

**FINAL REPORT
EXECUTIVE SUMMARY**

The State of Access to Information, Participation, and Environmental Justice in Ecuador

**July 2005
QUITO - ECUADOR**

INTRODUCTION

“Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”

Principle 10, **Rio Declaration on Environment and Development** (1992)

The Access Initiative Latin America in Ecuador seeks to evaluate the current state of access to information, participation, and justice in environmental decision-making. These principles work to promote transparency, anti-corruption efforts, accountability, and confidence in the relationship between citizenry and government. Nevertheless, an International Declaration that guarantees these rights in environmental issues is ineffective unless citizens are aware of and exercise these rights, demanding better practices of access.

To reach this end, The Ecuadorian Center for Environmental Law, CEDA, collaborating with Fundación Esquel and Coalición Acceso, is executing an evaluation of Principle 10 of the Rio Declaration in Ecuador.

As a national coalition, we seek to improve the policies that affect the environment and human life, establishing common practices in the implementation of these three access principles, by means of monitoring government efforts in capacity building.

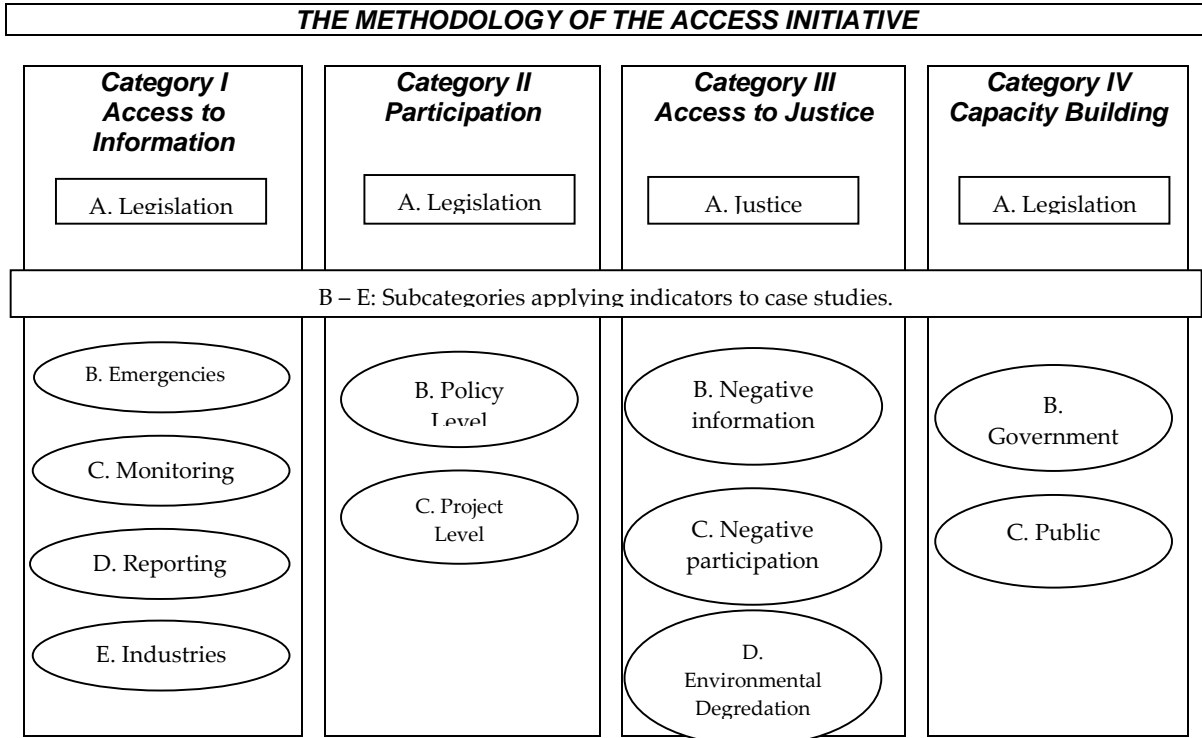
Civil society and government face a great challenge: to make use of and apply legislation, to follow procedures in an adequate manner, to make these experiences systematic, and to generate local knowledge and processes of access to information and participation that strengthen community action in favor of a healthy environment and better quality of life.

