

A black and white photograph of an industrial facility, likely a power plant or refinery. The image shows a long, straight perspective of large, horizontal pipes running along the ground, supported by concrete blocks. Above the pipes, there are complex metal structures, including walkways, ladders, and various pipes and valves. The scene is dimly lit, with a bright light source visible at the far end of the corridor, creating a strong contrast and long shadows.

EIA in focus

**A TOOL TO PROMOTE DEMOCRACY
AND ENVIRONMENTAL PROTECTION**



Introduction

WHY ENVIRONMENTAL IMPACT ASSESSMENT?

In the 2014-2020 period the EU will allocate around EUR 15 billion for programs and projects in the European Neighbourhood (ENI) region, both in the middle east and north Africa (MENA) region as well as the Eastern Partnership Community (EaP)¹. Part of this money, together with additional financial support from the European Bank for Reconstruction and Development (EBRD) and the European Investment Bank (EIB) will be allocated for energy and infrastructure projects that, if not planned carefully, could harm the environment and violate human rights. Given the general human rights track record and poor state of environmental and social safeguards policies and legislation in the majority of ENI region countries, as well as the implementation experience for different types of projects in the 2007-2013 period, it is important that people understand what type of safeguards may be applied in order to protect human rights and the environment. According to EU Common Rules, Regulation for Development Aid, any investment through ENI that is "Appropriate environmental screening, including for climate change and biodiversity impacts, shall be undertaken at project level, in accordance with the applicable legislative

acts of the Union, including Directive 2011/92/EU of the European Parliament and of the Council² and Council Directive 85/337/EEC³ comprising, where applicable, an environmental impact assessment (EIA) for environmentally sensitive projects, in particular for major new infrastructure. Where relevant, strategic environmental assessments shall be used in the implementation of sectoral programs. The involvement of interested stakeholders in environmental assessments and public access to the results of such assessments shall be ensured."

It also requires that "In the design and implementation of programs and projects, criteria regarding accessibility for persons with disabilities shall be duly taken into account," and that "Natural and legal persons who have been awarded contracts shall comply with applicable environmental legislation including multilateral environmental agreements, as well as internationally agreed core labour standards". Therefore the EIA process becomes an important tool for the public in both the MENA and EaP regions to ensure that national governments are not misconducting EIA



processes, and to ensure fully fledged public participation.

EIA legislation exists in many countries of the world. It took root in the early 1970s, when the environment first started to appear on the political agenda.

In the 1980s, environmental and ecological considerations also became partly enshrined in the policies of the international financial institutions (IFIs), such as the World Bank. This was formalised in the 1990s when EIA became a condition for the funding of IFI-sponsored projects.

It can be the case that civil society organisations (CSOs) and the representatives of interest groups are not able to or are restricted from participating in the EIA process, finding it overly-technical or deeming it to be for specialists rather than for the general public. This, however, is not true: knowing the general jargon of the EIA process and understanding its structure, functions and aims, provides the public with a great opportunity to ensure its right to participation and to influence decision-making.

Residents of Derstei, near the EBRD-financed Tayan Nuur iron ore mine on the Chinese-Mongolian border, during a public meeting about the project - CEE Bank-watch Network

¹ Parliament approves new European Neighbourhood Instrument with more than €15 billion in funding for 2014-2020, <http://goo.gl/FTEh2Z>

² On the assessment of the effects of certain public and private projects on the environment, <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:026:0001:0021:EN:PDF>

³ On the assessment of the effects of certain public and private projects on the environment, <http://www.environment.ie/en/Publications/Environment/Miscellaneous/FileDownload,8786,en.pdf>

What is EIA?

EIA IS A PROCESS – NOT SIMPLY A DOCUMENT.

The purpose of the EIA process is to study the potential environmental consequences of implementing a proposed project and to inform decision-makers and the public. The EIA document itself is a technical tool that identifies, predicts, and analyses the impacts on the physical environment, as well as social, cultural, and health impacts. A proper EIA process will show alternatives with their impacts, as well as mitigation measures to reduce the impacts of a proposed project. The EIA process also serves an important procedural role in the overall decision-making process by promoting transparency and public involvement.

EIA rests on the assumption that the gathering of information, before making

any decision about activities that could significantly affect the environment, will improve environmental performance. Through EIA, public authorities are presented with environmental information from a range of sources, including the public, and have an opportunity to reflect on the impact of their decision.

Ideally EIA is done at the stage when the details of the projects concerned can be modified to address possible negative impacts. It should be noted that, following the EIA process, a project with high environmental impact may be not modified or rejected, as the EIA leads towards an informed decision, but not necessarily an environmentally friendly one.

