

# Challenge of Public Participation in China's EIA Practice

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**Abstract:** Public participation in environmental impact assessment (EIA) is required by law and compulsory in China. This requirement has developed as the evolution of EIA in this country. It is well known that China has paid its environmental costs to gain the fast economic growth in the past several decades since its economic reform in the late 1970s. The awareness of environmental protection and concerns on environmental quality among its citizens have also increased and amplified during this process. The contradiction between increasing requirement of its people for a good living environment and the degrading environmental state is more remarkable and challenging the environmental management in China. Public engagement in EIA can play its role to solve this issue. However, it is certainly a hard job to conduct this process for all stakeholders including the environmental assessors, the environmental authorities, and the public. First of all, the development of public participation in China's EIA practice was reviewed based on literature. Some recent public environmental movements were then introduced to indicate people's increasing concern on environmental quality. The challenge of public participation in EIA was thus analyzed.

**Key words:** public participation, EIA, challenge, China, environmental protection

## 1 Introduction

There is a long established heritage of environmental protection and conservation of natural resources in China with some examples dating back over 2000 years. However, the environmental costs of China's fast economic development over the past three decades have been high and salient (Goelz, 2009). Faced with the reality of environmental degradation and deterioration, some new national policies on environmental protection were introduced in the 1970s. One important component of these policies was environmental impact assessment (EIA). Public participation in environmental impact assessment (EIA) is required by law and compulsory in China. However, to transform public participation of EIA in China from rhetoric into reality is challenging to all parties involved in EIA. In the following sections, the EIA mechanism in China is introduced. What follows on is about the evolution of public participation in EIA and the challenges in it. The conclusions are drawn based on the analysis.

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## 2 EIA in China

In reference to the literature, the development of China's EIA is briefly described as the following

The concept of EIA was introduced during the first conference for national environmental protection in 1973 (Wang et al., 2003). Then, the Environmental Quality Assessment program was on trial. The important concept of "Three Simultaneities" (3Ss) was also created, which means the explicit anticipation of the likely pollution related to a proposed project and for environmental protection measures to be designed, constructed, and operated simultaneously with the project's main components in order to prevent and/or control pollution. The 3Ss were presented in China in 1972 as the main instrument for the pollution control and prevention and became compulsory for nearly all development projects (Ning et al., 1988; Wang et al., 2003).

The trial implementation of Environmental Protection Law (EPL) in 1979 is a landmark that declared the beginning of the formal EIA application in China. Following this, the Management for Environmental Protection of Capital Construction Projects (MEPCP) was released to provide the specific guidelines on how to carry out EIA. Generally, the scope of the early EIA was just limited within the area of pollution issues. An EIA Licensing System (EIALS) for impact assessment practitioners was then introduced in 1986. This EIALS provided a mechanism for the authority to review the assessment standards and to withdraw licenses if the EIA practitioners were not performing to an adequate level of competence. In 1989, after a 10-year period with a trial revision, the EPL was officially enacted (Chen et al., 2007; Ning et al., 1988; Wang et al., 2003).

The EPL of China is fundamental to environmental legislation in China and has been supplemented by 15 specific laws that address air, noise and water pollution control, management of solid wastes, resource conservation, wildlife, land-use control, and hazardous material disposal. These statutes contain provisions for EIA and between them form the legislative basis for EIA practice. At the same time, the State Council and SEPA have also issued a number of administrative regulations and guidelines for EIA. The Ordinance of Environmental Management for Construction Projects (OEMCP) adopted in 1998 (amendment of MEPCP) is one of the most important such regulations. This regulation sets out the fundamental requirements for the implementation of EIA in relation to development projects. Under the OEMCP, EIA in China was made compulsory for all sizes of construction projects, along with the adoption of low-polluting and energy-saving cleaner production technologies. More specific guidelines have further been developed in order to complement the OEMCP. These examples include the Management of Environmental Impact Assessment Certification for Construction Projects (MEIAC, 1989), Technical Guidelines for Environmental Impact Assessment (TGEIA, 1993), and References to the Management of the Environmental Protection for Construction Projects (RMEPC,

1999). In addition, a number of governmental ministries are responsible for setting industry-specific criteria for EIA at the national level(Zhao, 2010).

The concept of Category Management was also introduced at this time: under this approach, construction projects were categorized according to whether they required a full Environmental Impact Report (EIR), a less detailed Environmental Impact Form (EIF) or a basic Environmental Impact Registration Form (EIRF). In addition, a process for Regional Environmental Impact Assessment (REIA) was introduced in 1993 so that EIA could be extended from individual projects to wider development zones, in order to address larger scale impacts and cumulative effects of existing or proposed developments(Tang et al., 2005; Yang, 2008; Zhao, 2010).

Since the late 1990s, EIA in China has been developed as the main regulatory instrument for environmental protection, culminating in the new EIA law approved in October 2002 and adopted on the 1st September 2003. This new law will not only strengthen the legal status of EIA in China, but also allow EIA practice to subject to judicial review in certain circumstances, thereby improving the competent authorities' decision-making process and effectiveness of the whole EIA system. Regulation of Strategic Environmental Assessment was issued in 2009. Technical guidelines for impact on groundwater and ecosystem have also been issued in the past several years. The EIA system in China comes into a new stage.

