



APFED Policy Dialogue Working Paper Series No. 1



## **Access to Environmental Information**



January 2006

**Institute for Global Environmental Strategies (IGES)**

## APFED Policy Dialogue

As economic activities intensify, their impacts on the environment have been being multiplied in an accelerated pace. The challenges in promoting effective environmental management and achieving sustainable development thus have become increasingly complex and in need of enlarged multi-faceted actions.

The Asia – Pacific Forum for Environment and Development (APFED) launched in its second phase multi-stakeholder policy dialogues as a part of its main activities in response to the APFED phase one recommendations contained in the APFED Final Report of 2004. The APFED policy dialogue is intended to promote mutual understanding of policy challenges on major environmental and sustainable development issues, forge consensus building and foster partnership development with a view to facilitating the development and implementation of enabling policies for promoting effective environmental management and achieving sustainable development in Asia and the Pacific.

The APFED Policy Dialogue Series is aimed to provide the outcome of the APFED Policy Dialogue and related background documents for supporting the relevant policy processes and pursuing common policy goals in collaboration with a wide range of stakeholders and partners

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*Access to Environmental Information*

*Institute for Global Environmental Strategies*

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## **Workshop on Access to Environmental Information in Asia**

**Organized by the Asia-Pacific Forum for Environment and Development (APFED)**

**23 - 24 November 2005**

### **Co-Chairpersons' Summary**

#### **1. General Points**

- 1) Since the Rio Declaration recognized, in 1992, "access to information" as an essential principle to promote sustainable development, a lot of progress has been made in many parts of the world. Importance of this principle was reconfirmed at WSSD held in Johannesburg in 2002.
- 2) The Aarhus Convention which came into force in October 2001 proved useful in promoting access to information in European countries. The Kiev Protocol on Pollutant Release and Transfer Registers, adopted in May 2003, provides a legal framework for development of national and regional pollutant registers. Although details are different, most countries in Europe have legislation to ensure access to information. In East Asia, though substantial progress has been made recently, still only a few countries such as Thailand, the Philippines, Korea, and Japan have introduced freedom information acts. PRTRs have been adopted or under development in some countries in Asia. Asia lacks a regional framework to promote freedom of information.
- 3) Systems for access to information should be designed to support a broad range of specific uses and users. These should include information required by individuals (such as information on drinking water quality), by corporations (such as information on environmental risks) and by the broader public for meaningful participation in decision making and seeking access to justice. Such national systems are most effective when the right to access to information is legally enforceable.
- 4) Access to information can be considered as a universal right as well as an instrumental device to achieve other objectives including environmentally sustainable economic growth. Specific benefits of information disclosure should be more clearly identified to promote it particularly in developing countries. Such benefits could include avoiding future conflicts among different stakeholders, supporting environmentally sustainable consumption choices, raising ownership of projects by stakeholders, and empowering the public to hold the government agencies and private corporations accountable for their environmental performance. Also access to information held by other countries may improve relationship amongst neighbouring countries over sound management over common natural resources.
- 5) At the same time, costs associated with information disclosure should be also looked at. Time, staff and other resources necessary to implement measures to ensure access to information are not considered significant, when they are compared to potential costs which could be brought about, if information disclosure had not taken place. It is however important to note that for proper implementation of information disclosure, most developing countries need substantial capacity building for the government as well as for the private sector, and civil society.
- 6) Quality of information in developing countries is generally poor due to lack of capacity of stakeholders concerned. Substantial amount of data and information may exist, but critical policy relevant information is difficult to obtain. Education of the general public, as well as use of the media for broadly publicising these issues, is essential.

## **2. Regional Collaboration to Promote Access to Information**

- 1) A regional instrument for harmonizing implementation of principle 10 of the Rio declaration is a desirable objective in Asia. However, prior to initiating a process to develop a regional convention stakeholders should invest in the development of legal frameworks and institutional capacity in each country, based on the results of needs assessments, in order to provide a basis for consensus-building and regional and sub regional collaboration. “Soft approaches” to raise awareness and promote voluntary actions may be a more effective approach to building support for an eventual regional agreement. Such approaches include good practices, bridging the digital divide and clearing house mechanism which can help civil society in gaining access to information. For example, participation in such fora as the Partnership for Principle 10 can facilitate the exchange of views and experiences among state and non-state stakeholders.
- 2) Regional collaboration should be promoted in particular on capacity development providing technical assistance, training, awareness-raising and network development for state and non-state stakeholders. In such activities, UNESCAP and other international partners such as APFED and WRI should continue to facilitate research, dialogue and implementation. Technical and financial support from the countries participating in the Aarhus Convention and other efforts to support principle 10 would facilitate the exchange of lessons learned in this process.
- 3) Independent assessment of national systems, such as those conducted by the Access Initiative using common indicators to identify gaps in law and practice, have proven to be a useful tool to promote progress in a number of countries around the world, including Indonesia and Thailand. Such assessment should be conducted in other countries as a matter of priority.
- 4) A regional framework to ensure access to information over transboundary environmental impacts for those who are affected or are likely to be affected merits special attention, as there exist a number of trans-boundary natural resources (e.g. international rivers) as well as transboundary investment in Asia. In this regard experience of implementing the Convention on Environmental Impact Assessment in Transboundary Context (Espoo Convention) could provide a good example such as ensuring adequate and effective consultation with stakeholder beyond the national border at the early stage of planning.
- 5) More comprehensive and reliable information management and sharing schemes need to be developed and promoted for transboundary environmental issues such as acid rain deposition and dust and sand storms in East Asia, and flow change & haze control in South East Asia.
- 6) Asia should be proactive in implementing multilateral environmental agreements that require information management and dissemination such as the Basel Convention, Convention on Biological Diversity, Stockholm Convention and Rotterdam Convention. PRTRs are recognised as useful instruments for fulfilling a certain information requirements of these conventions.