The results of this process allow us to develop clear, concrete, and effective proposals in order to promote the principles of access to environmental information in policy and national programs. We are sure that this process will strengthen the Law of Transparency and Access to Public Information recently approved in Ecuador.

I. METHODOLOGY

The methodology applied in this study was developed by The Access Initiative (TAI) and consists of a set of indicators. Response to these indicators allows the determination of strengths and weaknesses with regard to the existence and implementation of mechanisms that guarantee access to information, participation, and justice in environmental issues. This evaluation acts to review the efforts of the government to strengthen its own capacities and those of the general public.

The following scheme demonstrates the structure and elements of the methodology.



II. ACCESS TO ENVIRONMENTAL INFORMATION

Legal Framework

Ecuadorian law supports public access to information in general and environmental information in particular. Our Constitution establishes the fundamental principles, guarantees, and duties of citizens and extensively describes the fundamental, civil, political, economic, social, and cultural rights, among which the recognition of the right to the access to information. The same legal body, in the chapter of collective rights, in the section referring to the environment, assures the participation of the communities and civil society in all activities implemented by the state, through government entities that affect the environment. Thus, there exists a close relationship between the right to access to information and the right to participation.

In general, the Constitution recognizes the right to access to environmental information. However, the Law of Transparency and Access to Public Information develops and amplifies the protection of the right to information, establishing a judicial and administrative mechanism for various principles, such as access. The exception to the right of access to public information is that which is considered private.

In relation to the right of access to public environmental information, the Law of Environmental Management recognizes the right to be informed about any state institutional activity that has the potential to produce an environmental impact. This includes the right to formulate petitions. Hence, the party that creates environmental damage has the obligation to provide information.

Similarly, the Constitution provides for the overall right to access to information, but does not establish regulations or standards. Thus, the state and private institutions manage the information according to their own criteria. This has created a situation in which it is not possible to rely on current or complete information in cases involving prior consultation or in the process of accountability.

Emergencies

Case Studies:

Grand Scale Emergency: Papallacta Oil Spill

On April 8th, 2003 a section of the Trans-Ecuadorian Pipeline System (SOTE) ruptured at a distance of 4,000 meters from the Papallacta lagoon. As an effect of the spill, a great number of fish, endemic birds, livestock, and vegetation were exposed to oil. 25% of the potable water consumed by the capital city of Quito originates from the contaminated lagoon and adjoining rivers while another 25% comes from surrounding areas.

Media pressure led public authorities to release information; however, this information was incomplete. During the emergency, information was constantly open to the public upon request; nevertheless, a massive diffusion of this information on the part of state agencies did not exist, save a few press releases.

Small scale Emergency: the Bolivar Theater Fire

The Bolivar Theater is one of the most important cultural monuments in Quito's Historical Center. On August 8th, 1999 the theater burned for approximately four hours, damaging its entrance and main floor.

There is little information about this case. Studies that do exist are not circulated in any form and the information that is available exists due to the interest of the media and not due to any agency distribution of information. Even to identify a responsible agency was exceedingly difficult.

There was no follow-up investigation as the repair work was never completed. Thus, the quality of information after the emergency is rated 'weak.'

In general, there was no dissemination of information of an environmental nature regarding the emergency. Relevant agencies were identified; however, none of these had information relevant to the investigation. The information obtained addresses only the issue of reconstruction, for which the quality of response was not adequate. Nor were technical studies conducted. For these reasons, the rating of the access to information for this emergency is weak.

Monitoring Systems

Case Studies:

Air Quality in the Metropolitan District of Quito

Quito is the city with the poorest air quality in Ecuador due to excess of vehicular traffic and to deficiency in the monitoring of automobile emissions.

Air quality monitoring is the responsibility of the municipality, specifically of CORPAIRE. Qualitative criteria do not exist in a law to provide parameters of compliance. In regards to access to information, the information generated by the municipality of Quito is accessible and of quality.

