



FOR PEOPLE TO HAVE SECURE, SUSTAINABLE ACCESS TO CLEAN WATER, THEY ALSO MUST HAVE:

◆ ACCESS TO INFORMATION

about water resources and the human actions that affect them;

◆ THE RIGHT TO PARTICIPATE

in decisions that affect the quality and distribution of water;

◆ ACCESS TO JUSTICE

to resolve water conflicts when they arise.



THE ACCESS INITIATIVE is conducting national assessments of these three “access rights” around the world. Join us as we pilot a new focus on improving water governance.

THE ACCESS INITIATIVE

The Access Initiative is a global coalition of civil society groups dedicated to ensuring that people everywhere have the right and ability to influence decisions about the natural resources that sustain their communities. With partner organizations in over 40 countries, we promote national-level implementation of the three “access principles” enshrined in the 1992 Rio Declaration: access to information, public participation, and access to justice in decisions that affect the environment.



At the heart of The Access Initiative’s (TAI’s) work is a research toolkit that supports civil society groups in telling a complete story about the implementation of the access principles in their country. Using TAI research guidelines and indicators, Access Initiative partners conduct a set of case studies that evaluate how well their national law and government efforts uphold citizens’ rights to transparent, participatory, and accountable governance.

CITIZEN ACCESS IN THE WATER SECTOR

Twenty percent of the world’s population currently lacks access to safe drinking water, and contaminated water remains one of the biggest killers worldwide. Access to safe drinking water is one of the most pressing challenges faced by the world’s peoples, and better governance is key to resolving the problem. TAI provides a three-part framework with which citizens and public interest groups can keep government accountable for the decisions that affect access to clean, safe, affordable water:

✓ **ACCESS TO INFORMATION** about water quality allows people to decide whether to

use water available to them for drinking, swimming, irrigating crops, or fishing.

✓ **PUBLIC PARTICIPATION** mechanisms give citizens a voice in policies that affect water provision, and in project decisions that affect water resources.

✓ **ACCESS TO JUSTICE** means having fair and open institutions for resolving water conflicts peacefully.

This document presents preliminary findings of 16 studies on “access rights” in the water sector by TAI partners in four countries.

TAI WATER SECTOR PILOT PROJECT

In September 2005, The Access Initiative launched a pilot project to apply the TAI research toolkit to information, participation and justice issues that influence citizens' access to water. TAI partners from nine countries convened at a workshop in London to seek advice from global water experts and discuss how to best apply the TAI toolkit to the water sector. Based on these initial discussions, TAI launched water case studies in four countries: **CHILE**, **ESTONIA**, **IRELAND** and **MEXICO**. The resulting reports are currently under peer review and can be seen in their draft form at http://www.accessinitiative.org/partnerpages/water_working_group.htm.

Moving forward, TAI partners are planning follow-up workshops to build on these water studies. In Estonia, for example, an upcoming meeting will convene stakeholders from government and civil society to discuss the case study findings and evaluate options for implementing their recommendations nationally. In April 2006, TAI partners from around the world will have the opportunity to discuss the pilot studies at the TAI Global Meeting in Bangkok, and to further refine the guidelines for applying the TAI assessment toolkit to the water sector.

Findings from the pilot cases are summarized in this flyer's tables, followed by general recommendations for addressing the access principles in the water sector.

THE LEGAL FRAMEWORK

National law lays the foundation upon which citizens rely for protecting their access rights. TAI's water pilot studies evaluated relevant constitutional rights such as free speech and assembly, as well as important national laws underpinning water policy, freedom of information, and the judicial system.

Country	Key Findings
CHILE	<ul style="list-style-type: none"> The right to a clean environment is addressed in Chile's Constitution, which states that the State will be the steward for the preservation of nature. Chile has no single government body dedicated to the care, conservation, and management of the resource. This results in minimal collection of and access to information concerning water. A recent amendment to the Constitution introduces the principle that the acts and resolutions of State agencies must be published. Nevertheless, no clear mechanism obligates authorities to provide information, leaving such action at the discretion of public officials. The General Law on the Environment establishes mechanisms for public participation in Environmental Impact Assessments, the elaboration of regulations, and in consultative councils. All individuals have the right to legal defense and any citizen can sue for environmental damages, as is described in the General Law on the Environment.

