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Unless stated otherwise, the points of view, interpretations and findings submitted herein are the responsibility of the coalition and not of The Access Initiative.

ACCESS INITIATIVE VENEZUELA (AI-VENEZUELA)

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¹ The Access Initiative (TAI) is a global coalition of organizations of public interest that cooperate to incentivate at a national level the implementation of commitments to access to information, participation and justice in the making of environmental decisions. The Access Initiative is led by a global coordination comprised by the Institute of World Resources (Washington D.C., U.S.A.), the *Environmental Management and Law Association*, (Budapest, Hungary) the *Corporación Participa* (Participate Corporation) (Santiago, Chile), *Advocates Coalition for Development and Environment* (Uganda), and the *Thailand Environment Institute* (Bangkok, Thailand).

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Presentation

This study is based on the analysis of the implementation of the postulates of Principle 10 of the Declaration of Rio, using a methodology, accepted and validated at the international level. The evaluated elements comprise the study of the participation in the environmental matter, analyzed in four aspects: information, participation, access to justice and strengthening of capabilities. Each one of these aspects is studied in the regulatory environment and in the practical environment.

In this study an analysis of the regulating instruments on which part of the policies on the environmental matter is based is carried out. It is necessary to carry out said analysis, given the high value that it is assigned to the existence of a clear regulating framework that contemplates or regulates the situation. It is also important to evaluate in what type of instrument the regulation is found, since it would not have the same qualification, if it is regulated by the Political Constitution, than if it is only a Decree or Regulations that contemplate the situation. The regulation is analyzed from the point of view of the instruments that contains it.

Additionally and in order to provide it with a factual support, study cases are analyzed, to evaluate in practice which is the application of the existing regulation to a specific case. The preceding will give us the possibility to evaluate the extent of application of the rule in practical aspects, allowing us to obtain indicators that may lead to the enhancement, expansion or revocation of the analyzed rule. The cases chosen represent situations that, in spite of being emblematic (in each one of the aspects studied), have received a treatment of times and processes that would apply for any case.

All the above expressed in figures, through the system of allocating values and the classification of results. This system allows us to place within a scale the situation of the principles of access within the Venezuelan system.

For purposes of this summary, the summary of numerical results was arranged in the first place, and then a descriptive explanation of the results obtained. The complete results may be consulted in the complete version of the Report of Venezuela.

Objectives of the Study

The general object of this study consists in analyzing the compliance of the postulates of the principle 10 of the Declaration of Rio, referred to the participation in environmental matters, seen from the perspective of the four aspects mentioned in the presentation.

From the above general objective some specific objectives derive, among which we find:

- To know the regulating situation (at the constitutional, legal and regulating level) of the rights linked to the access to information in a general sense and in the environmental matter. This objective comprises the analysis of the freedoms of information, printing, expression, interpretation of environmental information and as a counterpart, the analysis of the existence (at the legislative level) of provisions in the matter of confidentiality. Likewise, it comprises the possibility that the citizens are aware of the status of the environment and of the controls exercised by the government authorities over the industrial activity, specially as relates to the compliance with the environmental regulations.
- To evaluate the levels of participation of the citizens, both from the regulating perspective, as well as from the practical point of view. Likewise, this objective comprises the possibility not only that the citizens participate, but also to study the impact that this participation has in the formulation of public policies in the environmental matter.
- To study the jurisdictional mechanisms that the citizens have to solve situations that may cause or have caused damage to the environment. Also, within the jurisdictional aspects, there is the possibility of activating the jurisdictional bodies in case that some information is not accessible and that there are limitations to the participation in the decision making processes.
- To know and evaluate the programs of the government entities to strengthen their own capabilities and the capabilities of the citizens to access the information, participation and justice, by the citizens, non government organizations, schools and independent professionals, all these relative to the environmental subject. This objective, the same as the preceding ones is seen from the regulatory and practical perspective, the latter developed through case studies.
- To make proposals of public policies in the matter of access to information, taking as a basis the data obtained along the study. The above comprises to send the processed results, with the pertinent recommendations, so that the government

authorities undertake specific actions to reinforce the good practices, and correct the weaknesses shown in other environments.

Synthesis of Results

Chapter I: Access to Information

Table 1: Summary of results of the Information Category

Legislation	Weak	Intermediate	Strong
The Constitution guarantees access to information			75
Existence of special laws on access to information		60	
Existence of specific laws on access to environmental information		56.25	

Subcategory	Quality	Accessibility	Average
Emergencies	53.41	69.72	61.56
Monitoring	62.85	48.59	55.72
Report	84.37	67.21	75.79
Industries	69.88	38.74	54.31

The Venezuelan regulating framework in the matter of access to information, from the Constitutional point of view, is quite broad and has ample regulations that allow the contemplation of the rights, but from the point of view of the legislation that develops it (or that should develop it) has some insufficiencies and imprecisions, since in the constitutional rule it mentions the laws that should develop the right to information, however, there are only some articles scattered in the rules. Specifically in the environmental matter there are only general statements, which are susceptible of discretionary interpretations.

