

**Access to information, participation, and
justice for environmental issues in Chile:
How much have we advanced?**

Access to information, participation and justice for environmental issues in Chile: How much have we progressed? – Executive Summary

CDA - CODESOSUR/SINERGIAS
PARTICIPA – RIDES

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This summary presents the principal results of the project “The state of access to environmental information, participation and justice in Chile,” developed by the National Coalition for the Chile Access Initiative, made up of the Center of Environmental Law of the University of Chile Law School (CDA), the Corporation for Sustainable Development of the Southern Network of Sustainable Development (CODESOSUR-SINERGIAS)¹, Corporación PARTICIPA, and Recursos e Investigación para el Desarrollo Sustentable (RIDES), between May 2004 and March 2005. The complete study is available on the websites of the executor organizations.

This project was done in the framework of a regional initiative that was carried out simultaneously in seven countries in Latin America (Chile, Bolivia, Costa Rica, Ecuador, El Salvador, Peru and Mexico). Its objective was to learn about the current state of access to information, participation and justice in different countries in Latin America through a common methodological framework created by the Access Initiative, thus providing an independent evaluation of the degree of progress on the implementation in the region of Principle 10 of the Declaration of Rio.

The project was financed by the Global Opportunities Fund of the Foreign and Commonwealth Office of Great Britain, through the British Embassy in Mexico. Contributions for specific activities were also

made by the Access Initiative and by Principle 10 (PP10).

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INTRODUCTION

Inspired by the Rio Summit, a group of non-governmental organizations from various parts of the world created the Access Initiative (TAI) in order to drive the implementation of commitments related to access to information, participation and justice in decision-making for the environment (Principle 10 of the Rio Declaration). Since its creation, TAI has grown significantly and currently has 32 member organizations in Latin America.

TAI developed a methodology for evaluating to what extent countries have fulfilled their commitments in the legal framework of rights to access, dissemination of information, participatory practices, access to justice and citizens' access to decision making.

Between 2004 and 2005, thanks to the support of the Global Opportunities Fund of the British Foreign and Commonwealth Office through the British Embassy in Mexico, the methodology developed by TAI was applied simultaneously to seven countries in Latin America. This summary presents the principal results found and recommendations made as a result of the experience in Chile².

One important aspect of this initiative was the advisory group that was created, which was a part of the evaluation in Chile throughout the project. The advisory group, which was made up of eight representatives from various social sectors, contributed its experience and knowledge to the investigation, reviewing the reports prepared. We would like to take this opportunity to thank the group for the important work that it did.

This reports represents an endeavor of civil society to take an independent look at the current situation of access to information, participation and justice on environmental issues in Chile. The goal is to help identify good practices on the issue which can be replicated in other sectors and countries as well as areas for improvement.

1.2 ON THE METHODOLOGY

The methodology applied was designed by the TAI team and consists of a series of performance indicators that allow the evaluation of the legal framework and the level of implementation of rights to access to information, participation and justice in environmental issues. The results generated can be classified as Weak (0-32.9%, in red); Intermediate (33-65.9%, in yellow) and Strong (66-100%, in green).

It is important to note that this methodology was designed to be applied in countries with various levels of economic and institutional development (there are now more than 30 countries). In areas where the application was to be universal, the indicators are very general and the methodology is sometimes insufficient or unable to accurately measure the particularities of each country. Notwithstanding this fact, we are convinced that this methodology yields relevant information for comparison across nations of the implementation of Principle 10 of the Rio Declaration at a national level and identification of key elements that can be a starting point for a deeper discussion

² For a complete version of the study, visit <http://www.iniciativadeacceso.org> or the websites of organizations that participated in the project.

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about the issue in each country.

The objective being to identify the particularities of each country, the methodology calls for the consultation of the greatest possible number of sources of information and for checking official information by consulting various independent sources. During this evaluation, personal, telephone and e-mail interviews were done, as well as document-based research (based mainly on the Internet). Available public information was also accessed and specific information was requested (which also allowed the evaluation of whether information was made available in response to requests from civil society). Information generated by private and state-run industries was also used.

A warning is necessary here. In the first place, the methodology evaluated a limited number of cases, in accordance with the minimum standards, which means that the conclusions cannot be generalized; rather, they can only contribute to the discussion of fulfillment of citizens' rights on environmental matters.

In addition, it is important to note that some of the methodological indicators take into account only the existence of binding legal regulation rather than measuring the degree to which it is implemented, thus producing a drastic increase in the final percentage of these cases simply by verifying their legal existence. Because of these difficulties, the methodology has been in constant revision since its application began in 2002. This experience, as well as others in the region, were incorporated into the process of creation of a new methodology, which was presented in 2006.

Next is presented a diagram of the principal results of the investigation in relation to the three access principles (information, participation, and justice) and capacity building in Chile.

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Access to Information			
	Quality	Accessibility	Average
General legal framework for supporting access to information	54%		
Information about environmental emergencies	51%	51%	51%
Information about regular monitoring	68%	68%	68%
Information about environmental conditions	90%	90%	90%
Information about facilities	63%	63%	63%
Access to Participation			
General legal framework for supporting participation	67%		
Participation in decisions at the political level	45%	63%	54%
Participation in decisions at the project level	70%	86%	78%
Access to Justice			
Access to justice in the refusal of right to information	81%		
Access to justice in the refusal of right to participation	59%		
Access to justice in cases of environmental damage	85%		
Strengthening of Abilities			
General legal framework for supporting the strengthening of abilities	76%		
Government programs for the strengthening of abilities	58%		
Government programs for the strengthening of public abilities	79%		

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2. CHILE IN THE REGION

In the framework of the Access Initiative Project in Latin America, the TAI evaluation was implemented in seven countries in the region. Although the goals of the methodology do not include establishing a ranking of fulfillment by country, as the methodology is based on case studies, it is possible to establish certain comparisons.

Regarding legal aspects, Chile, unlike the majority of the other countries studied, guaranteed neither access to information nor access to participation in the Constitution at the time the investigation was carried out. Specific normative frameworks that dealt with these issues, however, did exist. After the study had ended, a Constitutional Reform³ was promulgated which incorporated article 8 of the Carta Fundamental into the First Chapter about Bases de la Institucionalidad (institutional regulations), which, while it does not constitutionally guarantee the right to access, establishes the principle of publicity of “the acts and resolutions of agencies of the State, as well as their grounds and their procedures.”

In accordance with this reform, any legal regulation that declares information in the hands of the state to be secret or confidential, if it is not a law with a special quorum and does not establish the grounds for secrecy stated in the Constitution, is unconstitutional and has been revoked.

Regarding the existence of specific legislation on matters of access to environmental information, Chile received the worst score, whereas Mexico, El Salvador, Peru and Bolivia received high scores because of the development of the legal framework in these countries.

Chile appears to have an averagely developed legal framework, a product principally of the lack of clear criteria on what information is secret, in the case of access to information, and the fact that there are no guarantees for citizen participation in all aspects of decision-making (plans, programs, and policies, among others) in the case of access to participation.

