

# Public Participation in China: Weaknesses, Strengths and Lessons Learned

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This paper analyses the strengths and weaknesses of the Chinese legal Environmental Impact Assessment (EIA) system, focusing on the public participation practices and lessons learned<sup>5</sup>.

## Introduction

Public participation in environmental decision-making is a critical component of the legal mechanism for environmental protection. The objectives of public participation in EIA vary from improving the quality of plans and projects, improving implementation by preventing litigation and costly delays, and meeting legal requirements, to improving active citizenship, complementing democracy, protecting individual rights, and creating acceptance for the projects outcome (Enserink 2014).

The Project 'Regulating and promoting public participation in EIA in selected pilot provinces and municipalities', funded by the European Union through the EU-China Environmental Governance Programme (EGP), aimed to improve the quality, transparency and effectiveness of procedures for public participation in Environmental Impact Assessment (EIA) in China.<sup>6 7</sup> In particular, the project aimed to identify the main gaps in the existing Chinese EIA public participation procedures by analysing rules and practices and interviewing competent public authorities and stakeholders. Another aim was to support local environmental protection bureaus in developing clear and transparent procedures on public participation in EIA by building on existing mechanisms and best

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<sup>6</sup> EU and Chinese project partners: the Accademia Europea Bolzano (EURAC), the Croatian Green Istria Association, the Chinese Academy for Environmental Planning, the Yunnan Institute of Environmental Science, and the Shandong Academy of Environmental Science. The project concentrated on Yunnan province, the municipalities of Shangri La and Lincang, and Shandong province, the municipalities of Linyi and Rizhao, and Beijing.

<sup>7</sup> For more information, see: <http://egpeia.caep.org.cn/Default.aspx>

practices through comparison with the EU and identification of local gaps, thus enhancing environmental, economic and social sustainability. (EURAC, 2014)

An important aspect of the above project was the exchange between Chinese and European partners and the comparison of cases. EU experience showed that “the failure to comply with procedural environmental rights, such as public participation, results in increased litigation that inevitably delays the decision. (EURAC 2014:13) Some concrete examples of EU failures in recent years are a waste landfill in Pezinok, near Bratislava (Slovakia) and to the Irish programme for promoting renewable energy (REFIT), under which developments (such as wind parks) were authorized in breach of the provisions on public participation of the Aarhus Convention. From these and several other examples<sup>8</sup> it appears that competent authorities sometimes try to discourage the public from participating actively. The main lesson learned though is that in the end these administrations faced an increase in litigation and court appeals, which resulted in delays on permits and then affected the planned investments. Even worse, once the public perceives that information is being withheld or participation discouraged, it organizes itself to fight against it, supported by new ICT and social media to do so.

### **China’s national Legal Framework**

Although the environmental impact assessment (EIA) concept was introduced in China in the early 1970s, it was in 2002 with the adoption of the Environmental Impact Assessment Law of the PRC that public participation system in EIA was specifically introduced. This 2002 Law required the environmental impact report submitted by the construction unit for approval to include an explanation of whether or not to adopt the comments of the units, experts and the public. The ‘Temporary Methods of Public Participation in Environmental Impact Assessment’ issued by the former State Environmental Protection Administration in 2006 extends and deepens the public participation system in EIA. It defines the principles of this system, the rights and obligations of its main participating bodies, the specific range of its solicited opinions, the information disclosure requirements at each stage, and the specific modes and timing etc. of public opinion surveys. It has become a milestone of this system in the democratization process. It is supported by a large number of laws and regulations to provide legal assurance of the public participation in EIA.

Since 2006, the standing committees of local people congresses, the local people’s governments and their competent administrative departments of environmental protection in China have added some special clauses or sections on public participation in EIA in their local regulations or local

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<sup>8</sup> EU Best practices and case studies - see Report D.2.2 —Chinese and EU best practices of public participation in EIA procedures, available on <http://egpeia.caep.org.cn/default.aspx>

government regulations in line with the actual EIA work of the administrative regions under their jurisdiction.

Some relatively economically developed regions have given more concern to the specific details on public involvement in environmental impact assessment by issuing local normative legal documents. Guangdong, Zhejiang and Shandong have prescribed the identification and selection requirements and methods for public participation and defined the nature, range, proportion, and number of people for 'public'. Shandong has further stipulated the requirements and standards for verifying the truth of questionnaires. According to the rules of Shanghai and Shandong, an entrusted environmental assessment agency is not allowed to re-entrust any third party as a subject to implement public involvement. Despite these new laws and regulations problems occur during the implementation.

### **Common practice**

The implementation situation of public involvement in the specific procedures of Chinese environmental impact assessment is mainly reflected in the following ways: first, posting notices in residential quarters, publishing news in local newspapers, releasing news on the websites of enterprises or local governments etc. for disclosing the information on environmental impact assessment; second, collect information by holding informal discussion or carrying out door-to-door interview etc.; third, classify and accept the public opinions on environmental impact assessment of relevant projects, submit the opinions to the owners for rectifications and improvement and take them as an important conclusion of public involvement chapter in environmental impact assessment report.

