

Public Participation in Environmental Assessment Process in Nepal

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Abstract

Nepal started conducting environmental assessment (EA) of major infrastructure projects such as road, hydroelectricity, and industries through policy formulation in early 1980s. In 1993, the Government endorsed the national EIA guideline and its use was ramified to prepare and approve EA reports of the prescribed projects. Recognising the importance and benefits of EA, the Environment Protection Act (1996) and Environment Protection Rules (1997) were enacted which include over 225 projects of different size requiring either initial environmental examination (IEE) or environmental impact assessment (EIA). The environmental law also includes detail provisions on approval process for IEE and/or EIA including Scoping Document and Terms of Reference.

Nepal underscores the importance people's participation, as a key element, in EA process. The proponent is required to publish a 15-days public notice in the national newspaper before the submission of the Scoping Document for approval of each project requiring EIA study in order to ensure that concerns and issues of the stakeholders and affected people are adequately addressed by the EIA study. After the preparation of the draft EIA report, the proponent must conduct a public hearing at the project site. Furthermore, the competent authority – the Ministry of Population and Environment – must publish a 30-days public notice before the approval of EIA report of any sector to provide stakeholders additional opportunities for comments and suggestions on the final EIA report. As of December 2003, Nepal has approved about 24 EIA reports of various sectors.

This paper examines people's participation, legal process, and inputs of the stakeholders during the preparation and approval of EIA reports of the hydropower projects. It also examines practices, problems faced, people's empowerment, challenges, and opportunities in expanding public participation in impact assessment process in Nepal.

Key words: EA, Public Participation, and Hydropower

1. Introduction

Implementation of the development projects through sectoral outlook, and efforts to accomplish the sectoral target accelerated environmental problems in Nepal, and made projects environment-unfriendly. Sectoral approach also increased pressure (stress) on natural resources, particularly the forests, soil and water. It accelerated human-induced landslides and soil erosion, decline in forest area and its productivity, damage to biodiversity, and increase in pollution load. As the environmental problems cropped up, people suffered, and projects became unsustainable, Nepal along with the focus of the developed countries realised the need for integrating environmental aspects in development activities in 1980s by introducing a tool – an environmental assessment (EA) – to identify, predict and evaluate environmental impacts, and know mitigation measures and monitoring requirements in advance. Nepal used the EA tool for 'informed choice' about the project and for 'informed decision-making'.

In Nepal, the project level EA – Initial Environmental Examination (IEE) or Environmental Impact Assessment (EIA) – is in practice. In 1980s, IEE or EIA studies were conducted for donor-assisted

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projects. Usage of EA, as a planning and management tool, was ramified after the endorsement of the National EIA Guidelines in 1993, and separate EIA guidelines for forestry and industry sectors in 1995. This tool has been used as a mandatory requirement for the 'prescribed' projects after the enforcement of the Environment Protection Act (EPA) 1996 and the Environment Protection Rules (EPR) 1997 to safeguard the natural resources. The guidelines and laws have sufficiently accommodated public consultation process during the preparation and implementation of EA and its associated reports.

2. Policies and Legal Provisions on EA

In Nepal, usage of EA tool has evolved along with the resolutions of the international fora and conferences. The EIA principles adopted by UNEP-GC in 1987 and Rio outcomes of 1992 contributed a lot in streamlining this tool in Nepal's development planning (Upreti, 2003). These initiatives contributed to realise the importance and benefits of using the EA tool as a precautionary approach in Nepal.

Nepal introduced the concept of EA since 1980s. The Sixth Plan (1980-'85) provided a basis to conduct EIA for large-scale development projects (NPC, 1980). The Environmental Impact Study Project was established in 1982 under the Ministry of Forests and Soil Conservation, and it started carrying out EA to identify adverse impacts of selected projects, particularly the small-scale road, hydroelectricity, irrigation, and resettlement projects, on the environment. Provisions on EIA were elaborated in the Seventh Plan (1985-'90), Eighth Plan (1992-'97), Ninth Plan (1997-2002) and current Tenth Plan (2002-'07) periods (Figure 1; NPC, 1985; NPC, 1992; and NPC, 1997). The current Plan has recognised the role of strategic environmental assessment (SEA), and has committed to make the EIA process effective, and conduct environmental monitoring of the project that prepared an EIA report (NPC, 2002).

