

COUNCIL OF EUROPE

**SEMINAR ON
«THE CHALLENGES FACING EUROPEAN SOCIETY WITH THE APPROACH OF
THE YEAR 2000: PUBLIC PARTICIPATION IN REGIONAL / SPATIAL
PLANNING IN DIFFERENT EUROPEAN COUNTRIES»**

BATH (UK), 26-27 April 1995

SESSION 2: «Public participation in the planning process and in the application of the plan. Experience of organisations, special interest groups and individuals»

**«SPAIN: THE EXPERIENCE OF PUBLIC PARTICIPATION IN
THE PLANNING PROCESS»**

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1. THE GENERAL FRAMEWORK OF PARTICIPATION IN SPAIN.

1.1. Constitutional references

§1. On the subject of public participation, the Spanish Constitution of 1978 (hereafter SC) contains six fundamental articles [see **Appendix I**] concerning: the right of the public to intervene, directly or indirectly, in political decision-making processes (arts. 9.2 and 23), to protection of natural resources, environmental rights and quality of life (art. 45); the right to a dwelling and to land-use and town planning (art. 47); and rights, as consumers and users assembled in groups, to defend their interests (arts. 51 and 52, SC).

These six articles conform the constitutional framework that is intended to protect and guarantee the fundamental right of all citizens, either individually or in groups, to participate in the collective tasks of society and to be informed of decisions that affect them.

§2. Having regard to the substance of spatial planning activity whether affecting the environment in general or town planning more specifically, the fundamental reference for all Spanish statutes which have been or will be promulgated is contained in arts 45 and 47 of the SC. In this context, planning is probably the area in which the legislation most abundantly and clearly provides guarantees of participation by the citizens in decision-making processes that affect transformation of land and the environment.

1.2. Evolution of public participation in political planning decisions

§3. The Act of 1975 was the first reform of modern planning legislation as encoded in the Act of 1956. Both were promulgated under the Franco dictatorship and all the subordinate legislation has been preserved in the new *Ley del Suelo* [Land and planning Act] of 1990 and 1992. Public participation in planning in Spain since the 1975 Act exhibits two peculiar

characteristics arising out of the historical moment at which such participation was legally incorporated as part of normal planning procedures.

A) Spanish planning is typically strong on *detail* and *prior programming*. It tends to be *binding* and *prescriptive*, generating substantial new rights/duties and financial conditions requiring fulfilment in return for private appropriation of the benefits of the underlying land. This general characteristic has given rise to a number of significant requirements — publicity, common knowledge and broad participation of all persons affected by plans, for the purposes of *informing*, *legitimising* and *authorising*:

(i) any ***changes or modifications*** — enhancement or loss — in the existing legal-economic status; eg, where a site is already urbanised and scheduled for development but the development plan may alter specifications of height, volume, use and rights/obligations; or

(ii) ***new, detailed planning*** of new sites yet to be urbanised. This is of special interest to all owners of land currently classified as rural which is designated and scheduled for urbanisation in the immediate future, involving as it does major benefits and obligations.

B) During the Dictatorship, the absence of the most elementary democratic legitimisation of organs of governance in either central or local administration was offset with interest by jurists and technical specialists in Administrative Law, who in drawing up planning acts, decrees and by-laws actually overdid the provision for public participation in such internal procedures of the planning process. Their aim was twofold:

(i) to provide a counterweight to the lack of any democratic parties, free trade unions or civic associations through a vigorous system of ***sporadic planning control by the general public*** which contemplated civic and popular participation, and an easy avenue through which the public could bring objections and appeals before the Courts of Justice; and

(ii) to establish a system of ***judicial control of the executive*** based upon strict legal compliance of detailed plans, which politicians lacking a democratic mandate would be forced to respect, thus placing constraints upon their discretionary powers. They would be obliged to ensure that the citizens were duly notified and enabled to intervene in such planning processes in defence of their interests as small proprietors.

§4. Within this legal-technical and political framework, administrative measures were introduced to allay the desire of proprietors — and by extension, the public in general — to take part in public life and political surrogates therefor (like town planning), debarred as they were from any effective democratic participation in political life. A way was thus opened for any individual, even if he had no direct interest in the development plan concerned, to submit objections, complaints or even his innermost desires regarding such plan, by making it compulsory for planners to consult the sole Trade Union, the sole Party, trade associations, the Regime's official organisations, local authorities, etc., which were provided with specific channels of intervention. This provided a pseudo-democratic release-valve for the few town planning decision processes to which citizens had access; all were aware, however, that the final word on every specific plan always lay with appointees of the Central Government or the sole Party, whose job it was to look after the prevalent ideological and economic interests of local governing classes and power elites.

Land speculation in town planning practice during the forty years of dictatorship — camouflaged at the time by spurious specific technical requirements — was utterly catastrophic. This is instantly visible in any city or town, no matter how small, throughout the length and breadth of Spain, and particularly on the Mediterranean coast, where speculation in the service of domestic and foreign tourism was rampant. The conscious sectors of popular opinion raised no serious outcry against these onslaughts on the environment and the quality of urban life until the appearance of *popular civic movements* in big cities during the last years of the Franco

regime (1970-75), which provided cover for nascent political parties that would emerge into the limelight with the advent of democracy (beginning in 1976).

§5. However, these planning practices based on technical and legal subterfuges had become ingrained in the mentality and culture of planning both official and private. They prompted expectations of gain from development business in many officials in new democratic authorities who continue — now as before — to serve the interests of powerful local or national groups. The result has been the revelation (now no longer swept under the carpet as before) of cases of serious public corruption where easy profits have been reaped from political decisions involving planning and land reclassification.

Nor have reforms of planning legislation — which the 1978 Constitution allocates to the *exclusive competence* of the Autonomous Communities (directly-elected democratic regional governments) — succeeded in reducing or restricting such active public participation in development planning processes, despite the existence of unimpeachably democratic organs of local or regional government. Indeed, since the end of the Franco era in 1975, *all* statutory regulations governing public participation on land development have remained *quite untouched*, even in the latest *Ley del Suelo* [Town and Country Planning Act] of 1990-1992 (see **Appendix I**, section **B** *passim*).

Since the change of regime in 1976, the thrust of reform has been towards cutting down *time and procedure for publication and public participation* in the successive planning stages. Such initiatives have been justified on grounds of a need to simplify and speed up public decision-making; only the time allowed for notification is cut back, not the legal provisions for intervention of citizens and/or courts in all planning decisions of a political nature.

1.3. The debate over judicial control of executive discretion *versus* greater discretion on grounds of political legitimacy

§6. One of the central themes in the current debate over legal-political doctrine is the clash of two viewpoints: constitutionalism/administrativism *versus* civil libertarianism. The positions at the heart of the debate are:

- (i) The view that *judicial powers of constraint* on the executive ought to be cut back to allow legitimately-elected, democratic organs of government greater *discretion to take political action*.
- (ii) The contrary view: ie, the need for greater judicial control and power to constrain the discretionary acts of the executive and defend the individual and personal freedom against the *arbitrary and discretionary powers* of the all-powerful State Leviathan with its dangerous tendency to swamp constitutionally-recognised individual liberties and civic guarantees.

