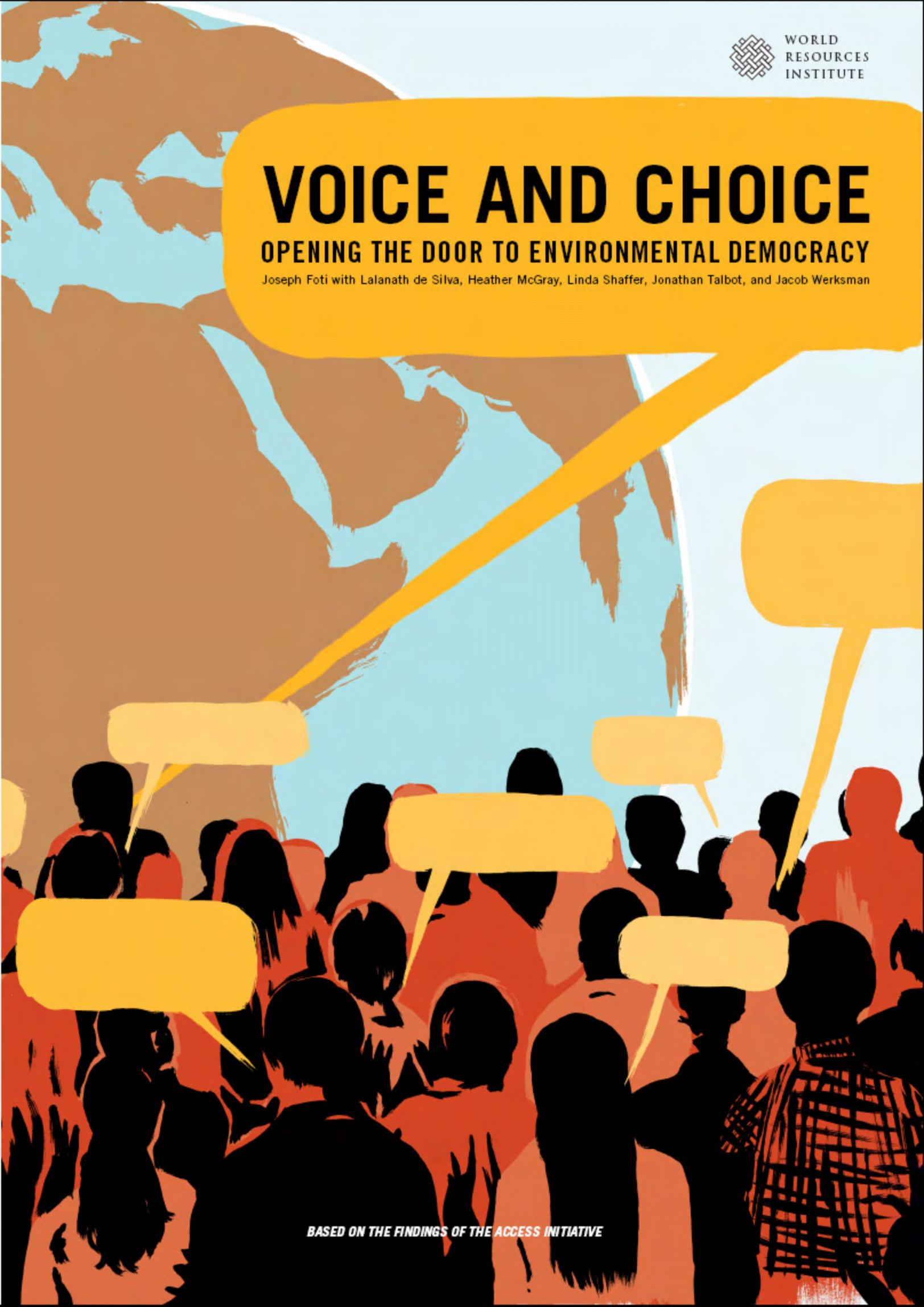


# VOICE AND CHOICE

## OPENING THE DOOR TO ENVIRONMENTAL DEMOCRACY

Joseph Foti with Lalanath de Silva, Heather McGray, Linda Shaffer, Jonathan Talbot, and Jacob Werksman



BASED ON THE FINDINGS OF THE ACCESS INITIATIVE

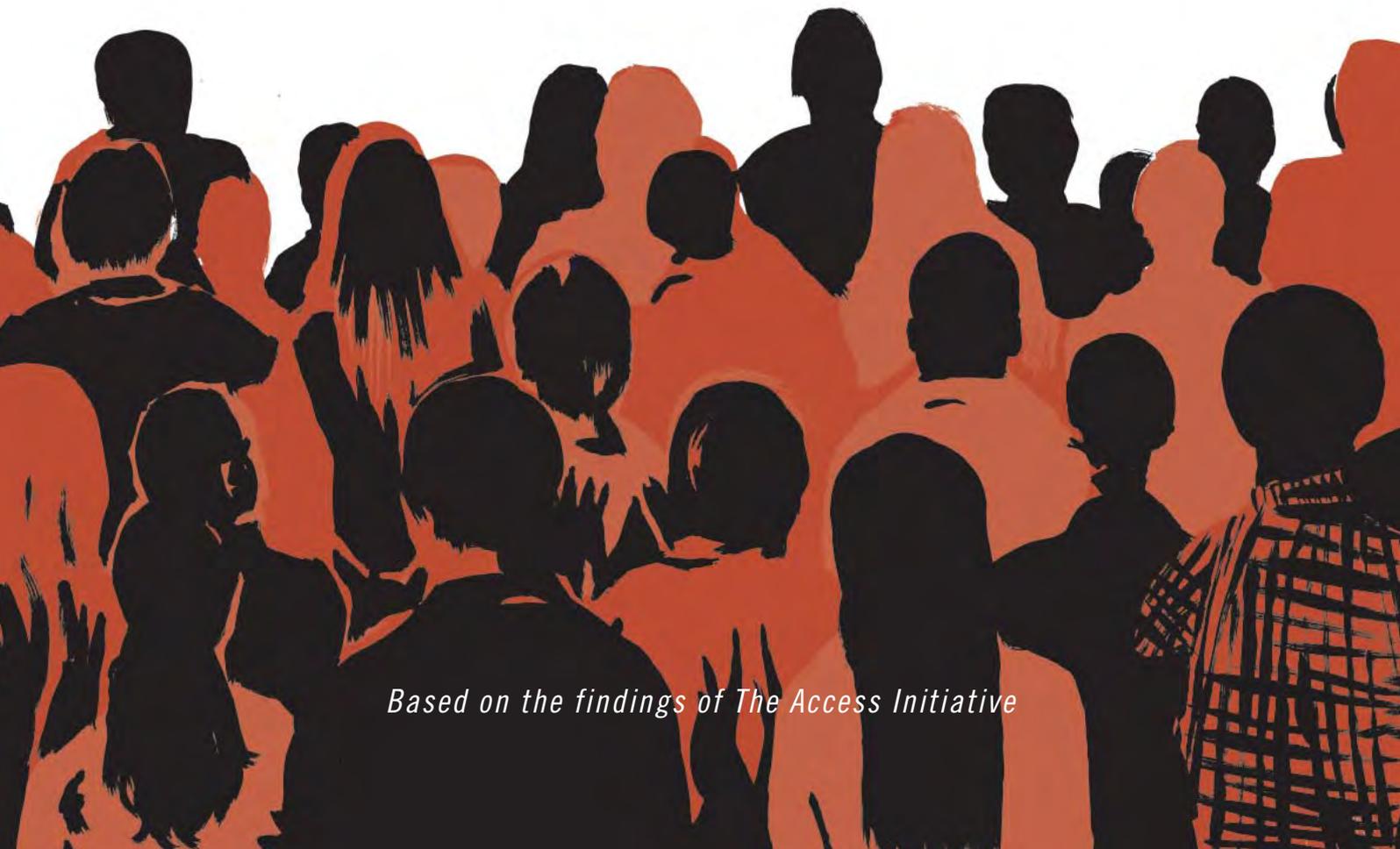
# Voice and Choice:

## Opening the Door to Environmental Democracy

**Joseph Foti**

*with*

Lalanath de Silva, Heather McGray,  
Linda Shaffer, Jonathan Talbot, and Jacob Werksman



*Based on the findings of The Access Initiative*

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ISBN: 978-1-56973-687-6

Library of Congress Control Number: 2008929166

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Asociación Civil Consorcio Desarrollo y Justicia  
Asociación Civil Justicia Alternativa  
Fundación Justicia de Paz Monagas  
Fundarbol (Fundación para la Conservación de los Árboles)

# Acknowledgments

*Voice and Choice: Opening the Door to Environmental Democracy* is the collaborative product of many people's efforts. The authors would like to thank the many colleagues who contributed to the research and production of this report.

We are indebted to the hundreds of individuals and partner organizations of The Access Initiative (TAI), who continue to evaluate access in their countries, to spread the network locally and globally, and, most importantly, to produce change on the ground. This report would not have been possible without their investigations, insights, and support.

We especially want to recognize the following contributing writers: Valeria Enriquez, Cultura Ecológica, Mexico; Sophie Kutegeka, Advocates Coalition for Development and Environment, Uganda; Nikolay Marekov, Access to Information Programme, Bulgaria; Smita Nakhooda, World Resources Institute; Ravadee Prasertcharoensuk, NGO Coordinating Committee on Development, Thailand; David Turnbull, World Resources Institute; and Godber Tumushabe, Advocates Coalition for Development and Environment, Uganda. Very special thanks are due to Gregory Mock for extensive writing and contributions to this report.

In addition, we are grateful for the research assistance provided by the following individuals: Sanjana Ahmad, Sumia Ahmad, Arisha Ashraf, Isabella Johnson, Danielle Rappaport, Orissa Samaroo, and Aiga Stoekenberga.

We would like to thank the following individuals who offered their experience, expertise, and insight into the many aspects of environmental access: Jonathan Allotey, Environmental Protection Agency, Ghana;

Sylvia Bankobeza, United Nations Environment Programme; Jānis Brizga, Green Liberty, Latvia; Saikat Dutta, The Foreign and Commonwealth Office of the United Kingdom; Patricia Flanagan, Coillte, Ireland; Mary Hobley, Hobley Shields Associates, UK; Tony Lowes, Friends of the Irish Environment, Ireland; Erika Lagzdina, Regional Environmental Center- Latvia; and Žaneta Mikosa, Ministry of the Environment – Latvia.

Internal and external reviewers provided critical feedback that improved the quality of this report. They include: Jon Anstey, United Nations Environment Programme; Gernot Brodnig, United Nations Development Programme; Juan Carlos Carrillo, Centro Mexicano de Derecho Ambiental, Mexico; Olimpia Castillo, Comunicación y Educación Ambiental, Mexico; Diego Cooper, Corporación Participa, Chile; Lisa Jordan, Ford Foundation; Csaba Kiss, Environmental Management and Law Association, Hungary; Sophie Kutegeka, Advocates Coalition for Development and Environment, Uganda; Silvana Lauzan, Corporación Participa, Chile; Leida Mercado, United Nations Development Programme; Rene Nijenhuis, United Nations Environment Programme; Somrudee Nicro, Thailand Environment Institute, Thailand; Yelena Panina, EcoPravo-Kyiv, Ukraine; Andrea Sanhueza, Corporación Participa, Chile; Tomas Severino, Cultura Ecológica, Mexico; Olexander Steigny, EcoPravo-Kyiv, Ukraine and Godber Tumushabe, Advocates Coalition for Development and Environment, Uganda.

We are especially grateful to the following World Resources Institute staff members who supplied invaluable encouragement and constructive criticism. They are: Phil Angell, Manish Bapna, Robin Murphy, Janet Ranganathan, Jesse Ribot, Dan Tunstall, and Peter

Veit. Former staff members include David Turnbull, David Jhirad, and Amy Wiedeman. WRI is particularly indebted to the work of Frances Seymour, the Institute's first Director of the Institutions and Governance Program and Elena Petkova, TAI's first Director who, in collaboration with partners, fashioned the idea for TAI from a common commitment to analytical excellence, practical solutions, and a passion for accountability.

We would also like to thank April Osmanof, Hyacinth Billings, Robert Livernash, Maggie Powell, and the entire External Relations team at WRI. They ensured

timely production and publication of this report. Special thanks are due to Linda Shaffer and Monika Kerde- man for managing the research schedule and produc- tion process of this report.

Finally, we wish to express our deep appreciation for the financial support provided by the European Com- mission, the Netherlands Ministry of Foreign Affairs, the Swedish International Development Cooperation Agency, and the Royal Danish Ministry of Foreign Affairs.

# Foreword

As humanity strains the limits of this fragile planet to meet our growing demands, we will depend increasingly on the capacity of our institutions to move us towards outcomes that are widely accepted as fair and effective. Mitigating and responding to the impacts of global climate change, water scarcity, and dwindling natural resources will challenge governments and civil society to manage inevitable trade offs at the local, national and global levels. This report finds hope and insight that these trade offs will be possible in the work of hundreds of individuals and institutions working around the world to bring the voices of the many to making the choices that will shape our common future.

*Voice and Choice* assesses progress towards a world of environmental democracy based on the principles of transparency, inclusiveness and accountability envisioned at the 1992 Earth Summit in Rio. Drawing on the work of The Access Initiative (TAI), a remarkable global network of civil society organizations dedicated to these principles, this report assesses over 200 case studies and analyses of national law in 26 countries, and examines trends in implementing the internationally recognized “access rights” to information, participation and justice in government decisions about the environment.

The authors find that transparency is not enough; improving environmental outcomes depends on the quality of participation, and on the availability of redress when things go wrong. While freedom of information laws have become something of a global norm, they have proven to be necessary, but insufficient, to providing the basis of better decisions on environmental issues. National state-of-the-environment reports are also useful, but have limited potential if not well publicized. Data on toxics in the soil or water mean much more if public education has prepared a population to understand that data.

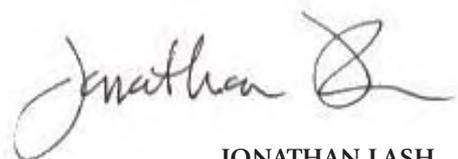
Governments’ duty to ‘supply’ access— through freedom of information laws and notices of public meetings—must be complemented by civil society’s capacity and interest to ‘demand’ access. This demand may take the form of petitions to courts, filing of requests for information, or public presence at government meet-

ings. Capacity building of civil society, administrators, legislators and judges, is needed to help parties productively engage one another.

*Voice and Choice* provocatively suggests that forces and interests in the environmental movement, the democracy movement, and the human rights movement have converged in what might be the beginnings of a global “access movement”. The authors call for alliances and coalitions that can work effectively with governments to achieve real and lasting reforms. They emphasize that governments are made up of individuals, including judges and members of legislatures; and that some of these officials will also be champions for access.

Access proponents in government, civil society, and the private sector can use this volume as a resource for both policy options and talking points as they work to overcome common hurdles to increasing access. *Voice and Choice* highlights progress on specific tools – including pollutant release and transfer registers, judicial training, and online tracking of freedom of information requests—that nearly any government in the world can embrace to improve access. It suggests that human rights arguments and international law can also be tools to help build the participation of an informed public. It goes further, and examines the evidence for the legitimacy, effectiveness, and efficiency gains governments can expect when they improve and maintain access.

*Voice and Choice* builds on WRI’s 2002 report, *Closing the Gap: Information, Participation and Justice in Decision-Making for the Environment*. That volume asked whether access rights could be measured and if access could be improved for environmental decisions. The answer to both questions was “yes.” This report now addresses the question, “How can we transform these insights into action?”



**JONATHAN LASH**  
PRESIDENT

WORLD RESOURCES INSTITUTE

# Executive Summary

People have the right to participate in the decisions that affect their environment. To exercise this right they need access to the information upon which decisions rest, and the opportunity to voice opinions and to influence choice among possible outcomes. Meaningful participation is guaranteed through “access rights”: the rights of public access to information, to public participation in government decision-making, and of access to justice.

In the 1992 Rio Declaration on Environment and Development, 178 governments pledged to open environmental decision-making to public input and scrutiny. Access to information, public participation, and access to justice are keys to more transparent, inclusive, and accountable decision-making in matters affecting the environment—what we call “environmental democracy”. Access to information motivates and empowers people to participate in an informed manner. Participatory decision-making enhances the ability of governments to respond to public concerns and demands, to build consensus, and to improve acceptance of and compliance with environmental decisions. Access to justice enhances the public’s ability to enforce the right to participate, to be informed, and to correct environmental harm. In turn, access depends on governments and civil society having the capacity to operationalize these rights.

*Voice and Choice: Opening the Door to Environmental Democracy* assesses the progress governments have made in providing access to environmental decision-making and, in the hope of moving forward, evaluates what hurdles remain and how they might be overcome. It picks up where a previous WRI publication *Closing the Gap: Information, Participation, and Justice in Decision-Making for the Environment* (Petkova et al. 2002) left off and builds on its findings and recommendations. This report is for “access proponents”—members of government, civil society, business, and intergovernmental organizations committed to promoting access, and eager to learn what has worked and why. *Voice and Choice* captures the research findings and practical experiences of The Access Initiative (TAI)—the largest network of civil society organizations to assess and promote transparency, inclusiveness, and accountability in environmental decision-making (see Box 1,

## BOX 1 THE ACCESS INITIATIVE STRATEGY

TAI developed a strategy to spread access rights around the world. The strategy has three elements:

1. Develop an indicator-based tool to assess the performance of national governments on the implementation of Principle 10 of the Rio Declaration and to identify gaps in the law, institutions, and practice of access rights.
2. Empower civil society organizations (CSOs) to use the tool and support them to conduct independent assessments of access rights in their countries.
3. Engage governments in a constructive dialogue to close gaps identified in the national assessments, and encourage collaboration between CSOs and governments in the effort to realize access rights for all.

*Voice and Choice* presents TAI assessments from 2002-2005 of the performance of 26 national or regional governments on access to information, public participation, and capacity building.

TAI Assessments were carried out in:

- **Africa:** South Africa, Tanzania, Uganda
- **Asia:** India, Indonesia, Thailand
- **Europe:** Bulgaria, Estonia, Hungary, Ireland (limited study), Latvia, Lithuania, Poland, Portugal, Ukraine
- **Latin America:** Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Mexico (national and three state-level: Baja California, Jalisco, Chiapas), Peru, Venezuela
- **North America:** United States (state-level: California and Ohio)

TAI Strategy, and Box 2, TAI Method). It brings these findings together with academic literature on public participation in an attempt to further understand the link between the quality of public participation and the impact of environmental decisions.

## Findings

Generally, *Voice and Choice* finds that governments have made significant progress in establishing the legal infrastructure of rights and opportunities for “access”. Constitutions and laws now guarantee freedom of information in more than 69 countries. Many governments have enacted administrative pro-

**BOX 2 THE ACCESS INITIATIVE METHOD**

The TAI assessment method evaluates national law and policy regarding access to information, public participation, and access to justice, as well as the capacity of the public, civil society organizations, and government officials to supply and demand access. TAI assessments use a standardized set of indicators, research guidelines, and rankings. The method also surveys government practice in each of the three access rights using case study analysis. The table below lists the topic areas covered by TAI assessments. The full report identifies limitations to the data.

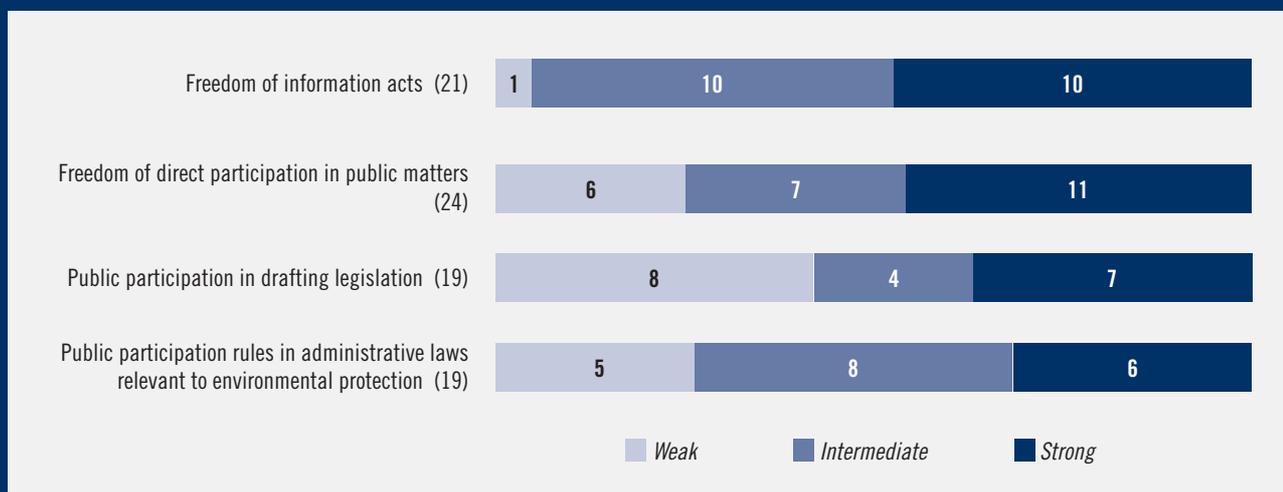
	LAW	PRACTICE	
Access to Information	Access to Information Law	State of Environment Reports	
		Facility-level Information	Compliance Data Pollutant Release and Transfer Data
		Regular Monitoring	Air Quality Water Quality
		Emergency	Small-scale Emergency Large-Scale Emergency
Public Participation	Public Participation Law	Policy-level decision-making	
		Project-level decision-making	
Capacity Building	Capacity Building Law	Government-level agency capacity building	
		Public capacity building	
Access to Justice <sup>1</sup>	Access to Justice Law	Denial of Access to Information	
		Denial of Public Participation	
		Environmental Harm	

1. Access to justice was not included in this report. It has been included in TAI regional reports and will be the subject of future publications.

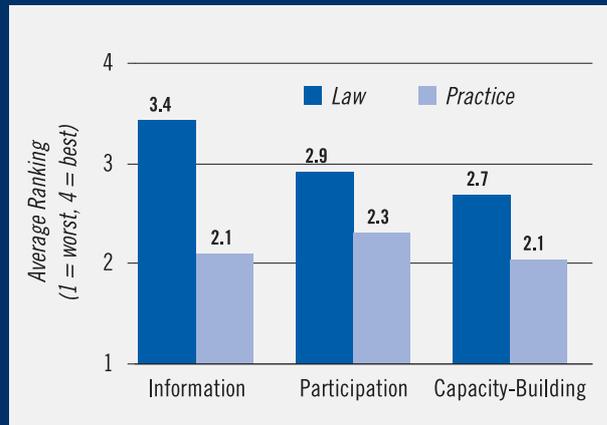
cesses, such as environmental impact assessments, that mandate public participation. Progress toward the implementation of these policies has, however, been slower, reflecting the profound transformations necessary to achieve a level of openness in which governments and civil society share a commitment to environmental democracy.

Framework laws for freedom of information are more widespread than framework laws on public participation. Assessments from the TAI network demonstrate that more countries have bedrock framework laws on information than framework laws supporting public participation. Figure 1 documents the results of TAI assessments that seem to confirm this gap. Only 1 of 20 countries evalu-

**FIGURE 1 RANKINGS OF ACCESS TO INFORMATION FRAMEWORK LAWS AND PUBLIC PARTICIPATION FRAMEWORK LAWS (number of countries)**



**FIGURE 2** MEAN RANKINGS FOR LAW AND PRACTICE INDICATORS (*value*)



ated lacked a basic freedom of information law. Yet, of the countries evaluated for framework laws on participation, one quarter received weak rankings.

*Practice lags behind laws.* Implementation of information and participation laws has lagged far behind legal reform. Figure 2 shows the difference between law and practice in 26 countries as surveyed by TAI partners. Causes for these differences vary. Implementation of framework laws may be hindered by a lack of detailed administrative rules and operational policies. In other cases, laws may be in place, but public capacity to use the laws or official capacity to carry out the laws may be absent.

## ACCESS TO INFORMATION

Rules providing access to environmental information can take on a variety of forms. They include general freedom of information laws, pollutant release and transfer registers (PRTRs), compliance reporting requirements, emergency information systems, state of the environment reporting, and the release of regular monitoring of environmental quality.

*Fewer laws require the proactive release of information.* Meaningful access to environmental information requires governments to *proactively* gather, analyze, and disseminate information. However, most information laws require government agencies to release information *reactively*, only when that information is requested. Figure 3 shows that in the countries surveyed, governments have underinvested in proactive information laws, which were seen as narrower and weaker than reactive information laws.

*Access to information on industrial facility pollution and compliance is particularly weak.* There remain tremendous barriers to accessing information on facility level industrial pollution. For the facilities studied, emissions compliance reports and pollutant releases and transfer registers (PRTRs) were unavailable. Access to information was also hampered by a failure to record data, weak mandates to report data, and excessive claims of commercial and security-based confidentiality.

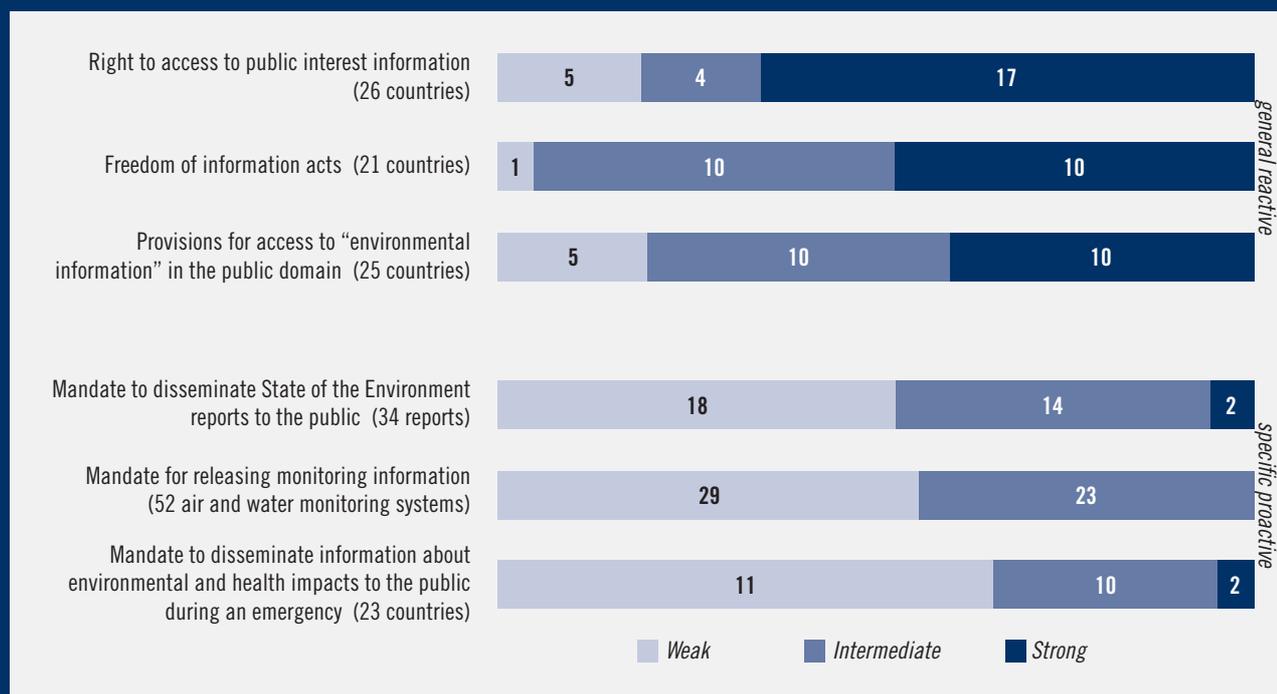
*The capacity for air quality monitoring was strong, but data was not disseminated.* Access to information on air quality demonstrates the divide between what is measured and what is made public. While most countries had an intermediate or strong capacity to actually monitor major problems with air quality, few demonstrated the commitment to publish and distribute that information to the public.

*Water quality monitoring systems were generally weak.* Findings for drinking water quality demonstrated both weak collection and dissemination. Governments monitored fewer and less diverse parameters for water. Of 25 countries assessed for available water quality monitoring information on the Internet, 21 received a “weak” ranking. Findings suggest weaknesses in all aspects of information provision—collection, analysis, and dissemination—are pervasive across countries.

*Countries performed poorly in providing environmental information during and after emergencies.* Improvements in information management during emergencies, especially emergency warning systems, have improved greatly in recent times. A number of countries fared better at releasing information during an emergency than after. Most countries, however, failed to release relevant environmental information on emergencies at all. Mandates to produce and disseminate such information were generally weak.

*Most countries produced state of the environment reports of generally good quality, but publicity was particularly weak.* State of the environment reports, which present data on a country’s air, water, and land quality, were produced in most countries, but country-level assessments demonstrate that many had weak mandates to disseminate their findings, and very few made attempts to publicize the results through the mass media or in a usable format.

**FIGURE 3 ACCESS TO INFORMATION: RANKINGS FOR REACTIVE LAWS AND PROACTIVE MANDATES**



**PUBLIC PARTICIPATION**

Public participation takes place largely, although not exclusively, as a part of procedures to assess and to mitigate environmental harm, such as in preparation of environmental impact assessments, and through policy making and planning bodies such as legislatures and zoning boards.

*Public participation has not been mainstreamed at the project level in about half of the countries assessed. Findings demonstrate that environmental impact assessments and similar processes have yet to integrate public participation fully. Often, even where there are open participatory processes, there are hurdles to meaningful participation, including insufficient lead time or unavailable project documents. Consultation is often held too late in the project development cycle to make a significant difference in selecting outcomes.*

*Planning and policy processes do not consistently involve public participation. Those that did varied in terms of how well they facilitated involvement. Nearly half of policy and planning processes studied were evaluated as having weak or no consultation at all. Those with stronger consultation often gave inadequate lead time for public comment or involvement. In the majority of cases, the public did not receive a timely response from officials*

as to how concerns were or were not integrated into final policies and plans. This has the effect of weakening the ability of public participation to foster accountability. On the other hand, strengths included a general availability of documents relating to the proposed policy.

**CAPACITY BUILDING**

Legal mandates are insufficient to ensure the implementation of access principles. The government must have the capacity to supply access, and the public and civil society organizations (CSOs) must have the capacity to demand access.

*The majority of governments invested in building the capacity of officials, but a significant minority did not. Government officials need knowledge of the legal framework, practical skills, and financial resources for access. In some countries assessed, some officials were trained but not across all relevant ministries. Often, only the Ministry of Environment had sufficient training in implementing access; other parallel and sectoral ministries and agencies did not. In many of the poorly ranked countries, ministries lacked mechanisms for public consultation.*

Governments generally had strong legal frameworks supporting civil society associations and freedom of association. In a few cases, these laws were not enforced and civil society organizations suffered harassment. In most cases, however, governments were ranked as “strong” in laws carrying out basic rights such as freedom of association and providing general tax breaks for CSOs, but made less effort to support the CSO sector through education on access rights and offering seed grants.

*Environmental education is not yet fully integrated or supported in many public schools.* While many countries mandated environmental education, the quality of such education and the support of teacher training often reflected the state of education in the country more generally. In countries with strong education systems, many teachers completed training in environmental education and had sufficient materials. In other school systems, despite requirements in the curriculum, teachers often lacked formal training in the subject and often went without textbooks or supplies.

## Hurdles

A number of political, legal, cultural, and capacity-related hurdles stand in the way of more rapid progress in fulfilling access rights. Examining these hurdles serves as a starting point to understand where access advocates might best deploy tools and arguments to spark reform. Evidence from TAI assessments (including cases studies) as well as TAI network member experiences served to diagnose the problems in achieving access, and suggested the outline of prospective solutions.

## MANAGING VESTED INTERESTS AND THE POLITICS OF ACCESS

In many policy processes, increasing access may threaten those in power. Government officials may stand to lose influence over decisions by increasing transparency, public input, and personal accountability. Public participation can shift control, at least in part, from government officials to the public. This shift may be perceived as a cost to some, whose status or power may be premised on exclusive control of information and decision-making. TAI assessments suggest significant resistance to greater transparency. Specifically, vested interests—those individuals, businesses, and government agencies that benefit from the control of information—seek to limit public knowledge about

extraction of natural resources, pollution, and compliance with regulation.

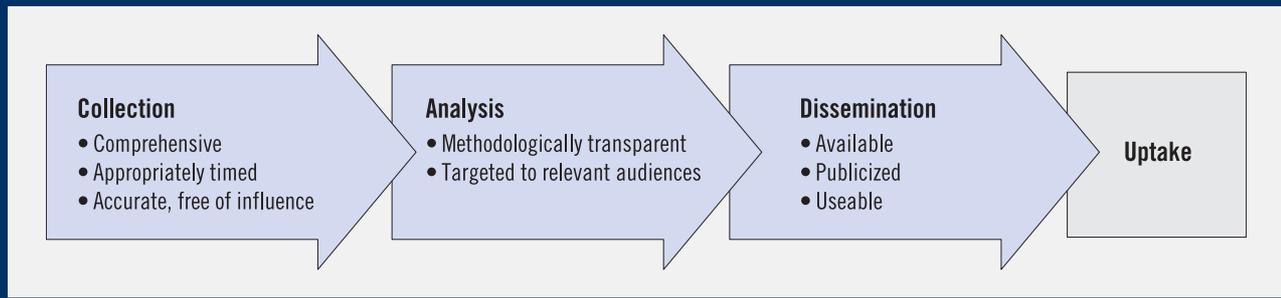
*Strategic alliances and coalitions can help to strengthen access in single issue cases and more broadly.* Movements for access rights require the involvement of many actors. Pioneering officials, media outlets, environmental CSOs, community-based organizations, and companies that depend on information about the environment are just some of the parties interested in fostering more transparent decision-making. Building issue-oriented strategic alliances and sustaining long-term coalitions can help overcome the hurdles that vested interests present. By its very nature, advocating transparency requires the coordination of the many—those who pay the price of corruption and poor decision-making—to oppose the few—those who benefit from secrecy.

*Information by itself is not enough to initiate collective action.* Groups are more likely to respond to information when it reveals a substantial departure from the status quo rather than a gradual change. This phenomenon, this shift in perception, is often referred to as “shock.” The implications for advocates of access are that the timing and messaging of information can have as crucial an impact on environmental and human health outcomes as the information itself. Information by itself is not enough: it must be combined with a clear, precise, and novel message about the state of affairs through culturally appropriate channels. Environment advocates must decide how to release information strategically.

## IDENTIFYING THE GAPS IN INFORMATION SYSTEMS

Access to information requires more than just a public right to obtain information. Governments must be able to collect, analyze, and disseminate information in ways that are meaningful. Challenges in providing environmental information vary across issues. For example, most countries assessed by TAI were able to monitor environmental indicators for air quality. While some had trouble analyzing the data to see larger trends, others had a hard time distributing the data in a useful format that made larger environmental trends clear to the consumers of that information: politicians, businesses, and the public. An important step in developing effective advocacy strategies will involve targeting the problems unique to the particular environmental information system. Figure 4 shows the elements of a complete environmental information system.

FIGURE 4 ELEMENTS OF AN INFORMATION SYSTEM



### FOSTERING A CULTURE OF OPENNESS

Many officials in resource management agencies go through years of training in forestry, fisheries, or other resource management skills. Respect for technical skills can lead to a culture of decision-making that is closed to public input. On the basis of their professional expertise, officials may be genuinely concerned that “inexpert” public influence over resource management decisions may result in choices that are worse for the environment, the public well-being, or both. Access rights can be seen as compromising technocratic or data-driven analysis by introducing more democratic processes aimed at balancing subjective and competing views.

*By seeking to improve particular aspects of the public participation process, officials can improve the quality of participatory decision-making.* Public notice, advertising, and early information can engender stakeholder interest, affect social norms, and educate the public to understand the problem better. Proactive recruitment of a variety of stakeholders, especially from underrepresented groups, will increase the likelihood of a wider range of possible solutions.

*Governments can foster citizen participation and environmental values through better public education campaigns.* Widely held environmental values are characteristic of sustainable societies. To facilitate public participation, governments, CSOs, and international organizations have created campaigns to ensure that citizens know how to access environmental information, participate in public hearings and consultations, and use justice mechanisms to safeguard the environment.

### INVESTING IN ACCESS CAPACITY

Governments are the primary suppliers of access and the gatekeepers to the information and processes necessary to realize those rights. CSOs, those interest groups

independent from the state, family, and market—are the primary—although by no means the only—source of organized demand for access. By supporting the growth of the CSO sector concurrently with other governance reforms, governments can encourage transparency and accountability.

*In order to supply access, government officials need training.* Government itself does not need to be the sole source of capacity-building; it can be completed through partnerships with civil society and business. Experience from case studies demonstrates that civil society can be an important source of education for judges and other officials through training in environmental and access law.

Governments can take a number of steps to increase the independence and sustainability of CSOs, and consequently promote the power of this sector to advocate in the public interest:

- *Freedom of association.* Even in countries that allow people to freely associate and interact, CSOs face a number of obstacles to organization. Common limitations on freedom of association include requiring sponsorship by local authorities, registration of individual members, or excessive tax burdens due to unclear nonprofit status. Removing these legal obstacles would strengthen the ability of CSOs to function.
- *Building public domestic support.* Governments can help build domestic support for CSOs by subsidizing or requiring public service announcements, encouraging philanthropy, or sponsoring publicity campaigns about public interest issues.
- *Seed grants.* Governments can set up agencies responsible for setting forth transparent requirements and decision-making processes for competitive grants to nonprofit organizations.

- *Tax-exempt status.* Governments could allow organizations registering as nonprofit to receive tax exemptions on income. Standards for such exemption should be transparent and subject to review by an independent authority.
- *Broadened standing for environmental harm.* Environmental CSOs, in particular, require legal innovations from governments, such as broadened standing in order to carry out litigation in the name of the public.
- *Capacity building.* CSOs unaware or incapable of using access rights are less likely to foster membership, attract publicity, or influence environmental decisions. Governments should include CSOs as a key target group in their larger educational efforts to increase public understanding of access.

### Advocating Access

Access proponents must understand and deploy the array of arguments in favor of access and overcome hurdles to implementation. Access rights are inherently human rights. Increasing access will advance the fulfillment of norms well-established in international and national laws. Access allows society to tap the potential of all of its sectors — the public and the private, government officials and citizens — to contribute to the betterment of public policy.

The fulfillment of access rights confers substantial public goods to the benefit of the governments and communities that implement them. Access principles are associated with good governance. These practices, in turn, are associated with stronger economic growth. Through its connection with good governance, access may also promote sustainable development more widely. A growing body of research demonstrates the positive connection between the ability to govern and the ability to manage natural resources sustainably.

#### ACCESS RIGHTS ARE HUMAN RIGHTS

Access rights are rooted in human rights. The primary purpose of access rights is to empower people to advance the fulfillment of substantive rights—the entitlement of all people to the fundamental civil, political, economic, social, and cultural conditions that are considered necessary to ensure human dignity. The most widely recognized category of human rights, known as civil and political rights, provides the basic building

blocks for access. Various international and regional human rights instruments establish these core rights of the individual to exercise freedom of expression and association, to take part in the conduct of public affairs, and to have these and other rights enforced by an independent and impartial tribunal.

Access rights are also rooted in another category of human rights—so-called economic, social, and cultural (ESC) rights. ESC rights are reflected in many international and regional human rights treaties and proclamations. They include the right to an adequate standard of living, including adequate food, clothing, and housing; safe and healthy working conditions; and the highest attainable standard of physical and mental health.

Forging a strong link between environmental access rights and human rights instruments can be an important dimension of strategies to promote and reform access law and practice for several reasons. Widely recognized human rights are grounded in both treaty law and the equally binding rules of international customary law. Human rights describe duties that a government has consented to or is bound by and should therefore be a constructive part of its discourse with civil society. Framing arguments in human rights terms can also help environmental advocates to utilize international and regional human rights enforcement machinery, as well as domestic constitutional courts, tribunals, and commissions. Finally, the universal appeal of human rights can draw support from civil society groups beyond the environmental field. Evidence from the TAI network suggests that when national governments adapt the law to reflect these international norms, they enable CSOs to use these rights to improve environmental outcomes.

#### ACCESS TAPS SOCIETY'S FULL POTENTIAL

The provision of access can be understood as a dynamic of supply and demand. Governments are the primary suppliers of access rights, and the gatekeepers to the information and processes necessary to realize those rights. Civil society organizations are the primary source of organized demand for access. However, access to decision-making by the government is essential for more than just civil society. Tables 1 and 2 give a broad view of the reasons different groups demand access to information, participation, and access to justice. As Table 2 shows, governments themselves benefit from openness. An informed public is an essential ally

**TABLE 1 WHY DEMAND ACCESS?**

	GOVERNMENT INFORMATION	PUBLIC PARTICIPATION	JUSTICE MECHANISMS
Civil Society	<ul style="list-style-type: none"> <li>To monitor government and private activity through information collected by the government</li> <li>To assess and formulate policies and practices</li> <li>To educate the public about existing policies and practices</li> </ul>	<ul style="list-style-type: none"> <li>To increase influence of civil society organizations</li> <li>To ensure fairness of decisions</li> <li>To foster greater voice and equity for underrepresented groups</li> </ul>	<ul style="list-style-type: none"> <li>To ensure enforcement of environmental laws</li> <li>To enforce access to information and participation</li> <li>To resolve disputes</li> </ul>
Private Sector	<ul style="list-style-type: none"> <li>To identify potential resources—financial, human, technological, and natural</li> <li>To obtain market information</li> <li>To ensure fair contracting practices</li> <li>To manage environmental and human risk</li> </ul>	<ul style="list-style-type: none"> <li>To increase influence of the private sector</li> <li>To reduce risk to projects from the consequences of low public approval</li> </ul>	<ul style="list-style-type: none"> <li>To ensure fair application of laws and regulations by officials</li> <li>To seek remuneration for harm from damage to ecosystem services</li> <li>To ensure consistent and predictable interpretation of laws</li> </ul>

**TABLE 2 GOVERNMENTS THEMSELVES USE ACCESS**

GOVERNMENT INFORMATION	PUBLIC PARTICIPATION	JUSTICE MECHANISMS
<p><b>Purpose of access</b></p> <ul style="list-style-type: none"> <li>To share responsibility for monitoring with civil society</li> <li>To monitor fiscal expenditure</li> <li>To monitor and analyze management practice</li> <li>To set taxation rates and account for natural resource use</li> <li>To assess current practice</li> <li>To oversee other government agencies</li> </ul>	<p><b>Purpose of access</b></p> <ul style="list-style-type: none"> <li>To gather information from the public</li> <li>To disseminate information and educate the public</li> <li>To disseminate and influence public opinion</li> <li>To increase legitimacy</li> <li>To respond to public pressure</li> <li>To generate and capture wider ideas</li> <li>To amplify minority voices</li> </ul>	<p><b>Purpose of access</b></p> <ul style="list-style-type: none"> <li>To ensure monitoring and enforcement of regulation</li> <li>To protect minority interests and the environment</li> <li>To ensure consistent and predictable interpretation of laws</li> <li>To resolve disputes between parties over natural resources</li> </ul>

in government’s role as regulator, strengthening the incentive of regulated entities to police themselves. Participatory processes such as public hearings raise awareness of—and can build public support for—government initiatives.

**ACCESS GENERATES PUBLIC BENEFITS**

Findings from current governance literature show that, by increasing access to information, public participa-

tion, and access to justice, governments raise the quality of decisions in multiple ways:

*Legitimacy.* Participation by all interested parties in a decision process builds legitimacy and “buy-in” for the resulting decision. Even in cases where there are winners and losers, the ownership built through the participatory process can lessen opposition and conflict when the decision is implemented.

*Building Stakeholder Capacities.* Through the participatory process, stakeholders gain skills and knowledge. They build relationships with one another, deepen their community’s democratic culture, and foster trust and social cohesion. All of these capacities may be resources that enable better project and policy implementation, or they may be of value for activities unrelated to the decision process. Some authors consider the relationships built through public participation a good in and of themselves—a form of social capital.

*Better Implementation.* Decisions made in a participatory manner are more likely to be fully implemented and sustained, in part because of enhanced legitimacy and reduced opposition. There may also be cost savings, especially in cases where stakeholder ownership of the decision extends to the sharing of labor or other resources in the implementation phase.

*Improving the “Quality” of the Decision.* In a participatory process, the resulting decision will reflect the specialized knowledge and variety of perspectives that participants bring to the table. This raises the substantive quality of the decision relative to its intended outcomes.

*Making Decisions that Reflect Stakeholder Values.* When the public has the opportunity to influence a decision-making process, the resulting decision is more likely to reflect public values and interests than if it were top-down.

**Recommendations**

Realizing greater environmental democracy is clearly a long-term process. Evidence from TAI country assessments and case studies conducted thus far suggests that improvements in access have been achieved over the 16 years since the Rio Earth Summit, but that much more remains to be done. These recommendations come primarily from our research, and provide a starting point for improving public participation, raising the quality

and accessibility of information, and increasing the availability of judicial and administrative relief for citizens.

Many of these recommendations echo those in the previous TAI global report, *Closing the Gap*. This similarity raises a question: how can we ensure continued progress in the supply of access rights? Building on the findings in this publication and the rapidly growing body of information being gathered by the TAI network, we present the following set of next steps, including instituting legal reforms, mainstreaming public participation, building coalitions, and building the capacity of both government and civil society for better environmental governance.

## **ACTIONS FOR GOVERNMENTS**

### **Legal Frameworks for Access to Information**

Gaps can exist at different points of environmental information systems. These may be at the collection, analysis, or dissemination stages. Governments can address these gaps by strengthening specific legal codes to mandate proactive information production mechanisms, including PRTRs, emergency response systems, regular air and water quality monitoring systems, state of the environment reports, and EIA codes. Adequate codes would encourage officials to produce and release information. Making clear which officials are answerable to the public will increase accountability for decision-making.

### **Information on Compliance and Industrial Pollutants**

Industrial facility reporting on pollution emissions needs stronger mandates. Facility reporting needs further standardization of monitoring and sampling techniques, as well as narrowed scope of confidentiality claims. Establishment of a PRTR is one way to make information available through the channels most likely to reach those affected.

### **Information on Air and Water Quality**

Strong mandates to monitor air and water quality require a robust slate of indicators, analysis of health and environmental implications of this information, and availability of regularly released information in a usable form.

### **State of the Environment (SoE) Reports**

Strong mandates for SoE reporting require that reports are released regularly. Because SoE reports are used widely by the public, they should employ standardized

formats for ease of comparability over years, attention to environmental trend data, and a minimum of jargon. Corresponding data should be available on the Internet free of charge. Production, analysis, and distribution can be aided through partnerships between agencies, the private sector, and CSOs.

### **Information on Emergencies and Accidents**

Successful distribution of environmental information requires clear legal mandates for reporting on impacts. This involves clarifying responsibility and accountability for producing environmental reports during and after an emergency. It includes clarifying overlapping or nonexistent mandates and supporting responsible agencies with adequate budgets.

### **Public Participation at Policy, Planning, and Project Levels**

Earlier citizen involvement in policy and planning and improved notification processes for public input can serve to inform stakeholders more adequately about participation opportunities. Comprehensive briefing materials, such as initial planning drafts or scoping criteria can also be distributed. In particular, timely information on available technical, economic, and environmental data may improve the quality of final decisions.

### **Building the Capacity for Access**

Capacity building for officials, CSOs, and the general public requires sustained support. This means increasing and maintaining budgetary resources directed toward training government officials not only to be aware of and comply with access laws, but to publicize and support opportunities for citizen participation, and to solicit the involvement of affected parties.

