



# ACCESS TO INFORMATION IN THE LOWER MEKONG

A summary of legal rights to access information in support of environmental protection and natural resource governance



# ACCESS TO INFORMATION IN THE LOWER MEKONG

A summary of legal rights to access information in support of  
environmental protection and natural resource governance

Cover Photo: © Thomas Cristofolletti / WWF-US

This report is a collaboration between the World Wide Fund for Nature (WWF) and the Asian Research Institute for Environmental Law (ARIEL). The development of this report was led by Martin Cosier, with assistance from Sai Nay Won Myint, Roger Joseph (Rocky) Guzman, Deputy Director, ARIEL and Matthew Baird, Director, ARIEL. The report benefitted from reviews undertaken by WWF and Prof. Amara Ponsapich. Special thanks to Stefano Zenobi, WWF for his contributions, review, and support throughout the development of this report.

# FOREWORD

Since data and information generated by human society have reached unprecedented levels, the right to access information has never been more salient. Accessing information is essential to promote the rights of everyone, including the right to a clean, healthy and sustainable environment. Good governance relies on public participation when addressing complex challenges, such as climate change and natural resource management. Meaningful public participation requires shared and equal access to information. By promoting access to information, we can make better and more inclusive decisions.

In the capacity of the Representative of Thailand to the ASEAN Intergovernmental Commission on Human Rights (AICHR) and former National Human Rights Commissioner of Thailand, I congratulate the World Wide Fund for Nature (WWF) in advancing the knowledge on human rights and the environment by convening and supporting collaboration between institutions and organizations, across the ASEAN region.

The publication of this report is a vital step for promoting and protecting rights to access information.

This report sheds light on the significance of access to information and presents the current legal framework in the Lower Mekong region. It provides background information on procedural rights, and can be used as a tool for fostering dialogue among different partners on how to move forward to achieve rights to access information in a collaborative manner.

By outlining good practices, it suggests a way for the ASEAN region to enhance the protection and promotion of access to information in environmental matters. Only through a rights-based approach to sustainable development can we build a future where nature and people prosper, harmoniously.

Professor Amara Pongsapich

# CONTENTS

<b>ACRONYMS</b>	<b>1</b>
<b>EXECUTIVE SUMMARY</b>	<b>2</b>
<b>INTRODUCTION</b>	<b>4</b>
<b>ACCESS TO INFORMATION RIGHTS</b>	<b>6</b>
CONCEPT	6
ACCESSIBILITY OF INFORMATION	9
HUMAN RIGHTS PERSPECTIVE	10
RELEVANCE FOR ENVIRONMENTAL GOVERNANCE	13
INTERNATIONAL GOOD PRACTICE	15
<b>ACCESS TO INFORMATION IN THE LOWER MEKONG</b>	<b>17</b>
REGIONAL ARRANGEMENTS	17
CONSTITUTIONAL RIGHTS	20
OVERARCHING ACCESS TO INFORMATION LAWS	21
THAILAND	21
VIET NAM	23
THEMATIC LAWS	25
ENVIRONMENTAL PROTECTION	25
ENVIRONMENTAL IMPACT ASSESSMENT	31
FISHERIES MANAGEMENT	36
WATER RESOURCES	40
LAND PLANNING AND MANAGEMENT	44
REDD+	48
THEMATIC SUMMARY	53
<b>CONCLUSIONS</b>	<b>55</b>
<b>ANNEX 1</b>	<b>58</b>
<b>ANNEX 2</b>	<b>59</b>
<b>ANNEX 3</b>	<b>60</b>
<b>ANNEX 4</b>	<b>61</b>
<b>REFERENCES</b>	<b>65</b>
LIST OF LEGISLATION	67
LIST OF INTERGOVERNMENTAL AGREEMENTS	69

# ACRONYMS

ADB	Asian Development Bank
AHRD	ASEAN Human Rights Declaration
AIP	Access to Information Policy
ASEAN	Association of South East Asian Nations
COVID-19	Coronavirus disease 2019
EIA	Environmental Impact Assessment
EMP	Environmental Management Plan
FPIC	Free, Prior and Informed Consent
GMS	Greater Mekong Subregion
ICCPR	International Covenant on Civil and Political Rights
Lao PDR	Lao People's Democratic Republic
MFF	Mekong For the Future
MPE	Mekong Partnership for the Environment
MRC	Mekong River Commission
NLUP	National Land Use Policy
NGO	Non-Governmental Organization
N.W.R.C	National Water Resources Commission
ODI	Open Development Initiative
PNPCA	Procedures for Notification, Prior Consultation and Agreement
REDD+	Reducing Emissions from Deforestation and forest Degradation, and foster conservation, sustainable management of forests, and enhancement of forest carbon stocks
SDG	Sustainable Development Goal
SLAPP	Strategic Lawsuit Against Public Participation
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNECE	United Nations Economic Commission for Europe
UNEP	United Nations Environment Program
UNFCCC	United Nations Framework Convention on Climate Change
USAID	United States Agency for International Development

# EXECUTIVE SUMMARY

The right to access information is a procedural human right that is inherently linked to the right to public participation in decision-making and the right to access justice. Together, these rights are essential for effective environmental management and natural resource governance, and for achieving the fundamental human right to safe, clean, healthy and sustainable environments. The right to access information is central to these other procedural rights, and has been enshrined in international human rights agreements, multilateral environment treaties, and the Sustainable Development Goals.

Access to information is important for effective environmental governance because it:

- is essential to enable meaningful public participation in decision-making that affects the environment and communities;
- strengthens decisions by increasing opportunities for communities to understand the basis for decisions and by enabling them to respond with additional relevant information;
- strengthens decision-making and builds trust between decision-makers and communities;
- supports transparency and accountability amongst decision-makers, which in turn reduces corruption and mismanagement of resources and thus increases opportunities for sustainable natural resource management;
- can help ensure compliance with environmental regulations;
- can help communities understand the legal obligations of private companies and build trust between communities and companies; and
- supports the watchdog function played by many civil society organizations.

The Lower Mekong countries—Cambodia, Lao PDR, Myanmar, Thailand and Viet Nam—have all committed to upholding the right to access to information by subscribing to international agreements including the Universal Declaration of Human Rights and the Association of South East Asian Nations (ASEAN) Human Rights Declaration. This report summarizes the legal arrangements in the region to protect and implement the right to access information in environmental matters by reviewing regional arrangements and, for each country, their constitutions, their overarching access to information laws, and key environmental protection and natural resource management laws.

Beyond the ASEAN Human Rights Declaration, there are no regional agreements that further elaborate the rights to access information in the Lower Mekong region but a number of mechanisms support the principle. The Mekong Agreement, which established the Mekong River Commission, recognizes the principle in its processes requiring member states to notify and consult neighboring countries on projects that may cause transboundary impacts. The Mekong Agreement applies between member states, however, and does not provide for access to information by individuals or civil society. In 2017, Regional Guidelines on Public Participation in Environmental Impact Assessment were developed involving representatives of governments and civil society from the five Lower Mekong countries. These guidelines include detailed expectations on information disclosure, but have not been formally adopted. In the absence of regionally agreed arrangements, the Open Development Initiative (ODI) was developed as a platform for sharing data for people in the Lower Mekong.

The domestic situation represents a patchwork of legal arrangements that provide some degree of recognition and protection for the right to access information—but this is far from universal, comprehensive or consistent, with clear gaps in arrangements apparent.

All five Lower Mekong countries have constitutions that enshrine the right to a clean environment and freedom of expression, while Cambodia, Thailand and Viet Nam’s constitutions also include an explicit right to access information. Apart from Thailand, all constitutional provisions on the rights to access information and to freedom of expression are limited to citizens of the country. This renders these provisions weaker than those under international human rights instruments, which apply to all people regardless of citizenship.

Only Thailand and Viet Nam have adopted overarching national laws on access to information. Despite providing significant scope for state agencies to restrict disclosure or deny access requests, both countries’ laws provide a legal basis for accessing information on environmental matters.

For each country, thematic laws on environmental protection, environmental impact assessment, fisheries management, water resources, land planning and management, and REDD+ were reviewed to identify provisions for access to information, as well as broader public participation and information disclosure arrangements. While all countries have some laws including such provisions, there are limited clear patterns as to the coverage of access to information rights in the region. The environmental impact assessment laws most consistently include clear provisions, which is to be expected given public participation and information disclosure are fundamental components of commonly utilized environmental impact assessment procedures.

The review of the legal arrangements demonstrates that there are clear gaps and opportunities in the region’s approach to access to information rights:

- There is a clear commitment in the region to the human right to access information for environmental matters.
- This commitment is not translated into clear, comprehensive or consistent legal provisions to uphold the right to access information in the Lower Mekong countries.
- Those legal provisions that do exist are commonly limited by citizenship and subject to broad, discretionary exemptions, which is inconsistent with internationally accepted principles.
- The right to access information for environmental matters is not specifically provided for by environment or natural resource management laws, apart for those governing environmental impact assessments.
- There is an opportunity to develop a new regional agreement to facilitate the strengthening of these provisions within and between the Lower Mekong countries.

A regional agreement on access to information rights could:

- Set consistent expectations for access to information rights and processes in the Lower Mekong countries, including clarity on the circumstances in which certain information may be exempt from disclosure;
- Support information collection, management, sharing and disclosure systems across the region to strengthen environmental protection and natural resource governance;
- Consider innovative approaches to information disclosure by the private sector;
- Be broadened to an ASEAN-wide agreement in support of the ASEAN Human Rights Declaration that includes the right to access information;
- Address the inter-related procedural human rights that underpin effective natural resource governance and the right to clean, safe, healthy and sustainable environments—access to information, public participation, and access to justice.

## INTRODUCTION

The purpose of this report is to provide a summary of rights and opportunities to access information to support improved environmental outcomes across the Greater Mekong Subregion (GMS).<sup>1</sup> The GMS is a region in Southeast Asia composed of five countries—the Kingdom of Cambodia, Lao People’s Democratic Republic, the Union of Myanmar, the Kingdom of Thailand, the Socialist Republic of Viet Nam—and two provinces of the People’s Republic of China (Yunnan Province and the Guangxi Zhuang Autonomous Region). The GMS, dubbed the “Rice Bowl of Asia”,<sup>2</sup> hosts the Lower Mekong River basin. The Lower Mekong is a major trade route between China and Southeast Asia. The region is the location of the largest inland freshwater fishery industry in Southeast Asia, and contains extensive biodiversity of aquatic life, second only after the Amazon River.<sup>3</sup> For the purposes of this paper, the five Southeast Asian countries in the Lower Mekong—Cambodia, Lao PDR, Myanmar<sup>4</sup>, Thailand, and Viet Nam—will be considered for analysis. The report focuses on rights to access information at the national level in each country, without going into detail into any sub-national laws or arrangements that may exist.

Mekong for the Future (MFF) is a three-year program funded by USAID designed to strengthen civil society’s ability to engage in natural resource governance in the Lower Mekong, including by improving their access to and understanding of environmental data from public and private actors.

Access to information is important for effective environmental governance for a range of reasons:

- Full and accessible information is essential to enable meaningful public participation in decision-making that affects the environment and communities
- It strengthens decisions by increasing opportunities for communities to understand the basis for decisions and by enabling them to respond with additional relevant information
- A culture of information sharing strengthens decision-making and builds trust between decision-makers and communities
- Access to information supports transparency and accountability amongst decision-makers, which in turn reduces corruption and mismanagement of resources and thus increases opportunities for sustainable natural resource management
- Access to information can help ensure compliance with environmental regulations
- Access to information can help communities understand the legal obligations of private companies and build trust between communities and companies
- Access to information supports the watchdog function played by many NGOs

Access to information principles apply more broadly than to just environmental matters. While the phrase “access to environmental information” is sometimes used to clarify the scope of what is being considered, this report instead refers to “access to information in environmental matters” because often the type of information that is relevant is not “environmental information” as it is commonly understood. For example, information about foreign investment decisions may be relevant to environmental risks in a country but not automatically considered environmental in nature, as opposed to, for example, pollution data.

<sup>1</sup> A summary of the methodology employed in the preparation of this report is available at Annex 1.

<sup>2</sup> WWF, Greater Mekong, <https://www.worldwildlife.org/places/greater-mekong> (last accessed 26 September 2021).

<sup>3</sup> WWF, Greater Mekong, <https://www.worldwildlife.org/places/greater-mekong> (last accessed 26 September 2021).

<sup>4</sup> The Myanmar analysis considers the legal context as of January 31, 2021.

The right to access to information, and its importance for effective environmental governance, is recognized internationally. The right to information is enshrined in Article 19 of the Universal Declaration of Human Rights (UDHR):

*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.*

The significance of the right for environmental governance and sustainable development is established in Principle 10 of the 1992 Rio Declaration on Environment and Development (“Rio Declaration”):

*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.*

The Sustainable Development Goals (SDGs) are a set of interlinked goals which “provides a shared blueprint for peace and prosperity for people and the planet, now and into the future”.<sup>5</sup> SDG 16, *Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels*, explicitly promotes strengthened access to information and includes the following targets:

**16.6** *Develop effective, accountable and transparent institutions at all levels*

**16.7** *Ensure responsive, inclusive, participatory and representative decision-making at all levels*

**16.10** *Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements*

Target 16.10 includes an explicit performance indicator of “number of countries that adopt and implement constitutional, statutory and/or policy guarantees for public access to information.” The United Nations (UN) reports that 127 countries (including two of the Lower Mekong countries) have “binding laws and policies giving individuals a right to obtain access to information held by public authorities,” with 40 percent of the new laws developed in the past decade coming from Africa.<sup>6</sup> However, the quality and implementation of these laws needs strengthening globally, with some only providing basic access rights while numerous jurisdictions have suspended existing legal guarantees of access to information during the COVID-19 pandemic.<sup>7</sup>

These findings reinforce the importance of developing strong laws and policies that guarantee access to information rights that are implemented and enforceable.

<sup>5</sup> UNDESA, *The 17 Goals*, <https://sdgs.un.org/goals> (last accessed 21 September 2021).

<sup>6</sup> *Progress towards the Sustainable Development Goals: Report of the Secretary-General (E/2020/57)* (28 April 2020), p18.

<sup>7</sup> *Progress towards the Sustainable Development Goals: Report of the Secretary-General (E/2021/58)* (30 April 2021), p25.

## ACCESS TO INFORMATION RIGHTS CONCEPT

Access to information is one of three inter-related procedural rights, along with public participation and access to justice, that are critical for effective environmental governance—and that therefore support improved environmental outcomes.<sup>8</sup> These procedural rights are also intimately linked to substantive human rights, including the basic obligation of States to provide safe, clean, healthy and sustainable environments.<sup>9</sup>

As noted above, this group of procedural rights is outlined in Principle 10 of the Rio Declaration. For effective application, however, Rio Principle 10 needs to be translated into domestic laws that enshrine the right to access information and for such laws to be implemented. The *Guidelines for the Development of National Legislation on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* (“the Bali Guidelines”) were adopted in 2010 by the UN Environment Program’s (UNEP) Governing Council to support countries adopt such laws. The Bali Guidelines contain seven voluntary guidelines dedicated to access to information (replicated at Annex 2), which are reflected in the approach taken in this report. The 2012 Rio+20 Conference outcome document, *The Future We Want*, specifically highlighted regional action, as well as efforts within countries, as important in promoting implementation of Rio Principle 10.<sup>10</sup> In 2015, UNEP developed an implementation guide for Rio Principle 10, which includes recommended further details as to what is required to develop effective access to information laws (see Table 1).<sup>11</sup>

The premise of the right to access information is that all information held by governments is public and therefore accessible, except in cases where its disclosure may be withheld due to legitimate reasons. This leads to the idea of information being “pushed” or “pulled”. Information that is “pushed” is disclosed voluntarily (or in compliance with legal obligations) by government agencies—this could include, for example, reports, plans or datasets. In addition to promoting a culture of information disclosure, a “pushing” approach also reduces the administrative burden associated with requests for information. Information that is not automatically published should still be available to be “pulled” through a request to access that information.

As such, the initial assumption should always be that information is accessible – there may be grounds for refusal, but these should be clearly defined and explained, with no onus on the individual to justify their request for information. Commonly, a “public interest test” is used to evaluate whether granting or withholding access to particular information will ultimately be more in the interest of the general public. There should also be clear avenues for appealing any decision to restrict access to information.

<sup>8</sup> UNEP and ESCAP (2021) *An Assessment of Access to Information, Public Participation and Access to Justice in Environmental Decision-Making in Asia-Pacific*.

<sup>9</sup> Human Rights Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/HRC/37/59* (24 January 2018), available at <https://digitallibrary.un.org/record/1474985?ln=en>.

<sup>10</sup> UN (2020), *The future we want: Outcome document of the United Nations Conference on Sustainable Development*, para 99.

<sup>11</sup> UNEP (2015) *Putting Rio Principle 10 Into Action: An Implementation Guide*, p23.

