

# Prospects for Regional Cooperation on Environmental Impact Assessment in Mainland Southeast Asia

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*Environmental Impact Assessment (EIA) is a central process in sustainable development to mitigate the anticipated impacts of development projects. Every national government in mainland Southeast Asia has, or is in the process of developing, legislation on environmental governance and shares a common interest in implementing and enforcing EIA. Yet despite the fact that significant environmental impacts occur across borders, no multi-country EIA agreements have yet been passed and implemented. Increased regional cooperation could present an opportunity to address this gap, potentially linked to ASEAN or other regional organizations. Based on this hypothesis, a consultative research process under the auspices of the Mekong Partnership for the Environment interviewed 127 key stakeholders in five countries (Cambodia, Laos, Myanmar, Thailand, and Vietnam) to assess the positions, levels of influence and readiness to cooperate on EIA principles and standards. Using a political economy approach, the research team found strong support among government and non-governmental stakeholders alike for reform of national EIA procedures, increased public participation and the development of regional EIA standards. At present, government officials in some countries favour increased cooperation, while others express reservations and concerns about the value of such cooperation. The article explores the underlying interests and incentives behind these varied standpoints and concludes with a discussion of possibilities*

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*for regional institutions, national governments and donor agencies to advance cooperation on environmental governance.*

**Keywords:** Environmental Impact Assessment, Mekong region, political economy, ASEAN, economic integration.

Economic development in Southeast Asia is increasingly pressing against environmental limits. Infrastructure construction, including the “connectivity corridors” established through the Asian Development Bank’s (ADB) “Greater Mekong Sub-region” (GMS) initiative, affects biodiversity, forest cover and water systems.<sup>1</sup> Mining of gold, bauxite, iron ore and other minerals raises issues of waste storage and chemical pollution.<sup>2</sup> In perhaps the highest-profile example, construction of the Xayaburi and Don Sahong dams along the mainstream of the Mekong River is claimed by some analysts to threaten fisheries throughout the lower Mekong basin and even end the rainy season reverse flow of the Tonle Sap river system in Cambodia<sup>3</sup> — claims that are denied or downplayed by project proponents.<sup>4</sup> The environmental impacts of these projects have emerged as issues of common concern among governments, organized civil society groups and business sector actors in the region.

This article begins from the premise that there are potential benefits to transnational cooperation to address environmental impacts, whether they are felt within a single country or across borders.<sup>5</sup> The formation by the Association of Southeast Asian Nations (ASEAN) of the ASEAN Economic Community (AEC) — due to come into effect at the end of 2015 — is the latest in a series of steps by countries in Southeast Asia to increase multilateral cooperation aiming for development and sustainability.<sup>6</sup> ASEAN has taken substantive action to address the perceived “development gap” among member countries through the establishment of an Initiative for ASEAN Integration, with a focus on raising standards among the poorer members such as Cambodia, Laos and Myanmar.<sup>7</sup> Yet environmental issues have been notably scarce on the integration agenda.<sup>8</sup> Sub-regional institutions, notably the Mekong River Commission (MRC) and the GMS, have picked up some of the slack, funding high quality research on environmental impacts at the sectoral and project levels.<sup>9</sup> However, these studies have not yet led to the establishment of regional cooperation mechanisms. Each regional institution and major donor has tended to set up its own system, resulting in a plethora of working groups and conferences, all including some important actors but leaving others out. As a result, the MRC, ASEAN, and international financial institutions have overlapping mandates and

roles, each relating to different parts of national governments.

At the domestic level, legal processes for environmental impact assessment (EIA) are well-established in all Southeast Asian countries. EIA and related forms of environmental assessments are carried out throughout the region with varying quality, legal frameworks, monitoring and compliance.<sup>10</sup> As a widely-applied process for preventing, mitigating and reducing potential impacts of developmental projects on the environment and society, EIA is not primarily a tool for decision-making about project approval. Instead, assessments answer the questions of how and where a proposed project should be built, offering regulators a means to influence options for project design and monitor compliance.<sup>11</sup>

Previous research has identified a “window of opportunity” to engage in supporting new EIA laws and improved implementation through a regional EIA standard, linked to regional openings such as the AEC.<sup>12</sup> Such a standard would form the basis for an agreed-upon benchmark or minimum level of quality for EIA practices, potentially including specific principles, criteria and indicators that define social and environmental performance. But how would regional governments, investors, and societal actors respond to opportunities to cooperate on EIA standards?

To answer this question, the author and a team of eight regional researchers initiated a qualitative political economy study in late 2014 to identify key features of EIA policy processes and to develop a proposed roadmap for improving these processes through regional cooperation. We selected the five countries of mainland Southeast Asia (Cambodia, Laos, Myanmar, Thailand and Vietnam) as research sites, since a large concentration of regional development projects is currently taking place in these countries, particularly in the sectors of hydropower, mining, and land concessions that have attracted the greatest attention from citizens, civil society groups and investors.<sup>13</sup> This article begins with a consideration of the structures, interests and incentives of key national and regional stakeholders engaged in EIA processes in each country. It then proceeds to country-specific and general recommendations for increasing regional cooperation in EIA.