Besides, sectoral policies on industry, tourism, solid waste management, hydropower development, irrigation, public infrastructure, and wetlands underscore the importance of carrying out EIA. The Water Resources Strategy (2002) and Nepal Biodiversity Strategy (2002) equally focus on the need for conducting EIA in accordance with the existing legal provisions.

The Constitution of the Kingdom of Nepal 1990 states that *"The State shall give priority to the protection of the environment of the country and also prevent damage due to physical development .."*. The Constitution also provides provisions on right to information on aspects of public importance.

Realisation of the benefits of EA prompted HMG to internalise it into the decision-making process and make it legally mandatory for the "prescribed" projects (proposals). This realisation was materialised through the enactment of EPA in 1996 and EPR in 1997. EPA contains several provisions to institutionalise EA system. EPR provides elaborated approval process on EAs and associated reports, and lists proposals requiring IEE or EIA. The Act also empowers HMG to frame Rules on IEE or EIA. EPA 1996 and EPR 1997 have commenced from 24 and 26 June 1997 respectively (MOPE, 1997). EPA – a framework and umbrella Act – opens avenues to mainstream and institutionalise EA system.

Based on threshold criteria, over 225 projects of different categories of the forestry, industry, mining, road, water resources and energy, tourism, drinking water, health, waste management and agriculture, and other projects require either IEE or EIA. Furthermore, plan, project or programme which will invest NRs. 10 to 100 millions (1 USD = NRs. 72.00 as of March 2004) should undergo IEE and those investing more than NRs 100 million should follow EIA process.