Information that is available is analyzed with numerous variables. Access to information correlates to the extent of the public officials' authority: if the information is solicited from authorities that have local jurisdiction, such as municipalities, it is easier to obtain information. However, if the agency is broad in scope, such as a national ministry, the acquisition of information will be more difficult.

Water Quality in the Metropolitan District of Quito

Water quality control is the responsibility of the municipality of the Municipio del Distrito Metropolitano de Quito through the Empresa Metropolitana de Alcantarillado y Agua Potable de Quito (the municipal sewer agency).

There are indicators regarding water pollution that are published monthly on the internet. However, the small window for access to information and the low level of organization is made evident in attempting to contact these agencies. There was no adequate response to our request for information.

The information that is available is rated intermediate because while it is made available online, it is nevertheless, lacking in details regarding requirements for petition. As far as access, the rating is strong for its internet availability, but low for inaction of the public agents; thus, the overall rating is intermediate.

State of the Environment Reports

Case Studies:

This sub-category refers to the elaboration of reports on the State of the Environment, SOE, by the nations that participated in the initial processes of the UN Conference on Environment and Development. Unfortunately, Ecuador does not participate in the drafting of this report.

Industry Performance Reports

Case Studies:

AEC Ecuador, Petroecuador and Oxy

AEC Ecuador and Oxy are petroleum companies working in the excavation and extraction of oil that operate in all of the Americas, including Ecuador. Petroecuador is a state oil agency that works in coordination with private companies to extract, transport, and market oil.

There is no dissemination of information on the part of the organs of control. The Ministry of Energy and Mining website is complete and easily accessible by means of any internet search engine.

Nevertheless, the relevant reports are not available. Nor is the information about environmental performance catalogued in an intelligible or useful manner. In the same way, none of the oil companies provide relevant information, except for the AEC which offers access to reports once certain requirements are fulfilled.

Information in respect to the mandate on the diffusion of prohibited products or contaminants is found in none of the avenues of dissemination. For this, the rating earned is weak.

III. ACCESS TO PARTICIPATION:

Legal Framework

The Constitution of the Republic of Ecuador provides for the basic right of the collective to participate in decision-making processes and, additionally, Article 81 establishes that “every state-decision that has the potential to affect the environment should first take into account the opinions of the community, which is to be well informed. The law guarantees their participation.”

The Law of Environmental Management establishes the obligation of the state to create advisory groups to study and assess environmental impacts. The Law also establishes a guarantee of participation to the local authorities and to civil society in environmental processes and in actions that affect the environment, information, and public participation in general.

Therefore, although laws that regulate citizen participation in environmental decision-making are relatively new and authorities enforce them inadequately, we are able to count on constitutional regulations that guarantee the right of citizen participation in environmental decision-making.

Environmental decision-making on the national and sub-national levels regarding policies, strategies, plans, programs, and legislation

Case Studies:

The National Biodiversity Policy and Strategy

The National Biodiversity Policy and Strategy (PENB in Spanish) is a project implemented by the Ecuadorian Ministry of the Environment as a tool to promote sustainable management of the nation's vast biological diversity. The processes of PENB are amply participative, developed by means of workshops and all the sectors related to biodiversity. All decisions adopted were studied and worked through in discussion tables with the participation of the agriculture, livestock, fish, art, forest, export, oil, and social (including indigenous communities) sectors. As a result participants composed a comprehensive document that includes solutions and criteria that evolved at the discussion tables.

For this reason, in 70% of the indicators, PENB received a score of 100, which resulted in an average value of 82.14%. This value is considerable high and verifies that PENB followed the large majority of parameters to guarantee participation.

Conservation and Sustainable Management of Biodiversity Bill

The purpose of this bill is to combat the large legal void that exists in environmental law and to develop a legal framework that adequately protects biodiversity.