This long-standing Hobbesian debate, which has lost none of its relevance or power to arouse passion and is causing upheavals in current Spanish political thought, is of great importance for discerning degrees of public participation in political decisions.

1.4. Forms of participation and contentious relationships in actions affecting territorial interests

§7. The concept of public or civic participation in political planning decisions is structured on two complementary levels:

A) Direct public participation, with intervention open to private individuals, legal personae (corporations, companies, banks, etc.) and associations of individuals (these may be of all kinds — neighbourhood associations, ecologists, squatters, "friends of the castles" or persons

prejudiced by Project X; old people or hunters; shopkeepers or landowners; clubs, trade unions, political parties and so on) who are entitled to intervene in specific cases that affect them, or to have proposals submitted to public consideration by the local, regional or national authority in order to be able to set forth and defend their private or collective interests on their own behalf or on behalf of a social group that they represent.

B) Indirect public participation, specifically through *interadministrative relationships* between democratic, representative political bodies. Broadly speaking, this will take the form of disputes and conflicts of local *versus* supra-local collective interests, or regional *versus* national, or local *versus* national, always of an overtly political cast. The degree to which these government organs actually represent the interests of citizens in such indirect public participation is in inverse proportion to the extent of the jurisdiction that they represent: the smaller this is, the more compact, concrete and direct these interests will be — and at times the more vigorous their means of expression. In practice, frequent disputes arise over matters of spatial planning between the three levels of Public Administration: ie, Local Governments, Regional Governments (of Autonomous Communities) and the Central State Government, all of which the Constitution recognises as autonomously empowered to defend their own interests and material areas of competence as marked out more or less clearly in the Constitution itself. It is these kinds of *conflict of competence and interadministrative participation* that attract most attention, running as they do along two axes:

(i) Vertical interadministrative conflicts: between different offices and political parties in the various administrative levels, which clash over a proposal by any one of them that conflicts with one or more proposals put forward by the others. The Constitutional Court may be called on to settle the demarcation of powers brought to issue in such disputes.

(ii) Horizontal interadministrative conflicts: between one and another neighbouring municipality or Autonomous Community; or bodies at either of these levels having territorial jurisdiction and objecting to central state decisions that affect them; or occasionally Spain's disputes with other States in the European Union. Horizontal disputes have to be pursued through participation and political coordination among equals and may eventually be settled in the ordinary courts.

§8. The issues raised by *interadministrative indirect public participation* are of tremendous relevance and importance for the undisturbed political, legal and social functioning of the entire Spanish constitutional system and deserve to be dealt with in a section apart. However, here they are discussed together with issues of *direct public participation* in the course of the various stages in the development planning process, in terms of institutions having a peculiar status with respect to decision-making and to sectoral aspects (roads, coasts, rivers and dams, historical protection, agriculture, etc.) and environmental issues.

2. ECHELONS, STAGES AND FORMS OF DIRECT PUBLIC PARTICIPATION IN THE DEVELOPMENT PLANNING PROCESS

2.1. Various echelons and stages of public participation during the spatial planning and decision-making process

§9. There are three broad echelons participating in any spatial or development planning process (see DIAGRAM 1):

a) Planning authority: The *public authority having direct competence* over the plan concerned and responsible for taking decisions and for promoting, processing and approving it, as determined by the constitutional distribution of powers; this may be the Local, Regional or State Authority (here generally referred to as the Planning Authority or decision-maker in respect of the object of competence concerned);

b) Other Public Authorities or Government Organisations involved or affected, other than the above, representing democratically-elected bodies as organs for indirect participation of the people within their jurisdiction, and hence *duty-bound* to intervene or participate and constitutionally *bound to be consulted* so that they may voice the opinion of the interests that they represent. (If the plan is a local initiative, it will affect other neighbouring local authorities, the relevant regional authority and the central authority; if the initiative is regional it will affect the local authorities within the region, other adjoining regions and the central authority; if national it will affect the regions and municipalities directly involved or affected).

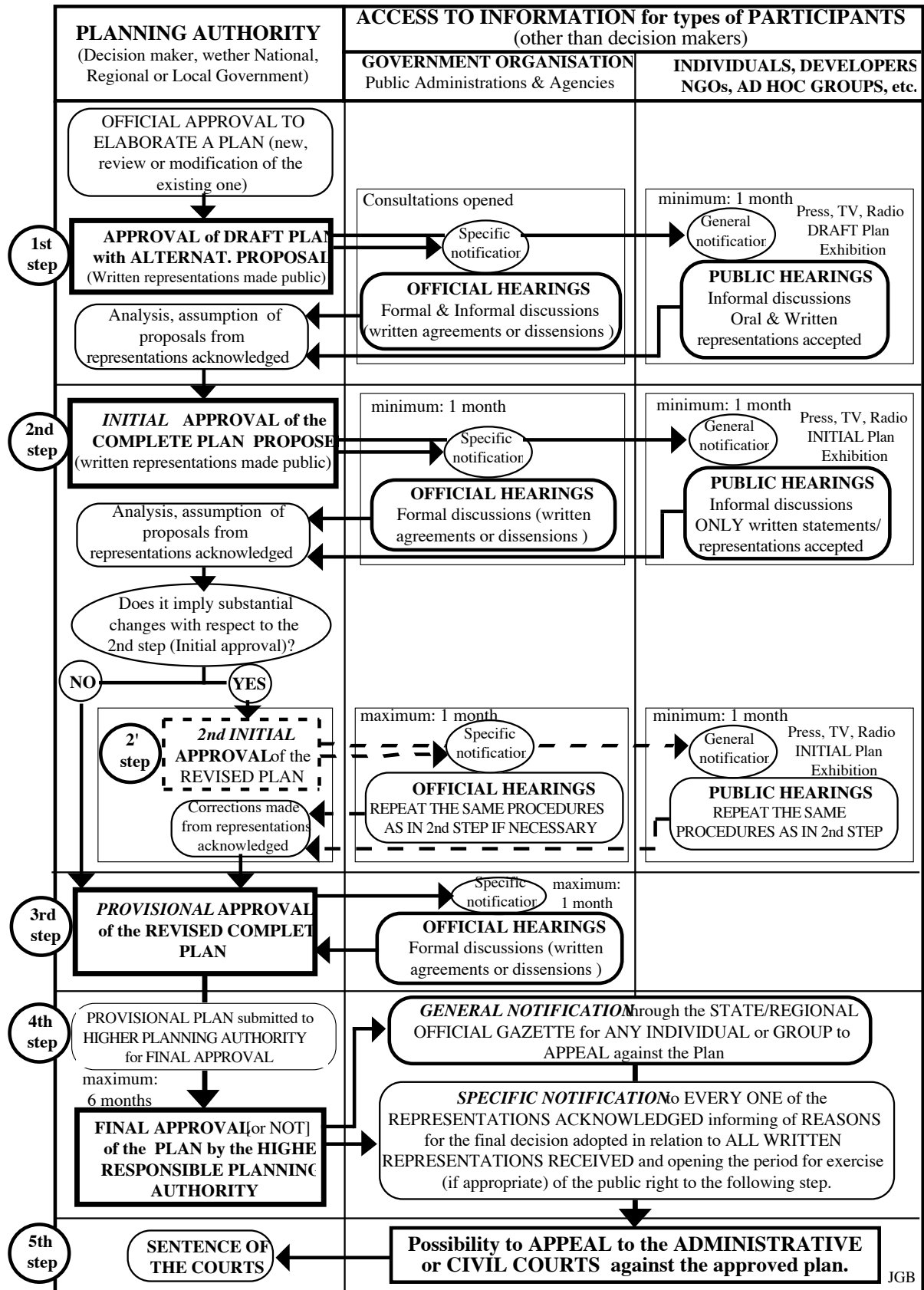
c) Individuals, associations and Non-Governmental Organisations (NGOs), open to direct participation of persons, entities and associations or *ad hoc* groups local or national in scope, who *may intervene* voluntarily provided that they believe their interests are being violated or infringed upon by planning processes. Their intervention will carry more or less specific weight depending on their level of organisation, size, prestige and social power (this category may include arms of political pressure groups of considerable power or influence on public opinion and decision-making organs: press, TV, the Catholic Church, merchants, entrepreneurs, trade unions, aristocrats, military, parties, etc.).