## **ACTIONS FOR ACCESS PROPONENTS**

Actors from all sectors and levels of society stand to benefit from increased access to information, public participation, and access to justice. Our findings and conclusions suggest that access proponents can take several essential actions to bring about access reforms and address barriers to and gaps in the provision of public access.

- *Access proponents can assert both the instrumental benefits of access rights and the human rights basis of access. As these advocates continue to place access rights on their national agendas, they can argue that greater access to environmental decisions has clear benefits on a number of levels. Because access rights have their basis in international*

human rights, access advocates can deploy human rights arguments. This has particular potential in those settings where international mechanisms are available to enforce these rights.

- *Access proponents must build and strengthen networks in order to push for greater transparency and public influence.* Access proponents can employ both strategic alliances and broad-based coalitions of like-minded groups in order to manage and sustain policy reform. They can begin with those most affected by lack of access to environmental decision-making and spread out to those who have the greatest interest in a transparency and democracy agenda. Networks—including members of civil society, government, and the private sector—may serve strategic purposes different from CSO-only coalitions. As they continue to work for incremental change CSOs must capitalize on major opportunities that present themselves unexpectedly or at short notice — such as constitutional reform or international treaties.
- *Governments and civil society can work together to build official capacity.* The proper training of government officials requires efforts in the legislative, administrative, and judicial branches. Civil society organizations can help in this training, as they often have well-developed access expertise.
- *Advocacy for public participation should be supportive of representative government.* Efforts to strengthen public participation should seek to support and not undermine representative government. For example, access advocates should strengthen public participation in legislative processes.
- *Researchers must continue to address gaps in the public participation literature.* This includes practical research into how CSOs are selected to participate in national and regional policy-making, and mechanisms for downward accountability from “grasstops” CSOs to grass-roots community-based organizations. Continued research must address mechanisms to include the poor and socially excluded in the decision-making process and to limit capture of participatory processes by elites. Finally, the circumstances under which participation reinforces and strengthens other democratic institutions merits additional attention. Continued assessments of access

laws and practice by TAI and others will play an essential role.

#### **A RESEARCH AGENDA TO EXPLORE PUBLIC PARTICIPATION AND ENVIRONMENTAL SUSTAINABILITY**

Research is needed to better understand when and how access most contributes to positive impacts and prevention of harm. Key questions include:

- What are the key elements—legal, political, cultural and capacity-related—that enable public participation to have positive on-the-ground impacts?
- At what stages in the policy and project planning process is access most beneficial?
- What are appropriate guidelines for officials to decide what form of participation, information, and justice forums are suitable for given circumstances?

In particular, the following research could help improve the policy environment for access rights:

- Systematic meta-studies of accumulated case studies.
- Comprehensive approaches to weighing the costs and benefits of participation (e.g. how to include capacity-building benefits; how to apply cost-effectiveness analysis, cost-consequences approaches), especially those that would be usable at a practical administrative level.

#### **A Final Thought**

Access rights—and those individuals and institutions that fulfill them—are at a moment of opportunity. New freedom of information acts and a push for greater transparency in decision-making have raised the profile of access reforms. Yet improvement and institutionalization of access rights is not assured without continued independent assessment and ongoing advocacy and collaboration.

# A Reader's Roadmap

The publication in your hands represents the culmination of several years of research, experimentation, and reform by governments, civil society organizations, and industry in implementing access to information, public participation, and access to justice in decisions that affect the environment. *Voice and Choice* is an interim report of the Access Initiative, and captures the results of the network's first efforts to assess the adoption and implementation of environmental access rights. As an interim report, its main purpose is to begin to answer the questions, "Where are we?" and "Where do we go from here?"

**Chapter 1 Opening Access** provides a theoretical and historical background for access rights and the relationship these rights seek to establish between governments and people in the context of environmental decision-making. Reformers at the convergence of agendas in environment, governance, and human rights have already made significant inroads in measuring, analyzing, and promoting more open and transparent governance around natural resources. The chapter also presents The Access Initiative (TAI) method for assessing government provision of access rights and shows a number of general results of these assessments.

**Chapter 2 Strengthening the Argument for Access** provides access proponents within and outside of government a broad palette of arguments to use in order to spur reform in decision-making processes. The chapter outlines three key arguments for access rights, under the assumption that access proponents and governments will find some arguments more compelling than others given their unique circumstances. First, the chapter argues that access rights are human rights grounded in international law. Second, the chapter briefly touches upon the larger arguments other researchers have made about the positive relationship between good governance and growth at the national level. Third, the chapter looks at evidence about how public participation, access to information, and access to justice affect the quality of decisions on the small scale.

**Chapter 3 Access Hurdles** presents and draws lessons from original research completed by the TAI network. Aggregated data from this research shows that while access to information law and public participation law have grown, implementation is still lacking. In order to deal with this, the chapter identifies hurdles to further implementation of access rights and presents case studies where access proponents have encountered, and in some cases, overcome these hurdles. We group the sections of this chapter under four headings:

- **Managing Vested Interests and the Politics of Access.** Data from TAI country assessments and case studies suggests that vested interests play a significant role in controlling the flow of information and participation. We attempt to address this challenge by proposing strategies for overcoming these interests through coalition-building and highlight the importance of messaging to engage the public.
- **Identifying the Gaps in Information Systems.** Not all systems for releasing environmental information suffer from the same gaps. We look at the elements of a complete environmental information system including collection, analysis, and dissemination. A series of case studies and findings highlight the importance of ensuring the availability, publicity, and usability of information.
- **Fostering a Culture of Openness.** This section describes how opening participation to the public affects the 'environmental quality' of a decision. While not offering a definitive answer on the subject, lessons on how to reconcile the need for expert deliberation with the demand for public input.
- **Investing in Access Capacity.** Support for government officials and for civil society organizations to supply and demand access is essential for environmental democracy. This section examines the extent and the sustainability of efforts to create this cycle of engagement.

**Chapter 4: Recommendations** culls lessons from the previous chapters. The first part of the chapters presents next steps for governments in implementing access rights while the second section presents ideas for access proponents to use to promote these reforms more generally.



1

## Opening Access

*“People living in poverty have the least access to power to shape policies—to shape their future. But they have the right to a voice. They must not be made to sit in silence as ‘development’ happens around them, at their expense. True development is impossible without the participation of those concerned. All of us—rich and poor, governments, companies and individuals—share the responsibility of ensuring that everyone has access to information....And our starting point must be respect for individuals’ rights.”*

—Nelson Mandela, 2006

## Principle 10: A World Open to Change

Nelson Mandela’s words and his actions inspire us to imagine a more open world in which access to information and the opportunity to participate enables even the most disempowered people to shape their own future. At the 1992 Rio Earth Summit, the international community moved toward this goal by agreeing on a set of principles aimed at ensuring that people everywhere would enjoy the right to understand and influence decisions affecting their environment. Principle 10 of the Rio Declaration sets out the necessary elements to achieve a more open and just world (see Box 1.1). It asserts that sound environmental governance and effective environmental policies depend on providing people with access to information, opportunities for participation, redress for environmental harm, and mechanisms to ensure that these rights are fulfilled.

The rights of access to information, participation in decision-making, and access to redress and remedy form the three basic pillars of Principle 10, which we refer to collectively as “access rights”. Access rights are central to more representative, equitable, and effective environmental decision-making. Access to information empowers and motivates people to participate in a meaningful and informed manner. Access to participation in decision-making enhances the ability of a government to be responsive to public concerns and demands, to build consensus, and to improve acceptance of and compliance with environmental decisions. Access to justice allows people to hold government agencies, companies, and individuals accountable. Meaningful participation requires access to the information that forms the basis for decisions, the opportunity to voice opinions, and the ability to influence choice among possible outcomes.

Governments have made significant headway establishing the legal infrastructure for access. Constitutions and legislation now guarantee freedom of information in nearly 70 countries (Banisar 2006). Many governments have enacted administrative processes, such as environmental impact assessments, that mandate public participation. Progress toward the implementation of public participation policy has, however, been slower, reflecting the profound transformations necessary to achieve actual openness, in which governments and civil society share a commitment to environmental democracy. In other words, we now stand at the threshold of a half-open door. Understanding the benefits that lie behind that door, and the hurdles that remain, will be essential to achieving a world open to change.

### BOX 1.1 TEXT OF PRINCIPLE 10 OF THE 1992 RIO DECLARATION ON ENVIRONMENT AND DEVELOPMENT

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

*Voice and Choice: Opening the Door to Environmental Democracy* assesses the progress governments have made to provide access to environmental decision making and, in the hope of moving forward, evaluates the challenges to access in order to identify points of opportunity. This report is for “access proponents”—members of government, civil society, business, and intergovernmental organizations committed to promoting access and eager to learn what has worked and why. *Voice and Choice* acknowledges that the contexts and priorities of individual countries and of individuals within those countries will vary. Many of the opportunities and challenges will be familiar to readers regardless of locale, while others may provide a new framing of well-known issues.

This document is an interim report—a map of progress toward fulfillment of access rights and a guide to where we might head in the future. It includes stories of how access has empowered people, transformed communities, and avoided or lessened environmental damage. Our starting point is Principle 10. (See Box 1.2). *Voice and Choice* captures the research and practical experiences of The Access Initiative (TAI), the largest network of civil society organizations dedicated to realizing Principle 10 by assessing and promoting transparency, inclusiveness, and accountability in environmental decision-making. (See Box 1.3 for a further description of TAI.)

In this chapter, several case studies capture glimpses of a more open world, one where the right combination of popular demand and political will have begun to put in place progressive and potentially transformative access rules and innovations in government. This section brings together general observations and specific examples from policy and practice that we believe describe the inspiring contours of a “Principle 10 World.”

**BOX 1.2 ARE ACCESS PRINCIPLES ACCESS RIGHTS?**

When 178 governments signed the Rio Declaration in 1992, they refrained from using rights-based language in Principle 10. Yet this report uses the term “access rights” throughout. There are several reasons.

First, as reflected in human rights law, access to information, public participation, and access to justice have the legal and moral force of rights. Governments must make efforts to *respect*, to *protect*, and to *fulfill* these rights. By framing access principles as a series of rights for people and associated duties for governments, we signal the expectation that governments take the proactive steps necessary to realize these rights.

Second, Chapter 1 shows that many countries have created rights-based framework laws on freedom of information and most have framework laws on environmental impact assessment, including rights to public participation. As described in Chapter 2, a range of international declarations and laws enshrine the rights to information, participation, and justice. We believe these laws form a set of baseline duties of all states and rights of all people to information, participation, and justice.

**BOX 1.3 THE ACCESS INITIATIVE**

Started in 2000, The Access Initiative's (TAI's) first assignment was to assess progress on implementing Principle 10 ten years after Rio, for the 2002 World Summit on Sustainable Development in Johannesburg, South Africa. Since then, TAI has become the largest global civil society organization (CSO) network dedicated to ensuring that people have the right and ability to influence government decisions about the environment and natural resources. The network now includes over 150 civil society organizations and operates in over 40 countries. Six CSOs from Asia, Africa, Latin America, North America, and Europe now spearhead TAI in their respective regions. The World Resources Institute functions as the global Secretariat for TAI.

## Environmental Governance and Environmental Democracy

The title of this report—*Voice and Choice: Opening the Door to Environmental Democracy*—reflects the objectives of opening up decision-making processes affecting the environment by widening the range of voices heard and improving the quantity and quality of policy choices

available to society. Through this effort, we believe that environmental values will increasingly become part of the public debate. Our working hypothesis is that these added voices strengthen the democratic foundation for better environmental governance and, in so doing, will generate better outcomes for human well-being and the environment.

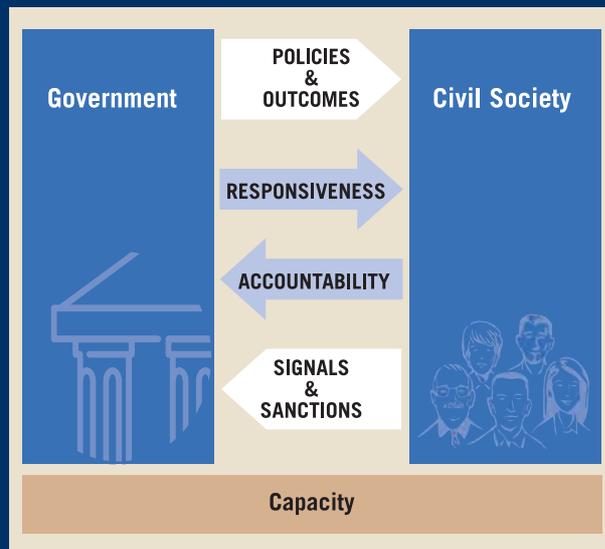
At its core, *Voice and Choice* is about democratizing environmental governance. Petkova et al. (2002) review a number of definitions of governance, including:

- The set of values, policies, and institutions by which a society manages economic, political, and social processes (Cheema 2000).
- The manner in which power is exercised in the management of a country's economic and social resources for development (World Bank 1992).
- The process of decision-making and the process by which decisions are implemented (UNESCAP 2002).
- The framework of rules, institutions, and practices that set limits and provide incentives for the behavior of individuals and organizations (UNDP 1999).

Veit and Ribot offer a specific definition of environmental governance as the distribution, exercise, and limits of power over decisions that affect the environment (Veit and Ribot 2008). For our purposes, the term can describe a broad range of policy-making processes—and actors—that might be more or less open to public input and, as a consequence, more or less responsive and accountable to public needs.

Strong feedback between the public and government officials encourages responsiveness and accountability. Figure 1.1 shows this relationship. In open, democratic systems, a well-informed public is able to observe and measure the outcomes of policies. The public can receive this information through channels such as a free press, public education, civic associations, and official reports. Individuals and organizations can express their policy preferences through public hearings, meetings with elected leaders, petitions, submitting research, holding referendums or initiatives, or staging boycotts or demonstrations. Holding government to account depends upon the ability to sanction public officials. (Veit et al. Forthcoming, 2008). The most effective and peaceful means of sanctioning public officials is removal from office by elections.

FIGURE 1.1 THE RELATIONSHIP BETWEEN RESPONSIVENESS AND ACCOUNTABILITY



Source: Adapted from Veit et al. Forthcoming, 2008

Despite its strengths, government by elected representatives has its shortcomings. If elections are the only means of signaling policy preferences, minority opinions can be trampled by a majority. The views of those less able to use electoral mechanisms will be under-represented. To address these weaknesses, democratic systems install a number of checks in order to protect minority opinions, and promote forms of participatory democracy that supplement the voices of elected and appointed officials. For example, constitutions can empower courts to overrule laws that infringe on minority rights, and can require legislatures to deploy supermajorities to approve some types of legislation. The requirement that major planning and policymaking processes be based on public hearings and public input can also provide participatory channels for minority viewpoints.

Those espousing environmental values often find themselves in the minority. In many societies, environmental movements are nascent, fragile, or marginal. In the absence of a strong environmental voice, officials may fail to value immediate environmental concerns or neglect longer term issues that reflect the needs of future generations. Lawmakers may not know how to make decisions about natural resources when there is incomplete information or little public signaling about preferences. By opening policy processes to public participation governments increase information flows both to and from officials and the public, and broaden the

range of policy options to choose from, including those reflecting environmental values.

Access rights thus form a core part of what we refer to as “environmental democracy.” A balance of representative and participatory decision-making, informed by public access, will most likely reflect the will of those with an essential stake in the outcome, and most likely to bring environmental values into the policy-making process. Greater transparency and public participation increase the accountability and responsiveness of government officials. By allowing for public participation and access to remedy and redress, environmental values are more likely to become part of the policy-making process.

Concurrent with significant advances in the institutionalization of representative democracy throughout the world, political reformers have begun to focus on increasing public participation in decision-making processes. For example, civil society groups and political leaders in Latin America have advocated institutionalizing participatory democracy. Regardless of differences in ideology and ultimate goals, parties in these countries agree that representative democracy is not enough: public participation is essential to cultivate the influence of civil society (García-Guadilla 2002). This trend has been most prominent in decisions for the environment. In fact, public participation, freedom of information, and access to justice seem woven into the fabric of the modern environmental movement.

Reforms focusing on participation, access to information, and access to justice are not the sum of environmental democracy. Such reforms work best in combination with representative democracy, rather than in its place (see Box 2.4 for a discussion on the practical limitations to public participation). Even in non-democratic policy environments, increasing access to information can open new corridors for public expression. While not a substitute for free and fair elections, increasing opportunities for public participation in planning and policymaking processes can lead to better outcomes.

### The Elements of Access

The ability of affected people to influence decisions is shaped by many factors. A seat and a voice at the table is the defining feature of meaningful participation. People must have the appropriate information on which the decision turns if their influence is to be meaningful.

Accountability is also an essential factor in exerting influence. Accountability can be defined as, “the obligation to explain and justify conduct” (Bovens 2006). Decision-makers are more likely to respond to stakeholder concerns if they can be held accountable. Accountability requires that decisions be scrutinized by independent third parties and that, based on this scrutiny, stakeholders can apply sanctions if they find decision-makers wanting. Such sanctions can run the gamut from simple reversal of a decision to loss of decision-making power—perhaps by being removed or voted out of office—to criminal sanctions and fines. Transparency, participatory processes, and access to remedies and redress are all important mechanisms to strengthen accountability (Ribot 2002).

#### ACCESS TO INFORMATION: TRANSPARENCY AND OPENNESS

Transparency describes the free flow of information about the decision-making process. Without information, participation is meaningless. People need access to all relevant information to understand the circumstances and context of decisions being made and to eval-

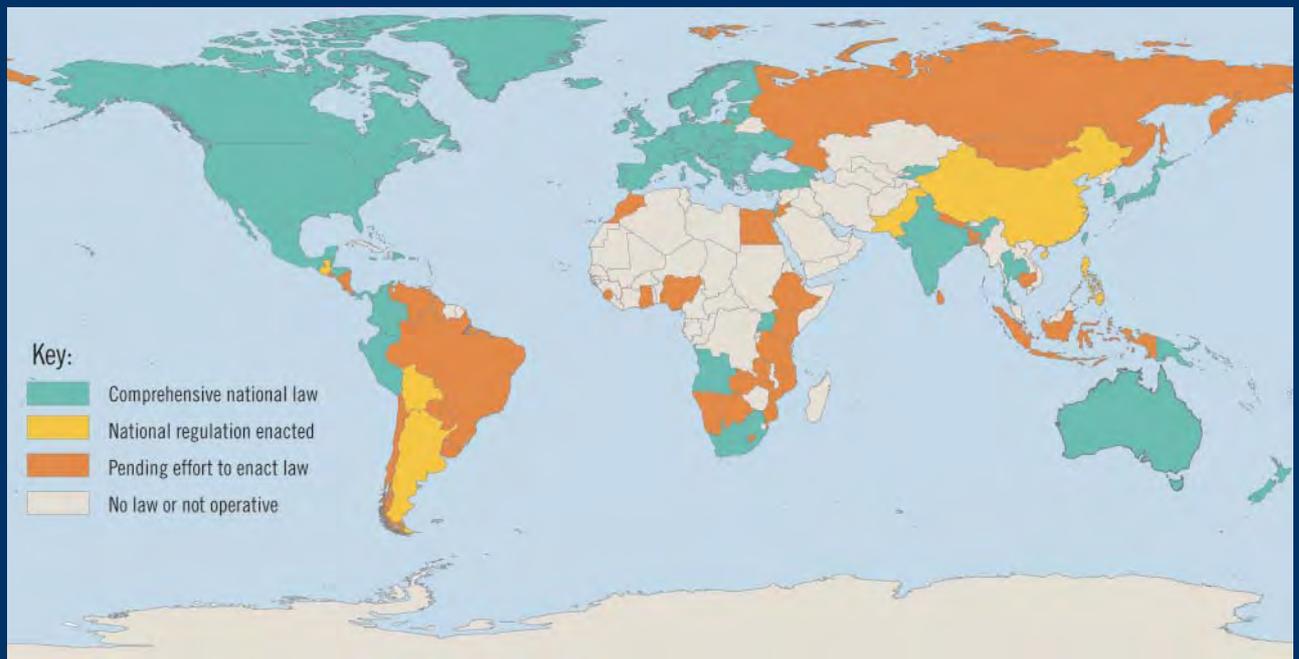
uate the impacts of these decisions on themselves and the environment. Transparency also has other benefits. It reduces the space for corruption and arbitrary or discriminatory decision-making. In so doing, it strengthens the rule of law and increases accountability (Pope 2003; Gray-Molina et al. 1999; Alt and Lowry 2006).

In a society where every person had access to environmental information held by the government, each individual would be able to access that information in a timely and affordable manner. People would be aware of their right to information and would easily understand where to go, whom to meet, and how to get that information. Each agency would advertise to people the information it has and where, when, and how it could be obtained. Civil servants would see the public as the rightful owners of government-held information, as a key source of information, and an indispensable ally in informed decision-making. Government agencies would willingly bear a heavy burden of proof when asserting any duty or privilege of government secrecy, such as national security or public safety. Furthermore governments would mandate and support the production, analysis, and dissemination



Supporters of Andres Manuel Lopez Obrador, the candidate of the Party of the Democratic Revolution (PRD), in Zocalo Square, Mexico City. Over 250,000 people rallied to demand a recount of the votes in the presidential election of 2006, which PRD lost by a razor-thin margin.

FIGURE 1.2 FREEDOM OF INFORMATION LAWS BY COUNTRY



Source: Banisar 2007

of information, and would build the capacity of the public to use that information.

The right of access to information is guaranteed in the constitutions of many countries. A growing number of countries have enacted freedom of information acts (FOIAs) enabling people to obtain information held by the government. A 2006 survey identified 69 countries with freedom of information laws (Banisar 2006), and many other countries are considering such legislation (see Figure 1.2 and the example of Mexico in Box 1.4). Despite this progress, implementation of these laws has been weak and uneven. On the other hand, there is a trend toward greater openness of government and the recognition that the right to information is a fundamental human right. That trend is a combination of civil society demands for greater transparency and the recognition by governments of the benefits of transparency. As a result, a number of governments have engaged in constructive dialogue with civil society groups, resulting in successful legal, policy, institutional and practice reforms regarding access to information.

#### **PUBLIC PARTICIPATION: A SEAT AT THE TABLE, A VOICE IN THE ROOM**

For participation to be fair and effective, a decision-making process should include a range of stakeholder voices. Decision-makers should listen and, to the greatest extent possible, respond to these voices. Decision-making can take many forms. At one end of the spectrum it can be direct—where stakeholders collectively make a decision, either by majority or by consensus. Each stakeholder exercises an influence equal to his or her vote or veto power. At the other end of the spectrum is indirect decision-making, where a third party, usually a government official, makes the decision with or without the participation of stakeholders. The third party could be an elected representative. It could also be a judicial or administrative officer appointed by the government. (For more on this, see Box 2.2.)

A stakeholder's influence over the decision depends on the ability to access the decision-maker and have his or her voice heard. That influence increases when there is an ability to hold the decision-maker accountable both in the way the decision is made and in the merits of the decision itself (Uphoff 2005). Access rights are important to both direct and indirect decision-making. However, they are particularly important in the context of indirect decision-making, where elected or appointed officials can easily marginalize stakeholders and limit

## BOX 1.4 MEXICO'S FEDERAL INSTITUTE OF ACCESS TO PUBLIC INFORMATION

In April 2002, Mexico passed its first Freedom of Information Act. Mexico is now the only Latin American country with a government agency devoted to freedom of information—the Federal Institute of Access to Public Information (IFAI in Spanish). IFAI is an autonomous institution that consists of five commissioners proposed by the President and approved by the Senate. Citizens, academic institutions, business, and media can use IFAI to file requests for information held by any federal agency.

Through June 15, 2007, citizens made over 218,000 requests for information from 240 federal agencies. The large majority of requests came from citizens in Mexico City. Academics made about a third of all requests, while the media, business and other government agencies made about half. SEMARNAT, the Ministry of Environment and Natural Resources, received the fourth highest number of requests of any federal agency.

IFAI has also processed 10,503 appeals by citizens against federal agency decisions to withhold information. Of these appeals, IFAI revoked or modified government refusals about two-thirds of the time. In keeping with their commitment to open government, IFAI's proceedings on appeals are public, transparent, and even broadcast on the web. Media outlets regularly report on its work.

To fulfill its mandate to process requests and resolve disputes, IFAI has developed a state-of-the-art Internet-based system for citizens to use when requesting information. Called SISI, this information management tool handles 95 percent of all the information requests that flow through IFAI. While citizens can also make requests by mail or other methods, SISI provides an efficient and accurate method for requesting information and keeping track of a large number of requests.

Mexico's access to information rights and the work of IFAI are transforming democratic politics and government decision-making.

A June 2007 constitutional amendment ensured that all 32 states in Mexico would establish electronic information request systems and appellate bodies like IFAI. The constitutional amendment will guarantee to each person basic information rights and remedies both at the federal and state levels.

When IFAI was established in 2003, only one in ten Mexicans knew of its existence. In just four years, half the population had learned of its existence. IFAI has used its public recognition to educate both the public and government officials about the new right to access to information.

Mexico has set an example for the world of how a middle-income country can benefit from access to information. In 2006, Human Rights Watch stated that *"The transparency law may prove to be the most important step Mexico has taken in its transition to democracy since the 2000 election."* The World Bank has acknowledged Mexico's success, stating that it was *"... particularly impressed by IFAI, the autonomous agency which gives ordinary citizens access to public information... We would like to congratulate Mexico on these initiatives and applaud the strength of civil society in pushing for this kind of increased transparency."*

Despite this, there is still room for improving Mexico's transparency laws. Without a strong archiving law, many officials often use the excuse that they do not have particular records. Lack of document naming and classification conventions allows officials to refuse to release information unless the requestor asks for the exact title. Like any country dedicated to implementing access rights, Mexico is involved in an active learning process about the best means of reforming access to information.

*Sources:* Trevino Rangel 2007; Romero Leon 2007. Direct quotes are from the same sources.

their access. As has been described, electoral processes that allow representatives to be held accountable by electors also increase responsiveness. Electoral processes alone will not ensure fully responsive government (Halvorsen 2003; Diamond 2005).

Full implementation of the right to public participation means that each person would know about their right to participate and have ample guidance on how, when, and where to exercise that right. Access to decision-making would apply to national, regional, and local policy-making as well as at the project level. People would have

ample notice before the decision-making process begins with access to relevant and easily understood information on the decisions that are to be made. They would be able to communicate their concerns in written and oral submissions. Governments would be obligated to take public input into account and give reasons as to why they have or have not addressed relevant concerns. Participation would allow for governments to be more accountable and responsive to their constituents. Decisions would be publicized before implementation so that aggrieved people could seek remedies and redress

## BOX 1.5 STEADY PROGRESS ON ENVIRONMENTAL IMPACT ASSESSMENT IN GHANA

For Ghana, making public participation an integral part of decision-making has been a long process. Since the 1990s, a series of victories has served to strengthen the environmental impact assessment (EIA) process and to bolster the role of the public in influencing environmental decisions. The case of EIA reform in Ghana suggests that, even when spread over a long period of time, small changes can result in major progress.

Among African countries, Ghana has always been an early mover on environmental issues. In 1973, the country set up its first agency with responsibility for the environment, the Environmental Protection Council. The Council served a primarily educational function, to familiarize government officials with the EIA process. The first legislative recognition of the need for EIAs came with Ghana's National Investment Code (1981), which required the agency responsible for investment to assess and mitigate for adverse environmental impacts in the country. Yet these and other mandates suffered from insufficient staffing and political will. As a result, EIAs in Ghana remained underutilized, voluntary, overcentralized, and largely closed to the public. Still, some progress was made: during this time, Ghana hosted several conferences regarding domestic and international efforts to promote EIAs (Ofori 1991).

The 1990s were a watershed decade for environmental protection in Ghana. The 1994 Environmental Protection Agency Act established a ministry-level post for the environment and mandated EIAs for an extensive set of activities, including mining and manufacturing. Yet a framework law for public participation in EIAs had to wait until the 1999 Environmental Assessment Regulations. The law also closed an important loophole when it became illegal for a project proponent to proceed without an approved environmental impact statement and permit (Appah-Sampong 2004). The regulations also strengthened the law by requiring publicly available environmental management plans within 18 months of completion of the project and every 3 years thereafter (UNECA 2005).

The EIA process has gradually institutionalized public participation. Beginning in 1999, the government invested in increasing public and official awareness in the EIA process. As a result, the number of EIAs with public participation involved has tripled over the last 10 years (UNECA 2005). The government of Ghana has even been self-critical; an internal review of its EIA practices in 2001 found that the government's engagement with the public was weak, but improving. Most EIAs received a grade of "C or D." Partially as a consequence of this study, the government established a 5-year comprehensive capacity development program (Appah-Sampong 2004).

Ghana has adapted the EIA process to meet the particular needs of stakeholders. Reforms in transparency have fed the



participatory process. Initially, EIA documents were kept under lock and key; eventually, a national EIA library improved availability of environmental information. A further step was to make these documents available for the public in other regional capitals (Tunstall 2008). Federal law requires that EIA processes be announced ahead of time in a variety of ways, including newspaper ads and announcements on the national radio and television stations. Local media—such as the beating of the “gong gong”—are used in more remote areas of the country, and paper notices must be posted in areas likely to feel the effects of the project. After public participation, an independent panel must collate comments and officially submit findings of the public hearings to the EPA. Other reforms proactively encourage the participation of the public. The project proponent must describe the project and the predicted environmental impact in the local language. Members of the local community—including specifically invited leaders, farmers' organizations, and NGOs—are given time to air their opinions, and the project proponent is expected to respond. Additionally, security is provided to ensure that the hearing is peaceful (Appah-Sampong 2007).

The success of the EIA process is evident in a number of outcomes. Public hearings have affected many decisions in Ghana, including the size of a shopping mall, the siting of a Shell Company service station, and involuntary resettlement in six gold mining projects (Appah-Sampong 2007). In an internal survey, the government of Ghana found that 76.2 percent of government institutions used EIA data, and that 66 percent of those did so regularly, including in the siting, design, and implementation of projects (Appah-Sampong 2004). In a survey of 28 EIA frameworks in Africa, the United Nations Economic Commission for Africa ranked Ghana among the top three countries surveyed, with “functional and relatively robust systems.” (South Africa and Tunisia were the others.) The success of participation and EIA-based project decision-making has spilled over into a strategic environmental assessment integrated into the 2004 Ghana Poverty Reduction Strategy, that includes stakeholder conversations from October 2003 to April 2004 (UNECA 2005).

if they wished. (Box 1.5 illustrates Ghana’s successful effort to strengthen public participation.)

**ACCESS TO JUSTICE: REDRESS AND REMEDIES**

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 public needs mechanisms to ensure that their government fulfills the right of access to information and the right to participate. Additionally, laws and institutions should provide the means to promote compliance with environmental standards and enforce environmentally related rights. We refer to access to the rules, procedures and institutions designed to fulfill these rights as “access

to justice.” Access to justice is thus a vital aspect of accountability as it provides the venues for the enforcement of procedural and substantive environmental rights and duties.

A comprehensive system for access to justice provides procedural justice, that is, a fair and efficient means of resolving conflict. This depends on a number of factors. The first is the right to bring cases to court, or “legal standing.” Legal standing is often severely limited for environmental matters, even in countries where courts are frequently relied upon to adjudicate policy. (Box 1.6 tells the story of India’s broadening of environmental standing.) Second, forums for conflict resolution need to be geographically accessible and readily affordable. The costs in time and money of

**BOX 1.6 THE MEHTA TREND: INDIA AND BEYOND**

For 350 years, the Taj Mahal in Agra, India stood as a symbol of an emperor’s undying love for his wife. Yet over the centuries, as industries sprung up around the Taj, their pollution contributed to enough acid rain to eat away at the once-pristine white marble. For decades, the authorities ignored the damage.

This began to change in 1980, when the Indian Supreme Court reformed the rules of the courts. Prior to these changes, only directly aggrieved parties could bring environmental cases to the courts. The new reforms broadened legal standing to allow public interest litigation (sometimes called “social action litigation”), allowing groups to sue for a cleaner environment.

In 1984, M.C. Mehta, an environmental lawyer, decided to do something about the slow destruction of the Taj Mahal. After six months spent collecting data and talking with experts about the damage to the Taj, he filed a landmark case in the Indian Supreme Court to save the monument. The case lasted for 10 years. In the end, the Indian Supreme Court compelled hundreds of industries around the Taj to install pollution controls under threat of closure.

A year later, Mehta filed a case alleging that India’s longest and holiest river—the famous Ganges—was being polluted by 300 municipalities and thousands of industries. Mehta argued that any concerned citizen should be able to access the courts and seek remedies for adverse impacts on the environment and public health. The Indian Supreme Court accepted this argument and decided that any concerned citizen acting in good faith could activate the court. In other words, the Court broadened legal standing. It also decided that the right to life found in the Indian constitution included a right to a healthy environment. With these two decisions, Mehta and the



Indian Supreme Court dramatically changed the environmental law of India. The Court handed down dozens of orders over a 20-year-period regulating pollution from these sources.

The seeds that were sown in New Delhi have taken root all over South Asia. Public interest environmental lawyers in Bangladesh, Nepal, Pakistan, and Sri Lanka have adapted Mehta’s arguments in cases brought before the highest courts of their respective countries. Judges in those countries accepted these arguments and broadened legal standing; some even recognized that the right to life included a right to a healthy environment. The seeds have spread further still. Public interest lawyers in Tanzania adapted the arguments to use in their own cases. The broadening of legal standing to access courts for environmental disputes is the first step in creating a fabric of rights and laws that would allow citizens greater access to courts, tribunals, and administrative agencies where they can seek remedies for environmental harms and for enforcing access rights.

Source: de Silva 1999



*People's Court in session, Rangpur, India. Courts such as this one make dispute resolution more accessible to a greater number of people.*

using the forum should not pose a barrier to poorer communities or individuals. Finally, the public must be made aware in clearly understandable terms of the procedural opportunities afforded by the justice system (Petkova et al. 2002).

Access to justice also entails substantive justice—the delivery of redress and remedy to the affected parties. Here, institutions providing justice might order the government to revisit or reverse its decision, require a polluter to halt its activities, or compensate victims. For example, a panel may rule that an EIA did not have public participation, and so may order a halt to construction until such public participation takes place. A court may also rule on whether an involuntary resettlement was in fact legal, or whether a displaced person was compensated sufficiently. Constitutional courts can hear public claims based on denial of a right to a clean environment. Access to justice does not mean that the complaining party always wins, but that environmental rights and values are protected as provided for in law,

and that those advocating for those rights have impartial venues to resolve conflict and obtain remedy.

Redress and remedy can be provided by a variety of institutions, including judicial, administrative and executive bodies. For example, a superior officer in a government agency can provide relief and remedy against an erroneous or unlawful decision by a subordinate officer. Administrative redress and remedy can be provided by local authorities and officials with respect to local matters.

### THE CAPACITY TO EXERCISE ACCESS RIGHTS

The effective use of access rights depends, in part, on a supportive legal framework that creates the space and means for exercising those rights. In addition, civil society organizations require the funding and skills to assist the public in asserting their access rights. Public education and awareness about access rights is essential for people to understand and exercise their rights.

Governments can improve official capacity to ensure public access to decisions. That includes providing adequate staff, equipment, briefings on relevant laws and regulations, and training in participatory approaches. Sufficient resources and clear standards are stepping stones to more transparent, inclusive, and accountable governance. Aid agencies can help by including in their portfolios programs to foster good governance reforms, especially those dealing with transparency. The following section outlines the efforts proponents and governments have made to address environmental issues and to build the capacity to integrate public demand.

### A Brief History of Environmental Access Rights

For some time, environmental activists have relied on information release, public hearings, and use of the courts to bring environmental values into public policy. While many of the modern EIA laws supporting these rights arguably have their roots in the United States, many other countries have modified, strengthened, and streamlined the application of these laws. We group them here into three overlapping phases.

**U.S. ENVIRONMENTAL LAW**

The modern practice of public involvement in decisions affecting the environment has roots in U.S. federal laws of the 1970s and 1980s. Specifically, the United States National Environmental Policy Act (NEPA, 1970) sought to increase the legal ability of environmental CSOs and other concerned groups to influence the policy-making process. NEPA mandated environmental impact statements and environmental impact assessments (EIAs). Further amendments strengthened the opportunity for citizen participation in identifying environmental hazards and in suggesting mitigation (Rosenbaum 2008; Repetto 2006).

A series of U.S. environmental laws also set early standards for access to information about natural resources. The 1970 Clean Air Act, 1972 Federal Water Pollution Control Act, and the 1974 Safe Drinking Water Act set standards for air and water quality and required mandatory collection, analysis, and dissemination of related data (Rosenbaum 2008; Repetto 2006). The 1976 Toxic Substances Control Act required the Environmental Protection Agency (EPA) to gather information on the manufacture and distribution of toxic substances from all chemical manufacturers. The 1986 Superfund Amendments and Reauthorization Act mandated the collection and publication of chemicals and toxics at industrial sites. Title III of the law, the Emergency Response and Community-Right-to-Know Act, allowed communities to request information on chemicals stored, processed, or manufactured by local companies and to participate in the creation of emergency response plans. Beginning in 1988, EPA mandated publication of toxics release inventories from all businesses (Rosenbaum 2008).

Courts also widened the interpretation of standing and the right of citizens to bring suit on behalf of the environment. The landmark *Scenic Hudson* case (1965) sought to prevent the construction of a power plant in New York State. The ruling's ideas on standing made their way into NEPA, which expanded not only the right to sue on behalf of the environment, but also for violations of procedure in the formulation of environmental impact statements (Rosenbaum 2008).

TABLE 1.1 COMMON ENVIRONMENTAL MANAGEMENT TOOLS INTEGRATING ACCESS	
<b>Access to Information</b>	Freedom of information mechanisms State of the environment reports Toxics release inventories/pollutant release and transfer registers Emergency warning systems Air and water quality monitoring systems
<b>Public Participation</b>	Environmental impact assessment Strategic environmental assessment Planning and permitting hearings Legislative hearings
<b>Access to Justice</b>	Litigation Alternative dispute resolution Administrative justice mechanisms (planning councils, etc.)

**ADOPTION IN DEVELOPED COUNTRIES**

While American access reforms were once groundbreaking environmental law, they have slowed considerably, and in some cases, reversed (Rosenbaum 2008). Yet this has not impeded either active adoption or innovation on environment and access in other developed countries.

In the 1970s, for example, governments in Australia, Canada, and New Zealand adopted environmental impact assessments but made a number of changes based on learning from difficulties in the U.S. system. The level of participation varied widely by country. Whereas Canada's law set aside funds to ensure the participation of individuals and organizations in the public review process, New Zealand's original EIA process had little to no mandate to involve the public (Wood 1997).

When the European Commission investigated the EIA process in Europe in 1975, it found that many countries already had elements of the process. Over the next decade, European Community (EC) member states harmonized standards for EIAs, including provisions for participation. Public involvement in EIAs, at least in the early years, was generally stronger in Northern Europe than in Southern Europe (Wood 1997). After the collapse of communism in Central Europe, there was a rise in EIAs, but a lag in integrating public participation into the framework. The Aarhus Convention, which went into effect in 2001, sought to strengthen many of these gaps. (See Box 1.10, later in this chapter.)

The gradual adoption of EIAs by EC (now European Union) member countries allowed some countries

### BOX 1.7 THE ACCESS INITIATIVE STRATEGY

TAI developed a simple but effective strategy to spread access rights around the world. The strategy has three elements:

1. Develop an indicator-based tool to assess the performance of national governments on the implementation of Principle 10 and to identify gaps in the law, institutions, and practice of access rights.
2. Empower civil society organizations (CSOs) to use the tool and support them to conduct independent assessments of access rights in their countries.
3. Engage governments in a constructive dialogue to close gaps identified in the national assessments, and encourage collaboration between CSOs and governments in the effort to realize access rights for all.

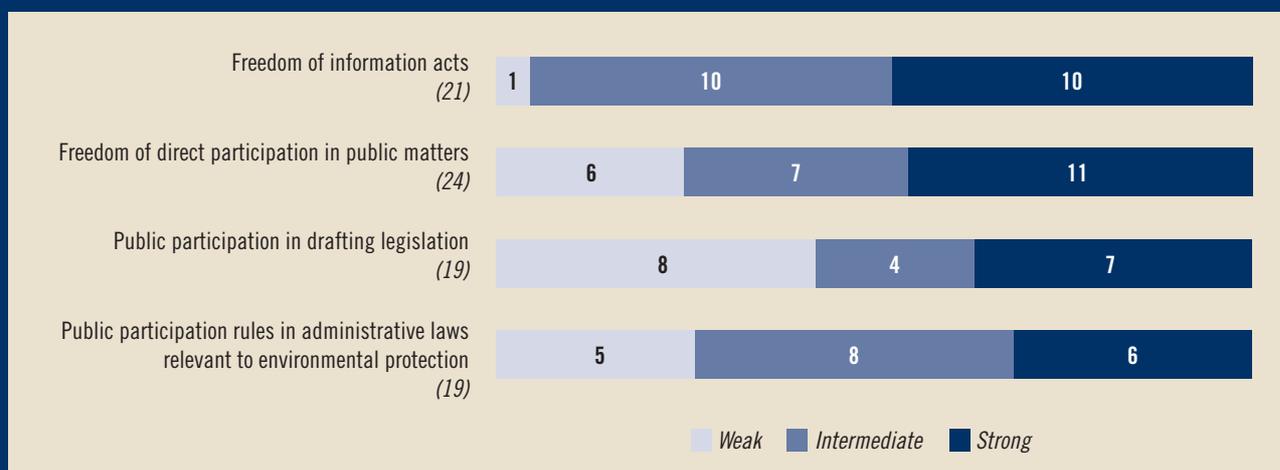
to learn from the experience in the United States and other countries. After watching a proliferation of lawsuits in the United States, many governments weakened provisions that allowed suits to challenge poor EIAs, or created special administrative courts to deal with conflicts arising from the process (Wood 1995). Similarly, many European countries realized that public participation in individual project-level EIAs was insufficient. As a result, newer EIA laws have, at times, integrated public participation into land-use planning procedures and policy evaluation.

### ACCESS IN THE DEVELOPING WORLD

The implementation of access rights in the developing world has varied, reflecting the diversity of experience and relative openness of many countries and regions. Broadly speaking, many developing countries introduced tools for environmental management through legal reform in the 1970s and 1980s, but many lacked enforceability or strong provisions for access. (Table 1.1 provides a list of common environmental management tools which integrate access principles.) External actors have driven—and continue to drive—adoption of many of these tools, although domestic constituencies have increasingly advocated for inclusion of information, participation, and justice as core principles. Arguably, adoption of many environmental tools came as early in the developing world as in developed countries. The 1954 Equatorial Nile Project in Sudan is likely the earliest EIA (albeit under a different name) carried out in the developing world (Moghraby 1997). Colombia, the Philippines, Thailand, and China have all adopted some form of EIA process, although these reforms largely lacked the strength to influence the development process and only rarely had enforceable provisions for public participation and access to information (Wood 1997). (See Box 1.5 on Ghana for one case study.)

In response to international pressure—as well as civil society backlash against unpopular dam-building and other large-scale projects—many bilateral and multi-lateral institutions tried to include public participation in development projects by introducing environmental and social safeguards. As a result, international financial

**FIGURE 1.3 RANKINGS OF ACCESS TO INFORMATION FRAMEWORK LAWS AND PUBLIC PARTICIPATION FRAMEWORK LAWS**  
(*n* = countries)



Source: TAI Assessments

institutions increasingly mandated public participation to be part of their planning process. A second trend was the use of loan conditionality and technical transfer (or modeling) of EIA processes to borrowing countries. Western European countries have poured a good deal of technical know-how and financing into implementing participatory environmental reforms (Braithwaite and Drahos 2000). Similarly, the United States has often mandated access to information and public participation reforms in its environmental side agreements to free trade agreements (Nauman 2006). Another trend is the increasing use of participation in community-based natural resource management.

The adoption of participatory frameworks for decisions affecting the environment initially met with modest success, as most countries lacked a strong domestic demand for participatory processes (Wood 1997). Similarly, reforms in access to justice and access to information began slowly, if at all in some countries (Nauman 2006).

Despite some setbacks, access reforms have gained a foothold in parts of the developing world. Reformers such as M.C. Mehta of India (see Box 1.6) devised novel ways of interpreting law to increase access rights. As a result of these types of innovations, lawyers and judges in other contexts have benefited from cross-national citing of judicial and juristic opinions. Lobbying by national and international CSOs, and occasionally the integration of international standards into national laws have also strengthened access rights (Braithwaite and Drahos 2000).

### Turning Rights into Practice

How far have governments come in fulfilling access rights since Rio? The answer is mixed. While governments have made inroads to opening up decision-making processes that affect the environment, much remains to be done. Assessments from the TAI network demonstrate that more countries have framework laws on information than have framework laws supporting public participation. (Assessments of recently introduced access to justice indicators were not available at the time of this writing, but will be presented in forthcoming reports.) Figure 1.3 documents the results of TAI assessments that seem to confirm this gap. Only 1 of 21 countries evaluated lacked a basic freedom of information law. Yet, of the countries evaluated for framework laws on participation, one quarter received weak rankings. (For a description of the strategy, refer

to Box 1.7. For the method, see “Approach” later in this chapter.)

There are even larger gaps between law and practice in the assessed countries. Implementation of laws has lagged far behind legal reform. Figure 1.4 shows the difference between law and practice in the countries surveyed.

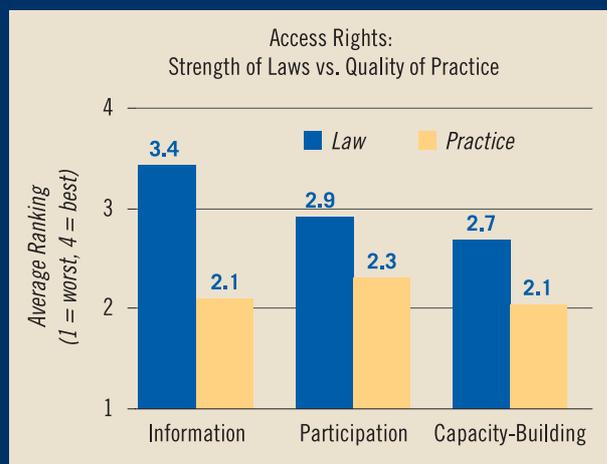
There are many reasons for the apparent gaps between law and practice. These rankings reflect a partial fulfillment of access rights. While the governments included here have taken steps to respect the right to information and the right of participation, they have not been equally proactive in making sure that information and participation have reached the public at the right time. For example, many countries have framework FOIAs that cover environmental information, but they may not mandate the collection and distribution of data on pollutants from industrial facilities. Experience shows that successful environmental regulation requires proactive information and consultation if environmental values are to come to the table.

These observed gaps between law and practice corroborate the findings of *Closing the Gap*. (See Box 1.8) The difference is that they now reflect evidence from 26 countries, not just 9. The basic challenges, then, are to strengthen law and to turn law into practice. In order to achieve this agenda and to lay out the challenges ahead, the rest of this chapter identifies key motivations for demanding the fulfillment of access rights and describes the Access Initiative’s method for identifying gaps in access provision.

