public and strengthen their organisational capacity to tackle more environmental issues (Accountability, UNEP and Stakeholder Research Associates[11], 2005). Furthermore, it is hoped that through secured partnership the mass media can help build NGOs advocacy to influence the full range of government decision making.

Besides the general recommendations raised above, specific recommendations to the Government are:

1. Delegate representatives to officially participate in the Partnership for Principle 10 (PP10) in order to promote the implementation of Principle 10 of the Rio-92 Declaration on Environment and Development.
2. Provide necessary conditions for government agencies and non-governmental organisations for continuation of TAI method application to conduct the assessment of community's access rights in Vietnam.
3. Include in current legal documents detailed provisions ensuring the right of the public to access information and justice; strengthen law enforcement; increase investment in human, physical and financial resources for state management

[10] Reporters San Frontieres (RSF), http://www.rsf.org/
[11] AccountAbility, UNEP and Stakeholder Research Associates 2005: The Stakeholder Engagement Manual

agencies concerning the environment, especially the local environmental agencies.

4. Set up a policy that strongly mobilises public participation at larger scale, especially disadvantaged groups such as women, the poor, and people in far and remote areas, in environmental protection activities; supporting and facilitating mass media agencies and non-governmental organisations in their activities.
5. Accelerate the guidance and training for the public on knowledge, skill and procedures to access environmental information and how to use the right of filing a lawsuit when the environment is damaged or their legal rights are violated.
6. Allocate an appropriate budget to set up environmental information systems and support public participation in environmental protection activities.

Full commitment to the access principles is fully in line with the government's program of public administration reform, and is gaining recognition as a necessary element of any strategy towards sustainable development. An environmental governance agenda that emphasises the implementation of access principles is mutually compatible with a development agenda that aims for greater transparency and responsiveness. The encouraging developments documented in the TAI Vietnam study highlight the high potential for exploiting synergies towards sustainable society.

Yunnan Province of China

Country Report: Yunnan Province of China

Background

The province of Yunnan in southwest China is positioned in a unique confluence of ecological, cultural, economic, and political forces. Although it is geographically on the margins of China, extending from Southeast Asia to the Himalayan foothills, it is of central environmental importance because its boundaries include the upper watersheds for the Mekong, Salween and Yangtze Rivers. Moreover, the mountains of Yunnan province are interwoven with a rich tapestry of ecosystems and people. Topographically, towering alpine peaks descend into temperate forest and tropical jungle, and further into majestic river gorges. Its topography and climate make it an important area for biological and cultural diversity and, therefore, a priority conservation area for China. The predominantly rural population of Yunnan is heavily dependant upon the natural environment for their livelihoods. Yet despite the wealth of environmental resources, the province remains one of the China's poorest region and upland populations with limited per capita resources and few assets. For instance, Yunnan province is ranked 29th out of China's 31 provinces in terms of household consumption expenditure in 2007.[12]

At the same time, economically and politically, Yunnan is a target of China's push to develop areas on the western frontier, and is thus poised for significant investment in new infrastructure, including roads and dams. This dual reality – the high biodiversity of the province coupled with the government's drive for development – positions Yunnan as a particularly critical area for initiatives to support good governance of natural resources and biodiversity. Adding to the pressing need for improved natural resources governance in Yunnan is its role as a link between China and neighbouring countries in the Himalayan and Greater Mekong regions. As development initiatives in the province will inevitably affect bordering countries through shared ecosystems and watersheds, Yunnan will need to establish and adjust to new relationships with its neighbours.

In recent years, the political space to address sustainable development challenges in Yunnan has begun to expand. The traditionally closed government is gradually becoming more open to external input to its policy-making process, both from a new community of independent public interest groups domestically, and from organisations located elsewhere in the region and abroad. The media have also begun to assert themselves as a player in raising public awareness of environmental issues and exerting social pressure for governance reforms. Strong central and provincial forces are driving a gradual process of decentralisation, but the atmosphere of tolerance remains fragile, and the boundaries of acceptable discourse uncertain. At the local level, while the trend is towards gradually reducing the restrictions on operations of civil society organisations, the Chinese government with its long history of centralised decision-making often views NGOs as dissidents, or as posing a threat to the authority of the state. Furthermore, local NGOs remain embryonic and have yet to build a secure niche. Persistent financial constraints, low institutional capacity and limited public awareness have hindered their growth.

Many previous and ongoing initiatives in Yunnan, however, have failed to address the need for a coherent strategy for improved environmental governance on a broad and long-term basis, as an in-depth analysis of the environmental governance landscape is absent. A systemic and accurate

[12] Source: Bureau of statistics of China, http://www.stats.gov.cn/tjsj/ndsj/2008/html/C0225e.htm

assessment is required to provide the environmental relevant information for the public, NGO workers and policy-makers.

In 2007, Thailand Environment Institute started to collaborate with the World Agroforestry Centre program to discussing the possibility of conducting the systemic assessment on Environmental Governance, applying the global methodology developed by The Access Initiative. Based on a number of case studies, it examines to the access rights of access to information, access to participation and access to justice. In January 2008, the Yunnan TAI coalition was built up by environmental NGOs and institutions, which includes World Agroforestry Centre China Program (as coordinator), Yunnan Institute of Environmental Sciences, Yunnan Academy of Social Science, Yunnan Environmental Science Society and Eco-Watch. Simultaneously an advisory panel was organised, consisting of environmental experts, government officials from environmental bureaus, university professors and lawyers who are professional on the environment. As the Regional Lead, Thailand Environmental Institute provides technical support to make this assessment happen.

