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## **A Political Economy of Environmental Impact Assessment in the Mekong Region**

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**ABSTRACT:** Environmental Impact Assessment (EIA) is an issue of concern to governments, organized civil society groups, as well as business actors in the Mekong region. EIA and related forms of environmental assessments are being carried out throughout the region with varying levels of quality, legal frameworks, monitoring and compliance. Through a political economy approach, we seek to understand the interests and incentives among key stakeholders in each of the five Mekong region countries and propose ways that EIA processes can potentially be improved, with reference to hydropower and other infrastructure and development projects. The analysis is based on a collaborative research process carried out under the auspices of the Mekong Partnership for the Environment, a USAID-funded program implemented by Pact that aims to advance regional cooperation on environmental governance. We find that at present, EIA implementation is limited by numerous political economy constraints, some general across the Mekong region, others specific to one or more country contexts. Certain of these constraints can be addressed through a regional cooperative approach, while others will require longer-term changes in social and political dynamics to encourage uptake and impact and avoid possible blockage from entrenched interest groups.

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KEYWORDS: Environmental Impact Assessment, political economy, infrastructure, hydropower, governance, economic development, Mekong region

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## INTRODUCTION

Environmental Impact Assessment (EIA) is a central process in sustainable development to reduce and mitigate anticipated impacts of development projects. Every national government in the region has or is in the process of developing specific legislation on EIA and related environmental governance issues. Yet despite the fact that significant environmental impacts may occur across borders, no regional EIA agreements have yet been passed and implemented. Why is this so? Explanations offered to date for the ineffectiveness of regional cooperation centre around a perceived "lack of political will" and "local pressures and issues" (Baird, 2014: 30-31). This finding provides an excellent starting point for analysis from a political economy perspective. Rather than falling back on a black-box explanation of "political will" (Green, 2009), a political economy approach seeks to understand what factors are driving or blocking proposed reforms, and what can be done to affect the situation.

Given the multi-faceted and complex political relationships and economic interests among multiple sectors in the five Mekong region countries (Cambodia, Lao PDR, Myanmar, Thailand, and Vietnam), we assembled a multi-national research team in the five participating countries, including both consultants and staff of the Mekong Partnership for the Environment (MPE), a USAID-supported initiative implemented by the non-governmental organization Pact. Researchers conducted a series of 127 individual interviews between October-December 2014 using semi-structured interview guides tailored for governmental and non-governmental respondents. Interview guides and a research description were translated into local languages, and all interviews were conducted in the respondent's native language. Interview respondents were selected from a draft interview list prepared by the researchers in advance and then expanded through a "snowball" process in which respondents suggested others that researchers should talk with. A total of 73 interview respondents were government officials, with the remainder consisting of NGO staff, academic experts, retired officials, international organizations, and business representatives. Our questions focussed on hydropower, mining, and land concessions, which are the "hottest" EIA issues identified by regional civil society groups (MPE, 2014). These issue areas are interlinked, in the sense that hydropower and mining development involves clearance and logging of land, and can even be set up as a pretext for obtaining access to timber (World Bank, 2014: 4).

Interview data forms the primary data source for this article. All unattributed statements in this article are taken from notes of one or more interviews. Names of sources are kept anonymous. The nationality of respondents is mentioned in the text when this is not obvious from the context. Where relevant, respondents are also identified as working in government or non-government sectors. Additional data is taken from presentations and conversations at regional workshops hosted by MPE and the Mekong River Commission in 2014; information from these events, along with other secondary data, is cited as written references. It is important to emphasize that the 'Mekong region' as used here is broader than the Mekong River or river basin. The region is a social, geographic and historical construct taken to encompass the territory, ecosystems, people, economies and politics of the five countries considered here (Dore, 2014).

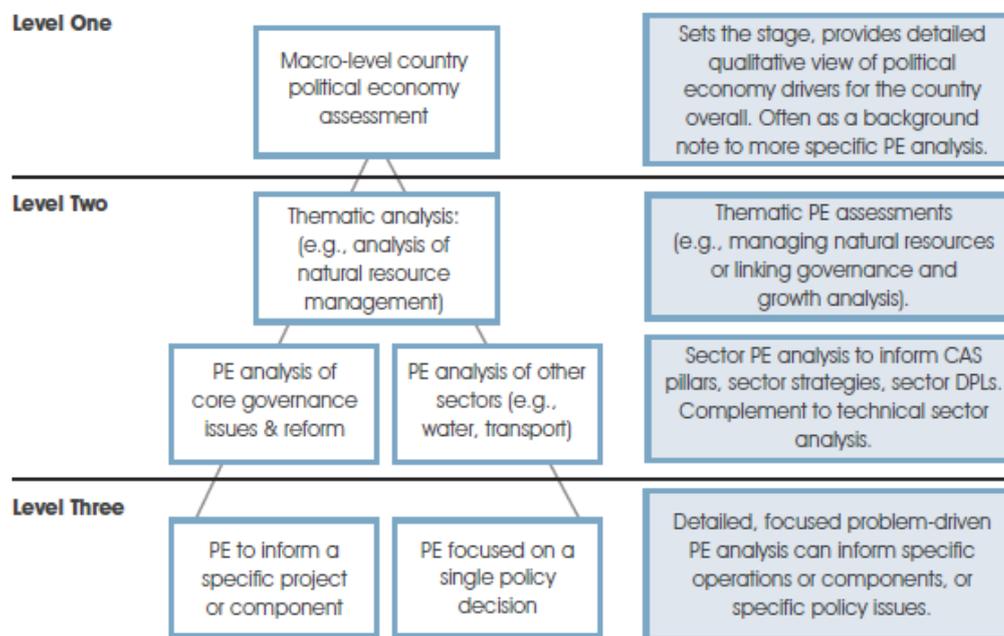
## APPLYING POLITICAL ECONOMY ANALYSIS TO EIA POLICY

Political economy analysis, or PEA, can be defined simply as the places where politics and economics intersect (Poole, 2011). A more thorough definition is provided by the OECD: PEA is "concerned with the interaction of political and economic processes in a society: the distribution of power and wealth

between different groups and individuals, and the processes that create, sustain and transform these relationships over time" (Pact, 2014: 5). Among the common characteristics of a political economy approach to development are iterative problem solving, stepwise learning, brokering of relationships, and the discovery of common interests among stakeholders (Booth and Unsworth, 2014) – an approach that also resonates with USAID’s 'Local Systems Framework' (USAID, 2014) and concepts of 'deliberative governance' (Dore, 2014). Understood as such, PEA is a non-linear process of exploration to inform strategic programming, not merely a tool that can be bolted onto a project framework.

Political economy analysis has been increasingly used over the past decade in both academic and applied settings. This typically occurs at one of three levels: country, sector, or project/issue (Figure 1).

Figure 1. Levels of Political Economy Analysis.



Source: Poole, 2011: 4, adapted from Fritz et al., 2009.

Analysis of EIA policy is at basis a Level Three analysis, since it considers one specific facet of environmental policy and decision making. In other respects it is a complex analysis involving 5 countries and multiple *sectors* of regional institutions, governments, civil society, and business; within the government sector, multiple ministries and levels of authority; and focus *issues* (or industries) of hydropower, mining, and land concessions.<sup>1</sup> At whichever level, PEA consists of several main forms of analysis: stakeholders, institutions, and processes (World Bank and OPM, 2008: 12-15). 'Institutions' refers here not to organizational structures, but rather to rules of the game, which can be formal institutions (written laws and policies) or informal (the ways the game is played).

While the literature on EIA from a technical perspective is immense, our research process represents one of the few examples of EIA examined through a political economy lens (see, for instance, Lo et al.,

<sup>1</sup> These issue areas are also sometimes referred to as 'sectors', however to avoid confusion of terms, 'sector' is used in this article to mean only components of society.