BENEFITS OF THE EIA PROCESS

- Potentially screens out environmentally-unsound projects;
- Proposes modified designs to reduce environmental impacts;
- Identifies feasible alternatives;
- Predicts significant adverse impacts;
- Identifies sensitive issues that only locals know;
- Identifies mitigation measures to reduce, offset, or eliminate major impacts;
- Proposes an environmental management plan that minimises the negative impacts of the project;
- Engages and informs potentially affected communities and individuals;
- Influences decision-making and the development of terms and conditions.

⁴ The EU EIA directive requires that “the developer shall ensure that the environmental impact assessment report is prepared by competent experts.”

⁵ Environmental Impact Assessment – EIA, <http://ec.europa.eu/environment/eia/eia-legalcontext.htm>

Who prepares EIA?

IN DIFFERENT COUNTRIES, THE SYSTEM IS DIFFERENT. IN THE EU, FOR INSTANCE, THE EIA SHOULD BE PREPARED BY THE PROJECT DEVELOPER.

The EIA process is carried out by project developers through environmental consultants⁴. Where developments do go ahead, EIAs should help to propose proper mitigation measures. EIA is meant to be a systematic process which leads to a final product: the EIA report.

In the EU, the EIA process is regulated by Directive 85/337/EEC that came into effect in July 1998. It has since been amended by Directive 97/11/EC, Directive 2003/35/EC and Directive 2009/31/EC. These three directives have now been consolidated into one Directive 2011/92/EC⁵.

Another important legislative act is the UN/ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention), signed by the European Community in 1998.

Among other objectives, the Aarhus Convention guarantees the rights of public participation in decision-making in environmental matters both on the policy as well as the project and program level. The convention stipulates the specific procedures and actions regarding public participation in the EIA process that is fully reflected by the directive.

The 2003/4/EC of the European Parliament, and of the Council of 28 January 2003 on public access to environmental information, requires the routine publication of documents including things such as policies, plans and procedures relating to the environment, reports on the state of the environment, and environmental impact studies. It also includes data taken from monitoring activities and risk assessments that affect, or are likely to affect, the environment.

The EIA report represents part of the project documentation, and should contain:

- A description of the project: location, design, scale, size etc;
- A description of the likely significant effects of the project on the environment;
- Mitigation measures;
- A description of the reasonable alternatives studied by the developer that are relevant to the project, including the 'zero' alternative;
- A Non-technical summary;
- An environmental management plan;
- An emergency response plan where applicable.

International financial institution requirements for EIA

World Bank

The Operational Policy (OP)/Bank Procedure (BP) 4.01: Environmental Assessment

is one of the ten environmental, social, and legal safeguard policies of the World Bank. It is an umbrella policy of the Bank's environmental 'safeguard policies' which, among others, include: Natural Habitats [OP 4.04], Forests [OP 4.36], Pest Management [OP 4.09], Physical Cultural Resources [OP 4.11], and Safety of Dams [OP 4.37].

Depending on the project concerned, the Bank may use a wide range of instruments, such as EIA, a regional or sectoral EIA, a strategic environmental and social assessment, an environmental audit, a hazard or risk assessment, etc⁶.

The Bank screens projects under four categories depending on the type, location, sensitivity and scale of the project, and the nature and magnitude of its potential environmental impacts:


Category A – includes those projects that are “likely to have significant adverse environmental impacts that are sensitive”, diverse, or unprecedented. These impacts may affect an area broader than the sites or facilities subject to physical works.

For this category of projects, the Bank requires an environmental assessment that “examines the project’s potential negative and positive environmental impacts, compares them with

those of feasible alternatives (including the “without project” situation), and recommends any measures needed to prevent, minimize, mitigate, or compensate for adverse impacts and improve environmental performance.” For a Category A project, the borrower is responsible for preparing a report, normally an EIA (or a suitably comprehensive regional or sectoral EA). In the case of category A projects, the public disclosure of the project documentation, including the EIA, should be not less than 120 days before the World Bank board’s decision in the case of state projects, and 60 days prior in the case of private projects. The public is usually requested to submit written comments to the project task team.

A project may be classified as category B if “its potential adverse environmental impacts on human populations or environmentally important areas –including wetlands, forests, grasslands, and other natural habitats – are less adverse than those of Category A projects.” According to the Bank: “These impacts are site-specific; few if any of them are irreversible; and in most cases mitigation measures can be designed more readily than for Category A projects.” The findings and results of a Category B EIA are described in the project documentation [Project Appraisal Document and Project Information Document].

A category C project is “likely to have minimal or no adverse environmental impacts”, and, beyond screening, no further EIA action is required.



A community member reacts during a public hearing about a waste treatment facility near Stara Zagora, Bulgaria - CEE Bankwatch Network

According to the Bank: "the proposed project is classified as a Category FI if it involves investment of Bank funds through a financial intermediary, in subprojects that may result in adverse environmental impacts." Subprojects will be categorised individually as projects of category B or C⁶.

