



**An assessment of Access to Information, Participation in  
Decision-making and Access to Justice in environmental  
Matters  
In R.of Macedonia**

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***An assessment of Access to Information, Participation in Decision-making and Access to Justice in Macedonia***

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The Access Initiative Macedonia

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## *Acknowledgement*

Every citizen has right to access to information, right to participate in decision making processes and right to access to justice regarding environmental issues. Ensuring these environmental rights has great importance for the democracy in our country. This is why during 2008 Macedonia conducted TAI research.

This initiative represents the largest global network dedicated on promotion of people's rights and abilities to influence in the decision making processes regarding the natural resources in their communities.

Using the 2.0 toolkit, members of the coalition were answering questions for every research in particular. Information was provided through interviews, visits, legal analysis, and documentation reviews or media reports.

Leading organization responsible for complete implementation of the TAI research in Macedonia is NGO Florozon from Skopje. As president of this organization and coordinator of TAI Macedonia I formed TAI coalition with the following structure: TAI research team, representatives from the NGO sector: Biosfera – Bitola and Macedonian green Center – Skopje, Advisory Panel that includes representatives from the Ministry of Justice, Ministry of Environment And Urban Planning, Public Relations Office, NGO ORT, Primary Court of Kavadarci, Municipality of Gorce Petrov and the Ombudsman office.

The World Resources Institute (WRI) from USA and Environmental Management and Law Association (EMLA) from Hungary helped Macedonia to become member of the TAI network and to achieve successful research with aim to bring positive environmental changes in the future.

We would like to express special gratitude to The World Resources Institute (WRI) for their technical and financial support for realization of this project.

The Access Initiative – TAI has the strength to promote access to information, public participation and justice in environmental decision making and together we will make the changes in our country.

**Kiril Ristovski**

**President of NGO Florozon**

**Leader of TAI Macedonia**

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## EXECUTIVE SUMMARY

### Introduction

The Partnership builds on the work of **The Access Initiative (TAI)** – a global coalition of civil society organizations promoting access to information, participation, and justice in decision-making that affects the environment. TAI supports independent monitoring of government progress by civil society groups using a common assessment tool.

With the adoption of the Rio Declaration the world has been committed to abide the “access right”. Republic of Macedonia signed the **Rio Declaration on Environment and Development** (often shortened to Rio Declaration) accompanying the 178 Governments of the World. The Rio Declaration is consisted of 27 principles intended to guide future sustainable development around the world.

Over a decade ago, **Principle 10** of the **Rio Declaration** articulated public access to information, participation in decision-making, and access to justice as key principles of environmental governance.

In order to emphasize the importance of access rights implementation the world has been initiated the UNECE **Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters**, usually known as the **Aarhus Convention**.

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#### **Aarhus Convention, OBJECTIVE –**

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

For the purpose of translating the principles of environmental governance into action by promoting transparent, inclusive, and accountable decision-making at the national level, the so called Partnership for Principle 10 (PP10) is constituted.

### Overview

This report is structured in a manner to give an overview over the local circumstances with respect to the access right. Through screening the practice of access rights in comparison to rules prescribed within the national legislation in the field of access to information, public participation and access to justice, it can be concluded that between the rules and the reality in practice the span exists and for making the current practices more fitting to the prescribed provisions a lot of supporting activities should be undertaken. In following the general structure of the report:

### **a. TAI APPROACH – The Assessment Methodology**

TAI was established in late 2000 to develop a methodology that civil society can use to assess national government progress in implementing Principle 10 of the Rio Declaration and the Aarhus Convention. The methodology consists of a software tool (TAI Assessment Toolkit version 2) that guides researchers in generating indicator databases for access to information, participation, justice and capacity building (known as Categories) efforts by their governments through a structured set of questions based on pre-determined qualitative values. The questions and values are organized to produce information about the presence and quality of relevant laws as well as the effort put into and effectiveness of their implementation. The latter is assessed through selected case studies. The majority of indicators is qualitative and serves as a basis for further analyses.

The leading organization managing the TAI Research for Macedonia is the NGO – Florozon, Skopje (Association for environmental protection and sustainable economic development); the partner organizations of TAI Macedonia that take participation together with the NGO – Florozon are the NGOs: Macedonian Green Centre - Skopje and Biosfera from Bitola.

**Team – Kiril Ristovski- coordinator of the TAI Macedonia, assistant coordinator of the report Milena Manova, researcher: Marija Jankovska, Natasa Lazarevska, Aleksandra Karakashova, Daliborka T. Janevska**

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**Methodology** – Framework of research questions, indicators, and research tools (including guidelines on source selection and documentation) used to conduct a ***national assessment of access to information, participation, and justice via examination of Case Studies***.

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#### **Methodology Overview**

Each TAI assessment is based on **148 indicators**, or research questions, that NGO researchers use to assess their governments' provisions for transparency and accountability in decisions that affect the environment. TAI researchers apply the 148 indicators at both a **general, national level** and to **at least 18 case studies**.

The indicators are divided into **four categories**:

1. **Access to information** – Information is the cornerstone of decision-making, providing the public with knowledge and evidence to make choices about and monitor the state of the environment.
2. **Public participation** – Participation allows citizens to express opinions, challenge decisions, and shape policies that could affect their communities and environment.
3. **Access to justice** – Mechanisms for justice enable citizens to seek legal recourse if their access rights have been denied or if they have suffered an environmental harm.
4. **Capacity building** – The efforts to improve a country's human, scientific, technological, organizational, institutional, and resource capabilities. Both government agencies and civil society need particular knowledge, skills, and abilities to facilitate public access to information, participation, and justice.

In addition to these four categories, the TAI indicators also fall within one of **three topics**:

- a. **Law** indicators evaluate the national legislative and judicial framework related to access.
- b. **Effort** indicators assess the government's actions to provide access, including the implementation of laws.
- c. **Effectiveness** indicators assess whether the laws and government efforts resulted in effective access, as well as how the world changed because of the level of access achieved.

### Case studies

TAI research teams apply the indicators to **a minimum of 18 case studies** for each national assessment. Case studies fall into three of the four categories: Access to Information, Public Participation or Access to Justice. The fourth category, Capacity Building, is measured both within the other categories' case studies and through a general set of indicators. Similarly, law indicators fall into two types: ones that are answered for particular cases and ones that apply to the entire assessment.

According to Macedonian Case Study selection, the following Case Studies were analyzed for TAI assessment (See the below list of titles, divided by Category and grouped according to the chosen type of performances for the certain Case Study).

### **Access to Information – 8 Cases**

Case Name	Case Type	Case Type Details
<b>Air pollution from Okta, crude oil refinery</b>	Information from regular monitoring	Air quality
<b>Environmental problem with water pollution of Kriva Reka in Kriva Palanka</b>	Information from regular monitoring	Drinking water quality
<b>The pollution of Kamenichka Reka river</b>	Information from regular monitoring	Drinking water quality
<b>OKTA Refinery – Existing equipment for environment protection</b>	Facility-level information	Reports from industry audits
<b>Discotheque noise – stuck in the administration loop</b>	Facility-level information	Reports on environmental compliance
<b>Ecological disaster on Macedonian river Vardar: thousands of fish killed</b>	Information in an emergency	Biodiversity
<b>Leakage of the huge amounts of mining waste from the mine for extraction of lead and zinc oar – SAS</b>	Information in an emergency	Water bodies (river)
<b>State of Environment Report 2006</b>	State of Environment reports	Link to Scale



**Public Participation – 6 Cases**

Case Name	Case Type	Case Type Details
Absence of public participation in Macedonia for the project NPP Belene in Bulgaria	Project-level decisions	Development Permits
Bypass Skopje- Corridor 8	Project-level decisions	Other
Corridor 10	Project-level decisions	Other
Radioactive landfill	Policy-making	Plans
The NGOs of environmental sector in Macedonia fights for their participation right	Policy-making	Programs
Revolted citizens, against construction of a landfill in the Centar Zupa, Debar	Regulatory decisions	Plans

**Access to Justice – 4 Cases**

Case Name	Case Type	Case Type Details
Air pollution - Toplifikacija AD Skopje	Environmental harm	Judicial forum
Feni Industry Kavadarci	Environmental harm	Judicial forum
Usje AD Skopje	Environmental harm	Judicial forum
Regional Landfill “Peresi”	Environmental harm	Judicial forum

CATEGORIES	Access to Information	8	Information from regular monitoring	3
			Facility-level information	2
			Information in an emergency	2
			State of Environment reports	1
	Public Participation	6	Project-level decisions	3
			Policy-making	2
			Regulatory decisions	1
	Access to Justice	4	Environmental harm	4

- \* ***General Law and General Capacity Building Indicators do not require individual case studies.***

## ***b. MAIN FINDINGS***

### **General Law**

The obligations derived from the Agreement on Stabilization and Association that was signed with EU in 2001 bind Republic of Macedonia to harmonize its own national legislation with that of the EU in order to make the Accession to EU more feasible. The responsibilities derived to fulfill the requirements stated within the Aarhus Convention, cause consolidation of governmental activities for the purpose of reshaping the national legislation in a manner to fit to the international demands.

The Legal Acts that were analyzed are the following:

- Law on Environment
- Law amending the Law on environment
- Law on free access to information of public character
- Methodology of regulatory impact assessment
- Macedonian criminal code
- Law on general administrative procedures
- Macedonian civil and criminal law
- Law on registration and operation of CSOs
- Law on CSOs and foundation
- Law on donations and sponsorships
- Law on radio diffusion
- Laws on primary and secondary education
- Law on noise
- Law on ambient air quality

### **General Capacity Building**

Many government officials including members of the judiciary do not have a thorough understanding of access laws and public participation practices, hampering their ability to help the public exercise its access rights. In some instances, officials lack a culture of compliance with the spirit and practice of access, as well as accountability for their role in making access possible. At the same time, citizens are often unaware of their rights and lack the skills needed to participate effectively, demand and collect the information they need, and make complaints or seek remedies when they are dissatisfied with environmental

decisions. While many CSOs could help citizens develop these skills, the financial resources to undertake large capacity-building programs are often missing.

## **A2I (Access to Information)**

### **Problem:**

No matter it was considered that Macedonian Legislation profile is structured in a manner to fit to the requirements of European Union regarding access to information, as well as, to be in line with International Regulative and Conventions (Aarhus Convention; Espoo Convention), it can be concluded that even where these laws contain an important basis for public access to environmental information, it can't be accepted as enough.

Public access to information about environmental emergencies and accidents is surprisingly poor in most countries assessed, as well as in Macedonia. Both, the timeliness and quality of information on chemical spills or other potentially dangerous incidents is usually inadequate to protect public safety, to ensure accountability for the incident, or to help establish legal liability. Currently, most environmental accidents go unreported unless they are observed by the public. There is generally no mandate to proactively make information available as to the extent or cause of the incident, or even to ensure that emergency information is accurate and delivered effectively to the affected public.

What is evidenced is the poor job of dissemination of: the publication of pollutant's release data; the information about the industrial project activities; the lack of information about the obligatory documents that should be prepared by the industries, as well as limited efforts to reach out the media in order to make their findings public.

No matter of the responsibilities prescribed within the law, where industrial facilities are required to: monitor their releases, carry out self-monitoring by using devices and instruments approved through the procedure for measurements, maintain the monitoring devices and instruments in proper working condition and inform about all this internal activities, the reality shows they rarely release this data to the public.

In addition Macedonia, still does not have a Pollutant Release and Transfer Register (PRTR) that routinely informs the public about sources and quantities of industrial pollutants. The result is that in many communities the public has no way of knowing whether a nearby facility is in compliance with pollution regulations or if it poses a threat to public health and safety.

## **PP (Public Participation)**

### **Problem:**

The access to information (A2I) and the access to PP are straitely related. Without information properly announced on the official web sites of both, the ministries and entities legally binded to carry out the release of information, as well as proper dissemination of the information through the media, the parties interested to take participation in the decision-making process are limited to express their opinion about some issues.

Access to PP is requiring appropriate information about the industrial project activities (adjustments of the technological processes and the equipment; initiation for enlarging of their performances etc.), as well as, about all the activities, which can impact the environment for the sick of better living society.

The Law is determining the conditions under which the public takes participation in the decision-making processes. The entities (legally binded to carry out the release of information) are following the procedures properly, mainly because they are legally binded, but still the PP is not carried out in an acceptable way. The reasons diverse from case to case. The problem could be found everywhere: not timely dissemination of the information or using not easy available media for information release. More often the reasons for such reality could be found not among the authorities, but also among the public which is not especially interested about the environmental issues or their awareness is at very low level.

The opportunity for the public to participate in decision-making at both the national and project levels is usually confined to the later stages of policy formulation or project planning. Frequently, the availability and timeliness of information on opportunities to contribute earlier in the planning process is poor or nonexistent. The exclusion of stakeholders is a serious shortcoming of most participatory processes.

#### **A2J (Access to justice)**

##### **Problem:**

The research identified some weaknesses during the practicing of the right to justice. It was concluded that the trials can be considered as not effective due to the long court procedures which are time and money consuming. Very often the final court decision not corresponds to the reality and it is practice the legal entities that contribute to significant extent into the local economy to be exempted of the liability to respond according to environmental procedures. This practice should be changed what leads to making substantial changes in the juridical system of Republic of Macedonia (strengthening of the capacities – “zero level of corruption” initiative)

### ***c. CONCLUSIONS & RECOMMENDATION***

#### **General Law**

##### **Actions:**

- .Changes and supplements in the law for citizen associations and foundations. The sub-law act enabling the interested public to get free registration of their organization which is going to function for the benefit of the environment.
- Passing a law for Legal Help
- Supplements of the sub-law acts for the establishment of the Monitoring system for implementing the legal ordinances and introducing penalties for concealing or distortion of data.

- Passing sub-law acts within the Environmental Law which will enable capacity building within the national government agencies concerning the access to information and public participation.
- Passing sub-law act within the Environmental Law which will provide training of the information holders, the representatives of the Ministry for Environment and Local Self-government in order to provide easier access to information and public participation in the process of decision-making.
- Changes and supplements of Article 212 from the environmental law. The penalties are minimal regarding the legal person who causes pollution of the environment. Increase of the fines up to 100 000 euros.
- Changes and supplements of Article 53 from the environmental law. To change the time framework for providing access to information.
- To change bullet 1 and the required information to be provided as fast as possible, in a period no longer than 15 days.
- To change bullet 2 in article 53 in the environmental law, and to provide the required information in a period of one month after the claim was submitted.

### **General Capacity Building**

In order to provide better understanding and active implementation of the law's provisions with respect to environmental information, including collection, analysis, dissemination, as well as, information on public participation and justice, some activities should be undertaken. With this respect to be pointed out the need the governmental Agencies and their staffs take participation in educational training programs for appropriate dissemination of information.

#### **Actions:**

- Forming an inter-ministry group for realizing the three rights to access. This group will be consisted of representatives from different sectors of the Ministry for Environment, representatives of the local self-government, the Ministry of Justice and the ombudsman. Clear definition and position of the jurisdictions for protection of the environment within the state institutions which will lead to efficient implementation of the laws, inspectorial coordination and objective implementation of the Aarhus convention. In order to achieve the final goal it is necessary to realize the training programs by an expert team.
- Training for state clerks in order to provide information concerning the environment. Encourage the production of information by Governments. Hold staff accountable for their access related duties (including these in their job descriptions and assessing their performance based on how well they discharge these duties).
- Develop inter-agency partnerships and partnerships with business and civil society to ensure that complex environmental data becomes usable and publicized.

- Build partnerships with and provide seed money to CSOs that have experience with community organizing and education around civic and environmental matters.
- Build domestic awareness of CSOs, train CSOs in access to information, justice, and participation mechanisms and broaden standing for environmental harm.
- Provide accessible financial programs for the CSOs, grant tax-exempt status etc.
- Practical research into how CSOs are selected to participate in national and regional policy-making to be addressed. The research must address as well mechanisms to include the poor and socially excluded in the decision-making process and to limit capture of participatory processes by elites.
- Make the access rights available to every concern party.
- The access proponents to take several essential actions to bring about access reforms and address barriers to and gaps in the provision of public access.
- Raised the profile of access reforms (push for greater transparency and public influence in decision-making)
- Manage and sustain policy reform (to be examined through those most affected by lack of access to environmental decision-making and spread out to those who have the greatest interest in a transparency and democracy agenda).
- Build and strengthen networks in order to push for greater transparency.
- Improvement and institutionalization of access rights (continued independent assessment and ongoing advocacy and collaboration).
- Permanent capacity building at early stage, what means enforcing the changes in the educational system by including the sustainable environmental and civil society education as obligatory subject in primary and secondary schools.

## A2I

The general activities that should be undertaken for improving the access right to information, to be examined through implementation of the following recommendations: (to be added that each of the actions pointed out below are in some manners fulfilled, but there is need to make them strengthened and more intense).

- Conducting citizen training in all municipalities in Republic of Macedonia. Campaign in the media for raising public awareness, TV spots, radio advertisements, distribution of leaflets and posters.
- Capacity strengthening of the media and the journalists since they are the most adequate disseminator of information of public concern. Forming a list of journalists who will work on issues related to the environment, conducting a training program

which will have influence and will contribute to the improvement of the environment condition, promoting the rights to access.

- Aiming to provide planning, monitoring and implementation of the legal acts for access to information at a municipality level, it is necessary to strengthen the local self-government units and to establish institutional framework and systematization at local level. Conducting training programs in all municipalities in Republic of Macedonia at local level by independent experts, preparation of procedures, manuals and training materials for efficient implementation of the rights for access to information, monitoring and conducting environmental regulations at local level.
- Make an available and easy applicable system for data archiving that will processed easy understandable reports on environmental data information for the citizens.
- Due to the faced reality of low public information over the laws regulating the right for free access to information and low awareness of the procedures for requesting information of environmental character, some educational trainings to be provided with this regard.
- Strengthening of the State Environmental Inspectorate capacities for the purpose of providing good quality and timely disseminated information is needed. The inspectors to be provided with specific training programs on how to make their work more transparent and to be instructed to penalize the improperly actions of entities that are obliged to make the information available.  
Concealment of information and not transparency of the Inspectorate is not allowed
- Creating widely publicized standards for collection and distribution of environmental data.
- Enable natural and legal persons to exercise their right to free access to information of public character.
- In order to perform planning, monitoring and implementing of the legal acts on access to information at municipality level, strengthening of the local-self government units is need.

**(1) INFORMATION ON COMPLIANCE AND INDUSTRIAL POLLUTANTS (Water, air and soil discharges)**

**Actions:**

- Establish mandatory requirements for reporting pollution emissions or discharges from industrial facilities, using standardized monitoring and sampling techniques to ensure high-quality data.
- Make this data available to the public on-line and through channels most likely to reach those affected, preferably as part of a Pollutant Release and Transfer Registry that allows the public to obtain both a local and macro view of the pollution releases in their area.

- Specify which classes of information must be placed in the public domain and which can remain confidential in order to reduce administrative discretion in releasing information.
- Include a requirement to analyze the health and environmental implications of the information on water and air quality.
- Invest funds to increase the human, financial and physical resources necessary for a robust monitoring system.

## **(2) STATE OF THE ENVIRONMENT REPORTS**

### **Actions:**

- Establish a mandate for periodic SoE reporting – at least once every three years, if possible.
- Encourage the use of a standardized format for ease of comparability over years, and give greater attention to environmental trend data. Make these data available on the Internet free of charge.
- Collaborate with other partners and the media to ensure that SoE information is widely available, publicized, and usable.

## **(3) INFORMATION ON EMERGENCIES AND ACCIDENTS**

### **Actions:**

- Establish a legal mandate for timely reporting on environmental emergencies and accidents; encourage the creation of specific standards for information content and timeliness in emergency reporting that leads to expectations of proactive provision of accurate information to the public.
- Establish emergency broadcast systems and protocols for their use. Such systems should take into account the latest communications technologies—such as cell phones and text messaging—in addition to conventional emergency broadcast technology and traditional communication methods and systems.
- Establish a list of toxic substances and specific hazardous substances that, if accidentally released or encountered, require immediate notification of nearby residents.
- Mandatory use of established emergency protocols easy accessible for every citizen.
- Develop clear responsibility and accountability for environmental reports both during and after an emergency.



**PP****Actions:**

For the purpose of better understanding when and how the access most contributes to positive impacts and prevention of harm, it is proposed to initiate a Research Agenda to Explore Public Participation. Key questions include:

- ✓ At what stages in the policy and project planning process is access most beneficial?
  - ✓ What are appropriate guidelines for officials to decide what form of participation are suitable for given circumstances?
- 
- For the purpose of more active inclusion of the public in the procedures of public hearing, the reliable information is needed (stakeholders to be adequately informed of early participation opportunities)
  - Conducting training program for improvement of public participation in the process of decision-making
  - Education of the representatives of the local self-government, the employees in the ministries and the representatives of the NGOs with aim to involve the public in the programs, plans and legal regulations concerning the environment.
  - Not only to be aware of and comply with the laws, but to publicize opportunities for citizen (widening opportunities for stakeholders to contribute in the initial phases to be addressed)
  - Specify targets for earlier citizen involvement in policy and planning.
  - Adjust the notification process for public participation
  - The Laws is requiring regular proactive creation
  - Receiving of more comprehensive briefing materials, such as initial planning drafts or scoping criteria (early information)
  - Available quality technical, economic, and environmental data to be provided in order to improve the quality of final decisions.

**Provide greater budget support to citizen education programs that build participation skills.**

**PP/Law**

1. Sublegal act in the environmental law that will impose capacity building in the government institutions for public participation in environmental decision making

2. Sublegal act in the environmental law that will regulate trainings for the government accountable employees regarding public participation in the environmental decision making
3. Sublegal act in the environmental law that will regulate trainings for the public to enable public participation in the decision making processes

## **A2J**

The more specific recommendations with this regard are related to the following:

- Rights and responsibilities: ensuring a right to a healthy environment is an overarching aim of policy, which must be supported by placing responsibilities on individuals and organisations to ensure this right is achieved.
- Conducting training programs with the help of external experts concerning the three rights to access. Realization of workshops and seminars intended for judges, state secretaries in the courts, representatives in the state and basic prosecution, representatives of the ombudsman. Education of these representatives concerning the legal commitments which come from the Aarhus convention, the legal regulations in our country, comparative analysis of the EU legislature. Parallel with these trainings it is necessary to start a campaign in the media
- Assessment: projects and policies need to be assessed for their distributional impacts.
- Participation and capacity: decision-making should involve those affected, and those groups or individuals enduring environmental injustices need support in order to increase their control over decisions which affect them.
- Integration: of social and environmental policy aims in all sector

## Overall observation

Principle of public participation and access to information obliges the bodies of Republic of Macedonia (both central and local) to provide all necessary measures and perform and specify the procedures of access to environmental information and public participation in all processes requiring environmental decision making.

In general speaking, the practicing of the legal procedures sometimes is misleading the proceedings as they are prescribed within the national legislation. The manner of implementing the legal Acts and their provisions is more often not in compliance with the directions given by the framework legislative and the secondary laws. The misinterpretation of the legislation is done by the actors of the procedure on their own initiative in order to mask their illegal activities.

Very often, especially when some of large scale facilities are doing permanent pollution, and the indicators of affected, both, environment and people's health are noticeable, discourage the information (about water, air or soil pollution) given by the competent authorities who stand by the polluter side and withhold the real data for the environmental state. This inconvenient reality prolongs the activities that must be undertaken to fulfill the requirements for adaptation and improvement of the both, equipment and technological processes within the industries. Up till now, non initiative performed by the CSOs result with success.

Facing this reality, it could be concluded that many cases which exercise the legal rights on clean and healthy living environment are still open and the unsolved ones are compiled permanently. This reality must be finished and every future process invoked to be concluded in judicial effective manner. The constitutional right of access to justice is one of the most valuable human rights guaranteed by the Constitution itself. One of the fundamental values of the constitutional order of the Republic of Macedonia are the rule of law, the division of state powers into legislative, executive and judicial and the legal protection of property. It is guaranteed the right of every citizen to invoke the protection of freedoms and rights determined by the Constitution before the regular courts, as well as before the Constitutional Court of Macedonia, through a procedure based upon the principles of priority and urgency. No matter everything is properly regulated on paper, reality in practice is different. With this respect, we are not recommending prioritisation of the actions identified, but concluding at least one case in properly (judicial effective) manner. For that purpose, we are proposing the following:

- Protection of the rights of individuals and organizations exclusively through the administrative procedure by the Institution Ombudsman
- Solidifying the Institution Ombudsman
- Initiate division within this institution specialized on environmental issues
- Restriction over the state administration bodies and other bodies and organizations having public competencies in cases when their work results with omissions
- Provide serious methods for the involvement of the affected by decisions

The legal system is often inaccessible because it is complex, time-consuming and expensive. With this respect to be ensured acceptable conditions for every citizen to invoke judicial proceedings.

## 1. THE BACKGROUND

The three “access rights” of access to information, participation in decision-making and access to justice in environmental matters empower individuals to have a meaningful voice in decision that affect sustainable development. On the United Nations "Conference on Environment and Development" (UNCED), informally known as the Earth Summit (Rio De Janeiro, 1992) the access rights were recognized internationally. With the adoption of the Rio Declaration on Environment and Development the world has been committed to abide the “access right”. Republic of Macedonia signed the Rio declataion along with 178 Governments of the World.

The full implementation of Agenda 21 (The full text of Agenda 21 was revealed at the United Nations Conference on Environment and Development – the Earth Summit. It is a comprehensive blueprint of action to be taken globally, nationally and locally by organizations of the UN, governments, and major groups in every area in which humans impact on the environment. The number 21 refers to the 21st century.), the Programme for Further Implementation of Agenda 21 and the Commitments to the Rio principles, were strongly reaffirmed at the World Summit on Sustainable Development (WSSD).

### What is Johannesburg Summit 2002?

Johannesburg Summit 2002 – the World Summit on Sustainable Development – brought together tens of thousands of participants, including heads of State and Government, national delegates and leaders from non-governmental organizations (NGOs), businesses and other major groups to focus the world's attention and direct action toward meeting difficult challenges, including improving people's lives and conserving our natural resources in a world that is growing in population, with ever-increasing demands for food, water, shelter, sanitation, energy, health services and economic security.

The Rio Declaration consists 27 principles intended to guide future sustainable development around the world.

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### Principle 10. *Public participation* –

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***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.***

***Principal 10 is a political principle or practice, and may also recognise as a right (right to public participation).***

Generally public participation seeks and facilitates the involvement of those potentially affected by or interested in a decision. The principle of public participation holds that those who are affected by a decision have a right to be involved in the

decision-making process. Public participation implies that the public's contribution will influence the decision.

Public participation may be regarded as a way of empowerment (**Empowerment** refers to increasing the spiritual, political, social or economic strength of individuals and communities) and as vital part of democratic governance.

This initiative didn't stop here, but continued through the years. In order to emphasize the importance of access rights implementation the world has been initiated the UNECE **Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters**, usually known as the **Aarhus Convention**. The Convention was signed (as of April 2008, it had been signed by 40 and ratified by 41 countries) on June 25, 1998 in the Danish city of Aarhus. It entered into force on 30 October 2001. It had also been ratified by the European Community, which has begun applying Aarhus-type principles in its legislation.

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#### **Aarhus Convention, *OBJECTIVE* –**

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

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

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#### **The Access Initiative and PP10**

The establishment of transparent, accountable, and participatory decision-making is instrumental to address two main challenges facing the world in the new millennium - poverty alleviation and environmentally sustainable development.