## Methodology

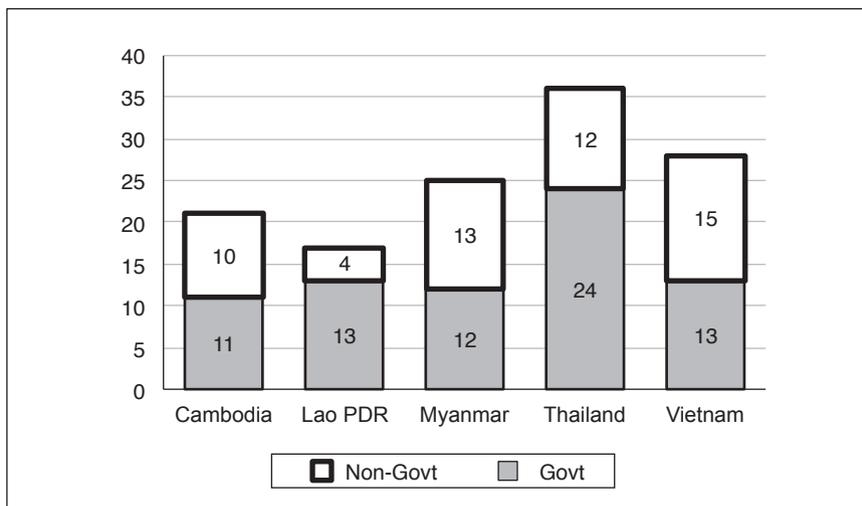
Cross-national research in Southeast Asia poses a series of methodological and logistical challenges.<sup>14</sup> Despite common membership in ASEAN, countries in the region differ widely in

political systems, language and ease of access.<sup>15</sup> This is particularly the case for the five Mekong Basin countries that are considered in this article. To ensure a balanced approach, the author and research sponsors in the Mekong Partnership for the Environment (MPE) assembled a multinational team of eight researchers based in each of the participating countries.<sup>16</sup> During a week of face-to-face orientation to discuss the research topic and qualitative data-gathering methods, members of the research team identified key governmental and non-governmental stakeholders in their respective countries. We then organized qualitative interviews with these stakeholders according to an agreed interview guide including a set of key questions that were translated into each national language. All interviews were conducted in the respondent's native language without translation. Interviews were arranged through a combination of personal contacts and official letters from the research sponsors. This allowed for a combination of the trust and rapport achievable through relationship-building<sup>17</sup> along with access to key official agencies engaged in the EIA process. Additional interviewees were added through a "snowball" sampling method in which stakeholders recommended others for researchers to meet.<sup>18</sup>

The research team conducted a total of 127 semi-structured interviews in the five countries surveyed (see Figure 1). Government respondents included officials at department director and specialist levels in ministries responsible for environmental protection, planning and investment, agriculture, land, mining and hydropower issues. Non-governmental stakeholders selected comprised directors and staff of research institutes (including some retired government officials), non-governmental organizations, international development agencies and business associations. The specific composition of interviewees varied among countries based on assessed influence and interest in EIA issues. Respondents' ages ranged from the low 30s through to senior citizens, with the majority being in their 40s and 50s; 78 per cent were male and 22 per cent female, a consistent ratio among both governmental and non-governmental sectors. Interviews were primarily conducted in capital cities, with some notable exceptions such as Siem Reap and Yangon. For reasons of confidentiality, the names of interview respondents are not included in the text of this article. Quotations are identified by the nationality and/or affiliation of the speaker where this is important to convey meaning.

Interviews explored respondents' understandings and attitudes towards EIA policies and types of possible regional cooperation, seeking to assess positions and levels of influence among multiple

Figure 1  
EIA Stakeholders Interviewed in Mekong Countries



Source: Author.

stakeholders. After each interview, researchers scored the respondents on four basic questions regarding their positions and influence on national and regional EIA policies. Interview data was triangulated with other sources of information, including published documents, government and non-governmental reports in various languages and presentations at national and regional workshops sponsored by MPE and MRC. During an analysis of the interview results, the team leader communicated regularly with researchers through a combination of face-to-face and virtual meetings. This allowed for joint debriefing, commenting and later review of draft findings.<sup>19</sup>

The political economy framework used in analysis aims to integrate economic development concerns with policymakers' decisions in each of the countries studied. More generally, a political economy analysis 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".<sup>20</sup> Political economy tools used in analysis included stakeholder identification, power mapping, process tracing and assessment of both formal and informal institutions.<sup>21</sup> In a broader sense, the political

economy approach allows for iterative problem solving, stepwise learning, brokering of relationships and the discovery of common interests among stakeholders, including the research team.<sup>22</sup> 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.<sup>23</sup>

### **ASEAN's Approach to Regional Environmental Governance**

Regional cooperation on environmental issues is weaker in Southeast Asia than in other parts of the world. Regional structures are present but not functioning optimally as environmental institutions.<sup>24</sup> These include ASEAN, inter-governmental mechanisms for cooperation and international financial institutions such as the World Bank and ADB, specifically through the GMS initiative and the MRC. These bodies have not yet implemented regional environmental standards; not due to any lack of capacity among the people involved, but because the structures have not prioritized such standards. Regional institutions are weak because their members prefer it that way.<sup>25</sup>

EIA-related issues have been discussed by policymakers in Southeast Asia for several decades. A series of environmental agreements was reached among ASEAN member states in the 1990s, including the 1994 ASEAN Strategic Plan of Action on Environment and the 1996 Basic Framework of ASEAN–Mekong Basin Development Cooperation.<sup>26</sup> These statements contain a basis for ASEAN engagement on EIA, but they have not been referred to again in recent ASEAN meetings or documents, such as the 2012 “Bangkok Resolution” on ASEAN environmental cooperation.<sup>27</sup> Meanwhile, ASEAN has focused mainly on trade and investment, not broader development issues (since economic growth is something all members can agree on, and trade and commerce ministers are reluctant to engage in environmental issues). As one respondent states, “there is an entry point on economics, but no entry point on environment ... Yet ASEAN is a lot stronger than MRC or GMS if you can get in.” The ASEAN People’s Forum has called for the establishment of such an entry point in the form of an ASEAN safeguard policy and an Environmental Pillar in ASEAN, including an independent monitoring mechanism and regional framework on the trans-boundary environmental and energy issues.<sup>28</sup> To date there has been no formal interface with ASEAN member states concerning these proposals.

