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**Participation rights in Ecuador, from the access rights (Principle 10, Río Declaration) and poverty perspective**

With the adoption of a new Constitution of Ecuador in 2008 it was established a new framework that ensures the compliance of the access rights: access to information, public participation and access to environmental justice. This constitutional guarantees has been strengthened with the enactment of some laws such as the Law of Transparency and Access to Public Information (2004), the Public Participation Law (2010) and the Organic Code on Territorial Organization and Decentralization (COOTAD).

The analysis of the right of public participation and the status of poor and vulnerable people will be analyzed in two parts: (i) the first one will analyze the normative aspects regarding the right of public participation and its relationship to poor or disadvantaged groups; (ii) the second part includes institutional aspects closely related to the inclusion of the poor people. The analysis also includes comparatively participation in projects, policies and laws from analysis topics.

1. **Who is involved**

Following the adoption of the 2008 Constitution sets up a state constitutional rights and justice that reinforces and ensures compliance with the rights of access to information, public participation and environmental justice with a wide range of good living rights including collective rights

The Constitution breaks with the traditional division of rights and includes all rights of participation as a rights group in which we talk about the recovery of people power through control mechanisms without taking into account the need to create capacities in priority groups / disadvantaged is the subjective dimension of the right of citizens of the faculty actively exercise the right. However, incorporating principles of equality and interculturalism, respect for differences, etc. solidarity.

The constitution sets up a new development model for the country, establishing the public participation as a transversal aspect in the public management of the state, in addition, recognizes different forms of representative, direct and communal democracy under the mentioned principles. These principles show, in the regulatory framework, the adoption of the constitutional mandates seeking the strengthen of the constitutional State of rights and justice and the obligation that in the processes of participation do not occur acts of discrimination and also fostering the dialogue between different cultures and ensuring the respect of autonomous organizational processes of peoples of different nationalities and communities. Likewise, these principles also include the gender parity, accountability and co-responsibility. Special rights are recognized for priority groups (women, youth, disabled, etc.) and indigenous people from diverse nationalities, communities and communes but does not exist regulations regarding poor and disadvantaged groups.

1. **How is the participatory process structured and managed and what are its desired outcomes: How is the information about the participatory process distributed to the public including persons living in poverty, what are the procedures employed to allow the public to submit comments, information, analysis or opinions that it considers relevant to the process**

In environmental matters the Constitution recognizes the right of prior consultation (Art. 398) regarding any decision that may affect the environment of a community; it is equivalent to inform on the decisions that might harm the environment and consulting the community its criterion. However, this opinion is not binding.

Another mechanism included in the constitution is the free, prior and informed consultation for people of nationalities and communities on plans and programs of exploration, exploitation and sale of non-renewable natural resources that are in their land and that can affect their environment or culture; on the other hand, if we take into account the relationship of ethnic groups and poverty we can see its high connection, therefore it should be consider in the implementation of new institutional efforts and the expedition of secondary legislation to effectively achieve the implementation of this mechanism, since it implies a critical link between poverty indicators (Census, 2010) and ethnic groups, geographic location; at the same time exist some barriers like language, roads, education, health which are real impediments for enjoying the participation rights.

Laws such as the Law of Transparency and Access to Public Information (LOTAIP) and the Law of Public Participation are very important regulations intended to generate participation in public affairs; however the lack of secondary legislation that develop mechanisms and procedures regarding registration of opinions, feedback and capacity building for priority or disadvantaged groups constitute challenges for the government, considering that access to information is a basic and a key right for informed participation.

As noted, the right to participation materializes in the Law of Public Participation in force This law recognizes the power of citizens that is exercise through the active and direct participation of social organizations. Mechanisms of participation at different levels of government (national and local) are also established, however, these mechanisms have not been yet sufficiently developed in the secondary legislation, having as a consequence that in the practice a heterogeneity of process can be evidenced regarding the participation in the processes of development of policies and laws.

