Chapter 4: Setting the Scene - Concepts, Purposes, Principles, and Guidelines of Public Participation in EIA

Bert Enserink

Introduction

Some of the most important provisions in environmental impact assessment (EIA) legislation are the provisions for public participation. When a major project or new policy is being planned, the public has a right to be informed and to voice its concerns and issues. The project developer, most often the government, should create the conditions for the public to effectively participate and has the moral obligation to take these public concerns serious and have them reflected in their policy decisions. Allowing the public to speak out is considered to be an element of, or even a prerequisite for, good governance and it is expected to lead to more informed decision-making and consequently to better decisions and policies.

In this chapter, what public participation in impact assessment means in practice is explored and the most important concepts, purposes, and principles, as well as the most important guidelines for public participation in EIA, are considered.

1. Good Governance and Public Participation

Good governance, public participation and harmonious society are all in the same family of concepts as they are based on recognition of the interdependence of the parties involved\(^{104}\). They are all based on the idea that only the shared efforts of public and private stakeholders and the exchange of resources, goals, and expectations between the parties involved and/or affected by the policy, plan or project will lead to realization of a sustainable environmental policy and strategy. Cooperation and active involvement of public and private parties and the general public in environmental

impact assessment calls for good governance mechanisms for integrative planning and timely and actively informing and involving public and private stakeholders in policy processes and decision-making\footnote{M.R. Montgomery, R. Stren, B. Cohen and H.E. Reed (eds) \textit{Cities Transformed. Demographic Change and its Implications in the Developing World, Panel on Urban Population Dynamics} (National Research Council, Earthscan, London 2004), p. 65.}. Good governance has eight major characteristics: it is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law (see Figure 1). It assures that corruption is minimized, the views of minorities are taken into account and that the voices of the most vulnerable in society are heard in decision-making. It is responsive to the present and future needs of society\footnote{UNESCAP, \textit{What is good governance? United Nations economic and social omission for Asia and the Pacific} (2005), <www.unescap.org/huset/gg/governance.htm>. UNDP, \textit{Governance for Sustainable Human Development}, (United Nations Development Programme, 1997).}.

Participation is considered the cornerstone of good governance. Participation can be either direct by the public or through legitimate intermediate institutions or representatives. The Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters states (art. 3, par. 6) that countries should meet these three crucial obligations through legal frameworks. This means that participation needs to be informed and organized.

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{characteristics_of_good_governance}
\caption{Characteristics of good governance.}
\end{figure}

\textbf{Source:} Unescap (2005)
This implies freedom of association and expression on the one hand and an organized civil society on the other hand. Fair legal frameworks that are enforced impartially and information freely available and directly accessible to those who will be affected by policy decisions and their enforcement (transparency) are additional requirements for participation and good governance. It also means that enough information is provided and that it is provided in easily understandable forms and media. Finally, accountability is a key requirement of good governance. In general, an organization or institution is accountable to those who will be affected by its decisions or actions.

2. What is Public Participation?

Public participation is the involvement of individuals and groups that are positively or negatively affected by, or that are interested in, a proposed project, programme, plan or policy that is subject to a decision-making process. Public participation can be either direct by the public or through legitimate intermediate institutions or representatives, such as, for instance, through non-governmental organizations (NGOs).

Public participation in impact assessment (IA) is not new. At the international level, IA including the obligation to consult the public was fully recognized in 1992 at the United Nations Conference on Environment and Development, held in Rio de Janeiro. Principle 17 of the Final Declaration is dedicated to EIA:

‘Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.’

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Therefore, Impact Assessment aims to:

- Provide information for decision-making that analyses the biophysical, social, economic and institutional consequences of proposed actions.
- Promote transparency and participation of the public in decision-making.
- Identify procedures and methods for the follow-up (monitoring and mitigation of adverse consequences) in policy, planning and project cycles.
- Contribute to environmentally sound and sustainable development.

Public participation is essential for good governance and may empower local communities. In fact there is a moral obligation for authorities to create a ‘level playing field’, where all parties have full access to information and knowledge\textsuperscript{110}. As a consequence, public participation has multiple purposes: the activity serves both the initiators, shareholders and the stakeholders in plans, projects, and policies\textsuperscript{111}. Thus, proponents/initiators should invite and involve the affected and interested public into the decision-making process to foster justice, equity and collaboration.

At the same time it is recognized that public participation can increase the quality of the decision itself as public participation also serves to:

- gather data and information from the public about their cultural, social, economic and political environment and the biophysical environment, as well as about the relations (including those related to traditional and local knowledge) they have with their environment;
- seek input from the public on the planned intervention to increase its positive outcomes or to compensate for impacts that may not be mitigated;
- contribute to better analysis of proposals leading to more creative development, more sustainable interventions and consequently greater public acceptance and support than would otherwise be the case.


Good governance and public participation as its foundation therefore implies freedom of association and expression on the one hand and an organized civil society on the other hand. Fair legal frameworks that are enforced impartially and information freely available and directly accessible to those who will be affected by policy decisions and their enforcement (transparency) are additional requirements for meaningful participation and good governance and will be discussed in other chapters of this book.

