

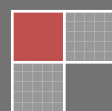


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# ENVIRONMENTAL DEMOCRACY IN THE HIMALAYAS

An Assessment of  
Access to Information,  
Public Participation and  
Access to Justice in  
Himachal Pradesh and Uttarakhand

THE ACCESS INITIATIVE HIMALAYAN COALITION



# ENVIRONMENTAL DEMOCRACY IN THE HIMALAYAS

An Assessment of Access to Information, Public Participation and  
Access to Justice in Himachal Pradesh and Uttarakhand

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## PREFACE & ACKNOWLEDGEMENTS

*The Access Initiative* (TAI) is a global coalition of public interest groups. The coalition is led by a Core team comprising of Advocates Coalition for Development and Environment (ACODE, Uganda) Corporación Participa (Chile), Environmental Management and Law Association (EMLA, Hungary), Thailand Environment Institute (TEI, Thailand), World Resources Institute (WRI, United States) and Legal Initiative for Forest and Environment (LIFE, India). Through this initiative, various groups across the world collaborate to promote national-level implementation of access to information, participation, and justice in environmental decision-making as a part of their global commitment. Since the last one year, TAI has expanded to many countries of South Asia, with Sri Lanka, Nepal and Bangladesh having just completed their National TAI Assessment. With effect from October 2008, a Core Team position has been created with LIFE representing South Asia. The aim is to expand TAI to Pakistan and Bhutan followed by Maldives and Afghanistan.

We are grateful to a whole lot of friends and supporters who have helped us do the assessments. First and foremost, our thanks to Lalanath De Silva, Director, The Access Initiative for having confidence on us to carry out this assessment. His support and guidance at every stage made this assessment a reality. We are especially thankful to Joseph Foti, Research Associate of TAI Global Secretariat and Loraine Gatlabayn of Ateneo School of Government, Philippines for training the researchers and acquainting us with TAI Methodology. Our sincere thanks are due to Linda J Shaffer and Monika Kerdeman and the team at the TAI secretariat for always providing crucial support.

Within India, the assessments would not have been possible without support from a whole lot of people and organizations, especially at the field level, all our partners, our research team and our advisory board. We are grateful to the officials and other stakeholders who gave us time for interviews and shared their insights.

**TAI Acknowledgement:** *Environics Trust (ET)* and the *Legal Initiative for Forest and Environment (LIFE)* completed the assessment along with the coalition members. The study was conducted using the assessment method developed by **The Access Initiative (TAI)**, a global network of civil society organizations. Unless otherwise noted, the opinions, interpretations and findings presented in this document are the responsibility of ET and LIFE and not of TAI. For additional information about The Access Initiative, including its members and leadership, please see [www.accessinitiative.org](http://www.accessinitiative.org)."

## EXECUTIVE SUMMARY

In the 1992 Rio Declaration on Environment and Development, 178 countries including India, pledged to open environmental decision making to public input and scrutiny. *Access to Information, Public Participation, and Access to Justice* are keys to a more transparent, inclusive, and accountable decision making in matters concerning the environment – what we call ‘environment democracy’. Access to Information motivates and empowers people to participate in an informed manner. Participatory decision-making enhances the ability of governments to respond to public concerns and demands, to build consensus, and to improve acceptance of and compliance with environmental decisions. Access to Justice enhances the public’s ability to enforce the right to be informed, to participate and to correct environmental harm. In turn access depends on governments and civil society having the capacity to operationalize these rights.

This report entitled “*Environmental Democracy in the Himalayas*” assesses the progress made in providing access to environmental decision making by the Governments of Himachal Pradesh and Uttarakhand, (as well as the Union Government so far as they relate to these two states) and, in the hope of moving forward, evaluates what hurdles remain and how they could be overcome.

This report is for those who are “access proponents”- members of the governments, judiciary, civil society, business and others committed to promoting access and eager to learn what has worked and why. *Environmental Democracy in the Himalayas* is based on the research findings of The Access Initiative carried out from February to November 2008 made by the TAI Himalayan Coalition.

TAI assessment method evaluates national law and policy regarding access to information, public participation, and access to justice, as well as capacity of the public, civil society organizations, and government officials on access related issues. TAI assessments use standardized set of indicators, research guidelines, and ranking. The method also surveys governmental practice in each of the access rights, using case study analysis.

The moot question that TAI assessments address is to what extent existing legal and institutional framework facilitate access rights and specifically in terms of implementation of Principle 10 of the Rio Declaration 1992. TAI assessments have been used by Civil Society Groups across the world to identify gaps in access rights and use the findings to press for reforms.

## FINDINGS

India is a signatory to *Principle 10* that entails that each country must facilitate access to information, public participation and access to justice in environmental decision-making. Pursuant to this declaration, India has initiated some steps to translate these commitments into practice. This includes the start of the Environment Impact Assessment (EIA) process through the EIA Notification of 1994; the introduction of Public Hearing's of select projects requiring EIA and setting up of grievance redressal mechanisms in the form the National Environment Appellate Authority (NEAA) as well as the National Environment Tribunal (NET). These legal developments are landmark steps recognising both, the need to ensure participatory democracy as well as ensure compliance with Principle 10.

Thus, to a significant extent, the legal infrastructure for 'access rights' has been established in this country. However, certain disparity exists in terms of development: - while *access to information* (A2I) has made the most dramatic progress (in view of the enactment of the Right to Information Act, 2005), the other 'access rights' have unfortunately not gained much ground. The *public participation* (PP) component is woefully lacking in most of the recent enactments. *Access to Justice* (A2J) is being greatly restricted, partly on account of legal and policy development which favors speedier investment decisions in core sectors of infrastructure, mining and other mega projects, and partly, on account of the Courts, including the Supreme Court and the High Courts exercising greater judicial restraint. This disturbing trend is reflective of the global

### THE ACCESS INITIATIVE STRATEGY

- *Develop an indicator based tool to assess the performance of National Governments on the Implementation of Principle 10 of the Rio Declaration and to identify gaps in the law, institutions and practice of access rights.*
- *Empower civil society organizations (CSO's) to use the tool and support them to conduct independent assessment of access rights in their countries.*
- *Engage governments in constructive dialogue to close gaps identified in the National Assessments, and encourage collaborations between CSO's.*



scenario<sup>1</sup>.

The main findings in terms of the various access rights in the two states were:

## ACCESS TO INFORMATION

Environmental Information itself can take a variety of forms such as EIA reports Compliance Reports, Emergency Information system, State of the Environment Reports and information on regular monitoring on environmental quality. The TAI assessment reveals the following:

1. **Proactive disclosure of information, although required under the law is generally absent:** Despite the Right to Information (RTI) Act, information sharing is generally reactive in nature and more so, only in response to an application filed under the Act. In respect of the Environment Impact Assessment reports, only the 'draft' version is accessible to the public and not the 'final' version on which decisions take place. Despite an overall 'transparency' regime ushered under the RTI Act (2005), the new EIA Notification (2006) greatly limits access to information on a range of projects.
2. **There is no specific provision for sharing emergency and disaster related information:** Given the vulnerability of the Himalayan states to flash floods, earthquakes, landslides and forest fires, no specific efforts seem to have been taken to ensure that disaster related information is available well in advance. No lessons seem to have been learnt from previous disasters and all investment on disaster management research and systems seems to lie outside the realm of information sharing.
3. **The findings from the 'State of the Environment' reports, are rarely disseminated:** The State of the Environment reports, presenting data on the air, water, and land quality of every State and the nation is undertaken under a programme of the Ministry of Environment and Forests. No legal mandate exists for regularly publishing a State of the Environment Report and almost no effort is put in to disseminate such information to our citizenry. As such, these have remained a purely academic exercise.

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<sup>1</sup> See for instance TAI Report entitled Voice & Choice that states 'more countries have bedrock framework laws on information than framework laws supporting public participation'.

4. **Information dissemination with respect to industrial facilities (including air and water quality data) is almost absent:** Although facility level information and basic information on air and water quality is mandatory and collected, no effort is made to disseminate the same in a proactive manner.

## PUBLIC PARTICIPATION

Public Participation within the environmental decision making framework is largely done within the Environment Impact Assessment process. This takes the form of a “public consultation” in the form of a Public Hearing. In addition, judicial and quasi-judicial forums provide an opportunity for the public to influence outcomes of the decision making process. Broadly, the legal mechanism for ensuring participation is either lacking in most situations or has limited impact on the decision making process. In these two states, the findings around public participation relate to the following:

1. **Public Participation is limited to a few projects and activities.** The assessment clearly reveals that, most projects and activities do not require mandatory public consultations. The most disturbing aspect is that the new EIA Notification of 2006 has been regressive on this count and has done away with public consultation with respect to a range of projects that required either an EIA or a public hearing under the 1994 Notification. Even the National Environment Policy, 2006 makes no mention of public participation in environment decision making, rather it is guided by an ‘investor friendly’ approach instead of a pro-people and pro-environment emphasis.
2. **Even where a mandatory public consultation process exists, it is regarded as a mere formality.** The outcome of a public hearing rarely, if ever, influences the decision making process. There is very little evidence to show that the proceedings of a public hearing are taken into consideration while taking a project level decision. In fact, genuine public participation rarely ever takes place principally because very limited lead time (advance notice) is provided and the information that’s made available is either very sketchy or too complicated. The most discerning part is that while project proponents get to participate at different levels of the decision making process (scoping, appraisal, public consultation), public involvement is limited only to the public hearing stage and that too only for the local public.
3. **Policy formulation, including enactment of new laws does not involve any element of public participation.** The dominant thought is that, consultation with elected politicians (as people’s representatives) as well as government officials (as servants of the public) will suffice. Thus, the existing legal framework provides no

mechanism for involving the public in policy formulation. This was in fact, amply evident in the case of formulating the Hydro power policy of the two States. In addition, with respect to the enactment of the law, though some efforts have been made to hold consultations, these were very unsystematic.

## ACCESS TO JUSTICE

If environmental decision makers are to be held accountable, people need access to procedures and institutions that provide redress and remedy when government's decisions are incorrect or unlawful. The liberal interpretations of the Supreme Court as far as the issue of 'standing' is concerned have greatly facilitated access to justice. The findings of the assessments reflects on existing judicial and institutional lacunae in this respect:

1. **There is a significant and an ever-widening gap between law and practice.** There is legal recognition of the need to have grievance redressal mechanisms other than formal courts. It was for this reason that the National Environment Tribunal (NET) and the National Environment Appellate Authority (NEAA) were constituted. However, in reality, while NETA is yet to come into effect (14 years after the law was enacted by Parliament), the NEAA continues to be a 'limping authority' with crucial vacancies at top levels and a manner of functioning that rarely inspires either independence or impartiality.
2. **Cost and distance as well as timeliness act as significant barriers.** The grievance redressal mechanisms/ institutions are mostly located in capital of the country or in the State capital. Access to both locations is generally difficult as well as expensive for most people. Statutory bars on local Civil Courts (Section 22 of the Environment Protection Act, 1986) to entertain environment related issues act as a great hindrance in respect of access to justice specially where the poor and marginal sections of the population are concerned.
3. **Technical considerations tend to limit access to justice.** The assessment reveals that technical considerations, such as the *locus standi* of the person filing a petition/ appeal, unrealistic timeframes within which appeals can be filed act as significant barriers towards access to justice (e.g. NEAA). Absence of norms for appointment of members to the authority affects the quality of decisions and raises questions of integrity. On the other hand, where issues concerning standing have been liberal, and procedural considerations have been kept to a minimum, e.g. the Central Empowered Committee (CEC) of the Supreme Court, access to justice has been comparatively easier.

## CAPACITY BUILDING

Capacity building consists of mechanisms, efforts, or conditions which enhance effective and meaningful public participation in decisions affecting the environment. The findings of the assessment on this subject reveal the following:

1. **Legal mandate for capacity building is evident only in a few legislations.** Although, there is mention of the need for capacity building in the RTI Act, 2005, it finds limited mention in environmental legislation. Thus, there is no mention of capacity building either in the EIA laws or in any of the Forest and Wildlife laws of the country.
2. **Capacity building (even if it exists) is only for officials and not for the public.** Effective implementation of a law is critically dependent on both the public and the government officials being aware of the law and its application and its interpretation in terms of its letter and spirit. While there are positive indicators with respect to capacity building of government officials on access to information (principally on the application of the RTI Act, 2005), capacity building for the public is non-existent and is done sporadically by civil society organisations.
3. **Capacity building is limited only to access to information and does not extend to other access rights.** Public officials including members of the judiciary as well as quasi judicial authorities dealing with the environment remain woefully ill-equipped to facilitate access to justice or involve the public in decision making processes. The public is largely alienated from any capacity building exercise around access rights around environment unless specifically focused by a particular civil society organization.

## RECOMMENDATIONS

The TAI assessments of both the States of Himachal Pradesh and Uttarakhand clearly reveals that there are institutional, legal and procedural hurdles in achieving environmental democracy. Infact, achieving 'environmental democracy' can be at times as difficult as securing democracy for non-democratic countries. Few governments want 'interference' from the public other than securing their support at the time of election. Yet, in reality, democracy has a more positive content and its orchestration has to be continuous and pervasive.

The recommendations that emerge from this assessment apply to the two State governments as well as the Central (federal) government.

#### *ACCESS TO INFORMATION*

1. Greater emphasis must be placed on proactive disclosure of information as opposed to information on specific request. Information sought under RTI Act should be an exception and proactive disclosure should be the norm.
2. The States should develop a clearing-house mechanism at state, district, and sub divisional level for collection, analysis and dissemination of environmental information.
3. The Final Environment Impact Assessment Report as opposed to the draft EIA in simple, understandable language should be available to the public. An amendment in the EIA Notification, 2006 to this effect is essential.
4. A legally binding mandate is necessary for publishing and disseminating "State of the Environment Report" – atleast once every three years.
5. Emergency and disaster related information must be treated as a special and priority category of information to be easily accessible to all concerned especially in the context of the unique geographical conditions of the Himalayas.

#### *PUBLIC PARTICIPATION*

1. Public Participation should be mandatory for a much larger category of projects, which have environmental implications including plans, policies and legislations.
2. Public Participation should be ensured during the stage of project planning and design for it to be effective at all levels.
3. Greater weightage to the Public hearing should be provided at the stage of EIA appraisal and final decision-making.
4. Adequate lead time (advance notice) must be provided for public hearings. Given the poor communication network, in the hilly areas it should be a minimum of two months as compared to the existing one-month now.

#### *ACCESS TO JUSTICE*

1. Grievance redressal mechanism specially the National Environment Appellate Authority should be overhauled with the appointment of technically qualified persons with appropriate code of conduct and ethics.
2. National Environment Tribunal should be made operational on a national and regional basis in accordance with the National Environment Tribunal Act.

3. Procedures for filing of appeals/ petitions before Judicial as well as quasi-judicial authorities dealing with environmental issues should be simplified.
4. Allow District Courts to hear environmental suits by amending section 22 of the Environment (Protection) Act, 1986 (EPA), which bars civil courts from entertaining matters concerning the EPA.

#### *CAPACITY BUILDING*

1. A legal mandate must be created for building capacities of both Public and as well as officials in the framework of environmental law. Of special attention should be greater government focus on educating the public either directly or through civil society groups.
1. Capacity building of members of judicial and quasi-judicial forums dealing in Environmental issues especially of the NEAA and other related authorities must be a continuing task. This effort should crucially focus on neglected aspects such as disaster related information and problems of poor and marginalized in accessing justice.

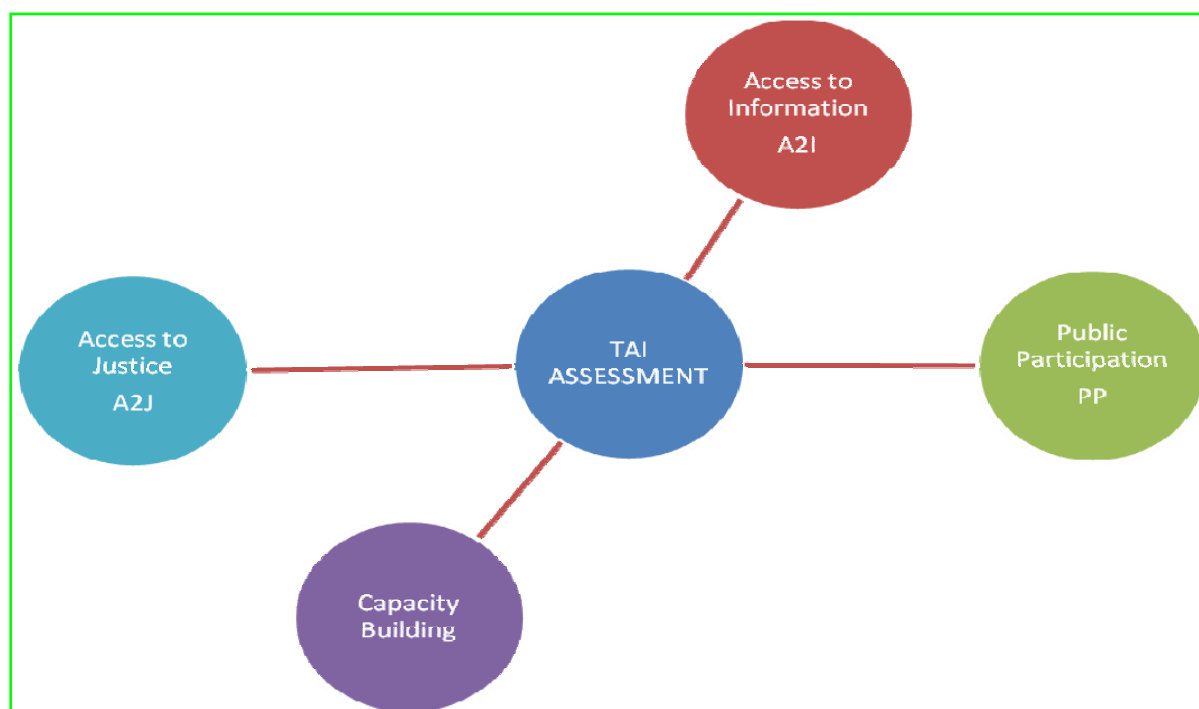
## Chapter I

### TAI ASSESSMENT METHODOLOGY

#### 1.1 Background

TAI methodology is a case studies based process of looking at the actual status (and future) of the three fundamental access principles enshrined within Principle 10 i.e Access to Information, Public Participation and Access to Justice. Capacity building is an intrinsic part built into the assessment. The entire approach is aimed at making it possible to “break Principal 10 into discrete parts or measurable characteristics”<sup>2</sup>.

To achieve this the assessment is divided into four main subject headings namely:



These four subject headings are researched within a three-fold structure for the examination and assessment of:

- (i) Existing laws of relevance,
- (ii) Practice of the law through the study of a set of case studies; and
- (iii) Capacity building.

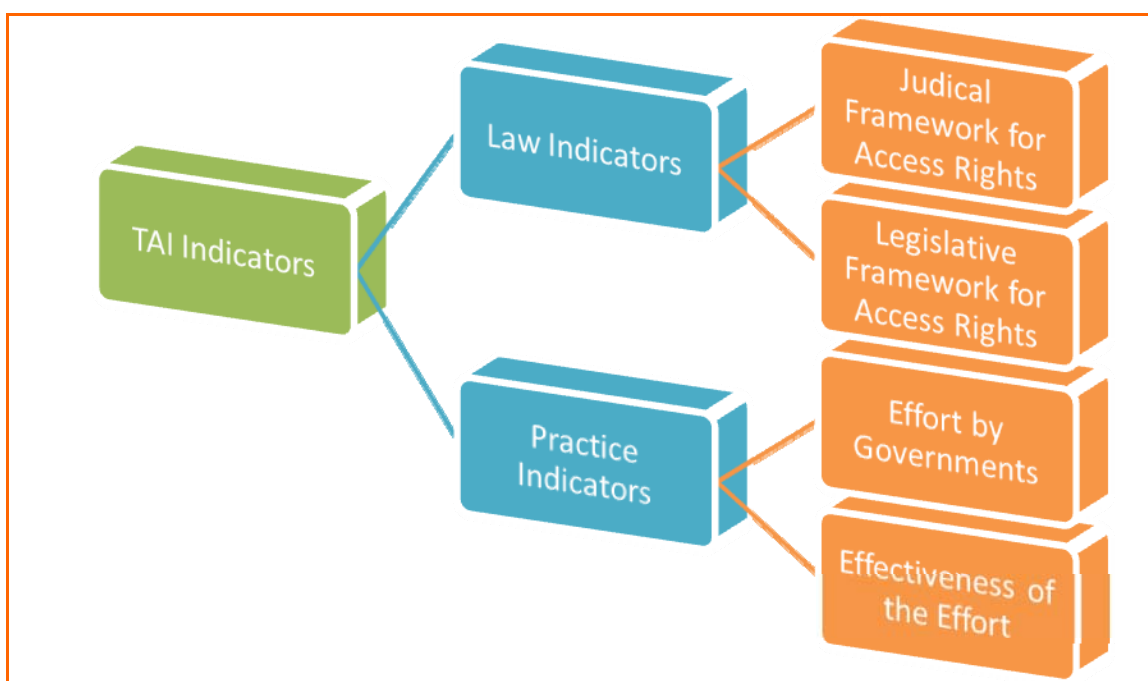
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<sup>2</sup> The Access Initiative Assessment Toolkit: Evaluating the Foundations of Environmental Governance; WRI, Washington DC.

