Public involvement in environmental issues in the ASEM – background and overview

Preface

The very basis for co-operation among the ASEM partners lies in the possibility to share common experiences and to develop and explore ideas and solutions that can shape our future to the mutual benefit of all partners. The diversity of the ASEM partners is a strength. We know that concepts, ideas and solutions that have been examined among the ASEM partners have passed severe tests and should therefore have wide applicability.

Public participation, as an element of good governance and as a way of mobilizing citizens and others in the effort to shape sustainable futures, is a concept and idea that has entered numerous international declarations and Conventions. The issue was emphasised in Johannesburg and it will be referred to in many future discussions on the environment at the global, regional and national level.

The ASEM represents an excellent forum for sharing experiences related to public participation. The project on public participation is a proof of this and several ASEM partners have contributed significantly to its success, in particular the EC with contributions to seminars and a conference, Thailand, which hosted the International Conference on Public Participation, and China and Vietnam which hosted seminars.

Many ASEM partners have undertaken legislative work supporting the development of public participation. This legislative work will naturally reflect the historical and cultural context of each jurisdiction. Due to the many issues that arise the rate of development naturally varies, but the ultimate objective is a legislation that supports discussions of what is loosely referred to as sustainable development. In this connection it is important to note that developing legislation is important, but not sufficient.

The task to implement public participation is interesting, challenging and often difficult. Therefore we should take full advantage of the possibilities to learn from our successes and mistakes and share them with others. When we expand our learning to include an exchange of experiences in many countries and cultures we not only learn faster but we also gain a deeper understanding of what public participation can and should mean in the work for a better environment and a sustainable development. This is why Finland has supported work aiming at exploring and supporting good practice of public participation among the ASEM partners. The ASEM partners have accumulated a large body of experiences related to public participation. By reflecting on these experiences the ASEM partners are likely to find a common basis for future good practice of public participation.

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Foreword

Public participation is of the themes of environmental protection and sustainable development that were highlighted at the United Nations Conference on Environment and Development in 1992 in Rio de Janeiro and again during the World Summit on Sustainable Development in Johannesburg 2002.

The ASEM Senior Expert Meeting (SEM) identified public participation, together with Megacities, Bioremediation and Nature Disaster Management as one of the four priority areas of the Asia-Europe Environmental Technology Centre (AEETC) in February 1998 in The Hague. Since the establishment of the AEETC, the European Commission has supported AEETC by funding international conferences and seminars with focus on the three priorities, Public Participation, Megacities and Bioremediation.

Since 1999, the Government of Finland has provided funding to the AEETC for a project on public participation to support the priority area on public participation. An expert team from the Finnish Environment Institute (SYKE) and Thailand Environmental Institute (TEI) has been working closely with the AEETC to conduct a series of studies on public participation among ASEM partners during the past three years. This publication condenses the collected material. It is a useful reference for policy makers, administrators, civil servants, researchers, practitioners, NGOs, reporters and everyone else interested in developing public participation.

In addition to the publication the project has developed a network on public participation among ASEM partners. As one significant output of this activity, AEETC successfully organized a side event "Asia-Europe Dialogue on public participation" during the 1st ASEM Environment Ministers Meeting in January 2002 in Beijing with the support of the Center for Environmental Education and Communication of the Chinese Environment Protection Agency.

The public participation project also became one of the key inputs for the AEETC's project funded by the EC, "the 1st International Conference on Public Participation for Asia Europe Meeting (ASEM)", June 10-12, 2002, UNCC, Bangkok. The Conference enlarged the AEETC network on public participation with good connections within the Asia and Pacific region. The Ministry of Science, Technology and Environment of Thailand gave strong support to the organization of the Conference.

With support from the public participation project and the EC, the 2nd ASEM International Conference on Public Participation was held in Hanoi and hosted by Ministry of Natural Resources and Environment, Vietnam. It addressed issues of public participation in the areas of ASEM and Greater Mekong sub-region.

The activity on public participation has brought together many ASEM partners in the true spirit of the ASEM. This was also recognized in the Chair's Statement of the Fourth ASEM Foreign Ministers Meeting in Madrid on June 3-7, 2002:

"Ministers gave special recognition to the valuable work carried out by the AEETC in promoting public participation in environmental affairs…"

The AEETC expresses it sincere appreciation to the government of Finland and to all other countries, individuals and organizations who have contributed to this project.

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EVOLUTION OF PUBLIC INVOLVEMENT IN ENVIRONMENTAL ISSUES WITHIN THE ASEM- PARTNERS:

AN ANALYSIS OF INTERNATIONAL REGIONAL AND BILATERAL, CONVENTIONS, AGREEMENTS AND OTHER INITIATIVES

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1 Introduction

Public involvement in environmental issues is intimately linked with the development of civil society. It is closely related to basic societal functions and its interpretation has varied accordingly in different societies. The emphasis on different aspects and functions of public involvement has therefore varied. In some contexts the main emphasis has been on enhancing environmental awareness, whereas legal aspects have been stressed in others.

The recognition of public involvement in various international environmental initiatives, which are here understood to mean conventions, agreements, declarations and general international policy statements, is a relatively recent phenomenon. The history of international law in relation to public involvement has been elucidated in papers by Stec and Casey-Lefkowitz (2000) from the angle of the Aarhus Convention, by Bruch and Czebiniak (2002) in the light of regional initiatives, and by Haklay (in press) with emphasis on the history of sharing environmental information.

In this paper, we give an overview of international law and other international initiatives dealing with environmental issues of relevance to the Asia Europe Meeting (ASEM)[1]. We will examine how public involvement has been defined and dealt with in these initiatives. We will further explore how the concept and contents of public involvement have evolved and analyse why particular aspects have been emphasised in the international discussion in the context of environmental agreements and how different processes have influenced one another. We will approach this by examining examples that illustrate different ways of dealing with the issue of public involvement rather than covering all possible initiatives. Due to the large number of relevant initiatives, we have excluded most of the general high level initiatives (e.g. the Cairo Action Programme on Population and Development (1994); the World Summit for Social Development, 1995; the Beijing Action Programme from the World Conference of Women, 1995; and the UN Istanbul Declaration and Habitat Agenda on Human Settlements, 1996) and concentrated on more specific and action-oriented initiatives in the environmental field.

2 The approach

2.1 Defining involvement

Several terms have been used for describing activities that are related to the role of the public in environmental matters and they are commonly used interchangeably. Public involvement has been used as the generic term, covering the full "range of techniques that can be used to inform, consult or interact with stakeholders affected by a proposal" (UNEP 2001). Different types of involvement were identified within the concepts that are part of the Rio Declaration (1992)[2] and the Aarhus Convention (1998)[3]:

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[1] *ASEM is a high level meeting forum for the European Commission (EC), all EU countries and ten Asian countries. The ASEM partners are Austria, Belgium, Brunei Durussalam, China, Denmark, Finland, France, Germany, Greece, Indonesia, Ireland, Italy, Japan, Luxembourg, Malaysia, the Netherlands, the Philippines, Portugal, the Republic of Korea, Singapore, Spain, Sweden, Thailand, the United Kingdom, Vietnam and the European Commission. The Web page of the EU on ASEM is http://europa.eu.int/comm/external_relations/asem/intro/ , last visited June 30, 2002.*

[2] *At the Rio Summit on Sustainable Development (1992), three types of public involvement were defined:*
- *access to information (including information relevant to policy formulation, and performance of regulated entities, environmental impact studies, and other information important to sustainable development)*
- *access to process (including the processes of making policies, laws, and regulations and those granting permits, limits and other conditions important to health and welfare)*
- *access to justice (including access to courts, administrative appeals and other relevant decision-making tribunals concerned with the application of law and compliance with relevant standards and norms)*

[3] *The Aarhus Convention (1998) identified the three pillars of involvement to be*
- *access to information*
- *public participation in decision-making*
- *access to justice*

one dealing with access to information, one with participation in processes and one with access to justice. These definitions cover both the more specific and the more general uses of terms such as public participation[4].

Within the World Bank, public involvement has often been used as the generic term, whereas public consultation describes activities seeking the advice of the public and public participation processes aiming at sharing decision-making responsibility with the public.

In this paper we will use public involvement as the generic term and divide involvement into the pillars of Aarhus Convention, i.e. access to information, public participation in decision-making, and access to justice. Within these broad categories the detailed specifications vary and we will highlight these. Related issues are the definition of the public and the role of environmental awareness.

2.2 The analysis

The study is based on an analysis of the text of the initiatives supplemented with information on the processes related to the development of the initiatives. We have chosen to analyse ten non-binding and thirteen binding global initiatives, and eighteen non-binding and fourteen binding regional initiatives that are connected to environmental issues and that have been issued over the past 60 years (see the list of the analysed initiatives at the end of this paper).

The elements of involvement that we have examined are based directly on the texts in the initiatives, but for the analysis we have combined and identified certain elements that are not explicitly mentioned in the texts, although they are a part of the logic of the initiative. By examining the different elements of public involvement it is possible to identify essential changes in the perception of public involvement that have occurred over time. The other aspects that we will address are the definition of the public and the contents of the concept of public awareness.

Within **access to information** it is possible to distinguish between general requirements on transparency and making information available on the one hand, and specific requirements on the production of information on the state of the environment or even specific activities, on the other hand. The first requirements are broad and general, and their actual implementation is often difficult to document, whereas the effects of the latter can easily be verified.

Public participation can be raised as a general issue, or it can be specified in various ways. In some cases the specification is based on the context of the participation (resource management, environmental impact assessment, regulatory decision-making), whereas another type of specification addresses the result of the participation (treatment of objections to activities, initiation of dialogues).

Initiatives dealing with **access to justice** can contain general unspecified requirements, specific requirements on access to court procedures or requirements to deal with appeals or redress decisions.

The **definition of the public** can be broad by referring to "any person", "all actors of society" or it may be restricted to specific groups such as producers, registered organisations and so on. The definition can also be broad, but at the same time it highlights groups that may need special attention.

Environmental awareness can be used in an unspecified way or it can be focussed on specific means such as programmes or the media and the material that is used.

The initiatives, their interpretation and their role in developing public involvement are context dependent. For the analysis we have thus divided the initiatives into two categories based on their legal status and two categories of geographical scale.

We have categorized the status of the initiatives according to how legally binding they are. **General initiatives** represent so-called soft law, while **legislation** is used to mean binding international law. The scale categorisation of the international initiatives differentiates between **global and regional initiatives**. In this study we have restricted the widest category to deal only with those global initiatives that concern the ASEM region. We call it the broad international category.

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[4] For example FAO´s report (2000) on public participation in forestry reads:
"Public participation is a voluntary process whereby people, individually or through organized groups, can exchange information, express opinions and articulate interests, and have the potential to influence decisions or the outcome of the matter at hand."

The regional initiatives are usually linked to specific regional institutions. In Asia one of these is the Association of South East Asian Nations (ASEAN). This regional group covers seven out of ten Asian ASEM partners: Brunei, Indonesia, Malaysia, the Philippines, Singapore, Thailand and Vietnam. Another Asian institution developing regional environmental initiatives is the UN Economic and Social Commission for Asia and the Pacific (ESCAP), which includes all the Asian ASEM partners. In Europe, the institutions include the UN Economic Commission for Europe (ECE), the European Union (EU) as well as geographically more restricted institutions such as those for the Baltic Sea, the Arctic, the North Sea and the Mediterranean region. The last-mentioned subregions are restricted only to some of the European ASEM partners, and some of these subregions include non-ASEM nations, as well. In the regional initiatives we have also included the draft ASEM document "Towards Good Practices for Public Involvement in Environmental Policies" (2001).

3 Findings

3.1 Broad international initiatives

In 1940-1970 there were practically no explicitly environmentally oriented broad international initiatives, but issues such as human rights and equity received attention (e.g. the UN Declaration on Human Rights (1948)[5] and the UN Covenant on Civil and Political Rights 1966).

These were the basis for the explicit treatment of public involvement that started to appear in environmental initiatives after 1970 (Tables 1-4). The recognition of public involvement did not only appear in the texts of the initiatives, but also in the process that produced the initiatives. Thus, non-governmental organisations (NGOs)were allowed to take part in meetings on the initiatives as observers (Paris 1972, CITES 1973[6], Bonn 1979). The importance of support to public awareness and requirements to provide information were introduced into the environmental initiatives (Ramsar 1971, Paris 1972[7], CITES 1973, Bonn 1979) at this stage of their development.

[5] The UN Universal Declaration on Human Rights (1948) includes the following:
- Everyone is entitled to all the rights and freedoms set forth in this Declaration, without
- distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty (Article 2)
- Everyone has the right to life, liberty and security of person (Article 3)
- Everyone has the right to recognition everywhere as a person before the law (Article 6)
- Everyone has the right to freedom of opinion and expression; this right includes freedom to
- hold opinions without interference and to seek, receive and impart information and ideas
- through any media and regardless of frontiers (Article 19)
- Everyone has the right to education. …(Article 26)
- Everyone has duties to the community in which alone the free and full development of his personality is possible (Article 29)

[6] CITES Article XI, 7: Any body or agency technically qualified in protection, conservation or management of wild fauna and flora, in the following categories, which has informed the Secretariat of its desire to be represented at meetings of the Conference by observers, shall be admitted unless at least one-third of the Parties present object:
(a) international agencies or bodies, either governmental or non-governmental, and national governmental agencies and bodies; and
(b) national non-governmental agencies or bodies which have been approved for this purpose by the State in which they are located. Once admitted, these observers shall have the right to participate but not to vote.

[7] Paris Convention 1972: Article 27
1. The States Parties to this Convention shall endeavor by all appropriate means, and in particular by educational and information programmes, to strengthen appreciation and respect by their peoples of the cultural and natural heritage defined in Articles 1 and 2 of the Convention.
2. They shall undertake to keep the public broadly informed of the dangers threatening this heritage and of the activities carried on in pursuance of this Convention.

In the early initiatives, the right for involvement was restricted to specialists. Typical statements were: "*cooperation with research institutes…*"; "*specialists should be consulted…*"; "*specialists should be trained and there should be exchange of information between specialists…*"; "*responsible authorities should be informed…*". In some of the initiatives requirements to provide information on the initiative were set for the Secretariat. It was not, however, always mentioned to whom the information should be provided. In some cases simply the Parties of the Convention (e.g. Vienna 1986) were mentioned as the receivers of the information. In one of the early initiatives (the World Charter for Nature, 1982) the public was explicitly given responsibility: "*each person has a duty to act…*". This kind of wording and approach has not, however, been used in the later initiatives analysed in this paper. The right of the public to appeal against decisions was included in only a few initiatives during 1970-1990. The World Charter for Nature (1982) and the Brundtland Commission report (1987) were the forerunners, as they included requirements on access to means of redress.

Public involvement became a part of broad global initiatives in the 1990s, more specifically from the Rio Summit (1992) onwards. The philosophy in the Rio Declaration can be sensed in other initiatives that evolved in the same time period as the Rio Declaration. After the Rio Declaration all aspects of involvement have been dealt with: access to information, participation and access to justice. In the earlier initiatives public involvement was brought up on a general level, while later, more detailed instructions have entered into the texts. These specifications include non-governmental organisations (Agenda 21, 1992), women (Desertification 1994), indigenous groups (Malmö 2000) and the private sector (OECD 2001).

3.2 Regional and bilateral initiatives

Regional and bilateral initiatives display a similar development as the broad, global initiatives. The relation of the initiatives to the issues analysed can be seen in Tables 5-6 (general initiatives) and in Tables 7-8 (binding agreements).

Both Asian and European ASEM partners have been involved in developing non-binding regional environmental initiatives. The European ASEM partners also have binding regional agreements, e.g. in the form of the various directives of the European Union (EU), while the Asian ASEM partners have no binding regional environmental agreements. The Agreement on the Conservation of Nature and Natural Resources (1985) is the closest attempt to develop a regional binding agreement on the environment in ASEAN, but it has not been ratified, and thus it has not been enforced. Another attempt is the ASEAN Agreement on Forest Fire that is now under development. It is a response to the incidence of smoke haze during the dry season in the past decade in the region.

In the ASEAN region, environmental initiatives started to appear in the early 1980s. From the first regional environmental initiatives until the present, environmental awareness has been an issue. Attention has been paid to ways of enhancing public environmental awareness by developing and implementing environmental education and public awareness programmes, and to the exchange of materials containing environmental information. Also, the availability of environmental information for the public has been addressed since the early 1980s. The state of the environment in the ASEAN region was first mentioned in the late 1980s and more regularly in the 1990s (see Strategic Plan of Action 1994-1998 and 1999-2004 and Education Action Plan 2000-2005). However, mechanisms supporting public right of access to information have not been identified. Public participation entered into the Asian initiatives from 1985 onwards (Agreement on the Conservation of Nature and Natural Resources 1985), initially at a general level, and later in more detail. Environmental management and decision-making have been identified as particular issues (Plan of Action 1994-1998 and Education Action Plan 2000-2005). Public access to judicial redress has not been an issue in the initiatives in Asia.

ESCAP has strived to find regional political support for public involvement in the Asian region. The result of the ministerial meeting in Kitakyushu (2000) clearly indicated that there is political interest in raising the status of public involvement in environmental issues. In 2002, ESCAP decided to explore the possibilities initiate a process of developing a non-binding Asian initiative that would deal

specifically with public involvement in environmental issues. The initiative would be based on the Aarhus Convention and the ASEM draft document "Towards Good Practices for Public Involvement in Environmental Policies" (2001).

The European ASEM partners have taken on the elements of public involvement gradually. First, requirements on access to information were introduced with occasional requirements for direct or indirect participation in decision-making. The Aarhus process made access to justice a key issue. Some forerunners can be identified in the evolution of public involvement in European environmental initiatives, such as the Nordic Environmental Protection Convention, which secured the right to appeal in another country already in 1974, and the Barcelona Convention (1976), which specified requirements on participation in decision-making.

When looking at the development of public involvement in environmental issues, the most important initiatives have been the EC directives (1990 and draft 2001) and the UN/ECE guidelines (Sofia, 1996) and Convention (Aarhus, 1998), which all concentrate on the issue of public involvement. All these documents bring up the three pillars of involvement and give detailed requirements on them. In these European initiatives, public awareness is not raised as a major issue. This reflects the implicit assumption that the awareness is fairly high already. Their main contribution is the explicit approach to setting binding international requirements on access to justice. Thus, they play a major role in introducing this issue into future initiatives. Already now, the Aarhus Convention is referred to in recent initiatives such as the Organisation for Economic Co-operation and Development (OECD) environmental strategy (2001).

In Asian, European and broad international initiatives, specifications of stakeholders are found only in some of the pre-Rio initiatives after which a spectrum of stakeholders is commonly mentioned. In Asia, the term 'public' has been mentioned mostly in general form, although from time to time reference is made to "all parties concerned" or to "stakeholders". Specific parties such as NGOs, governmental authorities, and private and business sectors have also been addressed since 1985 (see Agreement on the Conservation of Nature and Natural Resources 1985, Singapore 1992, Jakarta 1997 and Education Action Plan 2000-2005), but not clearly defined. In the Regional Action Programme 2001-2005 (ESCAP 2000) in Asia, different stakeholders are identified and their different roles are recognized. In some regions such as the Arctic, indigenous groups have been identified as a special group in the entire initiative (AEPS 1991).

4 Discussion

This study has examined the evolution of public involvement in international environmental law. The issue has evolved within the last 20-40 years from being hardly mentioned (UN Covenant 1966, Ramsar 1971, Vienna 1985) to broad coverage (Aarhus 1998, Malmö 2000). The results also indicate that public involvement entered as a new concept into international legislation through non-binding initiatives, and slowly found its way to more specific, operational articles of binding initiatives and in the regional context, to binding initiatives of its own. The process of reaching the legal status has taken time, especially for the issue of access to justice. From the initiatives analysed in this paper only a few regional binding initiatives include a requirement on access to justice, all of them being regional and dealing with the European Partners of the ASEM. The slow process of introducing new concepts into binding international law is documented also for the precautionary principle, the acceptance of which has taken some 20 years to develop from a general, non-binding concept to a subject with an operational role in binding agreements (Saladin 2000).

The development of the concept of public involvement has not been smoothly incremental. Issues that have been raised at some stage may be lacking in newer initiatives but might appear again later. Participation in decision-making is a case in point. The partly haphazard appearance and disappearance of items on the political agenda has also been observed elsewhere. Oran Young (1998, 56-57) analyses the rise of certain issues in the creation of regimes and points out: "*A simple answer assumes that inscription on this agenda occurs more or less automatically or spontaneously following the emergence of problems that are important in some objective sense. But this interpretation is surely naïve. …No doubt, the availability of information and the configuration of the interests of influential players have a good deal to do with these develop-*

ments." Our findings support the view that the diffusion of concepts and issues from one initiative to another is not a straightforward process although established initiatives undeniably influence the development of new ones. Once an initiative has reached the status of binding international law this influence naturally becomes much stronger. The clearest example of this is the Aarhus Convention, which exerts a strong influence, e.g. on the formulation of directives within the European Union.

