

ANALYSES FORMS – INTRODUCTION

Literature review of documents relating to public participation in general, and of materials on the JBNQA

This literature review represents one of the three analyses conducted for the development of the final report on public participation adopted by the JBACE in April 2015.¹

This literature review was conducted to tease out broad insights from the literature as well as to inventory and confirm recognized principles or standards of public participation. The review was also undertaken to determine if the gaps identified in the JBACE’s 2009 joint project with experts from the Université de Montréal still apply in light of these standards and to see where Section 22 stands in relation to them.

A total of 28 documents relating to public participation in general, or the JBNQA, were identified for analyses.² These documents were qualitatively evaluated across the following six key internationally-recognized indicators for meaningful public participation:³

- A. Transparency and access to information;
- B. Awareness of the process;
- C. Credibility of the process;
- D. Predictability / ‘Foreseeability’ of the process;
- E. Legal standing and the roles and responsibilities of the pertinent actors;
- F. Socio-cultural adaptability.

Notes to Readers

- 1. The following analyses forms are provided for informational purposes only. They are provided in the language of their conception, either in English or in French.**
- 2. The analyses forms relate only the findings made by the members of the JBACE’s Subcommittee on Public Participation. The forms are thus not definitive nor are they exhaustive. Readers are fully responsible for their own respective interpretations of the information contained in the analyses forms.**

¹ JBACE, 2015. *Recommendations concerning Public Participation during Environmental and Social Impact Assessments and Reviews: James Bay and Northern Québec Agreement – Section 22 Territory*. Online: www.ccebj-jbace.ca/en/documents/file/618-report-on-public-participation-may-2015. A French version is here: www.ccebj-jbace.ca/fr/documents/file/619-rapport-sur-la-participation-publique-mai-2015. Please consult the report for a complete description of the methodology, selection of indicators, results and recommendations.

² Only 27 of the documents are public, and have been included here.

³ While reviewing the literature, several key principles mentioned in the documents were identical to six indicators used by the JBACE for the analyses. Such instances are in italics. These concurrences reinforced the validity of our indicators.

ACRONYMS

The following acronyms are used in the analyses forms for concision:

AANDC	Aboriginal Affairs and Northern Development Canada (formerly, Indian and Northern Affairs Canada – INAC)
BAPE	<i>Bureau d’audiences publiques sur l’environnement</i>
CEA Act, 2012	<i>Canadian Environmental Assessment Act, 2012</i> (SC 2012 c.19 s.52) (references to the previous version are cited as CEA Act 1992)
CEA Agency	Canadian Environmental Assessment Agency
CEA Registry	Canadian Environmental Assessment Registry
CNG	Cree Nation Government (formerly the Cree Regional Authority – CRA)
CPEQ	Conseil Patronal de l’Environnement du Québec
COFEX-South	Federal Review Panel–South (Comité fédéral d’examen–Sud)
COFEX-North	Federal Review Panel–North (Comité fédéral d’examen–Nord)
COMEX	Provincial Review Committee (Comité provincial d’examen)
COMEV	Evaluating Committee (Comité d’évaluation)
CSR	Corporate-social responsibility
EA	Environmental Assessment
EQA	<i>Environment Quality Act</i> (CQLR c.Q-2)
EIS	Environmental Impact Statement
GCC	Grand Council of the Crees
IAIA	International Association for Impact Assessment
JBACE	James Bay Advisory Committee on the Environment
JBNQA	James Bay Northern Québec Agreement
KEAC	Kativik Environmental Advisory Committee
KEQC	Kativik Environmental Quality Commission
MDDELCC	Ministère du Développement durable, de l’Environnement et de la Lutte contre les changements climatiques (formerly the MDDEFP and MDDEP)
MDDEFP	Ministère du Développement durable, de l’Environnement, de la Faune et des Parcs
MDDEP	Ministère du Développement durable, de l’Environnement et des Parcs
PP	Public participation
RA	Responsible Authority
SAA	Secrétariat aux affaires autochtones
TK	Traditional Knowledge

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DOCUMENT RELATING TO PUBLIC PARTICIPATION IN GENERAL OR TO THE JBNQA – ANALYSIS FORM N° 1

TITLE: *The James Bay and Northern Quebec Agreement and the Northeastern Quebec Agreement - Annual Report: 2005-2006 & 2006-2007* (n° 1)⁴

1. Nature of the text (context)

INAC activity report for 2005 to 2007 with general info on Section 22 – may be of use for Section 22 guidance material (published in 2009).

2. Objectives to be pursued via public participation

Nothing on the subject and does not address six key indicators.

3. Types of public participation (categories)

Nothing on the subject and does not address six key indicators.

4. Guiding principles for public participation

Nothing on the subject and does not address six key indicators.

5. Potential solutions / best practices that should be pursued for public participation

Nothing on the subject and does not address six key indicators.

6. Additional notes

- Outlines the land regime and general rights of the Cree in terms of land category (pp. 7-8);
- Summarily describes Section 22 and bodies established thereunder (pp. 9-11);
- Summarily describes the implication of the CEA Agency in the Section 22 and 23 EA procedures (“*supports the federal administrator and provides advice and administrative support to the various committees established under these two sections*”) (pp. 36-37, 62-63), as well as the funds that were provided the CEA Agency for EAs and/or for public participation in EAs (see pp. 37 and 63 for examples).

⁴ INAC, 2009. *The James Bay and Northern Quebec Agreement and the Northeastern Quebec Agreement - Annual Report: 2005-2006 & 2006-2007*. Online: www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/jb0507_1100100030831_eng.pdf.

DOCUMENT RELATING TO PUBLIC PARTICIPATION IN GENERAL OR TO THE JBNQA – ANALYSIS FORM N° 2

TITLE: *Environmental Assessment of Northern Projects* (n° 2)⁵

1. Nature of the text (context)

MDDEP guide on the Section 22 and 23 procedures and on the roles and composition of the bodies acting thereunder (published in 2003). Offers few specifics regarding public participation during project EAs – may be of use for Section 22 guidance material.

2. Objectives to be pursued via public participation

Nothing on the subject beyond the principle that participation of the Native party / peoples in the environmental and social protection regime is ‘*an issue requiring special attention*’ (p. 8);

3. Types of public participation (categories)

- Mentions Native party / peoples via consultation and representation (p.8);
- Mentions that the public and Native administrations may be consulted at the review stage of the EA process either via public hearings or any other type of consultation (pp. 11-12).

4. Guiding principles for public participation

As above.

5. Potential solutions / best practices that should be pursued for public participation

Nothing on the subject.

6. Additional notes

- Provides basic info (size of the Territory, population, jurisdictional map), and briefly summarizes the signing of the JBNQA, Paix des Braves and Sanarrutik agreement (pp. 4-7);
- Outlines the land categories, describes the Section 22 environmental and social protection regime and the EA procedure (provincial, federal, joint), JBACE, COMEV, COMEX, KEQC, and the Administrators – also explains their compositions and roles (pp. 7-15);
- Does not go into detail on how the Cree are consulted during actual project EAs.

⁵ MDDEP, 2003. *Environmental Assessment of Northern Projects*. Online: www.mddelcc.gouv.qc.ca/evaluations/mil-nordique/eval-nordique-en.pdf.

DOCUMENT RELATING TO PUBLIC PARTICIPATION IN GENERAL OR TO THE JBNQA – ANALYSIS FORM N° 3

TITLE: *KEAC Position paper on strengthening the environmental and social impact assessment and review procedure in Nunavik* (n° 3)⁶

1. Nature of the text (context)

KEAC document with recommendations for Section 23 – offers several suggestions on public participation during EAs; may be of use for Section 22 guidance material (published in 2009).

2. Objectives to be pursued via public participation

Must address the ‘special status and involvement for the Native people’ wherever necessary (p.5).

3. Types of public participation (categories)

Consultations during reviews (pp. 5).

4. Guiding principles for public participation

- *Transparency* and *Predictability* of PP activities during EAs – they relate to public awareness of the EA procedure and of the details on projects subject to EA (p. 9);
- Access to info and PP in the decision making process are necessary to ensure the right to live in a healthy environment – legally-assured access to info and systematic consultation procedures are necessary because PP is discretionary under Section 23 and no guidelines or provisions for PP exist therein (p. 9). This has led to several problems (see additional notes) (pp. 5-6).

5. Potential solutions / best practices that should be pursued for public participation

- Info on ‘grey zone’ and automatically-subjected projects must be improved, includes (pp. 9-10):
 - Preliminary info, project description, EIS;
 - Modifications to the project, maps, plans, notices issued by government bodies, public position papers, project and EA and PP timetables, and locations where info is available;
- Ensure sufficient time for public to consult project info, to request consultations, and to express concerns (p. 10);
- Communicate consultation request mechanisms, assessment criteria for such requests, language of communication, notice of hearings, participation costs, grounds for decisions (p. 10);
- Public register provided for in s. 118.5 of the EQA must be updated and include data on planned and completed projects (p. 11);
- Criteria used to assess the need for EA of ‘grey zone’ projects and records of the decisions of the administrative agencies must be made public (p. 11).

⁶ KEAC, 2009. *KEAC Position paper on strengthening the environmental and social impact assessment and review procedure in Nunavik*. Online: www.keac-ccek.ca/documents/memoires-avis/avis-final-en_20091109162112.pdf.

6. Additional notes

- Describes the Section 23 environmental and social protection regime and the EA procedure (provincial, federal, joint), KEAC, KEQC, Federal Screening Committee, 'grey zone projects,' and the paragraphs in the JBNQA relating to revision thereof (pp. 3-5);
- Outlines several problems with the Section 23 EA procedure relating to PP (e.g. lack of transparency, grounds for decisions on the need for PP or on the actual project are not public, overly-technical info, timeframes are not conducive to PP, notices and info for PP activities not readily-accessible to public) (p. 6).

DOCUMENT RELATING TO PUBLIC PARTICIPATION IN GENERAL OR TO THE JBNQA – ANALYSIS FORM N° 4

TITLE: [Environmental and Social Impact Assessment and Review Procedure Guide](#) (n° 4)⁷

1. Nature of the text (context)

KEAC guide outlining the Section 23 procedure with suggestions regarding PP (published in 2008). It describes the means by which stakeholders may participate during reviews and encourages proponent-driven PP initiatives pre-evaluation and pre-review. May be of use for Section 22 guidance material.

2. Objectives to be pursued via public participation

- KEQC / COFEX-North may hold PP activities at any time, to obtain the public's opinion, for projects under review (p. 10).
- Proponent-driven pre-review PP activities are objectives in and of themselves (p. 16):
 - To foster social-acceptability;
 - To gain understanding of community concerns in order to account for them in the EIS;
 - Traditional and local knowledge can aid impact definition (environmental and social);
- Similar objectives are cited for KEQC or COFEX-North driven consultations during reviews – they allow KEQC and COFEX-North to (p.18):
 - Understand people's concerns about the project;
 - Verify that the proponent took these concerns into account in their EIS;
 - Determine if the communities affected by the project find it acceptable.

See below for the objectives identified for the various categories of public participation.

3. Types of public participation (categories)

- i. Informing = a one-way process, flowing from the proponent to the citizens. It includes information on the project submitted, answers to citizens' questions, and information on decisions made. The proponent's objectives are to inform and increase the awareness of the public with regard to the issues, impacts, and proposed mitigation measures (p. 20);
- ii. Consultation / Discussion = a two-way communication process where citizens can inform proponents and review bodies (traditional knowledge, local concerns) (p. 20).
- iii. Participation in the decision making process = a partnership between the proponent and citizens where they mutually-engage on project alternatives. Proponents may focus on target groups and build ongoing partnerships for the purpose of making joint decisions (pp. 20-21).