There is an ongoing review of the World Bank Safeguard Policies. The draft text for consultation can be seen at the following link: <http://consultations.worldbank.org/>

consultation/review-and-update-world-bank-safeguard-policies.

According to numerous CSO assessments, the draft document that was published for public comment is a massive dilution of existing policies, would dismantle 30 years of progress on social and environmental standards and send a strong negative signal to other development finance institutions, and private finance and national authorities that safeguard policies do not matter⁷.

⁶ <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20064724~menuPK:64701637~pagePK:64709096~piPK:64709108~theSitePK:502184,00.html>

⁷ A potential impact is considered "sensitive" if it may be irreversible (e.g., lead to loss of a major natural habitat) or raise issues covered by OP 4.04, Natural Habitats; OP/BP 4.10, Indigenous Peoples; OP/BP 4.11, Physical Cultural Resources or OP 4.12, Involuntary Resettlement.

⁸ http://www.mpil.de/files/pdf2/mpunyb_bekhechi_3.pdf

⁹ For additional information, see: <http://bankonhumanrights.org/world-bank/>

EBRD environmental and social policy

EIA AND PUBLIC CONSULTATION

The EBRD's environmental and social policy 2014 (ESP) undertakes that "All projects financed by EBRD shall be structured to meet the requirements of this Policy." It adopts a "comprehensive set of specific Performance Requirements [PRs] that the projects are expected to meet". Moreover, "EBRD, as a signatory to the European Principles for the Environment, is committed to promoting the adoption of EU environmental principles, practices and substantive standards".

The EBRD undertakes environmental screening of each proposed project to determine the appropriate extent and type of EIA. The bank classifies the proposed project into one of four categories.

The categorisation of projects for the EBRD follows the World Bank categorisation. Yet, in its ESP, the EBRD annexed a list of the projects that may be considered as an example list. According to the EBRD: "This list applies to "greenfield" or major extension or transformation-conversion projects in the

categories listed below. The list is indicative and the types of projects it contains are examples. The categorization of each project will depend on the nature and extent of any actual or potential adverse environmental or social impacts, as determined by the specifics of its design, operation, and location."

For 'Category A' projects, in addition to the disclosure required of the clients under the ESP, the "Bank will make available Environmental and Social Impact Assessments on "Category A" on the EBRD website in its Headquarters in London and in the relevant EBRD Resident Office a minimum of 60 calendar days prior to consideration of the project by the Board of Directors for private sector projects and 120 calendar days prior to Board consideration for public sector projects. For projects located in countries where EBRD does not have a Resident Office, alternative means of disclosure will be identified on the ESIA webpage for the project. ESIA's are made available in local language and may be available in whole or in part in other languages, where appropriate."

¹⁰ Effective from 7th November 2014.

¹¹ The European Principles for the Environment (EPE) were adopted by the Council of Europe Development Bank, EBRD, European Investment Bank, Nordic Environment Finance Corporation and Nordic Investment Bank. The EPE is an initiative launched in response to the drive for increased harmonisation of environmental principles, practices and standards associated with the financing of projects. The EPE commitments are reflected in PRs 1, 3, 4 and 10.

¹² Substantive environmental standards of the EU are comprised in EU secondary legislation, e.g., regulations, directives and decisions. Procedural norms directed at Member States and EU institutions and the jurisprudence of the European Court of Justice and the Court of First Instance which applies to Member States, EU institutions and EU legal and natural persons, is excluded from this definition.

¹³ <http://www.ebrd.com/downloads/policies/pip/pipe.pdf>


EIB and environmental assessment

The EIB requires that all projects in the EU, candidate and potential candidate countries, likely to have a significant effect on the environment, be subject to an EIA, according to the definitions and requirements of Directive 2011/92/EC [henceforth referred to as the EIA Directive].

According to the EIB handbook, with regards to projects in third countries for which a formal Environmental and Social Impact Assessment (ESIA) is required, the ESIA process and content must be consistent with the requirements of the EU EIA Directive. The ESIA, which includes public consultation and stakeholder

engagement, is the responsibility of the promoter and the competent authorities. The full ESIA process should be completed and its findings and recommendations should satisfy the requirements of the EIB prior to Board approval¹⁴.

However, in practice sometimes the EIB approves projects before the completion of the EIA and some of those cases have become subject to investigation by the European Ombudsman¹⁵. Therefore, there is a need to constantly remind the EIB that it should strictly follow EU legislation in its operations, especially outside of the EU.



