



ACCESS

TO INFORMATION AND HUMAN RIGHTS IN EXTRACTIVE ACTIVITIES:

THE CASES OF NICARAGUA, GUATEMALA AND THE
DOMINICAN REPUBLIC

IACHR PUBLIC HEARING:

Right of Access to Information and Transparency
in the Environmental Management, Granting,
Monitoring and Control of Extractive Activities in
Latin America and the Caribbean

Washington, DC, March 18, 2017

PETITIONERS:

Movimiento Salvemos Santo Domingo, with support from Centro Humboldt of
Nicaragua

Convergencia Social y de ONG's "Tezulutlán", with support from the Organized
Communities in Resistance for their Water Resources of Guatemala

Acción Ciudadana, Capítulo Guatemalteco de Transparencia Internacional

Fundación Justicia y Transparencia (FJT), Dominican Republic

Observatorio Dominicano de Políticas Públicas of the Universidad Autónoma de Santo
Domingo and articulated organizations in the Espacio Nacional para la Transparencia en
las Industrias Extractivas (ENTRE), with support from communities affected by mining
in La Piñita, Tocoa and El Yagal, Sanchez Ramirez Province, Dominican Republic

Derecho, Ambiente y Recursos Naturales (DAR) of Peru

Due Process of Law Foundation (DPLF)

With
support from:



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*Right of Access to Information and Transparency in Environmental Management,
Granting, Monitoring and Control of Extractive Activities in Latin America and the
Caribbean*

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Introduction

The present report seeks to disseminate the arguments and recommendations from civil society and affected populations presented at the public hearing, "The Right of Access to Information and Transparency in Environmental Management, Granting, Monitoring and Control of Extractive Activities in the Americas". The hearing was held on Saturday March 18, 2017, from 10:30-11:15 AM in Washington, DC, within the framework of the 61st Session of the Inter-American Commission on Human Rights (IACHR).

During the session, the ineffective application the right to public information in Nicaragua, Guatemala, and the Dominican Republic in the field of extractive industries was exposed, implying the violation of other rights such as: life, health, physical integrity, healthy and balanced environment, citizen participation, consultation, among others; often adversely affecting the most vulnerable populations, subjected to a situation of historical disadvantage, such as women, indigenous peoples, peasants and people of African descent.

The request for the public hearing was requested by: Movimiento Salvemos Santo Domingo, with support from Centro Humboldt of Nicaragua; Acción Ciudadana and Convergencia Social y de ONG's "Tezulutlán", with support from the Organized Communities in Resistance for their Water Resources of Guatemala; Fundación Justicia y Transparencia (JTF); Observatorio Dominicano de Políticas Públicas of the Universidad Autónoma de Santo Domingo; Espacio Nacional para la Transparencia en las Industrias Extractivas (ENTRE), with support from communities affected by mining in La Piñita, Tocoa, and El Yagal, of the Sanchez Ramirez province of the Dominican Republic; Derecho, Ambiente y Recursos Naturales (DAR) together with the Due Process of Law Foundation (DPLF). This took place within the framework of the follow-up regarding policies on access to information and transparency in Latin America and the Caribbean carried out by these organizations.

Given the proximity of the majority of the organizations requesting the hearing with the communities and people affected by extractive activities, the intention of this report is to share the testimony of the victims themselves around the difficulty and, in some cases, lack of access to information on extractive activities that affect their environment and basic rights. In addition, it addresses some of the patterns linked to the lack of transparency with regards to the fiscal policy in the field of extractive activities, examples that reflect the inefficiency of the administrative institutional and judicial procedures for obtaining information about the mapping of t concessions, payment of royalties, tax exemptions, licensing and environmental auditing, among others. Although these issues are of undeniable public interest, they are often unfortunately managed with secrecy on the part of the public administration in the countries which were the subject of the hearing.

With a significant number of representations and petitioners, the hearing provided more first-hand information and analyses to contribute to the development of the IACHR's in its mandate with regards to the exercise of the right of access to information on environmental management, granting, monitoring, and control of extractive activities in Latin America and the Caribbean.

The hearing was chaired by Esmeralda Arosemena de Troitiño, who was accompanied by Commissioner James Cavallaro and the Special Rapporteur for Freedom of Expression, Edison Lanza.

