

EarthTrends Featured Topic:

Implementing the “Access Principles”: Measuring Nine Countries’ Progress in Strengthening Environmental Governance

Source: *Closing the Gap: Information, Participation, and Justice in Decision-Making for the Environment*

Author: Elena Petkova and Frances Seymour

Date Written: July 2003

At the 1992 Earth Summit, 178 governments committed to an idea with profound implications for sustainable development: Every person should have access to information about the environment, opportunities to participate in decision-making processes affecting the environment, and access to justice, including redress and remedy. Articulated in Principle 10 of the Summit’s Rio Declaration (*see Box 1*), these three “access principles” represent fundamental global norms of equitable and environmentally sound decision-making.

Principles of effective governance—such as transparency, inclusiveness, and accountability—are increasingly recognized as a key factor supporting sustainable development. Moreover, accumulating evidence suggests that public participation in decision-making can improve the quality as well as the acceptance of resulting decisions.

A Unique Approach to Measuring Progress

To what extent have the access principles been integrated in national laws and policies and implemented on the ground? In 2001, research teams in nine countries—Chile, Hungary, India, Indonesia, Mexico, South Africa, Thailand, Uganda, and the United States—set out to answer this

question. The teams used a common methodology on a pilot basis to assess their governments’ performance in meeting the Rio commitment. Their work was conducted under the auspices of The Access Initiative, a global coalition of civil society groups seeking to promote public access to information, participation, and justice in decision-making affecting the environment.

The research efforts in the nine countries shared two objectives: to identify the strengths and weaknesses of specific national systems of public participation in environmental decision-making, and to test the methodology and evaluate the usefulness of the assessment tool itself.

The approach used by the research teams is unique. It assesses environmental governance in *practice* as well as in law. It combines original data produced at the national level with independent assessment and application in multiple countries. Use of this methodology produces indicators of performance both in law and in practice.

Because the methodology was somewhat tailored by national circumstances, the results do not support overall cross-country rankings. Rather, the intent was to evaluate progress in individual countries using a globally applicable tool based on a common framework. Nonetheless, it is possible to identify areas of relative strength and weakness in national implementation of the access principles, which are summarized in the Access Scorecard (*see Box 2*).

Because of the diversity of geography, economics, and cultural and political traditions encompassed by the nine pilot countries, collectively their results provide a snapshot of global progress.

The Findings Are In

- **Pilot application of this innovative methodology indicates that diverse national systems of public participation can be assessed within a common framework.**

Teams from nine countries—representing different legal traditions, cultural and political conditions, income levels, development paths, and economic dependency on natural resources—were able to apply the methodology, with only relatively minor modifications to capture unique national circumstances.

- **While significant progress has been made in implementing Principle 10 of the Rio Declaration, much remains to be done.**

Most countries have put in place the basic elements of a legal framework to support public access to environmental information, but specific gaps in law and practice were identified in every country studied.

- **Implementation is uneven across the three access principles.** In most of the pilot countries, governments perform best—in law and in practice—in providing access to information; they perform less well in

facilitating participation and least well in providing access to justice.

- **Legal frameworks supportive of the access principles are rapidly evolving.** For example, one pilot country (**Mexico**) passed a Freedom of Information Act while the

assessment was underway and another (**India**) approved such legislation in December 2002.

- **Improvements in practice lag behind improvements in law.** In most of the pilot countries, the institutional infrastructure necessary to implement the access principles is insufficient.

Access to Information

- **Access to information is strong in high-profile emergencies that threaten public health.** For example, the quality and accessibility of information provided to the public after a volcano eruption in **Mexico**, cyanide pollution of a river in **Hungary**, and cholera outbreaks in **South Africa** and **Uganda**

Assessing the Implementation of Access Principles

Fig. 1 The Access Scorecard Results from nine Access Initiative Countries			
Access to Information			
Type	Quality	Accessibility	Overall
Legal guarantees and provisions for access to information	Strong	Strong	Strong
Emergencies: large and visible emergencies with extensive media coverage	Strong	Strong	Strong
State of the environment reports	Strong	Strong	Strong
Monitoring information: air quality	Intermediate	Strong	Intermediate
Monitoring information: water quality	Intermediate	Weak	Weak
Industrial facility information: based on air and water compliance monitoring and PRTRs	Weak	Weak	Weak
Emergencies: accidents or fires at private facilities	Weak	Weak	Weak
Access to Participation			
Legal guarantees and provisions for participation	Intermediate	Intermediate	Intermediate
National policy-making on environmental issues	Strong	Intermediate	Intermediate
Regional, state, or local decision-making (state or local planning efforts)	Intermediate	Intermediate	Intermediate
Specific projects with or without an EIA process	Weak	Weak	Weak
National policy-making outside the environment	Weak	Weak	Weak
Access to Justice			
Affordability of justice	<i>Not assessed</i>	Intermediate	Intermediate
Institutional infrastructure	Intermediate	Weak	Weak
Legal and regulatory framework supporting enforcement	Weak	<i>Not assessed</i>	Weak

were highly rated.

