

Environmental assessment law and public participation for sustainable development of natural gas in Bangladesh: harmonizing the Aarhus Convention

Hasna Shireen (Student ID#10011216), Course-Based LL.M. Student

AN ANNOTATED BIBLIOGRAPHY

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This annotated bibliography is prepared as a requirement for Law 703, and is intended to be a work in progress for my major research paper.

A. Books and Essays

- 1) Davies, Peter, “Public Participation, the Aarhus Convention, and the European Community” in Zillman, Donald N., Lucas, Alastair R. & Pring, George (Rock), eds., *Human Rights in Natural Resource Development* (Oxford: University Press, 2002) 155.

This essay demonstrates the role of public participation in the Aarhus Convention, which establishes the importance of such participation in the decision-making process, and forms the heart of this research paper. Emphasis has been placed on the principles that are relevant for implementing the Convention, and are important for discussion on the arguments presented in this paper.

- 2) Jain, R.K., Urban, L.V. & Stacey, G.S., *Environmental Impact Analysis: a New Dimension in Decision Making* (New York: Van Nostrand Reinhold Company, 1977).

This work is a rationale for the essential elements of public participation in the environmental impact assessment process. According to the authors the three major elements required to make the decision making process effective are: unhindered flow and availability of information, public accessibility to information, and reflection of public opinion in governmental decisions and regulations. In addition, the authors also propose possible frame works incorporating public participation in decision making. This work provides several important perspectives pertinent to this research.

- 3) Pring, George (Rock) & Noe, Susan Y., “The Emerging International Law of Public Participation Affecting Global Mining, Energy, and Resources Development” in Zillman, Donald N., Lucas, Alastair R. & Pring, George (Rock), eds., *Human Rights in Natural Resource Development* (Oxford: University Press, 2002) 11.

In this essay, analysing from a historical perspective, the authors conclude that public participation is a key issue affecting energy and resources development. The authors

scrutinised and evaluated existing international laws for public participation, and discussed the guidelines for public participation at a decision making level. The article also provides a useful review on Aarhus Convention, and is resourceful for constructing the ideas and information conveyed in this paper.

- 4) Thomas, I., *Environmental Impact Assessment in Australia: Theory and Practice*, 3d ed. (Sydney: the Federal Press, 2000).

Presenting the situation in Australia as an example, this book illustrates the necessity and development of environmental impact assessment. The author introduced the concept of public participation as a major characteristic of the assessment process, identifying it as a source of knowledge, sign of affirmation to democracy, and an effective way to close the difference between decision-making and public opinion. The author believes that such participation can eliminate public alienation, hostility and lack of confidence on government decisions. These are important issues, and are strongly related to the scope of this paper.

- 5) Tilleman, William A., “Environmental Assessment” in Hughes, Elaine L., Lucas, Alastair R. & Tilleman, William A., eds., *Environmental law and Policy*, 3rd ed. (Toronto: Emond Montgomery Publication Ltd, 2003) 216.

Starting from the details important for understanding the scope and procedures of assessment laws, this essay provides a comprehensive picture on Environmental Impact Assessment (EIA). While justifying the need of EIA, it also considers several alternatives such as good environmental planning and practice. Most importantly, it discusses the significance of the role of the public in the environmental assessment process, which is strongly related to the research objective of this paper.

- 6) Barton, Barry, “Underlying Concepts and Theoretical Issues in Public Participation in Resources Development” in Zillman, Donald N., Lucas, Alastair R. & Pring, George (Rock), eds., *Human Rights in Natural Resource Development* (Oxford: University Press, 2002) 84.

B. Articles

- 1) Habib M. Alshuwaikhat, “Strategic Environmental Assessment Can Help Solve Environmental Impact Assessment Failures in Developing Countries” (2005) 25 *Environmental Impact Assessment Review* 307.

This article investigates project-level environmental impact assessment and its limitations, and advocates adoption of Strategic Environmental Assessment (SEA) as a means to achieve sustainable development in developing countries. The author suggests that the lack

of transparency and accountability, and ineffective public participation in the development of the policy, plan and program (PPP) in many of these countries can be mitigated by the SEA process. Moreover, the proactive and broadly based characteristics of SEA would benefit the institutional development of the PPP process. The author calls for a coordinated effort between all government, nongovernment and international organizations involved with PPP to enable the developing countries pursue a path of sustainable development through application of SEA. This article provides good complementary and supporting material on public participation.

- 2) Hartley, Nicola & Wood, Christopher, “Public Participation in Environmental Impact Assessment-Implementing the Aarhus Convention” (2005) 25 *Environmental Impact Assessment Review* 319.

This article explores the possible nature of public participation in the environmental impact assessment process provided potential integration of the Aarhus Convention. The Convention advocates early and effective participation, but these terms remain rather undefined, and questions persist about the exact procedure to implement its principles. This paper reports the extent, to which the practice evaluation criteria were fulfilled, and the types and effectiveness of the participation methods. Finally some of the key barriers that appear to impede the execution of early and effective participation programmes are highlighted. The authors conclude that the Convention will undoubtedly lead to strengthening of participation procedures, but were critical about the possible level of improvement which is dependent on the interpretation and incorporation of the ideals into legislation and practice. This article is a good critical review of the Convention.

- 3) Mahmud, S, “Magurchara Blowout in Bangladesh: Environmental and Human Rights Issues” (2003) 1 *Oil, Gas and Energy Intelligence* 1.

