

PUBLIC PARTICIPATION:
BUT FOR WHAT PURPOSE?

A Critical Look at Citizen Involvement
in the
Allain Duhangan Environmental Impact Assessment

or

What happens to the voice of the *local* in the age of *global*?

Terri Martin
Communications 7170
April 28, 2005

INTRODUCTION

How we decide and *who* gets to decide often determines *what* we decide.”

This statement introduces a report on environmental governance titled “Decisions for the Earth: Balance, Voice and Power” that was recently released by the United Nations Development Programme, the United Nations Environment Programme, the World Bank and the World Resources Institute.¹ The report argues that our environmental future depends on “good governance,” and that good governance rests upon the meaningful involvement of people - including those people affected locally by environmental decisions - in environmental decision making processes.

While deceptively simple, the statement succinctly sums up what meaningful public participation is all about - citizen involvement in *how* decisions are made as well as *what* decisions are made. It also speaks to the heart of why citizen participation is so important - *who* decides usually determines *what* is decided.

Public participation has always played a crucial role in giving locally affected people a voice in environmental decisions, but as the U.N. sponsored report acknowledges, the forces of globalization have made that role even more important.² The embrace of neoliberalism and the explosive growth of international investment in the last two decades has accelerated development activity around the world. In addition, the trend towards privatization - compelled in many places by the structural adjustment policies of the International Monetary Fund and World Bank - has dramatically increased the power of the private sector to shape economic and environmental decisions. In the last ten years, for example, many governments have transferred development and management of basic utilities such as electric power, wastewater treatment and drinking water supply to the private sector.³ And in most places, such privatization has occurred absent the kind

¹ United Nations Development Programme, United Nations Environment Programme, World Bank, and World Resources Institute, *World Resources, 2002-2004: Decisions for the Earth: Balance, Voice and Power* (Washington D.C.: World Resources Institute, 2003) (hereinafter *World Resources, 2002-2004*).

² *World Resources, 2002-2004, supra* note 1.

³ By 1998, some 40 percent of developing countries had allowed the entry of private power producers into their electric utility systems by 1998. C. P. Bacon, “A Scorecard for Energy

of public oversight programs needed to ensure that subsequent development decisions adequately consider social and environmental impacts. Finally, in the name of alleviating poverty and improving people's lives, the World Bank and its private sector arm, the International Finance Corporation, have further encouraged many development projects around the world.

In this climate, it is worth asking: What happens to the voice of the local in this age of global development? Do provisions for public participation adequately ensure the consideration of local concerns and the involvement of local people in development decisions? Especially in situations where investors, promoters and managers may reside in countries on other side of the globe, is public participation truly participatory for local people?

A growing body of literature from academic scholars and activist observers concludes that the answers to these questions are mixed at best. In fact, critiques repeatedly indicate that despite the increasingly widespread adoption of provisions for public participation in environmental decision, public involvement practices are often experienced by citizens as serving more to exclude them from decision making than to include them.

This paper seeks to contribute to an understanding of how and why this is so by presenting a case study of the environmental decision making process for a project in northern India. Specifically, it analyzes citizen involvement in the environmental impact assessment process for the Allain Duhangan hydroelectric project in India's northern state of Himachal Pradesh. The Allain Duhangan project provides a useful case study because it was subjected to environmental assessment twice – first under the oversight of the Government of India, and then, when international financing was sought for the project, under the oversight of the International Finance Corporation, the private sector arm of the World Bank.

This paper includes a description of the relevant public participation requirements under which the environmental impact assessment (EIA) processes took place, and reflects on whether, or to what extent, these requirements were honored. The primary focus, however, is on communication. This paper describes four communication-related practices and analyzes how – deliberately or inadvertently – they served to curtail the consideration of citizen concerns and to

Reform in Developing Countries," *Public Policy for the Private Sector*, (1999), quoted in *World Resources, 2002-2004* *pra* note 1.

limit public input into the decision making process. These practices include: control of information; definitional hegemony; privileging scientific/technical discourse; and use of one-way modes of communication.

A critical perspective informs this analysis. Adopting a Foucaultian lens, discourses are viewed as “domains within which power and authority are conferred on some and denied to others.”⁴

The four communication-related practices discussed are viewed as “strategic organizational discourses.” This means that they are seen as empowering certain players while constraining others, and as allowing certain positions to emerge as sound and rational while dismissing others fear-based and invalid.⁵

The paper is organized in three sections. Section I provides contextual background. It describes rationales for public participation in environmental decision making; summarizes how environmental impact assessment procedures have expanded requirements for citizen involvement around the world; and highlights some contemporary complaints about public participation practices. Section II presents a detailed description of public participation in the Allain Duhangan hydroelectric project environmental impact assessment process. This section also reviews the adequacy of public participation against the rationales identified in Section I. Section III examines *how* opportunities for meaningful public involvement in the Allain Duhangan decision making process were curtailed by four communication-based practices. Specifically, this section describes how meaningful public participation was compromised because: 1) the public lacked adequate access to information, undermining citizens’ ability to participate in the decision making process; (2) the project sponsor and reviewing agencies maintained control over defining the focus and scope of issues addressed in the EIA, thus predetermining to a large extent the outcome of EIA decisions; (3) rational/scientific discourse was privileged, disregarding local knowledge and foreclosing consideration of certain concerns; (4) the sponsoring agencies relied primarily on “consultative” forms of public involvement which facilitate one way flows of information and

⁴ M.J. Shapiro, *Language and Political Understanding* (New Haven: Yale University Press, 1981): 140, quoted in Hamid Mowlana, *Global Communication in Transition: The End of Diversity?* (Thousand Oaks, CA: Sage Publications, 1996), 110.

⁵ Shiv Ganesh, “Organizational Narcissism: Technology, Legitimacy and Identity in an Indian NGO,” *Management Communication Quarterly*, Vol. 16, No. 4 (May 2003): 561.

values between the stakeholders and decision makers, rather than “collaborative” or “deliberative” forms that encourage more interactive exchange.

SECTION I

PUBLIC PARTICIPATION IN ENVIRONMENTAL DECISION MAKING: RATIONALES, MILESTONES, SHORTCOMINGS

Rationales

The literature on public participation suggests three basic rationales for involving citizens in environmental decision making: democracy demands it; decisions are improved; and the legitimacy of the decision making process, and thus the decision, is enhanced. This section briefly discusses these rationales, and then summarizes how the adoption of environmental impact assessment procedures has expanded the commitment to citizen involvement around the world. Finally, it highlights some of the major complaints identified in contemporary critiques of public participation for environmental decision making.

Why involve the public in decisions that affect the environment? First of all, public participation is seen as an essential aspect of democratic governance. As Shepherd and Bowler write, democratic governments involve citizens in environmental decision making because the ideals of democracy demand it. Public participation, they assert, “is regarded as proper, fair conduct of democratic governance in public decision-making activities.”⁶ Similarly, Peterson notes that public participation “is considered a critical component of democratic society, ‘an unassailable good’.”⁷

Underlying this assumed mandate of democracy is the ideal of citizen representation in decision making. Efforts to involve citizens in environmental decision making are seen as implementing a

⁶ Anne Shepherd and Christi Bowler, “Beyond the Requirements: Improving Public Participation in EIA,” *Journal of Environmental Planning and Management*, 40(6), (1997): 725.

⁷ Tarla Rai Peterson and Rebecca Royer Franks, “Environmental Conflict Communication,” in *The Sage Handbook of Conflict Communication: Integrating Theory, Research, and Practice*, ed. JG Oetzel and S. Ting-Toomey (Thousand Oaks, CA: Sage, 2005): 7, quoting T.A Steelman and W. Ascher, “Public Involvement Methods in Natural Resource Policy Making: Advantages, Disadvantages and Trade-offs,” *Policy Sciences*, 30 (1999): 73.

fundamental tenant of democracy – that people should have the opportunity to participate in decisions that affect them, and that decision makers should be accountable to those affected by decisions. As Shepherd and Bowler note, public participation is based on “the democratic ideal of citizen representation in decision making,” and public participation requirements “seek to maintain this democratic ethic: government decision making is opened up to the public; democratic practice is revitalized by citizen participation; and citizen involvement helps to guard the public interest.”⁸

Also inherent in the democratic ideal is the notion that no single party should have undue influence over the decision making process. Public participation is also often seen as a tool to implement this democratic objective. By providing all stakeholders a voice in the decision making process, citizen involvement serves to offset the influence of powerful special interests. The “Decisions for the Earth” report, for example, argues that environmental degradation and social inequity result when citizens are not adequately involved in environmental decision making processes. The authors write

Degraded forests and dying coral reefs often reflect a flawed environmental decision-making process. Illegal logging thrives where forest managers have little accountability. Mining decisions taken in secret often attach too little value to protecting local water supplies or crucial habitat. Plans to exploit any natural resource prepared without input or review by local inhabitants and other affected groups all too often enrich a few but dispossess the larger community and disrupt the ecosystem.⁹

The second rationale widely cited in the literature for involving citizens in environmental decision making is that it improves decisions. The basic notion is that decisions are enhanced when a diversity of viewpoints, values and interests are given weight and taken into consideration. One argument is that the consideration of diverse perspectives can help ensure that important sources

⁸ Shepherd and Bowler, 728, *supra* note 6 referencing G.L. Efram and E. Lucchesi, “Citizen Participation,” *The Practice of Local Government Planning* (Washington D.C.: International City Management Association, 1979) F. So (Ed.)

⁹ *World Resources 2002-2004*,, vii, *supra* note 1.

of information or expertise – such as “local knowledge” sources – are not overlooked, and that dominant systems of knowing – such as “scientific expertise” – are subject to critique. As Shepherd and Bowler write, “The final decision ‘is better’ when local knowledge and values are included and when expert knowledge is publicly examined.”¹⁰ Another argument is that the consideration of diverse perspectives is the best way to reach decisions that reflect “balanced” trade-offs between competing interests. Suskind and Cruikshank maintain, for example, that decision making can be improved by providing opportunities for citizens to argue publicly about different goals and objectives. Such discussions, they assert, can play an important role in highlighting the trade-offs that must be addressed in reaching decisions that will be acceptable to the public.”¹¹ Similarly, the international institutions that published the report, “Decisions for the Earth,” argue that public participation is an important tool for determining how such trade-offs should be made. They write

[A] forest can be managed to maximize timber and pulp production through intensive harvesting, but only by trading off some of its potential to support biodiversity, agroforestry, or nature-based tourism. Public participation – at the appropriate level – provides the best means to negotiate such trade-offs equitably and to make sure the goals that drive the day-to-day actions of natural resource agencies reflect the priorities of the community and stakeholders.”¹²

Public participation is also seen as improving decisions because citizen involvement can help facilitate development decisions that are “sustainable,” a much touted goal around the world. Peterson, for example, argues that because local citizens experience the resulting impacts and

¹⁰ Shepherd and Bowler, 725, *supra* note 6, referencing R. Parenteau, *Public Participation in Environmental Decision-Making* (Ottawa, Canada, Minister of Supply and Services, 1988), and T. Webler, H. Kastenholz and O. Renn, “Public Participation in Impact Assessment: A Social Learning Perspective,” *Environmental Impact Assessment Review*, 15 (1995): 443-463.

¹¹ Shepherd and Bowler, 729, *supra* note 6, referencing L. Suskind and J. Cruikshank, *Breaking the Impasse: Consensual Approaches to Resolving Public Disputes* (New York: Basic Books, 1987).

¹² *World Resources 2002-2004*, 217, *supra* note 1.

benefits of environmental decisions “their participation in determining sustainable development policy is essential to its success.” She suggests that the “contradictory results of much development assistance” is due, at least in part, to the failure to involve local residents in its design.¹³ Similarly, the International Association of Public Participation (IAP2) underscores the need for public involvement in determining whether development projects are sustainable. They write that “Public participation assists decision makers in establishing the point of sustainability for each project by contributing essential knowledge and wisdom to project planning and design, and by clarifying the degree to which stakeholders are willing to accept or live with the trade-offs.”¹⁴ Finally, the World Bank, in a 1999 update on public consultation, asserted that “Experience has shown a strong link between project sustainability and effective public consultation.”¹⁵ In the “Decisions for the Earth” report, the Bank joined with the other international authors to stress that public participation is a critical element in the kind of “good governance” needed to make decisions that are environmentally sustainable. They write

If we do not address our governance failures – from corrupt or inept agencies to decision making that doesn’t reflect the needs of the people or the complex nature of ecosystems – our attempts to manage the environment will continue to be ineffective and unfair, with little chance of finding a path toward sustainability.”¹⁶

The third rationale frequently cited for public participation in environmental decision making is that it helps to build public legitimacy for a decision. Peterson notes that there is “expanded awareness that environmental policy cannot achieve legitimacy without broad public

¹³ Tarla Rai Peterson, *Sharing the Earth: The Rhetoric of Sustainable Development* (Columbia, South Carolina: 1997), 117.

¹⁴ International Association for Public Participation, “Public Participation: Critical for Sustainable Development,” available at www.iap2.org

¹⁵ World Bank, “Public Consultation in the EA Process: A Strategic Approach,” World Bank Update, May 1999, No.26

¹⁶ *World Resources, 2002-2004*, 2, *supra* note 1.

involvement.”¹⁷ Similarly, Portnoy asserts that public participation is not only desirable but necessary, since “the only legitimate answers are those derived through a process that incorporates the public will.”¹⁸ And drawing on their first hand experience in facilitating citizen involvement processes, Daniels and Walker argue that two criteria define the social legitimacy of environmental policy. First, decisions must be made rationally and be recognized as technically sound. And second, the “people whose lives may be affected by a policy process should have a voice in that process.”¹⁹

Public participation is seen as enhancing legitimacy by fostering public trust – or even a sense of ownership – in the decision making process. According to Shepherd and Bowler, trust is a matter of public perception, and is best fostered through meaningful citizen involvement. In their study of the US Army’s public consultation process for a proposal to incinerate chemical weapons, Shepherd and Bowler observe how public resistance to the proposal intensified when citizens felt excluded from helping decide *how* the weapons should be disposed of. Noting that citizens were less willing to accept the risk involved because they were not involved in the decision making process, they conclude that “what is suitable and acceptable to a community depends on public perception, not just scientific studies.”²⁰ Similarly, Beierle argues that involving and empowering the public in decision making is one of the most effective ways to gain public trust. “Indeed, the literature on procedural justice suggests that fair processes are likely to

¹⁷ Peterson and Franks, 54, *supra* note 7.

¹⁸ K.E. Portnoy, “Public Environmental Policy Decision Making: Citizen Roles,” in *Environmental Decision Making: A Multidisciplinary Perspective*, eds. R.A Chechile & S. Carlisle (New York: Van Nostrand Reinhold, 1991), quoted in Shepherd and Bowler, 728, *supra* note 6.

¹⁹ Portnoy, 137, *supra* note 18 quoted in Greg Walker and Steven Daniels, “Dialogue and Deliberation in Environmental Conflict,” in *The Environmental Communication Yearbook, Volume 1*, ed. Susan Senecah (Mahwah, NJ: Lawrence Erlbaum, 2004), 137.

²⁰ Shepherd and Bowler, 732, *supra* note 6, referencing L.S. Bacow & M. Wheeler, *Environmental Dispute Resolution*, (New York: Plenum Press, 1984), and W. Leiss & C. Chociolko, *Risk and Responsibility* (Montreal/Kingston: McGill-Queen’s University Press, 1994).

impact on the level of participant satisfaction than any substantive decisions made.”²¹

Public participation is also seen as building legitimacy by reducing conflict among the various stakeholders affected by a decision. Beierle and Cayford cite their analysis of 200 cases of public participation in environmental decisions in the U.S. In those cases where the government incorporated public input, they say, there was less conflict among competing interests as a result.²² Legitimacy is important to decision makers, as well as to proponents of environmental projects, because it reduces the risk of public challenge. The International Association of Public Participation asserts, for example, that “[i]nternationally, business, industry, governmental and other institutions have learned that top-down decisions, while made quickly, often produce failure or costly delays.”²³ Similarly, the World Bank claims that public consultation can result in “fewer conflicts and delays” which “translate into improved profitability for investors.”²⁴ Shepherd and Bowler write that if citizens are excluded from environmental decision making processes, they “may continue to choose indirect means of involvement, such as litigation, lobbying or direct action.”²⁵

Milestones

Some scholars claim that the call for greater degrees of public participation in environmental decision making emerged in response to the increasing centralization and growth of bureaucracy,

²¹ Thomas Beierle, “Public Participation in Environmental Decisions: An Evaluation Framework Using Social Goals,” Discussion Paper 99-06 (Washington D.C.: Resources for the Future, 1988), 12, referencing Rick L. Lawrence, Steven E. Daniels, and George H. Stankey, “Procedural Justice and Public Involvement in Natural Resource Decision Making,” *Society & Natural Resources*, 10, (1997) 578, and W. Chan Kim and Renee Mauborgne, “Fair Process: Managing in the Knowledge Economy,” *Harvard Business Review*, (July-August 1997).

²² T.C. Beierle and J. Cayford, *Democracy in Practice: Public Participation in Environmental Decisions* (Washington D.C.: Resources for the Future, 2002), quoted in *World Resources* 2004, 59, *supra* note 1.

²³ International Association for Public Participation, *supra* note 14.

