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THE ACCESS INITIATIVE: PROMOTING SUSTAINABLE DEVELOPMENT THROUGH GOOD GOVERNANCE

by Melissa Dasgupta*

“Outside a closed battery recycling plant on Otay Mesa in Tijuana, Mexico, open pits of toxic waste...¹ define the once pristine landscape, and “chemicals leaching up”² from the soil form an ominous and unnatural crust on the earth. “In the barrio of Chilpancingo, below the mesa, 19 children were born with no brains in 1993 and 1994, because of pollution from... [industrial facilities] on top of the mesa.”³

INTRODUCTION

To prevent such horrific tragedies as the one that occurred in the barrio of Chilpancingo, environmental organizations across the world promote Multilateral Environmental Agreements and treaties, support educational campaigns, and participate in corporate lobbying and protests. The Access Initiative (“TAI”), however, focuses on “good governance” and the establishment of worldwide environmental standards as critical elements in avoiding these tragedies, and ultimately promoting sustainable development. TAI is a coalition of international groups “working together to promote national-level implementation of commitments to public access to information, participation, and justice in decisions that affect the environment.”⁴ TAI supports the premise that “good governance” values such as transparency, access to information, voting rights, and public accountability have a direct effect on a country’s level of environmental compliance.⁵

TAI is modeled after Principle 10 of the 1992 Rio Declaration.⁶ The organization asserts that access to information, an open decision-making process, and a system of justice are essential components of a comprehensive system of environmental enforcement. TAI’s ultimate goal is to keep governments of participating countries accountable to the public for their actions. Accountability will then extend to other nations, creating an international awareness of the importance of making, implementing, and enforcing environmental laws.⁷

In accordance with these goals, TAI builds civil-society coalitions, sets reform priorities, raises public awareness, and assesses government progress. From 2001-2002, TAI launched a worldwide campaign to assess various countries’ levels of public participation and progress towards sustainable development.⁸ The methodology included review of planning documents, legislation, and court cases; interviews with government officials and non-governmental organizations (“NGOs”); questionnaires, requests for information and media analysis. These criteria were compiled and assessed to determine how well public authorities provide (1) access to environmental information; (2) access to decision-making affecting the environment; and (3) access to justice and remedies.⁹

By creating a more standardized method of assessing environmental governance, TAI hopes to identify the full range of access to environmental information, participation, and enforcement in countries across the world. These studies are steps towards creating a worldwide standard for measuring and promoting sustainable development. A finding that TAI’s assessment criteria are accurate and reliable¹⁰ could help governments identify and remedy environmental problem areas, as well as better notify the population of these potential situations. While such methods are commonly used to assess education, health, and the economy, this proposed environmental application is innovative and challenging, especially given the complications inherent in establishing standard environmental indicators.¹¹ Previous efforts at creating standardized environmental criteria include the Environmental Sustainability Index,¹² State of the Environment Reports,¹³ the Human Development Report,¹⁴ the World Bank governance indicators,¹⁵ and the Wellbeing of Nations survey.¹⁶

TAI’s pilot assessment evaluated nine countries and relied on more than 100 indicators, 79 of which were applied by all or most of the national teams. An international team¹⁷ created these indicators, formed the methodology, and identified sources that might provide comprehensive data.¹⁸ Teams then began individual assessments of their pilot countries: Chile, India, Mexico, Thailand, the United States, Hungary, Indonesia, South Africa, and Uganda. Most of these assessments were completed in just a few months and were fairly affordable. Some assessments even resulted in constructive dialogues with national governments regarding ways to improve performance, as well as access to information.¹⁹ The most significant result, however, seemed to be TAI’s comprehensive dissection of where each nation’s problem spots exist and how these issues might be addressed.