This article provides a detailed description and understanding of the environmental and human rights issues originating from blow out situations where the Environmental Impact Assessment (EIA) procedures are not properly defined. Illustrating with the Magurchara blowout case in Bangladesh, the author identifies the potential legal, environmental and humanitarian crises arising from joint venture multinational projects facing blowouts, particularly due to lacks in the EIA and/or Acts outlining the EIA. Most importantly for this research, it illustrates the extent of lack of public participation in energy projects in developing countries, and discusses the significance of the role of EIA to prevent such situation from occurring in the first place.

- 4) Palerm, Juan R., “An Empirical–Theoretical Analysis Framework for Public Participation in Environmental Impact Assessment” (2000) 43 *Journal of Environmental Planning and Management* 581.

This paper proposes a public participation model for introducing theoretical approaches to the Environmental Impact Assessment (EIA) practices, and suggests application of the

critical social theory to a practical level. The theoretical model is based on Habermas's theory of communicative action and Weblar's analysis. This article provides a clear and concise summary of the literature on public participation in the EIA process, and is instrumental to develop a theoretical background on the subject matter of this research.

- 5) Palerm, Juan R., "Public Participation in Environmental Decision Making: Examining the Aarhus Convention" (1999) 1 *Journal of Environmental Assessment Policy and Management* 229.

In this article the author reviewed the development of public participation in environmental decision making. Empirical principles for public participation are proposed, based on Haberman's theory of communicative action, and these principles are used to access the Aarhus Convention which is the subject of this research paper. The Convention is compared with public participation principles, following more strict standards to interpret such participation. It is a significant work scrutinising the effectiveness of the Convention to incorporate meaningful public participation in environmental decision making process.

- 6) Rose-Ackerman, Susan & Halpaap, Achim A., "The Aarhus Convention and the Politics of Process: the Political Economy of Procedural Environmental Rights" (2002) 20 *Research in Law and Economics* 27.

This paper establishes the importance of the Aarhus Convention as an international agreement designed to strengthen democratic environmental governance by project level public participation. The authors endorse the idea that public participation reinforces procedural environmental rights and makes administrative decision-making more democratic and accountable. This is supportive to the idea conveyed in this research paper.

- 7) Zaharchenko, Tatiana R. & Goldenman, Gretta, "Accountability in Governance: The Challenge of Implementing the Aarhus Convention in Eastern Europe and Central Asia" (2004) 4 *International Environmental Agreements: Politics, Law and Economics* 229.

The focus of the paper is to represent the Aarhus Convention as an exercise in learning the tools and skills of democratic governance based on accountability and transparency. The authors argue that the fundamental principle of the Aarhus Convention is to ensure better environmental decisions and better management of specific environmental problems by developing well-informed citizens and more accountable governance. This article provides a good practical approach to adopt the Convention in order to secure public participation.

- 8) Jendroska, Jerzy, "Aarhus Convention: towards New International Standards in Access to Information, Public Participation and Access to Justice in Environmental Matters" (2001) *World Jurist Association* 12.

- 9) Julie, Lemmer A., "Cleaning up Development: EIA in Two of the World's Largest and Most Rapidly Developing Countries" (2007) 19 Georgetown International Environmental Law Review 275.
- 10) Lee, Maria & Abbot, Carolyn, "The Usual Suspects? Participation under the Aarhus Convention" (2003) 66 Modern Law Review 80.
- 11) Paul, McHugh D., "The European Community Directive-an Alternative Environmental Impact Assessment Procedure?" (1994) 34 Natural Resources Journal 589.
- 12) Ryall, Aine, "EIA and Public Participation: Determining the Limits of Member State Discretion" (2007) 19 Journal of Environmental Law 247.

C. Legislations/Acts/Policies

- 1) *National Energy Policy of Bangladesh 2004*, online: Official Website of Bangladesh Oil, Gas and Mineral Corporation (PETROBANGLA)
<http://www.petrobangla.org.bd/NEP_2004_fulldoc.pdf>

D. International Materials (United Nations Documents)

- 1) *Aarhus Convention*, UNECE ESCOR, 1998, UN Doc.ECE/CEP/43 (1998).
- 2) *Agenda 21*, CSD GAOR, 1992, UN Doc.A/CONF.151/26 (vol. 1-3) (1992).
- 3) *Declaration of the UN Conference on the Human Environment*, UNEP GAOR, 1972, UN Doc. A/ CONF.48/ 14/ Rev (1972).
- 4) *Draft Principles of Conduct in the Field of the Environment for Guidance of States in the Conservation and Harmonious Utilization of Natural Resources Shared by Two or More States*, UNEP GAOR, 1978, UN Doc. UNEP/ IG12/ 2 (1978).
- 5) *Guidelines of 1987 on Goals and Principles of Environmental Impact assessment*, UNEP GAOR, 1987, UN Doc.UNEP/Z/ SER.A/9 (1987).
- 6) *Rio Declaration on Environment and Development*, CSD GAOR, 1992, UN Doc.A/ CONF.151/26 (vol. 1) (1992).

E. News Articles

- 1) “Bangladesh Sues Canadian Oil Giant for Gas Field Blowout” *The Economic Times* (18 June 2008), online: The India Times Group
<http://economictimes.indiatimes.com/International_Business/Bangladesh_sues_Canadian_oil_giant_for_gas_field_blowout/articleshow/3142630.cms>.