

II. Building National Consensus through Effective Dialogue and Public Participation

2.1 Environmental management is influenced by, and has impacts on, a great variety of institutional stakeholders, as shown in Figure 2.1. The individual action of each of these stakeholders has consequences for other stakeholders, and their relationships for environmental management are intrinsically inter-connected. Economists would call this relationship a significant asymmetry between the benefits and costs, as the (private) benefits from using an environmental resource are often captured by one group (e.g. an industry using assimilative capacity of a river or an air-shed) while the (social) costs are borne by the others (e.g. nearby community exposed to the pollution). This asymmetry is the fundamental cause of potential conflict between multiple stakeholders, necessitating both government interventions to correct for market failure and create an effective dialogue for developing an appropriate set of interventions (i.e. a set of environmental policies and regulatory mechanisms) which will be broadly accepted, widely honored, and thus sufficiently enforced. A history of environmental management worldwide shows that effective environmental enforcement requires *informed* consensus on environmental management objectives and policies that is based on a *good understanding of the shared roles and responsibilities* of all players, including the regulator, the regulated community (developers and polluters) and the affected community (general public).

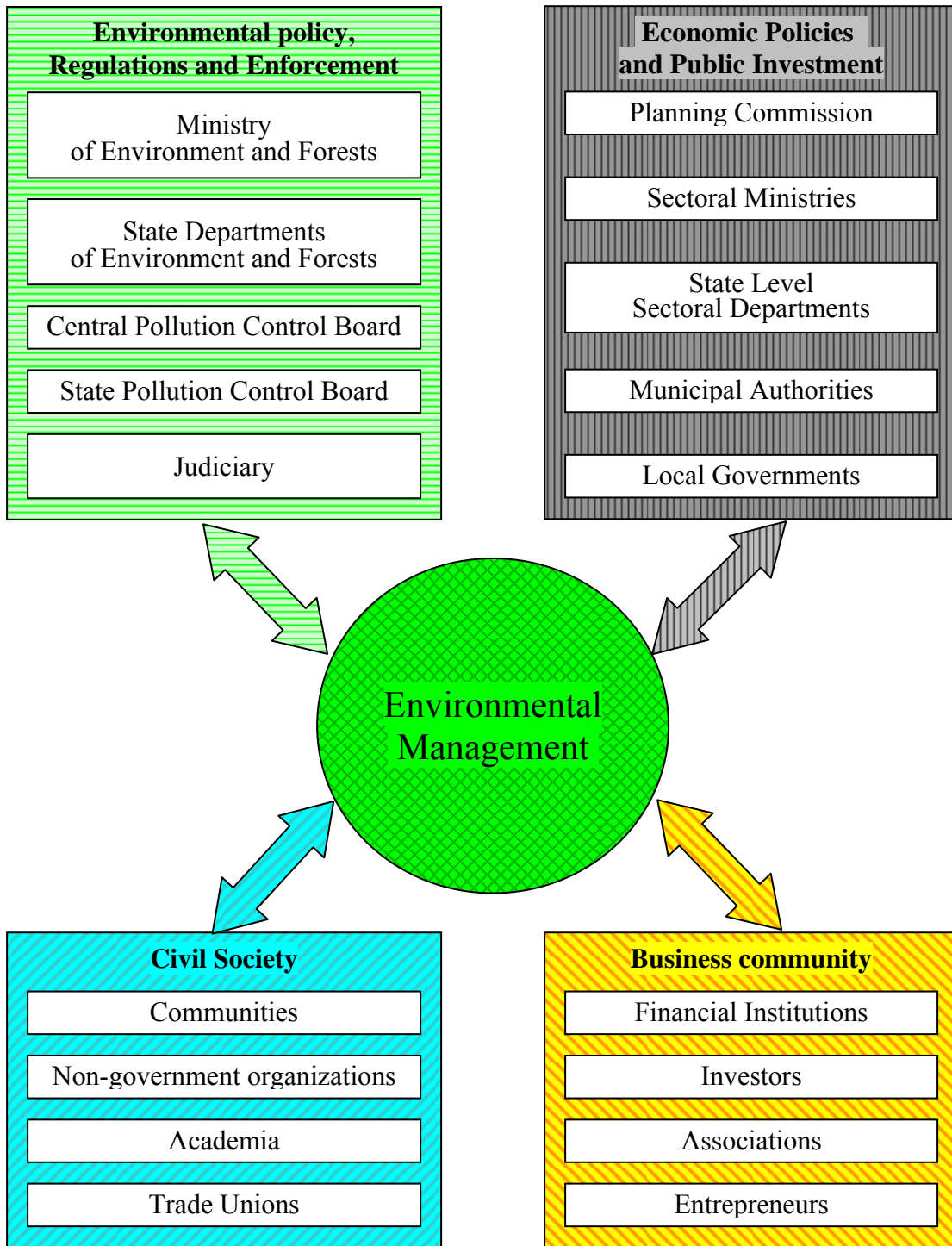
The Challenge: Multiple Stakeholders with Opposing Views

2.2 Currently, several factors undermine the effectiveness of multi-stakeholder dialogue over environmental issues in India and the ability of all stakeholders to move forward towards a more sustainable mode of development. The problems of multi-stakeholder dialogue arise from societal assumptions that different stakeholders have of each other based on experience and perceptions.

