

# PUBLIC PARTICIPATION AND ACCESS

In 2001-2002, a global coalition of 25 civil society groups called the Access Initiative measured the public's ability to participate in decisions about the environment. For this pilot assessment, the Access Initiative focused on laws and public experiences in nine countries: Chile, Hungary, India, Indonesia, Mexico, South Africa, Thailand, Uganda, and the United States. These countries vary in terms of income levels, development paths, literacy rates, natural resource dependency, and cultural and political traditions. The findings, summarized here, give a good indication of public access to environmental decision-making around the world.

## **Why Does "Access" Matter?**

Access to environmental information is important because an informed public is more alert to problems, more apt to challenge assumptions of government or corporate decision-makers, more capable of discussing issues, and more likely to organize for social and political change. Access to decision-making matters because people want and need to shape the choices that affect their well-being—the quality of the air they breathe, the purity of the water they drink, the aesthetics of their neighborhood, the availability of forests that are a source of fuel or food, the wildness of their favorite place to hike. When people have access to justice—where independent courts supply remedy and redress free from politics—there is greater accountability for decisions that affect the environment.



**T**he Access Initiative framed its assessment around the three elements of Principle 10 of the 1992 Rio Declaration, which asserts that access to information, to the decision-making process, and to a system of justice are all essential components of a comprehensive system of public participation. Assessment teams in each of the pilot test countries used a common methodology, including the review of planning documents, legislation, and court cases; interviews with government officials and non-governmental organizations (NGOs); questionnaires; requests for information; and media analysis (see Box 3.1). Using this material, the assessment teams examined how well public authorities provide:

1. **ACCESS TO ENVIRONMENTAL INFORMATION.** Public information is one of the cornerstones of sustainable development strategies. Access to environmental information enables the public to make informed personal choices, contributes to the protection of the environment, and encourages improved environmental performance by industry.

The Access Initiative focused on access to four critical types of environmental information:

- *Information about day-to-day environmental quality, such as air and water quality, which helps people decide whether children should play outside, whether to drink water from the tap, or whether to take other*

actions to lessen environmental impacts on their health

- *Information about environmental trends over time, which creates a more enlightened public—one that is better able to connect its actions to environmental consequences, more likely to support policies that minimize environmental harm, and more able to hold decision-makers accountable*
- *Information about pollution from industrial facilities, which empowers NGOs, investors, neighbors, and consumers to press for responsible corporate citizenship*
- *Information about emergency situations and risks, which enables people to protect their health or environment during events such as a cholera outbreak or a fire at an industrial plant.*

These categories represent a minimum standard for public authorities to use in providing environmental information.

Access Initiative researchers looked at specific cases of government practice and industrial reporting. They rated governments on how well they generate and manage environmental information and on how easily citizens can obtain comprehensive information in a timely manner,



usable format, and appropriate language. They did not specifically rate the accuracy of the information, but stressed the efforts made to collect and disseminate it. For example, in examining the response to a fire at a chemical factory in Viña del Mar, Chile in 2000, the Access Initiative found that public authorities provided neighboring communities information that was incomplete and too late to be useful. Accordingly, the Viña del Mar case rated “low” for access to information. The assessment teams also examined the framework of laws and regulations to determine each country’s commitment to support people’s access to environmental information through clearly defined and enforceable rights.

## 2. ACCESS TO DECISION-MAKING AFFECTING THE ENVIRONMENT.

To get an indication of public participation in practice, the Access Initiative evaluated several specific kinds of decisions with environmental impacts and the degree to which a broad set of stakeholders or interested groups were able to participate early, easily, and substantively in each kind. Researchers examined how much opportunity the public has to influence:

- *National policies and plans*, including broad environmental and economic policies, such as South Africa’s water management policy, or Thailand’s national provisions for siting power plants
- *Provincial and local policies and plans*, such as regional development plans in Hungary, and other sub-national decisions that affect natural resources
- *The design of environmentally significant projects*, such as the licensing of a power plant in the United States, or approval of a discharge permit at a wastewater plant in Uganda.

Scores given for each of these categories were based on when and how easily people could participate, and the degree to which authorities took public feedback into account. For example, researchers looked at when, how, and who was notified about pending decisions and opportunities for input such as public hearings or comment periods. They also looked for the presence of laws and regulations ensuring people’s rights to participate in environmental decisions.

3. *ACCESS TO JUSTICE AND REMEDY.* The Access Initiative evaluated whether individuals and organizations can seek legal remedy and redress when there is a failure to provide information or involve the public in decisions as required by law, or when citizens wish to dispute a decision or have it independently reviewed. Researchers scored countries on indicators of:

- *Enforceable rights and legal standing*, particularly the legal guarantees and provisions for access to information and participation that enable individuals and organizations to build a legal case. Just as important is the matter of “legal standing,” or the eligibility to defend one’s rights in court, to file a suit, or post a grievance
- *A process for review of disputed plans and policies*, including the presence of an independent, impartial, and ably administered judiciary, and the availability of review mechanisms in specific decisions such as the awarding of timber or mining concessions.

Access Initiative research teams also looked at practical considerations that can limit access to justice, such as the affordability of judicial and administrative services and legal help, or the time required for an appeal process.

The Access Initiative findings provide more than just a picture of the state of environmental democracy in individual countries. The results reveal common accomplishments and failures across countries, pointing to the challenges that face most nations as they try to create effective national systems of access for their citizens.

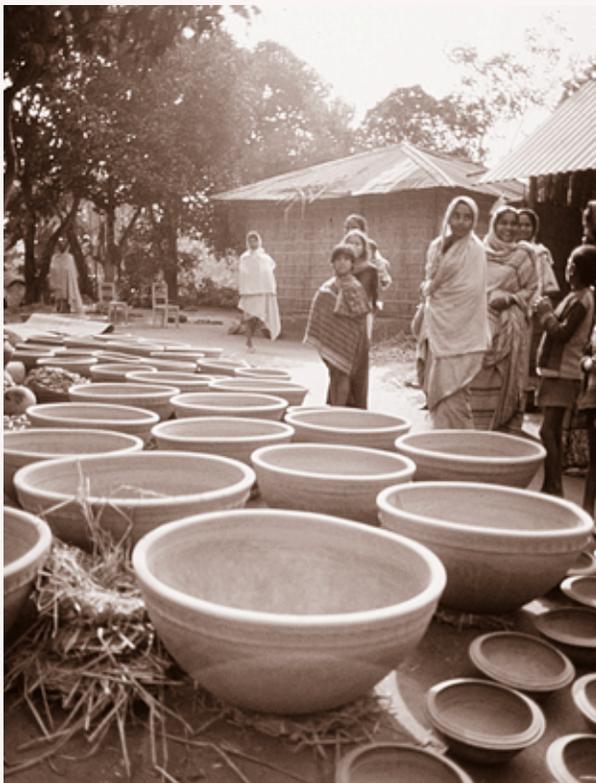


## Box 3.1 Measuring Access

To assess how well a country is fighting poverty, you can turn to data on income, life expectancy, access to clean water, the percentage of people living below the poverty line, and undernourishment. Do you want to know how well a country is educating its citizens relative to other countries? It's fairly easy to find statistics on school enrollment and literacy rates. But what if you're interested in a country's performance on environmental governance? This is much harder to measure, with few objective, widely accepted indicators (UNDP 2002:36), since good environmental governance embodies not only environmental sustainability, but also human rights, political freedoms, transparency, and more.