4. Guiding principles for public participation

Beyond the guiding principles of Section 23 and the special status of the Native parties to the JBNQA, see points 2 and 3 above.

⁷ KEAC, 2008. *Environmental and Social Impact Assessment and Review Procedure Guide*. Online: www.keac-cceek.ca/en/environmental-procedure/ANNEXES_Guide_e.pdf.

5. Potential solutions / best practices that should be pursued for public participation

- Proponents should voluntarily put together a public communications program right from the start of the project planning stage (p. 20) – plans should be adapted to each project based on:
 - Project scale (large ones prompt more interest, questions and concerns than smaller ones);
 - Project location (projects sited in a community or harvesting territory causes greater concern than a project located away from areas used for everyday or traditional activities);
 - Area of influence and extent of the project’s impacts (greater impacts entail greater concerns);
 - Local and regional economic spin-off (greater potential for economic spin-off entails greater local and regional expectations) (p. 21).
- Proponents should write up a detailed report on all consultations or public participation activities; and, the outcomes should be made public to ensure the procedure's credibility and transparency (p. 21);
- For Informing, proponents should plan for: Notices or information in newspapers, Radio shows, Documentation on a Web-site or at municipal office, Information campaigns (meetings) with target groups or organizations and/or municipal authorities, Information booth (p. 22);
- For Consulting and discussing, proponents should plan for (as above and): Correspondence, E-mails, Internet forums, Call-in radio talk shows, Interviews (individual and groups), Restricted discussion groups (e.g. for youth, women, the elderly), and Public meetings (p. 22);
- For Participation in the Decision making Process, proponents should plan for (as above and): Restricted meetings, Discussion meetings, Public hearings, and Standing committees (p. 22);
- As a minimum and for all projects, a notice describing the project should be posted in the municipal offices concerned and on the appropriate Web-sites (p. 22);
- Ultimately, proponents should tailor their communications program in order to integrate the project into the community as easily as possible (p. 22).

6. Additional notes

- Describes history, signing of the JBNQA, land regime, and harvesting rights (pp. 5-6);
- Outlines the objectives of the environmental and social protection regime and of the guiding principles of the EA procedure (including the ‘special status’ of involvement and participation of the Native parties) (pp. 6-7);
- Describes the developments that are subject to or exempt from EA, the body tasked with determining this for ‘grey zone projects’ – the KEQC – and provides an in-depth description and flow-charts of the various steps through the EA procedure (pp. 7-19 and Appendices);
- Confirms that individuals, communities and other stakeholders can ask the KEQC or COFEX-North, or the Inuit members of these committees, for public hearings during reviews (p. 18);
- Provides a comprehensive contact list for communities, regional entities and other government organizations involved in the Section 23 procedure (pp. 23-24).

DOCUMENT RELATING TO PUBLIC PARTICIPATION IN GENERAL OR TO THE JBNQA – ANALYSIS FORM N° 5

TITLE: *A Five-Step Process* (n° 5)⁸

1. Nature of the text (context)

A KEAC brochure (published in 2001) that outlines the steps of Section 23 EA procedure, the roles and composition of the bodies acting thereunder, as well as the responsibilities of proponents (pp. 1-3). It does not immediately meet our objectives but offers info useful for development of similar guidance material on Section 22.

2. Objectives to be pursued via public participation

Nothing on the subject and does not address six key indicators of meaningful public participation.

3. Types of public participation (categories)

Only mentions that the Native administrations and the public can make representations to the KEQC or COMEX, which may also hold public hearings or any other type of consultation, but goes into no further detail (pp. 2-3).

4. Guiding principles for public participation

Nothing on the subject and does not address six key indicators of meaningful public participation.

5. Potential solutions / best practices that should be pursued for public participation

Nothing on the subject.

6. Additional notes

None.

⁸ KEAC, 2001. *A Five-Step Process*. Online: www.keac-ccck.ca/procedures-environmentales/etapes-evaluation-environnementale.pdf.

DOCUMENT RELATING TO PUBLIC PARTICIPATION IN GENERAL OR TO THE JBNQA – ANALYSIS FORM N° 6

TITLE: *Internal operating procedures* (n° 6)⁹

1. Nature of the text (context)

COFEX-North's internal work procedure designed to promote efficiency and transparency during reviews per Section 23 (published in 2001). Provides useful info for development of guidance material on Section 22.

2. Objectives to be pursued via public participation

Nothing on the subject.

3. Types of public participation (categories)

- Public consultations (hearings) are an important type of public participation that COFEX-North wishes to enable during project reviews (pp. 1-3);
- If COFEX-North determines that public consultations are required during a review (see point 6 for the criteria), COFEX-North considers the following options for holding them:
 - Hearings in the community;
 - Formal meeting with municipal representatives;
 - Informal meetings with key stakeholders (e.g. proponent, municipal council, targeted groups);
 - Interviews and question period on community radio stations (radio show) (p. 3).

4. Guiding principles for public participation

Nothing specific on the subject; but, in general, *Transparency* must be promoted (pp. 1-3).

5. Potential solutions / best practices that should be pursued for public participation

Nothing specific on the subject; but, it mentions that COFEX-North considers the '*...nature of the proponent's public consultation in the project's design phase.*' This suggests that COFEX-North encourages proponent-driven pre-review public participation activities (p. 1).

6. Additional notes

- COFEX-North uses these criteria to decide if consultations should be held during a review:
 - Project type;
 - Sensitivity of the potentially affected environment and scope of expected impacts;
 - Perceptible public interest and concerns in the project's impacts;
 - Nature of the proponent's public consultation in the project's design phase;

⁹ COFEX-North, 2001. *Internal operating procedures*. Online on KEAC's website: www.keac-ccek.ca/en/environmental-procedure/screening-committee/internal-operational-procedures.pdf.

- Previous consultation by another body;
- Proponent's experience in the EA process (e.g. past achievements, follow-up results);
- Discussion with the mayor of the municipality that is affected by the project (pp 1-2).

DOCUMENT RELATING TO PUBLIC PARTICIPATION IN GENERAL OR TO THE JBNQA – ANALYSIS FORM N° 7

TITLE: *Federal Environmental and Social Impact Assessment and Review Process as Established by Section 23.4 of the JBNQA* (n° 7)¹⁰

1. Nature of the text (context)

COFEX-North's flow-chart / diagram representing the federal EA procedure under Section 23 (published in 2001). It does not meet our objectives but may be a model for flow-chart of the Section 22 procedure.

2. Objectives to be pursued via public participation

Nothing on the subject.

3. Types of public participation (categories)

Only mentions that '*...communities make representations to COFEX-North*' during reviews (per paragraph 23.4.20), but does not provide any additional details.

4. Guiding principles for public participation

Nothing on the subject.

5. Potential solutions / best practices that should be pursued for public participation

Nothing on the subject.

6. Additional notes

None.

¹⁰ COFEX-North, 2001. *Federal Environmental and Social Impact Assessment and Review Process as Established by Section 23.4 of the JBNQA*. Online: www.keac-ccek.ca/en/environmental-procedure/screening-committee/Process-23.4.pdf.

DOCUMENT RELATING TO PUBLIC PARTICIPATION IN GENERAL OR TO THE JBNQA – ANALYSIS FORM N° 8

TITLE: [Report on Public Participation under the James Bay and Northern Quebec Agreement Environmental Assessment and Review Process](#) (n° 8)¹¹

1. Nature of the text (context)

CRA report with recommendations on PP for Section 22 (published in 2011). The text is extensive and draws on the JBACE's work. This analysis focuses on its findings.

2. Objectives to be pursued via public participation

- *Public awareness* and understanding of the Section 22 EA procedure, as well as of the details regarding specific projects subject to it, are key principles and objectives. With an understanding of these elements, the public can then offer informed opinions (pp. 33-35);
- To achieve this, consistency, *Credibility*, and *Transparency* are crucially-important and must be addressed (the report highlights this as a serious issue for the Section 22 procedure) (pp. 33-35).

3. Types of public participation (categories)

- Informing and Consulting are recognized (see point 5 for more details);
- Some indications of public input on the development of guidelines for 'grey zone' projects under evaluation by COMEV is made in COMEV's internal operating procedures, but no details are provided other than such public input is driven by good practice (p. 31);
- During reviews, COMEX had an internal set of operating procedures (see Analysis Form n° 8) in which the conduct of public Informing and Consulting activities were outlined – the document stipulates that these were procedures were also driven by best practices (p. 31).

4. Guiding principles for public participation

- See point #2;
- The special status and involvement of the Crees over and above that provided for the general public (22.2.2) is basis for the need to undertake public participation during EAs per Section 22, and is also the basis for the need to improve public participation therein (p. 37);
- Consistency and *Transparency* are guiding principles for public participation. They are also motives for several of the report's recommendations (i.e. per the report, these principles are not adequately met by current public participation operations undertaken by proponents, and the review bodies established by Section 22) (pp. 33-35 and 37).

¹¹ CRA c/o Sanammanga Solutions Inc., 2011. *Report on Public Participation under the James Bay and Northern Quebec Agreement Environmental Assessment and Review Process*. Online: www.gcc.ca/pdf/Report-on-PP-under-JBNQA-Section-22-2011-09-09.pdf.

5. Potential solutions / best practices that should be pursued for public participation

- The following are available or undertaken in all of the other jurisdictions reviewed, either due to legal requirements or as a matter of best practice (pp. 8, 14, 19, 25 and 36):

- Website with information about the jurisdiction's EA process;
- Electronic public registry with documentation on projects undergoing EA and their status;
- Information sessions to explain the EA and PP processes and goals;
- Publicly-available minimum expectations for proponents (i.e. published guidelines and/or mandatory directions);
- Opportunities for the public during issue scoping sessions, technical reviews;
- PP activities and documentation provided in local languages;
- The reasons for decisions or recommendations made by the various boards or agencies involved in EAs are public;
- Monitoring, follow-up and reporting (reports are publicly-available and/or public involved in monitoring committees or informed thereof);
- Community tours to explain the EA procedure and means for the public to participate in project EAs are also undertaken in the other jurisdictions.

- The following are actual recommendations tabled in the document:

- A harmonised / consistent process for public participation activities during EAs should be established for project reviews conducted by COMEX, COFEX-South, or jointly (p. 37);
- An independent body should be tasked with maintaining the public participation process during EAs and provide consistency in the manner in which information on the review process and projects being reviewed is disseminated and in how the consultation processes are undertaken (including the maintenance of an electronic public registry, preparing EA timetables, distributing documents to local governments and the public, disseminate info concerning proponent follow-up activities) (p. 37);
- The registry should serve to disseminate info and should allow for the filing of documents and materials related to the EA. The registry should also provide the reasons for deciding to review 'grey-zone' projects (these reasons can guide future policy making) (p. 38);
- Establish guidelines that define the role and expectations of proponents and that offer them guidance on public participation activities (e.g. organizing consultations, documenting exchanges, accounting for traditional knowledge, socio-economic impact assessment, rules of procedure, role of the public, standardized timelines and steps). The guidelines should include opportunities for the Cree to confirm that proponents have appropriately followed the guidelines during proponent-driven public participation activities (p. 38-40);
- Establish a consultation 'roadmap' with mandatory actions and schedules so that the public know when, how, and on what they can provide input (p. 38);
- Setup a centralised website for the JBNQA EA procedure, with a link to the project registry, offering info on the procedure, the above-mentioned guidelines, etc. The independent body could maintain this website (p. 38);

- Establish an info-exchange process by which the CRA / CNG would systematically receive all technical / scientific info related to projects in order to assist to the public per 22.3.33 – this should apply to ‘grey zone’ projects as well (p. 38);
- Establish local community working groups (with aid from the CRA / CNG) as part of a coordinated effort to engage the public in EAs – funding could be collectively provided by governments and proponents (p. 38);
- The public should be afforded an opportunity to comment on the directives produced by COMEV (for ‘grey zone’ and listed projects that must undergo an EA) – public commentary could be facilitated by the registry (p. 39 and 40);
- Preliminary project descriptions and complete studies (EISs) should be the object of public consultations so that the public can determine if their comments and design concerns are reflected in the proponent’s final EIS submission and final project design – as is the case in Nunavut and the Mackenzie Valley (p. 40);
- Revise Schedule 3 of Section 22 to clarify expectations and necessary components in the EIS produced by proponents (e.g. include treatment of the Cree way of life, requirements to account for traditional land use and/or knowledge, requirements to document proponent-driven public participation activities) (p. 39).