3. The Purpose of Public Participation

It is widely believed that public participation contributes to better projects, better development and collaborative governance.

Participation is thought to generate ownership and agency, including among local or regional communities, which contributes to social sustainability, legitimacy, community building and harmonious society.\(^{112}\)

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.\(^{113}\) It has been argued that public participation can help broaden the information base of ecosystem assessments, and might be a possible remedy for not-in-my-backyard (NIMBY) sentiments as it may lead to acceptance for new policies,\(^{114}\) policy innovations and tough decisions among the public.\(^{115}\) The merits of the process are often seen as decisive for the success or failure of public policies.

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In the European Union more constructive and cooperative forms of planning, like consultation and active, early involvement in policy-making are now supported and actively promoted, for instance by the EU among its Member States (EU Guidance, 2002)\(^{116}\). Research has shown that these forms of participation can be advantageous for the quality of the analysis, for the quality of the planning decisions and for the quality of implementation of the planning decisions\(^{117}\). This is especially true for strategic planning: in discussions about plans, policies and programmes at a national level, institutionalized and well-organized stakeholder groups are considered partners in the planning process and procedures for Strategic Environmental Assessment (SEA) have been institutionalized.

Clearly different countries have different practices for public participation in impact assessment and this partly relates to their political culture, tradition and social organization. A tool providing a structure for ideas on good or meaningful participation is Arnstein’s ladder of citizens’ participation\(^{118}\). (See Figure 3/E-1 below.) Arnstein published a seminal paper that until today is widely debated by everyone working in public participation. Her nine-rung ladder reads as follows. On the lowest rungs we have manipulation and therapy, both words with a strong negative connotation in the US, indicating that citizens are manipulated/tricked into a situation. In fact, it is non-participation. Next are the basic steps according to Arnstein, which are information, consultation and placation. These three at least inform the citizens about initiatives in their environment affecting


them and, when consulted, citizens are asked for their concerns and issues and, when talking about placation, some of their concerns are met and accommodated to appease them and to make them accept the new situation. On the top rungs Arnstein put partnership, delegated power and citizen control, which are three steps by which citizens get more influence and power in decision-making. Partnership implies that the government and citizen are on equal footing; delegation implies that the government lets the citizen decide; and citizen control implies that the government has stepped back.

![Arnstein's Ladder of Citizen Participation](https://doi.org/10.5771/9783845253459-51)

**Figure 2:** Arnstein’s Ladder of Citizen Participation (Source Arnstein 1969).

Highly valuing citizen involvement in decision-making, even codifying citizen participation in legislation, typically reflects the assumption that moving up Arnstein’s (1969) ladder of citizen participation is a move towards better governance. In the international arena there is constant pressure for more participation and for moving up the ladder for better governance, for instance by UN organizations and the World Bank. Arnstein’s Ladder is heavily debated and various adaptations have been made. In
Figure 3, on the left, an adaptation of Arnstein’s ladder is presented with five rungs only, which reflects the situation in Europe, and on the right, an adapted version by Plummer and Taylor (2004) is presented, which claims to represent the situation in China\textsuperscript{119}.

These ladders can be used to discuss where we stand now and where we would want to be. When looking at the ladder of community participation in China on the right, a possible classification with a number of rungs that are supposed to fit better to the Chinese reality is presented, starting at the bottom with notification, then moving to attendance and expression. A next step is discussion and then moving up to decision-making and self-management.

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{ladders.png}
\caption{Two ladders of community participation (Source Enserink and Koppenjan (2007)\textsuperscript{120}).}
\end{figure}


\textsuperscript{120} Supra note 112, pp.459-474.
4. General Principles

Taking the general principles of public participation of the International Association on Impact Assessment as point of departure, contemporary public participation (PP) practice in IA should be:

- Adapted to the context – Understanding and appreciating the social institutions, values, and culture of the communities in the project area; and respecting the historical, cultural, environmental, political and social backgrounds of the communities which are affected by a proposal.

- Informative and proactive – Recognizing that the public has a right to be informed early and in a meaningful way on proposals which may affect their lives or livelihoods. Increased interest and motivation to participate occur by diffusing simple and understandable information to the affected and interested public.

- Adaptive and communicative – Recognizing that the public is heterogeneous according to their demographics, knowledge, power, values and interests. The rules of effective communication among people, in the respect of all individuals and parties, should be followed.

- Inclusive and equitable – Ensuring that all interests, including those non-represented or underrepresented, are respected regarding the distribution of impacts, compensation and benefits. The participation or defence of the interests of less represented groups, including indigenous peoples, women, children, elderly and poor people, should be encouraged. Equity between present and future generations in a perspective of sustainability should be promoted.

- Educative – Contributing to a mutual respect and understanding of all IA stakeholders with respect to their values, interests, rights and obligations.

- Cooperative – Promoting cooperation, convergence and consensus-building rather than confrontation. Engaging conflicting perspectives and values as well as trying to reach a general acceptance of the proposal toward a decision that promotes and supports sustainable development should be pursued.