The legal situation on the issue of capacity-building in Chile also faces a major obstacle compared with other countries, which is the fact that for civil society organizations to be recognized by law, they have to register as either foundations or corporations, the approval of which is at the discretion of the administrative authorities, in this case the president of the Republic. Nor does capacity-building have the financial support it needs, as there are few funds dedicated to it.

The only area observed in which Chile's legal framework was exemplary was in access to justice in cases of refusal of information or participation or of environmental damage. The results indicate that it is possible to file a legal action against an involved party, that who may file this legal action is firmly established, that the decisions that the courts make are binding and that in the case that legal reparations are denied or the decision is damaging, the claimant can appeal for a revision of the sentence by an independent tribunal that has the power to overturn the decision and obtain the reparations solicited. The only aspect that the methodology measured which Chile does not fulfill on the

³ Recently approved by the National Congress and published in the Official Newspaper on Friday, August 26, 2005 in Law No. 20.050.

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judicial issue is the existence of *friends of the court* (*amicus curiae*), people that are not part of the trial but can participate in it by presenting written documents, a legal concept which exists in all the other countries except for Peru.

With respect to the practical aspects, the situation of the region in general is characterized by a lack of fulfillment of legal obligations on the part of governmental institutions, which means that the community does not have effective access to information, nor does it participate in decision-making on environmental issues. In addition, the results indicate that it is common in the region for public officials to be ill-informed about principles of access.

In Chile, the process of formulation of public policy on the environment is relevant because no legal obligation to allow citizen participation exists. While it is true that in the processes observed, there was some type of participation, this occurred because of the discretion of the authorities. In addition, the public was not notified of development processes, nor about the final decision, nor was there any consultation so that the public could introduce modifications to specific concerns. In this category, Chile was given one of the lowest scores in the region.

Finally, it is worth highlighting two cases of positive practices that exist in Chile, which are interesting experiences at a regional level.

The first is the government's periodical creation of high-quality reports about general environmental conditions. These reports include various presentation tools such as statistics, graphs, and figures, among others. In addition, events have been held to publicize the reports.

The second is the process of participation in the framework of the SEIA (Sistema de Evaluación de Impacto Ambiental, or the System of Evaluation of Environmental Impact). In Chile, while there is a consensus that the system could be improved in both cases studied, the public was supplied with information about the comments received in the context of the consultation process. In the Resoluciones de Calificación Ambiental (Resolutions of Environmental Classification), the observations received were mentioned and the environmental authorities carried out a planned and systematic effort to consult populations that would potentially be affected, a process which did not occur in any other country.

3. ACCESS TO INFORMATION: THE FIRST STEP TOWARDS A PUBLIC RESPONSIBLE IN ENVIRONMENTAL ISSUES⁴

The evaluation of access to information on environmental matters in Chile measured principally – within a legal framework – a series of practical cases, such as environmental emergencies, systems of monitoring air and water quality, reports about the environment and reports on environmental fulfillment issued by industries.⁵

Next is presented a summary of the results found.

3.1 Legal Framework

The right to access to information, which applies to acts of the civil service as well as documents and information that they possess, arises from the process of modernization of the State. From 1990 until today, we have witnessed the promulgation of various regulations that indicate that the aforementioned access has become a reality. This process has been developed significantly during the last few years as a result of legal actions on irregularities that have come to the attention of the public in our country.

It is thus possible to confirm that Chile has recently begun to legally regulate access to information in circumstances in which other countries have been doing so for decades.

It is vital to understand what advances have been made in Chile's legislation and in issues of citizens' rights to access, as well as modifications that need to be made to rectify the deficiencies that still exist.

The results of this study confirm that, although the Constitution that was in force in Chile during the period of investigation did not explicitly guarantee access to information, there is special legislation that clearly regulates access to information that comes from public agencies, confirming the Principle of Transparency and Publicity as a general rule (Law 19.653). That is to say, apart from the exceptions established by law, administrative acts of the bodies of the State Administration and the documents that they use are public.

Among the shortcomings identified which should be rectified, the following stand out:

- Administration authorities are given the power to determine grounds for secrecy or confidentiality;
- The obligation to provide information applies only to entities of Executive Power, not to those of Judicial or Legislative Power;
- The opposition of a third party to presenting information does not have to be justified;
- While the importance of access to information on environmental issues is recognized, there is no specific legislation on this matter.

After the study was finished, a constitutional reform was promulgated which, among many other resolutions, incorporated a new Article 8 into the "Carta Fundamental", in the First

⁴ The indicators for evaluating access to information were applied by CODESOSUR-SINERGIAS and Coporación PARTICIPA

⁵ See Annex 2.

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Chapter of Institutional Regulations. While this does not constitutionally guarantee the right to access, it does establish the principle of publicity:

“The exercise of public functions requires strict complicity with the principle of integrity in all actions. The acts and resolutions of agencies of the State are public, as are the grounds and procedures that they use. Only a law with a special quorum can establish the confidentiality or secrecy of the aforementioned, when publicity affects the due fulfillment of the functions of said agencies, the rights of people, the security of the nation or the national interest.”

In accordance with the aforementioned, the principle of publicity of the acts and resolutions of State agencies has been introduced into Chile's institutional order at the highest level of the legal hierarchy.

Regarding the exceptions to the principle of publicity, it is established that a law with a special quorum will stipulate the grounds for an exception, consequently requiring a high degree of accordance. Allowing current governments or temporary parliamentary majorities to make the decision about the public or private nature of the information to the is thus avoided. Constitutional regulations limit to four the conditions in which the laws should consider establishing secrecy or confidentiality: when publicity affects due fulfillment of the functions of agencies of the State, the rights of the people, the security of the nation or the national interest. It was decided that the grounds for confidentiality that affected “due fulfillment of functions” of the agencies would be maintained, grounds established by Law No. 18.575, whose amplitude and discretion do not conform with the requisites of the American Convention on Human Rights endorsed in 1969, also known as the Pact of San José de Costa Rica and ratified by Chile in 1990. The law legitimizes the restrictions of rights based on national interest, which also ignores the recommendations that were made to the State on this matter by the Committee of Experts on the Mechanism for Follow-Up on Implementation of the Inter-American Convention against Corruption on February 6, 2004.

The Constitution requires all state agencies to provide information on their actions to the public, which can be understood as all the entities or persons governed by the public right. They are also prohibited from adding temporary regulation that validates legislation before it comes into effect. In addition, any legal regulation that declares information in the hands of the State secret or confidential, if it is not a law with a special quorum and does not establish the grounds for secrecy stated in the Constitution, is unconstitutional and has been repealed. The regulatory statute from Supreme Decree No. 26 of 2001 of the Ministerio Secretaría General de la Presidencia (in charge of facilitating and coordinating the development and fulfillment of the government's legislative agenda) is understood to be repealed. This affirms the Regulation of Secrecy and Confidentiality of the Acts and Documents of the Administration, as well as the administrative resolutions dictated in conformity to it that contradict constitutional regulations.