Decades

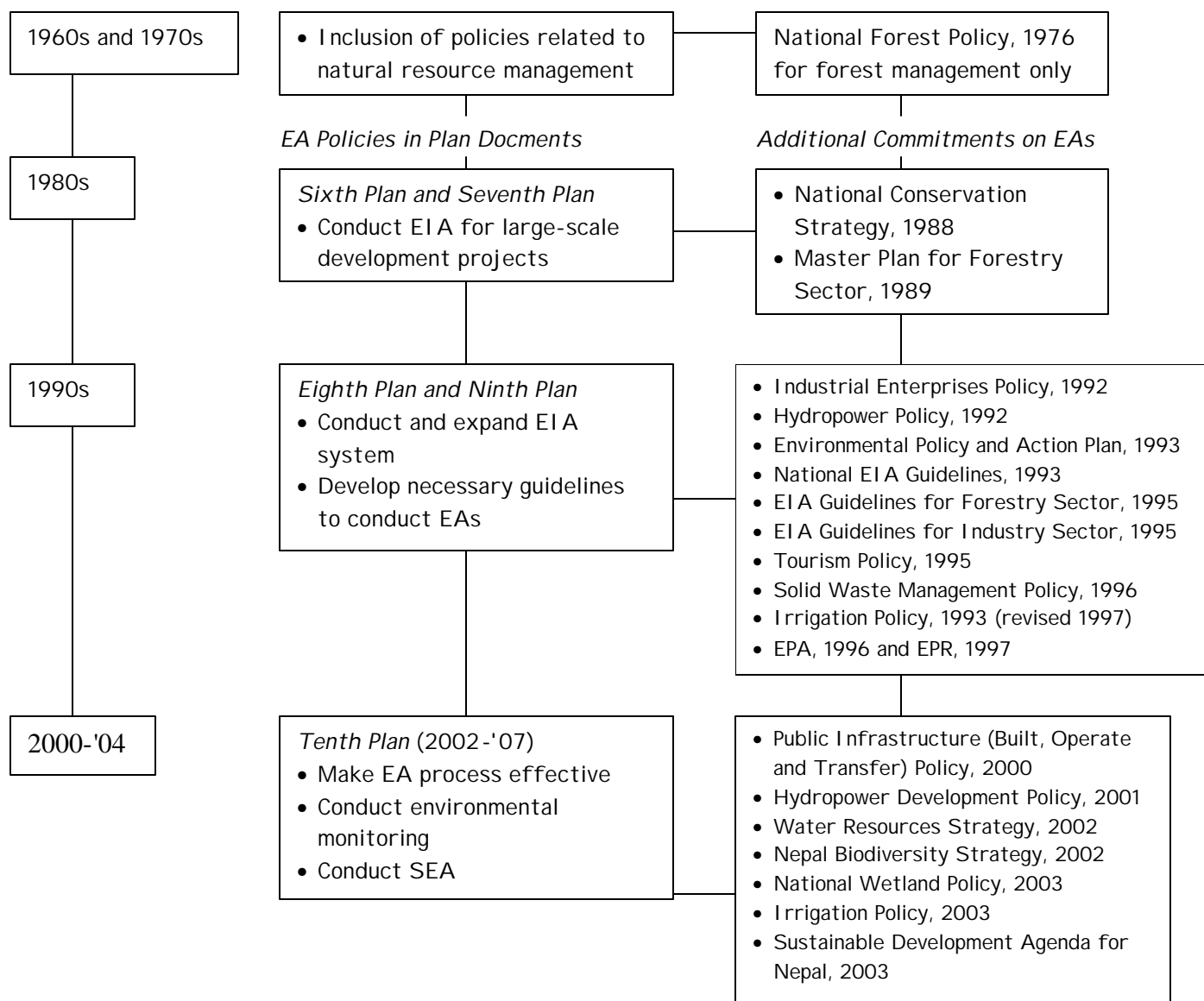


Figure 1. **Inclusion of EA Provisions in Policies**

In general, the proponent is liable to compensate for the loss or damage as prescribed. If the proponent implements the project requiring IEE or EIA without approval, the prescribed authority may close down such act immediately or may punish with a fine up to one hundred thousand Nepalese rupees.

The environmental law obliges the proponent to prepare and submit the Scoping Document (SD), terms of reference (TOR) and final EA reports. It empowers the concerned body (the ministries related to the proposal) to approve TOR and its IEE report. The Ministry of Population and Environment (MOPE) has the legal responsibility to approve SD, TOR and EIA report. The Concerned Body should approve the final IEE report within 21 days upon its receipt, and MOPE should approve the final EIA report within preferably 60 days and latest by 90 days upon its receipt.

The decade of 1990S, particularly the Eighth Plan period, was remarkable and notable in institutionalising EA process in Nepal's development planning and administration. During this period, His Majesty's Government (HMG) endorsed and implemented the National EIA Guidelines in 1993, and separate EIA Guidelines for Forestry and Industry Sector in 1995. In the Plan period, EIA guidelines for road, water resources, mining, agriculture etc. were drafted as process guidelines. EPA and EPR were also enacted and enforced in this plan period. The guidelines and legal provisions provide a basis for public participation in EA process.

3. Legal Requirements on Public Participation

The 1993 National EIA guidelines provided a basis for public involvement as a foundation stone for planning and implementation of a project. The guideline encourages to involving local beneficiaries, target groups, user groups and affected groups, relevant government and private sector agencies, local leaders and academic groups, relevant NGOs and recognised experts taking into account the nature of the project and its EIA report (HMG, 1993). The proponents, implementers, and authorising agencies are encouraged for public consultation. This encouraged to streamlining public participation further through legal provisions (Figure 2). EPA and EPR provide provisions to involve the local people and stakeholders, and seek their concerns and opinions right from the preparation of scoping document. In Nepal, environmental scoping is not required for IEE study and it is legally binding only for projects that require EIA.

Public involvement is sought legally in three major steps of the EA process. In case of IEE study, the proponent is required to prepare the draft report in the prescribed format. The proponent must affix a notice in the concerned (where the project will be implemented) VDC (Village Development Committee), DDC (District Development Committee), school, hospital and health post requesting the concerned individuals or institutions to offer their opinions and suggestions in writing within 15 days; and must publish a 15-days notice (similar to that affixed in VDC or DDC office) in the national daily newspaper. These institutions are mentioned categorically to ensure that many people while visiting them will see the notice and know about the project and environmental impacts.