1997). EIA is fundamentally about sustainable development, based on participatory approaches, application of the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity, and improved valuation, pricing and incentives, including the 'polluter pays' principle (Baird, 2014: 11-12). When imported into new political and economic contexts, however, this internationally accepted understanding of EIA often appears missing. Impact assessment frequently has become a bureaucratic and technical exercise emphasizing the writing and approval of a scientific document, rather than part of a holistic planning process to inform decision making. In these ways, EIA results, like other political-economic processes, are subject to the production and reproduction of power and knowledge.<sup>2</sup>

In the Mekong region, a review by the Asian Development Bank concluded that EIA as it is currently practiced does not lead to sustainable development (ADB, 2010: 99). It is often viewed as an obstacle or a regulatory requirement, resulting in dry, technical reports that are inaccessible to non-experts and frequently not publicly available. Added to this limitation, many EIAs in the region are conducted post-facto, once project construction has begun or final decisions have been made about project design options (Dusik and Xie, 2009: 8). Therefore, EIAs are often seen as a necessary legal requirement and purely an administrative hurdle for the developer. The quality of these documents is often very poor, even after they have been approved, making it inevitable that environmental impacts will not be adequately addressed by project developers (ICEM, 2013: 305).

EIA is the best known of several acronyms referring to environmental assessments that are currently discussed in the Mekong region (and beyond). While EIA is concerned mainly with questions of how a project can be implemented to mitigate and reduce anticipated environmental and social impacts, the broader category of Strategic Environmental Assessments (SEA) examines environmental impacts and issues at a higher sectoral or policy level (Dusik and Xie, 2009: 1). EIAs can also be considered cumulatively across multiple projects or across borders. Finally, some countries and agencies have integrated EIA with social assessments (ESIA) or public health (EHIA).

## **STAKEHOLDERS IN THE EIA POLICY PROCESS**

The primary focus in political economy stakeholder analysis is assessing positions, interests, and levels of influence of various actors. Analysis can determine who are key supporters or champions, who are 'influencers' sitting on the fence, and who might potentially block a particular policy or action. In our research process, we found that identifying the best people to interview was already half of the process towards a complete stakeholder analysis.

Overall, our findings suggest that the further someone is from EIA policy processes, the more supportive he or she is likely to be of EIA reform; in other words, support and influence are inversely related. This can be explained through the observation that stakeholders who are directly involved in EIA policy have generally had high influence on forming current processes and systems, thus are relatively satisfied with the current situation and have few incentives to change. Stakeholders who are situated on the outside of policy processes (perhaps including civil society actors, academic experts, and government officials from less well-connected agencies) are inclined to be more critical of existing systems and more supportive of reform.

### **Environment ministries**

The first set of key actors in the EIA policy process is national government ministries with a responsibility for environmental protection. These ministries, and particularly specialized EIA

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<sup>2</sup> Thanks to an anonymous reviewer for suggesting a link to Michel Foucault's thesis on the reproduction of power and knowledge through technical processes.

departments within them, serve as focal points for each government on coordinating related laws and policies. Thailand has had EIA legislation and government capacity to manage it since the 1970s. In the other Mekong region countries, EIA is a newer policy topic. Ministries have made enormous progress in developing and regulating EIA systems in a remarkably short time. This had led inevitably to overload, as ministries' capacity has not developed as quickly as the needs and demands placed on them. This challenge is particularly acute in Myanmar due to the rapid opening and political transition there: the new government has enacted new laws and formed new institutions, including the Ministry of Environmental Conservation and Forestry (MOECAF) established in 2011.

Ministry structures vary somewhat among the five countries. Cambodia and Thailand have dedicated environment ministries (MONRE in Thailand, MOE in Cambodia). In Vietnam and Lao PDR, MONRE combines environment, land, and (in Vietnam) energy and mining functions, although important aspects of natural resource policy are also housed elsewhere. In Myanmar, environmental protection is managed by the Ministry of Environmental Conservation and Forestry (MOECAF).

Most environment ministries have a dedicated EIA department (Table 1). These departments are the main drivers of EIA legislation and implementation. In Cambodia, Lao PDR, Myanmar, and Thailand, EIA departments have final approval authority for EIA reports – though this is not the same as final project approval, which rests with the relevant ministry. In Vietnam, EIAs for some larger projects of national scope are approved by the MONRE EIA department, while others are approved by other ministries, by provinces, or even in some cases by state-owned enterprises themselves.

Table 1. Environment Ministries and Departments Responsible for EIA in the Mekong Region.

Country	Ministry Responsible for Environmental Policy	Department Responsible for EIA Policy
Cambodia	Ministry of Environment	EIA Department
Lao PDR	Ministry of Natural Resources and Environment (MONRE)	Department of Environment and Social Impact Assessment (DESIA)
Myanmar	Ministry of Environmental Conservation and Forestry (MOECAF)	Environmental Conservation Department (ECD)
Thailand	MONRE	Office of Natural Resources and Environmental Policy and Planning (ONEP)
Vietnam	MONRE	Department of Environmental Appraisal and Impact Assessment (DEAIA), part of the Vietnam Environmental Administration (VEA)

EIA departments and environment ministries have leading roles in EIA policy and implementation. In the siloed world of government bureaucracies, EIA clearly 'belongs' to them. Respondents from other ministries and agencies universally referred EIA-related questions back to EIA departments. A Myanmar respondent describes that "MOECAF is the key actor in all environment-related policy processes. Other ministries and CSOs are just sitting in the meeting room not to have any vacant chairs". In Thailand, ONEP (an office under MONRE) acts as coordinator for all EIAs according to the Enhancement and Conservation of National Environmental Quality Act of 1992. The EIA office is responsible for providing comments and suggestions to EIA reports and can also withhold permission if the EIA is not correct or incomplete. The EIA then passes to an Expert Review Committee for approval before being returned to the permitting agency that grants the license for the project to be implemented.

This focal position should not hide the reality that environment ministries are almost universally the weakest relevant government agency in terms of power and influence. A Vietnamese respondent put

this succinctly: "EIAs are approved by MONRE, but MONRE is not yet powerful". Environment ministries have limited influence to change policy and practice; key decisions are made elsewhere. External donors' generous support for environmental ministries may paradoxically isolate them further from other, more influential government agencies, leaving overall power relations unchanged (Suhardiman and Giordano, 2014). If, as is often the case, only the environment ministry is represented in a regional or international meeting on environmental issues, this is almost certain to have little effect on overall government policy.

As a Cambodian respondent describes the situation prior to development of the new draft EIA Law in 2014,

Theoretically and technically, MOE's mandate is to lead decision making for EIA policy development and EIA approval, including the assessment, law enforcement and implementation. However, the actual decision making for resource assessment and EIA is operated by different ministries who have mandates to manage natural resources. For instance, if the Ministry of Agriculture, Forestry and Fisheries advise and suggest that economic land concessions granted do not have any negative impact on an affected community, then the Ministry of Environment EIA Department would not object to this decision making. The same goes for the Ministry of Mining and Energy and other ministries. Therefore, it's fair to conclude that EIA is just a box-checking exercise.

Lao government respondents paint a similar picture. EIA department staff do not have sufficient expertise or time to provide in-depth review of EIA reports; sometimes they have to review three different projects in one day. Reviews of EIA reports mostly focus on basic aspects, such as grammar. "Mostly, the government is concerned with the format of the EIA and whether all of the questions have been answered. It's like a checklist".

Both Lao and Vietnamese officials confirm that no EIA report has ever been rejected by the EIA department. A Lao respondent explains, "If the companies did not pass the EIA we recommend that they go back to improve it, but most of them passed and there haven't been any that didn't pass, because they already received approval from the government, we only help to mitigate the impacts". In this case, EIA is still a useful exercise. In a few instances when projects have been cancelled, EIA was not the primary reason. For instance, the Dong Nai 6/6A dam EIA in Vietnam was approved by MARD, MONRE, and the Ministry of Industry and Technology (MOIT) – then, after a public campaign by media and CSOs, the project was withdrawn at the Prime Ministerial level because its location touching a national park violated another provision of the Environmental Protection Law. Such instances of project cancellation are rare; more often, the EIA process identifies potential impacts and is meant to put adequate and appropriate mitigation strategies in place. In Thailand, ONEP officials also stated that there has never been a case of EIA report rejection. However, there have been occasions when the project owner cancels a project themselves because the cost of EIA is already quite high (over US\$100,000 per report, according to one respondent), and having to add extra costs to improve the EIA might not be worthwhile.