6. Additional notes

- The text’s review of the process in Nunavut offers some interesting suggestions that may be helpful considerations for public participation under Section 22 (see p. 28):
 - Proponents and technical experts should be available during info and consultation sessions in order to explain the projects under review – they should be allowed to answer questions;
 - Dictionaries or glossaries in English and in Cree would assist translators during consultations and would also be a helpful reference for the public;
 - Bodies organizing public participation activities may wish to consider holding the events over several days in order to give the public sufficient time;
 - Clear and publicly-accessible reports outlining the reasons for the decisions or recommendations made by the implicated committees or boards, following public participation activities, are very important and improve the credibility and transparency of the entire procedure.
- The text underscores the need to revise the funding regime for the JBNQA processes, given that the modernization of the Section 22 regime will require funds and manpower. It is foreseeable that these additional resources will have to be recurrent as certain elements must be maintained over time (e.g. electronic registry) (p. 36).

DOCUMENT RELATING TO PUBLIC PARTICIPATION IN GENERAL OR TO THE JBNQA – ANALYSIS FORM N° 9

TITLE: *Considering Aboriginal traditional knowledge in environmental assessments conducted under the Canadian Environmental Assessment Act - Interim Principles* (n° 9)¹²

1. Nature of the text (context)

CEA Agency document for EA practitioners, published in 2013. Offers general guidance to responsible authorities ('RAs') under the previous version of the CEA Act for considering traditional knowledge ('TK') during projects EAs. Section 19(3) of the Act mentions that RAs have the discretion to consider TK in any EA – still the case under the new CEA Act 2012. The guide has not been revised for the CEA Act 2012, but some info is still helpful. Only major insights and elements that are helpful are included here.

2. Objectives to be pursued via public participation

- The following are potential objectives for seeking and considering TK in EAs (p. 2):
 - To exchange relevant biophysical and historical info on an area that may be otherwise unavailable, and that may help identify potential environmental effects;
 - To examine / improve project designs, mitigation measures, and overall decisions;
 - To enhance relationships between proponents, Aboriginal groups, and/or RAs;
 - To build awareness and appreciation for TK by all stakeholders.
- The following are potential motives and times for seeking and considering TK in EAs (pp. 2-3):
 - To assist in the scoping of the EA (planning phase of the EA);
 - To assist in the collection of baseline information (in the outset of the EA);
 - During the identification of impacts (when producing and/or reviewing an EIS);
 - When identifying project mitigation measures (when producing and/or reviewing an EA);
 - When designing follow-up programs (when reviewing an EIS or post-EA).

3. Types of public participation (categories)

- The text states that Interviews, Group discussions, and Consultations may be used by an RA at any time during an EA to collect TK, but does not offer specific details on these types of participation activities.
- However, the guiding principles and best practices (see points 4 and 5) must be considered when RAs are organizing and adapting their intended participation activities.

¹² CEA Agency, 2013. *Considering Aboriginal traditional knowledge in environmental assessments conducted under the Canadian Environmental Assessment Act - Interim Principles*.
Online: www.ceaa-acee.gc.ca/default.asp?lang=En&n=4A795E76-1.

4. Guiding principles for public participation

- i. TK research should be planned and conducted in collaboration with the communities (p. 3);
- ii. No two project EAs are the same and no fixed format for seeking TK through pp activities can be applied – RAs must adapt accordingly (p.3);
- iii. Access to TK may be confidential (an agreement may be needed) (p. 3);
- iv. No two communities are the same. They may have different laws, customs, and protocols regarding PP and/or regarding who holds different aspects of a community's TK, with whom and how TK may be shared, and who has authority to pass it on (pp. 3-4);
- v. Communities must be contacted early in the EA, informed that their input is sought, and have an opportunity to determine if they wish to provide TK – RAs should (pp. 3-4):
 - Provide clear and accurate info about the project, the EA, and the EA process;
 - Set out what TK is sought, how it will be collected, how it will be used in the EA process;
 - Identify potential benefits and problems associated with the TK research;
 - Outline how the community will obtain resultant reports, and how they may review them.
- vi. RAs should be prepared for unforeseen delays and make extra efforts for ongoing and extensive communications with communities (p. 3);
- vii. RAs should frame their TK collection efforts in the context long term relationship-building, and seek to establish trust with the community, its leaders, and TK holders (p. 3);
- viii. Language may be an issue and RAs must note that translation may be necessary (p. 3).

5. Potential solutions / best practices that should be pursued for public participation

See p. 5 for the following:

- RAs should work with the community and TK-holders when establishing TK collection activities and methods, and seek the community's approval prior to undertaking the collection activities (e.g. Interviews, group or mapping discussions, public consultations);
- Data collection and analysis should be done by or with members of the Aboriginal community;
- RAs should note that different types of TK are held by different segments of the population depending on age, gender, and lifestyle, and should plan their collection activities accordingly;
- RAs should provide the community with an opportunity to review the TK that is collected, and how it was incorporated in the EA (e.g. in the determination of impacts, proposed mitigation, proposed follow-up and monitoring);
- RAs should ensure that any TK collected remains available in the community so that it may also benefit from the research.

6. Additional notes

There is no set definition of TK given that it is a knowledge that is built up by a group of people through generations, both cumulatively and dynamically, building on experiences and adaptations to social, economic, environmental, spiritual and political histories and inter-relationships. RAs must be mindful of this when undertaking PP activities seeking to consider TK (p. 2).

DOCUMENT RELATING TO PUBLIC PARTICIPATION IN GENERAL OR TO THE JBNQA – ANALYSIS FORM N° 10

TITLE: [Public Participation Guide - A Guide for Meaningful Public Participation in Environmental Assessments under the Canadian Environmental Assessment Act \(n° 10\)](#)¹³

1. Nature of the text (context)

CEA Agency document for EA practitioners published in 2008. Offers guidance to RAs under the previous version of the CEA Act for planning PP activities during EAs. The guide is extensive (227 pp.) and has not been revised for the CEA Act 2012, but some info is still helpful. Only major insights and elements that are helpful are included here.

2. Objectives to be pursued via public participation

See pp. 1.13 and 2.29 for the following:

- To obtain valuable information about the environment and potential impacts;
- To enhance understanding of the public's interests, concerns and priorities;
- To obtain a range of perspectives on problems and solutions;
- To align project design with public priorities before investing in detailed project planning and/or reduce the likelihood for conflicts;
- To increase communication, transparency and accountability with the public
- To improve the quality of the EA and, over time, increase the credibility of the EA process.

3. Types of public participation (categories)

- Information = one-way flow from proponent or RA to public. A critical activity for sharing info about a project, an EA, and for advertising PP activities (pp. 1.4, 4.24-4.25, A-A.3);
- Consultation = two-way communication between proponent or RA and public (public has an opportunity to express views). Intent is to raise awareness and understanding, to consider public input, and to facilitate more informed decisions about projects (pp. 1.5, 4.24-4.25, A.14);
- Information and Consultation are minimum legal requirements for all EAs per the Act, at least via the registry (p. 1.7-1.8 – still per CEA Act 2012 ss.8-12, 24-25, 34, 37, 43, 45-46);
- Involvement = two-way communication increases between proponent or RA and public in order to seek mutually-accepted objectives. Public has more influence on decision making and outcomes (pp. 4.24, 4.26, A.23);
- Collaboration = active involvement of the public in decisions or work, in planning activities, identifying priorities or issues, etc. Public influences outcomes (pp. 4.24, 4.26-4.27, A.23);
- Involvement / Collaboration events are not held during Screenings (still per the CEA Act 2012).

¹³ CEA Agency, 2008. *Public Participation Guide – A Guide for Meaningful Public Participation in Environmental Assessments under the Canadian Environmental Assessment Act*. Online: www.ceaa-acee.gc.ca/Content/4/6/4/46425CAF-50B2-408D-A2A4-EDFAD2A72807/Public_Participation_Guide.pdf.

4. Guiding principles for public participation

- Public participation is based on the premise that the public's contribution will be considered in the decision making process (p. 6.7);
- Access to info relating to EAs is mandatory per (s.55 of the Act) – all records produced or collected in relation to EAs are available on the Agency's registry (pp. 1.4-1.5);
- Notifying / Informing is not 'meaningful' participation on its own. But participation is not possible otherwise – timely and adequate notification and information are essential (p. 1.4);
- *Adaptability, Flexibility* / Discretion are important for the bodies organizing activities (RAs in this case). RAs may use several means to Inform, Consult, and Involve the public (p. 1.7);
- Planning is crucial for RAs. They must prepare Public Participation Plans for each project EA that are tailored to the circumstances (sometimes these plans are developed in collaboration with the communities affected by the project) (p. 1.7);
- Impartiality, *Transparency*, consistency, efficiency, accountability, fairness, and timeliness are cited as guiding principles for all RAs undertaking public participation activities (p. 1.13);
- Good governance – the public is increasingly requiring implication in decisions that affect them. Allowing for public participation in EA is now a matter of good governance (p. 2.28).

5. Potential solutions / best practices that should be pursued for public participation

- RAs should remember to communicate in a language and format that is appropriate to the audience (i.e. translation and non-technical language may be required) (throughout document).
- The following criteria may be used to determine the need for PP during EAs conducted by RAs or by Review Panels (p. 2.7 – still per the CEA Act 2012 ss.24-25, 31, 34, 37, 43):
 - Indication of public interest;
 - History of involvement;
 - Potential for value conflict;
 - Potential for significant impacts;
 - Potential to learn from local or TK;
 - Uncertainty about impacts;
 - Use of equivalent PP processes.
- The guide offers more info on how RAs may use the criteria to assess the level of PP to apply,¹⁴ how to setup a Public Participation Plan, and how to interpret public insights (pp. 2.10-2.27, 3.1-6.15).
- When planning any PP activities the following are best practices (p. 1.12):
 - Early notification, reasonable timing, and accessible information;
 - Sensitivity to local values, with appropriate levels of participation and adaptive processes;
 - Transparent results.
- *Consultation* via a written commentary period is common but other techniques may be explored (e.g. questionnaires, surveys, panels) (p. 1.5);
- All decisions and reports prepared by RAs and Review Panels are in the public domain (throughout guide, see pp. 2.31-2.40 for how they are published).

¹⁴ If, for example, Consultation or Collaboration is appropriate.

