

Procedural Environmental Obligations: Comparing the development of airports in Cambodia and China

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Introduction

With an investment of USD 8 trillion until 2049 and spanning 72 countries in Africa, Asia and Europe, the Belt and Road Initiative (BRI) is the biggest infrastructure program in the world. Data gathered from China's Ministry of Commerce indicated that more than 7,000 projects financed by the BRI were approved in 2017, of which 34 percent are investments in transportation sector such as rails, highways and ports (WWF 2017). In theory, investment in transportation projects, if done in a participatory manner, can deliver economic and social benefits to millions of people while minimizing environmental and social harms. However, in practice, these projects often ignored its social dimensions which have resulted in forced evictions, loss of livelihoods and destruction of cultural and religious practices of local communities, particularly those such as women and indigenous people. In this context, our research examined ways in which effective public participation could be enhanced in infrastructure development projects that are connected to the BRI. We argue that without adequate and meaningful public participation, the environmental impact assessment (EIA) process required for large scale infrastructure projects lacks a key component that makes it an effective tool to mitigate those social issues. To explore this question, we empirically compared the experiences from the on-going development of the Beijing-Daxing International Airport with the upcoming construction of the Koh Kong International Airport. Based on observations of the two case studies, this paper makes the central argument that a robust EIA process where the public is meaningfully and effectively engaged

remains a crucial requirement to achieve economic development while mitigating environmental impacts. This is largely feasible if the state, through its legal instruments, adopts a more open, representative and participatory process in its approval of infrastructure development projects.

Environmental Procedural Obligations

Much of the literature on public participation in environmental decision-making and planning often credited their origin to the Rio Declaration on Environment and Development (1992) and the Aarhus Convention (1998). These international instruments introduced several procedural obligations for states to protect the environment by ensuring that the public is engaged in environmental matters. These obligations include the duties to: assess environmental impacts and make environmental information public; facilitate public participation in environmental decision-making, including by protecting the rights of expression and association; and provide access to remedies for potential risks (Knox 2016). In practice, these obligations could be realized through a robust EIA process where information are provided to and consulted with the public in a timely manner that enables them to understand and discuss the situation in question, including the potential positive and negative impacts of the proposed project. The process must ensure that opportunities are provided for the public, particularly women, indigenous people and local communities, to express their views and that those views influence decisions that are made (Glucker et al. 2013).

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Research Designs: Constructions of Airports in Cambodia vs. China

Drawing from this line of literature, the remaining parts of this paper explore the extent to which procedural obligations in EIA process exist and, if possible, are applied in Cambodia and China. We base our assessment on a range of primary and secondary sources. First, we conducted a desk review on the EIA legal framework in the two countries, paying particular attention on key indicators such as: institutional arrangements, legal framework, information disclosure, public participation, consultation process and timing. To assess the application of these legal frameworks, we examined the EIA process, if any, of the new Beijing-Daxing International Airport in China and the new Koh Kong International Airport in Cambodia. We selected these projects as our case studies mainly because as mentioned earlier infrastructure development projects, particularly transportation, make up 34 percent of the BRI projects. Although it is not known if these two cases are financed by the BRI, their lessons are still pertinent to upcoming infrastructure projects financed by the BRI or other means. We visited the sites of both airports during the course of our research to understand its surrounding natural, social and built environments. Information for this study was also collected through semi-structured interviews with stakeholders in both countries including government officers, technical experts from specialized government agencies in the field of transportation and environment, academic researchers, and relevant Cambodian civil society organizations. No interview was conducted with Chinese civil society organizations. Interviews and site visits were conducted in various timeframes in 2017. Furthermore, we attended events such as meetings, conferences and forums related to the BRI in Cambodia and China to learn of recent developments and to interview some stakeholders that were difficult for us to meet one-on-one due mainly to their busy schedules.

Case 1. Beijing-Daxing Intentional Airport, China

Located in the South of Daxing District in China, the Beijing-Daxing International Airport covers an area of 3,032 hectares, with an estimated investment of about USD13 billion for the

construction, of which USD0.7 billion was allocated for environmental protection. The developer of this project is Capital Airports Holding, a state-owned enterprise that built Beijing International Airport's Terminal 3 (Brombal et al. 2017). The EIA for the Project was conducted by Beijing Guohuan Tiandi Environmental Technological Development Center, Ltd. The project was announced by the Chinese media in 2011 and approved by the State Council in January 2013. Public participation process was done between February and April 2014. EIA was submitted to the Ministry of Environmental Protection in April and was approved in June 2014. Construction started on December 2014 and expected to complete in 2018 (CNN International 2013). The Project's main identified environmental impact was noise pollution, where 11 villages were expected to be exposed to noise levels exceeding 80dB and would be relocated. Other environmental impacts identified included air pollution by exhaust emissions by airplanes, termination of water supplies for some villages, and potential accidents caused by leaks from fuel depots or explosions. It was estimated that in total, at least 52 villages (consisting of around 20,000 people) would be relocated (Aehnelt 2013).

