



**Policy Instruments for Chinese Sustainable Future:
Environmental Policy Integration and
Strategic Environmental Assessment
for the Energy and Transport Sectors**

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**Public Participation in Strategic
Environmental Assessment in
China**

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Project outline

Policy Instruments for Chinese Sustainable Future focuses on the integration of the environment into transport and energy planning in China, both at the policy level and in terms of concrete measures for the two administrative levels of provinces and municipalities. The implementation of this project will help to build transportation and energy-use systems that are environmentally sound and capable of achieving sustainable development in China. As part of the Asia Pro Eco II Programme the project contributes to the programme's main themes for China: energy savings, improved air quality and reduced emissions of GHGs.

At the heart of this project are two closely related mechanisms that are central to the EU efforts to promote sustainability: Environmental Policy Integration (EPI) and Strategic Environmental Assessment (SEA).

The action targets the inadequate reflection on environmental policy objectives and the weakness of the environment as a cross-sectoral priority and the need for information and knowledge of technical/practical solutions that can lead to immediate improvements in the development of sectoral plans. The 30 months Action consists of four work packages and multiple activities.

For further information please look at:

http://www.epi-in-china.com/project_information/summary.html

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List of contents

| | |
|---|-----------|
| 1. INTRODUCTION..... | 3 |
| 2. BACKGROUND: SEA AND PUBLIC PARTICIPATION | 5 |
| 2.1 SEA IN CHINA | 5 |
| 2.2 PUBLIC PARTICIPATION..... | 8 |
| 2.3 PUBLIC PARTICIPATION IN SEA | 11 |
| 3. LEGAL REQUIREMENTS AND PRACTICE OF PUBLIC PARTICIPATION IN SEA IN CHINA | 14 |
| 3.1 LEGAL REQUIREMENTS | 14 |
| 3.2 IMPLEMENTATION | 17 |
| 3.3 EFFECTIVENESS..... | 23 |
| 4. FUTURE PROSPECTS AND RECOMMENDATIONS | 27 |

1. Introduction

In recent years, China's vast environmental problems have attracted the attention of politicians and scholars world wide. The Chinese leadership has been adopting a series of measures to fight pollution since the 1980s, but only during the past decade growing concern about the environmental quality has led to substantial interventions in the field of environmental policy. As a result, revisions of ineffective laws and regulations on the one hand (van Rooij 2006: 69), and the introduction of new, modern instruments for environmental protection on the other have been promoted. One of these new approaches is the embracement of Strategic Environmental Assessment (SEA), an instrument that aims at integrating environmental concerns into decision-making. In contrast to project Environmental Impact Assessment (EIA), SEA applies to higher-level decisions such as plans, programmes, and in some countries, as well to policies and legislation (in short, referred to as PPP – plans, programmes, and policies).

Most guidance documents and legal frameworks on SEA recommend or require the adoption of some form of public participation in the assessment process. Researchers state that this way, affected or interested people can contribute with their knowledge to the planning process, help monitor the quality of the decision, and they are more likely to accept the final decision if they are involved in the planning (see, e.g., Arbter 2005).

Environmental public participation has been an intensely discussed subject in China over the recent years. Government officials expect that besides a positive impact on the enforcement of environmental policies, public participation will also help to avoid environmental protests (Chung 2006: 138). The 2002 EIA Law, in addition to creating new provisions for SEA, also introduced binding rules for public involvement in both EIA and SEA. However, especially with regard to SEA, public participation seems to remain limited (Zhu et al. 2008: 621-622, Bina 2008, Tao et al. 2007: 261). Many authors describe both legal provisions and implementation as insufficient, yet, without discussing in detail the problems associated with public participation practice.

Theoretical background

Since the 1970s, scientists have been examining the obstacles to the implementation of political programmes. Problems with the implementation of environmental policies have been attributed especially to the traditional interventionist approach of regulatory politics. In environmental politics in China, implementation is often referred to as a major obstacle to tackling the vast environmental problems (Heggelund 2004: 165; Jahiel 1998: 34). Public participation is a rather modern instrument supposed to help implement environmental policies effectively. Nevertheless, provisions for public participation can be subject to implementation research as well.

There are different concepts of what "implementation" means. The term is basically associated with three different ideas: first, fleshing out the law with administrative regulations and policy programmes (Chen 2002: 3, Otto 2002: 23); second, putting the "law-in-the-books" into practice, that is, authorities apply the legal requirements to specific situations; and third, taking enforcement measures when violations of the law have been detected (van Rooij 2002: 151-152). In the context of this paper, the

second meaning applies, thus “implementation” is defined as the process of converting the content of laws and regulations into practice in specific situations. Hence, the degree of compliance with provisions on public participation set forth in relevant laws and regulations serves as benchmark for determining the quality of implementation.

However, even if it is assumed that the legal provisions are implemented correctly, there still remains the question of their actual effects. Effectiveness is the ratio of set targets to achieved targets, that is, the degree to which set targets are achieved. Examining the effectiveness of participation means to ask whether it is having any impact on a decision and if it can comply with the objectives for which it is applied. In this research, the objectives for which public participation is applied in the SEA process serve as criteria to determine effectiveness. They are obtained from a review of relevant literature on SEA and public participation (cf. Section 2.3). The degree of their achievement indicates the effectiveness of public participation.

Methodology

This research is based on several case studies, expert interviews, and a review of relevant literature. As case studies, five reports on SEA in China were analysed. They include four reports compiled according to Chinese law for SEAs on transportation infrastructure in three provinces and one city, and one SEA report which was prepared by an international environmental consulting provider and which evaluates plans on tourism development. Three telephone interviews with Chinese and international SEA experts were conducted and one expert responded to the interview questions in written form.

Proceeding

In the first part of this article, an overview of SEA in China and public participation is presented. The main part consists of an analysis of public participation legislation and its implementation and effectiveness. Finally, recommendations are given how the process of public involvement in SEA in China could be advanced.

2. Background: SEA and Public Participation

2.1 SEA in China

Strategic Environmental Assessments have been conducted sporadically without statutory basis in China since the mid-nineties (Che et al. 2002). Examples include SEA studies on Shanxi Province's Coal and Electricity Strategy in 1997, the East Coastal Zone Development Plan for Xiamen in 1999, the Revision of the Law of Air Pollution Prevention and Control of the PRC in 1998, and the Great Western Development Strategy in 2001 (Bao et al. 2004, Che et al. 2002, Vennemo et al. 2005, Zhu et al. 2008).

The reasons for the emerging interest in SEA were the inherent limitations to project EIA, which applies too late to the decision-making process (cf. Haq 2004: 6), and the government's acknowledgement of SEA as an important tool for sustainable development (Che et al. 2002: 102). According to Zhu and Ru (2008: 617), the main driving force in the emerging SEA discussion were Chinese scholars disseminating ideas from a meeting of the International Association of Impact Assessment in the mid-nineties.

The SEA process in the EIA Law

In 2003, the Environmental Impact Assessment Law of the People's Republic of China¹ (hereafter, EIA Law) came into force. Besides strengthening the application of EIA for projects, it also introduced legal provisions on SEA for the first time, so that environmental assessment is mandatory for certain strategic actions now. Furthermore, the EIA Law establishes binding rules for public involvement in both EIA and SEA.

In fact, Chinese regulations do not exactly address Strategic Environmental Assessment, but "Plan Environmental Impact Assessment".² Nevertheless, Plan EIA commonly is taken as the Chinese SEA.³ Originally, the EIA Law should also provide for SEA for policies. This idea was dropped due to objections by concerned government departments that the provisions were "*vague, impractical and premature*" (Stender et al. 2007: 3).

The requirement addresses "relevant departments of the State Council, People's Governments at or above the level of municipalities (with districts) and their relevant departments" to conduct SEA on plans for which they have organised the drafting (arts. 7, 8 EIA Law). The agency responsible for the drafting of a plan can either carry out the SEA itself or commission another institution that has according qualifications

¹ Environmental Impact Assessment Law of the People's Republic of China [*Zhonghua renmin gongheguo huanjing yingxiang pingjia fa*]. Adopted on 28 October 2002 at the 30th Session of the Standing Committee of the Ninth National People's Congress, effective as of 1 September 2003.

² SEA is "*zhanlüe huanjing pingjia*" in Chinese, but regulations address "*guihua huanjing yingxiang pingjia*", Plan EIA.

³ Some authors differentiate into "PEIA" (Planning EIA) if speaking about China and SEA for the international context (Tao et al. 2007, Bina 2008). In order not to complicate things further here the abbreviation "SEA" is maintained, but the Technical Guidelines on Planning EIA are called "PEIA TG" since this is the name of the document.

to do so (CATS 2008a) – usually research institutes, university departments or a consulting company (Bao et al. 2004: 32).