The Access Initiative has developed a set of indicators that civil society groups can use to assess how well their governments are performing at providing access to information, participation, and justice in decision-making. Such independent monitoring provides a crucial tool for governments, businesses, and other stakeholders as they set priorities for policy change and work to implement their commitments. PP10 will use the findings from TAI assessments to improve national and local access to information, participation, and justice in environmental decision-making. Those groups who have joined TAI may also join PP10.

## 1.1 TAI APPROACH – The Assessment Methodology

TAI was established in late 2000 to develop a methodology that civil society can use to assess national government progress in implementing Principle 10 of the Rio Declaration and the Aarhus Convention. The methodology consists of a software tool (TAI Assessment Toolkit version 2) that guides researchers in generating indicator databases for access to information, participation, justice and capacity building (known as Categories) efforts by their governments through a structured set of questions based on pre-determined qualitative values. The questions and values are organized to produce information about the presence and quality of relevant laws as well as the effort put into and effectiveness of their implementation. The latter is assessed through selected case studies. The majority of indicators is qualitative and serves as a basis for further analyses.

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**Methodology** – Framework of research questions, indicators, and research tools (including guidelines on source selection and documentation) used to conduct a ***national assessment of access to information, participation, and justice via examination of Case Studies***.

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- (1) **Assessment** – Process of measuring a country's performance in providing access to information, participation, and justice, including collecting data to answer selected research questions. The term also refers to the product of such research - as in, "once a team has completed an assessment, they should submit it to The Access Initiative."
- (2) **Access** – Ability or right to obtain or make use of information, opportunities for participation, and mechanisms for justice.
- (3) **Information** – Facts, knowledge, explanations, justifications, data, and resources on environmental factors, including air and water quality, environmental emergencies, general environmental trends, facilities and their environmental impacts, plans or programs affecting natural resources, etc
- (4) **Participation** – Informed, timely, and meaningful input and influence in decisions on general policies, strategies, and plans at various levels and on individual projects that have environmental impacts.
- (5) **Justice** – Fair treatment and due reward in accordance with the law (adequate and effective redress and remedy in the case of a violation of rights)
- (6) **Case Study** – Study of an example used for assessing government effort and effectiveness in providing access to information, participation, or access to justice. A case study may be about an event (such as an environmental emergency), a decision-making process (such as development of an environmental impact assessment), or a particular judicial claim.

### Methodology Overview

Each TAI assessment is based on **148 indicators**, or research questions, that NGO researchers use to assess their governments' provisions for transparency and accountability in decisions that affect the environment. TAI researchers apply the 148 indicators at both a **general, national level** and to **at least 18 case studies**.

The indicators are divided into **four categories**:

1. **Access to information** – Information is the cornerstone of decision-making,

providing the public with knowledge and evidence to make choices about and monitor the state of the environment.

2. **Public participation** – Participation allows citizens to express opinions, challenge decisions, and shape policies that could affect their communities and environment.
3. **Access to justice** – Mechanisms for justice enable citizens to seek legal recourse if their access rights have been denied or if they have suffered an environmental harm.
4. **Capacity building** – The efforts to improve a country's human, scientific, technological, organizational, institutional, and resource capabilities. Both government agencies and civil society need particular knowledge, skills, and abilities to facilitate public access to information, participation, and justice.

In addition to these four categories, the TAI indicators also fall within one of **three topics**:

- a. **Law** indicators evaluate the national legislative and judicial framework related to access.
- b. **Effort** indicators assess the government's actions to provide access, including the implementation of laws.
- c. **Effectiveness** indicators assess whether the laws and government efforts resulted in effective access, as well as how the world changed because of the level of access achieved.

#### **Case studies**

TAI research teams apply the indicators to **a minimum of 18 case studies** for each national assessment. Case studies fall into three of the four categories: Access to Information, Public Participation or Access to Justice. The fourth category, Capacity Building, is measured both within the other categories' case studies and through a general set of indicators. Similarly, law indicators fall into two types: ones that are answered for particular cases and ones that apply to the entire assessment.

**CATEGORIES**

1	2	3	4	TOPICS
Access to Information	Public Participation	Access to Justice	Capacity Building	
a. Law				
Indicators 7-19	Indicators 47-59	Indicators 91-103 143	Indicators 14-18 53-58 98-102 137-143	
b. Effort				
Indicators 20-38	Indicators 60-80	Indicators 104-128 148	Indicators 32-38 74-80 104 122-128 144-148	
c. Effectiveness				
Indicators 39-46	Indicators 81-90	Indicators 129-136	Indicators 42-46 86-90 132-136	



## 2. INTRODUCTION

### 2.1 Facts for Republic of Macedonia

The Republic of Macedonia is situated in South-Eastern Europe, in the centre of the Balkan Peninsula. According to the geocharitcal location, it is central Balkan country bordering with four countries, at the east with Republic of Bulgaria, at the north with republic of Serbia and Republic of Kosovo, at the west with Republic of Albania and at the south with Republic of Greece. The length of the borders is 766 km in total.

The Republic of Macedonia covers an area of 25.713 km<sup>2</sup>. The terrain is mostly hilly and mountainous.

According to the Census in 2002, the total population of the Republic of Macedonia is 2. 022. 547 inhabitants. The gender structure shows almost equal participation of both genders (50. 2 % men and 49. 8 % women).

In the Republic of Macedonia dominates a sub-Mediterranean climate with characteristic warm and dry summers, and cold and humid winters. The mean annual temperatures decrease from the north to the south of the country. The mean annual precipitations quantity on mountains is approximately 1000 – 1500 mm, and in the basins it is 600 – 700 mm.

The longest river is Vardar, 388 km (of which 301 km are in Republic of Macedonia), and mostly it flows through the central part of the country. Its basin occupies biggest part of the territory of the country and it is part of the Aegean basin. On the southern border there are three big, natural lakes: Lake Ohrid, Lake Prespa and Lake Dojran. The territory of the Republic of Macedonia lies on seismically active area.

In industry, the food and the tobacco industry are most characteristic, as well as the manufacture of iron and steel.

The unemployment is approximately 38 %.



Nearly half the total area



a of the country is used by agriculture, split equally between cultivated areas and pastures. Forest cover plays an important ecological function in terms of watershed protection and soil conservation. Agriculture combined with forestry and fishing and the service sector account

for 22% and 30% of the GSP, respectively. About 37% of the total territory of the Republic is classified as forest lands which is high in comparison to other countries in Europe.

Industry is the dominant sector, accounting for 35% of Gross Social Product (GSP) and 39,9% of employment.

Some of the crucial environmental issues in the country are poor air quality in Veles and Skopje, polluted surface water due to discharge of untreated wastewater, and inadequate solid and hazardous waste management system.

It is expected in future that the ongoing economic and social reform will have a favorable influence on the environment. Large polluting industries are expected to be restructured to be more efficient and less polluting. Also, energy and other resource consumption should decline, with price liberalization and industrial reforms promoting sustainable use of natural resources. The introduction of "polluter pays" and "user pays" principles in environmental policy will further reduce pollution, minimizing clean-up and promoting rational use of natural resources.

#### MACEDONIAN GEOGRAPHY

Location of Macedonia:			Southeastern Europe, North of Greece	
Continent:	Europe		Land Area Total:	25,333 sq km
Region:	South-Eastern Europe		Land Area Land:	24,856 sq km
Capitol City:	Skopje		Land Area Water:	477 sq km
Latitude:	041 50 N		Border Boundary Land:	766 km
Longitude:	022 00		E Border Boundary Coastlines:	0 km
Arable Land:	22.01 %		Pastures:	26%
Crops:	1.79 %		Woodlands and Forests:	37%
Highest Elevation:	2,764 m	Location:	Golem Korab	
Lowest Elevation:	50 m	Location:	Vardar River	
Largest City in Macedonia:	Skopje 485,000	Skopje Largest City Population:		
Threatened Species:	25			
Environmental Issues:	air pollution from metallurgical plants			
Environmental Agreements, party to:				
Air Pollution, Biodiversity, Climate Change, Climate Change-Kyoto Protocol, Endangered Species, Hazardous Wastes, Ozone Layer Protection, Wetlands signed, but not ratified: none of the selected agreements				
Irrigated Land:	550			

**Bordering Countries:**

Albania 151 km, Bulgaria 148 km, Greece 246 km, Serbia 62 km and Kosovo 159 km

**Natural Resources:**

low-grade iron ore, copper, lead, zinc, chromite, manganese, nickel, tungsten, gold, silver, asbestos, gypsum, timber, arable land

**Geographical Terrain:**

mountainous territory covered with deep basins and valleys; three large lakes, each divided by a frontier line; country bisected by the Vardar River

**Macedonia's Geography:**

landlocked; major transportation corridor from Western and Central Europe to Aegean Sea and Southern Europe to Western Europe

**General Climate:**

warm, dry summers and autumns and relatively cold winters with heavy snowfall

**Natural Hazards:** high seismic risks

<b>MACEDONIAN ECONOMY</b>
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**Economic Overview:** At independence in September 1991, Macedonia was the least developed of the Yugoslav republics, producing a mere 5% of the total federal output of goods and services. The collapse of Yugoslavia ended transfer payments from the central government and eliminated advantages from inclusion in a de facto free trade area. An absence of infrastructure, UN sanctions on the downsized Yugoslavia, one of its largest markets, and a Greek economic embargo over a dispute about the country's constitutional name and flag hindered economic growth until 1996. GDP subsequently rose each year through 2000. However, the leadership's commitment to economic reform, free trade, and regional integration was undermined by internal political problems. The economy shrank 4.5% because of decreased trade, intermittent border closures, increased deficit spending on security needs, and investor uncertainty. Growth barely recovered in 2002 to 0.9%, then rose by 3.4% in 2003, 4.1% in 2004, and 3.7% in 2005. Macedonia has maintained macroeconomic stability with low inflation, but it has lagged the region in attracting foreign investment and job growth has been anemic. Macedonia has an extensive grey market, estimated to be more than 20 percent of GDP, that falls outside official statistics.

<b>GDP:</b>	\$15,940,000,000 USD	<b>Currency:</b>	Macedonian denar
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<b>GDP per Capita:</b>	\$7,800 USD	<b>Currency Code:</b>	MKD
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**GDP Growth Rate:** 4.00 %

**Currency Exchange Rate History:**

Macedonian denars per US dollar – 41.43 (2008), 1 (2007), 1 (2006), 48.92 (2005), 49.41 (2004), 54.322 (2003), 64.35 (2002), 68.037 (2001)

<b>GDP of Agriculture:</b>	11.80 %	<b>GDP of Industry:</b>	31.90 %
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<b>GDP of Services:</b>	56.30 %
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Inflation Rate:	0.00 %	Population in Poverty:	29.60 %
Unemployment Rate:	37.30 %	Tourism:	181,000.00 visitors each year
Budget Revenue in USD:	\$2,105,000,000 USD		
Budget Expenditures in USD:	\$2,150,000,000 USD		
Electricity Production:	6,271,000,000 kWh		
Electricity Exports:	0 kWh		
Electricity Consumption:	7,933,000,000 kWh		
Electricity Imports:	1,662,000,000 kWh		
Electricity Production by Source:			
Fossil Fuel Electricity Production:	82.25%		
Nuclear Electricity Production:	0.00%		
Hydro Electricity Production:	17.75%		
Oil Production:	0 barrels per day	Natural Gas Production:	0 cu m
Oil Consumption:	23,000 barrels per day	Natural Gas Consumption:	/ cu m
External Debt:	\$2,190,000,000 USD		
Received in economic aid:	\$250,000,000 USD		
Agricultural Products: grapes, wine, tobacco, vegetables, milk, eggs			
Primary Industries:	food processing, beverages, textiles, chemicals, steel, cement, energy, pharmaceuticals		
Industrial Growth Rate:	6.80 %		
Import Amount in USD:	\$3,196,000,000 USD –		
	machinery and equipment, automobiles, chemicals, fuels, food products		
Import Partners:	Russia 13.2%, Germany 10.4%, Greece 9.2%, Bulgaria 7.3%, Italy 6%		
Export Amount in USD:	\$2,047,000,000 USD –		
	food, beverages, tobacco; miscellaneous manufactures, iron and steel		
Export Partners:	Germany 17.8%, Greece 15.3%, Italy 8.3%		
Labor Force Number of People:	855,000		
Labor Force by Occupations:	agriculture NA%, industry NA%, services NA%		

MACEDONIAN COMMUNICATIONS
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Radio Broadcast Stations:	49	Number of People with Radios:	410,000
Television Broadcast Stations:	31	Number of People with Televisions:	510,000
Internet Service Providers:	3,541	Internet Users:	159,900
Internet Country Code:	.mk	Newspapers:	53
Two Letter Country Code:	MK	Phone Country Code:	389

#### MACEDONIAN TRANSPORTATION

Highways:	5,540 km	Railways:	699 km
Gas And Oil Pipelines:	388 km	Waterways:	0 km
Motor Vehicles:	155 per 1,000 people		
CO2 Emissions:	10,688,000 Metric Tons of CO2 per year		
Per capita CO2 emissions:	5.40 Metric Tons of CO2 per year		

#### MACEDONIAN PEOPLE

Population:	2,050,554	Birth Rate:	12.02 births per 1,000 people
Population Density:	80.00 people per sq km		
Death Rate:	8.77 deaths per 1,000 people		
Population Growth:	0.26% per year		
Fertility Rate per Women:	1.57 babies born per woman		
Population 0-14:	20.10%	Population 15-64:	68.90%
		Population 65+:	11.00%
Net Migration Rate per 1,000 people:	-0.65		
Nationality:	MACEDONIAN		
Ethnic Groups:	Macedonian 64.2%, Albanian 25.2%, Turkish 3.9%, Roma 2.7%, Serb 1.8%, other 2.2%		
Primary Language:	Macedonian		
Other Languages:	Macedonian 66.5%, Albanian 25.1%, Turkish 3.5%, Roma 1.9%, Serbian 1.2%, other 1.8%		
Primary Religion:	Macedonian Orthodox		
Other Religions:	Macedonian Orthodox 64.7%, Muslim 33.3%, other Christian 0.37%, other and unspecified 1.63%		

## **2.2 Environmental aspects**

### ***2.2.1 Basic weaknesses in solving the environmental problems***

The need for completion of the existing legal frame with the necessary secondary legislation, aimed at providing the appropriate mechanisms for monitoring and legislation enforcement, as well as appropriate capacity introducing on all levels, has been recognized as one of the major weaknesses in the process of approximation with the EU in the sector of environment. The lack of institutional and human resources on both central and local level, as well as with other relevant stakeholders (especially in the industrial sector) should be emphasized in the context of the implementation of the EU Directives transposed in the Macedonian legislation.

The problems get more severe because of:

- Absence of clear allocation of responsibilities between the numerous involved bodies,
- Absence of functional connection between the local and the national level, which is very important in terms of the new responsibilities and tasks that should be taken over by the units of the local self-government, that need models for exchange of experience and significant capacity increase,
- Weak capacities of the units of the local selfgovernment in all domains of environmental protection, including implementation of inspection, law enforcement, monitoring, issuing of B environmental integrated licenses and parts of other responsibilities according to the EU requirements and the local conditions,
- Lack of training and guidance that should be organised by the central administration in collaboration with the local self-government in order to direct and speed up the transition phase and to obtain adequate vertical coordination between the government authorities, as well as
- Lack of activities for increasing the public awareness and education at all levels, emphasising the aspect of transparency.

Lack of complete and accurate data regarding the polluting substances and polluters, lack of integrated approach to environmental problems solving, especially in the areas of water resources management and waste management, as well as the lack of capital investments to finance the needed upgrading of the infrastructure in these areas, result in further slowing down of the processes for setting up an efficient system for environment protection in the Republic of Macedonia.

### ***2.2.2 Measures for overcoming the weaknesses in solving the problems in the environment***

In the forthcoming period, the Republic of Macedonia will continue to address the challenges in the EU approximation pointing out the need for overall strengthening of the national system for environmental management and strengthening the capacities of the administration on central and local levels, in order to accelerate the harmonization of the national legislation in the area of environment with the relevant legislation of the European Union. In that regard, major efforts are necessary in securing adequate strategic base for implementation of the legislation, as well as for building the capacity and institutional structures needed to speed up the identification process, preparation and implementation of

programmes and projects in line with the requirements for multilateral and bilateral support. The on-going decentralisation process requires identification of numerous priorities and actions to facilitate the process of allocation of the responsibilities from central to local level, to enhance the local selfgovernment capacities for implementation of the new responsibilities, as well as to build up strong relation between the central and the local government. The importance of these issues is additionally confirmed by the important role of the local-self government in the process of securing stable progress towards harmonisation with the EU legislation and adequate implementation of the national legislation.

The mechanisms for integration of the environmental issues in other sector policies have been increasingly applied in the Republic of Macedonia, and these policies and the requirements specified in the national legislation gain greater importance. This trend should continue in the next period with even greater intensity towards integrated environmental management in accordance with the sustainable development principles.

The general goals for setting up functional and efficient national system for environmental management are aimed at:

- Continuation of the process of approximation with the EU policies in the area of environment, with the horizontal legislation and specific requirements deriving from the relevant Directives,
- Integration of environmental policy into other sector policies,
- Strengthening of the administrative structures needed for providing efficient environmental management,
- Establishment of a platform for efficient implementation and compliance with environmental requirements through the process of capacity building for efficient environmental management at all management levels, through close collaboration between the responsible authorities on horizontal and vertical levels,
- Motivating the industry, the service providers and other stakeholders in the environmental area for undertaking greater responsibility for the protection of the environment,
- Solving important environmental problems of national importance
- Increasing the degree of fulfilment of the obligations deriving from regional and global environmental agreements, and
- Last but not least, increasing the investment level in the area of the environment in order to achieve the EU standards.

### 3. METHODOLOGY

#### 3.1 Methodology used for Macedonian Assessment

The leading organization managing the TAI Research for Macedonia is the **NGO – Florozon, Skopje (Association for environmental protection and sustainable economic development)**; the partner organizations of TAI Macedonia that take participation together with the NGO – Florozon are the NGOs: Green Centre Macedonia - Skopje and Biosfera from Bitola.

In order to make the process for Macedonian TAI assessment transparent, some logical steps were undertaken in prior. Several stages were adopted with respect to TAI (Toolkit version 2.0 as opposed to the former desk top database software on CD-ROM) web-based toolkit analyses in Macedonia:

- Training workshop on the methodology for research assistants;
- Selection of case studies by the research team;
- Meeting of Assistant Researchers (preparation for research starting and assigning of the case studies).

Methods used by the research team to gather data and information involved:

- Literature search by collecting data and gathering information from various agencies and from the internet;
- Research of the national legislation (available legislative consisted of Primary legal acts and Secondary legislation)
- Research of the approach for requesting information in the field of environment
- Research of the procedures for public participation
- Research of the policy and practice for supporting NGOs and education performances in the field of environment
- Research of the social-political system
- Sending questionnaires, formal correspondence, and conducting interviews with key actors for the purpose of the research;
- Discussions between research team members and Review Panel, and with resource persons;
- Editing data into the research database
- Review over the possibilities for reuse of the methodology in repeating the research
- Consolidation and synchronisation of all the Category Reports into a single report in conformity with the guidelines provided by TAI;
- Preparation for examine the final results of the research
- Forwarding report to Review Panel for review and adoption;
- Forwarding of draft for international review.

Altogether eighteenth (18) case studies in various sectors were selected in the three main categories (access to information, public participation and access to justice) and assigned to



research assistants. All indicators in the various categories were reviewed. Each researcher was responsible for entering the data collected into the TAI website whose follow-up was assured by the TAI – Macedonian Coordinator.

### **3.2 Case Study selection process**

The Case Studies are example of free access to investigation and acquiring common practise with respect to assessing the access right in the own country.

The process of Case Study selection is performed by leading some logical steps for best case determination, what means, using a guidebook with clear instructions on what type of case studies to streamline the focus. In following, the guidance is shown:

- Take in consideration the expertise and knowledge of the Research Team and the Advisory Group/Panel. Those are responsible to conduct and select the cases.
- Choose a Case specific for your country. It is not necessary to assess cases with best and worst practice.
- Choose an applicable case from the recent (fresh case). This is useful for easy data collection and determination of data which, at the most appropriate way will express the actual state in your country.
- Choose a Case that affects the environment and the human health.
- Choose as much as possible number of cases to assess within the timeframe available. As much as the cases are numerous, as deeper and more real is the assessment. The research team should fulfil acceptable level of knowledge and skills.
- Choose Cases according to your internal Sector specification in order to easy access the necessary data for the investigation.
- Choose Cases implemented by the determined number of government agencies. This will help you to access the agencies' performances and to streamline the efforts to have them as primary auditorium.
- Choose a Case from your very next door in order to save money and resources

### **3.3 Key contributors of TAI Research**

The key contributors to the process for carrying out the selection and the assessment of the Case Studies are the following group of researchers: Marija Jankovska, Aleksandra Karakashova, Natasa Lazarevska, and Daliborka T. Janevska

#### **TAI Coalition**

The TAI coalition represents a union of individuals or organizations united for the purpose of carrying out the TAI assessment. "Coalition" refers to the group of organizations and individuals within a country who have agreed to work together to conduct the assessment and translate the results into products and outcomes.

TAI Report - Macedonia

TAI Coalition Macedonia: NGO Florozon Skopje- leading organizations, the partner organizations of TAI Macedonia that take participation together with the NGO – Florozon are the NGOs: Macedonian Green Centre – Skopje and Biosfera from Bitola.

### **Advisory Group/Panel**

An individual representing both Civil Society and Government that oversees, reviews, and helps to guide a TAI assessment in a given country. It is the responsibility of the TAI Coalition within a country to invite individuals to serve on the advisory group/panel. Members of the National Advisory Group/Panel in a given country will review data and reports assembled by the TAI coalition in the country in order to determine if the study was done in an accurate and objective manner. Once completed to a satisfactory level, the data and reports move on to Global Review.

### **Team**

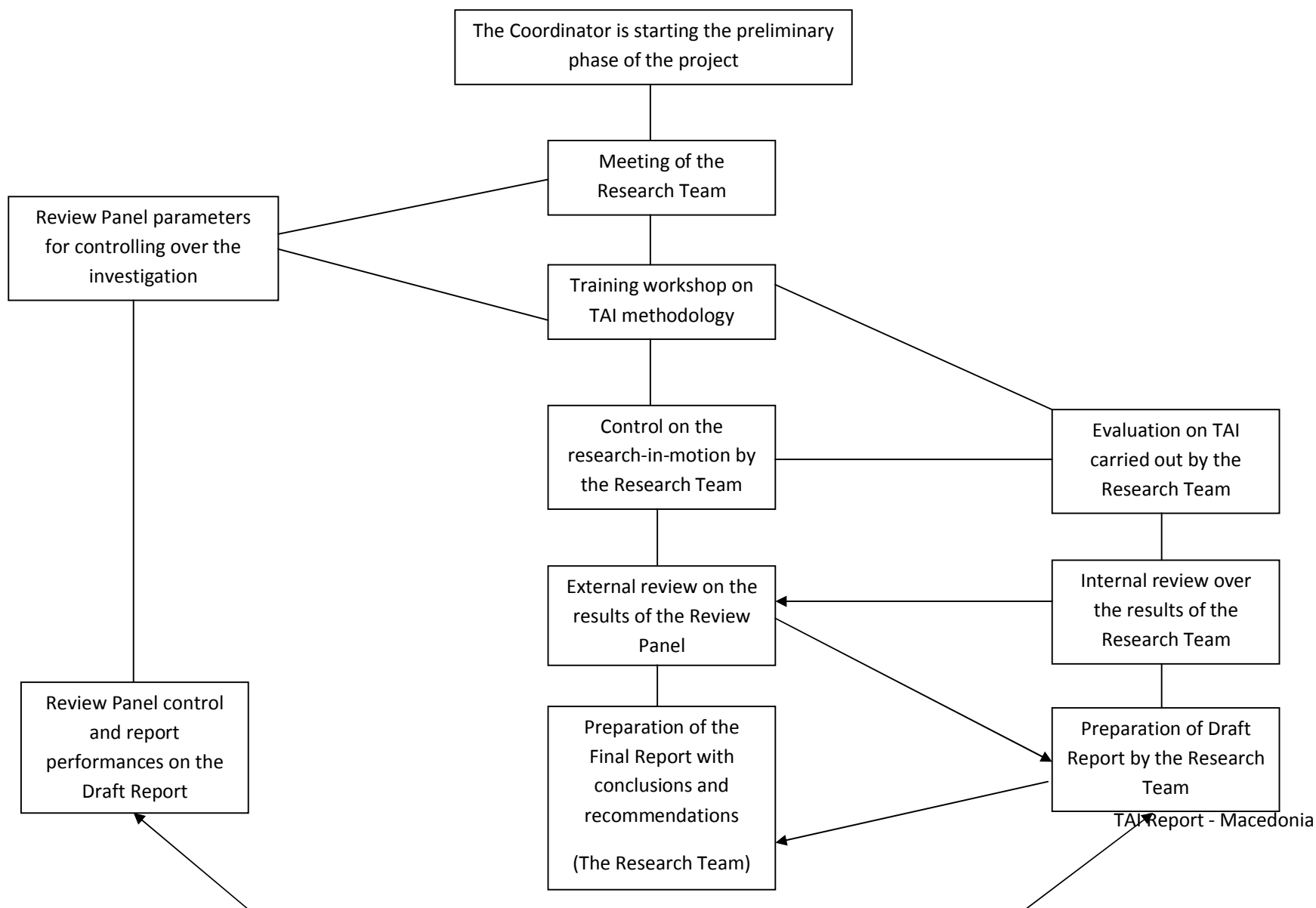
The group of researchers (and coordinators) conducting a TAI assessment in a given country. This group will include individuals from several organizations within a coalition.

TAI team Macedonia: **Kiril Ristovski – coordinator of the TAI Macedonia, the assistant coordinator of the report Milena Manova**, researcher: Marija Jankovska, Natasa Lazarevska, Aleksandra Karakashova and Daliborka T. Janevska

### **Reviewers**

National Advisory Panel or Global Reviewers are involved in a process to analyze the results of an assessment. This analysis can include inspection of case study selection, value selection and explanation, and research methods used. It also includes analysis of the final report for consistency with the research as well as general quality of prose.







According to Macedonian Case Study selection, the following Case Studies were analyzed for TAI assessment (See the below list of titles, divided by Category and grouped according to the chosen type of performances for the certain Case Study).

Case Name	Case Type
<b># 1 [ACCESS TO INFORMATION]</b>	
Air pollution from Okta, crude oil refinery	Information from regular monitoring
Environmental problem with water pollution of Kriva Reka in Kriva Palanka	
The pollution of Kamenichka Reka river	
OKTA Refinery – Existing equipment for environment protection	Facility-level information
Discotheque noise – stuck in the administration loop	
Ecological disaster on River Vardar: thousands of fish killed	Information in an emergency
Leakage of the huge amounts of mining waste from the mine for extraction of lead and zinc ore – SAS	
State of Environment Report 2006	State of Environment reports
<b># 2 [ACCESS TO PUBLIC PARTICIPATION]</b>	
Absence of public participation in Macedonia for the project NPP Belene in Bulgaria	Project-level decisions
Bypass Skopje- Corridor 8	
Corridor 10	
Radioactive landfill	Policy-making
The NGOs of environmental sector in Macedonia fights for their participation right	
Revolted citizens, against construction of a landfill in the Centar Zupa, Debar	Regulatory decisions

### # 3 [ACCESS TO JUSTICE]

Air pollution - Toplifikacija AD Skopje

Feni Industry Kavadarci

Usje AD Skopje

Regional Landfill "Peresi"

} Environmental harm

#### 4. GENERAL LAW

The Parliament of the Republic of Macedonia is a representative body of the citizens and a bearer of the legal authority in the country. The Government of the Republic of Macedonia is a bearer of the executive authority and the MOEPP carries out the activities related to the state and protection of environment and spatial planning.