§10. As for the general time phases comprising almost any planning process for general development or a specific sector, we may identify up to four cumulative, necessary and non-potestative stages through which the promoting body must carry its plan — plus a judicial stage, which is evidently potestative in the event of conflict over legal rights, interests or competence.

The articulation of these time phases with the three echelons can be seen in the DIAGRAM 1 overleaf.

First stage: Draft Plan. Following approval of plan initiation, once sufficient progress is made, a Draft Plan is submitted (and approved internally, if appropriate, by the drafting Authority), containing the surveys, proposals, alternatives and broad outlines of the basic decisions involved. The Draft Plan must be issued for general notification over at least one month; it must be published in the Official State Gazette and in a newspaper to allow interested parties to examine it and if they so wish, make oral and/or written representations or propose other alternatives. The sole end of this stage is to gather opinion and comment (cf. **Appendix**, sect. **B.2**), **art. 125 RP**). Already at this stage there are contacts with other Authorities in formal (specific notification) and informal hearings and discussions; also, informal contacts are arranged with local citizens, associations, etc. in the form of public hearings, display of plans, videos, films, round tables, radio interviews, leaflets and booklets, etc. The drafting team examines all suggestions received, accepting or rejecting them as appropriate, reports to the Authority on each one then completes a redraft of the plan for initial approval.

1.- STANDARD PROCEDURES FOR PUBLIC PARTICIPATION IN THE PLANNING PROCESS FOR A STATUTORY PLAN IN SPAIN



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Second stage: Plan (initial approval). Once the plan is granted initial approval by the Authority, it must be issued for general notification by publication in the Official State Gazette and a newspaper. At least one month's notice must be given (although 2 or 3 months is more normal); the plan must be aired through public hearings, neighbourhood meetings, meetings of interest groups and other means, and publicised via all written and spoken media (cf. **Appendix**, sect. **B.3**), **art. 114.1 LS**; and **art 128 RP**). All those with something to say may express their opinions — even if they have no direct interest and do not own buildings or land — by means of *written statements or representations*. These may be submitted with or without legal counsel, in technical, formal or plain and simple language. Specific acknowledgement must be made of all such representations. Once these have been examined, a final draft of the plan is prepared for provisional approval by the same Authority responsible for drafting and processing it.

For the plan at this stage, incorporating amendments as a result of the above general notification procedures, there are two possible outcomes (cf. **Appendix**, sect. **B.3**), **art. 114.2 and 3 LS**; and **art. 130 RP**): **(i)** *there are no amendments of substance* in respect of property rights defined in the plan as publicised in stage 2, in which case it is prepared for provisional approval; **(ii)** *there are amendments of substance* affecting property rights defined in the plan as publicised in stage 2; in this latter case the plan must go back in its entirety to the initial approval stage and second-stage general notification procedures repeated (as if for the first time), *for the same length of time and using the same media for publication and the same avenues of participation*. Once representations have been examined and any not before considered accepted or dismissed, the same situation could in principle arise again and the whole general notification procedure have to be gone through for a third time. It should be said, nonetheless, that this has never been known to occur other than where a judicial decision is handed down some years after approval, bringing the whole process back to the initial approval stage. This has occurred on more than one occasion.

Third stage: Plan (provisional). Following provisional approval by the drafting and promoting body, the Plan is raised to the competent Public Authority for final approval (Autonomous Community, Regional Planning Authority, National Government, etc.)

Fourth stage: Plan (final form). Once it receives the full dossier and the representations made in the course of official and public hearings, the higher Planning Authority concerned has 6 months in which to examine these. During this time it will consult the Plan's drafters in order to decide upon issues of technical content and wider implications. It may decide: (i) to approve the Plan as is; (ii) to withhold approval and return the Plan for remedy of errors or legal defects; or (iii) to approve the plan provisorily, subject to certain amendments. If no decision is forthcoming in 6 months, the Plan is deemed to be approved by positive administrative silence (cf. **Appendix**, sect. **B.3**), **art. 114.4 LS** and **art. 131**).

For a Plan to become effective, there are two general notification requirements, which are legally very important and the *sine qua non* for full effect and automatic supersession of the previously-existing plan: (i) publication of the final approving decision in the Official State Gazette; and (ii) publication in full, in an official daily bulletin, of the description, regulations, bylaws and written prescriptions, together, where appropriate, with the basic plan drawings, so that citizens have access to a definitive text.

Fifth stage: appeals by other Authorities and individual citizens. In addition to individuals and groups having made representations in stage 2, any other individual or group, even though they entered no written representations in the that stage, are entitled to file an administrative appeal in pursuit of any legal rights which they feel the Plan infringes upon, by reason either of defects of legal form (procedures) or of the actual substance of the plan (cf. **Appendix**, sect. **B.4**), **art. 304 and 305 LS**). The appeal will be against the Planning Authority which granted final approval, not against the drafters. The Authority may either accept or reject such appeal. If an individual citizen is not satisfied, he or she may have recourse to the Law Courts, either through ordinary civil proceedings or through the administrative court machinery.

An appeal may go through two jurisdictional levels: the Regional jurisdiction, then the Supreme Court, which is the top echelon. A citizen who considers that his or her fundamental civil rights have been violated may appeal directly to the Constitutional Court, but this very rarely occurs.

