

Doctoral Dissertation

**Public participation in Environmental Impact Assessment –
An analysis of theory and practice in Vietnam**

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Abstract

–*EIA is not EIA without consultation and participation*” Hartley and Wood (2005, p. 319). To date, most EIA systems in national legislation have legalized public participation as a key element in EIA process to ensure the environmental right and environmental conservation. However, among scholars, there seems to have contestation on the concept and objectives of public participation in EIA process. Additionally, the literature review reveals that the extent to which the participatory approach differs from developed countries to developing countries. Especially, empirical research on implementation of public participation in EIA process is still limited, namely in Vietnam.

Based on the signal background above, the purpose of this research is to delve deeper into the theoretical argument on public participation in EIA process and the practice of public participation in Japan and Vietnam. Due to limited time and resources, an empirical study was only conducted in Vietnam through EIA analysis and interviews. Both the theory review and the analysis of public participation in Japan’s EIA systems as well as EIA reports and interviews in Vietnam have centered on the following issues of public participation in EIA process: the meaning, scope, and objectives of public participation as well as factors influencing the effectiveness of public participation in EIA process. Consequently, two research objectives of this dissertation are indicated: (i) the first research objective is to analyze the theoretical issues of public participation in EIA process; and (ii) the second research objective is to scrutinize factors influencing the implementation of public participation in Vietnamese EIA process in practice.

Moreover, the research methodology used in my research is a combination of the legal comparative method, the legal historical method, the desk/historical method and the qualitative method. Particularly, to achieve the first objective and to answer first two research questions, the legal comparative method, the legal historical method, and the desk/historical

method are mainly employed. In order to reach the second objective and to solve the last two research questions, the qualitative method is primarily used for data collection. In so doing, seven EIA reports were analyzed and thirty-three face-to-face interviews with different stakeholders in Ho Chi Minh City, Vietnam were conducted. Although some methodological limitations remain, such as the possible bias from interviewees, the qualitative method is the best approach for obtaining the opinions of stakeholders regarding the theory and practice of public participation in Vietnam's EIA process.

Public participation, *ipso facto*, does not bring into play its effectiveness in practice if separating it with transparency, access to information, access to justice and other democratic aspects. Admittedly, public participation should not be described as a panacea for all problems of environmental governance, nor can the one best participatory form be established for the EIA process of each country. But equally, public participation is also a multifunctional key for improving environmental governance and consolidating democracy. Recently, some authors point out literally many theoretical reasons and experience from empirical research to believe that the wider public participation is, the more successful EIA achieves. There seems to not deny the truth that public participation plays a key role in the success of EIA process and the smooth implementation of the specific project. Although public participation has already implemented in legislative process and administrative process for a long time, the theoretical review of public participation in EIA process has centralized the concepts of "*participation*", "*the public*" and "*public participation*", models and objectives of public participation, and factors influencing the effectiveness of public participation in EIA process. However, from different standpoints and various approaches, each researcher gives well-grounded contestation in favor of his viewpoint regarding the above issues and no needs to compare those understandings.

Appropriately, I insist that public participation in EIA process implies an interaction process among access to information and environmental governance. In which, access to information ensures that the public can be provided full, accurate, prompt and completed information to participate in EIA process effectively and constructively; while environmental governance, the formation of policies and the introduction of measures for mitigating undesirable consequences (Bulkeley & Mol, 2003, p. 144), is more effective through the public participation procedure. Consequently, public participation hereby discussed means an emphasis on the interactions among stakeholders, and of course, this procedure cannot bring into play any changes without relationships with the other elements of environmental governance.

This dissertation also shows that public participation confronts the various difficulties and challenges in each country, particularly, between developed countries and developing countries, or between democratic countries and monarchy countries, and among the countries with different participatory cultures. To illustrate these differences, this dissertation has concentrated on the analysis of public participation in EIA process of Japan and Vietnam. In both Japan and Vietnam, public participation in EIA is a mandatory procedure but differing in the participatory approach, the voluntary-based approach in Japan and the requirement-based approach in Vietnam. Public participation in Vietnam's EIA process is described the top-down and passive model, namely, the public is just informed of a proposed project and asked for their support (Hostovsky, MacLaren, & McGrath, 2010, p. 409).

As has been explained above, in Vietnam public participation in EIA process has a consultative trait, which does not empower the public to influence the decision (Arnstein, 1969). A procedure for public participation is a mandatory procedure in EIA process but just being the procedure for informing and/or consultation. The public meeting is not open to all citizens, just for the affected people or/and their representatives leading to distrust in the

results of the public meeting held in EIA process for consultation. Moreover, there are no definitions of “*the public*” and “*public participation*” as well as “*the objectives of public participation*” in any environmental provisions regarding EIA process. These barriers involve several factors, such as the EIA process, the procedure for public consultation, the awareness of stakeholders, the quality of information and trust in government. In which, lack of environmental awareness of authorities and proponent/consultant has led to the trade-offs between economic growth and a clean environment.

Moreover, goals of public participation in Vietnam’s EIA process are not achieved *de facto* because of lacking specification *ipso jure*. The inadequate capacities and attitudes of government agencies in EIA process and a top-down manner through existing structures (People’s Councils and People’s Committees) at the provincial, district and commune levels as well as a participatory culture in Vietnam are considered as some great barriers for achieving the objectives of public participation in EIA process. The EIA analysis and interviews revealed that the public participation in Vietnam’s EIA process has been implemented in a perfunctory manner, leading to reducing the effectiveness of this procedure *in praxis*. Due to the fact that theoretically public participation in EIA process will achieve the effectiveness if all objectives of public participation are fulfilled in reality. The public has involved in Vietnam’s EIA process passively and superficially. In practice, only affected people have attended the public meeting due to the compensation, the relocation and the resettlement. This is easily understandable, given the fact that in developing countries (namely in Vietnam) the public concerns are mainly economic benefits, particularly private benefits. Additionally, the public participation in EIA process in developing countries differs from the public participation in Western countries and developed countries because of the differences in the participatory culture and attitudes of governments (Hostovsky et al., 2010). Moreover, the specific socio-economic conditions also affect the participatory process of

stakeholders in EIA process. This might explain the reasons of the more effectiveness of public participation in EIA process in Western countries, where democracy has already existed. The research findings have also shown that the participatory culture, economic and political factors influence the effectiveness of public participation in Vietnam's EIA process. Thus, the empirical researches should be made in other developing countries in order to demonstrate that the research findings of my study can be employed in other developing countries, which own the same key characteristics of socio-economy, culture, politics and ecology.

Abbreviations

ADB	Asian Development Bank
ADR	Alternative Dispute Resolution
COP	Conference of Parties
EC	Economic Commission for Europe
EC	European Commission
EDCC	Environmental Dispute Coordination Commission
EIA	Environmental Impact Assessment
EIS	Environmental Impact Statement
EU	European Union
IMR	Impact Mitigation Reporting
IUCN	International Union for Conservation of Nature
JICA	Japan International Cooperation Agency
LEP	Law on Environmental Protection
MOE	Ministry of Environment (Japan)
MONRE	Ministry of Natural Resources and Environment (Vietnam)
NEPA	National Environmental Policy Act
NGO	Non-Governmental Organization
ODA	Official Development Assistance
OECD	Organization for Economic Co-operation and Development
PEIC	Primary Environmental Impact Consideration
PPEC	Prefectural Pollution Examination Commission
SEA	Strategic Environmental Assessment
TMG	Tokyo Metropolitan Government
UN	United Nations
UNDP	United Nations Development Programme
UNECE	United Nations Economic Commission for Europe
UNEP	United Nations Environment Programme
US	United States
WB	World Bank
WWF	World Wildlife Fund

Glossary of Vietnamese terms

BTNMT	Ministry of Natural Resources and Environment
CP	Government
HCM	Ho Chi Minh
HDBT	Council of Ministries of Socialist Republic
Mtg	Environment
ND	Decree
TT	Circular
TTg	Prime Minister

CHAPTER 1: INTRODUCTION AND BACKGROUND TO THE STUDY

1.1. Summary of chapter 1

Environmental Impact Assessment (hereinafter referred to as EIA) is a process of evaluating the likely environmental impacts of proposed projects or activities, including both favorable and harmful impacts. EIA is normally conducted before implementing the project in order to identify the environmental, social and economic impacts. In so doing, inputs for EIA report needs to cooperate with public inputs. To get these goals, most EIA systems of countries have legalized public participation as a key element in EIA process to ensure the environmental right of the public. Principle 23 of the World Charter for Nature of 1982 strongly expresses that *—All persons, in accordance with their national legislation, shall have the opportunity to participate, individually or with others, in the formulation of decisions of direct concern to their environment, and shall have access to means of redress when their environment has suffered damage or degradation.*¹

In Vietnam, the Law on Environmental Protection (hereinafter referred to as LEP) was firstly adopted in 1993, which set out the requirements for EIA. Despite lacking provisions of public participation in EIA, this law represented a major step in the development of a robust legislative framework for EIA in Vietnam. This law was replaced by the LEP 2005, 2014. The LEP 2014 came into force on 1 January 2015². In those laws, public participation in EIA process was legally regulated for implementation in practice. However, to transform public participation in Vietnam's EIA process from theory into practice is challenging to all stakeholders involved in EIA process. Analyzing the current provisions of public participation in EIA process and its implementation in practice as well as comparison with

¹ See “The World Charter for Nature”. Retrieved on December 21, 2016 from <http://www.un.org/documents/ga/res/37/a37r007.htm>

² See “Law on Environmental Protection of 2014 of Vietnam”. Retrieved on December 21, 2016 from http://www.itpc.gov.vn/investors/how_to_invest/law/Law_on_environmental_protection_2014_1/mldocument_view/?set_language=en

the Japan's EIA system are necessary to draw some recommendations for Vietnam's legal framework.

In this chapter, I review some literature regarding EIA and public participation in EIA process to make the background and motivation for my study. They are the following issues:

- Access to information and the right to know
- Environmental Impact Assessment
- Public participation in EIA process

After that, I identify two research objectives of my thesis, (i) the first research objective of my study is to analyze the theoretical factors of public participation in EIA process; and (ii) the second research objective is to scrutinize the factors influencing the implementation of public participation in Vietnamese EIA process in practice. In addition, I introduce four research questions in order to make the orientation for my study. Moreover, the research methodology used in my research is a combination of *the legal historical method, the legal comparative method, and the qualitative method*.

1.2. Literature review: background and motivation for the study

1.2.1. Access to information and the right to know in the epoch of globalization

In 2016, the Swedish and Finnish government, and others celebrated passage 250 years ago of the world's first law to grant the public access to information - the Freedom of the Press Act of 1766. Swedish citizens have had a right to access public data, unmatched in any other legal system (Sand, 2002, p. 2). Especially, Anders Chydenius (1729-1803) is praised as an enlightenment thinker and politician in creating the new law (Mustonen, 2006, p. 4). As Professor *Juha Manninen* describes that *“the key achievements of the 1766 Act were the abolishment of political censorship and the gaining of public access to government documents”* (Mustonen, 2006, p. 4). This first law on public access to information has therefore marked the evolution of the right to know and right to say in the world. From that,

other Nordic countries followed much later: Finland's *Publicity of Documents Act* in 1951, US *Freedom of Information Act* of 1966, Denmark's *Public Access Act* in 1970, Dutch *Administrative Transparency Act* of 1978 (Sand, 2002, p. 2). Although *–Gustav III brought the Age of Liberty to a sudden end” through the revolution of –the coup of 19 August 1772”* (Roberts, 2003, p. 2), *–Sweden for the first time acquired a politically effective and socially conscious middle class”* in the Age of Liberty (1719-1772) (Roberts, 2003, p. 214). In addition, *–the experience of Finland, Anders Chydenius' home country, shows that transparency in the decision-making process is beneficial also to governments themselves by improving citizens' trust in government actions”* (Mustonen, 2006, p. 6).

Furthermore, in the book of *–Freedom of Information: A comparative legal survey”*, the author expresses that *–the importance of the right to information or the right to know is an increasingly constant refrain in the mouths of development practitioners, civil society, academics, the media, and governments. What is this right, is it really a right and how have governments sought to give effect to it?”* (Mendel, 2008). Also, he introduces the international standards and trends on freedom of information, from United Nations to regional standards (such as Organization of American States, the Council of Europe and the African Union) (Mendel, 2008, pp. 8-12).

In the international sphere, the notion of *–freedom of information”* of UN was appeared in the *–Calling of an international conference on freedom of information”* – a Resolution No.59(I) adopted by the general assembly during its first session on 14 December 1946³, as follows:

–Freedom of information is a fundamental human right and is the touchstone of all the freedoms to which the United Nations is consecrated. Freedom of information implies the right to gather, transmit and publish news anywhere and everywhere

³ See *–Calling of an international conference in freedom of information”* of UN of 1946. Retrieved on December 12, 2016 from: <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/033/10/IMG/NR003310.pdf?OpenElement>

without fetters. As such it is an essential factor in any serious effort to promote the peace and progress of the world.”

The UN’s 1948 Universal Declaration of Human Rights states at Article 19⁴ as *–the flagship statement of international human rights”* (Mendel, 2008, p. 8) that:

–Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”.

Following this idea, the Article 19.2 of the 1966 International Covenant on Civil and Political Rights⁵ provides that:

–Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”.

Moreover, the London - based international advocacy group Article 19 (named after the freedom of expression clause of the Universal Declaration of Human Rights) has introduced *–clearly and precisely”* nine principles of freedom of information (see table 1.1) which assist countries in the progress of adopting freedom of information laws as well as establish norms to extend transparency (Darch & Underwood, 2009, p. 14). In addition, Preface of *–The public’s right to know – Principles on freedom of information legislation”* of ARTICLE 19 (1999) strongly states that *–information is the oxygen of democracy”*. And Ackerman and Sandoval-Ballesteros (2006, p. 89) cited the statement of Villanueva that *–Right to information”* including, but going beyond, freedom of expression and access to information consists of three elements: (1) the right to seek and receive information, (2) the right to inform, and (3) the right to be informed.

⁴ See *–Universal Declaration of Human Rights”* of UN of 1948. Retrieved on December 12, 2016 from <http://www.un.org/en/documents/udhr/index.shtml>

⁵ See *–International Covenant on Civil and Political Rights”* of UN of 1966. Retrieved on December 12, 2016 from <https://treaties.un.org/doc/.../unts/.../volume-999-i-14668-english.pdf>

Table 1.1: Nine principles of freedom of information

Principle 1	Maximum disclosure: Freedom of information legislation should be guided by the principle of maximum disclosure.
Principle 2	Obligation to publish: Public bodies should be under an obligation to publish key information.
Principle 3	Promotion of open government: Public bodies must actively promote open government.
Principle 4	Limited scope of exceptions: Exceptions should be clearly and narrowly drawn and subject to strict “ harm ” and “ public interest ” tests.
Principle 5	Processes to facilitate access: Requests for information should be processed rapidly and fairly and an independent review of any refusals should be available.
Principle 6	Costs: Individuals should not be deterred from making requests for information by excessive costs.
Principle 7	Open meetings: Meetings of public bodies should be open to the public.
Principle 8	Disclosure takes precedence: Laws which are inconsistent with the principle of maximum disclosure should be amended or repealed.
Principle 9	Protection for whistleblowers: Individuals who release information on wrongdoing – whistleblowers – must be protected.

Source: Article 19

In short, at a glance of “right to information” literature, all authors do agree that “*freedom of information is an essential right for every person*” and “*freedom of information is the fundamental human right*” (Ackerman & Sandoval-Ballesteros, 2006; ARTICLE 19, 1999; Banisar, 2006; Birkinshaw, 2006, 2010; Blanton, 2002; Darch & Underwood, 2009; Doty, 2000; Emerson, 1976; Mendel, 2008; Mustonen, 2006).

In the environmental arena, access to environmental information is considered as a key role for furthering sustainable development, democracy, and healthy environment as well as environmental governance (Mendel, 2008, pp. 16, 17; Torres, 2014). Al-Tuwaijri (2004, p. 448) examines collectively the relations among the firm’s (1) environmental performance, (2) environmental disclosure, and (3) economic performance in order to suggest that “good” environmental performance is significantly associated with “good” economic performance, and with more extensive quantifiable environmental disclosures of specific pollution

measures and occurrences. Torres (2014, p. 2) concludes that *“if citizens were able to know about the state of the environment, to express their opinions and demand accountability of the public authorities and private sector‘ performance, society as a whole was going to be able to contribute to preventing serious environmental damage and ensuring effective environmental management”*.

Initially, Council Directive No. 313 of 1990 on *Freedom of Access to Information on the Environment* was adopted by the European Commission and Parliament for the enactment of transparency legislation in all EU member countries (Sand, 2002, p. 2). However, the implementation of the Directive of 1990 did not still achieve the success in reality because of the old administrative habits, and especially the entrenched reluctance of civil service departments (Sand, 2003, p. 491). Until 1992, access to environmental information was officially addressed in Principle 10 of the 1992 Rio Declaration on Environment and Development⁶:

“... Each individual shall have appropriate access to information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes...”

This principle implies (i) that the informed and educated public was better prepared to importantly participate in decisions affecting their environment; (ii) that the informed and meaningful public participation was an effective and efficient tool to integrate social and environmental concerns into public policy decisions and governance of natural resources (Torres, 2014, p. 2).

Additionally, in the *“Plan of Implementation of the World Summit on Sustainable Development”* adopted by the 2002 Johannesburg Summit strongly re-affirmed that:

⁶ See Principle 10 of *“Rio Declaration on Environment and Development”* of 1992 of UN. Retrieved on December 12, 2016 from:

<http://www.unep.org/documents.multilingual/default.asp?documentid=78&articleid=1163>

–Ensure access, at the national level, to environmental information and judicial and administrative proceedings in environmental matters, as well as public participation in decision-making, so as to further principle 10 of the Rio Declaration on Environment and Development, taking into full account principles 5, 7 and 11 of the Declaration”⁷.

Furthermore, in the *–Declaration on the Application of Principle 10 of the Rio Declaration on Environment and Development”⁸*, Governments of Chile, Costa Rica, Dominican Republic, Jamaica, Mexico, Panama, Paraguay, Peru, and Uruguay understandably declare that:

–Commitments must be made to ensure proper fulfillment of the rights of access to information, participation, and justice regarding environmental issues as enshrined in Principle 10 of the Rio Declaration of 1992.”

Following the Rio Declaration, the Member States of the United Nations Economic Commission for Europe (hereinafter referred to as UNECE) and the European Union adopted the legally binding Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (hereinafter referred to as the Aarhus Convention) in 1998 but its enforcement began in 2001. This Convention requires State Parties to take legal measures to implement its provisions on access to environmental information. The Preamble affirms that: *–... citizens must have access to information ...”* and *–in the field of environment, improved access to information and public participation in decision-making enhance the quality and the implementation of decisions, contribute to public awareness of environmental issues, give the public the opportunity to express its concerns and enable public authorities to take due account of such concerns ...”*

⁷ See Item 128 of *–Plan of Implementation of the World Summit on Sustainable Development”* No. A/CONF.199/20 of 2002 of UN. Retrieved on December 12, 2016 from:

<http://www.un-documents.net/jburgpln.htm>

⁸ See *–Declaration on the Application of Principle 10 of the Rio Declaration on Environment and Development”* of the Governments of Chile, Costa Rica, Dominican Republic, Jamaica, Mexico, Panama, Paraguay, Peru and Uruguay. Retrieved on December 12, 2016 from www.wri.org/sites/default/files/uploads/Principle10-Declaration.pdf

Thus, access to information, becoming one of three pillars set by the Aarhus Convention 1998, is mostly provided in Article 4. It is the most important to ensure the implementation of public participation in the decision-making process because effective public participation depends on full, accurate, up-to-date information (UNECE, 2014, p. 19). According to the Aarhus Convention, there are two types of access to information:

- (i) –Passive” access to information means that public has the right to seek information from the competent agencies and *vice versa*, the competent agencies have the obligation to provide information for public adequately.
- (ii) –Active” access to information means that public has the right to receive information and *vice versa*, the responsible authorities have the obligation to collect and disseminate information.

As the first legal binding international instrument regarding standards on the right to information, the Aarhus Convention appreciates access to information as part of the right to live in a healthy environment, rather than as a free-standing right (Mendel, 2008, pp. 16, 17). States have to regulate the definitions of –*environmental information*” and –*public authority*” as well as the responsibilities of public bodies on information dissemination.

Hence, it is very important to note that environmental information is the key element to help stakeholders participate in the EIA process. Some authors already discuss the definition of –*environmental information*” (Changhua, 2005; Yousefi-Sahzabi, Sasaki, & Yousefi, 2014) and other issues relating to environmental information (Haklay, 2003; Stephan, 2002; Yousefi-Sahzabi et al., 2014). In addition, at the international and national level, the notion of environmental information is also provided in the legal documents. For instance, in the Aarhus Convention, environmental information means any information in written, visual, aural, electronic or any other material form on the state of elements of the environment, facts

that affect the elements of the environment, decision-making processes, and the state of human health and safety (UNECE, 2014, pp. 35-49).

The number of authors does also focus on analyzing the centering role of information in EIA process (Changhua, 2005; David P. Lawrence, 2003; Stephan, 2002; Yousefi-Sahzabi et al., 2014). Creighton (2005, chapter 6 and 7) considers the techniques for getting information to the public and from the public. When mentioning access to knowledge, Palerm (2000, p. 597) believes that attempts to keep information away from the public shall be the biggest obstacle to the implementation EIA legislation in practice. Hence, the government should not apply the ways to prohibit the public from conducting the right to access to information. The government should inform the public about the policies, plans, documents at the beginning of each process and the public fully has the right to access to all information during the process.

In Vietnam, representatives of local communities have the right to ask the owners of companies to provide information on environmental protection through direct dialogs or in writing and have the right to ask the responsible authorities to supply results of investigation, inspection, and handling of the entities⁹. Environmental information is provided at least once a year periodically. Responsibility for the supply of environmental information to the community is on the environmental state management authorities if environmental information refers to legal documents, environmental reports, information about proposed and existing activities that may significantly affect the environment, harmful waste sources, result of inspection, examination, and handling of violation and specialized environmental publications. On the other hand, if environmental information refers to their environmental

⁹ See more details in Article 146 LEP 2014, *supra note 2*. And Decree No.19/2015/ND-CP dated 14 February 2015 of Government on detailing the implementation of a number of articles of the law on environmental protection. Retrieved on December 12, 2016 from <http://thuvienphapluat.vn/van-ban/Tai-nguyen-Moi-truong/Decree-No-19-2015-ND-CP-detailing-the-Law-on-Environmental-Protection-268680.aspx> (Vietnamese version only)

protection activities and license related to the extraction, use and protection of natural resources and environment, it will be on the companies.

According to the Aarhus Convention, environmental information means any information in written, visual, aural, electronic or any other material form (UNECE, 2014, pp. 51-55). This is the simple, clear and comprehensive definition of environmental information. Environmental information includes information relevant to public authorities' functions, information about proposed and existing activities that may significantly affect the environment, information in times of emergencies, information on the state of the environment, product information, pollutant release and transfer information, information about laws, programs, policies, agreements and other documents relating to the environment and information about how to get information. In Vietnam, LEP 2014 gave the definition of environmental information as *“Environmental information refers to environmental figures and data represented in the form of signs, letters, numbers, images, sounds or the like and includes figures, data about environmental components, environmental impacts, policies and law on environment and environmental protection”*. This definition is general, vague and difficult to implement in practice. Understanding of *“information”* and *“environmental information”* helps to distinguish the responsibilities of disclosure information between the proponents and the responsible authorities.

However, in Vietnam's EIA process, the public has passively accessed environmental information. It means that there is the one-way flow of environmental information. It is necessary to enhance the implementation of the right to access information in Vietnam for sustainable development.

1.2.2. Environmental Impact Assessment

Although environmental issues have been considered in the development control and land-use planning in some countries for many decades, EIA is just a creation of the 1970s

(Lee, 1983, p. 5). Particularly, EIA requiring environmental evaluation in large-scale projects was firstly introduced in the 1969 National Environmental Policy Act (hereinafter referred to as NEPA) of the United States of America as a tool for environmental protection and sustainable development¹⁰. At the UN Conference on Environment and Development in Rio de Janeiro, Principle 17 of the 1992 Rio Declaration¹¹ proclaims that:

–Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority”.

EIA is used as a useful tool for environmental conflict resolution (Kakonge, 1998, p. 289), environmental sustainability (Bruhn-Tysk & Eklund, 2002, p. 129), environmental protection (Wood, 2003a, p. 3) and environmental management (Jay, Jones, Slinn, & Wood, 2007; Pölönen, Hokkanen, & Jalava, 2011, p. 120). Some authors focus on the transparency of EIA process (Morrison-Saunders & Bailey, 2000; Zaharchenko & Goldenman, 2004). Lee (1983, p. 5) defines that EIA is considered *–as a process by which an action, that requires the approval of a public authority and which may give rise to significant environmental side effects, is submitted to a systematic environmental evaluation, the results of which are then taken into account by the public authority in deciding whether or not to approve it.”* Simply, Cashmore (2004, p. 404) concludes that *–EIA is a decision tool employed to identify and evaluate the probable environmental consequence of certain proposed development actions”.* Thus, the consideration of environmental issues plays a key role in making the investment decisions. Moreover, EIA is interpreted as applied science and civic science (Cashmore, 2004, p. 403). In the applied science, EIA is considered as a process in which scientific knowledge and expertise are put into practical application. In the civic science, putting into the relationship with science, EIA is considered *–as a tool for influencing decisions through*

¹⁰ See *–National Environmental Policy Act”* of 1969 of United States. Retrieved on December 27, 2016 from <https://www.epa.gov/laws-regulations/summary-national-environmental-policy-act>

¹¹ See *–Rio Declaration on Environment and Development”* of 1992 of UN. Supra note 6.

application of a pragmatic, inclusive and deliberative form of science, variously known as civic science” (Cashmore, 2004, p. 410).

In Vietnam, LEP 2014 provided that *“EIA refers to the analysis and prediction of environmental impacts of specific investment projects in order to take preventive measures to protect the environment during the implementation of such projects”*¹². However, not only in Vietnam but also in other developing countries, the implementation of EIA process is often too late (Li, 2008). In Vietnam, an important gap between EIA theory and practice remains. As a result, it is necessary to improve the Vietnamese EIA system for environmental management (Clausen, Vu, & Pedrono, 2011) and for environmental conservation.

1.2.3. Public participation in EIA process

Public participation in the decision-making process has been aroused for a long time in line with democratic theory (Creighton, 2005; Ebbesson, 2012; Gilpin, 1995a; Pateman, 1976). Concurrently, recent literature on EIA and related decision-making process often focus on analyzing the issue of public participation and explaining the concept of public participation in the context of EIA (Creighton, 2005; Doelle & Sinclair, 2006; Ebbesson, 2009; A. N. D. Glucker, Peter P. J.; Kolhoff, Arend; Runhaar, Hens A. C., 2013; Hughes, 1998; Kurukulasuriya & Robinson, 2006; O'Faircheallaigh, 2010; Stern & Dietz, 2008). Especially, on the basis of different analyses of the concept of public participation (Arnstein, 1969; A. N. D. Glucker, Peter P. J.; Kolhoff, Arend; Runhaar, Hens A. C., 2013; Hughes, 1998), Stærdahl et al. (2004) distinguish between three forms of public participation: legitimatizing participation, instrumental participation and democratic participation. Additionally, some scholars already build the ladder of public participation (Arnstein, 1969; Bishop & Davis, 2002; Connor, 1988). Furthermore, Palerm (2000) presents the integral evaluative yardstick with the empirical evaluation guidelines for public participation in EIA

¹² See LEP of 2014 of Vietnam, supra note 2

provisions which is translated from the theoretical model. Other surveys do analyze the importance, the objectives and the rationales of public participation (Ebbesson, 2012, pp. 682-702; A. N. D. Glucker, Peter P. J.; Kolhoff, Arend; Runhaar, Hens A. C., 2013; O'Faircheallaigh, 2010). To focus on the information exchange, Creighton (2005, p. 86) believes that an effective public participation requires the two-way communication and the genuine interaction with the public.

Pateman (1976) cites some definitions of participation in some sectors, such as enterprise, industry, and politics. According to Pateman (1976), in many cases, participation is left undefined or if a definition is offered, it is somewhat vague. However, few researchers still want to answer the question of what is public participation in the context of EIA. For example, to focus on the redistribution of power as a key element, Arnstein (1969) perceives that *“citizen participation is a categorical term for citizen power”* and *“the have-nots can be shared on the benefits of the affluent society”*. Following this line of thinking, Bishop and Davis (2002) also emphasize that *“participation is only meaningful when it involves a real transfer of power from government to citizens”*. If the absolute power belongs to the king or one person, namely in the monarchical countries, the public shall need to receive the transfer of this power from the king. However, in democratic countries, the state power belonging to the public is the fundamental principle in the constitution. Correspondingly, in those countries, participation is the basic right of the public in a democracy. The government shall need to facilitate better public participation in the decision-making process.

According to European Commission, *“effective public participation in the taking of decisions enables the public to express, and the decision-maker to take account of, opinions and concerns which may be relevant to those decisions, thereby increasing the accountability and transparency of the decision-making process and contributing to public awareness of environmental issues and support for the decisions taken”* (EC, 2003). Like this idea, WB

asserts explicitly that *“participation is a process through which stakeholders influence and share control over development initiatives and the decisions and resources which affect them”* (WB, 1996). According to Stern and Dietz (2008), *“public participation includes any of a variety of mechanisms and processes used to involve and draw on members of the public or their representatives in the activities of public or private-sector organizations that are engaged in informing or making environmental assessments or decisions”*. Another concept of public participation is that, in 40 CFR 25.3 (b), *“public participation is that part of the decision-making process through which responsible officials become aware of public attitudes by providing ample opportunity for interested and affected parties to communicate their views.”*¹³ This view implies that public participation means to provide input in the making of decisions. Each scholar gives the notion of public participation, depending on research objectives of ones or even, in many cases, authors talk about public participation without defining it (A. N. D. Glucker, Peter P. J.; Kolhoff, Arend; Runhaar, Hens A. C., 2013).

Some authors do consider the deficiency of public participation in EIA and analysis the characteristics of the effectiveness of public participation in EIA (Del Furia & Wallace-Jones, 2000; Diduck & Sinclair, 2002; Morgan, 2012; Shepherd & Bowler, 1997). Particularly, Palerm (2000) develops the theoretical model for public participation and considers some factors of best-practice public participation in EIA.

The EIA literature often gives rationales for public participation: (i) democratic theory (Creighton, 2005; Ebbesson, 2012; Gilpin, 1995a; Pateman, 1976); (ii) harmonizing interest between stakeholders (Doelle & Sinclair, 2006); (iii) the legitimate and effective of final decision and without litigation (A. N. D. Glucker, Peter P. J.; Kolhoff, Arend; Runhaar, Hens A. C., 2013; O’Faircheallaigh, 2010). Also, Organization for Economic Co-operation and

¹³ See Protection of Environment - 40 CFR of United States Environmental Protection Agency, 2002. Retrieved on December 26, 2016 from <https://www.law.cornell.edu/cfr/text/40>

Development also introduced the handbooks offering a practical “road map” for building robust frameworks for informing, consulting and engaging citizens during policy-making (OECD, 2001). To focus on the information transparency and accountability, some studies give the forms of public participation (Arnstein, 1969; Bishop & Davis, 2002; Connor, 1988).

As the EIA literature focuses on the analysis of public participation, it is logical to consider the information transparency, which plays a key role in the effectiveness of public participation. However, the implementation of public participation in EIA process depends on the country-specific context, as a result, the information transparency in EIA process will be diverse remarkably.

In Japan, EIA has been studied with many relevant topics by experts in some sectors. Okubo (2016) has studied the Principle 10 in Asia and Japan in order to see the future perspectives of public participation in EIA process in Japan. In paper of “*EIA research in Japan: retrospective and prospective*”, Nishikizawa (2015, p. 1) concludes that there are five groups of EIA articles: (i) systems and laws, (ii) methods, (iii) theme-oriented studies, (iv) sector-oriented studies and (v) case studies. He identifies the following three main areas for future EIA research; (1) studies on pro-active sound decision making for sustainability; (2) effectiveness of EIA from a proponent's viewpoint, leading to enhancing the public acceptance; and (3) substantive and methodological aspects, including the use of both quantitative and qualitative evaluation methods (Nishikizawa, 2015, pp. 7,8). Moreover, Ken - Ichiro Yanagi (2016) introduces the citizens’ movement in the _60s and institutionalization of EIA system and modes of public participation in Japan to identify requirements for effective public participation. Additionally, he also shows the status and current issues of public participation in Japan. He concludes that public monitoring and citizens’ involvement play key roles in the check-and-balance system.

In Vietnam, some authors have studied the development of EIA in Vietnam (Can, 1997; Doberstein, 2003; Obbard, Lai, & Briffett, 2002, p. 281; Toan, 2015). All EIA literature has just mentioned the issue of current public participation in EIA process in Vietnam without empirical research. Hence, a research on public participation in Vietnamese EIA process has been still a hot theme in the future research.

1.3. Research Objectives

The above illustrations of the notion of public participation clearly display that public participation is an important process in the decision-making. In a simple conclusion, in the context of EIA process, public participation explains about the democracy, empower and flow of information as the cores of the definition to get the consensus on the final decisions. However, there is no consensus among scholars when explaining the notion of public participation in EIA process. Besides, *“who should participate in EIA process”* is still a controversial question in theory (A. N. D. Glucker, Peter P. J.; Kolhoff, Arend; Runhaar, Hens A. C., 2013; Morgan, 2012; O’Faircheallaigh, 2010; Reed et al., 2009). Others focus on studying the objectives of public participation in EIA process as well as the effectiveness of public participation (Chess & Purcell, 1999; Doelle & Sinclair, 2006; Ortolano, Jenkins, & Abracosa, 1987; Popovic, 1992; Priscoli, 2004).

With the above theoretical debates, *the first research objective of my topic is to analyze the theoretical issues of public participation in EIA process* as follows:

- Definition of public participation;
- Who should participate?
- The purposes and objectives of public participation;
- The models of public participation;
- The factors influencing the implementation of public participation.

However, depending on the country-specific context, the implementation of legal documents providing for public participation in EIA process will be diverse remarkably. Thus, an empirical research on public participation in EIA process is necessary to find out the differences among the EIA legislations in each country as well as their implementation in reality. As a result, *the other research objective is to scrutinize the factors influencing the implementation of public participation in Vietnamese EIA process in practice.* Therefore, EIA report analysis and interviews in Vietnam have been conducted for the empirical analysis in this research.

1.4. Research Questions

As previously discussed, even when each country has officially regulated the public participation in EIA process, we cannot expect that these EIA legislations will always have the same or similar characteristics consistently. Thus, depending on the country-specific context, the implementation of public participation in EIA process will be diverse remarkably from country to country. My research focuses on the analysis on public participation in EIA process and its implementation in Vietnam. With the above research objectives, I will focus on answering the following research questions:

- 1. Why have governments provided public participation in EIA system? What theoretical and normative arguments are related to public participation in EIA process? What are the meaning and scoping of public participation?*
- 2. What are the laws, views and legal trends on public participation in EIA system at international level and the national level in some selected countries?*
- 3. How is Vietnamese legal system on public participation in EIA as well as their implementation in reality? Which factors influence the implementation of public participation in Vietnam's EIA process?*

4. *What are the suggestions for Vietnamese government concerning the public participation in the EIA system in the future?*

1.5. Research Methodology and Limitations

Research methodology is a way to systematically solve the research problem. It may be understood as a science of studying how research is done scientifically (Kothari, 2004, p. 8). In addition, *research methods* may be understood as all those methods/techniques that are used for conduction of research. Research methods or techniques, thus, refer to the methods which the researchers employed in performing research operations (Kothari, 2004, p. 7). According to this author, the scope of research methodology is wider than that of research methods.

The research methodology used in my research is a combination of *the legal historical method, the legal comparative method, and the qualitative method*. Depending on each part in the thesis, each method will be used either in an appropriate combination with the others or by taking the key role in the study.

1.5.1. Legal historical method

According to Kothari (2004, p. 4), *historical method* is that which utilizes historical sources like documents, remains, etc. to study events or ideas of the past, including the philosophy of persons and groups at any remote point of time. Hence, the legal history method is the study of the development of material legal norms. It also includes the analysis of these rules in the light of the external legal history (the economic, cultural, political, social, philosophical and religious development). The purpose of legal historical research is, therefore, to establish what the development of legal rules is and to propose solutions or amendments to the existing law based on historical facts. This method can be used in isolation or can be combined with other methods.

Social relationships will change under the impact of social and economic conditions. Thus, the study of the law should be linked to the political and economic foundation within which the law exists and develops, as well as to the historical process and social requirements for the formation of the law in general. I would like to use this method for my study because I will analyze the provision of EIA from the foundation stage to current time, finding the reasons for the existence of the EIA system in each legal system of each country and analyze the role of public participation in EIA process.

1.5.2. Legal comparative method

The legal comparative method is the comparison of different legal systems with each other. With using the comparative legal method, I analyze to see the similar or difference of the historical origins of the problem, to find solutions for new legal developments or to compare similar legal rules or problems.

Vietnam issued the first law on environmental protection in 1993. It means that EIA had been provided formally for over twenty years. Thus, legislation in Vietnam should be improved through studying the experiences of other countries. Accordingly, the study of Vietnamese laws is often combined with comparisons to the laws of other countries. Hence, Vietnamese legislation should be issued to comport with international law, especially in the environmental sector. To cope with the climate change but still developing the economy, each country should have the proper activities to confront these problems. With 20 years of building the EIA policy, to have the effective EIA system, it is necessary to evaluate the current EIA system. A comparative method is therefore also used in the research.

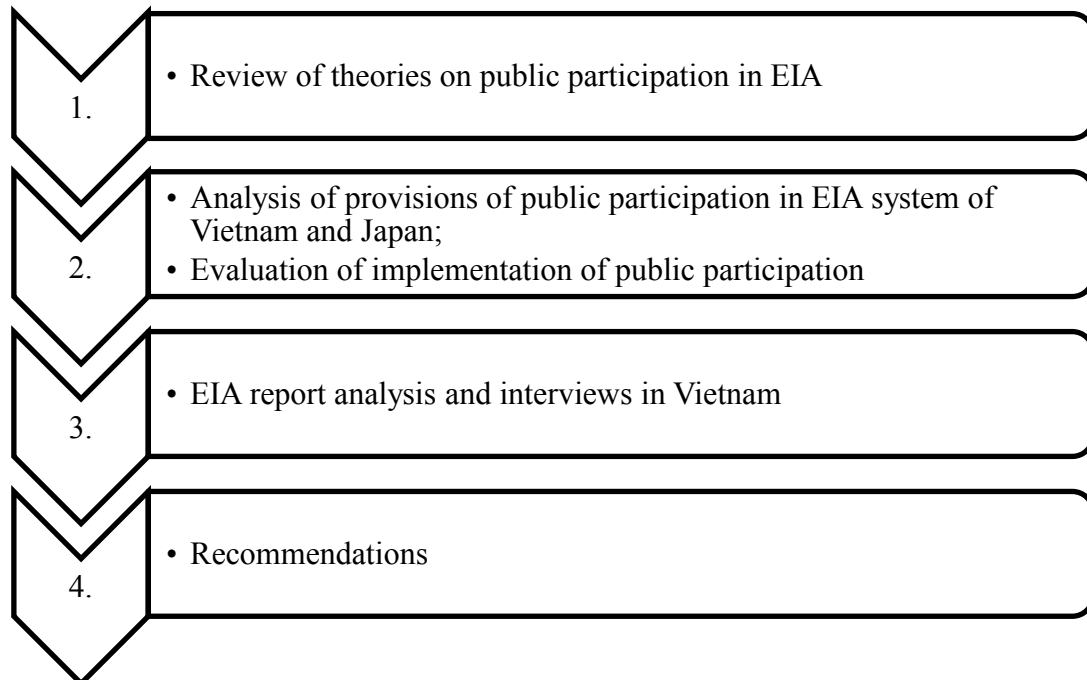
I will begin with single state approach - Vietnam - to analyze the legal framework and implementation of public participation in EIA process. The research method of a legal approach combined with comparative analysis shall be used to consider the mutual understanding the notion of public participation in EIA process.

1.5.3. Qualitative method

According to Creswell (2014, p. 32), *qualitative research* is an approach to exploring and understanding the meaning individuals or groups ascribe to a social or human problem”. *Qualitative research* involves studies that do not attempt to quantify their results through statistical summary or analysis and it is often used as a source of hypotheses for later testing in quantitative research (Marczyk, DeMatteo, & Festinger, 2005, p. 17). And according to Kothari (2004, p. 5), *qualitative approach* to research is concerned with the subjective assessment of attitudes, opinions, and behavior. Qualitative studies typically involve interviews and observations without formal measurement. A *case study*, which is an in-depth examination of one person, is a form of qualitative research (Marczyk et al., 2005).

All in all, the research design will be introduced to show a systematic analysis of my research. Thus, the outline of the methodology is as follows:

Figure 1.1: The outline of research design



Particularly, Chapter 1 of this dissertation reviews summarily the background for my study, such as the right to access to information and the right to know in the epoch of

globalization, EIA and public participation in EIA process. Thus, I employ the methods of *legal historical method* in this chapter.

In Chapter 2, I critically review the literature of public participation and the comprehensive concept of public participation in EIA process. I approach the concept of public participation as a criterion for democracy and empower as well as an element of flow of information to get the consensus on the final decisions. This chapter also illustrates the relevant issues of public participation in decision-making in general and in EIA in particular. In addition, I examine the previous research on public participation in EIA process. Moreover, I analyze public participation in EIA that have been proposed and implemented through international organizations including United Nations (UN), World Bank (WB), the Organization for Economic Cooperation and Development (OECD), The United Nations Environment Programme (UNEP), the Economic Commission for Europe (EC), and Japan International Cooperation Agency (JICA). First, it figures out the emergence and expansion of environmental right through the international organizations, but public participation in EIA process firstly promulgated by national law (National Environmental Policy Act in 1969 – NEPA). Next, this chapter investigates and illustrates the concept and objectives of the public participation in EIA process in laws of international organizations and nations. In so doing, this study used *the legal historical method*. To establish the general theoretical and philosophical background, I mention to the retrospective and contemporary writings and jurisprudential articles, papers. The main method used is the *legal historical method* to gather information regarding the evolution of public participation in EIA process in international and national laws. Legal sources for my study are accessed via the library, the Internet, CiNii Articles, Scholar, Elsevier, and EndNote. I employ the legal research method and depend on secondary sources, including legal encyclopedias (legal, political journals) and legal treaties

and conventions. Additionally, I use the “*italic letter*” to cite and to highlight the important texts.

In Chapter 3, I introduce the EIA system in Japan and the regulations on public participation in EIA process, both national and local levels. From which, I critically analyze the detailed provisions on public participation in EIA process within legal framework and examples of public participation in EIA process in reality. I use the “*italic letter*” to cite and describe legal rules. Next, I find the answer for the question of how different the Japanese EIA system *vis-à-vis* Vietnamese EIA process would be. I use the *historical method* to gather information regarding the evolution of public participation in Japan’s EIA systems. Legal sources for my study are accessed via the library, the Internet, CiNii Articles, Scholar, Elsevier, and EndNote. I employ the legal research method and depend on secondary sources, including legal encyclopedias (legal, political journals).

Chapter 4 focuses on the current public participation in Vietnam’s EIA process, the case of Ho Chi Minh City. This chapter evaluates Vietnam’s efforts to reform its legal system for sustainable development and environmental protection to conform to the regulations of international organizations. Moreover, I analyze the drawbacks of current legislations on public participation in Vietnam by using the legal research method and depend on secondary sources, including legal encyclopedias (legal, political journals). Then, I employ the *qualitative method* through interviews for data collection. Thus, the primary method for data collection is qualitative interview through open-ended questions. In this research, there are 33 interviewees. The interviews are conducted during the five-month fieldwork in Ho Chi Minh city, Vietnam. Additionally, seven EIA reports were used for analysis.

Finally, I give some recommendations for improvement of public participation in Vietnam’s EIA process in the future. Furthermore, I discuss the *ex-ante* provisions for the revision of public participation in EIA process in Vietnam. Last, I suggest possible solutions

for legal reforms promoting the participatory process. In so doing, I begin with the comparative research approach to drawing parallels and contrasts between Japan's EIA system and Vietnam's EIA process, focusing on the regulations on the public participation. After adequately evaluating the implementation of public participation in EIA process, I apply a jurisprudential method to improve legal revision to facilitate public participation in EIA process.

Limitations

Although research methodology brings the data for my dissertation, there remain several limitations, specifically in Chapter 4. I approach the notion of public participation in EIA process based on the democratic view and the right to access to information. I narrowly define this term based on the preceding literature review, to be described as a pillar of democracy, together with access to information and access to justice. The primary objective of my study is to examine the legal reform process and its implementation in reality. Consequently, the data collection and EIA reports collected in Chapter 4 rely heavily on interviews and analysis of EIA reports in Ho Chi Minh City, Vietnam. Therefore, this research is limited to assessment of the implementation of public participation in EIA process in other provinces in Vietnam.

CHAPTER 2: REVIEW OF PUBLIC PARTICIPATION IN ENVIRONMENTAL IMPACT ASSESSMENT PROCESS

2.1. Summary of chapter 2

Information, transparency, accountability, and public participation are the important elements of good governance. Those elements are also provided in the Aarhus convention (UNECE, 2014). With the emphasizing environmental management for sustainable development, public participation has recently become one of the central themes of environmental literature. Particularly, public participation in EIA process is mostly discussed as an essential component of EIA report as well as the effective tool for the decision-makers (Hartley & Wood, 2005; O'Faircheallaigh, 2010). Consequently, Hartley and Wood (2005, p. 319) cited the statement of Wood that *“EIA is not EIA without consultation and participation”*.

Firstly, this chapter introduces the EIA with the focal analysis of the EIA approach, purposes of EIA and EIA process. There is no common definition of EIA but it is generally agreed that EIA is a systematic process used to predict and mitigate the adverse environmental consequences of proposed activity. In this research, EIA is a tool with several important purposes, such as: (i) an aid to decision-making; (ii) an aid to the formulation of development actions; (iii) an instrument for sustainable development. Especially, EIA is intended to supply information for the *“players”* (Munn, 1975) or the *“actors”* (Glasson, Therivel, & Chadwick, 2013, p. 24) in the decision-making from which the current environmental issues as well as potential environmental concerns are well understood. The EIA process normally includes the key elements as follows: public participation, screening, scoping, impact analysis, mitigation and impact management, reporting, review of EIA quality, decision-making, implementation and follow-up.

Next, the main contents of this chapter are the review of public participation in EIA process. Theory of public participation in EIA process will be given. This section will focus on the following key issues: the notion of public participation; participants in EIA process; the purposes and objectives of public participation; the models of public participation; and the factors influencing the implementation of public participation.

2.2. Environmental Impact Assessment

2.2.1. Definition of Environmental Impact Assessment

It is obviously said that human survival depends on the environment, resources and raw materials. However, economic growth, rapid industrialization, and urbanization as well as human needs at high levels of human development have been affecting the environmental components leading to rapid loss of natural resources, environmental pollution. People have been increasingly suffering from natural disasters. Natural disasters (floods, drought, and desertification) as well as poverty and hunger have been adverse effects of climate change. There is no measure to evaluate the impacts of climate change on human life exactly. Day by day, people have to confront with the changes in the physical environment resulting from climate change. However, the main reason for climate change comes from human activities directly or indirectly. To satisfy the needs of the human, people himself have made them affected through over exploitation of environmental components for industry, agriculture and other usages. Thus, people have had much greater awareness of environmental issues and climate change. As a result, EIA is formally approved as an effective tool for protecting the environment as well as harmonizing the economic growth with environmental protection with the basic principle of *“it is better to prevent a problem than to cure it”*. This tool would help stakeholders find the measures to restrict potentially adverse impacts at an early stage of the specific project. Barrow (1997, pp. 1-2) explained shortly that EIA is as *“an approach which seeks to improve development by a-priori assessment”*.

From the early 1960s, several proposals to establish a national environmental policy were discussed in the US (Glasson et al., 2013, p. 32) because pollution, environmental degradation, and other environmental problems were both complex and interrelated (Wood, 2003b, p. 17). In 1969, NEPA was adopted by the US as the first country to develop a system of EIA. This act was passed to ensure that environmental concerns received adequate attention at all levels of government planning, decision-making and action in the US (Burton, Wilson, & Munn, 1983, p. 133). Many countries have provided that EIA has been a mandatory process (Burton et al., 1983, p. 134). Concurrently, in the international sphere, EIA can be easily recognized in a large number of international conventions, protocols, and agreements (Morgan, 2012, p. 6).

After 45 years from the first official appearance, EIA is now universally recognized as a key instrument for environmental management, firmly embedded in domestic and international environmental law (Morgan, 2012, p. 6). However, definitions of EIA abound in literature and legislations (Glasson et al., 2013, p. 3) and up to now, there has been no universally accepted definition of EIA. Although NEPA represented the first formal law on EIA, there was no definition of EIA in this law.

The UN Conference on the Human Environment, having met at Stockholm from 5 to 16 June 1972, proclaims at the 21st principle that pursuant to the national environmental policies, countries has the right to exploit their own natural resources and the responsibility to ensure that development activities do not cause damage to the environment¹⁴. Concurrently, Convention on EIA in a transboundary context defines that EIA means a national procedure

¹⁴ See Principle 21 of United Nations Conference on the Human Environment. Retrieved on December 26, 2016 from <http://www.encyclopedia.com/environment/energy-government-and-defense-magazines/united-nations-conference-human-environment-1972>

for evaluating the likely impact of a proposed activity on the environment¹⁵. Consequently, at the UN Conference on Environment and Development in Rio de Janeiro, the 1992 Rio Declaration proclaims that *“environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority”*¹⁶.

In addition, WB also gives the definition of EIA applied to projects proposed for WB financing, as *“EIA is an instrument to identify and assess the potential environmental impacts of a proposed project, evaluate alternatives, and design appropriate mitigation, management, and monitoring measures”* (WB, 1999, revised 2011, Annex A -Definitions (2)). Environmental impacts shall be predicted and assessed the project's likely positive and negative impacts, in quantitative terms to the extent possible (WB, 1999, revised 2011, Annex 2, 2(e)).

According to OECD (1992, p. 7), EIA is a procedure used to examine the environmental consequences, both beneficial and adverse, of a proposed development project and to ensure that these consequences are taken into account in the project design. The EIA evaluates the expected effects on human health, the natural environment and on the property. The EIA should consider alternative project designs (including the *“no-action”* alternative), as well as mitigation measures or environmental safeguards that should be incorporated into the project design to offset adverse impacts.

JICA guidelines for environmental and social considerations emphasize the impacts not only on the environment but also on society of proposed project. EIA includes evaluating the environmental and social impacts that projects are to have, analyzing alternative plans, and

¹⁵ See Article 1 (vi) of Convention on Environmental Impact Assessment in a Transboundary Context. Retrieved on December 26, 2016 from https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-4&chapter=27&clang=_en

¹⁶ See supra note 6

preparing adequate mitigation measures and monitoring plans in accordance with the laws or guidelines of host countries (JICA, 2010).

The above illustration of the notion of EIA clearly displays that EIA is an important assessment process for projects. With the emphasis on environmental consequences of proposed project, some scientists conclude that EIA is a decision tool employed to identify and evaluate the probable environmental consequence of certain proposed development actions in order to facilitate informed decision-making and sound environmental management (Cashmore, 2004; Cashmore, Gwilliam, Morgan, Cobb, & Bond, 2004, p. 295). Other scholars consider EIA as a document for decision-makers and highlight that EIA is a systematic and integrative process for considering possible impacts prior to a decision being taken on whether or not a proposal should be given the approval to proceed (Wood, 2003b, p. 1). Munn (1975, p. 1) also defines EIA that *“an EIA is an activity designed to identify and predict the impact of an action on the bio-geophysical environment and on man's health and well-being, and to interpret and communicate information about the impacts”*.

In line with David P. Lawrence (2003, p. 7), in this research, EIA is defined as a systematic process of:

- Determining and managing (identifying, describing, measuring, predicting, interpreting, integrating, communicating, involving, and controlling) the
- Potential (or real) impacts (direct and indirect, individual and cumulative, likelihood of occurrence) of
- Proposed (or existing) human actions (projects, plans, programs, legislation, activities) and their alternatives on the
- Environment (physical, chemical, biological, ecological, human health, cultural, social, economic, built, and interrelations)

This definition demonstrates that EIA is a process that embeds numerous activities. However, EIA in developing countries tends to be very different from EIA in the developed nations (Wood, 2003a, p. 5). That is the fact that in developing countries, EIA has been carried out because of pressure from donor agencies rather than demand for environmental protection. Although EIA has been introduced later and there is the difference of the EIA's origin, the concept of EIA is the same. Particularly, in Japan, EIA shall mean the process of (a) surveying, predicting, and assessing the likely impact that a project will have on various aspects of the environment; (b) studying possible environmental protection measures relating to the project; and (c) assessing the likely overall environmental impact of such measures¹⁷. In Vietnam, according to Law on Environmental Protection No.55/2014/QH13, EIA refers to the analysis and prediction of environmental impacts of specific investment projects in order to take preventive measures to protect the environment during the implementation of such projects¹⁸.

All views of EIA's concept aforementioned obviously display that EIA is a process to produce the documentation used to predict the environmental protection activities (Glasson et al., 2013, pp. 3-4). In this research, EIA is simply understood as a fence, helping to screen and eliminate the activities, which shall harmfully affect the environment, society and human being. EIA is a systematic process through which the public shall participate to give opinions on the potential impacts of proposed projects on environment, society, and human. Through EIA process, the environmental rights shall be fully enhanced.

In conclusion, while there is no common definition of EIA, it is generally agreed that EIA is a systematic process used to predict, not prevent, the adverse environmental consequences of proposed activity, through which the public has the right to participate.

¹⁷ See Environmental Impact Assessment Act 1997 (Japan). Retrieved on February 17, 2016 from <http://www.env.go.jp/en/laws/policy/assess>

¹⁸ See supra note 2

2.2.2. Purposes of EIA

In the EIA literature, a number of authors considers EIA is a process for prediction and management but Wood (2003b, p. 2) emphasizes that the EIA is not a procedure for preventing actions with significant environmental impacts from being implemented. The development activities are authorized in the full knowledge of their environmental consequences to protect the environment and to develop sustainability. Thus, objectives of the EIA process will be provided in legislation and varies from country to country (UNEP, 2004, p. 40). For instance, according to the Californian EIA system, the objectives of EIA are very clear as follows (Wood, 2003b, pp. 1-2): (i) to disclose the environmental information, (ii) to identify the alternatives, (iii) to find the ways to reduce the environmental damage, (iv) to foster coordination between the environmental agencies, (v) to enhance public participation.

In addition, UNEP (2004, p. 40) introduces the purposes of EIA as follows:

- To facilitate the systematic consideration of environmental issues as a part of development decision-making,
- To supply environmental information for the approval body, decision-makers and the public,
- To save money and time if EIA is begun at the early stage of site location and project design,
- To protect the environment and to avoid disruption of local communities affected by a project.

Moreover, different authors highlight different objectives of EIA. EIA aims at ensuring that potential problems, conflicts, or natural resource constraints are foreseen and addressed at an early stage of project design and planning (Kakonge, 1998, p. 295). Thus, EIA is used as a useful tool for environmental conflict resolution (Kakonge, 1998). In addition, Kakonge (1998, pp. 295-296) also lists the goals of EIA as:

- To predict the consequences of a proposed undertaking from the adverse environmental, social, economic, and cultural perspectives, and to develop plans to mitigate impacts and resolve conflicts;
- To provide information about potential impacts on the environmental, social, economic, and cultural perspectives of a proposed development
- To develop plans to mitigate impacts and resolve conflicts;
- To compare the available alternatives for a specific project;
- To promote a consultative process in order to allow stakeholders to take part in the decision-making process.

Furthermore, some scholars emphasize that EIA is also a useful tool for promoting sustainable development (Bruhn-Tysk & Eklund, 2002, p. 129; Cashmore et al., 2004; Nwafor, 2006; Berry Sadler, 1999; Wilkins, 2003, p. 402) and also as a tool for social learning (Wilkins, 2003, p. 402). The others think that EIA can be characterized as a preventive environmental policy and management tool (Jay et al., 2007; Pölönen et al., 2011, p. 120). Especially, EIA is intended to achieve “*ecological rationality*” - preservation of the ecological foundations of human society and to provide focused scientific analysis on environmental and social consequences (Cashmore et al., 2004, p. 299).

