

SUMMARY

Situation on Environmental Matters' Access to Information Civic Participation and Access to Law in Costa Rica

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Presentation

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Introduction

The matter that defines this study has to do with how state management is exercised over environmental patrimony, and what the participation of the organized civic society in this management is.

Context

The environment topic holds a special significance for Costa Rica. This country stands out for having a great availability of hydric resources and rich biodiversity. Having placed the 25,6% of the country's surface under some kind of management; 8% of this area is protected by the private sector and an additional 7% are indigenous reservations, which have community management plans.

Costa Rica has positioned itself globally as a country that appreciates and protects its natural environment, which has brought, within other results, a very relevant affluence in tourism, with the subsequent environmental impact that the development of hotel infrastructure and general services.

On the other hand, the Costa Rican population has increasingly begun to relate their life quality to the country's environmental wealth, which is expressed in an ample social environmental movement.

Moreover, the development model experimented by Costa Rica, at least until the mid 70's, made conservation of its beaches, costal maritime zone, and important forest regions possible, under the national public property regime; but at the present moment it is an unresolved conflict with the predominant foreign investment based current proposal.

The Costa Rican environmental context can be synthesized in the in the following phrases from the *Tenth Report on the State of the Nation*:

"Without having been able to solve the problems related to the "green agenda" of conservation, Costa Rica faces a series of pressuring challenges which correspond to the "grey agenda" of contamination an inadequate use of natural resources. This is especially critical with regards to the factor that links all habitats and ecosystems including humans' top priority: water. If in fact there has been impulse for legislation, and public entities have been created in the last few years to approach these matters, this sector suffers an important institutional weakness, both political and economical."

The document *"Towards a National Environmental Strategy 2004-2020"*, Diagnose and Forecasts from MINAE (Ministry of Environment and Energy), points out that: *"The environmental agenda has not been an evident priority during the latest administrations, or at least, has not been approached from an integral perspective. The governmental efforts have focused in continuing the programs in course, particularly dealing with matters of protected areas, forest an biodiversity policies; and the initiatives in new areas are scarce or resulting from the numerous responsibilities entrusted to the MINAE since the proclamation of the Organic Environmental Law."*

Thus, the National Development Plan (PND) 2002-2006, expresses: *"In the last 30 years Costa Rica has developed public policies of environmental protection that have brought respect and allowed the conformation of an internationally recognized system of national parks and protected areas"*, although the PND states that *"the diverse legislation adopted has fostered a not very orderly or coherent institutional development, which (nonetheless) has permitted great advances in this field"*.

The Organic Environmental Law, the Law for Creating the Ministry of Environment and Energy, the Wildlife Law and the consecration of the right to a balanced environment in the constitutional level -Article 50, Political Constitution-conform the institutional system in the environment field, to which multiple international treaties subscribed by the country are added.

From the institutional point of view, it is pertinent to highlight manifestations and analysis that reflect a serious institutional flaw. While the *Tenth Report On the State of the Nation* states that: *“The environment and energy sector in Costa Rica is formed by twenty-five public entities created by law, which makes it complex from the organizational point of view.”*

At the same time it identifies the ruling entity of this institutional complex related to environmental management as the MINAE, which *‘is surrounded by a constellation of attributed institutions that are specialized organs to which the law has given specific functions and certain autonomy. The Ministry presides over six funds and nine organs with different degrees of independence.’*

Moreover, it is noted that the MINAE is *“at least in theory the ruling entity of autonomous institutions such as the ICE (Costa Rican Institute of Electricity), the ICAA, RECOPE (Costa Rican Petrol Refinery) and the National Meteorological Institute. The first three are some of the biggest and highest patrimonial institutions in the Costa Rican State.”*

In the document of National Environmental Strategy, it is sustained that *“The MINAE is not “the” ruling Ministry in environmental matter as has been repeatedly interpreted in the country. The one who exercises direction over the rest of the centralized and decentralized administrations is the Minister as such, with the sustenance of the LAGP (General Public Administration Law). Nonetheless, there has to be an indispensable agreement between the mission of the Minister as director of a whole sector of activity, and his mission as the Ministry’s head.”*

As for the organized civic society and the environment, some studies point out that autonomous civic society organization, regarding the environmental field, *“grows independent from the State, but lacks unification in its efforts.”* A study from the German Cooperation Agency (GTZ) *“shows that the NGO’s with environmental interests add up to more than 10,000, including development associations and volunteering organizations, among others.”*

It is important to note that, particularly in the last few years, with the passing of the Biodiversity Law, a step forward has been taken in institutionalizing the participation spaces for the civic society. Such is the case of CONAGEBIO and the Regional Councils of Biodiversity, to which important legislative responsibilities have been assigned.

The 10th Río Principle, Referent for TAI Methodology

The fundamental conceptual referent of the present study is the PP10 Principle in Río de Janeiro’s Declaratory, which sustains that: *“The best way to handle environmental issues is through the participation of all interested citizens. Everyone must have adequate access to environment related information as disposed by public authorities, as well as the opportunity to participate in the*

decision-making processes. The Governments must facilitate and promote the sensitization and participation of the population. Effective access to judicial and administrative procedures must be provided; among these the restating of pertinent damage and resources.”