Efforts are under way to fill this gap. For example:

- The Environmental Sustainability Index (ESI) is an assessment of 142 countries conducted by the World Economic Forum, Yale University, and Columbia University. It includes indicators of environmental governance such as people's "capacity for debate" estimated with data on democratic institutions, and civil and political liberties (World Economic Forum 2002:1).
- In the Human Development Report, the United Nations Development Programme offers a collection of objective indicators of governance (such as voter turnout or the existence of competitive elections) and subjective indicators (such as expert assessments of government effectiveness, corruption, and other aspects of a country's degree of democracy) for 173 countries (UNDP 2002:36–45).
- The World Bank calculates governance indicators for 175 countries that capture characteristics of the political process, civil liberties, and political rights, including citizen participation in the selection of government and the independence of the media (Kaufman et al. 2002:1).
- *The Wellbeing of Nations* is a survey of 180 countries conducted in collaboration with the International Development



Research Centre, IUCN, and other research institutes. It combines measures of environmental conditions with measures of respect for human rights; the freedom to choose how decisions are made and who makes them; and the openness, accountability, and effectiveness of decision-making bodies (Prescott-Allen 2001).

These studies rely on existing data from surveys and from other organizations. There are also efforts to generate new data specifically on environmental governance, including country self-assessments organized by the United Nations Commission on Sustainable Development, environmental performance reviews organized by the Organisation for Economic Co-operation and Development and the United Nations

Economic Commission for Europe, and an effort in Russia by a civil society coalition to assess governance practices related to freedom of information (UNCSD 2002; Russian Journalists' Union 2001).

### The Access Initiative Methodology

The Access Initiative is also generating new country-level data on environmental governance. Specifically, the initiative has developed a framework of indicators that measure a country's progress toward implementation of the access principles articulated in Principle 10 of the 1992 Rio Declaration. The methodology was crafted by an international team convened by the World Resources Institute (U.S.), the Environmental Management and Law Association (Hungary), Corporación PARTICIPA (Chile), Thailand Environment Institute, and Advocates Coalition for Development and the Environment (Uganda).

Research questions are designed to assess both a country's policies on and practice of the access principles. Some of the resulting analysis is based on observable measures of access. For example, an observable measure of access to information is whether a government has published a State of the Environment Report in the prior three years, the degree to which that report contains comprehensive data, and the extent of proactive efforts to provide the report to the public

and the media. Another measurable indicator is the number of groups a government consults before going ahead with a project. Other indicators are opinion-based. For example, to measure meaningful participation, Access Initiative teams surveyed experts on the degree to which public input influenced government decision-making related to a project or policy.

One aspect of access that the initiative did not measure is the role of legislatures and parliaments as a means of public participation in environmental governance. In many cases, citizens can lobby legislators on environmental issues of concern and influence legislative policies and oversight. However, the Access Initiative did not assess legislative performance or how well legislators represented their constituents' environmental interests. Instead, it focused on the efforts of non-elected government officials to extend access to citizens, and the access implications of government and judicial policies in practice.

The methodology for the nine pilot national assessments relied on more than 100 indicators; 79 were applied by all or most of the national teams and allow for some general conclusions about performance. These indicators form the basis of the Access Scorecard (see Figure 3.1).

The Access Initiative methodology has strengths and weaknesses. A strength is its relative ease of use and its global relevance: the nine national teams were able to apply most portions of the framework without making significant modifications. In most cases, assessments were completed in a matter of months and without excessive costs in spite of the great differences between countries. The assessment results have enabled several research teams to enter into constructive dialogue with national governments about ways to improve performance.

Although the Access Initiative offers a "standard" approach to measuring access, it also encouraged research teams to adapt the methodology to their own national circumstances. This sacrifices a degree of comparability across countries in the interest of country-specific relevance.

Another problem is that not all teams followed the suggested common criteria for case selection. Nor were all indicators applied by all teams. Sometimes teams proposed and pursued alternatives. South Africa, for example, assessed the investment of the government in environmental education using a survey. No other country used a survey method for this indicator, making it difficult to compare South Africa's findings with those from other countries.

The framework of indicators was revised based on the experiences of the nine pilot test countries. Ideally, additional countries will refine and use this set of standard indicators to conduct regular assessments of the performance of public authorities in implementing environmental governance. Wider application will provide more meaningful comparisons of compliance with the access principles across diverse cultural, socioeconomic, and political settings.

## Access Initiative Findings: The State of Access

Every country examined by the Access Initiative has sought in significant ways to broaden citizen participation in environmental decision-making. However, people still have only limited opportunity to participate in the economic, political, and environmental decisions that affect their lives and their ecosystems. The Access Initiative findings show that governments in the nine countries surveyed scored highest at providing their citizens with access to information. They rated lower at providing opportunities to participate in decisions that affect the environment, and generally lagged on the provision of access to justice. A truly effective and empowering system of access requires the strong, integrated practice of all three principles.

### Access to Information

#### Finding: Strong Laws, Weak Implementation



Strong laws guarantee access to information in all the countries examined—an important and encouraging finding. Since the Rio Earth Summit in 1992, the developing countries and transition economies included in the Access Initiative survey have introduced legal provisions and established the infrastructure for access to information. Three of the nine countries—Mexico, South Africa, and Thailand—have comprehensive legislation dealing with access to information, including constitutional guarantees to access, legislation addressing access to information generally, and legislation that specifically addresses access to environmental information. Three of the other countries examined have enshrined at least two of those three types of provisions in national law (see Table 3.1).

The constitutional right to information can offer advantages, such as a consistent basis for applying and enforcing this right, and protection from having the right arbitrarily revoked or abridged. Right-to-information laws are clearly valuable: they help meet strong demand for access to information. Following the enactment of the National Environmental Statute in Uganda in 1995, concerned citizens and environmental NGOs have increasingly requested and obtained environmental audits, the text of resource concession agreements, and other key documents not formerly available to the public from the National Environmental Management Authority (ACTS et al. 2000:5). In the United States, public use of the Freedom of Information Act (FOIA) continues to grow. In fiscal 1999, nearly 2 million FOIA requests were filed with federal agencies (National Security Archive 2002) and in Thailand, more than half a million citizens used the Official Information Act in its first three years of existence (Banisar 2002).

