

Title: Social context, pluralism and accidental changes in IA practice

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Abstract

The IAIA19 conference theme description notes that the introduction of Impact Assessment (IA) was a revolutionary means in environmental decision making, which later evolved to be applied in wider contexts and settings. It raises the question about whether evolution or revolutionary changes are needed for IA right now. However, an important question arising is whether changes in IA practice really went as intended? Or whether (at least some) are rather “accidental”. While development of public participation is one of the more notable changes in the evolution of IA, in this paper empirical observation among community and stakeholder liaison practices in Hong Kong is used to argue that practical changes are often orchestrated by stakeholders from different parties. Stakeholders have different understandings and interpretations on how IA and the instruments under its umbrella should be conducted. Their actions and interactions with others enable changes in practices, and outcomes could go beyond original designs. This can be related to the discourse on pluralism aspects that stakeholders having different interpretations of the instruments, meaning that different courses of action are taken. As a result, changes in IA practices were not necessarily as intended in the original designs. As part of the social context that IA is built on, it is necessary to engage with pluralistic societies to make changes to IA and to make it more effective.

Introduction

Impact Assessment (IA) is a tool formally established first through the US NEPA Act in 1969. Since then, EIA has been established as a formal process in many countries. Over the past 50 years, the scope of EIA has been expanded to cover natural, social and economic effects of projects, policies, plans, technologies and activities. Among the changes over time, the development of public participation in IA is one of the most notable. The development of public participation in IA aligned with the wider development of public participation in environmental decision making in the 1990s. More exigent public participation requirements are also implemented through international and local legislation (e.g. the UNECE Aarhus Convention and the later transposition among member countries). Currently, most IAs in the world require some form of public consultation or participation, including EU member states under the EU EIA Directive, the US under the NEPA Act and Australia under the EPBC Act. While the detailed requirements in each country differs, key elements usually include ensuring that the public has the right to be informed and comment, and that decision-makers need to examine the concerns and opinions expressed by the public before making a decision (see e.g. the EU EIA Directive). Beyond these objectives, legislation usually provides flexibility for authorities and practitioners to implement the actual practices.

While legislative updates, such as the update and transposition of the EU EIA Directive act as strong drivers of changes in practice, there are other factors driving change, too. The EIA legislation in Hong Kong has mostly remained unchanged since its introduction in 1997; yet, there are observed changes in practice. This provides an opportunity to examine how practitioners could utilize the flexibility

authorized under the legislation in making changes, and how the social context would influence the changes in the process.

Background and Context

EIA in Hong Kong is mandated under the Environmental Impact Assessment Ordinance (EIAO), which was adopted in 1997, which is one of the last major legislations passed before the transfer of the sovereign over Hong Kong from Britain to China. Since then, there have been minimal changes to the legislation and the development of EIA, mostly on administrative-led initiatives. Under the EIAO, there are two statutory public inspection windows. The public can inspect and comment on the Project Profile when a project starts the EIA process, and can inspect and comment on the EIA Report when a project applies for approval. The Director of Environmental Protection has the duty to consider the comments received before making a decision. The principles outlined by the legislation are straight forward and similar to general international practices. However, Hong Kong has a unique geographical-social context which has shaped agendas in public participation practices.

Geographically, Hong Kong is a congested city with a high population density. As a congested city, there are three major implications for managing environmental impacts. Firstly, projects that are located in an urban area would have impacts on a high number of receivers. Secondly, a project would more likely affect areas with different social characteristics, like groups with different income levels, education levels, age, etc. Thirdly, in addition to those being directly affected, an environmental impact (especially if it involved ecology or air quality impacts), may catch attention from multiple NGOs and concerned groups with different agendas. In short, the geographical-social nature in Hong Kong facilitates a rich pluralistic context that would be reflected in public participation practice.

Use of liaison as part of EIA follow up

In Hong Kong, environmental permits can be applied after EIA approval. The environmental permit outlines the criteria and conditions that the project proponent needs to follow. In more recent years, environmental permits have at times included a condition that the project proponent needs to liaise with the local communities when the project commences. This condition is not a standardized measure that applies to all of the project, which is up to the decision makers in the authority to determine whether such a condition would apply. It was first established for the Kowloon Southern Line Project in 2005, which was a railway extension project in the crowded Kowloon area. The environmental permit required the project proponent to set up a community liaison office to “service complaints, comments, suggestions or requests for information.”¹

General Practice

Since 2005, around 30% of the EIA designated projects in Hong Kong were required to set up liaison measures under the environmental permit. The detailed requirements differ and may use different forms, as is illustrated in **Table 1** below.