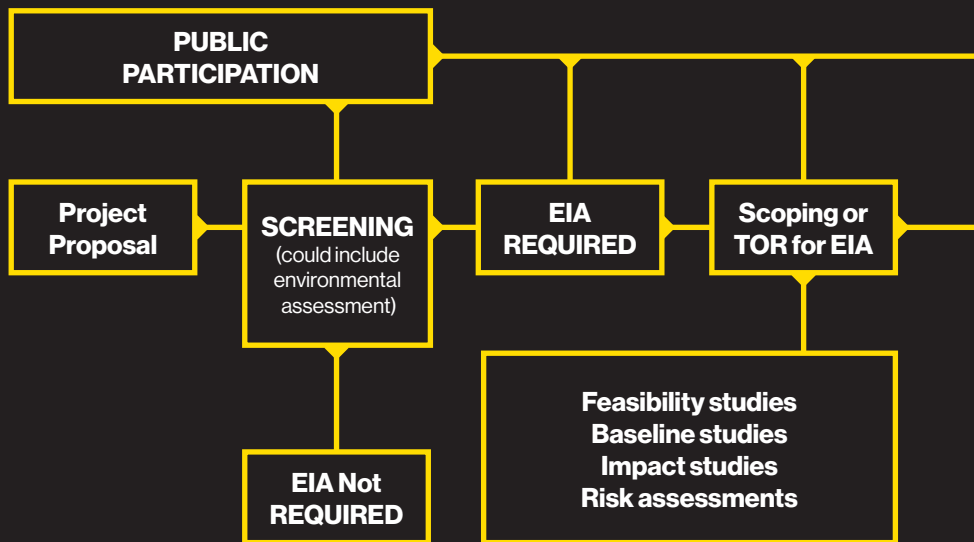
Andrey Shingarev and his family lost everything when his home was cleared to make room for the Olympic city and a landfill in Sochi - CEE Bankwatch Network

¹⁴ EIB Environmental and Social Handbook: <http://goo.gl/NK2tYM>

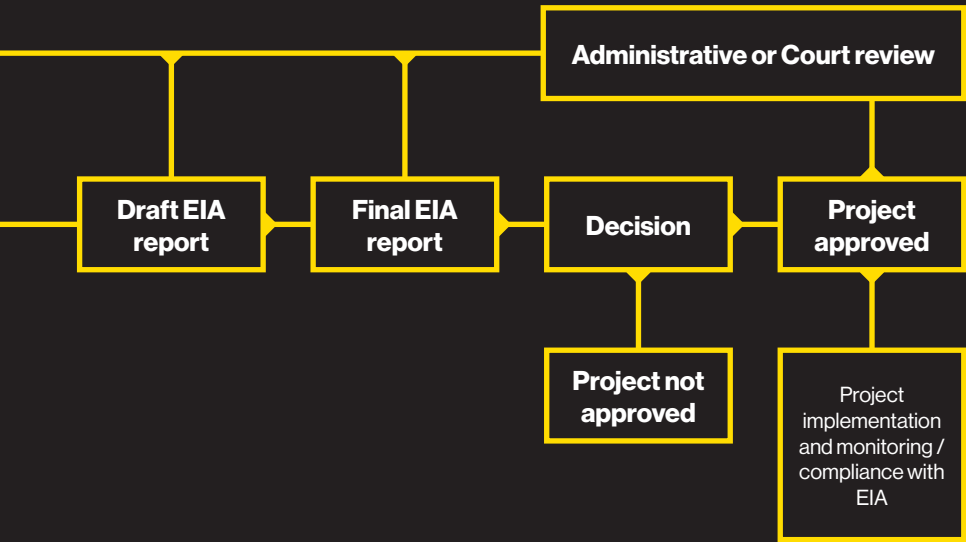
¹⁵ <http://www.ombudsman.europa.eu/en/cases/draftrecommendation.faces/en/537/html.bookmark>

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The EIA process, while not uniform from country to country, generally consists of a set of procedural steps culminating in a written impact assessment report that will provide grounds to decision-makers on whether or not to approve or reject a proposed project.



EIA PROCESS



PRELIMINARY ASSESSMENT PHASES

SCREENING AND CLASSIFICATION

The screening process determines whether a particular project warrants the preparation of an EIA. The threshold requirements for an EIA vary from country to country and also across the IFIs – some laws provide a list of the types of activities or projects that will require an EIA, others require an EIA for any project that may have a significant impact on the environment. The EIA directive defines applies to a wide range of defined public and private projects, which are defined in Annexes I and II.

For all projects listed under Annex I, an EIA is mandatory. These are likely to have significant adverse impacts on the environment and society that are sensitive, diverse, or unprecedented. These impacts may affect an area broader than the sites or facilities subject to physical works. For example, this includes the construction of motorways and express roads, airports, railways, nuclear and thermal power plants, medium and large dams, installations for the disposal of hazardous waste, oil, etc.

