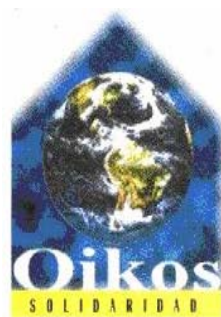


State of Access to Information, Participation, and Environmental Justice in El Salvador 2004

ACCESO-ES Coalition

Executive Summary

El Salvador, January 2005



Recognition of the TAI Methodology:

This study was executed by UNES, OIKOS SOLIDARIDAD, AMAS and VAMOS. The study has as its base methodology developed by The Access Initiative (TAI).¹

Unless otherwise noted, the points of view, interpretations and findings presented in this document are the responsibility of the ACCESO Coalition of El Salvador and not of The Access Initiative.

The following people and institutions are responsible for the evaluation and form the ACCESO – El Salvador Coalition:

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¹ The Access Initiative (TAI) is a global coalition of public interest organizations which work together to encourage at the national level the implementation of commitments for access to information, participation, and justice in environmental decision-making. The Access Initiative is coordinated globally by the World Resource Institute (Washington D.C.), the Environmental Management and Law Association, (Budapest, Hungary), Corporation Participates (Santiago, Chile), Advocates Coalition for Development and Environment (Uganda), and the Thailand Environment Institute (Bangkok, Thailand).

THE STATE OF ACCESS TO INFORMATION, PARTICIPATION, AND ENVIRONMENTAL JUSTICE IN EL SALVADOR

Executive Summary

PRESENTATION

This evaluation was developed in 2004 as an initiative of the SALVADORAN ECOLOGICAL UNION—UNES—in light of El Salvador’s deficiency in complying with Principle 10 of the Rio de Janeiro declaration, which states:

“The best way to approach environmental questions is with the **participation** of all the interested citizens, to the extent that they are affected. At the national level, everyone should have **adequate access to information** about the environment, provided by public authorities, including information about materials and activities which put their communities in danger, as well as the opportunity to participate in the decision-making process. **The States** should facilitate and foment the awareness and participation of the population by putting information within everyone’s reach. Effective access to judicial and administrative proceedings, among them, the compensation of damages and resources, must be made available.”

This is the first time that Principle 10 has been evaluated in El Salvador and that the organizations of the Coalition utilize The Access Initiative (TAI) methodology.

In this study, El Salvador is a part of a regional initiative named “**Evaluation of the Implementation of Principle 10 in Latin America**” which has as its objective to familiarize, through a common methodological framework, the current reality in each country with respect to access to information, social participation, and justice in environmental issues. This effort in Latin America is coordinated by The Access Initiative of Mexico and the Corporation Participates of Chile.

ACCESO Coalition of El Salvador
San Salvador, 2005

THE STUDY

The methodology allows for the measurement of categories in two areas:

Legislation, through indicators focused on the Constitutional level and secondary legislation. The questions are based on the existence and quality of the legal framework.

Practice, through indicators focused on test cases in diverse sectors. Questions are formulated around the existence, time frame, facility, regularity and reach of the access measures, as well as similar questions related to access of information and participation in decision-making.

These two arenas intersect with the methodology which is based on Four Principal Categories:

1. Access to Information. A key point in decision-making as it gives the public the knowledge and necessary evidence to chose and monitor the state of the environment.
2. Access to Participation. Allows the citizenry to express its opinions, question decisions, and modify policies that could affect its communities and environment.
3. Access to Justice. The mechanisms of justice permit the citizenry to seek compensation if they do not have total access to information and participation, or if the environmental is not being taken into consideration in government decisions.
4. Capacity Building. Efforts of the government to strengthen its capacities guarantees that individuals and groups have the knowledge, capacities, and support necessary for obtaining environmental information, in order to participate in decision-making and to demand justice when their rights to access have not been respected.

The Legislative arena is evaluated on four levels:

- i. The access is prohibited
- ii. The law does not regulate the access
- iii. The legislation supports access in a manner that is unclear, with vague restrictions and exceptions
- iv. The legislation supports access in a clear manner with well-defined restrictions and exceptions

The Practice arena is evaluated on three levels:

- i. The practice does not exist
- ii. The practice exists but is limited (without timeframes, facilities, etc.)
- iii. The practice is good (timeframes, facilities, etc.)

Criteria for qualifying the aspects evaluated.

Through the results shown by punch cards introduced by the Database, the following qualifying criteria are used:

1. **Weak:** Corresponds to the lowest range of values, meaning, a grade of weak implementation will be given to the 0% - 33% range, indicated in red.
2. **Intermediate:** Corresponds to the medium range of values, meaning, a grade of intermediate implementation will be given to the 34% - 66% range, indicated in yellow.
3. **Strong:** Corresponds to the highest range of values, meaning, a grade of strong implementation will be given to the 67% - 100% range, indicated in green.