2.3 On one end of the spectrum of societal assumptions, some believe that involving the public will merely lead to inefficiencies in the decision making process and not add substantially to the quality of decisions that need to be made; that the opposition voiced by NGOs is uncompromising and merely reflects a “Not In My Back Yard” (NIMBY) syndrome; and that some NGOs do not represent the real interests of the affected community — who are often largely illiterate and uninformed — and merely promote their own agenda. Some also believe that governments are meant to represent the “public interest” and therefore should be entrusted with the inherent authority to decide what is in the public interest.

2.4 On the opposite end, there is a public distrust and an assumption that the government is always under the influence of developers and therefore any decision that the government makes is automatically suspect. Regulatory agencies are often criticized for spending most of its attention on addressing the concerns of the developers and investors and giving little attention to concerns of the affected community. Rather than trying to understand the possible impacts of a proposed development on the affected communities, more time is spent in identifying regulatory obstacles that are viewed as impeding construction of the proposed project.

Figure 2.1: Key Stakeholders of Environmental Management in India



2.5 This public mistrust has been reinforced by previous developments over large and controversial projects, particularly those where the resettlement of communities was proposed to make way for alternative land uses, such as hydroelectric dams or highways projects. The communities to be resettled were often not informed or consulted until after key decisions were made. Conflict over land use or environmental impacts due to infrastructure or industrial projects have been one of the most contentious public policy issues for economic

growth in both industrialized and developing countries alike (see Box 2.1 for some examples from India). This is of particular concern to the growth agenda in India due to its high population density, enormous needs for new investments, and the mounting environmental activism.

The Alternative: Confrontation and Public Interest Litigation

2.6 There are numerous examples of environmental or land use related disputes over various development projects in India that have led to a dramatic confrontation between the communities and the developers, eventually inflicting the heavy cost on both sides and highlighting the need for a different approach. (See Box 2.1).

Box 2.1: Conflict over Development Projects in India: Examples Collected by Sector Reviews

A highway project in Karnataka. The Western Transport Corridor bisected the village community of Aimangala in Karnataka. Due to the lack of prior consultation with the community, the need of villagers for a pedestrian underpass to provide safe crossing was not considered. The local people resorted to public confrontation, including laying siege to engineers and consultants, to demand an underpass to connect both sides of the village. At this stage, however, the redesign would have meant significant additional costs, time and demolition of work already done; and was thus declined. The consequence was an unsafe and accident prone road, which could have been avoided if there had been early consultation with the community during the design of the project. This lesson demonstrated the value of public consultation and has been taken up by National Highways Authority of India (NHAI) in more recent projects.

(Source: Information collected during study consultations).

An industrial facility in Kerala. In the Birla Enterprise case of the early 1980s, citizens in Kerala raised concerns over pollution in the Chaliyar River from the Gwalior Rayon manufacturing mill. The state government called a meeting between the community, factory management, and Kerala state pollution control board and several agreements for improved environmental management at the factory were reached. Despite this, after several years no action was taken by the factory and citizens were forced to launch a prolonged protest against the factory and government to compel the implementation of the earlier agreement. This citizen's action led to the government forming a committee to study the pollution caused by the factory and recommend corrective solutions. The factory management eventually decided to close down the polluting plant.

(Source: *Centre for Science and Environment, 1982; 2005*)

2.7 More recently, citizens have also been increasingly resorting to public interest litigation to resolve environmental disputes. In 1985, the Doon Valley case marked a watershed event in the establishment of public interest litigation in India. Claining the government's inability to control the environmental destruction from quarrying, citizens in Uttar Pradesh turned to public interest litigation to protect their rights and the environment. In a landmark decision, the Supreme Court ordered the closure of 53 of the 60 limestone quarries in Doon Valley because the facilities had adversely affected local water springs and the health of nearby residents.¹⁴

2.8 With this decision, the Supreme Court established the important legal precedent of the "right to a healthy environment" and created a new avenue for addressing environmental

¹⁴ <http://www.unu.edu/unupress/unupbooks/80a03e/80A03E0n.htm>

concerns through public interest litigation and the courts. In most countries, the courts have been viewed as a last resort in resolving environmental conflicts. In India, however, it has often become the first resort because of the perceived inability or lack of political will of the regulatory agencies to enforce environmental laws and regulations. This has resulted in an increasing number of court directives that have established new environmental policies and implementation requirements for both the public and private sectors (Table 2.1).

