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CITIZEN PARTICIPATION IN THE ENVIRONMENTAL IMPACT ASSESSMENT PROCESS IN GUYANA: REALITY OR FALLACY?

Mark Lancelot Bynoe



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1

BACKGROUND

Ever since the enactment of the National Environmental Policy Act (NEPA) in 1969, which legally established Environmental Impact Assessment (EIA) in the United States of America (USA), this procedure has spread throughout the world.¹ Today most developed and many developing countries practice some form of EIA. In this context therefore Guyana is no exception.

One of the earliest commitments made by Guyana to undertaking environmental assessment is when it became a signatory to the Cartagena Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region in 1983. Article 12 of the Cartagena Convention imposes on Contracting Parties, obligations with respect to the development and use of guidelines for EIAs. The Convention states under the caption 'Environmental Impact Assessment' that:

As part of their environmental management policies the Contracting Parties undertake to develop technical and other guidelines to assist the planning of their major development projects in such a way as to prevent or minimise harmful impacts on the Convention area....[and that] each contracting party shall assess within its capabilities, or ensure the assessment of, the potential effects of such projects on the marine environment, particularly in coastal areas, so that appropriate measures may be taken to prevent any substantial pollution of, or significant and harmful changes to, the Convention area.²

The pursuance of EIAs has become particularly attractive as a means of reconciling economic

development and natural resources management activities, since the nature of environmental phenomena and the characteristics of human activities often give rise to conflicts when making decisions or taking preventive and corrective measures.³ However, such reconciliation cannot be effectively reached without the useful participation⁴ of those citizens/stakeholders most likely to be affected significantly⁵ or those that have a specific interest.⁶ It is pellucid that development is both a technical and social issue. As such, one of the main tenets for the attainment of the sustainability goal is through the involvement of stakeholders.

Many attractive features for the promotion of citizen participation exist. These include the mitigation of conflicts,⁷ increase transparency to decisions reached,⁸ and increase in the possibility of acceptance of the project. However, citizen participation is not a straightforward process and often the major questions have been (1) who should participate, and (2) what mechanism should be designed for effective participation. Additionally, the successes of participation have demonstrated that good information, solid background, a clear budget, and clear options and proposals of the proposed development activity are paramount.

1 A. Gilpin, *Environmental Impact Assessment: Cutting Edge for the Twenty First Century* (Cambridge: Cambridge University Press, 2000).
2 United Nations Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region - Protocol concerning Co-operation in Combating Oil Spills in the Wider Caribbean Region, UN Doc.UNEP/A/Res/IG.39/4 (1983).

3 Inter-American Development Bank, *Fundamentals of Environmental Impact Assessment* (Washington, DC: Centre For Development Studies, 2001).
4 There is no universally acceptable definition for citizen participation or accepted theory of how persons should participate. It is generally seen as citizen action that influences or seeks to influence policy decisions or as an action that incorporates the demands and values of citizens into public administration services.
5 In this context significance is viewed in terms of the relative importance, scope of the impact, and duration over which it is felt.
6 A. Pasquali, 'A Brief Descriptive Glossary of Communication and Information - Providing Clarification and Improving Mutual Understanding', in G. Bruce and O. Siochru *Communicating in the Information Society* (Geneva, UNRISD, 2003), available at <http://files.crisinfo.org/cris/pasquali.pdf>.
7 L. Carlsson and F. Berkes, *Co-management Across Levels of Organisation: Concepts and Methodological Implications* (Lead paper prepared for the Resilience panel and the Regional Workshop of the International Association for the Study of Common Property, 'Politics of the Commons: Articulating Development and Strengthening Local Practices' (Chiang Mai, 2003), available at http://dlc.dlib.indiana.edu/archive/00001133/00Lars_Carlsson.pdf.
8 D. Wilcox, *The Guide to Effective Participation* (Brighton: Partnership Books, 1994).

It is because of the above issues that this writer feels a critical review of the participatory process in Guyana is warranted. It is the belief that despite the benefits of participation, the EIA process in Guyana has often not adequately engaged citizens, particularly in relation to development projects or those that are of national significance, hence giving the impression that the project is a 'done deal' and citizens are expected to legitimise decisions 'reached'. Additionally, while mechanisms are available for involvement at various stages of the process, not all of these are culturally appropriate, thus leading to the perception of tokenism.

This paper therefore, takes a critical look at the EIA process in Guyana and the conceptual and contextual issues militating against more effective citizen participation. It also seeks to posit recommendations to improve the participatory approach in the EIA process for less suspicion of the modalities and greater acceptance by citizens of the importance of this tool for the continued development of Guyana.

The methodological framework applied is that of reviewing the legislative framework that governs the EIA process in Guyana. Furthermore, the writer, who has had extensive exposure in conducting EIAs in Guyana from the time it became mandatory in 1996, uses his observations to assess the general practice for citizens' participation.

The remainder of the paper examines the national legislative framework that governs the EIA process in Guyana. Thereafter the EIA process as it operates in Guyana and areas for citizen participation are specified, followed by a critical review of citizen participation modalities and practice, before finally concluding and positing recommendations for improvements to the existing system if the Guyanese are to fully appreciate the importance of the EIA process for national development.

2

NATIONAL ENVIRONMENTAL LEGISLATION

The convening of the United Nations Conference on Environment and Development (UNCED) in

1992, gave additional impetus to the need for environmental impact assessments as a means of integrating environmental and developmental concerns. Principle 17 of Agenda 21 states 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'.⁹ This Principle is reinforced by the numerous references to environmental impact assessment in the Barbados Programme of Action (BPOA) on the sustainable development of Small Island Developing States (SIDS).¹⁰ The importance of the BPOA, in this context, is that it was designed for and highlights the special vulnerabilities of a group of countries, including Guyana that is considered by the international community as a special case for environment and development.¹¹

The vulnerability of Guyana underscores the importance of proper stewardship of the environmental resource base on which the country is dependent for its survival and the role environmental impact assessment can play in that process.¹² As the Member States of the Caribbean Community, inclusive of Guyana, move towards the creation of a common market and economy, issues relating to the stewardship of the environmental resources of the Member States of the Community will become even more critical, as the Community strives to satisfy the aspirations of its peoples in the overall context of globalisation.