²⁴ World Bank, “Public Consultation in the EA Process: A Strategic Approach,” World Bank Update, May 1999, No.26

²⁵ Shepherd and Bowler, 732, *supra* note 6.

which extended the influence of public institutions in people's lives.²⁶ Jurgen Habermas, for example, viewed the environmental movement "as a response to the increasing tendency of institutional systems to take over decisions traditionally dealt with through rational debate."²⁷ Others argue that the emergence of "global and intangible risks" led to the demystification of science and technology, – areas which had been largely "excluded from the public debate" – evoking citizen demands to have a say in decisions they previously entrusted to "experts."²⁸ Weston writes, for example, that "Today we no longer accept, as a society, the widely held view in the 50s and 60s that science is neutral and that technology can overcome all problems." This has led to a situation, he says, where "environmental decision making has become dominated by perceptions of risk" with the result that citizens want a role in defining the risks.²⁹ Yosie and Herbst identify a host of factors fueling citizen demands for increased public participation in environmental decisions. Some of these include: increased public concern about the environment, growing distrust in the government's ability to effectively manage natural resources, past failures of government organizations to consider the values and opinions of shareholders and greater public access to information about environmental issues.³⁰ Whatever its roots, the call for increasing public involvement in environmental decision making has led to widespread adoption of public participation measures around the world. A major milestone was the passage of the National Environmental Policy Act (NEPA) in the United States. Enacted in 1969, NEPA emerged out of a growing concern for environmental quality in the U.S. as well as in response to increasing demands for wider public involvement in decision making in

²⁶ Juan Palerm, "Public Participation in Environmental Decision Making: Examining the Aarhus Convention," *Journal of Environmental Assessment Policy and Management*, Vol.1, No.2 (1999)

²⁷ Palerm, 231, *supra* note 26.

²⁸ Palerm, 231, *supra* note 26, referencing U. Beck, *Risk Society: Towards a New Modernity*, (London: Sage, 1992).

²⁹ Joe Weston, "Is there a Future for EIA? Response to Benson."

³⁰ T.F. Yosie and T.D. Herbst, *Using Stakeholder Processes in Environmental Decisionmaking: An Evaluation of Lessons Learned, Key Issues, and Future Challenges* (Washington D.C.: Rudder Finn Washington and ICF Incorporated, 1998) referenced in Peterson and Franks, 8, *supra* note 7.

general.³¹

NEPA requires the preparation of an environmental impact statement (EIS) for any federal action that could have a significant impact on the environment. Agencies are required to notify the public about the proposed action, and seek public input (1) at “scoping,” before the EIS is prepared, which defines the issues and concerns that should be addressed and (2) on the draft EIS after it has been made available to the public. Furthermore, NEPA requires agencies to formally consider and respond to each of the comments offered during consultation periods. Agencies retain, however, the right and responsibility to make the final decision regardless of public opinion.

NEPA solidly established, and greatly expanded, the role of public participation in environmental decision making in the United States. But its influence also extended beyond the country of its origin. With the passage of NEPA, public participation was increasingly recognized as a key element in environmental decision making around the world.³² Both industrialized and developing nations have used the law as a model for developing requirements for environmental impact assessment and public participation.³³ According to Salzman and Thompson, the progeny of NEPA now exist in over 130 of the world’s nations.³⁴ And according to the “Decisions for the Earth” report, the use of environmental assessment procedures “has dramatically increased public access to decision making that affects the environment.”³⁵ As Cox writes, “The requirements of NEPA to solicit the public’s involvement before a proposed action may be the most important development in the last half century for democratizing the process of environmental decision

³¹ Shepherd and Bowler, *supra* note 6, and Palerm, *supra* note 26.

³² Palerm, *supra* note 26.

³³ Peterson and Franks, 54, *supra* note 7.

³⁴ J. Salzman and B.H. Thompson, *Environmental Law and Policy* (New York: Foundation Press, 2003), 275, in Peterson and Franks, 5, *supra* note 7.

³⁵ *World Resources 2002-2004*, 59, *supra* note 1.

making.”³⁶

Another important milestone for public participation in environmental decision making was the World Bank’s adoption in 1991 of a formal policy requiring environmental assessment procedures.³⁷ Formed in response to world wide pressure from environmental and human rights groups for increased accountability and transparency, the policy requires borrowers to consult with project affected groups and local non-government organizations, and to take their views about the proposed project into account. To facilitate meaningful consultation, the policy requires the borrower to provide information in a timely manner prior to consultation in a form and language that is understandable to the groups being consulted.³⁸ The International Finance Corporation, the private sector arm of the World Bank, adopted similar policies in 1998. In 1992, the adoption of the Rio Declaration at the U.N. Conference on Environment and Development by 178 nations marked another watershed for public participation in environmental decision making. Principle 10 of the Declaration commits national governments to an inclusive process of public participation in environmental decision making. More specifically, it asserts that access to information, to the decision-making process, and to a system of justice are all essential components of public participation.³⁹ After the Rio Conference, the importance of public participation was recognized in almost any environmental policy document adopted by the U.N..⁴⁰ In 1998, the European Community further underscored its commitment to the public participation

³⁶ Robert Cox, “Chapter 3, Public Participation in Environmental Decisions,” Unpublished, 2005, 40.

³⁷ The World Bank initially adopted mandatory environmental procedures in the 1980s, but revised these to create its formal Operational Directive (OD) 4.01 on Environmental Assessment in 1991. OD 4.01 was revised in 1999 to include the mandatory Operational Policy (OP) and Bank Procedure (BP) and the discretionary Good Practices (GP). See Erin MacDonald, “Playing by the Rules: The World Bank’s Failure to Adhere to Policy in the Funding of Large-Scale Hydropower Projects,” *Environmental Law*, Vol.31:981 (2001).

³⁸ Erin MacDonald, “Playing by the Rules: The World Bank’s Failure to Adhere to Policy in the Funding of Large-Scale Hydropower Projects,” *Environmental Law*, Vol.31:981 (2001).

³⁹ *World Resources 2002-2004*, *supra* note 1.

⁴⁰ Palerm, *supra* note 26.

principles stated in the Rio Declaration by passing the Aarhus Convention at the fourth Ministerial Conference in Denmark. Signed by 36 countries, the Aarhus Convention commits its signatories to three principles: access to environmental information, public participation in environmental decision making and access to justice.⁴¹

More recently in 2001, the World Commission on Dams recognized the need and value of widespread citizen involvement in environmental decision making by proposing a “rights and risks” approach to environmental decision making. Under this approach, anyone holding a right or facing a risk relevant to a proposed action must have the opportunity to participate in the decision making process.⁴² The recommendation is particularly noteworthy because the Commission was comprised of a diverse mix of dam-building industrialists and anti-dam citizen activists. Their mutual endorsement of the need for meaningful citizen participation in environmental decision making reflects the widespread recognition that public participation must be a key element in environmental decision making.

Complaints

Despite the widely acclaimed merits of public participation in environmental decision making, and the adoption of measures requiring public consultation by many countries, citizen dissatisfaction with public involvement efforts are common. Scholars and activists around the world repeatedly complain that public participation processes serve more as pro forma exercises to defend a decision that has already been made than as meaningful efforts to involve the public in the decision making process.

Critiques of public participation processes associated with the environmental impact assessment process in the U.S., for example, commonly note that public involvement is too limited in time and scale and take place too late to have any significant influence over the decision making process. With regard to time, Shepherd and Bowler note that public participation often involves only a discrete event or series of events, rather than an ongoing exchange over time, curtailing citizens’ opportunity to influence the decision making process. Similarly, in terms of scale, they note that public participation commonly occurs at the local project level, rather than at the

⁴¹ Palerm, *supra* note 26.

⁴² *World Resources 2002-2004*, *supra* note 1.

regional program or policy level, diminishing the ability to effectively consider cumulative impacts or broader community concerns, such as sustainable development.⁴³

That public participation occurs too late in the process is perhaps the most common complaint. ✓
The initial stage of “scoping” in the NEPA process is the point where the relevant agency determines what issues and alternatives will be addressed, and as Peterson notes, many members of the public argue that by the conclusion of this phase agencies already have made their decision regarding outcomes. Yet, Peterson says, public involvement “often begins with an opportunity to comment on the EIS.”⁴⁴

Furthermore, as Shepherd and Bowler point out, when public participation finally does take place, the project proponent (and at times the reviewing agency) often has already conceived of, and become attached to, a particular project. “Public participation may become public relations,” they write, “to defend a decision, or to placate the public by soliciting opinions that are subsequently dismissed.”⁴⁵

The complaints heard in these U.S. based critiques are echoed in reviews of environmental impact assessment processes elsewhere in the world. Polling from Gallup International shows that more than 70 percent of people worldwide would like to invest time and effort participating in decisions that affect their environment, but only about 40 percent are satisfied with the efforts made by their governments to provide information or engage them in decision-making.⁴⁶

The results of a pilot assessment completed in 2001-2002 by the Access Initiative⁴⁷ – a global coalition of 25 civil society groups who undertook a study to measure the public’s ability to participate in decisions about the environment – suggest some reasons for these poll results. The Access Initiative studied the laws and public experiences associated with environmental impact

⁴³ Shepherd and Bowler, *supra* note 6.

⁴⁴ Peterson and Franks, 6, *supra* note 7.

⁴⁵ Shepherd and Bowler, 727, *supra* note 6.

⁴⁶ *World Resources 2002-2003*, 44, *supra* note 1.

⁴⁷ The following discussion of the Access Initiative relies upon information in *World Resources 2002-2004*, 47-59, *supra* note 1.

assessment in nine countries representing a variety of cultural and political traditions, as well as income levels and development paths.⁴⁸ Their study revealed that the adoption of environmental impact assessment procedures in most countries in the past 20 years has dramatically increased the potential for public participation in decisions that affect the environment. But it also found that the preparation of an EIA often does not ensure meaningful opportunities for citizen involvement in the decision process.

More specifically, the Access Initiative found that in practice, the public isn't consulted early enough to significantly influence the decision making process. According to the report, public participation was weak at both the early stages of decision making, when projects or policies are proposed and the issues to be assessed are defined, and at the end, when the impacts of a decision are monitored and its acceptability reviewed. Most public consultation is clustered in the middle stages of decision making after a draft plan or project has already been defined, and after proponents or reviewing agencies have already become attached to a certain solution or decision. As the "Decision for the Earth" report concludes, "This reduces 'participation' to refining already-defined policies, projects and solutions."⁴⁹

Moreover, the Access Initiative found that in the majority of cases, "the onus of initiating participation in a decision-making process is on the public."⁵⁰ In all the countries surveyed, governments were not proactive in seeking public input. Rather citizens had to make formal demands or otherwise insert themselves into the process to compel consultation. Finally, the pilot assessment found that even when citizens were able to participate in the assessment process, there were very few provisions for incorporating their input into the final EIA report.

While the Access Initiative reviewed government activities, its findings largely echoed assertions made a few years earlier by the World Commission on Dams in regard to multilateral banks, in particular the World Bank. In its 2000 report on dams and development, the Commission found that among the multilateral banks there is a "generalized failure to include and recognize people

⁴⁸ The countries were Chile, Hungary, India, Indonesia, Mexico, South Africa, Thailand, Uganda, and the United States.

⁴⁹ *World Resources 2002-2004*, 58, *supra* note 1.

⁵⁰ *World Resources 2002-2004*, 58, *supra* note 1.

and empower them to participate in decision making.”⁵¹ Furthermore, they concluded that despite World Bank policy requiring consultation with the affected public early in the environmental assessment process. “the scope and influence of a public consultation is severely restricted because the public consultation process often occurs late in the planning process, after major decisions have been made.”⁵²

SECTION II

THE ALLAIN DUHANGAN HYDROELECTRIC PROJECT

This section examines public consultation process for Allain Duhangan hydroelectric project environmental impact assessment in northern India. Consistent with the underlying concern of this paper – what happens to the voice of the local in the age of global development – the purpose of the review is to assess the adequacy of the public consultation process, especially as it involves, or fails to involve, local people.

The Allain Duhangan project not only provides a rich case study – as EIAs were prepared on the project under the oversight of the Government of India as well as the International Finance Corporation – it also provides a case study highly relevant to potential future hydropower development in northern India. This is because the Allain Duhangan is only one of many sites considered desirable for “run-of-the-river” hydroelectric projects in the region. The state of Himachal Pradesh, where the Allain Duhangan is located, has enormous hydropower potential⁵³

⁵¹ World Commission on Dams, *Dams and Development: A New Framework for Decision-Making* (2000), 191, quoted in MacDonald, 1037, footnote 222, *supra* note 38.

⁵² MacDonald, *supra* note 38.

⁵³ *Allain Duhangan Hydroelectric Project Environmental and Social Impact Assessment (ESIA), Volume 1 (Revised), December 2003* (New Delhi: Environmental Resources Management), 246. This document also states that 69.4% of the hydropower potential for the state of Himachal Pradesh is still lying untapped (p.246). And, according to a 1998 article in *The Tribune*, Chandigarh, India, p.7, (“New HP Power Policy on Cards”), there are 319 small-scale hydro sites proposed for development in Himachal Pradesh. (See A. John Sinclair, “Public Involvement in Hydro Development in Kullu District, Himachal Pradesh, India,” section 3.1.1)

and the Himachal government “has taken to selective privatisation for its speedy exploitation.”⁵⁴ Furthermore, India is keen to produce more peaking power for its northern grid, and the tremendous controversy over large dams has shifted some of the focus of energy development to smaller projects. A critical analysis of public participation for the Allain Duhangan project could help enhance citizen involvement practices for future projects and potentially ameliorate conflict. This section first describes the Allain Duhangan project, and by way of introducing the project’s benefits and impacts, explains some of the reasons why local villagers support or oppose the project. It then takes a close up, detailed look at the public consultation process associated with the preparation of the project’s two EIAs. The attention to detail is deliberate – in fact, essential. If one simply chronicles the “disclosure events” for the Allain Duhangan EIA, as is done in the Addendum to the project’s 2003 EIA, the public consultation process appears relatively extensive and inclusive. However, if one examines these events step-by-step with some understanding of the broader context in which they occurred, a different and more disturbing picture emerges. In the course of this description, the public consultation requirements for EIA adopted by the International Finance Corporation, as well as the Government of India, are briefly summarized and compliance with those requirements discussed. Finally, relying on the rationales for public participation discussed in Section I as a contextual framework, this section considers whether the public consultation process for the Allain Duhangan: provided meaningful opportunities for citizens to participate in the decision making process; improved the decision; and fostered legitimacy.

The Allain Duhangan project⁵⁵

The Allain Duhangan project is set in the rugged terrain of the Himalayas, in the Kullu District of the northern Indian state of Himachal Pradesh. The area is characterized by steep mountainous

⁵⁴ “Irrigation and Power,” <http://www.merahimachal.com/inp.html>. Site designed, developed and maintained by: Gaurav Sharma and Ishwinder Singh Thukral, Chandigarh, India.

⁵⁵ The following description of the Allain Duhangan hydroelectric project relies on information provided in *Allain Duhangan Hydroelectric Project Environmental and Social Impact Assessment (ESIA), December 2003: Non-Technical Executive Summary (Revised); Draft Final Report, Volume 1 (Revised); Draft Final Report Volume II (Revised);* and the *Addendum to Environmental and Social Impact Assessment Report, September 2004, Draft Final Report* (New Delhi: Environmental Resources Management) Available at www.IFC.org/projects

slopes rising at gradients of 20 to 40 degrees from narrow valley floors. The elevation varies from about 2000 meters in the valleys to about 4,500 meters on the surrounding ridges, with isolated peaks soaring to 6,500 meters in the region's upper watershed. The area enjoys cool snowy winters and relatively warm, wet monsoonal summers, with snow falling year round above 3000 meters.

The project involves the diversion of the Allain and Duhangan streams – perennial tributaries to the Beas River, a major water course in Himachal Pradesh – through two tunnels to a common pooling point. The tunnels are, respectively, 3,500 meters and 4,400 meters in length, with the Allain tunnel more or less paralleling the course of the stream and the Duhangan tunnel cutting through steep mountainous slopes to the Allain drainage. A ~~pressure shaft~~ 1.75 kilometers long pressure shaft will carry the water to an underground power house. The project is called a “run-of-the-river” hydel project because rather than involving a large dam and submergence area, the project entails two relatively small reservoirs, one at the Allain diversion (14 meters high, approximately 4 ha in size), and one above the pressure shaft (14.5 meters high, about 2.3 ha in size). Including the reservoirs, roads, pipelines, housing and administrative areas, the project would require the disturbance of about 77 ha, of which 36.5 is private. 8.5 is government and 32 is government owned forest.

The project is designed to produce 192 megawatts of “peaking” power for a minimum of four hours a day. Power would be evacuated to India's northern grid by a 185 km transmission line. The precise location of the transmission line has not been identified. The ESIA only included a “reconnaissance study” which suggested a potential route.

The project anticipates the influx of 2000 people (1500 workers and their families) over the 5-6 years of construction. After this, about 100 people would be employed during the project's operation.

The estimated cost of the project is 9.220 million rupees (about \$200 million dollars). The project sponsor at the time the EIA processes were completed was the Rajasthan Spinning and Weaving Mills Limited (RSWML), a flagship company of LNJ Bhilwara Group, a diversified Indian business corporation involved mostly in manufacturing of textiles, graphite electrodes and power generation. Several days after the International Finance Corporation authorized a \$45 million loan

for the project in October 2004, Bhilwara announced a joint venture agreement with Statkraft Norfund Power Investment AS, a Norwegian based company. Norfund, which has hydropower investments in Peru, Chile and Sri Lanka, will hold 49 percent of the joint venture.