Table 2.1 Summary of Selected Public Interest Litigations and Court Directives	
Case	Court Directive
Ratlam Municipality v/s Vardhichand – AIR 1980 SC 1622	The municipality was directed to construct toilets and remove filth from an open drain irrespective of financial constraints.
M.C. Mehta v/s Union of India & Others – AIR 1988 SC 1037	The authorities were directed to stop the operation of tanneries causing pollution in river Ganga.
M.C. Mehta v/s Union of India & Others – AIR 1987 SC 1086	The Court held that the enterprise engaged in hazardous or dangerous activity owes an absolute duty to the community to ensure that harm is avoided to anyone on account of hazardous nature of activity undertaken by such enterprise.
M.C. Mehta v/s Union of India & Others – 1997 (11) SCC 312	Directed the Government to constitute an authority for regulating and control of ground water management.
M.C. Mehta v/s Kamal Nath – 1997(1) SCC 388	Relying on Public Trust Doctrine, the Court ordered that it extends to natural resources such as rivers, forests, etc.; directed for recovery of damages who caused damage to the environment.
Vellore Citizens Welfare Forum v/s Union of India – 1996(5) SCC 647	Directed the polluter to pay the cost for remediation of the damaged environment as part of the process of sustainable development, polluter pays principle and precautionary principle.
S. Jagannath V/s Union of India – AIR 1997 SC 811	Directed shrimp culture industry to close its activities in view of the ecologically fragile coastal area and adverse effect on the environment because of its activities.
Rural Litigation & Entitlement Kendra v/s State of Uttar Pradesh – AIR 1987 SC 359	Directed the mining industry to stop the mining activities in the forest area of Doon Valley.
B.L. Wadhwa v/s Union of India – AIR 1996 SC 2969	Directed the municipality of Delhi to remove garbage from various parts in the city of Delhi.
M. C. Mehta v/s Union of India & Others 1997(11) SCC 327	Directed the authorities for closure/shifting/relocation of hazardous and noxious industries outside the territory of Delhi which were operating in violation of the Master Plan.
M.C. Mehta v/s Union of India & Others 1997(3) SCC 715	Directed the industries to stop construction activity within 1 km from the lakes for the preservation of tourism and upheld the concept of sustainable development and precautionary principle.
M.C. Mehta v/s Union of India & Others 1986(2) SCC 176	Observed to set up separate environment courts to deal with environmental disputes.

(Source: the Supreme Court of India website, <http://supremecourtindia.nic.in>)

2.9 While the judiciary is an essential institutional player in environmental management, it is also widely and increasingly recognized that the Executive Branch agencies must urgently find new ways to reduce public conflicts and improve the dialogue among multiple stakeholders over environmental issues. Box 2.2 provides one useful example of such an action by an environmental ministry.

Box 2.2: Government's Response to Growing Public Confrontation: Thailand

Thailand's rapid industrialization and urbanization has led to significant environmental challenges and community opposition. As a result, environmental conflicts have been front-page news in Thailand. Infrastructure projects were frequently delayed due to disputes between project developers and communities who were not consulted in the early stage of the development process. In 2002, the State of the Environment Report developed by Ministry of Natural Resources and Environment (MoNRE) concluded, "Lack of participation from local community and all stakeholders in the early stage of the mega development projects has led to conflicts and protests that have not been settled yet."

Consequently, a Cabinet Resolution was issued in Thailand mandating that all Thai agencies establish dispute resolution programs. Beginning in 2002, MoNRE, the Thai courts, and civil society leaders worked to develop an environmental dispute prevention and resolution policy. As a first step, MoNRE conducted stakeholder consultations to identify the major challenges, priority issues, and training needs in implementing this policy.

Based on these consultations, MoNRE piloted a training program for a core group of mediators, including government officials, civil society leaders, judges, and police officers. In addition, an Environmental Dispute Prevention and Resolution Center was established as a center of excellence to support skills development among governmental and civil society leaders, expand the roster of capable mediators, and foster greater cooperation between the government and civil society. Since 1992, MoNRE has expanded the dispute resolution training program, established formal mediator qualifications, and begun creating a network of local mediators in the regions capable of handling actual disputes.

Source: US-Asia Environmental Partnership, <http://www.usaep.org/accomplishments/thailand.htm>

The Way Forward: From Stand-Off to Constructive Dialogue

2.10 One of the priority challenges (and possibly the top priority) facing India today with respect to environmental management is to break the vicious circle of distrust and accusations of blame among opposing stakeholders. Fortunately, good practice examples from India and elsewhere and the three sector reviews provide encouraging examples of how to successfully *promote and harness public participation*.