TAI found that many countries, including the United States, had strong legal provisions establishing open access to environmental information, but demonstrated weak implementation of these laws. Since “government bureaucrats and agencies have wide discretion to decide what information is secret, what to share, how to share it and with whom,”²⁰ it is often difficult for citizens to obtain information about their country’s environmental performance. This lack of access to information was especially true in Mexico, Hungary, and Thailand. TAI found that the excessive ambiguity in these countries’ legislation and the limited access to definitions and statutory interpretation created a situation where the average citizen would have tremendous difficulty comprehending the system of environmental reporting.²¹

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TAI TEST PILOT ASSESSMENT PROGRAM

In its pilot assessment, TAI attempted to determine how sustainable development and environmental compliance are being treated around the world. TAI did this by analyzing nine countries' opportunities for the public to access environmental information, participation, and legal review.

PUBLIC ACCESS TO ENVIRONMENTAL INFORMATION

In evaluating the nine pilot countries,²² TAI assessed how these countries differed in their ability to disseminate information effectively and quickly. Specifically, TAI compared South Africa's response to a cholera outbreak in 2000 with India's response to a liquid gas petroleum storage tank accident in 2001, and analyzed how and why these responses differed in effectiveness.

To determine whether a country provided effective access to environmental information, TAI assessed the responsiveness of authorities to requests for information, the extent of active information dissemination, whether information was provided

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in a range of formats, and the timeliness and coverage of information provided both during and after emergencies. These criteria were also analyzed regarding clarity of content, frequency of reporting, and breadth and coordination of coverage.²³

Most countries were proficient at disseminating information regarding air pollution, but only the United States and South Africa were also successful at disseminating information about drinking water.²⁴ Other countries such as Hungary and Indonesia proved unsuccessful due to inefficient government procedures and inconsistent data collection. The problem of inconsistent data collection makes standardizing reports, such as the State of the Environment Reports mandated by the Aarhus Convention,²⁵ difficult to rely on. Even so, the mere fact that these reports exist exhibits a government's attempt at disseminating information to its citizens. Of countries participating in the pilot assessment, only the United States and Indonesia do not consistently produce these reports.²⁶

TAI discovered that the most difficult information to access was that concerning pollution at industrial facilities. Most countries surveyed did not make this information available to the

public even though TAI found that they all collected data on industrial compliance with air and water laws.²⁷ Countries provided varying explanations as to why they either released the collected data or kept their findings secret. Mexico, South Africa and Uganda consider this information a matter of complete corporate privacy and do not release it to the public. Indonesia, while failing to disclose specific information to the public, still rates industrial facilities on their environmental compliance. Conversely, the United States is on the forefront of emissions reporting and it requires industrial facilities to submit Toxic Release Inventories.²⁸ Hungary and Mexico are working toward a similar system of documenting industrial pollution.²⁹ Another source of environmental information is the use of environmental impact statements throughout the world.³⁰

Dissemination of information is especially important when environmental disasters occur. A government's ability to disseminate information quickly and react appropriately will have a huge effect on public safety and security. TAI's studies showed

that governments react quicker to large-scale disasters where there is a high media presence, versus smaller, isolated incidents receiving little media exposure. Researchers found, however, that once the crisis passed, governments are ineffective at providing information about the long-term consequences and impacts of these emergencies.³¹

CASE STUDY: SOUTH AFRICA AND INDIA'S ACCESS TO ENVIRONMENTAL INFORMATION

In order to assess government information dissemination during emergency situations, TAI compared the South African government's response to a cholera outbreak in 2000 with the Indian government's handling of a liquid gas petroleum storage tank explosion in 2001. TAI distinguished South Africa's quick and effective response from India's lack of efficiency and inability to follow its own environmental laws. As a result, TAI gave South Africa a higher score in the assessment.