# Figure 3.1 Access Scorecard

## How Much Can the Public Participate in Environmental Decisions?

THE ACCESS INITIATIVE is a first effort to systematically take stock of people's access to information, participation, and justice in decisions that affect the environment. This scorecard presents a comparative analysis of national assessments conducted by research teams in nine pilot countries: Chile, Hungary, India, Indonesia, Mexico, South Africa, Thailand, Uganda, and the United States.

**High** ●●●

Most cases had scores in the highest range. A high score does not necessarily represent the best practice possible.

**Medium** ●●

Cases had scores in the mid range or showed great variation among cases.

**Low** ●

Most cases had scores in the lowest range. A low score does not necessarily represent the worst practice possible.

**Access** and **Quality** scores are averaged to yield an **Overall** score. Not all indicators were measured in all nine countries.



### ACCESS TO ENVIRONMENTAL INFORMATION

#### How much access does the public have to:

Information about day-to-day environmental quality

**Air quality information**

**FINDINGS:** The majority of countries make an effort to actively disseminate air monitoring data, at least in urban areas. The press, radio, or the Internet often provides daily updates. (7 cases assessed from 7 countries)

**Water quality information**

**FINDINGS:** In six of the eight countries examined, data on drinking water quality were inaccessible, or only accessible with much effort. Often, data are fragmented among multiple agencies, making it difficult to get a complete picture of water quality. (8 cases assessed from 8 countries)

Information about environmental trends

**State of Environment reports**

**FINDINGS:** State of Environment reporting processes are in place in eight of the nine countries surveyed. Six countries have produced at least two high-quality reports in the past decade. (18 cases assessed from 9 countries)

Information about pollution at industrial facilities

**Pollution compliance records from industrial sites**

**FINDINGS:** Industrial facilities report to the government on compliance with air and/or water pollution standards in all countries. Frequently, the reports were not available from the government although they could sometimes be obtained from companies themselves. (36 cases assessed from 8 countries)

**A national inventory of industrial emissions**

**FINDINGS:** While countries generally require some kind of pollutant reporting from industrial facilities, only the United States specifically makes pollution data available to the public through a national inventory of pollution releases, by facility, in standard formats. Hungary and Mexico are developing similar inventories, called pollutant release and transfer registers. (9 countries assessed)

Information about emergency situations and risks

**Information about large-scale, highly visible accidents**

**FINDINGS:** The larger the scale of the emergency and the greater the media attention, the better the government effort to provide timely, accurate information in the cases examined. (8 cases assessed from 6 countries)

**Information about localized accidents at private industrial facilities**

**FINDINGS:** Information about explosions and fires in private facilities is shrouded in secrecy. In four of five such emergencies examined, public authorities provided little or no information to local residents, or the information was supplied too late to be useful. (5 cases assessed from 4 countries)

	Access	Quality	Overall
Air quality information	●●●	●●●	●●●
Water quality information	●	●●	●
State of Environment reports	●●●	●●●	●●●
Pollution compliance records from industrial sites	●	●	●
A national inventory of industrial emissions	●	●	●
Information about large-scale, highly visible accidents	●●●	●●●	●●●
Information about localized accidents at private industrial facilities	●	●	●

**Access is defined as:**

- responsiveness by authorities to requests for information
- extent of active information dissemination
- provision of information in a range of formats and products
- timeliness and coverage during and after emergencies

**Quality is defined as:**

- clarity of content
- frequency of reporting
- breadth and coordination of coverage



## ACCESS TO PARTICIPATION

### How much opportunity does the public have to influence:

#### Participation in national policies and plans

##### National environmental laws and plans

**FINDINGS:** Governments generally made adequate efforts to solicit or allow the public to submit comments on national policies or proposals about environmental issues. Maps and policy documents were readily available for public comment. (3 cases assessed from 3 countries)

##### National sectoral policies (e.g., mining, power)

**FINDINGS:** Efforts to incorporate the public's environmental concerns into plans for power provision and other sectoral decisions are minimal in cases examined. In two of the four cases examined, plans and policies underwent no review or consultation with affected populations or public interest groups. (5 cases assessed from 5 countries)

#### Participation in provincial and local policies and plans

##### Provincial and local policies and zoning plans

**FINDINGS:** Participation and access vary widely at provincial and local levels; sectoral and issue-specific decisions are often made without broad input from stakeholders and without proactive efforts by relevant agencies to seek wider participation. (5 cases assessed from 4 countries)

#### Participation in the design of environmentally significant projects

##### Projects requiring an Environmental Impact Assessment (EIA)

**FINDINGS:** An EIA process does not necessarily ensure public accessibility to the decision process. In cases examined, more effort was made to solicit public input in high profile projects with significant environmental impacts, but typically too late in the process to influence the result. (11 cases assessed from 7 countries)

##### Projects not requiring an Environmental Impact Assessment (EIA)

**FINDINGS:** Without a formal EIA, the right of the public to participate in decisions can be easily forgotten or ignored; these cases demonstrated a range of accessibility and quality of participation. (5 cases assessed from 5 countries)

Access	Quality	Overall
●●●	●●●	●●●
●	●	●
●●	●●	●●
●	●●	●
●●	●	●

#### Access is defined as:

- existence of opportunities to participate and the ability of the public to learn about these opportunities
- opportunity to learn about the outcome of environmental deliberations

#### Quality is defined as:

- inclusiveness of consultation
- timeliness of notification of opportunities to participate



## ACCESS TO JUSTICE

### To what extent does the public have:

#### Justice for all affected people

##### Enforceable rights and legal standing in courts

**FINDINGS:** Most countries examined do not clearly define the scope of information in the public domain, agencies' responsibilities, or who has standing to pursue legal remedy. (9 countries assessed)

##### A process of review for disputed plans and policies

**FINDINGS:** In less than half the countries examined, the public can use administrative and judicial review to contest the way in which national or provincial policies were made. Justice is often expensive, complicated, and time-consuming. (9 countries assessed)

Access	Quality	Overall
●●●	●●●	●●●
●	●●	●

#### Access is defined as:

- legal standing
- affordability of legal help and fees
- the presence and diversity of mechanisms for dispute resolution and remedy

#### Quality is defined as:

- inclusiveness and clarity of legal mandates to disclose information
- inclusiveness of legal definitions of environmental information in the public domain

**BOTTOM LINE:** Governments scored high at providing their citizens with access to information, rated lower at providing opportunities to participate in decisions that affect the environment, and lagged on the provision of access to justice. A truly effective and empowering system of access requires the strong, integrated practice of all three principles.