§11. It is most often the case that developments, plans or building work by other Authorities infringe on the current plan, and for such events specific procedures exist (cf. **Appendix**, sect. **B.5**), **art. 244 LS**). Such differences are practically always settled in the administrative courts, or may even reach the Constitutional Court since article 244 of the Land Act is pre-Constitutional (promulgated in 1956) and is deemed unsatisfactory by the new regional and local governments incorporated under the Constitution. In fact the Constitutional Court itself has called for a revision of this statute to bring it into line with the Supreme Law of the land.

2.2. Description of the range of Organisations involved in public participation

§12. The organisations or associations most often consulted or most widely represented nationally and regularly having an active part in planning procedures — subject, of course, to the specific material and type of problem concerned in any case — are, briefly, the following:

- Professional associations (architects, engineers, lawyers, physicians)
- Neighbourhood associations in towns or districts concerned
- NGOs (chiefly ecologists)⁽¹⁾:
- Trade unions ⁽²⁾
- Employers' associations (CEOE and PYME)
- Chambers of Commerce
- Several Consumers' and Users' associations
- *Ad hoc* defence groups formed spontaneously by persons prejudiced by or having an interest in local schemes or specific plans.

§13. On 14 February 1994, an *Environment Advisory Council* was set up as a consultative body, with wide powers of intervention and participation in all major State-level decisions affecting the environment. It has been particularly critical of national plans for roads, motorways, waterworks and so on. The Council has 40 members and is chaired by the Minister of Public Works, Transport and the Environment. There are only 4 other Government members, the rest representing NGOs, trade unions and other bodies from practically all the areas listed in §12 above, plus 8 technical and scientific experts of acknowledged prestige and independence. The members meet quarterly and are delegated by their respective organisations for two-year periods. Their meetings and discussions have reached a very wide audience.

2.3. Adequacy, fairness and effectiveness of the opportunities for participation

§14. Persons and organisations intervening in participation processes fall into two broad groups:

A) Persons or groups *possessing direct material interests* in the plan concerned and directly affected by it. Their interest is confined to the defence of their properties, interests or

¹ The most important of these are: Nature Protection Association (ADENA), Ecologist Nature Defence Association (AEDENAT), Federation of Friends of the Earth, Environmental Defence Organisations Coordinator (CODA), Foundation for Ecology and Environmental Protection (FEPMA), Iberian Fund, European Natural Heritage Fund, Greenpeace, Spanish Ornithological Society (SEO), Iberian Council for Nature Protection (CIDN), Coordinator of Non-Governmental Organisations for Development, etc. Each has a representative on the Environment Advisory Council mentioned in §13.

² Nationally, Comisiones Obreras, Unión General de Trabajadores, Confederación Nacional de Trabajo, etc., basically because they possess technical and legal capabilities. Also, in very specific cases, farmworkers' and rural landowners' unions.

rights. Their aim is to ascertain what may become of these and to try to preserve them and prevent their disposal or simply to augment and improve them for their own benefit. Their attitude is essentially conservative of their clearly-circumscribed goods and rights, and they do not therefore take an active part in the examination of alternatives or other proposals received; they confine themselves to opposing or defending the *status quo*, either passively or violently depending on how serious a threat they perceive to their interests. Such groups or persons may include those opposed to noisy, annoying activities that disturb their present habitat ("occasional ecologists") or to having "low-class" social groups near them who will bring down property prices; or again, those who favour any increase in the value of their property, whatever the social cost, as conducive to "progress and development". Participation and intervention by such groups of citizens in planning processes tends to be occasional, isolated, dispersed, self-centred and highly vocal; they are normally the first in at public participation sessions looking out for their own site or property, keen to know what will become of that but with no concern for the more general good.

B) Persons or groups possessing no property or other direct interest, but only *indirect interests of a professional, political or ideological nature*, perceived as consciousness or wariness regarding changes likely to be brought in by the plan concerned. While not necessarily personally disinterested, they tend to be more active participants, perceived as they are to be defending broad-based interests or values backed up by ideas, theories, methods or practical experience; they may pursue more altruistic goals — political, ecological, group interests, etc. — or again they may be seeking to protect the interests of groups every bit as conservative as the small property owners, only in ideological terms. This type may include dynamic ecologist groups ("ecologists by conviction"), *advocacy planners*, NGOs, advocates of social reform, renewal, etc., alongside professional speculators in general on the lookout for the sacred and inalienable rights of private property. Participants in these groups tend to act with generosity, adopting a generalised, ideological approach. They are technically well-documented and defend abstract economic, social, political or environmental values in a forceful, organised manner. They will not stop short of mass demonstrations and press declarations, and are often willing to go to the Law Courts to enhance their social prestige.