Guyana's EIA provisions are nested, in an integrative manner, within its environmental legislation, with the Environmental Protection Act (EPA) of 1996 being the primary legislative vehicle for promulgating environmental regulations and coordinating

9 Agenda 21, *in* Report of the United Nations Conference on Environment and Development, Rio de Janeiro, UN Doc.A/CONF.151/26/Rev.1 (Vol. 1), Annex II (1992) 156 [hereafter Agenda 21].

10 United Nations Programme of Action for Small Island States *in* Report on the Global Conference on the Sustainable Development of Small Island Developing States, Bridgetown, UN Doc.DPI/SD/1609/Rev.1 (1999) [hereafter Barbados Programme of Action].

11 *See* Agenda 21, note 9 above.

12 Government of Guyana, National Development Strategy for Guyana: Participatory Development through a Participatory Economy 2001 - 2010 (Georgetown: Ministry of Finance, 2000).

environmental activities on the part of the Guyana Environmental Protection Agency (GEPA) referred to as the 'Agency' hereafter.¹³ The Act, which brought about the establishment of the Agency, also provides for this entity to manage, conserve, protect and improve the environment, for the prevention or control of pollution, and for it to assess the impacts of economic development activities on the environment.¹⁴ The Agency also has responsibility for national environmental education and awareness and the co-ordination of programmes for coastal zone management, wildlife management and the establishment of a system of protected areas.¹⁵

The GEPA since its formulation has created various mechanisms for actions geared towards environmental protection. These include:

- the establishment of environmental quality standards,
- mandating that all projects likely to have significant impacts on the environment carry out an environmental impact assessment (EIA),
- regulating and licensing activities with the potential for pollution,
- instituting penalties and fines for environmental degradation,¹⁶
- monitoring impacts on the environment emanating from industrial and other activities, and
- developing a programme geared towards public awareness and environmental education of the national populace.

Recognising that environmental protection is a multi-disciplinary task the GEPA has established links with sectoral natural resource agencies and has sought to

involve other stakeholders and interest groups. Accordingly, the GEPA signed Memoranda of Understanding (MOU) with the Guyana Geology and Mines Commission (GGMC), the Guyana Forestry Commission (GFC), the Ministry of Agriculture (MoA) and the Ministry of Health (MoH). Through these MOUs the GEPA has placed the onus for environmental monitoring on the sector agencies.¹⁷

Through these MOUs the Agency has sought to forge closer inter-agency collaboration for environmental management in the country. In this regard therefore the MOUs allow, *inter alia*, for:

- The sector agencies to review EIAs within the specific sector and recommend to the Agency whether an Environmental Authorisation should be issued;
- The establishment and implementation of compliance monitoring policies;
- The development and implementation of environmental standards, monitoring protocols, regulations and guidelines;
- The devolution of power from the Agency to the sector bodies to monitor operations in an effort to ensure compliance with the requirements of the EPA before contracts, permits or licences are issued or renewed;
- The divestment of power from the Agency to the sector bodies to investigate and report to the Agency incidents of non-compliance with the Environmental Permit;
- The collaboration in the resolution of issues of mutual concern to the parties in the area of conservation, management and sustainable development of the natural resources and the environment of Guyana.

Building upon the MOUs, both the Guyana Forestry Commission (GFC) and the Guyana Geology and Mines Commission (GGMC) have proceeded to establish sector-wide environmental guidelines and are currently seeking to develop strategic environmental assessments (SEAs) for the sectors. This latter initiative, it is believed, will aid in fast-tracking investments in the sectors that are critical to Guyana's future economic fortunes.

13 M. D. Griffith, D. Oderson and M. L. Bynoe, *Environmental Impact Assessment: Practice and Application in the Caribbean Community* (Unpublished Report, 2006).

14 Guyana, *The Guyana Environmental Protection Act, 1996* (No. 11 of 1996, 5 June 1996) [hereafter EPA].

15 Environmental Protection Agency, *Annual Report: 2003* (Turkney: GEPA, 2004).

16 These fines range from G\$10,000 (US\$509) for a person found littering, e.g., approximately 56 percent of the minimum wage, to G\$500,000 (US\$2,500) for a major environmental accident. All conversion in this research uses the mean exchange rate of US\$1 = G\$200.

17 A. Hoppendeadt and M. L. Bynoe, *Guyana Transport Sector Study: Environmental and Social-Cultural Issues* (Unpublished Report, 2006).

The main contextual challenge that all sectors face however, is the inability to adequately monitor the operations occurring in the hinterlands of the country. This matter is further compounded by the fact that in the case of the GGMC, only large and medium-scale¹⁸ operators are required to apply for an environmental authorisation. However, the sector is replete with small, itinerant operators and prospectors.¹⁹ As such, while their cumulative impacts are said to be having significant environmental and social impacts and affecting the livelihood of communities with regard to river water contamination, lowered fish catch, increased soil erosion and indigenous cultural degradation, they are inadequately monitored.²⁰ Furthermore, while these sector bodies have been devolved monitoring functions by the Agency, there is limited technical and scientific capacity within these entities to adequately carry out this mandate.

Furthermore, the absence of a land-use plan and spatial planning generally has meant that there is often appreciable conflict between the GGMC and the GFC. It is customary to find the same block of land being issued to various developers.²¹ The GGMC has the authority and first preference to all sub-surface minerals. But as forest operatives seek for greater market access via certification, this land-use conflict is becoming a major impediment.

Another major area of concern is the fact that despite the EPA being passed nearly ten years ago, to date there are no regulations that have been finalised and implemented. In 2000 a variety of regulations were drafted, inclusive of Management of Hazardous Waste, Air Quality and Noise Pollution. These draft regulations are currently being taken to the communities for consultation and implementation. But this is occurring at a time when the level of environmental consciousness in the country as a whole appears low and in many rural and hinterland communities even more acute. To

counteract the absence of regulations in the country, the Agency has often used the regulations of other entities, such as, the World Health Organisation (WHO) and the Canadian Environmental Assessment Agency.