## **3. National Initiative to Promote Access to Information**

- 1) Although positive steps are noted in some Asian countries that have made a progress in enacting and implementing national legislation, much more needs to be done.
- 2) Countries in the region should make an effort to include access to information in the country’s constitution, when considered appropriate.
- 3) Besides inclusion in the constitution, there’s a need to bring out new legislation or strengthen existing legislation. Existing legislation should ensure quality of information, timely dissemination of information and formulation of the right to information rather than the “exception/exemption to information”. Effective enforcement of existing laws and legislation would be an appropriate solution in some countries.

- 4) It should be, however, noted that different social, economic and cultural factors should be fully taken into account in developing a national framework for legislation of access to information. In this respect, a model approach of access to information might be useful; however access to information act needs to be guided by the situation, socio-cultural differences in the different countries.
- 5) Environmental impact assessment (EIA) is an important tool which is common to almost all countries in Asia. Effectiveness of EIA depends on easy access to essential information and assessment of its quality by transparent reviewing process. Particularly, strategic environmental assessment (SEA) is considered useful as it provides opportunities to utilise information collected to select the optimal alternative to meet development goals. Experiences obtained through the implementation of EIAs should be fully taken into account in developing national legislative framework.
- 6) Also important is to pilot good practices regarding access to information in selected local areas and for particular sectors in coming up with a feasible framework to promote access to information for individual countries, because benefits created by access to information can be more specifically identified.

#### **4. Partnership among stakeholders**

- 1) Proper implementation of access to information requires certain capacity of all major stakeholders concerned, depending upon their respective roles. In developing countries not only government, but also the private sector and civil society need substantial capacity development.
- 2) Constrained political freedom and limited civil society organisations capacities are the constraint in pursuing the promotion of access to environmental information.
- 3) Knowledge and information held by community groups, civil society groups and indigenous people is useful for rational decision making. A mechanism should be set up to facilitate exchange of knowledge among different stakeholders.
- 4) Voluntary information disclosure by private corporations (e.g. environment management reports, and adoption of ISO 14000) is considered encouraging. In countries like Japan and Korea, such companies are to a certain extent benefited from Socially Responsible Investment (SRI).
- 5) Aid agencies should develop and apply their own policies to make relevant environmental information available even to those residing in recipient countries. Likewise, intergovernmental bodies should have policies to promote access to information. Donors who have ratified the Aarhus convention have responsibilities to promote its principles.

# Background Paper on “Access to Environmental Information”<sup>1</sup>

## 1. Introduction

Access to environmental information is vital for promoting policies and measures conducive to sustainable development. It influences people’s behaviour and promotes environmental responsibility and ensures that public decision-making is more environmentally sound. In Asia, however, the disclosure of information on the environment is limited. European countries promote information disclosure according to the Aarhus Convention. Latin American countries do the same in pursuance of the strategy adopted under the auspices of the Organization of American States (OAS). The situation in Asia is lagging behind and Asian countries encounter many challenges in adopting freedom of information acts. The region must collaborate now to develop a policy instrument that promotes the disclosure of information on the environment and sustainable development.

Asia can no longer afford to delay the development of a policy that ensures the people’s access to information on the environment and sustainable development. It is not rare to hear, for instance, someone complain about being denied an environmental impact assessment (EIA) report on the grounds that it is not open to the public. NGO representatives are often dissatisfied when they cannot obtain important information related to illegal logging or unauthorised mining, for example. Inaccessibility to essential information often prevents stakeholders, particularly local people, from voicing their views and concerns in the decision-making process, which may bring risks to their environment, health and economy. There is growing recognition of the need to ensure public access to environmental information. Improved access to information will help promote sound decision-making and planning, which in turn will promote public involvement in the implementation of projects. This policy rationale is embodied in principle 10 of the Rio Declaration (1992, Box 1) and paragraph 128 of the Johannesburg Plan of Implementation (2002).

APFED made an explicit recommendation on a regional agreement on the Right to Access Environmental Information (Box 2). Despite some reservations from certain countries, there is growing interest in endorsing the Aarhus principles in other parts of the world. Therefore, an agreement similar to the Aarhus Convention is proposed for the Asia-Pacific region. Few countries in the region have fully developed a system comparable to that advocated by the convention. While diversity in terms of

### **Box 1: Rio Declaration on Environment and Development (1992) Principle 10**

Environmental issues are best handled with the 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: APFED Final Report Excerpt**

#### *B-R5. Regional agreement on the Right to Access Environmental Information*

Despite some reservations from certain countries, there is growing interest in endorsing the Aarhus principles in other parts of the world. Therefore, an agreement similar to the Aarhus Convention is proposed for the Asia-Pacific region.

Few countries in the region have fully developed a system comparable to that advocated by the convention. While diversity in terms of politics, culture, history, and religion could make it difficult for the region to introduce such a convention in the immediate future, a gradual shift in that direction is possible. After all, the region’s largest resource for prompting sustainable development is human resources, which can be drawn upon only through active participation. The basic rights prescribed by the Aarhus Convention are essential in that respect.

*Source: APFED Final Report, p.70-71*

<sup>1</sup> This document is contained in “APFEDII-1/05/Doc.7” released on 25 October 2005 for the ASIA-PACIFIC FORUM FOR ENVIRONMENT AND DEVELOPMENT (Second Phase) First Plenary Meeting in Bogor, Indonesia 21-22 November 2005 and for the APFED Workshop on Access to Environmental Information held in Jakarta, Indonesia from 23 – 24 November 2005 that was a part of the Asia – Europe Environment Forum “One Third of Our Planet” held from 23 – 25 November 2005. The document was prepared by Mr. Hideyuki Mori, Project Leader and Mr. Masanori Kobayashi, Senior Policy Researcher of the Long-term Perspective and Policy Integration, Institute for Global Environmental Strategies (IGES).