### ACCESS TAPS SOCIETY’S FULL POTENTIAL

The provision of access can be understood in terms of supply and demand. Governments are the primary suppliers of access rights and the gatekeepers to the information and processes necessary to realize those rights. Civil society organizations are the primary—although by no means the only—source of organized demand for access. Table 1.2 provides an overview of the reasons both civil society and the private sector demand that governments fulfill their right to access information, public participation, and justice. Of course, while no single actor is likely to need access for all of the reasons stated below, the table demonstrates why different actors might make use of access.

**FIGURE 1.4** MEAN RANKINGS FOR LAW AND PRACTICE INDICATORS (VALUE)



Source: TAI Assessments

However, opening decision-making to the public is essential for more than just civil society and the private sector. (See Box 1.9 for information on the private sector.) Table 1.3 demonstrates that governments themselves benefit from openness, public influence, and justice mechanisms for environmental decisions. Government officials can benefit from an informed and participating public. The public can be an essential ally in the government's role as regulator—strengthening the incentive of regulated entities to police themselves. In addition, the public and private sectors often serve to enable particular individuals and agencies within the government to monitor and regulate the activities of other officials (Fox 2000). Participatory processes such as public hearings raise awareness and can build public support for government initiatives. In addition, justice mechanisms serve a number of purposes, including interpretation of environmental law and conflict resolution.

This report does not limit the responsibility or credit for creating a “culture of openness” to governments. In fact, the supply side of access requires actors outside of government as well. Governments, civil society organizations, the private sector, and international organizations are essential in pushing for reform, building capacity for government officials to provide access, and in helping build the ability for other groups to demand access. Table 1.4 describes the variety of activities each of these groups undertakes in advocating for access.

The inclusiveness of Tables 1.2, 1.3, and 1.4 suggest that a larger group of actors may be interested in the provision of access than typically assumed. All sectors can play a positive role in the promotion of supply, and all groups and individuals have an interest resulting in the demand for access rights.

Although most of the stories and examples in *Voice and Choice* focus on the interplay among the private sector, governments, and civil society, Box 1.10 and Appendix 1 focus on two international organizations that play a critical role in enabling the global provision of access rights.

### TOWARD AN ACCESS MOVEMENT?

Fuller implementation of access rights requires broad national coalitions and strong international support in order to succeed. The remarkable growth of access-oriented groups appears to reflect a growing awareness of and demand for access rights. This growing momentum has involved CSOs from a variety of traditions, as well as government agencies, international organizations, and private sector actors. These and many other efforts to increase the transparency, inclusiveness, and accountability of environmental decision-making may have begun to shape a global “Access Movement”.

To date, access principles have been the shared interest of three complementary traditions or movements: (1) the environmental movement, with its concern for environmental protection and natural resource management; (2) the democracy movement, with representative government with free, fair and multi-party elections as its basis, but an emphasis on transparency, inclusiveness, and accountability in government decision-making; and (3) the human rights movement, which seeks to universalize and realize human rights. An effective access movement could deploy arguments from all three traditions and mobilize groups from all three movements to accomplish its goals. Figure 1.5 shows the linkages and the overlap in work and suggests that organizations within these traditions might seek innovative partnerships. For example, organizations might ally to fight corruption in natural resource extraction, might work to develop grassroots environmentalism as a way to open local government, or might litigate on environmental issues based on human rights.

Each of these movements has a history and a set of associated policies, programs, and constituencies.

The environmental movement traces back well over 100 years. The modern democracy movement, which increasingly advocates not just for elections but for better governance generally, has its roots in the post-colonial and social movements of the 1960s and 1970s and the recent emergence of new democracies, starting in Southern Europe and extending globally. This movement has traditionally focused on the supply of institutions—including free and fair elections, constitutions, and government capacity—but more recently has been associated with transparency, the control of corruption, and increased accountability. The contemporary human rights movement has centuries-old roots; its modern genesis is the 1948 Universal Declaration of Human Rights. Chapter 2 deals more fully with the relationship between access rights and human rights. The goal of poverty reduction—and more specifically, the idea of “livelihoods” (the goal of using environment for rural development)—has driven discussion and advocacy for access rights as well. Many development specialists believe that empowerment and poverty reduction for the poor requires a responsive government—access to information, participation, and justice—and a healthy environment (Narayan 2004).

A growing number of organizations are now demanding transparent, inclusive, and accountable access to decision-making that affects the environment. Recent initiatives by international civil society organizations represent one manifestation of this shift. Both the Open Society Institute and the Ford Foundation, are large private foundations with traditions of working to promote civil society. The Open Society Institute has increasingly focused its energies on governance, especially on the rule of law, with such programs as its Open Society Justice Initiative. Similarly, traditional governance-focused organizations such as Transparency International

**BOX 1.8 CLOSING THE GAP AND VOICE AND CHOICE**

In 2002, WRI published *Closing the Gap: Information, Participation, and Justice in Decision-Making for the Environment* (Petkova et al. 2002). *Closing the Gap* asked whether progress on Principle 10 could be measured, and, if it could, what would be the results? Using The Access Initiative's method to evaluate the state of access rights in each country, the report showed that progress could be measured.

*Closing the Gap* assessed progress in nine countries (Chile, Hungary, India, Indonesia, Mexico, South Africa, Thailand, Uganda, and the United States). The findings showed mixed results for access to environmental information, participation, and justice. According to the report, low government capacity and weak civil society capacity.

*Voice and Choice* builds on the findings and recommendations of *Closing the Gap*. It measures progress in 26 countries and asks not just how far access has come, but why progress has been limited, and what a future agenda for implementation might look like.

have been associated with initiatives related to natural resource management such as the Extractive Industries Transparency Initiative, which looks at the politics surrounding large, heavy industries such as oil. Traditionally conservation-focused organizations such as The Nature Conservancy are working more frequently with local partners. Many environmental groups have found that they increase their own accountability and responsiveness to local priorities when they partner with local organizations or work on the governance reforms necessary to remove roadblocks that hinder on-the-ground reformers. Chapter 2 discusses further the convergence of human rights and environmental advocacy.

**TABLE 1.2 WHY DEMAND ACCESS?**

	<b>GOVERNMENT INFORMATION</b>	<b>PUBLIC PARTICIPATION</b>	<b>JUSTICE MECHANISMS</b>
<b>Civil Society</b>	<ul style="list-style-type: none"> <li>To monitor government and private activity through information collected by the government</li> <li>To assess and formulate policies and practices</li> <li>To educate the public about existing policies and practices</li> </ul>	<ul style="list-style-type: none"> <li>To increase influence of civil society organizations</li> <li>To ensure fairness of decisions</li> <li>To foster greater voice and equity for underrepresented groups</li> </ul>	<ul style="list-style-type: none"> <li>To ensure enforcement of environmental laws</li> <li>To enforce access to information and participation</li> <li>To resolve disputes</li> </ul>
<b>Private Sector</b>	<ul style="list-style-type: none"> <li>To identify potential resources—financial, human, technological, and natural</li> <li>To obtain market information</li> <li>To ensure fair contracting practices</li> <li>To manage environmental and human risk</li> </ul>	<ul style="list-style-type: none"> <li>To increase influence of the private sector</li> <li>To reduce risk to projects from the consequences of low public approval</li> </ul>	<ul style="list-style-type: none"> <li>To ensure fair application of laws and regulations by officials</li> <li>To seek remuneration for harm from damage to ecosystem services</li> <li>To ensure consistent and predictable interpretation of laws</li> </ul>

### BOX 1.9 ACCESS AND THE PRIVATE SECTOR

The private sector has been involved in a number of voluntary partnerships to increase transparency in matters affecting the environment. A number of industry initiatives have added environmental standards to their corporate social responsibility portfolios. Examples include:

- The Global Reporting Initiative (GRI) is an international organization that has developed a tool for evaluating compliance with international law and standards as commitment to sustainable development.
- The Extractive Industries Transparency Initiative (EITI) is a network of NGOs, companies, and countries working at the nexus of governance and the oil and gas sectors. Both countries and companies can apply to see if they meet EITI standards for transparency in reporting of revenues and activities.

TABLE 1.3 GOVERNMENTS THEMSELVES USE ACCESS

GOVERNMENT INFORMATION	PUBLIC PARTICIPATION	JUSTICE MECHANISMS
<p><b>Purpose of access</b></p> <ul style="list-style-type: none"> <li>• To share responsibility for monitoring with civil society</li> <li>• To monitor fiscal expenditure</li> <li>• To monitor and analyze management practice</li> <li>• To set taxation rates and account for natural resource use</li> <li>• To assess current practice</li> <li>• To oversee other government agencies</li> </ul>	<p><b>Purpose of access</b></p> <ul style="list-style-type: none"> <li>• To gather information from the public</li> <li>• To disseminate information and educate the public</li> <li>• To disseminate and influence public opinion</li> <li>• To increase legitimacy</li> <li>• To respond to public pressure</li> <li>• To generate and capture wider ideas</li> <li>• To amplify minority voices</li> </ul>	<p><b>Purpose of access</b></p> <ul style="list-style-type: none"> <li>• To ensure monitoring and enforcement of regulation</li> <li>• To protect minority interests and the environment</li> <li>• To ensure consistent and predictable interpretation of laws</li> <li>• To resolve disputes between parties over natural resources</li> </ul>

A few observations are worthy of note. While there seems to be growing convergence among these movements, many CSOs and coalitions continue to work in isolation, or in small local coalitions. Similarly, many access advocates work only within their traditions. Environmental groups work with environmental groups and pro-democracy groups work with like-minded groups. Yet some organizations have seen fit to work across traditions. To provide an example, the TAI Chile coalition includes both environmental CSOs and democracy CSOs. However, in forming coalitions across these traditions, it is essential that an access to decision-making theme remain central. As Brinkerhoff and Crosby (2002) warn, it is possible for coalitions to become too wide and to lose sight of their central goals. As access coalitions expand, they must balance the advantages of breaking out of traditional molds with a respect for original intent.

Also, many successful access proponents have been advocates from outside any of the traditions in Figure 1.5 or have not been NGOs. Indeed, public health advocates, social justice movements, and business groups have frequently worked at increasing the quality of governance in their respective sectors, often with broader consequences and often including decisions for the environment. Organizations and individuals also push for access at the community, regional, national, and international levels. International organizations and private industry, especially media and telecommunications groups, can play a significant role in a converging access movement. (Box 1.10 describes the

most fully formed of these organizations, The Aarhus Convention Secretariat.) Environmental access proponents may thus find fertile ground for alliances across a variety of sectors.

### Approach

In addition to reviewing much of the current literature on access, *Voice and Choice* introduces new data on the implementation of access rights. Specifically, the report presents and analyzes the findings of the Access Initiative's national and state coalitions in 26 countries. The TAI network assessed the performance of national (and state-level) governments on access to information, public participation, and capacity building. The research is based on original data generated at the national level through these independent assessments, using a framework that relies on legal research and case study analysis.

A TAI assessment consists of two major components: (1) an evaluation of national law, and (2) case studies to evaluate the practice of access rights. Research questions address each of these components, using indicators that divide Principle 10 into discrete, assessable characteristics. Following the framework of Principle 10, the TAI indicators fall into the categories of "access to information," "public participation," "access to justice," and "capacity building."

Each country coalition analyzed case studies in the major areas of information provision, public participa-

**TABLE 1.4 HOW ORGANIZATIONS ENABLE ACCESS**

MEANS	GOVERNMENTS	CIVIL SOCIETY ORGANIZATIONS	PRIVATE SECTOR	INTERNATIONAL ORGANIZATIONS
<i>Legal reform</i>				
Passing laws	X			X
Creating institutions to implement laws	X			X
Lobbying for access reform		X	X	X
<i>Building demand capacity</i>				
Providing funding for civil society	X		X	X
Training for demand (CSOs, public, private sector)	X	X		X
Interpret official information for public	X	X	X	X
Disseminate information	X	X	X	X
Providing legal aid	X	X		
Providing judicial representation	X	X		
Alternative dispute resolution	X	X	X	X
Enabling participation	X	X	X	
<i>Building supply capacity</i>				
Training agencies to supply	X	X	X	X
Drafting standards and guidelines for openness	X	X	X	X

tion, and capacity building. (For information on access to justice data, see “limitations of the data” below.)

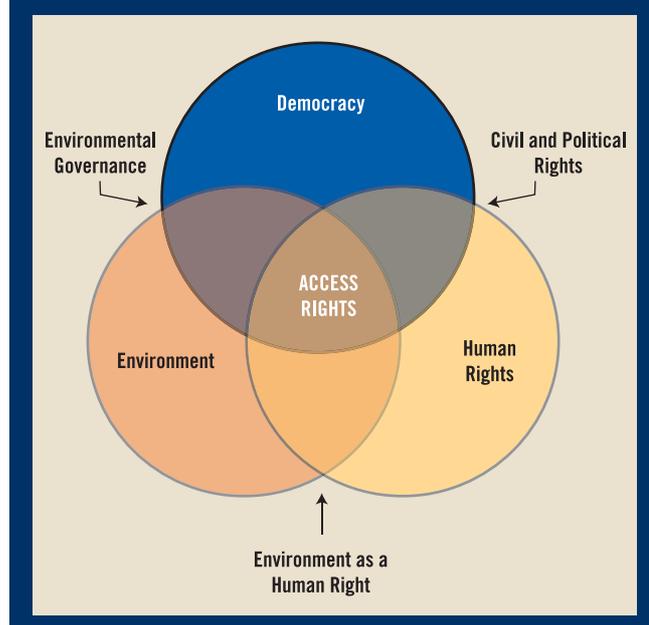
The TAI method involves the application of a series of indicators to assess the quality of law and practice for that particular issue by analyzing at least one case study in each area of practice (see Table 1.5). For each indicator, the TAI assessment framework provides research guidelines used by national coalitions to evaluate law and practice. Further guidelines for each indicator assist researchers in locating and evaluating a variety of relevant source materials, including interviews, documents, laws, statistics, or physical sites. When researchers have completed their work on an indicator, they rank government performance. The authors then classified these rankings as “weak,” “intermediate” or “strong” for ease of reference. Data and analysis throughout this publication represent those indicator values.

Most of the data in this report was collected from 2002 to 2005. Additional information comes from the nine pilot studies featured in *Closing the Gap* (see Box 1.8). In some cases, more than one assessment has been done in a country. In such cases, data from that country’s latest assessment is used. Data comes from TAI assessments in the following countries:

- **Africa:** South Africa, Tanzania, Uganda
- **Asia:** India, Indonesia, Thailand

- **Europe:** Bulgaria, Estonia, Hungary, Ireland (limited study), Latvia, Lithuania, Poland, Portugal, Ukraine
- **Latin America:** Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Mexico (national and three state-level: Baja California, Jalisco, Chiapas), Peru, Venezuela

**FIGURE 1.5 TRADITIONS AND INTERSECTIONS OF AN ACCESS MOVEMENT**



## BOX 1.10 THE AARHUS CONVENTION: ALL PRINCIPLE 10, ALL THE TIME

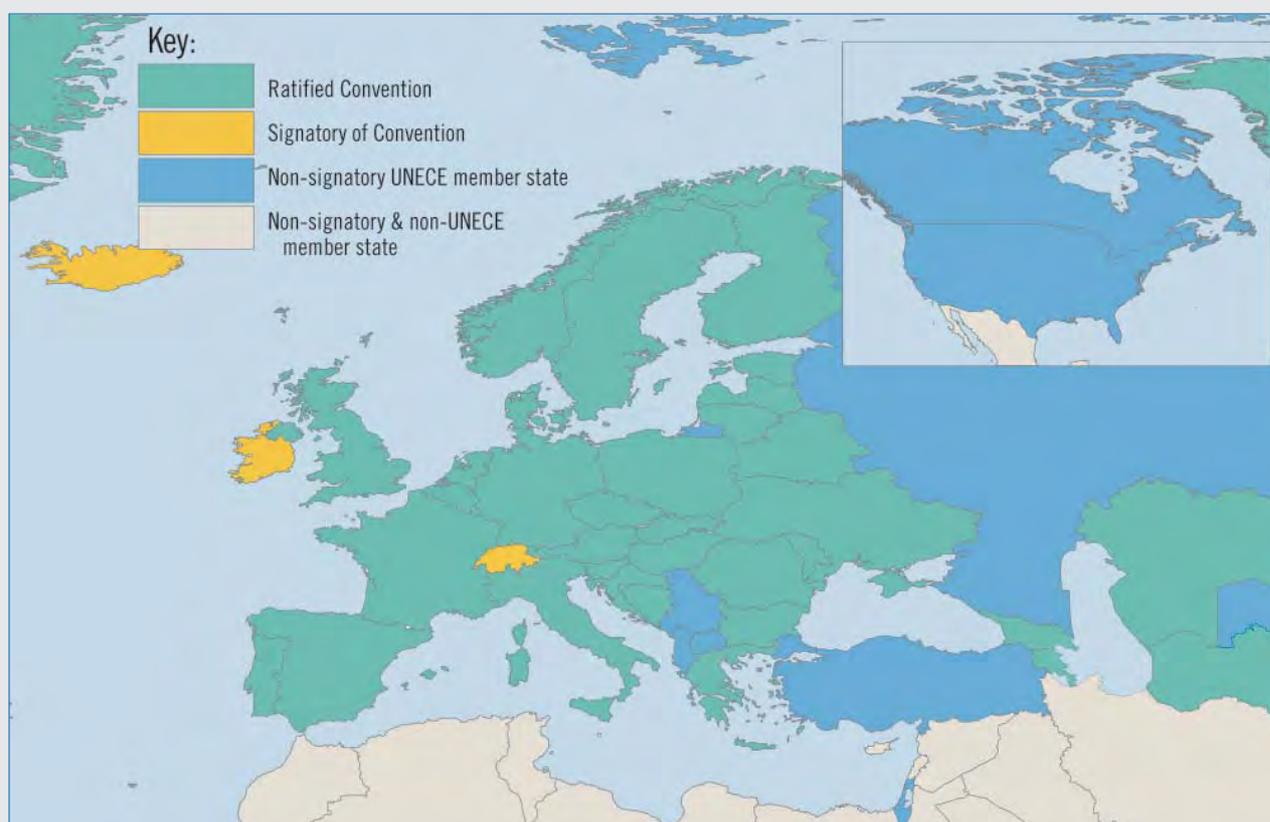
*Although regional in scope, the significance of the Aarhus Convention is global. It is by far the most impressive elaboration of Principle 10 of the Rio Declaration, which stresses the need for citizen's participation in environmental issues and for access to information on the environment held by public authorities. As such, it is the most ambitious venture in the area of environmental democracy so far undertaken under the auspices of the United Nations.*

— Kofi A. Annan

Six years after the Rio Declaration, the states present at the UNECE Environment for Europe Conference adopted the Aarhus Convention, which is known formally as the Convention on Access to Information, Public Participation in Decision Making, and Access to Justice in Environmental Matters (UNECE 1998). The Convention is legally

binding on states that ratify it. As of April 2006, 39 European countries had ratified the convention (UNECE 2007a). The European Commission acceded to the Aarhus Convention and approved it on February 17, 2002. As a result, the European Commission and all member states are now responsible for implementing the Convention.

Figure 1.6 Map of Parties to the Aarhus Convention



Source: UNECE 2007b

- **North America:** United States (state-level: California and Ohio)

While the data aggregated in this publication represents a major step forward in the evaluation of access implementation and law, there are important limitations to the dataset.

- *Data is country-specific.* The data is intended to be a tool for domestic CSOs, governments, and

international organizations to assess law and practice, not to compare or shame particular countries in front of the international community. When the TAI method was designed, its purpose was to assist individual countries to identify the gaps in law and implementation within that country in order to make recommendations, prioritize reforms, and allow CSOs to work with the government to improve access. In keeping with this spirit, *Voice*

BOX 1.10 *continued***Access to Information**

The Convention recognizes each citizen's right to information. It also establishes obligations on state agencies to proactively collect and disseminate environmental information. Authorities must also inform the public about the type and scope of government information held and how to obtain it.

**Public Participation**

The Convention sets out minimum requirements for public participation in various categories of environmental decision-making. The public participation requirements include (a) timely and effective notification to the concerned public; (b) reasonable timeframes for participation, including provision for participation at an early stage; (c) a right for the concerned public to inspect information relevant to the decision-making process at no cost; (d) an obligation on the decision-making body to take due account of the outcome of public participation; and (e) prompt public notification of the decision, with the text of the decision and the reasons and considerations on which it is based made publicly accessible. The "concerned public" is defined as "the public affected or likely to be affected by, or having an interest in, the environmental decision-making." It explicitly includes CSOs promoting environmental protection and meeting any requirements under national law.

**Access to Justice**

The Convention aims to provide access to justice in three contexts: (a) review procedures with respect to information requests; (b) review

procedures with respect to specific (project-type) decisions subject to public participation requirements; and (c) challenges to breaches of environmental law in general. The inclusion of an access to justice pillar both underpins the first two pillars and also points the way to empowering citizens and CSOs to assist in the enforcement of the law. The procedures in each of the three contexts referred to above are required to be "fair, equitable, timely, and not prohibitively expensive." Decisions must be given or recorded in writing, and in the case of court decisions, made publicly accessible. Implementing agencies must consider assistance mechanisms to remove or reduce financial and other barriers to access to justice (Waites 2002).

In 2003, the EU adopted two directives concerning the first and second "pillars" of the Aarhus Convention. The directives required EU member states to implement these laws

(European Commission 2003). While there are some *provisions* for access to justice, a *directive* on access to justice is still in preparation.

A September 2006 regulation called the "Aarhus Regulation" applied the Convention to EC institutions, bodies, offices, and agencies established by the EC Treaty. The Aarhus Regulation also enables environmental CSOs meeting certain criteria to request an internal review under environmental law of acts adopted, or omissions, by Community institutions and bodies. The regulation required all provisions to be in place by mid-2007 (European Commission 2006).

and Choice does not present individual country data, although that data may be downloaded in its original format at [www.accessinitiative.org](http://www.accessinitiative.org) or at the websites of various national coalition members.

- *Country selection.* TAI regional leaders select national TAI coalitions based on a number of informal "readiness" criteria. (See list of partners for a list of Core Team members.) These may include the presence of CSOs with sufficient capacity to carry out an assessment, the availability of funding, and the presence of professional connections. As a result, the TAI network has grown organically throughout each region. In Africa, this consideration is especially important, as the countries with TAI coalitions are among the few African nations with freedom of information laws, and thus are not a representative sample of the region. Further, demand for the TAI method has grown most quickly in countries undergoing bureaucratic reform, often with an emergent civil society and new environmental laws.

It is not coincidental that a significant number of countries whose research is included in *Voice and Choice* are middle-income countries.

- *Regional bias.* Certain regions are underrepresented in this report. These include much of Africa, the Middle East, Central Asia, North America, and Western Europe. While the reasons for this vary, this absence strongly justifies further investment for assessments in these areas.
- *Access to justice indicators.* Access to Justice is not covered here, as the indicators were in pilot testing at the time of assessment. While TAI now assesses access to justice and has done so in 16 countries at the time of this writing, those findings will be presented in a future volume. The findings of newly published studies are available at [www.accessinitiative.org](http://www.accessinitiative.org).

In spite of these limitations, we believe the data is both sufficiently broad and strong enough to demonstrate

consistent, general trends in government provision of access. The strength of this data justifies continued investment in repeat assessments to identify trends in access law and implementation and the expansion of the TAI method to underrepresented areas. (This process is outlined in Box 1.11.)

**BOX 1.11 THE TAI RESEARCH AND ADVOCACY PROCESS, STEP-BY-STEP**

1. *Forming a coalition.* For each country that is to be assessed, the TAI core team regional leaders (see list of partners) pick organizations, including a lead organization, to complete the national assessment. Participants complete training on the TAI method.
2. *Forming an advisory panel.* The national team assembles a body of scholars, government officials, and representatives from civil society organizations to monitor the quality of the national report and to facilitate cooperation for future reform.
3. *Case study selection.* The national team divides up the research tasks by individual researcher and selects representative or notable case studies for each of the topics. Most frequently, environmental lawyers or public interest law organizations will evaluate the legal indicators for each topic. Other indicators and topics are evaluated by contributors from a variety of academic and professional backgrounds, but usually with expertise in government, environment, or both.
4. *Identifying sources.* Individual researchers conduct interviews, obtain documents, interpret laws, compile statistics, or visit physical sites to assess indicator values. Multiple sources are required for each indicator to ensure accuracy in assessment.
5. *Researching the indicators.* Researchers evaluate how well government performed for each of the indicators, assign a value to the indicator, and complete an explanation.
6. *Draft assembly and review process.* Draft reports are sent out to relevant TAI core team members and to the advisory panel for a review of content and form.
7. *Publication and advocacy.* Coalitions publish reports in relevant languages and use them to engage governments and civil society to improve environmental governance within countries.

**TABLE 1.5 TAI ASSESSMENT METHOD TOPICS**

	LAW	PRACTICE – TOPICS OF CASE STUDIES	
Access to Information	Legal Assessment	State of environment reporting	
		Facility-level information	
		Regular monitoring	Air quality Water quality
		Emergency	Small-scale emergency Large-Scale emergency
Public Participation	Legal Assessment	Policy-level decision-making	
		Project-level decision-making	
Capacity Building	Legal Assessment	Government-level agency capacity building	
		Public capacity building	
Access to Justice	Legal Assessment	Denial of access to information	
		Denial of public participation	
		Environmental harm	

**Chapter 1 in Summary**

- All sectors of society benefit from government supply of access.
- Global convergence around environment, democracy, and human rights point to an ascendant “access movement.”
- The Rio Declaration (1992) established Principle 10 for implementing access to information, public participation, and access to justice.
- Governments have made encouraging progress in the passage of laws supporting access rights, but must continue with major reforms to successfully implement these rights.
- *Voice and Choice* presents the data collected by The Access Initiative network in 26 countries, reviews the literature, and presents case studies on access law and practice.
- This report captures the efforts of “access proponents” in a variety of sectors to implement and use access rights.



## 2

### Strengthening the Argument for Access

*Access proponents have identified an array of arguments in favor of access and have confronted hurdles to implementation. This chapter of Voice and Choice begins with two normative arguments: access rights are rooted in human rights, and increasing access will advance the fulfillment of principles already well established in international law. Additionally, the report presents instrumental arguments for access rights, and outlines the substantial benefits they confer to those governments and communities that implement them. This chapter uses evidence from the literature on human rights and governance and the experiences of the Access Initiative partners to probe the theoretical and practical promise of access rights.*

## Access Rights are Human Rights

Human rights—which include access rights—are those fundamental rights to which each human being is entitled, regardless of how well their government protects and respects those rights. The right to information, the right to public participation, and the right to seek justice are intrinsic to every individual, and therefore each government has a duty to respect, protect, and fulfill these rights.

Access rights are largely procedural in nature. Their primary purpose is to empower people to advance the fulfillment of substantive rights—the entitlement of all people to the fundamental civil, political, economic, social, and cultural conditions that are considered necessary to ensure the inherent dignity of each individual.

Civil and political rights provide the basic building blocks for access. Various international and regional human rights instruments establish these core rights of the individual to exercise freedom of expression and association, to take part in the conduct of public affairs, and to have these rights and other rights enforced by an independent and impartial tribunal (United Nations General Assembly 1948, 1966a). Many public interest organizations have successfully argued that access rights spring from these fundamental civil and political rights. For example, TERRAM, a civil society organization (CSO) in Chile, brought a case before the Inter-American Human Rights Court and successfully argued that the right to expression includes a right of access to government-held environmental information (see Box 2.1).

Access rights are also rooted in another category of human rights—so-called economic, social, and cultural (ESC) rights. ESC rights are reflected in many international and regional human rights instruments. They include the right to an adequate standard of living, including adequate food, clothing and housing; safe and healthy working conditions; and the highest attainable standard of physical and mental health (United Nations General Assembly 1966b). By using access rights to draw attention to and press for improvements in environmental and social conditions, TAI partners are directly and indirectly advancing ESC rights.

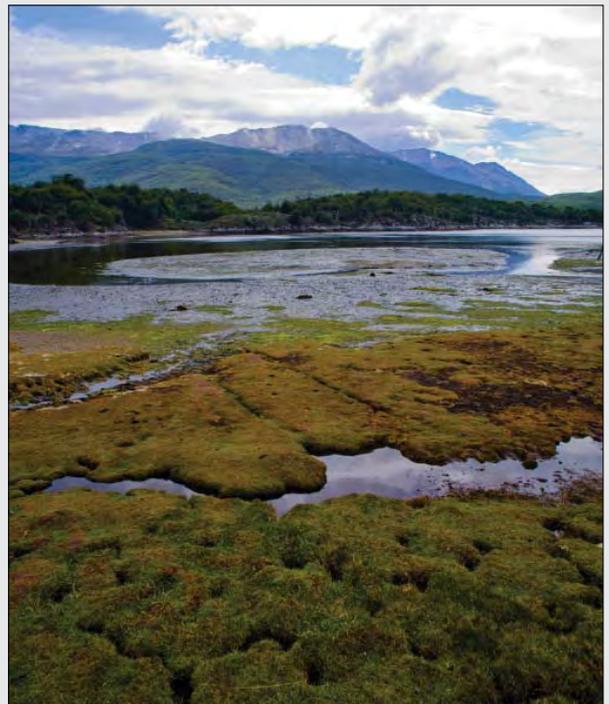
A growing number of environmental and human rights advocates are making the link between human rights and the environment. This is contributing to a greater recognition by international, regional, and national commissions and tribunals of emerging human rights,

### BOX 2.1 CHILE: USING THE INTER-AMERICAN COURT OF HUMAN RIGHTS FOR THE RIGHT TO INFORMATION

On May 6, 1998, three activists in Chile asked their government what it had done to comply with national law requiring environmental review before approving a \$200-million logging project in Tierra del Fuego. The activists wanted to know whether the national Foreign Investment Committee had seen any evidence that the project would use environmentally sustainable practices. After years of review, the Inter-American Court of Human Rights ruled in September 2006 that the activists were entitled to receive the information.

The Court's decision is based on Article 13 of the American Convention on Human Rights, which guarantees freedom of thought and expression. At present, 24 of the 35 member states of the Organization of American States (OAS) are parties to the Convention. (Article 13 is almost identical to Article 19 of the Universal Declaration of Human Rights, which has been signed by nearly every nation.) Many courts around the world have recognized that freedom of expression contained a right to “seek” and “receive” information. But this new decision expands that right to include a general right of access to information. The Inter-American Court ruled that Chile had violated the right to information not only by refusing to provide the information, but also by not having a law that guarantees the right to request and receive public information.

TERRAM, the CSO that brought the case, helped to develop The Access Initiative method.



including a right to potable water and even a right to a healthy environment (Sands 2003; Organization of American States 1988).

### HUMAN RIGHTS AND PRINCIPLE 10

Despite the strong conceptual ties between access rights and core human rights, the Rio Declaration has been criticized for failing to place greater emphasis on human rights (Birnie and Boyle 2002). Principle 10 does not use the term “rights” to describe the relationship among citizens, governments, and environmental decision-making. It does, however, set out the three access pillars in terms of a state’s duty to provide access to information, participation, and justice for its citizens. Although the Rio Declaration is not a legally binding instrument, a number of its 27 principles, including Principle 10, have been reflected in international treaties and national law, and some are considered to reflect binding customary international law (UNEP 1992).

Table 2.1 shows the relationship between human rights law and access rights. The right to access information is widely recognized as an inextricable part of the freedom of expression. The UN Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Cooperation in Europe Representative of Freedom of the Media, and the Organization of American States Special Rapporteur on Freedom of Expression have issued a joint declaration to this effect (Ligabo et al. 2004). Likewise, public participation is an essential aspect of the rights of political participation, freedom of association and assembly, and freedom of expression. The right of access to remedy and redress derives from the right to an effective remedy by a competent tribunal for acts violating rights granted by the constitution or by law (see, for example, Article 8 of the Universal Declaration of Human Rights (UDHR)). It also extends from the right to a fair and public hearing by an independent and impartial tribunal (see Article 10 of the UDHR).

### THE SIGNIFICANCE OF ACCESS RIGHTS AS HUMAN RIGHTS

Forging a strong link between Principle 10 and human rights instruments can be an important dimension of an access strategy for several reasons. Widely recognized human rights are grounded in both treaty law and the equally binding rules of international customary law. They thus describe duties that a government has consented to or come to be bound by and should therefore

be a constructive part of its discourse with civil society. Framing arguments in human rights terms can also help environmental advocates gain access to international and regional human rights enforcement machinery, as well as to domestic constitutional and human rights courts, tribunals, and commissions. Finally, the universal appeal of human rights can draw support from civil society groups beyond the environmental field.

Human rights law sets an internationally respected standard for the relationship between a citizen or group and their government. It is designed in part to allow those mistreated by their own governments to take their cases to a higher authority. Therefore, much of the progress in human rights law occurs through international law and institutions. Even nonbinding “soft-law” agreements can serve useful purposes that binding “hard laws” might not. For example, soft-law declarations of human rights serve a normative purpose—they make clear both the expected rights of citizens and the corresponding duties of governments (Office of the United Nations High Commissioner for Human Rights 2002). Once these rights and obligations are made clear, advocates for the relevant issues can employ rights-based arguments to bolster their cause, knowing they have the weight of international governing bodies behind them (Roht-Arriaza 2002). Soft-law declarations of human rights can evolve into hard laws as governments increasingly protect those rights (Shelton 2000). Over the long run, governments can be encouraged to adjust their local laws to reflect the global legal norm.

Many CSOs have succeeded by using an integrated approach to human rights and environment. Earth-Rights International—a group of activists, lawyers, and teachers who operate in the United States and Southeast Asia—has sought to improve livelihoods through public education, litigation, and other legal means. Similarly, the Argentine CSO, Center for Human Rights and Environment (CEDHA by its Spanish acronym), has advocated for nearly a decade at the intersection of human rights and environment. This has included advocacy for public participation at both the local and hemispheric levels (Jordan 2008; Centro de Derecho Ambiental et al. 2005). These are just two examples of the many CSOs taking this approach.

Expectations about human rights approaches to access need to be tempered. Although many human rights are reflected in international treaties and are thus considered hard law, the political will or capacity of many gov-

**TABLE 2.1 THE BASIS OF ACCESS RIGHTS IN INTERNATIONAL HUMAN RIGHTS LAW**

STATUTE OR PRECEDENT	ACCESS TO INFORMATION	PUBLIC PARTICIPATION	ACCESS TO JUSTICE
GLOBAL HUMAN RIGHTS LAWS	<p><b>Universal Declaration of Human Rights (UDHR) (1948)</b></p> <p><i>Article 19:</i> “Everyone has the right to freedom of opinion and expression; <b>this right includes the right</b> to hold opinions without interference and to <b>seek, receive and impart information and ideas</b> through any media and regardless of frontiers.”*</p> <p><b>Case law:</b> <i>Filartiga v. Peña-Irala</i> (Filartiga v. Pena-Irala 1980): Decided that the UDHR was binding as international customary law.</p>	<p><i>Article 21(1):</i> “Everyone has the right to take part in the government of his country, <b>directly</b> or through freely chosen representatives.”*</p>	<p><i>Article 8:</i> “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”</p> <p><i>Article 10:</i> “Everyone is entitled <b>in full equality</b> to a fair and public hearing by an independent and impartial tribunal, in the <b>determination of his rights</b> and obligations and of any criminal charge against him.”*</p>
	<p><b>Other Relevant Law</b></p> <p><i>International Covenant on Civil and Political Rights Article 19 (2)</i> (United Nations General Assembly 1966a): “Everyone shall have the right to freedom of expression; this right shall include <b>freedom to seek, receive and impart information</b> and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”* (Ratified by 145 nations, legally binding)</p> <p><i>UN General Assembly Resolution 59(I)</i> (1946): “Freedom of information is a fundamental human right and ... the touch stone of all the freedoms to which the United Nations is consecrated”</p> <p><i>UN Human Rights Committee</i> (Tae-Hoon Park v. Republic of Korea 1995: Para. 10.3): “The right to freedom of expression is of paramount importance in any democratic society.”</p>	<p><i>UN World Charter for Nature 3(16)</i> (1982): “All planning shall include, among its essential elements, the formulation of strategies for the conservation of nature, the establishment of inventories of ecosystems and assessments of the effects on nature of proposed policies and activities; all of these elements shall be disclosed to the public by appropriate means in time to permit effective consultation and participation.”</p> <p><i>International Labor Organisation Convention 169: 2(1)</i> (1989): Requires governments to employ public participation of indigenous peoples to protect their rights and to guarantee respect for their integrity.</p> <p><i>Draft Principles On Human Rights And The Environment, Annex I</i> (1994): First general document to explicitly connect human rights and the environment, including participation.</p>	
REGIONAL HUMAN RIGHTS LAWS	<p><b>Relevant Laws</b></p> <p><i>Article 10 of the European Convention on Human Rights</i> (Council Of Europe 1950)</p> <p><i>Article 13 of the American Convention on Human Rights</i> (Organization of American States 1969)</p> <p><i>Article 9 of the African Charter on Human and Peoples’ Rights</i> (Organization of African Unity 1981)</p> <p><b>Case Law:</b> <i>Guerra v. Italy</i>: The European Court of Human Rights ruled that Italy had violated the right to privacy and family life (Article 8 of European Convention on Human Rights) by not providing the applicants with information on risks of living close to a chemical plant. The right to information in Article 10 grants the right to information about hazardous activities with an impact on the environment. (Jagwanth 2002)</p>	<p><i>Salzburg Declaration on the Protection of the Right of Information and Public Participation</i> (1980)</p> <p><i>Council of Europe resolution No. 171 of the Standing Conference of Europe on regions, environment and participation</i> (1986)</p> <p><i>Declaration of the Second Pan-European Conference “Environment for Europe”</i> (1993)</p> <p><i>African Charter for Human and Peoples’ Rights 13 (1)</i> (1981): “Every citizen shall have the right to participate freely in the government of his country, either <b>directly</b> or through freely chosen representatives in accordance with the provisions of the law.”*</p>	<p><i>Council of Europe Lugano Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment</i> (1993): International rules concerning access to courts in environmental matters.</p> <p><i>North American Free Trade Act, Side Agreement on Environmental Cooperation/North American Agreement on Environmental Cooperation</i> (1993): Broadened all three rights but created a right to environmental dispute resolution across borders.</p>

\* Emphasis added  
Source: Stec 2000

ernments to fulfill these duties is often limited. Human rights, particularly ESC and emerging rights, place positive obligations on governments to provide benefits such as health care and education. This requires a financial commitment from governments that can be beyond the resources of many developing countries. Furthermore, human rights law, like other areas of inter-

national law, while legally binding, is often bereft of strong oversight and enforcement mechanisms.

Strategies that combine human rights with an environmental access agenda can be provocative and polarizing. Because they are based on international standards that define the duties of states to their own citizens,

human rights arguments can be perceived by governments as confrontational and threatening to state sovereignty. In the context of North-South discourse about development and good governance, a human rights approach could risk being characterized as a neocolonial agenda. Moreover, human rights advocates such as Amnesty International are often mobilizing pressure on issues generally perceived as “life and death,” involving imprisonment, torture, or extrajudicial killings. Potential allies could view environmental issues as secondary to their concerns and as diluting their agenda.

#### HUMAN RIGHTS-BASED APPROACHES AND TAI

Access Initiative partners have been able to deploy human rights law to hold their national government accountable for providing access rights. TERRAM, a CSO from Chile, held its government to account before a regional human rights tribunal (see Box 2.1). The TAI partner in Ukraine, Ecopravo Kyiv, brought a complaint against the government about a planned municipal waste site, arguing that the site violated citizens’ rights to a healthy environment. The public responded strongly to this court case and won redress from the government, including resettlement of the affected families (Zaharchenko and Goldenman 2004).

#### The Measure of Good Governance

A growing body of research measures the connection between the ability to govern and the ability to improve peoples’ lives. The idea of “good governance” has emerged as a central concept in the global discourse on sustainable development. The United Nations Millennium Declaration, for example, emphasizes that “we must learn to govern better” if poverty reduction and the other Millennium Development Goals are to be achieved (United Nations General Assembly 2000). The United Nations Development Programme (UNDP) has repeatedly called for better, stronger governance to address a host of development challenges (UNDP 2002). Multilateral and bilateral development agencies have launched numerous initiatives focused on governance.

According to the United Nations Environmental and Social Commission for Asia and the Pacific (UNESCAP), good governance is participatory, consensus-oriented, accountable, transparent, responsive, effective and efficient, equitable, inclusive, and follows the rule of law (2002). These elements are interrelated and interdependent. *Voice and Choice* focuses on governance

that is transparent, inclusive, participatory, accountable, and responsive, each an invaluable component of environmental democracy.

A growing body of evidence from around the world associates good governance with higher economic growth rates. The World Bank Institute’s World Governance Indicators (WGI) project, one of the longest-running efforts to evaluate the impact of governance on development, suggests a relationship between good governance and per capita GDP (Kaufmann et al. 2005). The authors cite evidence supporting a causal relationship in which better governance raises per capita incomes, which they refer to as a “governance dividend” in economic growth rates (Kaufmann and Kraay 2002; Kaufmann et al. 2005). This is not a proven correlation, however, and evidence suggests that a number of other variables may intervene.

Research by Norris et al. (unpublished) found that few of the indicators associated with the Millennium Development Goals correlate well with governance measures at the national level. The authors conclude that, while democratic governance is to be valued as an end in itself, there are no automatic linkages between good governance and national development. Instead, they identify two broad “necessary conditions” for socioeconomic development: (1) empowerment of the poor and marginalized to participate in decision-making and (2) effective state capacity to deliver public services. These are important arguments for the further spread of access rights since access principles are important components of empowerment for the poor (Narayan 2004). Strengthening state capacity necessarily requires the collection of information, and is increased through public pressure to regulate effectively.

Intriguing evidence suggests a relationship between aspects of a nation’s governance and its environmental sustainability. The Environmental Sustainability Index (ESI) ranks countries according to a set of indicators measuring various aspects of environmental sustainability. Produced jointly by the Yale Center for Environmental Law and Policy and Columbia University’s Center for International Earth Science Information Network, the ESI consists of a set of 76 variables that measure natural resource endowments, environmental history, pollution, and resource extraction rates, as well as institutional mechanisms that may influence pollution and resource extraction (Environmental Sustainability Index 2005).

## BOX 2.2 FORMS OF PUBLIC PARTICIPATION

- *Information-sharing*: a one-way flow of information. Information-sharing serves to keep actors informed, to provide transparency, and to build legitimacy. From government to the public, examples are dissemination of written material through official documents, newspapers, or magazines; distribution of documents from local government offices; press conferences; radio or television broadcasts; or establishment of websites. From the public to government, examples include responding to questionnaires and surveys; accessing toll-free telephone “hot lines;” and providing various kinds of data, opinion surveys, or analyses.
  - *Consultation*: a two-way flow of information and the exchange of views. Consultation involves sharing information and garnering feedback and reaction. Examples include beneficiary assessments, participatory poverty assessments, town hall meetings, focus groups, national conferences, round tables, and parliamentary hearings.
  - *Collaboration*: joint activities in which the initiator invites other groups to be involved but retains decision-making authority and control. Collaboration moves beyond collecting feedback to involving external actors in problem-solving, policy design, and monitoring and evaluation. Examples include public reviews of draft legislation, government-led working groups, and government-convened planning sessions.
  - *Joint decision-making*: collaboration where there is shared control over decisions made. Shared decision-making is useful when the external actor’s knowledge, capacity, and experience are critical for achieving policy objectives. Examples are joint committees, public-private partnerships, advisory councils, and blue-ribbon commissions or task forces.
  - *Empowerment*: transfer of control over decision-making, resources, and activities from the initiator to other stakeholders. Empowerment takes place when external actors, acting autonomously and in their own interests, can carry out policy mandates without significant government involvement or oversight. Examples are local natural resource management committees, community empowerment zones, water user associations, some forms of partnerships, and civil society “seed” grants.
- Source*: Brinkerhoff and Crosby 2002.

Of the ESI’s 76 variables, the five most closely correlated with a high ESI ranking all relate to governance. These variables are (1) civil and political liberties; (2) the World Economic Forum survey ranking on environmental governance; (3) government effectiveness; (4) political institutions; and (5) participation in international environmental agreements.

Notwithstanding the index’s newness, the ESI’s governance findings suggest that the link between governance and growth found in the World Governance Indicators (Kaufmann and Kraay 2002; Kaufmann et al. 2005) may also hold true for environmental sustainability. Many of the variables used by ESI to measure environmental governance are not strictly focused on environmental governance, but rather are indicators of good governance generally.

### Access Generates Public Benefits

The Access Initiative has moved forward on the assumption that a positive correlation between good governance and better environmental outcomes emerges through environmental democracy. This section looks at the basis in theory and experience for this assumption. While all three access rights are essential, public participation is ultimately the means by which citizens influence government decision-making most directly. For that reason, this section pays particular attention to

evidence from the literature supporting greater participation. Briefer sections on access to information and access to justice follow.

### BENEFITS OF PUBLIC PARTICIPATION

Public participation is a key entry point for integrating environmental values into decision-making processes. Here we elaborate on the meaning of public participation and outline evidence of its benefits.

Public participation can take place at different stages in a decision process. TAI divides decisions into five stages: proposal, drafting, implementation, evaluation, and renewal (TAI 2003). The timing of participation strongly affects the types of decisions that stakeholders can influence and their ability to have an impact on those outcomes.

Public participation can take many forms. In Chapter 1 we described the two ends of the spectrum of participation as direct and indirect participation. Brinkerhoff and Crosby (2002) identify five types of participation that range from simple information sharing to full transfer of decision-making control to stakeholders (see Box 2.2).

*Voice and Choice* groups the benefits of participation into five categories:

- *Enhancing legitimacy.* Participation by all interested parties in a decision process builds legitimacy and “buy-in” for the resulting decision. Even in cases where there are winners and losers, the ownership built through the participatory process can lessen opposition and conflict when the decision is implemented.
- *Building stakeholder capacities.* Through the participatory process, stakeholders gain skills and knowledge. They build relationships with one another, deepen their community’s democratic culture, and foster trust and social cohesion. All of these capacities may be resources that enable better implementation, or they may be of value for activities unrelated to the decision process. Participatory processes may be a good in and of themselves—a form of social capital.
- *Better implementation.* Partly because of enhanced legitimacy and reduced opposition, decisions made in a participatory manner are more likely to be fully implemented and sustained. There may also be cost savings involved, especially in cases where stakeholder ownership of the decision extends to the sharing of labor or other resources in the implementation phase.
- *Improving the “quality” of the decision.* In a participatory process, the resulting decision can reflect the specialized knowledge and variety of perspectives that participants bring to the table. This raises the substantive quality of the decision relative to its intended outcomes.
- *Making decisions that reflect stakeholder values.* When the public has the opportunity to influence a decision-making process, the resulting decision is more likely to reflect public values and interests than if it were top-down.

(Adapted from Brinkerhoff and Crosby 2002; Petkova et al. 2002; World Resources Institute 2003; Zazueta 1995)

Each of these categories of benefits of participation can aid in understanding the links between public involvement and the impacts for environment and development. The following sections discuss the evidence for each group of benefits and its role in promoting positive impacts. Box 2.3, which discusses traditional livelihoods in the Pian Upe Wildlife Reserve in Uganda, shows how participation and the information it generates can empower a community to help sustain livelihoods.

### Raising the Legitimacy of Decisions

Among the strongest arguments for the benefits of public participation is that it builds trust in decisions made by public officials. Numerous authors cite the legitimacy of decisions as central to strengthening implementation. (See, for example, studies reviewed in Brinkerhoff and Crosby 2002; Andersson 2005; Fritsch and Newig 2006.) Stakeholders who believe a decision was reached through a fair and inclusive process are less likely to oppose or obstruct its implementation, even when the decision itself is not completely to their liking. This can prevent project delays and other costs associated with litigation.