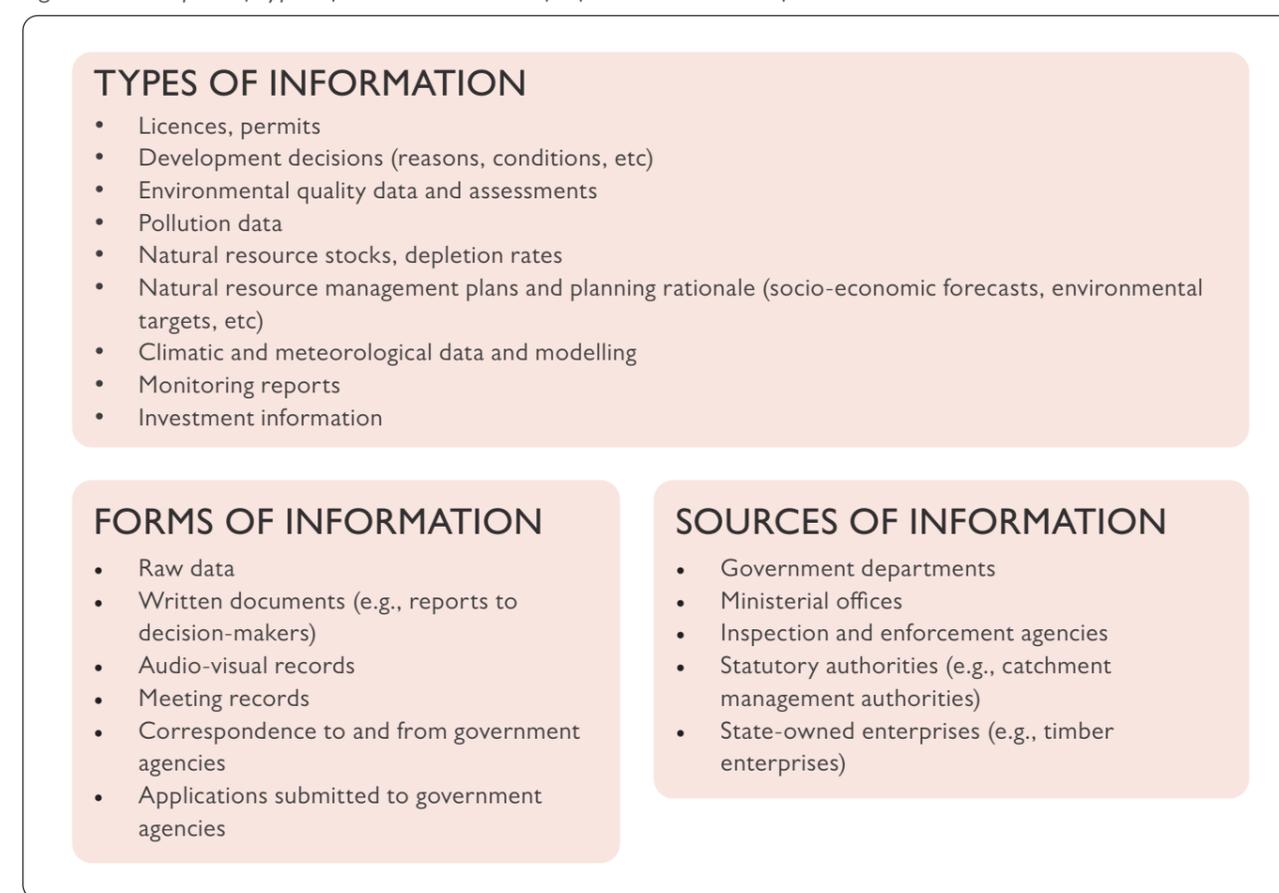
Table 1: Summary of the main recommendations in each Guideline on access to information and the elements for application<sup>12</sup>

Guideline	Subject	Implementation elements
Guideline 1	Access to environmental information held by public authorities	“Any person” principle No interest to be proved Timeliness, affordability and effectiveness
Guideline 2	What environmental information should be in the public domain?	Environmental quality Environmental impacts on health and factors affecting them Information about law and policy Meta-information
Guideline 3	Limited grounds for refusal to provide information	According to law Interpreted narrowly Public interest test
Guideline 4	Public authorities to collect and update various types of environmental information	Information on environmental performance and compliance by operators Mandatory systems that ensure adequate information flow to public authorities about proposed and existing activities which may significantly affect environment
Guideline 5	State of environment reporting	Reasonable intervals Up to date Includes quality and pressures on environment
Guideline 6	In event of imminent threat to human health or environment, immediate dissemination of all information which could enable the public to prevent or mitigate harm from the threat	Emergency preparedness and response systems Systems for collection and dissemination of information related to potential emergencies
Guideline 7	Provide means for encourage effective capacity-building	Aimed at public authorities and the public To facilitate effective access to information

It is not possible—or useful to attempt—to provide a complete list of all the types of information that may be relevant to environmental matters or natural resource governance. Rather, it is important to recognize that many different types of information can be relevant, both directly and indirectly. For example, while environmental monitoring reports submitted by factory operators will obviously contain details commonly considered to be “environmental information”, other information related to the factory might also be relevant, such as who owns and finances the factory or what government subsidies it might receive. Similarly, information should not be limited to official reports or raw environmental data, but includes any forms of information that are used to support policy or administrative decisions made by governments. Figure 1 provides some examples indicative of the types, forms and sources of information that may be relevant for environmental matters.

<sup>12</sup> UNEP (2015) *Putting Rio Principle 10 Into Action: An Implementation Guide*, p23.

Figure 1: Examples of types, forms and sources of information relevant for environmental matters



Access to information laws—as well as the expectations under international human rights instruments and sustainable development guidelines—generally relate to information that is held by public authorities. This is reflected in the example sources of information identified in Figure 1. Often, however, relevant information is held by private enterprise or other nongovernment organizations. To fulfil the principle of access to information in such cases, the following approaches are at times employed:

1. Environment and natural resource management laws often explicitly require the regular collection and maintenance of certain information from the private sector (e.g., fish catch reporting)
2. Legal obligations are often imposed on applicants for certain government licenses or approvals (e.g., for project proponents to release information about the project as part of environmental impact assessment processes)
3. Access to information held by nongovernment agencies may be provided by other regulatory regimes (e.g., company registrations laws may require disclosure of financial or operational information that is relevant for environmental matters).

It also needs to be recognized that, at times, certain laws can be used to restrict access to information. Such laws may be developed for ostensibly public interest reasons, such as protection of state secrets or confidential personal information, but there is a risk (and plenty of global experience) that such laws get used as a tool against those with legitimate interests in accessing information (e.g., journalists). Attempts to restrict access to information may also come in the form of a *strategic lawsuit against public participation* (“SLAPP suit”) whereby people who access information that may be damaging to a company’s reputation may be threatened with legal action (for defamation, for example). SLAPP suits are often used to intimidate people to the point of silence, rather than being based on a desire to have the case heard by the courts.

## ACCESSIBILITY OF INFORMATION

Access to information is not simply about making raw data available—that information should also be accessible to different members of the public. Information should be made available in languages and forms that can readily be accessed, understood and utilized by diverse audiences. This includes, where possible and appropriate, providing non-technical summaries of information, targeting information disclosure strategies for various stakeholder groups, and providing varying ways for the public to receive information. Particular consideration should be given, and dedicated arrangements are often warranted, to ensure accessibility for specific groups of people, including Indigenous Peoples, women, persons with disabilities, and people of varying education levels.

Commonly, information may be made available to peruse at a government office. In such cases, accessibility considerations include; location (i.e., do information requesters need to travel long distances), timing (i.e., are office opening hours accessible to people in varying circumstances, such as parents and carers), infrastructure (i.e., are buildings physically accessible for people with disabilities) and language/literacy (i.e., are individuals able to bring or access support for reading and/or translating documents).

Any person or organization should be able to request access to information, irrespective of their citizenship or residency status.

Requested information should also be freely available with no costs imposed either to act as a barrier to access, or as a mechanism for generating revenue. It is common, however, that fees are imposed to cover some of the costs of making the information available, such as photocopying and postage—any such fees should still be transparently applied and affordable by the general public.



A warning sign used to rate the danger of fires inside the Tram Chim National Park. © Thomas Cristofolletti / WWF-US

## HUMAN RIGHTS PERSPECTIVE

Access to information is a procedural right that is enshrined in international law and reflected in multiple human rights instruments, including the 1948 Universal Declaration of Human Rights (UDHR), the 1966 International Covenant on Civil and Political Rights (ICCPR), and the 2012 ASEAN Human Rights Declaration (AHRD). Table 2 highlights the key access to information provisions in these human rights agreements.

Table 2: Access to Information in Human Rights Instruments

<b>UDHR</b>	<b>Article 19</b> Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.
<b>ICCPR</b>	<b>Article 19</b> Everyone shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order ( <i>order public</i> ), or of public health or morals.
<b>AHRD</b>	<b>Article 23</b> Every person has the right to freedom of opinion and expression, including freedom to hold opinions without interference and to seek, receive and impart information, whether orally, in writing or through any other medium of that person's choice.

The AHRD also enshrines the rights to “a safe, clean and sustainable environment”<sup>13</sup> and to development.<sup>14</sup> Significantly, the AHRD is explicit that development needs “may not be invoked to justify the violations of internationally recognised human rights”<sup>15</sup>—including the right to access information.

The Framework Principles on Human Rights and the Environment (the Framework Principles)—developed by former UN Special Rapporteur on Human Rights and the Environment, Professor John Knox, and presented to the UN Human Rights Council in March 2018<sup>16</sup>—further elaborate the main human rights obligations in relation to environmental matters. Professor Knox submits that “States should accept the framework principles as a reflection of actual or emerging international human rights law.”<sup>17</sup> The Framework Principles reiterate the procedural rights that are integral to sound environmental governance and sustainable development:

<sup>13</sup> ASEAN Human Rights Declaration, Article 28(f).

<sup>14</sup> ASEAN Human Rights Declaration, Article 35.

<sup>15</sup> ASEAN Human Rights Declaration, Article 35.

<sup>16</sup> Human Rights Council, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/HRC/37/59 (24 January 2018), available at <https://digitallibrary.un.org/record/1474985?ln=en>.

<sup>17</sup> Human Rights Council, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/HRC/37/59 (24 January 2018), p3, available at <https://digitallibrary.un.org/record/1474985?ln=en>.

**Framework principle 7:** *States should provide public access to environmental information by collecting and disseminating information and by providing affordable, effective and timely access to information to any person upon request.*

**Framework principle 9:** *States should provide for and facilitate public participation in decision-making related to the environment, and take the views of the public into account in the decision-making process.*

**Framework principle 10:** *States should provide for access to effective remedies for violations of human rights and domestic laws relating to the environment.*

The Framework Principles also include two principles that are focused on protecting the rights—including the procedural rights—of vulnerable and Indigenous People. These are particularly relevant in the context of environmental governance, where such groups are often disproportionately affected by environmental harm.

**Framework principle 14:** *States should take additional measures to protect the rights of those who are most vulnerable to, or at particular risk from, environmental harm, taking into account their needs, risks and capacities.*

**Framework principle 15:** *States should ensure that they comply with their obligations to indigenous peoples and members of traditional communities, including by:*

- a. Recognizing and protecting their rights to the lands, territories and resources that they have traditionally owned, occupied or used;*
- b. Consulting with them and obtaining their free, prior and informed consent before relocating them or taking or approving any other measures that may affect their lands, territories or resources;*
- c. Respecting and protecting their traditional knowledge and practices in relation to the conservation and sustainable use of their lands, territories and resources;*
- d. Ensuring that they fairly and equitably share the benefits from activities relating to their lands, territories or resources.*

On October 8, 2021, the United Nations Human Rights Council adopted a resolution on the human right to a safe, clean, healthy and sustainable environment.<sup>18</sup> This resolution recognized the right “as a human right that is important for the enjoyment of human rights” and was based on a recognition:<sup>19</sup>

*that the exercise of human rights, including the rights to seek, receive and impart information, to participate effectively in the conduct of government and public affairs and in environmental decision-making and to an effective remedy, is vital to the protection of a safe, clean, healthy and sustainable environment.*

<sup>18</sup> Human Rights Council resolution, *The human right to a clean, healthy and sustainable environment*, 48/13, A/HRC/48/L.23/Rev.1 (8 October 2021), available from <https://undocs.org/A/HRC/RES/48/13>.

<sup>19</sup> Human Rights Council resolution, *The human right to a clean, healthy and sustainable environment*, 48/13, A/HRC/48/L.23/Rev.1 (8 October 2021), available from <https://undocs.org/A/HRC/RES/48/13>.

ASEAN is not alone in translating universal human rights principles into regional commitments. For example, the African Charter on Human and Peoples’ Rights and the Declaration of Principles on Freedom of Expression in Africa guarantee the right of access to information as a fundamental inalienable human right and as an indispensable component of democracy and development.



A local fisherman collects small fish from his net on an island inside the Ramsar protected area, Stung Treng, Cambodia  
© Thomas Cristofolletti / WWF-US

## RELEVANCE FOR ENVIRONMENTAL GOVERNANCE

Access to information features as a fundamental requirement in a range of contemporary tools, processes and agreements that are central to effective environmental governance.

The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) recognizes the principle of “free, prior and informed consent” (FPIC) which can be summarized as “the right of indigenous peoples to give or withhold consent to actions that will affect them, especially actions affecting their lands, territories and natural resources.”<sup>20</sup> Access to information is obviously central to FPIC and ensuring that decision-making is:<sup>21</sup>

*Informed, based on full information, at least, about the nature and scope of any proposed project or activity; areas that will be affected; the potential economic, social, cultural and environmental risks and benefits; and the timeframe of the proposed project and organizations/actors likely to be involved. Information should be in a language easily understood by the affected people, delivered in a culturally-appropriate way, and available from independent sources. Communities may also require capacity building on unfamiliar issues to be truly informed.*

FPIC, and access to information generally, is of particular relevance to REDD+ (reducing emissions from deforestation and forest degradation in developing countries, and the role of conservation, sustainable management of forests, and enhancement of forest carbon stocks in developing countries), under the UN Framework Convention on Climate Change (UNFCCC). REDD+ provides financial incentives for developing countries to reduce emissions from forested lands and invest in low-carbon paths to sustainable development. Changes to the use of forests could potentially support or threaten the rights and livelihoods of Indigenous Peoples and local communities and, as such, FPIC is an explicit part of the REDD+ program.<sup>22</sup>

More generally, the Paris Agreement on climate change adopted in 2015 under the UNFCCC requires States to ‘cooperate in taking measures, as appropriate, to enhance climate change education, training, public awareness, public participation and public access to information, recognizing the importance of these steps with respect to enhancing actions under this Agreement.’<sup>23</sup>

Access to information is also fundamental to effective environmental impact assessment (EIA) processes, because stakeholders must have access to all relevant information in order to effectively participate in these processes and make an informed decision on a project’s potential impacts.<sup>24</sup>

Under international law, countries have an obligation to “undertake an environmental impact assessment where there is a risk that the proposed [project] may have a significant adverse impact in a transboundary context, in particular, on a shared resource.”<sup>25</sup>

The duties associated with transboundary EIAs was recognized in the 1985 ASEAN *Agreement on the Conservation of Nature and Natural Resources*, which addressed “Transfrontier Environmental Effects” (now referred to as transboundary environmental effects). Article 20 of the Agreement referred to the “generally accepted principles of international law” and agreed to “avoid to the maximum extent possible and reduce to the minimum extent possible adverse environmental effects of activities” within their jurisdiction. Under Article 20(3), the Agreement provided for the carrying out of an EIA for any projects likely to have a significant transboundary effect and to conduct a process of notification and consultation prior to approval of those projects.

Internationally, the application of transboundary EIA has been enshrined in the *Convention on Environmental Impact Assessment in a Transboundary Context* (informally called the Espoo Convention). The Espoo Convention is a preventative mechanism to avoid, reduce, and mitigate significant environmental impacts by promoting international cooperation in assessing the likely impact of a proposed activity on the environment. It applies to major projects that could impact the environment in other countries.<sup>26</sup> The Espoo Convention entered into force in 1997. There are currently 45 parties to the Convention, but none are from Asia.

Under the Espoo Convention the Parties shall take “all appropriate and effective measures to prevent, reduce and control significant adverse transboundary environmental impact from proposed activities.”<sup>27</sup> The obligations under the Espoo Convention extend to an obligation to require project-level EIA, notify potentially affected countries, provide access to information to potentially affected parties, and to allow comments and be informed on the final decision with respect to the project.<sup>28</sup> The Espoo Convention provides a list of activities in Appendix I that are covered by the Convention and a minimum list of information that should be included in the EIA in Appendix II.

The *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* outline extensive detail on actions that governments should take to ensure the right to access information, “including by publicising policies and decisions, and setting up transparent systems for recording land tenure.”<sup>29</sup> These guidelines cover a wide variety of information that should be collected, published, and made available in an accessible fashion in order to help “enhance the transparency and improve the functioning of tenure systems.”<sup>30</sup>

20 Spriner and Retana (2014), *Free, Prior and Informed Consent and REDD+: Guidelines and Resources*, WWF Working Paper, p2.

21 Spriner and Retana (2014), *Free, Prior and Informed Consent and REDD+: Guidelines and Resources*, WWF Working Paper, p4.

22 Spriner and Retana (2014), *Free, Prior and Informed Consent and REDD+: Guidelines and Resources*, WWF Working Paper, p3.

23 Conference of the Parties, *Adoption of the Paris Agreement*, Dec. 12, 2015, U.N. Doc. FCCC/CP/2015/L.9/Rev/1 (Dec. 12, 2015), Article 12.

24 *Mekong Partnership for the Environment (2017) Guidelines on Public Participation in Environmental Impact Assessment in the Mekong Region*, p6.

25 *Pulp Mills Case (Provisional Measures) (Argentina v. Uruguay) ICJ Reports 2006*, p.204

26 Vesna Kolar Planinšič (2016), *Ministry of the Environment and Spatial Planning of the Republic of Slovenia, Various presentations to the Regional Technical Working Group on EIA*.

27 *Convention on Environmental Impact Assessment in a Transboundary Context (1991)*, Article 2.

28 *Convention on Environmental Impact Assessment in a Transboundary Context (1991)*, Articles 3 to 6.

29 *Article 19 (2019) The Right to Information and Natural Resources in Myanmar*, p8.

30 *FAO (2012) Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*, p1.

## INTERNATIONAL GOOD PRACTICE

Two multilateral environmental agreements have been developed that enshrine the right to access to information in environmental agreements—the 1998 *United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (“the Aarhus Convention”), and the 2018 *Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean* (“the Escazú Agreement”). The Aarhus Convention was the first international law instrument to specify State obligations to fulfil Rio Principle 10 and, since entering into force in 2001, its implementation has led to “a valuable body of State practice and legal interpretation.”<sup>31</sup> There are 47 Parties to the Aarhus Convention, comprising the European Union and 46 European and Central Asian countries.<sup>32</sup> The Escazú Agreement, which entered into force in 2021, represents a recent reinforcement of the relevance of Rio Principle 10 and the success of the Aarhus Convention.

Both the Aarhus Convention and Escazú Agreement are premised on the understanding (discussed above) that effective environmental governance requires adherence to the three interrelated procedural rights of access to information, public participation in decision-making, and access to justice. In establishing access rights, the Aarhus Convention and Escazú Agreement both define “environmental information” using broad, inclusive terminology (see Annex 3). The Escazú Agreement also explicitly defines “access rights” as:

*...the right of access to environmental information, the right of public participation in the environmental decision-making process and the right of access to justice in environmental matters.*

Both agreements also provide for both a right to access information that is held by public authorities and an obligation on public authorities to actively collect, update, and disseminate information.

Implementation of both the Aarhus Convention and Escazú Agreement require adoption of national regulatory arrangements. The European Union has adopted regulations implementing the Aarhus Convention:<sup>33</sup>

**Article 1(2) of the Aarhus Regulation (Regulation 1367/2006), which is the main instrument for implementing the Convention for the EU institutions and bodies, sets out public rights with regard to the three pillars of the Convention.**

**Article 6(4) of the Access-to-documents Regulation (Regulation 1049/2001) also requires that the institutions shall assist citizens with access requests.**

**Concerning access to environmental information in Member States, Article 3(5) of the Environmental Information Directive (Directive 2003/4/EC) requires Member States to ensure that public authorities provide guidance on access to environmental information.**

31 UNEP (2015) *Putting Rio Principle 10 Into Action: An Implementation Guide*, p15.

32 UNECE, *Map of Parties*, <https://unece.org/environment-policy/public-participation/aarhus-convention/map-parties> (last accessed 10 October 2021).