In conclusion, in line with Glasson et al. (2013, pp. 7-10), in this research, EIA is a tool with several important purposes, such as: (i) an aid to decision-making; (ii) an aid to the formulation of development actions; (iii) an instrument for sustainable development. Particularly, EIA is intended to supply information for the “*players*” (Munn, 1975) or the “*actors*” (Glasson et al., 2013, p. 24) in the decision-making from which the current environmental issues as well as potential environmental concerns are well understood.

2.2.3. Environmental Impact Assessment process

In general, the EIA literature often focuses on analyzing EIA process (Barrow, 1997, pp. 97-131; Burton et al., 1983, pp. 97-131; Gilpin, 1995b, pp. 16-34; Glasson et al., 2013; David P Lawrence, 2013; Munn, 1975; Wood, 2003b, pp. 5-8). Because of differences in socio-economic development, political system (Munn, 1975) and the public awareness across countries, the EIA process contains various steps. According to Barrow (1997, p. 98), he distinguished between process and procedure. The process is a system of administration or series of steps. The procedure shall be steps suggested or enforced by law or an overseeing body. Following this line of thinking, Munn (1975) believed that the administrative procedures will support the EIA process. Thereby, the EIA process may be based on informal procedures, which are often modified or adapted to the needs of individual situations and proposals; or formal procedures, which are sometimes embodied in legislation, and which are specifically designed to ensure an integrated examination of economic, social, and environmental factors affecting a development proposal (Burton et al., 1983, p. 134). According to Burton et al. (1983, p. 135), EIA process is usually formal and explicit, or informal and implicit. Particularly, in many developing countries, the EIA systems are formally based on legislation in the period since 1990. Some countries remain to apply EIA process as an informal process (UNEP, 2004, p. 18).

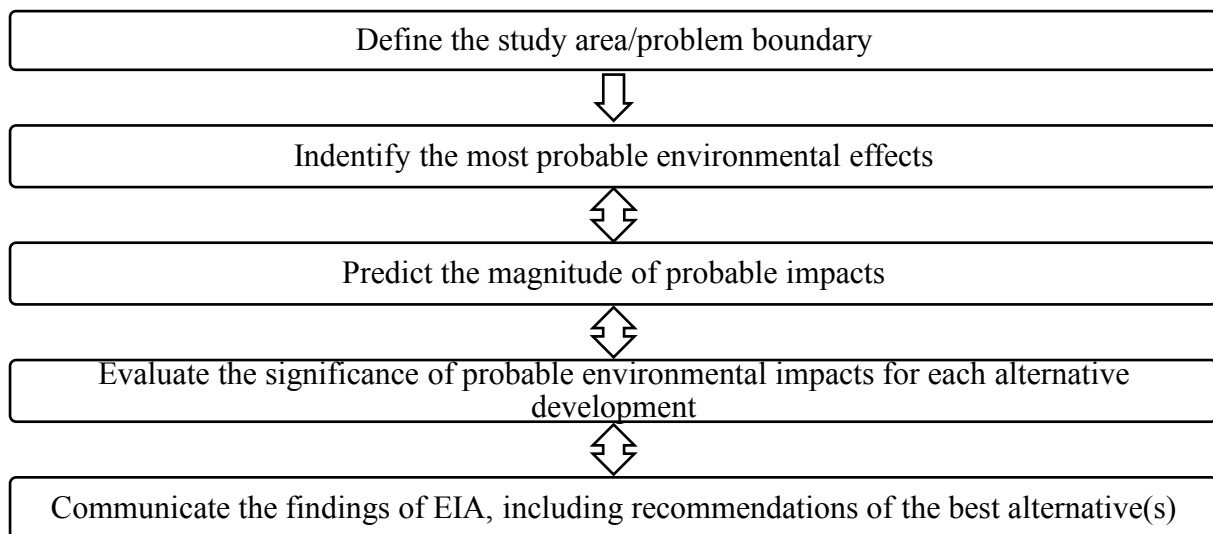
In addition, Principle 17 of the Rio Declaration on Environment and Development¹⁹ refers to EIA as a national instrument. Thereby, EIA systems of developed and developing countries can be made with some differences. In developing countries, the EIA process is less advanced because those countries face financial, structural and resource constraints on introducing and instituting EIA arrangements (UNEP, 2004, p. 16). However, the same basic

¹⁹ See supra note 6

principles for EIA good practice apply internationally to both developed and developing countries (UNEP, 2004, p. 17).

In EIA literature, some authors give the EIA process from their own viewpoints. For example, Barrow (1997, p. 100) presented the typical pattern of phases, steps in EIA process as follows:

Figure 2.1: Typical pattern of phases, steps in EIA process



Source: Adapted from Barrow (1997)

However, post-EIA audit and review/monitoring and feedbacks are not shown in the EIA process of Barrow. Then, in *EIA and SEA: Towards and Integrated Approach*, UNEP (2004, p. 45) had added some elements for EIA process and introduced some factors for EIA good practice as follows:

- Screening – determine if a proposal is subject to EIA as early as possible;
- Scoping – identify priority issues and impacts to focus the EIA study
- Terms of Reference (ToR) – establish clear requirements and timelines for an EIA
- Public consultation – provide suitable opportunities for stakeholders to express their views;
- Impact analysis – use best practicable methods;

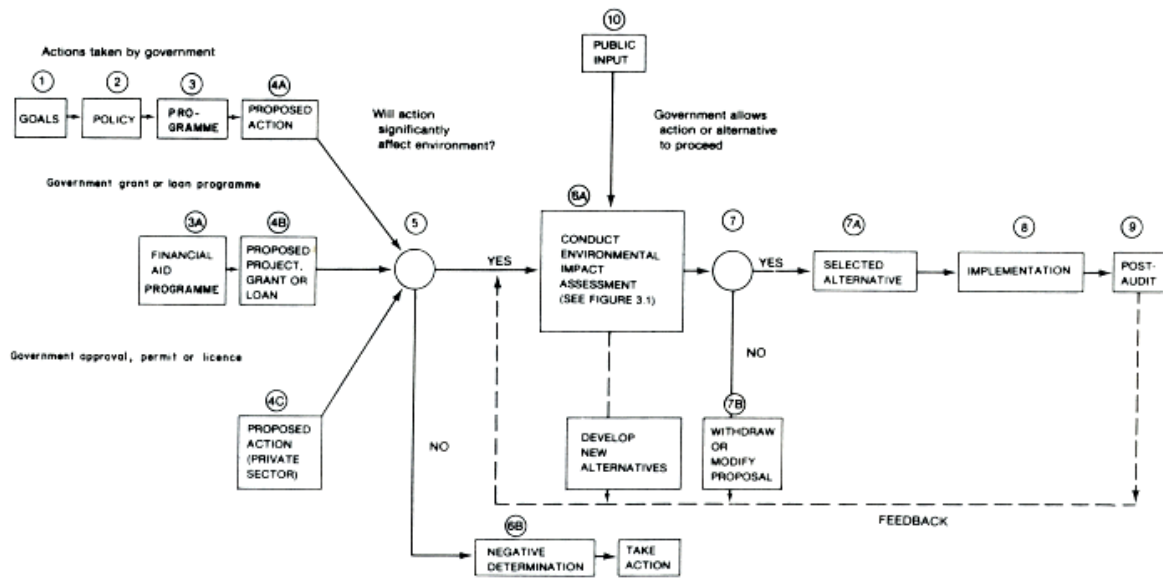
- Mitigation – identify appropriate measures to avoid, minimize or offset impacts;
- Significance – evaluate the likelihood, range and severity of residual effects;
- Preparation of EIA report – write in plain English to ensure decision makers and others understand the main issues and impacts and how they can be mitigated
- Review of EIA quality – determine if the report meets the ToR and the information is sufficient for decision-making;
- Impact management and follow up – carry out, as necessary and appropriate, the following steps:
 - inspection/surveillance to check terms and conditions are implemented
 - effects monitoring to determine if impacts are as predicted
 - spot checks and audits to identify and address unanticipated problems
 - performance review of EIA outcomes and experience.

Especially, according to Munn (1975), when establishing an EIA process, it is necessary to consider some administrative factors, such as:

- (i) decision-making process with well-defined terms of reference;
- (ii) environmental considerations throughout the entire planning process;
- (iii) the EIA cycle;
- (iv) identifying alternatives;
- (v) EIA should be undertaken by whom;
- (vi) EIA needs to be reviewed by whom;
- (vii) the review process.

In the opinion of Munn (1975), the detailed way in which the environmental planning system operates relies on the approach taken within a particular jurisdiction. Thus, EIA is as an integral part of the planning and decision-making process.

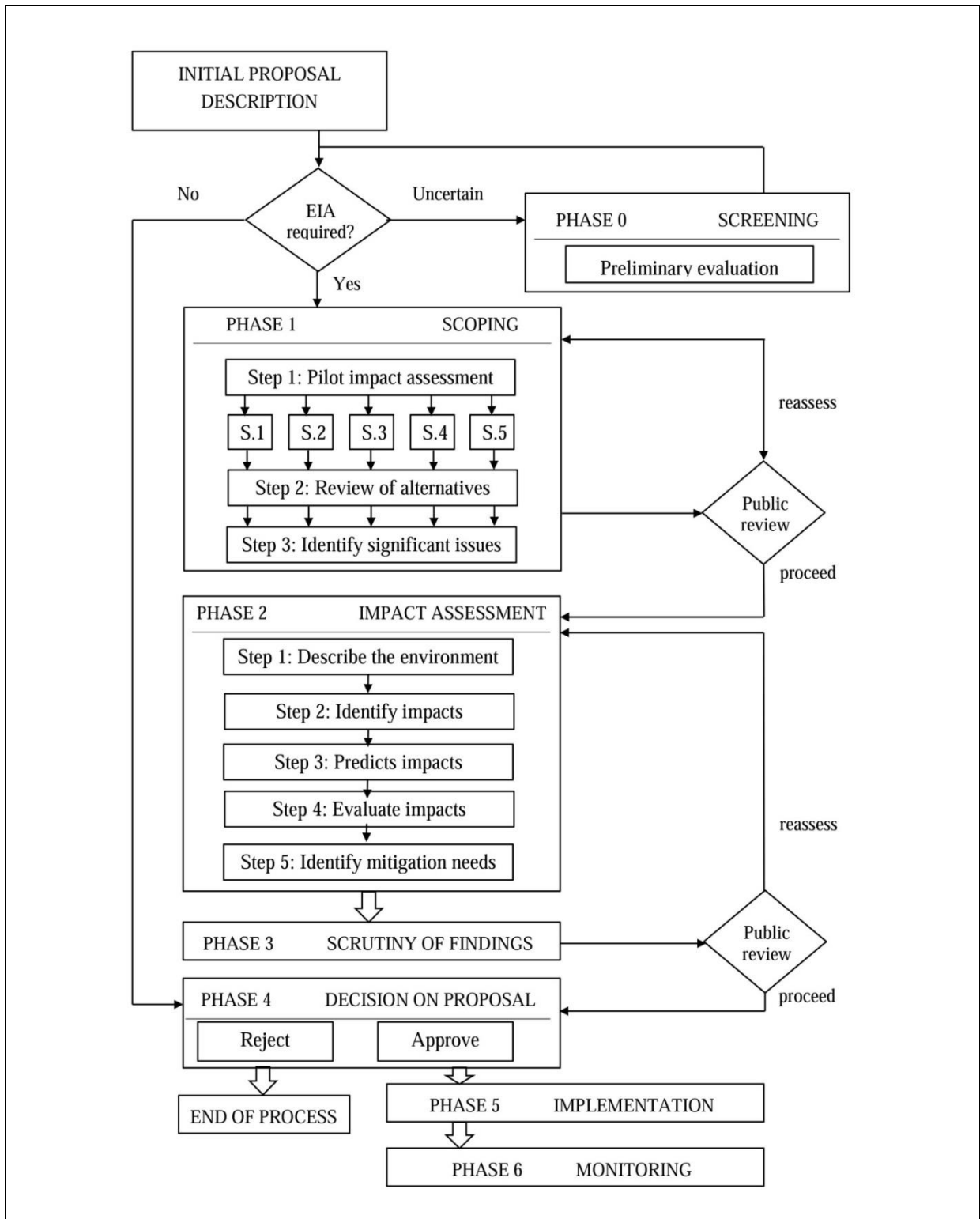
Figure 2.2: EIA as an integral part of the planning and decision-making process



Source: Adapted from Munn (1975)

However, in the diagram above, the role of public participation in EIA process is not clear. Thus, to focus on public participation in EIA process, some scholars introduce the models of EIA process (Barrow, 1997, p. 101; David P Lawrence, 2013; Barry Sadler & McCabe, 2002). In those models, each scholar focuses on the different aspects of EIA process. For example, in Figure 2.3, Barrow (1997, p. 101) introduces the EIA process in which the public just participates from the scoping stage to the stage of decision on proposal.

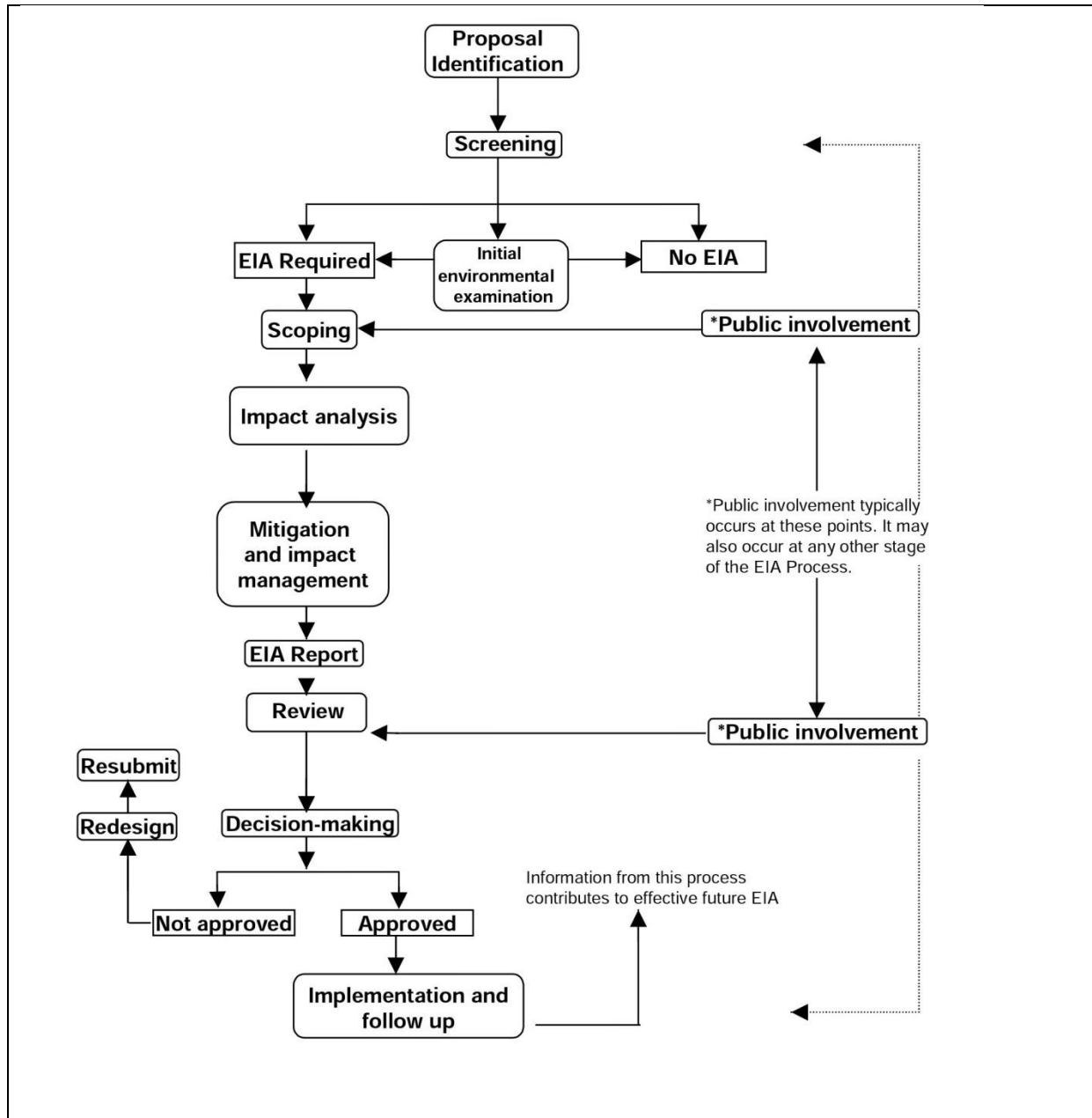
Figure 2.3: The EIA process



Source: Adapted from Barrow (1997, p. 101)

Following this line of thinking, in *UNEP EIA Training Resource Manual*, Barry Sadler and McCabe (2002, p. 114) draw the EIA process as follows:

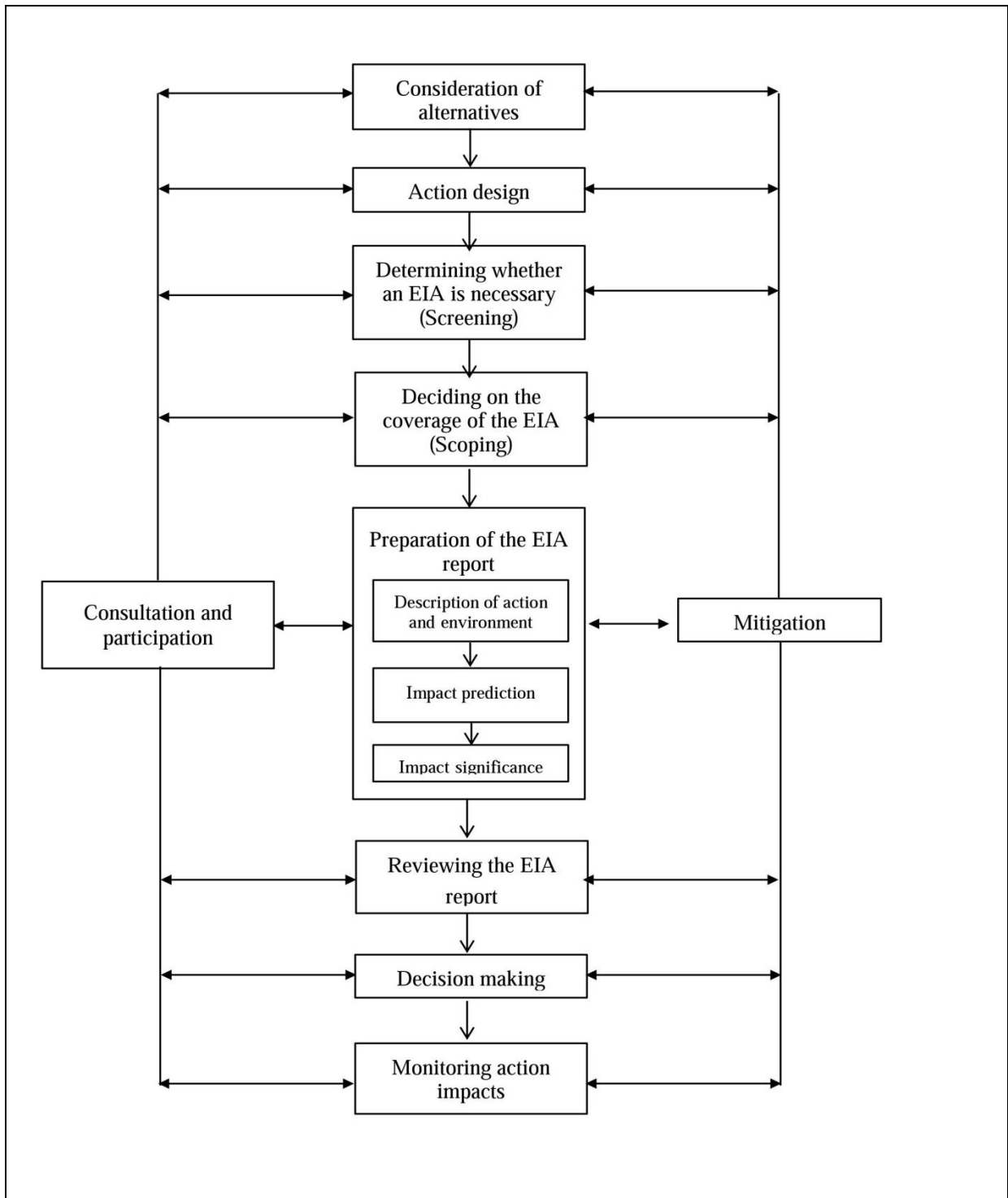
Figure 2.4: Generalized EIA Process Flowchart



Source: Adapted from Barry Sadler and McCabe (2002, p. 114)

By contrast with above EIA procedures, in Figure 2.5, to focus on the role public participation in EIA process, Wood (2003b, p. 6) introduces the model of EIA process in which consultation and participation will be carried out from the first stage to the end of the EIA procedure.

Figure 2.5: The EIA process



Source: Adapted from Wood (2003b, p. 6)

In conclusion, the following stages will be unchangeable in EIA process (Barry Sadler & McCabe, 2002, p. 115):

- Public participation: To inform the public about the proposal and to gain the inputs

of those directly affected by or interested in the proposal.

- Screening: To decide whether or not a proposal should be subject to the EIA process and, if so, at what level of detail.
- Scoping: To identify the key issues and impacts that are likely to require further investigation, and to prepare the terms of reference for the EIA study.
- Impact analysis: To identify and predict the likely environmental and social effects of the proposal and evaluate their significance.
- Mitigation and impact management: To develop measures to avoid, reduce or compensate for impacts, making good any environmental damage.
- Reporting: to describe the results of the EIA for decision-makers and other interested parties.
- Review of EIA quality: To examine the adequacy of the EIA report to see if it meets the terms of reference and provides the information necessary for decision-making.
- Decision-making: To approve or reject the proposal and set the terms and conditions under which it can proceed. The decision-maker also has the option to defer approval (e.g. until certain conditions are met or to require a proponent to redesign the project so that the environmental effects are minimized).
- Implementation and follow up: To check on the implementation of the terms and conditions of approval during the construction and operation phases; to monitor the impacts of the project and the effectiveness of mitigation measures; to take any actions necessary to ameliorate problems; and, as required, to undertake audit and evaluation to strengthen future EIA applications.

In all models of EIA procedure, public participation often is of greatest value at the decision-making process.

2.3. Public participation in Environmental Impact Assessment process

In line with research objective one, in this section, the theory of public participation in EIA process will be given. This section will focus on the following key issues:

- (1) Definition of public participation;
- (2) Participants in EIA process;
- (3) Purposes and objectives of public participation;
- (4) Models of public participation;
- (5) Factors influencing the implementation of public participation.

Before delving into details, a review of public participation in environmental decision-making will be presented in order to be a background for the topic.

2.3.1. An overview of public participation in environmental decision-making

The term “*participation*” has been used for a long time ago in the political system. Jean-Jacques Rousseau might be the famous author describing the nature of the political system in the book “*The Social Contract*”(Rousseau & Betts, 1999). This was the background for the theory of participatory democracy. In Rousseau’s participatory system, there are two key elements: (i) “*participation*” is participation in the making of decisions; (ii) “*participation*” is the way of protecting private interests and ensuring good government (Pateman, 1976, p. 24). To explain the notion of “*participation*”, Pateman (1976, p. 67) cited some definitions from different aspects of society. Particularly, participation in decision-making is the totality of such forms of upward exertions of power by subordinates in organizations as are perceived to be legitimate by themselves and their superiors (Lammers, 1967, p.205 cited by Pateman, 1967, p.67). Thus, this obviously emphasizes that participation must participate in decision-making process.

Moreover, the UN Universal Declaration of Human Rights 1948 proclaims that *–all human beings are born free and equal in dignity and rights*²⁰. Following this line of idea, the International Covenant on Civil and Political Rights adopted by the General Assembly of the UN on 19 December 1966 affirms that *–all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development*²¹. Furthermore, *–everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice*²². Article 8.2 of the UN Declaration on the Right to Development states that *–states should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights*²³. Hence, people can participate in all matters of the society, such as politics, economy, culture, and others.

Regarding environmental issues, environmental pollution has become more seriously at an alarming rate, especially after the World War II. This is due to the fact that it is so difficult to evaluate the environmental impacts from human's activities. Thus, a call for integration of environmental concerns in development planning and decision-making was emerged in the 1960s -1970s. The UN Conference on the Human Environment at Stockholm from 5 to 16 June 1972 proclaims that:

–Man is both creature and moulder of his environment. Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights the right to life itself. The protection and improvement of

²⁰ See supra note 4

²¹ See supra note 5

²² See supra note 4 and 5

²³ See Article 8.2 of UN Declaration on the Right to Development. Retrieved on December 27, 2016 from <http://www.un.org/documents/ga/res/41/a41r128.htm>

*the human environment is a major issue which affects the well-being of peoples and economic development throughout the world*²⁴.

Moreover, to address the right to political participation in the context of the environment, principle 23 of the World Charter for Nature proclaims that:

*–All persons, in accordance with their national legislation, shall have the opportunity to participate, individually or with others, in the formulation of decisions of direct concern to their environment, and shall have access to means of redress when their environment has suffered damage or degradation*²⁵.

Declaration of the World Commission on Environment and Development in 1987 adopted the Tokyo Declaration²⁶ provides that:

–...[G]reater public participation and free access to relevant information should be promoted in decision-making processes touching on environment and development issues”.

In the *Caring for the Earth: A Strategy for Sustainable Living* of IUCN, UNEP, WWF, to care for communities’ own environments, it was provided that:

–Most of the creative and productive activities of individuals or groups take place in communities. Communities and citizens' groups provide the most readily accessible means for people to take socially valuable action as well as to express their concerns. Properly mandated, empowered and informed, communities can contribute to decisions that affect them and play an indispensable part in creating a securely based sustainable society” (IUCN, UNEP, & WWF, 2013, p. 11)

In Agenda 21, Section III focus on strengthening the role of major groups for sustainable development, including women, children and youth, non-governmental organizations, indigenous people and their communities (UN, 1992, Paragraphs 23-27): *–One of the fundamental prerequisites for the achievement of sustainable development is broad public participation in decision-making*”.

²⁴ See supra note 14

²⁵ See supra note 1

²⁶ See World Commission on Environment and Development, appointed by the United Nations, published the Tokyo Declaration. Retrieved on December 23, 2016 from <http://documents.tips/documents/the-tokyo-declaration-world-commission-on-environment-and-development-tokyo.html>

With the urgent aim of promoting public participation in environmental issues as well as implementing the Stockholm Conference in 1972, the UN Conference on Environment and Development at Rio de Janeiro from 3 to 14 June 1992 proclaims again that *“human beings are at the center of concerns for sustainable development”*. Particularly, the 10th principle of this Rio Declaration 1992 is the cornerstone of public participation for sustainable development:

*“Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided”*²⁷.

To cope with the climate change in all over the world, UN Framework Convention on Climate Change states that: *“Promote and cooperate in education, training and public awareness related to climate change and encourage the widest participation in this process, including that of non-governmental organizations”*²⁸.

Recently, at COP 21, *Paris Agreement 2015* was adopted to emphasize with holding the increase in the global average temperature to well below 2 °C above preindustrial levels and pursuing efforts to limit the temperature increase to 1.5 °C above preindustrial levels. In the Paris Agreement 2015, Article 12 also puts the high concentration on the role of public in coping with climate change, as follows:

“Parties shall cooperate in taking measures, as appropriate, to enhance climate change education, training, public awareness, public participation and public access to

²⁷ See supra note 6

²⁸ See Article 4.1 (i) of United Nations Framework Convention on Climate Change. Retrieved on December 23, 2016 from <https://unfccc.int/resource/docs/convkp/conveng.pdf>

information, recognizing the importance of these steps with respect to enhancing actions under this Agreement”²⁹.

In addition, the Environmental Law Program of the International Union for the Conservation of Nature and Natural Resources (IUCN) in cooperation with The International Council of Environmental Law issued Draft International Covenant on Environment and Development for the fourth edition in 2010. In which, the Article 14.4 provides:

–Parties shall ensure that all persons have the right to participate effectively during decision-making processes at the local, national and international levels regarding activities, measures, plans, programs and policies that may have a significant effect on the environment.”³⁰

Several regional organizations have adopted instruments that address public participation in the environmental sphere. For example, thirty-nine countries and the European Community have signed the Aarhus Convention in 1998 which affirms that public participation is one of three key pillars of people’s rights with respect to the environment in the UNECE region and beyond, as follows:

–Each Party shall promote environmental education and environmental awareness among the public, especially on how to obtain access to information, to participate in decision-making and to obtain access to justice in environmental matters (UNECE, 2014, p. 64)”.

According to Article 7 of the Aarhus Convention, *–each Party shall make appropriate practical and/or other provisions for the public to participate during the preparation of plans and programs relating to the environment, within a transparent and fair framework, having provided then necessary information to the public (UNECE, 2014, p. 176)”.*

On 20 June 1985, OECD Council adopted the Recommendation of the Council on Environmental Assessment of Development Assistance Projects and Programs that

²⁹ See Paris Agreement 2015. Retrieved on December 23, 2016 from http://unfccc.int/paris_agreement/items/9485.php

³⁰ See Draft International Covenant on Environment and Development. Retrieved on December 27, 2016 from <https://portals.iucn.org/library/sites/library/files/documents/EPLP-031-rev3.pdf>

recommends: *“...[w]hen examining whether a specific development assistance project or program should be subject to in-depth environmental assessment”* (OECD, 1985).

Since then, multilateral donors, including the WB and main bilateral donors, have prepared guidelines for environmental considerations and have applied them while implementing Official Development Assistance (ODA). Similarly, JICA issues the Guidelines for Environmental and Social Considerations that states:

“Democratic decision-making is indispensable for environmental and social considerations. It is important to ensure stakeholder participation, information transparency, accountability, and efficiency, in addition to respect for human rights, in order to conduct an appropriate decision-making process (JICA, 2010).”

In the environmental context, EIA, as a national-level assessment tool, plays a key role in bringing the public into the environmental decision-making process. EIA is a tool aimed at evaluating environmental impacts before the project is implemented in reality. The application of public participation in EIA process will reduce the subjectivity of decision-makers who were used to make decisions *“behind closed doors”* (Gilpin, 1995b, p. 24). The first introduction of EIA in NEPA was introduced in 1969 and after that, EIA has been diffused in the legislation of many countries in over the world. In NEPA 1969, public participation in EIA system is strongly written, to the extent that it might be described as a *“corner-stone”* (Barrow, 1997, p. 169).

One of the important objectives of the EIA process is to provide information about a proposal’s likely environmental impacts to the developer, the public, and the decision-makers to ensure the quality comprehensiveness and effectiveness of the EIA, as well as ensuring that the various groups’ views are adequately taken into consideration in the decision-making process. Theoretically, public participation can be useful at all stages of the EIA process, namely, from the first stage to the end of the EIA procedure. However, depending on the

country-specific context, the implementation of legal documents providing for public participation in EIA process will be diverse remarkably.

2.3.2. Definition of public participation

At a glance, recent literature on both EIA process and decision-making process often focus on analyzing the issue of public participation and explaining the concept of public participation in the context of EIA (Creighton, 2005; Doelle & Sinclair, 2006; Ebbesson, 2009; A. N. D. Glucker, Peter P. J.; Kolhoff, Arend; Runhaar, Hens A. C., 2013; Hughes, 1998; Kurukulasuriya & Robinson, 2006; O'Faircheallaigh, 2010; Stern & Dietz, 2008). As being a central tool of sustainable development, some authors do focus on EIA processes in which the public engages early (Bruhn-Tysk & Eklund, 2002; Doelle & Sinclair, 2006; Popovic, 1992; Wilkins, 2003). EIA is an anticipatory, participatory environmental management tool (Jay et al., 2007). Wood (2003b) insists that *“EIA refers to the evaluation of effects likely to arise from a major project (or other action) significantly affecting the natural and man-made environment. Consultation and participation are integral to this evaluation”*.

Public participation in the decision-making process has been aroused for a long time in line with democratic theory (Creighton, 2005; Ebbesson, 2012; Gilpin, 1995a; Pateman, 1976). Pateman cited some definitions of participation in some sectors, such as enterprise, industry, and politics (Pateman, 1976). According to Pateman, in many cases, participation is left undefined or if a definition is offered, it is somewhat vague (Pateman, 1976, p. 67). Each scholar gives the notion of public participation, depending on the research objectives of ones or even, in many cases, authors talk about public participation without defining it (A. N. D. Glucker, Peter P. J.; Kolhoff, Arend; Runhaar, Hens A. C., 2013).

In my research, the definition of public participation is very important for my in-depth study and so, I will analyze to get this definition. At the beginning of the analysis, the

question of *“what is participation?”* will be clearly examined. In some EIA literature, the terms *“stakeholder involvement”*, *“consultation”* and *“participation”* have been used interchangeably.

Firstly, “consultation” can be differently defined in each field. For example, in the *Stakeholder Consultation Toolkit* developed by members of the Adult Social Care Consultation & Information Group³¹, consultation is *“a process of dialogue or the gathering of information that contributes to a decision or change”*. Therefore, the purpose of the consultation is to give people an opportunity to express their opinion, and to weigh up and balance these views before final decisions are made. In this toolkit, the authors emphasize that stakeholders should involve from the beginning of the process. However, in public sector, Ministry of the Information, Communications and the Arts of Singapore in 2010 issued the *Public Consultation Toolkit*³² that identified that *“public consultation is a process by which government interacts with the public or stakeholders to seek input and discuss issues regarding a specific deliverable, which is often either a policy or initiative”*. This toolkit also distinguishes the definition of public consultation from public engagement. The later refers to the government’s ongoing involvement with stakeholders or partners and is not necessarily focused on a particular policy, initiative or issue. The key difference between public consultation and public engagement is the driving impetus behind the activity. While the objective of public consultation is to gather feedback on a specific issue, the ultimate goal of public engagement is to develop a longer term relationship with stakeholders. According to Glasson et al. (2013, p. 190), consultation is in essence an exercise concerning a passive audience: views are solicited, but respondents have little active influence over any resulting decisions. Hence, Hughes (1998) concludes that *“consultation implies a process with little*

³¹ See Stakeholder Consultation Toolkit. Retrieved on March 16, 2016 from *“consult.brighton-hove.gov.uk/file/2181395”*

³² See Public Consultation Toolkit. Retrieved on March 16, 2016 from: https://www.cscollge.gov.sg/data/CSC/9_Public_Consultation_Toolkit.pdf

share or control over the process for consultees". Like this thinking, Barry Sadler and McCabe (2002, p. 163) insist that consultation implies an exchange of information designed to examine the public views on a proposal and its impacts. Generally, consultation is a process of dialogue leading to a decision. According to Arnstein (1969), consultation is a form of participation and can be a legitimate step toward their full participation, through which the proponent and the government invite the public to express their opinions, comments on a specific document, particularly in the draft. Consultation can be organized with a wider group of participants from the public, proactively and reactively.

Secondly, dictionaries state that *involvement*" is the act of taking part in an activity, event, or situation³³. Public involvement is used in research when research is carried out *with*" or *by*" members of the public rather than *to*", *about*" or *for*" them. Hence, involvement is the act of participating in something, as a result that the use of term *involvement*" is not specific. If someone attends the public meeting in EIA process for listening without giving any opinions, he might refer to his involvement in EIA process. Thus, through involvement procedure, it is difficult for the public to share a seat at the table with the representatives of the government and the proponent, unless the public involves actively, i.e. collaborating and taking responsibilities at all stages of the decision-making process (OECD, 2001).

Thirdly, according to Pateman (1976, p. 1), *participation*" is used to refer to a wide variety of different situations by different people". Based on this understanding, Barry Sadler and McCabe (2002, p. 163) think that *participation* is a more interactive process of engaging the public in addressing the issues, establishing areas of agreement and disagreement and trying to reach common positions". Like this thinking, WB asserts explicitly that *participation* is a process through which stakeholders influence and share

³³ See MacMillan Dictionary, available at <http://www.macmillandictionary.com/dictionary/british/involvement>

control over development initiatives and the decisions and resources which affect them” (WB, 1996, p. 3). Consequently, when using the term of *participation*”, it means that through which participants can control and able to influence the decision-making process. Basing on this, I take *participation*” for my research. According to Glasson et al. (2013, p. 190), public participation involves an active role for the public, with some influence over any modifications to the project and over the ultimate decision.

In recent EIA literature review, the term *participation*” has commonly been used to focus on the role of the public in EIA process. Thus, the question of what is public participation in the context of EIA has been continuing a strong argument among scholars in EIA literature. Indeed, some authors who do give a definition of public participation have different opinions about its explanation (A. N. D. Glucker, Peter P. J.; Kolhoff, Arend; Runhaar, Hens A. C., 2013, p. 105). For example, to focus on the redistribution of power as a key element, Arnstein (1969, p. 216) perceives that *citizen participation is a categorical term for citizen power*” and *the have-nots can be shared on the benefits of the affluent society*”. Following this line of thinking, Bishop and Davis (2002, p. 18) also emphasize that *participation is only meaningful when it involves a real transfer of power from government to citizens*”. If the absolute power belongs to the king or one person, namely in the monarchical countries, the public shall need to receive the transfer of this power from the king. However, in democratic countries, the state power belonging to the public is the fundamental principle in the constitution. Correspondingly, in those countries, participation is the basic right of the public in a democracy. The government shall need to facilitate better public participation in the decision-making process.

By contrast, according to Stern and Dietz (2008, p. 12), *public participation includes any of a variety of mechanisms and processes used to involve and draw on members of the public or their representatives in the activities of public or private-sector organizations that*

are engaged in informing or making environmental assessments or decisions". This understanding just examines the public engagement without the public influence on the decision-making process. Dislike the definition of Stern and Dietz (2008, p. 12), notion of public participation in 40 CFR 25.3 (b) focuses on public communication as: *public participation is that part of the decision-making process through which responsible officials become aware of public attitudes by providing ample opportunity for interested and affected parties to communicate their views*"³⁴. This view implies that public participation means to provide input in the making of decisions and the public can express their opinion in the decision-making process. Concerning the emphasis on deliberation, Fischer (2000, p. 32) thinks that *public participation is about deliberation on the pressing issues of concern to those affected by the decisions at issue*". Here, the extent of deliberation and objectives of public participation process remains unclear. Therefore, to focus on the purposes of public participation, Rowe and Frewer (2004, p. 512) define the concept of public participation as *the practice of consulting and involving members of the public in the agenda-setting, decision-making, and policy-forming activities of organizations and institutions responsible for policy development*". Furthermore, in making the identification and the exploration of all ways in which the public relate to EIA process, O'Faircheallaigh (2010, p. 20) insists that a restrictive notion of public participation is unsuitable. Consequently, O'Faircheallaigh thinks *public participation is any form of interaction between government, corporate actors and the public that occurs as part of EIA process*".

These examples depict that the definition of public participation in the context of EIA is directly connected with the purposes of the participatory process. These purposes may be the demand for empowerment, or the influence on decision-making process, or the control of decision-making process. Hence, Aregbeshola (2009, pp. 17-18) cited some definitions of

³⁴ See supra note 13

public participation to group into three categories: (1) collaboration and improved decision making; (2) degrees of participation; and (3) information exchange. Noticeably, Stern and Dietz (2008, p. 48) believe that the different purposes of public participation may lead to the difference in the process of participation and conflicts about the way to conduct the process. Thus, Stern and Dietz (2008, p. 49) follow the idea of Renn (2008) to summarize six theoretical approaches regarding public participation, namely functionalist, neoliberal, deliberative, anthropological, emancipatory and postmodern (reflexive). Each concept is followed by its main objective and rationale.

The above illustration of the notion of public participation clearly displays that public participation is an important process in decision-making. In a simple conclusion, in the context of EIA process, public participation explains about the democracy, empower and flow of information as some cores of the definition to get the consensus on the final decisions. Thus, public participation is a part of the EIA process through which the environmental information exchange among stakeholders shall be conducted during all stages of EIA process, and the public has the right access to all information of projects to give the valuable opinions for a consensus in EIA report.

2.3.3. Purposes and objectives of public participation

In line with the analysis above, the issue of the purposes and objectives of public participation merits memorable part in my study. This issue has been already discussed in EIA literature (Creighton, 2005, pp. 5-26; A. N. D. Glucker, Peter P. J.; Kolhoff, Arend; Runhaar, Hens A. C., 2013; Hanchey, 1998; Hughes, 1998; O'Faircheallaigh, 2010; Stern & Dietz, 2008, pp. 43-51) but under different approaches. For instance, depending on the agencies' discretion regarding the aims of public input in participatory process, Stern and Dietz (2008, p. 43) divide those purposes into three groups relating to (1) improving the quality of decisions; (2) increasing legitimacy; and (3) improving the decision-making

capacity. However, the authors just present the purposes of public participation within an idealized decision process as well as the conflict about the purposes of public participation among social groups or between social groups and agencies without mentioning the relations among those purposes. O'Faircheallaigh (2010, p. 19) likewise comments that in EIA literature the purposes for public participation are inarticulately analyzed, sometimes without discussion of the relations among them. Thus, in identifying various approaches and implications of public participation, O'Faircheallaigh discusses some specific purposes audibly in Table 2.1:

Table 2.1: Some specific purposes for public participation in EIA process

<i>Wide purposes</i>	<i>Specific purposes and activities</i>	<i>Achievement</i>
Obtain public input into decisions taken elsewhere	<ol style="list-style-type: none"> 1. Provide information to public 2. Fill information gaps 3. Information contestability 4. Problem solving and social learning 	<ol style="list-style-type: none"> 1. Transmission of information to decision makers by the public; assistance to the smooth implementation of projects; and preparation of the affected groups for project impacts 2. Identification of the issues potentially associated with proposed actions; providing decision makers with information about the distribution of costs and benefits from proposed projects; calculation of the political consequences of alternative decisions. 3. Examining all information given by proponent and the public equally 4. Problem solving by suggesting ideas, concepts, solutions and resources to address complex environmental and social issues; the public's contribution of ideas and potential solutions
Share decision making with public	<ol style="list-style-type: none"> 1. Reflect democratic principles 2. Democracy in practice 3. Pluralist representation 	<ol style="list-style-type: none"> 1. Obtaining the consent of people affected by proposed projects 2. Achieving the full development of individual capabilities and obligations 3. Avoiding the conflicts among stakeholders
Alter distribution of power and structures of decision making	<ol style="list-style-type: none"> 1. Involve marginalized groups 2. Shift the locus of decision-making 3. Entrench marginalization 	<ol style="list-style-type: none"> 1. Achieving a more equitable distribution of political power and changing existing decision structures 2. Reshape existing structures through establishing impact assessment processes studied by the public. 3. Reinforcing powerlessness

Source: Adapted from O'Faircheallaigh (2010, p. 20)

In contrast to the previous approaches, Hanchey (1998, p. 21) insists that depending on the public involvement techniques, objectives of public participation should be considered by the planner in the design of a public participation program as follows:

Table 2.2: Objectives of public participation

<i>General objectives</i>	<i>Specific objectives</i>	<i>Brief description</i>
Public relations	Legitimizing the Agency's Role in the Planning Process	<ul style="list-style-type: none"> - Reducing disparity between the capability of the agency to satisfy community needs and the expectations of the community - Informing the public about the agency's authorities, responsibilities, operating procedures, and constraints
	Development of Confidence and Trust	- The agency must demonstrate a willingness to develop information on all aspects of the planning problem and to share this information with the public even though some of it might be damaging to programs or solutions which the agency favors.
Information	Diagnosis of Community Problems and Needs	The public, as a narrow specialist, does not have the same values, problems, and viewpoints. Therefore, the agencies must supply the public an adequate knowledge of potential adverse impacts of proposed project.
	Development of Alternative Solutions	Information exchange and a commitment to change among the participants may be achieved. The public should be consulted at an early stage before the proponent has proposed the alternatives.
	Evaluation of the Implications of Solutions	The public basing on developing alternative solutions including several values should be allowed make value judgments relating to alternative solutions to the potential problems. To make rational value judgments depending on the outcomes, the public must be informed the alternatives, the potential impacts of each alternative in detail because the public plays a key role in forecasting the consequences of the each alternatives.
Conflict resolution	Consensus seeking	<p>Consensus seeking is cooperative problem solving in which the conflicting parties have the joint interest of reaching a mutually satisfactory solution, which have some factors:</p> <ul style="list-style-type: none"> - to gain acceptance of a decision; - to determine the prior relationship between the parties in a conflict; - to identify the attitudes, strength, and resources of interested third parties.
	Avoidance of Extreme Positions	In a conflict perceived by participants, a party can be only one of two positions: for or against, being a competitive process. Thus, the planner must endeavor to keep communication among the parties and ensure common values and common interests reasonably.

Source: Adapted from Hanchey (1998)

Another approach is to base on the respective rationale, e.g. A. N. D. Glucker, Peter P. J.; Kolhoff, Arend; Runhaar, Hens A. C. (2013, pp. 106,109) divide objectives of public participation into three underlying groups: (i) normative rationale; (ii) substantive rationale; and (iii) instrumental rationale (Table 2.3). These authors conclude that *“participatory process has to be designed in line with the objectives it shall fulfill”*. For instance, if the objective of *“harnessing local knowledge”* needs to achieve, it would be important to consult a selected people; or if the objective of *“enhancing democratic capacity”* needs to fulfill, it would be necessary to meet the requirements of involving the general public into the EIA process (A. N. D. Glucker, Peter P. J.; Kolhoff, Arend; Runhaar, Hens A. C., 2013, p. 109). Thus, A. N. D. Glucker, Peter P. J.; Kolhoff, Arend; Runhaar, Hens A. C. (2013) distinguish among objectives of public participation as well as analyze how these objectives relate to each other.

Table 2.3: Objectives of public participation in EIA process

<i>Rationale</i>	<i>Objectives</i>
Normative rationale	Influencing decisions
	Enhancing democratic capacity
	Social learning
	Empowering and emancipating marginalized individuals and groups
Substantive rationale	Harnessing local information and knowledge
	Incorporating experimental and value-based knowledge
	Testing the robustness of information from other sources
Instrumental rationale	Generating legitimacy
	Resolving conflict

Source: Adapted from (A. N. D. Glucker, Peter P. J.; Kolhoff, Arend; Runhaar, Hens A. C., 2013)

As touched upon in the previous analysis, different authors basing on different approaches highlight different purposes/ objectives of public participation in EIA process. However, in the approaches above, authors often use *“purposes”* and *“objectives”* interchangeably despite the fact that there are quite differences between them. Thus, I made

in my study special analysis about these two words in order to get a better understanding for using them correctly. Purpose³⁵ normally mentions the reasons behind something that is being done while objective refers to small guides that a person can complete the goal and achieve success. Hence, objectives are more particular and are clearly identified by specific steps that will allow the person to achieve that exact goal at hand in short term with the time frame. As a result, objectives are much easier to measure than purposes. Thus, it is important to distinguish the term “objective” from the term “purpose” in EIA process. From which, in “EIA Training Resource Manual” of UNEP, Barry Sadler and McCabe (2002, pp. 161,162) give the purposes and objectives of public participation as follows:

Table 2.4: Purposes and objectives of public participation in EIA process

<i>Purposes</i>	<i>Objectives</i>
<ul style="list-style-type: none"> - Inform the stakeholders about the proposed project and its potential impacts - Scrutinize the public inputs, views, concerns and values - Appropriate the information, views and concerns of the public in EIA process and decision-making. 	<ul style="list-style-type: none"> - Obtain indigenous knowledge that may be useful for decision-making; - Facilitate consideration of alternatives, mitigation measures and trade-offs; - Ensure that important impacts are not overlooked and benefits are maximized; - Reduce conflict through the early identification of contentious issues; - Provide an opportunity for the public to influence projects design in a positive manner (thereby creating a sense of ownership of proposal); - Improve transparency and accountability of decision-making; and - Increase public confidence and trust in the EIA process.

Source: Adapted from Barry Sadler and McCabe (2002, pp. 161,162)

In an attempt to provide a clear understanding, I, in my study, use the term “purpose” for an intended or desired goal and the term “objective” for a part of goal. Thus, I divide purposes of public participation into three general groups which are based on the relationships among the stakeholders and participatory techniques and decision-making process as well as based on the specific EIA context in each country. These are referred to as:

³⁵ See Difference between purpose and objective. Retrieved on March 7, 2017 from <http://www.differencebetween.info/difference-between-purpose-and-objective>.

(1) information exchange; (2) joint decision-makers; and (3) controlling and monitoring. To achieve each purpose completely, the following objectives need to be fulfilled:

2.3.3.1. Information exchange

The first purpose of public participation in EIA process is to get enough information for decision-making. To achieve this purpose, the underlying objectives need to be accomplished:

(a) Provision of information

As mentioned as recipients of information in EIA process (O'Faircheallaigh, 2010, p. 20), the public has the right to receive all information of proposed project, such as the purposes, the objectives, the scope of project, the potential impacts, the solutions and the alternatives. This provision of information should be conducted by the proponent and the responsible authorities, who must take a full responsibility for supplying information with the accuracy and promptness. Such information provision plays a very important role in allowing the public, especially the affected people, to understand the proposed project and to ready for potential impacts in the future. Additionally, achieving this objective is also a key prerequisite for the other objectives, namely, the objective of problem solving and reaching consensus and objective of testing the situation of information from different sources.

(b) Obtaining indigenous knowledge

“Indigenous knowledge” consists of traditional and nontraditional, ecological and nonecological knowledge (Stevenson, 1996, p. 278). This knowledge would be a superior role in identifying and assessing the environmental impacts of the proposed project as well as planning strategies to diminish them (Stevenson, 1996, p. 282). Additionally, indigenous knowledge would be used to fill in knowledge gaps (A. N. D. Glucker, Peter P. J.; Kolhoff, Arend; Runhaar, Hens A. C., 2013, p. 107; O'Faircheallaigh, 2010, pp. 20, 21) and to evaluate the effects of next developments (Stevenson, 1996, p. 282). Thus, indigenous people

possessing in-depth knowledge of their land play a key role in environmental monitoring and distinguishing project-related changes from natural changes in the environment (Stevenson, 1996, p. 278).

Obtaining indigenous knowledge helps decision-makers scrutinize all information properly because proponents tend to be far from disinterested in their information and magnify the project benefits (O'Faircheallaigh, 2010, p. 21). Moreover, by obtaining indigenous knowledge and receiving project information, it would be easy to test the situation of information from different sources.

(c) Problem solving and reaching consensus

Public participation may help solve problems and address complex environmental issues by indigenous knowledge (O'Faircheallaigh, 2010, p. 21). Through social learning involving *“a flow of ideas that is not unidirectional”*, the public can share information *“to identify effective socially acceptable strategies to mitigate impacts and identify opportunities”* (O'Faircheallaigh, 2010, p. 21). Thus, all aspects of social and environmental reality will be scrutinized properly before reaching the final consensus. A. N. D. Glucker, Peter P. J.; Kolhoff, Arend; Runhaar, Hens A. C. (2013, p. 107) insist that the people directly affected by a specific decision have the right to participate in deliberation to identify a mutually acceptable action.

In brief, public participation helps gain access to information for the public and indigenous knowledge for the decision-makers and proponent. From doing so, the public will share the power with the power-holders in EIA process.

2.3.3.2. Joint decision-makers

Some scholars highlight the importance of public participation to enhance the quality of EIA process (Doelle & Sinclair, 2006; Hughes, 1998; Barry Sadler & McCabe, 2002; Stern & Dietz, 2008). It is due to the fact that public participation in EIA is proposed to make a better

decision. Receiving information and sharing indigenous knowledge with others stakeholders, the public needs to be empowered to participate in the final decision as a decision-maker. In this regard, to achieve a role for the public as joint decision makers, some latter objectives must be completed in practice.

(a) Democratic capacity

Through participation in EIA process, the public can develop individual capabilities through joint learning and problem solving which creating opportunities for them to promote understanding and involving in the collective decision-making process (O'Faircheallaigh, 2010, p. 22). Thus, public participation techniques need to be properly designed for the public to exercise their rights and obligations as well as develop their skills. This objective of public participation implies that the participatory process needs all members of the public to participate because of their own capabilities. Moreover, particular groups representing all public interests would not be satisfactory (A. N. D. Glucker, Peter P. J.; Kolhoff, Arend; Runhaar, Hens A. C., 2013, p. 106). Hence, individual development and exercise of citizenship will be diminished if the decision-making power is just allocated to officials of responsible authorities without the public (O'Faircheallaigh, 2010, p. 22). This is also the reason that we need the next objective of public participation in EIA process.

(b) Empowering the public

Arnstein (1969, p. 216) strongly stresses *“participation without redistribution of power is an empty and frustrating process for the powerless”*. Thus, the main objective of public participation in EIA process is *“to achieve a more equitable distribution of political power and change existing decision structures”* (O'Faircheallaigh, 2010, p. 23). The distribution of power in democratic society allows the public to participate in the decision-making process in *“meaning”* ways; as a result, the public can *“use EIA as a mean to change the social order”* (A. N. D. Glucker, Peter P. J.; Kolhoff, Arend; Runhaar, Hens A. C., 2013, p. 107). If the

public is adequately provided accurate information and they are ready to share their indigenous knowledge, they will be a willingness to participate in EIA process to make a decision as a member of decision-makers. Thus, to fulfill this objective, the first purpose needs to be achieved completely.

(c) Changing EIA process

O'Faircheallaigh (2010, p. 23) emphasizes that the public may recognize decision-making structures impossible to shift it, and thus, they can establish a different impact assessment process which is separate from the one of the proponent. In so doing, the above objectives need to fulfill successfully. Additionally, the public has to hire experts and receive the financial supports. After that, the public uses their study for negotiating with the proponent as well as demonstrating the rationales for their concerns and interests. The responsible authorities must scrutinize all information from both studies to make accurate and equal decisions.

2.3.3.3. Controlling and monitoring

(a) Testing the situation of information from different sources

Through information exchange process, the public shall check the situation of information from other sources (A. N. D. Glucker, Peter P. J.; Kolhoff, Arend; Runhaar, Hens A. C., 2013, p. 108). Public participation in EIA process will improve the quality of assessments (Stern & Dietz, 2008, p. 43) because public participation can be important for *“getting the science right”* (Stern & Dietz, 2008, p. 50). Moreover, different people have different views, values, concerns and interests; as a result, the way to receive and solve information will be diverse. For instance, specific professionals bring the scientific analysis while *“locally grounded, contextually sensitive factual information that is often essential to apply scientific analysis to a specific context often comes from nonscientists”* (Stern & Dietz, 2008, p. 56). In addition, the proponent tends to avoid mentioning the adverse impacts of proposed project

and to be inclined to increase the economic and social benefits instead of environmental protection activities, while environmentalists and indigenous people tend to live in a relationship of mutual dependency among the people and environment as well as according to the laws of nature. Consequently, public participation in EIA shall increase the quality of the decision when all information for inputs of EIA report is crosschecked carefully.

(b) Resolving conflict

The objective of public participation in EIA process is also conflict resolution (A. N. D. Glucker, Peter P. J.; Kolhoff, Arend; Runhaar, Hens A. C., 2013; Hanchey, 1998; Barry Sadler & McCabe, 2002; Shepherd & Bowler, 1997). Conflict will be resolved in EIA process through reaching the consensus among stakeholders. Public participation helps identify the conflicts which are emerged during EIA process and find resolutions for them before making final decisions (A. N. D. Glucker, Peter P. J.; Kolhoff, Arend; Runhaar, Hens A. C., 2013, p. 108). In fact, *“because of the diversity of interests, citizens and project proponents will inevitably encounter conflict”* (Shepherd & Bowler, 1997, p. 729). Thus, full communication among opposing interests must maintain reasonably as well as common values and common interests need to be found and considered properly (Hanchey, 1998, p. 28). Furthermore, active public participation in EIA process can reduce costly litigation (Shepherd & Bowler, 1997, p. 729), save time and money as well as help implement the project smoothly. In short, *“the conflict resolution process can be productive, rather than destructive, and co-operative relationships and mutual interests can be discovered”* (Shepherd & Bowler, 1997, p. 729).