## 1.2 Indicators and Assessment Process

The assessment is carried out through the administration of a set of indicators explained below:

**The Indicators:** A set of research questions and/or “indicators” have been developed under each of the four subject headings also called categories:



- The **law indicators** evaluate the existing legislative and judicial framework for guaranteeing the three access principles.
- The **practice indicators** are applied to the case studies to examine the real world conditions. They include indicators reflecting the effort and effectiveness of the governments in facilitating these principles.

There are 148 indicators or questions under the four categories. Some of the indicators are “core” indicators or compulsory and others are “optional”. A given set of instructions enables the conduct of research on each indicator and filling up the specific indicator worksheet. These worksheets are uploaded to the TAI software.

**Organisation of Indicators into Subtopics:** The entire sets of indicators are subdivided into twelve subtopics within the aforementioned framework. These subtopics are the



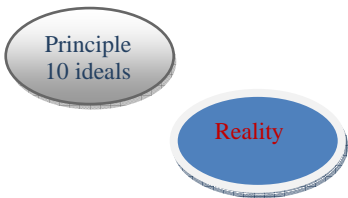
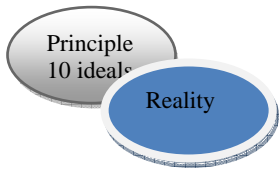
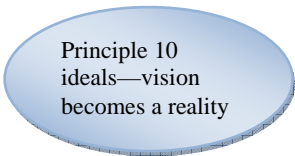
key areas under which information gathered, researched and analysed in the assessment of government's performance in relation to the three access principles.

TAI Subtopics for Analysis
<b>Scope and Quality of Access</b> —Scope and quality indicators access the fundamental laws and systems needed to protect citizens' access rights. They address issues such as the presence of a Freedom of Information Act, the quality of information management systems, efforts to involve minorities in decision making, and the rules for registration of civil society organizations (CSOs)
<b>Limits on Access</b> —Limit indicators assess the extent to which restrictions on citizens' access rights are clear, narrow, and justified in the law. Examples of limits include laws that allow information to be kept confidential, that permit decision to be made behind closed doors or those that make certain government bodies immune to claims.
<b>Timeliness</b> —Timeliness indicators assess whether processes for collecting and distributing information enabling participation and deciding judicial claims proceed on a pace appropriate for supporting access rights. For example, notification of upcoming decisions should provide citizens enough time to fit participation into their schedules.
<b>Cost and Affordability</b> —Costs can present a significant barrier to citizens exercising their access rights. Indicators in this subtopic assess government efforts to keep costs low in the entire process.
<b>Fairness and Equitability</b> —Fairness and equitability indicators measure the degree to which government efforts are free from bias and provide equal treatment to all citizens.
<b>Channels of Access</b> —Channels of access include courses of action or methods of communication through which citizens can obtain information, participate in a decision, or seek redress for harm done. Indicators in this subtopic assess whether the channels in a given case are sufficient and appropriate for supporting access rights.
<b>Capacity Building for Government Agencies</b> —Capacity building for government agencies means establishing both the institutional infrastructure and the human resources needed to support citizens' access rights.
<b>Capacity Building for the Public</b> —The government should invest in the capacity of the public to exercise its access rights. The indicators in the subtopic assess how well the government helps citizens learn how to obtain and use environmental information, participate in decision-making processes, or use the justice system. This subtopic also includes indicators on civic and environmental education in public schools.
<b>Capacity Building for sub-national Agencies</b> —Indicators in this subtopic assess how well the national government helps state/provincial and local agencies develop the institutional infrastructure and human resources needed to support citizens access rights.
<b>Capacity Building for the Media and Civil Society Organizations</b> —Indicators in this subtopic evaluate how well laws and governments create an environment in which the media and CSOs can play a positive role in promoting access to information, participation and justice.
<b>Impacts of Law and Governmental Efforts</b> —Impact indicators measure the degree to which relevant laws and efforts lead to greater transparency, participation, or access to justice for citizens.
<b>Outcomes from the Provision of Access</b> —Outcomes indicators measures the degree to which the world has changed because of the level of access or capacity attained in a certain case study.
(Source: The Access Initiative Assessment Toolkit: Evaluating the Foundations of Environmental Governance; WRI, Washington DC).

**Assigning a Value:** All indicator worksheets provide a box with a set of five values (or six<sup>3</sup>) with a colour assigned to each. The colours given move from red (worst) to green (best). A value is selected for each indicator according to the information received and evaluated<sup>4</sup> and is a reflection of governments' performance in relation to that indicator and/or the question being researched. The values assist in obtaining an overall picture of the situation.

**Expected Results:** By applying the indicators within the aforementioned framework it is expected that the gaps between a country's laws and policies and its actual implementation in relation to the access principles can be identified and appropriate measures can be taken to improve the situation.

### Closing the Gap between International Commitments and National Policies and Practice

1. Present Situation	2. TAI Assessments Promote Change	3. Realizing the Principle 10 Vision
Few Governments have taken adequate steps to implement their Principle 10 commitments to access right	Governments move towards the Principle 10 ideal in response to TAI assessments	Governments take action to ensure adequate implementation of the three access principles
		
<b>A LARGE GAP</b>	<b>CLOSING THE GAP</b>	<b>REALITY MATCHES VISION</b>
<i>(Source: The Access Initiative Assessment Toolkit: Evaluating the Foundations of Environmental Governance; WRI, Washington DC).</i>		

<sup>3</sup> A sixth value (black) is assigned in some of the Law indicator worksheets and represents situations where the law clearly does not allow a given activity.

<sup>4</sup> The Access Initiative Assessment Toolkit: Evaluating the Foundations of Environmental Governance; WRI, Washington DC.

## Chapter II

### CASE STUDIES SELECTION AND PROFILES

#### 2.1 Introduction

TAI Himalayan Assessment started in early 2008 with the formation of a TAI Himalayan Coalition as part of the larger TAI India coalition to facilitate the study and follow-up its recommendations. Ten groups comprising essentially of civil society organisations and one Village Panchayat (local self-governing institution) became the core group engaged in research and collection of information. The group was oriented to the TAI process and exposed to the Version-2 software by Joseph Foti, Research Associate of TAI Global Secretariat and Loraine Gatlabayn of Ateneo School of Government, Philippines.

Since the case studies are the heart of the assessment, the central idea was to choose cases, which would be representative of the situation in the two states and reflective of the national situation.

TAI researchers spent over three to four months in the field, both, at the site of the study as well as in the state capitals to meet with concerned officials. As a process, direct interviews with concerned local people and officials, studying relevant documents and several “Right to Information” applications were filed to ensure the authenticity of the information. Several visits to the Public Information Officers of various departments as also the State Information Commission were part of the research methodology followed.

Research was also conducted in New Delhi, especially in the context of accessing information from the National Environmental Appellate Authority as well as the Ministry of Environment and Forests and the Ministry of Tribal Affairs.

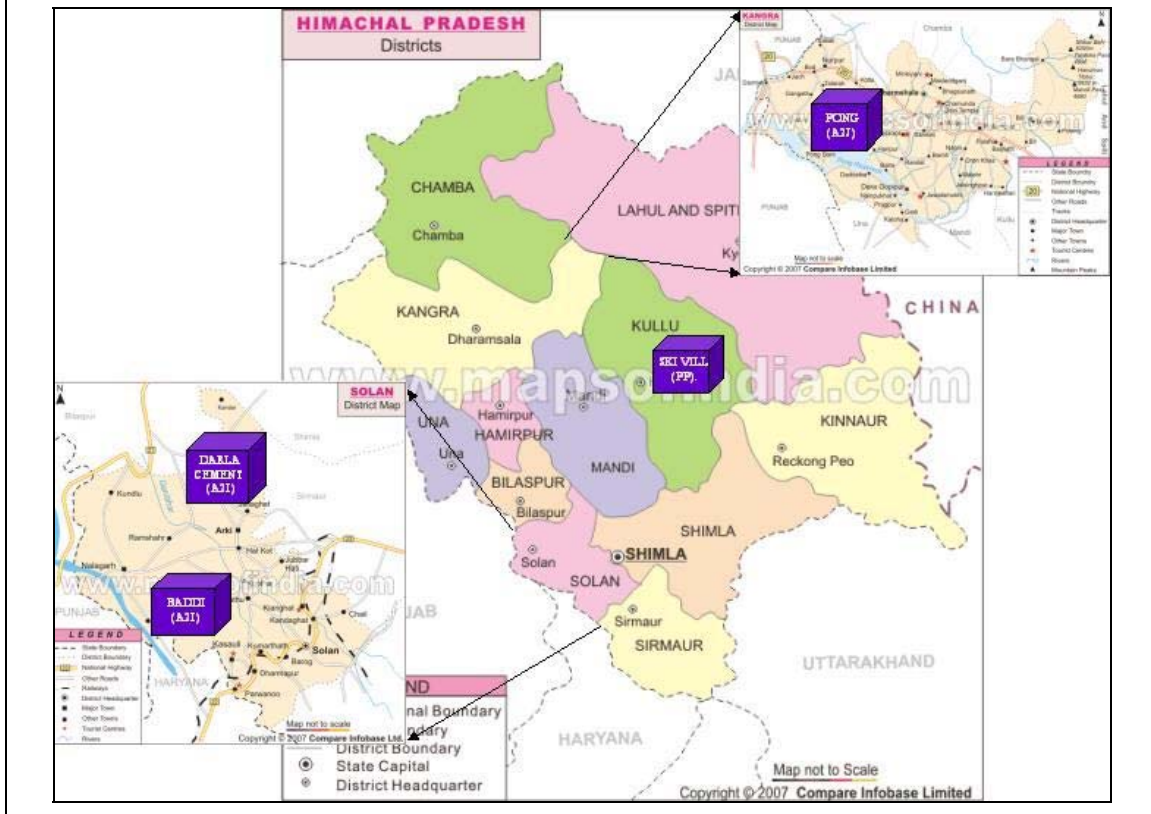
The difficult terrain and landslides due to the monsoons presented some physical barriers in carrying out the field assessment; yet, most case studies were completed within the planned timeframe.

**Eighteen** case studies representing different contexts to which the indicators are applied were selected according to the TAI guidelines. Different case types specified were considered and eight cases as required were studied under A2I while six cases were studied under PP and four case studies were under A2J.

<b>Cases Studies for the TAI Assessment in Himachal Pradesh and Uttarakhand</b>		
<b>Category</b>	<b>Case Type</b>	<b>Case Name</b>
Access to Information	Facility Level Information	Baddi-Barotiwala Pharmaceutical and Chemical Industry hub , Himachal Pradesh.
	Facility Level Information	Kashipur Industrial Estate, Uttarakhand
	State of Environment reports	State of Environment Report, Himachal Pradesh
	State of Environment reports	State of Environment Report, Uttarakhand
	Information from regular Monitoring	Dehradun Urban Water quality Analysis, Uttarakhand
	Information from regular Monitoring	Darlaghat-Barmana Cement Plant, Himachal Pradesh
	Information in an emergency	Chamoli Earthquake Vulnerable Villages, Uttarakhand
	Information in an emergency	Dhauliganga Tunnel Leakage, Uttarakhand
Public Participation	Policy-making	Hydro Power Policy, Himachal Pradesh
	Policy Making	The Schedule Tribes and Other Forest Dwellers (Recognition of Forest Right) Act, 2006
	Project level decision	Askot Multimedia Mining, Uttarakhand
	Project level decision	Himalayan Ski Village, Himachal Pradesh
	Project Level Decision	Kataldi Limestone Mining
	Regulatory Decision	Bhagirathi River Valley Development Authority, Uttarakhand.
Access to Justice	Access to Information	Palamaneri Hydroelectric Project, Uttarakhand
	Public Participation	Rima Soapstone Mining,
	Environmental Harm	Road though Corbett Tiger reserve
	Non-Compliance	Resettlement of Pong Dam.



### CASE STUDY LOCATIONS





## 2.2 Brief Profile of the States

Himachal Pradesh was created originally as a Union Territory merging nearly 30 princely states in the region immediately after independence. In 1966 with the reorganisation of the State of Punjab, some more areas were brought within Himachal Pradesh. In 1971, it was constituted as a separate state. Uttarakhand<sup>5</sup> was carved out of Uttar Pradesh in 2001.

The two northwestern Himalayan States of Uttarakhand and Himachal Pradesh share remarkable similarity in their geographical extent– nearly 50,000 sq km of land. The two states exhibit a huge diversity in the terrain from the plains of the Indo-gangetic basin to the high Himalayas and parts of the Tibetan plateau. While the plains in Uttarakhand are relatively more expansive, the cold deserts of the Tibetan Plateau are more expansive in Himachal Pradesh. The middle and higher Himalayas occupy an almost similar region in both states. Given the more inhabitable southern portions of Uttarakhand, its population is higher at 8.6 million as compared to 6.07 million in Himachal Pradesh. Himachal Pradesh has a higher per capita income (751.2 USD) as compared to Uttarakhand (691.17 USD)<sup>6</sup>. Both state enjoy high literacy rates of over 70 percent.

Different sets of environmental concerns are embedded in the natural conditions of the region and the present political and developmental decision-making. Some of the regions of particular concern are: The *transient environments* like the periglacial regions where the geographical evolution of glacial environments into fluvial environment is currently taking place is a zone, which is prone to avalanches, landslides and rapid change in surface morphology. The varied geographical situations brings about several *transitional environments*, which are prone to dramatic changes with small triggers often beyond the resilience of the systems such as between Bhabhar-Terai (zone between the Himalayas and the flood plains), glacial margins etc. Some of the examples include avalanches, which periodically come down with lot of ice and soil, cloud bursts which creating flash floods and landslides. (Madhmaheshwar 1998 Uttarkashi floods, 1978}. The *tectonically unstable environments* refer to regions along the major thrust and fault belts, which are intrinsically unstable and will be continually prone to impacts from seismic events, small or large. Last major earthquake was in 1999 in Chamoli and recent studies indicate that the Himalayan region could infact witness an earthquake as severe as the Indonesian Earthquake of 2004<sup>7</sup>. The possibility of

<sup>5</sup> The State was originally called “Uttaranchal” but subsequently it was changed to “Uttarakhand”.

<sup>6</sup> Data for 2005-06; Source India Brand Equity Foundation ([www.ibef.org](http://www.ibef.org))

<sup>7</sup> Seismic Hazard Microzonation and site selection in Uri Sector, J&K, Environics Trust, 2006-07

human intervention to avoid impacts in these zones is minimal and the best effort would be to understand them in detail and address situations where it may snowball into a crisis. (Chirgaon, Shimla District; Varnavrat landslides, Uttarkashi). Apart from the nature driven environmental fragility, several *inappropriate development regimes* have impacted the environment. A number of areas are affected by denudation because of past processes of inappropriate development or neglect such as several areas where mining has degraded the slopes or altered river regimes. The huge costs and time for recovery is well known from the experience of mining in Doon Valley, Sirmaur District. There are certain communities, which are a part of *subsistence environment* and need a proactive approach to address their issues. Regions in the rain-shadow areas, isolated valleys and forest villages where the communities have to precariously manage their existence need particular concern and attention than what the regular process can support.

Besides the naturally fragile conditions, the driving forces leading to the current situation are:

1. Relentless pursuit of the Liberalisation, Privatisation and Globalisation model of economic development calling for rapid expansion of mining, industrialisation and power generation;
2. Rapid changes including construction of roads and other infrastructure post- 1962 War with China when environmental concerns were absent and
3. Political and administrative convenience driving many inappropriate decisions leading to several situations of environmental damage.

The current conditions which have been induced by driving forces in combination with the natural processes in the region calls for wiser environmental decision-making.

### 2.3 Profile of Case Studies on Access to Information

Eight case studies were selected across five different case types - Air Quality Monitoring System; Water Quality Monitoring System; Environmental Emergency; State of Environment Report and Industrial Facility with records of Compliance with Environmental Requirements. A brief profile of these case-studies is as follows;

<b># 1: Baddi-Barotiwala Pharmaceutical &amp; Chemical Industry Hub, Himachal Pradesh</b>
Category: Access to Information
Case type: Facility Level Information.
Case Type Detail: Information on Air and Water Pollution

Baddi-Barotiwala-Nalagarh in District Solan, Himachal Pradesh is a contiguous region at the foothills of Himachal Pradesh extending NW-SE and forms border with the Union Territory of Chandigarh and the Haryana State. This region has been a hub of industrialization with the nodal center being Baddi, where pharmaceutical industries and other chemical industries have established their base over the last two decades. The subsidies provided to industries here i.e. excise tax waiver, tax holidays etc have resulted in mushrooming of industrial houses in a haphazard manner along this corridor. The assessment focused on the information sharing mechanisms of the resultant pollution and other health impacts due to hazardous chemicals.

<b>#2: Kashipur Industrial Estate/Zone, Uttarakhand</b>
Category: Access to Information
Case Type: Facility Level Information
Case Type Detail: Report on Environmental Compliance.

Udhamsingh Nagar, is a District in the *terai* region of Uttarakhand along the border of Uttar Pradesh. This region has been seen as a potential industrial development corridor and several of the pulp & paper mills as well as sugar mills were established while within Uttar Pradesh. The regional agricultural development (largely Uttar Pradesh's adjoining regions and parts of Uttarakhand terai region) is marked by sugarcane cultivation owing to availability of irrigation facilities from the Ramganga project. After the creation of new state, around 931 hectares has been notified for industrial estates in Udham Singh Nagar and Haridwar Districts.

The adhoc development of industries over the past two decades has resulted in establishment of highly water intensive and polluting industries in the region. Now the State Industrial Development Corporation of Uttarakhand Limited (SIDCUL) is the nodal agency for approving or notifying new industrial estates under the private and joint ownerships.

The districts of Haridwar, Udhamsingh Nagar have the highest number of 'red-category' industries, which have high pollution potential. Though there is a monitoring mechanism in place with the Pollution Control Boards (PCBs) to regulate and provide consent<sup>8</sup> to the industrial units, the effectiveness and process of such monitoring is often questioned, as the high pollution levels remain unchanged.

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<sup>8</sup> Of the 56 applications received (for Kashipur), almost 56% pertained to 'Red Category' industries and all were granted consent to operate and establish.