Table 1: Case Studies analyzed

CATEGORY	Subcategory	Cases
Access to Information	Emergency	<ul style="list-style-type: none"> • Flooding due to mismanagement of the CEL in the opening of the floodgates of the 15 of September damn. • Storage and deterioration of barrels containing taxofen by the AGROJELL, S.A. corporation
	Monitoring Systems	<ul style="list-style-type: none"> • Monitoring of air quality in the Metro San Salvador area: SWISSCONTACT – FUSADES System • Monitoring of water quality: Public Health and Social Assistance Ministry
	Environmental Reports	<ul style="list-style-type: none"> • Memorandum of the Environmental and Natural Resources Ministry (MARN) • Nacional Report of the State of the Environment GEO 2002 (MARN and PNUMA)
	Industrial Information	<ul style="list-style-type: none"> • Agriculture, Fish and Wildlife Sector: <ul style="list-style-type: none"> - Izalco refinery - El Molino coffee processing plant - San José La Majada Agricultural products • Manufacturing Industry (petroleum refineries): <ul style="list-style-type: none"> - RASA Corporation • Electricity, Gas and Water Sector: <ul style="list-style-type: none"> - Hydroelectric Damn on the Sensunapán River
Participación	Plans and Programs	<ul style="list-style-type: none"> • Foundation for the Plan of the Nation • Development program in the Eastern zone
	Participation in Projects	<ul style="list-style-type: none"> • Construction of the Cutuco Port • Construction of the Berlín Geothermic plant

Justice	Negative to the Participation	<ul style="list-style-type: none"> • El Espino estate case
	Environmental Damage	<ul style="list-style-type: none"> • Opening of the floodgates of the 15 of September damn
Capacity Building	Government	<ul style="list-style-type: none"> • Adjunct Ombuds office for the defense of Human Rights, on the theme of Environment and National Reality • Environment and Natural Resource Ministry. • Environmental Division of the National Civilian Police
	Public	<ul style="list-style-type: none"> • Education Ministry • Media training institute • Non-governmental institutions

SYNTHESIS OF RESULTS

CHAPTER 1. ACCESS TO INFORMATION

This category has as its end the evaluation of the presence and quality of the access to information, guarantees, laws and definitions, with respect to legislation. In the cases of practice, it evaluates the existence and quality of systems of information, the quality of efforts to disseminate information, the frequency and facility of access to information, and the quality of public access.

A. LEGISLATION

This subcategory evaluates whether or not there are legal bases for accessing information, including the Constitution of the Republic as well as the country's laws and other legal instruments. The methodology includes indicators designed to evaluate if the law establishes, in a consistent manner, conditions for accessing information.

Two principle laws were examined which contain, to a certain extent, access to information: The Constitution of the Republic of El Salvador and the Environmental Law. The Constitution does not specifically state the right to access to public information in general, much less environmental information per se. It only contains two articles worth noting (Articles 6 and 18) and therefore the issue of "access to information" is not constitutionally established as it could be. In the Environmental Law, Article 9 expresses the right of the population to be opportunely informed on environmental issues.

The qualifications obtained through the previously-stated definitions give Salvadoran Legislation an average of 70%, noting that there is no special law about "Access to Information."

B. EMERGENCY

This subcategory permits knowing and evaluating the access to information during and after an emergency has occurred and the efforts made by the corresponding authorities to properly inform the public.

In El Salvador, two situations have been taken as a reference: a) Flooding in the departments of San Vicente and Usulután due to the inadequate management of the floodgates of the 15 of September damn. B) Storage and Deterioration of barrels containing toxafen belonging to the AGROJELL, S.A. Corporation.

The first emergency was provoked by human error in emptying more than the normal quantity of water (15,000 m³ per second) in the Lower Lempa region, for a period of 20 hours, damaging homes, livestock and crops; the communities were not warned ahead of time that they would be affected; this occurred as Tropical Storm Mitch was hitting El Salvador.

In the second case, an analysis was done of the corporate abandonment and subsequent deterioration—for a period of six years—of 92 barrels filled with the contaminant Taxofen that were stored in a warehouse and which caused contamination of the topsoil and water and health problems for the population in surrounding areas.

The value given to the first case during the time that the emergency was occurring was intermediate, given the coverage by the different media outlets. After the event, no authority presented plans for attention or prevention of this type of disaster caused by human error, and likewise no investigations were done. It was the people living in the affected communities who took the initiative to file a complaint in the courts, without success.

Throughout the duration of the second case, the qualification earned in terms of access to information is valued as weak (33%) since dispersion has existed. Afterwards, with the investigations done by the Human Rights Ombudsman's office, recommendations have been made that the Environmental Ministry (MARN) take up the case.

In both cases, the application of the Environmental Law for organizing and coordinating the National Prevention and Environmental Contingency Plan was basically nonexistent given that no corresponding authority assumed their role.

No law states that the public must be given information when a disaster or natural emergency occurs, only that mechanisms of collaboration should exist between entities.

In both cases, to date there has been no exhaustive treatment on behalf of government institutions in charge of environmental management (MARN, Courts, and the National Emergency Committee). This, despite the formal complaint waged by the affected populations in the case of the floodgates and despite the recommendations of the Human Rights Ombudsman's office regarding the contaminating barrels.

C. MONITORING SYSTEMS

This subcategory evaluates the environmental information made available by the water and air quality monitoring systems in the country. This important information is fundamental for the daily decisions of the public, since these two resources are needed on a daily basis to ensure a quality of life which guarantees health. The public authorities are obligated to make said information available with the goal of defending the health of millions of inhabitants, which is established as a constitutional right. The **quality** of information and the **access** to information are both evaluated.

