



The Access Initiative – Peru

“Situation of the Access to the Information, to the Social Participation and to the Environmental Justice in Peru”

Executive Summaryⁱ

Peruvian Society of Environmental Law

Isabel Calle Valladares
Iliana Urtecho Fuentes

August, 2005



1. Presentation and acknowledgements

The Access Initiative - Peru has been conceived as an integral part of an initiative on the level of Latin America, which also integrates a global coalition of organizations of the civil society calls " The Access Initiative ", that promotes the access to the information, to the public participation and to the justice in the decisions that affect the environment, and which has been founded in the Principle 10th of the Declaration of Rio de Janeiro.

The Initiative of Access Latin America, of which Peru is part of, seeks to evaluate the national systems of public participation, the legal and institutional frame and the mechanisms of management, to obtain this way, an independent diagnosis about the degree of advance of the implementation Principle 10 of the Declaration of Rio. As a matter of fact, this work has the purpose of elaborating recommendations and proposals that improve the exercise of these rights in each of the countries where this Initiative develops.

That is why this qualified Report " Situation of the Access to the Information, to the Social Participation and to the Environmental Justice in Peru " represents the study, elaborated during the year 2004 because of the Initiative of Access Peru, respect of the condition of the rights of access in Peru.

The Initiative of Access Peru has been conformed since May 2004, by the following organizations of the civil society: the Peruvian Society of Environmental Law (leading Organization), the Association of Consumers and Users, CARE Peru, the Center of Investigation in Applied Geography of the Pontificia Universidad Católica del Peru and the Council of the Peruvian Press.

It is necessary to indicate that, the Initiative of Access Peru relies on the support of a Council Adviser made up of the Technical National Group of Environmental Citizenship of the National Council of the Environment – CONAM, Engineer Carlos Loret de Mola, President of CONAM; Reverend Joaquín García, President of the Center of Theological Studies of the Amazonia; Ecologist Antonio Brack, PNUD Consultant and Dr. Pepi Patrón, from Transparency.

2. Aim of the study

This Initiative has as its principal aim to elaborate and give to know the current diagnosis of the social concretion of the rights of access to the information, public participation and access to the justice in the environmental decision-making in Peru, so that the people could know the real intensity of exercise,



respect and guarantee that these rights are having in the last years, established in our current Constitution.

For this, the research has been elaborated from the study of cases, guided by the methodology developed by the Initiative of Access, which determines the weaknesses and strengths of the treatment of our rights of access.

Though, this study describes and specifies each of these rights, from cases of study, also it is an instrument that will allow us to propose mechanisms to overcome the mistakes, to reinforce the advances and to suggest actions that promote the development and concretion of these rights. We hope that this study achieve its aim and could help on promoting actions and processes of short, medium and long term in the improvement of the access to these rights in the country.

3. Synthesis of results for chapter

In this point, the results have been summarized of each one of the cases studied in order to determine the condition of the rights of access in Peru in the methodological frame proposed by The Access Initiative.

As we will see then, the results have been systematized in charts that establish numerical values, which determine if the performance, according to each category and subcategory has been *low* (up to 33 %), *medium* (up to 66 %) or *high* (up to 100 %).

These purely quantitative qualifications, are used as a base to process, thanks to a complementary document, the obtained results and with them, to qualify in a qualitative way these results, being the applicable criteria the following ones: quality, orientated to verify the capacity and the efforts from the State to generate information; and accessibility, to refer to the degree in which the public can obtain the information.

Chapter 1: Access to information

The access to information is an indispensable component for the process of civil participation and the access to the justice, in the measurement that gives to the population more aptitude to take part, opportunely and adequately in the public decisions that can affect them. Undoubtedly, the access to the public information is fundamental for the development of societies with more participation and justice.



A. Legislation

As the picture indicates, in Peru our Constitution has established the right of access to the information as a fundamental right of the human being; therefore, there has been emitted special regulation that establishes the general procedure for the access to the public information. Likewise, there have been dictated rules that regulate the access to the public information of environmental matters. That is why our qualification of our legal frame respect of the access to information is *high*.

