



Regional restrictions on environmental impact assessment approval in China: the legitimacy of environmental authoritarianism



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ABSTRACT

The poor enforcement and effectiveness of environmental impact assessment (EIA) on construction and investment projects in China has long been blamed for not preventing environmental pollution and degradation. At the same time, freezing EIA approval of all new projects in an administrative region, introduced in 2006 as a punishment for failing to meet regional environmental quality targets, has been regarded as an innovative administrative instrument used by higher level environmental authorities on local governments. But it also raised controversies. Applying an environmental authoritarianism perspective, this study analyzed the legitimacy and environmental effectiveness of freezing EIA approval procedures by reviewing all 25 national cases and 12 provincial cases of so-called EIA Restrictions Targeting Regions between 1 December 2006 and 31 December 2013. The results show that such an environmental authoritarian measure is to some extent environmentally effective but lacks legality and transparency towards and participation of third parties, and hence falls short in legitimacy. Legal foundations and wider third party participation are essential for the long term effectiveness of this policy and its transfer to other countries.

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1. Introduction

In most industrializing and industrialized countries many environmental policy and governance instruments are aimed at emission control of individual point sources. The environmental licenses/permits, emission standards and environmental impact assessments (EIA) of new industrial investments are some of the most successful instruments in regulating emissions of polluting industries. Through these instruments companies that do not behave according to the set emission requirements face sanctions, ultimately resulting in losing their license to produce. But for a region, in the end it is the total amount of emissions of all polluting sources and the total resulting ambient environmental quality that counts. An increasing number of countries, including China, faces problems in protecting and safeguarding regional environmental quality, as the sum of individual polluting companies that produce according to emissions requirements might result in ambient

environmental quality above standards. Individual polluters can then not be held responsible for the overall deterioration of ambient (air and water) quality in a region, and governmental authorities often lack instruments to intervene.

Since 2007 the Chinese Ministry of Environmental Protection (MEP) has developed and implemented a new and unprecedented strategy to cope with this problem of ambient environmental quality exceeding ambient environmental standards in a specific region. If an administrative region (usually a county) does not fulfill environmental quality requirements as formulated in prevailing standards or not enforce EIA law or other pollution prevention and control regulations, all new EIA application documents (including EIA reports, statements and registration forms) on (expanding or new) economic projects with significant environmental impacts in that region are not taken into consideration by the relevant authorities (often the MEP or a provincial Environmental Protection Bureau (EPB)). That means that these new investment projects will not be judged against the pertaining emissions standards and construction of new or expanding of existing economic activities cannot start (as no EIA will be handed out, a requirement for starting a construction project with potentially severe

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environmental impact). In China this new policy is called Environmental Impact Assessment Restriction Targeting Regions (EIARTR, *Quyū Xianpi*). Such a suspension of approval of EIA in a region puts significant pressure on local authorities prioritizing local economic development. Lifting the restriction to take EIA into consideration is put conditional to improvement of local ambient (air and/or water) quality or recovery from severe environmental damage.

This new measure to safeguard regional environmental quality is not without discussion (Zhu and Moser, 2014). Questions have been raised regarding the legitimacy and environmental effectiveness of these measures, especially by local authorities confronted with these suspensions of EIA approval. Can individual companies planning to invest being refrained from decision-making on their environmental impact assessment following behavior of other companies? In addition, EIA has always been seen as an instrument that involves third parties in decision making on new economic investments with potential environmental impacts. In China, EIA has become one of the first policies with experiments on public hearings, be it with mixed experiences (Tang et al., 2005; Zhao, 2010; Li et al., 2012; Johnson, 2013). But the EIA restriction targeting regions does not seem to allow for any third party participation, a setback in China's germinating attempts in participatory environmental policy making and implementation. This article reviews this new Chinese policy of EIARTR and investigates its legitimacy and environmental effectiveness. The next section discusses democracy and authoritarianism and develops a framework for assessing the legitimacy of China's EIARTR. With the historical background of EIARTR provided in Section 3, Section 4 assesses the legality, environmental effectiveness, transparency and third party engagement in EIARTR. Section 5 concludes with suggestions for improving the legitimacy of EIARTR.