The cases evaluated were: a) The SWISSCONTACT – FUSADES System for monitoring air quality, and b) the Public Health and Social Assistance Ministry’s system for monitoring water quality.

The Swisscontact and FUSADES (Salvadoran Foundation for Economic and Social Development) network for monitoring air quality, which is owned by private enterprise, is the only entity which has for the past nine years gathered data about the levels of atmospheric contamination, and this is the data utilized by the Environmental Ministry in its National Report on the Environment. But it is the central government, through the Environmental and Public Health Ministries, which has the obligation to guarantee to the public a clean environment that does not harm one’s health, and therefore the government must assume this state responsibility.

The qualification given to the Swisscontact-Fusades System was intermediate because the report included the measurement of parameters at systematic periods and was done over a period of seven years (1996-2002): nonetheless, there is no database which can be consulted about the monitoring of air quality. In terms of accessibility, it qualified as intermediary but with a weak tendency, since it was found that there is no mandate to make information public, the law suggests the necessity for regulating air quality, but not the publication of the state of air quality.

Water quality was given an intermediate qualification given that, despite the fact that the Public Health Ministry monitors some parameters of air quality per the Obligatory Salvadoran Norm 13.07.01:97, there is no database dedicated entirely to water quality, but rather it is spread among a variety of governmental and international institutions. The accessibility of information was rated as intermediate, principally because there is no mandate to disseminate information related to water quality, but there is a mandate for monitoring (Article 47 of the Environmental Law, and Section 8 of the Health Code). Potable water quality does not have a database on the Public Health Ministry’s webpage nor is there availability of information to mass media or the public.

The law is clear in assigning to the Environmental and Natural Resource Ministry the responsibility for monitoring air quality, but currently it does not have a monitoring network nor is there an institutional system which permits the evaluation of air quality.

In the case of water quality, there is an ambiguity of functions within two ministries (Public Health and Environment), reflecting a duplicity of competence which carries with it the lack of a network for monitoring quality.

D. REPORTS ABOUT THE ENVIRONMENTAL CONDITION

The conglomerate of indicators of this subcategory evaluates if the government publishes current state and the evolution of the national environment. Specifically, it evaluates if these are broad and precise, as well as the access which the public has to these.

For the study, the following cases were considered: a) the Memorandum of the Environmental and Natural Resources Ministry, which is a report describing annual activities and b) the Report on the National State of the Environment GEO 2002 (MARN and the United Nations Environmental Program, PNUMA) published every two years which contains qualitative and quantitative information about soil, water, air, and natural resources under the Global Environmental Outlook (GEO) methodology.

MARN Memorandum

The qualification given to the memo is intermediate, since the data it contains is considered insufficient, and they only refer to activities that the MARN developed. Its accessibility qualifies as strong, since the information can be found on the MARN website, and the MARN makes an effort to make the information available to the public through the media and thus there is open access for a period of three years with the MARN.

GEO Report 2002

It receives a strong evaluation, at 68.7%, since the quantity and quality of the data about the environment in El Salvador is profound and solid. It also contains explanatory tables and statistical data linked to the effects on the health of the inhabitants. In terms of the accessibility of the report, the law establishes as a mandate that the report should be elaborated and published every two years at the initiative of the President of the Republic, which is fulfilled by GEO 2002. The recent report is available on the websites of MARN and the PNUMA.

The Environmental Law establishes as an obligation that the MARN will gather, update and publish environmental information and obliging that such information be accessible to the public. But El Salvador still does not publish by its own account complete reports about the State of the Environment; what comes out of the current system is information which has not been systematized by MARN, as the data is spread among a number of different specialized entities.

E. REPORTS ABOUT THE ACTIVITIES OF INDUSTRY

In this subcategory, the possibility of access to information relative to the completion and activities of industrial entities is analyzed. It is from this sector that productive activities

are most often converted into environmental threats since waste is dumped into water, air, and soil. The responsibility of corporations should be identified and regulated effectively by public authorities to safeguard the environment.

There were five cases studies in the productive sector of the country:

The Izalco Sugar Refinery, which is dedicated to the processing of sugar cane to yield sugar, molasses, and other export products. The El Molino coffee processing plant, where the coffee cherry is processed to obtain whole and roasted coffee beans, export products. San José La Majada Agricultural Products, which produces ferns and requires an enormous amount of water. The RASA Petroleum Refinery which processes crude oil and is a latent threat from a potential hydrocarbons spill. The Nahuizalco Hydroelectric Center (Sensunapán S.A. de C.V.) which operates in the bed of this important river with three small hydroelectric units which are projected to be expanded in the medium term and one in process of implementation. These hydroelectric units have detoured the current of the river approximately 15 kilometers from its natural bed.

The evaluation demonstrated that for all the installations the results were weak both for the quality as well as the accessibility, the state of information is very critical since none showed that they had compliance reports or that they were in adherence with the established norms. In terms of quality it was impossible to determine whether the corporations informed about their actions to the proper authorities at the local or national level, and likewise it is unknown what kind of information was given.