The players participating in developing initiatives naturally affect the contents of the initiatives. The NGOs were among the players that entered into international governance in the 1980s when they were given an official observer status at the meetings of Parties. Once the non-governmental organisations were invited into the processes of developing initiatives, their influence was unquestionable. They had the right to give small speeches at the meetings and they could lobby decision-makers at the meetings. Consequently, the wording in the initiatives reflects their participation. Their greater role has also contributed to an increasing recognition of the importance of public involvement (Breitmeier 1997:93). Bruch and Czebiniak (1992) see the environmental organisations and agencies as having a role in turning the emphasis from traditional substantive concerns, such as wildlife and hazardous waste, to the decision-making processes that affect the environment.

The request for accessibility of environmental information was one of the elements that opened the dialogue between public authorities and the private sector in the 1980s (Haklay in press). This interplay gradually brought the business community to accompany the non-profit organisations as organised stakeholders in public involvement, eventually reaching also the list of the specified public in the international initiatives. Interestingly, five of the analysed Asian regional initiatives requested involvement to reach the private sector while only four initiatives specified NGOs as important stakeholders, reflecting the importance of the business sector in Asian politics.

The results indicate that a balance seems to have been sought between broad international issues and local requirements when developing regional initiatives. This concept was generalised by Young (1998: 57) in his research on the initiatives of the Arctic region: "*But the creation stories of AEPS and BEAR suggest that issues are often propelled onto the international political agenda through a process involving the fusion of local or geographically delimited concerns and broader, more generic concerns.*" Civil society has deep roots in the Western tradition (Wapner 1997: 72), which is reflected in the level of public involvement in regional initiatives in Europe during the last 30 years, as seen in this study. The high political status of public involvement has followed the general societal development in Europe, which has emphasised public involvement in nearly all societal fields. The introduction of environmental impacts assessment (EIA), for example, in the 1980s with an emphasis on public discussion has also contributed to the development of public involvement.

In the region of the Asian ASEM partners, public involvement has not had as clear backing as in Europe, although Connor (1999) finds connections to historical societal structures. In the Asian ASEM partners, the emphasis has so far primarily been on providing information to the public and on promoting public awareness. This is important in the region where the environmental issues have become part of the public discussion more recently and because many environmental issues have to be addressed acutely. Also, the strong role of the private sector can clearly be seen.

Bruch and Czebiniak (2002) bring up the importance of regional initiatives in forming global agreements by analysing the three finalised initiatives and one draft initiative all dealing with public involvement. They analyse how the contents of those initiatives world summit for sustainable development (WSSD). Our results broadly support the conclusion that regional agreements are important as steps towards global environmental governance, but we have also been able to document more complex interactions. In addition to the input from national to regional and regional to global, global initiatives provide input on the regional level. Furthermore, different regions influence one another. ASEM partners are parties in broad global initiatives such as the Biodiversity Convention (1992) and the Agenda 21 (1992), which both emphasise all three pillars of public involvement. The preparation of a draft document on guiding principles under the ASEM process and its follow-up have affected the discussions preceding the is an indication that regions influence and support each other in developing civil society in relation to environmental governance.

The evolution of issues of public involvement in international environmental initiatives is instructive. One can argue that the development of a social contract political philosophy in general and its application to environmental law and justice was a necessary condition. John Rawls's (1971) theory of jus-

tice embodies many of the elements that justify public involvement. Public involvement is also rooted in pluralistic political views, which emphasise that it is not possible to determine externally a single optimal solution in societal issues. Thus, the necessary background of political philosophy and its practical applications were developed in the second half of the 20th century.

The non-binding initiatives have become moral reminders for governments. Other players have been able to refer to these initiatives in demanding that binding legal frameworks for broad public involvement be prepared. Thus, the non-binding initiatives have also stressed the importance of public involvement in new initiatives in other regions and new contexts. Binding international agreements on specific issues have clearly helped to speed up the actions taken and the public discussion on these issues. The Aarhus Convention and the requirement for public involvement in major environmental conventions have therefore been very important. However, major progress is still needed at the level of practical implementation of public involvement at regional, national and local levels.

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Initiatives

Initiatives analysed in Tables 1 and 2: broad non-binding international general initiatives

1. UN Declaration on Human Rights, 1948
2. UN Declaration on Human Environment, Stockholm, 1972,
3. World Charter for Nature, UN General Assembly, 1982
4. Brundtland Commission Report: Our Common Future, World Commission on Environment and Development, 1987
5. Rio Declaration on Environment and Development, 1992
6. Agenda 21 UNCED, Rio, 1992
7. International Tropical Timber Agreement, Yokohama, 1994,
8. Malmö Declaration from the 1st Global Ministerial Environment Forum, UNEP, 2000
9. Dublin UNEP Infoterra Declaration on Access to Environmental Information, 2000
10. OECD Environmental Strategy for the First Decade of the 21st Century, 2001

Initiatives analysed in Tables 3 and 4: broad international law including elements of public involvement

11. Convention for the Protection of Cultural Property in the Event of Armed Conflict and Protocol to the Convention, the Hague, UNESCO, 1954
12. UN International Covenant on Civil and Political Rights, 1966
13. Ramsar, Convention on Wetlands of International Importance Especially as Waterfowl Habitats, Protection of Habitats of Wetland Birds, 1971
14. Convention for the Protection of the World Cultural and Natural Heritage, Paris, UNESCO, 1972
15. CITES, Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1973
16. Convention on the Conservation of Migratory Species of Wild Animals, Bonn, 1979
17. Vienna Convention for the Protection of the Ozone Layer, Vienna, 1985
18. Convention on Early Notification of a Nuclear Accident, Vienna, 1986
19. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, 1989
20. Convention on Biological Diversity, Rio, 1992
21. The Convention on Climate Change, 1992
22. UN Convention to Combat Desertification, 1994
23. The Kyoto Protocol on Climate Change, 1997

Initiatives analysed in Tables 5 and 6: general regional initiatives

24. Manila Declaration on the ASEAN Environment, 1981
25. ASEAN Declaration on Heritage Parks and Reserves, 1984
26. Bangkok Declaration on the ASEAN Environment, 1984
27. Jakarta Resolution on Sustainable Development, 1987
28. UN/ECE regional strategy for the environment, 1988
29. The Kuala Lumpur Accord on Environment and Development, 1990
30. Arctic Environmental Protection Strategy, AEPS 1991
31. Singapore Resolution on Environment and Development, 1992
32. Bandar Seri Begawan Resolution on Environment and Development, 1994
33. Strategic Plan of Action on the Environment, Asia (1994-1998)
34. The Pan-European Biological and Landscape Diversity Strategy, 1995

35. UN/ECE Guidelines on Public Participation in Environmental Decisionmaking, Sofia, 1996
36. Jakarta Declaration on Environment and Development, 1997
37. Strategic Plan of Action on the Environment, Asia (1999-2004)
38. Kota Kinabalu Resolution on the Environment, 2000
39. ASEAN Environmental Education Action Plan (2000-2005)
40. ESCAP Action Programme for Environmentally Sound and Sustainable Development (2001-2005), Kitakyushu, 2000
41. OECD Environmental Strategy for the First Decade of the 21st century, 2001
42. ASEM Document: Towards Good Practices for Public Involvement in Environmental Policies, draft, 2001

Initiatives analysed in Tables 7 and 8: regional supranational law

43. Frontier Rivers Agreement, Sweden and Finland, 1971
44. Nordic Environmental Protection Convention, 1974
45. Convention on the Protection of the Marine Environment of the Baltic Sea, HELCOM, 1974
46. Barcelona Convention for the Protection of the Mediterranean Sea, 1976
47. Bern Convention on the Conservation of European Wildlife and Natural Habitats, 1979
48. European Commission Directive on environmental impact assessment (EIA), 1985
49. Agreement on the Conservation of Nature and Natural Resources, 1985
50. European Commission Directive on Freedom of Access to Information, 1990
51. Espoo Convention – UN/ECE Convention on EIA in a Transboundary Context, 1991
52. The Ospar Convention, Protection of the North Sea, 1992
53. Convention on the Protection of the Marine Environment of the Baltic Sea, HELCOM, 1992
54. UN/ECE Convention on the Protection and Use of Transboundary Watercources and International Lakes, Helsinki, 1992
55. Aarhus Convention – UN/ECE Convention on Access to Information, Public Participation and Access to Justice, 1998
56. The Proposal for an European Commission Directive on Public Participation, Draft, 2001

Other initiatives mentioned in this study

Cairo Action Programme on Population and Development (1994)
World Summit for Social Development, 1995
Beijing Action Programme from the World Conference of Women, 1995
UN Istanbul Declaration and Habitat Agenda on Human Settlements, 1996)

Table 1: Elements of involvement in broad non-binding international general initiatives.

ISSUE \ INITIATIVE	1. 1948	2. 1972	3. 1982	4. 1987	5. 1992	6. 1992	7. 1994	8. 2000	9. 2000	10. 2001
ACCESS TO INFORMATION:										
ON THE STATE OF THE ENVIRONMENT				●	●				●	
MAKE INFORMATION AVAILABLE		●			●		●		●	●
TO BE INFORMED OF A SPECIFIED ACTIVITY				●						
TRANSPARENCY OF THE DECISION-MAKING PROCESS										
PUBLIC PARTICIPATION:										
IN GENERAL		●			●	●	●	●		●
PARTICIPATION IN THE MANAGEMENT										
PUBLIC PARTICIPATION IN DECISION MAKING			●		●					●
POSSIBILITIES FOR MAKING COMMENTS ON OR OBJECTIONS TO PROPOSED ACTIVITY/PARTICIPATION IN EIA										
DIALOGUE										
ACCESS TO JUSTICE:										
ACCESS TO JUSTICE IN ENVIRON-MENTAL MATTERS										●
ACCESS TO JUDICIAL AND ADMINIS-TRATIVE PROCEEDINGS / RIGHT TO BRING BEFORE THE APPROPRIATE COURT				●	●					
ACCESS TO MEANS OF REDRESS / TO APPEAL AGAINST THE DECISION			●							
ISSUE \ INITIATIVE	1. 1948	2. 1972	3. 1982	4. 1987	5. 1992	6. 1992	7. 1994	8. 2000	9. 2000	10. 2001

Table 2. Specifications of the public and public awareness in broad international general initiatives.

ISSUE \ INITIATIVE	1. 1948	2. 1972	3. 1982	4. 1987	5. 1992	6. 1992	7. 1994	8. 2000	9. 2000	10. 2001
PUBLIC:										
IN GENERAL		●								●
EACH PERSON HAS A DUTY TO ACT			●							
ANY PERSON	●		●							
PUBLIC IN GENERAL						●				
ALL PARTIES CONCERNED					●					
ALL ACTORS OF THE SOCIETY								●		
EXPLICIT SPECIFICATIONS (PUBLIC):										
LOCAL COMMUNITIES						●				●
WOMEN							●			
CULTURAL DIVERSITY								●		
INDIGENOUS PEOPLE / KNOWLEDGE								●		●
NON-GOVERNMENTAL ORGANISATIONS						●			●	●
OTHER GROUPS						●				
USER GROUPS										
PRIVATE SECTOR										●
AUTHORITIES										
PUBLIC AWARENESS:										
IN GENERAL		●			●		●			●
AWARE AND EDUCATED POPULATION								●		
PROPAGATION THROUGH MEDIA		●								
MEANS OF INCREASING AWARENESS		●					●			●
EXCHANGE OF MATERIAL BETWEEN COUNTRIES							●			
ISSUE \ INITIATIVE	1. 1948	2. 1972	3. 1982	4. 1987	5. 1992	6. 1992	7. 1994	8. 2000	9. 2000	10. 2001

Table 3. Elements of involvement in broad international law including elements of public involvement.

ISSUE \ INITIATIVE	11. 1954	12. 1966	13. 1971	14. 1972	15. 1973	16. 1979	17. 1985	18. 1986	19. 1989	20. 1992	21. 1992	22. 1994	23. 1997
ACCESS TO INFORMATION:													
ON THE STATE OF THE ENVIRONMENT			●							●	●		●
MAKE INFORMATION AVAILABLE					●	●	●					●	
TO BE INFORMED OF A SPECIFIED ACTIVITY												●	
TRANSPARENCY OF THE DECISION- MAKING PROCESS													
PUBLIC PARTICIPATION:													
IN INITIATIVE MEETINGS				●	●	●	●		●	●	●	●	●
IN GENERAL											●	●	
PARTICIPATION IN THE MANAGEMENT												●	
PUBLIC PARTICIPATION IN DECISION-MAKING												●	
POSSIBILITIES FOR MAKING COMMENTS ON OR OBJECTIONS TO PROPOSED ACTIVITY / PARTICIPATION IN EIA										●		●	
DIALOGUE													
ACCESS TO JUSTICE:													
ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS		●											
ACCESS TO JUDICIAL AND ADMINISTRATIVE PROCEEDINGS / RIGHT TO BRING BEFORE THE APPROPRIATE COURT													
ACCESS TO MEANS OF REDRESS / TO APPEAL AGAINST THE DECISION													
ISSUE \ INITIATIVE	11. 1954	12. 1966	13. 1971	14. 1972	15. 1973	16. 1979	17. 1985	18. 1986	19. 1989	20. 1992	21. 1992	22. 1994	23. 1997

Table 4. Specifications of the public and public awareness in broad international law.

ISSUE \ INITIATIVE	11. 1954	12 1966	13 1971	14. 1972	15. 1973	16. 1979	17. 1985	18. 1986	19. 1989	20. 1992	21. 1992	22. 1994	23. 1997
PUBLIC:													
IN GENERAL													
EACH PERSON HAS A DUTY TO ACT													
ANY PERSON	●	●		●									
PUBLIC IN GENERAL											●	●	
ALL PARTIES CONCERNED													
ALL ACTORS OF THE SOCIETY													
EXPLICIT SPECIFICATIONS (PUBLIC):													
LOCAL COMMUNITIES												●	
WOMEN		●										●	
CULTURAL DIVERSITY		●											
INDIGENOUS PEOPLE / KNOWLEDGE													
NON-GOVERNMENTAL ORGANISATIONS		●		●		●	●		●		●	●	
OTHER GROUPS												●	
USER GROUPS												●	
PRIVATE SECTOR												●	
AUTHORITIES								●				●	
PUBLIC AWARENESS:													
IN GENERAL										●	●	●	●
AWARE AND EDUCATED POPULATION													
PROPAGATION THROUGH MEDIA										●			
MEANS OF INCREASING AWARENESS			●	●			●			●	●	●	
EXCHANGE OF MATERIAL BETWEEN COUNTRIES				●				●			●		
ISSUE \ INITIATIVE	11. 1954	12 1966	13 1971	14. 1972	15. 1973	16. 1979	17. 1985	18. 1986	19. 1989	20. 1992	21. 1992	22. 1994	23. 1997

Table 5: Elements of public involvement in general regional initiatives (European ASEM partners are members of 28, 30, 34 and 35: initiatives 41 and 42 have Parties from both regions, the other ones are Asian initiatives)

ISSUE \ INITIATIVE	24. 1981	25. 1984	26. 1984	27. 1987	28. 1988	29. 1990	30. 1991	31. 1992	32. 1994	33. 1994	34. 1995	35. 1996	36. 1997	37. 1999	38. 2000	39. 2000	40. 2000	41. 2001	42. 2001
ACCESS TO INFORMATION:																			
ON THE STATE OF THE ENVIRONMENT				●	●					●	●	●		●		●	●	●	●
MAKE INFORMATION AVAILABLE	●		●		●		●	●		●		●		●		●	●	●	●
TO BE INFORMED OF A SPECIFIED ACTIVITY												●					●		●
TRANSPARENCY												●					●		●
PUBLIC PARTICIPATION:																			
IN GENERAL					●		●	●	●		●	●	●	●		●	●	●	
PARTICIPATION IN THE MANAGEMENT										●	●					●	●	●	
PUBLIC PARTICIPATION IN DECISION-MAKING					●					●		●				●	●	●	●
POSSIBILITIES FOR MAKING COMMENTS ON OR OBJECTIONS TO PROPOSED ACTIVITY / PARTICIPATION IN EIA											●	●							●
DIALOGUE					●												●		
ACCESS TO JUSTICE:																			
ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS					●													●	●
ACCESS TO JUDICIAL AND ADMINISTRATIVE PROCEEDINGS / RIGHT TO BRING BEFORE THE APPROPRIATE COURT												●							●
ACCESS TO MEANS OF REDRESS / TO APPEAL AGAINST THE DECISION																			
ISSUE \ INITIATIVE	24. 1981	25. 1984	26. 1984	27. 1987	28. 1988	29. 1990	30. 1991	31. 1992	32. 1994	33. 1994	34. 1995	35. 1996	36. 1997	37. 1999	38. 2000	39. 2000	40. 2000	41. 2001	42. 2001

Table 6. Public participation and environmental awareness in general regional initiatives (European ASEM partners are members of 28, 30, 34 and 35; initiatives 41 and 42 have Parties from both regions, the other ones are Asian initiatives)

ISSUE \ INITIATIVE	24. 1981	25. 1984	26. 1984	27. 1987	28. 1988	29. 1990	30. 1991	31. 1992	32. 1994	33. 1994	34. 1995	35. 1996	36. 1997	37. 1999	38. 2000	39. 2000	40. 2000	41. 2001	42. 2001
PUBLIC:																			
IN GENERAL	•																	•	•
EACH PERSON HAS A DUTY TO ACT									•					•		•		•	•
ANY PERSON												•	•						•
BROADEST PUBLIC																			
ALL PARTIES CONCERNED										•						•	•		
ALL ACTORS OF THE SOCIETY								•											
EXPLICIT SPECIFICS (PUBLIC):																			
LOCAL COMMUNITIES							•					•						•	•
WOMEN																	•	•	•
CULTURAL DIVERSITY																			•
INDIGENOUS PEOPLE / KNOWLEDGE							•	•				•					•	•	•
NON-GOVERNMENTAL ORGANISATIONS					•							•					•	•	•
OTHER GROUPS											•								
USER GROUPS											•						•		
PRIVATE SECTOR					•			•			•		•			•	•	•	
AUTHORITIES			•													•	•		
PUBLIC AWARENESS:																			
IN GENERAL	•		•		•				•		•	•		•		•		•	•
AWARE AND EDUCATED POPULATION																		•	•
PROPAGATION THROUGH MEDIA											•						•		•
MEANS OF INCREASING AWARENESS	•				•			•	•	•	•			•		•	•		•
EXCHANGE OF MATERIAL BETWEEN COUNTRIES					•			•								•	•		•
ISSUE \ INITIATIVE	24. 1981	25. 1984	26. 1984	27. 1987	28. 1988	29. 1990	30. 1991	31. 1992	32. 1994	33. 1994	34. 1995	35. 1996	36. 1997	37. 1999	38. 2000	39. 2000	40. 2000	41. 2001	42. 2001

Table 7. Elements of public involvement in regional supranational law.

ISSUE \ INITIATIVE	43. 1974	44. 1974	45. 1976	46. 1979	47. 1985	48. 1985	49. 1990	50. 1971	51. 1991	52. 1992	53. 1992	54. 1992	55. 1998	56. 2001
ACCESS TO INFORMATION:		–												
ON THE STATE OF THE ENVIRONMENT			●				●	●					●	
MAKE INFORMATION AVAILABLE			●	●	●	●	●			●	●	●	●	
TO BE INFORMED OF A SPECIFIED ACTIVITY							●	●					●	●
TRANSPARENCY											●		●	●
PUBLIC PARTICIPATION:		–												
IN INITIATIVE MEETINGS														
IN GENERAL						●		●						
PARTICIPATION IN THE MANAGEMENT														
PARTICIPATION IN DECISION-MAKING			●										●	
POSSIBILITIES FOR MAKING COMMENTS ON OR OBJECTIONS TO PROPOSED ACTIVITY / PARTICIPATION IN EIA					●				●				●	●
DIALOGUE														
ACCESS TO JUSTICE:		–												
ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS							●						●	
ACCESS TO JUDICIAL AND ADMINISTRATIVE PROCEEDINGS / RIGHT TO BRING BEFORE THE APPROPRIATE COURT	●						●						●	●
ACCESS TO MEANS OF REDRESS / TO APPEAL AGAINST THE DECISION	●													
ISSUE \ INITIATIVE	43. 1974	44. 1974	45. 1976	46. 1979	47. 1985	48. 1985	49. 1990	50. 1971	51. 1991	52. 1992	53. 1992	54. 1992	55. 1998	56. 2001

Table 8. Public participation and environmental awareness in regional supranational law.