The major components of TAI assessment conducted in Yunnan Province, China include the appraisal of the general legal framework and capacity building as well as eight cases in access to information, six cases in access to participation and four cases in access to justice. Four partners – Eco-Watch, Yunnan Institute of Enviromental Science (YIES), Yunnan Academy of Social Science (YASS) and Yunnan Environmental Science Society – carried out the case studies listed below:

Access to Information

- Paraquat herbicide accidents in Yunnan;
- Exploding accident of sulfur depot in the vitriol factory of Sanhuan chemical company.
- Air quality monitoring in Kunming City.
- Monitoring of drinking water quality in Songhuaba reservoir in Kunming.
- Noise quality monitoring in Kunming City.
- GMO information monitoring in Yunnan.
- State of Environment Report of Yunnan Province
- Environmental information of Yuntianhua International Chemical Company in Yunnan.

Public Participation

- Assessing public participation in decision making of Provincial Forestry Development Strategy.
- Public participation in the urban agglomeration development plan in south Yunnan.
- Public participation in environment protection decisions in eco-tourism policy in Diqing prefecture.
- Public participation in the Municipal Water Saving Ordinance of Kunming city.
- Public participation in the extension project of the second hospital of Kunming Medical College.
- Public participation in the environmental impact assessment of the construction of Honghe Steel Factory.

Access to Justice

- Pesticide residue information in food-claimed by people to the people's congress.

- Claim on the pollution accident of Longma Phosphorous Chemical Company in Xundian, Yunnan.
- Public's claim on the dam building on Salween River.
- Local residents' collective claim on old trees cutting by a company in Baiyu Village, Xishan District of Kunming.

Legal Framework

General Situations

The legal framework in Yunnan, province, China is well formed. In the constitution, it is clearly stated that the "people (citizens) own the power of state". "People have the rights to manage state affairs, economy, culture and other social affairs through various forms and mechanisms." People can excise state power through both the National People's Congress and the local People's Congress. The constitution has clearly stated people's rights that include the right to information, public participation, and justice. The clear commitments in the constitution provide a solid foundation and guidance for other laws and regulations as well as policy formulation so that public access to information, participation and justice has been ensured in the present legal framework. However, the precise scope and extent of access to information, participation and justice has not been defined clearly, and these rights are limited in some specific cases. Although the legal framework is well constructed, the enforcement and implementation of the law varies.

Research Findings

a) Access to information: In China, the Regulation of the People's Republic of China on Open Government Information clarifies the scope, means, time and procedure for releasing information. It also requires the government to take responsibility to reduce the transaction costs for access to information, improve the readability of information as well as to take special consideration of the needs of disadvantaged people (including those with speech and hearing impediments). Meanwhile, the law on Environment Protection specifies the requirements for regular preparation of the national-level and provincial-level Environmental Report.

b) Access to participation: the Law of Environment Impact Assessment clearly states the roles of organisations, experts and the public to participate in environmental impact assessment in appropriate ways. Other than 'confidential matters', public consultation has to be held for EIAs related to large infrastructure and other related plans. The scope for public consultation is also defined. Usually the local government decides when the environmental issues should follow a participatory process. The law also clarifies the qualification of EAI assessment team and person.

c) Access to justice: The constitution has clearly defined the private and public sectors' rights to participation for the improvement on justice and the scope for compliance. At the same time, a series of laws – "Law of Civil Claims", "Law of Administration Claims", "Law of Environment Protection", and Organic Law of the Courts – have all defined the scope and rights that ensure people's access to justice as well as how to deal with non-compliance. These laws also state the means, timing and procedures of dealing with civic claims.

Strengths and Challenges

Strengths

- Relatively clear and sound legal framework that builds a solid foundation and guidance;
- The Constitution and general laws support and ensure public access to information, participation and justice with regard to environmental issues;
- The Central government has a strong interest in improving legislation on environment issues.

Challenges

- Releasing information of environmental impacts from the industrial sector is not mandatory by law;
- There are no practical and specific mechanisms on legal support for public participation in decision making of environmental decisions and plans;
- Environmental claims and compensations are not well defined in the law;
- Insufficient support for disadvantaged groups to pursue their legal claims.

Recommendations

1) To improve legislation and law enforcement: Enforcement needs to be improved at different levels. There is also a need to improve legislation so that it can take disadvantaged groups, issues of compensation, mandatory information releasing into consideration.
2) To build up the capacity and various mechanisms to ensure meaningful public participation: Holding public hearings is the only way for public participation. But various other approaches (e.g. stakeholder platform, environmental forum) should also be developed with appropriate capacity building.

Access to Information

General Situation

Generally, the provincial government has put a great deal of efforts to improve information access through legislation, investment in information infrastructure, and encouragement of NGOs to engage in information sharing. According to the law, the government is required to publish information they have collected and make it available to the general public via convenient and accessible channels. Monitoring information about the environment, such as regular water monitoring and air quality monitoring is easily accessible, but is sometimes not so timely. Information about emergencies is also provided in a timely manner. Environmental impact information from facilities is also being collected and published. There are trainings and other activities for government staff and the public to enhance their capacity on information dissemination and accessibility. However, inadequate attention has been given to disadvantages groups, and specialised capacity building for both government officials and the general public on access to information is not adequate. Access to facilities' information has not been given enough support and the facilities tend to control the disclosure of information by treating it as "confidential". But often, the information simply does not exist as there is a lack of appropriate modern monitoring systems. CSOs' facilitation in public's access to information has not been somewhat limited, and capacity building for them is also lacking.