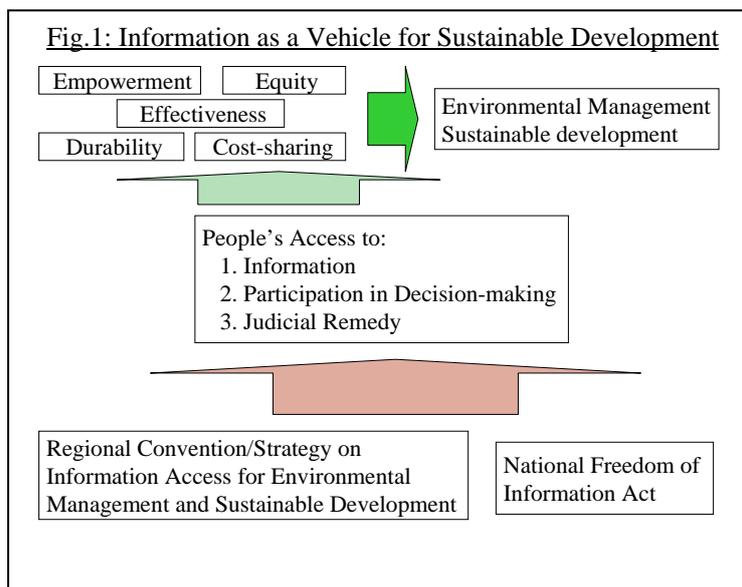
politics, culture, history, and religion could make it difficult for the region to introduce such a convention in the immediate future, a gradual shift in that direction is possible. After all, the region's largest resource for prompting sustainable development is human resources, which can be drawn upon only through active participation. The basic rights prescribed by the Aarhus Convention are essential in that respect.

2. Conceptual framework for access to environmental information – why it matters in pursuit of sustainable development and environmental management

(i) Information as a tool for sustainable development

Promotion of information disclosure can lead to greater involvement of wide-ranging stakeholders in the decision-making and implementation processes. People will have differing views on certain issues and could disagree on the final conclusion. Yet, some studies suggest that even dissident people may concur with the final decision if they feel that the process has been fair and their views have been properly heard. A decision taken with community involvement and backed by scientific findings has a better chance to achieve its original objectives.

For instance, the results of environmental impact assessment (EIA) are crucial for local people to formulate relevant views on the project in question. Transparency stimulates trust in local people and dialogue with project proponents become more constructive. The close engagement of local people and stakeholders is imperative to ensure the effectiveness and sustainability of various projects. Fig.1 shows the two major policy tools for promoting access to environmental information, *i.e.*, a regional policy tool and national legislation, and their major policy objectives and their expected impacts.



(ii) Informed consent for sustainable development

“Informed consent,” a term originally developed in medical ethics, tells us more about the importance of the access to information (Table 1). When a patient suffers from a certain illness, he or she has a right to ask the doctor to provide treatment options and come to a mutually-agreed method of treatment. The patient is entitled to information that will help decide the treatment options and is not be obligated to undergo any treatment without first giving consent.

The concept of “informed consent” has been applied to the domains of environmental management and sustainable development. The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal provides for a legal obligation of “informed consent” over the import/export of designated hazardous wastes. In the Convention on Biological Diversity (CBD), the “informed consent” was explicitly included in Article 15 (5), and stipulated that “access to genetic resources shall be subject to prior

**Table 1: Elements of Informed Consent for Sustainable Development**

|    |   |
|----|---|
| 1. | Nature of the decision/procedure.   |
| 2. | Reasonable alternatives to the proposed project.  |
| 3. | Relevant risks, benefits, and uncertainties related to each alternative.  |
| 4. | Assessment of the local people’s understanding.   |
| 5. | Acceptance of the project by the local people.  |
| 6. | Competence of the local people in making the decision:<br>(1) Ability to understand the situation.<br>(2) Ability to understand the risks associated with the decision.<br>(3) Ability to communicate a decision based on that understanding. |
| 7. | No presumed/implied consent is allowed.   |

Developed from “ETHICS IN MEDICINE ”  
University of Washington School of Medicine

informed consent of the Contracting Party providing such resources, unless otherwise determined by that Party.” The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade also relied on “informed consent” procedures. The Stockholm Convention on Persistent Organic Pollutants reinforces the “informed consent” procedures for the import/export of persistent organic pollutants. Information on the safety and risk of materials and chemicals is crucial to the “informed consent” procedures.

The application of the “informed consent” concept is not limited to international environmental laws. There were cases in the 1990’s in South Asian countries where local communities were given only partial information about projects and subsequently suffered from environmental calamities. Local communities received few benefits while being inflicted with the tragic consequences from mineral excavation. Toxic effluents from the mine contaminated drinking water, land and air, and devastated cropland and the surrounding ecosystems. Local people endured the health damage and lost the basis for their livelihood. Under those situations, in response to the World Bank’s Extractive Industries Review headed by Dr. Emil Salim, the World Bank Group revised its “Operational Policy on Indigenous Peoples.” The revised operational policy was finally approved by the Board of Executive Directors in May 2005 after being posted for six months for public comment. It requires that the government of the borrowing country will engage in a free, prior and informed consultation with concerned indigenous people by establishing an appropriate and inter-generational consultation. In order for such consultations to be transparent and effective, indigenous language interpretation is essential. The process will not provide veto power to any individuals or groups, but will ensure that a broad support of the community for the mining project will be a prerequisite for launching the project. The World Bank will not proceed with the project if such support is not ascertained through the prescribed process.

In securing a proper “informed consent for sustainable development,” local people must have relevant information on the operation and potential effects of development projects, including their repercussions on surrounding ecosystems and post-facto restoration commitments. In order to make the process meaningful, local people must: (i) understand the project, (ii) know the availability/non-availability of alternatives, (iii) be capable of properly assessing the risks, benefits and uncertainty, and (iv) make the explicit decision to support or reject the proposed project.

