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EIAs go public:
creating new spaces
for participation

by LILA BUCKLEY

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In resource scarce China, people's ability to move – and stay – out of poverty relies heavily on their ability to participate in the sustainable management of their resources. This is especially true in rural areas where the majority of residents rely on agriculture and other land-based practices for their livelihoods. Tackling resource scarcity and degradation in China has therefore long been both an ecological issue and an arena for public participation – often at the interface between wealthy and impoverished. Within this context, the development of environmental legal frameworks such as China's Environmental Impact Assessment (EIA) law has provided opportunities to strengthen policies for public participation as well.

Like other cases of participatory poverty alleviation approaches explored in this issue, developing China's EIA law involved pragmatic use of international experience and financial support (from the World Bank), as well as unique piloting and experimentation with participatory processes, even involving a local non-governmental organisation (NGO) in the drafting of the law itself. This process resulted in a series of public participation requirements within China's EIA legal framework that remain an ongoing arena for experimentation around the role of participation in poverty alleviation. Participatory in its creation, this EIA law provides an example of how participatory

approaches are gaining traction beyond small-scale pilot projects to be integrated into the structure of China's development institutions.

In this article I share insights into the participatory policymaking process from the founding director of the Chinese NGO involved in the drafting of the EIA framework. This organisation was the Global Environmental Institute (GEI), where I worked as Assistant Executive Director from 2005-2008. Though there are still governance questions surrounding public participation practice in China, the law helps to address some of the accountability issues facing participatory processes in other levels of development and poverty alleviation work in China.

Grounding China's EIA rhetoric in public participation

Though the concept of conducting assessments of the environmental and social impacts of development projects has existed in Chinese policy circles for more than three decades, avenues for public participation in this process have lagged behind. Where they have been introduced, Chinese and international NGOs have played an important role.

One of these NGOs was GEI, a Beijing-based Chinese environmental NGO founded in 2004. GEI's founding director, Mrs. Jin Jiaman, recalls that when the EIA concept first entered policy in 1979 as part of China's national Environmental Protection Law (EPL), proponents saw it as an important tool for achieving sustainable poverty alleviation and diffusing conflicts between local people and developers over resources. However, explains Jin, early EIA law proved to be pure rhetoric, providing no concrete stipulations or methodologies for its implementation. A channel for applying this law was theoretically opened a decade later with the first mention of individual environmental rights in the revised version of China's EPL, in which Article Six clearly stated, 'All companies

and individuals have a duty for environmental protection, and have the right and authority to report and bring suit to those companies and individuals committing environmental damage and pollution.' Unfortunately, this too lacked clauses for implementation and, according to Jin, was thus largely ignored. Nearly another decade later, then, when the concept of EIAs was reintroduced by the State Council in a 1996 Article Two of the 'Rules and Regulations for Management of Environmental Protection in Construction Projects', there were still no provisions for public input.

Despite this slow start, the policy rhetoric finally began to achieve some grounding under a 1994 law that permitted the registration of NGOs. The first groups to be formed focused on environmental issues, and according to Jin, these groups began drawing links between Chinese policies and communities affected by China's increasingly severe pollution and degradation. In this way, the creation of officially registered NGOs gave public participation in the environmental sphere its first legitimate access point. 'Growing activism of NGOs and increased pollution protests around China during the 1990s' recalls Jin, 'further contributed to the push towards more specific provisions for public participation in EIA legislation.'

These included a 2002 amendment to the EPL which stipulated that, 'the country will support companies, experts and the public in using appropriate methods to participate in environmental impact assessments.' It also addressed the concepts of stakeholder forums, public hearings and other methods of public participation for the first time. Then in 2003, China passed a new stand-alone EIA Law that was a significant departure from the earlier drafts. The new law broadened the scope of EIAs to include all development and construction projects, and legally secured the public's right to conduct analysis, prediction, and evaluation of environmen-

tal impacts from all development projects and plans. With EIAs now required for all projects and procedures, and protections for the right to public participation in the assessment process, the conceptual framework was set for a meaningful implementation of EIAs with public input.

International engagement and participatory policy-making

With this initial framework in place, GEI found itself in the middle of a much wider policy-making process which engaged a wide range of actors, from Chinese government officials and construction companies, to other NGOs and the World Bank. In 2006, the World Bank reached an agreement with China's EIA Centre of the State Environmental Protection Administration (SEPA, now the Ministry of Environmental Protection) to carry out a programme on 'Public Participation in China' and invited GEI to take part.