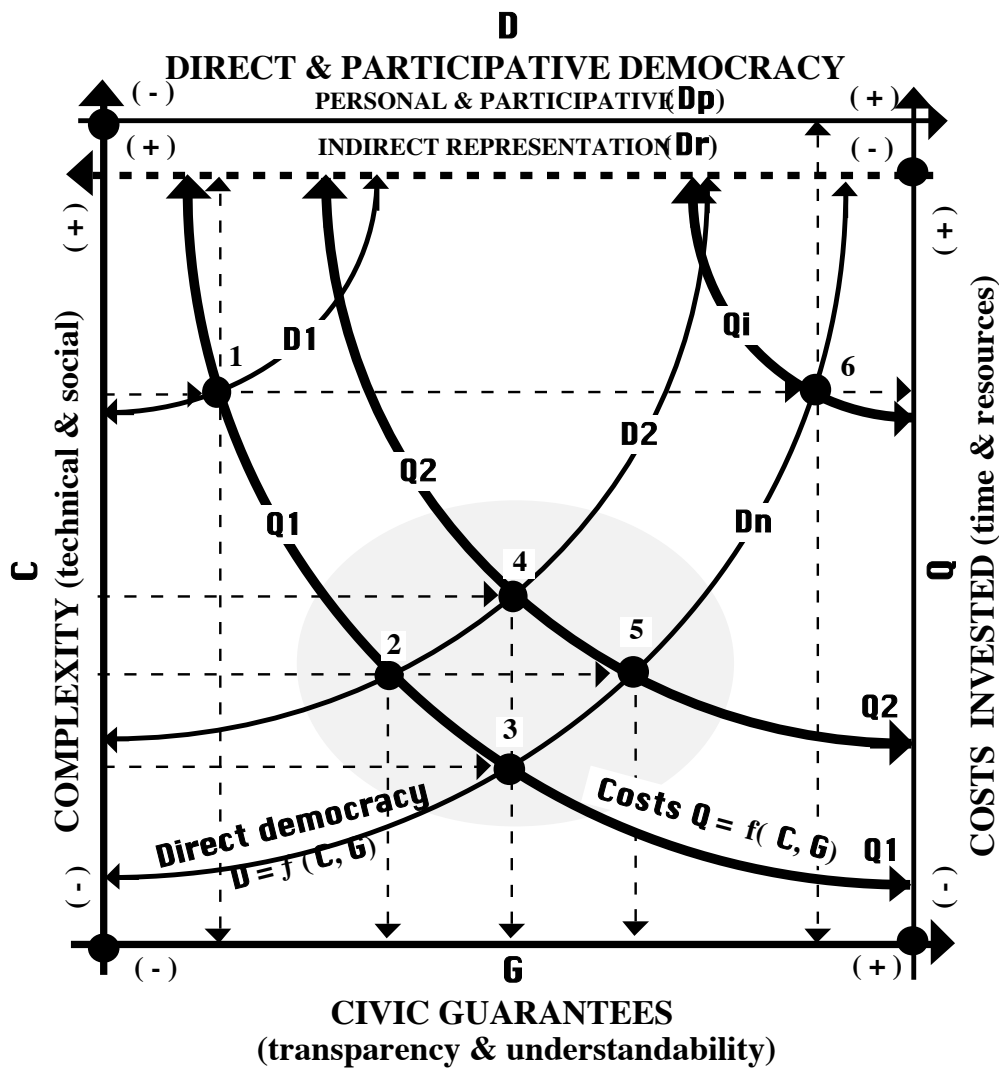
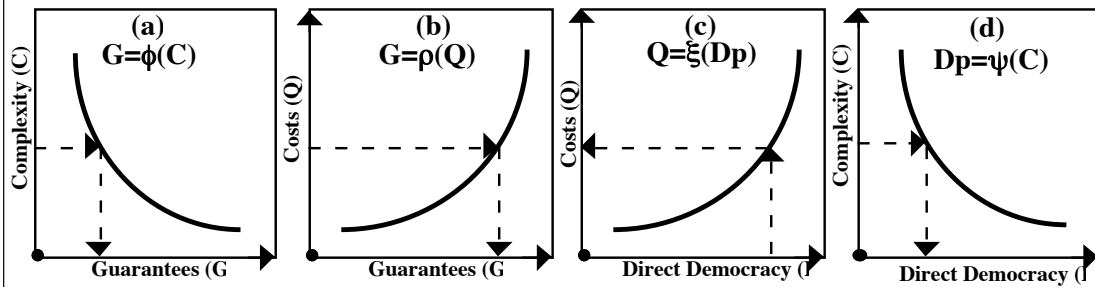
§15. The capacity of either type to influence decisions is in direct proportion to: (i) the "noise" they are able to make in defence of their interests; (ii) their personal social power and the influence they can bring to bear on the group in government (in which case they manoeuvre covertly or "backstage"); and (iii) their capacity to bring disparate interests firmly together around a simple and effective ideological banner.

In extreme, not to say perverse cases, their capacity to influence decisions is in proportion to their ability to intimidate the Government and its servants by means of attacks, threats, sabotage, death and ruin (as a number of traumatic experiences in the Basque Country have shown; see **Appendix II**). In very isolated cases, a proposal for compulsory purchase of land for the construction of public utilities has even been known to result in the murder of the mayor or the person responsible for the proposal at the hands of an enraged owner (cases occurring in remote country areas of Spain).

2.4. The role of the public as watchdog of the planning system: resources and relationships of "representative democracy" versus "personal democracy"

§16. The central problem of public participation in planning in democracies lies in the dialectical relationship of four fundamental variables. The factors — technical and social complexity (**C**), guarantees of transparency and comprehensibility/understandability (**G**), costs (**Q**) in time and resources invested, and direct, participative democracy (**D**) — are combined to try and find an optimum of *democratic efficacy*. What we have, then, is a set of four formulae with four unknown variables which may be grouped into two broad families of curves arranged graphically in a dual system of cartesian coordinates: costs (**Q_i**) and democratic forms of direct participation (**D_n**) [See DIAGRAM 2 overleaf];

2.- RELATIONSHIPS OF SOCIO-POLITICAL AND ECONOMIC VARIABLES IN PUBLIC PARTICIPATION IN PLANNING



SYMBOLS

$G = f(C, Dr)$ COMPLEXITY (C) & GUARANTEES (G) & REPRESENTATIVE DEMOCR. (Dr)

$G = f(Q, Dp)$ COSTS (Q) & GUARANTEES (G) & PERSONAL DEMOCRACY (Dp)

ZONE OF OPTIMUM RELATIVE EFFECTIVENESS

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1) COSTS. For the family of costs curves (Q_i), the function costs (Q) is taken to be *in inverse proportion* to the complexity (C) of the social system in which it is generated or the technical complexity of the problem, and likewise to the guarantees (G) of active participation which it is sought to observe or secure [$Q = f(C,G)$]; hence, the greater the complexity the less sure are the guarantees and vice versa. Therefore, given equal complexity (point **1** in the diagram), to increase guarantees of participation, higher costs must be invested (move to point **6** on curve Q_1 ; or from point **2** on Q_1 to point **5** on Q_2). In order to hold to a constant costs curve (point **1** on Q_1), if guarantees (G) are increased, the complexity (C) and technical content of the problem must be reduced so as to increase understandability (move from point **2** or **3** on curve Q_1 ; or from **4** to **5** on Q_2) — and vice versa. This gives us the following formulae:

(a) Technical complexity (C) versus guarantees (G) of understandability [$G=\phi(C)$], wherein the two variables stand in *inverse proportion*: the greater the social or technical complexity of the problem (diversity and abundance of socio-political and technical factors to be taken into account), the less easy it will be to convey the scope and nature of possible and feasible solutions. In this function, then, in order to achieve greater transparency and understanding of the problem, the complexity and interplay of factors (concealed interests, social and economic conflicts or environmental effects) must be downplayed, the tendency being to oversimplify to the point where the problem as presented is not true, as variables, repercussions and so on are glossed over. The danger then is that participants will be deceived at first by such oversimplifications and that — not all of them being fools — someone will smell a rat and raise a rumpus.

(b) Costs (Q) in time and resources versus guarantees (G) of comprehensibility and transparency [$G=\rho(Q)$] (social and economic costs/benefits), wherein the two variables are in *direct proportion*: the greater the guarantees of communication and participation, the greater the costs will be in time and money, meetings, consultations, leaflets, videos, correspondence, explanations, etc. Savings in time and money can only be achieved by restricting guarantees of civic participation.

