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THE ENVIRONMENTAL DEMOCRACY INDEX: AN updated score for Ukraine



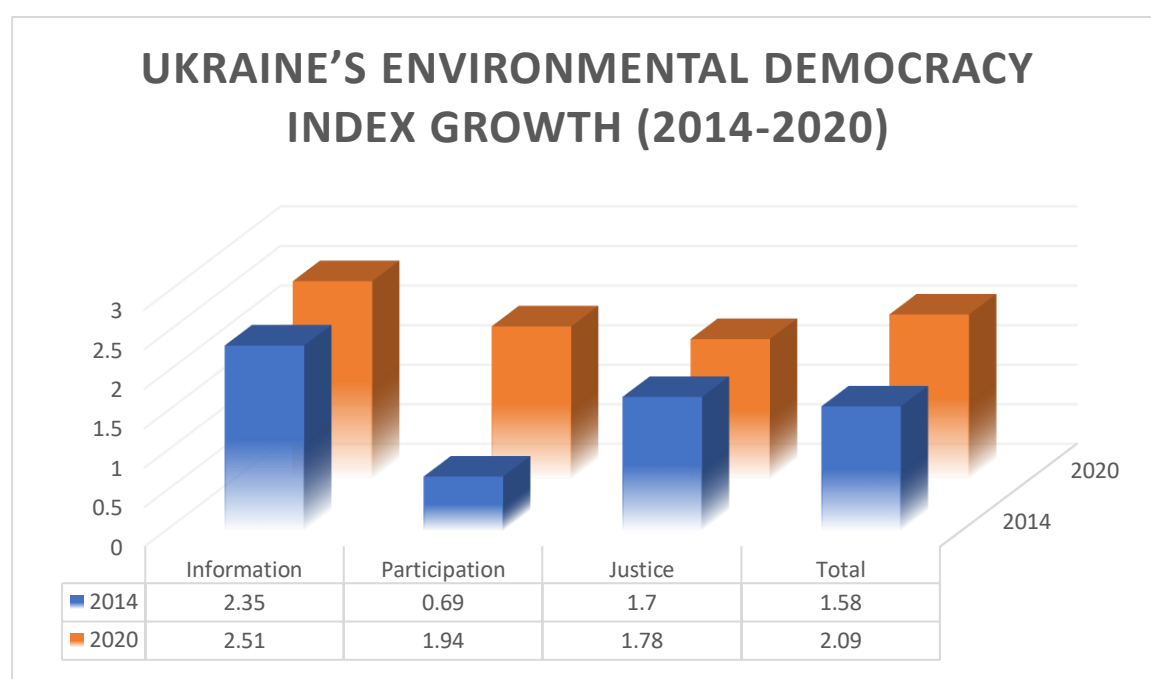
2021

THE ENVIRONMENTAL DEMOCRACY INDEX:
an updated score for Ukraine

Environment-People-Law, 2021

SUMMARY

Having re-evaluated Ukraine's Environmental Democracy Index, Environment-People-Law applauds to a tangible increase of political freedoms, general rule of law, and transparency in environmental matters that happened over the last six years in Ukraine.



Environmental democracy is enabled by the right and ability of the public to freely access relevant and timely information, provide input and scrutiny into decision making, and to challenge decisions made by public or private actors which may harm the environment or violate their rights before an accessible, independent, and fair legal authority. These rights – also referred to as procedural rights – provide a legal basis to enable transparency of environmental information, open and inclusive decision making, and the ability to challenge decisions or seek justice through fair and affordable legal mechanisms. When supported by willing and capable state institutions and exercised by civil society, they promote more informed, inclusive, and accountable decision making¹.

¹ Worker, J. and Lalanath De Silva. 2015. "The Environmental Democracy Index." Technical Note. Washington, D.C.: World Resources Institute. Available online at: www.environmentaldemocracyindex.org.