In such cases therefore, before receiving an environmental authorisation, a developer agrees to the terms and conditions as set out in the permit, inclusive of the adherence to the standards and regulations being set down by the Agency. As such, these standards, though adopted from elsewhere are often enforceable for someone receiving an environmental authorisation as a contract exists between the developer and the Agency. However, such regulations are not enforceable on a third party. This is because for regulations to be enforceable on all parties, they must first be published in Guyana's official gazette, thus becoming legal instruments that can be applied and/or enforced. Therefore, apart from persons applying for environmental permits, it is a legal impossibility for the Agency to enforce these regulations. This may partly explain the Agency's reluctance to conduct their management function as they lack the legal instrument to support such practices and must depend on moral suasion.

3 THE ENVIRONMENTAL PERMITS/ CERTIFICATE OF ENVIRONMENTAL CLEARANCE PROCESS

A common characteristic of the integrative environmental legislative model followed in Guyana is the use of the Permit and Licensing mechanism, a classic example of the command and control methodology. Part IV, Section 11 of the EPA indicates that any developer whose project falls within the class of projects listed in the Fourth Schedule or any other project that may significantly affect the environment is required to apply to the Agency for an Environmental Permit. The EIA must follow a prescribed form as laid out by the Agency. This format includes information on the site, design and size of the project; possible effects on the environment; the duration of the project; and a non-technical explanation of the project as shown in

¹⁸ The scale of the operations are often based on the volume of material that will be excavated during the life of the project (GGMC, 2005).

¹⁹ M. Bynoe and D. Singh, *Environmental Assessment of the Mahdia Area* (Unpublished Report, 1997).

²⁰ D. Singh, C. Watson, and S. Mangal, *Identification of the Sources and Assessment of the Levels of Mercury Contamination in the Mazaruni Basin in Guyana, in Order to Recommend Mitigation Measures* (Unpublished Report, 2001).

²¹ See Hoppensteadt and Bynoe, note 18 above.

Figure 1 below. In the case where it is not clear whether a project will significantly affect the environment the developer must submit a summary of the project to the Agency containing the same information as in case of an application for an Environmental Permit.

Where the Agency exempts a project under Section 11(3) any person or party who may be affected by that project has the right of appeal against the decision of the Agency. The legislation prescribes the procedures for the appeal which must be made to Environmental Assessment Board (EAB) (see Figure 1). However, the mechanism for this is often via written submission, making it culturally inappropriate for many of the communities in the hinterland of Guyana as some are unable to make such submissions in a timely manner due to logistical problems.

The EPA under Section 12 authorises the Agency to approve or refuse a project after considering a number of factors including public submissions, the recommendations of the Environmental Assessment Board and the Environmental Impact Statement (EIS). As a means of public information dissemination, the EPA requires the Agency to publish its decision and the grounds for making that decision in a daily newspaper. Issuing of a permit is premised, *inter alia*, on a developer being able to comply with the terms and conditions of the permit and the developer being able to pay compensation for any loss or damage which may arise from the project or a breach of any of the terms and conditions of the permit.

It is important to note that the environmental permit takes precedence over other development consents. Section 14 of the EPA prohibits other public agencies responsible for issuing development consents in relation to matters where an environmental authorisation is needed, from so doing unless such environmental permit has been issued. The Act states that '[a] public authority shall not give development consent in any matter where an environmental authorisation is required unless such authorisation has been issued and any development consent given by any public authority shall be subject to the terms of the environmental authorisation issued by the Agency'.²² The Act also provides that any

development consent given is subject to the terms of the environmental authorisation.

Under the EPA it is an offence for a developer to carry out or commence a project without obtaining an environmental permit. Despite this, the writer is aware of at least three cases of projects commencing without the requisite environmental authorisation. The first relates to a developer in 2005 that received authorisation from the Guyana Lands and Surveys Commission (the body responsible for issuing public lands for development purposes) for the construction of a hotel facility but had not obtained an environmental authorisation from the Agency. This project was occurring in an area prone to flooding and was encumbering a major drainage canal. However, despite public protests and the developer being served with a cease order by the Agency, work progressed apace. It was only after the Mayor and City Council, who also had jurisdiction over the area, accompanied by its security branch intervened that this project was brought to a halt. The Agency has no such support mechanism and therefore depends upon moral suasion for developers to adhere to its cease orders. Should developers persist, the Agency would often move to the Supreme Courts to have this body institute an injunction against the offending party. This injunction can then be enforced by the Guyana Police Force.

In the second instance, another developer was constructing a parboiling rice facility in 2003 at Farm on the Eastern Bank of the Demerara River. This developer received authorisation from the Central Planning and Housing Authority and commenced building without conducting an EIA. After public outcry about the impacts this project was likely to have on surrounding businesses and residents the developer was served a cease order by the Agency, but challenged this in the High Court, arguing that it was told that an environmental management plan rather than an EIA was required. The developer won his case.

And lastly a cement bagging facility in 1996 received authorisation from the local government organ, the Neighbourhood Democratic Council (NDC), but had not received an environmental authorisation from the Agency. The Agency served the developer with a cease order and work stopped on site.

²² See EPA, note 14 above.