In line with above analysis on objectives of public participation, it is an important note that there is the relationship among these objectives, which is in the relationship of mutual dependency. In attempting to achieve the effectiveness of public participation in EIA process, it is necessary to satisfy the above objectives. In so doing, Hanchey (1998, p. 28) introduces

two principles: (1) the objectives of involving the public in the study should be clearly spelled out; and (2) the techniques used should be designed to meet these objectives.

2.3.4. Participants in EIA process

The right to participation theoretically allows the public to participate in a decision-making process. Who are *the public*? *The public*, *stakeholders* and *citizens* are not the new terms in EIA literature, but there is still no strong consensus about *who are participants*? (A. N. D. Glucker, Peter P. J.; Kolhoff, Arend; Runhaar, Hens A. C., 2013). Actually, *the public* refers to a complex interest groups, which changes over time and from project to project (Glasson et al., 2013, p. 168). In fact, *there is no single public, but different levels of the public based on differing levels of interest and ability* (Aggens, 1983). Following this line of thinking, *the public* can be participants who will make a difference to participatory processes because different selections are likely to represent different sets of interests or concerns in the process (Stern & Dietz, 2008, p. 12). A clear understanding of who is *the public* and what their interests are is essential not only to the recognition of the benefits of participation in general but to the design of specific activities (J. Petts, 2009).

Some scholars insist that *the public* just refers to anyone affected by or interested in a decision (Dewey & Rogers, 2012; English, Gibson, Feldman, & Tonn, 1993; Hughes, 1998; Stern & Dietz, 2008; WB, 1996). For instance, English et al. (1993, p. 30) state that *stakeholders are those with an interest that can be affected, for better or for worse, by a contemplated decision*. Dewey and Rogers (2012, p. 24) also think that *the public* consists of all those who are affected by indirect³⁶ consequences of transactions to such an extent that it is deemed necessary to have those consequences systematically cared for. In addition, Stern and Dietz (2008, p. 15) agree that *the public* in public participation normally refers to individuals acting both in their roles as citizens and as formal

³⁶ Dewey's language of *indirect* is deceptive because he appears to also mean harmful or unwanted consequences, indirect or not. See Dewey and Rogers (2012, p. 24).

representatives of collective ~~interested and affected parties~~—people, groups, or organizations that may experience benefit or harm or that otherwise choose to become informed or involved in an environmental decision”. Thus, the definition of Stern and Dietz (2008) will encompass ~~the full range of interested and affected parties, including corporations, nonprofit educational or advocacy organizations, and associations and it also considers the roles of public officials, agencies, and scientists, the last acting as individuals or on behalf of organizations~~”. While, according to WB (1996, p. 125), ~~stakeholders are those affected by the outcome – negative or positively – or those who can affect the outcome of a proposed intervention.~~” Similarly, Hughes (1998) uses ~~stakeholders~~” as ~~all those people and institutions who have an interest in the successful design, implementation and sustainability of the project. This includes those positively and negatively affected by the project~~”. Thus, there are some different stakeholder groups as follows:

Table 2.5: Different stakeholder groups in EIA process

<i>Organizations</i>	<i>Public and community stakeholder groups</i>
<ul style="list-style-type: none"> - Co-ordination: Planning commissions and departments; government agencies at national, regional, district and village level; - Advisory: Research institutes, universities, colleges; - Regulatory: Government authorities at national, regional, district and village level; - Implementation: Relevant ministries/departments at national, regional and district levels, training organizations, private companies, NGOs; - Funding: Development assistance agencies, banks, entrepreneurs, taxpayers; and - Conservation: Environment departments, museums, zoos, botanical gardens. 	<ul style="list-style-type: none"> - Political: Members of Parliament (MPs), local councilors, party functionaries, lobbying groups; - Cultural: Community and religious leaders, community service groups, community organizations/NGOs, traditional leaders; - Business: Business leaders, Chambers of Commerce, trade unions, resource owners and those with tenure rights, common property resource users; and - Environment: Community interest groups, international and local environmental NGOs, local experts

Source: Adapted from Hughes (1998)

Another perspective is that who should be involved, no all of segments of the public³⁷, is often determined by the objectives of public participation in EIA process (Stern & Dietz, 2008, p. 15). Thereby, the definition of the public should not be important because ~~the~~

³⁷ There are four segments of the public: stakeholders, directly affected public, observing public, general public. See Stern and Dietz (2008, p. 15)

purpose of the definition is only to eliminate parties who could not possibly contribute constructively to the public process” (Doelle & Sinclair, 2006, p. 196).

However, the other authors keep different views as the public will include all members of the public (Doelle & Sinclair, 2006; Barry Sadler & McCabe, 2002; UNEP, 2004). In line with the previous approach, UNEP also identifies *“stakeholders”* involved in an EIA process including (Barry Sadler & McCabe, 2002, p. 164): the people – individuals, groups and communities – who are affected by the proposal; the proponent and other project beneficiaries; government agencies; NGOs and interest groups; and others, such as donors, the private sectors, academics. Participation of different groups in EIA process will provide the different benefits described by UNEP (Barry Sadler & McCabe, 2002, p. 165, Table 1). Similarly, ADB lists five categories of stakeholders: local communities, civil society, government and local government bodies, private sector bodies and other institutions. In which, the *“primary”* stakeholders are those who are directly affected, whether positively or negatively (ADB, 2003, p. 72). Moreover, *“anyone who may have something to contribute must be permitted to participate”* (Doelle & Sinclair, 2006, p. 196). In addition, the Aarhus convention (Ebbesson, Gaugitsch, Jendroska, Marshall, & Stec, 2014) and Directive 2011/92/EU of the European Parliament and of the Council³⁸ give the definitions of *“the public”* and *“the public concerned”* separately. *“The public”* means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups. *“The public concerned”* means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest (UNECE,

³⁸ See Directive 2011/92/EU of the European Parliament and of the Council , *The assessment of the effects of certain public and private projects on the environment*, European Parliament and of the Council, 2011. Retrieved on November 12, 2016 from <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0092>

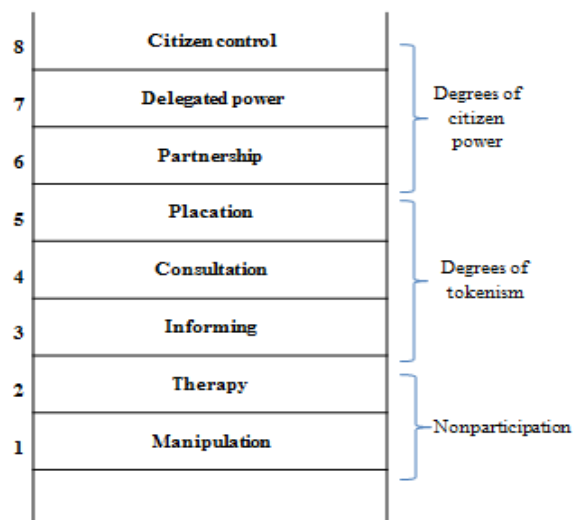
2014). Any member of the public and/or their representations, not limited only to the affected people or the public concerned, must be granted the right of access to environmental information and the right to submit comments. This is mainly due to the fact that people need to know about the actual *“how”* of using common pool resources and public goods. The mutual agreement between the public and the developers is completely needed when using public goods (such as stable climate, fresh air, or the ozone layer) and common pool resources (soil, water, oil). Public goods are traditionally defined as being both non-rival and non-excludable in consumption. Common pool resources are rivalrous but non-excludable in consumption (Petersen, 2015). Thus, if investors carry out the specific projects which have adverse impacts on the environmental components, such as public goods and common pool resources, the public will obviously have the rights to know about these projects and to voice opinions for the sustainable development goals.

Accordingly, Stern and Dietz (2008, p. 16) thinks that identification of participants often requires content-specific characterizations of the public but it would be ineffectiveness and the cost-time consuming to include the full scope of public actors in all environmental controversies because of *“quot homines, tot sententiae”* (i.e. there are as many opinions as there are people). Following this line of thinking, O’Faircheallaigh (2010, p. 22) states that *“There is no necessity for members of the public to participate directly in EIA process or to lobby governments, only for the groups that represent them to participate.”* According to A. N. D. Glucker, Peter P. J.; Kolhoff, Arend; Runhaar, Hens A. C. (2013, p. 109), *“allowing everybody to participate also bears a risk”* because of their various concerns, interests and expectations. There are two approaches to achieving good representativeness (Rowe & Frewer, 2004, pp. 12,13): to select a random stratified sample of the affected population; and to use questionnaires to determine the spread of attitudes with regard to a certain issue for the proportionate selection of members.

2.3.5. Models of public participation

Even a cursory glance at recent EIA literature shows that types of public participation are the major concentration of authors and researchers (Arnstein, 1969; Bishop & Davis, 2002; Connor, 1988; Voinov & Bousquet, 2010; Wood, 2003b, p. 226). They give the models, which allow distinguishing among different forms of public participation. Arnstein (1969, p. 217) establishes a hierarchy of forms of participation based on the level of citizen power – Ladder of Citizen Participation. This ladder consists of eight rungs, which are classified into three groups of public participation: non-participation, degrees of tokenism and degrees of citizen power.

Figure 2.6: Eight Rungs on a Ladder of Citizen Participation



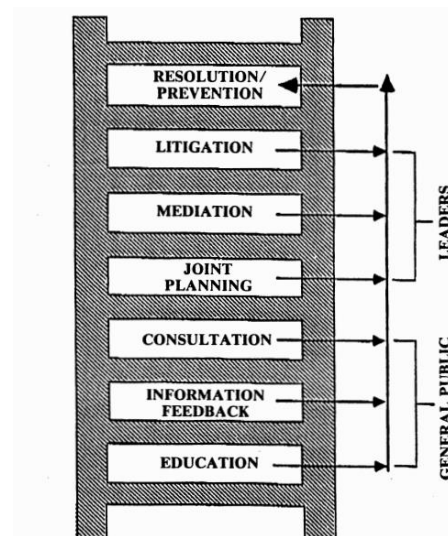
Source: Adapted from Arnstein (1969)

Correspondingly, two rungs of non-participation, namely *manipulation* and *therapy*, do not make people participate in any decision-making process, but make the participants be educated or calm. Next, the degrees of tokenism include *informing*, *consultation* and *placation*. In which, the nature of the rung of *informing* is a one-way flow of information from decision-makers to the public without negotiation and feedback. Through *consultation* and *placation*, the public can express their voice in the decision-making process but without

assurance for inputs on the decision. The last level of public participation is the degrees of citizen power including *partnership*, *delegated power* and *citizen control*. *Partnership* makes the public negotiate and involve in trade-offs with agencies. At the rungs of *delegated power* and *citizen control*, the public can have seats at the same table with the agencies.

However, Arnstein (1969, p. 217) concedes some limitations of her typology relating to (i) empowering to the public, (ii) barriers to achieve genuine levels of participation, (iii) about 150 rungs to cover all actual public participation levels, not only eight. From these limitations of Arnstein, Connor (1988, p. 250) introduces a new ladder which can apply to orient decision-makers to the many approaches to prevent and resolve public argument about different proposals as follows:

Figure 2.7: A new ladder of citizen participation



Source: Adapted from Connor (1988)

Correspondingly, *education* will provide people with a sound knowledge base before an issue arises. A key factor of *information feedback* is to have an accurate appraisal of what each party knows and believes about the proposal and one another. *Consultation* is an advisory process. *Joint planning* is with relevant jurisdictions. *Mediation* has been applied to resolving environmental and land use issues as a more cooperative approach than lengthy and

costly legal actions. *Litigation* is a traditional method of conflict resolution. *Prevention* may be conducted not only by the education strategy discussed initially but also by the public affairs technique of issue management. *Resolution* of a controversy about a proposed policy, program or project implies acceptance by most of the parties involved in the agreed solution. An interesting point of the ladder of Connor is to make the relationship among the rungs of the ladder, i.e. the next rungs based on the previous rungs. However, public participation techniques must be built upon the particular situation because Connor (1988, p. 256) thinks *“there is no one best way to design and manage a public participation program”*. From this view, Bishop and Davis (2002, p. 14) believe that *“participation is the expectation that citizens have a voice in policy choices”* and *“participation takes many forms”*. Thus, Bishop and Davis (2002, pp. 26,27) introduce a map of participation types in which *“each form of participation has a public rationale and a characteristic set of policy instruments”* (see Table 2.6).

Table 2.6: A map of participation types

<i>Participation type</i>	<i>Objective</i>	<i>Key Instruments</i>	<i>Limitations</i>
<i>Consultation</i>	<ul style="list-style-type: none"> - To estimate community response to a proposal and invite opinion - to influence policy if information is used effectively 	<ul style="list-style-type: none"> - key contact - surveys - interest group meetings - public meetings - discussion papers - public hearings 	<ul style="list-style-type: none"> - delay between consultation and any outcomes - communities feel betrayed if they do not like the decision - expensive and time consuming for complex decisions
<i>Partnership</i>	<ul style="list-style-type: none"> - involving citizens and interest groups in aspects of government decision making 	<ul style="list-style-type: none"> - advisory boards - citizens advisory committees - policy community forum - public inquiries 	<ul style="list-style-type: none"> - issue of who can seek for a community - bias toward established interest groups - legitimacy issues with those excluded from the process
<i>Standing</i>	<ul style="list-style-type: none"> - allowing third parties to become involved in the review process 	<ul style="list-style-type: none"> - review courts and tribunals - open and third party standing - statutory processes for social and EIA 	<ul style="list-style-type: none"> - only relevant for those issues which come to court - expensive and time consuming - bias toward well-funded interests

			- legal approach may be inappropriate for some issues
<i>Consumer Choice</i>	- allowing customer preferences to shape a service through choices of products and providers	- survey, focus groups - purchaser/ provider splits - competition between suppliers - vouchers - case management	- relevant only for service delivery issues
<i>Control</i>	- to hand control of an issue to the electorate	- referendum - community parliaments ^c - electronic voting	- costly, time consuming and often divisive - are issue votes the best way to encourage deliberation?

Source: Adapted from (Bishop & Davis, 2002)

Based on the analysis on public participation in public policy, in EIA process, participation is divided into six types (Hughes, 1998) as follows:

Table 2.7: Typology of participation in EIA

<i>Type</i>	<i>Description of each type</i>
1. Passive participation	Proponent or consultant informs the public with the proposed projects.
2. Participation in information giving	Proponent or consultant gathers all information from the public and their interests, concerns.
3. Participation by consultation	Proponent or consultant seeks the public opinions and responses.
4. Functional participation	Proponent or consultant facilitates the public to discuss all aspects of the proposed project.
5. Interactive participation	The public identifies their concerns, interests and assist in finding the solutions to potential negative impacts.
6. Self-mobilization	The public can give the other plan and retain control over how resources are used.

Source: Adapted from Hughes (1998)

However, unlike the previous approaches, UNEP (2004, p. 70) introduces four main ways in which the public can participate in EIA process: (1) information dissemination; (2) consultation involving information exchange among the proponent and the public in a two-way process; (3) participation; (4) empowerment and control. Consequently, those forms of public participation in EIA process should be officially introduced in EIA process of each country.

2.3.6. Factors influencing the implementation of public participation in EIA process

Theoretically, public participation plays a key role in the decision-making process in general, in EIA process in particular. There are factors of the country-specific context which

will influence the implementation of public participation in EIA process; as a result, it will prevent achieving the objectives of public participation in practice. Earlier in my study, I examine the objectives of public participation in EIA process and the models of public participation in various approaches. In this section, I analyze the factors influencing the implementation of public participation in EIA process. Particularly, I examine what and how factors can influence the public participation.

In the theoretical literature, some authors already discuss about the difficulties and barriers concerning effective public participation (Diduck & Sinclair, 2002; Morgan, 2012; Palerm, 2000; Judith Petts, 2004; Shepherd & Bowler, 1997; Stern & Dietz, 2008; Wood, 2003a). Most of these elements belong with the procedure of public participation in EIA process, similar to components of best-practice public participation in EIA (ADB, 2003; Palerm, 2000). However, the influence levels of factors on the implementation of public participation in EIA process depend greatly on the specific country context. For instance, Wood (2003a, p. 18) cited the identification of Bisset (2000) on the difficulties concerning effective public participation in low-income countries, such as illiteracy, attitudes.

In addition, from the organizing participation perspective, Stern and Dietz (2008, p. 116) identify that public participation processes are more successful when they cover the following dimensions:

- (i) Breadth: the number and diversity of participants involved in EIA process;
- (ii) Openness of design: the degree of participation at early stages of the process, the number of participatory points in the process, and participants' influence on the design of the process;
- (iii) Intensity: the amount of time and effort participants put into the process and the amount of interaction among stakeholders; and
- (iv) Influence: the degree of influence on the decision-making process.

Obviously, to get good practice for organizing public participation processes, it is necessary to implement four principles: inclusiveness, collaborative problem formulation and process design, transparency of process, and good-faith communication (Stern & Dietz, 2008, p. 135). Moreover, Wood (2003b, p. 226) summarized briefly the principles for public participation in EIA which based on Australian and New Zealand Environment and Conservation Council as follows:

- Participate in the evaluation of proposals through offering advice, expressing opinions, providing local knowledge, proposing alternatives and commenting on how a proposal might be changed to better protect the environment.
- Become involved in the early stages of the process as that is the most effective and efficient time to raise concerns. Participate in associated and earlier policy, planning and program activities as appropriate, since they influence the development and evaluation of proposals.
- Become informed and involved in the administration and outcomes of the EIA process, including:
 - o Assessment reports of the assessing authority
 - o Policies determined, approvals given and conditions set
 - o Monitoring and compliance audit activities
 - o Environmental advice and reasons for acceptance or rejection by decision-makers.
- Take a responsible approach to opportunities for public participation in the EIA process, including the seeking out of objective information about issues of concern.

Furthermore, in the *EIA Training Resource Manual* of UNEP (Barry Sadler & McCabe, 2002, p. 168), some key principles for public participation which are widely agreed, are outlined. Following these, the process should be:

- Inclusive – covers all stakeholders
- Open and transparent – steps and activities are understood
- Relevant – focused on the issues that matter
- Fair – conducted impartially and without bias toward any stakeholder
- Responsive – to stakeholder requirements and inputs
- Credible – builds confidence and trust

According to European Commission, *“effective public participation in the taking of decisions enables the public to express, and the decision-maker to take account of, opinions and concerns which may be relevant to those decisions, thereby increasing the accountability and transparency of the decision-making process and contributing to public awareness of environmental issues and support for the decisions taken”* (EC, 2003). Hence, Del Furia and Wallace-Jones (2000, p. 459) basing on the literature review on public participation in EIA process introduce four factors which contribute to effective public participation in EIA: (1) the nature of the public involved (the wider the better); (2) the amount of power the public (the higher the better, but the public must be equipped with the power); (3) when the public are involved in the procedure (the earlier the better as well as during the process); (4) the ability to *“manage”* conflict (the more flexible the better). Consequently, from international EIA guidelines and EIA literature, some main factors assumed to influence the implementation of public participation in EIA process are, but the influence levels will be different from country to country:

Deficient provision of information

Some authors often focus on the role of information in achieving the success of public participation in EIA process (A. N. D. Glucker, Peter P. J.; Kolhoff, Arend; Runhaar, Hens A. C., 2013; O’Faircheallaigh, 2010). However, deficient provision of information prevents the public from participating in EIA process actively and constructively. For particular, deficient

provision of information encompasses inaccessible information, overly technical terms, inaccurate information, delayed information and incomplete information (Diduck & Sinclair, 2002, p. 579).

Improper procedure for public participation

Numerous scholars also discussed about the procedure for public participation to achieve the effectiveness but this procedure depends greatly on the national legislation of each country. Matters in each procedure influencing the implementation of public participation in EIA process are:

- Points in the EIA process (Del Furia & Wallace-Jones, 2000; A. Glucker, 2012): Del Furia and Wallace-Jones (2000, p. 463) think that public participation should be presented at the feasible stages of the procedure as well as during the EIA process because of the earlier the better. Furthermore, Shepherd and Bowler (1997, p. 727) believe that *“the later that public participation occurs in the EIA process, the higher the risk that public comments will only minimally influence the final decision”*. Thus, points in the EIA process will decide the values of public comments and implementation of public participation.

- Timing in the procedure of public participation: According to Stern and Dietz (2008, p. 103), if a procedure of public participation is begun too soon or too late, there may be some drawbacks, such as incomplete information in case of early participation or inadequate time to understand all information about proposed project. Thus, the public must participate in EIA process in a timely manner, i.e. beginning the procedure early enough. Satisfactory duration will establish mutual understanding, confidence, and trust (Stern & Dietz, 2008, p. 104).

Inadequate capacity and resources

As mentioned by Palerm (2000, p. 589), the capacities of actors can change the implementation of public participation in EIA process. First, a lack of capacity and resources

of agencies makes public participation procedure unsuccessful. For instance, financial resources influence the assistance of access to information, provision of neutral facilitation, technical assistance and supporting for a sufficient number of meetings. Moreover, human resources (such as skilled and enthusiastic staff ensuring the engagement of two-way communication processes; and continuity of agency personnel assuring participants of the agency's continued commitment to the process (Stern & Dietz, 2008, p. 102)) are very important to the success of public participation procedure. Thus, Stern and Dietz (2008, p. 101) think that *“the commitment of resources is both a practical matter and a signal from the agency that the participatory process is important.”* Secondly, capacities of participants are also vital to effective public participation. Depending on current legislation in each country, the public who wishes to participate in EIA process needs to meet the requirements of cognitive capacity. Continuously, the public must have time and money for the participatory procedure during EIA process (Diduck & Sinclair, 2002, p. 579). For example, lack of financial resources is a barrier for hiring external experts in doing opinions and comments. In developing countries, capacities of participants are greatly based on the illiteracy, linguistic and cultural diversity, lack of local knowledge and understanding regarding the scale, nature and likely effects of certain types of development projects, unequal access to consultative and participatory processes for certain social categories (for example, women) and remoteness of some stakeholders (Wood, 2003a, p. 18).

Attitude of stakeholders

According to Palerm (2000, p. 589), two aspects influencing the participatory process are distinguished: willingness to participate; and capacity to participate. In reality, the public has the right to participate in EIA process with their concerns about proposed project but sometimes refuses to participate due to oppression from the power-holders (Palerm, 2000, p. 589). Therefore, attitudes of participants primarily rely upon the use of the results of the

participatory procedure in EIA process and participatory techniques employed. Lack of clarity about how decision makers intend to use the results shall encourage skepticism (Stern & Dietz, 2008, p. 98). This implies that a public participation procedure will be more successful if responsible agencies properly consider public opinions, comments, concerns and interests (Stern & Dietz, 2008, p. 99).

2.4. Interim Conclusion

In this chapter, the following issues are withdrawn from the theory on public participation in EIA process: the notion of public participation, the purposes and objectives of public participation and the factors influencing the implementation of public participation. First of all, there is no consensus among scholars about the notion of “public participation”, particularly in using the term “participation” or “consultation” or “involvement”. In my study, I define that public participation is a part of the EIA process through which the environmental information exchange among stakeholders shall be conducted during all stages of EIA process, and the public has the right to access to all information of projects to give the valuable opinions for a consensus in EIA report. Moreover, some authors measure the gradation of participation through the various approaches, such as Arnstein (1969), Connor (1988). Next, the scope of participants in EIA process remains a continuous controversy among the scholars. On the one hand, the public just included the affected people; on the other hand, the public should encompass all members of the public. Thus, I argue that the identification of participants depends on the public participation techniques and objectives of this procedure. Continuously, the implementation of public participation will be decided by the fulfill of objectives of public participation and this implementation is influenced by some factors, such as the deficient provision of information, the improper procedure for public participation, the inadequate capacity and resources, the attitude of stakeholders. However, public participation confronts different difficulties and challenges in each country, for

instance, between developed countries and developing countries, or between democratic countries and monarchy countries, and among the countries with different participatory culture³⁹.

³⁹ See “participatory culture” in *The Participatory Cultures Handbook* (Delwiche & Henderson, 2012) for more details.

CHAPTER 3: PUBLIC PARTICIPATION IN JAPAN'S ENVIRONMENTAL IMPACT ASSESSMENT SYSTEM

3.1. Summary of chapter 3

After experiencing the increase of environmental pollutions caused by expansion of economic activities, the Japanese government has issued many environmental policies and laws to solve promptly these pollutions. Before the enactment of the EIA act of 1997, local governments already issued the EIA ordinances for the projects located in their area. When the EIA act was officially adopted in 1997 (which was revised in 2011), there is the difference in implementation of EIA process for each kind of projects. The EIA act is applied for the larger projects than that of EIA ordinances of local governments. Local EIA ordinances apply smaller size projects excluded from the Japanese EIA act application to avoid the duplication.

I analyze the way to institutionalize EIA system in Japan in order to see the differences with those in other countries. By introducing the EIA act, the objectives and procedure of EIA are clearly displayed. Especially, I focus on the analysis of public participation in Japanese EIA process with strong emphasis on participants who will participate in Japanese EIA process, kind of participation, time for public participation and access to proposed project information. Finally, I withdraw some conclusions that citizens just have three opportunities for participation in Japan's national EIA process. The *status quo* of public participation in Japanese EIA process remains some shortcomings, such as without public meetings at the scoping stage and restrictions of access to EIA documents at the stage of implementation of EIA.

3.2. System of Environmental Impact Assessment in Japan

With the aim of the reestablishment of Japanese economy after the World War II, chemical and heavy industries rapidly developed and recorded great achievements, leading to

high pressure on environmental controls. Mass production activities without EIA caused the environment to be polluted, leading to damage to human health. For instance, Minamata disease is a typical disease caused by eating fish and shellfish polluted by methyl mercury. In 1956, Minamata disease was officially recognized by the government, and after that, the national government announced that Minamata disease was a pollution disease caused by the Chisso Co., Ltd in 1968⁴⁰ (Japanese-MoE, 2013). This basically marked a turning point for Japan's recognition of the critical importance of anti-pollution measures, prompting the development of new policies and technologies for environmental protection. Consequently, environmental protection measures were gradually introduced in Japan, particularly, many legislation and the revision of 14 laws during the so-called "Pollution Diet Session" in 1970 (Japanese-MoE, 2013, p. 5). During the 1960s to early 1970s national and local governments put their efforts into pollution control programs (Ohkura, 1999, p. 351). The Ministry of International Trade and Industry began conducting EIA in areas where industrial development was planned from 1965 onwards (Ohkura, 1999, p. 352). At present, there are many initiatives and approaches to prevent environmental destruction and health damage with the involvement of all stakeholders, including the public (Japanese-MoE, 2013, p. 5).

3.2.1. Way to institutionalize EIA system in Japan

Apart from using a "positive control" (i.e. the regional planning policy) to reduce the impacts on the environment of proposed projects, the Japanese government has promoted the implementation of EIA as a "negative control" (Shimazu, 1995). Thus, before the EIA act was enacted in 1997, EIA system was already developed in Japan. The idea of conducting EIA in industrial development was emerged in 1964 (Ohkura, 1999, p. 352). The first EIA process was an extension of pollution control laws established as early as 1965, leading to

⁴⁰ See more details at "Ten Things To Know About Minamata Disease". Retrieved on December 19, 2016 www.soshisha.org/english/10tishiki_e/10chisiki_3_e.pdf

focusing on air and water quality and ignoring the assessment of social impacts as well as public opinions (Shimazu, 1995).

Then, the Environment Agency established in 1971 had prepared to have a uniform EIA process (Abery, 1999, p. 381). After that, EIA was firstly appeared in the guideline of Cabinet of “*Concerning Environmental Conservation Measures Relating to Public Works*” (Suwanteep, Murayama, & Nishikizawa, 2016, p. 20) (sometimes called as “*Environmental Protection Measures for Public Works*”) (Barrett & Therivel, 1989) in 1972 (Japanese-MoE, 2012). According to this guideline, the administrative agencies shall instruct the proponent to survey and examine the potential environmental impact and alternative plans. For example, EIA was also undertaken for some projects as power stations (1977) and super-express trains (1979). However, this administrative guideline did not describe any EIA process as well as a procedure for public participation (Barrett & Therivel, 1989, p. 223). At the same period, EIA was also introduced in some laws, such as the Basic Policy for Natural Environment Conservation based on the Nature Conservation Law (1972), the Port and Harbor Law and the Public Water Areas Reclamation Law (both amended in 1973).

After that, local governments established their ordinances on EIA, for instance, Fukuoka (1973), Kawasaki (1976), Hokkaido (1978), Tokyo and Kanagawa (1980) (Barrett & Therivel, 1989, p. 223). Consequently, EIAs were carried out for a large-scale national project (such as Honshu-Shikoku Connecting Bridge), and large-scale local projects for industrial development in the Eastern Tomakomai, Mutsuogawara, etc.⁴¹

Thus, EIA was conducted based on the ordinances of local governments. With efforts to enact the national unified EIA process, the government began the progress of compilation and enactment of EIA system in the mid-1970s. On June 24, 1974, “*Guidelines for conducting EIA*” was sent to Environmental Agency by Central Council for Control of Environmental

⁴¹ See Legal Systems of Japan. Retrieved on June 14, 2016 from <https://www.env.go.jp/earth/coop/coop/document/08-ttmnce/08-ttmnce-31.pdf>

Pollution. The most important objective in these Guidelines is to set suitable environmental quality standards (Tanaka, 1997, p. 17). Following these guidelines, Central Council released “Concerning the Direction of the EIA system” in 1975. From that, the Environment Agency compiled the EIA bill based on the guidelines by the Central Environmental Pollution Control Council. In early 1976, a draft of EIA act was proposed by Environmental Agency (Ohkura, 1999, p. 352). However, this bill was promptly refused due to impracticability at that time and cost consuming for projects (Tanaka, 1997, p. 224). After revising several times, the bill was finally approved by the Cabinet and presented to the Diet for debating in detail. One of the modifications of the bill made by the Environmental Agency was to *cut down procedures for the public participation by restricting public comment to those residents living in the affected area and by limiting the conditions under which public hearings and briefings could be held*” (Ohkura, 1999, p. 353). But this Bill was abolished in November 1983 by the Diet (Barrett & Therivel, 1989, p. 225; Ohkura, 1999, p. 353). Continuously, it was not resubmitted to the Diet in 1984 because according to the committees of the Liberal Democratic Party, there were some constraints, such as the scope and form of public participation in EIA process (Ohkura, 1999, p. 353). In spite of the reasoned refusal of EIA bill, the Director of Environmental Agency suggested that the Bill should be used as a basis for compiling the national EIA guidelines to make the unification of local and national EIA procedures. Then, a decision of “Implementation of EIA” was passed on August 28, 1984 (Ohkura, 1999, p. 353). Based on “Principles concerning Surveys, Studies, Prediction and Evaluation of Environmental Impact” issued on November 27, 1984, the relevant ministries introduced their own guidelines (Japanese-MoE, 2012, p. 1). As a result, 304 EIA reports were carried out under the national EIA guidelines until 1997 (Ohkura, 1999, p. 353).

With the enactment of the Basic Environmental Law in 1993, the EIA systems were finally provided as a tool for implementation of Policies for Environmental Conservation by the State. At Article 21, EIA was promoted as follows:

–The State shall take necessary measures to ensure that, when corporations are engaged in alteration of land shape, construction of new structures and other similar activities, they will conduct in advance, surveys, forecasts or evaluations of the environmental impact of such activities and will give proper consideration to environmental conservation based on the results of them”⁴².

Ohkura (1999, p. 354) pointed out that the diverse EIA systems in national and local governments still existed without any integration, anticipation of much wider and in-depth public participation.

Based on the promotion of EIA in the Basic Environmental Law, the report “Present State and Problems of EIA system” was prepared in 1996. Before resubmitted the EIA Bill, the results of the inquiry made by the Prime Ministry recommended that the adoption of EIA act was important. Thus, when the Environmental Agency submitted the EIA Bill in March 1997, it was promptly enacted in June 1997 (Ohkura, 1999, p. 355). According to Article a (effective date) at supplementary provisions, this EIA act came into force within two years from the date of promulgation, namely in 1999. In April 2011, the Revised EIA act was adopted in which an EIA procedure at the planning stage (i.e. PEIC) and a procedure for reporting and announcing results of the measures for protecting the environment (i.e. IMR) were officially incorporated (Japanese-MoE, 2012, p. 1).

⁴² See Basic Environmental Law of 1993 of Japan. Retrieved on October 10, 2016 from <https://www.env.go.jp/en/laws/policy/basic/>

Table 3.1: Overview of process of development of EIA system in Japan

<i>Year</i>	<i>Process of development of Japanese EIA system</i>
1965	Ministry of International Trade and Industry began conducting EIA for industrial development.
1972	“Environmental Protection Measures for Public Works” was approved by Cabinet.
1973	- Fukuoka prefecture established the first local government EIA guidelines. - “Port and Harbor Law” and “Public Water Reclamation Law” were amended for consideration of EIA.
1974	Interim Guidelines for Conducting EIA (Central Council for Environmental Pollution Control’s Prevention Planning Committee EIA Subcommittee)
1977 - 1979	Administrative guidelines (Local ordinances: Kawasaki (1976), Hokkaido (1978), Tokyo and Kanagawa (1980))
1978	Ministry of Construction released “Policy for interim measures concerning EIA for public works” under the jurisdiction of this ministry.
1979	- Ministry of Transportation released “Implementation of EIA for construction of five bullet train lines” - Chairman of Central Council for Environmental Pollution Control released “Model of EIA system”. - Natural Resource and Energy Agency released “Implementation of Environmental Surveys and Environmental Review for sitting of Power plants”.
1981	The EIA Bill was presented to Diet.
1983	The EIA Bill was voided by Diet.
1984	- Cabinet issued the Guidelines of “Implementation of EIA”. - Committee for Fostering the Implementation of EISs released “Common matters necessary for the procedure and other based on implementation scheme for EIA”. - Environmental Agency issued “Principles concerning surveys, studies, prediction and evaluation of Environmental Impact”
1993	“The Basis Environment Law” was adopted.
1997	Central Council for Environment released the report of “Model of Future EIA system”
1997	“The Environmental Impact Assessment Act” was enacted.
1999	“The Environmental Impact Assessment Act” came into force.
2005	“Basic Guidelines for Environmental Impact Assessment” was adopted.
2011	“EIA Act” was revised.
2011	“Special EIA process” provided in the “Basic Act on Reconstruction in response to the “Great East Japan Earthquake” was adopted for post-disaster reconstruction projects
2013	The revision of the EIA act in 2011 came into force.

Source: Japanese-MoE (2012); Tanaka (1997); Ohkura (1999); Barrett and Therivel (1989); Suwanteep et al. (2016)

3.2.2. The Environmental Impact Assessment Act

After reviewing the responding of more than five hundred people via email, mail and public hearings about the EIA systems in Japan, the Government completed the EIA Bill and submitted it to the National Diet on 28 March 1997 (Kurasaka, 1997). As a result, the “Environmental Impact Assessment Act” was officially enacted in June 1997. According to Ministry of the Environment (Japanese-MoE, 2012, p. 1), since the EIA Act was adopted, there was a total of 142 projects in sectors of road, power plant and others which were completed the EIA process so far. However, with efforts to have a good EIA process, in April 2011, the EIA Act was revised and came into force in April 2013 (Suwanteep et al., 2016). An EIA procedure at the planning stage (PEIC) and a procedure for reporting and announcing results of the measures for protecting the environment (IMR) in the EIA system were incorporated (Japanese-MoE, 2012, p. 1). With the purpose of promoting smooth and prompt reconstruction after the “Great East Japan Earthquake” on 11 March 2011, the Diet passed the “Basic Act on Reconstruction in response to the “Great East Japan Earthquake”⁴³. Thus, a simplified EIA process (referred as “special EIA process”) was established in this Act as an exemption from the normal EIA process (Daisuke Uesako, 2013, p. 3). This special EIA process will apply to land readjustment projects to relocate residential areas to uplands or railway projects to restore railway service that was designated in municipalities’ land restructuring plans (Daisuke Uesako, 2013, p. 3).

3.2.2.1. Introduction of Environmental Impact Assessment Act

Economic growth has strongly imposed on the environment. Thus, it is necessary to consider the negative impacts on the environment and human beings when conducting the development projects. Apart from considerations of impacts on environment and socio-

⁴³ See “Basic Act on Reconstruction in response to the “Great East Japan Earthquake” of Japan, Act No. 122 of 2011. Retrieved on November 8, 2016 from <http://www.reconstruction.go.jp/english/topics/2012/12/basic-act.html>

economy for environmental protection, sustainable development should be taken into account in the preparation and implementation of the specific project. Consequently, EIA is a useful tool to solve these above issues.

Definition of EIA is officially defined in Article 2.1 of the EIA Act 1997 of Japan⁴⁴ as follows:

–Environmental impact assessment shall mean the process of
(a) surveying, predicting, and assessing the likely impact that a project (hereinafter meaning changes in the shape of the terrain, and the establishing, modifying, and expanding of a structure for specific purposes), will have on various aspects of the environment (if the purpose of the project includes business activities and other human activities on the project land or within a project structure after the implementation of a project, the impact of such activities is included) (hereinafter referred to simply as "environmental impact");
(b) studying possible environmental protection measures relating to the project; and
(c) assessing the likely overall environmental impact of such measures.”

According to Ministry of the Environment of Japan, the EIA Act was formulated from the idea that EIA is essential for preventing serious environmental impacts and promoting a sustainable society (Japanese-MoE, 2012, p. 2). At the first Article of the EIA Act, it was strongly emphasized that EIA process must be conducted in advance of a project which changes the shape of the terrain or involves the construction of a new structure or other similar activities for protecting the environment. The objectives of EIA Act are to ensure that *–proper consideration is given to environmental protection issues relating to such a project and, ultimately, to ensure that present and future generations of this nations enjoy healthy and culturally rewarding lives”*⁴⁵. Based on these purposes, the EIA Act has established a process for the EIA of large-scale projects that could influence the environment seriously. In addition, the results of EIAs must be reflected in the decision-making process. Especially,

⁴⁴ See Law No.81 of 1997, supra note 17

⁴⁵ See Law No.81 of 1997, supra note 17

this act also contains provisions on the responsibilities of the government regarding EIA process.

In short, purposes of the EIA Act are as follows (Japanese-MoE, 2012):

- To realize that an EIA process is very important for environment conservation;
- To secure measures for environment conservation relating to the projects by providing the EIA process and assessing the potential environmental impacts.
- To contribute to secure healthy and culturally-meaningful life for the people of present and future generations.

After ten years' experience in development and implementation of the EIA Act, in 2011, this act was revised to solve new issues (such as the need for EIA process at an earlier stage) and to address change of EIA roles in diversification and complication of issues and problems on environmental policy (such as conservation of biodiversity) (Japanese-MoE, 2012, p. 2).

Table 3.2: Main issues on amendment of the EIA Act

Enforced in 1 April 2012	<ul style="list-style-type: none"> - Addition of projects provided with grants to projects subject to EIA - Obligation to hold a public session at the stage of the assessment method determination - Obligation for the publication of the documents prepared by the project proponents (environmental assessment documents) via internet - Stipulation of the procedure to have opinions from Minister of the Environment in the selection of evaluation items - Enabling direct submission of opinion from the designated cities to the project proponent - Stipulation of the procedure to gain advice from the Minister of the Environment when a prefectural governor etc. is the issuer of the license etc.
Enforced in 1 April 2013	<ul style="list-style-type: none"> - Establishment of PEIC - Establishment of IMR

Source: Adapted from Japanese-MoE (2012, p. 2)

At Article 2 of the EIA Act, 13 types of projects are subject to the EIA act. Additionally, EIA is implemented for large-scale port and harbor planning as well, not for the project (Japanese-MoE, 2012, p. 3) (see Table 3.3). However, regarding the port planning, the

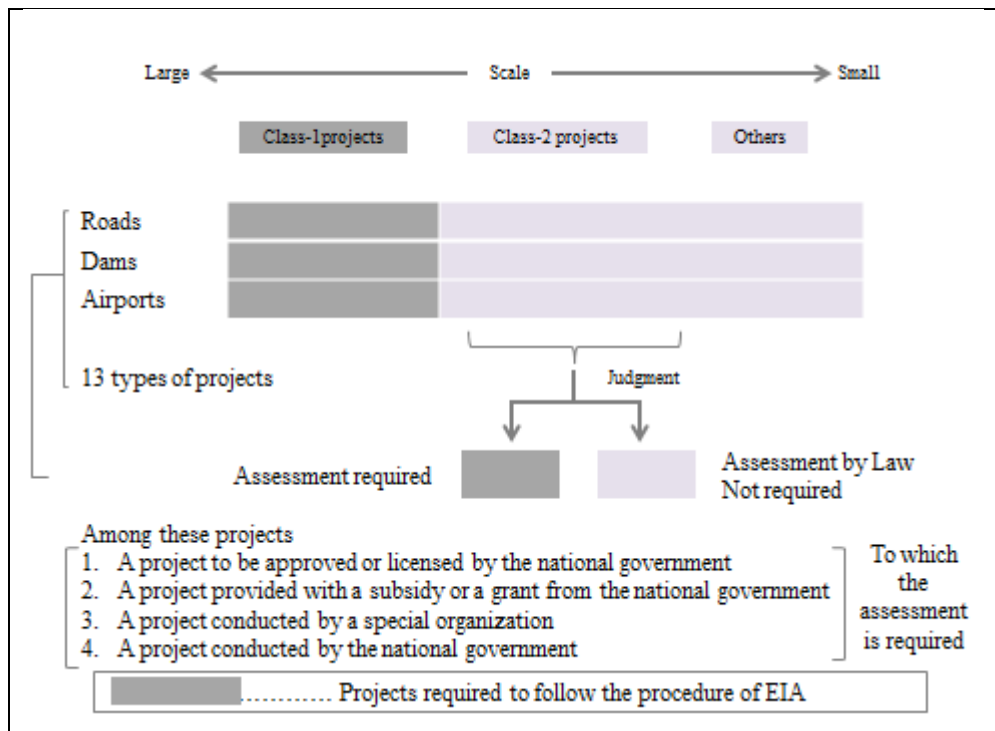
assessment conducted by port management bodies does not include PEIC, Screening, Scoping and IMR (Japanese-MoE, 2012, p. 15).

In the EIA act, based on the level of environmental impacts, projects which are subject to the EIA act are classified into two classes (See Figure 3.1). –Class-1 Project” means a large-scale project which has a serious impact on the environment. –Class-2 Project” means a project for which a determination as to whether it will have a serious impact on the environment must be made by an authority person. –Others” include projects that are not required EIA process, but which will be conducted by the State, through still subject to the EIA act (Suwanteep et al., 2016, p. 20). Thus, the Class-1 project is a project which an EIA must be rigorously conducted, while Class-2 projects is a project in which determination of conducting an EIA is based on the decision of authorities concerned. On the other hand, Class-1 projects are big projects and Class-2 projects are smaller than that of Class-1 projects (see Table 3.4).

–Who will implement EIA process?” is answered in the EIA Act of Japan. Following Article 12 of the EIA act, project proponents shall implement EIA by themselves. According to Japanese-MoE (2012, p. 4), EIA is a process through which environmental considerations are made from the project design by exchanging of views and information among stakeholders concerned. Additionally, project proponents themselves know exactly about the proposed project and have the capacity to adjust their projects. Moreover, Article 3 of the EIA Act officially regulates the responsibilities of the National Government and other parties as follows:

—... (t)he national government, local governments, proponents, and citizens shall endeavor from their respective positions to ensure that such an EIA is conducted properly and smoothly, ... (i)n order to avoid or to reduce as much as possible the environmental burdens resulting from the project, and in order to assist in giving proper consideration to the protection of the environment in regard to the implementation of the project”.

Figure 3.1: Illustration of projects required to follow the EIA process



Source: Adapted from Japanese-MoE (2012, p. 3)

Table 3.3: Implementation Status of the Legal EIA Procedures in Japan
(as of 31st March, 2013)

	Road	River	Railway	Airport	Power Plant	Waste disposal site	Landfill and reclamation	Land readjustment	Total
Total	79	8	17	10	159	6	16	20	308
- On-going	14	1	3	2	103	2	4	2	129
- Completed	56	6	12	7	50	4	10	14	155
- Aborted	9	1	2	1	6	-	2	4	24
Opinions of the Minister of the Environment	59	6	12	7	56	-	-	14	154

Source: Adapted from Takaaki ITO (2014)

Table 3.4: List of projects subject to the Environmental Impact Assessment Act

	Project	Class-1 project (EIA is always required)	Class-2 project (The necessity if EIA is judged by project)
1	Road - national expressway - metropolitan expressway - national roads - large-scale forest road	- all - 4 lanes or more - 4 lanes or more, 10km or longer - width: 6.5m or wider, 20km or longer	- - - 4 lanes or more, 7.5km-10km - width: 6.5m or wider, 15km-20km
2	River - dam, weir - diversion channel, lake-related development	- reservoir area: 100ha or larger - area of land alteration: 100ha or larger	- reservoir area: 75ha-100ha - area of land alteration: 75ha-100ha
3	Railway - shinkansen (super express train) - railway, track	- all - length: 10km or longer	- - length: 7.5km-10km
4	Airport	Runway: 2,500m or longer	Runway: 1,875m-2,500m
5	Power plant - hydraulic power plant - thermal power plant - geothermal power plant - nuclear power plant - wind power plant	- output: 30,000kw or over - output: 150,000kw or over - output: 10,000kw or over - all - output: 10,000kw or over	- output: 22,500kw-30,000kw - output: 112,500kw-150,000kw - output: 7,500kw-10,000kw - - output: 7,500kw-10,000kw
6	Waste disposal site	area: 30ha or larger	area: 25ha-30ha
7	Landfill and reclamation	area: exceeding 50ha	area: 40ha-50ha
8	Land readjustment project	area: 100ha or larger	area: 75ha-100ha
9	New Residential area development project	area: 100ha or larger	area: 75ha-100ha
10	Industrial estate development project	area: 100ha or larger	area: 75ha-100ha
11	New town infrastructure development project	area: 100ha or larger	area: 75ha-100ha
12	Distribution center complex development project	area: 100ha or larger	area: 75ha-100ha
13	Residential or industrial land development by specific organizations	area: 100ha or larger	area: 75ha-100ha
14	<i>Port and harbor planning</i> ⁴⁶	<i>Total reclaimed and excavated land: 300ha or larger</i>	

Source: adapted from Japanese-MoE (2012, p. 4)

⁴⁶ Large-scale port and harbor planning is subject to the EIA (Japanese-MoE, 2012, p. 3) at Articles 47 and 48 of the EIA Act of Japan.

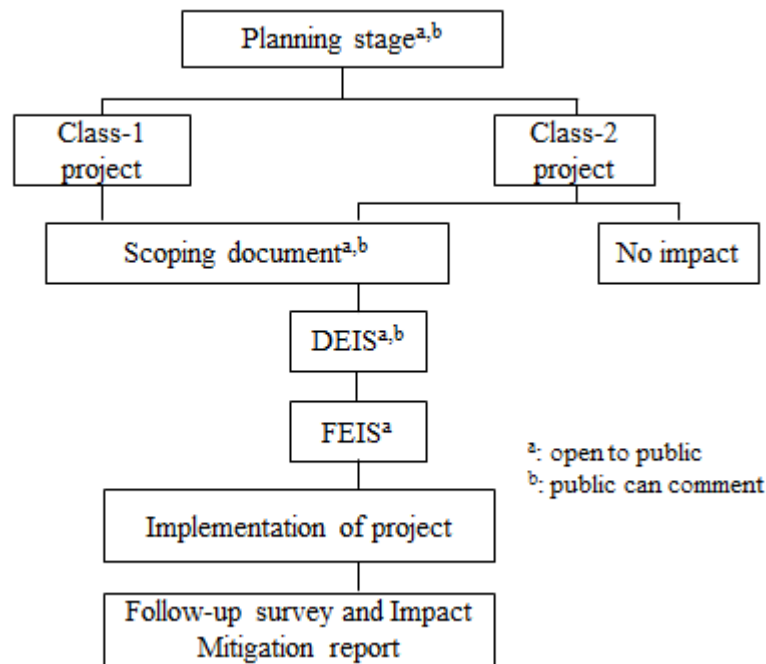
3.2.2.2. Environmental Impact Assessment process

Before the adoption of the EIA Act of 1997, Japan's EIAs were *unnecessarily complicated, non-uniform and duplicative*" (Ohkura, 1999, p. 356), resulting to the existing of the hegemony in EIA legislation. To solve this issue in EIA provisions, the EIA Act regulates the "Transition Provision" (Ohkura, 1999, p. 357) which requires the proper consideration of environmental issues by the relevant Minister⁴⁷. At Article 33 of the EIA Act of 1997, the relevant Minister may refuse to issue the license or other required approval, or may attach conditions to license or other required approval after reviewing an application for a license or other required approval based on the consideration of environmental protection in the project area.

The EIA Act 1997 specifically regulates the EIA process, such as procedures prior to preparing a draft EIS, a draft EIS and procedures after an EIS is made public and available for public review. However, EIA process was implemented after determination of the framework of the project (such as location, scale, and others), leading to difficulties with alternative plans in some cases (Japanese-MoE, 2012, p. 7). Hence, PEIC was successfully instituted by the amendment of the EIA Act in order that the alternative plans could be conducted at the planning stage. As a result, potential environmental impacts could be diminished and prevented in an effective manner. Consequently, the EIA process in Japan includes the following stages: PEIC, screening, scoping, implementation of EIA, a procedure for the draft EIS, a procedure for the EIS, reflecting the assessment results in the project scheme, impact mitigation reporting (see Figures 3.2).

⁴⁷ See Law No.81 of 1997, supra note 17

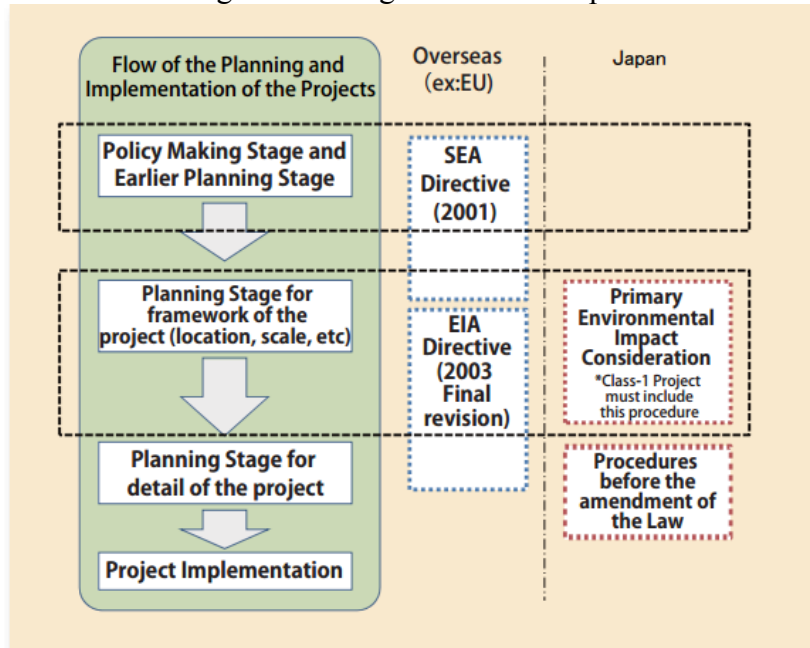
Figure 3.2: Overview of EIA process in Japan



Source: Adapted from Suwanteep et al. (2016, p. 20)

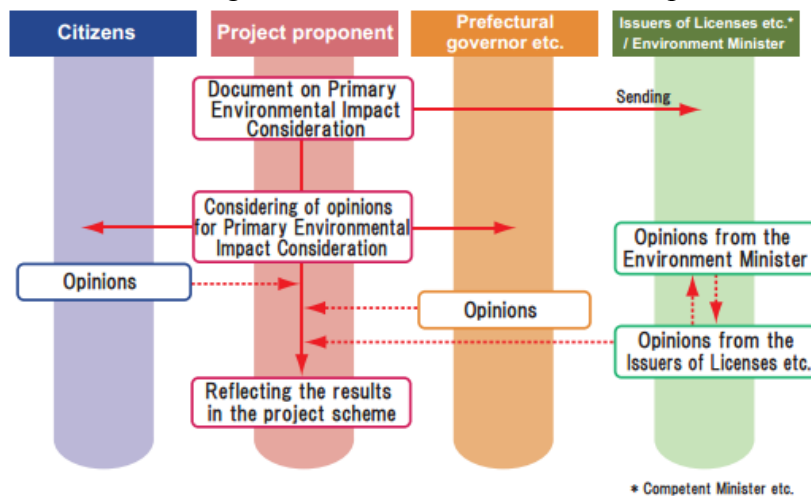
First of all, this is a procedure for *Primary Environmental Impact Consideration* (PEIC) which was established on Revision of the EIA Act and came into force on 1 April 2013. Thus, PEIC is carried out at the early stage, i.e. planning stage, and is prepared by each proponent of Class-1 projects (Japanese-MoE, 2012, p. 6). Document on PEIC contains the following contents: evaluation information on environmental conservation, location, scale and others (Japanese-MoE, 2012, p. 6). Project proponent considers the opinions of stakeholders regarding the possible impacts on the environment, human being, and others before deliberating the results of the PEIC in the Scoping stage and following stages. According to Japanese-MoE (2012, p. 6), the proponent of Class-2 can voluntarily perform the procedure for PEIC (see Figures 3.3 and 3.4).

Figure 3.3: Stage of PEIC in Japan



Source: Adapted from Japanese-MoE (2012, p. 7)

Figure 3.4: Procedure for PEIC in Japan



Source: Adapted from Japanese-MoE (2012, p. 6)

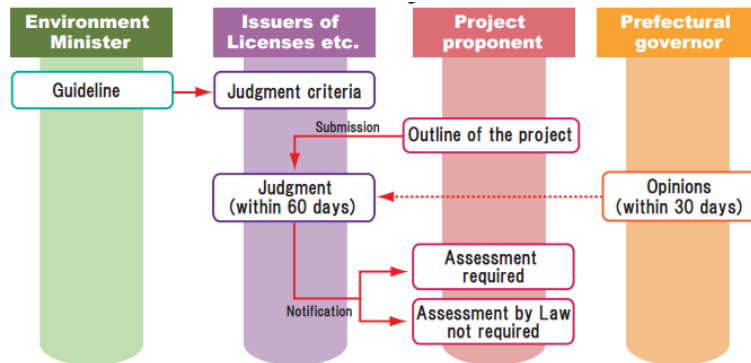
It is interestingly noted that according to the amendment of the EIA Act, the Minister of the Environment has the right to give opinions to proposed project at the stage of PEIC, Scoping document and IMR (Japanese-MoE, 2012, p. 6). Because in the EIA Act of 1997, the Minister of the Environment just gives opinions to all the projects which require environmental licenses by the national government.

Secondly, this is the stage of determination of the project subject to EIA (*Screening of projects*). At Article 4 of determinations regarding a Class-2 project of the EIA Act of 1997⁴⁸, the initial screening is conducted to identify the projects which fall into. On the other hand, screening is the procedure for deciding whether EIA should be applied to proposed projects (see Figure 3.5). Screening is just applied to Class-2 projects because EIA must be implemented for Class-1 projects without screening. Implementation of Screening will restrain project proponents evading the EIA process by designing the project scale to be only a little smaller than the standard in the regulation (Ohkura, 1999, p. 358). Hence, based on the scale of proposed project, EIA process will be conducted or not for Class-2 projects. According to Hayashi (2008, p. 1), there were 27 projects which were implemented the screening stage and then conducted EIA process from the EIA act enforcement to 2008. Hayashi (2008, p. 2) concludes that screening procedure was not effectively conducted because the Class-2 projects may be too big. Moreover, consideration of the environmental impacts is not only depended on the scale of the project (Japanese-MoE, 2012, p. 8). Therefore, the determination on whether EIA process should be implemented to a Class-2 project is made separately on a case-by-case basis (Japanese-MoE, 2012, p. 8). According to Article 4 of the EIA Act, the determinations regarding a Class-2 project are made by the person(s) who issue the license or other required approval in accordance with the types of project. For instance, decisions on road projects are made by the Ministry of Infrastructure, Land, Transport and Tourism; decisions on power plant projects are made by the Ministry of Economy, Trade and Industry (Japanese-MoE, 2012, p. 8). Especially, a decision-competent person (i.e. it is a person's right to make decision based on his own preferences) shall send a document of proposed project to the prefectural governor(s) for his or her opinions regarding the implementation of EIA process of the specific project within 30 days. Because the

⁴⁸ See Law No.81 of 1997, supra note 17

prefectural governor is well acquainted with the local situation in which the Class-2 project will be undertaken⁴⁹.