**#3: State of Environment Report, Himachal Pradesh***Category: Access to Information*

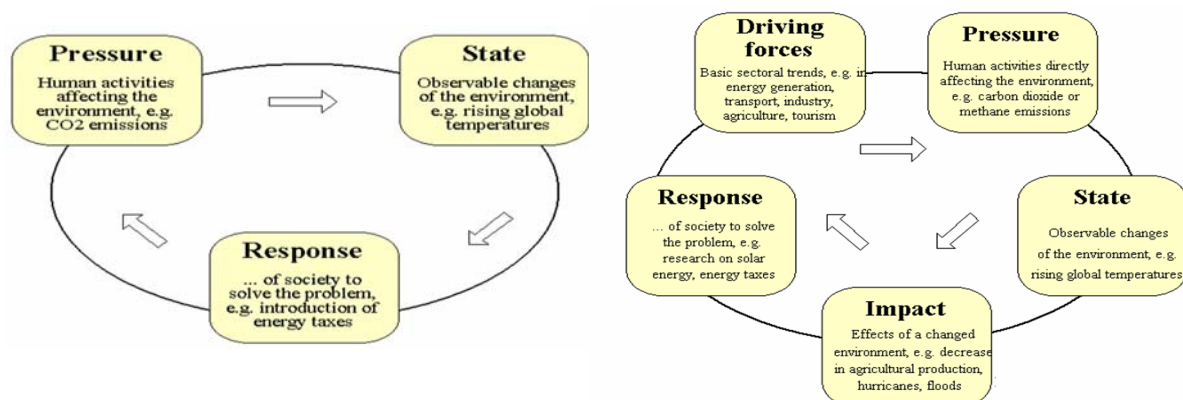
Case type: State of the Environment Report

The main objective of the State of Environment Report of Himachal Pradesh is to protect the environment of the Himalayas and for sustainable development. The focus of this document is to develop approaches compatible with the mountain eco-systems and its unique aspects such as fragility, inaccessibility, marginality, diversity, climatic peculiarities, etc. The policy guidelines cover important areas such as land, water, air, mineral resources, health, biodiversity, agriculture, horticulture, energy etc. There is a State of Environment Report for Himachal Pradesh of the year 2000 and there is a 2006 draft report till date.

**#4: State of the Environment Report, Uttarakhand 2004***Category: Access to Information*

Case type: State of Environment Report

The state of Uttarakhand embarked upon the process of making the first State of Environment Report in the 10<sup>th</sup> Five Year Plan to create an environmental baseline of respective states in India. The institutional arrangements through National Host Institutes<sup>9</sup> (NHIs) for overall design and provisioning of expert advice in respective methodologies as well as driving the state's environmental consciousness and situations. In case of Uttarakhand, Environment Protection Training Research Institute (EPTRI) was assigned this role. Uttarakhand Environment Protection and Pollution Control Board (UEPPCB) was nominated as the State Host Institute (SHI). UEPPCB in turn took the services of Infrastructure Development Finance Corporation (IDFC) along with Academy for Mountain Environments, Dehradun to prepare the report. The widely accepted methodology of DPSIR – **Driving Force – Pressure – State – Impact – Response** was adopted for preparation of SoE report.



<sup>9</sup> NHIs - The Energy Resources Institute, New Delhi; Development Alternatives, New Delhi; The Administrative Staff College of India, Hyderabad; Environment Protection Training Research Institute, Hyderabad, IGIDR, Mumbai.

**#5: Urban Drinking Water Quality in Dehradun, Uttarakhand***Category: Access to Information*

Case Type: Information From Regular Monitoring

Case Type Detail: Drinking Water Quality

Uttarakhand Jal Sansthan (UJS) was formed under the Uttar Pradesh Water Supply and Sewerage Act 1975. After the formation of Uttarakhand, the state adopted the Act with certain modifications - Uttaranchal (Uttar Pradesh Water and Sewerage Act 1975) Adaptation and Modification Order 2002. Uttarakhand Jal Sansthan i.e. the State Water Utility looks after the operation and maintenance of the drinking water supply.

Usually there is outburst of water borne diseases during monsoon season and also regular recurrence of health ailments but no systemic efforts are undertaken to forewarn or to take measures for improving the public infrastructure for basic amenities like water and sanitation. This is due to the intermittent supply of water and the presence of leaky joints in the pipeline through which under backpressure storm and sullage water gets into the pipeline.

Dehradun has large population living in slums along the streams (Rispana & Bindal), which are disadvantaged and have poor access to infrastructure facilities like water supply, sanitation, electricity and other social and physical infrastructure. Most of this population is served by 'public stand posts' for water supply.

**#6: Darlaghat – Barmana Cement Plants, Himachal Pradesh***Category: Access to Information*

Case Type: Information From Regular Monitoring

Case Type Detail: Air Quality Monitoring

Darlaghat is located in Solan District of Himachal Pradesh and is home to three cement plants. The region has seen transformation from being a sylvan rural region to an extractive industry hub. Although the industrialization gave an impetus to the local economy and benefited those engaged as 'truckers', several families have been adversely affected with the acquisition of land by the companies.

There has been a huge loss to local ecology due to extractive activities and increasing fugitive emissions and pollution from the cement plants. This has direct implications on the health of human beings, milch cattle and vegetation growth in the area. The nearby Majathal Sanctuary is also endangered from this activity. Due to the blasting at the mining site, the rehabilitation colony and the houses in adjoining settlements have developed cracks. As a result the displaced families whose houses have been acquired

as well as those who are living in their old houses are living in danger due to havoc caused by large scale blasting.

<b>#7: Chamoli Earthquake Vulnerable Villages, Uttarakhand</b>
Category: Access to information
Case type: Information in an emergency.

An earthquake measuring 6.4 on the Richter scale occurred on the night of 29 March 1999 in the Chamoli district, Uttarakhand that was then a part of the undivided state of Uttar Pradesh. In India, several governmental organisations are mandated to conduct research and situational analysis in events of emergencies like earthquakes, floods, drought etc. The Geological Survey of India (GSI) is a premier scientific and technical institution with the responsibility of conducting geological investigations (particularly after such events) and suggesting safety measures for the sake of the larger community that lives in vulnerable conditions and in such geographic regions. There are also other institutions such as the Indian Meteorological Department, which generates data on seismicity and the Wadia Institute of Himalayan Geology, which undertakes research on various related aspects. The GSI brought out a report based on its investigations immediately after the Chamoli earthquake and identified at least 64 settlements that were vulnerable and needed immediate attention by the State.

<b>#8: Dhauliganga Power Project Phase 1 (Tunnel Leakage), Uttarakhand</b>
Category: Access to Information
Case Type: Information in an Emergency
Case Type Detail: Water bodies (rivers, lakes, oceans, dams)

The National Hydro Power Corporation (NHPC) has constructed the Dhauli Ganga Hydroelectric Project, which is a *run of the river* scheme on the river Dhauli Ganga. The dam is constructed at Chirkila near Dharchula of Pithoragarh District, Uttarakhand. The works are executed by a joint venture of Kajima Corporation (Japan) and Daewoo Corporation (Republic of Korea). Japan Bank for International Co-operation (JBIC) is financing this project. The headrace tunnel for the power project opened up, flooded, and destroyed a village comprising of 24 households in the year 2005. This is one of the several projects being undertaken by NHPC on a rather similar model and is reflective of the nature of disaster prevention and mitigation.

## 2.4 Profile of Case Studies on Public Participation

Six case studies were finalized under three categories of Policy-making, Regulatory decisions and Project-level decisions. The profiles are as follows:

**#1: Hydro Power Policy of Himachal Pradesh**

Category: Public Participation

Case type: Policy Making

The Government of Himachal Pradesh had formulated a comprehensive Hydro Power Policy in 2006 through the Department of Multipurpose Projects & Power (MPP & Power). The stated objective of the policy is to safeguard the interest of the people of the state and to protect the environment. Small Hydro-Electric Power upto 2 MW would be reserved for local residents (Himachalis) and the State Government would give first preference to the developers of Hydro Electric Powers above two MW and upto 5 MW and above five MW upto 25 MW to Himachalis and cooperatives and of such Himachalis. The Government reserves the right either to allot these Projects upto 25 MW to Himachal Power Corporation (HPC) and Himachal Pradesh State Electricity Board (HPSEB) or offer it to the Independent Power Producers and above 25 MW to HPC & Independent Power Producers. In case of bonafide Himachalis to whom Projects upto 5 MW capacity is allotted, the Government would consider the request of promoters to sell equity shares to the bonafide Himachalis. TAI assessment focused on the involvement of the public in formulation of the policy.

**#2: The Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006**

Category: Public Participation

Case type: Policy Making

In 2004, the United Progressive Alliance (UPA) [a coalition of political parties] Government through its Common Minimum Program committed itself to discontinue the eviction of tribal communities from forest lands. The Ministry of Tribal Affairs (MoTA) as the concerned ministry constituted a technical group comprising of representatives of various ministries, the civil society and legal specialists to draft the Scheduled Tribes & other Forest Dwellers (Recognition of Forest Rights) Bill, 2005. In December 2005, a Joint Parliamentary Committee (JPC) was formed to review the bill. The Scheduled Tribes & other Forest Dwellers (Recognition of Forest Rights) Act, 2006 came into force on 31st December 2007. The assessment focuses on the manner in which public opinion was sought during the finalisation of the Bill.

**#3: Askot Multimetal Mining, Pithoragarh, Uttarakhand**

Category: Public Participation

Case type: Project Level decision

Askot Mining Project is just below the village of Askot in Pithoragarh District of Uttarakhand. This is an ambitious project of M/s Adi Gold Mines Pvt Limited a subsidiary of Canadian Company, *Pebble Creek* to undertake mining of Gold, Copper, Lead and Zinc. This mining project requires an Environment Impact Assessment as per the provisions of the EIA Notification of both 1994 and 2006. The project also requires a Public Hearing in order to obtain the views and concerns of the affected communities. The final decision on the project is yet to be taken by the concerned regulatory authority i.e. the Ministry of Environment and Forests, Government of India.

Although the Public Hearing Panel is not a judicial forum, it is an important one for recording the views of local people and other groups concerned about the impact of the project. Askot mining is crucial issue due the opposition of local communities to the proposed mining as well as its potential adverse impact on the endangered Musk Deer in the adjoining Askot Wildlife Sanctuary. The assessment focuses on how the Public Hearing Panel heard and dealt with the concerns expressed by the people of the area and the response of the regulatory authority i.e. Ministry of Environment and Forests in the matter.

<b>#4: Himalayan Ski Village, Manali, Himachal Pradesh</b>
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Category: Public Participation
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Case type: Project Level decision
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The States of Himachal as well as Uttarakhand depend a lot on tourism for revenue generation and local employment and this case study is to address this important sector. Tourism is a major priority sector for the Government of Himachal Pradesh. Bulk of tourism in Uttarakhand is linked to pilgrimage to religious places and in Himachal Pradesh it is mostly leisure based. With the prime intention to provide world-class facilities, the Himalayan Ski Village has been proposed at Manali. This ambitious project is intended to provide international standard skiing facilities, which also includes about five seven-star hotels, nearly half a dozen five-star hotels, and other infrastructure. This proposed project has been assessed to examine whether such a massive project has been conceptualized by considering public opinion and the level of participation.

<b>#5: Kataldi Limestone Mining, Uttarakhand</b>
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Category: Public Participation
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Case type: Project Level decision
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Hemwalghati (Hemwal river and valley) was one of the centres of the pioneering Chipko movement in the 1970's. Since then, the people of this valley have always been

involved in several sustained environmental protection and conservation initiatives including community based conservation and regeneration of forests, resisting mining efforts, the *Harit* (green) Himalaya campaign etc.

Limestone mining was first undertaken around Kataldi during 1974-1979. Due to the strong opposition of the local communities the mining operations were stopped. Subsequent attempts to mine have also been unsuccessful due to strong opposition of the people of Hemwalghati, especially Kataldi and neighbouring villages. In 2001, the mining company managed to get a 30-year lease in this area. People of the area, especially women are clear that they would not allow mining to take place and for this they have launched a determined non-violent movement, including a dharna through December 2001, not allowing any kind of mining activity. A PIL filed jointly by Academy for Mountain Environics and a local citizen has enabled to obtain a stay on the mining operations. However, the 30-year lease is a cause of worry with repeated attempts at mining posing a constant threat to the people.

<b>#6: Bhagirathi River Valley Development Authority, Uttarakhand</b>
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Category: Public Participation
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Case Type: Regulatory Decision
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The mandate of the Bhagirathi River Valley Development Authority is, to maintain Ecological Balance, provide Environment Protection, ensure Sustainable Development and establish mechanisms for Redressal of Public Grievances. The specific tasks include:

- Ensuring treatment of damages to the environment in the basin by implementing soil conservation measures, afforestation by soil binding fodder and fruits species and maintenance of water quality.
- Ensuring Optimum Utilization of Natural Resources and setting up and implementation of mechanisms for Disaster Management and,
- Establishing Public Grievance cells in the Basin and Community Facility Centers near rehabilitation locations.

The Bhagirathi River Valley Development Authority has to also ensure compliance of the seven conditions of Environment Clearance and the directions of Supreme Court laid down while granting approval to the Tehri Dam.

## 2.5 Profile of Case Studies on Access to Justice

Five cases were finalized under four categories: Denied rights to Access to information, Denied rights to Public Participation, Environmental harm and Non-compliance. The case study profiles are as follows:



<b>#1: Pala Maneri Hydro Electric Project</b>
Category: Access to Justice
Case Type: Non-compliance
Case Type Detail: Judicial Forum (NEAA)

The Pala – Maneri Hydroelectric Project (416 MW) is a hydroelectric project on the river Bhagirathi, which is the main tributary of the river Ganga in district Uttarkashi implemented by the State-owned Uttarakhand Jal Vidyut Nigam Limited (UJVNL). The local affected people approached the National Environmental Appellate Authority on issue of faulty Environmental Clearance. The Authority gave limited relief to the affected people with respect to certain aspects with regard to cumulative impact assessment for series of different power projects coming up in the area. The assessment focuses on how the NEAA fared as an avenue for justice for the affected people.

<b>#2: State Highway through the Corbett Tiger Reserve (Uttarakhand) and the role of the Central Empowered Committee (CEC)</b>
Category: Access to Justice
Case Type: Environmental Harm
Case Type Detail: Judicial Forum

This case study relates to a construction of a road and concretization of the existing mud road to facilitate movement of vehicles in the Corbett National Park and Tiger Reserve, Uttarakhand. The construction was opposed by the local villagers living on the periphery of the park on the ground that it would increase traffic inside the Park (thereby leading to wild animals to stray into their fields) and at the same time would not be of benefit to the villagers since the road beyond the easy reach of the villagers. Their further fear was that the road would lead to the fragmentation of the forests, which would have disastrous consequences, as it is likely to aggravate the human-animal conflict. The aggrieved villagers approached the Central Empowered Committee: ('CEC' for short) a special committee of the Supreme Court appointed to hear instances of violation of various Supreme Court directives on protection of Forests and Wildlife as well as various conservation laws.

<b>#3: Soapstone Mining, Rima, Uttarakhand</b>
Category: Access to Justice
Case Type: Environmental Harm
Case Type Detail: Other Forum

This case study focuses on the implementation of the Public Liability Insurance Act (PLIA) as well as the role of the District Magistrate as well as National Environmental Tribunal Act, (NETA) in awarding compensation to victims of hazardous industries as well as compensating for the loss of the ecology in accordance with the Polluter Pay Principle.

<b>#4: Resettlement of Pong Dam Oustees, Himachal Pradesh</b>
Category: Access to Justice
Case Type: Non-compliance
Case Type Detail: Administrative Forum

The Pong Dam on River Beas commenced in the year 1960 and the land acquired was in State of Punjab. After the reorganisation of State boundaries on 1<sup>st</sup> November, 1966, that land fell within Himachal Pradesh. Although the waters impounded by the Pong Dam are within the State of Himachal Pradesh, the benefit thereof accrued to a dominant extent to the State of Rajasthan. The Government of Himachal Pradesh estimated in 1969 that 20722 persons were displaced. There are more than 6000 oustees, who are yet to be settled. The Government of Rajasthan framed 'Rajasthan Colonisation (Allotment of Government Land to Pong Dam Oustees in the Rajasthan Canal Colony) Rules, 1972' which lacks the perspective needed to deal with displaced people. Primary reason for the continuing situation is that the two governments i.e. Rajasthan and Himachal Pradesh have failed to find any common ground to settle the issue despite a Memorandum of Understanding drawn up in 1981.



## Chapter III

# CONSTITUTIONAL LAW ASSESSMENT

### 3.1 Background

The term “Constitutional law” is broader than the term “Constitution”, as it comprises of the “Constitution”, relevant statutory law, judicial decisions and Conventions<sup>10</sup>. The Constitutional law of the country consists of both the ‘legal’ as well ‘non legal’ norms. Legal norms are applied by courts and if such norms are violated, courts can give relief and redress. On the other hand, non legal norm arise in the course of time as a result of practices followed over and over again. Such norms are known as conventions, usages, customs, and practices of the Constitution. There may be nothing in the Constitution sanctioning them but they exist. This chapter elaborates on the Constitution and the laws pertaining to access to information, participation and justice.

### 3.2 The Indian Constitution and its Interpretation

India’s Constitution is a lengthy, elaborate and detailed document. Originally it consisted of 395 Articles and Eight Schedules. Today after many amendments, it has 441 Articles and 12 Schedules. It is probably the longest of the organic laws now extant in the world. The Constitution of a country seeks to establish its fundamental or basic of apex organs of government and administration, describe its structure, composition, power and principal functions, define the interrelationship of these organs with one another and regulate their relationship with the people, more particularly, the political relationship. The Indian Constitution in its preamble sets out that the nation would be a socialist, secular, democratic republic and codifies the fundamental rights and duties. It also defines a set of directive principles for the State policy.

The Supreme Court has in numerous cases deduced fundamental features which are not specifically mentioned in Fundamental Rights on the principle that certain unarticulated rights are implicit in the enumerated guarantees. For example, freedom of information has been held to be implicit in the freedom of speech and expression. In India, until recently, there was no legislation securing freedom of information. However, the Supreme Court by a liberal interpretation had deduced the right to know and the right to access information on the reasoning that the concept of open government is the direct result from the right to know which is implicit in the right of free speech and expression guaranteed under Article 19 (1) (a) of the Constitution<sup>11</sup>.

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<sup>10</sup> Jain. M.P, Indian Constitutional Law, Fifth Edition, 2003

<sup>11</sup> M. Nagraj Vs Union of India (2006) 8 SCC 212

The most basic human rights, according to Justice V.R Krishna Iyer is 'access to justice' (1981) 1 SCC (Jour) 3. The Constitution of India provides in Article 32 and 226 the right of every person to approach the Supreme Court or the High Court for any legal injury caused to a person or a determinant class of person. The Supreme Court of India in *S.P Gupta vs Union of India* held that where a legal wrong or injury is caused to a person or to a determinate class of persons by reasons of violations of any constitutional or legal right and such person by reasons of poverty, helplessness or disability or socially or economically disadvantaged position are unable to approach the court for relief, any member of the public can approach the High Court or the Supreme Court for seeking appropriate relief. Where the weaker sections of the Society are concerned such as under trials, people living in poverty and eking out a miserable existence with their sweat and toil and who are helpless victims of an exploitative society and those who do not have access to justice, the Courts will not insist on a regular petition.