2.11 Large corporations in India have responded to the situation by adopting corporate environmental and social policies and working with the communities. For example, the case studies of the Koldam Hydropower Plant by the National Thermal Power Corporation (NTPC) and the transmission line by PowerGrid showed that significant attention was given to meaningful community consultations. In the Koldam project, a Village Development Advisory Committee was created and Public Information Centers were established in three locations to enhance public involvement and communication between the community and NTPC. The constitution of Village Development Advisory Committees and Public Information Centers are being adopted in all NTPC projects, resulting in more intensive interactions with community representatives and affected people. There are emerging "good practice" example of community consultation in State road projects. *The challenge is to scale up good practices and social corporate responsibility initiatives, still practiced by a few, to a widely held social norm.*

The Benefits of Public Participation

2.12 The Public Trust Doctrine is one of the foundations on which democratic societies were built and it rests on the principle that certain resources such as air, water, and forests are of such great importance to society as a whole that the government is entrusted with protecting these resources for the enjoyment of everyone. Effective public participation increases the credibility of government institutions responsible for executing the public trust by ensuring an open and inclusive decision-making process. When civil society and other stakeholders feel they have an understanding and voice in the decision-making process, public confidence in the fairness of the decision increases. Conversely, lack of meaningful public participation creates perceptions of undue influence or corruption that project proponents or industry may have over the regulatory system and regulators. Effectively involving the public in the decision-making process helps to promote the accountability of government agencies and ensure that they are acting in the public interest. Participatory democracy also requires the involvement of all levels of government and society, including formal and informal institutions. There are a growing number of examples from developing countries reflecting the recognition of the value of strengthening the instruments and institutions for multi-stakeholder consultation and public participation in environmental management (Box 2.3).

Box 2.3: A Framework for Public Participation in the Philippines

As part of its environmental management strategy, the Laguna Lake Development Authority (LLDA) in *the Philippines* recognized that a broad based, multi-sector, multi-stakeholder approach was necessary to protect and restore the environment. The LLDA organized River Basin Councils for each of the river systems flowing into the lake and involved local governments, fishermen, farmers, industry, NGOs, schools, churches, and other community stakeholders in the governance structure. The River Basin Councils established a volunteer army for clean up activities, developed public awareness and educational campaigns, organized training programs for local governments, and shared best practices with other communities.

Source: LLDA website, <http://www.llda.gov.ph/>

2.13 Public participation is also beneficial in informing and improving the environmental and policy choices made, because communities are often important repositories for knowledge of the local conditions and historical trends underlying environmental problems such as groundwater contamination or soil erosion. Local stakeholders can provide site specific knowledge and identify potential solutions that project proponents or environmental managers may have overlooked in the early stages. This was highlighted by stakeholder consultations at project sites, particularly the power sector case studies, and is further illustrated in Box 2.4.

Box 2.4: Listening to Communities with Site Specific Knowledge

The case of Chipko Andolan in Uttar Pradesh showed how a constructive and action oriented movement by the villagers prevented the destruction of a nearby community forest. Because of the concerns and protests raised by women from the village, an expert committee was established to evaluate the potential environmental impacts from the proposed felling of trees by developers. The committee concurred with the women and recommended that, due to the highly sensitive nature of the watershed, felling of trees be banned to allow for regeneration of the forest.

(Source: CSE, 1982)

2.14 The importance of public participation in the Environmental Impact Assessment (EIA) process is probably most widely recognized, for several reasons. First, public involvement in the EIA process provides an opportunity for the community to identify and understand the economic, environmental, and social impacts of a proposed project. Second, public participation can help identify potential adverse impacts — indirect, cumulative, and long term impacts — and potential mitigation alternatives that might otherwise not have been considered. Third, it increases public awareness of the project and identifies opportunities for community ownership such as citizen monitoring of the project. Public participation cannot totally eliminate conflict over a proposed project. However, it can reduce conflict by bringing all the public concerns and suggestions to the surface. Finally, public participation can foster a more effective integration of economic, social and environmental concerns regarding infrastructure development. When the public is allowed to receive information about a proposed project, provide input, and most importantly, feel that their input is taken seriously, public participation can yield better decisions and long term results.

Overcoming Difficulties of Public Participation

2.15 When the public is not given an appropriate venue to be heard, it will create its own venue to protest using PIL or other showing of discontent. The highways sector review highlights the case of Golden Quadrilateral where citizens blocked the highway to demand underpasses, overpasses, and cattle crossings.¹⁵ Furthermore, instruments of public participation should be meaningful, and not perceived as a mere formality.

2.16 Unfortunately, public hearings which are the most common form of public participation and the main instrument currently used in India are often perceived by NGOs as a staged event that appears to involve citizens when in reality the decision has already been made by those in power. On the other hand, project proponents frequently perceive public hearings as an unavoidable evil where NGOs and civil society voice unfounded fears for the purpose of delaying or stopping a project. Regulatory agencies are caught in the middle, trying to balance the concerns of both the public and project proponent in hearings that are either not well attended or highly contentious. Acting upon the limited effectiveness of the current public hearing process and following an extensive public review and debate, the MoEF issued a new *EIA Notification* on 14th September 2006 (Box 2.5).