On August 2, 2005, the Ministerio Secretaría General de la Presidencia sent Notice No. 914 to the authorities, communicating the direction that would be taken in matters of transparency and publicity of the acts of the Public Administration. In the aforementioned notice, the new rules of constitutional status are made known, as is the procedure of the bill in Congress that modifies the regulations on access to information. The law that establishes the grounds for secrecy or confidentiality that will be applicable should be processed as quickly as possible. These causes, for their part, should be limited to

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internationally accepted cases: national defense and public security, individual right to privacy and due fulfillment of the functions of agencies.

The notice of the Government asked the agencies of the Administration to review immediately “the criteria applied and to define the management strategies and instruments that allow the strict observance of said principles, striving always for the most publicity and transparency possible.”

Finally, it should be noted that in December 2005, through notice No. 1,650 of the Secretaria General de la Presidencia, the government communicated that it would repeal the aforementioned Supreme Decree No. 26, in response to the representation on November 29, 2005 of the civil society organizations Pro Acceso, Corporación PARTICIPA and the Foro Chileno por la Libertad de Expresión (Chilean Forum for the Freedom of Expression).

The notice stated “that the regulation mentioned is found to be tacitly repealed by Article 8 of the Constitution,” but that it has been resolved to enact a Supreme Decree that makes a specific declaration on this circumstance.” The notice referred to specified that the decree that repealed D.S. No. 26 was being processed, “lacking only the endorsement of the President of the Republic.”

3.2 Practical Cases

The previous information indicates that a series of advances have been made in Chile regarding laws that regulate access to information. However, the results of the investigation show that in practice, these laws are not as effective as they should be, which means that citizens cannot count on effective access to public information.

One example is what happens during environmental emergencies. According to the results, although it is true that the procedures for information and coordination among various connected services⁶ are clearly established, in practice, these procedures do not always occur. This means that the affected community often does not have adequate and timely information during or after the emergency.

There are two main problems that present themselves on the matter of access to information. The first is related to the availability of information: i) the connected institutions consulted do not have information on the cases analyzed available to the visiting public and/or claimants; ii) the information requested does not exist; or iii) the public services consulted did not issue a response to any of the written requests that were made. One example of this is what happened in the subcategory “Monitoring Systems” in the case of Rural Potable Water in the Carretera Austral in the area of Puerto Montt, where the three aspects previously mentioned were observed in the various related public services consulted.

1. The majority of the public officials involved in the cases studied were unaware of the regulations that guarantee citizens the right to access public information.

⁶ A detailed description of each of these plans can be found at www.onemi.cl. There is a National Plan of Civil Protection, a Plan for Forest Fires, and a Plan for Dangerous Materials, among others.

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2. There is no practice of coordination among public entities making the information requested by civil society available.

The second problem is related to the quality of information from institutions. It is sometimes in a format too complex to be understood by the public, especially in rural areas, or is not relevant to the requests made or to the economic priorities of the areas studied. One example of this can be found in the results for the case of SINIA, in the Lakes Region, where much of the information in the system is too complex for individuals from rural areas to understand. In addition, it does not include specific information on the economic-productive and environmental priorities of the region.

Another fact which is relevant to the study is that much of the information that public services have is published on their websites, which given the economic weakness and the non-existent infrastructure of equipment and Internet connections in many rural areas of the country makes this a factor that limits access to information.

It should also be stated that for those communities or areas that are far from regional or provincial capitals it is more difficult to access information, which is concentrated in cities.

Despite the problems detected, it should be recognized that practices favorable to the access of information also exist, such as those of services which inform citizens about contact information and possible ways to request information (through the OIRS, the website, the ministerial offices, e-mail or telephone), as well as how to access specific environmental information. In addition, some of the public services selected replied within a reasonable period to the requests for environmental information (see the diagram in 5.2.1).

On the other hand, in relation to the creation and dissemination of reports about the conditions of the environment, the Country Report, State of the Environment in Chile for the years 1999 and 2002 and the sections of the National Institute of Statistics (INE) should be emphasized. Another example is the report on environmental recovery of the OCDE, created in 2004 and widely disseminated in 2005, which, while not material to this study, reports on the efforts of the government to disseminate information about the environmental conditions of the country.

One of the cases analyzed was the [air-monitoring system in Temuco](#), which earned a high score. This system provides daily comprehensive information about a wide set of parameters as well as creating weekly summaries.

The *accessibility* of the information that this system reports on was also highly evaluated. Although no specific requirement exists for the dissemination of information about air quality, since the monitoring system started functioning it has generated a large quantity of information, which is easily accessible and available to the entire population through the CONAMA website (there is also a series of studies about the air quality in the city on the site). In addition, when additional information was requested from COREMA about the days on which the norm had been exceeded, the information was provided within 48 hours in the form of a telephone call indicating the location of the information on the CONAMA website. The minimum response time for the research was two weeks.

4. PARTICIPATION IN DECISION-MAKING FOR THE ENVIRONMENTAL: PROGRESS AND CHALLENGES⁷

The evaluation of citizen participation in decision-making for the environments in Chile was primarily concentrated on the study of the legislative framework and cases of application at a political as well as project level⁸.

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Next are presented the principal conclusions from the research on access to participation.

4.1 Legal Framework

If citizen participation is defined as the direct intervention of civil-society actors in governmental decision-making, its history in the national political culture is not a long one. In global terms, although advisory forums are well-regulated through the Evaluation System of Environmental Impact (SEIA) at the level of project investments, this protection does not exist for State policy, programs, plans and other deeper processes of decision-making.

During the last few years, however, the issue has not only become important for environmental management but also emerged in national public management. It is appropriate to mention two efforts made in this matter during the administration of Ricardo Lagos, president of Chile from 2000-2006. The first is the creation of a presidential initiative on citizen participation. This initiative recognizes that this participation is a fundamental dimension of the democratic system and establishes that the public sector should generate information and establish forums and mechanisms to collect proposals from citizens. The second is the bill for a Citizen Participation Law submitted to Congress in June 2004, which proposes a new framework for the associations and citizen participation in public management. These efforts notwithstanding, there are still strong demands by various sectors to broaden the spaces for participation in decisions that affect the environment.

Current discussion focuses on the type of democracy that we want to build: one with an emphasis on representation and the delegation of governmental authority; that is to say, a participatory democracy, in which citizens have access to decision-making and the right to influence it in an informed and active manner. Limiting direct participation in the processes of evaluation of environmental impact (EIA) can entail certain risks.

Processes of participation in the EIA have become, for the proponents, one of the thorniest and most uncertain parts of the process of environmental license, failing to take advantage of the opportunities that this grant. In addition, the pressure that often builds up falls too heavily on the SEIA, and dissatisfaction with the expectations ends up discrediting participation processes and the Chilean environmental institution.

Con formato: Inglés (Estados Unidos)

4.2 Practical Cases

4.2.1 Access to participation at a political level

⁷ The indicators to evaluate access to participation on environmental matters were applied by Recursos e Investigación para el Desarrollo Sustentable (RIDES).

⁸ See Annex 2.