ASEAN is officially committed to “environmentally sustainable growth”.<sup>29</sup> Yet reports on progress towards the 2015 AEC make virtually

no mention of environmental issues, apart from a general proviso that “the AEC may also need to adopt regional environmental standards”.<sup>30</sup> The “ASEAN Economic Development Monitor” considers four economic and four social issue areas — yet none is environmental. There is no specific mention of EIA in any ASEAN statement to date, with the exception of efforts to integrate Health Impact Assessment (HIA) into the Socio-Cultural Community. The ASEAN statement on HIA notes that it “is anchored within environmental frameworks” and has “proven to be very useful in providing supportive information for EIA reports”.<sup>31</sup>

Respondents were hopeful that the completion of the AEC would result in a larger role for ASEAN in the future. Optimism about the potential of ASEAN appeared highest in interviews conducted in Cambodia and Thailand. Government and non-government stakeholders alike made the argument that for ASEAN to be a rules-based community, there is a need for common principles and standards, including on environmental issues. However, as a Thai interview respondent said, “it’s easy to talk about integration, but hard to implement it”.

The most substantive of ASEAN environmental agreements to date has been on Trans-boundary Haze Pollution.<sup>32</sup> (There are also environmental agreements on peatland management and biodiversity.) Negotiations for the haze agreement began in 1997 and were completed in 2002. Indonesia, a main source of haze from deforestation, did not ratify the document until early 2015.<sup>33</sup> The agreement is implemented through concrete preventive, monitoring and mitigation measures that acknowledge each country’s laws, regulations and national policies. Nevertheless, officials in Mekong region countries concede that the agreement has had little impact on deforestation, since enforcement depends on the executing agencies in each country, with ASEAN as a forum for discussions only. The haze agreement has improved information provision, but not changed the nature of the problem, as extensive haze pollution in Indonesia, Singapore and Malaysia in 2015 has demonstrated. Still, as a Vietnamese government respondent pointed out, this can be a potential model for other types of regional cooperation, since it is based on international cooperation with a legal basis.

A second positive example of ASEAN cooperation has been in Disaster Risk Reduction (DRR). A group of international NGOs drove this process, first setting up an “ASEAN Partnership Group” that adopted an insider approach to gain access to the ASEAN Secretariat in Jakarta. The ASEAN People’s Forum, which brings

together many national NGOs, represents an external component of the DRR activists' strategy. The Partnership Group drafted the text of an ASEAN Agreement on Disaster Management and Emergency Response (AADMER),<sup>34</sup> and worked towards convincing ASEAN Secretariat members of the need for a regional mechanism that complements rather than replaces national mechanisms. The process took five years to complete, in what one leading actor describes as "a slow burn" that only attracted broad support after the crises of the 2004 Indian Ocean tsunami and Cyclone Nargis in 2008. This led to an agreed partnership framework between ASEAN and national civil society organizations (CSOs) in specific thematic and work areas. The resulting agreement has now been ratified by all member states and is considered legally binding.

### Analysis of Key Stakeholder Groups

Overall, the results from stakeholder interviews demonstrate moderate to strong support for the idea of regional cooperation on EIA. As one Thai government respondent stated, "Any standard is good. A regional standard that all stakeholders can agree upon is even better." Interviewees agreed that the timing for a process of regional cooperation is propitious, as many countries are completing the process of revising national legislation and increasing regional integration via the AEC, GMS connectivity and other initiatives. But stakeholders differed over the details: what should be in a standard? Should it apply generally, or only to certain priority issues? Should it be legally binding or voluntary?

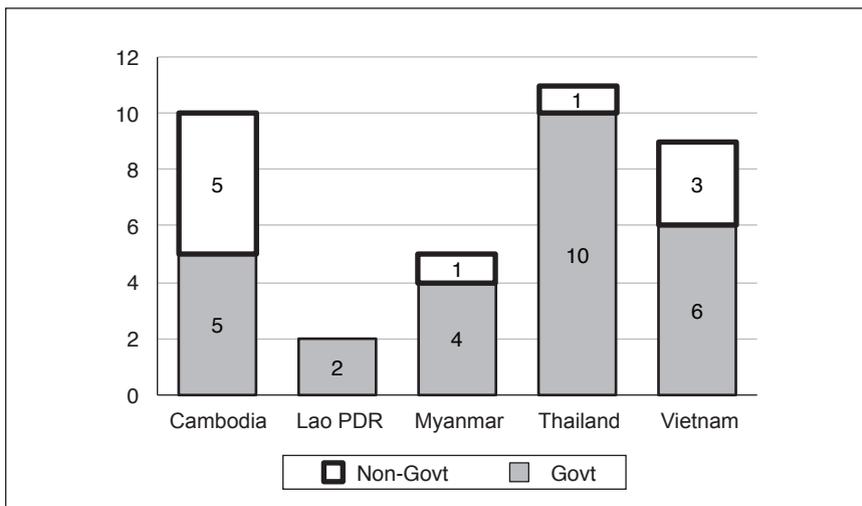
Behind these questions are multiple factors concerning the political economy context of each country. The differences can also be understood from the perspective of actor-oriented game theory. Under what circumstances will countries (and other actors) cooperate? Experience suggests cooperation will occur "not when compelled by principles, but when the net benefits [and costs] of cooperation are *perceived* to be greater than the net benefits of non-cooperation, and the distribution of these net benefits is *perceived* to be fair".<sup>35</sup> To reach a "deal structure" that can be a win-win for all sides, negotiators need to consider underlying interests, not just stated positions.<sup>36</sup>

Based on their post-interview scoring on support and influence on domestic EIA reform and a regional EIA standard, the 127 respondents interviewed were grouped into four categories of *champions*, *influencers*, *supporters* and *potential blockers* to reform. *Champions* are defined as individuals who are moderately or

strongly in favour of developing a regional EIA standard and at least have moderate influence in implementing such a standard. Reform champions or “policy entrepreneurs” are typically insider-outsiders, with connections in the system but also a certain independence.<sup>37</sup> They are both personally and professionally committed to EIA reform and see improved EIA implementation as in the broad interests of their countries’ development. We identified a total of 37 champions from all five countries (see Figure 2), mainly from the government sector as these constituted the majority of interview respondents with moderate or higher influence.