In case of EIA study, the proponent must publish a 15-days public notice in the national daily newspaper requesting the concerned VDC or municipality as well as the schools, hospitals, health posts and concerned individuals or institutions to offer in writing their suggestions about the issues that should be addressed by the EIA study. Such notice should be published before the submission of the scoping document for approval. It must organise a public hearing at the project site after the preparation of the draft report to collect opinions and suggestions. Upon receipt of the final EIA report, MOPE should publish a 30-days public notice in the national daily newspaper to collect additional opinions and suggestions (Figure 2 and 3).

Besides, local peoples and stakeholders are also involved in sharing information during the preparation of necessary reports. The public hearing provides the local people an opportunity to judge the environmental impacts, voice their concerns and issues on analysed alternatives, impacts and mitigation measures proposed. This also provides the reviewers and decision-makers an opportunity to check legal requirements, evaluate the issues raised by the public, and make suggestions and decision on the report concerned.

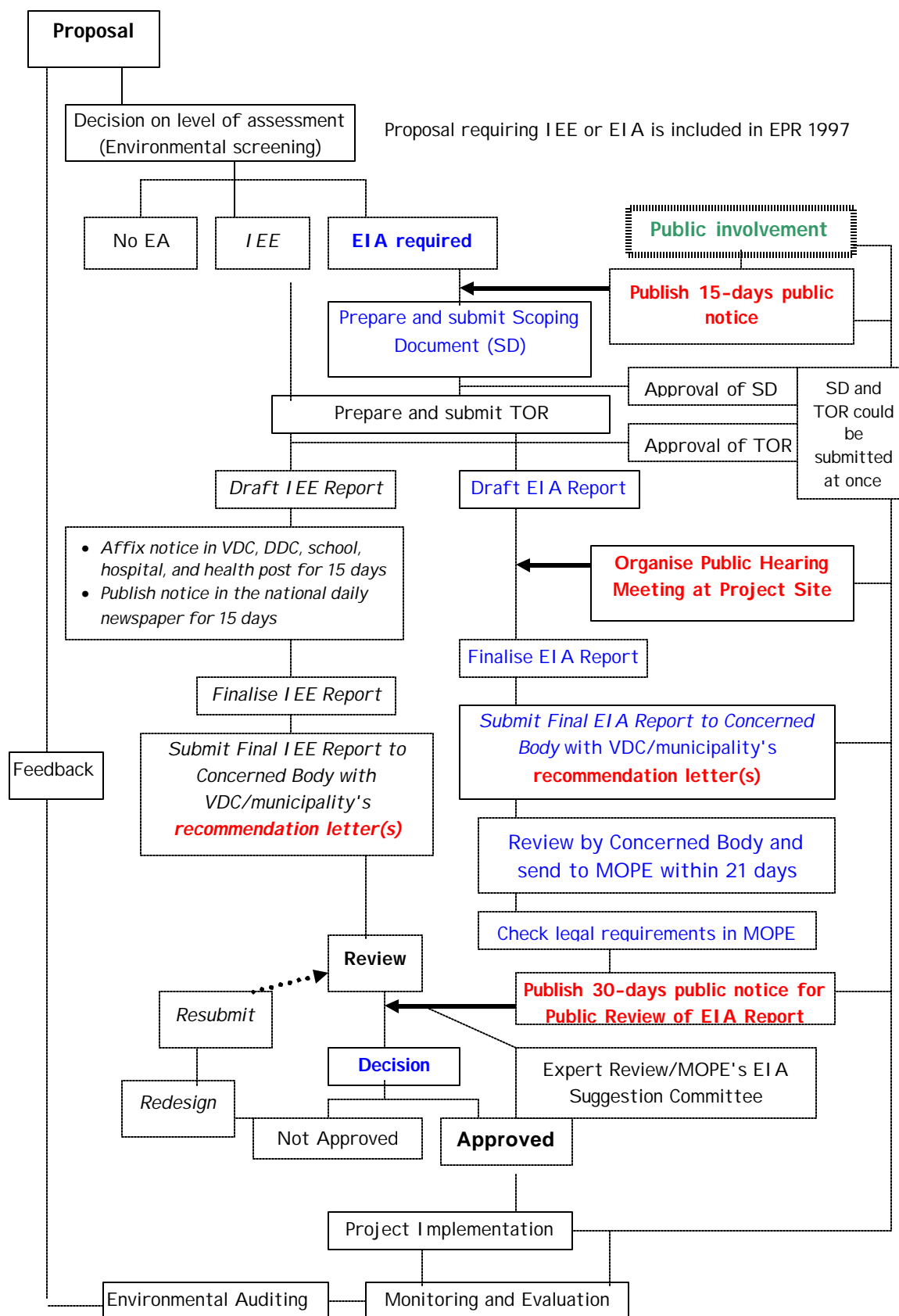


Figure 2 EA Process and Public Participation in Nepal (Modified from Uprety, 2000)

