

Human Security and Communications

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Research Achievement Report

Public Participation of Environmental Protection in China, Analysis and

Suggestions for Improvement

The Case of Amoy (Xiamen) PX Incident

Background

Review of the Public Participation in Environment Protection in China

The Definition and the Characters of the Public Participation

(1)What's the Public Participation

The Secretary of Public Participation Policy Statement defines public participation as open, ongoing, two-way communication, both formal and informal, between EPA and its stakeholders of those interested in or affected by its actions. The purpose of such interactive communication is to enable both parties to learn about and better understand the views and positions of the other. Public participation provides a means for EPA to gather the most diverse collection of options, perspectives, and values from the broadest spectrum of the public, allowing EPA to make better and more informed decisions. In addition, public participation benefits stakeholders by creating an opportunity to provide comment and influence decisions. (1)

Public Participation as an important part of Environment protection formulated in 1970. In 1969 the original form of EIA “National Environmental Policy Act, NEPA states all “EIA that might influence human environment must have PP, when an EIA report finished, it must be published on the Federal Communiqué for public discussion. Public participation requirements can be found throughout the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA, And DOE of NEPA Implementing Procedures. While the regulations describe specific requirements, they also state broad goals for public participation in the NEPA process.” For example, the Council on Environmental Quality regulations notes that public scrutiny is essential to implementing NEPA. For this reason, Federal agencies are required, to the fullest extent possible, to encourage and facilitate public participation in agency decisions that affect the quality of the human environment. Agencies must also make diligent efforts to involve the public in preparing and implementing their NEPA procedures. (2)

(2)The effect of the public participation

According to the mainstream, there are at least five institutional values of the participation right:

First, establishing the core environmental law value—the sustainable development requires the public participation. China has taken the sustainable development as its policy direction by promulgating and amending the environmental law after *the China's agenda 21* has been constituted. But currently, the thinking of “economy goes first” is still the dominant thinking in the practice, which is also the main problem to affect the environmental law value, therefore, in order to establish the sustainable development environmental law value, not only the sustainable development principle should be accepted by ordinary people, but also should the social members participate in every aspects of environmental governance.

Second, promulgating and amending the environmental law requires the public participation. People's participation in the legislation is an event of great significance to demonstrate the citizen hood, and it's also a way to realize the procedure justice, further speaking, it is the precondition to build up a country ruling by law. There are sufficient legal basis for the people to participate in the legislation, *the Constitution Law of P. R. of China* and *the Legislation Law of P. R. of China* both contain the requirements that hearing the suggestions from all aspects. As for the environmental law legislation, inevitably it requires the people's participation because it always involves the public wealth and health security, no mention the life security.

Third, the environmental judicatory justice requires the public participation and supervision. Just as the Ronald M. Dworkin pointed out that unjust judgment would lead a social member suffer a morally injury. In fact, in the environmental judicatory field, this injury would far from the morally level, it would endanger the wealth and health and even the life security of the public. The rights for suit and the supervision function of the public participation can jointly insure the judicatory justice. In China, as a litigant , people enjoy the rights to accusation, to averment and to appeal, all of these rights are the embodiment of public participation in environmental judicatory , however, they should be further completed in the future legislation.

Fourth, insuring the justness and efficiency of the environmental administration requires public participation. There are two main reasons for people to participate in environmental administration. On one hand, the different forms of environmental administration such as the administrative penalty and administration enforcement will largely influence the public environmental rights and people's rights about the wealth and the health. In order to protect the justness and efficiency of the environmental administration, it is most necessary to adopt the environmental information publication and hearing session about environmental affairs. On the other hand, it is necessary to introduce the public supervision system to prevent the abuse of environmental administrative power, at the same time; it is good for improving the efficiency of environmental administration.

