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PLUS Politics: Tackling the EIA Impact Gap

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KEY POINTS

- EIA processes are intended to:
 1. produce analyses that anticipate the main environmental and social ramifications of a development project;
 2. engage the broader population of a community, region, or country for input on these findings; and
 3. deploy the outcomes of the assessment and subsequent feedback in project-related decision-making, planning, and actions.
- EIA processes rarely function as intended, frequently becoming “box-ticking” exercises, particularly in developing countries.
- Government and private-sector actors who have the most say in how these processes unfold often see EIAs as impeding their interests and, therefore, act to weaken their implementation and use.
- The result is the appearance of action on social and environmental protection but little meaningful progress on these fronts through current EIA processes.
- More politically-informed approaches that better account for power and interest dynamics are needed to improve the social and environmental performance of extractive industry and associated infrastructure investments.

Tackling the EIA Impact Gap: Addressing Political Economy Realities to Bring Actual Practice Closer to Best Practice

Oil, gas, and mining projects can be profoundly disruptive to lives and livelihoods and damaging to air, water, soil, and vegetation. Evidence of this abounds across the world, from the Niger Delta and the Gulf of Mexico to Brumadinho, Brazil, and Porgera, Papua New Guinea. Understanding and addressing the social and environmental repercussions of EI development projects is crucial for avoiding or effectively managing such negative outcomes and fostering sustainable development. To date, environmental impact assessment (EIA) processes have been the cornerstone of efforts to identify and address social and environmental impacts of proposed development projects, including extractive industry projects and associated infrastructure.

In practice, however, crucial aspects of these processes — the production of EIAs, consultations around the findings and implications of reports, and the actual use of the content of reports to inform key project decisions — are at times considerably distorted by power and incentive dynamics rooted in the political economy of a given context. The result is too often watered-down “box-ticking” exercises in which the impact of the EIA process on actual social and environmental protection can be greatly reduced.

Technocratic approaches that emphasize best practices and capacity will not improve the performance of EIA processes on their own. Politically savvy approaches are needed to address the political challenges associated with EIAs, as even the most technically sound and capacitated EIA processes can be derailed by political factors.

This brief is based on a longer chapter on the topic produced for a United Nations Environment Programme (UNEP) publication on development corridors.¹ It aims to present the gaps between various aspects of the theory and practice of EIAs, explore some of the ways in which political factors may be contributing to these gaps, and suggest how future work on social and environmental protection and management



might better account for political context in hopes of achieving greater impact.

Best practice versus actual practice

Before delving into the issue of why EIA processes do not work as intended, it is worth briefly specifying some ways in which aspects of the EIA process tend to deviate from best practice.

EIA Production

The activities and decisions associated with the production of an EIA for an EI or infrastructure project would ideally involve the decision to carry out an EIA for a relevant project and the production of as complete, accurate, unbiased, and contextualized an assessment of the anticipated environmental and social risks as possible based on the best currently available information and analysis. Screening processes would ensure that EIAs are carried out for all relevant projects and the scope of reports themselves would ensure coverage of appropriate issues, types of impact, indicators, and geographic reach of a given project. They would forecast likely social and environmental effects, specifying probability and magnitude and weighing in on significant impacts and the acceptability of unavoided or unmitigated impacts in an unbiased way.

Actual EIA can often depart from good practices in various ways: governments can choose not to require EIA in order to minimize costs or inconvenience for project developers even when objective criteria suggest they should be undertaken; the scope of reports can be inadequate, failing to appropriately cover the reach of, or neglecting important variables shaping, likely social and environmental impacts; and predictions and evaluations can be biased or unsubstantiated to minimize the appearance of anticipated risks and efforts needed to mitigate them.

EIA Consultations

In theory, *meaningful* public participation in EIA processes is a fundamental tenet of good environmental governance. Public consultations are the main vehicle for such participation, typically by way of public hearings or workshops. There are some generally accepted principles of good practice in EIA consultation: EIA consultation processes should be inclusive dialogues among

participants possessing adequate capacity, expertise, requisite information and sufficient lead time to participate in informed ways; and they should also be timed and executed in a way that allows them to inform outcomes and decisions regarding the projects in question.