Figure 1: Preparatory Stages in Obtaining an Environmental Permit

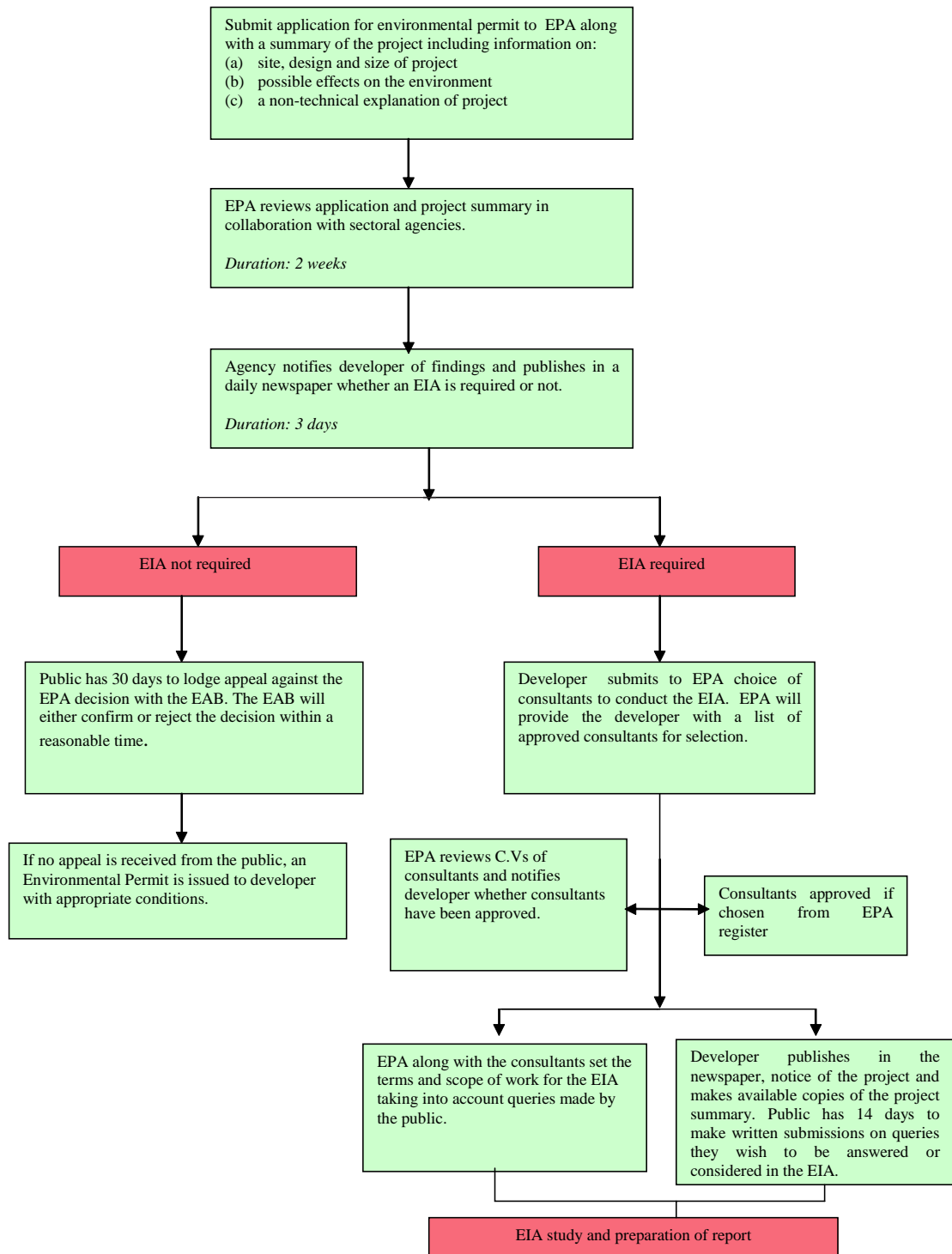
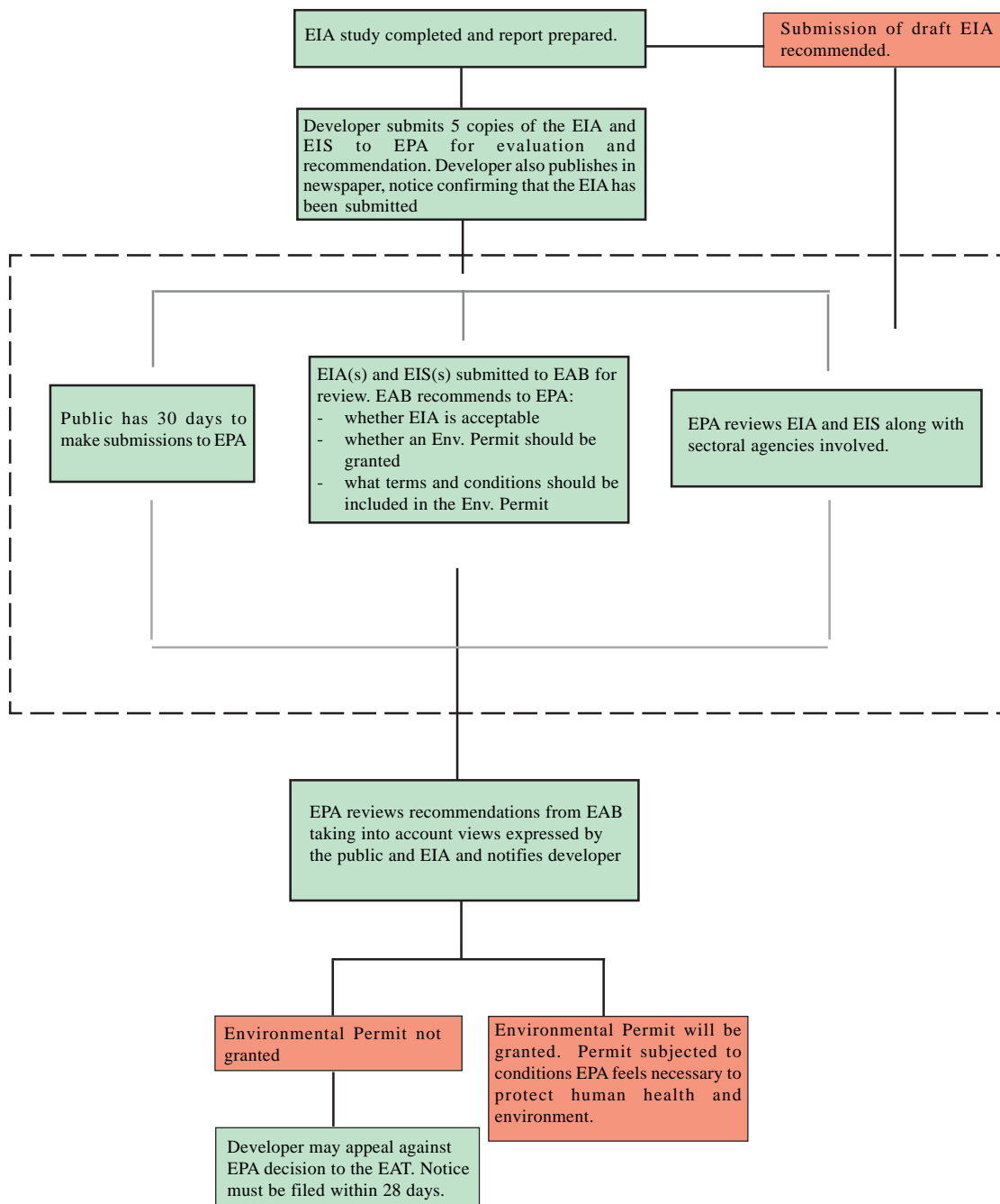