By ratifying the Aarhus Convention, Republic of Macedonia commits itself in front of the foreign institution to fulfill the requirements regarding to the access right.

*Article 118 of the Constitution of the Republic of Macedonia defines that the “international agreements ratified in accordance with the Constitution are part of the internal legal system and can not be changed by law”; Article 68: “The Parliament of the R. Macedonia – ratifies international agreements”; Article 98: “The courts shall judge on the basis of the Constitution and the laws and international laws ratified in accordance with the Constitution”.*

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**The agreements ratified in accordance with the Constitution shall be considered as internal right of the country, thus have legal power of a law and can not be changed by law.**

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*According to the Constitution of the Republic of Macedonia, the citizens of the Republic of Macedonia are equal in enjoying rights and freedoms, irrespective to the sex, race, skin colour, national and social origin, political and religious conviction, property and social state. The citizens are equal before the Constitution and the laws.*

The main drivers of the national access to right, apart from the Constitution of RM, are the legal acts (primary and secondary legislation) listed in following:

- Law on Free Access to information of public character (Official Gazette of RM no. 13/06)
- Law on Environment (Official Gazette of RM no. 53/05, 81/05 and 24/07), together with the adopted secondary legislation acts:
  - ⇒ Decision on publishing List of subjects that possess or on which environmental information are possessed (Official Gazette of RM no. 82/07),
  - ⇒ Rulebook on the Manner and Procedure for providing access to environmental information (Official Gazette of RM no. 93/07) and

*Decree on the Reimbursement of Costs for providing environmental information in the cases when fee is charged (it is in governmental procedure for adoption).*

##### 4.1 Access to information

The general provisions of the access to information are specified within the Constitution of RM:

***The Constitution of the Republic of Macedonia states: The right of access to information held at public bodies is specified in a manner that the free access to information and the freedom of reception and transmission of information are guaranteed. Also the Constitution of Republic of Macedonia contains article referring***



*to the right to petition state and other public bodies as well as the right to receive an answer.*

The Law on Environment directly implements the requirements of the Aarhus Convention for access to environmental information. The Law establishes that:

- Everyone has the right to access to environmental information without having to show interest;
- The right to access to information shall be established in a manner defined by the Law;
- All the bodies specified by the Law shall provide environmental information;
- A request for giving an information may be refused only in specific cases;
- The bodies specified by the Law shall collect and release environmental information within the scope of their work;
- The reimbursement of the costs on giving the required information shall be of a reasonable value which does not exceed the real costs; and
- The Party not satisfied shall have a right to access to justice.

The Law on Environment defines that bodies and legal entities and individuals which possess environmental information, shall be: the public administration bodies; local self government units; the legal entities and individuals who are authorized with public authorizations, including special duties, activities and services in the field of the environment; and other legal entities and individuals specified by law.

The right of access to environmental information shall be exercised in respect of all information in written, visual, audible, electronic or any other available form, pertaining to: **the state of environmental media and areas, factors, measures, reports; costs/benefit analysis; conditions related to human health and safety.**

Also, within the Law on Environment the **Condition under which the request for environmental information may be refused** is regulated.

The entities may refuse to allow access to information if disclosure of the information would have negative effects on:

1. the confidentiality of the proceedings managed by the competent authorities;
2. the international relations, public security and national defense;
3. the court procedure, the right of legal entities and individuals to a fair trial and the right to initiate court or disciplinary procedure;
4. the confidentiality of commercial or industrial information where such confidentiality is guaranteed by law with view of protecting legitimate economic interest;
5. the protection of persons and the confidentiality of personal data;
6. the protection of intellectual and industrial property rights;
7. the interests of any person who supplied the requested information without any obligation to do so, where that person has not consented to the disclosure of the information concerned; and/or
8. the protection of specific wild species and/or types of habitats.

In each of the cases, the entities shall assess whether the protection of public interest, to which the requested information pertains, is of higher importance than the interest served by the disclosure of the information.

*The framework Law supporting broad access to government information in Macedonia is stringent (not allow free access) in the following circumstances:*

*classified information of appropriate degree of secrecy; violation of personal data protection; information identified as confidential; violation of the confidentiality of the tax procedure; information obtained or compiled within an investigation, in case of possible harmful consequences for the course of the procedure itself; information relating to commercial and other economic interests, including the interests of monetary and fiscal policies, information contained in a document undergoing a procedure of compiling and still being subject of harmonization with an information holder, information related with environment protection which is not available to the public due to the human health and environmental protection; and information jeopardizing industrial or intellectual property rights (patent, model, sample, goods or service seal, product origin indication).*

Republic of Macedonia has ratified the Aarhus Convention. With this respect, all the responsibilities determined to fulfill the requirements of the Aarhus Convention running through the Ministry of Environment and Physical Planning (MOEPP) and Public Communication Department (PCD) which is located within the Ministry.

MOEPP has a **legal obligation** for dissemination of environmental information in accordance with the: *Law on Waste, Law on Nature Protection; Law on Ambient Air Quality and the Draft Law on Waters. All the aforementioned Laws envisage legal basis for practical implementation and realization on the basis of the secondary legislation acts.*

MOEPP is responsible for dissemination of environmental information and for facilitating the access to environmental information possessed by the other ministries, the municipalities, the City of Skopje and the municipalities of the City of Skopje, and the other bodies and entities.

The information shall be provided in the form requested, unless specified conditions in law are fulfilled. The manner and the procedure through which access to environmental information is provided are a subject to a secondary legislation act.

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**In order to make the access to information more transparent and easy available, MOEPP has established the Environmental Information System managed by the Macedonian Environmental Information Centre (MEIC). The obligation for informing, both on a national and international level, shall be carried out by MEIC.**

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The Information System is established and organized in a manner to provide a relevant database, comprehensive, accurate and publicly accessible information on the state of the nature, the state and quality of the environmental media and other environmental areas, noise, ionizing and non-ionizing radiation, including electromagnetic radiation, as well as forecasts through the use of modeling techniques. The Information System includes systematization, storage and use of data obtained through state monitoring network and local monitoring networks, from the monitoring performed by the operators obliged for that by Law, of individual environmental media and areas, as well as data from the Register of pollutants and polluting substances and their properties, and the Cadastre of polluters of the environment.

Operators, which are sources of emission and which pollute one or more environmental media and areas, or use natural heritage shall under the special law carry out self-monitoring by using devices and instruments approved through the procedure for measurements verification established by law, and maintain the monitoring devices and instruments in proper working condition.

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Based on the processed data, MEPP shall also prepare Reports on a monthly and yearly basis. The printed reports shall be submitted to the relevant institutions. The official Reports shall be available for different interested parties and for the public in the premises of the Public Relation Office (PRO) and on the web-site of the Ministry.

The MoEPP in cooperation with other relevant bodies (cooperation between MoH and MoEPP is performed through the State Sanitary and Health Inspectorate and the State Health Institute) of the state administration, prepare an Indicator Report, and a State of the Environment Report in the Republic of Macedonia every four years ('the Report'). The Report is available at the MOEPP web-site, and sent to all relevant and interested institutions.

#### **4.1.1 Practical application of the provisions on access to information**

*According to the law (Law on Environment), a person is being nominated responsible for achieving/practicing the right for access to environmental information, and provide premises in which the requesting parties shall be able to review or have an insight into the required environmental information. The PCD keeps register of the number of reviews. All the reviews are presented in the table, classified according to the type of information requested, or according to the target groups.*

This is experienced in practice through the PCD. The principles of the Aarhus Convention are in some manner practical implemented through the PRO and MEIC as parts of the communication department within the MoEPP. All the environmental information of vital importance for normal and healthy living is distributed to the public. Numbers of citizens are free to give their proposals and petitions/requests for certain environmental problems.

## **4.2 Access right to Public Participation**

The most common example for Public Participation is the mandatory principle for inclusion of the public attitude in the procedures of environmental impact assessment, as well as, in the procedure for preparation of Adjustment plans and filling in applications upon which the A – and B – IPPC permits are issued. According to the Law, inclusion of the public in the adoption of the environmental programme and plan documents, as well as, participation on the preparation of the Primary and Secondary Legal Acts is needed.

- (1) Subject of environmental impact assessment (EIA) shall be the projects which due to their character, scope or location of their realization, may have significant impact on the environment. The need for an environmental impact assessment is identified on the basis of case-by-case examination characteristics, size and location, in accordance with the prescribed criteria, in light of the latest scientific and technical developments, and the provisions in the regulations, which regulate the limit values of emissions into the environment.

MoEPP is obliged to:

1. Publish the notification for performance of project,
2. Publish the decision on the need for performance of EIA

3. Announce that the study on the environmental impact assessment is prepared and available to the public
4. Publish the report for compatibility of the EIA study
5. Publish the decision on granting approval or refusal of the project realization
6. Announce the time and the place of the public hearing on the EIA study

Where a foreign country so requests, items 2, 3, 4 and 5 shall be made available to the competent authority of foreign country, in accordance with stipulated procedure.

- (2) The law provides that the body of the state administration competent for the execution of the works from the area of environment shall be obliged, to publish the A integrated environmental permit on its web site and in two national daily newspapers, and allow within 15 days access to the concerned public to the information relevant for the public participation in the procedure of issuing the permit and to the opinions that were taken into consideration and upon which the permit has been issued.

The comments should be given to the MEPP, in written form, within 30 days from the date of the announcement of the application for IPPC permit, the concerned public may comment. MEPP is obliged to consider all comments and opinions when issuing the permit. During the preparation of the A-IPPC permit, MEPP shall be obliged, to explain which public comments are taken into account, and which are not considered including the reason why not.

The public has been informed on all the requests submitted to MoEPP regarding the issuance of Permit with Adjustment Plan for A Integrated Environmental Permit, which enables inclusion in the overall process.

At request of the concerned public, the investor is obliged to organize public hearing (public debates), whereas the results from the public participation are taken into consideration – in accordance with the legal obligations.

- (3) The public participation in the preparation and adoption of the NEAP and LEAP (public participation in the decision-making process) shall be exercised in a manner and under terms defined by Article 69 of the Law on Environment. Apart from the public participation on preparation of the planning documents, programs, plans and strategies. Law considered the effective public participation during the preparation of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment.

The state administration bodies and the local self-government units shall, for the objective of public participation in the decision making process, inform the public on all the proposals for preparation, adoption, amending or revision of plans and programmes, by means of oral information, or other appropriate manner, such as electronic and printed media. They shall also enable access to information on the proposals, including information on the right of the public to participate in the decision making procedure on the plans and programmes, along with the responsible body to which comments and questions can be submitted.

The bodies shall enable the public the right to give their comments, proposals and opinion prior to the making of the decision on the plans and programmes. During the decision making, they shall take into consideration the opinion from the public participation.

The MoEPP, and the bodies affected by the implementation of the planning document, legal entities and individuals and the public, may express their opinion on the draft planning document and the Environmental Report to the body that prepares the planning document within 30 days from the date of submission and publication of information thereon. The MoEPP shall, in the development of the planning document, take into account the opinions received and prepare special report thereon.

The Government of RM, upon a proposal of the state administration body responsible for the environmental issues, shall specify the conditions, manner and procedure for public participation in the preparation of environmental regulations and other acts.

*The manner in which information shall be published and the public participation and the manner of preparation of the report shall be a subject of a secondary legislation act.*

### 4.3 Access to Justice

The constitutional right of access to justice, including redress and remedy, is an important legal foundation and one of the most valuable human rights guaranteed by the Constitution itself. One of the fundamental values of the constitutional order of the Republic of Macedonia are the rule of law, the division of state powers into legislative, executive and judicial and the legal protection of property. It is guaranteed the right of every citizen to invoke the protection of freedoms and rights determined by the Constitution before the regular courts, as well as before the Constitutional Court of Macedonia, through a procedure based upon the principles of priority and urgency. Judicial protection of the legality of individual acts of state administration, as well as of other institutions carrying out public mandates, is guaranteed. A citizen has the right to be informed on human rights and basic freedoms as well as actively to contribute, individually or jointly with others, to their promotion and protection.

The Law on Environment, in order to enable organizations and individuals to have access to justice, specifies the cases in which citizens' organizations established for the purpose of environment protection, as well as the public, enjoy the right to submit appeal in the area of environment, thus providing a wider frame for exercising the right to an appeal.

The Law on Environment establishes the right to access to justice for organizations and individuals for the purpose of protecting their rights and interests in several cases. These cases include:

- **Protection of the right to access to environmental information**
- **Protection of the rights under the environmental impact assessment procedure**
- **Protection of the right under the integrated environmental permitting procedure**

The right to access to justice by organizations and individuals for the purpose of protecting their rights and interests, through administrative procedure, is also regulated by separate environmental laws, such as: **The Law on Air Quality** ("Official Gazette of RM" No. 67/2004;), **The Law on Nature Protection** ("Official Gazette of RM" No. 67/2004), **The Law on Waste Management** ("Official Gazette of RM" No. 68/2004), Draft Law on Waters and other laws regulating the rights of legal entities and individuals in the area of environment and other rights.

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***Protection of the Rights of Individuals and Organizations in the Administrative Procedure by the Institution Ombudsman***

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*The Institution Ombudsman in the Republic of Macedonia has a legal function and obligation to protect the rights of the citizens and everyone else, guaranteed to them by the Constitution, laws and international acts and documents ratified by the Parliament of the Republic of Macedonia in that direction, and protect the right to free access to environmental information.*

*The Ombudsman of the constitutional system of RM is an independent body, a mechanism through which the constitutional and legal rights of the citizens and everyone else are protected in case of violation by acts, activities and omissions of activities by the state administration bodies and other bodies and organizations having public competencies. The Ombudsman is regulated with the Law on Ombudsman (Official Gazette, No. 60/2003).*

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#### **4.4 GENERAL OBSERVATIONS over the General Law**

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The obligations derived from the Agreement on Stabilization and Association that was signed with EU in 2001 bind Republic of Macedonia to harmonize its own national legislation with that of the EU in order to make the Accession to EU more feasible, as well as, the responsibilities derived to fulfill the requirements stated within the Aarhus Convention, cause consolidation of governmental activities for the purpose of reshaping the national legislation in a manner to fit to the international demands.

Respectively, the Macedonian legislation stipulates provisions that comply with the provisions of the European Legislation, as well as, with those of the Aarhus Convention. The Primary legislation is almost fully complied; only the Secondary legal acts looking forward more intensive work with this regard.

In order to make a summary of the national legislation regarding the access to information, public participation in decision-making and access to justice, the desk survey was carried out. With this respect, the Constitution of Republic of Macedonia and the primary Legal Acts were reviewed. The laws and regulations that were analyzed are the following:

- Law on Environment
- Law amending the Law on environment
- Law on free access to information of public character
- Methodology of regulatory impact assessment
- Macedonian criminal code
- Law on general administrative procedures
- Macedonian civil and criminal law
- Law on registration and operation of CSOs
- Law on CSOs and foundation
- Law on donations and sponsorships
- Law on radio diffusion
- Laws on primary and secondary education
- Law on noise
- Law on ambient air quality

However, the general impression related to the access right is that some basic provisions are consisted within the national legislation, but in order to make the legislation complied to that of the EU the full transposition of the European legislation is needed.

#### **4.4.1 Main Findings**

##### *Constitutional guarantees to the right to a clean and/or safe environment (sustainable development)*

The basic principles of the fundamental values of the Republic of Macedonia is space development based on urban and rural planning to promote and improve social wellbeing and protection and promotion of the environment and nature. The right to a healthy environment, as one of the Basic freedoms and rights of the citizens, is regulated in the Constitution of the Republic of Macedonia as a social right which guarantees the right of citizens to a healthy living environment.

The Constitution contains the three pillars upon which the concept of sustainable development is founded, those being: economic development, social equity and the environmental protection. Namely “The citizens of the Republic of Macedonia... have decided to establish the Republic of Macedonia as an independent, sovereign state, with an intention to... guaranteeing human rights and civil liberties, to provide... social justice, economic welfare and prosperity in the life of the individual and the community...”

##### *Constitutional guarantees to the right of access to information held at public bodies*

The Constitution of Republic of Macedonia regulates the right to petition state and other public bodies as well as the right to receive an answer. The bodies of the central government and the bodies of the municipalities, and of the City of Skopje and of the municipalities of the City of Skopje prescribe procedures to ensure the right of public access to information and participation in the adoption of decisions related to the state of the environment, as well as to ensure that the public expresses their opinion in decision-making processes through such decision making procedures.

The Law of free access to information of public character regulates the conditions, manner and procedure of exercising the right to free access to information of public character disposed by state administration bodies and other bodies and institutions established by law.

The main goal of this right is to provide for publicity and openness in the operation of information holders, and enable natural and legal persons to exercise their right to free access to information of public character. The free access to information shall be enjoyed by all legal and natural persons and also be enjoyed by foreign legal and natural persons

##### *Constitutional guarantees to the right to direct public participation in government decision-making*

The direct public participation in government decision-making is regulated through the Methodology of Regulatory impact assessment. This Methodology defines the



obligation for including the interested people in the decision making process and allows affected communities and concerned citizens to influence those decisions.

Within five days from the date of planning document and Environmental Report completion, the information concerning the draft planning document and the environmental report should be published, along with information on the public participation procedure. The affected parties submit their opinion on the draft planning document and the Environmental Report to the body that prepares those documents within 30 days from the date of submission and publication of information thereon. The body shall in the development of the planning document take into account the opinions received and prepare special report thereon which than will be published.

#### *Constitutional guarantees to the right of access to justice, including redress and remedy*

The constitutional right of access to justice, including redress and remedy, is an important legal foundation and one of the most valuable human rights guaranteed by the Constitution. One of the fundamental values of the constitutional order of the Republic of Macedonia are the rule of law, the division of state powers into legislative, executive and judicial and the legal protection of property.

A citizen has the right to be informed on human rights and basic freedoms as well as actively to contribute, individually or jointly with others, to their promotion and protection. The freedoms and rights of the individual and citizen can be restricted during states of war or emergency, in accordance with the provisions of the Constitution. The restriction of freedoms and rights cannot be applied to the right to life, the interdiction of torture, inhuman and humiliating conduct and punishment, the legal determination of punishable offenses and sentences, as well as to the freedom of personal conviction, conscience, thought and religious confession.

The Law of environment specifies the restitution of environmental damage where legal entity or natural person, as well as citizens' associations established for the purposes of environment protection and improvement which is directly affected by or suffers consequences from the occurred environmental damage, has the right to request the operator before the competent Court: to restitute the environment to its original state, compensation for the occurred environmental damage, in accordance with the general regulations on compensation for damage, if restitution to original state is not possible.

#### *Constitutional guarantees to the right of freedom of expression*

Within the Constitution of RM, the freedom of personal conviction, conscience, thought and public expression of thought is guaranteed. Also, the freedom of speech, public address, public information and the establishment of institutions for public information, as well as, free access to information is guaranteed.

#### *Constitutional guarantees to the right to freedom of association*

The citizens can exercise and protect their political, economic, social, cultural and other rights and convictions. Citizens may freely establish associations of citizens and political parties; join them or resign from them. The citizens' right to assemble peacefully and to express public protest without prior announcement or a special license is guaranteed.

*Framework law supporting broad access to government information*

The framework law supporting broad access to government information in Macedonia is mostly clear and inclusive regarding exceptions defined (this information is already provided within this report little above)

*Law support broad public and civil society organization access to redress and remedy*

The Macedonian Criminal Code prescribes the consequences of disclosing an official secret. A person who tells, hands over, or in some other manner makes available information to the public or to an unauthorized person, which represents an official secret, or acquires such information with the intention to tell or hand over to the public or to an unauthorized person, will be punished with imprisonment of three months to five years.

According to the Macedonian legal system, discloser of an official secret is a criminal act, but not in all other cases. That would mean there is an obligation for all the officials who during their work will come across information about abuse, misuse, impropriety or illegality within the institution their work to release such information to the proper institution.

*Scope of confidential information*

In the Law of Environment the scope of confidential information is limited but not clearly defined. Within the Law is given the scope of the confidential environmental information and the conditions under which the refusal of request for environmental information is allowed. The requesting party has the right to lodge an appeal against the decision or conclusion of refusal to give information, with the Second Instance Commission of the Government of the Republic of Macedonia responsible for resolution of administrative matters in the area of environment.

*Law support broad public and civil society organization participation in decision-making*

The opportunity of public and civil society organization participation in decision-making process is part of limited support for broad public participation. The body that prepares the planning document publishes information concerning the draft planning document and the environmental report, and ensures availability of information needed to the public for participation in the public hearing, as well as informs citizens' associations established for the purpose of environment protection and improvement in the area in which the project would be implemented.

*Scope of "closed door" decisions that affect the environment*

Certain information related with environment protection cannot be published and given available to the public due to the human health and environmental protection. This means that in certain cases defined by law decisions can be made secretly and without public participation.

*“The concerned public” – any individual and civil society organizations interested to participate in decision-making*

The concerned public means one or more legal entities or natural persons, citizens and their organizations and associations. The public concerned includes the citizens' associations established for the purpose of environment protection and improvement, as well as individual with regard to whom there is a high probability to experience the effects of decision making.

#### *Administrative procedures concerning public participation*

The Law on general administrative procedures defines who can be a party in this procedure. It is noted that a party is a person that requires administering of a procedure or a person against who a procedure is being administered, or who has the right to participate in a procedure in order to protect his/her rights or interests. Any person or legal entity may be a party in an administrative procedure, as well as, any public unit, business unit in an organization and community, settlement, group of persons and other which are not considered as legal entities may be a party if they can be considered as bearers of the rights and liabilities that are subject of the administrative procedure.

The organizations can be a party not in all cases, but only in specific ones that are determinate by law. This very clearly defines the limitation to broad access on remedy and redress (the affected individuals seek redress and remedy before a court or other independent and impartial body, but under conditions specified mainly for the cases determined by Law)

#### *Legal system recognize liability for environmental harm*

Liabilities for damages caused to the environment based on the "polluter pays" principle:

- prevention and remediation of entire damage caused to environment,
- restoration of the environment; and
- introduction of measures and practices for minimization of the risk of environmental damage.

Liability for environmental damage shall occur due to: direct threat of environmental damage or environmental damage resulting from the performance of professional activities specified in the regulation adopted.

The MoEPP specifies the professional activities referred to the performance which may lead to liability for environmental damage. The operator which through

performing professional activities caused environmental damage or direct threat of environmental damage shall be held liable.

The MoEPP specifies the remediation measures with regard to occurred environmental damage. In case of occurred environmental damage, the operator has to define and propose remediation measures and submit them to the body of the state administration responsible for the affairs of the environment for approval. When defined remediation measures, the operator will take care that the remediation measures are appropriate and efficient with regard to elimination of entire damage occurred on the environment. When the environmental damage occurred is multifold so that remediation measures cannot be undertaken simultaneously, the MoEPP will decide on the priority in measures to be undertaken.

*Scope of government bodies who are immune to claims*

The Macedonian law system prescribes opportunity for some officials to be immune to claims while they are still on duty. The Constitution prescribes that the representatives enjoy immunity. Also, within the Constitution is stipulated that the President of the Republic is granted immunity and that the Constitutional Court decides by a two-thirds majority vote of the total number of judges on any case for withholding immunity and approving of detention for the President of the Republic. In addition, the Constitution prescribes that the Prime Minister and the Ministers enjoy immunity and that the Assembly decides on his/her immunity.

*A claim defined to include any interested individual and civil society organizations*

According the Macedonian civil and criminal law the ability to bring a claim by any interested individual and civil society organizations is limited only to those parties who have active legitimating in the process. This means that if some of the parties can prove their interest in the process can be actively involved in the court process.

On the other hand, the Law of Environment prescribes that any interested individual and civil society organizations can without any limitations and restrictions inform the State Inspectorate of Environment to make supervision over legal entities and natural persons that perform activity that makes or is likely to make impact on the environment. And after this information the state organ will precede the case.

*Registration and operation of civil society organizations promote an enabling environment for CSOs*

The Law on registration and operation of CSOs does not prohibit the registration of the CSOs regarding the field of operation of the CSOs, as well as the aims, interests and activities of the CSOs. The timeframe for registration and the registration costs are in the reasonable frames.

*Law create diverse legal and regulatory incentives supporting financial independence of civil society organizations*

The Law on CSOs and foundations and the Law on donations and sponsorships in the public affairs allow the CSOs to receive donations from vast sources of donors, from different sectors, budget of the Republic of Macedonia, budgets of the local-self-governments, from physical persons and institutions and firms, as well as from domestic and foreign sources. Donations could be as a financial support, services, as well as other kind of material support. Regarding this issue there are no prohibitions or strict restrictions in the conditions for founding foundations, domestic, or as a branch of foreign foundation.

*Registration and operation of media organizations supports press freedom*

The Constitution of the Republic of Macedonia guarantees the freedom of speech, the freedom of informing the public and the freedom of establishing institutions for informing the public. The censure is prohibited by the Constitution.

*Enable media organizations to have diverse sources of funding*

With this respect, the Law on radio diffusion mentioning the conditions for advertising, teleshopping and giving the sponsorships to the media. Donations to the media and selling of the programs and services, for the broader scope of the media are not mentioned, but it is mentioned the way of funding of the National Television – from the tax for radio diffusion, advertising, sponsorships, donations, selling of the programs and services and from the budget of the Republic of Macedonia.

*Law require the public school system to provide civic education*

Laws on primary and secondary education do not specify the subjects that are included in the educational process. The subject “Civic culture” is obligatory subject in the 7th and 8th grade of the primary school system. In the secondary school it could appear as a project activity, but not as an obligatory subject.

