

## Consulting During Environmental Impact Assessment According To Vietnamese Law

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**ABSTRACT:** The article focuses on analyzing the legal provisions regarding the consultation of residential communities, individuals, organizations, and agencies in environmental impact assessment. Accordingly, the Law on Environmental Protection 2020 introduces many new points on this matter to promote public participation and contribute to improving the quality of environmental impact assessment. However, some aspects of the regulations on consultation with residential communities, individuals, organizations, and agencies in environmental impact assessment are still inadequate, causing difficulties in the application process. The analysis and evaluations help the author propose solutions to improve the laws on consultation in environmental impact assessment.

**KEYWORDS:** Consult; Environmental impact assessment; Vietnamese Law.

### I. INTRODUCTION

Consultation with residential communities, individuals, organizations, and agencies helps enhance effectiveness and ensure democracy in the environmental impact assessment process of investment projects. Vietnamese environmental protection laws recognize and establish mechanisms for implementing consultation with residential communities, individuals, organizations, and agencies in environmental impact assessment. The regulations on consultation in environmental assessment have been increasingly perfected through various periods of environmental protection law development. However, to ensure the feasibility of these regulations, it is necessary to continue research to identify shortcomings and difficulties in the application process, thereby proposing solutions to improve the corresponding laws. The following article will present all these contents.

### II. CONTENT

#### 2.1. The necessity of consultation in environmental impact assessment

Environmental impact assessment is essentially an activity that has existed for a long time. Even when the economy was still simple, environmental impact assessment involved considering the environment's capacity to handle ongoing activities and devising measures to mitigate or eliminate adverse impacts on the environment. Naturally, this consideration process was not complex because the negative impact of economic activities on the environment was not significant. Later, as the commodity economy developed, humans exerted a strong influence on the natural environment by extracting raw materials for production and discharging waste. Consequently, many countries around the world gradually recognized environmental impact assessment as a mandatory obligation for production and business projects.

Currently, in Vietnam, the Law on Environmental Protection 2020 stipulates: "Environmental impact assessment is the process of analyzing, evaluating, identifying, and forecasting the impacts of investment projects on the environment and proposing measures to minimize adverse environmental impacts" (Clause 7, Article 3). Therefore, environmental impact assessment is carried out before a project begins operations, clearly reflecting the preventive principle of environmental protection law. The main activities of this process include preparing, appraising, and approving the environmental impact assessment report. All these activities are conducted before the investment project becomes operational.

In a general sense, consulting with residential communities<sup>1</sup>, individuals, organizations, and agencies involves seeking their opinions on a particular issue. Unlike ordinary opinion gathering, consultation means collecting opinions and relying on those opinions to make important decisions. Therefore, both the consulting entity and the consulted parties must maintain a serious and cautious attitude when conducting consultations. In a democratic society, state management must ensure that it aligns with the legitimate aspirations of the people. Consulting with residential communities, individuals, organizations, and agencies is one way to implement democracy in state management. Through consultation activities, state agencies can understand the legitimate aspirations of the people. Likewise, through consultation activities, residential communities, individuals, organizations, and agencies have the opportunity to express their views, especially their concerns during the state management process.

Each investment project carries the risk of negatively impacting the environment, thereby adversely affecting the health, lives, and property of the people. According to the precautionary principle, right from the stage of environmental impact assessment, it is necessary to allow the public to express their views on the environmental impact of the investment project. This can be explained for the following reasons:

- People have the right to live in a healthy environment, a right recognized in Article 43 of the 2013 Constitution. When the state acknowledges this right of the people, it must also establish mechanisms to protect it. One of the mechanisms that allow people to exercise their right to live in a healthy environment is by expressing their views on investment projects, especially those near their residences. Furthermore, project investors are obligated to seek the opinions of residential communities, individuals, organizations, and agencies, as well as to consider and reflect these opinions in the environmental impact assessment report.

- By incorporating the public's opinions, the overall quality of the project dossier and, specifically, the environmental impact assessment report will be improved. Each citizen, based on their knowledge and life experiences, provides valuable insights when consulted. Among these insights, there are bound to be reasonable suggestions. Especially when many citizens share the same opinion, project investors and competent state agencies must pay attention, investigate, and verify these opinions to make appropriate decisions for the environmental impact assessment report.