The project will require land in four villages: Prini, Aleo and Hamta, located in the Allain drainage; and Jagatsukh, located in the Duhangan drainage. The total population of these villages is about 3000 people, with 2000 residents in Jagatsukh, about 500 in Prini, 300 in Aleo and a lesser number in Hamta. Agriculture is the primary occupation in all the villages, with people growing kharif and rabi on a subsistence basis and tending orchards (apples, peach, apricots, chestnut, almonds, etc) for income. Individual land holdings are generally small in the Kullu District, with the average size only .78 ha. Villagers utilize common lands as well as government owned forests surrounding the villages for grazing, collecting fire wood and medicinal plants. Incomes vary, but a survey of 140 families indicated that 45 percent make less than \$100 month, 20 percent make more than \$300 a month, and the rest fall somewhere in between. A social impact study completed for the Allain Duhangan EIA found that 212 land owners (in 168 families) would lose some or all of their agricultural land to the project.⁵⁶

Potential benefits and impacts

Public sentiments about the Allain Duhangan project vary. Project sponsors argue that the power is needed and that the environmental and social impacts of the project are more acceptable than those of large dams. There is some local support for the project, particularly among land owners in Prini who have been able to negotiate significant financial compensation at nearly three times the historical price for land. Presumably others supporting the project do so because of the opportunity for employment, or other benefits promised in the mitigation plan developed as part of the EIA process. The promised mitigation includes: a Rehabilitation Action Plan that provides for various allowances and assistance for villagers whose land or livelihoods are directly affected; a Community Development Plan (under which the project sponsor would provide up to 500,000 rupees [about \$10,000] for each of 4 villages for villager-identified projects); the construction of a

⁵⁶ *Allain Duhangan Hydroelectric Project, Addendum to Environmental and Social Impact Assessment Report, September 2004, Draft Final Report* (New Delhi: Environmental Resources Management). Available at www.IFC.org/projects

small hospital and school; and electric street lights.⁵⁷

Substantial opposition to the project exists, however, most notably among the residents of Jagatsukh.⁵⁸ The most dominant concern is the affect on irrigation water from diversion of the Duhangan stream. The project sponsor has promised to maintain a minimum instream flow of .150 cubic meters/second. This equals about 10 percent of the stream's *average minimum* flow. (In contrast, the average flow of the Duhangan ranges from 1.38 to 7.31 cubic meters per second.)⁵⁹ But many villagers do not trust that this water will be adequate to meet their needs or that it will be available. Furthermore, many villagers have a strong spiritual association with the Duhangan stream and believe the stream should not be disturbed.

In addition, some villagers are also worried that blasting for the project will disturb the underground aquifers that feed local springs utilized for drinking water, and that the huge pipelines traversing the mountainside will leak. (This happened at a nearby project site.)⁶⁰

Access to pasture land is another issue. The construction of roads serving the project will block traditional routes to pasture land and many villagers claim alternatives are not available.

Furthermore, villagers worry about the impact of dust on the orchards, particularly the apple trees, over 5-6 years of construction.

Villagers in all the towns are concerned about the influx of 1500 workers and their families, and

⁵⁷ *Allain Duhangan Hydroelectric Project. Environmental and Social Management and Monitoring Plan, Draft Final Report Volume II (Revised)*; and the *Addendum to Environmental and Social Impact Assessment Report, September 2004, Draft Final Report* (New Delhi: Environmental Resources Management). Available at www.IFC.org/projects

⁵⁸ This description of concerns relies on: Shekhar Singh, Arvind Kejriwal, Vishaish Uppal, and Sejal Worah, *Allain Duhangan Hydroelectric Project Report of the Public Hearings* (Samya-Centre for Equity Studies, New Delhi, May 2004) as well as the *Allain Duhangan Hydroelectric Project Environmental and Social Impact Assessment (ESIA), Draft Final Report, (Revised), December 2003* (New Delhi: Environmental Resources Management).

⁵⁹ *Allain Duhangan ESIA, Vol 1*, supra note 53.

⁶⁰ Ashish Kothari, Kanchi Kohli and Neema Pathak, "Allain Duhangan Hydro-Electric Project: Report of a pre-public hearing focused group meeting at Jagatsukh village, 1.5.2005" in *Allain Duhangan Hydroelectric Project Report of the Public Hearings* (New Delhi: Samya-Centre for Equity Studies, May 2004).

what that may mean for the security of local women who go into the forest to gather resources and tend cattle. They are also worried about the use of natural resources (firewood, medicinal plants, etc) by the newcomers, and about managing their human waste. Finally, there is widespread skepticism that the project sponsor will fully comply with the promised mitigation and compensation measures.

Public consultation for the 1996 EIA

The Allain Duhangan project was conceived in the early 1990s when the state of Himachal Pradesh allotted eight sites for potential hydropower development. After entering into an agreement with the State of Himachal Pradesh and the state's Electricity Board, a private company, Rajasthan Spinning and Weaving Mills Limited (RSWML), began drilling boreholes to determine the feasibility of the site.⁶¹ In 1996, RSWML published an environmental impact assessment produced by Rail India Technical and Economic Services Ltd. On the basis of this documentation, the project received environmental clearance from the Government of India's Ministry of Environment and Forests (MoEF) in December 2000. Clearance for the diversion of forest lands was issued by the Forest Conservation Division of MoEF in October 2002.^{62 63}

The 1996 EIA is a 100 page long, double spaced document, including the 20 page Executive Summary. It focuses largely on technical issues such as the project components and geologic conditions. The document includes only a minimal discussion of environmental impacts, with 12 pages devoted to "negative impacts" and 10 pages devoted to "positive impacts." The document

⁶¹ Presentation by RSWML representative at May 7, 2003 meeting in Prini, Himachal Pradesh, India on video recording made by Environmental Resources Management.

⁶² *Allain Duhangan ESIA Addendum*, *supra* note 56.

⁶³ In December 2000, RSWML also published a "Summary Report" for a "Diversion of Forest Land and Catchment Area Treatment Plan." This document mostly includes information already available in the 1996 RITES EIA, as well as a description of the afforestation that will be carried out as part of the Catchment Area Treatment Plan and a Cost Estimate. In addition, according to an Addendum to the EIA prepared in 2003, "The Company subsequently updated the RITES EIA in the year 2001 for submission to the Government of India for Techno-economic Clearance of the Project." The author does not have a copy of this document. However, the author can find no evidence, that there was any public consultation on either of these documents, despite the fact that the requirement for public hearing was in place as of 1997.

fails to identify or assess most of the current concerns voiced by villagers, including the impact of stream diversion on water available for irrigation, access to pasture land, security of women, dust, etc.. There is no mention or impact assessment of the proposed 185 kv transmission line.

Furthermore, the social impact assessment is flagrantly incorrect. In contrast to a 2004 social impact assessment that concluded 212 landowners would lose some or all of their agricultural land, the 1996 EIA concludes that the project involves only the “displacement of two huts.”⁶⁴

No public hearing was held on the 1996 EIA. In fact, it appears that local villagers were not consulted during EIA preparation and that the EIA was not provided to them for review.⁶⁵

One could argue that this lack of public consultation for the 1996 EIA was consistent with the minimal public consultation requirements on India’s regulatory books at the time the EIA was published. However, it is clearly not consistent with the more substantive requirements that were adopted and took affect while the project was under government review, a period lasting at least two years before the project received its environmental clearance. Moreover, there is a strong legal basis for concluding that the lack of public consultation on the 1996 EIA was a violation of India’s EIA regulations.⁶⁶

India’s original EIA notification, issued in 1994 – only two years before the 1996 EIA was published – provided for public participation at the discretion of the Impact Assessment Agency, the EIA branch of India’s Ministry of Environment and Forest. The notification only required

⁶⁴ *Environmental Impact Assessment and Catchment Area Treatment Plan for Allain Duhangan Hydroelectric Project in Kullu District Himachal Pradesh*, (New Delhi: Rail India Technical and Economic Services Ltd. (RITES), January 1996).

⁶⁵ Even if a copy was available, it was in English, not Hindi, the local language.

⁶⁶ The High Court of Kerala has since held that when India's EIA regulations were amended to require full opportunity for public hearing before the grant of environmental clearance, projects that had applied for clearance and were under EIA review at the time of the public hearing amendment must go back and conduct the required public hearing, even if clearance had subsequently been granted. Failure to do so is likely to invalidate the clearance. See:

Ravi.S.P. and Chalakudy Puzha Samrakshna Samithy vs. State of Kerala, and Kerala State Electricity Board, et al O.P. No. 3581 of 2001, High Court of Kerala (Decided 17 Oct. 2001).

summaries of an EIA to be made available to the public and then only when access was determined to be “in the public interest.”⁶⁷ In April 1997, however, while the 1996 EIA was still under review, the EIA notification was amended to make public consultation and information disclosure mandatory.⁶⁸ Specifically, the amended rules: require that a public hearing be held with at least 30 days public notice; establish the right of “all persons” (including environmental groups) “likely to be affected” to participate in the hearing; mandate public access to the EIA report prior to the hearing;⁶⁹ and require that recommendations of the Impact Assessment Agency regarding clearance be based, in part, on the “details of the public hearing.”

Public consultation for the 2003-2004 EIA

In 2002, after obtaining environmental and forest clearance, the project sponsor approached the International Finance Corporation (IFC) for financing for the Allain Duhangan project. As described in more detail below, IFC’s involvement led to a second environmental impact assessment process, including the preparation of an updated EIA in 2003.

IFC is the private sector arm of the World Bank. It is also the world’s largest multilateral source of loan and equity financing for private investments in developing countries. Its mission is to promote private sector development in developing countries, with a larger aim toward reducing poverty and improving people’s lives.⁷⁰

IFC adopted policies in 1998 regarding public consultation for EIA. These policies require a project sponsor to consult with project-affected groups and local non-government organizations “as early as possible.” For Category A projects (such as hydroelectric projects), project sponsors

⁶⁷ Ministry of Environment and Forests, India, Notification S.O. 60(E), 27 January 1994, promulgating the original version of India’s EIA regulations.

⁶⁸ Ministry of Environment and Forests, India, Notification I, S.O. 318(E), 10 April 1997.

⁶⁹ The 1997 amendments required only that “an executive summary containing the salient features of the project” be made available. Amendments passed in June 2002 expanded this to include the full EIA. See: Ministry of Environment and Forests, India, Environmental Impact Assessment, Notification S.O. 632 (E) (13 June, 2002), amending Schedule IV, paragraph I.

⁷⁰ Sophie Hsia, “Foreign Direct Investment and the Environment: Are Voluntary Codes of Self-Imposed Standards Enough?”, *9 Environmental Lawyer* 673 (June 2003).

must consult “at least twice: (a) shortly after environmental screening and before the terms of reference for the EA are finalized, and (b) once the draft EA report is prepared.” In addition, the project sponsor is required to provide “relevant materials in a timely manner prior to consultation and in a form and language that are understandable and accessible to the groups being consulted.”⁷¹

IFC policies also address what to do if an EIA has already been prepared *before* IFC involvement in a project, as with the case of the Allain Duhangan project. Specifically, they require IFC to review the EIA “to ensure its consistency” with IFC policy. If deficiencies are identified, the IFC “may, if appropriate, require additional EA work, including public consultation and disclosure.”⁷² According to the IFC, the goal of public consultation and disclosure “. . . is to ensure that adequate and timely information is provided to project affected people and other stakeholders, and that these groups are given sufficient opportunity to voice their opinions and concerns.”⁷³

This brings us to a critical – and controversial – decision point in the Allain Duhangan public consultation process, one that raises serious question about the IFC’s compliance with its own policies. The 1996 EIA process was clearly not consistent with IFC policy requirements. Not only was the 1996 EIA analysis flimsy at best, and flawed in some of its environmental and social impact analysis, but the process lacked any meaningful public consultation and information disclosure. There is substantial argument that to properly comply with its policies, IFC should have required a *fresh* EIA process, with public consultation during scoping (*before* the terms of reference for the EIA are finalized) as well as after the draft EIA was disclosed to the public. Moreover, any public consultation process should have been supported with full disclosure of information in a timely and accessible manner. Instead, however, it appears that the IFC simply requested the project sponsor to *update* the 1996 EIA and to hold a public meeting (*not a public*

⁷¹ *Operational Policies, Environmental Assessment (OP 4.01)*, International Finance Corporation (1998), available at: <http://ifc.org/enviro>

⁷² *OP 4.01, IFC supra* note 71.

⁷³ *Procedure for Environmental and Social Review of Projects, Guidance Note F: Guidance for Preparation of a Public Consultation and Disclosure Plan*, International Finance Corporation (December 1998): 50.

hearing to receive input on the EIA) with the local villagers before IFC Board review of the project.⁷⁴ As the updated 2003 EIA stated

As a condition of IFC's consideration of the Project, the Company was required to undertake further public consultation and disclosure measures, which included an update of the previous Environmental Impact Assessment (EIA) by Rail India Technical and Economic Services (RITES) and a public meeting with the project-affected people (PAP).⁷⁵

Regardless of what was agreed upon between the IFC and project sponsor, however, those are the steps that followed. In March 2003, as part of their initial field survey work, the project sponsor and its consultants held four information gathering discussions with families and other groups in the local villages. Then, on May 7, the project sponsor held a meeting in Prini. *This meeting was not a hearing on the updated 2003 EIA*; in fact it was not yet publicly available. Rather, as the minutes state, the meeting was "only a forum for the PA [project authority] and the villagers to know each other face-to-face and learn of the difficulties that may arise at the local level during project implementation." (Emphasis added.)⁷⁶ In fact, a representative of RSWML opened the meeting by saying that "we are gathered here to discuss *the kind of support we expect* from the local people." (Emphasis added)⁷⁷

A few weeks after the meeting, the project sponsor submitted the updated 2003 EIA to the IFC. And then, in August, after an internal review by the IFC staff, the updated 2003 EIA (Volume I only) was posted on the World Bank InfoShop website. The posting identified October 31, 2003 as the date for IFC Board review. It appears that at this time, the project sponsor and IFC considered the public consultation efforts to date adequate for IFC to proceed with review and

⁷⁴ Records of discussions between the IFC and the project sponsor are not publicly available so the agreement reached between the IFC and the project sponsor is inferred from statements made in the 2003 EIA and from interviews completed by the author.

⁷⁵ *Allain Duhangan ESIA, Addendum. supra* note 56.

⁷⁶ Appendix C: "Minutes of Public Meeting of Allain Duhangan Hydroelectric Project," *Allain Duhangan ESIA, Vol 1 supra* <http://www.IFC.org.projects> note 53.

⁷⁷ Presentation by RSWML representative at May 7, 2003 meeting in Prini, Himachal Pradesh, India on video recording made by Environmental Resources Management.

approval of the project.⁷⁸ While the public was presumably free to submit comments to the IFC, no public hearing was scheduled and there was no indication that there was any plan to do so. Furthermore, no copies of the updated 2003 EIA in the local language (Hindi) had been provided either on the web or at the project site, and there was no indication of any plan to do so.

Obviously, these steps fall far short of the steps normally required under the IFC policy on public consultation. It can only be speculated that IFC allowed its public consultation requirements to be largely disregarded because the Government of India had already issued clearances for the project. But, as the IFC must have known, these clearances were based on an EIA process that lacked any public consultation, that was extremely deficient in its environmental and social impact analysis, and that did not comply with the current requirements of either the Government of India or the IFC.

Not surprisingly, these events evoked citizen outcry. In October, over 60 local villagers sent a letter to the World Bank. They complained that they had never been consulted about the Allain Duhangan project, demanded that the updated 2003 EIA be made available locally in Hindi, and requested a public hearing at least one month thereafter about “the necessity and viability of the project.” The letter says

While some work on the project has already started, the detailed information about the social and environmental impacts of the project is not known in the project affected areas. Neither there has been consultation with the local people about the project, nor have we been involved in the decision making process of the project. We are only told about our land being taken away, where too there has been no proper process. . . . There are thousands of such questions in front of us, due to which we are doubtful about our

⁷⁸ According to IFC procedures, projects are not posted on the World Bank InfoShop until IFC has internally reviewed them and found them in compliance with IFC policy. See “International Finance Corporation Environmental and Social Review Procedure,” under “Board Approval” (p.6) and under “Disclosure of Information” (p.17). Available at <http://ifc.org/IFCExt/enviro.nsf>

future.⁷⁹

Apparently as a result of this letter and other objections filed by non-government organizations (NGOs), the IFC Board review of the 2003 EIA was postponed. And in mid November, an IFC representative traveled to the Kulu District to meet with local citizens. Calling this meeting “inadequate and insufficient”, however, two local NGOs again wrote the World Bank and reiterated their demands – a Hindi translation of the full ESIA, and, at least one month later, a public hearing in the presence of an independent panel. The NGOs wrote

Til this is done, no money should be sanctioned for the project and all the works concerning the project should be stopped. Else the project will be violating the Bank’s policies and norms. . . We would like to tell you that as a result of the project, two tributaries of the Beas River, namely Allain and Duhangan, will be destroyed. Apples plantations, forest, Potato Seed farm (already destroyed) is being destroyed. Grazing land for cattle is being destroyed. These and other main and long term sources of livelihoods of the people are being destroyed.⁸⁰ Dinesh Sharma, Paryavaran Avan Kalyan Sansthan, November 15, 2003.

In December, apparently in *partial* response to these demands, a revised English language EIA (incorporating a change in the location of a reservoir) was posted on the World Bank InfoShop website. In addition, Hindi translations of the EIA Non Technical Executive Summary and Environmental and Social Management and Monitoring Plan (ESMMP) were posted and made available at the local project location.

On January 6, 2004, the project sponsor held another public meeting in Jagatsukh, apparently with the expectation of satisfying the demand for a public hearing. But the nearly 350 villagers present refused to participate, insisting upon access to Hindi translations of *all* the 2003 EIA documents

⁷⁹ Letter to Mr. James Wolfensohn, President, World Bank from Shiv Dayal, President, Prini Jan Vikas Avan Adhikar Manch (Platform for Prini People’s development and rights) and others, 23 October 2003.

⁸⁰ Letter to Mr. James Wolfensohn, President, World Bank from Shiv Dayal, President, Prini Jan Vikas Avan Adhikar Manch (Platform for Prini Peor’ development and rights) and

(not just the Executive Summary and ESMMP) *before* any public meeting was held.⁸¹ Finally, in February 2004, the remaining 2003 EIA documents were made available in Hindi at the project site, and in March, posted on the World Bank website.