The Law of Transparency and Access to Public Information (LOTAIP) provides that peoples, indigenous from diverse nationalities and groups fully enjoy the right of access to information that is generated in the government. It does not have specific provisions for poor people, but guarantees equality of all people regarding the costs to access the information. It establishes various means of disseminating information, prioritizing web pages, but does not consider special mechanisms and affirmative actions for the poor or less educated people. This creates a gap related to the access to information, considering that most of the people who inhabit areas with high contamination and poverty conditions are directly affected by the lack of public services, effects of industrial installations, etc. These people does not have the resources or capabilities to get to know the existence of environmental information and specific information related to security measures against risks from environmental events affecting the water, air, solid waste or discharges on the environment. Besides the provisions of the laws regarding the generation of environmental information by public institutions providing services related to water, air, soil, are very vague.

The Environmental Management Law in relation to public participation in environmental matters states that "Every natural or legal person is entitled to participate in environmental management, through the mechanisms that for this purpose establishes the secondary normative, among which will be included the consultations, public hearings, initiatives, proposals or any association between the public and private sectors”. This article is regulated in a secondary normative which is specific for the mechanisms of participation. It also provides environmental consulting to the community in any decision of the government that may affect the environment; in this case, the community should be widely and appropriately informed prior the consultation. It does not mention that people should have minimum conditions for effective participation and does not include considerations related to poverty, education or cultural conditions. In that sense, it is needed to be incorporated the principle of multiculturalism and equality for effective participation.

The environmental consultation is not binding on the decisions of the government; at the point that this secondary normative (Rules for the Application of the Social Participation of the Environmental Management Law) states that the decision of the community can be applied only if it is technically and economically feasible.

In the Environmental Management Law and specifically in this secondary normative are established requirements for engaging the public at the beginning of the process of environmental consultation regarding projects or programs with environmental or social impacts. It is required to provide information about the intention to begin the environmental consultation process and also provide the place and infrastructure for participation sessions, however, it does not have provisions regarding a identification and consideration of social, cultural and economic settings of the people participating in the process.

1. **What measures are taken to ensure that persons living in poverty can participate: how are the participants identified, are participants prepared and supported before that consultation(s), are the potential financial and opportunity cost to the participants taken into account**

At the project level or public programs linked to strategic sectors (water, mining, petroleum, telecommunications) the time stipulated in Decree 1040 is 15 days so that the community can know a Environmental Impact Assessment (EIA) and management plans (PMA) and seven days for public comment on these documents, which is considered as limiting as educational levels of the populations involved and their ability to provide feedback on these processes.

This decree viable means through which communities or populations known and reported project through socialization of EIA and forms of participation in the sessions of socialization through concerns and comments. The Ministry of Environment as a state actor has facilitators to monitor the participation process and prepares reports of these processes, which are not disseminated to the public or local authorities

In practice, project proponents value this mechanism that facilitates access and dissemination of information about their industries and impacts through various means: workshops, brochures, educational cartoons, models, videos, etc. At meetings of socialization we provide information to communities orally in simple language and a summary of the positive and negative impacts of the projects and their mitigation. It's low level input or feedback from the local population to the EIAs.

1. **What measures are taken to ensure the diversity of the participants in terms of gender, ethnicity, age, etc.**

The laws mentioned in addition to the Organic Code of Territorial Organization and Decentralization (COOTAD) are a reference regulatory mechanisms and specific spaces for citizen participation in the formulation of policies, laws, specifically the Citizen Councils are created as instances of sectorial dialogue, deliberation and monitoring of public policies at the national and sector but fails to address special considerations for vulnerable populations or gender, ethnicity or age as representative of the diversity in these mechanisms

1. **How is the participation of marginalized groups living in poverty ensured and supported, for example indigenous peoples, persons with disabilities, or older persons**

In the case of building a public policy as the National Development Plan (Good Living 2009) an extensive description and dissemination of the policy formulation process was developed, including participation opportunities for the public through various means. There were several sessions with public participation and sectorial consultations (gender, age and ethnic groups) and also, socializing fairs, and other activities as polls to gather opinions about the meaning of good living. Besides the Ministry of Planning (SENPLADES) created an Organic Statute that provides adequate laws on access to public information for the construction of public policies; however there is no specific law or regulation that requires a governmental entity to provide information on the intention to initiate the formulation of public policy and its subsequent adaptation to the social and cultural contexts of the country.