Those actors with the strongest support for public consultation and regional cooperation on EIA tend to have relatively less influence on policymaking, while the most influential actors are often neutral or opposed to reform. Respondents with high support for regional cooperation but influence only at a low or consultative level are classified as *supporters*; this group included a significant number of NGO staff, academics and government officials outside of the environmental ministries. *Influencers* are key swing votes who are neutral or undecided in support of regional cooperation, but exercise high or moderately high influence. A final group of important

Figure 2  
Champions from Government and Non-Government Sectors



Source: Author.

stakeholders is *potential blockers* who are strongly or moderately opposed to increased regional cooperation on EIA but have moderate or higher influence.

Some potential blockers have uninformed views about EIA issues that can be alleviated to an extent by clear communication, particularly if these messages come from champions within their own governments. The root causes of blockage, however, are not merely low capacity or information, but are closely connected to economic interests and the incentives of stakeholders. Changing the mind of blockers requires switching incentives — for instance, demonstrating that improved environmental safeguards will lead to better development outcomes as well as personal benefits such as promotions and international exposure. Specific levers of persuasion may include civil society and business lobbying, personal ties with other national and international stakeholders and, on some occasions, public and media pressure.

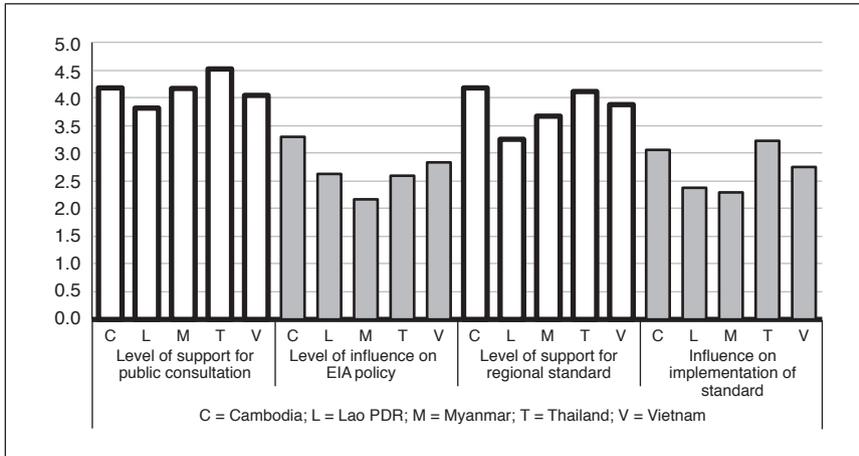
With these stakeholder groupings in mind, we consider the perspectives from interview respondents (both government and non-government) in each of the five countries, followed by lessons from existing efforts at regional environmental cooperation, leading to a set of recommendations for increased cooperation that can be put into operation through a consultative roadmap. Except where noted, all points raised in the sections below were mentioned by multiple respondents.

### **Cambodia: Support for Regional Institution-Building**

Cambodians within and outside the government were the most positive of the five countries regarding the benefits of a regional EIA standard (as seen in Figure 3, which shows the average scores for all interviewees on four key questions asked by the research team, ranked on a five-point scale from 1 = strongly opposed/no evidence of influence to 5 = strongly in favour/major or determining influence). On the question of support for public consultation in EIA, Cambodian respondents averaged a score of 4.2, second to the average Thai score of 4.5. On support for a regional EIA standard (question 3), Cambodian respondents were the most favourable by a slight margin over Thais and Vietnamese.

For Cambodian interviewees, the perceived benefits of regional cooperation were improved implementation and enforcement of EIA laws and regulations; equal opportunity for investors; accountability and transparency; and increased cooperation between government and

Figure 3  
Average Levels of Support and Influence for EIA in Mainland Southeast Asia  
(all interview respondents)



Source: Author.

civil society. The Ministry of Environment is viewed as a proponent for EIA reform that is open to engagement from non-government actors. Other ministries that are involved in project development “may be neutral or uninterested” if they think an EIA standard would increase costs to investors. One government respondent believes that the existing EIA sub-decree and draft law are “comprehensive enough to carry out, therefore, it is not necessary to have another EIA regional standard and impact assessment, for the [priority in the] context of Cambodia is how to enforce and implement the current law and regulations”.

Regarding regional institutions, most Cambodian respondents favour working with ASEAN: “It is a good idea to have a common ground or common standard for EIA at the regional level, especially for ASEAN, because the ASEAN Economic Community will soon come into effect.” A Cambodian respondent noted that the majority of foreign direct investment (FDI) came from regional sources, so that an EIA standard could be applied by private investors. Another respondent suggested that MRC and other donors could contribute technical support to develop the standard. Others thought the choice of institution was largely up to the MPE. Several ministries that

received loans from the ADB indicated a preference to work through GMS structures. One differing voice suggested that “ASEAN is just a debating club” and the most important factor was that each country (including China) has clearly defined roles and responsibilities for law enforcement and implementation in GMS.

Interview respondents largely favoured an enforceable, binding agreement eventually, but thought that a voluntary standard could be a practical first step. “Countries may be firstly requested to comply with a regional EIA principle on a voluntary basis”, said a government respondent, while a non-government actor proposed “starting with a voluntary-based guideline and then binding later”. There was an understanding that some trade-offs and negotiated compromises would be necessary to reach an agreement. Among other challenges identified in the process of developing a standard were socio-economic development gaps among countries, competition among countries to attract FDI, dominance of larger economies within ASEAN and internal political instability within ASEAN members.