33 European Commission (2021) *Aarhus Convention Implementation Report*, p3.

The Asian Development Bank (ADB) was ranked first in the past two global Aid Transparency Indexes.<sup>34</sup> This coincided with the ADB adopting an Access to Information Policy (AIP) in 2018 that applies to all information produced by or for ADB or by its borrowers and clients.<sup>35</sup> The policy aims “to promote stakeholder trust in ADB and to increase the development impact of ADB activities ... [and] recognizes the right of people to seek, receive, and impart information about ADB’s operations.”<sup>36</sup> It is based on strong access to information principles including: “clear, timely and appropriate disclosure”, a “presumption in favor of disclosure”, “limited exceptions”, “proactive disclosure”, “sharing of information and ideas”, “providing information to project-affected people and other stakeholders”, and a “clear appeals process”.<sup>37</sup>

The ADB Access to Information Policy is supported by detailed implementation arrangements in the ADB Operations Manual, and processes for requesting information are outlined on the ADB’s website.<sup>38</sup>

A recent briefing paper on human rights and the environment highlighted a number of examples of laws in Asia that have been used to support access to information in environmental matters—these include:<sup>39</sup>

- China’s *Environmental Protection Law* (2014) provides clear legislative guidance on the rights to access environmental information and participate in environmental protection, as well as obligations on environmental agencies to release environmental information.
- India’s *Right to Information Act* (2005) has been utilized successfully in environmental litigation.

This part of the report looks at rights and opportunities to access information in the Lower Mekong. It first outlines regional-level arrangements that provide for access to information before summarizing the domestic arrangements. For each Lower Mekong country, the report considers access to information in the following legal hierarchy:

1. constitutional rights
2. overarching access to information laws
3. specific natural resource management laws incorporating access to information

The report focuses primarily on the legal provisions for access to information in environmental matters. It does not involve an in-depth analysis of the extent or quality of the implementation or enforcement of these laws.

34 Asian Development Bank (2021) *Access to Information*, <https://www.adb.org/who-we-are/access-information/main>, last accessed 26 September 2021.

35 Asian Development Bank (2018) *Access to Information Policy*, p5.

36 Asian Development Bank (2018) *Access to Information Policy*, p5.

37 Asian Development Bank (2018) *Access to Information Policy*, pp6-7.

38 Asian Development Bank (2021) *Access to Information*, <https://www.adb.org/who-we-are/access-information/main>, last accessed 26 September 2021.

39 UNEP & UNESCAP (2021) *An Assessment of Access to Information, Public Participation and Access to Justice in Environmental Decision-Making in Asia-Pacific*, p18.

# ACCESS TO INFORMATION IN THE LOWER MEKONG REGIONAL ARRANGEMENTS

The 2012 ASEAN Human Rights Declaration (discussed above), which has been adopted by all five Lower Mekong countries, provides a clear articulation of the right to access information.<sup>40</sup> This has not yet been translated into further dedicated instruments designed to support the upholding of this right. In the absence of such implementing instruments, there are certain other arrangements that consider access to information rights at the regional level.

The 1995 *Agreement on Cooperation for the Sustainable Development of the Mekong River Basin* established the Mekong River Commission (MRC). The UN had established the Mekong Committee in 1959 but the Mekong Agreement reflected the decision by Cambodia, Lao PDR, Thailand and Viet Nam to establish a regional framework for cooperation along the Mekong Basin. Myanmar is not a signatory to the Mekong Agreement or member party of the MRC, but (along with China) became a Dialogue Partner to the MRC in 1996.

From the outset the Mekong Agreement was focused on sustainable development, utilization, conservation, and management of the Mekong Basin.<sup>41</sup> Key to the Mekong Agreement has been the expectation for all parties to act cooperatively in matters that impinge on the right of each member state to utilize the Mekong River resources. The Mekong Agreement implicitly recognizes that there are many actions that will have a transboundary impact, not least hydropower but also shipping, irrigation, and fishing.

A key feature of the Mekong Agreement from a transboundary EIA perspective is the requirement for prior consultation to discuss transboundary impacts of water projects in the Mekong River Region that may have an impact on neighboring countries, before any commitment is made to proceed. Prior consultation is defined in the Mekong Agreement as:<sup>42</sup>

**Prior consultation:** *Timely notification plus additional data and information to the Joint Committee as provided in the Rules for Water Utilization and Inter-Basin Diversion under Article 26, that would allow the other member riparians to discuss and evaluate the impact of the Proposed use upon their uses of water and any other affects, which is the basis for arriving at an agreement. Prior consultation is neither a right to veto the use nor unilateral right to use water by any riparian without taking into account other riparians' rights.*

40 ASEAN Human Rights Declaration (2012) Article 23.

41 The Mekong Agreement, Preamble.

42 Procedures for Notification, Prior Consultation and Agreement (2003), Article 3.

The prior consultation requirement was further enhanced by the Procedures for Notification, Prior Consultation and Agreement (PNPCA), which were adopted in 2003 to promote better understanding and cooperation among the Mekong River Commission member countries. The guiding principles of the PNPCA are:<sup>43</sup>

- Sovereign equality and territorial integrity;
- Equitable and reasonable utilization;
- Respect for rights and legitimate interests;
- Good faith;
- Transparency.

The aim of the PNPCA, similar in substance to the notification requirements under the Espoo Convention, is to provide other member countries with prior notification of any development that would likely have a transboundary impact. The PNPCA would also allow the impact party an opportunity to consider the information contained in the Notification and to request further information or clarification. The time for Prior Consultation was set at six months with the possibility of extension.<sup>44</sup> Approval was to be considered on a case-by-case basis.<sup>45</sup>

Since 2002, under a signed Memorandum of Understanding, China has provided the MRC with daily river flow and rainfall data during the wet season to support improved flood forecasting. In October 2020, China agreed to provide hydrological data throughout the year to “contribute to better river monitoring and flood and drought forecasting in the Mekong countries.”<sup>46</sup> The MRC publishes Mekong flood and drought forecasts on its website,<sup>47</sup> along with other relevant information including water quality monitoring data.<sup>48</sup>

Notably, the PNPCA and the data sharing agreements between the MRC and China do not explicitly provide for access to information by individuals or organizations. Similar to the obligations on states to notify neighbors about potential transboundary environmental impacts under customary international law and the Espoo Convention, disclosure of this information within a jurisdiction is the responsibility of the receiving government.

The development of the 2017 Regional Guidelines on Public Participation in EIA through the Mekong Partnership for the Environment (MPE) involved in-depth dialogue about the importance of public participation and access to information in the EIA process. The collaborative process used to develop the guidelines brought together government and civil society representatives from the five Lower Mekong countries, with support from international experts, and involved national-level public consultations.<sup>49</sup>

43 Procedures for Notification, Prior Consultation and Agreement (2003), Article 3.

44 See Procedures for Notification, Prior Consultation and Agreement (2003), Article 5.5

45 Procedures for Notification, Prior Consultation and Agreement (2003), Article 6.

46 MRC, Dialogue Partners, <https://www.mrcmekong.org/about/mrc/dialogue-partners/>, last accessed 6 October 2021.

47 MRC, Mekong Flood and Drought Forecasting, <https://www.mrcmekong.org/>, last accessed 15 October 2021.

48 MRC, Water quality conditions, <https://portal.mrcmekong.org/monitoring/water-quality>, last accessed 15 October 2021.

49 UNEP and ESCAP (2021) *An Assessment of Access to Information, Public Participation and Access to Justice in Environmental Decision-Making in Asia-Pacific*, p20.

The Guidelines address; principles of EIA and public participation; access to information; public participation in the EIA process; and public participation in project monitoring, compliance and enforcement. They provide detailed guidance on the information sharing that is required to support meaningful public participation and, therefore, effective EIA processes.<sup>50</sup>

Based on the process and principles used in the Regional Guidelines, national guidelines were developed in Cambodia and Myanmar in 2017-2018. These draft National Guidelines have not yet been formally adopted.<sup>51</sup>

The Open Development Initiative (ODI) is a nongovernment initiative in the Mekong Region that aims “to make data and objective information accessible and useful to all people in the Lower Mekong.”<sup>52</sup> As a project of East-West Management Institute, ODI “stimulates public demand, builds coalitions, and offers a constantly evolving platform to support the transparent sharing and analysis of data to improve and inform constructive dialogue and decision-making for sustainable and equitable development.”<sup>53</sup> It was launched as a Mekong regional project in 2015 and comprises a regional website and five dedicated national-level websites for the Lower Mekong countries.<sup>54</sup>



Sunset over Tram Chim National Park. © Thomas Cristofolletti / WWF-US

50 UNEP and ESCAP (2021) *An Assessment of Access to Information, Public Participation and Access to Justice in Environmental Decision-Making in Asia-Pacific*, pp20-21.

51 UNEP and ESCAP (2021) *An Assessment of Access to Information, Public Participation and Access to Justice in Environmental Decision-Making in Asia-Pacific*, p21.

52 *Open Development Mekong, Background*, <https://opendevelopmentmekong.net/background/> (last accessed 21 October 2021).

53 *Open Development Mekong, Background*, <https://opendevelopmentmekong.net/background/> (last accessed 21 October 2021).

54 *Open Development Mekong, Background*, <https://opendevelopmentmekong.net/background/> (last accessed 21 October 2021).

## CONSTITUTIONAL RIGHTS

All Lower Mekong country Constitutions contain specific provisions for their citizens’ right to expression and right to the protection of the environment. The Constitutions of Cambodia (1993), Thailand (2017), and Viet Nam (1992) also contain explicit provisions upholding access to information principles, but Lao PDR (1991) and Myanmar (2008) do not have such Constitutional rights.

Table 3 references those provisions in each country’s Constitution that provide for these rights. These provisions are replicated in Annex 4.

Table 3: *Constitutional provisions on environmental governance rights*

Country (Constitution Date)	Right to information	Right to expression	Right to a clean environment
Cambodia (1993)	Article 41	Article 41	Article 59
Lao PDR (1991)	N/A	Article 44	Article 19
Myanmar (2008)	N/A	Section 354	Sections 45, 390
Thailand (2017)	Sections 41, 59	Section 34	Sections 43, 57, 58, 72
Viet Nam (1992)	Article 25	Article 25	Articles 43, 50, 63

Notably, apart from Thailand, all constitutional provisions on the rights to access information and to freedom of expression are limited to citizens of the country. This renders these provisions weaker than those under international human rights instruments, which apply to all people regardless of citizenship. Accordingly, some affected stakeholders within these countries may be denied the constitutional rights otherwise afforded to recognized citizens. This could include foreign nationals living or working in these countries, civil society organizations under the leadership of foreign nationals, refugees or Stateless people, and/or members of ethnic groups that are not recognized as citizens of the countries in which they reside. The denial of rights to access information to such people may be particularly egregious infringements of human rights—as they are often the people most at risk of having other substantive human rights violated and most vulnerable to environmental harm, they can also be the people most in need of accessing information about environmental matters that may affect them.

The constitutional rights to a clean environment generally do not suffer from such limitations as they are primarily provided in terms of duties upon the State to protect the environment.

## OVERARCHING ACCESS TO INFORMATION LAWS

Only two of the Lower Mekong countries—Thailand and Viet Nam—have enacted laws on access to information. Both Cambodia and Myanmar have drafted access to information laws, but these are yet to be adopted. Lao PDR, however, does not have any existing or pending legislation specific to access to information. As such, only Thailand and Viet Nam are considered in this section.

### THAILAND

Thailand's *Official Information Act, B.E. 2540 (1997)* establishes duties on State agencies to publish, and make available for inspection, information which is defined in broad terms.<sup>55</sup> The definition of State agencies to which the law applies is broad and includes State enterprises and “independent agency of the State”,<sup>56</sup> but does not specifically include private bodies that perform a public function or that receive significant public funding. Whether the law applies to people who are not Thai citizens is subject to Ministerial Regulation.<sup>57</sup>



Life along the banks of the Mekong River. © Nicolas Axelrod / Ruom / WWF-Greater Mekong

<sup>55</sup> *Official Information Act, B.E. 2540 (1997)*, Sections 4, 7 and 9.

<sup>56</sup> *Official Information Act, B.E. 2540 (1997)*, Section 4.

<sup>57</sup> *Official Information Act, B.E. 2540 (1997)*, Section 9.

The law does establish broad reasons for restricting disclosure or denying requests to access information.<sup>58</sup>

**Section 14.** *Official information which may jeopardise the Royal Institution shall not be disclosed.*

**Section 15.** *A State agency or State official may issue an order prohibiting the disclosure of official information falling under any of the following descriptions, having regard to the performance of duties of the State agency under the law, public interests and the interests of the private individuals concerned:*

- 1. the disclosure thereof will jeopardise the national security, international relations, or national economic or financial security;*
- 2. the disclosure thereof will result in the decline in the efficiency of law enforcement or failure to achieve its objectives, whether or not it is related to litigation, protection, suppression, verification, inspection, or knowledge of the source of the information;*
- 3. an opinion or advice given within the State agency with regard to the performance of any act, not including a technical report, fact report or information relied on for giving opinion or recommendation internally;*
- 4. the disclosure thereof will endanger the life or safety of any person;*
- 5. a medical report or personal information the disclosure of which will unreasonably encroach upon the right of privacy;*
- 6. an official information protected by law against disclosure or an information given by a person and intended to be kept undisclosed;*
- 7. other cases as prescribed in the Royal Decree.*

*An order prohibiting the disclosure of official information may be issued subject to any condition whatsoever, but there shall also be stated therein the type of information and the reasons for non-disclosure. It shall be deemed that the issuance of an order disclosing official information is the exclusive discretion of State officials in consecutive levels of command; provided that, a person who makes a request for the information may appeal to the Information Disclosure Tribunal as provided in this Act.*

These provisions confer significant discretion on state agencies to restrict access to information, although reasons for such a decision would need to be provided. Information that is relevant for environmental matters could conceivably be captured under these provisions. Notwithstanding this limitation, the *Official Information Act, B.E. 2540 (1997)* does provide a framework for seeking access to information on environmental matters.

<sup>58</sup> *Official Information Act, B.E. 2540 (1997)*, Sections 14 and 15.

## VIET NAM

As per its constitutional provisions, Viet Nam's *Law on Access to Information* (2016) confers rights to access information on citizens. The law defines information in broad terms and forms<sup>59</sup> and establishes both the rights and processes for citizens to access information and the responsibilities of state agencies in providing access.<sup>60</sup> It also expressly considers inclusivity by requiring the Government to "create favorable conditions for persons with disability, people living in mountainous areas, islands, [and] areas with exceptional socio-economic difficulties to exercise the right to access to information."<sup>61</sup>

The right to access information is subject to some exceptions and conditions and applies to information held by state agencies.<sup>62</sup> The law does not define "state agencies" and is unclear as to whether it applies to "state-owned enterprises [or] private bodies that perform a public function or that receive significant public funding."<sup>63</sup>

The law defines information that is "inaccessible" to include:<sup>64</sup>

*Information classified as state secrecy, including important information in politics, national defense, national security, foreign affair, economics, sciences, technology and other fields as regulated by law. When classified information is declassified, citizens shall have the right to access them under the provisions of this Law.*

Much of the information that might be considered relevant in environmental matters could be classified as related to "sciences" or "technology" and, therefore, may easily be classified under this law. Any such classification would limit the effectiveness of this law for strengthening environmental governance.

The law does expect the widespread publication of a wide range of information categories, many of which are likely to be relevant for environmental matters, including:

- a. *Strategies, programs, projects, proposals, plans, master plans for socio-economic development at national and local level; sector and field planning and methods, results of implementation; programs and annual work plans of state agencies;*
- ...
- b. *Information on the list of projects and public investment programs, public procurement and management, using public investment, the processes and the results of the implementation of public investment plans, programs and projects; information on bidding; information on planning, land use planning; land price; land acquisition; compensation, site clearance and resettlement related to projects, works in the locality;*

59 *Law on Access to Information* (2016), Article 2.

60 *Law on Access to Information* (2016), Article 1.

61 *Law on Access to Information* (2016), Article 3(6).

62 *Law on Access to Information* (2016), Article 5.

63 *Transparency International* (2018), *Right To Information In Asia Pacific*, p54.

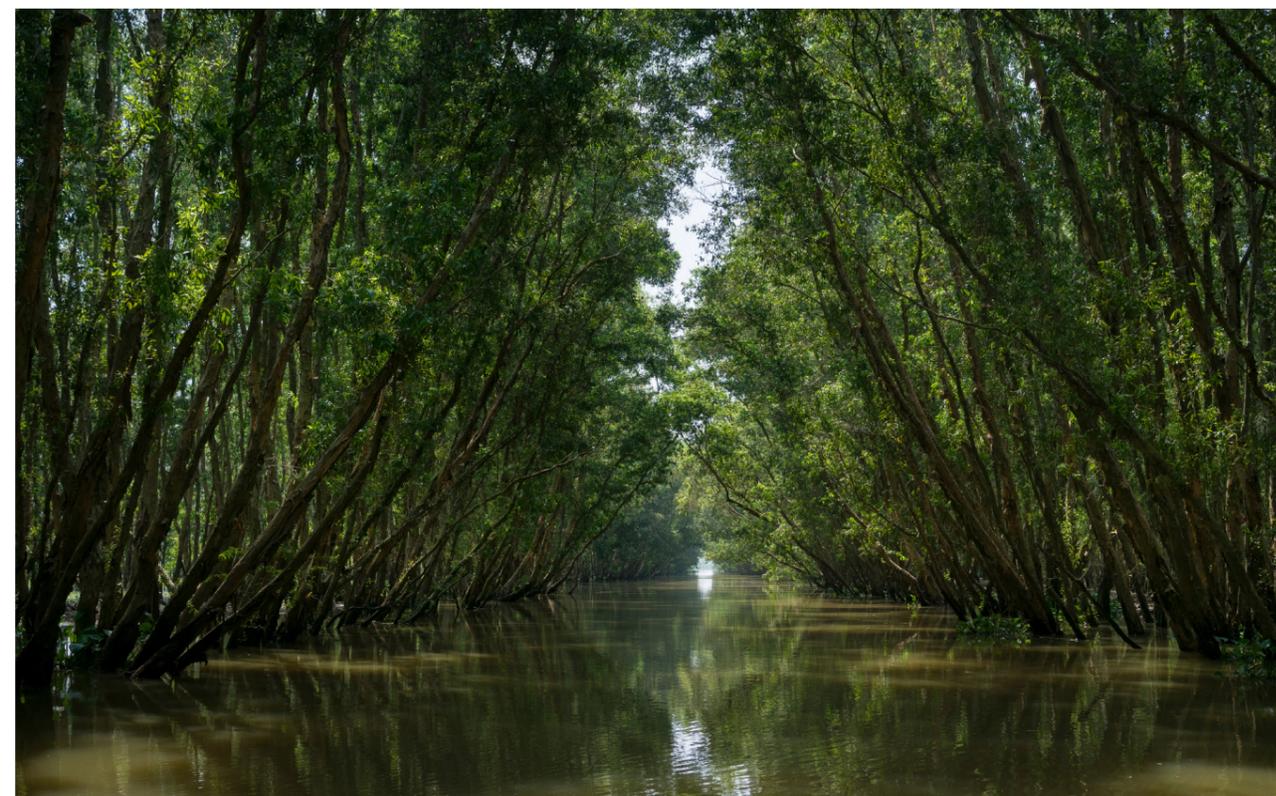
64 *Law on Access to Information* (2016), Article 6(1).