Projects under Annex II have potential adverse environmental impacts on human populations or environmentally important areas: including wetlands, forests, grasslands, and other natural habitats. According to the EU directive, member states should ensure implementation of a so called “screening procedure”, which determines the effects of projects on the basis of thresholds/criteria, or a case by case examination.

In order to ensure that the EIA report is done for all relevant projects, the directive has the specific criteria to determine whether projects listed under Annex II should be subject to an EIA or not. [See the Annex below for examples of category A and B projects].

According to the EU directive on EIA, during the determining of the project category, the authorities should base the decision on the most relevant criteria and information and “should take into account information that could be available following other assessments required by Union legislation in order to apply the screening procedure effectively and transparently.”

The directive states that “taking into account unsolicited comments that might have been received from other sources, such as members of the public or public authorities, even though no formal consultation is required at the screening stage, constitutes good administrative practice”.

SCOPING PHASE

Scoping is used to identify the key issues of concern at an early stage in the planning process.

Scoping is more than simply determining the scope of the EIA document. It is the process of identifying issues, alternatives, and impacts that must be considered in preparing the EIA. It is an opportunity to determine which are the key issues that must be examined in depth, and which issues are of less importance and can be downplayed or disregarded.

Scoping should be carried out at an early stage in order to aid site selection and identify any possible alternatives. The scoping process should involve all interested parties such as the proponent and planning or environmental agencies and members of the public. It should identify the key issues and concerns of the interested parties, as well as determine what are the thresholds of concern where changes become unacceptable. The results of scoping

will determine the scope, depth and terms of reference to be addressed within the EIA research and the final document.

In some cases the EIA's scope is determined either through formal or informal consultations; or defined by the legal framework without providing opportunities for public input. The terms of reference for the EIA are then prepared based on the results of consultations, legal requirements, or based on a generic terms of reference. In some cases scoping is not required by national legislation – for example, in ENP as well as in some EU member states.

World Bank procedures do not explicitly provide for public participation early in the scoping process, when key decisions are made. The Bank does, however, encourage borrowers to consult with “affected groups” and nongovernmental organisations shortly after the EIA categories are being assigned [screening]. For category A projects, Bank staff is advised to attend scoping meetings.

In the case of the EBRD, the scoping of EBRD projects is primarily the responsibility of the project sponsor, although the bank may play a role in establishing the scope of the EIA¹⁶. The extent of the EBRD's involvement depends on the complexity of the project and the competence of the project sponsor to conduct the EIA. During scoping the sponsor is supposed to identify the concerns of interested groups, including local communities, NGOs, and government institutions, and set up meetings between interested parties to discuss the EIA. Based on the scoping procedure or project scale, the Terms of Reference for the EIA report should be prepared. This will serve as a roadmap for consultants. In some cases, the terms of reference may be available to the public for comments.

¹⁶ The EBRD's environmental and social policy, 2014 www.ebrd.com



EBRD headquarters, London

IDENTIFYING ALTERNATIVES

In some member states the framework of preliminary assessment may require the developer to provide, inter alia, alternatives for the projects for which it intends to submit an application. In this case the applicants are obliged to provide a reasoned decision of the main alternatives to development.

As a result, a number of new issues may be raised. For example, the developer may be asked to honestly seek to examine other development sites that may be out of their control or, in the case of waste disposal, to address other sustainable solutions.

The problem is that – in practice – project developers often present meaningless alternatives, e.g. for large hydro projects they choose alternatives such as a nuclear reactor. Therefore, it is important that alternatives studied in detail are ‘reasonable alternatives’, as requested by the EIA directive. There should be a “description of the reasonable alternatives [for example in terms of project design, technology, location, size and scale] studied by the developer, which are relevant to the proposed project and its specific characteristics, and an indication of the main reasons for selecting the chosen option,

including a comparison of the environmental effects¹⁷.”

Preparing the draft EIA: A draft EIA is prepared in accordance with the Terms of Reference and/or the range of issues identified during the scoping process. The draft EIA must also meet the content requirements of the overarching EIA law or regulations. This step will ideally engage a wide range of technical specialists to evaluate baseline conditions, predict the likely impacts of the project, and design mitigation measures. The draft EIA has to be opened for public consultations in order to collect comments.

Preparing the final EIA: the aim is to produce a final impact assessment report that addresses the viewpoints and comments of the parties that reviewed the draft EIA. In some cases, the final EIA will contain an appendix summarising all of the comments received from the public and other interested parties and provide responses to those comments.

Decision: A decision to approve or reject a project is generally based on the final EIA or, in some instances, an environmental clearance may be just one step in the permitting process. The decision may be accompanied by certain conditions that must be fulfilled,

such as posting a reclamation bond or filing an Environmental Management Plan.

