

A Comparative Study on Public Participation in the Chinese-American Environmental Impact Assessment System

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Abstract. Public participation is a basic principle of environmental law. In order to ensure the fairness and openness of environmental decision-making, it plays an extremely important role in the process of environmental impact judgment through the expression and communication of public opinions. The United States is the first country in the world to establish an EIA system. Many countries in the world have cited it and regard the environmental impact assessment system as an important system in the field of environmental protection. Public participation in environmental decision-making is the core content of the EIA system. Due to the problems of public participation in the current environmental impact assessment system in China, it is difficult to meet the needs of the public and the society, so it is of great significance to promote the improvement of the public participation mechanism for the implementation of the environmental impact assessment system. This paper analyzes and recommends the public participation system in the environmental impact assessment system between China and the United States through comparative research.

Keywords: environmental impact assessment; public participation; comparative research.

1. Introduction

In China, the environmental impact assessment system (hereinafter referred to as EIA) is an important environmental legal system. Public participation is the key to the EIA process. Public participation can ensure the public and scientific decision-making, and ensure the effectiveness of decision-making. EIA system refers to engineering construction in an area, investigating, predicting and evaluating the environmental impact of the surrounding area before planning or other activities, and preventing environmental pollution and damage, and formulating corresponding plans; secondly, the relevant units, experts and the public take their environmental rights and interests, and make the development or approval of construction projects in the interest of the general public.

Public participation is a basic principle of environmental law, which relies on the expression and communication of public opinions during the EIA process. The United States is the first country in the world to establish an EIA system. Many countries in the world have cited the EIA system as an important system. In the process of EIA, the system, in order to ensure the fairness and openness of decision-making, most countries take public participation in environmental decision-making as the core content of the EIA system. Due to the current legislative status, ideology, economic development, social environment and other factors, China's environmental evaluation system still has problems such as not specific provisions, not operability, environmental evaluation system mere formality. Since the environmental evaluation system originated in the United States and has more advanced experience in the practice and development of the environmental evaluation system, in order to effectively improve and promote the research and development of China's EIA system and solve the problems faced by China's EIA system at the present stage, the author believes that we can refer to the EIA system of the United States.

2. The Significance and purpose of public participation in the EIA system

Public participation is a basic principle of China's environmental law, the key to the EIA procedure, and the main body of the EIA system. Public participation can ensure the democracy and science of decision-making and the effective decision-making. At the same time, promoting public participation

plays an important role in promoting the improvement of China's environmental assessment system and even environmental law.

Environmental assessment system is an important part of China's environmental management system and one of the important contents of environmental law. In the EIA system, in the process of concrete implementation, the authority must consider the public about the EIA report draft opinions or Suggestions, and submit the EIA report with the public opinion adopted details, make the relevant departments to adjust the relevant plan, make the decision-making more scientific and reasonable, is beneficial to improve the effect of the EIA implementation. Thus, one of the important meanings of public participation to the implementation of the EIA Law is to supervise and promote the government administration, reasonable administration, ensure the smooth implementation of the environmental law, and promote the smooth progress of environmental protection work.

3. Public participation in the Sino-us EIA system

3.1 Public participation in China EIA

Although there are some differences and gaps between the EIA system of China and the United States, there are many similarities in the operation procedures. From the perspective of public participation, the main ways of public participation between China and the United States are demonstration meetings, public hearings, public meetings and so on. However, the two countries are different in the subject, object, content, time, stage and aspects of public meetings.

According to the provisions of the law, the construction unit can solicit opinions from the public, experts and relevant units in the four stages before the formation of the environmental impact report of the superior project, namely, the project approval stage, the environmental impact report preparation stage and the examination and approval stage. Time and stage of public engagement, Mainly focused on the relevant special planning compilation organs or construction units for preliminary information collection and overall planning after the proposal of systematic planning or construction projects, Public participation after the draft of the environmental impact report, This stage just allows the public to use the project information and draft environmental impact reports submitted by the relevant units, Comprehensive and specific to put forward their own opinions and suggestions, At the same time, due to the failed approval of the approval department at this stage, Make the overall plan and the draft report have room for change or cancellation, The role of public participation is also well played, To make the relevant plans more refined and aligned with the overall interests of the public.