At this point, apparently at the IFC's suggestion, the project sponsor hired an independent team of consultants to facilitate a public hearing. At their suggestion, the project sponsor also agreed to hold pre-hearing informational meetings to educate villagers about the project and allow the consultants to understand their concerns. These "informational meetings," conducted in April 2004, were an innovation in India. As an NGO later wrote

One of the biggest flaws of the public hearing process in India is the lack of information on the project and its impacts prior to the actual event. Most often documents are not available in time, bulky and in technical English, a language beyond the reach of those going to be affected by a project . . . Therefore, it was hoped that the pre-public meetings would set an important precedent of a process by which local people can be adequately informed before any public consultation with them.⁸²

While a scheduling conflict with a religious fair created poor attendance in one village, and there was some problem with adequate notification in the other, the two other informational meetings were generally praised by all parties as a productive and worthwhile exercise. Consultants used maps, photographs, charts and verbal descriptions to interactively explain the project to the villagers and discuss their concerns. One NGO later praised the effort as "a unique exercise, probably the first of its kind in India."⁸³

Still, the meeting was marked by complaints that the 2003 EIA had been prepared without adequate consultation with the affected people, that the project was being treated as a "fait

⁸¹ *Allain Duhangan Addendum*, *supra* note 56. Also, interview with Himanshu Thakkar, South Asia Network on Dams, Rivers and People, New Delhi, 13 October 2004.

⁸² Kanchi Koli, "Himachal Power Project Under Scrutiny," *Indiatogether*, Toxics Link, June 2004. Available at <http://indiatogether.org/2004/jun/env>

⁸³ Kanchi Koli, Neema Pathak, and Ashish Kothari, "Don't Touch Water," Kalpavriksh Action Group.

accompli,” and that “critical gaps” remain in the EIA. In fact, these complaints led an NGO which was asked to serve as an “independent observer” to recommend that another “fuller ESIA” be conducted “as a pre-requisite to consideration of funding the project” “based on data collected over a period of at least one year and involving the local villagers more intensely.”⁸⁴

One month later, in May 2004, public hearings were held in Prini and Jagatsukh. The independent team of consultants viewed these hearings as an opportunity for the public to negotiate with the project sponsor over how impacts would be mitigated. They prepared large charts listing issues, the mitigation measures already proposed and space to record new proposals or agreements. At Prini, however, villagers were adamant that they would not discuss any issues until they got agreement from the project sponsor on an enhanced rate for their land. When agreement was not reached after extended discussion, the panel made an effort to encourage people to discuss some other issues, but many villagers starting removing the chairs and the hearing was consequently closed.⁸⁵ ✱

At Jagatsukh, where 400 people attended the hearing, villagers utilized the hearing to demonstrate their opposition to the project. There was a high level of aggression and antagonism and many comments were emotionally charged. Most attendees refused to sit on the chairs laid out for the hearing, sitting instead on the periphery or outside the *pandal* that had been put up. Many of the women carried placards expressing opposition to the project.

Concerns about the availability of water dominated the hearing, with villagers questioning the reliability of the company’s calculations and objecting to the diversion of a sacred stream.

Villagers also listed various gaps and weaknesses in the 2003 EIA and appealed to the IFC not to sanction funds. Apprehension about many other impacts were expressed as well as skepticism that impacts could - or would - be mitigated.⁸⁶

Following the hearing, the team of independent consultants made a number of recommendations

⁸⁴ Kothari, *supra* note 60.

⁸⁵ Singh, *supra* note 58.

⁸⁶ Singh, *supra*

to the project sponsor and the IFC. In addition to urging the Company to “significantly strengthen their capacity to interact and interface with villagers,” they pressed them to establish a “joint team” to “verify the data about water availability” and to facilitate additional “joint investigations, involving the local people (and/or their nominees) in areas of special concern.” Furthermore, they urged the Company to “make public a time frame within which they would address various legitimate issues with the environmental and social assessment” and settle those which “could have a bearing on the economic, social or ecological viability of the project” “before the project is approved.”⁸⁷ Issues listed by the consultants included:

- disagreement about the data on water availability
- incomplete data on how many people will be impacted and how
- inappropriate methodologies for collecting or analyzing data, such as reliance on season data on wildlife, fish and biodiversity
- missing data on the location and impacts of the 185 km transmission line.

Rather than implement these recommendations, the Company hired another “independent observer” to hold “focus group” meetings in Prini, Shuru and Jagatsukh in July 2004. The observer recorded many of the same concerns already identified by the earlier team of consultants and passed these concerns, and numerous suggestions about how they could be mitigated, on to the company. He also reiterated the recommendation made by earlier consultants to re-assess impacts to water availability. Describing villagers’ concerns as “both informed and technically challenging” he noted that “neither the draft ESIA nor the verbal assurances extended by the project authorities are at present adequate to allay these genuine concerns.”⁸⁸

The observer’s report was preceded by a candid statement criticizing public consultation for the EIA to date. Asserting that “it is the paramount duty of both the project authorities and the State Government to ensure, in letter and spirit, that affected people are fully informed and

⁸⁷ Singh, 14-16, *supra* note 58.

⁸⁸ Harsh Mander, “Report of the Independent Observer: Social and environmental impact assessment of the proposed Allain Duhangan Hydroelectric Project (ADHEP), Manali, District Kullu.” (July 2004)

consulted” and that “the rights of affected people are fully protected and promoted, and all suffering is prevented,” he stated that the company “in this case could have been more sensitive to people’s genuine fears, concerns and aspirations, and more proactive in sharing information and planning.” Furthermore, he noted that “much greater effort is required” to ensure “full transparency,” “share all relevant information,” implement “genuine efforts to understand and respond to fears and objections of affected people,” and “ensure that all affected people are better off” if the project is undertaken.⁸⁹ In a later interview with this author, the consultant soberly reflected that the company “did not even create a credible veneer that they cared about the local villagers concerns.” Rather, he noted, “It was clear that their principle goal was getting the project started with the least difficulty and that they were looking for minimalist solutions.”⁹⁰

In September 2004, the IFC posted an Addendum to the 2003 EIA on the World Bank website, indicating that the project was again scheduled for review by the IFC Board. In the next few weeks, a flurry of letters were sent to the IFC from NGOs, villagers, and even the team of independent consultants. These letters urged the IFC not to consider funding for the project at least until additional studies were completed to address missing, inadequate and disputed data, and until the public had an opportunity to review and provide input on the results.⁹¹

Also in September 2004, local villagers filed a complaint with the IFC Compliance Advisor/Ombudsman (CAO). Created as an accountability mechanism in 1998, the CAO is empowered to investigate complaints filed from project-affected people and recommend remedial actions. The villagers’ complaint alleged that “in spite of repeated requests the IFC has not changed the ESIA to address fundamental inadequacies” and listed other grievances.⁹² On

⁸⁹ Mander, *supra* note 88.

⁹⁰ Interview with Harsh Mander, New Delhi, 11 December 2004.

⁹¹ Letter to Mr. J. Wolfensohn, President, World Bank from Shekhar Singh, Samya–Centre for Equity Studies, 5 October 2004. Letter to Mr. James Wolfensohn, President, World Bank from Ashish Kothari, Kalpavrisksh, 26 August 2004. Letter to Mr. James Wolfensohn, President, World Bank from Ashish Kothari, Kalpavrisksh, 21 September, 2004. Letter to Executive Directors, IFC Board and President, World Bank Group from approximately 135 villagers, 5 October 2004.

October 12, 2004, however, two days after the CAO determined that the villagers' complaint warranted investigation, the IFC Board approved a \$45 million loan for the Allain Duhangan project.

Evaluation of the Allain Duhangan public consultation process

In Section I of this paper, three oft-cited rationales for public participation in environmental decision making were discussed: democracy demands it, decisions are improved, legitimacy is fostered. Reframed as questions, these rationales provide a useful framework for evaluating the public consultation process for the Allain Duhangan. In other words: Did the public consultation process provide the people who would be affected by the proposed project with a meaningful opportunity to participate in the decision making process? Did the public consultation process improve the decision by facilitating consideration of diverse viewpoints, values and knowledge sources so that equitable decisions regarding trade-offs could be made? Did the public consultation process build social legitimacy for the final decision? Analysis of the foregoing description of the opportunities for public participation in the Allain Duhangan project yields at least tentative answers:

- *Did the public consultation process provide the people who would be affected by the proposed project with a meaningful opportunity to participate in the decision making process?*

It is true that the list of public consultation events associated with the Allain Duhangan EIA process is substantial. Meaningful opportunities for the public to participate in the decision making process, however, were limited. To begin with, the public was not involved in the 1996 EIA process. There was no public involvement in scoping, no public hearing, and if the EIA was available anywhere near the locally affected villages, it was not in the local language. The project sponsor did obtain Notices of Consent (NOC) – a sanction required by India's Ministry of Environment and Forests – from officials in the villages of Prini and Jagatsukh, but the validity of the Jagatsukh NOC has been challenged.⁹³ (This issue is discussed in more detail in Section III,

2004.

⁹³ The Ministry of Environment and Forests, Government of India, Circular No. 11-30/96-

“Access to Information”), Furthermore, (assuming the 1996 EIA was the basis for whatever information was provided the villages on the project) the villages were asked to give their consent on the basis of incomplete, inadequate and at least in part, incorrect, information about the project and its impacts.

Moreover, the 2003 EIA clearly presented the Allain Duhangan project as a “fait accompli.” Opportunities for public involvement in the decision making process were limited to commenting *how to mitigate* the impacts of the already-assumed-to-be-proceeding project, or expressing “grievances” about the preparatory work already underway. There was no meaningful opportunity for the public to participate in an assessment of the actual *need* for the project or *alternatives* to it. Neither was there opportunity to be involved in the weighing of project benefits versus environmental and social costs. The decision to go ahead was assumed, even though the locally affected public had been virtually shut out of the environmental assessment process on which that decision was presumably based. To use a U.S. metaphor, this is akin to asking someone “Would you like catsup or mustard on your hamburger?” when the person hasn’t been consulted on whether they eat hamburgers, much less whether they eat meat.

In addition, even within the narrowed decision space about how to mitigate impacts, opportunities for meaningful input were curtailed. The public was provided no meaningful opportunity to participate in decisions about *how* issues and impacts would be assessed, even though *how* issues are assessed often largely determines the outcome of the assessment, and thus, what mitigation measures are needed. For example, in respect to the highly charged issues of water availability, local villagers were encouraged to trust the project sponsor’s assessment of how diverting flow from the Duhangan would affect local water needs, and to have faith that the minimal instream flow offered as mitigation was adequate to meet those needs. They were not given the opportunity, however, to help determine *how* water needs would be assessed, or to participate in defining what mitigation was adequate.

FC(pt.), dated 26.2.1999, requires that “whenever any proposal for diversion of forest land is submitted, it should be accompanied by a resolution for the “*Aam sabha*” of the Gram Panchayat/Local Body of the area endorsing the proposal that the project is in the interest of the people living in and around the forest land.”

Furthermore, the public was provided access to critical information and given opportunities to provide informed input on the project *only after* the public demanded it. The IFC was poised to review and presumably approve financing for the Allain Duhangan before the public ever had access to detailed information on the project and its impacts, or had seen a copy of the EIA in a language they could understand. The October 2003 meeting for IFC Board approval was only delayed because of public outcry. Similarly, the full EIA was translated into Hindi and made available locally only *after* repeated public demands. And public hearings were only scheduled after the full ESIA was made available in Hindi because the public refused to participate in the hearing that was scheduled before this information was available.

It should not go unnoted that the project sponsor voluntarily agreed to hold informational meetings prior to the May public hearings, and that consultants creatively utilized visual and oral approaches to help explain the project and its potential impacts to local people. As noted elsewhere in this paper, this initiative was innovative in India and widely praised. Unfortunately, this effort came *too late* in the process -- *after* the decision to go ahead with the project was already made, and *after* the EIA was written, and thus, understandably, *after* the local people had lost trust that their input would influence the decision making process. Praiseworthy as the initiative was, such informational meetings should really be held much earlier – during the scoping stage - so the public's informed input can actually play a role in how the project is assessed and in the decision making process.

In summary, if one looks at the list of public consultation events, it appears that the affected people were given some opportunities to influence the Allain Duhangan decision. But the truth is that public participation occurred only *after* the decision to go ahead with the project was already made, *after* the most crucial decisions about project design and location had been made, *after* the scope and kinds of EIA studies had already been determined, and to a large extent, only *after* the public demanded it. At that point any opportunity for public influence was largely limited to minor adjustments in proposed mitigation measures.

- *Did public participation help to improve the decision?*

It is clear that the 2003 EIA process compelled improvements in the mitigation plan for the Allain

Duhangan project. If nothing else, some landowners were able to utilize the process to negotiate better prices for their lost land. Also, the Environment and Social Management and Monitoring Plan at least promises many mitigation measures not included in the 1996 EIA. These include: various allowances and assistance for villagers whose land or livelihoods are directly affected; a community development program under which the company will provide 500,000 rupees (about \$10,000) per village; and the construction of a school, hospital and street lighting. It appears, however, that these initiatives were developed more in response to IFC policies (which require the development of plans to address involuntary displacement) than to public participation per se.

Similarly, the measures proposed to mitigate environmental impacts – such as afforestation – were developed in the 1996 EIA largely in response to Government of India requirements, and remain largely the same in the 2003 EIA. Still, some additional issues were addressed in the 2003 EIA in response to public input, such as access to pasture lands, the security of women, and the availability of potato seeds, although public skepticism persists about the effectiveness of the promised measures.

In summary, while meaningful opportunities were largely lacking for the public to influence the decision making process for the Allain Duhangan project, the preparation of the EIAs – especially the 2003 EIA under IFC oversight – compelled the adoption of significant mitigation measures to comply with various *institutional* requirements. Of course, especially in light of India's notoriously weak enforcement capability, compliance remains an open question.⁹⁴

- *Did public participation foster legitimacy for the project?*

The answer is clearly “No”. The public consultation process for the Allain Duhangan did not serve to build public trust in the project locally. Rather, public opposition to the project increased, or at least became more organized, visible, and apparently more hostile, as the compromised EIA process advanced. Similarly, distrust of the Company appeared to increase as well. This appears

⁹⁴ For example, in the case of dams, the India Ministry of Environment and Forests found that almost 90 percent of dams cleared were in violation of compliance conditions. Yet, in none of these cases had action been taken against the project authorities. See: "Environmental Aspects of Large Dams In India: Problems of Planning, Implementation, and Monitoring," Statement by Ashish Kothari, Kalpavriksh Environmental Action Group, Submission to the World Commission on Dams, Public Hearing, Bhopal, September 21-22, 1998.

to be because, despite the long list of “consultations,” many villagers felt shut out of the decision making process. In May, women protested with placards at the public hearing. In July the Jagatsukh village assembly (130 people and the Panchayat President) unanimously voted to oppose the project. In September villagers filed a complaint protesting IFC’s pending approval to the CAO. The message was the same: we don’t want the project and we don’t trust the company. The process also did not foster legitimacy for the project within the larger public, at least not for citizens who pay attention to environmental NGOs. Rather the Allain Duhangan project has been held up as the latest example of an environmentally harmful project that was approved despite inadequate environmental review and public consultation. The project is cited in a letter from more than 50 prominent activists and NGOs to the Government of India as an example of the government’s failure to consider citizen input on environmental matters.⁹⁵ The letter received national media attention and was circulated internationally on the web. Similarly, the Allain Duhangan project is identified in a report published by the International Rivers Council which warns investors of the “risks and challenges” involved in “financing dams in India.”⁹⁶ Again, this report has been disseminated internationally.

SECTION III

STRATEGIC ORGANIZATIONAL DISCOURSES

AT WORK IN THE ALLAIN DUHANGAN EIA

The preceding section describes the history of public participation in the Allain Duhangan environmental impact assessment process and concludes that despite a long list of public involvement events, meaningful opportunities for citizen involvement in the decision making process were limited. In part, this is an issue of compliance with the relevant public consultation requirements of the Government of India and the International Finance Corporation, as discussed

⁹⁵ “Open Letter to the Ministry of Environment and Forests” from 50 non-government organizations, 3 September 2004.

⁹⁶ International Rivers Network *et al.*, *Financing Dams in India: Risks and Challenges*. (Berkeley: International Rivers Network, 2005)

in the preceding section. It is also, however, a matter of communication.

This section describes four communication-related practices and analyzes how – deliberately or inadvertently – the handling of those practices in the Allain Duhangan project served to curtail consideration of citizen concerns and to limit public input into the decision making process.

These practices include: access to information; definitional hegemony; privileging scientific/technical discourse; and the use of one-way modes of communication.

This section also discusses how power is exercised through these practices. It begins with a brief discussion about how communication practices, even when portrayed as rational and objective, are inevitably laden with power relations. Then, within each discussion of a communication-related practice, it reviews how the practice operates to privilege some voices over others.

EIA communication practices as strategic organizational discourse

According to Weston, environmental impact assessment processes have their roots in the demand for a more systematic and objective approach to environmental decision making, and hence operate within the rationalist model of decision making theory.⁹⁷ Rationalism views decision making as a “logical structured process of adopting a means of achieving a given objective.”⁹⁸

Habermas, perhaps the most prominent advocate of a rationalist approach to decision making, advocated a normative ideal by which decisions were reached through undistorted rational debate involving representation of all perspectives.⁹⁹ Ideals of rationalism, including Habermas’s notion of undistorted rational debate, can be seen in the design of the EIA process, with its efforts to generate “objective” information about the likely impacts of a proposed action and to include diverse voices in decision making through opportunities for public participation.