With regards to consultation arrangements, collection of comments was made twice, before and after the simplified EIA report was published. Channels of collection included phone calls, mails, fax, e-mails, and online chats. After the simplified EIA publication, six workshops were held: two were only for State authorities (government departments and local people's congress) and four were open to representatives of villages affected by the project. Workshops were chaired by the developer and the EIA company. There was no mentioning of participatory consultation techniques such as workshops being freely open to members of affected communities, deliberate opinion polling, or citizen advisory committee. Reference was made that affected stakeholders of Hebei Province may bargain for compensation conditions similar to those applied in Beijing municipality.

Case 2. New Koh Kong International Airport, Cambodia

Geographically, the New Koh Kong International Airport is located within Dara Sakor Seashore Resort, a 45,000 hectares of land that was granted in 2008 as a 99-years development concession to a Chinese-owned firm Tianjin Union Development Group (UDG) in Botom Sakor district, Koh Kong Province, Cambodia. The size of the airport is reported to be 750 hectares. The investment of the entire resort is estimated at USD 3.8 billion (FT Investigation 2016). Although construction of this airport is scheduled to start from early 2018 (Phnom Penh Post 2017), the site for its construction has been one of the most controversial projects in Cambodia. This is due to the long standing, on-going land conflicts between the developer and local communities over the last 10 years and the un-assessed environmental impacts of large scale conversion of an area within a protected area, teaming with rare biodiversity (Phnom Penh Post 2017). Based on information gathered through interviews and visit to the site, the project has been in operation without any EIA submitted to the Ministry of Environment. For example, the site where the airport is to be built was already cleared, while its EIA is nowhere to be found. This is of particular and grave social and environmental concerns because construction at this site would have triggered all the safeguard policies defined by groups including the Asian Development Bank and/ or the World Bank Group.

Information regarding the detail of the project activities and its financier is not available to the public from neither the developer nor the Cambodian authority. According to news articles, approximately 2,000 families are affected by this project, many of whom have already been involuntarily relocated from their homes or accepted relocation packages. However, an estimated 370 families continue to protest their forced displacement (Phnom Penh Post 2014). About half of the families (more than 1,000 families) that were relocated have abandoned their new homes provided by the developer, citing poor housing conditions and an inconvenient location. A UDG's representative argued that about USD10 million out of the \$3.8 billion development plan was used for the relocation and compensation to affected families. The company

claimed that each family was entitled to a compensation package which included a house, farmland and financial reimbursement for property lost. However, villagers reported in the news complained about the poor housing quality, unproductive farmland, lack of infrastructure, less than sufficient financial compensation for the loss of livelihood, and the remoteness of the new site (Phnom Penh Post 2017).

Although the Cambodian law requires EIAs for all investments, this case demonstrated that assessment of private investments is extremely limited or none at all. Also, while the Cambodian regulatory system broadly supports public participation in EIA process, this case study showed that implementation of such principle does not exist. This case is only one of the many investment projects that have gone ahead without proper or any EIA conducted. Interviews with relevant competent authorities found that a majority of investments still have not been subject to EIA review. For example, based on interviews, MOE reported reviewing 49 EIAs in 2016 and 83 in 2017, while the Council for the Development of Cambodia reported approving 171 private investments alone in 2016, and 183 in 2017. In addition, it is estimated that at least an additional 100 public investments projects are approved each year, with or without EIA. This is, in part, due to a lack of enforcement of the penalty provisions in the current regulatory framework and a need to strengthen them through new legal instruments, such as those that are mentioned earlier that are being drafted. Also, it was reported during the interviews that project proponents often go directly to CDC for project approval first and are therefore permitted to begin implementation without an approved EIA. While this CDC approval is generally given based on the condition of completing an EIA in the near future, oftentimes they are not completed.

Lessons Learned

There are three lessons in China's legal framework relating to public participation in EIA that countries like Cambodia can learn from. First, a stronger language for the requirement of public participation in EIA should be noted in Cambodia's legal framework. According to China's EIA Law, construction units "should hold proof meetings, hearings, or take other forms to

solicit the opinions from relevant units, experts and the public.” The Interim Measures further provides, “Construction units ... should take public opinion seriously.” Unlike China’s, the Cambodia’s EIA Sub-Decree only mentions “encouraging public participation” as one of the Sub-Decree objectives and fails to impose any concrete obligations to include public participation in EIA. Moreover, public participation is merely mentioned in the EIA Prakas’ Annex 1, Chapter 5, which lists it as a component of an EIA report. The 2016 draft Prakas on Public Participation by the MOE has never been adopted. These show the lack of recognition of importance of public participation requirement in EIA. Cambodia’s legal framework should employ a stronger language that clearly indicates legal obligations to properly engage the public in EIA process. Such provisions would not only put a burden on public officers, but would also empower the public, especially the affected people, to engage in EIA process.