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There is no legal regulation in Chile of citizen participation at the level of policies, programs, plans and/or strategies. In general, this participation depends on the level of interest of the authorities in charge and the capacities of the equipment and resources available.⁹ In general, existing laws regulate closed processes or ones which only selectively involve sectors and groups. Among these, the private and academic sector and the growing incorporation of consultancies stand out as a mechanism for integrating external opinions and expertise into public sector decisions.

Due to the growing consciousness of the need for legitimacy in decision-making, there are some examples of increasing transparency. One example that stands out in this area is that for the three levels analyzed – policies, programs and legislation – the documents were already in public archives that were easy for the general public to find. This advance is due in large part to the drive the government is making for the implementation of websites for all the ministries and making the relations between citizens and the state more transparent and “friendly” on the issue of access to information.

It should be emphasized that in all the cases studied on the decision-making process, the processes were informal, and specific information about how the results of the participation would be considered was not given to the public in advance.

As a consequence, the final documents do not indicate that a participatory process was achieved, nor do they recognize the comments made during the public consultation processes.

According to those interviewed, the positive results of the effort to incorporate participation into decision-making include the following: it has been effective with respect to the internal planning of the institutions, generating changes in management and allowing visibility of their work. On this issue, incorporating various points of view gives greater legitimacy and backing to the processes. The cases evaluated are an interesting example of how, little by little, the State is beginning to open itself up to citizens and make a break with the solely internal mechanisms of review and implementation that have governed public policy in the past (see diagram).

One case that stands out is that of the creation of the National Policy of Fish Farmers (PNA). This established a National Commission for implementation and follow-up on the policy. The members of this commission, who had also supported the revision of the policy, expressed a high level of satisfaction with the way it had been conducted, as it had been an opportunity for them to have a real influence on decision-making. They also recognize that it is a unique initiative that should be repeated in the future and in other fields.

4.2.2 Access to participation at a project level

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⁹ There are some examples, such as the passing of regulations for environmental quality and emission and the enactment of plans of prevention and decontamination, in which the LBGMA confirms instances of citizen participation.

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In Chile, the Ley de Bases Generales del Medio Ambiente (LGBMA)¹⁰ turns over the responsibility for citizen participation processes at a project level in the framework of SEIA to CONAMA (Chile's environmental authority) or its regional representative (COREMA), depending on the case. In both cases analyzed, the environmental authorities made a planned and systematic effort to consult the potentially affected populations. Well-regulated consultation forums exist on this matter at the level of investment projects; however, deficiencies that should be corrected were also discovered.

One key issue for citizen participation in the framework of the SEIA is the length of the period for public commentary. Law 19.300 of Bases Generales del Medio Ambiente establishes 60 working days for the process of citizen participation. Although CONAMA makes various efforts during this period to assure the participation of involved actors, this is considered inadequate, as much for the communities that have participated in the process as for the authorities. In general, the majority of this time is used by communities and NGOs to inform themselves about the project, which limits the amount of time available for the formulation of observations and proposals.

Another very relevant issue is the restriction of citizen observations to a very brief period of the evaluation process of the EIA. The SEIA allows only participation related to the studies, and does not permit citizens to state their opinion on explanations, corrections or additional information requested by the authorities and responded to through an Addendum, even if these can include important changes to the studies initially presented.

Without a doubt, the issue of the results of the participation is what has caused the most frustration among the communities involved in the processes of citizen participation in the framework of the SEIA. One of the explanations for this can be found in the difference between the community's perception of the meaning of participation in the SEIA and that stated by the Ley de Bases del Medio Ambiente. By participating in the process, the community hopes to influence the decisions with their opinions. According to the law, however, the effective influence of the community on decisions made remains in the hands of CONAMA, which is in charge of considering the observations received.

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¹⁰ Law of general environmental regulation

5. ACCESS TO JUSTICE: A CRITICAL POINT ON THE FULFILMENT OF ENVIRONMENTAL RIGHTS IN CHILE¹¹

This category analyzes the ability of the legal framework and of national practices to ensure access to justice in environmental decision-making. On the basis of the three sub-categories of indicators of access to environmental justice, case studies are analyzed in which an appeal was made to a court, or its equivalent, to resolve a complaint of denial of access to environmental information or of denial of access to environmental participation and a case of environmental damage¹².

In each case that is studied, responses to questions about “legislation” and “practice” are sought. The questions related to the legal aspect are formulated in terms of what “should have happened” in the case. This formula seeks to investigate what the legal system ideally requires. The practical subjects explore what actually happened in each particular case.

Next are presented the principal conclusions of the investigation in relation to access to justice.

5.1 Denial of access to information

The case selected concerns the denial of access to information: specifically, the denial by the Corporación Nacional Forestal (CONAF)¹³ of Fundación TERRAM’s request for the documentation generated by a report filed by TERRAM about the lack of fulfillment of reforestation programs by four forestry companies that exploited native forest in the south of the country.

On June 12, 2001, the tribunal passed a sentence validating the complaint filed about access to information. On appeal, the sentence was confirmed by the Santiago Court of Appeals on December 11, 2001.

In the stage of fulfillment of the sentence the parties reached a settlement in which CONAF declares that the document called “Evaluación de la Oficina Provincial de Valdivia” does not exist and TERRAM states that it is satisfied with the information given.

The results indicate that the existing legislation in Chile specifically regulates the legal filing of complaints regarding access to information, in cases of denial of access to information by agencies of the State Administration. Chile’s laws identify who can present this demand, establishes that the decisions of the Justice Tribunals cannot be appealed and are binding, and states the possibility that the sentences passed by the Tribunal may be subject to later examination by another Tribunal higher in the hierarchy.

¹¹ The application of the indicators of access to environmental justice were applied by the Center for Environmental Law of the Law Faculty at the University of Chile (CDA)

¹² The application of indicators of access to environmental justice was an pilot initiative carried out for the first time in the countries of the Access Initiative, with the goal of making a preliminary evaluation and perfecting the indicators for later stages.

¹³ The National Forestry Service

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A legal action in accordance with the applicable regulation was filed by a representative of Fundación TERRAM against the responsible party, CONAF, through which obtaining reparations for the denial of access to information was a possibility.

The result of the process was a decision that satisfied the claimant. Although not all their expectations were met, the sentence of the tribunal met with the requisites established by law. Regarding publicity, in addition to the normal notification established by law, for wider dissemination of the contents of the sentence, the sentence was published in “El Mercurio,” a widely-read daily newspaper, as well as on the website of TERRAM.¹⁴

One of the first difficulties encountered, even before the indicators were applied, was in selecting the case. As previously stated, the regulation of access to information in Chile began only recently, which severely restricted the field of study. Because of these factors, there are few cases, and the ones that exist are led by non-governmental organizations that work with issues of access or public policy, which contract specialized lawyers and dedicate all their resources and effort to this. The practical indicators were generally highly evaluated; however, we do not know to what degree the fact that the claimant was a specialized NGO instead of an individual affected them.