The above situation can be seen very clearly in the Organic Law of the Public Administration, where there is a regulation in the matter of access to information, but its wording allows it to be interpreted as restricting the right, specially as related to motivation, relationship or interest that a person may have over that information. In accordance to the above, it is necessary to reinforce the existence of clear rules with clear exceptions that are not used as obstacles to the access to information. It is also important to determine with the highest precision as possible which are the "Confidential" or "Classified" documents, since the law remits to another law to make this determination, and there is no law that has been issued regulating the subject.

According to what has been analyzed and studied, it is mandatory to submit the reports on compliance and the reports on transfer of pollutants, which are made by laboratories

registered and authorized by the Ministry of Environment. It is also mandatory to submit at least once each quarter (for the case of water) and “at least once per year” for the case of air. This allows us to see the amount of information that the Ministry of Environment handles, which would provide the raw material necessary for formulating proper policies in the environmental matter.

As we pointed out at the time of analyzing the legislation on the matter of reports of compliance and the register on transfer of pollutants, there are different legislations regulating water, air, hazardous waste and even their geographical area; all those instruments point out that it is mandatory to submit the reports at least once per year, through the laboratories authorized by the Ministry, delivering the reports and the registration on the transfer of pollutants to the State Direction of Environment (DEA, in its Spanish acronym) which are located in each state of the country.

All industrial activities, before beginning their productive processes, must submit a study of the environmental impact to determine which is the system of adequation or which are the measures they should take to generate the least damage to the environment or to the people. For each industry, there shall be an adequation plan which includes in many cases, the construction of storages, placing of filters or other implements to reduce discharges to the environment.

As regards the access of the collective to the compliance reports and to the registers of transfers of pollutants, the same are not accessible to the public, there being a constant running around between industries and the Ministry since the first ones point out to the petitioner that they have a legal obligation to deliver information to the Ministry, not to the public. On the other hand, the Ministry does not inform the public about the reports, because it points out that said files are confidential (without there being any legal rule classifying them as such). Additionally, if the persons that appear at the physical location of the facilities did not receive information, much less can it be accessible through the Internet or be the electronic files sent to the petitioners.

In respect to the information that the industries provide to the public relative to the compliance with the environmental provisions, the same could be qualified as bare, since in most of the cases only scarce and out of date information on the compliance with the environmental subject could be obtained, many of the industries claim that their duty ends with the submittal of the reports to the government authorities.

In the Venezuelan case and related to emergencies, it is important to point out that the levels of information received by the citizens by their closest authorities (specifically the municipal ones) are quite low, and even in the initial moments of the emergencies, the

information was very scarce, but it was expanding as the emergency was developing and becoming more visible.

In virtue of the research work carried out, it stands out that there are and there are made monitoring of the quality of air, which (as we could find out in the interviews) are made regularly and observing the international accepted parameters. As regards accessibility, it is very deficient, because the citizens can not access the reports on monitoring, neither through Internet, not through written requests to the Direction of Environmental Quality, nor in the documentation centers of the entity, a situation that, as we saw previously, goes against what it is set forth in the Constitution and in the Organic Law of Environment and the Organic Law of the Public Administration.

Guaranteeing the access of the population to the official information in our country constitutes a challenge, specially in the first hours of an emergency (where the temptations of the authorities is to deny that there is an emergency situation) which are crucial to diminish the negative effects of the situation. Likewise, it is very important to have clear policies, plans and programs for the prevention of disasters, additionally to the plans to solve the contingencies, to which we are all exposed to.

In respect to the monitoring of the quality of the water, this follows the same pattern as that of the air: it is governed by internationally accepted standards, complying fully with the quality parameters, but it is not accessible to the public in any way, neither printed, nor digital nor through the Internet. We know of the existence of the survey of information only because of the questionnaire and the interview made to the person in charge of compiling this monitoring, but to us as researchers none of the reports was shown, and therefore we can only have available the results of the interviews.

When we asked the interviewed authorities why not the reports are made public, they simply answer that the common of the population does not request this information. Given this situation it becomes important that the interest of the community towards the status of the environment is motivated at every level, because on that not only depends our health but life itself. It is also necessary that once the interest of people for the environment begins to wake up, the administrative processes for requesting information become more expedite and without so many complications, since it would not be of much usefulness to generate an interest and then not having an answer.

In both cases (air and water), it is necessary that the information on quality becomes of public knowledge, because it is difficult to open participation processes to formulate coherent environmental policies if the real status of the resources is not known.