Rationalist models of decision making, however, have been widely critiqued as ignoring subjectivity and power. As Weston notes, the assessments made by environmental decisions

⁹⁷ Joe Weston, “EIA, Decision-making Theory and Screening and Scoping in UK Practice,” *Journal of Environmental Planning and Management*, 43(2) (2000): 185.

⁹⁸ Weston, 197, *supra* note 97.

⁹⁹ Palerm, 231, *supra* note 26.

makers are often qualitative and based upon value judgments, not objective and value free.¹⁰⁰ Foucault asserts that power relations always exist and are inescapable, even within rational decision making processes.¹⁰¹ Similarly, Mouffe asserts that embracing the notion “‘that political questions can be decided rationally’ too often leads to domination by the perspective with the most power.”¹⁰²

Contemporary communication scholars view communication processes as inevitably laden with power relations. Mumby asserts that discursive organizational practices are “‘the prime means through which ideologies are constructed and perpetuated.”¹⁰³ Similarly, Ganesh writes that communication practices serve as “‘strategic organizational discourses’ that enable particular sets of problems to be identified, and allow certain solutions to emerge as sound and rational.”¹⁰⁴

In the analysis that follow, the four communication-related practices discussed are viewed as “‘strategic organizational discourses.” This means that they are seen as privileging certain voices over others. After analyzing the role of each of the practices as discourse strategies, their application in the context of the Allain Duhangan project is examined.

Access to Information

Citizen access to information has been increasingly recognized as the cornerstone to meaningful public participation in environmental decision making. Access to information means not only

¹⁰⁰ Weston, *supra* not 97.

¹⁰¹ Palerm, *supra* note 26, referencing M. Foucault, “The Ethic of Care for the Self as a Practice of Freedom,” in *The Final Foucault*, eds. J. Bernauer and D. Rasmussen (Cambridge: MIT Press, 1988).

¹⁰² C. Mouffe, “Deliberative Democracy in Agonistic Pluralism,” *Social Research*, 66 (1999): 753, quoted in Caitlin Wills Toker, “Public Participation or Stakeholder Frustration: An Analysis of Consensus-based Participation in the Georgia Ports Authority’s Stakeholder Evaluation Group,” in *Communication and Public Participation in Environmental Decision Making*, eds. S.P. Depoe, J.W. Delicath, and M.A. Elsenbeer (State of New York Press: 2005). 179.

¹⁰³ Ganesh, *supra* note 5, referencing D.K. Mumby, *Communication and power in organizations: Discourse, ideology and domination*, (Norwood, NJ: Ablex, 1988).

¹⁰⁴ Ganesh, 561, *supra* note 5.

access to information about the current state of the environment, about proposed policies and projects that could affect the environment, and about how those proposed policies and projects could affect the environment. It also includes access to information about decision making processes that affect the environment – how those processes work, how the public can be involved, how a citizen can most effectively participate in and influence those processes.

Public participation programs which fail to provide citizens with meaningful access to such information are seen as not truly participatory. As the “Decisions for the Earth” report says:

The first foundation of access is *information*: about the environment, about the decisions at hand and their environmental implications, and about the decision making process itself. Without these meaningful public participation is impossible.¹⁰⁵

In the last two decades, an increasing number of measures which seek to ensure citizen access to such information have emerged on the international scene. As detailed earlier, these include the 1992 Rio Declaration (recognizing access to information concerning the environment as a basic human right), and the 1998 Aarhus Convention (with “access to information” a key pillar, along with public participation and access to justice). Most concretely relevant to this paper are the recently adopted policies of the World Bank which require borrowers, in preparing an environmental impact assessment, to consult with affected citizens. Specifically, those policies require proponents to provide citizens with information in a timely manner prior to consultation that is in a form and language that is understandable to them. (Detailed in Section II above.)

In its Disclosure Policy, IFC emphasizes how the sharing of information with local citizens is critical to the success of its efforts.

Experience has demonstrated that consultation and sharing of information with local communities affected by IFC-financed projects, as well as with cofinanciers, partners, and groups and individuals with specialized knowledge of private sector development issues, helps to enhance the quality of IFC- financed operations.¹⁰⁶

¹⁰⁵ *World Resources 2002-2004*, 11, *supra* note 1.

¹⁰⁶ *Disclosure Policy*. International Finance Corporation (September 1998), 1. Available at <http://www.ifc.org/IFCF/.../nsf>

Inherent in provisions for public access to information around the world is the understanding that access to information plays a critical role in empowering citizens to influence environmental decisions. As the “Decisions for the Earth” report states, “Information is power.”¹⁰⁷ Hays argues that political power lies increasingly in the ability to understand the complexities of environmental issues, and “the key to that power is information and the expertise and technologies required to command it.”¹⁰⁸ Because of this, says Cox, “the most interesting political drama of recent years is the struggle between the environmental community and its opposition over the control of information.”¹⁰⁹

A careful review of the environmental assessment process for the Allain Duhangan project clearly shows that the public was not provided access to information in a timely or adequate way, disempowering citizens and critically compromising the public’s ability to provide input into or influence the decision making process for the project. First of all, the Government of India issued clearances for the project and the IFC was poised to review and presumably approve financing for the project *before* the locally affected people had even seen --much less had the opportunity to provide input into -- the environmental assessments prepared for the project. In fact, according to the report of one NGO, many “villagers realized the project was underway only when they noticed some labourers and other activities in the area.”¹¹⁰

In respect to the 1996 environmental assessment process for the Allain Duhangan project, it appears that the locally affected people never had a chance to review, or to provide input on, the environmental assessment on which the Government of India based its environmental clearances (2000 and 2001) for the project. If the 1996 EIA was even available in the local villages (and it probably was not), it was only available in English, which is not the local language. Moreover, no public hearings were held to inform -- much less involve --the public.

¹⁰⁷ *World Resources 2002-2004*, 8, *supra* note 1.

¹⁰⁸ S.P. Hays, *A History of Environmental Politics Since 1945*, (Pittsburgh: University of Pittsburgh Press, 2000): 232, quoted in Cox, 5, *supra* note 36.

¹⁰⁹ Cox, 5, *supra* note 5.

¹¹⁰ Kothari, 31, *supra* note 60.

Moreover, it appears that the project sponsor sought – and obtained – a Notice of Consent (NOC) from the villages of Prini and Jagatsukh in 1997, on the basis of very limited, and possibly partially inaccurate, information about the project. As just noted, the 1996 EIA was not made available locally, at least not in a language people could understand. Even if it had been available, however, the 1996 EIA lacked critical information about the project’s impacts – information that could have influenced the village chief and/or council’s decision to give consent. For example, the 1996 EIA included no meaningful assessment of social impacts, incorrectly asserting that the project only “involves the displacement of two huts”.¹¹¹ In contrast, a social impact assessment completed in 2004 concluded that 212 title-holders, constituting 168 families, would lose some portion of their land.¹¹² The fact that the local people did not have detailed information about the Allain Duhangan project when the NOCs were signed is a critical issue because, according to the Addendum to the 2003 EIA, “based on these NOCs, the State Government gave its consent to establish the project” and “all subsequent clearances were obtained based on these NOCs from the Central and State Governments.”¹¹³

The 2003-2004 environmental assessment process completed under the oversight of the IFC largely failed to rectify these problems, at least in a timely manner. The Addendum to the 2003 EIA provides an impressive summary of public consultations and information disclosure events. This summary is misleading however, as a careful review of the history of these events reveals that meaningful disclosure of information did not occur until *after* there was extensive public outcry about the public being shut out of the process and only *after* repeated demands to the IFC – in writing and in person – that project documents be made available locally in the local language. As the Addendum to the 2003 EIA records, the project sponsor did eventually provide the local villages with a copy of the draft 2003 EIA in the local language as required by IFC’s operational policies. What the Addendum does not disclose, however, is that the Hindi translations were

¹¹¹ *Environmental Impact Assessment and Catchment Area Treatment Plan for Allain Duhangan Hydroelectric Project in Kullu District Himachal Pradesh*, (New Delhi: Rail India Technical and Economic Services Ltd, January 1996), 15.

¹¹² *Allain Duhangan ESIA Addendum*, *supra* note 56.

¹¹³ *Allain Duhangan ESIA Addendum*, 21, *supra* note 56.

provided only after local villagers had:

- written to the IFC demanding them (October 23, 2003 letter to World Bank President James Wolfensohn);
- made the same demands to an IFC official in person (November 13, 2003 meeting in Prini);
- written again to reiterate their demand (November 15, 2003 letter to World Bank President James Wolfensohn);
- and refused to participate in a public meeting (January 6 in Jagatsukh) scheduled by the project sponsor because all the 2003 EIA documents had not yet been provided to the local villages in Hindi translation.

Furthermore, the Addendum's summary of "public disclosure and consultation" fails to note that even after the Hindi translations were finally made available in February 2004, they were still largely inaccessible to the general public. When an independent consultant hired by the project sponsor tried to see the documents, he found the buildings in which they were located locked and the relevant attendants unavailable. The consultant's report reads:

I also tried to see the Hindi translations of the project documents kept in the Panchayat House of both villages. The effort was to determine how easily they were accessible and how often they were being read.

The Panchayat House of Prini . . . was locked when I visited it . . . We could not find any one who could open the building or give us information. Similarly, the Panchayat House of Jagatsuksh village was also locked. We were told that it only opened twice a month when quorum was taken. We tried to meet the Pradhan but she was away of some family illness.¹¹⁴

In addition to the fact that the draft 2003 EIA documents were not made available in a timely way to the local villagers in a language they could understand, the villagers encountered a further information problem. Even when finally available, the draft 2003 EIA documents lacked

¹¹⁴ Singh, 19, *supra* note 58.

adequate information about some important areas of potential impact. This happened because the project sponsor had yet to finalize the location of several key project components – including roads and the 185 km transmission line – and, had not completed a comprehensive social impact assessment or adequate baseline surveys of either aquatic or terrestrial flora and fauna. As a result the full extent of impacts could not be assessed, or disclosed. The effect was to mask the potential severity of some project impacts, and to misinform – at least to some degree – the public and IFC Board about the full impact of the project.

As one NGO complained:

The EIA admits that the full survey of people to be affected is still not known, that the road alignment and other components of the project is still be finalized to know the full impacts and that the route of the transmission line is yet to be finalized. Thus the full social and environmental impacts are yet to be identified. How can an EIA be completed when such crucial impacts are yet to be known?

. . . . It is clear that field surveys for the EIA were all done only once in the winter months. This is clearly inadequate. Any EIA has to do the survey all across at least one years so that full base line situation and possible impacts can be documented. The EIA is clearly incomplete in this score too. If for example, it has not assessed fisheries in the monsoon, how can it know the full extent of fisheries in the river?¹¹⁵

The 2003 EIA was also deficient in providing full disclosure of critiques provided by the public, as well as the independent consultants and observers recruited by the project sponsor. While the 2003 EIA included a summary of concerns raised by the public, it failed to record a number issues, including important procedural complaints about the availability of information, or demands that a new draft EIA be issued and another hearing held before IFC consideration of the project. Furthermore, the appendices to the Addendum clearly reflected a biased approach, including public resolutions in support of the project but excluding letters and resolutions opposing it. The result was to provide misinformation to the IFC Board, the Government of India,

¹¹⁵ Letter to Dimitri Tsitisragos, Director, South Asia Department, IFC from Himanshu Thakkar, South Asia Network on Dams, Rivers and People and Vimal Bhai, MATU, 21 November 2003.

and the public about the nature and extent of public opposition.

The most egregious example involves the 2003 EIA treatment of the Notice of Consent that was required from the village of Jagatsukh for the project to proceed legally. The Addendum to the 2003 EIA notes that “[t]he Company has asked for and received an NOC from the then Pradhan on 23 May 1997, as legally required and based on this certificate, the Company got all government clearances.” Furthermore, it notes that “[t]he villagers discussed the matter in the focus group meeting on 7 July 2004 in Jagatsukh in the presence of Independent Observer. The report of Independent Observer mentions that the No Objection Certificate is issued on behalf of the Gram Panchayat.”¹¹⁶ The Addendum fails, however to disclose the substantial public challenges to the validity of the 1997 Jagatsukh NOC. These include:

(1) The man who served as village Sarpanch (or chief) at the time the 1997 NOC was signed publicly stated that he had signed in his individual capacity without consulting the Panchayat or the Gram Sabha. (In fact, while the report of the Independent Observer mentioned above does note that the NOC document itself “states that the NOC is issued on behalf of the Gram Panchayat,” it also says that the ex-Sarpanch “was present and he himself admitted that he did not consult with either the Panchayat or the Gram Sabha.”)¹¹⁷

(2) At the May 2004 public hearing in Jagatsukh, the local Deputy Commissioner for the area (who represents the central Indian government) stated that because the NOC had not been signed by resolution of the Panchayat it could not be considered valid.¹¹⁸

(3) On July 4, 2004, the Jagatsukh village assembly (130 people and the Panchayat president) unanimously passed a resolution rejecting issuance of a NOC.¹¹⁹

Similarly, the Appendices attached to the Addendum include the Notices of Consent issued in 1997 by the villages Prini and Jagatsukh *and* resolutions *supporting* the project signed by 11

¹¹⁶ *Allain Duhangan ESIA Addendum*, 48, *supra* note 56.

¹¹⁷ Mander, *supra* note 88.

¹¹⁸ Singh, 11, *supra* note 58.

¹¹⁹ Letter to Executive Directors, IFC Board, from villagers, 5 October 2004.

women from Jagatsukh and 163 residents of the village Bhanara. The appendices fail to include, however, the unanimous resolution *rejecting* issuance of a NOC, passed by the Jagatsukh village assembly (130 people and the Panchayat President) on July 4, 2004. The appendices also failed to disclose any of the substantial correspondence from local citizens, local and national NGOs in India, and the independent consultants recruited by the company that criticized the 2003 EIA substantively and procedurally.

Finally, as noted in Section II, the project sponsor deserves praise for initiating the public information meetings held in April 2003. These meetings, which utilized visual and oral approaches to explain the project, are an exemplary example of what it means to provide information “in a form and language that are understandable and accessible to the groups being consulted.”¹²⁰ (IFC policy) Unfortunately, they were held *late* in the EIA process -- *after* the project sponsor had obtained the NOCs, *after* the project had received environmental clearance, *after* two EIAs had been written. Thus, they seemed more designed to inform the public about a decision that had **been made** rather than to involve the public in making a decision.

Definitional hegemony

As noted earlier in this paper, a frequent complaint about public participation processes for environmental decision making is that the public is involved *too late* to provide meaningful input or to significantly influence the decision making process. The crux of the problem however, is usually more than temporal. At the heart of most of these complaints is the lament that by the time the public has an opportunity to weigh in, the party drafting the EIA has already defined the problem and issues and alternatives in a manner that makes a certain (preferred) decision seem inevitable.

Dionisopoulos and Crable call the practice of predetermining an outcome by controlling how a problem or issue is framed *definitional hegemony*.¹²¹ Peterson describes how definitional

¹²⁰ OP 4.01, IFC, *supra* note 71.

¹²¹ Peterson and Franks, 24, *supra* note 7, referencing G.N. Dionisopoulos and R.E. Crable, “Definitional Hegemony as a Public Relations Strategy: The Rhetoric of the Nuclear Power Industry after Mile Island,” *Central States Speech Journal*, 39 (1988).

hegemony serves as a rhetorical device to justify predetermined decisions. She writes: "Parties in power establish the definition of issues then obtain influence over the outcomes by the very fact that they establish the definitions in the first place."¹²²

Despite the democratic ideals inherent in theories of public participation, definitional hegemony is at work in most public participation programs. Peterson observes that many agency officials exercise definitional hegemony by controlling the scope of issues under discussion and how those issues are defined. She writes that "[o]nce a problem or issue is defined, that definition establishes boundaries for what can and cannot be included in discussion, thus ruling out topics which others might see as pertinent."¹²³ Similarly Kaminstein, writing about public hearings, notes that "how a problem is defined by public officials, and what public officials are willing and unwilling to talk about, drastically shapes the ensuing dialogue at public meetings."¹²⁴ Ratcliff gives the example of how, at a public hearing on the proposed Yucca Mountain Nuclear Waste Repository, agency officials limited discussion to how nuclear waste would be transported, rather than the broader, and more controversial, question of where it should be stored.¹²⁵

In environmental impact assessment processes, the parties preparing the EIA practice definitional hegemony through controlling how "project need" is described, by defining the scope of issues to be addressed, and by selecting the alternatives that will be considered. Often, they also exercise definitional hegemony by establishing the criteria against which the decision will be made, and by determining *how*, *when* and even *by whom* issues will be assessed or analyzed. Judith Henry, for example, describes how a federal agency in New Mexico used the EA process to create "an argument for an a priori decision" to approve a gravel mine. This was done, she argues by framing the action as needed for "the public good," excluding certain areas of inquiry, and

¹²² Peterson and Franks, 24, *supra* note 7.

¹²³ Peterson and Franks, 24-25, *supra* note 7.

¹²⁴ D.S. Kaminstein, "Persuasion in a Toxic Community: Rhetorical Aspects of Public Meetings," *Human Organization*, 55 (1996): 462, quoted in Peterson and Franks, *supra* note 7.

