

Section.2

Current Situation on Environmental Impact Assessment Systems in Southeast Asian Countries

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1. Background

Environmental Impact Assessments (EIAs) has been recognized as important tools to ensure the participation of local people in environmental management systems. In the Asia-Pacific region, many governments have been increasingly recognizing the importance of EIAs and local participation, and as a result, many EIA systems in this region include provisions concerning the participation of local people. Fortunately, in some cases EIAs provide local people opportunities to express their opinions concerning forest management to their governments. However, at the same time many problems have been pointed out. Accordingly, it is would be useful to clarify the current situation in target countries of this IGES Forest Conservation Project in the Asia-Pacific region, such as Indonesia, Lao P.D.R, Malaysia, the Philippines, Thailand, and Vietnam for the purpose of further developing measures to support local people's participation.

2. Current Situation in Southeast Asian Countries

(1) Influence from international society

Since the 1970s, several countries (e.g. the Philippines, Thailand) established framework laws for the conservation of the environment which included some provisions regarding EIA systems, but in some cases no prescriptions were given on how to implement them². One of reasons these countries established the laws was to take action on the declaration of the United Nations Conference on the Human Environment. Most of these countries made these provisions to demonstrate to other countries - especially developed countries -- and multilateral aid organizations their commitment to address environmental issues.

It has been pointed out that this legislation achieved its purpose simply by its existence³. With a few exceptions, these provisions were not implemented for some time, however situation has been changing since UNCED (the Earth Summit held in Rio de Janeiro) in 1992. Most of the countries (e.g. Malaysia, the Philippines, Thailand) concerned began to implement these provisions after UNCED by prescribing EIA procedures⁴. Similar progress was also made in some economies in transition. In Vietnam, training and case studies began during the 1980s and in 1993, the government established a law on environmental protection and made a decree prescribing procedures for implementation. Considering these cases, one could conclude that international society affected the attitude toward the environment in these countries.

In addition, it has been pointed out that multilateral and bilateral aid organizations have been playing important roles in these countries⁵. As these organizations fund or implement a large number of large-scale projects, their funding activities sometimes have considerable impact on the environment. Each organization has prepared its own procedures or guidelines on EIA in order to avoid negative impact on the environment and criticism from environmental non-governmental organizations (NGOs). In the case of Lao P.D.R., these procedures and guidelines have affected the

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² SAKUMOTO, Naoyuki (1996), Possibility of Regional Cooperation in ASEAN Countries and Problems on Environmental Assessment System in ASEAN Countries (in Japanese), NOMURA, Yoshihiko / SAKUMOTO, Naoyuki (ed) " CHIKYU KANKYO MONDAI TO TOJOKOKU"(Global Environmental Issues and Developing Countries), IDE,pp184-194

³ KANEKO, Yuka (1998), Possibility of Asian Countries' Law (in Japanese) Daigaku Kyoiku Shupan, pp194-217

⁴ ibide

⁵ Op.cit.supra1,pp171-177

country's EIA system⁶. Laos P.D.R does not yet have an official EIA system in place, but in fact EIAs are implemented on an informal basis. Because the procedures and guidelines of the organizations noted above provide good examples of EIA, the government of Laos refers to them in EIA activities. As this case shows, these organizations can provide useful models and references for developing countries.

(2)Importance of regional cooperation

Although the Association of South East Asian Nations (ASEAN) Agreement on the Conservation of Nature and Natural Resources was adopted in 1985, it is not yet being enforced due to the reluctance of member countries to establish the legal obligation to conserve the environment and the low priority given to environmental conservation in each national policies⁷. However, similar to the example above, international society can affect these countries' attitudes, and it appears that the Rio Summit also influenced ASEAN countries. In 1994, ASEAN adopted its Strategic Plan of Action on the Environment. This Strategic Plan requires ASEAN countries to take actions such as, "1.1 Continue support in the documentation of regional EIA experiences leading towards the harmonisation of procedures;" "1.2 Initiate activities that will make use of natural resource and environmental accounting studies and approaches;" and "1.3 Establish procedures that would initiate the integration of environmental concerns in the various ASEAN programmes and activities".in order to "Support the development of a regional framework for integrating environment and development concerns in the decision-making process". There are many similar national Strategic Plans in ASEAN countries. Although the Strategic Plan is not a legal instrument, it was pointed out that countries are free to make improvements in their national policies⁸. It is possible that even non-legal instruments can be effective in ASEAN countries, and be good tools to improve their EIA systems.