Monitoring and environmental management:

Monitoring is an important part of project implementation. Monitoring serves three purposes: [1] ensuring that required mitigation measures are being implemented; [2] evaluating whether mitigation measures are working effectively; and [3] validating the accuracy of models or projections that were used during the impact assessment process.

PUBLIC PARTICIPATION IN EIA

Principle 10 of the Rio Declaration states: “environmental issues are best handled with participation of all concerned citizens”, and outlines three essential elements to public involvement: access to information; opportunity to participate in the decision-making process; and effective access to administrative and judicial proceedings¹⁷.

Public participation requirements and implementation vary widely, depending on the particular EIA system. Some laws require extensive public involvement as part of the EIA process, while others make it discretionary, or are silent on the matter. The terminology used in EIA systems to describe public involvement can be confusing. Terms such as “inform,” “consult,” and “participate” may seem similar, but in fact have very different implications.

Examples of EIA systems with more detailed public participation provisions include China, the EU (through the Aarhus Convention) and the United States.

The EIA directive, as well as the Aarhus Convention, requires that “The public concerned shall be given early and effective opportunities to participate in the environmental decision-making procedures”. This means that appropriate and effective measures should be implemented by developers and respective authorities to

¹⁷ http://ec.europa.eu/environment/eia/pdf/EIA_Directive_informal.pdf

¹⁸ Rio Declaration on Environment and Development, Principle 10 (1992). United Nations Environmental Programme (UNEP) Goals and Principles of Environmental Impact Assessment, Principle 7[1987]. <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163>

¹⁹ Only photocopy costs.

ensure the public's involvement in decision making. It should open participation in public in screening and scoping exercises, ensure the public scrutiny of the EIA report through publication and receiving comments, and organising public meetings and hearings to discuss relevant issues.

The EIA directive stresses that national legislation should stipulate "The detailed arrangements for informing the public, for example by bill posting within a certain radius or publication in local newspapers, and for consulting the public concerned, for example by written submissions or by way of a public inquiry".

The authorities are obliged to take all necessary measures to ensure that relevant information is "electronically accessible to the public, through at least a central portal or easily accessible points of access, at the appropriate administrative level." This means that the public are entitled to see both the non-technical summary and the full ESIA document by relevant means and at a reasonable price¹⁹. The best EIA practice involves and engages the public at numerous points throughout the process with a two-way exchange of information and views. Public participation may consist of informational meetings, public hearings and opportunities to provide written comments about a proposed project. However, there are no consistent

rules for public participation among current EIA systems. Even within a particular country, there can be variations in the quality and extent of public involvement in the EIA process, depending on the type of project being considered.

WHEN IS AN EIA PROCESS FLAWED?

Sometimes an EIA process and associated reports are conducted simply as box-ticking exercises. The format and contents of an EIA report can often be inadequate either in terms of the quality of the assessment or because key parts of the assessment are missing. Frequent defects include the failure to produce a non-technical summary, the failure to adequately consider human health and the failure to include a proper consideration of alternatives. In some cases, the information given in an EIA report cannot be seen as providing a clear technical and objective assessment of the environmental circumstances.

Another important issue is that failure in the procedural implementation of the EIA also undermines the credibility of the whole EIA process – especially if flaws apply to violations of public participation and access to information.

Challenging the decision: the EIA process does

not guarantee that, even in the case of drastic environmental and social impacts, a project will be rejected. Depending on the jurisdiction of the country, there may be opportunities for the public to seek administrative and/or judicial review of a final decision and the EIA process. The claim

may address the procedural flaws in the EIA process [such as the absence of public hearings] and/or the inadequacy of the EIA document and substantial issues that decision makers failed to consider, for example issues that are not resolved by comment and response.

SUBMITTING A COMPLAINT REGARDING EIA TO THE IFIS

Almost all the IFIs have independent accountability mechanisms. The World Bank was the first to establish its Inspection Panel in 1993, with the regional development banks and other finance institutions following suit shortly thereafter. While the mechanisms vary in scope, administration and outcomes, the mandates of all are similar: to provide recourse for people affected by IFI-funded projects when relevant social and environmental policies are perceived to have failed. If the board of an IFI approves a project that has a flawed EIA process and/or an inadequate EIA that is not in compliance with the relevant IFI's safeguard policies, then challenging the process/document via the relevant accountability mechanism may be helpful for campaigning. For more information, see: <http://bankwatch.org/sites/default/files/leaflet-unlockingaccountabilityEN-Apr2014.pdf>

Also, ask for support from the following CSOs, related to the following IFIs:

- **World Bank/IFC/MIGA**
 - Bank Information Center, www.bicusa.org
 - International Accountability Project, <http://accountabilityproject.org>
- **EBRD and the EIB**
 - CEE Bankwatch Network, www.bankwatch.org
 - Arab NGO Development Network, www.annd.org

Tips for CSOs on how to be effective in the EIA process

Public participation in the EIA process encompasses different activities – from seeking information about a project, to writing comments on a draft EIA, participation in public hearings, running a media campaign, preparing a request for administration review, and – finally – filing a court case or challenging a decision via an IFI redress mechanism. Be active too outside the formal process – seek contact with the team writing the report to ensure that problematic areas are spelled out and addressed in the report.