- c. *Information on investment activities, management and use of State capital in enterprises; evaluation reports on the results of operations and business classification; monitoring reports on the implementation of public financial information of enterprises and government agencies representing the owners; information on the organization and operation of state-owned enterprises;*
- d. *Information on products, goods and services that have negative impacts on health and the environment; conclusion of checking, inspecting, monitoring processes related to environmental protection, public health, food safety, occupational safety;*

If access to information is refused, citizens have a right to complain under the provisions of the *Law on Complaints* (2011).<sup>65</sup>

Any other laws in Viet Nam that address access to information continue to apply so long as they do not conflict with the principles outlined in the *Law on Access to Information* (2016).<sup>66</sup>

Despite the limitations identified, Viet Nam's *Law on Access to Information* (2016) provides a framework for seeking access to information on environmental matters.



A view of the flooded forest inside the Tram Chim National Park. © Thomas Cristofolletti / WWF-US

65 *Law on Complaints* (2011), Articles 14 and 15.

66 *Law on Access to Information* (2016), Article 16.

## THEMATIC LAWS

This section provides a summary of those laws in each of the Lower Mekong countries that provide rights to access information in relation to specific aspects of environmental protection or natural resources management. The specific areas covered are: general environmental protection laws; EIA regimes; fisheries management; water resources management; land planning and management; and REDD+ and forest management.

### ENVIRONMENTAL PROTECTION

All countries in the Lower Mekong Region have adopted environmental protection laws that, along with their subordinate legislation (rules, decrees, etc.), provide some degree of provision for rights to access information and public participation in environmental conservation activities.

#### CAMBODIA

Cambodia's *Law on Environmental Protection and Natural Resource Management* (1996) contains a dedicated chapter on public participation and access to information. This chapter contains clear requirements on the Ministry of Environment to establish processes to facilitate public participation and access to information:

**ARTICLE 16:** *The Ministry of Environment shall, following proposals of the public, provide information on its activities, and shall encourage participation of the public in the environmental protection and natural resource management.*

**ARTICLE 17:** *Procedure for participation of the public and access to information pertaining to the environmental protection and management of the natural resources, shall be determined by a Sub-decree following a proposal of the Ministry of Environment.*

**ARTICLE 18:** *Information related to environmental protection and natural resource management shall be mutually disseminated between the Ministry of Environment and other ministries.*

The *Law on Protected Areas* (2008), which establishes protected areas and governs their management, includes a specific reference to access to information.<sup>67</sup> This law also includes a reference to the provision of information to authorities for investigation of offences under the law.<sup>68</sup>

---

67 *Law on Protected Areas* (2008), Article 21.

68 *Law on Protected Areas* (2008), Article 46.

#### LAO PDR

The *Environmental Protection Law* (2012) of Lao PDR contains multiple provisions that promote access to information and public participation in environmental management. It includes a high-level statement of environmental protection policy that asserts that “[t]he State promotes protection and rehabilitation of social and natural environment through dissemination of regulations and environmental information”,<sup>69</sup> with environmental protection to follow principles including “[a]ctive participation and consultation of individuals and organizations into protection of social and natural environment.”<sup>70</sup>

The law includes a specific provision on access to information:<sup>71</sup>

##### **Article 47: Environmental Information Services**

*The natural resources and environmental sector shall develop the environmental information management and services to ensure the public information provision based on regulations. Persons, legal entities and organizations shall be able to access environmental information.*

It does not, however, provide any further details on the processes for accessing such information.

The law also includes requirements for public participation in identified environmental planning, management, and assessment processes.<sup>72</sup>

##### **Article 48: Public Participation (new)**

*An integrated spatial plan, strategic environmental assessment, environmental action plan, social and natural environmental impact assessment, environmental management and monitoring plan, pollution control and others, shall be developed with participations by organizations, local authorities and people, who are directly or indirectly affected by investment projects or activities.*

#### MYANMAR

The *Environmental Conservation Law* (2012) does not include any provisions on information disclosure, access rights or public participation. The *Environmental Conservation Rules* (2014), which are issued under the *Environmental Conservation Law* (2012), include generic references to access to information and public participation. The duties established under the Rules for the Environmental Conservation Department (ECD) include “implementing the dissemination of environmental information”<sup>73</sup> and undertaking “public participation in environmental conservation activities.”<sup>74</sup> However, no further clarity is provided as to when and how such duties should be undertaken.

---

69 *Environmental Protection Law* (2012), Article 5.

70 *Environmental Protection Law* (2012), Article 6(3).

71 *Environmental Protection Law* (2012), Article 47.

72 *Environmental Protection Law* (2012), Article 48.

73 *Environmental Conservation Rules*, Notification No. 50 /2014 (2014), section 26(c).

74 *Environmental Conservation Rules*, Notification No. 50 /2014 (2014), section 26(d).

The National Environmental Policy (2019) sets a right to information and public participation as an explicit policy principle:

*(17) Environmental decision-making at all levels will be inclusive, transparent and accountable to relevant stakeholders, with communities and citizens having the right to participate in decision making processes and access information that could affect their lives and property.*

The Myanmar Sustainable Development Plan 2018-2030 establishes a clear strategic outcome of “more inclusive, participatory and representative decision-making”.

However, these recent policy statements have not yet been translated into dedicated access to information or public participation rights in environmental protection regulations.

## THAILAND

The *Enhancement and Conservation of the National Environmental Quality Act*, B.E. 2535 (1992) contains an explicit provision upholding the right to access information on environmental matters, subject to defined exceptions:<sup>75</sup>

**Section 6.** *For the benefit of contribution to the Enhancement and conservation of national environmental quality, any individual may have the following rights and duties:*

*(1) obtaining information and news from the government in matters related to the enhancement and conservation of environmental quality, except the information or news that the government considers to be secrets pertaining to the protection of national security or secrets regarding the right to privacy, rights in property, or the rights in trade or business of a person which are duly protected by law;*

No further details are provided on how information can be accessed under this provision.

## VIET NAM

Viet Nam has recently adopted a new *Law on Environmental Protection* (2020), which comes into effect on January 1, 2022. The new law has been widely described as representing significant modernizations and improvements to Viet Nam’s environmental regulatory regime.<sup>76</sup>

The 2014 law, which is being replaced, defined environmental information as “environmental figures and data represented in the form of signs, letters, numbers, images, sounds or the like”<sup>77</sup> and as including “figures, data about environmental components, environmental impacts, policies and law on environment and environmental

<sup>75</sup> *Enhancement And Conservation of the National Environmental Quality Act*, B.E. 2535 (1992), Section 6.

<sup>76</sup> See for example: RFA’s Vietnamese Service, *Vietnam Revises Environmental Protection Law But Enforcement a Concern*, 2020-11-18, <https://www.rfa.org/english/news/vietnam/environment-11182020123525.html>, last accessed 26 September 2021; Burke, F. et al, *Vietnam: Major changes in the new Environmental Protection Law*, 2021-06-21, <https://www.globalcompliancenews.com/2021/06/21/vietnam-major-changes-in-the-new-environmental-protection-law-07062021/>, last accessed 26 September 2021.

<sup>77</sup> *Law on Environmental Protection* (2014), Article 3(29).

protection.”<sup>78</sup> It required the Ministry of Natural Resources and Environment (MONRE) to coordinate with other agencies “to collect and manage environmental information, [and] construct national environmental database”<sup>79</sup> as “a collection of information about the environment being constructed, updated and maintained to meet the demands for access and use of information for environmental protection tasks and for the public interests.”<sup>80</sup>

The law required publication of defined information—unless classified as a state secret—including:<sup>81</sup>

- a. *Strategic environmental assessment report, environmental impact assessment report and environmental protection plan;*
- b. *Information of emission sources, emissions and treatment of waste;*
- c. *Areas suffering from serious and particularly serious pollution, degradation, areas at risk of environmental incident;*
- d. *Environmental reports;*
  - d) *Results of environment inspections.*

This provision included a requirement that “publishing method must ensure convenience for information recipients.”<sup>82</sup>

In 2015, a Decree (19/2015/ND-CP) was issued providing more detailed regulations to implement the 2014 law, including “on the provision of environmental information for the community, forms of information provision and responsibility for providing information.”<sup>83</sup> This included at least annual publication of a “report on the current state of the national and local environment” with thematic reports by natural resources management agencies, a list of serious polluters, monitoring results, and environmental licenses.<sup>84</sup>

The new law no longer defines “environmental information” in the definitions section, but instead provides a more detailed explanation:<sup>85</sup>

### Article 114. Environmental information

1. *Environmental information consists of:*

- a. *Information on pollutants, discharge of pollutants into the environment and sources of pollutants; environmental protection by investment projects, businesses and dedicated areas for production, business operation and service provision and industrial clusters;*
- b. *Information about solid waste, hazardous waste, wastewater, exhaust gases and other types of waste prescribed by law;*

<sup>78</sup> *Law on Environmental Protection* (2014), Article 128(1).

<sup>79</sup> *Law on Environmental Protection* (2014), Article 129(1).

<sup>80</sup> *Law on Environmental Protection* (2014), Article 128(2).

<sup>81</sup> *Law on Environmental Protection* (2014), Article 131(1).

<sup>82</sup> *Law on Environmental Protection* (2014), Article 131(2).

<sup>83</sup> Luu Quoc Thai (2021) “Right to Access to Information and the Issue of Ensuring Environmental Security in Vietnam”, *European Journal of Humanities and Social Sciences*, 1(4), DOI: <http://dx.doi.org/10.24018/ejsocial.2021.1.4.113>, p45.

<sup>84</sup> Luu Quoc Thai (2021) “Right to Access to Information and the Issue of Ensuring Environmental Security in Vietnam”, *European Journal of Humanities and Social Sciences*, 1(4), DOI: <http://dx.doi.org/10.24018/ejsocial.2021.1.4.113>, p45.

<sup>85</sup> *Law on Environmental Protection* (2020), Article 114(1).

- c. *Information about decision to approve appraisal results, environmental impact assessment reports, except for trade secrets and information classified as state secrets; matters concerning licensing, registration, certification and confirmation; results of inspection of environmental protection by investment projects, businesses and dedicated areas for production, business operation and service provision and industrial clusters;*
- d. *Information about statistical indicators regarding environment, environmental quality and environmental pollution;*
  - dd) *Information about natural heritage sites, natural ecosystems, species and genetic resources; wildlife sanctuaries and biodiversity conservation facilities; important wetlands;*

This more descriptive approach to defining “environmental information” is, however, less encompassing than the previous broader definition and could arguably be used to exclude certain information (e.g., details about extractive industries). Further, while the new law contains clear provisions about the collection and storage of environmental information that also apply to the private sector,<sup>86</sup> it no longer contains a general requirement for the publication of defined information.<sup>87</sup> Instead, requirements for publication of information are dispersed throughout the new law according to topic: water use and quality;<sup>88</sup> air quality;<sup>89</sup> soil quality;<sup>90</sup> environmental licenses;<sup>91</sup> hazardous waste<sup>92</sup>. Moreover, most of these publication requirements incorporate exemptions “for information classified as state secrets and enterprise’s secrets as classified by law.”<sup>93</sup>

The disjointed approach to defining publication obligations is arguably offset by the requirement for information to be included in the national environmental information system and environmental database to be managed by the Ministry of Natural Resources and Environment.<sup>94</sup>

Rights to access the environmental information system and database, or to information concerning the environment generally, are not explicitly provided by the new law. There is a right for certain organizations to access some information:<sup>95</sup>

*Socio-political organizations, socio-political-professional organizations and socio-professional organizations are entitled to: a) be provided with and request information about environmental protection as prescribed by law*

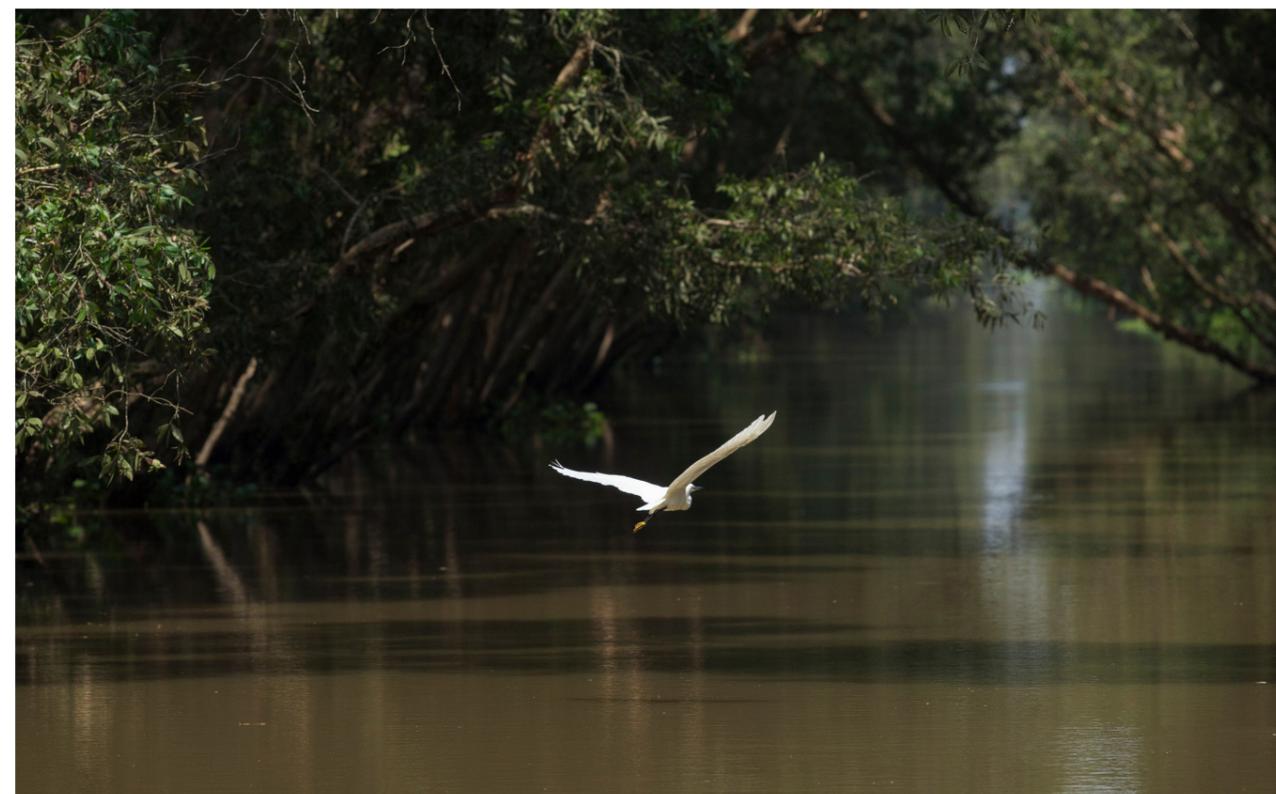
Residential communities suffering environmental impacts are also entitled to seek information from both government and private sector bodies, who must comply with such requests.<sup>96</sup>

86 Law on Environmental Protection (2020), Article 114(2).  
 87 c.f. Law on Environmental Protection (2014), Article 131.  
 88 Law on Environmental Protection (2020), Article 8.  
 89 Law on Environmental Protection (2020), Article 14.  
 90 Law on Environmental Protection (2020), Article 19.  
 91 Law on Environmental Protection (2020), Articles 43, 47 and 48.  
 92 Law on Environmental Protection (2020), Article 85(7).  
 93 Law on Environmental Protection (2020), Article 48(2).  
 94 Law on Environmental Protection (2020), Article 115.  
 95 Law on Environmental Protection (2020), Article 158.  
 96 Law on Environmental Protection (2020), Article 159.

### **Article 159. Entitlements and obligations of residential communities**

1. *Representatives of residential communities in areas under environmental impacts made by investment projects, businesses, dedicated areas for production, business operation and service provision and industrial clusters are entitled to request investment project/business owners to provide information about environmental protection through face-to-face meetings or in writing;*  
 ...
2. *Representatives of residential communities in areas under environmental impacts made by investment projects, businesses, dedicated areas for production, business operation and service provision and industrial clusters are entitled to request relevant regulatory bodies to provide results of inspection and handling of such investment projects, businesses, dedicated areas for production, business operation and service provision and industrial clusters, except for the case these results are classified as state secrets or enterprises’ secrets as prescribed by law.*  
 ...
3. *Investment project/business owners shall comply with requests from representatives of residential communities as prescribed by law.*

New Decrees concerning disclosure of environmental information will be required under the *Law on Environmental Protection* (2020). These have not yet been adopted.



A bird flies over the water of the flooded forest inside the Tram Chim National Park. © Thomas Cristofolletti / WWF-US

## ENVIRONMENTAL IMPACT ASSESSMENT

All countries in the Lower Mekong Region have adopted EIA requirements as part of the planning and assessment process under national law. The legal frameworks for EIAs contain provisions for the collecting and dissemination of information related to the EIA process and to the environmental management plan (EMP) that will accompany any approved EIA. However, it is not always clear from the legislation exactly what information should be disclosed or when. Some documents, including draft EIA reports or approval documents, may not be considered public documents, which could create some challenges for the enforcement of environmental obligations in approved projects.

### CAMBODIA

The legal requirements for EIAs in Cambodia are set out in Chapter III of the *Law on Environmental Protection and Natural Resource Management* (1996) and the Sub-Decree on *Environmental Impact Assessment* (1999). Cambodia is currently in the process of developing a new Environmental Code. There are also several other Prakas<sup>97</sup> on the procedures implementing the EIA Sub-Decree.<sup>98</sup>

Under the current framework, all investment-project applications and all projects proposed by the State shall have an Initial Environmental Impact Assessment (IEIA), report of pre-feasibility study, or an Environmental Impact Assessment as specified in the *Law on Environmental Protection and Natural Resource Management* (1996).<sup>99</sup> A copy must be submitted to the Project Approval Ministry/Institution and the Ministry of Environment. Table 4 summarizes the requirements for information disclosure and public participation at each key phase of the EIA process under Cambodia's legal framework.

Other sector specific legislation, such as the *Law on Forestry* (2002)<sup>100</sup>, the *Law on Mineral Resources Management and Exploitation* (2001)<sup>101</sup> and the *Sub-Decree 146 on Economic Land Concessions* (2005) refer to the need to undertake environmental and social impact assessments.

<sup>97</sup> A Prakas is a regulation promulgated by a Ministry to implement a law.

<sup>98</sup> Prakas on General Guidelines for Conducting Initial and Full Environmental Impact Assessment Reports (No.376 BRK.BST 2009), Prakas on General Guidelines for Conducting Initial and Full Environmental Impact Assessment Reports (No.376 BRK.BST 2009) and Decision on the composition and duties of the EIA Coordination Working Group (8 July 2015).

<sup>99</sup> Law on Environmental Protection and Natural Resource Management (1996), Articles 6 and 7.