Fifth, environmental implementation and supervision require the public participation. Environmental law implementation needs all kinds of roles to keep the law among which the public is a necessary party. In China, supervisions on environmental law consists of various of factors, briefly speaking, it includes the environmental legislation supervision; environmental judicatory supervision; environmental administration supervision; consensus, parties and social groups supervision, and the public supervision. Therefore, public supervision is not only capable complementarities to other parties' supervision, but

also the powerful guarantee to the environmental legislation, judicature and implementation. So, the core content of environmental implementation and supervision. (3)

The environmental law implementation mechanism and other environmental interests' adjustment mechanism both have their good points and drawbacks, each mechanism can avoid their drawbacks according to cooperation and interaction. Therefore, public participation has inherent drawbacks because it presumes that the parties can express their ideas out of the political and economic interests, but in fact that almost impossible because whether there are exists common interests between different groups is really a big question. There is a possibility for the Public participation to neglect the future interests and individual interests, under the white lie of public participation to hurt common interests. Therefore, it is a big change to the government, the market and the individuals. (4)

(3) Drawbacks of China's public participation protection system

There are mainly five different levels legislations in public participation protection system. Nevertheless, most of (if not all) these provisions are still at the principle stage and the provisions in detail or their implementation regulations are far from completed.

(1) The obligations (most of which are interdictory) provisions are not in proportion to the rights securing provisions. This consequence showed that the government didn't attach importance to public participation in the past legislation.

(2) Most laws and regulations are less operational and lack of the directions on how to carry out the general provisions.

(3) The narrow scope of participation restrained the implementation of the public participation in environmental protection. Currently, except the general provisions in different legislations, only three main areas have been definitely contained in the legislation, namely the emergency response of environmental accidents, the pollutant discharge and the EIA.

(4) The way for public participation is lack of diversity. In some other countries, there are diversiform ways for people to participate the environmental governance. For example, from the simple to the complex ones, there are advisory committees, expert examination board, hearing sessions, by providing handbooks, news in brief, research groups, public-opinion polls, news conferences and so on. When come back to China's legislation, the way for public participation restrained within inquiring opinions, feasibility study conferences and the hearing sections, obviously, neither is it good for the public participation rights protection, nor is it good for improving people's enthusiasm on environmental protection.

(5) The information support to public participation is expected to be complemented. Obtain sufficient environmental information is the precondition for public participation in the environmental governance. Few laws have provided the rights to obtain environmental information clearly, no mention to the assurance of effective procedure and system. Now, the main way for people to get the environmental information relies heavily on the TV set, the broadcast, newspapers and the internet, of all these can hardly satisfy people's sustainable information needing. (5)

2. Purpose of the research

There are 3 questions raised in this paper 1.what kind of attitude should government have when measuring the significance between economy growth and environment protection. 2. What role should public play to participate and influence the decision-making process? 3. Considering the social structure and characteristic of China, how to determine the level of Public Participation that could achieve its goals without causing chaos/panic. In order to answer these questions, This Thesis will discuss the efficiency of public participation in china's environmental protection. As an important part of the environmental right, public participation plays such an important role that more and more people (the citizens, legal person and the environmental protection non-governmental organizations/NGOs) have realized the drawbacks of the current protection system. It is necessary for us to reconsider the theoretic basis of public participation right and reform the current legal system in this field. Fortunately, Chinese government has also realized this problem and has made forward progress in this field, serious of new legislations have been drafted such as *Provisional Measures on Public Participation in EIA* is a new and of most significant one, as a result, a case study (Amoy PX Case) is analyzed to demonstrate the new development of public participation right in China's environment protection. After researched the preliminary approaches for the citizen, the legal person and NGO's public participation right ,this thesis (will make) made a proposal for complementing the public participation right protection and implementation system, such as introduce the hearing of witnesses system ,set up the environmental administration publication system, complete the letters from and calls by the people system, seek to the availability of China's public interest litigation system, enhance the environmental protection NGO system and popularize the environmental education system are available approaches to complete different entities' public participation right in China.

On Feb.22, 2006, the State Environmental Protection Administration (SEPA) promulgated the *Temporary Provisions on Public Participation in EIA* which is the first regulatory document about the public participation in environmental protection area. The promulgation of the *Temporary Provision* made the public participation in environmental protection not an empty catchword any longer but one of an "environmental rights". It also indicated that public participation has become a general trend in China; furthermore, it is the requirement of propelling the democracy construction. Confirming the public participation right is a main approach to settle China's environmental problem. The rights to know, the participation and the monitoring from the public can help the government to carry out proper policy-making and to take a development way of full round harmonious and sustainable. (6) Also, the public participation can stimulate enterprises to take the environmental responsibility on their own initiative and make efforts to mitigate pollution, by which to release the environmental press and contribute for the environmental friendly society construction. However, what's the public participation right in China? What is the theoretical basis linked to this kind of right? The last but not least, how is its current development in China? All the answers to above questions (will) consist in this paper.