I. Submission from the Petitioners

The petitioners' presentation was opened by Daniel Cerqueira of the Due Process of Law Foundation (DPLF), who introduced the organizations and individuals participating in the hearing: César Gamboa, Executive Director of Derecho, Ambiente, y Recursos Naturales (DAR) of Peru and civil society representative to the Extractive Industries Transparency Initiative (EITI); Boanerge Luna, Coordinator of the Movimiento Salvemos Santo Domingo of Nicaragua; Trajano Potentini, Director of Fundación Justicia y Transparencia of the Dominican Republic; Bienvenido Mejía of the Fundación Guayacán de Energía y Medio Ambiente (GEMA) and member of the Espacio Nacional por la Transparencia de la Industria Extractiva (ENTRE) of the Dominican Republic; Antonio Medina, Dean of the Facultad de Ciencias Jurídicas y Políticas at the Universidad Autónoma de Santo Domingo and Representative of the Observatorio Dominicano de Políticas Públicas of said academic entity; and Erick Armando Cú Caal, Representative of the Q'eqchi communities of Guatemala.

The methodology of the exhibition was divided in three parts: regional context, cases by country, and a unified request only to the Inter-American Commission on Human Rights (IACHR). Finally, the petitioners answered the questions from Esmeralda Arosemena de Troitiño, President of the Hearing; the Commissioner James Cavallaro; and Edison Lanza, the Special Rapporteur for Freedom of Expression.

II. General Context of Access to Information in the Extractive Sector

César Gamboa

DAR EXECUTIVE DIRECTOR (PERU)

This petition seeks to raise awareness about different patterns in the violation of the human right of access to public information and transparency, with regard to the implementation of government decisions on environmental management, granting, monitoring and control of extractive activities mainly in Guatemala, Nicaragua and the Dominican Republic.

My colleagues from the countries in question will explain the violation of the right of access to information in the extractive sector not only inhibits the exercise of the right itself, but also other fundamental rights such as life, a healthy and balanced environment, health, physical integrity, citizen participation, consultation, among others. These violations are oftentimes experienced most acutely by the most vulnerable populations who have been subjected to a situation of historical disadvantage in the region.

These facts are not isolated. In the Latin American context, we have at least three elements that demonstrate what is happening with extractive activities and the subsequent violation of the rights of participation and access to information:

1. The reduction of environmental and social standards in national legal frameworks in all countries of the region.
2. The criminalization of protest to the detriment of the defenders of rights of nature and the rights of local populations against extractive projects.
3. The cases of corruption associated with bribes of extractive and infrastructure projects (for example, the Lava Jato case) that plague the region.

As such, the implementation of efficient policies to guarantee access to information and transparency is imperative in order for our democracies to be rid of the scourge of corruption and the capture of political processes by large corporations.

Many of our countries are making great efforts. Some are members of the EITI initiative or the Open Government Partnership (OGP). There are also regional efforts to develop a treaty for the implementation of the access to information, public participation, and access to justice in environmental matters (Principle 10) born of the Rio Declaration that the Economic Commission for Latin America and the Caribbean (ECLAC) is promoting.

Unfortunately, these efforts are still insufficient. However, it is our hope that the honorable Commission consider these previous efforts as a baseline reference to identify standards to promote the exercise of the right of access to information in the future in order to apply them in our countries.

What is the problem with the exercise of the right to information?
This problem is divided into two moments:

First, there are no effective and timely mechanisms for the realization of access to information and transparency in the planning phase, i.e. in the decision-making processes for environmental and social management of these extractive projects. That is, there are no mechanisms at the stage for the elaboration of the territory use plan or before the granting rights to third parties i.e. companies.

Second, when extractive projects are to be developed, legal mechanisms that should guarantee the right to information are not effective or are not implemented. I Baselines with information totally inadequate, and environmental evaluation and auditing is extremely poorly done. Furthermore, no information is provided on social and environmental costs, in some cases because the owners of these projects do not reveal the relevant information.



This problem also reflects the inefficiency of the administrative and judicial procedures to demand the delivery of information on the mapping of concessions of extractive projects, the payment of royalties, and tax exemptions. Moreover, the systems generally fail to adequately communicate how the environmental impact study (EIA, for its name in Spanish) have been approved or how the State monitors the obligations contained in the EIA.

This information is highly relevant to the exercise of the right to life, health, or protection of property; rights that are put at risk by limiting access to the information on the decisions on the granting of concessions or how these projects can impact the environment or society of local populations.

Although such mechanisms for environmental information can be legally established, these are not effective because they are limited by laws or state practices. We can identify at least three types of formal constraints in the region:

1. **Procedural or bureaucratic constraints** to access to such information, either online or at physical levels, or State personnel not trained to make this information accessible.
2. **Limitations of access to socio-environmental information** by way of derogation from the principle of interculturalism. Much of this information does not conform to the language of the population possibly affected. It is also highly technical such that it is not known if the population has understood the information transmitted in the mechanisms of participation such as face-to-face events some of them last less than 3 hours.
3. **Limitations on access to information on licenses, authorizations, and contracts**, through its classification as confidential, secret, or reserved by the State for reasons of "safety or national interest", when this information should be publicly released.