By means of workshops, the public, private, and social sector worked together to obtain a first draft of the Conservation and Sustainable Management of Biodiversity Bill. Once the Ministry of the Environment received the first draft, they submitted it for review of specialists to elaborate the final draft which passed the first round of congressional debates. Unfortunately, due to social and political instability, this law has not been approved as of the date of this publication.

It is possible to conclude that the Bill for the Conservation and Sustainable Management of Biodiversity has been a project that has recorded a high degree of participation during a process of more than ten years and that it was completed according to the parameters established by law and by the Constitution.

Province of Pichincha General Plan of Development

In the organization of a development plan of this magnitude, it is fundamental to incorporate all the relevant areas and possible actors. It is for this reason that the government of Pichincha included areas such as education, recreation, culture, physical culture, governability, transparency, public safety, the media, youth, and the family. It also incorporated the sectors of agriculture, tourism, energy, industry and commerce, science and technology, small business, and art. Finally, the environment, transport and communication, land use and housing, and infrastructure sectors were also included.

The participation of the province was guaranteed in the open processes of discussion and working tables. All of the proposals were discussed, all of the actors were incorporated, and no proposal was rejected without analysis.

Thus, local participation in decision-making was included, reflected in the indicator tables with an average of 85.71% in citizen participation.

Participation in Project-level decisions

Case Studies:

Hydro-electric Power Project: Rios Orientales

The goal of this project was to satisfy the demands of potable water originating in the northern sectors of the city of Quito. As a project that works mostly within the Ecological Reserve of Antisana and Cayambe-Coca, it requires special attention regarding possible environmental impacts.

EMAAP-Q held a citizens' conference for those interested in contributing their opinion in respect to the terms of reference of the project. Nevertheless, the company made no attempt thereafter to consult the citizenry, nor were draft copies of the project available for the review of those interested. In evaluating this project, the results closely reflect the level of access to participation leading to a final average of 28.82% for participation.

Seismic Oil Exploration in Block 11

This project was created to increase the production level of petroleum in Ecuador by developing hydrocarbon activity within the National Patrimony of Protected Areas in the northern part of the Amazon rainforest in the province of Sucumbíos. There was no citizen participation within the execution of this project.

Authorities did not notify the population, nor did they present draft proposals, nor invite the local citizens to take part in the project.

Due to the low levels of participation it was impossible to encounter information regarding consultation, workshops, or other mechanisms of citizen participation. Nevertheless, we do know

that the petroleum company did give a public presentation for the people and municipal authorities in the area.

This case receives a score of 6.82% for public participation, clearly reflecting the ignorance on the part of the public officials responsible for the realization of this project.

IV. ACCESS TO ENVIRONMENTAL JUSTICE

Access to Information

Case Studies:

Ecological Action- Ministry of Foreign Affairs

This case consists of an appeal for access to information submitted by the legal representatives of the Ecological Action Corporation against the Ministry of Foreign Affairs. Ecological Action claimed to have been denied a request of information in reference to the fumigation realized along the border between Ecuador and Colombia as part of Plan Colombia. In conclusion, the 10th Civil Court Judge (Pichincha) accepted the appeal and ordered that the information be turned over within 24 hours.

According to the law, the judge is obligated to accept the case within two days of presentation and to set the trial date within the following 24 hours. At the conclusion of the trial, the judge has two days to dictate the ruling. In total, the entire process should develop within a maximum of five days; nevertheless, this case lasted 33 days. For the purposes of evaluation, this case reveals a grave defect in the administration of justice.

FIPSE – PETROECUADOR

This case consists of an appeal to the law of habeas data submitted by the legal representatives of the Independent Federation of the town of Shuar, Ecuador (FIPSE in Spanish) and the Inter-provincial Federation of Shuar Centers (FICSH) against Petroecuador (National oil company) in order to establish that the oil company maintains among its institutional information documents that are directly relevant to the indigenous populations represented by the aforementioned unions.

In the end, both parties maintained their respective positions, but the legal process was delayed with the only action taken by the court being the notification of both parties legitimating the unions' claim.