Research Findings

- Emergencies: Emergencies are a high priority, and the government has given special attention to releasing information for environmental emergencies. It has been clearly defined in regulations[13] as "Press Releasing Group (新闻发布领导小组) under the leadership of the Emergency Response Command (应急办), specifying various levels of emergencies (from the first level to the third) on the release of environmental information". This ensures that citizens receive timely and accurate information about environmental emergencies. There have been trainings and practical demonstrations on how to respond to emergencies. Media and various channels have been used in order to release information.
- The state's environmental reports: environmental reports at provincial and national levels have been produced annually. Free printed copies and also electronic copies have been provided to the public, with newspapers also helping to release the information.
- Regular monitoring and reporting: Regular monitoring includes the monitoring of water quality, air quality, noise, and water scarcity. This information is easy to access through the internet from the government's website. Regular monitoring information is also regularly reported in mass media, such as newspapers, television and radio.
- Facility-level reporting: The reporting of environmental impacts from the industrial sector is relatively poor in terms of accuracy and timeliness. While the government puts considerable effort into enhancing the information flow from the industrial sector, enforcement and implementation for small scale enterprises still require further improvements of the current environmental monitoring system.
- Emerging issues: Information relating to pesticides and Genetic Modified Organisms (GMOs) is not released to the public adequately. In particular, dissemination of information concerning the risks of pesticides has been hindered in one way or another. Civil society organisations play a crucial role in the process of information disclosure, while a majority of the authorities's work focus on the "Green label" farm product management system certification.

Strengths and Challenges

Strengths

- Government willingness to improve information access.
- Improved legal framework strengthens rights of access to information.
- Increasing levels of investment in information technology and capacity building (including internet based initiatives) and other types of information infrastructure
- Government provides more space for NGOs and the media to play an increasing role in improving information access.

Challenges

- Old attitudes about control of information remain entrenched within many parts of the government.
- The China's top-down political bureaucratic system and the Government environmental information disclosure system affect the information flows and timing of releasing. Much work is yet to be done to improve public access to environmental information.

[13] Source: Measures of Information Disclosure on Public Emergency Events of Yunnan Province, (in Chinese text), http://www.yndpc.yn.gov.cn/bgt_Model1/newsview.aspx?id=236905

- When confronted with what are considered to be "sensitive" issues, the government tends to use the law that provides numerous exemptions for state secrets and commercial information in order to present obstacles to citizens who wish to access environmental information.

Recommendations

- Raising the awareness of the government and the public on the significance of information flow and access. The voice from public might help the government to change the attitude and push for press censorship reform.
- Capacity building for NGOs and the media so that they can enable disadvantaged groups to improve their ability to access information. Capacity building also gives them the skill for policy advocacy and lobbying.
- Building up public platforms for environmental information sharing. The platforms should be in the form of forums, paper-based media or internet website blogs.

Participation in Decision Making

General Situations

The Chinese government at all levels traditionally welcomes public comments through letter writing and petitions, and engages experts through advisory committees and public hearings. However, most of these approaches to participation are *ad hoc*, and at the discretion of individual departments or officials. Many are implemented in an informal way (with the outcomes largely politically predetermined). Few mechanisms for meaningful participation have been institutionalised, and few are genuinely open to a broadly defined public. There are growing signs, however, that this is changing in a number of important areas. For instance, Yunnan Environmental Protection Bureau invited NGOs to review Yunnan Province Ecological Civilization Construction Framework Plan in June 2009.

In Yunnan, the participatory approaches have received a lot of attention within the context of community-based natural resources management, especially at the village level in the forestry sector. Largely initiated by NGOs and foreign donors, some of these efforts in pilot programs are now in the process of being scaled up to include more villages around the province. There is some indication that participation is beginning to move from management to governance, such as in the Yunnan Environmental Protection Bureau (YEPB) sustainable development training. Moreover, the Nujian (Upper Salween) Dam seems to have marked a turning point that with the government, particularly YEPB, beginning to be more open, and willing to collaborate with NGOs and the public to get their participation and engagement. Various other hydropower projects decision-making process in China, such as the Nujiang dam issue, involved NGOs, the media, experts and the general public to participate in enforcement of the Law of the People's Republic of China on Evaluation of Environmental Effects on1 September 2003. However, the levels of participation in decision-making and the willingness to have public participation vary from one agency to another (e.g. YEPB are more active than the forest department).

Research Findings

- Public participation has been carried out in environmental impact assessments, as well as in the formulation of most environmental policies, plans and projects. A range of

mechanisms for participation have been used, including accreditation councils, expert advisory committees, public hearings and questionnaire interviews, and also through the internet. Public opinion has been considered and has been able to influence the implementation process of policies, plans and projects.

- There is still some way to go, before there is genuine public participation in decision making. Only government officials and some scholars and experts could be involved in the decision making process. The experts mostly only give suggestions or opinions. The higher the level of decision-making, the less space for public participation.
- Efforts on capacity building, support for disadvantaged groups and CSOs' facilitation are inadequate.

Strengths and Challenges

Strengths

- There is an increase in government's recognition of the importance of public participation in decision making
- The government invests in capacity building to enhance public participation.
- The legal framework supports participation in environmental decision making, especially EIAs.
- There is a good foundation of participatory approaches being applied in natural resources management.
- NGOs are increasingly active and are more able to help promote public participation.

Challenges

- There is manipulation of participation in the decision-making process.
- Meaningful participation is still not institutionalised in environmental decision making,
- There is a lack of capacity within the government sector to facilitate public participation.

Recommendations

- To Increase investment in capacity building for NGOs, the government as well as the general public
- To raise the public's and government's awareness of public participation
- To research on the 'good governance' structure and accountability mechanisms that could link state authorities, NGOs and local communities together.
- To promote the NGOs' role in policy advocacy; to improve NGOs' capacity in environmental information disclosure.