### 3. Global trend in promoting access to environmental information

#### (i) Aarhus Convention

In Europe, countries promote information disclosure in accordance with the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters that was adopted in June 1998 in the Danish city of Aarhus (Århus) at the Fourth Ministerial Conference in the “Environment for Europe” process. The convention, called the Aarhus Convention, came into force

in October 2001 (key elements are highlighted in Annex I). Today it has thirty-six member countries. The Aarhus Convention links environmental rights with human rights. It grants the public rights and imposes on the Parties to the Convention and public authorities the obligations to ensure access to information, public participation in decision-making, and justice in environmental matters. In response to the Convention, at least in part, twenty-eight European countries already have freedom of information acts (World Resources 2002 - 2004). The first meeting of the Parties to the Convention was held in Kazakhstan, in May 2005, where the Parties reviewed the first set of national reports, and adopted ten decisions, including one that recommended actions to improve the compliance of the Convention by the Parties. The countries have started strengthening networking amongst partners, enhancing capacity of stakeholders, and developing the information clearing house mechanism.

(ii) OAS Strategy on public participation in decision making on sustainable development policies

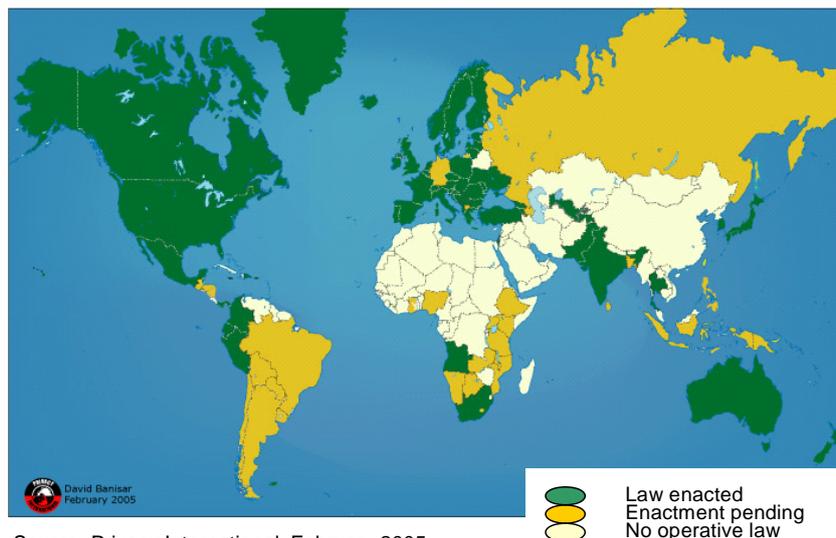
In Latin America and the Caribbean, countries promote information disclosure in accordance with the Inter-American Strategy for the Promotion of Public Participation in Sustainable Development Decision-Making that was developed in 2001 in response to the Action Plan adopted at the Summit of the Americas for Sustainable Development, held in Bolivia in December 1996. The structure of the Strategy is highlighted in Annex II.

(iii) Mekong River Commission

Involvement of public and the public opinion in the work of the Mekong River Commission (MRC) is believed to be a prerequisite for the overall aim and vision of the Mekong Agreement, i.e., sustainable development of the Mekong River Basin. The MRC has adopted a policy document on the public participation in the context of MRC. As a case in point, public inputs are required at the various stages of the formulation of the Basin Development Plan. With the consent of the Joint Committee, the Study on Public Participation in the Context of the MRC has been initiated in late 1996. The Joint Committee, with support from the Council, decided to undertake a review of the various recommendations and proposals through an in-house Task Force.

The Joint Committee, upon its review, approved the Report at its 9th Meeting, held in Phnom Penh

**Fig.2: World Atlas of National Freedom of Information Laws**



Source: Privacy International, February 2005

Note by the authors: Privacy International states that the Philippines does not have a freedom of information act (FOIA) per se; World Resource Institute reports that the FOIA is in effect in the Philippines based on the combination of the Constitutional right and various legal provisions on information access.

**Table 2: Governance and Access to Information**

|             | Polity Index | Corruption perceptions | NGOs (1990) | NGOs (2000) | Press Freedom | Freedom of Information Legislation | Radios | Internet Users |
|-------------|--------------|------------------------|-------------|-------------|---------------|------------------------------------|--------|----------------|
| Bangladesh  | 6            | 0.4                    | 6           | 9           | 63            | pending                            | 49     | 1              |
| Cambodia    | 2            | ...                    | 8           | 30          | 68            | ...                                | 119    | 1              |
| China       | -7           | 3.5                    | 1           | 2           | 80            | ...                                | 339    | 26             |
| India       | 9            | 2.7                    | 2           | 3           | 42            | pending                            | 121    | 7              |
| Indonesia   | 7            | 1.9                    | 6           | 9           | 53            | pending                            | 157    | 19             |
| Japan       | 10           | 7.1                    | 19          | 28          | 17            | in effect                          | 956    | 455            |
| Korea, Rep. | 8            | 4.2                    | 28          | 45          | 30            | in effect                          | 1,033  | 518            |
| Malaysia    | 3            | 5.0                    | 63          | 83          | 71            | ...                                | 420    | 252            |
| Pakistan    | -6           | 2.3                    | 9           | 10          | 57            | pending                            | 105    | 3              |
| Philippines | 8            | 2.9                    | 20          | 26          | 30            | in effect                          | 161    | 26             |
| Sri Lanka   | 5            | ...                    | 53          | 69          | 63            | pending                            | 208    | 8              |
| Thailand    | 9            | 3.2                    | 20          | 29          | 30            | in effect                          | 235    | 56             |
| Viet Nam    | -7           | 2.6                    | 4           | 10          | 82            | ...                                | 109    | 5              |
| Hungary     | 10           | 5.3                    | 153         | 329         | 23            | in effect                          | 690    | 149            |
| Sweden      | 10           | 9.0                    | 370         | 559         | 8             | in effect                          | 932    | 521            |
| Kenya       | -2           | 2.0                    | 43          | 54          | 67            | pending                            | 109    | 16             |
| Brazil      | 8            | 4.0                    | 14          | 18          | 32            | ...                                | 433    | 46             |

Note:

- (1) Polity Index; +10 indicates that a state is strongly democratic; -10 indicates that a state is strongly autocratic.
- (2) Corruption Perception Index: 10 indicates that the state is the least corrupt and 0 indicate that a state is the most corrupt.
- (3) NGOs per million population
- (4) Press freedom: 1-30 indicates "Free" media, 31-60 for "partly free", and 61-100 "not free."
- (5) Freedom of Information (FOI) legislation requires disclosure of government records to the public. "Pending" indicates that the legislation has not yet been finalized and still under consideration.
- (6) Radios per 1,000 population
- (7) Internet users per 1,000 population

Source: World Resources 2002 – 2004, World Resource Institute

on March 30-31, 1999. For implementation by the Secretariat and reference of the interested public, the basic concept, terminologies, and principal guidelines for public participation in the context of the MRC, as endorsed by the Joint Committee, are made available to the public.