Fundamentals of TAI Methodology

In consequence with this principle, TAI methodology assumes that “*Civic participation in public administration is related by three general principles: the access to information, the opportunity to participate and the results of participation.*”

Access to information must be permanent, through newspaper forecasts on the conditions of the environment, expressed in monitoring reports on the quality of air and water; in environmental reports on industrial activity; in information on emergencies, be it in small, large or national scale.

It also sustains that: *For participation to exist timely, efficiently and presenting concrete results, public information must not only be effective, but good.*

For participation to be timely, it has to occur before, during and after the processes of public policy elaborations, be it development strategies, plans, programs or legislation.

Categories in TAI Methodology

- I. Access to Public Information in Environmental Matters
- II. Civic Society Participation
- III. Citizens' Access to Justice
- IV. Reinforcing Government and Citizens' Capacities (to make the latter principles effective)

All 4 categories have been separated into two subcategories, some evaluate the existing legislation and some evaluate its application.

These subcategories group 171 indicators, interpreted into instruments or investigation index cards applied to properly selected “study cases” representing the environmental and legal conditions of the country.

TAI Methodology's Contribution

TAI methodology represents a fundamental step forward regarding the understanding of democracy's strengthening civic participation through institutionalization (ordainment, legislation and practice).

It identifies the forms, resources, and spaces or fields for environmental management participation, as well as the State's responsibility to assume this participation and bring it into effect.

More than just a reflection full of good will, it comes about to what Civic Participation is or should be. It is obvious that as progress is made in conceptualizing this, it also becomes possible to measure the situation and progress of this aspiration.

Chapter I Category: "Access to Information"

According to TAI methodology, *Information is the key element to decision making, therefore facilitating necessary knowledge and evidence to the public, in order to determine and monitor the environmental conditions, helps and favors the exercising of citizenship.*

Access to environmental information constitutes a significant endorsement to the options and decisions of individuals and organizations.

It alleges that: *"the information on environment might be very urgent and important or not so urgent or immediate, but it is crucial for everyday decisions on elaborating long-term policies. The different types of environmental information can be used to: protect human life, biodiversity and the environment in urgent situations such as a chemical substance accident; determining everyday decisions; helping decision-making with long term effects or elevating the general level of consciousness on environmental issues".*

The access of the citizens to a determined kind of information demands a better environmental management. For example, informing the people of how installations must obey environmental requirements, or of what is released into the atmosphere, is a form of motivating industries to better their environmental management

Subcategories Category I Access to Information

- Subcategory A: General Legal Framework
- Subcategory B: Emergencies
- Subcategory C: Monitoring Systems
- Subcategory D: Environmental Reports
- Subcategory E: Environmental Information on Industries

Subcategory A: General Legal Framework (see annex textbox 1)

Conclusions

According to TAI Methodology, the Costa Rican Legislation comes off somewhat well, but still indicates on important subjects that can be improved, particularly regarding the lack of a specific law on access to public information that would fill important judicial gaps.

In Costa Rica the liberty to access information regarding environmental matters is a right that has been consolidating in the last decade, after a 1994 reform on Article 50 in the Political Constitution and a series of jurisprudences coming from the Supreme Court Constitutional Hall, dealing with citizens' rights to a healthy and ecologically balanced environment. This right has also consolidated with the guarantee to access administrative and jurisdictional proceedings in order to reinforce this principle.

The International Agreements, especially on a global scale, have contributed to strengthen the acceptance and application of the participation principle by including it.

The Costa Rican Judicial Ordainment has incorporated the participation principle, mostly in regards to environmental decision-making. This includes the creation of spaces, both at national and regional levels. Such is the case of MINAE in Conservation Areas and in Local Governments up to District level.

The 1992 Rio Declaratory on Environment and Development, especially the 10th Principle of Civic Participation, is expressed in Article 7 of the Political Constitution, which ensures the citizens' right to participate in all matters that by nature might affect environment and natural resources in any way. This situation is supported by the reform on Article 46 of the Political Constitution, which guarantees explicitly, although in an unspecific manner, the right to information.

In spite of the wide range of constitutional norms and other series of norms and jurisprudences, which guarantee the citizens' right to information, in reality, civic participation is mostly symbolic. This results from administrations with predetermined intentions for spoiling the information.

Subcategory B. Access to Information on Environmental Emergencies.

Criteria:

- Legal order or mandate for compiling and divulging information.
- Existence and quality of information systems.
- Actions to divulge information.
- Quality of public access information.

Studied case type: small scale: (see annex textbox 2)

Agro-chemical contamination of the Canals in the Pacuare River Bank.

Conclusions

In Costa Rica the Government's behavior regarding national emergencies caused by human action could not be evaluated, given that non-natural environmental emergencies have never occurred.

On local scale emergencies, bodies of water are the ones generally affected or contaminated by industries, generating emergencies on a smaller scale. The media coverage on bodies of water's contamination is inexistent or very small.

The National Emergencies' Commission is now very organized and has enough resources for an ample display of information, all before (preventive), during and after an emergency, caused by natural phenomena. Its duty appeals mainly to this type of situations and not those humanly caused.