Opportunities for public participation may be available over different legislative acts at the national level, as well as through different safeguard policies of the funding institutions involved: - IFIs, export credit agencies and private banks (where the Equator Principles apply to the latter). Try to have a good overview of the legislative and policy opportunities regarding public participation for particular projects.

In some countries, it is required to become an interested party of an administrative decision-making process for an environmental permit officially, or you should not miss the public commenting period if you want later to complain about the decision taken, otherwise you may have difficulty in having your court complaint accepted.

CHECK CAREFULLY YOUR NATIONAL LEGISLATION AND RELEVANT IFI SAFEGUARD POLICY

Informing local communities

The EIA promoters are required to inform and

collect input from local communities. However, often that process is the most flawed and the EIA does not contain the concerns of local communities, or they are even not aware about the project and its impacts.

If you are a CSO representative, ensure that affected communities are aware about the project and its consecutive impacts, and that they know about their rights and opportunities for participation in decision-making. This can be done through the distribution of leaflets, media articles and reports, public meetings with local authorities and communities, and fact finding mission and subsequent reports. Make the local population understand and appreciate that their input can make a difference, and that they should be insisting on their demands.

Public hearings

Through your oral testimony, highlight impacts that will affect the community at large and explain how these can be avoided.

If there are issues of particular importance, consider putting these on paper in a simple,

bulleted form and handing them out at the beginning of the hearing. This will encourage others to address your points as well.

Affected communities

Ensure that representatives of affected communities are notified and participate in the hearings.

Experts

Find respected experts who understand the likely impacts of a proposed project and are willing to testify at the hearing.

Media

In order to involve the media, prepare press releases, fact sheets, issue papers and ensure that they are delivered broadly to journalists that are interested in concrete problems and issues.

HOW TO PREPARE WRITTEN COMMENTS

It is important to prepare written comments in order to specify how your rights are affected, or where there are omissions in the EIA process. The written and submitted comments will also be useful later, if you decide to appeal the approval of an EIA for a particular project, both at the national as well as the international level – your case will be stronger if your written comments cover all the issues you may later want to raise in court. Often EIA documents are submitted in a complex and technical manner. In other cases only the EIA's Executive Summary is available to the public.

Don't forget that the purpose of an EIA is to provide clear and impartial information about a project's potential environmental and social impacts.

DURING THE REVISION OF AN EIA, CONCENTRATE ON THE FOLLOWING ISSUES:

- Does the EIA comply with EIA guidelines and/or Terms of Reference?
- Does the EIA give – or not – answers on issues of concern to local communities?
- Is the description of the existing environment realistic and sufficient?
- Are the areas of direct and indirect influence of the project fully presented?
- Is the impact analysis clear about the extent and significance of the impacts?
- Does the EIA include an analysis of relevant project alternatives?
- Does the EIA include an analysis of the 'no project' alternative?
- Does the EIA include an analysis of the cumulative impacts of the projects?

SOCIAL IMPACTS

Large-scale projects can cause severe and even permanent social impacts. Changes in the physical environment, the presence of hundreds of workers, the building of new access roads, increased demands on services, changes in land use, access to water, and environmental contamination or even forced resettlement due to the project can permanently affect local people's lives.

Most EIA guidelines require a social impact analysis. Social impacts can differ substantially, depending on the duration of the project, the location of populated areas in relation to the project area, access to the community's land, etc. The World Bank, the EBRD and the IFC directly require the preparation of environmental and social impact assessments.

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DURING THE EVALUATION OF THE SOCIAL IMPACT ASSESSMENT, THE FOLLOWING ISSUES SHOULD BE CHECKED IN THE EIA REPORT

- Does the EIA correctly present the baseline data for the affected population?
- Are the changes in access to local resources (land, water) and basic services reflected correctly?
- Are the changes in the characteristics of a population (size, composition, traditions, productive activities) presented correctly?
- How will local people benefit from the concrete project, and what would be the social and environmental costs of it?

If the project involves involuntary resettlement, this represents usually the major social problem and is largely connected with Human rights violation. Therefore the EIA should describe in detail information about compensation, relocation plans, alternative relocation sites, and information about conditions that would guarantee people the same quality of life, compensation for losing their subsistence, etc.