(iv) Progress in Asia

The dilatory development of information disclosure in many Asian countries is disconcerting. Among the developing countries in East Asia, only the Philippines and Thailand have introduced freedom of information legislation (Fig. 2). Freedom of information tends to be a sensitive political issue and may require a complex piece of legislation that has important implications for many stakeholders. Legislative actions on information disclosure are directly related to such factors as political freedom, level of corruption, prevalence of NGOs, press freedom and radio/Internet availability (Table 2).

However, democratisation has progressed significantly in most countries in the region and there are promising examples of movement for information disclosure in India and Indonesia. Table 3 also shows the restrained evaluation of the Asian governments' performance in disclosing the information to the public. In order to facilitate such policy development on the promotion of access to environmental information at various levels, it is time for Asia to consider a regional convention to promote information disclosure and public participation with a view to promoting better environmental management and sustainable development.

“NGO Network for Realisation of the Aarhus Convention in Japan” (Aarhus Net Japan or ANJ) has been supporting the themes and guidelines of the Aarhus Convention. The Asia-Pacific Forum for Environment and Development (APFED) concluded its work at its Tokyo meeting in December 2004 by adopting the final report that included a recommendation to develop a regional agreement similar to the Aarhus Convention. The APFED final report was presented at the Fifth Ministerial Conference on Environment and Development in Asia and the Pacific (MCED) held in Seoul in March 2005. In addition, countries in Asia and the Pacific gathered at the High Level Asia-Pacific Conference for the World Summit on the Information Society in Tehran from 31 May – 2 June 2005, and adopted the Regional Action Plan for the Information Society. While the Regional Action Plan comprehensively addressed issues to promote information and communication technologies in Asia, it failed to spell out concrete obligations and procedures to be followed by the governments, unlike the Aarhus Convention or the Inter-American Strategy. Agreement at the regional level would trigger a national level movement and replicate successful initiatives across the region.

|             |    |
|-------------|----|
| Philippines | 59 |
| Thailand    | 56 |
| Cambodia    | 44 |
| Singapore   | 42 |
| Malaysia    | 33 |
| Indonesia   | 18 |
| Vietnam     | 18 |
| Myanmar     | 5  |

Source: Philippine Center for Investigative Journalism and Southeast Asian Press Alliance (2003)

4. Model law development for promoting access to environmental information in countries of Asia and the Pacific

(i) Lessons learned from the countries in Asia and the Pacific

Thailand

The Official Information Act was approved in 1997. The Act guarantees access to public information for all citizens and sets a code of information practices for the processing of personal information by state agencies. The Official Information Commission (OIC) oversees the Act. The Commission is under the Office of the Prime Minister. In November 2000, Mr. Chungtong Opassirwit was appointed as the new director of the Commission, following the dismissal of the former director in August 1999. In April 2001, an Information Act Amendment Committee, comprising 18 members was established. The Committee is looking at ways to enforce the Act more efficiently and effectively. In 2004, a draft amendment was submitted to the Cabinet. The Cabinet in return asked the OIC to further consider the controversial issue of whether autonomous agencies established by the Thai Constitution are under the jurisdiction of the Act. As of June, 2004, the OIC was still considering this issue. The Official Information Act allows for citizens to obtain government information such as the result of a consideration or a decision which has a direct effect on an individual, work-plan, project and annual expenditure estimates, manuals and orders relating to work procedure of State officials which affect the rights and duties of individuals.

Philippines

The right to information was first included in the 1973 Constitution and was expanded in the current 1987 Constitution. Article III, Section 7, states: “The right of the people to information of matters of public concern shall be recognized. Access to official records and documents, and papers pertaining to official acts, transactions, or decisions as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.” The Supreme Court as far back as 1948 recognized the importance of access to information and has issued a series of rulings. There is no freedom of information act per se in the Philippines but a combination of the Constitutional right and various other legal provisions makes it one of the most open countries in the region. The Supreme Court ruled in 1987 that the right could be applied directly without the need for an additional act. Civil society groups have formed the Access to

Information Network and are calling for the adoption of a new law. A number of bills are pending in the Parliament since then.

### India

The Supreme Court ruled in 1982 that access to government information was an essential part of the fundamental right to freedom of speech and expression. The Court ruled in 2002 that voters have a right to know information about candidates for elected offices and ordered the Election Commission to make candidates publish information about criminal records, assets, liabilities and educational qualifications. The Freedom of Information Act was approved in January 2003 but has not yet been implemented. Under the Act, all Indian citizens will have a right to ask for information from public authorities. The public authority must respond in thirty days (48 hours if it concerns dangers to the life or liberty of a person).