Figure 2: Final Stages in Obtaining an Environmental Permit



In each of the cases identified above however, there was some level of uncertainty as regards who was responsible and who had the final word. Additionally, there appears to be severe fragmentation of functions and little institutional communication and coordination.

In such cases of non-compliance the Agency has certain avenues that it can pursue. One such is that whatever work a developer who has not obtained an authorisation may have undertaken; the Agency has the mandate to undo and debit the cost to the potential developer. However, in the absence of a legally constituted Environmental Appeals Tribunal, the Agency is dependent on the High Court for providing the basis to encourage compliance.

The second institutional tier of the EIA process and provision for public participation is the review mechanism. In Guyana this is called the Environmental Assessment Board (EAB) and is designed to provide an independent contribution to the development and finalisation of the EIA and to make recommendations, after submission from the public, which uphold the principles of the EPA (*see* Figure 2 above).

A. EIA Guidelines

Guyana has a set of Environmental Impact Assessment Guidelines with some of these being sector specific. The purpose of these guidelines is to provide the lead agency for EIAs, the appeal mechanism, sector agencies, private sector, non-governmental organisations (NGOs), members of the public and consultants with a set of approved guidelines for the conduct and review of EIAs. The Agency has guidelines that clearly set out the processes involved in undertaking and reviewing EIAs.²³ These guidelines describe the role of the various actors and define the components of the EIA process. They are generally expected to operate in harmony with Part IV of the EPA and represent the first volume in a series of volumes ranging from Rules and Procedures for Conducting and Reviewing EIA to Generic EIA guidelines and Sector Specific

EIA Guidelines, for example, for mining, electricity, and forestry. It also addresses such issues as the EIA Process and Review with emphasis on the role of the various institutions (such as the Agency, sector agencies, EAB, the Environmental Appeals Tribunal, and the public) in the EIA process, Rules and Procedures of the EAB, as well as annexes such as EIA Checklists.

B. The Appeals Process

Guyana has a two-tier appeal mechanism in the form of the Environmental Assessment Board (EAB) and the Environmental Appeal Tribunal (EAT). Under Section 11(3) of the EPA (a) any person who may be affected by a decision of the Agency to exempt a project from the requirement for an EIA may lodge an appeal with the EAB within thirty days of the date of publication of the Agency's decision. The appeal must be in writing and must set out the reasons why the person(s) appealing believe that an EIA is necessary. A copy of the appeal is also sent to the developer. Once a date for the hearing is fixed all the participants (the developer, the Agency and the Appellant) are given fourteen days notice in writing. A notice is also published in at least one daily newspaper and the public given no less than fourteen days to appeal against the Agency's decision. The Agency has established procedure for the hearings and matters to be raised.²⁴ The EAB is required under the EPA to publish its decision within twenty-eight (28) days of the close of the hearing (*see* Figures 1 and 2 above).

But this method of public participation is seen in some quarters as tokenism as persons residing in hinterland communities, primarily because of distance, cost and not being notified of such an appeal on a time basis, are unable to adequately engage the EAB about their concerns where most of the pollution-intensive activities are occurring.²⁵

The EAB within the overall EIA system has a dual function. It has an appeal function in that it conducts hearings into all appeals submitted against a decision of the Agency to exempt a project from the requirements of an EIA as well as to conduct hearings into EIAs as may be necessary. It also performs a review function in that on the basis of the review of

²³ Guyana, Environmental Impact Assessment Guidelines 2000 (Vol. 1): Rules and Procedures for Conducting and Reviewing EIAs (Turkeyen: Guyana Environmental Protection Agency, 2000).

²⁴ *See* EPA, Section 3, note 15 above.

²⁵ *See* Hoppensteadt and Bynoe, note 18 above.

an EIA it recommends to the Agency whether the EIA should be accepted, amended or rejected; whether an environmental permit should be granted and the terms and conditions to be included as well as to ensure a participatory and consultative approach to EIA development.

The EAB is therefore bound to observe the principles of natural justice, namely the right to a fair trial and freedom from bias in the adjudication. Under Section 28 of the EPA, any person who is not satisfied with a decision of the EAB may appeal against that decision to the Environmental Appeals Tribunal (ETA). The EAT is a superior court of record which has all the powers inherent in such a court. The EAT has the jurisdiction to hear and determine appeals against:

- The refusal of an Environmental Permit;
- The requirement of an Environmental Permit; and
- The cancellation or suspension of an Environmental Permit.

However, to date this Tribunal has not been constituted, forcing persons to revert to the Guyana Supreme Court to deal with the refusal of permits in particular. The Guyana Supreme Court is legendary for the sloth with which cases are resolved. Hence, this does not augur well for speedy resolution of cases and public involvement. Moreover, it adds significantly to the transaction cost with which the developer is burdened.