In respect to the role of the communication media, it would seem that if we are not facing an emergency, they do not have the interest in divulging information of a preventive type, representing a further obstacle in the access to information.

Chapter II: Participation

Table 2: Summary of results of Category II Participation

	Weak	Intermediate	Strong
The Constitution guarantees access to participation			75
Existence of special laws on access to participation			87.5
Existence of specific legislation on access to participation			75

Type	Name of the case	Quality	Accessibility
Law	Organic Law on the Rendering of the Service of Drinking Water and Sanitation	64.78	64.78
Program	Technical Sessions on Water	94.64	78.57
Strategy	Community Micrometers for Drinking Water	41.42	64.78
Policy	National Policy on Forests	43.87	49.85
Plan	Plan of the Forestry Reserve of Imataca	80.35	78.57
Project	Coal Concessions, Cachiri, Mache, Socuy, Sierra de Perija State of Zulia	46.78	55.21
Project	Project of Communitary Handling of the Caparo Forest- State of Barinas	65.42	70.14

It is important to highlight that the system of government prevailing in Venezuela has the adjective “participative”, and along our regulating system, the term “participation” is found in a high number of the rules consulted, as well as within the establishment of the guidelines of the Economic and Social Development Plan 2001-2007, wherein one of the clear lines of action is the achievement of a social equilibrium, using as strategy the strengthening of the social participation in the generation of citizen power in public decisions spaces. However, in practice, the success of these policies has come with certain slowness, since one thing is to establish guidelines on paper and a very different one is the putting in practice of the same.

As we see, the topic of the participation in Venezuela poses in itself a great paradox: there are important rules that point out that it is mandatory to open participation processes to the community, specially when there is influence in a given community, however, in reality, it would seem that we are farther from achieving a collective conscious of participation. The public, in spite that it has possibilities to propose drafts of law, in practice it is very cumbersome to participate in this area. Additionally, the temptation of discretionallity in the exercise of public functions follows a major percentage of our authorities.

If we would attempt to assign a comparative type of evaluation to the rules studied, we could say that it is the Organic Law of the Public Administration the one that develops in some of its chapters the subject of participation. But, curiously, it is the one that leaves a higher margin of discrecionallity. However, as regards the plans and programs analyzed, there are high levels of citizens participation, expressed in that co-responsibility State-population, in the design of programs that respond to the needs posed.

There is in our country a deep rooted culture of the officers of the public administration of not allowing the participation of the citizens in spite of the principles established in our rules. The change of attitude of facing the possibility of persons may express their thought and their opinion in the respect of the performance of the bodies of the public administration constitutes a challenge. With their cooperation, community and government are co-responsibles in the design, the implementation and the monitoring of the projects, plans, policies or strategies that influence in a given sector or locality.

In spite of all the above we observe that some of the cases studied comprise good practices as refers to participation, since they are based on the construction of consensus to solve a situation or to develop activities that constitute an enhancement of the quality of life of the population. These practices are the ones that should be given a higher coverage in the media, a little in order to make these good practices known and also so that it serves as encouragement to the participants.

Chapter III Access to Justice

Table 3: Results of the Category Access to Justice

	Weak	Intermediate	Strong
Legal Action			100
Public Interest		53.3	
Courts Forum			100
Processes	26.6		
Appeal			73.3

	Weak	Intermediate	Strong
Legal Action			100
Juridical Interest		53.3	
Courts-Forum		57.7	
Opportunity	26.6		
Rules		46.6	
Processes		53.3	
Results			77.3
Appeal		40	
Extra-Judicial Mechanisms	20		
Extra-Juridical Factors		64.4	

In Venezuela there are substantive rules to punish environmental offenses, which are stipulated in the Criminal Law of the Environment, that in spite that in its time was an advanced law, nowadays the specialists considered that it must be adapted to reality and to the changes of the processal and institutional rules that have occurred since it was issued in 1992 up to this date.

Among the criticisms that are important to highlight to the purposes of this study, we find that within the Judicial Power there are no judges dedicated to the solution of environmental conflicts, in other words, the environmental offenses fall within the ordinary criminal Jurisdiction, this generates that if there arrive cases on offenses to persons or patrimony, the environmental cases are left aside, for the end. Only the prosecutors of the Public Prosecutor's Office have a special competence on environmental matter, but currently many of the environmental prosecutors (given the number of offenses that require arraignment by the Prosecutor's Office) are in charge of common delinquency cases. Additionally, the training of the Venezuelan judge is very oriented to the analysis of the environmental offenses as if the case would be one of an offense against the property,

without taking into account the high degree of specialty and of technique that is required to solve an environmental conflict.

