

Public Participation Indicator in Environmental Impact Assessment (EIA)

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I EIA and Bali Guidelines

In Environmental Law, Environmental Impact Assessment (EIA) has been playing an important role offering the public opportunities and instruments for participation. This paper analyses participatory systems and instruments of EIA aiming at developing a participation indicator for it.

Public participation is essential to the promotion of sustainable development. As Principle 10 of the Rio Declaration of 1992 states, environmental issues are best handled with the participation of all concerned citizens, at the relevant level. Public participation contributes to the protection of the right to live in a healthy environment as a basic human right. In order to accelerate the implementation of Principle 10, the United Nations Economic Commission for Europe (UNECE) adopted the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters in 1998 in the Danish city of Aarhus (the Aarhus Convention). It requires parties to guarantee the procedural rights of access to information, public participation in decision-making, and access to justice. Effective public participation depends on full, accurate, and up-to-date information. Access to justice ensures that participation occurs in reality and not just on paper. Therefore, it is important to guarantee these three access rights in an integrated way.

The Aarhus Convention is open to any state to join. However, as of January 16, 2015, all 47 Parties were from the UNECE region. In order to promote Principle 10 worldwide, the Governing Council of the United Nations Environment Programme (UNEP) adopted the Guidelines for the Development of National Legislation on Access to Information, Public Participation, and Access to Justice in Environmental Matters (the Bali Guidelines) on February 26, 2010. Like the Aarhus Convention, these Guidelines have three pillars. However, their content is much more abstract and allows more flexibility and discretion to legislators. In this sense, the Guidelines focus particularly on developing countries¹ and emphasize the importance of capacity building within each pillar.

¹ See UNEP at <<http://www.unep.org/civil-society/Implementation/Principle10/tabid/105013/Default.aspx>>

The Guidelines 8 to 12 are especially related to the EIA, as follows:

Guideline 8: Early Public Participation
Guideline 9: Proactive Public Consultation
Guideline 10: Informed Participation
Guideline 11: Due Account of Public Comments
Guideline 12: Public Participation in Review

The measures and methods used to implement Principle 10 differ from country to country, based on the field, as well as on local or regional social and cultural conditions. The Latin-American and Caribbean countries, for example, are now planning to have their own regional instrument in relation to Principle 10 in the framework of the Economic Commission for Latin America and the Caribbean (ECLAC)².

Against the above background, it is important to make a comparative study of the various countries and regions, and to share their good practices. The participation indicator in the EIA will contribute to promote implementation of Principle 10.

II Existing Indicators and the EIA Indicator

The Access Initiative (TAI) and World Resources Institute (WRI), in collaboration with lawyers around the world, developed the Environmental Democracy Index (EDI)³, the first legal indicator for public participation in environmental matters, which was publicized in 2015. The index is based on the Bali Guidelines, including 75 legal indicators and 24 practice indicators that provide an insight on a country's performance in implementing environmental democracy.

However, there are several points for EDI to be improved or further developed⁴. First, the index does not provide a comprehensive measurement of implementation of the law, but very limited indicators. Second, it does not assess laws at the subnational level. As a result, the evaluation does not always reflect the current situation in countries with a federal or decentralized legal system, which may have stronger regulation about public participation at the state or local level. In addition, the methods and procedures for

lt.aspx> (last accessed on March 5, 2015).

² Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development (A/CONF.216/13), available at <<http://www.cepal.org/rio20/noticias/paginas/3/54423/Declaracion-eng-N1244043.pdf>> (last accessed on March 5, 2015). Also see CEPAL HP at <<http://www.cepal.org/cgi-bin/getprod.asp?xml=/rio20/noticias/paginas/8/54448/P54448.xml&xsl=/rio20/tpl/p18f.xsl&base=/rio20/tpl/top-bottom.xsl>> (last accessed on March 5, 2015).

³ <<http://www.environmentaldemocracyindex.org/>> (last accessed on March 5, 2015).

⁴ The Access Initiative and World Resources Institute, Measuring, mapping & strengthening rights: The Environmental Democracy Index, 2014, p. 2.

effective public participation vary depending on the field, as well as on the social and cultural conditions. This justifies the need to develop the EIA indicators and to use various indicators complementary to each other.

III Provisional Indicator for Screening

The EIA indicator should be based on Bali Guidelines and Aarhus Convention. It would be rational to take into account the current EDI too. In this sense a provisional indicator for public participation at the screening stage in EIA would be as follows.