At the same time, China's law only stipulates that " the compilation organs should seriously consider the opinions of relevant units, experts and the public on the draft environmental impact report, and should attach explanations on the adoption or non-adoption of the opinions in the environmental impact report submitted for examination. "There is no corresponding punishment provision for violations of this law. This makes the public participation in China extremely passive and mere formality, and the conflict of interest between the masses and the construction unit has not been properly handled, resulting in the intensified contradiction between the two and causing social contradictions.

3.2 Public participation in the US EIA

The target of us EIA mainly includes federal legislative proposals and other major federal activities that have a significant impact on the human living environment. In terms of content, the US EIA consists of three main parts: first, the various alternative options, including the recommended actions; second, the environment affected by the alternative options; and third, the environmental consequences of the alternative options and their remedies. It mainly describes the precise and comprehensive data and relevant information needed for the decision makers and the public to make a scientific, reasonable and comprehensive analysis, such as the possible environmental impact estimates caused by the proposed actions or alternative programs. The setting of alternative schemes

can be more flexible and comprehensive, compared, analyzed, discussed and improved from different perspectives and methods, so that the final scheme determined through comparative analysis is the optimal scheme integrated from all aspects, so as to achieve the best effect of EIA.

The provisions on the legal procedures of EIA in the Regulations on the Implementation Procedures of National Environmental Policy can be roughly divided into two stages: environmental evaluation and the preparation of environmental impact reports. The first stage is the environmental evaluation stage, which is mainly to determine whether a proposed act (including legislative proposals, action plan, etc.) [1] will cause significant environmental impact to determine whether the environmental assessment is needed. If the environmental impact is small, public participation is not required. The second stage is conducted after determining the need of the environmental impact report, which is mainly divided into project review, evaluation scope definition, preparation of the draft environmental impact report, preparation of the final text of the environmental impact report. The four stages always involve the public in it, fully soliciting and considering public opinions.

3.3 Information disclosure system for public participation in china-US environmental assessment

In our country, everyone has the right to know, which is a basic right granted to us by our Constitution. The exercise of the public's right to know is mainly reflected in the disclosure of government information. Only after the public understands all the relevant information can they participate in the decision-making based on these information and realize the public participation in the real sense. The same is true of public participation in the EIA. Only the public obtaining all the corresponding information can be qualified to put forward their own views on the EIA of the project and truly participate in the EIA. Although China also stipulates the public participation system in the EIA Law, it does not make specific provisions on the subject, scope and method of information disclosure. The public is difficult to obtain enough information to support their own judgment, and can only passively participate in the EIA. In the process of practical application of social life, there are still many problems, which make public participation in EIA a mere formality.

The United States stipulates in the Regulations on the Implementation Procedures of National Environmental Policy that the construction project should be notified after the provincial inspection for 45-90 days, and the public can freely consult the relevant documents of the EIA and participate in the EIA planning period, and put forward their own opinions. This has enabled the United States to protect the public's right to know about the environment and allow the public to effectively participate in the EIA.

3.4 Judicial relief for public participation in china-US EIA

As a British and American law country, the US precedent has played a crucial role in the creation of the country's EIA law. From 1971 Calvert cliff coordination committee v. American atomic energy, 1976 creby v. Sierra club, Sierra club v. 1983 army Engineers to 1989 Marsh v. Oregon natural resources committee, etc., these cases gradually improve the EIA system, let the system from the beginning of guidance, programmatic bill gradually transformed into a set of meticulous, practical system. Under the protection of the US judicial system, the US public can fully participate in the EIA according to legal procedures, use judicial power to safeguard their rights and interests when their legitimate rights and interests are damaged, play the power of public participation in the EIA system, and promote the continuous development of environmental protection in the United States.