In addition, States should take into account that any limitation to the access to information on environmental and social aspects generates socio-environmental conflicts, which not only impacts rights but also calls into question the viability of investments in our countries.

In summary, it is necessary that the States adopt clear standards to implement access to environmental and social information as well as effective transparency mechanisms, particularly in four areas:

1. Access to the collection of socio-environmental information, that is, the baselines used for the decision-making process before the signing of the contracts or approval of the EIA, on the part of the population possibly affected;
2. Transparency of the socio-environmental information throughout the process of evaluation of the EIA, and of the process control and monitoring of these obligations in extractive projects;
3. Transparency of the environmental and social payments (for environmental remediation, compensation to owners and the local population affected, and compensation for pollution and environmental damage); and,
4. Transparency in the approval process of project bids and concessions of extractive projects.

Santo Domingo,
Chontales (Nicaragua).
Photo: Centro Humboldt.

Nicaragua

Boanerge Luna

COORDINATOR AND FOUNDER OF THE ENVIRONMENTAL MOVEMENT "SALVEMOS SANTO DOMINGO".



The legal framework of Nicaragua establishes a law to supposedly ensure citizen participation, access to information and transparency in environmental management, and control of extractive activities. However, its application in practice is insufficient and limited because the rights of the population living in the mining areas are violated, leaving them helpless in the face of aggressive companies due to the complacency of the Nicaraguan authorities.

Until December 2015, there were ways of exercising the right to citizen participation and social auditing in Nicaragua. It was possible, for example, to demand accountability of State officials, who are required to respond to the requests for information within the time limits established by law.

However, with the adoption of the "Law of Security and Sovereignty" in December 2015, Nicaragua institutionalized the criminalization of all acts of claim of rights, in violation of the mechanisms of public demonstration. It must be noted that peaceful demonstrations have been the

main way to claim rights in Nicaragua. Presently, as Boanerge Luna points out, there is a different picture.

"Now – those who participated in claiming our rights through demonstrations – have put at risk our life and [physical] safety".

The aforementioned strongly affects the participation of citizens in the sustainable development of the country. The resultant little or no participation reduces the pillars of democracy and creates the conditions conducive to the irrational exploitation of natural resources, to the detriment of the rights of the communities.

In particular, Boanerge Luna states that he has been the victim "of the collusion between the [mining] company B2Gold, of Canadian origin, and the State of Nicaragua". On February 9, in 2013, while small-scale miners were carrying out demonstrations against the company, Luna and other colleagues were arrested despite being several kilometers away from the

demonstrations and not belonging to the protesting groups.

Boanerge Luna remembers that they were taken to a prison known as the "Chipote", a place that did not have minimum sanitary conditions, in which he was held for almost 40 days in complete darkness (from February 9 to March 20, 2013). For eight days he was held incommunicado, without access to a lawyer or family visits, as required by law. During the time that he was detained along with his companions, they were not brought before a judicial authority.

"It is regrettable that in Nicaragua, the defenders that demand information and transparency in matters of the public interest ended up being held incommunicado for eight days and subjected to cruel and inhuman treatment, for a total of 40 days, in the worst jail in the country. All of this for demanding access to information on the EIA of the project and in the defense of the water source "Túnel Azul", the main source for a population of approximately 10,000 inhabitants. I do not intend to yield to intimidation by the authorities' joint ventures with companies that are destroying our water sources. I am aware that my testimony before this honorable Commission puts my life and integrity in danger in Nicaragua. If I am here, it is because I am willing to defend and conserve the resources and the environment from the greed of a few who deprive many of their fundamental rights".



San Pedro de Carchá
(Guatemala).

Photo: Commons Wikimedia.

Guatemala

Erick Armando Cú Caal

ON BEHALF OF THE BROTHERS AND SISTERS OF THE COMMUNITIES OF THE Q'EQCHI, IN THE MUNICIPALITY OF SAN PEDRO CARCHÁ, LOCATED IN THE NORTHERN REGION OF GUATEMALA.



"One of the special features of our district is that there are many rivers that come out of a mountain and after a short tour disappear under another mountain. As Q'eqchi people, we have within our riches: the world view, in which Tzultak'a, lord of the hills, takes care

of the natural elements and particularly the holy water. Us q'eqchios [sic] – we mention the existence of thirteen major hills or large Tzultak'a; they are all related to the underground channels and surface of the basin of the sacred Cahabón river".