There is a clear mandate within distinct legal bodies such as the Environmental Law, the Health Code, and the Special Procedures and Technical Norms for Environmental Quality, the Special Procedures for Residual (Waste) Water, Special Procedures for the control of Ozone-depleting substances, and the Penal Code. But, it was not possible to find public-access information in governmental institutions or from the authorities. The compliance of the reports that the installations are obligated to offer both to the public authorities as well as the communities is not known to the public. It was not found within the legislation how and what type of report the businesses should offer.

CHAPTER CONCLUSIONS

Regardless of the fact that the Constitution of the Republic is not clear with respect to access of general information, the national legislation includes some level of access to environmental information beginning with the Environmental Law. The laws and specific norms and procedures also do not clearly delineate the forms and mechanisms for offering said information nor how the public can access it.

The quality and accessibility of the information in the Emergency situations valued as intermediate identifies that the system of follow-up in the wake of disasters should be assumed with complete responsibility by the authorities. In the two cases discussed, there were no plans designed for giving a solution to the problems.

In the theme of monitoring, the intermediate evaluation evidences the lack of a network for monitoring the air quality which makes it necessary for MARN to clearly state the measures for installing such a network. Additionally, the variety of information found about the water quality network, and the duplicity of roles, obliges the establishment of integrated information systems where the public can access air and water quality information without much delay.

The reports evaluated have a strong tendency, due mostly to the GEO 2002, where the general status of the environment in El Salvador can be found. But its worth noting that its publication should be done at a more opportune time, since in the case of the last report it was presented two years late.

In the case of industry, which is the subcategory with the worse evaluation since the industries refuse to provide information, it becomes more urgent that the authorities play a more active role in demanding compliance with established norms.

CHAPTER 2. ACCESS TO PARTICIPATION

The Access Initiative methodology interprets Participation as the process during which the opinion generated through public consultation is discussed and taken into consideration by those who decide in the country. Effective consultation requires that the will and flexibility of those who make decisions incorporate ideas, suggestions and opinions of those persons who were consulted toward the end of constructing consensus, or negotiation between the public and the authorities with the goal of finding solutions.

A. LEGISLATION

This subcategory evaluates whether or not legal support exists to propitiate participation in El Salvador. As such the investigation is centered on the Constitution of the Republic, the secondary legislation and procedures about rights that have elements of citizen participation on environmental issues.

The Constitution of the Republic of El Salvador identifies Participation in public issues as a constitutional right of the inhabitants of El Salvador through three articles: 6, 7, and 18. But it establishes the right to propose legal initiatives only to Deputies, the President through his Ministers, the Supreme Court and the Municipal Councils with municipal taxes (Art. 133 Cons).

The Environmental Law includes a consistent apparatus for Participation in environmental issues, in Articles 8 and 10, and its corresponding procedures. Nonetheless, it's necessary to recognize that public participation is limited when it comes time to evaluate a project or work since MARN makes it a very bureaucratic process which does not encourage the citizenry to exercise its right.

In the case of Municipal Code, Articles 115, 116, and 117 allow for distinct spaces of participation and opinion en public decisions. Once again, this is not uniformly executable by the local authorities since it is up to the Municipal Councils how often and what decisions will be addressed at these forums. The code is also unspecific in terms of participation on environmental issues.

The rating for the three legal bodies is intermediate since participation is not guarantee on environmental issues. Environmental issues have a consistent theoretical argumentation for participation in the law, but in practice there is a lack of conformity.

B. ACCESS TO PARTICIPATION IN PLANS AND PROGRAMS

In this subcategory the extent, time and space that government authorities give for the public to participate in decisions about Plans and Programs that affect the environment on a national, regional, or departmental level are examined.

Several cases were studied: Bases for the Plan of the Nation and the Program for the Development of the Eastern Region.

The document Bases for the Plan of the Nation involves decisions of the country with impact in the following sectors: agricultural, industrial, financial, and fiscal. For the preservation and management of the environment, the Plan emphasizes two aspects: 1. Rescue and preserve the environment demanding strict controls, filing suit for actions, and economic incentives which can only be guaranteed within a broad national accord and 2. The Plan of the Nation petitions for profound and urgent commitments toward the end of rational management of the environment.

The Program for the Development of the Eastern Region is contained in the “Territorial Actions of the Plan of the Nation,” the document which completes the formulation of the Plan of the Nation. In the case of the eastern region, this program has as its goal converting the eastern region, beginning with the Gulf of Fonseca, into a bridge between hemispheres and oceans, vigorously encouraging trade, industry, and agriculture on the regional and world spheres.

The quality of both reports is rated as intermediate since the public expressed in a variety of meetings its opinion about the formulation of the projects, even though there was no awareness about which of their contributions was incorporated. Marginalized socioeconomic groups did not have the opportunity to opine once the Plan and the Program were created.

There are some legal foundations for the promotion of public participation in the making of public and environmental decisions. Nonetheless, the manner in which the Plan and Program have been driven forward has been through “citizen consultation” when the correct approach would be to apply the concept defined in the corresponding legislation which is “public consultation,” which implies following a procedure defined in the Environmental Law and its respective procedures. A weighty aspect of this subcategory,

participation, even though it can be seen as being formal and theoretical, in practice it is not, since the territorial meetings held were widely criticized by the local organizations and civil society that did not see their local proposals realized, but rather international policies determined by the financiers of the country.