2) DIRECT DEMOCRACY. For the family of participative democracy curves (D_n), either of the direct, personal variety (D_p) or the indirect, representative variety (D_r), direct participative democracy is again taken to be in *direct proportion* to the complexity (C) of the social system in which the problem arises or to the technical complexity of the problem itself, and likewise to the guarantees (G) of active participation which it is sought to observe or secure [$D_p = f(C,G)$]; hence, the greater the complexity, the more guarantees of participation are required to maintain a constant level of participative democracy, and vice versa. Thus, at a given level of complexity (point **1** on D_1 or **2** on D_2) if it is wished to secure augmented guarantees of participation, then the amount of direct, personal participation (D_p) must be increased (move from point **1** to point **6** or from point **2** to point **5** on D_n) at the expense of indirect, representative participation (D_r) through elected bodies. In order to hold to a constant level of democratic participation (point **2** on curve D_2), if the complexity (C) of the problem itself or of the social sector affected increases, guarantees (G) of public participation must be augmented (move from **2** to **4** on curve D_2 ; or from **3** to **5** or **6** on D_n). Costs (Q) then inevitably rise, stepping up from one of the middle curves (Q_1 or Q_2) to a higher one (Q_i). This gives the following formulae:

(c) Costs (Q) versus direct (D) or personal (D_p) democracy [$Q=\xi(D_p)$], wherein the two variables are again in *direct proportion*, so that the more direct, specific and personal public participation is in discussing and reconciling positions on any important problem facing the community, the greater is the expense in time and resources required to achieve the general level of participation desired. Greater direct participation (D_p) may be achieved by stepping up the

ladder of cost levels. If we accept that indirect, representative forms of democracy (**Dr**) stand in *inverse* relation to personal, participative forms (**Dp**), then pursuit of the interests of the social body through representation by elected bodies will be less costly than through direct, personal forms. If the aim is to reduce costs, then indirect representative forms must be preferred to direct, personal forms.

(d) Complexity (C) versus direct (D) or personal (Dp) democracy [Dp=ψ(C)], wherein the two variables are in *inverse proportion*, so that the more complex the social organisation (or the technical problem) is, the less likelihood there is of being able to solve problems by direct, personal consultation — or conversely, the greater is the need to solve problems by means of indirect representation systems wherein the citizens entrust decision-making to elected bodies at local, regional or national level.

§17. Generally speaking, we find a correlation between complexity (**C**) and costs (**Q**) [**Q=f(C)**]; and similarly we find that direct, participative democracy (**Da**) correlates with the transparency and guarantees of participation (**G**) that the system provides [**Dp = f(G)**].

Civic and legal guarantees of participation (**G**) stand in *direct proportion* to the costs (**Q**) of solving any given complex problem and likewise of achieving any approximation to direct, personal forms of consultation (**Dp**) regarding the same problem [in simplified form: **G = γ(Q, Dp)**].

Contrariwise, civic and legal guarantees of participation (**G**) stand in *inverse proportion* to technical and social complexity (**C**), representative democracy (**Dr**) and hence costs (**Q**) of solving given problems [**G = ζ(C, Dr)**].

The key to optimum participation in each case lies in finding a balance of least costs, maximum direct participation and a prudent degree of simplification to ensure the greatest possible public participation; in other words, we must seek a *zone of optimum relative effectiveness* — a zone of variable values or *fuzzy set* (see DIAGRAM 2) that best suits the conditions and requirements of each specific situation as determined by political assessment.

§18. Given the complexity and the need for speedy decision-making in a society governed by representative democracy, government bodies require some degree of discretion in most everyday or exceptional decisions if they are to adapt regulations to each specific case in obedience to political guidelines legitimated by elections. However, this tendency of complex representative democracies (discussed in §6 above) entails a relaxation of individual guarantees and a degree of discretion that is not without risk, given the high cost in time and money that the submission of all decisions to the public watchdog would involve. Friction with the judiciary is constant. The latter stands as legal guardian of the constitutional rights and guarantees of all groups and individuals affected by political decisions and thus circumscribes the freedom of elected organs of government to exercise political power.

Where the problem to be dealt with is especially fraught — involving high degrees of politico-social and technical complexity and demanding optimum transparency and direct, personal democratic participation to obviate any possible doubt that option chosen is the best one — costs in time and resources may soar out of control; this added cost may nonetheless result in maximum social satisfaction. Such is the case described in **Appendix II** (and DIAGRAM 3), concerning the decision-making process for an arterial motorway in the Basque Country, following the model known as *Nuclei of Participative Intervention*.

APPENDIX I

LEGISLATION ON PUBLIC PARTICIPATION

A) REFERENCES from the SPANISH CONSTITUTION of 1978 (SC).

1) In the Preliminary Title of the SC:

Art. 9.2: "It shall be the duty of the public powers [Legislative, Executive and Judicial] (i) to foster suitable conditions for real and effective freedom and equality of the individual and the groups to which the individual belongs; (ii) to remove any obstacles that prevent or hinder full achievement of this; and (iii) *to facilitate the participation of all citizens in political, economic, cultural and social life*".

2) In Title I, On fundamental rights and duties, Ch. 2, Rights and freedoms, Section 1, On fundamental rights and public freedoms:

Art. 23.1: "Citizens have the *right to participate in public affairs*, either (i) *directly* or (ii) through representatives freely chosen in periodic elections under universal suffrage."

3) Again in Title I, Ch. 3, On the principles governing social and economic policy, there are 4 relevant articles:

Art. 45: "1:- Everyone has the right to enjoy an environment adequate for his or her personal development and a duty to preserve it. 2:- The public powers shall keep watch over the rational utilisation of all natural resources, for the purpose (i) of preserving and improving the quality of life and (ii) of protecting and restoring the environment, upon a foundation of *indispensable collective solidarity*".

Art. 47: "1.- All Spanish citizens have the right to enjoy a decent, adequate dwelling. 2.- The public powers shall (i) foster the requisite conditions and (ii) introduce appropriate regulations for effective realisation of this right, by regulating land use in the general interest in order to *prevent speculation*. 3.- *The community shall participate in the surplus value* generated by the planning activities of government bodies".

Art. 51: "1:- The public powers shall (i) guarantee the *defence of consumers and users* and (ii) introduce effective measures to protect their safety, health and legitimate economic interests. 2:- The public powers shall (i) *promote information* and education of consumers and users, (ii) foster organisations thereof and (iii) *attend their representations on matters which may affect them*, in such terms as may be established by law."

Art. 52: "The law shall regulate professional organisations [employers, NGOs, etc., as well as the right to unionise, associate and form Professional Associations as provided in arts. 7, 22, 28 and 36] which contribute to the *defence of their own economic interests*. These must be internally structured and function in a democratic manner".

B) REFERENCES IN THE PLANNING LEGISLATION. Land Regulation and Town and Country Planning Act (LS 1992)

1) Basic general principle (applicable nationwide)

Sect. 4.4 (LS 1992):- In drafting, processing and controlling planning, the competent planning authorities *must* (a) *secure the participation of interested parties*, and in particular (b) *such rights in respect of initiative and information* as may be due to (i) *entities representing affected interests*, and (ii) to *private individuals*."

2) Draft Plan (not binding, only for internal administrative purposes).