Figure 3.5: Procedure for Screening of projects



Source: Adapted from Japanese-MoE (2012, p. 8)

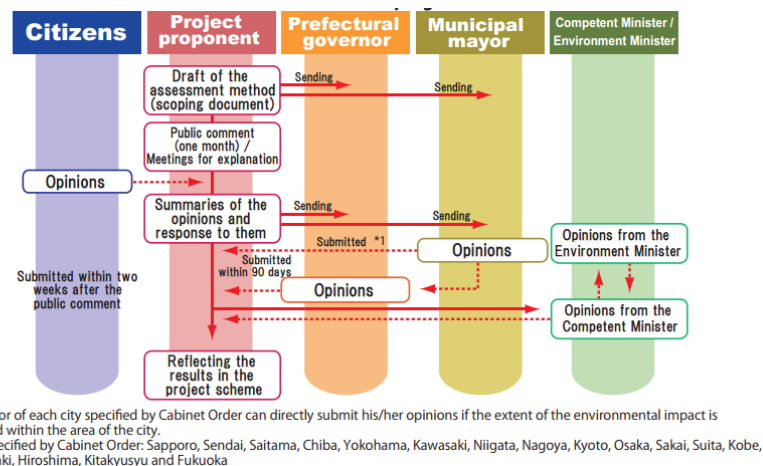
Thirdly, the next stage is the procedure for the draft of the assessment method (*Scoping*). Scoping is a system to select the evaluation items and assessment method at the earlier stage of the project (Japanese-MoE, 2012, p. 9) because environmental impacts by each project will be different. This procedure is specifically regulated from Article 5 to Article 10 of the EIA Act of 1997 (see Figure 3.6). Pursuant to these provisions of the EIA Act, the proponent shall prepare a scoping document containing the scope of the EIA (such as survey, prediction and assessment methods) to submit to the prefectural governor(s) and to the mayors of the cities, towns, and villages having jurisdiction over the area deemed likely to be environmentally impacted by the relevant project.

Pursuant to regulation adopted by the Prime Minister's Office, upon preparing the scoping document, the proponent shall make public and shall make the scoping document available for public review for one month from the date on which the scoping document is made known to the public. On the other hand, each project proponent shall hold public meetings to explain the contents of the scoping document. From the viewpoint of protecting the environment regarding a scoping document, the public may give comments to the proponent

⁴⁹ See Article 4, Paragraph 2 of Law No.81 of 1997, supra note 17

during a period that shall begin the date that the public know the document and that shall end two weeks after the day following the termination of the period during which the statement is to be available for public review. Then, the proponent shall submit a document outlining the comments submitted to the prefectural governor(s) having jurisdiction over the area stipulated and to the municipal mayors. Next, the prefectural governor(s) shall express opinions to the proponent within a time period to be established by government ordinance after seeking comments from the municipal mayors. In some cases, the project proponent can seek technical advice on evaluation items to be considered and assessment methods to be used in EIA process from the competent Minister⁵⁰. The competent Minister has to hear opinions of the Minister of the Environment before giving technical advice to the proponent (Japanese-MoE, 2012, p. 9). Later, the project proponent shall decide the assessment method after considering the all above opinions. It means that the proponent has to reflect the results in project scheme.

Figure 3.6: Procedure for Scoping



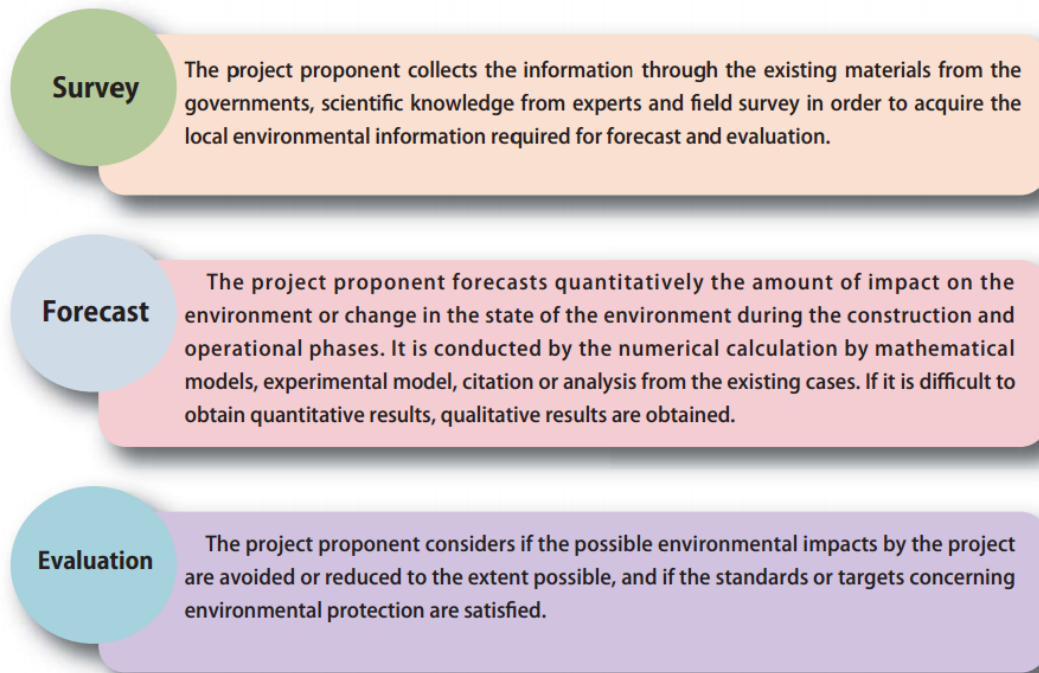
Source: Adapted from Japanese-MoE (2012, p. 9)

Fourthly, the procedure for *conducting an EIA* is specifically regulated from Article 11 to Article 13 of the EIA Act of 1997. After completing the procedure for scoping, the proponent shall take into consideration the above opinions and shall select the evaluation items to be

⁵⁰ See Article 11, Paragraphs 2, 3 of Law No.81 of 1997, supra note 17

considered in an EIA as well as the survey, prediction, and assessment methods to be employed (see Figure 3.7). Pursuant to ministerial regulations applicable to the various types of projects and the items and methods selected, the proponent shall implement an EIA.

Figure 3.7: Survey, forecast and evaluation when conducting EIA process

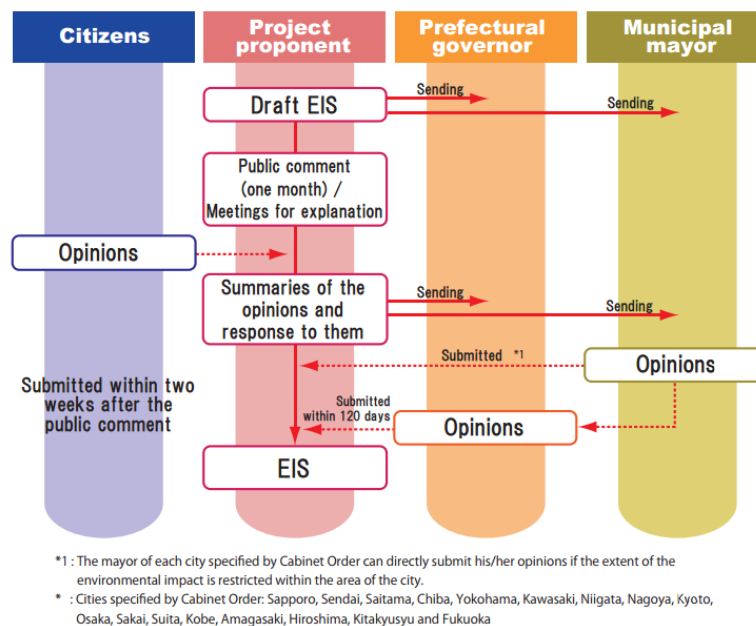


Source: Adapted from Japanese-MoE (2012, p. 10)

Fifthly, procedure for the *draft Environmental Impact Statements (EIS)* is regulated from Article 14 to Article 20 of the EIA Act of 1997. Objective of this procedure is to listen to opinions concerning the results of the assessment (see Figure 3.8). Following Article 14 of the EIA Act, after conducting an EIA, the proponent shall prepare a draft EIS that shall contain the assessment results and evaluation items as well as the approach to measures for protecting the environment. Then, the proponent shall submit the draft EIS to the prefectural governor(s) and related mayors. After that, the proponent shall publicly announce the draft EIS and shall make it available for the public review. Especially, the proponent allows anyone to access the draft EIS at local government offices, the proponent's offices and on websites for a period of one month from the date of the aforementioned public announcement. During the period of public review, the proponent shall hold explanatory

meetings to make the public understand the contents of the draft EIS. The explanatory meetings can be held inside or outside the related area which depends on the appropriateness of the meeting place. The proponent may seek the opinions of the governor(s) to decide the date, time, and venue of the explanatory meetings and shall publicly announce them at least one week before the date on which a meeting is scheduled to be held. If the proponent cannot hold an explanatory meeting that has been publicly announced for reasons that are not attributable to the proponent and are provided for in a regulation to be adopted by the Prime Minister's Office, the proponent shall not be obligated to hold that explanatory meeting. In such a case, however, the proponent shall attempt to make the public aware of the contents of the draft EIS, through such means as publicly presenting a summary during the period of public review. Anyone who has comments on the draft EIS can give comments regarding environmental protection during a period that shall start on the date of the public announcement and shall end two weeks after the day following the expiration of the period of public review. After the end of the period of submission of comments regarding draft EIS, the proponent shall submit to the prefectural governor(s) and related mayors a document containing both an outline of the comments received and the proponent's views regarding such comments. Next, the prefectural governor(s) shall express in writing their opinions after hearing opinions from the municipal mayors, while also taking account of the opinions from the public (Japanese-MoE, 2012, p. 11).

Figure 3.8: Procedure for the draft EIS



Source: Adapted from Japanese-MoE (2012, p. 11)

Sixthly, after the procedure for the draft EIS is ended, *the procedure for the EIS* is provided from Article 21 to Article 27 of the EIA Act⁵¹ (see Figure 3.9). In the reviewing the items dealt with in a draft EIS, the proponent shall consider any opinions of related governor(s) and shall pay attention to comments from the stakeholders; later, the proponent reviews the draft EIS and makes the EIS. In accordance with the various types of projects, the EIS shall contain the issues as follows:

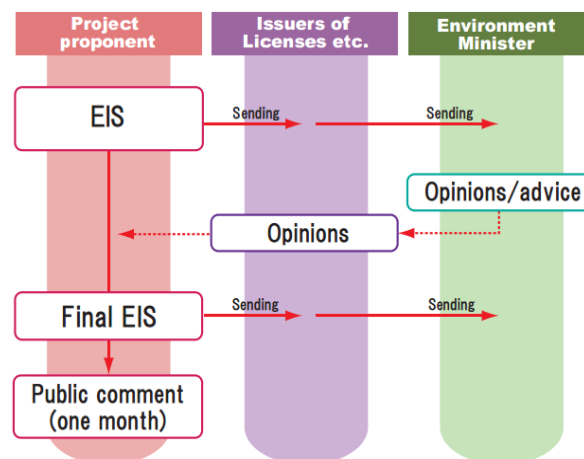
- (1) The contents of the draft EIS;
- (2) An outline of comments;
- (3) Opinions of the related governor(s)
- (4) The proponent's view regarding the above comments and opinions.

After preparing an EIS, the proponent shall promptly deliver it to the issuer(s) of the license(s) or other required approval(s) (for example, to the Minister of Infrastructure, Land, Transport and Tourism in case of the road or airport projects) or to the grant decision-maker,

⁵¹ See Law No.81 of 1997, supra note 17

to the corporate supervisor or other persons. Then, the EIS shall be promptly submitted to the director-general of the Environmental Agency for comments from the viewpoint of environmental protection. The director-general of the Environment Agency may express his or her opinions to the issuers of licenses and others. Later, the issuer of license and others shall consider the opinions of the Minister of Environment and express their opinions in writing to the project proponent, from the standpoint of protecting environment, regarding the EIS (Japanese-MoE, 2012, p. 12). After that, the project proponent shall deliberate these opinions and shall examine the matters dealt with in the EIS to amend if necessary. Next, the proponent shall send the EIS to the prefectural governor, the municipal mayors, and the issuer of licenses and others. At the same time, the proponent shall publicly announce the EIA and other items and shall make available for public review it at local government offices, the proponent’s offices, on websites and other related areas for the period of one month from the date of publication.

Figure 3.9: Procedure for the EIS



* If prefectural governors are the issuers of licenses etc., they shall endeavor to ask the Minister of the Environment for advice.

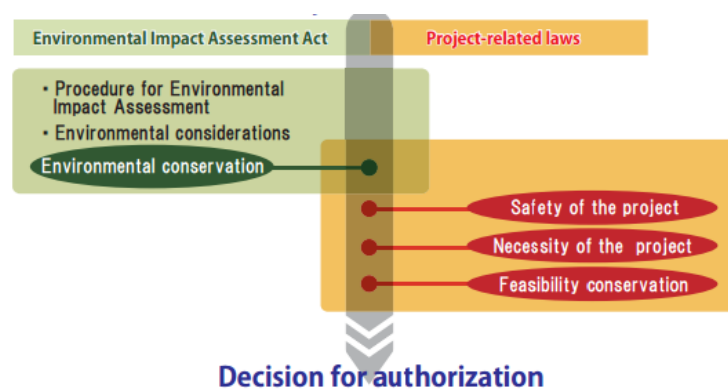
Source: Adapted from Japanese-MoE (2012, p. 12)

Seventhly, this is the procedure after an EIS is made public and available for public review. After a public announcement has been made, the proponent decides that the

proponent may conduct an additional EIA in order to give the proper consideration⁵². In reviewing an application for a license or other required approval, the issuer shall determine whether proper consideration is given to protecting the environment in the relevant project area. Depending on the results, the issuer may reject to issue the license or other required approval, or may impose conditions to such license or other required approval concerning conservation on the authorization. In implementing a project, the proponent shall consider the proper measures to the protection of environment pursuant to the contents of the EIA relating to the project. In other words, the governor can decide whether the projects will be implemented or not (Japanese-MoE, 2012, p. 13).

Finally, this is the procedure for *reflecting the assessment results in the project* and the *follow-up surveys*. Because EIA itself is not the purpose, the proponent shall reflect the results of the assessment in the project scheme (see Figure 3.10) (Japanese-MoE, 2012, p. 13).

Figure 3.10: Project scheme



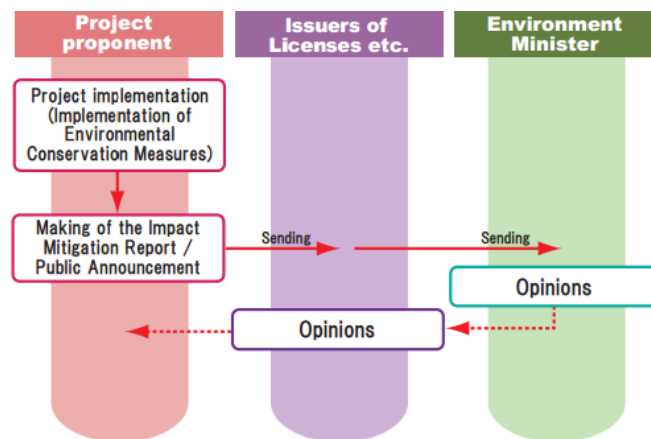
Source: Adapted from Japanese-MoE (2012, p. 13)

After the procedure for the EIS is completed and the construction is started, a follow-up survey is carried out to control environmental conditions at the stage of construction and operation. The project proponent concludes the necessity of the survey and specifies it in the EIS (Japanese-MoE, 2012, p. 14). After completion of construction, the project must

⁵² See Article 32, Law No.81 of 1997, *supra* note 8

assemble and publish a document about the follow-up survey, as well as the ways for environmental protection to meet the conditions recognized during the survey and the progress of the measures taken. This is called the Impact Mitigation Reporting (see Figure 3.11) (Japanese-MoE, 2012, p. 14).

Figure 3.11: Procedure for Impact Mitigation Reporting



Source: Adapted from Japanese-MoE (2012, p. 14)

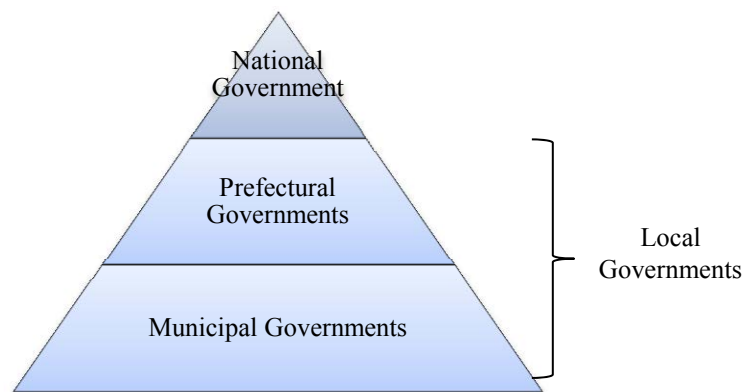
According to Japanese-MoE (2012, p. 14), the outcomes of the follow-up survey or the consequences of some ways for environmental protection cannot be completely forecasted at the time when the procedure for EIS is finished. Obligatory IMR aims to unveil the progress of the measures to the public who are interested, and to supply the content of measures taken by having opinions from the Minister of the Environment. Moreover, distributing the result of measures containing technical information is very useful for completing EIAs in other projects rather restraining it among the stakeholders involved.

In brief, the EIA process pursuant to the EIA Act of 1997 and the Revision of the EIA Act in 2011 is started by the procedure for PEIC in the planning stage and ended by the procedure for IMR. As a result, the potential impacts on the environment and human beings can be usefully predicted from the early stage and can be controlled during the project scheme.

3.2.3. Environmental Impact Assessment systems in local governments

Being typical of a centralized nation, the political power of the 47 prefectural administrative bodies in Japan is not strong and is restricted by the Constitution and laws (Ohkura, 1999, p. 360). Local governments just *enact ordinances with respect to their functions and not in conflict with the law*” (Ohkura, 1999, p. 360) (see Figure 3.12). However, according to Barrett and Therivel (1989, p. 229), before the EIA Act, local EIA procedures has applied at the local authority level to more projects than the national guidelines. Barrett and Therivel (1989, p. 230) said that the local EIA systems were stricter regulations than national governments EIA guidelines. In July 1976, Kawasaki city enacted the first EIA ordinance which gave the public the opportunities to participate in EIA procedures and contained the strict EIA procedures (Ohkura, 1999, p. 361). For example, EIA procedures are applied for many kinds of development projects, even for proposed projects less than 1 ha, and must assess the impacts on the environment, society, culture, safety and ecology. An EIA is submitted to the mayor and announced publicly in order that the public gives opinions and comments. Especially, there is a separate advisory committee which is not provided in the national EIA guideline (Ohkura, 1999, p. 361). In brief, local governments have implemented EIA systems before enactment of the official EIA Act in 1997.

Figure 3.12: Administrative Structure in Japan



Source: Adapted from Japanese-MoE (2012, p. 16)

After the EIA Act was issued, application of local ordinances has limited. Regarding EIA system, local governments have issued their own ordinances to apply non-national projects, i.e. the small size projects (Tanaka, 2001, p. 38), excluded from the Japanese EIA Act application (Hayashi, 2008, p. 2). As a result, this has prevented the duplication between Japanese EIA Act and prefectures' ordinances. Nevertheless, this is still an onerous matter. According to Article 60 of the EIA Act of 1997, *–the provisions of this Law shall not prevent a local public body from adopting a prefectural ordinance in order to institute provisions necessary to deal with the following matters:*

- (i) *Matters relating to EIAs and other procedures regarding projects other than Class-2 Projects and relevant projects;*
- (ii) *Matters relating to procedures for EIAs conducted by a local public body with regard to a Class-2 Projects or a relevant project (provided that the provisions of this Law are not violated)”⁵³*

Based on the above article, local governments should establish provisions regarding matters on EIA process, which do not conflict with the ones provided in the EIA Act (see Figure 3.13). Hokkaido is the first prefectural government reviewing its EIA ordinance in order to follow the EIA act and not to set stricter regulations than those in the EIA Act (Ohkura, 1999, p. 363). However, to avoid failing to assess the environmental impacts of the projects which are excluded from the EIA Act application in particular areas, the proponent has to conduct more rigorous EIA ordinances than the EIA Act (Ohkura, 1999, p. 364).

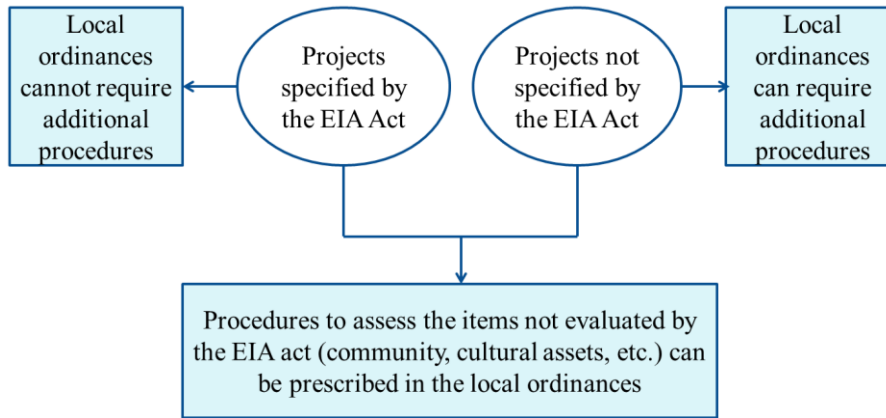
According to Japanese-MoE (2012, p. 16), when comparing with the EIA Act, MOE showed the factors of the local EIA system as follows:

- Applying the non-national projects, i.e. small-scale projects, excluded from the EIA application

⁵³ See Article 60 of Law No.81 of 1997, supra note 17

- Convening a public meeting to ask public comments
- Providing procedures relating to third-party organization evaluation

Figure 3.13: Relationship between the EIA Act and local ordinances



Source: Adapted from Japanese-MoE (2012, p. 16)

Compared with the EIA Act of 1997, Azechi and Nishikizawa (2014, p. 5) conclude that *“the systems of prefectural EIAs tend to focus more on slope stability, because prefectural EIAs have a wider range of environmental items to take into account the local context, and some prefectural EIAs prescribe slope stability as a major environmental item”*.

In my study, I took the EIA ordinances of Tokyo and Yokohama for examples. This is due to the fact that the EIA ordinance of Tokyo has succeeded in protecting the environment (Nagaoka & Harashina, 2006, p. 419). Tokyo, as one of the largest cities in the world, spreads out from the mainland to the Ogasawara Islands, or over 1.900Km from north to south. Tokyo consists not only of urban central areas with green space, including roadside trees and parks but also of different natural environments; suburbs partly covered with woods and fields, satoyama (open light-filled woodland near populated areas) and hilly terrain full of biodiversity, steep mountain areas overrun by primeval forests, and islands, including the Ogasawara Islands registered as a World Natural Heritage site ⁵⁴.

⁵⁴ See “Tokyo’s Environmental Policy”. Retrieved on March 31, 2017 from <http://www.kankyo.metro.tokyo.jp/en/files/e0b50308d4020c6246f797ab8a1f7ab0.pdf>

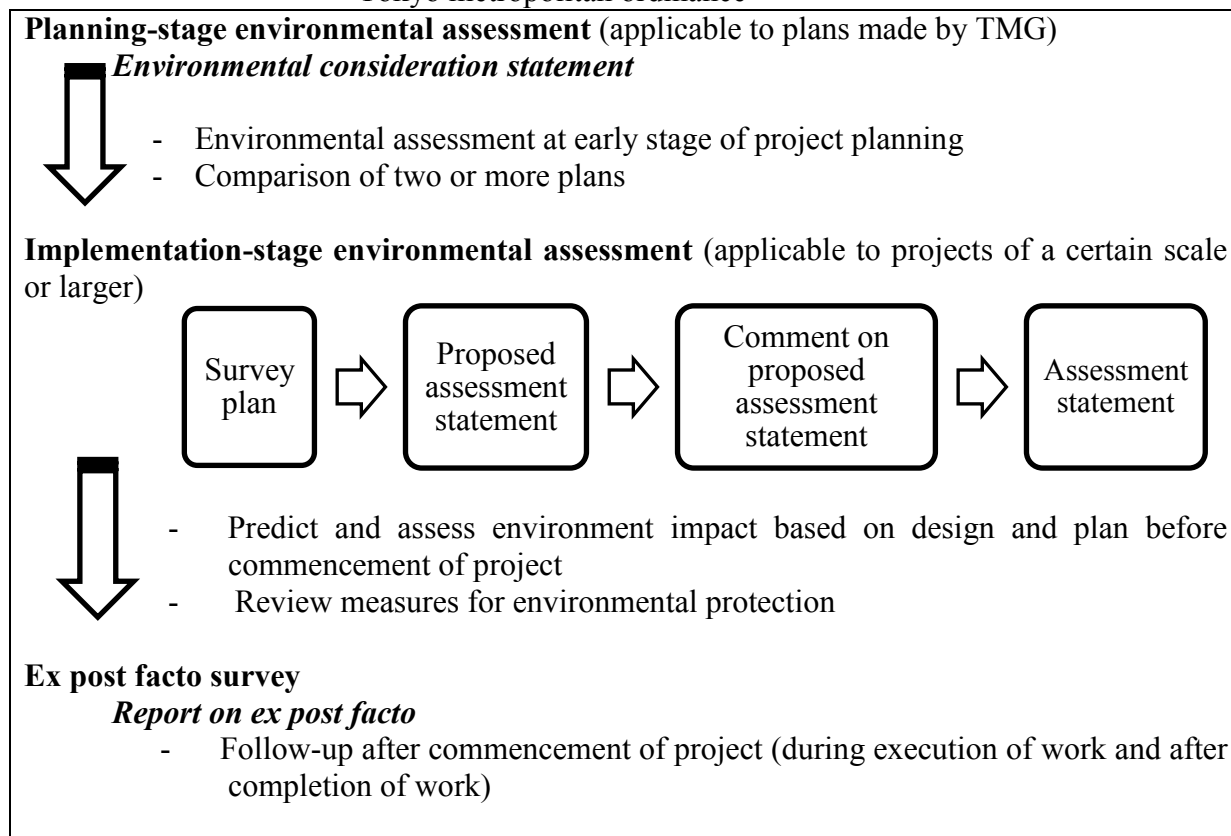
Although EIA was introduced in 1976, Tokyo Metropolitan Government started implementing EIA ordinance in October 1981 which covers 26 types of development projects including roads, railroads, urban development projects and high-rise buildings (Nagaoka & Harashina, 2006, p. 421)⁵⁵. After enactment of the EIA Act of 1997, Tokyo Metropolitan Government made an amendment the ordinance in accordance with the EIA Act as follows: (i) adding the procedure of the “investigation plan document” equivalent to the “method document” in EIA Act and; (ii) adding procedure related to the applied projects (Nagaoka & Harashina, 2006, p. 422). In July 2002, the EIA ordinance was again revised with the following issues: (1) addition of “Planning – stage EIA procedure”; (2) simplification of procedure in “Project-stage EIA procedure” and; (3) changing the name of “Public hearing” into “Town hall meeting to hear opinions of Tokyo residents (Nagaoka & Harashina, 2006, p. 422)”. With those above revisions, citizens have the right to participate in EIA procedure via many ways, such as explanatory meeting, public access and town hall meeting. The entries of EIA must contains the evaluation items as follows: air pollution, foul odor, noise and vibration, water pollution, soil contamination, soil foundation, geographical and topographical features, water circulation, biological & ecosystem, access to sunlight, radio interference, wind circulation, view, historic & cultural heritage, opportunity for interaction with nature, wastes, greenhouse gases⁵⁶. According to International Relations, Bureau of Environment Tokyo Metropolitan Government, the procedures based on the Tokyo Metropolitan Environmental Impact Assessment Ordinance were applied to 340 projects

⁵⁵ See more “Types and requirements of target project and individual plan subject to the Tokyo EIA ordinance”. Retrieved on March 31, 2017 from https://www.kankyo.metro.tokyo.jp/assessment/tokyo/kind_and_scale.html

⁵⁶ See Environmental assessment system in Tokyo. Retrieved on March 31, 2017 from <https://www.kankyo.metro.tokyo.jp/assessment/tokyo/about.html>

(including four program assessments) in Tokyo during the period from 1981, when the ordinance was enforced, until the end of March in 2017⁵⁷ (See Appendix 1).

Figure 3.14: The outline of the environmental assessment procedure based on the Tokyo metropolitan ordinance



Source: TMG general website⁵⁸

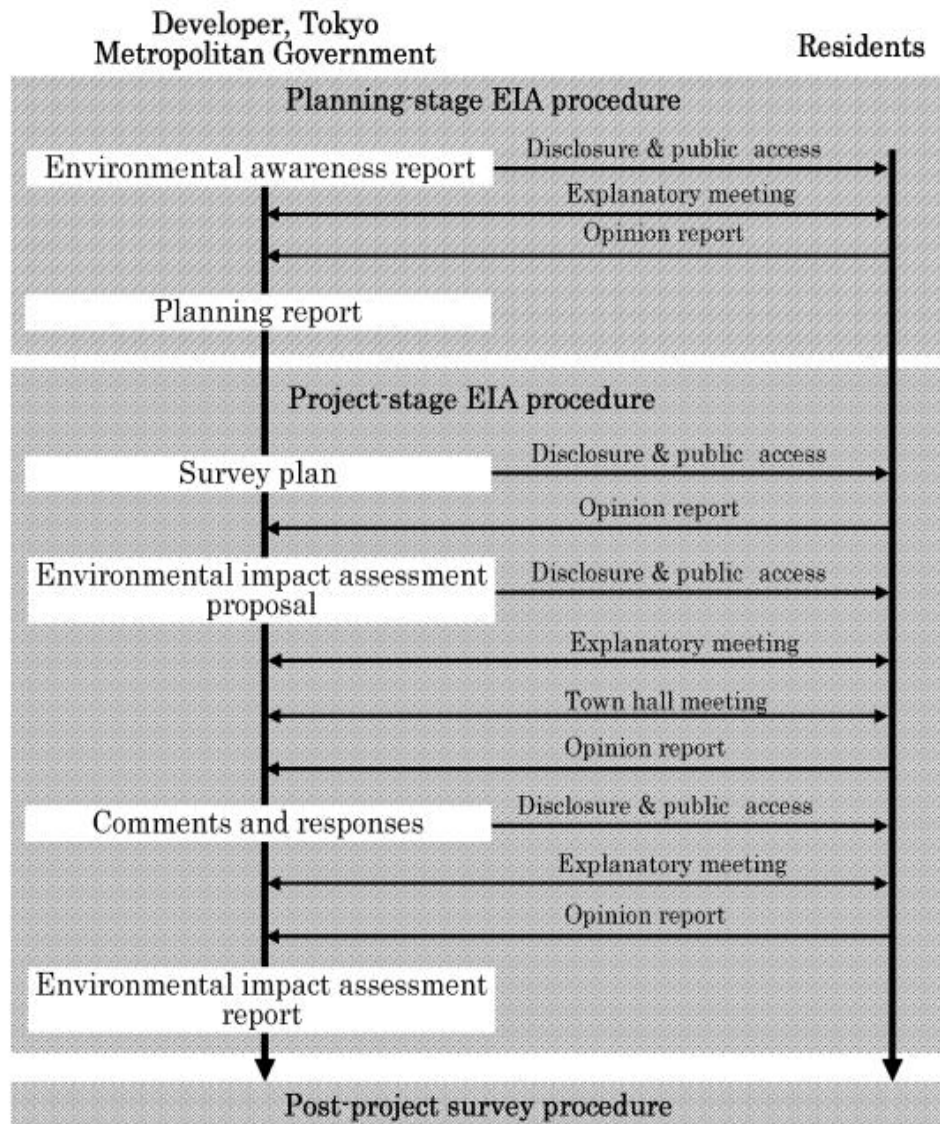
In the EIA system of the TMG (TMG, 2017, p. 6), in case of TMG project, after completing the preparation of an environment consideration report in the stage of Environmental Assessment procedure for planning, opinions of residents of Tokyo on this report shall be gathered and considered. Next, in the stage of Environmental Assessment procedure for the project, residents of Tokyo can express their opinions on survey plans and a draft environmental assessment report. After that, an environmental assessment report shall

⁵⁷ See List of projects at Tokyo. Retrieved on March 31, 2017 from https://www.kankyo.metro.tokyo.jp/assessment/information/projects_list/index.html

⁵⁸ See EIA in Tokyo. Retrieved on March 31, 2017 from https://www.kankyo.metro.tokyo.jp/en/other_issues/assessments.html

be submitted and the project shall be implemented. The follow-up survey procedure shall be conducted at the end stage of EIA process.

Figure 3.15: Procedure outline of EIA ordinance of Tokyo (Relation between developer, Tokyo Metropolitan Government and Residents)



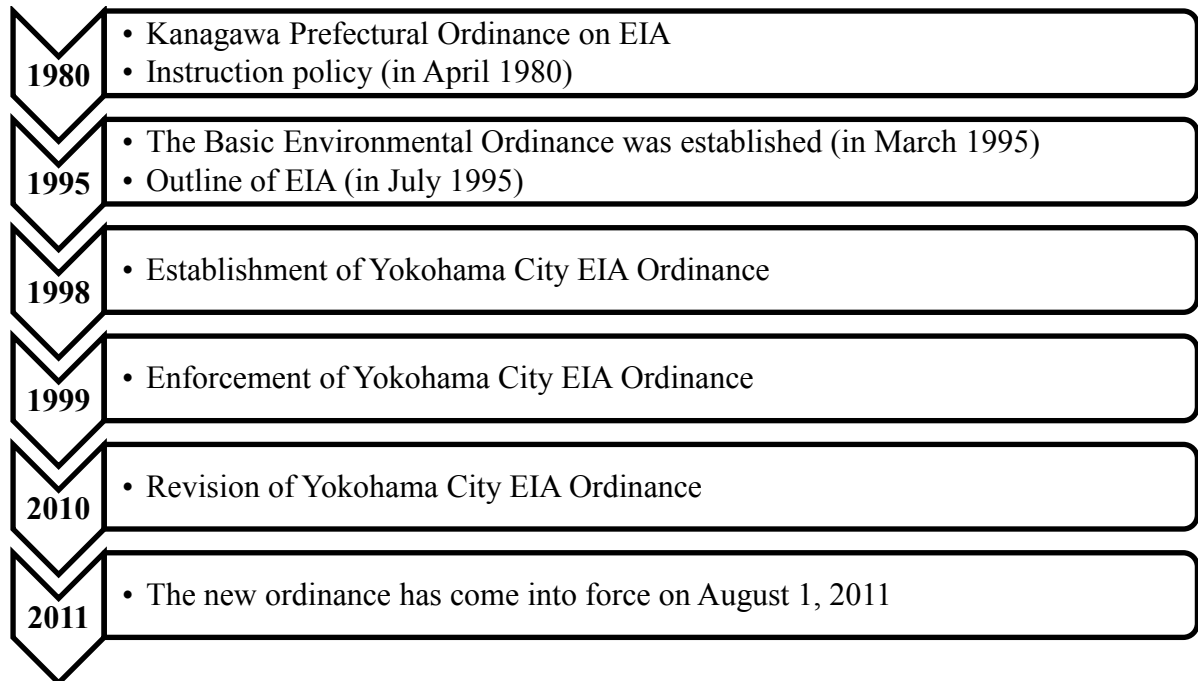
Source: Adapted from Nagaoka and Harashina (2006, p. 421)

Next, Yokohama is not only a big city but also an “Environmental Model City” in Japan⁵⁹. Yokohama facilitates the citizens to participate in environmental decisions and

⁵⁹ See Effort on the environmental by Yokohama. Retrieved on March 30, 2017 from <http://www.city.yokohama.lg.jp/seisaku/senryaku/en/policies/environment/>

policies as well as to protect the environment from the daily activities to the industrial projects. The history of the EIA process in Yokohama is illustrated as follows:

Figure 3.16: History of EIA system in Yokohama city, Japan



Source: Adapted from Yokohama-EIA-Division (2017)

Particularly, Yokohama issued an Instruction policy on EIA in April 1980 after the adoption of Kanagawa Prefectural Ordinance on EIA. The EIA ordinance of Yokohama city was established in 1998, enforced in 1999 and revised in 2000. By contrast, the “Ordinance on EIA in Kawasaki city” was enacted in October 1976, the new EIA ordinance of Kawasaki city was adopted in December 1999, came into force in December 2000⁶⁰ and was revised in 2012. The EIA ordinance of Yokohama city identifies the specific development projects conducted EIA procedures according to the project size⁶¹.

⁶⁰ See Kawasaki city, An outline of EIA Program – for the preservation and creation of a favorable environment. Retrieved on December 06, 2016 from: http://www.aecen.org/sites/default/files/8_eia_framework_and_implementation_by_kawasaki_city_doc.pdf.

⁶¹ Based on the project size, types of projects were divided into 3 actions, from class 1 to class 3. All classes are smaller than projects according to the EIA Act.

Table 3.5: Projects subject to EIA process in Yokohama

Type of Project	Scale of project (EIA ordinance of Yokohama city)
National Expressway	All (only renovation)
Motorway, etc.	All
Other road	4 lane-roads – longer than 3km
Railway/Track	All
Airport	All
Thermal Power Plant	Over 20000Kw output
Wind Power Plant	Over 5000kW output
Landfill – Land reclamation	Over 15ha
Waste Incineration Facility	Over 100t/day processing capacity
Final Waste Disposal Site	Over 2ha
Industrial Complex Construction	Over 10ha
Land Readjustment Projects	Over 40ha
Other Development Project	Urbanization area: over 20ha Urbanization control area: over 10ha

Source: Adapted from Yokohama-EIA-Division (2017)

The EIA Ordinance of Yokohama city reflected an idea that procedures should be more transparent and worthy through: (i) promoting disclosure of information to the citizens and (ii) providing more opportunities for public participation. Particularly, the latest EIA Ordinance identified some following issues⁶²:

- Introduction of environment-conscious procedure at the planning stage: As procedures for considering, the environment, public notice and public inspection will be conducted for gathering environmental information from citizens through “Consideration Form” and “Consideration mayor’s opinion statement” at the planning stage of the project. The environmentally conscious plan must be prepared before the EIA method report and submitted to the mayor along with their electronic records.

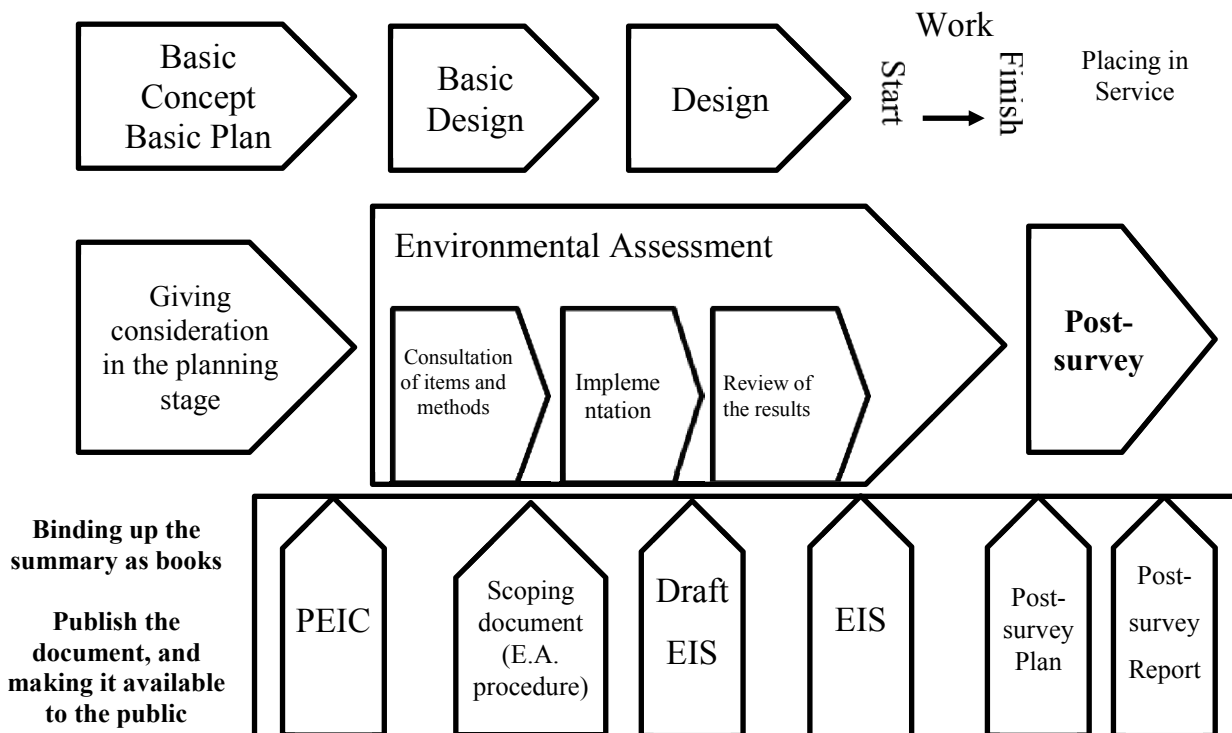
- Review procedures for examination are at the preparation stage.

⁶²See About revision of Yokohama municipal EIA system (effective August 1, 2011). Retrieved on March 30, 2017 from <http://www.city.yokohama.lg.jp/kankyo/etc/jyorei/jyorei/eikyoku/kaisei/z1108/kaisei110801.html>

- Publication of books on the Internet: the full text of the books from “Consideration” to “Post-survey result report” by the Internet.

When implementing the EIA process, the proponent must conduct a survey, prediction, and evaluation in advanced on how their operation will affect the environment. Then, the city must make an announcement and inspection of that result. Anyone can submit written comments to the mayor. Based on citizens’ opinions and hearing opinions from the EIA council, the mayor must deliver his opinion to the proponent. After that, the proponent must conduct necessary actions and report to the city about the subsequent conditions. In brief, Yokohama City executes its environmental assessments at earlier stage for alternative examination.

Figure 3.17: Public participation in EIA process in Yokohama City



Source: Adapted from Yokohama-EIA-Division (2017)

It can be concluded that the EIA Ordinance of Yokohama ensures the public rights for participation. Particularly, Yokohama city’s citizens are always involved in the decision-makings of the city to reflect their opinions on the development activities.

Table 3.6: Implementation of EIA in Yokohama City
(As of March 2017, the data includes businesses still under instruction.)

	Road	Railroad and track	Factory and office	Power plant (thermal power)	Buildings for natural science	Waste disposal facility (the law: only final disposal facility)	Airport	Reclamation of public water surface area	High-rise building	Exercise and recreation facility	Business related to development	Total
Guideline (April 1980 -)	4	9	2	-	-	3	2	3	-	-	7	30
Outline (July 1995-)	0	2	2	-	0	1	2	0	3	0	2	12
Ordinance (Oct. 1998-)	0	1	0	0	1	12	0	0	14	1	2	31
Law (June 1999-)	3	2	-	2	-	0	0	1	-	-	-	8
Law (Outside the city)	0	2	2	7	-	0	-	0	-	-	-	9
Total	7	16	4	9	1	16	4	4	17	1	11	90

Source: Adapted from Yokohama-EIA-Division (2017)⁶³

In conclusion, based on particular areas, local governments have issued their ordinances on EIA procedure for environmental protection and preservation in order to cover the small-size projects which are not covered by the EIA Act. Thus, the EIA of large-size projects will be conducted under the EIA Act, while the EIA of small-size ones will be implemented by the ordinance of each local government. Consequently, from 1998 to 2007, the average number of final environmental impact statement was very small, about 20 per year under the Japanese EIA Act application, and around 50 per year by Japanese local governmental EIAs (Hayashi, 2008, p. 2). In addition, characteristics for EIA system in Japan were listed in Table 3.7 (Suwanteep et al., 2016, p. 22):



⁶³ See Project after completion of review. Retrieved on March 31, 2017 from <http://www.city.yokohama.lg.jp/kankyo/mamoru/asesu/jigyoku/itiran2.html>

Table 3.7: Characteristics for EIA system in Japan

Enforcement date of EIA Act	1999
Central EIA authority	EIA Division, Environmental Policy Bureau, Ministry of the Environmental Government of Japan
EIA authority	National government and local governments
Type of EIA documents (only focus on EIA for construction project)	- EIA - Special EIA
Authorized company preparing EIS	Project proponent and consultant
Project covered/screening	- 14 types of project: Class-1 and Class-2 project (national EIA Act) - Local ordinances (EIA system of local government) (Depending on scale of the project)
Alternatives	In primary environmental impact consideration step (including –zero option”)
Evaluation/prediction of impacts	Covers physical, biological, and social resources by separating impacts into two parts: National situation and Social situation
Public participation	- Public meeting (Explanation): explain the content of the –Scoping document” in the scoping step and in the DEIS steps but if a public meeting does not take place then DEIS will be sent to the local government officer or be uploaded on the internet. - No provision that comments need to be included in the report.
Consulting firms	There are 138 environmental consulting companies that have been registered.
EIA reports/year	Approximately 70 projects (national and local level)
Total EIA reports	Approximately 400 (1999 –2014)
Approval time (full EIA)	Approximately 7 months

Source: Adapted from Suwanteep et al. (2016, p. 22)

3.3. Public participation in Environmental Impact Assessment system in Japan

Ohkura (1999, p. 364) think that *–public participation in EIA process is the important issue to be considered”*. Under the national guidelines, there were some limitations of public participation as follows (Ohkura, 1999, pp. 364,365):

- (i) Limiting the entry of the public into the process;

- (ii) Setting a limited time frame for participation;
- (iii) Permitting the public to participate too late;
- (iv) Framing the relevant area and allowing the submission of opinions by the residents only; and
- (v) Limiting access to information

However, the above limitations of public participation in EIA process under the national guidelines had completely changed in the EIA Act of 1997. One of the most conspicuous improvements is to regulate the public with an earlier opportunity to participate in the EIA process as well as the draft EIS inspection procedure in order to avoid the exclusions of evaluation items and identify the exact assessment items for reflection of the environmental components in the proposed area (Ohkura, 1999, p. 366). Public participation does not aim to influence the government decisions by imposing their opinions on the proposed project because public opinions are just considered as *“participation for environmental information formation”* (Ohkura, 1999, p. 370).

Nowadays, in Japan, public participation in EIA process is still a challenge for EIA research and require future EIA research to clarify the effectiveness of EIA from a proponent’s viewpoint (Nishikizawa, 2015, p. 7). Therefore, EIA research should explore practical methods to enhance the public acceptance of EIA proposals. Particularly, new types of participatory approaches to activate communication such as deliberative polling or consensus conferences could be considered effective methods for constructing social consensus through the EIA process (Nishikizawa, 2015, pp. 7,8).

3.3.1. Participants in Japan’s EIA systems

The Basic Environmental Law of 1993 of Japan prescribes the responsibility of citizens that⁶⁴:

⁶⁴ See *“Basic Environmental Law”* Law No.91 of Japan of 1993, supra note 41

1. Citizens shall make efforts to reduce the environmental loads associated with their daily lives so as to prevent interference with environmental conservation, pursuant to the basic principles.

2. Besides the responsibility prescribed in the preceding Paragraph, citizens are responsible for making efforts to conserve the environment and for cooperating with the policies implemented by the State or local governments with regard to environmental conservation, pursuant to the basic principles.”

Therefore, it is the public responsibility to protect and conserve the environment by cooperating with policies of national and local governments. It is ~~neither~~ a public right nor obligation to participate in the EIA process” (Ohkura, 1999, p. 370). Thus, the Basic Environmental law of 1993 does not refer to ~~right~~” when prescribing the responsibility of citizens in EIA process. Additionally, the Article 26 of the Basic Environmental law of 1993 again provides that ~~the State shall take necessary measures to promote voluntary activities with regard to environmental conservation conducted by corporations, citizens or private bodies organized by these entities~~” without mentioning the ~~public right~~”.

However, the Japanese Constitution of 1946 (came into force in 1947) affirms that ~~the people shall not be prevented from enjoying any of the fundamental human rights. These fundamental human rights guaranteed to the people by this Constitution shall be conferred upon the people of this and future generations as eternal and inviolate rights~~⁶⁵. Meanwhile, freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed⁶⁶. In addition, ~~the Right to Keep Nature~~” promoted at the federation of Japanese Bar Association, meaning ~~the right of people to naturally possess and enjoy the benefit of nature~~” may be applied for the Japanese public to acquire a right of public participation (Ohkura, 1999, p. 370).

⁶⁵ See Article 11 of ~~The Constitution of Japan~~” of 1946. Retrieved on 12 December 2016 from http://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html

⁶⁶ See Article 21 of ~~The Constitution of Japan~~” of 1946, supra note 65

Following this line of these above provisions, the EIA Act of 1997 applied an idea that EIAs should be conducted for the betterment of project planning. Thus, the idea that public participation should be restricted to the citizens in the concerned area was completely neglected. As a result, public rights of participation were extremely ensured by giving them the freedom to express their opinions and comments for the scoping documents and the draft EIS (Ken - Ichiro Yanagi, 2016, slide No.16).

Particularly, Article 8 of the EIA Act of 1997 provides that *“a person who has comments may submit such comments to the proponent”* at the scoping stage of EIA process. Also, Article 18 of this law again repeats that *“anyone who has comments may express such comments by submitting a document to the proponent”*. Thus, the EIA Act of 1997 does not give any limitations to the resident status for those who wish to submit their opinions regarding environmental conservation during the scoping document and draft EIS public inspection periods (Ohkura, 1999, p. 369). But admittedly, although voluntary activities of the public have already promoted, participatory still depends on the attitude, willingness and capacity of each individual.

3.3.2. Participatory procedure: the voluntary-based approach

In the EIA Act of 1997 and its amendment of 2011, the public participates in EIA process through:

- (i) Accessing the scoping document⁶⁷ and a draft EIS as well as other items⁶⁸;
- (ii) Attending explanatory meetings held by the project proponent⁶⁹;
- (iii) Submitting comments regarding a Document on PEIC (Japanese-MoE, 2012, p. 6), a scoping document⁷⁰ and a draft EIS⁷¹;

⁶⁷ See Article 7 of Law No.81 of 1997, supra note 17

⁶⁸ See Article 16 of Law No.81 of 1997, supra note 17

⁶⁹ See Article 17 of Law No.81 of 1997, supra note 17

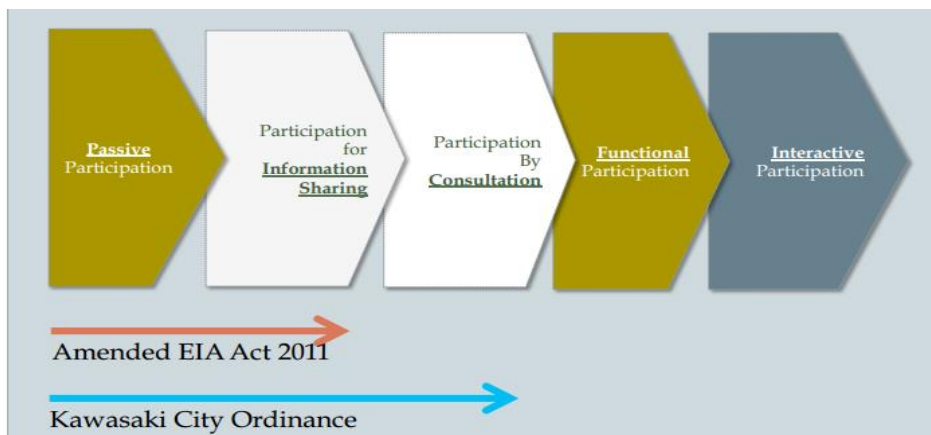
⁷⁰ See Article 8 of Law No.81 of 1997, supra note 17

⁷¹ See Article 18 of Law No.81 of 1997, supra note 17

Although environmental law and regulations on EIA process have been relatively well implemented in Japan, it is still difficult to control administrative discretion, including how to organize public participation (Okubo, 2016, slide No.22). According to this author, the purpose of public participation in Japan's EIA system is to gather environmental information for better decision leading to the procedural defect of public participation, i.e. no admission of legal standing for the public (Okubo, 2016, slide No.11). Therefore, the public comments are not considered inefficiently or negligently. It is due to the fact that the situation of current public participation in EIA system is the voluntary-based approach, i.e. promotion of voluntary activities (Okubo, 2016, slide No.8).

Following this line of thinking, Ken - Ichiro Yanagi (2016, slide No.22) introduces the modality of public participation in Japanese EIA process (see figure 3.17).

Figure 3.18: Modality of public participation in Japanese EIA process



Source: Adapted from Ken - Ichiro Yanagi (2016, slide No.22)

The amended EIA Act 2011 (came into force in 2013) identifies participation for information sharing in EIA process. The project proponent is legally obliged to share information with citizens through the following ways (Ken - Ichiro Yanagi, 2016, slide No.18):

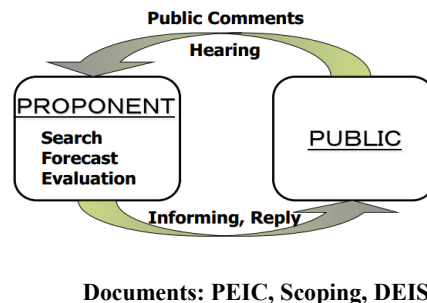
(1) Holding consultation meetings: Citizens are fully given opportunities to deepen their understandings on the project only through compulsory these meetings.

(2) Providing information via electric devices;

(3) Developing and disclosing summary documents of such information.

According to Kawasaki City's EIA Ordinance, the public can participate in EIA process as a consultant. While public participation does continue being participation for information and public participation is based on voluntary activities in the Japanese EIA Act. In addition, according to Harashina (2010), the communication in Japanese EIA process is illustrated as follows:

Figure 3.19: Communication in Japan's EIA process



Source: Adapted from Harashina (2010)

Although the amended EIA Act encourages public participation, it is a participation for information collection since the public is the one who has specific environmental information at the project site, not participation in decision-making (Ken-ichiro Yanagi, 2015, p. 10). It may be important to appropriately combine the rights-based approach (which means access to justice for legal protected interest) and the voluntary-based approach (Okubo, 2016, slide No.23). It is due to the fact that Environmental Public Interest Litigation and Specialized Environmental Courts are not established in Japanese legal system. However, the Japanese Government introduced its ADR system in 1970 and has encouraged its use ever since but ADR is no panacea for environmental disputes (Matsumoto, 2011, p. 659). When pollution compliant counselors fail to resolve the problem, the Environmental Dispute Coordination

Commission (EDCC)⁷² or the Prefectural Pollution Examination Commission (PPEC)⁷³ assists the negotiation between the parties in the dispute (Matsumoto, 2011, p. 660). Regarding the legal standing at courts, it is limited and no special standing rule for NGOs, communities and local governments, so case law is reluctant to expand standing (Okubo, 2016, slide No.20). Thus, rights-based approach needs to be applied to control administrative discretion and to improve the insufficient implementation of environmental law through Environmental Public Interest Litigation (Okubo, 2016, slide No.22).

3.3.3. Time for public participation

The EIA Act provides the public with an earlier chance to participate in the process, i.e. in the planning stage for PEIC, as well as the scoping stage and preparation stage of a draft EIS. The earlier participation will avoid the omissions of evaluation items and supplement the traits of the environment in the proposed project area (Ohkura, 1999, p. 367).

After preparing the document scoping, the proponent shall make it available for public review in the related areas for one month from the date on which the scoping document is made known to the public⁷⁴. Anyone can submit comments and opinions within a month and two weeks after the public announcement⁷⁵. Similarly, people can submit comments regarding a draft EIS within a month and two weeks after the public announcement⁷⁶. Thus, the EIA Act allows public participation at the stage of planning for PEIC, the scoping procedure and then the release of a draft EIS, but it is usually the case that the public is not invited to comment on the final EIS. This means that the public cannot file a suit which requests cancellation of the proposed project before the permission/license is given, even if

⁷² EDCC is an administrative commission established as an external agency of the Prime Minister's Office and consists of a chairman and six commissioners appointed by the Prime Minister. EDCC handles inter-prefectural cases, grave cases, and cases with nationwide implications.

⁷³ Most prefectures set up PPEC in accordance with the regulation. PPEC handles the Environmental Pollution Cases other than those within the jurisdiction of EDCC.