A major limitation faced in all countries is a perceived lack of cooperation among government agencies. In Cambodia, for instance, "[all ministries] believe that they have a mandate to access and control resources, therefore harmonization and working together is hardly ever done". Although inter-agency working groups have been formed, in practice each ministry operates 'like an island'. Additionally, there are frequent changes in position among government officials, as well as companies. Information sharing even within environment ministries (between EIA departments and other departments) is often not adequate. A Lao government respondent stated: "[the ESIA Department] doesn't send EIAs to [our department] for all projects, they only send for some projects, but it is not clear why they do this and how they decide... After the review, however, we do not know what happened with our comments, whether or not they incorporated them – we don't see the final EIA".

### Other central government agencies

Interview respondents in all countries stated that EIA policy processes would be more effective if additional government ministries were involved in addition to environmental agencies. A particular emphasis was frequently placed on economic-oriented ministries that are linked to the regional 'connectivity' agenda, as well as ministries responsible for land policy, hydropower development, and mining. However, when contacted many of these ministries tend to refer EIA questions back to the environment ministry.

Inter-ministerial coordination is perhaps the largest challenge in Vietnam, where six other ministries share EIA (and SEA) approval responsibilities with MONRE's EIA Department. The Ministry of Agriculture and Rural Development (MARD) has the second largest number of EIAs after MONRE (Dang and Mai, 2014). General departments under MARD (such as Fisheries and Forest Protection) are responsible to approve EIAs in relevant areas. Meanwhile, cross-cutting agricultural or irrigation EIAs are approved by the MARD Department of Science, Technology and Environmental Management. The Ministry of Industry and Trade approves EIAs for projects under its responsibility, including hydropower and mining (World Bank, 2014: 5). EIAs for smaller-scale projects may be both carried out and approved directly by one of the 17 state-owned enterprise conglomerates (SOEs) that MOIT manages in coal, petroleum, electricity, and other areas. The ministries of Construction, Health, Planning & Investment, and Transport are also responsible to approve certain EIAs in their areas of expertise.

In Cambodia, EIA approval authority is more clearly concentrated in MOE. The difficulty lies that EIAs are closely linked to project approvals through the Council on Development of Cambodia (CDC) or the Council of Ministers (COM). MOE leads on the technical EIA issues, but interview respondents state that many project decisions are made at higher levels, often before the EIA has been completed. Some projects are reportedly fast-tracked: for large-scale investment, CDC or the COM may influence the process in order to push through the investment opportunity and contribute to economic growth. Once approval is received, the proponent can begin implementing the project. An EIA may come later, saving time and resources for investors.

The key ministerial actors in Lao PDR are the Ministry of Energy and Mines (MEM) and Ministry of Planning and Investment (MPI): they have fixed targets for project development while MONRE only a general mandate (Suhardiman and Giordano, 2014). MEM is heavily involved in the EIA process for hydropower and mining projects. Development projects involving land concessions are shared between MONRE and MPI; MPI approves the investment while MONRE approves the contract to concede land, so developers need to receive both the right to invest and the right to land. In the resulting bureaucracy, large projects are sometimes approved faster than small ones (Schoenweger and Üllenberg, 2009: 13). An interview respondent adds that this occurs "especially if the document includes a note from senior level officials that it should be processed quickly". Despite MEM's central role and the priority given to hydropower, MEM is reportedly no richer than other ministries, as all funding from hydropower goes directly into the national budget.

In both Laos and Cambodia, National Assemblies are playing a somewhat more active role in environmental policy-making than previously. The National Assembly of Laos is legally mandated to approve all large projects such as dams, on the recommendation of government ministries. In Cambodia, by contrast, members of parliament from both the ruling and opposition parties play active roles in the environment committee. Parliamentarians receive complaints from villagers, send letters to ministers, and (on at least one occasion in Koh Kong province) have gone on site visits to monitor an EIA feasibility study.

In Myanmar, responsibilities for agriculture and economic issues are divided among multiple ministries. MOECF manages upland (forest) land, while the Ministry of Agriculture and Irrigation has responsibility for lowland agriculture and reportedly does not cooperate well with MOECF. Ministries of Mining, Electric Power, and Industry are all separate. In the political transition process, government

ministries have become more transparent and less bureaucratic, though many civil servants remain from the previous military regime. Officials have become easier to approach for collaboration with NGOs and donors, but observers still note a lack of collaboration among different ministries and departments. Although MOECAAF has taken steps to invite other line ministries to take part in policy consultations, staff in other ministries express that their inputs and suggestions are not fully taken into consideration.

In Thailand, in addition to ONEP, key central government players in EIA policy are the National Health Commission Office (NHCO) and the National Economic and Social Development Board (NESDB). The NHCO has initiated the Health Impact Assessment (HIA) tool and mechanism, which has been adopted by ONEP into EHIA and first implemented in 2009. The NESDB formulates the National Economic and Social Development Plan, an important role in linking environmental policies to investment and economic development. The current climate of uncertainty in Thai politics restrains ministries from moving forward with any new initiatives or implementation, until there is clear direction from above.

### **Sub-national government**

The pattern of multiple responsibilities and limited coordination among central-level ministries is replicated in relationships between central and provincial-level government agencies in each of the Mekong region countries. However, specific patterns and roles differ. Thailand and Cambodia are the most centralized with respect to EIA policy. Sub-national governments are involved in implementation of EIAs but do not have decision-making power. In Thailand, only seven provinces are involved in reviewing and approving EIAs in environmental protection areas, mainly in the southern region. All other EIAs are approved at the national level. Similarly, in Cambodia provincial Departments of Environment are mandated to approve EIA reports for investment projects up to \$2 million, but are limited in capacity and staff as well as budget allocation.

Vietnam, by contrast, has a highly decentralized system of EIA (Clausen et al., 2011). According to Decree 80 (2006), EIAs for projects of smaller physical size are approved at the provincial level, making up 75% of total EIAs in the country. In several decades of administrative devolution, the centre has ceded significant authority to provinces, so that the province is now the key level for EIA implementation. Provinces compete with each other to attract investment. Provincial departments (of Natural Resources and Environment, Planning and Investment, etc) report primarily to the provincial People's Committee (government), and only secondarily to national ministries, meaning the ministries have limited leverage.

Provincial leaders who want to improve their economic development performance frequently allow project owners to delay in submitting an EIA report (much as was observed at the central level in Cambodia). This means the project owner can receive approval for investment first and conduct an EIA later. Several Vietnamese respondents complained of provincial government collusion with dam builders and other investors. Provinces are unable to regulate investment as a result and are reduced, in one anecdote, to 'urging' a builder to follow safety standards. The builder didn't, and the dam later collapsed.

Myanmar has a complex system of state and regional governments that have different departmental structures from the national (Union) level (Nixon et al., 2013). As one central government respondent describes, "sub-national level government agencies have no influencing power or voice in national level policy making processes, like the Environmental Conservation Law (ECL) or EIA process, even though most environment-related problems occur in these regions". The role of states, ethnic groups, and other sub-national actors is a critical and sensitive topic given Myanmar's history and ethnic makeup. "On the ground", says a non-governmental respondent, "power is based in local government and local military commanders", not central authority. In Kachin State, for example, the KIA (Kachin Independent

Army) controlled area has its own Land Use Policy. Conflicts continue around some large-scale projects, such as the Lapadaung copper mine in Sagaing Region and the proposed Hat Gyi dam on the Salween River in Karen State.