C. ACCESS TO PARTICIPATION IN PROJECTS

This subcategory examines to what extent the participation of the local population is taken into account during the process of the project, as well as the process that was used to make public the project and the decisions made.

In the cases in El Salvador, the projects are considered to be dependent upon one national and one regional plan, with the purpose of including a wide and integrated vision of the actions which should exist to make public and communal participation possible.

The cases studied were: the construction of the Port of Cutuco and the construction of the Berlín Geothermic Plant (LAGEO S.A. de C.V.).

The Port of Cutuco is a project financed in its majority by the Japanese government which includes in its first phase, during 2005, the construction of terminals for containers, bulk shipments, and cruise ships in a work of largess which will affect the biodiversity of the Gulf of Fonseca.

The construction of LAGEO is aimed at the exploration, development, and commercial exploitation of geothermic resources, especially with the end of generating electricity for sale in wholesale markets. The construction process for the plant is generating soil instability, contamination of water resources and noise pollution for the inhabitants in the surrounding areas. Currently, LA GEO continues with the work of expansion and exploitation initiated by the Executive Hydroelectric Commission of the Lempa River – CEL – in order to confirm the existence of geothermic resources in distinct villages in the department of Usulután.

The results obtained earn a rating of intermediate with weak tendencies. These reflects that the practice of participation and information is weak since in the first moment of evaluation, the proper authorities did not offer the information required for that end. Also it was seen that the population does not know the integrality of the project nor the effects it could generate.

Even though there was a presentation of the Environmental Impact Assessment in the case of Cutuco, it did not use methodology or tools that would allow the public to make informed opinions, which resulted in very little participation. Additionally, this was not returned to the local population. Therefore, Article 25 of the Environmental Law was not fully adhered to.

Parts b) and c) refer to the realization of public consultation of the Environmental Impact Assessments (EIA) and taking into account public opinion.²

The organizations that participate in a somewhat sporadic manner in the EIA are included in a dispersed manner and sometimes were aimed at realizing negotiations which would permit the [owners of the project] to take steps towards realizing the projects. In the two cases studied, the local population never knew that a formal or official document could be submitted to express opinions about the project.

CHAPTER CONCLUSIONS

In the country there are some legal mechanisms (Art. 9, y Art. 25 of the Environmental Law) that mention participation of the population and opportune information, clearly and sufficiently. In the practice this type of participation and information has many gaps, with too much bureaucratic paperwork, with relatively short timeframes, without a defined or divulged methodology for gathering public opinion; MARN considers a consultation of documents in the central MARN office (in this case, located in San Salvador and with strict security norms) as a step in the approval of an EIA. Obviously this limits the participation of the population.

The little information and participation that the population can have on environmental issues can lead to inconformity, rejection, and a loss of credibility for those entities responsible for environmental issues. Failure to take into account these elements marginalizes the importance of real citizen participation for the development of democracy in the country.

CHAPTER 3. ACCESS TO JUSTICE

This category has as its end analyzing specific cases in which there could have been recognition by the Supreme Court of those affected on individual and collective levels. It seeks to recognize the existent national possibilities that can be used in complaints and suits and how solutions can be generated.

A. ACCESS TO ENVIRONMENTAL JUSTICE

The situation of access to environmental justice in El Salvador is currently not very strong. The law establishes in distinct texts its interest in protecting the environment; Article 177³ of the Constitution of the Republic, the Environmental Law approved in 1998, the Title X of the Penal Code, and respective procedures.

² b) For every EIA whose results reflected the possibility of affecting the quality of life of the population or threatening health risks or the wellbeing of the people or the environment, the Ministry must organize a public consultation of the study in the municipalities where the activity, work, or project is being considered.

c) In every case of consultation of EIAs, the public's opinions should be considered by the Ministry. The obligation that the owner (of the project or work) has in these two cases was not fulfilled.

³ Art. 177 of the Cons.: It is the duty of the State to protect natural resources, as well as the diversity and integrity of the environment, to guarantee Sustainable Development.

Currently, the law limits penalties for environmental crimes described in Title X, Cap II of the Penal Code, as it does not permit the Attorney General of the Republic as a part of the Public Ministry to officially intervene but rather assigns to the “administrative authority” (MARN) the procedure for classifying the crime.

Additionally, the Supreme Court through its president, has announced since 1999 that it assigned a budget for the creation of Environmental Tribunals⁴ but to date the failure to install those courts continues to be an urgent issue. Added to this is the lack of specialized personnel that can exercise the Environmental Right in these courts.

In the Attorney General’s office there are Environmental Attorneys, but they have a very weak role in terms of the application of environmental norms and generally are dedicated to activities of different environmental specialties. The Environmental Division of the National Civilian Police is in a similar situation, since it has minimal awareness or understanding of the Environmental Law; and even if people are found in flagrant violation there is very little that can be done since the System does not permit an objective evaluation of environmental crime and thus these are aired in civil tribunals.

Consequently, even though the law establishes in basic order the access to environmental justice, the Attorney General is limited in its action and the judicial system does not have the mechanism or sufficient capacity to permit that the public have access to justice (tribunals).