Table 1A

Average of the indicators of legislation for access to information.

	Low	Medium	High
The Constitution guaranties the access to environmental information			100.00
The existence of special laws about the access to environmental information			92.50
The existence of especific laws about the access to environmental information			81.25

B. Emergencies

In this subcategory is evaluated the access to information that the responsible entities spread during and after an environmental emergency. Two cases were evaluated: the case Choropampa, which was an emergency of large scale due to a spillage of mercury in the region of Cajamarca (in the north of the country) and the case of spillage of oil in a zone of the jungle, emergency of a small scale, occurred in a zone where the Plus Petrol S.A. company operates. In both cases, the qualification of the accessibility to information has showed an intermediate performance from the actors involved in each case, the State or the company; the same in case of the qualification of the quality of the information after the emergency.

It is necessary to annotate that in the qualification of the quality of the information during the emergency, both cases obtained *low* qualifications which indicates that the performance of the State and the persons in charge of the environmental emergency did not act in a better way to overcome adequately these emergencies.



Table 1B
Average of quality indicators and accessibility during and after the emergencies.

Type	Name of the case	Quality		Accessibility	
		During	Before	During	After
Emergency in large scale	Choropampa	33.00	45.83	37.33	46.19
Emergency in short scale	Spillage of oil in a zone of the jungle	33.00	48.50	37.33	48.75

C. Monitoring system

In this subcategory is evaluated the access to information about regular monitoring of the quality of air and water. For this purpose, there had been evaluated the performance of the Direction of Environmental Health (DIGESA) respect of information about the vigilance of the quality in Lima city; and for the case of the monitoring of potable water, the case of study was SEDAPAL, state-owned company that gives the services of sanitation services for Lima. It is necessary to indicate that DIGESA's performance has been qualified as *medium*, while, SEDAPAL has obtained a *high* value in the quality of the information that offers, and both institutions have obtained a *medium* performance in accessibility.

Tabla 1C
Average of quality indicators and accessibility of the monitoring systems of air and water.

Type	Name of the case	Quality	Accesibility
Air quality monitoring system	DIGESA Lima	62.50	48.87
Water quality monitoring system	SEDAPAL	100.00	48.31

D. Reports about the conditions of the environment

In this subcategory it is evaluated if the government publishes reports about the environmental impacts. In this item it has been evaluated the Annual Report of the state of the Environment emitted by the National Council of the Environment- CONAM, environmental national authority; and the Environmental Reports elaborated by the National Institute of Statistics and Information - INEI. The performance in each of these cases has been *high*.



Table 1D Average of the quality indicators and accessibility of the reports on the conditions of the environment

Title of the report	Quality	Accesibility
Annual Report of the state of the Environment	81.25	76.14
Environment reports in charge of INEI	81.25	72.57

E. Report about industries performance

This subcategory evaluates if the industries gives environmental precise information and in time. For the development of this point, there were evaluated companies of the mining sector: the mining companies of Maria's Community, Antamina Mining Company and the Miner Majaz; and companies of the fishing sector: Austral Group in Paracas and SIPESA S.A in Chimbote.

Table 1E Average of the quality indicators and accessibility of the fulfilment reports

Name of the industry	Sector	Quality	Accesibility
Antamina Mining Company	Energy and Mines Mining sub sector	67.63	57.33
Miner Majaz	Energy and Mines Mining sub sector	31.00	27.56
Maria's Community Miners	Energy and Mines Mining sub sector	42.63	36.89
Austral Group in Paracas	Fishing	37.25	36.89
SIPESA S.A. in Chimbote	Fishing	37.25	36.89

The results reflect a *medium* performance of each one of the companies in quality and accessibility from its fulfilment reports of environmental obligations. The only exceptions are the Antamina Mining Company, who had a *high* performance in the quality of the information that they offer and the Miner Majaz, was qualified with a *low* performance in quality, due to the fact that the company Majaz is in phase of mining exploration, and according with the current regulations, it is not obliged to present fulfilment reports or monitoring ones.