ESTONIA

- The basis for recognizing the right to a clean and safe environment is present in the Estonian Constitution, especially because the Aarhus Convention is an inseparable part of the legal system. However, court interpretations that would formalize this right are still lacking.
- National laws provide for public access to most relevant information regarding surface and ground water.
- The lack of access to information provisions in the Water Act means that authorities may keep some information valuable for water-related decisions "internal" under vague provisions in the Public Information Act.
- Interpretation of "standing" in the justice system varies considerably depending on whether a case concerns the environment. In general, standing is limited to affected persons, but under Aarhus Convention provisions is much wider for environmental cases.

IRELAND

- The legal basis for transparent and participatory water governance is improving as European Union directives are transposed into Irish law.
- The Irish Constitution does not cover specific environmental or access rights, but rights to 'bodily integrity' and 'fair procedures in decision making' provide a strong legal basis for many relevant legal claims.
- Government-sponsored free legal aid is available in Ireland, but barriers limit its use in some water-related cases. For example, it is not available for proceedings before a Planning Board or the Environmental Protection Agency.

MEXICO

- The Political Constitution of Mexico duly protects the fundamental right to enjoy an environment that is adequate for development.
- Mexico has a Federal Law of Transparency and Access to Public Governmental Information, which is intended to regulate and generate information and citizen participation. 27 of 31 states have approved local laws covering transparency and access to information.
- In Mexico there are still no federal standards that regulate citizen participation. However, the recently published Federal Law for Promoting Activities by Civil Society Organizations is intended to include interested parties in programs and actions that bring about social benefits.
- The General Law on Ecological Balance and the Protection of the Environment includes a specific chapter on social participation and environmental information, describing clear mechanisms for the exercise of these rights.
- Mexico has a National Water Law in which the functions of the National Water Commission are regulated.

ACCESS TO INFORMATION

The TAI assessment indicators examine the type, quality and quantity of data available to the public, as well as the scope and quality of systems for its dissemination to the public.

Case Study

Key Findings

CHILE

WATER ECOSYSTEM IMPACTS OF THE PASCUALAMA MINING PROJECT

The Barrick Gold Corporation's Pascua Lama project extracts gold, silver and copper in the Atacama region, where the ecosystem is mainly supported by melt water from nearby glaciers. In 2000-01, Barrick submitted an EIA for moving parts of 3 glaciers allocated on the area. The company was forced to redo its EIA, which was approved by the environmental authority in 2005 with the stipulation that the project not interfere with the glaciers.

ESTONIA

INFORMATION ABOUT THE STATE OF ESTONIAN GROUNDWATER AND SURFACE WATER

National surface and groundwater monitoring data is managed by the Estonian Ministry of Environment's Environment Information Center (EEIC), which maintains five different national environmental databases or information systems.

- The principle source of information on economic projects with social-environmental impacts is the System for Environmental Impact Assessments. The information is very technical and administrative; it is often not integrated, and is difficult for the general public to access.
- There is a lack of timely and formal response by environmental authority officials. Of 35 requests for information only 14 received a response and none of these offered complete or relevant answers.
- There was no training on access to information issues provided for the staff involved with the case over the last 3 years.
- The affected individuals had only 60 days to review the information and prepare their observations and comments.
- Limited information and material was disseminated in the area of direct impact within the time period allowed for public comment. No information was made available in public agencies, libraries, nor universities.
- Water quality monitoring information is easily available, but uses difficult scientific language and a large number of indicators.
- Publications exist in non-technical language addressing threats to human health and safety, but they are more difficult to obtain than specialized data.
- Local authorities do not receive monitoring information, and paper versions of reports are hard to find outside the capital.
- EEIC officials respond quickly to information requests, and are viewed as effective.
- Over-reliance on the Internet means that many citizens cannot access water information. (55% of Estonians aged 15-74 use the Internet.)