2.17 An important factor that influences effective public participation is the *ability* of citizens to engage in the public participation process. Making the project proponent or development agency responsible for providing the details of a proposed project in the local language during the public hearing so that participants can understand the information provided is necessary and already being practiced in India. It is sometimes not enough. Citizens, particularly from remote rural areas or tribal communities, may have difficulty in understanding the ramifications of a proposed project, because they lack the information or do not have the technical knowledge to appreciate the scientific and technical information presented. They may not understand the costs and benefits of the management options or how those options could affect their own interests over time. Or, they may not be able to call upon the same sophisticated planning tools or economic analyses that others may use to put forward a convincing case. For example, when considering the expansion of a highway, some

¹⁵ *Information collected during study consultations*

residents may have misgivings about the potential environmental impacts, but this may pale in comparison to the potential services that the road could bring to the community and the State's larger economy.

Box 2.5: Notification for the Re-Engineering of the EIA Process in India

The new EIA Notification, issued in September 2006, requires public consultation for all Category A and Category B1 projects, with some exception (such as project activities in industrial estates or parks, expansion of roads and highways, building projects and category B2 projects). The public consultation comprises of two components — the public hearing at the site for ascertaining concerns of local affected people; and written response from other concerned persons having a plausible stake in the environmental aspects of the project or activities. A summary of the EIA report will be made available on the website and the draft EIA report may be made available to persons who request it within 60 days. The public consultation will be conducted by the SPCB or Union Territorial Pollution Control Committee (UTPCC) within 60 days of a request by the applicant. If the SPCB or UTPCC fails to conduct the public hearing within the prescribed time period, the Expert Appraisal Committee (EAC) or SEAC will appoint another public agency to conduct the hearing. After completion of the public consultation, the applicant is required to address all the material environmental concerns expressed in the public consultation and make appropriate changes in the draft EIA and Environmental Management Plan. Procedures for conduct of public consultation are prescribed in Appendix to the Notification.

It is noteworthy, that 'public hearing' has been replaced with "public consultation" in the new notification, perhaps reflecting a paradigm shift in the expected outcome of the process. The *public hearing* process as part of EIA was presented as an opportunity for potentially affected communities to flag their concerns. In the new Notification, "*public consultation*" aims to force project proponents to proactively seek the views of affected communities at various stages of project development and integrate these concerns in the design. The other major change is the timing of getting views of affected parties, which is a prerequisite for the final EIA document and not as an annexure to EIA document after it is completed, as is usually done. A number of other process changes aim to address the alleged lacunae in the current system of public hearing.

It would be useful to establish a good evaluation mechanism to collect credible data on whether the new procedures once implemented will be able to improve the effectiveness of public consultation .

Source: EIA Notification 14 September 2006, Ministry of Environment and Forests, New Delhi

2.18 Another difficulty is that not all affected stakeholders are equally well-positioned to express their views. For example, in many projects, tribal communities who may be the most impacted by a proposed project are not involved either from their inability or lack of willingness to attend a public hearing. Barriers of distance, language, literacy, and connectivity — all the factors of particular relevance to India due to the remoteness of many habitations, multiple languages, and significant illiterate population — can also prevent full participation. There is also a growing trend among developers to distinguish between public stakeholders which include affected communities and NGOs, and to limit the consultation/public hearing process to the affected community only. While these two groups of public stakeholders are not necessarily the same, and some NGOs may have other interests than those of the communities, many affected local communities have relied on NGOs to assist them with technical information and public advocacy skills they do not possess. Therefore, in ensuring the effectiveness and sustainability of the public consultation process in the long-term, the focus should be on building capacity of community institutions to better understand and participate in the decision-making process rather than on limiting access to consultation forums.

Innovations in stakeholder involvement and public participation, tried by many countries, help to enhance the effectiveness of the more traditional methods, such as public hearing and public comment period. These innovations include application of community-based management approaches, conducting trainings to build civil society capacity, holding public hearings in a more interactive manner, and increasing access through technology enhancements. The main instruments of public participation are summarized in Table 2.2 and, while the public hearing process is the most commonly used, examples of each type of participation, at least on a pilot basis, can be found in India. For example, the Village Development Advisory Committees are a key instrument used by the NTPC to actively involve the public in community development activities.

Document Review	Community members and other stakeholders increase their capacity to participate by reviewing background materials presented in a language and at a technical level they can understand. Having access to documents and reports also increases the accountability of decision-makers and the perceived legitimacy of the decision-making process.
Informational Meetings	Informational meetings provide basic information to the public about proposed projects, such as where or when a road or power plant will be build and its potential benefits and impacts. Informal meetings when conducted, early on in the process can help minimize initial public fears, identify local concerns to be addressed in the design of the project, and develop trust and communication with local communities.
Public Hearings	Public hearings are meant to provide a formal opportunity for the public to voice their opinions and concerns on a proposed project, law, or environmental policy. Public hearings are often viewed as ineffective and lacking meaningful public participation. In some countries, government agencies have trained facilitators to preside over public hearings to improve the dialogue between the regulator, project proponent, and the public.
Advisory Committees	Advisory committees allow for greater participation of key stakeholders that is more in depth, continuous, and policy oriented. There is a distinction between citizen advisory committees, which consist of a diverse representation from civil society and expert advisory committees which usually bring together scientific or technical experts. Citizen advisory committees are intended to serve more as the voice of the larger public.
Public Involvement Volunteers	Public involvement volunteers are people from the community who are enlisted to assist an agency in developing and implementing a public involvement program. They can be specially trained to speak about the public participation process or proposed project. The volunteers help the agency to better understand the community concerns and improve the public hearing process.
Community Based Environment Management	Through community based environmental management, multiple stakeholders come together to develop and share solutions to local environmental problems via consensus-based approaches that integrate environmental, economic and social objectives. This approach encourages voluntarily and collaborative actions by all stakeholders — the government, citizens, and industry — for solutions that ensure both environmental protection and economic growth.