B. NEGATION OF ACCESS TO INFORMATION

In this subcategory that case of the construction of the Peripheral Beltway is studied; this was done under the jurisdiction of the Metropolitan San Salvador area (Capital and 8 surrounding municipalities). It is one of the mega projects within the Puebla Panama Plan (PPP), which will create a macro road infrastructure throughout the Central American region; it is financed by the Central American Economic Integration Bank—BCIE—which could cost up to \$1,500,000.000⁵. Its length is 98.36 kilometers (estimated area of 7 million m² among the asphalt area and the adjacent spaces on each side of the highway⁶).

In the face of the potential damages that the construction of the Beltway will cause, in the month of August 2002, Dr. Angel Ibarra, president of UNES (the Salvadoran Ecological Union) and Mr. Miguel Alvarado, president of ACAP (The Association of Communities Affected by the Peripheral Beltway), submitted a Contentious Administrative Recourse to the Supreme Court for the abuse committed by the MARN in not offering access to the

Protection, conservation, reasonable utilization, restoration or substitution of natural resources are in the public’s interest and are established by the law.

The introduction into the country of nuclear or toxic waste is prohibited.

⁴ El Diario de Hoy, Noviembre 23, 1999.

⁵ www.interaction.org

⁶ Central American Water Tribunal

information contained in the EIA that the Public Works Ministry completed. In October of 2002, the Court admitted a resolution and notified that the admissibility of the recourse was “pending” since it was not sufficiently clear with respect to the concepts of violation of each of the categories described in the Environmental Law that the recourse utilized.

The tribunal was partial since it did not permit a deeper investigation about the procedure that MARN and the Public Works Ministry used in the corresponding Public Consultations or in the exposition of the corresponding reports which are done in the Ministry’s installations. The recourse was not considered important. Additionally there was no access or diffusion in the media about this particular case.

In El Salvador there are no courts which can admit decisions linked to Access of Information, and therefore there can be no reparation of damages. The parties that introduced the recourse consider that the process was not transparent since, despite having sufficiently documented the complaint to the Supreme Court, it was not clear to them and therefore the Recourse was denied.

C. NEGATION OF ACCESS TO PARTICIPATION

In the Finca Estate, the owner cooperative (ACRAELES) which benefited from the Agrarian Reform did not have spaces for participation in in the process of making decisions regarding their own property; these were made by government authorities and the former land owners. The major part of the land was sold and commercial buildings were built upon it, causing the loss of biodiversity, damage to underground aquifers, and reduction in the production of oxygen in the capital city.

The Committee for the Defense of the Estate took the case to the Constitutional Chamber of the Supreme Court and to the Contention Administration, a process which took five years in its last phase and whose outcome favored the former landowner of the Estate. There were no reparations for the harm done to the environment nor to the families of the cooperative, but the significance of the case is that the opinions of the Committee for the Defense of the Estate were not taken into consideration during the decision-making process. For the judge, the right to private property is more important than the environment.

D. ENVIRONMENTAL DAMAGE

This case refers to the flooding of the San Vicente and Usulután departments as a result of the opening of the floodgates of the 15 of September damn, during the tropical storm Mitch which affected the Central American region.

In 1999 a complaint of negligence was registered at the Executive Hydroelectric Commission of the Lempa River—CEL—for having damaged the crops and livestock of San Vicente upon opening all at once the damn’s floodgates, which destroyed crops and animals. This is the first time an autonomous state entity has been accused in a penal court for its actions.

In 2000, there was a resolution from the Sentencing Court of San Vicente, that the CEL company should pay for the damages but the payment was never made; the Attorney General of the Republic accused the president of the company for disobeying a judicial order. The president of the state enterprise went before the Constitutional Chamber to solicit recourse of personal exhibition.

In December of 2004, the Constitutional Chamber of the Supreme Court submitted a sentence in which it exonerated the then-president of CEL, for the claim of disobedience of a judicial order. The Magistrates advised that the Sentencing Judge in San Vicente admitted and gave life to a request of “civil subsidiary responsibility,” which she did not have the competence to do. The Magistrates argued that the payment for the damages should have been aired in civil court. In short, there was no payment to those affected and the state enterprise was exonerated of all charges.

CHAPTER CONCLUSIONS

The disrespect and lack of compliance of Environmental Conventions and International Treaties signed and ratified by the country is highlighted, principally Principle 10 of the Río declaration.

On access to participation and environmental information, there is no political will to can make effective any resources administered by the law.

The weak role that the Attorney General of the Republic has for acting is evidenced in the CEL and El Espino cases, whose rational is contained in the existence of Article 263-A⁷ of the Penal Code through which the objective conditions of processability are annulled, since MARN is the one that must classify the environmental crime. With the referenced article all of Chapter II of the Penal Code, of the Crimes related to Nature and the Environment, which has 11 articles, is as yet unutilized. Additionally, MARN, upon beginning the administrative process, never gives a resolution that permits the Attorney General to act. The cases submitted by the citizenry or by the National Civilian Police make it as far as the MARN and there the process ends from negligence.