It is necessary to take into account that although the demand was not resolved, the actors were able to obtain a partially satisfactory result in their claims, given that Petroecuador received the first two of its claims without the mediation of the court. It is also important to note that the case's lack of continuity was not due to the judge's disinterest but to the parties' lack of persistence in following the various procedures.

A particularity of this category is that actions to combat the ignorance of the right to access to information are not common practice, especially in issues related to the environment. The only two forms of access that the law guarantees are the appeal to habeas data and the special action of access to information, the last recently adopted. The cases analyzed here do not represent in any form common practices within the Ecuadorian system.

A. Participation in Decision Making

Case Studies:

The Illapamba Commune

Illapamba Commune, in the province of Azuay is in proximity of the Santa Rosa marble quarry. The representatives of the near-by residents (1,500 people) issued a constitutional injunction, contesting the administrative resolution that granted the renewal of the mining title to the Santa Rosa Marble Company. The representatives argued that throughout the period prior to the exploitation of the mine the company did not conduct environmental evaluations, the company did not take into account the opinions of the community regarding the approval of the mining title nor environmental licenses, and that consequently the damages caused to the ecosystem and to the local population are considerable and have been inflicted for decades. Among one of their arguments is that the extractive activity requires a quantity of water that is greater than exists in the region and that this affects the domestic consumption of the local inhabitants.

The judge ruled that although the injunction was poorly proposed, he would accept the injunction in part, ordering a suspension of mining activity until the case could be tried by a more competent judge.

This injunction was appealed to the Constitutional Tribunal where it was denied. The mining title is effectively legitimate due to the nature of the damages.

Block 24

The indigenous communities located in the area that is referred to by oil companies as Block 24 brought a constitutional injunction against Petroecuador and ARCO Oriente Inc., in that their opinions had not been solicited. There did not exist a process of prior consultation. The judge denied the petition, considering the companies had not violated constitutional guarantees and that if some possible claim had existed, this should be focused towards the completion of the contract of oil exploitation, because the company, at the time of presentation of the injunction, was not even conducting environmental impact statements.

B. Environmental Damage

Case Studies

CORDAVI - MAE

The Defense of Life Corporation issued a constitutional injunction against the Ministry of the Environment, manifesting that according to the information published by the Technical Office of San Lorenzo, the Ministry sought to use an area of 60,000 hectares for the monoculture of the African palm, implying the harvesting of primary forest and some secondary forest. Additionally, they asserted that 4,550 hectares had already been harvested without permission, including 2500 from primary forests, nor conducting environmental impact statements or the prior consultation to local communities. The claimants asked that the government be ordered to anticipate the development of African palm monoculture in the San Lorenzo region in the Province of Esmeraldas and that an ecological emergency be declared in the province's northern zone and that the forest be controlled by the Armed Forces.

The 10th Civil Judge of Pichincha denied the constitutional injunction based on the object of the action, an appeal to a Constitutional right opposed to an illegitimate act on the part of the Authority of the Administration; and as the harvesting was not illegal under the definition of illegal as one that proceeds against a judicial order.

In the end, the demand was not resolved in a timely manner due to the fact that the harvesting activity had not ceased during the trial. There was no empirical evidence that the harvest activity had ceased, not that it had been ordered. Finally, as the demand was dismissed in the first court, measures were not taken to push the Ministry of Environment to stop the harvesting, but rather to wait until the case could be resolved by the court of appeal.

ASONE – PETROECUADOR

In this case, the Negro Association of Ecuador (ASONE) and the Municipality of Esmeraldas issued a suit for moral damages against the state company Petroecuador citing the large fire in the Winchela zone on February 26, 1998 and the subsequent rupture in a section of the pipeline just three kilometers outside of the city.

The claimants ask for the pay of the \$2,500,000 for the moral damage caused to the population and to the ecosystem of Esmeraldas. The 2nd Civil Judge considered that the moral damage corresponds exclusively to the victim and that there did not exist procedural evidence indicating the victims of the alleged moral damage. Therefore, the judge accepted the arguments of the defendants and dismissed the claim.