ISSUE \ INITIATIVE	43. 1974	44. 1974	45. 1976	46. 1979	47. 1985	48. 1985	49. 1990	50. 1971	51. 1991	52. 1992	53. 1992	54. 1992	55. 1998	56. 2001
PUBLIC:														
IN GENERAL			●		●			●	●		●			
EACH PERSON HAS A DUTY TO ACT														
ANY PERSON	●				●		●			●			●	●
PUBLIC IN GENERAL														
ALL PARTIES CONCERNED						●								
ALL ACTORS OF THE SOCIETY														
EXPLICIT SPECIFICATIONS (PUBLIC):		–												
LOCAL COMMUNITIES														
WOMEN														
CULTURAL DIVERSITY														
INDIGENOUS PEOPLE / KNOWLEDGE														
NON-GOVERNMENTAL ORGANISATIONS						●					●		●	
OTHER GROUPS													●	
USER GROUPS														
PRIVATE SECTOR						●								
AUTHORITIES						●		●						
PUBLIC AWARENESS:		–												
IN GENERAL				●							●		●	
AWARE AND EDUCATED POPULATION														
PROPAGATION THROUGH MEDIA														
MEANS OF INCREASING AWARENESS						●								
EXCHANGE OF MATERIAL BETWEEN COUNTRIES														
ISSUE \ INITIATIVE	43. 1974	44. 1974	45. 1976	46. 1979	47. 1985	48. 1985	49. 1990	50. 1971	51. 1991	52. 1992	53. 1992	54. 1992	55. 1998	56. 2001

PUBLIC INVOLVEMENT IN ENVIRONMENTAL ISSUES:

LEGISLATION, INITIATIVES AND PRACTICE IN ASIAN MEMBERS OF ASEM COUNTRIES

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Contents

Introduction

Ten years ago, member countries of the United Nations, NGOs and business leaders met in Rio de Janeiro in Brazil in 1992 at the United Nations Conference on Environment and Development to find ways to help save the earth from human destruction and set their agenda for the 21st Century. Principle 10 of the Rio Declaration highlights the significance of people's participation in environmental matters. It states:

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

Basically, it encourages the states to provide public access to information, participation in decision-making and access to justice. While in certain regions including Europe, Latin America and Africa, efforts have been made to formulate regional cooperation on implementation of Principle 10, this similar attempt is yet to be seen in Asia. Yet, even Asia will not be able to resist this global trend. "Towards Good Practices for Public Involvement in Environmental Policies", a policy paper produced by the Asia-Europe Environmental Technology Centre (AEETC) and submitted to the first ASEM (Asia-Europe Meeting) Environment Ministers' Meeting in Beijing, China, on January 17, 2002, is an ASEM regional effort towards this direction. (http://www.aeetc.org)

Whereas "Towards Good Practices…" targets the authorities, another initiative on similar issues has presented itself on the Asian horizon by a global coalition of civil society organizations. The Access Initiative (TAI), led by the World Resources Institute (WRI) in Washington D.C., has produced a set of indicators to assess national performance on public participation by NGOs. The first global report on pilot studies which applied these indicators in nine countries including: Chile, Hungary, India, Indonesia, Mexico, South Africa, Thailand, Uganda and the United States, will be launched at the World Summit on Sustainable Development (WSSD) on August 27, 2002. (www.accessinitiative.org) The ensuing Partnership for Principle 10 (PP10) is being proposed as a Type-II partnership to the WSSD with a network of not only NGOs, but also of governments and international organizations.

In this environment, this paper probes legislation, initiatives and implementations of public participation in Asian members of ASEM.

Methodology

The Asian members of ASEM include the 10 following countries: Brunei, Indonesia, Japan, Korea, Malaysia, the People's Republic of China, the Philippines, Singapore, Thailand and Vietnam.

Two sets of questionnaires were developed by the Finnish Environment Institute and the Thailand Environment Institute for the Asia-Europe Environmental Technology Centre (AEETC). One was on legislation and initiatives; the other was on cases.

A questionnaire survey was conducted in November 2000 with the assistance of AEETC's focal points in Asian countries of ASEM as well as individual experts in those countries. This was further supplemented by literature search, both in print and on the web. An Asian Experts Workshop was held in Bangkok May 24-25, 2001, to review and verify the collected information and analysis.

Limitation/conditions: It is not the purpose of this study to pinpoint the strengths or weaknesses of any particular country or to compare country performances. Rather, it is to present an overview of the state of public participation in these countries as a group, Asian members of ASEM, to present good practices and lessons learned. For this reason, when remarks or comments are made henceforth, the country names will not be revealed.

Definitions

It is worth setting forth definitions of three main concepts used in this study. They are "environmental information," "public participation," and "access to justice." The three concepts are here defined following the "Towards Good Practice…"

Environmental information refers to "*any information on the state of water, air, soil, fauna, flora, land, cultural and natural sites, human settlements and health, and on activities, policies, plans, programs or other measures significantly affecting or likely to affect these, and on activities or measures designed to protect these, including administrative measures and environmental programs.*"

Public participation is defined as "*the legal right and practical opportunities to affect decision-making, e.g. through statements to authorities making decisions on an activity, project, plan, process or program.*" Here, *public participation* and *public involvement* are not differentiated and are used interchangeably.

Access to justice is defined as "*the legal right and practical opportunities for challenging the decision on an activity with environmental implications through an appeal.*"

This paper begins with legislation and initiatives and only then moves on to implementation. For implementation, the paper presents the three access pillars in the order of access to environmental information, public participation in decision-making, and access to justice. At the end, recommendations and lessons learned are offered.

Legislation and initiatives

Public participation is recognized in the constitution in some of these countries such as the Philippines and Thailand. Most of these countries have either or both legislation and soft law requiring public involvement in specific sectors. The sectors that are governed by legislation or soft law requiring public involvement found in most countries are urban development and related infrastructure (land use planning) and pollution control (Environmental Impact Assessment, EIA).

The Philippines also has specific legislation involving public participation, e.g. the National Integrated Protected Areas System–NIPAS, the Indigenous People's Rights Act of 1997 and the 1991 Philippine Local Government Code. In Thailand, guidelines on how to conduct public participation in a public hearing process exist in the form of the Regulations of the Prime Minister Office. Given the increasing calls for public participation, the rising conflicts over environmentally impacted projects and the 1997 Constitution, the Council of State is preparing a new act on public involvement.

In Singapore, public involvement is not recognized in the national legislation. However, a public process such as public consultation is sometime organized; but it is still the government who makes the decision. In Indonesia, Environmental Management 1997 (EMA 1997) guarantees the right to access environmental information and the right to participate in environmental management. Certain government offices provide more public involvement than others due to the nature of their mandates. Examples of these agencies include, e.g. BADAPEL (government office in charge of reviewing environmental impact assessment), the State Secretary, Specific Commission, and Bapenas. However, more often than not, only selected NGOs are involved.

The Korea National Environment Technology Information Center under the Ministry of Environment of Korea has established a website (www.me.go.kr) to provide environmental technology and industrial information services. This is to fulfill the people's right to have access to information and to engage in two-way communication. The Environmental Impact Assessment Act 1993 (later amended) stipulates that a public consultation must be held to obtain the opinions of local residents.

In Malaysia, the public can seek redress from a public body – the local councils (with the representation of NGOs, Residents' Associations, etc.) by lodging a complaint. The Public Complaint Bureau accepts complaints against actions and decisions of the government.

Legislation and initiatives on public involvement in these countries are supported in various ways such as by the provision of guidelines and recommendations and by the conduct of pilot projects.

Roles of donors

Donors are important forces driving the governments to open up environmental processes for public participation in project implementation. This is for example the case in Vietnam, where donors urged the government to disclose information to the public.

In the Philippines, multiple standards are found. While there are local standards, international and regional banks also have their own standards, which differ among themselves. It has become difficult for implementing agencies to choose and decide on any one. In one case, although preparation for participation action plan was not the responsibility of the agency in question, the funding bank wanted it to be prepared for six projects that it was funding. While one international bank made it a condition, another regional bank only mentioned one or two lines about it.

Cross-cutting issues in public involvement in environmental issues

Cross-cutting issues (i.e., gender, cultural differences, minority and indigenous people issues) are not recognized uniformly among the countries studied. The Philippines has a significant amount of legislation covering cross-cutting issues including the Indigenous People's Rights Act of 1997. In Thailand, equal rights for all citizens are broadly guaranteed by the 1997 Constitution. Vietnam has soft laws addressing cross-cutting issues to promote participation. In Malaysia, indigenous people are recognized in soft law provisions concerning selected sectors. All cross cutting-issues are covered in either sectoral legislation or soft law in China. For example, the *"Law on the Protection of Women's Interest and Rights of the People's Republic of China"* and the *"Development Program of Chinese Women"* which aim to protect women's rights and ensure their participation in national management and environmental decision-making (GEO 2000: 249). In Singapore, all cross-cutting issues are recognized for access to justice. In Indonesia, there is the National Plan for Gender Policy 2002-2004, which came into force in 2000 as a decree.

Legal standing of civil environmental organizations

With regard to the legal standing of civil environmental organizations, one or another form of screening is applied before they can file complaints and appeals in environmental matters and act on behalf of individuals. In most cases, these NGOs have to register with their governments.

NGOs are sometimes seen by governments in this region as intermediary or the go-between for the officials to communicate with the grassroots. They are also taken as representing the general public. Thailand allows selected registered NGOs to sit in their National Environment Board. In China, in both national and local governments, officials involve selected NGOs in their environmental projects. However, there is no regulation or law that lays down how the Chinese environmental NGO can be involved in public hearings. EIA is defined by a single sentence: "*that all construction must have conducted an EIA*". EIA, which is approved at different levels of the government, can be conducted only by licensed institutions.

IMPLEMENTATION: FINDINGS FROM CASES

1 Background

1.1 Sector

The study involved projects in many sectors. They were mostly in resource and land use management (7), forestry (7), power production (6), protected area planning and management (4), urban development and related infrastructure (4), pollution control (4), rural community development (2), tourism (2), and transportation (1).

Most of these projects were started in the 1990s although a few of them started back in the 1970s. Some of them take or will take as long as twenty years to complete whereas others (a minority) took only a few months. Ten of the total 33 cases were already completed. Most cases are ongoing. One case has been indefinitely delayed since 1997.

1.2 Base for public involvement

There were only six cases in which public involvement was based on law, or required by law or regulation. Nine cases were based on soft law (i.e., general policies, programs, and recommendations). As many as sixteen cases saw public involvement occur at a later stage of projects initiated by the authorities without legal requirement. There were nine cases where public involvement was adopted by private developers. Public pressure caused public involvement in four cases. And two cases were based on donor's requirement.

1.3 Type of public involvement

Although most of the cases studied witnessed dissemination of information about the projects to interested persons, the information given was either distributed only partly or inadequately. In some cases, only the master plan was given to interested people. There were cases where it took as long as three years before information was given to the public.

However, in almost all cases, there were consultations of the public organized by the authorities before decisions were made although at a later stage of the planning process.

In very few cases stakeholders were part of the decision-making committee, i.e., having direct participation in decision-making, although mostly at a later stage. In other cases, stakeholders were invited to a public hearing, which affected the decision — indirect participation in decision-making. With regard to access to justice, approximately half of the cases showed that people had the right to appeal against decisions of the authorities.

2 Details of public involvement

2.1 Access to information, participation in decision making, and access to justice

Access to information

Two-thirds of the cases studied found that information was given to the public on planned activities. There were fewer cases where provision of information on the assessment was observed. In one case in

particular, information about EIA assessment was released only after a special negotiation. About two-thirds of the cases studied saw the provision of means for noting the interests of stakeholders and creation of a forum to discuss significance of issues related to the planned activity and its assessment.

<u>Participation</u>
About two-thirds of the total cases saw a provision of a forum for people to participate and present their views on the plan for the project/activity. Half of the cases provided a forum for stakeholders to transmit their own information and experience into the planning process as well as the decision-making. However, only one third offered a procedure for clarifying the rules of participation and the dialogue between stakeholders and developers.

<u>Access to justice</u>
Very few cases (9) offered any mechanisms for appeals.

2.2 How information was made available to the public

The most common means which the authorities or project proponents used to give information to the public was found to be public presentation in seminars or conference (14). Newspapers were another popular media (10 cases). Others returned to distributing leaflets (8), broadcasting on television or radio (6), and official notice boards at municipal or district level (5). Only in three cases was internet used to disseminate information. Some projects utilized more than one means to widen their circulation of the information. There was one case in China where all the means listed in the questionnaire were used.

2.3 Means of participation (techniques)

In the questionnaire, eight techniques were listed. They were: consultation with potentially affected public, appointed citizen committees/panels, public hearing, discussion forum, questionnaires, survey methods, group work techniques with selected groups, and others.

It was found that the technique most commonly used was survey methods (14). This was followed by appointed citizen committees/panels (12), group work techniques with selected groups (10), discussion forum (9), public hearing (8), consultation with potentially affected public (8), and questionnaires (2).

Interestingly, many more techniques than those listed in the questionnaire were also found. They were: community meeting (2), village committee meeting (1), press conference (1), local consultation (1), stakeholder meeting (1), demonstration (1), presentation to parliament (1), presentation to the national EIA committee (1), participatory legal drafting (1), consultation of academics (1), protest rally (2), meeting of cooperative members (1), irrigation association (1), conducting a study (1).

It can be observed that techniques used include making presentation of the project to those in power (i.e., national parliament, national EIA committee, appointed committee) and the knowledgeable (i.e., consultation with academics). The latter can be associated with seeking additional knowledge (i.e., conducting a study). This group of techniques can be seen as means for project proponents to seek justification and support for their proposed activities through the approval of those in high-level positions.

Another group of techniques was used to communicate with stakeholders. This group included getting involvement from potentially impacted people, irrigation associations, cooperative members, and specific groups.

2.4 Getting people involved

When contemplating involving the public, it is often asked who exactly the public are, whom to invite, and so on. Based on the cases studied, it was found that authorities topped the list of people invited (14). This is understandable as they were those whose responsibility is one way or another related to the proposed activity. Next on the list, but very close to the top, were environmental civil organizations (13). This is for at least two reasons, first they were seen as representing the public and especially the potentially impacted people. Second, they are organized people of environmental interests and have a loud voice. Authorities or private project proponents cannot proceed with their projects if they overlook this group. Individual citizens were also invited in many of the cases studied (12). Apart from these three categories, others were invited only in a small number of cases. Other organizations were found to be invited in six cases. Interest groups and international organizations were invited to get involved in only two cases. The rest of them, women's groups, the authorities in a neighboring country, and the public in a neighboring country, were invited to participate in only one case each.

Where invitations were extended in these cases did not show much difference. It was found that invitations were distributed mostly at the local level (11), regional or district level (10), national (in federal states) (9) and provincial (in federal states) (8). This finding showed that the local level was regarded as the most important, followed by regional and national. The provincial level has the least role in this regard. Still the difference is not so significant.

2.5 Public involvement in practice: representation, time of initiating the involvement, conflict and public support

When looking at persons actually involved in the project process, it is important to mention that the persons actually involved correspond well with persons invited to become involved. What can be learned here is that people will actually get involved if they are allowed a chance to do so.

In it is widely recognized by participation practitioners that timing or the stage at which public involvement was initiated is considered crucial to the success of the public participation process and the gaining of public acceptance. Unfortunately, more often than not, officials initiated public involvement only later in the process. Our study confirmed this as it showed that most initiations occurred when detailed planning was already taking place (18) and after the preliminary decisions on the implementation of the activity/project had already been made (13). Only few cases where public participation was initiated at a level of project idea, before any detail planning had taken place (9). However, there were not much fewer cases when the public were invited to get involved when the detailed plans were ready (7). Five cases in five countries witnessed the initiation of public involvement after the decision on the project has been made, e.g. the contract signed (5).

In terms of conflict and support, it was found that public opposition to the project was found in virtually all countries. The opposition came from local people, fishermen whose livelihood would be impacted by the project, NGOs, alternative energy groups, students and academics.

With regard to the form of opposition, demonstration or protest (9) was the most commonly form used in this region and found in practically all countries. The next often used forms were expressing opposition via mass media (5) and filing petitions (3). Physical violence is rare in this region. Only one case was found.

What would then be the authority's response to the oppositions? Based on the cases studied, it could be observed that the authorities' responses to oppositions varied also depending on the country. There were cases when the project was halted after the opposition, and cases where the participation process was extended to allow more dialogue. There were also about the same number of cases where authorities simply ignored the opposition and the projects continued. In yet one other case, the government modified the spatial plan that faced opposition, but the implementation of the decision was not taken.

It was observed that interest groups and local people do not always oppose the projects; the study also found high incidence of public support for the projects. However, it is noticeable that these incidents were found more often in two countries than in the others. Project supporters included govern-

ment officials, local authorities, landowners who foresaw a rise in the value of their land with the arrival of the new projects, local stakeholders such as farmers and water consumers, local NGOs, indigenous elders, mass media, and universities.

3 Lessons learned

The lessons learned from the cases studied are classified in accordance with the three pillars into access to information, participation and access to justice.

3.1 Public access to information

The lessons learned about public access to information are many and are grouped into benefits of having public access to information, type of information given, legal support for access to information, and practical ways to do it right.

Benefits

- Public access to information is conducive to project success.
- Transparency in terms of access to information is vital to achieving equitable development.
- Without adequate information, affected persons cannot make meaningful contribution.
- When the public are allowed access to information, trust and acceptability of the project proposal are enhanced.
- When developing a new project of a novel concept that is not already understood among the local people, such as ecotourism, it is necessary to allow a two-way flow of information and provide training and preparatory assistance to the local people. Their concerns will later be built into the project as such making the project relevant to their needs and acceptable to them.
- Public access to information will eventually lead to two-way communication and can serve as an important tool for encouraging participation in local governance.
- The larger the project and the greater the environmental and social impacts, the greater the need for open dialogue between project owners, including the government, and the people affected.

Type of information given

- It is important that the information given to the people, especially the potentially impacted people, be comprehensive and relevant. For example, in one case, partial information given to the public only presented the project to them as a threat to their livelihood, thus causing protests. In another case about an irrigation project, information about the development and maintenance of irrigation infrastructure was given to the people but no information about pricing and water charges, which would directly impact on them.
- Often officials assume that the project will benefit the people anyway whether they know about it at the beginning or not. Thus they reason that it is not necessary to inform the local people. In practice, it is important that the objectives of the project are disseminated to the local people — to all stakeholders including peasants.
- Implementation will be successful when deliberations on objectives and action program are held with beneficiaries.
- People should be informed as to how they can access the information they wish to have, e.g. agreed level of water quality and actual quality of water. They should also know how to go about filing their complaints.

Institutional support

- It is necessary to have a comprehensive act on public access to information and also the public's right to know. The information should be provided without asking, and it should be transparent and freely accessed.
- The decentralization process has addressed and increased the public's access to information.

How-To

- To have better channels for dialogue amongst a variety of stakeholders need planning.
- The information should be delivered using various types of media and using simple language that is easy to understand.
- Access to information should be initiated very early, from the visioning stage of the development project.
- Information dissemination should begin by establishing special contact with the affected parties.
- Many issues such as energy policy and technical terms are difficult to communicate to local community. Therefore it is important to translate them into a language easy for local and indigenous people to understand. This may mean acquiring assistance from specialists and budgeting accordingly.
- Different kinds of media should be employed to help disseminate information as people have unequal access to different media, even though it will imply extra costs.

3.2 Public Participation

Benefits

- Several cases have shown that public participation in planning will lead to efficient planning, better project preparation, easier proposal acceptance, better project management, and can lead to innovative solutions. It will also lead to better post-implementation management. This is all due to the sense of ownership among stakeholders built up through the participation process.
- Through the participation process, outstanding objections are identified. When they are heard at an early stage, solutions can be sought and the problems settled by discussions, negotiations and information exchange. Public participation brings social and political solutions to the problem.
- Local people can most benefit from a project when they can participate in the management of it.
- Public participation builds trust, faith and sense of ownership in the stakeholders and interest groups involved. This then leads to solutions faster than the access to justice option.
- People's participation in planning can prevent potential conflict. It can also lead to the identification of an entirely new set of objectives. It requires greater penetration by government machinery into stakeholder groups.
- It can build local experience on different aspects into the overall project scheme thereby resulting in project activities that suit local patterns. A case in forest conservation reveals that the participation process led to the rise of incomes of local people while reducing their dependency on the forests — preventing resource depletion.
- Allowing people to participate from the planning stage onward will help avoid the social and environmental issues of compensation and environmental degradation at later stages.

Who to get involved/ Stakeholders

- All concerned parties, especially local people, should be involved from the very beginning of the project.
- People's voice counts in projects that will impact on them. A case shows that water suppliers should not have decided the price of the water by themselves. People's or consumers' willingness to pay is a crucial factor needing to be explored before setting the water price. In such a case, public involvement in pricing would offer a win-win solution to both parties.

- Another case reveals that it was better to allow some stakeholder groups to opt out of the system rather than temporarily forcing them into acceptance and invest scarce resources in a system doomed to fail.
- Even in a transitional economy, it is found that in order to have successful implementation, both local people (stakeholders) and local government have to be involved in the decision-making process.

How-To

- Even if political will to practice public participation does exist, officials often encounter the 'how to' questions. Often, it is difficult to change government's conventional ways of doing things. The authorities should first drop their 'authoritative' attitude and adopt a cooperative approach instead.
- In many countries, survey was used to obtain public needs, opinion and feedback. It can also be used to get answers regarding worries, fear and the culture of local people.
- In general, people will not be interested in spending their time on participation unless the incoming project or activity is likely to pose problems to them directly. Hence, efforts need be made to educate and inform people so that they will be willing to participate in decision-making. They should be informed and allowed to participate in the decision-making process as early as at the level of project idea formulation.
- In some cases, baseline studies may be necessary.