- From a management perspective, the state views consultation as a reference channel to formulate appropriate legal policies. Citizens' feedback primarily stems from their own desires, but if these desires are legitimate and align with societal interests, the state must consider whether the current management methods meet the lawful demands of the majority. Public opinions also provide the state with additional information about potential economic, social, and environmental risks associated with investment projects. Consequently, the competent state agency will take these opinions into account when making decisions during the project approval process.

- Consultation is also an opportunity for investors to share information so that the public can better understand the project and the measures for preventing and addressing environmental pollution. If these measures are reasonable and ensure that the project promotes local socio-economic development and creates jobs while still protecting the environment, they will certainly gain public support.

- Consultation also reflects the superiority of a society that recognizes and ensures the democratic rights of its people, for the benefit of the majority. Citizens have the right to equality and democracy in all aspects of social life, including contributing opinions on investment projects.

From the above analysis, we can understand that consultation in environmental impact assessment is the process of collecting opinions from residential communities, individuals, organizations, and agencies, and reflecting those opinions in the environmental impact assessment report.

## 2.2. The current legal provisions on consultation in environmental impact assessment

In Vietnam, the Law on Environmental Protection 1993 (enacted after the Constitution of 1992 was passed) marked an important milestone in the history of building and perfecting environmental protection legislation, as it was the first time that environmental protection issues were stipulated in a specialized legal document. Subsequently, successive Environmental Protection Laws were enacted and replaced the previous ones (2005, 2014, 2020). All Environmental Protection Laws recognize the issue of environmental impact assessment. Although environmental impact assessment has been acknowledged since the Law on Environmental Protection 1993, it was not until the Law on Environmental Protection 2005 that the right of people to express their opinions (during the environmental impact assessment stage) on environmental protection in investment projects was recognized. However, the 2005 Law on Environmental Protection only acknowledged that: "Organizations, residential communities, and individuals have the right to submit requests and recommendations on environmental

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<sup>1</sup>According to Clause 2, Article 3: *residential community*" means a community of people living in the same village, hamlet, population group, ward or similar settlement within the territory of the Socialist Republic of Vietnam.

protection to the appraisal agency; the appraisal agency is responsible for considering these requests and recommendations before making conclusions and decisions” (Clause 6, Article 21)... without specifying the obligation of the project investor to conduct consultation and incorporate the consultation feedback.

In the 2014 Law on Environmental Protection, it was affirmed that: “The project owner must organize consultations with agencies, organizations, and communities directly affected by the project” (Clause 2, Article 21). However, this law did not specify the project owner’s responsibility to incorporate the consultation feedback, which rendered the consultation with residential communities, individuals, organizations, and agencies largely formalistic.

Currently, the 2020 Law on Environmental Protection provides detailed regulations regarding the subjects, responsibilities, content, form, and outcomes of consultation in environmental impact assessment (Article 33). Additionally, Article 33 of the 2020 Law on Environmental Protection is further specified in Article 26 of Decree No. 08/2022/ND-CP dated January 10, 2022, which details some provisions of the Law on Environmental Protection. Overall, the state has established a relatively comprehensive legal framework for consultation in environmental impact assessment, specifically:

- The subjects of consultation are diverse, including the following two main groups: Group 1: Residential communities and individuals directly affected by the environmental impacts of the project's activities; Group 2: Agencies and organizations directly related to the investment project. The entities in Group 2 are required to respond to the project owner in writing regarding the content of the consultation within the stipulated time frame; if there is no written response by the end of the stipulated time, it is considered as agreement with the consultation content.

- The main consultation content includes: The location of the investment project; The environmental impact of the investment project; Measures to mitigate adverse environmental impacts; The environmental management and monitoring program; Plans for preventing and responding to environmental incidents; Other content related to the investment project. Thus, the consultation content primarily consists of information about the project that the public needs to know in order to assess the extent of its impact on them and to understand the project's plans for preventing and handling pollution. People use this information as a basis for their arguments when consulted.

- The forms of consultation are diverse and include: Consultation through posting on electronic information pages; Consultation by organizing meetings to collect opinions; Consultation by written communication. Thus, the 2020 Law on Environmental Protection has added the form of consultation through posting on electronic information networks. Many legal researchers have highly appreciated this form of consultation as it facilitates residential communities in playing their role in environmental impact assessment, which is suitable for the current socio-economic context<sup>2</sup>.