The Local Emergency Commissions (CLE), take part in emergencies but do not contribute to divulge information on the possible impact to environment and citizens' health that contamination might provoke.

During these emergencies up to 5 Government entities with different functions converge, but in the end none of them have the capacity to inform the civic society on the implications of emergencies.

Subcategory C. Information on Monitoring Systems

Criteria:

- Legal order or obligation of compiling and divulging information.
- Existence and quality of information systems.
- Actions to divulge information.
- Quality of public access information.

Studied cases (see annex textbox 3)

- Monitoring of water quality carried out by the National Water Laboratory on 172 aqueducts in the Metropolitan Area.
- Monitoring of the air quality in the Belén Borough.

Conclusions

In the studied cases the monitoring quality is very efficient and regular, the gathered information adjusts itself to international WHO standards on contamination, and the parameters applied are exhaustive.

Nonetheless, there are government departments with injunction to create environmental reports, put these are not done, such is the case of SETENA, among others. The Ministry of Health does not carry out the environmental monitoring assigned to it by the Law; these are passed on to other institutions or organisms.

The quality of the information printed by the Water National Laboratory (LNA), is very thorough and well developed. The drinking water monitoring is performed daily in localities with high population density, such as the Greater Metropolitan Area (GAM). If the localities are smaller, the monitoring is performed every three or six months.

The access to information requires administrative procedures, not always efficient, which are established by the institutions themselves. It was not possible to obtain the required information easily.

The gathered data from the different monitoring procedures are filed as databases but are not available in the Internet nor published in other media.

Subcategory D. Information or reports on environmental conditions

Criteria:

- Legal order or obligation of compiling and divulging information.
- Existence and quality of information systems.
- Actions to divulge information.
- Quality of public access information.

Studied case (see annex textbox 4)

- Tenth Report on the State of the Nation.

Conclusions

The Costa Rican Government does not fulfill the internationally concurred mandate or obligation of elaborating and divulging Environmental Reports.

The Report on the State of the Nation, analyzed for this study, is an initiative that is not carried out on Government responsibility.

This Report does not specialize on the environmental issue, but includes a chapter considered (by the interviewees) as one of the most complete reports published annually over the last ten years.

The report can be considered easy to access but has the limitation of being poorly divulged. There is no mandate whatsoever to make its divulging compulsory; it is normally used by professionals or students of certain level, but not by most of the civic society.

Subcategory E: Information on Industry Performance

Criteria:

- Legal order or obligation of compiling and divulging information.
- Existence and quality of information systems.
- Actions to divulge information.
- Quality of public access information.

Studied cases (see annex textbox 5)

- Intel de Costa Rica and Coopemontecillos R.L. from the Manufacturing sector.
- Finca Rosa Blanca Inn Hotel from the Tourist sector.

Conclusions

During the development of the investigation it became evident that there are no existing procedures to facilitate manufacturing enterprises for providing technical information to allow the evaluation of their environmental performance, least the publishing of quality reports they elaborate for the civic society.

In the studied cases there was evidence that quality information can exist, but there is no easy access to it. The documents on the Internet are very broad and talk about the nature of the businesses, but make no reference to analysis on contaminating agents.

The Tourist sector, due to its nature, has detailed information available for the public, which is facilitated through the Internet or personally. Nonetheless, no information is included to make possible an evaluation of the quality of their environmental controls. Neither are the reports elaborated by the Ministry of Health, concerning this matter, presented. The technical data referring to water or air contaminants cannot be accessed because it is protected by confidentiality norms.

Civic participation can influence decision-making in many ways. The contribution of several groups of the population allow people making decisions:

- Considering different issues, perspectives and options in defining a problem.
- Compiling new knowledge in social, economical and environmental areas.
- Integrating environmental and social issues into decision-making.
- Making fair, legitimate, consistent decisions on environmental aspects.
- Handling social conflict, gathering the involved parties and the different groups of interest in the initial stages, when it is still viable to make changes.

Category II Subcategories: Civic Participation

- Subcategory A: General Legal Framework to Nourish Participation.
- Subcategory B: Participation in politics, strategies, plans, programs on national and local legislation.
- Subcategory C: Participation in project related decisions.

Subcategory A: General Legal Framework to Nourish Participation (see annex textbox 6)

Conclusions

The Costa Rican Political Constitution includes, throughout its text, a series of rights and guarantees, both individual and collective, to promote direct or indirect civic participation. According to constitutional disposition, participation is the individual right for each citizen to influence the State's policies and provides mechanisms that go from the right of association to authority for executing legal referendum or plebiscite at a local level.

The general legal framework that supports the right for civic participation in environmental matter is extensive. Citizens rely on dispositions for environmental protection.

Also, the civic participation is one of the principles harvested in the International Agreements, which, according to Costa Rican Law, constitute a legal framework superior to the Constitution.

There is the legal possibility of citizens' initiative, as well as discussions at Legislative Commission level, through audiences or mixed commissions.

Nonetheless, sector legislation does not refer explicitly to procedures that could promote public participation in elaboration of Strategies, Programs, Policies and Plans.