Note: VDC = Village Development Committee (village level political unit); TOR = Terms of Reference
MOPE = Ministry of Population and Environment

4. Current Practices on Public Consultation

For projects requiring EIA, the project developer or the consultant on behalf of the proponent prepares an information note about the project before the scoping document is prepared. A public notice indicating possible impact areas such as physical, biological, socio-economic and cultural aspects is prepared and published in the national daily newspaper. Similar notice is also pasted in the offices of VDC, municipality, school, hospital and health posts of the project area to provide the stakeholders an opportunity to offer their concerns, comments and suggestions. Pasting of notice in the project area is an additional commitment of the proponent to bring the stakeholders in the mainstream of project implementation. After obtaining concerns and comments, if any, of the local people, the proponent prepares the scoping document and submits for approval (Figure 3).

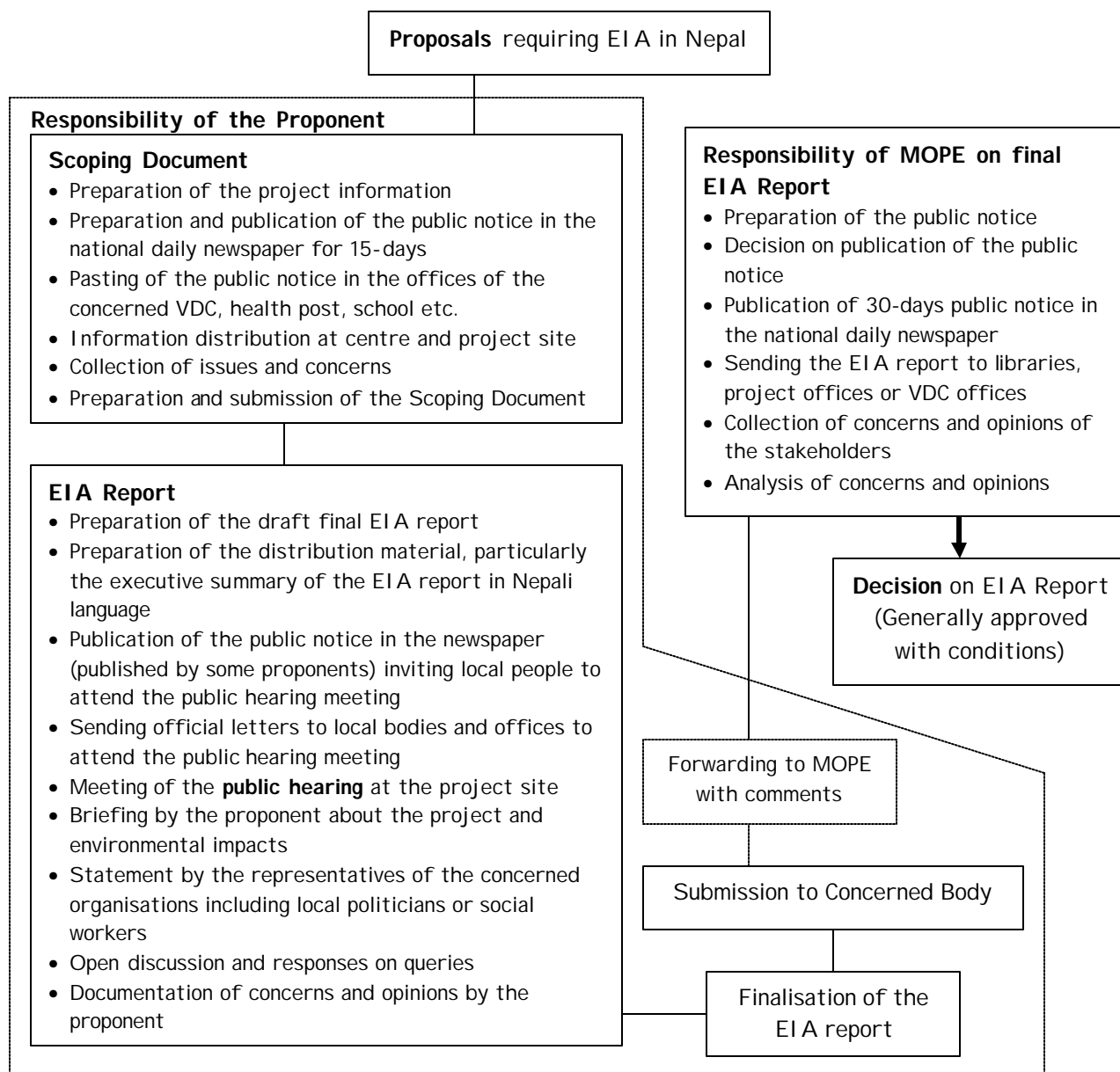


Figure 3. Public Consultation Process on EIA

The proponent/consultant collects baseline information and prepares an EIA report. The draft report is prepared taking into account the approved TOR. Then, a public hearing is conducted at the project site. In general, executive summary of the EIA report in Nepali language is distributed to the participants attending the public hearing. Based on the response, the proponent/consultant finalises the EIA report and submits to the concerned body which later sends it to MOPE for necessary decision. Once MOPE is satisfied with its compliance with the legal requirements, it publishes a public notice to inform the public to offer their additional comments and suggestions, if any, on the report. The public may give their opinions within 30 days from the first date of publication of the public notice. MOPE should consider and analyse the received opinions, comments and suggestions and utilise them in the decision-making process.

5. Public Consultation: A Case of Upper Modi Hydroelectricity Project