Recent literature points to the importance of “procedural justice” in public participation for decisions affecting the environment. People prefer to participate when they feel as though they can influence the final decision. Interestingly, when outcomes are unclear, participants place emphasis on the quality of the participatory procedure, ranking values such as “voice,” “neutrality,” and “respect” higher than the substantive justice outcomes (Markell and Tyler 2007; Webler et al. 2002). This seems to suggest that the quality and legitimacy of public participation may more strongly influence public acceptance of the outcome, lending credibility to the agency involved.

By providing opportunities for public participation in decision-making, a government may demonstrate to citizens that it takes their opinions into account and makes decisions transparently. This can build public trust in government and enhance the legitimacy of specific decisions. Given the importance of trust and legitimacy for a functioning democracy, the enhanced legitimacy of decision outputs can be a benefit of participation (Putnam 1993). Communities with more experience in making collective decisions and undertaking common projects build up a greater sense of trust (White and Runge 1995; Molinas 1998). Trust lowers transaction costs and risks in the everyday business of government, ultimately leading to more efficient execution of tasks (Levi 1998).

### Building Stakeholder Capacities

Public participation in a decision can generate more than just the decision itself. For example, a participatory decision-making process may build public awareness about a particular issue, and individual participants may develop valuable new knowledge and skills. Participation can also play a community-building function,

### BOX 2.3 UGANDA: SUSTAINING TRADITIONAL LIVELIHOODS IN PIAN UPE WILDLIFE RESERVE

The Karamojong people living around Pian Upe Wildlife Reserve make their living by raising cattle, goats, sheep, and donkeys. They and their animals have access to the reserve and rely on it, especially as a site for grazing and water during the dry season. They also harvest timber, firewood, fruit, honey, and medicinal plants from the area, and use it as a meeting place and as the location for certain rituals. The Uganda Wildlife Authority (UWA) estimates that the reserve is used by over 200,000 cattle and 500,000 local people (UWA 2002).

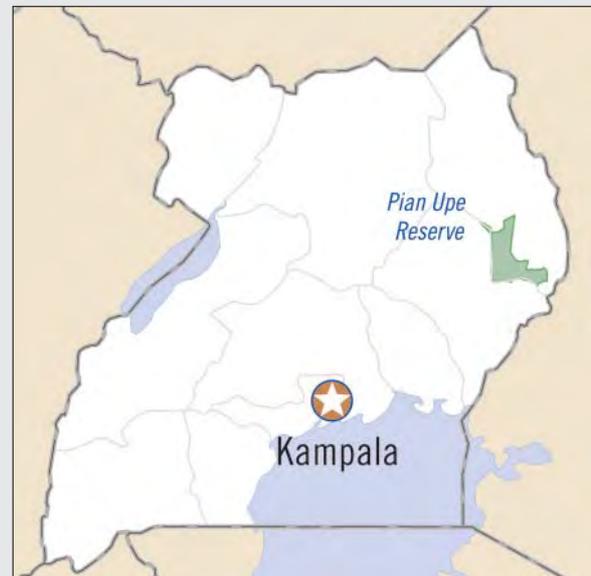
Located in the southwestern corner of Nakapiripit District in the Karamoja region, Pian Upe is the largest wildlife reserve and the second largest protected area in Uganda (UWA 2002). It covers a total area of 2,043 sq km and harbors the only permanent wetlands in the semiarid region. The reserve serves as an important route for migratory birds and sustains a wide variety of plants and wildlife, especially in the dry season, when neighboring areas are uninhabitable.

#### Using Protected Land for Economic Development

In 2002, the Government of Uganda proposed to “degazette” (remove from legal protection) most of the Pian Upe Wildlife Reserve in order to use the land for development. The land was to be transferred from the Uganda Wildlife Authority to the Uganda Investment Authority for lease to a Libyan company, which proposed to build a \$77 million agro-industry project. The project would include an airstrip, settlements, and a beef processing plant, and was estimated to create over 5,000 jobs for the Karamojong, who would raise cattle for sale to the plant (EMA Consult 2004). Infrastructure development was also expected to raise the incomes of the Karamojong by better linking their communities to the rest of the country.

National civil society organizations (CSOs), including Advocates Coalition for Development and Environment (ACODE) and the Uganda Wildlife Society (UWS), learned of the proposal through media publicity for the project required by Ugandan law as part of an environmental impact assessment (EIA). They sought out more information about the project through contacts within the government, and were alarmed by what they learned. The CSOs believed that the degazette of the reserve would exclude local people from resources they depended upon, and that the decision was made without proper consideration for citizens’ rights.

With funding from CARE International, ACODE and the Uganda Wildlife Society hosted a policy dialogue meeting attended by government officials, members of Parliament, and other CSOs. The dialogue was intended to build awareness of the problem at Pian Upe and other protected areas, and to create an opportunity to lobby the government. The meeting sparked a lasting partnership among



ACODE, UWS, and a local group, the Karamoja Cultural Trust. This coalition became an important vehicle for informing and mobilizing local communities, and for lobbying the government about the Pian Upe proposal.

#### Who Decides About Resources Held in Public Trust?

A key contention by the civil society coalition was that the transfer of Pian Upe from the Wildlife Authority to the Investment Authority violated the public trust doctrine enshrined in the 1995 Uganda Constitution. Under the Constitution and the 1998 Land Act, the people of Uganda own protected areas, with the government acting as the guarantor of the people’s interests. The CSOs argued that, to ensure the protection of the public interest, any decision about the degazette of publicly held land should be made by land boards at the district level (Tumushabe and Bainomugisha 2004).

The EIA conducted in preparation for the degazette of the reserve land proved to be another source of concern. The assessment found that the proposed project would compromise the ecological integrity of the area, as well as its economic value as a potential tourism destination. Negative environmental impacts of the project included drying of the wetlands, pollution of water resources, and loss of biodiversity. The EIA also found that the proposed project design would limit pastoralist access in the reserve to a strip of land too narrow for movement of livestock, and that restricted access to water and pasture could increase conflict in the region. The National Environmental Management Authority (NEMA) therefore recommended that only 442 square kilometers of the reserve be degazette, rather than the 1,903 square kilometers requested by the developer (EMA Consult 2004).

BOX 2.3 *continued*

However, NEMA failed to publicize the EIA findings or to hold UWA accountable for them in its decision about Pian Upe. Community members knew little about the planned project or its impacts, and felt excluded from the decision process. One Karamojong elder said,

*“We are worried that people in Kampala make decisions without consulting the community. This place is used as a safe haven for our animals. The people of Pian stand to lose if they do not make the right decision”* (EMA Consult 2004).

#### Outreach By All: CSOs, Local Elites, and the Media

The CSO coalition used the EIA findings in their outreach efforts to the communities around Pian Upe. As the results of the EIA became more broadly known, opposition to the project grew. In addition, it became clear that the project design did not clarify how communities would be compensated for their loss of access to resources in the reserve; only compensation of UWA was covered in the agreement with the investor. This further turned public sentiment against the project.

Local politicians and other Karamojong elites became key players in the debate over Pian Upe’s future. Some of them had been consulted about the decision previously, and had consented to the degazettement; however, as additional information became available, they grew to oppose the plan. These leaders had been the initial targets of CSO outreach, and subsequently became the main conduits of information from the CSOs and the media to their communities. They also took over from the CSOs as the primary advocates to the national government.

Media attention to the Pian Upe degazettement also grew over time, and played a significant role in the mobilization of public sentiment against the development plan. Local and national newspapers and radio programs gave powerful coverage to the CSO reports and other activities, strengthening the position of those who opposed the degazettement.

#### Local Hands Hold the Reins, but the Developer Departs

Ultimately, pressure from local leaders, national CSOs, and the press combined to force the national government to devolve authority over the degazettement to the District Councils. It also issued a directive in support of a smaller degazettement in alignment with the EIA findings. The District Councils then adopted a resolution to hold the Pian Upe land in trust for the public, and took responsibility for negotiating with the investor on behalf of the community. At that point, the investor pulled out of the project, citing the decrease in the size of the degazettement, as well as EIA findings that the area was too dry for the intended activities.

The final victory was, in some ways, bittersweet for the Karamojong. On the one hand, they maintained their traditional rights of access to Pian Upe and its resources, and they forced the government to comply with due process for degazettement under the law. Moreover, assertion to the right of public participation in decision-making in this case prevented harm to resources within the reserve that sustain the community. But just when the local people won the power to decide on the fate of the reserve, the opportunity that needed a decision disappeared. And the Karamojong remain poor. While it is of course better to win than to lose, NGO players express some regret that access did not lead to a “win-win” in this case: it was impossible to negotiate a more modest, less harmful development project in the area.

#### Lessons from Pian Upe

One of the challenges in looking at the concrete impacts from implementation of Principle 10 is that in any one case, there may be multiple problems that need to be addressed. In the case of Pian Upe, the primary impact from the success of citizen “access” was maintenance of the status quo. The reserve has retained its original size and presumably provides the same ecological and economic benefits as before. The Karamojong communities around the reserve still have access to their traditional resources; however, they are also still quite poor. Is there any way the Karamojong could have found a “win-win” situation? What would it have taken for local leaders to negotiate a more modest development project that would have created new jobs, but not have excluded citizens from reserve resources?



*Village in Karamoja, Uganda*

*This case was written by Sophie Kutegeka and Godber Tumushabe (ACODE- Uganda).*



*Participation can help to expand capacity for self-government. In this village meeting from Maharashtra, India, men discuss plans for a piped drinking water supply.*

in that stakeholders who otherwise might not have interacted with each other may develop new relationships through involvement in the process. The resulting trust and social capital can be considered benefits in their own right and likely have spillover effects into other realms of democratic practice (Putnam 1993). Additionally, they may help connect participants to government services, business opportunities, additional learning opportunities, or other resources. Andersson (2005) also cites less tangible benefits that individuals may build through participation, including confidence, social status, self-reliance, and satisfaction from helping to make the decision.

Government employees are among the stakeholders whose capacities are built through participatory decision-making. Engagement with a range of stakeholders may bring them new knowledge about their field or raise their awareness of the broader context in which they work. Andersson (2005) even cites examples where staff morale improved because of participatory approaches to their work.

Of course, not all participatory processes fill the same capacity-building functions. The more active, collaborative forms of participation listed in Box 2.2 are more likely to lead to deeper transformations for participants, while information-sharing and consultation primarily raise awareness and build knowledge. Lustig and Weiland (1998) provide an example where integrated urban planning led to the longer-term development of local citizen networks. Moreover, the specific circumstances of a given decision process and its participants make a significant difference for the kind of capacities that may be built through participation. Effective facilitation, equitable opportunities to participate, sufficient time, and engagement in good faith by all participants help in the development of lasting skills or relationships. An inequitable process or an inappropriate mix of participants may misinform stakeholders, diminish trust by undermining participants' expectations, or even increase conflict.

The capacity building benefits of participation can also extend to those areas where stakeholder action is needed for effective implementation. Skills, knowledge, or relationships developed through the decision-

making process may enable participants to serve more effectively, for example, as co-managers, monitors, or advisors. In some cases, the critical capacity developed through the process is simply familiarity with the decision itself.

### Promoting Better Implementation

As noted above, increased legitimacy and capacity are benefits of participation that can improve decision implementation. Implementation of a project or policy can be broadly broken into four aspects: efficiency, effectiveness, equity, and sustainability. Each of these is examined in turn.

*Efficiency.* Efficiency means that the input into making a project participatory is outweighed by the incremental improvements to the project.

One way in which participation can increase efficiency is through cost-sharing. Often engaged communities donate labor, supplies, wages, or forego activities that would compromise a project. A study by Katz and Sara (1997) suggests that communities invest more resources when they have greater control over how the funds will be used.

The evidence that participation reduces staff costs is inconclusive. Based on a statistical study of outcomes for 42 participatory World Bank projects and a control group of non-participatory projects, Reitbergen-McCracken (1996) found that participation reduced staff costs. These findings are also supported by an analysis of 64 community-driven projects (Carroll et al. 1996). Aycrigg (1998), however, points out that further studies by the World Bank have not corroborated these findings. Lustig and Weiland (1998) argue that the participatory process increases the difficulty of management. Hentschel (1994) estimated that preparation and supervision costs in participatory projects increased by 10 to 15 percent, but argues that this cost was compensated for by improved decision quality. Although the preparation and implementation of participatory strategies may require more staff time. This should be weighed against other costs and benefits.

*Effectiveness.* “Effectiveness” refers to whether a project or policy has met its goals. Fritsch and Newig (2006) evaluated the outcome effectiveness of participation in a review of 15 cases involving environmental impact assessments. The public tends to accept decisions made by participatory processes. The authors found that this

leads to improved implementation. Even if the technical quality of the decision outputs may be lacking, the success of the project improves. This conclusion is corroborated elsewhere (Lemos 1998; Hofman 1998). Coenen (1998) adds that the presence of public participation made it easier for target groups and local governments to coordinate their actions.

*Project Sustainability.* A World Bank (1994) review of participation in 21 development projects found that participation reduced staff costs during implementation, improved project effectiveness and maintenance, and was the most important factor overall in determining the quality of project implementation. A wide review of the literature on community-based natural resource management projects by Mansuri and Rao (2003) showed that participation increased project sustainability where there was strong institutional support, including funding and staffing. Another study (Sohn 2007) highlights the crucial role that the practice of “free, prior, and informed consent” can play in reducing risks to large-scale investments in natural resource extraction, construction, and manufacturing. This emphasizes the need for staff and public capacity,



Public hearing on food security issues in Kelwara village, India, 2004.

## BOX 2.4 REALISTIC EXPECTATIONS OF PUBLIC PARTICIPATION

Public participation is best at increasing the flow of information between the public and the government as well as increasing the range of possible policy options. It is important to acknowledge, however, that participation has its limits.

*Public participation is not a substitute for one-person-one-vote.* Participatory processes cannot claim to have universal and equal voice for all citizens. This is in contrast to universal adult suffrage which uses a secret ballot for elections, and where each person has equal voting rights. In decision-making processes that require equal voices, participation can serve to illuminate the choices to be made but cannot guarantee equality and is thus not a substitute for the ballot.

*The loudest voice in the room can dominate the deliberative process.* Often, the powerless or the poor refrain from taking an active role in public hearings. This may be due to lack of time or resources to participate. It can also be due to fear of retribution, or lack of confidence in speaking or analytical skills. This problem is not unique to participation; representative systems are often dominated by the wealthy and powerful as well. Yet, the difference between the two is that regular, free, and fair elections allow those who might not normally participate to have their say in public decisions. Thus, public participation works best when (1) elected or appointed officials are able to field and solicit diverse input for policies and projects; and (2) those officials can be held accountable for the quality of the decision-making processes as well as the quality of the decision outcomes.

*Public participation is part of holding officials accountable, but by itself cannot provide accountability.* To the extent that public participation increases information flows to the public about the policies, plans, and actions of officials, it helps ensure

accountability. Without the threat of peaceful removal from office or other forms of censure, however, a dissenting or otherwise unsatisfied public will often rely on “weapons of the weak”—open revolt, petty theft, foot-dragging, and active destruction of ongoing projects (Scott 1985).

*Over-reliance on public participation can undermine the role of legislative bodies.* One critique of public participation coming from the experience of poverty reduction strategies might be generalized to other policy settings. Employing cases from Bolivia, Honduras, and Nicaragua, Dijkstra (2005) suggests that a “conscious decision” by international financial institutions to use nationwide consultations in place of legislatures undermined what likely would have been more representative, accountable, and possibly more reform-oriented processes. In this sense, large-scale public consultations may have bypassed an opportunity for the legislature to use its powers, to build its capacity, and to exercise its power to check the executive. If done repeatedly, these types of consultations may suggest to the public that representative bodies are increasingly less important.

*Direct democracy cannot be taken to scale.* All concerned or affected parties cannot participate in every deliberative process all of the time. Even with strong local government and a civic-minded public, most of the business of policy-making and project planning must be carried out by a combination of elected and appointed officials. Access proponents might therefore consider where and when participation is most likely to impact decisions.

Taken as a whole, these limitations reiterate the viewpoint stated at the beginning of *Voice and Choice*. Public participation is best in concert with strong electoral systems and the two can be used to strengthen one another. It is with this combination that we can strive for the whole of environmental democracy.

as well as follow-through on funding to make sure that decisions are maintained.

*Equity.* Whether public participation increases the quality of decision outputs for the poor or other excluded stakeholders varies widely by context. In cases where different groups cannot make collective decisions, public participation forums can serve to reduce gridlock and force compromise (Balducci and Fareri 1998). In this sense, participation may bring more groups to the table to negotiate. In certain cases, especially where the general public is opposed to special interest groups, public participation forums may level the playing field (Lemos 1998).

### Improving the Quality of the Decision

Evidence that public participation improves the substantive quality of a decision output is mixed, and to a great extent depends on how “quality” is measured. A number of authors have suggested that increased information flows among stakeholders improve planning and monitoring of programs and projects (Chambers 1995; Uphoff 1986; Narayan 1998). Other studies suggest that, as a result of this information, increased public participation leads to more sustainable and human health outcomes (Pretty 1998; Chowdhury and Amin. 2006). Beierle and Cayford (2002) evaluated the contributions of participants in a range of participatory decisions. They found that participants do add new

information and ideas to decision processes, and can also improve decisions by reframing issues. They cite examples where this has led to more holistic problem-solving, rather than a very narrow focus, as when a decision about building a dam shifts to a broader focus on flood control and land-use planning.

Fritsch and Newig (2006), on the other hand, looked at the “environmental effectiveness” of the decisions in meeting the intended environmental goal. Their 15 case studies found that decisions arrived at through participatory processes often generated lower environmental standards. On the other hand, as noted earlier, they found better compliance with standards arrived at through participation, leading to what might have been better overall outcomes had participation not occurred.

To look only at the environmental elements of a decision output is to judge the decision in an inappropriately narrow way. From a sustainable development perspective, almost any participatory process requires the resolution of multiple—and sometimes competing—objectives. This means that decision quality must be judged from a broader perspective. In their review of 69 community forestry case studies, Padgee et al. (2006) note that very few researchers evaluate decision-making from the perspective of more than one intended outcome. This tendency entirely misses the point of community forest management, which aims explicitly for dual environmental and socioeconomic outcomes.

#### **Making Decisions that Reflect Stakeholder Values**

The argument that participation helps decisions to better reflect stakeholder values does not ring as resoundingly as others do. As currently practiced, participation often fails to represent the complexity and spectrum of stakeholder values (although it arguably does so better than would the absence of any participation). Findings suggest that public participation can be co-opted by interest groups. A prime growth area for the art of managing public participation will be to ensure that participation, when it occurs, is broadly and representatively inclusive; poorly executed participation is not a substitute for broadly representative deliberation.

In a review of 239 cases of public participation in decision-making related to the environment in the United States, Beierle and Cayford (2002) found that participants substantially influenced the decision output in a majority of participatory processes. Participation did indeed lead to decisions that reflected participants’ val-

ues. However, the question remains: how representative are these values? In Beierle and Cayford’s study, participants’ socioeconomic background did not represent the wider public in the majority of cases for which data was available. In only 39 percent of cases did participants consult the wider public.

Other research suggests that the values inserted into decision-making via participation may not always be broadly held in society. A number of authors have found that actors who will gain directly from a decision process are those most likely to engage in it (Fritsch and Newig 2006; Rydin and Pennington 2000). Likewise, powerful actors with a greater ability to invest resources in participation are more likely to participate than those with less time, energy, and income (Turner and Wieninger 2005). These forms of self-selection mean that participation does not necessarily inject a high level of representativeness into a decision process. Box 2.4 sets out realistic expectations of participation in the hope that policy makers and advocates will seek to couple public participation with other practices which also encourage representativeness and accountability.

In their survey of 15 European and American case studies, Fritsch and Newig (2006) find that the level of participants’ environmental consciousness plays an important role in shaping the environmental impacts of the resulting decision. Like Padgee et al. (2006), they note that the environment is rarely the only value at play in a participatory decision process, and discourage blanket claims that participation always leads to better environmental outcomes. As this report pointed out earlier, participation (and access more broadly) allows environmental values to enter more easily into the discussion. Increasing options, however, does not guarantee that those values will always trump others.

#### **BENEFITS OF ACCESS TO ENVIRONMENTAL INFORMATION**

Early legislation and activism aimed to obtain access to environmental information and employed a normative argument: citizens had the right to know what was happening in their environment (Hadden 1989). Beyond this, however, there are strong arguments that increased access to information also serves an eminently practical purpose in protecting natural resources.



**¿Dónde puede encontrar información ambiental?**



**AGUA**

En la DIRECCIÓN GENERAL DE AGUAS (DGA) se puede acceder a información estadística sobre el clima, las lluvias, las rías y aguas subterráneas, sistemas de estudio e informes de investigación, evaluación y planificación sobre el recurso agua. También se puede encontrar un listado con los establecimientos que desarrollan un aprovechamiento de riego e información acerca de la red de drenaje en zonas pobladas y comarcas. La información sobre la calidad del agua potable, ya sea urbano o rural, se puede encontrar en la AUTORIDAD SANITARIA Y GESTIÓN. La SUPERINTENDENCIA DE SERVICIOS SANITARIOS (SISS), también posee información sobre agua potable, pero sólo a nivel urbano. La SISS cuenta además con toda la normativa que regula a los empresas sanitarias. Como parte de la información que posee la SISS web disponible a través de Internet. Además, en la COMISIÓN NACIONAL DEL MEDIO AMBIENTE (CONAMA) Regional se puede encontrar información sobre ríos y corrientes relacionadas con el agua, así como sobre proyectos ingresados al Sistema de Evaluación de Impacto Ambiental (SEIA) relacionados con el tema.

En tanto, el SERVICIO NACIONAL DE PESCA (SERNAPESCA) es la institución encargada de velar por la calidad sanitaria de los productos pesqueros, promueve planes de desarrollo para la pesca deportiva y apoya la gestión de parques y reservas marinas. Maneja información sobre normativa pesquera, acuicultura y ambiental, tesis y guía de hábitos.



**AIRE**

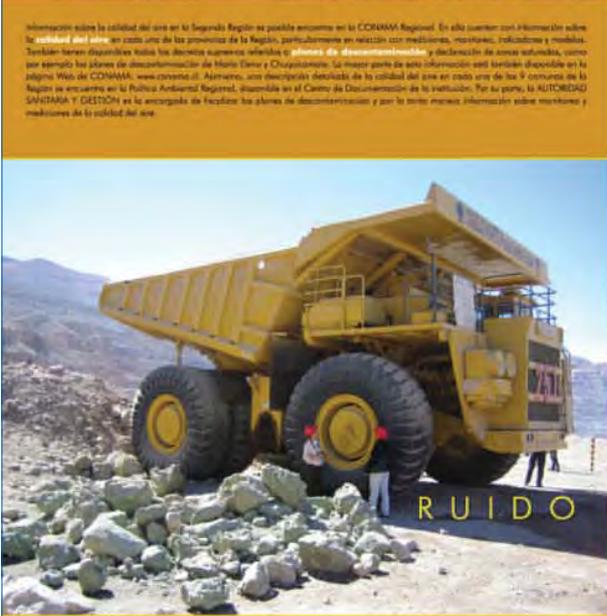
Información sobre la calidad del aire en la Segunda Región se puede encontrar en la CONAMA Regional. En ella cuentan con información sobre la calidad del aire en cada uno de los comunas de la Región, particularmente en relación con mediciones, monitoreo, indicadoras y modelos. También tienen disponibles todos los datos acerca de calidad de aire en el momento de medición y de tendencias de series históricas, como por ejemplo las planas de descontaminación de Monte Esmer y Chuyupatzen. La mayor parte de esta información está también disponible en la página Web de CONAMA, [www.conama.cl](http://www.conama.cl). Asimismo, una descripción detallada de la calidad del aire en cada uno de los 9 comunas de la Región se encuentra en la Publicación Ambiental Regional, disponible en el Centro de Documentación de la institución. Por su parte, la AUTORIDAD SANITARIA Y GESTIÓN es la encargada de realizar las planas de descontaminación y por lo tanto maneja información sobre monitoreo y mediciones de la calidad del aire.



**RESIDUOS**

Información sobre los residuos sólidos de origen domiciliario, hospitalario y/o residuos peligrosos puede ser solicitada en la AUTORIDAD SANITARIA Y GESTIÓN, donde también encuentran información sobre las autorizaciones para la recolección y gestión de lugares destinados a la acumulación, almacenamiento, conexión o disposición de desechos de cualquier origen. Los recursos web para las recolección y sistemas de transporte de materiales que pueden significar un peligro o molestia a la población, e informes sobre la operación de basureros y la finalización del mismo y el sistema de disposición de residuos peligrosos.

Las MUNICIPALIDADES disponen de información sobre la recolección, transporte y disposición de los residuos, residuos o desechos que se depositan o recolectan en los vertederos, el funcionamiento de los basureros y el funcionamiento de los sistemas sanitarios relativos al tema. En relación con los residuos líquidos, la SUPERINTENDENCIA DE SERVICIOS SANITARIOS (SISS), cuenta con información sobre el sistema de los alcantarillados y a las aguas superficiales y subterráneas, ya sea a nivel departamental (como Internet). Tanto en la CONAMA nacional como en la CONAMA Regional cuentan con información sobre producción de proyectos relativos a residuos, transporte y disposición final de desechos. Asimismo, en las páginas Web de ambas instituciones se puede encontrar información actualizada sobre el tema y recibir el soporte necesario para los gestiones internacionales de los residuos sólidos domiciliarios.

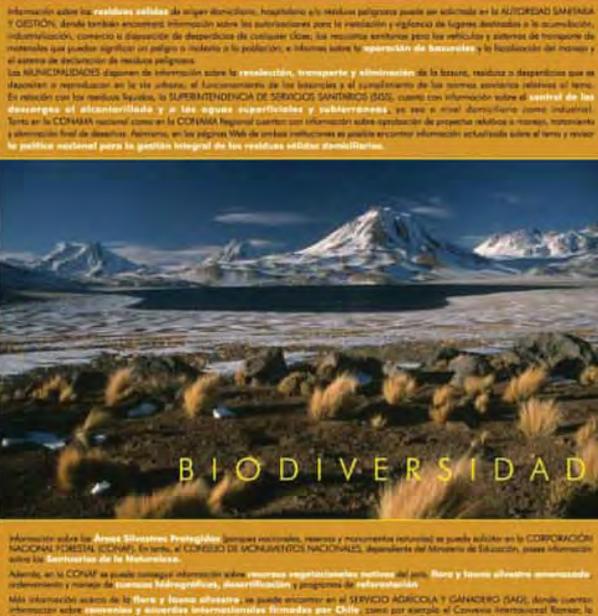


**RUIDO**

La AUTORIDAD SANITARIA Y GESTIÓN posee información sobre los impactos del ruido en la salud, y un listado con las principales fuentes emisoras de ruido y la recolección y el monitoreo de los mismos. Además es la institución que establece y controla los límites máximos permitidos para ruidos emitidos generados por fuentes fijas.

Información sobre ruidos (normativa y aspectos relacionados con el Sistema de Evaluación de Impacto Ambiental (SEIA)) se pueden solicitar en la CONAMA Regional.

En tanto, las MUNICIPALIDADES poseen información sobre ruidos de actividades realizadas de la locomoción urbana y rural e información relativa a la recolección y acciones correctivas de los ruidos.



**BIODIVERSIDAD**

Información sobre los Áreas Silvestres Protegidas (zonas naturales, reservas y monumentos naturales) se puede solicitar en la CORPORACIÓN NACIONAL FORESTAL CONAFOR, el CONSEJO DE LICENCIADOS NACIONALES, dependiente del Ministerio de Educación, para información sobre los establecimientos de enseñanza.

Además, en la CONAMA se puede conseguir información sobre reservas vegetales/terrestres naturales del país, Reservas y Zonas silvestres protegidas, ordenamiento y manejo de sistemas silvestres, planificación y programas de restauración.

Más información acerca de la flora y fauna silvestres se puede encontrar en el SERVICIO AGRÍCOLA Y GANADERO (SAG), donde cuentan con información sobre reservas y áreas silvestres protegidas, tanto a nivel nacional como regional. Asimismo, el Convenio Internacional sobre la Convención sobre el Comercio Internacional de Especies Amenazadas de Fauna y Flora Silvestres, y la Convención sobre Diversidad Biológica y de Ecosistemas.

El SERVICIO NACIONAL DE PESCA (SERNAPESCA), es la institución encargada de velar por la conservación y gestión de los recursos acuáticos y los establecimientos de recursos marinos. Posee información sobre parques y reservas marinas, así como sobre ríos, lagos y el agua que se utiliza y el agua que se consume.

Por su parte, la DIRECCIÓN DE TERRITORIO MARITIMO Y MARINA MERCANTE (DIRTERRAMAR) posee información sobre la calidad del medio ambiente marino. Para puertos, bahías, ríos y lagos navegables del país, las medidas preventivas para evitar contaminación de especies perjudiciales y organismos nocivos de aguas de fuera. La calidad del agua que protege una determinada zona (marino) de contaminación por actividades de pesquerías, acuicultura y otros sectores.

La CONAMA Regional cuenta con información sobre las áreas silvestres y reservas protegidas en el marco de la Ley 17.248, Ley 17.344, Ley 17.345, Ley 17.346, Ley 17.347, Ley 17.348, Ley 17.349, Ley 17.350, Ley 17.351, Ley 17.352, Ley 17.353, Ley 17.354, Ley 17.355, Ley 17.356, Ley 17.357, Ley 17.358, Ley 17.359, Ley 17.360, Ley 17.361, Ley 17.362, Ley 17.363, Ley 17.364, Ley 17.365, Ley 17.366, Ley 17.367, Ley 17.368, Ley 17.369, Ley 17.370, Ley 17.371, Ley 17.372, Ley 17.373, Ley 17.374, Ley 17.375, Ley 17.376, Ley 17.377, Ley 17.378, Ley 17.379, Ley 17.380, Ley 17.381, Ley 17.382, Ley 17.383, Ley 17.384, Ley 17.385, Ley 17.386, Ley 17.387, Ley 17.388, Ley 17.389, Ley 17.390, Ley 17.391, Ley 17.392, Ley 17.393, Ley 17.394, Ley 17.395, Ley 17.396, Ley 17.397, Ley 17.398, Ley 17.399, Ley 17.400, Ley 17.401, Ley 17.402, Ley 17.403, Ley 17.404, Ley 17.405, Ley 17.406, Ley 17.407, Ley 17.408, Ley 17.409, Ley 17.410, Ley 17.411, Ley 17.412, Ley 17.413, Ley 17.414, Ley 17.415, Ley 17.416, Ley 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17.998, Ley 17.999, Ley 18.000.

Government and NGOs in Chile worked together to create maps and guides to inform the public about available environmental information as well as where to find it.

### Increasing Accountability for Public Officials and Government Processes

Readily available information about public decisions should make officials more accountable. Transparency subjects elected officials to greater scrutiny from their constituencies, and therefore potentially to censure at the ballot box. Transparency also reduces the opportunities for corruption within the much larger unelected apparatus of the state—the bureaucracy—and provides conditions necessary for better decision-making and oversight. A growing body of literature supports this assertion (Islam 2003; Stiglitz 1999; Pope 2003).

### Dispersing the Costs of Environmental Monitoring

In most countries, the inability (or refusal) of the government to monitor and regulate polluting facilities makes environmental protection difficult. Public access to information can help overcome this shortcoming, allowing for what McCubbins and Schwartz (1984) call “fire-alarm” oversight in place of “police patrol” oversight. Police patrol oversight involves the active search for violations and sanctioning of violators by government agencies. While this is an effective method of protecting the environment, it is impossible to maintain

given limitations of cost, technology, and human capabilities. This is particularly true for developing countries. Fire alarm oversight, on the other hand, allows the public, the media, or any number of agencies to spend their time reviewing environmental information and to raise an alarm when there are major violations of laws or norms. In this sense, governments are likely to have increased quality of environmental protection while lowering their direct costs.

### Enabling Nongovernmental Means of Regulation

When a government provides timely public information, it also allows for other forms of enforcement to occur. Rather than directly regulating a polluting industry or activity, the government plays the role of informing the public. Interested parties, once informed, can choose to respond through other government agencies (courts or legislative reform), the market (shareholder reactions, consumer boycotts, changing consumption patterns), or civil society (often spurred by negative press coverage) to ensure environmental quality, even where legislation might not exist. In this way, the informing agency has enabled a number of alternative means of enforcement (Stephan 2002).



*The Lagos State Mobile Court, Nigeria.*



*A demonstrator reads a morning newspaper in Kiev's "tent city". Ukrainians called a mass protest after allegations that presidential candidate Viktor Yanukovich had won the election by fraudulent means. The peaceful 'Orange Revolution' led to the results being thrown out.*

### Balancing the Relative Power of Political Groups

By monitoring, subsidizing, and disseminating information, government agencies reduce information inequality between powerful and unified political actors (industries, lobbying groups) and politically dispersed or relatively poor groups. By providing environmental information to the latter groups, a government can enable these actors to overcome differences in political power and difficulties in organizing uncoordinated individuals with a common interest (Grant 1997).

### Changing Public Expectations to Spur Public Participation

By providing information to the public, governments signal which environmental issues are important or urgent and encourage a public response. For example providing public hearings on a proposed hydroelectric dam encourages public discussion through media coverage, official websites, and raises the profile of pertinent public interest groups and industries. In a different manner, governments also spur public response and collective action when they present information

that contradicts peoples' prior expectations about an "acceptable" level of pollution. In this sense, more than just making information more available, government can foster a sense of urgency and "shock," spurring civil society, other agencies, and the private sector into action (Stephan 2002). Public information can serve as a catalyst for public participation.

Access to information provides a bundle of benefits to the public, governments, and private industry. However, as this and other reports make clear, it is most effective when combined with the other access rights of public participation and access to justice, an independent judiciary, systems of mass communication, freedom of the press, and the absence of violence (Martin and Feldman 1998; Goldberg 2002).

### BENEFITS OF ACCESS TO JUSTICE

Access to justice is the right to redress and remedy. Redress and remedy can be provided by several different institutions, including the judicial branch of govern-

ment, special administrative forums in the executive branches of government, extra-governmental dispute resolution mechanisms, and even traditional forms of mediation. Broadly speaking, access to justice serves four principal purposes in the context of environmental decision-making. First, it strengthens the freedom of information, allowing civil society to press governments for information they were otherwise denied. Second, access to justice allows citizens the means to ensure that they participate meaningfully and are appropriately included in decision-making on environmental matters. Access to justice also levels the playing field by empowering groups that may not have influence in legislative processes or may not have the ear of government ministries to seek redress in the courts and other forums. Finally, access to justice increases the public's ability to seek redress and remedy for environmental harm (Stec 2000).

#### Supporting Access to Information and the Right to Participate

In the context of this report, the principal purpose of access to justice is to ensure that the public can hold officials accountable for procedural and substantive failings in the provision of information and opportunities for participating in environmental decision-making.

#### Increasing Accountability and Responsiveness of Public Officials in Environmental Enforcement

Access to justice allows the public to hold officials accountable for carrying out proper procedures in environmental decision-making and enforcement. With increased public access to redress and remedy, the public can ensure greater accountability from both elected and non-elected officials beyond election years. Access to justice also sets precedents, which guide public officials in the course of procedural and substantive environmental decision-making, reduce arbitrary decision-making, increase consistency and predictability in decision outcomes, and ensure that officials are appropriately responsive to stakeholder concerns and input.

#### Spreading Costs of Enforcement by Encouraging Public Enforcement of Environmental Law

Access to justice provides an opportunity for the public to hold corporations and individuals liable for environmental harm. This means that environmental protection agencies do not have to bear the full costs of enforcement as some of these will be taken on by citizens and citizen interest groups. Furthermore, in contrast to constant monitoring, a court case can have



Lawyers in Haryana, India, discuss a case while a temporary court is in session in an adjacent police station. Justice on Wheels is an experimental program that delivers legal redress to the disenfranchised. Remote areas often suffer from lack of access to justice.



*Slovenia's appointed Ombudsman, Zdenka Cebasek Travnik, speaks to the press. Ombudsman positions can serve a vital role in ensuring that citizens have access to information and participation in environmental matters.*

Administrative and judicial forums provide an alternate venue for minority groups (whether in terms of population or relative political power) whose voices might otherwise be ignored in legislative or public participation venues. In common law societies, courts and alternative forms of dispute resolution (mediation and arbitration) allow minority groups to strike down legislation that may not serve their interest and to seek protection under the law where their rights may not have been otherwise protected. In civil law societies, the courts serve as a locale for dispute resolution, ideally presenting the opportunity to non-majority groups to influence the final outcome. Of course, this aspect of access to justice only functions if the courts themselves are independent and sufficiently free of political influence and are perceived as more speedy and efficient than extra-judicial means of protest and redress (Santhakumar 2003).

#### Overcoming Collective Action Problems through Broad Standing

One of the key difficulties in protecting the environment is that those most affected can be separate individuals and families who lack the means or information to coordinate larger collective action. Often, activities that degrade the environment bestow concentrated wealth on a small group of people, or on organizations that can hire lawyers relatively easily. Therefore, groups that are degrading the environment often have to spend much less time and energy to defend their position than those who are directly harmed. By introducing broad legal standing (see Box 2.5), providing for governmental ombudspersons or allowing civil society organizations and public interest groups to seek redress and remedies, countries can assist those affected by environmental harms. Broad legal standing helps overcome the collective action problem (Fundación Ambiente y Recursos Naturales 2001).

#### BOX 2.5 IMPLEMENTING BROAD LEGAL STANDING

One of the problems with access to justice in the environmental realm is the question of who has legal standing. Legal standing is the ability of a person to show a sufficient legal interest in a matter to allow him or her to bring a claim. When defending individual rights, such as the right to life, to dignity, to liberty, to property, etc., the individual must prove that their value or good (life, dignity, liberty, property, etc.) is being threatened or damaged. In this sense, the individual is considered to have just and sufficient cause for defending their right.

Environmental standing is particularly difficult because, even with the right to a healthy environment, many people are unable to prove that they have been directly harmed by environmental degradation. Because of this, many governments have legislated alternate methods of establishing legal standing in environmental affairs.

There have been three main routes around the problem of environmental standing. The first is the provision of *public interest* or the right of any individual in the polity to sue for the violation of certain collective rights. The second is the role of a particular government agency with a mandate to protect public interest on behalf of the public, such as the Attorney General or ombudsperson in some countries. Finally, some constitutions allow CSOs with environmental objectives to stand in for the public in environmental matters.

*Source:* Fundación Ambiente y Recursos Naturales 2007

#### Chapter 2 in Summary

- There is a variety of arguments for access. Advocates will need to decide which arguments work best in different political contexts.
- Access rights are human rights.
- Access rights have their origins in civil and political rights and, over time, have gained normative strength in international law. As a result, they are likely to be increasingly supported by international mechanisms and incorporated into national laws.
- Research into access rights in general and public participation in particular suggests that access is positively related to the legitimacy of decision-making, stakeholder capacities, and successful implementation of environmental decisions. More open to debate are the propositions that access may improve the environmental or economic quality of decisions, and under certain circumstances may make decisions that more reflect stakeholder values.
- Increasing access makes more likely that environmental values are considered in the decision-making process.



## Access Hurdles

*Even as access proponents make progress, they will inevitably encounter resistance: some will argue that access invites confrontation, access delays development, access can be prohibitively expensive to implement, or access can needlessly complicate processes. To better prepare proponents for these arguments, this chapter considers the successes and the shortcomings of past efforts to improve access and suggests some new and promising directions.*

We have organized this discussion in terms of “hurdles”:

- *Managing Vested Interests and the Politics of Access.* Vested interests may actively resist sharing information and power, especially when it threatens business as usual. Organizing broad-based coalitions and strategic alliances can help the public interest prevail over those benefiting from secrecy.
- *Identifying Gaps in Information Systems.* Not all environmental information systems suffer from the same weaknesses. Carefully analysis can help to target advocacy on the choke points in information flow.
- *Fostering a Culture of Openness.* Environmental decision-making can often pit different values—scientific, popular, and economic—against one another. Investing in public awareness and

engagement can help bridge the divide between technocratic and democratic decision-making.

- *Investing in Access Capacity.* Meaningful access requires significant investment in the capacity of governments to supply and in the capacity of civil society to demand access. The costs of building this capacity can be shared through partnership between these actors.

After a brief review of the uneven progress made so far advancing the access agenda, we explore each of these hurdles separately. Each section presents relevant data and analysis from the findings of TAI assessments. Representative cases also accompany the text. Each section concludes with lessons learned from the literature, TAI data and case studies. Goals for research and advocacy

**TABLE 3.1 HOW THIS CHAPTER IS ORGANIZED**

THEME	CENTRAL QUESTION	EVIDENCE FROM TAI ASSESSMENTS	CASE STUDIES	LESSONS
<i>The Politics of Transparency</i>				
<b>Building Transparency</b>	How can citizens begin to build a pro-transparency movement?	<b>Access to Information:</b> Facility-Level Information – Compliance data and Pollutant Release and Transfer Registers	<b>Bulgaria – Military Waste TAI Network – Coalition building</b>	Alliances and coalitions can overcome transparency hurdles. Alliance and coalition-building depends on incentives.
<b>Spurring Public Action</b>	When does increased transparency lead to a public that demands solutions?		<b>Mexico - Cleaner Beaches</b>	Timing and urgency impact how the public uses information.
<i>Assessing Information Capacity</i>				
<b>Availability</b>	How can the legal frameworks for transparency be improved to increase information availability?	<b>Access to Information:</b> Environmental Emergency information	<b>Chile – Emergency Response</b>	Stronger laws will drive officials to produce better information.
<b>Publicity</b>	When is passive availability of environmental information not enough?	<b>Access to Information:</b> Air-Quality Monitoring data <b>Access to Information:</b> Water-quality monitoring	<b>USA – Solving a Water Contamination Mystery in Washington, DC</b>	Making information available requires culturally appropriate publicity.
<b>Usability</b>	Is environmental information in a form that the public can use?	<b>Access to Information:</b> State of the Environment Reports	<b>Hungary – State of the Environment report</b>	Governments can improve information access by targeting information to user groups.
<i>Unlocking the Culture of Secrecy</i>				
<b>Uniting Technical and Popular Views</b>	How can governments balance the need for democratic input and scientific solutions?	<b>Public participation:</b> Policy level <b>Public participation:</b> Project level	<b>Sri Lanka – The Southern Transport Development Project</b>	Improvements in public participation such as early notice, early provision of public documents, and early involvement may improve the quality of public input.
<b>Building a Culture of Participation</b>	What can government do to ensure that typical citizens can use access?	<b>Capacity-building:</b> General Public	<b>South Africa – Cautious Optimism in Environmental Education</b>	Public environmental and civic education can be expanded to improve environmental governance.
<i>Addressing Access Capacity</i>				
<b>Building Capacity to Supply Access</b>	What can access proponents do to build government capacity?	<b>Capacity-building:</b> Government Officials	<b>Indonesia – Sowing the Seeds of Access to Justice</b>	Civil society and government can accelerate the capacity-building process through partnerships.
<b>Building Capacity to Demand Access</b>	What can governments do to enable CSOs to use access?	<b>Capacity-building:</b> Public	<b>Latvia – Snapshot of a Growing Environmental Movement</b>	Governments can prioritize a number of reforms in order to insure growing civil society participation in decision-making.

are suggested, as well as strategies that access proponents might adapt to their national situation. Table 3.1 outlines the structure of this chapter.

### Uneven Progress

TAI national assessments demonstrate two major trends: (1) general access to information laws are more common than either general public participation laws or capacity-building laws; and (2) practice falls behind laws. These two general observations are the starting points for this analysis.

TAI assessments demonstrate that laws requiring public participation are common in the countries surveyed, but not as common as general access to information laws. The disparity in occurrence between information and participation law raises a question as to why some countries have strong laws enabling public participation, while others have weak laws.

Figure 3.1 shows that, according to TAI assessments, general framework laws on access to information—such as freedom of information laws or acts (FOIAs)—received rankings of “intermediate” or “strong” more often than framework laws on public participation such as national environmental impact assessment mandates or provisions for public comment on pending legislation.

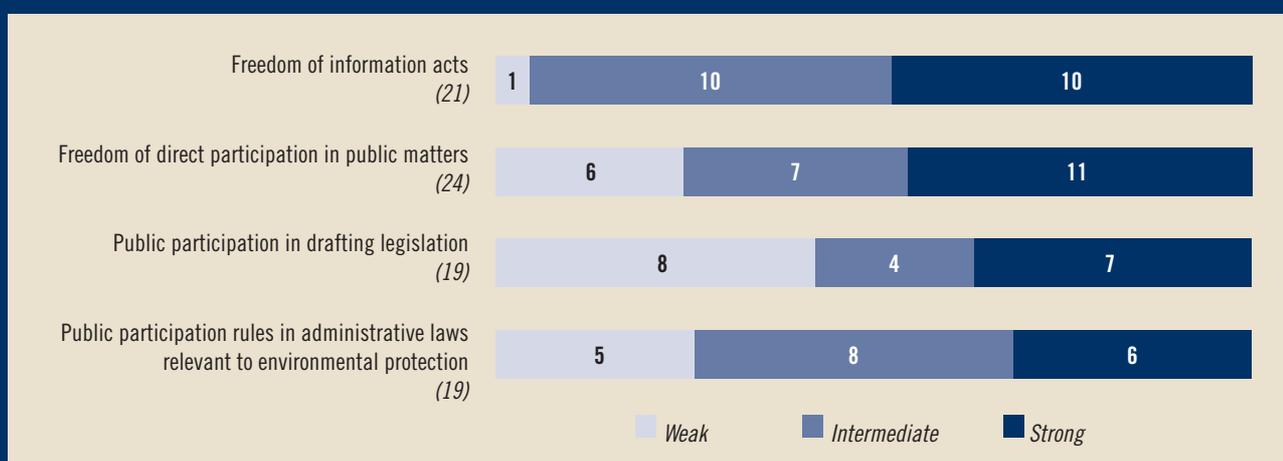
What does the data on access to information frameworks entail? TAI coalitions assessed national information laws based on how well each law provided access to a wide spectrum of information for any member of

the general public and for civil society organizations (CSOs) as well as the range and types of information the law restricted. Rankings on access to information depended on how well a law fulfilled the right to information in terms of procedures for exercising that right, who is entitled to the right, and limits on the right. All but one country had a national freedom of information law (TAI 2003).

TAI assessments of public participation law found mixed results. Coalitions assessed the extent to which the constitution, national-level legislation, administrative orders, or major court cases provided for direct public participation in public matters. Countries with “strong” rankings had a general public right to participation, or had clearly and strongly worded guarantees for public participation in specific affairs (for example, permitting the siting of an industry or waste disposal facility or the enactment of laws and regulations), including guarantees of the right to be notified, submit written or oral comments, question experts, and receive reasons for a decision (TAI 2003).