The range of judicial review recognized in the superior judiciary in India is perhaps the widest and most extensive known to the world of law<sup>12</sup>. For instance, the scope of Article 21 was a bit narrow till 50s as it was held by the Apex Court in *Gopalan's case* that the contents and subject matter of Article 21 and 19 (1) (d) are not identical and they proceed on total principles. In this case, the word deprivation was construed in a narrow sense and it was held that the deprivation does not restrict upon the right to move freely which came under Article 19 (1) (d). Post *Gopalan's case*, the Apex Court opened up a new dimension and laid down that the procedure cannot be arbitrary, unfair or unreasonable one. Article 21 imposed a restriction upon the state where it prescribed a procedure for depriving a person of his life or personal liberty. This view has been further relied upon in a case of *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi and others* as follows:

Article 21 requires that no one shall be deprived of his life or personal liberty except by procedure established by law and this procedure must be reasonable, fair and just and not arbitrary, whimsical or fanciful. The law of preventive detention has therefore now to pass the test not only for Article 22, but also of Article 21 and if the constitutional validity of any such law is challenged, the court would have to decide whether the procedure laid down by such law for depriving a person of his personal liberty is reasonable, fair and just. In another case of *Olga Tellis and others v. Bombay Municipal Corporation and others*, it was further observed : Just as a mala fide act has no existence in the eye of law, even so, unreasonableness vitiates law and procedure alike. It is therefore essential that the procedure prescribed by law for depriving a person of his

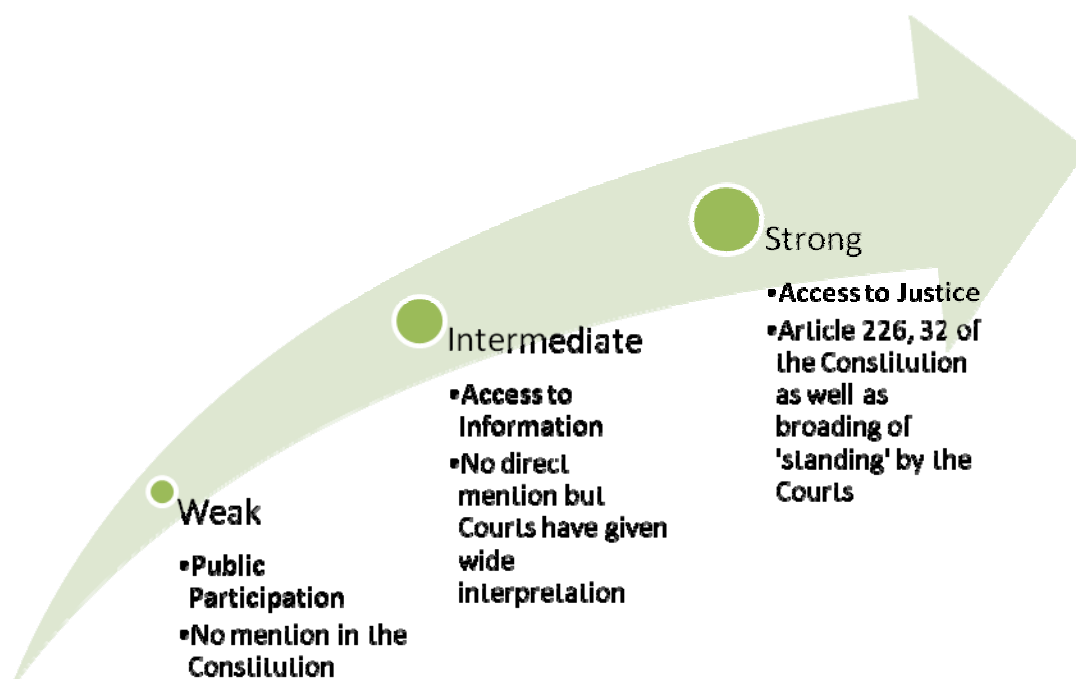
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<sup>12</sup> Swarup Jagdish, Constitution of India, Vol 2, 2006

fundamental right must conform the norms of justice and fair play. Procedure, which is just or unfair in the circumstances of a case, attracts the vice of unreasonableness, thereby vitiating the law which prescribes that procedure and consequently, the action taken under it. As stated earlier, the protection of Article 21 is wide enough and it was further widened in the case of *Bandhua Mukti Morcha v. Union of India* and others in respect of bonded labour and weaker section of the society. It lays down as follows:

Article 21 assures the right to live with human dignity, free from exploitation. The state is under a constitutional obligation to see that there is no violation of the fundamental right of any person, particularly when he belongs to the weaker section of the community and is unable to wage a legal battle against a strong and powerful opponent who is exploiting him. Both the Central Government and the State Government are therefore bound to ensure observance of various social welfare and labour laws enacted by Parliament for securing to the workmen a life of basic human dignity in compliance with the directive principles of the state policy.<sup>13</sup>

## CONSTITUTIONAL LAW ASSESSMENT



<sup>13</sup> Vidhan Maheshwari <http://www.legalserviceindia.com/articles/art222.htm>

## Chapter IV

# ACCESS TO INFORMATION AND ASSESSMENT OF RELEVANT LAWS

### 1.1 Introduction

*‘Open government is a contradiction in terms, you can be open or you can have Government’*

Sir Humphrey Appelleby’s remark in *Yes Minister* aptly describes the mindset until recently of Indian Government Policy. For nearly six decades after independence, secrecy has been the norm of the working of the Government, and transparency, the exception. Under the guise of protecting the States interest, secrecy in public affairs has been a shield for those in the Government, a means for concealing their action from public scrutiny<sup>14</sup>. Why is access to Information important? Perhaps, the best description has been given by Justice P.N Bhagwati in the famous *Judges transfer case*<sup>15</sup>. In his words:

*“ Where a society has chosen to accept democracy as its creedal faith, it is elementary that the Citizens ought to know what the Government is doing. The citizens have a right to decide by whom and by what rules they shall be governed and they are entitled to call on those who govern on their behalf to account for their conduct. No democratic government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the Government...a popular government without popular information or the means of obtaining it, is but a prologue to a force or tragedy or perhaps both. The Citizen’s right to know the facts, the true facts, about the administration of the country is thus one of the pillars of a democratic states”.*

Access to information is a critical component for a functional democracy. The Supreme Court had observed “democracy expects openness and democracy is concomitant of a free society and that sunlight is a disinfectant”<sup>16</sup>. In another case, it observed “the right to participate in the affairs of the country is meaningless unless the citizens are well informed of all sides of the issues, in respect of which they are called upon to express their views. One sided information, disinformation, misinformation and non information, all equally create an uninformed citizenry which makes democracy a farce when the medium of information is monopolized by the partisan central authority or by

<sup>14</sup> Diwan. Madhavi, From Secrecy to Freedom of Information – A reluctant transition, (2003) 8 SCC (Jour) 61

<sup>15</sup> S.P Gupta v. Union of India, 1981(Supp) Supreme Court Cases 87

<sup>16</sup> Dinesh Trivedi Vs Union of India, (1997) 3 SCC 306

private individuals or oligarchic organizations” [Secretary, Ministry of Information and Broadcasting Vs Cricket Association of Bengal (1995) 2SCC 161].

Legislations supporting Right to Information was first enacted in the States of Goa, Assam, Rajasthan, Delhi, Karnataka and Tamil Nadu and Maharashtra between the mid 1990’s and 2001. The Central Government followed suit and came out with a Freedom of Information Act, 2002. The object of the Act was to ‘provide for freedom to every citizen to secure access to information’. The Act of 2002 was an important landmark in terms of legal development. However, certain basic shortcoming in the law and the most prominent being the fact that large categories of information was exempted from disclosure including information from private bodies greatly affected its efficacy.

The TAI assessment covers two aspects:

- Law supporting access to Information
- Case studies with a focus at Governments efforts and effectiveness.

The purpose of the assessment was two fold:

- “Scope and quality” of the law: *If public participation is to be meaningful and government decisions are to be rational and informed, relevant information must be gathered and put into an understandable form. Government agencies responsible for managing various aspects of the environment are best placed to do this.*
- The degree to which it supports access to environmental information in general. *A requirement to make information and data collected or produced available helps ensure that all parties concerned are accountable for their environmental performance.*

Access to environmental information is more than just the public’s right to obtain information and the government’s duty to respond. Principal 10 states, “States shall facilitate and encourage public awareness and participation by making information widely available”.

The enactment of the **Right to Information Act, 2005** was an important legislation in ensuring the official information is available

#### *List of laws analysed*

- *The Environment Impact Assessment Notification, 2006*
- *The National Disaster Management Authority Act, 2005*
- *The Right to Information Act, 2005*

as a matter of right and not based on official discretion. Prior to the enactment of this law, the Courts and specially the Supreme Court had expanded the scope of Article 21 of the Constitution to include the Right to Information. The law to a very large extent has taken care of the information needs of the common citizens and provides information as a matter of right to almost all types of environmental information. The law also provides for fixed time frame for providing information and procedures are relatively simple. There are penalty provisions for Non Compliance and an elaborate system of State Information Commissions at the apex to Public Information Officers at the initial levels have been set up.

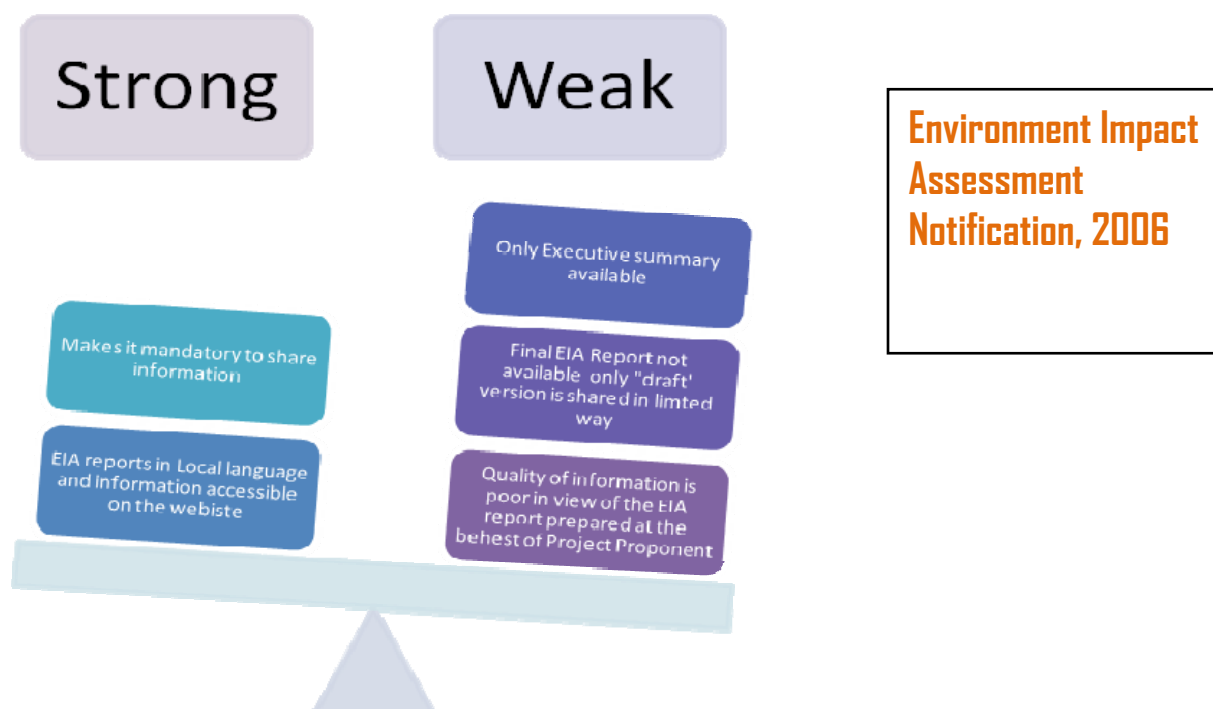
Right to Information Act, 2005 is a general law with respect to access to information and does not specifically deal with environmental information. These are dealt in other special laws, rules and notifications. Thus in respect to projects which require a mandatory Environment Impact Assessment to be done, the provisions of the **Environment Impact Assessment Notification, 2006** is relevant in this respect.

#### **4.2 The Environment Impact Assessment Notification, 2006**

The EIA Notification is not a 'law' in the real sense of the term. It is a delegated legislation, having its origin in the Environment (Protection) Rule, 1986 which in itself is a delegated legislation tracing its source from the Environment (Protection) Act, 1986. The Notification provides citizens the right to access the EIA report. However, the law has not defined as to what is meant by "access". The Notification is complicated and difficult to understand and at times confusing. It liberally uses words that are amenable to diverse interpretation e.g. 'access to Draft EIA report'. This creates confusion at the field level as to whether the citizens can actually get a copy of the EIA report or is it limited to merely looking at the same at designated places.

Similarly, only the Executive Summary of the EIA is made available but all other project documents such as Detailed Project Report, Disaster Mitigation Plan among others can be obtained only by following the procedures of the Right to Information Act.

The 'Executive Summary' of the Environment Impact Assessment Report shared with the public gives very limited understanding of the proposed project and its implications. The *Executive Summary* prepared at the behest of the project proponent rarely provides an honest assessment of the implications and specifically the adverse impacts of the project. It is thus a clear case of disinformation and misinformation as well as non-information.



### 4.3 The Disaster Management Act, 2005

The Disaster Management Act, 2005, defines disaster as any catastrophic event, mishap, calamity or grave occurrence affecting any area arising from natural or man made causes or by accidents or negligence and which leads to loss of human life as well as destruction to property and degradation of environment.

The Act defines Disaster Management as a continuous and integrated process of planning, organizing, coordinating and implementing measures, which are necessary for prevention of danger. According to Section 24, the State Executive Committee shall be responsible for implementation of the National Plan and State Plan for Disaster management and 'may' disseminate information to public to deal with any threatening disaster situation or disaster.

The law also provides for District Authority, which shall act for District Planning, coordinating and implementing body for disaster management. In terms of its function, Section 30 provides that the District Authority 'may' set up, maintain, review and



upgrade the mechanism for early warning and dissemination of information to the public.

It is clear that so far as information dissemination to the public is concerned, the Act leaves it to the discretion to the concerned Authorities since the word 'may' has been used instead of 'shall'. Thus there is no mandatory provision requiring the Authority as duty bound by law to provide the required information.

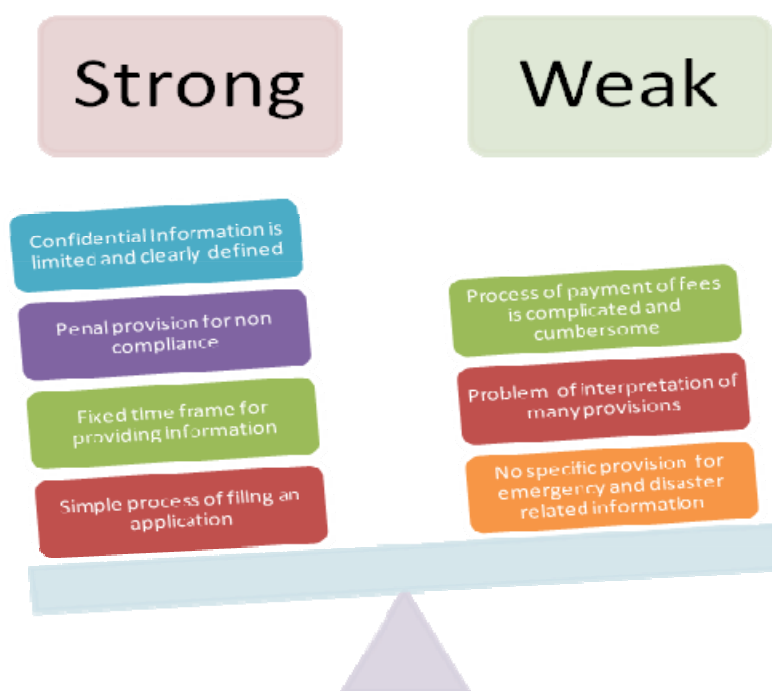
#### 4.4 The Right to Information Act, 2005

The enactment of the Right to Information Act, 2005 is a landmark legal development in India. However, when critically examined the provisions of the law are either restrictive or offers scope for restrictive interpretation. Even when the law recognizes a right to information, that right can be significantly limited if exceptions are created a) for a body of information that is deemed confidential, or b) for certain groups, individuals, or corporations.

- The **definitions** in the Act are **not clear** and a right case can be denied unless provisions are known to the applicant or the officer is trained so well to interpret the application in true spirit of the Act.
- **Cost effectiveness** is required in obtaining critical information by the communities. In the *Darlaghat Barmana* case study the costs indicated was Rs 7600 (USD 150). Often the provisions are not known and people abstain from seeking information due to the notions about cost. The Rules enacted under the Law, providing for payment of fees by Bank Draft is **cumbersome**.
- **Timeliness** is a very critical component of any environmental information but it depends on situation to situation and is often time consuming. The *Darlaghat Barmana* case study reveals that while it took 5 months to get a favourable order.
- *There is no specific provision for "emergency and disaster related information"*  
If there is danger from a source of toxic pollution or flood, that information must be made available to people who might be affected in time for them to take mitigative and preventive action. The earliest time within which information can be provided under the Right to Information Act is 48 hours when information relates to life and personal liberty. There can be disasters affecting one's life and property, however, the law is unclear as to whether these will also come within the category of 'life and personal liberty'. If information is to be relevant, it must be made available in a timely fashion



- Given the vulnerability of the Himalayan Areas to flash floods, earthquakes and landslides, no specific provisions or effort undertaken to ensure that disaster related information is available well in advance. No lessons seem to have been learnt from the previous disasters. This was evident in the case studies on the *Dhauliganga Tunnel leakage* case and the *Chamoli Earthquake* case.



#### 4.5 Information in an Emergency

Mountain areas are particularly vulnerable to disasters, both natural as well as human induced. Two case studies concerning the *Tunnel leakage of the Dhauliganga project* of the National Hydro Power Corporation and the *Chamoli Earthquake* indicate that the law is deficient on many counts with respect to information dissemination in situations of emergency and the problem gets compounded due to institutional slackness in providing information.

- There is no regular information collection. The information generation or collection is incidental and linked to post disaster evaluation of the region.

- The vulnerability of settlement sites adds a tremendous risk to the poorer segments as they lack resources for recouping losses and no specific action taken for information dissemination to the disadvantaged groups in the region despite the fact that 40-60% households live below the official poverty line across different development blocks of the district.
- The information about the vulnerability of villages and the risks that they run owing to the geological and geographical conditions in the region has not been shared by the State.
- Infact, most risk related information if sought in advance is regarded as issues of 'national security' and thus denied. Proactive disclosure is completely absent. Risk communication has to be an essential part of the Right to Information law.
- Even after the tunnel leakage in Dhauliganga in 2005, there has been no change in any of the practice of NHPC, i.e. the project proponent which continues not to share any risk related information with the public. The entire effort was aimed at cover up without any lessons learnt for the future and citizens continue to live with almost the same level of threat as in the past.

#### **4.6 Information from Regular Monitoring**

Regular monitoring is the requirement to make information and data collected or produced with respect to environmental information available to the public which in turn helps to ensure that all parties concerned are accountable for their environmental performance on regular basis. Approvals granted to industries, operations and processes are subject (or supposed to undergo) to regular monitoring of the approval conditions. These include compliance with general as well as specific conditions. Monitoring has generally been a weak aspect of environmental law enforcement in India with very limited penalty for violation.

There is also reluctance for providing information of this nature. For example, in March 2008, an application under the RTI Act was filed with the 'Himachal Pradesh State Pollution Control Board' (HPPCB) for seeking information on quality of environment in the regions where Cement Plants are operational in Darlaghat and Barmana regions. The information requested was for a period of two years. The Public Information Officer (PIO), HPPCB gave a reply that compiling the information would take time and it is likely to cost Rs. 7600 (150 USD) as the information is contained in 760 pages i.e. a charge of Rs. 10/- per page. The applicant responded to the PIO that his appeal was misinterpreted and the information sought would be at the most in ten pages. An appeal to Member Secretary of the board stating the facts communicated by the PIO was returned with reiteration of the stance taken by the PIO that information as it exists only could be provided. On further appeal filed with the State Information

Commissioner (SIC), the order of SIC acknowledged the fact that information be given as desired and *“the contention of the appellant regarding furnishing of information in the desired format as per provisions of Section 7(9) of the RTI Act, 2005 is correct and is upheld. The PIO is required to furnish the information as sought by the appellant in the format enclosed with his RTI application.”*

Another case study on information from regular monitoring is Dehradun Urban Drinking Water Quality. The State Water Utility i.e. Uttarakhand Jal Sansthan looks after the operation and maintenance of the drinking water supply. UJS was formed under the Uttar Pradesh Water Supply and Sewerage Act 1975 and after the formation of Uttarakhand, the state adopted the Act with certain modifications. However, functions of the board remained more or less unchanged and there is no particular clause stating regular generation or reporting of information on water quality. The UJS is unable to ensure potable drinking water due to intermittent supply, old and leaky pipelines, high calcium content, chlorination as the only treatment method etc. Though daily schedules for treatment and monitoring quality at source exists the quality is poor at the receiving end where no effort is made to check the quality.

