

# A Review of the Environmental Democracy Index Pilot Tests

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## Background

For over a decade, the Access Initiative (TAI) has grown to be the largest network of civil society organizations dedicated to research, advocacy and capacity-building to promote access to information, public participation, and access to justice in environmental matters—Principle 10 of the Rio Declaration, also known as the environmental democracy principle. TAI partners have conducted rigorous assessments of laws, capacities, and implementation in 50+ countries, which have led to dozens of reforms.

In 2010, the United Nations Environment Programme’s Governing Council unanimously adopted the “Guidelines for the Development of National Legislation on Access to Information, Public Participation, and Access to Justice in Environmental Matters” in Bali, Indonesia—referred to as the “Bali Guidelines”. They are comprised of 26 guidelines, each pertaining to one of the three pillars of Principle 10. They elaborate upon Principle 10, providing more specific guidance for governments to design, adopt, and implement legislation. While the Bali Guidelines are not binding like the Aarhus Convention (a regional convention for the UN Economic Commission for Europe), they do draw upon legally-binding norms established in the Aarhus Convention. The Guidelines also reflected the growing recognition that access rights are fundamental to sustainable development.

The adoption of the Bali Guidelines presents an opportunity for civil society advocates and government champions to measure their country’s progress against an international standard. However, to do so would require a tool that enables the current state of laws to be assessed, scored, and benchmarked for future evaluation. With this in mind, TAI developed the pilot Environmental Democracy Index—79 indicators under 23<sup>1</sup> of the Guidelines that could be used to assess countries’ laws. The indicators were piloted in 13 countries in the fall of 2013.

## Country Selection

The TAI Secretariat at WRI provided all TAI partners with an opportunity to indicate an interest in participating in the pilot. From this list, partners were chosen on a basis of geographical diversity and legal experience. Partners were then asked to nominate one researcher and one reviewer. In some cases, partners self-nominated and in other cases outside or affiliated civil society lawyers were nominated.

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<sup>1</sup> The three guidelines dealing with capacity building, and not laws, were left out

**Table 1: EDI Pilot Countries, Researchers, and Reviewers**

Country	Researcher	Reviewer
<b>Cambodia</b>	Huon Chundy	Sokha Am
<b>Cameroon</b>	Justice Nchunu	Camila Nkwente
<b>Colombia</b>	Ana Lucia Maya Aguirre	Libardo Herreno
<b>Ecuador</b>	Sofia Suarez	Hugo Echeverria
<b>Hungary</b>	Csaba Kiss	Fulop Sandor
<b>India</b>	Krishnendu Mukherjee	Geetanjoy Sahu
<b>Indonesia</b>	Dessy Eko Prayitno	Yustisia Rahman
<b>Ireland</b>	David Browne	Andrew Jackson
<b>Kenya</b>	Benedette Mutuku	Benson Ochieng
<b>Mexico</b>	Juan Carlos Carillo	Tomas Severino
<b>Panama</b>	Luisa Arauz	Juan Diego Alvarado
<b>Turkey</b>	Yusef Gunes	Aynur Aydin
<b>Uganda</b>	Dan Ngabirano	Irene Ssekyana

## Training

TAI is using Global Integrity’s Indaba Platform to host the indicator research. Indaba facilitates collaborative research, review, and communication, clarifying workflow, responsibilities and allowing for transparency in research and methodology. TAI provided trainings for the researcher and reviewer for each country (13 trainings in all) along with an Indaba tip guide for reference.

The trainings were effective overall, based on the survey responses of participants and the general degree of ease with which participants used the Indaba interface, but there was still room for improvement.

All materials, including the indicators and tip sheet, were translated into Spanish for the pilot tests. However, due to a lack of funding and time, TAI was not able to provide a French version.

Revisions: Providing individual trainings for each country will not be feasible for the 2014 Index, so instead 3-5 trainings will be scheduled with multiple participants. These will be scheduled at different hours of the day to accommodate different time zones. For the 2014 Index, the indicators and instructions will be translated into French for francophone participants.