⁷⁴ See Article 7 of Law No.81 of 1997, supra note 17

⁷⁵ See Article 8 of Law No.81 of 1997, supra note 17

⁷⁶ See Article 18 of Law No.81 of 1997, supra note 17

the public find the plan to be environmentally unsound or the EIA procedure itself is inadequate (Ohkura, 1999, p. 372). Participation is restricted to participate in the stage of screening of projects and the follow-up procedure after the establishment of the project.

The Amended EIA Act of 2011 regulated the Minister of the Environment additional opportunities to give opinions to the proposed project at the stages of PEIC, Scoping Document and IMR (Japanese-MoE, 2012, p. 6). Besides citizens and the Minister of the Environment, prefectural governors and municipal mayors can express their opinions at the stages of PEIC, scoping document and preparation of a draft EIS. Especially, prefectural governors can send to issuers of licenses etc. their opinions regarding whether an environmental impact assessment is necessary and whether other procedures must be followed pursuant to the EIA Act⁷⁷.

Consequently, regarding public participation, recent procedures in Japan clearly define at which steps public participation should be implemented. Focus group meetings and questionnaires to gather public opinions and comments before approval of a project are one voluntary option in the Japanese EIA system, depending on the project (Suwanteep et al., 2016, p. 21).

3.3.4. Access to proposed project information

Good guidelines will improve transparency by giving citizens access to project information which also requires the passage of a freedom of information law (Harashina, 1998, p. 311). Public participation, however, was still limited for the purpose of information collection (Ken - Ichiro Yanagi, 2016, slide No.16). In the amended EIA Act of 2011, sharing information with citizens is promoted by obligating the project proponents to (i) hold consultation meetings, (ii) provide information via electric devices, and (iii) develop and disclose summary documents of such information. People are given opportunities to deepen

⁷⁷ See Article 4 of Law No.81 of 1997, supra note 17

their understandings on the project only through mandated consultation meetings (Ken - Ichiro Yanagi, 2016, slide No.18).

However, according to Hayashi (2008, p. 2) the number of comments in scoping stage is smaller than that of a draft EIS. It is due to the fact that public communication in scoping stage is lacking, particularly, without public meetings during the public inspection⁷⁸. Moreover, the proponent must organize public inspection, leading to some limitations, such as citizens' difficulty on way to access a scoping document in some remote areas. Thus, public involvement, the main issue in the scoping stage of EIA process, should be improved. Then public communication, namely two-way communications, and environmental authority involvement should be improved by utilizing two-way communications especially for in scoping stage starting before developing a scoping report (Hayashi, 2008, p. 3). In addition, public notice and inspection should be conducted by a competent authority or an environmental authority.

3.4. Interim conclusion

With the aim of the reestablishment of Japanese economy after the World War II, chemical and heavy industries rapidly developed and recorded great achievements, leading to high pressure on environmental controls. Mass production activities without EIA caused the environment to be polluted, leading to damage to human health. This basically marked a turning point for Japan's recognition of the critical importance of anti-pollution measures, prompting the development of new policies and technologies for environmental protection. Consequently, environmental protection measures were gradually introduced in Japan during the so-called "Pollution Diet Session" in 1970. Noticeably, EIA was conducted from 1965 onwards. EIA Act was finally adopted in 1997 and came into force in 1999. To date, there are many initiatives and approaches to prevent environmental destruction and health damage

⁷⁸ See Article 7, 8 of Law No.81 of 1997, supra note 17

with the involvement of all stakeholders, significantly, the public participation in Japan's EIA system.

Reviewing the EIA systems in Japan revealed that there are current two EIA systems in Japan: national EIA system and local EIA systems, but be not duplicated. Admittedly, the local EIA systems tend to concentrate on the green sustainability because the content of EIA report includes the wide environmental issues. The EIA processes of both Tokyo government and Yokohama government are the typical examples. Accordingly, public participation in those EIA processes is more advanced than national EIA process; significantly, the local citizens can participate in the first stage of local EIA process and can influence the final decisions. In national EIA process, anyone who has comments to participate the EIA process without depending on the residence status from the beginning stage of the EIA process. However, it may be necessary to combine the rights-based approach and the voluntary-based approach in future EIA legislation. Additionally, public notice and inspection should be implemented by a competent authority from the early stage of EIA process.

CHAPTER 4: PUBLIC PARTICIPATION IN VIETNAM'S ENVIRONMENTAL IMPACT ASSESSMENT PROCESS

4.1. Summary of chapter 4

In line with the first research objective, in this chapter, public participation in Vietnamese EIA process is analyzed. Firstly, I brief about the historical development of EIA in Vietnamese legislation with two main periods: (1) pre-1993: the research and learning phase; and (2) from 27/12/1993 to current time: the legal formalization phase. In particular, I focus on the introduction of legal provisions on EIA in general and public participation in particular, pursuant to LEP 1995, LEP 2005 and LEP 2014. From these points above, I withdraw three main issues when analyzing the current legal provisions as follows: the ill-defined concepts of the public and public participation (public consultation), one-way flow of environmental information in EIA process, and proponent's intervention in the contents of EIA report.

Moreover, to evaluate the current situation of implementation of public participation in EIA process, it is necessary to base on (i) review of legal provisions, (ii) review of EIA reports of some development projects, (iii) interviews with environmental officials, EIA consultants/experts and citizens. Legal provisions are the requirements regarding procedures for EIA and public participation. Review of EIA reports of some development projects will show the implementation of legal provisions in practice. To collect data, qualitative interviews⁷⁹ have been conducted at Ho Chi Minh City, Vietnam, and personal interview⁸⁰ has been employed in this research.

⁷⁹ In qualitative interviews, the researcher conducts face-to-face interviews with participants, telephone interviews, or engages in focus group interviews with six to eight interviewees in each group. These interviews involve unstructured and generally open-ended questions that are few in number and intended to elicit views and opinions from the participants (Creswell, 2014, p. 239).

⁸⁰ Personal interview method requires a person known as the interviewer asking questions generally in a face-to-face contact to the other person or persons. This method is particularly suitable for intensive investigations. (Kothari, 2004, p. 97).

Based on results withdrawn from the above research methods, I analyze the implementation of public participation in EIA process in Vietnam with the following issues: legal requirements for implementation of public participation, access and quality of information, evaluation of the methods used for notification, time for consultation, public meeting venue, public meeting, consultations, content of EIA report (with regard to public participation only). After that, I give my conclusions regarding the implementation of public participation in Vietnam's EIA process for discussions. In particular, objectives of public participation in EIA process in Vietnam have not been fulfilled in reality although there were some legislative rationales of public participation in EIA process provided by interviewees. Before making the chapter conclusion, I review some barriers to the implementation of public participation in EIA process identified by interviewees.

Finally, the important research findings are finally withdrawn as follows. A procedure for public participation is a mandatory procedure in EIA process but just being the procedure for informing and/or consultation. The public meeting is not open to all citizens, just for the affected people or/and their representatives leading to distrust in the results of the public meeting held in EIA process for consultation. Moreover, there are no definitions of *“the public”* and *“public participation”* as well as *“the objectives of public participation”* in any environmental provisions regarding EIA process. These barriers involve several factors, such as the EIA process, the procedure for public consultation, the awareness of stakeholders, the quality of information and trust in government. In which, lack of environmental awareness of authorities and proponent/consultant has led to the trade-offs between economic growth and a clean environment.

4.2. History of Environmental Impact Assessment in Viet Nam

The Socialist Republic of Vietnam is a Southeast Asian country situated along the Eastern margin of the Indochina peninsula, neighboring Laos, Cambodia and China (see Figure 4.1).

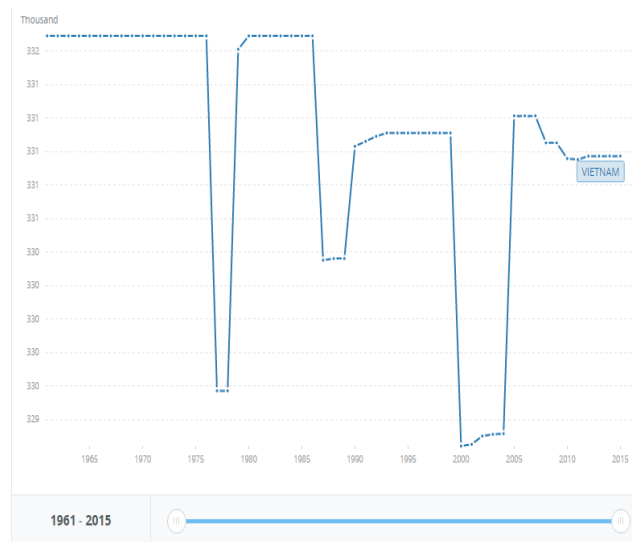
Vietnam has about 331,000.0 km² of land (see Figure 4.2). With the diverse ecosystem of tropical and humid monsoon climate, Viet Nam is a famous country with the rich natural resources, *“Forest is Gold, and Sea is Silver”* (i.e. forest could be considered as a precious gold mine, and sea is regarded as a precious silver mine). Thus, Can (2002, p. 393) realized that Vietnam is endowed with the important mineral resources in subsoil and with the marine products at sea as well as favorable environmental conditions.

Figure 4.1: Administrative Map of Viet Nam⁸¹



(Sources: nationsonline.org, 2015)

Figure 4.2: Surface area (sq.km) of Vietnam⁸²



(Source: World Bank, 2015)

Efforts to escape from poverty and to boost economic growth had been begun since ending the devastating war in 1975. However, along with the achievement in economic development, Vietnam experienced an environmental degradation and pollution (Can, 2002, pp. 394-396; Doberstein, 2004, pp. 27-28; Obbard et al., 2002; Quy, 1997; Quyen, Nhan, & Van San, 1995; Toan, 2015). Particularly, according to Can (2002, pp. 394-396), there have been serious environmental issues in Vietnam as follows:

- Deterioration of forest resources;

⁸¹ Retrieved on August 22, 2016 from <http://www.nationsonline.org/oneworld/map/vietnam-administrative-map.htm>

⁸² Retrieved on August 22, 2016 from <http://data.worldbank.org/indicator/AG.SRF.TOTL.K2?locations=VN&view=chart>

- Decrease in agricultural land and deterioration of soil quality;
- Inefficiency in the conservation and use of water resources;
- Irrational use of mineral resources;
- Degradation of biological resources;
- Environmental pollution.

Hence, the conflicts between the economic growth and the environmental protection activities for a good living environment in the environmental management in Vietnam have emerged. Consequently, EIA was officially introduced as a useful tool for promoting sustainable development in legal documents and for ensuring the environmental rights. Concurrently, to harmonize the benefits among proponent, the public and decision-makers in EIA process, public participation shall be formally provided as a vital component.

Depending on the viewpoint of each author, development of EIA in Vietnam can be divided into different phases. Obbard et al. (2002, p. 281), for example, divides the development of EIA in Vietnam into three phases since the 1980s: (i) from 1983 to 1993: preparation for EIA procedures; (ii) from 1993 to mid-1996: implementation of EIA procedures; (iii) from mid-1996 to current: improvement of EIA. Similar to Obbard et al. (2002), Doberstein (2003, pp. 30-35) also divides the history of EIA into three relatively distinct periods: the learning phase (pre-1990); the formalization phase (1990–1994); and the implementation and capacity-building phase (1995–present). However, from the perspective of Vietnamese expert in EIA, the history and development of EIA system in Vietnam can be divided into four phases (Toan, 2015). They are: (i) pre- 27/12/1993 (the learning phase); (ii) from 27/12/1993 to 01/7/2006 (the first legislation on EIA); (iii) from 01/7/2006 to 31/12/2014 (the improvement of EIA); (iv) from 01/01/2015 to current (the revision of EIA).

In addition, Can (1997, p. 101) bases on the EIA implementation in practice in order to divide the development of Vietnam's EIA into three phases: (1) preparation for

implementation, (2) implementation and (3) improvement of implementation. Following this line of thinking, I myself divided the development of EIA in Vietnam into two phases since the late of the 1970s. They are: (i) pre-1993 (the research and learning phase which EIA was not officially provided any laws); (ii) from 27/12/1993 to current time (the legal formalization which EIA was formally provided in law).

4.2.1. Pre-1993: The research and learning phase

After many years of devastating war, Viet Nam has faced with many difficulties, from economic, politics and environmental impacts of war. Thus, efforts to boost economic growth, particularly industrial development⁸³ were considered as the highest priority. The issue of environmental protection was mentioned in the last article of the chapter of the economic regime⁸⁴. Hence, it was said that the state, at that time, did not pay attention to this issue and just focused on post-war economic reconstruction. As a result, there were hardly tools for environmental protection, particularly EIA, in Vietnam until 1983 (Can, 1997, p. 101). From 1983, the research program on natural resources and the environment had initially studied on EIA (Toan, 2015, p. 6). Consequently, the Initial Environmental Examination of Tri An hydropower plant was conducted by the experts in 1984 (Can, 1997, p. 103). Based on the experts' proposal, Resolution No 246-HDBT dated 20th September 1985 was adopted by

⁸³ See Article 16 Vietnam's 1980 Constitution: *–The central task throughout the period of transition to socialism is the socialist industrialization of the country. The state gives priority to a rational development of heavy industry on the basis of development of agriculture and light industry, and the integration of industry and agriculture on a national scale into an industrial-agricultural structure, builds the centrally-run economy while developing the local economy and combines the two into a unified national economic structure, combines the development of the productive forces with the institution and perfection of socialist relations of production, combines economic construction and national defense, and strengthens cooperation and mutual assistance with fraternal countries in the socialist community in the spirit of socialist internationalism and, at the same time, develops economic relations with other countries on the basis of respect for each other's independence and sovereignty, equality, and mutual benefit*". Retrieved on August 25, 2016 from <http://heinonline.org/HOL/LandingPage?handle=hein.journals/rsl7&div=27&id=&page>

⁸⁴ See Article 36 Vietnam's 1980 Constitution *–All state organs, factories, cooperatives, units of the people's armed forces, and citizens have the duty to implement the policy of protecting, transforming, and renewing natural resources, and of protecting and improving the environment.*" Retrieved on August 25, 2016 from <http://heinonline.org/HOL/LandingPage?handle=hein.journals/rsl7&div=27&id=&page>

the Council of Ministries of the Socialist Republic of Vietnam⁸⁵, which provided for *the promotion of basic research, the rational use and the environmental protection*". EIA was not directly defined in this Resolution (Can, 1997, p. 104) but the perception of EIA as a tool for environmental protection was firstly instituted. Particularly, Article III2.a,b provided that *in the process of economic development planning, as well as the technical and economic feasibility study of the project, it is necessary to carefully consider and indicate the specific measures for environmental protection and rational use of natural resources*". This was the first step for implementation of EIA in Vietnam. Moreover, in 1986, a policy, called as *Đổi mới* policy" or *Revolution Policy*", was officially adopted by the sixth Congress of the Communist Party of Vietnam⁸⁶. This policy changed from a centrally-planned economy to market oriented one, leading to the reform of the land market, permission of private businesses and intensification of global trade. The more economic growth achieved, the more environmental pollution and degradation increased. Thus, the environmental issues have been received more attention from government authorities and environmental experts. Thus, the State Committee of Science and Technologies (in 1990 changing into the State Committee of Science and in 1992 being the Ministry of Sciences, Technologies and Environment under the Decree No. 22-CP⁸⁷) had obliged to govern the environmental issues in Vietnam (Toan, 2015, p. 7). However, the term of EIA appeared at the first time in the Order No 73-TTg dated 25/2/1993 of Prime Ministry on the urgent task of environmental protection⁸⁸. This Order

⁸⁵ See Resolution No 246-HDBT dated September 20, 1985 was adopted by the Council of Ministries of Socialist Republic of Vietnam. Retrieved August 25, 2016 from [http://vbpl.vn/tw/Pages/vbpq-toanvan.aspx?ItemID=3193&Keyword=m%C3%B4i](http://vbpl.vn/tw/Pages/vbpq-toanvan.aspx?ItemID=3193&Keyword=m%C3%B4i%20trường) (Vietnamese version only).

⁸⁶ See Resolution of the sixth Congress of the Communist Party of Vietnam. Retrieved December 18, 1986 from: http://daihoi12.dangcongsan.vn/Modules/News/ListObjectNews.aspx?co_id=28340651 (Vietnamese version only)

⁸⁷ See the Decree No.22-CP date May 22, 1993 of Government on functions, power and structure of Ministry of Sciences, Technologies and Environment. Retrieved on August 25, 2016 from [http://vbpl.vn/tw/Pages/vbpq-toanvan.aspx?ItemID=10710&Keyword=m%C3%B4i](http://vbpl.vn/tw/Pages/vbpq-toanvan.aspx?ItemID=10710&Keyword=m%C3%B4i%20trường) (Vietnamese version only).

⁸⁸ See Order No 73-TTg dated February 25, 1993 of Prime Ministry on the urgent task of environmental protection. Retrieved on August 25, 2016 from <http://thuvienphapluat.vn/van-ban/Tai-nguyen-Moi-truong/Chi-thi-73-TTg-cong-tac-can-ngay-bao-ve-moi-truong/38518/loi-dung.aspx>. (Vietnamese version only).

focused that *–all sectors and all government authorities must implement EIA in the economic feasibility, technical feasibility when building the development projects, including the cooperation projects with foreign*”. Based on this, on September 10, 1993, Ministry of Sciences, Technologies and Environment issued the Guideline No 1485-Mtg on *–the temporary guidelines on EIA*” for all major projects in Vietnam (Can, 1997, p. 104; Toan, 2015, p. 7). Before 1993, although EIA was not officially regulated in any laws, the implementation of EIA were conducted for some projects, such as the Tri An hydropower plant (1984), the Hoa Binh reservoir (1991)⁸⁹, the Thac mo and Song Hinh hydropower plant (1992-1993) and the Bai Bang pulp and paper factory (1992-1993) (Can, 1997, pp. 103-106).

In short, in this period, the implementation of EIA was carried out in practical without mandatory laws. As a result, this helped to set up the scientific background of EIA for the adoption of the compulsory EIA provisions in the next periods (Toan, 2015, p. 7).

4.2.2. From December 27, 1993 to current time: the legal formalization phase

In this period, the National Assembly issued three laws on environmental protection. Hence, I introduce each law with the other legal documents in three small phases in order to see the changes of EIA system in Vietnam from the first law on environmental protection.

4.2.2.1. From December 27, 1993 to June 30, 2006

With the efforts of Vietnamese experts as well as the assistance of international organizations, such as UNEP, UNDP, IUCN and ADB (Can, 1997, p. 102; Doberstein, 2003, p. 32), Law on Environment Protection was officially adopted by the National Assembly on 27 December 1993⁹⁰. Efforts to have effective EIA in practice, the Government⁹¹ and the

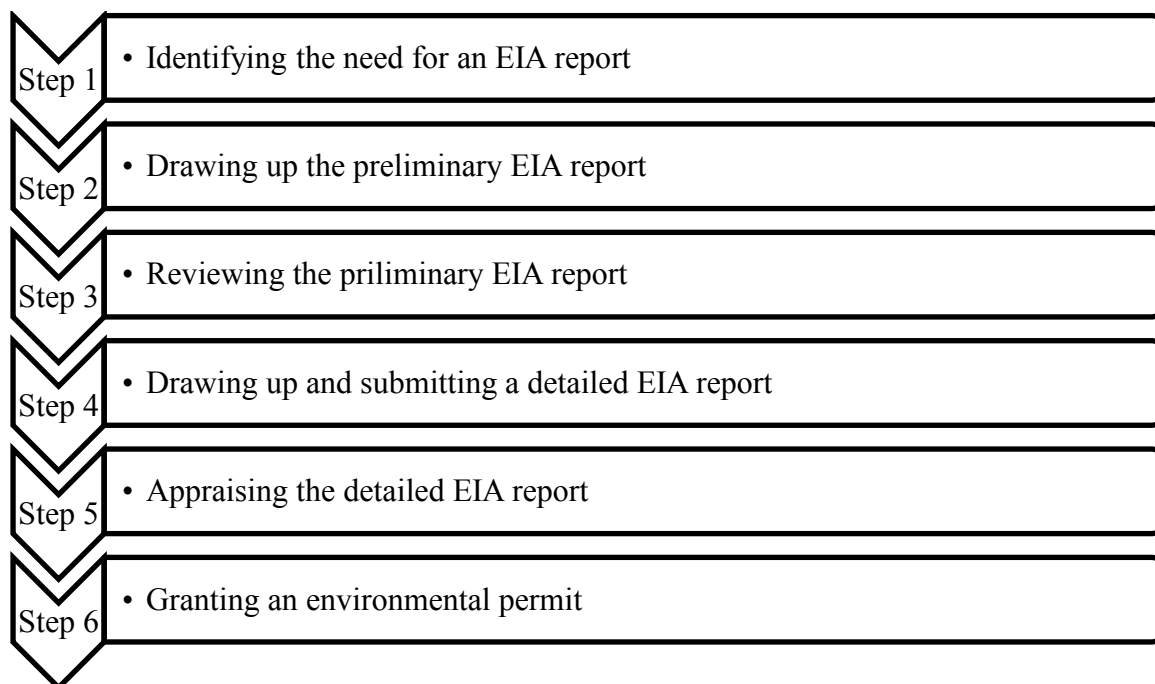
⁸⁹ See more details on *–Social and Environmental Implications of Resource Development in Vietnam: The Case of Hoa Binh Reservoir*” (Hirsch & Sinh, 1992)

⁹⁰ See Law on environmental protection of 1993 of Vietnam's National Assembly Law. Retrieved on August 26, 2016 from http://www.moj.gov.vn/vbpq/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=10443 (Vietnamese version only)

⁹¹ See Decree No.175-CP dated October 18, 1994 of Vietnamese Government on guiding implementation of the law on environmental protection. Retrieved on August 27, 2016 from <http://www.kenfoxlaw.com/resources/legal-documents/governmental-decrees/2199-vbpl-sp-29100.html>

Ministries issued some legal documents for implementation of EIA (see Table 4.1). Moreover, the requirements of EIA process was legally introduced with the following stages (see Figure 4.3):

Figure 4.3: The EIA process following LEP 1993 and Decree No.175-CP



Source: Adapted from Toan (2015), Can (1997)

Table 4.1: Provisions of EIA in legal documents from December 27,1993 to June 30, 2006

Legal documents	Main contents of EIA
Law on Environment Protection in 1993 (came into force in 10 January 1994)	<ul style="list-style-type: none"> - Article 2(11): –EIA is a process of analyzing, evaluating and forecasting the environmental impacts of projects, socio-economic development planning and enterprises as well as economic, scientific, technical, health, cultural, social, security and defense facilities and others, leading to proposals of appropriate measures for environmental protection.” - Article 17: –Organizations and individuals in charge of the management of economic, scientific, technical, health, cultural, social, security and defense establishments that have begun operation prior to the promulgation of this law must submit an EIA report on their respective establishments for appraisal by the State management agency for environmental protection. In case of failure to meet environmental standards, the organizations of individuals concerned must take remedial measures within a given period as stipulated by the State management agency for environmental protection.

	<p>Upon expiry of the stipulated time limit, if they still fail to meet the requirements of the State management agency for environmental protection, the latter shall report to the higher State authority at the next level to consider and decide on the suspension of operation or other penalizing measures.”</p> <p>- Article 18: Organizations, individuals when constructing, renovating production areas, population centers or economic, scientific, technical, health, cultural, social, security and defense facilities, owners of foreign investment or joint venture projects, and owners of other socio-economic development projects, must submit EIA reports to the State management agency for environment protection for appraisal. The result of the appraisal of EIA reports shall constitute one of the bases for competent authorities to approve the projects or authorize their implementation. The Government shall stipulate in detail the formats for the preparation and appraisal of EIA reports and shall issue specific regulations about special security and defense establishments mentioned in Article 17 and in this article. The National Assembly shall consider and make decision on projects with major environmental impacts. A schedule of such types of projects shall be determined by the Standing Committee of the National Assembly.”</p> <p>- Article 37(5): the contents of environmental management of State are ... [t]he appraisal of EIA reports of projects and operating production units and enterprises.”</p> <p>- Article 38: Ministry of Sciences, Technologies and Environment is legally obliged to govern the environmental protection”.</p>
<p>Decree No.175-CP date 18/10/1994 of Government on guiding implementation of the law on environmental protection.⁹²</p>	<p>- Article 4 (1.e) and Article 6 (1.c): Ministry of Sciences, Technologies and Environment and the provincial People’s Committee are legally obliged to appraise EIA reports of projects and units.”</p> <p>- Chapter 3 includes 20 articles on EIA (from article 9 to article 20).</p> <p>+ Article 9: The investors, the owners of projects or directors of enterprises are legally obliged to elaborate the EIA reports for the following projects and units:</p> <ol style="list-style-type: none"> 1. The overall plans for regional development, the development of provinces and cities under the central government, urban and residence areas. 2. The projects of economic, scientific, health care, cultural, society, security and defense. 3. Projects carried out within Vietnam with the funds invested, assisted, granted or contributed by foreign organizations or individuals or international organizations. 4. Projects mentioned in Items 1, 2 and 3 above that were approved before 10 January 1994 but that have not yet conducted an EIA.

⁹² See supra note 86

	<p>5. Enterprises/ Units of economy, sciences, health care, cultural, society, security and defense that have been operating since before 10 January 1994.</p> <p>For more details, Annex II lists 41 types of projects and operating enterprises/units which require an EIA report and identifies the competent authorities for approval each kind of EIA report: Ministry of Sciences, Technologies and Environment or Department of Sciences, Technologies and Environment.</p> <p>+ Article 10: –The contents of an EIA report includes:</p> <ul style="list-style-type: none"> (i) An evaluation of the current state of the environment around the project/ enterprise location; (ii) An evaluation of the possible impacts caused by project/enterprise activities; (iii) A proposal of measures to tackle the environmental issues.” <p>For more detail, Annexes I.1, I.2 and I.3 describe the detailed contents of an EIA report for projects and operating enterprises/ units.</p> <p>+ Article 11: –With regard to the projects mentioned at point 1, 2, 3, 4 of Article 9, the making of EIA report should be undertaken in two steps: preliminary and in details (those projects mentioned at Point 4 should be evaluated in details only). The contents of preliminary EIA report are stipulated at Annex I.1. The contents of detail EIA report are stipulated at Annex I.2.</p> <p>With regard to the projects mentioned at Point 5 of Article 9, the contents of EIA report are stipulated at Annex I.3.”</p> <p>+ Article 12: –The methods used for evaluating environment must be objective, scientific and practical, and up to current international standard. EIA report must be made by those agencies and organizations that have the qualified staffs and facilities. EIA report must be based on Vietnam’s environmental standards. As for those areas which do not yet have environmental standards, a written agreement should be reached with the responsible authorities on environmental protection.”</p> <p>+ Article 13 to Article 20 the EIA process.</p>
<p>Circular No 1420-Mtg date 26/11/1994 of Ministry of Sciences, Technologies and Environment on guiding on implementation of EIA report for operating enterprises⁹³.</p>	<p>Based on the nature of activities and the level of making pollution, Department of Sciences, Technologies and Environment categorizes the operating enterprises into 4 kinds as follows:</p> <ul style="list-style-type: none"> (1) Enterprises do not need to have the EIA report; (2) Enterprises have to elaborate the simple EIA reports as –Lists of activities affecting environment report”; (3) The medium and large enterprises have to elaborate the EIA reports; (4) Enterprises/ Units granted the permission license before 10 January 1994 but no activities in practice and no EIA report as well as no appraisal have to elaborate the EIA reports.

⁹³ See Circular No 1420-Mtg date November 26, 1994 of Ministry of Sciences, Technologies and Environment on guiding on implementation of EIA report for operating enterprises. Retrieved on August 28, 2016 from

<p>Circulars of Ministry of Sciences, Technologies and Environment</p>	<ul style="list-style-type: none"> - Circular No 715/TT-Mtg date 03/4/1995 of Ministry of Sciences, Technologies and Environment on guiding on implementation of EIA report for foreign direct investment projects⁹⁴. - Circular No 1100/TT-Mtg date 20/8/1997 of Ministry of Sciences, Technologies and Environment on guiding on implementation of EIA report for investment projects (replaced the Circular No. 715 above)⁹⁵. - Circular No.490/TT-BKHCMNT date 29/4/1998 of Ministry of Sciences, Technologies and Environment on guiding on implementation of EIA report for investment projects (replaced the Circular No.1100 above). This Circular identifies 2 kinds of projects: (1) Type 1: Projects requiring the EIA reports; (2) Type 2: Projects requiring the Lists of activities affecting environment report⁹⁶.
<p>Technical Guidelines for EIA of Ministry of Sciences, Technologies and Environment</p>	<p>There were 16 technical guidelines for EIA on the following sectors:</p> <ul style="list-style-type: none"> - Development of industrial zones; - Development of urban; - Transportation Construction; - Beer, wine and beverage factory; - Thermal power plant; - Textiles and dye factory; - Cement factory; - Exploitation and processing of rocks and clay; - Hydropower plant; - Pulp and paper factory; - Building harbor; - Production of basic chemical; - Building landfill and oil & gas exploration; - Building oil depot and steel industry.

Source: (Can, 1997, pp. 107-115; Doberstein, 2003, pp. 111-115; Toan, 2015, pp. 7-14)

<http://thuvienphapluat.vn/van-ban/Doanh-nghiep/Thong-tu-1420-MTg-huong-dan-danh-gia-tac-dong-moi-truong-co-so-hoat-dong-42641.aspx> (Vietnamese version only)

⁹⁴ See Circular No 715/TT-Mtg date 03/4/1995 of Ministry of Sciences, Technologies and Environment on guiding on implementation of EIA report for foreign direct investment projects. Retrieved on August 28, 2016 from <http://thuvienphapluat.vn/van-ban/Dau-tu/Thong-tu-715-MTg-huong-dan-lap-tham-dinh-bao-cao-tac-dong-moi-truong-du-an-dau-tu-truc-tiep-nuoc-ngoai-42638.aspx> (Vietnamese version only)

⁹⁵ See Circular No 1100/TT-Mtg date 20/8/1997 of Ministry of Sciences, Technologies and Environment on guiding on implementation of EIA report for investment projects. Retrieved on August 28, 2016 from <http://thuvienphapluat.vn/van-ban/Dau-tu/Thong-tu-1100-1997-TT-BKHCMNT-lap-tham-dinh-danh-gia-tac-dong-moi-truong-du-an-dau-tu-40940.aspx> (Vietnamese version only)

⁹⁶ See Circular No.490/TT-BKHCMNT date 29/4/1998 of Ministry of Sciences, Technologies and Environment on guiding on implementation of EIA report for investment projects. Retrieved on August 28, 2016 from http://www.moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=7815 (Vietnamese version only)

From 05 August 2002, the environmental management agencies has been the Ministry of Natural Resources and Environment at the central and the Department of Natural Resources and Environment at the provincial level⁹⁷. Those agencies take the responsibility for appraisal and approval of EIA reports. The number of EIA reports was increasingly submitted to EIA administrative agencies, from 69 in 1994 to 423 in 1995 (Can, 1997, p. 111).

The most cursory glance at the aforementioned legal documents showed that there was a limitation of legislations on public participation in EIA process in Vietnam at that time. Particularly, the contents of the EIA report were detailed at the Annexes (I.1, I.2, I.3) of the Decree No.175-CP⁹⁸ without mentioning of public participation. But representatives of social organizations and representatives of the people could become the members of the appraisal council in the appraisal stage of EIA process⁹⁹. It was not a mandatory provision. Hence, Can (1997, p. 113) pointed out that public participation should be compulsory during EIA process because the public would be directly affected by the project's activities. According to him, *–such participation is beneficial for the public, the government, and the project's investor”* (Can, 1997, p. 113). In addition, Obbard et al. (2002, p. 284) claim that in this period public participation was still a new issue in Vietnam and the public was difficult to access EIA information due to insufficient transparency.

⁹⁷ See - Decree No. 25/2008/ND-CP date 04/3/2008 of Government on providing the functions, tasks, powers and organizational structure of the Ministry of Natural Resources and Environment. Retrieved on August 28, 2016 from http://faolex.fao.org/cgi-bin/faolex.exe?rec_id=063346&database=faolex&search_type=link&table=result&lang=eng&format_name=@ERALL

- Resolution No. 02/2002/QH11 of 05 August 2011 of National Assembly on providing the lists of Ministries and quasi-ministerial agencies. Retrieved on August 28, 2016 from http://moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=22115 (Vietnamese version only)

- Decree No. 21/2013/ND-CP date 04/3/2013 of Government providing on the functions, tasks, powers and organizational structure of the Ministry of Natural Resources and Environment. Retrieved on August 28, 2016 from http://www.moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=28320 (Vietnamese version only)

⁹⁸ See supra note 86

⁹⁹ See Article 15, point 3, supra note 86

In short, it can be concluded that the preliminary provisions on the participation of representatives of the people ushered in a new period of public participation in EIA process in the next legislation step.

4.2.2.2. From July 01, 2006 to December 31, 2014

Despite the lack of legal principles of public participation in EIA, the LEP 1993 represented a major step in the development of a robust legislative framework for public participation in Vietnam's EIA process. Until 2005, in line with the recognition of the environmental impacts of projects and the role of public participation in decision-making process, Vietnam's National Assembly adopted the LEP 2005 replacing the LEP 1993 and containing the new approach on public participation in EIA process. According to LEP 2005¹⁰⁰, the public has firstly experienced the unprecedented change of the right to participate in decision-making process affecting the environment and human. However, the LEP 2005 and the Decree No.29/2011/ND-CP dated April 18, 2011 of the Government providing strategic environmental assessment, EIA and environmental protection commitment¹⁰¹ just regulated the consultation process and participants without the definition of public participation (see Table 4.2). Furthermore, Vietnam Environment Administration of Ministry of Natural Resources and Environment already issued the guideline on the implementation of EIA for investment projects in 2010¹⁰². Based on the legal documents above, the mandatory EIA procedure was required to 146 projects in Vietnam (see Figure 4.4).

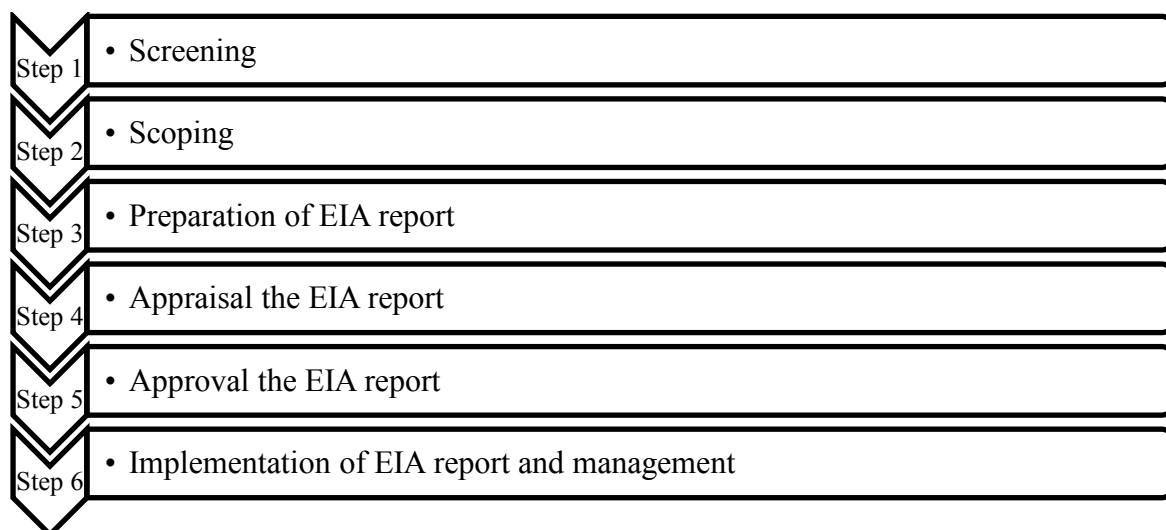
¹⁰⁰ See Law on environmental protection, No 52/2005/QH11 dated November 29, 2005 of Vietnam's National Assembly. Retrieved on August 27, 2016 from http://vea.gov.vn/en/laws/LegalDocument/Pages/LawNo52_2005_QH11onenvironmentalprotection.aspx

¹⁰¹ See *Decree No.29/2011/ND-CP dated 18/4/2011 of Government providing strategic environmental assessment, environmental impact assessment and environmental protection commitment*". Available at http://www.moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=26501 (Retrieved Nov 22, 2016)

¹⁰² See Guideline on the implementation of EIA for the investment projects. Retrieved on August 27, 2016 from <http://eia.vn/index.php/en/document-library/file/12-huong-dan-chung-ve-thuc-hien-danh-gia-tac-dong-moi-truong-doi-voi-du-an-dau-tu>

As a result, since the Decree No.29/2011/ND-CP came into force, the number of EIA reports sent to EIA administrative agencies for appraisal and approval has increased (see Table 4.3). Particularly, the investor’s recognition of the role of EIA has been remarkably improved (Toan, 2015, p. 32) since the Decree No.117/2009/ND-CP dated December 31, 2009 adopted and then replaced by the Decree No. 179/2013/ND-CP dated 14 November 2013 of the Government on the sanction of administrative violations in the domain of environmental protection¹⁰³. However, the number of EIA reports refused or rewritten was high because of the low quality of EIA reports (Toan, 2015, p. 32). For instance, at the provincial level, 902 per 6.525 EIA reports were not approved by Department of Natural Resources and Environment of the provincial level (Toan, 2015, p. 34). Nevertheless, those EIA reports were finally approved when the consultants or proponents amended and added the contents asked by the EIA Appraisal Council. Such contents often related to the scale and capacity of the proposed project (Toan, 2015, p. 32), did not mention to public participation in EIA process.

Figure 4.4: The EIA process following LEP 2005 and Decree No.29/2011/ND-CP



Source: Adapted from Toan (2015)

¹⁰³ See Decree No. 179/2013/ND-CP dated November 14, 2013 of the Government on the sanction of administrative violations in the domain of environmental protection. Retrieved August 25, 2016 from <https://luatminhkhue.vn/en/decree/decree-no-179-2013-nd-cp-dated-november-14--2013-of-the-government-on-the-sanction-of-administrative-violations-in-the-domain-of-environmental-protection.aspx>

Table 4.2: Provisions of EIA in legal documents from July 01, 2006 to December 31, 2014

Legal documents	Main contents of EIA
<p>Law on Environment Protection in 2005 (came into force in 01 July 2006)</p>	<p>- Article 3(20): –20. Environmental impact assessment means analysis and forecast of impacts on the environment to be exerted by specific projects so as to work out measures to protect the environment when such projects are carried out.”</p> <p>- Chapter 3 – Section 2: Environmental Impact Assessment: from Articles 18 to 23.</p> <p>Article 18: –Objects subject to elaboration of environmental impact assessment reports:</p> <ol style="list-style-type: none"> 1. Owners of the following projects must elaborate environmental impact assessment reports: <ol style="list-style-type: none"> a/ Projects of national importance; b/ Projects planned to use part of land of or exerting adverse impacts on, the natural sanctuaries, national parks, historical and cultural relic sites, natural heritages or beautiful landscapes which have been ranked; c/ Projects to potentially exert adverse impacts on the river watershed, coastal areas or areas of protected ecosystems; d/ Projects to construct infrastructure works in economic zones, industrial parks, hi-tech parks, export-processing zones or craft village areas; e/ Projects to construct new urban centers or concentrated residential areas; f/ Projects to exploit and use groundwater or natural resources on a large scale. g/ Other projects having potential risks or adverse impacts on the environment. 2. The Government shall promulgate a list of projects obliged to submit environmental impact assessment reports.” <p>Article 19: –Elaboration of environmental impact assessment reports</p> <ol style="list-style-type: none"> 1. Owners of projects mentioned in Article 18 of this Law shall have to elaborate environmental impact assessment reports and submit them to competent state agencies for approval. 2. Environmental impact assessment reports must be elaborated simultaneously with formulation of feasibility study reports of projects. 3. Project owners may elaborate environmental impact assessment reports by themselves or hire consultancy service organizations to do so and take responsibility for figures and results used therein. 4. In case of changes in the project's size, content, commencement time, execution duration and completion time, the project owner shall have to give explanations to the approving agency; in case of necessity, an additional environmental impact assessment report shall be required.

	<p>5. Consultancy service organizations that are hired to elaborate environmental impact assessment reports must meet all necessary conditions on professional personnel and material-technical foundations.”</p> <p>Article 20: –Contents of environmental impact assessment reports</p> <ol style="list-style-type: none"> 1. Enumeration and detailed description of the project's construction components, construction area, time and workload; operational technology for each component and the entire project. 2. Overall assessment of the environmental status at the project site and neighboring areas; the sensitivity and load capacity of the environment. 3. Detailed assessment of possible environmental impacts when the project is executed and environmental components and socio-economic elements to be impacted by the project; prediction of environmental incidents possibly caused by the project. 4. Specific measures to minimize bad environmental impacts, prevent and respond to environmental incidents. 5. Commitments to take environmental protection measures during project construction and operation. 6. Lists of project items, the program on management and supervision of environmental issues during project execution. 7. Cost estimates for building environmental protection works within the total cost estimate of the project. 8. Opinions of the commune/ward or township People's Committees and representatives of population communities in the place where the project is located; opinions against the project location or against environmental protection solutions must be presented in the environmental impact assessment report. 9. Citation of sources of figures and data, assessment methods.” <p>- And some articles provided the EIA procedure.</p>
<p>Decree No.80/2006/ND-CP date 09/8/2006 of Government on detailing and guiding the implementation of a number of articles of the Law on environmental Protection¹⁰⁴</p>	<p>- Chapter 2 Section 2: SEA, DTM and environmental protection commitments. In Annex 1, there were 102 projects required EIA reports.</p>
<p>Decree No. 21/2008/ND-CP dated 28 February 2008 of Government on amendment of</p>	<p>- This Decree amended the Decree No.80/2006/ND-CP above. This amendment related to the provision of public participation in EIA procedure by adding the Article 6(a) as follows: –Article 6(a) Obtaining opinions from people's committees of communes, wards or townships and representatives of the resident</p>

¹⁰⁴ See Decree No.80/2006/ND-CP date 09/8/2006 of Government on detailing and guiding the implementation of a number of articles of the Law on environmental Protection. Retrieved on August 27, 2016 from http://moj.gov.vn/vbqp/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=5160 (Vietnamese version only)

<p>and addition to a number of articles of decree 80- 2006-nd-cp of the government dated 9 august 2006 providing detailed regulations for implementation of the law on protection of the environment¹⁰⁵.</p>	<p>community during preparation of an environmental impact assessment report</p> <ol style="list-style-type: none"> 1. The Fatherland Front committee of a commune, ward or township shall represent the resident community in providing its opinion during preparation of an environmental impact assessment report of an investment project in its locality. 2. The project owner shall send a written notice of the main items of the investment, environmental issues and solutions on environmental protection of the project and shall request the people's committee of commune level and the Fatherland Front committee of commune level of the locality of implementation of the project to provide their opinion. 3. Within a time limit of fifteen (15) working days from the date of receipt of the written request for opinions, the people's committee of commune level and the Fatherland Front committee of commune level shall be responsible to notify the project owner in writing of their opinions and to announce them to the people. Where there is no written notification given within the above time limit, the commune people's committee and the representative of the resident community shall be deemed to have agreed with the project owner. 4. The following projects shall not be required to obtain opinions from the commune people's committee and the representative of the resident community in the locality of implementation of a project during preparation of an environmental impact assessment report: <ol style="list-style-type: none"> (a) The investment project is situated in an industrial zone, export processing zone or hi-tech zone and the EIA report of a project for construction of infrastructure of such zone has been approved by the authorized State administrative body. Where the EIA report of a project for construction of infrastructure of an industrial zone, export processing zone or hi-tech zone was approved after 1 July 2006, the State body for environmental protection as authorized by law must still inspect and certify complete performance of the items on environmental protection specified in the decision on approval of the environmental impact assessment report and in such report. (b) Projects situated in sea areas for which the administrative responsibility of the commune people's committee cannot be determined in order to obtain an opinion during preparation of an EIA report. (c) Investment projects in the national defense or security sector relating to national secrets”
<p>Decree No. 29/2011/ND-CP</p>	<p>- This Decree took effect on June 5, 2011, and replaced Decree No. 80/2006/ND-CP and Decree No.21/2008/ND-CP, that relating to</p>

¹⁰⁵ See Decree No. 21/2008/ND-CP dated 28 February 2008 of Government on amendment of and addition to a number of articles of decree 80- 2006-nd-cp of the government dated 9 august 2006 providing detailed regulations for implementation of the law on protection of the environment. Retrieved on August 28, 2016 from <http://www.ecolex.org/details/legislation/decree-no-212008nd-cp-amending-and-supplementing-a-number-of-articles-of-the-governments-decree-no-802006nd-cp-of-9-august-2006-detailing-and-guiding-the-implementation-of-a-number-of-articles-of-the-law-on-environmental-protection-lex-faoc079328/>

<p>dated 18/4/2011 providing strategic environmental assessment, EIA and environmental protection commitment¹⁰⁶</p>	<p>guideline of implementation of EIA procedure.</p> <ul style="list-style-type: none"> - Chapter III: Articles 12 to 28 provided the detail of implementation of EIA. - There were 146 projects subject to EIA report at the Appendix II. - Article 14: –Consultation in the process of EIA report <ul style="list-style-type: none"> 1. When making an EIA report, the project owner (except the cases specified in Clause 3 of this Article) shall consult: <ul style="list-style-type: none"> a) The People’s Committee of the commune, ward or township in which the project is to be implemented; b) Representatives of communities and organizations directly affected by the project. 2. A project owner investing in a consolidated production, business or service zone with its production, business or service line unconfomable with the sector and trade planning in the approved EIA report of such zone shall consult the agency having approved the EIA report in the phase of building the zone’s infrastructure facilities. 3. Consultation is not required in the following cases: <ul style="list-style-type: none"> a) An investment project in a consolidated production, business or service zone whose EIA report has been approved by a competent authority in the phase of building the zone’s infrastructure facilities, provided that this project conforms with the sector and trade planning in the approved EIA report of such zone; b) An investment project in a sea area for which the administration responsibility has not yet been assigned to any commune-level People’s Committee; c) An investment project involving state secrets.” - Article 15. –Consultation process and requirements on inclusion of consultation results in EIA reports <ul style="list-style-type: none"> 1. Consultation of the commune-level People’s Committee and representatives of communities and organizations directly affected by a project is conducted as follows: <ul style="list-style-type: none"> a) The project owner shall send to the commune-level People’s Committee and representatives of communities and organizations directly affected by the project a written request for consultation together with brief documents on the project’s major investment items, environmental issues and environmental protection solutions; b) When necessary, the commune-level People’s Committee may convene representatives of organizations and communities directly affected by the project to a meeting, notify the project owner of the time, place and participants of the meeting and together with the project owner chair such meeting within ten (10) working days after receiving the project owner’s written request for consultation; c) Results of the meeting between the project owner, the consulted agency and involved parties shall be recorded in writing, including
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¹⁰⁶ See Decree No. 29/2011/ND-CP dated 18/4/2011 providing strategic environmental assessment, environmental impact assessment and environmental protection commitment. Retrieved on August 27, 2016 from http://moj.gov.vn/vbpq/en/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=10586

	<p>the list of participants and all discussed opinions and opinions absorbed or not absorbed by the project owner. The record must contain the signatures of the project owner representative (with full name and title) and representatives of involved parties participating in the meeting;</p> <p>d) Within fifteen (15) working days after receiving a written request for consultation, the commune-level People’s Committee shall reply the project owner in writing and make public such reply. Past this time limit, if a consulted agency fails to send a written reply to the project owner, it is regarded as agreeing with the project owner’s investment plan;</p> <p>e) Agreeing and disagreeing opinions of consulted organizations and persons shall be summarized and truthfully reflected in the EIA report.</p> <p>2. Written opinions of consulted agencies and the meeting record shall be copied and attached as an annex to the EIA report.</p> <p>3. The Ministry of Natural Resources and Environment shall provide the form of request for consultation of involved parties.”</p> <p>- Article 16: –An environmental impact assessment report contains the following major contents:</p> <p>a) Indication of the project origin, project owner, agency competent to approve the project; sources of information and data and use methods; organization and process of environmental impact assessment reporting; consultation of the community in the process of environmental impact assessment reporting;</p> <p>b) Listing and detailed description of the project’s activities and work items which likely have adverse environmental impacts, indicating the size in terms of space and time, construction volume, operating technology of each work item and the entire project;</p> <p>c) General assessment of the current status of the environment of the project site and its neighborhood; level of environmental sensitivity;</p> <p>d) Assessment and prediction of the project’s impacts on natural conditions, natural environmental components, the community and related socio-economic elements; results of consultation of the community;</p> <p>e) Proposal of measures to mitigate adverse impacts on natural conditions, natural environmental components, community health and related socio- economic elements;</p> <p>f) Listing of works and programs for managing and controlling environmental issues in the course of project implementation;</p> <p>g) Estimation of costs for construction of environmental protection works in the project’s total cost estimate;</p> <p>h) The project owner’s commitment to taking environmental protection measures in the course of project construction and operation proposed in the EIA report and to observing other regulations on environmental protection related to the project.”</p>
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<p>Circulars of Ministry of Natural Resources and Environment</p>	<ul style="list-style-type: none"> - Circular No. 08/2006/TT-BTNMT dated 08/9/2006 of MONRE guiding SEA, EIA and environmental protection commitment¹⁰⁷. - Circular No. 05/2008/TT-BTNMT dated 08/12/2008 of MONRE guiding SEA, EIA and environmental protection commitment¹⁰⁸, replacing the Circular No. 08/2006/TT-BTNMT above - Circular No. 26/2011/TT-BTNMT dated 18/7/2011 of MONRE detailing a number of articles of the Government’s Decree No. 29/2011/ND-CP of 8 April 2011 on SEA, EIA and environmental protection commitment¹⁰⁹, replacing the Circular No. 05/2008/TT-BTNMT above.
<p>Guideline on implementation of EIA for investment projects of Vietnam Environment Administration</p>	<ul style="list-style-type: none"> - This Guideline introduces the detail EIA procedure of investment project. - Ministry of Natural Resources and Environment already issued twenty-two guidelines on EIA for twenty-two kind of projects (Toan, 2015, p. 29).

Source: LEP 2005 and other legal documents from 2005 to 2014

¹⁰⁷ See Circular No. 08/2006/TT-BTNMT dated September 08, 2006 of MONRE guiding strategic environmental assessment, environmental impact assessment and environmental protection commitment. Retrieved on August 27, 2016 from

http://moj.gov.vn/vbpq/lists/vn%20bn%20php%20lut/view_detail.aspx?itemid=15201

¹⁰⁸ See Circular No. 05/2008/TT-BTNMT dated December 08, 2008 of MONRE guiding strategic environmental assessment, EIA and environmental protection commitment. Retrieved on August 27, 2016 from <http://www.ecolex.org/details/legislation/circular-no-052008tt-btnmt-guiding-strategic-environmental-assessment-environmental-impact-assessment-and-environmental-protection-commitment-lex-faoc085715/>

¹⁰⁹ See Circular No. 26/2011/TT-BTNMT dated 18/7/2011 of MONRE detailing a number of articles of the Government’s Decree No. 29/2011/ND-CP of 8 April 2011 on strategic environmental assessment, EIA and environmental protection commitment. Retrieved on August 27, 2016 from <http://www.ecolex.org/details/legislation/circular-no-262011tt-btnmt-detailing-a-number-of-articles-of-the-governments-decree-no-292011nd-cp-of-8-april-2011-on-strategic-environmental-assessment-environmental-impact-assessment-and-environmental-protection-commitment-lex-faoc107404/?q=Circular+No.+26%2F2011%2FTT-BTNMT>

Table 4.3: The number of EIA reports from June 05, 2011 to September 10, 2014

No	EIA administrative agencies	EIA reports	
		<i>Submitted</i>	<i>Approved</i>
1	Ministry of Natural Resources and Environment	1252	1205
2	Ministry of Industry and Trade	1	1
3	Ministry of Transport	72	65
4	Ministry of Agriculture and Rural Development	24	19
5	Ministry of Information and Communications	3	2
6	Ministry of Construction	1	0
7	Ministry of Health	11	7
8	Department of Natural Resources and Environment of provincial level	6525	5623

Source: Adapted from Toan (2015)

4.2.2.3. From January 01, 2015 to current time

The major adjustments of the LEP 2005 were to mitigate the shortcomings of LEP 1993, such as regulating the public participation in EIA process. This continuously existed in the LEP 2014 and the other legal documents. The consultation to be required in the EIA process would help minimize the adverse impacts on the environment and human beings, socio-economics, culture and ensure the sustainable development. However, the LEP 2014 gave the only one general article on public participation in EIA process. Consequently, Decree No.18/2015/ND-CP dated on February 12, 2015 of Vietnamese Government presented the environmental protection planning, strategic environmental assessment, environmental impact assessment and environmental protection plan¹¹⁰ provided more details of how to

¹¹⁰ See Decree No.18/2015/ND-CP dated on 14 February 2015 of Vietnamese Government presented the environmental protection planning, strategic environmental assessment, environmental impact assessment and environmental protection plan. Retrieved August 25, 2016 from <http://hethongphapluatvietnam.com/decree-no-18-2015-nd-cp-dated-february-14-2015-on-environmental-protection-planning-strategic-environmental-assessment-environmental-impact-assessment-and-environmental-protection-plans.html>

consult with the stakeholders and who will participate in EIA process (see Table 4.4). The EIA process with the public participation is illustrated in Figure 4.5.

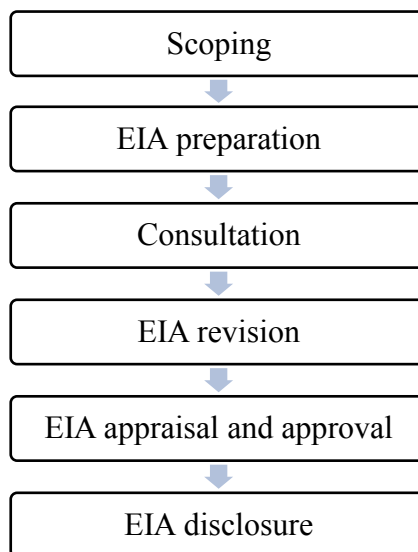
Table 4.4: Provisions of EIA in legal documents from 01/01/2015 to current time

Legal documents	Main contents of EIA
<p>Law on Environment Protection in 2014 (came into force in January 01, 2015)</p>	<p>- Chapter 2, Section 3, Articles: 18 to 28: providing the EIA. - Noticeably, there were some new provisions on EIA: + Article 19, Point 2: The environment impact assessment must be performed in the preparatory stage of the project. + Article 22, Points 4 and 5 provide on assessment and forecast of the impact of the project on community health as well as measures for minimizing the impact of the project on community health. + Article 25: Decision on approval the EIA report shall serve as the ground for the competent authorities to make the decision on the investment policy of the project.</p>
<p>Decree No.18/2015/ND-CP dated February 14, 2016 of Government on environmental protection planning, strategic environmental assessment, environmental impact assessment and environmental protection plans</p>	<p>- Chapter 4, Articles: 12 to 17: providing the EIA. - Appendix II lists 113 projects subject to EIA. - Article 12, Points 4, 5, 6: providing on public participation in EIA process as follows: -4. The project owner shall consult with the People’s Committee of communes, wards and towns where the project is carried out, with organizations or community under the direct impact of the project; research and receive objective opinions and reasonable requests of relevant entities in order to minimize the negative effects of the project on the natural environment, biodiversity and community health. 5. The People’s Committee of the commune where the project is carried out and the organizations under direct impact of the project shall be consulted according to procedures below: a) The project owner shall send EIA reports to the People’s Committee of the commune where the project is carried out and organizations under the direct impact of the project together with the written requests for opinions. b) Within 15 working days, from the date on which the EIA reports are received, the People’s Committee of the commune and organizations under the direct impact of the project shall send their responses if they do not approve the project. 6. The consultation with the community under the direct impact of the project shall be carried out in the form of</p>

	community meeting co-chaired by project owner and the People’s Committee of the commune where the project is carried out together with the participation of representatives of Vietnamese Fatherland Front of communes, socio-political organizations, socio-professional organizations, neighborhoods, villages convened by the People’s Committee of the commune. All opinions of delegates attending the meeting must be sufficiently and honestly stated in the meeting minutes”.
Circular No. 27/2015/TT-BTNMT dated May 29, 2015 of MONRE on strategic environmental assessment, environmental impact assessment and environmental protection plans ¹¹¹	- This Circular provided some forms for implementation of EIA in practice, for detailed in Appendixes 2.1 to 2.14.