#### 4.7 Facility Level Information

Facility Level information relates to information on activities performed to support a facilities general manufacturing process. These would include information e.g. in respect to industrial unit, information on emission, wastewater discharged, nature of fuel used, water consumption among others. Mandatory compliance report can demonstrate how well a particular company is meeting regulations for emissions and pollutant release. In the case study an Industrial estates: *Kashipur*, Uttarakhand the Central Pollution Control Board found that out of 24 highly polluting units in the state, 11 units have very poor pollution control facilities.<sup>17</sup> The following issues based on the assessments needs to be highlighted:

- No proactive disclosure of information takes place by any of the Industrial authorities.
- No information is provided on the technology used and the risks and toxicity involved.
- No proactive disclosure of environmental information by the PCB. Though there is industry wise information generated and collected by the PCB before providing consent to industries, there is no scope for the people to comment on the quality of environment in their surroundings as outcomes of these reports not shared with the people.

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<sup>17</sup> Mills Pollute Uttaranchal Hills, Down to Earth, November 2006

- Water intensive units like pulp and paper, sugar mills also have the high pollution potential and categorized as 'Red' category industries. Efficacy of consent mechanism is questionable as over 100 units have been given consent to establish even though the industries are in the Red list.
- Though there is monitoring by the pollution control boards but the information generated is for “official purposes” and without any relevance to the people impacted.

#### 4.8 State of the Environment Report

*State of the Environment* (SoE) reports are designed to communicate credible, timely and accessible information about the condition of the environment to decision makers and the community. It reports on the condition of the State's environment, the major environmental issues facing the State, and identifies what should be done to improve the environment. State of Environment reports needs to be shared among the people so that awareness and ground level action can take place. It needs to be a regular practice so that the progress of the state can be measured.

The case studies on the State of the Environment Report and the processes associated with it indicates:

- In both state there has been no effort to disseminate the information among the public. Even several departments of the government were not aware and those who knew about it had no idea about its purpose or utility.
- It has remained a “one off experience” with no financial and legislative support. In case of Himachal Pradesh, only two State of the Environment Report was prepared of which one is in draft form. In case of Uttarakhand, only once the process was undertaken.
- The SOE remains an academic pursuit and with limited or no effort to ensure that there is any change in behavior or practices pursuant to the findings of the SoE Report

#### 4.9 Main Findings on Access to Information

The Right to Information Act, 2005 ushered in India, for the first time, a feeling and hope that governmental functioning would be subject to public scrutiny. Prior to the enactment of the Act, only two citizens within the State could seek information as a matter of right from any government department: the Chief Minister and the Chief Secretary. Today, citizens enjoy the right to demand information on most issues related to the government. Yet, there are critical deficiencies and these are very much apparent

in environmental information, especially those concerning emergencies such as earthquakes and man made disasters. There are further problems with respect to industrial facilities and Industrial estates where information collection is extremely weak. Dissemination is almost non existent and it gets further compounded by the fact most industries being privately owned, seeking information under third party requests is extremely complicated and futile. Although, appeal process exists under the law, it needs understanding of the law as well as significant cost and time. In hilly regions, these restrictive provisions create hurdles in accessing information. Unless these procedural aspects are simplified specially in the context of environmental information is unlikely to achieve its full objective of providing access to information to the public.

Information sharing with respect to projects which requires Environment Impact Assessment, although is legally mandated, suffers both in terms of its utility (since only limited sharing of information takes place) as also very limited time to examine the document. The problem is further compounded with respect to projects which do not require EIA. In those instances, RTI application is the only route. However, significant information with respect to these projects are either classified as ‘Commercial’ or ‘Trade Secrets’.

The TAI assessment of both the States reveals the following:

- *There is very limited proactive disclosure of information.* This leads to an excessive burden on citizens and concerned groups to access information. This has implications both on time and well as affordability. Although, the charges of obtaining/ procuring the information may be limited, in hilly terrain and poor communication facilities, travel and repeated visits to the Public Information Officer, Bank (for making draft for the fees and costs) and filing of an appeal all have financial implications and greatly acts as a deterrent to access.
- *Emergency related information needs much greater attention.* Emergencies reflect the extreme vulnerability created by the combination of weak capacity and poor transparency. As is evident, no advanced information sharing mechanism exists.
- *No clearing-house mechanism exists for data and information management.* Such a system is critical since it brings comprehensive and relevant information together and ensures that the public can find it in one place, in a form that is understandable, and with content that supports informed decisions. In other words, a good system is comprehensive (scope) and integrates and manages information in such a way that it is relevant (quality). A system for integrated management of environmental information includes information on the state of the environmental element (e.g., water, air, forests) being investigated, factors

that influence the quality of the element, any related threats to human health and safety, and measures to prevent possible harms.

A reform agenda for information should concentrate on the following:

- ***Creating a legal mandate for information collection, analysis and dissemination of information:*** This should be ideally in the local language and in a manner comprehensible to the local people. Providing information in English and in highly technical language amounts to no information at all. Suitable amendment in legislations would greatly help in achieving the purpose.
- ***Increasing investment in collection, analysis and dissemination:*** The investment needs to be with respect to both technological as well as human resources. Extensive use of media both print and electronic and other tradition modes of information dissemination would greatly help the process.
- ***Creating clearing-house mechanisms:*** Systems to collect, analyse and disseminate information at State, district and sub-division level is essential.
- ***Creating a culture of openness in the Government:*** This is perhaps the most critical aspect. Legal provisions and executive directives can succeed only if officials develop an attitude of sharing information whether it is with respect to past or even future plans, policies and programmes.

## Chapter V

### ACCESS TO PUBLIC PARTICIPATION AND ASSESSMENT OF RELEVANT LAWS

#### 1.1 Introduction

It is now widely accepted that democracy does not consist merely of people exercising their franchise once in few years to choose their rulers and once the vote is cast, then retiring in passivity and not taking any interest in government. Today, it is common ground that democracy has a more positive content and its orchestration has to be continuous and pervasive. This means inter alia that people should not only cast intelligent and rational votes but should also exercise sound judgment on the conduct of the government and the merits of the policies so that democracy does not remain a sporadic exercise of voting but a continuous process of government<sup>18</sup>.

Public participation is based on the belief that those who are affected by a decision have a right to be involved in the decision-making process. "Participation" refers to informed, timely and meaningful input and influence in decisions on general policies, strategies, and plans at various levels and on individual projects that have environmental impacts.

Among the strongest arguments for the benefits of public participation is that it builds trust in decisions made by public officials. Stakeholders who believe a decision was reached through a fair and inclusive process are less likely to oppose or obstruct its implementation, even when the decision was not completely to their liking. This can prevent project delays and other costs associated with litigation.

By providing opportunities for public participation in decision-making, a government may demonstrate to the citizens that it takes their opinion into account and makes decision transparently. This can build public trust in government and enhance the legitimacy of specific decisions. Given the importance of trust and legitimacy for a functioning democracy, the enhanced legitimacy of decision outputs can be a benefit of participation.<sup>19</sup> Trust lowers transaction costs and risks in everyday business of government, ultimately leading to a more efficient execution of tasks<sup>20</sup>.

If public participation is to be meaningful and government decisions are to be rational and informed, relevant information must be gathered and put into an understandable

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<sup>18</sup> S.P Gupta v. Union of India, 1981 Supp SCC 87

<sup>19</sup> Putnam, 1993 in Voice and Choice, WRI, 2008

<sup>20</sup> Levi, 1998 in Voice and Choice, WRI, 2008



form. Government agencies responsible for managing various aspects of the environment are best placed to do this. However, civil society organizations can play an active role in assisting the Government as also private sector entities through proactive disclosure of information

## 5.2 Assessment of Laws Supporting Public Participation

The assessment covered both the scope and quality of this law and the degree to which it supports the public participation in decisions that affect the environment.

Description of the Laws studied:

- Environment Impact Assessment Notification, 2006
- Special Economic Zone Act, 2005

The framework for public participation in environmental decision-making is provided in the **Environment Impact Assessment Notification, 2006**. Public Participation is however limited only to specific categories of projects. Public participation consists of the following:

- Public Hearing at the project site or in proximity in order to elicit the opinion of the affected persons or those who have a plausible stake in the grant of environmental clearance.
- Accepting written representation from the affected people and people with plausible stake.

The law provides that the Public Hearing is conducted by a Panel comprising of the District Magistrate/ Collector or his nominee not below the rank of Additional District Magistrate and a representative of the State Pollution Control Board. The earlier EIA Notification (1994) provided for representation from Panchayats and Senior citizens of the area in the Public hearing Panel. This provision no longer exists in the new EIA Notification of 2006. The Panel has thus been reduced to a purely official platform. Some of the other major deficiencies noticed in the law are:

- Only a limited number of Projects and activities require Public Participation. Thus construction activities and mega tourisms facilities (*Himalayan Ski Village*) do not require public consultation despite its social and ecological consequences.
- The law provides for only 'environmental' public hearing. However, there are many social issues linked to environmental issues such as grazing rights, impacts on traditional livelihoods, potential economic benefit to the community and cultural impacts of the project. The environmental Public hearing does not provide for a

platform for such concerns. Infact, the panel generally refuses to entertain such requests (*Askot Multi Metal Mining*)

- The law provides that the Expert Appraisal Committee (EAC) of the Ministry of Environment and Forests should carry out detailed scrutiny of the outcome of public hearing. However, the law does not make the outcome of the public hearing binding on the decision makers. Thus, even if there is total opposition to a project at the time of public hearing, the project can still be allowed by the Ministry of Environment and Forests.
- The law does not require the Ministry of Environment and Forests or the EAC to give reasons for overruling the opinion of the people.
- Although the law does provide opportunity for public participation, it is has no weight in the final decision making process. The EIA Notification provides that deliberation of Expert Appraisal Committee of the Ministry of Environment and Forests should take place in a transparent manner and following the principles of natural justice. However, only the project proponent is allowed to be present at the meeting without any scope for affected communities or concerned civil society groups.

*The Special Economic Zone Act, 2005* provides for the establishment, development and management of Special Economic Zone for the promotion of exports and for other related matters. A perusal of the Act clearly provides that neither local persons are mentioned nor any provision exists for involving the local people in either the planning or execution of SEZ. The key actors as per the Act are the developers, co-developers and entrepreneurs. There is no provision for either consultation or even recognizing any people beyond the regulator and the developer.

### 5.3 Assessment of Participation in Policy Making Process

Public involvement in Policy making as well as enactment of laws ensures that decision is based on ground realities and will also address in a realistic and implementable manner the problem that it intends to address. In terms of Assessment of Policy making two case studies were done: one related to the enactment of the *Scheduled Tribes (Recognition of Forest Rights) Act, 2006* [also known as the “Forest Rights” Act] and the Hydro power policy for the state of Himachal Pradesh. The key findings so far as the process of enactment of the Act is concerned:

- The responsible agency i.e. Ministry of Tribal Affairs (MOTA) did not give any clear description or notification of the decision making process to the public. Only media and some civil societies publicized it. The responsible agency failed to provide any training and guidelines to the public to participate.

- The Ministry of Tribal Affairs did not provide adequate lead-time for the public to participate and mode of participation for public including target group was limited. At times it was not clear as to who is responsible for inviting public comments whether it is the Ministry of Tribal Affairs or the Ministry of Environment and Forests.
- Most information was through the web. Even public comments on the bill were limited and largely through email. For law having such wide implications as well as impacting a significant number of people only 127 comments were received on the Bill and 90 comments on Rules. The people were also confused since many versions of the draft Bill were being circulated.
- The Ministry of Tribal Affairs, Government of India has failed to provide any information to the public that whether their comments/ suggestions have been incorporated or not.

So far as policy formulation was concerned with respect to Hydro Power Project, it was noted that the following are the main deficiencies:

- The public participation in the preparation of the Hydropower policy is negligible and also there is no information available with the public about the policy.
- The copy of the policy is not available in the website of the department and it costs Rs. 1000 (USD 20) for the hard copy.
- In some of the most critical decisions such as the ensuring of minimum flow, practically no public consultation has taken place. The figures arrived are clearly arbitrary and these cause lot of resentment and well as have adverse impact on local ecology and downstream environment.

#### **5.4 Assessment of Participation in Project Level Decision Making**

The public needs lead time (advance notice) so that they may participate early in the process when options are still open and change is possible. The public can meaningfully participate only if they are provided with relevant information before the process begins. As is observed the opportunity for the public to participate in decision-making at both in national and project level is generally confined to later stages of policy formulation or project planning.

From the three case studies have been undertaken i.e. *Askot Multimetal Mining, Himalayan Ski Village and Kataldi Limestone Mining* the key findings are:

- The Public hearing process is generally regarded as a mere formality and procedural step to be complied. There is no seriousness on the part of the Pollution Control Board to make it effective for eliciting public opinion.

- Very limited information is shared with the affected people: only copies of the executive summary is provided and only limited 'access' is provided to the full EIA report.
- There is no orientation and capacity building or even basic information on how to analyse or study an EIA report. In rural India, where a significant proportion of the population is illiterate or of limited education. Understanding EIA documents is a complicated and unless it is explained in a simple manner by the authorities concerned simply making it available to the public serves no effective purpose.
- The Pollution Control Boards responsible for the conduct of Public Hearings have no emphasis on Public Participation and do not have dedicated staff or guidelines to facilitate.
- The information regarding the conduct of public hearing is disseminated in a mechanical way through publication in newspaper without looking at specific regional or cultural aspects, which could facilitate greater participation.
- The time frame available for public comments (30 days) is very limited especially in mountain areas with difficult communication facilities.
- There is very little evidence to show that the proceedings of the public hearing process are taken into consideration while taking the project level decisions.

### 5.5 Assessment of Participation in Regulatory Decisions

The *Bhagirathi River Valley Development Authority* case study reveals a lack of Public Participation and large gap between objective and actual performance. The Authority is more a post-project management authority without any role prior to clearance of the projects critical for Hydropower projects. Further, deficiencies were noted as follows:

- The Board has been ineffective in making any significant intervention on the series of projects coming up on the Bhagirathi. It remained a silent spectator when significant agitation took place against the series of dams.
- The Board has limited or in fact no interaction with the public.
- The effectiveness of this authority is still to be established and it is not clear if it will be able to suggest concrete measures on 'rational power generation' based on its assessment and public consultation.

### 5.6 Main Findings on Access to Public Participation

Public participation is among the most neglected aspect in the decision making process. Most projects do not require public participation. A reason for the same is the assumption of a representative democracy that public as a whole need not be consulted since their opinions and concerns will be expressed by their representatives in

Parliament and Legislature. This presumption has greatly restricted the space available to the people to voice their concerns on the social and environmental implications of plans, programmes and projects. The TAI assessment clearly reveals that the law and practice in India in general does not encourage public participation. Very limited scope exists in the EIA process. In the various procedure for conduct of EIA *viz*, Screening, Scoping, Public Consultation and Appraisal, public involvement is limited to only the Public Consultation stage. There is no provision for involvement at the crucial stages of either scoping or appraisal. The Public Consultation stage in itself is a rather late stage since many project related activities including site selection and acquisition of land and also some preliminary activities at times have taken place prior to it. Of serious concern is the lack of the consideration of the outcome of public hearing during the appraisal stage. There is no scope for Public Participation after the public hearing and communities are not aware whether their concerns have been addressed (*Askot Multi Metal Mining, Uttarakhand*). They are taken by surprise when clearance is granted despite the acceptance of their concerns. The only recourse is to approach the High Courts (*Kataldi Limestone Mine, Uttarakhand*), which is expensive and time consuming. The new EIA Notification of 2006 has made the situation worse by removing the legal requirement for public consultation for a range of projects including tourism projects and construction projects. Thus compared to the earlier EIA Notification, the new notification has been clearly regressive.

The lack public participation in policymaking, project planning and implementation is of greater concern (*e.g. were the formulation of the Hydro Power Policy in the States of Himachal Pradesh and Uttarakhand*). In case of law formulation (*the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2005*, although there was an attempt to involve civil society groups, larger community level interaction was limited.

Summary of Public Participation Case				
Name of the Cases	Case Type	Weak	Intermediate	Strong
Hydro Power Policy, Himachal Pradesh.	Policy Making	Weak		
The Scheduled Tribe and other Forest Dwellers (Recognition of Forest Right) Act, 2006	Policy Making		Intermediate	
Askot Multimetal Mining, Uttarakhand	Project-Level Decision		Intermediate	
Himalayan Ski Village, Himachal Pradesh	Project-Level Decision	Weak		
Kataldi Limestone Mining, Uttarakhand	Project-Level Decision		Intermediate	
Bhagirathi River Valley Development Authority	Regulatory- Decisions	Weak		

## Chapter VI

### ACCESS TO JUSTICE AND ASSESSMENT OF RELEVANT LAWS

#### 6.1 Introduction

The most basic human rights, according to Justice V.R Krishna Iyer is 'access to justice' (1981) 1 SCC (Jour) 3. The Constitution of India provides in Article 32 and 226 the right of every person to approach the Supreme Court or the High Court for any legal injury caused to a person or a determinant class of person. The Supreme Court of India in *S.P Gupta vs Union of India* held that where a legal wrong or injury is caused to a person or to a determinate class of persons by reasons of violations of any constitutional or legal right and such person by reasons of poverty, helplessness or disability or socially or economically disadvantaged position are unable to approach the court for relief, any member of the public can approach the High Court or the Supreme Court for seeking appropriate relief.

Where the weaker sections of the Society are concerned such as undertrials, people living in poverty and eking out a miserable existence with their sweat and toil and who are helpless victims of an exploitative society and those who do not have access to justice, the Courts will not insist on a regular petition. *"This court will readily respond even to a letter addressed by an individual acting pro bono public. It is true that there are rules that are made by this Court prescribing the procedure, but it must not be forgotten that procedure is but a handmaiden of justice and that the cause of justice can never be allowed to be thwarted by any procedural technicalities"*. Today a vast revolution is taking place in the judicial process; the theatre of law is fast changing and the problems of the poor are coming to the forefront. The Court has to innovate new methods and devise new strategies for providing access to justice to large masses of people who are denied their basic human rights and to whom freedom and liberty have no meaning. Despite such landmark judicial interpretation, the legal developments over the last decade or so have created hurdles in access to justice.

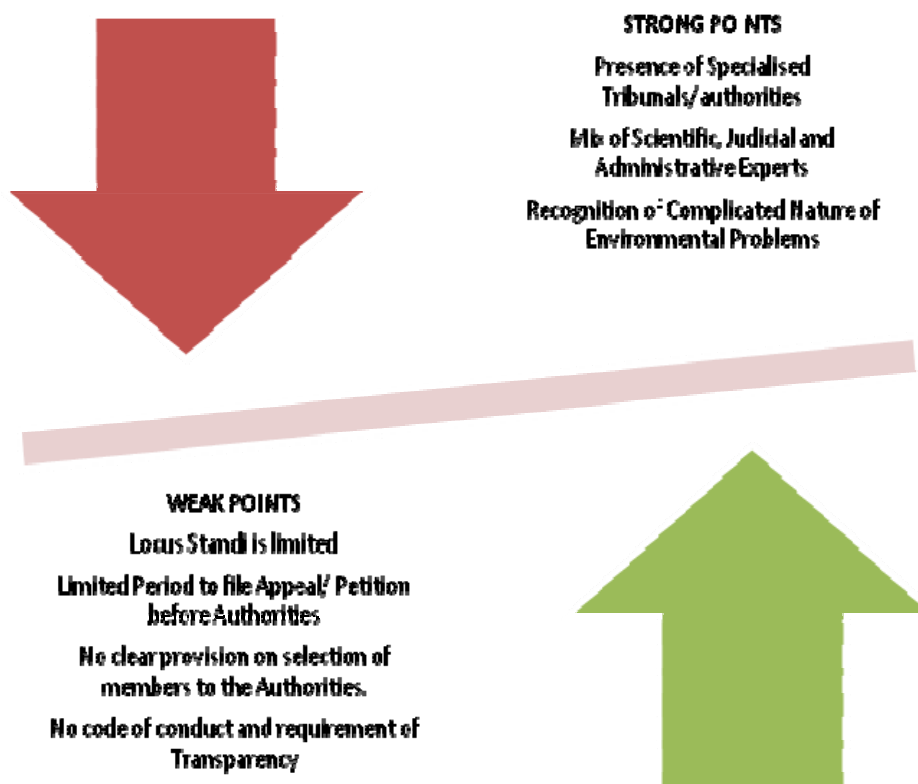
The assessment covers both law supporting access to justice as well as specific cases in order to assess government effort and effectiveness. Of specific focus were institutions and Authorities such as National Environment Appellate Authority, National Environment Tribunal and Central Empowered Committee of the Supreme Court of India wherein citizens could come forward with their grievances with respect to either denial of rights or specific instances of environmental damages.