(3)Current situation in each country

Various types of EIA systems exist in the Asia-Pacific region, reflecting the diversity of each country's situation (See Table 1). Almost all target countries of this study have provisions regarding EIA in their legislation (Indonesia, Malaysia, the Philippines, Thailand, Vietnam⁹). In case of Lao P.D.R, although no legislation yet exists concerning EIA per se, EIA is included as a procedure of approval on foreign investment¹⁰. In any case, these countries are carrying out EIA now in some form. As mentioned above, various types of EIA exist, but there are some common characteristics. It can be seen that many countries tend to extend the scope of EIAs. In Vietnam, almost all projects must conduct an EIA in order to obtain approval from governments, other than a few exceptions where serious environmental impacts cannot be expected.¹¹ In Thailand and Indonesia the scope of EIAs has been extending. It can also be seen that almost all countries require project proponents to execute EIAs before starting projects, and results of EIAs will be referred to when the government decides to approve a project.¹²

⁶ Douglas L.Tooke,(1997), Laos P.D.R Country Report , Robert Beckman / Lal Kurukulasuriya (ed), "Environmental Legislation and Sustainable Development Workshop Report" UNEP/APCEL Publication Series Issue No.1 pp74-75

⁷ SAKUMOTO, Naoyuki (1997) , ASEAN Nature Conservation Agreement and ASEAN Environmental Strategies (in Japanese), NOMURA Yoshihiro / SAKUMOTO Naoyuki (ed) " Hatten Tojoukoku No Kankyō Seisaku No Tenkai To Hou" IDE, pp95-115

⁸ loc.cit.

⁹ NOMURA, Yoshihiro / SAKUMOTO, Naoyuki (1996), Hatten Tojoukoku No Kankyō Hou- Tounan Ajia/ Minami Ajia (Environmental Law in Developing Countries- Case Studies in Southeast Asian Countries and South Asian Countries) , IDE

¹⁰ Op. cit. Supra1,pp197

¹¹ The World Bank Agriculture and Environmental Operation Division(1996) Vietnam Environmental Program and Policy Priorities for a Socialist Economy in Transition, The World Bank Agriculture and Environmental Operation Division, pp112

¹² Op. cit. Supra1,pp184-194

(4) Ensuring local people's participation

Most developed countries recognize the importance of local people's participation in decision-making and have tried to ensure that participation. This recognition also affects international society, and evidence exists that this is true in southeast Asian countries, where many provisions in legislation refer to local people's participation (Indonesia, Malaysia and the Philippines).¹³ In Vietnam, where national law does not yet require EIAs, attempts are made to include public participation at the city level (e.g. Ho Chi Minh City, and Hanoi).¹⁴

A Malaysian case demonstrates effective local people's participation.¹⁵ In case of the Penang Hill development project, many local people made comments for an Environmental Assessment and an NGO involved in a review process claimed that there were many flaws in the assessment process. In the end, the review committee did not accept the environmental assessment, and the development project was canceled. While this case is good example of local people's participation, many problems with the process were also pointed out.

(5) Case of Environmental Impact Assessment

In a case on environmental impact assessment in Malaysia, a law suit was initiated by local people seeking an extension of an exemption of the EIA issued by government.¹⁶ The Environmental Quality Act enacted as federal legislation included a provision on EIA in 1974. However, provisions on EIA in the Act were not prescribed precisely. The Environmental Quality Order was made for the purpose of defining EIA processes in 1987. In case of projects listed in the Order, project proponents should implement EIAs before starting a project, and in the EIA process, project proponents are required to provide opportunities for local people's participation.

However, Malaysian federal government declared that project expected to be proposed in Sarawak state was exempted from duty to implement an EIA. From 1993, the Bakun Dam project had been proposed in Sarawak state and serious impact for environment was anticipated. At the time the proponent announced the project, EIA procedure was just prepared. According to a declaration, the project proponent need not to implement and EIA, but three residents claimed that they have right to obtain a copy of the EIA concerning the Bakun Dam project and they also have the right to representation. The first trial judged that "The EQA was enacted to be applicable to the entire nation. Subsidiary legislation was permitted to give full effect to the EQA. Under the guidelines prescribed by the project proponent ... it cannot be made without some form of public participation ... For this is a right vested with the plaintiffs ..." However this judgement was reversed by an appeal court.