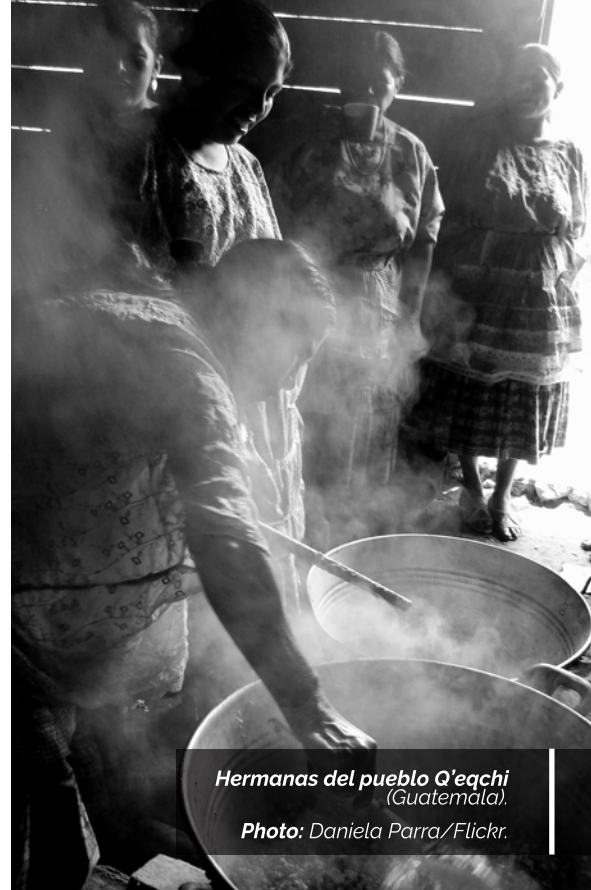
Two decades ago, work began on the construction of the first hydroelectric project on the banks of the Cahabón river, and according to Cú Caal today this work continues under a company called “Natural Resources and Cellulose” (RENACE, for its name in Spanish). The owners are the Bosch Gutiérrez brothers, of the Cooperation Multi Investment (CMI), who plan to build five or more hydroelectric megaprojects. At no time was there ever a process of information-sharing or consultation with the communities of the Q’eqchi people, much less in their native language.

“For the defense and care of the Cahabón river we have been intimidated, threatened, and persecuted by workers of the company mentioned above. The Ministry of Energy and Mines (MEM) has only served as an agent for business interests and at all times has failed to provide information in relation to the construction being undertaken by the company”.

He adds that the Ministry of Environment and Natural Resources has failed to comply fully with its obligation to provide the EIA of the hydroelectric projects to the q’eqchies in their native language.

The institutional actor closest to the affected population is in the Municipality San Pedro Carchá, which, during the last four administrations, Cú Caal describes as the “perpetrator of the inaccessibility of public information related to the use and abuse of the water resources of the municipality, and therefore they have violated the law on free access to public information”. He identified similar action in the Ministry of Energy and Mines and the Ministry of Environment and Natural Resources. Along with the municipality of San Pedro Carchá and during all phases of the construction and operation of the hydroelectric projects, they did not communicate the impacts of the works that q’eqchies consider to “have deformed more than 30 km of the natural flow of the river”.

“We have been stripped of our lands; essentially, they have privatized the river. Also, the majority of the origin points of water - which for centuries have served us to obtain the vital resource for use and family consumption - are guarded by private police to intimidate us daily. [This intimidation] is worse for children and women who come to ask for a little water, even when for generations and generations previously, their access had been free”.



Hermanas del pueblo Q’eqchi
(Guatemala).
Photo: Daniela Parra/Flickr.

The Political Constitution of the Republic of Guatemala establishes that all acts of the administration are public, and therefore the persons concerned have the right to obtain report, at any time. The Law on Access to Public Information clearly establishes the obligation to provide such information. The Cahabón river and its tributaries have been exploited for hydroelectric generation in private hands, without having taken into account the Q’eqchi communities that have inhabited the region for thousands of years.

The representative of the Q’eqchi people ended his presentation by stating that their collective rights and the access to information have been violated:

“They have violated our collective rights by not asking us if we agree on the construction of the hydroelectric plant in our territory. The institutions of the State of Guatemala in respect to this violation of rights are weak, minimum, and complacent with private capital that exploits our natural resources. The Municipality of San Pedro Carchá, in contravention with the guiding principles of its existence and mandate, has defended the interests of private enterprise instead of ensuring the preservation of natural resources and of the population within its jurisdiction”.

Dominican Republic

The statements in this case were divided into the regulatory context explained by Trajano Potentini, and the situation of the affected populations explained by Bienvenido Mejía.