NGOs as intermediaries for participation

- Several cases have shown that NGOs should play the role of intermediaries as participation could not be achieved by the government machinery alone.
- NGOs have to take an active role in mediating and decreasing tension between local people and local policy makers.
- Sometimes governmental officials tend to underestimate the views and knowledge of the local people and exclude them from decision-making. Media helps attract the attention of the government and international organizations. They can therefore help to initiate public participation.

Institutional support

- In more than one country, policy shift from top-down to a decentralized and democratic process helps facilitate the participation process and contribute to enhancing local governance of policies and plans. One case saw decentralization in a community forest enabling several parties in the community to develop a working relationship. As a result, they had the opportunity to participate in planning and decision-making in community forest management.

3.3 Public access to justice

Public access to justice helps lend support to other two pillars mentioned above. However, experiences in the Asian members of ASEM have shown that it serves best as the last resort. And even when laws are in place, it does not always guarantee that the people will have justice. Below are lists of benefits, problems, role of NGOs and the precondition of institutional support.

Benefits

- Access to justice at the village level will mitigate transgression of individual rights with regard to resources on which people may be dependent, however, access to justice may be tedious and time consuming.
- The use of access to justice can be avoided if participation is allowed before a decision is made.

- Concerns of local communities having been gradually built into the legislation and its implementation guidelines remove the necessity for access to justice.
- To consolidate functional working relationships between the developers and affected parties and to properly and timely respond to requests is to help avoid turning to access to justice.
- Cases show that when local parties were involved in decision making processes, the necessity for access to justice did not arise.

Problems

- It was observed that despite having the law in place, it is difficult to appeal because of the corrupt system and the NGOs lack of money for good lawyers and experts.
- In some countries, the appeals of the public have very few chances of winning in court. This is because the decision of the court depends on political will even though the people have the right to appeal.
- In a country studied, the permit system consists of principal and operational permits. The general public can only appeal against the operational permit but not principal permit.
- Whereas there is AN administrative court in some countries, it is still lacking in others. For the latter, it is very important to create new mechanisms so that people who are impacted by government policies or damaged by government malpractice can seek redress.

NGOs

When conflict arises, open legal systems are needed and facilitators such as NGOs are important in maintaining degrees of transparency between the developers and the affected parties, especially when affected parties cannot express themselves clearly.

Institutional support

In order to have access to justice, it has to be institutionalized that people have the right to good environment, sustainable development, food security, and good health.

4 Economic considerations: Cost and benefit of public participation

The financial cost of including public participation in the project process is not always recorded. However, for those cases in which the expenses were reported, they varied from USD 700 to USD 133,000. Indeed, the monetary costs of public participation depend on the scale of the project and the respective impacts on the people.

Nevertheless, in most cases it was observed that the benefits overweigh the costs. These benefits are in terms of: better relations between the people involved and between these people and the government and that local people are aware of some of the impacts of the project, and have been able to raise their concerns. Benefits also include having built a public sense of ownership for the project, completion of the project with no delay through absence of resistance from local people, no compensation costs after project implementation and better overall outcomes of the projects.

In particular, when compared with compensation costs, money spent to finance public participation is considered much more efficient. In one case, an electricity generating company had to pay the impacted community per kwh of electricity produced each year. This means long term costs for the developer. Moreover, compensation costs are often unpredictable, hence letting the project budget get out of control.

In another case, with public participation, an irrigation system has become more useful for the local people, because they can participate in its management. Public involvement also creates a sense of ownership, and the local people are willing to repair the equipment. On the other hand, the equipment is easier to repair for the local people, because they have been able to influence the decisions concerning equipment planning and design. The infrastructure based on public involvement is also ecologically more sound.

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Appendix

List of cases

1. **Three Gorges Dam;** Yangtze River, China.
2. **Indications from Community Forestry in China;** Yunnan, China.
3. **Environmental Information Disclosure;** Huhhot and Zhenjiang cities, China
4. **EIA on the Construction of Bay Bridge in Qingdao:** Shandong, China.
5. **Eco-tourism in two Indonesian Parks;** Komodo and Kelimutu National Parks, Indonesia.
6. **The Community-Based Forest Management (CBFM);** Indonesia.
7. **Participatory Development in the Urban Centre of Samarinda: Niaga Experience;** Samarinda city centre, Indonesia.
8. **Participatory Development in the Urban Centre of Samarinda: The Gang Manggis Experience;** near Samarinda city centre, Bandung, Indonesia.
9. **Waste Management;** Java, Indonesia.
10. **Conservation of Mangrove Forest in Pantai Timur Surabaya;** Eastern coast of Surabaya, Java, Indonesia.
11. **Java Irrigation Project;** River Brantas in East Java, Indonesia.
12. **Tangguh Gas Exploitation Project;** West Papua, Indonesia.
13. **Addressing Local People's Rights into Regional Government Policies;** Sanggari District - West Kalimantan, Toraja District - South Sulawesi, and Garut District - West Java, Indonesia.
14. **Drinking Water Use;** Jakarta, Indonesia.
15. **Bakun Dam;** Sarawak, Malaysia.
16. **Tanjung Tuan Wildlife Area:** Penang, Sabah and Sarawak, Malaysia.
17. **Calauit Game Preserve and Wildlife Sanctuary;** Busunga, Palawan, Philippines.
18. **Philippines Integrated Protected Areas System (IPAS);** Mindoro and Palanan, Philippines.
19. **Communal Irrigation Development Project (CIDP I and CIDP II);** North Luzon, Philippines.
20. **Community Based Resource Management;** Coron Island, Philippines.
21. **Community Forestry and Decentralization Policies;** Philippines.
22. **San Roque Multi Purpose Dam;** Lower Agno River Basin, Philippines.
23. **Resettlement Action Plan for Road Projects under the National Road Improvement and Management Program (NRIMP) (5 road sections):** in the provinces of Benguet, Zamboanga del Sur, Surigao del Sur/Norte, Davao Oriental, Davao del Sur, Bukidnon, Davao City, Negros Occidental and Negros Oriental, Philippines.
24. **Governance and Local Democracy (GOLD) Project (7 projects):** Palawan Province, Philippines.
25. **Singapore Concept Plan Review;** Singapore.
26. **Forest Bufferzone Management;** Huai Kha Kaeng Wildlife Sanctuary, Thailand.
27. **Khao Sok National Park;** Suratthani, Thailand.
28. **Use of Traditional Forest Conservation System for Forest Protection;** Mae Tha Watershed Forest, Chiang Mai, Thailand.
29. **Pak Mun River Hydropower Dam Project;** Kaeng Tana Rapids, Ubon Ratchathani, Thailand.
30. **Hin Krut Coal-fired Thermal Power Plant:** Prachuap Khirikhan, Thailand.
31. **Water Management Decentralization;** Red River Delta (RRD), Southern Vietnam.
32. **Sustainable Utilisation of Non-Timber Forests Products:** Ha Tinh and Bac Kan, Hanoi, Vietnam.
33. **The Settlement of Ecovillages in Fragile Ecosystems (5 villages):** Tuyen Quang Province, Central Vietnam.

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PUBLIC INVOLVEMENT IN ENVIRONMENTAL ISSUES:

LEGISLATION, INITIATIVES AND PRACTICE IN EUROPEAN MEMBERS OF ASEM COUNTRIES

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Contents

1 Introduction

Public involvement in environmental issues is closely linked with democracy and the development of civil society but it is also connected to the methodology of effective planning. (Coenen et al. 1998) Public involvement is related to basic societal functions and therefore its interpretation depends on the socio-cultural context. Thus the emphasis on the different aspects and functions of public involvement varies.

In this study we examine how different aspects of public involvement have been dealt with in legislation, in soft law and in practice. The approach we use is based on a comparison of general international recommendations concerning good practice in public involvement with the actual implementation in the EU member states. This report is the result of a study that was carried out as part of a project on public involvement in environmental aspects in the member countries of the Asia-Europe Meeting (ASEM), launched in June 2000. The project has been coordinated by the Asia-Europe Environment Technology Centre (AEETC), an institution under ASEM, which has this topic as one of its priority areas. The aim of the project is to provide material for developing and enhancing public involvement in environmental issues among the ASEM partners.

2 Material and methods

Information on legislation and soft law, which includes policy statements, guidelines, and general advice, and on public involvement in practice was collected and analysed. The material was gathered from European ASEM countries using two methods. First, information was obtained by e-mail or telephone interviews 1) with persons in the central government or government agencies (for legislation and soft law) and 2) with persons who had been involved in a case (in practice). Second, the relevant literature was reviewed.

The interviews (for countries, cases and submitters see Appendices I and II) were carried out and the literature analysed as specified in the questionnaires. The AEETC project team developed these questionnaires; one for legislation and soft law and one for practice (Appendices III and IV) . Additional information on legislation and soft law was obtained from a study carried out by Environmental Resources Management (ERM) for the European Commission (EC) (ERM 2000).

In this report, countries or cases are not identified separately except in certain cases. Instead, the analysis aims at providing an overview of the variation in addressing public involvement at the levels of law, soft law and practice.

The concept of public involvement is dealt with according to the three pillars of the Aarhus Convention, as is the information from countries and cases: access to information, participation in planning and decision making and access to justice. For each pillar a set of issues is raised and examined in the light of the findings of the study.

The material on national legislation and soft law describes the conditions in the European ASEM countries, in practice the members of the EU (data is missing from Luxemburg and Belgium is represented by the situation in the Flanders region only). The cases, including nine interviews and nine literature studies, provide examples of public involvement in practice in varying geographical parts of the European Union and represent different sectors from the list compiled by the AEETC project team (Table 1). The cases deal with both governmental and private activities. The processes of public involvement are either finalized or almost finalized, but their separate evaluations are not yet available.

Table 1. The sectors that were specifically examined in this study.
- power production
- resource and land use management
- protected area planning and management
- urban development and related infrastructure
- rural community development
- pollution control
- tourism

After analyzing the three pillars of public involvement, an overview is presented on the relationship of the studied countries to the Aarhus Convention (1998), which represents the most recent development in international law in the field of public involvement.

The summary analysis is synthesized in the last chapter using the SWOT-method by which we examine the Strengths, Weaknesses, Opportunities and Threats related to public involvement in the ASEM countries with reference to sustainable development as it is understood in the UN Agenda 21 process.

2.1 Public access to information

Every person has the right to live in a healthy environment and the obligation to protect the environment. To assert this right and meet this obligation, citizens must have access to information, be entitled to participate in decision-making and have access to justice in environmental matters. The information ensure that the public can participate in an informed fashion, and the access-to-justice is to ensure that participation happens in reality and not just on paper. (UN/ECE 2000:4,6)

This section provides an overview on how access to information is ensured in law and in soft law and how it is provided in practice in the European Union member countries.

2.1.1 Ensuring access to information by general legislation

When governments make environmental information publicly accessible and enable the public to participate in decision-making, they help meet society's goal of sustainable an environmentally sound development (UN/ECE 2000:4).

One way of ensuring that all relevant information is provided to the public is through cross sectoral, general legislation. In all the studied countries general legislation ensures access to information. The concept of access to information is thus not restricted to specific sectors or types of information, but is a general principle that applies to all material produced by authorities. This is not, however, complete for all the countries and there may be gaps in certain specific sectors or issues, e.g. mining and forestry. The degree to which preparatory material is accessible also varies. In some countries material under preparation is also accessible, whereas others restrict the access to finalised documents.

2.1.2 The legal basis for sharing the responsibility of access to information among authorities

The right of the public to receive information and the obligation of authorities to collect and disseminate information of public interest without the need for a specific request is called "active" access to information. Access to information is the first in time, since effective public participation in decision -making depends on full, accurate, up-to-date information. (UN/ECE 2000)

Access to information that has been ensured by general legislation encourages all authorities to provide environmental information. In eleven EU-countries, providing access to information is in legal terms a cross cutting issue for which all authorities carry responsibility. In the other countries, although access to information is a general principle, the legal basis for right to be involved is restricted to certain issues such as the environment and the spatial planning. Thus authorities that deal with these issues carry the main responsibility for providing access to information .

Although the provision of information is important in all sectors that have connections with environmental issues, there is a particularly high demand for openness in certain fields. Sector-specific legislation highlights the importance of public access to information in these fields. Sectors having specific legislation that include access to information are found in 12 of the countries. In some of these countries, the list given in this study (Table 1) is not entirely covered. For example in four countries tourism is not included in the sectors, and one country mentions GMO as a sector with specific legislation. Two of the countries have specific legislation, but the sectors are different from those listed (Table 1).

Countries with a federal structure (e.g. Germany, Belgium, Italy, Spain) have a multilayered structure of legislation. This is also the case with legislation concerning public involvement Source: interviews by SYKE.

Access to information is a cornerstone in environmental impact assessment. However, in the late 1990s there were no formal requirements in nine EU countries to inform the public of the decision taken on the basis of the environmental impact assessment. (ERM 2000).

2.1.3 Support for implementation of legislation and the existence of soft law

The tendency of soft law provisions to develop into legally binding rules can be shown by principle 21 of the 1972 Stockholm Declaration, reaffirmed through principle 2 of the 1992 Rio Declaration , and enshrined in a binding instrument in article 3 of the Convention on Biological Diversity. This provision declared that States should be internationally responsible for the environmental consequences of activities under their jurisdiction or control. (UN/ECE 2000:11)

Poor enforcement of legislation is often due to lack of support for the implementation, such as guides, training and monitoring. In most EU countries soft law and other measures support the implementation of the legislation on access to information. In two countries this was not the case. This may be due to the fact that access to information has become common practice in these countries and thus there does not seem to be a need for further support (two countries expressed this point), but it may also reflect incomplete planning of how actually to implement legislation on access to information (at least in one studied country). When implementation is supported, the means include guidelines (8 countries), recommendations (6 countries) and pilot projects (6 countries).

Sometimes recommendations or action programmes are used to support and strengthen general legislation. They may also encourage authorities to develop access to information when legislation is missing. In four countries of this study, there was soft law on access to information for the named sectors (Table 1). In the other countries soft law was not available or it was found in different sectors such as Agenda 21, or on a different level, such as the regional or municipal level.

2.1.4 Cultural and other cross-cutting issues in legislation or soft law

The human environment, including human health and safety, cultural sites, and other aspects of the built environment, tends to be affected by the same activities that affect the natural environment. They are explicitly included here to the extent that they are or may be affected by the elements of the environment. (UN/ECE 2000:38)

Cross-cutting issues such as culture, gender, indigenous peoples and minorities set special requirements for the provision of access to information. Legislation, but also recommendations and programs, is one way of making developers recognise the special needs of certain groups. Cross-cutting issues (Table 2) are not explicitly recognized in the legislation on public involvement except in one country. This can be explained by the fact that equal rights are generally guaranteed by the constitution. In one country a law on public administration requires equal opportunities for both sexes, but in general it appears that the identification of specific groups of people in sector legislation on public involvement is considered unnecessary or even in conflict with the constitution. In soft law, cross-cutting issues were touched upon in four of the studied countries at least to a certain depth (gender issues, minority issues). In general the cross-cutting issues are focused on at the regional or municipal level, the governmental level having only a general guiding role.

Table 2. The cross cutting issues examined in this study were:
- gender
- cultural differences
- minorities
- indigenous peoples

2.1.5 Distribution of information

*Information, even technical information, must be in a suitable format for the public and easy to obtain. Methods of providing information such as the Internet can appear very open but it might make it difficult for people to obtain the information if computers are not common. There is need to choose the right methods to provide the information for each case with the aim of making it as accessible to as many people as possible. (*Aarhus Handbook 2000)

The starting point in providing information is to distribute the information to interested parties. In the studied cases, information was distributed and access to it was provided for interested persons. This was generally required by law. In many cases the developer also had a voluntary interest to provide access to information beyond the formal requirements of the legislation.

All the countries studied had requirements for notifying a neighbouring country of possible significant transboundary impacts, but only two mentioned that special requirements have been made on public involvement in the neighbouring country (ERM 2000). All EU countries and the EU have signed the UN/ECE Convention on EIA in a transboundary context (1994) and 12 countries and the EU have ratified it. The Convention requires the public in the neighbouring country to be notified and invited to the EIA process.

Different cultures, different target groups and different activities may not be reached with one and the same form of information. By using several different means in providing information to the public, the involvement could be enhanced. In the studied cases, various ways of distributing information were used, even within one case. In some cases cultural differences were taken into account when the form of information was decided. In one case, mediators helped the public in understanding the message of the planners and scientists. This clearly helped to reduce conflicts and to find common ground. In another case, the developer assumed that people would seek information but did not assist them in finding it, thus causing frustration.

The examined cases have shown that acceptance problems have frequently resulted from lack of communication. The lack of communication can be aggravated by planners who fail to recognise the historical context, which may determine basic attitudes among both decision-makers and the public. Recognising and dealing with the past may provide new opportunities. For example one project, which had been dismissed as a 'dead plan' or a 'planning corpse', became feasible after specifically tackling this 'waste' and restoring communication between parties.

In one case, which dealt with planning on a strategic level, the approach of involving stakeholders was chosen because the previous plan had many complaints that were based on misunderstandings or suspicion. The involvement was voluntary activity from the developer´s side. Information was provided in a continuous process. A regular journal was started and a website with frequent updating was set up. Hundreds of visits to stakeholder groups were made. This resulted in high involvement of the stakeholders in the planning of the strategic plan and low involvement in the implementation phase. The provision of information was not stopped when the plan was finalised. In this way the stakeholders are kept up to date with the development and became prepared to get involved with the planning of the next plan.
Source: interviews by SYKE

2.1.6. Transparency of distributed information

The Aarhus Convention shall endeavour to ensure that officials and authorities assist and provide guidance to the public in seeking access to information, in facilitating participation in decision-making and in seeking access to justice in environmental matters (UN/ECE 2000:43).

The cases have shown that misleading or defective information may have unpredictable consequences and that a propaganda-type of information and atmosphere lowers the credibility of the developer. Information provided in an open and transparent way is a prerequisite for mutual trust in future dialogues. There were cases in which transparent information reduced appeals that had earlier been made due to misunderstandings. It was noted, however, that when real (transparent) information was given, it incurred a real cost for the developer in the sense that plans had to be modified.

In one case the developer provided unrealistic expectations to the local communities. According to the developer there were no environmental issues, everything was sustainable and only positive information was given. People were mislead and when the environmental and health problems started to occur it was noted that a real environmental impact statement (EIS) had not been carried out. After continuous efforts to collaborate, the local people realized from the responses that they were not being considered as part of the decision-making process and their interests were not being taken care of. Only after the local people started to demonstrate and act (a dynamite explosion blasted the power station) did they get a response from the developers and the government and the environmental impact assessment (EIA) was made. People did not trust the results anymore and the project was stopped. After one year the health and environmental problems linked to the activity disappeared. Source: (Kousis1993).

2.1.7 Information may activate people to participate

Good information is vital for effective public participation. There are two types of information that participants need: information about the process and information about the proposal. To participate effectively, people need to know that the exercise is happening and how they can get involved. This is usually done by an announcement in the local media or on a notice board. Although this is normally the legal minimum, some of the public do not read newspapers or pass the notice board and so might miss the information about the process. Good practice is to be active and announce the procedure using a range of different methods. (Aarhus Handbook 2000:17)

Timing the delivery of information to the public can be critical. People want to have the opportunity to become part of the process in order to understand it. Initiating access to information before any detailed planning has taken place has thus turned out to be good practice. In the studied cases access to information made people become more aware of the specific issues related to their environment. In cases in which access to information was offered in an early stage, participation became more active and appeals diminished. On the other hand, in a case with late access to information and lack of information flow before participation, aggressive participation and an increase in appeals was seen.

Timing has been seen as one of the cornerstones of successful public involvement. Key questions in involvement are:
- *in which phases is the public invited to participate,*
- *in which stage is the environmental report/statement given to the public to be reviewed and for how long*

The legislative requirements vary from country to country and there are countries which have not clearly defined these issues. The public is involved in EIA screening in six EU countries (in one case only on the level of access to information), in scoping in seven countries and in the initial assessment in four countries of all the twelve countries. The timing of providing information on environmental impact statements (EIS) to the public was not defined in seven of the studied twelve countries, the others aimed at a prompt provision immediately after finalizing the EIS. The minimum time given for the public to review the EIS varied from two weeks to more than two months. (ERM 2000).

2.1.8 Cost/benefit considerations on access to information

Free access may be understood to mean free, open, unfettered and non-discriminatory access to procedures for public participation. It does not imply that the government should subsidize all the costs of any member of the public to participate in a given procedure. However, the costs borne by the member of the public should be the normal costs associated with participation in any procedure. (UN/ECE 2000:19)

It is difficult to estimate the actual costs of access to information in relation to its benefits, since there are so many indirect effects involved. In general terms, public access to information has supported the development of better plans and helped in avoiding future pressure from the public, which can be counted as direct benefits. One interviewee argued that the benefits are proportional to the energy and effort put into the delivery of information. In response to the observed benefits of providing information, even cities of significant size have started to invest more time into participation and to look for ways of direct communication during the planning processes rather than long formal procedures which do not bring concrete results.