The 14 MW run-of-the-river Upper Modi Hydropower Project (UMHEP) was identified by the Nepal Electricity Authority (NEA) in 1990 and conducted feasibility study in 1994. It has been planned to implement in Kaski district, West Nepal within the Annapurna Conservation Area, an internationally acknowledged area for environmentally sound and sustainable development and biodiversity conservation. Having coverage of 7600 km², this area is managed by the national non-governmental organisation, the King Mahendra Trust for Nature Conservation (KMTNC) since mid-1980s. The China Guangxi Corporation for International Tecno-Economic Cooperation (GITEC) Nepal Private Ltd (GNPL) is the proponent of this project. His Majesty's Government of Nepal issued a survey licence in May 1999 to prepare a detailed feasibility of UMHEP. GNPL entered into Power Purchase Agreement (PPA) with NEA in July 1999. The feasibility study report was updated by GNPL in 1999.

The major project components are diversion weir, intake, desanding basin, balancing reservoir, headrace tunnel, surge tank, penstock pipe, powerhouse, and tailrace outlet. The project has planned to divert 17 m³/sec of water from the Modi Khola to generate 14MW clean energy. A 5.5 km. long and 5m wide access road including two bridges should be constructed to reach the powerhouse site (GITEC Nepal, 2000).

In accordance with the provisions of EPA 1996 and EPR 1997, GNPL started conducting an EIA study in early 2000. A public notice was published on 14 January 2000 in the national daily newspaper to inform the local people and stakeholders about the project and also to seek issues and concerns to be addressed during the EIA study. The study team made field visits to inform the local people about the projects and to collect their concerns and suggestions. In response to this notice, local people did not provide comments and suggestions rather they urged to implement the project to the earliest possible.

The proponent submitted the Scoping Document the TOR for approval and MOPE approved it on 23 May 2000. A public meeting was also conducted on 29 July 2000 during the collection of the baseline information. After preparing a draft EIA report and a public hearing was organised at the project site on 25 September 2000 to provide information to the local people about the findings of the EIA study and getting feedback on anticipated impacts and mitigation measures proposed. For this meeting, the proponent prepared an information note (executive summary of the EIA report in Nepalese language for distribution), published a public notice on 15 September 2000 inviting local people to attend it, and wrote a letter to the concerned organisations to send their representative to attend the meeting. Over 235 persons attended the meeting.