Judicial relief is the most important and final legal guarantee for public participation in EIA. "Unguaranteed rights are not rights"[2], which means that the law stipulates that citizens have a certain right, but it must also make punitive provisions for violations of the right, otherwise the right will be useless. China's EIA law does not stipulate the relief ways for the public's right to participate in EIA and the punishment that such violations should be punished, but only stipulates that "directly responsible persons will be given administrative sanctions according to law". The lack of guarantee strength of the department makes it a mere formality in social practice.

3.5 Social basis for public participation in china-US EIA

As a developed capitalist country, the United States has been troubled and threatened by the severe environmental problems. When people sacrifice the environment to obtain resources and wealth, and the resulting terrible environmental problems have caused more wealth losses, and people realize the importance of environmental problems and the urgency of protecting the environment. Due to historical, political, economic and cultural reasons, American citizens have high political enthusiasm and participation, and generally pay high attention to environmental issues, so that the public participation can be reflected more effectively and quickly reflected.

As a developing country, China's many local economic development is not yet comprehensive. Under the action of various factors, the public's awareness of environmental protection is weak. Between economic development and environmental protection, the public is more inclined to economic development. In terms of environmental protection, the public relies too much on the government and participates in a low level of environmental protection activities. It is believed that the main reasons for environmental pollution is that the relevant departments do not comply with laws and lax law enforcement, and they do not realize that environmental protection is the obligation of every one. This is because China has been government-led environmental protection work for a long time, resulting in the current public's awareness of environmental protection and safeguarding their own environmental rights is weak. As the main body of the public participation system, the public has no strong sense of "ownership" and fails to fully participate in environmental assessment or other environmental protection activities. Making the development of the public participation system in China's EIA system slow, and the role of public participation is still minimal.

4. Problems and solutions to public participation in China's EIA

4.1 The scope and stage of public participation in EIA in China are too narrow

Relevant laws and regulations, public participation EIA system is mainly applicable to special planning and construction projects, and need in may cause adverse environmental impact and directly involves the public environmental rights and interests or may cause significant impact on the environment, shall prepare an environmental impact report, in this case, to public participation. Although the law also stipulates that the public can participate in the planning EIA, the corresponding regulations are too vague to play a role in practice.

Chinese public participation in a project EIA time is basic in the project environmental impact report submitted to the superior examination and approval before this stage, in this stage, whether you need to prepare environmental impact report or environmental impact report content has been determined, public participation can call is the overall situation, more mainly in the establishment authority in complete the legal requirements, to achieve the legal procedure, to get the approval of the superior. This makes China's public participation system a mere formality and difficult to play a role.

Therefore, China should expand the scope and stage of public participation in EIA, from the current planning EIA, special planning and construction projects to other proposed behaviors, so as to expand the scope of EIA, so that the public can participate in more projects or planning. At the same time, the public can participate in the EIA process of the project from the beginning, fully express their opinions, through the continuous communication and improvement between the establishment authorities and the public, and finally through the consent of the examination and approval department, these decisions can be more scientific, democratic and reasonable. By expanding the scope and stage, public participation can play its due role.

4.2 Insufficient guarantee of information disclosure

In the practice of China's environmental assessment system, information disclosure is an important issue, mainly manifested in: 1, China's laws have no provisions on the subject of information

disclosure, that is, which departments should make the disclosure. If the subject of information disclosure is clarified through legal provisions, the subject of responsibility can be more clear, the phenomenon of buck-passing among various departments can be reduced, and the efficiency of information disclosure also provides a clear way for the public to find relevant information. Second, the scope of disclosed information is limited and some contents are too obscure, making it difficult for the public to obtain information effectively. The scope of the disclosed information should be as comprehensive as possible. For all the information that needs to be kept confidential, all the other relevant information should be kept confidential. Only in this way can the public be more aware of the specific situation of EIA projects and put forward more specific and valuable opinions.