IRELAND

MOHERCREGG GROUP WATER SCHEME WATER MONITORING SYSTEM.

The Mohercragg Group Water Scheme is a community-run, community-owned network of 201 water users, and is typical of the 778 Group Water Schemes (GWS) in rural Ireland. Over the past five years, the Mohercragg GWS has experienced six instances of pollution by E. coli, a dangerous bacterium caused by fecal contamination.

MEXICO:

WATER QUALITY IN THE FEDERAL DISTRICT.

The National Water Commission and the Mexican City Water System are the government agencies responsible for providing information regarding water quality indicators in the Federal District and its 16 political divisions. At the moment, the information systems available to the public only address levels of chlorine, excluding all information regarding other contaminants.

- It is not easy to get access to up-to-date water monitoring information, and generally only raw data is available.
- The agency responsible for monitoring water quality is not the one responsible for informing consumers of health risks. There is typically a time delay of over ten days between when water sampling finds E. coli and when consumers receive notices to boil their water.
- Consumers know what to do to prevent illness, but there is as yet no action to address the root of the problem.
- The Federal and Federal District Laws of Transparency and Access to Public Governmental Information have not been sufficiently popularized and distributed to achieve their assimilation and incorporation as a tool frequently used by civil society.
- An information system with the results of all of the parameters of measuring water quality is being elaborated, as established by Mexican Official Standard. Though it is hoped that they will be ready this year, there are 127 standards on potable water that are not available.
- Water quality information is available in the web pages of the water authorities and updated twice a year. The National Water Commission and the Federal District Water System also provide some web-based information, but only pertaining to the chlorine content of the water.
- "Water Statistics" notebooks developed by the National Secretary of the Environment and Natural Resources and the National Water Commission also provide information on water quality.



PUBLIC PARTICIPATION

TAI water pilot studies examined key characteristics of public participation in water management policies, as well as project-level decisions that affect water quality and availability.

Case Study	Key Findings
<p>CHILE PUBLIC PARTICIPATION ON THE DESIGN AND DEVELOPMENT OF MULTIPLE-USE MARINE AND COASTAL PROTECTED AREAS.</p> <p>The National Commission of the Environment and the Global Environmental Facility are in charge of the project, where they piloted Chile's first systematic process for consulting with local communities and other stakeholders. The long-term objective is the design and implementation of an integrated system for management of a set of protected areas. The areas covered by the project are located in the Atacama Region, the Lakes Region, and the Region of Magalanes in Chilean Antarctica.</p>	<ul style="list-style-type: none"> • Participation in environmental issues in Chile is limited to Environmental Impact Studies. There is no history of public participation in conservation or environmental management projects. • There was active generation of mechanisms to create institutional agreements at a regional and municipal level for the implementation of the Project. • Information about the design and development of the Project was shared in a timely manner through numerous multi-stakeholder meetings in the field. • There has been no creation of a systematic register of the results of the meetings, which prevents the public from reviewing and evaluating the process. • Due to the early incorporation of the participation process, the final decisions were able to include the public comments.
<p>ESTONIA VIRU-PEIPSI WATER MANAGEMENT PLAN</p> <p>The preparation of the Water Management Plan for the Viru-Peipsi catchment area (38% of the territory of Estonia) was launched by EEIC in 2002. Public discussions were held in six counties, but few members of the public were involved, relative to representatives of enterprises, local authorities, and national government.</p>	<ul style="list-style-type: none"> • The law sets clear norms for public participation, but they were not well implemented in this case. • Notification of the start of the Water Management Plan (WMP) decision process was neither widespread nor sufficiently detailed to engage the public. • Requests for lists of water sector decisions were addressed promptly, though public registries of decisions and public input are not maintained. • Voluntary trainings in public participation are provided for Ministry of Environment (MoE) staff, and public participation guidelines are under development. • Inappropriate definitions of "the public" on the part of MoE staff, together with the staff assumption that the WMP is not highly relevant to citizens' lives, contributed to the low public participation rate.