EDI METHODOLOGY

In 2014, World Resources Institute², in partnership with the Access Initiative³, calculated Environmental Democracy Index (EDI) to measure the extent and degree to which national laws in 70 countries promote environmental democracy rights. Ukraine was one of them, Environment-People-Law's lawyer – Yelyzaveta Aleksyeyeva participated in the project as a national researcher. In 2021 EPL decided to use WRI initial questionnaire and scoring methodology to measure the progress made by Ukraine over the period of time when the first EDI for Ukraine was calculated by the WRI project and December 31, 2020.

EDI is a unique index measuring the extent of rights to participate in environmental decision making, which has no analogue. EDI measures the degree to which countries have enacted legally binding rules that provide for environmental information collection and disclosure; public participation across a range of environmental decisions; and fair, affordable, and independent avenues for seeking justice and challenging decisions that impact the environment. In addition to the legal index, EDI contains a separate and supplemental set of indicators that provide key insights on whether environmental democracy is being manifested in practice.

EDI consists of 75 legal indicators developed under 23 of the UNEP Bali Guidelines that are concerned with the development and implementation of legislation. In addition to the legal indicators, EDI includes 24 supplemental indicators that assess whether there is evidence that environmental democracy is being implemented in practice.

The EDI legal indicators assess laws, constitutions, regulations and other legally binding, enforceable rules at the national level. The scope of the first EDI assessment specifically includes:

- The Constitution and interpretations of the Constitution by competent bodies (e.g. the Supreme Court or Constitutional Court)
- The main national freedom-of-information law, public participation law, and access to justice law (including access to administrative justice), if these exist

² <https://www.wri.org>

³ <https://accessinitiative.org>

- The apex environmental management law
- Laws and regulations governing pollution control (including air and water quality laws), environmental impact assessments, terrestrial biodiversity (protected areas and wildlife), extractive industries, and forests
- Laws governing the creation of environmental policies
- Interpretations of these laws through case law

The 24 practice indicators were scored using a variety of sources, but typically drawing from government agency websites where environmental quality data is released or environmental impact assessments may be made available. In the case that they are not available online, the researcher would contact the agency. The practice indicators are not comprehensive across the guidelines and their results do not affect the legal index scores. Rather they are presented as a supplemental set of indicators that provide key insights on whether certain environmental democracy practices can be observed. Because the practice indicators are based on information available online or at a government agency, these indicators are better able to detect the implementation of access to information than the implementation of public participation or access to justice.

Creating indicators from guidelines

As mentioned above, the Bali Guidelines contain more guidelines for the access to justice pillar than for access to information and public participation. Similarly, the number of EDI indicators that have been developed for each guideline varies depending on the substance of the Bali guideline. The indicators are designed to test only one discrete component of each guideline so as to create simple, clear metrics and limit subjectivity. As an example, see guideline 1 concerning environmental information on request:

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.

The guideline is calling for environmental information (1) to be made available on request to any person as well as legal entities (as opposed to just citizens), (2) to be affordable, (3) to be provided within a reasonable time frame, (4) to be provided by public authorities (which should be considered broadly), and (5) to not require a legal or other interest.

EDI therefore includes six legal indicators for this guideline—one which tests whether a law exists to provide environmental information on request and five that assess the qualities listed above. While this method increases the number of total indicators, it allows users to pinpoint provisions which need strengthening.

Legal indicator scoring

Nearly every indicator is accompanied by a guidance note, which typically consists of a short paragraph that defines any key terms, provides clarification, and offers illustrative examples. The legal indicators have four scoring options, ranging from zero (lowest) to three (highest). Each score is accompanied by scoring criteria which must be in place for that score to be defensible. In this way, subjectivity in scoring is limited, though not eliminated. In general, there are two types of indicators: (1) indicators that test the extent of provisions that promote environmental democracy across the range of types of environmental decision making and (2) indicators that test the strength of a given provision in providing an enforceable legal right for the public. A score of 3 means that the respective provision exemplifies accepted good practice. A score of 2 indicates that a majority – but not all – environmental decision making includes a certain provision, or indicates moderately strong provision. A score of 1 translates to a weaker provision that allows significant discretion to government agencies to fulfil these rights, or that a right only applies to a minority of environmental decision-making processes. A score of 0 indicates that the law is either silent or prohibits some aspect of procedural rights, depending on the indicator.