## 6.2 Assessment of Law Supporting Access to Justice

The assessment of the National Environment Appellate Authority Act, 1997 indicates that the avenues for justice are greatly limited. The issue of *locus standi* is construed narrowly allowing only 'aggrieved persons' and 'associations of persons' working in the field of environment to file Appeals. Further limitations in terms of the time limit within which an Appeal can be filed (within a period of 30 days from the date of approval and not beyond 90 days) is unfair as there is no corresponding legal requirement to widely publicize the approval (clearance letter issued by the Ministry of Environment and Forests). On the positive aspect, the law acknowledges that environmental issues in view of their complicated nature should be decided by a mix of judicial, administrative, and technical members and that there should be speedy disposal of appeals filed.

In the case of Non compliance and for claiming damages, the **Public Liability Insurance Act, 1996** has been enacted. In order to compensate the victims affected by Industrial accidents and for restoration of damaged ecology due to industrial pollution, **National Environment Tribunal Act, 1995** was enacted. These are to a large extent innovative and provide an option other than existing administrative and judicial remedies.





The Constitution provides for the Supreme Court to appoint Commissions and Committees to ensure effective compliance with judicial orders. The Courts have used the powers to Constitute Committees such as the **Central Empowered Committee** (CEC) in order to ensure effective compliance with the orders passed. The Rules of procedure of the CEC allows 'any person' to move the CEC if they are affected by any action done by the State in order to implement the orders of the Supreme Court or if any issue related to forest conservation is concerned.

### 6.3 Justice in Environment Harm Case

"Environmental Harm" is any harm, or potential harm, to the environment (of whatever degree or duration) including environmental nuisance or anything declared in any environment protection policy as environmental harm. Environmental harm requires that the forum for justice is able to provide either injunctive relief or restoration of the ecology in accordance with the polluter pay principle. The forum for justice should ideally be located close so as to make access to justice easily accessible and affordable.

The TAI assessments in this case study relating to the adverse impacts due to road construction within Corbett Tiger Reserve, Uttarakhand where the petitioners the Central Empowered Committee reveals a rare positive indicator so far as access to justice is concerned. This is in view of the following facts:

- The CEC had **liberal rules with respect to locus standi** and filing procedure and costs are minimal. It is not essential for lawyers to be present and applications filed are heard through *amicus curiae* if the applicant expresses inability to be personally present.
- In order to examine the issues directly, the **CEC undertook a site inspection** and this involved detailed meeting with all stakeholders including the Applicant, the Government Agencies, the Transport Union, Conservationist, NGOs and all other concerned people. They were also allowed to join the site inspection. This greatly facilitated public participation as well as offered direct opportunity to present the grievances to the forum members.
- The work on the road not only in selected case but also other forest areas being laid without prior approval of the Supreme Court were stopped immediately due to the intervention of the CEC redressing the grievance of the Applicants.
- The **CEC has a mix of lawyers, NGO's and forest officers** both retired and serving as well a bureaucrat. This adds to the varied skill required to provide in-depth advise to the Supreme Court on forest and wildlife related issues.

- The **proceedings are open to the public** and the past orders are available on request.
- Information with respect to the **outcome of the cases** and the proceedings however **needs to be made available** to the Public and a website would greatly facilitate the same.

#### 6.4 Justice in Access to Information Claim Cases

The Access to information claims are those claims where any information which is vital for the public to participate in the decision making process are not provided to them. When information are not provided in normal manner, the affected person has to take recourse of judicial forums to access the right to information.

The National Environment Appellate Authority serves as the Statutory Authority for challenge to any approval (Environmental Clearance) granted to a project. The lack of sharing of information about the proposed dam project (Pala Maneri Hydel Power Project) and its implications was challenged before the NEAA.

The TAI Assessment of the NEAA however reveals:

- **The NEAA is still to be made fully functional**, as there is no Chairperson as well as vice Chairperson. This is despite orders passed by the Delhi High Court as well as recommendation of the Comptroller and Auditor General of India.
- The **Independence and impartiality** of judicial forums help to ensure that parties obtain a fair and unbiased hearing of their claims. **Forum members are not truly “independent”** as they are appointed by the very same Ministry (MoEF) they are supposed to pass orders against and most of the members are ex officials of the Ministry of Environment and Forests. There are no standards, regulations, and policies to ensure independence and impartiality. No code of ethics exists for the members.
- **No technical expertise** exists although the NEAA is supposed to be a technical body, the members are not from any scientific disciplines but career bureaucrats. No orientation or training has taken place either before or after joining the NEAA. Further the NEAA has never ever consulted any outside expert either individual or institution. The NEAA does not have access to any current law or scientific journal. Its annual expenditure on journals and periodicals is 12 USD.
- The **existence** of the NEAA is almost **unknown**: It has no website, no internet access and no means of communicating how to file an Appeal. As a result most projects go unchallenged or even when appeal are filed it is dismissed either on grounds of delay or other technical consideration.

- The forum members rarely interact with the stake holders: In the last three years it has undertaken only one site visit (not in the present case)
- The chance of securing justice is remote: in its eleven years of existence, it has dismissed every single Appeal except one.

As an avenue of Justice, the NEAA has really failed to perform the function assigned and therefore needs a complete revamp.

## 6.6 Justice in Non-Compliance Claim Case

Rima soapstone mining is a live example, which questions 'sustainable mining' and economic development for a few and curse for a community. Rima is a region rich in soapstone and is available as an extended terrace on which agricultural fields are spread with formation of soil on the top. The mining activity started in mid 80's and since then there is no control over it. With no compensation from the miner due to damages caused by the activity, the people have been forced to sell or lease their lands for the mining activity. This trend has made tragic transformation of the region to an environmental hotspot. Though there are certain legislations like the Public Liability Insurance Act (PLIA) but a case has never been brought up in establishing the liability of the miner – *a similar case like Roro mines in the State of Jharkhand*. The authority to implement the Public Liability Insurance Act i.e the National Environmental Tribunal is yet to be formed despite the Parliament having passed the Act in 1995. This is a clear instance of the executive under extraneous pressure/influence sabotages even a parliamentary enactment. The scope for a public dialogue is not available in the region totally overshadowed with the mining lobby and no actions taken by the district administration to either control the damage or provide options for development.

## 6.7 Conclusion

Despite the Supreme Courts' emphasis on the importance of access to justice especially with respect to the poor, there has been an increasing gap between law and practice. In terms of the National Environment Appellate Authority (NEAA), the Authority has been interpreting the provisions with respect to both maintainability as well as limitation rather narrowly. Although, there is always recourse to higher courts, it is expensive as well as time consuming. The NEAA is located in New Delhi. It is far off and involves almost a days journey by road from most areas where dams and mines are coming up in the Himalayas. There is no proactive effort on the part of the NEAA to reach out to the people. It has no website, no internet access, the posts of Chairperson, Vice chairperson have been vacant for years. There is no infrastructural support. The

current technical members have no expertise on most issues concerning EIA and are only retired bureaucrats . As a result of all these factors, in the last 11 years of its existence it has dismissed every single appeal other than one mostly on technical grounds. The members of the NEAA are retired bureaucrats often from the same Ministry of Environment and Forests, whose decision they are supposed to review. There is no procedure for selection of members and is mostly ad hoc.

So far as compensating the victims of Hazardous activities are concerned, despite the passage of 11 years since Parliament enacted the law, the National Environmental Tribunal is yet to be formed. Thus, a crucial Authority to implement both the Polluter Pay Principal as well as provide claims to environmental victims is “still-born”.

The Court constituted committees and especially the Central Empowered Committee (CEC), which has been constituted by the Supreme Court in respect of forest and wildlife, related matters have served as an important avenue of justice in an overall bleak scenario. Its expertise and liberal justice oriented approach has led to significant relief to affected citizens as well as conservation and social action groups.

To conclude, it can be stated that that though the Constitutional mandate for access to justice is strong, recent legislative as well executive actions have unfortunately, worked in tandem to greatly restrict the avenue of justice especially on matters concerning the environment.

## Chapter VII

### CAPACITY BUILDING

#### 7.1 Introduction

Capacity building refers to efforts to improve a country's human, scientific, technological, organizational, institutional, and resource capabilities. According to Agenda 21, capacity building consists of mechanisms, efforts, or conditions which enhance effective and meaningful public participation in decisions affecting the environment. Types of capacity building include educating officials to implement access rights, creating a supportive legal and administrative situation for non-governmental organizations, and ensuring Internet access for the general public.

Principle 10 of the Rio declaration puts specific emphasis on capacity building in view of its strategic importance in promoting access rights.

Capacity building is essential for all the three access rights and unless effective, proactive measure and actions to build the capacity of citizens and officials are undertaken, legislative as well as judicial expansion of access rights will have limited impact at various decision level.

Capacity Building in Information Access	Capacity Building in Access to Justice	Capacity Building in Public Participation
<ul style="list-style-type: none"> <li>• Providing Public with Skills and Knowledge needed to:</li> <li>• <i>obtain information</i></li> <li>• <i>utilize the information</i></li> </ul>	<ul style="list-style-type: none"> <li>• How to use forums for redress and remedy</li> <li>• Guidelines, Trainings, Handbook, websites on how to use the forum</li> </ul>	<ul style="list-style-type: none"> <li>• Disseminating guidelines through a variety of outlets (e.g., libraries, internet, radio, etc.) on how to participate.</li> <li>• Guidelines should be :</li> <li>• "Clear" i. e in simple language &amp; easily understood by the average citizen.</li> <li>• "Easily accessible" i.e the availability of public guidelines in more than one public format and source.</li> </ul>

Members of the public will have difficulty asserting their right to justice unless the government actively informs them how to use the available forums for redress and remedy. The public cannot gain access to and use the selected forum unless the government or the forum makes active efforts to tell it how to do so. Activities that can be counted as efforts to build public capacity on access to and use of the selected forum include making trainings, guidelines, handbooks, websites, pamphlets, leaflets, and other materials for broad dissemination available at government offices, libraries, and other public places and through the media.

Uninformed government personnel, misunderstandings, or active rejection of the value of participatory decision-making can create obstacles to effective public participation. Staff training can help prevent this problem. Training must be fairly recent to be effective and reach all staff. Ideally, it is part of a systematic, long-term plan for human resources development.

## 7.2 Assessment of Law supporting Capacity Building

Legal mandate for capacity building is generally absent in most regulation in India. The Right to Information Act to some extent recognizes the need and provides a time line for building the capacity of the officials. However, the greatest lacunae with all the laws is that even in situation where it does provide for building capacity of the officials there is no corresponding legal mandate to train the public. In a country with a significant proportion of its population either illiterate or with limited educational background, such omission seriously defeats the purpose.

	<b>Weak</b>	<b>Intermediate</b>	<b>Strong</b>
<b>Right to Information Act, 2005</b>	Public	Officials	
<b>The Environment (Protection) Act, 1986</b>	Public	Officials	
<b>The Environment Impact Assessment Notification, 2006</b>	No Mention	No Mention	
<b>The Indian Forest Act, 1927</b>	No Mention		
<b>Disaster Management Authority</b>	No Mention (Public)	Officials	

## 7.3 Assessment of Capacity Building for the Government

The case study reveals a good level of effort as far as the Right to Information Act is concerned. This is particularly more in the State of Himachal Pradesh where Himachal Institute for Public Administration (HIPA) has been involved in providing training on the Right to Information Act.

However, Capacity building for the two other access rights is almost non-existent. The general idea seems to ensure that minimal awareness about these two access rights takes place so that those in power can continue exercising the same without any hindrance and unaffected by public reaction and viewpoints.

Access to justice requires that members Tribunal, Quasi Judicial bodies be familiar with and understand laws, procedures or common practices relating to claims that they review. Training for forum members on access to information and participation can help build capacity for claims related to the access principles. Training must be recent and involve all relevant staff to be effective.

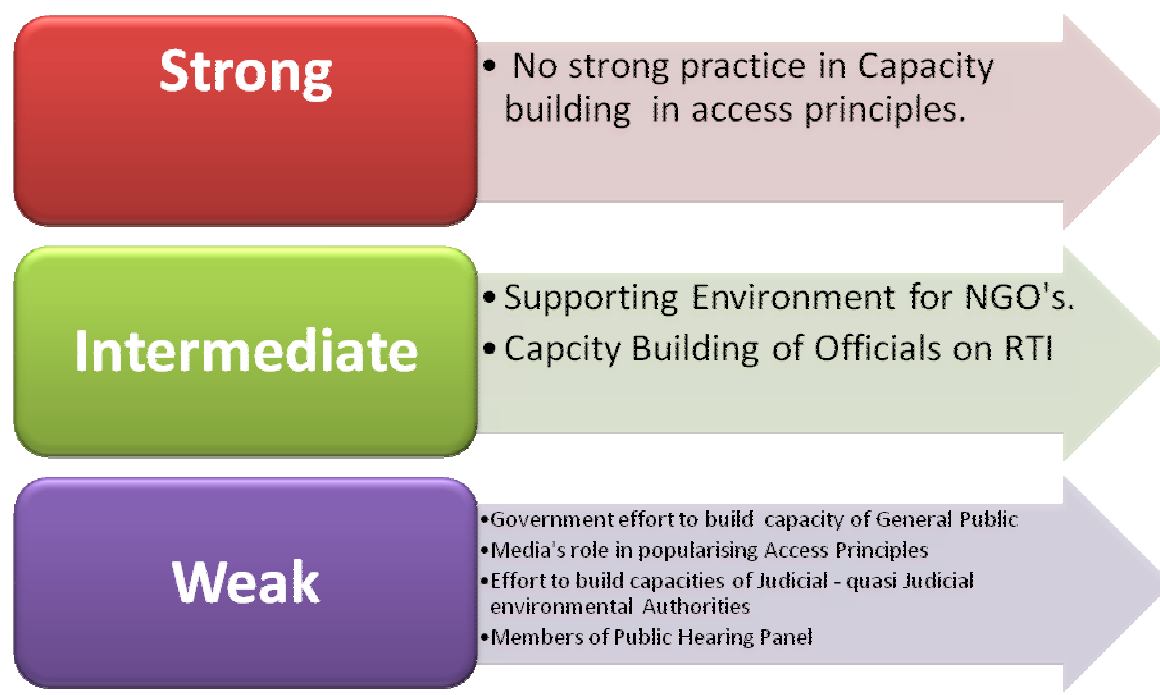
The TAI assessments reveal the following:

- With respect to Judicial forums such as the *National Environment Appellate Authority* which has the mandate to hear appeals against grant of environment clearance, no capacity building exists for members of the Authority and no orientation has been provided on either the scientific aspects or even the legal aspects. This is particularly serious in view of the fact, that existing members essentially retired bureaucrats have no scientific, technical or legal expertise.
- As far as Public Hearings under the EIA process is concerned, the Presiding officers have never been trained either on the EIA process or on how best to conduct an environmental Public Hearing. EIA and public hearing does not form part of the syllabus although larger environmental issues are covered as a part of their regular training. Private institutes (Amity University, Uttar Pradesh) have recently initiated some effort with the support of the Government of India. However, there is an urgent need to standardize the same and also to have it part of in service training for the services. In the absence of training or even guideline on how to conduct the Public Hearings and facilitate Public participation, the officers of the Government including the Pollution Control Board have ended up becoming *defacto* agents of the project proponents.

#### 7.4 Assessment of Capacity Building for the Public



- **General Public.** The public cannot be aware of their access related rights unless there is a proactive effort to empower the people. The TAI assessment reveals that the capacity of the Public as far as the access rights are concerned is generally very limited. No effort on the part of any of the State has been initiated to train and build the capacity of the general public. In the absence of the same public is rarely able to make use of grievance redressal forums as well as effectively make use of the Right to Information Act. Further, with respect to recent parliamentary enactment such as the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2006 no efforts have been undertaken to educate the people.
- **Media.** The media plays a crucial role in providing information to the public, and is also an important tool in the activities of CSOs, government and other stakeholders. Laws and government efforts that enhance the capacity and independence of media organizations underpin the media's ability to promote transparency and an informed citizenry. However, media reporting tends to focus on issues that have an element of 'sensationalism' and the 'news value' of the issue tends to decide focus than the actual importance of the issue in terms of access principles. Thus, we noticed significant media stories on the *Himalayan Ski Village and Dhauli Ganga tunnel leakage*. However, there was very limited follow up on these issues while in *Darlaghat Barmana*, Himachal Pradesh, there was hardly any coverage.
- **Civil Society Organizations (CSOs).** Civil society organizations (CSOs) play a crucial role in promoting and protecting the interests of the public. They frequently serve as an important vehicle through which citizens promote transparency and obtain information. Laws and government efforts that enhance the capacity of CSOs may improve CSOs' ability to play such a role. The role of CSO's has been largely positive especially, in respect to issues concerning access to information. CSO's in both the states played a major role in creating awareness about the new law as well as on how to make the best use of it. To this extent, they greatly made up for the lack of effort on the part of the Government. However, given the limited resources which most CSO's have, they can at the best play a complementary role in building the capacities of citizens on access rights. Also, it was observed that although capacity building workshops were organized they have been limited to access to information. In some instances, *Darlaghat Barmana Cement Plants, the Kashipur Industrial Estate* CSO's were completely absent.



## 7.5 Conclusions

Very limited capacity building exists for most sectors, and even where it exists, it is limited mostly to Government Officials. However, in terms of its content it is limited only to access to information. This has been due to the enactment of the Right to Information Act. So far as other access rights are concerned *viz.* Access to Justice and Public Participation, there exists no capacity building for either officials or the public. The officials are generally in the dark as to what is expected of them. Since neither the officials nor the public are trained, the Public Consultation process for a range of projects remains a mere procedural step in the approval process. Some efforts have been initiated by Civil Society Organisations in building the capacity of the people however, these are sporadic and lack continuity.

Officers at the District level are often the government representatives who interact most directly with citizens and are in the best position to hear citizen voices. However, these officials are unfamiliar with or do not value the principle of public participation in decision-making, they may create barriers to citizen involvement. Effective Training on Public Participation in the EIA process as well as on citizens' rights and on procedures for facilitating participation can help alleviate such problems. Unfortunately, there exists no effort on the part of the Government on the crucial issue of capacity building.

## Chapter VIII

### CONCLUSION AND RECOMMENDATIONS

The TAI Assessment of the Himalayan States of Uttarakhand and Himachal Pradesh is largely reflective of the scenario in India. This is due to two principal reasons:

- The laws and Rules are generally Central/ federal laws and therefore have a largely uniform application throughout the country.
- The administrative and political system and institutions are the same.

However, the crucial distinction arises in view of geographical factors. The Himalayan states have poor communication facilities and this create obstacles towards accessing the various rights whether they are justice, information and participation.

TAI assessment reveals that the States have a much distance to cover. Achieving environmental democracy is no easy task. It requires first of all an identification and understanding of the problem and the shortcomings in the existing system: this could range from absence of law and policy, to gaps in existing laws which hinders access as well as financial and cultural barriers to access. Enactment of laws and policies as well as constituting of authorities by itself is not a solution. As the assessment reveals: it is easier to set up authorities and committees (Bhagirathi River Valley Authority, Pong Dam), it is a herculean task to ensure that they actually function in a manner in which it not only meets the objective for which it is set up, but also in a manner which is participatory and justice oriented.

The assessment reveals that legal enactments with respect to environment have largely restricted access to justice. This is not only contrary to the constitutional provisions but also various landmark Supreme Court rulings on *locus standi*. Avenues for justice are few and far away and in most instances are either non functional (National Environment Tribunal) or dis-functional (National Environment Appellate Authority and Bhagirathi River Valley Development Authority). Clearly, the intention of Parliament to constitute these authorities has been defeated largely due to administrative and political apathy.

The Environment Impact Assessment process as it exists is plagued with too many loopholes and serves no effective purpose for the affected community or to protect the environment. Simple amendments by itself will not suffice and a fundamental shift in the mindset of the decision makers from an “investor friendly” to an “environment and

people friendly” approach is needed. This in turn necessitates an appropriate capacity building of officials and decision makers and to inculcate a ‘culture of openness’. As the TAI assessment reveals, this is largely absent: partly due to lack of legal mandate and due to lack of prioritization of the same in government plans and programmes.