### **Laos: Protecting Sovereignty and National Development**

Lao respondents, particularly in government ministries, assessed the potential of regional EIA cooperation less optimistically. Regarding the transnational impacts of large-scale investment in Laos, the non-government interviewees recognized this as a critically important dimension of environmental impacts, but most government officials interviewed did not recognize this as a legitimate policy concern. This is in part because they view Laos to be in a special position when compared with other countries of the region that are seen as more developed and less dependent upon natural resource exploitation, or more capable of pursuing alternative development strategies. Because Laos is a poor country, the government claims the right to develop natural resources without external control; otherwise, in these officials’ view, it would be difficult for the country to extract itself from poverty. Some officials also believe that the cross-border impacts of certain development projects are exaggerated, perhaps by political elements that are antithetical to the Lao regime.

There were a range of opinions regarding the possibility of a regional EIA standard. The non-government interviewees and the government officials less directly involved in EIA processes were more supportive, notably in the Ministry of Agriculture and Forestry (MAF), but they also had their own concerns and reservations about regional cooperation. Specifically, they felt that a regional EIA

standard would be most successful if it served as a semi-voluntary guideline for improving EIA processes in the region and reducing social and environmental impacts of large-scale projects. Some respondents also felt that the process of creating a guideline would in itself be a success in learning and working out together how to improve EIA processes and reduce their impacts. One interviewee expressed the view that it might be easier to improve standards through a bilateral approach, citing the blockage that has occurred in the multi-country MRC.

Government officials involved in the domestic EIA process felt that a regional EIA standard would be difficult for Laos for several reasons. First, presuming that such a standard would be legally binding, they felt that it would infringe upon the sovereignty of the Lao government to make independent decisions concerning the approval of investment projects within its borders. Second, it would not be fair to create a single standard for the region considering the different economic situations of each country. A high standard that might be suitable for a country like Thailand would be too stringent for Laos. Third, they felt that an EIA standard might create additional bureaucratic hurdles, complicating an already slow and cumbersome investment process, which in turn, would scare away investors.

Those who supported the idea of a regional standard identified ASEAN as the best partner for pushing it forward. One government official noted that “investment is regional now, so an ASEAN EIA standard would be good ... There needs to be a forum on increasing the quality of investments.” Other reasons cited were that ASEAN is a neutral body that represents all of the countries of the region on a relatively equal basis. Since ASEAN is a negotiating body among sovereign states, it has the mandate to work on a regional standard. Laos has been an active participant in the ASEAN Trans-boundary Haze Pollution agreement and hosted the most recent meeting in Vientiane,<sup>38</sup> demonstrating the possibility of broader regional environmental cooperation.

For some respondents, their concept of a regional standard appeared closely linked to experiences of working on trans-boundary EIA with the MRC, and therefore to hydropower, which is a major development priority for the Lao government. Government officials spoke directly about these concerns, making significant assumptions: “we have low salaries, and our country wants to develop. If there’s a regional standard, it will be difficult for local people to gain benefits from development, have jobs and infrastructure. Also, there would be no developers and less money.” A regional standard, or indeed

any environmental regulation, was interpreted (mistakenly) by some respondents as a disincentive to investment: “When we have a regional standard I think the companies will have to do an EIA two times, once for the country and once for the region. I think that might not make investors happy if they invest in one country and then have to pay to other countries, so if we have a regional standard it might impact investment in our country.” Another respondent opined: “It is not appropriate for our country to talk about preserving a small amount of fish, Lao people are still poor and so we have to choose development ... If we follow a regional standard there will be too many steps and the projects will never get started.”

Underlying this priority on economic development is a country-based interpretation of existing regional agreements. A Lao delegate at the November 2014 MRC conference in Siem Reap stated that in order to achieve optimal basin development according to the 1995 Mekong Agreement, “each country must decide for itself what is optimal and practical, and then share this with others”. (The Chinese observer delegate made a similar point; other participants viewed optimal development as requiring regional cooperation.) In blunter terms, a government interview respondent stated that “other countries can comment but not make decisions because it’s our country, we own the country”. This emphasis on sovereignty notwithstanding, decisions about hydropower and other export-oriented development projects are made from at least two sides: the political decision-makers and the owners of economic resources. In order for projects to go ahead, investment-receiving countries need power purchase agreements and external financing in order to proceed. Without such external commitments, a country’s economic development plan cannot be accomplished.

Within Laos, government and non-government respondents suggested that EIA should be framed as an academic rather than a political issue, which would improve quality and reduce sensitivity. “EIA needs to be moved from administrators to researchers”, said a government respondent: “Regional support could help in this aspect by providing resources and researchers.” Sensitivity would also be reduced through a focus on process rather than written outputs:

the process of establishing the standard is more important than the standard itself. [We] should get ministers and impacted communities together from the different countries and look at the best and worst practices. This is much more important than producing a regional standard document; it would create a learning process for those who are responsible.

Non-governmental observers confirmed government officials' descriptions of the Lao policy context. One emphasized the importance of implementation and enforcement of standards after they are made. Another noted that the Lao government "doesn't respond well to external pressure, they respond much more to their own opportunities that they identify by themselves". Lao government participation in forming a regional EIA standard will require time and space for officials to clarify how it benefits their broader development goals.

### **Myanmar: Openness and Capacity Constraints**

Interviews in Myanmar demonstrated a high level of interest and openness among government officials, academics and CSO respondents to the idea of a regional EIA standard. Many actors in Myanmar felt that they lack experience and knowledge to carry out EIAs at the international level and therefore welcome outside assistance and guidance. Most CSOs and academics expressed strong support for a regional mechanism that they felt could bring benefits to affected communities and all stakeholders, if it is comprehensively consulted and drafted.