*Law require the public school system to provide environmental education*

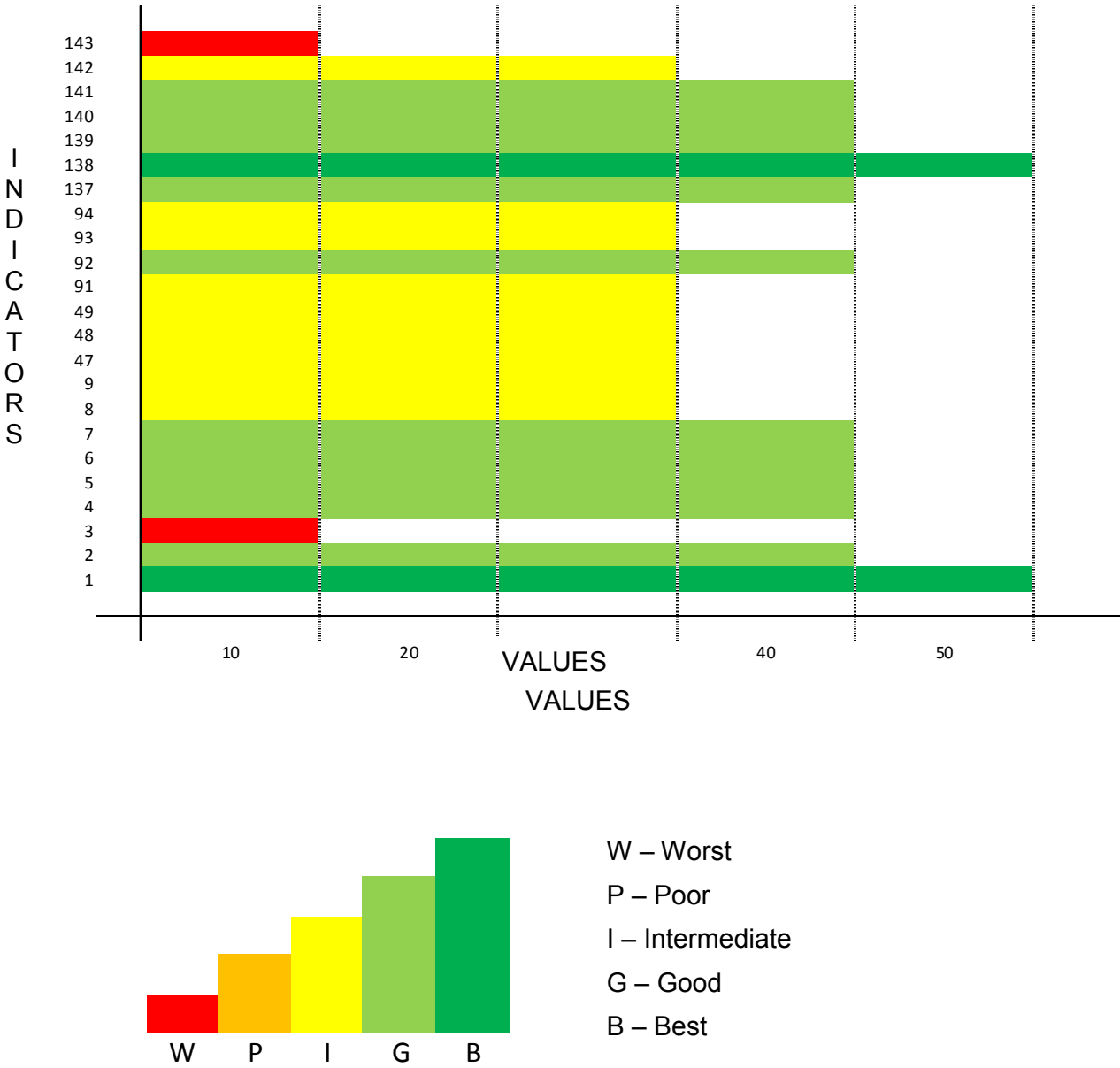
The experience of the educational system till now shows a lack of separate subject dedicated to the environment and its protection in the public school system in Macedonia. Environmental issues are mentioned in separate topics in the framework of the other subjects, but usually the extent of these topics is very narrow.

But, with the opening of the new school year on the pupils desks is available the so call “Green Pack” (prepared by REC Office Macedonia with help of the Austrian Embassy and ADA) – which is a kind of toolkit for education on sustainable environment and which is integrated in the educational curriculum from the beginning of the 5<sup>th</sup> grade in primary schools (this subject is a matter of option in competition with two other subjects).

*Law require the government to provide free legal aid*

The law on environment doesn’t include articles of regulation on “free legal aid”. This law is silent on legal aid. And up to now there is no particular law for legal aid.

The all above indicators were used to reflect the current performances of the legal system in Republic of Macedonia with respect to the right on access, and the qualitative expression of the carried out research is given on the graphic below.



#### **4.4.2 Conclusions and Recommendation**

**Problem:** No matter it was considered that Macedonian Legislation profile is structured in a manner to fit to the requirements of European Union regarding access to information, as well as, to be in line with International Law (Aarhus Convention), it can be concluded that even where these laws contain an important basis for public access to environmental information, it can't be accepted as enough. The Laws require regular proactive production of environmental information.

**Actions:**

- .Changes and supplements in the law for citizen associations and foundations. The sub-law act enabling the interested public to get free registration of their organization which is going to function for the benefit of the environment.
- Passing a law for Legal Help
- Supplements of the sub-law acts for the establishment of the Monitoring system for implementing the legal ordinances and introducing penalties for concealing or distortion of data.
- Passing sub-law acts within the Environmental Law which will enable capacity building within the national government agencies concerning the access to information and public participation.
- Passing sub-law act within the Environmental Law which will provide training of the information holders, the representatives of the Ministry for Environment and Local Self-government in order to provide easier access to information and public participation in the process of decision-making.
- Changes and supplements of Article 212 from the environmental law. The penalties are minimal regarding the legal person who causes pollution of the environment. Increase of the fines up to 100 000 euros.
- Changes and supplements of Article 53 from the environmental law. To change the time framework for providing access to information.
- To change bullet 1 and the required information to be provided as fast as possible, in a period no longer than 15 days.
- To change bullet 2 in article 53 in the environmental law, and to provide the required information in a period of one month after the claim was submitted.

## 5. GENERAL CAPACITY BUILDING

The main strive of each Government is to build the own capacities in a manner that will accomplish the principles of: transparency, reporting, and accountability. For the reason of making the national system complied with international requirements regarding the right for free access to information, public participation in decision-making process as well as to justice, Republic of Macedonia focus its own activities to make an agreeable climate for supporting the civil society organizations (CSOs) through performing suitable legal arrangements for their establishment.

Civil society organizations perform important public services by responding to human needs and promoting the health of communities. Regrettably, however, the legal position of such organizations is often highly precarious or unclear. Too often, Government perceives civil society as a threat and acts to limit its discretion and role. But Government has an important responsibility to create the legal conditions that enable civil society organizations to perform their important missions. This requires a balance between equipping civil society organizations with privileges and burdening them with responsibilities. It is our hope that the principles outlined here will help Governments strike this balance in a responsible yet enabling way.

Civil Society Organizations include neither organizations that are part of the private (for profit) nor governmental sectors. They include nongovernmental organizations (NGOs) and community-based organizations (CBOs). Yet, the ability of these organizations to carry out their special functions depends importantly on the legal environment within which they operate, and this, in turn, depends on actions by the state. Indeed, establishment of an enabling legal environment is one of the most important contributions governments can make to the development of civil society organizations.

In many parts of the world, however, the legal framework for civil society activity is uncertain and incomplete at best, burdened with contradictions or out of date in light of current civil society needs. While some organizations have managed to thrive despite an unfavorable legal environment, improvement of the legal environment for civil society has become a growing priority around the world.

### 5.1 Main Findings (Overview)

#### *Laws and rules for registration and operation of civil society organizations*

The legal arrangements for the CSOs are properly regulated. The Law on registration and operation of CSOs does not prohibit the registration of the CSOs regarding the field of operation of the CSOs, as well as the aims, interests and activities of the CSOs.

The timeframe for registration of the CSOs is also clearly described and it is reasonable (in 5 days the Central register has to decide about the registration of the CSO). The registration costs for CSOs are also in the reasonable frames.

#### *Law create diverse legal and regulatory incentives supporting financial independence of civil society organizations*



The CSO's financial independence often hinges on the laws that govern their financial operation.

The Law on CSOs and foundations and the Law on donations and sponsorships in the public affairs allow the CSOs to receive donations from vast sources of donors, from different sectors, budget of the Republic of Macedonia, budgets of the local-self-governments, from physical persons and institutions and firms, as well as from domestic and foreign sources. Donations could be as a financial support, services, as well as other kind of material support. There are also tax-paying incentives, for physical persons, as well as for institutions and firms which will donate in the CSOs.

Regarding this issue there are no prohibitions or strict restrictions in the conditions for founding foundations, domestic, or as a branch of foreign foundation.

*Laws and rules for registration and operation of media organizations support press freedom*

There aren't any kinds of prohibitions mentioned in the Law which limit the freedom of the press.

The Constitution of the Republic of Macedonia guarantees the freedom of speech, the freedom of informing the public and the freedom of establishing institutions for informing the public. The censure is prohibited by the Constitution.

*Laws and regulations enable media organizations to have diverse sources of funding*

The law enables a variety of funding options for media organizations.

The media plays a crucial role in providing information to the public, and is also an important tool in the activities of CSOs, government and other stakeholders.

The funding sources for the National Television are coming from the tax for radio diffusion, advertising, sponsorships, and donations, selling of the programs and services and the National Television is the only media allowed to have the access to the budget of the Republic of Macedonia.

*Law require the public school system to provide civic education*

"Civic education" includes courses that educate students about their country's system of government, their rights within the law, and their duties as a citizen.

The subject "Civic culture" is obligatory subject in the 7th and 8th grade of the primary school system. In the secondary school it could appear as a project activity, but not as an obligatory subject.

*Law require the public school system to provide environmental education*

The Laws on primary and secondary education do not specify the subjects that are included in the educational process. This issue is covered in the teaching plans and programmes.

The experience of the educational system till now shows lack of separate subject dedicated to the environment and its protection in the public school system in Macedonia. Environmental issues are mentioned in separate topics in the framework of the other subjects, but usually the extent of these topics is very narrow.

But, with the opening of the new school year on the pupils desks is available the so call "Green Pack" (prepared by REC Office Macedonia with help of the Austrian Embassy and ADA) – which is a kind of toolkit for education on sustainable environment and which is integrated in the educational curriculum from the beginning of the 5<sup>th</sup> grade in primary schools (this subject is a matter of option in competition with two other subjects).

*Law require the government to provide free legal aid*

The "Free legal aid" includes attorney services and legal advice provided by a government -funded agency or office available to the public at no cost.

The Law on Environment doesn't include articles of regulation on "free legal aid". This law is silent on legal aid.

Free legal aid is fundamental to ensuring equal protection to all citizens under the law.

*Government does not provid opportunities and incentives for public school teachers' professional development in environmental education*

This indicator assesses the extent to which the government encourages environmental education through the training of teachers.

Governmental institutions neither offer any opportunities for the public school teachers to continue their education in the environmental field, nor offer any incentives. Collaboration on environmental issues between NGOs and public school teacher, as well as the collaboration between the public school teachers and the Sector for public relations in the Ministry of environment and physical planning is on volunteer and not regular bases.

*Government implement rules and regulations for registration and operation of CSOs*

Government agencies implement rules for CSO registration and operation in a way that is equitable across different localities and different types of NGOs.

CSOs in Macedonia do not face restrictions during the registration and operation, nevertheless of the field of activities of the CSOs or the scope of activities (local, national or international)

*Government implements rules and regulations for registration and operation of media organizations*

This indicator assesses whether government agencies implement rules for the registration and operation of media organizations in a way that is equitable across different localities and different types of media.

Every Government until now was inconsistent and unpredictable towards the media; there were the cases where the Government retracted its attempts to take the medium to the court due to the revealed information.

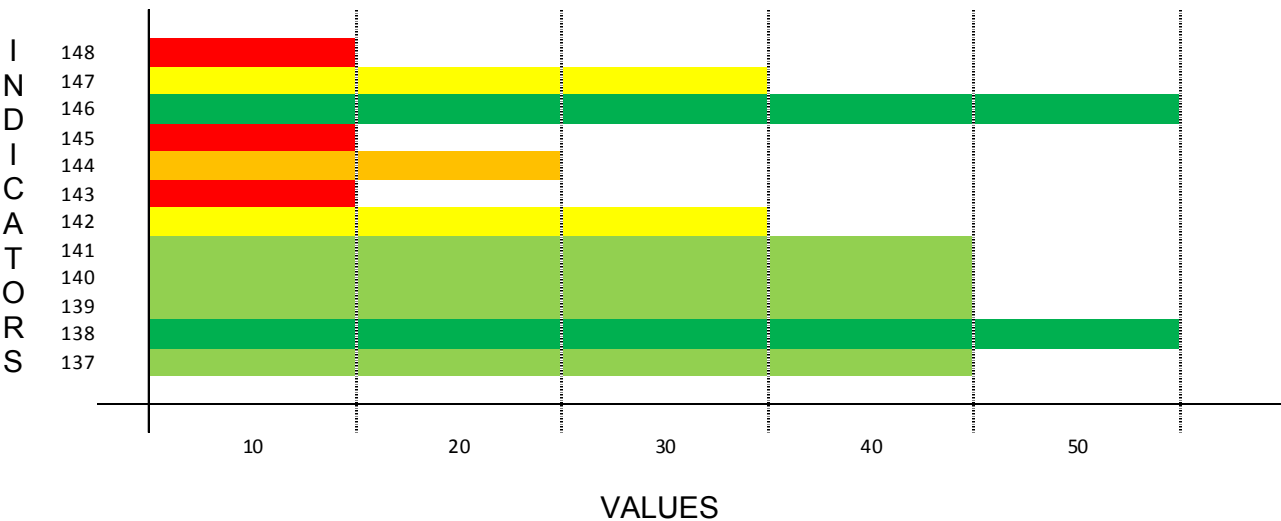
*Government provides training or curriculum resources on access rights to public school teachers*

Access rights are very poorly addressed in the public education system in Macedonia. They are covered only with one to maximum three lessons at the beginning of the 8th grade of the primary school in the framework of the subject “Civic culture”. The government has not organized trainings for the public school teachers regarding access rights. The teachers stated that they need far more education on this topic.

*Government provides free legal aid*

The law on environment doesn't regulate the “free legal aid”, and also the Government doesn't provide free legal aid.

The all above indicators were used to reflect the current performances of the Capacities (governmental and non-governmental) in Republic of Macedonia with respect to the carried out activities to promote the access right of every citizen to information, public participation and justice, and the qualitative expression of the carried out research is given on the graphic below.



## 5.2 The Macedonian Capacities

Making the own capacities steady and well build, the European integrations is easy to be approached. Macedonia makes efforts to establish efficient capacities with respect to access right. It is worth to be mention that some capacities already exist to contribute for the easy access to information, public participation in decision-making process and access to justice, incorporate into the institutional set-up. In following, the current institutional system for practicing the access right is prescribed:

*Public Relations Office* is public service that provides an easy access to environmental information. It was established in January 1999, under the Ministry of Environment and Physical Planning.

Since 31 January 2001, resulting from the joint project implemented by EU and the Ministry of Environment and Physical Planning, through the PHARE Programme aimed at institutional development and capacity building, the Office opening and promotion has been of vital importance for its efficient performance, easier access to public, its ultimate objective being the increase of the public environmental awareness.

Recognizing the fact that the Government considers environmental information of public interest, the Public Relations Office implements the fundamental principle of transparency in decision making.

The establishment of the Public Relations Office has contributed towards constant enhancement of the activities involving the government - public relation.

### *Coalition - Aarhus Family.*

The non-governmental sector has established the s.c. Coalition - Aarhus Family in the Republic of Macedonia, in order to strengthen the role of the non-governmental sector in the Convention implementation. In that direction, the non-governmental sector envisage establishment of four regional offices. The regional offices shall have the role of Centres for the citizens, which shall enable the citizens to request information; resource centres for the NGOs in the region and for transfer of information on a local, national and international level; and centres which shall take part in the dissemination of information on horizontal and vertical level.

### *Interministerial Working Groups*

The harmonization of the legislation in it preparation process is helped by the interministerial Working Groups. The Working Groups are established to become the main driving force for most of the activities related to the preparation of the legal texts, thus presented a platform for development of the new environmental legislation, compatible with the EU legislation. This manner is also practiced in the preparation of strategic documents in the field of the environment.

### *Centre for Access to Justice and implementation of the Aarhus Convention*

Since 2005 NGO Florozon - Skopje started activities for strengthening the capacities of administration of justice for practical application of the right to access to justice. Namely, the Programme was aimed at strengthening the capacities of judiciary system in Republic of Macedonia for practical application of the Aarhus Convention - Right to Access to Justice, i.e. introduction of and education on the Third Pillar of the

Aarhus Convention and better unification during its application, imposing alternative mechanisms for fast and efficient processes, and appropriate and efficient measures for eliminating the consequences.

Representatives from 27 courts in Republic of Macedonia had benefits from the Programme (judges, higher associates, state secretaries, presidents of courts) including lawyers, representatives of the Ombudsman, Ministry of Justice and the Ministry of Environment and Physical Planning.

The Seminar was realized by the EMLA expert team (Environment Management and Law Association) - Hungary. Florozon will continue with the realization of this Programme in 2008.

In order to enable easier access to justice, Florozon opened a **Centre for Access to Justice and implementation of the Aarhus Convention**. The Centre acts at the whole territory of R.Macedonia, for benefit of all individuals and legal entities. The Centre Programme offers free legal advise and free legal representation in the cases when the right to a healthy environment is breached.

There are records for the following statistical data in the database:

- 396 reports for obtaining information - where can the citizens raise questions regarding the environmental issues (in that direction, Florozon works in co-relation with the subjects that possess environmental information)
- 6 criminal charges prepared against private persons
- 4 misdemeanor denunciations submitted to the competent court
- 14 reports - achieved agreement on reclamation of the state of the environment

Governmental action is crucial to the extension of legal personality status to civil society organizations and is often accompanied by some form of registration and regulation. A number of crucial principles should govern the design and execution of these incorporation and registration procedures. Most important among these are the following:

- Legal provisions allowing civil society organizations to incorporate and thus obtain legal personality status should be made easily available. The criteria for obtaining legal personality and limited liability should be clear and unambiguous and not be unduly restrictive.
- While provisions for civil society organizations to incorporate should be made easily available, these provisions should not be mandatory. Informal, unincorporated organizations also make important contributions and should be allowed to operate.
- The right to associate and to form civil society organizations carries with it the right of these organizations to the fundamental rights that apply to natural persons, such as the rights of freedom of speech and association, and the right to petition the government.
- Governments may choose, as a condition of incorporation, to register civil society organizations. Such registration can help clarify the status of these organizations and bolster public confidence in them. Any such registration provisions should adhere to the following guidelines, however:
  - Registration should be conducted by independent authorities not bound by the policies of particular governments, which may change from time to time.

Examples of such independent bodies include courts, chambers of commerce, and special registration bodies.

- Registration procedures should be uniform wherever conducted, and registration with one competent authority should suffice for the entire country.
- Procedures and criteria for registration should be publicly available, clear, and straightforward; fees should not be prohibitive; registration processes should be expeditious; and registration should not be refused if all requirements for registration are met.
- Any denial of registration must be subject to court review.
- Registered organizations may be required to present by-laws specifying the governance structure of the organization and the responsible officials. Requirements for such by-laws can usefully specify minimum numbers of board members, rotation of officers, and other features of good governance as appropriate.
- Governmental authorities should maintain a record of registered organizations that contains information that is useful to the public. This record should be publicly accessible and reliable and therefore should be kept updated.

### ***Transparency, Reporting, and Accountability***

To retain public trust, civil society organizations must be transparent in their operations. Such transparency can be achieved voluntarily by organizations through regular reports and communication with their various stakeholders. However, public authorities may legitimately mandate such transparency by requiring regular reports from registered civil society organizations. Several principles should apply to the design of such public reporting requirements, however:

- Reporting requirements should serve valid public purposes, not be unduly burdensome, and, where possible, be harmonized with reporting requirements from other public and private bodies.
- Government should establish procedures for receiving and storing required reports from civil society organizations, and for making such reports available to the public in an easily accessible manner. The latter can include village notice boards, web sites, and information centers through which information on civil society organizations can be accessed easily by all organizational stakeholders.
- Coordinating bodies, such as NGO Councils, should be encouraged to assist organizations in meeting public registration and reporting requirements. In addition, public authorities should look to such bodies for help in providing access to such reports and should consider compensating them for this service.

### **5.3 Conclusions and Recommendations**

**Problem:** Many government officials including members of the judiciary do not have a thorough understanding of access laws and public participation practices, hampering their ability to help the public exercise its access rights. In some instances, officials lack a culture of compliance with the spirit and practice of access, as well as accountability for their role in making access possible. At the same time, citizens are often unaware of their rights and lack the skills needed to participate effectively, demand and collect the information they need,

and make complaints or seek remedies when they are dissatisfied with environmental decisions. While many CSOs could help citizens develop these skills, the financial resources to undertake large capacity-building programs are often missing.

### **General Capacity Building**

In order to provide better understanding and active implementation of the law's provisions with respect to environmental information, including collection, analysis, dissemination, as well as, information on public participation and justice, some activities should be undertaken. With this respect to be pointed out the need the governmental Agencies and their staffs take participation in educational training programs for appropriate dissemination of information.

#### **Actions:**

- Forming an inter-ministry group for realizing the three rights to access. This group will be consisted of representatives from different sectors of the Ministry for Environment, representatives of the local self-government, the Ministry of Justice and the ombudsman. Clear definition and position of the jurisdictions for protection of the environment within the state institutions which will lead to efficient implementation of the laws, inspectorial coordination and objective implementation of the Aarhus convention. In order to achieve the final goal it is necessary to realize the training programs by an expert team.
- Training for state clerks in order to provide information concerning the environment. Encourage the production of information by Governments. Hold staff accountable for their access related duties (including these in their job descriptions and assessing their performance based on how well they discharge these duties).
- Develop inter-agency partnerships and partnerships with business and civil society to ensure that complex environmental data becomes usable and publicized.
- Build partnerships with and provide seed money to CSOs that have experience with community organizing and education around civic and environmental matters.
- Build domestic awareness of CSOs, train CSOs in access to information, justice, and participation mechanisms and broaden standing for environmental harm.
- Provide accessible financial programs for the CSOs, grant tax-exempt status etc.
- Practical research into how CSOs are selected to participate in national and regional policy-making to be addressed. The research must address as well mechanisms to include the poor and socially excluded in the decision-making process and to limit capture of participatory processes by elites.
- Make the access rights available to every concern party.
- The access proponents to take several essential actions to bring about access reforms and address barriers to and gaps in the provision of public access.
- Raised the profile of access reforms (push for greater transparency and public influence in decision-making)

- Manage and sustain policy reform (to be examined through those most affected by lack of access to environmental decision-making and spread out to those who have the greatest interest in a transparency and democracy agenda).
- Build and strengthen networks in order to push for greater transparency.
- Improvement and institutionalization of access rights (continued independent assessment and ongoing advocacy and collaboration).
- Permanent capacity building at early stage, whate means enforcing the changes in the educational system by including the sustainable environmental and cyvil society education as obligatory subject in primary and secondary schools.



## 6. ACCESS TO INFORMATION

The access to information gives the ability of citizens to obtain environmental information in the possession of public authorities. The "Environmental information" includes information about air and water quality, for example, and information about whether any hazardous chemicals are stored at a nearby factory etc.

*Access to Information* – 8 Cases

Case Name	Case Type	Case Type Details
<b>Air pollution from Okta, crude oil refinery</b>	Information from regular monitoring	Air quality
<b>Environmental problem with water pollution of Kriva Reka in Kriva Palanka</b>	Information from regular monitoring	Drinking water quality
<b>The pollution of Kamenichka Reka river</b>	Information from regular monitoring	Drinking water quality
<b>OKTA Refinery – Existing equipment for environment protection</b>	Facility-level information	Reports from industry audits
<b>Discotheque noise – stuck in the administration loop</b>	Facility-level information	Reports on environmental compliance
<b>Ecological disaster on Macedonian river Vardar: thousands of fish killed</b>	Information in an emergency	Biodiversity
<b>Leakage of the huge amounts of mining waste from the mine for extraction of lead and zinc ore – SAS</b>	Information in an emergency	Water bodies (river)
<b>State of Environment Report 2006</b>	State of Environment reports	Link to Scale

In following the main findings of the case studies' research:

1.	<b>Case Name:</b>	Air pollution from Okta, Crude oil refinery
	<b>Case Type:</b>	Information from regular monitoring
	<b>Case Type Details:</b>	Air Pollution
	<b>General Info.:</b>	(Case Description)

The OKTA CRUDE OIL REFINERY A.D., funded in 1980, located in Skopje, near by the village of Miladinovci (Municipality of Ilinden).

*The scope of the company* – refining of crude oil; import and trade of petroleum products (the main products produced are liquid petroleum gas, leaded and unleaded gasoline, aircraft fuels, diesel fuel, heating oil and heavy fuel oil).

*The main problem* – pollution coming from the sulphur dioxide dispersion and POPs release.

*The main concern* – impact is manifested in the form of skin allergies, bronchitis, laryngitis, asthma and other forms of (chronic) respiratory diseases. The pollution has also very negative impact to the animals, plants, as well as ground waters.

*Facts* – the refinery has released the sulphur dioxide in huge amounts mostly during the night, early in the morning and during the holidays, when the State Environmental Inspectorate does not work.

In April 2008 the TAI research team has asked the MoEPP for the air quality monitoring data for emissions coming from OKTA, for the period January 2007 – April 2008. The received data referred to the period from February till September 2007, and the records keeping were only for one week in the month. These measurements were done by state laboratory, and of course all of them were “under” the upper limit value for sulphur dioxide and smoke. The TAI team was told by the Ministry of environment that there are no data from the constants monitoring of the air quality near the refinery. From January till March 2008 the received data were from internal measurement made by OKTA. This internal monitoring system in OKTA was put on place at the end of 2007, and the data are on every day bases. In these data, the values were also under the upper limited value for sulphur dioxide. The TAI team was told by the Ministry that after this internal monitoring system was put on place, the Ministry will mainly rely on the air quality data obtained from OKTA.

*Worth to be stressed* – In Instead of this data, the local villagers were still suffering of the pollution coming from the refinery, among the others pollution of the air with SO<sub>2</sub>.

After the local people pressure in 2005, one air quality monitoring station was located in the village of Miladinovci and the data were collected by one of the state laboratory. Just for experiment, the local people poured pure sulphur acid in the monitoring equipment, and as they expected the results were again “under the upper limited values”.

Even though the results given from the officials were in the frame of the limit values they promised to the citizens the desulphurisation Klaus facility. The desulphurisation Klaus facility was still not operational in June 2008. This was the reason for the latest protests.

Also, the putting on place of the air quality monitoring stations in several spots in the Municipality is still not fulfilled.

<b>2.</b>	<b>Case Name:</b>	Environmental problem with water pollution of Kriva Reka
	<b>Case Type:</b>	Information from regular monitoring
	<b>Case Type Details:</b>	Drinking Water Quality
	<b>General Info.:</b>	(Case Description)

*The main problem* – water pollution (notable changed water color in to dark gray or brown); Suspected Party – the mine “Toranica”

*The main concern* – existing fear of risks for cattle illness or a worst, death, because they were drinking from that water and also existing risk for fields pollution from the water of Kriva Reka used for watering (death fish in the water and also destroyed flora and fauna).

*Facts* – State Inspectorate of environment and other competent institutions had not provided any information to the concerned citizens, neither had assumed some actions for settling of this problem. The resident and the association of the sports fishermen’s “Mrena” didn’t manage to get requested information and results of water measuring from the National State inspectorate.

*Worth to be stressed* – The National State Inspectorate for Environment hadn’t concerned any measurements and they were silent.

<b>3.</b>	<b>Case Name:</b>	The pollution of Kamenichka Reka river
	<b>Case Type:</b>	Information from regular monitoring
	<b>Case Type Details:</b>	Drinking Water Quality
	<b>General Info.:</b>	(Case Description)

The Kamenichka Reka River was heavily polluted during the great accident in the mine Sasa in 2003, when a huge amount of mine waste leaked into the Kamenichka Reka and was also spread on its banks. The management of the mine Sasa (extraction of metal raw material from the oar and metal production) is owned by the Russian company Solvej from 2004.