The EIA Law distinguishes basically two categories of plans, the first one simply being called “plans” (*guihua*; art. 7 EIA Law), and the second one referred to as “special plans” (*zhuanxiang guihua*; art. 8 EIA Law). A third category, “guidance plans” among the special plans (*zhidaoxing guihua*; art. 8, s. 2 EIA Law), has to go through the same procedure as the first category plans.⁴

Article 7 EIA Law specifies the first category as “plans concerning land use and plans on regional, river basin and sea area construction and exploitation”, which have been characterised as “strategic plans” (Dalal-Clayton et al. 2005: 289), “master plans” (Bao et al. 2004: 32) or “synthetic plans” (Tao et al. 2007: 249). Relevant departments of the State Council, People’s Governments at or above the level of municipalities (with districts) and their relevant departments organising the drafting of such plans must in the course of drafting organise and conduct an EIA and provide “writings” (*pianzhang*) or “explanations” (*shuoming*) on the environmental impact of these plans. These documents should provide an assessment on the potential environmental impact after the implementation of a plan and according countermeasures, and must be attached to the draft plan when it is submitted to the plan examination and approval authority.

Article 8, Sentence 1 EIA Law refers to “special plans concerning industry, agriculture, pasturage, forestry, energy, water management, traffic, urban construction, tourism, and exploitation of natural resources”. In contrast to the more comprehensive plans subject to Article 7, these have been called “area plans” (Dalal-Clayton et al. 2005: 289) or “sector plans” (Bao et al. 2004: 32). For special plans prepared by them, relevant departments and People’s Governments must organise and conduct an EIA before the drafts of such plans are submitted for examination and approval. Whereas provisions for plans outlined in Article 7 are summarised very briefly, for “special plans” additional requirements specified in Articles 10-14 EIA Law have to be fulfilled. Together with the draft of the special plan, an Environmental Impact Report (EIR) must be submitted to the approval authority. The EIR, like the abovementioned writings and explanations, must present an assessment on the potential environmental impact and corresponding countermeasures, and additionally, it must provide an “environmental impact conclusion” (art. 10 EIA Law). Article 11 contains a public participation requirement for special plans that may cause environmental impacts and directly involve environmental rights and interests of the public. Article 13 contains provisions on an expert group that shall examine the EIR and provide a written statement prior to decision-making on the plan. In the case that the plan approval authority does not adopt the EIR conclusion and the opinion of the expert group, it has to explain its decision and record it for future reference (art. 14 EIA Law).

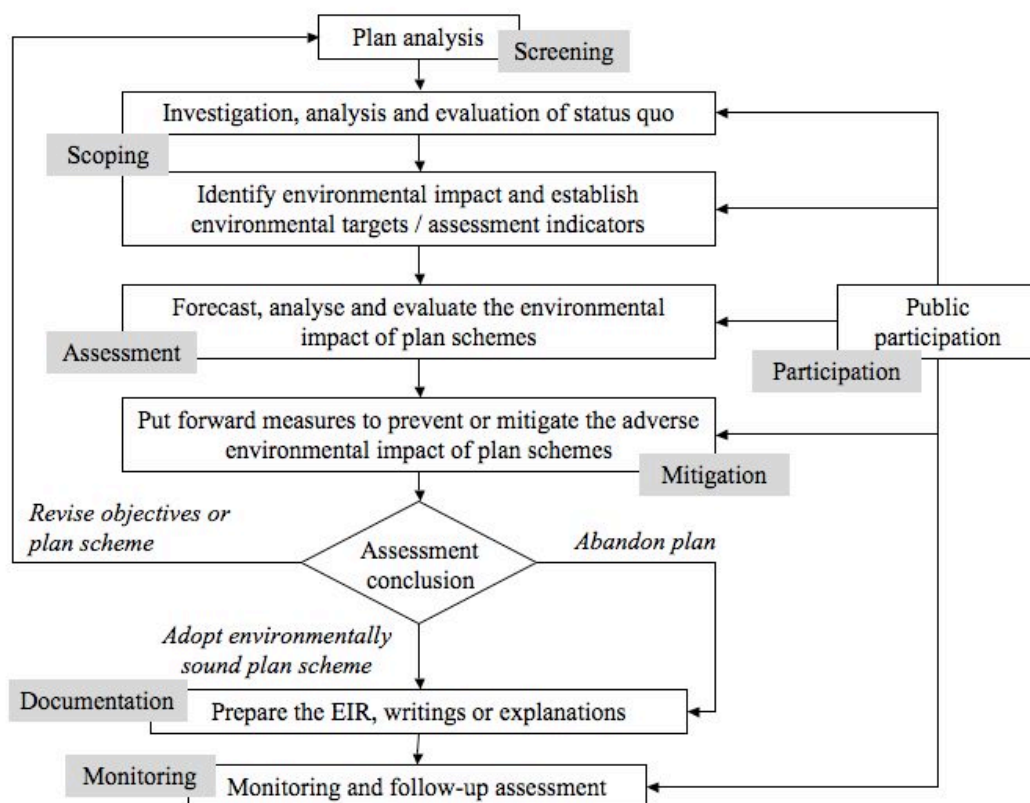
For both types of plans the EIA Law does not only call on plan drafting agencies to conduct EIA but also obliges plan approval authorities to accept only plans with the respective EIA documents attached (art. 7, s. 4 and art. 12, s. 2 EIA Law). Article 15

⁴ In 2004, SEPA passed a document that lists in detail the plans covered by each category, named “The specific scope of plans for that an Environmental Impact Report must be prepared (on trial)” and “The specific scope of plans for that Environmental Impact writings or explanations must be prepared (on trial)”.

EIA Law requires for plans having a major impact on the environment to organise a follow-up assessment after plan implementation and eventually adopt measures for improvement.

The Technical Guidelines for Plan Environmental Impact Assessment⁵ issued by SEPA in 2003 (hereafter, PEIA TG) describe in detail the procedure for environmental assessment for planning. In particular, the PEIA TG provide a figure where the proposed SEA procedure is shown (see fig. 1). The process incorporates the common SEA stages internationally known as screening, scoping, etc. It generally follows the requirements established in the EIA Law, but the scope of public participation is much broader.

Figure 1: SEA process as shown in the PEIA TG (by author, translation mainly after Tao et al. 2007). The grey boxes indicate the name which is commonly given to each stage in the international literature (amended by author).⁶



⁵ Technical Guidelines for Plan Environmental Impact Assessment (On Trial) [*Guihua huanjing yingxiang pingjia jishu daoze (shixing)*]. Chinese Environmental Industry Standard HJ/T 130 – 2003, issued by SEPA on 11 August 2003, effective as of 1 September 2003.

⁶ With respect to this figure, the PEIA TG do not differentiate between “plans” and “special plans”, although the procedure that applies to “plans” is much narrower than the process shown in the figure.

Limitations of the EIA Law's SEA system

Like other SEA schemes, SEA in China underlies restrictions that limit the effectiveness of the process. These can be traced back both to limitations of the legal framework and insufficient implementation and include:

- The design of the SEA process as prescribed by Chinese legislation, which relies strongly on the traditional assessment model for projects and supports solutions based on prevention, mitigation and compensation (Bina 2008). SEA researchers criticise such EIA-like approaches for SEA arguing that their capacity to integrate environmental concerns into decision-making is very limited (Haq 2004: 15).
- The limited scope of the SEA system. Not only does it not cover SEA for policies, it also excludes planning activities of the State Council, the People's Congresses at all levels, and county-level People's Governments (Zhu et al. 2008: 621).
- The way the SEA system is timed. Researchers agree that strategic-level assessment should begin as early as possible in the planning process so that the results can be used in the preparation of the strategic decision and consideration of alternatives (OECD 2006: 54, Dalal-Clayton et al. 2005: 15, Caratti et al. 2004: 80). Though, in China, as in many other countries, timing is a critical point (Bina 2008, Tao 2007: 260). As mentioned above, Article 7 EIA Law requires SEA "*in the course of drafting*" of a plan, and according to Article 8 EIA Law, SEA for "special plans" must be conducted "*before the drafts of such plans are submitted for examination and approval*". In practice, however, in both cases SEA usually starts after completing the draft of a plan or even after plan approval (Bina 2008). The question of timing is also essential to public involvement (cf. Section 3.3).
- Problems in implementing SEA under the EIA Law due to competition between environmental and non-environmental agencies. Experts interviewed by Zhu and Ru reported that as of 2005, few SEAs had been carried out for "special plans" reviewed by non-environmental ministries and that such ministries had approved special plans without requiring an EIR (Zhu et al. 2008: 623-624).
- A limitation mentioned in nearly all reviewed articles on SEA in China (Zhu et al. 2008, Bina 2008, Tao et al. 2007, Che et al. 2002) concerns the proposed public participation procedure. Both legal provisions and practice are described as insufficient.

In the following, participation and its importance in SEA are discussed before analysing in detail the PRC's framework for public participation in SEA.

2.2 Public Participation

The most prominent document on public participation is probably the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention).⁷ The Convention establishes three pillars that only jointly provide an effective instrument for the public to contribute to environmental protection: access to information, public participation, and access to justice.

⁷ Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. Done at Aarhus, 25 June 1998, effective as of 30 October 2001.