In the same way, it is important to note that, regarding legal and administrative procedure norms regulating civic participation, it is not clear what the procedure to follow by the citizens is, in order to execute their rights, due to the dispersion of this matter in several laws.

Subcategory B: Participation in politics, strategies, plans, programs or national and local legislation.

Criteria:

This subcategory contains indicators that reflect civic participation in decision-making regarding policies, strategies, plans, programs, and important legislation that could determine the tendencies to be followed by organizations and people.

The indicators of this subcategory are organized around three common topics:

- *Access to information on decision-making processes*
- *Participation Opportunities*
- *Participation Results*

The decisions on a national level concerning policies, strategies, plans, programs and legislation can:

- *Affect a great part of the population*
- *Regulate sectors that are an important part of the Internal Gross Produce*
- *Affect industries that employ a great number of people*
- *Determine the framework for natural resources' usage (e.g.: water distribution, use of land, mineral extraction, forest exploitation, fishing industry)*
- *Determine the framework for environmental protection (e.g.: industrial contamination control, elimination of solid or hazardous residue, piped water treatment, toxic substances' transportation).*

Studied cases (see annex textbox 7)

- The Biodiversity Law
- National Strategy for Conservation and Sustainable Use of Biodiversity
- Access to elements and genetic or biochemical resources on the Biodiversity's Policy of Norms.

Conclusions

The Law on Biodiversity, the National Strategy on Biodiversity and the Policy of Access to Genetic Resources show, to a higher or lower degree, the existence of spaces for participation on different social segments such as farmers, indigenous populations, the academicians, government institutions and the civic society. Nonetheless, there is still a lot of information to be made accessible for the great public in order to allow a more informed participation. Also, there is a lack of resources in order to achieve these participation spaces.

The MINAE has been establishing institutionalized participation instances, according to what the Law on Biodiversity establishes in the CONAGEBIO and the Biodiversity Regional Councils.

The 1990's marked the decade in which civic society struggled to access participation rights. At the present time, the challenge is to establish the necessary mechanisms and procedures to exercise these rights, along with the State's capacity of response and the information mechanisms.

The State still shows flaws regarding acceptance, within its administration and culture policies, towards civic society participation, both because of lack of personnel training and the absence of resources concerning this matter.

From the civic society's point of view, the struggle towards broadening participation is considered unequal and a strong resistance from the State is perceived. The uneven relationship State / private enterprise versus State / civic society organizations is clear.

This limitation is determined by two main elements:

- The lack of political culture and technical capacity to understand the complexity of related matters, particularly the complexity of civic society participation.
- The lack of financial resources

SUBCATEGORY C: Participation on project level decisions

Criteria:

Contains indicators evaluating public opinion's opportunity in partaking on project decision-making. This subcategory's indicators are organized around three common subjects:

- Access to information on decision-making procedures
- Participation opportunities
- Participation results

Studied Cases (see annex textbox 8)

- La Joya Hydroelectric Project
- Explorations for Petroleum in the Caribbean

Conclusions (see annex textbox 9)

According to the evaluation carried out, the civic society partaking at project level decision-making has been slow. It occurs more as a reaction against an initiative that had already been established by the government, through contracts and agreements.

With the study of these cases it was determined that the projects have not been made public prior to their execution. There is no clarity, nor is it considered relevant, that businesses should involve the citizens in their decision-making.

In the period previous to the EIA public audience, which should be summoned by the interested person or party, the space for participation was inexistent. During these public audiences, there has been no access to relevant information that might be suitable for cultural conditions.

Also, this space for participation is not linked to the Government, although it does have, and has had, a great influence in political decision-making. In both of the studied projects, the participation of civic society has been able to revert the initial authorization. It stands out in all studied cases, that there are no mechanisms to follow up participation and its contribution to high impact projects.

The Access to Justice (A2J) is a crucial component of the public's participation in decisions that affect the environment and an important element of the 10th Principle of the Rio Declaratory. The judicial indicators in the Access Initiative are

designed to measure access to justice, as an integral component in the IA's work frame.

The indicators in the case of Category III, Access to Justice refer to:

- Access to justice upon denying rights to **information** related to policies or decisions on environment or environmental impact,
- Access to justice upon denying rights to **participation** in decisions related to environment; and
- Access to justice upon **environmental damage** (which can include past, present or presumed damage to human health or environment, as well as civil actions on Government unfulfillment of duties)

Subcategories from Category III, Access to Justice

- Subcategory A: Negative on access to information
- Subcategory B: Negative on access to participation
- Subcategory C: Environmental damage.

Subcategory A: Negative on access to information (see annex textboxes 10 and 11)

Conclusions

The applicable legal framework as a first resort for solving a negative on access to information is entirely constitutional and was evaluated as strong. In the beginning the administrative proceedings must be exhausted, if no response is obtained, it passes on to judicial level.

During the course of the studied process, there were no geographical, idiomatic or file related accessibility problems. The claim was processed and solved timely. Through the course of the process, the Tribunal performed transparently, impartially, independently, according to the law and on the fringe of any external factor.

The Costa Rican Tribunals limited to pronounce and acknowledge the pronouncing to the involved parties. The possibility of this information being divulged to the public through any type of media was not contemplated, so this depends on the discretion and interest of the involved parties.