## Table 3.1 Grading Legal Guarantees to Environmental Information

The Access Initiative looked for:	Country Assessments		
	Weak	Medium	Strong
Constitutional guarantees of access to information	<b>Chile and the United States</b> do not constitutionally guarantee the public's right to information.	<b>India and Hungary</b> do not guarantee the public's right to information in their constitutions, but court decisions have interpreted the right to free speech and a free press to include the right to information.	<b>Indonesia, Mexico, South Africa, Thailand, and Uganda</b> constitutionally guarantee the public's right to information.
Legislation addressing access to information generally, such as Freedom of Information legislation	<b>Uganda</b> has no special legislation on access to information.	<b>India and Indonesia</b> have Freedom of Information legislation pending legislative approval.	<b>Chile, Hungary, Mexico, South Africa, Thailand, and the United States</b> have enacted Freedom of Information legislation.
Legislation addressing access to environmental information specifically	<b>Hungary, India, and Uganda</b> lack provisions specifically addressing access to environmental information. Or, access to different types of environmental information is treated in separate laws.	<b>No countries</b> in this category.	<b>Chile, Indonesia, Mexico, South Africa, Thailand, and the United States</b> have provisions that specifically support access to environmental information.

Despite the general strength of legal provisions for access to environmental information, the implementation of these laws is typically weak among the surveyed countries. Government bureaucrats and agencies have wide discretion to decide what information is secret, what to share, how to share it, and with whom. In their research and investigations, researchers discovered that many government agencies required parties to submit written justifications for requests for policy documents, and then determined whether or not to supply such information (Mexico and Thailand), or would supply only those excerpts they deemed relevant. In Hungary, Mexico, and Thailand, researchers found that gaining access to policy documents often required a fairly sophisticated knowledge of the agency in question, or a personal acquaintance with decision-makers or staff. Thai researchers who submitted identical requests through personal contacts as well as via formal letters from organizations not known to the agency, promptly obtained documents in the first case—but no replies, or late replies to the letters in the second case.

Many important concepts, such as what constitutes environmental information, are poorly defined. Few countries mandate that public agencies maintain a central environmental information service, and few have established

requirements for public disclosure of industry reports on compliance and environmental performance. Ambiguous provisions can result in piecemeal access, as in Hungary and the United States, where laws governing different environmental media and types of pollutants each treat access to information differently.

### Finding: Room for Improvement in Access to Information

In the countries surveyed, access to information about air and water quality—key elements of a citizen's day-to-day environment—is mixed. Citizens have good access to data on outdoor air quality, such as the level of airborne particulates and ozone. The majority of countries make an effort to actively disseminate air monitoring data, at least in urban areas. The press, radio, or the Internet often provides daily updates. By comparison, only in South Africa and the United States did researchers find that information on drinking water quality is actively disseminated to the public. Some countries, such as Hungary and Indonesia, disperse responsibility for collecting water data among multiple agencies and don't integrate the separate data collections into one comprehensive set of findings. For example, in Hungary, data on water quality are held



### Reversal of Information Access

A constitutional guarantee provides the most immutable means of ensuring public access to information. Nonetheless, even as a guaranteed right, access to information may have to be balanced against other state interests such as national security or privacy rights. In the absence of a constitutional guarantee, governments may be all the more likely to tip the balance away from access. In the United States, where there is no such constitutional guarantee, the executive branch of the government moved to take some information out of the public domain in the wake of the terrorist attacks of September 11, 2001. U.S. Attorney General John Ashcroft issued a memo to all federal agencies in October 2001 supporting their use of more restrictive standards of secrecy when considering requests submitted under the Freedom of Information Act. Also in October 2001, the United States Environmental Protection Agency removed from its website information related to Risk Management Plans for industrial facilities. These plans inform workers and communities about the potential consequences of a major chemical release and are aimed at preventing accidents.

by both the environmental inspectorate and the health service. A citizen seeking a complete picture of Hungary's water situation must submit requests to both agencies.

State of Environment reports are an important way for governments to inform citizens about their nation's environmental status. The Aarhus Convention, for example, requires signatories to publish State of Environment reports every three to four years. Access Initiative findings show that State of Environment reporting processes in most countries are good, providing citizens with access to long-term environmental trend data. This does not necessarily mean that the data provided are always accurate or complete—often they aren't—but does imply an effort by authorities to communicate at least a modicum of environmental information. Most of the countries examined have produced two or more State of Environment reports in the past decade, in both print and electronic form. The United States, however, stopped produc-

### What's in the Drinking Water?

In some countries, it's difficult to know. In Uganda, government authorities monitor the quality of drinking water, but don't share their findings with the public. In Thailand, it's impossible to find out from the Food and Drug Administration if bottled water contains contaminants—information particularly important to those who are pregnant, elderly, or caring for children.

ing meaningful federal-level reports in 1997, and Indonesia has produced only one in the past decade (in 1998).

Information about pollution at industrial facilities is the hardest information for the public to access, and is impossible to obtain in some of the surveyed countries. All the governments collect data on facility compliance with air and water laws, but of the nations surveyed only Hungary and the United States routinely make these data public. In Mexico, South Africa, and Uganda, researchers were unable to obtain any information about facility or sector performance from either companies or governments. Corporate rights of privacy are typically treated as paramount to individual citizens' rights to know about their environment, limiting access to information about what companies discharge from their smokestacks and pipes.

Businesses often make claims of confidentiality to shield proprietary research and protect trade secrets; these claims are frequently a barrier to the collection and sharing of facility data. Most countries examined do not have an explicit policy limiting a corporation's rights to claim that information is confidential and requiring justification of that claim.

Newer public disclosure tools are coming into play which, when more widely adopted, promise to improve accessibility of data on the environmental performance of private companies.

### Emergency Access

In August 2000, cholera broke out in the South African province of KwaZulu Natal. Almost immediately, national, provincial, and local authorities began supplying daily reports to communities, regular media reports, and patient and death statistics. They also offered road shows in local languages, distributed posters and leaflets, and supplied drinking water in an effort to control an epidemic of as many as 100,000 cases. The Access Initiative rated this government response to an emergency as “strong.”

By comparison, the Access Initiative gave a “low” rating to the response to a fire at Flex Industries in Gwalior, India in 2001. Despite the risk of explosion of a liquid gas petroleum storage tank, and a law requiring public notification of the threat, no emergency action was taken in neighboring communities.

Emissions inventories—which provide a listing in a standard format of pollution emissions from each factory, power plant, or other private facility—are among the most progressive. Among the nine countries evaluated, only the United States operates a mandatory emissions inventory (which it calls the Toxics Release Inventory) specifically aimed at making information available to the public. Hungary has a legal mandate to establish a similar system. Under a new law, Mexico is drafting regulations for mandatory public reporting by industrial facilities starting in 2003 (see also Chapter 6). In recent years,

Indonesia has disclosed facility information through a public rating system that doesn’t reveal specific data on company emissions, but does grade facilities on their environmental compliance (see Box 6.3).