Trajano Potentini

PRESIDENT OF
FUNDACIÓN JUSTICIA Y TRANSPARENCIA.



According to Trajano Potentini, the 2010 Constitution of the Dominican Republic established a social and democratic State, promoting fundamental rights with a particular emphasis on access to public information under the name of right to information, the right to a healthy environment, the right to property, and the right to health. In addition, in the context of the social and democratic state of law, special emphasis is put on the theme of citizen participation, social policies, and institutions, the highest expression of the fulfillment of the law.

“All of this linked to the existence of a national and international legislation for the protection of human rights with a binding character, since our Constitution in one of its articles gives this connotation, and as well as the Constitution as whole, has been integrated into our legislative torrent, at the level of ratification of the treaties in the field of human rights. All this would seem an ideal scenario, but it becomes in the Dominican Republic in a kind of constitutional and legal poetry”.

In that regard, Potentini denounces the existence of a “one-sided contract, harmful and detrimental to the national interest” signed by the Dominican State with the Canadian company Barrick Gold for mining exploitation in the province of Sánchez Ramírez, specifically, in Cotuí.

“This contract, among other inconsistencies, is for an open-pit mine, releasing cyanide waste and hazardous substances without oversight. It also contains confidentiality clauses which allow for and strengthen the non-disclosure of vital information [and disallow] for the access to public information, monitoring, and follow-up by the population”.

He also warns of the capacity of the government to expropriate land with alleged mining interests - to then become the property of the Barrick Gold - however, until now, no one has been duly compensated for the land, nor by the hegemonic and privileged use of the waters of the area. Other processes that are questioned include: lax tax penalties with extensive grace-periods granted by the State, the purely formal and non-binding nature of the consultations to the communities under the modality of public views, the lack of control of periodic reports, the weakness of the State and confidential contracts made in favor of the companies.

Bienvenido Mejía

OF FUNDACIÓN GUAYACÁN DE ENERGÍA Y MEDIO AMBIENTE (GEMA) AND ON BEHALF OF THE ESPACIO NACIONAL PARA LA TRANSPARENCIA DE INDUSTRIAS EXTRACTIVAS (ENTRE).



Bienvenido Mejía said that public views must first be solicited, in order to initiate a given project, according to the Law 6400. However, the public hearings are often used by companies to insert people who are not of the affected communities and, therefore, "what they do is like a birthday celebration; people accept things and the violations that [the companies] are going to commit".

In case of the public hearings regarding extractive projects that will be of great impact, two hearings should be carried out. In the second public hearing, the commitment from company "X" is enshrined – in this case, Barrick Gold – to fulfill the agreements with communities and to respect the environment. Due to the weakness of the Dominican state, which does not monitor the commitments contained in the Program of Adequate Environmental Management (PAMA, for its name in Spanish), the result is the violation of the law on the discharge of pollutants into the water, affecting its quality.

"This causes the river to dry up, because instead of flowing water through the channels, cyanide flows through, causing the

death of domestic animals, [and] diseases of people living in these places. This is proven in [the fact] that the same company is committed to bring two or three gallons of water per day. What does that mean? That we are losing life".

Mejía details, in addition, that the authorities have been weak in monitoring the faithful fulfillment of the outputs of the mining activity in a way that is consistent with the provisions of the regulations of the country, which results in the pollution of the waters of the rivers and basins, affecting the human right to water of the population. Another detail was that, in the area of influence of the dam, there has not been a survey of the local species of flora and fauna, leading to an absence of a record in that area.

The problem of water also adds the pollution caused by the activity of Barrick Gold in Cotui, where the consequences are seen in respiratory issues, skin diseases, and in the eyes of children, as documented in the health center in the area according to the representative of ENTRE.



IV. The joint request



Antonio Medina

DEAN OF THE FACULTAD DE CIENCIAS JURÍDICAS Y POLÍTICAS OF THE UNIVERSIDAD AUTÓNOMA DE SANTO DOMINGO AND ITS OBSERVATORIO DOMINICANO DE POLÍTICAS PÚBLICAS

“For all these reasons we ask the Honorable Commission to recommend to the States of Nicaragua, Guatemala, and Dominican Republic:

- 1. To fulfill their laws on access to information, participation, and consultation with local communities.*
- 2. In the absence of such laws, that countries generate transparency mechanisms and processes of citizen participation in the allocation and environmental assessment of extractive projects. [They should] create spaces for dialog that will allow all – victims, communities, civil society organizations, and state entities— to overcome the shortcomings of policies and practices on access to information and transparency.*
- 3. To refrain from intimidation, harassment, and the criminalization of human rights defenders who seek information related to the management of natural resources and the granting of extractive projects.*
- 4. In addition, we request that, when the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (ESCER) is created, this person incorporates into their work agenda the development of indicators to assess the impact of the extractive megaprojects on human rights.*
- 5. Finally, we request the Special Rapporteur for Freedom of Expression, Dr. Edison Lanza: to visit the countries and areas mentioned in the report that supports the present hearing and issue recommendations he deems pertinent to the respective countries; to develop specific standards through a thematic report related to access to information, transparency, and participation in environmental and social development of extractive projects; and to expand the activities of consultancies and training to government officials of the countries of the region on the issues referred to in the audience”.*



Public Hearing in Washington, DC.