- The consultation results must be incorporated and reflected in the strategic environmental assessment report. The responsibility for this incorporation lies with the project investor. The reflection of the opinions from the consulted residential communities, individuals, organizations, and agencies in the environmental impact assessment report must be honest, objective, and comprehensive.

Additionally, there are several issues within the consultation regulations that create difficulties in the implementation process and reduce the effectiveness of the consultation. Specifically:

- Although the lawmakers have tried to detail and specify the subjects to be consulted (for example, Group 1 includes: “residential communities and individuals living, producing, and doing business in areas of land, water surfaces, land with water surfaces, and sea areas occupied by the investment project; residential communities and individuals within the direct impact range of wastewater, emissions, dust, noise, solid waste, and hazardous waste generated by the project; residential communities and individuals affected by phenomena such as subsidence, erosion, and sedimentation of riverbanks and coastlines caused by the project; and other affected residential communities and individuals identified through the environmental impact assessment process”), it is still not easy to identify the subjects to be consulted in practice. The primary criterion for determining the subjects to be consulted is “individuals, organizations, agencies, and residential communities affected by the environmental impact of the investment project,” but this is also only a prediction of the impact. Therefore, in practice, identifying the subjects to be consulted in the environmental impact assessment is not easy and is very difficult to quantify.

- The law stipulates three forms of consultation and identifies the corresponding forms for each subject: Consultation with residential communities and individuals directly affected is conducted through meetings to

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<sup>2</sup>Nguyen Thi Hang (2023), Regulations on the community consultation during the implementation of environmental impact assessment according to the 2020 Law on Environmental Protection 2020 and its guiding documents, Journal of Industry and Trade, updated: 19/08/2023 at 20:00, <https://tapchicongthuong.vn/quy-dinh-phap-luat-ve-tham-van-cong-dong-dan-cu-trong-qua-trinh-thuc-hien-danh-gia-tac-dong-moi-truong-theo-luat-bao-ve-moi-truong-2020-va-cac-van-ban-huong-dan-thi-hanh-108197.htm>

collect opinions; consultation with agencies and organizations directly related to the investment project is conducted through written consultation; and consultation through posting on electronic information pages can be applied to any subject.

I believe that this regulation limits the rights of the group consisting of residential communities and individuals. While holding meetings to collect opinions from this group is necessary and suitable for practical purposes (since this group is often large, shares a common residence, and usually has similar viewpoints), it should not exclude the form of written consultation for this group. This is because there may be residential communities and individuals who wish to be consulted in writing, yet there is no legal basis to do so.

The 2020 Law on Environmental Protection has classified projects based on their risk of adverse environmental impact (Article 28). Accordingly, Group I consists of projects with the highest risk of adverse environmental impact; Group II consists of projects with a moderate risk of adverse environmental impact; Group III consists of projects with a low risk of adverse environmental impact; and Group IV consists of projects with no risk of adverse environmental impact. Clearly, each investment project carries different levels of risk to the environment, but currently, the law only stipulates that every investment project undergoes consultation once. I agree with the view of authors Mai The Toan and Hoang Thanh Nguyet, who assert that a one-time consultation for all investment projects is inappropriate and does not ensure fairness<sup>3</sup>.

The law mandates that project owners must reflect the results of consultations in the environmental impact assessment report but does not stipulate the right of the consulted parties to oversee this process. Only when the environmental impact assessment report has been approved and is in effect does the project owner have the obligation to make the report public. This has contributed to the consultation process being somewhat formalistic and limited the rights of the consulted parties.

To expedite the approval of the environmental impact assessment report, project owners may falsify documents related to the consultation of residential communities, individuals, and organizations. However, upon reviewing Decree No. 45/2022/ND-CP dated July 7, 2022 (regarding the administrative penalties in the field of environmental protection), this action by project owners is not identified as an administrative violation. Without sanctions, there is insufficient deterrence to prevent project owners from committing such wrongdoings.