4

A CRITICAL REVIEW OF CITIZEN PARTICIPATION IN THE EIA PROCESS IN GUYANA

The very nature of environmental phenomena and the characteristics of human activities are such that conflicts often arise when making decisions or taking preventive and corrective measures.²⁶ This is

26 R. O'Leary and L. Bingham eds, *The Promise and Performance of Environmental Conflict Resolution* (Washington, D.C.: Resources for the Future, 2003).

particularly relevant in the environmental impact assessment process where scenarios are simulated before the execution of plans, programs, and projects. Thus, citizen participation is a key element to facilitate prevention and solution of conflicts; to give greater transparency to decision-making on human actions and to protect the environment; improve quality of life and ensure that activities and projects will be compatible with community interests.²⁷ In this context therefore, the affected stakeholders should be informed and allowed to discuss, participate, and verify environmental decisions.

A. The Participatory Process In Guyana: The Conceptual Framework

In the context of this paper, citizen participation is viewed as a two-way information and communication process among several stakeholders. It is viewed as getting people directly involved and becoming a part of the decision making process according to predetermined levels. This process, apart from being a legislative requirement also allows for greater transparency, accountability and garnering of public support. Furthermore, it allows for concerns and issues to be identified and discussed.²⁸

In Guyana, the EPA contains express provisions for public consultation by the developer with members of the public during the course of the EIA. Section 11(9) of the EPA specifies that the developer must (i) consult members of the public, interested bodies and organisations with the mechanisms for consultation including scoping meetings, structured interviews, key informant interviews and written submissions; and (ii) the Agency is expected to provide to members of the public on request, and at no more than the reasonable cost of photocopying, copies of information obtained for the purpose of the EIA. In this latter case, the onus is placed squarely on the communities to obtain

27 S. Shackelton and B. Campbell eds, *Empowering Communities to Manage Natural Resources: Case Studies from Southern Africa* (2000), available at http://www.cifor.cgiar.org/publications/pdf_files/Books/Empowering.pdf.

28 R. Philip, *A Basic Guide to the Public Participation Process of an Environmental Impact Assessment* (Horsholm: DHI Water and Environment, 2001) available at <http://www.dhi.dk/courses/AlumniCafe/LectureNotes/Files/Public%20participation.pdf>.

copies. Of importance, is that the Agency has a single office, located in the suburbs of the capital city, there is no sub- or regional office! This makes it costly, time consuming and grossly inappropriate for indigenous and other rural communities that may have concerns that have not been adequately addressed in the environmental impact statement (EIS) to get these included before the environmental authorisation is granted to the developer.

Furthermore, the EPA provides that before any EIA can commence the lead agency has the statutory duty to publish a public notice in at least one daily newspaper, at a cost to the developer, giving the members of the public a project summary. The EPA gives members of the public 28 days from the date of the notice to submit written comments to the Agency, setting out questions and matters they require to be answered or considered in the EIA. Hence, it is safe to say that citizen participation takes place at three stages in the EIA process in Guyana: 1) at the preliminary assessment, 2) preparation of the study, and 3) review of the EIS.

B. The Participatory Process in Guyana: The Contextual Framework

1. *The General Public*

While the legislative framework for the public's involvement is laudable, in practice it does not allow for effective participation by interested parties as has been observed at different fora. The reasons for this are as follows. Guyana is a small, open developing country, but is resource rich. Most of its natural resources however, such as bauxite, gold and diamond and timber are found in the hinterlands of Guyana. These areas are generally sparsely populated, possess low levels of environmental awareness and generally are the poorest in the society.²⁹ Furthermore, their communication networks are rudimentary and poorly maintained as population densities are low in these areas, for example, a single inhabitant per square hectare, and population is widely dispersed. Also, getting to other parts of the country is difficult as the terrain is hostile and difficult to manoeuvre.³⁰ As such, it is often

the case that the first time members of the public within these localities hear of a project is when they are invited to the scoping meeting. The normal format for these meetings is for the project to be introduced to the communities, many of whom do not have more than a primary education,³¹ and often orally and with little or no visual aid. Not only is the presentation consistently a substantial amount of information to digest in a short period of time, but, additionally, terminologies are often used with which the citizens participating are evidently unfamiliar. This implies that there is little positive feedback the citizens can provide.³² As such, it is often the case that issues are raised that have little relevance to the project under review, thus leading to the fact that the EIAs do not adequately address the issues affecting residents, and the consultation process ends up being more cosmetic than effective as noted by O'Faircheallaigh.³³ This issue becomes even more acute where development, rather than investment projects are being pursued as political, financial, technical and motivational constraints all now enter the participation calculus.³⁴

Two recent development projects can be cited to illustrate the point raised above. In the first instance, with assistance from the Indian Government, the Government of Guyana is constructing a cricket stadium for cricket world cup (CWC) 2007. This project went through no formal EIA process. As such, though it has national importance, citizens were not given the opportunity to provide inputs into how the project design may be altered to reduce potential negative impacts, particularly as it relates to traffic congestion and potential for increased flooding in the area. This project can be described at best, as being foisted upon the community and the nation. In fact the International Monetary Fund (IMF) has been quoted

29 C.Y. Thomas, Poverty and the 1999 Guyana Survey Living Conditions (Turkeyen: Institute of Development Studies, University of Guyana, Unpublished Report, 2000).

30 See Hoppensteadt and Bynoe, note 18 above.

31 Statistical Bureau of Guyana, Guyana Census 2002 (Georgetown: Government of Guyana, 2004) [hereafter Guyana Census 2002].

32 R. Saunders, Protecting and Enhancing Biodiversity through EIA - Public Consultation and Participation (Robin Saunders Environmental Solutions: IUCN, 1999), available at <http://economics.iucn.org/pdf/kits-06-01.pdf>.

33 C. O'Faircheallaigh, 'Making Social Impact Assessment Count: A Negotiation-Based Approach for Indigenous Peoples', 12 *Society and Natural Resources* 63, 67 (1999).