(Source: Information collected during the study)

Involving Citizens in Monitoring and Enforcement

2.19 A very important public participation tool is involving the public in environmental compliance and enforcement through citizen monitoring. Citizen monitoring can be a very effective mechanism to help support the implementation of an agency's environmental management responsibilities, particularly in States with limited resources. A process for longer engagement with the public beyond the planning stage of a development project is needed to ensure that the public's interests are protected through project implementation and

compliance. Successful examples of citizen monitoring can be found both in India and internationally (see Box 2.6).

Box 2.6: Examples of Citizen Involvement in Monitoring and Oversight

Under the Green India program, Development Alternatives is working in 78 cities in India on community based monitoring of PM, SO, and NOx parameters with air quality kits provided to local students and local NGOs. The data from these kits are shared with CPCB which validate the data collected and it is also used by the cities to develop city level action plans. Similarly, the Banwasi Sewa Ashram citizen monitoring project, supported by the CPCB, invites polluting industries to discuss initiatives they have taken for mitigation and control. (*Source: consultations during the study*)

In the Philippines, the concept of multi-partite monitoring has been introduced. Under this approach a monitoring team consisting of representatives from the Department of Environment and Natural Resources, the project proponent, NGOs, and local community residents may jointly undertake compliance monitoring of a licensed facility. The Philippines Department of Environment and Natural Resources is creating Regional Community Advisory and Monitoring Committees in each regional office which will involve NGOs and the private sector in all phases of EIA including compliance monitoring. (*Source: International Network for Environmental Compliance and Enforcement website, <http://www.inece.org/>*)

In the United States, citizen monitoring has been used to help support regulatory agencies in environmental management. In Baltimore, Maryland, the U.S. Environmental Protection Agency and the Maryland Department of Environment established a Community Environmental Partnership to monitor air quality in the city. Under this partnership program, the federal, state, and local governments worked side by side with businesses, community leaders, and NGOs to assess air pollution threats from 125 industrial, commercial, and waste facilities in the city. The members of the partnership reviewed a Toxic Release Inventory report on local chemical releases in the area and met with scientific experts. Partnership members then agreed upon a risk-based air pollutant screening approach to identify which chemicals that were being emitted posed the greatest health risks to the community. Based on these screenings, the partnership developed risk based priorities and an action plan to improve air quality in the area. By building the capacity of the community to assess pollutant risk calculations enabled them to better understand the air quality risks and to measure air quality improvements. (*Source: USEPA website, <http://www.epa.gov/>*)

2.20 Citizen monitoring and oversight might also involve reviews or “report cards” of agency or industry performance to ensure compliance with laws and policies. For this to be truly effective, an enforcing mechanism either from a voluntary agreement between the regulatory, industry and citizens or legal accountability is necessary to ensure compliance. For example, Local Area Environment Groups that are used by the SPCBs for monitoring purposes were created by the initiative of the Supreme Court Monitoring Committee on Hazardous Wastes. And of course, the ultimate form of citizen monitoring and supervision is the use of public interest litigation.

The Importance of the Right to Information

2.21 Public information is the foundation of a modern society. To be an effective participant of the decision making process it is necessary to know what decision is being made, why it is being made, and who is responsible. Access to environmental information enables the public to make informed personal choices about problems that may affect their well being and that of their children. It promotes improved environmental performance by the industry and a better performance of government institutions by empowering the public to hold the government and industry *accountable* for their performance and decisions (Box 2.7).

Box 2.7: The Impact of the Right to Information on Environmental Performance in the United States

The United States passed the Emergency Planning and Community Right-to-Know Act (EPCRA) to inform communities and citizens of chemical hazards in their communities. Under the Act, businesses are required to report the locations and quantities of chemicals stored on-site to state and local governments, and to annually collect data on releases and transfers of certain toxic chemicals and make the data available to the public in the Toxics Release Inventory (TRI). The US Congress later passed the Pollution Prevention Act which expanded the scope of TRI to include additional data on waste management and source reduction activities by industries. The goal of TRI is to empower citizens through information to hold companies and governments accountable on how toxic chemicals are managed. The information has led companies to improve their chemical management practices and governments to improve environmental enforcement since the TRI data is made public and is used as a public indicator to measure environmental performance.