Information on environmental emergencies such as large chemical spills into the water or air, explosions and fires at manufacturing plants, and even natural disasters like volcanic eruptions or earthquakes can have immediate bearing on citizens’ health and safety, affecting their exposure to risk and their ability to evacuate disaster zones. Based on analyses of 13 emergency events, Access Initiative researchers found that access to information varies widely depending on the scale and nature of the emergency. In the majority of cases, the public received adequate and timely information. However, governments generally made a greater effort to provide timely information during large-scale and visible emergencies than during smaller or more confined industrial accidents at private facilities. One reason may be that the larger-scale disasters draw greater media attention and occasionally international attention, motivating authorities in the spotlight to provide more timely and often more accurate information to the public about the immediate threats to health and the natural environment. However, researchers also found that once the attention fades, the public has little or no access to information about the long-term impacts of most emergency events, regardless of their scale.

### Demand for Access Opens Doors

The Access Initiative undertook a comparative review of five cases of national energy policy development in Central and Eastern Europe. They found that only in Slovakia—where there was a strong and vocal demand for participation by public interest groups—was decision-making truly accessible to the public.



## Access to Decision-Makers and Opportunities to Participate



### Finding: Minimal Legal Rights to Public Participation

The right to public participation through hearings, Environmental Impact Assessments (EIAs), advisory groups, meetings with decision-makers, and other avenues is poorly articulated in the legal and constitutional frameworks of most of the surveyed countries. The majority of national legal frameworks:

- exclude certain groups or restrict them from participation
- don't require public participation in some sectors of the economy or for some development activities (such as the siting of forest or mining concessions)
- lack adequate provisions for participation at different stages of the decision-making cycle.

With the exception of Thailand, public participation rights are not explicitly guaranteed in any of the constitutions or legal frameworks of the countries surveyed (see Table 3.2).

Table 3.2 Grading Legal Rights to Participate

The Access Initiative looked for:	Country Assessments		
	Weak	Medium	Strong
Constitutional guarantees of public participation, freedom of speech, and freedom of assembly	<b>Chile, India, and Uganda</b> have constitutional guarantees, but the highest courts have limited their reach through decisions, or legal requirements limit how speech or freedom of assembly rights can be expressed.	<b>Hungary, South Africa, and Mexico</b> have strong constitutional guarantees for free speech and association, but they are not as well defined by the highest court's decisions.	<b>Thailand</b> includes the right to participation as well as broad freedoms of speech and assembly in its constitution. The <b>U.S.</b> Constitution includes strong protection of freedoms of speech and assembly.
Provisions for public notice and comment in sectoral policies and single development activities	<b>Thailand and Indonesia</b> have no such provisions.	<b>Chile, Hungary, India, and Uganda:</b> Notice and comment provisions are specified only for single development activities through EIA regulations.	<b>Mexico, South Africa, and the United States</b> have provisions requiring public notice and comment in specified types of both sectoral policies and single development activities.
Public notification and comment requirements for Environmental Impact Assessments (EIAs)	<b>Thailand</b> has no requirements for notification and comment for EIAs.	<b>Hungary, India, Mexico, and Uganda</b> require public notice and comment at the final stage of EIAs.	<b>Chile, Indonesia, South Africa and the United States</b> require public notice and comment at various stages of an EIA.
Broad legal definitions of the public and the public interest	<b>Chile, India, Indonesia, Thailand, and Uganda</b> do not define the public or the public interest in legal frameworks.	<b>Mexico</b> broadly defines the public interest in the constitution, but supporting legal regulations almost always restrict definition to persons affected or harmed by public or private action/decision.	<b>Hungary, South Africa, and the United States</b> broadly define the public and the public interest in legal frameworks.

Instead, public participation is usually articulated in government documents that are not legally binding, such as guidelines or manuals of “best practice.”

**Finding: The Burden Is on the Public**

The Access Initiative finds that opportunities to participate vary significantly depending on the government agencies involved, the scale and scope of the project under debate, and the type of policy under review. What stands out across the majority of cases, however, is that the onus of initiating participation in a decision-making process is on the public.

In general, governments are not sufficiently proactive at seeking public input. This is true across the range of surveyed countries, regardless of economic development or income levels. For example, although Mexico provides broad constitutional guarantees for public participation, in practice, NGOs or affected communities must prove legal interest and submit formal requests to access documents about a decision or to ensure that a public consultation is carried out. Another common finding is that public participation is weak both at the early stages of decision-making and at the end of the process when a decision’s impacts are monitored and its acceptability reviewed. In other words, notification of opportunities to participate, circulation of project documents like Environmental Impact Statements, and public consultations occur mainly in the middle stages of decision-making, when the parameters of the problem or possible solutions have already been defined, but before they are actually implemented or adopted (see Figure 3.2). This reduces “participa-

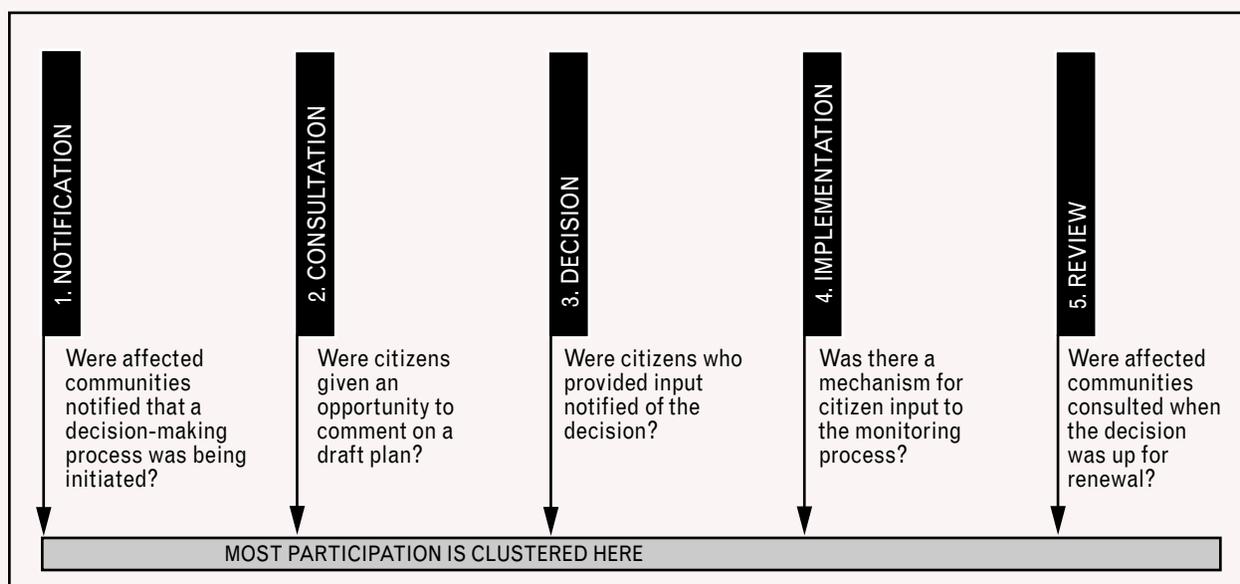
**NGOs Lend Fresh Perspectives**

When the government of Slovakia announced its intention to reform the energy sector, more than 20 Slovak NGOs jointly developed an alternative energy sector reform strategy. By the time the government strategy was ready, so were the NGOs. With help from the media, the two different approaches received much attention and discussion regarding their relative social and environmental merits. The final version combines elements of both the government and the NGO proposals.

tion” to refining already-defined policies, projects, and solutions. It can also lead to protracted conflicts with civil society, as occurred over the siting of the Hin Krud coal-fired power plant in Thailand. Despite the potential damage to nearby coral reefs from the release of water used in the cooling process, and negative impacts on the local economy from reduced tourism and fishing, the government selected the plant site without discussion with the public, external experts, or interest groups. Now that construction is under way, there has been tremendous public protest.