¹²⁵ J.N. Ratcliff, "The Politics of Nuclear Waste: An Analysis of a Public Hearing on the Proposed Yucca Mountain Nuclear Waste Repository," *Electronic Journal of Communication*, 8 (1988), quoted in Peterson and Franks, *supra* note 7.

analyzing a more controversial alternative. She writes

When the first page of the EA frames the discourse only in terms of the quantifiable needs for the extraction of resources, the ensuing document will most likely be positioned firmly within that utilitarian frame of quantifiable resource needs.¹²⁶

Henry points out that the prevalence of definitional hegemony is exacerbated by the practice of having EIAs prepared by project proponents. She writes

Nevertheless, when prepared by, or financed by, the proponent of the action, the document on which a decision will be based runs the risk of presenting an a priori case with built-in biases, however subtle, toward a decision in its own favor.¹²⁷

Some public participation processes associated with the preparation of environmental impact assessments have sought to address the problem of definitional hegemony by requiring public involvement early in the assessment process, at the time when the scope of issues to be addressed is still being defined. Regulations governing compliance with the National Environmental Policy Act (NEPA), for example, require that agencies invite comments at the “scoping” stage,¹²⁸ and that a second opportunity to comment must be afforded for a draft environmental impact statement.¹²⁹ The NEPA regulations further require the agencies to take these comments into consideration and respond to them, either by appropriate project modifications or analyses, or by explaining why modifications are not warranted.¹³⁰ Similarly, IFC’s operational policies require project sponsors to consult with the affected public “at least twice,” with the initial consultation taking place *before* the terms of reference are finalized. The success of these measures, however;

¹²⁶ Judith Henry, “Decide, Announce, Defend: Turning the NEPA Process into an Advocacy Tool Rather than a Decision-Making Tool,” in *Communication and Public Participation in Environmental Decision Making*, eds. S.P. Depoe, J.W. Delicath, M.A. Elsenbeer (State University of New York Press, 2005), 111.

¹²⁷ Henry, 111, *supra* note 126.

¹²⁸ 40 Code of Federal Regulations, sec. 1507.7

¹²⁹ 40 Code of Federal Regulations, sec. 1503.1

¹³⁰ 40 Code of Federal Regulations, sec. 1503.4

ultimately depends on an agency's willingness to share the hegemonic power of defining issues. The practice of definitional hegemony –whether done consciously or unconsciously – is an act of power. Definitional hegemony serves to control and narrow the “decision space” that is open to the public. In Ratcliffe’s case cited above, for example, the agency conducting hearings on the proposed Yucca Mountain Nuclear Waste Repository narrowed the decision space open to public input from where waste should be stored to how it should be transported. By doing so, the agency retained sole power over the more important decision of waste dump location. As Walker points out, “Sharing decision space involves sharing a form of power.”¹³¹ He explains

Meaningful decision space is critical to a meaningful and innovative public participation process. Traditional public participation processes do not necessarily include any shared decision space. Any agency can consult with the public (e.g. invite comments in writing or at a hearing) without any assurance of how those comments might be part of the decision process. A traditional public participation process may embody a decision space facade.¹³²

The practice of definitional hegemony fuels public cynicism, hostility and distrust. As Peterson notes, when public opinion is ignored it “perpetuates the notion that public participation is futile and that agencies conduct public hearings simply to avoid lawsuits, to gauge public support for predetermined projects, or to legitimate previously made decisions.”¹³³ Similarly, Shepherd and Bowler write that “If citizens cannot directly participate in problem definition, planning and alternatives evaluation, citizens may continue to choose indirect means of involvement, such as litigation, lobbying or direct action.”¹³⁴ Furthermore, they point out, attempts to interact with the public “without a willingness to include citizens in the decision-making process,” will likely be

¹³¹ Greg Walker, “The Roadless Areas Initiative as National Policy: Is Public Participation an Oxymoron?” in *Communication and Public Participation in Environmental Decision Making*, eds. S.P. Depoe, J.W. Delicath, M.A. Elsenbeer (State University of New York Press, 2005), 120.

¹³² Walker, 121, *supra* note 131.

¹³³ Peterson and Franks, 26, *supra* note 7.

¹³⁴ Shepherd and Bowler, 732, *supra* note 6.

seen as window dressing.¹³⁵ In an article critiquing the public hearing processes for three hydroelectric projects in the Kullu District of Himachal Pradesh (not including the Allain Duhangan), Sinclair describes how citizens perceived the hearings as mere “tokenism” because they felt the agency had unfairly narrowed the discussion of issues. He writes

It appears that at least some members of the public came to the hearings expecting to deal with broad normative or strategic issues (e.g., questions relating to project need and how the need should be met) but were faced with operational questions (e.g. where construction debris should be stored). This prompted one participant to comment that, “the hearing is the only opportunity for the public to participate in the case, but the hearing itself offers limited potential to participate.”¹³⁶

In the Allain Duhangan EIA processes, the practice of definitional hegemony foreclosed meaningful public involvement in the decision making process and evoked public hostility and distrust. First, in respect to the 1996 EIA, there was no effort to involve the public in defining issues to be addressed in the EIA. As a result, consistent with the dominant concerns of the project sponsor, the 1996 EIA focused primarily on technical issues, such as the geologic stability of the site, and the acceptability of the project was assessed against those terms.

When the project sponsor approached the IFC for funding in 2002, the IFC – despite the clear inadequacy of the 1996 EIA on which the Allain Duhangan project had received clearances – accepted the project as a *fait accompli*. The result was that the 2003 EIA prepared under IFC’s oversight, rather than serving to provide a fresh critique of the overall project, focused only on assessing impacts in order to identify measures to mitigate those impacts.

The difference is critical. In a fresh assessment, the question of whether or not the project should proceed would have remained open. The need for the project, and alternatives to it, would have been critically assessed. Project benefits would have been weighed against project impacts. And presumably, the public would have been given the opportunity to help define and weigh in on all

¹³⁵ Shepherd and Bowler, 732, *supra* note 6.

¹³⁶ A. John Sinclair, “Public Involvement in Hydro Development in Kullu District, Himachal Pradesh, India,” section 4.2.2

these issues, including whether or not project benefits justify the project's environmental and social costs.

Assuming that the project is a *fait accompli*, however, meant that the question of whether or not the project should proceed was closed. The EIA assessed impacts, but primarily for the purpose of identifying what sort of mitigation measures were desirable, rather than for determining whether the overall benefits outweighed the costs. In short, assuming that a project was a *fait accompli* dramatically narrowed the decision space on which the public had input.

Local villagers and NGOs vociferously objected to this exercise of definitional hegemony.

That it evoked cynicism and distrust of the process is evident in public comment.

One NGO wrote

The ESIA is clearly written with the assumption that the project is a *fait accompli*, and that its main task is to suggest mitigatory measures. This is one reason why, even when it finds irreversible impacts of impacts that may not be possible to mitigate, it simply suggests that mitigatory measures be taken, or that further studies be done. . . . This is a serious flaw; any ESIA must be geared towards feeding into an overall assessment of the feasibility of the project itself.¹³⁷

Similarly another wrote

[The 2003 EIA] tries to justify the project when an ESIA agency is supposed to assess the project impacts in an objective manner without assuming the project will go ahead.¹³⁸

One consequence of assuming that the Allain Duhangan project was a *fait accompli* is that the 2003 EIA completed under IFC oversight failed to take a critical look at project alternatives, either in terms of other locations or other options for meeting energy needs. As one NGO wrote

Chapter 9 on 'Analysis of Alternatives' is a joke, to put it lightly. The chapter has nothing

¹³⁷ Kothari, 37, *supra* note 60.

¹³⁸ South Asia Network on Dams, Rivers and People, "Comments on the ESIA of the Proposed Allain Duhangan HEP," December 2003.

by way of analysis of options available for meeting the energy or peak load requirements of Himachel Pradesh or northern region. Options like Demand Side Management, increasing supply efficiency of existing plants, reducing T&D losses, increased end use efficiency, peak load management etc are not even mentioned! Table 9.5 titled “Alternatives considered for the Allain Duhangan Project” is in fact a list of project features and not a single alternative is even suggested.¹³⁹

That the 2003 EIA failed to assess alternatives is admitted in its Addendum. The Addendum notes

Some stakeholders were concerned that alternatives to the Project were not considered in the draft ESIA reports. However, the Project location was assigned by the Government of HP and the Government of India for the implementation of this specific run-of-river scheme. The Project has been scrutinized by Central Electricity Authority, Gov of India from the techno-economic and environmental perspectives and has been found suitable for commercial development.¹⁴⁰

Definitional hegemony was practiced by the project sponsor (and IFC) not only by defining *what* issues would be addressed in the 2003 EIA, but also by defining *how* and *when* issues would be assessed. Since *how* and *when* issues are assessed can greatly influence – if not determine – the outcome of an assessment, as well as play a significant role in how those results are utilized, this is a powerful form of definitional hegemony.

A prime example in the Allain Duhangan 2003 EIA is that the project sponsor based its assessment of impacts to the terrestrial and aquatic environment on data that was collected during only *one* season (winter). As the public pointed out, this approach potentially concealed significant environmental impacts since some species of wildlife and fish are not present in winter. Public demands were made that the project sponsor postpone submission of the 2003 EIA to IFC until *after* this important data was collected and the public had a chance to re-review the 2003 EIA. These demands, however, were ignored. Project impacts were reviewed and the

¹³⁹ South Asia Network on Dams, Rivers and People, *supra* note 106.

¹⁴⁰ *Allain Duhangan ESIA Addendum, 4, supra* note 56.

project was approved by the IFC on the basis of the deficient data. A concession was offered to the objecting public – during the next year, consultants would be hired to collect the missing three seasons of baseline data. However, as several NGOs pointed out, this concession made a mockery of the 2003 EIA process as impacts were being assessed *after* the decision to fund the project.

One NGO wrote:

It is shocking that the supplementary studies on terrestrial and aquatic biodiversity will be undertaken after the project begins operation. It is in fact even incorrect to call these “supplementary”, for some of the most basic studies that would be needed to assess the impacts have not been carried out (e.g. on fish fauna). . . How would IFC and the company respond if it found that the impacts on biodiversity are severe, but the project is already well under way by the time this is found out? This makes the entire purpose of such assessments futile, as you would have already agreed to fund the project.¹⁴¹

A similar problem occurred with the social impact assessment. Because the project proponent was in a hurry to complete the draft 2003 EIA, it only included a partial census (25%) of the families who would lose some portion of their land or otherwise be directly affected by the project. As a result, when the local villagers were invited to provide comment on the 2003 EIA at the public hearings, the full impact of the project on the people had not been disclosed. As a number of villagers pointed out, how could the social impacts of the project be assessed, and how could villagers evaluate the rehabilitation plan, if a full survey was not complete? As one NGO wrote

The ESIA keeps saying “A full census will be carried out in the beginning of the implementation stage of the project that will identify all the directly and indirectly affected families.” This is amazing. How can an ESIA be completed without doing the full survey of the affected families and without identifying all the directly and indirectly affected families?¹⁴²

¹⁴¹ Letter to Shalabh Tandon, International Finance Corporation from Ashish Kothari Kalpavriksh, 21 September 2004.

¹⁴² South Asia Network on Dams, Rivers and People, *supra* note 139.

In response to these complaints, the project sponsor did complete the social impact survey prior to resubmitting the 2003 EIA to the IFC. However, the public was not given the opportunity to review the results before IFC approval of the project.

Privileging scientific/technical discourse

Peterson describes how public participation processes for environmental decisions often privilege scientific/technical discourse, and thus “unwittingly devalue,” or even exclude, the consideration of issues which members of the public consider crucial to making fair decisions. She describes scientific/technical discourse as discourse whose “fundamental assumptions exclude evidence and arguments drawn from nonnumerically defined experience.”¹⁴³

When scientific/technical discourse is privileged, she says, often “[p]ublic perceptions are assumed to be based on irrational, subjective, and ignorant fears, as opposed to rational, objective, and informed planning.”¹⁴⁴ This attitude can lead to the failure to “tap appropriate, and readily available, sources” – such as local experts – when information is solicited.¹⁴⁵ Furthermore, she asserts, when citizens raise issues that lie outside the dominant scientific/technical discourse, “scientists are left with a vocabulary that no longer fits the situation.” Peterson argues that this undercuts the qualification of scientists to make critical development decisions for communities because they are not able to fully recognize, understand or wright the risks and impacts to the community.¹⁴⁶

Peterson also describes how the privileging of scientific/technical discourse is obfuscated by the assumption that it is “objective” while citizen discourse is seen as “subjective” and socially constructed. This obfuscation, she argues, allows political and economic reasoning to be “shrouded” “in the neutral code of science.”¹⁴⁷

¹⁴³ Peterson, 101, *supra* note 13.

¹⁴⁴ Peterson, 90, *supra* note 13.

¹⁴⁵ Peterson, 104, *supra* note 13.

¹⁴⁶ Peterson, 118, *supra* note 13.

¹⁴⁷ Peterson, 116, *supra* note 13.

Privileging scientific/technical discourse is an act of power, one that maintains the hegemony of certain players while obscuring the power act. As Ganesh writes: "Organizations construct narratives and sets of vocabularies not only out of rational choice or because it is materially expedient to do so, but because it enhances their symbolic legitimacy and reinforces their hegemony."¹⁴⁸ Similarly, Peterson notes that the privileging of scientific/technical discourse often serves "to limit participation in public policy decisions to an elite group who merit inclusion because of their technical expertise" rather than expanding participation in environmental decision making to include all parties whose lives will be affected by those decisions."¹⁴⁹

Scientific/technical discourse was privileged in the decision making process for the Allain Duhangan project, compromising meaningful public involvement in the environmental assessment process and limiting consideration of some public concerns. The 1996 EIA focused primarily on technical issues related to project design and site suitability, and the project was evaluated and granted clearance by the Government of India largely against economic and technical criteria. That this privileging of scientific/technical issues pushed the consideration of social and environmental concerns to the periphery was obscured by the discourse itself, which assumed the primacy of technical and economic matters. For example, when citizens later complained that alternatives to the project were not adequately considered, the official response was that

the Project location was assigned by the Government of Himachal Pradesh and the Government of India for the implementation of this specific run-of-the-river scheme. The Project has been scrutinized by the Central Electricity Authority, Government of India, from the techno-economic and environmental perspective and has been found suitable for commercial development.¹⁵⁰

¹⁴⁸ Ganesh, 577, *supra* note 5, referencing D.K. Mumby, *Communication and power in organizations: Discourse, ideology and domination*, (Norwood, NJ: Ablex, 1988).

¹⁴⁹ Peterson, 101, *supra* note 13.

¹⁵⁰ *Allain Duhangan ESIA Addendum*, 4-5, *supra* note 56.

As Depoe and Delicath write: “Efforts by policymakers, environmental advocates, and others to achieve meaningful public participation may be constrained by more deep-seated commitments to institutional rationalities or economic imperatives that are articulated in dominant discourses of expertise, knowledge, risk and legitimacy.”¹⁵¹

In the 2003 EIA completed under IFC’s oversight, the privileging of scientific/technical discourse also played a role in the EIA’s failure to seriously consider some of the concerns of local villagers. As Peterson points out, the “fundamental assumptions” of scientific/technical discourse which “exclude evidence and arguments drawn from nonnumerically defined experience,” can serve to provide “its users with a rationale for excluding those whose competencies fall beyond the predetermined, technologically defined realm of expertise from the decision-making process.”¹⁵² A key example for the Allain Duhangan project is the dispute over water.

Rather than involve local villagers in a collaborative assessment of water flows and needs, project consultants relied on their own technical assessment to draw conclusions about the project’s impacts on water availability. Villagers’ concerns that the diversion of water from the Duhangan stream could diminish water available for irrigation were dismissed as “fears” with a recommendation to “monitor” the situation.¹⁵³ An independent consultant hired by the project sponsor to consult with villagers near the end of the process, however, criticized the project sponsor for dismissing local concerns about water impacts as “irrational” and “motivated by political factionalism.” The consultant wrote:

Villagers of Jagatsukh are primarily opposed to the project because they believe that the project activities, including the blasting and the diversion, will divert and damage more water sources than are required to fully meet their future needs for irrigation and drinking water. I found that the arguments raised by the villagers were both informed and technically challenging. I feel it is an injustice to them to suggest their opposition to the

¹⁵¹ S.P. Depoe, J.W. Delicath, M.A. Elsenbeer, eds, *Communication and Public Participation in Environmental Decision Making*, (State University of New York Press, 2005), 6

¹⁵² Peterson, 101, *supra* note 13.

¹⁵³ *Allain Duhangan ESIA, Vol 1*, 203, *supra* note 53.

project is irrational and motivated by political factionalism. I feel further that neither the draft ESIA nor the verbal assurances extended by the project authorities are at present adequate to allay these genuine concerns. There remains a wide gulf between the calculations and claims of the villagers and the project authorities.¹⁵⁴

Similarly, the 2003 EIA failed to address – or even identify – the religious association villagers held for the Allain Duhangan. According to an NGO invited to serve as an independent observer at the public information meetings, however, this association is widespread. The NGO writes

[The] responses of the villagers, in particular of the women, indicated that there is a very strong spiritual association with the Duhangan stream. People fear the wrath of the Gods, if the stream is disrespected. [That] this fear is very strong was clear from the number of stories recounted by the villagers. They went to the extent of saying that it's either the misfortune of the village or that of the company that this project has been envisaged to desecrate this abode of Gods!¹⁵⁵

Some comments recorded by the NGO include:

Sh. DS Sharma said that the water of the Duhangan had religious attachments and related an episode in which a bus fell down because of the curse of Hidimba Devi. He said that the villagers performed sacrifices in this water and misuse of the Duhangan would amount to playing pranks with the Devta (God) and therefore, the villagers need water in the stream. . . . Another lady villagers said that the D stream was special and it is mentioned in the Dev-Bhagwati. She said that the villagers performed their sacrifices etc. on the waters of the Duhangan. . . . An elderly lady intervened with a emotional statement that the Co could take their blood, but the villagers would not give the water.¹⁵⁶

This religious association is not even mentioned in the 2003 EIA however. The Addendum to the draft 2003 EIA, published later, says that this is because “the first indication of the religious

¹⁵⁴ Mander, *supra* note 88.

¹⁵⁵ Kothari, 32, *supra* note 60.