In this case, it is important to point out the grave delay in the administration of justice. Four years passed between the time the claim was presented and the resolution of the case. Additionally, we should note that there was no evidence that the claimant had taken directed measures to repair the environmental damages during the course of the trial.

V. CAPACITY BUILDING:

Legal Framework

Ecuador has a legal framework that declares and protects rights to the access principles; however, it does not provide for the necessary funds and policies that guarantee implementation of these principles. Unfortunately, this legal framework has not focused on the importance of capacity-building for government officials or the public.

Capacity Building in Government

Case Studies:

The Ministry of the Environment of Ecuador

The Ministry of the Environment is responsible for the formulation, coordination, application, execution, and evaluation of laws, policies, and strategies of environmental management and sustainable development. More specific obligations are to coordinate, unify, execute, and supervise the policies, projects, and programs of the Executive Branch that relate to the environment.

We find the levels of accessibility within the Ministry to be intermediate in that while the access principles of information, participation, and justice are acknowledged, they are not implemented. Ministry officials have participated in trainings of general themes related to the access principles; however, they do not possess any type of mechanism that would permit them to implement these

principles, such as an office or agency designed to ensure citizens' right to information or to participate in environmental themes.

Thus, this state entity receives a score of 75% for capacity building in government, reflecting that while some important themes have been addressed, much remains to be done.

The Ministry of Energy and Mining

The Ministry of Energy and Mining exercises its legal authority in environmental matters indirectly through the Undersecretary of Environmental Protection. This undersecretary is charged with organizing, directing, and supervising the management of the National Direction of Environmental Protection and with coordinating policies of environmental control, preservation, and rehabilitation in the energy and mining sectors at the national level. Other duties include approving environmental impact statements and management and control policies.

According to the authorities of this ministry, their agents have complete knowledge of the Transparency and Access to the Public Information Act and the responsibility of implementation is left to their discretion. Nevertheless, the Ministry has made no effort to implement the Law or the access principles nor is there an office charged with providing information to the public or an agent assigned to this commission.

Secretaría Técnica del Frente Social

This institution is responsible for establishing the social policies of the national government. Its charge is to coordinate, support, and organize processes of design, execution, and evaluation of social programs and projects, often involving the environment.

There are no initiatives within this entity for the capacity building of the themes of access to information, participation, and justice. The only workshops have been regarding the Law of Transparency and Access to Public Information; however, this training is useless in practice if it is not supported by the necessary resources.

Although this institution offers acceptable levels of accessibility, it has not dedicated an office or agent to the implementation of the access principles.

Province of Pichincha Superior Court

This court is charged with the resolution of judicial processes in the second instance, giving individuals the opportunity to appeal prior decisions.

This judicial body has not offered any type of capacity building of access principles. In many cases, judges and officials are ignorant of the existence of these rights or do not consider it then concern as an independent branch of government.

Office of the Public Prosecutor of Pichincha

The flagrant crimes, environmental, cultural patrimony, and intellectual property unit of the office of the Public Prosecutor of Pichincha handles cases of crimes against the environment. This unit constitutes a fundamental axis for the exercise of environmental justice in our country; thus, it is of great importance that its agents are trained in protecting citizens' rights.

However, this institution has not initiated capacity building efforts related to the access principles. The only trainings agents have conducted have been related to environmental law, but this does not include training about the importance of access to information, participation, and justice.

Remarkably, most agents replied that they were unaware of the Law of Transparency and Access to Public Information and those that were familiar with the Law had not been encouraged to apply it.

Capacity Building of the Public

Case Studies:

Ministry of the Environment

The authorities interviewed replied that, unfortunately, the Ministry does not have any type of information that informs the public of the processes and requirements to access public information.

Ministry of Energy and Mining

There is ignorance within this agency about the access principles and especially regarding the new Law of Transparency and Access to Public Information. The Ministry has not implemented mechanisms to inform the public of the processes, requirements, or offices by which it can obtain information.

Ministry of Education and Culture

The Ministry of Education and Culture is the governmental agency that designs the policies, plans, and programs of the national education system.