Cases in this study have shown that early distribution of information activates people, including environmental organizations, to get involved. Involvement turned out to be beneficial for strategic level plans since it cuts down the opposition against those plans in the implementation stage. In another case, a journal and website for information flow that were initiated in the process, remained and have continued to play a role even after the process; they activated people to get involved in future planning.

In regions which have much experience of involvement, people know how to obtain information and how to get involved. On the other hand, in new processes and regions with less experience, involvement had to be initiated by early distribution of information on the opportunities to become involved. This was achieved through one-way distribution of information and dialogues in small meetings.

The cases also report experiences of situations in which the public has been given false or misleading information. At the end of the involvement process the public did not believe the developer any more and opposed the activity so strongly that it was halted. In another case, the EIA had to be carried out three times before the developer gave environmental issues the level of attention that was required by the stakeholders.

2.1.9 Synthesis of issues related to access to information

In the studied countries, access to information is guaranteed by legislation, which in most of them is general, covering all sectors . In countries where there are no general legislative requirements for ensuring access to information, the responsibility usually falls on authorities with specific tasks such as EIA or pollution control, but basically all authorities contribute.

The stage at which information has to be provided to the public varies from country to country. In some countries, early drafts are already made available while in others, access is given only to information in finalized form. The case studies indicated, however, that the early distribution of information is beneficial both in terms of monetary and socio-political (less public pressure, better plans, higher awareness) considerations. The case studies also showed that access to information in a late stage may have negative effects: it does activate the public, but at that stage the public is left with only few options to participate, appeal-making being one of them.

Certain sectors have specific legislation on access to information. The list of sectors varies from country to country, e.g. tourism is seen as an important field in some, whereas regulation of e.g. GMOs is highlighted in others. In addition to legislation, soft law is found on specific issues in certain countries. Most countries have provided various kinds of guiding material and carried out case studies. A couple of countries did not have a need for this since public access to information has been a common practice for such a long time. One country had not yet reflected on the need for supportive material.

Some cases showed that access to information has been provided voluntarily even in the absence of legislation, at the initiative of the developer.

The cases show that problems related to information may arise even when access to information is provided: it is important to plan *when, how* and *to whom* access is provided. The use of mediators between different stakeholders has proved to be beneficial. In cases in which mediators were used they helped in finding a common language between planners, scientists and local people, thus providing real access to information and possibilities for common understanding.

Information was often distributed using various means, which helped in activating different groups of people. Legislation on access to information does not, however, generally include special provisions for different groups of people based on gender, cultural identity, minorities or indigenous peoples. In all but one country interviewees found that this would conflict with the concept of equal rights that is guaranteed by the basic constitution. Some soft law and supportive material was found on gender issues, whereas cultural and minority issues were identified in more specific contexts, e.g. in local strategies.

2.2 Participation in planning and decision making

The Convention sets out minimum levels of opportunities for participation and the procedures that must be followed. It is only by working with the public that decisions will be made which provide a good environment and meet the needs of local communities for a better quality of life. However, successful public participation depends on more than just granting a right to participate and setting out a procedure in the Convention. Aarhus Handbook (2000).

To make communication into a two-way process, it is necessary not only to provide access to information but also to allow and encourage participation. This section describes the variety in legislative and practical issues that relate to public participation in decision making.

2.2.1 Ensuring participation in general legislation

Public participation is one of the pillars in the Aarhus Convention. It relies upon the other two pillars for its effectiveness—the information pillar to ensure that the public can participate in an informed fashion, and the access-to-justice pillar to ensure that participation happens in reality and not just on paper. Aarhus Handbook (2000:6)

In most EU countries, there is general legislation for participation although there appear to be gaps in some sectors. The concept of participation is a generally recognized principle and a general feature of all decision making by authorities. The type and extent of the participation may nevertheless vary between sectors or even between specific decisions. In three of the studied countries there is no general legislation, but in one of these countries regional legislation provides participatory rights.

2.2.2 The legal basis for sharing the responsibility for organizing participation among authorities

It is necessary that all authorities and political actors know their responsibility in making planning and decision making processes participatory. When participation has been guaranteed in general legislation, there has been a legal basis that encourages all authorities to develop participatory practice. In ten EU countries, organizing public participation in decision making is in legal terms a cross cutting issue for which all authorities carry responsibility. In some countries the distribution of responsibilities is clearly specified in legislation on planning and environmental issues only. In other countries the responsibilities are restricted to certain authorities such as those working with environmental issues (such as EIA-related procedures) and spatial planning.

> *In one case, the developer kept the participation at the minimal level fulfilling the requirements. Later the opinion atmosphere towards the project became so negative that even serious attempts at negotiations and some mitigation offers could not change the public opinion, and the project failed.* (Del & Wallace-Jones 2000).

Sector-specific legislation can provide more focused regulation of participatory practices. Sectors having specific legislation that include specifications for participation in decision making are found in most EU countries. In some countries, the list given in this study (Table 1) is not entirely covered. Countries with incomplete coverage of the mentioned sectors vary with respect to the sectors which they emphasise with specific legislation on public participation. In some countries, there is no sector specific legislation as such, but some sectors are indirectly covered through EIA, pollution control and land use planning legislation. In one country none of the sectors mentioned in Table 1 included requirements for public participation in legislation but instead some other sectors (e.g. marine environment, nuclear installations) did.

> *Strategic environmental assessment (SEA) is a new policy instrument and in many countries in the EU there are not yet legal requirements for it. An EC directive on SEA (2001/42/EC) was published on the 21st of July 2001 and must be transposed into the Member States' legislation within 3 years after that date. The EC directive on SEA will introduce clear requirements for public involvement. At the level of project EIA the public is not required to be involved in the screening or scoping processes, but the public is involved in the initial assessment in five EU countries. (ERM 2000).*

2.2.3 Support for the implementation of legislation and the existence of soft law

Implementation of legislation on participation is separately supported through guidance or soft law in most countries. In two EU countries this was not the case. This may be due to the fact that participation in decision making has become common practice in these countries and thus it is not considered to be in need of further support. Alternatively the lack of guidance may reflect the need for further development of support for the implementation of the legislation. This was the case at least in one country where very limited material had hitherto been produced. The other countries support implementation by guidelines (8 countries), recommendations (6 countries) and pilot projects (6 countries).

Emphasizing the issue by programmes or recommendations provides further help, especially when they highlight sectors with special needs. In five countries, there is soft law on participation in decision making for specific sectors named in this study (Table 1). In the other countries soft law on participation did not exist or it was found on a different level, such as the regional or municipal level. Implementation of Agenda21 was mentioned as a soft law by interviewees in two countries.

2.2.4 Cultural and other cross-cutting issues in legislation or soft law

The Rio Declaration specifically mentioned the roles that various groups could play in the protection of the environment and the attainment of sustainable development. While it specifically mentioned women (principle 20), youth (principle 21), and indigenous people and other local communities (principle 22), the Rio Declaration did not mention how these groups might organize their participation. Agenda 21, in its section 3: Strengthening the role of major groups, went further to include workers, trade unions, business and industry, the scientific community, and farmers among the enumerated groups, and included among the activities aimed at strengthening their role, promoting freedom of association and strengthening participation and consultation. In addition, Agenda 21 indirectly mentioned organizational capacities in the context of developing countries. There is one specific reference in Agenda 21 to environmental NGOs. It comes closest in chapter 36, where NGOs, among other entities, are specifically encouraged to train people in environmental management. (UN/ECE 2000:19).

Equity is a key element in the constitutions of the member states of the European Union. Equity is also emphasised in specific legislation such as laws on public administration, laws on gender equity and indigenous peoples. Thus environmental legislation does not grant any groups of people a special position. Therefore, cross-cutting issues (Table 2) are not recognized in the environmental legislation, except in one country where cultural differences have received special attention.

However, soft law and other supportive measures help in providing all citizens with the right to participate, taking into account special needs. In soft law, cross-cutting issues have been touched upon in some countries but only in one country in the context of environmental issues. The cross-cutting issues (Table 2) are commonly focused on the regional or municipal level.

2.2.5 The status of environmental organizations in participation according to legislation

Some countries require public review of the draft development plans through public hearings and by the provision of written comment on the draft plans. They also enable NGOs to participate—with the same rights and duties as public authorities and other social and economic partners—in the committees that monitor the preparation of development plans. (UN/ECE 2000:116). The European Commission in 1997 established a consultative committee on environmental affairs, which includes the participation of representatives from environmental NGOs. (UN/ECE 2000:122)

In many situations organizations bring together people holding similar views and these organizations play a key role in environmental discussion. Therefore, environmental organizations have been given an active role in planning processes. In six EU countries, all environmental organizations can act on behalf of individuals (with the individuals´ permission). Two of these countries have requirements for registration in certain issues. In four countries this right was restricted to registered environmental organizations only. In two countries environmental organizations cannot act on behalf of individuals. In one country, organizations with more than 2000 members and with activities during the three years can represent their own members.

In one case, involvement was organized due to the public debate that took place in mass media and through petition against the project. Participation was organized according to the law. There were public hearings, discussion forums, consultations with the potentially affected people and small scale informal meetings. The methodology of participation was changed during the process to a form that was easily approached by the stakeholders: several small scale meetings were organized instead of large scale hearings. The participation process lasted 4 months. It lead to a radically revised plan. Source: interviews by SYKE

2.2.6 Participation as a process

The opportunity of the public to express its concerns is a matter of self-fulfilment that increases confidence in society generally. The sincere desire of the public authorities to come to good decisions taking the concerns of the public into account as far as possible is reflected in the last element mentioned. (UN/ECE 2000:18)

Participation is based on the principles of democracy. Participatory approaches deal with several kinds of people, ranging from high level professionals to lay persons. This is challenging for the organization of the participatory processes. In the studied cases, several different means were used in organizing participation, thereby helping to activate most of the persons/groups invited to participate.

The traditional methods of public hearings and discussion forums were the most common means used in participation. In some cases the stakeholders were consulted or surveys were carried out, sophisticated group techniques were used and appointed panels were set up. Different means and techniques were often combined in order to reach different people. Choosing the right technique is crucial. For example, the lack of face-to-face communications increased the potential for misunderstanding and redused the possibilities to reach consensus.

Comment by a participating NGO-representative: Participation in large infrastructure projects is not a hobby for local people. Participation requires time, resources and preferably a lawyer´s skills. Source: interviews by SYKE

Timing of the participatory process is critical in two ways. The cases indicated that providing sufficient time to participate is crucial: if insufficient time is allocated, people may feel that obstruction through appeals is the only meaningful activity. The other important aspect of timing is the initiation of the participatory process relative to the decisions that are being made. Consultations that have been organized before relevant decisions are made have given participation a chance really to have an effect. Only in a few cases was early involvement used at the stage of the project idea and in some cases the involvement process was initiated when detailed planning was already taking place. In the other cases the public was involved at a later stage.

I*n one case the stakeholders themselves set management goals and objectives for each site in a development planning and resource management project in the coastal zone. Generation of awareness and an open dialogue were fundamental aspects of each stage of the planning and implementation process. Efforts were made to ensure that the participatory process was as open as possible to all by, for example, contacting individual landowners, holding regular public meetings and using a variety of media to publicise the project. The demonstration sites allowed a diverse range of individual stakeholders to participate directly in decision making.*

Regular round table public discussions and site meetings were held in order to obtain historical and management information, to identify and prioritise issues, and to canvas opinion on strategies prior to the implementation of the plans. A discussion document was prepared for each site, outlining the key management issues, potential solutions, their positive and negative impacts and approximate costs. These documents and follow-up public meetings provided the basis for the management plans and helped the stakeholders to express their preferred strategy.

Occasionally, the process was constrained when a key player, such as the owner of the dune system, did not participate. Furthermore, some government officials were reluctant to speak openly. Many professional environmental managers and elected council members have yet to be fully convinced of the benefits of community mediated decision-making. Many are ill at ease with the transparency and accountability that public meetings bring about. The project was nevertheless very successful in achieving consensus on the majority of management issues.

Source: (Power, McKenna, MacLeod, Cooper & Convie 2000).

2.2.7 Participation and stakeholders

Sustainable development can be achieved only through the involvement of all stakeholders. It links government accountability and environmental protection. It focuses on interactions between the public and public authorities in a democratic context and it is forging a new process for public participation in the negotiation and implementation of international agreements. (UN/ECE 2000:1)

All participatory processes worthy of the name should reach all relevant stakeholders. Key questions are, how does one finds the stakeholders and how does one motivate them to become active. These questions are relevant despite the general tendency to stop restricting stakeholdership and to give the right to participate to anyone interested. For example, in one case it was efficient to have all residents living closer than 100 meters to the project site participating.

In the examined cases participation was usually offered in planning processes or in the form of hearings. In a minority of cases participation was offered in direct decision making processes. The cases show that the public wanted to be involved, also in the decision making.

It has been possible to make the participation process flexible and easy for the stakeholders and this has eliminated unnecessary hurdles in the course of participation and also kept the stakeholders interested in the process and maintained their trust in it. Combining hearings according to different legislation on the same issue kept up the motivation to participate. In one case, fishermen were given support by having small scale meetings before the large official ones. One interviewee noted that local activists carry out capacity building to gain supporters and action. Thus participation can give rise to both scientific appraisal and public debate.

> *Participation raises public awareness. In one case, school children were invited to take part in a habitat management project. They were very motivated to do so and other volunteers also took part in the management. Source: (House1999).*

> *In one case, communication was carried out through*
> *- public visiting days*
> *- consultations with the public*
> *- appointed citizen committee*
> *The visiting days on the site were popular. Source: (Castell,Castello & Soler 1996).*

2.2.8 Activating different kinds of participants

Different stakeholders have different levels of power, different interests and different levels of resources. The voices of the weak can be overshadowed by the more articulate or more influential groups within and beyond the boundaries of the project site. It has long been recognized that participation varies in intensity and intent. (CIDA 2001:17)

One of the challenges of participation is to balance the use of resources between matters of principle and practical issues. For example, should people be provided background material in their own language if they manage with the majority language, or should the resources be used to run discussions in smaller groups?

The cases show that special attention has been devoted to environmental and cultural groups when inviting persons to participate. In some of the cases, cultural differences between people in different regions, different occupational groups and people with different national history were given special attention, which helped in the dialogue with the groups. It was considered important to make an effort in hearing equitably all the sectors and not to concentrate on the powerful groups.

> *No special attention was given to the indigenous Saami people of Lapland, but they were active along with other local people. They brought to the discussion views to support their livelihood such as the use of animal power instead of motorized vehicles in transport. Source: interviews by SYKE*

Special means to alter the participation ratio between men and women were not used in the studied cases, with the argument that gender equity is specified by the constitution. However, in most cases men dominated in the participation. This was explained by the common way of sharing duties between spouses in society. The impact on the final decision is difficult to analyse, but in one case it was mentioned that women participate more eagerly in meetings that deal with environmental and philosophical questions, whereas men dominate in meetings on the activity itself and on economic issues.

> *In one case, people were advised on how to actively participate at hearings. Source: interviews by SYKE*

In general the cases indicated that those actually participating corresponded well with the groups of persons that were invited to participate. Apart from individual citizens and authorities it was common to invite environmental organizations and other interest groups. It was noted, however, that those offered the possibility to participate were not homogenous: not all groups acted, and there was tension within and between the active groups. Citizens of neighbouring countries were invited to participate only in a few cases. This is also true of e.g. women's groups. In one case, people of the neighbouring community were not involved in the planning although the project was located close to the border. Later, participation was expanded but the negative perceptions of the neighbouring community could no longer be changed and finally the project plan was abandoned.

2.2.9 Participation as a way of developing ideas

The implementation of decisions can be improved where the members of the public who are most interested in the result have been included in the process and have had their concerns considered. In such cases they can be expected to support the decision more strongly. Contribution to public awareness of issues is a side benefit of particular procedures that results in an overall increasing sophistication of the public in terms of its involvement and in terms of its potential support for good decisions. (UN/ECE 2000:18)

Many scientists in planning teams remain reluctant to include 'ordinary people' in the process; in their thinking it remains safer to focus on so-called objective planning criteria instead of opening the discussion to subjective or even emotional issues. However, subjective experiences may be important for bringing forward new issues and potential solutions. The cases of this study show examples of how participation generated ideas that were then considered and which have had positive effects on the environment. In one case, participatory processes revealed which issues must be taken into account when aiming for sustainable development in the tourism planning of a small municipality. The elected local representatives recognised the needs and deficiencies in the previous procedure for making a long term management plan and tried to shape the process into a participative and fair one. In another case, the local groups had the capacity to deliver low cost sustainable development solutions related to area management, particularly in remote, sparsely populated areas. The project was successful in achieving consensus on the majority of management issues.

2.2.10 Participation and cost/benefit considerations

The State should not impose financial constraints on members of the public who wish to participate. The issue of costs is further developed in the Convention. (UN/ECE 2000:19)

Cost/benefit calculations on public participation are challenging due to the many side-effects and time lags. The common use of participatory planning on a voluntary basis indicates that at least in certain kinds of planning, participation is considered beneficial from the developers´ point of view. When participation has been organized on a voluntary basis, it has usually been taken further than required by law. Only in one case was it possible to find hard figures on the costs of the participatory process. They amounted to 0.1% of the total investment costs of the developer. In the other cases it was mentioned that participation was not excessively expensive. The costs were mainly due to working hours. For example one of the cases included several hundred small scale negotiations with different stakeholders.

In half of the cases, benefits were considered high enough to compensate for the costs. They included the positive effects of public awareness, the positive effects from the point of view of democracy, the lowered number of complaints, elimination of the risk of having to redo the planning, innovations brought up by the public and the speeding up of the activity. From the citizens' perspective, public involvement in many of the studied cases was worth the effort: the projects were altered in response to the demands or, in some cases, abandoned.

> *In one case, the young people in the area were first positive about the forthcoming activity due to the prospect of good jobs. Later, all people turned against it when they found out that the developer gave biased information and did not take into account suggestions by the local people. When mass media on national level became active, the public pressure became so high that the activity had to be abandoned. Source:* (Kousis1993).

Participation has also made it possible to avoid future conflicts and pressure from the public. Opposition existed in all cases but in most of them it was not strong. In these cases participation helped in conflict solving and decision making and also cut down the number of appeals. The opposition mainly took the form of petitions or newspaper articles and the questions were mainly discussed in the meetings organized as part of the participatory process. In one case, the opposition was highly aggressive because the developer had neglected the public view. In three cases the local people managed to halt projects completely.

> *The park area is surrounded by a large number of people, (350,000 live within neighbouring zones). With the participatory management strategy in the park there have been less fires, but more green belts and outdoor leisure activities. At the same time it has been possible to conserve and preserve natural systems and the cultural landscape as well as to provide possibilities for outdoor enjoyment. The park administration has managed to give grants and technical assistance to family farms and has ensured that compatibility with the environment is respected. Now the majority of the local population accepts the park and collaborates with its administration. There is now a broad-based social consensus supporting the existence of the park. Source:* (Castell,Castello & Soler 1996).

2.2.11 Synthesis of issues related to participation in planning and decision making

In Europe, public participation is important. It is supported by general, cross sectoral legislation in most of the studied countries, and specific legislation gives authorities with certain tasks such as EIA, spatial planning and pollution control the main responsibility for its implementation. There are areas in which legislation on participation is only emerging, for example public participation is only to a limited extent supported by law in the assessment of policies, plans or programmes.

Legislation is usually supported by soft law, which gives further advice on how to develop participatory practices. There are some sectors that have specific legislative requirements and soft law on participation, but the list is not exhaustive and varies between the countries. Agenda 21 strategies appear to play a role in supporting public participation.

The legislation on participation or the corresponding soft law have not included specific demands concerning the participation of certain groups of people except in one country, because equal rights are generally guaranteed by the constitution. There was, however, a clear tendency in the studied cases for males to dominate the consultations. This could be interpreted as meaning that although equal rights are specified in the legislation, women do not participate as eagerly as men unless supportive means are used. In most countries such supportive measures are still missing. Although some countries have soft law for minorities, e.g. the indigenous Saami people of Lapland have no specific legislative support for participation in environmental issues.

In practice, participation takes place more in the planning than in the decision making processes. NGOs have been given and also play an important role in participation. As a whole, a tendency can be seen in the EU to stop specifying the stakeholders and to invite anyone interested to participate. For example, in approximately half of the countries, organisations do not have to be registered in order to participate. However, in many countries legal tools (e.g. in specifying the NGO) have been developed to avoid sporadic NGOs becoming involved in procedures such as permitting.

In general, participation was restricted to national stakeholders in the examined cases. The participation was extended to the neighbouring country only in one case, although the issues in many other studied cases could also have been of interest to the neighbouring public.