Chapter 2: Access to participation

The participation of the citizenship in matters of public interest is a right recognized in several international legislations and has the purpose of allowing the citizens express their opinions, make consultations and collaborate, with their knowledge, in the formulation of policies, projects and rules that could cause some effect in the community.

A. Legislation

In this subcategory it is analyzed if legal bases that guarantee the effective exercise of the participation right, exist or not. So, a high performance has been obtained, in the measure that our Constitution establishes right to participate in public matters of any political, social and cultural nature. Likewise, there have been emitted regulations that assure the participation in different areas of the public matters, included the processes of environmental evaluation that requires of normative, political and investment projects.

Table 2A

Average of the indicators of legislation for access to participation

	Low	Medium	High
The Constitution guarantees the access to participation			100.00
Existence of special legislations about the access to participation			100.00
Existence of legislation about the access to participation in environmental matters			100.00

B. Access to participation in Policies

In this subcategory is evaluated the promotion to the civil participation that the responsible authorities practise in relation to their policies, plans, programs, legislation and / or strategies. In this point, there was evaluated the National Plan of Solid Waste Integral Management and the National Forest Strategy. In both cases the performance resulted with a *medium* qualification.



Type	Name of the case	Quality	Accesibility
Plan	National Plan of Solid Waste Integral Management	57.00	41.57
Strategy	National Forest Strategy	63.08	65.93

C. Access to participation in projects

In this subcategory is evaluated the promotion to the civil participation that the responsible authorities have in relation to their projects. For the development of this sub category, there was evaluated the case Tambogrande, called this way by the people that showed resistance to the mining activities that were trying to be carried out in this zone of the north of the country; and the case Camisea, respect of the stage of location and execution of the natural gas Fractionation Plant, in Paracas. In both cases, the performance obtained a medium qualification.

Name of the case	Quality	Accesibility
Tambogrande	64.79	54.71
Camisea	65.93	59.10

Chapter 3: Access to justice

This category seeks to determine the smugness (or lacks) of the legal national frames to assure the access to justice of environmental decisions and to identify the legal situation granted to the citizens who want to raise a controversy.

A. Results associated with Legislation

Through this paragraph we seek to present the general panorama of Peru in the access to the justice in environmental topics. Our Constitution establishes the fundamental right of access to the justice, to protect our rights. Likewise, specific processes exist to safeguard the force of our rights; so, constitutional, civil, penal processes and administrative procedures, exist.



The results about the legislation are the following ones:

	Low	Medium	High
Legal Action			80.00
Public Interest			80.00
Courts/Forum		60.00	
Processes	Not corresponded / Not evaluated		
Appeal			100.00

B. Results associated with Practices

In this point, the cases could not be approached as they have been raised in the proposed methodology, since in Peru there have not registered cases of access to the justice for turning down public information in environmental matters or in participation in environmental matters.

About the cases of access to the justice for environmental damage, there was analyzed the case Choropampa. The obtained results are the following:

	Low	Medium	High
Legal Action			80.00
Public Interest ¹	Not evaluated		
Courts/Forum		46.70	
Oportunity		40.00	
Regulations		40.00	
Process ²	Not evaluated		
Reparation	20.00		

¹ In the case of Choropampa, there had not been an administrative report, but the process had a court-appointed beginning. There had not been any civil report because there had been extrajudicial deals and a report for ecological crime have not been formalized neither. That is why, this category has not been evaluated; it seeks to qualify if there has been given procedural legitimation to the parts in the concrete case or not.

² In the case of Choropampa, we have not evaluated this category because there have not been any civil or criminal report. We have not evaluated the administrative procedure for it.