After public participation activities have been held:

- RAs should report back to the public in order to communicate results or EA decisions – this is mandatory for EAs conducted by RAs and Review Panels; a posting in the registry is sufficient for Screenings (pp. 5.32-5.33 and still per the CEA Act 2012 ss.12, 31, 34, 37, 43, 45 and 46);
- RAs should evaluate the outcomes of Public Participation Plans, their effectiveness, and means to make improvements. The CEA Agency must monitor the quality of EAs conducted under the Act, including PP processes (pp. 6.1-6.6 – still per the CEA Act 2012 s.105).

6. Additional notes

- Agency maintains a Participant Funding Program (p. 1.9 – still per the CEA Act 2012 s.57-58).

Activities that RAs may organize during EAs across the types / levels of participation (p. A.2)¹⁵				
Activity / Technique	Inform	Consult	Involve	Collaborate
Advertising	✓			
Briefings / Presentations	✓			
Central Info Contact	✓			
Community fairs / events	✓			
E-Mail	✓			
Field Offices	✓	✓		
Info Centres / Repositories	✓			
Info Kiosks / Exhibits / Displays	✓			
Open Houses	✓	✓		
Print and Electronic Media	✓			
Print Materials / Mail Outs	✓			
Response Summaries	✓	✓		
Site Tours / Field Trips	✓	✓		
Symposiums / Expert Panels	✓	✓		
Telephone Hotlines	✓	✓		
Web Sites and Other Internet Tools	✓	✓		
Coffee Parties	✓	✓		
Comment Forms		✓		
Focus Groups		✓		
Interviews		✓	✓	
Public Meetings	✓	✓		
Surveys		✓		
Town Meetings	✓	✓	✓	
Charrettes			✓	✓
Roundtables			✓	
Small Group Meetings			✓	
Workshops			✓	✓
Advisory Groups		✓	✓	✓
Consensus-Building Techniques			✓	✓
Study Circles		✓	✓	✓
Task Forces			✓	✓

¹⁵ See A.1 to A.25 for a description of each activity, when they are appropriate, their benefits, and additional tips.

DOCUMENT RELATING TO PUBLIC PARTICIPATION IN GENERAL OR TO THE JBNQA – ANALYSIS FORM N° 11

TITLE: *Ministerial Guideline on Assessing the Need for and Level of Public Participation in Screenings under the Canadian Environmental Assessment Act* (n° 11)¹⁶

1. Nature of the text (context)

CEA Agency document for EA practitioners published in . Provides criteria for RAs to determine, on a project-by-project basis, whether PP during a screening is appropriate under the previous version of the CEA Act (with the exception of model class screening reports)¹⁷ (pp. 1-2).

N.B.: The guideline has not been revised for the CEA Act 2012. Access to information and consultation is mandatory for Screenings under the CEA Act 2012, at least via the CEA Registry.

2. Objectives to be pursued via public participation

- Activities should be complementary rather than duplicative (p. 3)
- Should focus on early information-sharing by participants (p. 3);
- Should provide means to identify and share viewpoints on the project subject to EA (p. 3);
- Should serve to identify public support or concerns regarding the project subject to EA (p. 3);
- Should improve the EA and the project by facilitating the integration of community, local, and Aboriginal traditional knowledge, public ideas and opinions (p. 3);
- Should provide opportunities for the public to influence the project's planning / design before any final decisions are made (p. 3);
- Should promote *Transparency* and *Accountability* in government decision making (p. 3);
- Should inspire confidence in the EA process (*Credibility*) (p. 3);
- Should contribute to the conservation and enhancement of the environment by supporting development that is environmentally and economically sustainable (p. 3).

3. Types of public participation (categories)

Nothing on the subject.

¹⁶ CEA Agency, 2006. *Ministerial Guideline on Assessing the Need for and Level of Public Participation in Screenings under the Canadian Environmental Assessment Act*.

Online: www.ceaa-acee.gc.ca/Content/1/F/E/1FE6A389-4547-4B5C-8DE1-1196B1AE19C9/Assessing_the_Need_for_and_Level_of_Public_Participation_in_Screenings_under_the_CEEA.pdf.

¹⁷ However, the guideline applies to the development of model and replacement class screening reports.

4. Guiding principles for public participation

- 1) *Early notification*; 2) *Accessible Information*; 3) *Shared knowledge*; 4) *Sensitivity to community values*; 5) *Adaptive and commensurate with public interest*; 3) *Transparency* (includes *Transparency of results*); 4) *Consistency*; 5) *Efficiency*; 6) *Accountability*; 7) *Fairness / Impartiality*; 8) *Timeliness / Reasonable timing* (pp. 1, 5);
- The public should have an opportunity to have a say in decisions that affect their lives (p. 5).

5. Potential solutions / best practices that should be pursued for public participation

- Notification should be early and allow public to participate in the EA, to influence the project, and to consider proposals made by the proponent or the RA, before any final decisions (p. 5);
- Participants should be provided with all necessary info on the EA and the project, and access to info should only be limited due to legal or privacy restrictions (p. 5);
- Confidentiality or ‘ownership’ of exchanged info must be respected (p. 5);
- Consideration of the appropriate language of the info for the public should be made (p. 5);
- Culturally-sensitive means of communication should be sought (p. 5);
- Technical, scientific, local, community, and Aboriginal traditional knowledge should be exchanged and used to better the EA and the project design (p. 5);
- Knowledge, concerns, values and viewpoints should be shared in an open and respectful manner (including info on the potential impacts of the project undergoing the EA screening) (p. 5).

6. Additional notes

- The following criteria were used by RAs to determine if public participation activities were needed for project screening EAs under the previous CEA Act (p. 4):
 - i. Indication of an existing or likely public interest in (a) the type of project, (b) the location of the project, or (c) the ways the project might affect the community;
 - ii. Those who may be interested have a history of being involved;
 - iii. Project may generate conflict due to the public’s environmental, social, or economic concerns;
 - iv. Project may have or be perceived as having potential significant impacts (including cumulative effects and effects of malfunctions and accidents);
 - v. There is potential to learn from local, community, or Aboriginal traditional knowledge and, thereby, improve the EA and the project;
 - vi. There is uncertainty about potential direct / indirect impacts or the significance of identified impacts;
 - vii. The project has been, or will be, subject to other public participation processes of appropriate scope and coverage that would meet the objectives of this guideline.
- RAs operating under the previous CEA Act had the obligation to document the bases on how they decided whether or not to include public participation, to demonstrate how info generated through public participation was considered in their decision making process, and/or explain why their conclusions were not affected by public input (p. 6).

DOCUMENT RELATING TO PUBLIC PARTICIPATION IN GENERAL OR TO THE JBNQA – ANALYSIS FORM N° 12

TITLE: [Les règles de participation en audience publique](#) (n° 12)¹⁸

1. Nature of the text (context)

The established and formal rules of procedure for Public hearings held by the BAPE in the context of project-level EAs, published in 2011 (applies only in southern Québec). The rules are themselves set to facilitate public expression in a respectful, non-confrontational, and organized manner.

N.B.: The document focuses only on the Consultation phase of formal Public hearings that the BAPE may organize following the standard public information and consultation period that applies to all EAs (individuals, organizations, or municipalities may request a formal Public hearing after the standard information and consultation period – the Minister of the MDDELCC may agree with the request and mandate the BAPE to hold a Public hearing).

N.B.: Document n° 14 offers information on the BAPE's standard public information and consultation period that applies to all EAs in southern Québec.

2. Objectives to be pursued via public participation

The objective of Consultation sessions, during a formal Public hearing, is to learn and document the participants' opinions, concerns and supporting arguments regarding the specific development project undergoing the EA (p. 2).

3. Types of public participation (categories)

Consultation sessions, designed to provide the public with information and a means to express their concerns, are the only type dealt with in the document. Oral presentations and/or the deposition of written briefs are the two means of participating during the Consultation sessions held by the BAPE during Public hearings – but, written briefs may be tabled without attending the actual sessions (p. 3).

4. Guiding principles for public participation

Nothing on the subject.

5. Potential solutions / best practices that should be pursued for public participation

- Organizations are encouraged to submit written briefs (p. 3);

The following are the BAPE's actual rules of procedure for participation during Public hearings:

- Individuals or organizations wishing to participate during a Consultation session must register to do so via an online form or via telephone, at least 2 weeks in advance, and must confirm if they wish to make an oral presentation and/or submit a written brief during the Consultation sessions (p. 3);

¹⁸ BAPE, 2011. *Les règles de participation en audience publique*.

Online: www.bape.gouv.qc.ca/sections/documentation/Regles-participation.pdf.

- Written briefs must be sent to the BAPE at least 4 days prior to the Consultation session by email (non-protected PDF or MS Office file types only), by fax, or by the mail, and the BAPE must confirm its receipt thereof (p. 3);
- Written briefs that are received by the BAPE but that are not orally presented during a Consultation session are published after the session is completed (p. 3);
- The BAPE must confirm the date and time of the Consultation session in which registered participants may make their oral presentations, at least 5 days before the hearing (p. 3);
- Registered individuals or organizations have ~15 minutes for their oral presentations or to orally present their briefs; a question period is afforded thereafter (time may be adjusted) (p. 3);
- Participants must identify themselves prior to making their presentations (p. 4).

6. Additional notes

- No participant may express misleading or illegal information (p. 2);
- All oral presentations are recorded and made public in the form of transcripts (p. 2);
- All written submissions are made public as is (the BAPE does not confirm the info therein and does not alter them in any way) (p. 2);
- As general conditions, no presentations may prejudice the privacy, personal info, or copyright of any individual (p. 2).

DOCUMENT RELATING TO PUBLIC PARTICIPATION IN GENERAL OR TO THE JBNQA – ANALYSIS FORM N° 13

TITLE: [How to Participate?](#) (n° 13)¹⁹

1. Nature of the text (context)

Guide on the role and functions of the BAPE published in 2008. Describes the BAPE's standard public information and consultation period for all EAs, as well as the BAPE's role in holding formal Public hearings if mandated to do so by the Minister of the MDDELCC (i.e. if individuals, organizations, or municipalities submit a written request for a formal Public hearing after the standard public information and consultation period on a given EA, and if the Minister agrees with the request).

N.B.: The document applies only in southern Québec.

2. Objectives to be pursued via public participation

Nothing on the subject other than gathering public concerns and input in order to assist the government decision making (p. 1).

3. Types of public participation (categories)

There are two steps in the BAPE's standard public information and consultation period (p. 2):

- i. Informing = one-way transmission of info on the project undergoing EA from proponent to public, with the BAPE as an independent intermediary (document centres, websites, info sessions);
- ii. Consultation = the public is invited to attend Information sessions and to ask questions of the proponent, with the BAPE as an independent intermediary (there are no 'public consultations' in strict sense of the term).

There are two steps in the BAPE's formal Public hearings (after the standard information and consultation period and only upon being mandated to undertake them by the Minister of the MDDELCC) (pp. 2-5):

- i. Informing = As above. In addition to the info available at document centres and on websites, the BAPE holds an Information session in the affected community, where the proponent and BAPE-selected experts are present, and to whom the public and the BAPE may pose questions (several info sessions may be held if deemed necessary);
- ii. Consulting = after an Information session(s), the BAPE holds a Consultation session(s), where the public is invited to express their position regarding the project in writing and/or orally (several sessions may be held if deemed necessary).

4. Guiding principles for public participation

Nothing on the subject.

¹⁹ BAPE, March 2008. *How to Participate?*

Online: www.bape.gouv.qc.ca/sections/documentation/depliant_participation_eng.pdf.