*The main problem* – water pollution (cadmium, lead, and zinc pollution of the River Kamenicka Reka)

*The main concern* – destroyed biodiversity (the cattle drinking the water of the river get ill); odor (the people health is threatened as well). This huge exceeding of heavy metals in the river water is very dangerous, not only for the village of Sasa and the town of Makedonska Kamenica, but also for the hydro accumulation Kalimanci, which waters are used for melioration of the agriculture land of the broader region.

*Facts* – Since the regional environmental inspector was claiming that the river is not polluted, unsatisfied people started to collect signatures for “saving the Kamenichka Reka”. The Crises Body has been established in the region for the purpose of taking action for river protection. The Body is consisted from the members of the local-self government, people from the village Sasa and the town of Makedonska Kamenica, NGO – Zdravec 2002, and the police. The State environmental inspectorate, (MoEPP) stated that there is no pollution of the river and the soil. The results are from several sampling during different time periods, without any concrete numbers from the measurements, and in a way of narrative report.

The NGO Zdravec 2002 in March 2007 made independent measurements in the environmental laboratory in Kumanovo, which is state owned laboratory. Results showed that the values of cadmium, lead, and zinc were exceeding allowed values. The independent analysis which NGO Zdravec 2002 made in April 2008, in independent private laboratory, showed worse results than the results from 2007.

**According to NGO Zdravec 2002, these independent results differ very much from the results of the state environmental inspectorate and the mine Sasa.**

*Worth to be stressed* – The management of the mine Sasa is surprised why local people are protesting. They declare that they put a lot of efforts for protection of the environment (2.4 million euros are invested for building a new storage for mine waste). But, the reality is different. At least one in a month, when the equipment is not clean, the used chemicals for the process of flotation are directly discharge into the River.

<b>4.</b>	<b>Case Name:</b>	OKTA Refinery – Existing equipment for environment protection
	<b>Case Type:</b>	Facility-level Information
	<b>Case Type Details:</b>	Report from industry audit
	<b>General Info.:</b>	(Case Description)

The OKTA CRUDE OIL REFINERY A.D. is founded in 1980, located in Skopje Region, near by the village of Miladinovci (Municipality of Ilinden). OKTA Refinery is industry of oil derivatives. Since 1999 year, OKTA AD Skopje became a member of Hellenic Petroleum Grouping which provide significant investments and modernization of technological plants. OKTA as a big entity and polluter is responsible to achieve high efficiency in the field of Health, Safety and Environment issues.

*The scope of the company* – refining of crude oil; import and trade of petroleum products (the main products produced are liquid petroleum gas, leaded and unleaded gasoline, aircraft fuels, diesel fuel, heating oil and heavy fuel oil).

*The OKTA's main drivers (principles)* – To raise the environmental protection performances: reducing environment impact, reducing emission of pollutants, implementation of Best Available Techniques (BATs), monitoring of flue gases emission and ambient air quality and monitoring of waste water and drinking water quality (doesn't have certificated Environment Management System – EMAS, until now).

*Obligations and responsibilities* - OKTA must prepare Application for A-Adjustment permit with an Adjustment Plan and it was submitted in the first quarter of 2007 to the Ministry of Environment and Physical Planning. This application is announced at the website of Ministry of Environment and it is public document. Driven by the provisions of Directives related to IPPC, standards known as BAT (Best Available Techniques) are required. Draft version of A - Integrated environmental permit with Adjustment plan is prepared and they are waiting for final decision from the Minister. In following, the negotiation for achieving full compliance to EU requirements should start with the MoEPP (agreed schedule between 2008 and 2014).

*List of existing equipment regarding to environmental protection -*

#### **Emission in the atmosphere: SO<sub>2</sub>**

- Constructed Klaus plant which performed the Klaus process where is obtained sulphur (S) from H<sub>2</sub>S. Sulphur is not harmful and it can use in chemical industry. Nowadays, SO<sub>2</sub> emission is in the frame of Maximum Allowed Concentration.
- Mobile instrument for monitoring of SO<sub>2</sub> in the ambient air (MODEL 100 E, UV FLUORESCENCE SO<sub>2</sub> ANALYZER). Monitoring of the emission is conducted with Testoterm - TESTO 33.
- New sophisticated instruments (In Situ Stack Gas Analyser System) for permanent monitoring of emission of chimney smoke gases.

\* The general impression is that Klaus plant doesn't work all the time. People said that Refinery released SO<sub>2</sub> in huge amounts during the night and weekends and they can see black clouds and feel smell of sulphur.

#### **Emission in the soil**

- There is almost impossible emission in the soil but they are controlled with taking samples in certain time intervals. There is possibility of ground water pollution and it is controlled by piezometers which are set into Refinery and outside.

#### **Wastewater treatment**

- OKTA has wastewater treatment plant (for treatment of: industrial wastewaters, sanitary wastewaters and atmosphere waters).  
crude separation → chemical → mechanical → biological purification  
Final recipient – Bujkovacka River (the effluent satisfied the standards determined with the Water economy License and State Legislation on Water)

\* The general impression is the ground waters are polluted and people who use drinking water from pump very often notice dirty and black water.

***Problem with pollution in villages Bujkovci and Miladinovci was solved by construction of water supply system for drinking water from v. Jurumleri.***

### **Waste management**

- Generation of:
  - ⇒ Industrial waste and liquids (concrete protected basins for temporary storage of industrial waters and sediments; aerators for stabilization of waste mil; demineralization of the oil residues)
  - ⇒ household like waste (OKTA signed agreement with public communal enterprise from Municipality of Ilinden)

### **Storing of chemicals**

- Chemicals are packed in plastic or metal barrels. Storing space is protected with durisol walls and concrete floor (Chemicals in solid condition are stored in separated basins).

### **Laboratory**

The Accredited Laboratory (ISO 17025) provides analyses for quality control of:

- raw materials,
- final products,
- additional fluids,
- chemical solutions and
- technical wastewaters.

(Beside this there are conducted chemical and microbiological analyses of technological wastewaters)

### **Safety systems**

OKTA has established safety systems such as:

- technical obstacles for protection during of accidents;
- protection of equipment during the increasing pressures with safety valves;
- signalization when concentration H<sub>2</sub>S and explosive gases are increase;
- cooling system connected with hydration network;
- the fire protection system.

### **Combustion chambers**

OKTA Refinery plans replacement of burners in combustion chambers for burners with low nitrogen oxide emissions in some of the Furnaces in OKTA.

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**OKTA Refinery has Department (Service) for Environment. Its role is to monitor the quality of ambient air; purification plant and water quality; preparing of monitoring reports; communication and cooperation with Ministry of Environment and implementation of national laws and regulations. Beside these responsibilities there is technical staff whose are in charge of monitoring of level of vibration.**

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\* *In Republic of Macedonia doesn't exist regulative or ordinances which will define model for creating of dispersion of SO<sub>2</sub> and NO<sub>x</sub> in the atmosphere.*

*OKTA will create dispersion of emission after adoption of model from the MoEPP.*

<b>5.</b>	<b>Case Name:</b>	Discotheque noise – stuck in the administration loop
	<b>Case Type:</b>	Facility-level Information
	<b>Case Type Details:</b>	Report on environmental compliance
	<b>General Info.:</b>	(Case Description)

This Case Study refers to incompatibility of the institutions (competent authorities) to solve the environmental problems.

*The main problem – noise pollution*

*The main concern – incompatibility for fulfilling the responsibilities of the institutions regarding to response on complaints (the institutions' opt out practice); overlapping of responsibilities between the institutions or lack of clear description of the responsibilities delegated to them.*

*Facts – Running in circle –*

NGO submitted a complaint to the MoEPP in June 2007 due to the noise coming from the discotheques in the city park of Skopje. The Ministry claim itself as not in charged for these issues and passed the duty to the local-self government on which territory the discotheques are situated. In line with the answer from the Ministry, Eko-misija submitted a complaint to the City of Skopje on the 11<sup>th</sup> of July 2007, where they were told they are not in charged for the issue and suggested Eko-misija to communicate with the MoEPP. In July 2007, the NGO sent a complaint to the Municipality of Centar (one Skopje's Municipality), but they didn't get an answer from the Municipality in the next five months. In following, the NGO submitted complaint for "not receiving the answer/information from the Municipality of Centar" to the Ministry of justice, where they were suggested to communicate Ombudsman for solving this issue. Instead of answer on their complaint for misappropriate answer they received from the Inspectorate in the Ministry of Justice and not receiving the information from the Municipality of Center, the deputy Ombudsman suggested in his answer that they should contact the MoEPP concerning the issues of noise from the discotheques.

*As a consequence of this, the NGO has submitted appeal to the Constitutional Court of the Republic of Macedonia asking about which institution is obliged for measuring of the noise in the discotheques in the city park, and has also submitted a request to the Parliament of the Republic of Macedonia for examine the work of the Ombudsman and his deputies.*

At the end, it was announced that the competences regarding this issue are delegated to the City of Skopje, but it was hard to be responded upon the complaints

due to those were rised out of time dedicated for this purpose. The inconveniences resulted due to the unclear competencies between the institutions

<b>6.</b>	<b>Case Name:</b>	Ecological disaster on Macedonian River Vardar: thousands of fish killed
	<b>Case Type:</b>	Information in an emergency
	<b>Case Type Details:</b>	Biodiversity
	<b>General Info.:</b>	(Case Description)

*The main problem* – mudding the river by releasing a large amount of water by electricity producing facilities (hydro plants)

*The main concern* – thousands of dead fish, some as heavy as 5 kilograms, were discovered floating on the River of Vardar in the town Veles where the river Vardar is passing by.

*Facts* – The members of Civil societies in Veles have assumptions that as a result of large water amount releasing, the river water starts mixing the river sand and mud, but also the tiny soil or clay particles suspended in the water (the muddy water of the river damage capillary system for exchanging oxygen).

*Worth to be stressed* – After one mount of the ecological disaster there is still no official information what was the reason for fish-kill. According the statement given by the Director of the State Agricultural Inspectorate, the possible cause for fish-kill is the releasing the large amount of water by the artificial lake Matka where the operator is Hydro-electrical Plant “Matka”. But the EVN owners of the HEP “Matka”, demand this information and they said the reason for fish-kill is releasing water from HEP “Kozjak” where the owner is “Elektrani Makedonija”.

\* *There is no official information, yet, about what happened. The institutions are throwing the guilty among themselves without taking any responsibilities.*

<b>7.</b>	<b>Case Name:</b>	Leakage of the huge amounts of mining waste from the mine for extraction of lead and zinc oar - SASA
	<b>Case Type:</b>	Information in an emergency
	<b>Case Type Details:</b>	Water Bodies and soil
	<b>General Info.:</b>	(Case Description)

*The main problem* – Between 70,000 and 100,000 m<sup>3</sup> of mine waste leaked from the waste storage lake of the mine for production of lead and zinc oar, Sasa. The accident happened only 12 km from the town of Makedonska Kamenica.



The leaked mine waste was spread in the river Kamenichka Reka, and its banks, in the village Sasa and the town of Makedonska Kamenica. It also reached the hydro accumulation Kalimanci.

During the summer period, when the water from the hydro accumulation is used for watering the agriculture lands in the region, and the accumulation is emptied, the mine waste is not covered by the water. In this situation the wind blows the dust of mine waste to the near houses of Makedonska Kamenica.

*The main concern* – Because of the pollution, the biodiversity in the Kamenichka Reka was completely destroyed, and also the fertile soil and agriculture land on the banks of the river were polluted. The water of the river is also used as drinking water for the cattle in the villages along side the river. The ground waters were also endangered.

*Facts* – The Government established special governmental body, consisted by members from different Ministries, with duty to find the solution for remediation of the polluted area.

The MoEPP started raising the funds for remediation of the polluted area. The remediation was lasting four months with support by UNDP.

The MoEPP and the local-self government immediately informed the villagers in the affected village to evacuate themselves from the polluted areas and not to take the cattle to the river.

*Worth to be stressed* – Not the whole polluted area was cleaned. It was cleaned the area from the mine waste disposal, along side the river passing through the village Sasa and through the center of the town of Makedonska Kamenica. The other part of the bank river up to the hydro accumulation Kamenica, and the mine waste which entered the accumulation are still not cleaned.

The Ministry of environment has never delivered valuable and comprehensive information about the pollution of the environment media caused by the accident.

<b>8.</b>	<b>Case Name:</b>	State of Environment Report 2006
	<b>Case Type:</b>	State of Environment Report
	<b>Case Type Details:</b>	/
	<b>General Info.:</b>	(Case Description)

*Responsible institution for dissemination of data and information with respect to the environment (on the state and quality of the environmental media, nature, noise, ionizing and non-ionizing radiation and special natural heritage) – MoEPP*

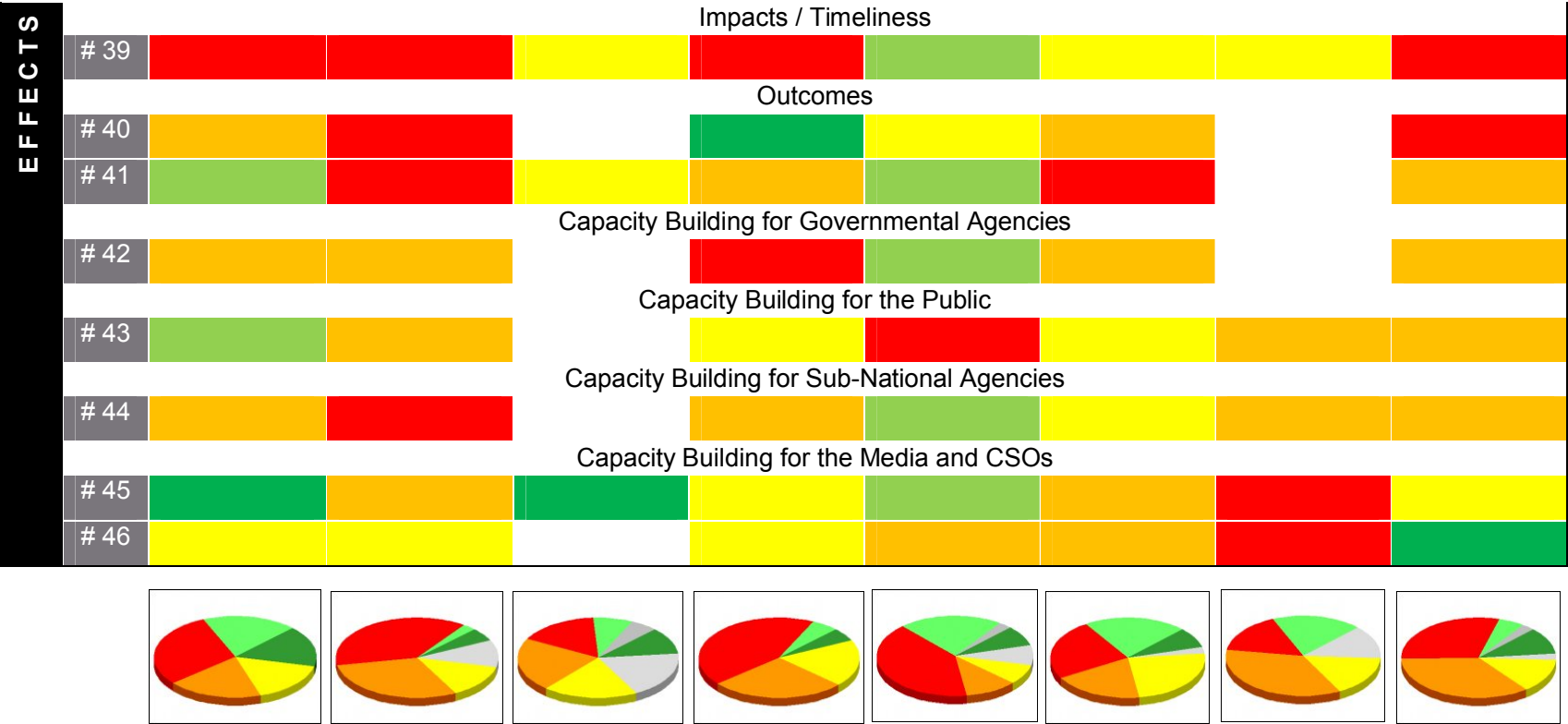
*General impression of the Case Study* – MoEPP legally fulfilled its obligation to prepare its State Report for 2006.

*Worth to be stressed* – The information gathered is not very clear and understandable because they are described in more professional manner. The information given in tables cannot determine whether the level of pollution or the presence of some substances is above or not of the prescribed threshold. On the other side there isn't anything about the impacts on human health and the environment caused by the factors; and the policies, measures and actions that should be undertaken to reduce, alleviate or remove the negative impacts in various environmental mediums.

\* *Dissemination of this report was with delays of a couple of months*

		OCTA – Air Pollution	Discotheque Noise – admin. loop	Ecological disaster (r. Vardar)	Water pollution (Kriva Reka)	Leakage of mining waste SASA	OCTA – Existing Equipment	State of Environment Report (2006)	Pollution of Kamenicka Reka
LAW		Specific Law + Scope and Quality of Access							
	# 10								
	# 11								
	# 12								
		Specific Law + Limits on Access							
	# 13								
		Capacity Building for Governmental Agencies							
	# 14								
	# 15								
	# 16								
		Capacity Building for the Public							
	# 17								
		Capacity Building for Sub-National Agencies							
	# 18								
		Timeliness							
	# 19								
EFFORT		Scope and Quality of Access							
	# 20								
	# 21								
	# 22								

# 23									
# 24									
Costs and Affordability									
# 25									
Fairness and Equitability									
# 26									
# 27									
Timeliness									
# 28									
# 29									
# 30									
Channels of Access									
# 31									
Capacity Building for Governmental Agencies									
# 32									
# 33									
# 34									
# 35									
Capacity Building for Sub-National Agencies									
# 36									
Capacity Building for the Public									
# 37									
# 38									



## 6.1 GENERAL OBSERVATION over the Right on Access to Information

Findings from the 37 indicators used for this research have been classified into two groups. In the first group comprising 10 indicators, the existing legal framework is assessed on the basis of the legal instruments reviewed. In the second group comprising 27 indicators, Government effort and effectiveness are assessed for the identified information case types on the basis of the Quality of the effort and accessibility to the specific information type. Quality is determined by the scope and quality of effort by the content of information generated and disseminated. Accessibility is determined by the effort to reach out to the public and disadvantaged groups, the timeliness, channels used, costs and capacity building for staff and citizens.

Performances of the government systems in providing access to information are scored as strong, intermediate and weak are presented in the Table below, respectively for the laws, effort and effectiveness. For this analysis, red colours are rated weak, yellow and orange rated as intermediate and light green and green rated strong. The table provides a general overview of the state of access to information in Macedonia. The following conclusions can be made:

CASES (8) – Access to Information		Indicators #	PERFORMANCES			
			WEAK	INTERMEDIATE	STRONG	n.a.
LAW	Specific Law + Scope and Quality of Access	# 10 - # 12		29 %	71 %	
	Specific Law + Limits on Access	# 13		12.5 %	87.5 %	
	Capacity Building for Governmental Agencies	# 14 - # 16	83 %	17 %		
	Capacity Building for the Public	# 17		12.5 %	87.5 %	
	Capacity Building for Sub-National Agencies	# 18	100 %			
	Timeliness	# 19	75 %	12.5 %	12.5 %	
EFFORT	Scope and Quality of Access	# 20 - # 24	30 %	45 %	10 %	15 %
	Costs and Affordability	# 25		12.5 %	62.5 %	25 %
	Fairness and Equitability	# 26 - # 27	37.5 %	31.25 %	6.25 %	25 %
	Timeliness	# 28 - # 30	12.5 %	37.5 %	33 %	17 %
	Channels of Access	# 31	37.5 %	62.5 %		
	Capacity Building for Governmental Agencies	# 32 - # 35	18.75 %	56.25 %	18.75 %	6.25 %
	Capacity Building for Sub-National Agencies	# 36		87.5 %		12.5 %
	Capacity Building for the Public	# 37 - # 38	12.5 %	75 %	12.5 %	
EFFECT	Impacts / Timeliness	# 39	50 %	37.5 %	12.5 %	
	Outcomes	# 40 - # 41	25 %	37.5 %	18.75 %	18.75 %

Capacity Building for Governmental Agencies	# 42	12.5 %	50 %	12.5 %	25 %
Capacity Building for the Public	# 43	12.5 %	62.5 %	12.5 %	12.5 %
Capacity Building for Sub-National Agencies	# 44	12.5 %	62.5 %	12.5 %	12.5 %
Capacity Building for the Media and CSOs	# 45 - # 46	12.5 %	56.25 %	25 %	6.25 %

**Law** – In general speaking the national legislation is well approximate to the legislation of EU. In 2001 when the Agreement on Stabilization and Association was signed, the process on compliance of national legislation to that of EU in the field of environment started.

- *Macedonia was the first country that has signed the Stabilization and Association Agreement on 9th April 2001 in Luxembourg (SAP); it was ratified by the Macedonian Parliament on 1st June 2001, but came into effect on 1st April 2004, when all the member states of EU ratified it.*
- *On 17th December 2005 the EU Council granted Macedonia a candidate status for EU membership.*

With this regard, very specific provisions related to the access right to information are consisted within the national legislation.

According to the Law on Environment the Ministry of Environment and Physical Planning (MoEPP) is responsible for the collection, processing and presentation of official (relevant, comprehensive and publicly accessible) data and information on the state and quality of the environmental media, nature, noise, ionizing and non-ionizing radiation and special natural heritage. Principle of public participation and access to information obliges the bodies of the Republic of Macedonia (both central and local) to provide all necessary measures and prescribe procedures by means of which the right of access to environmental information and public participation will be provided and to specify conditions for the public participation in the process of all environmental decision making. The entities referred above will, within the scope of their competence, provide for dissemination, public accessibility and maintenance of environmental information they hold, or which is held on their behalf, in forms and formats that are easy to reproduce and accessible by computer communication networks. There is not concrete time line for preparing and disseminating it to the public but the practice of the MoEPP is that such reports have to be prepared by the end of month April (Data on State of the Environment)

Operators, which are sources of emission and which pollute one or more environmental media and areas, or use natural heritage shall under the special law carry out self-monitoring by using devices and instruments approved through the procedure for measurements verification established by law, and maintain the monitoring devices and instruments in proper working condition.

But our conclusion is that the public needs independent experts to monitor the conditions.

The Law on Environment defines that bodies and legal entities and individuals which possess environmental information, shall be: the public administration bodies; local self government units; the legal entities and individuals who are authorized with public authorizations, including special duties, activities and services in the field of the environment; and other legal entities and individuals specified by law.

The right of access to environmental information shall be exercised in respect of all information in written, visual, audible, electronic or any other available form, pertaining to: **the state of environmental media and areas, factors, measures, reports; costs/benefit analysis; conditions related to human health and safety.**

**Effort** – From the analyses performed through the assessment of the Case Studies with regard to Access to information, it was easy to conclude that some initiatives are evidenced. The Civil Society Organization making efforts to announce the occurrences affecting the environment. They are well introduced with the procedures for reaching relevant information, but the main concern is the convenience of the information that they obtain by the competent authorities. The CSOs respect the procedures regulated by the Legal Acts (General Law and/or Subsidiary legislation) regarding the access right and they properly lead the steps on how to approach the institutions and business sector in order to gain some relevant information with respect to the state of the environment. The Macedonian CSOs represent a bunch of assertive organizations that are performing vicarious actions to promote the access right. But, very often, especially when some of large scale facilities are doing permanent pollution, and the indicators of affected, both, environment and people's health are noticeable, discourage the information (about water, air or soil pollution) given by the competent authorities who stand by the polluter side and withhold the real data for the environmental state. Challenged by such reality, was attempted to gain some explanation about the reasons for this practice. What else to be concluded, but, it is hard to react in favour of the affected citizens due to very corrupted channel existing between the officials and the large scale industries.

**Effectiveness** – The effectiveness is on the very low level due to the no willing of the competent authorities to solve the occurred problems. Encourage the fact that the CSOs can approach the officials (main responsible institutions) and the management of business sector in order to request some information regarding the environmental state, but usually data which are provided didn't correspond to the reality (health problems that people encounter - skin allergies, bronchitis, laryngitis, asthma, respiratory diseases, notable changes of ecosystems and so, refer to concentration of the pollutants over the threshold value). This inconvenient reality prolongs the activities that must be undertaken to fulfill the requirements for adaptation and improvement of the both, equipment and technological processes within the industries. Up till now, non initiative performed by the CSOs result with success.

Taking in consideration the above analyzed cases on examination of the right access to information, it's easy to be concluded that where monitoring is required, there is usually no obligation to disseminate the information widely in a form that is easily understandable.

## **6.2 Recommendation**

The general activities that should be undertaken for improving the access right to information, to be examined through implementation of the following recommendations: (to be added that each of the actions pointed out below are in some manners fulfilled, but there is need to make them strengthened and more intense).



- Conducting citizen training in all municipalities in Republic of Macedonia. Campaign in the media for raising public awareness, TV spots, radio advertisements, distribution of leaflets and posters.
- Capacity strengthening of the media and the journalists since they are the most adequate disseminator of information of public concern. Forming a list of journalists who will work on issues related to the environment, conducting a training program which will have influence and will contribute to the improvement of the environment condition, promoting the rights to access.
- Aiming to provide planning, monitoring and implementation of the legal acts for access to information at a municipality level, it is necessary to strengthen the local self-government units and to establish institutional framework and systematization at local level. Conducting training programs in all municipalities in Republic of Macedonia at local level by independent experts, preparation of procedures, manuals and training materials for efficient implementation of the rights for access to information, monitoring and conducting environmental regulations at local level.
- Make an available and easy applicable system for data archiving that will processed easy understandable reports on environmental data information for the citizens.
- Due to the faced reality of low public information over the laws regulating the right for free access to information and low awareness of the procedures for requesting information of environmental character, some educational trainings to be provided with this regard.
- Strengthening of the State Environmental Inspectorate capacities for the purpose of providing good quality and timely disseminated information is needed. The inspectors to be provided with specific training programs on how to make their work more transparent and to be instructed to penalize the improperly actions of entities that are obliged to make the information available.  
Concealment of information and not transparency of the Inspectorate is not allowed
- Creating widely publicized standards for collection and distribution of environmental data.
- Enable natural and legal persons to exercise their right to free access to information of public character.
- In order to perform planning, monitoring and implementing of the legal acts on access to information at municipality level, strengthening of the local-self government units is need.

#### **(1) INFORMATION ON COMPLIANCE AND INDUSTRIAL POLLUTANTS (Water, air and soil discharges)**

**Problem:** In cases where industrial facilities are required to monitor their releases, they are rarely required to release this data to the public. Almost all of the facilities examined

in our country claimed confidentiality regarding the publication of their pollutant release data. In addition, our country still do not have a Pollutant Release and Transfer Register that routinely informs the public about sources and quantities of industrial pollutants. The result is that in many communities the public has no way of knowing whether a nearby facility is in compliance with pollution regulations or if it poses a threat to public health and safety.

**Actions:**

- Establish mandatory requirements for reporting pollution emissions or discharges from industrial facilities, using standardized monitoring and sampling techniques to ensure high-quality data.
- Make this data available to the public on-line and through channels most likely to reach those affected, preferably as part of a Pollutant Release and Transfer Registry that allows the public to obtain both a local and macro view of the pollution releases in their area.
- Specify which classes of information must be placed in the public domain and which can remain confidential in order to reduce administrative discretion in releasing information.
- Include a requirement to analyze the health and environmental implications of the information on water and air quality.
- Invest funds to increase the human, financial and physical resources necessary for a robust monitoring system.