4. Problems

Cases exist of public participation in EIAs in the Asia-Pacific region. Whether positive or negative, they indicate that these countries are gaining experience in implementation of EIAs. Looking beyond these cases, one can identify current problems and challenges which southeast Asian countries face on EIA.¹⁷ Some of these are noted below:

- Overlapping jurisdiction between central and local governments
Coordination between central and local governments or among the relevant ministries in central government have been pointed out as a problem. Overlapping jurisdiction may allow the escape from duty on the implementation of EIAs.
- Lack of technical expertise

¹³ Op. cit. Supra1, pp199

¹⁴ Op. cit. Supra10, pp113

¹⁵ Op. cit. Supra1, pp201-202

¹⁶ See Regional Symposium on the Role of the Judiciary in Promoting the Rule of Law in the Area of Sustainable Development (1997), Compendium of Summaries of Judicial Decisions in Environment Related Cases, SACEP, UNEP, pp112-113, also Japan Environmental Conference, ed.(1997) Ajia Kankyou Hakusho (White Paper on Environment in Asia), Toyo Keizai Shinpou Sha, pp180-181

¹⁷ See country reports opened at APCEL website (<http://sunsite.nus.edu.sg/apcel/>)

Experienced experts are necessary for implementing EIAs, however a shortage of experts exists -- not only scientific experts but also facilitators of local participation. In addition there are shortages of local government's staff.

- Cost

Implementation of EIAs is sometimes too costly. In some cases, this has become obstacle to implement EIAs effectively.

- Lack of awareness

Many people are not aware of the existence of EIA regulations, and even if they are aware, they may not know how EIAs can be utilized. This shortcoming can be a hindrance to public participation.

- Arbitrary implementation of EIA systems

Some cases indicate problems of appropriateness and fairness in a EIA processes controlled by governments. One problem pointed out is that the decision to start an EIA process depends on the governmental administration. Another problem is the absence of judicial procedure to check decisions made by the administration.

Further research on these issues may provide useful input to improve public participation in Environmental Impact Assessments in Southeast Asia.

Table.1 Current Situation of Target Countries' Environmental Impact Assessment Systems (1998)

Country	Basic law or Regulation	Concerned Authority	Scope	Person who has duty to execute EIA	Evaluation Authority	Participation	Post -EIA Evaluation
Philippines	Philippine Environmental Policy (P.D.1151)/Presidential Decree (P.D.) No. 1586/Proclamation No. 2146 of 1981	Department of Environment and Natural Resources (DENR)	Heavy industries/ Major mining and quarrying projects/ Forestry projects/ Fishery projects/Infrastructure projects/ Projects located in Environmentally Critical Areas	Project Proponent	Environmental Impact Assessment Review Committee (EIARC)	There is a procedure of public hearings	(Environmental Monitoring)
Vietnam	Law on Environmental Protection/Decree 175/CP	Ministry of Science, Technology and Environment (MOSTE)	From master plan on regional development to projects such as concerning to economic, scientific, medical, cultural, social, security defense and investment from international organizations,foreign companies except some projects or activities predicted to have no serious effect on environment	Project Proponent	Expert Council	No provision for public participation	No provision regarding monitoring.
Laos	informal and ad hoc in nature	Foreign Investment Management Committee (FIMC)	Mainly foreign investment projects	Project Proponent	STENO	N.D	N.D
Thailand	Enhancement and Conservation of the National Environmental Quality Act	Office of Environmental Policy and Planning (OEPP)	Industry/Residential Building and Service Community/Transportation/Energy/Water Resource/Watershed Area/Mine	Project Proponent	Expert Review Committee	Right to participate is permitted but there is no precise provision to ensure the right.	Environmental Monitoring
Malaysia	Environmental Quality Act1974/ Handbook of Environmental Impact Assessment Guidelines	Department of Environment (DOE)	Iron and steel industry/ Pulp and paper mills /Cement plant/Construction of coal fired power plant/Construction of dams and hydroelectric power schemes/Land reclamation/ Incineration plant (scheduled waste & solid waste)/ Sanitary landfill Development of project covering an area of 50% or more with slopes exceeding 25 degrees (except quarry) Logging involving an area exceeding 500 hectares	Project Proponent	DOE Review Panel	Public participation can be permitted	No provision regarding monitoring
Indonesia	the 1997 Environmental Management Act	Central government agency is BAPEDAL	The types of businesses or activities which are predicted to have significant impacts on the environment	Project Proponent	EIA commission at the central and provincial level	Participation for local AMDAL committee's review process	Environmental Impact Statement, Environmental Management Plan and Environmental Monitoring Plan

This table is based on "EIA system in Asian Countries" (in Japanese) included in "Hatten Tojoukoku No Kannkyou Hou- Tounan Ajia, Minami Ajia" (Environmental Laws in Developing Countries - South East Asia/ South Asia-), IDE, 1996 and APCEL reports and target-country legislation accessed at website (<http://sunsite.nus.edu.sg/apcel/>).