34 M. Choguill, 'A Ladder of Community Participation for Underdeveloped Countries', 20 (3) *Habitat International* 431, 435 (1996).

as expressing concerns about the stadium, indicating that it does not make long-term commercial sense, given the project's financial rate of return and the country's significant debt-overhang.³⁵

The other project of note is the proposed bridging of the Berbice River in the East of the Country. The approval for this bridge and the selection of the site had already been granted and determined respectively by the Government of Guyana though the EIA was still being prepared! Though members of the public, inclusive of the Berbice Chambers of Commerce raised objections to the location of the bridge (which is being sighted at the mouth of the river), government has used the argument that the cost of relocating this structure militates against it being located further inland.³⁶ What is even more startling is the fact that consultation on this important structure that has national development implications, as twenty per cent of the estimated US\$35 million will be provided from the National Insurance Scheme coffers, were done only with communities immediately to the east and west of the bridge! No consultation was held nationally, though a Bill to deal with operational issues was debated in the Guyanese Parliament. Clearly, the issues of consultation and participation require more involvement of citizens, specialists, and listening of the issues that were raised.

But experts in the field are not excluded from blame as well, rarely, if ever do they provide the Agency with the feedback necessary for projects to be amended. Rather, a pervasive sense of lethargy seems to be present.

2. Local and Hinterland Communities

Where investment projects are occurring in poor rural or hinterland communities, invariably, the community leader or Village Captain, also known as Tousha, are aware of the project. However, such persons are excited because they view such projects as bringing economic benefits to their communities in the form of construction jobs, income and in some cases, improved social services. In some cases, personal aggrandisement on the part of the village captain may

be the main cause for the excitement. But such projects have also been known to bring cultural erosion, increased levels of prostitution and alcohol usage, and spousal abuse.

Under the Local Democratic Organ Act from 1980, Guyana has been divided into ten administrative regions, which are governed by a local democratic organ called the Regional Democratic Council (RDC). The RDCs are regional organs of the central government and cannot be regarded as decentralised autonomous local governments. With the local elections from 1994 the new local government structure presently consists of ten RDCs, sixty-five Neighbourhood Democratic Councils (NDCs), six municipalities and seventy-six Amerindian Village Councils.

Some of the services provided by the NDCs include, provision and maintenance of abattoirs and burial grounds, construction of bridges, community centres, drainage of land, day nurseries, provision and maintenance of markets, levying and collection of rates, property valuation, dissemination of information and development of bye laws. However, the NDCs, who must have an input into the EIA process if a project falls within their jurisdiction are often unable to effectively disseminate information about the proposed project activities due to the limited financial resources to carry this function. The NDC derives its funding from government subventions and the collection of rates and taxes. In 2003 Mott MacDonald estimated that for the majority of NDCs, collection rate was below fifty per cent annually, thus compromising their ability to adequately provide the services they are mandated to do.³⁷ It is through this medium that the Agency often works. However, it is not impractical to find the report sent to the NDC remaining in that office and the constituents being unaware about an EIS requiring review. NDCs are also unable to provide guidance to communities as they lack the expertise, most of the positions in the NDCs are lowly paid or done on a *pro bono* basis, hence communities are not properly informed as regards the impacts of projects on their lives.

³⁵ J. Mair, IMF Says Loan Deal is not Just Cricket (2004), available at <http://www.business.timesonline.co.uk/article/0,,16614-1406867,00.html>.

³⁶ Draft Environmental Impact Statement, Berbice River Bridge (Turkeyen: NDLEA, 2005).

³⁷ M. MacDonald, Guyana Drainage and Irrigation Systems Rehabilitation Project: Feasibility Study of Principal Areas (Unpublished Final Report, Georgetown: Government of Guyana, 2004).

Another point to note is that while persons are often told about the application of firms for an environmental permit via a daily newspaper, many of the communities in which these projects are likely to impact do not purchase nor do they have access to a daily newspaper. Thus, it is necessary for the Agency to find a new way of informing communities to get their involvement at the project identification stage of the EIA process. Sometimes, means such as a rudimentary 'bell cry' may be more effective.

Upon submission of the EIA to the lead agency in Guyana, the developer and the EIA consultant are required by the EPA Section 11(10) to publish a notice in a daily newspaper confirming that the EIA has been submitted to the agency and members of the public have sixty days within which to make submissions. Section 11(11) clearly declares the EIAs as public documents and require the developer and the Agency to make those documents available to the public for inspection for the duration of the project and up to five years after its completion, subject to the deletion of information that may disclose intellectual property rights. The documents must be available during normal working hours and should be provided on request, subject to photocopying charges. While this is so, many projects to be perused have to be accessed off the Agency's website and most areas in Guyana do not have access to internet facilities, thus making this method most inappropriate.

3. Indigenous Rights

Another observation of the EIA System in Guyana is the lack of specific measures addressing the protection of the rights of indigenous peoples. This issue is particularly relevant in a country like Guyana that has a significant indigenous population, estimated to be ten per cent of the total population in the 2002 Census.³⁸ It is a well established principle in international law that Indigenous Peoples have the right to the recognition of their property rights and ownership rights with respect to the lands and territories that they historically occupy, as well as the use of the lands to which they have traditionally had access to, for carrying out their traditional activities and for sustenance, respecting the principles of each State. These rights also include the waters, coastal

³⁸ See Guyana Census 2002, note 32 above.

seas, flora, fauna and all other resources of that habitat, as well as their environment, preserving these for themselves and future generations.³⁹ Notwithstanding this principle, not enough recognition has been given to this in the EIA process in Guyana and to allow the country's indigenous peoples to participate fully.