The term “participation” in general means to take part in something, or to partake. In politics, participation refers to *“all kinds of voluntary action that is undertaken by individual citizens or groups with the objective to influence or make by themselves decisions at the distinct levels of the political system (...)”* (Kaase 1994).⁸ In contrast to political participation in general, public participation⁹ means the involvement of external players in concrete decision-making procedures. It refers to the opportunities to get involved provided to these players by the decision-maker, no matter if these measures are legally required or adopted voluntarily.

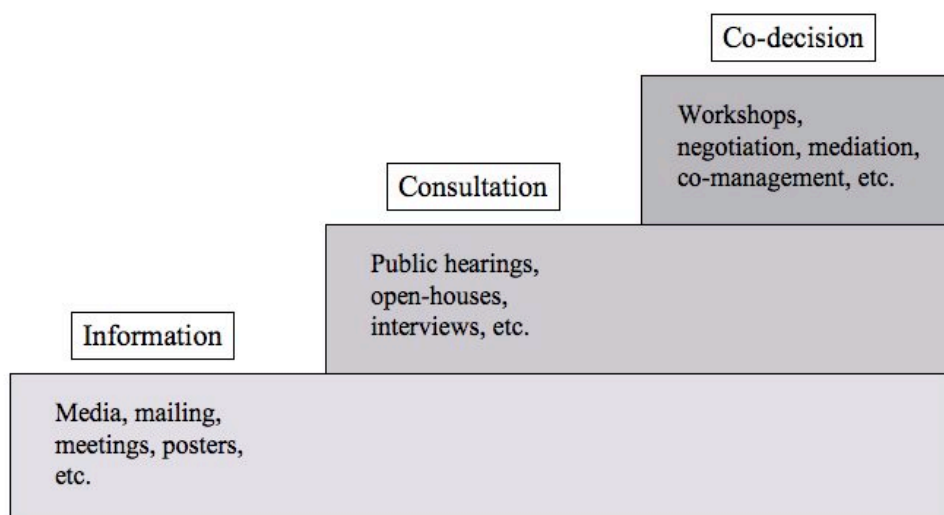
Stages of public participation

Public participation embraces various forms of involvement, which differ with regard to the intensity of involving the public. Basically, three stages can be separated: information, consultation, and what may be understood as participation in the narrower sense, or “interactive participation” as the International Association for Impact Assessment (IAIA) calls it (André et al. 2006), or co-decision, as it will be called hereafter (see fig. 2).

Information is a one-way process in which the public receives information, but cannot make any statements on the information obtained. Most people would not call this participation because of the one-sidedness that lies in the nature of mere information dissemination. It rather is a necessary step towards “real” participation, as the Aarhus Convention emphasises. Information can be provided via conventional and electronic media, meetings, posters, etc.

In contrast, consultation is a bilateral approach, a form of dialogue. In a consultation process authorities offer information on the project or other action to the public and then ask the public for their opinions. Thus, authorities are aware of the public’s

Figure 2: Stages of public participation (by author, after ÖGUT 2005: 9).



⁸ Translation by author, original German quotation: „Partizipation in der Politik bedeutet alle Handlungen, die Bürger einzeln oder in Gruppen freiwillig mit dem Ziel vornehmen, Entscheidungen auf den verschiedenen Ebenen des politischen Systems (...) zu beeinflussen und/oder selbst zu treffen.“

⁹ The Chinese term “gongzhong canyu” means exactly the same – *gongzhong*: the public; *canyu*: to participate, to take part, to be involved.

concerns and opinions, but they are not obliged to take these concerns into account when adopting a decision (Bisset 2000: 151). Nevertheless, authorities may at least partly adopt the gathered opinions as far as they touch aspects which have not been considered yet, and in order to avoid protest during the implementation of the decision. Methods of consultation are, for example, public hearings, open-houses, interviews, etc. (André et al. 2006, Arnstein 1971). Consultation is probably the most common way to involve the public in environmental assessment (Bisset 2000: 150).

In co-decision approaches, the third stage of public participation, the public is considered to be a partner in decision-making (Bisset 2000: 151). Concerned and interested citizens are allowed to take part in developing the project or co-decide in its realisation in an interactive process. The degree of cooperation ranges from jointly developed proposals to nearly autonomous decision-making by the involved citizens (ÖGUT 2005: 9). Methods of co-decision include workshops, negotiation, mediation and co-management (André et al. 2006).

Definition of “public participation”

In the following, a definition proposed by the IAIA is adopted, in which public participation means the *“involvement of individuals and groups that are positively or negatively affected by, or that are interested in, a proposed project, program, plan or policy that is subject to a decision-making process”* (André et al. 2006). The term “involvement” above shall be used in a broad meaning, including information, consultation, and co-decision approaches.

The meaning of “the public” differs in the distinct existing legal frameworks that address public participation. Often it is distinguished between “general” and “concerned” public. The latter means the public affected by, or having an interest in decision-making (cf. Aarhus Convention art. 2, no. 5), including environmental and other interest groups (the “organised public”). Other approaches, as it is outlined in the Chinese EIA Law, also require the consultation of authority representatives and experts. Of course, the public *“is not a homogenous body with a set of agreed common interests and aims”* (Bisset 2000: 151) but consists of individuals and groups whose interests are often conflicting. Therefore, some authors suggest to make use of the concept of “stakeholders”, drawing on an idea originally developed in management. This concept defines stakeholders as all *“parties who affect, or can be affected by, a company's actions”*.¹⁰ Accordingly, “public participation” as used in this context, may refer to the involvement of everyone whose interests may be beneficially or adversely affected by a proposal, including authorities, experts, concerned and interested citizens, enterprises, non-governmental organisations (NGOs) and other stakeholders. Basically, three groups are distinguished: authority representatives, experts, and the general public including citizens, NGOs, etc.

Advantages and disadvantages of public participation

Public involvement procedures in environmental concerns offer benefits for all stakeholders (cf. ÖGUT 2005: 11-12). The advantages cited most often in the literature include the following: stimulating an exchange of knowledge; the decision is more likely to be accepted, so that the project or other action can be implemented

¹⁰ Definition from the Internet encyclopaedia Wikipedia (2008). Other definitions focus rather on the expectations that persons or institutions have of an enterprise (see Jänicke et al. 2003: 439) or on the interest someone has in a business (see Black 1997).

more quickly and time and money can be saved; conflicting interests may come to an agreement during the participation procedure, thus, less legal disputes arise.¹¹

On the other hand, participatory approaches not only are advocated, but are also subject to broad criticism. In a book with the explicit title "*Participation: The New Tyranny?*", several case studies find that under certain circumstances, the participation process may turn out to be manipulative and that the assumptions made by many advocates of participation are an oversimplification (Cooke et al. 2001). This critique, however, applies especially to participation in development cooperation. Public participation is also criticised with regard to more practical aspects. High costs and poor effects of such measures may provoke the judgement that participation is an end in itself. If important decisions have been made before participation is launched, the contribution made by the public cannot be considered anyway. Public involvement may fail if concerned citizens are not interested or do not want to participate, or if decision-makers do not support the participation process. Social inequalities can remain if the process fails in involving unprivileged groups that are difficult to reach (ÖGUT 2005: 12).

Different participation approaches have different advantages and disadvantages, and in some cases participation may be successful, in others it may lead to disappointing results. The importance of public participation in Strategic Environmental Assessment is discussed in the next section.

2.3 Public Participation in SEA

According to the IAIA, a good-quality SEA is a process that must meet several performance criteria. Among other things, it must be participative (IAIA 2002). Public participation, at least in theory, is an important part of most SEA systems proposed in the literature or established in legislation. Being itself a key principle of sustainable development (Therivel 2004: 71), it supports SEA in aspiring sustainability.

Rationale for involving the public in SEA

From a review of various documents on SEA and on public participation in environmental assessment, five main objectives for the application of participation to the SEA process have been extracted: make use of the specific knowledge of the public; contribution to quality control and a more sustainable decision; greater acceptance of the decision; enhance knowledge and awareness; and foster democracy and legitimacy.¹²

Make use of the specific knowledge of the public

The public can help the agency conducting the SEA to gather information about the area to which the PPP will apply, for example, about social and environmental conditions and the relation the citizens have with their environment. Consulting opinions from residents is also necessary to develop compensation measures for impacts that cannot be mitigated (André et al. 2006). Besides the general public,

¹¹ See also objectives for public participation in SEA in the next Section and Bina (2008a).

¹² The reviewed texts include: André et al. (2006), Arbter (2005: 2), Kravchenko (2003: 6), ÖGUT (2005: 11-12), Sinclair et al. (1995: 220), Smith (2003: 35), and Therivel (2004: 71).

experts and also authority representatives can contribute valuable external knowledge.

Contribution to quality control and a more sustainable decision

Furthermore, it is often stated that participation makes the decision-making process more transparent and thus, is an effective measure to ensure quality control (Arbter 2005: 2, Kravchenko 2003: 6). If the public can contribute with its knowledge to the process, the decision itself is expected to be more sustainable, environmentally sound (Kravchenko 2003: 6), and of higher quality in general (Smith 2003: 33). Accordingly, corrections carried out at a later date are less likely to become necessary (ÖGUT 2005: 11).