TAI rated the South African government's response to a cholera outbreak during the summer of 2000 as “strong.”³² When the price for tap water rose to excessive heights, many South African citizens were unable to afford their water bills and began drinking river water, which was plagued by a poor waste management system and regional flooding. These factors combined to create 58,000 cases of cholera and 122 deaths.³³ The government immediately and effectively responded to the situation by employing its own machinery, as well as seeking help from international sources. By the end of the crisis, the World Health Organization complimented the South African government for keeping death rates below 0.5% of reported cases – the lowest death rate ever reported in South Africa during a cholera outbreak.³⁴

Because cholera is a disease that demands immediate response, this crisis was an opportune moment to observe the

South African government's ability to respond to an emergency situation. "By responding immediately, we increase our chances of containing cholera. Through prevention and education, we also can reduce the risk of the disease spreading," said Habiba Bihi of the American Red Cross.³⁵ South Africa specifically addressed the situation by convening emergency meetings among government officials, and allocating \$82.5 million for water and sanitation projects in Kwazulu-Natal province. Other decisions included opening rehydration centers to prevent more deaths, sending South African National Defense Forces to rural areas with fresh-water tankers, and treating, as well as quarantining, those infected with cholera. The government then took preventative steps such as training volunteers to teach affected villagers about cholera prevention, detection, water safety, and hygiene.³⁶

TAI compared South Africa's response to that of the Indian government when a liquid gas petroleum storage tank exploded in 2001 at Flex Industries in Gwalior, India.³⁷ Even though India had laws in place requiring the government to notify the population of threats such as this one, the government took no action after the explosion. Although this case involved a smaller risk to fewer people than what was encountered in South Africa, TAI rated India's response as "poor" because of the government's inability to react to an emergency or even to follow its own laws.³⁸ Interestingly, there was a discrepancy in news coverage between the two disasters – South Africa received extensive media attention whereas India's exposure was limited.

Although the best situation would have been for the two governments to have taken steps to prevent the disasters before they even occurred, TAI determined that South Africa's quick and effective response was still commendable, and was one step closer to sustainable development.

PUBLIC PARTICIPATION IN THE LEGISLATIVE PROCESS

TAI assessed how the pilot countries allowed for public participation, and for the public to learn about the government's environmental decisions. Assessment criteria for public participation in environmental decision-making included reviewing the existence of opportunities for citizens to participate and the ability of the public to learn not only about these opportunities, but about the outcome of environmental deliberations. TAI also assessed the inclusiveness of consultation and whether notification of the ability to participate was timely.³⁹

Legally and constitutionally, almost all of the countries surveyed did not explicitly provide for public participation rights in their legal frameworks. Thailand is the only country that specifically allotted a constitutional right for citizens to participate. Mexico established broad constitutional guarantees for public participation; however, the procedures are so tedious and exhausting that the objective of participation is often lost in the process.⁴⁰ Most other countries surveyed either excluded certain groups of people from participating in these environmental dis-

cussions, did not require public consent for economic and developmental natural resources decisions, or lacked adequate provisions for participation at different stages of the decision-making cycle. While many of these governments articulated that they approved of the idea of the public participating in the creation of government documents, such an articulation alone does not hold the binding authority of a constitutionally enumerated right.

JUDICIAL REVIEW

TAI also assessed whether countries' laws allowed the public to use administrative or judicial review to voice their concerns vis-à-vis how environmental policies were being developed or implemented. In assessing the ability of legal review, TAI looked at legal standing, affordability of legal help and fees, and the presence and diversity of mechanisms for dispute resolution and remedy. Countries receiving quality assessments had legal review systems that were inclusive and clear as to the legal mandates to disclose information and as to the legal definitions of environmental information in the public domain.⁴¹

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Once information is available, and there is a legal mechanism by which the public can participate, countries must also create an adequate enforcement structure in order to protect such rights. TAI researchers found this to be the weakest element across the board of the three access principles. Most countries created laws to allow public participation, yet had no binding system of review. In fact, the rights and laws created are often so ambiguous that they are not legally enforceable. Even laws that are clear tend to be riddled with exhaustive standing requirements and other administrative obstacles, making them void of any practical application. Researchers found that “in less than half the case . . . assessed was the public able to use administrative or judicial review to contest how national or regional environmental policies were made.”⁴² In fact, courts and administrative agencies often had complete authority and discretion over huge decisions regarding logging, mining, grazing, and other huge resource concessions. This lack of public participation is frequently an indication of corruption and tends to trivialize the concept of judicial review. Certainly, it is nearly impossible to enforce environmental laws when even the courts cannot be trusted.