<sup>100</sup> Law on Forestry (2002), Article 4.

<sup>101</sup> Law on Mineral Resources Management and Exploitation (2001), Article 21.

Table 4: Information disclosure & public participation requirements in Cambodia's EIA framework\

PHASE	DISCLOSURE / PUBLIC PARTICIPATION REQUIREMENTS
Screening	Informal arrangement Government to disclose information about the proposed Project to the public and civil society
Scoping (for full EIA-type projects)	Is not referenced in the EIA Sub-Decree
IEIA/EIA investigation & report preparation	The Government is to encourage public participation Project proponent to: <ul style="list-style-type: none"> <li>disclose information about the proposed project to the public and civil society</li> <li>arrange consultation processes</li> <li>report on consultation process</li> </ul>
Review & decision	The Government has no clear obligation to disclose EIA report or approval conditions.
Monitoring (for approved projects)	Government to follow up on compliance and monitoring

### LAO PDR

The Ministerial Instruction on the *Process of Environmental and Social Impact Assessment of the Investment Projects and Activities* (2013) was updated by the *Decree on Environmental Impact Assessment* (2019). The EIA Decree outlines the principles that must be followed in carrying out an EIA, including transparency, disclosure and ensuring public involvement.<sup>102</sup> Part VIII of the EIA Decree provides that the preliminary EIA report, the comprehensive EIA report, the environmental management and monitoring plan, and monitoring reports must be disclosed to affected people and other stakeholders.<sup>103</sup> Chapter 4 requires public involvement at project preparation and planning, construction and operation, and at the end of the project.

Table 5 summarizes the requirements for information disclosure and public participation at each key phase of the EIA process under Cambodia's legal framework.<sup>104</sup>

<sup>102</sup> Decree on Environmental Impact Assessment (2019), Article 5.

<sup>103</sup> Decree on Environmental Impact Assessment (2019), Article 64.

<sup>104</sup> Decree on Environmental Impact Assessment (2019), Article 35.

Table 5: Information disclosure & public participation requirements in Lao PDR's EIA framework

PHASE	DISCLOSURE / PUBLIC PARTICIPATION REQUIREMENTS
Screening	Required based on a list of projects.
Scoping	Project proponent to: <ul style="list-style-type: none"> <li>undertake preliminary EIA</li> <li>undertake scoping for comprehensive EIA</li> <li>disclose information to the affected community</li> </ul>
Comprehensive EIA investigation & report preparation	Project proponent to: <ul style="list-style-type: none"> <li>disclose information to the community</li> <li>prepare an Environmental Management and Monitoring Plan (EMMP)</li> </ul>
EIA review & decision	The Government is to: <ul style="list-style-type: none"> <li>convene technical assessment committee</li> <li>gather opinions from local communities</li> <li>ensure public involvement is carried out.</li> </ul>
Monitoring (for approved projects)	Project proponent to: <ul style="list-style-type: none"> <li>monitor in accordance with EMMP</li> <li>provide opportunities for comments and feedback</li> <li>disclose information on monitoring to the community</li> </ul>

## MYANMAR

Myanmar's *Environmental Impact Assessment Procedure* (2015) is established under the *Environmental Conservation Rules* (2014), which are issued under the *Environmental Conservation Law* (2012). The EIA Procedure establishes clear requirements for information disclosure and public participation by both project proponents and the government at all key stages of the EIA process. Table 6 summarizes these requirements and opportunities.

Table 6: Information disclosure & public participation requirements in Myanmar's EIA framework

PHASE	DISCLOSURE / PUBLIC PARTICIPATION REQUIREMENTS
Screening	Not required
Scoping (for full EIA-type projects)	Project proponent to: <ul style="list-style-type: none"> <li>disclose information about the proposed project to the public and civil society</li> <li>arrange consultation processes</li> </ul>
IEE/EIA investigation & report preparation	Project proponent to: <ul style="list-style-type: none"> <li>disclose information about the proposed Project to the public and civil society</li> <li>arrange consultation processes</li> <li>publicly disclose the IEE/EIA report</li> </ul>
IEE/EIA review & decision	The Government is to: <ul style="list-style-type: none"> <li>publicly disclose the submitted IEE/EIA report</li> <li>invite comments and suggestions on the report</li> <li>arrange public consultation on the report</li> <li>publicly disclose its decision on the report</li> </ul>
Monitoring (for approved projects)	Project proponent to publicly disclose monitoring reports submitted to the government

Draft Guidelines on Public Participation in Environmental Impact Assessment have been prepared and have been the subject of significant community consultation. These Guidelines further detail the expectations for information disclosure at various stages of the EIA process. However, they have not yet been adopted.

## THAILAND

Thailand's 2017 Constitution provides that projects and activities which may cause severe adverse effects on the environment must be evaluated to assess the impact on environmental quality and health of people, which shall be conducted in light of a public hearing for relevant stakeholders.<sup>105</sup> Additionally, the public has the right to receive information from a State Agency prior to the granting of permission, and the State is obliged to take precautions to minimize the impact on the community and biodiversity.

The Environmental Impact Assessment requirements were developed in accordance with Part 4 of the *Enhancement and Conservation of National Environmental Quality Act*, B.E. 2535 (1992), with provisions on EIA Screening, Preparation, Review, Process and Monitoring. This law was amended by the *Enhancement and Conservation of National Environmental Quality Act (No 2)*, B.E. 2561 in 2018. The Ministry of Natural Resources and Environment (MONRE) issued a Notification in 2018 on the procedures for the preparation of EIA Reports. Neither the 2018 Act nor the Notification make any provision for access to information by the community or the public or for the public disclosure of the EIA Report. In B.E. 2562 (2019), the Office of Natural Resources and Environmental Policy and Planning under MONRE published Guidelines for Public Participation in the Procedure of Providing an Environmental Impact Assessment Report.

Table 7 summarizes the requirements for information disclosure and public participation at each key phase of the EIA process under Thailand's legal framework.

Table 7: Information disclosure & public participation requirements in Thailand's EIA framework

PHASE	DISCLOSURE / PUBLIC PARTICIPATION REQUIREMENTS
Screening	Required to be undertaken by MONRE
Scoping (for EIA-type projects)	No requirements for disclosure
EIA investigation & report preparation	Project proponent: <ul style="list-style-type: none"> <li>required to consult with impacted parties</li> <li>must disclose information about the project</li> </ul>
EIA review & decision	The Government is to: <ul style="list-style-type: none"> <li>must disclose information about the project</li> <li>establishes Review Committee, but the Review Committee Report is not public</li> </ul> Project Proponent must disclose information about the project
Monitoring (for approved projects)	Project Proponent reports on compliance

<sup>105</sup> Constitution of Thailand (2017), Article 58.

## VIET NAM

In Vietnam, the EIA framework is primarily set by the *Law on Environmental Protection* (2014) and the following decrees and regulations under that law:

- Decree No. 18/2015/ND-CP on Environmental Protection Planning, Strategic Environmental Assessment, Environmental Impact Assessment, and Environmental Protection Plans (2015),
- Decree No. 40/2019/ND-CP on Amendments to Decrees on Guidelines for the Law on Environment Protection (2019).
- Ministry of Natural Resources and Environment Circulars guiding the preparation of EIA reports for investment projects.

A recent development is the passing of the *Law on Environmental Protection* (2020), which is set to take effect on Jan. 1, 2022. Chapter IV of the new law deals with EIA, strategic environmental assessment and environmental licenses and provides mandatory requirements for consultation with residential communities and individuals directly affected by the project.<sup>106</sup> At present the 2015 and 2019 Decrees on EIA have not been updated.

Table 8 summarizes the requirements for information disclosure and public participation at each key phase of the EIA process under Viet Nam’s emerging legal framework.

Table 8: Information disclosure & public participation requirements in Viet Nam’s EIA framework

PHASE	DISCLOSURE / PUBLIC PARTICIPATION REQUIREMENTS
Scoping (for full EIA-type projects)	Projects are classified under Art 28 of the EPL 2020.
EIA investigation & report preparation	Project proponent to conduct preliminary EIA for major projects having “high risk” of adverse environmental impact. This at the pre-feasibility stage of the project.
EIA review & decision	Project proponent to: <ul style="list-style-type: none"> <li>• prepare the EIA report and</li> <li>• consult with communities and other stakeholders.</li> </ul>
Monitoring (for approved projects)	The Government is to: <ul style="list-style-type: none"> <li>• establish an EIA appraisal committee.</li> <li>• review the EIA report</li> <li>• the approval is to be publicly disclosed.</li> </ul>
Monitoring (for approved projects)	Project proponent is required <ul style="list-style-type: none"> <li>• to monitor as required by its license and</li> <li>• submit reports to the relevant authority</li> </ul>

<sup>106</sup> *Law on Environmental Protection* (2020), Article 33.

## FISHERIES MANAGEMENT

The laws governing fisheries management in the Lower Mekong Region generally do not provide clear access information or public participation rights. Where provisions do exist, they tend to be broad principles and emphasise information disclosure rather than rights to access information.

## CAMBODIA

Cambodia’s *Law on Fisheries* (2006) references “the principle of transparency by ensuring the public rights to participate in decision making” as the basis for the functions of the Fisheries Administration.<sup>107</sup> The Fisheries Administration’s responsibilities include developing a National Fishery Management Plan with “broad participation from local communities and relevant authorities”.<sup>108</sup> This Plan is to reflect a range of principles, including access to information and public participation.<sup>109</sup>

- *People’s encouragement to participate in the sustainable fishery resource management and utilization ...*
- *Increase and expansion of knowledge on fisheries with the participation from local communities to manage, use and protect fishery resources*

The law does not include, however, any specific provisions on how these principles should be implemented in fisheries management. It does require that annual reports on the implementation of the National Fishery Management Plan be prepared and made available to the public on request.<sup>110</sup> It also provides for community fishery management, whereby “all Cambodian citizens have the rights to form Community Fisheries in their own areas on a voluntary basis to take part in the sustainable management, conservation, development and use of fishery resources.”<sup>111</sup> The government can assign areas to community fisheries,<sup>112</sup> which require community fisheries management plans.<sup>113</sup> Rights to access information in relation to community fisheries management are not further detailed.

The law does establish a duty in the protection of inundated forests and mangroves that implies public participation:<sup>114</sup>

*All citizens, community fisheries, armed forces, and authorities of all levels shall have the obligations to participate in the maintenance and protection of fish sanctuaries, forests, fire prevention and fighting against any inundated forests and mangroves fire.*

<sup>107</sup> *Law on Fisheries* (2006), Article 7.

<sup>108</sup> *Law on Fisheries* (2006), Article 15.

<sup>109</sup> *Law on Fisheries* (2006), Article 15.

<sup>110</sup> *Law on Fisheries* (2006), Article 15.

<sup>111</sup> *Law on Fisheries* (2006), Article 59.

<sup>112</sup> *Law on Fisheries* (2006), Article 60.

<sup>113</sup> *Law on Fisheries* (2006), Article 62.

<sup>114</sup> *Law on Fisheries* (2006), Article 26.

## LAO PDR

The Fisheries Law (2009) of Lao PDR does not contain any provisions on access to information or public participation. It does establish fisheries management responsibilities for the Ministry of Agriculture and Forestry, as well as for sub-national departments, that include dissemination of policies and regulations, and strengthening of information systems.<sup>115</sup> This is not supported by any detail about the type of information to be maintained or rights of the public to access such information.

## MYANMAR

Myanmar's national fisheries management laws – the *Freshwater Fisheries Law* (1991), the *Marine Fisheries Law* (1990), the *Law Relating to Aquaculture* (1989), and the *Myanmar Pearl Law* (1995) – do not contain any provisions on information disclosure or public participation. Generally, these laws regulate the designation of fishing areas and grant of fishing licenses, with provisions for the government to establish conditions on licenses. Arguably, the government could standardize all permits with requirements for public disclosure of information about the license (e.g. location, duration, catch allowance). Similarly, the designation of fishing zones should be publicly available information (with nothing in the laws preventing the publication of such information).

The *Law Relating to the Fishing Rights of Foreign Fishing Vessels* (1989) includes a requirement that the Master of a foreign fishing vessel “shall maintain ship log-book and fishing data book as prescribed by the Department.”<sup>116</sup>

In 2018, the Department of Fisheries issued *Technical Regulations for Export and Import of Fishery Products* (Directive 8/2018)<sup>117</sup> with the major objective of achieving smooth flow of trade of fish and fishery products from and into the Union of Myanmar. The focus of the technical regulations is on food safety, but it does include an objective of “[e]stablishing transparency through public consultation and public information”. It does include specific details about types of information that must be made available by industry and the government.

Most States and Regions<sup>118</sup> have their own Freshwater Fisheries Law—these all have similar structure, objectives and definitions, focusing on licensing and related matters. None of these State or Regional Freshwater Fisheries Laws contain any provisions on information disclosure or public participation. The Sagaing, Bago, Rakhine and Tanintharyi laws contain provisions about the development of community-based fisheries, but these are again focused on licensing and do not include provisions about the participation of the communities.

## THAILAND

Thailand's *Fisheries Act, B.E. 2558* (2015) provides for the participation of local fishing communities in the management of aquatic resources. It mandates the Department of Fisheries to enhance community involvement

<sup>115</sup> *Fisheries Law (2009), Articles 44-46 and Article 52.*

<sup>116</sup> *Law Relating to the Fishing Rights of Foreign Fishing Vessels (1989), Article 23.*

<sup>117</sup> *In exercise of the powers conferred by Section 23 of Marine Fisheries Law (1990) and Section 20 of the Law Relating to Aquaculture (1989); available at <http://extwprlegs1.fao.org/docs/pdf/mya190961.pdf>.*

<sup>118</sup> *Except for Chin State and Ayeyarwaddy Region.*

in the preparation of a Thai fisheries development policy<sup>119</sup> and “to disseminate the knowledge or information in respect to management, maintenance, conservation, restoration and sustainable utilization of fishery resources.”<sup>120</sup>

This approach to public participation is arguably weakened, however, by subsequent provisions in the law that apparently restrict opportunities for public engagement with fisheries management. The law establishes the “right to make any suggestion” to the Provincial Fisheries Committees on fisheries development or management, but only for local fishing communities that have registered with the Department of Fisheries.<sup>121</sup> This registration requires demonstration of objectives or activities that are directly related to fishing communities.<sup>122</sup> As such, members of the public with legitimate interests or concerns, but who have not been registered with the department for whatever reason, may not be able to make use of this legal right to contribute their views on fisheries management.

The *Fisheries Act, B.E. 2558* (2015) does require anyone involved in “fisheries occupations” to provide details on their activities to the Department of Fisheries to support the collection of fisheries statistics.<sup>123</sup> There are no provisions in the law on broader public rights to access fisheries information.

## VIET NAM

The Vietnamese *Law on Fisheries* (2017) mandates the creation of a standardized national fishery database, to be used and updated by the government, as well as by “organisations and individuals”. (Article 9).<sup>124</sup> While the specific uses of the database are unclear from the law, it does refer to the rights of various fisheries users to access relevant information and data—this implies access to the national database.<sup>125</sup> The law requires organizations and individuals involved in aquaculture, including those involved in breeding, to update information and submit reports on their activities to the national database.<sup>126</sup>

The law mandates government bodies to publish certain information relevant to sustainable fisheries management.

The Ministry of Agriculture and Rural Development is required to prepare and publish a master plan for protecting and extracting aquatic resources.<sup>127</sup> The Ministry is also required to design, undertake and publish nationwide assessments of aquatic resources, commercial fishing and aquatic habitats every five years to:<sup>128</sup>

<sup>119</sup> *Fisheries Act, B.E. 2558 (2015), Section 9(1).*

<sup>120</sup> *Fisheries Act, B.E. 2558 (2015), Section 9(4).*

<sup>121</sup> *Fisheries Act, B.E. 2558 (2015), Section 11.*

<sup>122</sup> *Fisheries Act, B.E. 2558 (2015), Section 10.*

<sup>123</sup> *Fisheries Act, B.E. 2558 (2015), Section 22.*

<sup>124</sup> *Law on Fisheries (2017), Article 9.*

<sup>125</sup> *Law on Fisheries (2017), Articles 46, 52 and 57.*

<sup>126</sup> *Law on Fisheries (2017), Articles 26(2)(dd) and 42(2)(h).*

<sup>127</sup> *Law on Fisheries (2017), Article 11(3).*

<sup>128</sup> *Law on Fisheries (2017), Article 12.*

- a. *Provide information, data and scientific bases for management and sustainable use of aquatic resources;*
- b. *Determine reserves and production of aquatic resources allowed to be caught, assess fluctuation of aquatic resources and living environment of aquatic species.*

The Ministry of Agriculture and Rural Development is required to publish updated quotas on marine fishing licenses every five years.<sup>129</sup>

The People's Committees of each province are required to publish details of quotas on commercial fishing licenses and the number of licenses issued in the province.<sup>130</sup>

There are no specific provisions on rights to access information more generally, or on public participation in fisheries management.



Diem Van Ho cleans the fish he caught in the morning and prepare it to be sold at the local market.  
© Thomas Cristofolletti / WWF-US

<sup>129</sup> Law on Fisheries (2017), Article 49.

<sup>130</sup> Law on Fisheries (2017), Article 62(1).

## WATER RESOURCES

The extent of access to information and public participation rights in water resources management laws varies across the Lower Mekong Region—some countries provide clear rights and information registries, others establish principles that are not supported by clear provisions, and some jurisdictions do not provide any such rights.

### CAMBODIA

The Cambodian *Law on Water Resources Management (2007)* includes specific provisions for the creation of accessible information systems and a general provision about public participation.

It requires the Ministry of Water Resources and Meteorology to keep a centralized water resources inventory that includes annual quantity, quality and geographic data. This data is available “free of charge to all government agencies and other communities for the public interests, except for those classified as confidential,” or subject to a fee for commercial purposes.<sup>131</sup> The potential classification of some information as confidential, especially in the absence of any clarity in the law as to how or why such classification could be made, somewhat weakens this access to information provision.

The law also requires the government to “encourage” collaboration with, and participation of, nongovernment actors “in all activities related to the management, investment, exploitation, conservation and development of the water resources.”<sup>132</sup>

### LAO PDR

A new *Law on Water and Water Resources (2017)* of Lao PDR was developed through a consultative process with support from the International Finance Corporation and the World Bank.<sup>133</sup> It establishes obligations on individuals and organisations in protecting water and water resources, and rehabilitating forest resources and land in watershed areas, in compliance with management plans.<sup>134</sup> The new law has a focus on sustainable water resources management and hydropower development, with new provisions “on water rights and use, including waste-water discharge permits, wetlands and water-resources protection, ground-water management, and river-basin management.”<sup>135</sup>

<sup>131</sup> *Law on Water Resources Management (2007)*, Article 8.

<sup>132</sup> *Law on Water Resources Management (2007)*, Article 7.