## Research and Review

There are four stages to the research and review:

1. Legal Researcher: This role is held by a lawyer native to the country who is well-versed in laws and statutes surrounding environmental democracy. The researcher was compensated US\$1000 by the TAI Secretariat. The researcher was responsible for

scoring the indicators, providing the sources to justify the scores and providing relevant comments to explain the score

2. National Reviewer: This role is held by an environmental democracy expert native to the country. In the pilot phase this role was not required to be a lawyer, however that requirement will be in place for the 2014 index. The reviewer was asked to provide his/her time on a voluntary basis.
3. Secretariat Reviewer: TAI Secretariat staff held this role. The Secretariat reviewer reviews the researcher's scores and comments as well as the national reviewer's comments. In the case of a disagreement between the researcher and national reviewer, the Secretariat will send a question back to the appropriate party. The Secretariat also provides a second review of the scores, sources, and rationale, and raises his/her own questions to the researcher.
4. Final Approval: The TAI Secretariat staff also fills this role, although the final reviewer is never the same person as the secretariat reviewer for any given country. The final reviewer checks scoring and reviews for consistency and sends any final questions back to other parties.

#### *Revisions and changes*

For the 2014 Index, new stipulations and requirements have been added to ensure consistency and accuracy. National reviewers are now required to be credentialed lawyers as well, so that they can more critically evaluate the researchers' work. To ensure independence and critical review, TAI partners have been encouraged to nominate senior lawyers or retired judges who are unaffiliated with the researcher, preferably from the public sector. The reviewer will also be compensated US\$300 for his/her time, as an incentive and recognition for the time required.

**Table 2: Improving the work flow: Lessons from the pilot tests**

Stage	Time	Effort	Cost	Solution
<b>Recruitment of researchers and reviewers</b>	1.5 months	Low	Negligible, as this was accomplished by a few emails	Recruitment for the 2014 index is expected to take much more time, as standards have been adjusted and personnel are needed in non-TAI countries
<b>Contracting</b>	3-4 months	Medium	The pilots demonstrated that contracting for 150 individuals during the 2014 index would require significantly more staff time than initially expected.	TAI is recruiting an administrative intern
<b>Training</b>	1.5 months	Low	1-2 hours of staff time were needed for each training session. 13 were conducted (one for each country)	While countries were trained individually in the pilots, this would not be feasible for 75 countries. Instead, 3-5 training sessions will be held at different times of the day for multiple researchers and reviewers.
<b>Research</b>	4 months	High	While some researchers were able to meet the deadlines set, the majority needed extensions of weeks and even months. Initially estimated at 3 full working days, the time needed to complete the research is now more accurately estimated at 5-6 working days.	Indicator wording and guidance has been clarified. Training modules will help to address areas of confusion. The scope of the indicators has been limited in some cases to make work more manageable.
<b>Local Review</b>	1-2 months	Medium	The review process took considerably longer than expected. Part of this is likely due to the lack	In the 2014 EDI, reviewers will be compensated US\$300 for their

			financial incentive in the pilot studies—the reviewers were not paid. In other cases, the reviewers did not allocate the time required and in a few cases did not appear to be qualified to review the material. The time required to review, based on the pilots is closer to 1-2 working days	work. This incentive is expected to encourage the work pace. Reviewers will also receive a more tailored training by TAI staff.
<b>Secretariat Review</b>	6-10 hours per country	Medium	The Secretariat review took somewhat longer than expected. The amount of time needed depended on the clarity and thoroughness of the researcher in explaining their score selections and providing sources.	The requirements for researchers are being clarified so that less time is needed to check work.
<b>Final Review</b>	3-4 hours per country	Low/Medium	The final review checked for consistency and followed up on any lingering questions, but overall it was less time intensive than the secretariat review	

## From EDLI to EDI

After listening to feedback from partners, stakeholders, and other experts, the TAI Secretariat decided to add indicators that would focus on measuring implementation in addition to the law itself. TAI had originally avoided including indicators on implementation due to a few key methodological and practical concerns.

The first concern comes from 10+ years of TAI country assessments, which include evaluations of how well laws work in practice. While assessing implementation is essential to know how well the law is working in practice, its evaluation is prone to subjectivity and methodological weaknesses which can hinder comparisons across countries.

The second concern is more practical: measuring implementation can be very costly, in terms of time and resources. In some cases it may involve sending information requests or meeting with multiple agencies to obtain information which may or may not be readily available. EDI is intended to be a low-cost assessment that can be repeated every two years.