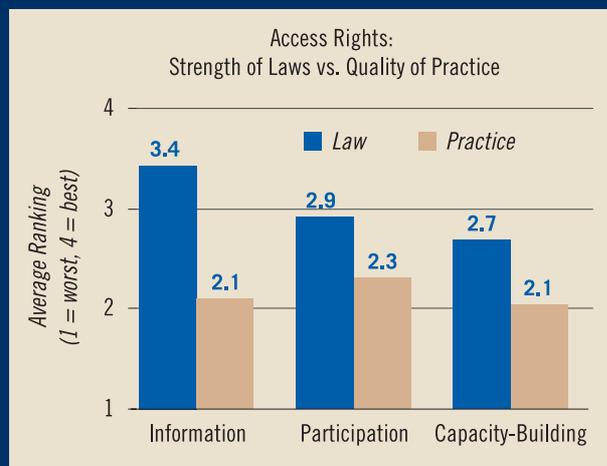
While TAI assessments demonstrated that framework laws for environmental information were generally strong, legal frameworks regarding public participation and capacity building for CSOs, officials, and the broader public received lower rankings generally (see Figure 3.2). For all categories, actual practice received lower rankings than the legal framework. This was especially true for information: while most governments evaluated had “reactive” information systems to respond to requests, far fewer proactively provided well-

**FIGURE 3.1** RANKINGS OF ACCESS TO INFORMATION FRAMEWORK LAWS AND PUBLIC PARTICIPATION FRAMEWORK LAWS  
(*n* = countries)



Public participation laws lag behind freedom of information laws

**FIGURE 3.2 MEAN RANKINGS FOR LAW AND PRACTICE INDICATORS FOR 26 COUNTRIES SURVEYED (value)**



publicized and usable environmental information in state of the environment reports, pollutant release and transfer registers, regular air and water quality monitoring data, and during environmental emergencies.

What causes this general gap between law and practice? The gap in on-the-ground access to information is partly a result of the gap between general framework

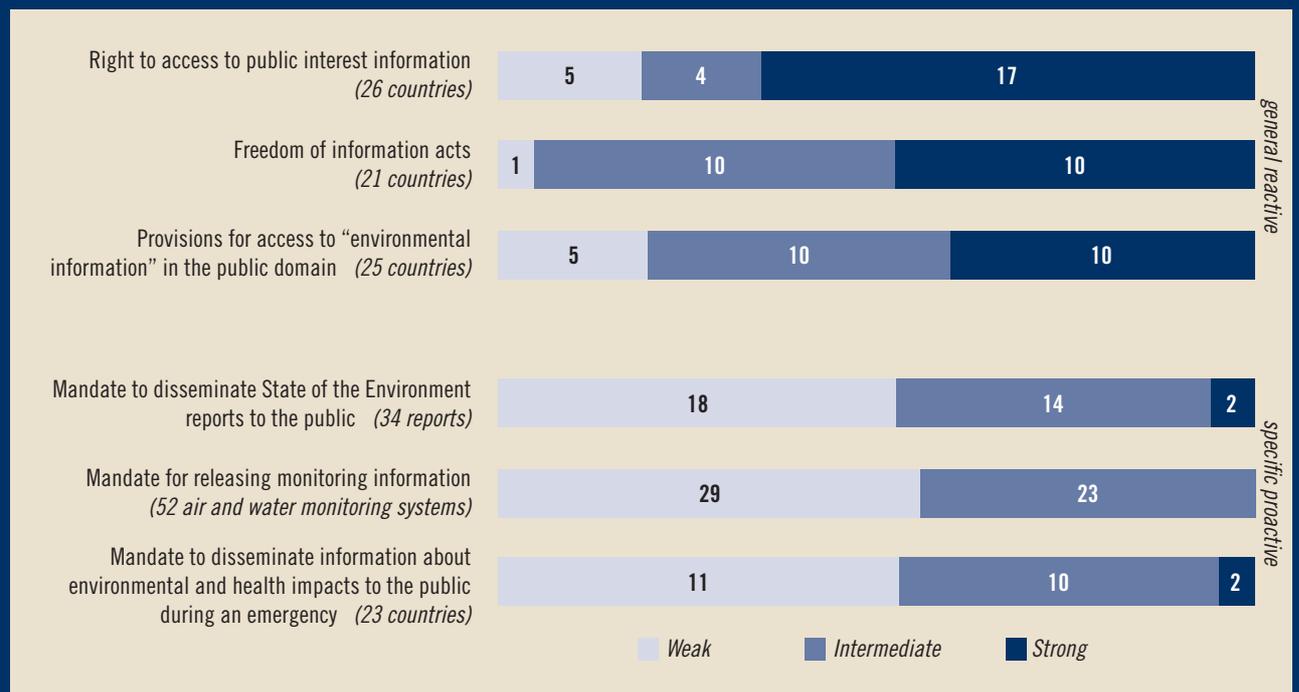
information laws, which are on the rise (see Chapter 1) and specific environmental laws and codes, which remain rare. General framework information laws tend to provide only for the reactive release of information upon request. More specific environmental information laws mandate the proactive production and publication of environmental information. Notably, even most reactive laws have “active” provisions describing the various duties of governments to publicize procedures, lists of available documents, and responsible information officers. However, even if we allow for a loose interpretation of “reactive” and “proactive” laws, Figure 3.3 still demonstrates considerable differences between these two categories of information law.

Once identified, these kinds of gaps can be remedied, if the political, legal, and capacity-related hurdles can be overcome.

### Managing Vested Interests and the Politics of Access

In many policy processes, increasing public access may threaten those in power. Government officials may stand to lose influence over decisions by increasing transparency, public input, and personal accountability for their decisions. If it works well, public par-

**FIGURE 3.3 ACCESS TO INFORMATION: RANKINGS FOR REACTIVE AND PROACTIVE LAWS**



ticipation will shift some control over decisions from government officials to the public. This shift may be resented by some officials, whose status or power may be premised on exclusive control of information and decision-making.

Access to information is essential in fostering meaningful public involvement. Without relevant and usable information, the public, officials, and companies are left to surmise what is reality from a mix of facts, innuendo, and hunches. Increased transparency increases the information on which decisions can be based, and reduces the opportunity for corruption, abuse, and misuse of power in public agencies. Companies engaged in polluting processes are less likely to push costs downstream onto local communities (see Chapter 2, “Benefits of Access to Environmental Information”).

Despite these benefits, many gaps appear in the practice of information provision. TAI assessments suggest that, in some cases, there is significant resistance to greater transparency when it leads to more accountability and public influence. Specifically, vested interests—those businesses and government agencies that benefit from the control of information—seek to limit public knowledge about environmental information on extraction of natural resources, pollution, and regulatory compliance.

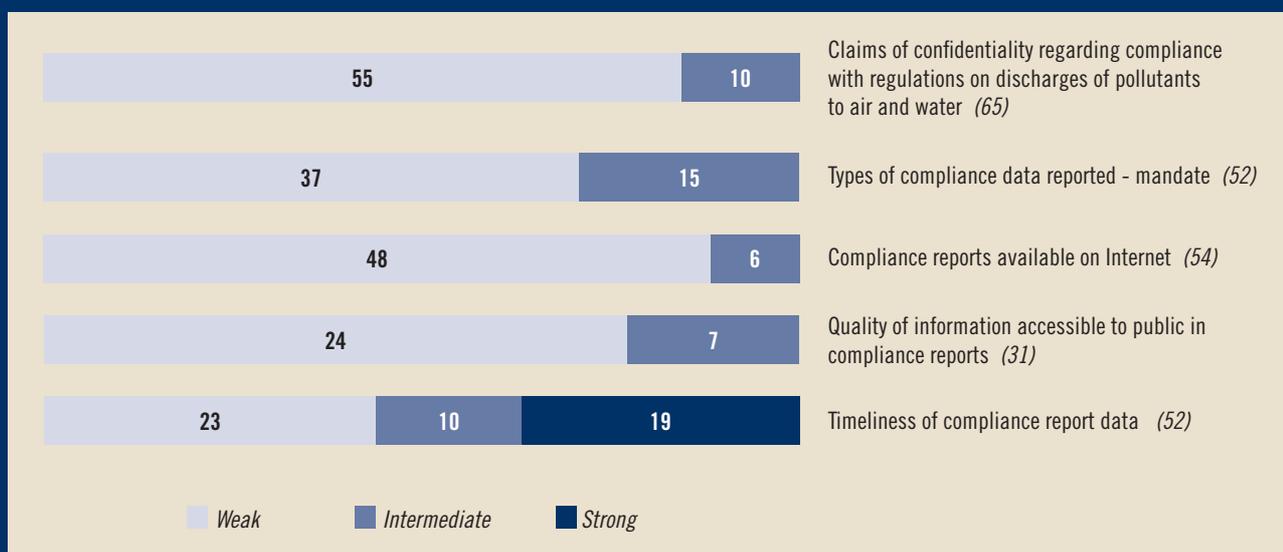
**BUILDING TRANSPARENCY**

Most of the time, forward leaps in access are not the work of an individual, but of a broad range of actors. Pioneering officials, media outlets, environmental CSOs, community-based organizations, and companies depend on information about the environment and natural resources. Consequently, they are some of the parties interested in transparent decision-making. We define “coalitions” as groups of like-minded individuals and organizations seeking long-term change and sharing strategies and resources. “Strategic alliances,” on the other hand, are organizations and individuals seeking solutions to immediate problems. These can be useful methods for overcoming weak accountability and poor transparency. Evidence from evaluations of facility-level information and the case of a citizen alliance working to combat duplicitous environmental decisions suggest strategies to tip the balance in favor of transparency. (See Box 3.1)

**Access to information: Facilities**

TAI case studies of 65 industrial and waste facilities found that, almost universally, companies, whether state-run or private, guarded or failed to produce information on toxic and hazardous effluents and emissions. The data gathered from these facilities—ranging from nuclear and coal-burning power plants to ports, from textile factories to free trade zones, from mines to logging companies—suggest active resistance to transparency and accountability. Few areas of environmental

**FIGURE 3.4 ACCESS TO INFORMATION: RANKINGS FOR FACILITY-LEVEL COMPLIANCE DATA** (n = facility case studies)



Compliance data faces problems of confidentiality claims, narrow scope, limited availability, and poor information.

access fared as dismally across assessments as facility-level information.

Mandatory compliance reports can demonstrate how well a particular company is meeting regulations for emissions and pollutant releases. In most countries, few facilities studied received strong rankings for compliance reports (see Figure 3.4). Facility-level information suffered from claims of commercial and security-based confidentiality (more than 4 in 5 were weak) as well as poor availability (with only 1 in 9 available on the Internet). Only 15 of 52 facilities surveyed had a mandate to report a wide variety of data.

TAI assessments found even fewer facilities produced pollutant release and transfer registers (PRTRs) or toxics release inventories (TRIs) in comparison with compliance data. Thirty-nine of the 42 facilities surveyed suffered from excessive claims of confidentiality regarding PRTRs. Three in five facilities did not produce PRTRs or received a “weak” ranking. None published the PRTRs on the Internet and almost three quarters received rankings of “weak” for the quality of information in the final report (see Figure 3.5).

Some countries have made steady progress in requiring the production of PRTRs or their equivalent. One example is Mexico. Required to track toxics and emissions by national legislation developed in response to the combination of domestic civil society pressures and the Environmental Side Agreement to the North

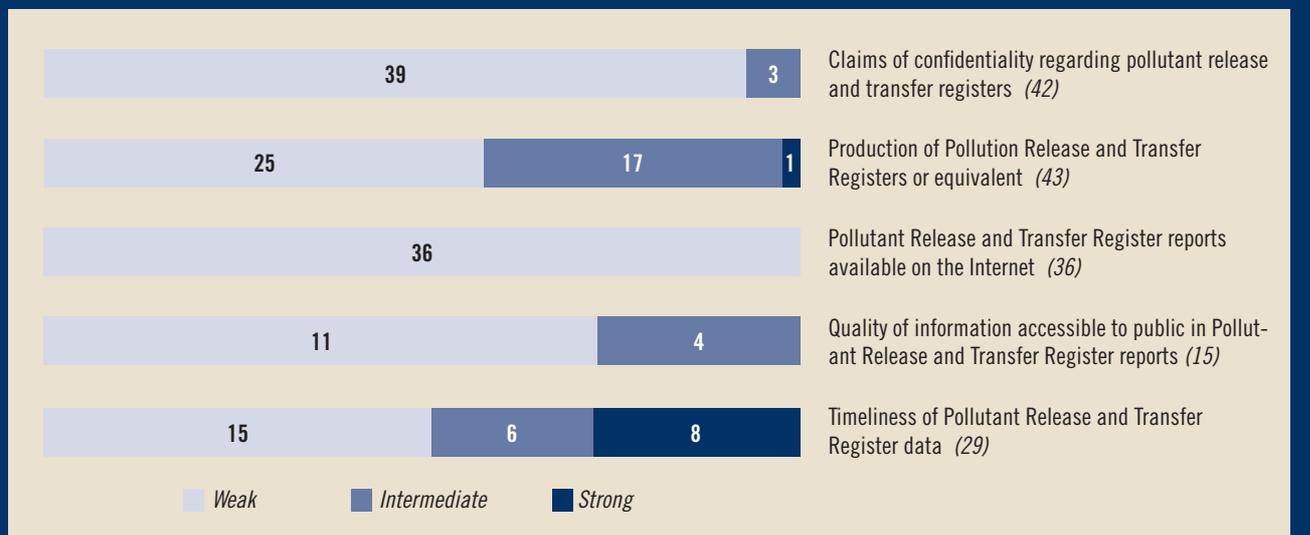
American Free Trade Agreement (NAFTA), the facilities assessed by the TAI Mexican coalition showed a significant degree of compliance within the country on emissions and effluent release reporting, with the exception of the state-owned nuclear facility (TAI - Mexico 2006). This suggests that cooperative capacity-building between countries—in this case Mexico, Canada, and the United States—can spur development of toxics release inventories. At the same time, domestic advocates have also played an indispensable role in the gradual development of Mexico’s system for access to facility-level information (Naumann 2005). Mexico’s example demonstrates the importance of recognizing strategic opportunities—in this case, the signing of NAFTA, which required parties to harmonize certain environmental standards, coincided with the flowering of civil society at the end of one-party rule.

Such historical moments are rare. What the Mexican example does share with other contexts is that coalitions of access proponents can leverage historical moments for increased transparency. While the dynamics differ across contexts, success stories offer general lessons about strategic alliances and coalitions in the pursuit of access.

**Lessons: Forming Strategic Alliances and Coalitions to Promote Transparency and Accountability**

Our research suggests that government officials may refuse to disclose information regardless of whether they have anything to hide. In some areas, this “culture

**FIGURE 3.5 ACCESS TO INFORMATION: RANKINGS FOR FACILITY-LEVEL COMPLIANCE FOR POLLUTANT RELEASE AND TRANSFER REGISTER DATA** (n = facility case studies)



Pollutant release and transfer registers are sometimes available, but suffer from excessive confidentiality, weak mandates, limited availability, and poor quality.

**BOX 3.1 MILITARY WASTE IN BULGARIA**

In 2002 and 2003, Bulgarian citizens faced a situation where officials resisted informing the public about a potentially harmful government action.

In the process of decommissioning obsolete Cold War military equipment, government officials assured the public that they were taking the necessary steps to prevent harm while disposing of old rocket engines. Contrary to their public assertions, officials set in motion a plan that ran counter to available evidence about environmental impacts. They made the plan secret, and then denied its existence.



A number of civil society groups and local officials learned of the proposed disposal, leading to protests in two different regions, Stara Zagora and Montana. The public would not have become sufficiently informed if there had not been civil society groups and individuals within the government pressing for the release of information under the new Freedom of Information Act. Through a concerted effort, these individuals, aided by active protest by Bulgarian citizens, were able to ensure that not only was information released, but also that disposal of the rocket engines protected both human health and the environment.

The full story can be found in “Appendix 3: Case Studies”.

of secrecy” remains entrenched despite new laws and systems designed to promote transparency and accountability. The story of how Bulgarians found a better way to destroy hazardous military waste (Box 3.1) suggests that information and environmental impact assessment laws, even if new, can provide leverage to strategic alliances and coalitions to protect human health and the environment. A few lessons about strategic alliances and coalitions:

- Because the benefits of secrecy often accrue to powerful individuals, but the costs accrue to a more dispersed public, strategic alliances and coalitions can add strength to the efforts of transparency proponents.
- Strategic alliances are best formed with groups that have an immediate material interest in protecting environmental assets.
- The “government” is rarely monolithic. Usually, there are agencies or officials open to change, willing to release information, or to seek alternative solutions. CSOs, government officials, and members of the public should seek these allies when attempting to gain access to environmental information or decision-making.

Coalitions are not as expedient as strategic alliances, but have the potential to sustain reform efforts for longer periods. Johnston and Kpundeh (2004) offer a set of useful analyses of coalitions to promote transparency. Using Wilson’s (1973) typology of incentives that motivate participation in organizations, the authors suggest that a variety of interested parties demanding access to information can overcome the difficulties of sustained action when they believe they are directly receiving benefits from their association. These benefits may be material incentives (money, goods, or jobs), purposive incentives (accomplishing the goal of an organization), specific solidarity incentives (rewards from exclusive membership given to individuals such as offices or individual honors), or collective solidarity incentives (benefits enjoyed by the entire group such as prestige, fellowship, or exclusivity). Among coalitions demanding transparency, the differences in success are not simply functions of how loudly or eloquently a group can trumpet its cause. Rather, an individual coalition’s success is also a function of how well it can use different incentives to encourage allies and to overcome hurdles.

The Bulgarian story offers an example where an alliance of access proponents garnered the benefits of their action (safer toxic waste disposal) immediately, so it is of limited value in explaining coalitions seeking sweeping reform. Coalitions demanding reform at the national level must be able to sustain action for longer periods of time without immediate material rewards (Brinkerhoff and Crosby 2002). These alliances can rarely support their active members and allies solely through purposive incentives. However likely transparency coalitions are to achieve their goals, the purposive rewards for advocacy often remain distant and diffuse,

operating as a “pure public good.” Long-term objectives such as reform, better governance, greater social equity, transparent political and economic decisions, and enhanced rule of law do not pay for the staffing, publicity, research, and facilities that access proponents need. As a result, most transparency coalitions, often desperate for funding, must find means to reward allies that require fewer strictly material incentives. This is particularly challenging in corrupt environments, where pro-transparency actors will be pushed to the margins.

The following incentives have been successfully employed in past transparency campaigns (adapted from Johnston and Kpundeh 2004):

- *Solidarity rewards for individuals:*
  - Awarding offices to allies (board of directors positions, for example) who have demonstrated commitment to public access
  - Honors and rewards for access champions
  - Access to exclusive or early information produced by the organization (especially important for sympathetic members of the press)
- *Solidarity rewards for groups:*
  - Prestige, such as allowing exclusive membership to a coalition for CSOs or government agencies
  - Enhancing the autonomy of the press, opposition leaders, or civil society groups; for example, groups can support one another if one member is jailed
  - Fellowship, such as throwing a party after a campaign or work accomplished
- *Material incentives:*
  - “Corruption insurance” schemes for businesses. Businesses can pool money as insurance in order to insure one another for the consequences of corruption
  - Information including assessments of officials (useful for civil society, businesses, and officials themselves)
  - CSOs can offer technical information, legal advice, and training on accessing information, using the judiciary, or news on upcoming decision-making about matters for the environment in exchange for support from businesses.

One implication for access proponents is that they can form strategic alliances with groups that benefit immediately from increased transparency and involvement. This may include groups that might not have traditionally worked together, such as advocacy CSOs

### BOX 3.2 THE GROWTH OF TAI: A CASE STUDY IN COALITION-BUILDING

The Access Initiative (TAI) serves as a case study in coalition formation. In contrast to a strategic alliance, TAI is longer-term and only has civil society organizations (CSOs) as members. Similar to strategic alliances, however, TAI has grown in the past because it has been able to provide incentives to its members. These incentives include material benefits, as well as solidarity benefits for both individuals and for the partner organizations.

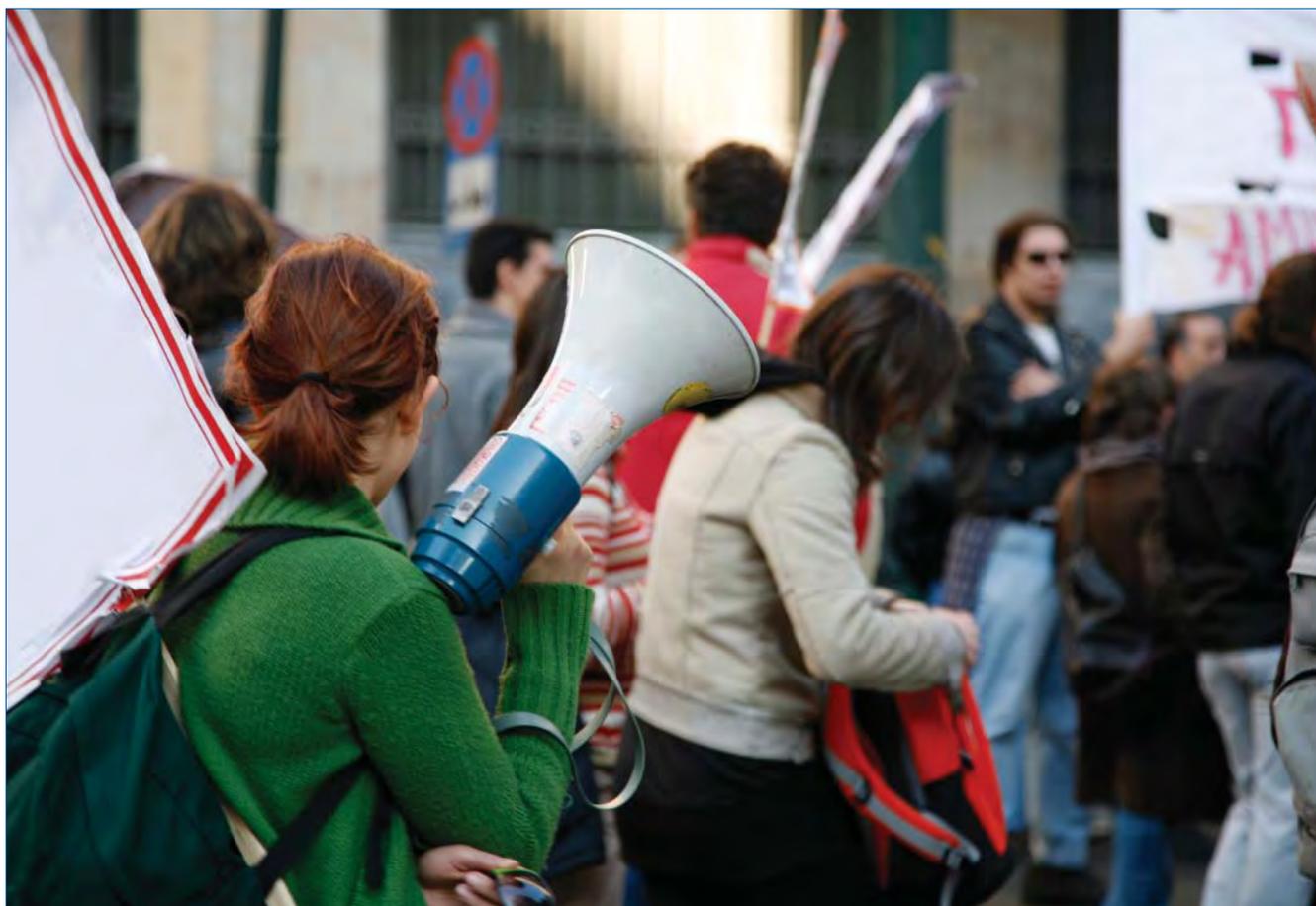
“Appendix 3 Case Studies” describes these incentives in greater detail.

and certain businesses who want open bidding for contracts. A second implication is that access proponents should seek to strengthen networks and build coalitions through innovations that provide incentives for membership, sharing resources, and the prestige of access advocacy. These networks are most sustainable when they meet the immediate needs of their members. Box 3.2 points to the experience of the TAI network as an international coalition. Past experience suggests that TAI partners are motivated by the particular incentives of the network.

### SPURRING PUBLIC ACTION

Access to information will spur public participation only when the public understands and acts on that information. Collective action usually requires a change in ideas about how things are or how they ought to be (White and Runge 1995). More often than not, a sense of “shock” is a necessary condition for public action. For example, a community may know that a particular mill rains ash down on their neighborhood on a daily basis, but it is not until a study demonstrates the pervasive health effects of the problem that the community is galvanized to take action and to propose an alternative.

The notion of “shock” implies that groups of individuals are likely to respond to information when it represents a substantial change in what they already know rather than a gradual change (Stephan 2002). Similarly, firms and organizations will respond to sudden revelations taken up by the public and the media. The “shame and blame” tactic has been used widely throughout the environmental movement (Singh 2007). Stephan (2002) cites literature showing the relationships between environmental information and polluter profits. Stock prices tend to fall in response to



*University students in Athens, Greece march for improved education.*

the sudden disclosure of negative environmental information (Badrinath and Bolster 1996; Hamilton 1995; Lanoie and Laplante 1994; Moughalu et al. 1990), and companies tend to improve environmental performance in response to falling stock prices (Khanna et al. 1998; Konar and Cohen 1997). In addition, national capital markets across income ranges respond to information about the environmental performance of listed companies (Wheeler 1999).

The implications for advocates of access are that the timing and messaging of information can have as much impact on environmental and human health outcomes as the information itself. Information by itself may not be enough: it must be combined with a clear, precise, and novel message about the state of affairs. Box 3.3, which describes the impact of seawater quality reporting in Mexico, demonstrates that the quality of reporting by public officials affects the interplay of public ideas about pollution and the consequent business response.

#### Lessons: The Importance of Timing in Public Information

In the short term, economic and environmental goals may not always be compatible. In these cases, advocates for the environment must decide strategically on how to release information to the public:

- In cases where the public—in this case, tourists and the business community—is likely to react strongly to information, it may be necessary to release environmental data to spur public action.
- In cases where there is likely to be significant backlash from the release of information, it is essential to build the capacity of the decision-making and problem-solving apparatus—including business, civil society, and government—as early as possible.
- Businesses that may initially be opposed to making information publicly available may change their stance once they are engaged in the practical problem-solving aspects of participation.

### BOX 3.3 MEXICO: CLEANER BEACHES WITH INFORMATION AND PARTNERSHIP

Mexico's vast coastline is a central asset to its economy. Its more than 11,000 kilometers of white, sandy beaches and turquoise water make tourism the third largest industry in the country. However, polluted seawater—which damages marine species and increases the risk of gastrointestinal diseases and respiratory infections—can turn increasingly well-informed and health-savvy tourists away from a beach vacation. Coastal water quality is therefore critical to the economies of coastal communities and the livelihoods of many Mexicans.

In this case study from the second TAI assessment for Mexico, the government received generally good rankings for its efforts to promote access rights. The quality and timing of official initiatives undoubtedly played a part in how quickly stakeholders dealt with the problem.

#### Seawater Quality: A Key Economic Resource

In 2002, Victor Lichtinger, Mexico's Secretary of Environment and Natural Resources (SEMARNAT), knew that a serious problem was brewing on Mexico's beaches. Pollution had put Mexico's treasured beach culture—and a major chunk of its national income—at risk, to say nothing of public health. But solving the pollution problem would require the collaboration of both the private sector and numerous agencies at multiple levels of government.

Lichtinger knew the necessary political will for such collaboration just did not exist. So he commissioned a national report to systematically document the extent of beach pollution. In April 2003, he boldly released it to the public just before the high-tourist season. The report provided damning information on seawater quality at seven beaches in Veracruz, Oaxaca, and Guerrero.



#### A Backlash against Transparency

While the reaction to the report could have been predicted, few predicted its severity. Local officials closed the beaches, tourists canceled flights, and the press gave voice to a nationwide public outcry. In response to the release of the pollution report, tourism shifted to other locales within Mexico. The affected communities, including Acapulco, were outraged. Other state and local authorities blamed the report rather than the pollution for their economic loss. The governors of Guerrero and Veracruz denounced the report, stating publicly that beaches in these states did not represent a hazard to tourists. When SEMARNAT unveiled plans for further water quality monitoring, local authorities in Guerrero threatened to file a lawsuit against the federal government and Minister Lichtinger for potential economic damage. Guerrero's governor, René Juárez Cisneros, even asked the representative of PROFEPA (the federal Ministry for

### Identifying the Gaps in Information Systems

Freedom of information acts and other framework laws on information dissemination vary in the degree to which they encourage proactive information provision rather than simply supply information upon request. Meaningful implementation of access rights requires information systems that have the capacity to collect, analyze and disseminate data proactively. (See Figure 3.6) Such a system may require the participation of multiple government agencies.

*Collection.* Access to information requires the collection of data by the government, whether it's reported by the company, (as in the case of PRTRs), or contracted out to a third party. In all cases, data should include indicators that allow the monitoring of performance. Air and water quality monitoring, for example, should collect data on widely recognized high-risk pollutants. Simi-

larly, information should be collected at regularly intervals (in the case of water or air quality monitoring), or should follow quickly after one-time events (such as environmental emergencies). Information must also be accurate and free of influence. Where polluters have incentives to hide or distort information, this may require special measures. In the case of PRTRs, for example, unannounced inspections and audits are more likely to represent the actual practice of a facility rather than regular or announced inspections.

*Analysis.* Data and documentation collected by governments should be amenable to analysis. These functions can be performed by governments themselves or they might be performed by independent organizations, such as CSOs and private firms. A number of CSOs and companies spend a great deal of time and resources unraveling complicated legislation, data, and docu-

BOX 3.3 *continued*

Environmental Protection) in Guerrero to resign. The official honored his request, stepping down from the position.

The picture was different at the federal level, where officials continued to focus on the pollution itself. Minister Lichtinger called on several federal entities to propose solutions to solve the seawater problem. The National Water Commission (CONAGUA) had already developed a proposal—outlining a platform for collaboration among federal, state, local, and private entities—to holistically address beach water quality. This proposal was the seed for a “Clean Beaches Program.”

### Stakeholder Collaboration for Clean Beaches

In coordination with a number of organizations, the Mexican government implemented the Clean Beaches Program. The main objective of Clean Beaches was to promote the sanitation of beaches, basins, sub-basins, and other water sources, as well as to prevent and address the pollution issue in order to protect and preserve Mexican beaches. Other goals included protecting users’ health; increasing the quality of life of the local population; and strengthening tourism, competitiveness, and environmental quality at Mexican beaches. The program also sought to educate citizens and to promote more environmentally benign activities at coastal areas in order to protect natural resources and keep facilities clean for the benefit of all sectors.

Representatives of six cabinet-level ministries formed several Clean Beaches Committees aimed at implementing sanitation programs, monitoring seawater, developing monitoring capabilities, building infrastructure, and developing the “Guide to Organizing and Operating the Committees of Clean Beaches, Mexico.”

The Clean Beaches Committees are led by local residents and are comprised of representatives from corresponding state and municipal governments, civil society organizations (nonprofit organizations and chambers of commerce) and private industry (hotels, restaurants, and tourism services). Clean Beaches Committees have the power to validate, direct, and certify local sanitation programs. These innovative initiatives represented a significant budgetary investment and required the coordination of three government levels and private industry. For example, 1.17 billion pesos were invested from 2003–05 to build, rehabilitate, and expand the hydro sanitary infrastructure, including better drains and water treatment plants (Comisión Nacional del Agua 2007). Beach owners interested in earning a high-quality beach certificate could apply for it through a beach certification program coordinated with local committees.

Building capacity for monitoring was a key element of the program. With the creation of the National System of Information on the Quality of Water at Mexican Beaches, health laboratories in each one of the 17 coastal states carried out sampling and analysis of seawater,



with guidance from the Ministry of Health. The monitoring data is now regularly published on the SEMARNAT website (SEMARNAT 2007). Additionally, a 32-million peso fund was opened to encourage research and development and studies to classify, monitor, and clean Mexican beaches.

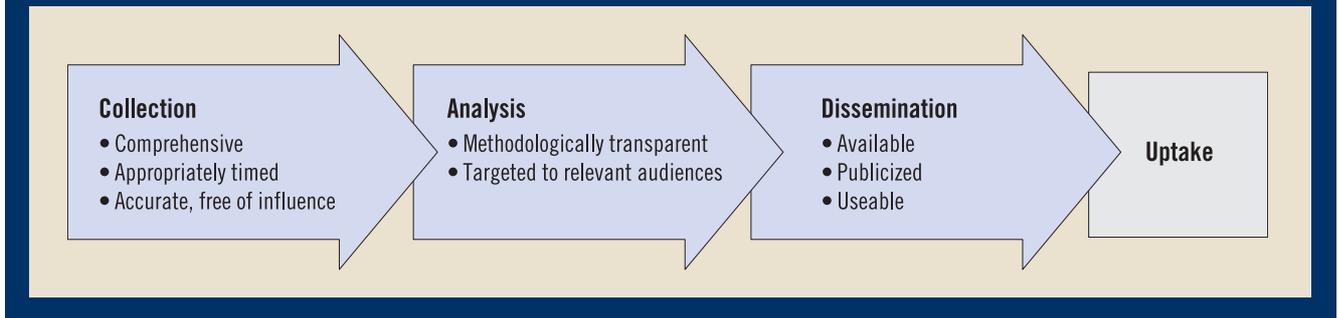
### Information and Action

The seawater monitoring program has proved to be a controversial element of Clean Beaches. Some industry, state, and local officials remain skeptical about the broadcasting of water quality information. Furthermore, the accuracy of data remains suspect and needs continual refinement. Fortunately, an increasing number of actors have participated in Clean Beaches’ cooperative process, thus increasing its legitimacy. Reviews of the monitoring program by the Senate have shed light on its flaws and have identified opportunities for improvement. Consequently, the Senate called on SEMARNAT to increase the proportion of beaches that are monitored. In the summer of 2006, Greenpeace and several other environmental groups demanded improvements in posting water quality information at beaches.

Bacteriological monitoring since 2003 shows that, on a yearly basis, the percentage of beaches exceeding pollution limits has decreased. Several important tourist destinations have drastically improved their water quality, including Acapulco, Bahia de Banderas, Puerto Vallarta, and La Paz. Improvements are primarily due to the construction of treatment plants and the implementation of massive cleaning programs. In La Paz and Los Cabos, for example, an existing trust was used to acquire four-wheelers and tools to clean the beaches 3–4 times a day. At the time of publication, the construction of three major treatment plants is underway in Puerto Vallarta on its three most polluted beaches.

*This story was written by Tomas Severino and Valeria Enriquez (Iniciativa Acceso Mexico).*

FIGURE 3.6 ELEMENTS OF INFORMATION CAPACITY



ments, even after such information is made available. In these cases, it is crucial that “interpreters” of data have the necessary funds to perform this function (Fox 2007).

*Dissemination.* The availability of public information is only one aspect of access to information for environmental matters. The availability of information can be improved not only through analysis, but also through proactive dissemination. In addition to making information usable, governments have a responsibility to tell the public that such information exists. This may mean advertising, training, or holding consultations, as well as training school teachers, librarians, CSOs, and journalists about how to interpret the information for the public.

This last element of information provision, “dissemination,” is the primary focus of the remainder of this section of the report.

#### AVAILABILITY OF INFORMATION

The production, analysis, and dissemination of environmental information necessary for public participation are not just technical, financial or human resource issues, but also a matter of legal requirements and political priorities. Limited availability of information is often the result of limited or weak mandates for the proactive production of information. Using evidence from TAI studies on a broad range of environmental emergencies, this section provides an overview of the information obtained on environmental emergencies and examines the incentives and disincentives officials face when deciding whether to provide meaningful information to the public in a timely manner. Examining environmental emergencies will shed some light on the broader problems of information access. Emergencies are particularly illustrative because extreme circumstances help to clarify trends in behavior.

#### Access to Information: Environmental Emergencies

Advances in scientific understanding, risk planning, and first response have helped make environmental emergencies more manageable. Studies from both developing and developed countries show that, on the whole, many environmental disasters are more predictable than political crises. (Hewitt 1983; Jarman and Kouzman. 1994; Vaisutis-White 1994; Rosenthal and Kouzmin 1997).



*A citizen in Yunnan, China reads the local news. Recent passage of an environmental information law in China may lead to better public access to environmental information.*



This mural in Sierra Leone dramatizes codes of conduct for non-governmental organizations and UN agencies working with the public in an accessible medium.

Significant improvements in information management during emergencies, especially emergency warning systems, have occurred in recent years. Planning and prediction tools have also greatly increased government capacity to respond to environmental problems. During environmental emergencies, however, governments may not be as effective in providing access to information. Early planning and establishment of information protocols can greatly aid the public, relief workers, officials, and businesses, CSOs, and agencies involved in emergency response.

In addition, a key aspect of access rights is the ability of governments to provide information about decisions and planning, as well as about the underlying processes for decision-making and planning. An environmental emergency plan emphasizing access to information should include the following elements (Pauchant and Mitroff 1992; Jin et al. 2006):

1. *Detection of the crisis*—looking out for warning signs
  - a. Information on data collection activities
  - b. Distribution of analysis and findings to relevant audiences
2. *Prevention/preparation for the crisis*—what can be done to prepare for its occurrence
  - a. Public information on emergency procedures
  - b. Public information on possible public health effects
3. *Containment*—efforts to limit the duration and area of the crisis
  - a. Public information on emergency procedures
  - b. Public information on the type of hazards present (water, soil or air contamination and particular effluents or emissions)
4. *Recovery*—restoring order and normalcy
  - a. Public information on health and environmental consequences of environmental emergency
  - b. Where to seek treatment
  - c. Where to seek information on compensation
5. *Learning*—evaluating and incorporating lessons from the crisis
  - a. Detailed reporting on health and environmental consequences of the emergency
  - b. Information on the location and timing of future planning to prevent recurrence

Such a plan—and the process of forming the plan—should be open to public input and well publicized.

Governments assessed by TAI coalitions, on the whole, demonstrated neither the capacity nor the planning to meet the information challenges of environmental emergencies. (See Figure 3.7.) TAI partners studied a broad range of environmental emergencies, including flooding, sewage leaks, chemical and oil spills, fires (urban, landfill, forest, industrial, and explosions), Hurricane Mitch, agricultural runoff and contamination, epidemics (bird flu and cholera outbreaks), and mercury poisoning. Three-fourths of the countries surveyed had weak or nonexistent mandates to provide public information during emergencies. The two indicators that measured the quality of the information available to the public—both during the emergency and in an after-the-fact investigation—received weak rankings in roughly three quarters of the cases respectively. Indicators that ranked the effort and effectiveness of government publicity also received weak rankings. These include posting of information on the Internet (during: all but one quarter of cases ranked as weak; after: one tenth were weak) and efforts to reach the mass media regarding the emergency (during: nearly three-fourths weak; after: 4 in 5 cases were weak).

TAI findings suggest that government performance in the face of environmental emergencies fared poorly due to major hurdles to access—poor capacity as well as resistance to transparency and accountability. Poor capacity contributes greatly to information difficulties during emergencies. Information capacity must be strengthened in all relevant actors, including emergency responders, health officials, and ministries of the environment. They are often emblematic of the relationships between the organizations. Weaknesses in providing access during emergencies vary by cause. These include:

- *Limited or overlapping mandates.* Agencies often lack the mandate to make environmental information public. In some cases, the differing agencies involved in an emergency may have overlapping or contradictory mandates about responsibilities for information provision.
- *Poor coordination.* At times, agencies may not share gathered data because they might not realize the benefits or opportunities of doing so. Agencies may not exploit their comparative advantages in

collection, analysis, or dissemination provided by partner agencies.

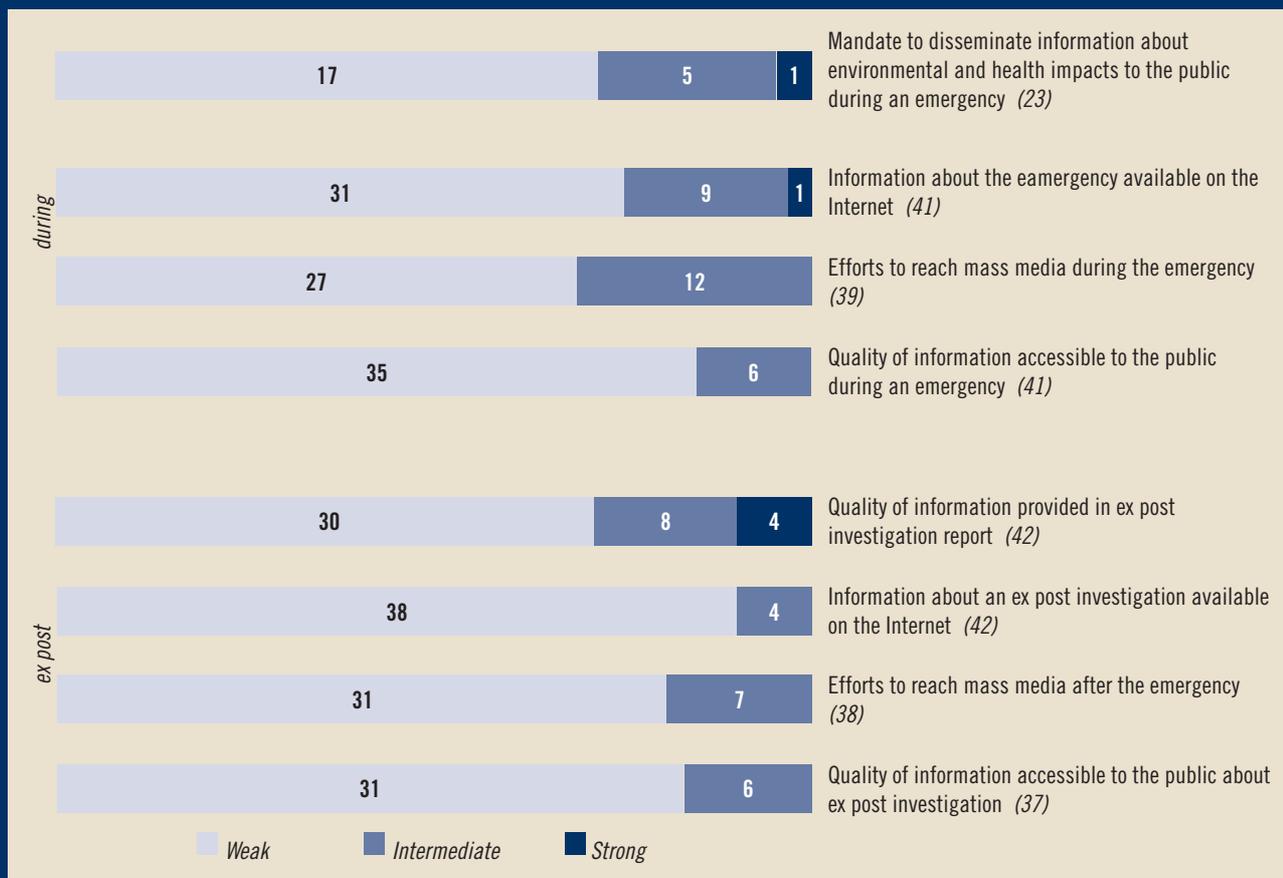
- *Poor response capacity.* Some agencies lack the finance, technology, or skills to carry out information collection, analysis, and dissemination during environmental emergencies.
- *Poor contingency planning.* Some agencies do not take appropriate steps in planning and making plans available, publicized, and usable (Nijenhuis 2008).

To respond to these common weaknesses in access provision, emergency professionals have developed guidelines, tools, and web resources for public information during emergencies. Most of these originate from humanitarian relief workers. One example is Relief Web, a clearinghouse for information for humanitarian relief workers, with a community of practice dedicated specifically to information provision during emergencies (see <http://www.reliefweb.int/hin/>). Another is the Virtual On-Site Operations Coordination Centre developed by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA). This is a web-based tool featuring media monitoring, the control of real-time alert systems, and mapping tools (<http://www.ocha.unog.ch/virtualosoccc/>) (Nijenhuis 2008).

In the context of major pollution incidents, UNEP/OCHA has developed model guidelines on information for a national environmental contingency plan. When a major pollution incident occurs, the guidelines suggest supplying the public with timely and accurate information on the nature of the incident and the steps that are being taken to cope with the problem. An open policy on public information helps to ensure cooperation and should also reduce the possibility of undue concern or alarm through misinformation. In an emergency, the guidelines suggest the government assign an information officer to establish a news desk at the field response center, who would coordinate with participating agencies and the emergency response team (UNEP/OCHA 2007).

Simply investing in emergency warning systems and changing the scope of activities for dealing with environmental emergencies is not enough to ensure appropriate, timely access to information. In order to understand systemic hurdles to access and to begin corrective action, it is useful to understand incentives and disincentives to produce information both during environmental emergencies and more broadly.

FIGURE 3.7 ACCESS TO INFORMATION: RANKINGS FOR ENVIRONMENTAL EMERGENCIES (n = emergency cases)



Poor access to information during emergencies suggests weak collection, analysis and dissemination capacities worsened by poor accountability.

Government officials and polluting industries may operate routinely in fear of prosecution or retribution from releasing information. As a result, they are willing to expend large amounts of energy to conceal information. These tendencies become more pronounced in the chaos of environmental emergencies. Budgets and mandates face increased pressure as a result of public alarm, a hurried time frame for decisions, and the demand for accountability. The fear of retribution (loss of electability, appointment, or work conditions) is greater during these moments than otherwise. In emergency situations, official decision-making must be done based on incomplete information about the practicality of responses, as well as public opinion concerning response options (Congleton 2005). Box 3.4 features two case studies from the TAI Assessment in Chile where officials, while ahead of most others in the countries surveyed, still dragged their feet on information release.

Emergencies also present more opportunistic officials with the chance to make public policy decisions without accountability. Two factors contribute to this. First, during emergencies, the typically departmentalized decision-making of public bureaucracies must adapt rapidly, emphasizing coordination over its typical specialization (Rosenthal and Kouzmin 1997). This often means that specific individuals receive expanded powers. Second, officials often possess better quality information than their constituents and, as a result, are able to make decisions without public scrutiny. At times, officials will abuse the political mandate temporarily granted to their respective agencies during emergencies, rewarding well-placed constituents and special interests (Congleton 2005).

In order to remedy the tendency for officials to hoard, distort, and suppress information, and instead to place human and environmental health in the forefront of emergency management, it is crucial that governments

### BOX 3.4 CHILE: EMERGENCY RESPONSE FALLS SHORT ON IMPACTS

Most countries that were assessed using the TAI method received rankings of “weak” for information provision both during and after environmental emergencies. Chile, however, showed some promise in informing the public about potential problems during and after two disasters. *The following text is translated from the Chilean TAI assessment:*

#### **Large-Scale Emergency: TRANSAP Sulfuric Acid Spill**

At 1:10 AM April 1, 2003, on Route G-78 (the old coastal highway), 11 railcars transporting sulfuric acid derailed. The material being transported was the byproduct of the el Teniente mine run by the state-owned company CODELCO. Responsibility for movement of the waste had been contracted to the TRANSAP Corporation. Of the 11 cars, 4 overturned onto the side of the highway, spilling their contents into a newly plowed field. The soil absorbed most of the acid, avoiding any greater dispersion. Fortunately, no one died or reported any injuries. According to the contract between CODELCO and TRANSAP, responsibility for the event fell on TRANSAP, which was therefore responsible for any interventions, investigations, and dissemination of information to the community. The government of Chile did not assume direct responsibility beyond the role of financier.

The Access Initiative team in Chile ranked information access concerning the emergency on two criteria, quality and accessibility, at two points in time—during the emergency and after the emergency. During the emergency, access to information was ranked as strong due to the large amount of data collected and the large number of outlets for information, including newspapers, television, and websites. The quality of the information was ranked as intermediate because it focused only on the events and not on the environmental or health impacts of the event. After the fact, the official investigation repeated the mistake of overemphasizing the causes of the wreck at the cost of not reporting the possible impacts, resulting in the same intermediate ranking. The report completed ex-post by TRANSAP was not available on the Internet and was made available only after three inquiries and beyond the four-week period imposed by the law, receiving a ranking of intermediate.