In a series of meetings to draft the law, participants discussed the value and approach of public involvement in the EIA process. Jin remembers negative reaction to her suggestion that true public participation must include multiple stakeholders. 'It felt very lonely,' recalls Jin, finding herself the sole NGO in an environment where her organisation and ideas were viewed as a threat to development and progress. 'I began to wonder how we could really help the government achieve its goals when the very concepts of NGOs and public involvement in environmental regulations were so foreign.' She explains that many in the group felt that her emphasis on public participation in the development process was unrealistic, leaving her feeling frustrated in the initial meetings. 'While I felt the central government had very good intentions in writing these regulations,' she remembers, 'I knew that actually creating

and enforcing strong public participation regulations would be a very long process.'

This initial team dynamic was a microcosm of the challenges such regulations face in China, in an atmosphere where NGOs and the general public can feel they have little voice. Despite the team's steep learning curve, it did succeed in producing draft regulations, which themselves were subject to wider public feedback and further editing before being issued by SEPA in March 2006.

The resulting 'Interim Public Participation Law for Environmental Impact Assessments' formulated the goals and scope of public participation in EIAs and clarified the rights and obligations of the developers, environmental groups, and the public.¹ These were then followed a year later by a clause on 'Environmental Information Disclosure Measures' providing the normative framework for information disclosure on environmental impacts of development projects.²

Remaining challenges in China's EIA

Despite the significant progress made to include public participation in the EIA process, many challenges still remain. While today's law provides clear and concrete steps and requirements for public participation, many grey areas in the implementation process need clarification. For example, the law fails to formally delegate authority or clarify the jurisdiction of the public in the process of participation. Nor does it define the scope and jurisdiction for true veto or policymaking power on the part of participants. Furthermore, there are no provisions for supporting human resource and other expert assistance required for public participation in hearings and monitoring of the EIA process.

At the institutional level, the organisational structure for EIA enforcement

¹ For more information on the Interim Public Participation Law for Environmental Impact Assessments see Moorman J.L. and Z. Ge, 2006.

² For an unofficial translation of the disclosure measures, see www.law.yale.edu/documents/pdf/Intellectual_Life/Ch_OGI_Regualtions_Eng_Final_051607.pdf

Photo: Simon Lim



Conflicts around resource use are becoming a critical feature of development and it is important that communities are able to engage with government decisions.

continues to be weak, understaffed, and inadequately centralised. MEP's EIA Centre, which is composed of highly experienced environmental scientists, is responsible for writing EIA-related regulations, licensing independent EIA agencies, and overseeing the work of regional EIA offices. These regional offices depend on funding from local governments, which generally prioritise economic development over environmental protection. Independent EIA agencies are dependent on development contractors for their survival, which opens the door to corruption during the assessment process, as these agencies are free to demand higher prices to downplay environmental problems.

Road ahead for institutionalising participatory poverty alleviation

Thus, while these documents represent an important step forward for China's sustainable and equitable development, the hard work of institutionalising participatory processes and building participatory capac-

ity – especially among impoverished groups – is still ongoing.

Over the past several years multiple actors have continued working to put pressure on destructive companies and foster participation capacity among local communities. For example, capacity building workshops targeting journalists and grassroots NGOs have involved mock public hearings for EIAs to build capacity and explore avenues for engaging residents in environmentally damaged regions to participate in development decisions. In addition, NGOs have worked to directly tackle industry through information disclosure and litigation. One coalition of NGOs known as the Green Choice Alliance focuses on global supply chains to pressure large corporations towards environmental performance-based sourcing.

News media has also proven itself a useful mechanism for empowering citizens and NGOs on EIA issues. For example, news journalists drew attention to ecologically destructive development in the Old

Summer Palace (Yuanmingyuan) and a wetland reserve outside Beijing, soon after the laws were passed. In both cases, informed citizens, NGOs, and scientists rallied to stop the development projects.

This brief essay has provided a glimpse into one NGO's experience engaging in China's legal infrastructure. GEI's inclusion in the drafting of the EIA law is a positive attempt to create space for multi-stakeholder involvement in the country's policy-making. NGO involvement in the drafting of future laws, however, should not be seen

as an end goal in and of itself. Indeed, NGOs themselves cannot be assumed to represent the voice of the public. Rather, GEI's experience highlights the potential – and the need – for a much more participatory policymaking process. China's EIA law and regulatory framework needs to be strengthened. But improved regulation alone is not going to achieve equitable development. The challenge now is to create wider space for public policy-making and provide all people – not just one NGO – the opportunity for informed participation.

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