Second, procedural requirements should be stated in Cambodia’s legal framework. China’s public participation consists of four phases: public announcement, public disclosure, comment solicitation, and review of public opinions, as indicated above. However, both the EIA Prakas and the EIA Guidebook contain vague terms and do not provide as how public participation should be engaged. In addition, although EIA public participation in China may sometimes be limited because duration of engagement is short, biasness in respondent selection, limited access to information, and limited weight of public opinions in decision-making, Cambodia can take this as a lesson and employ a system of its own to address such issues. For instance, Cambodia’s legal framework should clearly provide criteria to determine the appropriate timeframe and method of respondent selection. Guidance as to the disclosure of information and to the method of consideration of public opinions should also be specific.

Third, an accountability mechanism should be used in Cambodia’s legal framework related to public participation in EIA. According to the Interim Measures, the construction units should make it clear whether to adopt or not the public opinions in the EIA Statements. Moreover, the construction units, EIA agents, and administrative

departments of environment should keep the original data of the feedback opinions for future reference. However, these features are lacking in Cambodia’s EIA legal framework. Cambodia’s legal framework should thus establish a requirement that the approvals must provide an explanation, which is to be disclosed to the public. A failure to state reasons should be a ground for the public to challenge the decisions in order to suspend the projects for further studies and correction. In addition, Cambodia’s law can impose a legal requirement on public officers to public disclose the full text of EIR (except trade secret or other confidential parts) upon receiving it, and make it a serious administrative offense, leading to removal from offices.

Policy Recommendations

Furthermore, based on findings from the two case studies, we offer four recommendations that Cambodia can learn from China in terms of implementing regulatory frameworks on public participation in infrastructure projects to ensure its social and environmental sustainability. While these recommendations are mainly developed for the context of Cambodia, they could be applicable in countries that are engaged in the BRI financed projects, which mostly are poor countries in Africa and Asia. These include:

1. **Ensure full enforcement of the regulatory frameworks:** this helps facilitate the implementation and monitoring of EIA frameworks. This is a difficult task in many of the countries such as Cambodia where corruption is pervasive. It is important that authorities, in particular MOE, need to be empowered to exercise their designated duties in implementing rules related to EIA and public participation. For example, MOE should be able to impose and enforce penalties specifically for project proponents who begin construction prior to the approval of their EIA report. While it is noted that Cambodian laws exempt some special projects from having an-approved EIA report prior to

commencement, citing special circumstances, criteria constituting such special projects need to be established.

2. **Strengthen compliance and management:** the Cambodian case study indicated that there is a dire need to improve the compensation procedures for project affected people, particularly women and indigenous people. There is also a need to require developer to have a detail dispute resolution procedures. Competent authorities, such as MOE, need to develop an environmental audit process and require remedial action to be taken in the event a project's or activity's impacts are found to be greater than those estimated. The point here is that a robust EIA process where the public is meaningfully and effectively engaged remains a crucial requirement. However, we acknowledge that this is largely feasible provided that the state, through its legal instruments, adopts a more open, representative and participatory process in its approval of large scale development projects, such as those that are being realized through the BRI.
3. **Increase transparency by disclosing project information and its EIA reports:** while it is stated in the regulatory framework, disclosure of EIA reports and relevant project documents is still lacking in practice. For example, EIA report and relevant documents

related to the New Koh Kong International Airport do not exist in the public sphere. Similarly, an open access database on BRI financed projects including its planning, construction, supervision, and compliance should be set-up, especially in English.

4. **At minimum, apply the same social and environmental standards adopted in China for countries that have lower social and environmental standards and/ or poor enforcement of those standards:** studies have alleged that BRI projects might be the means for the Chinese government to outsource its environmental pollution to poorer countries involved in the initiative such as Cambodia. Thus, it is essential that in cases where regulatory frameworks on social and environmental standards in BRI countries are lacking in terms of substance and/ or implementation, China should make it their responsibilities to ensure that social and environmental standards adopted and implemented domestically by the Government of China apply in these countries. If not, the accusation stands that China is merely relocating its environmental and social externalities that come with China's economic development to poor countries. In other words, environmental damage and pollution that come from the BRI financed projects are simply exported overseas rather than being genuinely reduced.

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