In Laos, land concessions less than 150 hectares can be approved by the province, and in that case no EIA report is required. Some examples exist of projects over this amount still approved at provincial level (Schoenweger and Üllenberg, 2009: 12). In other cases, projects are pre-approved at central level and then handed down to local authorities (a pattern also observed in other countries). "When approval reached the local level", a Lao respondent described a logging concession, "the local officials feel unable to refuse the central level directive and had to allow logging in the conservation area. Also, another problem is that there is no master plan showing where different types of investments should be allowed". According to one interview respondent, up to 60% of project budgets are reportedly allocated to resettlement; provincial and local leaders are concerned about resulting livelihood issues, but a central government official reports that "we have to motivate the province to implement the resettlement decree" for approved projects.

### **Public participation in EIA processes**

The phrase, "Meaningful public participation is still lacking", or a variation on it, was a universal finding from both government and non-governmental research respondents. A Vietnamese respondent termed community consultation "extremely poor. I don't accept the explanation that people are uninformed or stupid, they're just not consulted". A GiZ review finds that while Thai EIA procedures are generally sound, there is not enough public participation unless there is a specific campaign to promote it (Wironajagud and Apipalakul, 2014: 15). Similar findings arise from a study of the Ba Ha hydropower project in south-central Vietnam: environmental mitigation measures were taken for flood warning downstream, but no consideration was made in the EIA report for resettlement and livelihood impacts on people in the flooded area (Thai et al., 2013: 41).

When consultation does occur, it is frequently limited to the lowest level of local government, such as the Chief of Tambon (sub-district) Administrative Organizations in Thailand or commune People's Committees in Vietnam. In Laos, consultations often do not proceed past provincial or district levels. In either case, local leaders do not always represent the views of all residents, even in systems in which they are elected: in numerous cases, they have reportedly made private deals with developers. A Lao government respondent stated, "Villagers generally don't participate in the ESIA process, this is a major lack in the current approach... Public consultations for EIA do occur, but they're mostly with other parts of the government and with the affected peoples, not with the general public or civil society...they are top-down consultation". In this case, a more appropriate term might be "information sharing to an invited audience", neither public nor a (two-way) consultation. Vietnamese legislation provides for consultation of directly affected communities, but not public consultation involving CSOs or others who are indirectly affected. Government officials state that it is difficult and time-consuming to determine who is directly affected and who is not.

Second, the amount and quality of information provided in consultations is said to be incomplete and biased, often because investors themselves are the only information providers. From a business point of view, one respondent expressed concern that if regulations increase the amount of consultation needed without requiring improved quality information provided and participatory processes, it will just increase costs for companies. In this view, the issue is not the scope of consultation but the fact that it is not taken seriously by project proponents or local authorities. In some cases, the information that is provided is incomprehensible to the target audience, as with the example of a billboard posted in an indigenous area of Cambodia in Khmer language, which local residents are unable to read (Brewster, 2014: 8).

Third, citizens (including local government representatives) are given insufficient time to respond. In Vietnam, the time frame for a local commune to agree or disagree to a proposed project is 15 days. Most local officers don't have enough information or capacity to achieve this. As a result, central officials have never heard of cases in which a commune opposed a plan, or even asked for more information.

### **Civil Society**

Civil society refers here to organized efforts by citizens to affect EIA policies. Although much less influential than government actors, the role of civil society is rising across the region through what is referred to as 'track 2' or semi-official policy-making (Dore, 2014). Key regional examples of civil society action on EIA come from the Save the Mekong Coalition and linked trans-boundary cooperation on the Xayaburi dam currently under construction in Laos. Other civil society and/or policy research networks focus on community-level action research, such as Tai Baan, Sumernet, and M-POWER. Each of these regional coalitions and networks is made up of national members in all Mekong region countries. Multiple networks gather at regular workshops and conferences at venues such as the annual ASEAN People's Forum (APF) or around Earth Rights International's Mekong School. The APF began as a government-organized initiative arising from an ASEAN civil society conference in Malaysia in 2005. Over the past ten years, it has evolved into the largest regional networking space of civil society and people's groups in Southeast Asia. The 2014 APF notably called for an ASEAN safeguard policy to protect people from social and environmental impacts of investment projects.

A key stakeholder group in civil society action is lawyers, who often do not receive as much attention as the higher profile NGOs. Legal action on EIA has been particularly robust in Thailand, with its well-developed court system – as seen in the current case of Thai citizens suing the Electricity Generating Authority of Thailand (EGAT) for not applying EIA in funding construction of the Xayaburi dam and other mainstream Mekong dams (The Nation, 2014). In addition, the Thai National Human Rights Commission is examining cases of foreign investments by Thai companies, for instance sugar plantations in Koh Kong province, Cambodia. On the Thai-Myanmar border, communities complaining about impacts of the Hat Gyi dam on the Salween River are calling for a new EIA on impacts into Thailand (Aye Aye Win, 2014).

Both Thailand and Cambodia have established mechanisms for including civil society voices in EIA policy. In Thailand, this happens via an informal EIA network including NGOs, academics, and lawyers who advocate for EIA reform. Members of the network are sometimes represented on Expert Review Committees for EIA. In Cambodia, an EIA technical working group, chaired by MOE, was set up in 2011 with facilitation from donors. The NGO Forum on Cambodia and Development and Partnership in Action (DPA), among others, are included as civil society representatives of the working group. DPA has involved, for instance, in developing guidelines for the oil and gas industry and reviewing EIA reports. This can be viewed as a model of good practice for cooperation in the region. Nevertheless, stakeholders involved in the working group report that it operates in an ad hoc manner without a clear strategic direction. Participants are given only one week or less to review EIA reports (of hundreds of pages) and feel that their input and feedback is more tokenistic than substantive. Still, this is a mechanism that can be engaged with to become more deliberative and participatory.

The roles of civil society and government in Myanmar are also becoming more closely linked as the transition process continues. The Myanmar Land Core Group, a network of INGOs, national NGOs, business and individuals, comes under the UN-sponsored Agriculture and Food Security Working Group. Its members are fully aware of trans-boundary environmental issues. One NGO, BANCA, carried out an EIA on the Myitsone dam project and has also participated in the Dawei (Tavoy) port project. Another Myanmar NGO, EcoDev, conducted a People's EIA on a mining project in Dawei in collaboration with a private company, bringing in multiple stakeholders for public training and surveying of impacts. Also, a

local CSO sent a complaint letter to the Thai Human Rights Commission and is suing the investors in Dawei.

During the process of drafting the Environmental Conservation Law (2012), MOECAP's ECD invited only a handful of registered CSOs for consultation meetings, such as the Renewable Energy Association Myanmar (REAM). MOECAP has since changed and become more open to invite NGOs to consultations, forum, and workshops. These meetings are "quite regular, almost one or two meetings in a month". In preparing Myanmar's EIA procedures, MOECAP has organized three public consultations that have been open to registered and unregistered CSOs alike. However, NGO participation is limited due to time demands and feelings that their input is not taken into account by decision makers, who treat the consultations more as briefings or information sessions. The overall sense is that the process for input into the Land Law in 2014 organized by the MOECAP Forest Department has been more open than other processes in the past. One contribution has been EIA training conducted by the Vermont Law School for CSOs such as FREDa, a Myanmar NGO comprised of retired forestry officials.

In Vietnam, a 'Mekong network' of leading advocates in the south, linked to Vietnam Rivers Network, has been active on water governance issues. Members of this network led opposition to the Dong Nai 6/6A dams in 2011 (which would have affected a national park), and are now carrying out community consultations on effects of the proposed Don Sahong dam. Among Vietnamese NGOs, PanNature (People and Nature Reconciliation) has taken an interest in regional EIA issues, initiating a Mekong Resource Forum on Vietnamese investment in Laos and Cambodia that has held two workshops since 2011. Vietnamese civil society has also begun to respond to long-standing concerns from Cambodia about trans-boundary impacts from dams on the Sesan and Srepok rivers, which originate in Vietnam and flow into Cambodia (Lor and Ham, 2013).