### 2.3. Solutions to Improve Legal Provisions on Consultation in Environmental Impact Assessment

Based on the analysis of the issues, this article proposes several solutions to improve the legal provisions on consulting residential communities in the implementation of environmental impact assessments. Specifically:

- The Law on Environmental Protection 2020 and Decree No. 08/2022/ND-CP need to amend the provisions regarding the subjects of consultation to ensure the rights of individuals and organizations in society. Accordingly, the law should maintain the current groups of subjects that project investors must consult and add provisions allowing any individual or organization (residing in Vietnam) and Vietnamese state agencies to express their opinions in the environmental impact assessment of investment projects. The project investor is responsible for considering the opinions of these individuals, organizations, and state agencies in the same way as required for mandatory consultation.

- Add provisions granting the right to respond to consultations in writing for communities and individuals. If any community or individual in society submits opinions in writing, the project investor must receive, consider, and reflect those opinions as if they were gathered in a consultation meeting. This provision accommodates practical situations where many individuals cannot attend meetings at fixed times and can express their views through written documents or electronic information portals.

- The law should stipulate the minimum number of consultations required for environmental impact assessments for different groups of investment projects: Group I projects must consult at least twice; Group II and Group III projects must consult at least once; Group IV projects are not required to consult. Such regulations ensure fairness and substantial consultation, with the complexity of the consultation process corresponding to the environmental pollution risks posed by the investment projects. The higher the pollution risk, the more consultations are required in the environmental impact assessment.

<sup>3</sup> Mai The Toan & Hoang Thanh Nguyet (2016), Current Status and Proposals for Improving the Environmental Impact Assessment System in the Project Approval Process, Environmental Journal, updated: 12/09/2016, <https://tapchimoitruong.vn/phap-luat--chinh-sach-16/Th%E1%BB%B1c-tr%E1%BA%A1ng-v%C3%A0-%C4%91%E1%BB%81-xu%E1%BA%A5t-ki%E1%BA%BFn-ngh%E1%BB%8B-nh%E1%BA%B1m--ho%C3%A0n-thi%E1%BB%87n-h%E1%BB%87-th%E1%BB%91ng-%C4%91%C3%A1nh-gi%C3%A1-t%C3%A1c-%C4%91%E1%BB%99ng-m%C3%B4i-tr%E1%BB%9Dng-trong-qu%C3%A1-tr%C3%ACnh-x%C3%A9t-đuy%E1%BB%87t-d%E1%BB%B1-%C3%A1n-%C4%91%E1%BA%A7u-t%C6%B0-19000>

- Add provisions granting consultation participants the right to monitor the project investor's response to consultation results. To exercise this right, the law should allow participants to request the project investor, the appraisal agency, or the approving agency of the environmental impact assessment report to provide documents on the consideration and reflection of consultation results. This right must be exercised before the environmental impact assessment report is approved and within a specified time frame to balance the rights of the project investor.

- Include the scenario "the project investor does not fulfill the consultation responsibilities in the environmental impact assessment" as an administrative violation in the field of environmental protection (add to Decree No. 45/2022/ND-CP dated July 7, 2022). Additionally, Decree No. 45/2022/ND-CP dated July 7, 2022 should establish primary penalties (warnings; fines), supplementary penalties (confiscation of administrative violation materials, means used for administrative violations), and remedial measures for such violations. This addition would enhance deterrence, compelling project investors to fulfill their consultation responsibilities in environmental impact assessments.

### III. CONCLUSION

The article analyzes the legal provisions on consultation in environmental impact assessment. Accordingly, consulting communities, individuals, organizations, and agencies is the responsibility of the project owner and is conducted during the environmental impact assessment phase. Although the state has established a relatively comprehensive legal framework, including the subjects, entities, content, forms, and results of consultation in environmental assessments, some points in these regulations are still inadequate. Additionally, the article proposes several solutions to improve the legal framework on consultation in environmental impact assessment, including: Adding the right for all communities, individuals, organizations, and state agencies (residing in Vietnam) to participate in consultations on the environmental impact assessment of all investment projects; Setting minimum consultation requirements for different groups of investment projects in environmental impact assessments; Including in Decree No. 45/2022/ND-CP dated July 7, 2022, the scenario where "the project owner does not fulfill the consultation responsibilities in the environmental impact assessment" as an administrative violation in the field of environmental protection. If these solutions are implemented synchronously and promptly, they will bring certain practical benefits. This would facilitate state management agencies, project owners, and the public in understanding and correctly performing their legal rights and obligations regarding consultation in environmental impact assessments.

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