5. Potential solutions / best practices that should be pursued for public participation

The BAPE's rules of procedure for its standard public information and consultation period (p. 2):

- Documentation on the project and the proponent's EIS is publicly-available (e.g. website, local libraries, town halls);
- Information session(s) are held in the community affected by the project;
- Proponent is present at information sessions and can respond to the public's questions through the auspices of the BAPE (independent intermediary);
- Standard public information and consultation period must last no more than 45 days.
- BAPE must prepare a report for the Minister of the MDDELCC thereafter (the report public).

The BAPE's rules of procedure for Public hearings (pp. 3-5):

- Documentation on the project and the proponent's EIS is publicly-available (e.g. website, local libraries, town halls);
- Information session(s) are held in the community affected by the project;
- Proponent and selected experts are present at Information session(s) and can respond to the public's questions through the auspices of the BAPE (independent intermediary);
- BAPE sets the time and date for a Consultation session(s) – at least 21 days after the Information session(s) and proceeds according to the BAPE's rules of procedure (see the analysis for n° 12 for details);
- Formal Public hearings must last no more than 4 months (Information and Consultation sessions combined);
- BAPE must prepare a report for the Minister of the MDDELCC thereafter (the report public).

6. Additional notes

- The document summarily describes the steps that occur prior to the start of the BAPE's standard public info and consultation period for the project subject to EA (i.e. the preparation of the proponent's EIS and the MDDELCC's review thereof) (p. 2);
- The document summarily describes the steps that occur after both the BAPE's standard public info and consultation period and formal Public hearing process (i.e. preparation of BAPE report, recommendations of the Minister of the MDDELCC, ultimate decision by the Cabinet regarding the fate of the project) (pp. 6-7).

DOCUMENT RELATING TO PUBLIC PARTICIPATION IN GENERAL OR TO THE JBNQA – ANALYSIS FORM N° 14

TITLE: *Guide des bonnes pratiques afin de favoriser l'acceptabilité sociale des projets* (n° 14)²⁰

1. Nature of the text (context)

A guide, published by the Conseil Patronal de l'Environnement du Québec (CPEQ) in 2012, and directed at project proponents seeking social acceptability of their projects.

2. Objectives to be pursued via public participation

Proponents seeking social acceptability of their project must be committed to PP.

3. Types of public participation (categories)

The document focuses on Consultation, but stipulates that a proponent presenting a project and then answering questions, does not amount to consultation (p.22).

4. Guiding principles for public participation

- *Transparency, Flexibility*, integrity, and openness are the key to seeking social acceptability, and so, are also fundamental principles for any PP activities. Corporate decision makers must commit to these principles, and must remain open to modify project in light of public concerns (pp. i, 15, 16);
- Proponents should view Consultation with the public as a condition for project success (p.6);

5. Potential solutions / best practices that should be pursued for public participation

The following are potential solutions for proponents:

- Establish a communication plan that may be implemented and monitored over time – proponents must mobilize adequate resources to implement communication plans (p. ii);
- Hold public info and consultation activities as early as possible during planning stages (pp. 8-9, 22);
- Inform and consult local governments even before public information and consultation activities occur. Local governments may serve as additional 'info-portals' for their constituents and should be aware ahead of time in order to answer questions or provide info to the public (p.13);
- *Adapt* the scale of PP activities, and the 'depth' of info for the public, in light of the level of public interest and public concerns (p.13). Proponents should always prepare public information materials in simple non-technical language (p.16);
- Proponents should consult with stakeholders prior to developing any evaluation of their projects risks, so that the evaluation can be tailored to their concerns (p.21-22);
- Proponents should explore various methods to when planning PP activities (e.g. info / consultation sessions, focus groups, public assemblies, surveys, online fora) (p.24).

²⁰ CPEQ, 2012. *Guide des bonnes pratiques afin de favoriser l'acceptabilité sociale des projets*. Online: www.cpeq.org/files/guides/guide_bonnespratiques_web.pdf.

6. Additional notes

The document provides definitions of the concept of ‘social acceptability’ of development projects and also outlines several tenets that proponents must adopt when seeking ‘social acceptability’ for their projects (pp.1-12).

Definition of Social Acceptability:

- Social acceptability has three-dimensions, all of which may not necessarily move in the same direction on a project or project-related issue:
 - i. Socio-political acceptability at the level of public decision makers (e.g. project meets international standards, and must ‘fit’ development strategies and land use plans);
 - ii. Community acceptability at the local level (e.g. residents may express NIMBY²¹);
 - iii. Market acceptability that applies to all project stakeholders (e.g. costs must be manageable, products must be profitable, costs to the public must be offset by project benefits).

Tenets that proponents must ascribe to when seeking ‘social acceptability’ for their projects:

- Public consultation and dialogue are the vehicles for developing ‘social acceptability’ of a project. However, social acceptability is not legally-defined. Proponents seeking it for their projects must thus go beyond legal obligations relating to PP and engage in a dialogue with the public well in advance of any legally-obligated engagements;
- Social acceptability for a project does not imply a unanimous acceptance of a project; but, rather, a reasonable consensus between parties (this consensus may not be easy). *Transparency* helps to establish legitimacy / *Credibility* in the overall process of consensus building (pp.2-3);
- Proponents have a responsibility to understand and integrate the local social and environmental realities in the conception of their project – to do so, proponents must engage with the public as soon as possible in the planning stage;
- Proponents must respect the interests and legitimacy of the positions and concerns expressed by the public and other stakeholders (they have a right to disagree);
- Proponents must maintain relationships with the public and other stakeholders that are based on *Transparency* and a willingness to listen.

The document also offers several real-world examples that are useful for operational questions on how a proponent may undertake a dialogue before any legal obligation, how to plan a consultation plan, etc. (pp.35-47).

²¹ Local residents may not ‘accept’ a project in light of the esthetic impacts that it may have on the locale, for example. A local expression of non-acceptance on such grounds is commonly referred to as a ‘not in my backyard’ argument (NIMBY).

DOCUMENT RELATING TO PUBLIC PARTICIPATION IN GENERAL OR TO THE JBNQA – ANALYSIS FORM N° 15

TITLE: [Good neighbor guide - How to harmonize your industrial activities with the environment and communities](#) (n° 15)²²

1. Nature of the text (context)

A CPEQ document for project proponents outlining measures that they should implement as ‘good neighbours’ / ‘good corporate citizens,’ published in 2011. New realities have changed expectations on what constitutes corporate-social responsibility (CSR), such that the behaviours of proponents must be in tune. It applies to companies that are already implanted in their communities, but may be helpful to prospective developers.

2. Objectives to be pursued via public participation

Nothing on the subject, other than seeking or improving the proponent’s CSR.

3. Types of public participation (categories)

Consultation is the primary vehicle to communicate with the public.

4. Guiding principles for public participation

- The key to CSR depends on consulting the stakeholders, maintaining a constant dialogue with the community and demonstrating achieved progress; but, there is no ‘one-size-fits-all’ approach – companies must *Adapt* and be *Flexible* in light of situations (p.3);
- Respect for public’s interests and concerns is fundamental (p.4);
- The public is now demanding more *Transparency* from companies as well as the adoption of best operating practices that respect the environment, public welfare and human rights. *Transparency* is the basis on which a bond of trust will be established (p.6);
- Proponent involvement in the community is a prerequisite for CSR and for maintaining good neighbour relations. This involvement goes beyond one-way communication. The decision to get involved in the community cannot be made if the proponent is not willing to show *Transparency* and *Flexibility* to the outside world (p.29).

5. Potential solutions / best practices that should be pursued for public participation

- Proponents should setup a communication plan and liaison committee to interact with the public. Communication with the public should be consistent over the long term in order to foster trust – also adds to the *Credibility* of the communication process (p.17);
- Proponents should consult the stakeholders to identify concerns and issues as early as possible, in order to inventory their concerns and then build a consultation strategy that addresses them effectively (i.e. upstream ‘scoping’ of issues with a clear link to outcomes / actions) (pp.6,14);

²² CPEQ, 2011. *Good neighbor guide - How to harmonize your industrial activities with the environment and communities*.
Online: www.cpeq.org/files/guides/goodneighbor.pdf.

- Adequate resources must be mobilized to implement communication plans (p.5, 22);
- Communication plans and related information that is intended for the public must be expressed in simple terms and short sentences (p.23);
- Individuals that may be affected by a proponent's works should be notified in advance (p.16);
- Public comments or complaints should be recorded / documented in a register, preferably in an electronic database (p.16);
- Proponents must be aware of the role and responsibilities of local governments (municipalities, regional county municipalities) and should inform and include them in its public participation activities (pp.12, 32-34).

6. Additional notes

None.

DOCUMENT RELATING TO PUBLIC PARTICIPATION IN GENERAL OR TO THE JBNQA – ANALYSIS FORM N° 16

TITLE: [Consultations protocol of First Nations of Québec and Labrador](#) (n° 16)²³

1. Nature of the text (context)

The consultation protocol adopted by the Assembly of First Nations of Québec and Labrador and by the First Nations of Quebec and Labrador Sustainable Development Institute, in light of the provincial and federal ‘Duty to Consult’ and to accommodate First Nations per court rulings (published in 2005).²⁴ Used for consultations regarding the modification or adoption of legislation, policies, planning processes, resource allocation regimes, and/or the approval of specific projects or resource allocations. Only the elements that are helpful for our purposes are included here.

2. Objectives to be pursued via public participation

Nothing on the subject beyond the fulfillment of the Crown’s duty to consult.

3. Types of public participation (categories)

It references Informing and Consulting, providing examples of different activities that can be used for these types of PP (e.g. meetings between decision-makers of equal standing; meetings between experts mandated by First Nations, Canada and provinces; interest-based negotiations; community meetings; focus groups; small meetings with elders, youth, trappers; visits to traditional territory; interviews or surveys; newsletters and pamphlets, radio show phone-ins; electronic forums).

4. Guiding principles for public participation

- Guiding principles for organizers and participants during consultations with First Nations:

- i. They must act in good faith to ensure an effective process throughout (p. 14);
- ii. They must exercise mutual respect, seek to build relationships and foster an understanding of diversity. Not just in terms of cultural diversity, but also in terms of perspectives, concerns and expectations (p. 17);
- iii. Provide the First Nations with all relevant quality information regarding the action contemplated (pp. 14, 17, 19) – as a minimum, this info should include:
 - Clear identification of the action being contemplated;
 - Clear identification of the territory that may be affected;
 - The proposed timeline for the action being contemplated;
 - Available expert reports and/or info on reports that will become available in the future.
- iv. They must Incorporate the concerns of First Nations in decision making processes (p. 14);

²³ First Nations of Québec and Labrador Sustainable Development Institute, 2005. *Consultations protocol of First Nations of Québec and Labrador*. Online: http://fnqlsdi.ca/wp-content/uploads/2013/05/protocole_consultation_2005_en.pdf.

²⁴ [2004] 3 S.C.R. 511, also referred to as the ‘Haida ruling;’ [2004] 3 S.C.R. 550, also referred to as the ‘Taku River ruling;’ and, [2005] 3 S.C.R. 388, also referred to as the ‘Mikisew ruling.’

- v. They must consult First Nations early on / upstream, preferably at the planning stage and not merely at the operational or implementation stage of the object under consultation, and before any final decisions are made (pp. 15, 16);
- i. Follow-up required = effective follow-up to ensure that (pp. 16, 22):
 - The results of consultation are transmitted to the First Nations;
 - An explanation of the ways in which First Nation interests / concerns were considered and integrated in the object or decision being contemplated;
 - The reasons for decisions are transmitted to the First Nations;
 - The decisions are respected, implemented as convened, and monitored.

