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Title: Ensuring Social and Environmental Sustainability of the

Belt and Road Initiative in Cambodia based on

Experiences from China

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Ensuring Social and Environmental Sustainability of the Belt and Road Initiative in Cambodia based on Experiences from China Nguon Pheakkdey and Vann Yuvaktep

Abstract

A central component of the Belt and Road Initiative (BRI) entails large scale infrastructural construction projects that will pass through countries across Africa, Asia and Europe. Proponents argue that the BRI will contribute to Cambodia's economic growth since it connects Cambodia initially to the ASEAN regional economic networks and subsequently to the Pacific and ultimately to the world. Critics instead question the extent to which projects such as those financed through the BRI would encourage full and effective participation of affected parties, particularly those that are most vulnerable. They argue that the lack of full and effective public participation is a major obstacle in ensuring that infrastructural construction projects in countries such as Cambodia deliver its supposed benefits while mitigating its social and environmental risks. In this context, this research engages with literature on participatory and procedural environmental rights (Knox 2016) to identify ways in which effective public participation could be enhanced in the Cambodian Environmental Impacts Assessment (EIA) process, particularly for projects that are linked to the BRI. To empirically explore this question, we compare the experiences from the recently completed New Beijing Airport with the upcoming construction of the Koh Kong Airport, a project backed by Chinese-owned firm Tianjin Union Development Group. Methodologically, this study utilizes qualitative comparative analysis which includes key methods such as semi-structured key informant interviews and extended archival research. This paper makes the central argument that a robust EIA process where the public is meaningfully and effectively engaged remains a crucial step toward achieving the goals of meeting economic development and mitigating environmental impacts. 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.

Short Biography:

- 1. **Dr. Nguon Pheakkdey** is a Research Coordinator at the Department of International Studies, Royal University of Phnom Penh. His research focuses on Climate Change, Sustainable Infrastructure, and Environmental Management. He is currently the Lead Researcher for 1) Comparative study on processes to develop national REDD+ strategy in Cambodia, Myanmar and Thailand; and 2) Ensuring social and environmental sustainability of the Belt and Road Initiative. In addition to academic work, Pheakkdey works as an Environmental Consultant for the Asian Development Bank and United Nations Development Programme. Pheakkdey holds a PhD in Human-Environment Geography from Clark University, United States, Fulbrighter.
- 2. Mr. Vann Yuvaktep is a Lecturer in Law for the English Language Based Bachelor of Law Program (ELBBL), Royal University of Law and Economics. His work concentrates on legal aspects in mega infrastructure development, including decision-making processes, financing structures, and environmental safeguards. He is currently writing a page for Open Development Mekong on international infrastructure financing frameworks in the Lower Mekong region, which touches on Chinese financed infrastructure projects under the Belt and Road Initiative. Yuvaktep is a New York licensed attorney, holding a LL.M. in Environmental and Energy Law from New York University School of Law, Fulbrighter.

Belt and Road Initiative: Ensuring Environmental and Social Sustainability

DR. NGUON PHEAKKDEY AND MR. VANN YUVAKTEP





七星海旅游度假区国际机场项目

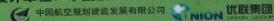
项目介绍

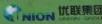
- □ 七星海国际机场位于七星海海滨旅游度假区南段东部的达怒恩村,东南 方向距离西哈努克港约54km,西北方向距离国公省省会约50km,距 天津优联集团公司基地约15km。
- 跑道长度3200m,机场飞行区指标规划为4E,为柬埔寨最高级别机场, 可起降B747-400以及A340-600等大型宽体飞机。跑道主降方向为 由南向北,跑道磁向为028°—208°,磁差0.5°西。规划分近期和 远期,近期占地面积约为298.6ha。远期占地面积约1000ha。
- 一期游客吞吐量可达到200万人次,货邮吞吐量约为900吨。二期游客 吞吐量可达1100万人次,货邮吞吐量可达41000吨。一期新建航站楼 2.0万㎡,二期航站楼面积规划为10.5万㎡。 一期规划停车场面积约为 20000㎡,二期规划停车场达9万㎡。