The study team presented the findings and recommendations of the EIA report. About 15 persons made statements. The summary of concerns and suggestions of the local people both statements and written comments is summarised below:

1. The speakers appreciated the allocation of some fund for school.
2. A permanent bridge should be constructed over the Modi River.
3. The compensation should be provided to project affective people and it should be realistic. The project should also be responsible for blasting-induced landslides.
4. The affected VDCs must be electrified from the project and local people should get electricity at a reasonable price. The legal provision about one percent revenue for community development should be provided to four project-affected VDCs.
5. Certain percentage of annual profit of the project must be allocated for the development of the affected VDCs.
6. The proposed alignment of the approach road should be less damaging to the environment and geological aspects should be considered.
7. First priority should be given to severely affected people for employment.
8. Some of the affected and needy schools of all VDCs should get assistance from the project.
9. Blasting should be done out-of-school-time or the proponent should provide scholarship to students for additional educational time.
10. Plantation should be done taking into account the felled trees.

In the spirit of these suggestions, the final EIA report was prepared and submitted for approval. The report reached at MOPE in February 2001. Stakeholders did not provide comments and suggestions on the public notice published by MOPE before its approval. The final EIA report was approved in August 2001.

6. Benefit of Public Consultation Process

These legal requirements have enhanced public involvement in EA process. Stakeholders have also shown their concerns. Previous attitudes of the proponents of keeping the project information secret have been changed. This has increased ownership over the project and stakeholders have extended cooperation in project implementation as well.

In general, two groups of proponents – private and public sectors – are involved in preparing and implementing EA reports. The private sector developers sometimes hesitate to disclose information which may be attributed to maintain trade secret or possible increase in land price and demanding attitude of the local people. The projects of the public sector disclose their information to the local peoples and stakeholders to facilitate for project implementation. In general, proponents have benefited from public consultation process, particularly in:

1. Providing information about the projects activities and environmental impacts that affect severely the local people;
2. Knowing the concerns and issues of the local people and stakeholders and timely take necessary action to bring the local people in the mainstream of project construction and implementation;
3. Informing/requesting stakeholders and institutions for timely decision on aspects that affect the project implementation such as tree felling or site clearance or demolition of private/public structures etc.;
4. Seeking technical inputs from the competent authority such as in bio-engineering, slope stabilisation or plantation and its management, pollution control; and

5. Involving stakeholders including representatives of the competent authorities in environmental monitoring and auditing etc.

Similarly, local people and stakeholders have been benefited by:

- a. Knowing their land and property to be severely or moderately affected by the project activities, and demanding for compensation at current price;
- b. Raising sectoral concerns and appealing to least damage the natural resources, to the extent possible;
- c. Selecting local level priority activities that need support of the project or that should be addressed during the project construction and implementation;
- d. Offering concerns, opinions and suggestions to the proponent and/or competent authority responsible for approval of EA and associated reports;
- e. Making timely decision on aspects that affect the project construction; and
- f. Contributing to activities by mobilising the local people that benefit them and the project as well etc.

In a nutshell, public consultation process has developed a sense of ownership, and has enhanced responsibility to make the project environment-friendly and sustainable by both project developers and stakeholders.

7. Problems Faced during the Consultation Process

The proponents have also faced problems in legal consultation process. In general, local people and stakeholders have sectoral interests, and demand the project in aspects which may not be directly related to project activities. For example, local people demand for the construction of the school building or provisions for drinking water or health post or road for even the project such as hydroelectricity generation or distribution. In such a case, the project hesitates to including costs for such activities while the local people try to insist to meet their demand. The project may require for skilled manpower while the local people demand for employment as their privileged right, and conflict arises. The proponent also feels that s/he is trapped by the legal provision and is compelled to disclose information. In brief, the proponents are facing the following problems during the legal consultation process:

1. Who are stakeholders or the interested and affected parties for the project, and who must be shared with information?
2. What type of project information should be shared with the local people and the stakeholders?
3. What are the processes that should be followed for information sharing and inviting the local people during the public hearing?
4. What should be the number of public hearings that must be conducted for linear projects such as road, transmission line or project that includes number of village development committees (VDC) or municipalities?
5. How to guarantee that the local people and stakeholders have obtained adequate information about the project and the environmental impacts?
6. What to do in case the concerns and issues of the local people and stakeholders are irrelevant or indirectly related to the project?
7. How to ensure that adequate number of stakeholders have participated? (In some cases, there are less than 10 persons attending the public hearing meeting. Public hearing is also conducted during the rainy and/or peak farming seasons. Voices of the women and disadvantage groups are over-shadowed by the traditional practice or by elites or some ethnic groups, and women are discouraged to attend the public meetings as well).