Ultimately, TAI chose to create a limited set of indicators on implementation while attempting to address these concerns.

- **Implementation “Snapshot”:** Rather than attempting to be comprehensive, the indicators focus on key aspects of implementation for each pillar. This snapshot will still provide useful information without becoming too costly or difficult to complete.
- **Easily retrievable information:** The implementation indicators have been developed so that they may be answered through modest online research or a few phone calls. Examples include: “Are Environmental Impact Assessments for development projects available online or at a national government agency for public access?” and “In the last 5 years, have public interest environmental cases filed by NGOs been rejected because of lack of legal standing?”
- **Discrete indicators:** Because they are not comprehensive and do not pertain to every guideline, the implementation indicators are scored differently and kept separate from the legal indicator scores. Instead of being scored 0-3, they will be scored as “Yes”, “Limited”, or “No”, which will be displayed on the website in the green, yellow, and red of a traffic signal.

All practice indicators were reviewed by pilot participants and TAI Core Team members. With the addition of the practice indicators, TAI simplified the name to the “Environmental Democracy Index”. However, the authors stress that these indicators do not attempt to comprehensively assess implementation of all of the Bali Guidelines. Those Guidelines for which indicators have been created are those that lend themselves to more rapid evaluation.

**Table 2: Major issues identified in the pilot tests**

Issue Type	Issue Details	Solution
<b>Usefulness of Index/tool in advocacy and campaigns</b>	While partners were very supportive of the legal indicators, some expressed interest in developing indicators measuring implementation of P10 laws as well. Initially these had been kept out of EDLI because of issues of methodology and the time required.	A discrete set of ~20 implementation indicators have been developed. These indicators are not comprehensive and do not fall under all of the guidelines. They do provide an implementation snapshot however. The name of the Index has since been changed to the Environmental Democracy Index (EDI).
<b>Indicator clarity</b>	The wording of some indicators led to confusion among researchers	Indicators were thoroughly revised, in some cases disaggregated or otherwise simplified so that interpretation was less ambiguous and scoring more consistent.



<b>Methodology</b>	Some pillar-level and country-level scores did not meet expectations and in some cases seemed far too high or low.	Researchers will need to source their scoring more rigorously and provide a narrative defending the score. Reviewers will be trained on how to critically assess the score. Secretariat review will be expected to review on all relevant provisions.
<b>Scope</b>	While the pilot index narrowed the scope of sectoral laws to be reviewed, the scope may still be too large to be manageable.	The scope of sectoral laws to review has been narrowed to air and water quality, forests, EIA regulations, extractives, and cities.

### Pilot Scores

See Table 4 for a summary of the pilot scores.

The pilot scores provided a few key lessons:

- The quality of legal protections for procedural rights varies not only across pillars, but within pillars. In some cases, countries were very strong on 1-2 guidelines within a pillar, but the law was silent on others.
- Access to environmental information scores may vary from overall access to information scores, like those created by the RTI Rating Index. This may be because of contradictory language between the laws or stronger sectoral laws.
- How to interpret the law can vary significantly by national context or individual. In order to ensure accuracy and consistency between the scores, more explanation of the expectations in scoring will be included in the training.

**Table 3: Summary of Pilot Scores**

Country	Access to Information	Public Participation	Access to Justice	Overall
<b>Hungary</b>	2.47	2.42	2.33	2.41
<b>Ireland</b>	2.6	2.1	1.94	2.21
<b>Colombia</b>	1.96	1.63	2.36	1.98
<b>Panama</b>	1.78	1.69	2.36	1.98
<b>Indonesia</b>	1.96	1.56	1.78	1.77
<b>Turkey</b>	2.11	1.43	1.63	1.72
<b>India</b>	1.35	1.42	1.88	1.58
<b>Ecuador</b>	1.12	1.51	2.06	1.56
<b>Cambodia</b>	1.15	1.36	1.99	1.5
<b>Uganda</b>	1.49	1.25	1.72	1.49
<b>Mexico</b>	2.31	0.74	1.21	1.42
<b>Kenya</b>	1.17	1.19	1.9	1.42
<b>Cameroon</b>	0.73	1.33	0.62	0.78