- Imputable – Improving the proposal under study, taking into account the results of the PP process; including reporting and feedback to stakeholders about the results of the PP process, especially how their inputs have contributed to decision-making.

121 Supra note 108.
In Figure 4 the normative basic principles that were mentioned above are presented in an objectives tree, constituted by factors that define the underlying objectives. The fundamental objective ‘good PP practice’ is defined/specifies by good governance on the one hand and good decision on the other hand; the lower lying objectives/factors define the higher level objectives.

Figure 4: Good PP practice objectives tree showing the elements constituting a good practice. Source: Enserink et al 2009

The above objectives tree provides us with a good basis for evaluating public participation in environmental impact assessment as the lowest level of operationalisable/measurable factors constitute a list of criteria for meaningful/good PP practices.

5. Why is it so Difficult?

As most countries in the world formally recognize the value of public participation in impact assessment, why is it hard to have really meaningful public participation? What are the main obstacles for inclusion of the public in real-life decision-making?

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Authorities think PP is time-consuming and an actual hindrance to effective project implementation.

Authorities are inclined to trust in the advice and the opinion of experts and think the general public is ignorant and has no relevant expertise.

Authorities are afraid of losing authority and of losing face.

Authorities are project developers rather than neutral guardians of public values.

The democratic political culture and lack of participatory tradition inhibits active participation.

Lack of public trust and legal guarantees for participating citizens.

How does this look like in practice:

Authorities turn PP into a bureaucratic exercise; PP becomes a ritual, typically with ample opportunity for the public to respond and only starting after the major decisions have been taken.

Authorities do not create a safe environment for constructive criticism, thus discouraging the public to express concerns and issues.

Authorities manipulate schedules and reaction times to reduce the amount of feedback; the relevant public is not informed in a timely manner and information is hard to get.

Citizens are not content but not speaking out; obstruction, resistance and possible law suits hinder progress.

Examples of the above can be found around the globe. The bureaucratic exercise is prominent in many countries in Africa, but can also be seen in the United States, Europe or even in the Scandinavian countries that are known for their open political culture. Manipulation of schedules even happens in the Netherlands, where important IA studies are opened up during summer holidays. And of course in China we can find examples too. From earlier work with the China Council for International Cooperation on Environment and Development (CCICED) in 2006 comes the following list of key governance issues in impact assessment and public participation in China and for now this list still seems to cover the main issues that impede effective and meaningful public participation.

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<th>Characteristics of Good Governance</th>
<th>Key Issues in China</th>
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<td>Consensus-oriented</td>
<td>Attitude and capacity of (local) government</td>
</tr>
<tr>
<td>Equity and inclusiveness</td>
<td>Level of community organization</td>
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<tr>
<td>Effective and efficient</td>
<td>Quality decision-making process</td>
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<tr>
<td>Participatory</td>
<td>Representation and level of socio-economic development</td>
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<tr>
<td>Follows rule of law</td>
<td>Legal framework and incentives</td>
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<tr>
<td>Transparency</td>
<td>Transparency, openness, accountability</td>
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</tbody>
</table>

Table 1: Characteristics of good governance and key issues in China (Source: Enserink and Koppenjan, 2007).

6. Guidelines

In respect to the governance principles previously identified, a list of guidelines for improving the practice of public participation in environmental impact assessment can be the following:

- Authorities should learn and recognize that the public is entitled to information and consultation and can have a valuable contribution to decision-making.
- Authorities are responsible for setting the conditions for meaningful participation.
- Authorities are responsible for creating a safe environment and establishing conditions for members of the public to respond.
- PP should be initiated very early into the life-cycle of a planned intervention, and sustained during its entire life.
- PP should be well planned and structured. All actors should know the aims, rules, organization, procedure and expected outcomes of the PP process undertaken.
- PP should be tiered and optimized. Any PP programme should take place at the most efficient level of decision-making, e.g. at the policy, plan, programme or project level.
- PP should be led by the neutral authority in its formal or traditional sense and follow rules known and accepted by all parties. PP needs to follow some rules of ethics, professional behaviour or moral obligations.
- PP should be focused on negotiable issues relevant to the decision-making. Because consensus is not always feasible, PP needs to hear about values and interests of participants, and to focus on negotiable issues.

7. Conclusions

Public participation has been increasingly recognized both as one of the most important assets and as one of the major challenges in environmental impact assessment. The multiple aims of public participation in EIA make it worthwhile to invest in public participation as it is believed to contribute to the environmental quality of plans and projects, lead to better implementation and environmental monitoring, create acceptance for the project outcomes, and support the legitimacy of the project and environmental authorities.

Meaningful public participation does not come about without serious efforts by the project developer and, without the presence of an independent authority, it soon becomes a bureaucratic exercise rather than a serious effort to improve the quality and legitimacy of policies, plans and projects. IA recognizes that the public has a right to be informed early and in a meaningful way on proposals that may affect their lives or livelihoods. Leading principles for good quality public participation imply that IA should be adapted to the context, be inclusive and equitable, promote cooperation and be directed at improving the proposal under study.