Some countries are helpless in enforcing public participation laws due to gross inefficiencies, exhaustive administrative obstacles, and the high prices of adhering to these ineffective procedures. These inefficiencies can inadvertently serve as complete barriers to judicial review. For example, fees to register an environmental case can cost more than 50% of the average annual income of a Chilean citizen and more than 20% of the average annual income of a Hungarian citizen.⁴³ While South Africa has an established government-sponsored program which provides free legal assistance to the poor, most other countries have no such outlets for lower income citizens. However, Thailand and the United States have large networks of pro-bono lawyers, which is a significant step towards access to review.⁴⁴

TAI'S FINDINGS AND HOW THIS INFORMATION CAN BE APPLIED

TAI's findings show that without adequate data gathering, public access to information, or public participation in decision-making, few people will have the luxury of judicial review. One major step toward improving this information dissemination and providing adequate judicial review for all citizens, regardless of income or country, is to create international standards by which environmental concerns can be measured and benchmarked. Both the United Nations Environment Programme⁴⁵ and the Aarhus Convention⁴⁶ stress the need to maintain a central environmental information service and commit to a practice of early consultation with stakeholders on environmental decisions. However, this alone may not be enough. To avoid the inefficiencies of bureaucracy which seem to slow the process of obtaining quick and effective results, governments will need to improve their capacity by continuously training staff and civil servants regarding new legislation and how to implement it. TAI found that only two countries were effective in training staff on new rules regarding the dissemination of environmental and public participation.⁴⁷

Though ambitious, these steps are necessary to create standardized environmental enforcement across the world. However, the high cost of such compliance makes it exceedingly difficult for poorer countries, such as Chile and Uganda, whose environmental information systems are completely supported by donor assistance, to adequately comply with these expensive necessities.⁴⁸ Due to the rising cost of such implementation, the business world's participation and support would greatly contribute to the realization of TAI goals. In addition to industries themselves, organizations that provide financing for industrial projects can also influence public participation in the decision-making process.

TAI noted that other successful methods of promoting good governance and environmental compliance have been protests, media coverage, NGO participation in high profile litigation, and negotiation with government officials regarding allocation of funding and education. In fact, governments in South Africa, Chile, Hungary, India, Mexico, and Thailand all support environmental education.⁴⁹ Yet, oftentimes this education comes not from the government, but from the dedication of NGOs. Furthermore, countries differ greatly in their openness to NGO

participation. While South Africa is extremely open to NGO input and contributions, other countries, such as Chile, Hungary, Indonesia, Uganda, and India, have excessive registration requirements or restrictions on foreign funding for NGOs.⁵⁰ This often results in stifling the very impetus of public access to information, participation, and review.

After viewing the many results and insights of TAI's assessment, we are reminded of the balancing act present in every government throughout the world. Governments are forced to press forward with important and crucial interests such as environmental safety, while battling inefficiency, corruption and a lack of funding. Often times the very administrative systems set up to remedy the problems tend to stand in the way of progress by creating exhaustive procedures and impossible goals. This is why programs and research such as TAI prove invaluable.

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Without NGOs and other such organizations to take on this work, there would be less reporting of necessary information, making the crucial step of solving these identified problems exceedingly difficult.

APPLYING THESE LESSONS TO GOOD GOVERNANCE IN THE UNITED STATES

While TAI's assessment and suggestions are instructive, the United States government provides a progressive model to understand the interplay of various forces and the balancing act that results. Although public participation in governance seems to be the answer to many societal problems, specifically those dealing with the environment, it also creates an inevitable conflict between efficiency and fairness. Despite the fact that various types of governments and systems manifest this conflict differently, the United States illustrates some of the nuanced challenges that still exist, even in the face of both democracy and environmental regulation.

While President Bush expressed his opinion that “the American people are using their money far better than the government would have,”⁵¹ many believe that a strong regulatory system is the only way to balance both fairness and efficiency.