The cases indicate that various means are now in use for participation, although the weight is still on the traditional ones such as large hearings. Some cases demonstrated well developed flexibility, where the participatory process is designed to take into account the stakeholders´ needs and possibilities for participation and where the process has been altered during development to meet these needs. The length of time given to participate, the timing (especially the starting moment) as well as the honesty of the process played the key role in the successful processes.

The failures have often been related to incompletely developed participatory practices. When the process has been initiated late relative to the planning, very few options are open any more and thus the public concentrates on protests and appeals. Such appeals are often of poor quality as they may be based on many misunderstandings.

As a whole, the experience of public participation in environmental issues indicates that it is a necessary and useful feature of environmental policy in Europe. Participatory approaches are becoming more common both on a voluntary as well as on a mandatory basis.

2.3 Public access to justice

If rights are to be effective, the public must have a way of seeking justice when those rights are accidentally, or deliberately, denied. The Convention sets out rights of access to justice to meet this need. The Convention highlights rights of appeal against decisions to refuse requests for information on the environment, against failures of law in decision-making processes, or against actions which are illegal under a country's environmental laws. (UN/ECE 2000:6)

This section describes the variety in the legislative basis for and the practice in providing access to justice in environmental issues in the member countries of the European Union.

2.3.1 Ensuring access to justice

Access to justice is necessary so that the public's legitimate interests—that is, those interests recognized by a particular society according to law, custom or practice—are protected and the law is enforced. The protection of interests and the enforcement of the law stand behind the obligations contained in the rest of the convention . Access to justice is the primary means for enforcement of the convention. (UN/ECE 2000:21). Potential barriers to access to justice can include, inter alia: financial barriers, limitations on standing, difficulty in obtaining legal counsel, unclear review procedures, corruption, a lack of awareness within the review bodies, weak enforcement of judgements. In addition , violations of environmental laws are usually difficult to prove without clear environmental standards, clear emissions requirements in permits, and regular monitoring and reporting of emissions data. (UN/ECE 2000:135)

Within the framework of its national legislation, ensure that any person who considers that his or her request for information under article 4 has been ignored, or otherwise not dealt with in accordance with the provisions of that article, has access to a review procedure before a court of law or another independent and impartial body established by law. In the circumstances where a Party provides for such a review by a court of law, it shall ensure that such a person also has access to an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law. Final decisions shall be binding on the public authority holding the information. Reasons shall be stated in writing, at least where access to information is refused under this paragraph. (UN/ECE 2000:126)

Access to justice is generally ensured in all but two of the studied EU countries. Access to justice thus applies to decisions by authorities in general, although the exact procedures may vary depending on the issues. The highest levels of appeal are commonly handled by central legal institutions.

In nine EU countries, providing access to justice is in legal terms a cross cutting issue and all authorities must provide the public with information on how to appeal against decisions. In some countries this shared responsibility deals with environmental and planning legislation. Although the legal basis is general, the practical tasks may, according to the legislation, be reserved to certain (legal) authorities. In the other countries, access to justice is restricted to certain authorities and issues such as environmental issues and spatial planning.

Sectors (Table1) having specific legislation that includes specifications for access to justice are found in most EU countries. In five countries this was not the case. In some countries, the list given in this study is not entirely covered. Two of the countries deviating do have specific legislation, but the sectors are different than those listed in this study. One country had no direct legislation on the sectors mentioned, although some dispositions existed. In this country the criminal code included a chapter on environmental crimes.

2.3.2 Support for implementation of legislation and the existence of soft law

The Aarhus Convention shall promote environmental education and environmental awareness among the public, especially on how to obtain access to information , to participate in decision-making and to obtain access to justice in environmental matters. (UN/ECE 2000:44)

Recommendations and pilot projects provide good practice on how the public can be given access to justice. Implementation of the legislation is separately supported through guidance or soft law in all but two EU countries. The lack of supportive material may be due to the fact that access to justice has become a common practice these countries and thus does not need further support, but it could also reflect a need for further development of the implementation of the legislation on access to justice. This was the case at least in one country where very limited supportive material existed as yet. The other countries supported the implementation by guidelines (7 countries), recommendations (6 countries) and pilot projects (6 countries).

Soft law encourages authorities to develop access to justice. In two countries, there is soft law on access to justice for specific sectors named in this study (Table1). In the other countries it was not available or it was found on a different level, such as the regional or municipal level.

2.3.3 Supporting access to justice

The Aarhus Convention shall endeavour to ensure that officials and authorities assist and provide guidance to the public in seeking access to information, in facilitating participation in decision-making and in seeking access to justice in environmental matters. (UN/ECE 2000:43)

For a civil person, searching for access to justice is not an everyday practice and the processes may appear to be complicated and difficult. In the cases of this report, the public has been provided help in how and when to make appeals against decisions of authorities. The cases have shown that when the environmental information provided is of low quality, more people make complaints: there are misunderstandings both on the technical and the political side. If the environmental information is of high quality and the participatory process well developed, the number of appeals decreases and their quality increases.

> *In one case, participation was not started before detailed plans were ready. The reason for this was that there was not much to mitigate and there was only one alternative seen for the activity: turn it down. Once given, the right to participate was used actively and aggressively. The process was prolonged to last several years and a high number of complaints were made. The opposition in the form of newspaper articles and a demonstration on the site had no influence on how the authorities carried out the process. Once the decision was made, the number of appeals was high. The process ended by giving the license for the developer to carry out the activity, with some technical changes that mitigated the environmental impacts. Source: interviews by SYKE*

2.3.4 Access to justice as a settled procedure

Under the Convention , "access to justice" means that members of the public have legal mechanisms that they can use to gain review of potential violations of the access-to-information and public participation provisions of the Convention as well as of domestic environmental law and they have ability to go to court or another independent and impartial review body to ask for review of potential violations of the Convention. (UN/ECE 2000:135)

In many European countries, the right to appeal against authorities has existed for a long time. The cases examined in this study show that the public has learned how the decision making processes operate and has been able to react at appropriate stages. In ten of the seventeen cases the public had the right to appeal against decisions of the authorities. In strategic planning the right to appeal is relevant only for the implementation phase, which includes other plans and activities than the strategic one.

The developer assumed that people would seek information but they did not help them to find it. The developer comments in retrospect that "one imagines that a newspaper notice is enough …but it isn't". The proponent gave a privileged role to the authorities of one municipal department (the only group that had the technical competence) and the elected local representatives. The developer put excessive trust in the judicial mechanism of EIA. The elected local representatives recognized the needs and deficiencies in the procedure and tried to shape the process into a participative and fair one.

Later in the process the proponent tried to find local acceptance of the proposal and of the authorities, with a series of attempts to negotiate, but it didn't work out any more. In this project the local people's wish was taken into account when the authority finally decided it could not give final approval for the project as it stood without the support of the local bodies. Source: (Del & Wallace-Jones 2000).

2.3.5 Cultural and other cross-cutting issues in legislation or soft law

Within the scope of the relevant provisions of this Convention, the public shall have access to information, have the possibility to participate in decision -making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective center of its activities. (UN/ECE 2000:48) Fair procedures must also apply equally to all persons, regardless of position, race, nationality or other suspect. Although fairness in justice may require, non-discrimination with respect to other classifications than those laid out there such as age, gender, religious affiliation, etc. (UN/ECE 2000:145,146)

Due to the strong role of equity in the constitution, access to justice is the same for everybody. At present, countries do not support access to justice for groups with special needs with other instruments than constitutional equal rights. Cross-cutting issues (Table 2) are not recognized in the environmental legislation on access to justice for any of the EU countries. The identification of specific groups of people in sector legislation is considered unnecessary or sometimes even in conflict with the constitution.

2.3.6 The right of environmental organizations to file complaints and to appeal against decisions

The access-to-justice provisions provide a level of standing to go to court or another review body, to individuals and NGOs. The Convention provides slightly different guidance on standing depending on the type of review requested. (UN/ECE 2000:123)

Environmental impact assessment is not itself a permitting or authorization process. It is a tool for decision -making, whether the decision -making itself may have a potentially significant impact on the environment (UN/ECE 2000:90). The public has access to justice to defend its rights and interests with respect to the procedures (UN/ECE 2000:92).

Environmental organizations frequently channel many of the environmental demands, but the possibilities for organisations to act on behalf of individuals or to file complaints more generally varies. When environmental organizations and other interest groups have been given the right to file complaints and to appeal against decisions, authorities and developers have paid great attention to environmental matters in order to avoid lengthy and costly legal procedures.

In seven EU countries, all environmental organizations have the right to appeal against decisions by authorities, although in two of the countries registration is needed when certain sectors are discussed. In one country the organization has this right if it is active in the whole country. In addition, registered organizations which have announced a request also have the right. In another country all organizations that have more than 2000 members and activities during the last 3 years can appeal. In some issues any association representing all interests linked with an issue can appeal, whereas in other cases only registered organizations can do so. In five countries only registered environmental organizations have these rights and in one country environmental organizations have no right to appeal except in the case of EIA, where citizen initiatives with more than 200 people in the host municipality have this right.

More specifically, the legal basis for who can appeal against EIA decisions varies within the EU countries. Either there are no restrictions, the person with the right to appeal must have raised objections earlier or then the appeal is limited to those who legally have an interest in the decision. Participation in the appeal process is not given or there are no requirements on it except for one country where the stakeholders are formally invited to participate in the action. (ERM 2000).

2.3.7 Synthesis of issues related to access to justice

The process of making appeals against decisions of authorities has a long history in Europe, but access to justice is still being developed. Most countries have general legislation on this issue. Sector specific legislation does not always deal with access to justice, although some sectors, such as legislation on protected areas, were mentioned for some countries. Soft law is rare, also.

Due to historical reasons, people know how to use the right to appeal and do use it, as seen in the examined cases. In some of the cases, people were given advice on the process and their rights, including their rights to appeal. The quality of the process of access to information and public participation has direct effects on the appeal process: on the number of appeals and the issues raised in the appeals. Thus e.g. the starting moment, the quality of the environmental information provided, and the trustworthiness of the process affect the length of the appeal process.

Access to justice is closely linked with the question of equal rights seen in the constitution and thus none of the countries make any mention of the cross cutting issues (gender, minorities etc.) in their legislation on access to justice. In most countries, NGOs, either any or the registered ones, can make appeals. Many of the cases studied did not have a legislative backing for access to justice and thus it was not included in them.

2.4 The UN/ECE Convention on access to information, public participation in decision making and access to justice in environmental matters (Aarhus Convention) 1998

The transposition of new international law into national legislation depends on the political history and the existing legislation and institutions. In countries in which the legal system and corresponding institutions have a long history it may be difficult to incorporate the new requirements. The legislation on different issues and sectors must be assessed in relation to the new legal requirements.

Countries which have recently developed their legislation have often been able to include new requirements already in drafting the new legislation and thus ratification of new international law is straightforward, if only the political will exists. In these countries the main problem may be the practical application, as there is little tradition for dealing with environmental matters and as institutions are only developing.

The Aarhus Convention was signed in 1998 and it came into force 30 October 2001, when 16 signatories had ratified it. The ratification process of the Aarhus Convention is a good example of the needs of different countries for different time periods to adjust the national legislation to the new international law and to take the ratification through the political process. The Aarhus Convention is particularly cumbersome, since it deals with such a wide spectrum of issues which cut across sectors and which are linked to constitutional rights.

The EU countries represent 38 % of the countries that signed the Aarhus Convention but only 9 % of the countries that have ratified the Convention (situation in May 2002). On the other hand, many countries which have limited traditions of public involvement, as shown by the fact that legal requirements for environmental impact assessment are only a few years old, have been able to ratify the Aarhus Convention. In these countries it has been possible to develop the legislation in line with the requirements of the Convention from the very beginning.

The Aarhus Convention is at present limited to the European partners of the ASEM. The studied countries have all signed the Convention but only two of them have ratified it. The need for revisions in the national legislation varies from no major requirements to changes in all the three pillars of the Convention. The areas requiring the greatest modifications are certain parts of the sector-specific legislation and issues such as the definition of the public in the context of participatory rights. Six of the studied EU countries aim at ratification during 2002, whereas six plan to ratify later.

3 SWOT-analysis

SWOT is an acronym for Strengths, Weaknesses, Opportunities and Threats. The purpose of the SWOT-analysis is to identify these factors in the context of the present public access to information, opportunities for the public to participate and public access to justice among ASEM partners. The material is based partly on information on legislation and other policy instruments in the ASEM partners and partly on practical experience that has been compiled among ASEM partners from real cases. The Strengths and Weaknesses refer to existing policies and practices, whereas the Opportunities and Threats refer to potential consequences that could arise or have arisen under special circumstances.

The strengths, weaknesses, opportunities and threats of different tools/activities in the field of public involvement can be assessed from several different perspectives: overall objectives (e.g. making information available, providing opportunities to participate), environmental effects, democracy or economic development. In this SWOT-analysis, the overall reference is to sustainable development, i.e. what strengths do the present policies and practices have from the point of view of sustainable development, what weaknesses do they have, what opportunities do they provide and what threats could arise in the present policies and practices from the point of view of sustainable development (Table 3). This choice of focus has been made because AEETC's overall objective is to contribute to sustainable development. In the SWOT-analysis sustainable development is considered to include ecological, economic and social aspects.

Table 3. The basic principle of the SWOT-analysis of policies and practices for public involvement in the ASEM region from the perspective of sustainable development from an ecological, economic or social perspective.

STRENGTHS	WEAKNESSES
Features of public involvement policies and practices that contribute to sustainable development, i.e. what inherent strengths can be identified among the ASEM members with respect to public involvement.	Features of public involvement policies and practices that fail to contribute to sustainable development, i.e. what kind of problems have frequently been encountered among the ASEM members with respect to public involvement.
OPPORTUNITIES	THREATS
Features of public involvement policies and activities that could significantly contribute to sustainable development, i.e. what potentials are there in public involvement policies and practices that under favorable conditions could significantly contribute to sustainable development	Features of public involvement policies and activities that could threaten the development towards sustainable development, i.e. what risks are there in public involvement policies and practices that under unfavorable conditions could lead to unsustainable development.

Tables 4–6 provide a synthesis of the findings in the ASEM region. No individual country is likely to display all strengths, weaknesses, opportunities and threats in its approaches to public involvement, but all the reported features have been found within the ASEM by examining legislation, policies and present practices. The purpose of the SWOT is to present a collection of observations separately for each of the three pillars of public involvement, not to identify individual countries.

Table 4. SWOT on activities/tools on public access to information.

STRENGTHS	WEAKNESSES
- Access to information that has been ensured by general legislation has encouraged all authorities to provide environmental information, thus contributing to environmental awareness - Material for informing the public has also supported the implementation of environmental legislation - Access to information has been provided before any detailed planning has taken place. This has supported development of better plans, thus providing long-term economic benefits - Voluntary provision of access to environmental information has been flexible and has been able to cater for different social needs. -Reliable information on environmental changes and on future plans helps to assure people, to eliminate suspicions and to create security. Information may enhance voluntary action and the production of new local solutions.	- Access to information is on its own a very restricted form of public involvement. - When access to information has been restricted to certain pieces of legislation or there has been a lack of legislation supporting access to information, authorities may have failed to provide information, with public frustration and suspicion as a consequence - Lack of active dissemination or too late dissemination of environmental information may have caused important environmental issues to be neglected in development activities - Lack of environmental awareness arising from non-availability of environmental information has contributed to e.g. waste and traffic problems and associated costs - Information provided may not have reached all concerned due to cultural and social barriers
OPPORTUNITIES	THREATS
- A broad access to information may raise environmental awareness that can contribute to significant innovations for solving environmental problems and create new environmentally and socially positive activities.	- Raising costs of producing and disseminating information may cause authorities and others to reduce their output of information -Too extensive production of information may blur the important issues, which may make the public lose interest in environmental issues - Misleading information may activate the public to oppose development that would have positive environmental impacts (e.g. better environmental technologies) -Manipulative use of information may discredit future attempts to provide access to information

Table 5. SWOT on activities/tools on opportunities for the public to participate in decision making.

STRENGTHS	WEAKNESSES
- When participation has been guaranteed in general legislation there has been a legal basis that has encouraged all authorities to develop participatory practices - Through public participation important environmental issues have been identified and adverse environmental effects have been avoided by modifying the plans for the developments - Well organized public participation has solved potential environmental conflicts, thus saving resources for all involved - Several different means have been used in organizing participation and the process has succeeded in activating most of the persons/groups invited to participate, including those representing environmental groups and cultural/ethnic groups - The opportunity of the public to express its concerns is a matter of self-fulfilment that increases confidence in society as a whole. -Environmental awareness and opportunities to prevent environmental problems increase. -Participation makes people feel that they are equal partners in discussions concerning environmental management in their neighborhood - Participatory processes increase accountability and transparency	- Participation can be demanding and all citizens are not able to use the opportunities offered due to time and skill constraints - When participation has been restricted to certain legislation or there has been no legislation supporting participation, only some authorities have provided opportunities for participation. This causes an unbalanced situation in which some activities may cause undue environmental damage. - Participation that has been organized only after strong demands and general public pressure has contributed to conflicts rather than solving them, and has caused delays and other costs - When participation has been organized in such a way that the public has had limited possibilities to participate in practice, important stakeholder groups have been excluded from the decision making, leading to frustration and public unrest -If participation is not genuine or it is based on information selected to support the opinions of the developer, expectations which do not materialise may be generated among participants
OPPORTUNITIES	THREATS
- Innovative voluntary approaches offer greater opportunities for participation than those required by law - New forms of participation may contribute to a sense of partnership in aiming for sustainable development in the spirit of Agenda 21 at all levels (community, district, state, region) - Active participation may contribute to new environmental innovations that can be successfully adopted at other locations and for other types of activities	- Participatory procedures may be used in a manipulative way that has little relation to the environmental issues at stake, or provide misleading information and expectations - Participatory procedures may drain scarce resources without contributing to environmental improvement or to a sense of community responsibility -The decision making process can become cumbersome and slow and susceptible to the activities of small groups who oppose the activities on other than environmental grounds -The options given to the population are selected on the basis of administrative and economic concerns, not on sustainable development

Table 6. SWOT on activities/tools on public access to justice.

STRENGTHS	WEAKNESSES
- A way of checking the quality of environmental decisions made by authorities - When environmental organizations and other interest groups have been given the right to file complaints and appeal against decisions, authorities and developers have paid great attention to environmental matters in order to avoid lengthy and costly procedures - By receiving assistance in how and when to make appeals against decisions of authorities the public has learned how the decision making processes operate and has been able to react at appropriate stages with a sense of responsibility	- Significant administrative costs - When environmental organizations and other interest groups have been given no or only very limited rights to file complaints and appeals, environmental damages have passed without attention - When there has been lack of knowledge on how the decision making procedures operate, opposition against decisions of authorities or against activities causing environmental damage have existed, but no appeals have been filed due to frustrating experiences. Eventually, triggering events lead to full blown conflicts
OPPORTUNITIES	THREATS
- A broad access to justice may contribute to the development of conflict management and solution approaches that facilitate discussions among stakeholders and a sense of partnership -People are assured of the transparency of environmental governance and are motivated to take responsibility and to take care of their environment	- Rights of appeal and filing of complaints may be used for the deliberate obstruction of development without concern for the environment or the sustainable development of the community/district/country - If societal structures and networks do not operate properly, those filing appeals or complaints may run the risk of intimidation and other threats

4 General synthesis

The SWOT analysis suggests that all three pillars of public involvement can contribute to sustainable development. They are linked and interdependent and thus weaknesses frequently arise due to incomplete legislation and poorly developed practice. This can be seen in the status of NGOs, neglect of cross-cutting issues and in too late and misleading involvement in practice.

The present state of public involvement in the EU provides opportunities to support sustainable development further, but not without pitfalls. Thus open and wide dissemination of information increases public awareness and provides good opportunities for activities to develop in a more environmentally sound direction, but too extensive production of information may hide the essential points and make people apathetic.

Participatory practices may bring forth real innovations in open communicative processes. On the other hand, developers may be tempted to use participatory processes for manipulative communication in which the aim may be contradictory with sustainable development. Access to justice is an important way of ensuring that public decisions are of high quality and that environmental problems are properly addressed. However, access to justice may also be misused by small groups who may paralyse the system by filing complaints that only formally relate to environmental issues.

In Europe, there is supranational and international legislation to support public involvement, in addition to the national legislation. The EU directives play an important role in providing access to information, in introducing participatory processes and in developing access to justice in environmental issues since they are binding and there are sanctions involved. In many of the studied countries the national legislation on public involvement has been prepared when joining the EU or when the EU has set a new requirement. There are several EU-directives in force which set explicit demands on the arrangements related to public involvement (e.g. the so-called EIA, IPPC and SEA directives). There are also directives under preparation that deal with public involvement (Proposal for a directive: Providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending Council Directives 85/337/EEC AND 96/61/EC, COM (2000)839 and Proposal for a directive on public access to environmental information, COM(2000) 402).