As an alternative mechanism for solving the negative on information conflict, one could adduce to an ordinary administrative process or summary, or a complaint process held before the administrations of the filed institutions themselves, in order to get a response from the department or functionary in charge. There is always the possibility of going to the Citizens' Defense.

The financial possibilities constitute a barrier in judicial processes, since paying for legal services is in order most of the time, and even if the costs are not too high for most people, it can become an onerous load. There is no public support for covering the plaintiff's expenses, furthermore if they are particular physical or legal entities or NGO's, who have to cover their own legal expenses. Therefore this indicator was graded as weak.

Subcategory B: Negative on Access to Participation (see annex textboxes 12 and 13)

Conclusions

The applicable legal framework for solving a negative on access to participation, which has a Constitutional nature, was valued as strong.

In Costa Rica, anyone can file a demand against any party, be it an important one or not. This is based on Article 50 of the Political Constitution.

The resolutions proceeding from the Supreme Court of Justice or the General Procuracy of the Republic are the only ones that appeal to these parties, the State included.

In Costa Rica there is the judicial figure of the active or passive coadjutant, where the latter can represent the plaintiff or the defendant. This is based on Articles 276, 277 and 278 of the General Public Administration Law.

Throughout the process, the Tribunal performed transparently, impartially, independently, following legislation and on the fringe of any external factor.

The case was settled in administrative head offices, in the only Tribunal specialized in environmental matters, the Environmental Administrative Tribunal, whose members specialize in this field and in Administrative Law.

The events occurred in the Ciruelas zone in Alajuela, and the accusation was filed in San José's head office of the Environmental Administrative Tribunal (TAA). The distance did not represent any problem for the involved parties, as neither did the language. The solicited answer could be sent by fax, so it was not necessary to travel in order to know it.

The accusation was processed timely, though not its resolution, which suffered a series of delays in its process due to a first deadline that was followed by the company. This forced to reopen the proceedings and communities exercised some pressure for a fast resolution. This delay increased the economic costs of the organizations involved and the time invested was plenty.

The evidence handled in the case was based on studies carried out by specialized laboratories in such way that there was a solid feedback of scientific and technical facts.

Along the process, the Tribunal performed transparently, impartially, independently, according to legislation and on the fringe of any external factor. The study allows affirming that this was an open process, where all evidence was available to all parties at all time.

The TAA's resolution was adequately established and in conformity with the environmental legal principles defended by our legislation.

The TAA's decisions do not entail the parties, for the resolution is not the material judgment itself but only terminates the administrative resources.

There is no norm at all as for monitoring the process, nonetheless, in the studied case, a trust fund originated due to conciliation, administered by the FPN, which has to present labor reports to the TAA every three months. This report must reflect both what is being invested, and the fulfillment of the agreement by Tuna Tun Enterprises. The assigned value is average, for even if there is a way to monitor the reports, these are not handed in on time and everything is delayed.

In this case, the financial capabilities constitute a barrier for justice due to the elevated costs of laboratory studies, which were fundamental evidence for the case's success.

Subcategory C: Environmental Damage (see annex textboxes 14 and 15)

Conclusions

In Costa Rica any person can file a lawsuit against any legal part, be it considered important or not. This is based on Article 50 in the Political Constitution.

In the studied case, although now condemnatory or absolatory sentence was reached, the terms of conciliation given before the judge are entailing.

In Costa Rica there is the judicial figure of the active or passive coadjutant, where the latter can represent the plaintiff or the defendant. This is based on Articles 276, 277 and 278 of the General Public Administration Law. This means that when someone appears before a judge as a third party or coadjutant, he/she becomes part of the process, and therefore will be informed about it.

An absolatory or condemnatory sentence is what eventually would incite a plead before a Superior Tribunal (second instance), or before Appeals (third instance). In the studied case a first instance sentence was not reached, however, according to the Process Penal Code, on the previous stage of a trail both parts agreed on a solution to the problem.

Along the process, the Tribunal performed transparently, impartially, independently, according to legislation and on the fringe of any external factor.

The Judges or members of a Penal Tribunal are not qualified in environmental matters, only in common theft matters. Until January 2005 the Public Ministry published a memo regarding penal environmental matters (Policies for penal environmental prosecution: Memo 01-2005, General Attorney of the Republic) to provide the judges with unified criteria on environmental legislation and environmental offenses. The selected case was processed before this memo was emitted; therefore it's graded as weak.

The selected case takes place in the Esperanza Zone, in Puerto Viejo de Sarapiquí, Heredia. The distance did not represent any problem to the defendant, but it did to the State, represented by the General Procuracy of the Republic, and for the civil plaintiffs, since travel had to be done from San José. The Tribunals were in Puerto Viejo, accessible to the people from the area, and relatively close to La Esperanza. Language problems were inexistent.

In the studied case, the lawsuit was processed timely. The affected party (OET) placed a penal accusation, which was taken over and processed by the Public Ministry. It cannot be concluded that the demand was solved timely, mostly because it involves environmental matter, where time is fundamental for stopping future damage.