¹⁵⁶ Kothari, 48, *supra* note 60.

significance of the Duhangan came to light well after the detailed socio-economic surveys conducted by ERM, public hearings conducted by the Company and focus group meeting moderated by an independent observer.”¹⁵⁷ Another explanation, however, is that the discourse didn’t provide adequate opportunity for this issue to be identified. As Kaminstein asserts, because the language of scientific discourse does not leave room for the language of emotions, members of the public are unable to fully express themselves in public hearings.¹⁵⁸

Finally, the privileged use of scientific/technical discourse also compromised public participation simply because many people could not easily understand, or felt intimidated by, the technical language which dominated the 2003 EIA . As Peterson notes, members of the public are often blocked from understanding the technical and scientific content of meetings because they lack access to critical data.¹⁵⁹ Similarly, Kaminstein describes how participants often remain silent because they feel they do “not have the technical background to question, contest, or disagree with scientists as they presented their battery of facts.”¹⁶⁰

Even at the public information meetings widely praised by observers, an NGO invited to observe the process commented:

We felt that the description of the project and its impacts provided by ERM at the meeting, was at points too technical and often used English terms even in cases where Hindi equivalents were available. It is of course not easy to explain technical aspects of such a project to an audience that is not used to such technicalities, but this is a challenge that needs to be met by devising appropriate tools and language. ERM’s use of a map and

¹⁵⁷ *Allain Duhangan ESIA Addendum*, 48, *supra* note 56.

¹⁵⁸ Peterson and Franks, 23, *supra* note 7, referencing D.S. Kaminstein, “Persuasion in a Toxic Community: Rhetorical Aspects of Public Meetings,” *Human Organization*, 55, (1996).

¹⁵⁹ Peterson and Franks, 22, *supra* note 7, referencing J.M. Wondolleck, N.J. Manring, and J.E. Crowfoot, “Teetering at the top of the ladder: The experience of citizen group participants in alternative dispute resolution processes,” *Sociological Perspectives*, 39 (1996).

¹⁶⁰ D.S. Kaminstein, “Persuasion in a Toxic Community: Rhetorical Aspects of Public Meetings,” *Human Organization*, 55, (1996): 460 quoted in Peterson and Franks, *supra* note 7.

pictures was a good idea, but not quite adequate.¹⁶¹

Similarly, the independent consultant in recommending the establishment of an “in-house mechanism for quick grievance redressal,” cautioned the company against the unconscious privileging of scientific/technical discourse. The consultant wrote the project sponsor

must ensure that the grievance cell is manned (or womanned) by people trained for the task. The tendency to depute engineers or non-specialists to perform social tasks is as fraught with danger as deputing social scientists to construct dams and tunnels!¹⁶²

Modes of communication

Many communication scholars describe the communication modes used in public participation processes as comprising a spectrum. One critical feature that divides some modes from others is whether communication is “one way” or “two way.” One way communication modes involves communication that flows in one direction, such as from an official to the public, or the public to an official. One way modes of communication are often used to educate or inform, or to gather information or invite feedback.¹⁶³ Some examples common to environmental decision making processes are written comment periods, scoping meetings, and public hearings. In these processes, officials generally brief the public on technical matters and the public shares its opinions and values. Peterson, for example describes how

Public meetings generally treat communication as a mere conduit through which discrete packets of pre-existing information can flow – technical information from experts to members of the public, and opinions and values from members of the public to the experts. Technical experts have information they believe would help make the public more tractable if members of the public could just learn it.¹⁶⁴

¹⁶¹ Kothari, 31, *supra* note 60.

¹⁶² Singh, 14, *supra* note 58.

¹⁶³ Beierle, 16-17, *supra* note 21.

¹⁶⁴ Peterson and Franks, 28, *supra* note 7.

Two way communication modes involve interactive, often direct face-to-face exchange, where information is not only exchanged but also jointly constructed. Two way communication modes emphasize mutual learning and dialogue as part of collaborative interaction. Dialogue, collaboration, deliberation, or workshops where people work together on a joint task are all examples.¹⁶⁵

In general, public participation methods that employ one-way modes of communication are seen as serving to establish or maintain power over decision making as well as the evaluative processes that may proceed it. Wondolleck and Yaffee, assert, for example, that traditional public involvement approaches “usually provide highly controlled, one-way flows of information, guard decision-making power tightly, and constrain interaction between interested groups and decision makers.”¹⁶⁶ Similarly, Walker notes that traditional methods are often part of a “strategy of command and control in which political decision making and technical information are guarded, and centralized power and hierarchy are maintained.”¹⁶⁷

In contrast, public participation methods that involve two way modes of communication are seen as more democratic, in part because they allow the public greater influence over the decision making process. Peterson writes: “Workshops, negotiated rulemaking and consensus-based decision making engage the public in more interactive, sustained communication and provide members of the public potentially greater influence over the final decision.”¹⁶⁸ As Walker points out, however, engaging in two way communication does not necessarily mean giving up authority over ultimate decisions, or compromising legal mandates, standards or regulatory authority. Rather, it can mean involving the public in decisions about *how* something is done, or even, *how* a process is carried out. An agency preparing an environmental assessment, for example, can

¹⁶⁵ J.M. Wondolleck and S.L. Yaffee, *Making Collaboration Work: Lessons from Innovation in Natural Resources Management* (Washington D.C., 2000).

¹⁶⁶ Wondolleck and Yaffee, 104, *supra* note 165, quoted in Walker, 121, *supra* note 131.

¹⁶⁷ Walker, 121, *supra* note 131 referencing E.P. Weber, *Pluralism by the Rules: Conflict and Cooperation in Environmental Regulation* (Washington D.C.: Georgetown University Press, 1998).

¹⁶⁸ Peterson and Franks, 10, *supra* note 7.

factor that distinguishes each model is the flow of communication. In the *technocratic* model, “experts” retain full authority over all decisions and communication with the public is very limited. Communication travels only one way as the “experts” inform the public of their decision. Communication also flows in only one direction in the *one-way Jeffersonian* model. “Experts” present technical information to the public to “educate” them. Two way communication occurs in the *interactive Jeffersonian* model, but it is confined to experts providing technical information to the public, and the public sharing opinions, values and emotions in response. Waddell’s fourth model, the *social constructionist* model, also involves a two way flow of communication, but it is more *interactive*. This model recognizes that both experts and the public have important knowledge to share and that both are influenced by opinions, values and emotions. Thus, both “experts” and the public “communicate, speak to, and engage values, beliefs and emotions.”¹⁷³ Furthermore, in the *social constructionist* model, at least some decisions are jointly constructed by all participants.

Walker makes a more simple binary distinction. He divides public participation methods into those that are “traditional” (public hearings, comments letters, open houses, web sites) and those that are “innovative” (workshops, roundtables, forums, dialogues). He describes traditional methods as characterized by a “command and control” communication philosophy and dominated by one way flows of communication activity designed to inform or gather feedback. In contrast, he says innovative methods have a communication philosophy of dialogue and deliberation, and are marked by interaction and mutual (two way) learning and idea development.¹⁷⁴

While scholars describe the differences between public participation in different ways, most seem to agree that methods which employ two way modes of communication are more likely to build trust in the decision making process and thus foster legitimacy. In contrast, methods that rely on one way modes of communication are more likely to foster public skepticism, or a sense that the

¹⁷³ C. Waddell, “Saving the Great Lakes: Public Participation in Environmental Policy” in C.G. Herndl and S.C. Brown (Eds.), *Green Culture: Environmental Rhetoric in Contemporary America* (Madison: University of Wisconsin Press, 1996), 142, quoted in Peterson and Franks, 13, *supra* note 7.

¹⁷⁴ Walker, *supra* note 131.

process were mere “tokenism” or “window dressing.” Waddel, for example, believes the social constructionist approach – which involves interactive communication and joint decision making on at least some issues – is a “prescription for enhancing public participation in environmental and science policy disputes.”¹⁷⁵ Walker argues that the traditional public participation methods increase the likelihood of “extreme behaviors” such as using volatile rhetoric and stating extreme demands. This is because traditional methods “resemble conventional arbitration with the deciding official acting as arbitrator”, and participants assume that the decision maker/arbitrator will somehow split the difference between the different groups.”¹⁷⁶ Finally, Wondolleck and Yaffee remark that

[T]he most successful collaborative efforts fostered two-way, interactive flows of information, and decision making occurred through an open, interactive process rather than behind closed agency doors. Such efforts actively involved people through a planning or problem solving process so that they learned together, understood constraints, and developed creative ideas, trust and relationships. Direct face-to-face interaction between stakeholders and decision-making authorities was critical.¹⁷⁷

The public participation process for the 1996 Allain Duhangan EIA is probably best described by Waddel’s *technocratic model*. For the most part, “experts” retained full authority over all decisions and communication was largely limited to experts informing the public of their decision. This was true even for the Notice of Consent issued for the village Jagatsukh, as the then-village chief did not consult – as required – with the village council before giving the consent.

The public participation process for the 2003 EIA required by the IFC was also dominated by one way modes of communication, at least until public outcry against the process compelled the IFC to require more innovative approaches. The draft 2003 EIA was developed with little interactive exchange with the people who would be most affected. While the project sponsor held several meetings over 3 days in March 2003, these meetings were primarily to inform the villagers that

¹⁷⁵ Waddell, 142, *supra* note 173, quoted in Robert Cox, 34, *supra* note 36.

¹⁷⁶ Walker, 130, *supra* note 131.

¹⁷⁷ Wondolleck and Yaffee, 105, *supra* note 165, quoted in Walker, 123, *supra* note 131.

the draft 2003 EIA was being prepared and to gather survey information. They did not *collaboratively* involve the villagers in the environmental assessment process by doing such things as giving them an opportunity to identify alternatives that should be addressed, *jointly* discussing *how* potential impacts should be studied, or *cooperatively designing* monitoring mechanisms. Rather, the 2003 EIA impact analyses were completed by the “experts” and the mitigation plan developed by the consultants.

Predictably, this approach fostered suspicion about the analyses made in the environmental assessment, intensified distrust of the project sponsor, and fueled opposition to the project. A key example is the dispute over how diverting flows from the Duhangan would affect the availability of water for local irrigation. The project consultants completed a detailed analysis of water flows in the Duhangan based on 22 years of data, as well as a study of potential water needs for irrigation, and concluded that the minimum flow release promised by the project sponsor – 150 liters/second -- is more than enough to meet local irrigation needs. Many of the local people, however, vociferously disputed this conclusion, challenging the reliability of the consultants’ analysis. Concern over the project’s impact on irrigation water became major rallying point for local villagers.

The contentiousness of this dispute was generated in part by the reliance on one way modes of communication during the preparation of the environmental assessment process. The project consultants relied on traditional “consultative” methods, where “experts” provided technical information to “citizens” and “citizens” shared concerns in response. This approach failed to acknowledge the existence and value of local knowledge, or to create a way to interact with that knowledge in the assessment of impacts. More simply said, this approach failed to respect the local villagers’ first hand knowledge of their water needs, and to involve them in determining *how* the project’s impact on those needs could be reliably assessed.

The use of two way modes of communication could have helped this situation. A collaborative effort where the project consultant and villagers jointly designed and implemented an investigation of water issues could have produced an analysis that was not only reliable, but also more credible with the local residents. This was in fact the recommendation of the independent consultants hired by the project sponsor. After facilitating the public hearings in Prini and

Jagatsukh, this team wrote:

With regards to the water issue in Jagatsukh, we recommend that a joint team be set up with the villagers, their technical representatives, and the ERM, to verify the data about the water availability and the requirements of Jagatsukh and other dependent villages.¹⁷⁸

Unfortunately, this recommendation was ignored, and the IFC approved the project on the basis of the consultant's disputed analysis.

The project sponsor did initiate some public participation efforts that anticipated two way modes of communication after extensive public outcry about the existing process. Specifically, the company hired a team of independent facilitators to hold public hearings in the spring of 2004. This team tried to initiate a process where the local villagers – empowered by an enhanced understanding of the project provided by informational pre-meetings – could negotiate with the company about mitigation measures during the public hearing. By the time this effort was initiated, however, the local public's distrust of the company, and of the public participation process, was too acute for it to succeed. As one NGO wrote, by the time of the hearings, "the Jagatsukh residents simply seemed to have lost faith in the company."¹⁷⁹ In addition, the public hearing was designed to empower the villagers to negotiate with the project sponsor about *mitigating* measures, and many villagers, at least in Jagatsukh, wanted to provide input about how project impacts should be assessed, and against what criteria they should be evaluated, *not* on how the project could be *mitigated*.

The need for two way modes of communication was recognized by the team of independent consultants. After the hearing, many of their recommendations to the project sponsor emphasized the need for more interactive, collaborative modes of communication. For example, the team stressed that "the Company needs to significantly strengthen their capacity to *interact and interface* with the villagers." Similarly, they suggested that the project sponsor "engage an independent facilitating agency" which could conduct *independent investigations, involving the local*

¹⁷⁸ Singh, 15, *supra* note 58.

¹⁷⁹ Kanchi Koli, "Himachal Power Project Under Scrutiny," *Indira Together* (June 2004). Available at: <http://india.../2004/jun/env>

people (and/or their nominees) in areas of special concern.” Finally, they recommended that a “joint team be set up with the villagers, their technical representatives, and the ERM to verify data about water availability . . . “ (Emphasis added.)¹⁸⁰

It could be argued that the project sponsor’s reliance on one way modes of communication in the public participation process for the Allain Duhangan maintained the Company’s control over the decision making process, and thus allowed them to win approval of IFC financing. But it is important to note that it also fostered public cynicism about the decision making process, aggravated public distrust of the company, and played a role in provoking NGOs to hold up the Allain Duhangan process as another example of the public being excluded from environmental decision making. As one NGO wrote:

[T]he whole stakeholders consultation strategy . . . has been formulated with a view to ‘ensure local support’ and not with a view to ensure participation of the local people in the project right from the decision making stage. In fact the ESIA agency sees the need for involvement of NGOs . . . as ‘it would be worthwhile to engage some NGOs in mobilising the community in favor of the project.’ This clearly shows that the ESIA agency has no value of participation of various stakeholders, but has only the interest in getting support for the project.¹⁸¹

Reflections

Decisions about development and the environment inevitably involve conflict. Different, and often contradictory, material interests and social values are unavoidably implicated. Even under the widely supported goal of “sustainable development”, there are different visions about what “sustainable” means and conflicting ideas about what development is needed, where it should take place and what it should look like. Furthermore, there are the perennial issues of privilege and power. Development projects tend to benefit some parties over others, and frequently those people bearing the impacts or risks involved in a development project are not those receiving the

¹⁸⁰ Singh, 14, *supra* note 58.

¹⁸¹ South Asia Network on Dams, Rivers and People, “Comments on the ESIA of the Proposed Allain Duhangan F”, December 2003.

benefits. Similarly, people enter a decision making process with very different levels of power, and again, those most likely to be affected by a decision are often in a position with the least ability to influence the outcome. In the age of globalization, where development has accelerated and the stakeholders often involve parties from around the globe, these issues are intensified.

Public participation offers the opportunity, to address these issues – at least in part. As discussed in Section I of this paper, public participation can make environmental decision making more democratic, and thus more fair. It can also generate the kind of analyses and debate necessary to understand and thoughtfully address trade-offs. And, it can build respect for the decision making process and thus – even though there may be disagreement – foster a sense of social legitimacy for a decision. But the potential promises of public participation can not be achieved unless the process is experienced as truly participatory.

An obvious first step toward public participation that is truly participatory is full compliance with measures that have been adopted to require it. World Bank and IFC policies for environmental impact assessment mandate early public access to information in a form appropriate for the affected people, and, early and continued consultation with citizens about *how* a project will be assessed (what issues are studied, what values are considered, what decision making criteria are relevant) as well as *what* the decision should be. The Government of India has also adopted similar, although somewhat less rigorous, requirements. When compliance with these requirements is compromised, so is authentic public participation.

Compliance with public participation requirements, however, is not enough to make public participation truly participatory. It also requires attention to communication practices, and, as important, the power relations inherent in those practices. This paper's review of public participation for the Allain Duhangan project shows, for example, how citizens were largely excluded from the decision making process by four communication practices. Specifically:

- (1) Citizens were not provided meaningful access to information – about the proposed project or about how to participate in the decision making process – in a timely manner or in the appropriate language.
- (2) The project sponsor, with concurrence of the IFC and the Government of India, maintained control over what – and how and when – issues would be addressed in the EIA, thus

largely predetermining the decision outcome and foreclosing significant public involvement. (3) The privileging of scientific/technical discourse devalued local knowledge, causing some local concerns to be disregarded, or dismissed as irrational, and making it difficult, if not impossible, for many citizens to engage in the process. (4) The predominant use of one-way “consultative” modes of communication largely relegated citizens to the role of passive players who were to be educated about the decision (and its merits), rather than positioning them as active participants in the assessment and decision making process.

This paper also shows how these practices, deliberately or unwittingly, served to maintain existing hierarchical relations of power. Specifically, they enable an elite group to use their established power to dominate the decision making process, rather than allowing the people whose lives will be affected to play a meaningful role. This approach had predictable result – the proponent secured official approval and financing for the project. But a fundamental principle of human rights – that those affected by a decision should have a say in that decision – was compromised. Furthermore, the approach taken to public participation for the Allain Duhangan project bred citizen distrust, antagonism and hostility, not only toward the project, but also toward the institutions involved in its approval.