Perhaps the most distinctive feature of environmental advocacy in Vietnam has been the role of professional associations and retired officials. These technical experts are active members in environmental networks and are also involved in EIA appraisal committees, comparable to the process in Thailand. As semi-governmental, semi-civil society 'straddlers' (Read and Pekkanen, 2009), they have strong connections both inside and outside the government system.

Laos is held by many observers to be the most restricted context for civil society action in the region. For instance, no known consultations were held to gather input to revision of the EIA Decree or other related ministerial instructions. Lao non-profit associations (NPAs) can and do participate in environmental consultations, but often in a supporting rather than an active role. Academics also comprise a possible venue for influencing and dialogue. At the same time, local villagers in Laos are becoming increasingly assertive in making complaints about perceived land and environmental violations in their communities. As one Lao government respondent states, "villagers are not the same as before. They raise concerns to the National Assembly [and] to the government... they didn't do this before".

In sum, regional governments are increasingly open to including civil society in EIA consultations. However, some officials admit that they do not always know who to ask or how to share information. This suggests a linking and convening role for international NGOs and donors, but brokers should also be aware of the risk that government agencies only include civil society voices when an external donor pays for it.

## **Businesses**

The business sector plays a driving role in development projects in the Mekong region. Often referred to as the 'private sector', regional businesses actually include both private and state-owned firms. For purposes of illustration, some examples of private investors include Thailand's Charoen Pokphand (CP) Group and Vietnam's Hoang Anh Gia Lai (HAGL), with agribusiness and land investments respectively; the Malaysian Mega First Corporation Berhad proposing to construct the Don Sahong dam in Laos; and

the (100% Thai-owned) Italian-Thai Development Public Company involved in constructing the Dawei port in Myanmar. The state sector includes electricity monopolies like EGAT in Thailand and Electricité du Laos (EDL) in Lao PDR as well as conglomerates such as the Vietnam Rubber Group or the Union of Myanmar Economic Holdings Limited company (UMEHL) in Myanmar. Military companies in multiple countries are also involved in regional land deals, logging and extractives.

Large state-owned and private businesses frequently have close connections with government officials. In the Vietnamese system, respondents point out that the Politburo and high-level government officials often reflect the interests of SOEs, especially large enterprises such as Electricity of Vietnam (EVN) and Vinacomin. The cosy relationships between business and the military in Myanmar originated before the transition process started; their deals are still in place but in a weaker position than previously. Investors in the region are increasingly concerned about their reputations in neighbouring countries. In response to a critical report by the international NGO Global Witness, for instance, the Vietnam Rubber Group (VRG) has opened a grievance mechanism in Laos that allows villagers to send complaints directly to the company. HAGL, which was also named in the report, has not yet taken any such action, perhaps because its private ownership is less sensitive to national image considerations than the state-owned VRG.

Among the Mekong region countries, Cambodia, Laos and Myanmar are primarily at the receiving end of regional investment, including large flows from China and increasing agricultural, mining, and rubber investments from Vietnam. Thailand's main role is as an investor and developer in other countries; for instance, no large dams have been built in Thailand since the 1990s, but EGAT (the international branch of EGAT) is a major actor in regional hydropower development. Laos has set up a branch of EDL called EDL-GEN to operate domestic dams and develop new projects in the future. Vietnam is in a middle position, receiving large industrial and agribusiness investments while also increasingly active in land and mining concessions in neighbouring countries.

Interview respondents concur that whether or not hydropower and mining projects are implemented, and quality EIAs conducted, depends mainly on investors' commitments, not on government policies or regional institutions. A Lao government respondent believes that

Investors often have good objectives, they want to help the country develop, improve people's livelihoods, but they don't follow this in the implementation of their project and the government has a very difficult time managing [and] regulating what they do. The government plays an important role only in the process of signing off on the project, and working on the terms of the contract agreement, but once approved [the investors] are basically able to do what they want without regulation.

Business attitudes to EIA overall are to see it as paperwork, rather than a concern with the environment. Nonetheless, the need for contract approval offers a strategic entry point to influence investors' behaviour, though leverage is necessarily limited without strong monitoring and compliance systems. In addition, most investors have formed relationships with economic ministries, not the environment ministry. In Laos, companies who have signed contracts with the Ministry of Planning and Investment see that their only reporting requirement is to this partner. "They don't see DESIA and the environmental sector as important because of this", says a Lao government respondent, "and MPI doesn't share the reports with DESIA".

If investors, in Laos or elsewhere, choose an independent EIA consulting firm, there is a risk of long, complex procedures. But if they pick one that has good relations with the province or ministry, the process will be faster, though poor quality. In this way, companies that want to be decent face more problems from authorities – those that accept the system as is have an easier time. A commonly cited practice was for investors to design projects of a size lower than the minimum requiring an EIA, or types of projects that avoid the EIA system; a Thai respondent compares this practice to a runner going around a fence instead of putting in efforts to jump over it.

At present, a Vietnamese respondent notes, many environmental regulations are "unrealistic and of poor quality... cannot be implemented properly or conflict with one another. This creates danger and uncertainty for business, as it's a system in which everyone is guilty of something. Authorities can use threats of inspection or penalties arbitrarily". Companies of whatever nationality want clarity and predictability from the EIA process so that they can implement their project in a timely and least-cost way. Thus, investors might be neutral or moderately in favour of EIA reform if this increases clarity and reduces conflict with communities and authorities (Brewster, 2014: 20). Additional EIA requirements might increase their formal, up-front costs, but reform of procedures could lower hidden costs, leaving them better off overall. Multinational corporations that work in multiple countries state that they would like to see clearer rules and harmonized standards across countries to reduce transaction costs. One stakeholder group that could be engaged is company lawyers, who are aware of the costs and benefits to a company for doing an EIA properly compared with doing a poor job that might lead to problems later.

Private sector actors also include banks, whose funding is crucial for large infrastructure projects to go ahead. For instance, four Thai banks (Bangkok Bank, Kasikorn Bank, Krung Thai Bank, and Siam Commercial Bank) are currently investing in the Xayaburi dam in Laos. Like other domestic banks in the Mekong region, these banks do not yet comply with international standards such as the Equator Principles, a set of principles, criteria and indicators for the banking and finance industry (MPE, 2014: 35-36). A Thai interviewee also emphasized the importance of corporate social responsibility through the ISO Environmental Standards for Project Proponents as an untapped mechanism for improving compliance of lending institutions involved in international projects. Some domestic banks may use varying levels of social and environmental risk management tools to evaluate loan applications, but these are unlikely to be sufficiently robust to meet international standards. According to one Vietnamese respondent, banks prefer to shift responsibility for risk management to governments, but few governments have such safeguard systems in place.

Power purchase agreements are signed in advance of hydropower construction with state energy companies such as Thailand's EGAT. A national government can desire to develop hydropower or other resources as much as they want, but cannot go forward unless there are purchase commitments and investors. Previously regarding electricity production from hydropower in Lao PDR, 85% went directly to EGAT and 15% to EDL, so that Thai purchasing decisions determined production levels and resulting benefits to Lao investors. The Lao government is now shifting to a system in which EDL acts as a middleman, buys all electricity and then can resell to various countries, not only Thailand. According to the SEA on mainstream Mekong dams, Laos will receive a maximum 31% of the benefit from hydropower sales: the rest goes to investors (ICEM, 2010: 12).

### **EIA consultancy firms**

In all Mekong region countries (and elsewhere), it is the responsibility of project proponents to select EIA consultancy firms and cover all costs for the assessment, giving contractors de facto control over the EIA contents. Licensing requirements vary; some countries do not have many licensed firms to choose from. Some consultancy firms perform high quality work; others are weak due to a lack of training, funding and timing limitations for data collection. A lack of confidence expressed in the capacity of EIA consultants was a recurring theme in PEA interviews. (Government agencies that approve EIA reports face similar capacity constraints, but were not subject to the same level of distrust, perhaps because of the greater deference and respect shown to government officials.)