Because it involves penal matter, once a party files an accusation, the action is public and the DA is the one who will continue with the plaintiff's part, leaving the defendant with the only option of acting as a civil part or as complaining plaintiff.

In the studied case both parts had the possibility of filing scientific and technical reports to prove: a- the existence of harm to the environment that was being occasioned by the stone extraction activity, or b- that such harm was inexistent, also based in technical and scientific criteria.

The involved parties or legal parties did have all the access to the information in the file, including the technical and scientific studies. However, this was graded as weak, since in penal related matters, other people or affected communities cannot access the file if they are not part of the process. It was also noted that the Tribunal would not accept agreeably writings that come from uninvolved third parties.

In this case the agreement based on compensatory measures aimed to mitigate the harm caused, as a form of reparation, based on the Process Penal Code.

The conciliatory agreements concerned both parties, especially the part obliged to obey the determined ruling. In a conciliatory process the guidelines were established for the parties to follow, including the processes for monitoring the accomplishment of the agreement over five years. The conciliation provided the monitoring mechanism, which was to be executed jointly by functionaries of the Ministry of Environment and Energy (MINAE) and Justice for Nature.

At the time of the events originating the studied case, the only resources were judicial means. At the present time, a case like this could be carried out in administrative head offices, obtaining a similar result than by judicial means. Recurring to alternative conflict solutions, for which a law was proclaimed after the studied events, is now also possible.

Financial capabilities still constitute a barrier for justice. The studied case required expert advisory, which resulted very onerous, though it represented the fundamental evidence for winning the case. In the same way, the penal resource must pay Lawyer's honoraries, elevating even more the cost of the process.

This category refers to programs aimed to increase social, educational, technological, legal and institutional infrastructure, so that the public can have access to environmental impact related decisions.

This category examines government capacities' strengthening plans, to allow a higher access to environmental impact related decisions.

Strengthening capacities through training and resource assignments stimulate compromising high government functionaries to hand out information, to engage public opinion in decision-making and creating access to legislation.

If the Government does not work to strengthen the population's capacities, then the latter will ignore its rights and current access opportunities. In consequence, the Government has to strengthen the citizens and public interest organizations' capacities to obtain and understand information regarding the environment and participating in decision-making.

Subcategories from Category IV: Capacities' Strengthening

- Subcategory A: General Legal Framework to support capacities' strengthening
- Subcategory B: Government Programs to strengthen its capacities
- Subcategory C: Government Programs to strengthen the public's capacities

Subcategory A: General Legal Framework to Support Capacities' Strengthening (see annex textbox 16)

Conclusions

The Costa Rican Legal Framework protects the basic rights of free association, and clean environment, and provides tributary and inscription facilities to environmental organizations and NGO's in general. Thus, this judicial framework supports the strengthening of capacities both in the government and in the public, in order to better their capacities regarding access to information, participation and access to justice.

Different indicators reflect a weakness, due to the lack of a specific law regulating the access to information, as well as another specific law establishing and regulating the effective participation of the citizens in public matters and policies.

Subcategory B: Government Programs to Strengthen its Capacities

Criteria

Contains indicators that reflect Government actions to strengthen human resources that might help public opinion access to information, participation or justice.

Studied Cases (see annex textbox 17)

- Ministry of Environment and Energy: National System for Conservation Areas (SINAC)
- National Environmental Strategy
- First Branch of the Justice Tribunals

Conclusions

The indicators show a clear weakness of Government capacities, in relation to the PP 10, since there is no specific bureau responsible for overseeing the implementation of this Principle. The offices in charge, expressed having no mandate to oversee this Principle in particular. There is and Environmental Comptroller, but he/she doesn't specifically watch over access to information and participation.

The studied governmental offices also evidence weakness regarding their efforts to train functionaries, particularly the MINAE personnel regarding the knowledge on interpretation and depth of Principle 10. None of the functionaries interviewed manifested receiving information about this topic from the Ministry; although in some cases said have knowledge of the Principle through personal sources.

No efforts from the Costa Rican State were identified for empowering Judges on participation and access to information rights, even when there are specialized offices, watching over environmental legislation in general being followed, like the Inhabitants' Defense and the Environmental Control Office.

Nevertheless, efforts were identified from nongovernmental organizations for promoting qualifying lawyers and students on environmental litigation laws.

One of the strong points from the State of Costa Rica was the access to free legal services or to public defense counselors, in the case that a citizen requires it.

Subcategory C: Government Programs to Strengthen the Public's Capacities

Criteria:

This category evaluates Government Programs to strengthen the public's capacities to use access principles and laws that interpret and ensure these principles.

It also evaluates actions oriented to reinforce conditions that influence positively in strengthening this capacity.

Studied cases (see annextext box 18)

- MINAE Civic Society Direction
- Ministry of Education's Office of Environmental Education
- Environmental Administrative Tribunal
- Non-Governmental Organizations
- Schools

Conclusions

The studied MINAE institutions or specialized office evidence a weak effort for facilitating and providing information to the public or citizens, so that they can make an effective usage of the access principles and the laws that interpret and guarantee these principles.

In the same manner, the effort to facilitate or identify guidelines for the citizens and public in general to have access to environmental information, which can direct participation in environmental administration, is also weak.