#### **Small-Scale Emergency: Gasoline Leak, Panguipullí, Region de los Lagos**

On January 21, 2003, the Regional Director of the Superintendent of Electricity and Combustibles (SEC) notified the Emergency Unit at the National Commission for the Environment (CONAMA) that there was a gasoline leak inside of a group of houses near the COPEC Gas Station. The leak was due to a faulty containment system in the tanks. Due to the terrain, the gasoline eventually flowed underground into the sewer, creating gas vapors and directly impacting neighboring

houses. No deaths or injuries were reported. At the time, relevant press releases did not make reference to any harm that might have occurred to the community. The entities with an institutional mandate to intervene in this case were CONAMA, SEC, and the National Office of Emergencies (ONEMI).

During the emergency, no official information was provided, so the government received intermediate rankings in both accessibility and quality due to the fact that the mandate existed but was not carried out. After the emergency, the investigation lacked any evaluation of the larger health or environmental impacts of the incident, receiving an intermediate ranking for quality. ONEMI's single press release identified those to blame for the incident, but did not describe the impacts on the public or the environment, and did not identify the causes of the accident. Of the three governing institutions, none had information on the event for the public. Only CONAMA gave an interview, which revealed that a planning meeting for a public information session had taken place, but the session itself never came about. As a result, the Chilean government received a ranking of intermediate in both accessibility and quality after the emergency.

#### **Too Much Focus on Blame, Not Enough Information Disseminated**

Despite the fact that Chile is better than most Access Initiative countries at reporting emergencies, these cases reveal important gaps in current environmental emergency information systems. All agencies consistently under-investigated and under-reported environmental and health impacts, preferring to focus on responsibility or causes for events. Efforts to disseminate information were initially excellent, but eventually waned.

Across all agencies, information was not readily available when requested.

Source: TAI - Chile 2006





*Journalists at a press conference in Puntland, Somalia. Reporters play a critical role in making sure that government information is publicized.*

undertake reforms in planning, information distribution systems, and incentive structures.

#### **Lessons: Building Incentives for Information Availability**

In order to promote public access to information before, during, and after environmental emergencies (and in other situations), access proponents must push to implement reform at each stage of planning, follow-up, and recovery. As has been shown, emergencies test the extreme vulnerability created by the combination of weak capacity and poor transparency. Preparedness requires addressing both challenges. The case study from Chile (Box 3.4) represents the typical outcome of deficits in capacity and transparency when officials' incentives do not favor production of information.

In order to address capacity issues, governments must invest in best practices for information systems during environmental emergencies. The following reforms might help respond to the capacity problems listed at the beginning of this section:

- *Clarify mandates and roles* for information collection, analysis, and dissemination within each agency. Establish or strengthen head offices of information to serve as single points for information distribution to media, relief workers, and to the broader public.
- *Strengthen and centralize capacity* for information sharing by assigning an express mandate for information production within agencies and for sharing between agencies.
- *Build response capacity.* Broaden investment in both technology and human resources necessary to carry out information collection, analysis, and dissemination during environmental emergencies. Make better use of existing environmental emergency guidance materials.
- *Improve contingency planning.* Develop contingency plans with strong information components. Ensure public availability of planning processes and the decisions resulting from those processes. Integrate information management into national contingency plans.

Environmental emergencies are not the only case where officials have incentives to conceal or distort information; emergencies merely represent circumstances when these problems of access are most exposed. One lever for access proponents is to change the incentives of public officials through legal reform. The following four recommendations are adapted from Wagner (2004):

- *Rewarding information production and dissemination.* Agencies should reward the collection, analysis, and distribution of data. This requires mainstreaming information production into transfer, hiring, firing, and promotion standards and making sure that performance standards are clearly posted in all relevant agencies. In addition, whistleblower protection acts should protect and reward those officials who make relevant environmental information available to the public.
- *Subsidizing government information systems through “information asymmetry” taxes.* In the case of heavily polluting or high-risk industries, the government could correct for information asymmetry and externality through levies used to directly subsidize government or third-party research and planning around potential environmental emergencies.
- *Introducing penalties for concealment and distortion.* Appropriate legal reform would introduce penalties for officials attempting to conceal or distort information, particularly in emergency situations.

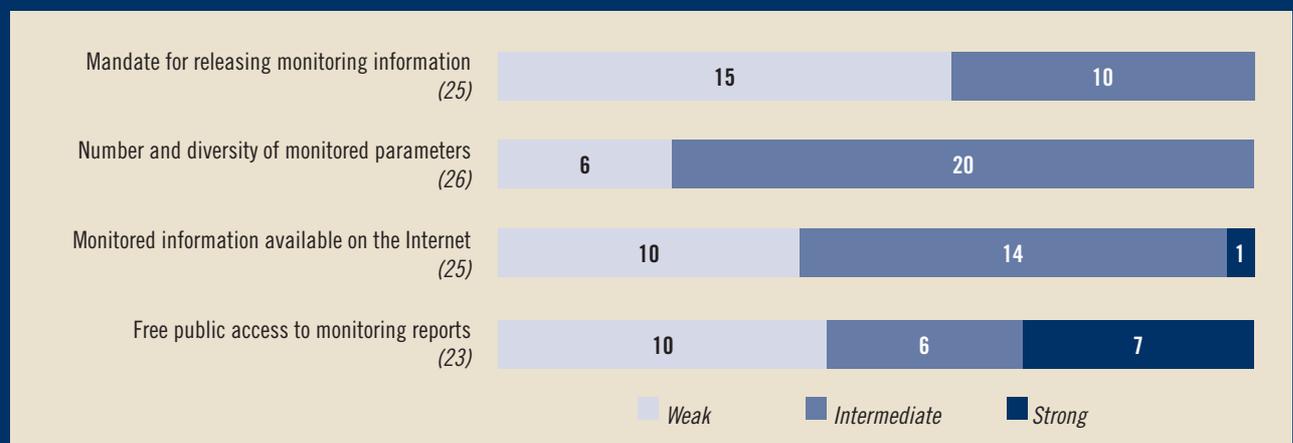
- *Creating standards for environmental emergency data.* In order to make penalties effective, there must be a standard set of targets for data and information produced during an environmental emergency. In many countries, these standards do not exist or lack the political or technical backing sufficient to motivate officials to gather the data.

Implementation of reforms in each country will proceed differently and is likely to encounter resistance from those who may stand to lose. Environmental emergency reforms must necessarily be accompanied by facility-level information and regular resource monitoring.

### PUBLICITY

Access to environmental information is more than just the public’s right to obtain information and the government’s duty to respond. Principle 10 says, “States shall facilitate and encourage public awareness and participation by making information widely available.” Governments distribute and publicize environmental information in ways that are meaningful and supportive of public participation and official accountability. Successful examples of usable and publicized information on air quality are not uncommon. For example, many major cities inform local news stations of “smog alerts” and days when the public should avoid strenuous activity due to air pollution. However imperfect, such systems may lead to citizen concern about air quality. Other information systems are more sophisticated, with strong monitoring capacity for a wide range of pollutants.

FIGURE 3.8 ACCESS TO INFORMATION: RANKINGS FOR AIR QUALITY DATA (n = air quality monitoring systems)



Air quality information was strong on the number and diversity of monitored parameters, but often suffered from a weak mandate on release, and, at times cost the public money to access.

**BOX 3.5 UNITED STATES: SOLVING A WATER CONTAMINATION MYSTERY IN WASHINGTON, D.C.**

A weakness in data dissemination put the public at greater risk for lead poisoning in Washington, D.C. Even in a country with robust scientific and technical expertise, as well as strong environmental information systems, rigidity in information distribution resulted in widespread public outcry.

A January 31, 2004 article in *The Washington Post* created a stir with a story about a strange environmental mystery: “Tap water in thousands of District houses has recently tested above the federal limit for lead contamination.” Authorities were “baffled” by the problem and had no idea how such a serious contaminant had become so widespread in the city’s water. Yet subsequent *Post* articles, public hearings, administrative reviews, independent investigations, and a class action law suit documented that the problem actually had not been discovered “recently.” The Washington Water and Sewer Authority (WASA) had been detecting unhealthy levels of lead in city drinking water for over two years. However, the public was not informed of the problem, and in other cases was told too late to take appropriate action, or with too little urgency to convey the seriousness of the health risk. Washington residents thus faced not one, but two mysteries. How did so much lead get into the drinking water? And how could the government have known about it for so long without addressing the problem?

Although WASA’s survey found high lead contamination during the previous summer, WASA failed to notify residents of the risk until

November. Water regulations required WASA to place a very specific notice on each affected customer’s water bill stating:

*“SOME HOMES IN THIS COMMUNITY HAVE ELEVATED LEAD LEVELS IN THEIR DRINKING WATER. LEAD CAN POSE A SIGNIFICANT RISK TO YOUR HEALTH.”*

However, the notice that WASA sent out in November downplayed the seriousness of the problem. It left out key required phrases, including “in their drinking water” and “significant.”

Similarly, national law required WASA to conduct public meetings to inform people of the health risk and the actions they could take to avoid lead exposure. However, their advertisements for the meeting did not reveal the lead problem. Instead, they simply stated that the meeting would “discuss and solicit public comments on WASA’s Safe Drinking Water Act projects.”

As a result of the lack of urgency in WASA’s public communications, residents were slow to take action. Some residents who received the notices began buying bottled water, and discussed the issue with their neighbors, or shared information about it via e-mail. Many had neglected the mailings, however, or didn’t understand them. One resident later told a reporter she had received a letter informing her that the lead in her water tested as “higher than the federal action level,” but she wasn’t sure if that was a good or bad result.

*continued, next page*

The difficulties faced by governments in collecting information vary by sector. TAI assessments demonstrated that most countries were able to monitor air and water quality, but had trouble disseminating the data in meaningful ways to the public. This section examines the general trends in access to information on air and water quality monitoring. It presents a case study of Washington, D.C., where, despite sufficient monitoring, the water quality system failed to publicize data in a way that would bring environmental health concerns to the public’s attention (see Box 3.5).

#### **Access to Information: Monitoring Air and Water**

While most assessed countries had an intermediate or strong capacity to monitor major problems with air quality, few demonstrated the commitment to publish and distribute that information to the public. Figure 3.8, an aggregate of indicators for collection and dissemination, shows that more than half of countries

assessed received average rankings. These middling rankings mask a more complex picture. The majority of countries received rankings of “strong” in the number and diversity of pollutant parameters measured. Yet only one monitoring system received a “strong” ranking for releasing the information on the Internet. Thus, dissemination of air quality information was significantly weaker than data collection on air quality.

TAI findings for water quality demonstrated the same gap between collection and dissemination as air, but all indicators relating to practice scored poorly (see Figure 3.9). The number and diversity of monitored pollutant parameters for water was lower, with less than a third of cases receiving a “weak” ranking and only a third receiving “strong” (compared to no cases and three-quarters of cases respectively for air quality). Meanwhile, dissemination was far worse than for air quality data. Of 25 countries assessed for availability of water quality

Months later, when the issue became front-page news, the situation changed rapidly. Residents inundated WASA's water hotline with calls and overwhelmed water testing laboratories with requests for their tap water to be tested for lead contamination. Successive public communications from WASA and other agencies contradicted each other and created confusion about who was at risk and what steps residents should take to protect their health.

Expressions of public frustration grew in response to the mixed messages emerging from WASA and other public agencies. The public organized to share information and circulate petitions by launching Internet sites like PureWaterDC.com and WaterForDCKids.org. Neighborhood meetings also were held to discuss the issue. Community organizations and elected leaders concluded that WASA had actively covered up the problem. On March 18, nearly 100 people took part in a protest at City Hall led by a CSO coalition (Public Citizen 2004). Also in March, a class action lawsuit was launched against WASA by a young lawyer, Chris Cole, and a neighborhood activist, Jim Meyers, who called on the government to give clear notification to affected residents, pay the full cost of lead pipe replacement, and compensate the plaintiffs for damages. To clarify the situation for the public, the government needs to “knock on doors, no more letters,” said Cole (Spencer 2004).

Fortunately, EPA studies showed that there were few public health impacts. Yet the question of how the government had failed to effectively notify residents of the problem was more difficult to



*Citizens in Washington, DC demand answers after high levels of lead were discovered in the drinking water.*

answer. The public outcry about the government's initial response to the lead contamination resulted in independent investigations commissioned by government and civil society organizations, as well as EPA administrative orders censuring WASA, and a congressional inquiry into EPA's own oversight failures.

This case demonstrates that it was not an absence of technical data that proved most problematic in this situation, but a lack of face-to-face communication, suggesting both that situations are unique across contexts, and that people need environmental information communicated to them in a medium and a setting they understand and can act upon.

*The full story, including sources, can be found in “Appendix 3: Case Studies”.*

monitoring information on the Internet, 21 received a “weak” ranking. Taken together, these data suggest that weaknesses in all aspects of information provision—collection, analysis, and dissemination—are pervasive in water quality monitoring.

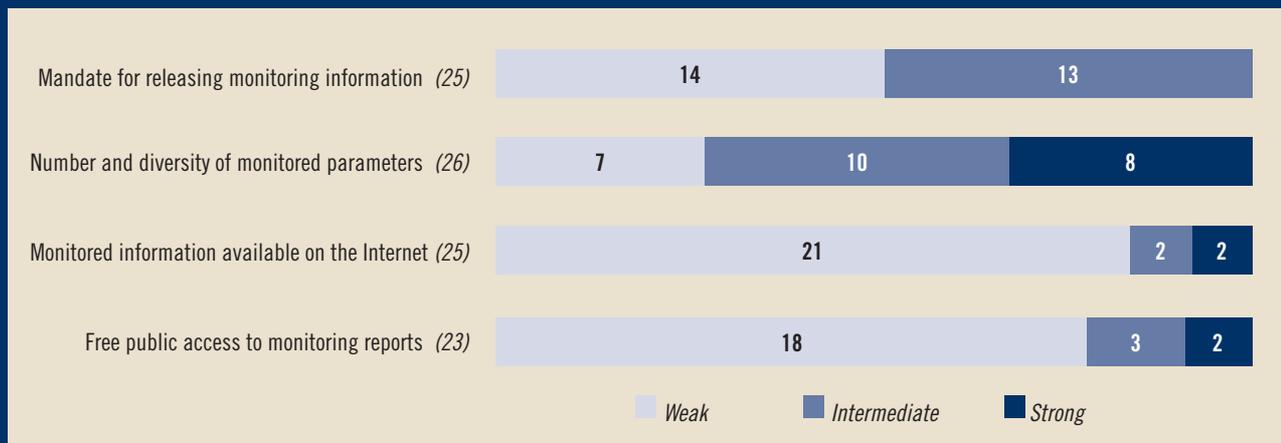
#### Lessons: Publicizing Environmental Information

Collection of data is not enough. Even in those places with excellent capacity to monitor water quality, public access to that information is absent, which makes public participation more difficult, in turn lessening accountability. Even where information is available, it must be both publicized and useful. Washington's water debacle did not arise from an absence of information, but from a lack of appropriate publicity and from information that was not useful to the public. The water contamination crisis provides several lessons on the role of access rights:

- Analysis and dissemination of regular air and water quality data lag far behind monitoring capacity.

- Simply providing information to the public is not sufficient to protect public health. Clarity and urgency of government information matters if individual citizens are to take effective action.
- The media can play an important role in fostering a sense of urgency that can prompt action from both individuals and government players.
- Lack of coordination among agencies can lead to delay and neglect in solving important problems.
- Without adequate preparation, public participation may be more important for preventing problems in the long-term than for addressing emergencies. In the Washington case, a technical solution to the contaminated water moved forward rapidly once it became urgent, even with little public involvement. However, movement on the institutional problems that had allowed the issue to be neglected required sustained engagement by many stakeholders.

**FIGURE 3.9 ACCESS TO INFORMATION: RANKINGS FOR WATER QUALITY DATA** (n = water quality monitoring systems)



The quality of regular water quality monitoring information varied in the number and diversity of monitored parameters. Legal mandates were weak for information release, and likely as a consequence, the public had little access to public information.

Individuals responsible for motivating the public would likely meet with more success by disseminating environmental and public health information through channels most appropriate to the particular culture in which they are working. This might mean visiting houses of worship, going from house-to-house, or communicating through soap operas, street theater, or other popular means.

**USABILITY**

Data is useful by itself. But without sufficient technical expertise or explanation it is meaningless for the broader public. At times, governments amass impressive quantities of data of high quality and considerable completeness. Yet if the material remains unusable by the public, it will be of practical value to fewer individuals and organizations. The use of appropriate media outlets, formats, and content to target specific audiences, foster wider public interest in environmental issues, and ensure public health depends on governments putting a high priority on communication. Some governments contract preparation and presentation of environmental information out to private advertising or education firms and others coordinate with environmental education CSOs. Either way, the usability of environmental information is crucial if it is to have an impact.

There are several key audiences for environmental information to support public participation, including (a) local residents directly affected by environmental degradation or improvement; (b) government staff required to carry out work regarding a particular environmental

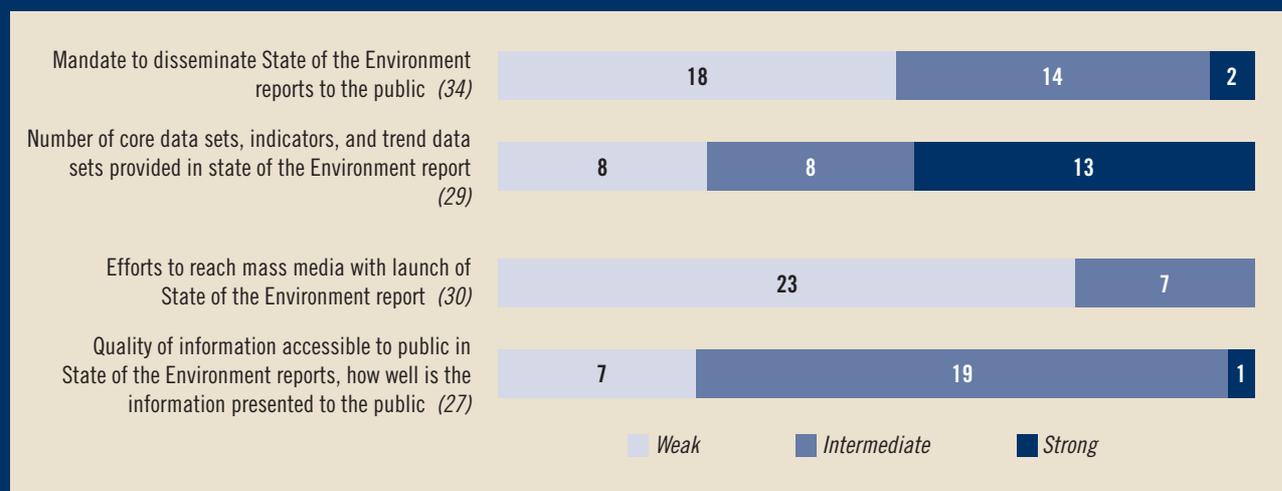
issue; (c) the news media and secondary channels of communication (teachers, CSOs, local governments); and (d) those who need to change their practices to solve environmental problems (adapted from Jin et al. 2006).

Agencies responsible for public education need to use specific mediums of communication and techniques to disseminate information, especially to socially excluded groups. Many factors can play a role in how a given target audience will receive, comprehend, and employ environmental information to their advantage. These include levels of literacy; television ownership; access to computers; Internet and cell phone use; language barriers; and the level of education about environmental issues. Here we present evidence from state-of-the-environment reports demonstrating a common shortcoming: even in those countries with otherwise strong collection capacity, “data” are often not transformed into “information.” In other cases, no effort is made to gather that data.

**Access to Information: State of the Environment Reports**

Many governments produce state of the environment (SoE) reports. At times, these are comprehensive, including air, water, soil, biodiversity, and quality of life indicators. Others are issued by individual ministries or departments and cover their respective sectors or mandates. Government departments may issue SoE reports focusing on different areas of practice. Still others contract out the work of reporting to independent monitors such as CSOs or universities (TAI 2003).

**FIGURE 3.10 ACCESS TO INFORMATION: RANKINGS FOR STATE OF THE ENVIRONMENT REPORTS** (n = reports)



Assessments of state of the environment reports often showed weak mandates to disseminate information and mediocre presentation despite generally good ability to collect data.

National SoE reporting reviewed by TAI coalitions fell into two categories. A first set of countries lacked national-level mandates requiring SoE reports. In these cases, some ministries produced the reports voluntarily. In others, reports were produced and poorly disseminated, or no agency issued a report at all. Figure 3.10 shows this gap, with over half of countries lacking a mandate to disseminate SoE reports to the public. This number is conservative; some countries have mandates to disseminate SoEs from more than one ministry. A second category of countries had SoE reports, but the reports were poorly disseminated.

In the TAI assessments, fewer than half of SoEs received “strong” rankings in the number of data sets, indicators, and trend sets presented, while less than a third were ranked “weak,” demonstrating generally sufficient collection and analysis capabilities. Dissemination of information showed the greatest gaps. Only two SoE reports had strong mandates to disseminate the information they contained. None was judged to have strong “rankings” in outreach to the media, and only one had strong rankings in how well the final information was presented to the public.

The TAI regional report for Europe makes a case for what must be done to improve the quality of existing state of the environment reports, emphasizing publication of analyses based on monitoring data, linking such analyses to sectoral policies and projects, and using a variety of graphic tools to help readers under-

stand environmental trends and conditions (Kiss et al. 2006).

Box 3.6 shows that even in one of the best performing situations (Hungary), the level of usability could be improved.

#### Lessons: Making Information Useful and Usable

Different countries have very different needs with regard to information capacity. While some lack the capacity to collect information, still others have a hard time making the information usable for the general public. According to TAI assessments, however, many governments are not proactive in trying to ensure that information on the great variety of environmental issues facing each society ends up in those places where it is needed most. Governments should make targeted efforts to prioritize delivery of information to those most affected by decisions about natural resources. Simply having data available is not enough if the general public is to become better educated and more engaged.

Significant reforms could mandate the production of specific information for specific audiences. This might include reports aimed at involving particular industries, educating the young, or helping voters understand the data behind proposed policies and projects. In order to carry this out, governments would need to dedicate staff time and energy identifying target audiences and create explicit information campaigns that address the needs of these audiences.

**BOX 3.6 STATE OF THE ENVIRONMENT, HUNGARY: THE IMPORTANCE OF USABILITY**

*“Everybody is entitled to get to know the facts, data concerning the environment, thus especially the state of environment, the extent of environmental burden and use of environment, that of environmental pollution, the environmental activity, projects and programs, as well as the environmental effects produced on human health.”*

— Paragraph (1) of Article 12 of the Hungarian Act on Environmental Protection

The form, frequency, and scope of state of the environment (SoE) reports vary from country to country. In Hungary, these reports are largely statistical and include three publications: *State of the Environment Indicators*, *The Environmental Data Compendium*, and *The Statistical Compendium* (a joint publication of the Statistical Office with several ministries). While some countries contract out the task of preparing such reports to CSOs or the private sector, Hungary’s SoE report is the responsibility of the Ministry of the Environment and Water.

The Ministry of the Environment and Water designates a team of scientists and specialists to gather the data specifically for the SoE reports. Relative to many other countries, this team is given considerable freedom. Interestingly, and perhaps as a consequence of its autonomy from other agencies and its integration into the government, Hungary received the highest marks in the TAI assessment indicator “Number of core data sets, indicators, and trend data sets provided in the SoE report.”

While Hungary SoE reports have been largely successful, its dissemination can be improved. Although the report is published in full book form, an abbreviated version, and a CD, the Hungarian



*Danube River floods city streets in Budapest, 2006.*

TAI coalition found no effort by the Ministry of Environment and Water to make the information understandable to the general public. This could include thematic posters; brochures; articles; or studies for different target groups, such as industry, students, and environmental CSOs as well as the general public.

The SoE report notwithstanding, few of the relevant ministers showed willingness to invest time and money in the “usability” of environmental information—to make it more accessible or more attractive to the public, according to the Hungarian TAI report. When the Hungarian coalition interviewed staff at one of the environmental inspectorates, the interviewees considered the supplementary materials reasonable and useful, but also said they lacked the public relations personnel to handle the task of creating and disseminating this information.

Sources: TAI - Hungary 2004b; Anderson et al. 1999

**Fostering a Culture of Openness**

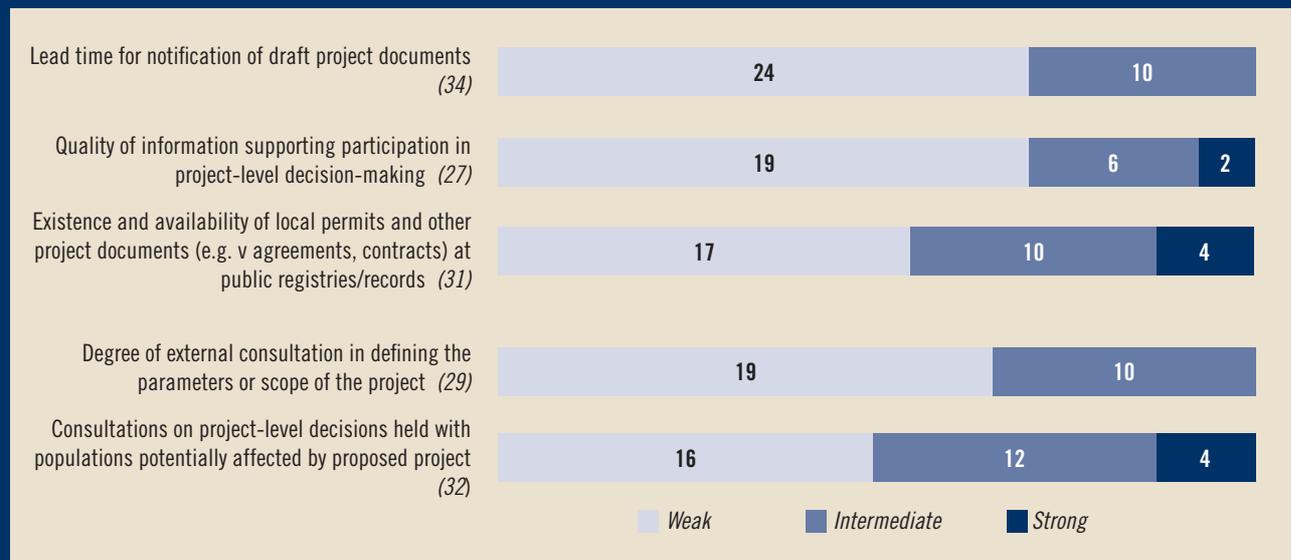
Often, both elected and appointed officials, with the best interest of the public and the environment in mind, see environmental decision-making as a tradeoff between a technical, data-driven analysis and a more democratic, opinion-driven process (Snell and Cowell 2006). While many may attempt to strike a balance between these two extremes, such hesitation slows the rate at which public participation will be widely integrated into public decision-making.

The concerns of planners and policy-makers are understandable. The time required for effective participatory decision-making may be seen as an unacceptable cost by politicians who are in office for limited periods of time. They may seek quick turnaround times for proj-

ects they think will enhance the well-being of their constituents, aid economic growth, or improve their chances of re-election or reappointment. Participatory processes sometimes risk arriving at a “lowest common denominator decision.” Such decisions can leave many stakeholders dissatisfied and a number of problems unresolved.

In a study of decisions made during environmental impact assessments in the United Kingdom, Snell and Cowell (2006) found that planning officials saw themselves as balancing two extremes: a participatory, open approach on the one hand and a technical and efficient method on the other. As a result, their behavior was mixed. While many officials included environmental concerns out of fear of legal action, a significant num-

**FIGURE 3.11 PUBLIC PARTICIPATION: RANKINGS FOR PUBLIC PARTICIPATION AT THE PROJECT LEVEL**  
(n = project-level case studies)



Public participation, as practiced, does not meet the necessary conditions to create an informed public.

ber often dismissed public participation requirements on grounds of (a) decision-making efficiency, (b) the need for early filing of documents, (c) fear of delay, and (d) risks of causing confusion.

Frustration with these possibilities, however, does not justify abandonment of public participation. In fact, it requires public administrators to take a closer look at the mechanics and context of open decision-making processes.

### UNITING TECHNICAL AND POPULAR VIEWS

Concerns about the quality of environmental decisions made through public participation are not new. It may almost seem intuitive that the lower technical expertise of the public diminishes the odds of quality outcomes. In certain cases, this may in fact be true. The normative basis for public participation and the imperative to improve the processes by which the public contributes, however, remain. (“Chapter 2: Strengthening the Arguments for Access” discusses these themes.)

Public officials can improve outcomes of the decision-making process. Public notice, advertising, and early information can engender stakeholder interest, affect social norms, and educate the public to better understand the problem at hand. Education about the public participation process itself can increase the likelihood of trust and cooperation among stakeholders. Active

recruitment of a variety of stakeholders, especially from underrepresented groups, will increase the likelihood of a wider range of possible solutions.

The timing of participation may also influence the quality and impact of decision outcomes. Presumably, earlier public participation should increase the diversity of options for a given policy or project while later public involvement suggests that participants will contribute to endorsement, rejection, or revision. Finally, the quality of information greatly impacts the environmental and social sustainability of the ultimate decision.

### Public Participation at the Project and Policy Levels

As the cases suggest, considerations that would likely contribute to the quality of decision outputs are often bypassed. Figure 3.11 reflects the state of public participation at the project level. Half of the projects evaluated by TAI coalitions in this report had no consultation whatsoever with the affected public. Where consultations and public meetings did occur, evidence from TAI assessments of 34 local projects suggests that information was unavailable to the public with sufficient advance notice (7 in 10 received “weak” rankings for lead time of draft project documents) or not of a quality that would contribute to better public understanding or decision-making (7 in 10 received “weak” rankings for quality). Early consultation in the scoping phase of a project was uncommon (one third of cases had it); no case demonstrated “strong” public participation in

these early phases. Just over half of the cases did not have relevant documentation—local permits and other project documents such as concessionary agreements or contracts at public consultations—available for public review during the decision-making process.

At the policy level, there was significantly more opportunity for the public to participate, but the conditions that would likely lead to policies that were both technically sound and legitimate were frequently lacking. Figure 3.12 demonstrates that in 29 of the 51 cases studied by the TAI coalitions, the lead time for notification of the draft was insufficient. The quality of the information about the public participation process and the timeliness of reports on the outcomes of the process received rankings of weak in three-fifths and nearly three quarters of the cases respectively. Three fourths of cases surveyed showed that draft policies were available beforehand. The majority of cases also had some participation, although two in five had weak or no participation. Similarly, just under half of cases had weak or no consultation during the early phases of policy-making.

Box 3.7 discusses a situation in Sri Lanka in which a technical decision to change a roadway without consulting many of the affected parties led to protracted conflict between citizens and the government.

#### Lessons: Technical Bias, Quality of Information, and the Timing of Public Participation

Cases studied fell into two broad categories with regard to public participation. The first category described situations where project planning lacked public participation altogether. These cases may be due to gaps in the law concerning public hearings or consultation in environmental impact assessment, or they may represent violations of the law, situations where enforcement of public participation is lax. The second category of cases did not often constitute those “best practices” that would improve both the quantity and quality of public decision-making—such as early, available, publicized, and usable information about a project and early consultation with affected groups. It is difficult to argue that public input is of a generally lower quality than expert input when evidence from TAI assessments strongly suggest that few attempts are made by decision-makers to provide the public with information and opportunities for influence at an early enough stage to ensure meaningful and thoughtful participatory decision-making. Efforts to improve the quality of

public input might begin by informing the public about opportunities for participation.

#### BUILDING A CULTURE OF OPENNESS

Costs to the public of participating in decision-making can be significant. Often, participants must invest substantial time and resources in gathering information, formulating positions, attending meetings, drafting communications, and monitoring or contesting decisions. Especially for the poor, the need for such investment can severely discourage participation.

Governments intent on encouraging participation often attempt to lower the costs and the risks of participation for the public. This might mean reductions in travel time, costs, or risks due to travel. Where appropriate, the quality of participation can be improved by a number of elements, such as (a) electronic participation mechanisms, (b) ensuring that participation takes place in a safe area, (c) scheduling participation around work and family schedules, and (d) making mothers with children welcome. This requires minimizing threats of violence and reprisal for participants. Finally, and perhaps most importantly, all individuals make a cost-benefit analysis when they decide whether to participate. In other words, individuals must weight the chance they have of influencing the outcome over the cost of participating. Therefore, those participatory processes that help inform and hold officials accountable are likely to be well-attended.

Additionally, if participation is to reflect environmental values, then those values must be part of the public discourse. Public school systems are a key site for cultivating the values and knowledge to promote fair and effective decisions affecting the environment. Governments interested in cultivating active citizens could train teachers to instruct students on the uses of access principles. This might mean that students would learn not just about national laws, as they do in many countries, but about how decisions are made at the local level, especially for those issues affecting the day-to-day quality of life—choices about land use, waste disposal, public transportation, agriculture, livelihoods, and air and water quality—and where they can participate in those decision-making processes.

#### Capacity Building: General Public

TAI reports included in *Voice and Choice* looked at the absence or presence of teacher training and materials on environmental education. Teacher training in

### BOX 3.7 FIGHTING FOR ACCESS IN SRI LANKA: THE SOUTHERN TRANSPORT DEVELOPMENT PROJECT

*This story demonstrates typical hurdles to public participation in project-level decisions. Despite numerous violations of public participation law, highway construction continued. The lawsuit to halt the construction shows the importance of access to justice and the continued need for reform and enforcement of existing participation laws.*

In November 1999, the Asian Development Bank, the Japan Bank for International Cooperation, and the Sri Lankan Government agreed to construct a 128 km multi-lane highway from the national capital, Colombo, to a number of southwestern cities. During the planning process leading up to this, officials—having consulted with members of civil society—had chosen one of two proposed routes.

In March 2000, a coalition of community-based organizations calling themselves The Joint Organization of the Affected Communities on Colombo-Matara Highway, supported by a TAI member, the Public Interest Law Foundation, brought a suit against the government agencies in charge over two deviations in the chosen route. The public had not been consulted in the decision to deviate from the approved route and most residents affected by the deviation only learned about the plan when Survey Department officers arrived on their property to begin taking measurements. In addition to lack of public participation, the petitioners in the case complained of involuntary resettlement, inadequate information, mistreatment at the hands of officials, the destruction of wetlands and holy sites, and the disruption of community social structures.

The Government and the Asian Development Bank failed to meet their own standards in regard to access to information and public participation. According to the ADB's internal compliance review, during the process of land acquisition for the highway, the authorities had acted rudely, intimidating and threatening those who requested more details and more transparency before agreeing to compensation. Documents such as the compensation matrix and the individual entitlement packages were unavailable in the vernacular Sinhalese. Maps of planned routes and relevant summaries of governing documents were also unavailable.

The ADB's compliance review also found that consultations were inadequate at the village level. All meetings had been held in crowded public buildings or on the individual household level. In addition, the report stated that staff involved in the resettlement lacked sufficient skills and training to carry out and document recognized methods of public participation. Finally, no new supplementary EIA process had been carried out (including public consultation) after the new proposal for the deviation of the approved route despite legal requirements to do so.



In August 2002, the petitioners brought their claims to the Court of Appeals. Analyzed in the Sri Lanka TAI Assessment, this particular case scored well on basic laws such as availability of a forum to bring the case and to appeal that case, but scored poorly in efforts to make sure that the public had adequate capacity to exercise their rights. The government also performed poorly because claimants had little access to regular information from the court. Additionally, few of the court documents or procedural documentation were in the language of those most directly affected. Most of these documents were in English. Furthermore, according to interviews with the claimants, the costs of bringing a suit, including legal fees, are equal to the average annual income in Sri Lanka: \$850. Given that petitioners who cannot find lawyers offering voluntary work must pay ahead of time, this means that considerable numbers of the poor cannot expect to resolve their demands in court.

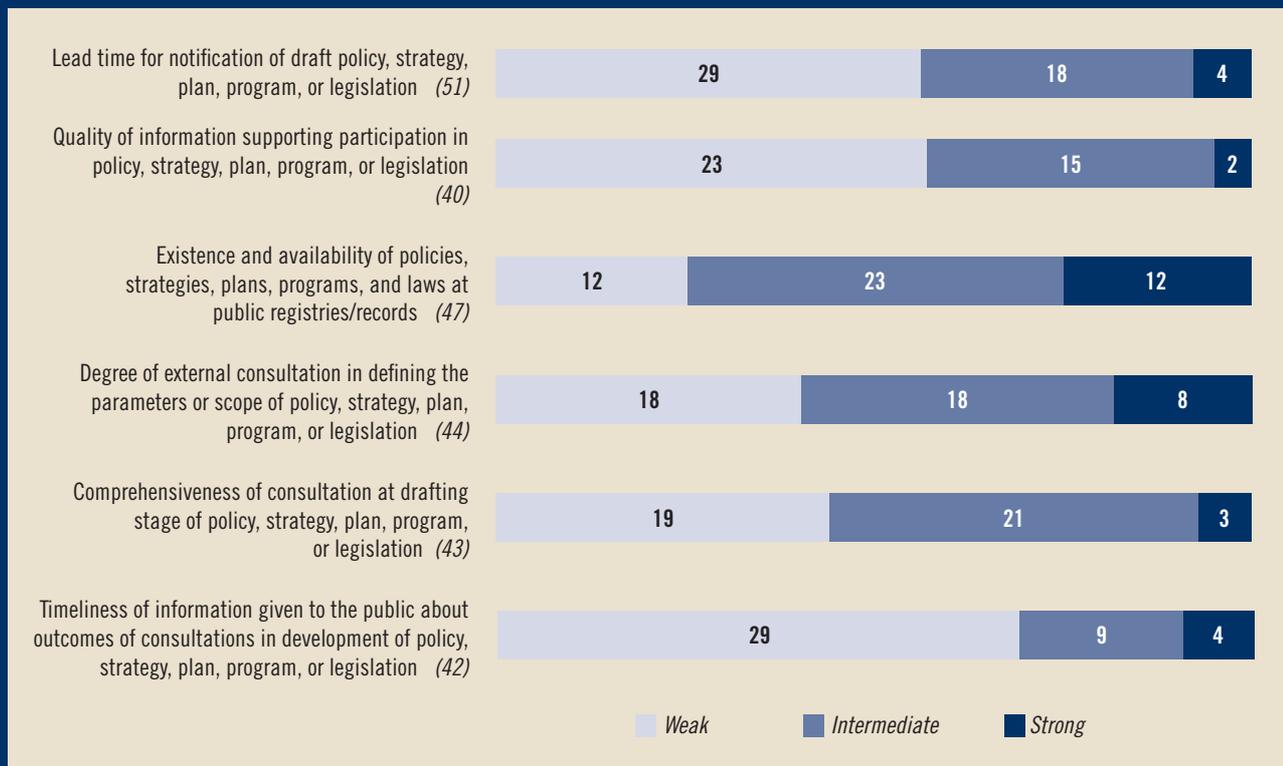
#### Sources:

Asian Development Bank. 2005. *Final report of the Special Project Facilitator on the Southern Transport Development Project Sri Lanka*. Manila: Asian Development Bank.

Public Interest Law Foundation. 2007. *The Access Initiative Report: Sri Lanka*. Unpublished.

United Nations International Covenant on Civil and Political Rights. 2006. "Decisions of the Human Rights Committee declaring communications inadmissible under the Optional Protocol to the International Covenant on Civil and Political Rights." Geneva, UN OHCHR.

**FIGURE 3.12 PUBLIC PARTICIPATION: RANKINGS FOR PUBLIC PARTICIPATION AT THE POLICY LEVEL**  
(n = policy-making process case studies)



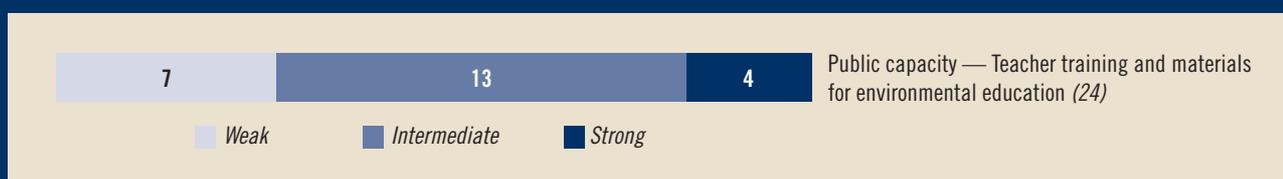
environmental education seems to be proceeding well in a number of countries, but still requires growth in others. Forthcoming TAI assessments will include a broader range of indicators on environmental and civic education.

While many governments require civic education and many also make environmental education compulsory, few integrate the two subjects. Box 3.8 provides a promising example of such integration in South Africa. Of course, education systems vary widely and must fit the needs and aspirations of local populations. TAI partners measured the quality of environmental education in their countries. According to TAI studies, 71 percent of national educational systems surveyed include some

environmental education in their curriculum. Some integrated environmental education with social studies, highlighting the importance of human use of natural resources. None of the TAI reports, however, found that any of the curriculums surveyed explicitly taught students how to use access rights—for example, how to prepare a petition to their local government or a freedom-of-information request. In still other countries, those with “weak” rankings, an environmental curriculum was required or under development by the government, but training and textbooks were not available to teachers at the classroom level (see Figure 3.13).

With respect to civic education, however, few if any of the curriculums surveyed included education on how

**FIGURE 3.13 CAPACITY BUILDING: RANKINGS FOR CAPACITY-BUILDING FOR THE GENERAL PUBLIC** (n = countries)



Efforts to provide environmental education vary widely by country.

### BOX 3.8 CAUTIOUS OPTIMISM: ENVIRONMENTAL EDUCATION IN SOUTH AFRICA

From the *TAI Assessment for South Africa*:

There is ample evidence that South Africa as a whole has by far the most environmental education (EE) programs and resources among the [Southern African] countries and it appears that EE is well supported by both government and nongovernment organizations.

A significant concern relates to the distribution of nongovernment support for EE programs and resource production in some of the provinces. While all provinces have provincially employed EE specialists in place to provide EE programs to the public, there is a dearth of private sector support for them. By contrast, other provinces, notably KwaZulu Natal, Gauteng and Western Cape, seem to have a healthy mix of both government and nongovernment support for EE. In answer to the question "...Does the public have unrestricted access to Environmental Education in South Africa?", the answer must be a cautious affirmative.

**Affirmative:** Because there are many government and nongovernment representatives engaged in EE in all nine provinces.

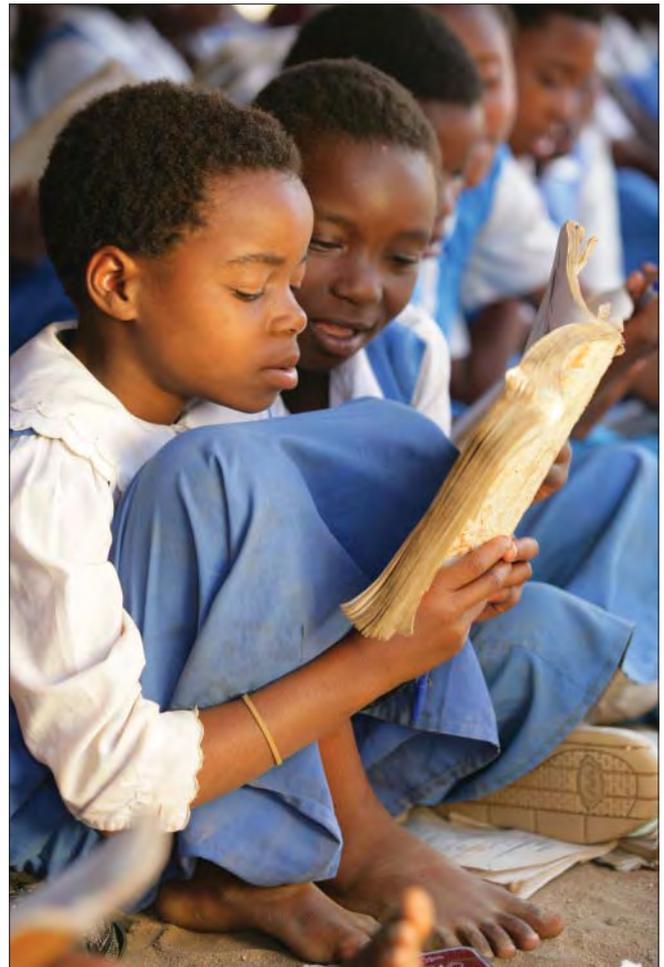
**Cautious:** Because there are still many communities, particularly in some provinces and in many marginal areas, who do not have access to EE resources, either because they do not know about them, or because they do not see them as relevant to their lives.

#### The Way Ahead

The structures and processes for delivery of EE in South Africa appear to be in place. Both the government (particularly the provincial government) and the private sector have roles to play in meeting the twin access challenges of making EE resources and programs available, while at the same time ensuring that they are both relevant to all sectors of society and are used by them. With ongoing commitment from both national and provincial government and support from the private sector, extensive delivery of EE at the community level is possible.

Source: *TAI - South Africa 2002*

individuals can access the government and participate in decision-making. Few students learn how to participate in a local government planning committee hearing or how to challenge a government decision before the courts. Teaching students about government does not necessarily equip them with the values and practical knowledge they need to be good citizens in a well-governed nation.



*Students in Malawi classroom. Environmental education and civic education are critical in building long-term citizen participation.*

#### Lessons: Building a Culture of Participation

Civic education programs have had some success in improving the civic knowledge of students, but they have generally failed to improve democratic values and attitudes (Torney-Purta and Amadeo 2004). "The everyday lives of young people in homes, with peers and at school serve as a 'nested' context for young people's thinking and action in the social and political world," according to Torney-Purta et al. (2001). Families, home resources, peers, and schools all contribute to children and adolescents learning about good governance and good citizenship. Embedding good governance learning in the structure of schooling (including curriculum, classroom, and school culture), home (parent interests and the availability of educational resources such as newspapers), peers (including youth organizations) and the neighborhood (social service organizations and community service) will contribute to developing citizens who are democratically aware and practice good governance values.

A 2002 study by USAID examined both adult and school-based civic education programs in several countries (Hansen 2002). The study sought to measure the impact of these education programs on key aspects of democratic behaviors and attitudes. First, the study showed that adult civic education contributed to “significantly greater rates of political participation among program participants, especially at the local level.” Second, the programs led to “moderate, but still significant, differences in participants’ knowledge about their political system and about democratic structures and institutions in general.” Third, they contributed to “a greater sense of political efficacy.”

While these positive gains were considerable, the education programs appeared to have “little effect on changing democratic values, such as political tolerance and sometimes negatively affected some values such as trust in political institutions.” Civic education encourages critical thinking about political problems and deficiencies in existing institutions. To the extent that this builds pressure for reform, this factor can be turned to good effect. A short-term decline in trust in government institutions could be a first step in understanding where political institutions need to be strengthened.

The study also showed that men tend to receive greater benefits from civic education than women. It suggests that “increasing women’s participation is considerably more difficult than simply changing attitudes or a sense of empowerment.” In most countries, women face more obstacles to political participation than men. These include lack of resources and cultural barriers, especially in the developing world. To reduce this gender gap, programs to address these barriers are needed in addition to civic education.