	Low	Medium	High
Result		45.00	
Appeal			80.00
Extrajudicial mechanism			100.00
Extra legal factors		46.70	

Chapter 4: Strengthening capacities

The strengthening of the capacities of the proper state or the public in general, allows to guarantee a suitable and opportune access to the information and civil participation, otherwise it will be very difficult to be able to exercise the above mentioned rights in an opportune and efficient way.

A. Legislation

In this subcategory it is analyzed if there exist or not, legal bases to sustain the creation of capacities.

In Peru exists constitutional and legal rules that not only defend the environment, but established the right of every person to enjoy of a healthy environment. Likewise, the State promotes the formation of private and public associations, which work in activities in favour of contributing to these purposes of environmental protection. That is why the results have obtained a high performance.

Table 4A

Average of the indicators of legislation for strengthening capacities

	Low	Medium	High
The Constitution allows asociations that protects the environment.			100.00
Tax Facilities			100.00

B. Efforts of the State to strengthen its own capacities

This subcategory evaluates the governmental actions to strengthen its own capacities.

In this point there were evaluated the capacities of the National Council of the Environment, the Ministry of Energy and Mines, the General Contralory of the



Republic, the Superior Court of Justice and the Supreme Court of Justice of the Republic. The general average, throws a medium qualification considering the current capacities and those that they are cultivating for the future, as representatives of the administration of the Peruvian State.

	Low	Medium	High
Effort of the State to strengthen its own capacities		50.00	

C. Efforts of the State to strengthen capacities of the general public

This subcategory evaluates the governmental actions to strengthen the citizen capacity to use the principles of access and the laws that interpret and guarantee these principles.

There were evaluated the efforts that make the National Council of the Environment, the Ministry of Energy and Mines, the National Institute of Natural Resources, the Ministry of Education, two Educational Centers and two national NGOs: *Gea Perú Group* and *Law, Environment and Natural Resources (DARN)*. The average has obtained a medium level.

	Low	Médium	High
Efforts of the State to strengthen the capacities of the public		62.50	

4. Final Conclutions and Recommendations

Chapter 1: Access to Information

- There exists a constitutional and legal frame that clearly establishes the right of every person to gain access to all public information. Nevertheless, there is still needed the spreading of these laws and their scopes. The implemented constitutional guaranty is the Hábeas Data.
- The Law of Transparency and Access to Public Information is still a rule with many limitations that not permit its effective application: the lack of systematized information, the lack of reliable information, the existence of a culture of the secret, the ignorance of the law for some authorities, the



excessive load of work in the environmental authorities that not let them to be able to absolve the consultations of the population in the terms established by law, excessive formalisms, the centralism of the information, the challenge of the decentralization, and others.

- Is important to reinforce the figure of the SINIA, to effects of placing at the disposal of the public the information about environmental matter that the different public authorities have.
- It is necessary to implement an efficient mechanism of information of environmental emergencies, which creates obligations to the responsible company and to the authorities in order that the population could know what to do and how to overcome the present and future effects hat cause the emergencies. It must be complements with efficient sanctioned and compensative mechanisms; as well as, promoted the implementation of communication systems in the agenda of the social responsibility of the companies.
- There must be implemented a regulative instrument that establishes the actions of the company in relation to an emergency out of the installations, which include programs of capacitating and training.
- Likewise, the environmental reports also are regulated by the current regulations, that is the reason why they have been published from time to time, but with problems in the managing of environmental updated information. In consequence, the generation, systematization and permanent update of environmental information and databases must be strongly stimulated. The use of the Internet, massive mass media, printed materials, etc. must be promoted.
- There exist regulations that are applied to the industrial and fishing sectors in order that they make monitoring of pollutant emission or effluents of each one of their installations, but the compliance to these regulations are weakened by the lack of exigibility of the norms. The State must improve the systems of information that it handles about the environmental performance of the companies, so that they will be accessible in an easy and rapid way. It is advisable to implement the Record of Emission and Transfer of Pollutants (RETC), which has demonstrated to be a system of information that promotes a culture of major transparency and environmental responsibility