This is why the United States has established such a broad administrative system with such strong regulatory authority. While many people dislike big government, most still want the freedom of safe streets, welfare, clean water and clean air. This tension between a laissez-faire economy and a system that protects public health and the environment continues to be grappled with in the United States and throughout the world.

The American regulatory system addresses this tradeoff in various contexts and venues, such as in Congress and the various executive agencies. While Congress creates the legal foundation for most agency policy through legislation, executive agencies promulgate the rules that often fill the gaps. These agencies interpret laws, promulgate regulations, and form a powerful element of the federal government.⁵² Because the President appoints the heads of most agencies, agencies' policies often change with new Administrations. This is significant because agencies have a fair amount of discretion in making rules.

“Without broad-based public access to information, the transparency with which the United States government prides itself could be slowly eroding.”

One of the central cases defining agency discretion is *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*⁵³ In *Chevron*, the court exercised judicial restraint by giving “deference” to an agency’s interpretation of an ambiguous statute. The court set out a two-part test in making this decision. The first is whether the statute is ambiguous. If the statute is not ambiguous, courts will nullify any interpretation that is contrary to the plain meaning of the statute. If the statute is ambiguous, the court will apply the second test, which is whether the agency’s interpretation is reasonable.⁵⁴ In practice, this means that so long as agencies can show a rational basis for an interpretation, a court will likely hold that the given interpretation is reasonable and thus within the agency’s discretion. The *Chevron* standard is far from difficult to show and provides a considerable amount of leeway for various different readings of a particular statute. This ability to make changes in rules and interpretations with minimal supervision by the judiciary allows agency actions to change with the appointment of a new agency head or the election of a new President. Thus, aside from the Presidential election process and the notice and comment procedures of the Administrative Procedure Act,⁵⁵ the American people are generally unable to affect the majority of agency decisions. While broad power is often necessary for the functioning of an agency, Americans are faced with an inability to affect changes in regulations and policies that often have far-reaching ramifications in their lives.

One of the current concerns outlined in TAI’s analysis of the United States involves the effects of giving agencies such

discretion. Pursuant to national security and the need to prevent terrorist attacks like that of September 11, 2001, U.S. Attorney General John Ashcroft issued a memo⁵⁶ in October of 2001. The memo instructed agencies to use a higher standard of secrecy in regard to the Freedom of Information Act (“FOIA”).⁵⁷ TAI noted the large effect this would have on the American population, as nearly 2 million FOIA requests were filed with federal agencies during the fiscal year 1999.⁵⁸

While this new standard of secrecy impacts access to information uniformly, it also affects many environmental laws such as the Emergency Planning and Right-to-Know Act (“EPCRA”).⁵⁹ Title III of the Superfund Amendments and Reauthorization Act created EPCRA with the idea of encouraging emergency planning for chemical accidents. EPCRA’s four components are Community Right-to-Know reporting, Emergency Planning and Notification, Emergency Release Notification, and Toxic Chemical Release Inventory report-

ing.⁶⁰ This scheme of providing local governments and the public with information on chemical hazards in their communities constitutes an important element in TAI’s framework.

TAI noted that in October 2001, the Environmental Protection Agency removed information from its website regarding Risk Management Plans in the event of a chemical spill. While this information merely informed workers and communities about potential consequences and ways to avoid chemical spills,⁶¹ it was considered a security risk, precluding public access. Though the interest of national security is obviously paramount, many Americans are concerned that the power of the people may be getting lost in administration and security. TAI expressed concern about the ability of the United States government to restrict the dissemination of information in the interest of national security. TAI then recommended advocating for a constitutional amendment that would solidly protect the public’s right to information.⁶² While few of the pilot countries have constitutional protections regarding access to information, TAI considers a constitutional guarantee to be “the most immutable means of ensuring public access to information.”⁶³