Course design and quality were critical to the success of civic education programs for adults and students alike. Such programs are most effective when:

- there are more than three sessions;
- methods are participatory, such as the use of breakout groups, dramatizations, role-playing, problem-solving, activities, simulations, and mock political or judicial activities; and
- teachers are knowledgeable and inspiring.

Good civic education programs promoting good governance would:

- address barriers to regular participation in the program and design around those obstacles;
- use as many participatory methods as possible;
- build opportunities for participation directly into the program through CSOs and political engagement;
- focus on themes that are directly relevant to participants’ daily lives, such as piggybacking learning on active live problems that lend themselves to political solutions;
- invest in training the trainers;
- use voluntary associations for recruiting participants since these are more ready for learning;
- pay attention to gender issues and where possible take steps to address connected gender-related barriers;
- keep expectations of political institutions at reasonable and realistic levels; and
- involve parents, teachers, and school administrators and do as much as possible to help them practice these values in their homes, community, and the school environment.

Beyond public schooling for children and young adults, governments must necessarily promote education for adults through public media, especially advertising campaigns, radio, and television. A combination of improved civic education programs, space at the family and local levels for the culture of participation and democracy to take root, and more participation opportunities opened up by governments in key decision-making processes can contribute to access.

### Investing in Access Capacity

As discussed in Chapter 1, access is, in its simplest form, a situation of supply and demand between government and civil society. If access is to foster greater policy choices and to allow environmental values in decision-making, both government and civil society capacity need to be strengthened.

Fostering meaningful public participation in decisions that affect the environment will always require funding. As government agencies and civil society organizations work to provide and operationalize access rights, they must prioritize reform and innovation. Broadly speaking, the cost of access falls on governments, the public, and on regulated entities. In order to supply greater



*One of the workshops of the Environmental Law Training program for judges in Indonesia. Courses such as this are necessary to provide greater access to justice.*

public access to decision-making, and to make sure that appropriate information helps the public to influence decisions, governments must bear the cost of the following activities:

- **Access to Information:**
  - collecting and maintaining official documents and databases
  - analyzing information
  - disseminating information by mail, through the media, via public consultations, and other means; responses to information requests and appeals
  - training information officers
  - improving the quality and usefulness of information for the public
- **Public Participation:**
  - public notification of proposals and opportunities for input, as well as decisions
  - providing information needed for effective participation

- holding public hearings
- processing written and oral comments
- analysis and response to public input

- **Access to Justice:**
  - training judges and lawyers
  - maintaining judicial or administrative facilities
  - processing claims
  - providing legal aid
  - enforcing decisions

Many of the above costs can be greater for environment-related matters than for other decisions, since technical complexity often necessitates specialized training, analysis, or communications. Making decisions at ecologically appropriate scales (for example, watersheds) may also require coordination among administrative jurisdictions or engagement of a particularly broad set of stakeholders. When poor or marginalized communities are involved, government costs may also increase due to the need to underwrite the participation of poor

participants, as well as the need to communicate in a manner that is more effective for the poor.

An oft-noted cost of participation is the length of time it takes to conduct a more inclusive decision-making process. Stakeholders need to be notified of an impending decision with enough time given to prepare their input to the process. This means time to gather and analyze information, consult with constituents and experts, and digest and discuss decision options. Sometimes a decision will require several rounds of consultation, or multiple consultation processes in order to engage the full spectrum of stakeholders. Government staff will need time to process, analyze, and respond to public input, and then to incorporate it into the final decision. In the most inclusive forms of participation, additional time may be required for the organic and unpredictable processes of negotiation, coalition-building, and power-sharing.

The time required for meaningful participation is sometimes viewed by corporations, investors, and government officials as “delays.” Many may see this time as delaying development, reducing profits, and increasing project costs. However, these costs should be weighed against the increased legitimacy and time savings that can come from participation once a decision enters its implementation phase. Sohn et al. (2007) and much of Chapter 2 make the case that increased information and inclusive dialogue are requisites to reducing financial, physical, operational, and reputational risks to companies and governments engaged in communities.

The costs described thus far are all transaction costs, which can be reduced, managed, shared, or borne by governments in the interest of transparent, inclusive, and accountable decision-making. Other costs are political. These costs and risks, however, are less tangible, and may pose more fundamental challenges to the implementation of access rights and the quality of their outcome. In the near future, we hope that access proponents will be able to share cost-effective innovations that serve to strengthen capacity to demand and use access. Here we present the extent to which governments and civil society organizations have progressed in building capacity and have even shared the costs of doing so, often across sectors.

### **BUILDING CAPACITY TO SUPPLY ACCESS**

To implement access rights effectively, government officials require knowledge of legal frameworks, practical skills, and financial resources. In order to carry out and fulfill the obligations outlined in Principle 10 of the Rio Declaration, both elected and appointed officials must understand the duties and procedures involved with each access right.

At the most basic level, legislatures must be able to develop legal codes that guarantee access to information, public participation, and access to justice. For example, parties to the Aarhus Convention are obligated to incorporate these principles into legal codes and often receive technical assistance. Other national legislatures benefit from outside assistance from international bodies or domestic access proponents. In addition, instituting such reforms at the national level is often much easier than carrying out the necessary reforms at the local level, where decentralized decision-making often falls prey to local elite interests (Ribot and Larson 2005). Legislatures must be both technically capable and legally empowered to write, pass, and revise laws to protect access rights.

The tasks involved in supplying access range from establishing freedom of information specialists in executive agencies to improving archiving systems to make sure that official information is stored and easily retrieved. Ensuring meaningful public participation is even more challenging. Given the broad range of activities that fall under the rubric of public participation (see Box 2.2), public officials must know how to conduct consultations and surveys, develop consensus among stakeholders, and resolve disputes among parties. Also critical is the ability of public administrators to ensure that socially excluded parties are involved in the public participation process and are able to safely and independently voice their opinions.

Access to justice obligates governments to develop dispute resolution mechanisms capable of resolving disagreements over the availability of public information as well as ensuring that the procedures for decision-making follow protocol. Exactly how this is carried out can vary greatly from context to context. Some countries will need to set up independent forums or tribunals to ensure access to environmental justice, whereas others will be able to resolve these disputes through established courts. In countries where environmental disputes take place in remote locales, typical forums may

### BOX 3.9 GREENING THE JUDICIARY IN INDONESIA

*CSOs have played an increasing role in building the supply-side of governance. This case study from TAI partner Indonesian Center for Environmental Law (ICEL) demonstrates one of many efforts at reform and education that will be necessary to ensure that public decision-making processes are fair and fully comply with the law.*

The Environmental Law Training program, conducted under the Indonesia Australia Specialized Training Project (IASTP), is a foreign aid program of the Australian Government focused on strengthening institutions promoting democratic, efficient, and effective government in Indonesia. Initiated at the request of the Indonesian Government, the program aimed to fill skills gaps among Indonesian officials and private and community sectors. The second phase of this program operated from 1998 to 2004. It was managed on behalf of the Australian Agency for International Development by Melbourne University.

The legal training initially focused on enhancing skills and knowledge of judges and prosecutors on environmental law for more effective enforcement. Later, the program expanded to include police officers, lawyers, representatives of regional environmental agencies, and nongovernmental organizations. When environmental law was made a compulsory subject in the law degree curriculum, university academics were also included.

The training programs were developed and delivered by staff from the School of International Business of the University of South Australia and the Australian Centre for Environmental Law at the University of Sydney, working with personnel from IASTP and ICEL (TAI partner).

Australian and Indonesian trainers worked together to deliver programs in both countries in two languages. The eight programs conducted in Australia involved 136 participants. In Indonesia, 1,386 individuals, including almost 1,000 judges, attended basic programs offered in Jakarta and many regional centers across the archipelago.

About a dozen advanced courses were offered to those who had attended the basic courses. A two-day symposium was presented for 18 members of the Indonesian Supreme Court. The curriculum included good governance and access rights. A hands-on approach emphasized case studies and field trips.

The outcomes from these training programs have been encouraging:

- An alumni association consisting of 1,300 trainees was set up in March 2003. The network of alumni helped trainees to keep in contact with each other and to share information about developments in environmental law.
- The network, through its moral and practical support of colleagues, has helped judges deal with powerful personalities in the business sector whose companies have been involved in environmental degradation.
- The Chief Justice of Indonesia issued a directive that only judges who have undertaken the environmental law training course should hear environmental cases.
- There have been a number of successful prosecutions for illegal logging set in motion by prosecutors and heard by judges who have completed the training.
- With the assistance of some of the environmental law trainers and graduates, the Indonesian Supreme Court adopted the class action procedure in 2002. (A class action is a proceeding in which one or more persons pursue a claim for themselves and a defined class of other defendants whose claims arise out of the same circumstances.)
- The first class actions to be brought were on behalf of victims of the major Jakarta floods of 2002 and the landslide on Mount Mandalawangi. In September 2003, a panel of Indonesian judges issued a decision in favor of the victims and the environment.

not suffice; legal innovations or recognition of traditional dispute resolution mechanisms may be necessary. Consequently, training must target those involved in local dispute resolution mechanisms or seek to incorporate existing institutions into more modern ones.

Some legislatures, agencies, and judiciaries have more than technical difficulties. Many are not legally empowered to provide access or do not receive sufficient funding. Still others find themselves subject to undue influence from vested interests throughout society. Corruption can undermine the independence of officials.

In other instances, parliamentarians and judges suffer from excessive censure by ministerial and executive authorities. Structural safeguards to promote judicial independence include guaranteed tenure, objective criteria for judicial advancement, judicial immunity from lawsuits for official action and protection from arbitrary removal. Executives often justify their interference into other branches of government on the basis of corruption or incompetence. In order to protect themselves from excessive interference, judiciaries, legislatures, and subsidiary governments must build sufficient mechanisms for self-regulation to maintain satisfactory inter-

nal conduct and must have control over their budget (American Bar Association 2007; Hall et al. 2002). The significance of these difficulties is that capacity is more than technical and is the product of larger institutional contexts.

#### Capacity Building: Governments

TAI assessments measured the degree to which public officials were trained in the implementation of access principles. Findings included in these studies varied in the emphasis they placed on financial support, frequency, and scope of trainings. Forthcoming TAI assessments will incorporate separate capacity-building rankings for each individual access pillar, as well as the outcomes of those training programs.

Despite methodological limitations, TAI assessments suggest that investment in access institutions often needs improvement. TAI partners measured the degree to which each country had invested in training its officials to comply with legal guidelines. Figure 3.14 shows these results. Box 3.9 provides an example of one CSO that sought to change this through helping to build the capacity of judges.

**Lessons: Meeting the demand for good environmental governance**  
Meeting the demand for access to decisions that affect the environment will require a significant investment

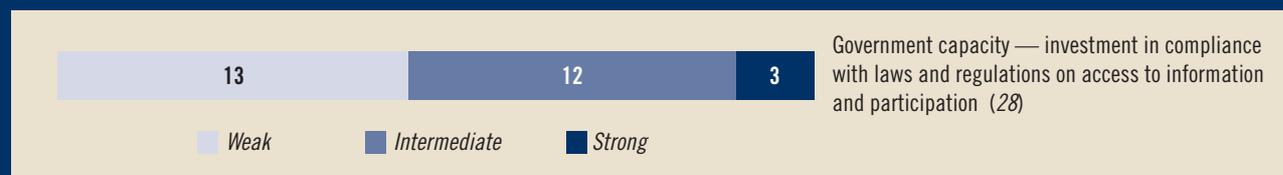
and coordination of resources. Although governments are ultimately responsible for fulfilling access rights, meeting public demand necessitates coordination among civil society, business, and multiple branches of government. Aid agencies and fiscal bodies interested in building the capacity of environmental administrations must coordinate their activities across traditional sectors. Building institutions will likely require considerable donor harmonization. As an example, the demand for access to justice can only be successful where courts are able to enforce their decisions. CSOs, the media, and businesses must continue to demand fairness in courts and administrative forums.

If they are to strengthen institutions such as courts or the media, individuals within these institutions will need to build up constituencies to advocate the implementation and extension of access rights. Consequently, moving the access agenda forward will require new and innovative strategic alliances and coalitions. The priorities and binding constraints to fuller access will vary greatly in each individual country. Some may already have strong courts that are able to enforce access rights. Other countries have relatively powerful executive ministries, which may serve as the ideal venue for advocacy. Access proponents would fare well by focusing on those leverage points that will open the door to greater public participation.



*TAI-Himalaya coalition of NGOs receives training on evaluating access in northern India. NGOs play a key role in building one another's capacity.*

FIGURE 3.14 CAPACITY BUILDING: RANKINGS FOR CAPACITY BUILDING FOR GOVERNMENT OFFICIALS (n = countries)



Many countries failed to follow up legal reform with sufficient investment.

### BUILDING ORGANIZATIONAL CAPACITY TO DEMAND ACCESS

Public-interest CSOs are the primary demanders of access rights. They require information and venues to express their opinions in order to shape public policy. Without justice mechanisms to enforce their rights to government documents and public participation in decision-making, CSOs can be left out of proceedings and policy procedures can become closed to a broad range of interests. In other cases, CSOs face limitations on their standing in courts and may find themselves unable to bring claims to fruition because they cannot show that an environmental harm is unique to them.

CSOs face a peculiar bind. While many wish to work with and improve government performance, they naturally find themselves in opposition to powerful officials. At the same time, some government officials and agencies wish to promote civil society while others seek to bring it increasingly under their sway. This problem is particularly acute in countries recently emerging from authoritarianism (Wiarda 2003).

Because of this, CSOs and officials wishing to promote the growth of civil society organizations must constantly balance sustainability of CSO activities and their independence. If they are too dependent on governments, CSOs may find themselves at the mercy of sponsoring agencies. Conversely, depending too heavily on foreign sources of funding or not having sufficient funds or staff can mean a loss in capacity for civil society as a whole. Foreign funding may undermine the credibility of domestic reformers (Biekart 1999) and may lessen the accountability of public interest organizations to their domestic constituents (Biekart 1999).

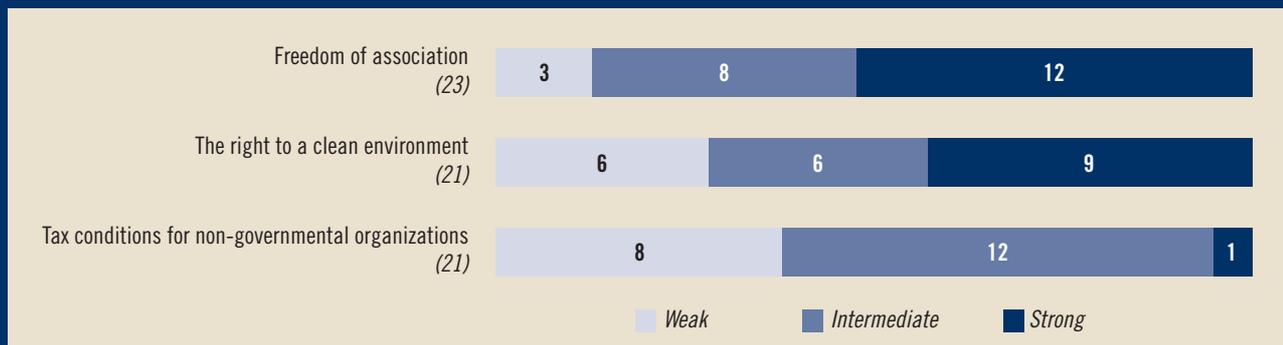
Given these concerns, it is crucial that CSOs negotiate the territory between sustaining activities (especially fundraising) and remaining loyal to their cause. For each CSO, this will mean navigating a unique path within a local context.

Nevertheless, there are a number of standards and legal reforms that favor both the independence and sustainability of CSOs, and consequently promote the power of this “Third Sector” to advocate in the public interest:

- *Freedom of association.* Even in countries that allow people to freely associate and interact, CSOs often face a number of obstacles to organization. Common limitations on freedom of association include requiring sponsorship by local authorities (McGray 2007), registration of individual members, or excessive tax burdens due to unclear nonprofit status.
- *Building public domestic support.* Governments can help build domestic support for CSOs by subsidizing or requiring public service announcements, making donations to CSOs tax deductible, and sponsoring publicity campaigns about public interest issues.
- *Seed grants.* Governments can set up transparent requirements and decision-making processes for competitive grants to nonprofit organizations.
- *Tax exempt status.* Organizations registering as nonprofit can receive tax exemptions on income. Standards for such exemption should be transparent and subject to independent review.
- *Broadened standing for environmental harm.* Environmental CSOs, in particular, require legal innovations such as broadened standing in order to carry out litigation in the name of the public.
- *Capacity building.* CSOs unaware of or incapable of using access rights are less likely to foster membership, attract publicity, or to influence environmental decisions.

In total, these reforms can increase the bargaining power of domestic CSOs over policy-making and project levels, and can increase local support and involvement in their activities.

**FIGURE 3.15 CAPACITY BUILDING: RANKINGS FOR FRAMEWORK LAWS FOR CSOs** (n = countries)



Legal indicators show basic rights in place, but only moderate tax incentives.

**Capacity Building: Civil Society Organizations**

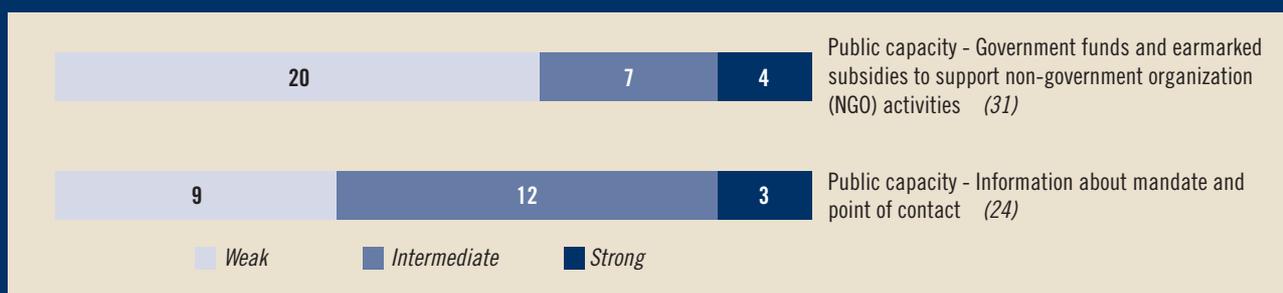
TAI assessments observed generally favorable conditions for CSOs in a variety of countries. This concurs with broader findings on the global growth of civil society (Ottaway and Carothers 2000). A key area for improvement is increasing the capacity of CSOs to demand and use access to information and justice mechanisms for the public interest where they exist. Figure 3.15 shows that 87 percent of countries assessed had “strong” or “intermediate” freedom of association laws, which allowed individuals to freely form organizations or meet in public or in private. The three countries receiving “poor” rankings had limitations on the formation of political parties, trade unions, or CSOs. These countries had broad exceptions to the freedom of association, such as very loose definitions of “acts of terrorism,” which included peaceful assembly, or clauses preventing association that might threaten “public morality.” While TAI assessments found that 6 of 21 countries surveyed had no express right to a clean environment in their legal code (ranked “weak”), 6 others had rulings from the

highest court or national laws guaranteeing the right to a clean environment (receiving a ranking of “intermediate”). The remaining 9 had explicit constitutional provisions guaranteeing the right to a clean environment. On a smaller scale, 62 percent of countries surveyed had a general tax exemption for nongovernmental organizations (not-for profits). Two in five TAI assessments showed that NGOs face excessive taxation, and in some cases suffer extortion or harassment by public officials.

Figure 3.16 suggests that governments can support the capacity for CSOs to use access rights. While the majority of governments did publish information about mandates to provide access to information, public participation, and access to justice, three in five environmental agencies surveyed did not provide grants or subsidies to help support NGO activities.

Box 3.10 presents the example of Latvia, which has recently made strides in civil society capacity building.

**FIGURE 3.16 CAPACITY BUILDING: RANKINGS FOR GOVERNMENT EFFORT TO BUILD CSO CAPACITY** (n = countries)



Basic information about government mandates to provide access and to domestic governmental funding sources leave significant room for growth.

### BOX 3.10 LATVIA: SNAPSHOT OF A GROWING ENVIRONMENTAL MOVEMENT

Much has changed for civil society in Latvia in the last 20 years. Latvian citizens suffered limitations on organizing under Soviet rule, but, as the 1980s progressed, along with *glasnost* and *perestroika* came increasing liberalization and hard-won freedoms of association. After independence, during Latvia's long run-up to European Union (EU) membership, less restrictive laws and steady foreign funding nurtured the growth of civil society in the country. Today, due in no small part to favorable reforms, Latvia's civil society has grown, but still faces questions of sustainability and popular support. This is especially true for the country's nascent environmental movement.

#### **An Enabling Environment—Necessary but Not Sufficient**

Governments can effectively support civil society sustainability and autonomy by providing proper incentives encouraging the growth of CSOs. Tools for building the capacity of CSOs include favorable tax conditions, seed grants, and provision of training. Latvia's experience illustrates the success of incentives provided by the state government, but also highlights future challenges. Recently, laws have granted tax exemptions and tax reductions, helping CSOs in Latvia to devote more resources to their activities. Because Latvia's tax code exempts organizations whose goals neither directly nor indirectly include generation of income or capital, most Latvian CSOs are tax-exempt.

#### **Changing Patterns of Funding**

Favorable tax conditions may not be enough to guarantee CSO survival in Latvia. According Erika Lagzdina, country office director of TAI partner REC-Latvia (Regional Environmental Center), EU/European Economic Zone (EEZ) grants have stimulated recent CSO growth more than tax exemptions or even the freedom of association guaranteed by the 2005 Law on Non-Governmental Organizations have. Given the low level of funding by the private sector, government grants have been one of the few available sources of

CSO sector funding. Without government grants, the existence of the nongovernmental sector in Latvia would be seriously threatened, since the vast majority of CSOs lack capacity and skills necessary for long-term planning and fundraising.

#### **Consulting services: Working for or with the government?**

The long-term vitality of the "third sector" in Latvia will likely depend on the ability of organizations to compete for grants, particularly for providing consulting services to governments, including municipalities. This shift in funding in Latvia has changed the relationship between CSOs and the government. This has led many CSOs to begin raising money by working for national, regional, and local governments. On the one hand, this may jeopardize the benefits of independence from the state; on the other, it may represent the start of more interdependent and sustainable cooperation between civil society and the government.

#### **Access to Justice; Legal status and broadened standing**

Access to justice for civil society organizations has not been without obstacles in Latvia. Some of the fundamentals of access to justice are strong. However, environmental and other CSOs have rarely taken judicial routes for resolving their claims against private or public entities; most concerns have been handled through administrative orders.

There has been significant growth in civil society over the last two decades, yet challenges remain. Beyond the changes in funding and the constant battle to sustain their activities, CSOs and the government bodies that support them will need more than just legal reform. Latvian civil society has enjoyed wide opportunities for activities and influence for the last few years, often limited only by the interests of the CSOs themselves. And while there are fewer CSOs today than two years ago, most work on larger projects affecting more people.

#### **Lessons: Mature Relationships to Balance Autonomy and Sustainability in the CSO Sector**

Anyone with experience in a not-for-profit organization is familiar with constant budget constraints. As this section has demonstrated, the financial and legal limitations faced by CSOs can, in the aggregate, have a tremendous impact on the health of the environmental movement and civil society as a whole. Governments can create enabling environments to invite and empower CSOs to sit at the bargaining table and take an active role in governing natural resources. Yet CSOs must actively temper this support with efforts to remain sufficiently independent to carry out their missions.

The experience of the TAI network has shown that successful reform requires push and pull between CSOs and the government. These "politically mature relationships" necessitate that the government and civil society often work together. When substantive disagreements do exist, or when litigation is the only path, CSOs must be willing to engage in constructive lawful conflict with the government. A 2005 report described TAI as based on a "change and dialogue developmental model," which implies that conversation and exchange between governments and CSOs are central to the reform process (Wadell 2005). This is generally the case with most TAI partners. However, many TAI partners

have been successful using largely confrontational tactics. In Europe, for example, Environment-People-Law (Ukraine) and Environmental Management and Law Association (Hungary) have brought a number of lawsuits. Yet, members of each of these CSOs, were elected to the Aarhus Compliance Committee by State Parties to the Aarhus Convention—the body that judges and acts on citizen complaints about Aarhus member states' compliance.

Several conclusions can be drawn from this section. First, governments must make efforts to support the viability of the CSO sector while allowing for significant independence. Second, CSOs advocating access rights must constantly negotiate the degree to which they collaborate with and are independent from the government.

### *Chapter 3 in Summary*

- Findings from the TAI assessments show that political, legal, cultural, and capacity-related hurdles stand in the way of more rapid progress in implementing laws and establishing practices that fulfill access rights. Examining these hurdles serves as a starting point to understand where access advocates might best leverage reform.
- Resistance to transparency initiatives is often met through the formation of coalitions of interested parties. Specific issue-based activism may employ strategic alliances, often across sectors.
- Access to information, by itself, does not spur public action. Timing and message are critical.
- Many societies lack the technical capacity and legal framework to enable public participation. Remedies include an understanding of where gaps in the provision of environmental information are occurring, targeting information to specific audiences, and correcting official incentives to produce information.
- For the public to play a better role in working with officials on technical solutions, access to information regarding public participation must be improved.
- Innovations in capacity-building include CSOs helping to train officials to implement access rights, broadening the ability of CSOs to sustain themselves independently, and educating the public to use the organs of government for environmental decisions.
- Governments can take steps to provide an enabling environment for civil society growth. Likewise, CSOs can help build government capacity





## Recommendations

*Achieving greater environmental democracy is a long-term process. Evidence from The Access Initiative country assessments and case studies suggests that improvements in access have been achieved over the 16 years since the Rio Earth Summit, but that much more remains to be done. While Voice and Choice is replete with suggestions and recommendations, this chapter presents priority areas for action that we believe—if heeded by governments, civil society groups, international organizations and businesses—will lead to improvements in access laws and immediate gains in the exercise of access rights.*

These recommendations, which spring primarily from our research, provide a starting point for improving public participation, raising the quality and accessibility of information, and increasing the availability of judicial and administrative relief for citizens.

Many of these recommendations echo those in the previous report on the findings of The Access Initiative (TAI), *Closing the Gap* (2002). The similarity in many of the findings raises a critical question: how can we bring about sustainable change to ensure access rights? There is a distinct need for strategies for change. Building on the findings in this publication and the rapidly growing body of information gathered by the TAI network, we recommend next steps to strengthen access, including instituting legal reforms, mainstreaming public participation, building coalitions and alliances, and building the capacity of both government and civil society for better environmental governance.

## Actions for Governments

### LEGAL FRAMEWORKS FOR ACCESS TO INFORMATION

**Problem:** The countries studied in *Voice and Choice* commonly had framework laws on access to information such as freedom of information acts. The majority of countries in the world still do not. Even where these laws form an important basis for public access to environmental information, they are not enough. Laws requiring regular proactive production and publication of environmental information are necessary to improve public access to information.

#### ACTIONS:

- Enact framework laws on access to information in countries that do not have them. Such laws must define access to information rights broadly and define limitations of such rights narrowly.
- Mandate proactive information production mechanisms, including but not limited to PRTRs, facility compliance reports, emergency response systems, regular air and water quality monitoring systems, state of the environment reports, and EIAs. These mechanisms need appropriate budget support, as well as adaptation to the specific context within the country.

- Identify gaps in the current provision of environmental information, including collection, analysis, and dissemination. Stronger specific legal codes and administrative and judicial manuals are needed to address the gaps unique to each tool.
- Strengthen legal codes to encourage the production of information by governments. Hold government staff accountable for their access-related duties by including these in their job descriptions and assessing their performance—and adjusting their compensation—based on how well they discharge these duties. Reform may include: introduction of penalties for concealment and distortion of data; creating widely publicized standards for collection and distribution of environmental data; strengthening whistleblower protection; and rewarding and promoting information production and dissemination.

### INFORMATION ON COMPLIANCE AND INDUSTRIAL POLLUTANTS

**Problem:** Although most nations adopt pollution standards for industrial facilities, many do not require these facilities to monitor or report their releases. In cases where industrial facilities are required to monitor their releases, they are rarely required to release this data to the public. In most cases, facilities have a right to confidentiality regarding their environmental releases. Almost all of the facilities examined in TAI country assessments claimed confidentiality regarding the publication of their pollutant release data. In addition, most nations still do not have a Pollutant Release and Transfer Register that routinely informs the public about sources and quantities of industrial pollutants. The result is that in many communities the public has no way of knowing whether a nearby facility is in compliance with pollution regulations or if it poses a threat to public health and safety.

#### ACTIONS:

- Establish mandatory requirements for reporting pollution emissions or discharges from industrial facilities, using standardized monitoring and sampling techniques to ensure high-quality data.
- Make this data available to the public on-line and through channels most likely to reach those affected, preferably as part of a Pollutant Release and Transfer Registry that allows the public to obtain both a local and macro view of the pollution releases in their area.

- Narrow the scope of confidentiality claims so that exceptions to the public reporting requirement are rare. Specify which classes of information must be placed in the public domain and which can remain confidential in order to reduce administrative discretion in releasing information.

#### INFORMATION ON AIR AND WATER QUALITY

**Problem:** In many countries there is still no government or agency mandate to monitor air or water quality and provide the results of this monitoring to the public. Even where monitoring is required, there is usually no obligation to disseminate the information widely in a form that is easily understandable. In addition, when data is available, there may be a charge to obtain it.

##### ACTIONS:

- Establish or strengthen the mandate to monitor air and water quality using a robust slate of indicators, and include a requirement to analyze the health and environmental implications of this information.
- Require regular public release of air and water quality data and analysis and provide this data free of charge.
- Invest funds to increase the human, financial, and physical resources necessary for a robust monitoring system.

#### STATE OF THE ENVIRONMENT REPORTS

**Problem:** Many countries still do not require their environmental ministries to compile and release information on national environmental conditions and trends. These state of the environment (SoE) reports tend to be useful documents, but the agencies responsible for producing them often do a poor job of dissemination, with limited efforts to reach out to the news media to make their findings public.

##### ACTIONS:

- Establish a mandate for periodic SoE reporting—at least once every three years, if possible.
- Encourage the use of a standardized format for ease of comparability over years, and give greater attention to environmental trend data. Make these data available on the Internet free of charge.
- Reduce jargon and improve the readability of SoE reports through greater use of graphics and other visual devices to represent data.

- Collaborate with other partners and the media to ensure that SoE information is widely available, publicized, and usable.

#### INFORMATION ON EMERGENCIES AND ACCIDENTS

**Problem:** Public access to information about environmental emergencies and accidents is surprisingly poor in most countries assessed. Both the timeliness and quality of information on chemical spills or other potentially dangerous incidents is usually inadequate to protect public safety, to ensure accountability for the incident, or to help establish legal liability. Currently, most environmental accidents go unreported unless they are observed by the public. While governments often do attempt to inform the public of emergency evacuations or other public safety responses, there is generally no mandate to proactively make information available as to the extent or cause of the incident, or even to ensure that emergency information is accurate and delivered effectively to the affected public.

##### ACTIONS:

- Establish a legal mandate for timely reporting on environmental emergencies and accidents; encourage the creation of specific standards for information content and timeliness in emergency reporting that leads to expectations of proactive provision of accurate information to the public.
- Establish emergency broadcast systems and protocols for their use. Such systems should take into account the latest communications technologies—such as cell phones and text messaging—in addition to conventional emergency broadcast technology and traditional communication methods and systems.
- Establish a list of toxic substances and specific hazardous substances that, if accidentally released or encountered, require immediate notification of nearby residents using established emergency protocols.
- Develop clear responsibility and accountability for environmental reports both during and after an emergency. This includes clarifying overlapping or nonexistent mandates and supporting responsible agencies with adequate budgets.

## PUBLIC PARTICIPATION AT THE NATIONAL AND PROJECT LEVELS

**Problem:** The opportunity for the public to participate in decision-making at both the national and project levels is usually confined to the later stages of policy formulation or project planning. Frequently, the availability and timeliness of information on opportunities to contribute earlier in the planning process is poor or nonexistent and the public is effectively barred from the formative stages of policy-making and project planning. Since this is where the scope and general outlines of national policies and local development projects are decided, the exclusion of stakeholders is a serious shortcoming of most participatory processes.

### ACTIONS:

- Specifically target earlier citizen involvement in policy and planning by widening the opportunities for stakeholders to contribute in the initial phases.
- Adjust the notification process for public participation so that stakeholders are adequately informed of early participation opportunities and can receive more comprehensive briefing materials, such as initial planning drafts or scoping criteria. In particular, early information on available technical, economic, and environmental data may improve the quality of final decisions.

## BUILDING THE CAPACITY FOR ACCESS

**Problem:** Many government officials including members of the judiciary do not have a thorough understanding of access laws and public participation practices, hampering their ability to help the public exercise its access rights. In some instances, officials lack a culture of compliance with the spirit and practice of access, as well as accountability for their role in making access possible. At the same time, citizens are often unaware of their rights and lack the skills needed to participate effectively, demand and collect the information they need, and make complaints or seek remedies when they are dissatisfied with environmental decisions. While many CSOs could help citizens develop these skills, the financial resources to undertake large capacity-building programs are often missing.

### ACTIONS:

- Increase budgetary resources directed toward training government officials including judges not only to be aware of and comply with access laws, but to publicize opportunities for citizen participation and to solicit the involvement of affected parties.
- Build partnerships with and provide seed money to CSOs that have experience with community organizing and education around civic and environmental matters.
- Develop inter-agency partnerships and partnerships with business and civil society to ensure that complex environmental data becomes usable and publicized.
- Strengthen freedom of association, build domestic awareness of CSOs, provide seed grants, grant tax-exempt status, broaden standing for environmental harm, and train CSOs in access to information, justice, and participation mechanisms.
- Provide greater budget support to citizen education programs that build participation skills and that mainstream environmental values.

### Actions for Access Proponents

Actors from all sectors and levels of society stand to benefit from increased access to information, public participation, and access to justice. Our findings and conclusions suggest that access proponents can take several essential actions to bring about access reforms and address barriers to and gaps in the provision of public access.

- *Access proponents can assert both the instrumental benefits of access rights and the human rights basis of access.* As these advocates continue to place access rights on their national agendas, they can argue that greater access to environmental decisions has clear benefits on a number of levels. Because access rights have their basis in international human rights, access advocates can deploy human rights arguments. This has particular potential in those settings where international mechanisms are available to enforce these rights.
- *Access proponents must build and strengthen networks in order to push for greater transparency and public influence.* Access proponents can employ both strategic alliances and broad-based coalitions of like-minded groups in order to manage and

sustain policy reform. They can begin with those most affected by lack of access to environmental decision-making and spread out to those who have the greatest interest in a transparency and democracy agenda. Networks—including members of civil society, government, and the private sector—may serve strategic purposes different from CSO-only coalitions. As they continue to work for incremental change CSOs must capitalize on major opportunities that present themselves unexpectedly or at short notice — such as constitutional reform or international treaties.

- *Governments and civil society can work together to build official capacity.* The proper training of government officials requires efforts in the legislative, administrative, and judicial branches. Civil society organizations can help in this training, as they often have well-developed access expertise.
- *Advocacy for public participation should be supportive of representative government.* Efforts to strengthen public participation should seek to support and not undermine representative government. For example, access advocates should strengthen public participation in legislative processes.
- *Researchers must continue to address gaps in the public participation literature.* This includes practical research into how CSOs are selected to participate in national and regional policy-making, and mechanisms for downward accountability from “grasstops” CSOs to grass-roots community-based organizations. Continued research must address mechanisms to include the poor and socially excluded in the decision-making process and to limit capture of participatory processes by elites. Finally, the circumstances under which participation reinforces and strengthens other democratic institutions merits additional attention. Continued assessments of access laws and practice by TAI and others will play an essential role.

## A Research Agenda to Explore Public Participation and Environmental Sustainability

Research is needed to better understand when and how access most contributes to positive impacts and prevention of harm. Key questions include:

- What are the key elements—legal, political, cultural and capacity-related—that enable public participation to have positive on-the-ground impacts?
- At what stages in the policy and project planning process is access most beneficial?
- What are appropriate guidelines for officials to decide what form of participation, information, and justice forums are suitable for given circumstances?

In particular, the following research could help improve the policy environment for access rights:

- Systematic meta-studies of accumulated case studies.
- Comprehensive approaches to weighing the costs and benefits of participation (e.g. how to include capacity-building benefits; how to apply cost-effectiveness analysis, cost-consequences approaches), especially those that would be usable at a practical administrative level.

## A Final Thought

Access rights—and those individuals and institutions that fulfill them—are at a moment of opportunity. New freedom of information acts and a push for greater transparency in decision-making have raised the profile of access reforms. Yet improvement and institutionalization of access rights is not assured without continued independent assessment and ongoing advocacy and collaboration.



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# The Partnership for Principle 10

The Partnership for Principle 10 (PP10) is a global initiative that supports transparent, inclusive, and accountable decision-making at the national level. The Partnership provides a venue for governments, civil society groups, and international organizations to work together to promote the accelerated implementation of Principle 10 so that decisions that impact the environment are more equitable and sustainable. Motivated by the belief that increased public access to information, participation in decision-making, and access to justice lead to fairer and environmentally sound development, PP10 promotes learning across national borders and encourages voluntary accountability among members. For more information please see [www.pp10.org](http://www.pp10.org)

PP10 members include 9 governments, 4 international agencies, and more than 35 civil society organizations. Below is a sampling of recent accomplishments of PP10 partners.

## Promoting Capacity to Demand Access

### *Australia – Moving Information Closer to People*

The Australian Environmental Defense Organization (ANEDO) is now providing legal advice and environmental law education directly to regional communities who would otherwise not have direct access to such services. ANEDO has also employed an Indigenous Engagement Officer to improve access to justice, information, and public participation for indigenous communities engaging in environmental issues.

### *Mexico – Regional Collaboration*

Mexican Federal Institute for Access to Information (IFAI) is building on the success of its national offices and rapidly establishing offices in each state where local citizens may request information. At the regional level, IFAI is working with other national governments and CSO's to promote public access to information and create common agendas across borders.

### *Ecuador – Civil Servant Education*

Centro Ecuatoriano de Derecho Ambiental (CEDA) has worked with partners in Ecuador to train more than 1000 civil servants (in both central and local governments), representatives of civil society, and academics. CEDA has worked with more than 2500 citizens, in more than 68 capacity building workshops and 5 national forums and has also developed and published three training manuals (one for each access right), a civil society guide, and several brochures to help spread awareness of Principle 10.

## Promoting Legal Reform

### *Uganda – Access to Information Legislation*

The Government of Uganda has enacted Access to Information legislation and has established a one-stop information and documentation center to provide the public with key government policy and other information.

### *Thailand – Drafting a Constitution*

The Thailand Environment Institute (TEI) has contributed to the drafting of the new Thai Constitution, and worked with King Prajadhipok's Institute and the Union of Civil Unity to draft key language that would encourage public participation in environmental matters. TEI is also working with the Constitution Institute to establish an environmental court in Thailand.

### *Ecuador – Consultation Laws*

In 2006, ECOLEX, a civil society organization, completed its work with the government, which signed into law the "Regulation of Previous Consultation about Environment Government Decisions". The regulation was the result of two years of citizen discussion led by ECOLEX involving representatives of businesses, industries, governments, CSOs, and indigenous groups.

## Promoting Capacity to Supply Access

### *Chile – Mapping Access*

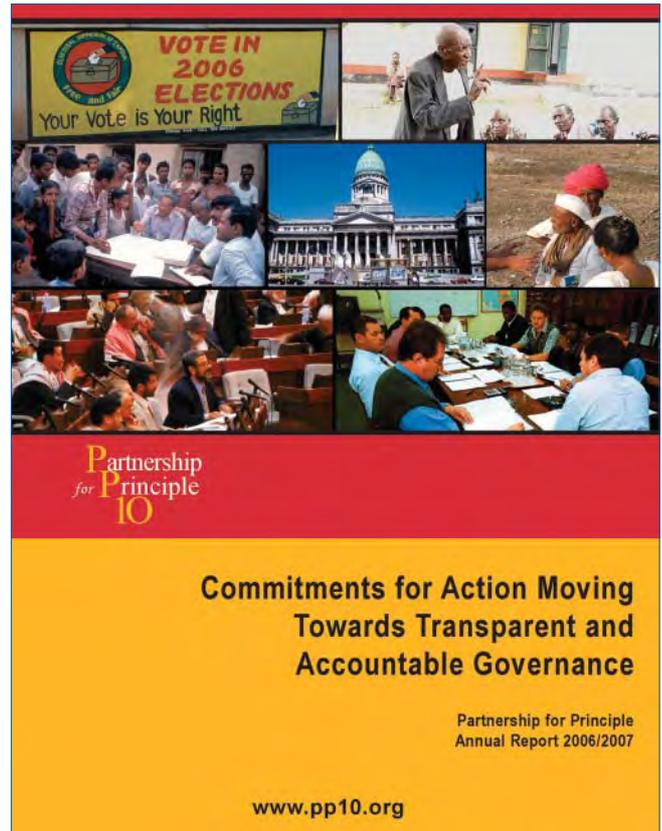
CSO CODESOSUR-SINERGIAS worked with PP10 Chile partners to design and produce a series of maps showing which government agencies in Chile that share commitments to PP10 are responsible for different types of environmental information at the regional level. These maps are being used to educate both government officials and the public.

### *Hungary – Strengthening Contacts*

During 2006, Environmental Management and Law Association (EMLA) strengthened its contacts with the Ministry of Environment and Water (MOE), leading to EMLA's active involvement in the MOE Aarhus Focal Point at the 2006 October Regional Meeting of TAI European partners, and to the endorsement and publication of a PP10 commitment by the MOE.

### *International – Putting Legal and Policy Information Online*

Readily accessible knowledge and information on laws and policies relating to sustainable development has been enhanced through the maintenance and expansion of ECOLEX, the gateway to environmental law information operated by The World Conservation Union (IUCN) in partnership with the United Nations Environmental Programme (UNEP) and the United Nations Food and Agriculture Organization (FAO). The combined information resources of the partners of the Millennium Ecosystem Assessments, national legislation, court decisions, and legal and policy literature have been available free of charge at ECOLEX.org since early 2004. The site is continuously updated.



# The Electricity Governance Initiative

## Principle 10 in the Electricity Sector

Policy-makers, regulators, citizens, and the international community are grappling with the challenges of providing access to reliable and affordable electricity, and addressing major environmental issues. Through their advocacy, civil society groups have drawn attention to concerns such as affordability, access to energy, and renewable energy in the electricity sector, but have been hampered by highly restricted access to decision-making. The Electricity Governance Initiative (EGI) is a collaborative effort by WRI (USA), Prayas Energy Group (India), and the National Institute of Public Finance and Policy (India), working with civil society and electricity sector actors to promote inclusive, transparent, and accountable systems of governance. In 2004, EGI developed a toolkit of research questions that indicate areas of relative strength and weakness in electricity decision-making processes. The indicators address public participation, transparency, accountability, and capacity related to electricity policy and regulatory processes, with an emphasis on environmental and social considerations. The toolkit was used to complete assessments of electricity governance in India, Indonesia, Thailand, and the Philippines in March 2006. The assessments suggest the following overarching trends in implementation of Principle 10 in the electricity sector:

### ACCESS TO INFORMATION

In general, very little information about the basis for new policy initiatives is shared with the public. There is inadequate transparency about critical issues, such as the goals of electricity reform efforts and the role of independent power producers. The lack of information available about the role of consultants is a serious shortfall, given that private-sector consultants have undertaken critical tasks such as preparing the economic analyses that justify decisions to corporatize, privatize, or restructure the sector, or draft new electricity laws.

More disclosure is necessary around issues often considered too “technical” for the general public to under-

stand. Public access to detailed analysis of demand-supply scenarios can allow people to understand the basis on which approaches to meeting energy needs are chosen. Transparency about the general terms of power purchase agreements and public consultation as part of their approval can be especially helpful. Such improvements can also make a valuable contribution to helping curb corruption in the electricity sector.

Effective regulation requires more than just the right rules, and it is vital to operationalize provisions for access to information. Legal provisions—such as requirements to disclose information to the public—need to be complemented with practical measures and systems to make these provisions operational. These include databases that help citizens identify and access documents, ensuring that these documents are available at a reasonable cost, and that regulators make some effort to publicize the availability of this information.

### ACCESS TO PARTICIPATION

Opportunities for public participation in policy processes remain quite limited, and when consultations are conducted, they are not taken seriously by policy-makers. In some cases, such as India, efforts have been made to collect public input on policy matters, which represents a significant step forward. But this input has had little impact on the final decision because effective mechanisms to incorporate this information were not in place. Under such circumstances, public participation—which takes no small effort or expense to coordinate—has limited value.

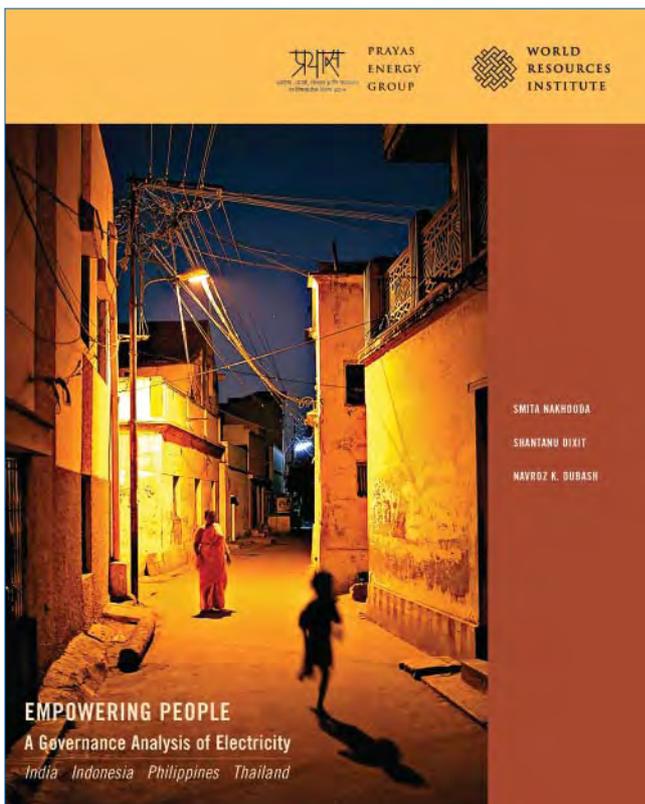
Particularly in the electricity sector, where the serious environmental and social impacts of electricity generation and transmission projects may be seen as “getting in the way” of economic development, stronger EIA procedures with greater public participation are necessary.

There is limited public input in electricity planning processes; governments need to make proactive efforts to reach out to stakeholders who will represent environmental and social interests.

## ACCESS TO JUSTICE

In all four countries, the court systems were found to be independent and accessible, allowing both civil society groups as well as electricity industry actors the opportunity to appeal fundamental policy and regulatory decisions. In Thailand the Administrative Court of Thailand undertook an independent review of the process for corporatizing the Electricity Generating Authority of Thailand in response to a claim filed by consumer groups, and concluded that the process was fraught with conflicts of interest and did not protect against abuse of power. In the Philippines, the Supreme Court has considered and upheld requests to appeal tariff increases on the initiative of consumer groups such as the Freedom from Debt Coalition.

A robust legal framework for regulation is emerging in India and the Philippines. Establishing an interim regulatory commission in Thailand has been an important first step to this end.