Access to justice

General Situation

Access to justice was the most difficult topic to explore in this assessment. Environmental actors engaging in this project frequently cited the importance of the rule of law, and many demonstrated a clear awareness of the linkage between environmental quality, natural resources, and distributional justice. But few conclusions were reached regarding channels for redress and remedy in Yunnan. Clearly, the massive scale of rural unrest across China indicates a systemic failure of access

to justice in environmental matters. The court system, in particular, is not well trusted and consequently is under-utilised in terms of addressing redress. According to State Environmental Protection Bureau Letters and Visits of the People Department data, there are 100,000 environmental disputes and conflicts occurring in China annually, but less than one per cent of these issues finally came to litigation proceeding.[14] It is reported that from 60 to 70 per cent of environmental lawsuits were unsuccessful, and even when victims won the suits, they faced obstacles to receiving redress.

Research Findings

- Findings in the case studies show that most larger and complicated claims have been led by organisations or government officials who have a genuine commitment to public welfare. Some small claims have been pursued by pressure from the public. There are forums to deal with environmental claims, and the independence of the forums and transparency of the process are reasonable but still need to be improved.
- There is no special law for environmental claims, the environmental justice system or institutions for access to justice. A lack of capacity among the general public, particularly the disadvantaged groups, needs more attention. CSOs are doing well in this regard, but more efforts are needed to build their capacity and address organisational management issues.
- There are numerous administrative mechanisms for bringing complaints in China such as petitions to government officials, mediation by party leaders, investigations in response to hotline calls. But the interviews during this project's activities failed to elicit much information about how well these mechanisms address natural resource problems. This failure likely stems from a number of factors, including most interviewees' orientation towards research and education (as opposed to advocacy), and the difficulty in finding the right terms to discuss access to justice in Chinese cultural and political contexts.

Strengths and Challenges

- Lack of court capacity. The court system is still relatively new and is significantly deficient in infrastructure and personnel. Judges are few in number and their training lags behind the rapid development of laws and regulations over the past twenty-five years.
- Cultural reasons. Generally people prefer to negotiate a solution through compromise and consensus, rather than through the adversarial litigation process.
- Legal remedy. Yunnan Superior People's Court defined the plaintiff in Public Environmental Interest Litigation in an announcement on 13 May 2009. Only The Peoples' Prosecutorial Office and qualified environmental organisations (such as the Environmental Protection Bureau) on the list.[15] Individual citizens still have no hope to receive the rights of litigation.
- Costs. The high cost of gathering evidence, together with a lack of legal expertise, often deters environmental actors from utilising the courts. Moreover, the vagueness of many Chinese laws and regulations makes it difficult for claimants to construct a compelling case, and also makes it difficult for the courts to assign liabilities. Many potential claimants also believe that a negotiated solution would better promote environmental compliance by preserving relationships (*guanxi*) for future cooperation.

[14] Gulin Study on Environmental litigation system in China Xuchang college academic journal [J][in Chinese text].(22)6,2003
[15] Zhaoguangxi, Yunnan provincial Environmental Court news brief on Development and Environmental Trial Seminar.[EB/OL]. http://www.gy.yn.gov.cn/Article/xwgj/xwgc/200905/14351.html

Recommendations

- A clearer picture of access to justice in Yunnan would require a separate study by researchers with legal expertise. Such research would need to pay careful attention to the language used, questions asked and individuals contacted.

Capacity Building

General Situation

Capacity building is a key area in which the government and international agencies have invested. However, capacity building relating to access to environmental information, participation and justice is weak. Considering effectiveness and efficiency, the government capacity building program has put too much emphasis on the conventional top-down approach. On the other hand, the law on CSO administration builds up barriers to CSO registration .Many CSOs in contemporary China therefore registered as companies in local Industry and Commerce Administrations, or as People's Public Institutions under the leadership of other government agencies, such as the Bureau of Civil Affairs and the Bureau of Forestry. NGOs, civic groups and associations are tightly regulated and are subject to official approval and registration[16].

Research Findings

- Capacity building has been given a significant attention and investment from both the government sector and international donor agencies. These efforts have moved "new" concepts forward, such as participation and governance.
- The government-led program has focused on capacity building for government staff, while programs for capacity building for the general public are rare. There is no systemic capacity building program on environmental issues.
- There are a number of capacity building programs focusing on technical skills, but few of them address practical skills such as how to improve information flows and how to facilitate public participation processes.
- Capacity building program are not concerned in raising the public awareness. Thus, the general public's understanding of information access, public participation and justice is low.
- People's rights relating to legal assistance and support are extremely lacking There have been very few public cases in which people have used the law to defend their environmental rights.
- NGOs play a crucial role in raising public awareness. However, they lack the capacity to deal with complex situations, such as multi-stakeholder participation and dialogues and taking legal action.

Strengths and Challenges

- The challenge is that environmental law has not defined the needs for capacity building adequately.
- Government investment in capacity building is increasing annually, but it is still far from being efficient.

[16] Jamie P.Horslet, Toward a more open China? http://www.law.yale.edu/documents/pdf/Intellectual_Life/ch_FLORINI_CH_02.pdf

Recommendations

- Increasing investment in capacity building for multi-stakeholder dialogues
- Promoting international collaboration; introducing new environmental governance approaches

Conclusions and Recommendations

The analysis of the legal framework, capacity building and eighteen case studies in four categories provides a better picture of environmental governance with regard to public access to information, participation and justice in Yunnan province. The assessment results show that the government's performance is best in information access. But there is considerable room for further improvement in information access. Results of the assessment of public participation and access to justice are generally positive with clear signs of improvement in terms of the efforts from the government. However, there are important challenges to improving environmental governance. The need to develop laws and institutions is the first priority for further action. Additionally, capacity building for all groups, including government officers, the general public and CSOs, with particular attention to the needs of disadvantaged people, is the most obvious weak point that needs to be addressed. CSOs have an important role to play, and should be supported to make further contributions in this process.