Without such access, the transparency with which the United States government prides itself could be slowly eroding. While most Americans are not aware of how powerful or how discretionary agencies can be, this is where many of the American transparency battles are fought. On one side is the argument for an efficient and secure administration and on the other is the argument for fairness, participation, and access to information. At the end of the day, America’s system of gover-

nance is not the embodiment of efficiency and is not always fair, but actually a bureaucracy that balances these goals, all the while making slow progress. As transparency is reduced, efficiency, security, and progress will increase, but fairness and public participation will be compromised, having an adverse effect on sustainable development and other national goals. While the extent of this compromise and the long-term ramifications in America are yet to be seen, countries across the world and throughout history have faced the same tradeoff. Winston Churchill addressed this dilemma through his statement “democracy is the worst form of government except for all those others that have been tried.”

However, aside from the reduction in U.S. transparency since 2001, the high discretion of agencies and the time consuming processes, the American people still have more freedoms than most other citizens of the world. With continued TAI-type assessments and evaluations of the actual levels of transparency and the effects on environmental compliance, Americans can take steps toward sustainable development. The United States illustrates how a country must first have the machine of governance working in order to allow objectives such as environmental compliance to thrive. Yet, the degree of transparency and the degree to which people participate in the government within the United States now and in the future will likely have a substantial impact on United States’ progress toward sustainable development.

CONCLUSION

Because of work conducted by organizations such as TAI, the world community is better equipped to build a framework where environmental variables are assessed on a common scale. Additionally, the reports and recommendations produced by TAI are invaluable to each country assessed because they provide constructive criticism concerning *how* to score well in sustainable development. The analysis focuses on good governance as one of the essential foundations of environmental compliance and creates a progressive formula for success. Yet obstacles are abundant and application will always be more challenging than recommendation. As evidenced in the above analysis of the United States, even a country that prides itself in both democracy as well as having started the environmental movement has many challenges ahead.

While TAI provides an amazing service to the world population by generating this data, more studies will likely be necessary before one consistent measuring standard is adopted worldwide. Some possible extensions of TAI could include studying more countries, making the studies broader and more exhaustive, and taking the next step of advocating recommendations in various countries. If the world can establish a common standard of environmental compliance assessment, it will be that much closer toward creating an enforceable international legal framework for sustainable development.



ENDNOTES: The Access Initiative

¹ David Bacon, *Mexico: Rebellion on the Border*, (1996), at <http://dbacon.igc.org/Mexico/border11.htm>. See also Commission for Environmental Cooperation of North America, *Metales y Derivados Final Factual Record (SEM-98-007)* (outlining the scientific details regarding the children in Tijuana, Mexico in accordance with Article 15 of the North American Agreement on Environmental Cooperation), available at <http://www.cec.org/files/pdf/sem/98-7-FFR-e.pdf> (last visited Mar. 5, 2004); Jeff Spurrier, *Border Stories*, WORLD HUM: TRAVEL DISPATCHES FROM A SHRINKING PLANET, Aug. 15, 2001, at <http://www.worldhum.com/story.cfm?SID=62> (last visited Mar. 5, 2004).

² Bacon, *supra* note 1.

³ *Id.*

³ The Access Initiative, Brochure (Jan. 2004), available at http://www.accessinitiative.org/pdf/brochure_Jan04.pdf.

⁵ The Access Initiative, available at www.accessinitiative.org (last visited Feb. 15, 2004). See also The Environmental Law Institute, *The New Public: Globalization of Public Participation*, (Carl Bruch ed., 2002).

⁶ *Rio Declaration on Environment and Development*, June 14, 1992, 1992 WL 602558, UN Doc. A/CONF.151/5/Rev. 1, available at <http://www.unep.org/Documents/Default.asp?DocumentID=78&ArticleID=1163> (stating that environmental issues are best dealt with through extensive public participation at the state and national levels, citizen access to relevant information concerning the environment, and access to judicial and administrative sources). See also World Resources Institute et. al, *Closing the Gap: Information, Participation and Justice in Decision-making for the Environment*, (2002) (explaining other declarations and agreements such as the The Inter-American Strategy for the Promotion of Public Participation in Decision-making for Sustainable Development and the East Africa Community Environmental Memorandum of Understanding).

