One Country, Two EIA Systems: the public engagement in the EIA systems of Hong Kong and China

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I. INTRODUCTION

The paper examines two distinctive Environmental Impact Assessment (EIA) practices in the aspects of public engagement process applied in Hong Kong and China mainland. Under the "One Country, Two Systems" governance framework, Hong Kong enjoys high level of autonomy. Due to the unique historical background, the practices of environmental management between the two places are different. This paper uses the EIA of Shenzhen Western Corridor project, a trans-boundary EIA (TEIA) between Hong Kong and Shenzhen, to compare and contrast the institutional setting of EIA system in Hong Kong and China mainland in terms of public engagement process. The paper ends with a discussion on the challenges faced in fostering public engagement in these two jurisdictions.

II. PUBLIC ENGAGEMENT PROCESS IN THE RESPECTIVE SYSTEMS

1. Public Engagement in Hong Kong's EIA system.

The establishment of Advisory Council on the Environment (ACE) and its subordinate Environmental Impact Assessment Sub-committee (EIA Sub-committee) in 1994 manifested the government's attempt to incorporate public opinion into the statutory EIA process. The role of ACE is clearly stipulated in the EIA Ordinance as a government advisory committee to comment and carry out inspection of EIA reports (*Environmental Impact Assessment Ordinance*, 1998). Director of Environmental Protection (DEP) heavily weights the comments from ACE since the composition of which includes representatives from major green groups in Hong Kong and the professionals. The public and ACE could submit comments to DEP according to the specified time frame.

The engagement opinion in the EIA process was further enhanced after the introduction of Continuous Public Involvement (CPI) process in September 2003, which allows the public to comment on different stages of EIA studies. CPI is regarded as an important step forward to acknowledge "the importance of making use of every opportunity for early consultation (formally/informally) with Environmental Protection Department (EPD), ACE, District Councils, green groups and all interested parties, including those whose livelihoods might be affected by the project" (ETWB Technical Circular 13/2003).

Hong Kong's EIA system is well-known for its high level of information accessibility through the adoption of online data base, project webpage and training websites based on the principle of CPI. The EIA webpage under EPD (EIAO website) includes the documents involved in every EIA projects conducted in Hong Kong. EPD also provides online training courses for the public to strengthen their understanding of EIA. 3-D web-based monitoring tools (2005) and real-time monitoring were introduced to further improve the public engagement process. Since 2007, the meetings of EIA Subcommittee are partially open to the general public. This practice further enhances the public engagement in Hong Kong's EIA process.

2. Public engagement in China's EIA system

The public and experts are the two main parties in the public engagement process of China's EIA system. Apart from the *Law of the People's Republic of Cghina on Environmental Impact Assessment* (EIA Law) being effective on 1 September 2003, *Interim Measures for Public Participation in EIA* was implemented on 18th March 2006 to ensure public engagement throughout the EIA process.

General provisions on the arrangement of public involvement in the process of project-EIA are stipulated in the laws concerned. Article 5 of the EIA Law states the general principle in encouraging participation of relevant parties, experts and the public in the EIA process "appropriately". Although the yardsticks for the judgment of appropriateness are absence, Article 4 of the Interim Measures suggests that public participation should be taken in an open, fair, comprehensive and convenient manner.

The value of public comments has been an emphasis in China's EIA policy. The project proponent should allow the public to comment on the summary of EIA report within 10 working days. It is required by the Article 6 of Interim Measures that a chapter on public participation has to be included in the EIA Report. Proof meetings, public hearing and questionnaires are the ways that are recommended to facilitate public involvement (Article 12, Interim Measures; Article 21, EIA Law). Followed by the release of a summary of the EIA report, reasons for incorporating or eliminating certain public comments shall be listed in the EIA report (Article 21, EIA Law). In fact, the above measures are subjected to the condition that the relevant development does not involve national secret (Article 11, EIA Law; Article 5. Interim Measures).

The involvement of relevant experts in the EIA process constitutes another provision of public engagement process in China (Zhu & Lam, 2009). Comments from government representatives and experts should be considered in the preparation and examination of the EIA report. Consultation committee formed by the competent administrative department in

environmental protection allows experts to examine whether the EIA report adequately adopts public comments and relevant recommendations. These recommendations should constitute part of the consideration when approval is given by the head of relevant departments (Article 17, Interim Measures).

3. The case of Shenzhen Western Corridor (2001)

A. Public engagement in Hong Kong

Public engagement of the Hong Kong section of Shenzhen Western Corridor EIA followed the requirements of EIA Ordinance. A project profile was issued by DEP in September 2001 and opened for public comments. The completed EIA report was subsequently opened for public comments from 11 Sep 2002 to 10 Oct 2002. It was reported that only one set of written comments was received from the public (*EIA Reports Approved under the Ordinance*, 2012). As said by a NGO expert, meetings with officials were held regularly and their comments were incorporated during the scoping process, which contributed to a situation that public concerns had been adequately addressed in the EIA study (Lo, 2002).

ACE played an active consultative role in the EIA process as specified in the EIA Ordinance. After thorough discussion on the EIA report, members agreed to recommend the report to DEP for approval. However, some members expressed critical concerns on the potential environmental impacts on the Shenzhen-side of the project. Although Shenzhen government agreed to provide the Executive Summary of the EIA report for interested parties in Hong Kong, it was still not available when the endorsement was made (*Confirmed Minutes of the 100th Meeting of the Advisory Council on the Environment*, 2002). This imposed difficulties to ACE and the public in assessing the potential environmental impacts of this trans-boundary project as a whole.