In addition to the specific recommendations drawn from each of the sections above, we also present some general recommendations for further post-assessment activities:

- Raising public awareness of access initiatives for environmental governance and enhance their concern on access to information, participation and justice;
- Developing a pilot site for access initiatives as the showcase for best performance of environmental governance at the local level;
- Networking among CSOs for policy dialogues, lobbying and advocacy;
- Scaling up TAI assessment from the provincial level, to the regional level (multi-province level), and eventually to the national level.

5

Conclusion & Recommendations

5. Conclusion & Recommendations

It is now seventeen years since the landmark international environmental agreement was reached in Rio. In this period, there has been important progress in fulfilling the access rights in Asia as in other parts of the world, with an apparent acceleration of progress within the last five years. Yet the TAI assessment clearly illustrates that while there has been significant progress, many familiar challenges remain.

The concern for access rights in Asia brings together diverse interests – from the environment, but also from the perspectives of human rights, democracy, and sustainable development. Common to all these perspectives is a belief that people have a fundamental right to engage in political, policy and legal processes that affect them. But there is also a belief that by securing such rights, the quality of the political and legal processes and the quality of decisions and actions implemented will improve.

In conducting the TAI we are able to draw on the experience of a range of countries that differ in size, population, levels and distribution of wealth and poverty, and political institutions. At the same time, we are witnessing a growing concern for environmental issues that are increasingly associated with issues of wellbeing and health. Climate change, environmental emergencies, disease pandemics, pollution, and degradation of natural resources have all entered national political debates in each of the countries herein.

From the experience of conducting the TAI, we have learned that while the basic principle of access rights might be straightforward, for the state to put these rights into practice and for citizens to be able to exercise, such rights effectively is not so straightforward.

But there are also important signs of progress that must be recognised and built upon. Access rights are increasingly covered in the legal framework across the countries of the TAI with specific legislation on rights to information being passed in recent years. Civil society organisations are growing in number and increasingly active in environmental issues, and in issues related to access rights.

Yet while legislation governing access rights is becoming clearer – and civil society more assertive – with greater opportunities for constructive engagement between state and civil society, familiar obstacles to access rights remain. These obstacles appear in many forms. Legislation is often loose, allowing for divergent interpretations and weak application. The legal process, particularly concerning environmental issues, is cumbersome, difficult for the general public to penetrate and all too easily influenced by vested interests, whether from within the state or the private sector. Despite increasing commitments from the state to the right to information and for making environmental information publicly available, it is often inadequate, failing to reach many of those who need it most. Public participation is rarely initiated by the state, but more often than not, as a result of public pressure. Where public participation does occur, doubts continue as to how representative, and ultimately, how influential such processes are. And for the state, civil society and the general public, there is a perennial problem of limited awareness, knowledge and capacity that constrains their ability to engage effectively. This appears in the institutional structures and cultures of state agencies,

in their promotion pathways, and attitudes towards civil society and public participation, but also with the limited technical capacity of legal dimensions of environment issues among civil society, the media and the general public.

Perhaps unsurprisingly, the TAI illustrates that the performance in Asia is mixed, but that there are important opportunities for state, civil society and the general public. Clearly an important aspect of this is to be able to engage in such a way as to hold the state accountable to its own commitments, to strengthen public awareness, and provide the space for engaging in the legal process, and dialogue on national policy and practice.

In this final chapter, we attempt to consider why and in what ways access rights are so much a part of environmental governance, and to draw out some of the main conclusions from the Asian assessment in order to provide some pragmatic recommendations for how to proceed.

1. Regional weaknesses and strengths

Before going into a discussion of the specific conclusions and recommendations coming out of the TAI in Asia it is useful to put the issue of environmental access rights in a broader context.

The language of rights and public participation has emerged more strongly in environmental discourse. But what is there about the environment that should make such issues so important?

There is something inherent in the nature of environmental problems that requires greater public engagement, transparency and accountability. Environmental problems are characterised by uncertainty and complexity. Their potential impacts tend to be felt by silent or unrepresented voices, and their full consequences only manifest in the future. These characteristics have implications for the types of knowledge, institutions and organisations, representation and deliberation that are brought into public policy arenas (Munton[4], 2003).

Environmental problems tend to be highly uncertain – their causes and consequences are not always clear and are often contested, diffuse and diverse, with the full implications of environmental harm only being manifest in the future. Defining the precise cause and the extent of impact of environmental harm is not straightforward. Environmental problems often take time to become clear, and can be the result of combined and cumulative impacts. These aspects of environmental problems have implications for the legal process, in determining the precise legal cause and liability for environmental harm, and also in identifying the injured party or parties. In many cases, the injured parties of environmental harm are the public, and in others, future generations.

Equally, environmental problems are complex – bringing in a wide range of issues, sectors, and scientific disciplines. Such complexity requires that in order to resolve environmental problems, a range of knowledge both from scientists and lay people is brought into public policy. This presents challenges for institutions and organisations – whether from the state or civil society – that are often sectoral, compartmentalised or issue-based, and largely led by experts and formally established institutions.

[4] Munton, R. 2003. Deliberative democracy and environmental decision! making. In Berkhout, F.; Leach, M. and Scoones, I. (Eds), Negotiating! environmental change: New perspectives from social science, pp 109-136. Cheltenham, UK: Edward Elgar.