In Cambodia, there are currently at least 15 local EIA consulting firms; respondents assess their work of varying quality, and that "most of their standards did not follow the EIA sub-decree". Though ostensibly private, some consultancy firms are believed to have close connections with local or national authorities and project owners. Consultancy firms in any setting have a vested interest in having EIAs

approved (Brewster, 2014: 9), as they want to attract more business. Even the best EIA report is "not objective", says a Vietnamese government respondent: "the report presents problems and says all of them can be mitigated. This is because the investor hires the [consulting] company and is responsible for the result, so consulting companies will never produce a negative finding".

Another Vietnamese respondent argues, "If you have a choice of doing the EIA well with an independent consulting company or choosing the company with good government linkages, many businesses choose the second. If you choose the first, you face a risk of the EIA not being approved quickly and leading to problems for investment". Respondents in another country report that project proponents sometimes contract staff of government agencies responsible for approving the EIA as consultants to carry out the EIA. This ensures that the EIA report is approved quickly. As one respondent described, "[p]aying is the only way to get it through, otherwise it will get criticized and blocked by the government, even if it is a well-done EIA and high quality. Companies are better off subcontracting it to the government". At worst, in situations where EIA is not taken seriously, it becomes an administrative process for governments and consulting firms to extract funds from investors (Brewster, 2014: 8).

As a result, consulting companies in many settings do not function as independent third parties in the EIA process: they are an arm of the project developer and/or the government (who might also own or be closely linked to the investing company), creating a clear conflict of interest. The same limitation can occur with EIA appraisal committees that are chosen by the agency responsible to ensure approval. This may be seen in narrow terms of reference provided by the investor (only looking at immediate impacts in the vicinity of the project, not longer-term or more distant effects) or an executive summary that does not reflect the actual content of the report. In one case in Laos, a non-government respondent suggested that government pressure produced an EIA report that understated potential impacts (see National Consulting Company, 2013). In this respondent's view, the principle of an independent EIA was not in itself an issue for the Malaysian investors.

### **Regional cooperation structures**

The next sub-sections of stakeholder analysis examine the complex political economy of regional structures: inter-governmental mechanisms for cooperation and international financial institutions (IFIs, e.g. World Bank Group and Asian Development Bank). The Mekong River Commission, IFIs and ASEAN have overlapping mandates and roles, each relating in different ways to different parts of national governments.

The Mekong River Commission was established via the 1995 Mekong Agreement among Cambodia, Laos, Thailand and Vietnam. (China and Myanmar also share portions of the Mekong basin and participate in the MRC as observers.) The MRC is made up of a secretariat in Vientiane and National Mekong Committees (NMC) in each country. In Laos, Thailand and Vietnam the national committee is under the environmental ministry. In Cambodia, it is led by the Minister of the Ministry of Water Resources and Meteorology (MOWRAM) (Suhardiman et al., 2015: 206). The NMCs have a unique position: isolated from the mainstream of environmental policy making in their respective countries, yet influential in regional issues and access to funds.

One of the original MRC functions set up in the 1995 agreement was prior consultation in case of trans-boundary environmental impacts. This requirement was clarified into the 'Procedures for Notification, Prior Consultation and Agreement' in 2003 (Baird, 2014: 27). The PNPCA were first implemented in the Xayaburi dam case in 2011; the current Don Sahong consultation is MRC's second attempt. Previous attempts to develop trans-boundary EIA (tbEIA) protocols have not yet been agreed on by MRC member countries; however, efforts are ongoing. Faced with a complex political-economic context, the MRC secretariat has sought to use EIA and SEA processes to open space and raise issues to a regional level (Suhardiman et al., 2015: 210).

Member states rarely refuse to comply with MRC decisions, but they can interpret the Mekong Agreement in a way that serves their interests. For instance, there has been disagreement whether the Don Sahong hydropower project should fall under the 'prior consultation' or 'agreement' provisions of the PNPCA, and even whether it is considered a mainstream Mekong dam (since it does not block the entire mainstream, only a portion of it). The PNPCA period is 6 months, and can be extended by consensus; in the case of Don Sahong, the MRC Council announced that the starting date of the consultation process had occurred a month earlier without any public announcement, in effect shortening the period to five months (Te, 2014).

Among the many research and technical initiatives of the MRC are the Initiative on Sustainable Hydropower, which includes benefit sharing, socio-economic impacts, gender aspects (in cooperation with GiZ), impact mitigation, and risk assessment. MRC has also produced Guidelines on Multi-Purpose Evaluation of Hydropower Projects and a Rapid basin-wide Hydropower Assessment Tool to measure the full economic value and cost-benefit analysis of proposed projects. Overall MRC is in favour of "the preparation and promotion of best practice guidelines" (MRC, 2014: 39) including guidelines for "protection of vulnerable resource users" and design guidance for dams. MRC guidelines make no mention of SEA or EIA, instead preferring terms such as 'risk assessments' and 'uncertainties'. Once these risks and uncertainties have been noted, however, the guidelines lack a framework to assess their impacts.

The limits of regional cooperation have been clearly in view in MRC's unsuccessful attempts to introduce a tbEIA requirement for development along the Mekong River (Baird, 2014: 28). The initiative enjoyed broad donor support, for instance through training for regional government leaders in 2009 funded by the European Commission and USAID. As a (supportive) Vietnamese respondent concluded, the tbEIA effort failed because upstream and downstream countries had different interests. A Lao government official saw the situation differently: "The experts from MRC created the [tbEIA] framework" and foisted it on them without their agreement. Despite MRC's best efforts, it was unable to convince Lao and other stakeholders that agreement would benefit their interests. The experience of trans-boundary EIA is often cited as an example of how Mekong sub-regional processes are not working. However, these risks are not specific to the MRC and could be faced by any regional institution or actor. Conversely, when there are no political obstacles, MRC has shown that its members can come together to implement trans-boundary actions, such as the Regional Action Plan for Transportation of Dangerous Goods on the Mekong River (MRC, 2012).

The MRC is currently engaged in a Council Study (full title: 'Study on Sustainable Management and Development of the Mekong River, including Impacts by Mainstream Hydropower Projects'), commissioned by regional Prime Ministers when the MRC Council met in Ho Chi Minh City in April 2014. The study aims to decide what Mekong watershed development can be considered optimal, to fill knowledge gaps and "minimize the uncertainty" around both "negative and positive impacts (including cumulative and trans-boundary impacts)". With this information, MRC can identify "appropriate measures" to "enhance the benefits and mitigate the negative impacts throughout the Lower Mekong Basin" (Manguerra, 2014). At the same time, the Vietnamese government has funded its own study of impacts of mainstream hydropower development in the Mekong Delta; as of late 2015, the Vietnam National Mekong Committee and consultant team are in the process of completing the impact assessment report. Although the initial findings appear to be of high technical value, the processes of both studies underscore the challenges in trans-boundary approaches to EIA, whether through a regional institution or from the initiative of a single state.

## **EIA INSTITUTIONS AND PROCESSES**

In a political economy approach, the term 'institutions' refers to rules of the game. Our analysis examines both explicit policies and implicit interests and norms to answer a core question or dilemma

posed at the outset of research (Pact, 2014: 6, 9). The core problem identified in this article is why the enforcement of existing EIA laws by environment ministries and other government agencies remains weak. A frequent refrain heard from respondents across the region is that the laws themselves are adequate, but their implementation is lacking. However, as one respondent in Laos noted, this explanation should be questioned: a law that cannot be enforced, or does not consider implementation challenges, should not be considered a high quality law! In any case, the gap between written policy and implementation is wide and growing.

National laws and policies in the five countries differ from each other in some significant respects. The Thai EIA law has been in place the longest, since 1992. In Laos, EIA was introduced in the Environmental Protection Law (1999) and specified in a 2010 Decree and 2013 Ministerial Instructions. Expectations are high for recent reforms: a Lao government respondent says, "I guarantee that new projects starting [from] 2014 will carry out a strong implementation of the EIA and follow the processes". Lao law is based in part on Thailand's; Vietnamese in part on China's. The Vietnamese environmental protection law was revised in 2014, and MONRE is now working on sub-law decrees to implement it, including a decree on EIA, SEA, and environmental management plans.