It is also relevant to point out that in Venezuela we lack special legislation that regulates the access to information and to participation, therefore the administrative and judicial remedies (those used in the studied cases) that the citizen may exercise against acts of the public administration, but this procedures are not expedite, a situation that causes that while an administrative case is running, the affected party introduces a precautionary request for relief so that the violation of the right ceases, the administrative appeal in question is decided. At times, in given opportunities, when an administrative decision is obtained, it is declared that there is nothing on which to decide, given that it was already solved through another appeal or the decision could not repair the infringed situation.

In the matter of appeals of action of a person (or a group of persons) in order to reinforce the right to the information and participation, is the Action of Relief, which is applied for violation of constitutional rights. Given its nature of an extraordinary appeal and brief (in practice it is not so brief), it is widely used, to the point of abuseness, since through this action not other proceeding is annulled, it is only ordered that the violation of the constitutional right is to cease.

It is important to point out that in Venezuela there are the alternate means for the solution of disputes, (even from the constitutional point of view) that might be competent to cooperate in the solution of environmental conflicts, but the criminal jurisdiction has an attractive premium to hear cases of environmental damages which involve civil and criminal responsibility. Additionally, the law sets forth that for the cases where there is an effective or alleged violation, the jurisdictional entities must be resorted to in order to stop the violation or request its repair.

A step that we consider should be studied in the future is the possibility of creating special courts (we already have Public Prosecutor's offices specialized in environmental matters), which judges are provided with a proper training, since environmental damage (in particular) requires of a wide vision that incorporates factors of economical, scientific, engineering analysis that an ordinary judge or process can not do, since the priorities of the criminal judges, are the offenses against persons and against properties.

Chapter IV: Strengthening of Capabilities

Table 4: Summary of Results of the Strengthening of Capabilities Category

Subcategory	Average
Legal Framework	80.20
Strengthening of the government	56.25
Strengthening of the public	88.75

In Venezuela, the regulating framework allows and guarantees the right to association, provided it is for legal purposes. It is specially allowed the constitution of groups and associations which objectives are the prevention, the preservation, the protection and the restoration of the environment, groups to whom the income tax law grants the possibility of exemption of the income tax. Additionally, there is the possibility that the government subsidies some of these non-government organizations (NGO's) through "contracts", but the latter are highly bureaucratized and the disbursements are irregular, which many organizations consider not so feasible. However, during the last times there have been pronouncements and judgments issued that interpreting the term "civil society" have created more confusion and have been used for campaigns against some NOG's, being the most emblematic one the reception of international funds for the development of activities, where it was even discussed to penalize the reception of international funds.

There are some actions of the government entities oriented to stronger their institutions, through training programs containing topics related to the information and citizens participation. However, remembering a little the results of the preceding chapters, it would seem that in spite of the training efforts, it has been hard for the officers in charge of divulging the information to internalize the concept of free access to information.

In respect to the training of judges and other judicial officers, we note that it is scarce, in order not to say that it does not exist. Therefore, it is necessary to promote the training of judges and other judicial officers in the matter of access to information and on the environmental legislation, there being a marked interest by many of the interviewed ones to incorporate these topics within the study programs. It is important to improve the quality of the information, since many times the information available is not updated, and therefore it lacks interest for many of the petitioners.

The environmental education has been included successfully in the designs of curricula and in the educational projects in the classroom, of the initial formation grades and in those of basic education, but it is necessary to extend them to other education and social levels to achieve an appropriation of the participation concept.

In respect to the mass communication media, we have observed that in spite that many times the environmental topic “is not news” some private and community means have turned to the construction of healthy environmental spaces under the premise that it is a construction where we all are capable of contributing. The role of the communication media has been very important in the emergencies, and in some of the cases studied, since they constituted an informative tribune of high importance to make known opinions on the situation process.

Conclusions

This is the first draft for the research work using the *TAI* Methodology, which makes it the point of departure for the comparative analysis to the future of the situation of the Access Principles. In a general sense, we are starting from a Constitution that sets forth the basic principles on which the right to information, participation and access to justice are based, but however, it has slightly timid provisions as regards the environmental matter, given the nature of fundamental Law that the Constitution has and that this demands complementary regulations.

In a general sense, although there exist a multiplicity of laws that, as we have mentioned previously, touch tangentially the topics of access to information, we may point out that the element that is present in most of the laws approved as from year 2000, is participation. With this, we may say that it is an important advancement to include participation as a transversal axis of the policies at all levels, but it is not less important to strengthen the information that will allow a conscient participation and not only as “being there”. As the “third leg” of this important tripod, it is necessary to strengthen the administrative and judicial mechanisms of access to justice, since the latter allow to solve a situation of conflict of interests between citizens and Public Administration.

It is important for the success of the implementation of the principles of access, that the public and private actors are incorporated, and that there are concrete products of this interaction, of course within the framework of the legal and constitutional principles.