The Supreme Court also exercises a deficient role in the case of the flooding provoked by the CEL state enterprise, as neither reparation of damages to individuals nor to the environment were administered.

⁷ Art. 263-A—The option emerging from each of the crimes included in the present chapter, can only be advanced after the competent administrative authority has concluded the corresponding procedures in conformity with the Environmental Law.

This article entered as a reform via Legislative Decree No. 703, September 9, 1999 and published that same year in the month of October.

CHAPTER 4. CAPACITY BUILDING

This category exposes the situation of capacity building that government institutions provide for generating efforts which bring with them the better execution of the public's rights. Equally, the capacity generated in the public for supporting the exercise of rights of access to information and participation is evaluated, as well as the sources of information that serve to support the general understanding of environmental issues among the public.

A. LEGISLATION

This subcategory includes elements which should be contained in the national legislation in order to favor capacity building both of the government itself as well as other institutions related to distinct themes.

The Constitution of the Republic of El Salvador recognized the right of Freedom of Association in Art. 7. Additionally, Art. 113 and 114 include the duty of the State in fomenting and protecting economic and cooperative associations. The Constitution in Art. 117 inc. 1 manifests, "It is a duty of the State to protect natural resources, as well as diversity and the integrity of the environment, to guarantee Sustainable Development." From here, it can be deduced that the "integrity" of the environment includes the right to a clean environment.

The Environmental Law, in Art. 1, includes the protection, conservation, and recuperation of the environment. The related procedures specify the appropriate measures. The right to a clean environment is legislated; it's another situation entirely how these measures are executed to ensure that the compliance with this obligation.

In the Law of Non-Profit Associations and Foundations, the activities and functions of non-governmental organizations, principally in terms of registration, supervision, and control, are regulated. National and International organizations comply with this law. But the law does not include the facilities that the government must procure for facilitating the work of the NGO's.

These three laws get an intermediate grade given that they do not assure nor guarantee on behalf of the government the conditions which strengthen the capacities of social organizations.

B. STRENGTHENING OF GOVERNMENT CAPACITIES

This subcategory evaluates the Government's abilities and those which are systematically formed in order to produce better results in attention to the public.

In the first case, the Minister of the Environment and Natural Resources is the executor of the Environmental Law and his work is to coordinate among the state and social institutions the protection and sustainable management of natural resources.

The Environmental Division of the National Civilian Police has as its objective the protection of the environment and natural resources in accordance with the existent related laws.

The Minister of the Economy is in charge of promoting economic and social develop via an increase in production, productivity, and the rational utilization of resources. He is responsible for defining the country's trade policy, the drive and follow-up for Central American economic integration and the development of trade negotiations with tertiary countries and multilateral organisms.

The evaluation for these three institutions is weak, since, despite the government's efforts that its own personnel know and apply the postulates regarding access to information and participation, the personnel was basically unaware of those postulates.

From none of the three institutions was it known whether there were efforts to train judicial functionaries for the management of access to information and participation.

C. STRENGHTENING OF CITIZEN'S CAPACITIES

This subcategory analyzes the government's efforts to strengthen the capacities of the general public in knowing their rights of access to information and participation.

This subcategory evaluates the government's programs for strengthening citizen's capacity to make use of the principles of access and of the laws that interpret and guarantee those principles. It also evaluates the government's actions for strengthening this capacity.

The case studies take into account the MARN, the Economy and Education Ministries, as well as the Educational Institutions and the Office for the Defense of Human Rights.

The Education Ministry is the centralized party responsible for supporting the educational process in El Salvador with the end of working towards the integral development of the country.

The Institutions for Media Education that were evaluated were:

- General Francisco Menendez National Institute, San Salvador
- Dr. Pedro Miguel Rivera Damas National Institute, San Vicente
- Emilia Merchan School, Quezaltepeque, La Libertad

The office for the Defense of Human Rights submits resolutions, reports, and pronouncements through the Adjust Ombudsman for the Environment and National Reality, working towards the dignity of the human person, through respect and the guarantee of the fundamental human right to an environment adequate for the general viability of life. The Adjunct Ombudsman has national coverage through its delegates. It is an institution of the Public Ministry.

The non-governmental organizations evaluated were:

- The Salvadoran Center for Appropriate Technology (CESTA)
- Regional Program for Environmental Investigation
- The Association of Communities Affected by the Peripheral Beltway
- Network of Environmentalists in Action

In general, all the government's efforts were evaluated as strong since each was striving for greater awareness and public capacity regarding the rights to access to information and participation.

Also, the efforts that each institution is making to further strengthen public awareness about environmental issues were evident. The most stable institutions were the MARN and the Office for the Defense of Human Rights (PDDH). The PDDH is one of the institutions which seeks to reach the public in broad and systematic ways. Equally, the Education Ministry through its curriculum has broad reach beginning in primary school through the mid-levels of education. But once again the elements of access to information, participation and justice are practically unknown. A strong investment of resources and government positioning are needed so that the capacities and central elements of Principle 10 can be relayed.

In the case of NGO's, from different areas and methods throughout the country, they do laudable work in the country since they are the basic resources in the face of so much demand and many environmental issues. The most important element would be the existence of a consistent relationship among the NGO's and MARN toward the end of sharing capacity and generating methodology that can effectively reach the citizenry.