Practice Indicator Scoring

The practice indicators are scored qualitatively on a three point scale:

1. YES (practice is observed in full)
2. LIMITED (practice is observed irregularly or partially)
3. NO (no observation of practice)

Similar to the legal indicators, practice indicators are typically accompanied with guidance to limit subjectivity for the researcher. Unlike the legal indicators, the scores are simply presented as sums, and not averaged. There are 4 practice indicators under the transparency pillar, 7 under the participation pillar, and 13 under the justice pillar. However, as previously mentioned, several of the practice

indicators indirectly assess accessibility of information due to the method of research.

Creating the index scores

EDI scores are arithmetically averaged across indicators to guideline, across guidelines to pillar, and across pillars to generate the overall country score. This methodology weights the pillars equally but does not provide the same equal weighting for the guidelines and indicators. Specifically, the guidelines for information and participation are weighted more heavily than the guidelines for justice, as there are fewer of the latter. Rather than make value-laden decisions on whether certain guidelines were more fundamental than others and argue in favour of weighting one pillar over another, WRI chose to adhere closely to the structure of the UNEP Bali Guidelines and give each pillar equal weight.

Research and review process

All participating lawyers and environmental experts had at least five years of experience, though most were mid- or late-career lawyers from civil society, academia, government, and the private sector.

1. **NATIONAL RESEARCHER:** This role is held by a lawyer native to the country who is well-versed in laws and statutes surrounding environmental democracy. The researcher was responsible for scoring the indicators, providing the sources to justify the scores, and providing relevant comments to explain the score. After completing the initial scoring, the research is submitted to the National Reviewer. This role is typically filled by a public interest lawyer.
2. **NATIONAL REVIEWER:** This role is held by another legal expert from that country who is familiar with the relevant laws and statutes. This person was independent and unaffiliated with the first. This role was often filled by senior lawyers from academia, the public sector, or civil society.
3. **FIRST SECRETARIAT REVIEWER:** WRI staff held this role. The Secretariat reviewer reviews the researcher's scores and comments as well as the national
4. **FINAL SECRETARIAT REVIEW:** The TAI Secretariat staff also fills this role, although the final reviewer is never the same person as the secretariat reviewer for any given country. The final reviewer checks scoring and reviews for consistency and sends any final questions back to either the National Researcher or National Reviewer. WRI reserved the

right to alter scores if the evidence provided after multiple reviews did not support the score suggested by the researcher.

The first EDI assessments were conducted between April and September 2014.

Government engagement

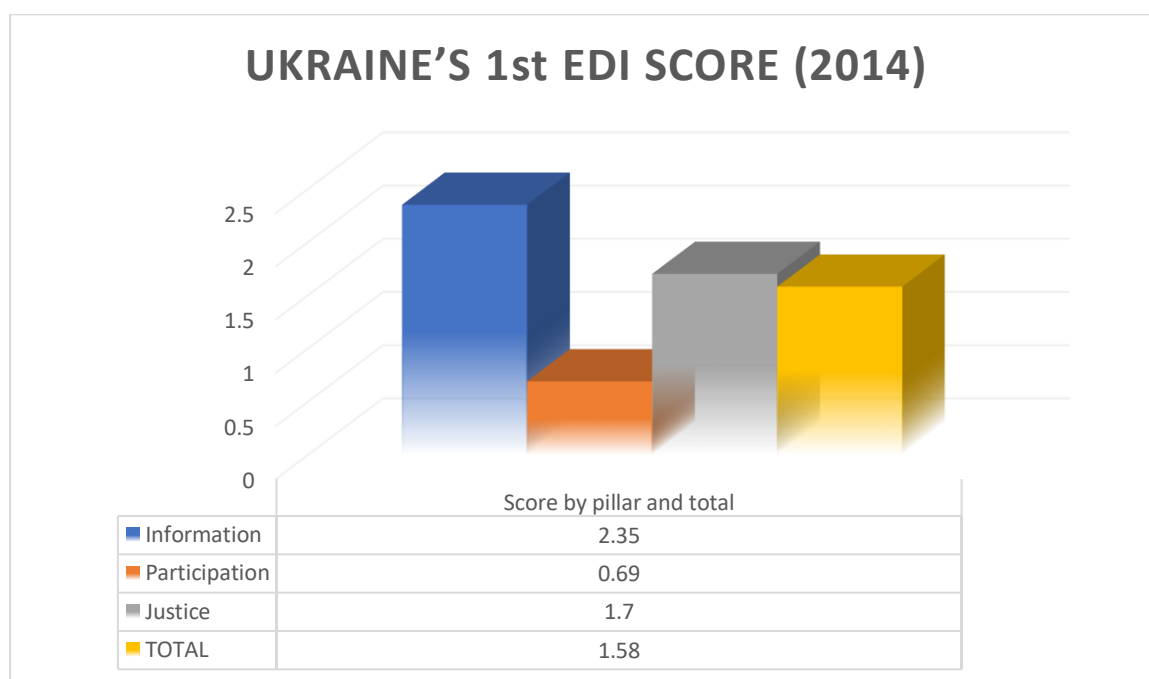
Following the research and review process, WRI analyzed results and sent summary analysis along with the full results to government ministries responsible for implementing environmental democracy laws. WRI provided government respondents with 60–90 days to respond to the results.