开发商: 优联发展集团有限公司

设计单位:中国航空规划建设发展有限公司









សូមអញ្ជើញមកកាន់ស្តង់តំបន់វិស្សមកាលទេសចរណ៍តារាសាគរកម្ពុជា នាពិពីរណ៍ឧស្សាបាកម្មសំណង់កម្ពុជា ២០១៥ នៅថ្ងៃទី ៣-៥ ខែធ្នូ ឆ្នាំ២០១៥ នៅមជ្ឈមណ្ឌលសន្និបាតនិងពិពីរណ៍កោះពេជ្រ ក្នុងនោះយើងនឹងមានបង្ហាញនូវគម្រោង វីទ្បាលំបែាលកាយដ៏ប្រណិត ដែលជាជម្រើសល្អបំផុតសម្រាប់ការវិនិយោគនិងទេសចរណ៍ ទំនាក់ទំនង 023 626 6666 023 651 9999



Background/ Assumptions

- ► Environmental Impact Assessment (EIA) is an effective tool to identify and mitigate social and environmental risks, and thus enhancing the benefits from development projects
- ► EIA requires full and effective participation of project affected parties, particularly those that are most vulnerable
- Mitigating risks and enhancing benefits from Belt and Road Initiative's development projects require EIA with full and effective participation of project affected parties

Research Objective/ Questions

- Objective: Compare EIA legal framework in Cambodia and China, examining how they address issues related to public participation.
- Guiding Questions
 - What are the recent government efforts to clarify the roles of and to increase public participation in China and Cambodia's EIA process?
 - ▶ What are the challenges that both governments faced in their efforts to increase public participation in EIA process, particularly for infrastructure projects?
 - Given that EIA as a legal instrument existed in China since the 1970s, what lessons have China learned in terms of ways to increase public participation in infrastructural construction projects?
 - ▶ To what extent, could those lessons be applicable to the BRI's proposed activities in Cambodia to ensure its social and environmental sustainability?