Sect. 125 (Decree regulating planning):- "As soon as work on drafting the Plan is sufficiently advanced to admit the formulation of planning criteria, objectives and general solutions, the Planning Authority responsible therefor must announce, in the Official Gazette of the Province and in one of the leading newspapers in the Province, the availability of the works for public inspection so as to allow a period of at least one month for submission of written and oral representations and, where appropriate, other planning alternatives by Local Authorities, associations and individual citizens."

3) Initial, provisional and final approval of the Plan (with all statutory documents, not yet binding but generating certain valid property rights and useful for obtaining building permission pending final approval).

Sect. 114 (LS 1992):-

1:- Upon *initial approval* [in public session in the Town Council or Regional Parliament] of a Plan by the Planning Authority responsible for drawing it up, it shall be subject to *general notification for a minimum period of one month* through publication—

- a) in the Official Gazette of the Autonomous Community;
- b) in that of the Province, where applicable; and
- c) in one of the daily newspapers with the largest circulation in the Province.

On expiration of this period, a further period of equal duration shall then commence for representations by the Local Authorities whose territory is affected.

2:- The Planning Authority which initially approved the plan shall grant *provisional approval* with any appropriate modifications. If such modifications should entail substantial amendment of the Plan as initially approved, *general notification must be repeated for a further period* before provisional approval is granted.

3:- Once provisional approval is granted, reports shall be requested from the provincial or regional Planning Authorities. Failure to remit such reports within one month shall be construed as approval through administrative silence.

4:- Upon completion of these procedures, the Plan with its full dossier shall be submitted to the competent authority for comprehensive examination and *final approval*, which must be granted or denied within a period of six months. Failure to issue a decision within this time shall be construed as approval by administrative silence.

Sect. 128 (Decree regulating planning, provisions set forth in Sect. 114.1 LS).

1:- The decision to grant *initial approval* shall be accompanied by a decision to initiate general notification procedures.

2:- Following initial approval, the Plan shall be subject to general notification by announcement, to be published (i) in the case of provincial capitals or towns with more

than 50,000 inhabitants, in the Official State Gazette (or that of the Autonomous Community) and in the provincial Official Gazette; or (ii) in all other cases, only in the provincial Official Gazette. In either case, the announcement shall also be placed in one of the leading newspapers in the province.

3:- This stage shall last at least one month, during which time the dossier shall be available for general inspection.

4:- During this same period, *written representations or objections* may be submitted.

Sect. 130 (Decree regulating planning, provisions set forth in Sect. 114.2 and 3 LS).

In the light of (i) the outcome of general notification, (ii) the hearing referred to in the foregoing section and (iii) the technical reports, the Local Planning Authority which granted initial approval shall grant *provisional approval*, subject to any appropriate amendments.

Should such amendments entail substantial alteration to the Plan's criteria and solutions as initially approved, before proceeding to provisional approval the Local Planning Authority must repeat the general notification and hearing procedures, allowing the same period of time.

Sect. 131 (Decree regulating planning, provisions set forth in Sect. 114.4 LS).

1:- Where general Plans for provincial capitals or towns with over 50,000 inhabitants are concerned, once *provisional approval* is granted, the approving L.P.A. shall request reports from the Provincial and the Regional Planning Authorities successively. Failure by either to issue such reports within one month of such request shall be construed as approval by administrative silence.

[2, ...]

3:- The L.P.A. which granted provisional approval shall submit the Plan, along with the technical reports referred to in paragraph 1 above, to the Regional Minister responsible for Town and Country Planning, for further processing and *final approval* if appropriate.

4:- Before deciding on final approval, the responsible Regional Minister must request a report from the Regional Government's Planning Advisory Committee. Again, failure to issue such a report within one month shall be construed as a favourable opinion.

4) Objections and appeals against plans after approval.

Sect. 304 (LS 1992). Public action [by any natural or legal person or group, whether possessing direct interests in the location or not].

1:- Action before the administrative Authorities and the Courts of Administrative Justice to enforce compliance with planning legislation and with Plans, Programmes, Projects, Rules and Bye-laws, shall be public action.

2:- If such action is undertaken in response to the performance of works deemed unlawful, it may be brought during such performance or at any time within the periods laid down for the adoption of measures to protect the legal planning order [up to four years following completion of the unlawful works concerned].

Sect. 305 (LS 1992). Action before the ordinary courts [as opposed to courts of administrative justice].

Over and above the provisions of the foregoing section [public action open to all, proprietors and holders of title in real property rights [at this stage only those directly concerned] may petition the ordinary Courts for demolition of works and installations contravening regulations as to the distance between structures, wells, cisterns or

trenches, common ownership of building or other urban elements, or those regarding inconvenient, dirty or hazardous uses [activities classified as harmful to the environment or health] which are expressly designed to govern the use of the other properties.

5) Disputes in the event of a local plan conflicting with projects and works of other public Authorities

Sect. 244 (LS 1992) Acts promoted by Public Authorities

1:- All acts [works, installations or building subject to municipal planning permission] which are promoted by Public Authorities or Public Corporations administering goods of such Authorities *shall likewise be subject to municipal planning permission* if such is required under the relevant legislation [regional or sectoral, respectively].

2:- Where reasons of urgency or exceptional public concern so necessitate, the Minister [national or regional] having competence in such matters may order remittal of the project concerned to the relevant Municipal Council, requiring the latter, within one month, to issue notice as to whether or not the project conforms with the current local town and country planning.

In the event of non-conformance, the dossier shall be remitted by the Department concerned to the relevant Minister [national or regional Councillor], who shall lay it before the Cabinet [or equivalent regional body] after first eliciting successive reports from the competent body in the Autonomous Community, which must be issued within one month, and then from the Central Commission [national or regional] for Land and Town and Country Planning. The Cabinet [or equivalent regional body] shall decide whether the project may properly be implemented and in affirmative case shall order initiation of the procedure for planning modification or review, in accordance with the process laid down in the planning legislation.

3:- The Municipal Council may in any event order the suspension of works referred to in subsection 1 of this section if an attempt is made to proceed with these in the absence of or contrary to notice of conformance with the planning and prior to a Cabinet decision in favour of executing the works. The Body which drafted the project and the Minister [responsible for Town and Country Planning] shall be notified of such a suspension order.

4:- This power shall not extend to works directly affecting the defence of the nation, for the suspension of which an order shall be required from the Cabinet, at the proposal of the Minister of Public Works, Transport and the Environment, in response to a petition from the competent Municipal Council and following a report from the Ministry of Defence.

APPENDIX II

ALTERNATIVE MODEL OF PUBLIC PARTICIPATION VIA *NUCLEI OF PARTICIPATIVE INTERVENTION (NPI)*

CASE-STUDY: THE URBINA-ARDATZA MOTORWAY THROUGH THE DEBA RIVER VALLEY (BASQUE COUNTRY) January-March 1994

Purpose: to examine the utility, need and, if applicable, the best alignment for a trunk motorway to traverse the Basque Country in a NE-SW direction, linking San Sebastian-Eibar-Vitoria or France-Spain and completing the network of existing E-W aligned motorways on the Cantabrian coast and the Ebro valley, and the Vitoria-Bilbao link.