In practice, EIA consultations often limit or narrow participation to those most likely to support or acquiesce to a project. These consultations are typically characterized by major asymmetries in expertise and information between project proponents and under-capacitated or inexperienced participants working with incomplete or biased information and within rushed timeframes that can exacerbate the impact of these imbalances. The way EIA consultations are structured and timed further undermines the likelihood of their serving as meaningful mechanisms for public participation in informing decisions pertaining to EI projects: EIA consultations are typically carried out as one-way information transfers from companies and government proponents to relatively passive participants and often as a one-off taking place after key decisions about the fate of a project have already been made. In essence, these consultations end up giving the appearance of participation with very little of its substance.

EIA Use

Finally, a good EIA process would not end with the production of a report and a consultation deliberating on its findings. Rather, these should serve as inputs into subsequent decisions around whether or not to proceed with a project and if so, how to address anticipated social and environmental challenges. These should be key inputs into the design, adequate resourcing, effective implementation, and enforcement of environmental management plans (EMP) to address anticipated and emerging social and environmental impacts of a particular project on an on-going basis.

Most EIA processes fall flat at this stage. Even when solid assessments are completed and feedback is collected through participatory mechanisms and integrated, EIA impact can be undermined by subsequent inaction. Indeed, because key project decisions are often made before EIA are complete, reports often end up “sitting on a shelf” without further action being taken. To the extent to which EMP are actually produced, they tend to be ill-specified, underdeveloped, or inactionable. They typically lack sufficient clarity around who would be responsible

for doing what in the event of certain outcomes and rarely ensure the capacity and resources for these responsibilities to be effectively undertaken. Where EMPs do exist, they tend to be characterized by little effective oversight and few consequences for non-implementation.



In short, every step of the way, there are significant gaps between how EIA processes are meant to work according to notions of best practice and how they actually unfold. These gaps can significantly reduce or fundamentally impede their contributions to better understanding and responding to the social and environmental impacts of EI projects. Gaps that are in many cases not accidental.

Political realities and EIA performance

While technical appropriateness and capacity no doubt influence the trajectories of EIA processes, there can be little doubt that political context also plays an important role. The fate of EIA processes is significantly shaped by power and interest dynamics across the various actors involved from government, private sector, and society. Fairly consistently, environmental and social protection are not the highest priorities for those with the most influence over EIA processes, but are important to those in the weakest position to advance their interests. As a result, those who have the greatest responsibility and *de facto* power may undermine EIA processes for political, personal, or private sector gains, while surrounding ecosystems, the climate, and relevant communities may bear the burdens of the weakened implementation of the EIA process.

Private sector

In a very powerful position with regard to the development and implementation of EI projects, private sector actors have significant influence over associated EIA processes. With both direct influence over EIA production and indirect influence over other aspects of the process through government ties and leverage. While larger, reputation-sensitive companies listed on international stock exchanges and possessing internal capacity may choose to pursue relatively high social and environmental standards, many EI companies do not. The latter can wield power to dilute the impact of the EIA process by, for instance:

- influencing legislation and decision-making to reduce the number or demands of EIAs;
- using their common role in financing EIA and hiring consultants who perform them to speed up EIA production processes and bias the contents in favor of company interests rather than providing unbiased, accurate and comprehensive reporting; or
- deploying their government ties and leverage to otherwise bend EIA processes (including consultations) to their corporate interests in having these operate as rapid and smooth affairs that legitimize their projects rather than processes that serve the public good.