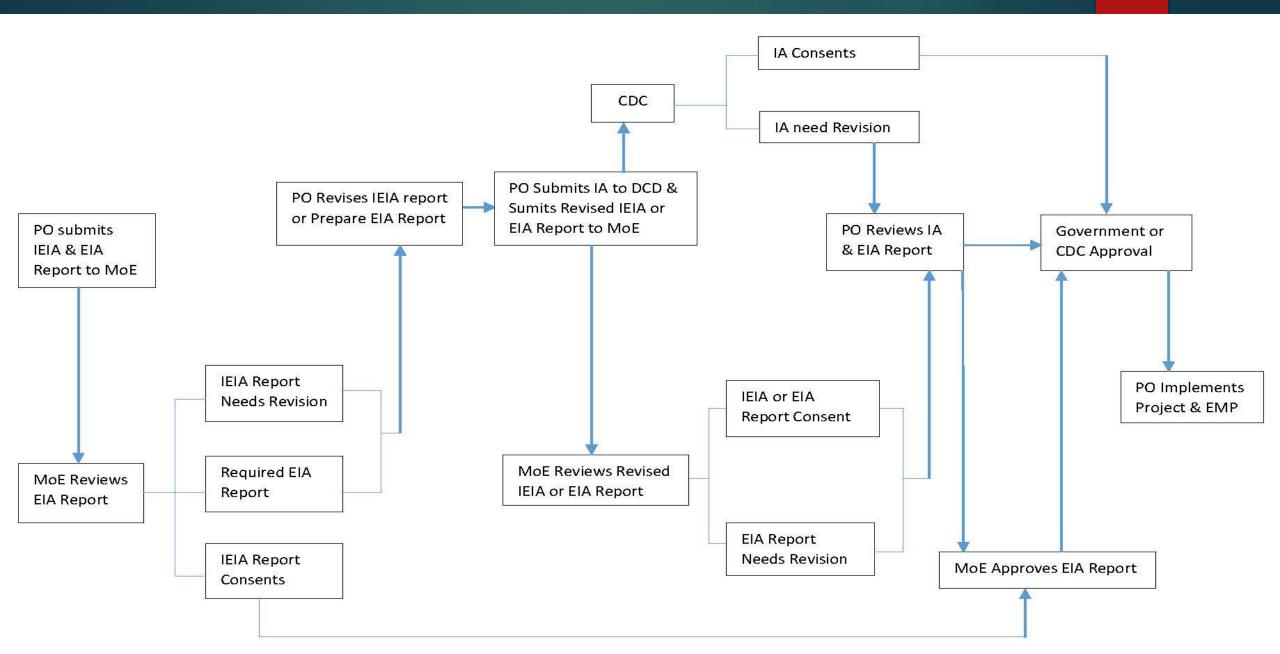
Research Design

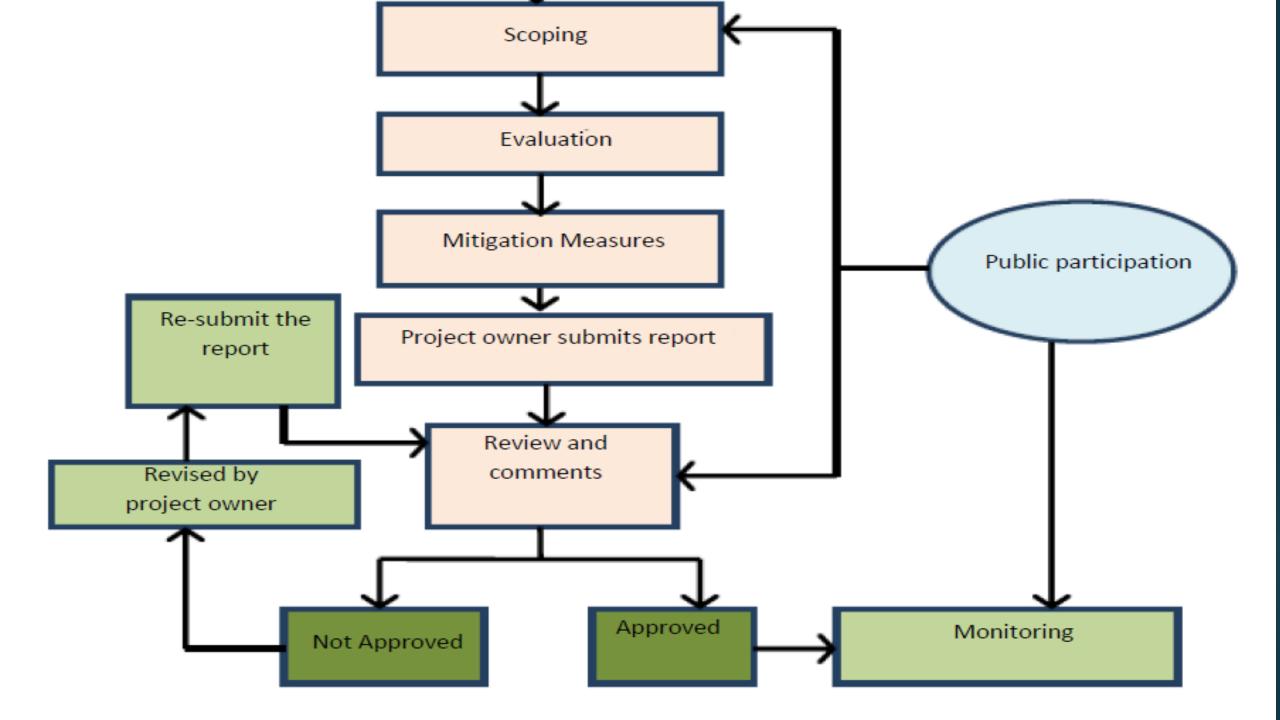
- ▶ Case studies
 - ▶ New Beijing Airport, China
 - ▶ New Koh Kong Airport, Cambodia
- ▶ Data Collection and Analysis
 - ▶ Desk Review
 - ▶ Government policies, laws, regulations, plans
 - ▶ Academic articles
 - ► Site Visits
 - ► Key informant interviews