The enactment of the Right to Information is an historic step. Yet, for a vast majority unless there are proactive measures to educate the people on how to access information it is bound to carry no meaning for them. As the assessment clearly shows there is neither a legal mandate nor any effort on the part of the government to acquaint the people on the use of Right to Information Act. There is a greater need to make it more relevant for information related to the environment as well as emergency related situation.

## RECOMMENDATIONS

The TAI assessments of both the States of Himachal Pradesh and Uttarakhand clearly reveals that there are institutional, legal and procedural hurdles in achieving environmental democracy. Infact, achieving ‘environmental democracy’ can be at times as difficult as securing democracy for non-democratic countries. Few governments want ‘interference’ from the public other than securing their support at the time of election. Yet, in reality, democracy has a more positive content and its orchestration has to be continuous and pervasive.

The recommendations that emerge from this assessment apply to the two State governments as well as the Central (federal) government.

### *ACCESS TO INFORMATION*

6. Greater emphasis must be placed on proactive disclosure of information as opposed to information on specific request. Information sought under RTI Act should be an exception and proactive disclosure should be the norm.
7. The States should develop a clearing-house mechanism at state, district, and sub divisional level for collection, analysis and dissemination of environmental information.
8. The Final Environment Impact Assessment Report as opposed to the draft EIA in simple, understandable language should be available to the public. An amendment in the EIA Notification, 2006 to this effect is essential.
9. A legally binding mandate is necessary for publishing and disseminating “State of the Environment Report” – atleast once every three years.

10. Emergency and disaster related information must be treated as a special and priority category of information to be easily accessible to all concerned especially in the context of the unique geographical conditions of the Himalayas.

#### *PUBLIC PARTICIPATION*

5. Public Participation should be mandatory for a much larger category of projects, which have environmental implications including plans, policies and legislations.
6. Public Participation should be ensured during the stage of project planning and design for it to be effective at all levels.
7. Greater weightage to the Public hearing should be provided at the stage of EIA appraisal and final decision-making.
8. Adequate lead time (advance notice) must be provided for public hearings. Given the poor communication network, in the hilly areas it should be a minimum of two months as compared to the existing one-month now.

#### *ACCESS TO JUSTICE*

5. Grievance redressal mechanism specially the National Environment Appellate Authority should be overhauled with the appointment of technically qualified persons with appropriate code of conduct and ethics.
6. National Environment Tribunal should be made operational on a national and regional basis in accordance with the National Environment Tribunal Act.
7. Procedures for filing of appeals/ petitions before Judicial as well as quasi-judicial authorities dealing with environmental issues should be simplified.
8. Allow District Courts to hear environmental suits by amending section 22 of the Environment (Protection) Act, 1986 (EPA), which bars civil courts from entertaining matters concerning the EPA.

#### *CAPACITY BUILDING*

2. A legal mandate must be created for building capacities of both Public and as well as officials in the framework of environmental law. Of special attention should be greater government focus on educating the public either directly or through civil society groups.
3. Capacity building of members of judicial and quasi-judicial forums dealing in Environmental issues especially of the NEAA and other related authorities must be a continuing task. This effort should crucially focus on neglected aspects such as disaster related information and problems of poor and marginalized in accessing justice.

## MATRIX OF INDICATORS

Indicators No:	Indicators	Baddi-barotiwala Pharmaceutical Chemical Industry, Himachal Pradesh	Chamoli Earthquake Vulnerable Villages	Darlaghat Barmana Cement Plants	Dehradun Urban Drinking Water Quality	Dhauli Ganga Power Project (Phase-1)	Kashipur Industrial Estate	State of Environment Report, Himachal Pradesh	State of Environment Report, Uttarakhand
10	To what extent does the law support public access to comprehensive information about the environmental area (water, air, forest, etc) concerned in the selected case?	Law provides some access to information	Law provides some access to information	Law provides some access to information	Law provides some access to information	Law is silent on access to information	Law provides some access to information	Law provides access to most information	Law provides some access to information
11	To what extent does the law require a government agency to generate or report regular and diverse information of the selected type?	Some generation / reporting required	Some generation / reporting required	Some generation / reporting required	Law is silent on generating /reporting the selected information	Law is silent on generating /reporting the selected information	Some generation / reporting required	Some generation / reporting required	Some generation / reporting required
12	To what extent does the law require a government agency to publicly disseminate all generated or reported information of the selected information type?	Some information dissemination required	Some information dissemination required	Some information dissemination required	Law is silent on information dissemination	Adequate information dissemination required	Law is silent on information dissemination	Some information dissemination required	Some information dissemination required
13	How clear and narrow are the limits on claims of confidentiality of the selected information type?	Limits neither clear nor narrow	Limits neither clear nor narrow	Limits neither clear nor narrow	Not applicable (N/A)	Limits neither clear nor narrow	Limits neither clear nor narrow	Limits are narrow but not clear	Limits are narrow and clear
14	To what extent does the law require the agency responsible for the selected information type to build the capacity of its staff on access to information?	Law inadequate on building capacity	Law somewhat adequate on building capacity	Law inadequate on building capacity	Law inadequate on building capacity	Law somewhat adequate on building capacity	Law inadequate on building capacity	Law somewhat adequate on building capacity	Law inadequate on building capacity
15	To what extent does the law require the agency responsible for the selected information type to build the capacity of its staff with regard to the environment?	Law requires limited capacity building	Law silent on building capacity	Law requires limited capacity building	Law silent on building capacity	Law silent on building capacity	Law requires limited capacity building	Law silent on building capacity	Law requires limited capacity building
16	To what extent does the law require the agency responsible for the selected information type to maintain the infrastructure needed to provide the public access to the information?	Law requires limited maintenance of infrastructure	Law requires limited maintenance of infrastructure	Law requires limited maintenance of infrastructure	Law requires almost no maintenance of infrastructure	Law silent on maintenance of infrastructure	Law requires limited maintenance of infrastructure	Law requires adequate maintenance of infrastructure	Law silent on maintenance of infrastructure
17	To what extent does the law require the government to offer the public technical assistance, guidance or training on how to access and use the selected	Law somewhat adequate on offering technical assistance etc	Law inadequate on offering technical assistance etc	Law inadequate on offering technical	Law inadequate on offering technical	Law inadequate on offering technical	Law somewhat adequate on offering	Law somewhat adequate on offering technical	Law inadequate on offering technical

## THE ACCESS INITIATIVE COALITION

Indicators No:	Indicators	Baddi-barotiwala Pharmaceutical Chemical Industry, Himachal Pradesh	Chamoli Earthquake Vulnerable Villages	Darlaghat Barmana Cement Plants	Dehradun Urban Drinking Water Quality	Dhauli Ganga Power Project (Phase-1)	Kashipur Industrial Estate	State of Environment Report, Himachal Pradesh	State of Environment Report, Uttarakhand
	information type?			assistance etc	assistance etc	assistance etc	technical assistance etc	assistance etc	assistance etc
18	To what extent does the law require the government to build the capacity of sub-national governments to provide access to the selected information type?	Law inadequate on building capacity	Law inadequate on building capacity	Law inadequate on building capacity	Law somewhat adequate on building capacity	Law inadequate on building capacity	Law inadequate on building capacity	Law somewhat adequate on building capacity	Law inadequate on building capacity
19	Does the law establish a reasonable timeframe within which the responsible agency must make information of the selected type available to the public?	The law establishes a somewhat reasonable timeframe	The law establishes a somewhat reasonable timeframe	The law establishes a somewhat reasonable timeframe	The law establishes a somewhat reasonable timeframe	The law establishes a somewhat reasonable timeframe	The law establishes a somewhat reasonable timeframe	The law establishes a somewhat reasonable timeframe	The law establishes a somewhat reasonable timeframe
20	How good is the system for data collection and integrated management of the selected information type?	Integrated information management system not present	Rudimentary integrated information management system	Integrated information management system limited in scope and quality	Integrated information management system not present	Integrated information management system not present	Integrated information management system not present	Integrated information management system of adequate scope and quality	Integrated information management system not present
21	To what extent does an agency or system generate and/or collect information about the environmental area (water, air, forest, etc.) concerned in the selected case?	Information generated or collected in only one of the 4 areas	Information generated or collected in only one of the 4 areas	Information generated or collected in only one of the 4 areas	Information generated or collected in only one of the 4 areas	Almost no information generated or collected	Information generated or collected in only one of the 4 areas	Information generated or collected in all 4 of the 4 areas	Information generated or collected in only one of the 4 areas
22	To what extent is there a monitoring system and/or penalties for non-compliance to ensure the agency meets its obligations to disclose information?	Adequate monitoring system or penalties for non-compliance	Adequate monitoring system or penalties for non-compliance	Adequate monitoring system or penalties for non-compliance	Adequate monitoring system or penalties for non-compliance	Adequate monitoring system or penalties for non-compliance	Limited monitoring system or penalties for non-compliance	Adequate monitoring system or penalties for non-compliance	Limited monitoring system or penalties for non-compliance
23	How complete, relevant, and accurate were responses to requests for information in the selected case?	Response satisfied only ONE criterion	Almost no responses to request provided	Response satisfied only ONE criterion	Not applicable (N/A)	Response satisfied only ONE criterion	Almost no responses to request provided	Response satisfied TWO criteria	Response satisfied only ONE criterion
24	How complete, relevant, and accurate was the information disseminated to the public in the selected case?	No information disseminated to the public	Information disseminated satisfied only one of the criteria	Information disseminated satisfied only one of the criteria	No information disseminated to the public	None of the information disseminated to the public was complete, relevant or	Not applicable (N/A)	Information disseminated satisfied two of the criteria	No information disseminated to the public



Indicators No:	Indicators	Baddi-barotiwala Pharmaceutical Chemical Industry, Himachal Pradesh	Chamoli Earthquake Vulnerable Villages	Darlaghat Barmana Cement Plants	Dehradun Urban Drinking Water Quality	Dhaul Ganga Power Project (Phase-1)	Kashipur Industrial Estate	State of Environment Report, Himachal Pradesh	State of Environment Report, Uttarakhand
						accurate			
25	To what extent did the public have access to information in the selected case at little or no cost?	Information very expensive	Information available at medium cost	Information very expensive	Information available at medium cost	Information available at medium cost	Information very expensive	Information available at medium cost	Information very expensive
26	How comprehensive and planned were efforts to reach a wide range of stakeholders with information in the selected case?	Limited effort made to reach a wide range of stakeholders	Limited effort made to reach a wide range of stakeholders	No effort	Limited effort made to reach a wide range of stakeholders	Limited effort made to reach a wide range of stakeholders	No effort	Limited effort made to reach a wide range of stakeholders	Limited effort made to reach a wide range of stakeholders
27	How well did the responsible agency make a planned and systematic effort to disseminate information to a minority or disadvantaged group (identified in the explanation to this indicator) in the selected case?	No effort to reach the target audience	No effort to reach the target audience	No effort to reach the target audience	Limited effort to reach the target audience	No effort to reach the target audience	No effort to reach the target audience	Limited effort to reach the target audience	Limited effort to reach the target audience
28	To what extent does the government generate/collect the selected information type at regular time intervals and in a timely fashion?	Almost no information generated or collected at regular time intervals or in a timely fashion	No information generated or collected at regular time intervals or in a timely fashion	Some information regularly generated or collected in a timely fashion	Some information regularly generated or collected in a timely fashion	Almost no information generated or collected at regular time intervals or in a timely fashion	Some information regularly generated or collected in a timely fashion	Almost no information generated or collected at regular time intervals or in a timely fashion	Some information regularly generated or collected in a timely fashion
29	With what level of timeliness does the government disseminate the selected information type?	Dissemination not performed	Dissemination not performed	Dissemination not performed	Dissemination not performed	Dissemination not performed		Dissemination not timely or regular	Dissemination not timely or regular
30	How prompt was the response to a request for information in the selected case?	Extensive delay in response to request	No response	Extensive delay in response to request	Not applicable	Prompt response to request	Extensive delay in response to request	Prompt response to request	Some delay in response to request
31	To what extent was all relevant information in the selected case found in many different outlets in different locations?	Information available only in one outlet in one location	Some relevant information found in EITHER different outlets OR different locations	Information available only in one outlet in one location	Information available only in one outlet in one location	Information available only in one outlet in one location	Information available only in one outlet in one location	Most relevant information found in different outlets AND in different locations	Some relevant information found in EITHER different outlets OR different locations

Indicators No:	Indicators	Baddi-barotiwala Pharmaceutical Chemical Industry, Himachal Pradesh	Chamoli Earthquake Vulnerable Villages	Darlaghat Barmana Cement Plants	Dehradun Urban Drinking Water Quality	Dhaul Ganga Power Project (Phase-1)	Kashipur Industrial Estate	State of Environment Report, Himachal Pradesh	State of Environment Report, Uttarakhand
32	To what extent does the agency that manages the selected information type have staff explicitly responsible for disseminating information and responding to requests?	Agency has some staff explicitly responsible	Agency has some staff explicitly responsible	Agency has some staff explicitly responsible	Agency has adequate staff explicitly responsible	Agency has almost no staff explicitly responsible	Agency has some staff explicitly responsible	Agency has adequate staff explicitly responsible	Agency has some staff explicitly responsible
33	To what extent were guidelines or training on access to information offered regularly over the last 3 years to staff in the agency managing the selected information type?	Limited and irregular training in the past three years	Limited and irregular training in the past three years	Limited and irregular training in the past three years	Limited and irregular training in the past three years	Almost no guidance or training in the past three years	Not applicable	Somewhat regular training in the past three years	Almost no guidance or training in the past three years
34	To what extent were guidelines or training on the environment offered regularly over the last 3 years to staff in the agency managing the selected information type?	Somewhat regular guidelines or training in the last 3 years	Almost no guidelines or training in the last 3 years	Somewhat regular guidelines or training in the last 3 years	No guidelines or training in the last 3 years	Almost no guidelines or training in the last 3 years	Not applicable	Somewhat regular guidelines or training in the last 3 years	Somewhat regular guidelines or training in the last 3 years
35	How adequate is the government budget allocation for facilitating the collection and dissemination of the selected information type?	Budget mostly adequate	Budget mostly adequate	Budget inadequate	No funds allocated	No funds allocated	Not applicable	Budget inadequate	Budget mostly adequate
36	How regularly did relevant sub-national government officials receive guidelines or training on access to the selected information type over the last 3 years?	Limited and irregular guidelines or training in the last 3 years	No guidelines or training in the last 3 years	Limited and irregular guidelines or training in the last 3 years	Almost no guidelines or training in the last 3 years	No guidelines or training in the last 3 years	No guidelines or training in the last 3 years	Somewhat regular guidelines or training in the last 3 years	Limited and irregular guidelines or training in the last 3 years
37	How clear and easily accessible are the public guidelines on how to obtain the selected information type?	No guidelines can be found	Guidelines are either clear or easily accessible, but not both	No guidelines can be found	Guidelines are present, but difficult to find and understand	No guidelines can be found	Guidelines are present, but difficult to find and understand	Guidelines are present, but difficult to find and understand	Guidelines are either clear or easily accessible, but not both
38	How regularly have activities to build the capacity of the public in the selected information type been conducted over the last three years?	No activities conducted in the last 3 years	Limited and irregular activities conducted in the last 3 years	No activities conducted in the last 3 years	No activities conducted in the last 3 years	No activities conducted in the last 3 years	No activities conducted in the last 3 years	Almost no activities conducted in the last 3 years	Almost no activities conducted in the last 3 years
39	To what extent did the relevant information in the selected case reach the relevant public in time?	No relevant information reached the relevant public in time	Almost no relevant information reached the relevant public in time	No relevant information reached the relevant public in time	Almost no relevant information reached the relevant public in time	Almost no relevant information reached the relevant public in time		Some relevant information reached the relevant public in time	Almost no relevant information reached the relevant public in time

## THE ACCESS INITIATIVE COALITION

Indicators No:	Indicators	Baddi-barotiwala Pharmaceutical Chemical Industry, Himachal Pradesh	Chamoli Earthquake Vulnerable Villages	Darlaghat Barmana Cement Plants	Dehradun Urban Drinking Water Quality	Dhaul Ganga Power Project (Phase-1)	Kashipur Industrial Estate	State of Environment Report, Himachal Pradesh	State of Environment Report, Uttarakhand
40	To what extent did individual choices and behavior change because of information?	Not applicable (N/A)	Not applicable (N/A)	Very limited change in choices or behavior	Very limited change in choices or behavior	Almost no change in choices or behavior		Almost no change in choices or behavior	Not applicable (N/A)
41	To what extent did information lead to deliberate actions to prevent or reduce negative impacts on the environment or human health?	Some deliberate actions taken	Almost no deliberate actions taken	Limited deliberate actions taken	Limited deliberate actions taken	Limited deliberate actions taken		Not applicable (N/A)	Limited deliberate actions taken
42	How well did staff/officials execute their information provision and management responsibilities in the selected case?	Stakeholder impression of staff/officials' performance was mixed	Not applicable (N/A)	Staff/officials did not interact with stakeholders at all	Not applicable (N/A)	Stakeholders were consistently dissatisfied with the performance of staff/officials		Stakeholder impression of staff/officials' performance was mixed	Stakeholder impression of staff/officials' performance was mixed
43	In the selected case, to what extent did stakeholders have the skills and knowledge to obtain the information they needed?	Limited stakeholder skills and knowledge	Limited stakeholder skills and knowledge	Almost no stakeholder skills and knowledge		Almost no stakeholder skills and knowledge		Limited stakeholder skills and knowledge	Limited stakeholder skills and knowledge
44	How well did sub-national government agencies facilitate access to information in the selected case?	Sub-national government officials had limited effectiveness in enhancing access to information	Sub-national government officials had limited effectiveness in enhancing access to information	Sub-national government officials had limited effectiveness in enhancing access to information		Sub-national government officials had limited effectiveness in enhancing access to information		Sub-national government officials played a strong role in enhancing access to information	Sub-national government officials had limited effectiveness in enhancing access to information
45	To what extent did media involvement facilitate access to information in the selected case?	The media had limited effectiveness in enhancing access to information	Not applicable (N/A)	The role of the media was neutral		The media had limited effectiveness in enhancing access to information		Not applicable (N/A)	The role of the media was neutral
46	To what extent did civil society organization involvement facilitate access to information in the selected case?	CSOs had limited effectiveness in enhancing access to information	CSOs had limited effectiveness in enhancing access to information	No involvement by civil society organizations		CSOs had limited effectiveness in enhancing access to information		CSOs played a strong role in enhancing access to information	Not applicable (N/A)

**Public Participation Indicator Data, by Case**

Indicator No:	Indicator	Askot Multimetall Mining	Himalayan Ski Village	Hydropower Policy Himachal Pradesh	Kataldi Limestone Mining	The Scheduled Tribes & other Forest dwellers (Recognition of forest Rights) Act, 2006	Bhagirathi River Valley Development Authority, Uttarakhand
50	To what extent does the law require a government agency to provide relevant information to the public about the intention to start the selected decision-making process?	The law requires provision of limited information	The law requires provision of limited information	Not Applicable	The law requires provision of limited information	The law requires provision of limited information	The law is silent on provision of information
51	To what extent does the law require the government to provide opportunities for public involvement in the selected decision-making process?	The law requires almost no provision of opportunities	The law requires limited provision of opportunities	Not Applicable	The law requires limited provision of opportunities	The law is silent on provision of opportunities	The law is silent on provision of opportunities
52	How clear and narrow are the limits on claims of confidentiality of relevant information about the selected decision-making process?	Limits are either narrow or clear (not both)	Limits neither clear nor narrow	Not Applicable	Limits neither clear nor narrow	Not Applicable	No limits exist
53	To what extent does the law require the agency responsible for the selected decision-making process to build the capacity of its staff with regard to public participation?	Law silent on building capacity	Law silent on building capacity	Not Applicable	Not Applicable	Law silent on building capacity	Law silent on building capacity
54	To what extent does the law require the agency responsible for the selected decision-making process to build the capacity of its staff with regard to the environment?	Law silent on building capacity	Law requires limited capacity building	Not Applicable	Law requires limited capacity building	Law silent on building capacity	Law silent on building capacity
55	To what extent does the law require the agency responsible for the selected decision-making process to maintain infrastructure to support public participation?	Law silent on maintenance of infrastructure	Law requires almost no maintenance of infrastructure	Not Applicable	Law requires limited maintenance of infrastructure		Law silent on maintenance of infrastructure
56	To what extent does the law require the government to offer the public technical assistance, guidance or training on participation in the selected decision-making process?	Law silent on offering of technical assistance etc.	Law silent on offering of technical assistance etc.	Not Applicable	Law silent on offering of technical assistance etc.		Law requires government to offer almost no technical assistance etc
57	To what extent does the law require the government to offer the public guidance or training on how resulting decisions affect the environment?	Law silent on offering guidance or training	Law silent on offering guidance or training	Not Applicable	Law silent on offering guidance or training		Law requires government to offer almost no guidance or training