Source: LEP 2014 and other legal documents from 2015 to current time

Figure 4.5: The current EIA process in Vietnam



Source: LEP 2014 and Decree 18/2015/ND-CP

Regarding the public participation in EIA report, under the form attached to the Circular No. 27/2015/TT-BTNMT above, Chapter 6 of EIA report relating to consultation with the community just shows following contents:

¹¹¹ See Circular No. 27/2015/TT-BTNMT. Retrieved July 29, 2016 from http://vanban.chinhphu.vn/portal/page/portal/chinhphu/hethongvanban?class_id=1&mode=detail&document_id=180408 (Vietnamese version)

(1) Summary of process of consultation with the community:

- a. Summary of consultation with the People's Committee of the commune and affected;
- b. Summary of consultation with the affected community.

(2) Results of consultation with the community

- a. Opinions of the People's Committee of the commune and affected organizations;
- b. Opinions of representative of the affected community;
- c. Responses and commitment of the project owner in terms of the above proposals.

In short, from 1993 to 2016, the significant changes in the Vietnam's EIA legislation have taken place since 1993. To meet the requirements of economic growth and environmental protection policy, the legal documents have been gradually improved and amended. Particularly, the EIA process was legally described in more details to ensure the quality of EIA report for sustainable development. However, one of the shortcomings of the current EIA legislation is the procedure of public consultation in EIA process (Toan, 2016). Thus, to promote sustainable development and the environmental rights, it is necessary to improve the current EIA system, particularly the public participation in EIA process.

4.3. Public participation in EIA process in Vietnam: analysis of current provisions

Implementation of EIA provisions depends on socio-economic development, political system and the public awareness across countries. Public participation in Vietnam's EIA system was also conducted with the assistance and under the compulsory requirements of ADB, WB, JICA. EIA for all funded projects must comply with not only the Vietnamese legislations but also with the requirements of those international organizations (ADB, 2003). This experience with public participation in the EIA of projects funded by international

bodies displayed the value of public input in making decisions that have to balance the needs of the environment and development (Zhang et al., 2012). To recognize the essential role of public participation in sustainable development, Vietnamese Government supported the establishment of public participation mechanisms, encouraged the public to participate in EIA process, and provided “public participation” being a mandatory component of the EIA report¹¹². In practice, analyzing the implementation of public participation plays a key role in EIA literature (Del Furia & Wallace-Jones, 2000). However, when examining the implementation of public participation in Vietnamese EIA process, there are some matters emerged requiring more analysis as follows (Anh, 2015b):

4.3.1. The Public and Public Participation: The Ill-defined Concepts

Firstly, who should participate in Vietnam’s EIA process? However, unlike the analysis above, in Vietnam, according to Decree 18/2015/ND-CP, the proponent has to consult the opinion of (i) the People’s Committee of communes, wards and towns, and (ii) organizations or community under the direct impact of the project. Community meeting co-chaired by project owner and the People’s Committee of communes where the project is carried out together with the participation of representatives of Vietnamese Fatherland Front of communes, socio-political organizations, socio-professional organizations, neighborhoods, villages convened by the People’s Committee of communes shall be held to collect the opinions for completing the EIA report. There are some shortcomings existing in the Decree No.18/2015/ND-CP as follows:

- The participants are limited in the EIA process. This will exclude the groups having an interest in the project and/or the groups will be likely affected by the project. Additionally, environmentalists and experts will not have a chance to voice an opinion if they live outside of direct affected areas of the project. As a result, participants in

¹¹² See supra note 2

Vietnam's EIA process will not encompass all members of the public. This is not reasonable because Vietnam's state is of the people, by the people and for the people¹¹³.

- Furthermore, the representatives of mentioned entities which will be directly affected by the project shall attend the public meeting. There are no any legal principles of how to choose the representatives for the communities and what their responsibilities are. For example, when river reclamation by pouring tons of rocks and soil into the river to make land for building a residential area, the large-scale projects will affect thousands of people and families living in both riversides, how many the representatives for the communities are there in this case (Anh, 2015a)? Stern and Dietz (2008, p. 61) think that *“selecting participants to represent” the broader public is not itself adequate reason for nonparticipants to regard the outcomes of participatory processes as being legitimate.*”
- When the public disagrees with the contents of EIA report after consultation meeting, there are no any provisions of whether proponent will answer to the public opinion or not. We expect greater transparency and accountability from the developers. If lacking this, the dispute between the proponent and citizens will appear quickly. Sometimes, it makes the project slack or suspended and inactive. Even, proponent will waste the money and time to carry out the previous stages of the EIA process.

Secondly, what is definition of *“public participation”* in Vietnam's EIA system? Understanding of the meaning of public participation in EIA process is will change the awareness of policy-makers. Theoretically, public participation reflects an expansive notion of democracy where the involvement of citizens is considered not only as furthering selfish interests, but also as contributing to the promotion of public environmental interests

¹¹³ See supra note 78

(Ebbesson, 2012). Democracy is increasingly seen as a continuous and dynamic process in which governments carry ultimate responsibility but only with the most careful public scrutiny (Gilpin, 1995a). Some scholars argue that public participation will take public time-consuming and costs to participate in the decision-making process (Del Furia & Wallace-Jones, 2000; Gilpin, 1995a). However, public participation can enhance legitimacy, the quality of decisions and even the democratic quality of society (Ebbesson, 2012). In addition, public participation in EIA shall not only help participants develop their citizenship skills but also make participants with an opportunity to exercise citizenship actively (A. N. D. Glucker, Peter P. J.; Kolhoff, Arend; Runhaar, Hens A. C., 2013). Hence, participation is *“of value in its own right”* (O’Faircheallaigh, 2010) and people can develop their full potential as citizens when they participate in the work of governance (O’Faircheallaigh, 2010). Because of their in-depth knowledge of the nature resources, climate, biodiversity, indigenous people have a particularly important role to play in environmental monitoring and distinguishing project-related changes from natural changes in the environment (Stevenson, 1996). Thus, public participation is both rights and duties inseparably. People can develop a fuller knowledge of environment and society.

In Vietnam, although legal system on public participation in EIA process has been gradually improved by the time, the role of public opinion in Vietnam’s EIA process is not valued appropriately and there is no definition of public participation in EIA process in any current legal documents. Various stakeholders have expressed interests in interpreted definition differently. Proponents also explain the meaning of this definition through which they can receive the benefits. The proponents just carry out the provisions of public participation on who will participate in EIA process and how to consult the public. Whilst the public participates the consultation without understanding of the meaning of this action and its requirements; as a result, the public often neglects participation.

Thus, to prevent the potential conflicts among proponents, the responsible authorities and the public, it is necessary to provide the united definitions of the public and public participation in Vietnam's EIA process.

4.3.2. One-way flow of environmental information in EIA process

In Vietnam, to give an impulse to economic development, the program of the industrialization and modernization of the economy has been carried out from the late of 1980s. As the results, Vietnamese government and public authorities occasionally fail to consider essential environmental concerns, increasing the conflicts between the economic benefits and the demand for a good living environment. To harmonize this conflict, government should greatly facilitate citizens to give opinions in the decision-making process. However, the right to access to information is not implemented fully, accurately and punctually in EIA process. People receive information passively (one-way flow of information) leading to the impacts on the quality of the public opinions. Proponent should recognize that both the quality of EIA report and the success of the project will increase through public participation as well as the proponent shall get a higher level of consensus to the project, avoiding environmental dispute in the future (Del Furia & Wallace-Jones, 2000).

It is very important to note that environmental information is the key element to help stakeholders participate in the EIA process or not. Some authors already discuss the definition of "*environmental information*" (Changhua, 2005; Yousefi-Sahzabi et al., 2014) and other issues relating to environmental information (Haklay, 2003; Stephan, 2002; Yousefi-Sahzabi et al., 2014). In addition, in both the international and national sphere, the notion of environmental information is officially provided in the legal documents. Information can be stored and transmitted in a variety of forms (Israel & Perry, 1991). Therefore, according to the Aarhus Convention, environmental information means any information in written, visual, aural, electronic or any other material form (UNECE, 2014).

This is the simple, clear and comprehensive definition of environmental information. This definition just lists the categories within the illustrations. Environmental information includes information relevant to public authorities' functions, information about proposed and existing activities that may significantly affect the environment, information in times of emergencies, information on the state of the environment, product information, pollutant release and transfer information, information about laws, programs, policies, agreements and other documents relating to the environment and information about how to get information. In Vietnam, LEP 2014¹¹⁴ gave the definition of environmental information as *“Environmental information refers to environmental figures and data represented in the form of signs, letters, numbers, images, sounds or the like and includes figures, data about environmental components, environmental impacts, policies and law on environment and environmental protection”*. This definition is general, vague and difficult to implement in practice. However, almost environmental documents have just defined the term *“environmental information”* without defining the term *“information”*. Through the introduction some intuitive principles of information of Israel and Perry (1991), the informational content is made clear. Understanding of *“information”* and *“environmental information”* helps to distinguish the responsibilities of disclosure information between the proponents and the responsible authorities.

In Vietnam, representatives of local communities have the right to ask the owners of companies to provide information of environmental protection through direct dialogs or in writing and have the right to ask the responsible authorities to supply results of investigation, inspection and handling of the entities¹¹⁵. Environmental information is released at least once a year periodically. Environmental information is provided by diverse forms, such as the

¹¹⁴ See supra note 17

¹¹⁵ See more details in Article 146 LEP 2014, supra note 2

meeting held for information dissemination to the community. Responsibility for supply of environmental information to community is on the environmental state management authorities if environmental information refers to legal documents, environmental reports, information about proposed and existing activities that may significantly affect the environment, harmful waste sources, result of inspection, examination and handling of violation and specialized environmental publications. On the other hand, if environmental information refers to their environmental protection activities and license related to the extraction, use and protection of natural resources and environment, it will be on the companies.

However, in Vietnam's EIA process, the proponent shall send the EIA reports to the People's Committee of communes where the project will be carried out and organizations under the direct impact of the project together with the written requests for opinions. The consultation with the community under the direct impacts of the project shall be carried out in the form of public meeting. In this meeting, the proponent will explain the contents of EIA report for the proposed project. It means that the proponent already evaluated environmental information and found the alternatives to the application of measures for the environment protection. They often keep their own ideas in EIA report and do not want to change because of cost and time consuming. In addition, the public lacks the knowledge of environment and is not supplied environmental information adequately, accurately and promptly, the public just hears the proponent's interpretation on EIA report without comments. It means that negotiation among the proponent and the public is rarely occurred in reality. It looks like a "*window-dressing ritual*" (Arnstein, 1969). In theory, proponents just want to disclose the mandatory information. Both authorities and proponents would like to give less information as they can because they want to have the smooth EIA process. The more information is disclosed, the more complex proponents can get. Thus, it is inevitable to provide the more

detailed provisions relating to the proponent's responsibilities to disclose information in the legal documents. The flow of information in the EIA process is one way from the proponent to the public. In theory, the public participation can help the proponent to get local information for producing the good EIA report and makes the EIA process more transparent. Therefore, supplying environmental information plays a key role to improve the transparency of EIA process. The responsible authorities and the proponent have to facilitate the public's access to environmental information. Moreover, the public actively searches and updates environmental information through the given forms provided by responsible authorities and the companies. However, most environmental information is stored in computerized information systems (Haklay, 2003). In Vietnam, the computer system has not adequately equipped yet. Especially, some large proposed projects have been often located in remote areas with the poor infrastructure. The distance from the People's Committee to the community is very far and inconvenient for transportation. Additionally, the low public awareness level is challenging the environmental information transfer. As a result, the public capability of assessing environmental information fully from storage unit would have been limited. The public often knows the proposed project's information when the consultants come to each household to disseminate environmental information. But it has never happened in reality. It is therefore not surprising to know that the public normally agrees with the proposed projects because proponents have already drawn the good future prospect.

In short, to change the one-way flow of environmental information into two-way flow of environmental information for transparency and effectiveness of EIA process, it is necessary to increase the public environmental awareness and improve the infrastructure system as well as environmental information system. After that, the proponent and the public can exchange the environmental information for the valuable EIA report with the strong consensus.

4.3.3. Proponent intervention in the contents of EIA report

“Who should prepare the EIA report?” is a difficult question for legislators and the scholars who study in EIA system. Hollick (1984) argues that the proponent shall be responsible for EIA preparation by using the consultants listed by the environmental protection agency. Following this line of thinking, in Vietnam, LEP 2014 also provided that the proponents or consultancies hired by the proponents shall carry out the EIA process. However, the proponents shall take statutory responsibility for the conclusive result after conducting environmental assessment. The proponent shall cover expenses incurred from the formulation and inspection of the report on EIA.

In the first case, the proponent shall prepare the EIA report and hold the public meeting to receive objective opinions and reasonable requests from the relevant public. The proponent has extremely expressed his own ideas in the EIA report. Thus, this shall favor the proponent when interpreting the contents of EIA report. As aforementioned, the proponent will try to persuade the public of environmental information and the given alternatives in EIA report. It is very difficult for the public to interfere in the EIA process. Consequently, the owner of the project shall control the EIA process.

In the second case, the proponent has to pay the money for hiring the consultancies to elaborate the EIA report. The proponent does not want to waste money and time without getting the smooth EIA report. Therefore, when consultancies elaborate the EIA report, the proponent still intervenes in the contents of EIA report and sometimes makes environmental information distorted. It means that because the consultancies are employed, they will speak the voice of the proponent who pays money for hiring them. It is difficult for consultants to give the opinions which put proponent at a disadvantage. It is said that dependent finance should make the quality of the opinions influenced strongly.

It is reasonable for proponents to have a smooth EIA process because they pay money for hiring consultants. Hence, proponents have the rights to know the EIA process, leading to intervention in EIA contents. As a result, the EIA report shall reflect opinions what are subjective rather than what are objective. Limitation of intervention in EIA process is a challenge for EIA legislation in Vietnam.

4.4. Evaluation on public participation in current EIA process in Vietnam: the case of

Ho Chi Minh

4.4.1. Overview of Ho Chi Minh, Vietnam

Geographically, Ho Chi Minh City locates in the South of Vietnam and has an area of approximate 2.094 square kilometers. This city is bounded by Binh Duong province in the north, Tay Ninh province in the southern, Dong Nai province in the east and northeast, Ba Ria - Vung Tau province in the southeast and Long An and Tien Giang provinces in the west and southwest. Because of the large port system (Saigon Port) and airport (Tan Son Nhat International Airport) in Vietnam, Ho Chi Minh City becomes a transport hub of the southern region and a gateway to the world¹¹⁶ (See Figure 4.6).

Ho Chi Minh City is now the most populated city with the approximate population of 8.224.000 in 2015 people (HCM-City-Statistical-Office, 2015, p. 17). Being a modern city with lots of office skyscrapers, new residence areas and industrial zones, Ho Chi Minh City is a most dynamic city in Vietnam. Ho Chi Minh City belongs to a transitional region between the southeastern and Mekong Delta regions. In general, the topography of HCM City is not complicated but diverse and therefore has good conditions for multi-faceted development. Particularly, Ho Chi Minh City People's Committee issued the policies attracting the domestic and foreign investors (HCM-City-Statistical-Office, 2015, p. 4) (see Figure 4.7).

¹¹⁶ See Natural Conditions of Ho Chi Minh city. Retrieved on September 01, 2016 from: <http://www.eng.hochiminhcity.gov.vn/aboutthecity/Lists/Posts/AllPosts.aspx?CategoryId=14>

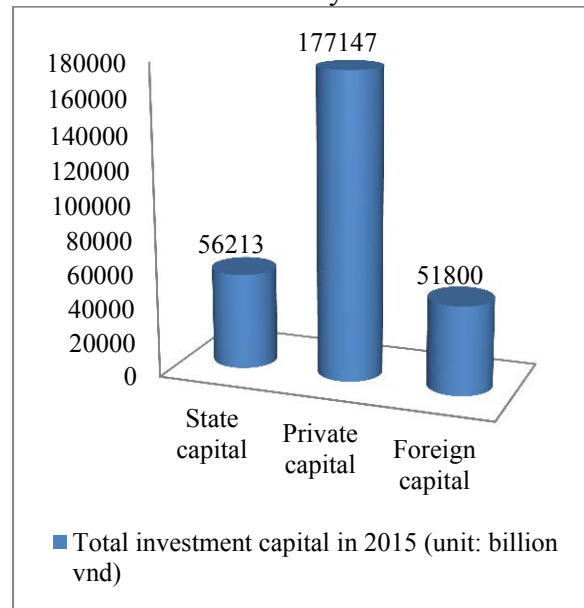
Figure 4.6: Ho Chi Minh City Map



Source:

<http://investinvietnam.vn/report/parent-region/86/139/Ho-Chi-Minh-City.aspx>. Retrieved date 01/9/2016

Figure 4.7: Total investment capital at Ho Chi Minh City in 2015



Source: Report of socio-economic status in 2015 of Statistical-Office in Ho Chi Minh City

Regarding the economy, in 2015, the GRDP of Ho Chi Minh City (Gross Regional Domestic Product) was 957.358 billion VND (about 43,01billion USD) (HCM-City-Statistical-Office, 2015, p. 2). By comparison, in 2015, in the Report of socio-economic status in 2015 of Statistical-Office in Ha Noi (Hanoi-Statistical-Office, 2015, p. 18), the GRDP of Ha Noi capital was 382200 billion VND (about 17,17billion USD)¹¹⁷ and the Vietnam’s GDP was 194 billion USD¹¹⁸. The industrial development is still the cornerstone of Ho Chi Minh City. For example, in the first six months of 2016, the index of industrial development increased 3.2% in comparison with the last same period, especially production

¹¹⁷ See Report on the socio-economic status in Ha Noi. Retrieved on September 01, 2016 from: <http://thongkeha noi.gov.vn/a/bao-cao-tinh-hinh-kinh-te-xa-hoi-thang-12-1450756743-5678ca87cad1e/> (Vietnamese version only)

¹¹⁸ See Economic Indicators of Vietnam. Retrieved on September 01, 2016 from: <http://www.tradingeconomics.com/vietnam/indicators>

of motor vehicle 11.4%, metal 28.1% and paper 11.7%. Those sectors have taken heavy impacts on the environment.

In line with economic growth of Ho Chi Minh City, citizens have to face with the environmental degradation and pollution. Thus, in the Report of social, economic, cultural, security and defense status for the first months of 2016, Ho Chi Minh City People's Committee shows that governmental agencies continue to conduct the Action Program and the Implementation Plan of Pollution Reduction Program for the period of 2016-2020 (HCM-City-People's-Committee, 2016, p. 17). Particularly, environmental agencies appraised and approved sixty EIA reports of the projects located in Ho Chi Minh City in the first six months of 2016 (HCM-City-People's-Committee, 2016, p. 18). That is a big number in the biggest city in Vietnam. Projects located in Ho Chi Minh City are more diverse scale than those projects in another city; as a result, implementation of EIA process can represent the implementation of other places in Vietnam.

4.4.2. Research methods and techniques

As mentioned in Chapter 1, it is hypothesized that the public awareness and living conditions would influence the process of public participation in EIA process in Vietnam. It is also hypothesized that the two-way flow of information in EIA process would determine the implementation of public participation in EIA process in Vietnam. To find the reasons for these hypotheses, apart from reviewing EIA reports, interviews will be conducted with some questions that were written in the way that conveys the methods and content of study (Creswell, 2014, p. 194). The research questions for my interviews are as follows:

- *How do qualitative interviews serve to contribute to a more understanding of Vietnamese legal system on public participation in EIA as well as their implementation in reality?*
- *Which the factors influence the implementation of public participation in Vietnam's*

EIA process?

According to Kothari (2004, p. 7), *research techniques* refer to the behavior and instruments we use in performing research operations such as making observations, recording data, techniques of processing data and the like. *Research methods* refer to the behavior and instruments used in selecting and constructing research technique”. In my study, research designs, research methods and techniques shall be used in the following chart:

Table 4.5: Research designs, methods and techniques

<i>Research designs</i> (Creswell, 2014, pp. 41-42)	<i>Research methods</i> (Kothari, 2004, p. 7)	<i>Research techniques</i> (Kothari, 2004, p. 7)	<i>Purposes</i> (Bricki & Green, 2007, p. 13)
Qualitative Designs - Exploratory case study (Yin, 2013, pp. 6-8)	- In-depth interviews - Open-ended questions - Text analysis - Interpretation	- Using note taking - Using audiotape and transcribing for analysis	- Reproducible - Systematic - Credible - Transparent

According to Creswell (2014, p. 42), case studies are a design of inquiry found in many fields, especially evaluation, in which the researcher develops an in-depth analysis of a case, often a program, event, activity, process, or one or more individuals. Yin (2013, p. 18) points out that a case study is an empirical inquiry that investigates a contemporary phenomenon in depth and within its real-life context, especially when the boundaries between phenomenon and context are not clear evident. Moreover, Kothari (2004, p. 113) emphasizes that the case study method is a form of qualitative analysis. Thus, to design *the case study protocol*” (Yin, 2013, pp. 79-83), it is helpful to use the exploratory case study. According to Yin (2013, p. 20), the exploratory case study may be used to explore those situations in which the intervention being evaluated has no clear, single set of outcomes. Moreover, Baskarada (2014, pp. 2-3) points out that *exploratory case studies may be undertaken prior to the*

definition of the research questions and hypotheses and exploratory ... [i]s aimed at generating hypotheses for later investigation rather than for illustrating”.

However, a major challenge in the case study is to connect the primary research or re-analysis with the broader theoretical themes and empirical concerns of the existing literature¹¹⁹. Thus, it is necessary to formulate causal relationships for the similar cases. This also makes the validity of the research findings and quality of my volume enhanced. Nevertheless, the research findings have been presented to and discussed with environmentalists and EIA experts at the workshop held by School of Laws, University of Economics Ho Chi Minh City on September 15, 2016. The feedback obtained from these experts and researchers helped improve my research findings.

As mentioned in section 4 of Chapter 1, to evaluate the current situation of public participation in EIA process in Vietnam, qualitative interviews have been conducted from May 2016 to September 2016 in Ho Chi Minh City, Vietnam. To collect data, the personal interview has been employed in my study. Thus, in-depth interviews¹²⁰ (sometimes refer to *unstructured interviews*¹²¹) with stakeholders are strictly conducted. Unstructured interview happens to be the central technique of collecting information in case of exploratory research studies (Kothari, 2004, p. 98). Being a major type of unstructured interviews as well as being a technique in the development of hypotheses, the focused interview has been employed. The *focused interview* is meant to focus attention on the given experience of the respondent and its effects. With this technique, the interviewer has the freedom to decide the manner and sequence in which the questions would be asked and has also the freedom to explore reasons

¹¹⁹ Professor Chris Winch, Dr Malcolm Todd, Ian Baker, Dr Jenny Blain, Dr Karen Smith, *Methodologies*, Retrieved from <http://www.socscidiss.bham.ac.uk/methodologies.html> date 06/11/2016

¹²⁰ In-depth interview is used to explore in detail the participants' own perceptions and opinions (Bricki & Green, 2007, p. 11).

¹²¹ The *unstructured interviews* are characterized by a flexibility of approach to questioning. Unstructured interviews do not follow a system of pre-determined questions and standardized techniques of recording information. In a non-structured interview, the interviewer is allowed much greater freedom to ask, in case of need, supplementary questions or at times he may omit certain questions if the situation so requires (Kothari, 2004, p. 98).

and motives. The main task of the interviewer in the case of the focused interview is to confine the respondent to a discussion of issues with which interviewer seeks conversance (Kothari, 2004, p. 98). According to Kothari (2004, pp. 98-99), the use of personal interview method in general way would have the major advantages and weaknesses. The chief merits of the interview method are as follows: (i) more in-depth information, (ii) easy obtainment of personal information, (iii) restriction of the spontaneous reactions. However, there are also certain weaknesses of the interview method, such as: (i) a very expensive and time-consuming method, (ii) the possibility of the bias of interviewer as well as that of the respondent.

Furthermore, answers of the interviewees play a key role for the quality of volume. Thus, the selection of interviewees has been based on some criteria. Interviewees belong to different groups, including hearing participants (EIA actors) and non-participants, namely those concerned environmental officials of the environmental agencies, projects proponents, EIA consultants, and citizens. With non-participants and citizens, those interviews use random sampling technique. With the others, interviews use purposive sampling. All of interviewees are also asked to truthfully talk about the way of information flow as well as the factors influencing the implementation of public participation in EIA process in Viet Nam, namely in the case of Ho Chi Minh City. In addition, one of the important criteria is the willingness and cooperation of all interviewees. Hence, interviewees freely choose the time and place for interviews conducted. Finally, a list of interviewees is completely collected. Because of differences in participation in EIA process, all interviewees are divided into three groups:

(1) Group 1: Environmental officials

The environmental officials appraise and approve the EIA report. Thus, they have depth understanding of all elements of EIA process, from theory to regulations and

practice, including the issues of public participation.

(2) Group 2: Proponent and consultants

The proponent is the owner of the project subject to EIA procedure. Thus, the proponent has experience with EIA in practice.

Consultants were hired by the proponent to carry out the EIA and take statutory responsibility for the conclusive result after conducting such assessment. They have to contact with environmental agencies and the public. Thus, they could provide the practical application of public participation in EIA in Viet Nam. Especially, in Vietnam, EIA experts are often consultants as well as researchers, professors teaching/ training on the subject of EIA process. Hence, they could give value and constructive analysis on theory and practice of the EIA system.

(3) Group 2: Citizens:

Citizens are individuals who may involve in public participation in EIA process or not. Thus, they can be affected directly or indirectly by projects.

With the reasons mentioned above, the personal interviews were strictly conducted with 33 interviewees from May 2016 to September 2016. The interviews last between 15 minutes and 75 minutes and are carefully recorded if interviewees allow. Based on interviewees' answers, the evaluation of public participation in EIA process in practice and some conclusions have been drawn.

Table 4.6: Number of interviewees

Interviewees	
Environmental officials	10
Proponent and consultants/ EIA experts	7
Citizens	16
Total	33

However, there are some limitations of research methods and techniques in my study. *Firstly*, it is difficult to contact the interviewees. Environmental officials often tend to refuse the interview because they need the permission from the higher officials and/or their leaders. Thus, to avoid the inconvenient situation for their promotion in the future, they do not cooperate with me in my research although I try to explain the purposes of my study. There is no interview with proponent because they said that their EIA report is prepared by consultants. Consultants are often experts and professors who do research and conduct EIA process, so they hardly have time to make the interview. Additionally, it is very difficult to identify the citizens (i.e. local people). Concerning the participants in the public meeting, their addresses, sometimes their name, have not been displayed in the attendance sheets. With the rest, random sampling technique is used; as a result, many people do not know the concept of EIA and public participation in EIA process. It is concluded that interviews should be conducted together with the national or international research projects. *Secondly*, non-participants interviewees have not involved in the EIA process and/or public meeting yet. As a result, they have not known the procedure of public participation as well as the right to participate in EIA process. Therefore, evaluation of public participation in EIA process in practice is only based on the answers of participants. *Thirdly*, many interviewees have not seen the EIA report, the draft and the final, as well as the brief EIA report. Thus, interviewees, who are citizens, are unable to have a chance to give opinions as well as comments on the quality of EIA report. *Fourthly*, the main public concern is to earn money for their livings; as a result, they do not concern about the environmental policies and laws or regulations of the state. It can be said that the change of legal provisions on public participation in EIA process has not affected their lives. In addition, they have not also received the information about public participation in EIA process and its change in legal

provisions from the responsible agencies. In general, there are the public neglect and the governmental authorities' irresponsibility about public participation in EIA process.

4.4.3. Case studies

This study has been carried out in conjunction with analysis of EIA reports (namely regarding the Chapter of public participation in EIA process only) of projects located in urban and rural in Ho Chi Minh city, Viet Nam. Furthermore, there are following criteria for identifying suitable cases (Nadeem & Fischer, 2011, p. 37):

- Projects should be of national interest, attracting the attention of a wide public;
- Projects should be affecting people belonging to diverse socio-economic backgrounds.

Based on the situation of Ho Chi Minh City, seven EIA reports of seven projects were finally chosen. The EIA reports of case studies were conducted in recent five years, in which there were four projects before January 01, 2015 (the date of enforcement of LEP 2014) and the rest cases after January 01, 2015. A brief introduction to the case studies is presented below:

- Before January 01, 2015

(i) *Case study 1: Establishing of an industrial estate for industrial zone*

An Ha industrial zone construction investment and infrastructure business is located in the South West of Pham Van Hai Commune, Binh Chanh District, Ho Chi Minh City and next to Long An Province. This project covers 159.06ha in the total area encompassing an area of 123.51ha for industrial manufacture, an area of 8.51ha for high voltage corridor area and 27.04ha for the residential area. This site is near An Ha industrial zone residence area and the Hanh Phuc Industrial zone (at Long An province) (see figure 4.9). One of the important advantages of this project is the convenient transportation, namely 23km from Tan Son Nhat international airport, 23km from the center of Ho Chi Minh City, 46km from Cat Lai

container port and 12km from the highway.

The public consultation was conducted at Pham Van Hai commune on August 15, 2011. Its EIA report was approved in May 2012.

Figure 4.8: Location of An Ha Industrial Zone in Ho Chi Minh City



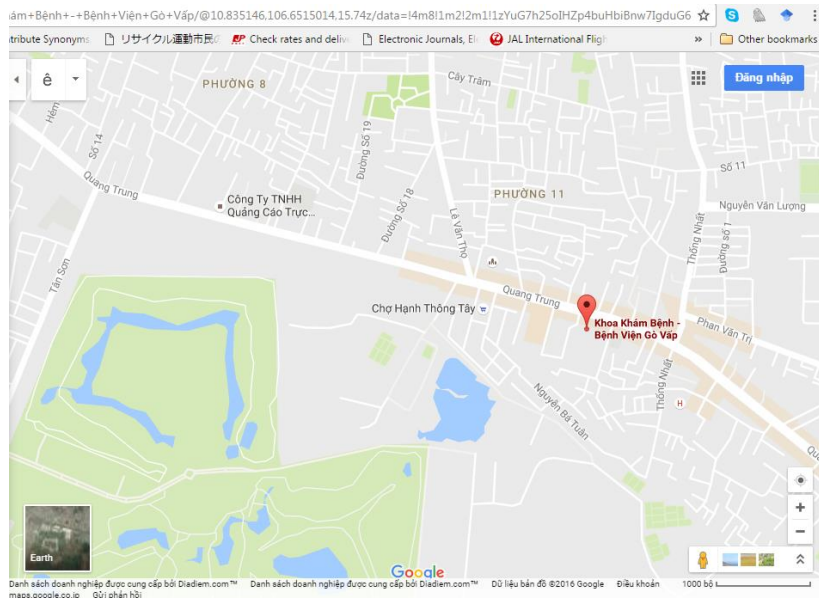
Source: <http://anha.vn/en/project/an-ha-industrial-zone.html>

(ii) *Case study 2: Construction of a hospital*

A project of construction of a hospital is located at 304 Quang Trung street, ward 11, Go Vap district, Ho Chi Minh City (called as Go Vap hospital). This project covers 14.030 m² in total area and its capacity will supply 300 patient beds for inpatient treatment and other departments for outpatient treatment. This hospital was started in 2012 with an approximate investment of 472.594.852.000 VND (about 21.214.484 USD) from city's budget. Now, this project was almost completed its construction and will be soon operated in practice.

The public consultation was conducted at ward 11, Go Vap district 26 August 2012. Its EIA report was approved in December 2012, after four months from the date of the public meeting held.

Figure 4.9: Location of Go Vap hospital



Source: <https://www.google.com/maps>

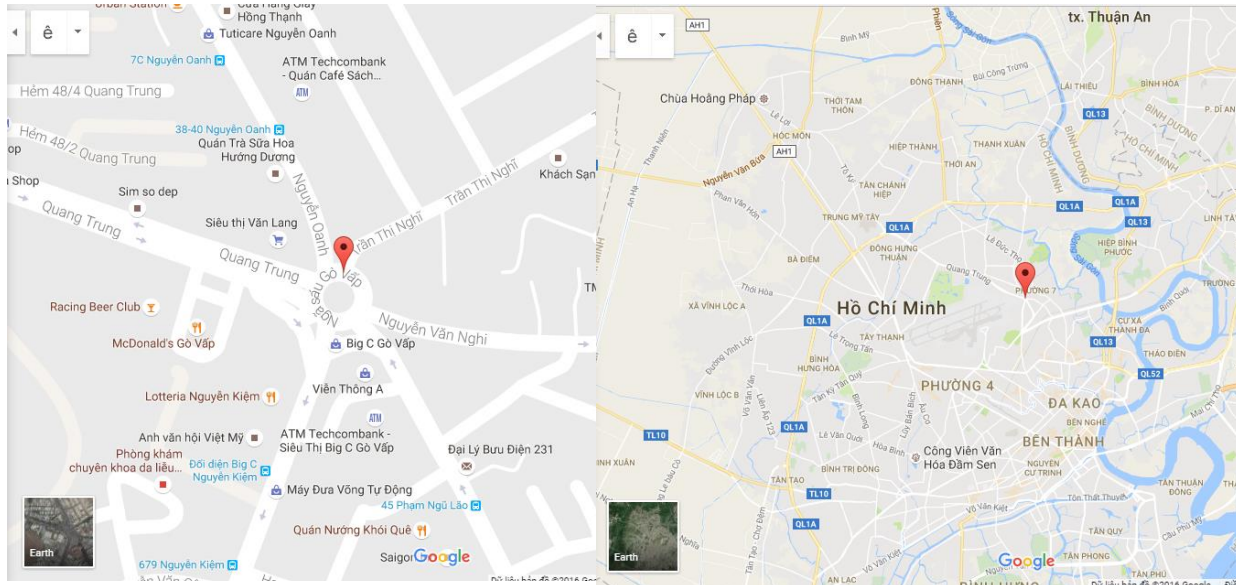
(iii) *Case study 3: Construction of an overpass bridge*

A project of construction of an overpass bridge at Go Vap traffic roundabout is located at the center of Go Vap district, Ho Chi Minh City. This site is the traffic junction of six important roads, namely Quang Trung street, Nguyen Oanh street, Nguyen Kiem street, Pham Ngu Lao street, Nguyen Van Nghi street and Tran Thi Nghi street (see Figure 4.10).

This overpass bridge with a way of 240.7m from Nguyen Oanh street to Nguyen Kiem street and the other way of 280.7m from Pham Ngu Lao street to Nguyen Oanh street and the width ranging from 6m to 11.75m is planned with the total investment capital of VND406billion from September 6, 2016 to February 22, 2017. This project will directly affect the people residing at wards 3, 7, 10 in Go Vap district. After holding the public meeting at three wards in June 2013, its EIA report was approved in September 2013.

However, the implementation of this project made the serious traffic jams in the first day of construction.

Figure 4.10: Location of overpass bridge at Go Vap traffic roundabout



Source: <https://www.google.com/maps>

(iv) *Case study 4: Construction of a residential area*

The project of Cityland Z751 (Zone A) residential area is located at ward 7, Go Vap District, Ho Chi Minh City (see Figure 4.12). This project covered 76.629 m² in the total area encompassing houses (about 40.652,94m²), commercial center (about 7.662,9m²), kindergarten (about 919,55m²) and other structures. Total capital of investment of this project is about 739.009.685.974VND (about 33.173.677USD) from the Cityland Real Estate Investment Co., Ltd.

Public participation in EIA process of this project was conducted in November 2013. Its EIA report was approved in January 2014, after three months from the date of the public meeting held.

Figure 4.11: Location of Cityland Z751 (Zone A) residential area



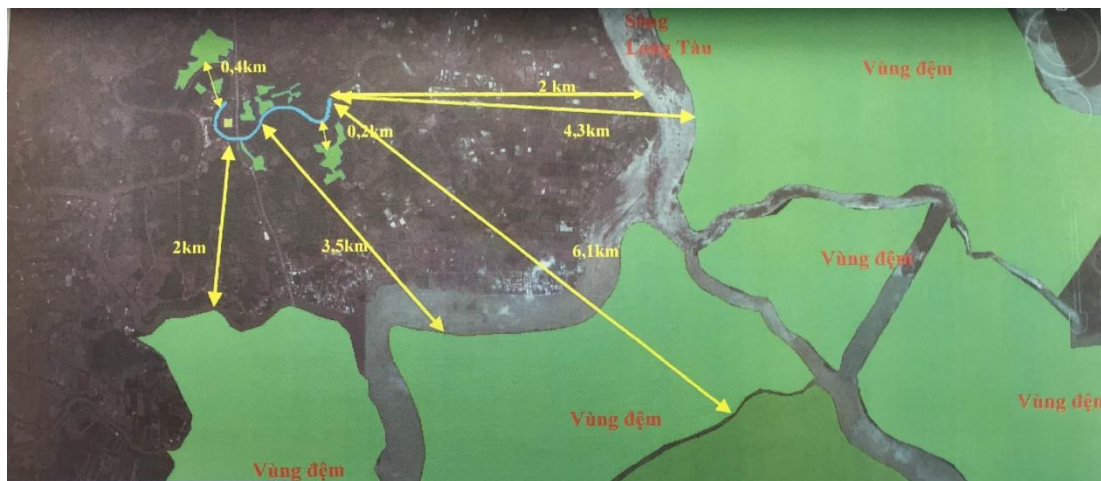
Source: <http://www.citylandcenterhills.vn/vn/cityland-center-hills/vi-tri-16>

- After January 01, 2015

(v) *Case study 5: Project for dredging of navigable canal*

I chose the project of maintenance, dredging at the canal La and Tac Tay Den at Can Gio district, Ho Chi Minh City. This scale is about 68.508,73 m³ with the length of 2.135,31 km (see Figure 4.13). Total estimated cost of this project is about 9.108.000.000 VND (about 408.852 USD). Public participation in EIA process of this project was conducted in June 2016. Its EIA report was approved in July 2016, after one month from the date of the public meeting held.

Figure 4.12: Location of project of maintenance, dredging at the canal La and Tac Tay Den

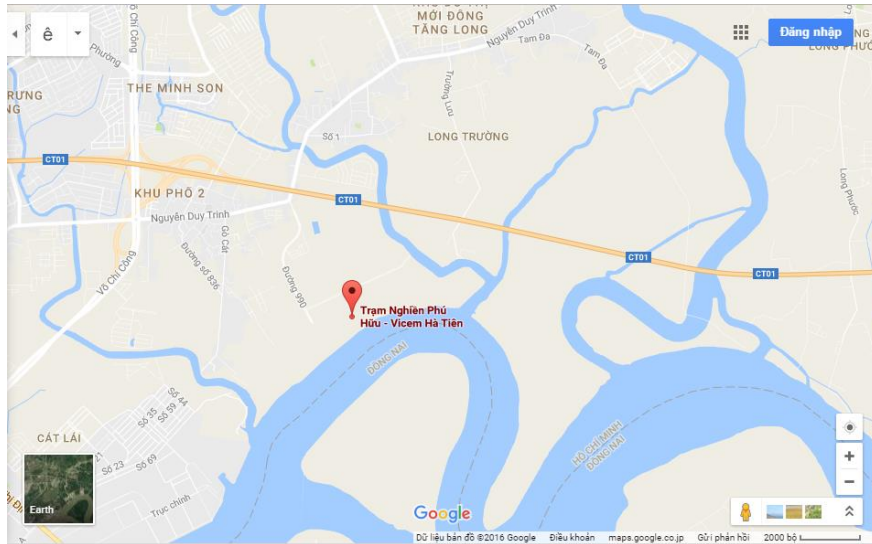


Source: EIA report of project of maintenance, dredging at the canal La and Tac Tay Den, page 12

(vi) *Case study 6:* project for renovation and increasing capacity of a cement factory

A project for renovation and increasing capacity of Ha Tien 1 cement factory is located in District 9, Ho Chi Minh City (see figure 4.14). The project's site is about 20km from the center of Ho Chi Minh City, near Dong Nai river and Cat Lai industrial park. Other organizations are also located within a 2 km radius of the cement factory, such as the People's Committee of Phu Huu ward, Phu Huu elementary school, Long Thanh-Dau Giay highway, companies and restaurants (see Figure 4.14). Public participation in EIA process of this project was conducted in November 2015. Its EIA report was approved in August 2016 after nine months from the date of the public meeting held.

Figure 4.13: Location of Ha Tien 1 cement factory



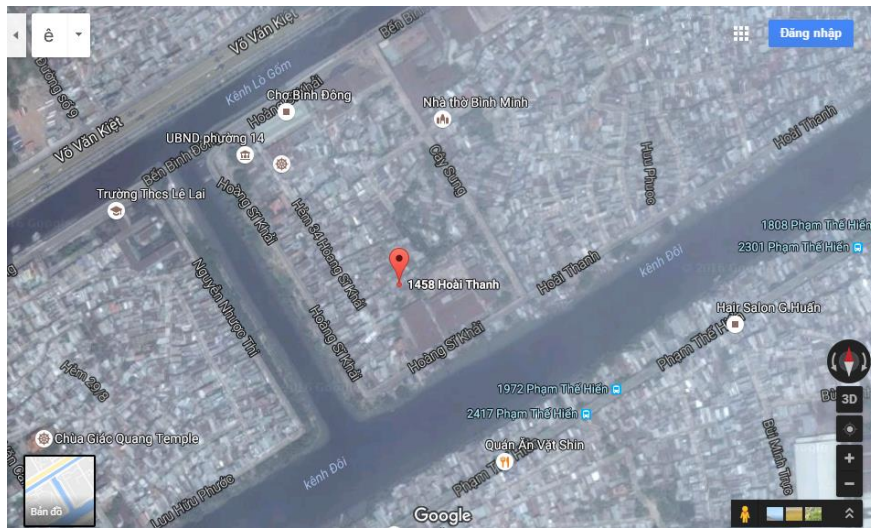
Source: <https://www.google.com/maps>

(vii) *Case study 7: construction of resettlement building*

Construction of resettlement building is located at 1458 Hoai Thanh, ward 14, District 8, Ho Chi Minh City. This project covers 8.490,7 m² in the total area encompassing 588 apartments. Other organizations are also located within a 2 km radius of this project, such as Hong Duc elementary school, Binh Dong market, Cay Sung church, Lam Quang pagoda, Binh Dong wheat flour company and Nhi Thien Duong (see Figure 4.15). The total cost of this project is about 625 billion VND (about 28 million USD). Public participation in EIA process of this project was conducted in May 2016. Its EIA report was approved in August 2016 after three months from the date of the public meeting held.

My concern in those cases mentioned above is the analysis of the implementation of public participation in EIA process at the biggest city in Vietnam from the date of enforcement of LEP 2005 to current time.

Figure 4.14: Location of resettlement building



Source: <https://www.google.com/maps/>

4.4.4. Evaluation framework for implementation of public participation in EIA process in Vietnam

To compile the questions for interviews, it is very necessary to review the public participation in EIA process, especially the framework for evaluation of implementation of public participation in EIA in other countries, such as: China (Zhang et al., 2012), Indonesia (Purnama, 2003), Pakistan (Nadeem & Fischer, 2011), Malaysia (Marzuki, 2009), Chile (Lostarnau et al., 2011), Italia (Del Furia & Wallace-Jones, 2000).

With efforts to introduce an adequate evaluation criteria for public participation, Palerm (2000) gives the best-practice public participation including two components (legal provisions and actors' attitudes and capacities) depending on elements of the country-specific context. In addition, Nadeem and Fischer (2011, pp. 38-39) identifies the framework for the evaluation of public participation in EIA in Pakistan. Following of these lines of thinking, I analyze the implementation of public participation in EIA process in Vietnam within some key criteria as follows:

- (1) Legal requirements

Following the first component of Palerm (2000, p. 589), I review the legal provisions on public participation in EIA process in order to identify the relevant questions. The questions are designed to define whether this participation is conducted rigorously or not. There are the questions relating to the stage of public participation in EIA process, the procedure of public consultation in EIA process, the disclosure of EIA report.

(2) Disclosure of social and environmental information

Social and environmental information supply plays the key role in improving the quality of public consultation. This information supply relates to the methods used for informing and ways used for inviting the affected people to participate the public meeting. Because of lacking legal provisions, proponent/ consultant and responsible agencies implemented these methods depending on their own decision. According to Nadeem and Fischer (2011, pp. 38-39), access to information depends on the place where the public are living because the population in developing countries still lives in rural areas leading to the limitation on access to information. Similarly, Vietnam is not an exception. In addition, transparency of EIA process adhering on the right to access information is a key element of information supply. Hence, access to information has been taken into account in the EIA process.

Moreover, the contents and quality of information always rely on the mandatory requirements and the actors' attitudes and capacities. Because of depending on the role of actor – active or passive (Palerm, 2000, p. 590), the actors will behave their own ways for their own interests. Thus, the questions relating to disclosure of social and environmental information are distinctively designed for each actor to achieve the objectives of my research.

(3) Procedure for public consultation

According to the current EIA legislation in Vietnam, public participation is only conducted in the EIA preparation stage. Thus, based on the best-practice guidelines for this phase of Palerm (2000, p. 593), I analyze some following elements: time and venue; public

meeting; consultations; the content of EIA report (with regard to public participation only). For details, time and venue must be accessible for the public residing in both urban and rural areas. Time and venue are the important elements to ensure adequate participation of all people, even working days and/or in remote areas (Nadeem & Fischer, 2011). Continuously, the public meeting is not the good way to communicate among proponent/ consultant, responsible agencies and the public, except in Vietnam. Moreover, the quality of public meeting much depends on the actors' attitudes and capacities (Palerm, 2000, p. 592). Hence, it is necessary to facilitate the public participate in the meeting in order to express their opinions and reach the consensus among the stakeholders. I do therefore analyze the issues including the contents of the public meeting, rights and obligations of participants, the level of degree of freedom to express opinions and explain the EIA report and effort to resolve the conflicts among opposing interested groups. Regarding consultation, its scope is very important in order to identify the people who will be consulted and the ways to consult. The contents of consultation must be understandable and valuable in line with the contents of EIA report, such as the identification of potential impacts and the proposal of mitigation measures. Finally, consideration of the content of public participation in EIA report will prove that the public participation can be reflected accurately or not. Particularly, how the public concerns are considered in EIA report is the key element for the implementation of public participation (Nadeem & Fischer, 2011, p. 39). Thus, I analyze how the public concerns (related to proposed project's impacts on society, economic environment and human being as well as the proposal of mitigation measures) showed on the EIA report.

Based on the above framework and the difference in awareness of public participation in EIA process, interviews are unlike questions which are answered by environmental officials, consultants, proponents, and citizens (see Appendix 3). After conducting interviews, the evaluation of the implementation of public participation in EIA process in Vietnam is

carefully analyzed. From this evaluation, conclusions related the meaning, scope and objectives of public participation in EIA process as well as factors influencing the implementation of public participation in EIA process in Vietnam are withdrawn.

4.4.5. An analysis of implementation of public participation in EIA process in reality

To achieve the second objective of this research, the key components of framework are analyzed as follows:

4.4.5.1. Legal requirements for implementation of public participation

According to Article 25 LEP 2014, the decision on approving the EIA report shall be considered as the ground for the competent authorities to make the decision on the investment policy of the project. Thus, 113 projects subject to EIA report in the Decree No.18/2015/ND-CP cannot be started without the approval of EIA report. One of the reasons for refusing of EIA report is the lack of content of public participation (Vietnam's legal document referred as "public consultation") because public participation is a compulsory stage in EIA process in Vietnam.

Public participation is always a Chapter in EIA report of all cases in conjunction with the Appendices related to the procedure. However, the legal provisions for public participation were remarkably changed in LEP 2014 comparing with LEP 2005. Hence, before December 31, 2014, according to Decree 29/2011/ND-CP, the public meeting on the subject of a proposed project might be held if considered necessary by the commune-level People's Committee. In all cases, the proponent just received the responses of the commune-level People's Committee and Vietnam Fatherland Front to the project owner's written request for consultation together with brief documents on the project's major investment items, environmental issues and environmental protection solutions.

In this study, case studies' EIA reports established before December 31, 2014, there were two written responses of the commune-level People's Committee and Vietnam Fatherland

Front to the written requests for opinions without the public meeting. Nevertheless, although there was no minute of public meeting attached to EIA report, the responses of People's Committee of commune level showed that the public meeting was already held (see EIA reports of case study 3). Four Interviewees (No. 18, 20, 21, 28) stated that land of affected people (who living in project's site) would be repossessed for construction of projects; as a result, those people would have the right to know information of projects as well as its impacts on society, economic and environment. Consequently, it was important to convene the public meeting on the subject of projects.

By contrast with the provisions for public participation in LEP 2005, apart from the responses of the People's Committee, the public meeting must be held by the project owner and the People's Committee of the commune where the project is carried out. Participants include representatives of Vietnamese Fatherland Front of communes, socio-political organizations, socio-professional organizations, neighborhoods, villages convened by the People's Committee of the commune. In accordance with the Decree 18/2015/ND-CP, the forms used in the procedure of public participation in EIA process were prescribed in Appendices in Circular 27/2015/TT-BTNMT. Hence, case studies' EIA reports established after December 31, 2014, the meeting minutes of consultation with the community under the direct impacts of the project as well as the attendance sheet with participants were attached to the EIA report.

Theoretically, the legal requirements of public participation in EIA process have been fulfilled. Interviewees No.12 and 21 said that some projects were already completed the construction and are now in operating without any letters of claim or/and any appeal to the court. However, the others are being constructed. Interviewees No.17, 18 and 20 said that there are some letters of claim about the project of construction of an overpass bridge at Go Vap traffic roundabout started on September 8, 2016, but relating to issues of acquisition of

land and compensation for their land loss and other structures. After reviewing the EIA reports of all cases and interviews, it can be concluded that affected people have had no comments and complaints relating environmental impacts of all projects and they completely agreed with the responsible agencies and proponent about the implementation of proposed projects.

Table 4.7: Public consultation in the cases' EIA reports

	Responses of People's committee and Vietnam Fatherland Front	Public meeting	
		EIA report	Reality
Case study 1	Yes	No	No
Case study 2	Yes	No	No
Case study 3	Yes	No	Yes
Case study 4	Yes	No	No
Case study 5	Yes	Yes	Yes
Case study 6	Yes	Yes	Yes
Case study 7	Yes	Yes	Yes

4.4.5.2. Analysis of access and quality of information

The consultants said that they sent the summary of EIA report (according to LEP 2005) or EIA report (according to LEP 2014) for submitting written comments to the People's Committee and the Vietnam Fatherland Front of communes, not to the affected people. Two these organizations kept it as a secret. Interviews showed that all environmental officials received EIA report for submitting written comments, citizens did not receive it. All interviewees who were citizens said that they did not even know about EIA report. If citizens attended the public meeting, they would be just informed about the proposed project without EIA report or its summary leading to the weak quality of their opinions. The environmental

officials stated that they had to carefully read the summary of EIA reports in order to draft the main information for discussion in the public meeting. However, the summary of EIA report did not obviously identify and predict the potential impacts and mitigation measures. Furthermore, environmental officials and consultants agreed that the language of EIA report included the technical terms, as a result it was very difficult to understand. Hence, this was extremely challenging for environmental officials at the People's Committee of communes to interpret the contents of EIA report for the public. Although the proponent/ consultant attended to explain more detail on the EIA report in the public meeting, citizens were still vague about the supplied information, especially the information on potential environmental impacts. Especially, after the final decision, the citizens and the People's Committee of communes did not also receive the final EIA report¹²². Hence, interviewees suggested that the EIA report should be disclosed at the public places, such as the bulletin of the People's Committee of commune level and the public house of local community, as a result, all people would access the full content of EIA report easily. Interviewee No.12 stated that it would be a mistake if the public has no chance to access to the EIA report. After answering my interview questions, he said that he would ask to publicly post the EIA report on the noticeboard at the office of People's Committee in order that all local people could access to the EIA report.

In addition, because of the low standard of living, citizens often cared the socio-economic impacts of the proposed project. To grasp citizens' concerns, the People's Committee of commune level and the proponent/ consultant focused on these impacts, such as loss of houses/ other structures, compensation for land loss and resettlement. They often tend to ignore and did not supply citizens with the other information about potential impacts on the environment. Generally, environmental officials said that the information supply in the public

¹²² See Article 9 of Circular 27/2015/TT-BTNMT, *supra* note 110. Particularly, the EIA report assessment authority shall send the decision on the EIA report approval and EIA report to the project owner and relevant agencies, such as MONRE, the People's Committee of provinces. The People's Committee of districts, communes just receive the decision on the EIA report approval, without the EIA report.

meeting was not enough for citizens, and the quality of information was sometimes poor, leading to disbelief in the supplied information.

All interviewees who were EIA experts agreed that the procedure of information supply looked like a top-down process. The flow of information was one way from the People's Committee of commune level and proponent/ consultant to the public. This was affected by awareness and attitude of stakeholders. According to Interviewees No.3 and 4, in the past, Vietnamese people were ruled by the colonialist regime. Thus, they got used to complying with orders. If the People's Committee of commune level continued to disseminate the information of proposed project, like a state policy, the public would have the attitude of acceptance without repudiation. This will affect the quality of opinions for EIA reports. All interviewees who were experts/ consultants suggested that independent organizations (such as NGOs) would take the responsibility for information dissemination of proposed project; as a result, the public would freely express their comments and complaints.

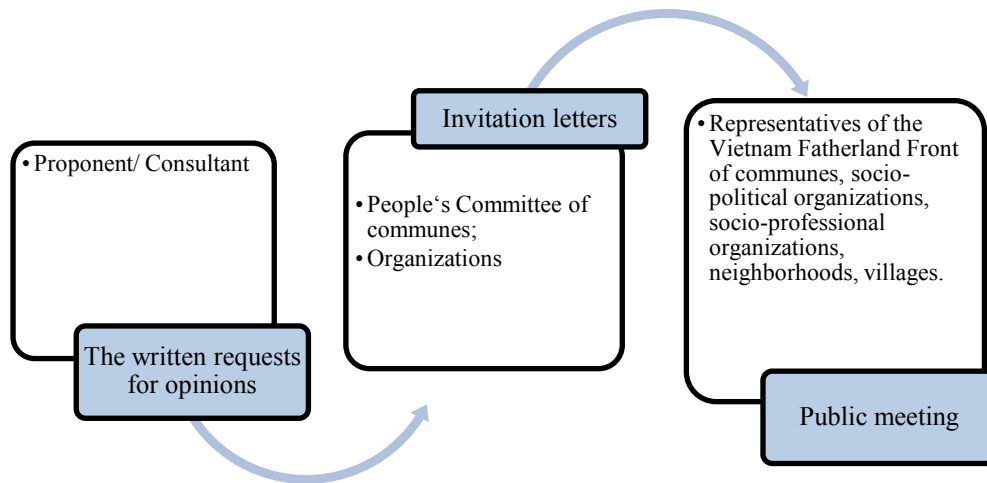
4.4.5.3. Evaluation of the methods used for notification

The methods used for notification, i.e. inviting stakeholders, were analyzed to evaluate its effectiveness. The contents analyzed were the way of invitation, the date of notification, the people who will be invited, and the language used in the notification, the contents of notification (time, date, venue of the meeting and the project's description as well as its environmental impacts).

Firstly, this is the way of invitation. As I mentioned above that public meeting was not mandatorily held according to LEP 2005, by contrast, it is the compulsory procedure under LEP 2014. However, in practice, most of the interviewees (62.5% of interviewees) living in the projects' site stated that they were directly invited to the public meetings on the subject of acquisition of land and compensation, not for responding to request for consultation in EIA process by the People's Committee. They did just know about the public meeting through

invitation letters. 37.5% of interviewees living in the projects' site did not know any information about the proposed projects, even though in newspapers and/or on television (local channel), until the construction of those projects was started in practice. Moreover, review of the EIA reports revealed that the written request for opinions was just sent to People's Committee and Vietnam Fatherland Front of communes where the project is carried out by the proponent/ consultant. After that, People's Committee of communes send the invitation letters to representatives of the Vietnamese Fatherland Front of communes, socio-political organizations, socio-professional organizations, neighborhoods, villages (normally, a captain who is a leader of a group of people) (see Figure 4.15). After receiving the invitation letter, representative of hamlet will send it to each household in the hamlet. If citizens did not receive the invitation letters for the public meeting, they would miss hearing about the proposed projects. Sometimes, citizens received the invitation but did not come to the meeting; they did not know anything about the proposed projects. Consequently, the citizens just knew about the proposed project through neighbors/friends or the beginning of construction. Interviewee No.5 suggested that it is necessary to inform about the public meeting on bulletin at the office of the People's Committee of communes and through social media, such as local radio system, local television to achieve the effective methods of inviting stakeholders to participate the public meeting.