Provisions related to Cambodia EIA

- Law on Environmental Protection and Natural Resource Management (1996)
- ▶ Law on Protected Area (2008)
- Sub- Decree on Environmental Impact Assessment Process (1999)
- Sub-Decree on Water Pollution Control (1999)
- Sub-Decree on Solid Waste Management (1999)
- Sub-Decree on the Control of Air Pollution and Noise Disturbance (2000)
- Joint Prakas between MoE and MEF on the Establishment of Service fee for Reviewing report of EIA and Monitoring the Project implementation (2000)
- Prakas on Delegation of Power to Municipal/Provincial Department of Environment to Decide on Project Development (2005)
- Prakas on General Guideline for Preparing Initial Environmental Impact Assessment and Full Environmental Impact Assessment Report (2009)

Preliminary Findings





Sample outline of an initial & full EIA report

- Summary
- ▶ Introduction
- Legal framework
- Project description
- Description of existing environmental resources
- ▶ Public participation
- ▶ Environmental impact assessment and mitigation measures
- Environment management plan
- Analysis on environmental damage and economic gains (for full EIA report only)
- ▶ Conclusion and recommendations.

Preliminary findings

▶ Interviewees

- Cambodia's legal framework for conducting EIAs is incomplete
- ▶Ensuring integrity of the EIA process is respected
- Significance of EIAs is not fully recognized by, for example, many of the government ministries responsible for infrastructure or industrial and agricultural development

Chinese Trainers, Cambodian Students

首页>>经色

"最重要的是,中国是地区大国,更应作出示范。" 中国老师, 柬埔寨学生

作者: 南方周末记者 吕明台 发自柬埔寨金边

专访柬埔寨沈良西党秘书长真淑

【环保复东】投资源中。环保

环保 東埔寨 NGO 环评

東埔寨也和当年的中国一样,由于在环评工作上 已有评论11条 没有严格要求,政府很难控制环境破坏行为,而 即使有了环评,政府迄今也未替对一家企业做出

一个接一个,学生们举着手提问。问题有时因过 于简单引发哄堂大笑,有时则令老师们颇为嬗 打印 始,"中国这么好的环保法律,能不能管管你们 字体:大中小

这是9月13日,柬埔寨国家环保部大楼里的一场特殊的课堂,合下满是柬埔寨环保部官员们,台上则 是来自中国环保部环评中心的技术官员们。

学生们显得足够虚心。柬埔寨环保部国务秘书Prach Sun说。"主要是为了学习中国落实环评的方法和 经验",特别是分享中国在"矿产勘探、天然气开采、水电站开发、火力发电以及城市基础设施建设等



培训课上,虚心的柬埔寨学生们

"東埔寨太需要中国"

東方希望中方下到地方。到现场手把手告诉他们怎么做评估。但中方觉得太复杂,不现实。

"東埔寨太需要中国的帮助了。"東埔寨环保部环评局局长Push Sorithy直言,東埔寨自1999年就颁布 实施了环评法令,但由于条件所限,直到2004年才有部分建设项目开展环评工作。

与中国相比,柬埔寨环评人员和法律法规尚处起步阶段,国家环保部每年审查的项目总数极少,更遑 论各省环保部门。

東埔寨国家环评法令也规定,项目在获得审批和动工之前,必须完成环境影响评估工作,并向环保部 送交环评报告书。但从2004至2009年的5年间柬埔寨约有1600个建设项目获得政府审批并动工建设。 但合乎上述环评规范的建设项目只有84个。而2009年一年,柬埔寨国家环保部所做的环评不过8个,