## **(2) STATE OF THE ENVIRONMENT REPORTS**

**Problem:** The state of the environment (SoE) reports tend to be useful documents, but the agencies responsible for producing them often do a poor job of dissemination, with limited efforts to reach out to the news media to make their findings public.

**Actions:**

- Establish a mandate for periodic SoE reporting – at least once every three years, if possible.
- Encourage the use of a standardized format for ease of comparability over years, and give greater attention to environmental trend data. Make these data available on the Internet free of charge.
- Collaborate with other partners and the media to ensure that SoE information is widely available, publicized, and usable.

## **(3) INFORMATION ON EMERGENCIES AND ACCIDENTS**

**Problem:** Public access to information about environmental emergencies and accidents is surprisingly poor in most countries assessed, as well as in Macedonia. Both the

timeliness and quality of information on chemical spills or other potentially dangerous incidents is usually inadequate to protect public safety, to ensure accountability for the incident, or to help establish legal liability. Currently, most environmental accidents go unreported unless they are observed by the public. There is generally no mandate to proactively make information available as to the extent or cause of the incident, or even to ensure that emergency information is accurate and delivered effectively to the affected public.

**Actions:**

- Establish a legal mandate for timely reporting on environmental emergencies and accidents; encourage the creation of specific standards for information content and timeliness in emergency reporting that leads to expectations of proactive provision of accurate information to the public.
- Establish emergency broadcast systems and protocols for their use. Such systems should take into account the latest communications technologies—such as cell phones and text messaging—in addition to conventional emergency broadcast technology and traditional communication methods and systems.
- Establish a list of toxic substances and specific hazardous substances that, if accidentally released or encountered, require immediate notification of nearby residents.
- Mandatory use of established emergency protocols easy accessible for every citizen.
- Develop clear responsibility and accountability for environmental reports both during and after an emergency.

## 7. PUBLIC PARTICIPATION

According to the Law, inclusion of the public in the adoption of the environmental strategies, programme and plan documents, inclusion of the public opinion in the adoption of the participation of the Primary and Secondary Legal Acts, as well as, participation of the public in the procedures of environmental impact assessment, and in the procedure for preparation of A – and B – IPPC permits is mandatory.

*Public Participation* – 6 Cases

Case Name	Case Type	FCB
<b>Absence of public participation in Macedonia for the project NPP Belene in Bulgaria</b>	Project-level decisions	Development Permits
<b>Bypass Skopje- Corridor 8</b>	Project-level decisions	Other
<b>Corridor 10</b>	Project-level decisions	Other
<b>Radioactive landfill</b>	Policy-making	Plans
<b>The NGOs of environmental sector in Macedonia fights for their participation right</b>	Policy-making	Programs
<b>Revolted citizens, against construction of a landfill in the Centar Zupa, Debar</b>	Regulatory decisions	Plans

In following, the Cases upon which the mandatory principle of Public Participation is examined are elaborated.

<b>1. Case Name:</b>	Absence of public participation in Macedonia for the project NPP Belene in Bulgaria
<b>Case Type:</b>	Project-level Decision
<b>Case Type Details:</b>	Development permits
<b>General Info.:</b>	(Case Description)

The Belene nuclear power plant (NPP) project was started in 1980s, but due to strong opposition by the local citizens, and because of the low cost-effective work that was consider as unjustified, the construction of the plant was stoped. The idea for restarting of the project happened in 2003 (the national electricity company (NEK) announced the Bulgarian Ministry of Environment and Waters for the intention of

restarting the NPP Belene project). The EIA study that was prepared in 2004 was subject for public hearing in April/May 2004

*The scope of the company* – Nuclear power plant (production of electricity)

*The main concern* – In case of an accident very damaging impact may occurs – radioactivity (either, non biological species or medium of the environment could be saved).

*Facts* – EIA study for the project NPP Belene should be subject of public participation in the countries which could be affected by the NPP Belene (it should not be included only the neighboring countries, but also affected countries in broader geographical scope).

*Worth to be stressed* – On the own initiative, Macedonian NGOs made an effort to participate in the public hearing. Macedonian NGOs were intended to start official procedure for participating in the public hearing process (under the Espoo Convention) for the NPP Belene project. A meeting was carried out between the Espoo Convention focal point for Macedonia (person from the MoEPP) and the Macedonian NGOs when it was stressed out by the MoEPP that Macedonia has not right to ask for invocation, because the NPP is more than 30 km away from the Macedonian border. They pointed out that were never officially informed from the Bulgarian side about the intention for restarting of the NPP Belene project. Macedonian NGOs communicated the Bulgarian Ministry of Environment.

Official letter was sent for receiving official information and complete technical documentation about NPP Belene project, as well as for starting the procedure for public involvement in the EIA procedures for NPP Belene project (this letter was also send in CC to the Espoo Convention Secretariat and European Commission, DG Environment). The Bulgarian Ministry of Environment sent a reply that only informed party was Romania as the only country which could be affected by the NPP Belene project, and that Bulgaria has not have commitments for notifying other countries. It was shocking to be announced that the MoEPP didn't officially contact the Bulgarian Ministry regarding the Macedonian NGOs initiative for participation in the public hearing at all.

One of the included NGOs started court case in the Bulgarian Supreme Court in Sofija in June/July 2006, for violation of the principles of Aarhus and Espoo Convention for the NPP Belene project. The court case for violation of Aarhus Convention was settled in favor of the NGO, in June 2007.

<b>2.</b>	<b>Case Name:</b>	Bypass Skopje – Corridor 8
	<b>Case Type:</b>	Project-level Decision
	<b>Case Type Details:</b>	Other
	<b>General Info.:</b>	(Case Description)

The Bypass of Skopje – Corridor 8 (financed by EBRD and EIB), is part of the huge transport project carried out between three neighboring countries (Albania-Macedonia-Bulgaria) The bypass Skopje is long 26.7 km. The Environmental Impact Assessment (EIA) procedure for this part started in 2002 according the EBRD procedures.

*The main concern* – The closeness of the road (It was planned to pass 30 meters near the houses) of the people living by and that this distance is too close and that the road need to be changed and to be build 200 meters away from the houses.

*Facts* – According to the preliminary study for construction, it was planned the ring road to cross the local cemetery, the local water sewerage and the private properties of the local citizens. These provoked reactions by the citizens of 4 villages settled on the path of the ring road. Due to the vicinity of the passing road to the local houses, people complaint on the solution the road to be constructed 30 meters away from the houses, instead of the prescribed 200 m according to the regulations.

*Worth to be stressed* – Local citizens accompanied by NGO organized a couple of protests. Thanks to this, the track was changed. In addition, the Fund for Regional and Local roads promised to build bridges which will take the road passing above the villages, so the probability of side effects of this project was minimized (the local population even arranged to obtain reconstruction of the local roads).

<b>3.</b>	<b>Case Name:</b>	Corridor 10
	<b>Case Type:</b>	Project-level Decision
	<b>Case Type Details:</b>	Other
	<b>General Info.:</b>	(Case Description)

Macedonian Government is required to finish upgrading of the remaining section Demir Kapija-Smokvica highway, of the Corridor 10, thus enable the link between the European countries of the north and south (only remaining non-upgraded road of this corridor). The Environmental Impact Assessment (EIA) procedure for this project started at the end of 2007, when scoping and screening were carried out.

*The main problem* – The possible impact of the highway on the Demir Kapija gorge. The gorge is rich in many endemic and rare animal and plant species and is one of the richest ornithological reserves in Europe.

*The main concern* – Not appropriate announcement of the EIA study and its annexes (both, maps and the results of the screening and scoping process) on the web-site. People were not able to consult the documents before the start of the public hearing.

*Facts* – The public was not informed about the results of the EIA procedure (the consultation period is running): nothing was published on the website of the Ministry

of the Environment and Physical Planning (even though this is obligatory according to national legislation). The Ministry has explained on several occasions that this was due to technical problems.

*Worth to be stressed* – The MoEPP failed to announce the public hearing properly (according to national legislation the announcement for the release of the EIA Study and the date of the public hearing should be published in at least one daily newspaper, but this was not a case). The event was announced during the weekend, only three days before the hearing was held. Only one NGO was presented. Due to inconvenience with respect to the availability of the full document (annexes were missing), as well as incompatibility of the maps presented (the maps were much broader and the region specific details were not very visible) the consultation period was prolonged.

<b>4.</b>	<b>Case Name:</b>	Radioactive landfill
	<b>Case Type:</b>	Policy making
	<b>Case Type Details:</b>	Plans
	<b>General Info.:</b>	(Case Description)

Based on propose of the International Atomic Energy Agency (IAEA), (project financier) it was initiated project for construction of damp for radioactive waste.

*The main problem* – Harmful effects over the people's health due to the radioactivity of the waste disposed.

*The main concern* – Area full of natural beauties such as the reservoir Kozjak, Jasen – the hunting area of Tito, River Treska etc.

*Facts* – Not satisfied people who therefore organized themselves on massive protests in order to stop the construction. The Ministry of environment and the Directorate of Radioactive safety claimed that this dump was not harmful for the human health and that this investment is useful for the whole country.

*Worth to be stressed* – After hard efforts by the local citizens and the Municipality of the settlement where was the first intention for construction of the radioactive dump, stopped. Afterwards, new location was pointed out and the complaints continued, but according the International Atomic Energy Agency, Republic of Macedonia has to have a radioactive dump in order to protect the health of the population.

<b>5.</b>	<b>Case Name:</b>	The NGOs of environmental sector in Macedonia fight for their participation right
	<b>Case Type:</b>	Policy making
	<b>Case Type Details:</b>	Programs

**General Info.:** (Case Description)

The NGOs for environment matters, have supplied an request to the Ministry of Environment and Physical Planning and Macedonian Center for International Collaboration (MCIC) for realizing a public gathering to emphasize their rights to be direct participants in the decision making process for nomination and selection of the representative and substitute for the Comity sector of the Operative Program on Regional Development under the MoEPP.

*The main problem* – NGOs discriminated upon call for nomination and selection of the representative and substitute for the Comity sector of the Operative Program on Regional Development

*The main concern* – An e-mail letter posted to “all” non-government ecological organization on a suggestion of the MoEPP. But on that proposal list were only 17 suggested NGOs (in Macedonia existing much more ecological organizations).

*Facts* – The process of selection and organization under the numbered conditions to be performed by the body named as Secretariat of Citizens Platform of Macedonia (CPM).

*Worth to be stressed* – The outcome on this NGOs’s reactions was realized with calling of a meeting. On that meeting were invited all NGOs from environmental sector in Macedonia, the representatives from MCIC and also the representatives from the MoEPP.

The NGOs statement on that meeting was about the next following issues:

- nondemocratic and limited process of decision making,
- limited participation in the process for NGOs environmental sector,
- no completed, short list of proposed organizations (they states that all organization that work on the field of environment should be eligible participants in the nomination of one representative),
- about the short terms that disabled providing the real time for participation of the NGO environmental sector in the decision process, and
- not agreeable attitude, that (CPM) was nominated to be responsible body on this process in all phases in the decision making process.

The process was assessed as nondemocratic and not transparent for the entire non-government environmental sector.

At the end, the process was concluded in favor of NGOs. The NGO environmental sector has gotten their rights and they manage to conduct the entire process of selection and nomination of one NGO representative person and one substation person, with making the Verification commission.



<b>6.</b>	<b>Case Name:</b>	Revolted citizens against construction of a landfill in the Centar Zupa, Debar
	<b>Case Type:</b>	Regulatory Decision
	<b>Case Type Details:</b>	Plans
	<b>General Info.:</b>	(Case Description)

As a part of the project “Clean Radika” financed from the Italian Government with total sum of 6, 8 million euro, a regional landfill was required to be constructed.

*The main problem* – pollution coming as a result of inappropriate managing of the landfill facility.

*The main concern* – impact on the clean environment which is a basic condition for development of the agriculture, stockbreeding, fishery and tourism. In addition to this was emphasized the possible destructive affection of the construction activities on the lake and rural tourism.

*Facts* – The Municipality of Centar Zupa had made a decision for landfill construction on June, 2006 with absence of public participation in the decision making process. The people’s attitude was uncompromising against construction of a waste dump (landfill). The mayor of Zupa municipality has stated that the construction will be constructed under predictable standards and technical ecological aspects.

*Worth to be stressed* – the responsible municipality didn’t informed the public about the plan for construction of landfill site and the resident didn’t either was included in the decision making process.

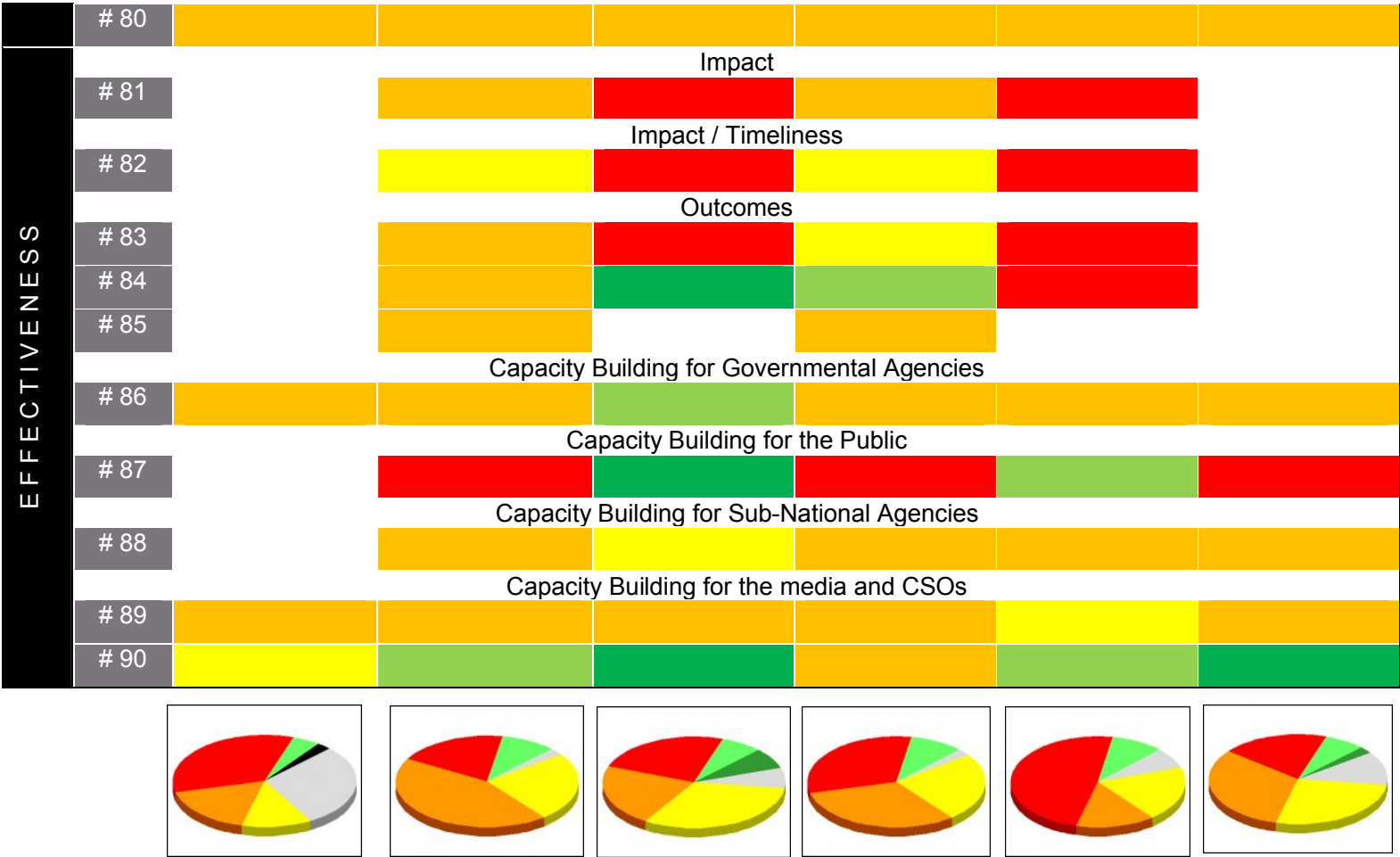
On the initiative of one NGO, signatures against construction of the landfill site of resident people in affected villages were collected.

There is an assumption that the Council of the Municipality of Centar Zupa, had come to decision for landfill construction behind closed doors. There is existing possibility that the mayor of Zupa has cheated the Council, persuading them that the decision was brought by Government and the MoEPP.

\* *This is a typical case, were the public is not included in the decision making process.*

		NPP Belene (Bulgaria)	Bypass – Corridor 8	NGO Env. Sector (participation right)	Radioactive Landfill	Citizens against the landfill “Centar Zupa”	Corridor 10
LAWS		Specific Law / Scope and Quality of Access					
	# 50						
	# 51						
		Specific Law / Limits on Access					
	# 52						
		Capacity Building for Governmental Agencies					
	# 53						
	# 54						
	# 55						
		Capacity Building for the Public					
	# 56						
	# 57						
		Capacity Building for Sub-National Agencies					
	# 58						
		Timeliness					
	# 59						
EFFORT		Scope and Quality of Access					
	# 60						
	# 61						
	# 62						
	# 63						

# 64						
Costs and Affordability						
# 65						
Fairness and Equitability						
# 66	No effort is made					
# 67						
Timeliness						
# 68						
# 69						
Channels of Access						
# 70						
# 71						
# 72						
# 73						
Capacity Building for Governmental Agencies						
# 74						
# 75						
# 76						
# 77						
Capacity Building for Sub-National Agencies						
# 78						
Capacity Building for the Public						
# 79						



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## 7.1 GENERAL OBSERVATIONS over the Access to Public Participation

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**Law** – The most common example for Public Participation is the mandatory principle for inclusion of the public attitude in the procedures of environmental impact assessment, as well as, in the procedure for preparation of A – and B – IPPC permits.

Also, according to the Law, inclusion of the public in the adoption of the environmental strategies, programme and plan documents, as well as, participation on the preparation of the Primary and Secondary Legal Acts is regulated.

- In order to comply with the 'Strategic Environmental Assessment' or 'SEA' Directive, the Law on Environment contains provisions that require a formal environmental assessment of certain strategies, plans and programmes which are likely to have significant effects on the environment.

Authorities which prepare and/or adopt a strategic document, plan or programme must prepare a report on its likely significant environmental effects, consult environmental authorities and the public, and take the report and the results of the consultation into account during the preparation process and before the plan or programme is adopted. They must also make information available on the plan or programme as adopted and how the environmental assessment was taken into account.

### ***Public information and participation***

- (1) Prior to the commencement of the planning document adoption procedure and within five days from the date of Environmental Report completion, the body that prepares the planning document has to publish information concerning the draft planning document and the environmental report, the place where the draft planning document can be reviewed, along with information on the public participation procedure.
  - (2) The body referred above has to at the same time submit the draft planning document and the Environmental Report to the MoEPP.
  - (3) The MoEPP, and the bodies affected by the implementation of the planning document, legal entities and natural persons and the public, may submit their opinion on the draft planning document and the Environmental Report to the body that prepares the planning document within 30 days from the date of submission and publication of information thereon.
  - (4) The body that prepares the planning document has to take into account the opinions received and prepare special report thereon.
  - (5) The MoEPP has to prescribe the manner in which information has to be published, the public participation and the manner of preparation of the report.
- The projects which due to their character, scope or location of their realization, may have significant impact on the environment shall be subject of environmental impact assessment (EIA). With this respect MoEPP is obliged to:
    1. Publish the notification for performance of project,
    2. Publish the decision on the need for performance of EIA
    3. Announce that the study on the environmental impact assessment is prepared and available to the public
    4. Publish the report for compatibility of the EIA study

5. Publish the decision on granting approval or refusal of the project realization
  6. Announce the time and the place of the public hearing on the EIA study
- Transboundary environmental impact assessment when the project is to be carried out on the territory of another country
    - (1) Receiving a notification from a competent authority of another country on initiation of the implementation of a project on the territory of that (neighboring) country which is likely to have an impact on the environment in the Republic of Macedonia.
    - (2) MoEPP should immediately initiate a procedure for assessment of the impacts of the project.
    - (3) MoEPP should immediately initiate a procedure to inform the competent authority of the other country of the intention that the relevant institutions and the concerned public of the Republic of Macedonia become involved in the procedure for environmental impact assessment, under the conditions and in the manner stipulated by the regulations of that other country.
    - (4) MoEPP should immediately inform the body of the state administration responsible for the foreign affairs of the Republic of Macedonia, which shall submit official notification to the competent authority of the other country, in order to provide for participation in the procedure.
  - Also, the MoEPP, publish the A integrated environmental permit on its web site and in two national daily newspapers, and allow within 15 days access to the concerned public to the information relevant for the public participation in the procedure of issuing the permit and to the opinions that were taken into consideration and upon which the permit has been issued. (B integrated permits are responsibility of local self government unites. With the process of decentralization the competencies with this respect, fallen over them)
  - The public participation in the preparation and adoption of the planning documents is exercised in a manner and under terms defined in the Law on Environment. The legal entities and individuals and the public, may express their opinion on the draft planning document and the Environmental Report to the body that prepares the planning document within 30 days from the date of submission and publication of information thereon.
  - Apart from the public participation on preparation of the planning documents, programs, plans and strategies, Law is taken the consideration on the effective public participation during the preparation of executive regulations and other generally applicable legally binding rules that may have a significant effect on the environment.
  - The bodies enable the public the right to give their comments, proposals and opinion prior to the making of the decision on the plans and programmes. During the decision making, they shall take into consideration the opinion from the public participation.

**Effort** – There are several cases where the Macedonian initiatives for public participation are examined. Macedonian NGOs made continuous effort to participate in the public hearing of any character with respect to the environment, due to their opinion that environmental issues

are very sensitive and they require transparent procedures for announcement of the inconveniences as well as effective outcome of those procedures in favour of well-being.

There are many examples of practicing the public participation:

- Public hearing processes in neighboring country executed in order to emphasize the public concern about the effects of some industrial activities that might represent a threat to the environment
- Inclusion of the NGOs in court cases for violation of Aarhus Convention
- Non satisfied local citizens organize themselves on massive protests accompanied by NGO to raise their voice over the environmental management inconveniences.

What is worth to be mention is that CSOs respect the procedures for participation in the events of public character with respect to the environment, in a way that is determined within the national legal procedures and international regulation.

Very often, the public rights for participation in processes in the field of environment are threatened by the authorities and they can't examine the right on public participation in a proper manner. This situation provoke complains by the citizens and CSOs (NGOs). They pointed out on following:

- Non-democratic and limited process of decision making,
- Limited participation in the process for NGOs environmental sector,
- All organization that work on the field of environment should be eligible to participants in the procedures of public character in a democratic way (limitations are not allowed)

**Effectiveness** – Taking in regard the results of the cases that were analyzed for the purpose of TAI research in the Category – Public Participation, it's easy to be concluded that there are some cases where the initiatives for addressing the public right on participation in the decision-making process show successful performances and the final outcome of the initiatives are in favor of the concerned citizens, and on the other hand, cases where the authorities and legal entities which perform the harm over the environment and people's health, show not respective attitude regarding the public participation in decision-making and very often they skip the both, legal and democratic procedures.

- There are many examples of unsuitability with this regard
- Not appropriate announcement of the EIA study and/or IPPC permits and other relevant strategic and plan documents and programmes
- Public is not informed about the results of the EIA procedure (nothing published even though this is obligatory according to national legislation), and so on.

However, besides all these inconveniences the CSOs are strong enough (from the both, capacities and knowledge point of view) to endure the struggle with this regard. Numerous of new events show they are striving successfully for their rights.

They win through:

- Prolong the consultation period
- Stop the construction of facilities affecting the environment and people's health.
- Emphasize their rights to be direct participants in the decision making process (either, policy or project level) etc.

CASES (6) – Access to Public Participation		Indicators #	PERFORMANCES			
			WEAK	INTERMEDIATE	STRONG	n.a.
LAW	Specific Law + Scope and Quality of Access	# 50 - # 51		25 %	75 %	
	Specific Law + Limits on Access	# 52	17 %	83 %		
	Capacity Building for Governmental Agencies	# 53 - # 55	61 %	39 %		
	Capacity Building for the Public	# 56 - # 57	100 %			
	Capacity Building for Sub-National Agencies	# 58	100 %			
	Timeliness	# 59	17 %	33 %	50 %	
	EFFORT	Scope and Quality of Access	# 60 - # 44	30 %	67 %	
Costs and Affordability		# 65	83 %	17 %		
Fairness and Equitability		# 66 - # 77	59 %	8 %		33 %
Timeliness		# 68 - # 69	33 %	42 %		25 %
Channels of Access		# 70 - # 73	29 %	58 %		13 %
Capacity Building for Governmental Agencies		# 74 - # 77	8 %	71.5 %	12.5 %	8 %
Capacity Building for Sub-National Agencies		# 78		100 %		
Capacity Building for the Public		# 79 - # 80	8 %	84 %	8 %	
EFFECTIVENESS	Impacts	# 81	33.3(3) %	33.3(3) %		33.3(3) %
	Impacts / Timeliness	# 82	33.3(3) %	33.3(3) %		33.3(3) %
	Outcomes	# 83 - # 85	17 %	28 %	11 %	44 %
	Capacity Building for Governmental Agencies	# 86		83 %	17 %	
	Capacity Building for the Public	# 87	50 %	33 %		17 %
	Capacity Building for Sub-National Agencies	# 88		83 %		17 %
	Capacity Building for the Media and CSOs	# 89 - # 90		67 %	33 %	



## 7.2 Recommendation

Access to Public Participation is requiring appropriate information about the industrial project activities (adjustments of the technological processes and the equipment; initiation for enlarging of their performances etc.), as well as, about all the activities, which can impact the environment for the sick of better living society. For the purpose of more active inclusion of the public in the procedures of public hearing, the reliable information is needed.

**Problem:** The opportunity for the public to participate in decision-making at both the national and project levels is usually confined to the later stages of policy formulation or project planning. Frequently, the availability and timeliness of information on opportunities to contribute earlier in the planning process is poor or nonexistent. The exclusion of stakeholders is a serious shortcoming of most participatory processes.

### PP

#### Actions:

For the purpose of better understanding when and how the access most contributes to positive impacts and prevention of harm, it is proposed to initiate a Research Agenda to Explore Public Participation. Key questions include:

- ✓ At what stages in the policy and project planning process is access most beneficial?
- ✓ What are appropriate guidelines for officials to decide what form of participation are suitable for given circumstances?
- For the purpose of more active inclusion of the public in the procedures of public hearing, the reliable information is needed (stakeholders to be adequately informed of early participation opportunities)
- Conducting training program for improvement of public participation in the process of decision-making
- Education of the representatives of the local self-government, the employees in the ministries and the representatives of the NGOs with aim to involve the public in the programs, plans and legal regulations concerning the environment.
- Not only to be aware of and comply with the laws, but to publicize opportunities for citizen (widening opportunities for stakeholders to contribute in the initial phases to be addressed)
- Specify targets for earlier citizen involvement in policy and planning.
- Adjust the notification process for public participation
- The Laws is requiring regular proactive creation
- Receiving of more comprehensive briefing materials, such as initial planning drafts or scoping criteria (early information)
- Available quality technical, economic, and environmental data to be provided in order to improve the quality of final decisions.