### Indonesia

The movement for seeking a national freedom of information act (FOIA) has taken shape in Indonesia. "The NGOs Coalition for Freedom of Information" was formed with eighteen NGOs in November 2000 and started a campaign called "Access Initiative". The movement led to the passage of the Human Rights Action Plan (1999) and the new Constitutional Amendments (2001). The Indonesian Center for Environmental Law (ICEL) took the initiative in drafting the "Freedom of Information Act" that was adopted by the National Parliament in 2002, but it was not enacted due to the subsequent dissolution of parliament. The UN Development Programme (UNDP) and the World Resource Institute (WRI) have supported capacity-building activities. Some local governments started implementing the freedom of information provisions through local ordinance. The National Access Committee was established with the Ministry for Environment, the Supreme Court, universities and the Chamber of Commerce. The Environmental Caucus in the National Association of Parliaments was also established. It is hoped that the relentless endeavours of Indonesian stakeholders and their partners will make a breakthrough under the newly formed parliament to finally reach a stage of enacting the FOIA as an important step forward to promote sustainable development in Indonesia.

## 5. Key steps for successful formation and implementation of the regional convention for Asia and the Pacific

### (i) Assessment on the current status of information disclosure

At the national level, it would be useful to assess the degree of information disclosure to society by the public offices. As Table 3 indicates, the people's assessment varies on the degree of disclosure regarding information withheld by the government. Are inspection reports on effluents from mineral refineries, or slaughterhouses, for example, available for public reference? Local residents are often denied access to such information and governments fail to detect the problems at early stages. Such an assessment on information disclosure might already indicate the degree and nature of deficiencies in legislative measures and their implementation.

### (ii) Development of a basic model of FOIA in the region

It would be useful to develop a basic model of legislation on access to environmental information in order to promote legislative process in the countries that lack a Freedom of Information Act (FOIA). With respect to the FOIA in Thailand and Indonesia, the Finish Environmental Research Institute and the World Resource Institute have been assisting each of them. Research institutes such as IGES can assist to developing countries in Asia through forging mutual partnerships. Based on such models, countries can develop legislation by reflecting each country's socio-political conditions through extended policy dialogues with relevant stakeholders and advance the adoption and implementation of FOIAs. Pilot projects should be also promoted to examine the potential impacts of various measures in promoting access to environmental information on the people's perception, behaviours and environmental performance.

(iii) Establishment of an agreement at the regional level

A regional convention must be developed in parallel to the national level efforts. Asia has seen many new developments regarding access to information, particularly related to the environment and sustainable development. Agreement at the regional level would trigger a national level movement and replicate successful initiatives across the region. Through the formulation process of such regional agreement, stakeholders could exchange information on the progress and constraints in adopting and implementing such policies in various countries, and develop more effective policies based on the lessons learned. Those policy dialogues would contribute to raise the overall effectiveness for sustainable development as a region. The framework already provided by the Aarhus Convention and OAS Strategy offers a useful basis for developing such a regional convention/strategy for Asia and the Pacific. Partnership also needs to be forged with the UNESCAP, UNEP/ROAP (Regional Office for Asia and the Pacific), UNDP, and others such as WRI and IUCN.

(iv) Promotion of multi-stakeholder dialogue regionally and internationally

Establishing a regional agreement may require mutual communication among multi-stakeholders, including international organisations such as United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP), funding institutions, such as Asia Development Bank (ADB), research institutions, NGOs and other relevant bodies which are expected to take important initiatives. Also, communication with other regions, such as Europe or Latin America can be effective to examine the lessons learned there. In November 2005, the Asia-Pacific Forum for Environment and Development (APFED, Secretariat: IGES) organized a workshop related to information disclosure at the conference entitled “1/3 of our Planet” (Asia Europe Environmental Forum) in Jakarta (the co-chairperson’s summary and programme of the workshop is contained in this publication). Participants are expected to review the current situations, identify concerns and discuss possible measures for international cooperation. Thus, under the common objective of information freedom, national, regional and international multi-stakeholders may conduct diversified dialogues to develop a mutual consensus for the measures and procedures for implementation. The workshop is particularly geared toward forging partnership to develop a regional convention on access to environmental information and a programme for capacity development in Asia and the Pacific. A multi-stakeholder process such as this workshop would certainly drive the sustainable development with a more transparent and equitable decision-making process based on the agreement of society.

**Structure of the Aarhus Convention**  
(not showing the entire text of the Convention)

CONVENTION ON ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS done at Aarhus, Denmark, on 25 June 1998

**Article 1 OBJECTIVE**

In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.

**Article 2 DEFINITIONS**

**Article 3 GENERAL PROVISIONS**

Each Party shall take the necessary legislative, regulatory and other measures, including measures to achieve compatibility between the provisions implementing the information, public participation and access-to-justice provisions in this Convention, as well as proper enforcement measures, to establish and maintain a clear, transparent and consistent framework to implement the provisions of this Convention.

**Article 4 ACCESS TO ENVIRONMENTAL INFORMATION**

Each Party shall ensure that, subject to the following paragraphs of this article, public authorities, in response to a request for environmental information, make such information available to the public, within the framework of national legislation, including, where requested and subject to subparagraph (b) below, copies of the actual documentation containing or comprising such information:

**Article 5 COLLECTION AND DISSEMINATION OF ENVIRONMENTAL INFORMATION**

1. Each Party shall ensure that:

- (a) Public authorities possess and update environmental information which is relevant to their functions;
- (b) Mandatory systems are established so that there is an adequate flow of information to public authorities about proposed and existing activities which may significantly affect the environment;
- (c) In the event of any imminent threat to human health or the environment, whether caused by human activities or due to natural causes, all information which could enable the public to take measures to prevent or mitigate harm arising from the threat and is held by a public authority is disseminated immediately and without delay to members of the public who may be affected.

**Article 6 PUBLIC PARTICIPATION IN DECISIONS ON SPECIFIC ACTIVITIES**

1. Each Party:

- (a) Shall apply the provisions of this article with respect to decisions on whether to permit proposed activities listed in annex I;
- (b) Shall, in accordance with its national law, also apply the provisions of this article to decisions on proposed activities not listed in annex I which may have a significant effect on the environment. To this end, Parties shall determine whether such a proposed activity is subject to these provisions; and
- (c) May decide, on a case-by-case basis if so provided under national law, not to apply the provisions of this article to proposed activities serving national defence purposes, if that Party deems that such application would have an adverse effect on these purposes.