At the same time, our country can also refer to the environmental licensing and the concept of the task book "the content of public information is easy to understand by the public"[3] this basic principle, in the public information attention content should be simplified as far as possible, and provide necessary help, so that the public to understand the information content, better participate in the process of EIA. Third, the way of information disclosure needs to be improved. The way of information disclosure is very important for the public to receive information. Many times, the reason why the public does not obtain information is that the information is not effectively disclosed, making the population of obtaining information more limited. There is another reason is that the way of information disclosure stipulated in China is "convenient for the public to know". This makes the way of disclosure unclear, makes it difficult for the public to know how the information is published, and allows many public participation authorities to avoid extensive and effective public participation. In order to improve the effectiveness of information disclosure, it is necessary to improve the existing disclosure methods as soon as possible, so that the public can understand the information more conveniently, quickly, timely and fully.⁴ The time of information disclosure is relatively short. Compared with the 49-90 days stipulated by the United States, China's interim Measures only require the period for making announcements and soliciting opinions of not less than 10 days. This short period makes it difficult for the public to analyze and understand the information in time and think carefully, reducing the quality of public participation. On the other hand, the short period of publicity and soliciting information is easy for some public to miss the opportunity to express their opinions. The period of information disclosure can be appropriately extended, so that more of the public can better participate in the evaluation process of the project.

4.3 We urgently need to strengthen judicial protection

Although China's laws stipulate the content of public participation in the EIA system, it does not establish the judicial guarantee system corresponding to the system. The author thinks that at present the most important thing is to build the public participation in the EIA system of judicial protection system, to the participation of the public by illegal relief, damage the public participation in the EIA rights, to make these behavior of units or individuals to make specific provisions in law.

In terms of the improvement of the judicial system, although the United States is a case law country, very different from China, we can still learn from some legislative ideas of the United States. Such as, the United States regulation "anyone can in their own name to anyone on the matters of the law", the provisions of the law let every citizen of the country have the opportunity to exercise power, at the same time improve the public enthusiasm at the same time to a certain extent, improve the law environmental litigation protection effect. However, China's environmental civil litigation is that the plaintiffs must be "citizens, legal persons and other organizations with a direct interest in this case". This narrow scope of plaintiffs has become an obstacle to the realization of environmental litigation right, and it is difficult to effectively protect the environmental rights and interests of the public. Therefore, the author thinks that the plaintiff scope of environmental civil litigation system can be further expanded.

4.4 Public awareness of environmental protection is weak

The public is the basis of environmental protection and the source of power, but at present stage our citizens do not know about our environment, treat environmental protection is still some people irrelevant attitude, now the environmental protection is mainly dominated by government, but because the citizens did not completely formed environmental protection, make the public participation is not high, so environmental protection development is slow, so the public environmental awareness in our country. The author believes that the government should give full play to its leading role, strengthen the environmental education for government staff, and set an example of environmental protection. Promote the environmental protection legislation, expand the content of environmental rights and interests, establish and improve the way of public participation, improve the EIA system, etc., and use the news media propaganda laws and regulations on environmental protection, popularize environmental protection knowledge, intensify the propaganda of environmental awareness, set up rational consumption, promote sustainable consumption patterns, advocate law, law-abiding, usage of social atmosphere. At the same time, environmental protection associations and organizations should give full play to their own subjective initiative, convey environmental awareness and knowledge to other people, and encourage the public to participate in environmental protection.

5. Summary

With the continuous improvement of laws in our country, the EIA system has made great progress and development, EIA increasing public participation, but has not yet formed a complete legal system, part of the law is still fuzzy, and the public participation EIA system corresponding judicial security system is still not established, in the process of social life, still faces many problems, makes the public participation in the EIA becomes a mere formality.

The main causes of public participation in the EIA system are: lax laws, loopholes, inadequate EIA information disclosure, insufficient public access, difficult to improve the EIA of the project; the law does not guarantee public participation in the EIA system; weak environmental awareness, low public participation, low participation and the opinions of experts and relevant government departments.

Because the EIA system was created and improved by the United States, it was later introduced into China. Our country can more deeply study the legislative thought of EIA system, learning the successful experience of western countries and combined with China's national conditions, constantly improve the EIA system of our country, give full play to the positive role of public participation, make more scientific and democratic decisions, to better use of resources, reduce the waste of resources and impact on the environment, in order to achieve the purpose of protecting the environment.

References

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