## **Pp/Law**

- Sublegal act in the environmental law that will impose capacity building in the government institutions for public participation in environmental decision making
- Sublegal act in the environmental law that will regulate trainings for the government accountable employees regarding public participation in the environmental decision making
- Sublegal act in the environmental law that will regulate trainings for the public to enable public participation in the decision making processes

## • 8. ACCESS TO JUSTICE

The observation upon the right on Access to Justice comprising the aspects derived from the analyses carried out over the four (4) selected cases dating from the recent, which were identified as appropriate to reflect the right to justice for clean and healthy environment.

*Access to Justice* – 4 Cases

Case Name	Case Type	Case Type Details
Air pollution - Toplifikacija AD Skopje	Environmental harm	Judicial forum
Feni Industry Kavadarci	Environmental harm	Judicial forum
Usje AD Skopje	Environmental harm	Judicial forum
Regional Landfill “Peresi”	Environmental harm	Judicial forum

In following, the main findings of the cases analyzed with respect to access to justice:

1.	<b>Case Name:</b>	Air pollution – Toplifikacija AD, Skopje
	<b>Case Type:</b>	Environmental harm
	<b>Case Type Details:</b>	Judicial Forum
	<b>General Info.:</b>	(Case Description)

This Case reveals the criminal procedure against the legal entity “Toplifikacija AD Skopje” (in the further text Toplifikacija – the heating plant). This case was started in 02.02.2007 by the State inspectorate for environment (MoEPP).

*The scope of the problem* – Uncontrolled discharge of air polluting substances in the air affects the local population. Very high level of sulfur-dioxide and carbon oxide was discharged and contaminated the whole district urban area.

*Facts* – The citizens are complaining and the result is unsatisfactory.

*Worth to be stressed* – The concerned citizens complain to the State inspectorate for Environment in order to take action towards this problem. This provoked the State inspectorate for environment decided to oblige Toplifikacija in the period of 30 days to reduce the air-contamination and to keep the level of sulfur dioxide maximum to 1 % so that the contamination would decrease up to 50 %. Anyway, the team leader of Toplifikacija claimed that there wasn't enough time to take all the necessitate measures and that they can not change the filter because the only solution of the problem was to connect Toplifikacija to the city gas-main network.

- \* *The court procedures are still in process but the contamination is still in progress and the people are still complaining about the contamination of the air*

<b>2.</b>	<b>Case Name:</b>	FENI Industry - Kavadarci
	<b>Case Type:</b>	Environmental harm
	<b>Case Type Details:</b>	Judicial Forum
	<b>General Info.:</b>	(Case Description)

This Case reveals the criminal procedure against the legal entity “FENI Industry - Kavadarci” (the processing industry of ferrous-nickel). The case was started in 25.11.2006 by the State inspectorate for environment (MoEPP). It was requested by the court of Kavadarci to take offence procedure against the legal entity “FENI”

*The scope of the problem* – Uncontrolled discharge of air polluting substances in the air affects the local population (concentration over the threshold prescribed within the regulation).

*Facts* – During this court case there was a decision made by the State inspectorate of environment by which FENI was ordered to take activities for reducing the level of concentration of dust below 150 mg/Nm<sup>3</sup> produced by its stove and to make weekly and monthly analysis of the quality of the emission of dust. Also “FENI” was obliged to buy new filter in order to reduce the level of concentration of dust in the air.

*Worth to be stressed* – The “FENI” was penalized and obliged to pay a sum of some amount and to buy a filter.

- \* *Although the filter was changed the contamination is still in progress and the people are still complaining about the contamination of the air*

<b>3.</b>	<b>Case Name:</b>	TITAN Cement, USJE – AD Skopje
	<b>Case Type:</b>	Environmental harm
	<b>Case Type Details:</b>	Judicial Forum
	<b>General Info.:</b>	(Case Description)

This Case reveals the criminal procedure against the legal entity “TITAN Cement, USJE – AD Skopje” (the cement processing industry). The case was started in May/June 2006 by the State inspectorate for environment (MoEPP). It was requested

by the court of Skopje I to take offence procedure against the legal entity “TITAN Cement”

*The scope of the problem* – Uncontrolled discharge of air polluting substances in the air affects the local population (the polluting substances coming from the process of cement production – mainly from the tyres burning activities performed to produce high temperatures for the process needs).

*Facts* – After a long court procedure the judgment was made on the 30.01.2008. It was decided that TITAN Cement need to pay fine of 200.000 denars because of contamination of the environmental media and the main person in charge of TITAN Cement needed to pay a fine of 30.000 denars. Also the court decided that Usje need to stop working and therefore it took away the permit of TITAN Cement permanently. However, the representatives of TITAN Cement appeal to this decision and therefore the court after deciding on this appeal made a new decision by which this last decision was abolished.

*Worth to be stressed* – The court procedures are still in process because the concerned citizens are not satisfied with this last court's decision. The contamination is still in progress and the people are still complaining about the contamination of the air

\* *The citizens made a petition in order to collect money needed to buy instruments for measuring the level of air and ground contamination in the Municipality of Kisela Voda where the TITAN Cement kiln is settled. The main goal of this is to collect sufficient evidence so that they can prove that the cement kiln is contaminating the environmental media.*

<b>4.</b>	<b>Case Name:</b>	The Regional landfill “Peresi”
	<b>Case Type:</b>	Environmental harm
	<b>Case Type Details:</b>	Judicial Forum
	<b>General Info.:</b>	(Case Description)

This Case reveals the claim procedure against the Municipality of Centar Zupa and constructing company “Imako” from Gostivar (construction started without permission by the council of the Municipality).

*The scope of the problem* – Construction of landfill in the area with special natural values

*Facts* – The local citizens protest against the project activities on construction of regional landfill in the Municipality of Centar Zupa, mainly because the landfill will contaminate the beautiful surrounding of Debar Lake, its natural beauties and jeopardize the possibilities for tourism. The Municipality of Debar and the fishery

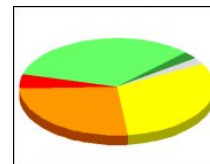
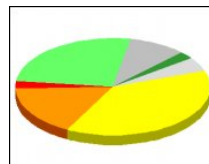
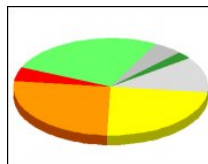
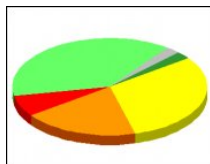
association Trofta made a complain in front of the Primary Court of Debar against the municipality of Centar Zupa and the constructing company Imako from Gostivar.

*Worth to be stressed* – After long court proceedings the court made a decision on the 22.04.2008 in favor of the municipality of Debar and the fishery association Trofta in a way by accepting the proposed temporal measure to stop with the building of the regional landfill by the Imako until the termination of this court case. On the other hand the second part of the claim was not accepted by the court regarding the fact that the municipality of Centar Zupa did not made distraction of the position of the Debar Lake.

\* *This case is not finished yet because it has appeal and now it is waiting the decision by the Secondary Court of Gostivar.*

		FENI Industry – Kavadarci	TITAN Cement kiln	Toplifikacija AD, Skopje	Regional Landfill “Peresi”
LAW		Specific Law / Scope & Quality of Access			
	# 95				
	# 96				
		Specific Law / Limits on Access			
	# 97				
		Capacity Building for Governmental Agencies			
	# 98				
	# 99				
	# 100				
		Capacity Building for the Public			
	# 101				
		Capacity Building for Sub-national Agencies			
	# 102				
		Timeliness			
	# 103				
EFFORT		Scope & Quality of Access			
	# 104				
	# 105				
	# 106				
	# 107				
	# 108				
	# 109				
	# 110				
	# 111				
		Costs & Affordability			
	# 112				
		Fairness and Equitability			
	# 113				
	# 114				
	# 115				
	# 116				
	# 117				

EFFECTIVENESS	# 118				
		Timeliness			
	# 119				
	# 120				
		Channels of Access			
	# 121				
		Capacity Building for Governmental Agencies			
	# 122				
	# 123				
	# 124				
	# 125				
		Capacity Building for Sub-national Agencies			
	# 126				
		Capacity Building for the Public			
	# 127				
	# 128				
EFFECTIVENESS		Impacts			
	# 129				
		Outcomes			
	# 130				
	# 131				
		Capacity Building for Governmental Agencies			
	# 132				
		Capacity Building for the Public			
	# 133				
		Capacity Building for Sub-national Agencies			
	# 134				
		Capacity Building for Media and CSOs			
	# 135				
	# 136				





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## 8.1 GENERAL OBSERVATION over the right on Access to Justice

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In international law, as in any other legal system, respect and protection of human rights can be guaranteed only by the availability of effective judicial remedies. When a right is violated or damage is caused, access to justice is of fundamental importance for the injured individual and it is an essential component of the rule of law.

The results of the observation upon the right on Access to Justice comprising the aspects derived from the analyses carried out over the four (4) selected cases dating from the recent, which were identified as appropriate to reflect the right to justice for clean and healthy environment. The prescribed provisions of the legislation do not differ notably to those determined within the international legislative systems of the countries that are considered as best example for practicing this right.

The research identified some weaknesses during the practicing of the right to justice. It was concluded that the trials can be considered as not effective due to the long court procedures which are time and money consuming. Very often the final court decision not corresponds to the reality and it is practice the legal entities that contribute to significant extent into the local economy to be exempted of the liability to respond according to environmental procedures. This practice should be changed what leads to making substantial changes in the juridical system of Republic of Macedonia (strengthening of the capacities – “zero level of corruption” initiative)

The main findings of our examination are elaborated below. Taking in consideration of the performances of the TAI assessment toolkit, the results are classified in sub-topics, which are grouped within three main topic indicators (law, effort and effectiveness). In following, the main findings of the research:

### A. LAW

#### (1) Specific Law, Scope and Quality of Access

According to *Law of the courts* (Official Gazette 58/2006) the judge decide impartially, based on the free evaluation of the evidence. Any form of influence on the independence, impartiality and autonomy of a judge in exercising the judicial function, on any grounds or by any entity are prohibited. The courts conduct trials and base their decisions on the Constitution, the laws and the international treaties ratified in accordance with the Constitution.

*Civil law procedure* (Official Gazette 75/2006) allows the judges during the trial to take all the evidence proposed by the parties and the evidence that they consider appropriate into consideration when they need to make a judgment.

The Primary Court Skopje 1 is legally authorized by the Criminal Code and Law of criminal procedures in Macedonia

## (2) Limits on Access

The *Criminal law procedures* provide provisions for the court parties not to give statements in front of the court if this will have negatively impacts on their life, dignity or if with their statement will disclose classified information which cannot be made available to the public (like military secret, official secret etc).

Within the *Law on Environment* is given the scope of the confidential environmental information. It is allowed refusal of request for environmental information if disclosure of the information would have negative effects on the confidentiality of the proceedings managed by the competent authorities.

*In each of the cases, the entities shall assess whether the protection of public interest, to which the requested information pertains, is of higher importance than the interest served by the disclosure of the information. In all the other cases the environmental information shall be available*

## (3) Capacity Building for the Governmental Agencies

Having in mind the importance of the trained staff, lots of efforts has been made to be organized and actively participation of the court's staff in various trainings and lectures in different topics. Most of the trainings related to the EU harmonization of the legislation of Macedonia. Also, with the Annual Training Program the courts now have clear guidelines about the trainings which will be organized by the Academy for Training of Judges and Prosecutors.

The main purpose of the Academy is to provide competent, professional, independent, impartial and efficient performance of judicial and prosecution function through selection, organization and implementation of initial training of candidates for judges and prosecutors and continuous professional training of judges and prosecutors and judiciary and prosecution clerks. Also, in order to fulfill its obligations it is formed the Program Council that will give instructions and make the drafts and program proposals for: the admission exam, initial training, final exam and continuous professional education, training of educators and other special training programs. The content of the programs will be defined by the Statute of the Academy.

Also, the Continuous Professional Training to be provided in order to maintain and improve the knowledge and skills in performance of judiciary and prosecution office. The continuous professional training of judges and prosecutors will be implemented through a general and special – specialized programs, which will cover the application of substantive and procedural laws, the modifications of the laws and regulations, ethic standards of behavior, the latest scientific and professional accomplishments in the field of national and international law, especially the law of the European Union, the judicial and prosecution practice, etc.

## (4) Capacity Building for the Public

In order to make access to justice and information easier very special contribution is provided by the NGO's and Government through performing campaigns. Dissemination

of guidelines and information about using the courts including marketing, websites, pamphlets etc is prime objective of those initiatives. Also, establishing of a court's offices where the trained persons can help the people that need help in order to find the information they need. On the other hand, very useful is dissemination of leaflets and other materials for access to justice (for example people not to go straight to courts but to use alternative forums to solve their problems).

#### (5) Capacity Building for Sub-National Agencies

In the Book of rules of each sub-national agency in Macedonia is prescribed in details whether the trainings in a certain area are planned or not (same as previous answer given above). For example, for the year 2008, The State Institute for health protection had planned various workshops and trainings in different areas according the need of the staff just in order to strengthen the capacity of the experts that work there.

#### (6) Timeliness

According the *Law of criminal procedure* the judgment must be announced when the public hearing is finished or 3 days after. Also the same law provides that the written judgment must be written in time of 15 days after announcing the court's decision and only in special cases (when the case is more complicated) the time for writing the judgment is up to 60 days.

### B. EFFORT

#### (1) Scope and Quality of Access

Big efforts are being made to increase the level of knowledge of the staff in order to have legal power to entertain, hear and dispose of the claim. The goal of the Academy for Training of Judges and Prosecutors is to provide competent, professional, independent, impartial and efficient performance of judicial and prosecution function through selection, organization and implementation of initial training of candidates for judges and prosecutors and continuous professional training of judges and prosecutors and judiciary and prosecution clerks.

#### (2) Costs and affordability

The costs of bringing a claim are provided by the special Tariff which must be obligatory used and taken into consideration when the court decides upon the procedure's costs. There are 2 different types of Tariffs. One is the Tariff that the court use it when decides how much bringing a claim will cost in the concrete case and the other one is the Tariff that the lawyers use it when they need to repay their expenses for legal representation in front of the court.

#### (3) Fairness and Equitability

Fairness demands that all stakeholders have equal access to forums for resolving grievances. To make a forum accessible to a wide range of stakeholders, government

may need to utilize a variety of communications tools, including different languages, when publicizing the forum's function and providing guidelines for its use. In addition, the language, rules, protocol, location, hours, staffing, and other specifics should be designed to be useful for all citizens.

In this area still need steps to be taken in order to succeed the proper access to all stakeholders to the courts in Macedonia. In the past few years lots of improvement has been made so that often the people can come across a booklets in different languages (minorities too)

All of this is designed to make it possible for all citizens to use the courts properly.

#### (4) Timeliness

The court's proceedings had a clear schedule and provide both parties with adequate notice and a reasonable amount of time to act. The court left sufficient amount of time for both parties to prepare themselves for the proceedings, also some delays which occur during the procedure were in accordance with the circumstances of the case.

#### (3) Channels of access

This kind of claims can be brought only in front of the courts.

#### (5) Capacity Building for Governmental Agencies

Since Law on the free access to information of public character ("Official Gazette of RM" No.13/06) was adopted by the Parliament of Macedonia, every public institution was obliged to designate a person who will be explicitly responsible for responding to inquires from citizens wishing to bring claims and of providing relevant information to the public.

#### (6) Capacity Building for Sub-national Agencies

In the Book of rules of each sub-national agency in Macedonia is prescribed in details whether the trainings in a certain area are planned or not (same as the answer given in the section Law). For example, for the year 2008, The State Institute for health protection had planned various workshops and trainings in different areas according the need of the staff just in order to strengthen the capacity of the experts that work there.

#### (7) Capacity Building for the Public

In the last couple of years the government actively informs the public how to use the available forums for redress and remedy. The government led very active campaign when the new administrative court started to work. There were guidelines and information that educate the public about the functions of this court, its procedures to submit a claim, rules regarding standing, representation, etc. Additionally, similar campaign with numerous pamphlets printed was conducted about the new Law for mediation. Anyway, speaking with regular citizen who read these pamphlets came to conclusion that this kind of informing people is not sufficient and quite understandable, but also need to involve pro-active activities.

### C. EFFECTIVENESS

What is going to be final outcome of the court's procedure depends on many factors.

Very often the court decision is being not implemented after the court judgment is published. But, there are cases where the final decision is carried out properly by the entity that fails on court (penalizing performances).

C A S E S (4) – Access to Justice		Indicators #	P E R F O R M A N C E S			
			WEAK	INTERMEDIATE	STRONG	n.a.
LAW	Specific Law + Scope and Quality of Access	# 95 - # 96		100 %		
	Specific Law + Limits on Access	# 97		100 %		
	Capacity Building for Governmental Agencies	# 98 - # 100		75 %	25 %	
	Capacity Building for the Public	# 101		100 %		
	Capacity Building for Sub-National Agencies	# 102		100 %		
	Timeliness	# 103			100 %	
	EFFORT	Scope and Quality of Access	# 104 - # 111		71.875 %	28.125 %
Costs and Affordability		# 112			100 %	
Fairness and Equitability		# 113 - # 118		58 %	12.5 %	29.5 %
Timeliness		# 119 - # 120		25 %	62.5 %	12.5 %
Channels of Access		# 121	100 %			
Capacity Building for Governmental Agencies		# 122 - # 125	6.25 %	75 %	18.75 %	
Capacity Building for Sub-National Agencies		# 126		100 %		
Capacity Building for the Public		# 127 - # 128	12.5 %	87.5 %		
EFFECTIVENESS	Impacts	# 129		25 %	50 %	25 %
	Outcomes	# 130 - # 131		50 %		50 %
	Capacity Building for Governmental Agencies	# 132		75 %		25 %
	Capacity Building for the Public	# 133			100 %	
	Capacity Building for Sub-National Agencies	# 134			75 %	25 %
	Capacity Building for the Media and CSOs	# 135 - # 136	25 %	25 %	50 %	

## 8.2 Conclusions and Recommendations

There is growing evidence of the links between environmental problems and social injustices. Environmental justice is the idea that brings both together. It researches the extent of linkages between environmental and social injustice, and asks whether it is possible to tackle both social exclusion and environmental problems through integrated policies and developments.

At the same time, there is an emerging toolkit for governments, individuals and communities to use to implement environmental justice. New assessment techniques, policies, and laws now allow the more transparent establishment of rights and responsibilities, and this in turn brings new legal reputational and financial risks for those acting in an irresponsible way.

***Everyone should share in the benefits of increased prosperity and a clean and safe environment, to improve access to services, tackle social exclusion, and reduce the harm to health caused by poverty, poor housing, unemployment and pollution. The needs must not be met by treating others, including future generations and people elsewhere in the world, unfairly.***

As a concept, environmental justice encompasses the substantive right of all to a healthy environment. The two basic Environmental Justice's premises are:

1. that everyone should have the right and be able to live in a healthy environment, with access to enough environmental resources for a healthy life,
2. it is predominantly the poorest and least powerful people who are missing these conditions.

***The legal system is often inaccessible because it is complex, time-consuming and expensive.***

Implying environmental rights, it implies environmental responsibilities. These responsibilities are on this current generation to:

- ensure a healthy environment exists for future generations, and on countries, organisations and individuals in this generation
- ensure that development does not create environmental problems or distribute environmental resources in ways which damage other people's health.

---

*The new laws allow human rights to be perceived as an integral facet of social justice and environmental protection, because 'acts leading to environmental degradation may constitute an immediate violation of internationally recognised human rights' This clearly has implications for the actions of individuals and the private sector as well as the public sector.*

---

\* Using human rights to provide assistance in environmental equity depends upon a judiciary familiar with environmental and human rights law

In order to make the national legal system efficient with respect to access to justice, the following aspects to be taken in consideration:

- People suffering from environmental harm to be more able to seek redress and defend themselves in future.
- Governments and companies which act early to change policies and practices to reduce environmental injustices, and look ahead to meet the challenges of how to distribute scarce environmental resources will be much better placed than those that react later.

In this rich context, research shows that to achieve environmental justice, there are four broad areas where changes in policy and practice are needed:

1. Rights and responsibilities: ensuring a right to a healthy environment is an overarching aim of policy, which must be supported by placing responsibilities on individuals and organisations to ensure this right is achieved.
2. Assessment: projects and policies need to be assessed for their distributional impacts.
3. Participation and capacity: decision-making should involve those affected, and those groups or individuals enduring environmental injustices need support in order to increase their control over decisions which affect them.
4. Integration: of social and environmental policy aims in all sectors.

***Policy for environmental justice is likely not just to be more democratic but also to be more effective if it provides serious methods for the involvement of those affected by decisions.***

The more specific recommendations with this regard are related to the following:

- Rights and responsibilities: ensuring a right to a healthy environment is an overarching aim of policy, which must be supported by placing responsibilities on individuals and organisations to ensure this right is achieved.
- Conducting training programs with the help of external experts concerning the three rights to access. Realization of workshops and seminars intended for judges, state secretaries in the courts, representatives in the state and basic prosecution, representatives of the ombudsman. Education of these representatives concerning the legal commitments which come from the Aarhus convention, the legal regulations in our country, comparative analysis of the EU legislature. Parallel with these trainings it is necessary to start a campaign in the media
- Assessment: projects and policies need to be assessed for their distributional impacts.
- Participation and capacity: decision-making should involve those affected, and those groups or individuals enduring environmental injustices need support in order to increase their control over decisions which affect them.
- Integration: of social and environmental policy aims in all sector

- Continuous professional training of judges and prosecutors is needed (The continuous professional training of judges and prosecutors will be implemented through general and special – specialized programs)
- The court's proceedings are responsible to provide both parties with adequate notice and a reasonable amount of time to act.



## ANNEXS I

### A. National Coalition TAI Macedonia

No.	Name and Surname	Institution
1.	Kiril Ristovski	Florozon-Skopje Leader Organization
2.	Daliborka T.janevska	Florozon-Skopje Leader Organization
3	Elena Papazova	Biosfera Bitola
4	Biljana Nikodinovska	Biosfera Bitola
5	Aleksandra Karakasova	Macedonian Green Centre
6	Stole Georgiev	Macedonian Green Centre
7	Marija Jankovska	Researcher
8	Natasa Lazarevska	Researcher
9	Vesna Sukuloska	Research Coordinator-Florozon Skopje

### B. Review panel

No.	Name and Surname	Institution
1.	Professor Dr Todor Anovski	Faculty of Technology and Metallurgy Skopje Macedonian/ Macedonian Ecological society
2	Biljana Siderovska	Ministry of Environment-KKJ
3	Angelina Jovanovik	Ministry of Environment-KKJ

5	Mirjana Ilijeva	Ministry of Justice
7	Vaska Trpkovska	LER Department consultant in Municipality Gorce Petrov
8	Roza Aleksovska	Basic Court Kavadarci
9	Suzana	Basic Court Kavadarci
10	Mirjana Ivanova	Ombudsman's state consultant
11	Cvetanka Jankovska	ORT Skopje

**Global Review Team:**

Joseph Foti -WORLD RESOURCES INSTITUTE- USA

Csaba Kiss-EMLA Hungary

## ***ANNEX 2: ASSESSMENT OF THE LAWS ON ACCESS TO INFORMATION***

### **CASE-ACCESS TO INFORMATION**

1. State of Environment Report 2006
2. The pollution of Kamenichka Reka river
3. Discotheque noise – stuck in the administration loo
4. Air pollution from Okta, crude oil refinery
5. Environmental problem with water pollution of Kriva Reka in Kriva Palanka
6. Leakage of the huge amounts of mining waste from the mine for extraction of lead and zinc oar – SASA
7. OKTA Refinery – Existing equipment for environment protection
8. Ecological disaster on Macedonian river Vardar: thousands of fish killed

### **Correspondence Between the Two Ratings**

Key:

Colour appellation	Dark Green	Light Green	Yellow	Light Orange	Red	Grey
Colour representation						
Description	Best	Good	Intermediate	Poor	Worst	N/A
Values	5	4	3	2	1	
W or S	Strength			Weakness		

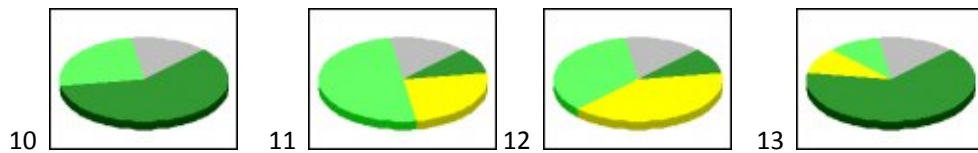
**#10** To what extent does the law support public access to comprehensive information about the environmental area (water, air, forest, etc) concerned in the selected case? **CORE**

**#11** To what extent does the law require a government agency to generate or report regular and diverse in

**#12** To what extent does the law require a government agency to publicly disseminate all generated or reported information of the selected information type? **CORE**

**#13** How clear and narrow are the limits on claims of confidentiality of the selected information type? **CORE**

formation of the selected type? **CORE**

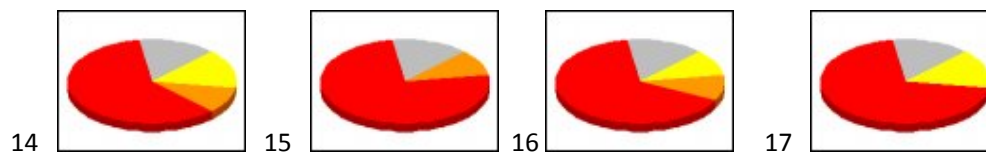


**#14** To what extent does the law require the agency responsible for the selected information type to build the capacity of its staff on access to information? **CORE**

**#15** To what extent does the law require the agency responsible for the selected information type to build the capacity of its staff with regard to the environment?

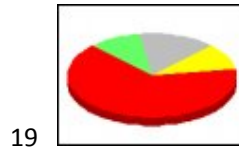
**#16** To what extent does the law require the agency responsible for the selected information type to maintain the infrastructure needed to provide the public access to the information?

**#17** To what extent does the law require the government to offer the public technical assistance, guidance or training on how to access and use the selected information type? **CORE**



**#18** To what extent does the law require the government to build the capacity of sub-national governments to provide access to the selected information type? **CORE**

**#19** Does the law establish a reasonable timeframe within which the responsible agency must make information of the selected type available to the public? **CORE**



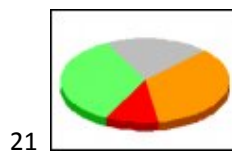
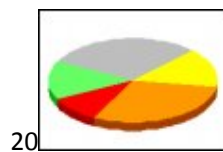
### ANNEX 3: MAIN FINDINGSS IN ALL CASE STUDIES ON ACCESS TO INFORMATION USING EFFORT AND EFFECTIVENESS INDICATORS

#### EFFORT INDICATORS

##### 1. Scope and Quality of Access

**#20** How good is the system for data collection and integrated management of the selected information type? **CORE**

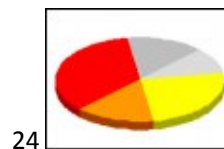
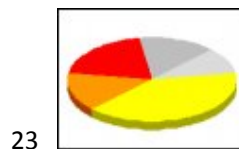
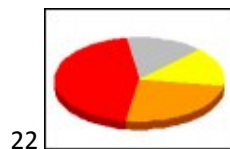
**#21** To what extent does an agency or system generate and/or collect information about the environmental area (water, air, forest, etc.) concerned in the selected case?