Greater acceptance of the decision

In some cases, conflicts between stakeholder groups can be resolved in participation procedures prior to decision-making (Therivel 2004: 71). If the public is involved in the decision-making process, the decision is more likely to be supported in its implementation (Kravchenko 2003, Smith 2003: 35). Greater acceptance leads to timely implementation so that time and money can be saved. Additionally, the contribution of external expert knowledge can put the decision on an independent scientific basis that may strengthen the confidence of concerned citizens.

Enhance knowledge and awareness

In the course of informing the stakeholders about the planned intervention and discussing its consequences with them, mutual learning processes can take place. This refers especially to the general public, whose knowledge, understanding, and awareness in environmental affairs can be improved. Also, the involved agencies improve their knowledge of the needs and ideas of citizens (ÖGUT 2005: 11).

Foster democracy and legitimacy

Finally, participatory approaches are often associated with improved democratic backing of decisions. Communities should have a voice in decisions they are affected by in order to improve the legitimacy and democracy of decision-making (Therivel 2004: 71). In SEA, it is less likely that people are directly affected by a decision compared to project EIA. However, public involvement also includes interest groups that give a voice to more general concerns existent in society. Bina (2008) argues that uncertainty is intrinsic to strategic decisions and therefore, a solution cannot exclusively rely on data but requires dialogue and communication. Accordingly, in SEA information in the form of data and a “*discussion about the objectives and values at stake*” need to be combined to ensure legitimacy (Bina 2008). In the long run, measures for public involvement in decision-making can also contribute to greater acceptance towards information disclosure and cooperation with non-state stakeholders, and therefore, solidify democracy.

Experience in public participation in SEA so far

Experience with public involvement in SEA has been limited to date. A paper from an international workshop on public participation in strategic decision-making held in early 2008¹³ presents positive examples where extensive public involvement has

¹³ Workshop of the Working Group of the parties to the Aarhus Convention, see UNECE (2008).

been applied to SEA, as well as examples in which public involvement encountered many problems (UNECE 2008: 5). In a recent issue of a German journal on environmental assessment, various shortcomings in the practice of public involvement in planning processes in Germany are described (cf. Meunier 2008).

Generally, difficulties with public involvement are more likely to arise in SEA than in project EIA. Many people feel highly motivated to participate when it comes to concrete construction projects that produce changes in the quality of their environment. In strategic planning, in contrast, it is more difficult to involve the various groups that make up "the public". Especially, the general public apart from experts and organisations may not be interested in abstract planning proposals that require specialist knowledge (Arbter 2005: 3, Calliess 2006: 42). This can result in a very limited and unrepresentative group of people involved in SEA participation (Therivel 2004: 72).

In the next part of this paper, the legal provisions for public participation in SEA in China, as well as the current practice in this realm are analysed.

3. Legal Requirements and Practice of Public Participation in SEA in China

3.1 Legal requirements

The most important law regarding public participation in Strategic Environmental Assessment is the 2002 Environmental Impact Assessment Law (EIA Law).¹⁴ Additional provisions can be found two documents issued by the former State Environmental Protection Administration (SEPA):¹⁵ the 2003 Technical Guidelines on Plan Environmental Impact Assessment (On Trial) (hereafter, PEIA TG)¹⁶ and in the Provisional Measures for Public Participation in Environmental Impact Assessment of 2006 (SEPA Measures).¹⁷

The EIA Law

In October 2002, the Standing Committee of the National People's Congress promulgated the Environmental Impact Assessment Law of the People's Republic of China, which became effective on 1 September 2003. According to Moorman and Zhang (2007), the EIA Law "*marked a watershed moment*" for public involvement in EIA in China because for the first time it became a mandatory part of the EIA process.

Provisions for public participation in SEA are established in Articles 5 and 11. In Article 5 it says, "*The State encourages related units, experts and the public to participate in Environmental Impact Assessment in appropriate ways.*" This provision is framed in very general terms, "encouraging" (*guli*) its addressees instead of imposing legal obligations on anyone. This can be understood as a political statement rather than a legal tool.

According to Article 11, the opinions of related units, experts and the public must be consulted only for "special plans" (*zhuanxiang guihua*) that "*may possibly cause adverse environmental impacts and directly involve environmental rights and interests of the public*". For plans outlined in Article 7 EIA Law (*guihua*) and "guidance plans" (*zhidaoxing guihua*, art. 8 s. 3 EIA Law) amongst the special plans, no measures for public involvement are required. Furthermore, Article 11, Sentence 2 excludes "*cases in which secrecy is required by State regulations*".

The law provides for "*related units, experts and the public*" (*youguan danwei, zhuanjia he gongzhong*) to give their opinions on the draft EIR. The term "units"

¹⁴ Environmental Impact Assessment Law of the People's Republic of China [*Zhonghua renmin gongheguo huanjing yingxiang pingjia fa*]. Adopted on 28 October 2002 at the 30th Session of the Standing Committee of the Ninth National People's Congress, effective as of 1 September 2003.

¹⁵ In March 2008, SEPA was replaced by the Ministry of Environmental Protection (MEP).

¹⁶ Technical Guidelines for Plan Environmental Impact Assessment (On Trial) [*Guihua huanjing yingxiang pingjia jishu daoze (shixing)*]. Chinese Environmental Industry Standard HJ/T 130 – 2003, issued by SEPA on 11 August 2003, effective as of 1 September 2003.

¹⁷ Provisional Measures for Public Participation in Environmental Impact Assessment [*Huanjing yingxiang pingjia gongzhong canyu zanxing banfa*]. Document no. 2006 (28) issued by the State Environmental Protection Administration on 14 February 2006, effective as of 18 March 2006.

(*danwei*) refers to a distinctive feature of the Chinese society, today meaning the public institution someone belongs to, such as a company, administrative department or educational establishment (Heberer et al. 2008: 18). In this context, “related units” primarily addresses authorities whose domain might be concerned by the planning proposal. Experts are those university or other scholars who have special knowledge relevant for the subject of planning or the ecological and other effects it is likely to produce. The meaning of “the public”, however, is not so obvious. Since the law does not further specify the term, “the public” refers to everybody, including private persons, NGOs and other institutions interested in the case.

With regard to the stages of participation, like it is common in SEA, the EIA Law provides for consultation and excludes co-decision. However, it does not address the right to information, which in theory is the first step of participation (see fig. 2). Chen and others (2007: 62) note for project EIA that “*there is no statutory requirement for the full EIR to be made available to the public*”, and the same is true for Plan EIA. Article 11 EIA Law imposes on Special Plan drafting organs the duty to adopt measures of “*soliciting the opinions*” (*zhengqiu yijian*) from related units, experts, and the public. These stakeholders must be consulted prior to submitting the draft plan to the examination and approval authority, and they are solicited to give opinions on the draft Environmental Impact Report. This means that consultation should take place once in the SEA process after the plan and the EIR have been drafted (i.e., after the assessment), and before both documents are submitted for approval. In the early stages of the SEA, for example in scoping, public participation is not required. Consultation, of course, implies that some information is disclosed which will be used in the consultation procedure, in this case the draft EIR.¹⁸ However, it is unclear which information, if any, will be open to the public after consultation has been carried out.

As measures for realising consultation, Article 11 suggests evidentiary meetings (*lunzhenghui*), hearings (*tingzhenghui*) or “*other forms of soliciting opinions*” (*qita xingshi zhengqiu yijian*). The choice of a certain consultation method is left to the agency conducting the SEA. Finally, Article 11, Sentence 3 states that special plan drafting organs shall “*conscientiously consider*” (*renzhen kaolü*) the opinions on the EIR obtained during the consultation process and “*shall attach the explanations of its acceptance or non-acceptance of such opinions to the environmental impact report submitted for examination.*”

The Plan EIA Technical Guidelines

On 11 August 2003, SEPA approved the Technical Guidelines on Plan Environmental Impact Assessment (On Trial), which came into force with the EIA Law on 1 September 2003. Such technical guidelines (*jishu daoze*), which provide a detailed description on the implementation of environmental laws, are neither mentioned in the Chinese Constitution, nor in the Environmental Protection Law or Legislation Law. Obviously, they are not mandatory, but rather provide technical instructions for the implementation of existing regulations. When addressing implementation gaps, it must be distinguished carefully between binding law and guidance.

¹⁸ However, not even the full planning proposal is published for consultation (WI 2008), cf. Section 3.2.

Requirements on considering public opinions can be found throughout the document. It promotes the principle of public participation, which stipulates to “*encourage and support public participation during the process of Plan EIA, and sufficiently consider the society’s interests and viewpoints in every respect*” (no. 1.3.2.4 PEIA TG).

Further on, the guidelines contain a description of each step of the SEA procedure as shown in the attached diagram (see fig. 1) as well as measures how to realise these steps.

Number 2.9 PEIA TG lists provisions for public participation. Among other things, it specifies who should participate in the assessment (no. 2.9.2). Similar as the EIA Law, the guidelines by “*the public participating in the assessment*” refer to “*related units, experts and the public*”, but explain further that the latter term “the public” means “*citizens not among the experts*”. This, again, can refer to everybody affected by the plan or otherwise interested in the SEA. In addition, the PEIA TG prescribe which factors should be taken into account when selecting the participants. For plans with a broad impact scope and direct impact, “*extensive public participation*” (*guangfan de gongzhong canyu*) should be applied, and in the assessment of technically complicated plans especially high-level administrative representatives and experts should participate (no. 2.9.2 a. PEIA TG).