Due to the nature of the right to access to information, this new jurisdictional legal action is proposed as a particularly suitable way to support an intervention strategy, available to individuals as well as to organizations that are affected by damage or the threat of damage, that seeks to obtain the fulfillment of environmental regulations, the support of a formal complaint, or induce authorities indifferent to their obligations to legal action.

This case poses the challenge of capacity-building for the public to take advantage of this tool that the law has awarded them.

The lack of knowledge of these materials on the part of the courts makes clear both the absence of courts that monitor the legal actions of the administration and the shortage of training of Chile's judges in these new type of proceedings.

It is important to mention once again that the new Constitutional Reforms, approved just recently, after the cases studied were over, have confirmed the principle of publicity of the acts and resolutions of agencies of the State¹⁵ in Chile's Carta Fundamental.

Con formato: Inglés (Estados Unidos)

5.2 Denial of access to participation

The case studied centers on the modification of part of the original route of the Costanera Norte highway, which was introduced during the process of evaluation of environmental impact, after the period for citizen participation. This prompted a legal action for constitutional protection introduced by legal officials and individuals to request the repeal of the environmental authorization of the project, arguing that their lawful right to participate in the process had been denied.

¹⁴ Both publications, however, were made at the request of TERRAM and not through the initiative of the court, as there is no legal requirement for them to do so, nor is it usual practice.

¹⁵ See page 8 of the access to information chapter.

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At the time the project was presented to the SEIA, the route of the Central Sector included a tunnel under Cerro San Cristóbal and an urban tunnel under the street Constitución in Providencia. This was the project that was submitted to the SEIA and was considered during the citizen participation process included in the Ley de Bases de Medio Ambiente No. 19.300. Within the legal time period for this process, between May 14, 1997 – the date of publication of the extract in the newspaper El Mercurio – and July 25, 1997, observations were received from companies, neighbor meetings and labor and student entities.

During the process of evaluation of environmental impact, however, and after the citizen participation process, the government agency responsible for the project incorporated a variation on the route into the proposal submitted to the SEIA. The difference was in the part that corresponded to the Central Sector, called “Bellavista Variation,” which would be constructed as a covered trench under the cross-street between the streets Carlos Casanueva and Purísima. Some of the neighbors affected by this new route felt that their right to participate in the process¹⁶ of citizen participation that had taken place earlier had been mocked.

There was no reason given for the decision, the argument being that negative environmental effects of the project had not been proven, and that the interest of citizens was strictly possessive, because business owners were among the claimants. In addition, it was stated that the law prevents modifications by the proponent, but not by the authorities.

It should be noted that the Ley de Bases del Medio Ambiente and the Regulation Decree of the SEIA give civil organizations and individuals whose comments have not been duly considered in the resolution of environmental classification the right to present an administrative appeal of complaint to a higher authority than the one that made the decision. However, these regulations do not allow a complaint to be made if citizen participation has been hindered by a modification to the project subsequent to the process of citizen participation, as in this case, which was undeniably an unforeseeable event.

Because of the results of the appeal, this case discouraged citizen participation in environmental management, lending strength to the perception that the environmental institution and system of evaluation of the environment focus more on protection of the investment made than conservation of the environment. In this particular case, this was aggravated by the highest courts' confirmation of the opinion of the administrative authorities, which was later found to have been based on a factual error.

The appeals stated that the attitude of the political authorities that manage the SEIA and allowed the change to the original project is worrisome. The change was concealed in Resolution 335-A98 of July 10, 1998, because of which COREMA of the Metropolitan Region favorably judged the project in the final act of the evaluation of environmental impact¹⁷.

¹⁶ The complete specifications, presentations and resolutions on the project can be found at http://www.e-seia.cl/portal/ficha/ficha_principal_web.php?idExpediente=1041

¹⁷ This Resolution of environmental quality establishes in its exposition: “4. That during the evaluation of environmental impact, the proponent incorporated a variation of the route in the Central Sector called “Bellavista Variation” which will be constructed in the form of a covered trench, under the cross-street between the streets Carlos Casanueva and Purísima (from kilometer 12,900 to km 15,800). This was considered a positive modification to the project considering the observations of the community and various

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It is notable that the authorities formally rejected the original formula, which turned out to be irrelevant as the proponent had already modified the project to introduce the “variation.” Thus, the resolution in number 2 of the resolution¹⁸ obviously was a contrivance to give the illegal act of modifying the project the appearance that the modification was an act of the authorities, which was not successful.

This is an early example of a bad practice that has turned into a deformation of the system. Proponents now opt to submit incomplete projects to the system, so that later, after the stage of citizen participation is over, they can introduce new aspects. They thus limit the effect that citizen participation has on the actual project¹⁹.

In Chile’s system of evaluation of environmental impact, the specific administrative resources available to contest the resolution of environmental classification are available only to the proponent to appeal against resolutions that reject or impose conditions on the projects. According to the resolution of the administrative agency, the responsible parties of the bills can appeal before the civil courts. This right, however, has not been granted to citizens, who can appeal to the superior of the official who passed the resolution, but not to repeal the decision, only to lodge a complaint if the citizen’s observations have not been “duly considered.”

As stated in the previous chapter, the participation of citizens in the management of the state generally is not a part of Chile’s culture, which means that normally neither authorities nor businesses inform citizens of relevant facts, except when they are required by a legal order to do so.

The participation of citizens in the SEIA is more formal and limited²⁰. Despite the fact that so few so few means of citizen participation in environment matters exist, citizens continue to invest time and resources to participate in a manner that may be useful to avoid the generation of the social conflicts of confrontation.

The results of this case show that the Courts of Justice are not attempting to ensure citizen participation in evaluation of environmental impact, limiting themselves in the majority of cases to confirming administrative criteria without getting into deeper questions.

State Agencies with environmental expertise with environmental advantages over the original route...”. The following is text from the resolution: “RESOLVED: 1. Favorable classification in project “Sistema Oriente-Poniente (Costanera Norte y Av. Kennedy), Variante Bellavista” (the Bellavista variation of the original plan), conditional to the completion of the requisites, requirements and obligations established in Considerations number 7, 8, 9, 10, 11 and the present Resolution. 2. Reject the original route of the project in the Central Sector because it will not be possible to build a tunnel under Cerro San Cristóbal nor an urban tunnel under the street Constitución in Providencia. 3. Confirm that the project “Sistema Oriente-Poniente (Costanera Norte y Av. Kennedy), Variante Bellavista” complies with current environmental regulations and, regarding the effects, characteristics and circumstances established in Article 11 of Law 19.300, means of mitigation, compensation and/or reparation have been established, together with environmental conditions.”

¹⁸ See previous note.

¹⁹ This was confirmed by the lawyer Fernando Dognac Rodríguez, who designed and executed the strategy of citizen coalition.

²⁰ See Meunier, Pamela, “La Participación Ciudadana en el Sistema de Evaluación de Impacto Ambiental Chileno”, en Facultad de Derecho Universidad de Chile, *Prevención y Solución de Conflictos Ambientales: Vías Administrativas, Jurisdiccionales y Alternativas, Segundas Jornadas de Derecho Ambiental, 1º al 3 de diciembre de 2004*, Lexis-Nexis, Santiago, 2004. Also see the chapter about Access to Participation in this report.