⁷ World Resources Institute et. al, *supra* note 6.

⁸ World Resources Institute et. al, *supra* note 6.

⁹ World Resources Institute et al., *World Resources 2002 – 2004: Decisions for the Earth: Balance, Voice and Power*, 48 (2003), available at http://pdf.wri.org/wr2002fulltxt_047-064_chap03.pdf.

¹⁰ The Earth Negotiations Bulletin (“ENB”), *Implementing Principle 10: The Access Initiative, Selected side Events at WSSD Events convened on Thursday, 30 May 2002*, 8 WSSD PC-IV (2002) available at <http://www.iisd.ca/2002/pc4/enbts/may30.html> (showing that TAI is quickly gaining recognition, both from the International Institute for Sustainable Development and the United Nations Development Programme as they included an article in their publication about a speech regarding TAI by Frances Seymour of the World Resources Institute).

¹¹ *Id.* (explaining that there are few widely accepted environmental indicators and that the evaluation of environmental governance is more difficult to measure because it involves not only environmental sustainability, but also human rights, political freedoms, transparency and more).

¹² Center for International Earth Science Information Network, *Environmental Sustainability Index*, at <http://www.ciesin.columbia.edu/indicators/ESI/>, (last visited March 27, 2004) (explaining that the Environmental Sustainability Index is an assessment of 142 countries’ environmental governance, that creates cross-national comparisons of environmental progress in a systematic and quantitative fashion, conducted by the World Economic Forum, Yale University and Columbia University).

¹³ National Council for Science and the Environment, *State of the Environment Reports*, available at <http://www.ncseonline.org/About/>,

(last visited March 27, 2004) (providing these reports with a goal of a “society where environmental decisions are based on an accurate understanding of the underlying science, its meaning, and its limitations. In such a society, citizens and decision makers receive accurate, understandable, and integrated science-based information. They understand the risks, uncertainties, and potential consequences of their action or inaction.”).

¹⁴ United Nations Development Programme, *Human Development Reports*, available at <http://hdr.undp.org/reports/global/2003/>, (last visited March 27, 2004) (explaining that the Human Development Report assesses various measures of democracy and good governance throughout 173 countries).

¹⁵ The World Bank Group, *Governance & Anti-Corruption*, available at <http://www.worldbank.org/wbi/governance/index.html>, (last visited March 27, 2004) (explaining that the World Bank calculates the good governance indicators of 175 countries, including political process, civil liberties, political rights, and independence of the media).

¹⁶ IUCN—The World Conservation Union, *The Wellbeing of Nations at a Glance*, available at http://iucn.org/info_and_news/press/wonback.doc, (last visited April 1, 2004) (explaining that the Wellbeing of Nations Survey is conducted by the International Development Research Centre, IUCN—The World Conservation Union, and other research institutes and that it encompasses 180 countries’ environmental conditions, including human rights and ability to participate in the government’s decision-making process).

¹⁷ The team was convened by the World Resources Institute (U.S.), the Environmental Management and Law Association (Hungary), Corporacion PARTICIPA (Chile), Thailand Environmental Institute, and Advocates Coalition for Development and the Environment (Uganda). World Resources Institute et al., *supra* note 10.

¹⁸ World Resources Institute et al., *supra* note 9, at 50.

¹⁹ *Id.*

²⁰ *Id.* at 55.

²¹ *Id.*

²² Chile, India, Mexico, Thailand, the United States, Hungary, Indonesia, South Africa, and Uganda. *Id.*

²³ *Id.* at 50.

²⁴ In light of the recent lead crisis in the Washington, D.C. water supply, one can only imagine what kinds of systems exist in countries that scored low in this area.

²⁵ The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, June 25, 1998, art. 5, 8, available at <http://www.unece.org/env/pp/documents/cep43e.pdf>, (last visited April 8, 2004) (establishing rights of the public with regard to obtaining environmental information and mandating that “each Party shall, at regular intervals not exceeding three or four years, publish and disseminate a national report on the state of the environment, including information on the quality of the environment and information on pressures on the environment.”). See generally Europa, *Europa – Environment – The Aarhus Convention*, at <http://europa.eu.int/comm/environment/aarhus/> (last visited March 28, 2004).