There is also a dimension of social justice to environmental problems. The impacts of environmental problems fall on the silent – whether from the natural world or from the social world. Many of those most severely affected by environmental problems are poorer and more marginalised peoples, who by definition have less voice, and less influence in public policy. Many would argue that social and economic inequalities are at the heart of most environmental problems (cf. Berkhout et al.[5], 2003, Redclift[6], 1984) and we see these concerns clearly articulated in the TAI experience. Environmental problems also bring in a distinct aspect of social justice, as many of the impacts are felt beyond the immediate source of the problem, with many such impacts to be felt by future generations. Again in these circumstances, those affected are largely absent or silent.

Dealing with environmental problems can be seen as requiring a particular kind of policy, legal and technical process. Debates about the environment are essentially concerned with how people as individuals and societies perceive, value and interact with their natural environment, but also fundamentally about what kind of society we strive to build. A cornerstone of international efforts to address environmental challenges has consequently been on emphasising what some would call 'deliberative processes' (Munton 2003) that hinge on principles of access to information, public participation, and justice. Ultimately concerns for environmental access rights are entwined with concerns for citizenship and governance.

Such requirements for public policy appear in many state commitments and international agreements. There is an increasingly shared language – with terms of good governance, public participation, transparency and accountability, and crucially sustainability – widely adopted by different parties whether from the state, civil society and increasingly the private sector. Certainly at one level, there is greater consensus than ever before.

There is also a growing interest in environmental problems that again brings together a diversity of actors. The types of environmental problems that enter areas of public concern are also broadening. Previously, environmental problems were most closely associated with conservation problems, and issues largely seen as affecting the natural world. Increasingly, we see the environmental agenda higher on the political agenda, and more closely associated with issues of social development, health, housing, and participation and justice. Among the environmental problems that have emerged recently in public debate, are concerns for climate change particularly in Bangladesh and Vietnam, plus public concern regarding pandemics such as avian and swine flu.

The dramatic changes in information technology also influence access to environmental information. Certain kinds of information are more readily available from a greater variety of sources than ever before, with more accessible media for sharing information. But at the same time, we see that where the commercial independence of the media is compromised, greater pressure can be exerted on the content of the media. Information technology can also be a valuable tool in mobilising public opinion and placing the state under closer scrutiny.

Despite this degree of growing consensus, and positive trends, areas of contention – and conflicts of interest and power, particularly between commercial interests, remain. In some ways the intensification of environmental issues suggests that there will be greater conflict about control over and access to environmental resources, and thus an even greater need for ensuring access rights, even if those rights are under greater pressure. But there is also a growing concern for

[5] Berkhout, F.; Leach, M. and Scoones, I. (Eds). 2003. Negotiating environmental change: New perspectives from social science. Cheltenham: Edward Elgar Publishing Ltd.
[6] Redclift, M .1984. Development and the Environmental Crisis: Red or Green Alternatives, London:Methuen.

social and environmental issues in the business world, and commitments to corporate social responsibility are also growing.

Some of the problems about the environment relate to the sectoral ways in which the environment continues to be dealt with. But these challenges can also be seen as manifestations of competing values and visions of how the natural and socioeconomic worlds should be.

2. What we can conclude

The value and importance of access rights themselves is recognised in each of the country assessments. For example, making information available, whether for regular environmental monitoring, or at the facility level, or for dealing with emergencies, makes it easier to identify effective solutions. Making information available and accessible allows for greater efficiency and effectiveness. Conversely, where access to such information is constrained, the impacts are likely to be greater, the risks of malpractice and the risks of social conflict higher. Equally, access to justice acts as a deterrent against abuses, and ensures a greater degree of accountability, as well as more positive outcomes in policy and practice.

The case for public participation is perhaps more complicated. What is meant by the term 'participation' is very much contested across and within the TAI assessment countries, and however frequently the term is used, it is at risk of being increasingly distorted and highly politicised (cf Cornwall et al[7], 2008). In some cases, public participation is very much a tool for strengthening the influence and reach of the state, and manufacturing support from the public. In this context, public participation is framed and managed by the state. In other cases, public participation at levels of policy and decision making is a means for ensuring better practice, more in tune with needs, and a mechanism to ensure a more accountable, transparent and better performing state. It is also an end in itself – a value of what constitutes sustainable development and good governance.

From all the TAI country assessments, there is not only an argument for effective and capable civil society as being necessary to ensure access rights are supported, but also recognition that this alone, is insufficient to guarantee access rights. In all the countries, the advances that have been made have occurred as the result of pressure from civil society, rather than from the benevolence of the state. Many of the countries have gone through intense political struggle in which civil society has taken on a range of active roles. As the struggle to implement access rights meaningfully continues, the role of an active, assertive and capable civil society continues to be necessary.

Concerns for justice come through clearly in all the country reports. In all cases there is a clear correlation between abuses of access rights and the poor and marginalised. Social and economic inequalities lie at the heart of many environmental problems in Asia, as elsewhere in the world. The poor are less likely to have access to information in an appropriate, timely manner – often being geographically remote, having no access to media and communications, and in many cases, not even being familiar enough with national languages. They are too easily ignored, and systematically excluded from planning and decision making at all levels. They are also the most likely to be victims of environmental harm and abuses of justice, and yet the least able to take benefit what legal processes there might be.

[7] Cornwall, A. and K. Brock. 2005. What do Buzzwords do for Development Policy? A critical look at participation, empowerment and poverty reduction. Third World Quarterly Vol. 26 No. 7 pp. 1043-1060.