《南方周末》《南方人物周刊》 《MANGAZINE/名牌》







国的环评报告书一般也只有一页半,发展几年,现在最少的也有十多页了。"

此次培训的资金支持方——美国公谊服务委员会官员张杰生(Jason Tower)则希望,柬埔寨的主要 投资国是中国、中方表柬培训、也更有利于中方更深入地了解这边的现状。同时、中方环评法规的框 架体系和技术也都不错,有到甘肃、青海等偏远的地方培训的经验,这与柬埔寨有着较高相似度。

洗柽美国公宜服务委员会作为会作方自有逻辑, 这个成立于一成时的北政府组织, 自延安时期就与中 国共产省保持着有好关系。冷地相问更为自动由美对话作出了贡献。一直被视为对张有好的组织。更 重要的是,"委员会不接受美国政府的资金,有独立的募捐渠道。"张杰生说。

正式培训前,中方两名官员专门到金边就培训内容与東方进行了沟通,张杰生说,当时東方提出,希 望中方下到地方,到现场手把手告诉他们怎么做评估。但"中方觉得太复杂,在国内做这样的培训, 一般需要一个月的时间,第一次培训就做,时间上不是特别现实"。

最终培训的内容遵照由浅入深的规律进行。前期基本以介绍中国环境管理制度及环评领域基本概念为 主,但即便如此,主持培训工作的刘伟生和他的同事们还是惊讶地发现,即使是如环境容量、环境影 响评价类别等基础概念,对一些要训官是来说,也是十分陌生的。



因为环评虚设,项目私自动工,柬埔寨的万古湖被黄沙堆积得只余一汪浅水

"矿业已经在勘探阶段,却连矿业法都没有。石油气、天然气2012年就要大规模开采,指导原则还没

对比中国表情所讲授的中国经验——警预的技术和制度设计、柬埔寨的类生们有着自己的一番比较。 "柬埔寨的现在就是中国的过去,法律体系不完善;在公共参与的程序上问题非常大"。

他们对中国老师们的拖费之情溢于言表,"中国每做一项环评,就有许多专业领域的人是分项进行, 而柬埔寨只能由一个人负责,如何做到专业?"

更为迫切的是,"矿业已经在勘探阶段,却连矿业法都没有。石油气、天然气2012年就要大规模开 采,指导原则还没做出来。"Push Sorithy几乎是在自曝放丑。

"对外资宽松的投资鼓励政策,确实可能磁长了一些情况。"柬埔寨环保部环评局局长Push Sorithy承 认。柬埔寨首都金边著名的万谷湖(Boeung Kak Lake)房地产项目就是例证。这个被西方背包客比 同于杭州西湖的湖泊边, 一个大型房地产项目未经审慎的环评, 就匆匆上马。

9月15日,南方周末记者在现场看到,此前照片中原本祥和宁静的借大湖面,现在大部已被黄沙潭 冷、只全一汪浅水。情愿的周边居民也因此聚集全边市政府集全、要求公司停止撞潮。

一發成,延迟退休炭擇余热 C 反对, 早点退休颐养天年 "我们看到中国环保部的项目信息都公布在网络上,柬埔寨也可以学习。"参与学习的一名官员说。这 提交 查看投票结果 几年柬埔寨在水电站建设、矿业投资、天然气及油田开采、房地产开发都有许多外国企业介入。"我 们可以吸收中国的先进经验,更好地约束他们"。



新闻信息服务许可证 ICP经营许可证号: 粤B2-20050252号10P本生信息。第10P本09015430号

45.59% 的朋友认为, 二套房首付

83.25%的网友反对"延迟退休", 支持我国维持现有法定年龄不变。

85.6%的网友斯斯会子恰对摄效

推儿她而被提拔。

61 14% 的网络表示。可以便能 (蜗居) 中海藻的选择, 宁徽二奶

14.63%的网友认为,任命强硬的 警员能改变货州坡贡镇的治安团

南方周末官方网站----www.infzm.com 返回

"中资企业不是最好的。但也不是最差的"

"这其中有真实存在的问题。亦有许多沟通不畅导致的设解。"

受训的柬埔寨学员总是习惯性将思维引向中资企业,"在外国的中国企业,是否也要遵守中国的环保 法律?""中国签订国际公约是否只适用于中国境内,是不是也可以适用于中国在外的企业?"