Myanmar's draft EIA procedures are currently in preparation. The ADB and Japanese donors have supported this process. According to interview respondents, debate about EIA procedures has included questions about appropriate standards and penalties for non-compliance. One key question raised by several government respondents is whether the new law will have 'umbrella' status covering projects implemented by all ministries and agencies. A non-governmental respondent expressed a concern that EIA issues are 'untouchable' for projects owned by military-related companies such as UMEHL.

As a result, CSOs observe that the government is working on EIA on a case-by-case basis only. "Only when they have a problem or concern raised by CSOs or a community, do the respective line ministries and departments work on it", said another respondent. The Environment Conservation Law was enacted in March 2012, followed by EIA procedures in 2013 and regulations in June 2014 detailing implementation of the ECL. In August 2014, the Myanmar Investment Commission issued a list of 30 economic activities requiring EIA. However, these laws and regulations have not yet been put into practice, especially at the sub-national level. As a result, a respondent claims that "most of the sub-national level government staff [have] never heard of EIA". Key projects such as the Lapadaung copper mine and Dawei SEZ have carried out EIAs only "after communities and CSOs' complaints and protests", in the words of a non-government respondent; "the EIA assessment was done during the exploitation process". There is a clear need and opportunity for improvement in the content and dissemination of environmental law in the Myanmar context.

Cambodia passed a sub-decree on EIA in 1999. On the initiative of the Minister of Environment, the EIA Department is now rewriting this into a law. Both government and non-governmental respondents speak highly of the consultation process that MOE has conducted with multiple stakeholders during the preparation of this law. The Vishnu Law Group, a Cambodian firm, has held a series of 6 consultation workshops with MOE on the draft EIA law since 2012; a recent workshop, in December 2014, focused on private sector engagement. The World Bank has also played a supportive role in the law-making process (Brewster, 2014: 17). The contents of the draft law include consideration of trans-boundary impacts, cumulative impacts, indigenous people and human rights, public participation, monitoring and compliance, and penalty provisions.

When the current draft law is passed, it will likely be one of the strongest EIA laws in the region if adopted as currently written. The question is what will happen to the draft law after MOE submits it to the Council of Ministers (expected in summer 2015). According to the Cambodian law-making process, the COM will have an opportunity to edit and change the contents before sending the final draft to the National Assembly. The outcome of the EIA law will be an important test case of the potential and limits of legal reform.

A comparable, but less public process of consultation took place during the revision of the Environmental Protection Law in Vietnam. Observers within and outside the state point to improvements in the revised law: there is more focus on the EIA process, not just a technical report, new dispute resolution mechanisms, and increased space for involvement of social organizations. But there are still many constraints. The law allows for consultation only of directly affected communities, not social-professional organizations who are not directly affected (Le, 2014). The focus of the law is mainly on state management, rather than the rights and needs for public participation. Respondents note that the draft revised EIA decree does not differ from the previous EIA decree (2006) in a major way.

The Thai EIA system is the most robust and long-standing in the region. This includes several features that are not applied in other countries: pre-EIA screening and draft EIAs before the main report; CIA for air pollution; and EHIA considering public health effects. Additionally, since the reform of EIA report during the 5th National Health Assembly in 2012, Thailand has clear protocols and guidelines for EIA consultants and project proponents, including responsibilities to engage in public participation. Thai regulations specify procedures for public participation, including public hearings, roles for environmental NGOs and press, and mandate at least some consideration of alternatives (Figure 2). EHIA, as implemented by health officials, stresses the importance of public participation at a minimum of three points in the process: screening, assessing, and reviewing. This enables a public learning process rather than a top-down approach, an example of good practice in the region.

Critiques of the Thai process include weak social safeguards and the reality that participation procedures are not uniformly applied. Interviewees stated that some public hearings were just "the process of gathering people together rather than meaningful participation". At present, public hearings are only mandated in guidelines from ONEP on EIA/EHIA, not at the level of the law (ONEP, 2013). Conversely, several Thai government respondents felt that "EIA law and regulations in Thailand are too strict, which sometimes slow down the development projects". Another government official claimed that EIA policies are strong but lacking an effective enforcement and monitoring system: "rechecking and post-monitoring of every project is not possible, which is the main weakness". The clarity in EIA procedures does not yet extend to the post-EIA phase, where respondents noted continuing challenges on transparency and public involvement.

Even when EIA and environmental laws are well prepared, a commonly-mentioned issue is that they conflict with other laws passed previously or by other bureaucratic structures in the same polity. Myanmar's Environmental Conservation Law, for instance, overlaps in some sections with the Special Economic Zone Law; SEZs argue that they should only be held accountable to provisions of the SEZ law, not the ECL. Furthermore, with the exception of the Cambodian draft law, no national laws consider trans-boundary impacts. Transborder issues were reportedly considered, but dropped, from both the Vietnamese and Myanmar laws.

In other cases, provisions of environmental laws are simply not followed. In Laos, 50% of 400 national projects have not completed EIAs, according to a government respondent. A Cambodian report demonstrates that the government's granting of economic land concessions doesn't comply with the 2005 Sub-decree on ELCs, which requires ESIA to be completed first. In many cases ESIA is not completed until after the lease is granted, and is of poor quality (NGO Forum, 2012). Limited or no consultation with local communities has taken place, also in violation of the sub-decree provisions. The sub-decree mandates only MAFF to grant ELCs, but MOE has also approved concessions, including some inside protected areas (NGO Forum, 2012). Respondents speak of the primacy of short-term financial interests over laws and procedures in determining what projects go ahead. Environmental and social costs, considered as externalities by economists, are not factored into appraisal decisions (ICEM, 2013: 297). In the words of a Vietnamese respondent, decision-makers "consider money first and environment second".

These examples point to the underlying nature of power in decision making. Succinctly, as stated by a Myanmar respondent, power belongs to whoever has the authority to approve projects and sign contracts with investors. Very little power belongs to the person or agency that writes or approves the EIA. When EIA is just one stage in a project approval process that has already been decided, its political importance is low. As noted earlier, EIA in practice has tended to be downgraded from a tool to promote sustainability to a technical or bureaucratic exercise, with the political decision making and responsibility left to others.

In this political context, there can be no such thing as an independent EIA. A non-governmental respondent in Laos uses these words and adds that EIAs "are there to be influenced, the caveat is who gets to influence them. It's important to understand the process by which EIAs get influenced". In Cambodia, respondents identify the most effective means to address constraints and issues in the EIA process to be "informal channels to the Prime Minister". Similarly, a Thai respondent comments that in reviewing an EIA report, "it is worth looking at the political leader in power at the time too". Although ONEP has formal authority to approve EIA reports and consultants, the actual power in project decision making lies in the hands of investors and politicians. In one case mentioned in an interview, ONEP staff recommended not approving an EIA report but was told that the report "has to be passed" and the project "has to be implemented" as requested by the politician. Technical decisions are thus infused with cultural factors of fear and deference to authority that are slow to change in any political system.

These channels can of course be used by multiple actors for their own purposes. Some well-connected and savvy investors (or possibly corrupt investors) reportedly skip the official project approval processes and engage and work closely with top leaders in various countries, such as the Cambodian Council of Ministers. Vietnamese firms in Laos, similarly, enter into agreements with provincial and district authorities, giving them official authorization for their activities even if they are contrary to national laws or regulations. Central government officials understandably feel in such cases that their authority is being undermined and that they are losing control over projects in their own country.

The sense among government officials of being overwhelmed by demands and the pace of change is a constant in notes from all interviews. Even in Thailand, with its relatively high government capacity, ONEP staff cannot meet demands to consider EIA reports and state that they have insufficient financial and human resources to monitor EIA compliance. In other countries, change has occurred more quickly. "Ten years ago", recounts an observer in Laos, "the government was trying to get any company to invest in Laos. They would give away land, tax breaks, and other big incentives. Now, investment has skyrocketed and outpaced the ability of the government to regulate it". In this and other cases, too much change in too short a time (much of it supported by well-intentioned donors) leads to "reform overload" (Bangura and Larbi, 2006).