## THE ACCESS INITIATIVE COALITION

Indicator No:	Indicator	Askot Multimetall Mining	Himalayan Ski Village	Hydropower Policy Himachal Pradesh	Kataldi Limestone Mining	The Scheduled Tribes & other Forest dwellers (Recognition of forest Rights) Act, 2006	Bhagirathi River Valley Development Authority, Uttarakhand
58	To what extent does the law require the government to build the capacity of sub-national governments with regard to participation in the selected decision-making process?	Law silent on building capacity	Law silent on building capacity	Not Applicable	Law silent on building capacity		Law requires almost no capacity building
59	How clearly does the law establish a reasonable timeframe for participation in the selected decision-making process?	The law establishes a somewhat reasonable timeframe for participation	The law is silent on timeframe	Not Applicable	The law establishes an unreasonable timeframe for participation		The law is silent on timeframe
60	To what extent does the responsible agency make available to the public a clear description of its decision-making processes, including opportunities for participation?	Limited or unclear public description available	No public description available	No public description available	Almost no public description available		Almost no public description available
61	To what extent is there a monitoring system and/or penalties for non-compliance to ensure the agency meets its obligations to facilitate public participation?	No monitoring system or penalties for non-compliance	No monitoring system or penalties for non-compliance	No monitoring system or penalties for non-compliance	No monitoring system or penalties for non-compliance		No monitoring system or penalties for non-compliance
62	To what extent did the responsible agency provide relevant information to the public about decision options and their environmental and health impacts in the selected case?	No information provided	Not Applicable	No information provided	No information provided		Not Applicable
63	To what extent did the responsible agency hold public participation sessions at all stages of the decision-making process in the selected case?	Public participation sessions held at only one stage	No public participation sessions held at any stage	No public participation sessions held at any stage	No public participation sessions held at any stage		No public participation sessions held at any stage
64	To what extent did the agency organize consultations so as to actively solicit and capture public input in the selected case?	Almost no efforts to actively solicit and capture public input	Limited efforts to actively solicit and capture public input	No efforts to actively solicit and capture public input	Almost no efforts to actively solicit and capture public input		Limited efforts to actively solicit and capture public input
65	To what extent did the responsible agency keep costs of participation low for participants in the selected case?	Costs of participation high. No action by agency to minimize costs	Not Applicable	Not Applicable	Costs of participation high. No action by agency to minimize costs		Not Applicable
66	How comprehensive and planned were the responsible agency's efforts to include a wide range of stakeholders in the selected	Limited effort is made to reach the target audience	No effort is made to reach the target audience	No effort is made to reach the target audience	No effort is made to reach the target audience		Not Applicable

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Indicator No:	Indicator	Askot Multimetall Mining	Himalayan Ski Village	Hydropower Policy Himachal Pradesh	Kataldi Limestone Mining	The Scheduled Tribes & other Forest dwellers (Recognition of forest Rights) Act, 2006	Bhagirathi River Valley Development Authority, Uttarakhand
	case?						
67	How well did the responsible agency make a planned and systematic effort to involve a minority or disadvantaged group (identified in the explanation to this indicator) in decision-making in the selected case?	Limited effort is made to reach the target audience	Not applicable (N/A)	No effort is made to reach the target audience	No effort is made to reach the target audience		Not Applicable
68	Did notification of the start of each stage in the decision-making process in the selected case provide reasonable lead time for effective public participation?	Not applicable (N/A)	Not applicable (N/A)	Not applicable (N/A)	Not applicable (N/A)		Not Applicable
69	How reasonable was the length of the public comment period in the selected case?	Almost no public comment period	No public comment period	Not applicable (N/A)	No public comment period		Almost no public comment period
70	How well does the responsible agency maintain a publicly accessible registry of past and pending decisions?	Not applicable (N/A)	Registry access and registry information both limited	Not applicable (N/A)	Registry access and registry information both limited		No access to registry provided
71	How well does the responsible agency maintain a publicly accessible registry of relevant supporting documentation for decisions?	Almost no access to registry provided	No access to registry provided	Not applicable (N/A)	Almost no access to registry provided	No access to registry provided	No access to registry provided
72	In the selected case, to what extent did records of decisions and the decision process enable the public to stay informed of developments in the decision, other related decisions, and upcoming decisions and consultations?	Responsible authority did not issue any records of decision.	Very poor records of decision issued	Responsible authority did not issue any records of decision.	Adequate records of decision issued		Not applicable (N/A)
73	To what extent was relevant supporting documentation available through public registries for the selected decision-making process?	No access to registry provided	Access to and extent of supporting documentation available in registry limited	Not applicable (N/A)	No access to registry provided		Access to and extent of supporting documentation available in registry limited
74	To what extent does the agency that leads the selected decision-making process have staff explicitly responsible for public participation?	Agency has no staff explicitly responsible	Agency has some staff explicitly responsible	Not applicable (N/A)	Agency has no staff explicitly responsible		Agency has almost no staff explicitly responsible
75	To what extent were guidelines or training	No training in the last 3	Somewhat regular	Not applicable	No training in the	No training in the last 3	No training in the

Indicator No:	Indicator	Askot Multimetall Mining	Himalayan Ski Village	Hydropower Policy Himachal Pradesh	Kataldi Limestone Mining	The Scheduled Tribes & other Forest dwellers (Recognition of forest Rights) Act, 2006	Bhagirathi River Valley Development Authority, Uttarakhand
	on public participation offered regularly over the last 3 years to officials in the agency that leads the selected decision-making process?	years	training in the last 3 years	(N/A)	last 3 years	years	last 3 years
76	To what extent were guidelines or training on the environment offered regularly over the last 3 years to officials in the agency that leads the selected decision-making process?	Limited and irregular guidelines or training in the last 3 years	Somewhat regular guidelines or training in the last 3 years	No guidelines or training in the last 3 years	No guidelines or training in the last 3 years	No guidelines or training in the last 3 years	Almost no guidelines or training in the last 3 years
77	How adequate is the government budget allocation for effectively facilitating public participation in the selected decision-making process?	No funds allocated	No funds allocated	No funds allocated	Not applicable (N/A)	No funds allocated	No funds allocated
78	How regularly did relevant sub-national government officials receive guidelines or training on public participation in the selected decision-making process over the last 3 years?	No guidelines or training in the last 3 years	No guidelines or training in the last 3 years	Not applicable (N/A)	No guidelines or training in the last 3 years		Almost no guidelines or training in the last 3 years
79	How clear and easily accessible are the public guidelines on how to participate in the selected decision-making process?	No guidelines can be found	No guidelines can be found	No guidelines can be found	Guidelines are present, but difficult to find and understand		No guidelines can be found
80	How regularly have activities to build the capacity of the public to participate in the selected decision-making process been conducted over the last three years?	No activities conducted in the last 3 years	No activities conducted in the last 3 years	No activities conducted in the last 3 years	No activities conducted in the last 3 years		No activities conducted in the last 3 years
81	To what extent was a public record kept in a reasonably accessible format detailing comments made, comments incorporated in the selected decision, and reasons for any rejection of comments?	Record kept, but no public access to it provided	Record kept, but no public access to it provided	No record kept	Record kept, but no public access to it provided		No record kept
82	How promptly did the public receive information about the dispensation of comments in the selected case?	Limited information regarding public comments promptly dispersed to the public	Limited information regarding public comments promptly dispersed to the public	No information regarding public comments promptly dispersed to the public	No information regarding public comments promptly dispersed to the public		Almost no information regarding public comments promptly dispersed to the public
83	How extensive was the public input provided in the selected case?	Some public input provided	Some public input provided	No public input provided	No public input provided		Almost no public input provided



## THE ACCESS INITIATIVE COALITION

Indicator No:	Indicator	Askot Multimetall Mining	Himalayan Ski Village	Hydropower Policy Himachal Pradesh	Kataldi Limestone Mining	The Scheduled Tribes & other Forest dwellers (Recognition of forest Rights) Act, 2006	Bhagirathi River Valley Development Authority, Uttarakhand
84	To what extent did public participation influence the final decision in the selected case?	Not applicable (N/A)	Public participation had some influence on the final decision	Not applicable (N/A)	Public participation had extensive influence on the final decision		Not applicable (N/A)
85	To what extent was the final decision more protective of the environment or human health than the initial draft in the selected case?	Not applicable (N/A)	Not applicable (N/A)	Not applicable (N/A)	Some more protection in the final decision		Not applicable (N/A)
86	How well did staff/officials execute their participation responsibilities in the selected case?	Stakeholders were consistently dissatisfied with the performance of staff/officials	Stakeholders were consistently dissatisfied with the performance of staff/officials	Not applicable (N/A)	Stakeholder impression of staff/officials' performance was mixed		Not applicable (N/A)
87	In the selected case, to what extent did stakeholders have the skills and knowledge they needed to participate effectively?	No stakeholder skills or knowledge developed	Limited stakeholder skills and knowledge	Not applicable (N/A)	Limited stakeholder skills and knowledge	Limited stakeholder skills and knowledge	Not applicable (N/A)
88	To what extent did sub-national government agencies facilitate public participation in the selected case?	Not applicable (N/A)	No participation	Not applicable (N/A)	No participation		Poor facilitation of public participation
89	To what extent did media involvement facilitate public participation in the selected case?	Not applicable (N/A)	The media played a strong role in enhancing public participation	The role of the media was neutral	The media had limited effectiveness in enhancing public participation		Not applicable (N/A)
90	To what extent did civil society organization involvement facilitate public participation in the selected case?	CSOs had moderate effectiveness in enhancing public participation	CSOs played a strong role in enhancing public participation	No involvement by civil society organizations	CSOs had moderate effectiveness in enhancing public participation		CSOs had limited effectiveness in enhancing public participation

## Access to Justice Indicator Data, by Case

Indicator No.	Indicators	Corbett Tiger Reserve Road	Resettlement of Pong Dam Oustees	Palamaneri Hydro Electric Project	Rima Soapstone Mining
95	To what extent does the law require a forum to hear the selected claim type and issue a decision?	The law provides some requirements	The law provides some requirements	The law provides inadequate requirements	The law provides inadequate requirements
96	To what extent does the law enable a party to seek review or appeal of selected claim type to an independent body with the power to reverse a decision?	Appeals and reviews are inadequately enabled	Appeals and reviews are inadequately enabled	The law is silent on appeals and reviews	Appeals and reviews are inadequately enabled
97	How clear and narrow are the limits on claims of confidentiality regarding information relevant to selected claim type?		Limits neither narrow nor clear	Not applicable (N/A)	Not applicable (N/A)
98	To what extent does the law require the selected forum to build the capacity of members with regard to access to justice?	Law silent on building capacity	Law requires limited capacity building	Not applicable (N/A)	Law silent on building capacity
99	To what extent does the law require the selected forum to build the capacity of members with regard to the environment?	Law silent on building capacity	Not applicable (N/A)	Law requires almost no building capacity	Law requires limited no building capacity
100	To what extent does the law require the selected forum to maintain the infrastructure needed for access to redress and remedy?	Not applicable (N/A)	Law silent on maintenance of infrastructure	Law requires adequate maintenance of infrastructure	Law silent on maintenance of infrastructure
101	To what extent does the law require the government to offer the public technical assistance, guidance or training on how to use the selected forum?	Law silent on offering of technical assistance etc	Law requires limited government offering of technical assistance etc	Law silent on offering of technical assistance etc	Law silent on offering of technical assistance etc
102	To what extent does the law require the government to build the capacity of sub-national government officials to understand and facilitate citizens' rights within the justice system?	Law silent on building capacity	Law requires limited capacity building	Law requires limited capacity building	Law silent on building capacity
103	How clearly does the law establish a reasonable timeframe for forum decisions?	The law establishes a somewhat reasonable timeframe for forum decisions	Not applicable (N/A)	Not applicable (N/A)	The law establishes a somewhat reasonable timeframe for forum decisions
104	To what extent is there a forum with adequate capacity to deal with the selected claim type?	Limited forums with adequate capacity	Almost no forum with adequate capacity	Limited forums with adequate capacity	No forum with adequate capacity
105	How strong are the forum's standards, regulations or formal policy to ensure	Some adequate standards, regulations or formal	Weak standards, regulations or formal	Not applicable (N/A)	No standards, regulations or formal policy in place

	independence and impartiality of the forum?	policy in place	policy in place		
106	To what extent is information regarding rules of procedure and types of claims to be heard by the forum made publicly available?	Limited information is available	Limited information is available	Not applicable (N/A)	Almost no information is available
107	To what extent is a publicly funded independent entity available to provide redress in the selected claim type?	Almost no independent entities available	Limited independent entities available	Not applicable (N/A)	Almost no independent entities available
108	To what extent was the forum independent and impartial in the selected case?	Adequate independence or impartiality demonstrated by the forum	Some independence or impartiality demonstrated by the forum	Almost no independence or impartiality demonstrated by the forum	Not applicable (N/A)
109	To what extent were both parties able to gain access to information and conduct fact finding in the selected case?	Some fact finding or access to information	Limited fact finding or access to information	Limited fact finding or access to information	No fact finding or access to information possible for parties
110	To what extent was the process transparent to the public in the selected case?	Limited public transparency of process	Limited public transparency of process	Limited public transparency of process	Not applicable (N/A)
111	To what extent did the forum consider all appropriate law and facts, including scientific and technical data, relevant to the selected case?	Appropriate law and facts were extensively considered	Appropriate law and facts were somewhat considered	Appropriate law and facts were inadequately considered	Not applicable (N/A)
112	To what extent did the forum keep the costs of bringing a claim low for the parties in the selected case?	Forum action to reduce costs adequate	Forum action to reduce costs limited	No action by forum to minimize costs	Not applicable (N/A)
113	How comprehensive and planned were the forum's efforts to enable a wide range of stakeholders to access the forum in the selected case?	No effort made to reach a wide range of stakeholders	Limited effort	No effort made to reach a wide range of stakeholders	No effort made to reach a wide range of stakeholders
114	How well did the forum take steps to make the forum accessible to a minority or disadvantaged group (identified in the explanation to this indicator) in the selected case?	No effort is made to reach the target audience	Not applicable (N/A)	No effort is made to reach the target audience	No effort is made to reach the target audience
115	To what extent did intimidation prevent stakeholders from effectively bringing a claim in the selected case?	Intimidation somewhat prevented stakeholders from bringing claim	Not applicable (N/A)	Not applicable (N/A)	Intimidation prevented stakeholders from bringing claim
116	To what extent did the allocation of the burden of proof support access and/or environmental protection?	Adequate support for access or environment through allocation of the burden of proof	Not applicable (N/A)	No support for access or environment through allocation of the burden of proof	Limited support for access or environment through allocation of the burden of proof
117	How broadly was legal standing interpreted by	Standing had only a few	Standing was moderately	Standing was extensively	Not applicable (N/A)

	the forum in the selected case?	limitations	constrained	constrained	
118	To what extent were the forum's restraining rules or limits supportive of environmental and "access" interests in the selected case?	Adequate support of access or environmental interests through forum rules	Limited support of access or environmental interests through forum rules	Adequate support of access or environmental interests through forum rules	Limited support of access or environmental interests through forum rules
119	To what extent did the proceedings have a clear schedule and provide both parties with adequate notice and a reasonable amount of time to act?	Some delay in schedule and notice	Schedule and notice not reasonably timely	Schedule and notice not reasonably timely	Schedule and notice not reasonably timely
120	To what extent did the forum minimize delays in processing and reviewing the claim and in issuing a decision?	Minimal delay in processing & reviewing of claims	Processing & reviewing of claims not timely	Forum took no action to minimize delays	Not applicable (N/A)
121	To what extent was there a choice of forums which could consider the selected claim?	Multiple forums but of limited relevance or only one forum but of high relevance	Multiple forums but of limited relevance or only one forum but of high relevance	Almost no choice of forum (due to lack of relevance, cost or convenience of alternative forum options)	Almost no choice of forum (due to lack of relevance, cost or convenience of alternative forum options)
122	To what extent does the forum have staff explicitly responsible for responding to inquires from citizens wishing to bring claims and of providing relevant information to the public?	Agency has some staff explicitly responsible	Agency has some staff explicitly responsible	Agency has no staff explicitly responsible	Agency has some staff explicitly responsible
123	To what extent were guidelines or training offered regularly over the last 3 years to forum members on access to information, participation?	No guidelines or training in the last three years	No guidelines or training in the last three years	No guidelines or training in the last three years	No guidelines or training in the last three years
124	To what extent were guidelines or training on the environment offered regularly over the last 3 years to forum members?	No guidelines or training in the last 3 years	No guidelines or training in the last 3 years	No guidelines or training in the last 3 years	Limited and irregular guidelines or training in the last 3 years
125	How adequate is the government budget allocation to support the forum's justice functions?	Budget mostly adequate	Budget inadequate	Budget inadequate	Budget inadequate
126	How regularly did relevant sub-national government officials relevant to the selected case receive guidelines or training on access to justice over the last 3 years?	Somewhat irregular guidelines or training in the last 3 years	No guidelines or training in the last 3 years	No guidelines or training in the last 3 years	Almost no guidelines or training in the last 3 years
127	How clear and easily accessible are the public guidelines on how to use the forum?	Guidelines are present, but difficult to find and understand	Guidelines are present, but difficult to find and understand	No guidelines can be found	Guidelines are present, but difficult to find and understand
128	How regularly have activities to build the capacity of the public on how to use the forum	No activities conducted in the last 3 years	No activities conducted in the last 3 years	Not applicable (N/A)	No activities conducted in the last 3 years

	been conducted over the last three years?				
129	To what extent was the forum decision implemented in the selected case?	Adequate implementation of forum decision	Some implementation of forum decision	Not applicable (N/A)	Not applicable (N/A)
130	To what extent did the forum decision lead to change in the behavior of any of the participants in the case?	Almost no change in behavior	Limited change in behavior	Not applicable (N/A)	Not applicable (N/A)
131	To what extent did the forum decision in this case lead to measures to avoid or reduce negative impacts on the environment or human health or improve access or participation?	Some measures taken	Very limited measures taken	Not applicable (N/A)	Not applicable (N/A)
132	How well did forum members and staff execute their access to justice responsibilities in the selected case?	Stakeholder impression of staff/officials' performance was mixed	Stakeholder impression of staff/officials' performance was mixed	Stakeholders were consistently dissatisfied with the performance of staff/officials	Not applicable (N/A)
133	In the selected case, to what extent did stakeholders have the skills and knowledge they needed to use the forum effectively?	Almost no stakeholder skills or knowledge developed	Almost no stakeholder skills or knowledge developed	Not applicable (N/A)	Almost no stakeholder skills or knowledge developed
134	To what extent did sub-national government agencies facilitate access to justice in the selected case?	Sub-national government officials played a negative role with regard to access to justice	Sub-national government officials had limited effectiveness in enhancing access to justice	Sub-national government officials played a negative role with regard to access to justice	Sub-national government officials played a negative role with regard to access to justice
135	To what extent did media involvement facilitate access to justice in the selected case?		Not applicable (N/A)	The media had limited effectiveness in enhancing access to justice	The role of the media was neutral
136	To what extent did civil society organization involvement facilitate access to justice in the selected case?		CSOs had moderate effectiveness in enhancing access to justice	CSOs played a strong role in enhancing access to justice	CSOs had limited effectiveness in enhancing access to justice