IRELAND

MOHERCREGG GROUP WATER SCHEME WATER TREATMENT DECISION.

The 2003 Drinking Water Regulation requires all drinking water in Ireland to be free of E. coli. In deciding how to bring their water up to standard, the community-owned Mohercregg GWS encountered problems related to power-sharing with the Sanitary Authority responsible for the law's implementation in their basin district.

- The GWS faced pressure to relinquish control of their water supply in order to make their treatment contract a commercial proposition by bundling it with other GWSs.
- GWS members had difficulty obtaining accurate information regarding treatment options available under the law and the financial consequences of each option, and were sometimes misinformed by Sanitary Authority officials.
- Poor record-keeping made the decision process difficult to track.
- The Sanitary Authority's appointment of a consultant to act as the GWS's 'Clients Representative' was seen as a decision in which the community had no part.

MEXICO

WATER BASIN COUNCILS STRATEGY

The National Water Law includes the obligation of The National Water Commission to establish Water Basin Councils in order to preserve and protect water resources. Each council is mandated to include representatives of federal, state and municipal authorities as well representatives of water consumers and civil society organizations.

At the moment, twenty five water basin councils have been installed throughout the Mexican Republic.

- Recent reforms to the National Water Law include the obligation of the Federal Executive to generate participation amongst consumers in the administration of the system and services. This same regulation obliges the National Water Commission to consult the different actors involved, through the Watershed Councils, in order to register their opinions and proposals in terms of planning, identifying problems, and developing strategy for management, as well as evaluating the supply sources in terms of sustainable development.
- Informative meetings were held in the four states involved in the Watershed Council of the Valley of Mexico (Hidalgo, Tlaxcala, Mexico, and the Federal District), involving a variety of consumers of water, all with different needs and objectives. Related to this, there are guidelines for participation described in the Rules of Organization and Operation of the Watershed Councils.
- The public comments gathered during these meetings received an immediate response from public officials. To this date, observations and suggestions continue to be received through the web page of the Watershed Council of the Valley of Mexico, as well as during working groups.



ACCESS TO JUSTICE

TAP's pilot water studies examined instances where citizens have contested development projects with negative impacts on water resources.

Case Study	Key Findings
<p>CHILE SUIT IN THE AYSÉN COURT AGAINST THE GOVERNMENT TO STOP THE ALUMYSA ENERGY AND ALUMINUM PROJECT.</p> <p>The Alumysa Project included the construction of an aluminum production facility and three hydro power plants, which would cause two important lakes in the Aysén region to disappear. These lakes represent one of the most important reserves of water in South America. A non-governmental organization sued the government in the Aysén Court because of inconsistency in exploitation rights given to the Project Alumysa Society between 1988 and 1997. Eventually, the company decided to cancel the EIA and the project.</p>	<ul style="list-style-type: none">• The water statutes grant to private individuals the absolute right to exploit, possess, use, and dispose of the water as they see fit, making it difficult to file suit and win any legal actions concerning the rights granted.• The judicial system does not contemplate mechanisms for information and training for their personnel, much less for those who specifically attend to cases having to do with the use of water.• The agency of judicial assistance does not offer an efficient orientation to the citizenry for the use of the tribunals, and the priority of attending to cases related to water resources or the environment is very low.• The costs of a claim and sue are often beyond what is possible for the affected community to pay.
<p>ESTONIA PEAT EXTRACTION PERMIT IN ESS-SOO MARSH</p> <p>A partnership of citizens, Roheline Urvaste, brought a claim against the Vorumaa Environmental Department for its decision to issue a peat extraction permit to the OU Ketel Voru company without requiring an environmental impact assessment. The claim is currently pending an appeal in the Circuit Court, following a dismissal of the claim by a lower court.</p>	<ul style="list-style-type: none">• Estonia has a good legal framework for access to justice, including appeals procedures, transparency of proceedings, and reasonable, transparent timelines.• Broad standing for civil society organizations in environmental cases is based on international law (the Aarhus Convention). In this case, it covered individuals forming a private partnership on a contractual basis expressly for the purpose of the claim.• Claimants relied on free legal aid from an environmental NGO, without which they would not have had the knowledge of the justice system needed for bringing the claim to court.
<p>IRELAND JUDICIAL REVIEW OF EIA REQUIREMENTS FOR PIGGERY DEVELOPMENT AT BALLYRAGGET.</p> <p>The Noreside Environmental Protection Group contested a Kilkenny County Council decision to allow the development of a piggery without requiring an environmental impact assessment. The decision was upheld by the Planning Appeals Board, but subsequent judicial review found that the Planning Appeals Board had misinterpreted regulations, and that the piggery in fact reached the size threshold requiring such an assessment.</p>	<ul style="list-style-type: none">• Information available through various agencies and venues made the appeals process clear and understandable.• Financial costs posed a barrier to bringing a claim.• Under changes in the Planning and Development act of 2000, the workload of the Planning Appeals Board has increased, without a proportional increase in staff.