In the event of disagreement on indicator scores, WRI consults with the participating national lawyers for that country to review the critique. If the critique is substantive and demonstrates that the indicator merits a different score, the score may be altered until the deadline is reached. The deadline for submitting comments for the first EDI was July 15th, 2015.

Source: Worker, J. and Lalanath De Silva. 2015. "The Environmental Democracy Index." Technical Note. Washington, D.C.: World Resources Institute. Available online at: www.environmentaldemocracyindex.org.

UKRAINE’S FIRST EDI SCORE (2014)

In 2014 Ukraine scored very well on the Transparency pillar, well on the Justice pillar, and poorly on the Participation pillar. The law grants a clear right to information and requires the government to collect and publish a wide range of environmental information. For the Participation pillar, however, the law provides few opportunities for members of the public to adequately participate in the process of environmental decision making, as comments can only be submitted once a proposal has been drafted, limiting the scope of the public’s influence. As for the Justice pillar, the public can challenge government and private-actor decisions that violate its environmental rights in court, but the law does not establish adequate mechanisms to ensure independence and impartiality of the courts. By addressing these issues, Ukraine could ensure public participation is provided at an early stage in the decision-making process and that review procedures are carried out in an unbiased manner.⁴

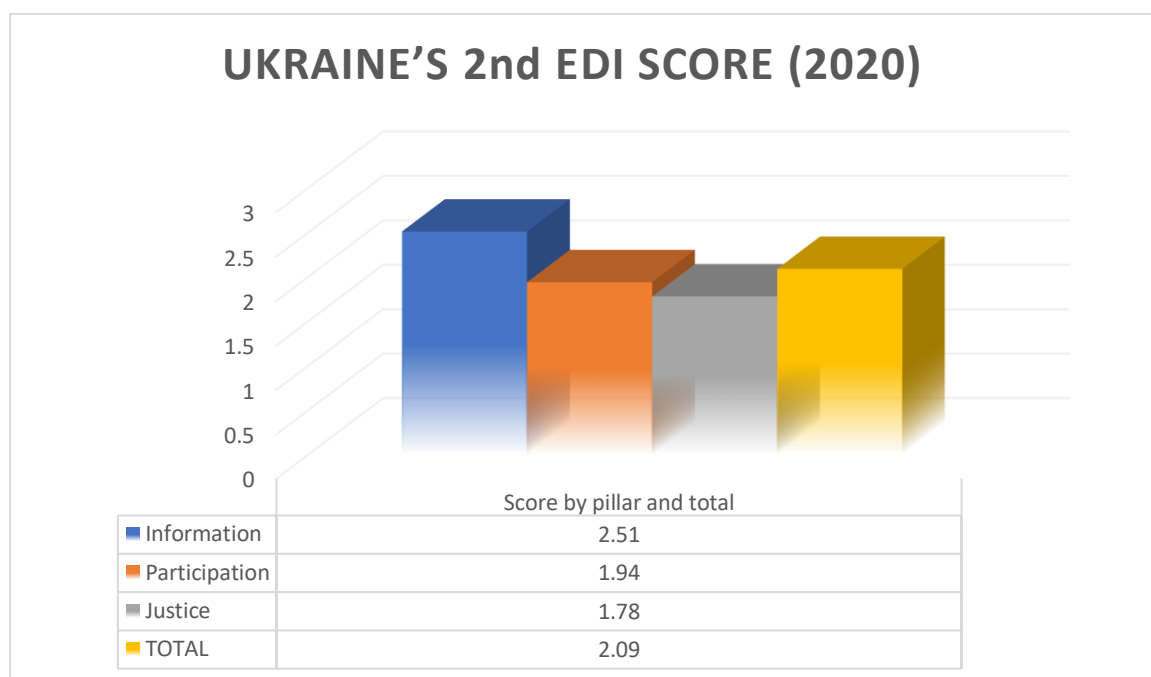


EDI full result data WRI 2014 (all countries) is available at <https://www.environmentaldemocracyindex.org/node/13967.html>
EDI full result data 2014 (Ukraine) is available at <http://epl.org.ua/en/about-us-posts/13961/>

⁴ <https://accessinitiative.org/network/country/ukraine>

UKRAINE'S SECOND EDI SCORE (2020)

EDI was planned to be reproduced every two years to benchmark national progress over time. Unfortunately, due to lack of funding WRI could not follow up with these plans. Given that there is no other available mean to track development of environmental democracy in Ukraine, EPL decided to use WRI initial questionnaire and scoring methodology (see above) to measure the progress made by Ukraine over the period of time when the first EDI for Ukraine was calculated by the WRI project and December 31, 2020). The difference, however, is that for the second round EPL carried out the research and scoring itself, with no participation of the outside reviewers.



In 2021 Environment-People-Law re-evaluated Ukraine's Environmental Democracy Index and found a tangible increase of political freedoms, general rule of law, and transparency in environmental matters that happened over the last six years in Ukraine.