(Source: USEPA website, <http://www.epa.gov/>)

2.22 The Right To Information Act (RTIA; 2005) is the result of a long fought campaign by civil society organizations in India, dating back to 1984 when the deadly methyl isocyanate gas released from the Union Carbide plant in Bhopal killed approximately 3,800 people and left several thousands with permanent or partial disabilities. The significance and the need for the law cannot be over emphasized. The Right to Information Act will operationalize the fundamental right to information; establish mechanisms to facilitate citizen's access to information; promote transparency and accountability in the government; reduce vulnerabilities for corruption in public office; and empower public participation in the governance of decisions that will impact public health and environment. The RTIA gives citizens the right to know and shape decisions that affect their own and their children's lives.

2.23 The adoption of the Act has important far reaching implications for public participation nationwide. While the Indian Constitution does not explicitly provide for right to information, the Supreme Court, through its various judgments, has interpreted this right to be originating from Article 19(1)(a) which states that "all citizens shall have the right to freedom of speech and expression". In addition, nine States of India had already adopted their own right to information legislation, viz. Assam, Delhi, Goa, Jammu & Kashmir, Karnataka, Maharashtra, Madhya Pradesh, Rajasthan and Tamil Nadu.

2.24 The next task is to ensure its use on a wide scale and effectively, in terms of clarifying procedures and ensuring capacity of public agencies to meet the requirements of the Act. It is important to widely disseminate policy guidelines on what type of information is covered under the Act. In addition, the procedural guidelines should detail the required specificity for the information requested, turn around times for complying with requests, etc. There is also an emerging need to assess the budget implications for government agencies of complying with the Act and plan additional expenditure in advance.

2.25 To facilitate the implementation of the RTIA, the MoEF launched the Information and Facilitation Counter (IFC), in December 2005. The IFC, being run by the Center for Environmental Education, will provide a range of services and assistance to users, including general information on MoEF; guidance for meeting officials; clearance status of projects (impact assessment, forest clearance, pollution clearance, industrial clearance, genetic engineering clearance); assistance on application procedures; interface with nominated nodal

officers of various divisions of MoEF. In the near future, a service for receiving and forwarding applications/queries under the RTIA will also be started, including the provision of document photocopies for a prescribed fee.

2.26 Ideally, the public should have access to the same environmental information as the decision maker. The four major types of environmental information for which public access should be provided are:

- 1) *Information about day-to-day environmental quality*, such as urban air quality, which helps people decide whether to take certain protective measures to lessen environmental impacts on their health;
- 2) *Information about long term environmental trends*, such as the quality of a watershed, which helps people to better understand the environmental consequences of unsustainable development;
- 3) *Information about pollution and violations from industrial facilities*, which empowers NGOs, communities, investors, and consumers to demand for greater compliance and responsible environmental stewardship; and
- 4) *Information about emergency situations and risks*, which enables people to protect themselves during events, such as a natural disaster or chemical explosion at an industrial plant.

Making Public Participation Work

2.27 In India, as in any democratic society, people hold the power to shape public opinion and government policy. As the economic situation improves, in India as in any other economy, an increasing number of people place a greater value on environmental quality and are able to voice their demands more aggressively. Strengthening opportunities for *effective* public consultation and participatory decision-making can play a critical role in avoiding conflicts between the citizens and developers, thereby improving both the physical environment for future generations and the business environment for investors. Several important steps can be taken in this direction.

2.28 **Improve Communication and Trust Among Stakeholders.** As more countries have incorporated public participation requirements in their EIA process, they have learned that involving the public late in the design of the project can cost money and time and breed mistrust from the public. Building trust between the government and stakeholders, which is a crucial component of any effective public participation process, will require commitment and time. Some communities and NGOs that had an adverse relationship with government agencies in the past still exist. However, trust can be enhanced by: (i) meeting with the community early in the decision-making process and throughout the project cycle; (ii) clearly responding to community concerns and explaining what actions would be taken to address their concerns; (iii) maintaining a credible presence in the community through the regional offices; (iv) openly sharing relevant information with the community; (v) involving key stakeholders in data gathering and decision making; (vi) linking with respected members of the community, such as religious leaders; and (vii) ensuring that channels of communication are always open.

2.29 **Maximize the Effectiveness of the RTIA.** The RTIA is a very powerful tool and should be optimally used. It is important to widely disseminate policy guidelines on what

type of information the public can have access to, as well as the procedural guidelines regarding requests for information, such as required specificity for information requested, processing or copying fees, turnaround times for complying with requests. Government agencies should also take timely steps to ensure that adequate resources are allocated to effectively handle the requests under the RTIA and should be trained on the legal requirements and procedural guidelines.