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This resistance of the courts to generally “replacing” the technical opinion of the administrative agencies has been repeated in other rulings on protection in environmental matters, and is also seen in other technical matters, making it clear that there will be a gap in the fundamental rights of people when they are affected by administrative authority.

Considering the aforementioned facts, we believe it necessary to reinforce administrative means of intervention in these issues and generate a debate about what the environment of the performance review of the administrative technical agencies by legal entities should be.

The case used for this study, then, has served to evaluate and prove the necessity of reinforcing access to justice in situations of denial of citizen participation in environmental matters, which is extremely important as much for society in general as for environmental management in Chile.

Regarding the indicators related to the impartiality of the court, although the law of Chile protects the independence of state powers, there is clear evidence of practices and problems that are often repeated and could mean a decrease in due impartiality, such as for example:

- The revision of the sentences of the Courts (in this case, the sentence of the Court of Appeals, which is the first example of this type of legal action) is sometimes done by lawyers who are members of the court. Member lawyers are lawyers external to the functions and structures of Judicial Power who are free to be employed outside of the court. Their role has been questioned recently and their elimination from the justice system discussed.
- The limitation of the independence of the courts: the defendant was the Ministry of Public Works and the National Commission of the Environment. The President of the Republic, head of the State Administration, plays a major role in the naming of the highest authorities of Judicial Power, selecting the ministers from among a group of three or five, and proposing their naming to Congress, which finally approves or rejects the motion. This can be a factor that eventually inhibits ministers from ruling against the authorities, although in all the orders on the issues rulings are made for and against governmental authorities and signs of independence are shown.

Regarding due process, however, in the current system of civil processing, the debate is not completely open to the public and the practice of the Supreme Court of the accounts and secret “arguments” is found to be drawn out, which takes away transparency from the process and prejudices the audience.

5.3 Environmental Damage

We believe it is relevant to relate the criteria used to select this case: a “responsibility action” brought forward by the State of Chile because of environmental damage to cultural heritage. After selecting some cases of protection of resources brought forward in relation to guarantee No. 8 of Article 9 of Chile’s Constitution, we arrived at the first criterion for selecting our case: we resolved that as there was a lack of rulings of protection of resources in environmental matters in Chile’s courts, it would be more interesting to apply the indicators to the development of a process in the framework of the legal action that the

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Ley Sobre Bases Generales del Medio Ambiente No. 19.300 grants in Title III to demand responsibility for environmental damage. It deals with a legal action that seeks to repair damaged environment, the understanding of reparation being “the action of replacing in the environment one or more of the components similar to what existed before the damage caused, or, in cases where this is not possible, reestablish its basic properties” (Article 2, letter s) of Law 19.300) without damage to the ordinary indemnity action.

This decision made, there were not many options given that, as it is a relatively recent development, jurisprudence is still new. We decided to choose one in which the sentence had recently been passed and the record was accessible to the team.

In the case chosen, whose record was kindly provided to us by the Environmental Unit of the State Defense Council, there were two precautions. The first was that the doctrine does not include socio-cultural elements in the concept of environment, and for this reason damage to archaeological sites does not constitute environmental damage in universal terms. Although the coordinator of this project and some of the team do not share this position, we decided to study the case since, while it was debatable whether or not the damage was environmental in nature, we were in the presence of a new legal action, conceived specifically to confront environmental damage, which has not been analyzed in comparison with the jurisprudence on the matter of protection resources. We thought that it would be feasible to study the elements evaluated by the indicators of Access to Justice, notwithstanding the fact that the damage requiring reparations was only more or less environmental. It was also an opportunity to identify difficulties and strengths that contribute to reinforcing application or carrying out the regulatory changes necessary for improvement.

The second precaution was that this type of case might not reflect the “average” of a comparable case, as the claimant was the State Defense Council, which possesses strong professional and material resources for appearing in court, whereas other parties affected by environmental damage are often much less protected. However, considering the other options available and the pros and cons of each one, we decided that we had made the right choice, considering the fact that the State Defense Council is the claimant in the legal action and has been a very important promoter of it.

The case evaluated consisted of a “responsibility action” for environmental damage brought by the State of Chile against Compañía Industrial Puerto Montt S.A. (the Puerto Montt Industrial Company) because of damage caused to two archaeological sites called Bahía Ilque I and Bahía Ilque II during preliminary work on the construction of a large industrial wood complex, known as “Proyecto Cascada,” in Bahía Ilque, located 20 km southwest of the city of Puerto Montt, in the Lakes region.

The first sentence, passed by the Second Installment Court of Puerto Montt, accepts the claim for reparations and compensation for damages and convicts the Compañía Industrial Puerto Montt. Both parties appealed, and the Puerto Montt Court of Appeals confirmed the sentence on April 2, 2004.

The first sentence passed states that the company must repair or compensate for the damage caused to the archaeological heritage of Chile, accepting the broader concept of “environment” contained in Article 2 Letter II of the Ley sobre Bases Generales del Medio Ambiente.

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The same law, in Article 54, grants a relatively broad legitimization of prosecution to the “responsibility action” for environmental damage, stating that “They the claimants of the environmental lawsuit ... and with the sole objective of obtaining the reparation of the environment, individuals or corporations, public or private, which have suffered damage or harm, the municipalities, for occurrences in their respective communities, and the State, through the State Defense Council.”

Regarding the process, it is not possible to state the opinions of the courts as doing so would indicate a degree of partiality or lack of objectivity. The legal action was processed in a timely fashion and the final result was obtained in time to resolve the principal worry of the parties that presented the case; the objective (compensation, restoration, and reparation of the damaged environment) was achieved without allowing worse damage to the environment because of the length of the trial process.

The trial process in Chile's civil courts is naturally slow because it deals with a pre-determined procedure which depends on the activities of the parties and written procedures. This case took close to four years to resolve, which is relatively quick given that there was an appeal.

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6. THE NEED FOR CAPACITY-BUILDING TO GUARANTEE THE ACCESS PRINCIPLES²¹

The evaluation of capacity-building²² in Chile was focused on the revision of the legal framework and on the study of state institutions and NGOs²³.

Next the principal conclusions of the investigation in relation to capacity-building are presented.

6.1 Legal Framework

Regarding Chile's legal framework, it can be concluded that the minimum grounds to guarantee the right to access in a democratic context are a given; that is to say, respect for the right to association and to live in a clean environment.

However, there are still shortcomings in the current regulations of the exercise of the right to association and in common rights of social organizations. In this sense, the system of granting the status of a corporation to foundations and corporations is slow, costly, and subject to various bureaucratic processes, discouraging the formation of new organizations.