However, respondents also noted that Myanmar's significant domestic priorities and capacity constraints take precedence over regional cooperation and issues. As Myanmar's formal EIA procedures are now being developed, most government respondents emphasize the importance of national (Union) level laws, rules and regulations. With the exception of the Environmental Conservation Department, they have little awareness of EIA-related problems with foreign investment or trans-boundary impacts. This resulted in a somewhat passive attitude towards a regional standard: as one government respondent stated, "if a standard is implemented, our department will simply follow it". Similarly, a CSO respondent suggested, "We need to work together [regionally]. It should be led by a country which is ahead of it. I think among ASEAN countries, Thailand could lead the initiative. And Thailand has strong CSOs who are really committed to it."

In terms of a regional body to provide leadership for an EIA standard, most government and CSO respondents indicated a preference for ASEAN, which is viewed as a neutral and positive actor in Myanmar. Some CSO leaders, while in favour of regional cooperation overall, indicated a preference for bilateral agreements with neighbouring countries, primarily Thailand and China over multi-country arrangements. In several cases, this inclination was

explained by respondents' perceptions that other regional cooperation mechanisms were less effective or relevant to Myanmar's context.

### **Thailand: Concern over Details and Process**

Thai stakeholders came a close second to Cambodian respondents in their stated support for a regional EIA standard (see Figure 3). However, as desirable as a standard would be, many Thais thought that it would be difficult to achieve. "The difficulties of having a regional standard on EIA would be in terms of cooperation among countries given different laws, perspectives and cultures in each one of them", said one respondent. This can be understood as a concern that other countries' capacity and experience on EIA is not at the same level as Thailand's. The benefits would largely accrue to other countries who can use regional cooperation as a basis to build their domestic EIA capacity. For Thailand, which already has high capacity to implement EIA, interviewees felt that there is perhaps no strong reason to engage. Several respondents felt that issue-based standards — for instance, specifically on industrial zones — would be "more precise and achievable" than an overall EIA standard. This may reflect the specialization and technical professional skills of Thai officials, rather than any objection in principle.

Perhaps the strongest support expressed for regional standards among Thai stakeholders came from the National Health Commission Office (NHCO), which initiated the Health Impact Assessment tool and mechanism that was later adopted by the Office of Natural Resources and Environmental Policy and Planning (ONEP). NHCO has also introduced HIA into ASEAN, with an emphasis on trans-boundary impacts. Yet, due to bureaucracy, progress has been slow.

Thailand's role in the Mekong region is largely one of investor than FDI recipient. As one government respondent explained:

Every stakeholder involved should bear the costs, not just the benefits. Currently, the big investors may prefer to invest in the country where the requirement of EIA is not too strict, which could encourage the other countries to loosen their laws and regulations. In this case, by having a regional standard, this problem can be resolved. However, big investors may not welcome the idea as much as it means that it could delay their project, or even cancel [it].

Thai interview respondents stated that investors consider the social and environmental impacts of a project as the host country's

responsibility, linking this hands-off posture with the ASEAN principle of “non-interference”. As one respondent added, regional institutions should promote “a minimum standard rather than rules and regulations that every country should follow”. Countries that are able to go above the minimum standard should be encouraged to do so, but everyone should comply with the agreed minimum. A third respondent favoured a regional mechanism that “builds upon learning through public participation”. Another stated, “If you push for a specific agreement, defences come up. If it’s an informal dialogue, people will take the idea and run with it in their [national] political contexts.”

### **Vietnam: Seeking Strengthened Enforcement Mechanisms**

Vietnamese stakeholders in and out of government generally expressed support for a regional EIA standard and favoured a binding, rather than a voluntary, agreement. In the words of one government respondent:

A regional agreement should be a legally binding convention. Only this is feasible. If it’s just a standard, this isn’t enough to ensure compliance. This is the same as with EIA policy in Vietnam, which only became enforceable once fines were implemented for non-compliance.

With commitment and consensus from regional governments, it would be easier for technical ministries to follow and comply with a regional standard. Based on an analysis of similarities and differences in EIA among the Mekong region countries, a regional EIA standard could be consistent and meet the needs of each country. Supporters argued strongly for a standard that covers EIA, environmental performance plans and mechanisms for conflict resolution. The standard should then be integrated into Vietnamese EIA regulations to ensure implementation.

Respondents also realized the practical difficulties of achieving consensus among all countries in the region. “A regional standard is needed, but this won’t be easy to achieve”, said one government official. “The best approach is to use technical projects as a basis for it. If the standard needs ratification by governments, this will be hard. It could begin with just a few governments who agree, but then what is the point of this if it is just a proposal?” Another government respondent concurred: “If countries don’t agree first, there’s no point having a regional standard. [Anyone who doesn’t agree] will just ignore it.”

Seeing the limits on accomplishing a compulsory and enforceable standard, respondents accepted the possibility of “principles, guidelines and pilots” as an alternative, or a temporary measure. Another respondent added, “a legally binding agreement is desirable in the long term, but it will take a while. So we should start with technical guidelines and consultations in the meantime.” A government official noted the importance of getting support from neighbouring countries for a standard, clearly identifying what benefits they will receive from following the standard: “No one will oppose the idea outright; they may say they agree, but have other interests in their guts.”

The Vietnamese government’s position on trans-boundary issues is clearly demonstrated in their 2014 accession to the UN Watercourses Convention and the fact that they have pledged US\$5 million for a Mekong Delta impacts study. In his speech at the Ho Chi Minh City MRC conference in April 2014, Prime Minister Nguyen Tan Dung mentioned the need for “equitable and reasonable development”, which is the standard described in the Watercourses Convention. However, attempts to put trans-boundary EIA into the recently revised Law on Environmental Protection were unsuccessful, perhaps because legislators did not see an international legal basis for trans-boundary EIA. The influence of Vietnam’s position may also be weakened by perceptions that Vietnam has not always acted as a good neighbour in its cross-border investment practices, as well as building Mekong tributary dams that impact downstream communities in Cambodia.