“Whether or not projects will proceed, and the quality of EIAs conducted, depends mainly on investors’ commitments, not the government policy or regional institutions”²

Governments

Within governments, generally the pro-investment actors—e.g., finance and economy ministries, ministries of energy, oil, gas, and mining, — have greater influence over the social and environmental determinations in the EIA processes than environmental and social ministries and agencies. Despite environmental ministries typically having nominal authority over key aspects of EIA processes, they can be functionally sidelined or constrained by those other ministries who can view social and environmental regulations as obstacles to their goals, interests and priorities. As a result of these internal power dynamics within governments, those with interests in prioritizing investment attraction and retention can lead to the implementation of EIA processes in ways that favor corporate over public interests: pursuing cost and time savings over thorough, accurate, and inclusive processes; minimizing resources allocated to administration of EIA requirements; ceding little or no power to other stakeholders; and otherwise preventing EIA processes from tying government or corporate hands on major decisions about the fate of projects regardless of EIA findings.

“Key actors involved in conducting EIAs – project proponents, government authorities, and the individuals who actually carry out EIAs (‘experts’) – have incentives to undermine EIA processes for personal and company gain.”³

Communities

In general, communities have very limited influence on EIA processes. Consultations would appear to be their most immediate path to impact but as noted above, the way consultations are operationalized leaves very little room for influencing outcomes even among those actually invited to participate. Indeed, the timing of EIA consultations typically occurs when community influence over EI governance outcomes is least.⁴ While communities and civil society may use protest as a strategy to voice concerns about shortcomings of EIA processes or about the projects in question, these tend to do no more than delay the project's proceeding. Particularly in low- and middle-income countries, limited capacity, limited coordination, and constrained civic space can collectively undermine community power and their prospects of driving consultants to produce better reports, for these to be the basis of collaborative dialogue and for major decisions to be made on the basis of communities' social and environmental priorities.

“[W]hen it comes to EIAs, most communities are the politically and economically weak party seeking to counter the proposals of powerful multinational corporations and their allies in government. Scholars have found that public participation procedures often fail to level the power asymmetries that characterize the relationships between developers, state agents and communities.”⁵

A troubling paradox

As others have noted, the upshot of the political dynamics discussed above can be inauspicious for existing approaches to EIA processes: those with the most power over how these processes unfold have the least interest in their being implemented in an effective and impactful way. In this case, global notions of best practices from a good social and environmental governance perspective simply don't align with the interests of those shaping governance outcomes on the ground. Therefore, in order to improve impact, we may have to think differently about how we pursue social and environmental goals related to EI investments.

Dealing with political challenges head-on

Work in the GEI field on EIA processes is primarily focused on technocratic interventions to improve EIA performance. The underlying logic is that change will come from enhancing information, procedures, resources, skills, technologies, systems, and institutional practices. However, as previous sections of this brief highlight, even the best-designed EIA processes can still be diluted and derailed by political factors.

In grappling with these political factors, there is no “one-size-fits-all” solution. The specifics will vary from one context – country, region, project, sector, etc. – to the next. Therefore, there is a need for a basic starting point – a political economy analysis (PEA) that:

- indicates the opportunities and constraints around specific reforms within a given system;
- helps illuminate who might be allies for and opponents to specific EIA reforms; and
- outlines the interests and incentives that need to be understood and addressed to help design and bring about meaningful improvements in EIA performance.

Armed with the information provided by a PEA, one can then turn to the matter of acting on this information and using it to identify and inform the design and implementation of strategies and approaches to better advance desired social and environmental outcomes with regard to EI and related infrastructure projects. For inspiration we provide some basic ideas for tackling some of the common challenging power and interest/incentive dynamics discussed above.

1. Changing power and incentive dynamics

Changing power dynamics across the key players within a system is a daunting task, but in the long term it will likely be critical to improving performance. Supporting the formation of *strategic coalitions* among those with a genuine interest in and commitment to meaningful EIA processes within government and beyond (civil society, media, progressive companies, communities, global allies, etc.) is one potential type of strategy for shifting power dynamics in the right direction.

Another set of strategies might focus on trying to change the incentives and interests that currently contribute to limiting the impact of EIA processes, for instance:

- Within governments or among EIA consultants, changing incentives/ reframing interests of individuals by emphasizing merit and performance-based rewards and creating sanctions for problematic practice.
- Using mass mobilization to create disincentives for failures or costs due to poor EIA processes.
- Persuading international financial institutions and development banks to create more incentives to reward governments for good EIA implementation and practice (and perhaps a parallel mechanism with EI investors tied to ESG commitments).