Photo: Daniel Cima/IACHR.

Questions and comments from the Table



Esmeralda Arosemena de Troitiño

PRESIDENT OF THE HEARING

¿How does the information you have provided us ratify or confirm the intersectionality of human rights, the indivisibility of human rights, and how to connect this need of access to information as a guarantee for the exercise of all other rights?

“I take note of the formal request to address this comprehensive vision of rights from the new ESCER Rapporteurship”.

In the case of laws requiring EIA or access to the information:

Are there model laws that differ in important ways from the laws of the three countries that we are analyzing, or is the problem that the implementation of the norm that may not be perfect, [or] but in practice it is not met?



James Cavallaro

COMMISSIONER IACHR

In the case of the access to information on the projects operated by foreign companies:

How far do Canadian laws facilitate – or not – the access to extraterritorial information? In other words, in Canada, can one apply for and obtain information on what Barrick Gold is doing in the Dominican Republic or what another company in Guatemala is doing?

On the arrest of Boanerge Luna in Nicaragua:

“We express solidarity with the situation of the colleague of Nicaragua for what has been reported here in the hearing. He has lived a situation of arbitrary detention in the defense of human rights, environmental rights in this case. We would like to hear the details of the situation of the detention because we are just taking notice of that and it is a serious situation of retaliation for exercising freedom of expression and the right to defend other rights, and also to make the warning to the State that as you return to your country you do not suffer reprisals, because it is so clearly established in the rules of the Commission”.



Edison Lanza

SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION

In the case of legislation on access to information:

We have laws on access in all three countries, however, are they being misapplied? What is the problem? Is the problem the lack of independence from the authorities to implement these laws or there is no authority for the application?

“I think that in the case of Peru, we still do not have an enforcement authority. That is to say, countries have adopted laws under the Inter-American Juridical Framework, but there is a problem with the application that we would have to detect in order to make a precise recommendation, but it is no longer time to recommend the adoption of laws but rather to enforce them”.

In the case of the confidentiality of the information of contracts and tenders:

What is the problem with the application of this type of law?

“This is a subject that has to do strictly with legal interpretation, which is to say the scope of the confidentiality clauses that could be covered. Surely the State can invoke a claim to legitimate interest, but if there is a test of damage, that it has to be done correctly”.



Edison Lanza
SPECIAL RAPPORTEUR
FOR FREEDOM OF
EXPRESSION

In the case of the role of private companies with respect to human rights:

There is a United Nations declaration on the human rights impacts of companies, but how could we go through the States so that companies comply with standards of respect for human rights?

“A theme that has to do with the civil society, can there be a dialogue between multilateral State Agencies, companies, and civil society on this topic, or are we in a situation of conflict so insurmountable that we can only try to manage the conflict? In the sense that if you comply with the legal framework, if there had been real previous hearings that were not a fiction as many of you have said, but truly comply with standards, does this solve part of this conflict by the territory?”.

In the case of the initiative of the Principle 10:

“There are some standards that are being consolidated, which are lesser than those of the Inter-American system in terms of access to information and participation. However, even though the Inter-American system should be very articulate, it is not in this situation. The IACHR has not been invited to this process, which seems to me to be serious. The adoption of a multilateral agency, a multilateral mechanism on access to information, public participation in environmental issues without any involvement of the Inter-American Human Rights System, all seem to me to be something serious, and civil society join me in this claim that I am making public at this time”.

From what we've seen in the preliminary documents there are standards that are going to affect civil society because they are lower than those established by the States. They are trying to establish standards lower than those that are established through the Court and the IACHR. If you have seen this problem, how do you react to that?

Response of the
petitioners by
organization and/or
country



Daniel Cerqueira
in response to:

**Esmeralda Arosemena
de Troitiño**

Commissioner
James Cavallaro

Rapporteur
Edison Lanza

Due Process of Law Foundation (DPLF)

“The report adopted by the Commission in December 2015 on extractive industries, rights of indigenous peoples, and Afro-descendant communities includes some very important standards on access to information, but they are very related to the processes of consultation given that the report addresses ethnic groups that have the right to a certain type of information to exercise this fundamental right [of consultation]. One of the requests of the petitioners, which we believe is the most important, is precisely that the Special Rapporteur for Freedom of Expression also participate in the development of specific standards on transparency and access to information in the management of natural resources”.