The use of Environmental Impact Assessments in most countries in the past 20 years has dramatically increased public access to decision-making that affects the environment (see Box 3.2). However, an EIA alone does not ensure adequate public participation. Access Initiative researchers

**Figure 3.2 When Do People Get to Participate?**



## Box 3.2 The Merits of Meaningful Participation

It is difficult to measure whether people have adequate, meaningful opportunities to participate. One proxy measure is the degree of public participation in Environmental Impact Assessments (EIAs). For example, in Hungary, there is widespread use of the EIA process, with early notification of and extensive participation by people and communities. Between 1995 and 1998, there were more than 600 EIAs carried out in Hungary, compared to just 16 in nearby Austria. Hungarian authorities rejected 4 to 6 percent of proposed projects where the EIA had detailed significant environmental impacts. This was mainly due to input the public provided. Across Europe, an average of just 1 percent of such projects are typically rejected (Fülöp 2002).

A recent analysis of more than two hundred cases of public participation in environmental decisions in the United States found that final government decisions incorporated public input about half the time. In these cases, better decisions resulted in less conflict among competing interests as a result (Beierle and Cayford 2002:17, 27–28).

The same study concluded that public participation is most successful when government agencies are flexible about the



participation process itself and what they expect it to produce. Flexibility includes letting participants redefine the problem, focus on other issues, and change the nature of the questions being considered. In addition, when governments recognize the legitimacy of public values, the chances for successful participation improve. Finally, government agencies must understand that citizen input may lead to priorities and conclusions with which the agencies themselves do not agree (Beierle and Cayford 2002:64).

found that all surveyed countries had provisions for public participation in EIAs. However, in practice, the public isn't consulted early enough to really affect key decisions. Some authorities provide such a tight time frame for the public to provide comments that significant input is impossible. Officials often limit who is considered a "legitimate" participant, and projects are selectively exempted from the review process and assessments that would require public involvement. Even if citizens are allowed to participate in the assessment process, there are very few provisions for incorporating their input into the final EIA report.

The Access Initiative also analyzed EIA provisions in 15 Latin American and Caribbean countries. The findings confirmed that EIAs are not yet a consistent vehicle for meaningful public participation (see Box 3.3).

### Access to Justice and Redress

When disputes arise over environmental decisions, or the public's rights to information and participation are ignored, a binding system of review and legal remedy is needed. Access Initiative researchers found that this kind of systematic dispute resolution by an impartial judiciary or



administrative review was the weakest element of the three access principles.

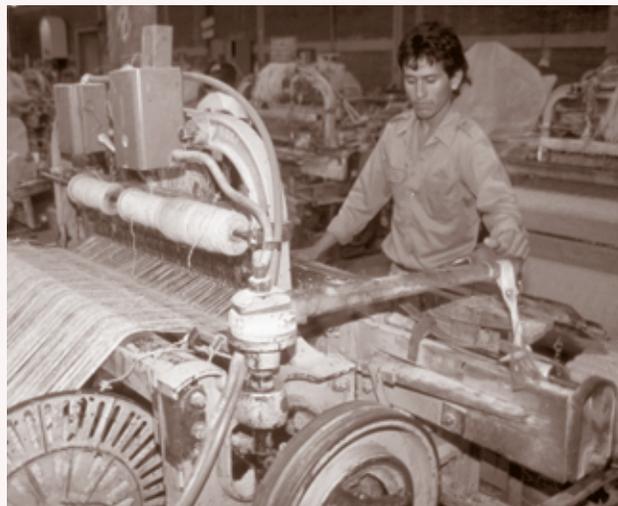
### Finding: Poor Procedures for Enforcement and Review

As mentioned earlier, countries have made much progress in the last decade in establishing a range of legal rights to environmental information and participation. Unfortunately, these rights are often not defined adequately enough to be legally enforceable, or the public is not given legal "standing" (the ability to appear in court or bring a legal suit). In other cases, there are no administrative procedures for reviewing decisions, registering complaints, and resolving disputes. The result is that the rights granted to the public in theory may not be effective in practice.

Access Initiative researchers found that in less than half the cases they assessed was the public able to use administrative or judicial review to contest how national or regional environmental policies were made. The situation is worse when logging, mining, grazing, or other resource concessions are awarded or Environmental Impact Assessments are conducted. In most of these cases, either no administrative or judicial review is available or legal standing is limited to "affected" people, giving courts and other administrative officials the discretion to limit who actually has access (see

## Box 3.3 Comparing Environmental Impact Assessment Laws in Latin America and the Caribbean

An Access Initiative analysis of Environmental Impact Assessment (EIA) provisions in 15 Latin American and Caribbean nations concluded that the quality of public participation mandated in EIA laws and policies varies widely. Fourteen of 15 countries assessed have adopted EIA laws and policies at the national, sectoral, or even provincial levels to mitigate environmental damage from economic development. The majority include some requirements for public participation. However, only four Latin American countries mandate that the public be given the opportunity to comment early in the EIA process. The majority of countries only mandate provisions for public participation after the EIA findings are final or have been officially approved by the government. In general, Latin American EIAs provide governments with considerable discretion in deciding when to initiate or apply public participation provisions.



### Public Participation Provisions in Latin American and Caribbean EIA Laws (X = In Place)

Indicator	Bolivia	Colombia	Ecuador	Perú	Argentina	Brazil	Chile	Paraguay	Uruguay	El Salvador	Guatemala	Jamaica	México	Nicaragua	Panamá
1. National law or policy exists that establishes the framework for the conduct of EIAs.	X	X	X	X		X	X	X	X	X	X	X	X	X	X
2. National (or at least two sectoral) EIA laws or policies clearly state that they apply to both public and private development activities.	X			X	X <sup>1</sup>	X	X	X	X					X	X
3. National (or at least two sectoral) EIA laws, policies, or guidelines provide for public participation after EIA is finalized.	X				X <sup>2</sup>	X		X				X		X	X
4. National (or at least two sectoral) EIA laws, policies, or guidelines provide for public participation before final approval of EIA.		X <sup>3</sup>		X			X		X	X			X	X	X
5. National (or at least two sectoral) EIA laws, policies, or guidelines provide for public participation at scoping or draft stages.	X			X										X	X
6. National (or at least two sectoral) EIA laws, policies, or guidelines provide for public participation in monitoring compliance or implementation of EIA mitigation measures.															

