

Information Access as a Vehicle for Sustainable Development in Asia

- Establishing Regional Agreement in Asia -

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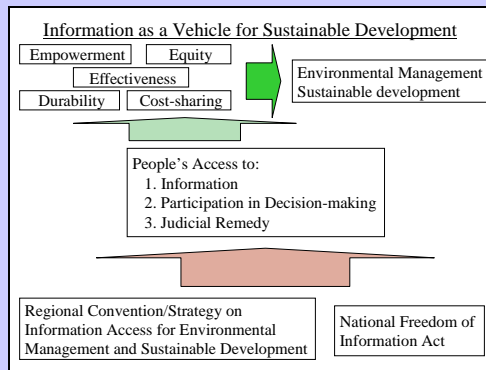


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Access to environmental information is vital for promoting policies and measures conducive to sustainable development. It influences people's behaviour and promotes environmental responsibility and ensures that public decision-making is more environmentally 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 the pursuance of strategies adopted under the auspices of the Organization of American States (OAS).



The situation in Asia is lagging behind and Asian countries see many challenges for establishing freedom of information laws. The region must collaborate now to develop a policy instrument that promotes the disclosure of information on the environment and sustainable development.

Asia, lagging behind in information disclosure, barely makes advances

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

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.

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“In Europe, countries promote information disclosure in accordance with the Aarhus Convention”

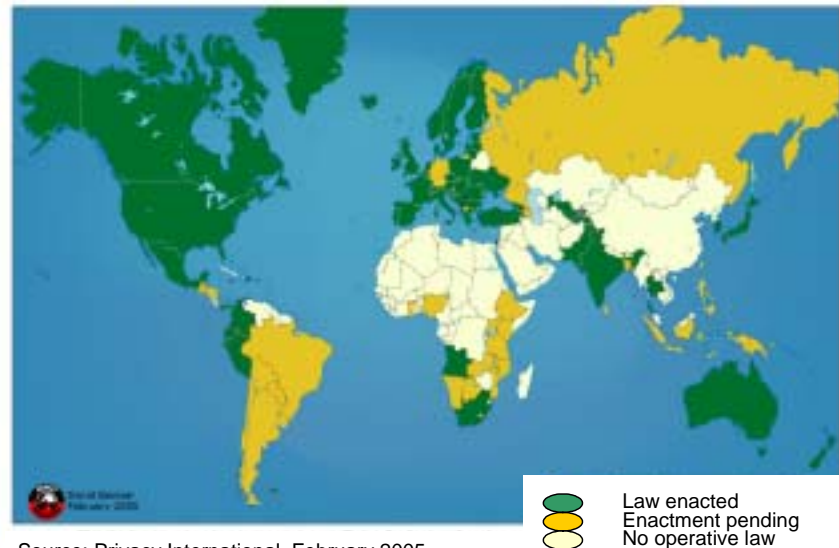
information. Improved access to information will help promote sound decision-making and planning, which in turn will promote public involvement in the implementation of projects. This policy rationale is embodied in principle 10 of the Rio Declaration (1992) (Box 1) and paragraph 128 of the Johannesburg Plan of Implementation (2002).

Information disclosure being accelerated in Europe and Latin America

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. 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 regarding 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 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.

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.

Figure 1: 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.

“Among the developing countries in East Asia, only the Philippines and Thailand have introduced freedom of information legislation”

Sign of information disclosure 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 (Figure 1). 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 1).

Table 1: 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

“It is time for Asia to consider a regional convention to promote information disclosure and public participation”

However, democratisation has progressed significantly in most countries in the region and we can see a promising example of movement for information disclosure in Indonesia (Box 2). 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.

Box 2: Movement for access to information legislation in 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.

Source: ICEL & UNDP (2004)

“NGO Network for Realisation of the Aarhus Convention in Japan” (Aarhus Net Japan or ANJ) has been supporting the themes and guidelines of

“Agreement at the regional level would trigger a national level movement and replicate successful initiatives across the region”

Box 3: 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

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 (Box 3). 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 does not 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.

Significance and effects of information disclosure

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. 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.

Application to International Environmental Law

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 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.

“Informed consent now applied to the field of environmental management and sustainable development”

Introduction of the development policies and project design

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.

“The World Bank will not proceed with the project if local support is not ascertained through the prescribed process.”

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 there will be broad support of the community for the mining 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 (Table 2).

Table 2: 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: (1) Ability to understand the situation. (2) Ability to understand the risks associated with the decision. (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

“A decision taken with community involvement and backed by scientific findings has a better chance to achieve its original objectives.”

Information as a tool for engaging people in common actions

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.

Steps for promoting information access in the context of pursuing sustainable development

Assessment on the current status of environmental information disclosure

“The development of a basic model of FOIA may stimulate national level discussions.”

At the national level, it would be useful to assess the degree of information disclosure to society by the public offices. Table 3 indicates the people’s assessment 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?

| | |
|-------------|----|
| 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)

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.

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 Environment Institute and the World Resource Institute have been assisting each of them. Research institutes such as IGES can assist 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.

“A regional convention must be developed in parallel to the national level efforts.”

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 a 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.

“Such a multi-stakeholder process would certainly drive sustainable development with a more transparent and equitable decision-making process.”

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, interactions with other regions, such as Europe or Latin America can be effective to see the lessons learned there.

In November 2005, the Asia-Pacific Forum for Environment and Development (APFED, Secretariat: IGES) will have a workshop related to access to environmental information at the conference entitled “1/3 of our Planet” (Asia-Europe Environment Forum) in Jakarta. 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 to be taken and procedures for implementation. Such a multi-stakeholder process would certainly drive sustainable development with a more transparent and equitable decision-making process based on the agreement of society.

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