What recourse do citizens and communities have when formal procedures are ignored or violated? Thai activists, as noted in the civil society section above, have taken their complaints to the courts, with some initial results. In other countries, legal systems do not provide a feasible mechanism. A Myanmar non-government respondent states, "we don't have a mechanism". NGOs are trying different approaches to a government that is more open than in the past but lacking formal procedures for dispute resolution. In one case, NGOs in the area of the Lapadaung Copper Mine area sent a complaint letter to the Human Rights Commission, and farmers and Buddhist monks have protested against the mine. The government formed an investigation committee lead by opposition leader Aung San Suu Kyi and released a report with recommendations. However, protests and violence around the mine continue without resolution.

In both Myanmar and Vietnam, the media are the default alternative to formal processes, as the government is sensitive to media pressure and seen as likely to respond. In the case of a mining project in northern Vietnam, communities surrounding the site are reportedly upset because the company

hasn't carried out environmental mitigation measures required in the EIA, leading to water contamination. Citizens complained to the province, who said the EIA was approved so there was nothing to worry about. Only when community members convinced a leading mainstream newspaper to run a story on the case did authorities respond.

In Cambodia, the default complaint mechanism is different: street demonstrations. Communities can and do make complaints to their local authorities, but in the absence of public consultation processes for EIA assessment, most complaints have not been resolved. As a result there have been increasing numbers of demonstrations from affected communities where the granted projects to concessionaires affected their livelihoods, environment, and cultural and spiritual beliefs, especially related to land conflicts and resource utilization conflicts. Since the official mechanisms for complaints are not clear or lack political backing, citizens take to the streets, as seen in frequent demonstrations in front of government offices, the National Assembly, and the Prime Minister's residence in Phnom Penh.

A fundamental factor in informal decision making is economic calculations related to national GDP growth, investment promotion, and the government budget. Rapid growth in Cambodia, Laos, Myanmar and Vietnam has been based on a model of natural resource extraction, with benefits increasingly flowing to wealthy elites. A prime example of this trend is the importance of hydropower in Laos as means of earning income and reducing dependence on external donors, who now contribute up to 70% of the national budget. As a Lao government respondent emphasized, "The most important thing is to push investment so that we achieve 8% GDP growth... This is very important. If there is no investment, then we won't achieve our goals". National goals are presented in terms of 'national development' and 'poverty reduction', though not all infrastructure projects directly benefit people living in poverty. The need for central government revenue is itself sufficient to drive large scale infrastructure projects such as dams, mines, or high speed rail.

In Cambodia, the impetus for hydropower development comes from a situation of electricity shortages and high electricity prices. With economic growth in Cambodia, the demand for energy has increased from 30 MW in 1998 to 983 MW in 2014. The first large hydropower project in Cambodia was the 193 MW Kamchay dam, constructed by Sinohydro beginning in 2007. Its ESIA report was approved in 2012 without any public involvement or local benefit sharing (NGO Forum, 2013).

An important distinction should be made between Vietnam and Thailand, which have developed most of their hydropower potential, and other regional countries which are just starting to exploit this potential. Available estimates of hydropower potential range from 10,000 MW in Cambodia and 20,000 MW in Laos, compared to 100,000 MW in Myanmar; only about 10% of this capacity has been harnessed in each country. In Vietnam, by contrast, 85% of hydropower potential is already tapped, allowing environmentally-minded experts to make convincing arguments to cancel remaining large dam projects and concentrate only on small dams that don't destroy forests. As for Thailand, the Royal Irrigation Department has proposed to replace one large dam with several smaller dams to minimize the social and environmental impact, but continue to face opposition from CSOs.

Additionally, an underlying (and unchangeable) structural feature of the Mekong basin is that some countries – Laos, Thailand, and ultimately China – are located upstream, while others – Cambodia and Vietnam – are downstream. This geography, combined with remaining natural resource endowments, produces a matrix in which Laos is naturally most disposed towards future hydropower development and Vietnam most wary of it, with Thailand and Cambodia in intermediary positions. Political positions on hydropower follow logically from this analysis, with the important caveat that the upstream/downstream distinction applies only to water governance, not to mining, land, transportation infrastructure, or other investments.

## CONCLUSION: EIA PROCESSES AND POWER INTERESTS

The constraints and limitations of EIA processes in the Mekong region are numerous and have been well described from a technical standpoint (e.g. ADB, 2010; AECEN, 2010; Brewster, 2014). Most EIA information is not publicly available, and even when information can be obtained, it is written in a fashion that is inaccessible to non-experts. EIA reports are frequently of low quality, even cut and pasted from previous reports on other projects. Reports do not consider alternatives to the project design in terms of location, technologies, or processes. Social (and health) content is often missing, as are gender considerations, in favour of a focus on cost accounting and technical issues. Long-term costs, such as resettlement and livelihood impacts, are absent. Once an EIA is complete, finally, there is a lack of implementation and monitoring; environmental management and mitigation plans, where they exist, often do not match the EIA. Cutting across all of these widely identified problems is a paucity of public participation, even where this is provided by law.

Many of these constraints apply generally across countries, though there are some specific differences based on geography, economic development, and political systems. Downstream countries, notably Cambodia and Vietnam, have stronger incentives for regional cooperation and more robust domestic EIA processes, at least in regions affected by hydropower development. Thailand stands apart due to its established legal system and higher capacity as a middle-income country. Myanmar, while starting from a low level of economic development, now faces the possibility of significant political change in its ongoing transition process. Yet in spite of these specific features, the limitations in EIA processes appear remarkably similar across Mekong region countries.

Legal and administrative changes would improve EIA compliance and effectiveness at the country level. In particular, increased sharing and dialogue among the five Mekong region countries can contribute to improved communication and information sharing among companies, government, and civil society; provide incentives for private sector compliance, and support national-level reform actors. By highlighting good practices in multiple countries, regional dialogue can raise the quality of EIA implementation across sectors and industries, including land, mining and hydropower (Wells-Dang, 2015).

In other respects, however, the web of power relations among political and economic stakeholders in EIA processes requires political solutions at the national and sub-national levels. The underlying political economy factors analyzed in this report suggest it would be a mistake to see EIA constraints largely as information obstacles or capacity problems among government staff, as some reports have suggested (Dusik and Xie, 2009; ADB, 2010; Phung et al., 2013). As long as power rests in the hands of project approval agencies without public accountability, environmental impact assessments will remain a technical exercise that can be manipulated by investors, consultants, and government agencies to fit a predetermined development agenda.

Although the interests of project proponents, consulting firms, and government officials largely converge, they are not identical. Investors, since they own resources, are generally in the strongest position, yet must also negotiate with government for approvals and avoid inspections and penalties. EIA consultants are subject to the need to satisfy the investors who hire them, while also clearly part of the system that keeps them in business. Government interests and incentives are even more diverse, depending on the ministry, level of authority, and individual involved. Those with the greatest influence on EIA policy and implementation also possess the strongest incentives to keep the system as it is, as they have themselves been invested in creating the policies and practices that are currently applied. Those with more distance from the EIA process, whether in government, civil society, or academia, are more in favour of reform but have less influence over policy outcomes.

EIA discourses have been adopted throughout the Mekong region along with a broader process of integration into international institutions and the global economy. While there has been a growing sophistication in the formal EIA apparatus, some of the purposes of EIA have been lost in translation.

The missing factor, public accountability, will not come about through reform of procedural documents, but only through longer-term changes in power relations in each country. For potential reform actors to challenge entrenched interests, they first need to work together, and then build a domestic constituency that backs up their demands. Only then will EIA become a substantive process of deliberation about what projects should be built, where, and how. Absent such public engagement, environmental assessment will remain a technical exercise subject to political and economic power.

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