²⁶ World Resources Institute et al., *supra* note 9, at 50 (explaining that the United States stopped producing meaningful federal-level reports in 1997 and Indonesia produced only one such report in the past decade, in 1998).

²⁷ *Id.* at 55.

²⁸ EPA, *Toxic Release Inventory (TRI) Program*, at <http://www.epa.gov/tri/> (last visited March 28, 2004) (explaining that TRI is a publicly available EPA database that contains information on toxic chemical releases and other waste management activities reported annually by certain covered industry groups as well as federal facilities. This inventory was established under the Emergency Planning and Community Right-to-Know Act of 1986 (“EPCRA”) and expanded by the Pollution Prevention Act of 1990).

²⁹ World Resources Institute et al., *supra* note 9, at 56.

³⁰ EPA, *EPA-Compliance and Enforcement –National Environmental*

Policy Act (“NEPA”), available at <http://www.epa.gov/compliance/nepa/index.html> (last visited March 28, 2004) (“The National Environmental Policy Act (NEPA) requires federal agencies to integrate environmental values into their decision making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions. To meet this requirement, federal agencies prepare a detailed statement known as an Environmental Impact Statement (EIS).”).

³¹ World Resources Institute et al., *supra* note 9, at 50.

³² World Resources Institute et al., *supra* note 9, at 50.

³³ Stephanie Kriner, *Cholera Spreads Through South Africa Townships*, DisasterRelief.org. (2001), at <http://www.disasterrelief.org/Disasters/010309choleraSA/>.

³⁴ Pat Sidley, *Cholera Sweeps Through South African Province*, 322 BRITISH MEDICAL JOURNAL 71 (2001), available at http://bmj.bmjournals.com/cgi/reprint_abr/322/7278/71/a.pdf.

³⁵ *Id.*

³⁶ Kriner, *supra* note 34; Sidley, *supra* note 34.

³⁷ World Resources Institute et al., *supra* note 9, at 50.

³⁸ *Id.*

³⁹ World Resources Institute et al., *supra* note 9, at 50.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.* at 50.

⁴³ World Resources Institute et al., *supra* note 9.

⁴⁴ *Id.*

⁴⁵ See United Nations Environmental Programme, *UNEP*, available at <http://www.unep.org> (last visited on March 28, 2004).

⁴⁶ Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, June 25, 1998, available at <http://www.unece.org/env/pp/treatytext.htm> (last visited on April 8, 2004).

⁴⁷ World Resources Institute et al., *supra* note 9.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ World Resources Institute et al., *supra* note 9.

⁵¹ President George W. Bush, State of the Union Address (Jan. 20, 2004).

⁵² Michael Asimow, et al., *State and Federal Administrative Law*, 2d.Ed., (West Publishing ed., 1998).

⁵³ *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 104 S.Ct. 2778 (1984).

⁵⁴ *Chevron*, 467 U.S. at 837.

⁵⁵ Administrative Procedure Act, 5 U.S.C. Subchapter II, §§ 551-559.

⁵⁶ World Resources Institute, *supra* note 9.

⁵⁷ The Freedom of Information Act, 5 U.S.C. § 552.

⁵⁸ World Resources Institute, *supra* note 9.

⁵⁹ 42 U.S.C. § 11001 et seq. (1986).

⁶⁰ Business & Legal Reports, *Regulatory Analysis—Emergency Planning and Response*, at <http://enviro2.blr.com/topic.cfm/topic/426>.

⁶¹ For more information about communities in the United States see EPA, *Environmental Justice*, at <http://www.epa.gov/oswer/ej/index.html> (last visited Feb. 15, 2004) (explaining “Concern that minority populations and/or low-income populations bear a disproportionate amount of adverse health and environmental effects, led President Clinton to issue Exec World Resources Institute,