Chapter 2: Access to the Participation

- The legislation has contemplated mechanisms of citizen participation, but it still has limitations in real terms.
- The legislation admits that the population has legislative initiative (not less than 0.3 % of the electoral national population), nevertheless it does not assure the citizen participation in the design of it.
- The environmental legislation in relation to the citizen participation has centred basically on the process of evaluation of environmental impact. That is the reason why, every sector has regulated this topic independently.
- The legislation has developed in a lower degree all the matters relating with the participative mechanisms.
- It has not been properly legislated about the duties and responsibilities of citizens who take part in the decision-making, so there is the possibility of excessively exercising the right as well as avoiding its correct functioning.
- The legislation does not assure the participation of the citizenship in the design of the rules, policies, strategies, plans, etc.
- Is important to establish other instruments from which the population has knowledge and could take part in policies, plans, programs or strategies; for example, to reinforce the information through explanatory manuals, prepublications, web sites, and others.
- There must be put in the agenda the topic of the interculturality in the context of the access to the participation in environmental matters.
- It is necessary that the population who takes part in public consultations is able to know what happens with their comments or suggestions.
- The process should be systematized in a uniform way. It is important that the documents for the public audience or public workshops could be available through several instruments: SINIA, web sites, national, regional or local offices.
- The SEIA is designed to evaluate projects and not to evaluate the policies that support them.
- There is no technical assistance or training to the population in relation to impacts of the project, which puts it in a disadvantaged position in the



moment to take decisions or in process of negotiation. There is support from organizations of the civil society, but it is necessary that the State also takes part of. That is why, an offer would be the necessity to create a fund to stimulate the access to the participation of the citizenship in public matters of environmental nature.

Chapter 3: Access to Justice

- The legal applicable frame in the first instance to accede to justice in case that the access to the information or to the participation has been denied, or that exists an environmental damage, is eminently administrative. Nevertheless, besides this, it is possible to initiate judicial processes.
- In case of refusal of the access to the information, it is possible to bring an Habeas Data.
- In case of refusal of the access to the participation, it is possible to present an Action of Protection.
- According to our current regulation, the instrument to accede to justice in case an environmental damage happens, is basically, the process in the civil courts to ask for the reparation of the damage demanding for extra-contractual civil responsibility.
- The administrative route is not advisable, since it does not repair the damages caused by an environmental damage. Though fines and sanctions exist for the causer of these damages, our regulation does not establish that the above mentioned fine goes directly to the repairing of the affected population.
- As we has indicated, for asking an environmental damage reparation, it must be demanded by the route of extra-contractual civil responsibility, which suffers from a series of faults in cases of reparations from environmental damage.
- It is important to indicate that though the normatively has established alternative mechanisms of resolution of conflicts, these are not used by the parts yet.



Chapter 4: Strengthening capacities

- The legal Peruvian frame allows and guarantees the constitution of organizations that have as aim to benefit the society; among the dispositions contemplated in the legislation, there could be identify the care and protection of the environment as social subject.
- In normative level, there is no impediment for the conformation of civil organizations that works at environmental matters.
- Likewise, the tax legislation offers facilities and promote the civil organized society work in favour of the environment.
- There exist clear laws that reinforce the exercise of the right of access to the information and that establish the obligation for the government to have in every entity a person in charge of receive these requests and to channel them to the corresponding entity to absolve the consultation.
- It is still missing the task of the government of training its public servants respect of the access to the information and the citizen participation. This must be for the public servants in the level of the Public Administration, as for the judicial public servants.
- It is needed to implement actions from the government to strengthen its own aptitudes through the training of its governmental public servants to provide information and help to the users who need information.
- It is needed to strengthen the capacities of the own population, so that these could take part in an efficient and effective way in the processes of making decisions.
- The environmental education must spread to all the sectors of the society, since it is the base of a responsible and awkward participation.

ⁱ Translation made from the brief elaborated by SPDA.