5. Potential solutions / best practices that should be pursued for public participation

- A Consultation Plan – including a list of involved persons and experts, list of the chairs, calendar and detailed schedule of activities, record-keeping, agenda-setting, funding / budgets, etc. – and the Consultation Parameters (e.g. time allotted for interventions or questions) should be mutually-agreed upon by the organizers and the First Nation being consulted (p. 19, 21);
- The objectives / goals of consultations must be clearly-communicated to the First Nation (p. 8);
- First Nations should be implicated in the development of the material(s) for the consultation(s) whenever possible (p. 8);
- Government representatives holding consultations should be well-versed in the rights and title that the targeted First Nation may have (p. 8);
- When approached by the organizers seeking to obtain a First Nation’s participation in a consultation, the First Nation should identify its language requirements with regard to documentation that may be provided and the need for interpretation services at meetings, any seasonal activities that should be considered when scheduling activities (p. 18, 19);
- Rigid timetables are to be avoided as they may not afford enough time for First Nations to prep their position or provide their consent for the object under consultation (p. 8);
- Detailed reports should be drafted and distributed back to the communities consulted. The reports should outline how the input from the communities influenced decisions made (p. 8);
- Funding to facilitate participation of First Nation communities at consultations should be established (e.g. to aid analysis of consultation materials with adequate expertise, to formulate positions, to assist them in participating in the decision making process) (pp. 9, 14, 19).

6. Additional notes

- The refusal of a First Nation to participate during a consultation is not equivalent to their consent for the object of the consultation (p. 17).

DOCUMENT RELATING TO PUBLIC PARTICIPATION IN GENERAL OR TO THE JBNQA – ANALYSIS FORM N° 17

TITLE: [Amerindians and Inuit of Québec: Interim Guide for Consulting the Aboriginal Communities](#) (n° 17)²⁵

1. Nature of the text (context)

Secrétariat aux affaires autochtones (SAA) guide to aid provincial ministries comply with Supreme Court rulings²⁶ regarding the ‘Duty to Consult’ and accommodate First Nations (published in 2008). The protocol is to be used for consultations regarding the modification or adoption of legislation, policies, planning processes, resource allocation regimes, and/or the approval of specific projects or resource allocations. Only the elements that are helpful for our purposes are included here.

2. Objectives to be pursued via public participation

- Information-sharing and a means to identify and share viewpoints – info to be shared includes, among other things, the issue’s scope, technical parameters, costs, and perceived impacts (p. 9);
- Establish, wherever possible, means to reconcile the concerns and interests of the Ministry and the Aboriginal community with relation to the issue at hand (p. 9);

3. Types of public participation (categories)

- Consultations with Band Councils are the main focus of the guide, but written correspondence, conference calls, technical meetings, publications, visits to the communities, and site tours are provided as additional means of facilitating two-way communication (p. 11);

4. Guiding principles for public participation

- Ministries involved in the consultation must have the intention of substantially considering the concerns of the Aboriginal communities (p. 7,9);
- Consultations are not linked to obligations to reach agreements (p. 7);
- *Adaptive* = ‘depth’ of consultation adapted to the significance that decisions may have; specific efforts may include the translation of documentation, in clear and understandable language, when needed for the smooth unfolding of a consultation (pp. 7, 9, 11);
- *Timeliness / Reasonable timing / Flexibility* = consultations must be initiated as far upstream as possible, scheduled, and of reasonable duration to ensure adequate opportunities for exchange prior to decisions (p. 9, 11);
- *Clarity* = parties to consultations have an obligation to share information, concerns, or viewpoints in a precise, clear, and factual manner (p. 9);

²⁵ Secrétariat aux affaires autochtones – Québec, rev. 2008. *Amerindians and Inuit of Québec: Interim Guide for Consulting the Aboriginal Communities*.

Online: www.autochtones.gouv.qc.ca/publications_documentation/publications/guide_inter_2008_en.pdf.

²⁶ [2004] 3 S.C.R. 511, also referred to as the ‘Haida ruling;’ [2004] 3 S.C.R. 550, also referred to as the ‘Taku River ruling;’ and, [2005] 3 S.C.R. 388, also referred to as the ‘Mikisew ruling.’

- Upstream collaboration = the precise objectives of a consultation should be developed with the communities, whenever possible, prior a consultation (p. 11);

5. Potential solutions / best practices that should be pursued for public participation

- SAA maintains a fund to assist Aboriginal participation during consultations held by the provincial government (p. 10);
- The decision making process, consultation process and objectives, and the roles of different parties during consultation should be well-defined – in advanced – and reiterated to participants (p. 11);
- Discussions, exchanges of info, the views and concerns expressed by participants, and the decisions and supporting arguments of the ministry undertaking the consultation, should be documented (p. 13);
- Following consultations, a feedback process should be established to identify how community concerns were considered (p. 11).

6. Additional notes

None.

DOCUMENT RELATING TO PUBLIC PARTICIPATION IN GENERAL OR TO THE JBNQA – ANALYSIS FORM N° 18

TITLE: [Aboriginal Consultation and Accommodation - Updated Guidelines for Federal Officials to Fulfill the Duty to Consult](#) (n° 18)²⁷

1. Nature of the text (context)

AANDC guidelines for federal ministries to comply with Supreme Court rulings regarding the ‘Duty to Consult’ and accommodate First Nations (published in 2011).²⁸ To be used for consultations regarding the modification or adoption of legislation, policies, planning processes, resource allocation regimes, and/or the approval of specific projects or resource allocations. Only the elements that are helpful for our purposes are included here.

2. Objectives to be pursued via public participation

- Make informed and appropriate decisions (p.5);
- Create and improve working relations with all those affected (p.5).

3. Types of public participation (categories)

Consultation is the focus of the document.

4. Guiding principles for public participation

- Consultation is important for good governance, policy development and decision making (p.5);
- Federal government must respect established treaty rights by consulting with Aboriginal groups when federal activities may affect them (p.8). It must assess the impact of its activities on Aboriginal groups, their Aboriginal and treaty rights, land claim and self-government agreements. Federal departments must identify when consultation are needed and begin consultation early in the decision making processes. Departments must also demonstrate how Aboriginal concerns were addressed (p.12);
- A meaningful consultation process is one which is (p.13, 44):
 - Carried out in a timely, efficient and responsive manner;
 - Transparent and predictable;
 - Accessible, reasonable, flexible and fair;
 - Founded in the principles of good faith, reciprocal responsibility, and respect for the uniqueness of Aboriginal communities and cultures;
 - Real opportunities for the Aboriginal groups to influence decisions and openness to modify proposals (e.g. changing of timelines, project parameters);

²⁷ AANDC, 2011. *Aboriginal Consultation and Accommodation - Updated Guidelines for Federal Officials to Fulfill the Duty to Consult*. Online: www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/intgui_1100100014665_eng.pdf.

²⁸ [2004] 3 S.C.R. 511, also referred to as the ‘Haida ruling;’ [2004] 3 S.C.R. 550, also referred to as the ‘Taku River ruling;’ and, [2005] 3 S.C.R. 388, also referred to as the ‘Mikisew ruling.’

- Federal government must ensure that a lead federal department is identified and accountable for consultation processes for federal government activities (p.13);
- Federal government must use and rely on, where appropriate, existing consultation processes, such as EA and regulatory processes in which Aboriginal consultation occurs, to coordinate decision making and determine if additional consultation may be necessary (p.14);
- Federal government must coordinate consultation with other stakeholders (e.g. Aboriginal groups, provinces, territories and industry) to assist it in meeting its responsibilities (p.14);
- Federal departments responsible for planning consultations must have intimate knowledge of the provisions of treaties (e.g. hunting and fishing rights, traditional land rights) (p.21);
- Consultation processes cannot be of a one-size-fits-all given differences in history, geography, demographics, governance and other circumstances of Aboriginal communities (p.8).

5. Potential solutions / best practices that should be pursued for public participation

- Coordination of federal, provincial, and local departments / governments is a priority when planning consultations (p.17). Federal government must establish a ‘Crown consultation coordinator’ for major projects to develop and use a consultation plan to integrate the activities of all federal departments throughout EA processes, for example (pp.14, 23-27, 44-47);
- Departments should develop long-term working relationships and consultation processes rather than work together only on an ad hoc or case-by-case basis (pp.17, 19);
- Officials responsible for undertaking consultations must adequately equipped with the tools, human, financial, and technological resources and training to carry them out. The development of an established consultation process assists official in this regard (pp.29-31);²⁹
- Scale of consultations should reflect the scale of the activity or of its potential impacts and should evolve as new information or circumstances arise (pp.41, 43);
- The targeted Aboriginal group should be involved in the planning of a consultation, and in the scoping of issues under consultation – this should occur as early as possible (p.48);
- Methods to record interventions must be put in place and all meeting and correspondence should be recorded (pp.29, 50, 52);
- An industry’s exchanges with Aboriginal groups can assist the government consultation efforts given that the info collected during these exchanges may be useful on the government’s decision making process, but do not replace the Crown’s duty to consult (p.19, 28). All industry sectors seek predictable timelines, clarity on the respective roles of parties, certainty and criteria to determine the adequacy of consultation (p.17);
- Federal officials should verify the effectiveness of the consultation process over time (pp.56-58).

6. Additional notes

None

²⁹ The Consultation and Accommodation Unit of AANDC provides training for federal officials.

DOCUMENT RELATIF A LA PARTICIPATION PUBLIQUE EN GÉNÉRAL OU A LA CBJNQ – FICHE D'ANALYSE N° 19

TITRE : *L'échelle de la participation publique* (n° 19)³⁰

1. Nature du texte (contexte)

Échelle portant sur les niveaux de participation publique élaborée par l'International Association for Public Participation (publié en 2007).

2. Objectifs devant être poursuivis par la participation publique

- Les objectifs de la participation publique varient selon le type de participation qui est recherché.
- Il peut s'agir d'un objectif strict d'information générale pour le public ou de la recherche d'une participation active de la part des parties prenantes au processus de prise de décision.

3. Types de participation publique (catégories)

Le texte situe l'engagement du promoteur pour chaque niveau de participation publique duquel découlent les objectifs de la participation et les moyens utilisés pour y parvenir.

4. Principes devant guider la participation publique

Dans tous les niveaux de participation publique présentés dans le texte (information, consultation, implication, collaboration et délégation), l'accès à l'information en continue est un élément récurrent.

5. Pistes de solutions / moyens pour favoriser la participation publique

s/o

6. Notes supplémentaires

s/o

³⁰ International Association for Public Participation, 2007. *L'échelle de la participation publique*.
En ligne : www.iap2.org/associations/4748/files/FR_Spectrum_final.pdf.

DOCUMENT RELATIF A LA PARTICIPATION PUBLIQUE EN GÉNÉRAL OU A LA CBJNQ – FICHE D'ANALYSE N° 20

TITRE : *Participation Publique – Principes internationaux pour une meilleure pratique* (n° 20)³¹

1. Nature du texte (contexte)

Le texte de l'International Association for Impact Assessment (IAIA) porte sur les principes fondamentaux et opérationnels devant guider les processus de participation publique (publié en 2006).

2. Objectifs devant être poursuivis par la participation publique

s/o

3. Types de participation publique (catégories)

Trois types de participation publique sont répertoriés: 1) participation passive / réception d'information; 2) consultation; et, 3) participation interactive.