- **Pilot countries perform well in providing reports on the state of the environment.** Most of the pilot country governments have produced such reports regularly over the past decade, providing citizens with data on various environmental trends in a manner that is accessible to the nonexpert.
- **Access to information about air and water quality is mixed.** Several governments make air quality information publicly available on a daily basis through the popular press and/or on the Internet, but the pilot countries scored weaker in providing access to information on water quality.
- **Access to information about private industrial facilities is particularly weak.** In most of the pilot countries, citizens cannot obtain information about the compliance of companies, and especially individual facilities, with pollution emission standards.

Access to Participation

- **Participation is strongest in national policy-making on environmental issues and weakest in policy-making on in other economic sectors.** For example, development of a national forest policy in **Uganda** and the mapping of water management areas in **South Africa** both involved extensive consultation with affected communities. In contrast, a “nautical tourism” planning process in **Mexico** and policy-making related to private electricity generation in **Thailand** were relatively closed to the public.

- **Participation in decisions concerning specific projects, permits, and concessions is weak.** For the most part, public authorities in the cases assessed failed to inform affected communities or public interest groups that they were initiating a process to grant an operating license for a factory, award a forest concession, or approve a development project.

Access to Justice

- **Access to justice is hampered by unclear laws.** In most of the nine pilot countries, the legal and regulatory framework governing access to information and participation does not provide an adequate legal basis for citizens to seek redress.
- **Access to justice is constrained by limited mechanisms for redress.** In fewer than half the decision-making processes reviewed were administrative or judicial processes available for citizens to contest the resulting decisions.
- **High costs are an effective barrier to access to justice.** While the costs of administrative and court fees varied across the pilot countries (and in some countries could be waived for individuals or public interest groups), expenses for legal representation were prohibitive in many cases.

Factors Driving National Performance

- **Lack of government capacity constrains implementation of the access principles.** Many lapses in providing access to information, participation, and justice can be attributed to a lack of government capacity, including staff, equipment, procedures, and training.

- **Lack of capacity in civil society also constrains performance.**

Governments in most of the pilot countries are investing in environmental education programs, but performance is less impressive in providing civil society with accessible, comprehensive information about agencies charged with information disclosure or decision-making.

- **Media attention and public scrutiny spur improved performance.** Evidence suggests that governments anticipating or reacting to media and public scrutiny do more to provide public access to information and participation.

- **The international community has a key role to play in supporting improved national performance.** Integrating the access principles in international agreements and the operations of multilateral institutions is an important means of strengthening access, along with donor assistance for environmental monitoring, reporting, and other activities supportive of the access principles.

The Next Steps

These findings and conclusions suggest several recommendations for action by a variety of stakeholders operating in both national and international policy arenas (see *Box 2*). Taken together, these recommendations constitute an agenda for accelerating implementation of Principle 10.

BOX 1**Actual Text of the Principle 10 of the Rio Declaration**

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

BOX 2**Recommendations from The Access Initiative's Pilot Assessment of National Implementation of Principle 10**

- 1. National governments and the international community as a whole should support independent assessment and monitoring as a first step toward improved performance.** Initial response to the findings of the nine national assessments indicates that such assessments are a powerful tool to stimulate dialogue and action to improve performance.
- 2. The international community should support refinement and application of a common assessment tool to support national implementation.** To improve the quality of assessments, further investment is needed in the refinement of a common methodological framework, guidelines for its application, and a global mechanism for sharing best practices across countries.
- 3. Efforts to improve national systems should include attention to all three principles.** Balanced investment across all three principles is required if national systems of public participation are to function effectively.
- 4. Where the legal framework for access is in place, efforts should focus on closing the gap between law and practice.** To this end, investments in government capacity to implement elements of the national participation system as well as developing public capacity to use that system should be high priorities for governments and donor agencies.
- 5. Public interest groups and the media, two engines driving demand for access, should be encouraged to play their roles vigorously and responsibly.** Governments must relax onerous registration requirements for nongovernmental organizations and reform regulations that constrain the financing of public interest advocates. Media outlets should improve the level and quality of their coverage of environmental issues.
- 6. The international community should support national efforts through donor assistance and incorporation of access norms into international institutions and agreements.** International donor agencies can promote access both by supporting the development of access systems as a funding priority and by revising their policies and practices to ensure greater access to information, participation, and justice in their own operations.

REFERENCES

Petkova, Elaina, Crescencia Maurer, Norbert Henninger, and Frances Irwin. 2002. *Closing the Gap: Information, Participation, and Justice in Decision-making for the Environment*. Washington DC: World Resources Institute.