8. How to select the time for public consultation as most rural people depend on agriculture and most of the projects requires time-bound completion of reports?
9. How to organise public meetings and hearings in a cost effective way?
10. How to organise such meetings in insecure areas? However, it may be a short-term problem.
11. How much compensation should be provided to the severely and/or project affected families?

8. Lesson Learnt

EA has encouraged project affected people and the stakeholders to raise their concerns and opinions and contribute to make the project environment-friendly. Many proponents have found it an opportunity to let the people know about their activities, and seek public support during the project construction and operational stages. However, it depends upon the group of proponents when and how they interact with the local people and stakeholders. Proponents are still not prepared to disclose necessary information, and are trying to just complete legal requirements. They don't consider it as a facilitative mechanism so as to get people's confidence but they take it a compulsory provision to go to the people for collecting peoples 'wish' lists. In some cases, proponents have also considered it just an add-on effort that may create lots of problems due to disclosure of information. Proponents are unaware on the number of public meetings to be organised in case of linear projects, and other projects that include number of settlements and villages.

Public consultation process has also been costly to small-scale but environmentally sensitive projects. The legal provisions oblige the proponent to conduct it at the project site. In most cases, the proponent requests for participation of the central level organization, and s/he bears the cost of all representatives attending such meetings. This has increased the cost significantly.

In view of the present practice of public consultation, and make it productive, it is necessary to:

1. Identify stakeholders, particularly the directly project affected local people, and consider them as 'partners in development';
2. Organise public meetings during the off agricultural seasons, i.e., before and after planting and harvesting seasons;
3. Inform local people and stakeholders at advance, i.e., prior information and distribution of user-friendly information;
4. Select suitable venue and time (duration) for public meeting to ensure that local people and stakeholders could attend and also return back their home on time;
5. Ensure proper representation of the local people, particularly the project affected people;
6. Disclose easily understandable information including impacts and environmental protection measures, and role of the local people in project implementation;
7. Provide adequate time for local people, particularly the voiceless people, vulnerable groups, seriously project affected families and women to raise their concerns; and
8. Document all issues, concerns and suggestions of the local people and stakeholders and tell frankly which could be taken care by the project in order to avoid or minimise people's expectation.

9. At the End

Public consultation process has changed the role of the proponents and the competent authority from a manager to the facilitator. It has obliged to disclose adequate information, at least on the project activities, and environmental impacts with corresponding environmental protection measures and monitoring parameters. Local people, particularly the affected people, have been empowered as they get compensation at the market price. Non-governmental organisations and local clubs have been

established and they are involved in providing information to the project and project-affected people. Local people are also obtaining environmental enhancement programmes, including necessary training and extension. Public consultation has been a 'vehicle' for raising concerns and getting additional support from the project, particularly on social sector such as school building, hospital or health post, drinking water, link road and so on.

In some projects, the proponents or the competent authorities are taking much time than required technically and administratively for public consultation and decision-making. Projects have also suffered from time taken at the end of the competent authority. Many projects feel the cost of delay decision. This has sometimes blamed to EA tool as a time-consuming process which is not true in practical sense. Local people and stakeholders are participating in the project activities as and when required and they are providing necessary information to implement the project in a timely and orderly fashion.

In a nutshell, Nepal's legal provisions on public consultation have enhanced the level of understanding the environmental aspects amongst the proponents, stakeholders, and decision-makers. The challenges faced at present are not the drawbacks of this tool, but it is mostly related to the process of handling it. However, much still remains to maximising the benefits of public participation, simplifying its process, bringing the 'affected' people in the mainstream of environmental management of the projects, and most importantly, materialising the principle and process of EAs into practice to avoid the misconception of preparing, evaluating and implementing EA reports by non-professionals, and also avoid the notion that once 'EA report is prepared and approved, environment is automatically managed'.

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