2. “Working with the grain”

This approach takes power and incentive dynamics and alignments as reasonably fixed in the short- to medium-term and focuses on trying to make the best of those circumstances in a given context, even if this involves adjusting goals and expectations. Specific strategies might include:

- Capitalizing on informal relationships to advance progress.
- More extensive use of the courts to try to bring about greater compliance with EIA regulations or action plans.
- Streamlining EIA consultations with other existing participatory mechanisms (e.g. prior consultation and consent processes).
- Collaboration with large, reputation-sensitive companies on a project-by-project basis.

3. Circumventing political obstacles

In an attempt to work around challenging power and interest dynamics, one might try to develop alternative mechanisms through which to advance a particular goal related to social and environmental protection. Specific examples of this might include:

- Greater focus on citizen involvement in data collection, impact assessment, and monitoring efforts as an alternative to corporate- and government-centric models.
- Relocation or delegation of authority or resources to work around conflicts of interest that undermine current EIA models, e.g. through basket funds paid into by companies for EIA costs but with consultant hiring and other expenditures overseen by third parties or multi-stakeholder panels.

Conclusion

The potential social and environmental costs of EI projects can be profound and the urgency to more effectively anticipate, mitigate, and address these is every day more apparent. Getting real traction will require policies and practices that are not only technically sound but politically savvy.

Our analysis, summarized in this brief and developed further in the full paper, highlights some of the political dynamics that can reduce the efficacy of current EIA processes. It also provides ideas for better engaging with political context to address these. Approaches to working on EIA processes moving forward should integrate political economy analyses from the outset and on an on-going basis to inform the selection, design and evolution of strategies to safeguard populations and the environment in the face of EI and related infrastructure investments. While integrating a political lens into this work may appear to complicate matters, for those who care about impact, it is indispensable.

Endnotes

- 1 That discussion paper, which includes full citations for all the material covered in this brief, will appear as a chapter entitled “Tackling the EIA Impact Gap: Addressing Political Economy Realities to Bring Actual Practice Closer to Best Practice” in this forthcoming volume: *The Development Corridors Partnership (2022). Impact Assessment for Corridors: From Infrastructure to Development Corridor*. Hobbs, J. and Juffe-Bignoli, D. (eds.). Cambridge: The Development Corridors Partnership.
- 2 Wells-Dang, A., Nyi Soe, K., Inthakoun, L., Tola, P., Socheat, P., Nguyen, T.T.V., Chabada, A. and Youttananakorn, W. (2016) ‘A political economy of Environmental Impact Assessment in the Mekong region. *Water Alternatives* 9(1), 44.
- 3 Williams, A. and Dupuy, K. (2016) ‘Deciding over Nature: Corruption and Environmental Impact Assessments.’ U4 Issue, 2016 (5), 5. Available at: <https://www.u4.no/publications/deciding-over-nature-corruption-and-environmental-impact-assessments.pdf> (Accessed 1 April 2021).
- 4 Mitro, T. (2021) ‘Who influences oil sector governance outcomes? It depends on when you ask.’ *Columbia Center on Sustainable Investment* [online]. Available at: [https://ccsi.columbia.edu/sites/default/files/content/docs/Who%20influences%20oil%20sector%20governance%20outcomes_%20It%20depends%20on%20when%20you%20ask%20\(5\).pdf](https://ccsi.columbia.edu/sites/default/files/content/docs/Who%20influences%20oil%20sector%20governance%20outcomes_%20It%20depends%20on%20when%20you%20ask%20(5).pdf).
- 5 Barandiaran, J. and Rubiano-Galvis, S. (2019) ‘An empirical study of EIA litigation involving energy facilities in Chile and Colombia’, *Environmental Impact Assessment Review*, 79, 106311, 2. Available at: <https://doi.org/10.1016/j.eiar.2019.106311>.

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