“There is a global movement precisely for more access to information both in the field of auditing and in environmental management in relation to companies. For example, in the case of Canada, are listed on the Toronto stock exchange, so that, from Canada, it will be possible to access to such information not only through requests, but also through a publication ex officio by the Canadian authorities.

We have seen, unfortunately in the last few weeks, what happened with the so-called Dodd-Frank Act, Section 1504 whereby the U.S. Senate essentially repealed a similar measure power. Before that repeal, the companies listed in the United States were obliged to disclose information (provide information) on any type of payment to foreign governments. There are still a number of countries that retain in such requirements, [but] we are concerned that the United States has opened the door — or rather a Pandora’s box — for the model of access to information to go in reverse”.

“We take note of the comments of Special Rapporteur Edison Lanza, indeed, that we believe that there is an inexplicable and large division between much of the discussion in the forums related, for example, of Principle 10 and the work of the Special Rapporteur for Freedom of Expression. One of the objectives of this hearing is, precisely, to build bridges and connect a little more the development of standards so that these forums apply the highest standards developed by the Inter-American Commission”.



César Gamboa
in response to:



Commissioner
James Cavallaro



Rapporteur
Edison Lanza

“With respect to the issue of the implementation of the right to access to information and transparency in environmental matters, the region has fifteen years of experience in model laws. However, the socio-environmental conflicts [and] this type of extractive [activities] are recent. The Access to Information Law has already been overtaken by it.

The main problem is the implementation. The framework law is in accordance with the interests of populations. It can be applied, but only if the State renews that commitment to implementation: have more staff, [or] generate capabilities for the population to understand how to use these mechanisms. The truth is that there are useless and unusable laws with all the social and environmental problems that are emerging in the region. It is a problem of implementation and renewal of the legislation, to adapt to a new reality that had not been addressed in the design of the law or at its entry into force.

The second problem is that there is a reversal – a process of regression in the region as a result of economic and political problems that we are living. It is seen as a process of weakening of environmental and social standards.

I can provide an example: for more than ten years, Peru has had a law on access to information and transparency, but a legal framework developed two months ago, between Christmas and New Year’s, indicates that the State will decide in the next 90 days, until 31 March what is secret, what is confidential, and what is reserved. The justifications for this state of exception are that it is in the national interest [and] for national security; in order to not damage the commercial rights or affect the rights of third parties - which would be a company - are going to expand because they are going to define [according to the national interest the terms] for each sector – in defense, energy and mines, or in transport and communications – what thing is confidential, reserved, and secret.

This is a process that not only lives in Peru but throughout the region. And indeed, a critical element for the next phase of implementation of the standard is to have an authority to centralize all this process”.

“With respect to the issue of confidentiality, secrecy, and the reserved [status] with exceptions to the environmental rights: first, this cannot be applied because those are public standards, and, second, many of the environmental rights gathered in the EIA could not be applied in any of these three elements. The EIA outlines the obligations of the State and the company so as to allow environmental and social rights to be exercised. This is where its impacts must be known and how the State will monitor the exercise of this compliance. Therefore, it is impossible that the EIS may fall into [the category of] reserve, confidentiality, or secrecy.

Finally, there are good experiences and interesting dialogs. I mentioned the Extractive Industries Transparency Initiative which is a dialog between the State, business, and civil society to ensure transparency in the extractive income and now social spending. Therefore, there are good experiences that this Committee could follow up and incorporate to be able to recommend to the countries how to comply with the access to information and transparency. And we agree that this honorable Commission should be invited to the negotiation process of Principle 10, my organization along with other participants of this process are going to advocate for this”.



La Piñita
(Dominican Republic).
Photo: Annie Morillo/DAR.



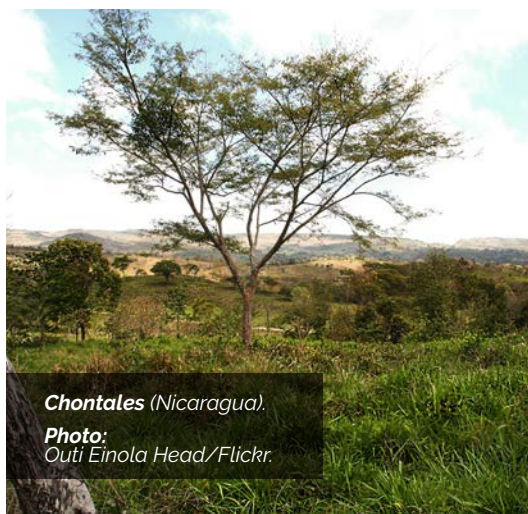
Barrick Gold Mining
(Dominican Republic).
Photo: Annie Morillo/DAR.