The identification and facilitation of guidelines that allow an effective participation of the public and citizens in environmental administration, made available through the studied Governmental Offices, manifests weaknesses; however, with some tendency towards self-improvement.

The COVIRENA program deserves important acknowledgment, though its action range is limited regarding civic participation in environmental administration. Other spaces, which emerge as key for participation, are the referred CONAGEBIO and Biodiversity Regional Councils, though equally functioning in the framework of a specific Law.

There have been important steps towards facilitating conditions for the public to file accusations, though the process has not been completed yet.

Regarding the Educational field, as step forward has been taken in including the environmental subject in basic education curriculum; although weaknesses come through regarding the teachers' capability to approach these subjects, mostly due to poor coverage and compulsoriness in providing teachers with this kind of formation.

In basic education, the environmental subject comes through as a thematic and transversal axis in the curricular structure, by executive decree No 32001 from 7.VII.04, but there is no systematic plan for teachers' formation.

Conclusions

The State of Costa Rica handles resources that can be directed to civic society organizations, particularly in environmental matters (CGR).

Specific responsibility should be created within the Environmental Comptroller's Office for securing law enforcement over legislation related to Principle 10.

General Recommendations:

It becomes necessary to divulge information regarding the diverse instruments available in our country, in order to facilitate civic participation and access to information, in such way that the citizens can exercise their rights and obligations and it doesn't become stagnant in a merely formal level.

The Inhabitants' Defense requires constitutional support. The recommendations emitted by said Defense have, at this moment, a control and moral pressure effect over functionaries that have faulted by action or omission. This Defense's Law should be enforced and measures should be taken to punish functionaries for any fault they might commit.

The Congress should elaborate and pass, as soon as possible, the law ruling constitutional reform guaranteeing plebiscite and public consultation; as well as promoting a specific law on access to information and participation.

Independent mechanisms for following or monitoring civic participation should be developed. This information could be reported to the Nation's State Project, by the instances that facilitate information for the yearly report. This should be done through indicators, which show improving or declining regarding aspects of participation.

Advise to the Government:

Considering that Law is based on the principle nobody can adduce ignoring it, and the formally accepted divulging means is the Official Diary, La Gaceta; however, this is not a public access Diary and this limits the access to information for the general public. Hence, in the present conditions of civic development and given the diversity of sectors integrating the civic society, in order to favor Participation Policies, strategies and mechanisms to guarantee information and its divulging should be developed, so that the Legal State is reinforced. This implies divulging Government initiatives in all its stages through new means of informing on public initiatives. The State must define a human,

financial and legal procedures' resources' structure in order to secure access and participation.

In this effort, the most vulnerable groups must receive special consideration according to its culture and socio-economic context. This must be a priority impelled from all sectors, public and private, at all levels, national and international.

A normative for participation and access to information must be incorporated, evident concepts that guarantee the citizen's access to information so that he/she does not have the institutional structure as only shelter.

Personnel must be trained and points of contact made available to facilitate information to the public. The Civic Society Direction should increase its action sphere in order to attend to training and civic society initiatives. The EIA mechanism still presents differences when incorporating rights to participation, mainly regarding access and opportunity to information, therefore human and financial resources should be established to guarantee this right.

Specialization of Environmental Tribunals should be considered. One option could be broadening the knowledge on environmental matters of the present Agrarian Tribunals and Judges, so they could acknowledge matters relating to environmental damage, water contamination, etc. The idea is not to create more tribunals, but, given the enormous relevance of environmental issues, that judicial branches become specialized so they can properly attend to such issues. Public Administration must determine a training program so that administrative resources presented before these instances become known and are solved by people with enough knowledge regarding environmental law' legislation and principles.

Local Emergency Committees must be reinforced so that they can respond to rural environmental emergencies in a more effective way. Bearing in mind that these emergencies do not qualify as natural disasters, such as the ones provoked by floods, landslides, volcanic eruptions, or other similar ones; but that these are provoked by direct or indirect human actions. In the same manner, a preventive initiative must be carried out in communities that are prone to environmental emergencies.

Due to the evident uncoordinated institutional proceedings, particularly on the environmental sector, an effective inter-institutional coordination must be established. Each governmental institution must attend the environmental subjects that correspond to them, but coordination must exist between institutions, so that no functions are duplicated and there are no possible excuses over obligations that are not of their competence. The directing functions of the MINAE must be evaluated in this sense.

All Government Instances should fully update their Internet web page, with relevant information and adequate inquiry and participation mechanisms. The concretion of the MINAE web page must be quickened, and it should include a segment with information on activities, cases being handled, procedures, legislation, etc. The National Environmental Information System (SINIA) must become a reality.

Training of educators in environment and particularly on PP 10 must be systematic and mandatory.

Advise to the Management Sector:

The incorporation of social responsibility within private tasks will lead to greater civic society participation and to establishing positive relationships for the constitution of a participative State where development is more fair and equal.

As part of the entrepreneurial social responsibility, industries must display registrations of carried out environmental monitoring reports to the interested public.