The guidelines further list methods that can be adopted for public participation: evidentiary hearings, hearings, questionnaires, mass media, announcements, or “*opinion boxes*” (*yijian xiang*) (no. 2.9.4 PEIA TG). These methods are listed without further comments, so it remains unclear, how, for example, mass media shall be used as a measure for participation.

The subjects of public participation, as outlined in the guidelines, should mainly include an environmental background survey (*huanjing beijing diaocha*), a calculation of the value of environmental resources (*huanjing ziyuan jiazhi gusuan*), and a discussion of mitigation measures and a possible follow-up assessment (no. 2.9.1 PEIA TG). In Number 2.9.3 PEIA TG it says, “*public participation shall cover the complete process of plan EIA*”, which is reflected in the diagram on the assessment process (fig. 1). This is a considerable extension of the scope of participation prescribed in Article 11 EIA Law, according to which opinions shall be gathered simply “*on the Environmental Impact Report*”. This may be understood as a recommendation by SEPA to solicit opinions during the complete SEA procedure, or at least various times at the different SEA stages such as scoping, the assessment, and the development of mitigation measures.

Finally, the PEIA TG list requirements for the elaboration of the EIR and environmental impact writings and explanations. Since for plans requiring writings and explanations no public involvement measures are prescribed, these documents are not relevant in this context. Though, for “*special plans*”, which require an EIR, the report must contain a special chapter on expert consultation and public participation (no. 3.1.2, 3.1.9 PEIA TG). This chapter should give an overview of public participation and a summary of the obtained advice, opinions and proposals, and explain the circumstances of the adoption (*luoshi qingkuang*) of such advice, opinions and proposals. Additionally, in the implementation summary of the report (no. 3.1.11 PEIA TG) the main findings of public participation and their handling should be outlined.

The SEPA Measures

The Provisional Measures on Public Participation in Environmental Impact Assessment issued by SEPA in 2006 belong to the legally binding administrative rules (*guizhang*) national departments can put forward within their sphere of competence. Such rules must be enacted in accordance with the laws and with the State Council's administrative regulations, decisions and orders (art. 71 s. 1 Legislation Law). Chapter 4 of the SEPA Measures applies to public involvement in SEA. The provisions, however, mainly repeat the requirements of the EIA Law. Articles 33 and 34 SEPA Measures summarise the provisions set forth in the Articles 11 and 8 EIA Law. Articles 35 and 36 SEPA Measures put an additional emphasis on the review of the consultation process on draft EIR, but do not establish new provisions for the process of gathering opinions itself. Article 35 requires the group examining special plan EIR (cf. art. 13 EIA Law) to investigate whether the consultation procedure was carried out according to the law. Article 36 SEPA Measures gives environmental authorities some influence on the review of public involvement in the form of review recommendations (*chuli jianyi*) to be submitted by environmental departments to the plan approval authority. For plans referred to in Article 7 EIA Law, that is, plans that do not require public involvement measures, Article 37 SEPA Measures proposes that authorities drafting such plans "*can (keyi) solicit public opinions according to the present Measures in the course of undertaking environmental impact assessment*". In summary, the SEPA Measures do not establish significant new provisions supplementing the EIA Law.

Synthesis

The provisions on public participation put forward in the EIA Law, the PEIA TG and the SEPA Measures address issues that can be grouped into five categories:

- Plans for which public consultation is required (arts. 8, 11 EIA Law)
- Persons or organisations whose opinions must be solicited (art. 11, s. 1 EIA Law and no. 2.9.2 PEIA TG)
- The time with regard to the plan's status and the SEA stage in which to conduct public participation and, closely related, the subjects on which public opinions shall be solicited (art. 11, s. 1 EIA Law and no. 2.9.3, 2.9.1 PEIA TG)
- The methods to be applied for conducting public participation (art. 11, s. 1 EIA Law and no. 2.9.4 PEIA TG)
- Dealing with the gathered opinions after the participation procedure (art. 11, s. 3 EIA Law, arts. 35, 36 SEPA Measures and no. 3.1.2, 3.1.9, 3.1.11 PEIA TG).

3.2 Implementation

3.2.1 Analysis of SEA Reports

For this research, five SEA reports on strategic actions in the provinces of Shaanxi, Heilongjiang, Henan, Guizhou, and the city of Jinzhou (Liaoning Province) were analysed with regard to the implementation of public participation in the respective SEAs. The reports on Shaanxi, Heilongjiang, Henan and Jinzhou were compiled by the Chinese Academy for Transportation Science (CATS), which is the responsible

agency for carrying out SEA in the transport sector, and the Guizhou SEA was carried out by Environmental Resources Management (ERM), a provider of environmental consulting services operating worldwide.

Heilongjiang, Henan and Shaanxi SEAs

The SEA reports on Shaanxi Expressway Network Planning, Heilongjiang Road Network Framework Planning, and Henan Expressway Network Planning deal with the expansion of the highway and road network in three provinces (cf. CATS 2006, 2007, 2007a). Drafted between 2005 and 2006, all three plans fall under the jurisdiction of the 2002 EIA Law. The plans aim at providing a more effective infrastructure and closer connection between the cities and regions of each province and adapt the provinces to the needs of economic and social development. The SEA procedure and the Environmental Impact Report (EIR) compiled for each plan conform to the structure prescribed in the PEIA TG. The reports all contain a chapter and summary section on public participation. In the final conclusion on the SEAs, it says in the reports that the plans are beneficial to development and, in spite of some negative effects, the plans are generally feasible (*kexingde*) from an environmental point of view if the proposed adaptation measures are realised and environmental protection requirements are taken into account in implementation of the particular construction projects.

Although these SEA deal with different plans in different provinces, the chapters on public participation in the reports are very similar. The wording is mainly the same, and even the numbers in the evaluation table of a questionnaire handed out to government officials are identical. Thus, it must be assumed that consultation, at least in part, was realised only in one of the three cases and the results were copied into the reports on the other SEA studies. The Shaanxi SEA report is discussed in the following as an example for the three studies.

According to the report, the consulted stakeholders mainly included government representatives from various departments and six experts from Shaanxi and Beijing. As methods of participation, a questionnaire was sent to government agencies, and a conference was held for discussion with their representatives. The experts from various fields were consulted via individual interviews. Furthermore, an announcement for the general public was placed on the Internet. The time frame set for public involvement covered two months at a rather late stage of the SEA, so it did not cover the complete SEA process. The Internet announcement was open for public comments for the period of two weeks in June 2006 (CATS 2008b). The issues discussed with government representatives and experts, covering most of the subjects recommended in the PEIA TG, included the specific environmental problems, mitigation measures, and also monitoring measures in the broadest sense. The results from administration and expert consultation that are presented in the report mainly depict very general comments regarding the sensitivity of the local ecosystem and necessary compensation measures. In consultation of the general public, “*no objection*” was raised during the period of online announcement (CATS 2008b). At the end of the Shaanxi and other SEA reports, an implementation summary of the SEA is attached. It contains an explanation on the treatment of opinions submitted by the public, which states for most of the issues raised in public consultation that the mentioned problems had already been considered sufficiently. No information is given on the review process of public participation, which should according to the SEPA Measures take place after finishing the draft EIR.

SEA on Jinzhou Highway Transportation Hub Planning

The Jinzhou SEA was also carried out by CATS, but the EIR differs in some respect from the reports analysed above. Subject of the SEA is a plan on highway transportation hub capacity in Jinzhou, a city in Liaoning Province, and its environments. The plan was drafted in 2007 and thus falls under the regime of the EIA Law. It aims at developing a comprehensive transport system in Jinzhou that meets the needs of harmonious social and economic development. The SEA and the report basically follow the structure prescribed in the PEIA TG and the report contains a chapter on public involvement, but there are no conclusions on public participation in the final part of the report. The overall result drawn from the assessment is that the planning proposal and the needs of environmental protection are compatible.

The public participation procedure is summarised on a single page in the report (cf. CATS 2008: 95). Consultation was divided into two steps, the first one, realised in October 2007, consisted of a survey, and in the second step in March 2008 the assessment results were disclosed for public comments. Participation at the first stage included government representatives from various departments and experts from different fields such as environment, regional development etc. The applied methods were government interviews and expert consultation, but no further information is given on the number of consulted persons or the concrete adopted measures. This consultation stage was carried out at a date when the SEA process was probably still at the beginning and the opinions of experts and government representatives could still make a difference.¹⁹ In the second stage, also the general public could submit comments to an announcement published on the Internet. There is hardly any information in the report on the feedback obtained during the public participation procedure. Regarding the online announcement, the agency states that no comments were obtained (CATS 2008: 95). Since there are no conclusions on public participation in the end of the report, the explanations on dealing with the public's opinions are missing.