3. Methods of the research

(1) Case study of Amoy (Xiamen) PX incident

Background



(7) Figure 1

Xiamen(厦门) is the second largest city of Fujian province located in the south of China facing Taiwan Channel and the city is famous for its nice climate and environment. Since the economy boost of China from the early 90s, Xiamen is also one of the quickest growing and most popular investment areas in China. The whole incident began with the Construction of the plant, owned by Dragon Aromatics, part of Chen's Xianglu and Dragon Group, began in November 2006 in Xiamen's Haicang district, which has a population of 100,000. It is set to produce 800,000 tonnes of paraxylene annually, used to make plastics and polyester. The plant's health and environmental dangers were made public last March when Zhao Yufen, a researcher at the College of Chemistry and Chemical Engineering at Xiamen University, led a petition to the Beijing parliament calling for the plant to be relocated away from residential areas. "Paraxylene is highly toxic and could cause cancer and birth defects," said Zhao in an interview with the Chinese newspaper China Business. Zhao Yufen, who is not only an academic affiliated with the Chinese Academy of Science and Xiamen University but also a member of the Chinese People's Political Consultative Conference (CPPCC), was widely credited for initiating the anti-PX factory movement, by submitting a petition with signatures of 105 CPPCC's members and stating the potentially disastrous effects of having a PX plant operating in a populous area. Critical intellectuals such as Lian Yue also played key roles in the anti-PX movement, by constantly providing information, leading discussions and encouraging people to speak out and take actions against the Xiamen PX Project

On 1 June 2007, mobilized and orchestrated through the internet and mobile phones, tens of thousands Xiamenese 'took a stroll' (散步 - *sanbu*; Internet slang for peaceful protest) on the streets in Xiamen, in

order to express their strong disapproval of the PX project. This development alarmed officials in Beijing. A few days later, deputy environment minister Pan Yue called for an independent environmental-impact assessment of the plant as well as of Xiamen's urban development plans. Pan also suggested that the relevant parties should comply with recently announced regulations on environmental-impact assessments that require a public-consultation process and the release of relevant information to the public. Interestingly, local police forces limited their role to observing the self-organized protests and restrained themselves from arresting anyone. This is a huge contrast compared to the sometimes violent suppression of mass demonstrations that occurred in other parts of China. In response to the widespread public protests, the Xiamen government ordered the PX factory to suspend its construction and authorized a third-party organization to undertake environmental assessment. In the meantime, public discussions continued, both online and offline

On 5 December, a 14-page version of the strategic environmental-impact assessment report, conducted by the Chinese Research Academy of Environmental Sciences, was released on Xiamen Net, the government's official website. The report criticized the Xianglu and Dragon Group's repeated emissions breaches and their disregard of requests since 2003 from the local environmental protection bureau to tackle the problems. Although it was less concerned about the environmental effects of the plant, the report pointed out serious flaws in a development scheme for Haicang that was pursuing the conflicting goals of industrialization and urbanization in such a small region. The plant may now be moved to Zhangzhou.



(8) Figure 2

The Xiamen PX Incident corroborated the existence of Chinese civil society and offered a glimmer of hope to its growing maturity. It provides an example of how different societal agencies (citizens, government institutions, academic institutions, enterprises, NGOs), all with shared or conflicting interests, can come to the negotiating table together as equal partners and openly discuss a specific controversial issue. It provides a valuable case study of how such constructive engagement could eventually facilitate a transparent, democratic decision-making process and ultimately yield a more open and innovative society. It seems that during the Xiamen PX Case, government institutions listened to people's voices and respected their views. This shows that it is high time for political leaders to realize that they can't act like nannies and treat its mature citizens as little kids. It won't work! Iron-handed and

suppressive governance methods fail in all societies, as peoples, regardless of their culture, education or wealth, become aware of having rights to information, rights to discuss and participate in decision-making, and rights to monitor and evaluate governmental actions. In a pluralistic society, there will always be diversified views and conflicting interests. The key is to provide a platform for creative engagement and constructive dialogue so as to facilitate mutual understanding, establish shared values and strengthen solidarity. Trusting the rationality and maturity of everyone involved is an indispensable basis for the attainment of a harmonious society (9)