柬埔寨发展理事会 (CDC) 徽至今年7月的最新报告显示,中国以81亿美元的直接投资总额已成为柬 埔寨最大的投资国。

源源不断的中资带来了欣喜。也引发了新的争议。中国社会科学院助理研究员郭维光曾在金边跟踪调 研过中资企业, 他坦陈, 中资企业的确在当地遭到了部分非议, 但"这其中有真实存在的问题, 亦有 许多沟通不畅导致的误解"。

此次参与受训的柬埔寨当地非政府组织DPA(Developmentand Partnershipin Action,以下简称DPA) 矿业项目官员Thy Try表示。2个月前、来自中国的中兴能源有限公司、就因用杀矿的方法开采全矿。 污染水源,影响了庄稼种值,并且与当地农民发生了冲突,迄今问题仍未解决。

"中国企业不是最好的,但也不是表现最差的。"柬埔寨中国商会的几位副会长和多家在柬NGO负责人 向南方周末记者坦言。

习惯性地指责中国,或出于多种原因。一方面,普通柬埔寨人有时很难区分中国企业与华人企业。比 如2004年印尼华人黄奕聪施下的会光公司柬埔寨毁林事件,就常被视为中国企业毁林行为。而声名狼 籍的万古湖填湖项目的公司,正是柬埔寨华人参议员刘明勤所属。

更重要的是,中资企业缺乏与当地NGO打交道的经验和兴趣。DPA矿业项目官员Thy Try抱怨说。他所 在的这个NGO,由柬埔寨156个机构组成。与欧洲企业相比、当地NGO很难和中国企业打交道。有时 根本找不到企业。比如一家叫'hai lan''的中国矿业公司,他找了半年,依然无法与之对话。

柬埔寨中国商会副会长朝金林承认。"中国的企业从来没有应对它们的经验"。一个原因是柬埔寨的体 制不完善。一些NGO和独立工会领导甚至出现了黑社会化的倾向。"有些NGO甚至雇用警察来威胁企 业。"柬埔寨中国商会秘书长、原云南国际公司在柬负责人孙燕黔说。"2008年,我们在建水电站时, 有家叫AZ的NGO就故意把砍伐过的再生林说成我们砍的原始森林。按过去当地人砍过的木桩点数。"

"一些企业不得不养着这些NGO的头目,每个月都要给钱。"柬埔寨中国商会常务副会长赵卫国不忿地

现在,中资企业亦在学着改变。以中兴能源公司为例,起初一家德国NGO与其接触遗拒,但后来该机 构派出了一名中国实习生,终于取得了沟通。"最重要的是,中国是地区大国,更应作出示范。"柬埔

改变其实早就开始。作为地区大国,中国正考虑承担其自己的另一种责任。

今年4月初,中国环保部专门组建了在中国一东盟环境保护合作中心,以更好地促进中国与东盟各国 在环境保护领域的交流和合作。"中国在与东盟开展区域经济合作时,将始终把环境保护摆在重要位 雾。"合作中心的官员们说。"环保部国际司正在积极开展相关工作。"刘伟生对柬埔寨环律局局长 Push Sorithy说,虽然此次培训并未纳入中国一东盟的框架内,但他回国后,将一定把束方的意见带 到,争取成立一个相对规律的交流机制。

"我们希望这样的活动,今后每三个月就能举办一次,每年至少有一次全年总结性的交流活动。"柬埔 寨环保部环评局局长Push Sorithy热诚地邀约。

▶ Since 2010, MoE has received technical support from the Chinese Appraisal Center for Environment and Engineering, which operates under China's Ministry of Environmental Protection.