SEA on Tourism Development in Guizhou

The SEA Study on Tourism Development in Guizhou Province (cf. ERM 2007) is not exactly an SEA required by Chinese legislation, and was thus only in part realised according to Chinese laws and regulations. It was undertaken by order of the World Bank and Guizhou Tourism Administration and carried out by Environmental Resources Management (ERM). The SEA incorporates various plans and proposals on tourism in Guizhou, which have been drafted between 2002 and 2006 in part by Chinese agencies and partly in cooperation with international players such as the UN World Tourism Organisation. Some of the planning proposals had been approved already before the assessment was launched in late 2005. Thus, the SEA differs in some respect from the SEA studies analysed above and its analysis serves for comparison rather than as an additional case study. As a supplementary source, an interview on this SEA was conducted with an ERM employee involved in the stakeholder consultation procedure. The SEA aims at enhancing the sustainability of Guizhou's tourism sector and improving the design and implementation of tourism development actions. Unlike the studies for the transport sector analysed above, it is

¹⁹ It is not specified in detail at what stage of the SEA the first consultation phase was implemented, but possibly it was during scoping since this is rather common compared to other stages.

a combination of the approaches for policy level and regional level SEA (ERM 2008: 2, 3). The SEA was performed going through the following stages: literature review and screening, scoping, development of an analytical framework (including scenario development, objectives, targets and indicators), consultation, impact assessment, and development of recommendations and conclusions (ERM 2007: 3). The report concludes that the examined planning proposals represent the most sustainable tourism strategy among the developed alternatives.

The public participation procedure, named “stakeholder consultation” in this SEA, comprised government officials, NGOs and other experts, and selected local community representatives. For government officials, interviews for the purpose of data gathering were conducted as well as two workshops. The experts and community representatives were consulted in personal interviews, and an additional half-day workshop was organised for local residents. For this SEA, consultation was undertaken at the scoping stage in March 2006 and in July 2006. The main subject of the SEA, the MP, had been approved two years before launching the assessment, so that the SEA could not have any impact on the plan, but probably on the general development of tourism in Guizhou. The stakeholders were consulted for the purpose of gathering data mainly for scoping, the impact assessment, development of alternative scenarios, and mitigation measures (ERM 2007: 4, A1, A4). The results from stakeholder consultation as documented in the SEA report were that government representatives as well as citizens were generally supportive of tourism development in Guizhou, but also raised some concerns about a possible loss of intangible cultural heritage and environmental pollution due to tourism development. Since the SEA is not clearly carried out according to Chinese legislation, the report does not contain a special chapter on dealing with the gathered opinions or any information on the review process, but it says that the results of stakeholder consultation were used in scoping, for the development of mitigation measures and alternative scenarios, and in the impact assessment (ERM 2007: 4, A1, A4).

3.2.2 Implementation of the legal provisions

As the analysis of the reports indicates, implementation of public participation in SEA in China is somewhat restricted. In the following, results from expert interviews and complementary comments from literature are presented in order to gain more general information on the implementation of public participation provisions, illustrated by the results from the SEA report analysis.

It is unclear how many plans per year require SEA and public participation measures, and for how many of them this is put into practice. An overall quota on this is not available. But, as the research by Zhu and Ru (2008: 623) indicates, as of 2005 non-environmental ministries had rarely implemented SEA at all. The interviewees of Zhu and Ru reported that *“most non-environmental ministries had approved Type B plans [“special plans”, author’s note] without requiring planning EA reports and that a few ministries had reviewed and approved planning EA reports without going through SEPA.”* Given the fact that in 2005 SEA was still a new requirement in China, this might have changed since then. However, as the above analysis of more recent SEA reports indicates, at least the requirements on public participation in SEA still are not taken too seriously.

The groups to be consulted during the SEA procedure are determined by the EIA Law as “related units, experts, and the public”. The Law does not put an emphasis on either of the groups, whereas the PEIA TG distinguish between technically complicated plans and plans with broad and direct impacts, and suggest to apply “extensive public participation” for the latter (no. 2.9.2 PEIA TG). In practice, the general public seems to be widely excluded from participation, as interviewees pointed out. Thus, participation concentrates on university experts and government agencies (Interviews A, B, and C), and may sometimes also include NGOs (Interview A). For the SEA studies implemented by CATS, SEA practitioners of the agency reported that they have never received any response to their Internet announcements, even if these announcements were posted on popular websites (WI 2008). The literature on SEA in China supports these findings. Zhu and Ru (2008: 624) find that *“public participation has primarily taken the form of review of planning EA [SEA] reports by experts. In most cases, planning EA reports are provided to a small group of experts at review meetings so that they can provide technical comments”*.²⁰ Given that there is an opportunity for citizens and NGOs to submit comments via the Internet, the EIA Law’s requirements are fulfilled formally. However, the current practice for the general public meets only minimum requirements.

The chosen methods for the involvement of each group play an important role for the success of public participation. Since the EIA Law and other provisions are not very specific on this, it can hardly be labelled as an “implementation gap” if the chosen approach does not work very well. Consultation methods commonly include workshops, conferences, interviews, questionnaires and Internet or newspaper announcements (Interview B). However, the concrete design of a participation technique, for example, selection of the participants, the place where an announcement is published, the profoundness of questions in a questionnaire, and the time span given for comments cannot be underestimated. The most common method for involvement of the general public seems to be an Internet announcement, which restricts participation to the people having access to the Internet. The selected website and time span can have the potential to further reduce the number of people who will be informed about the possibility to get involved.

Regarding the timing and subjects of public participation in SEA, the EIA Law requires to consult the public on the draft report before the draft of a special plan is submitted to the examination and approval authority. However, not uncommonly the complete SEA is carried out after the approval of a plan, as Bina (2008) notes. By establishing guidance in the PEIA TG, SEPA tries to extend public participation on the complete SEA process and goes more into detail regarding the subjects to be discussed with the public. In practice, public involvement is generally limited to comments on the draft report (Interviews A and C), but in some cases *“in the early phase of planning, there are certain forms of public participation – mainly expert consultation – in relation to environmental issues”* (Interview C). In the Jinzhou SEA report, for example, it says that interviews with administration representatives and experts were conducted at a relatively early stage of the SEA some months before the draft report was published for comments. Regarding the issues that should be

²⁰ Obviously, Zhu and Ru understand the review of a draft EIR submitted to the examination authority (art. 13 EIA Law) to be public participation, which seems not to be correct (cf. Section 2.1).

discussed in public participation as recommended in the PEIA TG, it seems that most of them are usually taken into account in public involvement.

Furthermore, the EIA Law and related regulations contain provisions on dealing with the opinions gathered during public consultation. The requirement most easily to check is whether the EIR contains a chapter on participation and an explanation on the acceptance or non-acceptance of the opinions. Compliance with this provision seems to be quite commonplace, since almost every SEA report offers such a chapter (Interview B). However, the relevance of the content is disputable. In the Shaanxi SEA report and in the identical chapters of the Henan and Heilongjiang EIR, the opinions put forward by the public are presented only vaguely ad touch upon very general issues. Regarding the examination process of the draft EIR, it is rather difficult to find out if it was convened lawfully since usually no documentation on the examination is provided. The provisions established in the SEPA Measures generally seem not to play an important role in SEA public participation. In the analysed reports compiled by CATS, the SEPA Measures are not even mentioned as relevant legislation, but an array of other laws and regulations are listed (see, for example, CATS 2006: 3-4).

The table below (tab. 1) gives an overview of the implementation of the provisions on public participation in SEA. In the cases in which public participation is put into practice, generally the most important requirements are met. However, in part only minimal measures that have a questionable effect are adopted for meeting the provisions.

| Criteria | | Implementation |
|---|--|----------------|
| General implementation of participation | | ? |
| Involved stakeholders | Administration | + |
| | Experts | + |
| | Public | 0 MR |
| | Selection of the participants | ? |
| Methods | | + , partly MR |
| Timing and subjects | Before plan approval | ? |
| | On the EIR | + |
| | Complete SEA process | 0 |
| | Diverse subjects | 0 / + |
| Proceeding after participation | Explanations on (non-) acceptance of opinions | + MR |
| | EIR examination, review recommendations | ? |
| | EIR chapter and summary section on participation | + |

Table 1: Implementation of the legal provisions for public participation in SEA. Legend: usually fulfilled (+), sometimes fulfilled (0), not fulfilled (-), unclear (?), only minimum requirements are met (MR). Recommendations from the PEIA TG are highlighted in grey.

Obstacles to the implementation of the public participation process

The problems that arise in the implementation of public participation in SEA can be traced back to socio-cultural, economic, political and administrative circumstances, and as well to shortcomings within the legal provisions.