Is this case study I wish to investigate the Policy Procedure and Problem of Public Participation of Environment Protection in China, especially the methods of cooperation and communication between public and government during environmental controversy. Through research the factors that influence the outcome of Public Participation, suggest a methods that could minimize the environmental controversy between public and government, maximize the effect and efficiency of Public Participation.

(2) Use the EIA(Environmental impact Assessment) system to assist Public Participation

Among major tools for environmental management, environmental Impact Assessment (EIA) has been widely practiced in many countries. Its effectiveness, however, varies depending on the extent to which transparency and public participation are incorporated in its process. This thesis wish to analyze the role of public participation in environmental management by examining the operation of EIAs. The Provisional Measures has kept the public participation rights as its content definitely, and, it has regulated the detailed scope, procedures, approaches and the time limits, all of which are propitious to protect the environmental rights to know. Furthermore, this method can raise people's enthusiasm on participating in environmental governance. (11)

(1) The principle of public participation in EIA. The Provisional Measures brought forward four principles for the public participation in EIA namely the publicity, equality, universality and the convenience principles. (12)

(2) The Provisional Measures has definitely divided the rights and obligations between the people, construction units and the environmental protection departments. It provided that these two parties should collect public opinions during the EIA or Environmental Impact Report (EIR) approval procedure. (13)

(3) The Provisional Measures has definitely the scope of public opinions collection, it is required that when the construction units fix on the groups from which the opinions be collected, it have to consider the location, occupation, major or specialty etc. of the group members, only if experienced serious consideration could the proper members be screened out. (14)

(4) It required the EIA reporters to predigest the documents to afford facilities for the public; it provided five embodiment of participation namely the public opinions poll, consultants' suggestions, symposia, approvalment discussions and the hearing sessions.

(5) The Provisional Measures has prolonged the time limit of hearing from the public, it provided that there should no less than 10 days for hearing from the public before the EIR documents be submitted to

the environmental administration departments. And, it has specified the different requirements at different publication stages. (15)

Bibliographies

1. Li Qijia, *the basic structure of the environmental rights. Research project—Research on Environmental law basic theory, project No.05JJD820007, available at <http://www.riel.whu.edu.cn/show.asp?ID=4861>*
2. Yang shen, *the particularity analysis to the transformation of Chinese society, Gansu Social Sciences, No.01, 2003*
3. J.H. Turner, *The Structure of Sociological Theory, the Dorsey Press, Chicago, 4.1986*
4. PATEMAN C., *Participation and Democratic Theory, Cambridge University Press, 1970.*
5. Wu Zhiliang, *On public participation in environmental protection, Proceedings of Conference in 2004 of China Law Society Association of Environment and Resources Law. at214.*
6. Yuan Hongchen, Wang Xiaoping, *Research on the Legal System of Public Participation in Environmental Protection, Proceedings of Conference in 2004 of China Law Society Association of Environment and Resources Law.*
7. CHE Xiu-zhen, SHANG Jin-cheng, CHEN Chong, [J].*Scientia Geographica Sinica*,2 1(6):5 54-557 .(in Chinese) LI Weir, YANG Zhi-feng
8. 南方周末 *southern weekend* 07/08
9. 李新民, 李天威. 中西方国家环境影响评价中公众参与的对比 [J] . *环境科学*, 1998, 19 (S1) : 57 - 60 .
10. Anne Shepherd, Christi Bowler . *Beyond the Requirements : Improving Public Participation in EIA [J] . Journal of Environmental Planning and Management, 1997, 40 (6) : 725 - 738*
11. *the proposed method for public participation in EIA, art.4*
12. *Art.5*
13. *Art. 15*
14. *Art.12*