This lack of secondary legislation is reflected in other cases of participation, as in the formulation of public policies or laws. For example, the National Mining Plan was discretionary in that of an entity providing technical assistance and guidance to citizens (or groups of interest, eg ethnic groups) on how to participate and even with no mention of this process been adaptable to the conditions and contexts. The secretaries of state hold information, data, statistics and publications to support its work in the web portals. However, this media is not accessible to all citizens, especially the poor and rural population.

 The Mining Plan delivered technical information orally through socialization in workshops about the impacts on the health and environmental quality, but written or graphic detailed information of the specific impacts of each mining project, especially those seated in poor areas was not delivered. The institutional websites are not accessible for everybody, especially in poor and rural populations. In the case of the mining law the contributions of indigenous minorities were not collected.

1. **What are the particular challenges faced, or obstacles that have to be overcome, to ensure meaningful participation by those living in poverty**

Issue a regulation on the Participation Act in which specific procedures for citizen participation in planning, public policy, laws, projects or programs are created especially for vulnerable or poor population. Adequate time suitable for participation should be considered, a process of inclusion of all those involved and interested in politics, law or projects. The dissemination of general and specific information on the proposal and its alternatives, including minimal protocols for the collection process, recording of observations and feedback from groups with high poverty indicators is crucial..

Spreading mechanisms, rules and regulations for participation not only through the web portals of the responsible public entities but also through other media, radio, television, printed documents and materials that go directly to the public, especially those in urban areas marginal and rural areas.

Documents must have EIAs and laws summary in simple language and, once approved, explain them to the people involved. Time to notify socialization workshops and projects, laws or policies should be reformed taking in consideration the productive and reproductive activities of communities involved, especially those more distant communities.

Reform the 1040 Decree to require that the final document (EIAD), the facilitator´s report on the consultation process and the environmental licensing, are directly delivered to local communities, parish councils and community centers.

Language barriers are the main obstacles for groups with bilingual or ancestral languages and it requires a guarantee document translation. Besides the low education levels involve minimal skills in understanding a technical text, so it is required to include teaching techniques for effective understanding under a graphic, photographic or verbal mode in their own context.

1. **How successful is the process in terms of the levels of participation of persons living in poverty**

Overall participation is heterogeneous and relates to the skills and capabilities to participate, affected by schooling levels. The main concern is economic development issues rather than mitigation of environmental impacts, this because there is no environmental information and the understanding of environmental technical information is very low, plus an assessment to measure whether the information provided to the population is assimilated and understood is not conducted.

As mentioned in the constitution and the law special rights for priority groups (women, youth, disabled, etc.) peoples, nationalities, communities and communes are guaranteed , but here is no mention of poor and / or disadvantaged, so that their participation is weakly reflected.

1. **What is the impact (actual or envisaged) of the participatory processes on the design or implementation of the activity/legislation/policy/programme: what follow-up is undertaken after the process with the participants, if any how are the results documented and how are they used**

In the case of laws establishing the Organic Law of the Legislative mechanisms available to the National Assembly to promote the effective participation of citizens and provides for the maintenance of adequate infrastructure to promote participation in general but there are no specific to the National Assembly provides guidance and training to the public with regards to specific or vulnerable groups on how to participate in the law-making process.

1. **What additional changes would have been necessary to ease the constraints on the participation on persons living in poverty**

The new constitution and the laws of information and participation are a solid and consistent but practice shows that still need to adapt these frameworks in the secondary rule as evidenced heterogeneity of procedures to address participatory processes and therefore discretionary institutional efforts to fill the emptiness of existing rules and a weak recognition of the actual conditions of the populations to participate with comments and information, according to analysis or opinion which implies a process of effective participation, which is a reflection of the rapid pace of construction of policy public laws or proposals by the government, so it is a challenge increasingly difficult to have adequate space and time for participatory processes and information to citizens in the formulation of laws, policies and projects.

1. **Any other issues relevant to the scope of this study**

The law does not provide for participation and information about language specifications and / or languages ​​in which information is disseminated as part of the socialization process and discussion of projects, laws or policies.