Table 1 Requirement of Liaison Under the Environmental Permit

Title	Number of EIAs
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¹ Refers to the Environment Permit EP-215/2005/, available at https://www.epd.gov.hk/eia/english/alpha/aspd_369.html

Community/Stakeholders Liaison Group(s)	24
Community Liaison Hotline	7
Community Liaison Office	4
Community Liaison Channel	2
Others	3

As shown in the table, the most common form of practice is the establishment of (a) liaison group(s). While the detailed setting of each project and the liaison groups may vary, the general set up is to form a static group comprising of representatives from the project proponent, authorities, district council and local communities. These groups would arrange regular meetings. In the meetings, the project proponent would present and report on project progress and upcoming events, then the groups would discuss the issues they are concerned with. Besides environmental issues, it is common to see discussion about traffic, hygiene and other social impacts during these meetings, and in some cases, there are more concerns over social impacts on residents than environmental impacts.

Variations

When an instrument is applied to a wider variety of projects, variations also start to develop within the instruments. The use of liaison was first applied to projects located in populated areas, the focus of the liaison was on the immediate impacts to the residents during construction. Since the liaison was applied to projects with a different nature (e.g. projects in rural areas or projects with significant attention from the wider public), some liaison groups have adopted different compositions and different agendas. One of the more notable examples include the “Expansion of Hong Kong International Airport into a Three-Runway System” project. The Airport Authority (project proponent) set up liaison groups and started the liaison when the EIA was in preparation. In addition to the Community Liaison Group, it also set up a Professional Liaison Group that comprises of experts and professionals from other institutions and organizations. While the early start and additional set up are not part of the requirement under the EIAO or the environmental permit, it allows the liaison to cover more subjects and aspects in the discussion, such as detailed environmental conservation programmes, monitoring and other management issues². In this case, the project proponent and project managers created a variation of the use of the liaison and expanded the functions of it.

Exceptional Case

Besides the emergence of variations, exceptional cases have appeared in some supposedly general practice of community liaison. An example is the South Island Line (East) – Telegraph Bay Community Liaison Group. In this community liaison group, the focus was the environmental nuisance induced by the proposed use of barging point in the area. The local community objected the use of the site and had been campaigning against it before the establishment of the community liaison group. After the liaison started, the local community took a proactive approach to push its agenda in the process. There are external engineering professionals within the local community, allowing the local communities to actively engage with the project managers in detailing the engineering design, environmental protection measures and monitoring program³. Compared to the general cases, this case shows a different mode of practice, with a higher level of public involvement, through conflicts, compromise and collaboration.

² Based on reviewing of meeting materials and minutes on the project website:

³ From information on the project website (currently taken offline) and interviews with participants

Discussion

The above cases show that an instrument could evolve in different ways and play different functions. Practitioners and stakeholders may have their own interpretation on its use and incorporate their agendas into practice. Referring to the original intent: to “service complaints, comments, suggestions or requests for information”, there are variations and exceptional cases that have pushed beyond that mandate, showing new opportunities for future practice. The evolution of the instruments appears to be more accidental rather than planned. The observations could be related to the international discourse on pluralism (e.g. Bond, Morrison-Saunders & Howitt, 2013; Cape et al, 2018). Pluralism is part of the social context. While there is more discussion about how IA should incorporate pluralism in practice, it is equally important to look at the implication of pluralism on IA practices. IA practice could be seen as a social construct shaped by the views and actions taken by each of the involved parties. It must also be noted that neither the players nor society would necessarily want IA to be more effective in protecting the environment. Changing the social context to a more favourable condition may be required in reforming IA practices.

Conclusion

This paper examines whether the changes we observed in IA practice were revolutionary, evolutionary or rather accidental. The introduction of community liaison practice in Hong Kong showed that there can be changes in IA practice without changes in legislation. The later variation and exceptional cases observed in the practice showed that parties in the practice could have different interpretations on the use of the instrument and incorporate their agendas in the practices. Changes in IA vary from the original intent and sometimes appear to be rather accidental. It is necessary to look at the social context and engage with the pluralism in the society in making changes to IA practices and make it more effective.

Reference:

- Bond, A., Morrison-Saunders, A. & Howitt, R. (2013) *Sustainability Assessment*. Oxon, Routledge.
- Cape, L.; Retief, F.; Lochner, P.; Fischer, T. B. and Bond, A. (2018) Exploring pluralism – different stakeholder views of the expected and realised value of Strategic Environmental Assessment (SEA), *Environmental Impact Assessment Review* 69: 32-41