Public participation is still a new concept in China. The administrative culture is traditionally organised in a strictly hierarchical way, and authority representatives are mostly not used to this form of involvement (Interview D). Many officials doubt the general public's competence to contribute in any way to environmental assessment (Kim et al. 2006: 99, cf. CATS 2008a). In addition, access to information is restricted. It is not allowed to publish the draft highway plans for SEA participation until they are approved (WI 2008). Even within the administration there exist strict information barriers. Economic pressure and the lack of time further limit the implementation of public involvement. The environmental branch has traditionally had a weak position within governments at all administrative levels, and there is a strong competition for influence between different departments. The way in which the national environmental protection department SEPA seeks to influence decision-making in the domains of other departments since the EIA Law came into force is observed with growing concern by non-environmental ministries (Zhu et al. 2008: 622-624). This has given rise to tensions between SEPA and other ministries in the field of SEA, which also has an impact on public participation and interdepartmental consultation. Finally, the implementation of provisions for public involvement in SEA is also restricted by vague legal provisions. This problem is discussed in detail in the final part of this paper (Section 4).

The identified implementation barriers jointly lead to a situation in which agencies lack the motivation and capacity to implement public participation dedicatedly. This results in participation measures only meeting the minimum legal requirements with the main objective of producing a chapter for the final report where some very general information is provided, or not being implemented at all.

3.3 Effectiveness

Determining effectiveness, as outlined in the Introduction, requires drawing a comparison between targets and performance. The following objectives for which international scholars recommend to apply public participation in the SEA process were identified (cf. Section 2.3): to make use of the specific knowledge of the public; contribution to quality control and a more sustainable decision; greater acceptance of the decision; to enhance knowledge and awareness; and to foster democracy and legitimacy.

For Strategic Environmental Assessment, Bina and other authors have suggested to distinguish "direct effectiveness" and "incremental change" brought about by SEA (Bina 2008). Direct effectiveness relates to the objectives usually attached to SEA, that is, to avoid environmental damage and contribute to sustainability. However, SEA can also lead to incremental changes regarding mindsets, the level of awareness, the institutional framework, and planning culture (Bina 2008). Translated into effectiveness of public involvement procedures, on the one hand some objectives are directly related to a certain decision – to make use of the public's

knowledge, greater acceptance of the decision, contribution to quality control and a sustainable decision – and on the other hand there are long-term objectives such as inducing learning processes and fostering democracy and legitimacy.

In the interviews conducted for this research, interviewees stressed that generally timing is a problem. Only if the plan has not been developed and approved before “*we can judge if the objectives have been achieved or not*” (Interview D), but “*given the way the process is run today it seems difficult to imagine that this could be achieved*” (Interview A). The general findings from interviews are that the effectiveness of public participation in SEA is low (Interview B) and that it is difficult to judge if public participation has any influence on the assessment or the final decision (Interview A). Interviewee C, though, said that to a “*certain extent, public participation has influence on the assessment and the final decision.*” In spite of the general objections regarding the effectiveness of public involvement raised by the interviewees, particular aspects are discussed below.

Direct Effectiveness

At first, the part of the rationale for public participation in SEA that directly relates to a certain decision is examined.

For making use of the specific knowledge of the public, the timing of the Chinese SEA procedure is a problem. The moment of public involvement at the end of the SEA process and, therefore, at the very end of the decision-making process directly before a decision is adopted suggests that its influence is very limited. The only comments from the public that can be taken into account in the SEA, therefore, are those concerning mitigation and post-decision measures. Since the early involvement of the public as recommended in the PEIA TG is not practised regularly so far (Tao et al. 2007: 261), achievement of this objective seems to be constrained considerably. Apart from the problem regarding timing, in consultation of the general public no use can be made of their knowledge if no one submits comments, notwithstanding the reasons. The same is true for department consultation, where no use can be made of each other’s information in case if departments do not cooperate. Fewer problems seem to arise in the consultation of relevant experts as far as they are not affiliated with a certain authority.

Regarding the contribution of public involvement to better decision-making, again, timing is a problem. Given the way SEA is currently practised in China, it is unclear if public consultation has any influence on the final decision, and it is difficult to imagine how the public should ensure quality control of the Plan EIA process (Interview A). The consultation of external specialists seems to be most influential (cf. Tao et al. 2007: 258, Zhu et al. 2008: 623-624). In general, the impact of public consultation is mostly limited on mitigation measures and other ex-post improvements, which do not have the potential to lead to more sustainable PPPs with regard to the idea of sustainability to strengthen prevention and evoke structural changes (cf. Jänicke 2003: 120-129). With a view to the information policy of the authorities and legal requirements for information disclosure, it becomes evident that the public involvement procedure in SEA cannot guarantee the accountability of decision-makers. According to the EIA Law, plan drafting authorities must attach an explanation to the EIR on the acceptance or non-acceptance of the opinions put forward by the public. This provision holds the potential to improve the accountability of the decision-making process. In practice, however, as the examined EIRs indicate,

both the comments of the public and the statement on their treatment are formulated in such a general way that it hardly makes a difference whether such explanations are given or not. Moreover, it is not clear if the public has access to the explanations and the final EIR.

The objective of improving the acceptance of a decision points primarily to the public concerned by a PPP in order to increase satisfaction with the decision and avoid protest by residents who will be negatively affected. The concerned public, besides residents, includes NGOs and associations that represent the interests of the environment or other sectors. In contrast to construction projects, the public concerned by PPPs mainly comprises organisations rather than single citizens, since PPPs usually have a broad impact and it is difficult to determine the group of affected people. However, as repeatedly mentioned before, these stakeholders are commonly not consulted or do not receive information about SEA consultation, so they cannot or do not want to submit comments. Thus, the aim of improving the acceptance can hardly be achieved.

Incremental Effects

Besides the direct effects on a certain SEA process and the decision it is applied to, public participation can also evoke changes in the long run.

The objective of enhancing knowledge and awareness, again, points especially to citizens and NGOs as target group. It is argued that the quality of public involvement in environmental assessment will improve over time and both the public and future decisions benefit from this experience (cf. Sinclair et al. 1995: 228, ÖGUT 2005: 11). However, participation regarding this objective is ineffective for the public apart from experts and administration representatives, since it is in fact not involved in the process. The approach to involve the general public via Internet announcements clearly restricts its effect in the form of learning processes. Only citizens familiar with the Internet and relevant websites can access the provided information, and no questions can be raised or interactive discussions can take place, which would be most effective with regard to learning processes (cf. Sinclair et al. 1995: 234-235). Even if via Internet, in theory, a large number of people can be reached at low cost, this objective is more likely to be achieved if in addition other forms of consultation, for example workshops, are applied. Although not working for the general public, the participation procedure can bring about incremental learning effects within the involved institutions. Even if the effects of participation on decision-making are marginal, the agencies and people involved become familiar with the concept and get used to it.

The aim of improving the democracy and legitimacy of PPP-making, although subsumed under “incremental effects”, also has a component regarding “direct effectiveness”. This component consists in improving the democracy in the process of making a certain decision and therefore, increasing its legitimacy (cf. Section 2.3). However, it can hardly be claimed that the legitimacy of planning decisions is increasing due to public participation in SEA. “Legitimate concerns” of the society that interest groups or citizens could represent are absent from the Chinese SEA process. Nonetheless, public participation can have effects on the acceptance of more democratic approaches in the long run. According to Moore and Warren (2006: 4), meaningful public participation requires a *“change of orientation towards governance, including greater tolerance for early information disclosure and early public*

involvement in planning and resolving conflicts". At the same time, public participation, along with the discussion about it ongoing in China, can help to promote exactly this desired tolerance and disseminate the idea of information disclosure (similarly, Interview B). In recent years, the acceptance for citizen participation has been growing, which "*holds great promise for creating a functioning environmental governance system*" (Chung 2006: 140).

Summary

Regarding direct effectiveness and enhancing public knowledge, the current participation procedure in the Chinese SEA process is totally ineffective for involvement of the general public. For expert and department consultation, effectiveness seems rather low given the timing of the process as prescribed by the EIA Law and the existing information barriers.

The impact of public participation in SEA, even if difficult to prove, occurs probably more in the form of incremental effects. Planning authorities, experts and other involved departments have to deal with the idea of participation and are getting used to it. Learning processes can take place, bringing about a greater acceptance that the public has legitimate concerns. This may induce a change of attitudes and generally a shift towards greater support for information disclosure and democratic processes. The overall acceptance of environmental public participation has been growing over the past years (Chung 2006: 140, Interview B). When the acceptance is enhanced and more experience is gained in public involvement, in the next step improved methods and guidance can be developed, the legislation can be supplemented, and more effective participation procedures can produce better results.

4. Future Prospects and Recommendations

In April 2008, the Legislative Affairs Office of the State Council published the draft of a Regulation on Plan Environmental Impact Assessment²¹ (hereafter, PEIA Regulation) (Greenlaw 2008). The document, being an administrative regulation issued by the State Council (*xingzhengfagui*), will be legally binding and superior in the legal hierarchy than rules issued by national departments such as the SEPA Measures (art. 79, s. 2 Legislation Law). The draft contains several provisions that might have a positive influence on the public participation process as soon as the regulation enters into force. Article 4, Sentence 1 PEIA Regulation calls on the State Council department in charge of environmental protection (presently, the Ministry of Environmental Protection MEP) to prepare technical guidelines for EIA on planning jointly with relevant departments under the State Council. This might help to decrease the tensions between the ministries, since future technical guidelines will be authorised by the PEIA Regulation and prepared by MEP together with other departments. Article 17 PEIA Regulation strengthens the review of public participation measures within the review process of SEA reports. Article 29 establishes disciplinary penalties in the case that organs responsible for the drafting of plans neglect their duty, including non-compliance with provisions on public involvement.