Although both information and participation pillars scored higher in the second round, the progress was slight and directly connected to the increase in the participation pillar. The significant advance, indeed, happened in the area of public participation in environmental decision-making. That became possible due

to a successful implementation of environmental assessments reform in 2017-2018. The laws of Ukraine *On Environmental Impact Assessment* and *On strategic environmental assessment* allowed the score on participation pillar to increase by 26 % from 0,69 to 1,47 (out of 3 max).

EDI full result data 2014 (Ukraine) is [available at](#)

EDI full result data 2020 (Ukraine) is [available at](#)

EDI score data 2014 and 2020 (Ukraine) is [available at](#)

CONCLUSIONS

EDI is a unique index measuring the extent of rights to participate in environmental decision making, which has no analogue. EDI measures the degree to which countries have enacted legally binding rules and adopted practices that provide for environmental information collection and disclosure; public participation across a range of environmental decisions; and fair, affordable, and independent avenues for seeking justice and challenging decisions that impact the environment. EDI is a great tool to track the progress made by Ukraine in developing environmental democracy mechanisms.

Having re-evaluated Ukraine's Environmental Democracy Index, Environment-People-Law confirms a tangible increase of political freedoms, general rule of law, and transparency in environmental matters that happened over the last six years in Ukraine.

Although both information and participation pillars scored higher in the second round, the progress was slight and directly connected to the changes in the participation pillar. The significant advance happened in the area of public participation in environmental decision-making. That became possible due to a successful implementation of environmental assessments reform in 2017-2018. The laws of Ukraine *On Environmental Impact Assessment* and *On strategic environmental assessment* allowed the score on participation pillar to increase by 26 % from 0,69 to 1,47 (out of 3 max).

The total EDI score in the second cycle increased by 17 % from 1,58 to 2,09 (out of 3 max). There is however still room for further improvement. In the years to come due to the EU association processes Ukraine will continue to actively develop environmental policy and legislation, of which environmental democracy mechanisms constitute a significant part. Environment-People-Law is intended to use EDI in the future to measure this progress.