**Article 7 PUBLIC PARTICIPATION CONCERNING PLANS, PROGRAMMES AND POLICIES RELATING TO THE ENVIRONMENT**

Each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework, having provided the necessary information to the public. Within this framework,

article 6, paragraphs 3, 4 and 8, shall be applied. The public which may participate shall be identified by the relevant public authority, taking into account the objectives of this Convention. To the extent appropriate, each Party shall endeavour to provide opportunities for public participation in the preparation of policies relating to the environment.

#### Article 8 PUBLIC PARTICIPATION DURING THE PREPARATION OF EXECUTIVE REGULATIONS AND/OR GENERALLY APPLICABLE LEGALLY BINDING NORMATIVE INSTRUMENTS

Each Party shall strive to promote effective public participation at an appropriate stage, and while options are still open, during the preparation by public authorities of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment.

To this end, the following steps should be taken:

- (a) Time-frames sufficient for effective participation should be fixed;
- (b) Draft rules should be published or otherwise made publicly available; and
- (c) The public should be given the opportunity to comment, directly or through representative consultative bodies.

The result of the public participation shall be taken into account as far as possible.

#### Article 9 ACCESS TO JUSTICE

Each Party shall, within the framework of its national legislation, ensure that any person who considers that his or her request for information under article 4 has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with in accordance with the provisions of that article, has access to a review procedure before a court of law or another independent and impartial body established by law. In the circumstances where a Party provides for such a review by a court of law, it shall ensure that such a person also has access to an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law.

#### Article 10 MEETING OF THE PARTIES

The first meeting of the Parties shall be convened no later than one year after the date of the entry into force of this Convention. Thereafter, an ordinary meeting of the Parties shall be held at least once every two years, unless otherwise decided by the Parties, or at the written request of any Party, provided that, within six months of the request being communicated to all Parties by the Executive Secretary of the Economic Commission for Europe, the said request is supported by at least one third of the Parties.

#### Article 11 RIGHT TO VOTE

#### Article 12 SECRETARIAT

The Executive Secretary of the Economic Commission for Europe shall carry out the following secretariat functions:

- (a) The convening and preparing of meetings of the Parties;
- (b) The transmission to the Parties of reports and other information received in accordance with the provisions of this Convention; and
- (c) Such other functions as may be determined by the Parties.

**Key elements of the Inter-American Strategy for the Promotion of Public Participation in Decision-Making for Sustainable Development**  
(not showing the entire text)

**INTRODUCTION**

In December 1996, at the Summit of the Americas for Sustainable Development, Santa Cruz, Bolivia, the heads of state and government adopted a Declaration and Plan of Action supporting the full integration of civil society into the design and implementation of sustainable development policies and programs at the hemispheric and national level. In 1998, the heads of state of the Americas renewed their commitment to public participation in the development process at the Summit of the Americas II in Santiago, Chile. These commitments followed earlier progress at the Earth Summit in Rio and the Summit of the Americas in Miami, and built upon the work of governments and organizations committed to embracing the challenge of participation. Over a two-year period, the OAS has developed the Inter-American Strategy for the Promotion of Public Participation in Decision-Making for Sustainable Development (ISP) in collaboration with a broad array of government and civil society representatives from throughout the hemisphere. A unique advisory structure ensured that the ISP itself was open to continual input and that it supported the ongoing work of the regular OAS staff, consultants, and dedicated volunteers. National Focal Points, serving as liaisons of governments to the ISP, channeled information between the ISP and the broader civil society at the country level. A Project Advisory Committee consisting of seven representatives each from government and from civil society, including private business, women, indigenous people, other minority or marginalized people, and labor, provided advice on the ISP's work program and findings.

The following are the main essence of the recommended actions

**1 ) INFORMATION AND COMMUNICATION**

Access to and exchange of accurate, relevant, timely information, including scientific and traditional knowledge, is fundamental to assuring that civil society and government have the means and ability to participate meaningfully and responsibly in sustainable development decisions. It is recommended to strengthen and develop mechanisms for gathering the necessary information, exchanging it with other stakeholders, and disseminating it to the general public.

**2 ) LEGAL FRAMEWORKS**

Clearly defined rights and responsibilities, and complementary institutional mechanisms, encourage meaningful and responsible participation by civil society in sustainable development decision-making. Access to information, to processes for making and implementing decisions, and to administrative or judicial relief when needed is a sine qua non of a meaningful legal and regulatory framework for participation, assuring citizens and communities of a voice in the decisions that shape development and promote sustainability. At the same time, public servants who are allowed to innovate in support of public participation, and to reach out to citizens and communities within the bounds of these legal frameworks, bring vitality to public dialogue and promote the constant improvement of democratic processes. It is thus proposed to ensure the inclusion of provisions in new and existing laws that guarantee timely access to information, process and justice, and, when necessary, eliminate impediments to public participation.

**3) INSTITUTIONAL PROCEDURES AND STRUCTURES**

As societies develop, their institutional structures become more complex, which makes necessary the strengthening of institutional policies and structures for promoting the systematic interaction with the public. Institutions should be encouraged to innovate, and public-private partnerships should be promoted and consolidated, whenever possible, in order to address this need. It is thus proposed to develop and strengthen appropriate institutional structures and procedures, through legislation, where necessary, that allow for public participation in decision-making at all levels.

**4) EDUCATION AND TRAINING**

Educating citizens about the technical and practical issues raised by sustainable development decisions and training them for constructive participation ensure more articulate, comprehensible and effective participatory processes. Education and training are also fundamental wherever there are cultural and historical barriers to public participation. An effective education and training strategy will also encourage government and civil society organizations to rely on public input to find broad answers and solutions. It is in this context proposed to develop and support formal and non-formal education and training programs for government officials and members of civil society to improve their opportunities and capacity to participate effectively in sustainable development decision-making processes.