A number of group events in recent years are a symptom of the fact that public demands in EIA had not been satisfied. Such a series of public conflicts have also been hotspot issues in the society, triggering people's concern about their own environmental interests. The next section will describe one such event, related to (lack of) public involvement in environmental impact assessment: the Qidong Waste Water Pipe (Jiangsu). Other examples, like the Shifand copper smelting factory in Sichuan and the Xiamen PX Project, can be found in EURAC, 2014.

#### *The Wastewater pipe in Qidong, Jiangsu*

Qidong City, Jiangsu is located on the east of Changjiang River inlet to sea. The main economic activities are marine aquaculture and tourism. The natural convergence of the East China Sea,

Yellow Sea and Changjiang River enables Qidong to be a natural fishing ground adaptable for cultivation of fish, shrimp and crab, which enjoys high-quality sea and river food.

In 2012, Nantong planned to build a 100km wastewater pipe in its 'wastewater pipe project for Oji Papermaking Plant' for discharging the wastewater from the paper-making plant of Nantong Industrial Park to the county-level city Qidong under its jurisdiction. The discharge of industrial wastewater was likely to lead to a rise in red tide rate and jeopardize redwoods, coral reefs, wetlands and other key eco-systems and affect the water safety of Qingcaosha drinking water intake in Shanghai.

Since 2010, volunteers from local green organizations have repeatedly applied to the government for disclosing the project information, but the information obtained was fairly limited. During the period of the municipal people's congress and the municipal political consultative conference, 39 deputies to the people's congress opposed the launch of the project and some members voiced their opposition repeatedly. To enable the deputies and members to express their opposition opinions in the people's congress in 2010, the volunteers in Qidong placed their proposal at the doorsteps of the deputies and members one by one. The motions and proposals from the deputies and members have aroused a wide discussion by the public, but it has not shaken the government's decision.

In Spring and Summer 2012, the public called for their demands through the Internet. Given the reality that their strong appeal failed to get an explicit response, the public in Qidong applied for a demonstration on resisting the wastewater discharge by Oji, but their application was not approved by the relevant department. On July 27, 2012, the spokesman of Qidong municipal government announced that the wastewater pipe to the sea had not been started to be constructed and the city had received a notice that construction of the project had been suspended. However, the government failed to give a clear and thorough reply, which finally triggered the outbreak of a group event/demonstration that blocked the Qidong municipal government on July 28. In the morning of that day, thousands of civilians took to the streets, gathered, blocked and attacked the Qidong municipal Party committee and government offices, leading to mutual confrontation between civilians and local armed police and riot police. Finally it forced the Nantong municipality government to make a decision to permanently cancel the wastewater discharge project of Oji Paper-making Plant.

## **Analysis**

(1) Cases like Qidong reflect that these contested projects have undergone a systematic and scientific environmental impact assessment for construction projects, but had attached little importance to public involvement. After the projects were initiated, public involvement is

implemented in merely a symbolic way. The attitude of government organs is one of indifference or 'going through the motions'.

(2) The simple way of dialogue between the environmental protection department, construction unit or environmental impact assessment agency and the public cannot meet the demands of the public in expressing their appeal for public interest, resulting in the public taking extreme massive action to force the government to seriously consider the adoption of the public opinions through hearings and other approaches. Moreover, during hearings, the public doubts that the environmental impact assessment is fair or scientific. The Chinese system for public involvement in environmental impact assessment lacks a channel for both sides to effectively express their opinions and carry out inquiry and debate even if a hearing is held.

(3) The disclosure system for information on public involvement is unsound; in practice, the government mostly evades critical points for disclosure and lacks awareness to disclose the information, resulting in the public losing trust in the government.

(4) The procedural design for public involvement makes it difficult to safeguard and satisfy the right for the public to participate and know.

### **Discussion and recommendations**

One overarching impression of the public outcry in the above case is that public involvement during environmental impact assessment has been the only outlet for the public to express their concerns. The contradictions and problems that have arisen from land relocation, compensation, etc. have been a main reason for the public to oppose environmental impact assessment projects and is also a fundamental reason for confusion in environmental impact assessment. It is therefore recommended to introduce in China a public involvement system into the decision-making process of land use planning and many other departments in the form of a law or regulation, and to state the right of civilians to participate in government decision-making and social management and safeguarding this right through detailed rules of implementation.

Judging from the case the event seemed to be triggered by asymmetric information among the public, enterprises and EIA participating units. Therefore it is inevitable to improve the environmental information disclosure system.

On the administrative system level, it would be required to establish and detail the mechanism for the departments implementing environmental protection to get involved in key planning and engineering project decision-making and build a multi-sectorial joint working mechanism during public involvement in environmental impact assessment.

It is suggested to expand the scope of public participation, including not only the affected citizens, communities and experts, but also interested citizens, organizations, experts and government agencies. Meanwhile, include environmental non-governmental organizations (NGOs) through legislation to promote the development of environmental NGOs, promoting them as an important force in the development and progress of environmental protection.

## **References**

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