2.30 Provide Credible and Easily Accessible Information. Public access to information is a pre-requisite for effective consultation with and engagement of the public. Given the technological advances, regulatory agencies should ensure that the public has electronic access to EIA documents, documentation of consultations, environment monitoring data, status reports on pending actions by implementing agencies on clearance conditions and consent management, and submission of public comments. Credible sources of information can also help in resolving conflicts with stakeholders and the public. Often credibility of data is questioned and verification of scientific data by an independent outside source can improve credibility. An Environmental Information System (ENVIS) program by the MoEF and the creation of the IFC, serving as an independent repository for information and expertise, are important steps towards improving trust in the decision-making process. It is necessary to quickly develop these steps to ensure easy access to this information across India, and not only in elite locations. This information could be disseminated through kiosks at various locations, such as local college campuses, public schools, libraries, community centers. However, compiling and ensuring access to data will not be sufficient, because the public needs to know what is being done with the information and agencies should also develop ways to publicly report on the actions taken. The proposed review of the ENVIS programme is a timely opportunity to strengthen these and other aspects.

2.31 Develop Public Participation Strategies in the Context of the Specific Development Project and With Sensitivity to the Local Situation. For any development project, all stakeholders need to be identified and a systematic strategy prepared for outreach. The strategy would depend on the impacts identified and the sensitivities and social fabric of the local people so that a balanced consultation can be carried out. If the public feels that they are not given a meaningful opportunity to be heard, public hearings can backfire and greater conflicts can arise. It is also important to distinguish between a public “hearing”, which is a one time event and a “consultation” (the term used in the draft new EA notification), which is a continuous process of listening and responding to the community concerns. Independent and informal institutions should also be utilized in the public hearing and public consultation process, but it is necessary that they interface with government agencies.

2.32 Build Government Agency Capacity for More Effective Public Consultation and Participatory Decision Making. Government staff involved in stakeholder and public participation efforts need special training to sensitize them to the role of the public, the value and use of public consultation activities, and how to conduct them properly. The skills and techniques required include: listening and communication, community outreach and partnering, issue identification and management, consensus building, vision building, negotiation and alternative dispute resolution. If training is not available, agencies should consider employing outside facilitators to help conduct public hearings. In addition, agencies should be trained in the policy and procedural guidelines for implementation of the RTIA, and take actions to build capacity in a timely manner to effectively respond to the requirements of the Act. Sectoral agencies should develop their own communication strategies or community engagement manuals from which staff could be trained. For

example, in Australia, the Department of Roads has developed a simple user friendly community engagement manual that is used in-house to provide clear direction for road engineers in public consultation.

2.33 Broaden the Understanding and Strengthen the Capacity of Local Governments in Environmental Decision Making. Devolving more environmental responsibilities to local governments is an important aspect of the decentralization process initiated in the 73rd and 74th Constitutional Amendments. Local tiers of government have assumed increasing responsibilities for management of solid waste, providing clean drinking water, and controlling sources of urban air pollution. However, the process of devolution to the lowest levels of government has not been fully accomplished. It is critical to further involve local governments, particularly at the village council level, in the environmental decision-making process, especially when it comes to public participation. The relationship between national, State and local levels of government in the EIA process should also not be overlooked since State and local governments will play an increasingly active role in how the EIA is implemented. The increased emphasis on local control of environmental problems, however, raises new needs to strengthen the capacity of local governments to respond and manage these problems.

2.34 Sensitize Sectoral Agencies and Developers to the Need for Meaningful Public Participation. While there are good practice examples of government agencies, public corporations and private companies taking and working with communities seriously, many are still trying to bypass it and turn a public consultation, even when required, into a formality. It is important to facilitate information sharing, using examples of specific projects, on the benefits of true public participation to the ultimate outcomes and sustainability of development projects (and the likely cost of not taking it seriously), as well as provide practical guidelines and tools for facilitating effective public consultation and participation.

2.35 Build Civil Society Institutions and Capacity to Understand. Capacity building initiatives should target civil society institutions as well as the government. Even if given the opportunity to participate, community stakeholders may lack the capacity to become involved in as meaningful a way as they desire. This was cited as one of the main barriers to effective dialogue with the public by both regulators and developers. Greater effort should be made to improve the capacity of civil society to better understand the issues, including the impacts and benefits of available alternatives, and effectively engage in public participation forums. This could be achieved through training programs tailored to meet the needs of civil society organizations and NGOs.

2.36 Exercise a Participatory Action Planning Process. Environmental action planning has proven to be an effective mechanism in providing meaningful public input into the decision-making process and resolving environmental problems, particularly at the local level. The SPCBs or municipal/local government authorities could encourage and facilitate the development of *participatory* local environmental action plans in priority geographic areas or priority sectors. The preparation of the plans should bring together representatives from all stakeholders — State and local government, industry, NGOs, civil society, academic, and scientific organizations. Working together, stakeholders should define clearly articulated environmental goals shared by the community at large, identify performance targets or indicators to be measured over specified time periods, and outline a comprehensive set of action items including regulatory measures, voluntary initiatives, information

management measures, community initiatives, and educational activities to involve all stakeholders.

2.37 In conclusion, successful public participation must be strategically and carefully planned and executed as part of a long term environmental management program of educating and building capacity of all stakeholders involved. And, while government officials must still rely on the more traditional forms of public participation, such as public hearings, introducing innovative and more interactive approaches can increase the level of public awareness, involvement, and ownership of environmental problems and solutions.