Each of the TAI country assessments recognises the progress in strengthening the legal framework, and the establishment of appropriate institutions. But there are also important gaps. The absence of specific legislation covering the right to information is clearly identified as such. The countries that have such legislation – India, Indonesia, Nepal and Thailand, all consider it to be a major advance, but this has only occurred in the last two to five years. Consequently, the effectiveness of such legislation is still to be tested.

Concerns about legislation covering impact assessments continue. On the whole the impact assessment process is considered still to be weak, generally occurring late in the project development cycle and tending to have limited influence on outcomes of decisions. Disclosure of information in a timely manner prior to project development and the continued lack of space for effective public engagement, are also identified as key constraints on the effectiveness of impact assessments. The tendency remains for such assessments to be project-based, rather than strategic.

The lack of clear legislation on public participation also constitutes a major constraint on realising access rights. Without such legislation where public participation does take place, it tends to be *ad hoc* at best, and too often acting as a rubber stamping process rather than an opportunity to shape decisions. This is most difficult to separate from broader issues of participation and citizenship – transparency and accountability in government and democratisation. While there is a need for a clear legal framework to support public participation, governments need to be held accountable – and this is most frequently through the concerted efforts of NGOs, media and academia, and through reforms of state institutions.

Where progress in legislation is acknowledged, there is also a concern for the effectiveness of implementation. The concerns for poor implementation come up in different forms for all the countries. Yet what we mean by poor implementation is something of a thorny issue. Many of the assessments suggest that the weakness in implementation is essentially a matter of capacity. Clearly there are numerous issues of capacity that need to be considered. But we also need to be careful in thinking of capacity solely in terms of a lack of awareness, knowledge, and skills. The recommendations for dealing with capacity tend to be along the lines of improving training, mobilisation, manpower and financial resources. Yet many of the issues that are framed in the assessments as matters of capacity are more to do with the whole structure and performance of state institutions and bureaucracies. Rather than simply a matter of capacity as referring to training on awareness, knowledge and skills, we appear to be facing challenges of how to reform the performance of state institutions, and planning processes to be more transparent and accountable. This is a far greater challenge than is typically associated with capacity.

For the specifics of environmental law and associated issues of rights, there is an interest in establishing independent commissions and watchdogs that have the authority to investigate and take legal action. Such institutions exist in Thailand and Nepal in the form of National Human Rights Commissions that can act as watchdogs and put pressure on the state to improve implementation, and take legal action to represent interests of the public.

3. Recommendations for governments, civil society and donors

The analysis of the TAI assessments presents a number of clear recommendations that are relevant

across the nine countries. These are presented according to the individual access rights and the cross-cutting theme of capacity building.

3.1. Legal framework

The most fundamental recommendation from the TAI assessment concerns the absolute need for a Right to Information Act to be passed, and this should be a clear focus of effort for civil society across Asia. Such an act moves beyond what are generally loose acceptance of the principle of the right to information that often appears in the constitution, or in rules and regulations for particular sectors. The Right to Information Act, if well prepared, makes clear provision for roles and responsibilities of state agencies, clear definitions of what information should be made available and how, and clearly stipulates rights to redress.

Yet a Right to Information Act on its own has proven not to be enough in order to ensure that this access right is upheld. In those countries that have already passed such an act, the main concern becomes ensuring that it is implemented effectively. Additional legislation is also required in order to support more effective implementation of access rights, in particular legislation covering Public Participation.

The importance of effective legislation on impact assessments is also recognised. Across the TAI countries, there is a clear need to strengthen legislation for EIAs so that this kind of assessment process, supported by meaningful public participation, is carried out for all interventions that have a potentially significant environmental and social impact. A key challenge remains in ensuring that the EIA process is independent, and that the process involves effective disclosure of information for independent review and public consultation. Equally it is important to ensure that recommendations of EIAs will be acted upon, and to prevent the impact assessment process occurring too late in the decision-making cycle for it to have any real influence on the final decision.

As important as the EIA process has proven to be, it is also necessary to move from the individual project focus of the EIA towards a more strategic process of conducting Strategic Environmental Assessments (SEA) and to considering the combined and cumulative impacts of a series of projects under the framework of a Cumulative Impact Assessment (CIA). Such a shift would require changes in legislation as well as significant capacity building.

In many cases, countries do not necessarily suffer from a lack of legislation but rather from confusing, overlapping and inconsistent legislation. In these cases, there is a need to clarify and rationalise existing legislation with clear guidelines and responsibilities

Weak enforcement and implementation continues to be a challenge across the countries, but addressing these kinds of weaknesses requires a range of different responses. It is important to differentiate between issues of capacity and political will. In many of the countries there is clear resistance to effective implementation. But when the voices of civil society, people and media are strategically mobilised, political outcome can be influenced. There are case studies from the countries that demonstrate success in this area. Their actions are non-violent, legal, and justified.

3.2. Access to Information

Building on the Right to Information Act, there are a number of recommendations to ensure that information is made available and is accessible in a timely and useful manner. There need to be legally binding requirements governing disclosure of information – in emergencies, for monitoring, and in conducting EIAs.

It is essential to ensure that information that is provided is easily understandable. Given the ethnic diversity across Asia and within countries, information must be translated into local minority languages. Written information also faces limitations and there is therefore a need to make use of a range of dissemination channels, including mass media (newspapers, community radio, TV, the Internet). The importance of the Internet for monitoring state corruption in China can lead to exposure and spread through formal media.

The ownership of mass media is a cause for concern. In many countries, the state and/or powerful private interests control much of the popular media. In order to counter this, it is important to encourage community-based media (cf Thailand) and raise the profile of the Internet.