Figure 4.15: Procedure for inviting stakeholders



Source: LEP 2014

Secondly, this is the date of notification. Following LEP 2005 and Decree 29/2011/ND-CP, when necessary, the public meeting may be convened within ten (10) working days after receiving the project owner's written request for consultation; as a result, date of notification would be sent within the same time above. However, unlike the provisions above, based on LEP 2014 and other legal documents relating to the public meeting in EIA process, the date of notification of public meeting as well as time for the meeting were not mentioned in any legal provisions. Therefore, after receiving the invitation letter from People's Committee of communes, when would give it to citizens shall depend on the behavior and responsibility of the representatives of each hamlet. Citizens just received the invitation letter without any documents within two to seven days before the date of the meeting. There is no requirement of the date of notification; as a result, the notification could be made in insufficient time to allow stakeholders to prepare their opinions.

Thirdly, the contents of notification were displayed with the Vietnamese language and included the following issues: time, date, venue of the meeting and the name of proposed project without any project's description as well as its environmental impacts. Because of lacking the relevant documents, citizens do not know what would be discussed at the public

meeting. Especially, only one meeting is often held at each commune for some purposes, such as: (i) to inform the socio-economic status; (ii) to inform the new governmental policies; (iii) to inform the security situation of local area; (iv) to inform the new proposed project located in their area. Thus, citizens do not often prepare their opinions for consultation toward the specific EIA report of proposed project.

Finally, who will be invited participated in the public meeting? Before LEP 2014, the public meeting was not mandatory, so participants were not paid attention. Nonetheless, according to LEP 2014, Decree 18/2015/ND-CP and Circular 27/2015/TT-BTNMT, the public meeting shall be carried out in the form of community meeting co-chaired by the project owner and the People's Committee of communes where the project is carried out. The participants invited to the public meeting included the representatives of Vietnamese Fatherland Front of communes, socio-political organizations, socio-professional organizations, neighborhoods, villages. However, review of EIA reports of projects revealed that:

- (i) Regarding the projects without land acquisition: in the public meeting, there were representative of Vietnamese Fatherland Front of communes, socio-political organizations and neighborhoods without the attendance of local people, for instance, the projects which used abandoned land and/or proponent's land use right.
- (ii) Regarding the projects with land acquisition: apart from participants required by laws, participants included the affected people (i.e. the people whose land was recovered), for example, the projects covered the areas of housing land, agricultural land.

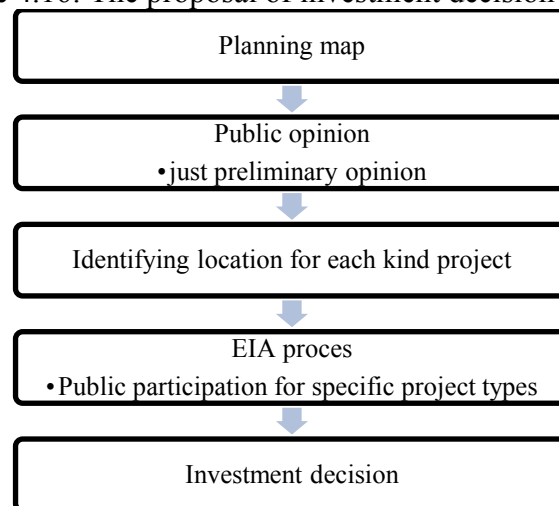
In short, there is a difference in applying the provisions for participation in the public meeting. Participants invited to participate in EIA process for consultation are different in each kind of projects. Also, Interviewees No.4, 10 mentioned that apart from projects that do

not require the consultation¹²³, it should be added projects which will use abandoned land and/or proponent's land use right. Those projects should not be conducted public consultation in order to save time and money for the proponent.

4.4.5.4. Time for consultation

Before January 01, 2015, an EIA report shall be made at the same time with the formulation of the investment project (i.e. feasibility study report). From LEP 2014 came into force, an EIA report must be performed in the preparatory stage of the project¹²⁴ and decision on verifying the EIA report shall serve as the ground for the competent authority's decision on the intention to invest in the projects or issuing and revising the permit¹²⁵. Hence, in theory, public consultation will be carried out before identifying the proposed project's location. However, in practice, public consultation for all projects from 2005 to current time was conducted after identifying the location. Interviewees No.8 and 12 said that it is necessary to change the process to build the development plan in order that the public could participate in the early stage after the planning map as follows (see Figure 4.17):

Figure 4.16: The proposal of investment decision process



¹²³ See supra note 17

¹²⁴ See Article 19 of LEP 2014, supra note 17

¹²⁵ See Article 25 of LEP 2014, supra note 17

Review of the cases' EIA reports showed that public just participated in EIA process after completing the preparation of EIA report. This means that there are hardly any possibilities for changing the project's location, but the public could give the opinion relating to alternatives and mitigation measures. However, the public opinions are not considered and displayed in the case's EIA reports. It is concluded that the time for consultation is too late to influence the contents of EIA report as well as investment policies. Based on interviews, all EIA experts and 40% of environmental officials suggested that the time for consultation should change, as the public should participate during EIA process from the first stage to the end stage. Those Interviewees hope that indigenous knowledge could help improve the quality of EIA report and environmental management. Regarding citizens' opinions, they do not know about how EIA process is in order to give the valuable ideas on time for consultation.

Interviewee No.2 gave an interesting information that after drafting an EIA report with some brief contents, to save time and money, the public consultation was sometimes conducted when the proponent/consultant make a survey about the proposed project's location. This means that the consultants have ignored the role of indigenous knowledge as well as public participation in EIA process. They just want to finish the procedure for public consultation without favoring the quality of public opinions. Thus, time for consultant has no meaning for those consultants. The public consultation is just considered as a formalistic procedure in EIA process and become a meaningless redundant step.

4.4.5.5. Public meeting venue

Accessibility of public meeting venue will determine the number of participants. However, public meeting venue is not provided in any legal documents. This venue completely depends on the decision of People's Committee of communes.

Review of the cases' EIA reports revealed that the public meeting venue was often at the office of People's Committee of commune level (see EIA report of case studies 5 and 6) or at the community hall (see EIA report of case study 7). For example, the project of case study 5 is located at two communes in the rural area. The distance between People's Committee of Binh Khanh commune and project site is far, about 7km; as a result, the number of participants was 19. However, the number of participants attended the public meeting held at the community hall of Rach La hamlet was 53 because the distance from community to venue is close within a 2 km radius. Moreover, Vietnamese people tend to have the fearful attitudes toward the state agencies when they go to the People's Committee - local government representing the power of state at the local. As a result, the public feel uncomfortable to speak up when the public meeting is held at the People's Committee of communes. Thus, it can be said that the inappropriate venue of a public meeting will be an obstacle to public participation (see Table 4.7).

Table 4.8: Public meeting venue and number of participants

	Office of People's Committee of commune level	Community hall
Case study 5	19	53
Case study 6	7	
Case study 7		17

Interviewees who are consultants said that the venue of the public meeting would be decided by the People's Committee. All interviewees, who are environmental agencies, stated that People's Committee of commune level would have chosen the appropriate venue of the public meeting, such as the office of People's Committee in case of in urban area, the public house of hamlet in case of in rural area (see Table 4.8). Also, those interviewees suggested that it should facilitate citizens (especially poor people) by giving financial support for transport and income lost. Citizens said that they were willing to participate without such support.

4.4.5.6. Public meeting

According to LEP 2005, the public meeting was not held mandatorily, so it was just convened in case study 3. Reviewing EIA report of case study 3, public meetings took place to cover the areas affected, namely affected wards 3, 7, 10. Following the LEP 2014, the public meeting is compulsory, as a result, the public meeting in EIA process was conducted in all case studies after January 01, 2015. In case study 5, because project site is at two communes, so there are two meetings displayed in EIA report: (i) the public meeting at Binh Khanh commune, (ii) the public meeting at An Thoi Dong commune. In case study 6, 7, there is only one meeting displayed in EIA report for one affected ward. In brief, enough meetings took place to cover the areas affected. Following the best-practice guidelines for the EIA process of Palerm (2000, p. 593), issues of public meeting are analyzed in table 4.9 as follows:

Table 4.9: Factors of public meeting in EIA report

<i>Criteria</i>	<i>Dissatisfied</i>	<i>Unsure</i>	<i>Satisfied</i>
The different participants must have an equal standing		√	
An egalitarian atmosphere should be promoted		√	
All participants must have the same opportunity to put forth validity claims and challenge others			√
Validity claims to language, truth, norms and expressions are all valid	√		
The discussion should be allowed to carry out on as long as possible to encourage the reaching of a consensus, and provide flexibility in terms of time available.	√		
All written information which circulates should be available to all participants		√	
Small group discussions should be encouraged	√		
An effort should be made to translate expressive claims into their normative and cognitive components	√		
Discussion should deal at least with impact identification and evaluation, and definition of mitigation measures		√	

Source: Based on review of the cases' EIA reports and interviews

The attendance sheets of the public meeting for case studies are not displayed all categories of stakeholders. However, Interviewee No. 20 said that the public meeting for case study 3, construction of overbridge, was held at the office of People's Committee of ward 7 with the participants including diversity of stakeholders. Hence, albeit without display in the attendance sheets of the public meeting, the composition of participants often included officials of People's Committee of wards (where the project was carried out), representatives of socio-political organizations and direct affected people (whose land was repossessed). Sometimes, citizens do not attend the public meeting, for example, the case studies 6 (project for renovation and capacity increase of a cement factory). In its attendance sheet, there were seven participants including representatives of the Vietnam Fatherland Front, the Ho Chi Minh Communist Youth Union, the Vietnam War Veterans' Association the Vietnam Women's Union and hamlet, without affected citizens. If the land acquisition was not conducted (it means that there was no affected people), the number of participants was small, because the public did not concern the project at all. All interviewees agreed that participation was the human right, the public could or could not conduct this right that depends on their awareness, willingness and capacity. Interviewees No 5, 12, 17, 18, 21 and 28 stated that they already sent the invitation letter to each affected people, but some of them came to attend. Non-participants said that they did not receive any information about the proposed project and EIA report as well as they had no time to attend the meeting if their land was not repossessed. Moreover, interviewees also felt that representatives were not fully representing the affected and interested people. Hence, they suggested that each affected or/and interested citizen should participate in the public meeting and give opinions.

The public meeting time lasted within 2 hours or less for discussion of many issues in EIA report of proposed project, resulting in the limitation on discussion and quality of the public meeting. However, in public meeting, based on interviews, all participants had the

same opportunity to put forth validity claims and challenge others. They freely expressed their opinions without any limitations. The secretary wrote out the procedure and brief contents of the public meeting into the minute of meeting attached to the EIA report. Moreover, to reach consensus, proponents often give a written undertaking displayed in the minute of public meeting and EIA report.

Review of cases' EIA reports and interviews revealed that participants knew potential environmental impacts of the proposed projects but less well aware of them. It is based on the fact that they are not educated and informed about environmental knowledge. Moreover, they just saw the immediate economic benefits due to economic difficulties in their lives. Particularly, in case study 5, dredging of the navigable canal, the participants in public meeting live in the rural area, leading to the awareness level was still low. Hence, they often focused on the socio-economic impacts, such as loss of houses/ other structures, payment for compensation of land. All interviewees who were citizens living in rural area also stated that they had no time to concentrate on other social issues because they had to earn money for their living and family (see Table 4.10, 4.11 and 4.12). According to Interviewee No. 4, because of low awareness about environmental protection, citizens just concerned the immediate benefits and surroundings. When the project activities directly influence their livings, they would often react against them. Like this idea, Interviewees No. 5 and 12 said that citizens just cared about what they would lose and what they would receive.

Table 4.10: Potential impacts and public concerns for case study 5

Potential impacts in final EIA report	Public concerns discussed in public meeting
<p>Impacts in the preparation phase:</p> <ul style="list-style-type: none"> - The appropriate project's site to the conditions of natural environment, economy and society - Mud treatment - Place for the machinery <p>Impacts in the construction phase:</p> <ul style="list-style-type: none"> - Dust and smoke emissions - Wastewater - Solid waste and dangerous wastes - Noise emission from the machinery - Impacts on the aquatic environment - Impacts on the geological structure, leading to landslide - Impacts on biodiversity, water traffic - Impacts on socioeconomic status <p>Impacts in the operation phase:</p> <ul style="list-style-type: none"> - Impacts on air, water - Impacts on public health and socioeconomic status - The effectiveness of the project <p>Assessments of impacts caused by risks and accidents</p>	<ul style="list-style-type: none"> - Impacts on fishery - Impacts on water traffic - Daily activities of workers

Source: Based on review of EIA report, public meeting for case study 5, dredging of navigable canal

Table 4.11: Potential impacts and public concerns for case study 6

Potential impacts in final EIA report	Public concerns discussed in public meeting
<p>Impacts in the preparation phase:</p> <ul style="list-style-type: none"> - The appropriate project's site - Place for the machinery <p>Impacts in the construction phase:</p> <ul style="list-style-type: none"> - Smoke and dust emissions - Wastewater, solid waste and dangerous wastes - Noise emission from the machinery, and vibration - Impacts on the environment, biodiversity, water resource, land and socioeconomic status - Other impacts <p>Impacts in the operation phase:</p> <ul style="list-style-type: none"> - Impacts on air and water environment - Impacts of solid waste - Impacts on public health and socioeconomic status - Other impacts: heat, noise and vibration, odor <p>Assessments of impacts caused by risks and accidents</p>	<ul style="list-style-type: none"> - Impacts caused dust emissions on public health

Source: Based on review of EIA report, public meeting for case study 6, renovation and capacity increase of a cement factory

Table 4.12: Potential impacts and public concerns for case study 7

Potential impacts in final EIA report	Public concerns discussed in public meeting
<p>Impacts in the preparation phase (removing the old building)</p> <ul style="list-style-type: none"> - Air pollution caused by dust and smoke emissions - Wastewater and solid waste - Assessment of the appropriate project's site <p>Impacts in the construction phase:</p> <ul style="list-style-type: none"> - Dust and Smoke emissions - Wastewater, solid waste and dangerous wastes - Noise emission - Temporary flooding - Impacts on road and water traffic <p>Impacts in the operation phase:</p> <ul style="list-style-type: none"> - Impacts on air, water and land environment - Impacts on traffic and socioeconomic status - Other impacts caused by solid waste, noise and vibration <p>Assessments of impacts caused by risks and accidents</p>	<ul style="list-style-type: none"> - Impacts caused dust emissions - Impacts on the neighbor house/ structures - Impacts on rest time of the citizens - Impacts on the geological structure - Impacts of solid waste - Occupational safety for workers and citizens - Environmental sanitation - Impacts of noise and vibration

Source: Based on review of EIA report, public meeting for case study 7

4.4.5.7. Consultations

In theory, consultations must be made to consider the potential impacts, the evaluation of impacts and the proposal of mitigation measures. However, many interviewees pointed out that the main impacts of proposed projects were briefly explained to the public. Interviewee No.7 stated that potential impacts on the environment, socio-economic were inadequately explained. Particularly, adverse impacts and information were not mentioned in the public meeting because proponents and consultants thought that it was not necessary to talk about them in details. All interviewees stated that information given in the public meeting was not enough for consultation. For example, according to Interviewee No.3, consultants often tend to hide or truncate the adverse impacts and information and just supply the brief information about the project in order that EIA report would be approved. If EIA report were not approved, consultants would not have received the money from proponent who hired them.

Especially, Interviewee No.1 pointed out that proponent and environmental agencies often underestimated the impacts on the environment and focused on the visible benefits,

such as increasing employment, infrastructure development. The responsible authorities want to escape from poverty by promoting investment, thus they deliberately exchanged between the benefits and environmental impacts. To grasp those policies, the consultant shortly introduce the impact identification, impact evaluation and the proposal of mitigation measures as less as possible. It can be seen as a formalistic procedure in order to avoid possible delays in getting the approval of EIA report.

In short, consultation was theoretically made with the mandatory contents provided in the forms attached to the Circular 27/2015/TT-BTNMT but low quality within poor information.

4.4.5.8. Content of EIA report (with regard to public participation only)

According to LEP 2014 and Circular No.27/2015/TT-BTNMT, EIA report includes various contents, such as: (i) assessment of current status of natural and socio-economic environment carried out at areas where the project is located, adjacent areas and demonstration of the suitability of the selected project site, (ii) assessment and forecast of waste sources, and the impact of the project on the environment and community health, (iii) assessment, forecast and determination of measures for managing the risks of the project posed to the environment and community health, (iv) waste disposal measures, (v) measures for minimizing the impact of the project on the environment and community health, (vi) alternatives to the application of measures for the environment protection and (vii) consultation result. Review of cases' EIA report revealed that consultation result was briefly displayed with poor contents (see Table 4.13).

(1) Case study 5: dredging of navigable canal

Generally, contents of public consultation for this project was better than the other two projects. Although there was no a non-technical summary, a full EIA report for consultation was officially sent to the People's Committee of Binh Khanh commune and An Thoi Dong commune (attached to official dispatches No.823, 824 of domestic

water traffic management office) for consultation. After that, those People's Committees responded with the written dispatches and the minutes of the public meeting. Those documents attached to the EIA report showed the procedure of public consultation taken during the EIA preparation. Review of the minute of the public meeting revealed that public concerns mainly relating to potential socio-economic impacts were solved (see Table 4.10) and considered as a part of the chapter of public participation in the final EIA report. Regarding potential environmental impacts, citizens agreed with this project because it was useful and valuable for agricultural production and fishery. Although all claims made by the public was noted without distinction. When answering the questions of the public, proponent suggested some of the alternatives which were already mentioned in the EIA report (for example, pages 95-96). The EIA report identified that the community control group would be established to let public control this project as well as through this group, all complains would be solved promptly during the construction phase. However, this solution was not explained in detail, such as who would be a member of this group, their responsibilities and tasks.

Table 4.13: Contents of public participation in the cases' EIA reports

	Case study 5	Case study 6	Case study 7
A non-technical summary	x	x	x
An account of the public participation that took place during the EIA preparation	■	○	∅
An account of the public input, trying to differentiate between the different types of claims made by the public	∅	x	∅
An analysis of alternatives	○	○	○
An account of how the claims made by the public were considered	○	x	∅

x: not displayed; ■ displayed in detail; ∅ displayed unclearly; ○ displayed without detail
Source: Based on review of cases' EIA reports

In shortly, the claims made by the public were considered but unsatisfied. It was said that this project would yield more benefits than loses for the public and less environmental impacts.

(2) Case study 6: renovation and increasing capacity of a cement factory

Comparatively, the contents public participation in EIA report for this project showed worse procedure than the other two projects. Chapter of public participation was within one page displaying the opinion of the People's Committee and local people without a commitment of the proponent. In the public meeting, there were consultants and officials of People's Committee, without proponent, explaining the project. There was only one opinion made by the representative of the hamlet, concerning dust pollution from the current company (see Table 4.11). It should be solved before renovation and increasing capacity of a current cement factory.

Review of EIA report, a non-technical summary, an account of the public input and an account of how the claims made by the public were considered were not displayed. This was due to the fact that the local citizens did not participate in the public meeting, except their representatives. Thus, the contents of public participation did not cover all public concerns, leading to poor quality of EIA report.

(3) Case study 7: construction of resettlement building

The EIA report of this project was approved within four months after the public meeting held. It is due to the fact that authority wants to solve the flooding situation through moving the houses located at both sides of some canals in the local area in order to dredge and renovate these canals for improvement of the water environment. This construction of resettlement work was suitable with the socio-economic plan of District 8 government as well as of Ho Chi Minh City government.

Many concerns regarding potential immediate impacts on the environment and socio-economic of this project were raised during the public meeting (see Table 4.12). However, those concerns were not considered as a part of EIA report. For example, the public asked proponent check the geological structure but it was not displayed in the final EIA report. Proponent just made a written commitment with the public without the details of solutions. An analysis of alternatives with technical terms was not sent to the public.

In short, public participation in all cases' EIA reports was not invested adequately. It was conducted in a perfunctory manner.

4.5. Conclusions and discussion

4.5.1. Objectives of public participation in EIA process

An evaluation of the implementation of public participation in EIA process was based on the assessment of achievement of its objectives. Review of legal provisions revealed that the goals of public participation in EIA process were not defined but the procedure for public consultation was briefly introduced (see section 4.2.2.3). Therefore, some interviewees were asked to voice their idea regarding the fulfillment of objectives of public participation in Vietnam's EIA process.

First of all, most of interviewees (64% of all interviewees who were asked to give the opinion regarding the objectives of public participation) pointed out that the main objective of public consultation is to *supply the public with information on the proposed project, the potential impacts and mitigation measures* (see Table 4.14). Particularly, Interviewee No.11 pointed out that information supply would manifest the principle of "the public knows, the public discusses, the public does, the public checks". From given information, the public could understand the benefits and losses caused by proposed project to support the project and share the difficulties of the project.

Table 4.14: Objectives of public participation in EIA process

Interviewees N ^o	Objectives of public participation in EIA process
1, 2, 4, 7, 8, 9, 11, 16, 19	To <i>supply the public with information</i> of the proposed project, the potential impacts and mitigation measures as well as the benefits and losses caused by proposed project to support the project and share the difficulties of the project.
3, 7, 8, 9, 11, 16, 18	To <i>receive the public opinions</i> as well as to <i>evaluate the adequacy of environmental information</i> because of indigenous knowledge, like as the bottom-up process, for making the public become a decision-maker in EIA process.
1, 12	To <i>express democratic society</i>
12	To <i>receive the consensus from the public</i>
5	To <i>evaluate the impacts on the public in the project area</i>
16	To <i>help proponent understand the public interests to give the suitable way</i>
12	To <i>help the authorities evaluate the purposes of the project in practice</i>
2	To <i>avoid a law suit as well as to make good conditions for implementing project</i>
1, 4	To <i>help EIA report reflected truthfully and cover full of issues in society</i>

Source: Based on the interviews

Regarding the question of “*to what extent are the objectives of public participation in EIA process being fulfilled in Vietnam*”, most of interviewees agreed that the quality of public participation was not effective and the objectives of public participation in EIA process was not fulfilled in Vietnam yet. The level of fulfillment of those above objectives was about 40% while the quality of public participation is not effective, just 50%. According to Interviewee No. 11, the public participation was conducted carelessly. Interviewee No. 2 pointed out that with the Vietnam’s projects, public participation was still very formalistic (often in-door procedures), resulting in low effectiveness while with the foreign projects, there were two phases of public participation with diverse forms, leading to high effectiveness. However, Interviewee No.4 said that in Vietnam, with the small projects, the purposes of public participation could achieve, but *vice versa*, with the large projects, the purposes could not. This was because of lack of information leading to low effectiveness of the feedback from the public. Interviewee No.5 thought that the public could not image the project until they were

affected directly by the project. Interviewees No. 18, 19 stated that the public did not concern about the project, so the consultant knew and did not want to take enough their responsibilities. The public and the authorities just concern about the compensation for land loss and ignored the environmental issues.

4.5.2. Factors influencing the implementation of public participation in Vietnam's EIA process

With the 40% of the fulfillment of objectives of public participation in Vietnam above, it could be said that public participation in EIA process in Vietnam was mostly ineffective. According to interview data collection, there were several factors influencing the implementation of public participation in Vietnam (see Table 4.15). All interviewees thought that public participation in EIA process should be changed in the near future in Vietnam. First of all, it is necessary to improve the current EIA process because it was not proper (interviewees No. 1, 2, 3, 12). If we want a good future of the environment as well as reduction of environmental pollution and environmental accidents, we should firstly make the current EIA process more meaningful. Interviewee No.3 strongly said that *“the nature of EIA report is to evaluate the appropriateness of project location and technology. However, the project site has already chosen and technology has also placed before conducting the EIA process. Consultants have to make them comply with the current legal provisions.”* Hence, EIA is not considered as a scientific work. As a result, the quality of public participation was just underestimated. It became a very formalistic procedure in EIA process. In line with this perception, Interviewee No.1 pointed out that *“in most of projects, consultants/ proponent often avoid consulting the public for saving money and time, if they could”*.

Secondly, most interviewees stated that one factor which decreased the implementation of public participation in EIA in Vietnam was that the procedure for public consultation was very formalistic (see table 4.15). Interviewee NO.11 said that *“the provisions of procedure of*

public participation were not clear". For example, the law stipulates that ~~the~~ *consultation with the community under the direct impact of the project shall be carried out in the form of community meeting ... (t)he participation of representatives of Vietnamese Fatherland Front of communes, socio-political organizations, socio-professional organizations, neighborhoods, villages convened by the People's Committee of the commune*"¹²⁶. Particularly, the way of sending invitation letters and the process for choosing representatives as well as their responsibilities in public meeting are not sufficiently regulated in any legal provisions. Thus, most of Interviewees pointed out that public meeting shall be held with the participation of the diversity of stakeholders also including the affected people, for example, projects with the high potential impacts on the environment and socio-economic (see EIA report of case studies 3 and 5). In small-scale projects with the low impacts on environment and socio-economic, there were representatives of those above organizations without the affected people. In reality, leaders of a community will be a representative for affected people participating in the public meeting held in EIA process (this information has been obtained from interviews and review of EIA report). They are people in retirement. Thus, they do sometimes capture information slowly. We are looking for representatives with both political elites and technical expertise. Moreover, according to Interviewee No.12, ~~the~~ *stage of public participation is too late.*" Public consultation was conducted after the EIA report was already elaborated by consultant/ proponent. Another issue in the current procedure for public participation was *the method employed to consult the public in EIA process*. This was a community meeting (public meeting). With the method, there was no dialogue between the project proponent/ consultants, decision-makers and affected people. Affected people were merely being informed about the proposed project and given the right to comment on it at the public meeting. The main problem was time for consultation which was too short. It normally

¹²⁶ See Article 12, supra note 17

lasted between one to two hours (see the minutes of public meeting attached to cases' EIA reports). There was insufficient room for discussion between the proponent and the affected people in public meeting. Furthermore, the public meeting was not designed as a forum for communication. In the public meeting, after a short introduction about the proposed project of proponent/ consultants and official, participants shall give short speeches regarding their thoughts and concerns. Because of limitation of time for consultation, quality of public opinions was not high.

Another related issue that was raised by some interviewees was that *quality of information given by proponent, consultants and environmental agencies was still low, just as a one-way flow of information*. Interviewee No.5 strongly stressed that *“the EIA report was the vague and ill-described description of the proposed project”*. This is due to the fact that the information provided to the public was too late and insufficiently. Interviewed citizens said that they just received the brief information about the project with too many technical and complex terms within a short time at the public meeting. Thus, most people had no time for research and understanding. Moreover, some were incapable of comprehending the brief information at the public meeting, particularly poor people with lower levels of education. Other citizens said that they did not know the proposed project until beginning the construction of this project in reality. As a result, affected people often gave unvalued opinions. Thus, interviewed EIA officials stated that input from the public was not considered and used for final EIA report. Interviewed citizens stressed that whether or not their opinions were considered and how they influenced decision-making. Before ending the public meeting, the proponent often gave the written commitment to express that they would carry out all measures displayed in EIA report and answer the public comments. Another problem was that consideration of public opinions was only evaluated by proponent/consultants, leading to the lack of objective nature. Interviewed citizens suggested that if their concerns

were considered as the input for EIA report they would be the willingness to participate in EIA process and give their opinions.

A major problem which has been pointed out by most interviewees was that *the environmental awareness of stakeholders was not high*. Environmental awareness is limited among environmental agencies, proponent/ consultants and the public. Interviewee No.1 said that *both proponent and authorities have ignored the environmental issues. Authorities have sometimes accepted environmental pollutions to develop economic and increase jobs for citizens. Thus, they consider EIA as an obstacle to economic growth; as a result, public participation is an additional constraint which can make proponent and authority waste time and money.*” In addition, Interviewee No.11 stated that *the authorities did not recognize the key role of the public in EIA process; and the public just cared about the compensation for land loss and other structures. The public still thinks that the decision-making process belongs to the state.*” Interviewed experts said that they did not understand why the authorities could approve many projects with potential adverse impacts. They thought that it came from the minds of EIA officials who considered EIA as a necessary step towards project approval. Like this thinking, Interviewee No.7 said that *There are the lack of academic knowledge, the competition among consultants and the finance for EIA preparation.*” Furthermore, some interviewees indicated that *most citizens have not trusted in governmental agencies in general and local environmental agencies in particular*. All interviewees agreed that because of lacking environmental awareness, the public had no knowledge to check information, leading to difficulty in making comments. They did not often give the valuable and constructive opinions. Interviewee No.4 stressed that *the public just cares about the immediate interests within their area if the proposed project influences the public directly.*” The lack of knowledge of proposed project and relevant environmental

issues stems from the lack of responsibilities of the proponent and the People's Committee of commune level.

Finally yet importantly, some interviewees pointed out that *there was the lack of compulsory sanctions*. Review of legal provisions, there were no compulsory sanctions if the public opinions were not considered as the input for EIA report. Thus, proponent/consultant has considered the procedure for public participation as a formalistic procedure mentioned above. They did not often pay attention to the public opinions. Because of lack of compulsory sanctions, the proponent/ consultant tend to ignore the procedure for public participation. The public was being consulted merely to comply with procedural requirements, without concentration of quality of public participation.

Table 4.15: Factors influencing the implementation of public participation in Vietnam's EIA process

Interviewees N ^o	Factors influencing the implementation of public participation in EIA process
1, 2, 4, 7, 8, 9, 11, 12, 16, 17, 18	The environmental awareness of stakeholders was not high
5, 11, 16,	Quality of information given by proponent, consultants and environmental agencies was still low, just as a one-way flow of information
1, 2, 3, 12	The current EIA process was not proper.
1, 2, 3, 4, 5, 7, 8, 9, 11, 12, 17, 18	The procedure for public consultation was very formalistic.
1, 2, 4, 7, 8	Most citizens have not trusted in governmental agencies in general and local environmental agencies in particular.
7, 18	There was lack of sanctions.

Source: Based on interviews data collection

4.5.3. The legislative rationale of public participation in EIA process

Theoretically, public participation plays a key role in EIA process. Nadeem and Fischer (2011, p. 45) conceives that the public participation makes EIA process transform the technical process to a political tool of environmental policy. It also makes this EIA process more transparent and trusted. With the important role of public participation in EIA process,

interviewees pointed out some legislative rationale of this participation as follows (see table 4.16):

(1) *Environment is a public good*: This was the opinion of Interviewee No.1. The mutual agreement between the public and developers is necessary when using public goods (such as stable climate, fresh air, or the ozone layer) and common pool resources (soil, water, oil). Public goods are traditionally defined as being both non-rival and non-excludable in consumption. Common pool resources are rivalrous but non-excludable in consumption (Petersen, 2015, p. 3). Thus, if the investors carry out the specific projects which have adverse impacts on the environmental components, such as public goods and common pool resources, the public will obviously have the rights to know about these projects and to voice opinions for the sustainable development goals. This is mainly due to the fact that people need to know about the actual “how” of using common pool resources and public goods. Hence, there are no reasons refusing the public participation in EIA process.

(2) *The sustainability of project*: Interviewee No.2 said that if the public did not participate in EIA process and did not have any information of proposed project, it would be difficult for proponent to carry out the project. Moreover, Bruhn-Tysk and Eklund (2002, p. 129) states that EIA is used as a useful tool for environmental sustainability. Meanwhile, lacking information will lead to misunderstanding about the purposes of proposed projects; as a result, environmental conflict can appear and pose a direct threat to the operation of project. Because EIA is also used as a useful tool for environmental conflict resolution (Kakonge, 1998, p. 289).

(3) *Global consequences of human activities*: According to Interviewee No. 3, environmental issues in general and environmental pollutions in particular will influence all people in over the world. Thus, the public should be informed about the potential environmental impacts in order to mitigate the adverse effects in reality if any. The public can

easily cope with the predicted environmental impacts promptly and accurately.

(4) *Corporate social responsibility*: Interviewee No.5 strongly highlighted that it was the corporate social responsibility. It means that the proponent and responsible authorities have to take the responsibility on the environmental accidents during the operation of project. The investors shall conduct their operations in an environmentally responsible manner and in accordance with environmental legislation in general and EIA provisions in particular. To protect environment and the quality of life of people affected by enterprises' activities as well as to conduct the transparency in enterprises' business, EIA plays an important role. However, to improve the corporate social responsibility is challenging the legislation in Vietnam, particularly in EIA process.

(5) *The transparency of EIA process*: According to Interviewee No.7, EIA report is a scientific work to evaluate the impacts on the human being, so the people should participate in the EIA process. When the project is carried out in reality, people himself will be affected directly by its activities. Some authors also focus on the transparency of EIA process (Morrison-Saunders & Bailey, 2000; Zaharchenko & Goldenman, 2004). Hence, there were no reasons for concealment of information of proposed project in general and of EIA report in particular.

(6) *The value of public input*: Some interviewees said that public participation was good because proponent/ consultants would receive the diversity of opinions which they did not sometimes know before. The public will give opinions for the decision-making process because they want to have a prosperous living in the future without environmental pollution. In addition, because of their in-depth knowledge of the nature resources, climate, biodiversity, indigenous people have a particularly important role to play in environmental monitoring and distinguishing project-related changes from natural changes in the environment (Stevenson, 1996, p. 278). Interviewee No.18 stated that each project would

locate in a different place, leading to different impacts on the environment. Thus, indigenous people could know exactly about the place where they have been living. The proponent/consultants and responsible authorities should listen the public comments and consider them as an input for EIA report.

(7) *The public rights*: Participation in the decision-making process in general and in EIA process in particular is the fundamental right of the public. Interviewees No.21 and 33 said that the public has had the right to control the activities of authorities and organizations. When the public participates in the EIA process, they carry out three rights: the right to control, the right to criticize and the right to complain. Hence, the authorities and proponent should not impede the public participation in EIA process and should facilitate the public participation in reality.

Table 4.16: The legislative rationale of public participation in the EIA process

Environment is public good	The transparency of EIA process
The sustainability of project	The value of public input
Global consequences of investment activities	The public rights
Corporate social responsibility	

Source: Based on interviews data collection

4.6. Interim conclusion

After evaluating the public participation in cases' EIA process in Vietnam, the important research findings are finally withdrawn as follows. Firstly, review of legal requirements revealed that procedure for public participation is a mandatory procedure in EIA process. In Vietnam's EIA process, public participation likes the rung of informing, rarely likes the rung of consultation (Arnstein, 1969, p. 217) . It means that negotiation among the authorities, proponent and stakeholders is rarely occurred in reality. In spite of having the consultation, public concerns and feedbacks remain vague extremely that whether these opinions will be taken into account in EIA report or not. As Arnstein mentioned that it looks like a *→window-*

drinking ritual" (Arnstein, 1969, p. 219). In addition, the only public meeting is the channel for communication between the public, responsible authorities and the proponent. Review of the cases' EIA report showed that the public meeting is not open to all citizens, just for the affected people or/and their representatives. Based on interviews, most interviewees said that environmental decisions would affect everybody's quality of life because environmental consequences are not limited in specific area. Thus, the public meeting should include anyone interested in EIA process. However, to get consensus from the public easily, the current legal provisions provide that participants in the public meeting just include the representatives of Vietnamese Fatherland Front of communes, socio-political organizations, socio-professional organizations, neighborhoods, villages where the project will be carried out in reality. Thus, public did not attend the public meeting, leading to distrust in the results of public meeting held in EIA process for consultation.

Moreover, there are no definitions of *"the public"* and *"public participation"* in any environmental provisions regarding EIA process. Again, the objectives of public participation are not defined in EIA legislation. Based on interviews, the main purpose of public participation in EIA process is to supply the public with information about the proposed project, the potential impacts and mitigation measures as well as the benefits and losses caused by proposed project. Thus, with the people, participating in the procedure of public participation is the main way to receive information of proposed project and an opportunity to comment EIA report of the project that will affect their lives in the future.

Finally, interviewees who were asked to give opinions regarding the implementation of public participation in EIA process pointed out some barriers. These barriers involve several factors, such as the EIA process, the procedure for public consultation, the awareness of stakeholders, the quality of information and trust in government. In which, the primary problem is the lack of environmental awareness of the public, authorities, and

proponent/consultant. This lack has led to the trade-off between economic growth and a clean environment.

CHAPTER 5: RECOMMENDATIONS FOR THE IMPROVEMENT OF PUBLIC PARTICIPATION IN VIETNAM'S ENVIRONMENTAL IMPACT ASSESSMENT SYSTEM

5.1. Summary of chapter 5

After reviewing the EIA process in Japan and Vietnam, a short comparison between these systems is made in order to withdraw the substantial similarities and differences. From which, lessons from experience of implementing the advanced legal provisions on public participation in Japanese EIA process will be lessons for Vietnamese EIA system in the future. Concurrently, in this chapter, I also analyze the viewpoint of disagreement on the implementation of public participation in Vietnam's EIA process in order to conclude that the legal provisions on public participation in EIA process should be continuously provided for sustainable development as well as for ensuring the environmental rights.

I suggest some recommendations for revision of the current legal provisions on public participation in EIA process. Firstly, definition of public participation in EIA process should be given concretely to have the unique understanding. Also, participants need to be identified in EIA legislations. Especially, the way and means to conduct EIA should be immediately changed because of the inappropriateness of current EIA process. Thus, I give the model of public participation in EIA process based on the experience from international provisions and other countries to achieve the objectives of public participation. Next, the environmental information supply system and the right to access to environmental information should be enhanced to facilitate public participation in EIA process. In addition, it is necessary to establish independent funding organization to support money and to raise the awareness on environment for the public in order to promote the public participation in EIA process. Noticeably, representatives of the public should be the members of EIA report assessment council to make the public opinions valuable on the decision-making.

5.2. Public participation in EIA system: a comparison between Japan and Vietnam

This section aims to find the similarities and differences of the EIA processes between Japan and Vietnam. Japan's EIA system was officially implemented in the 1960s for the industrial sector (Ohkura, 1999, p. 352), while in Vietnam, before 1993 the implementation of EIA was just conducted on testing for some projects, such as the Tri An hydropower plant (1984), the Hoa Binh reservoir (1991) without any legal provisions. However, EIA regulations in Vietnam have been legally adopted in 1993, while the national EIA law in Japan was enacted in 1997, four years later than Vietnam.

Regarding the public participation, the latest EIA process in both countries obviously demonstrates the specific stages with the public participation (see Table 5.1). In Japan's EIA process, opinions of citizens, experts, local governments, and others are fully considered in regard to potential impacts on living and natural environment caused by the proposed project at the planning stage when conducting the PEIC (Japanese-MoE, 2012, p. 6). The results of the PEIC have been not reflected in the scoping document, leading to the inadequate transparency. Additionally, opinions from the public can be received in the scoping stage and the preparation stage of a draft EIS within one month and two weeks after the public announcement of each stage. Though Japanese citizens can give their voice at the planning stage, Japanese-MoE (2012, p. 7) still suggests that Japan should consider the implementation of public participation at the earlier stage of the project, namely the stage of policy making, based on the experience from some foreign countries (such as Canada, England and Korea (Hayashi, 2008)) and from itself. For instance, in the project of construction process of Fukushima interim storage facility for soil and wastes produced by decontamination, there was no opportunity for public to review *–Basic policy on an interim storage facility*”, as well as no opportunity in policy making process, although it was released in October 2011 (Isono, 2015).

In contrast, in Vietnam, both the limited length of time for public consultation and limited access to information of proposed project are still the shortcomings in EIA process. Citizens just give their opinions and comments at the stage of EIA preparation within fifteen days. Thus, receiving the information too late and within a short time leads to the poor quality of public opinions. Moreover, the consultation with the community under the direct impacts of the project (particular their representatives) was just conducted in the form of public meeting. As a result, other citizens have been deprived of the right to participate in the decision-making process, specific in EIA process. In Vietnam, only limited members of communities are invited to a public participation process and not all community members are free to speak up in the this process, while in Japanese EIA process, anyone can submit opinions without depending on residence status. Thus, the scope of public participation in Vietnamese EIA process needs to be improved in term of increasing the segment of the public without focusing on the direct affected people and affected communities. Based on the experience of implementing the public participation in Japanese EIA process, both the diversity of participants and the performance of public participation at the earliest stage are expected to enhance the effectiveness of EIA process.

Furthermore, in Vietnam and Japan, local governments have the right to give opinions about issues relating to EIA process. However, Japanese local governments express their opinions from the planning stage to the preparation stage of the Draft Environmental Impact Statement, while Vietnam's local governments just send their responses to the written requests for opinions of the proponent at the stage of preparation of EIA report. Thus, Vietnam's local governments do not have any opportunities to express their opinions at the earlier stage of the EIA process; as a result, they intend to accept the proposed project. Moreover, it is difficult for both local governments and citizens in Vietnam to access to environmental information of proposed project. They just know project information when the

proponent sends them the EIA report and holds the public meeting for consultation. If citizens do not attend the public meeting, they will not know any information about the project. Thus, in Vietnam, the only way of information sharing is at the public meeting. Timely information disclosure is still a critical challenge for Vietnam. Viet Nam is still in the process of establishing a web-based EIA information system to provide EIA-related information in a timely manner. To have the effective EIA report, project proponent should realize the importance of collecting environmental information from the public and revealing in details of project. Hence, information sharing plays a key role in the success and the quality of EIA report. In Japan, explanatory meeting at the stage of the Scoping Document is additionally held; therefore, anyone can receive the explanation by project proponent before they implement the survey, forecast, and evaluation. Furthermore, an announcement of the documents on EIA via the internet has been also obligatory in order to expect to receive opinions from more people. For example, in the project of the construction process of Fukushima interim storage facility for soil and wastes produced by decontamination, information has been delivered through the internet (Isono, 2015). According to Japanese-MoE (2012, p. 13), *adequate information sharing is expected to be an effective way of consensus building for decision-making, as well as helpful for collecting environmental information.*” In short, EIA documents are publicly revealed via the internet and other media in Japan, while in Vietnam, this announcement via the internet is not so popular. Therefore, Vietnam can learn from Japan’s experiences of information sharing to improve the quality of environmental information in EIA report.

In Japan, after completing the Environmental Impact Statement, the proponent also publicly notifies the EIS document and allows all people to review it within one month and two weeks at local government offices, the proponent offices and on websites, etc. Conversely, in Vietnam, although the results of an external review panel including technical

experts and/or representatives from local communities have been incorporated into the final decision-making on project approval, these review results are not open to public.

Finally, there was a difference in approach regarding public participation in EIA process, a voluntary-based approach in Japan and a requirement-based approach in Vietnam. Particularly, understanding importance of disclosure of administrative information and the participation of interested people leads to Japanese government to hold frequently the local meetings to explain the proposed project, even without legal requirements. For example, in the project of the construction process of Fukushima interim storage facility for soil and wastes produced by decontamination, the Ministry of Environment held local meetings to explain its plan to residents of two towns and local governments. The authority held 2 hour meetings to explain about the investigation site at several places to Fukushima prefecture and eight towns and villages in Futaba area. However, the central government had no intention whatever of changing the framework of its plan (Isono, 2015). In contrary, EIA is mainly considered as a management tool for environmental agencies in Vietnam, so requirements for implementing EIA process often focus on the environmental management than the environmental protection. Hence, proponent just conducts requirements of public participation in EIA process under the mandatory provisions in legal documents. Promotion for voluntary activities has been not appeared in any EIA process in Vietnam, exception of projects funded by international organizations (such as JICA, WB, and ADB).

Table 5.1: Comparison of EIA system in Japan and Vietnam (regarding the public participation mainly)

Items	Japan	Vietnam
Legal documents	EIA Act	Law on Environmental Protection
Enforcement date of EIA provisions	1999 Revision on 2011, enforcement on 2013	- LEP 1993: enforcement on 1994 - LEP 2005: enforcement on 2006 - LEP 2014: enforcement on 2015
Central EIA authority	EIA Division, Environmental Policy Bureau, Ministry of the Environment Government of Japan	Department of Environmental Appraisal And Impact Assessment, Vietnam Environment Administration,

		Ministry of Natural Resources and Environment
EIA authority	National government and local governments	Ministry of Natural Resources and Environment; Provincial People's Committees
Type of EIA documents	- EIA - Special EIA (for restoring infrastructure projects after disasters)	EIA
Authorized company preparing EIS/EIA	Project proponent and consultant	Project proponent and consultant
Project covered/screening	- 14 types of project: Class-1 and Class-2 project (national EIA law) - Local ordinances (EIA system of local government) (Depending on scale of the project)	113 projects
Alternatives	In primary environmental impact consideration step (including "zero option")	Lack of legal provisions for consideration of alternatives
Evaluation/prediction of impacts	Covers physical, biological, and social resources by separating impacts into two parts: National situation and Social situation	Covers natural environment components; biodiversity; community's health; and climate change
Participatory approach	A voluntary-based approach	A requirement-based approach
The stage of public participation	- Planning stage of Primary Environmental Impact Consideration - Scoping stage - Preparation of a draft EIS	- Preparation of EIA report before submission for approval
Form of Public participation	- Participation - Public meeting (Explanation): explain the content of the "Scoping document" in the scoping step and in the DEIS steps but if a public meeting does not take place then DEIS will be sent to the local government officer or be uploaded on the internet. - No provision that comments need to be included in the report.	- Form of consultation: + The People's Committee of the commune where the project is carried out and the organizations under direct impact of the project: the written requests for opinions + The community under the direct impact of the project: Public meeting - All comments need to be included in the minute of public meeting in order to attach to EIA report.
Total time for conducting public participation in EIA process	90 days and times for public opinions in the planning stage for the Class-1 projects	15 days

Approval time (full EIA)	Approximately 18 months	Approximately 3 months
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Source: Adapted from Suwanteep et al. (2016, p. 22)

5.3. The public participation in EIA process in Vietnam: should or should not?

Theoretically, public participation plays a key role in decision-making process, particularly the EIA process. The success of implementation of public participation in EIA process has brought the sustainability for projects and contributed to environmental protection. However, in Vietnam the challenges of public participation have restrained the implementation of public participation in EIA process. For instance, time and cost consuming is the first element which makes the stakeholders hesitate to conduct or/and participate the procedure of public participation in EIA process. Additionally, the gaps of knowledge and education among citizens (poor and rich, low educated and high educated) as well as among the proponent, government officials and citizens have been a limitation for participation in EIA process. Another restraint is that there are the differences in concerns on the environmental issues of proposed projects among stakeholders; as a result, it is difficult to reach to consensus.

In spite of aforementioned challenges, we should not negate the role and meaning of the public participation in decision-making process. Some authors focus on analyzing the purposes of public participation to identify its important role in EIA process (Bruhn-Tysk & Eklund, 2002; Del Furia & Wallace-Jones, 2000; Doelle & Sinclair, 2006; A. N. D. Glucker, Peter P. J.; Kolhoff, Arend; Runhaar, Hens A. C., 2013; O'Faircheallaigh, 2010; Stern & Dietz, 2008). For instance, O'Faircheallaigh (2010, p. 20) demonstrates objectives for public participation in EIA process as follows:

- (i) Obtaining the public input into decisions taken elsewhere with specific purposes and activities such as providing information to public, filling information gaps, information contestability, problem solving and social learning;

- (ii) Sharing decision making with public with specific purposes and activities as reflecting democratic principles, democratic in practice and pluralist representation;
- (iii) Altering distribution of power and structures of decision making with specific purposes and activities as involving marginalized groups, shifting the locus of decision-making and entrenching marginalization.

To estimate the implementation of public participation in EIA process, those objectives need to be satisfied (Del Furia & Wallace-Jones, 2000, p. 460; Nadeem & Fischer, 2011, p. 36). However, as the analysis in Chapter 4, public participation in Vietnamese EIA process has failed in achieving those purposes. This is mainly due to late participation in the EIA process, poor access to information, limitation of the participatory ways, lack of transparency and accountability of the decision-making process as well as time and cost consuming for the proponent. Regarding costs, Nadeem and Fischer (2011, p. 36) argue that benefits of public participation in EIA process and its influence on the quality of EIA report sometimes exceed costs which proponent have to pay. Furthermore, the contents of EIA report have been driven by the proponent in the stage of EIA preparation and consultation procedures. As a result, it is difficult for the public to voice their opinions in order to influence the quality of EIA report. Hence, the influence of public participation on the final EIA report has varied from country to country. In short, my contention is that public participation should not be seen as the only way to improve the quality of EIA report through gathering information from the public. Simply, public participation in EIA process is not a recipe for success of all projects. In my opinion, it is very important to consider the public concerns about the environmental issues as well as the scale of each project in order to conduct the public participation in EIA process. From which, the objectives of public participation in EIA process will be satisfied.

However, in Vietnam, the objectives of public participation in EIA process were not completely achieved in each project (see section 4.5.2). This was due to the fact that the

public participation in EIA process was more open but not more trusted. Moreover, public participation in scrutinizing the governmental decision-making are mostly not acceptable to the planning agencies of Vietnam (a developing country) because public participation is normally considered as unnecessary, ineffective, time-consuming or even politically dangerous (Doberstein, 2003, p. 26). In most developing countries, EIA is viewed as an unimportant role in the development planning processes and regarded as a mitigatory rather than strategic role in the planning process (Doberstein, 2003, p. 26), although Vietnamese EIA process was already added to the development planning process. Thus, to integrate with the developing planning process, EIA report should be a *–technical/scientific rather than participatory process*” (Doberstein, 2003, p. 27).

Nowadays, public consultation in EIA process is a mandatory procedure but it has been judged weak and ineffective. Provisions on public consultation are considered unrealistic and rigid. Proponent has to comply with the rigid forms and procedures which apply to all kind of projects, from the big projects to small ones. Additionally, the public just participates in the stage of EIA preparation and any comments from the affected people must be made in writing and within a short time. All public opinions were just made in the stage of EIA preparation (i.e. in the public meeting), leading to the low quality and *–superficial*” opinions about the contents of EIA (Doberstein, 2003, p. 36). Also, the public has no opportunity to access to final EIA report because it is not made available to the public. As a result, the public cannot know that whether their opinions were considered or not.

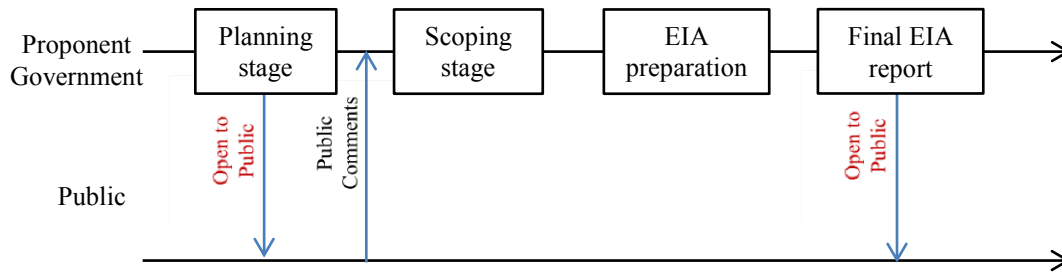
Another issue is the knowledge level of each individual when participating in EIA process. Most Vietnamese people, particularly low-educated people and minority ethnics living in remote areas, have no capacity to participate fully in EIA process. To participate in EIA process, each individual must: (i) understand the concept of EIA and the role of their comments for the proponent and decision-makers; (ii) know the public meeting and its

meaning in EIA process; (iii) have the capacity to access to the EIA report and understand its technical Vietnamese language; (iv) have the knowledge to review EIA report and give valuable opinions (Doberstein, 2003, p. 36).

Furthermore, efforts to escape a backward agricultural country and transform to the industrialized country through the industrialization and modernization policy have been implemented from the 1980s. In parallel with the economic growth, the issues of environmental protection should be also examined carefully for sustainable development. Thus, 113 projects, which may potentially cause the significant adverse impacts on environment and society, have to be subject to EIA process. Proponents of these projects must conduct all steps of EIA process without a special EIA process or streamlined procedure for public participation. However, my contention is that not all steps of EIA process should be applied to all kind of projects, from large-scale projects to small-scale projects. My idea is withdrawn from the results of interview data collection regarding some recommendations for improving the implementation of public participation in the EIA process in Vietnam (see table 5.2). The small-scale projects, which are not of national interest and do not attract the attention of a wider public, need to be implemented under the special EIA process or the procedure streamlined for public participation in EIA process. In my opinion, based on the responses of the Interviewees who were experts and environmental officials, the procedure of public participation in EIA process of these above projects should be reduced because of low quality and sometimes meaninglessness. For example, the project of construction of multi-family apartment and commerce center (Samland riverside project) located at 147 Ung Van Khiem, ward 25, Binh Thanh District, Ho Chi Minh City, covers 1.798.4m² in the total area encompassing apartment, swimming pool, parking area. Public consultation in EIA process of this project was conducted under LEP 2014 on March 2016 but there were five people attending the public meeting. Public consultation was just implemented perfunctorily to meet

the mandatory requirements of LEP 2014 without paying attention to the quality and value of public consultation. Hence, to save time and money for proponent, it is necessary to reduce the procedure of public consultation in EIA process of the small-scale project (see Figure 5.1) to save time and money for all of stakeholders.

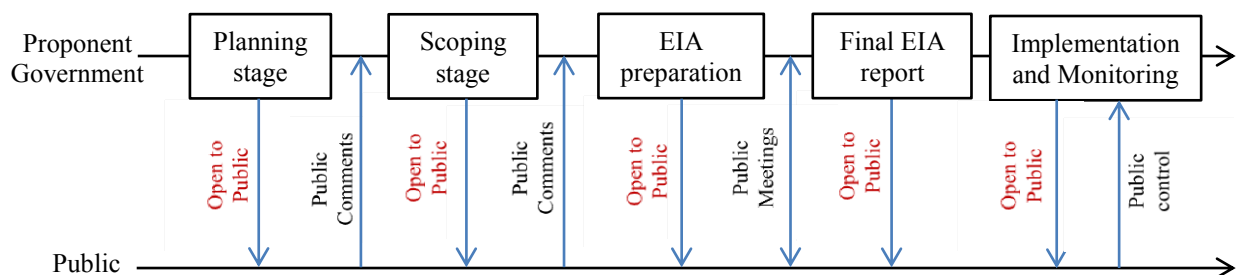
Figure 5.1: Proposed procedure for public participation in EIA process for the small-scale projects in Vietnam



Conversely, the large-scale projects, which are of national interest and attract the attention of a wider public, need to be implemented under the EIA process rigorously. These projects may cause the potential harmful impacts on environment and human beings. Thus, to guarantee the quality of living and sustainable development, procedure of public consultation is *a sine qua non* (see Figure 5.2). However, legal requirements for the consultation of affected people in EIA process has been regulated but too late, collating with procedure of public participation in EIA process of other countries, such as Japan and Canada. Under LEP 2014, the public just attends the public meeting held in the stage of EIA preparation for information disclosure of proposed project. Moreover, because of the lower levels of authorities under the hierarchical political system, the People’s committee of communes often tends to give the agreement to projects in the development planning adopted by the higher levels of governments. Consequently, they reflect the opinions and concerns of local communities inaccurately (Clausen et al., 2011, p. 140). Particularly, in the large-scale projects, it is very difficult to list the number of people affected by the project. In addition, these projects may affect people belonging to diverse socio-economic backgrounds.

Moreover, in the current EIA regulations, there is no any provisions regarding the right to access to justice if the affected people were deprived the right to participate in EIA process. Therefore, to ensure the environmental right of the public and to satisfy the public concerns on environmental issues of proposed project, the public should participate in all stage of EIA process.