<sup>133</sup> IFC, *Water and Water Resources Law to Advance Sustainability in Lao PDR, 2017-5-30*, [https://www.ifc.org/wps/wcm/connect/industry\\_ext\\_content/ifc\\_external\\_corporate\\_site/hydro+advisory/news/press+releases/water+and+water+resources+law+to+advance+sustainability+in+lao+pdr](https://www.ifc.org/wps/wcm/connect/industry_ext_content/ifc_external_corporate_site/hydro+advisory/news/press+releases/water+and+water+resources+law+to+advance+sustainability+in+lao+pdr) (last accessed 27 October 2021).

<sup>134</sup> *Law on Water and Water Resources (2017)*, Article 26, cited in AF-SUPFSM Preparation Team (2019) *Environment and Social Impact Assessment (ESIA): Additional Financing Scaling-up Participatory Sustainable Forest Management Lao PDR*, p31.

<sup>135</sup> IFC, *Water and Water Resources Law to Advance Sustainability in Lao PDR, 2017-5-30*, [https://www.ifc.org/wps/wcm/connect/industry\\_ext\\_content/ifc\\_external\\_corporate\\_site/hydro+advisory/news/press+releases/water+and+water+resources+law+to+advance+sustainability+in+lao+pdr](https://www.ifc.org/wps/wcm/connect/industry_ext_content/ifc_external_corporate_site/hydro+advisory/news/press+releases/water+and+water+resources+law+to+advance+sustainability+in+lao+pdr) (last accessed 27 October 2021).

The Ministry of Natural Resources and Environment Responsibility is responsible for basin level strategic planning of water resources.<sup>136</sup> To support the implementation of the law, sub-regulations are being developed,<sup>137</sup> as is a National Water and Water Resources Management Strategy “with a key element being more coordination between government and non-government agencies to improve sustainability in water use and water infrastructure,”<sup>138</sup> implying further provisions are likely to be detailed on information disclosure and public participation.

Notwithstanding these developments, the Government of the Lao PDR acknowledged in its 2018 *Voluntary National Review on the Implementation of the 2030 Agenda for Sustainable Development* that the participation of local communities in water management cannot be tracked as data collection and monitoring systems are not operational.<sup>139</sup>

## MYANMAR

The *Conservation of Water Resources and Rivers Law* (2006), including its 2017 amendment, does not include any provisions on information disclosure or public participation.

The *Underground Water Act* (1930) requires “[e]very person obtaining or attempting to obtain underground water shall supply the water officer with such information as the Governor may by rule prescribe.”<sup>140</sup> How this information is then stored and used by the Government, or whether it is publicly accessible, is not addressed by the law.

## THAILAND

The *Water Resources Act, B.E. 2561* (2018) of Thailand does not have any provisions ensuring access to information. The law does set the mandates for several government agencies, including the promotion of public participation, preparation and maintenance of water information systems, and the dissemination of information to the public.

The responsibilities of the National Water Resources Commission (N.W.R.C.) established by the law include issuing “Rules prescribing measures for promoting and encouraging participation, by the private sector, people and communities concerned, in the use, development, management, maintenance, rehabilitation and conservation of, and any other activities in connection with, water resources”.<sup>141</sup> The Office of Water Resources, serving as the Secretariat of the N.W.R.C., is responsible for “promoting and encouraging participation, by the private sector, people and communities concerned, in the use, development, management, maintenance, rehabilitation and conservation of, and any other activities in connection with, water resources.”<sup>142</sup>

136 McCartney and Brunner (2021) “Improved water management is central to solving the water-energy-food trilemma in Lao PDR”, *International Journal of Water Resources Development*, 37:4, 619-639, DOI: 10.1080/07900627.2020.1754175.

137 IFC, *Water and Water Resources Law to Advance Sustainability in Lao PDR, 2017-5-30*, [https://www.ifc.org/wps/wcm/connect/industry\\_ext\\_content/ifc\\_external\\_corporate\\_site/hydro+advisory/news/press+releases/water+and+water+resources+law+to+advance+sustainability+in+lao+pdr](https://www.ifc.org/wps/wcm/connect/industry_ext_content/ifc_external_corporate_site/hydro+advisory/news/press+releases/water+and+water+resources+law+to+advance+sustainability+in+lao+pdr) (last accessed 27 October 2021).

138 McCartney and Brunner (2021) “Improved water management is central to solving the water-energy-food trilemma in Lao PDR”, *International Journal of Water Resources Development*, 37:4, 619-639, DOI: 10.1080/07900627.2020.1754175.

139 Lao PDR (2018) *Voluntary National Review on the Implementation of the 2030 Agenda for Sustainable Development*, p33.

140 *The Underground Water Act* (1930), Article 5.

141 *Water Resources Act, B.E. 2561* (2018), Section 17(16).

142 *Water Resources Act, B.E. 2561* (2018), Section 23(16).

More specifically, the N.W.R.C. is also responsible for preparing policies and a master plan on water resources administration,<sup>143</sup> which must consider “opinions of the public, water-user bodies, interested persons ... in accordance with the rules and procedures prescribed by the N.W.R.C. and published in the Government Gazette.”<sup>144</sup>

Drainage basin committees, established under the law, are responsible for preparing plans for the prevention and management of droughts and floods, which are to include details on the dissemination of information to the public.<sup>145</sup>

## VIET NAM

The Vietnamese *Law on Water Resources* (2012) has several provisions promoting public participation in water resources management.

For projects involving the construction of water resource exploitation and use facilities or the discharge of wastewater into water sources, investors are required to undertake community consultation in coordination with local administrations.<sup>146</sup> This consultation is to be undertaken with “representatives of local communities and related organizations and individuals in affected geographical areas on the contents related to their plans,” with a summary of feedback and the investor’s responses to be submitted along with the project proposal for the government’s decision on the investment.<sup>147</sup> If approved, information on the project must be published before implementation commences.<sup>148</sup> All costs associated with consultation and publication must be borne by the investors.<sup>149</sup>

The law also mandates the archiving of documents pertaining to water resources, in accordance with the law on archives.<sup>150</sup> Government agencies must “supply information on water resources to organizations and individuals when so requested in accordance with law.”<sup>151</sup> Information provided under this law can be subject to a charge in compliance with the law on charges and fees.<sup>152</sup>

The law provides for a comprehensive system of water resource master planning for Viet Nam. While there are no clear opportunities for public participation in the preparation of these plans, final plans must be made public within 30 days of its approval.<sup>153</sup>

143 *Water Resources Act, B.E. 2561* (2018), Section 17(1).

144 *Water Resources Act, B.E. 2561* (2018), Section 18.

145 *Water Resources Act, B.E. 2561* (2018), Section 61(4) and Section 64(6).

146 *Law on Water Resources* (2012), Article 6(1).

147 *Law on Water Resources* (2012), Article 6(1)(a).

148 *Law on Water Resources* (2012), Article 6(1)(b).

149 *Law on Water Resources* (2012), Article 6(1)(c).

150 *Law on Water Resources* (2012), Article 8(1).

151 *Law on Water Resources* (2012), Article 8(2).

152 *Law on Water Resources* (2012), Article 8(3).

153 *Law on Water Resources* (2012), Article 24(1).

Organizations and individuals that exploit or use water resources in Viet Nam are required to supply relevant information and data to government agencies.<sup>154</sup> However, the law does not clarify how this data is to be stored or used, or how it might be publicly accessible.

The Ministry of Natural Resources and Environment has a mandated responsibility to “build a database and information system on water resources; to manage and preserve information and data on water resources; to publicize and publish documents and information on water resources.”<sup>155</sup>

The *Decree On Clean Water Production, Supply And Consumption* (2007) contains specific provisions on community participation in the management and oversight of water supply activities.<sup>156</sup>

#### Article 8. Community participation

1. *The State encourages people and communities to participate in the management and oversight of water supply activities.*
2. *The Construction Ministry guides the process of contributing opinions and overseeing by communities in the course of formulating, concluding and implementing agreements on water supply service provision.*
3. *Peoples Committees at all levels must abide by the process of contributing opinions and overseeing by communities in the course of formulating, concluding and implementing agreements on water supply service provision with water supply units.*

The decree also establishes the rights of water-using customers “to be supplied with or briefed on information on water supply activities.”<sup>157</sup>



A view of the Sopheak Mitt waterfall on the border between Laos and Cambodia. © Thomas Cristofolletti / WWF-US

154 *Law on Water Resources* (2012), Article 43(2)(f).

155 *Law on Water Resources* (2012), Article 70(2)(h).

156 *Decree on Clean Water Production, Supply and Consumption* (2007), Article 8.

157 *Decree on Clean Water Production, Supply and Consumption* (2007), Article 56(1)(c).

## LAND PLANNING AND MANAGEMENT

Jurisdictions in the Lower Mekong Region that have established contemporary cadastral and land information systems generally make the stored information publicly accessible, but rights to access information and public participation in broader land planning processes are less clearly defined. Some jurisdictions do not provide any such rights.

### CAMBODIA

Cambodia's *Land Law* (2001) contains explicit provisions on the rights to access cadastral information. The law requires the Cadastral Administration to provide maps and other information about land titles, including mortgages or easements to any person who makes such a request.<sup>158</sup> These information requests may not be refused, but they may incur a fee set in accordance with the law.<sup>159</sup> These responsibilities for information management and sharing are also delegated to sub-national offices of the Cadastral Administration.<sup>160</sup>

The *Law on Land Use Planning, Urbanization and Construction* (1994) requires a series of development master plans<sup>161</sup> and land use master plans<sup>162</sup> to be prepared for capital cities, provinces and municipalities to indicate areas for development, different land uses and construction opportunities. The law requires private entities and public authorities to comply with these master plans during construction works,<sup>163</sup> but does not include any provisions for public dissemination or access.

### LAO PDR

The Lao PDR *Land Law (Amended)* (2019) provides for the development, improvement, and use of the National Land Information System, under the responsibility of the Ministry of Natural Resources and Environment. The law specifically outlines the rights of individuals, legal entities, and organizations to “access and use land information in the National Land Information System subject to payment of service fees in accordance with the regulations.”<sup>164</sup>

The *Decree on the Implementation of the Land Law* (2008) was made pursuant to the *Land Law* (2003), prior to its amendment in 2019, and is yet to be updated. The Decree does not provide any further details on access to information in the National Land Information System, nor does it clearly define the type of information to be stored. The Decree does provide some details on the management of the National Land Information System, making the Centre for Research and Information of Land and Natural Resources under the National

158 *Land Law* (2001), Article 229.

159 *Land Law* (2001), Article 240.

160 *Land Law* (2001), Article 232.

161 *Law on Land Use Planning, Urbanization and Construction* (1994), Article 5.

162 *Law on Land Use Planning, Urbanization and Construction* (1994), Article 6.

163 *Law on Land Use Planning, Urbanization and Construction* (1994), Article 6.

164 *Land Law (Amended)* (2019), Article 91.

Land Management Authority responsible for “the collection and compilation of statistical data and information, situation and specific characteristics of each category of land located in different area in a systematic manner” for land planning and management purposes.<sup>165</sup> The Decree further asserts that “[l]and information shall be kept at a secure place and shall remain confidential for any data which are not to be exposed.”<sup>166</sup> This provision may arguably no longer apply to the extent it contradicts the access to information rights in the newer *Land Law (Amended)* (2019).

## MYANMAR

Myanmar does not have a unified system of land management. Rather, it is governed by a range of laws with different government authorities managing different types of land,<sup>167</sup> and limited provisions for transparency and public participation.<sup>168</sup> Two of the key pieces of land management legislation are the *Farmland Law* (2012), which was amended in 2020, and the *Vacant, Fallow and Virgin Land Law* (2012), revised in 2018. Neither of these laws provides any detail on information disclosure or public participation in land management processes.

The 2020 amendments to the *Farmland Law* (2012) introduced farmer representatives to local level (Township and Village Tract or Ward) Land Management Committees.<sup>169</sup> While it can be assumed that these farmer representatives provide a useful avenue for sharing information about committee deliberations and broader land management processes, the law does not provide any clarity about this function or about the type of information the representatives could access for further dissemination.

The *Vacant, Fallow and Virgin Lands Management Rules* (2012) issued under the *Vacant, Fallow and Virgin Land Law* (2012) do require government offices (at various levels of administration) to issue public notifications about applications to work on and use land classified as vacant, fallow and virgin. These notices are to provide individuals the opportunity to object to such applications—an objection must be made within 30 days of the notification.<sup>170</sup>

A corollary of the fractured land governance arrangements is that land-related spatial information is managed by various government departments and is therefore “not standardized and often not available in the public domain.”<sup>171</sup>

The National Land Use Policy (NLUP) was adopted by the government in 2016 to “to strengthen land tenure security of vulnerable communities and to improve the land governance framework.”<sup>172</sup> A key goal of the NLUP is to develop a National Land Law that would implement the policy’s objectives and principles,<sup>173</sup> and that would establish a “land use planning process that is participatory, transparent and accountable.”<sup>174</sup> Despite limited implementation of the NLUP and the continuing absence of a new National Land Law, the NLUP does provide strong indications that rights to access information should be incorporated into Myanmar’s future land management regime.

The NLUP is based on a series of “basic principles” that explicitly promote access to information and public participation and that are more broadly underpinned by human rights and inclusivity norms. These basic principles include:<sup>175</sup>

- a. *To legally recognize and protect legitimate land tenure rights of people, as recognized by the local community, with particular attention to vulnerable groups such as smallholder farmers, the poor, ethnic nationalities and women;*
- b. *To strengthen rule of law and good governance, including simplifying procedures, ensuring transparency, and increasing accountability and responsibility;*
- c. *To promote effective land information management, including easy public access to information;*
- d. *To adopt international best practices such as voluntary guidelines on the responsible governance of tenure of land, fisheries and forests in the context of national food security and human rights standards;*
- e. *To promote inclusive public participation and consultation in decision making processes related to land use and land resource management;*
- f. ...
- g. *To ensure equal opportunities for men and women over land resources, tenure rights and participatory decision making;*

Chapter III of Part II (Land Use Administration) of the NLUP is dedicated to Land Information Management. It also provides for information disclosure as part of land use planning processes, and explicitly provides for civil society to be able to “provide legal aid and acquire necessary information for use in land disputes.”<sup>176</sup> It also contains chapters dedicated to the land use rights of ethnic nationalities, and to the equal rights of men and women.

The *Land and Revenue Act* (1879) has provisions on information and transparency on how land acquisition processes are managed, and on information in relation to land that is required for public purposes.

---

165 Decree on the Implementation of the Land Law (2008), Article 12.

166 Decree on the Implementation of the Land Law (2008), Article 12.

167 FAO (2021) *Legal assessment brief in the framework of sustainable land management, sustainable forest management and climate smart agriculture in Myanmar*, p2.

168 Article 19 (2019), p15.

169 *Farmland Law* (2012), Article 16(c).

170 *Vacant, Fallow and Virgin Lands Management Rules, Notification No. 1/2012, section 9.*

171 Ingalls, M. et al (eds.) (2018). *State of Land in the Mekong Region*. Bern, Switzerland and Vientiane, Lao PDR: Centre for Development and Environment, University of Bern, and Mekong Region Land Governance, with Bern Open Publishing, p121.

---

172 FAO (2021) *Legal assessment brief in the framework of sustainable land management, sustainable forest management and climate smart agriculture in Myanmar*, p2.

173 Myanmar (2016) *National Land Use Policy*, p3.

174 Myanmar (2016) *National Land Use Policy*, p12.

175 Myanmar (2016) *National Land Use Policy*, pp4-5.

176 Myanmar (2016) *National Land Use Policy*, p23.

## THAILAND

The *Land Code Act B.E. 2497 (1954)* of Thailand does not contain any provisions on access to information or public participation.

The *Forest Act B.E. 2484 (1941)* of Thailand does not contain any provisions on access to information or public participation. The Forest Act does contain provisions about government decisions that must be published in the Government Gazette for set periods before those decisions take effect. These information disclosure requirements relate to decisions to: restrict (or change the restriction on) timber types from logging;<sup>177</sup> restrict the removal of certain forest products under license;<sup>178</sup> and declare value-added timber control areas.<sup>179</sup>

## VIET NAM

The Vietnamese *Land Law (2013)* explicitly establishes responsibilities of the State in creating and providing land information, including the following:<sup>180</sup>

1. *To develop and manage the land information system and guarantee the right to access to the land information system for organizations and individuals.*
2. *To promptly publicize available information in the land information system for organizations and individuals, except confidential information as prescribed by law.*

The land information system in Viet Nam is to include comprehensive information including:<sup>181</sup>

- a. *Database on legal documents on land;*
- b. *Cadastral database;*
- c. *Database of base investigations on land;*
- d. *Database of land use master plans and plans;*
- dd. *Database of land prices;*
- e. *Database of land statistics and land inventories;*
- g. *Database on inspection, examination, settlement of disputes, complaints and denunciations on land;*
- h. *Other databases related to land.*

Article 122 further clarifies that land information and data can be requested through central and local land information portals on payment of a fee. This provision does also state that the use of such information “must be in accordance with law,”<sup>182</sup> which may open avenues for restricting its otherwise legitimate use (e.g. through a SLAPP suit).

<sup>177</sup> Forest Act B.E. 2484 (1941), Section 7.

<sup>178</sup> Forest Act B.E. 2484 (1941), Section 28.

<sup>179</sup> Forest Act B.E. 2484 (1941), Section 47.

<sup>180</sup> Land Law (2013), Article 28.

<sup>181</sup> Land Law (2013), Article 121.

<sup>182</sup> Land Law (2013), Article 122(3).

## REDD+

Those jurisdictions in the Lower Mekong Region that report on REDD+ safeguards generally acknowledge access to information and public participation rights without establishing dedicated arrangements for REDD+ or forest management more broadly.

## CAMBODIA

Cambodia issued its first Summary of Information on Safeguards, as required under the UNFCCC, in 2019. This document affirms Cambodia’s approach to the transparency and rights of indigenous peoples safeguards as follows:<sup>183</sup>

### **CAMBODIA’S CLARIFICATION OF SAFEGUARD B**

*The rights of access to information, accountability, justice, gender equality, land tenure and fair distribution of benefits will be clarified, respected and promoted in the scope of the application of the National REDD+ Strategy.*

...

### **CAMBODIA’S CLARIFICATION OF SAFEGUARD C**

*The REDD+ Strategy will be implemented in accordance to the rights of recognition of, and respect for the rights of indigenous peoples and local communities; including the rights to non-discrimination, traditional knowledge and culture, self-determination, benefit sharing and collective tenure rights.*

...

### **CAMBODIA’S CLARIFICATION OF SAFEGUARD D**

*The right to participate, in an effective manner including Free Prior Informed Consent for relevant indigenous peoples and local communities will be recognized and promoted under the implementation of the National REDD+ Strategy.*

The first Summary of Information asserts that the Safeguards Information System is available online (at <https://cambodia-redd-safeguards.org>) but the website was not operational at the time of publication of this report.<sup>184</sup>

The first Summary of Information asserts that the access to information safeguard has been addressed and respected as follows:<sup>185</sup>

<sup>183</sup> Cambodia REDD+ Secretariat (2019) First Summary of Information on Safeguards, pp10-11.