The UN/ECE Convention on access to information, public participation in decision-making and access to justice in environmental matters, the so-called Aarhus Convention was signed in 1998. Only two EU-countries have ratified, which indicates that the present legislation of many EU-countries is far from complete with respect to public involvement. The overview of the legislation and the cases examined in this paper confirm the need for development of the legislation. The Convention has acted as a catalyst in this development. From an EU point of view it is less binding than the Directives as its enforcement process is much weaker but it does provide a clear frame of reference. This shows that regional international initiatives such as the forthcoming compilation of good practice in public involvement among the ASEM partners have a role to play.

5 References

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Appendix I: Information on studied cases

CASE	COUNTRY	SECTOR
1	SWEDEN	RURAL COMMUNITY DEVELOPMENT/TOURISM **1 ÅRE KOMMUN LOCAL AGENDA PROCESS** interview by SYKE submitter: Bengt Aspman, Åre Municipality, Environmental Div.
2	THE NETHERLANDS	URBAN DEVELOPMENT AND RELATED INFRASTRUCTURE **TEN YEAR WASTE MANAGEMENT PROGRAMME (1995-2000**) interview by SYKE submitter: Jo Daemen, Waste Management Council, The Netherlands
3	PORTUGAL	RESOURCE AND LAND USE MANAGEMENT **TO LIVE IS TO SHARE (FOREST FIRE PROJECT**) interview by SYKE submitter: Maria Joao Guedes, Ministry of Agriculture, Fisheries and Rural Development, Portugal
4	AUSTRIA	POWER PROTECTION **MODIFICATION OF A THERMAL POWER STATION** interview by SYKE submitter: Andreas Sommer, Land Salzburg, Umweltsschutz
5	FRANCE	URBAN DEVELOPMENT AND RELATED INFRASTRUCTURE Port 2000, extension of the le Havre Harbour, interview by SYKE submitter: Georges Guignabel, Ministry of the Environment, France
6	FINLAND	POLLUTION CONTROL AND PREVENTION 6. **PEAT EXTRACTION, ILOMANTSI** interview by SYKE submitter: Juha Helin, Finnish Environment Institute
7	FLANDERS, BELGIUM	POWER PRODUCTION 7. **BIO-POWER, OSTENDE, FLANDERS, BELGIUM** interview by SYKE submitter: Marjan de Groote, Aminal, Belgium
8	DENMARK	RESOURCE AND LAND USE MAGMT/RECREATION/PROTECTED AREA PLANNING **RE-ESTABLISHMENT OF A LAKE/WETLAND, DENMARK** interview by SYKE submitter: Poul Nordemann, Aarhus
9	GERMANY	RESOURCE AND LAND USE MGMT/LANDSCAPE ECOLOGY **SOCIAL AND BEHAVIORAL ISSUES CONCERNING LANDSCAPE ECOLOGY AND LANDSCAPE PLANNING WITH THE AIM OF EN-HANCING ACCEPTANCE AND IMPLEMENTATION** Literature citation: (Luz 2000).
10	ITALY	POWER PRODUCTION AND LOGISTICS **MONFALCONE REGASIFICATION TERMINAL SITE**, literature citation: (Del & Wallace-Jones 2000).

11	ITALY	POLLUTION CONTROL AND PREVENTION **VERRONE, THE INDUSTRIAL WASTE SITE OF FIAT**, Literature citation: (Del & Wallace-Jones 2000).
12	GREECE	POWER PRODUCTION **EC'S GEOTHERMAL ENERGY DEVELOPMENT PROGRAM IN MILOS, GREECE** Literature citation: (Kousis1993).
13	SPAIN	PROTECTED AREA PLANNING AND MANAGEMENT **MANAGEMENT AND MONITORING IN NATURAL PARKS OPERATED BY THE BARCELONA DIPUTACIÓN, CATALONIA, SPAIN**. Literature citation: (Castell,Castello & Soler 1996).
14	ENGLAND, UK	RESOURCE AND LAND USE MANAGEMENT **MEDWAY RIVER PROJECT** Literature citation: (House1999).
15	IRELAND	RESOURCE AND LAND USE MANAGEMENT **DEVELOPING INTEGRATED PARTICIPATORY MANAGEMENT STRATEGIES FOR ATLANTIC DUNE SYSTEMS IN COUNTY DONEGAL** Literature citation: (Power, McKenna, MacLeod, Cooper & Convie 2000).
16	SPAIN	URBAN DEVELOPMENT AND RELATED INFRASTRUCTURE **MADRID – VALENCIA MOTORWAY** Literature citation: (Palerm1999).
17	SPAIN	RURAL COMMUNITY DEVELOPMENT/TOURISM **CALVIA LOCAL AGENDA 21,** Interview by SYKE submitter: Carolina Suau Bosch , Agenda Local 21, Calvia

Appendix II: Summary of the Results from the Study on Legislation and Soft law

This is the summary of the material on national legislation and soft law collected from the European ASEM countries (the members of the European Union, EU) during the AEETC project on public involvement in environmental issues in ASEM countries. The material was collected by interviewing authorities/researchers from different countries either by telephone or via e-mail. The same questionnaire (Appendix II) was used in both means. Additional material was received from a survey (ERM 2000) and from the UN/ECE www-page (http://www.unece.org). The questionnaire was answered by 14 out of 15 EU member countries (information from Luxemburg missing). Belgium is represented by the Flemish region. The used symbols for countries are as follows: Austria (AU), Belgium-Flanders (BE), Denmark (DK), Finland (FI), France (FR), Germany (GE), Greece (GR), Ireland (IR), Italy (IT), the Netherlands (NL), Portugal (PO), Spain (SP), Sweden (SW), United Kingdom (UK). The following abbreviations are used for access to information (A.I.), participation in decision making (P.P.) and access to justice (A.J.).

The following persons submitted the information:

Austria	Christian Baumgatner (Federal Ministry of Agriculture, Forestry, Environment and Water Management)
Belgium	Jan de Mulder (Ministry of Flanders, Environment Administration)
Denmark	Susanne Andersen (Danish Environmental Protection Agency)
Finland	Ulla Huimala (Finnish Environment Institute) and Tuomas Kuokkanen (Ministry of the Environment)
France	Georges Guignabel (Ministry of the Environment)
Germany	Thomas Rolf (Ministry of the Environment)
Greece	Maria Peppa (Ministry of the Environment)
Ireland	Kevin Greene (Ministry of the Environment)
Italy	Federica Rolle (Ministry of the Environment)
Netherlands	Annemarie van der Heijden (Ministry of the Environment)
Portugal	Julio Jesus (University of Lisbon)
Spain	Sanchis-Moreno (TERRA)
Sweden	Håkan Hallstedt (Ministry of the Environment)
United Kingdom	David Acres (TXU Europe Power)

RESULTS:
Is there general (cross sectoral) national legislation on public involvement
source: interviews by SYKE

	AU	BE	DK	FI	FR	GE	GR	IR	IT	NL	PO	SP	SW	UK
A.I.	•	•	•	•	•	•	•	•	•	•	•	•	•	•
P.P.			•	•	•	•	•	•	•	•	•		•	•
A.J		•	•	•	•	•	•	•	•	•	•		•	•

*In Spain there are specific dispositions at national and regional levels dealing with public participation and access to justice. For all the three Belgian regions there is regional legislation which provides for public participation.

1. Is public involvement in legal terms a cross cutting issue for which all authorities carry responsibility?
source: interviews by SYKE

	AU	BE	DK	FI	FR	GE	GR	IR	IT	NL	PO	SP	SW	UK
no	•	•												•
yes			•	•	•	•	•		•	•	•	•	•	
partly								•						

*In Austria it is restricted to certain authorities. In UK: no, public involvement is restricted to particular issues and authorities, the public have clearly defined rights for involvement in general planning decisions and in decisions on large industrial processes that fall within the remit of statutory pollution control. Otherwise there are no formal legal rights for public involvement in environmental decision making. For Belgium no, public involvement is restricted to particular issues and authorities such as environmental issues and spatial planning. Public involvement in environmental issues improved during the 1990s, involving public participation not only in EIA procedures and the issuing of permits and licenses for several activities and installations, but also in the legislative process and other matters such as the management of protected areas, water planning and permits, waste management, etc. Although it is a rather cross cutting issue it is also specified which authorities are responsible in each case. For Ireland, it is a cross cutting issue with respect to access to information and in planning and IPPC.

2. Is the implementation of legislation on public involvement supported by the following material
source: interviews by SYKE

SUPPORTIVE MATERIAL	NUMBER OF COUNTRIES
GUIDELINES	8
RECOMMENDATIONS	6
PILOT PROJECTS	6
OTHER, SUCH AS BODY COMMISSIONER,	
PLANNING APPEALS BOARD, OMBUDSMAN	3
NOTHING	3

*In the Netherlands public involvement has already become a normative way of working and thus no guidance is considered to be needed any more. In Denmark and Portugal there is no supportive material.

3. Specific legislation, policies and programmes for different sectors (power production, resource and land use management, protected area planning and management, urban development and related infrastructure, rural community development, pollution control and tourism) of public involvement in environmental issues.
source: interviews by SYKE

Country	legislation (+explaining remarks)
AU	public participation for all sectors
BE	no (but protection of the marine environment and nuclear installations)
DK	all sectors
FI	all sectors except GMO yes, not tourism
FR	most of the sectors
GE	some (exists in many different development consent procedures: for urban development and related infrastructure there exists legislation on public participation)
GR	A.I.: all
	P.P.: all except power production and tourism
	A.J.: only for protected area planning, urban development and pollution control
IR	all
IT	for A.I. and P.P. all but tourism
	for A.J. no
NL	all sectors with some legislation
PO	no, except for land use planning, planning permits, EIA and licensing (IPPC)
SP	for P.P. in some sectors EIA (power production, protected areas, urban development, emission of pollutants, waste management)
	A.I. and A.J. no, except for A.J.: criminal code on environmental crimes
SW	all but tourism
UK	all but urban development and related infrastr. and tourism

4. Is there soft law (policy papers, statements of principle or general programmes) that supports public involvement in environmental issues in the following sectors (in addition to or instead of specific legislation): power production, resource and land use management, protected area planning and management, urban development and related infrastructure, rural community development, pollution control and tourism?
source: interviews by SYKE

Country	Legislation (+ explaining remarks)
AU	No
BE	No
DK	No
FI	Yes except for tourism, yes on GMOs
FR	No
GE	Only in P.P. (recommendation on how to deal with the new 97/11 EIA directive before the federal legislation comes into force)
GR	A.I.: all P.P. all except power production and tourism A.J.: no
IR	Yes for all sectors for A.I. and P.P., for A.J. no (A.J.: does not generally arise in these cases as they are general policy positions which are still subject to the normal planning requirements in delivery)
IT	Only Agenda 21
NL	A.I. and P.P. only Agenda 21 A.J. no
PO	No
SP	Only Agenda 21
SW	No, but exists on local level
UK	All

5. Are the following cross-cutting issues (gender, cultural differences, minorities, indigenous peoples) explicitly recognised in legislation or soft law in public involvement:
source: interviews by SYKE

country	Legislation (+ remarks)	soft law (+ remarks)
AU	No	no
BE	No	no
DK	no (in constitution)	no (in constitution)
FI	no (in constitution)	no (in constitution)
FR	No	no
GE	no (in constitution)	no (but a survey on the gender question in environmental issues)
GR	A.I.: yes P.P.: partly (cultural differences) A.J.: none	A.I: all P.P.: partly (for cultural differences) A.J.: None
IR	No	no (gender issues included in all policy initiatives (e.g. rural proofing)
IT	no (in constitution)	no
NL	no (in constitution)	no (in constitution, municipal level yes)
PO	No	parly (gender and minority (gipsy) issues, but not specifically environmental programmes)
SP	No	no
SW	no (in constitution)	no (in constitution)
UK	No	all

6. Can civil environmental organisations file complaints and appeals in environmental matters?
source: interviews by SYKE

	AU	BE	DK	FI	FR	GE	GR	IR	IT	NL	PO	SP	SW	UK
all civil environmental organisations have these rights			•				•	•	•	•	•			•
only registered civil environmental organisations have these rights	•	•	•	•	•				•			•		
civil environmental organisations cannot file complaints or appeals in environmental matters														

* In Sweden, no registration is needed, but the organisation must have 2000 or more members and activity within the country during the past 3 years. In Denmark it depends whether the organisation is nationwide or not, in Italy it depends on the sector, in Portugal registered organisations have special rights.

7. Can civil environmental organisations act on the behalf of individuals in environmental matters?
source: interviews by SYKE

	AU	BE	DK	FI	FR	GE	GR	IR	IT	NL	PO	SP	SW	UK
all civil environmental organisations can act on behalf of individuals in environmental matters			•				•	•	•	•			•	
only registered civil environmental organisations can act on behalf of individuals		•	•	•	•				•			•		
civil environmental organisations cannot act on behalf of individuals	•					•								•

* Organisations can represent their members – or those who have given the organisation approval to do so.

8. Who can appeal in EIA?
source: ERM 2000

APPEAL	Who can appeal?
BE (Wallonia)	anyone who can prove an interest can appeal against a decision of a competent authority
DK	anyone with a legal interest in the outcome of the case may appeal against a decision of the regional authority
FI	regional environment centers can appeal a ruling on a project to which an EIA procedure should be applied on the grounds that an EIA has not been carried out; Regional env. centers may also order implementation of the project to be halted until the EIA procedure has been carried out. There are general rights to appeal against administrative decisions
FR	any natural or legal person
GE	persons who can claim that the decision infringes upon their individual rights, in some sector legislation also the mainstream recognised NGOs, can appeal
GR	any natural or legal person who is offended by an administrative act or mission related to the environment has the right to apply for an administrative or juridicial review. The party must be able to demonstrate a territorial stake in the area where the environmental damage is supposed to have taken place
IR	any person
NL	any person who has raised objections to the draft licensing decision, EIA advisors who have submitted an opinion on the draft licensing decision, any person raising an objection about amendments made when the decision on the draft was taken and every interested party (=person whose interests are affected) which has not failed to raise objections to the draft licensing decision
PO	the EIA act does not introduce any appeal mechanisms n addition to those existing under current administrative legislation
SP	if there is a discrepancy between the declaration of the competent environmental authority and the licensing decision issued by the competent licensing authority, either the council of ministers or, on a regional level, the corresponding authority, must resolve the discrepancy, no further specific provisions on appeal
SW	the person to whom the judgement or decision relates, also environmental organisations that have been active during the last 3 years and have more than 2000 members
UK	a person „aggrieved" by the decision to grant or refuse planning permission

9. Legislative requirements for timing of involvement in EIA
source: ERM 2000

a. Involvement in different phases.

TIMING OF THE INVOLVEMENT	Is the public involved in the screening process?	Is the public involved in the scoping process?	Is the public involved in the initial assessment of impacts?
BE (Wallonia)	no	no	yes
DK	yes	yes	yes
FI	no	yes	no
FR	no	no	yes, in some projects
GE	no	yes	no
GR	no	no	no
IR	no	no	no
NL	yes	yes	no
PO	yes	no requirements	no requirements
SP	on access to information level	yes	no
SW	yes	yes	yes
UK	yes	yes, but only if the local authority/secretary of state gives a scoping opinion	no legal requirement

b. Timing for commenting on the EIS

TIMING OF THE INVOLVE-MENT	When is the EIS and other information made available to the public?	How long does the public have to express their opinion on the application?
BE (Wallonia)	no requirements	minimum 15 days, for projects requiring EIA, min. 30 days
DK	no requirements	it must be at least 18 weeks
FI	no requirements	begins on the date of publication of the announcement and last 30-60 days
FR	at the beginning of the public inquiry	1-2 months, may be extended by 2 weeks
GE	no requirements	one month´s inspection, then 2 weeks, then consultations with the persons who raised objections
GR	as soon as the prefecture receives an EIA from the MOE, the prefecture has 30 days to publicise it and make it available to the public	within 15 days of the announcement´s publication
IR	from when the planning authority receives the statement until one month after their decision on the application	no fixed time limit, normally 2 months
NL	no more than 8 weeks from the date of receipt of the EIS from the applicant	minimum 4 weeks
PO days,	no requirements	projects listed in annex I (EU dir.) :40-60 days, for annex II (EU dir.) : 20-30 days
SP	no requirements	30 days
SW	no requirements	no requirements
UK	when the local authority receives an ES with a planning application or if ES submitted after the planning application, the applicant must publicize it in a local newspaper and post a notice on the land immediately proceeding the date of submission of the ES	minimum 21 days

10. Legal requirements on public involvement in preparation of plans/programmes
source: ERM 2000

SEA	Is the draft plan/ programme made available to the public?	Is the public involved in the screening process for SEA?	Is the public involved in the scoping process for SEA?	Is the public involved in the initial assessment of impacts?	Is the public informed of the decision?
BE (Wallonia)	?	no	no	no	no
DK	?	no	no	yes	no requirements
FI	?	no	no	no requirements	no requirements
FR	Yes	no	no	no formal SEA as such, but as in EIA	see for EIA
GE	No, but NGOs may participate in the preparation of the plan	no	no	no requirements	no
GR	Yes	no requirements	no requirements	no requirements	no requirements
IR	Yes	no	no	yes	yes
NL	Yes	no	no	no	no
PO	No requirements	no requirements	no requirements	all NGOs which defend interests that might be affected by the plan and all inte-rested citizens must be consulted	no requirements
SP	No	no requirements	no requirements	no requirements	no
SW	Yes	no	no	yes	comprehensive plan: no, detailed development plan: jes
UK	Yes	no	no	yes	yes

11. The Aarhus Convention
source: interviews by SYKE and Århus Convention website (www.unece.org)

	Country has signed the Aarhus Convention	Country started to align its legislation	Parts of present legislation in need of revision	Expected year of ratification
AU	yes	no	public participation	later than 2002
BE	yes	yes	access to info public participation access to justice	later than 2002
DE	yes	yes	access to info public participation	already ratified (2000)
FI	yes	yes	access to justice	2002
FR	yes	yes	public participation	2002
GE	yes	yes	access to info public participation access to justice	later than 2002
GR	yes	no	access to info public participation access to justice	later than 2002
IR	yes	yes	access to information public participation	2002
IT	yes			already ratified (2001)
NL	yes	yes	access to info	2002
PO	yes	no	access to info public participation access to justice	open
SP	yes	no	access to information public participation access to justice	open
SW	yes	yes	access to info public participation access to justice	2002
UK	yes	yes	access to info	2002

12. Ratifications of the Aarhus Convention among the UN/ECE States members and States with consultative status with the UN/ECE
source: UN/ECE website (April 2002)

	have signed but not ratified the Aarhus Convention	have ratified the Aarhus Convention
EU-country	Spain Sweden Portugal Netherlands Luxembourg United Kingdom of Great Britain and Northern Ireland Ireland Greece Germany France Finland European Community Belgium Austria	Italy Denmark
Non-EU-country	Switzerland The Former Yugoslav Republic of Macedonia Slovenia Norway Monaco Liechtenstein Latvia Iceland Czech Republic Cyprus Croatia Bulgaria	Ukraine Turkmenistan Tajikistan Romania Republic of Moldova Poland Malta Lithuania Kazakhstan Kyrgyzstan Hungary Georgia Estonia Belarus Azerbaijan Armenia Albania

Appendix III: The Questionnaire for Study on Legislation and soft-law

Part 1.

Helsinki, x.x.2000

Dear…………………,

We contacted you last ……………by phone concerning the project on Public Participation in Environmental Issues in the ASEM Countries. ASEM stands for the Asia-Europe Meeting, a process which links ten Asian and fifteen European countries into cooperation.

This three-year project aims at promoting the development of public participation in environmental aspects within the ASEM-region by enhancing public participation practice and by strengthening networking within the region. The project is coordinated by the Asia-Europe Environmental Technology Centre (AEETC), financed by the Finnish Government and carried out by the Finnish Environment Institute from the European perspective and by the Thailand Environment Institute (TEI) from the Asian perspective.

One part of the project is to collect background information on ASEM countries´national arrangements for public involvement at the legal level and soft law. This is why we have contacted you.

We kindly ask you to be one of our informants of the European experience.

We suggest the following ways to proceed: Please inform us by email as soon as possible after receiving this questionnaire, whether you are willing to cooperate with us in this study. If your answer is YES,
1)   please choose one of the given time-periods when to carry out a telephone interview on the basis of the questions shown below. We will confirm the chosen time as soon as possible by email and let you know further details of the interview.
2)   Also, we ask you to give us in your acceptance email some pre-information.
We have chosen the telephone interview to give you more space to explain matters and to ask clarification for certain questions. After the telephone interview, we will fill in the questionnaire and send it to you for checking.