Source: Ibarra 2002.

<sup>1</sup> Argentina does not have a federal EIA framework. However, most of the provinces have their own frameworks. For those provinces that do not have their own, there are national sectoral frameworks, which they follow.

<sup>2</sup> Public participation provisions are included mainly within provinces' EIA frameworks.

<sup>3</sup> Colombia includes public participation provisions as mandatory, but only for ethnic minorities (Decree No. 1320/98).

**Table 3.3 Grading Legal Rights to Review and Remedy**

The Access Initiative asked:	Country Assessments		
	Weak	Medium	Strong
	Chile, Indonesia, Mexico, Thailand, and Uganda	India and the United States	Hungary and South Africa
Does a review process exist for decisions on projects with potential environmental impacts?	No review process is in place.	An administrative or judicial review process does exist.	Administrative review processes do exist.
	<b>OR</b>	<b>BUT</b>	<b>AND</b>
Who has legal standing to challenge these decisions?	Parties not participating in the decision-making process <i>have no standing</i> to challenge the decision.	Parties not participating in the decision-making process <i>have no standing</i> to challenge the decision.	Parties not participating in the decision-making process <i>do have standing</i> to invoke a challenge.

**Access to Justice Is Vital**

In 2001, WALHI, an environmental forum for NGOs and community organizations in Indonesia, went to court. WALHI argued that mining company Freeport-McMoran Copper and Gold, Inc. had provided false information regarding its responsibility for a landslide in Wanagoon Lake, West Papua. This was in violation of a national law requiring the provision of accurate information on environmental management. The court agreed with WALHI and held the company accountable.

Table 3.3). For example, in Mexico an individual or organization must show proof of harm in order to gain access to the courts for cases that pertain to the environment or access to information.

The efficiency, accountability, and independence of judicial systems also vary widely among the countries examined, undermining people’s ability to enforce their access rights. In the United States, for instance, the judicial system has evolved as a strong, generally trusted, and widely used instrument for enforcing the law. In other countries, such as Indonesia, researchers found that the courts are seen as one of the country’s most corrupt public institutions.

**Finding: High Costs and Sluggish Processes**

Legal costs are prohibitively high for the general public in all the surveyed countries. In Chile, fees to register environmental cases can cost more than 50 percent of the average monthly income, and in Hungary more than 20 percent. Pro

bono lawyers, who represent clients without charge for good cause, are usually concentrated in capital cities, not in rural areas. Only South Africa has a government-sponsored program with centers in the provinces that provide free legal help to the poor, and only the United States and Thailand have large national networks of pro bono lawyers.

Even where fees aren’t a tremendous obstacle to justice, incidental legal expenses add up and the complexity and length of the legal process are a burden. This is a particular problem for the rural poor and community organizations that lack the time and resources to pursue long court cases or to travel to cities to press a case.

**Improving Access: What’s Needed?**

Better access will require investments to increase the supply of information and opportunities to participate. Better access will also require greater demand for access rights from citizens, community organizations, and advocacy groups.

When residents of Szalánta, a village in Hungary, learned that their vineyards, wineries, and local economy were threatened by government approval of a hazardous waste incinerator in their area, they first tried protesting and lobbying against its construction. Then they turned to the judicial system. There they found an impartial ear for their argument that the permit needed reconsideration: their region’s economy had special environmental needs that called for higher standards and requirements for the incinerator than the law required. The permit was refused.

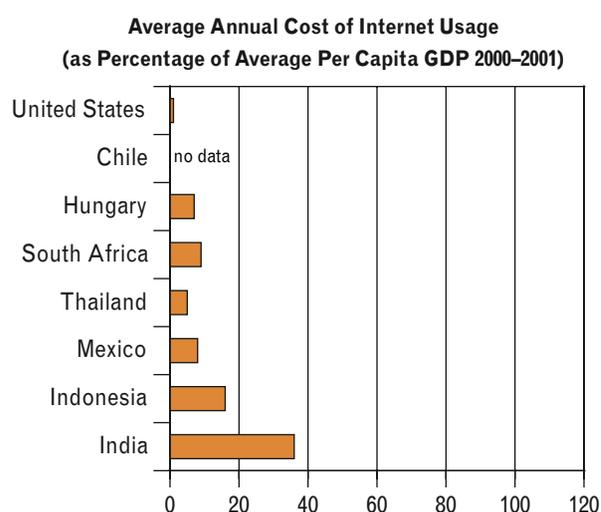
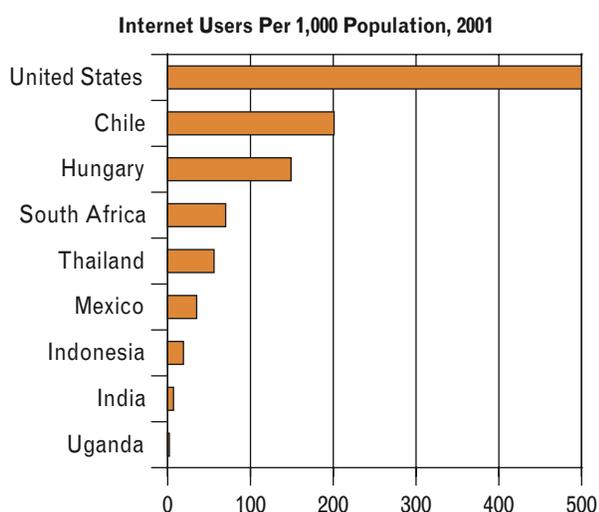
## Box 3.4 Access and the Internet

Where people have easy and affordable Internet access, governments have a ready means of supplying environmental data and alerts about opportunities to weigh in on projects, policies, and plans. For example, Bulgaria launched a website for “dialogues with the public” where comments and proposals related to environmental policies can be made on-line. To extend access to rural communities, Estonia is using a network of “telecottages”—rooms in a shop, school, library, home, or village center that offer free on-line access to the Internet and provide informa-

tion on the state of the environment, plans, and policies. In Tijuana, E-LAW members aided activists in drafting a municipal law that gives citizens the right to know the composition of factory emissions. They shared, on-line, examples of laws granting access to information from Australia, Canada, Kenya, Perú, and the United States (E-LAW 2002).

Unfortunately, the Internet is still limited in its reach. Internet usage for postings of information or agency rules, regulations, and data are helpful but not yet adequate to

### Internet Usage and Cost in Access Initiative Countries



Sources: World Bank 2002; ITU 2002; Population Division of the Department of Economic and Social Affairs of the United Nations Secretariat 2002.

tion on the state of the environment, plans, and policies. Countries that are signatories to the Aarhus Convention are considering creating a website for each country that would provide citizens with a single entry point for environmental information at the national level (United Nations Economic and Social Council 2000:7).