<sup>184</sup> Cambodia REDD+ Secretariat (2019) First Summary of Information on Safeguards, p12; Last attempt on 25 September 2021.

<sup>185</sup> Cambodia REDD+ Secretariat (2019) First Summary of Information on Safeguards, p20.

*The right to access information is linked to the right to participation across different pieces of legislation. The National REDD+ Strategy has committed to putting in place a Safeguard Information System that provides timely and transparent information on how Cambodia addresses and respects the Cancun safeguards. Additionally, Cambodia's National Forest Monitoring System (NFMS) will monitor information relevant to measurement, reporting and verification (MRV) of REDD+ activities, and support broader forest sector policies and programmes, including the National Forest Programme (NFP), National Protected Areas Strategic Management Plan (NPASMP) and Strategic Planning Framework for Fisheries (SPFF).*

This statement does not elaborate on the specific legislation that is asserted to provide for public participation and access to information in the context of REDD+, while the remaining assertions are about proposed future action.

The Law on Forestry (2002) is to be implemented “to ensure public participation in any government decision that has the potential for heavy impact on concerned general citizens, livelihoods of local communities and forest resources of the Kingdom of Cambodia.”<sup>186</sup> The law also provides for public participation in the duties of the Forestry Administration:<sup>187</sup>

*The Forestry Administration shall perform its duties in a manner consistent with principles of transparency, thereby ensuring the right of the public to participate in decisions regarding the management, sustainable use and conservation of the forests.*

The only explicit provision for access to information in the Law on Forestry (2002) is in relation to annual reporting:<sup>188</sup>

*the Minister of Ministry of Agriculture, Forestry and Fisheries shall submit to the Royal Government an annual progress report on the implementation of the objectives of the National Forest Management Plan. This report shall be provided to the public upon request*

## LAO PDR

Lao PDR issued its first Summary of Information, as required under the UNFCCC, in 2020. It asserts that two social safeguard tools have been prepared—a Resettlement Framework “to guide resettlement planning and implementation and provide protocols for due diligence in cases of involuntary acquisition and restrictions” and an Ethnic Group Development Framework “to guide in identifying ethnic groups, the project’s impacts on them, appropriate ways of engaging them, and beneficial and mitigating measures, and preparing and implementing the Ethnic Groups Development Plans (EGDP) based on the results of social impact assessment (SIA) conducted per the project site.”<sup>189</sup> The content of these documents is unclear.

<sup>186</sup> Law on Forestry (2002), Article 4.

<sup>187</sup> Law on Forestry (2002), Article 6.

<sup>188</sup> Law on Forestry (2002), Article 9.

<sup>189</sup> Lao PDR (2020) 1st Summary of Information on How Safeguards for REDD+ were addressed and respected by Lao People's Democratic Republic for the period 2015-2018, p27.

The Summary of Information provides general statements about commitments to follow existing policies and regulations in the implementation of REDD+, as well as about future needs to strengthen the access to information safeguard. For example:<sup>190</sup>

*To promote transparency, relevant government agencies and forestry and REDD+ projects should ensure that key stakeholders have timely access to relevant information and should be clearly communicated to stakeholders in a plain language. The existing channel of communication (information flow) from district, kumban, village and Neuy (group of households) and vice versa should be enhanced and supported.*

However, it does not provide any details on specific measures to facilitate access to information or public participation.

## MYANMAR

Myanmar submitted its first Summary of Information in 2020. It notes that the Safeguards Information System is under design and reports on safeguards in terms of policies, laws and regulations that currently exist, are under development and are needed to address safeguard gaps.<sup>191</sup>

The Summary of Information summarizes the approach to access to information as being provided through:<sup>192</sup>

- *The National Land Use Policy, the One Map Myanmar initiative and the work of the Myanmar Information Management Unit (to promote transparency and information sharing for land-related data, and to improve land use planning and management)*
- *The process for Free, Prior and Informed Consent (FPIC) for REDD+ that is currently under development (to ensure that information is made available in accessible form to local stakeholders);*
- *The Anti-Corruption Law, Anti-Corruption Commission and Corruption Protection Units, as well as the existing financial reporting regulations and the REDD+ financial management system that is currently under development (to ensure accountability and prevent corruption)*
- *[Policies and Measures] included in the National REDD+ Strategy that include actions to strengthen transparency, accountability and rule of law;*
- ...
- *The Guidelines for Stakeholder Engagement in Policies and Programmes for Sustainable Forest Management and REDD+, and the stakeholder mapping for REDD+ conducted during the development of the NRS (to identify the groups that should be engaged, and to guide the identification of rights and duties of stakeholders in engagement processes);*

<sup>190</sup> Lao PDR (2020) 1st Summary of Information on How Safeguards for REDD+ were addressed and respected by Lao People's Democratic Republic for the period 2015-2018, p39.

<sup>191</sup> Myanmar (2020) First Summary of Information on How Safeguards for REDD+ Are Addressed and Respected in Myanmar, p7.

<sup>192</sup> Myanmar (2020) First Summary of Information on How Safeguards for REDD+ Are Addressed and Respected in Myanmar, p8.

The Myanmar Guidelines for Stakeholder Engagement in Policies and Programmes for Sustainable Forest Management and REDD+ contain information on FPIC and an 'Appraisal Checklist for FPIC'.

The Summary of Information asserts that Myanmar's Safeguards Information System will include a publicly-accessible, online database that "will present a range of different information types, including qualitative data (e.g. on how particular [policies, laws and regulations] are relevant to addressing safeguards criteria), quantitative data (e.g. on the numbers of participants in REDD+ planning consultations, or statistical data on socio-economic trends in REDD+ implementation areas), and spatial data where relevant (e.g. maps showing the location of REDD+ implementation areas or distribution of natural forests)."<sup>193</sup>

## THAILAND

Thailand has prepared a Forest Reference Emission Level and Forest Reference Level as a basis for REDD+ implementation.<sup>194</sup> Thailand has not published any information on dedicated REDD+ access to information arrangements or safeguards more generally.

## VIET NAM

Viet Nam submitted its first Summary of Information in 2018. Viet Nam has developed an online Safeguard Information System at <http://sis.vietnam-redd.org/>. The Summary of Information and Safeguard Information System both provide an overview of Viet Nam's access to information provisions under its Constitution and Law on Access to Information (2016).<sup>195</sup>

Viet Nam has not published any information on dedicated REDD+ access to information arrangements.

<sup>193</sup> Myanmar (2020) First Summary of Information on How Safeguards for REDD+ Are Addressed and Respected in Myanmar, p26

<sup>194</sup> Thailand (2020) Thailand's Forest Reference Emission Level and Forest Reference Level for REDD+ Under the UNFCCC.

<sup>195</sup> Viet Nam (2018) First Summary of Information on How Safeguards for REDD+ Would Be Addressed and Respected in Viet Nam, p27; <http://sis.vietnam-redd.org/web/guest/safeguard-b>



A lady waters plants in her small vegetable garden behind her house in Stung Treng Cambodia.  
© Thomas Cristofolletti / WWF-US

## THEMATIC SUMMARY

The following table provides a simple summary of the rights to access information and for public participation provided by the various environment and natural resource management laws in each Lower Mekong country. The shading demonstrates the extent of these legal provisions, with the dark green boxes indicating clear provisions. The shading lightens progressively according to whether there are some provisions or whether there is an absence or lack of clarity in such rights.

	Environmental protection	EIA	Fisheries	Water	Land	REDD+
Cambodia	Clear requirements to establish processes to facilitate public participation and access to information	Some requirements for public participation and information disclosure, but only at certain stages of the EIA process.	Access to information and public participation are stated management principles, but not supported by any specific legal provisions.	Free access to information on the centralized water resources inventory, except for confidential information. Basic public participation principle.	Cadastral information available to the public, subject to a fee.	Rights recognized but not clearly defined.
Lao PDR	Clear rights to access information and, in defined processes, for public participation	Clear requirements for information disclosure and public participation, covering both project proponents and government, throughout EIA processes	No clear rights to access information or for public participation Some basic requirements for government agencies to disseminate information about fisheries regulations	No clear rights to information or requirements for information disclosure or for public participation	Information in the National Land Information System available subject to a fee	Rights recognized but not clearly defined.
Myanmar*	No clear rights to information or requirements for information disclosure or for public participation	Information disclosure duties on project proponents and government. Public participation required at key stages of EIA process.	No clear rights to information or requirements for information disclosure or for public participation	No clear rights to information or requirements for information disclosure or for public participation	No clear rights to information or requirements for information disclosure or for public participation	Rights recognized with additional safeguards under development.

Thailand	Clear rights to access information	Information disclosure duties on project proponents and government. Public participation required at key stages of EIA process.	Rights for local communities to participate in fisheries management, but restricted to registered groups. A general information dissemination duty applies to government, but no general rights to access information.	No clear rights to access information. Some general principles on public participation in water resources planning and management, with information dissemination responsibilities for government agencies.	No clear rights to information or requirements for information disclosure or for public participation	No dedicated provisions.
Viet Nam	Requirements to develop systems for publishing and ensuring access to information	Some requirements for public participation and information disclosure, but only at certain stages of the EIA process.	Some provisions on types of information to be made publicly available, but no general access to information rights or public participation provisions.	Clear rights to access information and participate in water resources planning and management.	Clear rights to access information stored in the land information system, subject to payment of a fee.	Safeguards Information System developed providing detail on (existing) access to information laws.

It can be seen from the summary table that the Lower Mekong countries generally provide good provisions on access to information and public participation in their general environmental protection and environmental impact assessment laws. Further, all five countries have some combination of environmental protection and natural resource management laws that provide at least some protections for the right to access information, with most countries some degree of protections in most of the laws considered in this study. There are clear gaps in this matrix, however, indicating that there are opportunities to clarify and strengthen these rights in support of enhanced natural resource governance in the region.

# CONCLUSIONS

This study has reviewed the existing rights to access information across the Lower Mekong region. It has considered regional arrangements, including under formal agreements (ASEAN Human Rights Declaration and Mekong River governance) and under other initiatives, as well as domestic legal regimes. For each country, the study reviewed constitutional provisions, overarching access to information laws, and environmental protection and natural resource management laws. Through this review, three key findings can be drawn.

First, there is a clear commitment across the region to the human right to access information. All five countries are active member-states of both the United Nations and ASEAN. They have affirmed their commitments to the Universal Declaration of Human Rights and the ASEAN Human Rights Declaration.<sup>196</sup> Further, most of the Lower Mekong countries enshrine the right to access information in their constitutions.

Second, there has been limited translation of this commitment into enforceable protections and clear processes governing the right to access information. Only Thailand and Viet Nam have passed legislation providing overarching rights to access information. In relation to environmental matters specifically, the importance of access to information to good environmental governance and sustainable development is recognized in general environmental protection laws or policy statements across the region. Again, however, these principles are not translated into cohesive legal rights to access information in the countries' conservation, development planning, or natural resource management laws. Rather, there is a patchwork of arrangements across the region, with varying degrees of clarity in information disclosure requirements and opportunities to request information from line agencies. There is no consistency either within countries, or thematically across the region. The environmental impact assessment laws most consistently include clear provisions, which is to be expected given public participation and information disclosure are fundamental components of commonly utilized environmental impact assessment procedures.

Third, those access rights that are provided are often qualified in ways that do not reflect the principles of the universal human right to access information and are generally not supported by clear processes that would ensure effective implementation. By and large, where access rights are provided, these are not limited to defined rights holders but are provided for all individuals and organizations in the jurisdiction. The major exception to this is that most constitutional and legislative provisions in the Lower Mekong countries confer rights to access information on citizens. This presents a significant constraint on the operation of these rights, which as universal human rights, should be available to anyone regardless of their citizenship or residency status. Some of the thematic laws further limit the specific rights to certain groups, such as the Thailand *Fisheries Act, B.E. 2558* (2015) that establishes rights for fishing communities that have registered with the Department of Fisheries.

While most of the legal rights that do exist are only constrained by citizenship, there is very limited provision in any of the countries for broader accessibility considerations.

Access rights are also often subject to exceptions, such as when information is deemed a state secret, without clearly defining how certain information would be classified as exempt from disclosure requirements. Further, there are very limited opportunities to appeal decisions to refuse requests to access information.

---

<sup>196</sup> It is worth noting that Myanmar is currently not a signatory to the ICCPR. It has been argued, though, that the ICCPR obligations reflect customary international law and should inform the interpretation of Myanmar's international human rights obligations (Article 19 (2019) p4).

Together, these three findings lead to clear conclusions about both the limitations of existing arrangements and the opportunities to further strengthen access to information in the region.

The limited articulation of the rights to access to information in the Lower Mekong countries presents challenges and risks for the region's commitment to sustainable development and effective environmental governance. The Lower Mekong countries—both individually and collectively through ASEAN—have committed to a course of development that relies on sound science and knowledge, inclusiveness and balancing of needs. A lack of access to information can jeopardize this approach by denying opportunities for civil society to make positive contributions to development planning and decision-making or, at the other end of the spectrum, by undermining community trust in decisions due to perceived corruption or other problems associated with a lack of transparency.

The absence of clearly defined rights to access information can also open the door for the application of other legal tools to deny access to information, or to discourage civil society from engaging in dialogue or oversight activities on environment and natural resource management.

While the risks associated with the limited existing arrangements to ensure access to information are clear, it is equally clear that the high-level commitments to access to information rights in the Lower Mekong countries provides a strong platform for efforts to strengthen and further clarify these rights, both within and between countries.

The domestic legal rights to access information can be strengthened through:

- Developing new overarching access to information laws for Cambodia, Lao PDR and Myanmar.
- Further elaborating the processes for access to information under the existing overarching laws in Thailand and Viet Nam through subordinate legislation (Rules and Decrees)
- Incorporating more explicit information disclosure requirements and processes for accessing information in all countries' environmental protection and natural resource management laws
- Limiting, or at least further clarifying, the application of exemptions to requests for information (e.g. designations of information as a state secret) in line with principles of transparency and maximum disclosure.
- Adopting processes for facilitating access to information that is held by the private sector, both directly and via reporting to government agencies.

These efforts could be fostered by the development of a new regional agreement on access to information and transboundary information sharing. Such an agreement could take various forms but would benefit from the existing efforts in developing the Aarhus Convention and Escazú Agreement. Table 9 provides an indicative structure and possible contents for such an agreement (noting that this is preliminary only and would need to be subject to significant consultation and further development).

There would be a myriad of benefits from such an agreement including the following:

- It would be an explicit demonstration of the Lower Mekong countries' readiness to translate their commitments to the right to access information into tangible legal protections, providing detailed guidance in the absence of clear domestic arrangements.
- Regional approaches to access to information could remove any perceived justification for constraining access rights to citizens, and provide a platform for clarifying and strengthening broader accessibility arrangements.
- Regional solidarity and assistance can help garner support among diverse stakeholders for domestic legal reforms to implement the agreement.

- Regional arrangements for information sharing and consistency in access to information arrangements will help improve transboundary environmental outcomes and natural resource governance.
- It could incorporate, or be developed in parallel to, guidelines for the private sector and international finance institutions on making information accessible (drawing upon the ADB Access to Information Policy).
- It would complement other existing regional agreements on transboundary environmental management.
- It could readily be developed either for the Lower Mekong countries or for all of ASEAN (which would have the benefit of alignment with other ASEAN agreements and the ASEAN Human Rights Declaration).
- Its discussion provides a platform for potential expansion to cover the other interrelated procedural human rights—public participation in decision-making and access to justice—that are critical to effective environmental governance and the achievement of the right to a safe, clean, healthy and sustainable environment.

A collaborative process involving representatives of the region’s governments and civil society organizations, along with key regional bodies including the ASEAN Intergovernmental Commission on Human Rights, could be initiated with a series of workshops and forums to explore the possible approaches to developing such a framework agreement. Such a participatory approach would be a further demonstration of the region’s commitment to the principles of access to information.

Table 9: Indicative structure and potential contents for a possible regional agreement on access to information

Section	Potential contents
Recognitions	<ul style="list-style-type: none"> <li>• The right to access information is important for right to a safe, clean, healthy and sustainable environment</li> <li>• The right to access information is a fundamental human right</li> </ul>
Definitions	<ul style="list-style-type: none"> <li>• Ensure broad, inclusive definition of “information” as it relates to environmental matters</li> </ul>
Principles	<ul style="list-style-type: none"> <li>• Access to information is a universal right not limited by citizenship or residency</li> <li>• Access to information includes matters of accessibility</li> <li>• Maximum disclosure through the presumption that all information is available</li> </ul>
Access to information	<ul style="list-style-type: none"> <li>• Covers proactive information disclosure and requests to access information</li> <li>• Covers access to information held by the private sector</li> <li>• Procedures for accessing information by people in vulnerable situations and people from varying backgrounds and circumstances</li> <li>• Clearly defined and limited grounds for refusing access to information – which may include redacting only parts of documents</li> <li>• Public interest test to be clearly defined and applied in considering whether to withhold information</li> <li>• Clearly defined and limited range of charges that may be imposed to cover costs of providing information</li> </ul>
Oversight and appeals	<ul style="list-style-type: none"> <li>• A defined agency should be responsible for ensuring access to information principles are followed and requests addressed</li> <li>• Rights and processes to appeal against decisions to deny access to information clearly articulated</li> </ul>
Capacity-building and regional cooperation	<ul style="list-style-type: none"> <li>• Regional information sharing arrangements</li> <li>• Transboundary notifications</li> <li>• Support for national and regional approaches to e-government and open data platforms</li> </ul>
Public participation in environmental decision-making and access to justice	<ul style="list-style-type: none"> <li>• An agreement could readily—and logically—be expanded to incorporate these two other inter-related procedural human rights central to good environmental governance, similar to the Aarhus Convention and Escazú Agreement.</li> </ul>

# ANNEX I

## STUDY METHODOLOGY

This study on rights and opportunities to access information to support improved environmental outcomes across the Greater Mekong Subregion (GMS) was undertaken by the Asian Research Institute for Environmental Law (ARIEL). The study was commissioned by WWF under the Mekong for the Future (MFF) program. MFF is funded by USAID designed to strengthen civil society’s ability to engage in natural resource governance in the Lower Mekong, including by improving their access to and understanding of environmental data from public and private actors.

ARIEL prepared the study based on desktop research undertaken by researchers from across Asia-Pacific including within the GMS. Official English translations of laws were used where available. In other cases, a mix of unofficial translations and arranged translations were relied upon. Other publications were relied upon to verify the most up-to-date laws were used and corroborate the authors’ understanding of legal contexts. A draft version of the report was distributed to WWF country offices in the GMS to corroborate findings.

While all efforts were made by the authors to ensure the accuracy of the information presented in this report, ARIEL acknowledges that at times unofficial translations of legal texts may result in differences in interpretation in some instances.