The material collected from the different cases will be gathered and analysed, and a report will be provided for the International Meeting on Public Participation in the ASEM countries in Spring 2002.
Please find attached to this email:
- information on the project (rtf and word),
- questions to be answered as a reaction to this email (rtf and word),
- questions for the telephone interview (rtf and word).
  We look forward to cooperating with you!
  Mikael Hildén and Eeva Furman
  Environment Policy Instruments
  Finnish Environment Institute
  P.O.Box 140 FIN-00251
  Helsinki, Finland
  mikael.hilden@ymparisto.fi eeva.furman@ymparisto.fi
  Project website:
  http://www.ymparisto.fi/eng/intcoop/regional/asian/asem/asem.htm

Information on the study

This is a study for compiling background information on the ASEM-countries´[1] national arrangement for public involvement at the legal level and soft law. The study is one part of a project which aims for good practice recommendations for the ASEM region on public participation issues in the context of environmental aspects. In another study in this project, finalised cases are analysed to identify good practice and recurring difficulties that can be solved when developing public involvement.

Due to the diverse nature of the ASEM region special attention will be given to cross-cutting issues such as gender, cultural differences, minorities and indigenous peoples.

A background report consisting of information collected from different sources of literature is also under preparation. The study is part of an AEETC-coordinated project: Public Participation in Environmental Aspects in the ASEM-countries.

For details, see: http://www.ymparisto.fi/eng/intcoop/regional/asian/asem/asem.htm

1 The ASEM countries include: ten Asian countries   Brunei, Indonesia, Malaysia, the Philippines, Singapore, Thailand, Vietnam, China, Japan and Korea   and fifteen Members of the EU, together with the President of the European Commission

Please answer the following questions as a response to our email:

A. Are you willing to give us a telephone interview?
- yes
- no
If yes,

B. Which of the following dates would suit you for an interview:
x.x x.x x.x other
Please choose one/several and indicate a suitable time (in the time of your country).
Please provide the following information of yourself:
Your name:
Organization:
Status of your organization:
- Civil environmental organization
- advocacy organisation
- research-based organisation
- other, please specify
- Public body
- municipal
- state
- provincial
- federal
- central government
- other, please specify
- Other, please specify
The organization operates
- nationally
- internationally

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Part 2.

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Definitions

For the purpose of this study, public involvement is defined as *all activities that give the public opportunities to obtain information and participate in environmental issues or that support participation*. Public involvement is a process of engaging affected people and other interested parties in open dialogue through which a range of views and concerns can be expressed in order to inform decision-making and help in creating mutual understanding despite different interests.

Public involvement can take many forms and have different objectives ranging from dissemination of information to joint planning. Here we distinguish three basic categories of objectives:
- providing access to information;
- providing access to participation in decision making; and
- providing access to justice.

By *Access to information* we mean the public´s rights and possibilities for finding, getting and being provided with information. *Public participation* is defined here as the legal right and practical opportunities to affect decision making e.g. through statements to authorities making decisions on an activity/project. *Access to justice* is defined as the legal right and practical opportunities for challenging the decision on an activity/project through an appeal mechanism.

Each of these may have varying legal background and is also backed by general policies (soft law).

The study

This study aims at giving structure for collecting background information on public involvement in environmental issues. The objective is to apply the study to **legislation and soft law** on public involvement in different ASEM countries thus illustrating the diversity and variation in approaches.

The study is structured around a set of questions. The purpose is to obtain coherent background information of legislation and soft law to help in understanding the processes described in the cases studied, in order to identify good practice and problematic issues. All questions may not, however, be relevant for the country you are giving us information on, so feel free to skip those questions that are not relevant for your case.

The questions

I. Country:………………………………….

II.   National legislation on public involvement

II. 1. Is there general (cross sectoral) national legislation on public involvement

	yes	no
access to information	•	•
public participation	•	•
access to justice	•	•

If you answered yes to II.1 , carry on with II. 2 and II. 3, otherwise move on to section III.

II. 2. Is public involvement in legal terms a cross cutting issue for which all authorities carry responsibility?
- Yes
- No, public involvement is restricted to particular issues and authorities, please specify: ………………………

II. 3. Is the implementation of legislation on public involvement supported by
- guidelines
- recommendations
- pilot projects
- other, please specify:………………………………………………………………

III. Specific legislation, policies and programmes for different sectors on public involvement in environmental issues.

III. 1. Is there specific legislation for the following sectors that would include/deal with public involvement:

	access to information	public participation	access to justice
power production	•	•	•
resource and land use management	•	•	•
protected area planning and management	•	•	•
urban development and related infrastructure	•	•	•
rural community development	•	•	•
pollution control	•	•	•
tourism	•	•	•
other	•	•	•

Further information:……………………………………………………………….

III. 2. Is there soft law (policy papers, statements of principle or general programmes) that supports public involvement in environmental issues in the following sectors (in addition to or instead of specific legislation)?

	access to information	public participation	access to justice
power production	•	•	•
resource and land use management	•	•	•
protected area planning and management	•	•	•
urban development and related infrastructure	•	•	•
rural community development	•	•	•
pollution control	•	•	•
tourism	•	•	•
other	•	•	•

Further information: (please list the important soft law documents from the point of view of public involvement)

IV. Cross-cutting issues in public involvement in environmental issues.

IV. 1. Are the following cross-cutting issues explicitly recognised in legislation on public involvement:

	access to information	public participation	access to justice
gender	•	•	•
cultural differences	•	•	•
minorities	•	•	•
indigenous peoples	•	•	•

Further information:

IV. 2. Are the following cross-cutting issues recognised in soft law **(policy papers, statements of principle or general programmes)** that supports public involvement in environmental issues? Please give examples of soft law documents that recognise the issues:

Issue   access to information public participation   access to justice
Gender
cultural differences
Minorities
indigenous peoples
Further information:…………………………………………………………………..

V. Legal standing of civil environmental organisations

V.1 Can civil environmental organisations file complaints and appeals in environmental matters?
- all civil environmental organisations have these rights
- only registered civil environmental organisations have these rights
- civil environmental organisations cannot file complaints or appeals in environmental matters

V.I Can civil environmental organisations act on the behalf of individuals in environmental matters?
- all civil environmental organisations can act on behalf of individuals in environmental matters
- only registered civil environmental organisations can act on behalf of individuals
- civil environmental organisations cannot act on the behalf of individuals

VI.   The Aarhus Convention (only for Europe)

VI. 1. Has your country signed the Aarhus Convention?
- yes
- no

VI. 2. If yes, has your country started to align its legislation with the Aarhus Convention
- yes
- no

VI. 3. Which parts of the Aarhus Convention require changes in the present legislation
- access to information
- public participation
- access to justice

VI. 4. When do you expect that your country will ratify the Convention
- 2001
- 2002
- later than 2002
- already ratified
- don't know

VII Additional information on legislation and soft law concerning public involvement.
E.g. conflict between legislation/soft law and practice, recent developments and trends in legislation/soft law/practices, successful experiences etc
Thank you for your co-operation!

APPENDIX IV: Questionnaire for the Study on Cases

on Public Participation in Environmental Aspects in ASEM Countries
For European cases: Finnish Environment Institute, Mikael Hildén and Eeva Furman
For Asian cases: Thailand Environment Institute
Somrudee Nicro and Chaiyan Rajchagool

Helsinki, x.x.2000

Dear…………………,

We contacted you last ……………by phone concerning the project on Public Participation in Environmental Issues in the ASEM Countries. ASEM stands for the Asia-Europe Meeting, a process which links ten Asian and fifteen European countries into cooperation.

This three-year project aims at promoting the development of public participation in environmental aspects within the ASEM-region by enhancing public participation practice and by strengthening networking within the region. The project is coordinated by the Asia-Europe Environmental Technology Centre (AEETC), financed by the Finnish Government and carried out by the Finnish Environment Institute from the European perspective and by the Thailand Environment Institute (TEI) from the Asian perspective.

One part of the project is a study of cases. We will be collecting information from finalized and ongoing activities with environmental concern, where public involvement has played at least some kind of role. This is why we have contacted you.

We kindly ask you to be one of our informants of the European experience.
We suggest the following ways to proceed: Please inform us by email as soon as possible after receiving this questionnaire, whether you are willing to cooperate with us in this study. If your answer is YES,
1)   please choose one of the given time-periods when to carry out a telephone interview on the basis of the questions shown below. We will confirm the chosen time as soon as possible by email and let you know further details of the interview.
2)   Also, we ask you to give us in your acceptance email some pre-information of your project.
We have chosen the telephone interview to give you more space to explain matters and to ask clarification for certain questions. After the telephone interview, we will fill in the questionnaire and send it to you for checking.

The material collected from the different cases will be gathered and analysed, and a report will be provided for the International Meeting on Public Participation in the ASEM countries in Spring 2002.

Please find attached to this email:
•   information on the project (info.rtf and info.word),
•   questions to be answered as a reaction to this email (qemail.rtf and qemail.word),
•   questions for the telephone interview(qtele.rtf and qtele.word).
We look forward to cooperating with you!

Mikael Hildén and Eeva Furman
Environment Policy Instruments
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P.O.Box 140 FIN-00251
Helsinki, Finland
mikael.hilden@ymparisto.fi eeva.furman@ymparisto.fi
Project website:
http://www.ymparisto.fi/eng/intcoop/regional/asian/asem/asem.htm

Information on the study
This is a study for compiling information on the practice of public involvement in the ASEM-countries[1]. The study is one part of a project which aims for good practice recommendations for the ASEM region on public participation issues in the context of environmental aspects. The aim is to obtain information on public involvement in environmental issues in the ASEM region. The purpose is to identify good practice and recurring difficulties that can be solved when developing public involvement.

Due to the diverse nature of the ASEM region special attention will be given to cross-cutting issues such as gender, cultural differences, minorities and indigenous peoples.

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[1] The ASEM countries include: ten Asian countries - Brunei, Indonesia, Malaysia, the Philippines, Singapore, Thailand, Vietnam, China, Japan and Korea - and fifteen Members of the EU, together with the President of the European Commission.

A background report consisting of information collected from different sources of literature is under preparation and will stand as a basis for the examination of practices and examples. Four main themes will be dealt with in the background report: Objectives of public involvement, legal base for public involvement, soft law supporting public involvement and public involvement in practice. The study is part of an AEETC-coordinated project: Public Participation in Environmental Aspects in the ASEM-countries. For details, see: http://www.ymparisto.fi/eng/intcoop/regional/asian/asem/asem.htm

Please answer the following questions as a response to our email:

A. Are you willing to give us a telephone interview?
- yes
- no

If yes,

B. Which of the following dates would suit you for an interview:
x.x x.x x.x other
Please choose one/several and indicate a suitable time (in the time of your country).

C. Please give us pre-information on the case you wish to provide us with:
Name of the project:
Location:
Name of the developer/implementer:
Is the developer/implementer:
- Public body
  - Municipal
  - State
  - Provincial
  - Federal
  - Central Government
  - Other
- Public enterprise, please specify:
- Private company
- Civil society

Other stakeholders (e.g. other governmental agencies, companies, lending agencies, farmers, local government, local residents, interest groups etc.), please specify
all:………………………………………………………………………………….
Financial supporters of the project
- Foreign government(s)
- International/regional banks
- International civil society organizations
- Other, please specify:

Please briefly describe the project:……………………………………….............
Is the project
- Finalized, please indicate the starting and closing year:………………
- Ongoing, please indicate the starting and expected closing year: ………………

Other relevant information on the case:
The telephone interview
Definitions
For the purpose of this study, public involvement is defined as *all activities that give the public opportunities to obtain information and participate in environmental issues or that support participation*. Public involvement is a process of engaging affected people and other interested parties in open dialogue through which a range of views and concerns can be expressed in order to inform decision-making and help in creating mutual understanding despite different interests.

Public involvement can take many forms and have different objectives ranging from dissemination of information to joint planning. Here we distinguish three basic categories of objectives:
- providing access to information;
- providing access to participation in decision making;
- providing access to justice;

By *Access to information* we mean the public´s rights and possibilities for finding, getting and being provided with information. *Public participation* is defined here as the legal right and practical opportunities to affect decision making e.g. through statements to authorities making decisions on an activity/project. *Access to justice* is defined as the legal right and practical opportunities for challenging the decision on an activity/project through an appeal mechanism.

Each of these may have varying legal background and can also be backed by general policies (soft law).

The study

This study aims at giving structure for collecting information on public involvement in environmental issues. The objective is to apply the study to **cases and practices** of public involvement in different ASEM countries thus illustrating the diversity and variation in approaches and methodologies.

The study is structured around a set of questions. The purpose is to obtain coherent information of public involvement in order to identify good practice and problematic issues. All questions may not, however, be relevant for all forms of public involvement and the importance and emphasis of the questions may vary, so feel free to skip those questions that are not relevant for your case. On the other hand, you may tick as many alternatives in one questions as necessary.

The questions

I BACKGROUND INFORMATION

I. 1. Which sector does the case represent? For specific cases some general information should also be given on the case (type of activity, size, number of involved parties etc.)
- power production
- resource and land use management
- protected area planning and management
- urban development and related infrastructure
- rural community development
- pollution control and prevention
- tourism
- other, please specify……………………………………….

I. 2. Which has been the base for the public involvement in your case?
- required by law, please specify:……………………………………
- recommended by "soft law" (general policy, programme, recommendations), please specify: ……………
- no legal background, but adopted practice of authority
- no legal background, but adopted practice of developer
- public pressure
- required by the financing body/donor agency
- other, please specify…………………………………

I. 3. Type of public involvement in your case

Has the case/practice included
- distribution of information to interested persons/providing access to information on the activity/project? (access to information)
- consultations organized by authorities before decisions on activity/project? (participation in planning)
- stakeholders were part of the decision making committee (direct participation in decision making)
- stakeholders were invited to a hearing which affected the decision (indirect participation in decision making)
- rights to appeal against decisions of authorities (access to justice)

II DETAILS OF PUBLIC INVOLVEMENT

II. 1. Has the involvement in your case been:

Access to information
- providing information on the planned activity?
- providing information on the assessment?
- providing means for noting the interests of stakeholders?
- creating a forum to discuss the significance of issues related to the planned activity and its assessment?

Participation
- offering a procedure for clarifying the rules of participation and the dialogue between stakeholders and developers?
- providing a forum for participation and presenting views on the plan for the project/activity?
- providing a forum for stakeholders to transmit their own information and experience into the planning process as well as the decision making?

Access to justice
- offering mechanisms for appeals

Other, please specify:…………………………………………………………………………..

II.2. How has information on the activity/project been made available to the public?

Through
- official notice boards (municipal/district)
- distribution of leaflets
- newspapers
- TV, radio
- Internet
- Public presentation in seminars or conferences

II. 3. Which of the following means of participation have been used in the case?
- consultation with potentially affected public
- appointed citizen committees/panels
- public hearings
- discussion forums
- questionnaires
- survey method
- group work techniques with selected groups
- Other, please specify:

II. 4. Invitations to involvement in environmental issues of the activity/project.

II. 4. a) Who have been invited to become involved?
- individual citizens
- interest groups
- women´s groups
- environmental civil organizations
- authorities
- the authorities in the neighbouring country
- the public in the neighbouring country
- international environmental civil organizations
- other organizations, please specify:……………………………………………

II. 4. b) Have invitations been distributed at the
- local/municipal level
- regional/district level
- provincial/(in federal states:) state level
- national/(in federal states:) federal level

II. 5. Public involvement in practice

II. 5. a) The persons actually involved have been representing
- individual citizens
- interest groups
- women´s groups
- environmental civil organizations
- authorities
- the authorities in the neighbouring country
- the public in the neighbouring country
- international environmental civil organizations
- other organizations, please specify:……………………………………………

II. 5. b) Administrative level of representation of the persons involved:
- local/municipal level
- regional/district level
- provincial/(in federal states:) state level
- national/(in federal states:) federal level

II. 6. When has public involvement been initiated?
- at a level of project idea, before any detailed planning had taken place
- when detailed planning was taking place
- when the detailed plans were ready
- after the preliminary decisions on the implementation of the activity/project had been made
- after the decision on the project has been made, e.g. contract signed

II. 7. Conflict and support
Has there been
- public opposition against the project, by whom:…………………………………
- public support for the project, by whom:…………………………………………

Form of opposition:
- petition
- demonstrations/protest
- via mass media
- physical violence

II. 8. Authority´s response to opposition to the project
- no response, project continues
- extension of the participation process, more dialogue
- project halted
- other, please specify:………………………………..

III ENVIRONMENTAL AND SOCIO-ECONOMIC ASPECTS
III. 1. Has the involvement in your case been dealing mainly with
- pollution effects on the environment
- nature conservation
- health and safety
- resource use
- other, please specify:

III. 2. Has the involvement in your case also dealt with socio-economic impacts?
- people´s livelihood
- resettlement/relocation
- local way of life
- other please specify:………………………

IV SUPPORT FOR INVOLVEMENT
IV. 1. Has support (e.g. training or helping people to get organized) been provided for people to be involved as a part of the public involvement in your case?

Type of involvement	Support has been inclu-ded (yes/no)	Example on how people have been supported
Access to information		
Public participation		
Access to justice		

IV. 2. Please provide us with specific successes and problems in supporting people to be involved in your case

Type of involvement	Successes	Key problems
Access to information		
Public participation		
Access to justice		

V CROSS-CUTTING ISSUES
V. 1. Gender issues.
V. 1 a. Has there been an intention to include a certain male:female ratio in your case?
• yes • no • not applicable

More specificly:
- Have special efforts been taken to guarantee that both sexes have access to information?
  • yes • no • not applicable
- Have special efforts been used to guarantee that both sexes could be involved by presenting their views and participating in the decision making process? • yes • no • not applicable
- Have special efforts been used to guarantee that both sexes have the same rights and same practical opportunities to make an appeal? • yes • no • not applicable

Please give examples:

Type of involvement:	Possible example of arrangement
Access to information	
Public participation	
Access to justice	

V. 1. b. What has been the sex ratio in the involvement:
- men dominated, please specify:……………………………………………
- women dominated, please specify:…………………………………………..
- no clear difference seen

V. 1. c. Please describe specific successes and problems in dealing with gender issues in your case

Type of involvement   Successes   Key problems
Access to information
Public participation
Access to justice

V. 2. Cultural diversity, general level

V. 2. a. How has cultural diversity been addressed in your case?
- Has attention been paid to support involvement in different languages that are used by the affected public? • yes • no • not applicable
- Has attention been paid to historical rights (e.g. land use rights, water rights)
  • yes • no • not applicable
- Has cultural heritage been considered in conducting public involvement?
  • yes • no • not applicable

Please give examples:

Type of involvement   Special consi-deration given   Example of arrangement
                             to cultural dif-ferences (yes/no)

Access to information
Public participation
Access to justice

V. 2. b. Have cultural issues been raised by the people? Please describe:

V. 2. c. Please describe specific successes and problems in dealing with cultural diversity in your case

Type of involvement   Successes   Key problems
Access to information
Public participation
Access to justice

V. 3. Cultural diversity, dealing with minorities in specific

V.3. a. Please describe the type of minority in your case:
- minorities are not an issue
- language
- ethnic
- cultural/religious
- recent immigration
- other

V.3. b. How have minority issues been dealt with in your case?
- Has attention been paid to support involvement in minority languages that are used by the affected public? • yes • no • not applicable
- Has attention been paid to minorities´ historical rights (e.g. land use rights, water rights)
  • yes • no • not applicable
- Has cultural heritage of minorities been considered in conducting public involvement?
  • yes • no • not applicable

Please give examples:

Type of involvement   Example of arrangement
Access to information
Public participation
Access to justice

V. 3. c. Have minority issues been raised by the people?

V.3. d. Please describe specific successes and problems in dealing with minority groups in your case

Type of involvement   Successes   Key problems
Access to information
Public participation

Access to justice

V. 4. Indigenous people according to the Agenda 21 definition: *Indigenous people and their communities have an historical relationship with their lands and are generally descendants of the original inhabitants of such lands.*

    V. 4. a. Has the case been affecting indigenous people?
-     yes
-     no

V. 4. b. How have the issues related to indigenous people been dealt with in your case
- Has attention been paid to support involvement in indigenous languages that are used by the affected public? • yes • no • not applicable
- Has attention been paid to indigenous peoples´ historical rights (e.g. land use rights, water rights) • yes • no • not applicable
- Has cultural heritage of indigenous peoples been considered in conducting public involvement? • yes • no • not applicable

Please describe examples:
Type of involvement   Example of arrangement
Access to information
Public participation
Access to justice
V. 4. c. Have indigenous peoples´ issues been raised by the people?
V. 4. d. Please describe specific successes and problems in dealing with issues related to indigenous people in your case
Type of involvement   Successes   Key problems
Access to information
Public participation
Access to justice

VI. WHICH ARE THE MOST IMPORTANT LESSONS TO BE LEARNED FROM YOUR CASE WITH RESPECT TO FUTURE DEVELOPMENT OF PUBLIC PARTICIPATION IN
-     public access to information:
-     public participation in decision making:
-     public access to justice:

VII. COST/BENEFIT CONSIDERATIONS
Is there any information on the costs of the public involvement in your case?
Is there any information on the specific benefits of the public involvement in your case?
Thank you for your cooperation!
(Footnotes)

2 The ASEM countries include: ten Asian countries
Brunei, Indonesia, Malaysia, the Philippines, Singapore, Thailand, Vietnam, China, Japan and Korea and fifteen
Members of the EU, together with the President of the European Commission

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