In terms of regional institutions, Vietnamese respondents showed a slight preference for working with the MRC, which has been the main proponent of trans-boundary EIA protocols in the past. One expert argued that “MRC is still the best vehicle to work with on environmental issues. No country says anything without going through MRC ... It’s better to strengthen MRC than work around them.” By contrast, most respondents saw the GMS and ASEAN as less relevant, the latter with mainly a political-economic function and less focused on the environment.

One non-governmental respondent advised, “The expert working groups can play a small role, but this is the last option ... Better to go to the existing GMS working groups, eight or nine of these, and open them up to more civil society participation, which is currently lacking.” Others suggested that using the “ASEAN + 1” mechanism involving China would be important, though challenging in the medium to long term.

### **Discussion: Towards Increased Regional Cooperation**

Changes in national and regional EIA policy processes will require ownership and agreement from all the major actors involved. To achieve this, the incentives to cooperate must be higher than existing interests that discourage it. In this way, the process of building cooperation on EIA is more important than any document or statement that emerges at the end of the process. To bring in government, civil society and private sector stakeholders, this process should be open and voluntary from the beginning, aiming to reach consensus on general principles and guidelines before proceeding to industry-specific tools or commitment to a binding regional standard. It is equally important to engage at national levels first before approaching regional institutions such as ASEAN, the MRC or GMS working groups. National commitment is a prerequisite for achieving the necessary backing from regional bodies.

It is important for any regional EIA process to be inclusive of all countries, sectors and issues, as an incomplete effort would reproduce the limitations of previous MRC and GMS initiatives. Such a process requires principled agreement among governmental, civil society and private sector representatives in each country. Several previous attempts at regional cooperation have failed or achieved limited results because they attempted to override one or more sectors or countries in hopes of achieving desired results or producing outputs more quickly; MRC's experience with trans-boundary EIA is a cautionary example.

Although differences exist among legal and political systems in the Mekong region, most interview respondents felt there are enough good practice features in existing national laws to form the basis for a regional agreement. A consensus-based approach is consistent with ASEAN's principles of non-interference and cooperative programmes<sup>39</sup> as well as the 1995 Mekong Agreement. A nationally-led process of regional cooperation would be likely to receive later support from ASEAN and the MRC (which are also governed by national representatives), rather than having the process perceived as imposed from above. Once the process has received initial buy-in from multiple countries in the Mekong region, it can be scaled up to regional institutions, eventually becoming a general standard accepted by all of ASEAN. Conversely, if a process began with more developed ASEAN members, it would likely face greater difficulties in acceptance and relevance to the developing nations on the mainland.

A key practical reason for a national-level agreement is that it will increase the probability that a standard is implemented. Given experience with trans-boundary EIA, the involvement of Laos is likely to be critical. Many Lao government officials in particular seem to believe that a regional standard would harm the country's investment climate and even lead to external interference in state decision-making. This suggests that proponents of a regional standard should increase their engagement in Laos and clarify that a regional EIA standard is not the same as previous trans-boundary EIA proposals. More generally, proponents will need to make a convincing business case to both government and private sector stakeholders that a regional EIA standard could help increase investor confidence and benefit all countries, since all investors and project developers would follow similar processes.

A regional EIA standard would not necessarily be a legally binding agreement and therefore should not be misunderstood as a regional legal framework. This was emphasized by numerous interview respondents, particularly in Thailand and Vietnam but also in Cambodia and Laos. Whether or not a policy instrument is effective in Southeast Asia is not primarily conditioned on whether it is binding or voluntary. National laws on environmental conservation or EIA are binding by definition, yet many provisions of these laws are not effectively implemented, even in countries with the most thorough and longstanding EIA policies. Seeing that it is entirely possible, even common, for a policy to be binding but ignored, it would be better to start with a regional agreement that is non-binding but put into action through the commitment of the agencies involved in forming it.

It is also critical for the regional process to be multi-stakeholder from the beginning, including government, civil society and business voices. In the words of a Vietnamese government respondent, "NGOs can hold many conferences and do projects resulting in good content and working documents, but in the end these are still NGO activities. For countries to take on [a standard], government voices need to be involved." In any sort of collaboration at the regional level, government officials need to feel that they are completely on board with the idea from the beginning and have ownership of the ideas and approaches.

An example of the risks to a civil society-only process is the Framework for Extractive Industries Governance in ASEAN, drafted by the Institute for Essential Services Reform in Indonesia.<sup>40</sup> The Framework includes four principles, of which one is environmental

protection, and includes environmental-social impact assessment as one aspect. The “bottom-up approach” has resulted in completion of the first draft of the principles, but their adoption and implementation by governments is aspirational only, with the “hope” that ASEAN will adopt and promote the idea. Even though the IESR coordinator is based in Jakarta with access to the ASEAN Secretariat, the chances of success appear to be low.

Regional actors engaging in EIA reform should prioritize linkages among civil society, government and business stakeholders. Rather than form new structures, a strategic approach would bring NGOs and community groups into existing regional forums. In most countries, civil society consultation will happen organically in existing venues (and regionally via the ASEAN People’s Forum and other networks). Cooperation with government and businesses, by contrast, will require a clear strategy to engage the private sector and multinational investors, including EIA consulting companies, while not excluding civil society voices.

International investors are a main audience for an EIA standard, perhaps even more than national law-makers. Businesses will support a standard if it reduces paperwork for them, increases predictability and clarity in state behaviour and regulation, and lowers informal costs. It is also possible that private sector actors will adopt changes more quickly than the pace at which government institutions can be reformed. Proponents should provide evidence of potential benefits of a regional standard to the private sector, so that their perceived incentives exceed the costs of cooperation.