In addition to previously mentioned fact, there is a lack of legal recognition of NGOs, a situation that could change if the bill currently being processed is approved. In this bill are considered associations and organizations of public interest, understood as "those legal persons without the intention to gain money that have as one of their essential goals the promotion of general interest through the prosecution of specific objectives that are civic, social assistance or related to promotion of constitutional rights or principles²⁴". These organizations will be recognized as such by the administration of the law; that is to say, by the fact of expressing free will before an authority, and will be incorporated into a Registry of Organizations of Public Interest. In addition, the organizations that opt not to seek legal standing as NGOs will be recognized as such.

Another problem identified for the strengthening of civil organizations is related to the lack of tax breaks or special financing mechanisms for NGOs. Taking this problem into account, the bill mentioned establishes the creation of a Fund for the Strengthening of Associations and Organizations of Public Interest for the financing of programs and projects, which will be created from public resources which come from international cooperation and private donations.

²¹ The indicators for evaluation of capacity-building were applied by Recursos e Investigación para el Desarrollo Sustentable (RIDES).

²² "Capacity-building" refers to governmental programs and activities to increase social, educational, technological, legal and institution infrastructure so that the public has access to decision-making that affects the environment. Improving this access necessarily implies making an internal effort of the public system as much as with and for citizens.

²³ Title II, Art. 27 of the Proyecto de Ley sobre Asociaciones y Participación Ciudadana en la Gestión Pública (Bill of Law on Associations and Citizen Participation in Public Management), 2004.

²⁴ Title II, Art. 27 of the Proyecto de Ley sobre Asociaciones y Participación Ciudadana en la Gestión Pública, 2004.

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The LGBMA also identified as a weakness the restrictive definition of the “public” that can take part in the participation processes in the framework of the EIAs. Broadening this definition would allow the collection of a greater range of opinions, expertise and knowledge when the time comes to analyze the possible risks of investment projects and seek better alternatives from a broader point of view.

6.2 Practical cases

6.2.1 Capacity-building of the government

In this subcategory there are some important efforts directed towards creating internal capacity for more responsible and transparent government performance in relation to citizens that stand out. However, the cases show that each service has measured unequally and that there is a clear lack of integration.

Although a Probiy Law exists as common ground, the general lack of knowledge about the Access Principles makes it difficult to adopt common measures and standards; for example, in preparing workers with a proactive focus. One major problem is the lack of information and total absence of preparation of legal officials.

The creation of specialized cases of citizen participation and information in MOP and CONAMA seem to be examples that are replicable in other state agencies.

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En cuanto a facilitar acceso a la información, se constató que los tres servicios analizados (CONAMA, Subpesca y MOPTT) informan a la ciudadanía sobre su mandato, punto de contacto y vía a través de la cual presentar un requerimiento (a través de las OIRS, ya sea a través del sitio Web, en las oficinas ministeriales, vía email o telefónicamente), así como también sobre cómo acceder a la información ambiental específicamente. Así mismo, los servicios públicos seleccionados contestaron dentro de un plazo prudente de tiempo las solicitudes de información ambiental requeridas. Es así como un requerimiento realizado a CONAMA fue resuelto el mismo día del envío y en un plazo de seis días en el caso de Subpesca. En el caso del MOPTT, si bien no se obtuvo respuesta a la solicitud vía correo electrónico, sí se recibió un llamado telefónico 28 días después.

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With respect to the facilitation of access to information, it was declared that the three services analyzed (CONAMA, Subpesca and MOPTT) inform citizens about their contact information and means of requesting information (through the OIRS, which means through the website, in ministerial offices, through e-mail or telephone), as well as about how to access specific environmental information. In addition, the public services selected answered the requests for environmental information within a reasonable period of time. In fact, a request made to CONAMA was answered the same day it was sent, and one made to Subpesca was answered within six days. In the case of MOPTT, although no response was made to the e-mail request, a phone call was received 28 days later.

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6.2.2 Capacity-building of the public

On this issue, the advance that has led to the creation of the OIRS in the public system, a bridge of information between citizens and the State, should be emphasized. One positive example is the relative rapidity with which responses were received to the requests sent to the three public services analyzed in the research.

The creation of websites of the various state powers (executive, legislative and judicial) also stands out. This tool has, in the case of CONAMA, allowed important information to be provided, such as information related to the spaces for participation that the environmental law grants, as well as providing information on how to present complaints to the administrative proceedings and decisions made by the authorities (although there is still a good deal to be done on this issue).

However, although the strategy of the websites is a good one, it is still very elitist. Computer technology is not available to everyone in Chile, as can be seen in the case of SINIA in the Lakes Region (see 2.2). Because of this fact, it is important to increase the mechanisms of access to information and not restrict them to Internet access.

Some advances have also been made on the issue of environmental education, especially in school curriculums and in a project aimed towards strengthening the role of schools in local environmental management. However, because environmental education is a cross-cutting objective for education in Chile, its inclusion remains at the discretion of the establishment.

Finally, while state financial support of NGOs and CSOs exists in Chile, this support is scarce. Moreover, it has decreased in the last few years because Fund of the Americas no longer exists. As in various aspects discussed in this reports, particularly in issues of participation, hopes are high for the Law for Citizen Participation that is currently being processed, though it is unfortunately not a priority in Chile's Congress.

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7. RECOMMENDATIONS

The situation of the Access Principles in Chile is currently at an intermediate stage, characterized by a series of positive aspects but also by a number of major obstacles.

7.1 Legal Framework

In access to information, participation and justice, as in capacity building for decision-making, initiatives intended to increase the legal regulations that guarantee access have been carried out. However, there are still several problems that need to be solved.

Access to information

- Establish legislation on specifically environmental matters of access to information.
- Establish by law the grounds for secrecy or confidentiality and increase the obligation of state powers to provide information.
- Redefine the established time period (48 hours) for public offices to provide the information requested.
- Establish the obligation to help the requesting party comprehend the information provided.

Access to participation

- Approve a legal framework that requires citizen participation in public management to be possible. Although the participation is well-regulated at the level of investment projects through the SEIA, this protection does not exist at the level of policies, plans, programs and strategies. This is a key issue in the bill of the citizen participation law submitted to Congress in June 2004, which has not yet been approved.
- Modify the Ley General de Bases del Medio Ambiente in the sense of expanding the range of people who are allowed to participate in the processes of participation in the framework of the EIAs. The aforementioned would allow a larger range of opinions, expertise and knowledge when it comes time to analyze the possible risks of the investment projects, as well as seeking better alternatives from a broader perspective.
- Increase the time currently allotted to citizen participation in the SEIA in order to allow the community to have a real influence on the course of the initiatives being evaluated.

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Access to Justice

- Access to justice on environmental issues is legally guaranteed in the Constitution. The law establishes a series of guarantees; however, the costs and timeliness of the processes should be reduced. Access would thus be guaranteed for lower-income groups as well.

Capacity building

- Facilitation of the system of awarding legal status to corporations and foundations, granting of legal recognition to NGOs as well as tax breaks or mechanisms for

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financing in order to strengthen their work is proposed. These issues are included in the bill of law on citizen participation that is currently in processing in Congress.