However, the draft PEIA Regulation does not entail fundamental changes to the existing public participation procedure. Of course, the regulation must conform to the EIA Law because it is lower in the legal hierarchy than national laws (art. 79, s. 1 Legislation Law). Thus, it cannot extend significantly the provision established in the EIA Law, but only flesh out the framework provided by the law.

The following recommendations concern both changes that would require amendments to the legal framework for public participation in SEA and the development of good practice regarding aspects that are not prescribed in detail in the legislation.

Scope

Fundamental changes such as the extension of the scope of SEA beyond planning proposals or to extend SEA participation on all plans would require an amendment to the EIA Law.

Rather an idea than a recommendation is the inclusion of policies in the scope of the EIA Law, which has been demanded by China's National People's Congress (NPC) already in the initial regulatory procedure in 2002. The State Council has promised the NPC to support this idea in future amendments to the Law when China has gained sufficient experience in SEA for planning (Zhu et al. 2008: 621). If an SEA requirement for policies would be established along with an according procedure for public participation in policy-level SEA, the public would obtain unexpected opportunities to participate in the political process in China.

²¹ Regulation on Plan Environmental Impact Assessment (Draft for Comments) [*Guihua huanjing yingxiang pingjia tiaoli (zhengqiu yijian gao)*]. Published online by the State Council Legislative Affairs Office in April 2008.

Regarding the scope of public participation in the current EIA Law, it is not clear why plans that are subject to Article 7 EIA Law (master plans) are excluded from public participation (cf. Tao et al. 2007: 261). These plans only require a shortened SEA procedure compared to “special plans”, but they do not differ in substance from the special plans with regard to public participation. In the SEPA Measures, it is suggested to implement public participation also for master plans. Hence, an extension of the scope of public participation on all plans covered by the EIA Law should be considered again.

Information access and coordination

The restricted information access in the Chinese administrative culture sets tight limits to the involvement of external players in decision-making. Efforts to promote information disclosure are still missing, even if the Chinese State has been improving participatory rights over the past years. Regarding the problem of coordination between different departments, Tao and others suggest to specify the assignment of tasks regarding public consultation and generally to improve coordination between departments (2007: 262). Bina (2008) recommends to shift the responsibility and leadership for SEA from MEP to the National Development and Reform Commission (NDRC) and its provincial counterparts. These agencies are more powerful than the environmental departments and have an overview of the distinct government branches. Another possible option would be to set up improved legislation to enforce the access to information between departments (cf. WI 2008).

Timing

A major limitation to SEA participation in China is the timing proposed in the legislation, locating the complete SEA process rather too late in decision-making, and placing public participation at the very end of the whole process. This way, the public has little chances to influence the planning proposal or the SEA outcome. According to the IAIA Best Practice Principles for public participation in impact assessment, participation should be “*initiated early and sustained*” (André et al. 2006). “Early” refers to the time before major decisions are made so that the opinions gathered during public participation can really make a difference. Furthermore, the IAIA recommends the regular involvement of the public, that is, several times in the impact assessment process.

Therefore, it would enhance the quality of public involvement in SEA if a clear requirement for the involvement at least of related authorities, experts and NGOs at the scoping stage would be incorporated into the EIA Law. Bina (2008) recommends to establish a requirement for a separate scoping report that should be approved by both the development and environmental authorities in order to strengthen early cooperation and consultation between agencies. Additional SEA stages such as the development of mitigation measures can also affect fundamental public interests and should be discussed in the participation process. The idea presented in the PEIA TG (cf. fig. A) to involve the public throughout the SEA process is maybe too ambitious given the current information barriers in China’s political system. Due to the problem of citizens proving little interest in abstract planning proposals, the introduction of a two-tiered process and distinct measures for the “organised” and “general” public seems to be most appropriate. The Jinzhou SEA comes close to this idea, but at the scoping stage no organisations apart from government agencies and experts were involved.

There are some examples in the international field that stipulate an early involvement at least for some stakeholder groups, e.g., the EU SEA Directive.²² The Directive requires the consultation of environmental authorities at the screening (art. 3, par. 6) and scoping (art. 5, par. 4) stage. For the general public, in contrast, at these early stages only disclosure of information on the results from screening is required (art. 3, par. 7 SEA Directive). The general public, including the NGOs, must be consulted only on the draft plan or programme and the SEA report (art. 6 SEA Directive). Finally, information has to be disclosed on the adopted decision and on monitoring measures (art. 9, par. 1).

Methods

The success of public participation depends heavily on the way it is realised. The evidence given in the Guizhou SEA shows that it is possible to involve the general public if adequate methods are applied. In part, more detailed requirements on the methods could be prescribed in the legislation, especially in regulations subordinate to the EIA Law, for example in the SEPA Measures. On the other hand, it is probably more important to develop adequate methods in guidance and give recommendations how to implement them. This way, agencies carrying out SEAs can follow the proposed procedure and it is avoided that assessors do simply not know how to reach the public because of missing advice in SEA guidance (cf. WI 2008).

Similar as in the case of the timing, it is advisable to establish separate procedures for the “organised” and the “general” public. Effective methods for consulting the distinct groups should be differentiated. This could take the form of information and consultation possibilities for the general public, and more intensive participation for NGOs and associations, administration representatives and external experts, as suggested by Arbter (2005, 2007). The minimum requirement for each group, including citizens, should go beyond soliciting opinions via the means of the Internet. Additional newspaper announcements and public notices are necessary in order to reach people without Internet access and to disseminate the information of an opportunity to submit comments. Personal interviews, as in the Guizhou SEA, are in any case a good source of information, but may be too costly and time-consuming. Hearings for the general public, along with appropriate notification that a hearing will take place, may be more efficient. For the organised public, more ambitious and intensive procedures such as the formation of a special team made up of experts, NGO and administration representatives can be applied (cf. Arbter 2005: 3).

Besides, as Interviewee B emphasised, the subjects discussed with the different stakeholders must be adapted to the consulted group. For residents, most important is the quality of the environmental they live in, whereas officials pay more attention on the ability of the plan to help them to achieve the departmental or the sectoral goals. Regarding the experts, consultation should focus on technical problems.

Legislation

The provisions of the EIA Law only very vaguely outline the requirements for public involvement. Related regulations, which should have the function of fleshing out the

²² Directive 2001/42/EC of the European Parliament and of the Council on the Assessment of the Effects of Certain Plans and Programmes on the Environment. Done at Luxembourg, 27 June 2001.

law, mainly repeat the provisions set forth in the EIA Law and add only some minor requirements. A lack of preciseness is said to be a general feature of Chinese environmental legislation (cf. Economy 2004: 101). Thus, Wang and others (2003: 568) emphasise the importance of *“the procedures developed to guide SEA”*. However, guidance such as the PEIA TG, which contains some more detailed provisions, is still not concrete enough and is anyway not legally binding. Thus, it is essential to improve the legal certainty of some provisions in order to safeguard the orderly implementation of public participation.

Article 11 EIA Law says that public participation measures must be adopted for special plans that *“may possibly cause adverse environmental impacts and directly involve environmental rights and interests of the public”*. It is not indicated when a plan could produce adverse impacts on the environment and how or when the public’s rights and interests are implicated, as Moorman and Zhang (2007: 303) point out, or what constitutes the *“interests of the public”* (Wang 2007: 220). Some clearer definition is needed here in order to improve the EIA Law’s legal certainty.

As described before, with regard to the form in which opinions shall be solicited from the public, much leeway is given to the agency carrying out the SEA. The EIA Law only requires to *“hold evidentiary meetings or hearings or adopt other forms of soliciting opinions”*, without even demanding that these methods must be appropriate to ensure the success of public participation. This provision should be concretised as suggested in the previous section.

Besides a lack of legal certainty, the EIA Law also lacks measures to deal with non-compliance of public participation provisions. In this regard, Zhu and Ru (2008: 621-622) argue that there should be an opportunity for the public to challenge the approval of a development plan if their comments are not incorporated into the EIR. Indeed, this is in part covered by Article 29 of the draft PEIA Regulation, which holds planning authorities liable if the public was not consulted according to the law.

Conclusions

It is remarkable that China, a country featuring not such a long history of environmental protection policy, has adopted an instrument as advanced as SEA and has established a procedure for public participation within the SEA process. Nevertheless, as outlined in this paper, improvements in various regards are necessary for public participation in SEA to become effective. There are lots of signs in the rhetoric of the Chinese leadership that suggest enhanced opportunities for public participation in the future. However, one should not expect sudden changes induced by improved legislation. As Kim and Jones (2006: 101) point out, *“unlike quick technological solutions that can be adopted overnight, the implementation of the public participation process demands a steep, and time-consuming learning curve.”* Thus, it is rather reasonable to expect incremental changes to take place, along with the incremental effects public participation itself can bring about.

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