The Mekong Irrawaddy Dolphin (*Orcaella brevirostris*) a proud symbol of the Mekong River and its biodiversity was taken in the Mekong River between Kratie town and Lao border. © Gerry Ryan / WWF-Greater Mekong

## ANNEX 2

### Extract from: Guidelines for the development of national legislation on access to information, public participation and access to justice in environmental matters

#### I. ACCESS TO INFORMATION

##### Guideline 1

Any natural or legal person should have affordable, effective and timely access to environmental information held by public authorities upon request (subject to guideline 3), without having to prove a legal or other interest.

##### Guideline 2

Environmental information in the public domain should include, among other things, information about environmental quality, environmental impacts on health and factors that influence them, in addition to information about legislation and policy, and advice about how to obtain information.

##### Guideline 3

States should clearly define in their law the specific grounds on which a request for environmental information can be refused. The grounds for refusal are to be interpreted narrowly, taking into account the public interest served by disclosure.

##### Guideline 4

States should ensure that their competent public authorities regularly collect and update relevant environmental information, including information on environmental performance and compliance by operators of activities potentially affecting the environment. To that end, States should establish relevant systems to ensure an adequate flow of information about proposed and existing activities that may significantly affect the environment.

##### Guideline 5

States should periodically prepare and disseminate at reasonable intervals up-to-date information on the state of the environment, including information on its quality and on pressures on the environment.

##### Guideline 6

In the event of an imminent threat of harm to human health or the environment, States should ensure that all information that would enable the public to take measures to prevent such harm is disseminated immediately.

##### Guideline 7

States should provide means for and encourage effective capacity-building, both among public authorities and the public, to facilitate effective access to environmental information.

## ANNEX 3

Definition of “environmental information” in the Aarhus Convention

*“Environmental information” means any information in written, visual, aural, electronic or any other material form on:*

- a. The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;*
- b. Factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above, and cost-benefit and other economic analyses and assumptions used in environmental decision-making;*
- c. The state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in subparagraph (b) above.*

Definition of “environmental information” in the Escazu Agreement:

*“Environmental information” means any information that is written, visual, audio, and electronic, or recorded in any other format, regarding the environment and its elements and natural resources, including information related to environmental risks, and any possible adverse impacts affecting or likely to affect the environment and health, as well as to environmental protection and management;*



View of the sunset over Tram Chim National Park from one of the guard tower. © Thomas Cristofolletti / WWF-US

# ANNEX 4

## Extracts of Lower Mekong country constitutional provisions on rights to access information, to a clean environment and to freedom of expression

### CAMBODIA (1993)

Right to...	Constitutional provision/s
Access to information	<b>Article 41</b> Khmer citizens shall have freedom of expression of their ideas, freedom of information, freedom of publication and freedom of assembly. No one shall exercise these rights to infringe upon the honor of others, or to affect the good customs of society, public order and national security. The regime of the media shall be determined by law.
Clean environment	<b>Article 59</b> The State shall protect the environment and the balance of natural resources and establish a precise plan for the management of land, water, airspace, wind, geology, ecological systems, mines, oil and gas, rocks and sand, gems, forests and forestry products, wildlife, fish and aquatic resources.
Freedom of expression	<b>Article 41</b> Khmer citizens shall have freedom of expression of their ideas, freedom of information, freedom of publication and freedom of assembly. No one shall exercise these rights to infringe upon the honor of others, or to affect the good customs of society, public order and national security. The regime of the media shall be determined by law.

### LAO PDR (1991)

Right to...	Constitutional provision/s
Access to information	<b>N/A</b>
Clean environment	<b>Article 19 (Amended)</b> The State promotes the protection and restoration of the environment which has been destroyed and degraded to develop it so that it may become abundant and sustainable. All organizations and citizens must protect and preserve the bio-diversity and use natural resources in line with the direction of ensuring sustainability
Freedom of expression	<b>Article 44</b> Lao citizens have the right and freedom of speech, press and assembly; and have the right to set up associations and to stage demonstrations which are not contrary to the laws.

### MYANMAR (2008)

Right to...	Constitutional provision/s
Access to information	<b>N/A</b>
Clean environment	<b>45.</b> The Union shall protect and conserve natural environment. <b>390.</b> Every citizen has the duty to assist the Union in carrying out the following matters: a. preservation and safeguarding of cultural heritage; b. environmental conservation; c. striving for development of human resources; d. protection and preservation of public property.
Freedom of expression	<b>354.</b> Every citizen shall be at liberty in the exercise of the following rights, if not contrary to the laws, enacted for Union security, prevalence of law and order, community peace and tranquility or public order and morality: a. to express and publish freely their convictions and opinions; b. to assemble peacefully without arms and holding procession; c. to form associations and organizations; d. to develop their language, literature, culture they cherish, religion they profess, and customs without prejudice to the relations between one national race and another or among national races and to other faiths.

### THAILAND (2017)

Right to...	Constitutional provision/s
Access to information	<b>Article 41</b> A person and community shall have the right to: 1. be informed and have access to public data or information in possession of a State agency as provided by law; 2. present a petition to a State agency and be informed of the result of its consideration in due time; 3. take legal action against a State agency as a result of an act or omission of a government official, official or employee of the State agency.  <b>Section 58</b> In regard to any undertaking by the State or that the State will permit any person to carry out, if such undertaking may severely affect the natural resources, environmental quality, health, sanitation, quality of life or any other essential interests of the people or community or environment, the State shall undertake to study and assess the impact on environmental quality and health of the people or community and shall arrange a public hearing of relevant stakeholders, people and communities in advance in order to take them into consideration for the implementation or granting of permission as provided by the law. A person and community shall have the rights to receive information, explanation and reasons from a State agency prior to the implementation or granting of permission under paragraph one. In the implementation or granting of permission under paragraph one, the State shall take precautions to minimise the impact on people, community, environment, and biodiversity and shall undertake to remedy the grievance or damage for the affected people or community in a fair manner without delay.  <b>Section 59</b> The State shall disclose any public data or information in the possession of a State agency, which is not related to the security of the State or government confidentiality as provided by law, and shall ensure that the public can conveniently access such data or information.

Clean environment	<p><b>Section 43</b> A person and community shall have the right to:</p> <ol style="list-style-type: none"> <li>1. ...</li> <li>2. manage, maintain and utilise natural resources, environment and biodiversity in a balanced and sustainable manner, in accordance with the procedures as provided by law;</li> </ol>
	<p><b>Section 57</b> The State shall:</p> <ol style="list-style-type: none"> <li>1. ...</li> <li>2. conserve, protect, maintain, restore, manage and use or arrange for utilisation of natural resources, environment and biodiversity in a balanced and sustainable manner, provided that the relevant local people and local community shall be allowed to participate in and obtain the benefit from such undertaking as provided by law.</li> </ol>
	<p><b>Section 58</b> In regard to any undertaking by the State or that the State will permit any person to carry out, if such undertaking may severely affect the natural resources, environmental quality, health, sanitation, quality of life or any other essential interests of the people or community or environment, the State shall undertake to study and assess the impact on environmental quality and health of the people or community and shall arrange a public hearing of relevant stakeholders, people and communities in advance in order to take them into consideration for the implementation or granting of permission as provided by the law. A person and community shall have the rights to receive information, explanation and reasons from a State agency prior to the implementation or granting of permission under paragraph one. In the implementation or granting of permission under paragraph one, the State shall take precautions to minimise the impact on people, community, environment, and biodiversity and shall undertake to remedy the grievance or damage for the affected people or community in a fair manner without delay.</p>
	<p><b>Section 72</b> The State should take actions relating to land, water resources and energy as follows:</p> <ol style="list-style-type: none"> <li>1. to plan the country's land use to be appropriate to the area conditions and potentials of the land in accordance with the principles of sustainable development;</li> <li>2. to undertake town planning at every level and to enforce such town planning efficiently, as well as to develop towns to prosper and meet the needs of the people in the area;</li> <li>3. to provide measures for distribution of landholding in order to thoroughly and fairly allow people to have land for making a living;</li> <li>4. to provide quality water resources which are sufficient for consumption by the people, including for agriculture, industry and other activities;</li> <li>5. to promote energy conservation and cost-effective use of energy, as well as to develop and support the production and use of alternative energy to enhance sustainable energy security.</li> </ol>

Freedom of expression	<p><b>Section 34</b> A person shall enjoy the liberty to express opinions, make speeches, write, print, publicise and express by other means. The restriction of such liberty shall not be imposed, except by virtue of the provisions of law specifically enacted for the purpose of maintaining the security of the State, protecting the rights or liberties of other persons, maintaining public order or good morals, or protecting the health of the people. Academic freedom shall be protected. However, the exercise of such freedom shall not be contrary to the duties of the Thai people or good morals, and shall respect and not obstruct the different views of another person.</p>
	<p><b>Section 43</b> A person and community shall have the right to:</p> <ol style="list-style-type: none"> <li>1. ...</li> <li>2. sign a joint petition to propose recommendations to a State agency to carry out any act which will benefit the people and community, or refrain from any act which will affect the peaceful living of the people or community, and be notified expeditiously of the result of the consideration thereof, provided that the State agency, in considering such recommendations, shall also permit the people relevant thereto to participate in the consideration process in accordance with the procedures as provided by law;</li> </ol>

## VIET NAM (1992)

Right to...	Constitutional provision/s
Access to information	<p><b>Article 25</b> The citizen shall enjoy the right to freedom of opinion and speech, freedom of the press, to access to information, to assemble, form associations and hold demonstrations. The practice of these rights shall be provided by the law.</p>
Clean environment	<p><b>Article 43</b> Every one has the right to live in fresh environment and has the duty to protect the environment.</p> <p><b>Article 50</b> The Socialist Republic of Vietnam constructs an independent and sovereign economy which shall promote its internal resources, internationally cooperate, and closely connect with cultural development; practices social progressiveness and equality; protects the environment; and exercises industrialization and modernization of the country</p> <p><b>Article 63</b> 1. The State has a policy to protect the environment; manages, and effectively and stably use natural resources; protects the nature and biodiversity; takes initiative in prevention and resistance against natural calamities and response to climate change. 2. The State encourages all acts of protection of the environment, development and use of new energy and recycled energy. 3. Organizations and individuals who cause environmental pollution, debilitate natural resources and weaken biodiversity shall be strictly dealt with and must be responsible for remedy and compensation for damage.</p>
Freedom of expression	<p><b>Article 25</b> The citizen shall enjoy the right to freedom of opinion and speech, freedom of the press, to access to information, to assemble, form associations and hold demonstrations. The practice of these rights shall be provided by the law.</p>

# REFERENCES

AF-SUPSPM Preparation Team (2019) *Environment and Social Impact Assessment (ESIA): Additional Financing Scaling-up Participatory Sustainable Forest Management Lao PDR*.

Article 19 (2019) *The Right to Information and Natural Resources in Myanmar*.

Asian Development Bank (2018) *Access to Information Policy*.

Asian Development Bank (2021) *Access to Information*, <https://www.adb.org/who-we-are/access-information/main>, last accessed 26 September 2021.

Burke, F. et al, *Vietnam: Major changes in the new Environmental Protection Law, 2021-06-21*, <https://www.globalcompliance.com/2021/06/21/vietnam-major-changes-in-the-new-environmental-protection-law-07062021/>, last accessed 26 September 2021.

Cambodia REDD+ Secretariat (2019) *First Summary of Information on Safeguards*.

Conference of the Parties, Adoption of the Paris Agreement, Dec. 12, 2015, U.N. Doc. FCCC/CP/2015/L.9/Rev/1 (Dec. 12, 2015).

European Commission (2021) *Aarhus Convention Implementation Report*.

FAO (2021) Legal assessment brief in the framework of sustainable land management, sustainable forest management and climate smart agriculture in Myanmar.

FAO (2012) *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*.

Open Development Mekong, Background, <https://opendevelopmentmekong.net/background/> (last accessed 21 October 2021).

Human Rights Council resolution, *The human right to a clean, healthy and sustainable environment*, 48/13, A/HRC/48/L.23/Rev.1 (8 October 2021), available from <https://undocs.org/A/HRC/RES/48/13>.

Human Rights Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, A/HRC/37/59 (24 January 2018), available at <https://digitallibrary.un.org/record/1474985?ln=en>.

IFC, *Water and Water Resources Law to Advance Sustainability in Lao PDR*, 2017-5-30, [https://www.ifc.org/wps/wcm/connect/industry\\_ext\\_content/ifc\\_external\\_corporate\\_site/hydro+advisory/news/press+releases/water+and+water+resources+law+to+advance+sustainability+in+lao+pdr](https://www.ifc.org/wps/wcm/connect/industry_ext_content/ifc_external_corporate_site/hydro+advisory/news/press+releases/water+and+water+resources+law+to+advance+sustainability+in+lao+pdr) (last accessed 27 October 2021).

Ingalls, M. et al (eds.) (2018). *State of Land in the Mekong Region*. Bern, Switzerland and Vientiane, Lao PDR: Centre for Development and Environment, University of Bern, and Mekong Region Land Governance, with Bern Open Publishing.

Lao PDR (2018) *Voluntary National Review on the Implementation of the 2030 Agenda for Sustainable Development*.

Lao PDR (2020) *1st Summary of Information on How Safeguards for REDD+ were addressed and respected by Lao People's Democratic Republic for the period 2015-2018*.

Luu Quoc Thai (2021) "Right to Access to Information and the Issue of Ensuring Environmental Security in Vietnam", *European Journal of Humanities and Social Sciences*, 1(4), DOI: <http://dx.doi.org/10.24018/ejsocial.2021.1.4.113>.

McCartney and Brunner (2021) "Improved water management is central to solving the water-energy-food trilemma in Lao PDR", *International Journal of Water Resources Development*, 37:4, 619-639, DOI: 10.1080/07900627.2020.1754175.

Mekong Partnership for the Environment (2017) *Guidelines on Public Participation in Environmental Impact Assessment in the Mekong Region*.

MRC, *Dialogue Partners*, <https://www.mrcmekong.org/about/mrc/dialogue-partners/>, last accessed 6 October 2021.

MRC, *Mekong Flood and Drought Forecasting*, <https://www.mrcmekong.org/>, last accessed 15 October 2021.

MRC, *Water quality conditions*, <https://portal.mrcmekong.org/monitoring/water-quality>, last accessed 15 October 2021.

Myanmar (2020) *First Summary of Information on How Safeguards For REDD+ Are Addressed and Respected in Myanmar*.

Myanmar (2016) *National Land Use Policy*.

Progress towards the Sustainable Development Goals: Report of the Secretary-General (E/2020/57) (28 April 2020).

Pulp Mills Case (Provisional Measures) (Argentina v. Uruguay) ICJ Reports 2006.

RFA's Vietnamese Service, *Vietnam Revises Environmental Protection Law But Enforcement a Concern*, 2020-11-18, <https://www.rfa.org/english/news/vietnam/environment-11182020123525.html>, last accessed 26 September 2021.

Spriner and Retana (2014), *Free, Prior and Informed Consent and REDD+: Guidelines and Resources*, WWF Working Paper.

Thailand (2020) *Thailand's Forest Reference Emission Level and Forest Reference Level for REDD+ Under the UNFCCC*.

Transparency International (2018), *Right To Information In Asia Pacific*.

UN (2020), *The future we want: Outcome document of the United Nations Conference on Sustainable Development*.

UNDESA, *The 17 Goals*, <https://sdgs.un.org/goals> (last accessed 21 September 2021).

UNECE, *Map of Parties*, <https://unece.org/environment-policy/public-participation/aarhus-convention/map-parties> (last accessed 10 October 2021).

UNEP (2015) *Putting Rio Principle 10 Into Action: An Implementation Guide*.

UNEP and ESCAP (2021) *An Assessment of Access to Information, Public Participation and Access to Justice in Environmental Decision-Making in Asia-Pacific*.

Vesna Kolar Planinšič (2016), Ministry of the Environment and Spatial Planning of the Republic of Slovenia, Various presentations to the Regional Technical Working Group on EIA.

Viet Nam (2018) *First Summary Of Information On How Safeguards For REDD+ Would Be Addressed And Respected In Viet Nam*.

WWF, *Greater Mekong*, <https://www.worldwildlife.org/places/greater-mekong> (last accessed 26 September 2021).

## LIST OF LEGISLATION

### CAMBODIA

*Land Law* (2001).

*Law on Environmental Protection and Natural Resource Management* (1996).

*Law on Fisheries* (2006).

*Law on Forestry* (2002).

*Law on Land Use Planning, Urbanization and Construction* (1994).

*Law on Mineral Resources Management and Exploitation* (2001).

*Law on Protected Areas* (2008).

*Law on Water Resources Management* (2007).

### LAO PDR

*Decree on Environmental Impact Assessment* (2019).

*Decree on the Implementation of the Land Law* (2008).

*Environmental Protection Law* (2012).

*Fisheries Law* (2009).

*Land Law (Amended)* (2019).

*Law on Water and Water Resources* (2017).

### MYANMAR

*Conservation of Water Resources and Rivers Law* (2006).

*Environmental Conservation Law* (2012).

*Environmental Conservation Rules, Notification No. 50 /2014* (2014).

*Farmland Law* (2012).

*Freshwater Fisheries Law* (1991).

*Law Relating to Aquaculture* (1989).

*Law Relating to the Fishing Rights of Foreign Fishing Vessels* (1989)

*Marine Fisheries Law* (1990).

*Myanmar Pearl Law* (1995).

*The Underground Water Act* (1930).

*Vacant, Fallow and Virgin Land Law* (2012).

*Vacant, Fallow and Virgin Lands Management Rules, Notification No. 1/2012*.

### THAILAND

*Constitution of Thailand* (2017).

*Enhancement and Conservation of the National Environmental Quality Act, B.E. 2535* (1992).

*Enhancement and Conservation of National Environmental Quality Act (No 2), B.E. 2561* (2018).

*Fisheries Act, B.E. 2558* (2015).

*Forest Act, B.E. 2484* (1941).

*Official Information Act, B.E. 2540 (1997).*

*Water Resources Act, B.E. 2561 (2018).*

## VIET NAM

*Decree on Clean Water Production, Supply and Consumption (2007).*

*Land Law (2013).*

*Law on Access to Information (2016).*

*Law on Complaints (2011).*

*Law on Environmental Protection (2020).*

*Law on Fisheries (2017).*

*Law on Water Resources (2012).*

## LIST OF INTERGOVERNMENTAL AGREEMENTS

*Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin (1995) (“The Mekong Agreement”).*

*ASEAN Human Rights Declaration (2012).*

*Convention on Environmental Impact Assessment in a Transboundary Context (1991)*

*International Covenant on Civil and Political Rights (1966).*

*Procedures for Notification, Prior Consultation and Agreement (2003), Mekong River Commission.*

*Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (2018) (“the Escazú Agreement”).*

*United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (1998) (“the Aarhus Convention”).*

*Universal Declaration of Human Rights (1948).*



A farmer using bamboo stick to navigate his boat inside the area of the National Park. © Thomas Cristofolletti / WWF-US