At present time, Ecuador does not have an official environmental curriculum. However, environmental education is being implemented as part of the general education.

Although the current education system in Ecuador remains weak, it is important to point out that in the future the Ministry will provide the necessary training and materials.

Sebastián de Benalcázar School

This institution is part of our study because it is a precursor school in environmental education. It has received training and financing from the Metropolitan Municipal District of Quito; however, it has yet to receive the support needed from the central government to be able to carry out the environmental education programs. This further demonstrates that schools are limited in offering environmental education due to a lack in investment in these programs by the central government.

Capacity Building for Non-Governmental Organizations

We have identified and selected for analysis three NGOs that offer environmental education programs:

- Fundación EcoCiencia.
- Fundación Arcoiris.
- Fundación Natura.

These organizations maintain that there are few official legal barriers to creating an NGO. However, one disincentive is the extensive time period of the development process due to bureaucratic delays.

Main sources of funding for these NGOs do not come from the central government, but rather from local governments, foreign foundations, and international aid agencies. As far as funding from the Ecuadorian government, there are no subsidies or aid; however, there are some cases where the government grants funds to specific projects.

CONCLUSIONS AND RECOMMENDATIONS:

CONCLUSIONS

A. Access to Information

- *A legal framework is established that guarantees the right to access to information. Our laws recognize and regulate the access to public environmental information.*
- *The newly adopted Law of Transparency and Access to Public Information extends and establishes clearer parameters for what is considered public or private information. However, this law has yet to be thoroughly implemented.*
- *The Law of Transparency and Access to Public Information is an important part of our legal framework, although it has some limitations. For example, it limits access only to that information already exists. If the requested information does not already exist, the Law does not obligate the entity to produce it.*
- *Ignorance exists regarding the Law of Transparency and Access to Public Information throughout all levels of local government (municipalities, provincial councils, etc.). There is also a lack of knowledge within civil society about the Law and the citizen's right to public information.*

B. Participation

- *Our judicial framework regulates and guarantees the right to access to citizen participation in environmental decision-making. However, its mere existence is not sufficient as its application remains susceptible to the discretion of the authorities.*
- *In general, a culture of citizen participation has not existed as common practice. Fortunately, in the last few years this culture is growing.*
- *The cases analyzed provide evidence that our legislation does not give substantial value to citizen participation but that it attributes a character that is merely formal. This orientation disfigures completely the contents of Principle 10 which cites the "opportunity to participate in the decision-making processes".*
- *Positive experiences of citizen participation do exist in Ecuador and can serve as reference for future processes. These experiences can be seen especially in local governments.*
- *There is a lack of capacity building for public officials, especially those of local governments, and for civil society regarding the mechanisms of effective participation in environmental decision-making.*
- *The participative processes in Ecuador have not always been characterized by adherence to laws that guarantee public participation in environmental decision-making. Often the processes of community consultation, for example, are done only as a mere formality in order to obtain approval of an Environmental Impact Statement, without actually conducting a consultation of the relevant community.*

C. Access to Justice

- *It is necessary to promote a culture that includes capacity building, reformulation of opinions, and an understanding of environmental justice as a basic and fundamental right.*
- *There are important legal tools that are not being utilized by the people. Among these are the right to constitutional injunction and previous consultation.*
- *There are many limitations facing those that want to protect environmental interests. It is not possible to limit the claimant to a real and direct victim in cases where the damage is collective, indirect, or future. Any person should have access to the solicitation of legal measures of environmental protection.*
- *In general terms, the institutional situation of the judicial system demonstrates some troublesome deficiencies in the judicial processes regarding the right to access to public information.*

D. Capacity Building

- *There exists no specific or sufficient legal framework that regulates capacity building for the public or for the government.*
- *There are capacity building initiatives for education and training processes; however, they exist nearly entirely in an environmental theme. Capacity building processes regarding the rights to access are few and target a specific public.*
- *These initiatives for the most part originate from non-governmental organizations and not from the state. This is due to the fact that the state does not allocate the necessary technical or financial resources to complete this task.*