In all countries, it is critical to involve participants from both environment ministries and more powerful economic-oriented ministries to ensure broader government acceptance and link EIA issues to safeguard policies and connectivity. The composition of champions and influencers in the EIA task force will vary in response to specific country dynamics and opportunities. Within government agencies, management levels (department directors and vice-directors) should be the main participants in regional dialogue, accompanied by mid-level technical staff and key advisors. Higher levels of ministers and vice-ministers will need to offer political support but will not engage in details. By contrast, a process made up of technical staff only would likely not achieve the necessary political support.

Hydropower is the most contentious environmental issue in mainland Southeast Asia at present, with land and mining concessions also high profile. As a result, there may be more political space

to work on other environmental issues such as those related to transportation, tourism, telecommunications, industrial zones or wind and solar energy as opposed to mining, hydropower and land concessions. A regional agreement should not only be about mainstream dams on the Mekong, but neither should it omit them. Efforts could also be made to engage the Chinese government and businesses. Although China's role in the Mekong region was not considered in the scope of this research, it is undeniably an important factor that was brought up unsolicited in numerous interviews, particularly in those countries that share a border with China. China has the key upstream position in the Mekong basin and a dominating share of regional investment. At the same time, the Chinese government is increasingly focused on environmental issues, with some green regulations and approaches to international investment that have been strongly supported by Chinese NGOs. Some Chinese investors are seen as potentially open to a corporate social responsibility approach to environmental issues.

If an EIA standard or its drafted guidelines satisfy potential blockers' concerns or scepticism, they may be convinced to become supporters or at least stay neutral. Perceived interests and benefits among government officials may shift over time, as officials retire and or are promoted, and form new relationships with investors and other political actors. Thus, the "right" people to include at the start of the regional EIA process might not stay constant several years later. More time will be needed to reach out to actors with interests and power in decision-making who are initially blockers or influencers but could subsequently become champions.

## **Conclusions**

Environmental impact assessment is a sensitive political issue in each of the five mainland Southeast Asian countries, but this sensitivity arises for different reasons. Government officials and civil society actors who prefer a binding agreement, concentrated (but not solely) in Cambodia and Vietnam, will need to be convinced that the guidelines are strong enough. Those who prefer a voluntary agreement, notably in Laos and Thailand, need reassurance that it is in their interests to proceed further towards the development of a regional EIA standard. Media coverage and public attention to EIA issues is not crucial in the early stages of cooperation, but may become essential once a regional standard is ready for formal approval or ratification. In any case, the eventual outcome of the

cooperation process should be identified by participants during the process of discussion, rather than in advance.

Depending on choices made collaboratively by national-level proponents, EIA regional cooperation could end at the level of voluntary guidelines, leading to an agreed standard committed to by governments and non-governmental actors, or be formally ratified by ASEAN. In the first option, the regional EIA mechanism would be used by national ministries and other stakeholders as a set of best practice principles, referred to and held up as a mirror without legal enforcement mechanisms. Regional institutions or donors could hold annual or regular review meetings to monitor implementation of the guidelines. In the second scenario, states would commit to integrating a regional EIA standard into national laws and regulations, along the lines of the UN Committee on World Food Security's guidelines on land tenure,<sup>41</sup> which were referred to as a possible model by several interview respondents. National government agencies would then join with businesses and civil society stakeholders including community-based groups to monitor EIA implementation through established policy processes. Thirdly, the most formalized of the options would result in a legally-binding standard, similar to the ASEAN Trans-boundary Haze Agreement or the UN Watercourses Convention. A permanent, formal structure would be established for monitoring and reporting on the agreement. However, as with other agreements, this is no guarantee of compliance. Given the range of views among stakeholders, it would be prudent to leave decisions about the final outcome of EIA cooperation open for as long as possible, pending dialogue and consensus-building among all parties. Greater cooperation on environmental governance is possible in mainland Southeast Asia, but the process will need to be carefully managed and negotiated by governments and non-governmental actors alike.

## NOTES

The author would like to acknowledge research funding and logistical support provided through the Mekong Partnership for the Environment, a project made possible by the generous support of the United States Agency for International Development (USAID) and implemented by Pact, a US-based non-governmental organization. The research results and any errors included are the responsibility of the author and do not necessarily reflect the views of Pact, USAID or the United States government.

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- <sup>12</sup> *Regional Stakeholder Engagement Assessment* (Bangkok: Mekong Partnership for the Environment, March 2014), pp. 28–30, 37–39.
- <sup>13</sup> Ibid.
- <sup>14</sup> An engaging account of field research challenges in multiple Southeast Asian settings is found in Sarah Turner, eds., *Red Stamps and Gold Stars: Fieldwork Dilemmas in Upland Socialist Asia* (Vancouver: University of British Columbia Press, 2013), pp. 1–13.
- <sup>15</sup> Victor T. King, *The Sociology of Southeast Asia: Transformations in a Developing Region* (Copenhagen: NIAS Press, 2008), pp. 16–17.
- <sup>16</sup> The author served as team leader and writer, as well as lead researcher in Vietnam. Members of the research team were Penh Socheat and Prom Tola (Cambodia), Lamphay Inthakoun (Laos), Kyaw Nyi Soe (Myanmar), Areeerat Chabada and Worachanok Youttananakorn (Thailand), and Nguyen Thi Thanh Van (Vietnam).
- <sup>17</sup> The importance of building rapport with respondents is stressed in much literature on qualitative research. See, for instance, Kathleen M. Blee and Verta Taylor, “Semi-structured Interviewing in Social Movement Research”, in *Methods of Social Movement Research*, edited by Bert Klendermans and Suzanne Staggenborg (Minneapolis, Minnesota: University of Minnesota Press, 2002), pp. 90–117.
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