EIA in China

- EIA law in China is mainly drawn from the Environmental Protection Law, the EIA Law, and a number of environmental laws and administrative regulations.
- Article 13 of the Environmental Protection Law provides the legal basis of EIA requirement that leads to the promulgation of the EIA Law in 2003
- ▶ The EIA Law imposes the EIA requirement on economic development plans and construction projects, establishes an assessment and mitigation system, requires a follow-up monitoring and evaluation on actual impacts of the plans and projects, and creates a legal liability regime in each EIA stage.

Public Participation in Chinese EIA

- Article 5 of the EIA Law provides that "The state shall encourage all relevant units, experts, and the public to participate in the EIA in appropriate ways."
- China distinguishes two EIA regimes
 - ▶ ElA for construction projects ("Project ElA")
 - ▶ Article 21 of the EIA Law
 - ▶ Article 16 and 17 of the Interim Measures
 - ElA for development plans ("Plan ElA")
 - ▶ Article 7 of the EIA Law
 - ▶ Article 11 of the Provisions of Public Participation in EIA on the Draft of Special Plans

Procedural Steps

- ► The EIA information are disclosed, notices are posted in residential quarters, and the news is released in local newspapers and websites of involved parties.
- ▶ Information is collected through different means. Usually, it is done by a hired contractor. Sometimes, there are informal arrangement for discussions or door-to-door interviews. A simple questionnaire is made for the public to answer.
- ▶ Then, collected opinions are classified and submitted to the project proponents to be considered and written as a mandatory section contained in the EIR.

Comparison

| Institution Nature in Cambodia | Cambodian Public Institution | Chinese Public Institution |
|--------------------------------------|--|--------------------------------------|
| Legislature | National Assembly & Senate | National People's Council |
| Executive: Central Government Level | Royal Government | State Council |
| Executive: Ministry Level | Ministry of Environment | Ministry of Environmental Protection |
| Executive: General Directorate Level | General Directorate of Environmental Protection | Department of EIA |

Executive: Department Level

Department of EIA

1 general admin. and 5 division divisions

N/A

Appraisal Center for Environmental Engineering

Municipal / Provincial

Environment Office

Environmental Protection Bureau

("EPB")

Administrative Level

Legal Framework for Public Participation

| Nature of Law/Regulation in | Cambodia | China |
|-----------------------------|---------------------------------|--------------------------|
| Cambodia | | |
| Main Environmental Law | Law on Environmental Protection | Environmental Protection |
| | and Natural Resource | (\$\$\$) |
| | Management (1996) | |
| Specific EIA Law | N/A (drafting is in progress) | EIA Law |

Law on Forestry (2003)

EIA Guidebook (2012)

N/A

Main Executive EIA Regulation

Main Executive Ministry-Level

Main Public Participation

Related Binding Document

Public Participation Related

Non-binding Document

EIA Regulations

on Law

-Regulation on Hierarchical

-Interim Measures for Public

-Specific ordinances of local

Participation in EIA

governments

Not Found

Examination and Approval of EIA

Among others:

Documents

Law on Protected Area (2008);

Sub-Decree on EIA Process (1999)

Prakas on General Guideline for

Preparing Initial and Full EIA (2009)

Experiences from Case Studies

Case 1: New Beijing Airport

- Identifying the "real" project affected parties
- Public participation requires time and resources
- ▶ Documents needing inputs are too technical to be simplified into tick-the-box surveys
- ▶ Information is not "fully" disclosed for the purposes of consultations
- Means for project affected parties to voice their concerns are not appropriate
- Comments received might not be incorporated nor addressed

Case 2: New Koh Kong Airport

▶ Still in its inception stage. See photos earlier.

Concluding thoughts

- A robust EIA process where the public is meaningfully and effectively engaged remains a crucial step toward achieving the goals of meeting economic development and mitigating environmental impacts.
- ▶ 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.