With a wide range of information sources within the state, information from different state agencies (for example regarding health, water and air quality) needs to be harmonised, to allow the public's easy access and analysis. Access to emergency and disaster related information should be extensively provided and treated as a top priority of information to be easily accessible by all concerned parties.

In order to promote improved performance and accountability from state officials, performance indicators related to access rights and particularly access to information need to be established as the basis for evaluating individual performance and promotion pathways. This would also provide for greater accountability and transparency if the performance of individual state agencies and offices was made publicly available.

3.3. Access to Participation

Access to Participation needs to be supported through a Public Participation Act – so that what constitutes public participation, and the roles and responsibilities of different agencies are clearly defined. A number of aspects of public participation would need to be addressed in such an act, as discussed below.

The question of who organises public participation is a central concern. Largely, this is the responsibility of the state, but this has proved to be inadequate. Establishing an independent body to take responsibility for managing public participation and for setting standards is a possible mechanism that has yet to be tested.

The definition of who has the right to participate must also be clear. In particular, definitions of who represents the people and what constitutes local communities must be clearly stated.

There need to be clear guidelines on what happens to the results of public participation to ensure that the process is able to influence decision making. Participation is not meaningful if it does not influence the final decision.

To improve public participation in EIA process, there is a need to establish an independent body tasked with forming opinion and recommendations on public policy and projects. Such bodies should have an autonomous and flexible organisational structure and management, as well as clear direction about how to effectively cooperate with the state sector in dedicated work related to public participation.

Costs associated with public participation continue to be a significant challenge. In order to ensure that meaningful participation occurs, there needs also be a public participation fund managed by an independent environmental organisation. This would result in the participation process being managed by a central stage agency or a neutral body rather than by the project owner. Special attention should also be given to developing a mechanism to support long-distance people to join the venue. The result would be an assurance, to a certain extent, of participation occurring at a more reasonable time.

Limited public awareness of access rights and environmental issues continues to act as a constraint against effective citizen engagement. This is partly solved by efforts directed at improving education, curricula and teacher training. However, raising public awareness must also be taken up by civil society as priorities.

There is a need for legal requirements to ensure the rights of people to participate fully at decision-making levels, but while advocating for such a reform, civil society must be aware that it can be seen as a challenge to state power, and is likely to be resisted.

The EIA process needs improvements in the participation process as well as institutional structure and funding that supports meaningful participation.

3.4. Access to Justice

Law must ensure the rights to clean and safe environment, and clearly define responsibilities of the state in ensuring such rights with clear process for taking action when such rights are violated.

This itself depends on:

- Definitions of the 'damaged party' that allow public interest litigations
- Clarity of the definition of locus standing
- Legal and financial aid

Independent institutions (e.g. ombudsman, department of special investigation), with authority to investigate cases and have their decisions acted on, are very much needed in order to act as watchdogs of abuses of power.

To create opportunities for disabled people and minority groups to better access the justice system, there needs to have a policy to assist them in litigation matters and help them attend case examination hearings.

Specifically, these institutions can also act to improve implementation of court decisions, and of penalties associated with cases of environmental harm to be stronger deterrents. Independent

Human Rights Commissions have been established in some countries and have the power to investigate, conduct research and pursue legal cases. Additionally, Green Benches can provide technical legal expertise to address environmental cases, and to ensure that such cases are dealt with in a timely manner.

The nature of environmental cases also requires new mechanisms for settling disputes. Alternative dispute resolution (ADR) mechanisms, which can operate outside formal state and judicial processes, provide the potential to reach conclusions without going through the lengthy and expensive formal legal process. The options for the structure and function of ADR are diverse, but each provides a more approachable process than litigation. However, in order for ADR to operate successfully and serve the interests of the general public (and in particular the poor and disadvantaged), the playing field needs to be reasonably level. This is not always possible, and in many cases more likely under formal judicial processes.

There needs to be greater transparency at the scoping stage where decisions are taken on the terms of reference for a development project and on the question of whether to require a project proponent to submit an initial environmental examination (IEE) or an environmental impact assessment (EIA).

3.5. Capacity Building

Knowledge and proper understanding of the full cycle of participatory process should be enhanced among state officials, civil society, and the general public. This could be done by giving staff of relevant state agencies trainings and guidelines regarding principles and methods on facilitating public participation and providing official information for public. When applicable, such trainings and guidelines should also be provided to civil society organisations to have them further support people in accessing right in environmental matters. The budget to be allocated for capacity enhancement is something that the state should pay attention to and take action more seriously.

The media is an actor who has strong potentials in promoting environmental governance because they have access to information that is unavailable to the public, and they can help reducing limitation on vernacular language by translating it to layman language in simpler formats. It is important to raise awareness of the media about rights of public access and role of NGOs in environmental governance, and to establish a NGOs-media partnership to multiply the power of civil society by engaging a society critical mass of stakeholders to work towards a significant improvement in environmental governance issues.

The private sector could be another actor who helps advance access to information. There is also a need to engage private sector in promoting environmental governance issues to be more open, transparent, and to foster access rights. To ensure that alliances among government officials, businesses and citizens will enhance commonalities and avoid conflict of interest, specific criteria should be set through corporate social responsibility (CSR) based strategy, Global Compact principles (human rights, labor, anticorruption and environment) and their participation in multi-stakeholder activities.

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Annex

Annex

Summary of International Commitments to Access Rights

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 on the environment. Though being 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 with the Convention's provisions. The Aarhus Convention Secretariat is currently focusing on implementing the convention in the UNECE region.

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 enviro mental 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.

Principle 10 of the 1992 Rio Declaration

"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."

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Environmental Governance in Asia: Independent Assessments of National Implementation of Rio Declaration's Principle 10