To the Civic Society

Participation culture must be reinforced, assuming it as a right of the civic society to advance towards the appreciation of this right as an opportunity. Assuming the institutionalizing of this field implies acknowledging negotiation capacities and learning to deal and formulate consensual proposals.

Structures of participation involving representatives to gather the interests, need and local and sector values should also be strengthened.

Spaces for exchange and construction of consensus must be reinforced, in order to share the lessons acquired throughout civic participation processes, to promote consensual positions, learning and conquering more and better spaces for participation.

Environmental groups should work jointly and coordinated, so they can influence over different institutions and enterprises in order to access information regarding projects that have a high impact in the environment. As long as this doesn't occur, groups will work isolated, which diminishes their force and presence.

Academic and non-governmental institutions should develop mechanisms that allow following and registering the steps taken, forward or back, regarding environmental issues.

Local Emergency Councils (CLE) must be strengthened, by providing them with equipment and training so they can have an effective influence over issues that originate contamination, and its posterior treatment. They should devote to preventive actions in communities that have propensity to humanly provoked environmental emergencies.

I Access to Information.

Annex Textbox 1: Average on Legislation Indicators	
The Constitution guarantees access to information.	100
Existence of Laws regulating access to information.	100
Existence of specific Laws on access to environmental information.	25

Annex Textbox 2: Average on Emergency Indicators.		
Type	Case	
Small scale emergency	Agro-chemical contamination in the Pacuare River Canals	41,95

Annex Textbox 3: Average on Monitoring Systems' Indicators.		
Monitoring	Case	
Quality of the Air	Monitoring of the quality of the air in the Belén Borough	51,85
Quality of the water	National Water Laboratory (LNA)	69,15

Annex Textbox 4: Average on Indicator Reports.	
Report	
SOE Report	30,82

Annex Textbox 5: Average on Industry Indicators.			
Industry	Sector	Quality	Accessibility
Finca Rosa Blanca Inn Hotel	Commerce and Tourism	83,25	51,33
Coopemontecillos R.L.	Food	83,25	35,25
Intel de Costa Rica Components	Components' Design and Software Systems	83,25	35,25

II Access to Participation.

Annex Textbox 6: Average on Legislation Indicators.	
The Constitution guarantees access to participation	100
Existence of special laws on access to participation.	75
Existence of special legislation on access to participation.	75

Annex Textbox 7: Average on Political Participation Indicators.		
Type	Case	
Strategy	National Strategy for Conservation and Sustainable Use of Biodiversity.	85,96
Law	Biodiversity Law	79,46
Strategy	Policy of Access Norms on Biodiversity Genetic and Biochemical Elements and Resources (Decree 31514-MINAE).	74,36

Annex Textbox 8: Average on Participation / Project Indicators.		
Type	Case	
Project	La Joya Hydro-electrical Project	57,32
Project	Concession grants for hydrocarbon exploration in the Caribbean	64,46

Annex Textbox 9: Average on Participation Category's Indicators			
CATEGORY	QUALITY OF THE INFORMATION	OPPORTUNITY FOR PARTICIPATION	AVERAGE
LEGAL FRAMEWORK	100	70	85
POLITICAL PARTICIPATION	88,88	88,38	88,63
PARTICIPACIÓN PROYECTOS	61,61	66,5	64,36

III Access to Environmental Justice.

Annex Textbox 10: Average on Legislation Indicators / Negative to Information	
Legal Action	100
Public Interest	100
Tribunals/Forum	100
Processes	100
Appeal Filings	100

Annex Textbox 11: Average on Practice Indicators / Negative to Information	
Legal Action	100
Judicial Interest	100
Tribunals/Forum	86.66
Opportunity	90
Norms	N.A
Processes	100
results	80
Appeal Filings	N.A
Extrajudicial Mechanisms	100
Extrajudicial Factors	20

Annex Textbox 12: Average on Legislation Indicators / Negative to Participation	
Legal Action	100
Public Interest	100
Tribunals/Forum	100
Processes	100
Appeal Filings	N.A

Annex Textbox 13: Average on Practice Indicators / Negative to Participation	
Legal Action	100
Judicial Interest	100
Tribunals/Forum	93.33
Opportunity	20
Norms	N.A
Processes	100

Results	72
Appeal Filings	N.A
Extrajudicial Mechanisms	N.A
Extrajudicial Factors	80

Annex Textbox 14: Average on Legislation Indicator's Factors / Environmental Damage	
Legal Action	100
Public Interest	100
Tribunals/Forum	100
Processes	100
Appeal Filings	100

Annex Textbox 15: Average on Practice Indicators / Environmental Damage	
Legal Action	100
Judicial Interest	100
Tribunals/Forum	86.66
Opportunity	80
Norms	100
Processes	84
Results	80
Appeal Filings	N.A
Extrajudicial Mechanisms	60
Extrajudicial Factors	40

IV. Capacities' Strengthening.

Annex Textbox 16: Average on Category IV's legislation Indicators	
The Constitution allows associations to protect environment	100
Tributary compensations	100

Annex Textbox 17: Average on Government Capacities' Indicators.	
Government efforts to strengthen its own capacities	62,5

Annex Textbox 18: Average on Citizens Capacities' Indicators.	
Government efforts to strengthen the public's capacities.	68,75