TYPICAL POINTS OF A FLAWED EIA PROCESS

- Failure to disclose certain adverse environmental impacts;
- Lack of or inadequate opportunities for public participation;
- Omissions in the required content of the EIA [e.g., inadequate range of alternatives, lack of mitigation measures, failure to evaluate cumulative impacts]
- Improper or lack of adequate notice of availability of EIA for public review
- Failure of the EIA promoters to ensure a public consultation process in accordance with the national legislation, the Aarhus Convention or the relevant bank policies.

GENERAL TIPS FOR EFFECTIVE PARTICIPATION

- Identify the ministries or agencies that have decision-making authority over the proposed project.
- Identify the key individuals who will be responsible for the decisions that concern you.
- Collaborate and join forces with organisations or groups that share a similar interest in the issues that concern you.
- Monitor local newspapers for official announcements or articles about a proposed project and opportunities to submit comments or attend hearings.
- Participate at every possible opportunity provided by the government or project proponent, whether by submitting written comments or attending a public hearing.

A black and white photograph of an elderly woman standing in a dusty, open area. She is wearing a dark, patterned dress and a headscarf. She is holding a white plastic bag in her right hand. In the background, there are large, dark pipes laid out on the ground, and some industrial structures are visible in the distance.

Conclusion

The legal and procedural background to EIA is complex, but members of the public and CSO representatives can be surprisingly effective in participating in the process if they have a basic understanding of the process and apply their local knowledge effectively.

As the quality of EIA documents is often poor and/or developers do not really care about the quality of the EIA process, then asking critical questions or challenging the process of EIA may bring the attention of the authorities to such shortcomings.

EIA can be made into a useful tool to defend the quality of the environment, but only if the public and CSOs are able to engage with the process effectively.

A woman from Poylu Stansiyasi, Azerbaijan, had her lands confiscated to make way for the BTC pipeline, seen in the background - CEE Bankwatch Network



ANNEX | THE EU EIA DIRECTIVE

The EIA Directive [85/337/EEC] is in force since 1985 and applies to a wide range of defined public and private projects, which are defined in Annexes I and II:

Mandatory EIA: all projects listed in Annex I are considered as having significant effects on the environment and require an EIA - e.g. nuclear power plants long-distance railway lines, motorways and express roads, airports with a basic runway length ≥ 2100 m, installations for the disposal of hazardous waste, installations for the disposal of non-hazardous waste > 100 tonnes/day, waste water treatment plants > 150.000 p.e, Dams designed for the holding back or permanent storage of water, where a new or additional amount of water held back or stored exceeds 10 million cubic metres, extraction of petroleum and natural gas for commercial where the amount extracted exceeds 500 tonnes/day in the case of petroleum and 500 000 cubic metres/day in the case of gas.

Discretion of Member States [screening]: for projects listed in Annex II, the national authorities have to decide whether an EIA is needed. This is done by the "screening procedure", which determines the effects of projects on the basis of thresholds/criteria or a case by case examination. However, the national authorities must take into account the criteria laid down in Annex III. The projects listed in Annex II are in general those not included in Annex I [railways, roads waste disposal installations, waste water treatment plants], but also other types such as urban development projects, flood-relief works, changes of Annex I and II existing projects...].

The EIA Directive of 1985 has been amended three times, in 1997, in 2003 and in 2009: Directive 97/11/EC brought the Directive in

line with the UN ECE Espoo Convention on EIA in a Transboundary Context. The Directive of 1997 widened the scope of the EIA Directive by increasing the types of projects covered, and the number of projects requiring mandatory environmental impact assessment [Annex I]. It also provided for new screening arrangements, including new screening criteria [at Annex III] for Annex II projects, and established minimum information requirements.

Directive 2003/35/EC was seeking to align the provisions on public participation with the Aarhus Convention on public participation in decision-making and access to justice in environmental matters.

Directive 2009/31/EC amended the Annexes I and II of the EIA Directive, by adding projects related to the transport, capture and storage of carbon dioxide [CO₂].

The initial Directive of 1985 and its three amendments have been codified by DIRECTIVE 2011/92/EU of 13 December 2011. Directive 2011/92/EU has been amended in 2014 by DIRECTIVE 2014/52/EU [for detailed information please refer to Review of the EIA Directive] The EIA procedure can be summarized as follows: the developer may request the competent authority to say what should be covered by the EIA information to be provided by the developer [scoping stage]; the developer must provide information on the environmental impact [EIA report – Annex IV]; the environmental authorities and the public (and affected Member States) must be informed and consulted; the competent authority decides, taken into consideration the results of consultations. The public is informed of the decision afterwards and can challenge the decision before the courts.

²⁰ <http://ec.europa.eu/environment/eia/eia-legalcontext.htm>



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