4. Principes devant guider la participation publique

Ces principes fondamentaux s'appliquent à toutes les étapes de la planification du projet, de l'étape stratégique à sa mise en œuvre :

- *Adaptée au contexte* : chercher à respecter les caractéristiques propres aux communautés concernées par le projet, dont les institutions sociales, leurs valeurs et leur culture;
- Informative et proactive : reconnaissance que l'intérêt du public et leur motivation à participer surviennent lorsqu'une information simple et facilement assimilable leur est diffusé. Un effort particulier doit être déployé afin de favoriser l'apport des groupes d'intérêts ou des catégories de gens souvent moins bien représentés (femmes, jeunes, etc.). L'équité entre les générations présentes et futures doit être l'un des principes recherché;
- Formative : la recherche de la compréhension mutuelle est primordiale à travers l'apprentissage de la réalité de chaque partie prenante, de leurs obligations/contraintes, leurs valeurs, etc.;
- Coopérative : rechercher l'atteinte d'un consensus plutôt que la confrontation;
- Reddition de compte envers les parties prenantes : il doit exister une ouverture à modifier les propositions initiales, une réelle prise en compte des résultats de la participation publique. Un retour sur l'information reçue des participants doit être effectué, notamment en précisant comment les préoccupations/suggestions exprimées en cours de processus ont été prises en compte.

³¹ IAIA, 2006. *Participation Publique – Principes internationaux pour une meilleure pratique*.
En ligne : www.iaia.org/publicdocuments/special-publications/SP4_fr.pdf.

Principes opérationnels :

- Initiée tôt et soutenue : non-seulement cela aide à bâtir la confiance avec les parties prenantes, mais également cela alloue plus de temps au processus de participation publique, ce qui facilite l'acceptabilité sociale;
- Bien planifiée et orientée vers les enjeux négociables : les objectifs de la participation publique et les résultats escomptés doivent être clairement énoncés. Le processus doit se concentrer autour des enjeux négociables pertinents à la prise de décision;
- Soutien aux participants : s'applique autant au niveau du renforcement des capacités des communautés impliquées, en terme d'assistance technique pour la compréhension du projet et de ses impacts, que du soutien financier à la participation, lesquels doivent être justes et équitables;
- Appliqué au bon moment et optimisé : la participation publique doit être continue mais particulièrement intense dans les moments appropriés, afin de maintenir l'intérêt et de ne pas solliciter à outrance le public. Les résultats de la participation publique seront optimisés ainsi;
- *Ouverte et transparence* : l'information et la facilitation en vue de la participation publique doit être accessible à toutes les catégories de citoyens;
- *Adaptée au contexte* : adaptée à l'organisation sociale, aux dimensions culturelles, sociales, économiques et politiques. Toutefois, l'hétérogénéité à l'intérieur de cette communauté doit aussi être prise en compte (différents niveaux d'éducation, des intérêts, jeunes, personnes âgées, femmes et générations futures);
- *Crédible* et rigoureuse : l'adhésion de l'organisation chapeautant le processus à des règles d'éthique favorise rigueur et crédibilité. La neutralité de l'instance conduisant le processus favorise la confiance du public à exprimer des opinions.

5. Pistes de solutions / moyens pour favoriser la participation publique

s/o

6. Notes supplémentaires

s/o

DOCUMENT RELATIF A LA PARTICIPATION PUBLIQUE EN GÉNÉRAL OU A LA CBJNQ – FICHE D'ANALYSE N° 21

TITRE : *Principles of Environmental Impact Assessment Best Practices, 1999* (n° 21)³²

1. Nature du texte (contexte)

Texte de l'IAIA publié en 1999. Le texte porte davantage sur l'évaluation des impacts environnementaux et sociaux que spécifiquement sur la participation publique.

2. Objectifs devant être poursuivis par la participation publique

Le processus doit permettre d'informer et de recueillir les préoccupations du public, et celles-ci doivent être abordées de façon explicite dans la documentation produite en vue de la prise de décision. La participation publique permet d'assurer la prise en compte des considérations environnementales et sociales, d'anticiper afin d'éviter ou de limiter les impacts et de promouvoir un développement de type durable. La participation publique doit permettre de bien cerner les impacts notamment sur la culture, le mode de vie et les femmes.

3. Types de participation publique (catégories)

Les types de participation suivants sont répertoriés: participation passive/réception d'information (participation unidirectionnelle), consultation, participation interactive (négociation, médiation, allant jusqu'à la cogestion).

4. Principes devant guider la participation publique

Les règles du processus doivent être clairement établies dans l'information nécessaire à l'évaluation des impacts. Notamment, les facteurs contribuant à la prise de décision doivent être clairement identifiées. La flexibilité est un élément clé; les leçons acquises en cours de processus doivent appeler à certaines modifications. L'approche de recherche de solution doit être utilisée et celle-ci doit se concentrer sur les enjeux principaux. La participation publique ne doit pas représenter de fardeau financier pour les participants. Encore ici, la rétroaction sur les préoccupations exprimées est primordiale; la documentation pour la prise de décision doit aborder clairement ces préoccupations et comment celle-ci ont été traitées. Le recours à une partie impartiale est recommandé. Le processus doit s'intéresser aux interrelations entre les différents aspects (social, économique, biophysique, etc.).

5. Pistes de solutions / moyens pour favoriser la participation publique

s/o

6. Notes supplémentaires

s/o

³² IAIA, 1999. *Principles of Environmental Impact Assessment Best Practices, 1999*. En ligne: www.iaia.org/publicdocuments/special-publications/Principles%20of%20IAA_web.pdf.

DOCUMENT RELATIF A LA PARTICIPATION PUBLIQUE EN GÉNÉRAL OU A LA CBJNQ – FICHE D'ANALYSE N° 22

TITRE : *Déclaration des Nations Unies sur les droits des peuples autochtones* (n° 22)³³

1. Nature du texte (contexte)

Déclaration des Nations Unies signée en 2008. Texte de nature juridique.

2. Objectifs devant être poursuivis par la participation publique

s/o

3. Types de participation publique (catégories)

s/o

4. Principes devant guider la participation publique

Dans le préambule, on retrouve les principes suivants :

- Le droit des communautés autochtones de contrôler les événements les concernant directement, leurs terres ou leurs ressources;
- Les peuples autochtones ont le droit au respect des savoirs, des cultures et des pratiques traditionnelles autochtones. Celles-ci contribuent au développement durable.

Dans le texte, les articles suivants concernent la participation publique :

- Le consentement préalable et donné en toute connaissance de cause pour toute décision susceptible de concerner les communautés autochtones, leurs terres, territoires ou ressources (Articles 19 et 32);
- Le droit de participer à la prise de décision sur des questions qui peuvent concerner leurs droits (Article 18).

5. Pistes de solutions / moyens pour favoriser la participation publique

s/o

6. Notes supplémentaires

s/o

³³ Nations Unies, 2008. *Déclaration des Nations Unies sur les droits des peuples Autochtones*.
En ligne: www.un.org/esa/socdev/unpfi/documents/DRIPS_fr.pdf.

DOCUMENT RELATIF A LA PARTICIPATION PUBLIQUE EN GÉNÉRAL OU A LA CBJNQ – FICHE D'ANALYSE N° 23

TITRE : *Convention sur l'accès à l'information, la participation du public au processus décisionnel et l'accès à la justice en matière d'environnement (Aarhus) (n° 23)*³⁴

1. Nature du texte (contexte)

Convention de la Commission des Nations Unies pour l'Europe signée en 1998.

2. Objectifs devant être poursuivis par la participation publique

- Meilleure prise de décision;
- Contribue à la sensibilisation du public aux enjeux environnementaux afin que celui-ci soit encouragé à jouer un rôle actif dans la protection de l'environnement.

3. Types de participation publique (catégories)

s/o

4. Principes devant guider la participation publique

- Reddition de compte;
- Le public doit avoir connaissance des procédures de participation au processus décisionnel, y avoir librement accès et savoir comment les utiliser;
- La documentation doit être automatiquement diffusée sans que le public n'ait à en faire la demande, celle-ci doit être rendue publique au plus tard un mois après sa réception par les autorités publiques;
- Une demande d'accès à la documentation ne peut être refusée si la documentation est prête et que le droit interne ne spécifie pas de restrictions applicables, sauf pour les cas énumérés (par exemple : incidences sur les relations internationales, secret commercial). À noter, les intérêts de tiers qui auraient transmis des informations et n'auraient pas consenti à leur divulgation publique comptent parmi les critères de restriction d'accès énumérés. Les citoyens doivent avoir un recours juridique s'ils jugent que le refus d'accès était injustifié;
- L'information disponible doit être listée et celle-ci doit être gratuite;
- Dès qu'un processus décisionnel est engagé, le public en est informé. Toute l'information disponible à propos de l'action proposée, du processus décisionnel, de la participation du public, etc. doivent être transmise, y compris l'information sur l'état de l'environnement du milieu d'implantation du projet;
- Délais raisonnables pour la prise en connaissance par le public de l'information et la préparation à sa participation;
- Participation en amont : alors que toutes les options sont encore envisageables;

³⁴ Commission économique des Nations Unies pour l'Europe, 1998. *Convention sur l'accès à l'information, la participation du public au processus décisionnel et l'accès à la justice en matière d'environnement (Aarhus)*. En ligne: www.unece.org/fileadmin/DAM/env/pp/documents/cep43f.pdf.

- Lors de la prise de décision : les résultats de la participation publique doivent être dûment pris en considération;
- Communication au public de la décision et des documents assortis mettant en relief les préoccupations soulevées en cours de processus et comment celles-ci ont été prises en compte;
- Le public doit être également appelé à prendre part à l'élaboration de lois, programmes ou stratégies en lien avec l'environnement, règlement ou processus.

5. Pistes de solutions / moyens pour favoriser la participation publique

- Miser sur l'utilisation des médias sociaux (communications électroniques);
- La Convention met l'emphase à plusieurs endroits sur la possibilité pour les citoyens de saisir la justice en matière d'environnement;
- Les parties sont responsables de favoriser l'éducation écologique des citoyens, notamment enfin que ceux-ci sachent quels sont les processus de participation publique, et comment saisir la justice, au besoin;
- Les États parties sont tenus de publier à des intervalles réguliers (3-4 mois) un rapport sur l'état de l'environnement. Un registre devrait également être tenu pour informer le public des rejets et des émissions dans les milieux, la qualité de l'eau, des sols, de l'atmosphère, etc.

6. Notes supplémentaires

s/o

DOCUMENT RELATIF A LA PARTICIPATION PUBLIQUE EN GÉNÉRAL OU A LA CBJNQ – FICHE D'ANALYSE N° 24

TITRE : [Déclaration de Rio sur l'environnement et le développement](#) (n° 24)³⁵

1. Nature du texte (contexte)

Déclaration des Nations Unies signée en 1992.

2. Objectifs devant être poursuivis par la participation publique

- La participation publique constitue la meilleure façon de traiter les questions d'environnement (Principe 10 de la Déclaration);
- L'accès à l'information devant être facilité par les autorités;
- Les citoyens doivent avoir accès à la justice pour réparation et recours;
- Les femmes ont un rôle vital dans la gestion de l'environnement, leur pleine participation est essentielle (Principe 20);
- Solliciter la créativité des jeunes (principe 21);
- Les populations autochtones ont un rôle vital à jouer dans la gestion de l'environnement et du développement du fait de leurs connaissances du milieu et de leurs savoirs traditionnels, leur participation doit être favorisée (principe 22).

3. Types de participation publique (catégories)

s/o

4. Principes devant guider la participation publique

s/o

5. Pistes de solutions / moyens pour favoriser la participation publique

s/o

6. Notes supplémentaires

s/o

³⁵ Nations Unies, 1992. *Déclaration de Rio sur l'environnement et le développement*.
En ligne: www.un.org/french/events/rio92/rio-fp.htm#three.