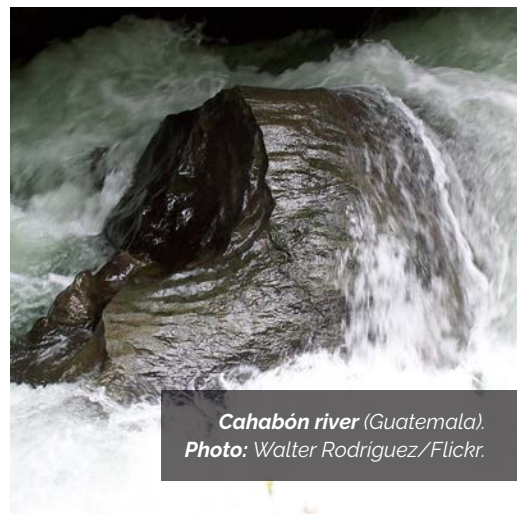
B2Gold Mining (Nicaragua).
Photo: Centro Humboldt.



Guatemala.
Photo: Indigo Expeditions/Flickr.



Chontales (Nicaragua).
Photo: Outi Einola Head/Flickr.



Cahabón river (Guatemala).
Photo: Walter Rodriguez/Flickr.

Nicaragua



Victor Campos
CENTRO HUMBOLDT

“According to the Law on Public Information, I would like to mention with regard to my country that this was a law enacted at the beginning of the years 2000 and that even in the institutions of government, there are units - some of them - to provide this information; there are formats online to request them; but they not responding to the requests we made. We work on environmental issues, and we are keeping a record of all the times that information is denied from us. Up until today and for the last 8 or 10 years, we have not had access to public information, despite having requested it numerous times from the corresponding authorities”.

Dominican Republic



Bienvenido Mejía

FUNDACIÓN GUAYACÁN
DE ENERGÍA Y MEDIO
AMBIENTE (GEMA)

“In our case, our Law establishes the environmental compliance reports that each company must submit every six months. Those environmental compliance reports are not audited, like with most instances when the State does not have the mechanisms to monitor.

What happens to the reports of environmental compliance? For example, if the State had conducted audits, we would not have today the environmental disasters in the entire affected area. These environmental compliance reports are not communicated to the population at the level required for compliance. If companies complied with the matters raised in the PAMA [Environmental Management Plan], we could have the environmental impact studies”.



Antonio Medina

OBSERVATORIO DOMINICANO
DE POLÍTICAS PÚBLICAS
OF THE UNIVERSIDAD
AUTÓNOMA DE SANTO
DOMINGO

“In many of our countries, the problem is in institutional weakness. While there is an excellent legal framework, procedural laws are not complied with, so we must resort to judicial processes, defense actions before the courts, and even those do not work because of many of these provisions of confidentiality, secrecy, and silence – or the state does not comply with judicial orders. In the background, in essence, is the institutional weakness, where there is a very fragile line – very weak – in what is the so-called independence of the branches”.



Trajano Potentini

FUNDACIÓN JUSTICIA Y
TRANSPARENCIA

“Certainly in the Dominican Republic, as we had noted, there is profuse legislation which dates back to the year 2004, in function of international commitments, at the level of the Inter-American Convention of Human Rights and other instruments. From there, we have a law on access to public information where we have noted some progress, but at a level of administrative structures, such as the opening of offices.

We are also part of the Open Government Partnership, and there is important and interesting monitoring in this sense. [But] this faces a wall of resistance when it comes to mega-projects and contracts that promise or guarantee a hegemonic power on a number of aspects. The result is that there is not effective and efficient publication at the time of research on Barrick Gold and many other entities or institutions. There is [an] asymmetry between what we are trying [to monitor] with citizen participation, and [with] what we are able to access”.



**Erick Armando
Cú Caal**

Q'EQCHI
COMMUNITIES

Guatemala

“What has happened in Guatemala is that we have not been able to access [information] as indigenous communities, as they [the companies] have co-opted public officials in different instances. Practically, our rights as a people have been violated”.

*** END OF HEARING ***

To watch the Hearing in its entirety visit:
“Industrias extractivas: Acceso a la información”.
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS.

URL:

www.youtube.com/watch?v=loqRsoHEmNU&t=560s.