#### 5 ) FUNDING FOR PARTICIPATION

Effective public participation depends on the capacity of individuals, civil society institutions, and governments to be involved in decision-making. Hence, governments and civil society organizations should seek to ensure that a scarcity of financial resources does not preclude, unduly impede, or lead to an imbalance in public participation. The availability of an adequate minimum of resources to all stakeholders helps to ensure that public participation will be integrated into development decisions, an element fundamental to sustainability. In this context, it is proposed to procure and expand financial resources to initiate, strengthen, and/or continue participatory practices in decision-making for sustainable development.

#### 6 ) OPPORTUNITIES AND MECHANISMS FOR PUBLIC PARTICIPATION

Those involved in the sustainable development process, from government officials and academics to representatives of non-governmental organizations and less favored sectors of society, point out the scarcity of regular, structured opportunities and mechanisms for consultation with each other. Where such opportunities and mechanisms exist, they have had important benefits. These benefits have included: (1) encouraging consensus for alternative solutions; (2) creating trust between participants; (3) building bridges between actors who often do not otherwise communicate, both within civil society and between government and civil society; and (4) serving as a first step toward more formal partnership among participants. These opportunities and mechanisms for public participation promote information exchange. They also play a crucial role in enabling early and ongoing dialogue. It is thus recommended to strengthen and support the creation of opportunities and mechanisms for public participation on sustainable development issues at all levels of the decision-making process to include stakeholders from all sectors of society.

*Workshop on Access to Environmental Information in Asia*  
*Agenda and Programme of Work*  
*23 – 24 November 2005*

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**Day 1 <14:00 – 18:00, 23 November 2005>**

**Opening Session (14:00 – 14:30)**

- Opening remarks  
by **Prof. Akio Morishima**, Chair of the Board of Directors, Institute for Global Environmental Strategies (IGES)
- Opening Address (15 min.)  
by **Prof. Emil Salim**, Chairman, Foundation for Sustainable Development, Indonesia

**Substantive Session (14:30 – 16:30)**

Co-Chair: **Prof. Emil Salim**, Chairman, Foundation for Sustainable Development, Indonesia

Key note presentations (14:30 – 15:45)

- Keynote Presentation I: “Information as a Strategic Tool for Promoting Sustainable Development and Environmental Management”  
by **Prof. Sachihiko Harashina**, Faculty of Engineering, Tokyo Institute of Technology
- Keynote Presentation II: “Lessons to be learned from European Experiences - Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)”  
by **Mr. Michael Stanley-Jones**, **Environmental Information Management Officer**, Aarhus Convention, United Nations Economic Commission for Europe Environment and Human Settlements Division
- Keynote Presentation III: “Promoting Public Involvement and Support for Promoting Sustainable Development and Environmental Management through Information Dissemination”  
by **Dr. Cielito Habito**, Professor and Director, Ateneo Center for Economic Research and Development

Discussions (15:45 – 16:00)

**Coffee Break (16:00 – 16:30)**

**Working Group Deliberations (16:30 – 18:00)** \* Participants will be divided into three groups.

- Working Group A: Developing an Asian regional convention on the access to environmental information, participation and justice  
Moderator: **Ms. Barbara Rosemary Hardy**, former Commissioner of the Australian Heritage Commission
  - “Model Convention on Access to Environmental Information, Decision Making and Judicial Proceedings”  
by **Mr. Masanori Kobayashi**, Senior Policy Researcher, Long Term Perspective and Policy Integration Project, IGES
  - “International Initiatives on Information Access”  
by **Ms. Frances Seymour**, Program Director of the Institutions and

- *Governance Program, World Resource Institute (WRI)*
- “Regional Collaboration for Promoting Access to Environmental Information in Asia and the Pacific”  
by **Mr. Masakazu Ichimura**, Chief, Environment Section, Environment and Sustainable Development Division, UN Economic and Social Commission for Asia and the Pacific (UNESCAP)

Discussions

- Working Group B: Facilitating the enactment of Freedom of Information Acts (FOIA) in Asian countries  
Moderator: **Mr. Parvez Hassan**, former Chairman of the world Conservation Union (IUCN) Law Commission
  - “FOIA process and intervening factors”  
by **Ms. Joshi Khatarina**, Deputy Executive Director, Indonesian Center for Environmental Laws
  - “Access to Environmental Information, Decision Making and Judicial Proceedings in Korea”  
by **Dr. Sang-in Kang**, Head/Research Fellow, Global Environment Research Center, Korea Environment Institute
  - “Gaps and Challenges in Utilizing Information as a Tool for Changing the People’s Behaviours toward Sustainability”  
by **Dr Saradha Iyer**, Legal Advisor, Third World Network

Discussions

- Working Group C: Forging a platform for promoting stakeholders’ participation in environmental decision-making  
Moderator: **Mr. Reza Maknoon**, Advisor to the Vice President and the Head of the Department of the Environment, Deputy Chairman of the National Committee SD of Iran
  - “Providing Enabling Policy and Institutional Framework for Information Sharing and Public Participation in Mekong River Basin Management”  
by **Mr Hans Guttman**, Environment Programme Coordinator of Environment Division, Mekong River Commission
  - “Grass-root Perspectives on the Constraints and Challenges for Information Dissemination and Public Participation”  
by **Mr. Satoru Matsumoto**, Representative Director, Mekong Watch, **Mr. Kim Sangha**, Coordinator, SeSan Protection Network (Cambodia), **Ms. Grainne Ryder**, Policy Director, Probe International (Canada)

Discussions

**Closing of Day 1 (18:00)**

**Day 2 <9:00 – 12:30, 24 November 2005>**

**Working Group Deliberations (continued) (9:00 – 10:30)**

**Wrap-up Session (10:30 – 12:00)**

Co-Chair: **Prof. Hironori Hamanaka**, Advisor, IGES

- Presentation from working groups (Working Groups A, B and C)
- Adoption of an appeal to the Plenary Session of the 1/3 of Our Planet

**Closing Session (12:30)**

- Closing remarks by the Co-Chairs