Figure 5.2: Proposed procedure for public participation in EIA process for large-scale projects in Vietnam



Source: Based on Harashina (2010)

Table 5.2: Recommendations for improving the implementation of public participation in the EIA process in Vietnam

Interviewees N ^o	Recommendations
2, 4, 8, 11, 12, 18, 19, 33	To increase the awareness of stakeholders in EIA process
2, 5, 7, 9, 11, 16, 19, 12	To change the procedure for public participation
2, 3, 4, 11	To change the EIA process

Source: Based on the interviews data collection

5.4. The way for Vietnam to revise the current legal system on public participation in EIA process and prospect for future

5.4.1. Public participation: a concept in need of definition in EIA context

The concept of public participation in the context of EIA have already been discussed by some authors, such as O'Faircheallaigh (2010), A. N. D. Glucker, Peter P. J.; Kolhoff, Arend; Runhaar, Hens A. C. (2013). However, depending on the research objectives of each author, the notion of public participation will differ from an approach to another approach. In many cases, some researchers just mention about the term of public participation without defining it

(A. N. D. Glucker, Peter P. J.; Kolhoff, Arend; Runhaar, Hens A. C., 2013). However, few writers still want to answer the question of what is public participation in the context of EIA. Similarly, World Bank (WB, 1996) and United States Environmental Protection Agency¹²⁷ also give the definition of public participation in EIA process as public participation means to provide input in the decision-making process. Nevertheless, in Vietnam, lawmakers have not given the interpretation of public participation in any legal documents. Thus, the notion of public participation and its objectives are still problematic issues and need to be comprehended in order to be implemented rigorously and systematically.

According to Creighton (2005, p. 7), the definition of public participation should include the following issues:

- Public participation applies to the decision-making process of administrative agencies, not elected officials or judges¹²⁸. For particular, Cramton (1971, p. 532) insist that *“broadened public participation in administrative process will lead to wiser and more informed decisions”*.
- Public participation aims not only to provide information to the public but also to create an interaction between the decision-makers and people who want to participate.
- The procedure for public participation is legally formulated without accidental activities.
- The participants in public participation should be identified.

Besides the above criteria, definition of public participation in the context of EIA also depends on the participatory approach and the situation of socio-economic development of

¹²⁷ See United States Environmental Protection Agency, *Protection of Environment - 40 CFR*, (2002)

¹²⁸ Areas in which public participation is desirable (in the rulemaking activities of administrative agencies) and not desirable (in criminal cases); see more Cramton, Roger C (1972), *“Why, Where, and How of Broadened Public Participation in the Administrative Process”*, The Georgetown Law Journal, Number 3, Volume 60

each country. Moreover, the diverse stakeholders have different knowledge of “public participation” leading to various expectations on the participatory process (A. N. D. Glucker, Peter P. J.; Kolhoff, Arend; Runhaar, Hens A. C., 2013, p. 106). Thus, if the different viewpoints and expectations of participants are not paid attention, public’s willingness to participate in EIA process may diminish, and which results to negative impacts on the effectiveness of the EIA process.

Based on the above criteria, the Vietnam’s lawmakers should give the definition of public participation in EIA process in legal documents. Depending on the public awareness and socio-economic development in Vietnam, the concept of public participation should be an understandable and clear notion. For instance, public participation is a part of the EIA process through which the environmental information exchange among stakeholders shall be conducted during all stages of EIA process, and the public has the right to access to all information of projects to give the valuable opinions for a consensus in EIA report.

5.4.2. The public: in need of clarification in EIA process

Like the definition of “public participation” mentioned on the above section, Vietnamese lawmakers should give the notion of “the public” broadly instead of the current narrow approach, just focusing on the affected people (i.e. the people whose land was recovered). In legal documents, apart from the People’s Committee of communes, wards and towns and organizations or communities under the direct impact of the project involving in the EIA process, representatives of Vietnamese Fatherland Front of communes, socio-political organizations, socio-professional organizations, neighborhoods, and villages shall be invited to the public meeting. Noticeably, only representatives of organizations and communities are participants in the public meeting. If only representatives of aforementioned entities which will be directly affected by the project shall attend the public meeting, the questions of how to choose the representatives for the communities and their responsibilities have been a

problematic issues. For example, when river reclamation by pouring tons of rocks and soil into the river to make land for building a residential area, the large-scale projects will affect thousands of people and families living in both riversides, how many the representatives for the communities are there in this case? Hence, in practice, the public meeting is convened with the participation of the affected people, not only above representatives. However, the participants are still limited in participatory process in the current EIA process. For instance, environmentalists and experts will be excluded from the procedure for public participation and will not have a chance to voice an opinion if they live outside of direct affected areas of the project, leading to low quality of public opinions.

Consequently, though under current EIA legislation the representatives and/or the affected people have participated in EIA process, this still restrains the rest people from participating the EIA process. I completely agree with idea of Doelle and Sinclair (2006, pp. 196,197) that *“no definition of the public should be necessary”* because any definition of the public also have the tendency to exclude someone, particularly person who wants the process unsuccessful. Thus, it is necessary to note that the identification of people who will participate in the EIA process is more importance than giving the definition of the public.

Thus, Stern and Dietz (2008, p. 15) insists that the environmental decision-making process, it is important to distinct the components of the public which encompasses stakeholders (affected and/or interest groups), directly affected public, observing public and general public (all individuals who are not directly affected by the issue but may be part of public opinion on it). Following this line of thinking, my contention is that participants in Vietnamese EIA process should encompass all of members of the public, not only stakeholders but also directing affected people, observing people and general public. This is a reasonable suggestion because Vietnam’s state is of the people, by the people and for the

people¹²⁹ and everyone has the right to live in a clean environment and has the obligation to protect the environment¹³⁰. Furthermore, Vietnamese people have the right to participate in the management of the State and management of society, to discuss and propose to state agencies issues about their base units, localities and the whole country; in contrary, the Vietnamese Government shall create the conditions for citizens to participate in this process and shall publicly and transparently receive and respond to the opinions and petitions of citizens¹³¹. Additionally, citizens have the right to freedom of speech and freedom of the press, and have the right of access to information, the right to assembly, the right to association, and the right to demonstrate¹³². Consequently, the right to participate in the environmental decision-making is officially regulated in the highest legal document, the Vietnam's Constitution. Another reason is that since the world's ecosystems are interlinked, the impacts of a project on the local environment are normally unlimited boundaries, not only in specific areas and *far-reaching repercussions*" (A. N. D. Glucker, Peter P. J.; Kolhoff, Arend; Runhaar, Hens A. C., 2013, p. 109). Thus, based on a democratic viewpoint, any member of the public and/or their representations must be granted the right to access environmental information and to submit comments. This is mainly due to the fact that people need to know about the actual *how*" of using common pool resources and public goods. The mutual agreement between the public and the developers is needed when using public goods (such as stable climate, fresh air, or the ozone layer) and common pool resources (soil, water, forest and oil). Public goods are traditionally defined as being both non-rival and non-excludable in consumption. Common pool resources are rivalrous but non-excludable in consumption (Petersen, 2015). Thus, if the investors carry out the specific

¹²⁹ See Article 2 of "Vietnam's 2013 Constitution", Vietnam's National Assembly, adopted 28 November 2013. Retrieved on 07 January 2017 from <https://www.ilo.org/dyn/natlex/docs/.../VNM94490%20Eng.pdf>

¹³⁰ See Article 43 of "Vietnam's 2013 Constitution". Supra note 129

¹³¹ See Article 28 of "Vietnam's 2013 Constitution". Supra note 129

¹³² See Article 25 of "Vietnam's 2013 Constitution". Supra note 129

projects which have adverse impacts on the environmental components, such as public goods and common pool resources, the public will obviously have the rights to know about these projects and to voice opinions.

Following this line of above reasons, in Japanese EIA process, anyone may submit comments to the proponent regarding a scoping document and a draft EIS, from the standpoint of protecting the environment¹³³. However, as has been mentioned by A. N. D. Glucker, Peter P. J.; Kolhoff, Arend; Runhaar, Hens A. C. (2013, p. 109), *“allowing everybody to participate also bears a risk”* because *“the public ‘is not a homogenous entity, i.e. the public interest does not exist’”* leading to difficulties in solve their diverse expectations. Perceptibly, in Vietnam, a developing country, environmental agencies lack human and financial resources to deliberate and reply to all public opinions and comments. Therefore, it is reasonable to allow everyone to participate in Vietnamese EIA process but lawmakers should set the appropriate participatory process to eliminate the unconstructive opinions. Additionally, representatives from the public should be the members of EIA report assessment council in order to enhance the role of their opinions on the final decision.

5.4.3. Model of public participation in EIA process

Like the analysis of consultation (one of the ladder of eight rungs on a ladder of citizen participation of Arnstein (1969, p. 219)), if the proponent and decision-makers did not consider the public concerns and ideas and restrict the public input, participation process just is a *“window-dressing ritual”*. Thus, the procedure for public consultation will be meaningless and *“what citizens achieve in all this activity is that they have participated in participation”*(Arnstein, 1969, p. 219). Particular in Vietnam, proponents need to attach the minute of public meeting and the attendance sheet to the EIA report, so what they achieve is the evidence that they have already conducted the procedure of public participation through

¹³³ See Article 8 of Law No.81 of 1997, *supra* note 129

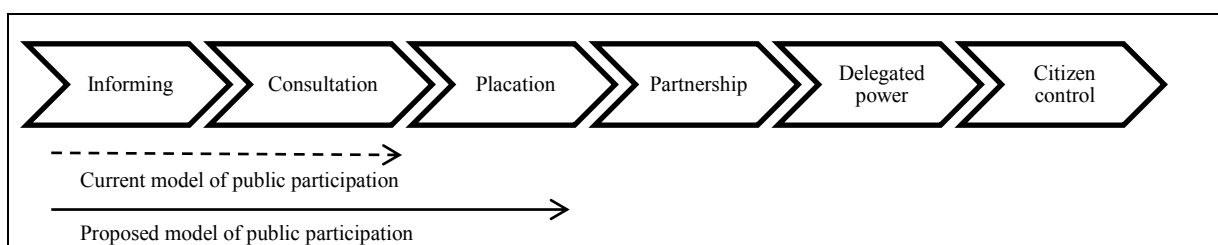
the public meeting. The purposes of the public meeting held in the Vietnamese EIA process are mainly to inform about the proposed project and to solve the issues regarding compensation for land loss and other structures. As a result, the objectives of public participation in EIA process have not been satisfied completely under the current participatory approach in Vietnam.

While the Arnstein's ladder focused on the redistribution of power as an important element in citizen participation, Connor (1988) introduces a new ladder of citizen participation providing *“a systematic approach to preventing and resolving public controversy about specific policies, programs and projects”*. Seven rungs on this ladder, (education, information feedback, consultation, joint planning, mediation, litigation and resolution/prevention) have a cumulative relationship and each successive rung builds upon the previous one (Connor, 1988, p. 257). In which, consultation, an advisory process, is used in cases of (i) the deficiency of an education program, (ii) the failure of an information feedback program, and (iii) the great gap between knowledge about proposed project and its acceptance through the programs of education and information feedback (Connor, 1988, p. 253). However, both Arnstein (1969) and Connor (1988) assume that in the consultation process, the proponent may accept or refuse the public opinions and comments. Therefore, to achieve the success of participatory process, the level of public participation in EIA process should be at the placation rung of the Arnstein's ladder or upper.

In Vietnam, to fulfill the objectives of public participation and increase the implementation of this procedure, the level of public participation in EIA process should be at the placation rung of the Arnstein's ladder, instead of the consultation rung (see figure 5.3). At this level, the public can have some degree of influence on the final EIA report. Arnstein (1969, p. 220) takes an example of placation strategy which places a few handpicked worthy people on boards (such as the board of education, police commission, or housing authority) or

planning committees. The public has the right to give the advice or comments but the decision-makers still keep the right to judge the legitimacy or feasibility of public opinions. Thus, to influence the final decision, it is necessary to increase the quality of public comments and opinions from the resident's boards or committees. Nowadays, in Vietnam, there are six socio-political organizations established on a voluntary basis to represent and protect the rights and lawful and legitimate interests of their members, namely the Vietnam Fatherland Front, the Trade Union of Vietnam, the Vietnam Peasants' Association, the Ho Chi Minh Communist Youth Union, the Vietnam Women's Union and the Vietnam War Veterans' Association¹³⁴. In Vietnamese EIA process, the representatives of those organizations already participate in the public meeting, but lacking specialization. Therefore, firstly, establishment of the resident's boards or committees needs to be put ahead in order to have the quality of opinions for EIA report. Thus, the resident's boards or committees employed in EIA process should include diverse socio-economic backgrounds (such as elected officials, welfare officials, poor and rich people, low- and well-educated people, and direct/indirect affected people). Accordingly, the rights and responsibilities of the various members of the resident's boards or committees need to be defined clearly to avoid the ambiguity. Additionally, representatives chosen from the resident's boards or committees should be the members of EIA report assessment council.

Figure 5.3: A proposed model of public participation in EIA process in Vietnam



Source: Based on eight rungs on the ladder of citizen participation (Arnstein, 1969, p. 217)

¹³⁴ See Article 9 of "Vietnam's 2013 Constitution". Supra note 129

5.4.4. EIA Process: in need of changing for improvement of public consultation

Based on the interviews, some interviewees who were the experts strongly stressed that the way to conduct EIA process would solely determine the implementation of public participation in this EIA process. They pointed out some following reasons, which impacts the implementation of public participation in EIA process in Vietnam:

- (i) Proponent/consultant prepares EIA report for their proposed project. As a result, they can easily intervene in the contents of EIA and just disclose the mandatory information, which brings the benefits for them (see section 4.3.3). Moreover, the contents of public participation of the EIA report are currently approved in a formalistic way by the EIA report assessment council.
- (ii) Public meeting is compulsorily held only one time during the EIA process, at the stage of EIA preparation. If citizens do not attend this only public meeting, they will not have any opportunity to give opinions for EIA report. Especially, implementation of notice for public meeting is still limited.
- (iii) It takes about six months to complete the EIA process, so time for consulting the public opinions is also too short. Especially, communication among the proponent/consultant, the responsible authority and the public is mainly one-way; as a result, the quality of public opinions is often low. However, the proponent wants to end the procedure of public consultation as soon as possible because of time-consuming. For them, the aim of this procedure is to provide information to public and fulfill their obligation for submission of EIA report.
- (iv) Cost has been a burden to proponent.

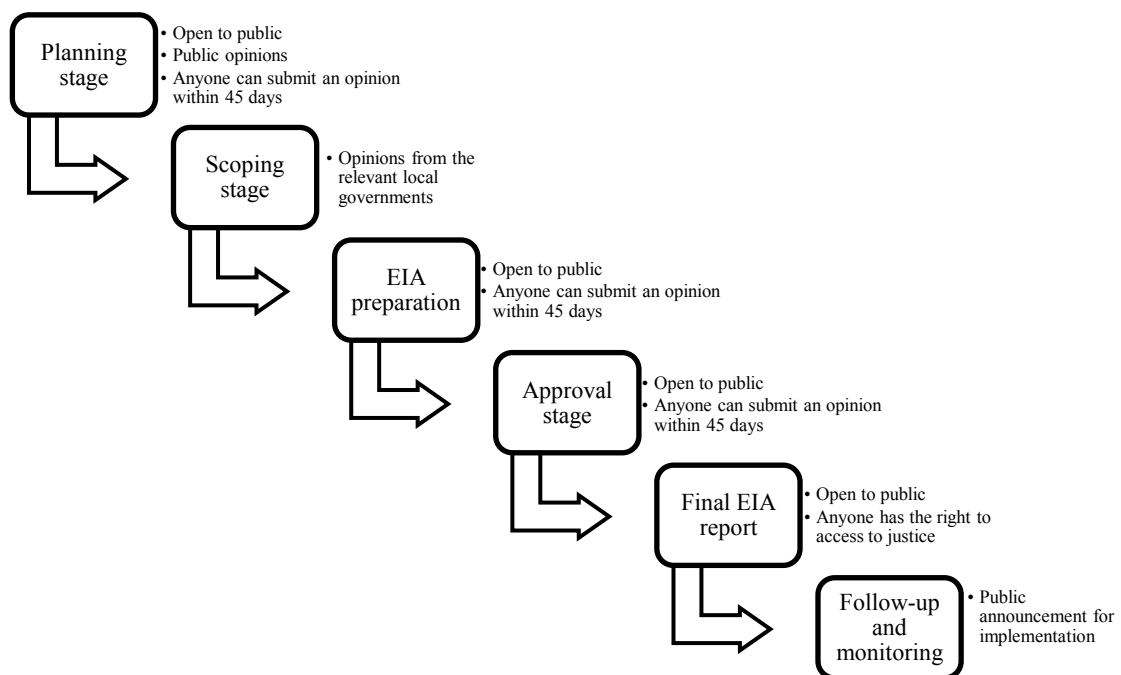
According to Sinclair and Doelle (2003, p. 3), EIA legislation shall set the quality standard for public participation, such as requirements for authorities, proponents and the public regarding the notice, access to information and participation. Thus, to solve the above

drawbacks in current EIA process in Vietnam, I suggested that the EIA legislation should be improved. *Firstly*, the EIA process should be started from the first stage of the decision-making process when Strategic Environmental Assessment was already completed. The public could access to the planning document and express their opinions for the environmental issues from the earliest stage of the EIA process (such as Primary Environmental Impact Consideration), even no options (see figure 5.4). *Secondly*, it is necessary to establish the independent consultancies in order that EIA report is a scientific work of the specific experts. Hollick (1984, p. 194) suggests that the environmental agencies should maintain a register of acceptable environmental consultants so that the proponent can select one of them from a register of those known to be honest, unbiased, technically competent, and capable of working with a design team. However, Hollick (1984, pp. 194, 195) also proposes that to identify the important environmental issues to be addressed, it might be better to form two committees, one having expert representatives from the proponent, relevant agencies, and outside organizations, and the other having representatives of the decision makers and public interest groups. These committees can receive the support from government and both committees will be empowered by responsible authorities to make decisions independently. It is logical and reasonable for proponent to pay the direct costs of the EIA. In Vietnam, LEP 2014 provided that the project owner shall cover all expenses incurred from the elaboration and appraisal EIA report. However, the cost for procedure of public meeting should be subsidized by the state to support proponent saving costs and time in EIA process. *Thirdly*, public meeting should be held several times during EIA process instead of one time under the current EIA process. This will be more reasonable if the government supports the cost for public meeting. Before submitting the EIA report to the responsible authorities, the relevant parties should convene one or more the public meetings to explain the proposed project and receive the opinions from people of diverse socio-

economic background if they missed the first public meeting. As a result, the conflicts among the proponent, the governments and the public will be reduced and the implementation of the project will achieve the success and effectiveness. *Fourthly*, to develop sustainability and to guarantee the sound environment for the people, it is necessary to provide the specific time period for consultation. Particularly, for the aim of inviting comments, proponent and/or local governments should make the documents of each stage (such as planning document, the draft EIA report, and the final EIA report) available for public comments in the local areas for one month from the date on which these documents are made known to the public. Additionally, anyone can submit comments and opinions to the proponent and/or the responsible authorities during a period of forty-five days from the date on which the above documents are made known to the public. On the other hand, this period is started from the date that these documents announce publicly and ended fifteen days after the following the termination of the period during which these documents are made known to the public. *Finally*, however, the most important for implementing the procedure of public participation is the notice. Doelle and Sinclair (2006, p. 197) propose that the ultimate responsibility for initial notice requirements should belong to the proponent. In contrast to this suggestion, in Vietnam, notice for public meeting has not been provided in any legal documents. In reality, notwithstanding lack of these provisions, notice has still been conducted by the responsible parties in Vietnam. Normally, the proponent send the notice to the People's Committee of commune, then this local governments will issue the notice inviting the public to come the public meeting for public opinions. Thus, a direct party making the notice for public meeting and/or for public comments is the People's Committee of commune, not a proponent; but the proponent still bear the full responsibility for the failure of public meeting. The People's Committee of commune, a local government, provides the actual notice through websites created for this announcement, public announcement at the bulletin boards, public areas, and

social media easily to the local people under the direct governance of the People’s Committee of commune. If the EIA process was changed under my proposal (see figure 5.4), requirement for notice period is thirty days from the date on which these documents for public comments are made known to the public. My contention is that responsibility for the notice should be provided by both proponent and local governments early in the planning stage with initial purposes and alternatives of proposed project.

Figure 5.4: A proposal of EIA process in Vietnam



In line with the principles suggested by Doelle and Sinclair (2006, p. 198), I withdraw some basic principles to ensure that the participatory process will be more meaningful and effective, as follows:

- Public participation should be carried out from the beginning to the end of EIA process.
- The results of consideration of public opinions need to be sent to responsible authorities.

- It is necessary to ensure of the right to access to information and enhance the two-way flow of information in EIA process.
- Independent consultants need to be established.
- Access to justice should be guaranteed to solve the controversial issues.

Based on the above principles, lawmakers can establish the new procedure for public participation in EIA process in order to achieve the effectiveness of this procedure.

5.4.5. Improve the environmental information system

The environmental information is the cornerstone of system designed to support decision-makers. Information on environmental issues should be opened and accessed easily and broadly. Diversity of information is necessary for the public to access to information. Difference in literacy will lead to difference in absorbing information. For experts and environmentalists, they can easily understand the environmental information with the academic terms and give valuable opinions. However, the rest sometimes feel uncomfortable to read with the technical terms. Therefore, information disclosed should be expressed in simple terms rather than academic ones.

Supply of environmental information to community depends on what kind of information, facts or propositions (Israel & Perry, 1991). *Firstly*, if information is fact, the responsibility of supplying this information shall belong to the state agencies, the public shall need to be educated to understand this knowledge. Thus, Connor (1988, p. 251) believes that education is the first step of the ladder of public participation. Accordingly, *–education in this case usually calls for a long-term, low profile, and relatively low-cost program; existing educational resources, such as schools and public affairs media programs, can often be used ...to provide people with a sound knowledge base before an issue arises”*. A mutual education process should be made among experts, governments, proponents, and the public in order to exchange the knowledge and information. From the sound basic information

developed in the policy, law, program or project will be understood and accepted by the public. The educated people would give more valuable and constructive opinions to the proposed project. Consequently, education program will lead to the step of prevention (Connor, 1988, p. 251). *Secondly*, if information is a proposition relative to connecting facts and the proposed project, proponents must be legally obliged to supply this information. Proponents shall persuade the public to believe the given propositions and agree the alternatives proposed in EIA report.

Then, to make the information flow smooth, the project proponent is obliged to provide a channel which enable public to have information about the proposed project. In Vietnam, the channel is often the public meeting. However, only way to supply the information of proposed project is not enough for public to get information accurately and promptly. Thus, the channels proposed for this are online/offline displays and public meetings. With the displays, the proponent adequately provides information about the proposed project, which will specifically illustrate the objectives, location, time for construction and other activities of project. All these information should be posted in bulletin boards at the local governments, local communities, the office of proponent, the proposed project's area as well as websites of local governments and the proponent. As a result, the public can access these information to compare with the facts of environmental issues in specific areas and give the most valuable and constructive opinions. In addition, the final EIA report should be made publicly for follow-ups and monitoring. Accordingly, the public can conduct the right to access to justice when proponent does implement the contents of EIA report inaccurately and inadequately.

5.4.6. Establish independent funding organization(s)

Doelle and Sinclair (2006, p. 197) suggests that an independent funding body should be established to supply the public with the appropriate forms of assistance at all stages of the EIA process, such as the financial support, free training and other things. In Vietnam, to have

the smooth EIA process and save time, the proponent has conducted the procedure for public participation as a perfunctory manner by completing the requirement of EIA process guideline. Additionally, public attitude towards this procedure is not willing to participate because they lack the knowledge and information about the environmental issues of proposed project. To improve this situation, it is necessary to establish the independent funding body having the functions as follows:

- Holding the seminars and workshops with the themes relating to the environmental science, climate change and environmental degradation with the participation of the experienced specialists on environment in general and on EIA in particular and the public;
- Printing the special issues on environmental knowledge and free access to those issues;
- Serving the skill training manual for using computer and accessing to internets, so that the public can access to information online and give their opinions as soon as possible and quickly;
- Supplying the financial supports for participatory process, such as transport fee, income lost and other fees.

With the above functions, the public has the full knowledge about environment and EIA and will be willing to participate the EIA process and confident in their ability to give the valuable and constructive opinions. As a result, the knowledge gap between government officials, proponents and the public in environmental issues will surely be bridged. Furthermore, the proponent will quickly gather the valuable public inputs for their EIA report before submitting it to the responsible authority.

5.5. Interim Conclusion

Several conclusions can be acquired from the analysis of public participation in EIA process in both Japan and Vietnam. First of all, a comparison on public participation in EIA process between Japan and Vietnam has revealed that there are some differences in participatory procedure regarding some issues: participatory approach, the stage of public participation, form of public participation, total time for conducting public participation in EIA process (see Table 5.1 for more details). Next, from findings of the EIA analysis and interviews in chapter 4, the existence of public participation in Vietnam's EIA process is again deliberated due to lack of its effectiveness in reality. But admittedly, the role of public participation in EIA process is not denied completely. However, public participation should not be seen as the only way to enhance the quality of EIA report through gathering information from the public. Thus, an implementation of public participation should differ from small-scale projects to large-scale projects. For instance, a special EIA procedure or a reduced procedure regarding participation should be applied to small-scale projects in order to save time and money for proponent. Conversely, the large-scale projects need to be implemented under the full EIA process rigorously.

Finally, some recommendations for revision of the current legal system on public participation in Vietnam's EIA process are withdrawn. That is, *"public participation"* needs to be defined in EIA context, of course, for mutual understanding among lawmakers, EIA actors and the public. For example, but not the only way, public participation is a part of the EIA process through which the environmental information exchange among stakeholders shall be conducted during all stages of EIA process, and all people has the right access to all information of projects to give the valuable opinions for a consensus in EIA report. Additionally, in implementing the public participation, scope of *"the public"* should be clarified in legal documents to reduce the ambiguity. For developing countries, namely in

Vietnam, due to lack of human and financial resources, allow everyone to participate in EIA process is a challenge, but no choices because of the environmental rights. However, lawmakers should consider the appropriate participatory approach to eliminate the unconstructive opinions and achieve the objectives of public participation. Moreover, the gradation of participation is a key role for the consideration of success of EIA process. In Vietnam, a level of public participation in EIA process should be at the placation rung of the Arnstein's ladder, instead of the consultation rung (see figure 5.3 for more details). Another remarkable point is that the current EIA process, *ipso facto*, has influenced the implementation of public participation. Thus, the new procedure for public participation in EIA process needs to be established (see Figure 5.4 for more details). Apart from above issues, an improvement of current environmental information system as well as an establishment of independent funding organization(s) also play important roles in the implementation of public participation in Vietnam's EIA process.

CHAPTER 6: DISCUSSION AND CONCLUSIONS

6.1 Summary of chapter 6

After reviewing the literature on public participation in EIA process as well as analyzing the situation of this matter in Japan and Vietnam, some limitations of my study and some recommendations for future research are reported. Firstly, the structure of the research methodology brought into play its values for the study but unavoidably there are some limitations: (i) time-cost consuming and the possibility of the bias caused by the interview method; (ii) lack of skill on communication with interviewees; (iii) using unstructured interviews leads to the reliability of the research findings; (iv) ability of applying the research findings to the international projects operating in Vietnam. Noticeably, choosing the public participation in Japan's EIA system leads to the significant difficulty when comparing it with this system in Vietnam because the difference in participatory culture between Japan and Vietnam. In the next section, I give some recommendations for future research. That is, the empirical researches need to be conducted in developing country and should focus on the effectiveness from the proponent's viewpoint. The terms of public participation also should be defined understandably among scholars. Finally, the conclusions of my study are withdrawn.

6.2. Research findings

Public participation, *ipso facto*, does not bring into play its effectiveness in practice if separating it with transparency, access to information, access to justice and other democratic aspects. Admittedly, public participation should not be described as a panacea for problems of environmental governance, nor can the one best participatory form be established for the EIA process of each country. But equally, public participation is also a multifunctional key for improving environmental governance and consolidating democracy. Recently, some

authors point out literally many theoretical reasons and experience from empirical research to believe that the wider public participation is, the more successful EIA achieves.

This dissertation is greatly influenced by the public participation approaches of O'Faircheallaigh (2010), A. N. D. Glucker, Peter P. J.; Kolhoff, Arend; Runhaar, Hens A. C. (2013), Stern and Dietz (2008) through which public participation in EIA process is clearly discussed by some main issues: definition, purposes, and models of public participation. Appropriately, I argue that public participation in EIA process implies an interaction process among access to information and environmental governance. In which, access to information ensure that the public can be provided full, accurate, prompt and completed information to participate in EIA process effectively and constructively; while environmental governance, the formation of policies and the introduction of measures to mitigate undesirable consequences (Bulkeley & Mol, 2003, p. 144), is more effective through public participation procedure. Thus, public participation is defined here as follows *“public participation is a part of the EIA process through which the environmental information exchange among stakeholders shall be conducted during all stages of EIA process, and all people has the right access to all information of projects to give the valuable opinions for a consensus in EIA report”*. However, public participation hereby discussed means an emphasis on the interactions among stakeholders, and of course, this procedure cannot bring into play any changes without relationships with the other elements of environmental governance.

After making the definition of public participation clear, the following issue is to find participants in EIA process, which remains a continuous controversy among the scholars. Some authors insist that the public just include the affected people; conversely, the others believe that the public should encompass all members of the public. Thus, I argue that the identification of participants depends on the public participation techniques and objectives of this procedure as well as a participatory culture in each country. Moreover, the purposes of

public participation including information exchange, joint decision-makers, and controlling and monitoring will be achieved in fulfilling the following objectives: provision of information, obtaining indigenous knowledge, problem solving and reaching consensus, democratic capacity, empowering the public, changing EIA process, testing the situation of information from different sources and resolving conflict. The implementation of public participation will be decided by fulfilling the objectives of public participation and being influenced by some factors, such as deficient provision of information, improper procedure for public participation, inadequate capacity and resources, attitude of stakeholders. However, public participation confronts different difficulties and challenges in each country, for instance, between developed countries and developing countries, or between democratic countries and monarchy countries, and among the countries with different participatory cultures.

In both Japan and Vietnam, public participation in EIA is a mandatory procedure but differing in the participatory approach, the voluntary-based approach in Japan and the requirement-based approach in Vietnam. Actually, in Japan anyone is officially given the opportunity to comment on scoping documents and draft EIS and they are directly involved in EIA process. In contrary, public participation in Vietnam's EIA process is in a perfunctory manner, namely, the affected people just attend the public meeting to receive information and give their opinions *ipso jure* without any direct involvement in decision-making process. Moreover, both in Japan and in Vietnam, *de facto* public participation is restrained to the review phase of the EIA process, which precedes the final decision about a project. In Japan the public has the right to express their comments from the planning stage of PEIC, the scoping stage and the preparation stage of a draft EIS before completing the final EIS to submit for final decision. By contrast, in Vietnam public participation is only implemented in the preparation stage of EIA report before submission for approval; as a result, the public

shows reluctance to participate in EIA process, and normally in the passive manner. Thus, public participation in Vietnam is described top-down and passive model, that is, the public is just informed of a policy, programme or proposed project and asked for their support (Hostovsky et al., 2010, p. 409). This clearly differs from model of public participation in Japan's EIA process, in which the public comments are considered public input to the decision.

As has been explained above, in Vietnam public participation in EIA process has a consultative trait, which does not empower the public to influence the decision (Arnstein, 1969). This is demonstrated by research findings mentioned in chapter 4. For instance, the goals of public participation in Vietnam's EIA process are not achieved *de facto* because of lacking of specification *ipso jure* (see chapter 4 for more details). All interviews claimed that the purpose of public participation in EIA process should be to empower the public to influence decisions regarding the proposed projects. As stated in chapter 4, interviewees identified some factors influencing the implementation of public participation in Vietnam's EIA process, and those factors correspond to factors mentioned by Hostovsky et al. (2010) in developing countries. For example, respondents pointed out a lack of information of proposed project as one of the key constraints to effective public participation. However, interviewees also stated the inadequate capacities and attitudes of government agencies in EIA process and a top-down manner through existing structures (People's Councils and People's Committees) at the provincial, district and commune levels as well as participatory culture in Vietnam as some great barriers to achieve the objectives of public participation in EIA process. Whereas the objectives of public participation in Vietnam's EIA process are not fulfilled completely, some interviewees suggested the implementation of public participation should not be withdrawn from the EIA process, but depending on the scale of the proposed projects, not applying to all projects (see chapter 5, section 5.3 and 5.4 for more details).

6.3. Limitations of research

First of all, the structure of the research methodology brought into play its values for my study, but unavoidably, some limitations were found as follows:

- As mentioned in chapter 4, section 4.4.2, using interview method remains some certain weakness, such as time – cost consuming as well as the possibility of the bias of interviewer and interviewees. Due to the limited time and resources for my study, only projects located in Ho Chi Minh City could be chosen for EIA analysis. Although Ho Chi Minh City shares some characteristics with the other cities and provinces in Vietnam, such as the socio-cultural, the diversity of economy sectors and including urban and rural areas, it also owns some differences. Most importantly, Ho Chi Minh City is regarded as the biggest city in Vietnam with 238 wards in urban and 65 communes in rural, the most developed city and the highest contribution to GDP with the highest number of business enterprises, so environmental issues play a major role in development process. In addition, as has been mentioned, the lack of understanding the case study method is the barrier to generate the research findings. As a result, research findings withdrawn from EIA analysis and interviews would be limited to assessment of EIA reports in other provinces or cities in Vietnam. However, it must be highlighted that the case of Ho Chi Minh City raised several issues, which are applicable to the theory on public participation in EIA process.
- Next, the research is just based on an analysis of public participation in seven EIA reports from domestic projects, without EIA reports from international organizations projects operating in Vietnam. Thus, the research findings are limited to all projects in Vietnam. However, to reduce this limitation, the comparison between Vietnam and Japan regarding implementation of public participation in EIA process was made to withdraw the shortcomings of current procedure of public participation in Vietnam for

improvement in the future.

- Another limitation is to choose the interviewees for data collection in Ho Chi Minh City. Due to the fact that participatory culture is not established in Vietnam, particularly the participatory procedure in EIA process, leading to the reluctance of interviewees in doing interviews. Moreover, a weakness of communication and relations with stakeholders is a limitation for contacting interviewees. Thus, in my research the personal interviews were just conducted with thirty-three interviewees, in which there were sixteen citizens being interested in compensation, employment, relocation and resettlement. As a result, responses may not be presented for all opinions of Vietnamese people, although those answers are relevant to the wider theoretical study of public participation in EIA process in developing countries.
- The research designs (qualitative designs), research methods (unstructured interviews and open-ended questions) and research techniques (note taking and audiotape) are greatly affected the validity of the research results. For more details, the unstructured interviews are characterized by a flexibility of approach to questioning and do not follow a system of pre-determined questions and standardized techniques of receiving information. Thus, the interviewer is freely to ask questions, in case of need, supplementary questions or omitting certain questions. As a result, no interview could be repeated with other interviewees, which may reduce the reliability of the research findings. However, the research objectives was achieved in fact and the data collection was still collected with full information from the interviewees.
- Because of private interests in EIA process, interviewees, sometimes, refused to answer a specific question or answered in the perfunctory manner. It should be emphasized that research findings completely depend on the responses of different interviewees. In given case, the perception and attitudes of interviewees play a key

role in the interview. But admittedly, interviewees often give the answers, in their thinking, favorably, leading to the biased responses. In reducing these bias, these responses were carefully cross-checked with information from other sources, such as information from responsible authorities, scientists, scholars and indigenous knowledge.

Next, although choosing public participation in Japan's EIA system for comparison with this procedure in Vietnam gives some benefits, the limitation of the comparative method of studying remains remarkably. This limitation stems from a difference in participatory culture between the developed country (Japan) and the developing country (Vietnam). Moreover, lack of communication and understanding of Japanese participatory culture is the limited generalizability of the findings. However, in order to account for the shortcoming, whenever possible, the drawbacks of current public participation in EIA systems in Japan will be properly considered the experience lessons for this system in Vietnam, of course, depending on the specific socio-economic context and participatory culture of Vietnam.

6.4. Recommendations for future research

On the basis of the literature review and the limitations aforementioned, some recommendations for future research can be withdrawn as follows:

- More studies are required to focus on the objectives of public participation in EIA process to find the differences between the developed countries and developing countries and then, to make a comparison these objectives of this procedure in these countries with the theoretical analysis. Moreover, the empirical research regarding the objectives of public participation in EIA process should be made in other developing countries in order to demonstrate that the research findings of my study can be employed in other developing countries.
- More future studies should identify the implementation of public participation in EIA

process from the proponent's viewpoint, without from the environmental agencies or citizens. To date, many research works have tend to focus on the viewpoints of authorities and citizens regarding the public participatory in EIA process, from the standpoint of protecting the environment and environmental conservation. Moreover, proponents also tend to consider EIA process as an administrative process in the investment activities in order to receive the approval from the responsible authorities, rather than a tool for environmental protection and sustainability. Thus, proponents have a tendency to conduct the procedure of public participation in a perfunctory manner, due to, not only, the cost and time-consuming. Therefore, in addition to exploring the realistic economic benefits of public participation in EIA process, these benefits should be analyzed deeper in the future research.

- Additionally, the terms of "*participation*" and "*the public*" has already defined in this study, but the difference among theoretical scholars, lawmakers and the EIA actors in using those concepts is remaining. Thus, to reduce the ambiguity, of course, it is necessary to reach the mutual consensus on the understanding of those terms through empirical research in developed countries and developing countries.
- This study has shown some factors influencing the implementation of public participation in EIA process as well as a degree of fulfilling the objectives of this procedure in Vietnam. But admittedly, the relation between those factors and theoretical objectives of public participation in EIA process was not analyzed considerably. Due to the fact that the objectives of public participation have not been clarified *via legis* in Vietnam. Therefore, future research needs to focus on the establishment of objectives of public participation in Vietnam's EIA process in legislation, and then, to clarify to what extent the linkage of these factors *via facti* and the objectives *via legis*.

- Noticeably, future research should focus on the way through which the public shall influence the whole EIA process, including, not only, draft terms of reference, scoping documents and the contents of EIA report because to date, EIA process is mainly controlled by the project proponent. It is very important because EIA findings shall greatly influence the decisions of the power-holders.
- In this study, research findings are mainly based on the analysis of EIA reports of domestic projects and interviews with stakeholders. However, honestly, participation in international funding projects is quite different with this in domestic projects in Vietnam. Thus, future research should identify the difference and reasons for this as well as the way to bridge the gap between the public participation in EIA process of domestic projects and of international funding projects.
- Finally, the research findings have shown that participatory culture, economic and political factors influence the implementation of public participation in Vietnam's EIA process. However, this study did not fully analyze the reasons of this influence in Vietnam. Thus, the case study analysis should be essential to solve this problem in next research.

6.5. Conclusions

This dissertation sought to address four research questions and fulfill two research objectives aforementioned in chapter 1. There seems to not deny the truth that public participation plays a key role in the success of EIA process and the smooth implementation of the specific project. The theory review of public participation in EIA process has centralized the concepts of "*participation*", "*the public*" and "*public participation*", models and objectives of public participation, and factors influencing the implementation of public participation in EIA process. Although public participation has already implemented in legislative process and administrative process for a long time, scholars still argue about all

issues regarding this procedure, such as meaning, scope, forms of participation and objectives. However, from different standpoints and various approaches, each researcher gives well-grounded contestation in favor of his viewpoint regarding the above issues and no need to compare those understandings. Thus, through applying the procedure of public participation in EIA process in each country, the notion and objectives of this procedure should be completely clarified in future research.

The EIA analysis and interviews revealed that the public participation in Vietnam's EIA process has been implemented in a perfunctory manner, leading to reduce the implementation of this procedure in given case. Due to the fact that public participation in EIA process will achieve the effectiveness if all objectives of public participation are fulfilled in reality. For instance, from EIA analysis and interviews, the theoretical objectives of public participation have not reached yet (chapter 4). The public has involved in EIA process passively and superficially. The public is hardly empowered to influence the final decision and EIA report. In practice, only affected people have attended the public meeting due to the compensation, relocation and resettlement. This is easily understandable, given the fact that in developing countries (namely in Vietnam) the public concerns are mainly economic benefits, particularly private benefits. In addition, the public participation in EIA process in developing countries differs from the public participation in Western countries and developed countries because of the differences in the participatory culture and attitudes of governments (Hostovsky et al., 2010). Moreover, the specific socio-economic conditions also affect the participatory process of stakeholders in EIA process. This might explain the reasons of the effectiveness of public participation in EIA process in Western countries, where democracy has already existed. Thus, the implementation of public participation in developing countries (such as Vietnam) and developed countries (such as Japan and Western countries) does not need to compare.

Furthermore, public participation in EIA process of international funding projects is implemented in accordance with the requirements of donor organizations (such as WB, ADB), but inconsistent with the objectives of public participation in EIA process of local projects. For instance, participatory technique employed in local EIA process is the public meeting, while survey, interview and explanation meetings are used in EIA process of international funding projects and public opinions are considered input for decision-making process. Hence, participatory procedure should be carried out with the same techniques among all kinds of projects in accordance with international requirements and local circumstances.

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Appendices

Appendix 1: Question and Answer collection for EIA in Tokyo

環境アセスメント質疑応答集（平成28年度改訂版）
Q & A Collection for Environmental Impact Assessment (EIA)

	質 問	回 答
	Question	Answer
①	環境アセスメント制度とは？	<p>大規模な開発事業の実施による環境への影響をできる限り少なくするための一連の手続きの仕組みをいいます。</p> <p>大規模開発事業事業者は、事業を実施する際に環境に与える影響について、あらかじめ調査、予測、評価を行い、これらの結果を踏まえ、環境保全対策をまとめます。その過程で周辺住民や関係自治体、審議会の意見を聴くための手続を行います。さらに、事業者は、工事の施行中及び完了後にも事後調査を行い、実際に適切な環境配慮がなされているかを確認します。</p>
①	What is an Environmental Impact Assessment System (EIA)?	<p>It is the system to reduce the impact on the environment of a large-scale development project as much as possible.</p> <p>Businesses and organizations that plan to conduct large-scale development projects are required to survey, estimate, and evaluate the environmental impact of implementing their projects in advance, and to report the results and environmental preservation measures adopted. They should follow a procedure for hearing the opinions of residents, local governments, and councils. Businesses and organizations are also required to undertake research during and after construction to monitor whether environmental preservation measures have been appropriately adopted.</p>
②	予測・評価する項目は？	<p>全部で17項目あります。 1 大気汚染、2 悪臭、3 騒音・振動、4 水質汚濁、5 土壌汚染、6 地盤、7 地形・地質、8 水循環、9 生物・生態系、10 日影、11 電波障害、12風環境、13景観、14史跡・文化財、15自然との触れ合い活動の場、16廃棄物、17温室効果ガス</p>

②	What are the assessment items?	<p>There is seventeen assessment items. 1 Air pollution, 2 Odors, 3 Noise and vibration, 4 Water, 5 Soil pollution, 6 Ground transformation, 7 Topography and geology, 8 Water cycle, 9 Biology and ecology, 10 Shade, 11 Radio disturbance, 12 Wind condition, 13 Landscape, 14 Historic sites and cultural assets, 15 Sites for activities in nature, 16 Waste, 17 Greenhouse gases</p>
③	<p>これまでに何件の事業に適用されたか。</p>	<p>東京都において、環境影響評価条例に基づき手続が実施された事業は、条例が施行された1981年から2017年3月末までの間に、340件（うち計画段階アセス4件）です。</p>
③	How many projects were applied to the ordinance so far?	<p>The procedures based on the Tokyo Metropolitan Environmental Impact Assessment Ordinance were applied to 340 projects (including four program assessments) in Tokyo during the period from 1981, when the ordinance was enforced, until the end of March in 2017.</p>
④	東京都の環境アセスメント制度の特徴は？	<p>都のアセスメント制度には、以下の5つの特色があります。</p> <p>1 計画アセスの導入 これは、事業計画の早い段階から複数の計画案を環境面から比較評価するものであり、対象となるのは事業者が東京都の場合のみです。なお、計画アセスを実施した事業は、一定の要件を満たす場合に限り事業アセス手続の一部を省略することが可能です。</p> <p>2 事業者責任・評価基準等の明確化、審議会開催 アセス調査、予測、評価は、技術指針、事後調査基準に基づき、事業者の責任と負担で行われることが明文化されています。また、知事の諮問に応じ、環境影響評価及び事後調査に関する事項について専門的な見地から調査、審議する環境影響評価審議会を開催します。</p> <p>3 住民参加の機会 意見書の提出、都民の意見を聴く会の開催などが手続化されています。</p> <p>4 事後調査手続 工事中、工事完了後も環境保全措置の実施状況などを検証するために事後調査を実施します。</p> <p>5 実効性の確保 事業に関係する許認可権者への配慮要請、事業者への措置要請などを行います。</p>

<p>④</p>	<p>What are characteristics of Tokyo's Environmental Assessment System?</p>	<p>The environmental assessment system of Tokyo is characterized by the following five points: 1 Introduction of Program Assessment This system is for the comparative evaluation of several plans from an environmental point of view at the early stage of planning. This is conducted only for projects implemented by the Tokyo Metropolitan Government. The assessment procedure may be partially omitted when a program assessment has been implemented, provided that certain requirements are satisfied. 2 Clarification of the Responsibilities of Businesses and Organizations and Assessment Standards, Establishment of an Advisory Council Businesses and organizations are responsible for conducting and paying for the survey, estimate, and evaluation following the technical guides and standards for follow-up surveys. The EIA Councils are held to examine assessments and follow-up surveys from a technical point of view at the request of the Governor. 3 Opportunity for Tokyo Residents to Participate The procedure includes collecting written opinions and organizing meetings to directly hear the opinions of the residents of Tokyo. 4 Procedure for Follow-Up Surveys Follow-up surveys are conducted to verify the implementation of efforts towards environmental conservation during a project and after its completion. 5 Assurance of Effectiveness Requests for environmental consideration are made to authorities issuing permits or approvals. Requests are made to businesses and organizations regarding necessary measures.</p>
<p>⑤</p>	<p>環境アセスメント手続きは義務なのか？条例違反となった場合、罰則はあるのか。</p>	<p>アセスメント手続きは義務ではないため、罰則規定はありません。ただし、事業者がアセス条例に違反した場合は、当該事業者の氏名と住所を公表します。</p>
<p>⑤</p>	<p>Are the procedures of the environmental assessment ordinance? Are there any penal provisions?</p>	<p>There isn't the penal regulations because the procedures are not obligation. But if businesses and organizations break the ordinance, we announce there name and address publically.</p>

⑥	<p>(調査、予測、評価は事業者の責任で行うとのことだが、)都は、環境アセスメント手続きの中で、どういった役割をするのか。</p>	<p>都では、環境影響評価手続きの運用を行っています。 具体的には、条例や技術指針の改正、都民や事業者等から環境影響評価制度に関する相談受付、助言・指導、スケジュール調整等を行います。 また、ほぼ毎月審議会を開催しており、事業者から提出された各アセス図書の内容を審議し、知事意見を出します。 なお、審査意見書を出す前には、意見書募集や都民の意見を聴く会の開催により、都民や関係区市町村長からの意見を受け付けます。</p>
⑥	<p>(According to that businesses and organizations are responsible for conducting and paying for the survey, estimate, and evaluation responsibility of) What is the role of government in the EIA system?</p>	<p>The roles of governments is operating the systems. Specifically, we revise the ordinance and the technical guidelines occasionally and give advice about EIA system to the citizen, businesses and organizations. And we hold EIA councils almost every month and examine the assessment and follow-up which businesses and organizations submit and report the results of examination. Furthermore, we have opportunities to listen the opinions from municipalities and the residents of Tokyo by collecting written opinions and organizing meetings to directly hear the opinions of the residents of Tokyo before making the reports of examination.</p>

Appendix 2: Information sheet for an Interviewee

You are kindly invited to participate in an interview for the research entitled “Public participation in Environmental Impact Process – An analysis of theory and practice in Vietnam”. This research aims to examine the implementation of public participation in Vietnam’s EIA process in reality. From which, the role of public participation in EIA process will be considered to achieve the objectives of this procedure. The interviews will be conducted in Ho Chi Minh City, Vietnam. The interviewees are selected randomly.

The research is expected to be completed by September 2016.

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You are kindly requested to participate voluntarily in the interview for about one hour. You are requested to provide information on your age, gender, literacy and occupation. Next, you are further requested to provide information on your views, experiences and proposals on public participation in Vietnam’s EIA process.

The researcher hereby solicits your kind support in this regard, as your opinion on the information supplied is very extremely important to the quality of the research, and the validity of the outcome.

If you have any comments with regard to this research, please contact the researcher in the address below:

Researcher’s address in Japan

Graduate School of International Social Sciences

Yokohama National University

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Email: nguyen-anh-sp@ynu.jp

You assure that the information supplied by you will be treated with utmost confidentiality. The researcher named above is responsible for the ethical conduct of this research.

The researcher deeply thank you for your anticipated cooperation and kind consideration.

Appendix 3: Interview Questions for Interviewees

INTERVIEW ON PUBLIC PARTICIPATION IN ENVIRONMENTAL IMPACT ASSESSMENT PROCESS OF DEVELOPMENT PROJECTS

PHẦN 1: THÔNG TIN CỦA NGƯỜI PHỎNG VẤN

PART 1: INFORMATION OF RESPONDER

- Số thứ tự liên lạc/ *Contact Number*:

- Giới tính/*Gender*: Nam/ *Male* Nữ/ *Female*

- Nhóm dân tộc/*Ethnicity*: Kinh/ *Kinh* Không phải dân tộc Kinh/ *Non-Kinh*

1. Tuổi/*Age*: dưới 18 tuổi/*under 18yrs* 18-25 25-55

56-60 trên 60/ *over 60*

2. Công việc hiện nay của anh chị là gì?/ *What is your current occupation?*

3. Anh chị tham gia vào quá trình lập ĐTM của các dự án với tư cách gì?/ *When you participated in the EIA process, what is your role?*

PHẦN II: THAM VẤN CỘNG ĐỒNG TRONG ĐÁNH GIÁ TÁC ĐỘNG MÔI TRƯỜNG

PART II: PUBLIC PARTICIPATION IN EIA PROCESS

4. Về báo cáo ĐTM/ *Regarding EIA report*

Quá trình đưa thông tin trong báo cáo ĐTM của dự án được thực hiện như thế nào? (Ai cung cấp? Cung cấp cho ai? Bằng cách nào? Và ở đâu? Nội dung thông tin cung cấp trong ĐTM/ Từ ngữ thể hiện trong báo cáo ĐTM?)

Please talk about the process of information disclosure on the EIA report of proposed project. (Who? To whom? How? When? The contents of EIA report? The language of EIA report?)

5. Về tham vấn cộng đồng/ *Regarding public participation*:

5.1. Thủ tục tham vấn cộng đồng được thực hiện như thế nào? (Giai đoạn nào? Hình thức nào? Ở đâu? Như thế nào? Ai tham gia và ai nên tham gia? Nội dung buổi tham vấn? Cách giải thích các thuật ngữ? Thời gian cho đóng góp ý kiến?)

What is the procedure for public participation? (When? Which forms? Where? How? Who? What are the contents? How to explain the technical terms? Time for comments?)

5.2. Theo anh chị, hiện nay, có hỗ trợ tài chính cho việc tham gia họp tham vấn cộng đồng không?/ có nên áp dụng việc hỗ trợ này không?

Are there financial supports for participating the public meeting in the EIA process? Should financial supports be applied?

5.3. Nếu người dân có ý kiến thì quá trình giải đáp sẽ diễn như thế nào?/

What is the feedback process if someone gives any comments?

6. Sự minh bạch trong quá trình ra quyết định/ *Transparency of decision making process*

- Biên bản của quá trình tham vấn?/ *The minutes of public consultation?*

- Các vấn đề quan tâm của các bên được thể hiện như thế nào trong quá trình ra quyết định?/ *How were the stakeholders' concerns used in the decision making process?*

- Giải quyết mâu thuẫn?/ *Resolution of conflicts?*

Mức độ tin tưởng đối với thông tin trong báo cáo ĐTM?/ *Level of trust in information of EIA report?*

7. Theo các anh chị, mục đích của tham vấn cộng đồng trong quá trình lập ĐTM là gì?/

In your opinion, what is the objective/are the objectives of public participation in EIA?

8. Theo các anh chị, ở Việt Nam, mục đích của tham vấn cộng đồng được hoàn thành ở mức độ nào?

In your opinion, to what extent is this objective/are these objectives being fulfilled in Vietnam?

9. Theo các anh chị, tại sao pháp luật quy định phải tham vấn cộng đồng trong ĐTM?/

In your opinion, what is the legislative rationale of public participation in the EIA process?

10. Theo anh chị thì yếu tố nào đóng góp hoặc cản trở quá trình thực hiện cũng như hiệu quả của tham vấn cộng đồng trong quá trình lập ĐTM ở Việt Nam?/

In your opinion, what are the contribution or the constraints of the implementation of public participation in the EIA process in Vietnam?

11. Anh chị đánh giá như thế nào về việc thực hiện quá trình tham vấn cộng đồng trong ĐTM hiện nay tại Việt Nam?/

What is your evaluation on the implementation of public participation in EIA process in Vietnam?

12. Để quá trình tham vấn cộng đồng trong báo cáo ĐTM được tốt hơn thì các anh chị có đề xuất gì?/

To improve the effectiveness of public participation in the EIA process, what are your proposals?

THANK YOU FOR YOUR COOPERATION!

Appendix 4: Information about the Interviewees

No.	Full Name	Date of interview	Affiliation
1	Dr Phạm Khanh Nam	16:00-17:00 21/6/2016	School of Economics - UEH
2	Ass Prof. Dr Phung Chi Sy	15:00-15:40 25/6/2015	Environmental Technology Center
3	Ass Prof. Dr Nguyen Đình Tuan	16:00-16:30 28/6/2016	Ho Chi Minh city University of Natural Resources and Environment
4	Dr Vuong Quang Viet	9:00-10:30 30/6/2016	Institute of Tropical Environment, Vietnam
5	Le Tien Dung	12:00-12:45 30/6/2016	Environmental agency of HCM city
6	Vo Thanh Nhan	12:30-13:00 6/7/2016	Cu Chi Commercial & Industrial Developing Investment Joint Stock Company
7	Ass Prof. Dr Vo Le Phu	10:15-11:15 11/7/2016	Department of Environment and Resources, Ho Chi Minh city University of Technology
8	Ngo Toai Chuong	8:40-10:00 12/7/2016	Environmental agency of Govap District
9	Dr Pham Thi Anh	14:00-15:30 12/7/2016	Institute of Environmental Research and Transport, Ho Chi Minh city University of Transport
10	Nguyen Van Thao	10:30-11:00 14/7/2016	Environmental agency of HCM city
11	Dr Vu Ngoc Long	10:30-11:15 15/7/2016	Southern Institute of Ecology
12	Nguyen Huu Nam	15:30-16:30 15/7/2016	The People's Committee ward 5, Govap District
13	Nguyen Thi Thanh My	16:00-16:30 13/5/2016	Environmental agency of HCM city
14	Unnamed	15:30-16:00 19/7/2016	Local community
15	Huynh Thị Thu Thao	13:50-14:15 20/7/2016	Vietnam Fatherland Front of ward 25, Binh Thanh District
16	Hoang Vu Cuong	14:20 -15:00 20/7/2016	Ho Chi Minh Communist Youth Union of Ward 25, Binh Thanh District

17	Nguyen Thanh Phuong	15:40-16:10 20/7/2016	The People's Committee ward 7, Govap District
18	Tran Huu Canh	16:10 -17:00 20/7/2016	The People's Committee ward 7, Govap District
19	Truong Phi Hien	17:50 – 18:20 20/7/2016	Retirement
20	Võ Thị Mai	10:10-10:40 21/7/2106	The Red Cross Society of Ward 7
21	Vo Minh Tri	11:10 – 11:45 21/7/2016	The People's Committee ward 3, Govap District
22	Vo Van Vinh	10:40 – 11:00 23/7/2016	Local citizen
23	Le Ngoc Dung	11:00-11:30 23/7/2016	Local citizen
24	Nguyen Van Binh	11:30-11:45 23/7/2016	Local citizen
25	Cao Van Vui	13:40-14:45 23/7/2016	Local citizen
26	Nguyen Thi Hanh	14:40-14:50 23/7/2016	Local citizen
27	Hoang Nghia Hung	15:00-15:20 23/7/2016	Vietstar Joint stock company
28	Nguyen Thi Anh Dao	19:00 -19:30 01/8/2016	The People's Committee ward 10, Govap District
29	Dinh Thi Nga	10:05-10:20 13/8/2016	Student
30	Pham Huy Kim	10:20-10:30 13/8/2016	Local citizen
31	Pham Thi Hien	10:30-10:50 13/8/2016	Local citizen
32	Dinh Van Tho	10:55-11:15 13/8/2016	Local citizen
33	Tong Viet Thanh	11:00-11:30 07/09/2016	Environmental agency of HCM city