Furthermore, the EPA authorises the Minister of Environment to make regulations defining principles to facilitate the participation of communities which are likely to be affected by the activities of a developer, taking account of the rights of indigenous communities. However, it is the conjecture of this writer that the EIA system in the country should give more specific recognition to the protection of the rights of indigenous peoples. In this regard, specific measures should be incorporated into existing guidelines to require at the screening stage a determination to ascertain whether indigenous peoples are present in or have a collective attachment to the proposed project area. Where the answer is in the affirmative, a social impact assessment should be mandatory as well as a process of free, prior and informed consultation at every stage of the project and the preparation of an Indigenous Peoples Plan as part of the EIS. This, it is submitted, will provide tangible meaning to the provisions in the Guyana Constitution that seeks to protect the fundamental rights of all and to ensure that indigenous peoples shall have the right to the protection, preservation and promulgation of their languages, cultural heritage and way of life.⁴⁰

5 CONCLUSIONS AND RECOMMENDATIONS

This paper examines the participatory process in Guyana for the conduct of environmental impact assessments. The paper notes that the legislative

³⁹ United Nations Draft Declaration on the Rights of Indigenous Peoples, New York, UN Doc. E/CN.4/Sub.2/1994/56 (1994).

⁴⁰ Constitution of the Cooperative Republic of Guyana (Georgetown: Government of Guyana, 1980).

framework provides for members of the public and stakeholders to be integrated into the process. Furthermore, the EPA outlines the modalities by which persons are to be involved. It is accurate to indicate therefore that the essential aspects of the EIA process are accepted and used in Guyana, thus making it possible to develop and incorporate a multidisciplinary focus in the process.⁴¹ This has created increased environmental awareness in some sections of society, particularly among policymakers and citizens. As a result, the EIA process has expanded. For example, the preventive focus has been institutionalised in environmental management, and environmental analysis is now required in many decision-making processes. The usefulness of this is that it allows for significant impacts to be identified, and therefore planned for, before they occur. In this way, a competitive advantage exists for corporations with a social conscience as cost over-runs are minimised, risks are reduced and projects have a better opportunity of being successful, and there is greater acceptance by the citizenry.⁴²

It is also becoming increasingly appreciated and recognised that the benefits and usefulness of EIA for impact mitigation and project sustainability can be enormous. This is important, given the negative perception of environmental sustainability. The main difficulty is how the system operates from the Agency standpoint, the review mechanism in place, and the incorporation of citizen participation.⁴³

The paper highlights significant weaknesses with both the conceptual and contextual framework for the public's involvement. For example, it notes that the method of having notices placed in a daily newspaper is culturally inappropriate. Moreover, the process for involving the public in the screening and review processes is viewed more as tokenism than being an effective method of engagement. As such, the EIA system is not sufficiently adjusted to the national realities, particularly with respect to available capacity, context needed for application, required resources for its operation, and decentralising the administrative functions needed

to apply the systems at multiple levels. Admittedly, this is now changing as it is generally accepted that stakeholders' participation can be a useful source of information and can create a sense of ownership.⁴⁴

Furthermore, the aspects of trust, cultural awareness, transparency and accountability are all important ingredients that must be present in the participatory process. Trust is necessary if there will be unhindered information flow. Furthermore, effective consultations and negotiations between different cultures require a commitment to cultural understanding and respect. Additionally, meaningful participation requires open and transparent stakeholder involvement,⁴⁵ while full transparency of developers' objectives, parameters and processes is critical and the definition and delivery of benefits at local, regional and national levels should be clear. Lastly, entities must be accountable to established international environmental and social standards.

The paper posits that one of the first necessities for effective participation is the presence of public understanding. It appears that in many instances citizen participation is not fully integrated into the EIA process. What is required is a more coordinated and consistent manner in applying the principals of the EIA process in Guyana. Citizen participation ought to be included in an integrated national plan, not only looking at whether scoping or public meetings were held, but whether sufficient was done before and after the conduct of the EIA to allow for inclusiveness, thus being better able to capture the entire gamut of issues pertinent for an effective management plan to be developed, a project modified, or a permit denied. Citizen participation and sustained economic development are intricately linked in areas such as project acceptance, project involvement and project monitoring. As such, the following recommendations are posited:

To be effective in the Guyanese context a citizen participation plan must be developed and implemented. Such a plan must satisfy three main requirements:

41 See Inter-American Development Bank, note 4 above.

42 See Gilpin note 2 above.

43 See Inter-American Development Bank, note 4 above.

44 G. Borrini-Feyerabend et al., *Co-management of Natural Resources: Organising, Negotiating and Learning-by-Doing* (Heidelberg: GTZ and IUCN, 2000), available at <http://nrm.massey.ac.nz/changelinks/cmnr.html>.

45 M. Jones, *Stakeholder Participation - The Road to Successful Oil and Gas Development* (SPE 46863 1998).

1. It must ensure that involvement capability exists to support effective participation;
 2. It must generate the greatest possible improvement in the general quality of participation of citizens and not merely their presence; and
 3. The benefits that participating brings should be explicitly identified and discussed.
- into the consultation and participation processes. Consequently, there is a pressing need to improve current consultation processes into greater levels of participation.

As such, the plan should, at a minimum, seek to address the following points to ensure that citizens feel they have participated in the development of their village, community or region. These points are:

- Determine the objective one is seeking to achieve;
- Have clear modalities in terms of how the participation process should be conducted;
- Determine what activities can be executed simultaneously;
- Identify clear guidelines on what techniques should be applied for the evaluation;
- Design of conflict resolution strategies and scenarios;
- The form the participation should take and the resources to be allocated for this activity; and
- Conducting stakeholder analysis.

From the thrust of this paper, it is evident that consultation with local communities and indigenous peoples are necessary for meaningful participation. It is the conjecture in this paper that participation must not be tokenistic to placate and pacify local communities to fulfil financing requirements and to avoid criticism for decisions that have, in effect, already been made. In general, the participation process remains weak in Guyana from a rural, hinterland and indigenous peoples' perspective.

It is important to note however that meaningful participation is not a panacea for equitable and sustainable natural resources development. While many international conventions go beyond token participation and identify the rights of indigenous peoples to participate fully in decisions on natural resources that affect or may affect their livelihoods and lands such rights are rarely if ever incorporated

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