Run-of-the-river hydroelectric projects offer an opportunity to move toward sustainable energy generation with comparatively fewer and less damaging environmental and social impacts than large dams, nuclear or coal fired power plants. Even citizen activists who have traditionally opposed large dams in India recognize that small scale hydroelectric projects may be a necessary energy alternative in some situations. But public challenge to such projects is likely to increase unless proponents provide authentic opportunities for the public to be involved in the decision making process. This means sharing information early and in a form that is truly accessible to affected people. It means allowing citizens to play a role in defining what issues need to be assessed and how those issues will be studied. It means respecting local knowledge and facilitating exchanges that ensure its integration in the assessment process. And it means adopting more collaborative approaches to communication where information is jointly constructed and decisions are interactively deliberated. As Peterson writes

If public participation is going to contribute to an increasingly sustainable and just world,

it must be transformed into the joint social construction of policies...where the knowledge of stakeholders and experts is integrated into the development, implementation and continued monitoring of environmental policy.¹⁸²

TIME LINE FOR EVENTS

ASSOCIATED WITH ALLAIN DUHANGAN PUBLIC PARTICIPATION PROCESS

1996	EIA notification provides for public participation at the discretion of the Ministry of Environment and Forests (MoEF). EIA summaries to be publicly available when in the public interest.
1996	EIA published. (RITES)
1997	Notices of Consent issued by officials in Prini and Jagatsukh. EIA notification makes public hearing mandatory. Also requires public disclosure of EIA prior to hearing.
2000	
December	MoEF issues environmental clearance.
2002	
October	MoEF issues clearance for diversion of forest lands.
2002	RSWML approaches IFC about financing.
2003	
March	Meetings in Prini, Aleo, Jagatsukh.
May	Meeting in Prini.
August	ESIA Volume 1 on World Bank InfoShop website.
October	Villagers write World Bank/IFC asserting violations of IFC policies.

¹⁸² Peterson and Franks, 55, *supra* note 7.

	Demand Hindi translation of ESIA and public hearing.
November	IFC representative meets with villagers in Prini.
November	Villagers write IFC reiterating demands.
December	ESIA (english) posted on World Bank InfoShop website.
	Hindi translation of Non-Technical Executive Summary and ESIA Vol 1 (Environmental and Social Management Plan) also on w
2004	
January	Meeting in Jagatsukh.
February	Hindi translations of ESIA Volumes I and III at project site.
March	Hindi translations of full ESIA on World Bank InfoShop website. Team of independent consultants hired.
April/May	Public information meetings in Prini, Jagatsukh
May	Public hearings in Prini, Jagatsukh Team of consultants submits report and recommendations.
July	Jagatsukh Village Assembly passes resolution rejecting Notice of Consent. (Panchayat President and 130 people) Women Society of Jagatsukh petition (11 people) Village of Bhanara petition (163 people) Independent observer meetings in Prini and Jagatsukh. Independent observer files report.
September	ESIA Addendum posted on World Bank InfoShop website. Villagers file complaint with IFC Compliance Advisor/Ombudsman.
Sept/Oct	Letters to IFC from consultant team, NGOs, villagers.

- Oct 10 IFC Compliance Advisor/Ombudsman determines complaint warrants investigation.
- Oct 12 IFC approves \$45 million loan.

REFERENCES

- Allain Duhangan Hydroelectric Project Environmental and Social Impact Assessment (ESIA), Non-Technical Executive Summary (Revised)*. New Delhi: Environmental Resources Management, December 2003.
- Allain Duhangan Hydroelectric Project Environmental and Social Impact Assessment (ESIA), Draft Final Report, Volume 1, (Revised)*. New Delhi: Environmental Resources Management, December 2003.
- Allain Duhangan Hydroelectric Project Environmental and Social Management and Monitoring Plan, Draft Final Report, Volume II (Revised)*. New Delhi: Environmental Resources Management, December 2003.
- Allain Duhangan Hydroelectric Project, Compendium of Specialised Studies, Draft Final Report, Volume III (Revised)*. New Delhi: Environmental Resources Management, December 2003.
- Allain Duhangan Hydroelectric Project, Addendum to Environmental and Social Impact Assessment Report, Draft Final Report*. New Delhi: Environmental Resources Management, September 2004.
- Arnstein, S.R. "A Ladder of Citizen Participation." *Journal of the American Institute of Planners*, 25 (1985)
- Bacon, R. "A Scorecard for Energy Reform in Developing Countries." *Public Policy for the Private Sector* (1999).
- Bacco, J.S. and Wheeler. *Environmental Dispute Resolution*. New York: Plenum Press, 1984.

- Beck, U. *Risk Society: Towards a New Modernity*. London: Sage, 1992.
- Beierle, Thomas. "Public Participation in Environmental Decisions: An Evaluation Framework Using Social Goals," Discussion Paper 99-06. Washington D.C.: Resources for the Future, 1988.
- Beierle, T. C. and J. Cayford. *Democracy in Practice: Public Participation in Environmental Decisions*. Washington D.C.: Resources for the Future, 2002
- 40 Code of Federal Regulations, sec. 1507.7
- 40 Code of Federal Regulations, sec. 1503.1
- 40 Code of Federal Regulations, sec. 1503.4
- Cox, Robert. "Chapter 3, Public Participation in Environmental Decisions." Unpublished, 2005.
- Depoe, S.P., J.W. Delicath, and M.A. Elsenbeer. *Communication and Public Participation in Environmental Decision Making*. State of New York Press: 2005.
- Dionisopoulos, G.N. and R.E. Crable. "Definitional Hegemony as a Public Relations Strategy: The Rhetoric of the Nuclear Power Industry after Three Mile Island." *Central States Speech Journal*, 39 (1988).
- Diversion of Forest Land and Catchment Area Treatment Plan, Summary*. RSWML.
- Efram G.L. and E. Lucchesi. "Citizen Participation." In *The Practice of Local Government Planning*. Washington D.C.: International City Management Association, 1979.
- Environmental Impact Assessment and Catchment Area Treatment Plan for Allain Duhangan Hydroelectric Project in Kullu District Himachal Pradesh*. New Delhi: Rail India Technical and Economic Services Ltd. (RITES), January 1996.
- Environmental Resources Management, video, 7 May 2003 meeting in Prini, Himachal Pradesh, India.
- Foucault, M. "The Ethic of Care for the Self as a Practice of Freedom." In *The Final Foucault*, edited by J. Bernauer and D. Rasmussen. Cambridge: MIT Press, 1988.

- Ganesh, Shiv. "Organizational Narcissism: Technology, Legitimacy and Identity in an Indian NGO." *Management Communication Quarterly*, Vol. 16, No. 4 (May 2003).
- Hays, S.P. *A History of Environmental Politics Since 1945*. Pittsburgh: University of Pittsburgh Press, 2000.
- Henry, Judith. "Decide, Announce, Defend: Turning the NEPA Process into an Advocacy Tool Rather than a Decision-Making Tool." In *Communication and Public Participation in Environmental Decision Making*, edited by S.P. Depoe, J.W. Delicath, M.A. Elsenbeer. State University of New York Press, 2005.
- Hsia, Sophie. "Foreign Direct Investment and the Environment: Are Voluntary Codes of Conduct and Self-Imposed Standards Enough?" *9 Environmental Lawyer* 673 (June 2003).
- International Association for Public Participation. "Public Participation: Critical for Sustainable Development." Available at www.iap2.org
- International Finance Corporation. *Disclosure Policy*. September 1998. Available at <http://ifc.org/IFCExt/enviro/nsf>
- International Finance Corporation. *Procedure for Environmental and Social Review of Projects, Guidance Note F: Guidance for Preparation of a Public Consultation and Disclosure Plan*. December 1998.
- International Finance Corporation. *Operational Policies, Environmental Assessment, 4.01*. (1998) Available at <http://ifc.org/enviro>
- International Rivers Network, et al. *Financing Dams in India: Risks and Challenges*. Berkeley, CA: International Rivers Network, 2005.
- "Irrigation and Power." Site designed, developed and maintained by: Gaurav Sharma and Ishwinder Singh Thukral, Chandigarh, India. Available at <http://www.merahimachal.com/inp.html>.
- Kaminstein, D.S. "Persuasion in a Toxic Community: Rhetorical Aspects of Public Meetings." *Environmental Communication*, 55 (1996).

- Kim, W. Chan, and Renee Mauborgne. "Fair Process: Managing in the Knowledge Economy." *Harvard Business Review*, (July-August 1997).
- Koli, Kanchi. "Himachal Power Project Under Scrutiny." *Indiatogether*, Toxics Link. June 2004.
Available at <http://indiatogether.org/2004/jun/env>
- Koli, Kanchi, Neema Pathak, and Ashish Kothari. "Don't Touch Our Water." Kalpavriksh Environmental Action Group.
- Kothari, Ashish. "Environmental Aspects of Large Dams In India: Problems of Planning, Implementation, and Monitoring." Statement by Kalpavriksh Environmental Action Group, submission to the World Commission on Dams, Public Hearing, Bhopal, India. 21-22 September 1998.
- Kothari, Ashish, Kanchi Kohli and Neema Pathak. "Allain Duhangan Hydro-Electric Project: Report of a pre-public hearing focused group meeting at Jagatsukh village, 1.5.2005." In *Allain Duhangan Hydroelectric Project Report of the Public Hearings*. New Delhi: Samya-Centre for Equity Studies (May 2004).
- Lawrence, Rick L., Steven E. Daniels, and George H. Stankey. "Procedural Justice and Public Involvement in Natural Resource Decision Making." *Society & Natural Resources*, 10 (1997).
- Leiss, W. and C. Chociolko. *Risk and Responsibility*. Montreal/Kingston: McGill-Queen's University Press, 1994.
- MacDonald, Erin. "Playing by the Rules: The World Bank's Failure to Adhere to Policy in the Funding of Large-Scale Hydropower Projects." *Environmental Law*, Vol.31:981 (2001).
- Mander, Harsh. Interview by author. New Delhi, India. 11 December 2004.
- Mander, Harsh. "Report of the Independent Observer: Social and environmental impact assessment of the proposed Allain Duhangan Hydroelectric Project (ADHEP), Manali, district Kullu." July 2004.
- Ministry of Environment and Forests, Government of India. Notification S.O. 60(E), 27 January 1994, promulgating the original version of India's EIA regulations.

Ministry of Environment and Forests, Government of India. Notification I, S.O. 318(E), 10 April 1997.

Ministry of Environment and Forests, Government of India. Environmental Impact Assessment, Notification S.O. 632 (E) (13 June, 2002), amending Schedule IV, paragraph I.

Ministry of Environment and Forests, Government of India. Circular No. 11-30/96-FC(pt.), dated 26.2.1999.

Mouffe, Chantal. "Deliberative Democracy in Agonistic Pluralism." *Social Research*, 66. (1999)

Mowlana, Hamid. *Global Communication in Transition: The End of Diversity?* Thousand Oaks, CA: Sage Publications, 1996.

Mumby, D.K. *Communication and power in organizations: Discourse, ideology and domination.* Norwood, NJ: Ablex, 1988.

"New HP Power Policy on Cards." In *The Tribune*, Chandigarh, India. 1998.

Palerm, Juan. "Public Participation in Environmental Decision Making: Examining the Aarhus Convention." *Journal of Environmental Assessment Policy and Management*, Vol.1, No.2 (1999)

Parenteau, R. *Public Participation in Environmental Decision-Making.* Ottawa, Canada, Minister of Supply and Services (1988).

Peterson, Tarla Rai and Rebecca Royer Franks. "Environmental Conflict Communication," in *The Sage Handbook of Conflict Communication: Integrating Theory, Research, and Practice*, edited by JG Oetzel and S. Ting-Toomey. Thousand Oaks, CA: Sage, 2005.

Portnoy, K.E. "Public Environmental Policy Decision Making: Citizen Roles," in *Environmental Decision Making: A Multidisciplinary Perspective*, edited by R.A Chechile & S. Carlisle. New York: Van Nostrand Reinhold, 1991.

Ratcliff, J.N. "The Politics of Nuclear Waste: An Analysis of a Public Hearing on the Proposed Yucca Mountain Nuclear Waste Repository." *Electronic Journal of Communication*, 8 (1988).

Ravi.S.P. and Chalakudy Puzha Samrakshna Samithy vs. State of Kerala, and Kerala State

- Electricity Board, et al O.P. No. 3581 of 2001, High Court of Kerala (Decided 17 Oct. 2001).
- Salzman, J. and B.H. Thompson. *Environmental Law and Policy*. New York: Foundation Press, 2003.
- Shapiro, M.J. *Language and Political Understanding*. New Haven: Yale University Press, 1981.
- Shepherd, Anne and Christi Bowler. "Beyond the Requirements: Improving Public Participation in EIA." *Journal of Environmental Planning and Management*, 40(6), (1997).
- Sinclair, John A. And Alan P. Diduck. "Public Involvement in Hydro Development in Kullu District, Himachal Pradesh, India." Available on the web.
- Singh, Shekhar, Arvind Kejriwal, Vishaish Uppal, and Sejal Worah. *Allain Duhangan Hydroelectric Project Report of the Public Hearings*. New Delhi: Samya-Centre for Equity Studies, May 2004.
- South Asia Network on Dams, Rivers and People: "Comments on the ESIA of the Proposed Allain Duhangan HEP." December 2003.
- Susskind, L. and J. Cruikshank. *Breaking the Impasse: Consensual Approaches to Resolving Public Disputes*. New York: Basic Books, 1987.
- Steelman, T.A. and W. Ascher. "Public Involvement Methods in Natural Resource Policy Making: Advantages, Disadvantages and Trade-offs." *Policy Sciences*, 30 (1999).
- Thakkar, Humanshu. South Asia Network on Dams, Rivers and People. Interview by author. New Delhi, India. 13 October 2004.
- Toker, Caitlin Wills. "Public Participation or Stakeholder Frustration: An Analysis of Consensus-based Participation in the Georgia Ports Authority's Stakeholder Evaluation Group." In *Communication and Public Participation in Environmental Decision Making*, edited by S.P Depoe, J.W. Delicath, and M.A. Elsenbeer. State of New York Press: 2005.
- United Nations Development Programme, United Nations Environment Programme, World Bank, and World Resources Institute. *World Resources, 2002-2004: Decisions for the Balance, Voice and Power*. Washington D.C.: World Resources Institute, 2002.

- Well, C. "Saving the Great Lakes: Public Participation in Environmental Policy." In *Green Culture: Environmental Rhetoric in Contemporary America*, edited by C.G. Herndl and S.C. Brown. Madison: University of Wisconsin Press, 1996.
- Walker, Greg. "The Roadless Areas Initiative as National Policy: Is Public Participation an Oxymoron?" In *Communication and Public Participation in Environmental Decision Making*, edited by S.P. Depoe, J.W. Delicath, M.A. Elsenbeer. State University of New York Press, 2005.
- Walker, Greg and Steven Daniels. "Dialogue and Deliberation in Environmental Conflict." In *The Environmental Communication Yearbook, Volume 1*, edited by Susan Senecah. Mahwah, NJ: Lawrence Erlbaum, 2004.
- Webler, T., H. Kastenholz and O. Renn. "Public Participation in Impact Assessment: A Social Learning Perspective." *Environmental Impact Assessment Review*, 15 (1995).
- Weber, E.P. *Pluralism by the Rules: Conflict and Cooperation in Environmental Regulation*. Washington D.C.: Georgetown University Press, 1990.
- Weston, Joe. "Is there a Future for EIA? Response to Benson."
- Weston, Joe. "EIA, Decision-making Theory and Screening and Scoping in UK Practice." *Journal of Environmental Planning and Management*, 43(2) (2000).
- Wondolleck, J.M., N.J. Manring, and J.E. Crowfoot. "Teetering at the top of the ladder: The experience of citizen group participants in alternative dispute resolution processes." *Sociological Perspectives*, 39 (1996).
- Wondolleck, J.M. and S.L. Yaffee. *Making Collaboration Work: Lessons from Innovation in Natural Resources Management*. Washington D.C., 2000).
- World Bank. "Public Consultation in the EA Process: A Strategic Approach, World Bank Update, No. 26." May 1999.
- World Commission on Dams. *Dams and Development. A New Framework for Decision-Making*. (2000)
- Walker, Greg and T.D. Herbst. *Using Stakeholder Processes in Environmental Decisionmaking: An*

Evaluation of Lessons Learned, Key Issues, and Future Challenges. D.C.:
Rudder Finn Washington and ICF Incorporated, 1998.

Letters:

Dayal, Shiv, President, Prini Jan Vikas Avan Adhikar Manch (Platform for Prini development and rights) and others, to Mr. James Wolfensohn, President, World Bank. 2 October 2003.

Dayal, Shiv, (President, Prini Jan Vikas Avan Adhikar Manch)(Platform for Prini development and rights) and Dinesh Sharma, Paryavaran Avan Kalyan Sansthan, to Mr. James Wolfensohn, President, World Bank. 15 November 2003.

Kothari, Ashish (Kalpavriksh), Ravi Agarwal (Toxics Link) and Centre for Equity Studies (Centre for Equity Studies). "Open Letter to the Ministry of Environment and Forests" from 50 non-government organizations. 3 September 2004.

Kothari, Ashish, Kalpavriksh, to Mr. James Wolfensohn, President, World Bank. 26 August 2004.

Kothari, Ashish, Kalpavriksh to Mr. James Wolfensohn, President, World Bank. 21 September, 2004.

Kothari, Ashish, Kalpavriksh to Shalabh Tandon, International Finance Corporation. 21 September 2004.

Singh, Shekhar, Samya-Centre for Equity Studies, to Mr. J. Wolfensohn, President, World Bank. 5 October 2004.

Thakkar, Himanshu, South Asia Network on Dams, Rivers and People and Vimal Bhai, MATU, to Dimitri Tsisiras, Director, South Asia Centre. 21 November 2003.

Villagers (135 signatures) to Executive Directors, IFC Board and President, World Bank Group. 5 October 2004.

Villagers (anonymous) Compliance Advisory Group. IFC. 15 September, 2004.