After considering comments from ACE and the public, DEP issued an Environmental Permit to the project on 2 April 2003. Environmental monitoring and audit reports were later made available for public inspection on the project website (*Hong Kong-Shenzhen Western Corridor (Shenzhen Bay Bridge)*, 2011).

B. Public engagement in Shenzhen

The extent of the EIA public engagement in Shenzhen was expectedly narrower than that of Hong Kong. Under the classification of constructions in China, Shenzhen Western Corridor project consists of three components: Shenzhen Western Corridor border control station, the main structure of the bridge and connecting road of Western Corridor on the Shenzhen side. However, public engagement was conducted for the EIA of the connecting road only, not the whole project. As no specific types of public engagement tools were required in the laws. The

Shenzhen Environmental Science Institute, the licensed agency for the EIA, completed soliciting public comments by distributing 50 questionnaires to locals in a small district near the connecting road, even though the affected area was home to over 200,00 Shenzhen citizens (Lau, 2005). Locals strongly complained that no relevant information was provided during the EIA process (Lau, 2005).

The project triggered public opposition across the area. The questionnaires results revealed in a high rate of opposition, in which 94% of the respondents objected the project (Wang, 2005). Such opposition seemed unable to change the determination of the government towards the development. Authorities explained that the public engagement process did not violate the law since the ways of soliciting public comments were not stipulated (*Legal Advice on Several Problems Concerning "Connection Roads of Shenzhen - Hong Kong Western Corridor"*, 2005). Since the public found their concerns were not addressed in the EIA process, they expressed their grievance to government departments in higher level in their own ways, including public petitions and "*shang fang*" (Yeung *et al.*, 2011).

Shenzhen Environmental Protection Bureau (SEPB) first approved the EIA report in Jun 2002. They requested the project proponent to re-conduct the EIA study in July 2003 because of the change of construction method of the alignment. Two months later, Experts Committee evaluated the EIA report and the results were also released to the public. Based on the recommendation made by the Experts Committee, the EIA report was re-approved in December 2003. The decision was made despite serious objections from the public on both the recommendation of the EIA report and the construction of the project (Tecent, 2005)

III. CHALLENGES

The case study has identified significant differences in the public engagement process in the two EIA systems within China. Such differences impose institutional and practical challenges to decision-makers and project proponents to achieve the aims of EIA. The case study highlights three challenges for the implementation of TEIA in Hong Kong and Shenzhen.

Firstly, the case example demonstrates the failure in addressing the cross-boundary nature of the project in the assessment process. Further cooperation between different governments in conducting EIA studies contribute not only to the comprehensiveness but also the accuracy of the impact projection. Marsden (2011) pointed out that the lack of joint or coordinates assessments will hamper the involvement of the public of each jurisdiction in the whole assessment. It is known that EIA studies for cross-boundary constructions in PRD are conducted individually by respective governments. The "split" up of EIA studies by the border of jurisdictions is also found in the Hong Kong–Zhuhai–Macao Bridge project (2009). The EIA

studies without considering the cross-boundary nature of the project, and also the inaccessibility of environmental data in the mainland side, results in the inability to carry out proper public engagement process.

Secondly, the existence of implementation gap contributes significantly to the inability of the decision-makers to make informed judgment in EIA process. The importance of public engagement lies upon extra inputs from the public which enable the decision-makers to comprehensively consider the potential impacts of constructions. The public engagement in the EIA of the connecting road project on the Shenzhen-side failed to achieve the goal, in which only questionnaires and a few number of public meetings were used. Since China's EIA Law does not explicitly specify the way of how the citizens could be involved in public hearings or meetings, how to solicit public comments is solely the decision of the competent authority. Officials should, in this regard, be encouraged to make use of various means of consultation to enhance public involvement and the validity of the EIA process.

Thirdly, the effectiveness of EIA rests upon the political beliefs and culture among the government officials. Martens (2006) pointed out that power relations in authoritarian regime hamper the effectiveness of public engagement in China. Even though there are strong public concerns, the situation would not be changed if the concerns are ignored. Apparently the concerns raised by citizens were not adequately addressed and seemed unimportant in the eyes of Shenzhen government officials. Citizens in Shenzhen had to seek alternative ways to express their grievance towards the development project. Whereas in Hong Kong, as heavily influenced by western culture, officials paid attention to public comments and tried to incorporate them through a public-friendly institutional setting. With this different official perception towards public engagement, it is expected that the comprehensiveness and effectiveness of TEIA would be impeded.

IV. CONCLUSION

The findings of the case study suggest that the practices of Hong Kong and China's EIA system in terms of public engagement process have apparently been hindered as the consequence of institutional differences and the uncooperative manners between the two local governments. Although the general public often raises concerns over the potential environmental impacts of a development, different levels of attentions are given by the authorities in the two places which, as shown by the case study, may due to the differences in political culture. The effectiveness of both public engagement and decision making are inseparable from the institutional setting and the attitude of government officials. Now that the challenges have thus arisen in regard to how both the Hong Kong and Shenzhen governments should, and could, take the importance of cooperation into consideration while

carrying out trans-boundary EIA, and that would resemble a step forward in environmental management in the PRD region.

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