### **3 Public participation in China's EIA**

Public participation in China's EIA was first conducted with the assistance and under the compulsory requirements of the international institutions that fund development projects. Basically, a significant role has been played by international initiatives in implementing public participation in China. Some trace the emergence of public participation to an EIA training program funded by the Asia Development Bank in 1991. As more international funds came to China, the Circular on Strengthening the Management of EIA for Construction Projects funded by International Financial Organizations was jointly promulgated in 1993, where 'public participation' was particularly emphasized. According to this Circular, EIA for all funded projects must comply with not only the Chinese legislations but also with the requirements of international funding organizations, i.e., the inclusion of the public participation requirement. This early experience with public participation in the EIA of projects funded by international bodies displayed the value of public input in making decisions that have to balance the needs of the environment and development(Yang, 2008; Zhao, 2010).

China's Agenda 21 issued in 1994 recognizes the essential role of public participation in achieving sustainable development. The State Council advocated the establishment of public participation mechanisms to enhance the functions of social organizations, and encourage the public to participate in the environmental protection in 1996, and

made ‘public participation’ a formal component of the EIA legal mechanism for construction projects in 1998. Developers of construction projects are required ‘to solicit the views of the work units and residents in the vicinity of the proposed projects when preparing the environmental impact report’. Meanwhile, all the environmental statutes enacted or amended since the 1990s require all new projects, modified projects and expanded projects to comply with the provisions on environmental management of construction projects, including the EIA Regulation 1998. To further emphasize the importance of public participation, the EIA Law 2002 provides that ‘the State encourages relevant units, experts and the public to participate in the environmental impact assessment in a proper way’ and, specifically, requires public consultation to be conducted in the form of seminars, hearings or any other format over the EIA reports of government plans and construction projects. The Law is, however, short of operational rules for public participation to be substantiated in practice. To further institutionalize and enhance public participation in the environmental decision-making process, the Provisional Measures on Public Participation in Environmental Impact Assessment 2006 (the Provisional Measures) was adopted by the State Environmental Protection Administration (SEPA, now the Ministry of Environmental Protection or MEP) on Feb.14, 2006 and came into effect on Mar. 18, 2006, and also responding to the Regulation on the Disclosure of Government Information 2007 (Regulation on Information Disclosure) issued by the State Council April 5, 2007, the Measures on the Disclosure of Environmental Information (for Trial Use) 2007 (Measures on Environmental Information Disclosure) was promulgated. A new draft of technical guideline for public participation in EIA process has been raised for trial use and some EIA cases are encouraged to test it (Martens, 2006; Yang, 2008; Zhao, 2010).

Since the 2002 EIA law, on the other hand, several cases occurred related to public participation in environmental protection: the Nu River Dams project, the Yuanmingyuan anti-seepage project, Xiamen PX project, Shanghai-Hangzhou Maglev Line project, Panyu Garbage Incineration plant project. Public opinions have played a role of importance in the decision-making of these projects in the above cases. The plans for all the projects were suspended because the public rejected the EIA. All these cases have enhanced the public participation in EIA (Zhao, 2010).

#### **4 Challenges in public participation of China’s EIA**

To transform public participation of EIA in China from rhetoric into reality is challenging to all parties involved in EIA. Although the positive progress has been made by the EIA Law 2002, the Provisional Measures 2006, the Regulation on Information Disclosure 2007 and the Measures on Environmental Information Disclosure 2007 to strengthen public participation, there is a long way to go for EIA conducted in China to be an inclusive and participatory process that can fully realise the efficacy of public participation in environmental decision-making (Zhao, 2010).

Most importantly, it needs the change of the government’s mindset toward public

opinions. The environmental protection in China is still government-oriented. Governments at all levels play a vital role in EIA process. Generally speaking, the negative consequences of opening environmental decision-making to the public are worried about by leaders who fear that it would cause confusion and chaos or undermine the government's authority and ability to address conflicts among divergent interest groups. However, recent initiatives of the Central Government indicate an open-minded acceptance of a more open and transparent government and a more democratic decision-making process. The State Council has promoted public consultation in government decision-making partially for better public access to government information. The political development beyond the EIA legal regime has made it possible for more sophisticated public participation to evolve in the EIA process.

On the other hand, there are some limitations in current EIA public participation mechanism. First of all, the extent of public participation is limited. Relatively small percentage of projects is subject to the compulsory public participation requirement. On the other hand, the timing and duration of engaging the public is rather short. The way in which the public is defined and selected also brings bias to the true public participation. Secondly, the access to information is limited. Although progress has been made to increase public access to environmental information, there are still uncertainties regarding what to disclose and how much to disclose, and concerns of potential social unrest if too much information is disclosed. Thirdly, the public has limited impacts on the final decision-making. The power of all the parties is out of balance among project proponents, EIA institutions and the public. In addition, the voice of environmental NGOs in China is still relatively weak(Zhao, 2010).

## **5 Conclusions**

In theory, public participation can make positive contributions to the quality of the EIA and the decisions made upon the EIA. In practice, there are some challenges in China on how to effectively and efficiently conduct the public participation in EIA. China is still on the way of transformation. Traditionally, its environmental protection is heavily government-oriented, which is on the other side of the coin discussed here. So there is a need to change the governance of environmental protection and to make public's voice heard. How to overcome the limitations with regards to the extent and duration of public participation challenges all parties involved in EIA process. If the public is effectively engaged in the EIA, the decisions made will reflect their concerns and consensus can be achieved.

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