7.2 Practical cases

Although major obstacles remain for this legislation, the central problem related to access does not lie in a deficiency of the normative frameworks; rather, it appears in practice. The general panorama indicates that it is impossible to ensure that effective access to information, participation and/or justice exists in our country.

Access to information

- Guarantee that the current legislation on issues of access to information is fulfilled by the Public Services in a manner that ensures effective public access to information.
- Train public officials on issues of access to information in order to facilitate the aforementioned goal.
- Carry out efforts to provide information in a format comprehensible to all people.

Access to participation

- Increase the level of citizen participation in the formulation, execution and evaluation of plans and policies.
- Formalize the participation processes, which cannot depend exclusively on the interest and discretion of the authorities. For example, the creation of an instruction manual about basic aspects of citizen participation is proposed. This would make it possible to avoid the excessive pressure that now falls on the SEIA.
- Increase the time periods for formulating observations in the Studies of Environmental Impact, generating instances of citizen participation in early stages of the project cycle as well as in its later phases. Although this is promoted by CONAMA, its implementation should not remain subject to political willingness to comply.
- The investigation team proposes consideration in processes and mechanisms of citizen participation.
- Finally, specification for the community of the objectives and importance their opinions in the environmental evaluation is proposed. The frustrations of many citizens at not seeing their participation in the results of the consultation processes can thus be reduced.

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Access to Justice

- Reduce the costs of access to justice
- Train judges in environmental matters
- Influence a cultural change directed towards increasing impartiality in decisions of judges.

Capacity Building

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- Train public officials and judicial powers on the basic principles of access and the laws that guarantee them, as well as create an incentive for proactive behavior on this matter.
- Institutionalize the programs of environmental education and promote the approval of the bill of law that guarantees resources for civil society organizations.
- Continue to support the creation of websites of various powers of the state, without restricting the presentation of information to this method. In addition, it is suggested that the documentation centers of the COREMAS be strengthened and diversified and that environmental information be provided to the libraries of primary and secondary schools in order to make them into agencies of information for generations to come.
- Generate channels and mechanisms that allow strengthening of the OIRS, particularly those located in municipalities that are not regional or provincial capitals or located in large cities.

ANNEX 1: Advisory Board Members

- María Paulina Saball, Executive Director, National Environmental Commission, represented by Constance Nalegach, Executive Director's Office, National Environmental Commission
- Raúl Arteaga, Regional Director, National Environmental Commission²⁵
- Rodrigo Pizarro, Executive Director, Fundación TERRAM, represented by Paola Vasconi, Fundación TERRAM
- Ximena Silva, State Defense Council
- Ximena Abogabir, President, Fundación Casa de la Paz
- Roberto De Andrade, President of the Council, Minor Subsidies Program, United Nations Development Program
- Guillermo Acuña, United Nations Economic Commission for Latin America and the Caribbean

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²⁵ A few months after the investigation began, he was transferred to the national CONAMA in the position of head of evaluation and environmental follow-up.

ANNEX 2: Laws and Cases Studied

LAWS
<ul style="list-style-type: none"> • Constitution of the Republic of Chile of 1980 • Law N° 19.653, 1999, about Administrative Probity of the Agencies of the State Administration. • Decree N° 26 of the Ministerio Secretaría General de la Presidencia, 2001, which determines the documents and administrative acts that may be classified as secret or confidential. • Law N° 19.880, 2003, which established the basis for administrative procedures of the agencies of the State Administration. • Law N° 19.300, about Bases Generales del Medio Ambiente (general environmental regulations) • Código del Trabajo (work code) • Law N° 19.418 about meetings of neighbors – 1997 • Law N° 19.247 about donations for education – 1993 • Law N° 18.985 about donations for culture – 1990 • Bill of Law about citizen participation – 2004

CASES STUDIED		
CATEGORY	SUBCATEGORY	CASES
Information	Emergency	<ul style="list-style-type: none"> • The crash of a train transporting sulfuric acid from the company TRANSAP • Fuel emissions in the area of Panguipulli, in the Lakes Region
	Monitoring Systems	<ul style="list-style-type: none"> • Monitoring System of Air Quality in Temuco, Region IX • Monitoring of Agua Potable Rural, Carretera Austral, Ruta 7, Puerto Montt, Lakes Region
	Environmental Reports	<ul style="list-style-type: none"> • Country Report, State of the Environment in Chile 1999-2000 • National System of Environmental Information – SINIA, Lakes Region
	Industrial Information ²⁶	<ul style="list-style-type: none"> • Fundación Hernan Videla Lira de ENAMI Paipote (foundry) • CODELCO Salvador Division, Fundación de Potrerillos (foundry) Fundación y Refinería Ventanas, ENAMI (foundry and refinery) • Marine Harvest, Processing Plant, Chamiza • Salmenes Multiexport (salmon export), Quillaie Plant • Sociedad Pesquera Comercial Chaicas Ltda (commercial fishing company), White Fish and Salmon Processing Plant

²⁶ The TAI methodology included the evaluation of two types of reports: those of Fulfillment and those of Registry of Emissions and Transfer of Contaminants (RETC); however, for the study only the first type was evaluated, as the RETC reports were still not in force in Chile.

Acceso a la información, participación y justicia en temas ambientales en Chile: ¿Cuánto hemos avanzado?

Participation	Policy	<ul style="list-style-type: none"> • National Policy of Fish Farmers - Subpesca • Environmental Policy – MOPTT • Environmental Regulation for Fish Farmers – Subpesca • Citizen Participation Manual (Plan)– MOPTT
	Participation in Projects	<ul style="list-style-type: none"> • EIA Second Runway, Arturo Merino Benítez Airport • EIA Conversión Project to Gas Central Renca
Access to Justice	Negative Information	<ul style="list-style-type: none"> • Case of denial of access to information: CONAF operational plans
	Negative Participation	<ul style="list-style-type: none"> • Costanera Norte (highway) 1998
	Environmental Damage	<ul style="list-style-type: none"> • Damage to shells in “proyecto Cascada” (waterfall project)
Capacity Building ²⁷	Government programs to increase capacity	<ul style="list-style-type: none"> • Comisión Nacional del Medio Ambiente – CONAMA (national environmental commission) • Subsecretaría de Pesca (undersecretary of fishing) • Ministerio de Obras Públicas, Transportes y Telecomunicaciones (ministry of public works, transportation and telecommunication) • Juzgado de Policía Local de Punta Arenas (tribunal of the local police of Punta Arenas) • 2do Juzgado del Crimen de Puente Alto (second crime tribunal of Puente Alto)
	Governmental programs for strengthening of the public	<ul style="list-style-type: none"> • Comisión Nacional del Medio Ambiente – CONAMA (national environmental commission) • Subsecretaría de Pesca (undersecretary of fishing) • Ministerio de Obras Públicas, Transportes y Telecomunicaciones (ministry of public works, transportation and telecommunication) • Santa Rosa school • Salvador Allende school • ONG Fiscalía del Medio Ambiente – FIMA (fiscal NGO for the environment) • Fundación TERRAM

²⁷ In this category, the cases studied correspond to state institutions and NGOs.