CHAPTER CONCLUSIONS

With assurance, it can be affirmed that this is an incipient area of work in El Salvador. In government spaces there is a general unawareness of the Principles of Access and of course of activities and practices that permit officials to orient, support, and induce the citizenry to exercise its rights.

The strengthening of capacities in El Salvador is still a theme that leaves much to be desired. It requires the political will of the government to be able to incite specific and concrete actions which permit the drive towards realizing the information and participation detailed in Principle 10.

Nonetheless, the average reflects that something exists, some work has been done, primarily from the environmental NGO's that keep these issues on the national agenda permanently through their activities and the constant denouncements they make to the decision-makers in MARN and the Legislative Assembly. They have a strong link to the population and in this way can get information out directly.

Governmental institutions, at different levels and intensities, do the work of exercising access to information and participation. But it is necessary that their own personnel be strengthened internally since the alternative, as is currently happening, is that issues are raised by the population but they are at best registered, but never resolved.

The promotion of environmental issues in the educational sphere has been done both with the professionals and with students beginning in primary school through high school. This is basically aimed at providing preventative and educational information. But, in any case, the awareness of Principle 10 is lacking among the teaching staff, and therefore it becomes even more important the work of incorporating it into the curriculum.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

The Salvadoran government is a signatory to the Río Declaration which came out of the Earth Summit celebrated in Brazil in 1992, coinciding with the signing of the Peace Accords in El Salvador that same year. Since then, a new page in the country's history has been written, in which the environmental theme occupies a preponderant position since the conditions of exploitation of natural resources have increased and are now in crisis. This also makes central the role of the government.

This is the first evaluation using the TAI methodology in El Salvador. Within this methodology are considered the elements of Principle 10 of the Río Declaration: access to information, participation, and justice; and it also includes that the government must make efforts to strengthen the government and public capacities, all with respect to the environment.

The methodology permits the establishment of parameters of compliance in legislation and in the practice with the purpose of visualizing how a feasible system of public participation in environmental decision-making functions.

Access to Information

The quality of information available refers to generalities and environmental aspects which are not very profound. The coverage in the media is infrequent and limited for the interior of the country.

On the level of competent investigation, it can be said that there exists theoretically a level of access to information which offers the necessary mechanisms and procedures, but these are all secondary laws and not openly guaranteed in the Constitution of the Republic, nor is there a special law which clearly permits access to information.

The results of the exercise of access to information did not produce better results that what was originally expected at the outset. The government institution in charge of the issue did not respond; some institutions responded by setting up meetings to ascertain what the required information was and then offering documents about their chores and about other activities they had done. Nothing concrete was obtained which would assure

transparent information and participation with well-defined mechanisms which permit the gathering of opinions or that they be taken into account.

The surveys, interviews, and letters directed to the responsible authorities in the execution of projects, as well as other parameters of evaluation, reveal the existing weaknesses in terms of citizen participation in the process, but also generate a rather negative image of the authorities with respect to the information and advancement toward a greater level of transparency.

It can therefore be stated that there are two general characteristics in the promotion and institutionalization of access to information: the first is that initiatives are developed in an elemental regulatory framework; the second is that the theme of access to information in the country is still very controversial and incipient.

Access to Participation

Much like the issue of access to information, in the case of participation there is a normative framework but there is no guarantee that citizen or public participation is effective. There is a lack of government policies directed towards this type of action and additionally there is a strong sense of tolerance for accepting the inconsistent opinions of officials. The Salvadoran society faces an enormous challenge for building a country where everyone may express her/his opinions and ideas and participate from citizens' spaces in a better future for the coming generations, already exposed to the effects of environmental degradations.

Along these lines, this evaluations verifies through the surveys done in the areas affected by the case studies, that there is no notification or any way for locals to become aware at the early stages, in the moment that options are open and change is possible in the draft stage of the process.

In this way, the different actors in the process see their participation as being regulated by the institutional practices of applying the laws, as well as by ambiguous and unclear procedures. The opportune participation of the population in the initiation, development, and final decision-making processes is not included as a mechanisms provided by governmental institutions.

Access to Justice

This is perhaps the weakest category in El Salvador, with a very limited and confusing practice. The environmental justice system, the institutions, and the people that should give life to the system have few possibilities for making this happen. Additionally, the idea continues that environmental issues can be handled in civil court for economic reparations. The dimension that guarantees the quality of life for Salvadorans has not yet been sufficiently valued.

Additionally, the guiding norms limit the role that the Attorney General can have, even if it is limited scope. Therefore, it is necessary that the First and Second Circuit Agro-Environmental Courts be established. The training and formation of the professionals who must act in these tribunals is also of utmost importance.

Strengthening of Capacities

In general, on the part of the government, there is a lack of investment toward the end of offering opportune attention to the citizenry on environmental issues. The PDDH and the MARN are the institutions which have programs and projects for generating capacity in the public. Added to this dynamic are the NGO's and grassroots environmental organizations.

In reference to the generation of capacities of the government for the public, it is evident that little investment has been made in this theme so that the personnel has awareness about environmental issues, and also there have been no spaces for the public to access the capacity building resources for the environment.