MEXICO

POPULAR COMPLAINT AGAINST THE WHARF BUILDING IN PLAYA DEL CARMEN, QUINTANA ROO.

A Mexican company promoted the construction of 2 medium wharfs in the Caribbean next to an important coral reef. Citizens brought a "Popular Complaint," which is a legal instrument available to every person, group and organization, to inform the environmental authority of a crime or irregularity that could cause an environmental harm. However, this mechanism only allows people to let the environmental authority know about the situation, without being able to directly access a court of law.

- The Judicial System continues to suffer from serious setbacks and delays in training programs to increase the understanding of environmental affairs. There are no specialized courts, and neither is there concrete legislation for the assignment of responsibility for environmental damages.
- The judges need a better understanding of the law and public ministers need training in order to have a better sense of environmental issues.
- Environmental justice in Mexico faces problems with the effective application of the law. The root of these problems is institutional, budgetary, and in some cases, due to a lack of political will. As well, there is a need for advancement in the perfection of the legal framework.

GENERAL RECOMMENDATIONS

Specific recommendations for the national governments of Chile, Estonia, Ireland and Mexico, are available in the draft reports at http://www.accessinitiative.org/partnerpages/water_working_group.htm. In addition, trends across the studies suggest the following recommendations for water governance in general:

✓ LEGAL FRAMEWORK

Our cases suggest that the general legal framework for protecting access rights is further developed than specific provisions needed for transparency, participation and accountability in the water sector. Governments should enact water-specific legislation and regulations to uphold citizens' access rights in this critical sector. Where a legal framework exists for implementing the access principles in the water sector, governments should focus on closing the gap between law and practice. This entails the development of institutional infrastructure and staff capacity.

✓ ACCESS TO INFORMATION

Systems for collecting, managing, and disseminating water information need to be integrated. In particular, they need to better involve local authorities and Environment Ministry subordinate offices.

Governments should make a greater effort to disseminate water information in language comprehensible to the public, avoiding purely technical and administrative information. Access to easily understandable information is especially needed for raising public awareness regarding the importance of water.

✓ PUBLIC PARTICIPATION

Processes for public participation are needed in all the steps of a decision, from initial consultation to issuing of the decision, to implementation and review of the decision.

Special attention to broadening public participation in water decisions is needed early in the decision-making process. Governments should actively reach out to stakeholders, and build the capacity of the public to take part in decisions.

The creation of watershed-based institutions for involving citizens in the management of water is a new process that requires new systems for sharing responsibilities between government agencies and organized society.

✓ ACCESS TO JUSTICE

Judicial forums should give effective advice or counseling to citizens about the requirements and procedures for making a claim and following judicial processes regarding water complaints.

Training to public officers in relevant judicial forums regarding environmental and water issues is necessary to have adequate access to justice.

Governments should provide free legal aid to citizens, and make sure it is applicable to the judicial forums in which water cases are heard.