DOCUMENT RELATIF A LA PARTICIPATION PUBLIQUE EN GÉNÉRAL OU A LA CBJNQ – FICHE D'ANALYSE N° 25

TITRE : *Environmental agreements, EIA follow-up and Aboriginal participation in environmental management: The Canadian experience (n° 25)*³⁶

1. Nature du texte (contexte)

Publication portant sur une étude menée par un chercheur universitaire australien portant sur les ententes sur les répercussions et avantages, ici appelées *ententes environnementales* entre les promoteurs et les communautés autochtones en tant qu'instruments de participation publiques pour ces communautés (publié en 2007). Selon l'auteur, les ententes présentent davantage d'opportunité pour une participation accrue des communautés autochtones particulièrement en phase d'exploitation des projets, et une plus grande flexibilité pour s'adapter aux contextes particuliers et de plus grandes ressources dévouées à la consultation. Celles-ci peuvent également favoriser une meilleure participation aux prises de décisions internes.

2. Objectifs devant être poursuivis par la participation publique

- La participation des communautés autochtones doit se situer à toutes les phases, y compris la phase de mise en œuvre du projet. Celles-ci doivent être appelées à prendre une part active dans les suivis environnementaux et dans les modifications du projet pouvant être commandés par les impacts observés (adaptive management);
- Les communautés autochtones devraient avoir un rôle réel dans la prise de décision et non seulement un rôle consultatif.

3. Types de participation publique (catégories)

- La participation publique est trop souvent limitée à la phase précédant l'autorisation du projet et très peu pour la phase opérationnelle, particulièrement en ce qui concerne les suivis environnementaux.

4. Principes devant guider la participation publique

- Tenir compte des capacités et des ressources des communautés à participer;
- Fournir l'accès à une expertise technique afin de permettre aux populations de bien comprendre les composantes du projet, les impacts potentiels.

5. Pistes de solutions / moyens pour favoriser la participation publique

- Le soutien financier à la participation est un élément clé pour assurer la participation des populations autochtones, mais devrait se poursuivre afin que ceux-ci puissent participer au suivi du projet et à la gestion adaptative de celui-ci;
- Mettre les conditions en place pour une plus grande utilisation des savoirs écologiques traditionnels (confidentialité, reconnaissance de la propriété intellectuelle, soutien financier, validation de l'interprétation, etc.);

³⁶ O'Faircheallaigh, C., 2007. *Environmental agreements, EIA follow-up and Aboriginal participation in environmental management: The Canadian experience*. EIA Review, Vol. 27 n°4, pages 319-342.

- *Flexibilité* : dans les délais, dans la procédure de consultation (moins formelle dans le contexte de communautés autochtones), vulgarisation de l'information;
- Assurer la traduction;
- Assurer une participation dans le suivi du projet.

6. Notes supplémentaires

s/o

DOCUMENT RELATIF A LA PARTICIPATION PUBLIQUE EN GÉNÉRAL OU A LA CBJNQ – FICHE D'ANALYSE N° 26

TITRE : *Environmental Impact Assessment and Strategic Environmental Assessment: Towards an Integrated Approach* (n° 26)³⁷

1. Nature du texte (contexte)

Document du Programme des Nations Unies pour l'Environnement publié en 2004. Il s'agit d'un texte portant sur les meilleures pratiques s'adressant principalement aux praticiens dans le domaine de l'évaluation des impacts environnementaux et des études environnementales stratégiques des pays en voie de développement et des économies émergentes. Le texte analysé est le chapitre 4 portant plus spécifiquement sur la consultation publique.

2. Objectifs devant être poursuivis par la participation publique

- Meilleures chances de réussite du projet;
- Peut réduire des délais étant donné que la participation facilite la prise de décision politique;
- Amener une meilleure compréhension du milieu d'insertion du projet, des impacts potentiels et donc de meilleures alternatives ou mesures de mitigation;
- Renforce la confiance du public en le processus d'évaluation des impacts sur l'environnement;
- Peut entraîner le renforcement des capacités des communautés locales;
- Le public doit être impliqué dans «le processus créatif de définition et de redéfinition du problème (...) et dans la proposition d'alternatives» (traduction libre);
- Recherche d'un scénario gagnant-gagnant;
- Donner confiance sur l'efficacité du suivi environnemental, dans la mesure où ceux-ci sont appelés participer à ceux-ci;
- Augmentation du support du projet par les communautés ayant contribué par leurs savoirs traditionnels;

3. Types de participation publique (catégories)

- Le texte identifie quatre types de participation :
 - 1) Diffusion de l'information : consultation unidirectionnelle, pas de dialogue;
 - 2) Consultation (échange d'information entre le promoteur et les parties prenantes) : Le promoteur et les instances politiques décisionnelles ne sont toutefois pas tenus de prendre en compte les préoccupations exprimées;
 - 3) Participation : implication et responsabilité partagée, analyse conjointe et implication du public dans la prise de décision. La prise de décision ne relève pas d'une seule partie. Ce type de participation peut comprendre la phase de l'élaboration du projet;

³⁷ Programme des Nations Unies pour l'Environnement (PNUE), 2004. *Environmental Impact Assessment and Strategic Environmental Assessment: Towards an Integrated Approach*. En ligne: www.unep.ch/etu/publications/text/ONUbr.pdf.

- 4) Local empowerment and control: le contrôle sur la portée du projet est donné à la communauté locale.
- Il serait souhaitable que la participation publique se situe entre la consultation (échange d'information) et la participation (implication dans la prise de décision).

4. Principes devant guider la participation publique

- Le plus en amont possible, idéalement lors de la définition de la proposition;
- Développement et discussion autour d'un plan de consultation;
- *Mettre à la disposition des participants toute l'information pertinente* dans un langage vulgarisé;
- Donner des délais raisonnables pour que ceux-ci puissent prendre connaissance et considérer suffisamment l'information;
- *Adapté au contexte* : trouver la formule permettant de rassembler le maximum de participants de tous les horizons.

5. Pistes de solutions / moyens pour favoriser la participation publique

- S'assurer d'avoir toutes les catégories des parties prenantes, dont des groupes recoupant toutes les catégories : les jeunes, les femmes, les aînés, les populations moins bien nanties;
- Créer un comité consultatif avec des représentants des différentes parties prenantes. Ceux-ci auront l'occasion de bien suivre l'évaluation du projet, et les propositions issues des différentes parties prenantes;
- Choisir les moments clés pour la participation publique : définition de la directive de l'étude d'impact et ébauche de l'étude d'impact;
- La participation doit se poursuivre lors de l'implantation du projet et dans l'évaluation des impacts réels;
- Idéalement impliquer les parties prenantes lors de la définition des alternatives;
- Dans certains cas, la médiation peut être un moyen à privilégier pour rétablir les faits, créer un monologue constructif et chercher de solutions mutuellement satisfaisantes, spécifiquement quand les conflits impliquent des différences au niveau des valeurs;
- L'importance d'avoir une tierce partie pour les consultations où les intérêts des parties prenantes risquent d'être opposés;
- À propos des savoirs traditionnels, puisqu'il n'est peut-être pas évident d'intégrer cette vision particulière du monde et des impacts appréhendés dans le cadre d'une étude d'impact, une approche peut être d'avoir un document parallèle, afin de contribuer au débat et à l'information du public.

6. Notes supplémentaires

Le document décrit plusieurs contraintes potentielles à la participation publique :

- Difficulté d'identifier toutes les parties prenantes;
- Communication interculturelle;
- Niveau d'éducation varié;
- Le manque de connaissance sur le contexte socioculturel des communautés interpellées;
- Le manque de connaissance sur la nature et la portée des projets;
- -Inégalités dans l'accès aux opportunités de participation (par exemple, les femmes);
- Les coûts et le temps que la participation implique, et pour les participants et pour les promoteurs;
- Le manque de compréhension du processus d'évaluation environnemental;
- La politisation ou la médiatisation de certains projets;
- La confidentialité des données (dans le sens que le promoteur peut vouloir restreindre l'information pour des raisons stratégiques).

DOCUMENT RELATING TO PUBLIC PARTICIPATION IN GENERAL OR TO THE JBNQA – ANALYSIS FORM N° 27

TITLE: [Environmental Impact Assessment Training Resource Manual](#)
(2nd Ed. Vol. 1 – Theme 3 pp. 157-177) (n° 27)³⁸

1. Nature of the text (context)

United Nations document used by instructors to train new EA practitioners, published in 2002. Designed to underscore the importance of PP in EA and in the decision making process. Outlines principles and options and tools for organizing PP activities during EAs.

2. Objectives to be pursued via public participation

- Several objectives are outlined (pp.161-162):
 - To inform stakeholders of the proposal and likely effects;
 - Ensure that important impacts or issues are not overlooked;
 - Obtain concerns, views – of key importance is traditional and local knowledge;
 - Integrate public input (including traditional knowledge) in the decision making process;
 - Reduce conflict by identifying contentious issues early on in the EA process;
 - Develop alternatives, mitigation measures and facilitate;
 - Improve transparency, accountability of the decision making process;
 - Improve public confidence of the EA process.

3. Types of public participation (categories)

- Information = one-way flow of info; a precondition for PP, on its own it does not constitute meaningful PP for major project EAs (p.163);
- Consultation = two-way exchange; the most common form of PP during EAs (pp.160 & 163);
- Participation / Involvement = interactive PP; including shared analysis, mutual agenda setting, and seeking shared positions (p.163);
- Negotiation = face-to-face discussion between stakeholders to achieve consensus or resolution of issues and differences (e.g. IBAs) (p.163).

³⁸ PNUE, 2002. *Public Involvement*. Extrait de, *Environmental Impact Assessment Training Resource Manual* (2nd Ed. Vol. 1 – Topic 3). En ligne: www.unep.ch/etb/publications/EIAman/SecETopic3.pdf.

4. Guiding principles for public participation

- Provisions made for PP activities should be consistent with principles established by international law and policy (p.166);
- PP is a fundamental principle of EA (pp.159-160):
 - PP ensures that EAs are transparent, credible, robust and characterized by defensible analyses;
 - Inclusion of the views of affected and interested public helps to ensure the decision making process is equitable, leading to more informed choice and better environmental outcomes;
 - PP is a valuable source of info on key impacts, mitigation measures and design alternatives.
- PP should be relevant to the issues that matter and responsive to stakeholders views (p.166).

5. Potential solutions / best practices that should be pursued for public participation

- Proponents must begin planning PP activities well before the EIS-related work (p.170);
- PP typically occurs at the scoping stage (before the tabling of the EIS) and at the review stage (p.158);
- Every effort must be made to identify the various groups, organizations and individuals who may directly or indirectly be affected by a project; and, to provide an opportunity to canvass their views. Special attention must be brought to groups who may be most 'at risk' (p.166);
- Public consultations or hearings can be formal or informal, but must be structured to allow citizens a chance to have their say (p.169);
- Whenever possible, meetings, info sessions, and hearings should be in the affected community – especially if there are basic constraints to its involvement (e.g. poverty, remoteness, language, cultural constraints) (pp.170-171);
- Bodies planning PP activities should outline how public comments and views will be analyzed and used in the EA decision (p.170);
- Local representatives should be implicated in the monitoring and follow-up stages, especially for a major project – it can improve relations with the local community and those affected by the project (p.169).

6. Additional notes

- Some of the benefits of PP are very tangible (e.g. improved design), others are not (e.g. public confidence in the EA and decision making processes) (p.162);
- Written commentary may be daunting for the public and impossible for the illiterate – other means should be provided, especially when issues are contentious (p.169).