- 1 Opportunity to participate at the screening level
 - Is the opportunity to express an opinion guaranteed?
- 2 Comprehensive target activities/enterprise (kind of enterprise, scale) to undergo screening
 - Are important enterprises not excluded (nuclear power plants, private enterprises, etc.)?
- 3 Range of Participants
 - (1) Is the public to whom participation is guaranteed comprehensive enough?
 - (2) Besides those directly affected, is it possible for any person to participate?
 - (3) Is there any system to make citizens' participation effective?
 - ① Is equal participation opportunity granted to citizens?
 - ② Do citizens have to identify themselves; or are citizens identified?
 - ③ Are there any special procedures for NGOs or communities' participation?
 - ④ Is the criteria for identifying participants adequate?
 - ⑤ Is participation opportunity granted to vulnerable groups?
- 4 Timely and adequate disclosure of the participation procedure
 - (1) Notification Content
 - Is the content of the notification adequate and in a language understood by the targeted participants?
 - ① Enterprise planning
 - ② Decision content (e.g., license, permit)
 - ③ Public body responsible for the decision
 - ④ Engagement procedure
 - a) Disclosure of the procedure
 - b) Way to participate, time and venue of the explanatory session as well as of the public hearing
 - c) Indication of the public body responsible for keeping the related information
 - d) Opinion/questions' addressee (public body), schedule and deadlines
 - e) Available environmental information
 - (2) Notification period
 - Is the notification period (promptly) adequate?
 - (3) Notification Method
 - ① Are two or more of the instruments below used for the notification?

- Official Gazette
 - Internet (e-mail, website, social media)
 - Citizens personal notification, visit
 - Phone calls
 - Local or/and national newspaper, television, radio, invitation letters
 - Instruments particular to certain region (e.g., drums)
- ②Does the notification use language that is easily understood by citizens?
- 5 Is the requisite information for the participation offered free of charge?
- (1) Kind of information
- ①Enterprise location, physical and technological enterprise planning's features
 - ②Environmental issues related to the enterprise
 - ③Non-technical summary of the findings in a language understood by participants
- (2) Is the information offered free of charge?
- (3) Is the information available within an adequate time/period?
- (4) Is it possible to access information within the period guaranteed to form an opinion?
- ①Is adequate time allocated to access the information and submit feedback?
 - ②Is the access to information open and disclosed to participants?
 - ③Is there a publicly disclosed form?
 - ④Is there a request form?
 - ⑤Is there an explanatory session?
- 6 Participation opportunity and method
- (1) Submission in writing
- (2) Public hearing, discussion session or exhibition
- ①Is it organized by an independent body (e.g., public body)?
 - ②Is an adequate and easily accessible venue provided?
 - ③Is the program of events for the public hearing/meeting disclosed?
 - ④How many times is it guaranteed that opinions will be listened to?
 - ⑤Can all those who wish to express their opinion do so?
 - ⑥Is there a requirement to take notes and record the proceedings of the public hearing?
 - ⑦Is the time for the participants to express their opinions adequate?
- Is there a minimum limit of time, normally 10min/person, for presenting oral allegations?
- ⑧Do all participants have time to ask questions to the entrepreneur?
- 7 Adequate consideration of opinions
- (1) Is it possible to choose to omit the name from the opinion publication list?
 - (2) Are all submitted opinions published?
 - (3) Is there a summarized publication?
 - (4) Is the appreciation of the entrepreneur/public body published?
 - (5) Are considerations on each individual's opinion published?
 - (6) Is there any mandatory notification?
 - (7) Publication method (same as above)
- 8 Decision Publication
- (1) Period of publication
- Is the decision published just after it is made?

(2) Publication method (same as above)

(3) Publication Content

- ① Is EIA necessary?
- ② Reasoning for the decision that dismisses EIA
- ③ Result of consideration of the submitted opinion

9 Access to Justice

•Is access to justice granted to review the procedure concerning the administrative decision?

IV Future Perspective

This paper shows a tentative EIA indicator for the screening stage. For being specific to the EIA, it includes more detailed items in comparison with EDI. However, there are still several open questions such as how to consider the specific situation in each country. In Japan, for example, the EIA law does not provide any opportunity for public participation at the screening stage. However, in the Japanese practice, the enterprises subject to screening have their EIA completely made by the entrepreneur itself. That is the reason why, in fact, there is no screening procedure. Thus, it would not make sense to consider public participation in the screening stage even though it was allowed. It is a crucial issue for EDI and EIA indicator to develop practical indicators.