**#22** To what extent is there a monitoring system and/or penalties for non-compliance to ensure the agency meets its obligations to disclose information?

**#23** How complete, relevant, and accurate were responses to requests for information in the selecte

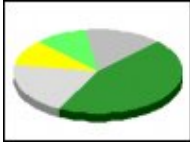
**#24** How complete, relevant, and accurate was the information disseminated to the public in the selected case?



## 2. Cost and Affordability

#25 To what extent did the public have access to information in the selected case at little or no cost?

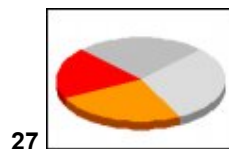
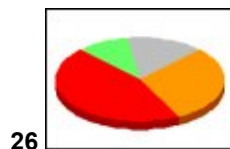
CORE



## 3. Fairness and equitability

#26 How comprehensive and planned were efforts to reach a wide range of stakeholders with information in the selected case?

#27 How well did the responsible agency make a planned and systematic effort to disseminate information to a minority or disadvantaged group (identified in the explanation to this indicator) in the selected case? CORE

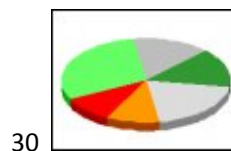
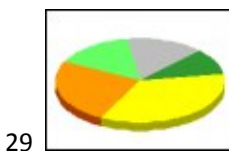
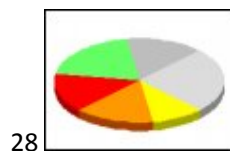


## 4. Timeliness

#28 To what extent does the government generate/collect the selected information type at regular time intervals and in a timely fashion?

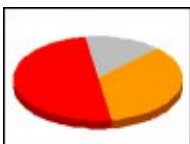
#29 With what level of timeliness does the government disseminate the selected information type? CORE

#30 How prompt was the response to a request for information in the selected case?



## 5. Channels of access

#31 To what extent was all relevant information in the selected case found in many different outlets in different locations? CORE



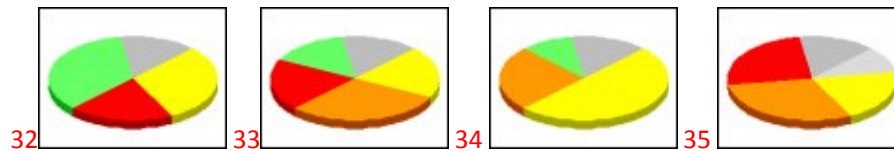
### 6. Efforts to build capacity of government agencies

**#32** To what extent does the agency that manages the selected information type have staff explicitly responsible for disseminating information and responding to requests?

**#33** To what extent were guidelines or training on access to information offered regularly over the last 3 years to staff in the agency managing the selected information type? **CORE**

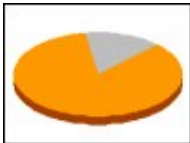
**#34** To what extent were guidelines or training on the environment offered regularly over the last 3 years to staff in the agency managing the selected information type? **CORE**

**#35** How adequate is the government budget allocation for facilitating the collection and dissemination of the selected information type? **CORE**



### 7. Effort to build the capacity of sub-national governments

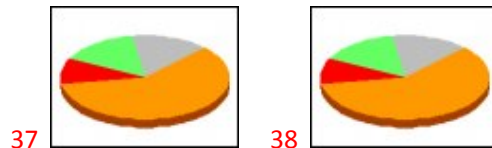
**#36** How regularly did relevant sub-national government officials receive guidelines or training on access to the selected information type over the last 3 years?



### 8. Effort to build the capacity of the public

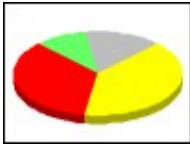
**#37** How clear and easily accessible are the public guidelines on how to obtain the selected information type? **CORE**

**#38** How regularly have activities to build the capacity of the public in the selected information type been conducted over the last three years?



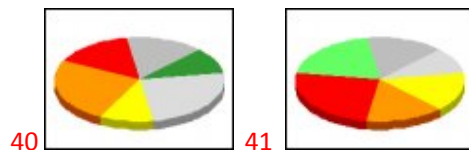
**EFFECTIVENESS INDICATORS****9. Impacts of access**

**#39** To what extent did the relevant information in the selected case reach the relevant public in time? **CORE**

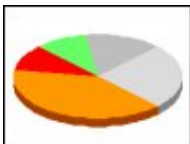
**10. Outcomes of access**

**#40** To what extent did individual choices and behavior change because of information?

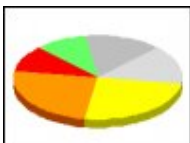
**#41** To what extent did information lead to deliberate actions to prevent or reduce negative impacts on the environment or human health? **CORE**

**11. Effectiveness of capacity for government agencies**

**#42** How well did staff/officials execute their information provision and management responsibilities in the selected case? **CORE**

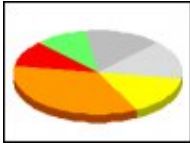
**12. Effectiveness of capacity building for the public**

**#43** In the selected case, to what extent did stakeholders have the skills and knowledge to obtain the information they needed?

**13. Effectiveness of capacity building for sub-national government**

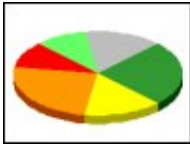
**#44** How well did sub-national government agencies facilitate access to information in the selected case?





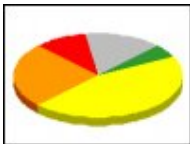
#### 14. Effectiveness of capacity building for the media

#45 To what extent did media involvement facilitate access to information in the selected case?



#### 15. Effectiveness of capacity building for C.S.Os

#46 To what extent did civil society organization involvement facilitate access to information in the selected case? **CORE**




### ANNEX 4: MAIN FINDINGS ON THE LAWS ON PUBLIC PARTICIPATION

#### **CASE –PUBLIC PARTICIPATION**

1. Absence of public participation in Macedonia for the project NPP Belene in Bulgaria
2. Bypass Skopje- Corridor 8
3. The NGOs of environmental sector in Macedonia fights for their participation right
4. Radioactive dump
5. Revolted citizens, against construction of a waste dump in the Centar Zupa, Debar
6. Corridor 10

### Correspondence Between the Two Ratings

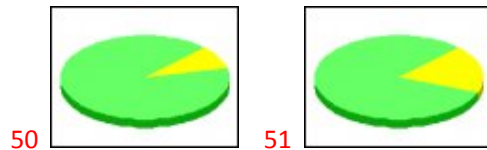
Key:

Colour appellation	Dark Green	Light Green	Yellow	Light Orange	Red	Grey
Colour representation						
Description	Best	Good	Intermediate	Poor	Worst	N/A
Values	5	4	3	2	1	
W or S	Strength			Weakness		

#### 1. Scope and Quality of Access

**#50** To what extent does the law require a government agency to provide relevant information to the public about the intention to start the selected decision-making process? **CORE**

**#51** To what extent does the law require the government to provide opportunities for public involvement in the selected decision-making process? **CORE**



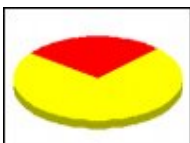
#### 2. Limits on Access

**#52** How clear and narrow are the limits on claims of confidentiality of relevant information about the selected decision-making process? **CORE**



#### 3. Timeliness

**#53** To what extent does the law require the agency responsible for the selected decision-making process to build the capacity of its staff with regard to public participation? **CORE**

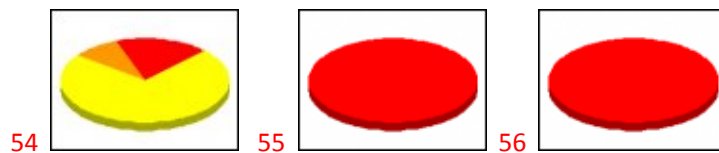


#### 4.Capacity Building for Government Agencies

**#54** To what extent does the law require the agency responsible for the selected decision-making process to build the capacity of its staff with regard to the environment?

**#55** To what extent does the law require the agency responsible for the selected decision-making process to maintain infrastructure to support public participation?

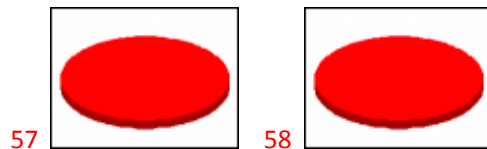
**#56** To what extent does the law require the government to offer the public technical assistance, guidance or training on participation in the selected decision-making process? **CORE**



#### 5.Capacity Building for the Public

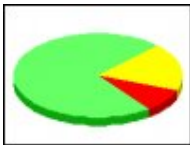
**#57** To what extent does the law require the government to offer the public guidance or training on how resulting decisions affect the environment?

**#58** To what extent does the law require the government to build the capacity of sub-national governments with regard to participation in the selected decision-making process? **CORE**



#### 6.Capacity Building for Sub-National Agencies

**#59** How clearly does the law establish a reasonable timeframe for participation in the selected decision-making process? **CORE**



## ***ANNEX 5. MAIN FINDINGS FOR ALL CASE STUDIES ON PUBLIC PARTICIPATION USING EFFORT AND EFFECTIVENESS INDICATORS***

### **EFFORT INDICATORS**

#### **1. Scope and Quality of Access**

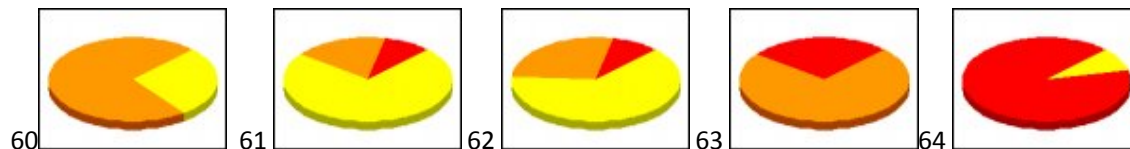
**#60** To what extent does the responsible agency make available to the public a clear description of its decision-making processes, including opportunities for participation? **CORE**

**#61** To what extent is there a monitoring system and/or penalties for non-compliance to ensure the agency meets its obligations to facilitate public participation?

**#62** To what extent did the responsible agency provide relevant information to the public about decision options and their environmental and health impacts in the selected case? **CORE**

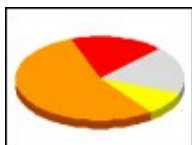
**#63** To what extent did the responsible agency hold public participation sessions at all stages of the decision-making process in the selected case? **CORE**

**#64** To what extent did the agency organize consultations so as to actively solicit and capture public input in the selected case?



#### **2. Cost and Affordability**

**#65** To what extent did the responsible agency keep costs of participation low for participants in the selected case? **CORE**



#### **3. Fairness and Equitability**

**#66** How comprehensive and planned were the responsible agency's efforts to include a wide range of stakeholders in the selected case?

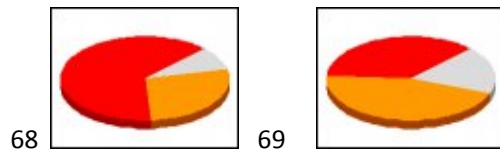
**#67** How well did the responsible agency make a planned and systematic effort to involve a minority or disadvantaged group (identified in the explanation to this indicator) in decision-making in the selected case? **CORE**



#### 4. Timeliness

**#68** Did notification of the start of each stage in the decision-making process in the selected case provide reasonable lead time for effective public participation? **CORE**

**#69** How reasonable was the length of the public comment period in the selected case?



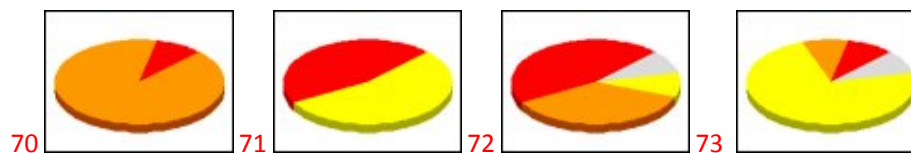
#### 5. Channels of Access

**#70** How well does the responsible agency maintain a publicly accessible registry of past and pending decisions? **CORE**

**#71** How well does the responsible agency maintain a publicly accessible registry of relevant supporting documentation for decisions?

**#72** In the selected case, to what extent did records of decisions and the decision process enable the public to stay informed of developments in the decision, other related decisions, and upcoming decisions and consultations?

**#73** To what extent was relevant supporting documentation available through public registries for the selected decision-making process? **CORE**



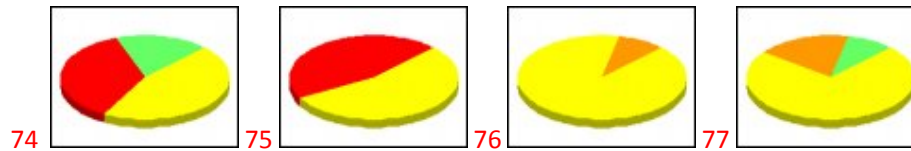
#### 6. Capacity Building for Government Agencies

**#74** To what extent does the agency that leads the selected decision-making process have staff explicitly responsible for public participation?

**#75** To what extent were guidelines or training on public participation offered regularly over the last 3 years to officials in the agency that leads the selected decision-making process? **CORE**

**#76** To what extent were guidelines or training on the environment offered regularly over the last 3 years to officials in the agency that leads the selected decision-making process? **CORE**

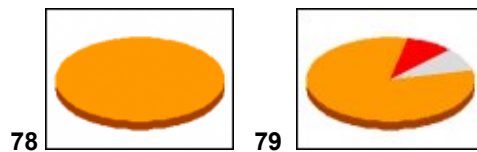
**#77** How adequate is the government budget allocation for effectively facilitating public participation in the selected decision-making process? **CORE**



#### 7.Capacity Building for the Public

**#78** How regularly did relevant sub-national government officials receive guidelines or training on public participation in the selected decision-making process over the last 3 years?

**#79** How clear and easily accessible are the public guidelines on how to participate in the selected decision-making process? **CORE**



#### 8.Capacity Building for Sub-National Agencies

**#80** How regularly have activities to build the capacity of the public to participate in the selected decision-making process been conducted over the last three years?

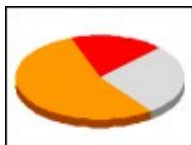


### EFFECTIVENESS INDICATORS

#### 1. Capacity Building for Government Agencies

**#81** To what extent was a public record kept in a reasonably accessible format detailing comments made, comments incorporated in the selected decision, and reasons for any rejection of comments?

**CORE**



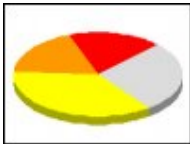
#### 2.Capacity Building for the Public

**#82** How promptly did the public receive information about the dispensation of comments in the selected case? **CORE**



### 3.Capacity Building for Sub-National Agencies

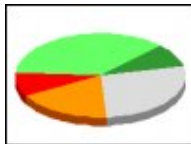
**#83** How extensive was the public input provided in the selected case?



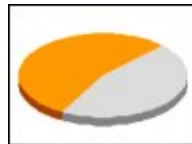
### 4.Impacts

**#84** To what extent did public participation influence the final decision in the selected case? **CORE**

**#85** To what extent was the final decision more protective of the environment or human health than the initial draft in the selected case?



84



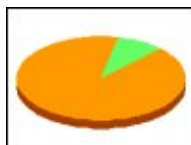
85

### 5.Outcomes

**#86** How well did staff/officials execute their participation responsibilities in the selected case? **CORE**

**#87** In the selected case, to what extent did stakeholders have the skills and knowledge they needed to participate effectively?

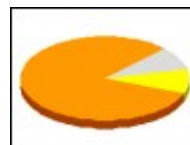
**#88** To what extent did sub-national government agencies facilitate public participation in the selected case?



86



87

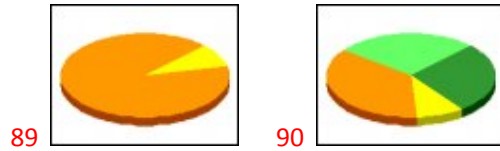


88

### 6.Capacity Building for the Media & CSOs

**#89** To what extent did media involvement facilitate public participation in the selected case?

**#90** To what extent did civil society organization involvement facilitate public participation in the selected case? **CORE**



## ***ANNEX 5: ASSESSMENT OF THE LAWS ON ACCESS TO JUSTICE***

### **CASE-ACCESS TO JUSTICE**

***1.Air pollution - Toplifikacija AD Skopje***

***2.Feni Industry Kavadarci***

***3.Usje AD Skopje***

***4. Regional Landfill “Peresi”***

Colour appellation	Dark Green	Light Green	Yellow	Orange	Red	Grey
Colour representation						
Description	Best	Good	Intermediate	Poor	Worst	N/A
Values	5	4	3	2	1	
Strengths or weaknesses (S/W)	S			W		

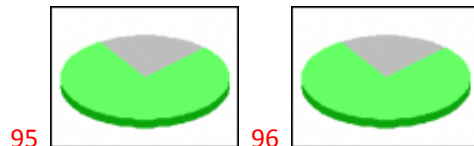


## LAW INDICATORS

### 1. Quality and scope of legal framework

**#95** To what extent does the law require a forum to hear the selected claim type and issue a decision? **CORE**

**#96** To what extent does the law enable a party to seek review or appeal of selected claim type to an independent body with the power to reverse a decision? **CORE**



### 2. Quality of specific legal limits on access

**#97** How clear and narrow are the limits on claims of confidentiality regarding information relevant to selected claim type? **CORE**

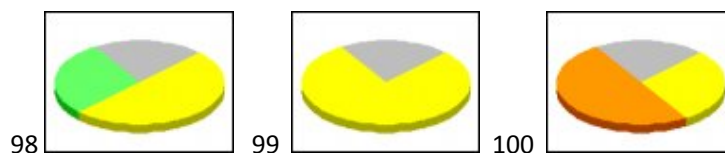


### 3. Quality and scope of legal requirements to build capacity of Government agencies

**#98** To what extent does the law require the selected forum to build the capacity of members with regard to access to justice? **CORE**

**#99** To what extent does the law require the selected forum to build the capacity of members with regard to the environment?

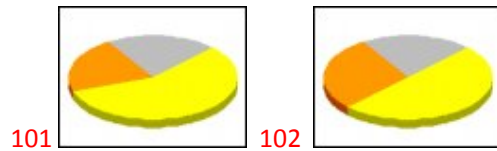
**#100** To what extent does the law require the selected forum to maintain the infrastructure needed for access to redress and remedy?



### 4. Quality and scope of legal requirements to build capacity of the public

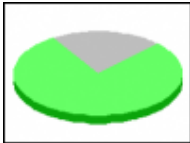
**#101** To what extent does the law require the government to offer the public technical assistance, guidance or training on how to use the selected forum? **CORE**

**#102** To what extent does the law require the government to build the capacity of sub-national government officials to understand and facilitate citizens' rights within the justice system? **CORE**



### 5. Legal requirement for timeliness

**#103** How clearly does the law establish a reasonable timeframe for forum decisions? **CORE**



## ANNEX 6: MAIN FINDINGS FOR ALL CASE STUDIES ON ACCESS TO JUSTICE USING EFFORT AND EFFECTIVENESS INDICATORS

### EFFORT INDICATORS

#### 1. Scope and quality of effort

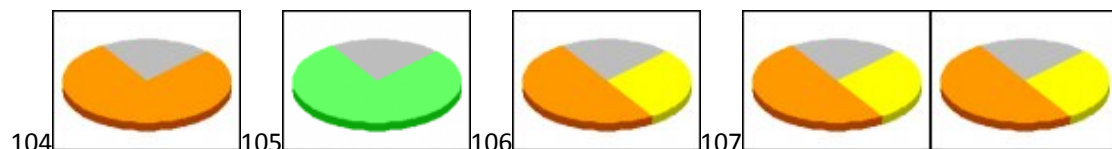
**#104** To what extent is there a forum with adequate capacity to deal with the selected claim type?

**#105** How strong are the forum's standards, regulations or formal policy to ensure independence and impartiality of the forum? **CORE**

**#106** To what extent is information regarding rules of procedure and types of claims to be heard by the forum made publicly available?

**#107** To what extent is a publicly funded independent entity available to provide redress in the selected claim type?

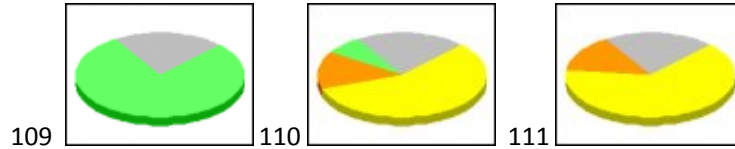
**#108** To what extent was the forum independent and impartial in the selected case? **CORE**



**#109** To what extent were both parties able to gain access to information and conduct fact finding in the selected case? **CORE**

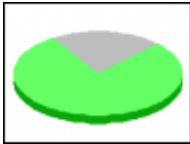
**#110** To what extent was the process transparent to the public in the selected case? **CORE**

**#111** To what extent did the forum consider all appropriate law and facts, including scientific and technical data, relevant to the selected case?



## 2. Cost and Affordability

**#112** To what extent did the forum keep the costs of bringing a claim low for the parties in the selected case? **CORE**



## 3. Fairness and equitability

**#113** How comprehensive and planned were the forum's efforts to enable a wide range of stakeholders to access the forum in the selected case?

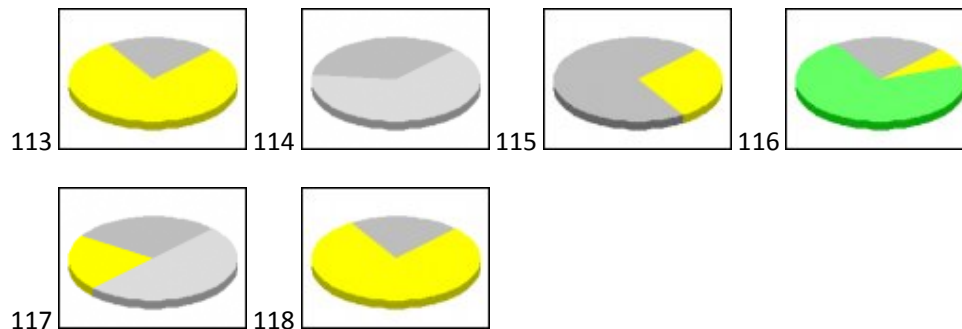
**#114** How well did the forum take steps to make the forum accessible to to a minority or disadvantaged group (identified in the explanation to this indicator) in the selected case? **CORE**

**#115** To what extent did intimidation prevent stakeholders from effectively bringing a claim in the selected case?

**#116** To what extent did the allocation of the burden of proof support access and/or environmental protection?

**#117** How broadly was legal standing interpreted by the forum in the selected case? **CORE**

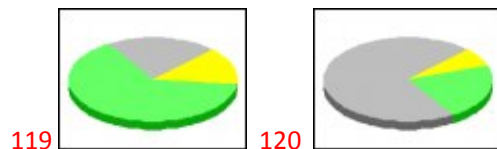
**#118** To what extent were the forum's restraining rules or limits supportive of environmental and "access" interests in the selected case?



#### 4. Timeliness

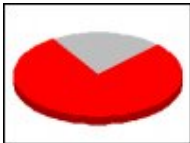
**#119** To what extent did the proceedings have a clear schedule and provide both parties with adequate notice and a reasonable amount of time to act?

**#120** To what extent did the forum minimize delays in processing and reviewing the claim and in issuing a decision? **CORE**



#### 5.Channels of access

**#121** To what extent was there a choice of forums which could consider the selected claim? **CORE**



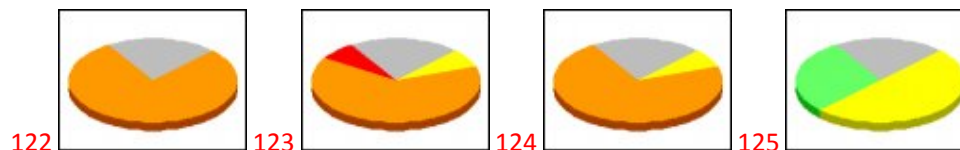
#### 6.Efforts to build capacity of government agencies

**#122** To what extent does the forum have staff explicitly responsible for responding to inquiries from citizens wishing to bring claims and of providing relevant information to the public?

**#123** To what extent were guidelines or training offered regularly over the last 3 years to forum members on access to information, participation? **CORE**

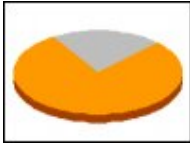
**#124** To what extent were guidelines or training on the environment offered regularly over the last 3 years to forum members? **CORE**

**#125** How adequate is the government budget allocation to support the forum's justice functions? **CORE**



#### 7.Effort to build the capacity of sub-national governments

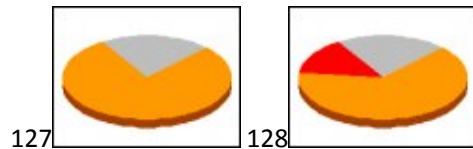
**#126** How regularly did relevant sub-national government officials relevant to the selected case receive guidelines or training on access to justice over the last 3 years?



### 8. Effort to build the capacity of the public

#127 How clear and easily accessible are the public guidelines on how to use the forum? **CORE**

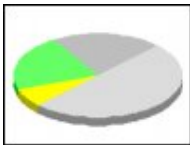
#128 How regularly have activities to build the capacity of the public on how to use the forum been conducted over the last three years?



### EFFECTIVENESS INDICATORS

#### 1. Impacts of access

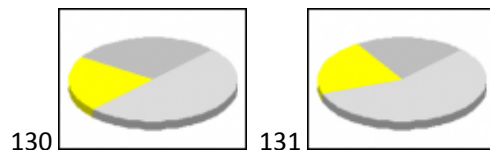
#129 To what extent was the forum decision implemented in the selected case? **CORE**



#### 2. Outcomes of access

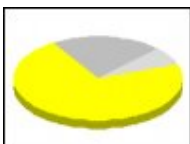
#130 To what extent did the forum decision lead to change in the behavior of any of the participants in the case?

#131 To what extent did the forum decision in this case lead to measures to avoid or reduce negative impacts on the environment or human health or improve access or participation? **CORE**



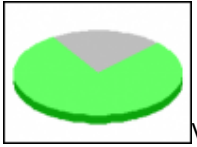
#### 3. Effectiveness of capacity for government agencies

#132 How well did forum members and staff execute their access to justice responsibilities in the selected case? **CORE**



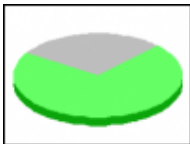
#### 4. Effectiveness of capacity building for the public

**#133** In the selected case, to what extent did stakeholders have the skills and knowledge they needed to use the forum effectively?



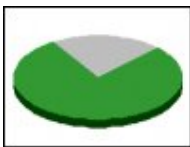
#### 5. Effectiveness of capacity building for sub-national government

**#134** To what extent did sub-national government agencies facilitate access to justice in the selected case?

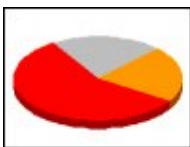


#### 6. Effectiveness of capacity building for the media

**#135** To what extent did media involvement facilitate access to justice in the selected case?



**#136** To what extent did civil society organization involvement facilitate access to justice in the selected case? **CORE**



Colour appellation	Dark Green	Light Green	Yellow	Orange	Red	Grey
Colour representation						
Description	Best	Good	Intermediate	Poor	Worst	N/A
Values	5	4	3	2	1	
W or S	Strength			Weakness		