2. Environmental democracy, environmental authoritarianism and China's EIA

2.1. Environmental governance: democracy and authoritarianism

First developed and applied in the context of liberal-democratic political systems (the US in 1970s and later in European countries), EIA has always been strongly related to notions of information disclosure and public participation in environmental decision-making. In these industrialized countries EIA has been a crucial instrument to include environmental considerations more fully into decision-making on economic projects and plans. At the same time, EIA was considered as part of democratic decision-making on future projects and plans, as all information necessary for decision-making was collected and disclosed and the public could participate and be involved in discussing the environmental challenges of such future developments (Stewart and Sinclair, 2007; O'Faircheallaigh, 2010). Stewart and Sinclair (2007), for instance, have pointed at a wide range of benefits of EIA, including the involvement of local communities at an early stage of decision making; the access to scientific and local knowledge and the sharing of environmental information; the role of EIA as a vehicle for individual and community empowerment; and hence its contribution to a more equal distribution of power in society. Because of these features EIA has become widely institutionalized in most western democracies.

In many developing and transitional economies EIA has been introduced much later and/or enforced to a lesser extent. In China, for instance, although EIA was mentioned already in the Environmental Protection Law 1979, EIA had not become one of the major policy instruments in environmental governance for projects until 1998, following the *Regulations on the Environmental Protection*

Administration of Construction Projects by the State Council, and for planning until 2003, when the *Law on Environmental Impact Assessment* was enacted (Zhu, 2011). Also here, EIA was introduced with the promises of both including the environment better and more fully into decision making on major projects and plans, and contributing to environmental information disclosure and public participation. Quite a few scholars explored the environmental effectiveness of EIA in China from the perspective of public participation and more democratic decision-making, to assess whether EIA empowers the environmental and community interests and groups that are too often ignored in China's infrastructure and investment projects and plans (e.g. Tang et al., 1997; Yang, 2008; Zhao, 2010; Li et al., 2012; Johnson, 2013; He et al., 2014). Regardless of often reported failures of EIA to live after these promises in the practice of China's policy making, the fundamental idea and design of EIA has remained, in China as well as in many other countries.

The idea that a close correlation exists between better environmental decision-making and more public participation and information disclosure is not restricted to EIA. In comparative environmental politics a long tradition exist of studying more generally the relation between regime type and the performance of environmental governance (e.g. Josephson, 2004; Buitenzorgy and Mol, 2010; Gilley, 2012). Quite some scholars have argued, with theoretical and empirical arguments, that democratic political systems show a better performance in environmental governance compared to less democratic systems, due to the former's high information flow and meaningful public participation in policy making processes (Payne, 1995; Barrett and Graddy, 2000; Farzin and Bond, 2006; Winslow, 2005; Humphrey, 2007). More recently, under conditions of a more severe environmental crisis, the better environmental performance of liberal democracies has come under attack. Some scholars have argued that politicians in liberal democracies focus on short-term developmental goals at the cost of solving long term environmental problems such as climate change (e.g. Midlarsky, 1998; Shearman and Smith, 2007). Others have asserted that public participation can endanger sound environmental policy making when lay people lack the capability to handle complex information and technical knowledge (Lawrence, 2003), and that transparency is not always facilitating better environmental performance (Mol, 2010; Gupta and Mason, 2014). The concept of environmental authoritarianism was recently coined to bring together these doubts on democracy as a favorable and capable environmental decision-making and governance model (Shearman and Smith, 2007; Beeson, 2010).¹ Authoritarian governance might be the result or consequence of severe environmental degradation as 'political elites come to privilege regime maintenance and internal stability over political liberalization.' (Beeson, 2010: 276). By the same token, a central undemocratic state may prove to be essential for major responses to the growing, complex and global environmental challenges. Especially in East and Southeast Asia, where the authoritarian tradition is deeply embedded in the cultural, social and political systems, environmental authoritarianism might be more likely to prevail, to form an (effective) answer to mounting environmental challenges. Beeson (2010) uses China's birth control policy as an example how authoritarian rule has contributed to environmental mitigation. But

¹ Gilley (2012: 288) uses a similar concept of "authoritarian environmentalism" to describe the 'public policy model that concentrates authority in a few executive agencies manned by capable and uncorrupt elites seeking to improve environmental outcomes. Public participation is limited to a narrow cadre of scientific and technocratic elites while others are expected to participate only in state-led mobilization for the purposes of implementation.'

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