A public enterprise, DEBASA (Deba Bailarako Autobidea, S.A.), was created to manage, finance and build the motorway, with capital contributions from the Basque Government and the Alava and Guipuzkoa provincial councils (respectively the regional and local authorities responsible for roads within their historical territories).

Political context: In the light of two previous traumatic experiences — the Lemóniz nuclear power station (paralysed and finally abandoned because of threats and attacks by the terrorist group ETA) and a Pamplona-San Sebastian motorway running through the Leizarán river valley (subject to multiple sabotage attacks by ETA and semi-paralysed for that reason)— a need was perceived to take special pains in respect of public works of this kind to ensure democratic legitimacy, full environmental consideration and active participation by local citizens in the adoption of solutions.

Participative model adopted: The model chosen for this new Vitoria-Eibar-San Sebastian link, and applied between January and March 1994, was that of *Nuclei of Participative Intervention (NPI)* [*Basque Interbentzio Gune Partehartzaileak*]. The model was designed and tested (for mediation and consultation in problematical situations involving conflicting interests) by the Forschungsstelle Bürgerbeteiligung und Planungs-verfahren at the Bergische Universität Wuppertal (Germany), a founder member of the European Network of Centres for Public Participation (ENCPP) and a correspondent of the Center for New Democratic Processes (CNDP) in the USA, the Centre National de Recherche Scientifique (CNRS) in France and, on this occasion, the *Laboratorio de Estudios Sociales-Gizarteaz* of San Sebastian, Spain, the firm responsible for directing and organising this experiment in participation.

Basic structure of the NPI model: A random sample of citizens aged over 18 was selected (weighted in proportion to the districts or towns affected by the project) [in January 1994]. They took a week off their various employments, for which they received compensatory payment. Fourteen NPIs, each composed of 25 persons, were set up to hear, grasp, consider and select from among alternative proposals placed before them by a number of proponents (political, ecological, social and economic groups, individuals, NGOs, etc.), each of whom were allowed equal time and means to defend their positions and opinions on the issue. With the assistance of neutral expert technical advisors, each NPI debated the issues internally and selected the best overall options. In March 1994 their final verdict was remitted to the public authorities for them to act upon. The results of the experiment were relatively encouraging, and the project as finally approved is currently being examined [November 1994]. The total costs of this participative experiment has been of c. \$ 700.000.

[See numbered summary and basic operating structure in DIAGRAM 3, attached].

For further consultation and abundant bibliographical information (in Spanish and Basque), inquiries to:

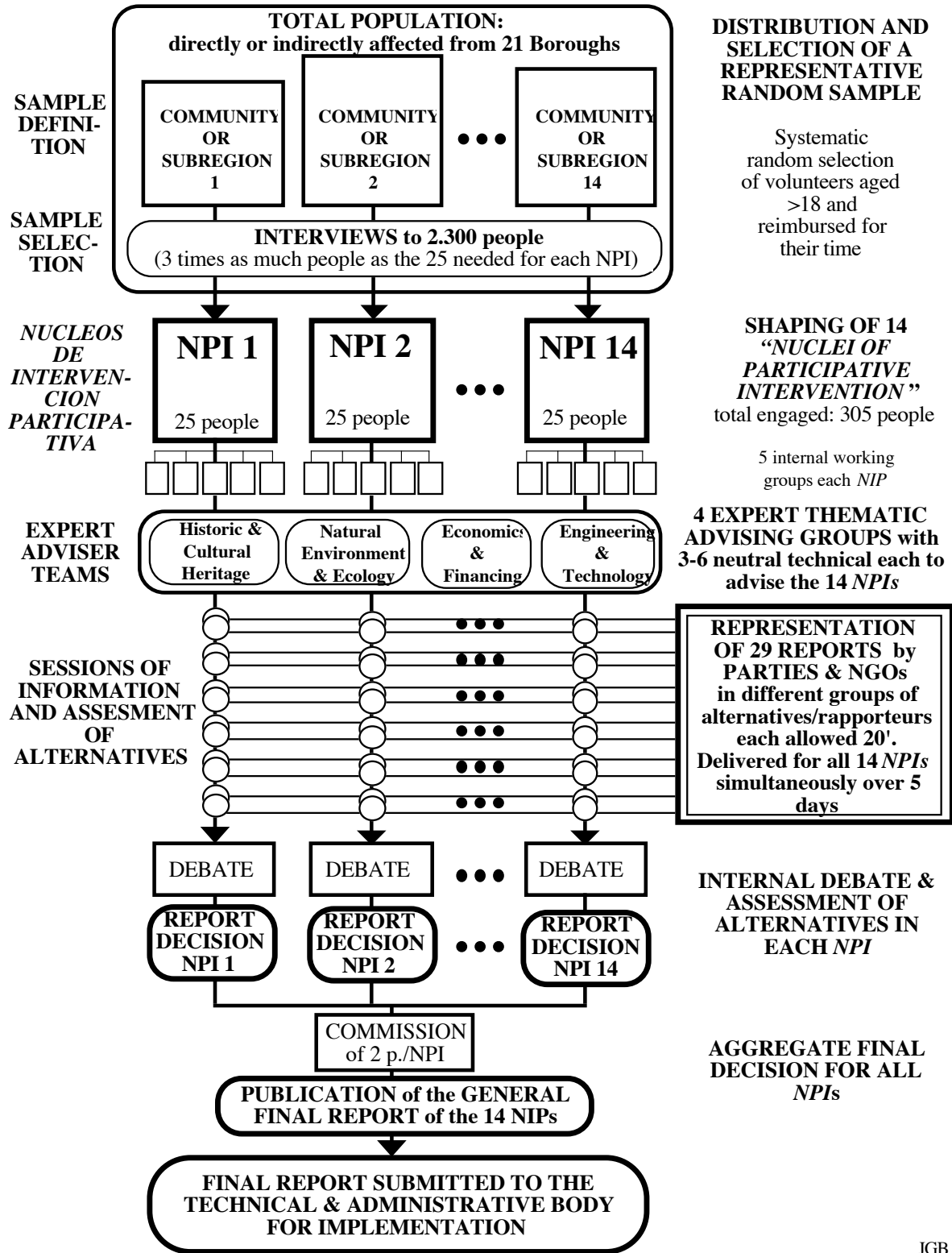
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3. - AN EXCEPTIONAL ALTERNATIVE PROCEDURE FOR PUBLIC PARTICIPATION IN THE PLANNING DECISION MAKING FOR A MOTORWAY IN THE BASQUE COUNTRY:

Some democratic representative taking place from January to Mars 1994
NUCLEI OF PARTICIPATIVE INTERVENTION (NPI)



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