The Internet also provides a means for networking among the citizens, activists, and lawyers who seek to expand access rights. Public interest lawyers, for instance, stay connected through the on-line “Environmental Law Alliance Worldwide” (E-LAW) network. By sharing legal and scientific information

ensure access in all countries, and are particularly unlikely to serve citizens in poor countries or rural areas. Affordability and “usability” of the Internet varies greatly by country, and even within countries. In one-third of the countries examined by the Access Initiative, affordable or free Internet access is limited to major urban areas or capital cities. Low literacy rates also reduce the utility of the Internet in many of the poorest countries. Until the Internet is more widely accessible, governments must pursue alternative means of reaching the public, too.

## Box 3.5 Public Interest Groups in Africa: Supported or Thwarted?

The Access Initiative assessed the ease with which public interest groups can form and operate in Botswana, Kenya, Mozambique, Tanzania, Uganda, and Zimbabwe. Each of these countries has constitutional provisions that guarantee freedom of association, but also has laws that restrict the activity of public interest groups. In all the countries, the national government assigned ministries exclusive oversight of registration or deregistration of NGOs. For example, Zimbabwe's Private Voluntary Organizations Act gives the Minister of Public Service, Labour, and Social Welfare the power to suspend the entire staff of an NGO without explanation (Viet 1999).

Some East African governments have created mechanisms that impede the process of NGO registration. For example, in Uganda, an NGO must obtain a letter of authorization from the appropriate ministry before official registration.

This oversight and regulatory power allows governments to

act against interest groups that challenge them. In Tanzania, BAWATA (the National Women's Council) was registered in 1995 only after a battle to convince the Registrar of Societies to grant approval. Its early work—as articulated in its constitution—focused on issues such as inheritance rights, the right to own land, and political representation of women in parliament. Nevertheless, the government soon accused BAWATA of being a political party. In September 1996, the government, without affording BAWATA a chance to be heard, deregistered the NGO and demanded that the group amend its constitution and become a research institute. In March 1997, at a general meeting, BAWATA yielded and amended its constitution in accordance with the demands. Even so, the government deregistered BAWATA. While the case is still pending in court, the lengthy legal battle has taken a toll on the organization: its charismatic leader has left and donors have ended their support.

### Improved Supply of “Access”

Strengthening legal provisions for access to information, participation, and legal remedy, and working with civil society organizations to implement those provisions are clearly critical steps toward more effective public participation in environmental decisions. But governments must also improve their capacity to generate and disclose information, and to solicit and respond to public feedback. This includes ensuring that the public always has access to adequate information in a usable format, including Environmental Impact Statements, prior to participating in public deliberations. (See Box 3.4.) The United Nations Environment Programme (UNEP) and the Aarhus Convention stress the need for countries to maintain a central environmental information service and to commit to a practice of early consultation with stakeholders on environmental decisions. UNEP established the INFOTERRA network of national environmental infor-

mation centers, currently numbering 177, to facilitate integrated access to information.

All countries must improve the capacity of government staff to make access to basic information easier. Agencies in some countries, such as Hungary and Indonesia, allow bureaucratic processes and attitudes of secrecy that can easily exhaust a citizen seeking information disclosure or attempting, for instance, to fight the siting of a new factory. Governments aren't adequately training staff so that civil servants are aware of new legislation and its implications for their work, or helping staff understand the value of public input in decision-making. South Africa and India were the only countries among those surveyed where three selected government agencies offered staff training on new rules about environmental information and public participation.

Donors can help with the task of building government infrastructure and capacity to make access a reality. Tracking and disseminating environmental information, for example, is expensive. Poorer countries that maintain centralized inventories of integrated environmental information typically rely on external funding. For example, Chile's environmental information system is supported by donor assistance, and Uganda maintains—with donor support—a highly effective and accessible public information system for health emergencies. Government commitment and the availability of resources also affect whether governments adequately train civil servants to provide information, involve citizens, or judge environmental cases.

Improved access is impossible without efforts by financial institutions—as the financiers of energy reform, electricity generation, water infrastructure, and other development projects with environmental impacts—to help nations apply the

### In the Spotlight: Access and the Media

The media can drive demand for access to information and opportunities to participate (see Box 4.4). Unfortunately, in national assessments of media coverage of environmental issues, only three of the Access Initiative countries scored “strong” on the level of coverage, and four scored “strong” on the quality of coverage. Thailand alone scored “strong” in both categories, because during three randomly selected and non-consecutive weeks, a sampling of media outlets regularly provided features and analysis on the environment, with more than one point of view presented.



principles of “good governance.” Institutions that fund development must first adopt and apply the elements of public participation to their own operations, and then promote transparent and inclusive decision-making by their clients through their lending policies and requirements. In Uganda, for example, agencies that have access to World Bank financing are more open to engaging the public in decision-making than those that don’t, because the World Bank has explicitly encouraged transparency through its lending policies there.

### Increased Demand for “Access”

Most of the Access Initiative research teams commented on the limited levels of public awareness about environmental issues and access rights. Public authorities have a responsibility to build—directly and indirectly—the capacity of their citizens to

#### For More Information

Complete findings of the Access Initiative’s pilot assessment can be found at <http://www.accessinitiative.org>. The website offers the full report, *Closing the Gap: Information, Participation, and Justice in Decision-making for the Environment*, and summaries of the national assessments. It also posts a *Guide* for groups interested in assessing the performance of their own governments.

exercise their rights to information and participation. Proxy measures of how seriously governments take that responsibility include their investment in environmental education and their efforts to create a favorable climate for nongovernmental organizations. For the most part, governments are investing in environmental education. South Africa has trained staff to develop environmental education programs and incorporate them in regular curricula at all levels. Chile, Hun-

gary, India, Mexico, and Thailand all support environmental education efforts.

However, the countries examined by the Access Initiative vary in their treatment and tolerance for environmental NGOs (see also Box 3.5). These groups often act as vital catalysts for public participation in environmental decision-making. They help citizens understand their access rights and obtain environmental information, and often represent individuals and communities in public deliberations and in judicial disputes. For example, the Advocates Coalition for Development and the Environment in Uganda educates communities about their rights, represents them in court, and is engaged in promoting access and participation in the East African Union.

South Africa offers an example of a supportive climate for NGOs. They do not have to register in court or with a government agency to be recognized as a legal organization and are permitted access to diverse domestic and international sources of funding. Not so in other countries. Onerous registration requirements in Chile, Hungary, Indonesia, and Uganda; the absence of local funding sources in Uganda; and restrictions on foreign funding for NGOs in India constrain the ability of public interest groups to form or operate. Consequently, most governments can promote greater access by enhancing the capacity of NGOs and working with them to draft new legislation, conduct education programs, and assess the strengths and weaknesses of access in government agencies.