## CAPACITY

Electricity executive agencies are increasingly sensitive to environmental and social considerations, although systems to encourage mainstreaming of environmental and social considerations remain weak. These institutions are beginning to invest in building human resources and budgetary capacity to address these concerns. In the Philippines, the Department of Energy requires senior staff to acquire knowledge about environmental sustainability in order to move up within the administrative hierarchy. In Indonesia, energy executive staff can get training in environmental issues, particularly in the technical aspects of EIAs.

While planning processes can be an important lever for mainstreaming environmental and social considerations, existing systems are often weak in practice. These processes frequently lack both credibility and resources, and there is little coordination and coherence across various levels of government and utilities.

Conflicts of interest and political interference can undermine the independence of the electricity executive in practice, despite the fact that formal criteria for appointment of senior staff do exist. In a capital-intensive sector where confluence of interest has dominated decision-making, designing adequate safeguards against conflicts of interest is a significant challenge.

Source: Nakhooa et al. 2007

## Case Studies

### Bulgaria: Military Waste in Gabrovnica Village

*In October 2002, under the cover of street protests, activist Petar Penchev found his way into a military base near the village of Gabrovnica. He confirmed what he and the other protestors had suspected: the Bulgarian military was storing obsolete missile engines, preparing them for illegal incineration. For Penchev, president of the environmental group Ecoglastnost (“Environmental Transparency”) Montana, this represented the beginning of a long campaign to expose government duplicity around the disposal of these hazards. In the following days, weeks, and months Penchev and his environmental organization, as well as the organizers of the demonstrations, the Gabrovnica Citizens’ Committee, would, through an array of public tactics, denounce the secrecy of government plans to harbor toxic waste near their community. Their persistent activism—letters, street protests, meetings with the media, FOIA requests, and direct engagement of officials—over the course of nearly two years, would maintain the momentum of public demands for information and, in the end, pressure officials to let out the truth.*

### VESTIGES OF THE COLD WAR

The toxic troubles in Gabrovnica had their roots months before the protests, in Bulgaria’s NATO accession talks in November 2001. At that time, the Bulgarian government decided to destroy obsolete rockets and missiles left over from the Cold War. Initial Defense Ministry plans called for the SS-23 and SCUD missile systems and FROG rocket systems to be burned. This was particularly problematic because they contained fuel residue—destroying them would likely release large quantities of dioxins and other toxins into the surrounding air.

In response to early public outcry against the plans, Defense Minister Nikolay Svinarov repeatedly announced that the engines would not be destroyed until an independent expert committee of the Bulgarian Academy of Sciences (BAS) had assessed environmental and health risks. The Minister of Environment and Water, Dolores Arsenova, also said that she would oppose plans to destroy the missile engines within Bulgarian territory if the process would cause any deviation from accepted levels of air or water quality (Arsenova 2006).

### REACTIONS TO THE EXPERTS’ OPINION

By August 2002, BAS scientists completed their report. The study, however, was not fully released to the public. In response, experts from BAS and the University of Chemical Technology and Metallurgy, on their own initiative, wrote a public letter based on their findings, expressing their disapproval of the proposal to burn the missile engines. They were specifically apprehensive about the health and environmental impacts from the release of harmful gases during incineration, stressing that since the United States had long rejected similar burning of missile engines, the practice was an unacceptable disposal method in Bulgaria.

In response to the letter, citizens demanded both public discussion of the report and the completion of an environmental impact assessment (EIA). Government response to these requests was ambiguous at best. In contrast to her prior comments, Minister Arsenova failed to make a clear statement on the BAS report. Moreover, the Ministry of Defense declared that the BAS report was classified as a state secret. Progress was further hindered by provisions in Bulgaria’s Environmental Protection Act which did not require EIAs for projects related to national security. In conjunction with this secrecy over the report, the Defense Ministry tried secretly to move the missile engines to the abandoned base near Gabrovnica.

### A COMMUNITY MOBILIZES

At first, no one could be certain that the missile engines had been moved to Gabrovnica. Citizens grew suspicious, however, when large military trucks began arriving at a nearby unused military base loaded with heavy equipment. In an emergency meeting held on October 29, 2002, the local council of the nearby city of Montana adopted a declaration demanding that the Bulgarian Cabinet and the President give a written explanation by the end of the day as to whether these activities were related to the planned destruction of the missile engines. Their declaration did not receive a response.

At the same time, residents of Gabrovnica formed the Citizens' Committee of Gabrovnica and led a protest to oppose the destruction of the missile engines near their village. The two-day protest received much media attention with widely circulated photos of protesters physically blocking two trains from delivering the military cargo. It was on the second day of these protests that Petar Penchev gained access to the military base and saw the missile engines. But his eyewitness account did not sway the government into changing its plans. The activists would have to continue their campaign for some time before they uncovered a "smoking gun" (Kamenarski 2002).

### THE LONG ROAD TO TRUTH

Exposing the hazards proved to be difficult. Over the course of the next several months, Penchev made a number of formal information requests to the Ministry of Defense, the Ministry of Environment and Water, and the Bulgarian Academy of Sciences, and twice filed court claims under the Public Information Act when requests went unanswered. Penchev also wrote to the Defense Minister with a specific disposal proposal: that the missile engines be destroyed in Slovakia, where a military base was already equipped for more sophisticated disposal.

The case began to turn after Penchev's office received an anonymous fax (probably from the General Headquarters of the Bulgarian Army) demonstrating that the government was fully cognizant of the serious harms that would result from the proposed method of disposing of the waste. Ecoglastnost Montana immediately had the information published in local and national media, prompting further public outcry and a hasty response from the Defense Minister. He insisted that the harmful disposal had not yet taken place and that plans were afoot to dispose of the equipment more safely in Slovakia. However, he continued to refuse to release the full BAS report or information about the state of the environment in Gabrovnica.

The minister's mixed responses created a puzzle for Ecoglastnost Montana and its allies. If nothing bad had yet happened, and the plans were now in motion to destroy the missiles in a safer way, why would BAS and the Defense Ministry continue to withhold information? As we shall see, the Defense Minister had been true to

his word about seeking better disposal methods, but Penchev and his colleagues had little reason to believe this, given prior untruths and obfuscation. At this point, the "culture of secrecy" within the Bulgarian government served little function other than to foster public mistrust.

Ecoglastnost continued its campaign—using both FOIA and the information provisions of Bulgaria's new Environmental Protection Act to file information requests to the Defense Minister and the BAS. It was only after Penchev warned that he was prepared to defend his right to information before the Supreme Court that the results of the BAS report were released. The report confirmed what citizens had long suspected: that the missiles could not be safely destroyed in Bulgaria, and that they should be moved to another site with adequate facilities for destruction without risk to public health and the environment.

In the end, the missile engines were destroyed in Slovakia under an arrangement made by BAS and the Slovak Academies of Sciences. The facilities used ensured that the dioxins and other harmful chemicals were deposited in activated coke filters rather than released into the atmosphere. The filters were later buried.<sup>1</sup> Whether or not Penchev's proposal was the source of this outcome is a matter of speculation. What is clear is that without the action of a broad range of allies at the community level, in the media, in the local government, and even including the anonymous whistleblower in the military, the engines would likely not have been disposed of properly and locals would have borne the costs.

*This case study is based on research by TAI partner Nikolay Marekov of the Access to Information Programme, Bulgaria.*



1. This information was received by Petar Penchev in a personal meeting with BAS Director Yuchnovski.

## The Growth of TAI: A Case Study in Coalition-Building

The rapid expansion of The Access Initiative (TAI)—from 9 countries in 2002 to over 40 in 2007—can serve to inform the reader about coalition-building to promote transparency, inclusiveness, and accountability. While much of the material for *Voice and Choice* comes from TAI reports, here we use the network *itself* as a case study. Although TAI is an international coalition, and therefore differs from the national coalitions discussed in the main body of the text, useful observations can be drawn from the experience of the network. Like other networks or coalitions, TAI's rapid growth to this point is due in large part to the convictions and enthusiasm of its members, but also to the rewards membership confers. The specific benefits received by TAI partners are grouped into material incentives, solidarity rewards for individuals, and solidarity awards for groups. Finally, the section concludes with "next steps," innovations currently under way that will lower the costs and increase the benefits of participating in TAI.

### MATERIAL INCENTIVES

*Funding* – As might be expected, consistent and expanding funding has enabled TAI to continue to grow. As country coalitions' activities move beyond assessment and coalition-building, funding has moved to enable coalitions to advocate for policy reform based on recommendations from TAI assessments. This has allowed TAI coalitions to remain active well after assessment.

*Research method* – By developing a common research method and creating consistency in analysis, TAI has made it easier for environment and access advocates to more clearly examine the legal and practical obstacles in environmental governance in their country. Common terminology also facilitates communication both within and between coalitions.

*Strengthening regional platforms* – The growth of the TAI network has enabled those areas of the world with the greatest TAI membership to strategize on a regional level. This is especially true for Latin America, where TAI has had its most extensive success and, to a lesser extent for the European region. The TAI network has given Latin American partners the opportunity to share stories, strategies, and lessons, and has enabled them to lobby regional organizations such as the United Nations Economic Commission for the Caribbean and Latin America. Similarly, European partners have been

able to communicate with the Aarhus Convention Secretariat (United Nations Economic Commission for Europe), especially on issues of access to justice.

*Learning* – Some TAI coalitions report that they learn from the process of doing the TAI assessments, creating "homemade lawyers" out of people without formal or with limited legal training. In this sense, the process of learning the method helps to develop NGOs and their staff's capacity, or their volunteers, to address environmental access principles more generally.

*Information sharing* – The TAI network serves to inform members that there are reformers of similar stripes in countries across the world. Currently, there have been regional meetings in Europe, Latin America, Africa, and Asia. One of the next major steps for the network will be the development of online "communities of practice" where the public may learn about access-related activities and TAI partners may communicate strategies and obstacles they are facing and can offer solutions or suggestions to one another (see below).

*Side benefits of other reforms* – Most, if not all, TAI partners are "multi-issue" advocates or CSOs, active in promoting other environment, civil society, or democracy-related causes. Successful advocacy of access-related reforms (such as FOIAs or public participation practices), facilitates policy advocacy generally. For example, if a TAI partner involved in environmental advocacy is able to improve information release in the forestry sector, this will likely help them with later campaigns or cases they bring in court around forest issues.

### SOLIDARITY REWARDS FOR INDIVIDUALS

*Camaraderie* – Of course, like most networks and coalitions, the TAI network serves a social function where like-minded individuals from across contexts can meet to share work, experience, and successes—a community of practitioners. This function is served through global and regional meetings, through email conversations, and, in the future, will be served by enhanced internet communications spaces.

### SOLIDARITY REWARDS FOR GROUPS

*Brand* – The TAI brand is controlled through a process of peer reviews and by the approval of the TAI Core Team, which makes decisions relating to method development and application and the approval process for TAI assessments. This keeps up the quality of the intel-

lectual products within the network, and consequently feeds into network members' prestige and reputation.

*Prestige* – TAI partners report that they have been more successful in negotiations with government officials because they are able to claim that they have the support of a large international network which supports access rights.

*Side benefits of coalitions* – Because each national TAI partner must form a coalition with other CSOs before it begins its assessment, many partners necessarily network and share the labor of the assessment with other NGOs, often in other regions of the country or with other competencies or interests. As a result, networks grow stronger within countries and NGOs involved have a shared history, perhaps making future cooperation and sharing of resources more likely.

#### NEXT STEPS

*Decentralizing/ Furthering independence* – Beginning in 2006, the TAI network began formally decentralizing. This means that many tasks formerly performed by the TAI Secretariat (WRI) such as recruitment, regional meetings, peer review of TAI assessment reports are increasingly, if not exclusively, the provenance of Core Team regional leaders. The role of the TAI Secretariat has been scaled back and specialized to focus on global fundraising, strategy, and the development of new methods and practices.

*Community of practice* – In order to help learning within the network, TAI is establishing an online community of practice for access practitioners and those advocating access rights. This should increase the incentive to stay active within the network as well as to provide exclusive information and publicity for involved partners.

*Developing a shared vocabulary* – One function of this report is to develop a shared vocabulary for access advocates. By identifying the strengths and weaknesses of access arguments, as well as hurdles to implementation, this report, in tandem with advocacy tools, should help the network to use similar language to describe similar problems.

*Advocacy tools* – All TAI coalitions write a set of policy recommendations that derive from their national assessments. In order to assist with instituting and managing these policy reforms, the TAI network is currently developing a set of advocacy tools to assist TAI partners in their advocacy work.

## United States: Solving a Water Contamination Mystery in Washington, DC

*This story demonstrates how a weakness in data dissemination put the public at greater risk for lead poisoning in Washington, DC. Here, a country with robust scientific and technical expertise, as well as strong environmental information systems demonstrated that poor transparency and rigidity in information distribution resulted in widespread public outcry. Interestingly, it was not an absence of technical data that proved most problematic in this situation, but a lack of face-to-face communication, suggesting not only that situations are unique across contexts, but also that people need environmental information communicated to them in a medium and a setting they understand and can act upon.*

A January 31, 2004 *Washington Post* article created a stir with a story about a strange environmental mystery: "Tap water in thousands of District houses has recently tested above the federal limit for lead contamination" (Nakamura 2004c).

#### DANGER: LEAD IN CITY DRINKING WATER

Lead exposure can lead, over time, to serious health effects—brain damage, kidney damage, and other illnesses. Those at highest risk—young children and pregnant women—can be affected by even short exposures to high lead levels (Washington D.C. Emergency Information Center). But the *Post* article went on to say that authorities were "baffled" by the problem and had no idea how such a serious contaminant had become so widespread in the city's water.

Subsequent *Post* articles—and the public hearings, administrative reviews, independent investigations, and a class action lawsuit that followed them—documented that the problem actually had not been discovered "recently". The Washington DC Water and Sewer Authority (WASA) had been detecting unhealthy levels of lead in city drinking water for over two years. However, the public often was not informed of the problem, and in other cases was told too late to take appropriate action, or with too little urgency to convey the seriousness of the health risk.

Thus, residents of Washington, D.C. faced not one, but two mysteries. How did so much lead get into the drinking water? And how could the government have known about it for so long without addressing the problem?

In fact, problems began in 2001, when water samples in 53 homes showed levels of lead that exceeded the national standard of 15 parts per billion. Based on these findings, WASA sped up existing plans and replaced lead service pipes in key areas of the municipal water system. But the problem persisted. National water regulations then required WASA to conduct a larger water quality survey, which found a serious, widespread problem throughout the city in June 2003. Lead levels in over 4000 homes exceeded acceptable levels.

#### FAILURE TO NOTIFY

Although WASA's survey found high lead contamination during the summer, WASA failed to notify residents of their risk until November. Water regulations required WASA to place a very specific notice on each affected customer's water bill stating:

*"SOME HOMES IN THIS COMMUNITY HAVE ELEVATED LEAD LEVELS IN THEIR DRINKING WATER. LEAD CAN POSE A SIGNIFICANT RISK TO YOUR HEALTH."*

However, the notice that WASA sent out in November downplayed the seriousness of the problem. It left out key required phrases, including "in their drinking water" and "significant" (United States Environmental Protection Agency (US EPA) 2004).

Similarly, national law required WASA to conduct public meetings to inform people of the health risk and the actions they could take to avoid lead exposure. However, their advertisements for the meeting did not reveal the lead problem. Instead, they simply stated that the meeting would "discuss and solicit public comments on WASA's Safe Drinking Water Act projects." (Nakamura 2004a)

Because of the lack of urgency in WASA's public communications, residents were slow to take action. Some residents who received the notices began buying bottled water, and discussed the issue with their neighbors, or shared information about it via email. Many, however, had neglected the mailings or did not understand them. One resident later told a reporter she had received a letter informing her that the lead in her water tested as "higher than the federal action level," but she wasn't sure if that was a good or bad result (Reel and Cohen 2004).



#### FRONT PAGE NEWS

Months later, when the issue became front page news, the situation changed rapidly. Residents inundated WASA's water hotline with calls and overwhelmed water testing laboratories with requests for their tap water to be tested for lead contamination (Nakamura 2004c; Cohn 2004b). District elected officials immediately called for an emergency public meeting, and established an inter-agency task force to investigate and manage the problem. The task force included WASA, the Department of Health, the Washington Aqueduct, and representatives of eight other government bodies. It became the primary government vehicle for responding to the crisis.

Within four days of the initial news report, WASA itself worked with the federal Environmental Protection Agency to establish a Technical Experts Working Group, bringing together national experts to study the problem and identify a solution. Meanwhile, the inter-agency task force swiftly implemented programs to provide free water filters, water testing, and blood testing for residents at risk of lead contamination. It wrote letters to residents, established a hotline, conducted 23 community meetings, met with leading local organizations, and produced a range of outreach materials.

## CONFLICTING MESSAGES

However, over the six weeks following the initial *Post* exposé, successive public communications from WASA and other agencies contradicted each other and created confusion about who was at risk and what steps residents should take to protect their health. For example, WASA sent a letter in February to all residents suggesting they flush water through their taps for a minute and a half to reduce lead levels before drinking or cooking. But during the same week, the Environmental Protection Agency demanded that the recommendation be changed to 10 minutes (Nakamura 2004b).

Similarly, early WASA communications limited the health advisory to pregnant women and small children in residences with lead service lines. However, subsequent water testing found high levels of lead in the water of a significant number of residences with copper service lines as well.

## THE PUBLIC ORGANIZES

Expressions of public frustration grew in response to the mixed messages emerging from WASA and other public agencies. The public organized to share information and circulate petitions by launching internet sites such as PureWaterDC.com and WaterForDCKids.org. Neighborhood meetings were also held to discuss the issue. Community organizations and elected leaders concluded that WASA had actively covered up the problem (Nakamura 2004b). Adding to the public mistrust was disclosure that a WASA employee, Seema Bhat, who had repeatedly warned WASA and EPA officials of the lead contamination, lost her job in 2003. She had won a legal claim of improper termination, which the city had appealed (*Washington Post* Editorial 2004; WJLA-ABC7 2004).

On March 18, nearly 100 people took part in a protest at City Hall led by a CSO coalition (Public Citizen). Also in March, a class action lawsuit was launched against WASA by a young lawyer, Chris Cole, and a neighborhood activist, Jim Meyers, who called on the government to give clear notification to affected residents, pay the full cost of lead pipe replacement, and compensate the plaintiffs for damages. To clarify the situation for the public, the government needs to “knock on doors, no more letters,” said Cole (Spencer 2004).

## A TECHNICAL SOLUTION

Meanwhile, the Technical Experts Working Group convened by WASA and the EPA had identified the cause of the elevated lead levels. They concluded that a new water treatment process introduced in 2001 had caused lead to leach from municipal water pipes into the water supply. Their hypothesis was confirmed in May 2004 when a return to the old treatment process caused lead levels to decrease immediately. They also recommended accelerating plans to further revise the water treatment system to include an anti-corrosion additive called orthophosphate (Cohn 2004a).

By July 2006, lead in Washington DC’s water had remained within nationally mandated limits for a year and a half (United States Environmental Protection Agency (US EPA) 2006b). Moreover, blood screenings found no identifiable public health impact from the period of lead contamination (DC WASA). With this finding, part of the mystery was solved.

## NEW LAWS, NEW PIPES, NEW INSTITUTIONS

The question of how the government had failed to effectively notify residents of the problem, was more complex to answer. The public outcry about the government’s initial response to the lead contamination led to independent investigations commissioned by government and civil society organizations, as well as EPA administrative orders censuring WASA, and a Congressional inquiry into EPA’s own oversight failures. Significant outcomes from these investigations include a multi-million dollar investment by WASA in the replacement of lead water pipes and an EPA proposal to revise national lead and copper regulations (District of Columbia Official Code 2005).

The investigations also identified serious problems with the institutional arrangements for water quality management and oversight in Washington DC. What with WASA, EPA, the City Council, the Army Corps of Engineers, Congress, and the Department of Health all involved, lines of authority, accountability, and communications among agencies were rarely clear. A Department of Environment within the DC government was created to coordinate these players and centralize responsibility (United States Environmental Protection Agency (US EPA) 2006a).

*This case study was written by David Turnbull and Heather McGray (WRI).*

## Latvia: Snapshot of a Growing Environmental Movement

Much has changed for civil society in Latvia in the last 20 years. Latvian citizens suffered limitations on organizing under Soviet rule, but, as the 1980s progressed, along with *glasnost* and *perestroika* came increasing liberalization and hard-won freedoms of association. After independence, during Latvia's long run up to European Union (EU) and European Economic Zone (EEZ) membership, less restrictive laws and steady foreign funding nurtured the growth of civil society in the country. Today, due in no small part to favorable reforms, Latvia's civil society has grown, but still has a way to go. This is especially true for the country's nascent environmental movement.

The vast majority of the country's citizens, following pre-independence traditions, typically distance themselves from governance and regulation processes. Due to the lack of effective communication and feedback mechanisms between government institutions and the nongovernmental (NGO) sector, Latvian civil society organization (CSO) involvement in national policy-making remains low despite an otherwise favorable legal framework. Latvian NGOs face additional difficulties: most environmental CSOs do not have wide membership among the Latvian public or a large youth following as in many other countries, and there is little support from private foundations or businesses. Additionally, concentration of CSO activity in the capital, Riga, means that CSOs in outlying areas remain underdeveloped.

### AN ENABLING ENVIRONMENT – NECESSARY BUT NOT SUFFICIENT

Governments can effectively support civil society sustainability and autonomy by providing proper incentives that encourage CSOs to grow. Tools for building the capacity of CSOs include favorable tax conditions, seed grants, and provision of training. Latvia's experience illustrates the success of incentives provided by the state government, but also highlights future challenges.

Recently, laws have granted tax exemptions and tax reductions, helping CSOs in Latvia to devote more resources to their activities. Because Latvia's tax code exempts organizations whose goals neither directly nor indirectly include generation of income or capital, most Latvian CSOs are tax-exempt. The law also provides a tax deduction of 85 percent of the money or property

when given to associations registered as "public benefit organizations". CSOs also do not need to register as value-added tax (VAT) payers, and so may recover VAT levied on grant money.

### CHANGING PATTERNS OF FUNDING

Yet, favorable tax conditions may not be enough to guarantee CSO survival. According to Erika Lagzdina, Country Office Director of TAI partner REC-Latvia (Regional Environmental Center), National EU/EEZ grants have stimulated recent CSO growth more than tax exemptions or even the freedom of association guaranteed by the 2005 "Law on Non-Governmental Organizations." Given the low level of funding by the private sector, government grants have been one of the few available sources of CSO sector funding. Without government grants, the existence of the nongovernmental sector in Latvia would be seriously threatened, since the vast majority of CSOs lack capacity and skills necessary for long-term planning and fundraising.

### DIMINISHING GOVERNMENT FINANCE

Financing programs administered by the national government are diminishing in importance, yet the overall available financing amount is steady. This year, the situation could change—financing levels could be much lower. Of CSOs with different interests, the activity of environmental organizations has decreased the most over the past two years.

### GROWING IMPORTANCE OF THE EU/EEZ

Since EU accession, direct financing from individual EU country governments (especially Norway) and pre-accession funding from the EU itself have become more important. CSO activities have increasingly reflected shifts in donor priorities in Latvia as well. Perhaps as a consequence, the funding quotas of the EEZ/Norwegian governments have so far seemed to favor Latvia's regional CSOs over those based in Riga. Environmental CSOs have, in the past few years, shifted their focus as national funds become unpredictable, directly engaging in EU-level projects that provide financing opportunities; however, such involvement has typically been short-term. The EU/EEZ currently fund 80-90 percent of the Latvian CSO sector activities, while co-financing by the national government amounts to only about 10-20 percent.

## PROSPECTS FOR PRIVATE SECTOR SUPPORT

Funding for CSOs from the private sector or foundations may increase in importance, but will likely require increased public familiarity with and trust in CSO agendas. According to the document, **“Integration of Society in Latvia”**, written under the guidance of several ministers, the third sector is not currently a key vehicle to influence government decisions.

## CONSULTING SERVICES: WORKING FOR OR WITH THE GOVERNMENT?

The long-term vitality of the “third sector” in Latvia will likely depend on the ability of organizations to compete for grants, particularly for providing consulting services to governments, including municipalities. This shift in funding in Latvia has changed the relationship between CSOs and the government. This has led many CSOs to begin raising money by working for national, regional, and local governments. On the one hand, this may jeopardize the benefits of independence from the state; on the other, it may represent the start of more interdependent and sustainable cooperation between civil society and the government.

The shift to providing consulting services means that environmental CSOs have less time and energy to spend on direct service or advocacy. In the environmental field, some CSOs have adapted to the new financing environment by pursuing government consulting, as well as by working for private businesses on projects including green office development. For example, Green Liberty, an environmental CSO has gone from direct unconditional funding to working through grant and tender competitions organized by the Ministry of the Environment. Green Liberty won a tender for environmental CSOs to develop recommendations for the Ministry on “Green Procurement Principles.” As a result, this CSO has improved its financial independence and stability in the last few years. Yet Green Liberty still relies on grant financing for non-administrative project expenses through the Latvian Environmental Protection Fund (Latvijas Vides Aizsardzības Fonds).

The benefits of contracting have been limited. Because other funding sources for basic expenses are scarce, a particular CSO often must demonstrate very specific expertise to successfully compete for government-delegated service tenders—if only to cover its basic expenses. Consequently, only a few professional environmental NGOs can engage in competitions and work as consultants—most of them at the national level. For-

tunately, regional governments and town municipalities are becoming more comfortable in delegating some of their work to CSOs, and in funding CSO-provided services. Tight municipal and regional budgets, however, mean such opportunities are still scarce and, so far, funds have not been dedicated to the environmental sector.

## TRAINING AND CAPACITY BUILDING

The Social Integration Council has identified CSO capacity building, diversification of funding for CSOs, and “results-orientation” as priorities for 2005-2014. A combination of supporting CSOs, government initiatives, and dedicated funds has attempted to meet these demands.

The Society Integration Fund (Sabiedrības Integrācijas Fonds) is a public organization with a mission to promote better integration of civil society and government in Latvia. Environmental CSOs such as Green Liberty and the Latvian Nature Fund have benefited from training on grant-proposal writing and grant application administrative procedures.

CSOs have partnered with the government to build the capacity of the environmental groups. Nongovernmental groups—Latvian Environmental Forum (Latvijas Vides Forums) and the Baltic Environmental Forum (Baltijas Vides Forums) have worked to help environmental CSOs advocate for change. The government has provided financing to the Latvian Environmental Forum through the Latvian Environmental Protection Fund, a state agency under the Ministry of the Environment. The Baltic Environmental Forum, a joint technical assistance project between the Environmental Ministries of the Baltic States, Germany, and the EU, has also been proactive in organizing various training programs for environmental CSOs and state institutions.

The Civic Alliance—Latvia (Pilsoniskā Alianse) is another important source of both capacity building and advice on law and accounting. The Alliance is an umbrella CSO based in Riga, uniting more than 60 CSOs and private members. It acts as a national support center for CSOs, representing their interests in communication with public authorities. It aims to improve the legal and financial environment for the non-governmental sector and, most importantly, to “strengthen capacity of the CSOs for efficient public advocacy performance” (Civic Alliance—Latvia 2005).

### LEGAL STATUS AND BROADENED STANDING

Ideally, CSOs would be able to use the courts and administrative forums to address environmental harms and to challenge denials of access to information and public participation. Yet access to justice for civil society organizations has not been without obstacles in Latvia.

Indeed, in Latvia some of the fundamentals of access to justice are strong. Any CSO can file a suit for violations such as denial of access to information about environmental quality and violation of state environmental laws. Environmental and other CSOs in Latvia are given adequate legal status and have opportunities to defend their rights and agendas in court.

However, environmental and other CSOs have rarely taken judicial routes for resolving their claims against private or public entities, and most concerns have been handled through administrative orders. According to the *Aarhus Convention Implementation Report for Latvia*, this is due for the most part to the serious financial implications of taking legal action to protect the environment.

Despite this, some CSOs have taken their complaints all the way to the European Court of Human Rights. After failing to receive a favorable ruling in the Court of First Instance, the Latvian Environmental Protection Club used its legal standing to voice its complaints against

the Latvian state by filing a suit at the supra-national level. The Club expressed concern about the conservation of dunes on a coastal stretch in the Gulf of Riga, with specific allegations against the Mayor of Mērsrags, a coastal town, in order to halt illegal building (*Vides Aizsardzības Klubs v. Latvia* 2005). In its final ruling in the case, the European Court of Human Rights decided the Club had rightfully exercised its role as a “watch-dog” under the Environmental Protection Act.

### LATVIAN CIVIL SOCIETY: SET FOR A TAKE-OFF?

Latvia has seen a growth in civil society over the last two decades—that much is clear. Yet challenges remain. Beyond the changes in funding and the constant battle to sustain their activities, CSOs and the government bodies that support them will need more than just legal reform. Latvian civil society has enjoyed wide opportunities for activities and influence for the last few years, often limited only by the interests of the CSOs themselves. And while there are fewer CSOs today than two years ago, most work on larger projects which affect more people.

Sources: Lagzdīņa 2007; Mikosa 2007; Brizga 2007; Vējonis 2007.

*Aiga Stoekenberga and Jonathan Talbot (WRI) wrote this case study.*



# The Access Initiative

## *A selection of outcomes from 2002–2007*

### 2007

- Cameroonian TAI Advisory Panel increases Government–CSO dialogue by establishing Country Advisory Panel (CAP) chaired by the Government and consisting of Government environmental and human rights Agencies, CSOs, sub-regional organizations and academia. Partner: The Access Initiative, Cameroon
- Chilean and Ecuadorian TAI partners work together to successfully develop material and train public officials in Ecuador on access. Partner: Centro Ecuatoriano de Derecho Ambiental, (CEDA)
- TAI Philippines Case Study triggers investigation of government officials and copper mining company officials regarding their conduct in relation to process damage claims arising out of the Boac River environmental disaster of 1996. Partner: The Access Initiative, Philippines
- TAI Uganda mobilizes public against government giveaway of Mabira Forest for use as sugar plantations. Partner: ACODE
- TAI partner in Zimbabwe prepares judges training course on environmental issues. Access issues is an important step in improving access to justice on environmental matters. Partner: The Zimbabwe Environmental Law Association (ZELA)
- TAI partner in Zimbabwe works to register community based environmental groups with the authorities so that they have legal recognition and capacity to manage their own affairs and fosters community environmental groups to improve access literacy. Partner: (ZELA)
- As a result of a TAI Case Study, TAI partner in Ukraine successfully litigates and obtains access to information on hunting permits and a ruling that such permits are subject to EIA laws. Partner: EcoPraovo-Kyiv

### 2006

- Thai Government involves affected fishing communities in decision-making and greens Seafood Bank in response to TAI Assessment. Partner: NGO Coordinating Committee on Development, Thailand
- TAI toolkit showcased and incorporated into Clearinghouse for Environmental Democracy of the UNECE Aarhus Convention.
- TAI findings convince Hungary’s Ministry of the Environment to designate “green points” information network. Partner: EMLA

### 2005

- The Access Initiative approach was recognized and supported at the second Meeting of the Parties of the Aarhus Convention in Almaty in May 2005. TAI and PP10 were showcased as successful partnerships in the official documentation and several countries, notably the UK, Estonia, Italy and Ireland, publicly endorsed the TAI approach in their country statements.

### 2004

- National Commission for the Environment (CONAMA) (Chile), and two NGOs—RIDES and Corporación Participa—developed an access to environmental information guide and workshop for public officials. Partners: RIDES and Corporación Participa
- United Nations Environment Programme’s African Experts Workshop on Rio Principle 10 promotes TAI approach.

### 2002

- *Closing the Gap* – published by the World Resources Institute based on findings of The Access Initiative in 9 countries.
- Access Initiative-Mexico publishes CD-ROM containing results of assessment and citizens’ guide to public participation in environmental decisions
- NGO coalitions in nine countries (Chile, Hungary, India, Indonesia, Mexico, South Africa, Thailand, Uganda, and the United States) published assessments of access to information, participation, and justice based on The Access Initiative framework.



# Glossary

<b>Access</b>	In the context of <i>Voice and Choice</i> , “access” refers to the ability or right to obtain or make use of information, opportunities for participation, and mechanisms for justice in official decisions.
<b>Access Initiative, The</b>	A global coalition of civil society groups working together to promote access to information, participation, and justice in decisions affecting the environment. See <a href="http://www.accessinitiative.org">www.accessinitiative.org</a> for more information.
<b>Access Principles</b>	Refers to the three cornerstones of The Access Initiative (TAI): access to information, participation, and access to justice.
<b>Access Rights</b>	The rights of citizens to information, participation, and justice in environmental decision-making. See also “access principles.”
<b>Access to Information</b>	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.
<b>Access to Justice</b>	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.
<b>Advisory Group/Panel</b>	For the purposes of <i>Voice and Choice</i> , a selection of individuals representing both civil society (including academia) and government that oversees, reviews, and helps to guide a TAI assessment in a given country. It is the responsibility of the TAI Coalition within a country to invite individuals to serve on the advisory group/panel.
<b>Assessment/ TAI assessment</b>	In the context of <i>Voice and Choice</i> , “assessment” refers to the process of ranking a country’s performance in providing access to information, participation, and justice, including collecting data to answer selected research questions. The term also refers to the product of such research.
<b>Capacity Building</b>	The efforts to improve a country’s human, scientific, technological, organizational, institutional, and resource capabilities. According to Agenda 21, capacity building consists of mechanisms, efforts, or conditions which enhance effective and meaningful public participation in decisions affecting the environment. Types of capacity building include educating civil servants to implement access rights, creating a supportive legal and administrative situation for civil society organizations, and ensuring Internet access for the general public.
<b>Case Study</b>	In TAI assessments, “case study” refers to a study of an example used for assessing specific laws and government effort and effectiveness in providing access to information, participation, or access to justice. A case study may be about an event (such as an environmental emergency), a decision-making process (such as development of an environmental impact assessment), or a particular judicial claim. Case studies are also referred to as “cases”. They are each examined using a prescribed set of TAI indicators.
<b>Civil Society</b>	Civil Society Organizations include organizations that are neither part of the private (for profit) nor governmental sectors. They include nongovernmental organizations (NGOs) and community-based organizations (CBOs).
<b>Coalition Organizations (CSOs)</b>	An association of individuals or organizations united for a common purpose. In the context of <i>Voice and Choice</i> , “coalition” refers to a group of organizations and individuals within a country who have agreed to work together to create policy and practical outcomes over an extended period. Compare to “strategic alliance.”
<b>Compliance</b>	Adherence to a particular law, regulation, guideline, or standard. In the context of <i>Voice and Choice</i> , “compliance” refers to adherence by facilities to laws, regulations, guidelines, or standards on emissions to air, discharges to water, and other environmental impacts.
<b>Confidentiality</b>	State of keeping information secret.
<b>Customary International Law</b>	Consists of rules of law resulting from the consistent practice of States followed out of the belief that the law required them to act in that way. Customary International Law is not based on a treaty or written agreement.

<b>Environmental Emergency</b>	An emergency situation caused by a human or natural agency that has environmental or human health impacts. Accidental chemical spills or oil spills, damage from hurricanes or earthquakes, or the escape of nuclear radiation from a malfunctioning reactor are examples of environmental emergencies.
<b>Environmental Governance</b>	The range of institutions and decision-making processes (including but not limited to governments) engaged in managing the environment and natural resources. For further definitions see the section entitled “Environmental Governance and Environmental Democracy” in Chapter 1 of <i>Voice and Choice</i> .
<b>Environmental Impact Assessment (EIA)</b>	The systematic examination of the likely impacts of proposed development on the environment prior to any activity, including an evaluation of environmentally less damaging alternatives to such development.
<b>Facility</b>	All buildings, equipment, structures, or other stationary items found at a single location and used in a particular industry’s production processes or service delivery. Common facilities include plants, factories, refineries, smelters, mills, mines, chemical manufacturing complexes, offshore installations, and municipal and commercial landfills.
<b>Forum</b>	In this report and in the context of TAI assessments, a forum is a judicial or quasi-judicial body. It includes courts, tribunals, independent panels and such institutions as well as environmental courts.
<b>Freedom of Information Act (FOIA)</b>	A law or regulation governing the right of access to government held information, limits to that right, mechanisms for exercising that right, and mechanisms for resolving disputes around the exercise of that right. Many countries have enacted FOIAs described by various titles.
<b>Governance</b>	Governance is about the process of making decisions. It is about the exercise of authority; about being “in charge.” It relates to decision-makers at all levels--government managers and ministers, business people, property owners, farmers, and consumers. In short, it deals with who is responsible, how they wield their power, and how they are held accountable. For further definitions see the section entitled “Environmental Governance and Environmental Democracy” in Chapter 1 of <i>Voice and Choice</i> .
<b>Inclusiveness</b>	Inclusiveness is a state in which all persons interested in or affected by a decision or decision-making process have the political space to participate in and influence the outcome.
<b>Indicator</b>	In the context of <i>Voice and Choice</i> , “indicator” refers to an assessment of a particular aspect of performance in implementation of access to information, access to participation, access to justice, or capacity building (the public participation system). The term “indicator” is used as shorthand to refer to both research questions and their answers.
<b>Information</b>	Knowledge of a specific event or situation; a collection of facts or data. In the context of <i>Voice and Choice</i> , “information” refers to facts, knowledge, explanations, justifications, data, and resources on environmental factors, including air and water quality, environmental emergencies, general environmental trends, facilities and their environmental impacts, and plans or programs affecting natural resources.
<b>Interested parties</b>	Participants in a legal or decision-making process that have an interest in or are affected by the outcome.
<b>Justice</b>	The upholding of what is just, especially fair treatment and due reward in accordance with the law. In the context of <i>Voice and Choice</i> , “justice” refers to the granting of adequate and effective redress and remedy in the case of a violation of rights including rights to information, participation, and access to justice. It includes remedies and redress for environmental harm. The term includes redress and remedies facilitated or granted by mediators, alternative dispute resolution mechanisms, administrative courts, formal courts of law, and other such mechanisms.
<b>Law Indicators</b>	Indicators that assess the legal framework supporting an access right or capacity building. These indicators require research in constitutional law, court decisions, regulations, and legislative process.
<b>Method/TAI Method</b>	In the context of <i>Voice and Choice</i> , “method” refers to the framework of research questions, indicators, and research tools (including guidelines on source selection and documentation) used to conduct a TAI assessment of access to information, participation, justice, and capacity building.
<b>Monitoring</b>	Periodic or continuous surveillance, data collection, and/or testing to observe the condition of a resource or situation and its change over time. Monitoring may be used to determine the level of compliance with laws or to detect and give warning of change.

<b>Nongovernmental Organization (NGO)</b>	Any civil organization or group, including voluntary groups, community groups, charities, trade unions, campaigns, and almost any other group that is not part of the government. Businesses and other profit-making entities are not included in this definition. While not exclusive of local efforts, NGO has a connotation of meso- and international-level activism and association in contrast to community-based organizations.
<b>Participation</b>	The act of taking part or sharing in something. In the context of <i>Voice and Choice</i> , “participation” refers to informed, timely, and meaningful input and influence in decisions on general policies, strategies, and plans at various levels and on individual projects that have environmental impacts. See Table 2.2 of this report for types of participation.
<b>Partnership for Principle 10 (PP10)</b>	Launched at the World Summit on Sustainable Development, the Partnership for Principle 10 provides a way for governments, civil society organizations, and international organizations to work together to implement practical solutions to provide the public with access to information, participation, and justice for environmentally sustainable decisions. See <a href="http://www.pp10.org">www.pp10.org</a> for more information. See also Appendix 1 of <i>Voice and Choice</i> for a more detailed description of PP10.
<b>Policy</b>	A plan or course of action, as of a government, political party, or business, intended to influence and determine decisions, actions, and other matters. In the context of <i>Voice and Choice</i> , “policy” refers to a broad statement of intent that focuses the political agenda and sets a decision cycle in motion. The term is also sometimes contextually used in this report to include laws and regulations enacted in pursuance of a policy.
<b>Principle 10</b>	Part of the Rio Declaration made at the Earth Summit in Rio de Janeiro, Brazil in 1992. (For the full text of Principle 10, see Box 1.1.) Principle 10 embodies the ideals of the Access Initiative and is the foundation of the Aarhus Convention (UNECE) and the Partnership for Principle 10.
<b>Project-Level Decisions</b>	A project-level decision usually relates to a specific, localized, one-time decision. Examples include the building of a dam, an application for a pollution permit, the restoration of a wetland, and the granting of a forest concession. A project may be part of a broader program, such as one designed to improve sanitation services in municipalities throughout the country.
<b>Pollutant Release and Transfer Register (PRTR)</b>	A PRTR is an environmental database or inventory of potentially harmful releases to air, water, and soil as well as wastes transported off site for treatment or disposal.
<b>Public</b>	Refers to the people or any individual, alone, with others, or as one of a community.
<b>Regulatory Decisions</b>	Decisions of a regulatory nature usually made by a government agency or officer and having the object of ensuring that an individual, group of individuals, or corporation complies with a law, regulation, guideline, or standard. Regulatory decisions include enforcement actions, investigations, reviews, and reporting particularly concerning the activities of the private sector. Such decisions are generally made in the public interest.
<b>Standing/Legal Standing/</b>	The legal right to pursue a claim before a judicial, administrative, or alternative forum.
<b>State of the Environment</b>	A document (electronic or paper) that is: (a.) concerned with environmental and natural resource issues; (b.) supported by numerical data, and charts, tables, and maps; (c.) countrywide or regional in coverage; (d.) useful to policy-makers and others concerned with development planning; and (e.) publicly available at reasonable cost.
<b>Strategic Alliance <i>Locus Standi</i></b>	A working relationship in which organizations and individuals seeking solutions to immediate or short-term problems come together. Compare to “coalition.”
<b>Transparency (SoE) Report</b>	The quality or state of being transparent. In the context of <i>Voice and Choice</i> , transparency refers to the sharing of information and acting in an open and accountable manner. Transparency allows stakeholders to gather information that may be critical to uncovering abuses and defending their interests. Transparent systems have clear procedures for public decision-making and open channels of communication among stakeholders and officials, and make a wide range of information accessible.

# List of Abbreviations

<b>ACODE</b>	Advocates Coalition for Development and Environment
<b>ADB</b>	Asian Development Bank
<b>BuZa</b>	Netherlands Ministry of Foreign Affairs
<b>CEDHA</b>	Center for Human Rights and Environment (Argentina)
<b>CODELCO</b>	National Copper Corporation (Chile)
<b>CONAGUA</b>	National Commission for Water (Mexico)
<b>CONAMA</b>	National Commission for the Environment (Chile)
<b>CSO</b>	Civil Society Organization
<b>DANIDA</b>	Royal Danish Ministry of Foreign Affairs
<b>EC</b>	European Commission
<b>EE</b>	Environmental Education
<b>EGI</b>	Electricity Governance Initiative
<b>EIA</b>	Environmental Impact Assessment
<b>EIS</b>	Environmental Impact Statement
<b>EITI</b>	Extractive Industries Transparency Initiative
<b>EMLA</b>	Environmental Management and Law Association
<b>EPA</b>	Environmental Protection Agency
<b>ERT</b>	Emergency Response Team
<b>ESC</b>	Economic Social and Cultural
<b>ESI</b>	Environmental Sustainability Index
<b>EU</b>	European Union
<b>EU/EEZ</b>	European Union/European Economic Zone
<b>FOIA</b>	Freedom of Information Acts
<b>FPIC</b>	Free, Prior and Informed Consent
<b>GDP</b>	Gross Domestic Product
<b>IASTP</b>	Indonesia Australia Specialized Training Project
<b>IBRD</b>	International Bank for Reconstruction and Development
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICEL</b>	Indonesian Center for Environmental Law
<b>IUCN</b>	The International Union for the Conservation of Nature and Natural Resources
<b>IFAI</b>	Federal Institute for Access to Information (Mexico)
<b>MDG</b>	Millennium Development Goal

<b>NAFTA</b>	North American Free Trade Agreement
<b>NEMA</b>	National Environmental Management Authority (Ghana)
<b>NEPA</b>	National Environmental Policy Act (USA)
<b>NGO</b>	Non-Governmental Organization
<b>OAS</b>	Organization of American States
<b>OCHA</b>	Office for the Coordination of Humanitarian Affairs
<b>ONEMI</b>	National Office of the Minister of Emergencies (Chile)
<b>OSC</b>	On Scene Coordinator
<b>OSCE</b>	Organization for Security and Co-Operation in Europe
<b>PP10</b>	Partnership for Principle 10
<b>PROFEPA</b>	Federal Prosecutor for Protection of the Environment (Mexico)
<b>PRTR</b>	Pollutant Release and Transfer Registers
<b>REC</b>	Regional Environmental Center
<b>SEC</b>	Superintendent of Electricity and Combustibles
<b>SEMARNAT</b>	Secretary of Environment and Natural Resources (Mexico)
<b>SIDA</b>	Swedish International Development Cooperation Agency SISI Information Request System (Mexico)
<b>SoE</b>	State of the Environment
<b>TAI</b>	The Access Initiative
<b>TRI</b>	Toxics Release Inventories
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UNDP</b>	United Nations Development Programme
<b>UNECA</b>	United Nations Economic Commission for Africa
<b>UNECE</b>	United Nations Economic Commission for Europe
<b>UNEP/OCHA</b>	United Nations Environment Program/ Office for the Coordination of Humanitarian Affairs
<b>UNESCAP</b>	United Nations Economic and Social Commission for Asia and the Pacific
<b>USAID</b>	United States Agency for International Development
<b>UWA</b>	Uganda Wildlife Authority
<b>UWS</b>	Uganda Wildlife Society
<b>WASA</b>	Water and Sewer Authority (Washington, DC US)
<b>WGI</b>	World Governance Indicators (World Bank Institute)
<b>WRI</b>	World Resources Institute

# About the Authors

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**LALANATH DE SILVA** was a public interest litigator and advocate for over two decades. Pioneering the growth of public interest law in the area of the environment, he appeared in all of Sri Lanka's leading environmental cases on behalf of victims, communities and non-governmental organizations. He also worked for the Sri Lankan government for two years as the Legal Consultant to the Ministry of Environment and Forests. During that time he was responsible for drafting and enacting numerous regulatory provisions addressing noise, ozone depleting substances, and ambient air quality, among others. From 2002-2005 he served as a Legal officer in the Environmental Claims Unit of the United Nations Compensation Commission (UNCC) in Geneva. Together with a small group of international lawyers, he helped process the largest war reparations claims handled by the UNCC to monitor, assess, restore and compensate for environmental damage resulting from the 1991 Gulf War. Lalanath joined the World Resources Institute (WRI) in 2005 as the Director of The Access Initiative (TAI).

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## About WRI

The World Resources Institute (WRI) is an environmental think tank that goes beyond research to find practical ways to protect the earth and improve people's lives.

Our mission is to move human society to live in ways that protect Earth's environment and its capacity to provide for the needs and aspirations of current and future generations.

Because people are inspired by ideas, empowered by knowledge, and moved to change by greater understanding, WRI provides—and helps other institutions provide—objective information and practical proposals for policy and institutional change that will foster environmentally sound, socially equitable development.

WRI organizes its work around four key goals:

- **People & Ecosystems:** Reverse rapid degradation of ecosystems and assure their capacity to provide humans with needed goods and services.
- **Access:** Guarantee public access to information and decisions regarding natural resources and the environment.
- **Climate Protection:** Protect the global climate system from further harm due to emissions of greenhouse gases and help humanity and the natural world adapt to unavoidable climate change.
- **Markets & Enterprise:** Harness markets and enterprise to expand economic opportunity and protect the environment.

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